



The Bar Council

Assaults On Emergency Workers Consultation

The Bar Council's views have been invited by the Lord Chancellor in relation to the Government's intention to double the maximum penalty for assaulting an emergency worker.

The Bar Council agrees, of course, with the recognition of the enormous contribution made by emergency service workers. Whether this contribution is best recognised through increasing the maximum penalty for assaults upon them is less obvious. Similarly it is not clear why the Coronavirus pandemic requires any permanent change in the sentencing powers of Courts, especially given that it is noted that sentencers are already identifying it as a relevant aggravating factor where appropriate.

As the consultation letter recognises, s1 Assaults on Emergency Workers (Offences) Act 2018 came into force as recently as 13th November 2018. This had the effect of increasing the maximum sentence for an offence of common assault or battery that is committed against an emergency worker acting in the exercise of functions as such a worker from six months to twelve months.

The Act also specifically required Courts dealing with other specified offences to treat the same factor as one that aggravates the offence without extending the maximum sentence, and defined 'emergency worker' for the purposes of the legislation.

This legislation is so recent that there has not yet been time for the Sentencing Council to fulfil its responsibilities in relation to this mode of offending. In particular it is yet to develop sentencing guidelines relating to the increased maximum pursuant to s1, and therefore has not been able to assess the impact of such guidelines on sentencing practice pursuant to ss127-131 Coroners and Justice Act 2009.

In this respect the references in the consultation letter to sentencing statistics since November 2018 do not appear to be sufficiently comprehensive to be of assistance. They do not, for instance, compare sentences for assaults on an emergency worker after the increase in maximum with those before (if that is possible), or even with sentences for common assault during the same period.

Perhaps more importantly, however, it is likely that clear guidance from the Sentencing Council would be of far greater assistance to sentencers than simply further increasing the statutory maximum.

Given that the average custodial sentence is currently said to be below three months imprisonment, it would appear that an increase in that average, if such is considered to be desirable, can be achieved simply through guidance to that effect within the current maximum sentence. Likewise if it is considered that the proportion of offenders receiving financial penalties (20%) or community orders (40%) is too high.

There is also a question as to the distortion of the sentencing spectrum for offences of violence. If the proposal were to be enacted the maximum sentence for assault occasioning actual bodily harm would be two-and-a-half times that for common assault in relation to an emergency worker, but ten times that for common assault in relation to any other member of the public.

Furthermore the substantial disparity that would exist between assaults on emergency workers and other members of the public (which would include children, the elderly, teachers, social workers, etc etc) similarly introduces a potentially problematic distortion.

These are all issues that the Sentencing Council is uniquely placed to address and until the effects of the 2018 legislation have been fully incorporated and accounted for, any further increase to the maximum sentence would appear to be premature.

The Bar Council Law Reform Committee

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