SENTENCING GUIDELINES IN ENGLAND AND WALES

Bringing consistency to sentencing
OVERVIEW

• Crime is reducing
• Public does not believe it (media role)
• So politicians can not believe it
• Important to be seen to be tough on crime – “populist punitiveness”
• Services stretched to (beyond) limit
• Financial constraints
• Pressure for greater democratic “engagement”
THE COURTS

• The Crown Court / Magistrates’ Courts
• Approximately 35,000 full-time and part-time judges, recorders and magistrates
• Well over 1 million offences each year
• Almost 80,000 in Crown Court
ACCEPTANCE OF GUIDELINES

• Previous history:
  – Court of Appeal - guideline judgments (over 40 years)
  – Magistrates’ Court Sentencing Guidelines (similar timeframe; grew from guidance on motoring offences)

• Statutory duty

• Authority of the Council

• Faith in the process of creating guidelines
THE VALUE OF GUIDELINES

• Structured approach to sentencing process, followed in all courts

• Agreed principles (impact of various factors)

• Consistency of approach (not outcome)

• Proportionality across offences
GUIDELINES AS A SOLUTION

- Primarily about consistency
- Important element of justice
- Avoiding unjustified disparity
- Avoiding unjustified uniformity
DEFINITIVE GUIDELINES (2004-2007)

1. Overarching Principles: Seriousness
3. Reduction in sentence for a guilty plea
4. Manslaughter by reason of provocation
5. Robbery
6. Overarching Principles: Domestic Violence
7. Breach of a Protective Order
8. Sexual Offences Act 2003
9. Reduction in sentence for a guilty plea – revised
10. Fail to surrender to bail
DEFINITIVE GUIDELINES (2008-2009)

11. Assaults and other offences against the person
12. Assaults on children/Child cruelty
14. Causing death by driving
15. Theft and burglary (non dwelling)
16. Breach of an Anti-Social Behaviour order
17. Attempted Murder
OTHER PUBLICATIONS

• Newsletters
• Annual Report
• Occasional papers (dangerous offenders)
• Compendium of Court of Appeal Guidelines
WORK IN PROGRESS

- Fraud – statutory offences
- Corporate manslaughter & Health and safety offences resulting in death
- Overarching principles of sentencing - review of Seriousness and New Sentences guidelines
- Sentencing young offenders
- Drug offences
- Burglary of a dwelling
EVOLUTION/BIG BANG

- Extensive consultation
- Direct involvement of very senior personnel
- Active involvement of Panel and Council members
- Length of process
- Media opportunities
DETERMINING SERIOUSNESS

- Harm – actual, intended, foreseeable
- Culpability
- Aggravating factors – not exclusive
- Mitigating factors – not exclusive
- Offence and offender
STRUCTURE OF A GUIDELINE

- Level of seriousness defined by type of activity (determinants of seriousness)
- Starting points
- Ranges
- Aggravating/mitigating factors
- Offender mitigation
“SERIOUS”

- **Community threshold** – ‘serious enough to warrant such a sentence’
- **Community order** – ‘restrictions on liberty commensurate with the seriousness of the offence’
- **Custodial threshold** – ‘so serious that neither a fine alone nor a community sentence can be justified’
- **Custody** – ‘for the shortest term commensurate with the seriousness of the offence’
USING A GUIDELINE

- Identify example of offence activity - starting point
- Move up or down for aggravating/ mitigating factors
- Provisional sentence – usually within range
- Consider offender mitigation
- Consider guilty plea – sliding scale
- Compensation
- Ancillary orders (punitive/protective)
- Decide sentence
- Give reasons
- Explain any departure from guideline
PREVIOUS CONVICTIONS

• Intuitive
• Research
• Limits - murder
  - minimum sentences
  - multiple offenders
FINES - APPROACH

- Seriousness and financial circumstances
- No perfect system
- Aim – easy to use, fair in most cases, flexible
- Less information needed
- Low income/benefit
- No information
Current two-tier system

SAP established 1999 to provide advice to the Court of Appeal

SGC established 2004:
- Principled and comprehensive approach (promote consistency)
- General principles
- Also new offences/sentences/general issues
- Guidelines from a single source

SAP now provides advice to the SGC
Sentencing Guidelines Council

Membership stipulated in statute:

- 12 members
- Chairman - Lord Chief Justice
  - 7 other judicial members (2 Court of Appeal Judges, 1 High Court Judge (Judicial Studies Board), 2 Circuit Judges, 1 District Judge, 1 Magistrate)
  - 4 non-judicial members (Policing; Prosecuting; Defence; Promotion of welfare of victims)
- 1 observer (Ministry of Justice - sentencing policy and administration of sentences)
- Chairman of the Sentencing Advisory Panel
Sentencing Advisory Panel

- Membership not stipulated in statute
- 15 members
  - Chairman – Professor Andrew Ashworth
  - Academics (2 others in addition to chairman)
  - Judiciary (2 Circuit Judges, 1 District Judge, 1 Magistrate)
  - CJS (Police, Prison, Prosecution, Probation)
  - Non-CJS (Business, Education, Health, Race Equality)
PRODUCING A GUIDELINE

• Currently two bodies – SAP and SGC
• Identify priorities (work programme)
• SGC commissions advice from SAP
• SAP researches extensively then consults widely (diversity pre-consultation)
• Panel advises
• Draft Guidelines
• Council consults Parliament/Ministers
• Definitive Guidelines
SENTENCING GUIDELINES SECRETARIAT

- Supports Council and Panel
- 14 staff
- Experience - practitioners/policy/research/media
- Funded by Ministry of Justice, accountable to Council and Panel
- www.sentencing-guidelines.gov.uk
THE FUTURE

• Current guidelines process under review – provisions in the Coroners and Justice Bill to create one new body: a Sentencing Council
• Interaction with Parliament/Government – provisional impact assessments to inform policy decisions / role of Justice Committee
• Data collection – sentencing trends/ costs of sentences/ use of resources
• Monitoring – use of guidelines /issues arising/impact and effectiveness
• Inform the public / promote confidence
• Prisons reserved for ..??
• Relevance of capacity
CHALLENGES

- Monitoring – width of discretion, high volume cases, number of judiciary
- Resistance to degrees of detail
- Imminent national election
DEMOCRATIC ENGAGEMENT

- Sentencing Advisory Panel members
- Consultation topic by topic
- Specific research – survey, focus groups
- Magistracy
- Use of juries
BUT ... 

- Low public confidence
- Headline belief in leniency
- Different in reality
- Interesting developments in Japan
SUMMARY

• Spring 2010 guidelines for commonly sentenced offences
• Guidelines for key areas of principle – assessing seriousness, those under 18, domestic violence, reduction for guilty plea
• New Council?
• New Government?
• Other jurisdictions – Australia, Japan, New Zealand, Scotland, South Korea, USA