
**MEETING OF THE SENTENCING COUNCIL
25 June 2010
MINUTES**

Members present:

John Crawford
Siobhain Egan
Henry Globe
Tim Godwin
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

External presenters:

Paul Cavadino, Adviser to the Council
Mandeep Dhami, Adviser to the Council
Roger Graef, Adviser to the Council

In attendance:

Amie Alekna
Emma Bethell
Nita Bhupal
Rosalind Campion
Michelle Crotty
Nick Mann
Alison Naftalin
Nigel Patrick
Helen Stear
Trevor Steeples
Isabel Sutcliffe

1. WELCOME AND APOLOGIES FOR ABSENCE

- 1.1 The Chairman welcomed Paul Cavadino and informed members that they would be joined by Roger Graef and Mandeep Dhimi as the meeting progressed.
- 1.2 The Chairman welcomed new appointees to the Office of the Sentencing Council: Alison Naftalin (Head of Legal), Nick Mann (Press Officer), Nigel Patrick (Policy Adviser) and Michelle Crotty (Lawyer).
- 1.3 Apologies were received from Anne Arnold and Gillian Guy.

2. MINUTES OF LAST MEETING AND MATTERS ARISING

- 2.1 Minutes from the last meeting held on 24 May were agreed.
- 2.2 The following issues were noted:
 - The allocation guideline should be progressed
 - The analysis and research sub group to develop a proposal for the non-sentencing factors for publication in the first annual report
 - The analysis and research sub group to develop a three year analytical plan and consider engaging with doctoral research students and research councils.
 - Work would be taken forward on the totality principle in September 2010
 - Work should start on a guideline on sentencing for drug offences in October 2010
 - A three year work plan for guidelines would be circulated to members by e-mail.
 - Option papers on developing revised guidelines on guilty pleas and assault would be presented later in the meeting.

ACTION – THE OFFICE TO CIRCULATE A THREE YEAR WORK PLAN FOR GUIDELINES TO MEMBERS BY E-MAIL.

ACTION – TO DEVELOP A THREE YEAR ANALYTICAL PLAN AND A PAPER ON ENGAGEMENT WITH DOCTORAL RESEARCH STUDENTS AND RESEARCH COUNCILS.

3. UPDATE FROM DISCUSSION WITH MINISTER AND MOJ PLANS

- 3.1 The Chairman referred members to the note that was circulated about the impending sentencing review. The Chairman was expecting to meet with Ministers during the review and while the Council could not comment on Government policy, there was a significant role to play in advising on the consequences of any changes.
- 3.2 Council members outlined large spending cuts to be made in the areas of probation, police, defence and prosecution and it was noted that this would impact heavily on current service provision. While many of these issues went beyond the Council's remit, it was acknowledged that there could be a potential impact on the nature of cases reaching court.
- 3.3 The Criminal Justice Council (CJC) looks at cross cutting criminal justice system issues. The Chairman, in his role as Chairman of the CJC would alert members to any relevant issues raised at the CJC.
- 3.4 The Council were informed about some promising findings from an evaluation of a policing initiative 'diamond district' which aimed to reduce reoffending rates. An offer was made to share the findings with the Council.
- 3.5 The Council noted the recent article in Archbold News regarding potential difficulties in the application of sentencing guidelines and in particular in relation to transitional provisions. The Chairman noted that this issue would be considered further at the July meeting.

ACTION – THE OFFICE TO CIRCULATE THE ARTICLE IN ARCHBOLD AND PRESENT ANY IMPLICATIONS TO THE COUNCIL AT THE JULY MEETING.

4. UPDATE ON COUNCIL PRESS ACTIVITY AND COMMUNICATIONS PRESENTED BY HELEN STEAR

- 4.1 Helen Stear provided the Council with an update on press activity and communications. Coverage had been received in BBC radio 4's Law in Action and articles had been published in the Watford Observer and the Law Society Gazette.
- 4.2 Future events include a meeting with Clive Coleman, the BBC's legal affairs correspondent, to provide general background information on the work of the Council, articles in The Magistrate, Insight - the Ministry of Justice magazine and Benchmark – the judicial newsletter.

- 4.3 Discussions were also underway with the Judicial Communications Office to see what opportunities there were to address misreporting on sentencing without discussing details of specific cases.
- 4.4 The public confidence and communication sub group had agreed the Council's key messages. These were set out in the paper circulated and Council members were asked to provide any comments by e-mail to Helen Stear. It was noted that the Council should not rely entirely on measuring its success through improving public confidence.

ACTION – COUNCIL MEMBERS TO PROVIDE COMMENTS ON KEY MESSAGES AND LINES TO TAKE VIA E-MAIL TO HELEN STEAR.

- 4.5 The Council was alerted to plans to use the website as part of the public consultation for the assault guideline. It was recognised that people would need to be directed to the website to ensure they used it. Figures on the numbers visiting the website would be routinely collected.
- 4.6 There was recognition that the Council's consultation papers would be too technical for the public and the material would need to be presented in a more user friendly way. It was suggested that the KIMS service could be used, which was a cohort of a sample of the public used by the police, to canvass views on a variety of issues, to help validate any public consultation papers.

ACTION – THE OFFICE TO EXPLORE THE FEASIBILITY OF USING THE KIMS SERVICE FOR WIDER PUBLIC ENGAGEMENT.

5. DRAFT ASSAULT GUIDELINE - PRESENTED BY AMIE ALEKNA

- 5.1 Amie Alekna introduced the paper on the draft assault guideline. She highlighted the key questions for the Council to consider at this meeting, which centred around the new structure for the proposed guideline. There would be a discussion on the substance of the guideline at the next Council meeting.
- 5.2 Three options on the format and structure of the guideline were presented to the Council. There were different options to consider in relation to establishing the level of harm and culpability, based on consideration of the aggravating and mitigating factors, and the number of category ranges necessary to establish the severity of the offence.

- 5.3 It was agreed that only one option should be included in the consultation paper, although reference to the other options considered by the Council should be included in the consultation paper. The Council took the view that the model should have three category levels, accompanied by a table of the aggravating and mitigating factors relating to the assault offences. The next step in the model would be to factor in the impact of personal aggravating and mitigating factors, such as previous convictions.
- 5.4 There was a discussion about the level of guidance required to decide which category level was appropriate for the level of seriousness of the offence. It was suggested that more guidance would benefit prosecutors and defence practitioners, in order to predict likely sentence outcomes for their clients. However, the majority view was that the category level should be decided, based on consideration of all of the aggravating and mitigating factors in each individual case and that further guidance was not necessary for the category levels.
- 5.5 It was suggested that case studies could be devised to see how the proposed draft guideline might work in practice. This could be done during the consultation process through focus groups.
- 5.6 While there was some recognition that weighting mitigating and aggravating factors in the guideline would be useful, there was general consensus that the facts of each case needed to be considered on their own merit.
- 5.7 The Council discussed whether the top of the category range for a guideline should incorporate the maximum penalty as set out in statute. The Council were of the view that if the ranges were increased, it could unnecessarily impact on the length of sentences.
- 5.8 There was a discussion on sentencing levels for assault occasioning actual bodily harm. In relation to community orders, it was noted that defining the level of the order, as high, medium or low was restrictive for sentencers. However, this classification of community orders is common practice and gives some indication about the number and type of requirements suitable for the seriousness of an offence. It was agreed that any proposed change to defining the community order would need to be consulted upon.
- 5.9 It was recognised that a starting point based on the first time offender did not reflect the vast majority of offenders appearing in court, who were more likely to be repeat offenders. Further consideration would be given to the purpose and definition of the starting point at the next meeting.
- 5.10 The new guideline would need to apply to Magistrates' Courts and require changes to the Magistrates' Court Sentencing Guidelines. This would need to be handled sensitively.

- 5.11 The Council's advice was sought on whether separate guidelines were needed for offenders aged 18-24. This was to reflect the view held by youth representative bodies and NGOs that offenders aged between 18-24 were a distinct group and still maturing up to their mid 20s. It was acknowledged that other jurisdictions recognised 18-24 year old offenders as a discrete group.
- 5.12 It was agreed that the consultation paper should explore further what the Council could do in relation to addressing the needs of this group. This should include reference to any feedback received by the Sentencing Advisory Panel to its consultation on sentencing for youths.

ACTION – THE OFFICE TO PROGRESS THE ASSAULT GUIDELINE AND REFLECT THE COUNCIL'S DISCUSSION.

6. CONFIDENCE AND COMMUNICATIONS PRESENTED BY PAUL CAVADINO AND ROGER GRAEF

- 6.1 Paul Cavadino, an advisor to the Council, gave a presentation on communications based on 37 years service at NACRO and 8 years as its Chief Executive.
- 6.2 He gave advice on the importance of understanding the public's interests. These were perceived as calling for just deserts, consistency in sentencing and a reduction in offending.
- 6.3 He suggested that the Council could embark on a myth busting exercise about sentencing, whilst also recognising there may be some truth behind certain myths. A key area was thought to be the need to stress the supervision element of a community sentence, as the public tended to hold the view that an offender had been "let off" rather than been given a sentence.
- 6.4 Paul recommended that the Council seek invitations to conferences, be proactive about seeking news coverage and he welcomed the communications strategy that has been developed. He also saw value in consulting with ex offenders and victims.
- 6.5 Roger Graef, an advisor to the Council, gave a presentation on communications based on his experience as a documentary film maker and criminologist. He highlighted the challenge to the Council in promoting public confidence when there was a propensity for TV to broadcast populist crime programme and for newspapers to focus on negative stories.

- 6.6 One of the challenges was to encourage people to think about sentencing. He believed that the Government agenda to promote citizenship should include sentencing. He suggested that the best way to engage with the public was to devise case studies and ask the public to sentence the offender.
- 6.7 The Chairman thanked the advisors for their contributions.
- 6.8 The Council were of the view that simple key messages, focused on the Council's functions, needed to be communicated repeatedly over a period of time. Local press was viewed as being a useful vehicle for promulgating messages.

7. DISCUSSION PAPER ON THE REDUCTION IN SENTENCE FOR A GUILTY PLEA GUIDELINE PRESENTED BY ISABEL SUTCLIFFE

- 7.1 Isabel Sutcliffe introduced a discussion paper on the reduction in sentence for a guilty plea and asked Council members for views on the key issues. It would then be taken forward by the sentencing framework and guidelines sub group.
- 7.2 It was suggested that alongside the stage at which a plea was entered, the nature of the offence should be explored as a factor that could influence the level of any discount. Certain cases which can take many years to investigate, such as fraud, may justify a larger discount.
- 7.3 The review of the guilty plea guideline should consider whether offenders committing murder should receive smaller discounts. Consideration should be given to whether any admissions at the police station should warrant an increased guilty plea discount. This could provide benefits across the CJS if it encouraged earlier pleas and fewer guilty pleas being entered on the day of the trial. A concern was raised that defendants were getting full discounts for a guilty plea entered at the Crown Court, even if they failed to enter a plea at the earliest opportunity in the Magistrates' Court.
- 7.4 The question was raised whether there was a need to ensure that defence solicitors were clear about the stages and level of any discounts so they could reliably inform defendants. Any defined stages would need to incorporate sufficient time for defendants to speak to their solicitors.
- 7.5 Evidence from the Early Guilty Plea scheme running in Liverpool Crown Court showed that there needed to be a real incentive for a defendant to plead guilty at any one stage in the process. At present the level of reduction between stages was relatively minimal and appeared to give no real incentive to defendants to plead early.

- 7.6 The Council noted the potential impact in relation to public confidence in the system. It agreed that research should be commissioned which sought to understand the views of the public on what levels of reduction may be acceptable.

ACTION – THE OFFICE TO CONSIDER RESEARCH ON PUBLIC ATTITUDES TO GUILTY PLEA REDUCTIONS.

- 7.7 The Chairman confirmed that the Secretary of State would be writing to him in relation to reviewing the guilty plea guideline and that the letter along with a draft response would be circulated to Council members for comment.

ACTION – WHEN RECEIVED, TO CIRCULATE THE LETTER FROM THE SECRETARY OF STATE AND THE DRAFT RESPONSE TO MEMBERS FOR COMMENT.

ACTION –THE OFFICE TO PROGRESS THE GUILTY PLEA GUIDELINE AND REFLECT THE COUNCIL’S DISCUSSION.

8. CROWN COURT SENTENCING SURVEY – UPDATE FROM THE PILOT PRESENTED BY TREVOR STEEPLES

- 8.1 Trevor Steeples gave a presentation on the findings from the pilot of the Crown Court Sentencing Survey (CCSS).
- 8.2 The Chairman commented on the excellent response rates from all of the pilot sites, but in particular at Liverpool Crown Court. There was an acceptance that a more realistic response rate was expected when the survey starts nationally which might be closer to the lower rate of return at 58%. Efforts would need to be made to ensure that the national response rate is as high as possible, as it could create a limitation on the depth of the analysis and overall usefulness of the data.
- 8.3 It was recognised that the average recorded five minutes taken to complete the questionnaire, could be perceived as long when it was aggregated to reflect impact on overall workload. However, it was thought that this was an estimation of time and could have been an over estimation.
- 8.4 The Council was informed that the commencement of the national survey in October 2010 would be communicated through regional

ACTION – THE OFFICE TO INCLUDE LIAISON WITH THE BAR COUNCIL AS PART OF ITS COMMUNICATION STRATEGY FOR THE CCSS.

- 8.5 The Chairman confirmed that he would send a follow up letter to the judiciary prior to the start of the national survey.
- 8.6 The final questionnaires used in the survey would be circulated to members by e-mail for their information, prior to the survey commencing.

ACTION –THE OFFICE TO CIRCULATE THE FINAL QUESTIONNAIRES TO COUNCIL MEMBERS.

9. A.O.B

- 9.1 The Chairman commented on the figures that were provided on the prison population and noted in particular the numbers sentenced to imprisonment for public protection over the last three years. The analytical team is currently considering how data on changes to sentencing practice could be presented to the Council.