

THE MAGISTRATES' ASSOCIATION
SENTENCING POLICY & PRACTICE COMMITTEE

Fly-Tipping – Policy

1. The Association is aware of concerns expressed by local authorities and others about perceived deficiencies on the courts' treatment of fly-tipping prosecutions. These include:
 - the courts do not take fly-tipping seriously and therefore impose 'lenient' sentences;
 - inconsistent sentences;
 - an assumption, seen as not always warranted, that the defendant is of good character;
 - court awards of costs do not cover the full costs of investigation and bringing the prosecution.

This note summarises the Association's position on these points.

Seriousness

2. The Association does not believe that a bench properly informed about the full range of costs and harms arising from fly-tipping views this offence as anything but serious; the exceptionally high fines provided for under the legislation make its seriousness clear. But it is essential that the prosecution provides the court with full information on the costs and harms arising from the conduct before the court; the court cannot make unsupported assumptions about these issues. Prosecutors can refer to the aggravating (and mitigating) factors listed in the publications of the Sentencing Council (formerly the Sentencing Guidelines Council). In general, for instance, the courts will view offences committed for commercial gain more seriously than those committed by individuals without any wider profit motive.
3. Prosecuting authorities also need to be aware of the statutory framework within which courts consider sentencing, in particular the need to take account of offenders' means, the general assumption that financial impositions should be payable within 12 months, and the discount applicable to a guilty plea. All these factors can have the effect of reducing a sentence from the figure that a prosecutor may consider appropriate. On the first factor, offenders' means, it is open to the prosecution to bring evidence of the defendant's means if it has such evidence, although almost invariably the only information the court has is provided by the defendant him/herself.

Inconsistency?

4. As for perceived inconsistency, the principal means of ensuring an appropriate degree of consistency in sentencing is through the application of sentencing guidelines from the Sentencing Council. There are no offence-specific guidelines relating to fly-tipping, though general guidance can be found in the *Magistrates' Courts Sentencing Guidelines* of 2008 at pages 180ff. The Association has consistently pressed for the production of offence-specific guidelines relating to environmental offending; pending such guidelines, it has taken the lead in providing detailed further advice to sentencers in the form of the publication *Costing the Earth*, which was issued in a revised edition in 2009. It is open to local authorities and others to ask the Sentencing Council to include the production of relevant guidelines in its work programme.

Previous convictions

5. On the question of 'good character', the Association accepts that this is a problem given the lack of a national database and the fact that such convictions are not as a rule entered on the Police National Computer, which is the principal source of knowledge about previous convictions when dealing with 'mainstream' crime. Since previous relevant convictions are, by statute, an aggravating factor, and one which magistrates always take into account, the Association would support moves to remedy this situation; but in the absence of information about previous convictions benches cannot make any other assumption than that the offender does not have such convictions.

Costs

6. The issue of costs has been considered by a number of higher court decisions and these, together with the general principles set out at page 175 of the *Magistrates' Courts Sentencing Guidelines*, guide benches in determining what costs to award. A bench will be advised on the day by its legal adviser, but the key points are generally as follows:
 - Costs should not exceed D's capacity to pay or the sum reasonably incurred by P. Costs are compensation not punishment (*Northallerton Magistrates*, 2001);
 - Costs should not be grossly disproportionate to any fine. It is preferable to reduce the costs rather than the fine. In absence of information, the court can draw inferences (especially as regards companies (*Howe*));
 - Costs awarded can include costs of investigation (*Associated Octel*, 1997);
 - The court can discount salary costs that would have been paid anyway (*BPS Advertising v LB Barnet*, 2006).

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