

A NEW YEAR, A NEW SENTENCE

‘Stand up. Congratulations. You have received double figures. 10 years. Take him down.’ These were once a judge’s remarks upon sentencing a guilty man, recollected and shared by Sir Brian Leveson, President of the Queen’s Bench Division and Head of Criminal Justice, when he gave the 16th Annual Law Reform Lecture at the London School of Economics earlier this month.

Attitudes to sentencing have since evolved exponentially, and a recognition of the importance of sentencing has led to much legislative activity over recent decades. In 14 of the last 30 years, Parliament has passed primary legislation amending sentencing procedure. Indeed, the volume of legislation governing sentencing has become so vast that when the Law Commission compiled all sentencing law in force as of August 2015, the document reached 1,300 pages; to say reading it would be like reading War and Peace is, in fact, an understatement – the original publication of Tolstoy’s opus came to a comparatively diminutive 1,225.

If the issue of sentencing was once that it required a judge to raise a proverbial finger to the wind, today’s problem is one of information overload: judges now find themselves confronted by a cornucopia of sentencing legislation and guidelines, pulling them in several different directions. And that is when judges are aware of the legislation that governs their decision: for amendments to sentencing legislation are often surreptitiously introduced through complicated transitional provisions, and are inconsistent in their application – sometimes applying retrospectively, and sometimes prospectively, without any suggestion of a principle guiding the alternation.

Errors are, as a consequence, in abundance. A 2012 analysis conducted by Robert Banks – author of Banks on Sentence, the practitioner’s sentencing guide – found that in 95 of 262 randomly selected cases sent to the Court of Appeal (Criminal Division), the Crown Court had passed a sentence that was fundamentally wrong in law; that is to say, in more than a third of those cases a sentence was imposed that the judge did not have the power to pass.

The Law Commission’s proposed Sentencing Code, which was published at the end of November, is therefore to be welcomed with open arms. The Code contains, in a single statute, the entirety of the law on sentencing procedure – reducing 1,300 disparate pages to 412 clauses, at last under the same roof.

The Code does not make any substantive changes to the law; it does not alter maximum or minimum sentences, replace the sentencing guidelines published by the Sentencing Council, or subject any offender to a harsher penalty than that which could have been imposed at the time of their offence. It is, effectively, the culmination of a three-and-a-half-year long exercise in consolidation, which is predicted to save the taxpayer more than £250 million over the next decade by reducing the number of sentencing appeals clogging up the court system, and allowing judges and counsel to spend less time piecing together sentencing legislation and more time conducting trials. If enacting the Code sounds like a no-brainer, that’s because it is.

Parliament’s Christmas recess will run from 20 December until 7 January. Its members’ thoughts will undoubtedly be occupied by Brexit, but may, as the New Year approaches, turn to resolutions. Statistically, most New Year’s resolutions are abandoned by the second Friday of January, invariably with a Sauvignon-flavoured hangover and a gym-membership-sized hole in the wallet. Some resolutions are simply too difficult to keep, but the fair, efficient and transparent sentencing of offenders is a resolution worth committing to, and Parliament should make enacting the Sentencing Code a matter of priority in 2019.