

30 June 2009

Dear

### **Overarching Principles – Sentencing Youths – Consultation guideline**

I enclose this consultation guideline on which the Council seeks your views. It has been published today alongside the comprehensive advice from the Sentencing Advisory Panel on which it is based. All documents can be found on our website: [www.sentencing-guidelines.gov.uk](http://www.sentencing-guidelines.gov.uk).

This guideline concerns a particularly important issue, not least because, as Professor Ashworth notes in the Foreword to the advice of the Panel, criminal activity by young people is a cause of much concern in many communities.

The particular impetus for this guideline is the enactment of the sentencing framework for youths in the Criminal Justice and Immigration Act 2008 and the desire to have guidelines available in time for the training that will accompany implementation of those provisions. The guideline seeks to provide a framework for balancing the various obligations and requirements to which a court must have regard when sentencing a youth.

As you will be aware, most young offenders who are sentenced are dealt with in the youth court which considers a wider range of seriousness than with adult offenders, both because of the longer maximum custodial sentence that is available (compared with that for an adult sentenced in a magistrates' court) and because of the likelihood that a court will impose a shorter custodial sentence than would be imposed on an equivalent adult offender. The Council was pleased to note that the Panel had specifically consulted the Chairs of Youth Panels in addition to its usual wide range of consultees.

The Council also noted the very high degree of agreement with the propositions made by the Panel in its consultation paper published in December 2008.

Whilst the Council has broadly accepted the advice of the Panel, there are two issues to which your attention is particularly drawn.

- a) The 2008 Act sets out the considerations to which a court must have regard when sentencing an offender under 18. The Panel drew attention to a significant difference from the purposes set out in relation to adult offenders in the Criminal Justice Act 2003, the omission of “the reduction of crime (including its reduction by deterrence)”. Its conclusions are set out at paragraphs 53-56 of its advice. However, the Council did not consider it was appropriate for the Council to seek to draw a conclusion as to the

reasons for this change; the interpretation of the statute is a matter for the courts. Accordingly, paragraph 2.12 of the consultation guideline draws attention to the difference without commenting on its significance.

- b) In determining whether a youth should be dealt with in the Crown Court or in a youth court, it will be of significance whether the offence falls within the description "homicide". If it does, the case *must* be committed to the Crown Court for trial. As stated in the consultation guideline (at paragraph 12.6) there is no statutory definition of the term.

In its advice, the Panel has concluded that the term should be defined narrowly leaving a youth court with a wider discretion whether to commit for offences involving death which have a maximum penalty (in the case of an adult offender) of 14 years imprisonment or more.

The Council did not consider that it is within its remit to define this term; it is a matter for the courts. You may however wish to consider this point.

In accordance with section 170(8)(b) of the Criminal Justice Act 2003, the Council is seeking the views of the Secretary of State and of the Justice Select Committee which it will consider before issuing a definitive guideline. Your response (to the above address) is requested by **Friday 28 August 2009**.

The names of those who respond will be listed in a summary of responses. Whilst full responses are not routinely published, on request the Council may be required to release copies in accordance with the Freedom of Information Act 2000.

Yours sincerely,

Lord Judge  
Chairman, Sentencing Guidelines Council