

the Sentence

Welcome to the third issue of *The Sentence*, the sentencing guidelines newsletter produced by the Sentencing Guidelines Council and Sentencing Advisory Panel. It provides an update on the work being undertaken, on changes to membership, and what you can expect from these bodies in coming months. In addition, Lord Justice Rose, Deputy Chairman of the Council and Vice President of the Court of Appeal (Criminal Division) gives us his thoughts on the role of the Court of Appeal and the Sentencing Guidelines Council.

THE ROLE OF THE COURT OF APPEAL AND THE SENTENCING GUIDELINES COUNCIL

LORD JUSTICE ROSE

- Deputy Chairman of the Sentencing Guidelines Council
- Vice President of the Court of Appeal (Criminal Division)

The main role of the Court of Appeal has been to promote consistency of approach while being alert to the particular circumstances of each case when deciding a just sentence. This has led in the last 30 years to the court making some 130 guideline decisions, the number of which has accelerated in more recent years due to the growing number of new offences, new sentences becoming available and the recommendations of the Sentencing Advisory Panel.

The role of the Court of Appeal has not changed since the formation of the Council in March 2004. Nor will its role change in the future. It will continue to use its well-established approach in deciding whether a sentence is manifestly excessive or unduly lenient, but will of course use the guidelines issued by the Council as important additional material to which all sentencers must have regard.

The Council and Panel add two significant features which complement the



Lord Justice Rose, a judge for 20 years and a member of the Court of Appeal for 13 years. Rose LJ is the only judge who sits exclusively on criminal appeals.

role of the Court of Appeal. First, thinking time, which is in short supply given the daily, relentless pressures on the Court of Appeal; and secondly, non-judicial perspectives on levels of sentence, including public perceptions of the appropriateness of particular sentences.

The Council's most effective work has been, and is likely to continue to be, in addressing broad areas of principle, such as the discount for guilty pleas and the relative seriousness of offences with

which the Court of Appeal cannot usually deal effectively in a judgment relating to a particular case.

Given the statutory procedures for the Council before a guideline can be produced, it will be many years before the Council is able to produce guidelines which deal with the many offences covered by existing guidelines from the Court of Appeal. The Council can produce four or five guidelines a year. The Court of Appeal has the advantage of not being bound by the same procedures and can therefore produce guidelines more quickly. With the introduction of new sentencing powers as in CJA 2003 or new offences as in Sex Offences Act 2003, guidelines are sometimes needed by the Courts before the Council can produce its recommendations.

The Council's work programme does have a bearing on issues addressed by the Court of Appeal. An issue may be identified by the Council, such as shoplifting, where people were serving longer sentences than they should have been, and the Court of Appeal gave a judgment reducing the tariff more swiftly than the Council could have produced a guideline. In due course, the Council will deal with this offence, and others, in greater depth than is sometimes possible for the Court of Appeal.

COUNCIL AND PANEL MEMBERSHIP

THE COUNCIL IS LOSING THREE MEMBERS AT THE END OF SEPTEMBER AND THREE MEMBERS OF THE PANEL STOOD DOWN ON COMPLETING THEIR TERMS OF OFFICE IN THE SUMMER.

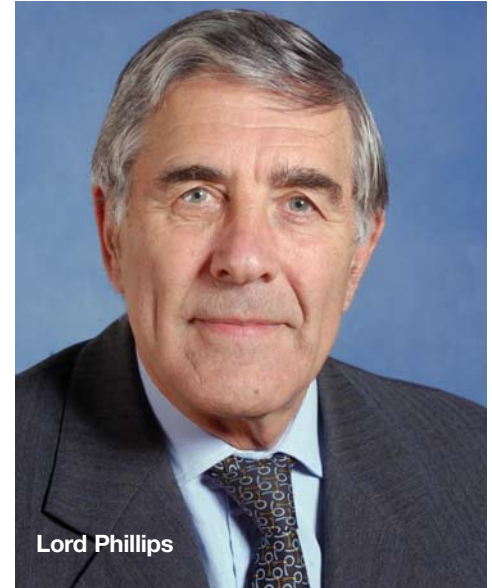
Lord Woolf has chaired the Council since it was created in March 2004 and has led the Council with the style and vision for which he is renowned.

Lord Justice Kennedy has been a member of the Council since July 2004 during which time he has played an

important and influential role in the affairs of the Council. He led the study visit to the Virginia Sentencing Commission in March 2005.

The Chief Executive of the National Offender Management Service, Martin Narey, has been an observer on the Council since it was created. He brought to the Council extensive experience of sentencing policy and the administration of sentences and played an important part in developing the Council's work.

At the Council's meeting in July, the Deputy Chairman, Lord Justice Rose, paid tribute to the contribution made by all three individuals stating that:



Lord Phillips

ANNUAL REPORT

On 23 June 2005, the first joint annual report of the Council and Panel was launched at a well-attended reception at the Royal Courts of Justice. As well as some words of introduction from the Chairs of the Council and Panel, the Home Secretary Charles Clarke took the opportunity to congratulate the Council and the Panel on the progress that had been made over the year, citing its work as a model for balancing the legitimate interests of the judiciary, the executive and Parliament. Copies of the annual report are available on our website or from the Sentencing Guidelines Secretariat.

“Lord Woolf brought to the work of the Council the same energy, enthusiasm, innovative thinking and wisdom that he brought to all his burdensome offices. Lord Justice Kennedy as the most senior judge in the Court of Appeal and foremost practitioner on the North Eastern circuit brought to the Council a vast and deep knowledge of the principles and practice of sentencing. Martin Narey has been an outstanding head of NOMS and a highly perceptive and shrewd observer of the Council's work and we wish him well in his new appointment as Chief Executive of Barnardo's.”

appreciation for both the content and style of the very significant contribution that each member had made and the benefits that they had brought to the quality of the Panel's work.

The new Chairman of the Council is the new Lord Chief Justice, Lord Phillips of Worth Matravers. Lord Phillips was called to the Bar in 1962 and appointed QC in 1978. He became a Recorder in 1982 and a High Court Judge in 1987. He was appointed to the Court of



The Panel also bade farewell to three members who had given long service.

Lord Chan and HH Judge Peter Jones had been members of the Panel since it was created in 1999. HH Sir Rhys Davies was appointed in February 2000. On behalf of the Panel, the Chairman, Professor Martin Wasik, expressed great



Sir Igor Judge

FOUR NEW PANEL MEMBERS WERE APPOINTED IN JULY 2005:



ANTHONY ANSELL

– a circuit judge for nearly 10 years covering criminal, family and other civil work and

employment appeals. He is a syndicate leader for the Judicial Studies Board currently on family law issues, and previously on Human Rights and Civil law. Judge Ansell was a barrister for 10 years then a solicitor for a further 15 before being appointed to the Bench.



PHILIP CLEGG

– appointed to the Circuit Bench in 1987 having spent twenty years practising as a

barrister on the Northern Circuit. During his 18 years on the Bench he sat almost exclusively on criminal and family cases. Additionally he has assisted as a tutor for the JSB. In 1996 he was appointed Resident Judge at Basildon Combined Crown and County Courts.



AMRITLAL DEVANI

– has worked in the public and voluntary sectors for 35 years with a particular interest in equality

and diversity issues. He was Executive Director for the Racial Equality Council between 1993 and 2004 and prior to this an Asian Development Officer for the Society for the Blind. He is also a Race Relations Adviser for the Home Office and an Associate Member of the General Medical Council since 2000. Mr Devani joins the Panel as a lay member.



JOANNA CROWLEY

– recently completed a five-year term as Chief Executive of the Christie NHS

Trust. She joined the NHS in 1995 from the USA where she had lived for seven years working in healthcare management. Mrs. Crowley joins the Panel as a lay member.

Appeal in 1995. In taking up his new appointment as the Lord Chief Justice, Lord Phillips leaves his post of Master of the Rolls, which he has filled for the past five years. Lord Phillips chaired his first meeting of the Council on 7 October.

Lord Justice Judge succeeds Lord Justice Kennedy. Sir Igor Judge was called to the bar in 1963, became a

Recorder in 1976 and appointed QC in 1979. He was appointed to the Queen's Bench Division in 1988 and to the Court of Appeal in 1996. He is the first President of the Queen's Bench Division.

The statutory position of observer is an appointment by the Home Secretary and a replacement will be identified in the near future.

THE MONTHS AHEAD...

STEPS INVOLVED IN ISSUING A GUIDELINE:



MANSLAUGHTER BY REASON OF PROVOCATION

The Council has recently concluded consultation on sentencing for this offence. The Council has considered the responses received and will soon publish a definitive guideline. This issue was taken up by the Council on referral from the then Home Secretary David Blunkett, who was concerned that sentences in such cases did not always reflect the seriousness of the offence and the loss of life.

CUSTODY PLUS ORDER AND ALLOCATION

The major sentencing provisions in the Criminal Justice Act 2003 yet to be implemented are the custody plus order, the increase in magistrates' courts sentencing powers to 12 months imprisonment for a single offence and the revised allocation procedures. It is expected that these provisions will be implemented in 2006. As with the other sentencing provisions in the Act, the Council aims to produce guidelines in time to be available for the extensive training planned by the Judicial Studies Board, the National Probation Directorate and others. The Panel is working to submit its advice to the Council within a very tight timescale.

As with the earlier new sentencing provisions, the Panel consulted mainly through a series of seminars. These were held in London and Manchester during

September 2005. They were well-attended with some 96 delegates from a range of backgrounds, including members of the judiciary and magistracy, Justices' Clerks' Society, defence solicitors, the Crown Prosecution Service, academics, probation practitioners, police and Government officials. The seminars stimulated some interesting discussions and the Panel is now involved in the challenging task of reviewing comments made and forming its advice to the Council.

DOMESTIC VIOLENCE

The Panel was requested by the previous Home Secretary David Blunkett, to frame guidelines on sentencing in domestic violence cases. The Panel's consultation paper attracted a very high level of responses. The advice of the Panel has recently been delivered to the Council and preparation of a draft guideline is under way.

SEX OFFENCES

In March 2005, the Panel delivered its advice to the Council on the wide range of offences provided for in the Sex Offences Act 2003 which came into force in May 2004. The Act is a large and complicated piece of legislation which revises some existing offences and introduces a number of new ones. The Panel provided its advice based on two separate public consultations, each concentrating on different parts of the Act. The draft guideline is expected to cover some 57 offences.

ROBBERY

Robbery is an offence that is commonly dealt with by the courts and covers a wide range of offending behaviour. The Panel's advice is being considered by the Council and a draft guideline is expected very soon. As a significant proportion of offenders are youths, the draft guidelines will provide starting points for both youths and adults.

DEPORTATION

The Panel was asked by the Council to produce advice on the circumstances in which it is appropriate to make a recommendation for deportation when imposing sentence for a criminal offence. A consultation paper was published in March and many responses were received before the closing date at the end of May. The Panel is analysing those responses and drafting its advice to the Council.

THE PANEL'S ADVICE TO THE COUNCIL ALWAYS FOLLOWS EXTENSIVE CONSULTATION WITH BOTH THE PUBLIC AND THEIR STATUTORY CONSULTEEES. IT IS PUBLISHED AT THE SAME TIME AS THE COUNCIL'S DRAFT GUIDELINES ENABLING THE DETAILED BACKGROUND TO BE CONSIDERED ALONGSIDE THE PROPOSED GUIDELINE.

CONSULTATIONS

OPEN CONSULTATION ASSAULTS AND OTHER OFFENCES AGAINST THE PERSON

The Panel is consulting on assaults and offences against the person that come before the courts in large numbers (such as common assault and actual bodily harm) and those which result in significant custodial sentences (such as attempted murder and wounding with intent to cause grievous bodily harm). This consultation also includes the offence of child cruelty. Responses to the consultation paper should be received by Friday 25 November 2005. The consultation paper is available on our website.

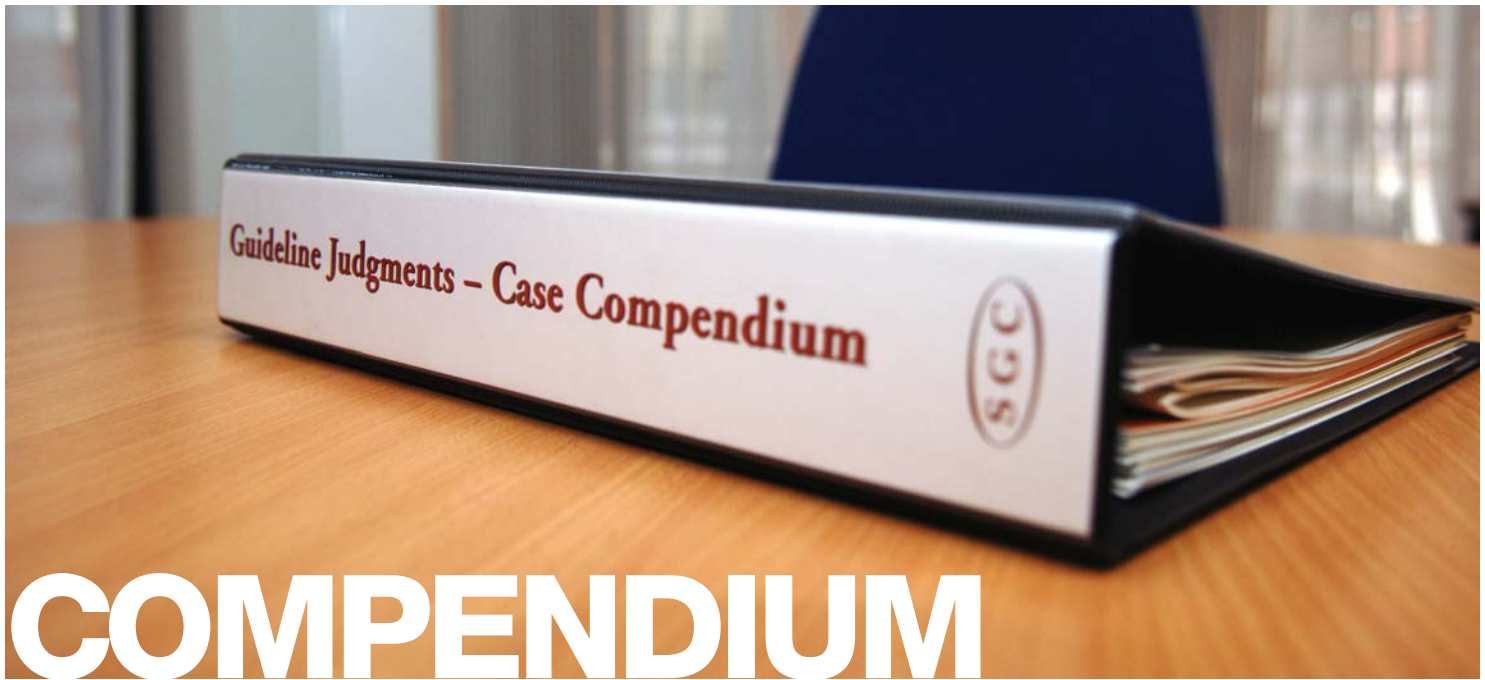
COMING CONSULTATIONS

The Panel is preparing consultation papers on the following offences:

- Failing to surrender to bail
- Dishonesty offences (including theft from shops)
- Criminal damage
- Drug supply – couriers

All consultation papers are published on the sentencing guidelines website.

www.sentencing-guidelines.gov.uk



Do you have a compendium of existing guideline cases? Some hard copies are still available from the Secretariat.

In March, the Council issued a compendium of guideline cases bringing together existing guidance from the Court of Appeal on general principles and on the sentencing of specific offences. In order to be of the most use to sentencers, it is important to ensure that the compendium contains the most recent and relevant guidance. The Council will regularly update and revise the online version with summaries of new guideline cases as they become available. The table on the right lists the cases that have been added to the compendium since its publication. The updated compendium is available at www.sentencing-guidelines.gov.uk

SUBJECT	CASE NAME AND REFERENCE
(A) Generic Sentencing Principles	
<i>Indication of sentence</i>	
● Indication of sentence in Crown Court	R v Goodyear [2005] EWCA Crim 888
<i>Racially aggravated offences</i>	
	R v McGillivray [2005] EWCA Crim 604
	R v O'Callaghan [2005] EWCA Crim 317
<i>Sentence length</i>	
● Extended sentences	R v Pepper and others [2005] EWCA Crim 1181
<i>Sentences/Ancillary orders</i>	
● Anti-Social Behaviour Orders	R v McGrath [2005] EWCA Crim 353
● Confiscation proceedings following sentence	R v Oshungbure and Odewale [2004] 2 Cr.App.R.(S) 47
● Confiscation order - obtaining social security benefit by false representations	DWP v Richards [2005] EWCA Crim 1491
<i>Specimen offences</i>	
	R v Smith and Tovey [2005] EWCA Crim 530
<i>Victim's wishes</i>	
	R v Ismail [2005] EWCA Crim 397
(F) Drug Offences	
<i>Cultivating cannabis</i>	R v Herridge [2005] EWCA Crim 1410
(G) Theft Acts Offences/Fraud	
<i>Benefit fraud</i>	R v Graham and Whatley [2004] EWCA Crim 2755
<i>Robbery</i>	R v Allen [2005] EWCA Crim 667

RESEARCH

The Council and Panel actively promote research that will help to develop greater understanding of sentencing matters. This involves both commissioning research and providing comments on projects conducted by other organisations. Currently, there are a number of key research projects that the Council and Panel are involved in:

THEFT FROM SHOPS

In December 2004, the Panel commissioned independent research consultancy Morgan, Harris and Burrows to undertake research to provide a better understanding of the factors that influence sentence in cases of theft from shops. The research involved collecting data on 1,563 offences sentenced in 2004. Data was collected from CPS files in eight areas – Greater London, Manchester, South Wales, Essex, Dorset, Cleveland, Wiltshire and South Yorkshire. These areas were selected to provide a good regional spread and a variety of sentencing practice. This research uses some advanced statistical analysis to show which factors most influence sentence for this single offence. Fieldwork has been completed and a report is being finalised. The results will become available when the Panel publishes its consultation paper on this offence in early 2006.

COURT SURVEY

The Council is embarking on a joint project with the Home Office looking at sentencing and its outcomes. The

Institute of Criminology at the University of Cambridge has been commissioned to undertake the research which will:

- look at sentencing practice for a number of key offences;
- provide baseline information from which the impact of the CJA 2003 can be assessed in the future; and
- examine the effectiveness and cost-effectiveness of different sentences.

The research will be conducted in two parts: Part 1 of the study will involve collecting data from court files to get a better understanding of current sentencing practice and the factors that influence sentence. It is estimated that data will be collected on some 8,000 adult offenders and 4,000 youth offenders. Part 2 of the study will follow up a sub-group of offenders studied in Part 1 to look at the effectiveness of sentences including a two-year reconviction study. Fieldwork for Part 1 of the study is anticipated to begin early in

the New Year with initial findings available in Spring 2007. Part 2 will begin after Part 1 is complete and findings should be available in Autumn 2008.

RECONVICTIONS

Both the Council and the Panel have contributed to the evaluation of work undertaken by the Home Office which is designed to examine whether there is a better way of measuring reconvictions. At present, the standard measure is reconviction within a set period with no allowance for the nature of the offence or whether that was soon after sentence or close to the end of the period of measurement. The Council is required to consider the effectiveness of sentences when preparing guidelines and will continue to consider ways in which effectiveness can be measured.

To stay in touch with progress made by the Council and Panel go to www.sentencing-guidelines.gov.uk/about/schedule/current.html

the Sentence YOUR COMMENTS

To share your thoughts and reactions to any of the issues covered in this issue, if you have views on the role and priorities of the Council or Panel, or if there is anything you would like to see covered next time, please contact:

Kevin McCormac

Head of Sentencing Guidelines Secretariat,
85 Buckingham Gate, London SW1E 6PD

Web address: www.sentencing-guidelines.gov.uk

Telephone: 020 7411 5558 **e-mail:** info@sentencing-guidelines.gsi.gov.uk

This newsletter is published in hard copy and electronic form and is also published on our website. When we publish newsletters, would you prefer to receive notification by email that it is now on our website rather getting a copy direct? If so, please let us know and provide the email address.