

**SENTENCING COMMISSION  
WORKING GROUP**

**A SUMMARY OF RESPONSES TO THE  
SENTENCING COMMISSION  
WORKING GROUP'S CONSULTATION  
PAPER**

July 2008

**SENTENCING COMMISSION WORKING GROUP**  
**SUMMARY OF RESPONSES TO CONSULTATION**

**Overview**

'A Structured Sentencing Framework and Sentencing Commission: A consultation' was published by the Sentencing Commission Working Group on 31 March 2008.

The consultation was available in hard copy and on the internet.

Throughout March the Chairman of the Working Group visited 10 Crown Court centres to take views and encourage responses to the consultation. The Working Group held a stakeholder conference on 30 April to help inform responses to the consultation.

**Responses Received**

**229** responses were received by the 9th June 2008 (the closing date was 2nd June 2008).

The responses primarily came from the judiciary with 203 responses. Of the judicial responses, nine were from organisations representing sentencers (e.g. The Magistrates' Association, The Council of HM Circuit Judges); 27 responses representing the collective views of judges in specific Crown Courts, 19 were substantive comments from individual Crown and High Court judges and 40 from Circuit Judges who wanted to record their support for the response from the Council of HM Circuit Judges. There were 108 responses from magistrates, 103 of which were from magistrates in Northamptonshire.

Of the 26 non-judicial responses, 10 were from academics and 15 were from criminal justice and non-governmental organisations (e.g. the Bar Council, the Prison Reform Trust).

**Responses to Specific Questions**

Not all respondents addressed all 25 questions in the consultation paper. Moreover, a number of the questions did not lend themselves to a straight forward 'yes' or 'no' answer and some respondents offered comments on the issues raised rather than express a definitive view on a given question. In these circumstances, this summary of responses does not contain a statistical analysis of the responses to each of the questions. The summary instead gives an indication of the balance of views held by respondents and records the main arguments given in support of, or opposition to, the various points raised in the questions.

## **General Responses**

Most responses, across all types of respondent, agreed with the Working Group's conclusion that a "sentencing grid" as used in some US states would not be appropriate for England and Wales. No response advocated the adoption of a US model.

## **Judicial**

The responses from all levels of the judiciary were broadly consistent on the main points.

Judicial respondents expressed concern that the Working Group's review was based on a desire to limit the use of custody in order to reduce the costs of providing prison places. There was a widespread belief amongst judicial respondents that a structured sentencing system would mean resources would be prioritised over the justness of an individual sentence. There was also a widely held view that a structured sentencing system, especially if an attempt was made to define or quantify the weight given to previous convictions or aggravating and mitigating factors would both constrain judicial discretion and potentially increase the prison population. Many judges felt that sentencing was "an art not a science" and was not amenable to prescriptive guidelines.

Many judicial responses highlighted increasing amounts and frequency of criminal justice legislation impacting on sentencing. It was often said that the sentencing framework was already overly complex and that what was needed was a moratorium on further change. In connection with this view, many judicial responses drew attention to the relatively recent establishment of the Sentencing Guidelines Council (SGC) and argued that the SGC should be allowed to continue with its work and that no decisions should be taken on further reforms until the current system had bedded down. Many respondents drew attention to the considerable achievements of the SGC and the Sentencing Advisory Panel (SAP).

Some judges, including the senior judiciary, did support further guidance on previous convictions; some suggested this would especially benefit recorders and new judges. Those who supported this view thought that the guidance could assist with consistency of approach and were clear that the guidance should be narrative and should not seek to quantify the weight given to previous convictions.

Most judges who expressed a view did not consider it necessary to strengthen the test which requires a sentencer to "have regard to" the sentencing guidelines. Almost all sentencers agreed that more data would be useful in both drafting guidelines and determining whether they were being followed. Several respondents expressed concern about the costs of collecting data in terms of IT systems and court time.

A number of judges wrote in support of the comments made by the Council of HM Circuit Judges. The Council's response emphasised a need to preserve judicial discretion, registered opposition to the creation of a Sentencing Commission and support for the current guidelines system. They expressed a belief that statistics were already available to predict the prison population. Finally, the Council did not believe a framework could be devised and, even if it could, it would remain a blunt instrument resulting in injustice.

Magistrates pointed out the existence of their comprehensive guidance meant that they already operated a structured sentencing framework. They advocated allowing those guidelines to settle in before making further changes. Some magistrates and the Magistrates' Association welcomed the prospect of further narrative guidance on previous convictions but warned against any attempt to produce a mathematical formula.

The responses from magistrates from Northamptonshire emphasised many of the same points as those set out above, as well as support for the response from Northampton Crown Court. Whilst there were some variations of emphasis the response from Northamptonshire magistrates made essentially the same points, that is; opposition to the proposals in the consultation, a need for a period of stability avoiding further changes to sentencing and a concern that structured sentencing would lead to a fettering of judicial discretion and independence and ultimately to injustice.

On wider issues, a number of judges suggested better predictability of the prison population could be obtained by looking more closely factors outside of sentencing notably at policing activity, crime patterns and demographic changes. A number of judges, including some responses on behalf of Crown Courts expressed a view that too many people were in prison and that there should be a review of maximum and mandatory minimum sentences.

## **Academics**

Responses from academics tended to be more divergent than those from the judiciary although there were a number of areas of agreement in the responses.

There was a widespread and strong belief amongst the academic responses that more data was required on sentencing. Most also agreed that there should be a comprehensive set of guidelines. There was some support for a scale of offence severity but several cautioned that such a scale could be difficult to construct. There was a majority in favour of narrative guidance on previous convictions.

Most academics argued that guidelines should be more presumptive although three argued they should not.

Most argued that the roles of the SAP and SGC could be combined but two did not. Some responses called for a wider review of the role of the SAP and SGC.

Opinion was divided on the membership of a sentencing body. Some favoured a judicial chair and judicial majority others suggested a balanced membership and a chair of either judicial or lay background. A third group took the view that the chair should be a lay member and lay members should be the majority on the body. One response argued judges should not be involved at all in such a body.

Opinion was also divided on Parliamentary approval of the guidelines with some strongly opposed and others supporting some democratic review. There was no support for Parliament being able to amend the detail of guidelines.

On a wider role for a sentencing body, three academics thought the body should have no role outside of sentencing. Most thought a body could take on this role subject to being properly resourced. Some suggested the role could be expanded further to include such things as promotion of community sentences and educating the public and on sentencing.

### **Criminal Justice and Non-Governmental Organisations**

This was the most diverse group of responses and opinion was divided on a number of issues although no responses supported a US-style grid.

There was a divide on the nature of guidelines. The Bar, solicitors and Justices' Clerks were in favour of retaining their advisory nature. The CPS and Nacro supported a stronger requirement on judges to follow guidelines unless it was not in the public interest to do so.

There was widespread support for more data on sentencing.

There was some support amongst these organisations for a sentencing body assessing the impact on correctional services of Government legislation and policy. The Law Society, Her Majesty's Inspector of Prisons and the Youth Justice Board supported such a role although some said it could be carried out by a separate body. The Justices' Clerks' Society took the opposite view. The Bar Council considered it would be dangerous for a body overseeing sentencing to become involved in the more politicised role of assessing Government policies.

Nacro supported Parliamentary approval for guidelines and the Law Society said it could give guidelines more gravitas.

The Youth Justice Board welcomed the extension of structured sentencing to under 18s and supported a proposal for a separate working group to consider the specific issues of juvenile sentencing. Victim Support said that the consequences of a sentence should be clearer to the victims. The Prison Reform Trust argued it should be clear in a sentencing framework that prison was reserved for only the most serious, violent and sexual offenders. The Police Federation opposed any linking of sentencing to resources and called for more prisons to be built.

## **Other comments and suggestions**

In addition to responding to the issues raised directly in the Consultation Paper, a number of those who sent in their comments raised other ideas and proposals.

As noted above, a number of responses advocated either a reduction in the amount of new legislation, or a complete moratorium. Some went on to suggest reviewing the whole approach to sentencing, while others limited their proposed review to reassessing past legislation, such as the Criminal Justice Act 2003, with a view to repealing those aspects that may have increased the prison population. Some suggested new legislation, specifically to reduce maximum sentences.

Others preferred methods of reducing the demand on correctional services, in particular on prisons. Some questioned whether all of those currently in prison really ought to be there. They called for a review of the use of prison, when it was appropriate and for whom. Some drew particular attention to foreign national prisoners, women offenders and the level of custodial remands.

Some of those who responded proposed that the number of indeterminate and discretionary life sentences be reduced and in particular that there should be more investment in community penalties, and the Probation Service to make these penalties more effective and increase public confidence in them. It was also suggested that Probation Officers be given more discretion regarding recall to prison for breaches.

There was support for sentences tailored more individually to the offender with a greater focus on health, reform and rehabilitation in order to reduce reoffending and therefore the long-term demand on the correctional services. In particular, some respondents argued more should be done to address the issues of offenders with mental health problems. Some argued in favour of better funding for prison courses so that more prisoners become eligible for parole, and more support, both financial and political, for the Parole Board and its activities.

Some responses discussed the role of the different partners in the criminal justice system. They argued that the training and efficiency of all of partners, such as police, prosecutors and other advocates, was very important and if improved would have a beneficial effect. Some suggested a specific role for these groups, for example requiring prosecutors to point out relevant guidelines to a case to help, although not to direct, the sentencer. Other aspects of training, for example to Magistrates on the use of bail, beyond the exemptions in the 1976 Act, were also raised.

## **List of Respondents**

Where a combined response was received from judges at a Crown Court centre, the name of the Court is listed rather than the individual judges.

Ian Addis  
Gill Ager  
HHJ Ainley  
D A Alabaster  
Mrs Milcie Aldersley  
Dr Dennis Allsopp  
HHJ Armstrong  
HHJ Ashurst  
Prof Andrew Ashworth  
John A Baker  
The Bar Council  
Vivienne Barnard  
A E Barrett  
M D Bate  
Mr Justice Bean  
Christine Bennett  
Pamela Birch  
Mr M Bishop  
HHJ Blackett  
Hazel J Bland  
Professor Sir Anthony Bottoms  
HHJ Broderick  
Elizabeth Bromage  
Diane F Brown  
HHJ Burn  
Pauline Callow  
Mr Justice Calvert-Smith  
Criminal Bar Association  
Canterbury Crown Ct  
Teresa Cave  
Central Criminal Ct  
Jane Charlton-Jones JP  
Chelmsford Crown Ct  
Chester Crown Ct  
Mrs Elizabeth Clayton  
Sally Clubley  
D M Coleman  
Gayl Coleridge  
Sandi Coles  
Louise Cook  
Pamela Cook  
Mr Justice Cooke  
HHJ Cottle  
Council of Circuit Judges  
Criminal Justice Alliance  
HHJ Cripps

Crown Prosecution Service  
D H M Dalrymple  
Sally Davies  
Mrs L A Dean  
Ronald Dean  
Louisa Deas  
Janet Denman  
Derby Crown Ct  
Dr MK Dhami  
Association of District Judges  
Charles Dixey  
Ian L Donald  
Terri Dorman  
Prof David Downes  
R M Dunkley  
HHJ Mark Eades  
Jane Eayrs  
Andrew Edwards  
Mrs S L Edwards  
Alistair Egglestone  
HHJ Elwen  
Mrs P J Escombe  
Angela M Evans  
HHJ Everard  
John Fairs JP  
David Faulkner  
P J Fleming  
B N Gentry  
HHJ Glenn  
Mary Gould  
HHJ Richard Griffith-Jones  
HHJ Grobel  
Mr Justice Gross  
Guildford Crown Ct  
HHJ Gullick  
Mrs Hilary Gupta  
HHJ Julian Hall  
HHJ Hammond  
Bridget Harris  
Harrow Crown Ct  
HHJ Heath  
Prof Carol Hedderman  
Her Majesty's Chief Inspector of Prisons  
Mrs M A Herrod  
B Hill  
David R Hill  
M S Hill  
HHJ Holt  
Prof Mike Hough  
David Hudson  
Prof Neil Hutton

HHJ Inman  
Isleworth Crown Ct  
R A Jeffrey  
Mr J F Jelley  
David Johnstone  
P R Joyce JP  
Justice  
Justices' Clerks' Society  
HHJ Karu  
Dr Barbara Kelso  
Mrs C B King  
Mr A J Kirkbride  
John E Kirkham  
Terry Knights  
Anne K Konig  
HHJ Lakin  
The Law Society  
S E Leach  
Alan M Lee  
Lewes/Hove/Brighton Crown Cts  
Liverpool Crown Ct  
Christopher Livesley  
Anne Lowe  
HHJ McCallum  
HHJ McCreath  
HHJ Neil McKittrick  
Magistrates' Association  
Maidstone Crown Ct  
Mrs C S Maltby  
Manchester Crown Ct (Crown Sq)  
Manchester Crown Ct (Minshull St)  
R G H Matthews  
John Maybank  
Mrs M A Mayo  
Penelope Menzies  
R E Mills  
HHJ Christopher Mitchell  
HHJ Fergus Mitchell  
HHJ Tony Mitchell  
Rosie Moffat  
HHJ Morris  
G B Morrison  
Nicholas Moss  
Nacro  
NAPO  
National Bench Chairmen's Forum  
New Zealand Law Commission  
Newcastle Crown Ct  
Deirdre Newham  
Susan Nicholas  
N. Yorks Magistrates Assoc Executive Cmte

Northampton Crown Ct  
Northants Mags Assoc Executive Cmte  
Norwich Crown Ct  
HHJ O'Brien  
HHJ O'Malley  
Elizabeth O'Neil  
HHJ Robert Orme  
Nicola Padfield  
Priscilla Padley  
B.R. Patel  
G A Paul JP  
PCS  
HHJ Pearce-Higgins  
HHJ Pert  
HHJ Philpott  
HHJ Picton  
Police Federation  
Portsmouth Crown Ct  
HHJ Pratt  
Preston Crown Ct  
Prison Reform Trust  
K W Pritchard  
Rachael Provok JP  
Rosemary Read  
Reading Crown Ct  
HHJ Reddihough  
HHJ Reid  
Anita D Reynolds  
HHJ Richardson  
Peter Riley  
HHJ Roberts  
Mrs S L Roberts  
Monica Roden  
HHJ Rundell  
Mrs Valerie Russell  
St Albans Crown Ct  
Salisbury Crown Ct  
HH John Samuels  
M W Sawford  
Mrs D Sayer  
S G Schanschieff  
Johanna Senior  
Senior Criminal Judiciary (& Rose Cmte)  
Sentencing Advisory Panel  
Gordon Sergent-Chalmers  
Sue Sharock  
Susan W Shaw  
HHJ Hayward Smith  
Michael Smythe  
Snaresbrook Crown Ct  
Southwark Crown Ct

Stafford Crown Court  
Ronald J Steele  
HHJ John Tanzer  
D A Thomas  
HHJ Ticehurst  
Mr Justice Treacy  
Peter Turner  
HHJ Tyrer  
Victim Support  
Wales (North) Crown Cts  
Jane Waller  
D W Ward  
HHJ Warner  
John Weddle  
HHJ Welchman  
Diana Whittaker  
Ursula Wide  
HHJ Wiggs  
HHJ Wolstenholme  
Wolverhampton Crown Ct  
Woodgreen Crown Ct  
Sally Woodward  
John Woollett  
HHJ Andrew Woolman  
Youth Justice Board

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