

MEETING OF THE SENTENCING COUNCIL

23 JULY 2010

MINUTES

Members:

Anne Arnold
Henry Globe
Tim Godwin
Gillian Guy
Anthony Hughes (morning only)
Brian Leveson (chair)
Alistair McCreath
Anne Rafferty (morning only)
Julian Roberts
Keir Starmer
Colman Treacy

Advisors and other
non-members:

Paul Cavadino (advisor to the Council)
Helen Edwards (Director General, Justice Policy Group)
Amy Shaw (attending on behalf of Christina Pride, Private
Secretary to the Lord Chief Justice)
Paul Wiles (advisor to the Council)

In attendance:

Amie Alekna (senior policy advisor)
Emma Bethell (policy team)
Rosalind Campion (head of office)
Michelle Crotty (legal advisor)
Robin Linacre (economist)
Alison Naftalin (head of legal)
Nigel Patrick (senior policy advisor)
Helen Stear (head of communications)
Trevor Steeples (head of analysis and research)
Isabel Sutcliffe (head of policy)

Apologies:

John Crawforth
Siobhain Egan
Katharine Rainsford

1. WELCOME AND APOLOGIES FOR ABSENCE

- 1.1 Apologies were received from John Crawforth, Siobhain Egan and Katharine Rainsford.

2. MINUTES OF LAST MEETING AND MATTERS ARISING

- 2.1 Minutes from the last meeting held on 25 June were discussed.

- 2.2 The following action points were discussed:

- at paragraph 2.2 – a three year guideline work plan had been circulated with the papers. A three year analytical plan would be progressed in the Analysis and Research sub-group, to be presented at a future Council;
- at paragraph 3.5 – there would be discussion later in the day about the recent Archbold News article concerning the application of sentencing guidelines and transitional provisions;
- at paragraph 4.4 – Council members have provided comments on key messages and lines to take and these have now been incorporated into the papers;
- at paragraph 4.6 – the Office has followed up with the Metropolitan police's KINs service (Key Individual Networks) to explore the potential for using this cohort of the public to help validate our public consultation papers;
- at paragraph 5 – the assault guideline has been progressed and the help of key Council members - Siobhain Egan and Alistair McCreath - was gratefully acknowledged;
- at paragraph 7 – the guilty pleas work will be discussed substantively at the September Council meeting. In the meantime, invitations to researchers to bid to undertake research will be sent out;
- at paragraph 7.7 – the letter from the Secretary of State has been circulated to members;
- at paragraph 8.4 – the Office had included liaison with the Bar Council as part of the communications strategy on the Crown Court Sentencing Survey. The Chairman commented that the Law Society, which would reach recorders, should also be included; and
- at paragraph 8.6 – the final questionnaires for the Crown Court Sentencing Survey will be circulated as soon as they are ready. Currently, these are still being discussed by the Analysis and Research sub-group.

3. SENTENCING AND PRISON TRENDS PRESENTED BY PAUL WILES

- 3.1 Paul Wiles gave a presentation that compared the trends in the prison population and crime statistics. He discussed potential explanations for various increases in the prison population since 1995, including looking at

sentencing for indictable offences, trends in determinate and indeterminate sentences and the relationship between sentences and recorded crime by offence type. There was a focus on the period around 2004/05 where the trends in prison population and crime levels, which usually travel in the same direction, diverge. As crime levels fell, the prison population went up. A key question was why this phenomenon occurred. Paul noted that the same fall in crime was going on in other developed countries, many of which used different penal strategies, meaning it would be difficult to attribute causation between crime levels and penal sentencing strategy.

3.2 Key facts to note included:

- between 1995 and 2009, the prison population increased by 32,500. Of this increase, 78 per cent could be attributed to sentences for immediate custody, whilst the use of fines and other discharges had decreased;
- two offence groups - violence against the person and drugs - have had particular impact on increasing the prison population;
- not only were more people being sentenced to prison, but once there, they were spending longer in custody;
- the proportion of determinate cases recommended for parole fell from around 50 per cent between 2001/02 and 05/06, to 36 per cent in 06/07 and 07/08; and,
- the increased use of indeterminate sentences would be likely to mean an increase in the prison population in the long run.

3.3 Paul Wiles noted that in these much wider issues the Sentencing Council had a more limited remit but it had a substantial role to play in improving public understanding of, and confidence in, sentencing. For example, as the crime rate has fallen, 60 per cent of the public believes it has gone up. Some Council members noted the importance of improving the confidence of front-line criminal justice staff in sentencing.

4. **STATUTORY DUTIES PRESENTED BY ALISON NAFTALIN**

4.1 Alison took the Council members through the 6 statutory criteria under section 120(11) of the Coroners and Justice Act 2009 which they must have regard to when developing sentencing guidelines. She suggested some issues which the Council could consider in relation to each area. Alison also highlighted additional statutory duties to which the Council is subject.

4.2 The Council discussed how it would have regard to the cost of different sentences and their relative effectiveness in preventing re-offending. It was acknowledged that differing approaches could be taken to discharge this obligation. Some Council members acknowledged that a broad interpretation of cost, including factors such as the cost to society, would be a valid approach. However, given the lack of robust data regarding such costs, the Council concluded that, at least for the time being, a narrow approach to cost would need to be taken.

4.3 The Council discussed whether it could have regard to additional factors other than those in the legislation. It was agreed that the list provided in the legislation was not exhaustive and that the Council could have regard to additional relevant factors.

4.4 The Council considered its equalities obligations and agreed that cultural factors need to be considered in the development of guidelines.

5. DISCUSSION ON THE ASSAULT GUIDELINE PRESENTED BY AMIE ALEKNA AND ROBIN LINACRE

5.1 Amie introduced the paper on assault and the key issues for discussion which were consideration of:

- evidence relating to each of the Council's statutory duties in preparing the assault guideline;
- the value of retaining starting points and where they should be positioned for all of the assault offences in the guideline;
- the proposed offence ranges for the new categories for all of the assault offences in the guideline; and,
- the revised timetable for consultation on the assault guideline.

5.2 The Council shared views on the value of starting points and following the discussion, it was agreed that the issue of whether or not to have starting points should be consulted upon.

5.3 Offence ranges are proposed for each assault offence, based on current sentencing practice, sentencing data and information on cost effectiveness. Views on these ranges included the view that the ranges should not overlap. The need to find the right balance between giving sentencers more assistance without being prescriptive was noted. Council members were invited to submit more detailed advice on where to set offence ranges to the Office.

5.4 Views were sought from the Council regarding the appropriate approach to racially aggravated offences. Members were of the view that the current sentencing practice, whereby a sentencer determines the appropriate sentence without the element of racial aggravation and then makes an addition to the sentence to take account of the aggravation (up to two years), should continue. The view of members was that there was no need to produce separate guidelines for the racially aggravated assault offences.

5.5 Moving forward, it was agreed that the consultation paper should be further developed by officials, approved by the Sentencing Framework and Guidelines sub-group and brought back before September's Council meeting. The impact assessment, which will be published in conjunction with the consultation paper, should be approved by the Analysis and Research sub-group; and the Confidence and Communications sub-group should approve the designs for the Sentencing Council-branded publications to be brought to Council in September.

Action: *The Office, working to the leads on the assault guideline, to progress the assault guideline and consultation paper to reflect the Council's*

discussion, to clear with the Sentencing Framework and Guidelines sub-group and to bring back to the September Council meeting.

6. FEEDBACK FROM ACADEMIC SEMINAR PRESENTED BY ISABEL SUTCLIFFE

- 6.1 The Chairman extended his thanks to Julian Roberts for his hospitality at Worcester College, Oxford for the academic seminar. The Chairman then invited Isabel Sutcliffe to update the Council.
- 6.2 Isabel provided the Council with a summary of the key points from the seminar. The Council's overall work programme, including the pilot of the Crown Court Sentencing Survey had been well received by most attendees at the seminar.
- 6.3 There had been discussions about the confidence strategy and the potential for an increased role for judges who already command the respect of their communities.
- 6.4 Feedback from the academics suggested that a similar seminar should be held annually in the summer (post-exams) and that they would also be happy to meet in smaller groups to look at individual issues if that were thought to be helpful. The Council agreed the recommendation for annual seminars going forward.

7. THE APPLICABILITY OF GUIDELINES PRESENTED BY ALISON NAFTALIN

- 7.1 Introducing this item, the Chairman referred the Council to an article written by David Thomas in Archbold Review on the complexity of the law in regard to sentencing.
- 7.2 Alison Naftalin provided the Council with an update on the applicability of the Council's guidelines setting out an analysis of the legislative framework. It was agreed that it would be helpful for the Chairman to write to the Ministry of Justice to seek clarification of their view of the legal position.
- 7.3 The Council noted that there would also be the issue of co-existing Sentencing Council and SGC guidelines for courts to be aware of.

Action: *Lord Justice Leveson to send a letter to the Ministry of Justice.*

8. UPDATE ON COMMUNICATIONS PRESENTED BY HELEN STEAR

- 8.1 Helen Stear provided the Council with an update on communications and media activity. The Confidence and Communications sub-group had finalised the communications strategy and it was presented for the Council's approval and agreement. At future Council meetings, communications will be incorporated into other agenda items rather than being discussed as a stand alone item.
- 8.2 The communications team have been discussing the work of the Council with the BBC with a view to future coverage of the Council's work. Articles are also going to be featured in a variety of legal publications and internal channels.

8.3 The communications team is working on a reorganisation of the Council's website to ensure that complex information is presented clearly and that it can reach diverse audiences. The SGC website has now been archived and is accessible through a link on the Sentencing Council website.

8.4 The Council noted the freeze on spend on marketing and communications.

9. CONFIDENCE PLANS PRESENTED BY ISABEL SUTCLIFFE

9.1 Isabel Sutcliffe updated the Council on current plans to take forward some practical activities designed to promote public confidence in sentencing. The Confidence and Communications sub-group had reviewed the plan and encouraged a pragmatic approach to this work given the Council's size and scope. The aim is to promote awareness of sentencing, making it as accessible and understandable as possible, fitting in with the wider work on public confidence in the criminal justice system. The Council agreed the approach set out, subject to confirmation of the communications and confidence budget.

10. DRAFT WORK PLAN FOR 2010/11 AND REQUESTS RECEIVED BY THE COUNCIL PRESENTED BY ISABEL SUTCLIFFE

10.1 Isabel Sutcliffe informed the Council that a work plan 2010/11 has been drawn up. The Council agreed that information about it could be published on the website, alongside Council meeting minutes.

10.2 The Council was informed that the Office has received a few requests for revised or new guidelines on a variety of issues. The Council will be given further detail of all requests received at the next meeting as well as advice on how they fit with the Council's duties and criteria. The Chairman advised that organisations requesting guidelines should provide the Council with evidence to back up their request. It was agreed that the Office would respond to correspondents requesting further information.

***Action:** The Office to respond to correspondents requesting new guidelines by requesting further information, and to bring back a summary of requests to a future Council meeting.*

11. CROWN COURT SENTENCING SURVEY (CCSS)

11.1 The Chairman informed Council that the Office had reported back about the success of the CCSS pilot to the courts that took part. The Chairman also informed Council that he was about to record a message to be sent out to Crown Courts which he cannot visit in person to explain the value of the CCSS to all courts. Judicial Council members were encouraged to visit neighbouring courts and should inform the Office when they intend to do so in order that the Office can advise, support and record visits.

12. ANY OTHER BUSINESS

12.1 The Chairman shared the proposed draft reply to the Lord Chancellor's letter regarding guilty pleas with the Council for approval. The Council agreed that the Chairman should write to the Lord Chancellor as drafted.