



Briefing for the Public Petitions Committee

Petition Number: [PE1572](#)

Main Petitioner: Parveen Haq

Subject: Occupational Disclosure in Trials and Sentencing

Calls on the Parliament to urge the Scottish Government to change the law of evidence so that in cases where a person is tried for a crime that has no connection to his/her occupation, his/her occupation should be dealt with by the courts as an irrelevant and non-aggravating factor

Proposed Reform

The petitioner argues that an offender's occupation should not, unless it was connected to the carrying out of the crime, be a potential aggravating factor in sentencing (ie a consideration which might lead to a stiffer sentence).

The petition goes on to highlight a concern for the situation of people who may, as a result of their job, be considered to be in a position of trust. It specifically refers to police officers and lawyers, stating that their occupation may currently lead to a stiffer sentence even if it has no connection with the commission of the crime. It argues that this should not happen. So, for example, one might draw a distinction between:

- a police officer who seeks to protect criminal associates by interfering with police investigations or a lawyer who defrauds a client – occupation could be an aggravating factor
- a police officer or lawyer who assaults a spouse – occupation would generally not be an aggravating factor

The petition concludes that "people should not be made an example of just because of the career path they took". It suggests that the possibility of this occurring might be avoided through a change to the law restricting the circumstances in which a person's occupation is disclosed in court. The intention would appear to be that, where a person's work is not directly connected to the carrying out of a crime, the sentencing judge would not be made aware of it – thereby preventing the judge from taking it into account in sentencing.

Another way of achieving the aims of the petition might be to make any necessary changes to the law on sentencing needed to ensure that judges are instructed to ignore a person's occupation, unless it is directly connected to the crime. Such an approach might avoid a number of difficulties

associated with trying to prevent a judge from being made aware of the offender's occupation (eg where that work is referred to as part of the wider evidence in a trial or is relevant in considering the likely impact on the offender of a particular sentencing option).

Current Law

In 'Sentencing Law and Practice in Scotland' (W Green, 2nd ed, 1992), Sheriff Principal Gordon Nicholson wrote that:

"When a judge comes to determine the appropriate disposal in a particular case he must consider and weigh in the balance several or, on occasions, many factors. He must (although he may not consciously think of it in every case) decide what his sentencing objectives are, both in general and in relation to the particular case. He must consider the aggravating and mitigating factors bearing both on the particular crime or offence and on the particular offender. He may have to consider background information relating to the offender. And he will have to consider carefully the advantages and disadvantages of all the different disposals which are available to him." (para 9-01)

In relation to people in a position of trust, he stated that:

"A final aspect of culpability which falls to be noted concerns any special status which the offender may have, and in respect of which the offence has been committed. Examples of this are thefts of mail by Post Office employees, or frauds and embezzlements committed by professional persons such as accountants or solicitors. In such cases a more severe sentence than would otherwise be appropriate will often be imposed, and the question must be asked why this should be the case. It cannot be with the aim of individual deterrence since in most of these cases the offender will have been ruined by the conviction,¹ and it will be most unlikely that he will ever again be in a position to commit such a crime. Sometimes, when imposing such a sentence, judges will express it as being with the aim of general deterrence. But, set against the, fortunately, good record that there is in this country of integrity on the part of public officials and professional men and women, it is doubtful whether a more severe sentence than would normally be appropriate is necessary in the interests of general deterrence. Instead, it is submitted, the justification for such a sentence is to be found in the greater culpability which attaches to one who abuses a position of special trust, or who departs from the high standards of those in public or professional service." (para 9-18)

The above paragraph refers to "any special status which the offender may have, and in respect of which the offence has been committed". Thus, it appears to point to there already being a difference in sentencing practice

¹ Here the author is referring to the implications for the offender over and above the criminal sanctions imposed by the court. For example, any action taken by a professional body to restrict or remove the person's right to continue working within the profession.

depending upon whether or not the offender took advantage of his/her employment (or other special status) in committing the crime. This distinction is also indicated in a number of reported cases.

Appeal decisions of the High Court of Justiciary, illustrating the potential aggravating impact on sentencing where an offender was working in a position of trust, include:

- Baillie v HM Advocate (December 2006)² – the offender indecently assaulted a number of female patients whilst working as a doctor. The court noted that patients put their trust in health professionals and that a doctor who abuses that trust by indecently assaulting patients must expect to be severely dealt with by the courts
- Millar v Dunn (February 2015)³ – the offender embezzled money from his employer whilst working as a sales manager. This was treated as a breach of trust and an aggravating factor in sentencing

The above decisions involve situations where offenders took advantage of their work to carry out the offences in question. The following High Court appeal decisions indicate that the impact on sentencing may be different where this was not the case:

- Turner v Scott (May 1995)⁴ – the offender was an off-duty police officer at the time of indecently assaulting two nieces. The fact that the offender had lost his job as a police officer was a factor referred to by the appeal court in justification for reducing the original sentence
- Wright v HM Advocate (March 2007)⁵ – the offender was an off-duty police officer at the time of causing death by dangerous driving. His work as a police officer was referred to by his lawyers in support of the contention that he was generally of good character. It was not treated as an aggravating factor in sentencing

Although not directly relevant to the petition, it may also be noted that the trust placed in people performing certain roles is sometimes reflected in specific criminal offences. For example, section 22(3) of the Police and Fire Reform (Scotland) Act 2013 provides that it is an offence for a police officer to “neglect or violate the constable’s duty”. Section 20 states that a constable’s duties include preventing and detecting crime, maintaining order, and protecting life and property.

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² Reported at 2007 J.C. 161.

³ Reported at 2015 S.C.L. 426.

⁴ Reported at 1995 J.C. 150.

⁵ Reported at 2007 J.C. 119.

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