

magistrates always sit in threes. The central magistrate is the Chair, more experienced and specially trained, with a 'winger' either side. Winger magistrates are mute that is, we do not speak in public court but refer matters to the Chair, who will in turn ask our questions for us. New magistrates must sit for at least four years (in Buckinghamshire at least) before applying to be trained as a Chairman.

A typical day begins about 9.30 am when we arrive to find the day's Listing of cases printed out for us. Occasionally, police officers arrive requesting authorisation for a search warrant, often before we begin our first cases at 10 am. The common listing is adult court, but there are specialist courts as well for Family, Youth and Fines matters. The daily business of the court is run by the Clerk, a qualified solicitor or barrister. The lawyers for the defence and prosecution play other leading roles.

The defendants have, by and large, a non-speaking almost peripheral role. Most, if new to the experience, appear nervous even daunted. There is a large minority however all too familiar with the process. It saddens me to hear so many variations on the apparent theme of offence mitigation but which is all too often a variety of disingenuous attempts to escape punishment by trying to provoke sympathy. Too often defendants' attitudes can best be characterised as defiant, dishonest, desultory or detached. A mercifully

small but disproportionately troublesome minority seem to understand the procedures as well as the magistrates and seem actively determined to delay and undermine the process as long as possible. Apart from a directive to consider compensation first where appropriate, the victims can sometime seem the forgotten, and absent, part of the equation.

Passing Judgement

The reality is that the Criminal Justice System will continue to expand as will the use and range of sentences.

When criminals fail prison, it only affects the public after they are released. When they fail community-based sentences like Community Punishment Orders, Fines and Curfews, they are able also to continue offending. Although it may sound cynical, the past two years in court have confirmed my prison experience of just how dishonest, manipulative and egocentric many repeat offenders can be. Human nature is not at its best in the dock. We modify our legal system to accommodate a more self-centred society at our risk. The quixotic nature of public opinion, especially as 'represented' in popular press, offers a dubious arbiter for a magisterial system which has served us so well for so long. It is a system worthy of our confidence and respect.

The Work of the Sentencing Advisory Panel

Professor Martin Wasik, Chairman of the Sentencing Advisory Panel.

Introduction

As many readers of this Journal will know, the role of the Sentencing Advisory Panel is to assist and advise the Court of Appeal in producing sentencing guidelines for the criminal courts. Established under statute, the Panel is independent of the Court, and independent of government. Although our remit is confined to sentencing, Panel members are drawn from across the criminal justice system and beyond. Members are appointed to the Panel on a part-time basis, and are a mix of sentencers, sentence providers, academics, and people from outside the criminal justice system. One of our founder members was Sir Richard Tilt, former Director General of the Prison Service.

The Panel proceeds on the basis of discussion and wide consultation. Our work is therefore an excellent

example of different perspectives on criminal justice being brought together, to achieve understanding and consensus in a very important area of policy. We very much welcome the views of both organisations and individuals from within the Prison Service.

Our work so far ...

The Sentencing Advisory Panel began work in the summer of 1999. I was pleased to address delegates at the Annual Conference of the Prison Service in Harrogate in January 2000. At that early stage the Panel had just submitted its first piece of advice to the Court of Appeal, on sentencing for environmental offences, and we were in the process of consulting on offensive weapons sentencing. Much has happened since then, and a great deal has been achieved. The Panel has now produced six sets of advice for the Court of Appeal, on sentencing for:

- environmental offences (Jan 2000);
- offensive weapons (April 2000);
- importation and possession of opium (May 2000);
- racially aggravated offences (July 2000);
- handling stolen goods (February 2001); and,
- extended sentences (October 2001).

It remains the function of the Court of Appeal to issue sentencing guidelines, and it is for the Court to decide whether to adopt our advice or not. However, the last four of these documents have all been acted on by the Court. Sentencing guidelines based on the Panel's advice have so far been issued on:

(i) the importation and possession of opium¹

This was a matter which the Court referred to the Panel for assistance. The purpose of our advice was to ensure that offences involving opium are sentenced fairly in relation to those involving other, more common, drugs for which sentencing guidelines were already well established. After considering a number of different possible bases for guidelines on opium, the Panel concluded that they should be based on weight, cross-checked with street value to ensure that at least an approximate equivalence with heroin and cocaine was maintained. In the Court of Appeal in *Mashaollahi*, Mr Justice Rougier acknowledged the Court's indebtedness to the Panel for its work. The Panel's advice was substantially adopted.

(ii) Racially aggravated offences²

The Panel proposed to the Court of Appeal that it should frame a sentencing guideline on this important subject, following the creation of specific new offences of racially aggravated assault, harassment and criminal damage. The proposal was that sentencers should indicate what the sentence for the offence would have been without the element of racial aggravation, and then indicate the extent of the addition to the sentence brought about by the racial element.

Lord Justice Rose said in *Kelly and Donnelly* that the Court had found the Panel's advice 'extremely helpful'. The Court adopted its general approach (which built on *Saunders* (2001) 1 Cr App R (8) 458), and adopted all the aggravating and mitigating factors proposed by the Panel.

(iii) Handling stolen goods³

This offence covers a very broad range of circumstances, from the otherwise law-abiding individual who makes a one-off purchase, perhaps of a stolen video recorder or a mobile phone, for personal use, to the professional criminal who regularly provides an outlet for the proceeds of major bank robberies and

other very serious offences. The Panel attempted in this proposal to assist sentencers in both the Crown Court and in Magistrates' Court in the exercise of their discretion when sentencing for this offence. We drew together the relevant sentencing principles, identified the factors which made a particular offence of handling more or less serious (including those features which identify the work of a professional handler) and indicated the threshold for a community or custodial sentence.

In *Webbe and Others*, Lord Justice Rose said that 'This Court is greatly indebted to the Sentencing Advisory Panel for the advice which they have tendered'.

(iv) Extended sentences⁴

The sentencing courts have a range of powers, when dealing with persistent or dangerous sexual and violent offenders, to impose a sentence which reflects the risk of future offending by the offender as well as the seriousness of the offence itself. One of the options available is an extended sentence, which provides for additional supervision of the offender under licence after his release from custody. The Court of Appeal indicated to the Panel that it intended to issue guidance on the use of extended sentences, and asked the Panel for its advice. When we began work on this topic it soon became clear that the legislation in this area was extremely complex, and sometimes sentencers were not well informed about the options available to them.

We proposed that guidance from the Court should start with a general overview of the powers available for dealing with violent and sexual offenders (including longer than commensurate determinate sentences and discretionary life sentences, as well as extended sentences) and an explanation of the practical implications of an extended licence period. In our advice the Panel also tried to identify the types of case in which an extended sentence would be the most appropriate option. These include sex offences where the offender is at high risk of offending but where the nature of the offence does not in itself justify a long custodial sentence; and at the other end of the scale, cases involving serious violent offenders who represent a continuing danger to the public. In *Nelson* Lord Justice Rose said that the Court was 'very grateful for that advice which, as will appear, the Court, for the most part, accepts'.

Research conducted for the Panel

At the time of writing, the Panel has just completed, and is expecting soon to publish, advice to the Court on three further important and controversial topics: the setting of tariffs in murder cases; sentencing

1. See the Court of Appeal's judgement in *Mashaollahi* (2001) 1 Cr App R (S) 330.

2. See the Court of Appeal's judgement in *Kelly and Donnelly* (2001) 2 Cr App R (S) 341.

3. See the Court of Appeal's judgement in *Webbe and Others* (2002) 1 Cr App R (S) 82.

4. See the Court of Appeal's judgement in *Nelson* (2002) 1 Cr App R (S) 134.

for domestic burglary; and, sentencing for rape. In the course of its work on the last two of these topics, the Panel commissioned detailed independent research to assist its deliberations.

For domestic burglary, research was carried by Research Surveys of Great Britain out to ascertain the views of a large and representative sample of members of the public on a range of issues relating to the offence of burglary. In particular, the researchers explored how far members of the public agreed with the aggravating and mitigating factors which had been identified by the Court of Appeal in the leading sentencing case on domestic burglary⁵. The Panel believes that this research has made a significant contribution to our understanding of public attitudes to sentencing, and to how those views are founded.

In respect of the offence of rape the researchers, from the University of Surrey, set up 28 discussion groups, chosen to reflect age, gender, ethnicity, social class, sexual orientation and geographical location, in which various issues about the sentencing of rape offences were considered. In particular, discussants were asked to consider to what extent, if at all, a pre-existing relationship between the offender and the victim should make a difference to the sentence for rape. The findings of the research have assisted the Panel greatly in formulating its advice to the Court. At the time of writing, the report of this research has not been published, but it will in due course also appear on our website.

Consultation

The Panel has recently completed a consultation on sentencing offences involving child pornography on the Internet; and are currently looking at sentencing offences involving evasion of the duty on cigarettes and alcohol. Consultation is central to all the work that the Panel does. Before putting a proposal to the Court of Appeal, we formulate an initial view on the basis of any relevant information about the category offence in question, including sentencing statistics and other research findings. We then set out our provisional views in the form of a consultation paper, inviting comments on specific questions, such as the features which would make an individual offence more or less serious, and the choice and length of sentence. We encourage respondents to let us have their views on any other matters they consider relevant.

We consult widely, and any individual or organisation is free to let us have their views on our consultation papers, or to draw our attention to areas of sentencing which might benefit from new sentencing guidelines or the amendment of existing ones. The core of our consultation, however, is with 28 organisations which have designated by the Lord Chancellor, with whom we must always consult. These organisations

range right across the criminal justice system and beyond. They include HM Prison Service, the Prison Governors' Association; and the Prison Officers' Association. Other consultees on the list who have special interest in prison-related matters include the Prison Reform Trust and the Parole Board. We also regularly consult a range of other interested bodies, including the Prison Service Trade Union Side. Our normal consultation period is three months, which is the period recommended by government. Sometimes it has to be shorter where, for example, the Court of Appeal has adjourned the hearing of an appeal against sentence in order to refer the general issue to the Panel for our advice.

We have received some very helpful responses from our Prison Service consultees to some of our consultation papers, but I would like to encourage more regular input from the Service. Of course I understand that your organisations receive many different requests for response, and that there is pressure on time and resources. In that context, replying to a consultation paper on a particular area of sentencing policy may not seem as much within your areas of concern as some other issues. To do its job effectively, however, and to retain the confidence of the Court of Appeal, the Panel needs the views and advice of the people on the ground about the sentencing issues which impact on the way that you do your work.

We value comments from individuals as well as organisations, and will always treat responses in confidence if you ask us to. Any suggestions for improving the exchange of information between the Sentencing Advisory Panel and prison service organisations would be welcome. At present, we regularly send copies of the Panel's annual report to all our consultees, and invite them to attend the launch of the report, which takes place in London in June.

Getting in touch with us

The easiest way to find out what the Panel is doing, and to check on current sentencing areas under consultation, is to visit our website, which is on www.sentencing-advisory-panel.gov.uk. The site, which has recently been redesigned, is updated regularly. It contains an archive of all our previous advice, and our annual reports, as well as the full text of current consultation papers. You can use the website to respond to our consultation papers by e-mail if you wish.

The Panel Secretariat, which is based in London, can be contacted by phone on 020 7271 8336, by fax on 020 7271 8400, or you can write to: Sentencing Advisory Panel, Room 101, Clive House, Petty France, London SW1H 9HD. The Secretary to the Panel is Miss Brenda Griffith-Williams.

5. *Brevester* (1998) 1 Cr App R (S) 181.