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Other News

New sentencing guidelines for drug offences comes into effect

Following research published last year that indicated that there are disparities associated with ethnicity and sex in sentence outcomes for some drug offences, the Sentencing Council has revised the guidelines for drug offences. Of particular note is the extension of the recent development of the guidelines explicitly drawing sentencers' attention to the evidence of sentencing disparities for specific offences. For example, the revised guideline for 'Supplying or offering to supply a controlled drug/ Possession of a controlled drug with intent to supply it to another' states at Step 2: 'Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that a higher proportion of Black, Asian and Other ethnicity offenders receive an immediate custodial sentence than White offenders and that for Asian offenders custodial sentence lengths have on average been longer than for White offenders.' The new guideline came into effect on 1 April 2021.

Recent Publications

The sentencing of young adults: A distinct group requiring a distinct approach – Emanuel, D., Mawer, C. and Janes, L. *Criminal Law Review* 2021, 3, 203-217

This article summarises developments from both the Court of Appeal and the Sentencing Council in relation to what the authors, David Emanuel QC, Claire Mawer and Dr Laura Janes, describe as a 'sea change in thinking' in the sentencing

of young adults in recent years. The authors argue that, as a consequence of these developments, those aged 18- to 25-years-old should now be treated as a distinct category of defendant for the purposes of sentencing and, when sentencing young adults, there should be a focus on the extent of their maturity. This, in turn, will have an impact on their culpability and thus sentence. It is now widely appreciated that lack of maturity is as relevant a sentencing factor as chronological age and, as was noted by the Lord Chief Justice in *R. v Clarke & Ors* [2018] EWCA Crim 185, reaching the age of 18 'does not present a cliff edge for the purposes of sentencing'.

The authors identify the expanded definitions for age and/or lack of maturity as potential mitigation in the Sentencing Council's *General Guideline: Overarching Principles*, which came into effect in October 2019, as being of particular significance. By embedding these core principles – such as 'the emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater)' and that 'in particular young adults (typically aged 18-25) are still developing neurologically and consequently may be less able to: evaluate the consequences of their actions; limit impulsivity; limit risk taking' – in the guidelines the authors believe that this will lead to greater consistency of approach when sentencing young adults.

The 2020 White Paper on sentencing: A missed opportunity for reform – Henham, R. *Criminal Law Review* 2021, 5, 374-389

In this article, Professor Henham analyses the key sentencing proposals contained in the Government's September 2020 White Paper, *A Smarter Approach to Sentencing*, most of which are now contained in the Police, Crime, Sentencing and Courts Bill. In a wide-ranging critique of the overall thrust of the White Paper, the author notes, amongst other concerns, that the proposals on repeat offenders represent 'the politically-motivated recycling of failed policies' and argues that the proposals to give a greater focus on victims' interests cannot achieve the desired outcomes without greater clarity about what the purposes of victim engagement are and what it is meant to achieve.

As an alternative to the White Paper proposals, Professor Henham calls for a fundamental shift in the values underpinning the policy and practice of sentencing in England and Wales. This would involve a move away from an essentially retributivist paradigm, which the author argues 'restricts the scope for reconciling the competing interests of offenders, victims, and victim communities' and towards a new approach designed to encourage restorative justice. Such an approach, Professor Henham argues, 'would maximise the potential for desistance and the reintegration of offenders, thereby enhancing social cohesion'. The author concludes that a coherent strategy for reducing the prison population and integrating restorative justice into the mainstream sentencing system is a necessary prerequisite for a better sentencing and penal justice system.

  
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