

MEETING OF THE SENTENCING COUNCIL

29 JANUARY 2021

MINUTES

Members present:

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

Apologies:

Nick Ephgrave

Representatives:

Hanna van den Berg for the Lord Chief Justice
(Legal and Policy Advisor to the Head of Criminal
Justice)
Amy Randall for the Lord Chancellor (Director
General of the Policy, Communications and
Analysis Group, MoJ)

Observer:

Jack Hickey (Policy Advisor, Policy,
Communications and Analysis Group, MoJ)

Members of Office in
attendance:

Steve Wade
Lisa Frost
Phil Hodgson
Ruth Pope
Ollie Simpson

1. MINUTES OF LAST MEETING

- 1.1 The minutes from the meeting of 18 December 2020 were agreed.

2. MATTERS ARISING

- 2.1 On 27 January the revised sentencing guidelines for drugs offences that reflect a change in the nature of offending and additional offences in relation to psychoactive substances were published. There had been good press coverage focussing on the inclusion of information on disparity in sentence outcomes associated with ethnicity and the changes relating to the exploitation of vulnerable people. The revised guidelines will come into force on 1 April 2021.
- 2.2 The Chairman informed the meeting that on 2 February he and the Head of Office would be giving oral evidence to the Justice Committee of the House of Commons on the work of the Sentencing Council.

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

- 3.1 The Council considered consultation responses to factors relating to GBH and ABH offences and the findings of research in relation to a number of points raised. Minor amendments were agreed to explanatory text relating to highly dangerous weapons, and to the highest GBH harm factor for the purpose of clarity.
- 3.2 The Council discussed whether the guidelines should provide for a lack of premeditation to be included as a lesser culpability factor, and based on a suggestion by a consultation respondent a relevant factor was agreed for inclusion in the guidelines.
- 3.3 The Council considered responses and research findings in respect of application of the draft ABH harm model. An alternative more descriptive model was discussed and the Council agreed this should be tested with sentencers to identify if the revised model addresses the issues raised.

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

- 4.1 The Council considered the responses to the consultation and the evidence from research with sentencers and discussed suggestions for changes to culpability and harm factors and to aggravating and mitigating factors.
- 4.2 The Council noted that this was an offence that most sentencers come across only rarely and that the culpability factors in the draft guideline were too generic to provide much assistance to sentencers in some situations. It was agreed that the culpability factors should be revised to

ensure that it was clear that in appropriate cases an offender working alone could be placed in high culpability.

4.3 The Council considered that some very valuable contributions had been made by respondents and that many of the issues raised warranted further consideration. In particular, the Council was keen to ensure that the right balance was struck between the financial value of the offending and other harms that could result.

4.4 The Council agreed that a working group should be set up to consider some of the issues in more detail. It was recognised that this might mean that the timetable for publishing the guidelines would have to be pushed back.

5. DISCUSSION ON SEXUAL OFFENCES– PRESENTED BY OLLIE SIMPSON, OFFICE OF THE SENTENCING COUNCIL

5.1 As part of the sex offences guideline revision, the Council discussed the findings of the 2018 assessment of the guideline. It was agreed that, in the context of generally increasing sentencing severity for sex offences, there was not a disproportionate increase in severity for sexual assault and sexual assault of a child since 2015. Nonetheless, picking up on the findings of the assessment, the Council agreed to provide clarity for all relevant sexual offence guidelines by way of expanded explanations for the Step One elements of “abuse of trust” and “psychological harm” in line with Court of Appeal case law.

5.2 The Council also discussed consulting on small revisions to the guidance on historic sex offences, to align the wording more closely to Court of Appeal authority in the case of *Forbes*.

6. DISCUSSION ON WHAT NEXT FOR THE SENTENCING COUNCIL? – PRESENTED BY PHIL HODGSON AND OLLIE SIMPSON, OFFICE OF THE SENTENCING COUNCIL

6.1 The Council considered a summary of the consultation responses relevant to promoting public confidence. Members made several concrete suggestions for the communication team to follow up and gave provisional feedback in relation to priorities for the Council’s public confidence work.

6.2 Some respondents to the consultation had suggested that the Council should draw more on specialist expertise. The Council agreed that external expertise could be fed into the Council’s deliberations by way of sub-groups and that at the scoping stage of a new guideline, consideration should be given to what external expertise might be needed.

6.3 The Council noted suggestions that it should become more actively involved in public debate on sentencing matters, but expressed concern about the risk of being drawn on individual cases when it would not be appropriate to comment on them.