

MEETING OF THE SENTENCING COUNCIL

22 NOVEMBER 2019

MINUTES

Members present:

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

Apologies:

Maura McGowan

Representatives:

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

Members of Office in
attendance:

Mandy Banks
Lisa Frost
Amber Isaac
Emma Marshall
Ruth Pope
Steve Wade

1. MINUTES OF LAST MEETING

- 1.1 The minutes from the meeting of 25 October 2019 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman welcomed Duncan Webster as the magistrate representative in the absence of Rob Butler who had resigned from the Council. The Chairman paid tribute to Rob Butler for his contribution to the work of the Council.

3. DISCUSSION ON ASSAULT – PRESENTED BY LISA FROST AND AMBER ISAAC, OFFICE OF THE SENTENCING COUNCIL

- 3.1 The Council considered whether revisions should be made to the draft guideline based on findings from the Serious Crime Seminar testing of the draft attempted murder guideline.
- 3.2 The Council agreed revised culpability assessment explanatory wording, and revision to a number of culpability factors. Substantial planning was removed from very high culpability and it was agreed that this category should provide for the very specific cases included. Planning is provided for at high culpability and spontaneous offences at medium culpability. It was agreed this would achieve proportionate categorisations and sentences.
- 3.3 The Council also agreed that life changing injuries should be assessed at the highest category of harm, with injuries which are almost fatal but from which a victim makes a full recovery provided for in a lower category. Extensive discussion took place regarding sentences, and it was agreed that two versions of sentences should be tested against a range of cases and findings considered by a working group, for final consideration by the Council in December.
- 3.4 The Council considered findings from analysis to estimate the impact on sentencing outcomes of the guidelines for common assault, assault on an emergency worker and assault with intent to resist arrest.

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

- 4.1 This was the third discussion of the draft guideline following the consultation earlier in the year. The Council considered the wording of a revised paragraph on cultural, ethnicity and gender considerations of offenders within a mental health context and the revised paragraphs on assessing culpability and private treatment.
- 4.2 The Council also agreed to set up a small working group to consider some issues in detail prior to the next Council meeting in December, namely detailed consultation responses on sections three and four of the guideline. The group will then outline their discussions and proposals for any amendments at the next Council meeting.

5. DISCUSSION ON SC PRIORITIES FOR NEXT 12 MONTHS – PRESENTED BY STEVE WADE, OFFICE OF THE SENTENCING COUNCIL

- 5.1 The Council considered a paper outlining priorities for the next twelve months in the light of recent staff changes. The Council confirmed that it wished to prioritise finalising all those guidelines, and revisions of guidelines, that are under active development. These are: Assault (revision), Mental Health, Drugs (revision), Terrorism (revision), Firearms, Immigration and Modern Slavery, Magistrates Courts Sentencing Guidelines (updates).
- 5.2 The Council also decided to continue with work on a replacement for the SGC *Unauthorised use of a trademark* guideline but for the scope of this work not to be expanded, and to take forward a discrete piece of work to produce guidelines for ‘drug driving’ offences (see discussion on MCSG below).

6. DISCUSSION ON ANNIVERSARY ACTIVITIES AND VISION UPDATE – PRESENTED BY EMMA MARSHALL, OFFICE OF THE SENTENCING COUNCIL

- 6.1 The Council considered the issues that emerged on analysis and research in the discussions on the Council’s future vision/priorities.
- 6.2 The Council discussed the key areas from the discussions overall and some of the considerations that the Council might want to take into account. The next steps are to continue this work and to translate these themes into areas that the Council can consider further and that would feed into a public consultation document.

7. DISCUSSION ON MCSG – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

- 7.1 The Council considered a revised version of the guidance in the explanatory materials to the MSCG on exceptional hardship in ‘totting-up’ disqualifications. It was agreed that evidence from the offender in support of an exceptional hardship application should be sworn evidence and the guidance was modified accordingly.
- 7.2 The Council wished to ensure that courts were mindful of issues of fairness and equality when making decisions about exceptional hardship and added a link to the Equal Treatment Bench Book to the draft guidance. Other changes were made to aid clarity and the Council agreed to consult on this revised version early in 2020.
- 7.3 The Council also decided to consult at the same time on adding a reference to the Equal Treatment Bench Book to all of the pages of the Explanatory Materials.

- 7.4 The Council reviewed the decisions made at the October meeting on proposed amendments to the *Breach of a community order* guideline, the *Totality* guideline, the *Drive whilst disqualified* guideline and to the explanatory materials relating to the surcharge and to fines for those on a very high income and agreed to consult on those also.
- 7.5 The Council agreed that further work should be undertaken on guidelines for the offences of *Driving or Attempting to Drive with a specified drug* above the specified limit and *In Charge with a specified drug* above the specified limit in conjunction with the Department for Transport before consulting on guidelines for these offences at a later date.