

SENTENCING COUNCIL PUBLISHES GUIDANCE ON THE APPLICATION OF SENTENCING PRINCIPLES DURING THE COVID 19 EMERGENCY

Those working in the criminal justice system are aware of the significant impact of incarceration on prisoners and their families during the current pandemic. Prisoners are required to endure up to 23 hours a day confined to their cells in order to enable social distancing within the prison estate. In addition inmates are prevented from receiving visits from friends or family.

The Court of Appeal recently indicated the current pandemic is a factor that can be taken into account when considering whether to suspend a sentence of imprisonment, see [R v Manning \[2020\] EWCA Crim 592](#).

Lord Justice Holroyde, Chairman of the Sentencing Council, released a [statement](#) (link here) on the 23rd June 2020 further clarifying the position. The statement sets out the staged approach when considering whether to impose an immediate custodial sentence;

- 1) the court must consider whether the custodial threshold has been passed with reference to the [Imposition Guideline](#);
- 2) if the threshold has been passed, is it unavoidable that a custodial sentence is imposed?
- 3) if a custodial sentence is unavoidable the court must decide what is the shortest term commensurate with the seriousness of the offence and whether the sentence can be suspended.
- 4) the court in answering those questions should take into account the likely impact of a custodial sentence upon the offender and, where appropriate, upon others such as children and other dependents;

As far as (4) above is concerned, the statement quotes the observations made by the Lord Chief Justice in *Manning* and makes clear that the court must bear in mind the “*practical realities*” of the effects of the current health emergency, including the impact of immediate imprisonment for some groups of offenders and their families.

The concluding paragraph of the statement refers to the [Reduction in sentence for a guilty plea guideline](#) stating that courts must consider the exceptions in that guideline including circumstances effecting the defendant’s ability to understand the allegations or receive the necessary advice before pleading guilty, or where a defendant ultimately pleads or is convicted of a different offence to that originally charged. The statement concludes “*the court must keep*

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in mind the practical difficulties of defendants accessing legal advice during the present emergency”.

The sentencing council have made it clear in their statement that the current pandemic is now an important feature to be borne in mind during the sentencing exercise. Firstly, as to whether any prison sentence should be suspended and secondly in assessing what appropriate reduction to make for a guilty plea.

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29TH JUNE 2020

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