House of Commons
Justice Committee

Theft Offences
Guideline: Consultation

Second Report of Session 2014–15

Report, together with formal minutes

Ordered by the House of Commons to
be printed Wednesday 9 July 2014
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)
Steve Brine (Conservative, Winchester)
Mr Robert Buckland (Conservative, South Swindon)
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)
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:
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 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.

Committee staff

The current staff of the Committee are Nick Walker (Clerk), Edward Beale (Second Clerk), Gemma Buckland (Senior Committee Specialist), Hannah Stewart (Committee Legal Specialist), Ana Ferreira (Senior Committee Assistant), Ellen Bloss (Committee Support Assistant), Holly Knowles (Committee Support Assistant), 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
Contents

Report

1  Report 3

Annex A 4
Letter from the Chair of the Justice Committee, Rt Hon Sir Alan Beith MP, to Lord Justice Treacy, Chairman of the Sentencing Council, 9 July 2014 4

Annex B 7
Names of the organisations represented at our Theft Offences Guideline seminar 7

Formal Minutes 8

List of Reports from the Committee during the current Parliament 9
1. Pursuant to section 120 of the Coroners and Justice Act 2009 the Justice Select Committee must be consulted on proposed draft sentencing guidelines issued by the Sentencing Council for England and Wales. The proposed Theft Offences Guideline was issued by the Sentencing Council on 3 April 2014, with a closing date for responses of 26 June 2014. It will provide, in a single document, up-to-date guidance to replace the existing 2008 Guideline *Theft and burglary in a building other than a dwelling*, and the guidance on theft offences contained within the *Magistrates’ Court Sentencing Guideline*.

2. The draft guideline is split into separate guidelines for (i) theft from a shop or stall (ii) general theft (iii) abstracting electricity (iv) making off without payment (v) handling stolen goods and (vi) going equipped for theft or burglary.

3. For our consideration of the proposed Guideline, on 2 July 2014 we held a seminar with a number of key stakeholders to consider various matters, namely the guideline’s treatment of culpability and harm factors, mitigating and aggravating factors, and sentence levels, with particular reference to the use of short custodial sentences. We would like to thank all those who attended our seminar. We are also grateful to the Sentencing Council for agreeing that we could submit comments to them after the conclusion of their formal consultation period.

4. We publish this short report to draw the House’s attention to this Guideline, and to our views on it, which are set out in the annexed letter to the Sentencing Council. We also annex a list of organisations which were represented at our seminar.
Letter from the Chair of the Justice Committee, Rt Hon Sir Alan Beith MP, to Lord Justice Treacy, Chairman of the Sentencing Council, 9 July 2014

The Justice Committee welcomes the opportunity to consider the draft Theft Offences Guideline, and thanks the Sentencing Council for its work in producing the draft Guideline and liaising with us in our scrutiny of it in our role as statutory consultee under section 120 of the Coroners and Justice Act 2009. In particular we are grateful to the Council for its agreement that, as with the previous sets of draft guidelines we have considered, we could submit our views after the conclusion of the formal consultation period.

The draft Guideline is split into separate guidelines for different types of theft: (i) Theft from a shop or stall, (ii) General theft, (iii) Abstracting electricity, (iv) Making off without payment, (v) Handling stolen goods and (vi) Going equipped for theft or burglary. In scrutinising the draft guidelines we have focused on four specific issues, which appears to us to be the most appropriate and effective way the Committee can materially assist the Council’s consultation process.

As you know, we held a seminar on 1 July 2014 to discuss the guidelines with representatives from organisations and institutions with an interest in this area. I am grateful to Elfyn Llwyd MP for chairing the seminar on this occasion. We are also grateful to HH Judge Sarah Munro QC for representing the Sentencing Council at the seminar, and to our other invitees for their assistance in our scrutiny of the guidelines and agreeing to provide us with copies of their submissions to the Sentencing Council. We do not repeat arguments contained in those submissions here, unless they were discussed in depth in the seminar, as they will already have been considered by the Council.

The two-stage approach to the assessment of harm

As with the Fraud Sentencing Guideline, to which this draft Guideline is closely related, and in line with the Council’s overarching approach to sentencing, the harm caused to the victim of the theft as well as the financial loss incurred are given greater weight. Again, we welcome this change in approach from that of the Council’s predecessor body: it puts the impact on victims at the heart of sentencing decisions, where it should be.

Financial categories

The financial categories set out at Harm A in the two-stage approach to the assessment of harm are relatively broad, reflecting, as the Sentencing Council have noted, the variability of financial loss caused by different offences of theft. The individual Guideline ‘Theft From a Shop or Stall’ has, as Category 3, its lowest category of financial loss ‘up to £250’ with a starting point of £125. We understand this category would cover around 90% of all shop theft. We heard some criticism of this approach, firstly, that it could give a signal to police, prosecutors and victims that thefts under £125 do not matter when they may have a significant, and cumulative, effect on a business and, secondly, that, the category was so broad it banded very low-value offences with those of a distinctly higher value and harm leading to disproportionate sentencing for offenders at the very bottom of the category. An examination of the draft guideline shows that sentencing for a Category 3...
offence, together with the lowest level of culpability, ranges from an absolute discharge up to a low level community order. It is difficult to conceive of a lower sentencing range, particularly given the problems offenders may have in paying fines, which would be required if a financial harm ‘Category 4’ were added to the Guideline. In our view, the draft Guideline gives sentencers appropriate flexibility in sentencing offenders committing low-value thefts.

Aggravating and mitigating factors

The ‘General Theft’ guideline includes ‘blame placed on others’ as an aggravating factor. We understand this to have been included with an offence of theft from an employer in mind, where the guilty party seeks to focus suspicion on an innocent party within the workplace. In our view, this factor could usefully be added to the other guidelines, particularly ‘Theft from a shop or stall’ and ‘Handling stolen goods’ where it is easy to imagine scenarios in which blame could be placed on an innocent party who suffered reputational and other harm as a result, in effect creating another victim of the original offence.

We note the difficulty in giving guidance to sentencers on the correct approach to “recent”, “persistent” and otherwise relevant offending. Those committing theft, particularly the offences often referred to as ‘shoplifting’, frequently have extensive previous convictions of a similar kind. We agree that this is an area where the variability of circumstances means suggesting a time limit, such as convictions within the last six months, or a specific number of convictions that would constitute an aggravating factor, would overly fetter the discretion of sentencers and flexibility in this area is therefore desirable. We are otherwise in agreement with the suggested aggravating and mitigating factors across all the separate guidelines but would suggest some areas in which clarification would be welcome.

Short custodial sentences

Those serving a prison sentence for theft constitute a very high number of prisoners serving short custodial sentences. Bearing in mind Parliament’s approach to custodial sentencing as set out in the Criminal Justice Act 2003, the Sentencing Council usually avoid starting points of less than six months custody. However, given that the average custodial sentence served for those convicted of theft is eight weeks, such a guideline would very significantly alter sentencing for theft.

Short custodial sentences are generally undesirable. They cost the taxpayer a significant sum and serve little rehabilitative purpose while potentially causing immense disruption in an offender’s life. However, custodial sentences for low-value and low-impact offences are only handed down when all other sentencing options have been exhausted, sometimes on repeat occasions, as the draft Guideline makes clear. Removing them from sentencing for theft would leave sentencers with nowhere to go when all other avenues have been exhausted. In addition, the prospect of prison can carry a deterrent effect when other approaches have failed and, in the case of offenders who steal low value items but who target the same victim on repeat occasions, give the victim some respite. We believe short custodial sentences need to remain available for theft, while cautioning that sentencers must be sure that they have no other option.
We would, however, repeat our previous warning that the introduction of supervision for under 12 month sentences should not be seen as a reason to impose a custodial sentence, where a community sentence would be adequate, merely as a way of getting an offender access to supervision.

Restorative Justice

The draft Guideline makes no mention of Restorative Justice, an area in which the Committee takes a close interest. Restorative Justice, when victim-led and appropriately undertaken, has significant benefits for both the offender and, more importantly, those who have been the subject of crime. While not a sentence in itself, an exercise in Restorative Justice may influence a sentencer to look more leniently on an offender given the mitigation of the harm caused to the victim a successful session will have. Unfortunately, access to Restorative Justice across the country is in its early stages. We are aware, however, of very successful local initiatives which have made a real difference to their communities. We would like, therefore, a prompt to appear at the very head of the Guideline, encouraging sentencers to consider whether Restorative Justice is available and, as importantly, whether the victim is willing to participate.

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 B

Names of the organisations represented at our Theft Offences Guideline seminar

British Transport Police
Magistrates’ Association
Metropolitan Police Service
Prison Reform Trust
Probation Chiefs Association
Sentencing Council of England and Wales
Draft Report (Theft Offences Guideline: 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 4 read and agreed to.

Annexes read and agreed to.

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

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

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 15 July at 9.15am.]
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/justicectee.

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)
<table>
<thead>
<tr>
<th>Ninth Report</th>
<th>The functions, powers and resources of the Information Commissioner</th>
<th>HC 962 (HC 560, Session 2013–14)</th>
</tr>
</thead>
</table>

### Session 2013–14

<table>
<thead>
<tr>
<th>First Report</th>
<th>Sexual Offences Guidelines: Consultation</th>
<th>HC 93</th>
</tr>
</thead>
<tbody>
<tr>
<td>Second Report</td>
<td>Women offenders: after the Corston Report</td>
<td>HC 92 (Cm 8279)</td>
</tr>
<tr>
<td>Third Report</td>
<td>Transforming Legal Aid: evidence taken by the Committee</td>
<td>HC 91</td>
</tr>
<tr>
<td>Fourth Report</td>
<td>Environmental Offences Guideline: Consultation</td>
<td>HC 604</td>
</tr>
<tr>
<td>Fifth Report</td>
<td>Older prisoners</td>
<td>HC 89 (Cm 8739)</td>
</tr>
<tr>
<td>Sixth Report</td>
<td>Post-legislative Scrutiny of Part 2 (Encouraging or assisting crime) of the Serious Crime Act 2007</td>
<td>HC 639 (HC 918)</td>
</tr>
<tr>
<td>Seventh Report</td>
<td>Appointment of HM Chief Inspector of Probation</td>
<td>HC 640</td>
</tr>
<tr>
<td>Eighth Report</td>
<td>Ministry of Justice measures in the JHA block opt-out</td>
<td>HC 605 (HC 972)</td>
</tr>
<tr>
<td>Ninth Report</td>
<td>Fraud, Bribery and Money Laundering Guideline: Consultation</td>
<td>HC 804</td>
</tr>
<tr>
<td>Tenth Report</td>
<td>Crown Dependencies: developments since 2010</td>
<td>HC 726</td>
</tr>
<tr>
<td>Eleventh Report</td>
<td>Appointment of the Chair of the Office for Legal Complaints</td>
<td>HC 916</td>
</tr>
<tr>
<td>Twelfth Report</td>
<td>Crime reduction policies: a co-ordinated approach?</td>
<td>HC 1004</td>
</tr>
<tr>
<td></td>
<td>Interim report on the Government's Transforming Rehabilitation programme</td>
<td></td>
</tr>
<tr>
<td>Thirteenth Report</td>
<td>Serious Fraud Office Supplementary Estimate 2013-14</td>
<td>HC 1005</td>
</tr>
<tr>
<td>First Special Report</td>
<td>The functions, powers and resources of the Information Commissioner: Government Response to the Committee's Ninth Report of Session 2012–13</td>
<td>HC 560</td>
</tr>
</tbody>
</table>

### Session 2014–15

| First Report          | Crime reduction policies: a co-ordinated approach?                       | HC 307                           |