



Justice Committee

Oral evidence: The work of the Sentencing Council, HC 820

Tuesday 1 March 2016

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Members present: Robert Neill, (Chair); Richard Arkless; Alex Chalk; Alberto Costa; Philip Davies; Dr Rupa Huq; Victoria Prentis; and Marie Rimmer.

Questions 1–70

Witness: **Lord Justice Treacy**, Chair of the Sentencing Council of England and Wales, gave evidence.

Q1 Chair: Good morning, Lord Justice Treacy. Thanks very much for coming to give evidence to us. It is very nice to see you again. Welcome. I think this is the first time that you have given evidence before the Select Committee since you became chair of the Sentencing Council.

Lord Justice Treacy: That is correct.

Chair: We are delighted to see you. We had better do some declarations; we sometimes forget that. I ought to remind people that I am a non-practising barrister.

Victoria Prentis: As am I.

Alex Chalk: I am a practising barrister.

Richard Arkless: I am a non-practising English and Welsh and Scottish solicitor.

Alberto Costa: I am a practising Scottish and English and Welsh solicitor.

Q2 Chair: I am not sure that any of us has been doing very much recently around sentencing. Actually, one or two of us may have. Mr Chalk probably has.

I thank you and your colleagues for your hospitality when I visited the Court of Appeal recently. It was very useful indeed and very helpful to us.

Lord Justice Treacy: You are very welcome.

Q3 Chair: We have had the chance to look at the annual report the Sentencing Council supplies us with. Thank you for the very prompt responses that we have had from you to issues that we raised as statutory consultees.



Lord Justice Treacy: Thank you.

Q4 Chair: It is a relationship that we find very helpful. I hope that it is useful at your end, too.

Lord Justice Treacy: Yes. We have a good relationship with you and members of your staff. In fact, we have improved the process of communication between us. There was a time when your response to consultations that we were putting out was coming at an inconveniently late stage for us. Our staffs have liaised, and we have improved that. It has been beneficial for both sides.

Q5 Chair: That is absolutely right. I concur with that; it is extremely helpful. Looking at the annual report, which is an overview of the work of the council, I was struck by the fact that the council faces quite a lot of challenges in its work. There are also resource issues you have to deal with at the same time. You described last year as a “highly productive year”, with the amount of work that was done. That must involve a bit of juggling, and there must be some areas of pressure. Within the overall context of what you are doing at the moment and what you see as the Sentencing Council’s role, can you give us a sense of where the pressures are and where the challenges are coming?

Lord Justice Treacy: Our primary role, of course, is to produce guidelines for use by judges and by magistrates, who are also judges, in order to guide them in the process of sentencing. That being our primary function, most of our resources are directed to it. A very significant challenge for us at present is the question of resources. Our budget is between £1.4 million and £1.5 million per year, which is less than when we started work in 2010. Along with everybody else, we have had to make our contributions to the need for economy.

At present we are in a very difficult phase. There has been a freeze imposed by the Ministry of Justice, because they found they had spent rather more than they budgeted for. For example, we lost a statistician at the end of October and have not been able to replace that person. At present, we have been able to manage, because we had sufficient work in the pipelines, but unless the situation is resolved soon, there will be a slowing down in the production of guidelines, because the person fulfilling that role is essential to the work we are doing.

We have also had a freeze put on any external contracting that we do. That is important to us, because we use outside bodies to grind some of the numbers we get from the surveys we do. Again, there is an embargo on doing that. At present we are working through pipeline projects, so it has not impacted on the work so far, but we are anxiously awaiting the outcome of a review of financing for arm’s length bodies. We know we shall have to make our contribution, but we are anxious to see how it will affect us.

The Department was speaking generally in terms of cuts of between 30% and 50%. If we had to sustain cuts of that level, we could not continue to function as the Sentencing Council. Either we would have to operate as some sort of zombie organisation, simply tending to the existing guidelines, with a very small staff, or shut up shop altogether. We are hopeful that the Department will be receptive to our case, which is that we are very small fry in the scheme of things for the funding that is administered by the MOJ, and they



will see that a blanket cut across the board will not be appropriate in our case and we can make better targeted cuts. We are willing to do our part in that, but there is a limit.

Q6 Chair: I understand that. In terms of context, we know from the report that the statutory composition of the council involves eight judicial members. As serving members of the judiciary, they would be paid as judges one way or the other, anyway.

Lord Justice Treacy: In effect, they come free to the council.

Q7 Chair: Indeed. That is free to the council. Then you have the Lord Chancellor's six appointees. I imagine that is not a great cost.

Lord Justice Treacy: There is an annual stipend for them. Not all of them take it. I believe that the Director of Public Prosecutions and the chief constable do not. There are costs in relation to the non-judicial members.

Q8 Chair: Sure, but they are pretty modest in the overall scheme of things.

Lord Justice Treacy: Yes.

Q9 Chair: What sort of support staff do you have? You talked about the loss of a statistician. It would be worth giving that some context. How many are you losing it from?

Lord Justice Treacy: We have about 16 staff. It is a mix of policy, research and analysis, communications, a lawyer and administrative staff. We expect them to work flexibly. People are not just put into silos; because we are a small organisation, people have to help one another out. It means that the departure of any particular person has very substantial impact if they are not replaced promptly. We do not carry deputies or slack. We were set up to be a tightly run organisation. It has become tighter as pressures in relation to funding have been brought home to us.

Q10 Chair: One might say that not only is there a public policy desirability in having consistency in sentencing but the more consistent sentencing is at first instance, the less the cost of appeals and the burden that goes on the High Courts.

Lord Justice Treacy: Yes.

Q11 Chair: That is useful. If you had to take out 30% of your staff—five out of 15 or 16—it would be a big chunk.

Lord Justice Treacy: Yes.

Q12 Alex Chalk: A huge amount of work has been done by the Sentencing Council. As a practitioner, I have to say that it has been invaluable. It has transformed the ability of practitioners to offer advice and so on. Just playing devil's advocate for a second, because so much of that work has been done—the heavy lifting of the assault, robbery and theft guidelines—is there an argument for saying that the tempo of work has dropped off a little?

Lord Justice Treacy: No—far from it. In fact, if you look at our programme for the next year, the tempo in terms of output is increasing. We anticipate that by about 2020 we will have covered nearly all the major criminal offences. I will say a word or two about how



we see the future from that point onwards. So that you understand, at present we are doing work on knife crime and offensive weapons, which is a matter that I know causes very considerable public concern. It is important that we deal with that. In the summer, we will bring out a consultation paper on the sentencing of youths. We are embarking on work on manslaughter, which is a very wide-ranging offence and can be committed in a wide variety of ways. That is a very complex piece of work. We are also embarking on work on terrorist offences. Those are just some of the strands we are working on. We anticipate bringing out consultation papers and, eventually, guidelines on them in due course. You can see just from that short list that we are still dealing with very important areas of crime.

What will happen in the future when we have covered, in effect, all the major elements? We see the process as a cyclical one. When you have brought out a guideline, you do not sit back and say, “Job done for assault.” There comes a point, once you have gathered sufficient experience and data on the working of that guideline, when you go back and look at it again. We envisage, therefore, continued analysis of our guidelines and implementation of a process of revision. A couple of months ago, we were just about to start revision of our first guidelines, on assault, because data from the Crown court sentencing survey show that, in relation to the most serious offence under that guideline—causing grievous bodily harm with intent—sentencing levels have risen rather more than we anticipated at the time the guideline came into play. We were going to do a piece of work to revise the assault guideline, but in the interim the Law Commission put forward proposals to restructure the 1861 Act offences relating to assault crimes. We need to pause in our revision until we see whether the Government are going to accept the Law Commission’s proposals and will give time for legislation along the lines suggested by the commission. That is one example of where we were about to start the revision process. We work to a model that the Treasury put forward. It works in a circle. You start off by working on a guideline, you consult, you implement, you assess it and you come back to the start and repeat the process. It is a well-known system.

Q13 Alex Chalk: I was very interested to hear you say that, effectively, there is a large hinterland of work still to be done. You talked about terrorism. Is there any threshold, as it were, that the Sentencing Council applies when considering whether it is worth the powder and shot to go through the process of creating a guideline? I will give one example. Section 5 of the Terrorism Act 2006 is on preparation of acts of terrorism. That is a very serious offence, of course, but mercifully it is relatively infrequent. There might be an argument that you should just go through the old-fashioned method of looking at the case law and saying, “Somewhere around this, approximately, the punishment meets the crime.” There is concern that it might be disproportionate to have a guideline in those circumstances. Is there a threshold?

Lord Justice Treacy: Yes. We publish our criteria for deciding whether or not to do a guideline. There is a variety of factors. Some arise as a result of direct requests from the Lord Chancellor or the Court of Appeal. Some come because bodies of all sorts get in touch with us and make a case to us to produce a guideline. Very often they are special interests. When we look into them, we find that there are only a dozen cases prosecuted in the course of the year and it is simply a waste of our resource to produce a guideline. Sometimes, because the members of the council represent a wide range of people experienced in the criminal justice system, a feeling develops that it is necessary to do a guideline.



Terrorism is a good example. I have been having conversations with other judges over recent months and have noticed an upsurge in people—not just judges—saying, “Isn’t it time you did something about terrorism?” In relation to the section 5 offence that you mentioned, because of what has been going on in Syria there has been particular interest in that type of offence. There is concern among the judges who deal with that sort of case that there is a possibility of inconsistencies.

Q14 Alex Chalk: Sections 57 and 58, in particular, are possibly calling out for a guideline.

Lord Justice Treacy: Yes. It is that sort of consideration. A variety of factors lead us to decide to do a guideline.

Alex Chalk: That is helpful.

Q15 Chair: Of course, the fact that the judicial members are, in effect, part-time, because they are sitting in the Court of Appeal, the Crown court or whatever, means that you have a fairly direct conversation and fairly direct experience with your colleagues. That would not be the case if it was merely an academic body.

Lord Justice Treacy: Indeed. Sometimes a guideline will develop from something very small. We had some strong representations from a number of Welsh magistrates’ courts about dumping mattresses and asbestos in lay-bys. It was a local problem for them, and they wanted us to do a guideline on it. When we looked into it, we thought that the very same principles would apply across the piece in environmental crimes, so we produced a very substantial environmental guideline that covers everything.

Q16 Chair: I have found that very useful in my constituency. It is a real issue, and I am rather pleased that you have done it. Similarly, with the Supreme Court decision about joint enterprise, for example, we may well see a great many more serious issues charged as manslaughter.

Lord Justice Treacy: We are dealing with manslaughter because we had a request from the previous Lord Chancellor, after some publicity about what is called a one-punch manslaughter case. There was a lot of publicity, and he asked us to look at it. We realised that simply to produce a guideline for that form of manslaughter would risk distorting the other forms. If we were going to do one, we needed to do the lot.

Q17 Chair: You need to do it across the piece.

Lord Justice Treacy: Yes.

Q18 Chair: That means that you need the resource to do that.

Lord Justice Treacy: Yes.

Q19 Chair: Looking at pressures, you have set out very clearly an overview of the work and the ambitions for the programme, but there is also the analytical part. I imagine that is why you would say that statisticians are quite important to that circular piece of work.

Lord Justice Treacy: They are absolutely vital. They are involved throughout the process. It may surprise you to learn, if you have not looked at the close detail of our annual report,



that our budget for analysis and research—not the staff costs—is about £140,000, which is pretty small in real terms. That does not take account of the salaries of the statisticians and other analysts, but it does take account of the expense of doing the research. It is at a fairly low level, as you can see.

Q20 Chair: We will come back to that a little more in a moment, but it is helpful to flag it up. Before we move on to some of the specifics, I would like to deal with a couple more broad points. One is on the business plan itself, to get it out of the way. You have made very comprehensively the case about the pressures that you face, which you have demonstrated to many of us. On the other hand, your business plan suggests that there has been a 9% increase in the budget compared with last year. Is that accurate?

Lord Justice Treacy: No.

Q21 Chair: Why not?

Lord Justice Treacy: We had some increase in budget, but we were not able to use it. In fact, if you look at the business plan, we had an underspend of the order of £100,000 or so. That was because, in arm's length bodies where civil servants work, the policy is that you cannot advertise a job until somebody has left their post. The recruitment process is a rather lengthy and cumbersome one, which means that we go not just for weeks, but sometimes for months, before getting a suitable replacement. That is why we had an underspend.

Chair: I understand that. You carry the vacancy, as I know all too well. I will come back to one or two other issues later. Can we get on to the guidelines themselves?

Q22 Victoria Prentis: I want to talk about victim impact. Could you tell us generally what evidence sentencers have about victim impact? In particular, what role do victim personal statements play?

Lord Justice Treacy: The judge has a wide range of information. If there has been a trial, the judge will normally have seen the victim himself or herself and will be able to make an assessment of the impact of the crime on the victim. The judge will have the witness statements. They may have CCTV or video material, photographs of the injuries, medical reports, if injuries have been caused, and so on. There is a lot of material within the trial process.

In addition, the CPS will very often be in a position to inform the judge about the impact on victims. As you say, there is the facility of the victim personal statement. Those are not gathered routinely by the police in all cases, but where they are available, they are viewed as important by the court. The reason the court will regard them as important is not just that it is common sense to do so but that our guidelines themselves, at step 1, involve a consideration of harm done as one of the major drivers of sentencing. Clearly, the harm done is very closely interrelated with victim impact.

In my experience, the victim impact statements themselves are of variable quality. Some are very good and give insights as to the effect of the crime on the victim in a very helpful way. Some—it may depend very much on the officer who assists the victim in providing them—are formulaic. Some are documents that simply express the hope that the judge will

give the highest and longest sentence possible, and are therefore of very limited use to the judge.

Q23 Victoria Prentis: You said that you have a very limited budget for doing research. Have you considered doing a project on the effect that sentencing has on victims?

Lord Justice Treacy: We know that sentencing can be extremely important to victims. When we were producing our sexual offences guideline, we did a lot of work with victim organisations. They gave us huge insight into the impact of offending on victims of that sort of crime.

One thing that came across from our work was the sense of resolution that victims get from an admission of guilt by an offender, which validates the history they have given to the police and their complaint, or, alternatively, from the satisfaction of a jury accepting their account. They also get a feeling of resolution from seeing the sentence passed and understanding why it has been passed. The purpose of the guidelines is not simply to guide judges and practitioners to achieving a just result in a structured way. Hopefully, they are designed so that victims, witnesses and, indeed, the wider public can understand the process of sentencing better and see what factors have an impact. Our work with victims has shown that they appreciate a clear structure and a clear statement and expression of the reasons why a particular sentence has been passed.

We have as one of the members of the council the chair of Victim Support. His predecessor was a member before that, so there is always a voice for victims at the table in the council's deliberations. As you know, the consideration of harm and the place of victims is central in the guidelines, by reason of the fact that it is at step 1—the very first consideration that the judge gives.

Q24 Chair: That is very helpful. In a sense, when we talk about your statutory duty to consider the impact on victims, it is not an add-on, is it? It is very much central at the starting point.

Lord Justice Treacy: Yes. It is central.

Chair: In the past, the Select Committee has raised the importance of empirical evidence, which brings us back to the analytical points that you stressed at the beginning. Dr Huq would like to ask you about that.

Q25 Dr Huq: I have a further question on research, which keeps surfacing. It is a statutory duty of the council to monitor the effect of its guidelines. On page 16, you mention—it is something we were aware of—that the Crown court sentencing survey has been axed, after five years. It has finished its run. The new thing that is in place is supposedly more targeted, which can be a euphemism, can't it? Do you think that this new, improved version, which does some things that the other one did not, is reaching out to the public? There were concerns about the visibility of the evidence from it and how accessible that is.

Lord Justice Treacy: We publish all our research materials, but we are absolutely confident that the new process we are substituting, which is much more targeted than the Crown court sentencing survey, will both be robust and provide us with the sort of information we require to develop and to continue to monitor and analyse our guidelines. Let me give you a couple of examples to add a bit of concreteness. The results of the

Crown court sentencing survey will continue to be of value to us for some years to come. We plan to top them up, where necessary, by further work in the Crown court. Since ceasing to conduct that sort of survey, we have been able to do specific work in the magistrates' court, where we had not previously done data collection. That seemed to us particularly important, since over 90% of criminal offences are dealt with in that court. To date, we have gone into over 80 magistrates courts and acquired data on theft offences, in relation to which we have recently brought into force a guideline, to enable us to monitor the "before guideline" state of play and then the "after guideline" state of play, so that we can see what the impact of the guideline has been. Another piece of work we have started in the magistrates' court relates to drug offences, particularly possession of class A and class C drugs, where the Crown court sentencing survey had shown greater deviation than expected from the sentence range. We are doing specific work in the magistrates' court to monitor and analyse that.

Our data collection from both the Crown court and the magistrates' court to date has all been paper-based. The sentencing court has had to fill in a form that we designed for it, ticking boxes that required subsequent analysis. We are now working on an electronic data collection method, which will simplify it for those working in court and make the collection and analysis more efficient. We are not giving up on the Crown court. More targeted research is about to be undertaken. We have a robbery guideline coming out very shortly. We will do a before and after survey in relation to that in the Crown court. We have not abandoned the Crown court. We are just targeting more closely particular areas of work we are involved in, having built up a very substantial bank of general knowledge through the five-year collection of data under the old Crown court sentencing survey.

Q26 Dr Huq: On empirical techniques of data collection, you make a lot of use of the one-to-one, deep-level conversation technique. That can be quite resource-intensive, and the transcription takes ages. You mentioned that you are operating on a comparatively small research budget. Do you have the resources to do all the social research you would like to do?

Lord Justice Treacy: We think we have them at the moment. Our sources of information will be, first, the data collected by the Crown court sentencing survey itself or the analogous work done by way of targeted surveys. That is paper-based, case result-oriented work. In addition, we gather in a number of transcripts of sentencing remarks for analysis. For example, for our robbery guideline we acquired something like 200 transcripts for analysis, which we were satisfied would give us a sufficient snapshot of the way robbery cases were being sentenced.

Together with that, we have a panel of magistrates and judges around the country with whom we are regularly in contact. We do what we call road-testing on them. When we are considering a guideline, we produce a draft and send it to them, with some case scenarios set out, and ask them to sentence them under the old guideline, if there is one, and using the new draft one. Then there will be a discussion between a member of staff and that judge as to points they found difficult or ambiguous or which produced an anomalous result. That feeds into the consultation draft, first of all. After the process of consultation we always revise our guidelines, because we are highly responsive to the responses that we get. Once we have changed from the consultation draft to the guideline, we repeat the same process with our panel of judges, to avoid unforeseen consequences arising. That is an extremely valuable part of the work we do and is very much appreciated by the



judiciary. We do not use the same people all the time, because we do not want to get into a pattern. We want to vary it so that we are sure we are getting a wide range of response and impact. It is an invaluable part of the process. Judges very much like being made part of it. They feel that they are being involved in the work.

Q27 Dr Huq: Is the qualitative-quantitative balance okay, given that one statistician has been chopped?

Lord Justice Treacy: We think so. It is something that we monitor carefully. We discuss the way we are proceeding with counterparts at the MOJ, so they know how we are working.

Q28 Dr Huq: You use quite a lot of their data. Do you have an input to the MOJ's research programme?

Lord Justice Treacy: No. The MOJ has its own programme. It is material that is gathered administratively, some by the police and some by the courts. They have their own reasons for gathering the particular data they gather. A lot of it is very useful to us, and we are free to draw on it. There are times when we work with the MOJ; for example, we recently brought out a consultation on credit for guilty plea. Over the summer, a joint team of MOJ and Sentencing Council staff worked on some resource implications that we were anxious to explore for the purpose of the consultation. There is joint working on occasion. Because they are all professionals in the same area, they tend to know one another, and there is quite a degree of informal contact as well.

The materials that we put out by way of research and analysis are examined—I will use that word rather than peer-reviewed—by counterparts in the MOJ, but they are very much aware of what we are doing. We put our work out more widely on our website and have invited academics to take an interest in it. We have been somewhat disappointed by the response from academia, where they have not made as much use of the materials that we put out as we thought they would. It is free for them to use. We have done a lot of the donkey work for them, and we thought that it might excite a bit more interest, but there has not been quite as much as we had anticipated.

Q29 Dr Huq: I will tell my friends in criminology—that is what I did before.

Lord Justice Treacy: Please do. We have a criminologist as a member of the council. He is a professor of criminology at Oxford and is a very valuable member of the council. He has done what he can to stir up interest among his colleagues, but they have proved a little resistant to date.

Chair: I am amazed that we have not been able to persuade them yet, but I am sure we will. That is very helpful to know.

Q30 Richard Arkless: You touch briefly on resource assessment in relation to new guidelines. It is one of your legal duties to publish resource assessments in respect of new guidelines. Do you think you have a role in making sentencers aware of the resource implications of their decisions? If so, how could you achieve that?

Lord Justice Treacy: Frankly, I do not think we need to make sentencers aware. They are acutely aware of the fact that, for example, the cost of keeping someone in prison is about



£25,000 a year, if you exclude capital and other costs of that sort, whereas the cost of a community order is a little over £4,000 per year. I am certain that every sentencer is aware of that.

Q31 Richard Arkless: Are they sent the resource assessment as a matter of course? Do they see a copy of it?

Lord Justice Treacy: They will, but no—the resource assessment is made available on our website. Our consultation paper and the definitive guideline make specific reference to the outcome of the resource assessment. They are made aware in that way. In our annual report, we publish a link to the MOJ data about the costs of different methods of disposal. We include that in the report. It is available, again through our website, on that basis.

Q32 Richard Arkless: It has been a concern of this Committee in the past that sentencing levels may be ratcheted up as a result of sentencing guidelines that you produce. You touched briefly on the impact on assault. Your assessment of the impact and implementation of the guidance on burglary found an unexpected increase in the severity of sentences for non-domestic burglaries. Will you revise the guidelines to stop that happening? Is there a possibility that you will simply accept that this trend represents current sentencing practice, so the guidelines have to follow suit? Where do you stand on that?

Lord Justice Treacy: As I said earlier, we do not stop work when the guideline is put out. When there are sufficient data and information, we go back to the guideline. In particular, we will look, and are looking, at the matter you raised in relation to domestic burglary. There has been a spike, starting in about August or September 2011, in the levels of sentencing for non-domestic burglary. That took us by surprise. There has been an increase in severity of about 13%. Interestingly, that spike coincides with the urban riots we suffered as a nation at exactly that time, where undoubtedly the targets of the rioters in many instances were non-domestic premises. A clear policy was adopted by the judiciary—recognised in our guideline, which came out at about that time—that burglary of non-domestic premises committed in public disorder should be a significant aggravating factor.

Q33 Chair: It was organised looting of shops.

Lord Justice Treacy: Exactly. It was to deal with looters. One of the pieces of work we are going to do is to try to see whether the riot effect was such as to heighten judicial sensibilities as to the harm done by non-domestic burglary. It may have had a permanent effect on the judicial mindset.

The other thing to be said is that sentencing for burglary generally has been on an upward trend for many years, preceding the time when the guideline came into effect, in 2011. We will be interested to see whether the particular spike in sentencing levels you referred to is something that arises from a continuation of that trend or is something separate. We are not ignoring that. We have published a preliminary piece of work on the burglary guidelines and we are taking that forward.

Q34 Richard Arkless: It would be very interesting to see the conclusions of that investigation. Turning to communications, the media are always interested in high-profile cases, but how do you capture their interest in relation to the principles of sentencing? Can

you build their interest in individual cases to encourage them to think about the wider issue and not just focus on the individual high-profile cases that can sometimes distort the public's view of things?

Lord Justice Treacy: We do not have much trouble interesting the media. Crime seems to be a regular staple of newspapers, so the media are always ready to run with issues that affect criminal sentencing. We have a communications section on the council. They do not just wait until a guideline is coming out. Unlike some press officers, they do not try to keep their heads down. They do proactive work to try to engage and, dare I say it, at times educate the media about the way in which sentencing works.

We have a particular problem with tabloid newspapers, which have an agenda of their own in relation to criminal sentencing and criminal justice generally. Regrettably, we find that when we bring out a guideline it is almost impossible to persuade them to say what the guideline is actually about, as opposed to picking on some aspect that they want to emphasise in order to suggest that levels of sentencing are being reduced or sentencing is getting softer. The journalists with whom our press officers deal are quite open in saying, "I can't run the story like that. The story my editor wants me to run is this," or "The angle we are going to take is this." There is a huge job of education. It is not just education. The media have their own agenda and interests. We cannot dictate those to them, but we try to be proactive, responsible and responsive.

Q35 Richard Arkless: Does that extend to public awareness? All members around the Committee table could have some empathy with those complaints about the press. The press and the public often overlap in terms of awareness, but does your proactive approach extend to increasing public awareness of sentencing issues that may at first appear controversial to an external audience—for example, reductions in sentencing for early guilty pleas?

Lord Justice Treacy: We try to do as much work with the public as we can, within time and financial resources. For example, we have a target for members of the council to do at least 20 significant events in the course of the year, either meeting organisations with a special interest or in wider public forums. In addition, we have a Twitter account, with over 3,000 followers. About a year ago, we revamped our website to make it more user-friendly. We adopt a variety of methods to try to get our message out to a wider public.

A lot of the work we do on guidelines involves groups that have a particular interest in the guidelines that we are developing. To come back to the sex offence guideline, we did a huge amount of work with victim organisations. When we did the environmental guideline, we were involved very heavily not only with the Environment Agency but with those who advise large organisations. It has been very interesting. There has been, and continues to be, a huge amount of traffic in the trade press, for example, since the publication of our environmental guideline. That has reinforced the message that came through from our guideline: for the most serious offences, committed by the largest companies, a very substantial increase in financial penalty was appropriate. That message has gone out very widely, through the trade press. There has been huge educative value through that sort of process.

Q36 Richard Arkless: You touched on the issue of more communication through partnership work. Is it your priority to consolidate your relationships with your core partners,



or might there be an advantage in broadening your range of partners, as a means of building wider awareness of sentencing principles?

Lord Justice Treacy: We have a very wide range of partners. When we are working on any guideline, we range far and wide seeking out organisations or people who may have a particular interest in the work we are doing. We have built up partnerships in that way. There are other ongoing partnerships. I can give one example. We worked with Victim Support and the witness service and made a video, which is now routinely shown by the witness service to those who are going to give evidence in court. It explains how the sentencing process works—what factors the judge will and cannot take into account.

Q37 Victoria Prentis: How do we have a look at that?

Lord Justice Treacy: I am sure it is accessible on our website, but may I check? Yes, it is. We have had a very large number of hits on that, as you might expect. We have an interactive feature on the website called “You be the Judge”—you may be aware of it—where we do some model sentencing exercises and you can work out what you think is the right sentence. It is very interesting that only 16% of the public who do the exercise sentence more severely than the judge did in the actual case. If you open your newspaper, you will see it stated that the public think sentencing levels are too lenient and too low. However, it is a fact that, when you get members of the public to do the exercise, they are more lenient.

Can I give you another, very striking example? We did work on a drugs guideline. As part of our social research, we were very interested to see what people who lived in neighbourhoods where street dealing was going on thought about it and about the levels of sentencing. Much to our surprise, the result showed that they were far more tolerant of the activities of street drug dealers, which we had regarded as degrading, intrusive and upsetting. Those elements came through in the research we did, but not to the extent that we had expected. To a degree, people were either more accepting, which would perhaps be a bad thing, or more understanding of the position of addicts; I do not know which. We were surprised. We thought that we would get a much stronger level of pushback than we did from those with whom we did that research. It shows us that you cannot always generalise about what the public think.

Q38 Chair: The corollary of that is probably that sometimes you may have to say that even if the public are tolerant, because of broader issues of public policy and the harm to the victim, we have to be tough on it.

Lord Justice Treacy: Absolutely. There is a public policy element—just as you cannot allow sentencing to be driven simply by what the victim or the victim’s family would want. Plainly, that would be wrong as well. There must be an appropriate balance.

Chair: That illustrates it very well.

Richard Arkless: On that rather enlightening note, I will pass it back to you, Chair.

Chair: I turn to Mr Davies.

Philip Davies: Just to be clear, some of us on the Committee are quite happy with the ratcheting up of sentences. I do not want you to run away with the idea that everybody on the Committee does not like that.

Chair: You are going to play the interactive game now, aren't you, Mr Davies?

Q39 Philip Davies: Lord Justice Treacy, you have confirmed today that obviously a lot of people from the Howard League for Penal Reform go on to your website.

I am interested in the role that the Government play in interacting with you and the Sentencing Council. How much communication or interference—whatever word you prefer to use—do the Government give you and your colleagues?

Lord Justice Treacy: We have no interference and we are strongly independent. We depend on the Ministry of Justice for our financing, so to that extent they have a degree of control over us, but there has never been any occasion when the Ministry sought to interfere with our work. We would not tolerate it. There are eight judges who are members of the council. Judges are fiercely independent. They value their independence and see it as constitutionally very important. The other six members of the council are all people who have achieved high positions in their respective roles. They would not countenance it either.

That said, it is important that we have a dialogue with the Ministry. We will respond to, and have responded to, requests from the Lord Chancellor to do particular pieces of work. We do that because we are required by statute to respond to anything he asks us to do. The level of interventions by Lord Chancellors has been appropriate and relatively low. We produced a guideline in relation to allocation of cases between Crown and magistrates court, as a result of a request last year from the Lord Chancellor. In fact, that arose from the efficiency review carried out by Lord Justice Leveson. In 2012, we were asked to produce a guideline relating to fraud offences, because the deferred prosecution scheme was coming into force in the Crown courts. We are doing work on manslaughter, because the previous Lord Chancellor asked us to look into one-punch manslaughter. Those are relatively isolated examples.

At our meetings, there is a representative of the Lord Chancellor, Stephen Muers, whose title, I think, is director of criminal justice policy. He is not a member of the council; he attends as an observer. He provides us with information about the thinking within the Ministry and keeps us sighted as to initiatives that are being taken there. Let me give you an example where that has worked to good effect. We were proposing to produce a guideline in relation to offences where death and injury are caused by reason of careless or dangerous driving. We were about to embark on work in relation to that when we were informed, through Stephen Muers, that a review of that type of offending was taking place within the MOJ. That enabled us to alter our work plan and to postpone that piece of work until the outcome of the review. That is of value to us. It saves us wasting resources or spending money prematurely, and we were able to turn our attentions to something else. In terms of influencing the decisions of the council, the Government have remained appropriately hands off.

Q40 Philip Davies: You never have any communication from the Government that says, "Our budget is a bit tight. It would be a bit handier if we had fewer people sent to prison."



Anything you can do on the sentencing guidelines to help to move that agenda forward would be very helpful.” Do you never get any implied or direct communication to that effect?

Lord Justice Treacy: Only by reading the newspapers, to see that Government Ministers are saying that across the piece. Anybody who works in public service is only too acutely aware of the cuts that are being sustained because of the economic position. It is part of the culture. We are required to produce a resource assessment to show the impact of any proposed guideline, both at the consultation stage and at the definitive guideline stage. That resource assessment will assess both in monetary terms and in impact upon prison places, which are obviously very expensive, the predicted results of any guideline we bring out. It is part of the statutory requirement upon us so to do.

Q41 Philip Davies: Do you have any discussions where you say, “In the broad scheme of things, we think this person should go to prison for a certain period of time for that crime, but resources are a bit tight, so maybe we ought to calm down our sentencing on this particular issue”? Is that a factor in your sentencing guideline decisions?

Lord Justice Treacy: No, never—not at all.

Q42 Philip Davies: When Parliament imposes minimum sentences for particular crimes, as it has done recently, do you take that as implied criticism of the Sentencing Council? Does it suggest that the council is not providing very good decisions on how people should be sentenced if Parliament has to be seen to intervene in such a way on sentencing decisions?

Lord Justice Treacy: No. It is part of the natural process. Parliament lays down both maximum penalties and, for certain offences, minimum penalties. We have to work within the desires of Parliament, as enacted in legislation. I do not see it as any form of criticism. It is just part of the process working.

I have to say—this is a personal view, not a Sentencing Council view—that I am somewhat hesitant about the development of minimum sentences. In my personal view, they tend to produce something of a one-size-fits-all approach to sentencing, whereas I believe that sentencing should reflect the facts of the individual case before the court. But that is the will of Parliament in certain respects, so I and other judges will obey it.

Q43 Philip Davies: You must see that, if the courts had been handing out those sentences in the first place, Parliament would not have felt the need to intervene in such a way. Surely that is some kind of implied criticism of the sentencing guidelines.

Lord Justice Treacy: I have never seen it as such. Maybe it has been a factor in your thoughts when legislating. Even if it is a criticism, we are receptive to criticism of all sorts. Some of it is very useful and has caused us to change our mind about things. I come back to our consultation papers. I made the point to you that we are proud of the fact that they are genuinely responsive to what people say to us. If you compare our definitive guidelines with our consultation guideline, you will see that quite significant changes have been made to every guideline, because we listen to what people say.

Q44 Chair: If the evidence changes, I change my opinion.

Lord Justice Treacy: Yes.



Chair: Fair enough.

Q45 Alex Chalk: Can I pick up a point that Mr Davies made about the role of Government? You made it quite clear that the Government do not intrude and that if they did they would be rebuffed, but I want to understand the thought process that goes into setting the sentence range. I will give you a clear example. Parliament has indicated that the maximum penalty for assault occasioning actual bodily harm, contrary to section 47, should be five years' imprisonment. Admittedly, it said that back in 1861; none the less, that was the will of Parliament. Yet when you go to the Sentencing Council's guideline for that, it says that the offence range should be from a fine up to three years' custody. Of course, it is very careful to say that if you have enough aggravating features you can go outside the guideline. None the less, the clear message coming from the Sentencing Council is that the range should be from a fine up to three years. Parliament, of course, said, "No, it is bigger than that. It should be five years." Is there a danger that the Sentencing Council is, if not defying the will of Parliament, arrogating too great a power to itself, effectively, to bring down the maximum sentence?

Lord Justice Treacy: I do not think that we are defying the will of Parliament. We set our ranges in relation to assault, in particular, by reference to a study of what existing sentence practice was. We had taken the decision, after consideration; that we did not want to signal an increase in sentencing levels for assault and were content to work within the research done, which showed us what the general range of sentences for specific assault offences was.

The position on section 47 assault, which is assault occasioning actual bodily harm, is that it has the same maximum as the section 20 offence, which can encompass causing grievous bodily harm—really serious bodily injury. It lacks the element of an intention to cause really serious harm; none the less, in terms of harm actually caused, it is very serious for the victim. It has always been recognised within the system that somebody convicted of a section 20 offence is likely to be punished more severely than somebody convicted of a section 47 offence, because that is set at a lower level of harm done. It is perhaps anomalous that there is the same level of sentencing maximum set by Parliament for those two offences.

Q46 Alex Chalk: You say that it is anomalous based on how, over the past century, the courts have decided to sentence under section 20 and section 47. Playing devil's advocate for a second, when the Sentencing Council comes in, should it not be saying, "Hang on. What did Parliament say, regardless of how the judges have interpreted it over time? Therefore, we say that the sentencing ranges should be the same for both." For section 20 the range is up to four years, whereas for section 47 it is three, but that is not what Parliament indicated.

Lord Justice Treacy: Parliament indicated a maximum, which is meant to cater for the worst imaginable case, committed by the worst imaginable person. That is right at the very top end, as I might put it. It is not the typical case.

The fact is that these sentencing ranges have developed. We took the decision that in relation to assault they did not need changing. We have not taken that decision in relation to other types of offence. For example, in relation to sexual offending, where multiple rapes have been committed, the maximum under the old sentencing guideline—the Sentencing Guidelines Council's guideline—was 15 years, for what that guideline

expressed to be “a campaign of rape”. We have moved that up from 15 to 20 years. In fact, sentencing levels for serious, repetitious sexual crime have gone beyond the 20 years, in appropriate cases. Using the guideline as a starting point, a series of Court of Appeal decisions have gone beyond that.

There are some guidelines in existence where we go up to the maximum. That for causing death by dangerous driving, which is one that we inherited but would be extremely unlikely to change, takes the sentencing level right up to 14 years. The reason for that is that in the last 20 years sentencing for causing death by dangerous driving has gone up from five years to 10 years and then to 14 years. It has been the clear will of Parliament to raise the maximum, because it is an offence that the public regard much more seriously than they did in the past. In response to those sorts of indications, Parliament raised the level of the maximum sentence.

Similarly, two or three years ago you legislated to raise the maximum sentence for causing death with a dog dangerously out of control. The maximum went up from two years to 14 years. The guideline we have brought out, which comes into force very shortly, takes the sentencing levels right up to the maximum. We saw it as analogous with the motoring offences. Can I use that as an example of where not getting a heads-up from Government is harmful? This is at a tangent, but it may be of interest to you. When we brought out our original dangerous dogs guideline, in which the maximum was two years, we had made inquiries as to whether any legislation was being contemplated. We spent time and resource and brought out a guideline in relation to dangerous dogs offences. Within months of its coming out, the legislation I have just referred to, raising the maximum sevenfold, was brought out. In effect, the work we had done was wasted. It is important that we have good communication with Government, to know what their plans are.

Chair: That is very helpful.

Q47 Alberto Costa: Can I turn to the council’s engagement with Parliament—specifically, its engagement with this Committee? Are you satisfied with the present engagement that the council has with the Justice Committee, or would you like to see improvements made to that relationship?

Lord Justice Treacy: We have improved the relationship. At the very outset, I mentioned the way in which our staffs have liaised in order to ease the process of receiving representations from you in response to our consultation papers. That has been much improved and has assisted both of us. It has been very helpful. I have had a couple of meetings with the Chair, since he took over as Chair, and I have had a meeting with Mr Davies. I have met other MPs with an interest in the criminal justice system who have asked to meet me. I have been happy to make time to do so, to talk about our work or matters that are of particular interest to them.

We want to have a good relationship with you, and I believe that we have one. Before some of you became Members of Parliament, towards the end of the old Parliament, we held an event here, sponsored by the old Justice Committee, so that we could explain ourselves to Members of Parliament. We set aside an afternoon and had some video presentations. A number of members of the council attended, and we invited parliamentarians from both Houses to join us. We were very grateful to Sir Alan Beith and his staff, who enabled us to hold such an event. I have mentioned to the Chair that we



would like to do a similar event with the new parliamentary intake, because we keep an eye on matters that are of interest to parliamentarians. It is clear that you very often get communications from your constituents relating to the outcomes of sentencing in cases in their locality. Offences involving fatalities caused by motor cars feature very high on the list of concerns. We are very anxious to demystify and explain how guidelines work. Increasingly, as the Sentencing Council's work has become more widely known, it is referenced in comments after sentences in particular cases, not always with a full understanding of the role of the guidelines or of the Sentencing Council.

We would like to do another piece of work in Parliament, with the help of your Committee. I have to say that on the first occasion we were a little disappointed with the turnout and the nature of the turnout. We were hoping, perhaps, for more of our critics to turn up, or those who had serious questions about our work or challenges to make to it, but we did not see many of them. A lot of it was preaching to the converted. I would rather have attempted to explain ourselves to those—perhaps like Mr Davies—who are not quite in the converted camp.

Q48 Chair: That is a fair point. You are making a good stab at it today, Lord Justice Treacy. It is something the Committee would be interested in taking forward. Perhaps one of the things that will get interest is topicality. As you have a number of quite important and potentially headline-catching pieces of work in the coming year, hanging those together may get appetites whetted.

Lord Justice Treacy: It may be a good time to talk about our recent work.

Chair: Indeed. I am sure that our staffs can liaise on that.

Q49 Marie Rimmer: Good morning. What does the Sentencing Council's monitoring of the impact of sentencing guidelines indicate to you about the extent to which lack of maturity is considered as a factor in sentencing 18 to 25-year-olds? You will have heard of the research in many reports about this. Do you have any data you can help us with?

Lord Justice Treacy: Yes. In the Crown court sentencing survey, which relates only to the Crown court of course, there will be data relating to the factor of lack of maturity. We know that it is a topic of interest to you currently and we are quite happy to share with you the data we have. I have to say that our examination of the responses to the Crown court sentencing survey has not shown any particular difficulty in understanding the concept of lack of maturity.

I would like to go on from that. We have been doing a large piece of work on youth sentencing. Lack of maturity is clearly built into the whole youth sentencing process. There is a very strong recognition that those under 18 are in a different position from adults, but it would be wrong to take the view that once somebody goes through the 18-year barrier, you stop thinking about lack of maturity. Particularly in the age range between 18 and 24, it is probably important that the court still bears in mind—to a lesser extent, but to some extent none the less—that people develop at different rates, in terms of maturing, and that there will be some carry-over from the approach when they were youths. We have done some specific work on lack of maturity in relation to those under 18. We have not done it on those over 18, because the Crown court sentencing survey did not throw up any pointers to show that that was a point of particular difficulty.

Q50 Marie Rimmer: A number of reports have come out—in particular, Lord Harris’s report—that seem quite different from what you are saying. Have you considered that?

Lord Justice Treacy: Personally, I have not considered that. If your work points up something that you think is worthy of consideration by the council, we will take that on board and go to it.

Q51 Marie Rimmer: There are also the inherent neurological deficits that have occurred. When some young people have been sentenced, those deficits do not appear to have been taken into consideration. Do you do any work on that kind of issue?

Lord Justice Treacy: No, we have not done any specific work on that. A court sentencing an offender should have before it a range of reports. The first is the pre-sentence report from the probation officer or the social worker concerned. If there is any question of the sort of deficit you are referring to, one would expect there also to be a report from an accredited psychologist, who will have investigated those matters. In my experience as a judge, defence advocates are not slow to pick up on that sort of issue, where it is relevant to sentencing, and to ensure that the court has appropriate materials before it to enable it to assess the position. Clearly, those reports have a bearing for the judge when looking at culpability and the responsibility of the offender concerned.

Q52 Alberto Costa: Could I go back for a moment to engagement with Parliament—specifically, with this Committee? I note that the council does not routinely make submissions to the Committee. I wonder whether the council would take up the opportunity of making relevant submissions. For example, we have inquiries on the role on the magistracy, as well as young offenders. What would your view be about submitting relevant evidence to the Committee?

Lord Justice Treacy: I do not think we would submit evidence to you on the issue of the role of the magistracy. That is some way outside the remit of the Sentencing Council, which is primarily concerned with the guidelines for sentencing. I know that the senior judiciary have responded to you. Indeed, I was part of that process, having input to the overall submission that was made. As I said—I do not want to weary the theme unnecessarily—we are resource-limited and we have to concentrate on what we can use our staff and our money for. We will respond to you where appropriate and where we see it as within our remit. For example, the role of the magistracy is not something we would contemplate responding on. We have to target what work we do.

Q53 Chair: Would that vary if there were an inquiry that related specifically to sentencing in some matter?

Lord Justice Treacy: Yes, of course it would.

Q54 Chair: You look at the terms of reference.

Lord Justice Treacy: We look at the terms of reference. There is a hybrid stage. Recently, you investigated the criminal charge and made certain recommendations. You may recall that, although the Sentencing Council as a body did not respond, in my personal capacity as chair but drawing on information that had come to the council, I submitted a response, part of which you were kind enough to quote in your final paper.

Q55 Chair: Absolutely. It was very powerful evidence. Perhaps that is a constructive and cost-effective way forward.

Lord Justice Treacy: Yes.

Q56 Philip Davies: Can I raise the issue of the differing treatment of men and women in the criminal justice system when it comes to sentencing? According to the Ministry of Justice's figures, in every single category of offence—every single one—a man is more likely than a woman to be sent to prison for committing the same offence. In some cases, there is a huge discrepancy between the two. It seems to boil down to the sentencing guidelines around the impact on dependants making a custodial sentence disproportionate. I wonder what further guidance you gave—or perhaps should give—about the impact on dependants. For example, there are something like 17,000 children who have mothers in prison, but something like 180,000 children who have fathers in prison. What is the difference between those?

I also wonder how it is checked. When somebody says that they have two children or whatever, how do we check that? The Ministry of Justice says that two thirds of women sent to prison have had their kids taken off them already. They may have children, but they are not caring for them. How is that taken into account in your sentencing guidelines? Where do you ask for those things to be considered?

Lord Justice Treacy: The checking is a matter for the individual court. Courts will not simply accept at face value a statement of the sort that you mention. There will usually be a pre-sentence report, which will assess the domestic circumstances of the offender before the court. The court is free to ask for further inquiries to be made, if it wishes to do so. I am confident that there is no question of the court simply accepting at face value a claim for mercy in relation to the fact that an offender is the sole carer for children, for example.

The guidelines we have invite the court to consider as a mitigating factor, where appropriate—I stress “where appropriate”—the fact that an offender is a carer for a dependent relative. It is not simply child-focused; it might relate to a carer for an infirm elderly relative. We have tightened up the guidance from that which previously existed under the Sentencing Guidelines Council. Interestingly, the tightening up of the guidance—the stress on its being the sole carer for a dependent relative—has resulted in this factor being used to mitigate sentence in a smaller proportion of cases.

We recognised and considered the work that was done by the Prison Reform Trust, which produced a paper specifically inviting consideration of the position of mothers, but our guidelines are gender neutral. They do not discriminate between males and females. Where children are concerned, the reality is that a significantly greater proportion of offenders with sole caring responsibilities will be mothers, rather than men. That is a fact of life and of the way in which society is ordered.

Q57 Philip Davies: The issue is really around the phrase “where appropriate” and what is considered appropriate. Surely you cannot believe that somebody can have multiple convictions and keep avoiding being sent to prison just by playing the dependant card. We also have the situation where, in sentences for child cruelty and neglect—child cruelty and neglect—a woman is far less likely to be sent to prison than a man. Surely the dependant argument—they cannot be sent to prison because they have a child to look after—cannot be



applicable in a case of child cruelty, yet that is what is happening in sentencing. What are you doing to deal with these clear discrepancies?

Lord Justice Treacy: We are doing work on child cruelty. We have yet to bring out a guideline. The point you make as to whether there is any place in a guideline of that sort for the dependent relative factor is very valid in relation to that particular guideline. The fact that there are dependent relatives—very often children—is not a get-out-of-jail card.

Q58 Philip Davies: But it is, isn't it?

Lord Justice Treacy: The whole point of it is that it is a relevant factor, where appropriate to the case. If the crime is sufficiently serious, it will not save the carer from going to prison. If, on the other hand, it is finely balanced as to whether or not that person should go to prison, it is a material factor—not so much for the benefit of the offender as for the benefit of the children. Studies show that those whose parents have gone to prison are disadvantaged in later life in very serious ways. It has a very great impact on their lives. They are innocent of the crime. They have the misfortune to have a parent who is an offender. What the court is recognising, in an appropriate case, is that it is in the public interest, where the case is very finely balanced, to give weight to the potential effect on, in particular, vulnerable children or vulnerable elderly persons.

Chair: It has to be for the sentencer in every case, doesn't it?

Q59 Philip Davies: How can it be great for the kids to have a violent serious offender mother back out looking after them? They are hardly great role models, are they? In fact, in their summing-up one of my local judges said, "I have every sympathy for your children, but the biggest burden they labour under is that their mother is a drunken thug." Thankfully, we have a few sensible judges at Bradford Crown court. Surely that is the point. The fact that people have a dependant does not make them an excellent role model and parent to bring up their children.

Lord Justice Treacy: I agree with that. If an offender is of the character described by the judge in Bradford, the factor will not carry any weight. However, if you have somebody who is, for example, an otherwise responsible mother who has become involved in some offence and has not been heavily convicted, there may be something to be said for taking into account the fact that there are two young children, as a balancing factor in making the decision as to whether or not custody should be imposed.

Q60 Philip Davies: I have one very brief question on the guilty plea consultation. There is a principle that a deduction of less than a full third can be given where the evidence in the case is so overwhelming that the defendant had no real choice but to plead guilty. That principle has been upheld by the Court of Appeal. Is it still your intention that people should be given less than a third off their sentence in those circumstances, even if they plead guilty at the earliest opportunity?

Lord Justice Treacy: No. We are proposing a change. Our consultation paper promotes a more streamlined scheme that would take away that particular element, which is in the existing guideline. It is something the membership of the council have had extended debate about. If you read our consultation paper, you will see that we have posed the



opposing arguments in a very balanced way. We have come down with a particular recommendation, but our consultation paper makes it clear that it is a difficult area and that we are inviting responses on it.

Q61 Philip Davies: Why? If somebody is absolutely bang to rights and they have nowhere else to go, why should they get the maximum credit for pleading guilty?

Lord Justice Treacy: Because the proposals under the new guilty plea guideline consultation have tightened up the stage at which an offender can claim the benefit of the maximum reduction of one third. In effect, it requires them to put in that plea on the very first court appearance, relative to the type of case that comes before the court, in order for there to be a degree of certainty for legal advisers to say to their clients, “If you plead guilty on the first appearance, this is what the effect will be.” The benefit of that is seen at present to outweigh the factors that you mentioned. We recognise that there is a genuine debate about that. It is something on which the consultation will assist us greatly.

Q62 Philip Davies: What about whole-life tariffs? When someone commits an offence that warrants a whole-life tariff, not much credit can be given for an early guilty plea at the moment. Will that stay the same?

Lord Justice Treacy: That will stay the same. Since the Lord Chief Justice said in 2005 that an early guilty plea could be a factor in deciding whether to give a whole-life tariff, that has been the law. A more recent Lord Chief Justice approved that statement. The reality is that, when you are in the territory of the whole-life tariff, the question whether or not somebody has tendered an early guilty plea is not a factor of significant weight. It is a factor the court has to have regard to, but if you are in the territory of the sort of case that is going to lead to a whole-life tariff, it will not be a factor that will make the difference. We have 50 people in custody on whole-life tariffs.

Q63 Chair: I understand. I am sure that the Committee will want to respond to the consultation precisely around that point.

Lord Justice Treacy: We very much hope that you will.

Chair: We will.

Lord Justice Treacy: We recognise that the point Mr Davies raised is a particularly difficult one. The early reaction to the consultation paper has shown that it is one about which there will be mixed opinions.

Q64 Chair: That is very helpful. I have no doubt that we will do that. I want to wrap up some things. It has been very helpful to have this session. You have your ambitious programme going forward, which we have outlined. That is set out in the business plan. You have emphasised the way in which you consult on the specific work that is done on the guidelines; our own experience bears that out. Do you consult, or think that it is helpful to consult, with stakeholders on the business plan—on the ongoing programme, perhaps—by saying, “What is your view on what we should be looking at?”

Lord Justice Treacy: We publish our business plan and receive comments on it, although not very many; people do not seem to be very interested in the business plan. The business



plan is devoted largely to our work plan. Since our free resources are limited, once we have paid our staff, there is not much flexibility to do anything very varied. Our staff overheads consume about 70% to 75% of our overall budget. The rest of the free money is spoken for, in reality. We divide the cake between research and analysis; I have told you how much we allocate to that. We have to put aside some for communications. Then there are the other costs of running an organisation such as ours. There is not a great deal of flexibility.

Q65 Chair: Sure. As you told us, the work programme is informed by what is happening. It is not done in isolation, as I understand it.

Lord Justice Treacy: Not at all. We are constantly getting ideas as to what we should be doing.

Q66 Chair: I get that totally. One idea that has been floated, which you personally have supported, is that of a single sentencing code. I know that the Law Commission is doing some work on that.

Lord Justice Treacy: We are enthusiastic supporters of that. The work that Professor Ormerod and the Law Commission are taking forward, and to which we understand parliamentary time will be given, is very important. Criminal justice legislation has been so prolific in the last 20 or 30 years as to overwhelm the judges, who spend very large parts of their time just making sure that they have the technicalities right. They should not be doing that; the technicalities should be clear. Professor Ormerod's work will greatly simplify that aspect. It will save money and provide certainty. We welcome it very much.

Chair: That is very helpful.

Q67 Richard Arkless: As a Scottish MP, I am always very keen to understand the interaction and co-operation between the two jurisdictions. Have you had any discussions with Lord Carloway and the brand-new Scottish Sentencing Council?

Lord Justice Treacy: Yes.

Richard Arkless: Excellent.

Lord Justice Treacy: They were in touch with us before they came into being. I went up and spoke to Scottish judges, who had mixed views about the desirability of a sentencing council—as judges always do. Lord Carloway and his team came down to London and visited us, and our two staffs are in liaison. I am due to go to Scotland in June for a day, again to meet the members of the Scottish council. Yes, we have links. We hope to share experience, in a two-way process.

Q68 Chair: One of the things you emphasise in your report is the role of the Sentencing Council internationally.

Lord Justice Treacy: Yes. We have quite a lot of interest internationally. I have been to Ireland, where the Chief Justice is interested in sentencing guidelines in some form. We get a lot of interest from Asian countries. We have had judges from South Korea and Japan. Judges from Pakistan were very interested in the concept of guidelines and took away a number of examples. We get quite a lot of inquiries from around the world about



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our work and how we go about things. Our model will not be right for every country. The finances will not be available in every country to put into place the sort of model that we have, but we are very happy to share our experience.

Q69 Chair: That is extremely helpful. We have had a very thorough session. Is there anything you feel we have missed out?

Lord Justice Treacy: We have covered everything, haven't we? I am very happy with the range of questions. It has given me an opportunity to respond fully.

Q70 Chair: Thank you very much. I hope that that is the case; it certainly seemed so to us. We are very grateful for your evidence and for the ongoing dialogue—that is probably the best way to look at it—between our Committee and yours.

Alex Chalk: And for the work of the Sentencing Council, which I know is immensely valuable.

Lord Justice Treacy: Thank you.

Chair: That is recognised very much by this Committee. We appreciate your evidence.

Lord Justice Treacy: You are important to us. We try not to be complacent. Bodies like you will help us in that process. Thank you very much.

Chair: Thank you very much.