

# **Monitoring and developing sentencing guidance in Northern Ireland**

**A report to the Lord Chief Justice from  
the Sentencing Working Group**

**23 June 2010**

## **Summary of recommendations.....3**

|  |   |
|--|---|
| 1. The Sentencing Group .....  | 3 |
| 2. The Lord Chief Justice's Priority List.....   | 3 |
| 3. Identifying Guideline cases in the Court of Appeal .....  | 3 |
| 4. Mechanisms for delivery of guidelines and guidance on priority areas in the Crown Court.....          | 3 |
| 5. Mechanisms for delivery of guidelines and guidance on priority areas in the Magistrates' Courts ..... | 4 |
| 6. JSB workshops .....   | 4 |
| 7. Development of the JSB Website .....  | 4 |
| 8. Research and Statistics .....   | 5 |
| 9. Judicial information launch event.....  | 5 |

## **Monitoring and developing sentencing guidance in Northern Ireland A report to the Lord Chief Justice from the Sentencing**

### **Working Group 26<sup>th</sup> March 2010 .....6**

|  |    |
|--|----|
| 1. Terms of reference .....  | 6  |
| 2. The existing system .....   | 6  |
| 3. Current ways to enhance consistency in sentencing .....   | 7  |
| 3.1 Court of Appeal guidance and guidelines .....  | 7  |
| 3.2 JSB publications and events.....   | 9  |
| 3.3 Sentencing statistics .....  | 10 |
| 3.4 Attorney-General's References .....  | 10 |
| 3.5 Information from other jurisdictions.....  | 11 |
| 4. Conclusions on current system .....   | 12 |
| 5. Recommendations for reform.....   | 12 |
| 5.1. The Sentencing Group.....   | 12 |
| 5.2. Formalisation of the system for identification of priority areas for sentencing guidelines..... | 14 |
| 5.3. Guidelines and guidance on priority areas in the Crown Court .....                              | 14 |
| 5.4. Guidelines and guidance on priority areas in the Magistrates' Courts .....                      | 15 |
| 5.5. Written decisions in priority areas in the Magistrates' Court.....                              | 16 |
| 5.6. JSB workshops .....   | 17 |
| 5.7. Development of the JSB Website and collated sentencing materials .....                          | 17 |
| 5.8. Research and Statistics .....   | 18 |
| 5.9. Judicial information launch event.....  | 20 |
| 6. Conclusions.....  | 20 |
| 7. Action Table and Next Steps.....  | 21 |

## **Summary of recommendations**

### **1. The Sentencing Group**

We recommend the setting up of a judicial oversight group to monitor and consider the provision of guidance for sentencers. The group should be chaired by a Lord Justice of Appeal and contain representatives of all tiers of sentencing judiciary. The duties of this group would be threefold; to take views on priority areas in which sentencing guidelines are needed, to put arrangements in place for guidance to be delivered in those areas, and to consider Court of Appeal and first instance sentencing cases which might merit inclusion in the NI Sentencing Guidelines and Guidance Case Compendium on the Judicial Studies Board (JSB) website.

### **2. The Lord Chief Justice's Priority List**

We recommend that the Lord Chief Justice consider the views of the Sentencing Group and his interactions with civic society each legal year and publish a list of his priority areas in which sentencing guidelines and guidance should be developed during that year. Obviously this may be altered through the year as required.

### **3. Identifying Guideline cases in the Court of Appeal**

We recommend that the Court of Appeal should state expressly in a judgment whether it is a sentencing guideline.

### **4. Mechanisms for delivery of guidelines and guidance on priority areas in the Crown Court**

We recommend as follows:

(a) where there is no guideline on a priority area in the Crown Court, the Court of Appeal should seek opportunities to give guidance to sentencers by way of obiter dicta in cases on related areas.

(b) the other mechanism for delivery of guidance on priority areas in which there are unlikely to be opportunities for the Court of Appeal to give an immediate judgment is by way of first instance judgments prepared by the judge hearing the case. Subject to approval by the Sentencing Group these would be included on the JSB website. Preparation of these judgments may

be assisted by the representations of counsel or solicitors in the case and by research assistance from the legal staff in the Office of the Lord Chief Justice if required.

## **5. Mechanisms for delivery of guidelines and guidance on priority areas in the Magistrates' Courts**

We recommend as follows:

- (a) that the Presiding District Judge and Presiding County Court judge put in place a system for the early identification of likely cases in priority areas which could be used for the delivery of written judgements at first instance or on County Court appeal. Preparation of these judgments may be assisted by the representations of counsel or solicitors in the case and by research assistance from the legal staff in the Office of the Lord Chief Justice if required. The publication mechanism would be as for the Crown Court.
- (b) that this new mechanism be reviewed at the end of twelve months and adjusted if required due to the potential practical difficulties.

## **6. JSB workshops**

Associated with 4 and 5 above we recommend that there should be an increase in the use of interactive sentencing workshops by JSB for sentencers at appropriate tiers to address priority areas.

## **7. Development of the JSB Website**

We recommend as follows:

- (a) that the work currently ongoing to update the JSB website materials on sentencing be continued;
- (b) that consideration be given to modernisation of the JSB website to maximise usability, and
- (c) that JSB give consideration to further developing the other forms of sentencing materials available to sentencers, such as the recent aides memoire on sexual offences and the materials for the new Criminal Justice (NI) Order 2008 offences.

## **8. Research and Statistics**

We recommend as follows:

- (a) that the Lord Chief Justice's Legal Unit be available to assist first instance sentencers giving guidance decisions;
- (b) that consideration be given in guideline and guidance cases to the suitable use of statistics on social trends;
- (c) that the secretary to the Sentencing Group set up a mechanism by which sentencing statistics may be commissioned from the government statisticians responsible for them; and
- (d) that the increased use of social statistics in sentencing cases be reviewed periodically.

We do not recommend the use of sentencing statistics as a guidance tool for sentencers.

## **9. Judicial information launch event**

We recommend that there should be a judicial launch event setting out the new developments and their role in putting them in place.

# **Monitoring and developing sentencing guidance in Northern Ireland**

## **A report to the Lord Chief Justice from the Sentencing Working Group 26<sup>th</sup> March 2010**

Chief Justice

### **1. Terms of reference**

You have asked us:

- to explore if there are ways of enhancing consistency in sentencing
- to review the adequacy of existing arrangements relating to the reporting, collation and distribution of sentencing decisions and guideline cases
- to consider the practicality and appropriateness of enhancing the pool of information and statistical information relevant to the determination of appropriate sentences
- to consider whether there is scope for improving research facilities to assist sentencing judges
- to consider whether an advisory panel could usefully and properly provide advice on sentencing and if so in what respect and subject to what limitations
- to make recommendations accordingly.

### **2. The existing system**

Northern Ireland has a developed system for creating sentencing guidelines and guidance which we summarise below. Judges sentence within statutory maxima (and sometimes minima) and other limits set by Parliament. There has been recent change to this underlying framework in the Criminal Justice (NI) Order 2008, which introduces a new approach to sentencing for serious offending. The sentencing policy which Parliament determines, and consideration of a sentencing guidelines council, is outwith the scope of this Group.

In our deliberations, we have dealt only with sentencing practice; which is the sphere of the judiciary. The decisions of judges in individual cases must be tailored to the individual offender. This report considers how to enhance our system for ensuring appropriate sentencing in the individual case with a framework, guidance measures and appeal mechanisms which seek to ensure consistency.

### **3. Current ways to enhance consistency in sentencing**

We identified the following as the main constituent elements of the system to enhance consistency in sentencing within the Parliamentary framework and considered whether each demonstrates inefficiency or a need for reform:

- Court of Appeal guidelines;
- JSB publications and events;
- Statistics on sentencing;
- The role of the Attorney-General;<sup>1</sup>
- Information from other jurisdictions (notably England and Wales).

#### **3.1 Court of Appeal guidance and guidelines**

The Court of Appeal in its decisions effectively provides guidance to sentencing courts and it is an important function of the Court to provide such guidance. In appropriate cases the Court may set out guidelines for sentencers. There is a body of Northern Ireland guidelines on the Judicial Studies Board website. New guidelines may be issued either for new offences or where trends in society or new statistical evidence suggest that previous guidance is no longer appropriate and requires adjustment. Guidance and guidelines are not issued in an abstract context but arise out of the disposal of a specific appeal. This allows the guidance to be set in its proper context and provides a “worked example” taking account of the aggravating and mitigating factors and range of sentence appropriate to the issue.

---

<sup>1</sup> We recognise that this is outside our direct control and falls, following devolution of justice, to the Director of Public Prosecutions.

We identify three stages in the production of a Court of Appeal guideline judgment. These are:

- The identification of a need for a guideline;
- The production of the guideline; and
- Dissemination of the guideline.

#### i. Identification of need

In relation to the first stage, the Court of Appeal judiciary, in particular the Lord Chief Justice, presently maintain a “watching brief” on the cases coming up before the Court. In the light of information which comes to the judges of the Court from meetings with civic society, discussions with other judges and case flow a need for guidance may be identified. The LCJ’s Legal Unit carries out research on all sentencing cases before they come to court in order to identify existing NI guidelines and English Sentencing Guideline Council (SGC) statements, and it provides information to the Court on whether there may be a need to update guidelines or either adopt or distinguish English SGC guidelines on the subject. If the Court determines that a guideline is appropriate then a reserved judgment will follow.

#### ii. Production of Guideline

The Court of Appeal produces a written judgment in a guideline case. This will be informed by the arguments and authorities produced by the parties. If the Legal Unit’s research has identified any further relevant case law, the parties must have a reasonable opportunity (either by notification before the hearing or by adjournment to a later date) to make arguments in relation to it. The Court does not necessarily have or need the benefit of wider statistical information (for example on crime trends or social problems), although the prosecution may bring this to the Court’s attention. The Court of Appeal on occasion takes judicial notice of evident social trends which are relevant to sentencing for a particular offence.



### iii. Dissemination of Guideline

The written judgment is published on the NI Court Service intranet and a summary is prepared by the LCJ's Legal Unit and circulated to all judiciary by the Judicial Studies Board e-alerter. In important cases, a press summary is also prepared. After any necessary anonymisation the judgment is added to the JSB Sentencing Guidelines website, which is publicly accessible.

A review has been carried out over the past 12 months of this website to ensure that it is fully up to date. A second tranche of work is presently under way to identify any cases which are of considerable vintage and may as a consequence be out of step with modern sentencing practice. This could conveniently be integrated into the programme of work in our recommendations.

### 3.2 JSB publications and events

JSB has a central role in the dissemination of guidelines in Northern Ireland. This occurs through its website which is available to the judiciary and to the public. It also has a key role in promoting consistency by means of training events for judges. These may be through traditional lectures by academic speakers or judges from this or other jurisdictions. These are particularly useful where, for example, changes have been made to the law (a recent successful example was the training provided for the new sentencing regime) and when the judiciary needs to be given new information efficiently and with the opportunity to ask questions. JSB has more recently begun to host sentencing workshops for sentencers at each judicial tier. These take the form of presentation of a series of fact-based scenarios and a discussion of the sentencing approaches the participants would take. Judges find these events particularly useful. In addition to the Sentencing Guidelines Case Compendium and the Bench Books, JSB has recently begun to experiment with other forms of collated sentencing material, such as the "aide memoire sheets" on the Sexual Offences Order 2008. The JSB regularly asks sentencers if there are additional topics or areas on which they would like training. JSB is already considering whether there is scope for it to develop

further on-line materials to assist sentencers and we believe that this is a fruitful area for development.

### 3.3 Sentencing statistics

In keeping with other common law jurisdictions, Northern Ireland does not rely heavily on statistics about sentencing to any great extent as an aide to sentencers. On occasion, statistical analysis of sentencing practice is carried out (for example a study has recently been undertaken in relation to duty evasion cases) to inform the Lord Chief Justice and Presiders about sentencing consistency and this can be a useful exercise. For guidance to individual sentencers, however, we believe that the availability of reasoned applications of the law to different fact situations (as in Court of Appeal guidelines) is of greater benefit than numeric data, unsupported by factual details, about the sentences given in other cases. We consider the reasons for this in more detail later in this report. We do, however, see a role in the sentencing process in appropriate cases for statistical and research information about matters such as social conditions or the prevalence of offences. We also deal with that topic later in this Report.

### 3.4 Attorney-General's References

The Group discussed this mechanism but does not make recommendations in relation to it as it is a function outwith the judiciary. We noted that it is a useful, although limited, safety-valve, as it allows sentences in certain types of case and which are of particular concern to the State or to civic society to be brought before the Court of Appeal. The power is used relatively infrequently in Northern Ireland. Before devolution, the then-Attorney-General undertook that if anyone wrote to her drawing a sentence to her attention within 28 days of it being handed down, she would consider it. We note that the offences in relation to which a reference is available have gradually changed over the years. Before devolution, the then-Attorney-General's office was carrying out a review to ensure that there is parity between the offences in relation to which a reference can be made here and in England. On devolution, responsibility for making references passes to the Director of Public Prosecutions, and responsibility for the policy, including perhaps extending

the range of offences in relation to which the mechanism is available, will pass to the Northern Ireland Assembly. It may perhaps be anticipated that such references will become more frequent than heretofore.

### 3.5 Information from other jurisdictions

The law in Northern Ireland is very similar to that in England and Wales, and for that reason courts here particularly take into account sentencing decisions from that jurisdiction and on occasion benefit from the considerations given to sentencing matters by the Sentencing Guidelines Council there. However, conditions in the two jurisdictions are not always similar. In *Attorney General's Reference (Number 1 of 2008)*(*Gibbons et al.*)[2008] NICA 41, the Court of Appeal stated at paragraph 44:

‘As we have repeatedly made clear, the guidance provided by the Sentencing Guidelines Council must always be regarded as secondary to the guidelines provided by the Court of Appeal in this jurisdiction. There will be occasions where the guidelines accord with local experience in which case they may be followed but there will also be occasions where they should not be applied.’

And also in *R v. Devine* [2006] NICA 11 at paragraph 14:

‘On occasions in the past this court has adopted recommendations made by the [Sentencing Guidelines] council (see, for instance, in the field of sexual offences *AG's Reference (No 2 of 2004)* [2004] NICA 15) but we have also declined to follow the approach of the council in other areas such as whether there should be a reduction of the discount for a plea of guilty where the defendant has been caught red-handed – see *R v Pollock* [2005] NICA 43. Recommendations of the council will be applied

in this jurisdiction where they are appropriate to locally encountered conditions; where they do not they will not be followed.'

The judiciary also informs itself as to sentencing issues in other jurisdictions by academic reading and by attendance on occasion at international conferences. In this latter case, a single or small number of judges will attend and will then write a report for their colleagues which may be published on the JSB website.

#### **4. Conclusions on current system**

It can be seen that the collegial system of a small local judiciary helps to promote consistency in sentencing. The small size of the jurisdiction makes it possible for all judges at a particular judicial tier to attend a single event and have a meaningful discussion. It is our conclusion that the system has developed so as to utilise the advantages of a small, compact jurisdiction which facilitates closer interaction, communication and exchange of ideas and experiences between and within judicial tiers. Our jurisdiction also has good communication with the judiciary in, and free access to sentencing material from, neighbouring jurisdictions. **Our conclusion is that the system which has developed here is broadly satisfactory but could usefully be supplemented. Our recommendations aim to build on existing good practice and fill the peripheral gaps identified.**

#### **5. Recommendations for reform**

##### **5.1. The Sentencing Group**

We took the view that it is important for responsibility for sentencing guidelines to be located in one defined place. Underpinning the recommendations below is a proposal for a judicial oversight committee, which we refer to as the Sentencing Group, and which will oversee the various procedures for identifying and disseminating the guidance produced by courts. It is recommended that it should contain representatives of all sentencing tiers and be chaired by a judge of the Court of Appeal. The members of this group have a decision-making function and act as

representatives who will obtain the views of their tier and feed them into the Group's deliberations. The Group should meet three or four times a year, or more often if required. It should have a dedicated Secretariat from the Lord Chief Justice's Office. It is our estimation that it will not take up more than 3 or 4 full days per annum (including preparatory work) for each member and one week per month for the member of staff providing the secretariat function. These time-costs should be capable of being met out of existing resources.

We recommend that the Group should have two main functions. Members should take views from their peers on priority areas in which sentencing guidelines are needed, and should also collect from their tier sentencing cases which might merit inclusion in the NI Case Compendium. Beyond that, the Group may identify other Court of Appeal decisions which are not guidelines but contain statements of such importance<sup>2</sup> to sentencers that they merit publication on the JSB website. First instance cases would not, of course, rank as guidelines, but could well provide useful guidance for sentencers, as they do in other jurisdictions such as England and Wales<sup>3</sup>. The terms "guidelines" and "guidance" are used with these meanings in this report.

The list of cases would be transmitted to the JSB after each meeting, to be put onto the website.

In relation to priority areas, we recommend that the Group provides the Lord Chief Justice annually with a list of areas in which judges have identified a need for sentencing guidelines or guidance. The Lord Chief Justice could consider this, in the light also of his interactions with civic society through the year, and would set out his list of sentencing priority areas for the year, perhaps also indicating the matters which he wishes the JSB to deal with by holding a sentencing workshop (see further below) and the matters on which he wishes to encourage a major written judgment, either from the Court of

---

<sup>2</sup> For instance about early pleas or technical points.

<sup>3</sup> Where they are collated in publications such as "Current Sentencing Practice", ed. D. Thomas, (Sweet and Maxwell, 2010)

Appeal or a first instance court. He could then notify judicial colleagues and court offices of these priority areas so that cases can be identified and allocated to a judge who will then provide a written judgment in a suitable case. He will also transmit the list to the LCJ's Legal Unit, who will bear it in mind as they carry out research for the Court of Appeal in criminal cases which come before it. Items may be added to or subtracted from the list as necessary.

## 5.2. Formalisation of the system for identification of priority areas for sentencing guidelines

We asked the Crown Court Judicial Committee and the Presiding District Judge (Magistrates' Court) to consider whether there are further areas in which sentencing guidance is required. They consider that the system for identifying areas in which further guidance on sentencing would be useful could be more systematic and we agree. There are some areas in which the current Court of Appeal guidelines need to be updated. There are other areas in which it is unlikely there will ever be Court of Appeal guidelines because the offences are always heard in the Magistrates' Court, because they are not frequently appealed (perhaps because sentences are usually lower on the scale), or because they are not referable by the Attorney General. The work of the Sentencing Group will provide a mechanism to keep all these areas under continuous review. The Crown Court Judicial committee mentioned in particular Class A drugs as an issue for possible future consideration. Guidance on offences involving domestic violence is an area that we believe would also merit early consideration.

## 5.3. Guidelines and guidance on priority areas in the Crown Court

We recommend that the Court of Appeal should state early in the text of a guideline judgment that it is a guideline in the area with which it deals. This will facilitate its capture for dissemination and will assist practitioners and parties in future cases.

In appropriate cases the Court of Appeal may consider it appropriate to express a view more widely than on the strict facts of the case before them.

For example, in a case of burglary with violence they could express the view that the time was ripe for reconsideration of the authorities on burglary without violence. This is a permissible exercise of their powers as the statements are not unrelated to an actual appeal before the court since the offence in that appeal must be viewed in the wider context of the class of offending in question. While they are *obiter dicta* and not binding on lower courts, they would nevertheless provide useful guidance to sentencers in future cases. Placing the category of offending under consideration into its wider context is also useful in informing the court in relation to the appropriate sentence in the actual appeal.

In areas which do not or have not yet come before the Court of Appeal and where there are accordingly no guidelines, the Group believes that first instance judgments have an important role to play. This will also be the case in unusual cases. We recommend that, where approved by the Sentencing Group, such decisions should be published electronically by JSB and made available to sentencers as an additional resource. This category of decision is currently published in England in publications such as “Current Sentencing Practice”. Northern Ireland is so small that the private sector does not function to deliver such a service. While important decisions at first instance tend to filter through the system and become known by the profession and judiciary over time, there is a gap in our system in their systematic identification, which we believe can easily be filled through the JSB website which is available to judges and publicly available.

#### 5.4. Guidelines and guidance on priority areas in the Magistrates’ Courts

While the Magistrates’ Courts, like the Crown Court, are subject to the Court of Appeal’s sentencing guidelines on general principles, they do not by and large have the benefit of guideline cases for specific offences. The only occasion on which definitive guidance is issued in relation to summary offences at present is when a case is “stated” from a Magistrates’ Court to the Court of Appeal. Cases stated raising sentencing questions are very uncommon. We consider that there is scope for consideration of other ways in which the DJ(MCs) could develop and record their sentencing jurisprudence.

Consistency at this tier is at present maintained through informal discussion and occasional JSB Workshops and other events. The Group considers that there is scope for formalising and developing this system somewhat.

#### 5.5. Written decisions in priority areas in the Magistrates' Court

The first way in which the system can be developed is for cases in the Lord Chief Justice's priority areas (see above) to be identified by individual DJ(MCs) and notified to the Presiding DJ(MC). It is unlikely that there will be occasions on which cases on the same topic will occur in the same County Court Division and so be suitable for hearing together. More usually, a DJ(MC) could notify the Presiding DJ(MC) as early as possible of a case in a priority area, so that the Presiding DJ (MC) can allocate the case to a colleague with relevant experience if needs be, notify the parties and obtain research support from the Office of the Lord Chief Justice to enable a considered written judgment to be produced. This can then be submitted to the Sentencing Group for consideration as guidance to be placed on the JSB website.

The County Court Appeal list is another forum in which written judgments about priority sentencing issues in the Magistrates' Courts might be formulated. We recommend that the Presiding DJ(MC) and Presiding County Court Judge should also be able to monitor the appeal lists for cases in priority areas, to enable a similar process of allocation and notification and enable the appeal list to be another source of written judgments on summary offences.

The potential practical difficulties inherent in this proposal lead us to suggest that it should be developed and run on a trial basis for a period of at least 12 months, then evaluated and adjusted if necessary.



## 5.6. JSB workshops

The second mechanism for developing guidance which is perhaps particularly useful in the Petty Sessions is that of the JSB Workshop. This has been successfully used in the past in areas such as environmental law and domestic violence. The very fruitful interaction in those workshops involved not only DJ(MCs) but also the County Court Judges who would be hearing appeals.

We recommend that such workshops could usefully produce written reports as a result of deliberations on the day. These could be published and would have a place in providing some assistance (but not of course guidelines) for courts. They would be placed on the JSB website which is publicly available.

## 5.7. Development of the JSB Website and collated sentencing materials

The JSB website is the main mechanism for the dissemination of sentencing guideline and guidance information in Northern Ireland. As we have indicated, despite the best efforts of some excellent authors, the Northern Ireland market is not big enough for regularly updated reporting and commentary on sentencing decisions to be produced in the private/academic sector. The JSB site, however, is publicly accessible and having an “official” destination of this nature, where published material has been signed off by the judiciary at the highest level might be seen as an optimum way to disseminate this information.

There have been some difficulties in the past in keeping the material on the website up to date. JSB staff have worked hard over the past year to remedy this defect. We recommend that once this review is completed, a named member of staff should have responsibility, as part of his or her job description, for maintaining the website in an up-to-date condition, and ensuring that cases and workshop reports recommended by the Sentencing Group and agreed by the Judicial Studies Board are placed on the site in a timely fashion. We also endorse the work which has already commenced to “weed out” that which has been superseded and that which is not genuine guideline material. We recommend that the review of existing material should

be under the supervision of the Sentencing Group, and that they should recommend to the LCJ and the JSB which material should be removed.

We are also keen to ensure that consideration is given to whether and how the website can be developed, for example with improved indexing and search facilities. At present it is a basic but useful internet mechanism which has existed in its present form for some time. We recommend that a paper be presented to the Sentencing Group and the Judicial Studies Board recommending ways in which it can be developed to ensure optimum functionality for users today and in the future.

We recommend that the Sentencing Group should have an opportunity to have an input in the JSB discussion on whether and what further collated collections or commentary should be prepared for publication on the website.

#### 5.8. Research and Statistics

We are aware of the research support available to the Court of Appeal from the LCJ's Legal Unit, in terms of case law, legislation and (on occasion) international or Parliamentary material. This is extremely useful work and is of particular value where the Court of Appeal is considering issuing a guideline. We recommend that this service should also be available to lower courts giving a written sentencing judgment in a priority area. As these cases are likely to be infrequent and at some notice, we believe that this may be achieved simply by the Presiding Judge asking the Secretary to the Sentencing Group for a lawyer to provide them with a research report on the case. Provided these cases are relatively infrequent, we understand that this can be managed within existing resources.

We have already mentioned that we do not recommend making sentencing statistics generally available to sentencers. Our system is based on individuated sentences supported by statutory frameworks, guidelines and guidance from other judges to ensure consistency. We are concerned that introducing purely numerical information about the range of sentences

awarded could create a “rush to the middle ground” rather than properly considered sentencing decisions.

That said we believe that there is a different role for statistics in the sentencing process, namely the usefulness of social statistical material in the context of research support for sentencing courts. A judge may sometimes be aware of prevalence of a particular crime in his or her area (for example) by observation of the cases coming before him or her. Statistical information on the prevalence of offending can, for example, show offending trends over time or demonstrate the geographic variation of the incidence of certain types of offending and so may be of assistance to sentencers. We are aware too, however, that such information must be analysed critically and with a degree of circumspection. Northern Ireland is a small geographic unit and numbers will get smaller as one reaches local level, leading to a risk of “statistical skewing”. There is also a risk that parties, perhaps without proper training in statistical methods, could use statistics inaccurately and inappropriately.

This is a relatively new development in NI and while we counsel against too frequent use of statistical material, we believe that the courts will on occasion find it helpful to have statistics available to the court to allow it to properly consider the fact situation in which it is sentencing. This is especially so in a guideline or guidance case. One way to obtain the material would be to request it from the parties (in particular the prosecution). We are of the view that it would also be permissible for the court to obtain the data independently of the parties, provided it is shared with them in advance of the hearing.

We recommend that there should be a designated officer in the Office of the Lord Chief Justice who has contacts with all the relevant providers of statistical information (Court Service, PSNI, NIO, etc) and who can either obtain the necessary information if published or, if not published, approach the correct department to see if it is possible to have the information generated from their data sets. We suggest that the Secretary to the Sentencing Group may be a useful designated officer for this task. As this is a

new approach and likely to be used only occasionally, we also recommend that it be reviewed after three years.

#### 5.9. Judicial information launch event

We recommend that JSB might launch this process by having an event on sentencing guidance at which the new arrangements are explained, emphasising the importance of the collegial approach and of judges at all tiers identifying cases covering the gaps and providing written judgments, together with an input about best practice in writing judgments.

This event could also be used to inform sentencers of the resource available to them in the crime and sentencing statistics available from Court Service and the NIO.

### **6. Conclusions**

We believe that these recommendations cover all the areas which you tasked us with considering. We are aware that many other jurisdictions have a bigger, more complex and independent Sentencing Guidelines Council (SGC) or Panel and we have considered comparative international arrangements. We recognise that ultimately a decision on a SGC is a matter for Government. Given the possible impact on our work we think it right for the judiciary to have a view. We think it important to note, however, that this is a small jurisdiction with legally qualified judges and we are not convinced at this time that the expense, possibly in excess of £500k, involved in establishing and operating such a body will provide the judiciary with greater assistance than our proposals do. Furthermore excessively prescriptive guidelines, whether imposed by the Court or by any statutory body, would frustrate the sentencer's duty both at common law and under article 6 of the ECHR to decide the individual case before the court justly on the merits.

The proposed system of sentencing guidance which has developed in Northern Ireland is flexible, proportionate as to cost and is suited to our circumstances here. It retains the necessary degree of flexibility and

embodies the values of consistency and transparency which are at the heart of a good sentencing system.

## 7. Action Table and Next Steps

Below is a possible action table for the next steps.

| <b>Date for completion</b> | <b>Action</b>   | <b>Responsible person</b>                   |
|----------------------------|---|---|
| June 2010                  | Set up Sentencing Group and nominate members  | Lord Chief Justice                          |
| June 2010                  | Nominate Secretary to Sentencing group  | PPS to LCJ                                  |
| June 2010                  | Secretary to Sentencing Group to write to statistics branches in relevant government departments and set up contacts. | Secretary to Sentencing Group               |
| June 2010                  | Notify interested parties of new arrangements   | LCJ's Press Officer                         |
| September 2010             | First meeting of Sentencing Group   | Secretary to SG                             |
| Immediate                  | Court of Appeal to state if a judgment is a guideline in the text   | LCJ, Court of Appeal                        |
| Immediate                  | Court of Appeal to consider opportunities to express obiter views on areas requiring guidelines                       | LCJ, Court of Appeal                        |
| At first SG meeting        | Report to Sentencing Group on how "priority cases" may be identified and heard in the Magistrates' Courts             | Presiding DJ(MC) and Legal Secretary to LCJ |
| At first SG meeting        | Report to Sentencing Group on out of date material on JSB website, for approval                                       | Secretary to JSB                            |
| At first SG                | Report to Sentencing Group on possible  | Legal                                       |

|                     |  |   |
|---------------------|--|---|
| meeting             | improvements to JSB website and possible new areas for on line JSB material  | Secretary,<br>Secretary to<br>JSB, Judges'<br>Librarian |
| At first SG meeting | Report to SG on potential areas for production of JSB collated materials/commentary and to JSB on SG response  | Secretary to<br>JSB                                     |
| September 2010      | JSB seminar on new arrangements. Invite Crown Court Judiciary and District Judges (Magistrates Court) to submit information on gaps to their representatives on the SG | Secretary to<br>JSB                                     |
| September 2010      | Publish list and begin work on filling Lord Chief Justice's priority areas   | Lord Chief<br>Justice,<br>judiciary                     |

