

Sentencing Guidelines and Sentencing in England and Wales – Victims of Crime

How do the sentencing guidelines in England and Wales reflect the interests of victims of crime? In developing its sentencing guidelines, the Sentencing Council of England and Wales has a statutory duty to consider the interests of victims. This document describes the ways in which the Council meets this statutory duty and includes a list of key references in the area of victim and witness views, and their experiences of sentencing. It covers:

- the Sentencing Council's statutory duties and membership;
- research carried out with victims;
- consultation on draft guidelines;
- factors taken into account when sentencing; and
- the sentencing process.

1. The Council's statutory duties and membership

There is a statutory duty placed on the Sentencing Council by the *Coroners and Justice Act (2009)* which directs that the Council must have regard to '*the impact of sentencing decisions on victims of offences*'.¹

It is also a statutory requirement that one Council member has experience of '*the promotion of the welfare of victims of crime*'.² The current Council member who fulfils this role has considerable experience in this field - Gillian Guy, the chief executive of the independent charity, Citizens Advice, and former chief executive of Victim Support.³

The Council has undertaken work to promote awareness of sentencing with victims and witnesses as part of a wider statutory duty in this area. A film explaining different types of sentence and the sentencing process was commissioned and developed in partnership with the Victim Support charity in 2012.⁴ It is aimed to help improve understanding of sentencing and sentences passed.

¹ Section 120(11)(c)

² As set out in paragraph 4(1)(e), Schedule 15, Coroners and Justice Act 2009:
<http://www.legislation.gov.uk/ukpga/2009/25/schedule/15>

³ For full details of Sentencing Council members see the Sentencing Council website:
<http://sentencingcouncil.judiciary.gov.uk/about/council-members.htm>

⁴ The film is hosted on the Sentencing Council website:
<http://sentencingcouncil.judiciary.gov.uk/about-sentencing.htm> and is also on the Victim Support website: <http://www.victimsupport.org.uk/About-us/News/2012/10/new-film-sentencing>

2. Research carried out with victims

The Council considers the interests of victims of crime through conducting research into victims' perceptions and experiences with respect to particular offences in order to inform the development of specific sentencing guidelines.

For example, most recently, the Council has commissioned research on the impact and 'harm' caused to the victim by online fraud offences. The research has used focus groups and interviews to explore the impact of different types of online fraud on victims⁵, factors which impact on the seriousness of the offence, and attitudes towards fraud offences in general. The findings from this study will be fed into the development of a guideline on sentencing fraud offences and will be published in Spring 2013.

In preparation for issuing its recent consultation guideline on sentencing sexual offences, the Council also commissioned research with victims and survivors of sexual crimes⁶. The research explored the experiences and perceptions of victim/survivors and parents or guardians of victims of sexual offences. The main methods used were in-depth interviews and focus groups, which allowed for a personal and detailed account of their experiences and views to be discussed. Findings from this research fed directly into the development of the draft guideline. This type of research with victims is of particular value in informing the development of specific factors listed in sentencing guidelines for courts to consider, and in particular, factors that indicate a high level of blame relating to the offender and also factors that make the offence more or less serious.

The Sentencing Advisory Panel, one of the Council's predecessor bodies, also conducted earlier guideline-related research into victims' views of sentencing in cases of driving offences causing death⁷ and for rape⁸. This research then contributed to the development of sentencing guidelines for these offences.

3. Consultation on draft guidelines

The Council has a statutory duty to conduct a consultation on draft offence guidelines. Consultation events are also arranged for different interest groups

⁵ The research focussed specifically on confidence fraud (where the victim typically transfers money/property as a result of having been deceived or misled by the perpetrator and on possessing, making or supplying articles for use in fraud (such as using false fronts for cash machines or computer programmes for generating credit card numbers).

⁶ McNaughton Nicholls et al., 2012

⁷ Hough et al., (2008)

⁸ Clarke et al., (2002)

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including those representing victims of crime. Individual victims, groups representing victims or providing services to them (for example, Victim Support) and academics working in the area of victims are an important part of the consultation process. Their views and responses to guideline consultations are then carefully considered by the Council before it issues any definitive sentencing guideline⁹.

4. Factors taken into account when sentencing

Victims play an important role in the sentencing process through the specific factors listed in sentencing guidelines. Guidelines issued by the Sentencing Council identify a number of victim-related factors which courts should consider when sentencing. In June 2011 the Sentencing Council issued its first guideline – covering assault offences.¹⁰ The format was different to previous sentencing guidelines as it presented a step by step approach for courts to follow when sentencing an offender. This format has since been followed by three other guidelines dealing with burglary offences and drugs offences and offences involving dangerous dogs.

5. The sentencing process

The first step of the guideline's approach requires a court to make an assessment of the harm caused (or intended) to the victim and the offender's level of blame. The second step requires a court to determine how serious the offence is using any particular factors that are present and will also include victim-related factors.

For example, the definitive guideline for sentencing common assault lists **10** factors related to the impact of the crime on the individual victim¹¹:

- victim is particularly vulnerable because of personal circumstances;
- sustained or repeated assault on the same victim;
- offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation);
- offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability);

⁹ A definitive guideline is the final version of a guideline that is issued for sentencers to use in court.

¹⁰ Sentencing Council (2011) *Assault. Definitive Guideline*. London: Sentencing Council of England and Wales. Available at: http://sentencingcouncil.judiciary.gov.uk/docs/Assault_definitive_guideline_-_Crown_Court.pdf

¹¹ These factors form part of a non-exhaustive list that must be considered by sentencers. The sentencer is free to give weight to any features of the case which in their judgment affect the impact of the offence on the victim.

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- deliberate targeting of vulnerable victim;
- offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity);
- ongoing effect on the victim;
- gratuitous degradation of victim;
- in domestic violence cases, victim forced to leave their home; and
- any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution.

The presence of any of these factors suggests that the case will be more serious, and a court will generally impose a higher sentence.

Finally, another step used in the sentencing guidelines reminds courts to consider their statutory duty as to whether the offender should pay compensation to the victim for personal injury, loss, or damage resulting from the offence.

By noting these important victim-related considerations during the sentencing process the guidelines ensure that courts across the country approach victims' interests in a consistent way.

A bibliography of key references in this area of research is included for reference below.

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