

MEETING OF THE SENTENCING COUNCIL

1 MARCH 2019

MINUTES

Members present:

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

Representatives:

Assistant Commission Nick Ephgrave for the police,
Sophie Marlow for the Lord Chief Justice (Legal and Policy Adviser to Sir Brian Leveson, Head of Criminal Justice)
Phil Douglas for the Lord Chancellor (Director, Offender and Youth Justice Policy)

Members of Office in attendance:

Steve Wade (Head of Office)
Lisa Frost
Phil Hodgson
Sophie Klinger
Mandy Banks
Ruth Pope

1. MINUTES OF LAST MEETING

- 1.1. The minutes from the meeting of 25 January 2019 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman informed the Council that he had recently given evidence to the Joint Committee on Human Rights' inquiry into the human rights of children whose mothers are in prison.

3. DISCUSSION ON PUBLIC ORDER – PRESENTED BY LISA FROST, OFFICE OF THE SENTENCING COUNCIL

- 3.1 The Council considered consultation responses and research findings into the draft guideline for Affray. The phrasing of a number of culpability factors was discussed and the Council decided to retain the wording used in the draft guideline.
- 3.2 The Council agreed a minor amendment to the wording for the lowest harm category to reflect more appropriately the threshold of harm required for the offence. Based on research findings, a mitigating factor of 'significant degree of provocation' was added and an additional aggravating factor of 'injury to animal carrying out public duty' was included, following a suggestion by a consultation respondent.
- 3.3 No revisions were made to sentence levels, which received broad approval from consultation respondents.

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

- 4.1 The Council considered the sentence ranges across the offences. The Council reviewed the consultation responses on this area and noted that generally most consultation respondents agreed with the proposed sentence ranges.
- 4.2 The Council also considered updated sentencing data and the results of the testing of some of the draft guidelines with Crown Court judges. Following discussion, the Council agreed to make some minor changes to some of the sentence ranges.

5. DISCUSSION ON FIREARMS 1 – PRESENTED BY SOPHIE KLINGER, OFFICE OF THE SENTENCING COUNCIL

- 5.1 The Council considered three guidelines on possession with intent offences. The Firearms Working Group had developed a revised approach to the type of weapon for each guideline in February; the Council considered and approved these approaches. The Council also

agreed the changes to culpability and harm recommended by the working group.

- 5.2 The Council also examined aggravating and mitigating factors at step two of these guidelines. Revisions to some factors were agreed. Sentencing tables were considered, including separate tables for the guidelines covering firearms and imitation firearms.
- 5.3 Finally, it was agreed to include wording relating to the minimum term above the sentence table, stating that where the minimum term applies, and the sentence reached by applying the guideline would be lower than the minimum term, it should be increased to five years, unless there are exceptional circumstances. There will also be more detailed guidance on the minimum term at step three.
- 5.4 It was agreed that the Firearms Working Group should work on the wording of certain factors which would come back to the next Council meeting for consideration.

6. DISCUSSION ON 10 YEAR ANNIVERSARY – PRESENTED BY PHIL HODGSON, OFFICE OF THE SENTENCING COUNCIL

- 6.1 The Council were updated on the plans for principal activities for the Council's anniversary year in 2020. Plans for consideration included an event, a sentencing competition, and the potential for a publishing opportunity. Members agreed the plans in principle and suggested an additional potential activity for engagement with schools should be explored.

7. DISCUSSION ON PUBLIC ATTITUDES WORK AND COMMUNICATIONS STRATEGY – PRESENTED BY PHIL HODGSON, OFFICE OF THE SENTENCING COUNCIL AND EMMA MCVEY, COMRES

- 7.1 The Council was given a presentation of the key findings and recommendations from *Public Understanding of Sentencing and the Criminal Justice System*, a draft report on research conducted for the Sentencing Council by independent agency ComRes. Members agreed that the research has important implications for the Council and should be given further consideration.

8. DISCUSSION ON FIREARMS 2 – PRESENTED BY SOPHIE KLINGER, OFFICE OF THE SENTENCING COUNCIL

- 8.1 The Council considered a draft guideline covering transfer and manufacture of prohibited weapons and ammunition, which draws on the guideline judgment of Attorney General's References (Nos 128-141 of 2015 and 8-10 of 2016) [2016] EWCA Crim 54 (R v Stephenson). The Council agreed to group all four offences under section 5(2A) Firearms Act 1968 in the one guideline.

- 8.2 The Council agreed the model of culpability focusing on the offender's role, planning, expectation of gain, and several other factors. It also agreed a model of harm focusing on the scale and sophistication of the criminal enterprise, and any actual harm caused.
- 8.4 Aggravating and mitigating factors were also examined. These were largely agreed with some minor amendments to wording to be made.
- 8.5 Consideration was given to the relative sentence levels in the guideline on possession with intent to endanger life and the manufacture/transfer guideline. It was agreed that the top end of the transfer/manufacture guideline would reflect the indications given in the Stephenson judgment which would make it higher than the possession with intent to endanger life guideline.
- 8.6 It was agreed not to develop a guideline for the offence of possession of articles for conversion offence (section 4A), due to low volumes and the expectation that this offence will be infrequently charged.

**9. DISCUSSION ON BLADED ARTICLE/OFFENSIVE WEAPON –
PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING
COUNCIL**

- 9.1 The Council had been asked by the Justices' Clerks' Society for a view on when it was permissible to suspend a minimum sentence for certain possession and threats offences.
- 9.2 The Council agreed to respond stating that it was unable to advise on this matter and that the Registrar of Criminal Appeals was looking out for a suitable case for the Court of Appeal (Criminal Division) to hear full argument and rule on the issue.