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SENTENCING: THE JUDGE'S ROLE

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Introduction

1. It is a pleasure to have been asked to give this year's Judicial Institute lecture, the first since Professor David Ormerod succeeded Professor Dame Hazel Genn as co-director with Professor Cheryl Thomas. Both have a wealth of academic and practical experience in judicial matters which will ensure that the Institute remains at the heart of the study of the judiciary.

2. I want to speak about sentencing. Across our Magistrates and Crown Courts thousands of people are sentenced every day for crimes ranging from minor motoring offences or failing to pay for a TV licence to serious violence, sexual offences and homicide. Public and political attention focusses on crimes sentenced in the Crown Court. That is because the Magistrates' Court deals only with summary offences where the penalties provided by Parliament are limited to a fine or very short term of imprisonment, or offences which could be tried or sentenced in the Crown Court – so-called either way offences – but for which the limited sentencing powers of the Magistrates' Court are sufficient. The Crown Court deals with tens of thousands of such either way offences each year as well as the more serious cases which can only be tried on indictment in that court.

3. Were the mythical alien to arrive on earth and, I grant you yet more improbably, take an interest in sentencing in England and Wales by reading the newspapers and dipping into the more noisy parts of on-line media, it would soon gain the impression that sentencing had got softer in recent years. It would read about "wet, liberal judges being soft on criminals"[1] and wonder why criminals convicted of serious offences were getting more lenient sentences than they used to. Then our alien visitor might seek some other sources of information, and if possessed of a brow it might become furrowed.

4. There is a difficulty with this narrative. It is a myth.

5. Here are some facts. In 1993 the prison population was a little over 44,000. It is now a little under 80,000. In December 2009, the average length of all custodial sentences was 13.7 months. In December 2019 it was 18.9 months. For cases that could be dealt with only in the Crown Court the average was 16.5 months in 2009 and 21.4 months in 2019. There have been further increases since last December. The latest Ministry of Justice figures[2] show that the overall average had risen to 19.6 months and for indictable only offences to 22.2 months. The average length of the minimum term that a person convicted of murder and sentenced to life imprisonment must serve before the Parole Board can consider release on licence, had risen from 12.5 years in 2003 to 21.3 years in 2016.

6. There are many reasons for these increases but there is no doubt that in recent decades sentencing levels have increased, not reduced.

[1] Sunday Express 8 November 2020, quoting a source.
[2] National Statistics, Criminal Justice Statistics Quarterly, England and Wales, April 2019 to March 2020, published August 2020.

The Structure Around Sentencing

7. Sentencing has been described as part of the criminal process where the court 'has a free hand within the limits laid down for the offence in question.'[3] That captures both the evaluative and discretionary element in sentencing and also that there are limits and structures within which judges operate.

8. The starting point for sentencing is the statutory framework provided by Part 12 of the Criminal Justice Act 2003. Subject to some limited exceptions, a court sentencing an adult offender must have regard to five purposes of sentencing.[4] The five purposes are listed but without any priority or specific weight given to each. That will vary from case to case. They are: the punishment of offenders; the reduction of crime (including its reduction by deterrence); the reform and rehabilitation of offenders; the protection of the public; and the making of reparation by offenders to persons affected by their offences. These objectives have a long history. Plato, for instance, emphasised the importance of punishment as a means to promote deterrence both of offenders and of the public.[5] Closer to our time, Jeremy Bentham, understood the aims of sentencing as 'deterrence, rehabilitation and incapacitation.'; the last being what is now referred to as protection of the public.[6] What ought to be clear is that it is no purpose of sentencing to exact vengeance upon an offender.

[3] R. M. Jackson, *The Machinery of Justice in England*, (CUP, 164, 2015 reprint) at 204.
[4] Section 142 of the 2003 Act.
[5] Plato, Protagoras cited in M. Materni, *Criminal Punishment and the Pursuit of Justice*, 2 Br. J. Am. Leg. Studies (2013) 263 at 289.
[6] M. Materni, at 265.

9. A different approach is taken to sentencing young offenders, individuals under the age of 18. The principal aim of the youth justice system is to prevent offending or reoffending. Sentencing must take account of the welfare of the offender, as well as consider punishment, reform and rehabilitation, protection of the public and reparation, as is the case for adult offenders.[7] Again, there are limited exceptions where these principles do not apply. The different approach to young offenders stems from the long-understood view that youths make mistakes that an adult would not be expected to make. Children and young people are immature, often more easily led and influenced than adults and are still developing. Their brains are still developing. Youth and immaturity are reflected in the statutory scheme for sentencing those under 18 and youth and immaturity play an important part in deciding sentences for those in early adulthood, when compared with true adults.

10. Parliament has set the overall structure. It also sets the maximum sentence available for all but a small number of common law offences. It requires judges to have regard to Sentencing Guidelines. At the heart of the sentencing process is a statutory provision which few outside the law appear to have heard of. A court must not impose a custodial sentence unless it is of the opinion that the offence is so serious that neither a fine nor a community sentence is justified.[8] If it is of that opinion, the sentence must be for the shortest term commensurate with the seriousness of the offence. Parliament's clear intention is that sentences of imprisonment, even suspended sentences, should be avoided unless nothing else will do. There is nothing new or unusual in this. It is a statutory requirement that has its roots in the earliest of the Anglo-

[7] Section 142A of the 2003 Act.
[8] Section 152 of the 2003 Act

Saxon sentencing codes[9] and one that with the variety of sentencing options now available enables judges to ensure, consistently with Parliament's intention, that sentences are just and proportionate to the crime.

11. Parliament specifies what period of any sentence must actually be served by a prisoner. Judges have nothing to do with that and take no account of the ins and outs of early release provisions when determining a sentence.[10] It is well known that Parliament has specified that most prisoners serve only half of the sentence imposed by the court before they are released on licence,[11] subject to recall if they reoffend or breach conditions, although in some circumstances the proportion is two thirds; and the position is changing because there is recent legislation affecting some sentences.

12. While these statutory purposes shape how judges approach sentencing decisions, in all cases the court determines a sentence by taking into account a series of factors. In all cases, Magistrates and Judges must consider the culpability of the offender together with the harm caused by the offending and thus assess the seriousness of the offence. In doing so, aggravating and mitigating factors are important. Aggravating factors, previous convictions, breach of trust and so on, increase the seriousness of the crime and the sentence. Mitigating factors, such as the offender having no previous convictions, their age, mental health concerns, remorse etc. have the opposite effect.

[9] See the Laws of Æthelberht <https://sourcebooks.fordham.edu/source/560-975dooms.asp#The%20Laws%20of%20Alfred,%20Guthrum,%20and%20Edward%20the%20Elder>.
[10] *R v Round, R v Dunn* [2009] EWCA Crim 2667 the Court of Appeal confirmed the principle that matters of early release, licence and home detention curfew should normally be left out of account when imposing sentence.
[11] Section 252 Criminal Justice Act 2003

13. I should pause here to note that the seriousness of an offence does not simply play a role in determining the length of a sentence. Courts may impose a range of sentences. At one end of the spectrum are absolute or conditional discharges; at the other life sentences. In between there are fines, and community sentences with a range of conditions attached such as curfew or work, through suspended sentences of imprisonment, an immediate sentence of imprisonment for a fixed term and then extended sentences. There is now a bewildering range of orders that may be made as part of the sentencing process. Importantly, the court's assessment of these core factors will often determine what type of sentence is imposed, particularly when considering cases on the cusp between fine and community sentence, community sentence and custodial sentence and so on.[12]

14. How do judges apply this framework? That takes me to the Sentencing Guidelines. They are issued by the Sentencing Council which was established by Parliament in 2009.[13] It is required to provide guidelines for different offences, which judges must follow except where it is in the interests of justice not to do so. Its membership covers a wide range of interest groups. It develops guidelines through a transparent process and after wide consultation. In developing the Guidelines, the Council in enjoined to promote consistency, to have regard to the impact of sentencing decisions on victims of offences, to the need to promote public confidence in the criminal justice system and also the cost of different sentences and their relative effectiveness in preventing re-offending.[14]

[12] e.g. Section 148 of the 2003 Act.
[13] Section 115 of the Coroners & Justice Act 2009,
[14] Section 120(11) of the 2009 Act.

15. Prior to the creation of the Sentencing Council the earliest attempt at providing help to sentencing judges of which I am aware were unofficial judicially created guidelines given to judges on appointment during the early part of the 20th century, although they were never published.[15] From the early 1980s the Court of Appeal increasingly laid down guidelines in the form of judgments. But it was still relatively rare for the Lord Chief Justice to deliver guideline judgments. The guidance was broad and, by the late 1990s, the judgments had covered only a small proportion of offences. The Sentencing Advisory Panel was created by statute in 1998[16] to make recommendations. This was followed by the creation of the Sentencing Guidelines Council in 2003[17] which produced guidelines to which the courts were required by statute to have regard, a weaker requirement than now applies.

16. The intention behind the Sentencing Guidelines is to ensure that there is far greater transparency, and hence understanding, of the range of sentences that judges can be expected to give for specific offences. This greater transparency is reinforced by a statutory requirement[18] that judges must set out their reasons for their sentencing decision in open court and in ordinary language, together with its effect. They also require judges to identify any applicable sentencing guidelines. If the judge decides that it is in the interests of justice not to follow the guidelines, he or she must also explain why. The reasons need not be elaborate,

[15] R. M. Jackson ibid at 213.
[16] Section 81 of the Crime and Disorder Act 1998
[17] section 167 of the Criminal Justice Act 2003
[18] Section 174 of the Criminal Justice Act 2003, and now section 52 of the Sentencing Act 2020

indeed should be short, and in straightforward language so that the defendant and public understand why the sentence was imposed.[19]

17. The Guidelines do not just set out the range of possible sentences, breaking down each offence into categories with fluid boundaries. They also provide the framework for determining the sentence. They set out a stepped approach dealing with culpability and harm, aggravating and mitigating factors and so on. The Guidelines explain that judges are required to take account of any reduction to the sentence for a guilty plea.[20] Those reductions are themselves the subject of a guideline and range from one third, when a guilty plea is indicated at the first opportunity, to only 10% if it comes at the beginning of the trial. Yet, as the Court of Appeal has repeatedly explained, the guidelines are not tramlines. A judge is free to go outside the guidelines for good reason.

18. I should add that a further and very welcome addition to the sentencing process has just been introduced. That is the statutory Sentencing Code.[21] It was the product of a great deal of hard work by the Law Commission; a project led by David Ormerod. It sets out clearly and comprehensibly the law concerning sentencing by bringing all statutory material into one place. This is a huge advance. Previously, the law affecting sentencing was scattered across a multitude of statutes making it difficult for judges, magistrates and practitioners alike to work out what applied in any given case. That resulted in many mistakes which had later to be corrected in further hearings or appeals. That will now largely be avoided.

[19] R v Chin-Charles [2019] 1 WLR 5921
[20] Section 144 of the Criminal Justice Act 2003
[21] The Sentencing Act 2020

Development of the Range of Available Sentences

19. Today's approach to sentencing will, of course, differ from the past. As society changes over time so do approaches to crime and punishment. At one time, imprisonment was primarily a means of pre-trial detention. It was famously used as a means to compel payment of judgment debts. Imprisonment as a form of sentencing really came into its own during the 18th and 19th centuries. Two things lay behind this evolution. First, the decline in the use of capital punishment for a wide variety of offences. Secondly, the initial replacement for capital punishment with transportation and, for a short period, the prison hulk both of which fell away. These historic shifts left imprisonment as the primary focus of sentencing policy.[22]

20. The increasing importance of prison within penal policy was not the only development. As it became the centrepiece of sentencing, alternatives were also being developed. Alternatives that reflected an acceptance by policy-makers in the past that different approaches to sentencing were needed to take account of different types of offender; a point the Gladstone Committee on prisons reached in 1895.[23] For it, imprisonment was '*too broad a brush*'. It recognised that '*Habitual criminals, habitual drunkards, mentally disordered offenders, first offenders, young prisoners, women, women with infants, remand prisoners and debtors*'[24] required different approaches.

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[22] J. H. Langbein, *The Historical Origins of the Sanction of Imprisonment for Serious Crime*, Journal of Legal Studies, Vol. V(1), (1976) 35.
[23] The Departmental Committee on Prisons was established under the chairmanship of Herbert Gladstone (son of W.E. Gladstone) in 1894. It was a response to continuing and intense criticism by newspapers and periodicals such as *The Daily Chronicle* and *The Fortnightly Review*, of the existing prison system, and of the Chairman of Prison Commissioners, Edmund Du Cane.
[24] P. Rawlings, *Crime and Power* (Pearson, 1999) at 120.

21. Recognition of mental disorder and illness, and the need for differential treatment, can be seen from the Mental Deficiency Act 1913 and the Infanticide Acts of 1922 and 1938. The former Act was based on an understanding that prison was not always appropriate for those convicted of crime who were mentally ill. That approach has been carried through into contemporary legislation which provides for different disposals for some who are mentally ill and more generally is recognised in the recent guideline from the Sentencing Council.

22. The Infanticide Acts acknowledged that murder was not an appropriate charge for women who had suffered mental illness consequent upon giving birth, despite all the normal ingredients of murder being present.

23. The shift to greater differentiation in the treatment of some categories of offender ran in tandem with an increase in alternatives to imprisonment itself. Probation was introduced on a voluntary basis in the 19th century and then put on a statutory footing in 1925.[25] Borstal Institutions for young offenders, the stated aim of which was to 'train and rehabilitate', were introduced in 1948[26] and then replaced in 1982 by Youth Custody Centres and now Young Offender Institutions together with secure accommodation for those aged 15 and under. The suspended sentence entered the picture in 1967. [27] The first community sentence was handed down by Mr Justice James in 1973.[28] From 1998, anti-social behaviour orders became available.[29] A wide range of conditions can be attached to community and suspended sentences. The 21st century

[25] Criminal Justice Act 1925.
[26] Criminal Justice Act 1948; R. M. Jackson, ibid, at 207.
[27] Criminal Justice Act 1967, s.39.
[28] J. Harding, *Forty Years of Community Service*, The Guardian, 8 January 2013 <https://www.theguardian.com/society/2013/jan/08/forty-years-community-service>.
[29] Crime and Disorder Act 1998, s.1.

has seen the introduction of injunctions and criminal behaviour orders under the Anti-Social Behaviour, Crime and Policing Act 2014. When we add in the use in some cases of restorative justice measures, we can see a broad evolution in the approach and sophistication of sentencing.

24. I wonder whether modern views of current sentencing practice may be determined by a misplaced view of the past and not only the recent past. Where crime and punishment are concerned it is often easy to imagine that the past took a stricter and tougher approach to criminal sentencing. The truth is more complex. What sentences, for example, would be attached to an Offences Against the Person Act if it were passing through Parliament today? Our Victorian forebears created two offences with precisely the same harm in the still in force 1861 Act, wounding or causing grievous bodily harm. One, section 18, also carried the requirement for the offender to intend to cause harm of that seriousness. The other, section 20, did not. The difference in available sentences? Life imprisonment for section 18 but only five years for section 20. The Victorian Parliament considered that culpability, not harm, had the dominant voice.

International Comparisons

25. Human nature being what it is, similar crimes are committed in every jurisdiction in the world and each has its own approach to sentencing. There is a rich study in international comparative criminal practice. Some countries sentence more severely than England and Wales. The United States, for example at least in most states, and some in Eastern Europe. No comparisons are exact, but it is nonetheless interesting to glance at the position in other mature democracies.

Time allows no more than a glance at Germany, Norway and Australia alongside England and Wales for three serious offences.

26. First, the approach to possession with intent to supply one kilogram of a class A drug. In England and Wales, the maximum sentence is life imprisonment, but after a trial in the Crown Court the offender might expect to receive a sentence of about 11 years' imprisonment. In Victoria, Australia a broadly similar approach is taken. The maximum penalty is also life imprisonment but an offender in a typical case might expect to receive a sentence of 8 to 9 years' imprisonment.[30] A comparable offence in Norway would attract a sentence within the range of 3 to 15 years' imprisonment, with 4 years being the starting point from which specific aggravating and mitigating factors would be taken into account. A similar offence in Germany would attract a sentence of between 1 and 15 years' imprisonment. For a one kilogram amount of heroin an offender would typically expect to receive a sentence of between 4 and 8 years.[31]

27. What about grievous bodily harm with intent? Under section 18 of the Offences against the Person Act 1861 the maximum sentence is life imprisonment. Where someone stabs another with intent, they might expect to receive a sentence of imprisonment in double figures. A comparable offence in Victoria, Australia (intentionally causing serious injury) has a maximum sentence of 20 years' imprisonment. An offender might expect to receive a sentence of 6 to 7 years' imprisonment. In Norway, a comparable offence (aggravated bodily harm with a knife)

[30] The Sentencing Advisory Council for Victoria produces 'Sentencing Snapshots', which provide aggregate statistics for sentencing for a particular offence over a five year period. The most common sentence for the offence is identified but there is no differentiation between guilty and not guilty pleas.
[31] Section 29a(1) No. 2 BtMG (Germany). Also see section 30 and 30a. See http://www.gesetze-im-internet.de/englisch_stgb/index.html.

attracts a maximum sentence of 15 years.[32] A typical sentence may, however, start from 3 years' imprisonment. A similar picture emerges in Germany, with the minimum sentence being 1 year and the maximum 10 years' imprisonment.[33]

28. In England and Wales, rape carries the maximum sentence of life imprisonment, with a starting point of 5 years in the Guideline for the least serious offences of rape. A sentence of 4 to 7 years would be expected. In Victoria, Australia, the maximum sentence is 25 years. In a case with no specific aggravating or mitigating factors, an offender would expect to be sentenced to 6 to 7 years' imprisonment. In Norway, sexual assault involving intercourse has a minimum term of 3 years and a maximum of 15 years' imprisonment, starting from a baseline of 4 years with no specific aggravating or mitigating factors.[34] In Germany, the comparable offence has a minimum sentence of 2 years, with a maximum of 25 years' imprisonment.[35]

29. These three examples are not intended to suggest that the approach in England and Wales is any better or worse than that in Australia, Norway or Germany. There are both similarities and differences, but they do not suggest that the approach to sentencing these serious offences in England and Wales is more lenient than in other jurisdictions.

[32] Section 274 Penal Code (Norway).
[33] Section 226 BtMG (Germany).
[34] Section 291 and 292 Penal Code (Norway). And see the preparatory work, Ot. prp. nr. 22 (2008-2009) ch. 7.5.3.4 p. 228 and the Supreme Court cases Rt. 2012 s. 1084 and Rt. 2012 s. 659
[35] Section 177(6) BtMG (Germany).

Judges and sentencing

30. We have seen that judges are required to sentence according to statutory purposes. They are required to follow Guidelines applying the statutory provisions now found in the Sentencing Code. Individual sentencing decisions will properly be tailored to the circumstances of each case. They will not be arbitrary. If judges or magistrates go wrong appeals will put them right. Sentences imposed in the Magistrates' Court are subject to appeal to the Crown Court. Sentences imposed in the Crown Court may be appealed to the Court of Appeal Criminal Division on grounds that they are wrong in principle or manifestly excessive. There is a corrective available to the Attorney General if she believes that a Crown Court sentence in a range of serious cases is unduly lenient. She may refer it to the Court of Appeal. The figures are interesting. Between October 2018 and September 2019, of the roughly 70,000 sentences imposed in the Crown Court, there were 3,356 applications for leave to appeal against sentence and in the same period 672 appeals against sentence were allowed.[36] In the calendar year 2018 the Law Officers referred 140 sentences to the Court of Appeal. Of that number, 99 were increased. As the Solicitor General said in August 2019 when issuing those statistics:

> *"It must be remembered that in the majority of cases the right sentence is delivered. 70,000 sentences were handed down at Crown Courts in England and Wales in this same year, and only around 0.1% of these were found to be unduly lenient, showing that in the vast majority of cases judges get it right."*

31. In 2019 only 93 were referred of which 63 were increased.[37] That too might surprise my alien visitor focussing too much on social and broader media.

[36] Court of Appeal Criminal Division Annual report 2019.
[37] Hansard 5.10.20 HC Vol 681 Col 731. Michael Ellis QC MP, Solicitor General.

32. I started by indicating that rather than sentences becoming more lenient over time, the opposite has in fact been the case. There are various explanations for this.

33. One has undoubtedly been the increase in minimum terms attached to sentences of life imprisonment for murder. The Criminal Justice Act 2003[38] substantially increased the starting points for the minimum term that a murderer must serve. Only after serving that term can the Parole Board direct release if they conclude it safe to do so. Even then the offender will remain on life licence subject to conditions and liable to recall to prison in the event of a breach of those conditions or reoffending. For an adult the usual starting point is a minimum term of 16 years but, for example, in cases where a firearm was used in murder or a murder occurred in the course of a robbery, the starting point for the minimum term is increased to 30 years. A 25 year minimum term was later introduced by way of amendment for murder involving a knife. A whole life tariff is appropriate for a range of the most serious offences of murder. The statutory minimum term starting points, albeit subject to upward and downward adjustment to reflect the circumstances of each case, led to the increases I mentioned earlier. In consequence of the increase in minimum terms mandated by Parliament for murder, the Court of Appeal Criminal Division increased manslaughter sentences,[39] increases which have followed through into Guidelines from the Council. As the Council itself notes, this resulted in average custodial sentences for manslaughter increasing from 5.4 years in 2007 to 8.8 years in 2017.[40] Both

[38] Schedule 21
[39] e.g. *R v Appleby* [2009] EWCA Crim 2693
[40] Sentencing Council, Manslaughter Data Tables, *https://www.sentencingcouncil.org.uk/wp-content/uploads/Manslaughter-data-tables.xls*

Parliament and the judiciary have played a key role in increasing sentence length. These increases fed through into increases in the sentences imposed for attempted murder and serious offences of violence.

34. Parliament has also increased the maximum sentences for a wide range of offences. For example, the maximum sentence for indecent assault on a girl aged under 13 was 5 years' imprisonment until 1985. In 1985 this was doubled to 10 years. Since 2003, sexual assault of a child under the age of 13 has attracted a maximum sentence of 14 years. These increases are necessarily reflected in increases in the level of sentences set out in the Guidelines. The Sexual Offences Act 2003 created maximum sentences which were often greater than those available for a like offence under previous legislation. Some academic commentary suggests that the effect of the Sentencing Guidelines by introducing a greater 'emphasis on consistency and proportionality' has resulted in sentences being adjusted 'upwards' rather than 'downwards'; and that the guidelines have, in specific cases, recalibrated the tariffs for sentences to increase those for offences where past sentences were viewed to be too lenient.[41]

35. To my mind, there has been a perceptible hardening of the public and political attitude to crime, particularly sexual and violent offending, which has resulted in a general shift in the balance between culpability and harm when determining sentence. Harm features more strongly than it did. That is perhaps best illustrated by the creation of new motoring offences. It has been an offence to drive carelessly for almost as long as there has been driving. But the consequences of that carelessness barely featured in sentencing because the view was that those consequences

[41] A summary of the various rationales is set out in J. Pina-Sanchez et al, ibid. at 980.

were unpredictable and largely unrelated to the carelessness. Emerging from a junction having not looked properly might result in trivial damage to a passing car or the death of a motorcyclist following the same momentary inattention. However dreadful the consequences, careless driving was a summary only offence for which a fine and points, occasionally a disqualification, were the penalties. In 2008 Parliament created the offence of causing death by careless driving[42] with a maximum penalty of 5 years' imprisonment. The recent White Paper on Sentencing Reform has again proposed a new offence of causing serious injury by careless driving, with the same sentence, following in the wake of the creation of an offence of causing serious injury by dangerous driving in 2012.

36. The substantial uplift in minimum terms for murder was also an example of that phenomenon, with the consequences I have suggested. The judiciary has been sensitive to that change in legislative mood and the Council has also captured it in the Guidelines.

37. Judges approach sentencing within a clear statutory framework and in a structured way dictated by the Guidelines. For many serious offences custody, indeed a long period of custody, is the only available sentence. But for others there are difficult decisions to be made about whether custody is appropriate; and if it is, whether a prison sentence can be suspended and on what terms; or whether a community sentence meets the justice of the case. In making those judgments there is often room for more than one view. The entire process is structured to ensure that sentences are just and proportionate, within boundaries set by statute and guided by the Guidelines. The evidence from the Court of Appeal suggest that judges are hitting the mark.

[42] By inserting section 2B of the Road Traffic Act 1988

Roughly 5% of sentences are appealed by defendants, less than 1% successfully. That means that many others have been advised that the sentence, although tough, cannot be said to be manifestly excessive. The figures of cases referred to the Court of Appeal by the Law Officers are very striking indeed. In 2019, as I have said, 93 were referred to the Court of Appeal, 63 successfully but 577 sentences were considered by the Attorney General's Office[43]. So all bar 93 were winnowed out as not approaching the threshold for a reference. Quite apart from the bare statistics of the increase in the severity of sentencing we have seen in recent years, the tiny number of cases referred by the Law Officers and the smaller number still where sentences are increased punctures the myth of a soft judiciary not applying the law as ordained by Parliament when sentencing.

38. Occasionally judges go wrong. We operate in public and state out reasons for making our decisions. Anyone is at liberty to disagree and can do so explaining why. But unreasoned, or worse, ignorant or ill-informed criticism from apparently authoritative quarters tends wrongly to erode confidence in the administration of justice. That is corrosive and harmful. Of course, different views about matters of importance are a sign of a healthy democracy. Sentencing policy is a matter of acute interest to individuals caught up in the criminal courts, to commentators and academics, to the public and politicians. Let the debate proceed on fact and not misconception. By all means have stimulating exchanges on whether either generally or for specific offences or types of offender sentences should be tougher or more lenient, but please avoid the knee-jerk criticism of a judge for applying the law and Guidelines when they produce a sentence that the commentator wishes were more severe.

[43] Hansard ibid.

39. Thank you.