

MEETING OF THE SENTENCING COUNCIL

31 JANUARY 2014

MINUTES

<u>Members present:</u>	Colman Treacy (Chairman) Anne Arnold Michael Caplan John Crawforth William Davis Henry Globe Heather Hallett (Items 1-9) Javed Khan (Items 1-6) Sarah Munro Lynne Owens (Items 1-6) Katharine Rainsford Julian Roberts Alison Saunders
<u>Apologies:</u>	John Saunders
<u>Advisers present:</u>	Paul Wiles
<u>Representatives:</u>	Stephen Muers for the Ministry of Justice (Director, Sentencing and Rehabilitation) Claire Fielder for the Lord Chief Justice (Head of Lord Chief Justice's Criminal Justice Team)
<u>Members of Office in Attendance</u>	Michelle Crotty (Head of Office) Mandy Banks Bee Ezete Ingrid Giesinger Mary Jones Robin Linacre Lissa Matthews Emma Marshall Karen Moreton Victoria Obudulu Ruth Pope Helen Stear Trevor Steeples

1. WELCOME AND APOLOGIES FOR ABSENCE

- 1.1 Apologies were received as set out above.

2. MINUTES OF LAST MEETING

- 2.1. The minutes from the meeting of 20 December 2013 were agreed.

3. MATTERS ARISING

- 3.1. The Council were pleased to hear that the definitive guideline on sentencing corporate fraud had been published on 31 January on the Sentencing Council website.
- 3.2. The Council discussed a request received from the Law Commission for an overarching guideline on sections 145 and 146 of the Criminal Justice Act 2003. The Council agreed that its current work programme does not allow for this work to be undertaken at this time, but the matter will be kept under review.

4. PRESENTATION AND DISCUSSION ON HEALTH AND SAFETY – PRESENTED BY RICHARD MATTHEWS QC (2 BEDFORD ROW CHAMBERS), PETER MCNAUGHT AND BERNADETTE CADMAN (HEALTH AND SAFETY EXECUTIVE) AND MARY JONES, OFFICE OF THE SENTENCING COUNCIL

- 4.1. Paul Wiles notified the Council of a conflict of interest in relation to the discussion on health and safety and took no part in the discussion.
- 4.2. The Chairman welcomed Richard Matthews, Peter McNaught and Bernadette Cadman who gave presentations on the Council's proposals for a sentencing guideline on Health and Safety offences.
- 4.3. The Council and attendees discussed issues relating to the structure and scope of the guideline and the approach the court should take when assessing harm, culpability and aggravating and mitigating factors in health and safety offences.
- 4.4. The Council explored different options for assessing the harm caused by health and safety offences for the purpose of sentencing, noting that health and safety offences are based on the creation of risks to health and safety yet in many cases actual harm will have been caused by the offence.
- 4.5. The Council discussed the best approach to ensuring that a fine was proportionate to the means of a corporate offender and agreed to return to this issue at a later meeting.

DISCUSSION ON ROBBERY – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

- 5.1. The Council discussed the scope and approach of the draft guideline for sentencing robbery.

5.2. The Council agreed to include the five types of robbery found in the current guideline and discussed how the offences should be grouped. It was agreed that officials would present alternative draft guidelines for consideration at the next meeting.

5.3. It was agreed that the draft guideline would not apply to offenders aged under 18. Work on a new guideline for youth offending is due to commence later this year.

6. DISCUSSION ON THEFT AND HANDLING STOLEN GOODS CONSULTATION PAPER – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

6.1. The Chairman expressed thanks to those members that had met with officials to discuss the theft sentence ranges, short term custodial sentences and parity between the fraud and theft sentence ranges. As a result of those discussions changes were made to ensure a closer relationship between the fraud and theft guidelines.

6.2. The Council considered the approach of the guideline to issues such as short term custodial sentences, repeat offenders and the proposed changes to the out of court disposals regime.

6.3. There was an in depth discussion on how to ensure that the draft guideline is helpful to magistrates and easy to understand.

6.4. The Council discussed the draft consultation paper which will explain the rationale behind the draft guideline and the Council's thinking.

7. DISCUSSION ON FRAUD OFFENCES GUIDELINE – PRESENTED BY LISSA MATTHEWS, OFFICE OF THE SENTENCING COUNCIL

7.1. The Council considered the assessment of step one factors for the draft guidelines on fraud, bribery and money laundering. In relation to fraud, the Council discussed the consultation responses received on the two stage approach which guides the sentencer to consider financial harm and victim impact. Results of the research with sentencers was also considered. The Council discussed the approach to offences where there is no actual loss or the offender does not intend there to be any loss and agreed that the guideline should take in to account the exposure of direct and indirect victims to the risk of loss.

7.2. The Council then discussed the consultation responses relating to the proposed assessment of harm for possessing, making or supplying articles, revenue fraud, benefit fraud and bribery. A detailed discussion was held on the two stage assessment of harm for the guideline on money laundering and it was agreed to retain this model with some modification.

8. DISCUSSION ON CROWN COURT SENTENCING SURVEY (CCSS) RESPONSE RATE AND FORMS – PRESENTED BY TREVOR STEEPLES, OFFICE OF THE SENTENCING COUNCIL

8.1. The Council discussed the CCSS form response rates and its strategy for addressing low or reduced response rates. Judicial members briefed the Council on the positive conversations they had had with various judges and suggestions were made on how to raise awareness of the survey.

8.2. There was a discussion on whether a new form should be issued to collect fraud information when the new guideline is published. Fraud information is currently being collected on the theft form. Members considered how best to balance the need to keep administration simple for the courts whilst ensuring that detailed information is obtained. The Council agreed that there should be a separate form for fraud as this will assist with the introduction of the new guideline and act as an aide memoire for the sentencing process.

9. UPDATE ON THE MAGISTRATES' COURT SENTENCING GUIDELINE (MCSG) – PRESENTED BY MICHELLE CROTTY, HEAD OF OFFICE OF THE SENTENCING COUNCIL

9.1. The Council were briefed on the ongoing work and challenges in relation to moving to digital delivery of the MCSG.

10. PRESENTATION ON THE PROPOSED EARLY GUILTY PLEAS SCHEME – PRESENTED BY GROSS LJ, SENIOR PRESIDING JUDGE

10.1. The Chairman welcomed Gross LJ to the meeting who updated the Council on the proposed early guilty plea scheme and discussed how this might work alongside the draft guideline.

11. DISCUSSION ON GUILTY PLEA GUIDELINE – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

11.1. The Council discussed what approach the guideline should take for ensuring that the guilty plea guideline provides an incentive for offenders to plead as early as possible and, specifically, to ensure that there will be an incentive for defendants sent to the Crown Court in either way cases to participate in the proposed early guilty plea scheme.