

Prison Reform Trust response to the Sentencing Council

Overarching Guidelines Professional Consultation: Allocation, Offences Taken Into Consideration and Totality

December 2011

The Prison Reform Trust is an independent UK charity working to create a just, humane and effective prison system. We do this by inquiring into the workings of the system; informing prisoners, staff and the wider public; and by influencing Parliament, government and officials towards reform. We welcome the opportunity to make a submission to the Sentencing Council.

ALLOCATION

Q1 Do you think that the structure of the guideline provides sufficient guidance to magistrates to assist them in making consistent, appropriate allocation decisions?

Yes.

It would be helpful for courts to be provided with information periodically to show the national and local picture with regard to allocation decisions. In this way the Council can form a view as to whether the guideline needs to be reviewed and magistrates can be asked to reflect on marked differences from the norm and become better informed as to sentencing outcomes.

Q2 Do you agree with the approach the guideline takes to assessing the suitability of cases for magistrates' court trial and the emphasis it places on taking a balanced initial view?

Yes.

It is important that magistrates look beyond the prosecution version of the facts and consider defence representations. Such good practice should also apply when considering a prosecution argument that a person should be remanded in custody.

Q3 Are there further matters that the guideline might usefully cover?

The guideline should make specific reference to ensuring that vulnerable defendants are able to participate effectively in the court proceedings to which they are subject. Recommendations are contained in *Vulnerable Defendants in the Criminal Courts: a review of provision for adults and children*, published by the Prison Reform Trust in 2008. The report can be found on the Prison Reform Trust website at:
www.prisonreformtrust.org.uk/nok

Q4 Do you agree to the amendment proposed to the introduction of the MCSG?

Yes.

OFFENCES TAKEN INTO CONSIDERATION

Q5 Do you agree with the proposed general principles?

Yes.

Q6 Do you agree with the proposals as to the types of offences that should not be the subject of TICs?

Yes – with the exception of:

“If the TIC constitutes a breach of an earlier sentence.”

This would prohibit any TIC from being accepted if it was committed while someone was subject to a community order. There will be occasions where this will be desirable, but there will also be other situations where it would be heavy handed and bureaucratic, for example if the person had already been dealt with for a breach of that order, or the TIC was committed some years earlier, or was of a minor nature. This should therefore be decided on a case by case basis.

Q7 Do you agree with the proposed procedural safeguards?

Yes.

In addition procedural safeguards should pay attention to the circumstances of individual defendants. This applies particularly to vulnerable defendants (see Q3

above) who may have difficulty understanding the process or responding in a considered fashion to each aspect of its application.

Q8 Do you agree with the proposed approach to the application of TICs?

Yes, but:

See Q3 and 7 above – it is important that the vulnerability of a defendant with learning disabilities, or learning difficulties, or mental illness, is not abused or taken advantage of through the application of an approach which fails to take account of that vulnerability.

Also, children should be afforded particular consideration in terms of offences TIC especially if they were committed when they were 10-14 years old or more than a year ago. Children develop and change rapidly and a crime committed at 11 may have little bearing on the behavior of a 17 year old.

Equally, young adults should be afforded a little more leeway given immaturity and impulsiveness.

TOTALITY

Q9 Do you agree with this definition of totality?

Yes.

As with consideration of previous convictions, the Prison Reform Trust believes that such decisions should be taken by a judge, having heard all the evidence in the individual case, rather than by the application of a mandatory sentence for repeat offences.

Q10 Do you agree with the proposed general principles of totality?

Yes, the overall sentence must be just and proportionate and the 'stand back and look' test should be applied towards the end of the sentencing process in all cases.

Q11 Do you agree with the circumstances in which concurrent and consecutive sentences are likely to be passed, recognising there is no inflexible rule?

Yes, but in addition, the Prison Reform Trust would like more thought to be given to cases where the same or similar mitigating factors apply to different sets of offences. In such cases a concurrent sentence may be appropriate.

Q12 Do you agree with the guidance provided on ensuring the sentence is just and appropriate?

Yes.

Q13 Should the guideline provide further detail on how sentences are adjusted in relation to totality, and if so how might this be done?

This may be something that could be monitored over the next year or two. A supplement to the guidelines could then be produced setting out examples of approaches that can be taken in different circumstances to reduce the length of the aggregate sentence. During this period it would be helpful to take into account the views of organizations that can reflect the views of vulnerable defendants.

Q14 Are there further specific considerations that the guideline could usefully cover relating to the sentencing of multiple offences?

Breach of court orders and post-custody licences.

GENERAL CONSIDERATIONS

Q15 Are there further ways in which you think victims can or should be considered, in relation to:

(a) allocation?

(b) offences taken into consideration?

(c) totality?

The Sentencing Council should be fully informed of the principles and practice guidance for restorative justice and, in particular, Victim Offender Conferencing. It should be aware of referral routes before conviction and post conviction, by

order of the Court. Guidelines from the Sentencing Council should include guidance as to the appropriate use of restorative justice in cases, for example, where there is an early guilty plea and an identifiable victim. In such cases the court should take steps to find out whether the victim would wish to take part in Victim Offender Conferencing and whether provision exists in the area, prior to arranging for the process to be explained to the offender.

Q16 Are there any equality or diversity matters that the Council should consider, in relation to:

(a) allocation?

See answer to question 3.

(b) offences taken into consideration?

See answers to questions 7 and 8.

(c) totality?

(please provide evidence where possible)

See answer to question 11.

Q17 Are there any further comments you wish to make?

The Sentencing Council should arrange a training event with the Restorative Justice Council to develop members' awareness of Victim Offender Conferencing and its implications for magistrates and judges.