



Sentencing Guidelines Council

Fail to Surrender to Bail

Response to Consultation

November 2007

Foreword

The guideline has been agreed by the Council after careful consideration of advice from the Sentencing Advisory Panel and of responses to its consultation guideline, published simultaneously on 24 May 2007.

This document sets out the main issues raised in the responses, the conclusions of the Council and the reasoning behind the conclusions.

The Council is grateful for the comments and suggestions received which have resulted in the development of some parts of the guideline.

The definitive guideline can be found at www.sentencing-guidelines.gov.uk or can be obtained from the Sentencing Guidelines Secretariat, 4th Floor, 8-10 Great George Street, London SW1P 3AE.

Chairman
Sentencing Guidelines Council
November 2007

1. The consultation guideline was published on 24 May 2007. Those invited to respond were:
 - Lord Chancellor and Secretary of State for Justice
 - Home Secretary
 - Attorney General
 - Constitutional Affairs Committee
 - Party Leaders and the Convenor of the Crossbench Peers in the House of Lords
2. A response was received from the Constitutional Affairs Committee (the Committee). This was the first guideline considered by the Committee since its role and remit were widened as a result of changes to the responsibilities of government departments in relation to criminal justice issues. The Council is grateful for the helpful contribution of the Committee.
3. A response was received David Hanson MP, Minister of State, on behalf of the Lord Chancellor which incorporated the views of the Home Secretary and Attorney General (the Ministers' response).
4. Additional responses were received from:
 - John Clucas
 - 15 Crown Court judges
 - West Mercia Bench Chairmen's Group
 - HM Council of Circuit Judges, Criminal Committee
5. There was broad support in the responses for the majority of the guidance contained in the guideline. The Committee noted the importance of a guideline for Bail Act offences and considered a review of the procedural issues associated with sentencing of the offences to be helpful given that different interpretations have led to inconsistency. The Ministers' response expressed gratitude for the work done. Ministers considered the guideline to be, by and large, the right response to the challenging behaviour of offenders who fail to attend as required and would enable courts to respond robustly.
6. Each of the main points raised is listed under the appropriate section heading drawn from the consultation guideline.

Starting points and sentencing ranges

7. The guideline table (page 13 of the consultation guideline) generated a high level of comment. The matters that respondents addressed included the issue of whether all forms of failure to surrender to bail should include the option of a custodial sentence either as a starting point or, at least, in the sentencing range, the appropriate level of the starting point and range for the highest category of seriousness, and whether additional guidance should be included in relation to the imposition of fines.

(i) Availability of custodial sentences

8. The consultation guideline contained four categories of seriousness to cover the wide range of culpability and harm in Bail Act offences. The Council considered the level of culpability to be the key factor and developed the proposals of the Sentencing Advisory Panel to reflect this view. The guideline contained two categories for cases where culpability is lowest, such as where an offender arrives late but the case is still able to proceed, and two for those situations where the failure to surrender is deliberate and culpability is therefore at its highest. The type and degree of harm influenced both the selection of the level and the placing of the case within the sentencing range.
9. The Council agreed with the Panel that custody should not be included in the sentencing range for the two categories of seriousness where culpability is lowest and that such cases would rarely cross the relevant threshold. This approach aimed to ensure that sentencing would be proportionate to the seriousness of the offence.
10. This approach drew on the responses to the Panel's consultation which showed that a large number of Bail Act offences sentenced in magistrates' courts fall into the two lower categories. Statistical information demonstrated that a significant proportion of offenders in magistrates' courts are dealt with by way of non-custodial disposals such as fines. These sentencing patterns are in accordance with the current guidance in the Magistrates' Court Sentencing Guidelines where the suggested starting point is a community order.
11. Strong representations were made in the responses from Crown Court judges that the majority of Bail Act offences were deliberate and there should be a custodial starting point at all levels of seriousness. This should be the case regardless of whether the offender is sentenced in the Crown Court or a magistrates' court. It was also emphasised that failure to surrender in relation to preliminary hearings could be as disruptive as failure to surrender for trial.
12. The responses argued that the prevalence of the offences, and the impact (potential or actual) on the criminal justice system, was such that the starting point must be custody.
13. Some respondents considered that the prevalence of non-attendance in the past was a direct result of lenient sentences. It was suggested that deterrence was a particularly important aspect of sentencing for Bail Act offences.
14. In the light of these responses, the Council reviewed the categories, starting points and sentencing ranges identified in the guideline. It agreed that any deliberate failure to surrender to bail should result in a custodial starting point and that it was not necessary to maintain the two separate categories for deliberate failure in the consultation guideline. Supporting information has been added to assist sentencers in consistently determining the proportionate response within the sentencing range.
15. However, where the failure to surrender was negligent or non-deliberate, the threshold for a custodial sentence would not normally be crossed. Accordingly, the Council decided that the two lowest categories would remain and did not

require amendment. Flexibility existed that would allow a sentencer to go beyond the appropriate sentencing range should an individual case require a more severe penalty.

(ii) Custodial starting point and custodial range for the highest category

16. One respondent suggested that the proposed custodial starting point where culpability is at its highest should be six months custody (for the Crown Court) rather than 16 weeks. Another respondent proposed that the disparity between the sentencing ranges for the Crown Court and magistrates' courts in relation to this category was too great.

17. The guideline is for a first time offender convicted after pleading not guilty. The Council considered that a starting point of six months custody would be too high. Such sentences are not normally imposed in the Crown Court and the Council was not persuaded that a starting point of that length would be justified. The range continues to allow for sentences to be imposed for up to 40 weeks (over 9 months) where there was a combination of aggravating factors and, in an exceptional case, a court would be able to sentence outside the range.

(iii) Guidance on the imposition of fines

18. Where the failure to surrender was negligent or non-deliberate, a fine is the starting point. It was suggested by one respondent that it would be helpful for the guideline to specify the level of fine that might be appropriate.

19. This greater level of detail would be most relevant in magistrates' courts. The current sentencing guidance for these courts is in the process of being revised and the Council noted that the guideline for offences of failing to surrender to bail will be adapted for inclusion in the revised guidance. This would include additional information in relation to levels of fine and methods for calculating financial penalties.

Mitigating factors

20. One response commented that inclusion of 'caring responsibilities' as a mitigating factor was confusing (as it strays into personal mitigation) and should be clarified.

21. An offender might rely on caring responsibilities as a defence (on the basis that they amounted to a reasonable excuse for not surrendering) or such responsibilities might mitigate the seriousness of an offence (where they were the reason for the offender failing to surrender) or be personal mitigation.

22. The guideline attempted to explain the distinction to enable sentencers to adopt a consistent approach. The Council agreed that the guideline could helpfully be developed and the text has been amended accordingly.

Sentencing options

23. Proposals were made (by the Committee and supported in the Minister's response) that the Council consider making specific recommendations

concerning the requirements that might most appropriately be included within a community order. It was suggested that the guideline should refer specifically to the curfew requirement (electronically monitored) as being particularly suitable and that the benefits of such a requirement included the restriction of liberty achieved through rigorous enforcement, a restriction of opportunities to re-offend and enhanced prospects of the offender attending other appointments.

24. The consultation guideline did refer to the availability of a curfew requirement (at paragraph 43) as being helpful in ensuring attendance on future occasions where an offender regains his or her liberty and is being sentenced for the Bail Act offence before the end of the proceedings. In considering the proposal the Council appreciated that the *New Sentences: Criminal Justice Act 2003* guideline includes a curfew requirement in all three bands of community order.
25. The Council agreed that the guideline should draw attention to the particular usefulness of a curfew requirement.

Miscellaneous

26. One respondent drew attention to the urgent need for guidance in relation to dealing with offenders who breach conditions imposed on bail. It was reported that significant numbers of offenders are arrested for breaching bail conditions each year and that there is a wide discrepancy in relation to the outcomes. Breach of bail conditions is not an offence, but courts have power to revoke bail or impose more stringent conditions to further restrict the liberty of an offender.
27. However, this is not a sentencing issue and, therefore, is not within the Council's remit.