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**MEETING OF THE SENTENCING COUNCIL  
17 June 2011 MINUTES**

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Members present:

Brian Leveson (Chairman)  
Anne Arnold  
John Crawforth  
Siobhain Egan  
Tim Godwin  
Henry Globe  
Gillian Guy  
Anthony Hughes  
Alistair McCreath  
Anne Rafferty  
Katharine Rainsford  
Julian Roberts  
Keir Starmer  
Colman Treacy

Apologies:

Helen Judge, Director Sentencing & Rehabilitation,  
Ministry of Justice

Advisors present:

Paul Cavadino  
Paul Wiles

Observers:

Christina Pride – Private Secretary to Lord Chief  
Justice  
Alyson Sprawson – Policy Advisor CPS

Members of Office in  
Attendance:

Rosalind Campion  
Isabel Sutcliffe  
Alison Naftalin  
Emma Marshall  
Robin Linacre  
Laura Smith  
Nigel Patrick  
Michelle Crotty

## **1 WELCOME AND APOLOGIES FOR ABSENCE**

- 1.1 Apologies were received as set out above.

## **2 MINUTES OF LAST MEETING**

- 2.1 Minutes from the meeting of 13 May 2011 were agreed.

## **3 ACTION LOG**

- 3.1 It was confirmed that the final TIC guideline and consultation paper would be presented to Council at its July meeting. Alistair McCreath had agreed with those who run the criminal continuation training course that they would use the release provisions table discussed at last month's meeting.
- 3.2 The Chairman updated the Council on the academic conference which had taken place the previous day and noted that there were a number of students, particularly MPhil, who were looking for dissertation topics and Council had been invited to identify areas where research was scant which they could undertake.
- 3.3 Members provided updates on consultation events that they had chaired:
- Colman Treacy reported that legal professional event he had chaired the previous evening in relation to both the drugs and burglary guidelines had provided some useful areas to think about;
  - Keir Starmer reported that a number of useful recommendations had been made by drugs organisations and organisations who work with offenders, particularly in relation to possession offences;
  - Katharine Rainsford reported on a positive and helpful event with magistrates in Manchester.
- 3.4 Nigel Patrick advised Council that he had chaired a meeting of a group of ex-offenders whose views would also be taken into account as part of the consultation process.

## **4 DISCUSSION ON DANGEROUS DOGS GUIDELINE INTRODUCED BY NIGEL PATRICK**

- 4.1 It was agreed that the draft guideline should deal with the three most commonly prosecuted dog offences (possession prohibited dog/dog dangerously out of control causing injury/dog dangerously out of control).
- 4.2 The structure for the out of control offences should replicate that of assault and burglary but this would be more difficult in relation to possession offence which is in effect an offence of strict liability. It was agreed that owners often do not know that the dog is prohibited and that the state and extent of the owner's knowledge should be considered in step 2.

- 4.3 The sentencing statistics revealed that a small number of offenders were imprisoned for all 3 offences but it was difficult to assess in what circumstances custody would be deemed appropriate. It was agreed that it would be helpful to consider the DEFRA consultation and responses and to have the views of the Met and other police forces.
- 4.4 It was agreed that further work should be undertaken in relation to the level of guidance that would be appropriate for disqualification from ownership and destruction of the dogs. It was noted that the significant kennelling costs had to be borne by law enforcement agencies and that they would welcome clearer guidance on both the destruction of dogs and compensation payable by the owner.
- 4.5 Enquiries should be made with the Home Office as to their progress in relation to dog control orders and with DEFRA to establish whether they are intending to introduce any legislation that will impact on this guideline.

**ACTIONS: DRAFT GUIDELINE TO BE BROUGHT BACK TO SEPTEMBER COUNCIL MEETING. CHAIRMAN TO WRITE TO SECRETARY OF STATE FOR DEFRA TO ESTABLISH WHETHER THEY ARE INTRODUCING ANY LEGISLATIVE CHANGES THAT WOULD IMPACT ON THIS GUIDELINE**

## **5 DISCUSSION ON REQUESTS MADE TO COUNCIL INTRODUCED BY NIGEL PATRICK**

- 5.1 There had been productive meetings between members of the Office and DEFRA/Environment Agency officials to identify the offences that should be included in the environmental offences guideline.
- 5.2 A meeting with the Health & Safety Executive is to be held to discuss the most commonly prosecuted offences.
- 5.3 There was a discussion about whether the guideline should be organised by sector (eg land waste, water, radioactive) or be more generic. Further work needed to be done in order to identify which offences carried the same maximum penalties before a decision could be made about this. Council will also need to consider whether there is a need for different approaches to be taken where the offender is an individual, a public body or a private company. It would also be useful to consider international comparators particularly in relation to corporate fines although care would need to be exercised because of the different sentencing regimes in operation.
- 5.4 Members of the Office had met with officials with the Food Standards Agency (FSA) and recommended that the Council should carry out further work in order to produce a guideline for these offences as there were some common factors with the health & safety offences. Further information had been requested from the FSA in order to identify the key offences for inclusion in a guideline.
- 5.5 There was a discussion about the need for a guideline for harassment offences – there are already guidelines in the Magistrates' Court Sentencing Guidelines and that court deals with the majority of offences. It was noted,

however, that the CPS had issued a policy on harassment in 2010 which could lead to increases in the volume being charged. It was agreed that Council should consider the charging statistics before making a decision as to whether a guideline was required.

- 5.6 It was agreed that a guideline in relation to breaches of financial reporting and serious crime prevention orders would not be taken forward at this stage because the number of orders being made were very low with a consequent low breach rate.

**ACTION: FURTHER PAPERS ON ENVIRONMENTAL OFFENCES AND HEALTH AND SAFETY OFFENCES TO BE BROUGHT BACK TO SEPTEMBER MEETING**

## **6 DISCUSSION OF YOUNG GOV RESEARCH INTRODUCED BY ROBIN LINACRE AND EMMA MARSHALL**

- 6.1 It was agreed that the findings of their research should be published and that members of the Office would work with the analysis and research sub-group to determine the best way to do this.
- 6.2 It was agreed that the collaboration had been successful and that the Council looked forward to working with the organisation in the future.

**ACTION: ANALYSIS & RESEARCH SUB-GROUP TO DETERMINE THE BEST METHOD OF PUBLICATION**

## **7 DISCUSSION OF DRAFT TOTALITY GUIDELINE INTRODUCED BY ISABEL SUTCLIFFE**

- 7.1 The Council discussed the draft totality guideline and subject to some suggested wording changes, approved the draft guideline.
- 7.2 Council also approved the structure of a draft consultation document. The full draft would be brought back to July Council.

**ACTION: DRAFTING CHANGES TO BE MADE TO GUIDELINE AND DRAFT OF CONSULTATION DOCUMENTS TO BE BROUGHT BACK TO JULY COUNCIL WHEN THEY WOULD BE CONSIDERED IN CONJUNCTION WITH A DRAFT TIC GUIDELINE**

## **8 DISCUSSION ON ALLOCATION INTRODUCED BY NIGEL PATRICK**

- 8.1 Council considered a draft of the allocation guideline. It was agreed that it would be important to set out the principle that cases should be tried where they belong in the guideline. There was discussion of the current assumption used by magistrates as to the strength of the prosecution case and it was agreed that the guideline should remind sentencers that defence representations should also be considered. It was also agreed that the guideline should remind sentencers that in considering whether their

sentencing powers are insufficient, they need to consider the realistic possibility of such a sentence being passed.

- 8.2 It was agreed that the amended guideline should be considered by nominated leads before returning to Council in its July meeting.

**ACTION: FURTHER DRAFT TO BE CONSIDERED BY LEADS AND BE BROUGHT BACK TO JULY COUNCIL**

## **9 DISCUSSION OF SEXUAL OFFENCES GUIDELINE INTRODUCED BY ISABEL SUTCLIFFE**

- 9.1 Council considered how to structure the new guideline. It discussed dealing with the offences currently set out in the SGC guideline and how these might be appropriately grouped, potential groupings and category definitions were considered.
- 9.2 It was agreed that further work should continue on alternative models which should be brought back to September Council.
- 9.3 Council will also need to consider, as a matter of principle, whether conduct of the same type charged as different offences should attract the same or different sentences.
- 9.4 Council will also need to consider whether there should be a distinction in the guideline between rape and assault by penetration. It noted that the maximum penalty for both offences is the same.

**ACTION: INITIAL DRAFT OF ONE SET OF SEXUAL OFFENCES TO BE BROUGHT BACK TO SEPTEMBER COUNCIL**