

MEETING OF THE SENTENCING COUNCIL

25 January 2019

MINUTES

Members present:

Tim Holroyde (Chairman)
Rob Butler
Mark Castle
Rosina Cottage
Rebecca Crane
Rosa Dean
Heather Hallett
Max Hill
Maura McGowan
Sarah Munro
Alpa Parmar
Beverley Thompson

Apologies:

Julian Goose

Representatives:

Vanessa Watling for the Lord Chief Justice (Head of Lord Chief Justice's Criminal Justice Team)
Phil Douglas for the Lord Chancellor (Director, Offender and Youth Justice Policy)

Members of Office in attendance:

Steve Wade (Head of Office)
Lisa Frost
Sophie Klinger
Eleanor Nicholls
Ruth Pope
Sarah Poppleton

1. MINUTES OF LAST MEETING

- 1.1. The minutes from the meeting of 14 December 2018 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman informed the Council that he had recently held an introductory meeting with Rory Stewart MP, the minister with responsibility for sentencing.

3. DISCUSSION ON FIREARMS – PRESENTED BY SOPHIE KLINGER, OFFICE OF THE SENTENCING COUNCIL

- 3.1 The Council considered firearms guidelines on possession with intent offences, covering possession with intent to endanger life (section 16), possession with intent to cause fear of violence (section 16A), use of firearm to resist arrest (section 17(1)), possession while committing a Schedule 1 offence (section 17(2)), and carrying a firearm with intent to commit an indictable offence (section 18). It was agreed that the section 16 and 16A offences should each have a separate guideline, and the section 17 and 18 offences could all be grouped within one guideline.
- 3.2 Culpability and harm models were considered. The Council agreed to adopt broadly the same culpability and harm models as used in the possession guidelines. The culpability factors were discussed and some revisions will be made to individual factors. Factors relating to coercion and acting under direction were considered; it was agreed these should remain at step two.
- 3.3 The Council considered the factors in harm; these were similar to those in the possession guidelines with additional factors relating to physical and psychological harm. Minor revisions were agreed to the wording.
- 3.4 The Council agreed to establish a working group to consider the firearms guidelines in more detail between Council meetings.

4. DISCUSSION ON ARSON/CRIMINAL DAMAGE – PRESENTED BY STEVE WADE, OFFICE OF THE SENTENCING COUNCIL

- 4.1 The Council discussed consultation responses to the draft criminal damage guidelines, including the racially or religiously aggravated version of the offence, and the threats to destroy or damage property draft guideline.
- 4.2 The Council also noted the work that was carried out to explore the guidelines with sentencers. As a result of the discussion the Council agreed a small number of amendments and changes to wording. Sentence levels across all the offences will be discussed at the next Council meeting.

- 5. DISCUSSION ON PUBLIC ORDER – PRESENTED BY LISA FROST, OFFICE OF THE SENTENCING COUNCIL**
- 5.1 The Council considered consultation responses and research findings for the draft guidelines for riot and violent disorder. Based on consultation responses and research findings the Council agreed a number of changes to the draft guidelines. The culpability factor referring to a ‘ringleader’ in both guidelines was amended to ‘instigator’.
- 5.2 The Council agreed that for riot offences culpability category B should be reworded to capture all cases not including a category A factor, rather than listing factors describing a riot incident. The harm model for the riot guideline was also amended, retaining the same factors and categories but clarifying that the highest harm category required multiple or extreme examples of the factors included.
- 5.3 The Council agreed that additional wording relating to increasing or reducing the starting point for relevant aggravating and mitigating factors should be removed in both guidelines. For violent disorder, no other culpability factors were amended.
- 5.4 The Council agreed to include an additional high harm category to capture cases involving extreme or multiple harm factors, to provide for very serious cases. This reflected updated statistics which highlighted a relatively high proportion of pre-guilty plea sentences above the draft guideline’s highest starting point.
- 6. DISCUSSION ON EXPANDED EXPLANATIONS IN OFFENCE SPECIFIC GUIDELINES – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL**
- 6.1 The Council discussed the approach to applying expanded explanations of aggravating and mitigating factors to offence specific guidelines and agreed to consult on the detailed proposals. The Council also agreed to consult on whether the General guideline should be treated as an overarching guideline to replace the existing Seriousness guideline produced by the Sentencing Guidelines Council in 2004.
- 6.2 The Council considered a policy for making future changes to guidelines and agreed that this should be published on the Council’s website.
- 7. DISCUSSION ON DRUG OFFENCES – PRESENTED BY ELEANOR NICHOLLS, OFFICE OF THE SENTENCING COUNCIL**
- 7.1 The Council discussed the guideline for possession offences under the Misuse of Drugs Act 1971, which it was agreed is working broadly as intended. The Council agreed some minor changes to the guideline, including how the guideline should make reference to community orders and how to deal with low level importation offences currently included within the possession guideline.

- 7.2 The Council considered the main offences under the Psychoactive Substances Act 2016 for the first time. It agreed that the approach to the assessment of culpability, and the aggravating and mitigating factors, should be closely based on that in the comparable Misuse of Drugs Act offences, with some small changes to take into account the differences in the legislation. The consultation on the draft guideline will seek views on whether there are any other differences between the offences which a guideline needs to take into account.
- 7.3 The approach to the assessment of harm for these Psychoactive Substances Act offences will be considered at a future meeting.

8. DISCUSSION ON PUBLICATION OF THE ROBBERY ASSESSMENT – PRESENTED BY SARAH POPPLETON, OFFICE OF THE SENTENCING COUNCIL

- 8.1 The Council agreed to publish the assessment of the robbery guideline's impact and implementation in February 2019. The Council noted the importance of making it clear that this report covers adult offenders only. In the light of these findings the Council agreed to put consideration of possible revision of this guideline on the medium to long-term work plan.