CBA Response to the Sentencing Council Consultation:

"Changes to the Magistrates' Court Sentencing Guidelines and associated explanatory materials"

8th April 2020

Introduction

1. The CBA represents the views and interests of practising members of the criminal Bar in England and Wales.

2. The CBA's role is to promote and maintain the highest professional standards in the practice of law; to provide professional education and training and assist with continuing professional development; to assist with consultation undertaken in connection with the criminal law or the legal profession; and to promote and represent the professional interests of its members.

3. The CBA is the largest specialist Bar association, with over 3,500 subscribing members; and represents all practitioners in the field of criminal law at the Bar. Most practitioners are in self-employed, private practice, working from sets of Chambers based in major towns and cities throughout the country. The international reputation enjoyed by our Criminal Justice System owes a great deal to the professionalism, commitment and ethical standards of our practitioners. The technical knowledge, skill and quality of advocacy all guarantee the delivery of justice in our courts, ensuring that all persons receive a fair trial and that the adversarial system, which is at the heart of criminal justice in this jurisdiction, is maintained.

Question 4: Do you agree with the proposed change to the Drive whilst disqualified guideline? If not, please provide any alternative suggestions.

4. Yes. The amendment provides greater clarity to sentencing courts and should prevent this common sentencing error from occurring.

5. We would also encourage a reference stressing the importance of the calculation, and consequent period of disqualification, being clearly explained by the sentencing tribunal to the Defendant during sentencing so a Defendant fully understands when the disqualification period ends.

Question 5: Do you agree with the proposed change to the Breach of a community order guideline regarding extending the length of an order? If not, please provide any alternative suggestions.

6. Yes. The proposed amendment better reflects the statutory provisions for breach of a community order. This should minimise the risk of a court imposing an unlawful penalty for the breach of a community order.

Question 6: Do you agree with the proposed change to the Breach of a community order guideline and the Totality guideline regarding committal to the Crown Court? If not, please provide any alternative suggestions.

7. This amendment is welcome and will prevent the administrative difficulty faced by the Crown Court where defendants have been incorrectly committed.

8. However, in the interests of clarity, we do however propose a slight change in wording as shown in italics below:

"Where an offender, in respect of whom a community order made by the Crown Court is in force, is convicted by a magistrates court *for a new offence,* the magistrates court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence.

The magistrates court should only commit the new offence to the Crown Court for sentence if there is a power to do so. If the new offence is summary only, the magistrates court should sentence for the new offence."

Question 7: Do you agree with the proposed changes to the references to the surcharge in the explanatory materials? If not, please provide any alternative suggestions

9. Yes.

Question 8: Do you agree with the proposed change to the guidance on fines for high income offenders in the explanatory materials? If not, please provide any alternative suggestions.

10. The proposed changes to the guidance are appropriate, however, we would recommend that the part of the existing guidance is kept, namely:

"The fine for a first time offender pleading guilty should not exceed 75% of the maximum fine.".

Question 9: Do you agree with the proposed changes to the guidance on totting up disqualifications and exceptional hardship in the explanatory materials? If not, please provide any alternative suggestions.

11. Yes. This amendment provides greater clarity to sentencing courts. Often courts are unsure of how discretionary disqualification interacts with totting up resulting in a significant degree of sentencing disparity and divergence.

12. The proposed changes and the "staged approach" in respect of the consideration of a discretionary disqualification ensures that the guidelines more closely align with the authority of Jones v DPP [2000] 10 WLUK 249.

13. We would invite the removal of the following paragraph from the section on discretionary disqualification, in light of the proposed amendment to the totting up section, as it does not accurately reflect the law as laid down in DPP v Jones:

> "In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on his or her licence that he or she would be liable to a 'totting up' disqualification if further points were imposed. In these circumstances, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies (see 'totting up')."

14. The changes may in practice lead to a greater number of discretionary disqualifications being imposed in lieu of points (where appropriate), but fewer successful exceptional hardship arguments.

15. We would also suggest that it would be useful to include a non-definitive list of examples of exceptional hardship to encourage consistency in sentencing between benches/ district judges.

Question 10: Do you agree to adding a reference to the Equal Treatment Bench Book to relevant pages in the explanatory materials? If not, please provide any alternative suggestions.

16. Yes.

Question 11: Are there any other comments you wish to make on the proposals?

17. No.

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