

Institution: Keele University
Unit of Assessment: C20 Law
Title of case study: Developing sentencing guidelines
<p>1. Summary of the impact</p> <p>Professor Martin Wasik's research has made a significant and enduring impact on the law and practice of sentencing – the scale of which has grown from 2008 onwards. This is evidenced by the adoption in England and Wales of 23 sentencing guidelines developed by the Sentencing Advisory Panel, which he chaired from 1999 to 2007, based on proportionality principles advocated in his research and publications. The work of the Panel attracted international attention, informed policy debate, and served as a model of democratic involvement in the area of sentencing. Wasik also provides national Judicial College training on sentencing, and publishes extensively for practitioners, including a monthly e-letter mailed by the College to all judges who sit in criminal cases.</p>
<p>2. Underpinning research</p> <p>The underpinning research set the ground for the principled development of sentencing guidelines in England and Wales as the appropriate mechanism to achieve greater consistency in sentencing practice. Drawing upon the writings of von Hirsch and Ashworth, Wasik has urged the adoption of proportionality (or 'desert') as the anchoring principle for the development of sentencing guidelines and as a proportionate constraint on punitive excess (see references 2, 3 and 4, below), but has argued that English guidelines should be narrative in form, rejecting the numerical sentencing 'grids' in the USA (e.g. reference 4). This has been the approach adopted by the Panel in its advice, such as that issued by the Sentencing Guidelines Council as <i>Overarching Principles: Seriousness</i>, para 1.4: "A court is required to pass a sentence which is commensurate with the seriousness of the offence. Seriousness is determined by two main parameters – the culpability of the offender and the harm caused or risked by the offence". He also argued for a step-by-step implementation of guidelines, rather than the one-off adoption of an overall scheme. The incremental approach (set out in detail in reference 2 below) has proved highly effective in practice in England and Wales, while ambitious attempts elsewhere (in some US States and in New Zealand) to implement guidelines as a single package have failed completely, through judicial or legislative resistance. Wasik's research has also argued that greater consistency in sentencing can best be achieved through working with judges towards proper engagement with sentencing guidelines, rather than the elimination of judicial discretion (e.g. references 2 and 5).</p>
<p>3. References to the research</p> <p>(1) Wasik, M. (2001) <i>Emmins on Sentencing</i>. (4th edition). Blackstone Press, Oxford, 399pp. (2) Wasik, M. (2004) 'Sentencing guidelines - past, present and future', <i>Current Legal Problems</i>, 56(1), pp.239-264. DOI: 10.1093/clp/56.1.239 (3) Wasik, M. (2004) 'Going round in circles? Reflections on fifty years of change in sentencing' <i>Criminal Law Review</i>, pp. 253-265. (4) Wasik, M. (2008) 'Sentencing guidelines in England and Wales - state of the art?' <i>Criminal Law Review</i>, Volume 4, pp. 253-263. (5) Wasik, M. (2004) 'Principles of sentencing' in Feldman D (Ed.) <i>English Public Law</i>. Oxford University Press, Oxford, pp.1191-123. 2nd Edition 2009. (6) Wasik M. 'Part E: Sentencing' in Murphy P (Ed.) <i>Blackstone's Criminal Practice</i>. Oxford, Oxford. Annual editions from 1991 to date, including supplements (2013 edition is 3052pp).</p> <p>(1) was cited by the High Court in Scotland in Gemmell (2012) JC 233 (3) and (4) are in the leading specialist journal in the field. (4) was influential in persuading the Sentencing Commission Working Group, Sentencing Guidelines in England and Wales - An Evolutionary Approach (July 2008) to reject the move</p>

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towards US-style sentencing guidelines.

(6) Is a standard work available in all criminal courts in England and Wales and is extensively used by advocates and judges.

All can be supplied if required.

4. Details of the impact**Adoption of sentencing guidelines**

Based on his underlying research that identified the need for and most effective form of sentencing guidelines, Wasik was appointed as the first Chair of the Sentencing Advisory Panel ('the Panel'), advising first the Court of Appeal, and then, from 2007, the Sentencing Guidelines Council. The Panel's work involved quantitative analysis of sentencing statistics, assessment of critical academic writing, wide consultation with interested organisations and individuals, including victims of crime and the general public. It was recognised as high-quality, thoroughly researched work, but directly applicable to practice. The Panel also commissioned independent empirical research into public attitudes to sentencing. Lord Chief Justice Woolf said: 'The advice of the Panel under Martin Wasik's authoritative chairmanship is always thoroughly researched, carefully considered, and of the highest quality' (source 1). In their text Easton and Piper refer to the 'value of the reasoned and researched advice given by the SAP [Sentencing Advisory Panel]' (source 2). The advice from the Panel on the basis of this research was adopted and their guidelines have been issued on 11 occasions by the Court of Appeal and on 12 occasions by the Sentencing Guidelines Council.

Some guidelines set out general principles, based on proportionality. These include guidelines on offence seriousness, sentencing of young offenders, and allocation of offences. Others provide clear and detailed advice for judges dealing with difficult and emotive areas, such as sentencing for rape, burglary, driving offences causing death, child abuse offences, fraud, handling stolen goods, minimum terms in murder, and the reduction in sentence for a guilty plea. This last guideline is 'the reference point' for judges dealing with the 90 per cent of defendants who plead guilty (source 3). This guideline has been referred to in appellate cases on 445 occasions in 2013 alone. The guideline on domestic violence was strongly endorsed by Hallett LJ: 'Investigators, prosecutors, defenders and judges should read and re-read the guideline, and ensure they are truly aware of its implications' (source 4). Early guidelines developed by the Panel, such as those on handling stolen goods in *Webbe* [2001] EWCA Crim 1217, remain the standard for any judge or magistrate sentencing for that offence. This guideline has been followed and endorsed by the Court of Appeal in 129 cases (63 since 2008). Many changes to sentencing practice have resulted from the Panel's advice and the resulting guidelines, including the principle that the starting point in sentencing for rape should be the same in 'stranger rape' and 'acquaintance rape' cases (source 5), and the adoption of a scale of seriousness within child abuse images as a means of achieving consistent sentencing for the offense of downloading child abuse images from the internet (source 6). The Lord Chief Justice had previously sought the views of the Panel in relation to issuing guidelines for this offence and substantially adopted the Panel's advice in this case. The guideline on sentencing for child abuse image offenses has been referred to and endorsed in 268 appellate cases (54 since 2008). The guidelines for sentencing in rape and child abuse image cases were subsumed within the compendious guidance on sentencing for all sexual offences, issued by the Panel and the SGC in 2005. The sex offence guidelines have been referred to in 97 appellate decisions in 2013 alone.

In the early years of the Panel there was considerable judicial scepticism about the guidelines project, but that was overcome, so there is now a high degree of agreement within the profession of the value, and therefore the impact, of sentencing guidelines. The Home Secretary who sponsored the creation of the Panel said in 2008 'It is a remarkable achievement that the Panel is now so highly regarded, not only by the Court of Appeal but by practitioners, academics, and other jurisdictions' (source 7), and the Lord Chancellor during the same period said: 'The acceptance of the Panel, and the good relationship it built up, initially with the Court and with the SGC, is due in no small part to [Wasik's] chairmanship ... [Wasik] made a huge contribution' (source 8). Lord Chief Justice Phillips in 2007 said that '... [Wasik's] ability to draw together academics, judges,

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magistrates and other practitioners, as well as individuals from outside the criminal justice system, has contributed significantly to increasing the Panel's influence' (source 9). Wasik was appointed CBE in 2008 for services to criminal justice.

Importance of guidelines for practitioners

Judicial training

The proper understanding and application of sentencing guidelines is now a key feature of training for all judges and magistrates who sit in criminal cases. Wasik, due to his role on the Sentencing Guidelines Panel, is one of two keynote speakers (with Professor Ormerod QC) invited to deliver the compulsory judicial training organised by the Judicial College. In 2012 Wasik addressed 90 full-time and part-time Crown Court judges over two days in September. He ran two training sessions for High Court and Court of Appeal judges at the Royal Courts of Justice in October and November 2012. He was the keynote speaker on sentencing in Judicial College courses in April and September 2013 (a total audience of 200 judges). He has been retained for similar presentations through 2014 and 2015. The published sentencing guidelines are reproduced in full in the relevant practitioner works: *Blackstone* (where Wasik writes the sentencing material) and *Archbold*. *Blackstone* is a leading practitioner work, with copies available on the bench in every criminal court and is regularly cited by the Court of Appeal. Wasik's continuing impact on judicial education was strengthened by his appointment in 2005 (to present) as a part-time Crown Court judge, and he sits for up to 30 days each year on the Midland Circuit. Training new practitioners and re-training older ones has a direct impact on the effectiveness and integrity of the criminal justice system throughout the UK.

Criminal law e-letter

Wasik produces (with Professor Ormerod) a monthly criminal law e-letter which is mailed by the Judicial College to all judges who sit in criminal cases. This has been described by HH Judge Phillips, Director of Training for the College as providing a 'massive contribution [to] keep[ing] judges up to date with recent developments in criminal law and to alert[ing] them to forthcoming changes. [Wasik and Ormerod] combine academic excellence with a down-to-earth practical approach' (source 10).

Informing policy debates in other jurisdictions

The working process of the Panel, and the guidelines they produced, have had international reach. The Panel hosted visits from judges and officials from the USA, Canada, South Africa, South Korea, Scotland, New Zealand, and Australia. According to Freiberg (source 11), the Sentencing Council in the Australian State of Victoria chose to follow the Panel's model, since 'its membership was broader than that of the US Commissions and its consultations were very wide, partly in order to democratise the decision-making process'.

5. Sources to corroborate the impact

- (1) Lord Woolf, Lord Chief Justice, in the Annual Report of the Council and Panel 2004-5
- (2) Easton, S. and Piper, C (2008) *Sentencing and Punishment: The Quest for Justice*, 2nd edition. Oxford University Press: Oxford, p.53.
- (3) Hughes LJ in *Caley* [2012] EWCA Crim 2821.
- (4) Lady Justice Hallett in Attorney General's Reference No 80 of 2009 [2010] EWCA Crim 470
- (5) *Millberry* [2002] EWCA Crim 2891
- (6) Lord Justice Rose in *Oliver* [2002] EWCA Crim 2766.
- (7) Home Secretary at the time.
- (8) Secretary of State and Lord Chancellor at the time.
- (9) Lord Phillips, Lord Chief Justice, 2007, *Sentencing Guidelines Newsletter*, May 2007, p.1.
- (10) His Honour Judge John Phillips, foreword to the *e-letter (Crime)*, July 2012.
- (11) Freiberg, A. (2008) 'The Victorian Sentencing Council' in Freiberg and Gelb (eds), *Penal Populism, Sentencing Councils and Sentencing Policy*, Willan Publishing, p.152.