

MEETING OF THE SENTENCING COUNCIL

30 March 2012

MINUTES

<u>Members present:</u>	Anthony Hughes (Deputy Chairman) Anne Arnold Siobhain Egan Henry Globe Gillian Guy Alistair McCreath Anne Rafferty Katharine Rainsford Julian Roberts Colman Treacy
<u>Apologies:</u>	Brian Leveson (Chairman) John Crawforth Tim Godwin Keir Starmer
<u>Advisers present:</u>	Paul Cavadino Paul Wiles
<u>Observers:</u>	Helen Judge (Director of Sentencing and Rehabilitation, Ministry of Justice) Ruth Coffey (Legal advisor to the Lord Chief Justice)
<u>Members of Office in Attendance</u>	Michelle Crotty Trevor Steeples Vanessa Watling Nigel Patrick Jackie Burney Helen Stear Emma Marshall Bee Ezete Anna Tuckett Martin Culliney

1. WELCOME AND APOLOGIES FOR ABSENCE

- 1.1. Apologies were received as set out above.

2. MINUTES OF LAST MEETING

- 2.1. Minutes from the meeting of 24 February 2012 were agreed.

3. MATTERS ARISING

- 3.1. The Deputy Chairman noted that this was Anne Rafferty's last meeting and thanked her for her much valued contribution to the work of the Council. The Deputy Chairman brought the Council's attention to letters that had recently been received. The Council also received an update on the progress of the Legal Aid, Sentencing and Punishment of Offenders Bill.

4. DISCUSSION ON DANGEROUS DOG OFFENCES – PRESENTED BY NIGEL PATRICK, OFFICE OF THE SENTENCING COUNCIL

- 4.1. The Council considered the many helpful responses received to the consultation on sentencing for dangerous dog offences and amendments were made to the guideline and sentencing ranges, as set out in its response to the consultation paper which will be published in conjunction with the definitive guideline.
- 4.2. The Council agreed the draft guideline, resource assessment and equality impact assessment for publication, subject to amendments as agreed.

5. DISCUSSION ON ENVIRONMENTAL OFFENCES / CORPORATE FINES – PRESENTED BY JACKIE BURNEY, OFFICE OF THE SENTENCING COUNCIL

- 5.1. The Council considered the approach the guideline should take, whether tariff-based, narrative-based or a hybrid of the two. In deciding this, the Council considered a range of models used by regulatory bodies and how such approaches might apply to different types of offenders.
- 5.2. The Council also discussed how turnover could be measured for publicly funded bodies and charities. Council noted the types of financial penalties that had been handed down in past cases and suggested that it would be helpful to apply the proposed models to those cases and consider the potential outcomes under the draft models.

ACTION: INVESTIGATE EQUIVALENT MEASURES TO TURNOVER IN THE PUBLIC AND THIRD SECTORS

- 5.3. Council discussed how best to ensure that the fine is both proportionate and a deterrent when imposed on very large companies or where the breach is a one-off incident or the result of ongoing bad practice.
- 5.4. Council considered the financial information that might be available in published accounts and any other measures that could be used in calculating

a financial penalty. It was suggested that it would be useful to find out what figures are regularly made available across all types and sizes of company, publicly-funded bodies and charities.

ACTION: INVESTIGATE WHAT OTHER INFORMATION FOUND IN PUBLISHED ACCOUNTS COULD BE USED TO CALCULATE FINANCIAL PENALTIES

- 5.5. Council was of the view that the draft guideline should aim to deter any future offending and have a severe enough impact to punish their business. Council was clear that any financial penalty should be proportionate to the seriousness of the offence and decided to further develop a tariff-based model, but incorporate a proportionality check on the size of the fine.

6. DISCUSSION ON SEXUAL OFFENCES – PRESENTED BY VANESSA WATLING, OFFICE OF THE SENTENCING COUNCIL

- 6.1. The Council considered the draft sentencing guideline for the offence of rape and discussed how to provide enough guidance for sentencers to ensure that the cumulative effect of category 2 factors is taken into account. There was discussion about the narrative that should be included.
- 6.2. Council considered the draft guideline on sexual activity with a child and discussed exploitative behaviour such as grooming and manipulation used to facilitate the commission of the offence, including where a victim is passed around a gang or group.
- 6.3. Council also discussed the offences of sexual activity in the presence of a child and causing a child to watch a sexual act and it was agreed that there was enough commonality in these offences to consider dealing with them in one guideline. Both offences featured aspects of grooming behaviour by the offender. It was agreed that the viewing of extreme pornography should be incorporated; it was not included in the current guidelines as those were produced before the legislation on extreme pornography was passed.
- 6.4. Council discussed the draft guideline on assault by penetration and considered how much similarity there should be between the sentencing ranges for this offence and those for rape, as the harm in this offence could be of a similar level to rape.
- 6.5. Council then discussed the draft guideline on sexual assault and suggested that the revised guideline should focus more on the context of the offence, for example, the timing, isolation and fear of escalation, rather than the physical activity being the primary driver.

ACTION: DRAFT GUIDELINES TO BE REVISED IN THE LIGHT OF THE DISCUSSION AND REVIEWED BY COUNCIL IN MAY

7. UPDATE FROM ANALYSIS AND RESEARCH SUB-GROUP – PRESENTED BY JULIAN ROBERTS

- 7.1 Julian Roberts updated the Council on the progress of the analysis and research sub-group's work against the Council's statutory obligations and its work plans.