

## Final resource assessment

### Kidnap, false imprisonment and blackmail offences

#### Introduction

This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services ([s127 Coroners and Justice Act 2009](#)).

#### Scope

The guidelines for kidnap, false imprisonment and blackmail offences apply only to adults. This assessment therefore considers the resource impact of the guidelines on prison and probation service resources. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the following offences:

- Kidnap, a common law offence
- False imprisonment, a common law offence
- Blackmail, Theft Act 1986 (section 21)

The Council has produced two new sentencing guidelines for these offences, for use in all courts in England and Wales. There is a single combined guideline covering the offences of kidnap and false imprisonment, and another separate guideline covering the offence of blackmail. The statistics are provided separately for each of these offences in the 'Current sentencing practice' section.

The data presented in this resource assessment only include cases where the principal offence committed is one of the offences covered by the new guidelines. For more details see the 'Further information' section at the end of this document.

#### Rationale and objectives for new guidelines

There have previously been no sentencing guidelines for the offences of kidnap or false imprisonment, which are offences under common law. There is also currently no existing guideline for blackmail.

The development of sentencing guidelines for these offences is in accordance with the Council's aim to develop guidelines to improve consistency in sentencing and provide guidance for sentencers.

The intention is that the new guidelines will encourage consistency of sentencing and in the vast majority of cases will not change overall sentencing practice. Both guidelines have been developed with a view to ensure sentences are proportionate to the seriousness of the offending.

## Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guidelines, the Council has carried out analytical and research work.

Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks, references to case law, relevant news articles and sentencing data from the MoJ Court Proceedings Database. For more information on this data source please see the 'Further information' section at the end of this document. Knowledge of the sentencing starting points, ranges, and factors used in previous cases has helped the Council to create guidelines that are in line with the Council's intentions (see 'Rationale and objectives for new guidelines' section for further information).

Discussions with sentencers held during the consultation stage to explore whether the guidelines will work as anticipated have provided further understanding of the likely impact of this guideline on sentencing practice, and the subsequent effect on prison and probation resources.

Detailed sentencing statistics for the offences covered by the guidelines have been published on the [Sentencing Council: Statistical summaries webpage](#).

### Kidnap

In 2023, around 100 offenders were sentenced for kidnap; this is an indictable only offence that can only be sentenced at the Crown Court. The majority of offenders were sentenced to immediate custody (85 per cent). A further 10 per cent received a suspended sentence order. The remaining offenders received either a discharge (2 per cent), a community order (1 per cent) or were recorded as 'Other/unknown' (2 per cent; see the 'Further information' section for more details).

For those sentenced to immediate custody in 2023, the average (mean) custodial sentence length (ACSL) was 7 years 7 months, after any reductions for guilty plea. In 2023, offenders were more likely than in previous years to have received an immediate custodial sentence of 8 years or greater (42 per cent). The maximum sentence allowed by law for this offence is life imprisonment.

### False imprisonment

Around 120 offenders were sentenced for false imprisonment in 2023. This is an indictable only offence that can only be sentenced at the Crown Court. The majority

of offenders (76 per cent) received immediate custody. A further 15 per cent received a suspended sentence order. The remaining offenders received a community order (4 per cent), a fine (1 per cent) or were recorded as 'Other/unknown' (3 per cent).

For those sentenced to immediate custody in 2023, the average (mean) custodial sentence length (ACSL) was 4 years, after any reductions for guilty plea, with almost all offenders (95 per cent) receiving an immediate custodial sentence of up to and including 8 years. The maximum sentence allowed by law for this offence is life imprisonment.

## **Blackmail**

In 2023, around 130 offenders were sentenced for blackmail. This is an indictable only offence that can only be sentenced at the Crown Court. Most offenders sentenced for blackmail receive a custodial sentence. Around 66 per cent of offenders were sentenced to immediate custody and 29 per cent received a suspended sentence order. A further 2 per cent received a community order and 3 per cent were recorded as 'Other/unknown'.

The statutory maximum sentence for this offence is 14 years' custody. For those sentenced to immediate custody, the average (mean) custodial sentence length in 2022 was 3 years 3 months, after any reduction for guilty plea. Around 92 per cent of offenders sentenced to immediate custody received a sentence length of up to and including 6 years, after any reduction for guilty plea.

## **Key assumptions**

To estimate the resource effect of new guidelines, an assessment is required of how they will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guidelines, and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guidelines are therefore subject to a substantial degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the new guidelines, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

The resource impact of the new guidelines is measured in terms of the change in sentencing practice that is expected to occur as a result of them. Any future changes in sentencing practice which are unrelated to the publication of the new guidelines are therefore not included in the estimates.

In developing sentence levels for the different guidelines, existing guidance and data on current sentence levels have been considered.

While data exist on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guidelines, due to a lack of data available regarding the seriousness of current cases. As a consequence, it is difficult to ascertain how sentence levels may change under the new guidelines.

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To support the development of the guidelines and to mitigate against the risk of them having an unintended impact, discussions with sentencers were undertaken during the consultation stage which have supported this final resource assessment.

## Resource impacts

This section should be read in conjunction with the definitive guidelines available on the [Sentencing Council website](#).

### Overall impacts

Overall, the kidnap and false imprisonment combined guideline is anticipated to lead to an increase in the average custodial sentence lengths for these offences and may therefore result in a total requirement of around 50 additional prison places (around 20 prison places for kidnap, and around 30 for false imprisonment).

For blackmail, it is also anticipated that the average custodial sentence length will increase under the new guideline. The guideline is estimated to result in a total requirement of around 10 additional prison places.

### Kidnap and false imprisonment

There is currently no guideline for the offences of kidnap or false imprisonment. The new guideline is a combined guideline covering both of these offences, consisting of three levels of culpability and three levels of harm. The sentencing ranges have been set with a view to ensure they are proportionate to the seriousness of the offending. The overall range of sentences (the offence range) in the new guideline is a community order to 16 years' custody.

Sentence ranges in the new guideline are entirely custodial with the exception of culpability and harm category 'C3' which has a starting point of 26 weeks' custody, and a category range of a high level community order to 2 years' custody. It is expected that offenders who currently receive a sentence of a discharge, fine or community order may instead receive a custodial sentence under the new guideline. Only cases which both fall into 'C3' and have the necessary mitigation and/or guilty plea reduction may result in a community order outcome. However, this only affects a small proportion of offenders, with only 3 per cent of offenders in 2023 receiving a discharge, fine or community order for kidnapping, and 5 per cent for false imprisonment.

A minority of offenders receive suspended sentence orders each year, with this figure at 10 per cent in 2023 for kidnap and 15 per cent for false imprisonment. Suspended sentence orders remain possible under the new guideline, with the sentencing table

including three categories with starting points that are eligible for suspension and a further three categories that include a sentence eligible for suspension at the bottom of the range. It is possible that under the new guideline, some custodial sentences which currently fall within the range for suspension may increase to above the 2 year threshold, potentially resulting in additional immediate custodial sentences.

Analysis of a sample of Crown Court judges' sentencing remarks was undertaken to understand the possible effects of the guideline on sentencing practice. As kidnap and false imprisonment are both indictable only offences, they are sentenced at the Crown Court. The transcript sample reflects a range of sentencing outcomes but is not necessarily representative of all cases.

Based on an analysis of 24 transcripts from 2021 for the offence of kidnap, it is estimated that the new guideline is likely to result in a modest uplift in sentences. The ACSL based on the sample of transcripts was 4 years 7 months; analysis indicated a possible increase to 4 years 11 months under the new guideline (after any reductions for guilty plea). Therefore, the transcript analysis suggests a potential increase in the ACSL of 4 months under the new guideline. As a result, it is estimated that the guideline may lead to a requirement for around 20 additional prison places for the offence of kidnap.

Analysis of 26 transcripts from 2021 was also undertaken for the offence of false imprisonment. This estimated that the new guideline would also slightly increase the severity of custodial sentences for offenders currently receiving immediate custody. It is also anticipated that offenders currently receiving suspended sentence orders may receive an immediate custodial sentence under the new guideline, as the sentence length may exceed the threshold for suspension. The combination of these is estimated to lead to a potential increase in the ACSL of around 4 months under the new guideline. The ACSL of the transcript sample increased from 4 years 3 months to 4 years 7 months, after any reductions for guilty plea. Therefore, for the offence of false imprisonment the new guideline may result in a requirement for around 30 additional prison places.

## **Blackmail**

There is currently no guideline for blackmail. The new guideline has three levels of culpability and three levels of harm. The overall range of sentences (the offence range) in the guideline is a community order to 10 years' custody.

The sentence ranges have been set to ensure that the appropriate sentences can be imposed for the most serious cases. The sentence ranges have been developed to ensure that sentencing can reflect the seriousness of the types of cases seen more recently in the courts where a very serious level of harm or distress is caused to the victim. Additionally, there are new elements to account for in sentencing blackmail offences (for example, due to the use of technology) and so the nature of offences may have changed from what was seen previously. Therefore, it is intended that the sentences imposed under the guideline will be proportionate to the nature and seriousness of the offence committed.

All starting points in the sentencing table are custodial and this is largely in line with current sentencing practice. In 2023, around 95 per cent of offenders received a custodial sentence (either suspended or immediate).

Analysis of a sample of Crown Court judges' sentencing remarks has been undertaken to understand the possible effects of the guideline on sentencing practice (a total of 22 transcripts from 2020 were analysed). Blackmail is an indictable only offence and is therefore sentenced at the Crown Court. The transcript sample reflects a range of sentencing outcomes but is not necessarily representative of all cases.

Based on the transcript analysis, it is expected that the guideline will lead to an increase in immediate custodial sentence lengths. It also suggested that some offenders currently receiving a suspended sentence order would instead receive an immediate custodial sentence under the guideline, as the length of the custodial sentence imposed would exceed the 2 year threshold. This is anticipated to lead to a potential increase in the ACSL of the transcript sample by around 1 month (from 3 years 1 month to 3 years 2 months). Therefore, it is estimated that the guideline may result in a requirement of around 10 additional prison places for blackmail.

## Risks

### **Risk 1: The Council's assessment of current sentencing practice is inaccurate**

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect.

This risk is mitigated by information that was gathered by the Council as part of the consultation phase. This included inviting views on the guidelines through the consultation exercise and research with sentencers using case scenarios to explore whether the guidelines could have any unintended effects. However, given there were limitations on the number of scenarios which could be explored, the risk cannot be fully eliminated. The Council also included a question in the consultation document, asking for consultees' views on the potential impact of the proposals, and these views have been considered for the development of the final guidelines.

### **Risk 2: Sentencers do not interpret the new guideline as intended**

If sentencers do not interpret the guideline as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing a new guideline to try to ensure that sentencers interpret it as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of Crown Court sentencing remarks for kidnap, false imprisonment and blackmail cases have also been studied to ensure that the guideline is developed with current sentencing practice in mind. Additionally, research with sentencers which was carried out during the consultation period has hopefully enabled any issues with implementation to be identified and addressed.

Consultees have had the opportunity to provide their opinion of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to

monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.

## Further information

### Data sources and quality

The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented in this publication are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Work has been undertaken by MoJ to develop and deliver improvements to the criminal court sentencing data, these new processes affect data from 2017 onwards, therefore care should be taken when comparing trends between 2017 and 2016. Further information on this can be found in the 'Technical Guide to Criminal Justice Statistics' within the [Criminal Justice System Statistics Quarterly \(CJSQ\) publication](#).

The data presented in this resource assessment only include cases where the principal offence committed is one of the offences covered by the new guidelines. When an offender has been found guilty of two or more offences, the principal is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. Further information about these sentencing data can be found in the accompanying data tables published on the [Sentencing Council: Statistical summaries webpage](#).

The average custodial sentence lengths presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea.

The result category 'Other/unknown' includes cases where the outcome categorised in the CPD was 'Otherwise dealt with', which covers multiple miscellaneous disposals, and those cases where the disposal was not known.

Figures presented include the time period from March 2020 in which restrictions were initially placed on the criminal justice system due to the coronavirus (COVID-19) pandemic, and the ongoing courts' recovery since. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

### Methodology

Where a resource impact has been calculated, volumes of sentenced have been adjusted in line with 2023 volumes. For the offences of kidnap and false

imprisonment, it has been assumed that those serving a determinate custodial sentence of less than seven years would be released half-way through their sentence and those serving a determinate sentence of seven years or more would be released after serving two thirds of their sentence. For these offences, where an extended determinate sentence was imposed, which consists of a custodial sentence length and an extended licence period, time served has been assumed to be 90 per cent of the custodial sentence length. For the offence of blackmail, it has been assumed that offenders would be released half-way through their sentence. These assumptions do not take into account the current policy that provides for automatic release 40 per cent of the way through sentences of less than 4 years for offenders sentenced for blackmail, kidnap and false imprisonment which could lead to a potential reduction in the estimated resource impact.

Data are not available to estimate how many suspended sentence orders would continue to be suspended under the guidelines, however, the estimated resource impacts provided are based on the assumption that offenders who were previously given a suspended sentence order would continue to be given one under the guideline, provided the sentence length was within the range for suspension (between 14 days and 2 years).

### **General conventions**

Actual numbers of sentences have been rounded to the nearest 100, when more than 1,000 offenders were sentenced, and to the nearest 10 when fewer than 1,000 offenders were sentenced.

Proportions of sentencing outcomes have been rounded to the nearest integer. Percentages in this report may not appear to sum to 100 per cent, owing to rounding.

Prison impact estimates have been rounded to the nearest 10 prison places.