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Dear Consultee

Priority list of areas for sentencing guidelines

You are invited, **by 20 December 2010**, to highlight any areas of sentencing which you would like the judicial Sentencing Working Group to consider for inclusion in a priority list of areas in which it is considered the courts should issue new or additional sentencing guidelines or guidance.

As the Lord Chief Justice set out in a speech on 6 September¹ he has been considering how the system by which judges are provided with guidance and information on sentencing could be enhanced. Part of this is to provide more guidance where it is needed.

The existing system

The maximum (and sometimes minimum) sentences for crimes are set by the legislature. That means that from 12 April this year they are the responsibility of the Assembly, which is also responsible for reform of the criminal law and for creating new offences if necessary.

Judges sentence within that framework and, also within it, have additional support from sentencing guidelines issued by the Court of Appeal in the cases which come before it. These are disseminated via the Judicial Studies Board (JSB) website² which can be freely accessed by members of the legal profession and the public as well as the judiciary. The Judicial Studies Board also regularly holds lectures and workshops for judges on various aspects of sentencing law and practice.

The sentence for an individual offender in court is set by the judge hearing the case. The judge will take into account the law, guidelines, expert reports and all the circumstances, to decide what will be the correct sentence for this offender, who committed this offence against this victim, in this situation. The circumstances of each offence can vary so greatly that the law has always permitted a judge to deviate

¹The speech can be found at http://www.courtsni.gov.uk/en-GB/Publications/Press_and_Media/LCJ_SpeechOpeningDayTerm2010.htm

² The JSB website is at www.jsbni.com

from a sentencing guideline if the guideline it is inappropriate in that case, as long as the judge does not move beyond the maximum or minimum sentence set by the legislature.

Last October the Lord Chief Justice asked a judicial Sentencing Working Group to examine the existing arrangements for providing guidance and information for judges and to make recommendations for ways in which it could be enhanced. The Group's report to the Lord Chief Justice is available on the NI Courts and Tribunals Service website³.

The new system

The Sentencing Working Group identified a weakness in the existing system in that the Court of Appeal can only issue guidelines in those cases coming before it. The Court of Appeal may recognise that a new guideline is required in a particular area, but cannot address it if a suitable case does not arise. A new guideline may be required because an offence has been created recently, or because social conditions in Northern Ireland have changed since the last guideline was issued. It has been difficult to find an opportunity to produce some guidelines. For example, some offences come before the courts very rarely. Others, which are prosecuted before the Magistrates' Courts, are appealed to the County Court and do not come before the Court of Appeal.

The Lord Chief Justice has accepted the Sentencing Working Group's recommendation that a new system needs to be put in place to address this problem. This will enable guidance to be prepared more readily, although that will take careful research and consideration on each occasion. Recognising that there is already guidance in many areas and that new guidance will take time to prepare, the Lord Chief Justice has agreed with the Working Group's view that a list of priority areas for sentencing guidance should be drawn up. The Lord Chief Justice has consulted his judicial colleagues as to the offences or groups of offences that should be on that list. In addition he is already aware, from his engagements with groups and individuals across Northern Ireland, of areas which may need attention. He would now like to hear from interested groups and individuals within civic society as to what offences they consider might require further guidance.

After considering all of the representations, the Lord Chief Justice will draw up his priority list of areas for guidance. **Clearly this will be finite and, inevitably, priority will be given to offences which are deemed to be, for instance, the most serious and most prevalent.** He will consider which areas within the list may best be addressed by producing a guideline judgment or which would benefit more from the commissioning of a JSB workshop for judges. As mentioned, it may be that

³ The Report may be found at http://www.courtsni.gov.uk/en-GB/Publications/Policy_and_Policy_Development/p_ppd_LCJSentencingReport.htm

sufficient guidance is already in place in some areas suggested. The list will be reviewed periodically.

Once the priority list is finalised the courts will identify appropriate cases in which to develop guidelines. Support will then be provided to the judges (at first instance or on appeal) who are hearing those cases, so that they can produce written judgments. In the Court of Appeal, those will be guideline cases. The judgments of lower courts will be of less authority but will still provide useful guidance for future sentences. The fact that an individual offender's case is used as a guideline or guidance decision will not mean that he or she will be treated any differently to any other offender. It will not increase or decrease the sentence in that case. The guideline and guidance judgments will be published on the JSB website.

Provisional priority list

The Lord Chief Justice's provisional list of areas to cover is:

1. Domestic violence
2. Serious sexual offences
3. People trafficking
4. Attacks on public workers and vulnerable people
5. Duty evasion and smuggling
6. Environmental crime

The consultation

In responding to this consultation, please remember that the judiciary cannot create new offences or reform the law on any crimes or criminal procedure. That is a matter for the Assembly, as is any increase or decrease in the maximum or minimum sentence set out in statute for a particular offence. Similarly, we cannot investigate any individual judge's decision in a particular case. Furthermore the question of whether a Sentencing Guidelines Council or other sentencing framework mechanism should be created is also one for the Assembly. It is understood that the Minister for Justice is planning to consult on this later this year. The Lord Chief Justice's proposals are independent of that consultation.

The scope of this consultation is to suggest areas of sentencing in which new guidance is needed for the judiciary. You may find it helpful to frame your response around the following questions:

1. What are the offences, or groups of offences, in which you believe it would be useful for the judiciary to have access to new or revised sentencing guidance?
2. What are the reasons for your suggestions? These might include issues such as the prevalence of the crime, impact on victims, changes in society, etc.

3. Are you aware of any guidelines on those offences which are already available? Are they insufficient in any way? (This question is mainly aimed at those who are familiar with the law and practice of sentencing.)

Please respond to Beverly Hall, The Consultation Co-ordinator, Office of the Lord Chief Justice, Royal Courts of Justice, Chichester Street, Belfast BT1 3JF, beverlyhall@courtsni.gov.uk, 028 9072 5918 on or before 20 December 2010.

We wish to hear from all those with a view including representatives of groups within the nine equality categories about issues which specifically affect them. If you or members of your group would like a copy of this letter in a different language or format, or wish to discuss any special communication needs in providing your response, please do not hesitate to contact Beverly Hall using the details above.

We intend to publish a response to this consultation. This will include a summary of all responses received. In line with freedom of information requirements, we cannot automatically guarantee confidentiality of any responses received. If you have particular reasons for wishing to keep your response confidential (for example because you have been the victim of a crime), please state this in your reply or contact me.

Finally, we are currently updating our mailing systems to increase our use of email and it would be appreciated if you could provide an e-mail address to which future consultations may be sent.

Yours sincerely

Joanne McDermott