

Blackmail, kidnap and false imprisonment guidelines.

Response to consultation

February 2025

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Foreword



On behalf of the Sentencing Council I would like to thank all those who responded to the consultation on these guidelines. I also extend my thanks to the members of the judiciary who gave their time to participate in the research exercise undertaken to test and inform the development of the guidelines.

As with all Sentencing Council consultations, the views put forward by all respondents were carefully considered, and the range of views and expertise were of great value in informing the definitive guidelines. Because of those views, some changes have been made to the wording of a number of factors within the guidelines. The detail of those changes is set out within this document.

Given that there were previously no guidelines for these offences I believe that these new guidelines will provide assistance to courts in sentencing these serious offences.

Lord Justice William Davis
Chairman, Sentencing Council

Introduction

In January 2024 the Sentencing Council published a consultation on draft guidelines for blackmail, kidnap and false imprisonment offences. There had not previously been sentencing guidelines for these offences.

The reaction to the draft guidelines was broadly positive.

The guidelines will apply to all those aged 18 or over who are sentenced on or after 1 April 2025, regardless of the date of the offence.

Summary of analysis and research

Several research exercises were carried out to support the Council in developing the guidelines. Content analysis was conducted of judges' sentencing remarks for offenders sentenced for all the offences included within these guidelines. This provided valuable information on some of the key factors influencing sentencing decisions for these cases.

During the consultation stage of guideline development, small-scale qualitative research was carried out to help gauge how the guidelines might work in practice. Fourteen interviews were conducted, all with Crown Court judges as the offences covered by the guidelines are indictable only offences.

Because of this research, and in combination with consultation responses, a number of changes were made to the wording of factors in the guidelines. In the kidnap and false imprisonment guideline the high culpability factor 'prolonged or repeated extreme violence, torture or sadistic conduct' was separated into two separate factors. Also additional factors were added at step two to ensure that any offences committed within a domestic abuse context could be appropriately aggravated. In this way, analysis and research played an important part in the development of the guideline.

A statistical bulletin and draft resource assessment were published alongside the consultation, and updated data tables and a final resource assessment are published alongside the definitive guideline and this consultation response document. These documents can be found at www.sentencingcouncil.org.uk.

Summary of responses

The consultation sought views from respondents on the two separate guidelines. In total, 12 responses to the consultation were received. It is not unusual to have a small number of responses, particularly for a small scale consultation on indictable only offences. Also, the responses received covered a range of perspectives including the Judiciary, legal professionals, and other organisations. The breakdown of respondents is below. Due to the timing of the general election and the Justice Committee being dissolved it was not possible for the Committee to submit a response.

Feedback received from the Council's consultation and interviews with sentencers during the consultation period is reflected in the text below.

In general, there was a positive response to the proposals. However, the Council was also grateful for constructive criticism and considered a number of suggestions for amending parts of the two draft guidelines. The detailed changes made to the individual guidelines as a result of the suggestions are discussed below.

Type of respondent	Number
Legal professionals 2 representative body responses and 1 individual	3
Judiciary 1 representative body response and 1 individual	2
Magistrates	2
Government	2
Members of the public	2
Academic	1

Blackmail

Culpability responses

A number of the responses regarding the culpability factors are connected to comments regarding step two factors. The Criminal Law Solicitors' Association (CLSA) proposed that the high culpability factor 'use of violence' should be amended to 'Use of violence or credible threat of serious violence'. H.M Council of Circuit Judges felt that the aggravating factor of 'use or threat of a weapon' should instead be reflected within culpability, with use of weapon within high culpability, and threats to use a weapon within medium. The London Criminal Courts Solicitors' Association (LCCSA) were also concerned with the risk of double counting with this aggravating factor, suggesting at the very least, to have a warning at step two of 'where not taken into account at step one'.

The Council considered these suggestions carefully and decided to leave the culpability factor unchanged but add the warning to the step two aggravating factor so it reads 'offence involved use or threat of a weapon (where not taken into account at step one)'.

The CLSA also proposed that the aggravating factor of 'conduct intended to maximise distress or humiliation' is moved to high culpability, as it is so central to the offending. However, the Council felt that this factor properly belongs at step two and that there are already a number of factors within high culpability. One respondent, a barrister, proposed that 'use of psychological pressure' is added to high culpability, but the Council felt that psychological pressure is inherent within the offence, so it is not necessary to add this as an additional factor.

Some participants in the testing of the guidelines chose higher categorisations of culpability than anticipated. Whether culpability A or B was selected was largely determined by whether or not the judge felt the culpability A factor of 'deliberate targeting of particularly vulnerable victim and/or their family' applied. Several judges commented that nearly all victims of blackmail were vulnerable, this is why the Council added 'particularly' to the factor - to signal that to apply victims had to be especially vulnerable.

Additionally, H.M Council of Circuit Judges suggested that where there was no **deliberate** targeting of a particularly vulnerable victim, but it just so happened that they were particularly vulnerable, this should be an aggravating factor. The Council agreed with this suggestion, and so has added 'victim was particularly vulnerable (where not taken into account at step one)' as an aggravating factor.

Harm factors

The Sentencing Academy (SA) suggested that the distinction between the amounts 'some' and 'small' value in category two and three could be rephrased. They state that even a small amount retains some value. They suggested instead 'significant' value in category two, with 'small' remaining in category three.

The Council thought about this suggestion carefully to try and ensure that cases are appropriately categorised, particularly that only the most serious cases should be captured in harm category one. The Council also noted that a judge said in road testing that assessing harm in blackmail could be challenging, as victims almost always are going to be seriously disturbed by it. After deliberation the Council decided to change a number of the harm factors, as shown below, having looked across at wording used in other guidelines:

Category one harm

- very serious distress and/or psychological harm caused to the victim and/or others
- property demanded or obtained represents or would represent very substantial loss to the victim and/or others (whether financial, commercial or of personal value)
- widespread public impact of the offence

Category two harm

- Substantial distress and/or psychological harm caused to the victim and/or others
- Property demanded or obtained represents or would represent substantial loss to the victim and/or others (whether financial, commercial or of personal value)

Category three harm

- Limited effects of the offence Property demanded or obtained represents or would represent a limited loss to the victim and/or others (whether financial, commercial or of personal value)

The CLSA had suggested that the harm factors should also contain a reference to physical harm, however the Council felt this was not necessary as this would probably form the basis of separate charges.

Sentence levels

Of those that gave consultation responses regarding sentence levels, around half agreed with the proposed levels. Other responses were mixed. One anonymous respondent said all levels should be increased by 50 per cent. The LCCSA were concerned that, although the number of offenders sentenced each year is very low, (around 140 in 2022) the proposed sentence levels may require additional prison places. They stated this could lead to significant sentence inflation, which should not be a consequence of the guidelines.

The CLSA felt that longer sentences should be reduced as a way to reduce the prison crisis - stating a sentence of six rather than eight years would have just as much of a deterrent and punitive impact and would, if widely adopted, reduce the prison population. They felt the sentences at the top of the table are generally too high, particularly the starting point in A1 of eight years.

In road testing participants were broadly content with the proposed sentence levels, although one judge questioned the inclusion of a community order given the offence severity, and another felt the ranges were broader than in many other guidelines.

The latest sentencing data from the Court Proceedings Database (CPD) shows for those sentenced to immediate custody, the (mean) average custodial sentence length (ACSL) after any reduction for guilty plea, was 3 years 3 months in 2023. Around 92 per cent of offenders sentenced to immediate custody received a sentence length of up to and including six years, after any reduction for guilty plea. As in 2022, in 2023 no offenders received sentences over 10 years, with just 2 per cent receiving sentences greater than 8 years and up to and including 10 years.

Given the consultation responses regarding the starting point in A1 being too high, and comments on the considerable impact of the guideline on prison places arising from such low numbers sentenced each year, the Council felt there was a strong argument to look at the sentence levels in A1 again. As a result, the range has been reduced slightly from a range of four to twelve years with a starting point of eight years to four to ten years with a starting point of six years. The rest of the sentence table is unchanged.

The final resource assessment can be viewed at www.sentencingcouncil.gov.uk.

Step two factors

The wording 'care should be taken to avoid double counting factors already taken into account at step one' has been added, as double counting was identified as a possible risk in the testing of the guidelines and this wording is used in many other guidelines.

Aggravating factors

H.M Council of Circuit Judges stated it is common for offenders to blackmail victims with one indecent image, in order to obtain more and worse indecent images - and that given

the particularly distressing nature of this offending, an aggravating factor to reflect this would be of benefit. The Council agreed it would be appropriate to have a factor to reflect the nature of the demand generally so has added 'property demanded or obtained is intimate/sexual images'.

The Council also decided to add an additional aggravating factor of 'intent to obtain sexual gratification or to procure sexual activity (see step five on totality when sentencing for more than one offence)'.

Some of the other changes to the aggravating factors are included in the discussion on culpability factors above.

Mitigating factors

Two additional mitigating factors were suggested by respondents. The CLSA suggested 'nothing of value actually obtained' but the Council felt this was not appropriate to include as a factor.

A barrister suggested 'group member with limited understanding of extent and background of the offence', but the Council felt this was unnecessary as existing factors could reflect this adequately.

As part of last year's miscellaneous amendments there were changes to the wording of some mitigating factors and some new mitigating factors were also introduced. The Council has amended the existing mitigating factors and added the new ones, as shown below:

- 'Good character and/or exemplary conduct' becomes 'positive character and/or exemplary conduct (regardless of previous convictions)
- 'Age and/or lack of maturity' becomes 'age and/or lack of maturity (which may be applicable to offenders aged 18-25)'

The new factors added are:

- Pregnancy, childbirth and post-natal care
- Difficult and/or deprived background or personal circumstances
- Prospects of or in work, training or education

Equality and diversity issues

Wording was added to the draft guideline to highlight certain disparities in sentencing between groups for the offences. For blackmail there was evidence that showed a higher proportion of black offenders (93 per cent) received immediate custody compared to white

offenders (71 per cent) between 2018 to 2022 (based on the Ministry of Justice's (MoJ's) Criminal Justice Statistics December 2022 publication). In addition, the (mean) ACSL was also higher for Asian offenders at 3 years 6 months, than for white offenders at 2 years 8 months. The ACSL for black offenders was only slightly higher than white offenders at 3 years 1 month.

The consultation asked questions on equality and diversity issues: on the proposed wording, whether there were existing disparities within the sentencing of the offences and any other matters relating to equality and diversity that the guidelines should address. Of the respondents that answered the questions, the majority agreed with including the proposed wording highlighting the disparities. Two magistrates disagreed with including the wording, stating it was unnecessary. No other equality and diversity issues were raised.

In road testing, views on the proposed wording was mixed. Of those in favour, some noted that highlighting disparities could act as a useful reminder to judges, while others were more indifferent, with the suggestion that there was "no harm" in including it, but questioned what sentencers were meant to do with the information.

For blackmail, the differences in the proportion of offenders receiving immediate custody and the ACSL are also consistent with the latest data, however, between 2019 and 2023, a higher proportion of black **and** Asian offenders (84 per cent and 89 per cent respectively) received immediate custody than white offenders (67 per cent). In addition, the ACSL is also higher for black **and** Asian offenders (3 years 4 months and 3 years 3 months respectively) compared to 2 years 7 months for white offenders. The disparity wording consulted on only highlights the disparity for one of these groups. The Council therefore decided to amend the wording to reflect the disparities seen in the most recent data, as shown below:

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that a higher proportion of black and Asian offenders receive immediate custody compared to white offenders and that the average custodial sentence length is also higher for Asian and black offenders, compared with white offenders.

There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 186 to 206 of the [Equal Treatment Bench Book](#).

Kidnap and false imprisonment

Structure of the guideline

The Council consulted on a combined guideline for both kidnap and false imprisonment offences, given the similarity and overlap between them. The Council had carefully considered different options, such as one guideline but with two separate sentence tables for each offence, given there are some differences in sentencing between them (kidnap is currently sentenced more severely than false imprisonment) and there could be a risk of sentence inflation for false imprisonment. However the Council concluded that the differences in sentencing between them was not so great as to require two separate tables.

The consultation and road testing asked for views on the proposed combined guideline with one sentence table. Responses on this point were mixed, roughly half in favour of a combined guideline (including a Judge, CLSA, Crown Prosecution Service (CPS)). Those not in favour included H.M Council of Circuit Judges, the SA, a barrister and the LCCSA, although most of these strongly suggested it was instead appropriate to reconsider having one guideline but two separate tables.

Most of the judges in road testing did not have any concerns with a combined guideline, the dominant view was that it was sensible given the similarity between the two offences. One judge however suggested that there could be separate sentence tables, and one judge felt there should be separate guidelines. One participant commented that false imprisonment cases may occur more within a domestic context than happens with kidnap, and that this different emphasis within the two offences may be lost in a combined guideline.

Given the feedback that due to similarities between offences one guideline is appropriate, but that two sentence tables should be considered, the Council reconsidered this. However, after weighing the merits and drawbacks of having two separate tables, the Council concluded that it was not appropriate to have two separate tables.

False imprisonment and kidnap are very closely allied offences, with overlap between them and can be charged interchangeably. One table allows a Judge to assess the offences accordingly and will aid consistency. It will also avoid 'guideline shopping' and bargaining on offence type if one table has lower sentences than the other. Also, the Council was concerned to ensure that cases within a domestic abuse context can be sentenced appropriately. The proportion of offences committed in a domestic abuse context is generally higher in cases of false imprisonment than in cases of kidnap. If the sentences in the table relating to false imprisonment had lower sentences in, this could potentially restrict or reduce the available sentence in a domestic abuse case. The Council wished to ensure that would not happen.

The Council did decide to make some changes to the ranges within the sentence table which are discussed later in this document.

Culpability factors

In road testing, sentencers' views on the high culpability factor 'prolonged or repeated extreme violence, torture or sadistic conduct' was explored to test how well it was understood or whether the wording was problematic. Some participants suggested that separation was needed between 'prolonged or repeated' and 'torture or sadistic conduct' - perhaps to become two separate factors. The Council felt this suggestion had merit so the high culpability factor consulted on has become two separate factors.

As with blackmail offences discussed earlier, the culpability A factor of 'deliberate targeting of a particularly vulnerable victim' was influential when this guideline was tested with sentencers, so the Council has decided to add the additional aggravating factor of 'victim was particularly vulnerable (where not taken into account at step one)'.

H.M Council of Circuit Judges expressed concern how 'protracted' may be interpreted in the factor 'detention over a protracted period of time'. They suggested it needs to be qualified in some way and suggest 'detention for a significantly protracted period of time'. The Council decided on balance to leave the factor unchanged as courts will need to assess this factor within the context of each individual case.

A Judge was concerned that there is too much of a gap between the levels of force and violence in culpability B and C. She noted limited use of force in C, and very significant use of force in culpability B, and questioned how significant use of force would be assessed - presumably not in lower, but also not in medium as it is greater than the level specified. She felt this could cause confusion.

The Council decided to remove the word 'very' for the medium culpability factor - so it is just 'significant force or violence used or threatened to victim and/or others' and change the lower culpability factor to 'some' rather than 'limited', so it becomes 'some use of force in the commission of the offence'. By making these changes the Council feels that the use of violence and force has been suitably gradated, with extreme violence in culpability A, significant force in B and some use of force in C.

Harm factors

The majority of respondents agreed with the draft proposals. Of those consultation respondents that offered comments, the SA commented that some cases result in considerable harm and distress to the local community, such as the case of [Shannon Matthews](#), in which the community were involved in supporting efforts to find the child and provide support to the family. They suggested adding wording such as 'demonstrable

distress to the community' to a category two factor. The Council did not agree it was appropriate to add this to the harm factors - in the relatively rare cases where this might apply courts could take it into account at step two as the factors are non exhaustive.

The LCCSA queried the use of 'serious pain' in category two harm, stating pain is subjective and could be difficult to assess objectively, unlike other factors referred to which could be quantified by medical evidence. In developing the guideline the aim was to reserve category one for the worst cases of their kind, and this wording for category two was trying to reflect the pain that could be caused by being handcuffed tightly for long periods, or chained to a radiator in a cramped position, for example. This type of pain could be different to injury caused by a blow to the head or being stabbed. As only one respondent queried the use of 'pain' the Council decided to leave this wording unchanged.

Sentence levels

Approximately half of responses agreed with the proposed sentence levels. Of those that disagreed, the same respondent on the blackmail guideline again suggested they should be increased by 50 per cent. The LCCSA suggested that the lowest category for false imprisonment should at least include an option for a community order. They also raised similar concerns as to the one on the blackmail guideline, given the relatively low numbers sentenced each year for the offences, the suggestion that additional prison places will be needed as a result of the guidelines is a concern. They state this is clear sentence inflation and should not be the result of the guidelines, and this demonstrates the need for a separate guideline for false imprisonment.

The CLSA made the same comment as they made on the blackmail guideline, that the sentences at the top end are too high, longer sentences should be reduced as a way of dealing with the prison population. The SA commented that there is a marked and consistent difference between the way kidnap and false imprisonment are sentenced, with the risk that sentences for false imprisonment will increase.

The findings from the testing of the guidelines did not overall suggest that there may be inflated sentences as a result of the combined guideline with one table. Participants commented that the broad sentence ranges were appropriate because of the range of criminality involved.

As discussed earlier, after considering the consultation responses and most recent sentencing data the Council decided to maintain one combined sentence table - but make some minor changes. The Council has decided to reduce the range in C3 from six months' custody to two years' custody with a starting point of one year - to a high level community order to two years' custody with a starting point of six months. Also, to reduce the bottom of the range in C1, B2 and A3 from three years to two years' custody. The rest of the table remains unchanged as the Council felt the existing ranges were appropriate to accommodate the most serious cases of kidnap and false imprisonment.

The final resource assessment can be found at www.sentencingcouncil.gov.uk.

Step two

Aggravating factors

Earlier in the discussion the issue of the higher proportion of domestic abuse cases within false imprisonment offences compared to kidnap cases was noted, and the need for a combined guideline to effectively accommodate this. The Council decided to ensure that cases with a domestic abuse context can be sentenced adequately by adding more relevant aggravating factors such as: 'history of violence or abuse towards victim by the offender', and 'presence of children'. Also, the 'offence committed in a domestic abuse context' factor has been moved so that it appears as the first factor in the list, in recognition of the primacy effect. Step two factors can potentially be more influential than step one factors as they could apply to all cases – whereas a step one factor will only apply to cases in a particular category.

The SA suggested adding an aggravating factor of 'offence committed for a political and/or terrorist purpose'. The Council decided instead to add 'where there is a terrorist connection-see [Offences with a terrorist connection: guidance](#)'.

The CLSA queried why the aggravating factor of the victim being an emergency worker is a statutory aggravating factor for kidnap but not for false imprisonment. This factor is listed in this way because of [legislation](#) - the factor is a statutory one for kidnap but not false imprisonment. The guideline notes that the statutory factor relates to kidnap only. However to avoid confusion a non-statutory factor has been reworded to 'victim was providing a public service or performing a public duty at the time of the offence'.

The wording 'care should be taken to avoid double counting factors already taken into account at step one' has also been added to this guideline to guard against the risk of double counting.

Mitigating factors

There were no suggestions for any additional mitigating factors by respondents. As with the blackmail guideline, the Council has amended the existing mitigating factors and added the new ones, as shown below:

- 'Good character and/or exemplary conduct' becomes 'positive character and/or exemplary conduct (regardless of previous convictions)
- 'Age and/or lack of maturity' becomes 'age and/or lack of maturity (which may be applicable to offenders aged 18-25)'

The new factors added are:

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- Pregnancy, childbirth and post-natal care
 - Difficult and/or deprived background or personal circumstances
 - Prospects of or in work, training or education

Equality and diversity

Wording was added to the draft guideline to highlight certain disparities in sentencing between groups for the offences. For kidnap and false imprisonment, the ACSL was higher for black and Asian offenders, compared with white offenders. The consultation asked questions on equality and diversity issues, both on the proposed wording, whether there were existing disparities within the sentencing of the offences and any other matters relating to equality and diversity that the guidelines should address. Of the respondents that answered the questions, the majority agreed with including the proposed wording highlighting the disparities. Two magistrates disagreed with including the wording, stating it was unnecessary. No other equality and diversity issues were raised.

In road testing, views on the proposed wording was mixed - some noted that highlighting disparities could act as a useful reminder to judges, while others were more indifferent, with the suggestion that there was “no harm” in including it. Judges did feel that the offence of kidnap could impact particular groups, the frequent connection of kidnap to drug offences was referenced, with drug offences often disproportionately affecting offenders with deprived or ethnic minority backgrounds who have been recruited into gangs.

Looking at the updated equalities data for kidnap and false imprisonment the differences in ACSL seen previously (between 2018 and 2022) are consistent within the latest data, i.e. black and Asian offenders received a higher ACSL than white offenders between 2019 and 2023. Between 2019 and 2023, the ACSL for white offenders for false imprisonment was 3 years 9 months, compared to 5 years 1 month for Asian offenders and 5 years 7 months for black offenders. For kidnap, between 2019 and 2023, the ACSL for white offenders was 5 years 2 months, compared to 6 years 9 months for Asian offenders and 8 years 2 months for black offenders. Therefore, the consultation wording drawing attention to these disparities for these offences is still accurate and the Council has retained it in the definitive guidelines.

Conclusion and next steps

The consultation has been an important part of the Council's consideration of these guidelines, responses received from a variety of sources informed changes made to the definitive guideline.

The guideline will apply to all adults aged 18 or over sentenced on or after 1 April 2025, regardless of the date of the offence.

Following the implementation of the definitive guidelines, the Council will monitor their impact.

Annex A: consultation respondents

1. Ministry of Justice
2. HHJ Rebecca Crane
3. Alistair Borland JP
4. Gary Knight JP
5. Member of the public
6. LCCSA
7. A barrister
8. CLSA
9. The Council of HM Circuit Judges
10. CPS
11. Sentencing Academy
12. Member of the public

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