

MEETING OF THE SENTENCING COUNCIL

20 JULY 2012

MINUTES

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| <u>Members present:</u> | Brian Leveson (Chairman) Anne Arnold John Crawforth William Davis Siobhain Egan Henry Globe Gillian Guy Anthony Hughes Katharine Rainsford Julian Roberts Keir Starmer Colman Treacy |
| <u>Apologies:</u> | Tim Godwin Alistair McCreath |
| <u>Advisers present:</u> | Paul Cavadino |
| <u>Observers:</u> | Ruth Coffey (Legal advisor to the Lord Chief Justice) Claire Fielder (Head of Lord Chief Justice's Criminal Justice Team) Helen Judge (Director of Sentencing and Rehabilitation, Ministry of Justice) |
| <u>Members of Office in Attendance</u> | Michelle Crotty (Head of Office) Jackie Burney Bee Ezete Robin Linacre Nick Mann Emma Marshall Karen Moreton Nigel Patrick Ameer Rasheed Keir Rodgers Helen Stear Trevor Steeples Gareth Sweny Vanessa Watling |

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 15 June 2012 were agreed.

3. MATTERS ARISING

- 3.1. The Council discussed the reforms to the victim surcharge rules as a result of the LASPO Act and considered how best to ensure that the guidelines remain up to date following the statutory amendments. It was suggested that the online resources should be amended and a hard copy update to the Magistrates' Court Sentencing Guidelines issued to magistrates. In future it might be useful to make the legislative changes that impact on the guidelines available to the public. The Council discussed options for the format of forthcoming guidelines and thought it would be helpful to consult with users and revisit the discussion at a later date.

4. DISCUSSION ON ROBBERY OFFENCES – PRESENTED BY NIGEL PATRICK, OFFICE OF THE SENTENCING COUNCIL

- 4.1. The Council discussed the offence of robbery and noted its volume which has increased in recent years. The Council considered the complex nature of the guideline which would cover a wide range of offences from street robbery, to commercial robbery and violent robbery within the home. The guideline would also need to give guidance on sentencing youths. The Council noted the importance of devoting sufficient time and resources to this work, in particular for research and road testing of the guideline. It was suggested that the work programme for 2013/14 should be reviewed to ensure that this work is timetabled appropriately.

5. DISCUSSION ON ENVIRONMENTAL OFFENCES – PRESENTED BY JACKIE BURNEY, OFFICE OF THE SENTENCING COUNCIL

- 5.1. The Council considered a range of principles relevant to setting a fine and discussed a range of models and different approaches to balancing those principles.
- 5.2. The Council discussed fine levels for strict liability offences where there may be little or no culpability on the part of the offender, but where a high level of harm results, and conversely, high culpability that is identified at an early stage so that the resulting harm is low. It was suggested that each case should be considered on its own facts. The guideline should indicate the appropriate factors for both culpability and harm with 'lower' or 'no culpability' available for instances where the offender was not at fault.
- 5.3. It was noted that two of the important factors that contribute to measuring harm are the cost of compliance and the cost of clear up. However, it was suggested that harm is wider than simply economic factors, and should also

include community impact and the potential harm that might have been caused.

- 5.4. The Council was of the view that the sentence should not only remove any economic benefit made by the offender, but should also impose a penalty. The Council discussed ways in which the means, particularly for larger corporations, can be determined without it becoming too onerous a task for the court.
- 5.5. The Council suggested that one of the aims of the guideline is to promote consistency of approach in sentencing rather than consistency of outcome. The fine should be of a sufficient amount to deter future offending. It was suggested that it would be helpful to obtain legal advice on options for the court to seek information on corporate structure.

ACTION: OFFICE TO PREPARE ADVICE ON THE EXTENT TO WHICH THE COURT CAN LOOK TO THE REALITY OF THE CORPORATE STRUCTURE AND PRESENT TO COUNCIL AT SEPTEMBER MEETING.

- 5.6 The Council discussed the setting of fines for offending public bodies and whether their function should be reflected in the fine.
- 5.7 The Council considered the three draft models and suggested that it would be useful to combine elements of each into one model for further consideration.

ACTION: OFFICE TO DRAFT AN AMENDED MODEL TO PRESENT TO COUNCIL AT SEPTEMBER MEETING.

6. DISCUSSION ON DEFERRED PROSECUTION AGREEMENTS – PRESENTED BY JACKIE BURNEY, OFFICE OF THE SENTENCING COUNCIL

- 6.1. The Council discussed and agreed, subject to amendments its draft response to the MoJ consultation on deferred prosecution agreements in the light of its statutory remit.

7. DISCUSSION ON SEXUAL OFFENCES GUIDELINE – PRESENTED BY VANESSA WATLING, OFFICE OF THE SENTENCING COUNCIL

- 7.1. The Council considered the culpability and harm factors and category ranges for the exploitation offences of trafficking, exploitation of prostitution and keeping a brothel. It was noted that although these offences are low in volume, they should be included in the consultation as they can cause high levels of harm to the victim and to the wider community.
- 7.2. The Council discussed the draft guideline on paying for the sexual services of a child. It was suggested that if the victim was under 13 the sentencer should be directed to the guideline for rape of an under 13 year old, sexual assault of an under 13 year old or sexual activity with a child. An aggravating factor of paying for the sexual service will be added to those guidelines. The guideline on paying for the sexual services of a child would be used for offences against 16-17 year olds where the sexual activity would have been legal but for the payment element.

- 7.3. The Council discussed the draft guidelines for sexual offences against those with a mental disorder. It was again decided that despite in some instances very low volume, it was important to include these offences in the consultation as they highlighted important factors relating to very vulnerable victims.
- 7.4. The Council considered the draft guideline for rape of an under 13 year old and it was suggested that it might be helpful to include a case or a scenario to provide more clarity for sentencers.
- 7.5. The Council discussed how best to provide assistance to the Crown Court when sentencing youths for sexual offences. It was noted that the Sentencing Guidelines Council guideline on the overarching principles of sentencing youths provides useful guidance to sentencers. However, when that guideline comes to be revised, specific work on sexual offending may need to be undertaken.

ACTION: OFFICE TO DRAFT CONSULTATION PAPER TO PRESENT TO COUNCIL AT SEPTEMBER MEETING.

8. DISCUSSION ON KEY MESSAGES FOR SEX OFFENCES CONSULTATION – PRESENTED BY HELEN STEAR, OFFICE OF THE SENTENCING COUNCIL

- 8.1. The Council heard a presentation on the key messages for the forthcoming sex offences consultation and discussed how specific messages could be developed for the different types of sexual offences and the need to cater the messages for different audiences.