

**MEETING OF THE SENTENCING COUNCIL
24TH SEPTEMBER 2010
MINUTES**

<u>Members present:</u>	Brian Leveson (Chairman) Tim Godwin Siobhan Egan Anne Arnold Alistair McCreath Julian Roberts Colman Treacy Gillian Guy Katherine Rainsford John Crawforth
<u>Advisors present:</u>	Paul Cavadino Paul Wiles
<u>Non-members present:</u>	Helen Edwards, Director General, Justice Policy Ministry of Justice
<u>External attendees:</u>	Professor Elizabeth Cooke (Law Commissioner)
<u>Members of Office in Attendance:</u>	Rosalind Campion Isabel Sutcliffe Alison Naftalin Trevor Steeples Nigel Patrick Robin Linacre Michelle Crotty Emma Marshall Laura Smith Azhar Hasham Katharina Walsh Karen Moreton

1. WELCOME AND APOLOGIES FOR ABSENCE

- 1.1. Apologies were received from Anthony Hughes, Keir Starmer, Anne Rafferty and Henry Globe.
- 1.2. The Chairman welcomed Professor Cooke from the Law Commission, who had asked to attend the Sentencing Council as an observer out of interest given the work of the two organisations.

2. MINUTES OF LAST MEETING

- 2.1. Minutes from the last meeting on the 23 July 2010 were agreed.

3. ACTION LOG

- 3.1. The Council had received a comparatively low number of requests to consider guidelines but the offences were not insignificant – dangerous dogs, fly tipping.
- 3.2. In order to consider these guidelines within the current year's timetable, it was agreed that a system should be designed to enable one member of the Council and one person from the office (OSC) to produce a paper to be presented to the full Council for initial consideration. Organisations making the relevant requests would also be asked to undertake basic research to support their suggestions.
- 3.3. The initial volunteers are as follows:

Anne Arnold – dangerous dogs
Siobhain Egan – SOCPA request
Katharine Rainsford – fly-tipping.

ACTION: OSC TO PROGRESS REQUESTS FOR SMALLER GUIDELINES WITH 1 MEMBER OF THE COUNCIL

4. UPDATE FROM MOJ

- 4.1. It was confirmed that an order would be laid to resolve the previously identified issues with the application of the guidelines.
- 4.2. The Chairman confirmed that the budget had been agreed for the Council for the year 2010/11. He noted that there were obvious concerns about the budget for the following year and that work could not be undertaken without appropriate resources.
- 4.3. It was confirmed that it was envisaged that a Green Paper relating to a review of sentencing would be published at the end of November for public consultation. The consultation would last for 3 months.
- 4.4. It was agreed that a slot would certainly be allocated in the December Council meeting to discuss the published paper and if timings coincided, it might be possible to allocate a slot at the November meeting. The Chairman noted the unique position of the Council to provide input into the sentencing review.

5. DISCUSSION OF DRAFT ASSAULT GUIDELINE

- 5.1. Nigel Patrick presented a paper to the Council which set out the latest version of the draft guideline it was proposed to consult on. The draft guideline had been discussed with members of the sub-group prior to the Council meeting and their comments had been incorporated into the draft guideline.
- 5.2. There was a general discussion in relation to the value of starting points. Some members felt that starting points provided a sentencing anchor which enabled victims to understand why actual sentences were lower than the

statutory maxima. There was also the suggestion that starting points promote consistency.

- 5.3. The discussion concluded with a decision to retain the concept of starting points but amend their applicability. It was confirmed that the starting point would now apply to all offenders and would be based on the offence not issues personal to the offender. It was also agreed that the draft guideline should include a clear definition of the starting point and that the consultation paper should explain the Council's proposals for this aspect of the draft guideline.
- 5.4. Following further discussion, some further drafting amendments were suggested and agreed to the wording of steps 1 and 2 of the proposed decision making process to provide clarification for sentencers.
- 5.5. It was agreed that the proposed guideline for each assault offence should include tailored decision making processes and lists of aggravating and mitigating factors to be taken into account at each step rather than having a generic list of factors.
- 5.6. There was a discussion concerning the category ranges and the Council agreed the ranges for all offences to be included in the draft guideline.
- 5.7. There was a discussion about how personal mitigation should be incorporated into step 2 to make it as clear as possible for those using the guideline. As a result, it was agreed to make some drafting amendments to step 2 to highlight that personal mitigation should be taken into account at the same stage as other factors reducing seriousness.
- 5.8. There was then a discussion of the draft public consultation document. The Chairman expressed particular thanks to Katharine Rainsford for all the work she had undertaken in relation to this document.
- 5.9. It was agreed that the public document met its aims in being significantly shorter than the professional document and providing greater explanation of each of the offences. The Council approved the public document and agreed that it would be available online along with the draft guideline and an online questionnaire.
- 5.10. It was noted that it was difficult to get responses to public consultations as there can be issues with motivating individuals to respond. It was confirmed that the communications sub-group had prepared a draft list of potential consultees and other ways of engaging with the public were being considered such as court open days.
- 5.11. The OSC confirmed that responses to email enquiries to the consultation would be a way to assist members of the public in relation to the consultation.
- 5.12. It was suggested and agreed that a glossary of terms will be included in the public consultation document.
- 5.13. Suggested amendments would be included in a re-drafted version of the guideline later this afternoon.

6. DISCUSSION OF RESOURCE ASSESSMENT

- 6.1. The Council considered the draft resource assessment which it has a statutory duty to prepare and the form that the document should take when published. It was agreed that some further work was needed to the latest version of the resource assessment which would be carried out by the OSC and overseen and signed off by the Chairman, Julian Roberts and Paul Wiles. The Council noted that the resource assessment needed to be published at the same time as the consultation.

ACTION: FURTHER WORK ON THE RESOURCE ASSESSMENT TO BE CARRIED OUT BY THE OSC

7. DISCUSSION OF EQUALITY IMPACT ASSESSMENT

- 7.1. The Council approved the latest version of the Equality Impact Assessment and agreed with the approach that had been taken to the EIA including the inclusion of some specific questions in relation to equalities in the consultation documents.

8. UPDATE ON ANALYSIS PRESENTED BY TREVOR STEEPLES

- 8.1. Trevor Steeples updated the Council on analysis activities, especially the Crown Court Sentencing Survey (CCSS) and the proposed contents of the Council's first non-sentencing factors report.
- 8.2. The CCSS would commence on 1 October 2010. Seminars and meetings have been held over the summer to raise awareness of the CCSS with judges. Trevor Steeples updated the Council regarding the 18-month contract with Liverpool John Moores University to enter the survey data. They would provide monthly updates on numbers returned.

ACTION: LORD JUSTICE LEVESON TO WRITE TO COURT MANAGERS AND TO JUDGES, THANKING THOSE WHO ATTENDED THE EVENTS AND DETAILING POINTS UNABLE TO BE CLARIFIED ON THE SURVEY FORM ITSELF.

- 8.3. It was noted that there was generally recognition of the need for the CCSS among judges, and that the coverage of the seminars had been good.
- 8.4. It was suggested that a copy of the survey DVD could be placed in each Crown Court for recorders to access, as well as making it available on Bar Council and Law Society websites. The idea of regional judicial advocates who could provide assistance to RJs to encourage participation in the CCSS was also suggested. It was noted that the survey was not intended to be part of the sentencing process and was for data collection only.

ACTION: ALISTAIR MCCREATH TO TAKE FORWARD FURTHER THINKING ABOUT THE IDEA OF ADVOCATES

- 8.5. The Council discussed and agreed the scope of the non-sentencing factors paper. The report would focus on those factors listed in the legislation.

9. ALLOCATION PRESENTED BY ISABEL SUTCLIFFE

- 9.1. Isabel Sutcliffe introduced the paper on allocation and the key issues for discussion, which were consideration of:
- whether allocation guidelines should be issued;
 - whether the introduction statement to the Magistrates' Court Sentencing Guidelines (MCSG) should be reviewed; and
 - whether the sentencing levels for either way offences as set out in the MCSG should be reviewed in order that the guidelines provide greater guidance on mode of trial decisions.
- 9.2. The Council agreed not to progress allocation guidelines at this stage but to retain them in the proposed 2011/12 work programme. The results of the MoJ sentencing assessment would be taken into account. It was noted that the work done so far would be a useful grounding when the guideline is developed.
- 9.3. It was suggested that any revision to the current MCSG guideline could be made at a later stage as part of a project to revise a number of MCSG guidelines simultaneously.

ACTION: LORD JUSTICE LEVESON TO DRAFT A LETTER TO MAGISTRATES OUTLINING THAT THE CURRENT GUIDANCE ERRS ON THE SIDE OF CAUTION AND THAT WE WILL BE LOOKING AT REVISIONS TO THIS IN DUE COURSE.

10. TOTALITY PRESENTED BY ISABEL SUTCLIFFE

- 10.1. Isabel Sutcliffe introduced the paper on totality and extended her thanks to the sub-group leads for their contributions.
- 10.2. Views were sought from the Council as to the definition of the totality. It was noted that there were currently some rules to follow but no guidance as to how to determine proportionality, and that the issue of definition needed to consider the many variations in consecutive and concurrent sentences.
- 10.3. It was suggested that it would be difficult to determine whether consistency of approach in this regard would equate to consistency of outcome, and that any results were pending the completion of the Crown Court Sentencing Survey.
- 10.4. The Council discussed the two general approaches being adopted to the application of totality: totality being applied as a 'limiting factor' and totality being applied as a 'foundation for sentence.' The potential variation in judgement when assessing what is proportionate was highlighted, as well as the need to make clear the reasons for following either of these approaches. The Council agreed that the approach to be explored would be the 'limiting factor' approach.
- 10.5. The inclusion of offences taken into consideration (TICs) was also discussed. The SAP had issued advice on this, which IS agreed to circulate.
- 10.6. It was noted that public perceptions of different ways of expressing totality would be important, and that this issue would have to be consulted on.

- 10.7. It was agreed that work on the totality guideline, including consideration of TICs, would be taken forward as planned.

ACTION: OFFICE TO CIRCULATE THE SAP GUIDANCE ON TICs.

11. GUILTY PLEAS – PRESENTED BY ISABEL SUTCLIFFE

- 11.1. Introducing this item, the Chairman invited Isabel Sutcliffe to present her paper.
- 11.2. Isabel Sutcliffe introduced the paper on guilty pleas and the key issues for discussion, which were consideration of:
- the stages of proceedings at which a discount could be given;
 - the level of discount; and
 - circumstances in which the discount may vary.
- 11.3. The Council shared views on whether the draft guideline should be based on a test of “first reasonable opportunity” or whether it should be based more strictly on the stage of proceedings at which the plea is tendered.
- 11.4. The Council then discussed the different levels of discount that could be applied. It was agreed that this would be consulted on, and also informed by guilty plea research currently being undertaken.
- 11.5. The Council agreed to discuss a draft guideline on the reduction in sentence for a guilty plea at its October meeting.

ACTION: OSC TO PRESENT A DRAFT GUIDELINE AT THE OCTOBER COUNCIL MEETING.

ACTION: OSC TO UPDATE THE COUNCIL ON THE INITIAL TOP LINES RESEARCH REGARDING GUILTY PLEAS AT THE NOVEMBER COUNCIL MEETING.

- 11.6. In addition, views were sought from the Council as to whether the extent of the reduction for a guilty plea in cases of murder and for very long sentences should vary from the discounts otherwise stipulated. It was agreed that this would have to be consulted on.
- 11.7. Finally, IS updated the Council on equality and diversity issues, and agreed to bring further advice once a guideline has been drafted.

ACTION: OSC TO SEND LETTERS TO DIVERSITY ORGANISATIONS ASKING FOR ANY VIEWS AND CONCERNS PRIOR TO PUBLICATION OF THE GUIDELINE.

12. FURTHER DISCUSSION OF RE-DRAFTED ASSAULT GUIDELINE

- 12.1. The OSC had redrafted some elements of the draft guideline following this morning’s discussions. The Council discussed these changes and approved those that had been made during the course of the day.

- 12.2. It was agreed that the final version of the draft guideline would be formally signed off by Council to ensure that it, along with the public and professional consultation papers could be published during the week commencing 11 October 2010.