

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**
- 2. New Sentences: Criminal Justice Act 2003**
- 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**
- 13. Magistrates' Court Sentencing Guidelines –
(and 2 updates in July and Dec 2008)**
- 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***