

MEETING OF THE SENTENCING COUNCIL

10 MAY 2019

MINUTES

Members present:

Tim Holroyde (Chairman)
Rob Butler
Diana Fawcett
Rebecca Crane
Rosa Dean
Julian Goose
Heather Hallett
Maura McGowan
Sarah Munro
Alpa Parmar
Beverley Thompson

Apologies:

Rosina Cottage
Max Hill

Representatives:

Assistant Commissioner Nick Ephgrave for the police,
Sophie Marlow for the Lord Chief Justice (Legal and Policy Adviser to Sir Brian Leveson, Head of Criminal Justice)
Phil Douglas for the Lord Chancellor (Director, Offender and Youth Justice Policy)
Kate Anderson for the Director of Public Prosecutions

Members of Office in attendance:

Steve Wade (Head of Office)
Lisa Frost
Amber Isaac
Mandy Banks
Ruth Pope
Eleanor Nicholls

1. MINUTES OF LAST MEETING

- 1.1. The minutes from the meeting of 5 April 2019 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman reported on a successful visit he had made to Taiwan to deliver lectures on the work of the Council and on the interest that the Taiwanese judiciary had shown towards developing sentencing guidelines in their jurisdiction.

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

- 3.1 The Council considered sentence starting points and ranges for the main Misuse of Drugs Act 1971 and Psychoactive Substances Act 2016 offences, looking at evidence of recent sentence levels and case transcripts.
- 3.2 The Council agreed to retain current sentence levels for most offences, but to give further consideration to sentence levels for Psychoactive Substances Act offences, which have a lower statutory maximum penalty than the equivalent Misuse of Drugs Act offences. As the guidelines are due to be signed off at the Council's meeting in June, some of these changes to sentence levels will be considered out of committee.
- 3.3 The Council also considered evidence from the police concerning increasing levels of purity of ecstasy tablets and decided to consult on revised quantities of tablets in harm tables, and to seek additional evidence from the police experts on changes in potential yield of cannabis plants.

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

- 4.1 The Council considered potential options for a revised attempted murder guideline, and agreed to proceed with a model including descriptive culpability factors. It was agreed that the most serious factors would reflect paras 4 and 5 of Schedule 21 of the Criminal Justice Act 2003 for murder offences, and that four categories of culpability would be required to allow for the guideline to be relative to the various minimum term murder categories and sentences.
- 4.2 The Council agreed that a similar harm model to the model agreed for GBH offences should be included, with some revisions to reflect the fact that harm can be broader in range in attempted murder than GBH.

The Council considered whether the guideline should include life sentences, and provisionally agreed that life starting points should not be included but that guidance be provided on when life sentences may be appropriate.

5. DISCUSSION ON FIREARMS – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

- 5.1 The Council considered the content of a step in the relevant guidelines on the five year minimum term provisions and guidance on when exceptional circumstances might apply. The Council was informed that the CPS had changed its charging advice on offences involving the possession of disguised stun guns which would reduce the number of cases coming within the minimum term provisions. The Council agreed to consult on providing additional guidance on the minimum term provisions for under 18s.
- 5.2 The Council confirmed that sentence levels should be developed to reflect broadly current sentencing practice. The Firearms Working Group would meet to discuss sentence levels in detail and these would be considered by the full Council at the July meeting alongside the resource assessment.

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

- 6.1 The Council considered consultation responses to the draft guideline for hate crime offences of stirring up racial hatred or hatred against persons on religious grounds or grounds of sexual orientation. It was agreed that one high culpability factor should be slightly amended to 'offender uses position of trust, authority or influence to stir up hatred'. It was also agreed that the reckless culpability factor should be qualified for clarity that the category applies to reckless offences only as the other offences must be intended.
- 6.2 Extensive discussion took place regarding the harm factor relating to widespread dissemination and a strong likelihood that many would be influenced. Some respondents had raised concerns that this factor would potentially capture a high number of cases in the digital age and potential for material to be shared, and that strong likelihood of influence was difficult to assess and measure.
- 6.3 The Council considered other forms of words, and agreed to rephrase the factor as widespread dissemination agreeing that this would cause more harm in an offence. It was agreed that a mitigating factor of 'Offender took steps to limit dissemination' should be included to provide for balance in considering an offender's role in disseminating material.

- 6.4 Finally the Council agreed to revise the starting point of the lowest category of offence from a custodial sentence to a community order and adjusted the sentence range for the category.

7. DISCUSSION ON IMMIGRATION AND MODERN SLAVERY – PRESENTED BY ELEANOR NICHOLLS, OFFICE OF THE SENTENCING COUNCIL

- 7.1 This was the first time the Council had considered the project to develop guidelines for Immigration and Modern Slavery Offences. The Council discussed which offences should be included, and agreed that the guideline should cover six of the most commonly sentenced Immigration offences, including two identity document offences and the offence of providing immigration advice in contravention of a prohibition or a restraining order, under s91(1) of the Immigration and Asylum Act 1999.
- 7.2 The Council also agreed that the guideline would cover eight offences under the Modern Slavery Act 2015, and agreed some questions of evidence gathering and approach.

8. DISCUSSION ON TERRORISM – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

- 8.1 The Council agreed that the Terrorism guidelines should be reviewed to take account of legislative changes in the Counter-Terrorism and Border Security Act 2019. Work on this would be expedited but changes would be subject to consultation. In the meantime the Council agreed to add notes to the existing guidelines to alert users to the legislative changes and the fact that the guidelines had not been updated to take account of these.