



Report by the Lord Chief Justice's Sentencing Group

December 2014

Background

This is the second biennial report¹ of the Lord Chief Justice's Sentencing Group². The Sentencing Group was established in 2010 by the Lord Chief Justice with the function to:

- (a) advise the Lord Chief Justice as to topics for his 'Programme of Action on Sentencing';
- (b) consider and advise sentencing guidelines for the Magistrates' Courts in Northern Ireland;
- (c) consider judgments of the Court of Appeal and advise the Judicial Studies Board for Northern Ireland ("JSB") as to their suitability for inclusion on the JSB Sentencing Guidelines and Guidance website;
- (c) consider first instance judgments of the Crown Court and advise the JSB as to their suitability for inclusion on the Sentencing Guidelines and Guidance section of the JSB website;
- (d) liaise with the JSB as to the training of the judiciary on sentencing practice and the dissemination of sentencing guidelines;
- (e) make such other proposals and carry forward such other programmes of action relating to sentencing guidelines and practice as may seem fit to them after consultation of the Lord Chief Justice.

The Sentencing Group meets on a termly basis.

¹ The first report was published in December 2010 and can be accessed at http://www.courtsni.gov.uk/en-GB/Judicial%20Decisions/LCJ-sentence-group/Documents/j_lcjsg_Dec12-report/Sentencing-Group-Report-Dec12.html

² A full list of the members of the Lord Chief Justice's Sentencing Group can be found at Annex A

Membership of the Sentencing Group

Following its initial establishment, the Lord Chief Justice considered the appointment of lay members to the Sentencing Group would enhance the Group's ability to perform its functions. To that end, in 2013, the Lord Chief Justice, in consultation with the Department of Justice, ran two open public competitions to appoint two lay members to the group: one lay member was required to have academic experience in criminal law, criminal procedure or sentencing within the Northern Ireland criminal justice system; the second lay member was required to have a knowledge and understanding of issues facing victims of crime.

In June 2013 the Lord Chief Justice was very pleased to appoint Professor Sally Wheeler of Queen's University, Belfast, as the first lay member on the Group. It has not, however, been possible to appoint a suitable second lay member.

Court of Appeal Sentencing Guidelines

The Sentencing Group periodically reviews new judgments being issued by the Court of Appeal and, where the Group considers that the judgment forms the basis of a sentencing guideline directs the judgment to be published as such on the JSB website.

Since the date of the last report in December 2012 the Group has identified and published 16 new Court of Appeal sentencing guidelines judgments³.

Crown Court Sentencing Guidance

One of the issues raised by the initial Report to the Lord Chief Justice in 2010 was the limited ability of the Court of Appeal to target specific offences for issuing sentencing guidelines (e.g. where the offence has been recently created, or where the offence comes before the Court of Appeal infrequently).

To help combat this problem the Sentencing Group has put in place a procedure whereby local Crown Court offices identify cases which fall within the 'Programme of Action' and where a plea of guilty has been entered. These cases are then transferred to Belfast and placed in the Presiding County Court Judge's list for him to issue a guidance judgment in the Crown Court. This is a comprehensive sentencing judgment giving general guidance to the Crown Court judiciary in relation to sentencing for the given offence. The guidance can then be used as an interim measure pending a suitable case coming before the Court of Appeal allowing formal sentencing guidelines to be issued.

Since December 2012 three such guidance judgments have been issued, namely:

Case	Citation	Keywords	Section
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³ A full list of these judgments, together with keywords, can be found at Annex B

R v Chen, Dempsey and Hinton ⁴	[2012] NICC 26	First instance sentencing remarks – guidance pending Court of Appeal deliberation –trafficking within the United Kingdom for the purposes of sexual exploitation contrary to section 58(1) of the Sexual Offences Act 2003 – controlling activities of another for purposes of prostitution for gain contrary to Article 63 of Sexual Offences (NI) Order 2008 etcetera.	Sexual Offences
R v Kumar	[2013] NICC 13	First instance sentencing remarks – guidance pending Court of Appeal deliberation – carrying dutiable goods with intent to defraud contrary to Section 170 of the Custom & Excise Management Act 1979 – consideration of relevant Sentencing Council (E&W) Guideline and categories.	Theft and Other Dishonest Offences
R v Rymacki and Jankowski	[2013] NICC 20	First instance sentencing remarks – Defendants pleading guilty to offences of selling goods bearing unauthorised trade mark and trading in counterfeit goods – Whether any aggravating or mitigating factors – Whether judge to suspend sentence	Theft and Other Dishonest Offences

Magistrates’ Courts Sentencing Guidelines:

The Sentencing Group’s Magistrates’ Courts Sentencing Guidelines Sub-committee⁵, chaired by the Presiding District Judge (Magistrates’ Courts), has created and published sentencing guidelines for a further 48 offences triable in the Magistrates’ Courts⁶, including child cruelty offences, counterfeit offences and farming offences.⁷ This means there are comprehensive sentencing guidelines in the Magistrates’ Courts for some 115 offences in total.

Judicial Studies Board:

The Sentencing Group continues to work in partnership with the JSB and during the period of December 2012 to December 2014 the following events relating to sentencing matters were organised by the JSB:

⁴ This is a sentencing judgment given by Stephens J sitting in the Crown Court.

⁵ A full list of the members of the sub-committee can be found at Annex C.

⁶ These sentencing guidelines are not applicable to the Youth Court.

⁷ A full list of the offences can be found at Annex D.

1. Workshop on Youth Court Disposals – 12 December 2012 (Tiers: County Court, DJ(MC) & Deputy DJ(MC));
2. A seminar on Warrants of Committal in default of payment of Confiscation Orders/Fines – 11 April 2013 (Tiers: Crown Court, DJ(MC) and Deputy DJ(MC))
3. A presentation on PBNi's new 'RESOLVE' Programme for Anger Management – 11 September 2013 (Tiers: Court of Judicature, County Court, DJ(MC) and Deputy DJ(MC));
4. A Presentation on Domestic Violence – 16 September 2014 - (Tiers: Court of Judicature, County Court, DJ(MC) & Deputy DJ(MC)).

Other Materials:

The Sentencing Group is conscious of the fact that not all topics on the Lord Chief Justice's Programme of Action can be captured by the combination of Court of Appeal guideline judgments, Crown Court guidance judgments and JSB presentations and papers. The Sentencing Group has, therefore, issued a number of 'Sentencing Case Compendia' which provides a 'one stop shop' for sentencers in relation to the given topic. These compendia are published on the judicial intranet only. In addition to the sentencing case compendia previously issued in relation to 'Tiger Kidnapping' and 'Fuel/Tobacco Smuggling', the Sentencing Group has now added sentencing case compendia relating to:

- (i) Child cruelty offences
- (ii) Intellectual property offences

One of the topics on the Lord Chief Justice's Programme of Action was 'Honour-based crime'. The Sentencing Group considered that a sentencing case compendium would not be appropriate given the extremely wide variety of offences which could potentially fall within this broad topic. In the absence of Court of Appeal guidelines or Crown Court guidance, the Sentencing Group issued a 'Sentencing Guidance Note' advising sentencers of the principles applicable to sentencing where the offence falls in a so called 'honour-based crime'.⁸

Lord Chief Justice's Programme of Action on Sentencing:

The Lord Chief Justice's Programme of Action on Sentencing is a 'rolling' programme with topics being removed when appropriate guidelines have been issued; and topics being added where the Lord Chief Justice considers it appropriate to do so.

Since December 2012 the Lord Chief Justice has added the following topics to the Programme of Action:

- (i) Slavery
- (ii) Animal Cruelty

⁸ The Sentencing Guidance Note is published in the sentencing guidelines section of the JSB website.

(iii) Cyber Crime

Annex E gives a summary of how the Sentencing Group has so far addressed each of the topics on the Lord Chief Justice's Programme of Action.

Summary and Conclusions

Over the last two years the Sentencing Group has continued to work with the judiciary and the JSB to target those topics in the Programme of Action which need addressed and to also oversee the publication of sentencing guidelines and guidance to ensure the Northern Ireland judiciary is kept up to date on sentencing practice in Northern Ireland. To that end, since its inception in 2010, the Sentencing Group has, amongst other things:

- reviewed and streamlined the collection of Court of Appeal sentencing guidelines;
- created a mechanism for identification and publication of first instance sentencing guidance judgments in the Crown Court for crimes on which the Court of Appeal will have infrequent opportunity to issue guidelines;
- created a mechanism for the creation and publication of Magistrates' Court sentencing guidelines;
- identified and published 41 Court of Appeal sentencing guidelines judgments;
- identified and published 7 Crown Court guidance judgments;
- created and published 115 Magistrates' Courts sentencing guidelines;
- created and published 4 sentencing case compendia; and
- created and published a Sentencing Guidance Note on 'Honour-base Crime'

The Hon. Lord Justice Gillen
2 December 2014

Membership of the Sentencing Group:

The Honourable Lord Justice Gillen, Chairperson⁹
The Honourable Mr Justice Weir
His Honour Judge McFarland, Recorder of Belfast, Presiding County Court Judge
Her Honour Judge Philpott QC, Deputy Recorder of Belfast
His Honour Judge Miller QC, Tutor Judge
District Judge (Magistrates' Court) Bagnall, Presiding District Judge (Magistrates' Court)
District Judge (Magistrates' Court) McNally
Professor Sally Wheeler, Lay Member¹⁰
Ms Clare McGivern, Legal Secretary to the Lord Chief Justice¹¹
Mr Terence Dunlop, Secretary to the Judicial Studies Board
Mr Paul Conway, Secretary
Mrs Andrea Dick, Assistant Secretary

⁹ Replaced the Rt. Hon. Lord Justice Girvan as Chairperson as of 11 September 2014.

¹⁰ Appointed Lay Member on 12 June 2013.

¹¹ Upon her appointment as Legal Secretary to the Lord Chief Justice in December 2012, replacing Ms Claire Archbold.

Court of Appeal Sentencing Guideline Judgments

<u>Case</u>	<u>Citation</u>	<u>Keywords</u>	<u>Section</u>
R v Wong	[2012] NICA 54	Appeal against indeterminate custodial sentence with minimum term of five years imprisonment - explosives offence - whether dangerousness provisions of Criminal Justice (NI) Order 2008 applied - whether correct to impose indeterminate custodial sentence rather than extended custodial sentence – appeal dismissed.	Dangerous Offenders under the Criminal Justice (NI) Order 2008
R v Hyde	[2013] NICA 8	Appeal against 3 year sentence for 48 offences (incl. firearms offences) committed from 1992 to 2007 - member of loyalist paramilitary organisation - whether there should be discount for mitigating circumstances in applicant's personal life - whether custodial sentences should have been suspended – appeal dismissed – specific guidance on the sentencing of defendants who have assisted the Police (ss. 73-76 Serious Organised Crime and Police Act 2005) annexed to judgment.	(i) Offenders Assisting Police (ii) Firearms/Explosives
DPP's Reference (No.5 of 2102) (Berry)	[2013] NICA 9	DPP reference from sentence of 18 months imprisonment suspended for 3 years, a fine of £50,000 and disqualification from driving for 5 years - causing grievous bodily injury by dangerous driving – whether sentence unduly lenient - limited but relevant criminal record consisting of road traffic offences – mitigating circumstances surrounding employment – reference allowed and sentence of 12 months' imprisonment substituted	Road Traffic Offences

R v Warwick	[2013] NICA 13	Money laundering offences, forgery, VAT fraud, mortgage fraud and deception - bank accounts in Isle of Man and NI - false identification and documents - whether confiscation order should have included accounts in own name or in fictional names - whether fruits of the accounts not enjoyed - most of monies going to others involved in the criminal enterprise	Orders Ancillary to Sentence
R v ML	[2013] NICA 27	Indecent assault, gross indecency and buggery of female child by male sibling aged 13/14 - 4 1/2 year custody probation order (concurrent) reduced to 12 months' imprisonment	Sexual Offences
DPP's Reference (No.2 of 2013) (McKeown); R v Han Lin	[2013] NICA 28	Appeal against sentence and DPP's Reference - review of authorities on supply and production of drugs - consideration of definitive guideline from England & Wales - guideline deemed useful for aggravating and mitigating factors and serious/culpability - less applicable however in this jurisdiction on starting points and ranges where flexibility required - different approach needed for very large quantities - R v. McIlwaine [1998] NICA reaffirmed in this regard	Drugs Offences
DPP's Reference (Nos. 8, 9 and 10 of 2013) (Newton, Doey and Doherty)	[2013] NICA 13	Attempted grievous bodily harm with intent – Three offenders pleading guilty to unprovoked attack on victim in early evening in public street – First offender, aged 18, instigating attack by punching victim – First offender and 14-year-old second offender kicking victim repeatedly and with stamping blows to his head as he lay on ground, while 17-year-old third offender delivering only two less forceful kicks to victim's body - Victim fortuitously not suffering serious injuries – First and second offenders having history of	Violent Offences

		involvement in similar violence – Whether sentences unduly lenient	
DPP's Reference (No.7 of 2013) (Kevin Brannigan)	[2013] NICA 39	Causing GBI by careless driving – dangerous driving – perverting the course of justice – almost invariably requires immediate consecutive sentence – suspended sentences inappropriate in this case – sentencers need to consider whether exceptional circumstances exists in serious offending before suspending.	Road Traffic Offences
DPP's Reference (Nos. 13, 14 and 15 of 2013) (McKeown, Lynn and Ferris)	[2013] NICA 63	Convictions for riotous assembly – Whether judge failing to identify correct starting point or setting period of imprisonment too low by comparison to starting point – Whether judge erring in suspending sentence of imprisonment	Public Order Offences
DPP's Reference (No.1 of 2013) (Marcus)	[2013] NICA 73	Possession of explosives – s. 3(1)(b) Explosive Substances Act 1883) – causing an explosion likely to endanger life or to cause injury to property – s.2 Explosive Substances Act 1883 – DPP's Reference – sectarian motivation – need for deterrent sentencing – 4 years' imprisonment suspended for 3 years – unduly lenient but not interfered with.	(i) Firearms/Explosives (ii) Terrorist Offences
DPP's Reference (No.17 of 2013) (McDowell)	[2014] NICA 6	Making/possession of explosives – s. 3(1)(b) Explosive Substances Act 1883) – DPP's Reference – sectarian motivation – 2 years' probation and 100 hours' community service – sentencing recommendation in victim impact statements not to form basis for reassessing sentencing – while deterrent custodial sentences normally required for sectarian violence the individual circumstances meant the sentence should not be interfered with	(i) Firearms/Explosives (ii) Terrorist Offences
R v Patricia McGrade	[2014] NICA 8	Application for leave to appeal against sentence – careless driving causing death having consumed	Road Traffic Offences

		excess alcohol – 3 years’ determinate custodial sentence – 18 months’ custody/18 months’ licence – level of consumption of alcohol aggravating factor – leave refused	
R v McCaughey and Smyth	[2014] NICA 61	Burglary – Whether sentences imposed had been excessive – applicability of E&W Sentencing Council guidelines	The Applicability of Guidance from the Sentencing Guidelines Council
R v Paul Pollins	[2014] NICA 62	23-year-old offender pleading guilty to aggravated burglary of occupied domestic premises – Offence committed four days after release from custody – Offender having previous convictions for aggravated burglary, assault and indecent assault and habitually taking drugs and binge drinking – Psychological report concluded that offender had empathetic deficit and presented significant risk of causing serious harm by committing further aggravated burglaries of domestic offences – Whether imposition of indeterminate custodial sentence was necessary	Dangerous Offenders under the Criminal Justice (NI) Order 2008
DPP’s Reference (Nos.2 and 3 of 2012) (R v Wootton and McConville)	[2014] NICA 69	Murder – Possession of firearm with intent to endanger life – Severity of sentence – Undue leniency – Appellants being convicted of killing police officer acting in course of duty – appropriate starting point – appropriate starting point where offender is a youth when offence committed	(i) Terrorist Offences (ii) Life Sentence - Mandatory
R v W	[2014] NICA 71	application by W for leave to appeal against total sentence of 5 years 8 months imprisonment - 23 offences against her children in the 1980s - wilful neglect - wilful assault - gross indecency - whether sentence manifestly excessive - sentencing in historic sexual offences	Child Cruelty

Membership of the Magistrates' Courts Sentencing Guidelines Sub-Committee

District Judge (Magistrates' Courts) Bagnall, Chairperson
Her Honour Judge Philpott QC, Deputy Recorder of Belfast
District Judge (Magistrates' Courts) Hamill
District Judge (Magistrates' Courts) Watters
District Judge (Magistrates' Courts) Meehan
District Judge (Magistrates' Courts) McNally
Mr Paul Conway, Secretary

List of Magistrates' Court Sentencing Guidelines

Animal Offences:

Breeding/Selling/Gifting/Advertising/Not Muzzling/Abandoning a 'Dangerous Dog'
Causing/Attending Animal Fighting
Cruelty to Animals
Docking Dog's Tail
Dog Attack on Other Animal/Worrying Livestock
Dog Attack on Person
Possessing a Dangerous Dog

Environment Offences

Breach of Prohibition Notice
Depositing Waste Without a Licence
Discharge or Deposit of Polluting Matter
Treating/Keeping or Disposing of Waste
Treating/Keeping or Disposing of Waste in Manner Likely to Cause Pollution

Farming Offences:

Deliberate Infection of Animals
Failure to Cleanse and Disinfect
Failure to Comply with Restrictions
Failure to Isolate
Failure to Maintain Fences
Failure to Notify Birth, Death or Movement of Cattle
Failure to Pre-Movement Test
Failure to Present Animal for Testing
Failure to Report Presence of Disease

Harassment & Domestic Offences:

Breach of Harassment Injunction
Breach of Non-molestation Order
Breach of Restraining Order
Harassment (Simpliciter)
Harassment causing fear of violence
Offensive or Malicious Communication

Breach of Court Orders:

Breach of Anti-Social Behaviour Order
Breach of Bail (Failure to Surrender)
Breach of Regulated Match Banning Order

Child Cruelty Offences:

Cruelty to Person Under 16
Exposing Child Under 2 whereby Life or Permanent Health is Endangered
Exposing Child Under 12 to Risk of Burning

Counterfeit Offences:

- Possessing counterfeit currency
- Passing counterfeit currency
- Making / distributing material infringing copyright
- Unauthorised use of trade mark

Firearms Offences:

- Possession of a Firearm
- Breach of Condition in a Firearms Certificate

Miscellaneous Offences:

- Abstracting Electricity
- Making Off Without Payment
- Failing to Give Info Re Identity of Driver
- Making/Using False Certificate of Insurance
- No Taxi Licence
- Permitting/Driving in Excess of Permitted Driving Hours
- Tachograph Offences
- Using/Permitting Overweight Goods Vehicle
- Possession of a False Identity Document

Update of Lord Chief Justice's Programme of Action on Sentencing

Domestic Violence	<ol style="list-style-type: none"> 1. Magistrates' Courts Sentencing Guidelines 2. JSB Publication of Paper by HHJ Burgess 3. JSB Presentation by HHJ McFarland 4. JSB Presentation by PBNI 5. R v PH [2011] NICA 42
Serious Sexual Offences (including offences against children)	<ol style="list-style-type: none"> 1. Magistrates' Courts Sentencing Guidelines 2. R v SG [2010] NICA 32 3. R v EB [2010] NICA 40 4. DPP's Ref (1 of 2012)(R v DM) [2012] NICA 36 5. R v ML [2013] NICA 27
Human Trafficking [including Slavery]	<ol style="list-style-type: none"> 1. JSB Presentation by PSNI 2. R v Matayis Pis [2012] NICC 14 3. R v Chen, Dempsey and Hinton [2012] NICC 26
Attacks on Public Workers (including police officers)	<ol style="list-style-type: none"> 1. Magistrates' Courts Sentencing Guidelines 2. DPP's Ref (2&3 of 2012)(R v Wootten and McConville) [2014] NICA 69
Attacks on Vulnerable people (including the elderly)	<ol style="list-style-type: none"> 1. Magistrates' Courts Sentencing Guidelines
Duty Evasion and Smuggling	<ol style="list-style-type: none"> 1. R v Grew; R v Mackle and others [2011] NICA 31 2. Sentencing Case Compendium 3. R v Kumar [2013] NICC 12
Environmental Crime	<ol style="list-style-type: none"> 1. JSB Presentation by Professor Sharon Turner 2. R v Allingham; R v McKenna [2012] NICA 29
Honour-based Crime	<ol style="list-style-type: none"> 1. Sentencing Group Guidance Note
Tiger Kidnapping	<ol style="list-style-type: none"> 1. Sentencing Case Compendium
Intellectual Property Crime	<ol style="list-style-type: none"> 1. Magistrates' Courts Sentencing Guidelines 2. Sentencing Case Compendium 3. R v Rymacki and Jankowski [2013] NICC 20
Road Traffic Offences	<ol style="list-style-type: none"> 1. Magistrates' Courts Sentencing Guidelines 2. JSB Sentencing Workshop 3. R v Conrad Doole [2010] NICA 11 4. DPP's Reference (No.5 of 2012)(Berry) [2013] NICA 9 5. DPP's Reference (No.7 of 2013)(Kevin

	Brannigan) [2013] NICA 39 6. R v McGrade [2014] NICA 8
Hate Crime	1. Magistrates' Courts Sentencing Guidelines
Health and Safety Offences Causing Death	1. R v JMW Farm Ltd [2012] NICC 17
Manslaughter	1. JSB Presentation by Hart J 2. R v Eamon Coyle [2010] NICA 48 3. R v Crollly [2011] NICA 58
Child Cruelty and Neglect and Serious Assaults on Children	1. Magistrates' Courts Sentencing Guidelines 2. Sentencing Case Compendium 3. R v W [2014] NICA 71
Animal Cruelty	1. Magistrates' Courts Sentencing Guidelines
Cyber Crime	