

30 March 2006

Dear,

**Draft Guideline – Custodial Sentences of Less Than 12 months -  
Custody Plus Orders**

The Council has recently agreed a draft guideline for the new 'custody plus order' which will replace the existing provisions relating to custodial sentences of less than 12 months. It is expected that the relevant provisions of the Criminal Justice Act 2003 will be implemented in autumn 2006 and the Council is committed to ensuring that sentencers and those training them have a definitive guideline as soon as practicable in preparation for this significant change. The Council has previously issued guidelines in relation to parts of the sentencing framework provided by the 2003 Act that have already been introduced.

In accordance with section 170(8)(b) of the Criminal Justice Act 2003, the Council is seeking your views which it will consider before determining whether to issue definitive guidelines to which every Court must have regard in accordance with section 172 of the Act. Since this is a subject of great importance to those who impose these sentences, on this occasion the Council is also consulting a small number of groups with particular expertise in imposing short custodial sentences.

Your response (to the above address) is requested by **22 May 2006**.

The draft guideline is derived from the Advice of the Sentencing Advisory Panel which is published simultaneously. A copy is enclosed for reference. Further information regarding the arguments supporting the content of the draft guideline can be found in that Advice. A comprehensive review of the background and the new statutory provisions is set out in a discussion paper used as the basis for a series of consultative seminars which informed the advice; this is available from our website or from the Sentencing Guidelines Secretariat.

The Council is concerned about the application of the early release scheme where prisoners are sentenced in accordance with the new provisions. The guideline sets out an approach to imposition of a custody plus order which requires sentencers to balance the custodial and licence periods (and licence

terms) according to the seriousness of the offence(s) and to review the elements of the order to ensure proportionality.

Section 246(2) of the Criminal Justice Act 2003 will provide for the early release scheme to be available to be applied to custody plus orders where the custodial period imposed is 6 weeks or longer. As is the position under the current sentencing framework, the Council has concluded that the possibility of early release is not a legitimate factor for sentencers to take into account when fixing the custodial period of the order. However, the Council is concerned that the availability of early release could be viewed as undermining an order carefully constructed by sentencers to achieve specific purposes. *The Council would welcome the views of consultees in relation to the use of early release in the context of the custody plus order.*

In addition to the specific issue identified above, the Council would welcome views on any other aspects of the draft guideline.

If there is any further information you would like, please contact the Head of the Secretariat, Kevin McCormac, or the Secretary to the Council, Joanne Savage.

Lord Phillips  
Chairman of the Sentencing Guidelines Council