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Draft response to **Allocation Draft Guideline**

Issued by **Sentencing Council**

Link to consultation <http://www.sentencingcouncil.org.uk/publications/item/allocation-consultation/>

1 Do you agree with the proposed changes to the Applicability of guideline and Statutory framework sections? Please give your reasons if you do not agree.

Yes. The MA agrees the proposed changes are clear and accessible.

2 Do you agree with the proposed wording at paragraph 1 of the Guidance section? Please give your reasons if you do not agree.

The MA strongly supports the intent behind paragraph 1. The first bullet point will support magistrates to retain jurisdiction in a number of cases they would currently send to the Crown Court in accordance with guidelines, even though a number of factors would suggest a sentence within their powers is likely. This will include cases where a not guilty plea is entered at the first hearing not because the offence is categorically denied or the basic facts disputed, but because defence advocates have not studied the whole of the evidence. However, the MA would suggest that the bullet point should be clearer in its guidance on the approach which should be taken to multiple offences where the likely aggregate sentence would be 12 months or shorter, but more than six months.

The MA would suggest that the second bullet point's reference to circumstances in which a case should be sent to the Crown Court even where the sentence is likely to be within the magistrates' courts' powers could be amended. The MA would like to see a change to reflect the explanation given in the consultation document that this bullet point only covers unusual exceptions from point 1, rather than a broad category of cases. The MA is concerned that the phrase "complex questions of fact" could be interpreted very broadly, especially given that it is given equal prominence with the main circumstance in which the court should send a case to the Crown Court. It is important that an overly-broad interpretation of this section does not lead to more cases being sent to the Crown Court, undermining the overall intention of the revised guideline and reducing efficiency.

3 Do you agree with the proposed change of practice as set out at paragraph 2? Is the wording clear? Please give your reasons if you do not agree.

The MA supports the proposed change and warmly welcomes the fact it reflects the MA's position as stated in its submission to the Leveson Review.

4 Do you agree with the proposed guidance at paragraph 3? Please give your reasons if you do not agree.

The MA supports paragraph 3 and agrees that it will provide useful guidance to ensure cases are not committed for trial unnecessarily. The MA's own research into cases committed to the Crown Court for sentence where the final sentence was within magistrates' powers showed that 44% of



cases scrutinised by its researcher were attributable to a breach of either a suspended sentence order or community order made by the Crown Court, and so this should have a positive impact.

5 Do you agree with the proposed guidance at paragraph 4? Please give your reasons if you do not agree.

The MA supports the guidance in paragraph 4 – it is certainly very important that the court hears representations from all necessary parties. It will be particularly important to ensure that appropriate representations are heard from the defence (including unrepresented defendants), so that potential mitigation can be taken into account in allocation decisions.

6 Do you agree with the proposed final paragraph of the Guidance section? Please give your reasons if you do not agree.

The MA questions why any change is necessary to this paragraph – in particular the fact that the existing guideline states a court “should warn” the defendant they may still be committed to the Crown Court for sentence. It is unclear why this would have to be changed to “must warn”: magistrates are well aware of the importance of ensuring defendants understand the impact of their decision to elect or not to elect.

7 Do you agree that the Linked cases section should be unchanged? Please give your reasons if you do not agree.

The MA feels it is necessary to update this section to reflect the recent changes brought in via Section 53 of the Criminal Justice and Courts Act 2015, which allows youth courts to commit cases to the Crown Court for sentence. This provides for youth courts to retain more appropriate cases and Parliament has made clear that the youth court is the appropriate place for young defendants to be tried.

The MA proposes the first paragraph should be amended to ensure the presumption that young defendants be dealt with in youth court is clear and only in exceptional cases should such cases be sent to the Crown Court. For example, the paragraph could read: 'Where a youth and adult are jointly charged, the youth must be tried summarily. In exceptional circumstances, the court may consider it to be in the interests...'

An additional bullet point should also be added to reflect the fact that youth courts are now empowered to commit cases to the Crown Court for sentence, the intent behind this change being that more cases are tried in youth court.

The MA would also query moving away from the prior situation where “any previous convictions” was a separate bullet point, which made sure it was considered carefully. The MA would suggest this should still be put as a separate bullet point.

Finally, the MA would point out that any reference to the role played by the young person should refer to his or her alleged role, as guilt has not been established at this stage.

8 Do you agree with the proposed guidance in the Committal for sentence section? Please give your reasons if you do not agree.

Yes, the MA agrees with this section. The MA would suggest that it would be worth adding a reference to the ability to order a pre-sentence report prior to deciding to commit a case for sentence.

9 Please provide any additional comments or suggestions that you have about the proposals.

Overall, the MA warmly welcomes the proposed amendments to the allocation guidance. In the lead-up to the publication of Lord Justice Leveson’s Review of Efficiency in the Criminal Courts, it



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was very clear in its support for providing a clear framework which encouraged magistrates to keep more cases in their courts. The Sentencing Council's proposals, in line with Leveson LJ's recommendations, represent real progress and should help to give magistrates greater confidence in retaining cases. The MA's suggestions for amendments are made in that spirit.