



Justice Committee

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The Rt Hon Lord Justice Holroyde
Chairman of the Sentencing Council
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Dear Chairman

What next for the sentencing council?

The Justice Committee welcomes the opportunity to contribute to the Sentencing Council's consultation: What next for the sentencing council?

The Committee wishes to congratulate the Sentencing Council on its 10-year anniversary and on its considerable achievements during that time. To have produced 27 definitive guidelines and 145 separate guidelines, each following a rigorous consultation process, represents a major contribution to the criminal justice system. The Sentencing Council has also published valuable research on sentencing practice, including evaluations of the impact of guidelines.

This consultation offers an important opportunity for the Sentencing Council to reflect on how it can fulfil its statutory functions over the next decade. The Committee recognises that the Sentencing Council has, up to this point, primarily focused on producing sentencing guidelines. This should continue to be a core part of the Council's work. However, now that many of the guidelines for high-volume offences have been produced, the Committee recommends that the Council rebalances its priorities so that it can dedicate more resources to evaluating the impact of guidelines, producing research and analysis on sentencing trends and promoting public confidence in sentencing.

The Council should develop a strategic plan for how it could fulfil some of the broader functions that are set out in the Coroners and Justice Act 2009. Developing this capacity may require an increase in the Council's resources. Nevertheless, it would be valuable to develop a strategic plan that could show how the Council could, given the right resources, increase its capacity to deliver on its statutory functions of promoting awareness of sentencing and monitoring the impact of its guidelines.

Improving the quality of information and analysis on sentencing, including the sentencing decision process and on sentencing outcomes, should be a key priority for the Sentencing Council over the next decade. The Committee has raised concerns in the past on the

quality of sentencing data. In 2009, the Justice Committee's report *Sentencing Guidelines and Parliament: building a bridge* concluded: "It is unacceptable that basic information such as what factors led to a particular sentence being imposed in a particular case is not collected and made available".¹ The Committee recommended that the Government "commit to identifying information on sentencing that is crucial and put in place a structured plan to collect and publish this data".² In relation to the Sentencing Council, the Committee was concerned that information collection, analysis and dissemination would turn out to be "peripheral considerations for the Sentencing Council".³

The Transforming Our Justice System Reform Programme represents an important opportunity to dramatically improve the quality of sentencing data. The Sentencing Council should work closely with HMCTS to ensure that every opportunity is being taken to develop the digital means to capture the information that the Council requires to fulfil its statutory functions. For example, HMCTS and the Sentencing Council could develop a digital version of the Crown Court Sentencing Survey, which concluded in 2015.⁴ Improved digital data collection should be able to enhance the Council's ability to carry out the analytical and research functions listed in the consultation: monitoring and evaluating guidelines, local area data and sentencing and non-sentencing factors reports. Finding a reliable digital means of capturing how sentencers use guidelines could be particularly valuable in terms of monitoring and evaluating how the practical impact of guidelines.

More broadly, the Committee recommends that the Sentencing Council develops its capacity to produce and analyse data on sentencing trends in England and Wales. This will have resource implications, but the Committee is concerned that there is limited data available on important issues facing sentencers, for example racial disparities in sentencing. The Sentencing Council's 2020 report, *Investigating the association between an offender's sex and ethnicity and the sentence imposed at the Crown Court for drug offences*, provides an example of the important statistical analysis that the Council can produce.⁵ The Committee would encourage the Council to dedicate more resources to this work. The Committee notes that up to this point the Sentencing Council has not published data on local area sentencing trends, under subsection 129 (1) of the Coroners and Justice Act 2009. The Committee would suggest that such data, although difficult to produce, would be valuable, especially in terms of understanding the impact of guidelines on consistency in sentencing. Enhancing the Council's role in analysing sentencing data could also serve to promote public awareness of sentencing matters and would also help this Committee to scrutinise the Government's approach to sentencing.

The Committee would encourage the Council to expand its capacity to promote awareness of sentencing and the role of its guidelines among stakeholders and the wider public. This Government, in common with its predecessors, has produced a significant number of proposals on sentencing reform. In this session alone, the Commons has debated the Sentencing Bill [HL], the Counter-Terrorism and Sentencing Bill and the Terrorist Offenders (Restriction of Early Release) Act 2020. The Government has recently published its sentencing White Paper, with a Bill to follow in due course. This level of legislative activity makes it especially important that Members of Parliament and the wider public have a good understanding of how sentencing works, the role of the Sentencing Council and sentencing guidelines.

The Sentencing Council's statutory duties suggest that the Council should play a role in

evaluating Government policy and Bills. Section 132 of the Coroners and Justice Act 2009 provides a statutory mechanism whereby the Lord Chancellor can refer a policy proposal or Bill to the Council. The provision outlines that the Council would then evaluate the effect the proposal would have on the resources required for prisons, probation and youth justice services. This power is yet to be used. The Committee would recommend that the Government uses this power, and that this in turn could enable the Council to develop its capacity to inform sentencing policy. When the then Home Secretary, Jack Straw, introduced the Coroners and Justice Act in the Commons, he spoke of the Council providing “independent assessments of the impact of Government proposals on correctional resources”.⁶ In practice, it may be difficult for a quasi-judicial body to perform this watchdog role. Nevertheless, the Committee would suggest that there is considerable merit in the independent and expert Sentencing Council proactively publishing information or analysis on sentencing that is topical and relevant to public debates on sentencing.

The relationship between the Justice Committee and the Sentencing Council is constitutionally significant. The inclusion of the Justice Committee as a statutory consultee in section 118 of the Coroners and Justice Act 2009 was designed to ensure that the House of Commons provided some democratic input into the process of producing sentencing guidelines, as well oversight over the Council’s other statutory functions.⁷ Over the past 10 years, the Justice Committee’s engagement with the Sentencing Council has evolved. It is right to recognise that there are some constitutional tensions in play, not least because the Sentencing Council is, as set out in Professor Bottoms’ 2017 independent review, a quasi-judicial body and that has an impact on the nature of its relationship with the House of Commons.⁸

The Committee notes that the last public evidence session with the chair of the Sentencing Council was on 11 July 2018.⁹ It may help to raise the profile of the Sentencing Council if the chair came to give oral evidence to the Committee on a regular or annual basis. Regular discussions between the chair of the Sentencing Council and the Members of this Committee, through an evidence session, is one way of promoting awareness of sentencing and the work of the Council. If the Sentencing Council dedicates more resources to analysing sentencing data and promoting public confidence then this will provide further opportunities for the Committee to work closely with the Council. The Committee would welcome the Council suggesting particular sentencing issues that emerge from its research to the Committee as potential inquiry topics.¹⁰ The Committee looks forward to working closely with the Council over the decade.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R. Neill', with a large, stylized initial 'R'.

Sir Robert Neill MP
Chair
Justice Committee

¹ Justice Committee, Sentencing Guidelines and Parliament: building a bridge, Sixth Report of Session 2008–09, HC 715 para 84

² Justice Committee, Sentencing Guidelines and Parliament: building a bridge, Sixth Report of Session 2008–09, HC 715 para 84

³ Justice Committee, Sentencing Guidelines and Parliament: building a bridge, Sixth Report of Session 2008–09, HC 715 para 85

⁴ Sentencing Council, [Crown Court Survey](#)

⁵ Sentencing Council, [Investigating the association between an offender's sex and ethnicity and the sentence imposed at the Crown Court for drug offences](#), 2020

⁶ Jack Straw MP [HC Deb 9 January 2009](#), vol 487, col 40

⁷ Maria Eagle MP [HC Deb Public Bill Committee Tuesday 10 March 2009 col 651](#)

⁸ Anthony Bottoms, [The Sentencing Council in 2017](#) para 64

⁹ On 11 July 2018, Lord Justice Treacy, Chair of the Sentencing Council and Steve Wade, Chief Executive of the Sentencing Council, gave evidence to the Committee as part of [the Committee's inquiry into Prison population 2022: planning for the future](#). On 1 March 2016, Lord Justice Treacy gave evidence to [the Committee on the Work of the Sentencing Council](#).

¹⁰ The Criminal Cases Review Commission recently asked the Justice Committee to conduct an inquiry into private prosecutions.