House of Commons
Justice Committee

Health and safety offences, corporate manslaughter and food safety and hygiene offences guidelines: consultation

Seventh Report of Session 2014–15

Report, together with formal minutes

Ordered by the House of Commons
to be printed 4 March 2015
The Justice Committee

The Justice Committee is appointed by the House of Commons to examine the expenditure, administration and policy of the Ministry of Justice and its associated public bodies (including the work of staff provided for the administrative work of courts and tribunals, but excluding consideration of individual cases and appointments, and excluding the work of the Scotland and Wales Offices and of the Advocate General for Scotland); and administration and expenditure of the Attorney General’s Office, the Treasury Solicitor’s Department, the Crown Prosecution Service and the Serious Fraud Office (but excluding individual cases and appointments and advice given within government by Law Officers).

Current membership

Rt Hon Sir Alan Beith (Liberal Democrat, Berwick-upon-Tweed) (Chair)
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Rehman Chishti (Conservative, Gillingham and Rainham)
Christopher Chope (Conservative, Christchurch)
Jeremy Corbyn (Labour, Islington North)
John Cryer (Labour, Leyton and Wanstead)
Nick de Bois (Conservative, Enfield North)
John Howell MP (Conservative, Henley)
Rt Hon Elfyn Llwyd (Plaid Cymru, Dwyfor Meirionnydd)
Andy McDonald (Labour, Middlesbrough)
John McDonnell (Labour, Hayes and Harlington)
Yasmin Qureshi (Labour, Bolton South East)

The following Members were also members of the Committee during the Parliament:

Mr Robert Buckland (Conservative, South Swindon); Christopher Evans (Labour/Co-operative, Islwyn); Mrs Helen Grant (Conservative, Maidstone and The Weald); Ben Gummer (Conservative, Ipswich); Mrs Siân C James (Labour, Swansea East); Gareth Johnson (Conservative, Dartford); Jessica Lee (Conservative, Erewash); Seema Malhotra (Labour/Co-operative, Feltham and Heston); Robert Neill (Conservative, Bromley and Chislehurst); Claire Perry (Conservative, Devizes); Mrs Linda Riordan (Labour/Co-operative, Halifax); Anna Soubry (Conservative, Broxtowe); Graham Stringer (Labour, Blackley and Broughton); Elizabeth Truss (Conservative, South West Norfolk); Karl Turner (Labour, Kingston upon Hull East), and Mike Weatherley (Conservative, Hove).

Powers

The committee is one of the departmental select committees, the powers of which are set out in House of Commons Standing Orders, principally in SO No 152. These are available on the internet via http://www.parliament.uk.

Publication

Committee reports are published on the Committee’s website at www.parliament.uk/justicecttee and by The Stationery Office by Order of the House. Evidence relating to this report is published on the Committee’s website at www.parliament.uk/joint-enterprise-follow-up

Committee staff

The current staff of the Committee are Nick Walker (Clerk), Daniel Whitford (Second Clerk), Gemma Buckland (Senior Committee Specialist), Hannah Stewart (Committee Legal Specialist), Ana Ferreira (Senior Committee Assistant), Ellen Bloss (Committee Support Assistant), Conor Johnson (Sandwich Student), and Liz Parratt (Committee Media Officer).

Contacts

Correspondence should be addressed to the Clerk of the Justice Committee, House of Commons, 7 Millbank, London SW1P 3JA. The telephone number for general enquiries is 020 7219 8196 and the email address is justicecom@parliament.uk; our Twitter handle is @commonsjustice.
## Contents

**Report**

1. Report .................................................. 3

   **Annex 1** ................................................. 4
      Letter from Rt Hon Sir Alan Beith, Chair, Justice Committee to Rt Hon Lord Justice Treacy, Chairman, Sentencing Council for England and Wales, 26 February 2015 ................................. 4

   **Annex 2** .................................................. 7
      Organisations represented at our Health and safety offences, corporate manslaughter and food safety and hygiene offences guidelines seminar .......................... 7

   **Formal Minutes** ......................................... 8

   **List of Reports from the Committee during the current Parliament** ................. 9
1 Report

1. The Sentencing Council of England and Wales is required to consult the Justice Committee on all the draft sentencing guidelines it publishes for consultation.¹ On 13 November 2014, the Council issued draft Health and safety offences, corporate manslaughter and food safety and hygiene offences guidelines with a closing date for responses of 18 February 2015. The guidelines are intended to replace the guideline for corporate manslaughter and health and safety offences causing death committed by organisations which was published by the Sentencing Council’s predecessor body, the Sentencing Guidelines Council, in February 2010. It also proposes guidance in relation to health and safety offences not resulting in death and health and safety offences committed by individuals, and in relation to food safety offences. Existing guidance for these offences is either piecemeal or non-existent.

2. On 24 February 2015 we held a seminar with a variety of key stakeholders to inform our consideration of the draft guidelines. We are grateful to all the seminar participants for their assistance in our deliberations. The seminar focused both on issues the Sentencing Council had asked us to consider and matters within the draft guidelines we thought required further consideration by the Council.

3. Our conclusions following the seminar are set out in a letter to Lord Justice Treacy, Chairman of the Sentencing Council, which we annex to this Report. We also annex a list of the organisations attending the seminar.

¹ Section 120 of the Coroners and Justice Act 2009
Annex 1

Letter from Rt Hon Sir Alan Beith, Chair, Justice Committee to Rt Hon Lord Justice Treacy, Chairman, Sentencing Council for England and Wales, 26 February 2015

Health and safety offences, corporate manslaughter and food safety and hygiene offences guideline consultation

The Committee held a seminar to consider the above draft guideline on 24 February 2015. We heard from a wide selection of stakeholders all of whom contributed to an interesting discussion on this wide-ranging guideline. We are grateful to all those who attended, including Michael Caplan QC and his colleagues from the Sentencing Council. As has been our practice in considering previous draft guidelines, we have focused on a few specific issues in our response to you rather than providing an overview of the guideline as a whole.

We welcome the Sentencing Council’s decision to prioritise development of a sentencing guideline for health and safety and related offences. As we noted in our consideration of the Environmental Offences draft guideline, the lack of clear guidance in this area was confusing. While some sentencers could be expected to ‘read across’ from the Environmental Offences guideline when sentencing for health and safety offences, in the absence of specific guidance not all would do so, potentially leading to inconsistent penalties being awarded. This guideline should resolve those concerns.

Custody threshold and deterrence

Participants in the seminar were generally agreed that the custody threshold for health and safety and food and hygiene offences committed by individuals was the right one. We heard that fines had a deterrent effect because they removed any economic incentive for breach of health and safety or food safety requirements but the power to hand down custodial sentences was necessary as the ultimate sanction. We agree and note that the threat of a prison sentence is a much greater deterrent to otherwise law-abiding people than to people habitually involved in crime. Together with an effective inspection regime and financial penalties we agree with the Sentencing Council that a high custody threshold is appropriate for these types of offences.

Turnover

A number of the stakeholders at our seminar expressed concerns that the use of turnover to categorise businesses in order to determine an appropriate fine was overly simplistic, an issue we previously raised when we considered the draft Environmental Offences sentencing guideline. We accept that using turnover to determine the size of a business is something of a blunt instrument but we believe the overall sentencing process in the proposed guideline gives sentencers the flexibility they need to ensure the interests of justice are served. Step two of the sentencing process states that sentencers must consider financial information on a company as well as turnover. Step four then requires sentencers to ‘consider other factors that may a warrant adjustment of the proposed fine.’ We believe
that this process, and step four in particular, will give sentencers the flexibility they need to determine appropriate financial punishment for defendant organisations.

We note some concerns over whether the turnover for the micro-business category is too high to reflect the fact that the majority of companies found guilty of breaches are very small. We were reassured to hear that prosecuting authorities will often charge the individual responsible for the breach in very small businesses, who will usually be the owner of the organisation, which effectively means that there is a sub-category below a micro-business for which sentencers will have guidance. Together with the power of the court to go outside the guidelines if it believes the interests of justice require it to do so we do not think a lower category than micro-business is necessary.

**New terminology on the risk of harm**

We heard concerns from some stakeholders that the Sentencing Council’s use of novel terminology to define risk of harm had the potential to delay proceedings by leading to arguments over the precise meaning of the terms. We understand, however, that there are no terms describing these levels of risk whose meaning has been agreed upon by the courts. It is therefore inevitable that there will have to be some debate around the meaning of remote, medium and high risk of harm but we anticipate that cases will establish the law in this area relatively quickly. We believe the Sentencing Council’s use of novel terms is the right decision as it is likely to cause less delay to early cases than employing terms which are already the subject of considerable legal discussion.

It was suggested to us that the three categories of harm were overly wide and that there was a gap between a remote risk of harm and a medium risk of harm which would present difficulties for sentencers. We acknowledge that there appears to be something of a gap between a remote risk of harm and a medium risk of harm but also that the creation of a greater number of categories increases the likelihood of legal argument over the most appropriate category. The Sentencing Council may wish to reflect on whether remote is the correct terminology for the lowest category of harm, or whether a further category of a low risk of harm is needed to ensure clarity for sentencers.

**Delay arising from consideration of financial information**

It was suggested to us that the court process is likely to be delayed if courts are required to consider extensive financial information before sentencing. In our view, some additional delay may be experienced but ultimately there is a need to ensure fines are proportionate, consistent and appropriately punitive. This means sentencers will have to spend some time examining company accounts and other relevant information in order to impose a just sentence. We also anticipate that the earliest cases will provide helpful guidance for later sentencers so, while any delay is regrettable and should be avoided if at all possible, case law will ensure it is kept to a minimum. We note the guideline states that a failure to provide “relevant recent accounts on request may properly lead to the conclusion that the company can pay any appropriate fine” and anticipate a robust approach to this provision should an organisation attempt to prolong the sentencing process beyond any reasonable timetable.
Disqualification of directors

The draft guideline states that directors of companies may be disqualified following conviction for a health and safety or food safety and hygiene breach. We believe some brief guidance on the test to be applied and the factors to be considered when making a decision on disqualification would improve the utility of the guideline for sentencers.

Saying sorry- a mitigating factor

We would like to see explicit reference made to an apology to victims as a mitigating factor. The Council has included 'self-reporting, co-operation and acceptance of responsibility' as factors reducing the seriousness of the offence but we believe a direct apology to the victims of breaches can be so important to victims in dealing with the harm caused to them that it requires a specific mention.

We wish the Sentencing Council well in its deliberations on the guideline and look forward to seeing the results of those deliberations on publication of the definitive guideline.
Annex 2

Organisations represented at our Health and safety offences, corporate manslaughter and food safety and hygiene offences guidelines seminar

2 Bedford Row Chambers
Chartered Institute for Environmental Health
DWF LLP
Engineering Construction Industry Association
Food Standards Agency
Health and Safety Executive
Health and Safety Lawyers Association
Local Government Association
Magistrates’ Association
Sentencing Council for England and Wales
Formal Minutes

Wednesday 4 March 2015

Members present:

Sir Alan Beith, in the Chair

Mr Christopher Chope  Mr Elfyn Llwyd
Jeremy Corbyn  Andy McDonald
Nick de Bois  John McDonnell
John Howell

Draft Report (Health and safety offences, corporate manslaughter and food safety and hygiene offences guidelines consultation), proposed by the Chair, brought up and read.

Ordered, That the draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 3 read and agreed to.

Annexes read and agreed to.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chair make the Report to the House.

[Adjourned till Wednesday 11 March 2015 at 9.15 am]
List of Reports from the Committee during the current Parliament

All publications from the Committee are available on the Committee’s website at www.parliament.uk/justicecttee.
The reference number of the Government’s response to each Report is printed in brackets after the HC printing number.

**Session 2010–12**

First Report  Revised Sentencing Guideline: Assault  HC 637
Second Report  Appointment of the Chair of the Judicial Appointments Commission  HC 770
Third Report  Government’s proposed reform of legal aid  HC 681–I (Cm 8111)
Fourth Report  Appointment of the Prisons and Probation Ombudsman for England and Wales  HC 1022
Fifth Report  Appointment of HM Chief Inspector of Probation  HC 1021
Sixth Report  Operation of the Family Courts  HC 518–I (Cm 8189)
Seventh Report  Draft sentencing guidelines: drugs and burglary  HC 1211
Eighth Report  The role of the Probation Service  HC 519–I (Cm 8176)
Ninth Report  Referral fees and the theft of personal data: evidence from the Information Commissioner  HC 1473(Cm 8240)
Tenth Report  The proposed abolition of the Youth Justice Board  HC 1547 (Cm 8257)
Eleventh Report  Joint Enterprise  HC 1597 (HC 1901)
Twelfth Report  Presumption of Death  HC 1663 (Cm 8377)
First Special Report  Joint Enterprise: Government Response to the Committee’s Eleventh Report of Session 2010–12  HC 1901

**Session 2012–13**

First Report  Post-legislative scrutiny of the Freedom of Information Act 2000  HC 96–I (Cm 8505)
Second Report  The budget and structure of the Ministry of Justice  HC 97–I (Cm 8433)
Third Report  The Committee’s opinion on the European Union Data Protection framework proposals  HC 572 (Cm 8530)
Fourth Report  Pre-legislative scrutiny of the Children and Families Bill  HC 739 (Cm 8540)
Fifth Report  Draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013  HC 927
Sixth Report  Interpreting and translation services and the Applied Language Solutions contract  HC 645 (Cm 8600)
Seventh Report  Youth Justice  HC 339 (Cm 8615)
Eighth Report  Scrutiny of the draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order 2013  HC 965 (HC 1119)
Ninth Report  The functions, powers and resources of the Information Commissioner  (HC 560, Session 2013–14)
First Special Report  Scrutiny of the draft Public Bodies (Abolition of Administrative Justice and Tribunals Council) Order  HC 1119
2013: Government Response to the Committee’s Eighth Report of Session 2012–13

### Session 2013–14

<table>
<thead>
<tr>
<th>Report No.</th>
<th>Title</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>Sexual Offences Guidelines: Consultation</td>
<td>HC 93</td>
</tr>
<tr>
<td>Second</td>
<td>Women offenders: after the Corston Report</td>
<td>HC 92 (Cm 8279)</td>
</tr>
<tr>
<td>Third</td>
<td>Transforming Legal Aid: evidence taken by the Committee</td>
<td>HC 91</td>
</tr>
<tr>
<td>Fourth</td>
<td>Environmental Offences Guideline: Consultation</td>
<td>HC 604</td>
</tr>
<tr>
<td>Fifth</td>
<td>Older prisoners</td>
<td>HC 89 (Cm 8739)</td>
</tr>
<tr>
<td>Sixth</td>
<td>Post-legislative Scrutiny of Part 2 (Encouraging or assisting crime)</td>
<td>HC 639 (HC 918)</td>
</tr>
<tr>
<td>Seventh</td>
<td>Appointment of HM Chief Inspector of Probation</td>
<td>HC 640</td>
</tr>
<tr>
<td>Eighth</td>
<td>Ministry of Justice measures in the JHA block opt-out</td>
<td>HC 605 (HC 972)</td>
</tr>
<tr>
<td>Ninth</td>
<td>Fraud, Bribery and Money Laundering Guideline: Consultation</td>
<td>HC 804</td>
</tr>
<tr>
<td>Tenth</td>
<td>Crown Dependencies: developments since 2010</td>
<td>HC 726 (Cm 8837)</td>
</tr>
<tr>
<td>Eleventh</td>
<td>Appointment of the Chair of the Office for Legal Complaints</td>
<td>HC 916</td>
</tr>
<tr>
<td>Twelfth</td>
<td>Crime reduction policies: a co-ordinated approach? Interim report on</td>
<td>HC 1004</td>
</tr>
<tr>
<td></td>
<td>the Government’s Transforming Rehabilitation programme</td>
<td></td>
</tr>
<tr>
<td>Thirteenth</td>
<td>Serious Fraud Office Supplementary Estimate 2013-14</td>
<td>HC 1005</td>
</tr>
<tr>
<td>Fourteenth</td>
<td>First Joint Report from the European Scrutiny, Home Affairs and</td>
<td>HC 1177</td>
</tr>
<tr>
<td></td>
<td>Justice Committees of Session 2013–14: The Government’s response to</td>
<td></td>
</tr>
<tr>
<td></td>
<td>the Committees’ Reports on the 2014 block opt-out decision</td>
<td></td>
</tr>
<tr>
<td>First Special</td>
<td>The functions, powers and resources of the Information Commissioner:</td>
<td>HC 560</td>
</tr>
<tr>
<td></td>
<td>Government Response to the Committee’s Ninth Report of Session 2012–13</td>
<td></td>
</tr>
<tr>
<td>Second Special</td>
<td>Post-legislative Scrutiny of Part 2 (Encouraging or assisting crime)</td>
<td>HC 918</td>
</tr>
<tr>
<td>Report</td>
<td>of the Serious Crime Act 2007: Government Response to the Committee’s Six</td>
<td></td>
</tr>
<tr>
<td></td>
<td>OPD: Sixth Report</td>
<td></td>
</tr>
<tr>
<td>Third Special</td>
<td>Ministry of Justice measures in the JHA block-opt: Government</td>
<td>HC 972</td>
</tr>
<tr>
<td>Report</td>
<td>Response to the Committee’s Eighth Report of Session 2013–14</td>
<td></td>
</tr>
</tbody>
</table>

### Session 2014–15

<table>
<thead>
<tr>
<th>Report No.</th>
<th>Title</th>
<th>Reference</th>
</tr>
</thead>
<tbody>
<tr>
<td>First</td>
<td>Crime reduction policies: a co-ordinated approach?</td>
<td>HC 307 (Cm 8918)</td>
</tr>
<tr>
<td>Second</td>
<td>Theft Offences Guideline: Consultation</td>
<td>HC 554</td>
</tr>
<tr>
<td>Third</td>
<td>Mesothelioma Claims</td>
<td>HC 308 (HC 849)</td>
</tr>
<tr>
<td>Fourth</td>
<td>Joint enterprise: follow-up</td>
<td>HC 310 (HC 1047)</td>
</tr>
<tr>
<td>Fifth</td>
<td>Manorial Rights</td>
<td>HC 657</td>
</tr>
<tr>
<td>Sixth</td>
<td>Robbery Offences Guideline: Consultation</td>
<td>HC 1066</td>
</tr>
<tr>
<td>First Special</td>
<td>Mesothelioma Claims: Government Response to the Committee’s Third Report of Session 2014–15</td>
<td>HC 849</td>
</tr>
<tr>
<td>Second Special</td>
<td>Joint enterprise: follow-up: Government Response to the Committee’s Fourth Report of Session 2014–15</td>
<td>HC 1047</td>
</tr>
</tbody>
</table>