

Recent developments

- **Judicial guidelines**

In March 2005 the Sentencing Guidelines Council (SGC) published *Guideline Judgements, Case Compendium*. This brings together, for the first time (except in textbooks), existing judicial guideline judgements relating to individual cases and sentencing principles.

See: http://www.sentencing-guidelines.gov.uk/docs/complete_compendium.pdf

In July 2006 the SGC published its 'Definitive Guideline' on Robbery.

See: <http://www.sentencing-guidelines.gov.uk/docs/robbery-guidelines.pdf>

- **New penal orders**

In December 2004 the Sentencing Guidelines Council (SGC) issued information about new disposals in *New Sentences: Criminal Justice Act 2003*.

See www.sentencing-guidelines.gov.uk/docs/New_Sentences_guideline.pdf

- **Sentencing Guidance Council:**

Leading judges have blamed the current prison crisis on the guidelines issued by the SGC. Both the current Lord Chief Justice (LCJ) and the former LCJ have criticized the 'over-sentencing' that has occurred in recent years. In a news item in several daily papers in 2006 the former LCJ, Lord Woolf criticised the SGC for its effect on sentencing discretion:

'Lord Woolf told Radio 4's Law in Action programme it was important to avoid "talking up" sentencing.

He reserved particular criticism for the Sentencing Guidelines Council, which was set up by the government to promote consistency in sentencing.

But the former Lord Chief Justice said the council's guidance helped to increase the severity of sentences.

"It puts [sentences] up because it reduces the discretion of the individual judge."

(BBC News 'Too many people in jail, says top judge' 30 May 2006:

http://news.bbc.co.uk/2/hi/uk_news/5028782.stm).

There was also a particular controversy in June 2006 about the sentencing of Craig Sweeney, a convicted paedophile who had re-offended shortly after his period of release on licence had expired. Particular criticism focused on the sentencing guidelines about the minimum term to be served in a life sentence [see 'Recent developments' for Chapter 10 in relation to amendments proposed by the Criminal Justice and Immigration Bill] and to the operation of the full one third discount for a guilty plea. [See separate item on the new guidelines for a guilty plea.]

- **Regional variations:**

Regional variations: Criminal Statistics 2003 Supplementary Volume 4: Proceedings in Magistrates' Courts gives data from Petty Sessional Areas. For example in Table S4.4 (Sentencing Indicators for Selected Offences: Assault on a Constable) there are the following discrepancies in relation to the % rates of immediate custody in the magistrates court (all being courts where none of the offenders for this offences committed to trial at the Crown Court):

- In Avon and Somerset area - in Mendip (where 17 offenders proceeded against on this charge) the rate was 46.7% whereas for nearby Bristol (172 offenders) the rate was 6%.

- In the Greater London area – in Acton no immediate custody was given and 14.8% in Ealing but 42.7% in Greenwich and 43.2% in Horseferry Road.

- **Revision of the guideline on the discount for a guilty plea:**

Section 144 of the CJA 2003 concerns the sentence reduction for a guilty plea. A guideline on its implementation was issued by the SGC in 2004, effective from 10 January 2005, but received criticism. As a result a consultation exercise was initiated by the Sentencing Advisory Panel, at the request of the SGC, in May 2006 with the publication of Consultation Paper. The press notice stated that the key issues were:

"• Does a maximum reduction of one third properly balance the interests of justice and the encouragement of guilty pleas?

- Should there be an upper limit on the amount of the reduction?
- Further clarification of the "first reasonable opportunity" for entering a guilty plea
- To what degree, if any, should the fact that the prosecution case is overwhelming influence the level of reduction?"

See: http://www.sentencing-guidelines.gov.uk/docs/reduction_guilty_plea_consultation.pdf

The Sentencing Advisory Panel issued advice following the consultation and the SGC has issued the 'Definitive Guideline' on the *Reduction in Sentence for a Guilty Plea* on July 20th, effective for all cases sentenced on or after 23rd July 2007): see

<http://www.sentencing-guidelines.gov.uk/docs/Reduction%20in%20Sentence-final.pdf>

The SGC accepted almost all the recommendations of the Panel and the Foreword to this document summarises its response as follows:

"The Council has agreed with the Panel that the general approach of the guideline is correct ...

The Council has agreed with the Panel that some discretion should be introduced to the approach where the prosecution case is "overwhelming".

The Council has not accepted the Panel's recommendation in relation to circumstances where a magistrates' court is sentencing an offender for a number of offences where the overall maximum imprisonment is 6 months. The Council continues to consider that there must be some incentive to plead guilty in such circumstances; this is consistent with other aspects of the guideline.

The Council has not accepted the Panel's recommendation in relation to the "capping" of the effect of reduction on very large fines."

- **Guideline on assault**

SGC (2007) *Assault and other offences against the person*, London: SGC.

The Sentencing Guidelines Council issued this Consultation guideline in June 2007 simultaneously with advice from the Sentencing Advisory Panel. The Foreword explains the approach as follows:

‘In formulating its proposals for these offence guidelines, the Council has sought to define sentencing starting points according to the seriousness of the offence and to establish where the sentencing thresholds should lie by reference to the specific nature of each type of offending behaviour. The guidelines have taken into account existing Court of Appeal guidelines and had regard to current sentencing practice and trends as evidenced by statistics.’

The consultation period ended on November 2nd 2007. The SGC has also published separately a consultation on sentencing for assaults on children and cruelty to a child (available at <http://www.sentencing-guidelines.gov.uk/docs/Assaultsonchildren&Crueltytoachild%20ConsultationguidelineFINAL-2007-06-21-JS.pdf>).

- ***Proposal for a Sentencing Commission***

On December 5th 2007 the Government published Lord Carter’s Review of Prisons: *Securing the future: Proposals for the efficient and sustainable use of custody in England and Wales*. Lord Carter’s terms of reference were ‘to consider options for improving the balance between the supply of prison places and demand for them and to make recommendations on how this could be achieved’. His proposals in relation to sentencing are that ‘a structured sentencing framework and permanent Sentencing Commission should be developed, with judicial leadership, to improve the transparency, predictability and consistency of sentencing and the criminal justice system’ (2007: Preface). The report advises that a working group be set up to report to the Government by the summer of 2008 (ibid: 3).

- ***Sentencing Advisory Panel (SAP)***

Prior to the establishment of the Sentencing Guidelines Council (SGC) the SAP had a valuable role in researching sentencing issues and advising the Court of Appeal on guidelines which they could issue when a suitable case came up. In the relatively short of period of time that the SAP had this particular role, the Panel issued a number of very useful documents which led to guideline cases. Amongst these were the guidelines on alcohol and tobacco smuggling, causing death by dangerous driving, environmental offences, rape, offences involving child pornography and domestic burglary. In addition a Practice Direction was issued on minimum terms in murder cases. For a full list see: <http://www.sentencing-guidelines.gov.uk/advice/guidelines/index.html#top>

The role of the SAP is now to produce advice for the SGC. Most recently the SAP has issued advice on assault (June 2007: see below), Sentencing for Bail Act offences (May 2007: see <http://www.sentencing-guidelines.gov.uk/docs/Version%20for%20printing%202007-02-16.LD.pdf>) and the reduction in sentence for a guilty plea (see below).

- ***Consultation Paper on Breach of an Anti-Social Behaviour Order (ASBO)***

This was issued by the Sentencing Advisory Panel in August 2007: the deadline for responses was 9 November 2007.

- ***Suspended sentences***

The Criminal Justice and Immigration Bill 2007 proposes in clause 10 (at 5.12.07) to abolish suspended sentences for summary offences. It will do so by inserting new subsections 1A and 1B in section 189 of the Criminal Justice Act 2003 which will state that the power to suspend a custodial sentence conferred by subsection (1) of that Act 'is not exercisable in relation to a sentence of imprisonment imposed for a summary offence'.