House of Commons
Justice Committee

Draft Allocation Guideline

First Report of Session 2015–16

Report, together with appendix and formal minutes relating to the report

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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).

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Publication

Committee reports are published on the Committee’s website at www.parliament.uk/justicecommittee and by The Stationery Office by Order of the House.

Committee staff

The current staff of the Committee are Nick Walker (Clerk), Jonathan Whiffing (Second Clerk), Gemma Buckland (Senior Committee Specialist), Christine Randall (Senior Committee Assistant), Anna Browning, (Committee Assistant), and Liz Parratt (Committee Media Officer).

Contacts

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1 Report

Draft Allocation Guideline

1. On 19 June 2015 the Sentencing Council for England and Wales began a consultation on proposed amendments to the Allocation Guideline, which is used in magistrates' courts and in some circumstances in the Crown Court to determine where cases should be heard. The closing date for the consultation was 31 July 2015.

2. The Council says the aim of the amendment of the guideline is to “bring it up-to-date, to improve clarity and to include all the guidance in one document.” When revising guidelines, the Council must have regard to: (a) the need to promote consistency in decisions on whether an offence is more suitable for summary trial or trial on indictment and (b) the results of monitoring of the operation and effect of its sentencing guidelines. It is under a statutory duty to consult the Justice Committee about revised guidelines.

3. The membership of the Justice Committee was nominated by the House of Commons on 6 July 2015. With the House rising for the summer recess on 21 July, and with other business to undertake during that short period, we had little time to consider the draft Guideline if we were to submit comments to the Sentencing Council by their deadline of the end of July. In particular we did not have a realistic opportunity to seek any views of stakeholders on the Sentencing Council’s proposals. Instead we conducted our own analysis of the draft guideline and submitted our comments in a letter from our Chair to the Chairman of the Sentencing Council dated 28 July 2015, which we append to this Report.

The Committee’s role in relation to sentencing guidelines

4. We take the opportunity of this brief report to make some preliminary observations about our role as a statutory consultee in relation to draft guidelines produced by the Sentencing Council. We consider this role to be an important one for us, and we want to make a valuable contribution on behalf of the House to the Sentencing Council’s work on specific guidelines and more generally to sentencing policy and practice.

5. Our Chair’s appended letter to Lord Justice Treacy noted the consultation which the Sentencing Council undertook recently on a draft Dangerous Dog Offences Guideline. This consultation began on 17 March 2015, leaving too little time for our predecessor Committee to consider the draft guideline and comment before the dissolution of Parliament at the end of that month, and it had a closing date of 9 June 2015, before we were established in the current Parliament. With the predictability of dissolution and election dates under the Fixed-Term Parliaments Act 2011, we would hope that, unless an urgent matter arises, the Sentencing Council will be able to arrange its programme in 2020 to ensure that either we or our successor Committee is afforded a realistic opportunity to comment on all draft guidelines.

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1 Sentencing Council, Consultation on proposed amendments to the Allocation guideline, June 2015, p 3
2 Coroners and Justice Act 2009, s 122(8)
3 Coroners and Justice Act 2009, s 122(4)(c) and (7)
6. We are aware that our predecessor Committee was assiduous in its work on draft sentencing guidelines. In their Report on their work during the 2010-15 Parliament, our predecessors say:

We have offered views on all draft guidelines issued by the Council over the course of the Parliament. Initially we approached this task by the standard method of taking formal oral and written evidence, but it became clear to us that this had the major disadvantage of duplicating the Sentencing Council’s own process of consultation. In the second half of the Parliament, with the Council’s agreement, we have instead held an informal seminar after the conclusion of the relevant consultation period with some stakeholders, focused on a number of points, in relation to which we have subsequently written to the Chairman of the Council. Our letters and Reports have picked up matters relevant to the structure and content of particular draft Guidelines, but we have also, through our work, pursued various general themes, such as a concern to ensure that the methodology of construction of guidelines for the sentencing process should not contribute to sentence inflation.4

7. We will not necessarily adopt the same overall approach to sentencing policy and practice as the last Justice Committee, but we would expect to emulate them in considering all draft guidelines produced by the Sentencing Council. We would welcome suggestions, from parliamentary colleagues, from the Sentencing Council itself, and from others, on how we should go about fulfilling this important statutory role in the course of this Parliament.

Appendix

Letter dated 28 July 2015 from the Chair of the Committee to Rt Hon Lord Justice Treacy, Chairman of the Sentencing Council of England and Wales

The Justice Committee welcomes your invitation to comment on the draft allocation guideline under section 122 of the Coroners and Justice Act 2009 upon which you are currently consulting. You will appreciate that given the relatively short time available for us to respond, we have not been able to take evidence or otherwise seek external views. Nevertheless, we are able to comment on a number of aspects of the draft guideline.

Guidance: straightforward cases

We note that the overall effect of the draft guideline appears to be that straightforward cases should be tried summarily, regardless of likely sentence (paragraphs 2 and 3 of the section “Guidance”). The only factor prescribed by statute (apart from taking into account representations and allocation guidelines) is the sentencing power of a magistrates’ court. We question whether the approach in the draft guideline is consistent with the statutory emphasis on sentencing power.

Guidance: personal mitigation

We observe that the draft guideline expressly enjoins the court to take into account personal mitigation (paragraphs 1 and 4 of the section “Guidance”). It is not clear to us how or why all personal mitigation would be advanced by a defendant when pleading not guilty and it is therefore hard to know how the court would be able to properly take into account such mitigation at allocation stage. The Leveson Review concluded that the existing guideline permits the court to take account of potential mitigation (our emphasis). We consider that the inclusion of the word “potential” would clarify the guidance.

Applicability of guideline

The draft guideline says (as does the existing one) that it applies to defendants in the magistrates’ court. We note that when the Crown Court has to make decisions on allocation under the Crime and Disorder Act 1998, Schedule 3, it must have regard to any allocation guidelines issued as definitive guidelines under section 122 of the 2009 Act, which these guidelines are. We therefore consider it might be better, in the interests of consistency, if the guideline also explicitly applied in the Crown Court.

Statutory framework

The existing guideline lists four factors ((a) to (d) in the section “Statutory framework”) to which a court must have regard. The draft guideline omits them. While the factors (or, at least, similar factors) are no longer enshrined in section 19 of the Magistrates’ Courts Act 1980, the Criminal Practice Directions [2013] EWCA Crim 1631 (para 9A.2) treat these factors as part of the guideline and therefore presumably of freestanding force. It is not clear to us on what basis you are proposing to omit those factors.
**Results of monitoring**

When revising allocation guidelines, section 122 of the 2009 Act requires you to have regard to the results of monitoring of the operation and effect of your sentencing guidelines. We note that there is no mention in the consultation document of the results of monitoring the existing guidelines. We believe that there should be.

**Drafting issues**

We noted a number of textual and typographical inaccuracies, which we append to this letter.

In conclusion, we look forward to any response you would wish to make to our comments and to the publication of the revised definitive guideline.

I should also let you know that we have noted that you have consulted on a draft Dangerous Dog Offences Guideline, with a deadline for comments of 9 June 2015, before the establishment of the Justice Committee in this Parliament. We have decided that in these circumstances we do not propose to offer comments on that draft guideline.

**Appendix**

- In the reproduced section 125(1) of the Coroners and Justice Act 2009:
  - “any sentencing guideline which is” should read “any sentencing guidelines which are”; and
  - a break is omitted between “function,” (at the end of paragraph (b)) and “unless”.

- In the reproduced section 19 of the Magistrates’ Courts Act 1980, breaks are omitted:
  - in subsection (3), between “above,” (at the end of paragraph (b)) and “and shall have regard”; and
  - in subsection (4), between “circumstances,” (at the end of paragraph (b)) and “subsection (3)(a) above”.

- Under the heading “Committal for sentence”, in the quoted extract from section 3(2)(a) of the Powers of Criminal Courts (Sentencing) Act 2000:
  - “the” is omitted before the second occurrence of “offence”; and
  - a comma appears before, instead of after, “should”.

- In the (non-statutory) list of factors under “Linked cases”, the last two bullet points (from the existing guideline) have been run together, presumably unintentionally.
Formal Minutes

Tuesday 8 September 2015

Members present:

Robert Neill, in the Chair

Richard Arkless
Richard Burgon
Alex Chalk
Alberto Costa
Philip Davies

Sue Hayman
John Howell
Victoria Prentis
Christina Rees
Nick Thomas-Symonds

Draft Report (Draft Allocation Guideline), proposed by the Chair, brought up and read.

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

Paragraphs 1 to 7 read and agreed to.

Appendix agreed to.

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

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

[Adjourned till Tuesday 15 September at 3.45 p.m.]