

MEETING OF THE SENTENCING COUNCIL

15 MAY 2020

MINUTES

Members present:

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

Representatives:

Duncan Webster for the Magistrates' Leadership
Executive
Phil Douglas for the Lord Chancellor (Head of
Custodial Sentencing Policy)

Members of Office in
attendance:

Ruth Pope
Mandy Banks

1. MINUTES OF LAST MEETING

- 1.1 The minutes from the meeting of 3 April 2020 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman welcomed members of the Office who had joined the team since the last Council meeting. Ollie Simpson joined the policy team and Charlotte Davison, Elaine Wedlock and Eliza Cardale joined the analysis and research team

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

- 3.1 This was the first consideration by the Council of the responses to the consultation on eight firearms guidelines which closed in January 2020. The Council noted that while there were only 20 responses to the consultation these were very helpful responses from key interested parties.
- 3.2 In response to a question relating to the scope of the guidelines the Council was persuaded that the project should be expanded to include a guideline for importation offences contrary to the Customs and Excise Management Act 1979 as these are serious offences (carrying a maximum of life imprisonment) and the number of prosecutions had increased since the original decision to exclude them. The Council was not persuaded to include guidelines for offences within the licensing regime as these were less serious and the number of convictions remained very low.
- 3.3 The Council considered responses to the possession of a prohibited weapon guideline and agreed some minor amendments to the type of weapon table to aid clarity. The possibility of providing guideline users with information about the types of weapon covered by the sections of the Firearms Act referred to in the guideline was to be investigated. There was a discussion regarding the ‘other’ culpability factors and it was agreed that further consideration should be given to the wording of these by the Firearms Working Group to ensure that the factors were clear and resulted in a proportionate categorisation of the seriousness of the offence.
- 3.4 The Council noted that respondents had been broadly satisfied with the sentence levels and agreed to make a minor change to the sentence table for offences where the minimum term does not apply. Suggestions for amendments to the aggravating and mitigating factors were discussed and the Council agreed to make some changes to the wording to improve clarity.
- 3.5 It was noted that respondents found step three of the guideline relating to the minimum term and exceptional circumstances to be helpful and the Council adopted some suggestions to improve the wording. Concerns regarding the position of this step within the guideline were

discussed and it was agreed to improve the 'signposting' of this information within the guideline.

- 3.6 The consultation had noted that BAME offenders were disproportionately represented in firearms offending and that there was an apparent imbalance in the proportion of White compared to Black and Asian offenders, sentenced for possession offences to which the minimum term applied, who received sentences less than the minimum term. The consultation had sought views on how the guidelines could address these issues, but there had been no suggestions from respondents. The Council remained concerned about this issue and asked for further analysis of the demographic data to be considered at a later meeting.

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

- 4.1 This was the last meeting to discuss and agree the guideline before publication later in the summer. The Council considered some changes to positioning of text within Annex C and section three, on sentencing disposals, also a new section at the end of Annex C called 'Effect of hospital orders, restriction orders and 'hybrid orders' and their release provisions'.
- 4.2 The Council also agreed some minor changes to terminology, in order to be consistent throughout the guideline, and considered whether any changes to the guideline were necessary due to the emergency Covid 19 legislation. The Council also looked the draft resource assessment, which will be published alongside the definitive guideline in due course.

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

- 5.1 The Council reviewed the draft guideline for sentencing individuals convicted of unauthorised use of a trade mark and agreed a version for consultation.
- 5.2 The Council also considered a proposed version of the guideline for sentencing organisations based on the same structure as the corporate fraud guideline. The Council noted that it was common for individuals and the companies they run to be prosecuted together and agreed that the factors in the guideline for organisations should mirror those in the guideline for individuals wherever possible. It was agreed that the sentence levels would be based on the assumption that the offending organisation is a micro business (turnover of not more than £2million) with a note to advise sentencers to adjust the sentence if this is not the case.
- 5.3 The Council agreed to consult on both guidelines and as part of the consultation to work with Trading Standards officers to test the draft guideline against real cases.

5.4 The Council also considered a submission on behalf of the London Borough of Barking and Dagenham requesting a sentencing guideline for the offence of selling knives to persons under the age of eighteen, contrary to s.141A of the Criminal Justice Act 1988. The Council agreed to add this to the list of future guidelines for detailed consideration at a later date.