

## MEETING OF THE SENTENCING COUNCIL 22-23 April 2010 MINUTES

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Members present:

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

Non-members present:

Helen Edwards, Director General, Criminal Justice,  
Ministry of Justice  
Helen Judge, Director, Criminal Law, Sentencing  
and Youth Policy, Ministry of Justice  
Christina Pride, Private Secretary to Head and  
Deputy Head of Criminal Justice

External presenters:

Mandeep Dhami, University of Cambridge

In attendance:

Amie Alekna  
Nita Bhupal  
Roz Champion  
Helen Stear  
Trevor Steeples  
Isabel Sutcliffe

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

- 1.1 The chairman welcomed all members and noted that Tim Godwin was only able to attend on Friday so would join the group in the morning.
- 1.2 The chairman commented that notes would be taken throughout the meeting and a minute produced which would be available publicly once it had been agreed.

## **2. OBJECTIVES DISCUSSION**

- 2.1 Isabel Sutcliffe gave a presentation identifying a proposed statement of purpose together with a list of objectives which also identified the way in which the Council would work (both in relation to its values and its structure) together with a proposed programme.
- 2.2 The Council agreed that it was a good idea to set out, in straightforward language, the ambitions of the Council and the approach which would be adopted.
- 2.3 Council members strongly supported using the language of the Coroners and Justice Act 2009 as the basis for these statements. In so doing, the statutory requirements upon the Council would always be the focus of attention.
- 2.4 It was agreed that a statement of purpose and list of functions of the Council would be published as well as general support for the Council endeavouring to be as open as possible in terms of its activities, functions and structures.
- 2.5 The Council endorsed the proposal that Paul Cavadino, Mandeep Dhani, Roger Graef and Paul Wiles be appointed external advisors to assist in its work. Advisors could be asked to prepare papers and/or attend either sub-groups or full Council meetings in order to inform discussions on their areas of expertise.
- 2.6 The Council also agreed that fixed reference fora were unnecessary but that it would be appropriate to identify, on an ad hoc basis, those who should be approached for views on specific issues.
- 2.7 Revised statements were brought to Council members on Friday afternoon in session 9 – see below.

## **3. DISCUSSION ON PUBLIC PERCEPTIONS OF SENTENCING AND THE MEDIA**

- 3.1 The Council received a presentation from a journalist focussing on this topic by particular reference to stories affecting deprived estates in the North of England.

- 3.2 The presentation noted that the world of the judiciary and sentencing can seem shrouded in mystery for outsiders and that this could perhaps have an impact on public perceptions, although generally, the judiciary is held in high regard by members of the public.
- 3.3 The presentation also provided an example of some bad press regarding a sentence – where in fact the sentence had been correct but had been communicated poorly. It was noted that even the smallest percentage failure rate at a large organisation could be equal to hundreds of individual negative anecdotes per month which could each potentially lead to negative media stories.
- 3.4 The presentation also highlighted that, having done some online research regarding the work of the Council and around sentencing generally, there seemed to be vibrant discussion within the justice community about sentencing, but that less material was addressed to a wider public audience.
- 3.5 Towards the end of the presentation, it was pointed out that access and trust were both key factors which contribute to more positive media engagement. The presenter encouraged Council members to consider opportunities for more of this type of engagement, whilst recognising that there were obvious limitations in terms of granting access to court rooms and commenting on specific cases.

#### **4. PUBLIC CONFIDENCE AND COMMUNICATIONS**

- 4.1 Isabel Sutcliffe outlined the proposed strategy on public confidence for Council members to consider, based on the three concepts of information, engagement and experience. Helen Stear presented on communications and the importance of using as many different techniques as possible to reach a wide variety of audiences.
- 4.2 The Council agreed that it was important to understand what other criminal justice agencies were doing in relation to public confidence. This overview would help prioritise where the Council might add the most value and to whom, as it is already a complex and busy area of work. However, the Council also felt that it needed to raise awareness and provide information to the public about its role and purpose.
- 4.3 The Council acknowledged its new remit in relation to victims, but wanted to be realistic about the impact it could have in this area, and avoid duplicating existing work being done by Non-Governmental Organisations and criminal justice agencies.
- 4.4 The Council agreed it should have a short term strategy, setting out the new, wider remit and how it differs from the Sentencing Advisory Panel and Sentencing Guideline Council. A medium term strategy would also be necessary to focus on engagement, improving the quality of

information and understanding of sentencing and working with other criminal justice agencies.

- 4.5 It was agreed that the Council would undertake proactive media activity in late May to announce its creation.

***ACTION – CONFIDENCE AND COMMUNICATIONS SUB-GROUP TO DEVELOP PLANS TO ANNOUNCE THE CREATION OF THE SENTENCING COUNCIL TO THE MEDIA***

## **5. DATA AVAILABILITY**

- 5.1 Trevor Steeples gave a presentation to the Council outlining a number of areas of analytical work.

- 5.2 Progress was being made on the development of the Crown Court Sentencing Survey pilot. The pilot will be taking place in May in four Crown Courts and feedback will be gathered in June. The Council will be asked to consider the findings from the pilot in July.

- 5.3 There was a view that the questionnaire should be amended so it allowed for data on timing of a guilty plea to be collected. This was considered essential information to enable accurate monitoring of the guilty plea guideline. An early guilty plea scheme in the Crown Court was being piloted at Liverpool and there could be an additional advantage in the data providing an indication of its impact.

***ACTION – ANALYTICAL TEAM TO AMEND THE QUESTIONNAIRE SO IT ALLOWS FOR DATA ON TIMING OF A GUILTY PLEA TO BE COLLECTED***

- 5.4 The Council was informed of the intention to start a nationwide Crown Court Sentencing Survey from 1 October 2010 ensuring six months' data could be collected by the end of its first year.

- 5.5 The Council recognised the importance of communication activity to support the survey. The Council agreed that it will be seeking the support of the senior judiciary to encourage colleagues to complete the survey. It was suggested that involving Resident Judges and Court Managers of each Crown Court would also be important to secure support and that regional seminars could be given to raise awareness. The Council of Circuit Judges should also be canvassed to encourage their members to participate.

- 5.6 The Chairman agreed that a senior judicial member would write to all Crown Courts and inform them of the survey.

***ACTION – ANALYTICAL AND COMMUNICATIONS TEAM TO CO-ORDINATE A LETTER FROM A SENIOR JUDICIAL***

***MEMBER TO ALL CROWN COURTS TO INFORM THEM OF THE SURVEY***

- 5.7 The Council was advised that there is an expectation in the legislation (Coroners and Justice Act 2009, SS128) that the Council draw conclusions from the data collected, including on departures from the guidelines. The work conducted by the Sentencing Commission Working Group around the definition for departures from the guidelines may well assist the Council when it comes to monitoring compliance, as there are some outstanding issues which need to be resolved.

**6. PRESENTATION ON WHAT 'DECISION SCIENCE' CAN OFFER THE SENTENCING COUNCIL**

- 6.1 Mandeep Dhani (MD) gave a presentation on the potential opportunities that the psychology of decision making, might offer the Council. She suggested that decision science can provide an understanding of how people make judgements, decisions and choices; it can then be used to develop models that describe and predict behaviour.
- 6.2 MD suggested that decision science could assist the Sentencing Council to revise the structure and format of the sentencing guidelines and consider sentencing practice. She had done an initial review of an existing guideline and identified opportunities to reduce the amount of text, ensure terms were clearly defined, and streamline the information.
- 6.3 The Council welcomed the presentation and the opportunity to consider decision science. It was noted that the Magistrates' Court Sentencing Guidelines are closer to the model MD was proposing than the offence definitive guidelines. The Council discussed the extent to which the complexity of justice and the value judgements that are involved could be reflected in the approach being proposed. MD confirmed that use of this approach in the medical field was demonstrating its potential to deal with complex issues. The Council felt it was appropriate not to overestimate the potential at this stage, whilst recognising that the presentation had identified areas for consideration.
- 6.4 The Council were of the view that the approach might assist decision making and also the communication of those decisions. It was agreed that the Council would wish to work with MD to produce a mock up of a guideline based on her proposals. It was proposed that this would be done in parallel with the work on a guideline that would be taken forward by the sentencing sub-group.

***ACTION – SENTENCING SUB GROUP TO TAKE FORWARD WORK ON A GUIDELINE IN PARALLEL WITH MD***

- 6.5 The Council discussed the format of sentencing guidelines. It was felt that the Council would want to take the principle of the single source

document that had previously begun to be developed by the Sentencing Guidelines Council, to assist in its thinking, but it would not continue the existing work. It was agreed that the Council would work towards a standard format for guidelines. The Council also agreed that it was aiming to produce a format for guidelines that was accessible to a range of audiences including: judges and Magistrates; prosecutors; the defence and wider practitioners; and victims.

## **7. DISCUSSION - SENTENCING GUIDELINES**

- 7.1 Roz Champion opened the discussion on sentencing guidelines by summarising the views that she had heard in discussions with Council members and the wider judiciary. The themes that had emerged included: the opportunity to look at how the guidelines fit together as a whole; the need to review the format of the guidelines; and, views that some of the existing guidelines including assault and sex offences might merit revision.
- 7.2 The Council agreed that it would take forward work to revise the guideline on assault through the sentencing sub-group.

### ***ACTION – SENTENCING SUB GROUP TO REVISE THE GUIDELINE ON ASSAULT***

- 7.3 The Council also discussed the potential of taking forward work on discounts for guilty pleas. The Council noted the positive results being seen through the early guilty plea scheme being trialled at Liverpool Crown Court. It was recognised that work in this area would require significant analytical resource. Council members offered to provide analytical resource on a secondment basis should the Council decide to take this work forward. Roz Champion agreed to review the matter further and assess the resource implications of undertaking the work in order to provide advice to the Council on both guilty pleas and other potential guidelines.

### ***ACTION – HEAD OF OFFICE TO CONSIDER TAKING ON ADDITIONAL ANALYTICAL RESOURCE AND TO PROVIDE ADVICE TO THE COUNCIL ON GUILTY PLEAS AND OTHER GUIDELINES***

- 7.4 The Council agreed that a further discussion on guidelines would take place at the meeting in May.

## **8. SUB-GROUPS**

### *Sentencing framework and guidelines*

- 8.1.1 The sub-group on the sentencing framework and guidelines agreed to revise the guideline for assault for the Crown Court and to combine this with considering the restructuring of the guidelines, using Mandeep

Dhami as an advisor. It was agreed that this work would be taken forward with support from the Office of Sentencing Council, and a report would be given at the meeting of the Council in June.

- 8.1.2 The sub-group also agreed to consider producing a guideline for guilty pleas, initially focusing on the availability of data to complete an impact assessment. It was agreed that this work would be taken forward with support from the Office of Sentencing Council, and a report would be given to the sub-group in May.

### *Confidence and Communications*

- 8.2.1 The sub-group on confidence and communications agreed its remit to support the Sentencing Council's overall aims through providing direction and oversight of confidence and communications work.
- 8.2.2 It was agreed that the aim of media activity in May would be to raise awareness of the Council. Alongside this media activity, the Office would look for speaking opportunities at practitioner conferences for Council members, so that they can begin to communicate to a range of justice audiences. The Office would put together a plan, press pack and additional associated materials for the sub-group to review in draft.

## **9. OBJECTIVES OF THE SENTENCING COUNCIL**

- 9.1 The Council agreed the form of words to be used to describe its purpose and explain its functions as they relate to the Coroners and Justice 2009.
- 9.2 The agreed statement of purpose is set out below.

*The Sentencing Council for England and Wales will:*

- *promote a clear, fair and consistent approach to sentencing;*
- *produce analysis and research on sentencing; and*
- *work to improve public confidence in sentencing.*

- 9.3 The Council endorsed the suggestion that its achievements should be identified through fulfilling the following functions in line with the Coroners and Justice Act 2009:

- *prepare sentencing guidelines;*
- *publish the resource implications in respect of the guidelines it drafts and issues;*
- *monitor the operation and effect of its sentencing guidelines and draw conclusions;*
- *assess the impact of policy and legislative proposals;*
- *promote awareness of sentencing and sentencing practice; and*

- *publish an annual report that includes the effect of sentencing and non sentencing practices.*