



Nigel Patrick
Office of the Sentencing Council
Steel House
11 Tothill Street
London SW1H 9LJ

5 January 2011

Dear Mr Patrick,

Sentencing Guideline on Assault

Please find herein our response to the public consultation on the proposed sentencing Guideline for assault. Further to our helpful discussion on the telephone before Christmas, we start by describing the interest of this organisation in this matter.

1 This response

Witness Confident is an independent charity that is taking a stand against street violence. We believe that if more people who witness such attacks and robberies can be encouraged to engage with the criminal justice system, these harmful offences will be reduced and deterred.

To get a sense of the scale and nature of this problem, we commissioned a market research company to survey university students on their experiences of and attitudes to street violence¹. We asked the students whether, if they were mugged on a busy high street, they were confident that any of the people who witnessed the attack would give a statement to the police. 55% said they were not confident that any of the witnesses would give the police a statement (and among female students this figure was 61%).

We also asked the students the main reasons they believe that witnesses will not engage with the criminal justice system in these cases. Prompted with nine possible reasons², the three that the students most frequently cited were

- the time it will take (63%),
- fear of reprisal (62%), and
- the offender will get off or be treated too leniently (48%).

In this response, we consider how the draft Sentencing Guideline on Assault approaches the issue of street violence and how it can help counter the beliefs (a) that such offenders will get off or be treated too leniently, and (b) about fear of reprisal.

Before that, we set out the scale and nature of violent crime in Britain today and explain why we believe the Guideline should and can properly be revised to focus on stranger assaults.

2 Assault – the scale and nature of the problem

The British Crime Survey³ estimates that last year there were

- 290,000 incidents of domestic violence,
- 679,000 incidents where the victim was attacked by an acquaintance, and
- 783,000 incidents where the victim was attacked by a stranger.

The BCS also records the success the criminal justice system and society has had in tackling the problems of violent assaults over the past twelve years. It shows that from 1997 there has been a

- 64% fall in the incidents of domestic violence,
- 59% fall in the incidents of acquaintance violence, but
- no change in the incidents of stranger violence.

3 Stranger assaults - an issue for the Guideline

In the light of the obligation in section 142 of the Criminal Justice Act 2003 that sentencing policy should have regard to (i) the reduction of crime (including by deterrence) and (ii) the protection of the public, we believe that the new Guideline can properly and should address the issue of stranger assaults. This is because the clear evidence from the British Crime Survey is that (i) uniquely among assaults there has been no or minimal success in reducing stranger attacks over the past twelve years, and (ii) assaults by strangers present the greatest harm to the public as they account for the largest number of violent attacks.

As under section 120 of the Coroners and Justice Act 2009 the Guideline should have regard to the promotion of confidence in the criminal justice system, this is another reason why it can properly and should address stranger assaults. The British Crime Survey stated in 2007 that the perceived risk of being attacked by a stranger has a direct and unique impact on people's views about crime generally:

“Analysis based on the 2002/03 BCS showed the following perception measures to be strongly independently associated with perceiving the national crime rate to have increased ‘a lot’: thinking that the criminal justice system was not effective in reducing crime and being fairly or very worried about being attacked by a stranger.”⁴

Our recommendation that the new Guideline should focus on a particular type of assault will not be a novel departure in sentencing policy or indeed in this draft Guideline. On three occasions⁵ the current draft refers to factors focusing on domestic violence as warranting a more severe sentence. By contrast, no factor in this draft refers to a matter unique to stranger assaults as being an aggravating factor, even though such attacks are almost three times as likely as those in a domestic context (and for every two women who were victims of domestic violence last year, three were attacked by strangers⁶). A result of this silence is that the Guideline gives the impression that stranger assaults are less serious.

Absent any guidelines on sentencing, we imagine that a court, dealing with a case where a victim had been injured in an unprovoked attack by a stranger in a public place, would be minded to treat the offence as one that warrants a heavier sentence. Our concern is that if the Guideline remains unchanged on this matter, a court may infer or be led to infer that such an approach is not consistent with sentencing policy. Even if we are mistaken on this and a court can properly construe this draft in such a way as to reflect the harm, culpability and seriousness of stranger assaults, the fact that the Guideline is silent on the type of assault that is most prevalent and does most harm to the public is unlikely to increase confidence in sentencing policy.

Finally, in the context of robbery, sentencing policy does recognise the seriousness of the individual and public harm caused by stranger violence. The existing definitive Sentencing Guideline on Robbery⁷ treats street robbery as a particular category and as one warranting a heavier sentence. Street robbery is a crime that, as the BCS records⁸, is overwhelmingly carried out by strangers. From the point of view of a victim of street violence – be it a stranger attack or street robbery - we believe it is the injury caused, the shock of experiencing an unprovoked attack in public, and the adverse effect on the victim, family, friends and witnesses to go safely and freely about their community that will in most cases be the dominant harms caused.

For these reasons and in the light of the statutory framework, we believe that the Guideline should be revised so that it addresses the pressing problem of stranger attacks. We make the following suggestions on amendments that may achieve this.

4 Proposed amendments

4.1 Harm

The draft Guideline rightly proposes that a factor that indicates greater harm is where ‘the victim is particularly vulnerable because of their personal circumstances’. The greater and wider harm that is caused by stranger attacks is that they are random and so instil fear among people in the community at large. This is reflected in the fact found by the British Crime Survey that, uniquely, the fear of being attacked by a stranger is ‘strongly independently associated’ with people believing the national crime rate has risen⁹.

A reason for this fear and for the greater and wider harm that stranger assaults cause is the fact that less than 20% of these attacks are cleared up by the police¹⁰. The explanation why this figure is so low is that it is not easy for the police to identify the offender in a stranger assault that the victim reports to them. By contrast, in those cases of domestic and acquaintance violence that are reported to the police, the identity and whereabouts of the offender – the first step to any crime being cleared up, whether or not it is brought before the court - can readily be provided by the victim.

With so few stranger assaults coming into the criminal justice system, it seems to us the only ways the country can start to reduce this type of crime and the harm it causes is if there is a deterrent element in sentencing policy and if greater consideration is given to how to engage those who witness such attacks. We believe that as the level of stranger violence is the same as it was in 1997 while that of domestic and of acquaintance violence has fallen by around two-thirds, there is a compelling case for the new Guideline to address this issue. As such, we hope that the Council will agree that the Guideline should explicitly address the problem of stranger assaults and the harm they cause.

Assuming this approach is accepted as sound, it seems to us that the most appropriate way this can be done within the structure of the draft Guideline is for it to recognise the wider and greater public harm caused by such attacks. For these reasons, we recommend that the fact the victim of an assault is a stranger should in itself be a factor indicating greater harm.

4.2 Culpability

The draft Guideline proposes that ‘*a greater degree of provocation than normally expected*’ is a factor that will indicate *lower* culpability. While this is an entirely valid approach in cases of domestic and acquaintance violence where the history between the victim and offender means a degree of provocation will be ‘normally expected’, no such assumption can properly be made in cases of stranger violence. As such, we recommend that the Guideline should provide that an unprovoked attack is a factor that indicates higher culpability.

4.3 Seriousness

The draft Guideline proposes a number of factors that will increase the seriousness of the offence and we turn to those that have a bearing on sentencing for stranger attacks.

4.3.1 One of these is '*the presence of others including relatives, especially children or partner of the victim*'. While the presence of others will usually be an important factor in the seriousness of stranger attacks, the focus in this provision on 'relatives especially children or partner of the victim' suggests this factor is particularly concerned with domestic violence. We recommend that this provision be amended to expressly include the presence of members of the public as, in the case of stranger assaults, the fear caused in bystanders who realise that they could as readily have been the victim is an aggravating factor.

4.3.2 Another factor increasing the seriousness is that the '*offence committed against those working in the public sector or providing a service to the public*'. While we welcome this, many stranger attacks take place on people using public services (particularly public transport) and as such, we recommend that this provision be extended by adding at the end 'or using such a service'.

4.3.3 Another factor increasing the seriousness of the offence is that '*in domestic violence cases, victim is forced to leave their home*'. While we support this, we think it equally serious if, as a result of a stranger attack, a victim is fearful of leaving their home. As such, we recommend that this be a distinct factor in its own right or that this provision be extended to include this point.

4.3.4 Another factor increasing the seriousness is where '*any steps taken to prevent the victim reporting an incident or obtaining assistance*'. While such intimidation can also be dealt with as a distinct criminal offence, we welcome this provision. We also recommend that it be extended to steps taken to prevent a witness reporting an incident or offering assistance to the police or the court. One of the reasons that the clear-up rate for stranger attacks is so low is the lack of evidence from members of the public who witness the assault. We have heard of cases where the attacker will intimidate bystanders in this way, for example by shouting 'I know who you are' or 'I know where you live'. As such, we recommend that this factor be extended to 'any steps taken to prevent a witness from engaging with the criminal justice system'.

4.3.5 The draft Guideline also proposes a number of factors that will reduce the seriousness of the offence. One of these is that the offence is an '*isolated incident*'. While this will rightly be a mitigating factor in many cases of domestic or acquaintance violence, it is to be expected that most cases of stranger assaults that come before the court will be presented as isolated incidents.

If, as we recommend, stranger attacks are in themselves to be a factor indicating greater harm we suspect this will outweigh the unintended effect of this provision that isolated incidents are less serious. If, however, our amendment on harm is not to be adopted then we recommend that this provision that isolated incidents are in themselves a mitigating factor be amended to expressly exclude cases where the victim was attacked by a stranger.

5 **Summary**

From the above, you will see that we have addressed in this response only questions 2, 4, 6 and 8 of the consultation and that we offer no opinion on the other specific matters on which responses are invited.

To summarise, we recommend that the Guideline should be revised to

- a) refer explicitly in step 1 to the greater harm caused by stranger attacks (see *section 4.1 above*),
- b) make clear that unprovoked attacks trigger a higher culpability (see 4.2),
- c) ensure that step 2 of the Guideline is not (mis)interpreted so as to downplay the seriousness of stranger attacks. As such, the aggravating factors should be extended explicitly to
 - i) assaults taking place in the presence of the public, (see 4.3.1)
 - ii) victims who use (and not just provide) public services (see 4.3.2)
 - iii) cases that leave the victim fearful of leaving their home (see 4.3.3), and
 - iv) steps taken to prevent a witness from engaging with the criminal justice system (see 4.3.4),
- d) exclude stranger attacks from the provision in step 2 that an isolated incident is in itself a mitigating factor (see 4.3.5), and
- e) thereby increase public understanding and confidence in sentencing as the Guideline will address the most pressing and the greatest problem in violent assaults today (see *section 3*).

We trust that you and the Council find our comments helpful and will give these recommendations fair consideration. Should you wish to clarify or discuss any of these points, please revert to the writer.

Yours sincerely,

Guy Dehn

Guy Dehn
Director

guy.dehn@witnessconfident.org

¹ Public policy, the perils of indifference and street violence (2009) Witness Confident

² The nine possible reasons put to the students as to why witnesses will not engage with the criminal justice system were - the time it will take (63%); fear of reprisal (62%); the mugger will get off/be treated too leniently (48%); nobody else can be bothered, so why should I? (43%); having to make a formal written statement (36%); distrust/dislike of the police (32%); distrust/dislike of the way witnesses are treated in court (26%); no need to engage as there's so much CCTV (20%); and it's not easy finding the right police officer (10%).

³ Crime in England & Wales (2009/10), Table 2.01

⁴ Crime in England & Wales (2007/8), p 130.

⁵ See the references in Table 2 of the draft Guideline to (a) the presence of others including relatives, especially children or partner of the victim, (b) in domestic violence cases, the victim forced to leave their home; and (c) exploiting contact arrangements with a child to commit an offence being matters that aggravate the seriousness of the offence.

⁶ Crime in England & Wales (2009/10), page 59

⁷ Issued in 2006 by the Sentencing Guidelines Council.

⁸ According to the BCS 73% of muggings were committed by strangers in 2009/10 and in the previous year the figure was 82%. (Sources: Table 3.17 in Crime in England & Wales (2009/10) and Table 3.14 in the 2008/9 study.)

⁹ See footnote 4 and the indented text on page 2 it refers to.

¹⁰ Crime in England & Wales (2009/10) - Table 2.11: 46% of stranger attacks are reported to the police and Table 6.01: 44% of all types of offences of violence that are reported to the police are cleared up. (Please note that if the clear-up rate for stranger attacks reported to the police is the same as the 19% for personal robbery – as in these cases unlike other violent crimes the identification of the offender, the first step to a case being cleared up, is a real issue – the official data suggests that 9% of the 783,000 stranger attacks carried out last year would have been cleared up).