

MEETING OF THE SENTENCING COUNCIL
24 May 2010
MINUTES

Members present:

Anne Arnold
John Crawford
Siobhain Egan
Henry Globe
Gillian Guy
Anthony Hughes
Brian Leveson (Chairman)
Alistair McCreath
Anne Rafferty
Katharine Rainsford
Julian Roberts

Non-members present:

Helen Edwards, Director General, Criminal Justice,
Ministry of Justice

External presenters:

Paul Wiles, Adviser to the Council

In attendance:

Amie Alekna
Nita Bhupal
Rosalind Campion
Robin Linacre
Alison Naftalin
Alyson Rose
Helen Stear
Trevor Steeples
Isabel Sutcliffe

1. WELCOME AND APOLOGIES FOR ABSENCE

- 1.1 The Chairman welcomed new members of the Office of the Sentencing Council: Robin Linacre, Alison Naftalin and Alyson Rose.
- 1.2 Apologies had been received from Tim Godwin, Colman Treacy and Keir Starmer.

2. MINUTES OF LAST MEETING AND MATTERS ARISING

- 2.1 Minutes from the last meeting held on 22-23 April were agreed subject to some minor amendments.
- 2.2 At its last meeting, the Council agreed it would undertake media activity in late May to announce its creation. It was noted that Alyson Rose would provide an update on progress on press activity later on in the meeting.
- 2.3 At its last meeting, the Council agreed that in order to enable accurate monitoring of the guilty plea guideline, the data collection form used in the pilot of the Crown Court Sentencing Survey would need to be amended to collect data on the timing of the guilty plea. Members were informed that the form used in the pilot had been amended appropriately.
- 2.4 At its last meeting, the Council agreed that a letter should be sent from a senior judicial member to inform all Crown Courts about the Crown Court Sentencing Survey. The Chairman informed the Council that the Lord Chief Justice would be writing imminently to all resident judges with this information.
- 2.5 At its last meeting, the Council agreed that the sentencing sub group should progress work with Mandeep Dhimi on the structure of guidelines and, in particular, in connection with the revision of the assault guideline, suggest alternative methods of presentation. The Council was informed that this work was progressing, and a draft guideline would be presented at the next Council meeting together with a draft consultation paper.
- 2.6 At its last meeting, the Council agreed that the Office would consider whether it would be possible to take forward work on the preparation of a draft guideline on the reduction in sentence for a guilty plea, in the light of the significant analytical challenge that this would pose. The Council was informed that, following discussions with the Crown Prosecution Service, the Ministry of Justice and the Metropolitan Police, there would be sufficient data to produce a high level impact assessment on a draft guideline for reduction in sentence for a guilty plea.

3. UPDATE FROM THE MINISTRY OF JUSTICE ON THE NEW GOVERNMENT

- 3.1 The Chairman referred members to the relevant excerpts of the coalition agreement of the new Government.
- 3.2 Helen Edwards provided an update on the new Government. She briefly outlined the background and experience of Ministers. Since the Government had been formed later than expected, it was not possible to provide any concrete information about future proposals. Following on from commitments in the coalition manifesto, a review of sentencing was expected and policy colleagues in the MoJ were working with Ministers to clarify the detail. It was noted that the policy was being reviewed in the context of fiscal tightening.
- 3.3 It was confirmed that the Sentencing Council would not be adversely affected by the Government review of Non Departmental Public Bodies (NDPB) and that it was in a beneficial position to implement change more quickly than the Government could through legislation.
- 3.4 The Chairman reiterated that the Sentencing Council was an independent body that had not been set up to take its direction from Government. There was, however, recognition that there may be some shared objectives.

4. UPDATE ON COUNCIL PRESS ACTIVITY PRESENTED BY ALYSON ROSE

- 4.1 Alyson Rose was introduced as the temporary press officer. The Council was informed that a permanent press officer was due to join the office shortly.
- 4.2 Press training had been provided to five members of the Council: the Chairman, Alistair McCreath, Anne Rafferty, Katharine Rainsford and Julian Roberts.
- 4.3 A number of activities were underway to raise the profile of the Council. Interviews had been arranged between the Chairman and the Times, Law in Action and Clive Coleman, the new BBC legal affairs correspondent. There would also be an interview with Katharine Rainsford in The Magistrate. Further ways of engaging with the local and specialist media would continue to be explored.
- 4.4 The Chairman noted the need to ensure collaborative working with the other criminal justice agencies including the police, Crown Prosecution Service, MOJ and the Judicial Communications Office.

5. LEGISLATIVE DUTIES AND INITIAL WORK PROGRAMME – PRESENTED BY ISABEL SUTCLIFFE

- 5.1 Isabel Sutcliffe presented a paper on the Council's legislative duties and asked the Council to consider how it wished to progress work on allocation guidelines, non-sentencing factors and other broader issues.
- 5.2 The Council agreed the initial work programme in principle and supported the need for allocation guidelines. A number of issues were raised which reflected that the current approach may provide an incentive for cases to be sent to the Crown Court. It was, nevertheless, noted that the new Government may focus on the Magistrates' Court sentencing powers. Further clarity was required on the Government's intentions as any changes to Magistrates' Courts would have a significant impact on all guidelines and potentially the timing of the proposed allocation guidelines.

ACTION – THE OFFICE TO PROGRESS THE ALLOCATION GUIDELINE

- 5.3 The Council agreed that the analysis and research sub group should develop a proposal on non-sentencing factors for the first annual report and confirm whether there was merit in taking forward wider work in this area. As a starting point, the list of non-sentencing factors in the Coroners and Justice Act 2009 should be considered and an explanation provided on how they operate and the availability of current data.
- 5.4 It was felt that as well as understanding the impact of non-sentencing factors on resources, there was an important link to public confidence as there was a general lack of clarity and misunderstanding about them.

ACTION – THE ANALYSIS AND RESEARCH SUB GROUP TO DEVELOP A PROPOSAL ON NON-SENTENCING FACTORS FOR THE FIRST ANNUAL REPORT

6. SENTENCING FRAMEWORK AND GUIDELINES – PRESENTED BY AMIE ALEKNA

- 6.1 Amie Alekna presented a paper on a draft three year work plan for preparing sentencing guidelines and sought direction from the Council regarding its priorities. It was noted that the work plan would need to change to react to events as and when they occurred.

- 6.2 The Council agreed that work on the guideline on the reduction in sentence for a guilty plea should be included within the first year work programme. It was acknowledged that there would be more robust data to inform the impact assessments in around 18 months time, when the results from the Crown Court Sentencing Survey would be available. However, it was felt that since there was sufficient current data to undertake a high level impact assessment and given that this was one of two guidelines mandated by legislation, the Council should not wait for 18 months before it considered the guideline and to commence work on the draft guideline.
- 6.3 It was noted that in relation to a guideline on guilty pleas, any adverse impact on defendants with mental illness, language difficulties or without legal representation should be given careful consideration. Any cost of a reduction in sentence for a guilty plea with regard to witnesses and victims would also need to be considered.

***ACTION – THE OFFICE TO PROGRESS AN
OPTIONS PAPER ON THE GUIDELINE ON GUILTY
PLEAS***

- 6.4 The Council noted that work on revising the Sentencing Guideline Council's guideline on assault was underway and it would be considered at the June meeting. The revised draft guideline would be used to incorporate issues of general principle, to enable the Council to consider how this information might be presented in all offence specific guidelines.

***ACTION – THE OFFICE TO PROGRESS THE
REVISION OF THE ASSAULT GUIDELINE AND
INCORPORATE ISSUES OF GENERAL PRINCIPLE***

- 6.5 The Council agreed that a guideline on sentencing for drug offences should be considered in its first year, to ensure that the analysis undertaken in the published advice of the Sentencing Advisory Panel did not become outdated. To accommodate this in the work plan, it was agreed that a guideline on the new defence of loss of control for manslaughter could be considered in the third year. This was because only a few cases were expected, and these would take time to filter through the criminal justice system and the Judicial Studies Board would be providing guidance on this area in the short term.

***ACTION – THE OFFICE TO PROGRESS THE
PREPARATION OF A GUIDELINE ON SENTENCING
FOR DRUG OFFENCES FROM OCTOBER 2010***

- 6.6 The Council discussed the need to produce guidelines on the totality principle, as the principle is routinely applied by sentencers in court. It

was suggested that a first step might be to understand how this is covered in other jurisdictions.

***ACTION – THE OFFICE TO REVIEW HOW
GUIDELINES ON TOTALITY ARE PROVIDED IN
OTHER JURISDICTIONS***

- 6.7 In relation to the Magistrates' Court Sentencing Guidelines, the Council were informed that they may receive a request to consider the assumed level of income for offenders with no means information. Members noted that there was currently adequate provision for a fine to be reviewed, if it was felt to be at an inappropriate level.
- 6.8 The Council discussed the proposed criteria for prioritising requests for preparing guidelines. It was considered to be a useful checklist for the Council but there was recognition that there may be other factors that become relevant, depending on the subject matter. The checklist would be more relevant to guidelines on specific offences, rather than overarching principles. Additional elements that should be included were the need to promote public confidence and whether there was likely to be a high impact on the criminal justice system.
- 6.9 There was general support among the Council for preparing overarching guidelines as well as offence specific guidelines as overarching guidelines have potential for greater impact. A number of areas such as the presumption that guidelines are prepared for first time offenders and incorporating overarching principles into individual guidelines would be discussed at the Council meeting in June as part of the assault guideline discussion.

***ACTION – THE OFFICE TO AMEND THE THREE
YEAR PLAN TO REFLECT THE COUNCIL'S
PRIORITIES***

**7. DATA ANALYSIS –PRESENTATION BY PAUL WILES, ADVISOR
TO THE COUNCIL**

- 7.1 Paul Wiles, an advisor to the Council, gave a presentation on the initial analytical requirements and challenges for the Sentencing Council. He outlined some of the difficulties with relying on sentencing data from the MOJ and the importance of the Council collecting its own data and conducting ad hoc research.
- 7.2 Following the presentation, the Council agreed upon the need for a three year analytical plan to ensure the timely delivery of data and analytical work, which can often take a long time to gather and deliver.

***ACTION – THE ANALYSIS AND RESEARCH SUB
GROUP TO CREATE A THREE YEAR ANALYTICAL
PLAN***

- 7.3 The Council agreed that it should work to stimulate interest in academic research on sentencing and look at ways of engaging with PhD students and research councils. This could be one way to ensure long term research into sentencing.

***ACTION – THE ANALYSIS AND RESEARCH SUB
GROUP TO CONSIDER HOW TO ENGAGE WITH
DOCTORAL RESEARCH STUDENTS AND
RESEARCH COUNCILS***

- 7.4 The Council acknowledged its role in promoting public confidence in the criminal justice system, in part by the dissemination of information about sentencing practice. The idea of a statistical digest was discussed which would present official statistics to the general public in an interesting and user friendly format. It was agreed that this work would be incorporated into the Council's analytical plan.

8. ANY OTHER BUSINESS

- 8.1 The Chairman informed members that a meeting was due to take place between him and the new Secretary of State on Wednesday 26 May.
- 8.2 It was confirmed that the next Council meeting would take place on Friday 25 June.