

## MEETING OF THE SENTENCING COUNCIL

26 JANUARY 2018

### MINUTES

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Members present: Colman Treacy (Chairman)  
Mark Castle  
Rosina Cottage  
Rebecca Crane  
Julian Goose  
Martin Graham  
Jill Gramann  
Heather Hallett  
Tim Holroyde  
Maura McGowan  
Sarah Munro  
Julian Roberts  
Alison Saunders

Apologies: Olivia Pinkney

Representatives: 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)

Members of Office in Attendance: Mandy Banks  
Vicky Hunt  
Lisa Frost  
Eleanor Nicholls  
Ruth Pope

## **1. MINUTES OF LAST MEETING**

- 1.1. The minutes from the meeting of 15 December 2017 were agreed.

## **2. MATTERS ARISING**

- 2.1 The Chairman welcomed Phil Douglas to his first Council meeting since his appointment as MoJ Director of Offender and Youth Justice Policy.

## **3. DISCUSSION ON TERRORISM – PRESENTED BY VICKY HUNT, OFFICE OF THE SENTENCING COUNCIL**

- 3.1 The Council considered the Preparation of Terrorist Acts guideline and agreed some revisions to the culpability factors to deal better with a 'less sophisticated' type of terrorist attack. The Council also agreed changes to the sentencing table and the guidance on dangerousness. These changes will also be made to the Explosive Substances guideline for consistency.
- 3.2 The Council also discussed proposed changes to the harm model for the Preparation and Explosive Substances guideline but agreed that this needs further thought and so a working group will convene in February for this purpose. The Council also agreed to discuss some changes to the Failure to Disclose Information guideline at the same working group.
- 3.3 In considering the second terrorism paper the Council considered and agreed changes to both the culpability and harm factors in the Encouragement of Terrorism and Collection of Terrorist Information guidelines. The changes to the culpability factors in the 'Encouragement' guideline were made to provide greater clarity for sentencers, and the changes to the harm factors were made to link harm more closely to the severity of the material published or disseminated.
- 3.4 The changes to the 'Collection' guideline were made to ensure that the factors capture offences at the right level. Many respondents to the consultation felt that the factors described the type of activity that is more likely to be charged with a more serious offence.
- 3.5 Finally the Council made minor changes to the Possession for Terrorist Purposes guideline to help achieve consistency across the package of guidelines.

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

- 4.1 The Council gave final consideration to the draft guideline for Public Order offences. The package of guidelines includes Riot, Violent

Disorder, Affray, s4, s4A and s5 Public Order Act offences and their racially or religiously aggravated counterparts, and a guideline for a number of related hate crime offences. A number of minor revisions to factors were agreed and the guideline was signed off for consultation, with consultation planned to commence on 12 April 2018.

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

- 5.1 The Council discussed how additional information could be made available on factors in existing guidelines, once all guidelines are available digitally. At this meeting the Council looked at the Assault, Burglary, Sex, Robbery, Drugs, Fraud, Environmental Offences, Possession of Offensive Weapon/ Bladed Article and Theft Definitive Guidelines.
- 5.2 The Council agreed to consult on proposals to include additional information on many of the standard aggravating and mitigating factors in offence specific guidelines. The Council also agreed to consult on including some tailored information in different offence specific guidelines.
- 5.3 The Council agreed that where guidelines define medium culpability or harm by the absence of factors in high or low, it would consult on changing the wording to give more guidance.

**6. DISCUSSION ON INTIMIDATORY OFFENCES – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL**

- 6.1 The Council considered consultation responses on the Coercive and Controlling Behaviour, Disclosing Private Sexual Images and Threats to Kill guidelines. Some amendments and changes to the culpability, harm, and aggravating and mitigating factors across the three offences were agreed as a result of the discussion. Some changes to the guidance for sentencing racially or religiously aggravated harassment and stalking offences were also agreed.
- 6.2 The Council agreed that sentence levels across all the offences will be discussed at the next Council meeting.

**7. DISCUSSION ON CHILD CRUELTY – PRESENTED BY ELEANOR NICHOLLS, OFFICE OF THE SENTENCING COUNCIL**

- 7.1 This was the first discussion of the guideline following the consultation on the draft guideline in summer 2017. The Council discussed the approach to the assessment of culpability and the culpability factors in the guidelines for the Cruelty to a Child and Causing or Allowing a Child to Die or Suffer Serious Physical Harm offences. Other aspects of these guidelines, and the guideline for the Failure to Protect a Girl from the Risk of FGM offence will be discussed at future meetings.

- 7.2 The Council considered comments made in consultation responses and noted the broad agreement from consultees with the approach to assessing culpability for both offences. The Council made some changes to the culpability factors, particularly to ensure that all types of child cruelty were clearly covered by the guideline, and to provide appropriate guidance on balancing different factors.

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

- 8.1 The Council considered the responses to the consultation on the Gross Negligence Manslaughter guideline and the results of research with judges on the draft guideline. The Council noted that some of the factors in the draft guideline could have unintended consequences in some cases. The Council agreed to remove some factors and redraft others.
- 8.2 It was agreed to re-test the revised guideline with judges before finalising the definitive version.