

11 June 2015

Dear Member,

Meeting of the Sentencing Council – 19 June 2015

Please note there is a change of room for the next Council meeting. It will be held in Room E200 at the Royal Courts of Justice, on Friday 19 June 2015 at 9:45.

A security pass is needed to gain access to room E200. When members arrive at reception please call the office on 0207 071 5793 and a member of staff will come and escort you to the meeting room.

The following papers are attached for the Council meeting:

- | | |
|---------------------------------------|-------------|
| ▪ Agenda | SC(15)JUN00 |
| ▪ Minutes of meeting held on 15 May | SC(14)MAY01 |
| ▪ Action Log | SC(15)JUN02 |
| ▪ Robbery | SC(15)JUN03 |
| ▪ Health and Safety | SC(15)JUN04 |
| ▪ Theft | SC(15)JUN05 |
| ▪ Youths | SC(15)JUN06 |
| ▪ Breach | SC(15)JUN07 |
| ▪ Supporting materials for guidelines | SC(15)JUN08 |

Also attached for your information are the latest minutes from the Confidence and Communications sub group meeting held since the last Council meeting.

As discussed at the last meeting we are no longer providing hard copies of meeting papers. Members can access papers via the members' area of the website and for those without access to the area a single pdf is attached which contains all the meeting papers in one document with links to each item.

I look forward to seeing you on the 19th.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Claire', written in a cursive style.

Claire Fielder

Head of the Office of the Sentencing Council

COUNCIL MEETING AGENDA

19 June 2015
Royal Courts of Justice
Room E200

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|---------------|---|
| 09:45 – 10:00 | Minutes of the last meeting and matters arising (papers 1 & 2) |
| 10:00 – 10:30 | Crown Court Sentencing Survey annual publication - presented by Victoria Obudulu |
| 10:30 – 10:50 | Reports from the confidence and communications and analysis and research subgroups – presented by Michael Caplan and Julian Roberts |
| 10:50 – 11:50 | Robbery – presented by Vicky Hunt (paper 3) |
| 11:50 – 12:50 | Health and Safety – presented by Lisa Frost (paper 4) |
| 12:50 – 13:20 | Lunch |
| 13:20 – 14:35 | Theft – presented by Mandy Banks (paper 5) |
| 14:35 – 15:20 | Youths – presented by Joanne Keatley (paper 6) |
| 15:20 – 15:50 | Breach – presented by Lisa Frost (paper 7) |
| 15:50 – 16:15 | Supporting materials for guidelines – presented by Ruth Pope (paper 8) |
| 16:15 – 16:30 | MCSG – presented by Helen Stear |

Sentencing Council

COUNCIL MEETING AGENDA

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MEETING OF THE SENTENCING COUNCIL

15 MAY 2015

MINUTES

<u>Members present:</u>	Colman Treacy (Chairman) Michael Caplan John Crawford Julian Goose Heather Hallett Javed Khan Sarah Munro Lynne Owens Alison Saunders John Saunders Richard Williams
<u>Apologies:</u>	Jill Gramann Tim Holroyde Julian Roberts
<u>Advisers present:</u>	Paul Wiles
<u>Representatives:</u>	Stephen Muers for the Ministry of Justice (Director, Criminal Justice Policy) Ceri Hopewell for the Lord Chief Justice (Legal Advisor to the Lord Chief Justice, Criminal Justice Team)
<u>Members of Office in Attendance</u>	Claire Fielder (Head of Office) Mandy Banks Lisa Frost Vicky Hunt Ruth Pope Caroline Nauth-Misir Victoria Obudulu Helen Stear Trevor Steeples Gareth Sweny

1. WELCOME AND APOLOGIES FOR ABSENCE

- 1.1 Apologies were received as set out above.

2. MINUTES OF LAST MEETING

- 2.1. The minutes from the meeting of 17 April 2015 were agreed.

3. MATTERS ARISING

- 3.1 The Chairman welcomed Judge Endo, who was observing the Council meeting. Judge Endo is a Judge of the Criminal Division in the Tokyo District Court and is currently conducting research under the Japanese Exchange Programme.
- 3.2 The Chairman also welcomed visitors from the team establishing the Scottish Sentencing Council: Lord Carloway, the Lord Justice Clerk, Ondine Tennant, Secretary and Carmen Murray, Policy officer who were observing the morning session of the Council meeting.
- 3.3 The Chairman welcomed and introduced Martin Graham who will join the Council on 1 June 2015, replacing John Crawford.

4. INTRODUCTION FROM THE SCOTTISH SENTENCING COUNCIL – PRESENTED BY LORD CARLOWAY, THE LORD JUSTICE CLERK

- 4.1 Lord Carloway informed the Council on Scotland's progress in establishing a Sentencing Council and asked questions of Council members.

5. DISCUSSION ON HEALTH AND SAFETY – PRESENTED BY LISA FROST, OFFICE OF THE SENTENCING COUNCIL

- 5.1 Paul Wiles notified the Council of a conflict of interest in relation to the discussion on health and safety and took no part in the discussion.
- 5.2 This was the Council's second review of the consultation responses following the end of the consultation on 18 February 2015. The Council considered the responses to questions relating to the health and safety and corporate manslaughter sections of the guideline.
- 5.3 Taking into account consultation responses the Council agreed revisions to the definitions of harm and culpability to improve the clarity of the guideline. There was also a discussion regarding the aggravating and mitigating factors in the light of consultation responses.

6. DISCUSSION ON ALLOCATION – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

- 6.1 The Council considered a draft Allocation guideline and agreed a version for consultation. Stakeholders will be consulted for a six week period starting in June 2015.

7. DISCUSSION ON THEFT - PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

- 7.1 The Council considered a number of issues following analysis of responses to the theft consultation. One important issue considered was how best to provide guidance on previous convictions in the guidelines.
- 7.2 The Council considered the treatment of prevalence in the guidelines. Amendments to the aggravating and mitigating factors were also discussed. The Council agreed to discuss the sentence levels at the June Council meeting.

8. UPDATE ON BUDGET – PRESENTED BY TREVOR STEEPLES, OFFICE OF THE SENTENCING COUNCIL

- 8.1 The Council considered how its budget for the financial year 2015/16 of £1.53 million was allocated.

9. UPDATE ON SENTENCING COUNCIL WEBSITE – PRESENTED BY HELEN STEAR AND GARETH SWENY, OFFICE OF THE SENTENCING COUNCIL

- 9.1 The Council was shown a presentation of the new members' area of the Sentencing Council website.

10. DISCUSSION ON GUILTY PLEAS – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

- 10.1 The Council considered the latest draft of the proposed guilty plea guideline. Officials were asked to do some further work on analysing the resource impact of the guideline to be discussed again at the July meeting.

11. PRESENTATION ON STATISTICS– PRESENTED BY VICTORIA OBUDULU AND CAROLINE NAUTH-MISIR, OFFICE OF THE SENTENCING COUNCIL

- 11.1 The Council was presented with an overview of sentencing statistics; explaining the datasets which are available to the Analysis & Research team, and providing clarification on various statistical and technical terms used by A&R when presenting analysis. A discussion was also

held on which average values are most appropriate to use in guideline development.

12. DISCUSSION ON ROBBERY – PRESENTED BY VICKY HUNT, OFFICE OF THE SENTENCING COUNCIL

12.1 The Council considered three alternative models for the Robbery guideline which had been drafted to overcome some of the concerns raised at the March meeting. The Council agreed to a model which consisted of a combined street and less sophisticated commercial robbery guideline, a separate professionally planned commercial robbery guideline and a separate dwelling robbery guideline.

12.2 The Council also agreed some amendments to the assessment of culpability and harm to accommodate the structure of the new model. The aggravating and mitigating factors were also considered, and some minor changes were made to reflect the responses that were received from the consultation.

12.3 The draft guidelines will be considered again in June.

SC(15)JUN02 April Action Log

ACTION AND ACTIVITY LOG – as at 12 June 2015

	Topic	What	Who	Actions to date	Outcome
SENTENCING COUNCIL MEETING 21 NOVEMBER 2014					
1	Robbery	Produce a revised version of the street robbery guideline to address some of the issues arising from the transcript exercise and run another transcript exercise to test this version.	Lissa Matthews and judicial Council members		ACTION CLOSED: Revised guideline to be presented at June meeting. Transcript exercise conducted by OSC officials.
SENTENCING COUNCIL MEETING 30 JANUARY 2015					
2	Probation	John Crawforth proposed a presentation on changes to Probation for a future Council meeting	Claire Fielder	ACTION ONGOING – Claire is approaching Colin Allars, Director of Probation in NOMS, to speak to the Council at a future meeting.	Arranging for the autumn
3	PQBD's review of efficiency in criminal proceedings	Paper/s to March Council exploring options for implementing the review's recommendations where relevant to the Council.	Claire Fielder / Ruth Pope	ACTION ONGOING Longer term "out of scope" recommendations relating to structure of the criminal courts will be considered at a later date.	PARTIALLY CLOSED The Council agreed to revise the allocation guideline and the recommendations relating to the guilty plea guideline will be picked up in the consultation.
SENTENCING COUNCIL MEETING 6 MARCH 2015					
4	Assault	Council decided that the work to be taken forward should be a potential combination of a complete review, option 3, and a review plus guidance on child cruelty and/or domestic violence, option 4, depending on the resource involved and whether Government legislates on DV early in next Parliament.	Mandy Banks	ACTION ONGOING: MOJ have since confirmed that the recent legislation on child cruelty was not a new offence, but a clarification of existing offences.	ACTION ONGOING - Review in November.

SENTENCING COUNCIL MEETING 17 APRIL 2015

5	Costs of sentencing	Council decided that a note should be produced, to be published on the A&R section of the Council's website, providing hyperlinks to relevant MoJ figures currently published on the costs of sentencing. A draft of the note should be taken to the A&R sub-group and then back to Council before publication.	Caroline Nauth-Misir	ACTION ONGOING: A draft of the note to be presented to the Council at July meeting.	ACTION CLOSED: A draft of the note was presented at the A&R sub-group meeting on 10 June.
6	Youths	Council decided that the approach taken to allocation should be amended but that this may be reviewed following any cases that exercise section 53 of the Criminal Justice and Courts Act. Council decided that some of the content needed some revision including the reference to adult guidelines and the factors included in the assessment of seriousness. Council also decided that the section on sentencing options could benefit from greater detail, perhaps in the form of an appendix. Council agreed with the overall style and approach of the revised guideline.	Jo Keatley		ACTION CLOSED: Redraft incorporating the changes suggested at the April meeting will be made and considered at the June meeting.

SENTENCING COUNCIL MEETING 15 May 2015

7	Guilty Pleas	Consultation to be delayed. Officials are speaking to the CPS, MoJ and police regarding impact on other parts of the system. The costs model is to be run again using 2014 CCSS data and with the reduction at the second stage of proceedings at 20% and 25%. Discussions have been undertaken with MoJ on how best to resource this work and the support they will offer to the Council. Progress on work to date will be brought back to Council in July.	Ruth Pope/ Victoria Obudulu	ACTION ONGOING: An update on work to date to be presented at July Council meeting	
8	Guilty Pleas	MoJ analytical services to provide assistance with cost modelling. MoJ to liaise with Home Office and Attorney General's Office regarding an analysis of the wider implications of the proposed reforms to the CJS of which the guilty plea guideline is a part.	Stephen Muers	ACTION ONGOING: Meeting scheduled for 15 June to review progress.	

9	Allocation	Key stakeholders to be consulted on the proposed allocation guideline by email. Council members will receive a draft of the consultation document by email for comments.	Ruth Pope/ Council members	ACTION CLOSED: Council members have now provided comments on the draft and the distribution list.	ACTION ONGOING: Consultation scheduled from mid June to end July.
10	Theft	Agreed that the wording regarding previous convictions used in consultation (model 1 in the Council paper) should be placed within the statutory aggravating factors section (model 2 in the paper). Also agreed that the wording used during consultation regarding prevalence should be kept, with a small addition. Small amendments to be made to some aggravating/mitigating factors.	Mandy Banks		ACTION CLOSED: Redrafts incorporating all the changes agreed at May meeting to be presented at the June Council meeting.
11	Robbery	Minor amendments to be made to Model B. Office to work on sentencing levels, and test those via a transcript exercise to ensure sentencing practice is unaffected by guideline.	Vicky Hunt		ACTION ONGOING: Considerations to be given to proposed sentence levels at June meeting

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Sentencing Council

Sentencing Council meeting: 19 June 2015
Paper number: SC(15)JUN03 - Robbery
Lead officials: Vicky Hunt & Jo Keatley
020 7071 5786
Lead Council member: Julian Goose

1 ISSUE

- 1.1 This is the third consideration of the guidelines post consultation. The main purpose of this paper is to ask the Council to consider the proposed sentencing levels within the guideline. The Council will also be asked to consider some minor changes to the draft.
- 1.2 The timetable is for the guidelines to be signed off by October 2015, published in January 2016 and come into force in April 2016.

2 RECOMMENDATION

- 2.1 The Council is asked to consider
- The sentencing levels set out in each of the guidelines
 - Moving the consideration of value to a step 2 consideration in the combined street/ less sophisticated commercial robbery guideline
 - The definitions provided for the street/ less sophisticated commercial robbery guideline and the professionally planned commercial robbery guideline
 - The descriptors for harm at step 1 of each of the guidelines

3 CONSIDERATION

- 3.1 At the May meeting the Council selected a preferred model of the guidelines. Since that meeting the office has carried out a small transcript exercise to test both the workability of the guidelines, and to assess the sentencing levels. The exercise involved 13 members of staff from the office assessing the guidelines against a number of first instance transcripts. Each tester was given about 10 cases each, and a total of 82 transcripts were used.

- 3.2 The Council will recall that the approach taken to the development of these guidelines has been to regularise sentencing practice rather than to substantially alter it. However, at consultation, the Council also expressed the view that sentence levels must reflect the serious social problem of offenders carrying knives or threatening to use knives, even in cases where knives are not produced (and may not even exist). It was felt necessary to reflect society's concern that knife crime has become widespread. This is especially the case in street robberies. The Council also decided to take a similar approach to cases involving firearms and imitation firearms. This aim has largely been addressed through the way in which we now assess culpability, ensuring that those cases involving a knife etc will always end up in the highest categories.
- 3.3 Devising sentencing levels for robbery is extremely difficult given the limited data available and the way in which that available data is classified by location, which does not necessarily fit with the groupings of our guidelines. The data referred to below is from the Court Proceedings Database and the Crown Court Sentencing Survey. We have used a combination of 2012 and 2013 data. In all cases the average custodial sentencing length is based on the actual sentence imposed and does not account for credit for a guilty plea.

Street/ Less Sophisticated Commercial Robbery

- 3.4 The sentencing table set out below, was the version put through the transcript testing exercise. The starting points and ranges were based on the consultation paper version of the guideline and the existing SGC guideline.
- 3.5 From analysis of the 2013 CCSS data for robberies committed in a park, playground, shop, small business, pub, public transit, and taxi, immediate custody was the most common sentence, and the average custodial sentence length was 3 years 3 months.

Harm	Culpability		
	A	B	C
Category 1	Starting point 8 years' custody Category range 7 – 12 years' custody	Starting point 5 years' custody Category range 3 – 8 years' custody	Starting point 3 years 6 months' custody Category range 2 - 5 years' custody
Category 2	Starting point 5 years' custody Category range 3 – 8 years' custody	Starting point 3 years' 6 months' custody Category range 2 – 5 years' custody	Starting point 2 years' custody Category range 18 months' – 4 years custody
Category 3	Starting point 3 years' 6 months custody Category range 2 – 5 years' custody	Starting point 2 years' custody Category range 18 months' – 4 years' custody	Starting point 18 months custody Category range 1 – 3 years custody

- 3.6 In the small transcript exercise carried out in the office, the sentences imposed by the testers were broadly inline with the actual sentences received. Some small issues of workability did arise, and these are addressed at a later stage in this paper.
- 3.7 Looking again at the SGC guideline (Annex A) and reflecting the Council's earlier decision to recognise the seriousness of using knives, it is proposed that a number of changes are made to the above levels. It is proposed that C3 is reduced to a starting point of 12 months as C3 is a direct comparison to the lowest category of activity described in the SGC guideline, and this category would never involve the use of a knife, so there is no reason to inflate the sentence.
- 3.8 It is also proposed that the starting sentence for A3, B2 and C1 is increased to 4 years as these scenarios are the equivalent of the middle category of the SGC guideline in that they either involve the production of a weapon, or the use of a weapon to inflict violence; or it involves serious harm to the victim. The SGC starting point is 4 years, and so to reduce this starting point, especially in the case of A3 where a knife/ firearm or imitation firearm may have been produced, would go against the Council agreed decision to reflect the seriousness of knife crime.

3.9 It is, therefore proposed that the sentencing table would look like this:-

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 8 years' custody</p> <p>Category range 7 – 12 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category range 3 – 8 years' custody</p>	<p>Starting point 4 years' custody</p> <p>Category range 2 – 7 years' custody</p>
Category 2	<p>Starting point 5 years' custody</p> <p>Category range 3 – 8 years' custody</p>	<p>Starting point 4 years' custody</p> <p>Category range 2 – 7 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category range 12 months – 4 years custody</p>
Category 3	<p>Starting point 4 years' custody</p> <p>Category range 2 – 7 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category range 12 months – 4 years' custody</p>	<p>Starting point 1 year custody</p> <p>Category range High Level Community Order - 3 years custody</p>

Question 1: Does the Council agree to the proposed starting points and ranges for the combined street/ less sophisticated commercial robbery?

Professionally Planned Commercial Robbery

3.10 The sentencing levels for the professionally planned commercial robbery guideline set out below include starting points and ranges based on an assessment of first instance transcripts and an analysis of the consultation paper version of the guideline (which combined less sophisticated and professionally planned robbery).

3.11 From the 2013 CCSS data of those robberies where the location indicated was a bank, the average custodial sentence length was 5 years 8 months, the maximum was 18 years.

Harm	Culpability		
	A	B	C
Category 1	Starting point 16 years' custody Category range 12 – 20 years' custody	Starting point 9 years' custody Category range 7 – 14 years' custody	Starting point 5 years' custody Category range 4 – 8 years' custody
Category 2	Starting point 9 years' custody Category range 7 – 14 years' custody	Starting point 5 years' custody Category range 4 – 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody
Category 3	Starting point 5 years' custody Category range 4 – 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 2 year's custody Category range 18 months custody - 4 years' custody

3.12 These sentencing ranges have now been tested in a transcript exercise. The sentences imposed by the testers were broadly inline with the actual sentences imposed. However at the upper end the sentences are potentially too high, especially when compared with the dwelling guideline sentences.

3.13 It is proposed that some minor changes are made to the upper levels of sentences:-

Harm	Culpability		
	A	B	C
Category 1	Starting point 14 years' custody Category range 10 – 16 years' custody	Starting point 8 years' custody Category range 6 – 10 years' custody	Starting point 5 years' custody Category range 4 – 8 years' custody
Category 2	Starting point 8 years' custody Category range 6 – 10 years' custody	Starting point 5 years' custody Category range 4 – 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody
Category 3	Starting point 5 years' custody Category range 4 – 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 2 year's custody Category range 18 months custody - 4 years' custody

Question 2: Does the Council agree to the above proposed starting points and ranges for professionally planned commercial robbery?

Dwelling Robbery

3.14 The sentencing levels for the dwelling guideline, below, are those that were set out in the consultation paper.

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 11 years' custody</p> <p>Category range 9 – 13 years' custody</p>	<p>Starting point 7 years' custody</p> <p>Category range 5 – 10 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>
Category 2	<p>Starting point 7 years' custody</p> <p>Category range 5 – 10 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category range 2 – 6 years' custody</p>
Category 3	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category range 2 – 6 years' custody</p>	<p>Starting point 18 months custody</p> <p>Category range 1– 3 years' custody</p>

3.15 The starting points and ranges in the consultation paper were based on statistical data from the Court Proceedings database and the Crown Court Sentencing Survey; analysis of first instance transcripts; analysis of Court of Appeal judgements and reference to the ranges within the Aggravated Burglary Guideline (Annex B).

3.16 The consultation paper asked respondents to comment on the sentence ranges and starting points. There were 15 responses, with only 9 providing a direct response to the question. 4 of the respondents, including HHJ Jeff Blackett, and the Criminal Sub Committee of the Council of HM Circuit Judges, commented that the sentencing levels seemed too low. However 3 of

the respondents, including the Law Society, indicated that they felt sentencing levels were too high and may not reflect current sentencing practice. 2 of the respondents said that they felt the levels were just right.

- 3.17 At roadtesting there was wide consensus that the starting points and ranges were too low, but only at the top end.
- 3.18 The transcript exercise revealed that testers also came out with sentencers that were too high.
- 3.19 From the available statistics we know that approximately 560 adult offenders were sentenced for robbery in a dwelling in 2013. The majority received an immediate custodial sentence, and the average sentence length was 5 years 9 months, the maximum was 14.
- 3.20 When the sentencing levels for dwelling were devised regard was given to the existing aggravated burglary guideline. However this guideline is very different, with only 3 sentencing categories, which makes comparison challenging.
- 3.21 Considering the competing considerations; the aggravated burglary guideline, the responses to consultation, roadtesting and our small scale transcript test the Council may agree that some small adjustments are needed to our guideline. As set out below:

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 13 years' custody</p> <p>Category range 10 – 15 years' custody</p>	<p>Starting point 8 years' custody</p> <p>Category range 6 – 10 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>
Category 2	<p>Starting point 8 years' custody</p> <p>Category range 6 - 10 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category range 1 – 4 years' custody</p>
Category 3	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category range 1 – 4 years' custody</p>	<p>Starting point 18 months custody</p> <p>Category range 1– 3 years' custody</p>

Question 3: Does the Council agree to the above proposed starting points and ranges for dwelling robbery?

Specific Issues with Street/ Less Sophisticated Commercial Robbery

- 3.22 At the last meeting it was agreed to combine the street and less sophisticated commercial robbery guidelines to avoid confusion about which guideline a sentencer should use in the case of a robbery in a taxi or a robbery on the street, targeting commercial takings. However it was also agreed that value should be included as a step 1 consideration but only for less sophisticated commercial robberies. (This is illustrated at pages C3 and C5 in Annex C).
- 3.23 Now we have drafted the guideline in this way it is apparent that some difficulties will arise. Firstly the main benefit of using this model is lost in that we would still need to provide a clear rationale for defining street/ commercial robberies in the way that we do. Secondly, during the transcript exercise a number of testers overlooked the caveat that value should not be considered for street robbery, and still counted it.
- 3.24 The Council's main concern about including value at step 1 in street cases is that it may inflate sentences as more offences may fall within a higher category of harm. An alternative option would be to remove value from step 1 entirely and simply place it as a step 2 consideration.
- 3.25 This option was not put to Council previously but on reflection it may achieve the better outcome. The existing SGC guideline (that combines street and less sophisticated commercial robbery) only includes value as an aggravating factor (at step 2). The Council may consider that in those less sophisticated commercial robberies which occur in small shops or businesses, value is not a principal element of the offence in the same way as it would be in a professionally planned commercial robbery. Moving value to step 2 should prevent unwanted inflation of sentences and also ensure that the guideline flows better and is easier to use for sentencers. It should ensure that consistency is achieved as sentencers will not be required to make a decision about whether the case was or was not a street robbery, and also removes

the risk of sentencers misreading the guideline and applying the factors incorrectly.

Question 4: Does the Council agree to move value to a step 2 consideration in the combined street/ less sophisticated commercial robbery guideline?

Specific Issues with Commercial Robbery

3.26 Separating commercial robbery into less sophisticated and professionally planned presented some difficulty for our testers in the office who went through the transcript exercise, in that they struggled to work out which guideline to use. This is likely to be less of an issue for actual sentencers as most will be familiar with the existing SGC guideline which includes the same grouping, and should know when this guideline applies. However to address this concern, and ensure new judges understand the guideline, it is proposed that some guidance is added to the front of the guidelines, providing a definition:-

3.27 “Street/ less sophisticated commercial robbery refers to robberies committed in public places, including those committed in taxis or on public transport. It also refers to unsophisticated robberies within commercial premises or targeting commercial goods. This may include (but is not limited to) small businesses, public houses and shops (but only where the level of planning and sophistication was low).”

3.28 “Professionally planned commercial robbery refers to robberies involving a significant degree of planning, sophistication or organisation.”

Question 5: Does the Council agree to the wording used to clarify the difference between street/ less sophisticated commercial robbery and professionally planned commercial robbery. (This is illustrated at pages D1 and D7 of Annex D)

Harm

3.29 The transcript testing exercise revealed that a number of people struggled with assessing value. This related to both the professionally planned commercial guideline and the dwelling guideline. Currently value is separated

into 'very high' for a category 1 offence, and 'high or medium' for a category 2 offence (see page C10 Annex C). Testers particularly struggled with deciding what should fall into 'high or medium'. Similarly some testers struggled to assess physical and psychological harm. Currently the factors in all 3 guidelines refer to 'serious physical/ psychological harm' for a category 1 offence, and 'some physical harm or psychological harm above the level inherent in the offence' for a category 2 offence. Testers struggled to assess what would class as 'serious' as opposed to 'some' harm.

- 3.30 To overcome this difficulty it may be better to describe the most serious type of harm (category 1), and the least serious (category 3), and leave category 2 as 'cases where characteristics for categories A or C are not present'. Category C would involve such factors as 'no or minimal physical/ psychological harm caused', and 'low value goods or sums (whether economic, personal or sentimental)'. This is illustrated at pages D3, D9 and D15 of Annex D. These descriptors are likely to be more easily understood, and it allows us to move away from the term 'above the level inherent in the offence', which many testers (including members of the judiciary at roadtesting) have struggled with. Changing the factors in this way will also achieve consistency with the culpability table.

Question 6: Does the Council agree to change the descriptors within harm as set out above?

- 3.31 In addition some testers commented that when assessing harm it would be useful if the guideline made clear that value should be considered within the context of the business, so that it truly reflects the impact on the victim. This is illustrated at pages D4 and D9 at Annex D.

Question 7: Does the Council agree to add wording to make clear that when assessing harm, value of the goods taken should be considered within the context of the size or means of the business from which they are taken?

4 IMPACT

- 7.1 The impact of the proposed guidelines was carefully monitored during the consultation period. The guidelines put to Council today have been tested by a transcript exercise in which the new guideline was tested against real cases that were sentenced in the Crown Court to ensure that the impact of the proposals on the criminal justice system is neutral, and to ensure that the guideline is easy to follow.

8 RISK

The main risk remains the potential for an increase in the prison population if the impact is not accurately assessed, or the problems already identified with the guideline are not addressed.

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Street robbery or 'mugging'
Robberies of small businesses
Less sophisticated commercial robberies

**Robbery is a serious offence for the purposes of sections 225 and 227
 Criminal Justice Act 2003**

Maximum Penalty: **Life imprisonment**

ADULT OFFENDERS

Type/nature of activity	Starting point	Sentencing Range
The offence includes the threat or use of minimal force and removal of property.	12 months custody	Up to 3 years custody
A weapon is produced and used to threaten, and/or force is used which results in injury to the victim.	4 years custody	2-7 years custody
The victim is caused serious physical injury by the use of significant force and/or use of a weapon.	8 years custody	7-12 years custody

Additional aggravating factors	Additional mitigating factors
<ol style="list-style-type: none"> 1. More than one offender involved. 2. Being the ringleader of a group of offenders. 3. Restraint, detention or additional degradation, of the victim. 4. Offence was pre-planned. 5. Wearing a disguise. 6. Offence committed at night. 7. Vulnerable victim targeted. 8. Targeting of large sums of money or valuable goods. 9. Possession of a weapon that was not used. 	<ol style="list-style-type: none"> 1. Unplanned/opportunistic. 2. Peripheral involvement. 3. Voluntary return of property taken. 4. Clear evidence of remorse. 5. Ready co-operation with the police.

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Aggravated burglary

Theft Act 1968 (section 10)

Category 1	Greater harm and higher culpability
Category 2	Greater harm and lower culpability or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine culpability and harm caused or intended, by reference **only** to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

<p>Factors indicating greater harm</p> <p>Theft of/damage to property causing a significant degree of loss to the victim (whether economic, commercial, sentimental or personal value)</p> <p>Soiling, ransacking or vandalism of property</p> <p>Victim at home or on the premises (or returns) while offender present</p> <p>Significant physical or psychological injury or other significant trauma to the victim</p> <p>Violence used or threatened against victim, particularly involving a weapon</p> <p>Context of general public disorder</p>	<p>Factors indicating higher culpability</p> <p>Victim or premises deliberately targeted (for example, due to vulnerability or hostility based on disability, race, sexual orientation)</p> <p>A significant degree of planning or organisation</p> <p>Equipped for burglary (for example, implements carried and/or use of vehicle)</p> <p>Weapon present on entry</p> <p>Member of a group or gang</p>
<p>Factors indicating lesser harm</p> <p>No physical or psychological injury or other significant trauma to the victim</p> <p>No violence used or threatened and a weapon is not produced</p>	<p>Factors indicating lower culpability</p> <p>Offender exploited by others</p> <p>Mental disorder or learning disability, where linked to the commission of the offence</p>

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	10 years' custody	9–13 years' custody
Category 2	6 years' custody	4–9 years' custody
Category 3	2 years' custody	1–4 years' custody

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Robbery – street and less sophisticated commercial

This guideline applies only to offenders aged 18 and older. The Sentencing Guidelines Council Robbery Definitive Guideline includes a guideline for sentencing young offenders which continues to be in force.

General principles to be considered in the sentencing of youths are available in the Sentencing Guidelines Council's definitive guideline, Overarching principles – Sentencing Youths. Check www.sentencingcouncil.org.uk for amendments to guidance for youth offenders.

Theft Act 1968 (section 8(1))

This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003.

Triable only on indictment

Maximum: Life imprisonment

Offence range: Community order – 16 years' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following:

A - High culpability:

- Use of a weapon to inflict violence
- Production of a bladed article or firearm or imitation firearm to threaten violence
- Use of very significant force in the commission of the offence
- Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))

B - Medium culpability:

- Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence
- Threat of violence by any weapon (but which is not produced)
- Other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Involved through coercion, intimidation or exploitation
- Threat or use of minimal force
- Mental disability where linked to the commission of the offence

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused to the victim • Serious detrimental effect on the business • Very high value goods or sums (whether economic, personal or sentimental) (commercial robberies only)
Category 2	<ul style="list-style-type: none"> • Some physical harm caused to the victim • Some psychological harm caused to the victim above the level of harm inherent in the offence of robbery • Some detrimental effect on business • High or medium value goods or sums (whether economic, personal or sentimental) (commercial robberies only)
Category 3	<ul style="list-style-type: none"> • Factors in categories 1 and 2 not present

Where the goods stolen are of more than low value, whether economic, sentimental or personal, this is considered as an aggravating factor at step two.

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Consecutive sentences for multiple offences may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	Starting point 8 years' custody Category range 7 – 16 years' custody	Starting point 5 years' custody Category range 3 – 12 years' custody	Starting point 3 years 6 months' custody Category range 18 months' – 7 years' custody
Category 2	Starting point 5 years' custody Category range 3 – 12 years' custody	Starting point 3 years' 6 months' custody Category range 2 – 7 years' custody	Starting point 2 years' custody Category range 18 months' – 4 years custody
Category 3	Starting point 4 years' custody Category range 2 – 7 years' custody	Starting point 2 years' custody Category range 18 months' – 4 years' custody	Starting point 1 year's custody Category range High level community order – 2 years six months' custody

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness**Statutory aggravating factors:**

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability
- Involvement of others through coercion, intimidation or exploitation
- Prolonged nature of event
- Restraint, detention or additional degradation of the victim
- Sophisticated organised nature of offence
- A leading role where offending is part of a group activity
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Failure to respond to warnings about behaviour
- Timing of the offence
- Location of the offence
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Commission of offence whilst under the influence of alcohol or drugs
- Targeting of large sums of money or valuable goods (except where considered at step one)
- High value goods or sums (whether economic, personal or sentimental) (~~street robberies only~~)
- Location of offence also victim's residence

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability

- Little or no planning
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Robbery – professionally planned commercial (including banks, shops, businesses)

This guideline applies only to offenders aged 18 and older. The Sentencing Guidelines Council Robbery Definitive Guideline includes a guideline for sentencing young offenders which continues to be in force.

General principles to be considered in the sentencing of youths are available in the Sentencing Guidelines Council's definitive guideline, Overarching principles – Sentencing Youths, [which will continue to be in force pending further guidance in a forthcoming youth guideline](#). Check www.sentencingcouncil.org.uk for amendments to guidance for youth offenders.

Theft Act 1968 (section 8(1))

This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003.

Triable only on indictment

Maximum: Life imprisonment

Offence range: Community order – 20 years' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following:

A - High culpability:

- Use of a weapon to inflict violence
- Production of a bladed article or firearm or imitation firearm to threaten violence
- Use of very significant force in the commission of the offence
- A leading role where offending is part of a group activity
- Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))
- Abuse of position

B - Medium culpability:

- Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence
- Threat of violence by any weapon (but which is not produced)
- A significant role where offending is part of a group activity
- Other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Threat or use of minimal force
- Mental disability where linked to the commission of the offence

Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused to the victim. The victim relates both to the commercial organisation that has been robbed and any individual(s) who has suffered the use or threat of force during the commission of the offence.

Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused to the victim • Serious detrimental effect on business • Very high value goods or sums
Category 2	<ul style="list-style-type: none"> • Some physical harm caused to the victim • Some psychological harm caused to the victim above the level of harm inherent in this offence • Some detrimental effect on business • High or medium value goods or sums
Category 3	<ul style="list-style-type: none"> • Factors in categories 1 and 2 not present

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of high culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Consecutive sentences for multiple offences may be appropriate particularly where exceptionally high levels of harm have been caused.

Where multiple offences or a single conspiracy to commit multiple offences of particular severity have taken place sentences in excess of 20 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 16 years' custody</p> <p>Category range 12 – 20 years' custody</p>	<p>Starting point 9 years' custody</p> <p>Category range 7 – 14 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>
Category 2	<p>Starting point 9 years' custody</p> <p>Category range 7 – 14 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category range 2 – 5 years' custody</p>
Category 3	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category range 2 – 5 years' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range High level community order – 3 years' custody</p>

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

- Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability
- Involvement of others through coercion, intimidation or exploitation
- Restraint, detention or additional degradation of the victim
- Prolonged nature of attack
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Failure to respond to warnings about behaviour
- Timing of the offence
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Commission of offence whilst under the influence of alcohol or drugs
- Targeting of large sums of money or valuable goods (except where considered at step one)
- Location of offence also victim's residence

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Robbery – dwelling

This guideline applies only to offenders aged 18 and older. The Sentencing Guidelines Council Robbery Definitive Guideline includes a guideline for sentencing young offenders which continues to be in force.

General principles to be considered in the sentencing of youths are available in the Sentencing Guidelines Council's definitive guideline, Overarching principles – Sentencing Youths, [which will continue to be in force pending further guidance in a forthcoming youth guideline](#). Check www.sentencingcouncil.org.uk for amendments to guidance for youth offenders.

Theft Act 1968 (section 8(1))

This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003.

Triable only on indictment

Maximum: Life imprisonment

Offence range: 1 year's custody – 13 years' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following:

A - High culpability:

- Use of a weapon to inflict violence
- Production of a bladed article or firearm or imitation firearm to threaten violence
- Use of very significant force in the commission of the offence
- Sophisticated organised nature of offence
- A leading role where offending is part of a group activity
- Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))
- Abuse of position

B - Medium culpability:

- Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence
- Threat of violence by any weapon (but which is not produced)
- A significant role where offending is part of a group activity
- Other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Threat or use of minimal force
- Very little or no planning
- Mental disability where linked to the commission of the offence

Harm

The court should weigh up all the factors set out below to determine the harm that has been caused or was intended to be caused to the victim.

Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused to the victim • Very high value of goods (whether economic, sentimental or personal) • Soiling, ransacking or vandalism of property
Category 2	<ul style="list-style-type: none"> • Some physical harm caused to the victim • Some psychological harm caused to the victim above the level of harm inherent in this offence • High or medium value of goods (whether economic, sentimental or personal) • Damage caused to dwelling
Category 3	<ul style="list-style-type: none"> • Factors in categories 1 and 2 not present

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Consecutive sentences for multiple offences may be appropriate particularly where exceptionally high levels of harm may be caused.

In a case of particular gravity, reflected by extremely serious violence, a sentence in excess of 13 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	Starting point 11 years' custody Category range 9 – 13 years' custody	Starting point 7 years' custody Category range 5 – 10 years' custody	Starting point 5 years' custody Category range 4 – 8 years' custody
Category 2	Starting point 7 years' custody Category range 5 – 10 years' custody	Starting point 5 years' custody Category range 4 – 8 years' custody	Starting point 3 years' custody Category range 2 – 6 years' custody
Category 3	Starting point 5 years' custody Category range 4 – 8 years' custody	Starting point 3 years' custody Category range 2 – 6 years' custody	Starting point 18 months' custody Category range 1 – 3 years' custody

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability
- Involvement of others through coercion, intimidation or exploitation

- Restraint, detention or additional degradation of the victim
- Prolonged nature of attack
- [Child or vulnerable person](#) at home (or returns home) when offence committed
- Victim compelled to leave their home
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Failure to respond to warnings about behaviour
- Timing of the offence
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Commission of offence whilst under the influence of alcohol or drugs

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
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STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Robbery – street and less sophisticated commercial

This guideline applies only to offenders aged 18 and older.

Street/ less sophisticated commercial robbery refers to robberies committed in public places, including those committed in taxis or on public transport. It also refers to unsophisticated robberies within commercial premises or targeting commercial goods. This may include (but is not limited to) small businesses, public houses and shops (but only where the level of planning and sophistication was low).

The Sentencing Guidelines Council Robbery Definitive Guideline includes a guideline for sentencing young offenders which continues to be in force.

General principles to be considered in the sentencing of youths are available in the Sentencing Guidelines Council's definitive guideline, Overarching principles – Sentencing Youths, **which will continue to be in force pending further guidance in a forthcoming youth guideline. Check www.sentencingcouncil.org.uk for amendments to guidance for youth offenders.**

Theft Act 1968 (section 8(1))

This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003.

Triable only on indictment

Maximum: Life imprisonment

Offence range: Community order – 16 years' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following:
<p>A - High culpability:</p> <ul style="list-style-type: none"> • Use of a weapon to inflict violence • Production of a bladed article or firearm or imitation firearm to threaten violence • Use of very significant force in the commission of the offence • Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))
<p>B - Medium culpability:</p> <ul style="list-style-type: none"> • Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence • Threat of violence by any weapon (but which is not produced) • Other cases where characteristics for categories A or C are not present
<p>C - Lesser culpability:</p> <ul style="list-style-type: none"> • Involved through coercion, intimidation or exploitation • Threat or use of minimal force • Mental disability where linked to the commission of the offence

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused to the victim • Serious detrimental effect on the business
Category 2	<ul style="list-style-type: none"> • Other cases where characteristics for categories A or C are not present
Category 3	<ul style="list-style-type: none"> • No/ minimal physical or psychological harm • No/ minimal detrimental effect on the business

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Consecutive sentences for multiple offences may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	Starting point 8 years' custody Category range 7 – 12 years' custody	Starting point 5 years' custody Category range 3 – 8 years' custody	Starting point 4 years' custody Category range 2 - 7 years' custody
Category 2	Starting point 5 years' custody Category range 3 – 8 years' custody	Starting point 4 years' custody Category range 2 - 7 years' custody	Starting point 2 years' custody Category range 1 year – 4 years' custody
Category 3	Starting point 4 years' custody Category range 2 - 7 years' custody	Starting point 2 years' custody Category range 1 year – 4 years' custody	Starting point 1 year custody Category range High Level Community Order – 3 years' custody

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability
- Involvement of others through coercion, intimidation or exploitation
- Prolonged nature of event
- Restraint, detention or additional degradation of the victim
- Sophisticated organised nature of offence
- A leading role where offending is part of a group activity
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Failure to respond to warnings about behaviour
- Timing of the offence
- Location of the offence
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Commission of offence whilst under the influence of alcohol or drugs
- Targeting of large sums of money or valuable goods
- High value goods or sums (whether economic, personal or sentimental) **(Within the context of the business)**
- Location of offence also victim's residence

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Little or no planning
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

STEP EIGHT

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

DRAFT

Robbery – professionally planned commercial (including banks, shops, businesses)

This guideline applies only to offenders aged 18 and older.

Professionally planned commercial robbery refers to robberies involving a significant degree of planning, sophistication or organisation.

The Sentencing Guidelines Council Robbery Definitive Guideline includes a guideline for sentencing young offenders which continues to be in force.

General principles to be considered in the sentencing of youths are available in the Sentencing Guidelines Council's definitive guideline, Overarching principles – Sentencing Youths, **which will continue to be in force pending further guidance in a forthcoming youth guideline. Check www.sentencingcouncil.org.uk for amendments to guidance for youth offenders.**

Theft Act 1968 (section 8(1))

This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003.

Triable only on indictment

Maximum: Life imprisonment

Offence range: Community order – 20 years' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following:

A - High culpability:

- Use of a weapon to inflict violence
- Production of a bladed article or firearm or imitation firearm to threaten violence
- Use of very significant force in the commission of the offence
- A leading role where offending is part of a group activity
- Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))
- Abuse of position

B - Medium culpability:

- Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence
- Threat of violence by any weapon (but which is not produced)
- A significant role where offending is part of a group activity
- Other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Threat or use of minimal force
- Mental disability where linked to the commission of the offence

Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused to the victim. The victim relates both to the commercial organisation that has been robbed and any individual(s) who has suffered the use or threat of force during the commission of the offence.

Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused to the victim • Serious detrimental effect on business • Very high value goods or sums (whether economic, personal or sentimental) (Within the context of the business)
Category 2	<ul style="list-style-type: none"> • Other cases where characteristics for categories A or C are not present
Category 3	<ul style="list-style-type: none"> • No/ minimal physical or psychological harm • No/ minimal detrimental effect on the business • Low value goods or sums (whether economic, personal or sentimental) (Within the context of the business)

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of high culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Consecutive sentences for multiple offences may be appropriate particularly where exceptionally high levels of harm have been caused.

Where multiple offences or a single conspiracy to commit multiple offences of particular severity have taken place sentences in excess of 20 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 14 years' custody</p> <p>Category range 10 – 16 years' custody</p>	<p>Starting point 8 years' custody</p> <p>Category range 6 – 10 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>
Category 2	<p>Starting point 8 years' custody</p> <p>Category range 6 – 10 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category range 2 – 5 years' custody</p>
Category 3	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category range 2 – 5 years' custody</p>	<p>Starting point 2 year's custody</p> <p>Category range 18 months custody - 4 years' custody</p>

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability
- Involvement of others through coercion, intimidation or exploitation
- Restraint, detention or additional degradation of the victim

- Prolonged nature of attack
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Failure to respond to warnings about behaviour
- Timing of the offence
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Commission of offence whilst under the influence of alcohol or drugs
- Targeting of large sums of money or valuable goods (except where considered at step one)
- Location of offence also victim's residence

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Robbery – dwelling

This guideline applies only to offenders aged 18 and older. The Sentencing Guidelines Council Robbery Definitive Guideline includes a guideline for sentencing young offenders which continues to be in force.

General principles to be considered in the sentencing of youths are available in the Sentencing Guidelines Council's definitive guideline, Overarching principles – Sentencing Youths, **which will continue to be in force pending further guidance in a forthcoming youth guideline. Check www.sentencingcouncil.org.uk for amendments to guidance for youth offenders.**

Theft Act 1968 (section 8(1))

This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003.

Triable only on indictment

Maximum: Life imprisonment

Offence range: 1 year's custody – 13 years' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following:

A - High culpability:

- Use of a weapon to inflict violence
- Production of a bladed article or firearm or imitation firearm to threaten violence
- Use of very significant force in the commission of the offence
- Sophisticated organised nature of offence
- A leading role where offending is part of a group activity
- Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))
- Abuse of position

B - Medium culpability:

- Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence
- Threat of violence by any weapon (but which is not produced)
- A significant role where offending is part of a group activity
- Other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Threat or use of minimal force
- Very little or no planning
- Mental disability where linked to the commission of the offence

Harm

The court should weigh up all the factors set out below to determine the harm that has been caused or was intended to be caused to the victim.

Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused to the victim • Very high value of goods (whether economic, sentimental or personal) • Soiling, ransacking or vandalism of property
Category 2	<ul style="list-style-type: none"> • Other cases where characteristics for categories A or C are not present
Category 3	<ul style="list-style-type: none"> • No/ minimal physical or psychological harm • Low value goods or sums (whether economic, personal or sentimental) • Limited damage or disturbance to property

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Consecutive sentences for multiple offences may be appropriate particularly where exceptionally high levels of harm may be caused.

In a case of particular gravity, reflected by extremely serious violence, a sentence in excess of 13 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 13 years' custody</p> <p>Category range 10 – 15 years' custody</p>	<p>Starting point 8 years' custody</p> <p>Category range 6 – 10 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>
Category 2	<p>Starting point 8 years' custody</p> <p>Category range 6 - 10 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category range 1 – 4 years' custody</p>
Category 3	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category range 1 – 4 years' custody</p>	<p>Starting point 18 months custody</p> <p>Category range 1– 3 years' custody</p>

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability
- Involvement of others through coercion, intimidation or exploitation

- Restraint, detention or additional degradation of the victim
- A leading role where offending is part of a group activity
- Prolonged nature of attack
- Child or vulnerable person at home (or returns home) when offence committed
- Victim compelled to leave their home
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Failure to respond to warnings about behaviour
- Timing of the offence
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Commission of offence whilst under the influence of alcohol or drugs

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
-

STEP THREE

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The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

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STEP SIX**Totality principle**

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STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Sentencing Council

Sentencing Council meeting: 19th June 2015
Paper number: SC(15)JUN04 – Health and Safety offences, corporate manslaughter and food safety and hygiene offences
Lead officials: Lisa Frost and Pat Scicluna
0207 071 5784
Lead Council member: Michael Caplan

1 ISSUE

- 1.1 This paper considers responses from the health and safety, corporate manslaughter and food safety and hygiene offences consultation. There is one further meeting to consider food safety and hygiene offences with a view to signing off the definitive guideline in July 2015.
- 1.2 This paper focuses on the health and safety guideline harm model, which is carried over for further consideration from the last meeting, as well as issues raised in response to questions 34-46 (food hygiene and food safety). Specifically, these relate to:
- the overall approach to assessing the culpability and harm of food hygiene offences,
 - the starting points and ranges of fines,
 - the proposed aggravating and mitigating factors, and
 - the use of ancillary orders and compensation.

2 RECOMMENDATION

- 2.1 That the Council considers an issue carried over from the last meeting, and agree the model for assessing harm in health and safety offences which includes some minor revisions. The Council is asked to carry out the application of case study scenarios to the harm model to test its practical use and effectiveness prior to the meeting to enable consideration of any issues with the model to be raised at the meeting.

2.2 The Council is then asked to consider responses to the fourth and fifth set of questions in the consultation and agree the revisions recommended, which are specifically;

- To retain the scope of the guideline,
- Amend the culpability headings for individuals and some of the culpability factors,
- To include risk of harm in Category 1 of harm, and amend the position and wording of other harm factors,
- Amend some of the aggravating factors and remove two mitigating factors,
- Consider whether to include a reference to totality within Steps 3 and 4.

3 CONSIDERATION

Health and Safety

Harm Model

3.1 At the Council's meeting in May discussion took place regarding the health and safety harm model. Council members felt that the model may need to be simplified for ease of use by sentencers. It was suggested that the model be reconsidered at this meeting by applying case scenarios to test its practical use. **Annex A** includes a copy of the harm model which incorporates the revisions agreed at the last meeting. **Annex B** includes four scenarios developed for testing with the harm model.

3.2 Due to the time required to conduct this exercise it would not be feasible for this to be carried out at the meeting. The harm model and scenarios have therefore been circulated to four Council members outside of the meeting, to seek feedback and identify any areas for improvement. Other Council members are invited to undertake the exercise and raise any matters for consideration at the meeting. A minor suggested amendment made by an initial Council member tester was to the structure of the explanation of dimensions of risk, where it was suggested the two dimensions should appear as a list rather than in one sentence to provide greater clarity as to the two step process in using the harm model. This amendment was made prior to the model being circulated to three other Council members for testing.

3.3 While the testers were able to apply the scenarios to the model to identify the risk of harm, two of the testers did note that the assessment of risk is a very difficult one to make. It was highlighted that the assessment involves such subjectivity that one sentencer could reach a number of different conclusions regarding the level of risk an offence posed, and therefore arrive at various assessments of the level of harm risked. This was the case with assessments made by two separate testers, who gradated likelihood of harm differently in all but one scenario. The problem is particularly evident in the determination of medium and high risk of harm. It cannot be ignored that a level of subjectivity will be involved in determining risk, and that it is very complex to conduct an assessment of something that has not actually occurred. The danger is that inconsistent assessments of the level of harm risked may be made when the guideline is used.

3.4 One tester suggested that the highest level of risk could capture cases where the risk actually materialised. However, this could bring consideration of actual harm into the assessment of risk of harm, and merge elements of the two stage test. The Council decided during the development of the guideline that the risk posed by the offenders breach must be considered foremost in assessing harm, as the seriousness of the offence is increased by the level of risk posed. Actual harm caused should then increase the seriousness and elevate the category of harm identified. If this principle is to be maintained, then the likelihood of risk assessment is an inherent element of the sentencing exercise. A potential solution could be to qualify the likelihood assessment by stating that the likelihood must be considered in 'reasonably foreseeable' terms. This is a recognised objective legal test and would help to address any subjectivity in the assessment. The Council also agreed at the last meeting to include this as a test in the consideration of any contributory negligence of employees, so this would provide consistency with that approach.

Question 1: Does the Council agree that the risk of harm assessment should be qualified as likelihood of risks which are reasonably foreseeable?

3.5 The final stage of the harm assessment provides for the level of harm to be increased if a greater number of people were exposed to it, and for actual harm caused to be adequately assessed. Some testers felt that the presentation of these other factors was confusing, and that improvement would be desirable. This was largely due to there appearing to be two 'two step' assessments. **Annex A** includes a possible amendment to this structure, which seeks to clarify the purpose of the final stage of the harm assessment. Other suggested amendments to the wording of the

harm model have been included as comments to **Annex A**, which the Council is asked to consider.

Question 2: Does the Council agree to the amendments to the structure and wording in the harm model illustrated at Annex A?

General themes: Food Hygiene Offences

Scope

3.6 Respondents generally agreed with the scope of the food offences guideline. Of the small number who disagreed, some thought the scope too wide and would have preferred a narrower focus on more serious offences, while others thought the scope should not be limited to dealing with food safety and hygiene offences.

3.7 The Council had considered the inclusion of offences concerned with the protection of consumers under the Food Safety Act 1960 during the development of the guidelines, but decided not to include these due to the low volumes of offences and the different statutory maxima on summary conviction. This rationale was recognised and approved by respondents who were positive regarding the scope, and we do not recommend that the scope be revised.

Question 3: Does the Council agree to retain the current scope of the guideline?

Culpability categories

3.8 Similar issues were raised with the differing culpability factors for individuals and organisations as were raised in response to the Health and Safety guidelines, which the Council considered at their May meeting and largely related to the subjectivity of the individual factors and concerns regarding the potential for inconsistency of interpretation. **Annex C** provides an illustration of the current presentation of these factors for individuals and organisations, which mirror the approach taken in Health and Safety in that an individual's culpability requires an assessment of whether behaviour was deliberate, negligent or reckless. It was again suggested that the culpability category headings used for organisations should also be used for individuals: Very High, High, Medium and Low. This was the approach

the Council agreed to take when considering health and safety responses, and it is suggested that it would be desirable to be consistent across the guidelines.

Question 4: Does the Council agree to use the same culpability headings of Very High, High, Medium and Low for both organisations and individuals?

3.9 During the road testing of the food offences for organisations guideline, specific issues were identified with the use of the word 'systemic' in the culpability factors. Sentencers appeared to regard 'systemic' as having a high threshold, and most did not identify failures as systemic in one of the example cases, contrary to expectations. As systemic failures are a factor in all but the low culpability categories, if a systemic failure is not identified this could result in a default assessment of low culpability.

3.10 Officials have considered providing a definition of the word 'systemic', but this proved difficult as any definition would need to relate to a 'system', and would not address situations where systems are not in place to fail, or where a failure in one establishment of a chain of food outlets is not regarded as systemic. It is recommended that the use of the word 'systemic' be reconsidered to address this. This applies to the culpability table for organisations at all levels other than low, and for individuals in low only. The amendments suggested are set out below, and are illustrated in **Annex C**.

For organisations;

- i) Amend the wording in the high culpability category '*Evidence of serious, systemic failings within the organisation to address risks to food safety*' to '*Evidence of serious **and/or** systemic failings within the organisation to address risks to food safety*'.
- ii) Amend the factor within medium culpability to remove any reference to a systemic failing. Amend from '*level of offender's systematic failure falls between descriptions in 'high' and 'low' culpability categories*' to '*systems were in place but these were not sufficiently adhered to or implemented*'.

For organisations and individuals;

iii) revise the low category factor of *'failings were minor and not systemic'* to *'evidence that failings were minor and/or occurred as an isolated incident'*.

Question 5: Does the Council agree to amend the culpability factors as suggested?

3.11 The Council will recall that at the last meeting it revised the low culpability factor of 'no prior event' in the health and safety guideline, as it was felt it would not be appropriate in high consequence cases to assess an incident as low culpability due to no prior event occurring, as this may have been purely fortuitous. It is recommended that this factor also be amended in the food offences guideline to ensure consistency across the guidelines. **Annex C** includes an illustration of this amendment.

Question 6: Does the Council agree to remove the words 'no prior event' from the low culpability indicator to read, 'there was no warning indicating food safety risks'?

Harm

3.12 A number of respondents disagreed with the approach to harm within the guideline, and in particular that the highest category of harm does not include a risk of harm. This was perceived to be a departure from the risk based approach to harm in the health and safety guideline. While in health and safety offences the offence itself is the creation of the risk of harm rather than causing actual harm, respondents highlighted that it is generally accepted that food safety offences also do not often result in actual harm, but offences can create varying levels of risk. It was felt that the guideline therefore facilitates a lower categorisation of harm where a regulator's intervention may have reduced or eliminated the harm actually caused, but nevertheless the offender's actions posed a serious risk of harm that he had not addressed. It was also felt by some respondents that a high risk of an adverse effect on human health which is categorised as a Category 2 harm would be more appropriately categorised as a Category 1 harm. We would recommend that this change is effected so that Category 1 addresses risk of harm as well as actual harm caused. Category 2 could then include a medium risk of harm, and category 3 a low risk of harm. In terms of levels of actual harm, category 1 could include serious harm, category 2 an adverse effect on human health not amounting to Category 1, and category 3 would address harm caused by the public being misled about specific food consumed. These proposed changes are set out in **Annex D**.

Question 7: Does the Council agree to amend the categorisation of harm for these offences to ensure risk of harm can fall within the highest harm category?

3.13 A further suggested amendment was to the wording of the current category 2 factor *'high risk of an adverse effect on human health – including where supply was to groups that are particularly vulnerable to health issues'*. It was suggested that the *'vulnerable groups'* element of the factor would be more appropriate as an aggravating factor than when assessing harm. However, Council may consider that this factor should appear in the highest category as shown in the amended harm factors in Annex D.

Question 8: Does the Council agree to amend the position of the vulnerable groups factor to the highest category of harm?

3.14 A further issue raised related to the description of Category 1 actual harm. Some respondents struggled with the terminology *'acute'* and *'chronic'*, and felt that this could be subject to incorrect interpretation of the harm intended to be captured by these terms. It is suggested that we remove the reference to *'acute and chronic condition'*, and replace these with the words *'requiring medical treatment and /or widespread'*. This amendment is also illustrated in **Annex D**.

Question 9: Does the Council agree to amend the wording relating to the description of actual harm in Category 1 as suggested?

3.15 A further harm factor which was suggested relates to situations where a consumer is misled regarding the content of food and it is consumed in contravention of religious beliefs. This issue was also raised in response to equality and diversity considerations of the guideline, which are considered at paragraph 3.16 of this paper. While category 3 includes a factor where the public is misled about the specific food consumed, it applies to situations where there is little or no risk of an actual adverse health effect. It is suggested that a greater level of harm may result if a person consumes food which is against their religious or personal beliefs, albeit it may be psychological rather than physical harm. Officials have considered wording for such a factor and suggest *'Consumer misled regarding food's compliance with religious or*

personal beliefs'. It is suggested that this would be included as a category 2 factor to adequately address the greater harm posed by the offence.

Question 10: Does the Council agree to include the additional harm factor suggested?

Starting Points and Ranges

Individuals

3.16 While there was general agreement that financial penalties are appropriate for these offences, there was some concern that the fine levels were too low to serve as a deterrent to offending, particularly in the low culpability and low harm ranges.

3.17 If the Council has agreed to the amendments suggested to harm, this may address the concerns as it is likely that offences would fall within a higher category and attract a higher penalty. The lowest fines would then be reserved for the very low harm and culpability offences.

Organisations

3.18 The point regarding fines being too low at the lower end of the scale was repeated for organisations. As with health and safety offences, responses highlighted the disproportionate level of fines for micro and small organisations compared to larger organisations. As discussed at the May meeting, officials are considering this issue in relation to health and safety fine levels. This consideration will be extended to fines for food offences, and further information will be provided at the Council's July meeting.

Aggravating and Mitigating Factors

3.19 As already noted in the discussion of harm, there was a suggestion that vulnerable groups being affected by offences should be an aggravating factor. It was also suggested that a failure to heed warnings or act upon regulator's advice should be included as an aggravating factor. A similar factor is already included at step one for organisations; *'ignoring concerns raised by employees or others'*. If the Council thinks it appropriate, this factor could be amended to specifically include regulators. This amendment is illustrated at **Annex C** for the Council's consideration.

Question 11: Does the Council wish to amend any of the aggravating factors?

3.20 There was some criticism of two particular mitigating factors. These were;

- Business closed voluntarily on discovery of problems in order to take remedial steps
- Effective food hygiene/safety procedures in place.

It was suggested that mitigation should not be available for voluntary closure, as this is a recognised procedure often invoked as part of enforcement proceedings, and it was highlighted that if a voluntary closure procedure was necessary it could actually aggravate an offence. Situations intended to be captured by a business closing voluntarily on discovery of problems in order to take remedial steps would be mitigated under '*evidence of steps taken to remedy the problem*'.

In relation to the second factor highlighted, it was pointed out that all food businesses are required to have an approved plan which includes hygiene procedures in place to comply with the law, so it should not be present as a mitigating factor.

Question 12: Does the Council agree to remove the mitigating factors suggested?

Ancillary orders and compensation

3.21 There was broad agreement to the guidance provided on ancillary orders and compensation.

Totality

3.22 The guidance on totality included within the guideline was felt to be particularly useful given that there are often multiple charges of these offences. It was felt that given its importance in sentencing these offences it could be given more prominence within the guideline, as it currently appears at Step 8 of the Organisations guideline and Step 7 of Individuals. While we do not propose the sections be moved, to ensure full consideration is given to the step the Council may think it helpful if reference to it were included earlier within the guideline. If so, we would suggest a reference to considering the totality step of each guideline could be included at the description of Step 3 and 4. This section of the guideline currently reads as below, and the additional text suggested for inclusion is italicised in bold.

‘STEPS THREE AND FOUR

The court should ‘step back’, review and, if necessary, adjust the initial fine based on turnover to ensure that it fulfils the objectives of sentencing for these offences. The court may adjust the fine upwards or downwards, including outside the range. ***Full regard should be given to the totality principle at Step 7’ (or 8 if organisations).***

Question 13: Does the Council wish to include a reference to totality within the Steps 3 and 4 summary to give greater prominence to the consideration of this point within the guideline?

Victims and Equality and Diversity – (the overall guideline)

3.23 This section of the consultation document included three questions regarding the guidelines impact upon victims and equality and diversity.

Victims

3.24 A number of respondents felt that the guidelines should give greater consideration to the impact upon victims of offences, either by specifically requiring consideration of victim personal statements or by including a direct apology to victims as a mitigating factor. The Council has taken the approach not to specifically include reference to victim personal statements in other guidelines, so a rationale for this could be provided in the consultation response document.

Equality and Diversity

3.25 The main issue raised in response to this question related to the religious issues with food offences, which is considered at paragraph 3.11. It was also highlighted that a significant proportion of those employed within the food industry may not speak English as a first language, or cultural issues can complicate enforcement activity, which may be a factor in offences being committed. This was an observation only and no particular action was recommended in relation to this.

Other Comments

3.26 Overall comments received generally repeated the strongest views of respondents in relation to a specific area. Notably, the use of turnover in assessing the size of an organisation, increased fines and the potential impact of increased fines on businesses. These were considered by the Council at the April meeting

when considering overarching aims of the guideline, and rationales will be provided in the consultation response document.

3.27 Other comments approved of the Council's approach to assessing risk of harm across the guidelines, and noted the value the guidelines will add in promoting consistency in sentencing often difficult and uncommon offences.

4 IMPACT

4.1 As with the Health and Safety guideline, the food offences guideline is likely to increase the level of fines significantly for large organisations. However the majority of prosecutions for these offences are of smaller independent traders and the effect on them will be dependant on the changes to harm and culpability addressed above. We do not have robust data on current sentencing levels to determine the extent of any effect.

5 RISK

5.1 It will be very important to ensure that fines for these offences act as a deterrent, and that the Council is seen to take a consistent approach to dealing with these offences. Particular consideration of the issues around the assessment of harm for these offences will therefore be important, as will the levels of fines imposed to ensure that the guidelines act as a suitable deterrent to offending.

5.2 Due to the increased fines for certain of these offences, criticism of the impact upon businesses is likely, and has been referred to in a significant number of consultation responses. It will be important that an appropriate rationale is provided in the consultation response document to address these concerns. There has been significant interest in the timescale for the publication of the definitive guideline, and media handling of the publication will be particularly important. We will need to ensure we are able to provide clear rationales for areas likely to attract criticism.

5.3 No impact upon prison or probation resources is anticipated as a result of the guideline.

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Harm

Health and safety offences are concerned with failures to manage risks to health and safety and do not require proof that the offence caused any actual harm. The offence is in creating a risk of harm.

Comment [C1]: Suggestion that this is amended to 'The seriousness of the offence is in the creation of the risk of harm'

First, the court should identify an initial harm category by assessing the risk of harm created by the offence. There are two dimensions to risk–

1) the seriousness of the harm risked (A, B or C) by the offender's breach and

2) the REASONABLY FORSEEABLE likelihood of that harm arising (high, medium and low).

Comment [C2]: See para 3.4

Comment [C3]: Amended to a list format per para 3.2

Seriousness of harm risked					
Likelihood of harm		Level A	Level B	Level C	
		<ul style="list-style-type: none"> Fatality Physical or mental impairment resulting in lifelong dependency on third party care Health condition resulting in significantly reduced life expectancy 	<ul style="list-style-type: none"> Physical or mental impairment, not amounting to Level A, which has a substantial and long-term effect on the sufferer's ability to carry out normal day-to-day activities or on their ability to return to work A progressive, permanent or irreversible condition 	<ul style="list-style-type: none"> All other cases not falling within Level A or Level B 	
	High Likelihood of harm	Harm category 1	Harm category 2	Harm category 3	Comment [C4]: Added to clarify subject of assessment
	Medium Likelihood of harm	Harm category 2	Harm category 3	Harm category 4	Comment [C5]: As C2
Low Likelihood of harm	Harm category 3	Harm category 4	Harm category 4 (start towards bottom of range)	Comment [C6]: Changed from 'remote' Comment [C7]: As C2	

3) The court must next consider if the following factors apply which increase the seriousness of the harm. These two factors should be considered in the round in assigning the final harm category. If already in harm category 1 and wishing to move higher, move up within the category range at step two.

Deleted: Second, the court should consider the following two factors

i) Whether the offence exposed a number of people to the risk of harm.

If a number of workers or members of the public was exposed to the risk created by the offender’s breach, the court must consider either substantially moving up within the category range or moving up a harm category. The greater number of people, the greater the risk.

ii) Whether the offence was a significant cause of actual harm.

- Where the offender’s breach was a **significant cause**¹ of actual harm, the court must consider moving up within the category range or moving up a harm category, depending on the extent to which other factors contributed to the harm caused. Actions of victims are unlikely to be considered contributory events for sentencing purposes. Offenders are required to protect workers or others who may be neglectful of their own safety in a way which should be reasonably foreseeable.
- The court should not move up a harm category if actual harm was caused but to a lesser degree than the harm that was risked, as identified on the scale of seriousness above.

Comment [C8]: Suggested amendment to ‘where the offender is responsible for causing actual harm of the degree which was risked and was likely then upward adjustment should be made’.

Comment [C9]: As agreed at May meeting, removed as a separate bullet point and ‘sentencing purposes’ reference added to give greater clarity. ‘Reasonably foreseeable’ replaces ‘in a way which should be anticipated’.

Comment [C10]: Suggestion that this is rephrased to “If the actual harm caused was less severe than the harm risked the court should not move up a harm category”

Deleted: These two factors should be considered in the round in assigning the final harm category. If already in harm category 1 and wishing to move higher, move up within the category range at step two.¶

¹A significant cause is one which more than minimally, negligibly or trivially contributed to the outcome. It does not have to be the sole or principal cause.

Health and Safety Scenarios – FOR CONSIDERATION PRIOR TO MEETING

Scenario 1:

The former owner of a building firm has been prosecuted for carrying out illegal and dangerous gas work at two homes.

Mr A, was prosecuted by the Health and Safety Executive (HSE) after an investigation established that he carried out gas work on two separate occasions without being a member of the Gas Safe Register, as the law requires.

The court was told that he was registered with the Gas Safe Register between October 2009 and October 2010, but had subsequently allowed his registration to lapse. He knew a current registration was a legal requirement, but opted to undertake the gas work regardless.

Mr A, pleaded guilty to five breaches of the Gas Safety (Installation and Use) Regulations 1998 as an unregistered gas fitter:-

- two counts of Regulation 3(1),
- two counts of Regulation 3(3)
- and single count of Regulation (3(2).

Mr A stated that he had let his registration lapse when his business ran into financial difficulties and lost the tender of ongoing contacts.

Although he fully accepted that he had deliberately deceived the householders into thinking he was registered, he was very remorseful.

Scenario 2

The owner of a fish and chip shop has been taken to court for a serious breach of health and safety regulations on his premises following an investigation into working practices at the business last year.

The investigation revealed that a counter assistant had to seek medical attention for burns, having been struck by hot oil on her feet, left leg and back while her employer was emptying the fryer.

The court heard how during an inspection at the premises it was discovered that Mr B was in breach of both the Health and Safety at Work etc Act 1974 and the Personal Protective Equipment at Work Regulations 1992.

Under this legislation, Mr B was required to ensure that a safe system of work was in place when emptying oil from the fryer, and to provide employees with health and safety training. During the investigation, there was no documentation found to reflect these requirements.

The court also heard how Mr B was required by law to provide personal protective equipment in the form of safety footwear to employees. During the investigation, he confirmed that the need to wear safety footwear had been identified due to slippery floors at the premises – but there was still none provided.

In mitigation Mr B said that he had never had any accidents previously as he usually emptied the fryer after the shop was closed and the staff had gone home and that he had advised staff to wear trainers to work

Mr B pleaded guilty to all three charges against him: two relating to his general duty to his employee and one relating to a breach in health and safety regulations.

Scenario 3

A plumber was prosecuted by the Health and Safety Executive (HSE) after it was found that he had installed an oil fired boiler at a property that had the potential to cause death from CO poisoning.

Mr C pleaded guilty to breaching Section 3 (2) of the Health and Safety at Work etc Act after it was heard the boiler was installed in a compartment with inadequate ventilation and an unsuitable material, flue liner, linking the boiler into the chimney.

No problems were noticed for around six months until the householder came home to find the house full of smoke and fumes. The flexible flue liner had dipped to form a moisture trap. This had become full of water which had fully or partially blocked the flue. These conditions led to incomplete combustion and the spillage of products of combustion including carbon monoxide.

Mr C was horrified to learn that his work was defective and was very remorseful.

Scenario 4:

A father of 3 was killed when his lorry clipped an overhead power line at a Farm.

Mr D, the farm owner, admitted breaching the Health and Safety at Work Act.

The victim was delivering cattle feed to the farm when his lorry's tipper hit the overhead power and died instantly by electrocution

The HSE said its investigation found Mr D had made no attempt to remove or reduce the serious risk associated with the power line.

After sentencing, the HSE inspector said: "Had Mr D had the power lines diverted, as he did after the incident, or even put in place measures to make people aware of the power lines, this terrible incident would not have happened and the driver would likely still be here today."

Breach of food hygiene and food safety regulations

Culpability Categories:

Organisations:

Very high	<ul style="list-style-type: none"> Deliberate breach of or flagrant disregard for the law
High	<ul style="list-style-type: none"> Offender fell far short of the appropriate standard; for example, by <ul style="list-style-type: none"> ○ failing to put in place measures that are recognised standards in the industry ○ ignoring concerns raised by regulator, employees or others ○ allowing breaches to subsist over a long period of time Evidence of serious, and/or systemic failings within the organisation to address risks to food safety
Medium	<ul style="list-style-type: none"> Offender fell short of the appropriate standard in a manner that falls between the descriptions in “high” and “low” culpability categories Level of offender’s systemic failure falls between descriptions in ‘high’ and ‘low’ culpability categories. Systems were in place but these were not sufficiently adhered to or implemented.
Low	<ul style="list-style-type: none"> Offender did not fall far short of the appropriate standard; for example, because <ul style="list-style-type: none"> ○ significant efforts were made to secure food safety although they were inadequate on this occasion ○ there was no warning indicating food safety risks Evidence that failings were minor and/or occurred as an isolated incident

Comment [C1]: See para 3.15

Comment [C2]: See para 3.6i

Comment [C3]: Replaces ‘Level of offender’s systemic failure falls between descriptions in ‘high’ and ‘low’ culpability categories.’ (para 3.6ii)

Comment [C4]: ‘No prior event’ deleted (para 3.7 Q4)

Comment [C5]: Replaces ‘and not systemic’ (para 3.6 iii)

Individuals:

Deliberate	<ul style="list-style-type: none"> Where the offender intentionally breached, or flagrantly disregarded, the law
Reckless	<ul style="list-style-type: none"> Actual foresight of, or wilful blindness to, risk of offending but risk nevertheless taken
Negligent	<ul style="list-style-type: none"> Offence committed through act or omission which a person exercising reasonable care would not commit
Low	<ul style="list-style-type: none"> Offence committed with little fault, for example, because: <ul style="list-style-type: none"> ▪ significant efforts were made to address the risk although they were inadequate on this occasion ▪ there was no warning indicating a risk to health and safety ▪ Evidence that failings were minor and/or occurred as an isolated incident

Comment [C6]: Amend to Very High (para 3.3 Q.2)

Comment [C7]: Amend to High (para 3.3 Q2)

Comment [C8]: Amend to Medium (para 3.3 Q2)

Comment [C9]: As comment C3

Comment [C10]: As comment C4

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Food Offences - Harm Categories:

Organisations and individuals:

<p>Category 1</p>	<ul style="list-style-type: none"> • Serious adverse effect(s) on human health requiring medical treatment and/or widespread impact • High risk of an adverse effect on human health – including where supply was to groups that are particularly vulnerable to health issues
<p>Category 2</p>	<ul style="list-style-type: none"> • Adverse effect on human health (not amounting to Category 1) • Medium risk of adverse effect on human health • Regulator and / or legitimate industry substantially undermined by offender's activities • Relevant authorities unable to trace products in order to investigate risks to health, or are otherwise inhibited in identifying or addressing risks to health • Consumer misled regarding food's compliance with religious or personal beliefs
<p>Category 3</p>	<ul style="list-style-type: none"> • low risk of an adverse effect on human health • Public misled about the specific food consumed, but little or no risk of adverse effect on human health

Comment [C1]: Para 3.8, Q6

Comment [C2]: 1) Move up from Category 2 to create a higher level of risk of harm? Para 3.6
2) Vulnerable groups-include in risk assessment or as aggravating factor? para 3.7

Comment [C3]: Additional factor, para 3.8

Comment [C4]: Move medium risk to Category 2 per para 3.6

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Sentencing Council

Sentencing Council meeting: 19 June 2015
Paper number: SC(15)JUNE05 – Theft
Lead official: Mandy Banks 020 7071 5785
Lead Council member: Sarah Munro

1 ISSUE

1.1 This meeting will focus on the sentence ranges throughout the theft guidelines. The Council is also asked to consider whether or not to include the wording agreed at the last meeting around previous convictions in all the guidelines, and to consider removing the reference to Community Impact statements from the prevalence wording.

2 RECOMMENDATION

2.1 That the Council :

- Agrees the proposed changes to the sentence ranges within the handling guideline, as discussed in **para 3.11, page 4 onwards**
- Agrees to the suggested rewording of a culpability factor within the handling guideline as discussed at **para 3.16 page 5 onwards**
- Agrees the revised sentence ranges for the rest of the guidelines, as discussed from **para 3.18 page 6 onwards**
- Considers whether to include the wording regarding previous convictions throughout the guidelines, as discussed at **para 3.25, page 8 onwards**
- Agrees to remove the reference to Community Impact statements from the prevalence wording, as set out in **para 3.27, page 9 onwards**

3 CONSIDERATION

3.1 The sentence ranges did not attract a great deal of comment within the consultation responses, similarly the sentence ranges were not an issue that raised much attention during road testing, other than some comments made about the

ranges and categories in handling. There was no consensus on the handling ranges: some thought that they were too high, and some too low, but this has prompted scrutiny of the ranges, the results of which are discussed in paras 3.11 onwards.

3.2 In re- examining all the sentence ranges prior to producing the definitive theft guideline, it may be helpful to first recall the principles used to develop the ranges prior to consultation (the sentence ranges used in the consultation can be seen at Annex H). The Council agreed that it would not seek to change current sentencing practice for these offences, accordingly current sentencing practice data was used to inform sentence ranges. The statistics bulletin attached at Annex A¹ provides full sentencing data, the breakdown of types of disposals given, and average custodial sentence lengths, and so on for the theft offences covered by the guideline. The Council was also mindful of the risks of escalating sentencing for theft offences.

3.3 It was also agreed that greater emphasis should initially be placed on the level of the culpability of the offender. Therefore the sentences become progressively more severe from right to left across the tables, as the culpability increases from C, lower culpability, through to A, in high culpability. This is so the sentence initially reflects the intention of the offender. For example, an offender who plays a leading role, or coerces others, so falls into category A, but who only manages to steal small value items without any additional harm caused, will receive a more severe sentence than an offender who performs a limited role under direction or is coerced, but steals items of a higher value (albeit that the sentence still reflects the value of the items stolen).

3.4 The harm caused by theft offences is still an important consideration. The principle described above works in conjunction with the uplift in sentence that can be given for any significant additional harm caused.

3.5 Overlaps between the sentence ranges and categories were deliberately created within the theft ranges - overlaps have always been a feature within the Sentencing Council guidelines, to reflect the fact that some offenders sit on the cusp between the top of one range, and the bottom of the next higher range, so seek to provide some transition from one category to another. Lord Justice Hughes described this in *Healey*² ‘...The format which is adopted by the Sentencing Council in

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- ¹ The bulletin was published with the consultation and is based on 2012 data- an update using more recent sentencing data was considered, but initial work on the update showed relatively little change to the trends from the 2012 data, so was not pursued.
- ² *R v Healey and others [2012] EWCA Crim 1005.*

producing its guidelines is to present the broad categories of offence frequently encountered pictorially in boxes....It may be that the pictorial boxes which are part of the presentation may lead a superficial reader to think that adjacent boxes are mutually exclusive, one of the other. They are not. There is an inevitable overlap between the scenarios which are described in adjacent boxes. In real life offending is found on a sliding scale of gravity with few hard lines. The guidelines set out to describe such sliding scales and graduations...'

3.6 The extent of the overlap can vary between guidelines. In the theft guidelines there is generally a small overlap, for example the top of the range in one category might be a high level community order, with the bottom of the range in the category immediately above being a medium level community order.

3.7 The overlaps within the theft guidelines also fulfil another important function. As noted above, the revised harm structure allows for a sentence to be increased into the category above if there is significant additional harm caused (this is a feature within shop theft, general theft, making off without payment and the handling guidelines). In shop theft for example, attached at Annex B, medium value goods stolen up to £1,000 fall into category 2, but if there is significant harm, they can move into category 1. In order to preserve the principle of the courts being able to take into account the additional harm caused by some theft offences, but without this causing an escalation in sentencing, the small overlaps work to limit any increase in sentencing caused by upward adjustments for harm. In addition, across the guidelines, a number of the sentence ranges have been slightly reduced, to reflect the additional increase in sentence that potentially could be made for additional harm, so that adjustment can be made without causing escalation in sentencing.

3.8 The Council will also recall that when the draft sentence ranges were developed prior to consultation, proportionality across offences, particularly with fraud was considered. Some offences may be charged interchangeably, such as abuse of position in fraud, or theft in breach of trust, and there is also a link between money laundering and handling. Proportionality between offences can be difficult to achieve, when the financial values and statutory maximums can be different. Also, there are differences between a shop theft involving £1,000, representing a more serious level of offending within that offence, and a fraud case involving £1,000, at the lower end of offending for that offence, for example.

3.9 Whilst developing the ranges, the existing sentencing guidance, where it existed for theft offences was considered. Comparisons between the sentence

ranges for the individual offences within the guidelines were made, such as shop theft and making off without payment. The expertise of Council members in sentencing theft cases was also used to develop the ranges. In addition, once the ranges had been developed, they were tested by using sentenced cases, to see if the new ranges lead to similar outcomes when re-sentencing the case with the same details.

3.10 Reflecting all of these principles simultaneously whilst trying to set sentence ranges is challenging. The paper will now examine the sentence ranges for each of the guidelines.

Handling guideline- Annex C

3.11 Sentencing data for this offence can be seen from page 14 onwards of Annex A. Where immediate custody is used, the average custodial sentence length was 6 months and 3 weeks custody, with 68% of those offenders receiving a custodial sentence less than 8 months, this reflects the majority of handling offences being sentenced in the magistrates' courts. This data was used to develop the sentence ranges prior to consultation. These ranges have been reviewed in light of changes made to the assessment of harm of the guideline as discussed in para 3.7 above, and following an issue raised with the guideline during road testing. The issue raised was whether the ranges at the very top of the handling range, were too high in comparison with the burglary guideline, which could lead a handler receiving a more severe sentence than a domestic burglar. The starting point in A1 of the draft handling guideline used in consultation was 6 years, within a range of 3-8 years, compared to a starting point of 3 years, in a range of 2-6 years in the domestic burglary guideline. Both offences have a 14 year statutory maximum.

3.12 Accordingly, the handling ranges have been carefully considered, and some adjustments made, these can be seen at page 4 of Annex C. As a check, the ranges were tested using sentenced handling cases, to see if by using the new guideline, different sentences would be arrived at than those given by the courts. If the results showed that different sentences might be given for the same facts, this would indicate that the ranges were not right, and if unaltered, might change sentencing practice. The results showed that broadly, the ranges were correct, although the ranges did need to be lowered in some places. Accordingly, some of the ranges have been very slightly lowered, this also works to resolve the concern discussed above in para 3.7, about the changes needed due to the potential upward movement for additional harm.

3.13 The Council will note that the top ranges in category 1 have been slightly lowered, and are closer to the ranges in burglary. The handling ranges are still higher than domestic burglary to provide the flexibility to sentence those cases where a professional handler is effectively creating an incentive for multiple underlying offences to be committed.

3.14 The effect of lowering the ranges has also had the effect of bringing this guideline more into proportion with money laundering sentence ranges within the fraud guideline.

3.15 Alongside these changes, it is also suggested that the financial values within harm should be increased, this can be seen in track changes on page 3 of Annex C. The purpose of these increases is twofold: to prevent escalation in sentencing by making it more difficult for offenders to fall into the higher categories, particularly category 1, which should be only for the most serious of handling offences; and also to reflect the principles outlined in the guideline judgment of *Webbe*³ At paragraph 30 of the judgment it states:

'Where the value of the goods is in excess of £100,000, or where the offence is highly organised and bears the hallmarks of a professional commercial operation, a sentence of 4 years and upwards is likely to be appropriate, and it will be the higher where the source of the handled property is known by the handler to be a serious violent offence such as armed robbery. As we have earlier indicated, sentences significantly higher than 4 years also may be appropriate where a professional handler, over a substantial period of time, demonstrated by his record or otherwise, has promoted and encouraged, albeit indirectly, criminal activity by others.'

Question one - Does the Council agree with the revised sentencing ranges in handling?

3.16 Due to the risk of escalation of sentencing due to cases with additional harm moving up for example into category 1 which has a range up to 8 years, it is suggested that one of the culpability factors are reconsidered. A factor agreed recently by the Council and placed in culpability A reads: *'advance knowledge that the stolen goods were to come from a domestic burglary or a robbery'* and there is also a harm factor of *'property stolen from a domestic burglary or a robbery'*. Although these factors separately reflect culpability and harm, it is recommended that

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- ³ *R v Webbe and others [2001] EWCA Crim 1217*

the factor in harm remains unaltered, to reflect the harm caused by offences of that nature, but that the culpability factor is reworded.

3.17 This should now read '*Advance knowledge of the primary offence*'. This is to reflect one of the other factors described in *Webbe* as making an offence more serious, the closeness of the offender to the primary offence. The factor of '*possession of recently stolen goods*' will partly capture offenders on this point, but this reworded factor will capture other offenders who can also be linked in some way to the original offence. This makes their culpability greater than an offender in culpability B who generally plays a more passive role in acquiring goods for resale, who has no link to the primary offence.

Question two - Does the Council agree to the reworded culpability factor of 'Advance knowledge of the primary offence'?

Shop theft guideline- Annex B

3.18 Sentencing data for this offence can be seen at page 8 of Annex A onwards, which shows the distribution of types of disposals given for shop theft. The average custodial sentence length is 8 weeks, with 75% of offenders receiving a sentence length of 12 weeks and less. The ranges, which can be seen at page 3 of Annex B have been slightly lowered, due to the potential upwards movement for either cases involving additional harm, and/or for offenders with many previous convictions, who represent a significant proportion of those sentenced for this offence. Given that only 5% of offenders receive a sentence length greater than 18 weeks, the top of the range within A1 is quite high, but provides sentences for the most serious cases, which it is envisaged relatively few offenders will fall into.

Question three – Does Council agree with the revised sentence ranges in shop theft?

General theft - Annex D

3.19 Sentencing data for general theft offences appears on page 27 of Annex A onwards, which shows the distribution of types of disposals given for general theft offences (which include all section one Theft Act offences other than shop theft). The median custodial sentence length is 3 months 3 weeks, with just over two thirds of offenders receiving a sentence of shorter than 5 months. As with shop theft, the sentence ranges in general theft have been slightly lowered, due to the potential upwards movement for cases either involving additional harm and/or for offenders with many previous convictions, who again represent a significant proportion of those

sentenced for these offences. The effect of lowering the ranges has also had the effect of bringing this guideline more into proportion with the relevant sentence ranges within the fraud guideline (Section 1 Fraud Act 2006 cases).

3.20 There are a further two reasons to lower the sentence ranges from the consultation version. Firstly, to counter the inflationary effect the draft guideline had, particularly on breach of trust cases, which was identified from the first round of road testing and the transcript exercise, discussed at the September 2014 Council meeting. This showed that on average sentences for breach of trust cases increased by around seven months. Following the discussion at that meeting, changes were made to the culpability factors to try to reduce the inflation, two factors were removed from culpability A, and two were added to culpability B, to reduce the amount of cases that might be captured within culpability A. As a general rule, the more factors there are in a culpability category, the more cases are likely to fall into it- and culpability A for this guideline contains more factors than the rest of the theft guidelines, so potentially more cases will fall into category A. Therefore, it is recommended that the ranges are reduced.

3.21 Secondly, the effect of lowering the ranges makes the general theft guideline more proportionate in relation to the other offences within the theft guideline, such as shop theft and making off without payment – to try and reduce the possibility of a perverse outcome in the sentencing of similar theft offences with similar financial amounts involved.

Question four- Does the Council agree with the revised ranges in the general theft guideline?

Making off without payment – Annex E

3.22 Sentencing data for this offence can be seen at page 33 onwards of Annex A. The most commonly used disposal for this offence is a fine. For the small proportion of offenders given a custodial sentence, the large majority of sentences are under 13 weeks. The sentence ranges on page 3 of Annex E reflect this sentencing data. It is suggested that relatively few changes are made to the ranges used during consultation, other than a slight lowering within some of the ranges to reflect the potential uplift for any additional harm within this guideline.

Question five – Does the Council agree with the revised sentence ranges within the making off without payment guideline?

Abstracting electricity – Annex F

3.23 Sentencing data for this offence can be seen at page 38 onwards. The most commonly used disposal for this offence is a community order. For the very small proportion of offenders given a custodial sentence, the large majority of sentences are under 13 weeks. The sentence ranges on page 3 of Annex F reflect this data. Although there is no uplift within this guideline for any additional harm, the ranges have been lowered slightly from the consultation version, as on reconsideration of the sentencing data, they appeared slightly too severe.

Question six – Does the Council agree with the revised sentence ranges within the abstracting electricity guideline?

Going Equipped – Annex G

3.24 Relevant sentencing data for this offence can be seen on page 20 of Annex A. The average custodial length for this offence is just under 4 months, with 70% of offenders receiving a custodial sentence less than 4 months. As with abstracting electricity, there is no uplift for additional harm, but the ranges have been lowered slightly from the consultation version, as on reconsideration of the sentencing data, they appeared slightly too severe.

Question seven – Does the Council agree with the revised sentence ranges within the going equipped guideline?

Inclusion of the wording regarding previous convictions within the guidelines

3.25 At the last meeting, the Council agreed to use the wording regarding relevant recent convictions and persistent offending from model 1, the wording used in the consultation paper, but place it within the existing wording regarding previous convictions under aggravating factors (model 2). This new format can be seen at page 4 of Annex B. The Council indicated that this wording should only be included in the shop theft and general theft guidelines. However, due to the significant proportion of offenders sentenced for theft offences with large numbers of previous convictions, this wording was used across all the guidelines in the consultation. Numbers of previous convictions held by offenders does vary between offences, and can be seen in detail within Annex A, but briefly:

- 41% of offenders sentenced for shop theft had 10 or more relevant and recent convictions
- 47% of offenders sentenced for going equipped had 10 or more relevant and recent convictions

- 36% of offenders sentenced for handling had 4 or more relevant and recent convictions
- 33% of offenders sentenced for making off without payment had 4 or more relevant and recent convictions
- 32% of offenders sentenced for general theft had 4 or more relevant recent convictions.

3.26 Given these figures, the Council may like to consider further whether to place the wording in all of the guidelines. A particular feature of sentencing for theft offences is the relatively low values involved, but that the offences are committed by persistent offenders, which can make sentencing of these offenders difficult. However, as Council is mindful of the concern around escalation in sentencing, this may be a reason not to include the wording throughout the guidelines. If Council decides to only include the wording within some guidelines and not all as in the consultation, the rationale behind this change will need to be explained in the consultation response document.

Question eight- Does Council wish to include the wording regarding previous convictions within guidelines other than just the shop theft and general theft guidelines?

Prevalence wording- reference to Community Impact statements.

3.27 At the last meeting it was agreed to keep the text regarding prevalence at the bottom of the list of aggravating factors, with the addition of the words '*before taking account of prevalence*', this can be seen at page 4 of Annex B. It was also agreed that this text should only be included within the shop theft and general theft guidelines. The Council will recall the discussion at the last meeting around examples of the evidence that can be used, such as the example listed of Community Impact statements. Since the last meeting, further thought has been given to this issue, and it is suggested that the reference is removed, in order to avoid criticism that inclusion of a reference to Community Impact Statements is inconsistent with the position in relation to Victim Personal Statements (VPS). In addition, the Council has generally tried to avoid providing examples in its guidelines; first, because long lists can be impractical, and second, because sentencers tend to read them as exhaustive lists. The question of references to both types of statements is perhaps more appropriately addressed as part of a broader consideration of cross-cutting issues relevant to all guidelines.

Question nine – Does the Council agree to remove the reference to Community Impact statements?

Rewording of the harm factors within the going equipped guideline.

3.28 Since the consultation a number of different ways of re wording the assessment of harm in the going equipped has been considered. It is now recommended that the wording reverts back to a simpler format used in the consultation, without listing specific examples, and can be seen on page 2/3 of Annex G. As noted above in para 3.27, it can be unhelpful to give specific examples, and in trying to do so for this offence, has led to complications. As revised, the wording '*possession of item(s) which have the potential to facilitate an offence affecting a large number of victims*' and '*possession of item(s) which have the potential to facilitate an offence involving high value items*' would cover the previously listed examples, heritage assets, metal from railway lines, expensive goods, potential risk to life and so on.

Question ten - Does the Council agree to the re wording of the harm factors within the going equipped guideline?

3.29 At the last meeting there was a discussion about the implications of the current cautions and out of court disposal work for the theft guideline. One of the potential implications is that far greater educational/diversionary work may have already been done with an offender prior to their first court appearance, which has raised concerns that this may leave courts with fewer non custodial options. However, just because various options have been tried once with offenders, doesn't mean that the courts shouldn't consider them again, if appropriate. Organisations like the Prison Reform Trust point out that the road to change for some offenders can be a long one, taking a number of interventions along the way.

3.30 Given the concerns around escalation in sentencing, a line, as suggested below, and included in track changes on page 3 of Annex B, could be added to the guidelines to remind courts that they can consider all options when sentencing, even if various options have been tried prior to an offender's first appearance, so that non custodial options are not ruled out unnecessarily.

'Previous diversionary work conducted with an offender does not preclude the court from considering this type of sentencing option again if appropriate'.

Question eleven – Does the Council wish to include some guidance regarding previous diversionary work with offenders prior to court within the guidelines?

3.31 The minor changes to the aggravating and mitigating factors agreed at the last meeting have been made. In particular, the wording of the aggravating factor to reflect offences motivated by any protected characteristics of a victim has been reworded, and can be seen at page 4 of Annex B. As agreed at the last meeting, this factor is only to be included within the shop theft and general theft guidelines.

3.32 As agreed at the last meeting, additional wording '*where high value goods are stolen*' has been added to the text within category 1 of the sentencing tables for shop theft, general theft, handling and making off without payment. This can be seen at pages 3/4 of Annexes B, C, D, and E (wording slightly varies as appropriate to each guideline).

3.33 There is one further Council meeting in July to discuss the coherence of the theft guideline overall and sign off the definitive guidelines, ahead of publication of the definitive guideline scheduled for October.

4 IMPACT/RISKS

4.1 As previously noted, theft offences are sentenced in very high volumes and consequently account for a substantial proportion of correctional resources. In 2013 a total of 92,284 offenders were sentenced for the theft offences covered by the new guideline, constituting 8.1% of cases sentenced in all courts. Further, adults sentenced for theft offences in 2013 constituted:

- 4.7% of the prison time that was sentenced⁴
- 21.9% of all community orders given
- 16.8% of all suspended sentences given

4.2 Clearly, the theft guideline has the potential to create a real impact on correctional resources, which is why the Council has been focused on avoiding escalation in sentencing, and maintaining and regularising current sentencing practice. The issues involved in the sentencing of theft offences were more complex than were envisaged at the start of the work, accordingly the timeframe for the guideline was extended to ensure that the definitive guidelines are as robust as possible. As discussed previously, the revisions and improvements to the draft guidelines will resolve some of complexities identified, but will not necessarily bring a narrowing of sentencing outcomes, although should provide for consistency of approach to sentencing these offences.

- _____
- _____
- ⁴ This is different to time served

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Theft Offences Sentencing Data

This bulletin provides statistics on the outcomes and demographics of adult offenders¹ sentenced for offences covered by the draft guideline on theft offences. The consultation period for the theft offences draft guideline will begin on 3 April 2014 and close on 26 June 2014.

Further information on these offences and the draft guideline can be found in the consultation document which can be accessed via the Current Consultations page on the Sentencing Council website, at the following link:

<http://sentencingcouncil.judiciary.gov.uk/get-involved/consultations-current.htm>

The Court Proceedings Database (CPD), maintained by the Ministry of Justice, is the main source of the data for this bulletin. Data on the CPD is categorised by the relevant legislation under which proceedings are brought. This has been supplemented with information from the Crown Court Sentencing Survey, maintained by the Sentencing Council, for the tables on recent and relevant previous convictions.

Background information

There are six draft theft guidelines:

- Theft from a shop or stall (shoplifting)
 - Theft Act 1968 Section 1(1): theft from shop/stall (and attempt/conspire)
- Handling stolen goods
 - Theft Act 1968 Section 22(1): Receive stolen goods (and attempt/conspire)
 - Theft Act 1968 Section 22(1): Handle stolen goods (and attempt/conspire)

¹ Includes adult offenders (aged 18 or over) at the time of sentence

- Going equipped for theft
 - Theft Act 1968 Section 25(1): Going equipped for theft, burglary and cheat
- General theft
 - Theft Act 1968 Section 1(1): Theft by employee (and attempt & conspire)
 - Theft Act 1968 Section 1(1): Theft in a dwelling other than from automatic machine/meter (and attempt)
 - Theft Act 1968 Section 1(1): Theft of pedal cycle (and attempt)
 - Theft Act 1968 Section 1(1): Theft from the person of another (and attempt)
 - Theft Act 1968 Section 1(1): Theft from motor vehicle (and attempt/conspire)
 - Theft Act 1968 Section 1(1): Theft of motor vehicle (and attempt/conspire)
- Abstracting electricity
 - Theft Act 1968 Section 13: Abstracting electricity
- Making off without payment
 - Theft Act 1978 Section 3(1): Make off without making payment (and attempt)

The figures on which all of the tables and charts provided in this bulletin are based are available for download as Excel spreadsheets at the following link:

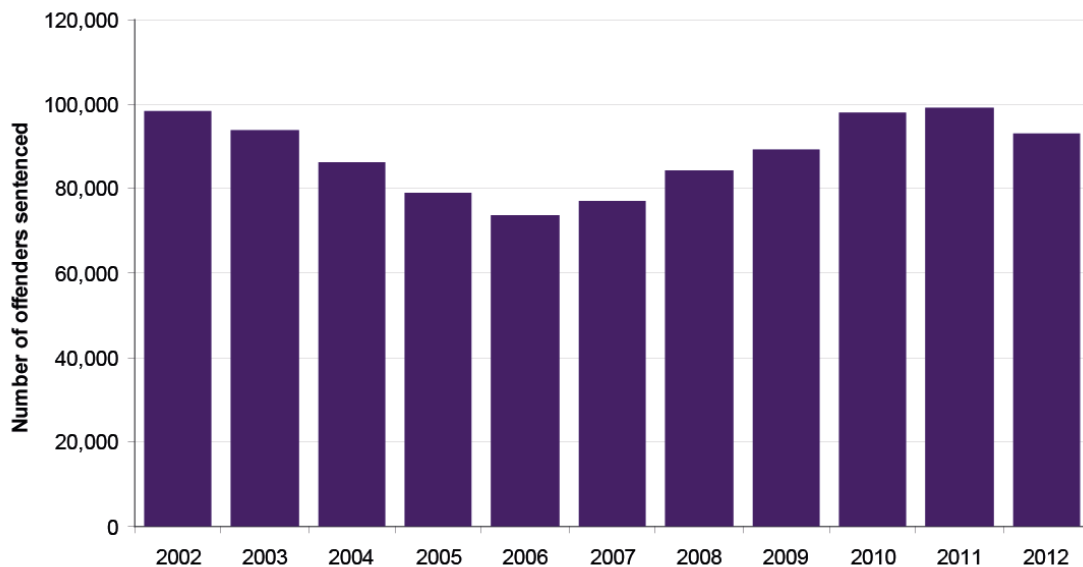
<http://sentencingcouncil.judiciary.gov.uk/facts/research-and-analysis-publications.htm>

Section 1: General trends across all theft offence guidelines

This section summarises data across all theft offences covered by the draft guideline, for which data is available. When reading this section it is important to bear in mind that it includes a wide range of offences, with a difference in statutory maximum sentences which range from two years for making off without payment to 14 years for handling stolen goods. Most theft offences included in the draft guideline, 92 per cent in 2012, were sentenced at the magistrates' court.

Figure 1.1 shows the volume of adult offenders sentenced for theft offences since 2002. The volume of offenders sentenced declined by 25 per cent between 2002 and 2006, from 98,500 in 2002 to 73,600 in 2006. This trend then reversed, with the volume of offenders sentenced increasing by just over a third, to 99,000 offenders sentenced in 2011. There was a 6 per cent decline in 2012, with 92,900 offenders sentenced, though it is unclear whether this is a new trend or a one-year decline.

Figure 1.1: Number of adult offenders sentenced for theft offences covered by the guideline 2002 to 2012

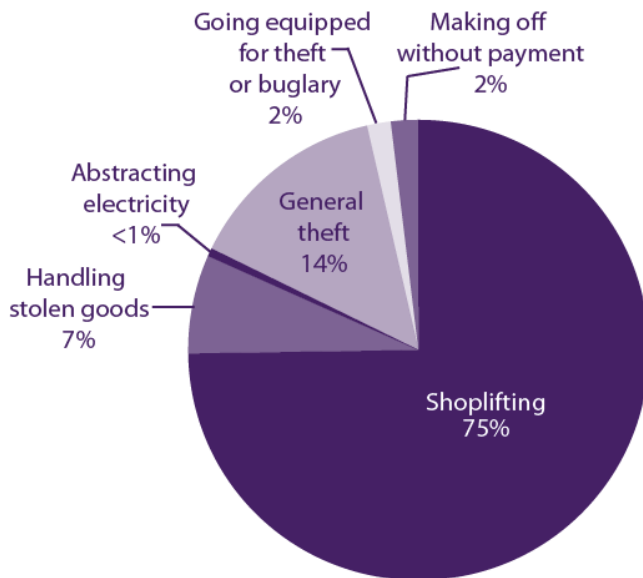


In 2012, 67,900 offenders were sentenced for theft from a shop or stall (shoplifting), which represents just under three quarters of all offenders sentenced for the theft offences included in the draft guideline. In 2012, 14,800 offenders were sentenced for offences covered by the general theft guideline, which is 16 per

cent of offenders sentenced for all theft offences in 2012. The remaining four guidelines account for 11 per cent of offenders sentenced in 2012. Further information can be found in **table 1.1** and **figure 1.2**.

Table 1.1: Offenders sentenced for theft offences broken down by individual guideline in 2012	
	Number of offenders sentenced
Abstracting Electricity	480
General Theft	14,800
Going equipped for theft or burglary	1,700
Making off without payment	1,700
Handling stolen goods	6,300
Theft from a shop or stall (shoplifting)	67,900
Total	92,900

Figure 1.2: Proportion of offenders sentenced for theft offences broken down by individual guideline in 2012



In 2012, for all theft offences covered by the Council's proposed guideline 41 per cent of offenders that were sentenced had 4 or more previous convictions

identified by the sentencer at the time of sentencing to be recent and relevant to the offence. Further information is given in table 1.2 below.

Table 1.2:
Proportion of adults offenders sentenced in 2012, by number of relevant & recent previous convictions

No previous convictions	36%
1 to 3	22%
4 to 9	19%
10 or more	22%
Total	100%

Section 2: Theft from a shop or stall

The draft guideline for theft from a shop or stall covers the offence of:

- Theft Act 1968 Section 1(1): theft from shop/stall (and attempt/conspire)

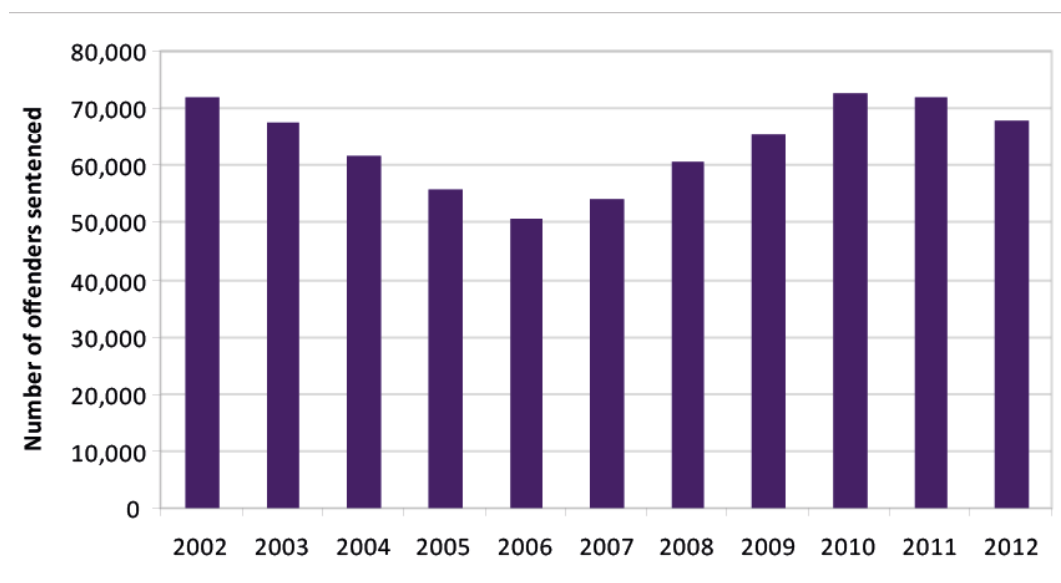
Statutory maximum: 7 years' custody

Sentences received by adults sentenced for theft from a shop or stall

In 2012, 67,900 adult offenders were sentenced for offences under theft from a shop and stall. Of these, 98 per cent were sentenced at the magistrates' court.

Figure 2.1 shows how the number of adult offenders sentenced for theft from a shop or stall offences has changed since 2002.

Figure 2.1: Number of adult offenders sentenced for theft from a shop or stall, 2002-2012

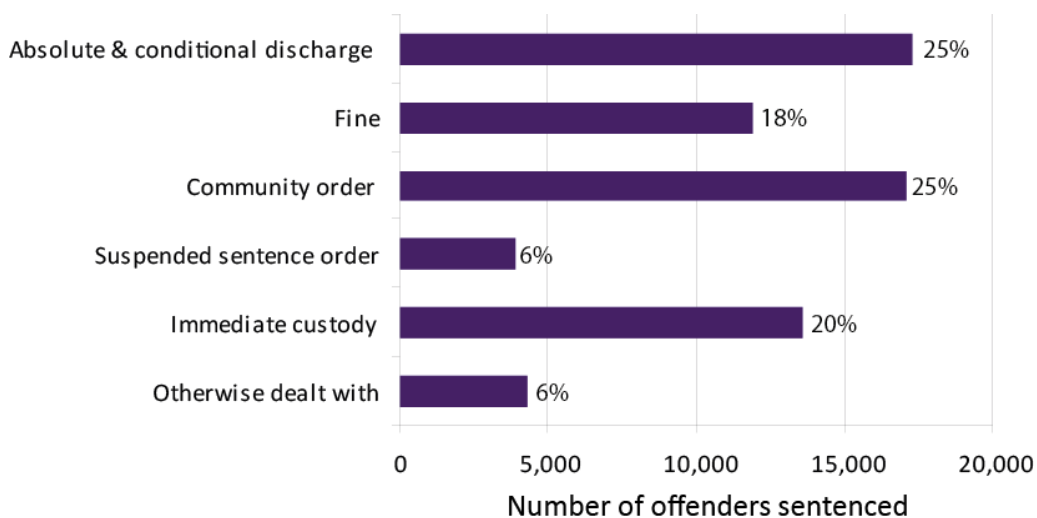


The number of adult offenders sentenced steadily declined year on year between 2002 and 2006, however this trend reversed, leading to a year on year increase between 2006 and 2010. The volume sentenced in 2012 is 7 per cent lower than the 2010 peak of 72,600, however it is too early to tell if this is part of a new trend.

The proportionate use of sentence disposals has been relatively consistent since 2006, following a brief period of volatility between 2002 and 2006. Community order and absolute or conditional discharge have been the most commonly used disposal since 2003, each accounting for roughly 25 per cent of adult offenders sentenced between 2002 and 2012. Further information is available in the accompanying tables available online.

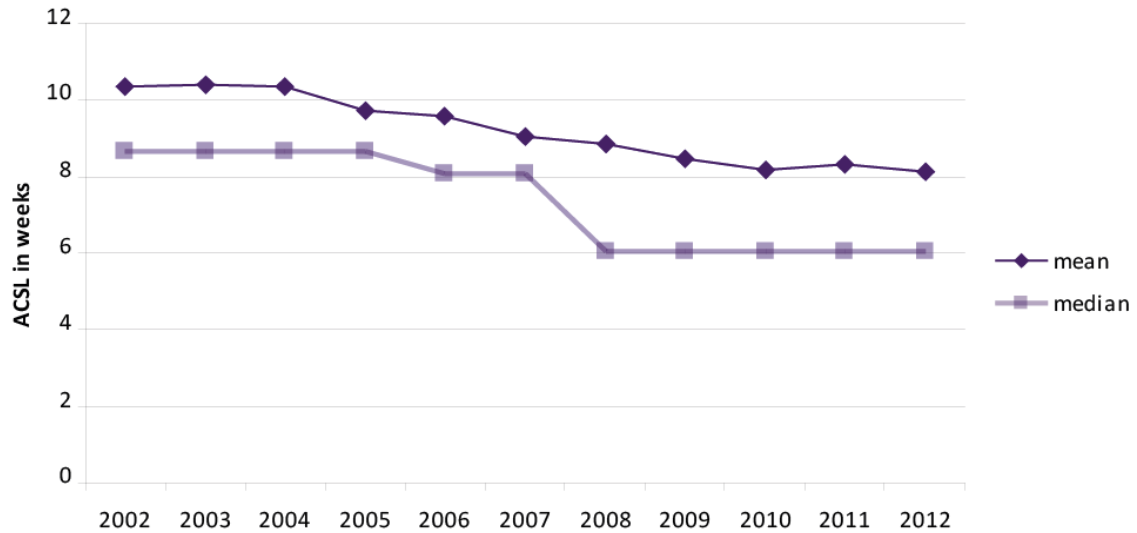
In 2012, absolute or conditional discharge was the most frequently used sentence, given to 17,300 offenders (25 per cent). Community order was the next most common disposal used, given to a further 17,100 offenders (25 per cent) and immediate custody was used when sentencing 13,600 offenders (20 per cent). The proportionate use of community order and immediate custody has been relatively stable since 2006. Figure 2.2 shows the disposals received by offenders in 2012, ordered from top to bottom by least severe to most severe in terms of sentence severity, followed by otherwise dealt with.

Figure 2.2: Adult offenders sentenced for theft from a shop or stall, by sentence disposal, in 2012



The average sentence length imposed (in weeks) on adult offenders sentenced to immediate custody for theft from a shop or stall offences between 2002 and 2012 is shown in Figure 2.3. The sentence length listed is the length imposed after taking into account guilty plea reductions, if relevant.

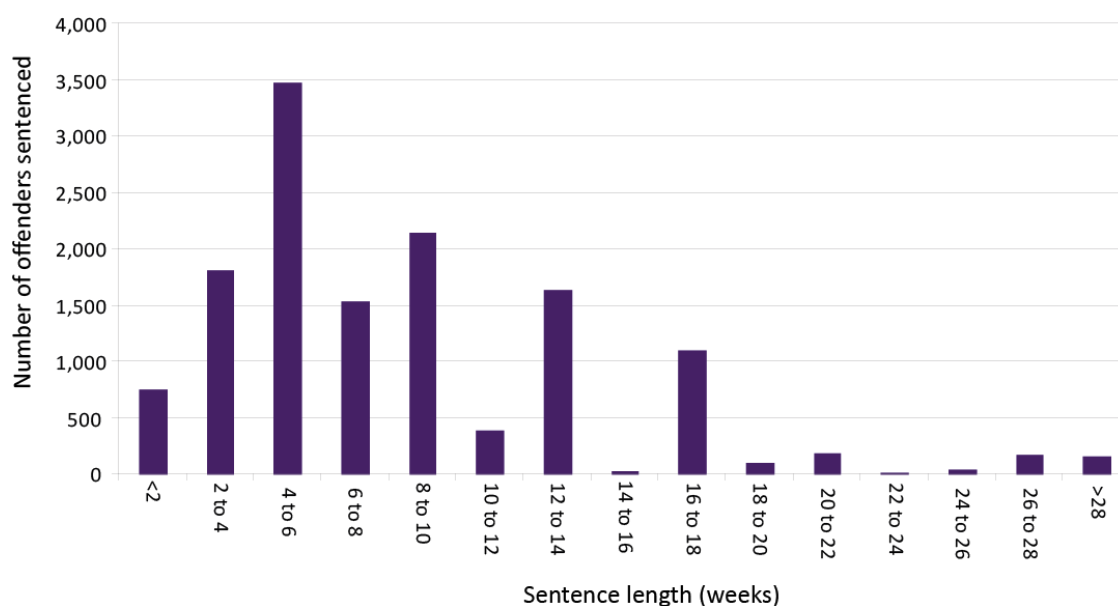
Figure 2.3: Average custodial sentence length (ACSL) received by offenders sentenced to immediate custody for theft from a shop or stall, 2002 to 2012 in weeks



The mean custodial sentence length for shoplifting has steadily declined from its peak of about 10 weeks in 2004 to 8 weeks in 2012, a 21 per cent decline in this period. The median has declined by 30 per cent over this time period, from 9 weeks in 2004 to 6 weeks in 2012.

Figure 2.4 presents the full range of sentence lengths imposed for offenders sentenced to immediate custody in 2012.

Figure 2.4: Sentence lengths received by offenders sentenced to immediate custody for theft from a shop or stall in 2012



Three quarters of offenders received a sentence length of twelve weeks or less, compared to five per cent receiving a sentence length of longer than eighteen weeks.

In 2012, for the offence of theft from a shop or stall 41 per cent of offenders that were sentenced had 10 or more previous convictions identified by the sentencer at the time of sentencing to be relevant and recent to the offence. An additional 24 per cent of adult offenders had between 4 and 9 relevant and recent previous convictions. Further information is given in table 2.1 below.

Table 2.1 Proportion of adults offenders sentenced by number of relevant & recent previous convictions

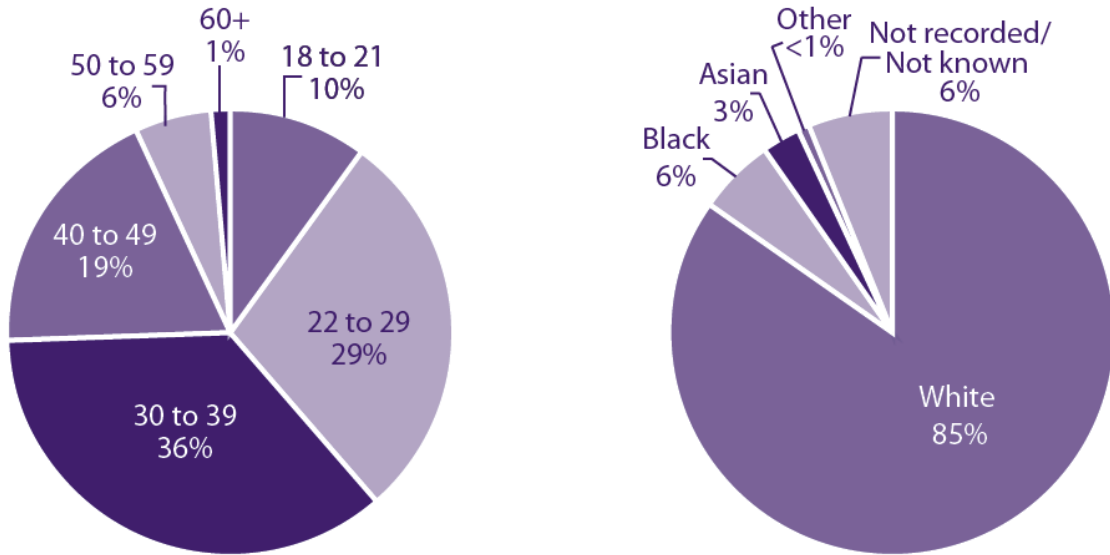
No previous convictions	15%
1 to 3	20%
4 to 9	24%
10 or more	41%
Total	100%

Demographics

In 2012, 74 per cent of adult offenders sentenced for theft from a shop and stall were male. Thirty-six per cent of offenders were between the ages of 30 to 39, and a further 29 per cent were in the age bracket 22 to 29. The majority of offenders sentenced, 85 per cent, were perceived to be of White origin by the police officer dealing with their case. The proportions amongst those for whom data on perceived ethnicity was provided may not reflect the demographics of the full

population of those sentenced. Further information on the age and ethnicity of offenders can be found in **Figure 2.5**.

Figure 2.5: Age demographics and perceived ethnicity of adults sentenced for shoplifting in 2012



Section 3: Handling stolen goods

The draft guideline for handling stolen goods covers the offences of:

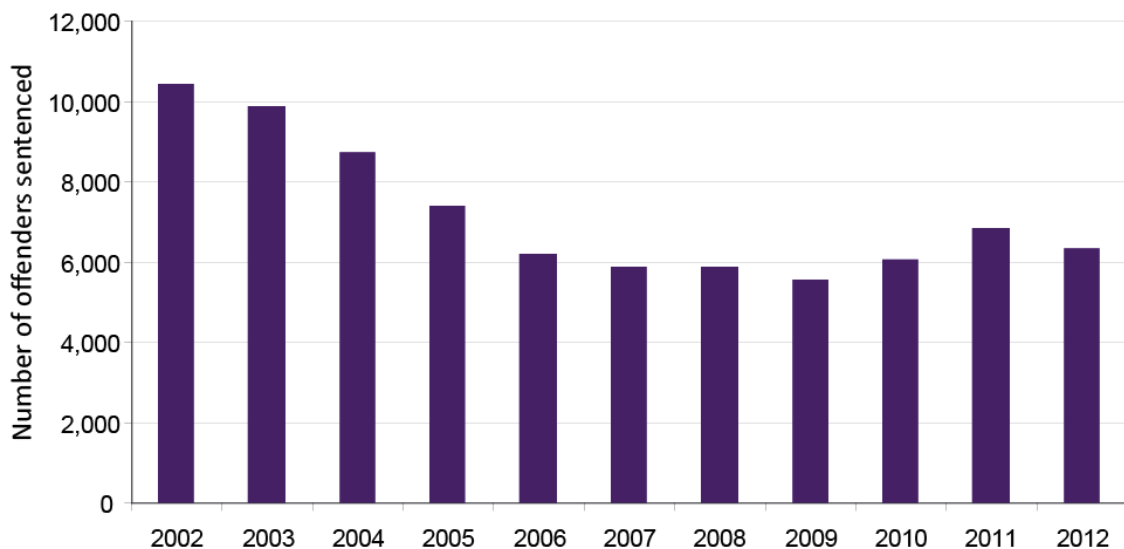
- Theft Act 1968 Section 22(1): Receive stolen goods (and attempt/conspire)
- Theft Act 1968 Section 22(1): Handle stolen goods (and attempt/conspire)

Statutory maximum: 14 years' custody

Sentences received by adults sentenced for handling stolen goods

In 2012, there were approximately 6,300 adult offenders sentenced for handling offences included in this section, as shown in **Figure 3.1**. The majority of offenders sentenced, 70 per cent, were seen at the magistrates' court.

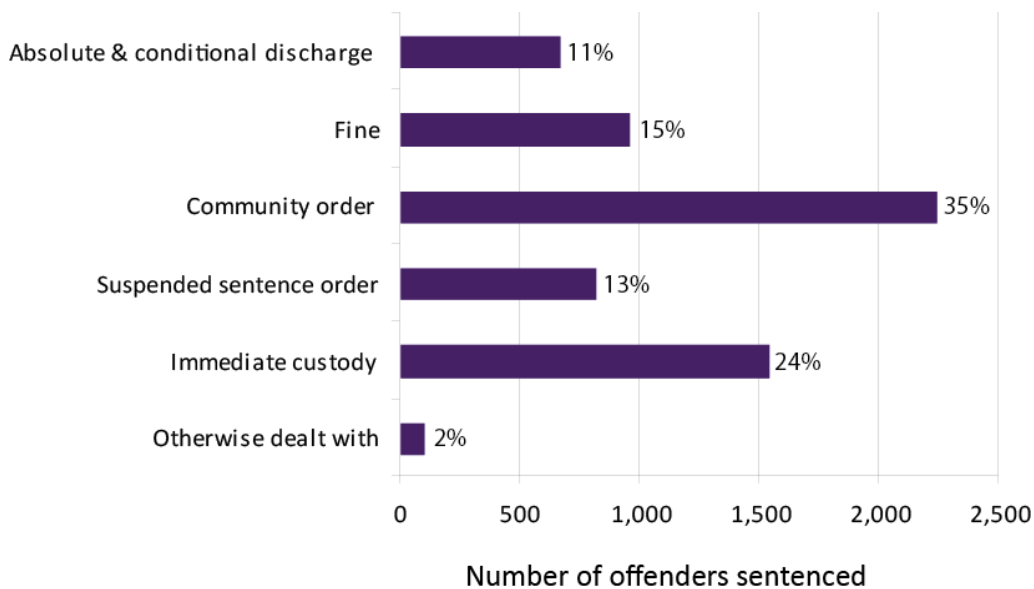
Figure 3.1: Number of adult offenders sentenced for handling offences, 2002 – 2012



Community order has been the most common disposal used when sentencing these offences since 2002. However, the proportionate use of community order has been on the decline since its peak in 2004, when it was given to 45 per cent of offenders. By 2012, community order was used for 35 per cent of offenders. The use of fines has been increasing since 2007 from 11 per cent to 15 per cent in 2012, while the use of discharge has declined from 16 per cent to 11 per cent over this same time period. Further information is available in the accompanying tables available online.

In 2012, 2,200 adult offenders received a community order and a further 1,500 were sentenced to immediate custody, making these the two most frequently used disposals, as shown in **Figure 3.2**, where disposals are ordered from top to bottom by least severe to most severe in terms of sentence severity, followed by otherwise dealt with.

Figure 3.2: Disposals received by adult offenders sentenced for handling stolen goods, 2012



Where the sentence outcome was an immediate custodial sentence, the average custodial sentence length received in 2012, following a guilty plea reduction where relevant, was 6 months and 3 weeks (median length 4 months). The longest average custodial sentence over the past decade was in 2010, at 7 months and 3 weeks (mean), however the median has been broadly consistent at 4 months over the past decade, suggesting that the 2010 peak was likely influenced by a small number of longer sentence lengths. This trend can be observed in Figure 3.3. The averages shown are the actual sentence received by the offender, after a reduction for a guilty plea where relevant.

Figure 3.3: Average custodial sentence length (ACSL) received by adult offenders sentenced to immediate custody for Handling Stolen Goods, 2002 to 2012 in months

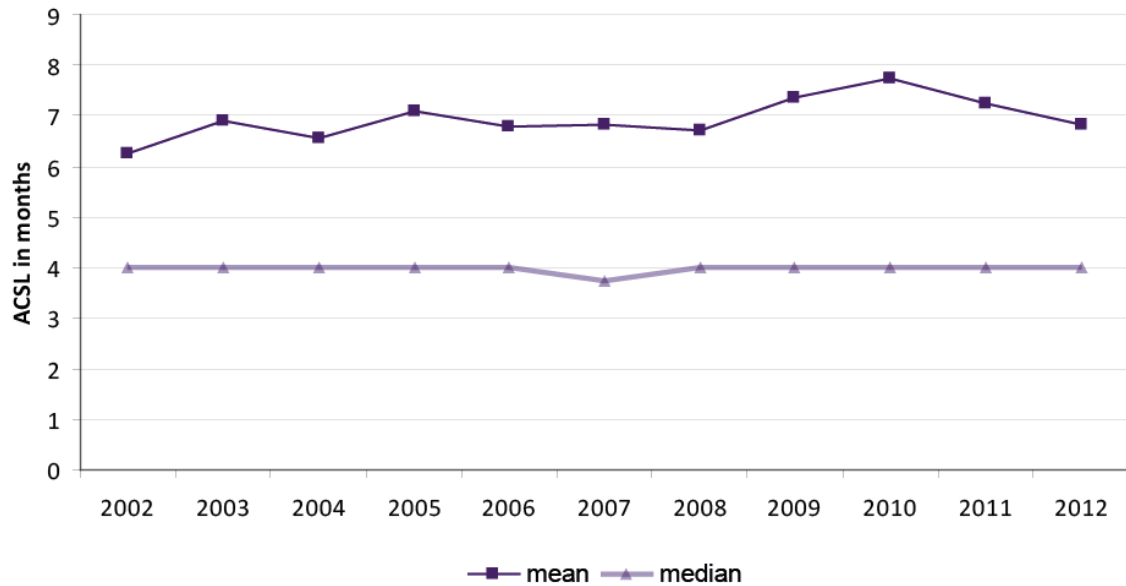
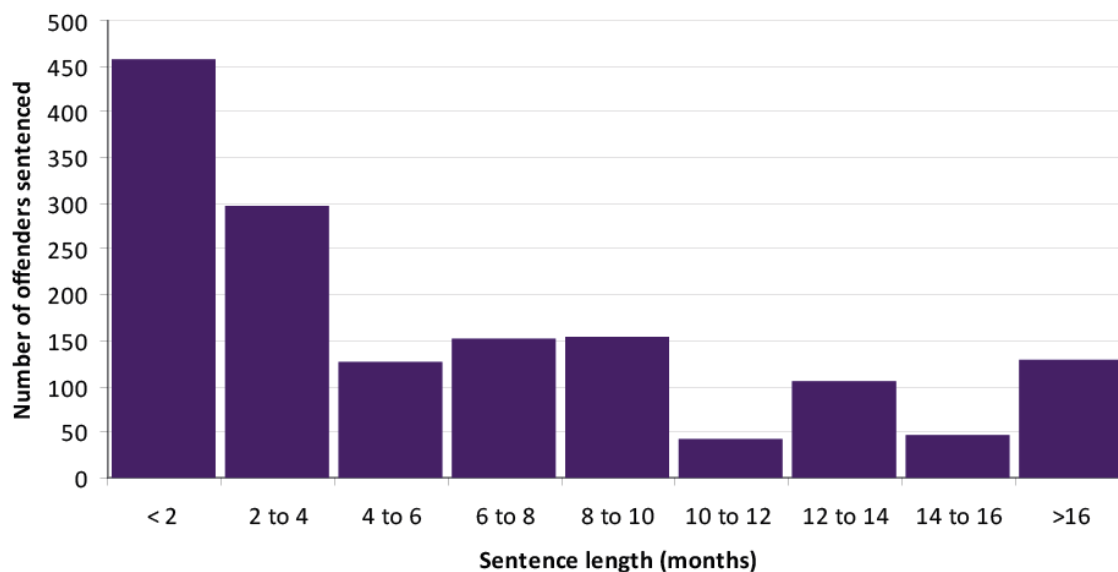


Figure 3.4 shows the full range of sentence lengths received by adult offenders sentenced to immediate custody in 2012 for handling stolen goods. Just over two-thirds (68 per cent) of offenders receiving a custodial sentence, received a sentence shorter than eight months, and nearly 12 per cent received a sentence longer than 14 months.

Figure 3.4: Sentence lengths received by offenders sentenced to immediate custody for Handling Stolen Goods in 2012



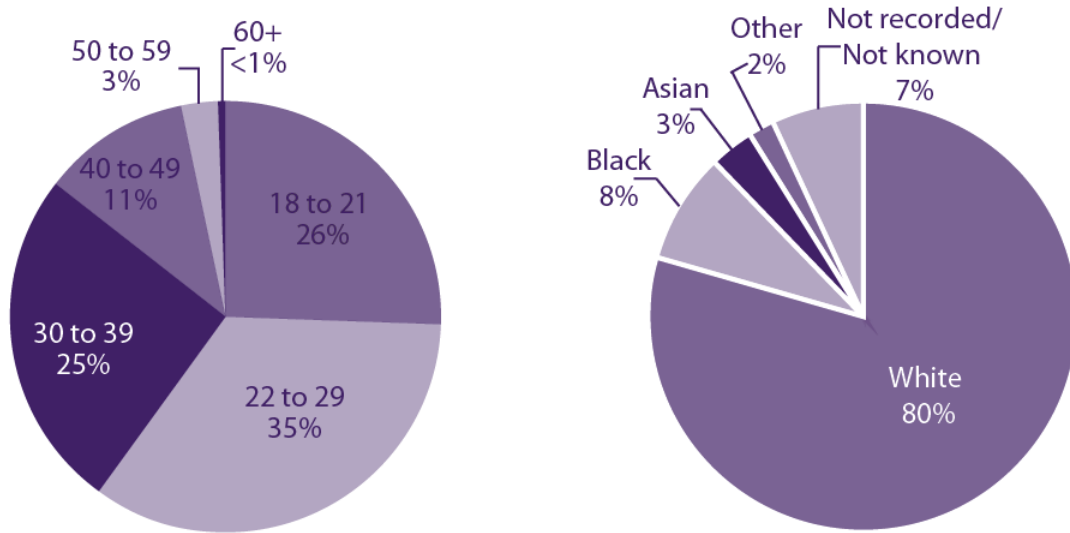
In 2012, for the offence of handling stolen goods 36 per cent of offenders that were sentenced had 4 or more previous convictions identified by the sentencer at the time of sentencing to be relevant and recent to the offence. Further information is given in table 3.1 below.

No previous convictions	36%
1 to 3	28%
4 to 9	19%
10 or more	17%
Total	100%

Demographics

Of all adult offenders sentenced for handling offences in 2012, 88 per cent were male. Just over a third (35 per cent) of those sentenced were aged 22 to 29, and one in four were between the ages of 30 and 39. In 4 out of 5 cases, the offender was perceived to be of white origin by the police officer dealing with the case. Further detail on the age and perceived ethnicity of adults sentenced for handling can be seen in Figure 3.5.

Figure 3.5: Age demographics and perceived ethnicity of adults sentenced for handling offences in 2012



Section 4: Going equipped for theft or burglary

The draft guideline for going equipped for theft covers the offence of:

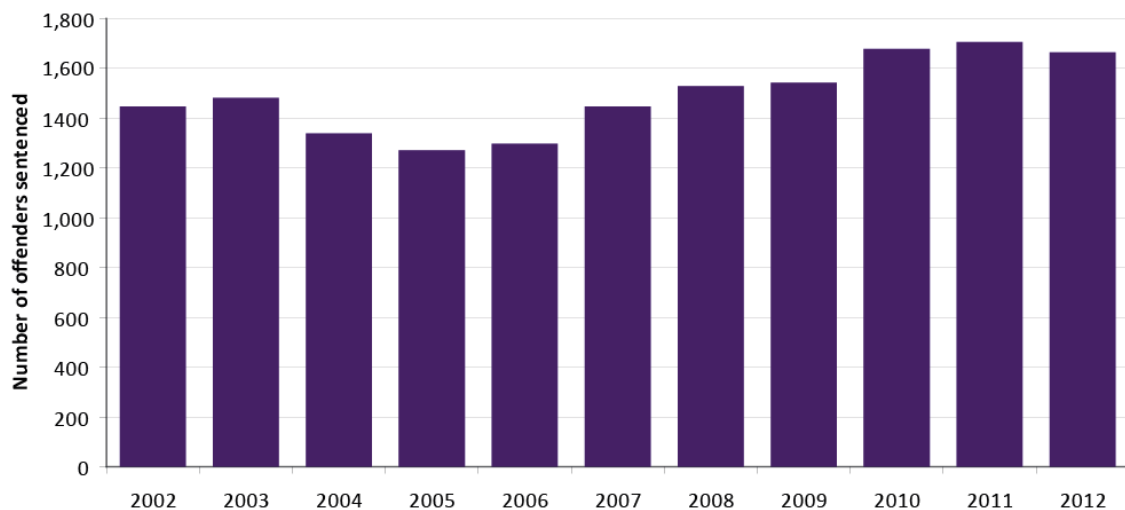
- Theft Act 1968 Section 25(1): Going equipped for theft, burglary and cheat²

Statutory maximum: 3 years' custody

Sentences received by adults sentenced for going equipped for theft or burglary

In 2012 approximately 1,700 offenders were sentenced for going equipped for theft. The majority of offenders (88 per cent) were sentenced at the magistrates' court. **Figure 4.1** shows how the number of adults sentenced for going equipped offences has changed since 2002. Between 2005 and 2011, the number of adults sentenced for going equipped for theft showed a year on year increase, rising from 1,300 sentences in 2005 to 1,700 sentences in 2010, an increase of a third during this time period. Between 2011 and 2012, there was a two per cent decrease in the volume of offenders sentenced. Though this is similar to the volume of offenders sentenced in 2010, it is too early to identify if the volume of offenders sentenced has leveled off or if this is part of a new trend.

Figure 4.1: Number of offenders sentenced for going equipped for theft, 2002 - 2012



² Due to data classification, going equipped for cheat is included in these statistics from 2002 to 2007 only.

The use of community order, the most frequently used disposal, has fallen by 5 percentage points between 2009 and 2012. During this same time period, the use of the second most common disposal, immediate custody, increased by 6 percentage points. The proportionate use of absolute and conditional discharge has been on the decline since its peak of 15 per cent in 2007, while the use of fine, suspended sentence order and otherwise dealt with have increased, by varying degrees, since 2007. Further information is available in the accompanying tables available online.

The most recent picture of sentences passed for going equipped is seen in **Figure 4.2**, with disposals ordered from top to bottom by least severe to most severe in terms of sentence severity. Community order was the most commonly used disposal, given to 37 per cent of offenders. Immediate custody was the next most frequently used disposal and was used when sentencing 30 per cent of offenders in 2012. A further 12 per cent received a fine, 10 per cent received a suspended sentence order and 8 per cent received an absolute or conditional discharge.

Figure 4.2: Disposals received by offenders sentenced for going equipped for theft, 2012

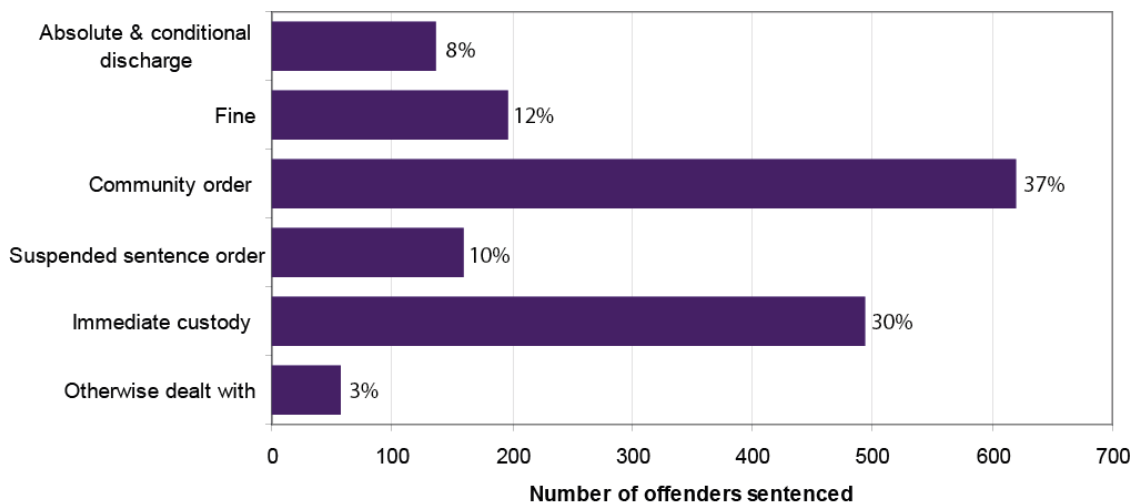


Figure 4.3 shows the average custodial sentence lengths imposed on adult offenders between 2002 and 2012. The sentence length listed is the length imposed after taking into account any reduction for a guilty plea, where relevant.

Between 2002 and 2005, the mean custodial sentence length increased by 26 per cent, from 4 months in 2002 to 5 months 3 days in 2005. Following this peak in 2005, the mean then dropped by 27 per cent, to 3 months and 3 weeks in 2008, the lowest over the past decade. The median however, remained constant at 3 months between 2002 and 2007 and dropped to 2 months 9 days in 2008, a decrease of 22 per cent. Both the mean and median have experienced some volatility since 2008, averaging just below 4 months, mean (median 2 months, 3 weeks).

Figure 4.3: Average custodial sentence length (ACSL) received by adult offenders sentenced to immediate custody for going equipped for theft in 2012 (months)

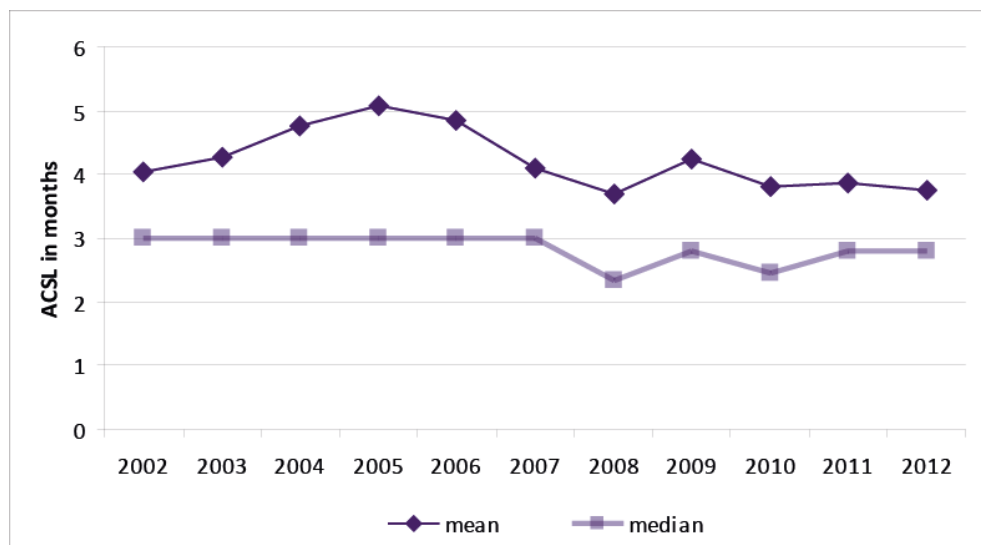
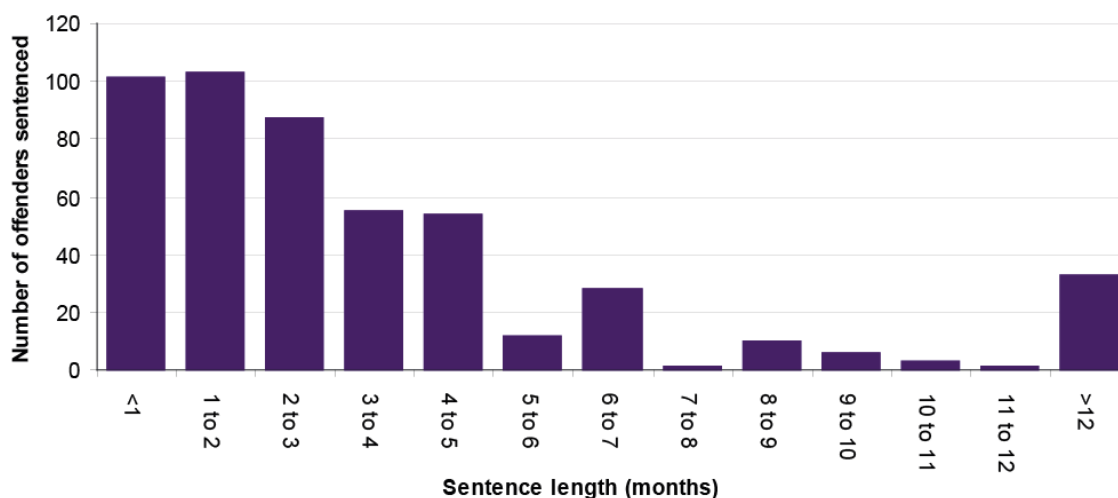


Figure 4.4 presents the full range of sentence lengths received by adult offenders sentenced to immediate custody in 2012. Seventy per cent of offenders received a custodial sentence shorter than 4 months, and a relatively small amount of offenders, 7 per cent, received a sentence greater than 1 year.

Figure 4.4: Sentence lengths received by adult offenders sentenced to immediate custody for going equipped for theft in 2012



In 2012, for the offence of going equipped for theft and burglary 47 per cent of offenders that were sentenced had 10 or more previous convictions identified by the sentencer at the time of sentencing to be relevant and recent to the offence. An additional 16 per cent of adult offenders had between 4 and 9 relevant and recent previous convictions. Further information is given in table 4.1 below.

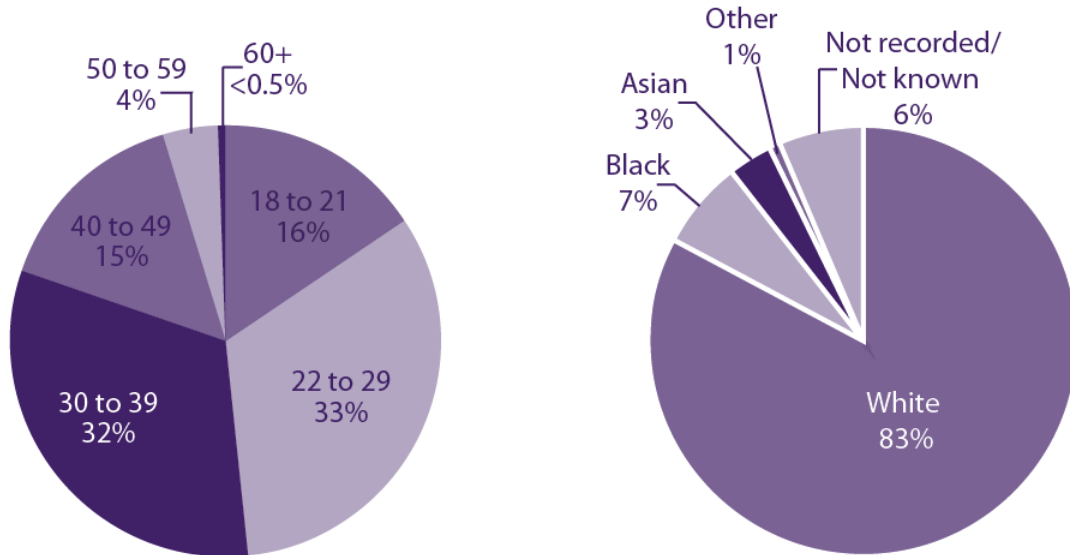
Table 4.1 Proportion of adults offenders sentenced by number of relevant & recent previous convictions

No previous convictions	12%
1 to 3	26%
4 to 9	16%
10 or more	47%
Total	100%

Demographics of offenders sentenced for going equipped for theft

Of all adult offenders sentenced in 2012, 90 per cent were male, 9 per cent were female (1 per cent not recorded). A third of all offenders were in the age bracket 22 to 29, and nearly a third were between the ages of 30 to 39. Approximately 15 per cent of offenders were in each of the age brackets 18 to 21 and 40 to 49. In 83 per cent of cases, the offender was believed to have been of white origin by the police officer dealing with the case. The proportions amongst those for whom data on perceived ethnicity was provided may not reflect the demographics of the population of those sentenced. Further detail on age and perceived ethnicity of offenders sentenced for going equipped for theft are shown in **Figure 4.5**.

Figure 4.5: Age demographics and perceived ethnicity of adults sentenced for going equipped for theft in 2012



Section 5: General Theft

The draft guideline for general theft includes the offences of:

- Theft Act 1968 Section 1(1): Theft by employee (& attempt & conspire)
- Theft Act 1968 Section 1(1): Theft in a dwelling other than from automatic machine/meter (& attempt)
- Theft Act 1968 Section 1(1): Theft of pedal cycle (& attempt)
- Theft Act 1968 Section 1(1): Theft from the person of another (& attempt)
- Theft Act 1968 Section 1(1): Theft from motor vehicle (& attempt/conspire)
- Theft Act 1968 Section 1(1): Theft of motor vehicle (& attempt/conspire)

Statutory maximum for all general theft offences: 7 years' custody

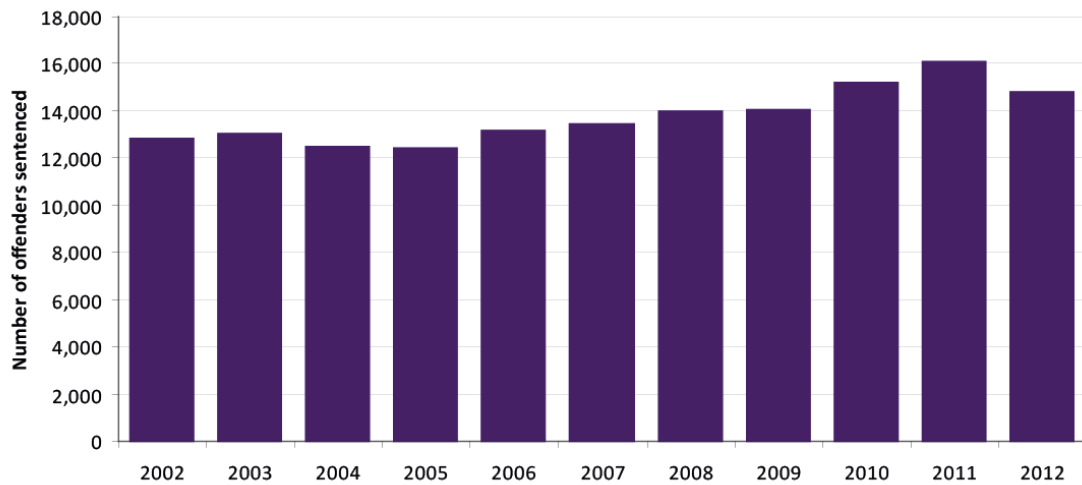
Sentences received by adults sentenced for general theft

Approximately 14,800 adult offenders were sentenced for offences included in the general theft guideline in 2012. Of these, 78 per cent were sentenced at the magistrates' court.

Figure 5.1 shows how the number of adult offenders sentenced for these offences has changed since 2002.

Until 2005, the number of offenders sentenced for general theft offences was fairly stable, averaging 12,700 offenders per annum. The volume of offenders sentenced has slowly increased since 2005 to its peak in 2011, from 12,400 to 16,100 offenders sentenced, a 30 per cent increase. There was nearly an 8 per cent decline in the volume of offenders sentenced from 16,100 in 2011 to 14,800 in 2012. It is too early to identify if this decline in offenders sentenced is due to a new trend.

Figure 5.1: Number of offenders sentenced for General Theft, 2002 – 2012



Community order has remained the most common disposal use for these offences since 2002, however its use has declined from its peak in 2004, where 42 per cent of offenders sentenced received a community order, to 34 per cent in 2012. There has been some minor fluctuation in the use of other disposals since 2005, with the most notable being the use of immediate custody, increasing from 28 per cent to 30 per cent. Further information is available in the accompanying tables available online.

Community order was the most commonly used disposal in 2012, given to a third of all offenders sentenced (n=5,000), as shown in **Figure 5.2**. The second most frequent disposal, immediate custody, was used when sentencing a further 4,500 offenders (30 per cent).

Figure 5.2: Disposals received by adult offenders sentenced for general theft in 2012

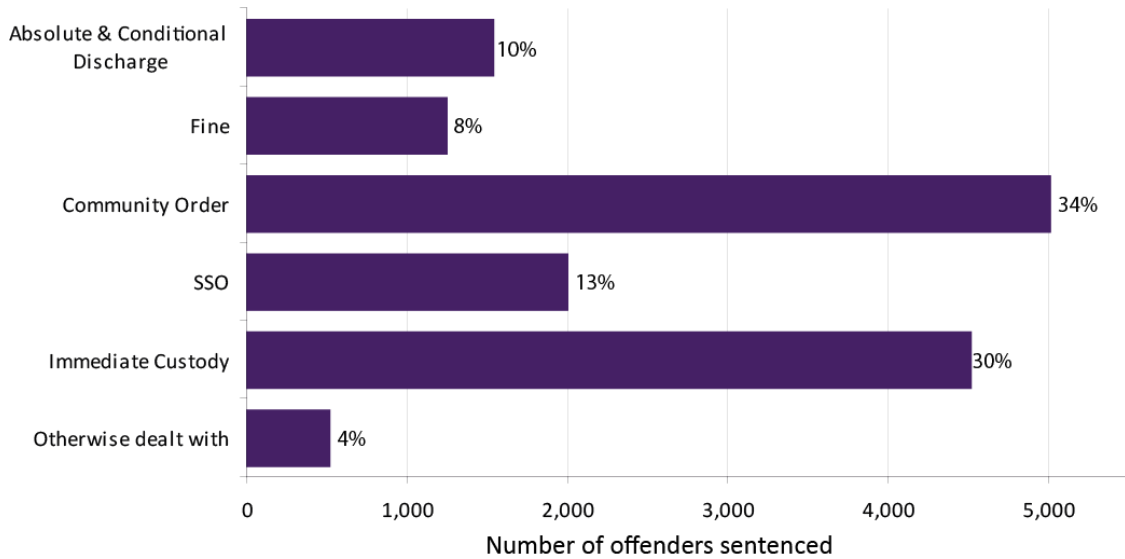


Figure 5.3 presents the average custodial sentence lengths imposed on offenders sentenced to custody for general theft. The sentence length listed is the length imposed after taking into account any reduction for a guilty plea, where relevant.

There has been some minor fluctuation in the average custodial sentence length (ACSL) received by offenders over the last decade. The highest ACSL over the past decade was 7 months 2 weeks (mean), in 2004, and the lowest was 6 months 2 weeks (mean) in 2012. Though there has been some fluctuation in the mean, the median has remained consistent since 2007 at 3 months 3 weeks.

Figure 5.3: Average custodial sentence length (ACSL) received by adult offenders sentenced to immediate custody for general theft, 2002 to 2012

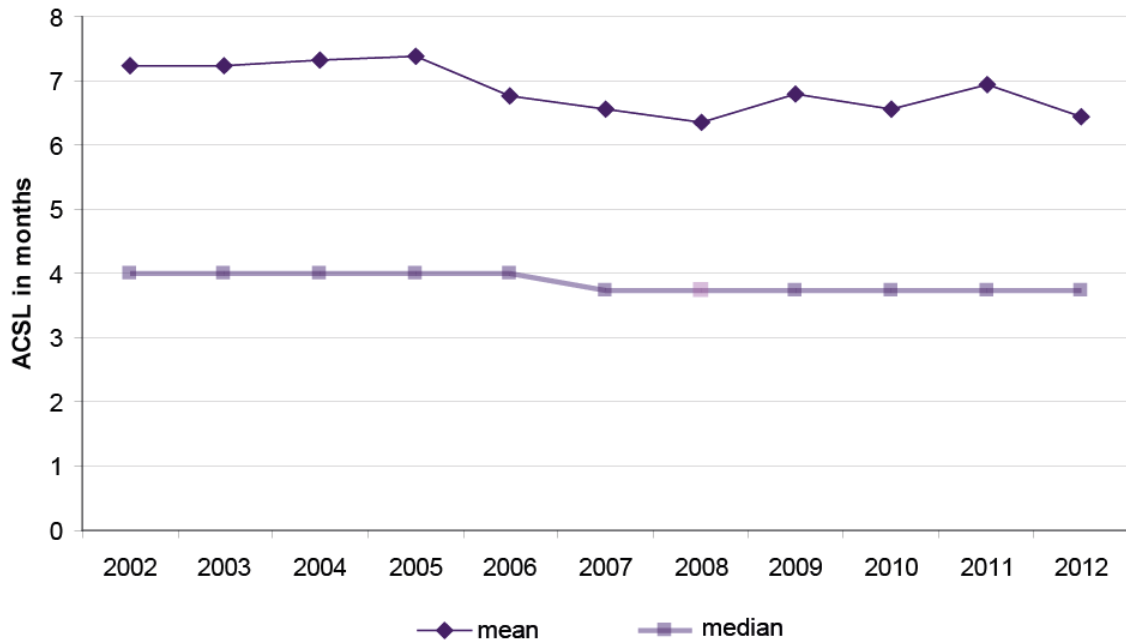
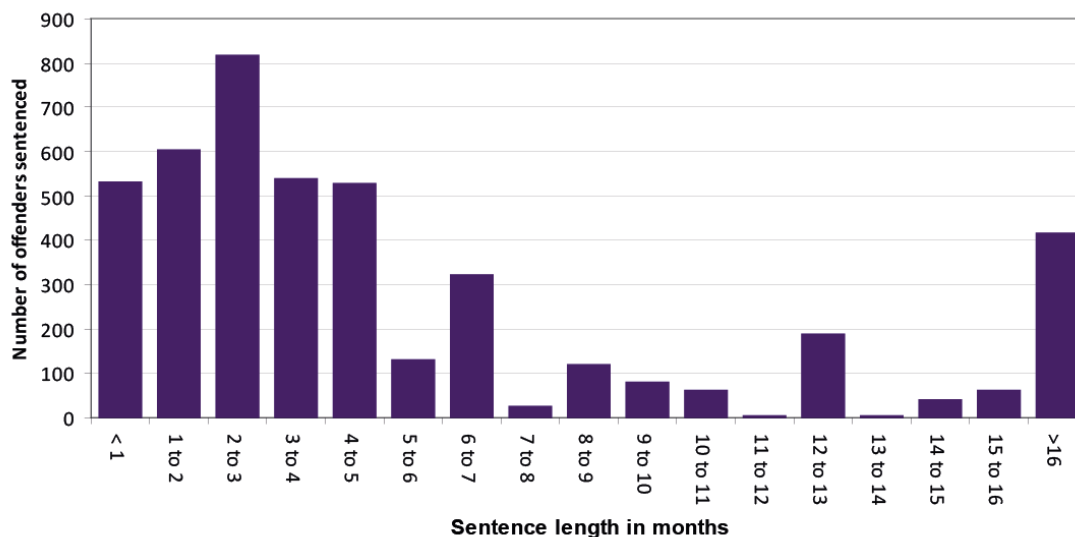


Figure 5.4 presents the full range of sentences lengths received by offenders sentenced to immediate custody in 2012. The sentence length presented is after the consideration of a guilty plea.

Just over two thirds of offenders (3,000 offenders) received a sentence of shorter than 5 months and nearly 10 per cent (420 offenders) received a sentence longer than 16 months.

Figure 5.4: Sentence lengths received by offenders sentenced to immediate custody for general theft in 2012



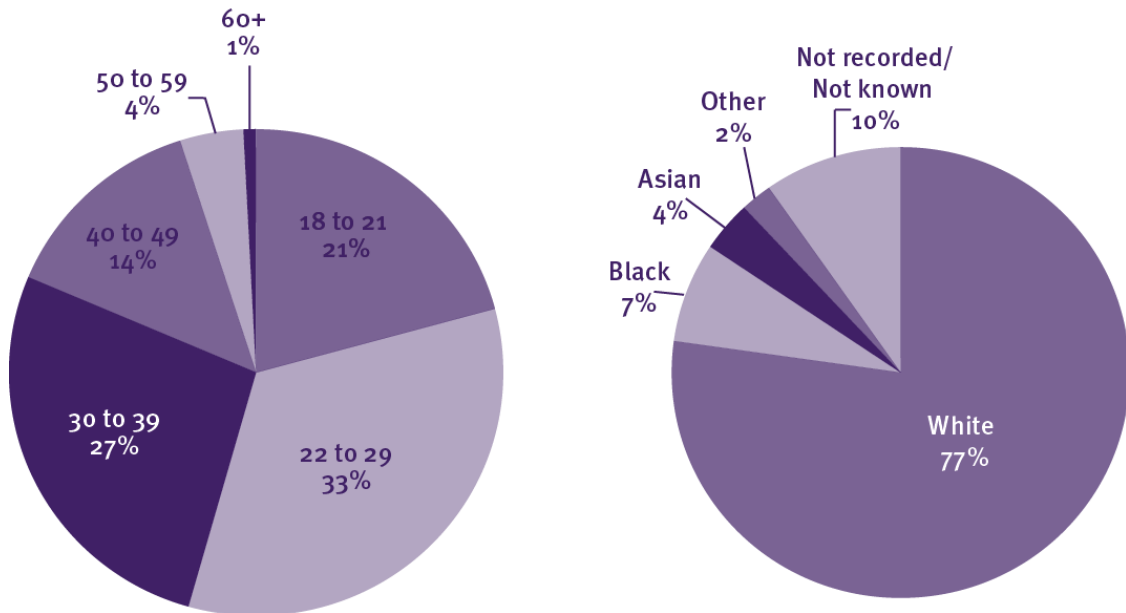
In 2012, for the offence of general theft 32 per cent of offenders that were sentenced had 4 or more previous convictions identified by the sentencer at the time of sentencing to be relevant and recent to the offence. Further information is given in table 5.1 below.

No previous convictions	48%
1 to 3	20%
4 to 9	16%
10 or more	16%
Total	100%

Demographics of offenders sentenced for general theft

In 2012, 85 per cent of offenders sentenced for general theft were male. Seventy seven per cent of offenders sentenced were perceived to be of White origin by the police officer dealing with the case. The proportions amongst those for whom data on perceived ethnicity was provided may not reflect the demographics of the full population of those sentenced. A third of offenders sentenced were between the ages of 22 to 29 and a further 27 per cent of offenders were between ages 30 to 39. Further detail on age and perceived ethnicity of offenders sentenced for general theft are shown in **Figure 5.5**.

Figure 5.5: Age demographics and perceived ethnicity of adults sentenced for general theft in 2012



Section 6: Making off without payment

The draft guideline for making off without payment covers the offence of:

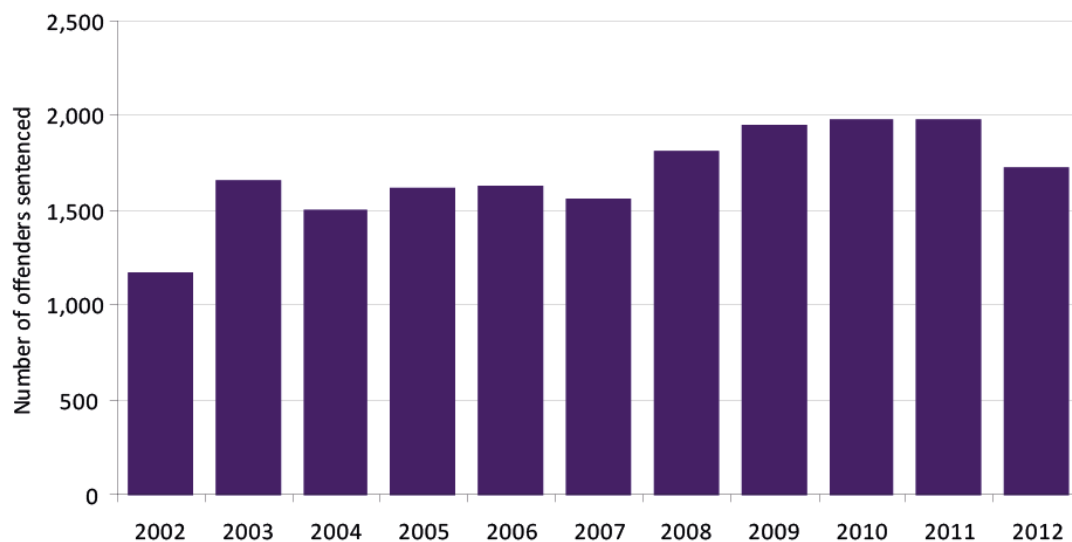
- Theft Act 1978 Section 3(1): Make off without making payment (and attempt)

Statutory maximum: 2 years' custody

Sentences received by adults sentenced for making off without payment

In 2012 approximately 1,700 adults were sentenced for making off without payment, of which 95 per cent were sentenced at the magistrates' court. The number of adults sentenced in 2012 decreased by 13 per cent on the previous year, however this is still up from the volumes sentenced in the first half of the last decade. **Figure 6.1** shows how the number of adults sentenced for making off without payment has changed over the last decade.

Figure 6.1: Number of adult offenders sentenced for making off without payment, 2002 – 2012

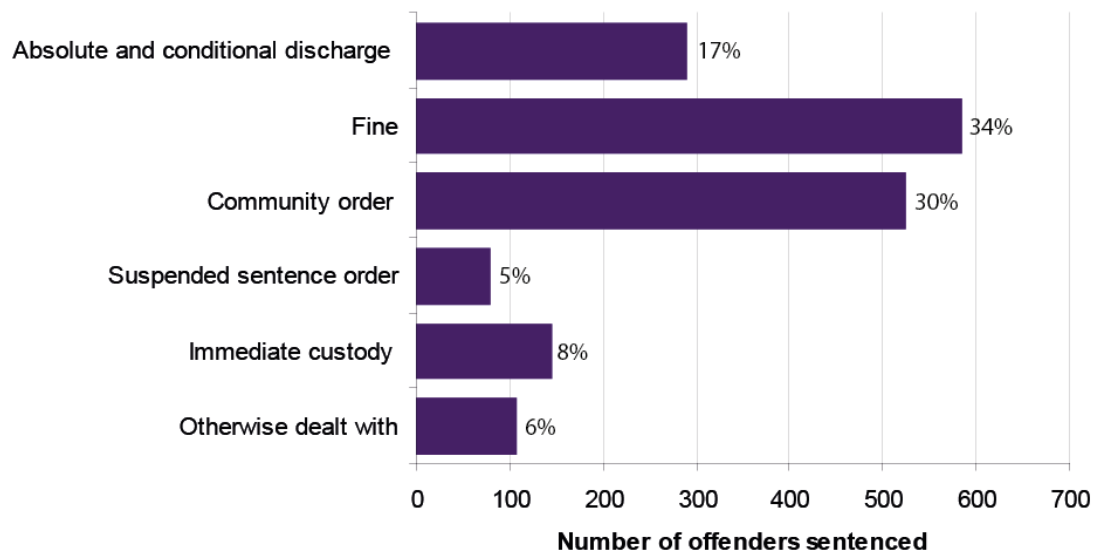


Between 2002 and 2007 the proportionate use of disposals experienced some minor fluctuation. Since 2007, the use of community order has increased from 22

per cent to 30 per cent, while the use of absolute and conditional discharge has fallen from 27 per cent to 17 per cent. The proportionate use of the other disposals has remained relatively consistent since 2007. Further information on the relative use of disposals over the last decade is available online.

The disposals received by adults sentenced for making off without payment in 2012 are shown in **figure 6.2**. The most frequent disposal used was a fine, followed by community order, with just over a third of offenders receiving a fine and 30 per cent of offenders receiving a community order.

Figure 6.2: Disposals received by adult offenders sentenced for making off without payment, in 2012



Where the outcome was a fine, the average fine amount given in 2012 was £118 (mean, median=£100). The mean fine amount has increased from 2002 to 2009, however it has been roughly the same from 2009 to 2012. The median fine increased from 2003 to 2007, but has remained constant at £100 since 2007. Figure 6.3 shows how fine amounts have changed over the last decade. No attempt has been made to adjust the fine amounts for inflation.

Figure 6.3: Average fine amount received by offenders sentenced to a fine for making off without payment, 2002 to 2012

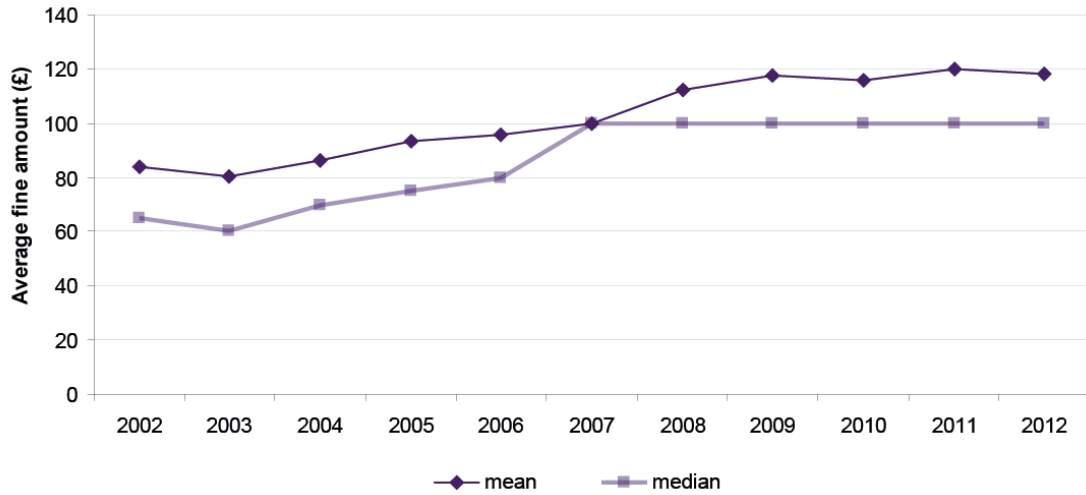
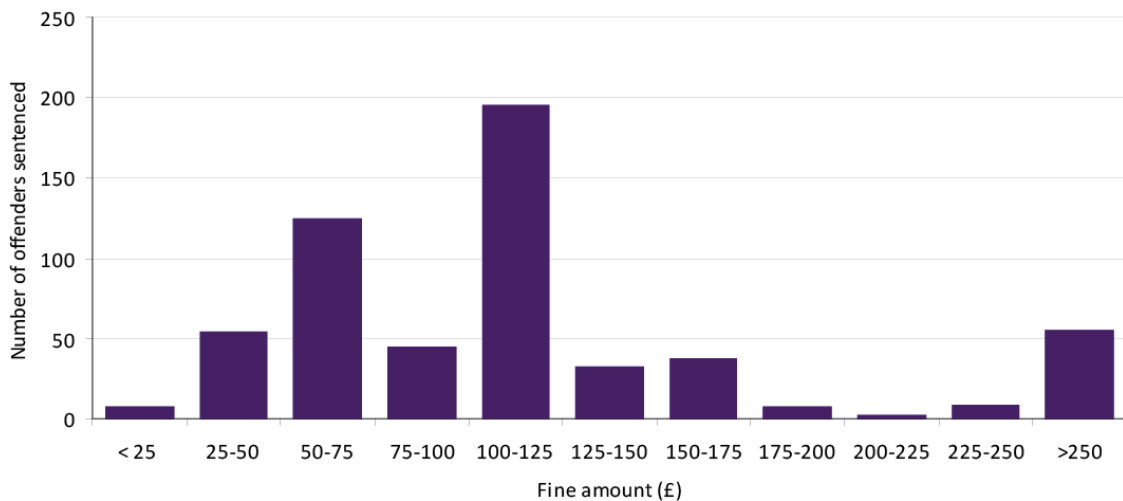


Figure 6.4 shows the full range of fine amounts received by adult offenders’ sentenced to a fine in 2012. Three quarters of offenders received a fine of £125 or less and ten per cent of offenders received a fine of more than £250. The highest fine given to an offender sentenced in 2012 was £665.

Figure 6.4: Fine amount received by adult offenders sentenced to a fine for making off without payment in 2012



In 2012, for the offence of making off without payment 33 per cent of offenders that were sentenced had 4 or more previous convictions identified by the sentencer at

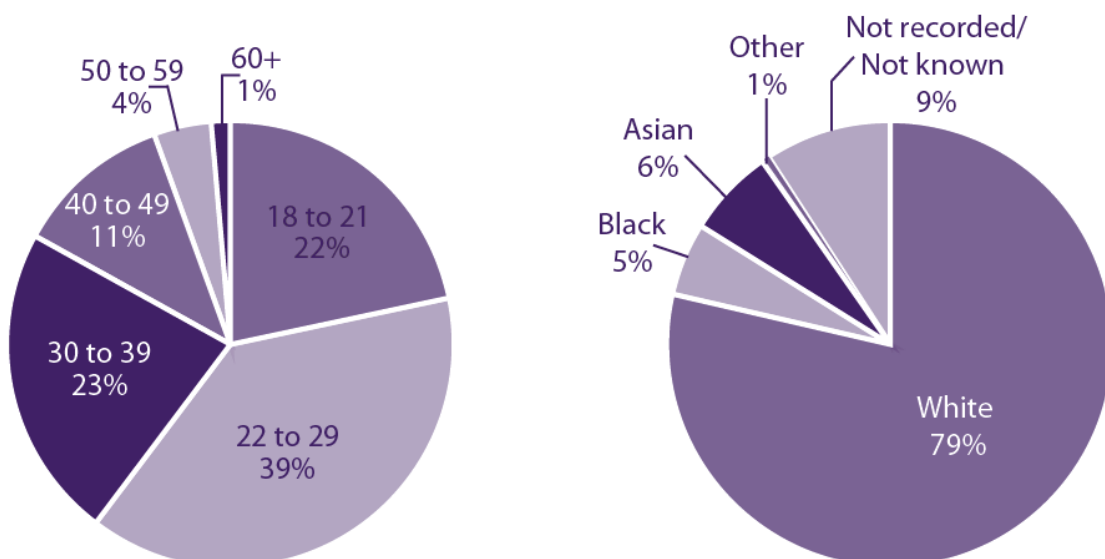
the time of sentencing to be relevant and recent to the offence. Further information is given in table 6.1 below.

Table 6.1 Proportion of adults offenders sentenced by number of relevant & recent previous convictions	
No previous convictions	33%
1 to 3	33%
4 to 9	20%
10 or more	13%
Total	100%

Demographics of offenders sentenced for making off without payment

In 2012, 83 per cent of adult offenders sentenced for making off without payment were male. Thirty-nine per cent of offenders were in the age bracket 22 to 29, and over a fifth were in each of the age brackets between 18 to 21 and 30 to 39. Seventy-nine per cent of adults sentenced were perceived to be of White origin by the police officer dealing with their case. Further detail on the age and perceived ethnicity of adults sentenced for making off without payment can be seen in figure 6.5.

Figure 6.5: Age demographics and perceived ethnicity of adults sentenced for making off without payment in 2012



Section 7: Abstracting Electricity

The draft guideline for abstracting electricity covers the offence of:

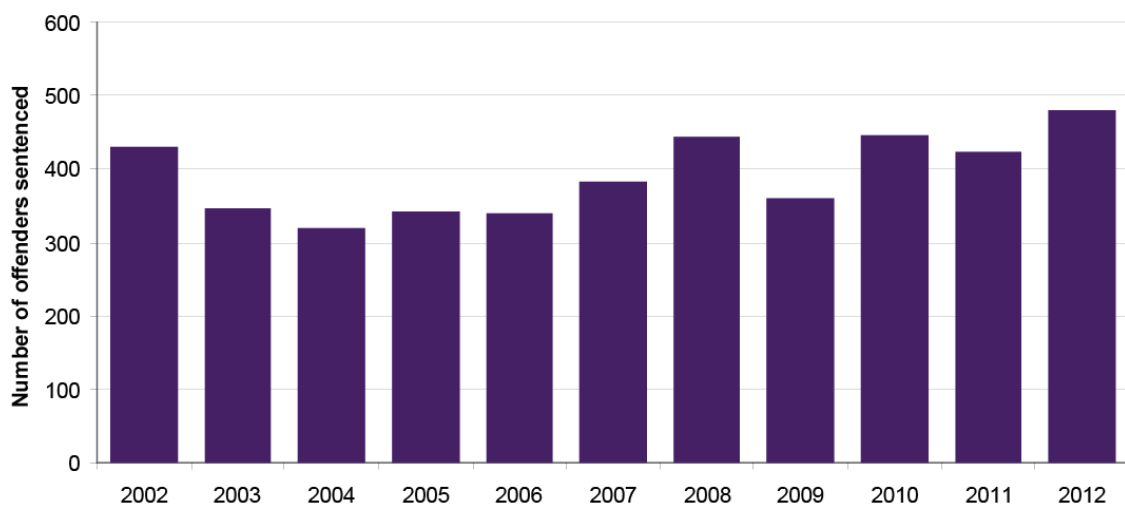
- Theft Act 1968 Section 13: Abstracting electricity

Statutory maximum: 5 years' custody

Sentences received by adults sentenced for abstracting electricity

In 2012 approximately 480 adult offenders were sentenced for abstracting electricity. The majority (72 per cent) of offenders were sentenced at the magistrates' court. **Figure 7.1** shows how the volume of this offence has changed since 2002. There has been no clear trend over the last decade, although, the volume of offenders sentenced was at its highest level in 2012.

Figure 7.1: Number of offenders sentenced for Abstracting Electricity, 2002 – 2012

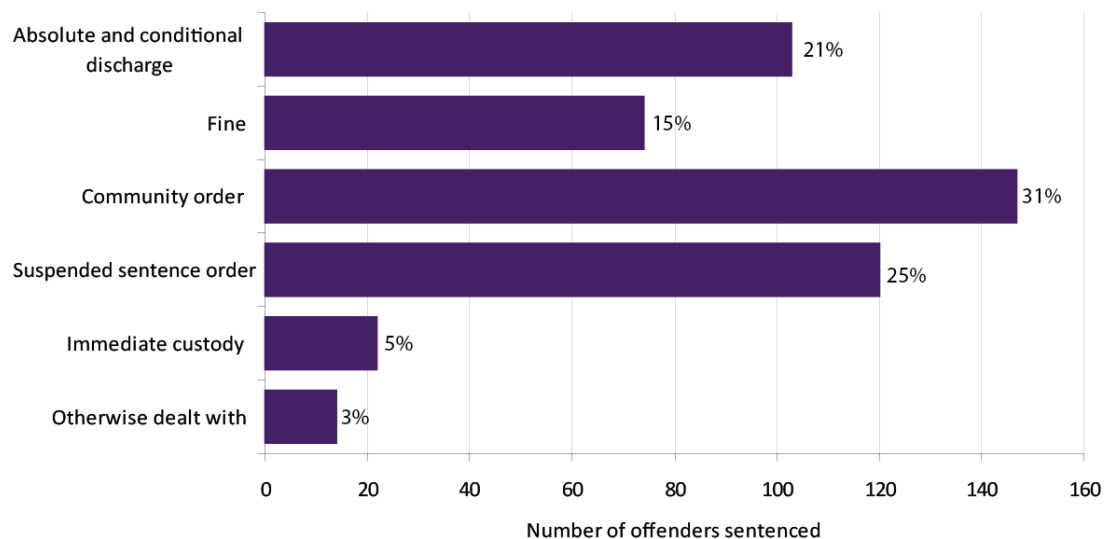


There has been a significant amount of fluctuation in the proportionate use of disposals over the last decade, largely due to the small volume of offenders sentenced. Since 2006, the relative use of absolute and conditional discharge when sentencing offenders has declined from 44 per cent to 21 per cent, with the lowest level in 2011 at 18 per cent. The use of fine has also declined during this time, from 25 per cent in 2006 to 15 per cent in 2012. Between 2006 and 2009 there was an increase in the use of community order, from 21 per cent to 40 per cent,

however this has fallen relatively steadily since 2009, to 31 per cent in 2012. Since 2009, there has been an increase in the use of suspended sentence order from 5 per cent to 25 per cent by 2012. Further information on the proportionate use of disposals over the last decade is available online.

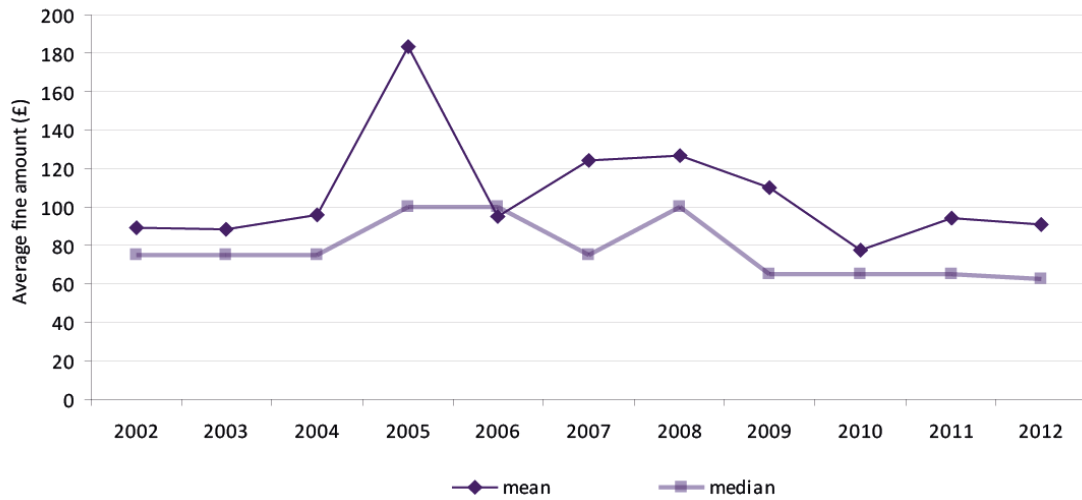
The disposals received by adults sentenced for abstracting electricity in 2012 are shown in **Figure 7.2**. Community order was the most frequently used disposal, with nearly a third of offenders receiving one, followed by suspended sentence order, given to a quarter of all offenders sentenced in 2012.

Figure 7.2: Disposals received by adult offenders sentenced for abstracting electricity in 2012



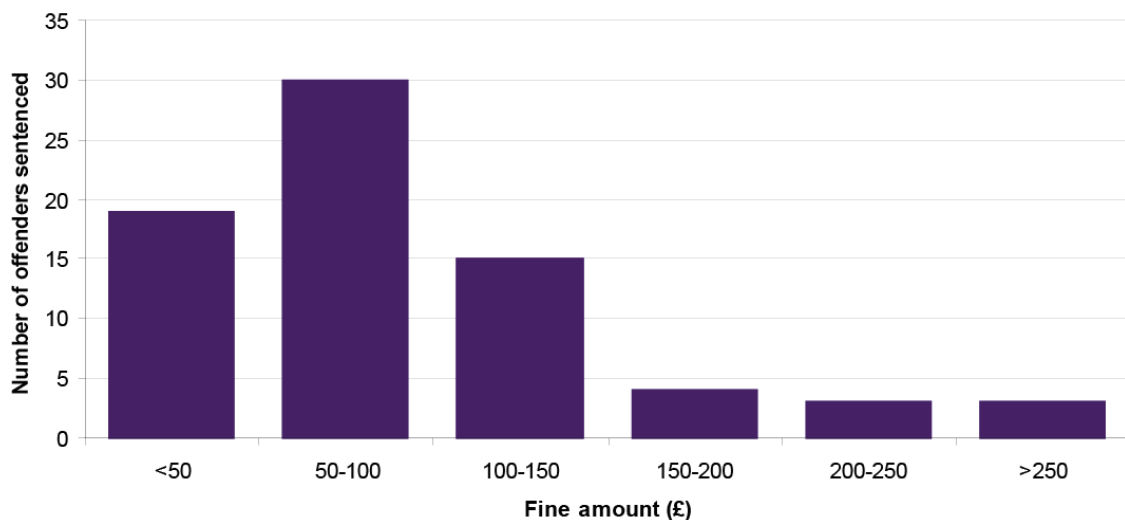
Where the outcome was a fine in 2012 (15 per cent of cases), the average fine received was £91 (mean, median=£63). **Figure 7.3** presents the average fine received by adult offenders sentenced for abstracting electricity over the last decade. The largest mean fine received was in 2005 at £184, however due to the low volume of offenders sentenced to a fine each year; this figure is likely to be skewed by a low volume of offenders receiving a large fine. The median fine has remained in the range of £62-£65 since 2009, and suggests that one or two very large fines are the cause of the volatility in the mean fine.

Figure 7.3: Average fine amount received by adult offenders sentenced for abstracting electricity, 2002 to 2012



The full range of fines received by adult offenders sentenced to a fine in 2012 can be seen in **Figure 7.4**. Two thirds of offenders received a fine of £100 or less, and 14 per cent of offenders received a fine of greater than £150. The largest fine received in 2012 was £1,000, however this was only given to one offender; the next largest fine was £265.

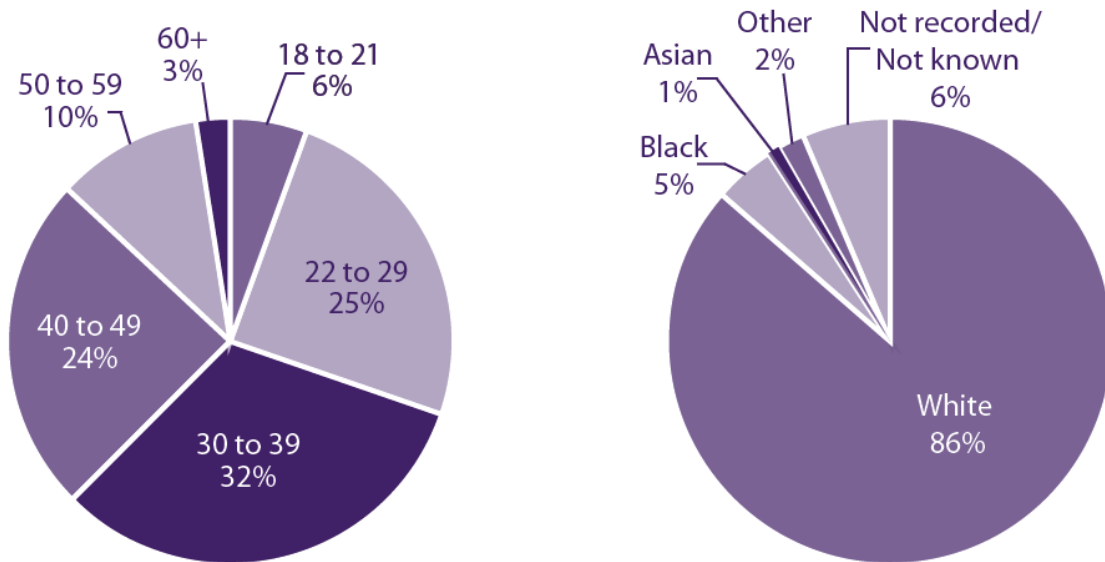
Figure 7.4: Fine amount received by adult offenders sentenced to a fine for abstracting electricity in 2012



Demographics of adult offenders sentenced for abstracting electricity

In 2012, the majority of adults sentenced for abstracting electricity were male (79 per cent). About a third of offenders were between the ages of 30 to 39, and a further quarter of offenders were in each age bracket of 22 to 29 and 40 to 49. The majority, 86 per cent, of offenders sentenced were perceived to be of White origin by the police officer dealing with the case. Further detail on the age and perceived ethnicity of adults sentenced for abstracting electricity can be seen in **Figure 7.5**.

Figure 7.5: Age demographics and perceived ethnicity of adults sentenced for abstracting electricity in 2012.



Further information

Notes on the data

Volumes of sentences

The data presented in this bulletin only include cases where the theft offence was the principal offence committed. Where an offender commits multiple offences on a single occasion, the offence which received the most severe sentence is taken to be the principal offence. 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 in this bulletin. This way of presenting the data is consistent with the Ministry of Justice publication, *Criminal Justice Statistics*.

Sentence Outcomes

The outcomes presented are the final sentence outcomes, after taking into account all factors of the case, including whether a guilty plea was made. This contrasts with the sentencing ranges presented at step 2 of the draft guideline, which are the recommended sentence lengths before taking into account certain factors, such as whether a reduction is appropriate for a guilty plea. Therefore, the sentence outcomes shown in the data are not directly comparable to the ranges provided in the new guideline.

Fine amount

Where historic fine amounts are described, nominal amounts are shown. No attempt has been made to adjust for the price level (inflation). Additionally, the fine amounts listed are the amounts imposed after any reduction for guilty plea, where relevant.

Offender Gender and Ethnicity

Where the ethnicity of sentenced adults is described, the ethnicity as perceived by the police officer dealing with the case is used. Perceived ethnicity is the most comprehensive data source available on ethnicity; therefore it is used in preference to any other source of ethnicity data. However, for some offences, there are a high proportion of cases where the perceived ethnicity was not known or not recorded. Therefore the ethnicity data should be read with some caution. The

proportions reflected amongst those for whom data was provided may not reflect the demographics of the full population sentenced.

General Conventions

The following conventions have been applied to the data:

- Actual number of sentences have been rounded to the nearest 100, when more than 1000 offenders were sentenced, and to the nearest 10 when less than 1000 offenders were sentenced
- Percentages derived from the data have been provided in the narrative and displayed on charts to the nearest whole percentage, except when the nearest whole percentage is zero. In some instances, this may mean that percentages shown, for example in pie charts, do not add up to 100 per cent.
- Where the nearest whole per cent is zero, the convention '0.5' has been used.
- Where totals have been provided, these have been calculated using unrounded data and then rounded.

Data Sources and Quality

The primary source of data for this bulletin is the Court Proceedings Database. This is supplied to the Sentencing Council by the Ministry of Justice who obtain it from a variety of administrative data systems compiled by courts and police forces.

Every effort is made by the Ministry of Justice and the Sentencing Council to ensure that the figures presented in this publication are accurate and complete. Although care is taken in collating and analysing the returns used to compile these figures, the data are of necessity subject to the inaccuracies inherent in any large-scale recording system. Consequently, although numbers in the accompanying tables available online and charts are shown to the last digit in order to provide a comprehensive record of the information collected, they are not necessarily accurate to the last digit shown. The figures in the text have been rounded to the nearest 100, or 10, as described in the section on *general conventions*.

Further details of the processes by which the Ministry of Justice validate the records in the Court Proceedings Database can be found within the guide to their Criminal Justice Statistics publication which can be downloaded via the link:

<https://www.gov.uk/government/collections/criminal-justice-statistics>

The Sentencing Council's Crown Court Sentencing Survey has been used to for the information given on previous convictions. This information is collected directly from the sentencer at the time of sentencing and identified by them as being relevant and recent to the offence. Sentencers are asked to identify relevant and recent previous convictions in the ranges: none; 1 to 3; 4 to 9; and 10 or more.

http://sentencingcouncil.judiciary.gov.uk/docs/CCSS_Annual_2012.pdf

Background Information

The Ministry of Justice publishes a quarterly statistical publication, Criminal Justice Statistics, which includes a section focusing on sentencing data at national level. This section breaks down the data by offence group and by demographic factors such as age, gender and ethnicity. The full publication can be accessed via the Ministry of Justice website at:

<https://www.gov.uk/government/collections/criminal-justice-statistics-quarterly>

Detailed sentencing data from the Ministry of Justice's Court Proceedings Database can be accessed via the Open Justice website at:

<http://open.justice.gov.uk/sentencing/>

This website allows the data to be viewed by offence category, local police force area and sentencing court. The offence categories used on this website are consistent with those used by the Ministry of Justice in their Criminal Justice Statistics publication, which is at a higher aggregate level than that used in this bulletin.

Further information on general sentencing practice in England in Wales can be found on the Council's website at:

<http://sentencingcouncil.judiciary.gov.uk/index.htm>

Alternatively, you may wish to visit the sentencing area on the Direct.gov website, which can be accessed at:

<http://sentencing.cjsonline.gov.uk/>

Uses Made of the Data

Data provided in the Council's range of analysis and research bulletins are used to inform public debate of the Council's work. In particular, this bulletin aims to provide the public with the key data that the Council has used to help formulate the draft guideline on fraud offences.

Contact Points for Further Information

We would be very pleased to hear your views on our analysis and research bulletins. If you have any feedback or comments, please send them to:

research@sentencingcouncil.gsi.gov.uk

Responsible Statistician

Trevor Steeples
020 7071 5793

Press Office Enquires

Nick Mann
020 7071 5792

Further information on the Sentencing Council and their work can be found at:

<http://sentencingcouncil.org.uk>

Theft from a shop or stall

Theft Act 1968 (section 1)

Triable either way

Maximum: 7 years' custody

(Except for an offence of low-value shoplifting which is treated as a summary only offence in accordance with section 22A of the Magistrates' Courts Act 1980 where the maximum is 6 months' custody.)

Offence range: Discharge – 3 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category with reference only to the factors identified in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

Culpability demonstrated by one or more of the following:

A - High culpability:

- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Sophisticated nature of offence/significant planning
- Significant use or threat of force
- Offender subject to a banning order from the relevant store
- Child accompanying offender is actively used to **facilitate** the offence (not merely present when offence is committed)

B - Medium culpability:

- A significant role where offending is part of a group activity
- Some degree of planning involved
- Limited use or threat of force
- All other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Mental disorder/learning disability where linked to commission of the offence

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Harm is assessed by reference to the **financial loss** that results from the theft **and any significant additional harm** suffered by the victim or others – examples of additional harm may include but are not limited to: emotional distress, damage to property, effect on business, a greater impact on the victim due to the size of their business, or a particularly vulnerable victim.

Intended loss should be used where actual loss has been prevented.

Harm

Category 1	High value goods stolen (above £1,000) or Medium value with significant additional harm to the victim or others
Category 2	Medium value goods stolen (£200 to £1,000) and no additional harm or Low value with significant additional harm to the victim or others
Category 3	Low value goods stolen (up to £200) and Little or no significant additional harm to the victim or others

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below.

The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1 Where the value greatly exceeds £1,000 it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm where high value goods are stolen	Starting point 26 weeks' custody Category range 13 weeks'-3 years' custody	Starting point Medium level community order Category range Low level community order -13 weeks' custody	Starting point Band C fine Category range Band B fine- Low level community order
Category 2	Starting point 13 weeks' custody Category range High level community order -26 weeks' custody	Starting point Low level community order Category range Band C fine – Medium level community order	Starting point Band B fine Category range Band A fine –Band C fine
Category 3	Starting point High level community order Category range Low level community order-13 weeks' custody	Starting point Band C fine Category range Band B fine - Low level community order	Starting point Band A fine Category range Discharge –Band B fine

Consecutive sentences for multiple offences may be appropriate-please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.

[Previous diversionary work with an offender does not preclude the court from considering this type of sentencing option again if appropriate.](#)

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction. Relevant recent convictions may justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence.
- Offence committed whilst on bail

Other aggravating factors:

- Stealing goods to order
- Offence motivated by, or demonstrating hostility based on, characteristics of the victim including, but not limited to, race, age, sex or disability
- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to conceal/dispose of evidence
- Offender motivated by intention to seek revenge
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Established evidence of community/wider impact
- Prevalence - see below

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability (where not linked to the commission of the offence)
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Offender experiencing **exceptional** financial hardship

Prevalence

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

- has supporting evidence from an external source, to justify claims that a particular crime is prevalent in their area, **and** is causing particular harm in that community, **and**
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

Deleted: , for example, Community Impact statements,

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the Guilty Plea guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Handling stolen goods

Theft Act 1968 (section 22)

Triable either way

Maximum: 14 years' custody

Offence range: Discharge - 8 years' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors identified in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was **planned** and the **sophistication** with which it was carried out. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

CULPABILITY demonstrated by one or more of the following:	
A - High culpability:	
<ul style="list-style-type: none"> ▪ A leading role where offending is part of a group activity ▪ Involvement of others through coercion, intimidation or exploitation ▪ Abuse of position of power or trust or responsibility ▪ <u>Professional and sophisticated offence</u> ▪ <u>Advance knowledge of the primary offence</u> ▪ <u>Possession of recently stolen goods</u> 	
B - Medium culpability:	
<ul style="list-style-type: none"> ▪ Other cases where characteristics for categories A or C are not present ▪ A significant role where offending is part of a group activity ▪ Offender acquires goods for resale ▪ Some degree of planning involved 	
C - Lesser culpability:	
<ul style="list-style-type: none"> ▪ Performed limited function under direction ▪ Involved through coercion, intimidation or exploitation ▪ Little or no planning/sophistication ▪ Limited awareness or understanding of offence ▪ Goods acquired for offender's own personal use 	

Deleted: <#>¶
 <#>Closeness in time or place to the underlying offence ¶
 <#>The provision in advance of the underlying offence of a safe haven or the means of disposal of stolen property¶

Deleted: <#>Advance knowledge that the stolen goods were to come from a domestic burglary or a robbery¶

Deleted: <#>Offender makes self available to other criminals as willing to handle the proceeds of crime¶
 <#>Offences are committed by offender as part of commercial activity¶
 <#>¶
 <#>Other cases where characteristics for categories A or C are not present¶

The handling of stolen goods is ancillary to other offences, often to a serious underlying offence

Harm is assessed by reference to the **financial value** (to the loser) of the stolen goods **and any significant additional harm** associated with the underlying offence on the victim or others – examples of additional harm may include but are not limited to:

- Property stolen from a domestic burglary or a robbery
- Items stolen of an economic, sentimental or personal value
- Metal theft causing disruption to infrastructure
- Damage to heritage assets
- Items stolen which may endanger life

Harm		
Category 1	Very high value goods stolen (above £100,000) or High value with significant additional harm to the victim or others	Deleted: 50
Category 2	High value goods stolen (£10,000 to £100,000) and no additional harm or Medium value with significant additional harm to the victim or others	Deleted: 5
Category 3	Medium value goods stolen (£1000 to £10,000) and no additional harm or Low value with significant additional harm to the victim or others	Deleted: 50
Category 4	Low value goods stolen (up to £1000) and Little or no significant additional harm to the victim or others	Deleted: 5

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1 <u>Where the value greatly exceeds £100,000, it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm where very high value goods are stolen.</u>	Starting point 5 years' custody Category range 3-8 years' custody	Starting point 2 years 6 months' custody Category range 1-4 years' custody	Starting point 1 year's custody Category range 13 weeks custody-1 year 6 months custody
Category 2	Starting point 3 years' custody Category range 1 year 6 months -4 years' custody	Starting point 1 year's custody Category range 26 weeks'-1 year 6 months custody	Starting point High level community order Category range Low level community order-26 weeks custody
Category 3	Starting point 1 years' custody Category range 36 weeks'-2 years' custody	Starting point High level community order Category range Low level community order-26 weeks custody	Starting point Band C fine Category range Band B fine –Low level community order
Category 4	Starting point High level community order Category range Medium level community order – 36 weeks custody	Starting point Low level community order Category range Band C fine –High level community order	Starting point Band B fine Category range Discharge –Band C fine

Consecutive sentences for multiple offences may be appropriate- please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Seriousness of the underlying offence, for example, armed robbery
- Deliberate destruction, disposal or defacing of stolen property
- Damage to third party for example, loss of employment to legitimate employees
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Established evidence of community/wider impact

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

Deleted: In particular, **relevant recent convictions** may justify an upward adjustment, including outside the custody range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence.¶ Consecutive sentences for multiple offences may be appropriate- please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.¶ Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.¶

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the Guilty Plea guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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General Theft

Including:

Theft from the person

Theft in a dwelling

Theft in breach of trust

Theft from a motor vehicle

Theft of a motor vehicle

Theft of pedal bicycles

and all other section 1 Theft Act 1968 offences, excluding theft from a shop or stall

Theft Act 1968 (section 1)

Triable either way

Maximum: 7 years' custody

Offence range: Discharge - 5 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category with reference only to the factors identified in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out.

CULPABILITY demonstrated by one or more of the following:

A - High culpability:

- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Significant breach of degree of trust or responsibility
- Sophisticated nature of offence/significant planning
- Offence conducted over sustained period of time
- Large number of persons affected by the offence
- Theft involving intimidation or the use or threat of force
- Deliberately targeting victim on basis of vulnerability

B - Medium culpability:

- A significant role where offending is part of a group activity
- Some degree of planning involved
- Breach of degree of trust or responsibility
- All other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Limited awareness or understanding of offence

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Harm is assessed by reference to the **financial loss** that results from the theft **and any significant additional harm** suffered by the victim or others – examples of significant additional harm may include but are not limited to: items stolen of an economic, sentimental or personal value; high level of inconvenience caused to the victim or others; consequential financial harm to victim or others; emotional distress, fear/loss of confidence caused by the crime; risk of or actual injury to persons or damage to property; impact of theft on a business; damage to heritage assets; disruption caused to infrastructure

Intended loss should be used where actual loss has been prevented.

Harm

Category 1	Very high value goods stolen (above £50,000) or High value with significant additional harm to the victim or others
Category 2	High value goods stolen (£5,000 to £50,000) and no additional harm or Medium value with significant additional harm to the victim or others
Category 3	Medium value goods stolen (£500 to £5,000) and no additional harm or Low value with significant additional harm to the victim or others
Category 4	Low value goods stolen (up to £500) and Little or no significant additional harm to the victim or others

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1 Where the value greatly exceeds £50,00, it may be appropriate to move outside the identified range. <u>Adjustment should be made for any significant additional harm factors where very high value goods are stolen.</u>	Starting point 3 years' 6 months custody Category range 2 - 5 years' custody	Starting point 1 year 6 months custody Category range 36 weeks - 2 years' custody	Starting point 13 weeks' custody Category range High level community order –26 weeks' custody
Category 2	Starting point 2 years' custody Category range 1- 3 years' custody	Starting point 26 weeks' custody Category range 13 weeks' -36 weeks custody	Starting point Medium level community order Category range Low level community order-13 weeks custody
Category 3	Starting point 26 weeks' custody Category range 13 weeks' - 1 year 6 months custody	Starting point Medium level community order Category range Low level community order-13 weeks' custody	Starting point Band C fine Category range Band B fine – Low level community order
Category 4	Starting point High level community order Category range Medium level community order – 13 weeks' custody	Starting point Low level community order Category range Band C fine –Medium level community order	Starting point Band B fine Category range Discharge –Band C fine

Consecutive sentences for multiple offences may be appropriate- please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209, or an alcohol treatment requirement under section 212 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction. Relevant recent convictions may justify an upward adjustment including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence
- Offence committed whilst on bail

Other aggravating factors:

- Stealing goods to order
- Offence motivated by, or demonstrating hostility based on characteristics of the victim including, but not limited to, race, age, sex or disability
- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Offender motivated by intention to cause harm or out of revenge
- Attempts to conceal/dispose of evidence
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Blame wrongly placed on others

- Established evidence of community/wider impact (for issues other than prevalence)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability (where not linked to the commission of the offence)
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

Prevalence

There may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community.

It is essential that the court before taking account of prevalence:

- has supporting evidence from an external source to justify claims that a particular crime is prevalent in their area, and is causing particular harm in that community, and
- is satisfied that there is a compelling need to treat the offence more seriously than elsewhere.

Deleted: , for example, Community Impact statements, t

STEP THREE**Consider any factors which indicate a reduction, such as assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the Guilty Plea guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX**Confiscation, compensation and ancillary orders**

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Making off without payment

Theft Act 1978 (section 3)

Triable either way

Maximum: 2 years' custody

Offence range: Discharge- 9 months' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors identified in the tables below. In order to determine the category the court should assess culpability and harm.

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

CULPABILITY demonstrated by one or more of the following:

A - High culpability:

- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Sophisticated nature of offence/significant planning
- Offence involving intimidation or the use or threat of force
- Deliberately targeting victim on basis of vulnerability

B - Medium culpability:

- A significant role where offending is part of a group activity
- All other cases where characteristics for categories A or C are not present
- Some degree of planning involved

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Limited awareness or understanding of offence
-

Harm is assessed by reference to the **actual loss** that results from the offence **and any significant additional harm** suffered by the victim or others – examples of additional harm may include **but are not limited to**: a high level of inconvenience caused to the victim, emotional distress, fear/loss of confidence caused by crime, a greater impact on the victim due to the size or type of their business.

Harm	
Category 1	Goods or services obtained above £200 or goods/services up to £200 with significant additional harm to the victim or others
Category 2	Goods or services obtained up to £200 and Little or no significant additional harm to the victim or others

STEP TWO
Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Category 1 <u>Where the value greatly exceeds £200, it may be appropriate to move outside the identified range. Adjustment should be made for any significant additional harm for offences above £200</u>	Starting point 13 weeks custody Category range High level community order -9 months custody	Starting point Low level community order Category range Band C fine -High level community order	Starting point Band B fine Category range Band A fine- Low level community order
Category 2	Starting Point Medium level community order Category range Low level community order-13 weeks custody	Starting Point Band C fine Category range Band B fine – Low level community order	Starting Point Band A fine Category range Discharge –Band B fine

Consecutive sentences for multiple offences may be appropriate – please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.

The court should then consider further adjustment for any aggravating or mitigating factors. The following list is a **non exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to conceal/dispose of evidence
- Failure to comply with current orders
- Offence committed on licence
- Offences taken into consideration
- Established evidence of community/wider impact

Deleted: In particular, **relevant recent convictions** may justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence.¶
Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.¶

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

Deleted: <#>Prevalence¶
Prevalence¶
There may be exceptional local circumstances that arise which may lead a court to decide that prevalence should influence sentencing levels. The pivotal issue in such cases will be the harm caused to the community. ¶
It is essential that the court before taking into account of prevalence: ¶
<#>has supporting evidence from an external source, for example, Community Impact statements, to justify claims that a particular crime is prevalent in their area, **and** is causing particular harm in that community, **and** ¶
<#>is satisfied that there is a compelling need to treat the offence more seriously than elsewhere. ¶

... [1]

STEP THREE
Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the Guilty Plea guideline.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX

Confiscation, compensation and ancillary orders

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Abstracting electricity

Theft Act 1968 (section 13)

Triable either way

Maximum: 5 years' custody

Offence range: Discharge -1 year's custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors identified in the tables below. In order to determine the category the court should assess culpability and harm.

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

CULPABILITY demonstrated by one or more of the following:

A - High culpability:

- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation
- Sophisticated nature of offence/significant planning
- Abuse of position of power or trust or responsibility
- Commission of offence in association with or to further criminal activity

B : Medium culpability:

A significant role where offending is part of a group activity
All other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Limited awareness or understanding of offence

Harm

The level of harm is assessed by weighing up all the factors of the case to determine the level of harm caused.

Greater harm:

A significant risk of, or actual injury to persons or damage to property.

Significant volume of electricity extracted as evidenced by length of time of offending and/or advanced type of illegal process used.

Lesser harm

All other cases.

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Greater	<p>Starting point 13 weeks' custody</p> <p>Category range High level community order- 1 year's custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order – 13 weeks' custody</p>	<p>Starting point Band C fine</p> <p>Category range Band B fine –Low level community order</p>
Lesser	<p>Starting point High level community order</p> <p>Category range Medium level community order- 13 weeks' custody</p>	<p>Starting point Low level community order</p> <p>Category range Band C fine – Medium level community order</p>	<p>Starting point Band A fine</p> <p>Category range Discharge –Band C fine</p>

The court should then consider further adjustment for any aggravating or mitigating factors. The table below contains a **non exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Electricity extracted from another person's property
- Attempts to conceal/dispose of evidence
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Blame wrongly placed on others
- Established evidence of community/wider impact

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

STEP THREE

Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a

Deleted: In particular, **relevant recent convictions** may justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence.¶¶
Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.¶¶
¶¶

discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the Guilty Plea guideline.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX

Confiscation, compensation and ancillary orders

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, or a restitution order.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Going equipped for theft or burglary

Theft Act 1968 (section 25)

Triable either way

Maximum: 3 years' custody

Offence range: Discharge - 18 months' custody

STEP ONE
Determining the offence category

The court should determine the offence category with reference **only** to the factors identified in the tables below. In order to determine the category the court should assess culpability and harm.

The level of culpability is determined by weighing up all the factors of the case to determine the offender's role and the extent to which the offending was planned and the sophistication with which it was carried out. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

CULPABILITY demonstrated by one or more of the following:
A - High culpability: <ul style="list-style-type: none">▪ A leading role where offending is part of a group activity▪ Involvement of others through coercion, intimidation or exploitation▪ Significant steps taken to conceal identity and/or avoid detection▪ Sophisticated nature of offence/significant planning▪ <u>Circumstances suggest offender</u> equipped for <u>robbery or domestic burglary</u>
B - Medium culpability: <ul style="list-style-type: none">▪ A significant role where offending is part of a group activity▪ All other cases where characteristics for categories A or C are not present
C - Lesser culpability: <ul style="list-style-type: none">▪ Involved through coercion, intimidation or exploitation▪ Limited awareness or understanding of offence▪ <u>Little or no planning</u>

This guideline refers to preparatory offences where no theft has been committed. The level of harm is determined by weighing up all the factors of the case to determine the harm that would be caused if the item(s) were used to commit a substantive offence.

Harm

Greater harm:

Possession of item(s) which have the potential to facilitate an offence affecting a large number of victims

Possession of item(s) which have the potential to facilitate an offence involving high value items

Lesser harm

All other cases.

Deleted: Greater harm is indicated by the possession of any of the following, ¶
 The possession of items to facilitate:¶
 Theft which would affect a large number of people¶
 Theft which may endanger life¶
 Theft of high value items¶
 Theft of heritage assets¶
 Possession of items(s) which have the potential to facilitate a theft affecting a large number of victims, for example, items intended to be used to steal metal from railway lines.¶
 Possession of item(s) which have the potential to facilitate a theft involving high value goods or large sums of money, for example, a master key for high value motor vehicles.¶

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the starting point to reach a sentence within the appropriate category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Harm	Culpability		
	A	B	C
Greater	<p>Starting point 36 weeks custody</p> <p>Category range 26 weeks' -1 year 6 months custody</p>	<p>Starting point 13 weeks' custody</p> <p>Category range High level community order – 26 weeks custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order – High level community order</p>
Lesser	<p>Starting point 26 weeks' custody</p> <p>Category range 13 weeks custody- 36 weeks custody</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order – 13 weeks custody</p>	<p>Starting point Band C fine</p> <p>Category range Discharge – Medium level community order</p>

Consecutive sentences for multiple offences may be appropriate - please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non exhaustive** list of additional factual elements

providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors

- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration

Deleted: In particular, **relevant recent convictions** may justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence may otherwise warrant a lesser sentence.¶
Consecutive sentences for multiple offences may be appropriate - please refer to the Offences Taken Into Consideration and Totality Definitive Guideline.¶
Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence.¶

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

STEP THREE

Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a

discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the Guilty Plea guideline.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SIX

Confiscation, compensation and ancillary orders

The court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the court believes it is appropriate for it to do so.

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order.

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make any ancillary orders, such as a deprivation order.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Annex H

Sentence ranges used in the consultation

Shop theft

Harm	Culpability		
	A	B	C
<p>Category 1 Above £1,000</p> <p>Starting point based on £2,500</p>	<p>Starting point 36 weeks' custody</p> <p>Category range 26 weeks'-4 years' custody</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order - 36 weeks' custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order-13 weeks' custody</p>
<p>Category 2 £250 to £1,000</p> <p>Starting point based on £500</p>	<p>Starting point 13 weeks custody</p> <p>Category range High level community order -1 year's custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order-26 weeks custody</p>	<p>Starting point Band C fine</p> <p>Category range Band B fine – Medium level community order</p>
<p>Category 3 Up to £250</p> <p>Starting point based on £125</p>	<p>Starting point High level community order</p> <p>Category range Low level community order-13 weeks custody</p>	<p>Starting point Low level community order</p> <p>Category range Band B fine- High level community order</p>	<p>Starting point Band B fine</p> <p>Category range Discharge -Low level community order</p>

General theft

Harm	Culpability		
	A	B	C
<p>Category 1 £50,000 or more</p> <p>Starting point based on £250,000</p>	<p>Starting point 5 years' custody</p> <p>Category range 3-6 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category range 1-4 years' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range 26 weeks' –1 year 6 months' custody</p>
<p>Category 2 £5,000 to £50,000</p> <p>Starting point based on £25,000</p>	<p>Starting point 3 years' custody</p> <p>Category range 1-4 years' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range 26 weeks'-2 years 6 months' custody</p>	<p>Starting point 13 weeks' custody</p> <p>Category range Medium level community order-1</p>

			year's custody
Category 3 £500 to £5,000 Starting point based on £2,500	Starting point 36 weeks' custody Category range 13 weeks'-2 years' custody	Starting point High level community order Category range Low level community order-1 year's custody	Starting point Medium level community order Category range Band B fine -13 weeks' custody
Category 4 Up to £500 Starting point based on £250	Starting point High level community order Category range Medium level community order – 1 year's custody	Starting point Medium level community order Category range Band B fine –13 weeks' custody	Starting point Low level community order Category range Discharge -High level community order

Abstracting electricity

Harm	Culpability		
	A	B	C
Greater	Starting point 26 weeks' custody Category range High level community order -1 year's custody	Starting point 13 weeks' custody Category range Medium level community order – 26 weeks' custody	Starting point Medium level community order Category range Low level community order – High level community order
Lesser	Starting point High level community order Category range Medium level community order-13 weeks' custody	Starting point Medium level community order Category range Low level community order – High level community order	Starting point Band B fine Category range Discharge –Low level community order

Making off without payment

Harm	Culpability		
	A	B	C
<p>Category 1 £200 and over</p> <p>Starting point based on £500</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order -9 months custody</p>	<p>Starting point Low level community order</p> <p>Category range Band C fine -High level community order</p>	<p>Starting point Band B fine</p> <p>Category range Band A fine- Medium level community order</p>
<p>Category 2 Up to £200</p> <p>Starting point based on £50</p>	<p>Starting Point Medium level community order</p> <p>Category range Low level community order- 13 weeks custody</p>	<p>Starting Point Band C fine</p> <p>Category range Band A fine – High level community order</p>	<p>Starting Point Band A fine</p> <p>Category range Discharge –Band B fine</p>

Handling

Harm	Culpability		
	A	B	C
<p>Category 1 £50,000 or more</p> <p>Starting point based on £250,000</p>	<p>Starting point 6 years' custody</p> <p>Category range 3-8 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category range 1-4 years' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range 26 weeks' –2 years' custody</p>
<p>Category 2 £5,000 to £50,000</p> <p>Starting point based on £25,000</p>	<p>Starting point 3 years' custody</p> <p>Category range 1-4 years' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range 26 weeks'-2 years 6 months' custody</p>	<p>Starting point 13 weeks's custody</p> <p>Category range High level community order-1 year's custody</p>
<p>Category 3 £500 to £5,000</p> <p>Starting point</p>	<p>Starting point 36 weeks' custody</p> <p>Category range</p>	<p>Starting point High level community order</p> <p>Category range</p>	<p>Starting point Medium level community order</p> <p>Category range</p>

based on £2,500	13 weeks'-3 years' custody	Medium level community order-1 year's custody	Band C fine -13 weeks' custody
Category 4 Up to £500 Starting point based on £250	Starting point High level community order Category range Medium level community order – 1 year's custody	Starting point Medium level community order Category range Band B fine –13 weeks' custody	Starting point Low level community order Category range Discharge -high level community order

Going Equipped

Harm	Culpability		
	A	B	C
Greater	Starting point 1 year's custody Category range 26 weeks' -18 months' custody	Starting point 26 weeks' custody Category range High level community order – 1 year's custody	Starting point High level community order Category range Medium level community order – 26 weeks' custody
Lesser	Starting point 26 weeks' custody Category range High level community order-1 year's custody	Starting point High level community order Category range Medium level community order – 26 weeks' custody	Starting point Band B fine Category range Discharge – Medium level community order

Sentencing Council

Sentencing Council meeting: 19 June 2015
Paper number: SC(15)JUN06 – Youths
Lead officials: Vicky Hunt / Joanne Keatley
020 7071 5786
Lead Council member: John Saunders

1 ISSUE

1.1 To consider the second revision of the Overarching Principles ensuring the amendments are complementary to existing guidelines and consistent with the overall aims of the Council in revising this document.

2 RECOMMENDATION

2.1 This is the second time that the Council has reviewed the draft Overarching Principles. There have been a number of amendments following the Council's first discussion and feedback from the Judicial Youth Justice Committee but only the amendments that form the focus of today's discussion have been tracked (Annex A).

2.2 The Council is asked to approve the draft of the Overarching Principles, paying particular attention to the following areas:

- the approach to welfare of the young offender;
- the approach to allocation;
- the approach to assessing offence seriousness; and
- the approach to breach.

However, if there are still areas for discussion there will be, if necessary, opportunity to review the Overarching Principles draft for a third and final time between today's meeting and the scheduled sign off for consultation in October.

3 CONSIDERATION

Scope

3.1 In October's meeting the Council agreed that the guideline would be made up of the revised Overarching Principles, some offence specific guidelines and some thematic guidance, such as looked after children.

3.2 There are large amounts of research suggesting that certain vulnerable groups of young people are particularly susceptible to entering the youth justice system and having thematic guidance could enable sentencers to deal more confidently with these often complex cases.

3.3 However, other than highlighting the vulnerable groups who tend to be disproportionately represented in the youth justice system and reminding sentencers to have regard for this association when considering welfare, there is little practical guidance we can give in terms of actual sentencing for these groups as it will be dependent upon the specifics of each case.

3.4 There will be guidance regarding these vulnerable groups and the welfare consideration in the Overarching Principles and any additional information that could be feasibly incorporated would likely be observational and outside the remit of sentencing. Therefore it is proposed that thematic guidance is not produced but we ensure that the Overarching Principles contains sufficient information regarding these vulnerabilities and welfare.

Question one: Does the Council agree that thematic guidance should not be produced as part of the overall youth guideline?

Welfare

3.5 The welfare section of the revised Overarching Principles has been amended since the Council last considered it in order to make less specific reference to research evidence. The overall principles that were garnered from this research have been retained, but the language is more general. This minimises the risk of being criticised for over-simplifying or being

selective in our use of research evidence, since we have not carried out a systematic review¹ of this literature and so cannot guarantee that what we say about it is entirely comprehensive and defensible. There is also a small risk that new research is published which casts doubt on the links between offending and one or more of these vulnerabilities, and so using more circumspect language mitigates against the guideline giving misleading or out-of-date information.

Question two: Is the Council content with the revised welfare section and does it contain sufficient detail on the approach towards vulnerable groups to address the matters covered at paragraphs 3.1 – 3.4?

Allocation

3.6 In April's meeting there was some debate regarding allocation in light of Section 53 of the Criminal Justice and Courts Act 2015, which gave the youth court a further power to commit for sentence, and how this should be dealt with alongside section 51A of the Crime and Disorder Act 1998².

3.7 Further clarification has been given to this matter in the recent case of *R (DPP) v South Tyneside Youth Court*.³ Prior to the implementation of Section 53 of the Criminal Justice and Courts Act 2015 the accepted test of whether a case involving a grave crime should be sent for trial was if there was a "real prospect"⁴ of a sentence of or in excess of two years, taking "account of the prosecution case at its highest"⁵ (this latter test being necessary as the decision of venue was irrevocable).

¹ A systematic review is a fully comprehensive and rigorous review of the available evidence. The process is lengthy and detailed, usually taking many weeks if not months to complete.

² Where a child or young person appears or is brought before a magistrates' court ("the court") charged with an offence and any of the conditions mentioned in subsection (3) below is satisfied, the court shall send him forthwith to the Crown Court for trial for the offence.

(3) These conditions are—

[...]

(b) that the offence is such as mentioned in subsection (1) of section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 [...] and the court considers that if he is found guilty of the offence it ought to be possible to sentence him in pursuance of subsection (3) of that section above.

³ [2015]- EWHC 1455 (Admin)

⁴ *R (H, A and O) v Southampton Youth Court* [2004] EWHC (Admin) 2912; [2005] 2 Cr App R (S) 30

⁵ *R (W and M) v. Oldham Youth Court* [2010] EWHC 661

3.8 The decision in *R (DPP) v South Tyneside Youth Court* concludes that, in light of the new legislation, the test of taking account of the prosecution case at its highest is no longer necessary but nevertheless cases in which there is a real prospect of a sentence beyond the powers of the youth courts (without this test being applied) should be sent forthwith to the Crown Court for trial, in accordance with Section 51A of the Crime and Disorder Act. However, the decision is explicit that these cases will be exceptional and in the majority of cases, using the information apparent before the court, it will not be possible to assess whether there is a “real prospect” until the court ‘has determined the full circumstances of the offence and has a greater understanding of the position of the offender.’

3.9 This has made the interpretation of Section 53 of the Criminal Justice and Courts Act 2015 clearer and so the revised Overarching Principles have been redrafted to make our stance stronger. The Overarching Principles now read:

‘Cases should be retained in the youth court wherever possible and only sent to the Crown Court for trial **when it is clear** that if convicted a sentence beyond the powers of the youth court should be available. When considering what sentence may be appropriate the court will want to reflect the seriousness of the offence but will also have regard to the youth of the offender [...] with these considerations in mind the court may have insufficient information about the offence and the offender to determine that a sentence beyond their powers would be required at this stage of the proceedings. (p.4, paras. 2.9 – 10)

3.10 In asserting that this decision should be made only on the information available before the Court the Council’s message is now in line with the *South Tyneside* case.

Question three: Does the Council agree with the revised guidance regarding allocation?

Culpability, aggravating and mitigating factors

3.11 In April's Council meeting there was a discussion surrounding the general list of culpability, aggravating and mitigating factors (p. 9-12). It was suggested that these factors did not capture a wide enough range of offences as well as not being as youth orientated as they could be. Specific attention was asked to be given to drug offences and driving offences.

3.12 Some amendments have been made to these factors (tracked changes, p. 9-12) to attempt to capture a broader range of offences and to be more youth specific when possible. These factors so far are all fairly general and could be applied to a number of offences.

3.13 There is a difficulty in providing culpability factors that apply to motoring and drug offences in that they are very specific to these offences only. For example, in the current guideline for *Possession of a controlled drug* the seriousness is determined by what class the drugs possessed are and in the guideline for *Driving with no insurance* the culpability factors include 'Never passed test,' 'Evidence of sustained uninsured use' and 'Driving for hire or reward.' Including these very specific factors in a table designed to be more general is not desirable stylistically however it should be noted that these offences are high volume amongst young offenders (Annex B).

Question four: Does the Council wish to include offence specific factors in section four or retain a more cross cutting list of culpability, aggravating and mitigating factors?

Referral orders

3.14 Following the Legal Aid, Sentencing and Punishment of Offenders Act 2012 there is no limit to the number of referral orders a young offender can receive or the amount of previous convictions a young offender receiving a referral order can have and at April's Council meeting it was suggested we may give guidance on when a referral order would no longer be appropriate for a young offender.

3.15 There is no guidance published by the Youth Justice Board and no commonly accepted practice with regards to this provision and as such sentencers have up until now used their discretion to decide whether a referral order or another sentence is appropriate. As there is no 'rule' in legislation and the power to give these referral orders is so open we do not propose suggesting a numerical figure but have instead incorporated the following, 'Before a court imposes a further referral order they must be satisfied that the sentence is commensurate with the seriousness of the offence and that the imposition of such a sentence would prevent re-offending.' (p.16, para. 5.17)

Question five: Is the Council content with the guidance given regarding repeat referral orders?

Persistent offenders

3.16 The term persistent offender is not defined in statute but it has been considered at the Court of Appeal, with a 2008 judgment asserting that a young offender who has committed one previous offence cannot reasonably be classed as a "persistent offender" and a young offender who has committed two or more previous offences should not be assumed to be one.⁶ This has now been incorporated into the guidance to give more assistance to sentencers when assessing whether a youth can be considered a persistent offender or not (p.14, para 5.5).

Question six: Does the Council agree to the inclusion of this extra information regarding the assessment of persistent offenders?

Breaches

3.17 In April's meeting the level of detail that should be included in the Overarching Principles was discussed. The overall aim of revising this

⁶ R V M [2008] EWCA Crim 3329

guideline was to make it a functional useful tool that sentencers can use as a standalone document, minimising the reliance on other guidance. However, this aim can sometimes be contradictory; to be a standalone document there needs to be a high level of detail but to be functional it needs to be relatively concise and streamlined.

3.18 The extra detail that could be usefully included was mainly involving breaches of an order or the commission of further offences whilst on an order. The existing Sentencing Guidelines Council guidelines only gave guidance on the breach of a youth rehabilitation order but this was perhaps disjointed and offering such guidance for all sentences would allow for completeness. However, it would make the guideline substantially more detailed and greater in length.

3.19 In the revised Overarching Principles the detailed section on breach has been included as an appendix (p.23), with a reference to this in the relevant section of the main body (p.14, para. 5.9). This does limit the amount of dense information provided in the main body of the guideline but it could be felt that this information would be more suitably presented if alongside the available sentences in section five.

Question seven: Does the Council wish to retain Appendix one or to incorporate the guidance into the main body of the guideline?

4 IMPACT

4.1 None at this stage.

5 RISK

5.1 The vast majority of youth cases are heard in the youth court. It is difficult to gather evidence and information about current sentencing practice in order to inform recommendations and fully assess the impact of the guideline.

5.2 There are strongly held and sometimes conflicting ideas among those who work in sentencing young people as to the best way to approach sentencing guidelines for youths. The Council will need to be able to give clear and cogent reasons for the choices it makes.

Section one: General approach

Statutory provisions

- 1.1 When sentencing an offender aged under 18, a court must¹ have regard to:
 - The principal aim of the youth justice system (to prevent offending by children and young people);² and,
 - The welfare of the offender³
- 1.2 Any restriction on liberty must be commensurate with the seriousness of the offence and care must be taken to ensure that a more severe sentence than the offence merits is not imposed because of a risk of re-offending. In considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused.⁴

Sentencing principles

- 1.3 The approach to sentencing should be individualistic and offender focused, as opposed to offence focused. While the seriousness of the offence will be the starting point the approach to sentencing for an offender under 18 should be focussed on the rehabilitation of the offender where possible. A court should also consider the effect the sentence is likely to have on the young person as well as any underlying factors contributing to the offending behaviour.
- 1.4 It is important to avoid “criminalising” young people unnecessarily; the primary purpose of the youth justice system is to foster a sense of responsibility for others and promote re-integration into society rather than to punish.
- 1.5 Young people have not reached full maturity and as such may not fully appreciate the effect their actions can have on other people. They may not be capable of empathising with the distress and pain they cause to the victims of their crimes. Young people are also more likely to be susceptible to peer pressure and other external influences. It is important to consider the extent to which the offender has been acting on an impulsive basis and the offender's conduct has been affected by inexperience, emotional volatility or negative influences.

¹ This section does not apply when imposing a mandatory life sentence, when imposing a statutory minimum custodial sentence, when imposing detention for life under the dangerous offender provisions or when making certain orders under the Mental Health Act 1983

² Crime and Disorder Act 1998, s.37(1)

³ Children and Young Persons Act 1933, s.44(1)

⁴ Criminal Justice Act 2003, s.143(1)

- 1.6 For these reasons young people are likely to benefit from being given an opportunity to address their behaviour and may be more receptive to changing their conduct. They should, if possible, be given the opportunity to learn from their mistakes without undue penalisation or stigma, especially as a court sanction might have a significant effect on the prospects and opportunities of the young person and hinder their re-integration into society.
- 1.7 Offending by a young person is often a phase which passes fairly rapidly and so the sentence should not result in the alienation of the young person from society if that can be achieved.
- 1.8 The impact of punishment is likely to be felt more heavily by a young person in comparison to an adult in the sense that any sentence will seem longer due to their relative age.

Welfare

- 1.9 The statutory obligation to have regard to the welfare of a young offender includes the obligation to secure proper provision for education and training, where appropriate to remove from undesirable surroundings and the need to choose the best option for the young person taking account of the circumstances of the offence.⁵
- 1.10 **In having regard to the “welfare” of the young person, a court should ensure that it is alert to:**
- **the high incidence of mental health problems amongst young people in the criminal justice system;**
 - **the high incidence of those with leaning difficulties or learning disabilities amongst young people in the criminal justice system;**
 - **the effect that speech and language difficulties might have on the ability of the young person (or any adult with them) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction;**
 - **the extent to which young people anticipate that they will be discriminated against by those in authority and the effect that it has on the way that they conduct themselves during court proceedings;**
 - **the vulnerability of young people to self harm, particularly within a custodial environment;**
 - **the extent to which changes taking place during adolescence can lead to experimentation;**
 - **the effect on young people of experiences of loss and neglect and/or abuse.**

⁵ *ibid.*

- 1.11 Additional factors regularly present in the background of young offenders include deprived homes, poor employment records, low educational attainment, early experience of offending by other family members and the misuse of drugs and/or alcohol. There is also evidence that those young people who are “looked after” have been more at risk of being drawn into the criminal justice system than other young people acting *in similar ways*.⁶
- 1.12 The court should always seek to ensure that it has access to information about how best to identify and respond to these factors and, where necessary, that a proper assessment has taken place in order to enable the most appropriate sentence to be imposed.
- 1.13 The requirement to have regard to the welfare of a young person is subject to the obligation to impose only those restrictions on liberty that are commensurate with the seriousness of the offence; accordingly, a court should not impose greater restrictions because of other factors in the young person’s life.
- 1.14 When considering a young offender who may be particularly vulnerable sentencers should consider which available disposal is best placed to support the young offender and which disposals could potentially exacerbate any underlying issues. This is particularly important when considering custodial sentences as there are concerns about the effect on vulnerable young offenders of being in closed conditions, with risks found of self harm and suicide.
- 1.15 The factors should also be considered in light of the offending behaviour itself. Although they do not alone cause offending behaviour – there are many young people who have experienced these circumstances but do not commit crime – there is a correlation and any response to criminal activity amongst young people will need to recognise the presence of such factors in order to be effective.

This does not undermine the fact that the sentence must be commensurate to the seriousness of the offence.

Section two: Allocation

There is a clear principle that cases involving young offenders should be tried and sentenced in the youth court wherever possible. This section covers the exceptions to this principle.

- 2.1 A youth must always appear in the Crown Court for trial if:
- charged with homicide;

⁶ see, for example, *Care experience and criminalisation* The Adolescent and Childcare Trust, September 2008 www.tactcare.org.uk

- charged with a firearms offence subject to a mandatory minimum sentence of three years (and is over 16 years of age at the time of the offence); or
- notice has been given to the court (under section 51B or 51C of the Crime and Disorder Act 1998) in a serious or complex fraud or child case

Dangerousness

- 2.2 A case should be sent to the Crown Court **for trial** if the offence charged is a specified offence **and** if convicted an extended sentence would likely be imposed.
- 2.3 An extended sentence can only be imposed if there is a significant risk to members of the public of serious harm occasioned by the commission of further specified offences and a custodial term of at least four years would be specified. It is unlikely that the court will be able to decide if there is a significant risk of serious harm by the commission of further offences without a pre-sentence report.
- 2.4 With non serious specified offences it will often be inappropriate to assess whether this criterion is met before trial and so these cases will generally be retained in the youth court. If, following conviction, the dangerousness criteria is met then the defendant should be committed **for sentence**.
- 2.5 The assessment of dangerousness should take into account all the available information relating to the circumstances of the offence and may also take into account any information regarding any previous patterns of behaviour related to this offence and any other relevant information relating to the offender.

Grave crimes

- 2.6 A young person may be sentenced by the Crown Court to long term detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 if convicted of a “grave crime” and neither a YRO nor a detention and training order is appropriate.
- 2.7 An offence comes within section 91 where:
- It is punishable with 14 years imprisonment or more for an adult (but is not a sentence fixed by law);
 - It is an offence of sexual assault, child sex offences committed by a child or young person, sexual activity with a child family member or inciting a child family member to engage in sexual activity; or
 - It is one of a number of specified offences in relation to firearms, ammunition and weapons which are subject to a minimum term but in

respect of which a court has found exceptional circumstances justifying a lesser sentence.

- 2.8 The court should follow the plea before venue procedure; if a guilty plea is indicated and a sentence beyond the power of the youth court (i.e. a sentence beyond two years' custody) is likely to be required then the case should be committed to the Crown Court for **sentence**.
- 2.9 If a not guilty plea is indicated or no plea is indicated then the court must make a decision whether to proceed to summary trial or send to the Crown Court for **trial**. Cases should be retained in the youth court wherever possible and only sent to the Crown Court for trial **when it is clear** that if convicted a sentence beyond the powers of the youth court should be available.
- 2.10 When considering what sentence may be appropriate the court will want to reflect the seriousness of the offence but will also have regard to the youth of the offender (both in terms of maturity and chronological age). As discussed above, the approach to sentencing should be individualistic. With these considerations in mind the court may have insufficient information about the offence and the offender to determine that a sentence beyond their powers would be required at this stage of the proceedings.
- 2.11 However if, following a trial in the youth court, it transpires that the offending was more serious than it first appeared, or the court learns more about the offender, indicating that there is a higher risk of re-offending, then the case can be committed to the Crown Court for **sentence** so that a sentence beyond the powers of the youth court can be imposed.

Where the court decides that the case is suitable to be dealt with in the youth court it must warn the young person that all available sentencing options remain open and, if convicted, the young offender may be committed to the Crown Court for sentence.

A young person aged 10 or 11 should only be sent for trial or committed for sentence to the Crown Court when charged with or convicted of an offence of such gravity that, despite the normal prohibition on a custodial sentence for a person of that age, a sentence exceeding two years is a realistic possibility.⁷

A young person aged 12-17 (for which a detention and training order could be imposed) should be sent for trial or committed for sentence to the Crown Court only when charged with or convicted of an offence of such gravity that a sentence substantially beyond the two year maximum for a detention and training order is a realistic possibility.⁸

⁷ *R(D) v Manchester City Youth Court* [2001] EWHC Admin 860

⁸ *C&D v Sheffield Youth Court* [2003] EWHC Admin 35 confirming the relevance of undisputed mitigation

Charged alongside an adult

- 2.11 The plea before venue procedure should be followed.
- 2.12 A young person can be sent to the Crown Court for trial when charged jointly with an adult for an indictable offence and the adult is sent for trial. The young person should only be sent to the Crown Court for trial if it is in the interests of justice to do so.
- 2.13 Points to consider under the interests of justice test are:
- whether separate trials can take place without causing inconvenience to witnesses or justice as a whole;
 - the young age of the offender, particularly where the age gap between the adult and youth is substantial;
 - the immaturity of the youth;
 - the relative culpability of the youth compared with the adult and whether or not the role played by the youth was minor; and
 - any lack of previous convictions on the part of the youth.

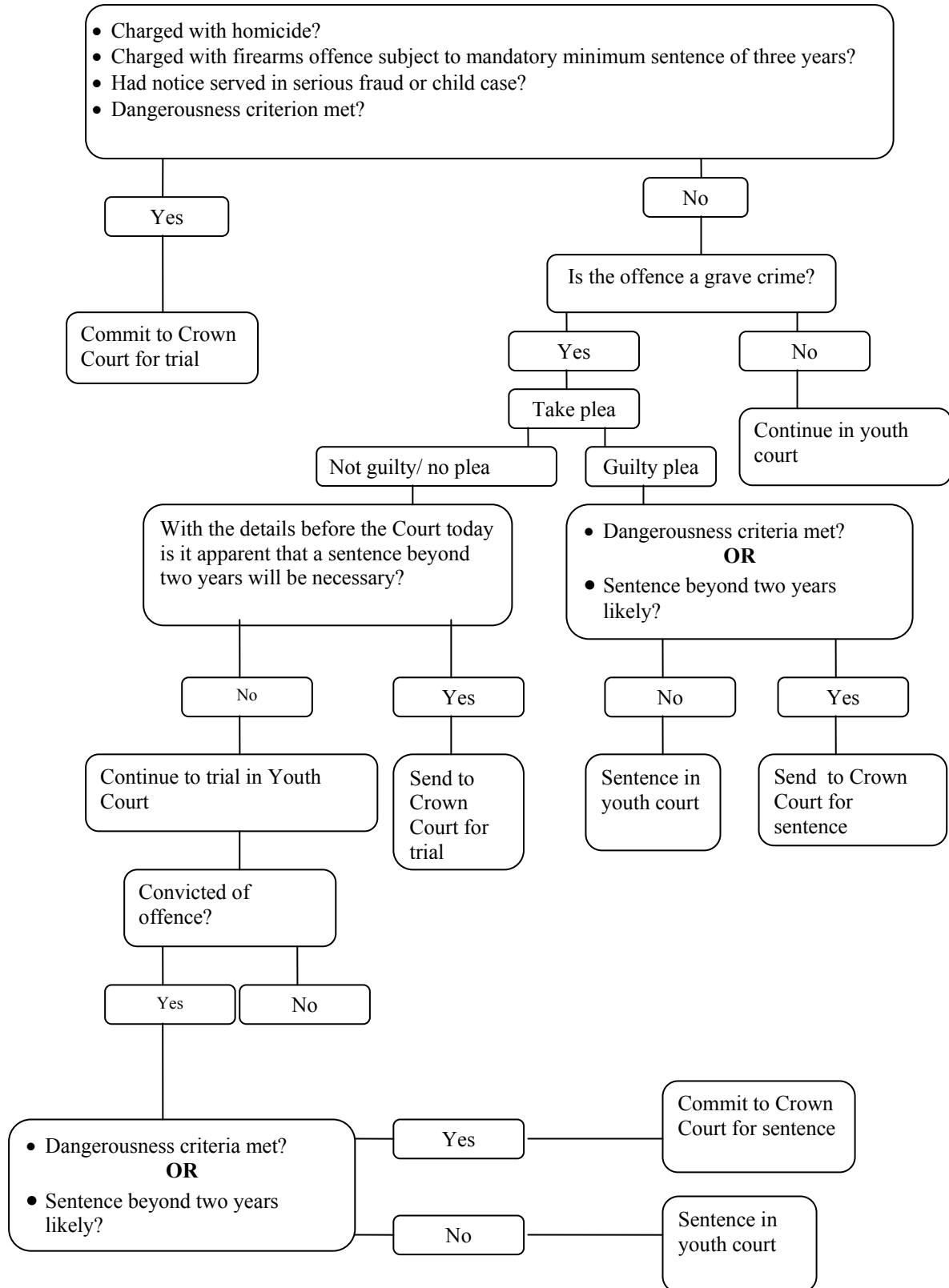
Remittal from the Crown Court

- 2.14 If a young person is convicted before the Crown Court of an offence other than homicide the court must remit the case to the youth court, unless it would be undesirable to do so⁹. In considering whether remittal is undesirable a court should balance the need for expertise in the sentencing of young offenders with the benefits of the sentence being imposed by the court which had determined guilt.
- 2.15 Particular attention should be given to young offenders who are appearing before the Crown Court only because they have been charged with an adult offender; referral orders are generally not available in the Crown Court but may be the most appropriate sentence.

Allocation Chart

⁹ Powers of Criminal Courts (Sentencing) Act 2008 s.8

Draft Overarching Principles – Youth- Annex A



Section three: Parental responsibilities

- 3.1 For any young person aged under 16 appearing before court there is a statutory requirement that parents/guardians attend during all stages of proceedings, unless the court is satisfied that this would be unreasonable having regard to the circumstances of the case.¹⁰ The court may also enforce this requirement for a young person aged 16 and above if they deem it desirable to do so.
- 3.2 Although this requirement can cause a delay in the case before the court it is important it is adhered to. If a court does find exception to proceed in the absence of a responsible adult then extra care must be taken to ensure the outcomes are clearly communicated to and understood by the young person.
- 3.3 In addition to this responsibility there are also orders that can be imposed on parents. If the young offender is aged under 16 then the court has a duty to make a **parental bind over** or impose a **parenting order**, if it would be desirable in the interest of preventing the commission of further offences.¹¹ There is a discretionary power to make these orders where the offender is aged 16 or 17. If the court chooses not to impose a parental bind over or parenting order they must state their reasons for not doing so in open court. In most circumstances a parenting order is likely to be more appropriate than a parental bind over.

A court cannot make a bind over alongside a referral order.

¹⁰ Children and Young Persons Act 1933 (s)34A

¹¹ Powers of Criminal Courts (Sentencing Act) 2000 s.150 & Crime and Disorder Act 1998, s.8(6)

Section four: Determining the sentence

4.1 In determining the sentence, the key elements to consider are:

- the seriousness of the offence;
- the age of the offender (chronological and emotional);
- the likelihood of further offences being committed; and
- the extent of harm likely to result from those further offences.

The approach should always be individualistic.

The seriousness of the offence

4.2 The seriousness of the offence is the starting point for determining the appropriate sentence. In order to determine the category the court should assess **culpability** and **harm**. The sentence and any restriction on liberty must be commensurate with the seriousness of the offence.

4.3 The approach to sentencing young offenders should always be individualistic and the court should always have in mind the principal aims of the youth justice system. In appropriate cases, if youth specific guidelines are not available, sentencers may find it useful to refer to the tables below to determine the level of seriousness.

4.4 There is an expectation that in general a young person will be dealt with less severely than an adult offender although this distinction diminishes as the offender approaches age 18, subject to an assessment of maturity and criminal sophistication. In part, this is because young people are unlikely to have the same experience and capacity as an adult to realise the effect of their actions on other people or to appreciate the pain and distress caused and because a young person is likely to be less able to resist temptation, especially where peer pressure is exerted.

STEP ONE

CULPABILITY

4.5 The table below contains a **non-exhaustive** list of factors that could contribute to the various levels of culpability. As this table is not for a specific offence there will be some factors that are not relevant to every offence. Likewise some offences will have other pertinent factors that should be considered, that are not listed below.

If there are youth guidelines available for the specific offence being sentenced then these should always be referred to.

If any of these factors are directly inherent within the committed offence then they should not be taken into account when considering the relative seriousness.

A - High culpability

- Use of a weapon to inflict violence
- Production of a bladed article or firearm or imitation firearm to threaten violence
- Use of very significant force in the commission of the offence
- Sophisticated organised nature of the offence/significant planning
- A leading role where offending is part of a group activity
- Serious harassment, alarm or distress was caused or intended
- Deliberately causing more harm than is necessary for commission of the offence
- Involvement of others through peer pressure or bullying
- History of antagonising or bullying the victim
- Offence is committed in a location where vulnerable people are or are likely to be present, such as a school
- Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))

B - Medium culpability

- Threats of any weapon (but which is not produced)
- Some planning
- Some harassment, alarm or distress was caused or intended
- A significant role where offending is part of a group activity
- Use of some force in the commission of the offence

C - Lesser culpability

- Performed limited function under direction
- Involved through bullying, coercion, intimidation or exploitation
- Threat or use of minimal force
- Very little or no planning
- No harassment, alarm or distress was caused or intended
- A greater degree of provocation than normally expected
- Excessive self defence
- Limited understanding of effect on victim

<ul style="list-style-type: none"> • Mental disorder or learning disability when linked to the commission of the offence • <u>Not motivated by personal gain</u> • <u>Offence motivated by particular financial hardship and/or neglect</u>
--

HARM

4.6 As with culpability, the table below contains a **non-exhaustive** list of factors that could contribute to the various levels of harm. As this table is not for a specific offence there will be some factors that are not relevant to every offence. Likewise some offences will have other pertinent factors that should be considered, that are not listed below.

4.7 If there are youth guidelines available for the specific offence being sentenced then these should always be referred to.

If any of these factors are directly inherent within the committed offence then they should not be taken into account when considering the relative seriousness.

Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused to the victim • A significant degree of loss intended or caused, whether economic, personal or sentimental • Soiling, ransacking or vandalism of property • Serious detrimental effect on business (when a business is the target of the offence or is the premise on which the offence takes place)
Category 2	<ul style="list-style-type: none"> • Some physical harm caused to the victim • Some psychological harm caused to the victim above the level of harm involved in the offence • Some detrimental effect on business (when a business is the target of the offence or is the premise on which the offence takes place) • A medium to high degree of loss intended or caused, whether economic, personal or sentimental • Damage caused to property
Category 3	<ul style="list-style-type: none"> • Little or no harm caused to the victim • Little or no detrimental effect on business (when a business is the target of the offence or is the premise on which the offence takes place) • Little or no loss intended or caused

STEP TWO

AGGRAVATING AND MITIGATING

4.8 Once the court has determined the seriousness of the offence they must then consider any additional factors, not identified at step one, which may aggravate or mitigate the offence.

4.9 The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any of these, or other relevant factors, will affect the level of sentence issued.

If any of these factors are directly inherent in the committed offence then they should not be taken into account when considering the relative seriousness.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability
- Restraint, detention or additional degradation of the victim
- Prolonged nature of attack
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Failure to respond to warnings about behaviour
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Commission of offence whilst under the influence of alcohol or drugs
- Abuse of position of trust
- Location of the offence (when not considered at step one)
- Timing of the offence
- Offence committed against those working in the public sector or providing a service to the public
- Filming of the offence

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Unstable upbringing including but not limited to numerous care placements, exposure to drug and alcohol abuse, lack of attendance at school, lack of familial presence or support, victim of neglect and/or abuse
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Behaviour stems from sexual immaturity or confusion*

*When sentencing a young offender whose offence involves sexual activity but there is evidence that this was fully consensual activity a court will need to be aware that a desire to explore gender identity or sexual orientation may result in offending behaviour. These factors may not be appropriate, depending upon the seriousness of the offence.

Age of the offender

- 4.10 There is a statutory presumption that no young person under the age of 10 can be guilty of an offence¹².
- 4.11 The youth of the offender is widely recognised as requiring a different approach from that which would be adopted in relation to an adult. Even within the category of “youth”, the response to an offence is likely to be very different depending on whether the offender is at the lower end of the age bracket, in the middle or towards the top end. The emotional age and maturity of the offender should be considered and in many instances this is at least as important as the chronological age.
- 4.12 It is important to consider whether the young offender lacks the maturity to appreciate fully the consequences of their conduct, the extent to which the offender has been acting on an impulsive basis and whether their conduct has been affected by inexperience, emotional volatility or negative influences.

¹² Children and Young Persons Act 1933 (s)50

Section five: Available sentences

Crossing a significant age threshold between commission of offence and sentence

- 5.1 There will be occasion when an increase in the age of an offender will result in the maximum sentence on the date of *conviction* being greater than that available on the date on which the offence was *committed* (primarily turning 12, 15 or 18 years old).
- 5.2 In such situations the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed. This includes offenders who attain the age of 18 between the commission and the conviction of the offence¹³ but when this happens the purpose of sentencing adult offenders¹⁴ has to be taken into account, which is:
- the punishment of offenders;
 - the reduction of crime (including its reduction by deterrence);
 - the reform and rehabilitation of offenders;
 - the protection of the public; and
 - the making of reparation by offenders to persons affected by their offences

Persistent offenders

- 5.3 Some sentences can only be imposed on young offenders if they are deemed a “persistent offender.” A youth **must** be classed as such for one of the following to be imposed:
- a YRO with intensive supervision and surveillance when aged under 15;
 - a youth rehabilitation with fostering when aged under 15; and
 - a detention and training order when aged 12- 14.
- 5.4 The term “persistent offender” is not defined in statute but has been considered by the Court of Appeal. In general it is expected that the young offender would have had previous contact with authority as a result of criminal behaviour. This could include previous convictions and disposals which involve an admission or finding of guilt such as

¹³ *R v Ghafoor* [2002] EWCA Crim 1857, [2003] 1 Cr App R (S) 428

¹⁴ Criminal Justice Act 2003 (s) 142

reprimands, final warnings, restorative justice disposals and conditional cautions.

5.5 A young offender who has committed one previous offence cannot reasonably be classed as a “persistent offender”, and a young offender who has committed two or more previous offences should not be assumed to be one. To determine if the behaviour is persistent the nature of the previous offences and the lapse of time between the offences would need to be considered.¹⁵

5.6 If convicted three times in the past 12 months for offences of a comparable nature (or been made the subject of orders as detailed above in relation to an imprisonable offence) then the court could certainly justify classing them as a “persistent offender.”

5.7 Even where a young person is found to be a persistent offender, a court is not obliged to impose one of the optional sentences. The approach should still be individualistic and all other considerations still apply. Custodial sentences must be a last resort for all young offenders and there is an expectation they will be particularly rare for offenders aged 14 or less.

Sentences available by age:

Sentence	Age of youth		
	10-12	12-14	15-17
Absolute or conditional discharge or reparation order	✓	✓	✓
Financial order	✓	✓	✓
Referral order	✓	✓	✓
YRO	✓	✓	✓
Detention and training order	✗	✓ For ‘persistent offenders’ only	✓
s91 PCC(S) Act detention (grave crime)	✓	✓	✓
Extended sentence of detention*	✓	✓	✓

¹⁵ R V M [2008] EWCA Crim 3329

*If convicted of a specified violent or sexual offence and the court is of the opinion that there is a significant risk to the public of serious harm caused by the child or young person committing further specified offences.

5.8 Some sentences have longer rehabilitation periods than others and so could have a longer term impact on the future of young offenders; this should be taken into account when considering if the sentence is commensurate to the seriousness of the offence. For example absolute or conditional discharges are not deemed to be treated as convictions other than for the purposes of criminal proceedings¹⁶ and referral orders are spent on the last day on which the order is to have effect.¹⁷

Breaches and the commission of further offences during the period of an order

5.9 If a young offender is found guilty of breaching an order, or commits a further offence during the period of an order, the court will have various options available to them, depending on the nature of the order (Appendix 1). The primary aim of the court should be to encourage compliance and seek to support the rehabilitation of the offender.

Absolute or conditional discharge and reparation orders

5.10 An absolute discharge is appropriate when, despite a finding of guilt, the offence is not serious enough to warrant punishment.

5.11 A conditional discharge is appropriate when, despite a finding of guilt, the offence is not serious enough to warrant an immediate punishment. The fixed period of conditional discharge must not exceed three years.

5.12 A reparation order can require a young offender to make reparation to the victim of the offence, where a victim wishes it, or to the community as a whole. Before making an order the court must consider a written report from a relevant authority, e.g. a youth offending team, and the order must be commensurate with the seriousness of the offence.

5.13 If the court has the power to make a reparation order but choose not to do so, they must give their reasons.

Financial order

5.13 A court may impose a fine for any offence (unless the criteria for a mandatory referral order are met). In accordance with statutory requirements, where financial orders are being considered, priority must be given to compensation orders and, when an order for costs is to be made alongside a fine, the amount of the cost must not exceed

¹⁶ PCCSA 2000 s14 (1)

¹⁷ LASPO 2012 s139

the amount of the fine. If the offender is under 16 then the court has a duty to order parents or guardians to pay the fine; if the offender is 16 or over this duty is discretionary.

- 5.14 It is important that travel costs to school, college or apprenticeships and lunch expenses are taken into account when assessing the income of a young offender.

Referral orders

5.15 A referral order is the mandatory sentence in a youth court or magistrates' court for most first time offenders who have pleaded guilty to an imprisonable offence. Exceptions are for offences where a sentence is fixed by law or if the court deems a custodial sentence, an absolute or conditional discharge or a hospital order to be more appropriate.

5.16 A discretionary referral order can also be given if the above conditions are not met but the offender has pleaded guilty to at least one connected offence. If the offender does not plead guilty to any offence then a referral order is not available to the court.

5.17 There is no restriction to the number of times a young offender can be sentenced to a referral order or the number of referral orders that can be imposed or the number of previous convictions a young offender receiving a referral order can have. However before a court imposes a further referral order they must be satisfied that the sentence is commensurate with the seriousness of the offence and that the imposition of such a sentence would prevent reoffending.

5.18 The court determines the length of the order but a Youth Offender Panel determines the requirements of the order.

Offence seriousness	Suggested length of referral order
Low	<ul style="list-style-type: none"> • 3-5 months
Medium	<ul style="list-style-type: none"> • 5-7 months
High	<ul style="list-style-type: none"> • 7-9 months • 10-12 months

A court should be prepared to use the whole range of periods; orders of 10-12 months should be made only for the most serious offences.

Youth Rehabilitation Orders (YRO)

5.19 A YRO is a community sentence within which a court may include one or more requirements designed to provide for punishment, protection of the public, reducing re-offending and reparation.

5.20 When imposing a YRO, the court must fix a period within which the requirements of the order are to be completed; this must not be more than three years from the date on which the order comes into effect.

5.21 The offence must be “serious enough” in order to impose a YRO, but it does not need to be an imprisonable offence. Even if an offence is deemed “serious enough” the court is not obliged to make a YRO.

5.22 The requirements included within the order (and the subsequent restriction on liberty) and the length of the order must be proportionate to the seriousness of the offence and suitable for the offender.

5.23 The available requirements within a YRO are:

- activity requirement;
- supervision requirement;
- unpaid work requirement;*
- programme requirement;
- attendance centre requirement;
- prohibited activity requirement;
- curfew requirement;
- exclusion requirement;
- electronic monitoring requirement
- residence requirement;*
- local authority accommodation requirement;
- fostering requirement;**
- mental health requirement;
- drug treatment requirement (with or without drug testing);
- intoxicating substance requirement;
- education requirement; and
- intensive supervision and surveillance requirement**

*These requirements are only available for offenders aged 16 or 17 years old on the date of conviction

**These requirements can only be imposed if the offence is an imprisonable one and for offenders aged under 15 they must be deemed a “persistent offender”

5.24 When determining the nature and extent of the requirements the court should primarily consider the likelihood of the young person re-offending and the risk of the young person causing serious harm.

5.25 The Youth Offending Team will assess this as part of their report and recommend an intervention level to the court for consideration.

	Offender profile	Requirements of order
Low level	Low likelihood of re-offending and a low risk of serious harm	Primarily seek to repair harm cause
Medium level	Medium likelihood of re-	Seek to repair harm

	offending or a medium risk of serious harm	caused and to enable help or change
High level	High likelihood of re-offending or a very high risk of serious harm	Seek to ensure the control of the young person

5.26 If a young person is assessed as presenting a high risk of re-offending or of causing serious harm but the offence that was committed is of relatively low seriousness then the appropriate requirements are likely to be primarily rehabilitative or for the protection of the public.

5.27 Likewise if a young person is assessed as presenting a low risk of re-offending or of causing serious harm but the offence was of relatively high seriousness then the appropriate requirements are likely to be primarily punitive.

Orders with intensive supervision and surveillance or with fostering

5.28 An intensive supervision and surveillance requirement and a fostering requirement are both intended to be a community alternative to custody.

5.29 The offence must be punishable by imprisonment, cross the custody threshold and a custodial sentence must be merited before one of these requirements can be imposed.

5.30 An order of this nature may only be imposed on an offender aged below 15 (at the time of conviction) if they are a “persistent offender”.

With intensive supervision and surveillance

5.31 An order of this nature must include an extended activity requirement of between 90 to 180 days, a supervision requirement and a curfew requirement. Where appropriate, a YRO with intensive supervision and surveillance may also include additional requirements (other than a fostering requirement), although the order as a whole must comply with the obligation that the requirements must be those most suitable for the offender and that any restrictions on liberty must be commensurate with the seriousness of the offence.

5.32 When imposing such an order, a court must ensure that the requirements are not so onerous as to make the likelihood of breach almost inevitable.

With fostering

5.33 Where a fostering requirement is included within a YRO, it will require the offender to reside with a local authority foster parent for a specified period that must not exceed 12 months.

- 5.34 In order to impose this requirement the court must be satisfied that a significant factor in the offence was the circumstances in which the young person was living and that the imposition of a fostering requirement would assist in the rehabilitation of the young person. It is likely that other rights will be engaged (such as those under Article 8 of the European Convention on Human Rights¹⁸) and any interference with such rights must be proportionate.
- 5.35 The court must consult the young person’s parent or guardian (unless impracticable) and the local authority before including this requirement. It can only be included if the young person was legally represented in court when consideration was being given to imposing such a requirement unless the offender, having had the opportunity to do so, did not apply for representation or that right was withdrawn because of the offender’s conduct. **This requirement may be included only where the court has been notified that arrangements are available in the area of the relevant authority.**
- 5.36 A YRO with a fostering requirement must include a supervision requirement and can include other requirements when appropriate (except an intensive supervision and surveillance requirement). The order as a whole must comply with the obligation that the requirements must be those most suitable for the offender and that any restrictions on liberty must be commensurate with the seriousness of that offence.
- 5.37 It is unlikely that the statutory criteria will be met in many cases; where they are met and the court is considering making an order, care should be taken to ensure that there is a well developed plan for the care and support of the young person throughout the period of the order and following conclusion of the order. A court will need to be provided with sufficient information, including proposals for education and training during the order and plans for the offender on completion of the order.

A custodial sentence should always be used as a last resort.

Custodial Sentences

The available custodial sentences for a youth are:

Youth Court	Crown Court
<ul style="list-style-type: none"> • Detention and training order for the following periods: <ul style="list-style-type: none"> ○ 4 months; ○ 6 months; ○ 8 months; ○ 10 months; ○ 12 months; 	<ul style="list-style-type: none"> • Detention and training order (the same periods are available as in the youth court) • Long term detention (under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000) • Extended sentence of detention or

¹⁸ Right to respect for family and private life

<ul style="list-style-type: none"> ○ 18 months; or ○ 24 months 	<p>detention for life (if dangerousness criteria is met)</p> <ul style="list-style-type: none"> ● Detention at Her Majesty’s pleasure (for offences of murder)
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5.38 Under both domestic law and international convention, a custodial sentence must only be imposed as a “**measure of last resort**”; statute provides that such a sentence may be imposed only where an offence is “so serious that neither a community sentence nor a fine alone can be justified.”¹⁹ If a custodial sentence is imposed, a court must state its reasons for being satisfied that the offence is so serious that no other sanction would be appropriate and, in particular, why a YRO with intensive supervision and surveillance could not be justified.²⁰

5.39 The term of a custodial sentence must be the shortest commensurate with the seriousness of the offence; any case that warrants a detention and training order of less than four months must result in a non-custodial sentence. The court should take account of the circumstances, age and maturity of the offender.

5.40 In determining whether an offence has crossed the custody threshold a court will need to assess the seriousness of the offence, in particular the level of harm that was caused, or was likely to have been caused, by the offence. The risk of serious harm in the future must also be assessed. The pre-sentence report will assess this criterion and must be considered before a custodial sentence is imposed. A custodial sentence is most likely to be unavoidable where it is necessary to protect the public from serious harm.

The court must always bear in mind that the principal aim of any sentence is **to prevent reoffending**²¹.

5.41 The welfare of the offender must be considered when imposing any sentence but is especially important when a custodial sentence is being considered. A custodial sentence could have a significant effect on the prospects and opportunities of the young person and a young person is likely to be more susceptible than an adult to the contaminating influences that can be expected within a custodial setting. There is a high reconviction rate for young people that have had custodial sentences and there have been many studies profiling the effect on vulnerable young people, particularly the risk of self harm and suicide.

Detention and training order

¹⁹ Criminal Justice Act 2003, s.152(2)

²⁰ Criminal Justice Act 2003, s.174(4B) as inserted by Criminal Justice and Immigration Act 2008, sched. 4, para.80(3)

²¹ Crime and Disorder Act 1998, s.37

- 5.42 A court can only impose a detention and training order if the offender is legally represented unless they have refused to apply for legal aid or it has been withdrawn as a result of their conduct.
- 5.43 If it is determined that the offence is of such seriousness that a custodial sentence is unavoidable then the length of this sentence must be considered on an individual basis. The court must take into account the chronological age of the offender, as well as their maturity and other relevant factors, such as their mental health or learning disabilities.
- 5.44 A detention and training order cannot be imposed on any offender under the age of 12 at the time of conviction and is only applicable to offenders aged 12-14 if they are deemed to be a “persistent offender.”
- 5.45 A detention and training order can be made only for the periods prescribed – 4, 6, 8, 10, 12, 18 or 24 months. Any time spent on remand in custody or on bail subject to a qualifying curfew condition should be taken into account when calculating the length of the order. The accepted approach is to double the time spent on remand before deciding the appropriate period of detention, in order to ensure that the regime is in line with that applied to adult offenders.²² After doubling the time spent on remand the court should then adopt the nearest prescribed period available for a detention and training order.

Long term detention

- 5.46 A young person may be sentenced by the Crown Court to long term detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 if convicted of a “grave crime” and neither a community order nor a detention and training order is suitable.
- 5.47 These cases may be sent for trial to the Crown Court or committed for sentence only²³ (see section two for further information).
- 5.48 It is possible that, following a guilty plea a two year detention order may be appropriate, as opposed to a sentence of section 91 detention, to account for the discount.²⁴

Dangerous offenders

- 5.49 If a young person is found to be a dangerous offender they can be sentenced to **extended detention** or **detention for life**.
- 5.50 A sentence of extended detention may be imposed only where the appropriate custodial term would be four years or more. The extension

²² *R V Eagles* [2006] EWCA Crim 2368

²³ This is not currently the case but will change when Section 53 of the Criminal Justice and Courts Act 2015 is implemented

²⁴ *Fieldhouse and Watts* [2001] 1 Cr App R (S) 104)

period must not exceed 5 years in the case of a specified violent offence and 8 years in the case of a specified sexual offence. The term of the extended sentence of detention must not exceed the maximum term of imprisonment for an adult offender convicted of that offence.

5.51 A sentence of detention for life should be used as a last resort when an extended sentence is not able to provide the level of public protection that is necessary.²⁵ In order to determine this the court should consider the following factors in the order given:

- the seriousness of the offence;
- the offender's previous convictions;
- the level of danger posed to the public and whether there is a reliable estimate of the length of time the defendant will remain a danger, and;
- the alternative sentences available²⁶

The court is required to set a minimum term which must be served in custody before parole can be considered.

Detention at Her Majesty's pleasure

5.52 This is the mandatory sentence for anyone convicted of committing a murder whilst aged below 18 years old. The starting point for the minimum term is 12 years.

²⁵ *R. v. Saunders; R v. G.; R v. Edwards* [2014] 1 Cr.App.R.(S.) 45, CA

²⁶ *Att.-Gen.'s Reference (No. 27 of 2013)*

Appendix 1

Breach of a conditional discharge

- 6.1 If the young offender commits an offence during the period of conditional discharge then the court has the power to re-sentence the original offence. The offender should be dealt with on the basis of their current age and not the age at the time of conviction and the court can deal with the original offence(s) in any way which it could have if the offender had just been convicted.
- 6.2 There is no requirement to re-sentence; if a court deems it appropriate to do so they can sentence the offender for the new offence and leave the conditional discharge in place.

If the order was made by the Crown Court then the youth can be committed to that court for re-sentence.

Breach of a reparation order

- 6.3 If it is proved to the appropriate court that the offender has failed to comply with any requirement of a reparation order that is currently in force then the court can:
- Order the young offender to pay a fine not exceeding £1,000; or
 - Revoke the order and re-sentence the offender in any way which they could have been dealt with him for that offence

If re-sentencing the offender the court must take into account the extent to which the offender has complied with the requirements of this order.

- 6.4 If the order was made by the Crown Court then the court can commit the offender in custody or release them on bail until they can be brought or appear before the Crown Court.
- 6.5 The young offender or a YOT officer can also apply for the order to be revoked or amended but any new provisions must be ones that the court would have been able to include when the original reparation order was given. There is no power to re-sentence in this situation as the offender has not been found to be in breach of requirements.

Breach of a referral order (Referral back to court)

- 6.6 If a young offender is found to have breached the conditions of their referral the Court can revoke the referral order and re-sentence the young offender using the range of sentencing options (other than a referral order) that would have been available to the court that originally

sentenced them. If the court chooses not to revoke the referral order then it is possible to:

- allow the referral order to continue with the existing contract;
- extend the referral order up to a maximum of 12 months; or
- impose a fine up to a maximum of £2500

Commission of further offences whilst on a referral order

- 6.7 The court has the power to extend a referral order in respect of additional or further offences. This applies to not only a first referral order but also to any subsequent referral orders. Any period of extension must not exceed the total 12 month limit for a referral order.
- 6.8 If the court chooses not to extend the existing referral order they have the power to impose a new referral order. The court may direct that the contract under the new order is not to take effect until the earlier order is revoked or discharged.
- 6.9 If the court sentences in any other way they have a discretionary power to revoke the referral order. Where an order is revoked, if it appears to be in the interests of justice, the court may deal with the original offence(s) in any way that the original court could have done, but may not make a new referral order. Where the referral contract has taken effect, the court shall have regard to the extent of the offender's compliance with the terms of the contract.

Breach of a YRO

- 6.10 Where a young person fails to comply with a YRO, the responsible officer must consider whether there was a reasonable excuse. If the officer considers that there was no reasonable excuse then a warning must be issued.
- 6.11 A warning must describe the circumstances of the failure to comply and include a statement that the failure is not acceptable and that further failure to comply may lead to the order being referred back to the court. In most circumstances, two warnings will be permitted within a 12 month period before the matter is referred back to court but there is a discretionary power to do so on the second failure.
- 6.12 The following options are available to the court:
- allow the order to continue in its original form;
 - impose a fine (and allow the order to continue in its original form);
 - amend the terms of the order; or
 - revoke the order and re-sentence the offender.
- 6.13 If the terms of the order are amended the new requirements must be capable of being complied with before the expiry of the overall period.

The court may impose any requirement that it could have imposed when making the order and this may be in addition to, or in substitution for, any requirements contained in the order. If the YRO did not contain an unpaid work requirement and the court includes such a requirement using this power, the minimum period of unpaid work is 20 hours; this will give greater flexibility when responding to less serious breaches or where there are significant other requirements to be complied with.

- 6.14 A court may not amend the terms of a YRO that did not include an extended activity requirement or a fostering requirement by inserting them at this stage; should these requirements be considered appropriate following breach, the offender must be re-sentenced and the original YRO revoked.
- 6.15 A court must ensure that it has sufficient information to enable it to understand why the order has been breached and should be satisfied that the Youth Offending Team and other local authority services have taken all steps necessary to ensure that the young person has been given appropriate opportunity and the support necessary for compliance. This is particularly important if the court is considering imposing a custodial sentence as a result of the breach.
- 6.16 Where the failure arises primarily from non-compliance with reporting or other similar obligations and a sanction is necessary, the most appropriate response is likely to be the inclusion of (or increase in) a primarily punitive requirement such as the curfew requirement, unpaid work, the exclusion requirement and the prohibited activity requirement or the imposition of a fine. However, continuing failure to comply with the order is likely to lead to revocation of the order and re-sentencing for the original offence.
- 6.17 Where the offender has “wilfully and persistently” failed to comply with the order, and the court proposes to sentence again for the offence(s) in respect of which the order was made, additional powers are available.

A young person will almost certainly be considered to have “wilfully and persistently” breached a YRO where there have been three breaches that have demonstrated a lack of willingness to comply with the order that have resulted in an appearance before court.

- 6.18 The additional powers available to the court when re-sentencing an offender who has “wilfully and persistently” breached their order are:
- the making of a YRO with intensive supervision and surveillance even though the offence is non imprisonable;
 - a custodial sentence if the YRO that is breached is one with an intensive supervision and surveillance requirement, which was imposed for an offence that was imprisonable; and

- the imposition of a detention and training order for 4 months for breach of a YRO with intensive supervision and surveillance which was imposed following wilful and persistent breach of an order made for a non-imprisonable offence.

The primary objective when sentencing for breach of a YRO is to ensure that the young person completes the requirements imposed by the court.

Commission of further offences during a YRO

6.19 If a young offender commits an offence whilst subject to a YRO the court can impose any sentence for the new matter, but can only impose a new YRO if they revoke the existing order. Where the court revokes the original order they may re-sentence that matter at the same time as sentencing the new offence.

Breach of a detention and training order

6.20 If a young offender is found to have breached a supervision requirement after release from custody then the court may:

- impose a further period of custody of up to three months or the length of time from the date the breach was committed until the end of the order **whichever is shortest**;
- impose a further period of supervision of up to three months or the length of time from the date the breach was committed until the end of the order **whichever is shortest**;
- impose a fine of up to £1,000; or
- take no action.

Commission of further offences during a detention and training order

6.21 If a young offender is found guilty of a further imprisonable offence during the currency of the order then the court has the power to impose a further period of detention, whether or not it chooses to pass any other sentence. This period cannot exceed the period between the date of the new offence and the date of when the original order would have expired.

6.22 This period can be served consecutively or concurrently with any sentence imposed for the new offence and this period should not be taken into account when determining the appropriate length of the sentence for the new offence.

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Top 30 offences for which youths were sentenced in 2013

Offence	Number of offences	Proportion of all youth offences
Common Assault and battery	4,519	13%
Criminal Damage £5000 or less and Malicious Damage	3,139	9%
Stealing from shops and stalls (shoplifting)	2,843	8%
Having possession of Cannabis	2,594	7%
Robbery	2,323	6%
Other burglary in a dwelling	1,580	4%
Using motor vehicle uninsured against third party risks	1,167	3%
Burglary other than in a dwelling	937	3%
Assaults occasioning actual bodily harm	831	2%
Harassment alarm or distress (Public Order Act 1986)	801	2%
Other stealing and unauthorised taking: offences under the Theft Act 1968 sec.1 not classified elsewhere	786	2%
Stealing from the person of another	728	2%
Having an article with a blade or point in a public place	704	2%
Assaulting Police Act 1996	631	2%
Breach of anti social behaviour order	468	1%
Other offences - breach of supervision requirements of Detention and Training Order	446	1%
Fear or provocation of violence (Public Order Act 1986)	442	1%
Other criminal damage	419	1%
Unauthorised taking of a motor vehicle, being carried knowing vehicle to have been taken or driven away	368	1%
Being guilty while drunk of disorderly behaviour	354	1%
Aggravated Taking of a vehicle where the only aggravating factor is Criminal Damage of £5000 or under	318	1%
Wounding etc with intent to do grievous bodily harm etc or resist apprehension	92	0%
Rape of a female child under 13 by a male	38	0%
Arson endangering life	36	0%
Assault with intent to rob	33	0%
Possession of a firearm or imitation firearm with intent to cause fear of violence (group I)	30	0%

Blackmail	24	0%
Common law: attempting to pervert the course of public justice	19	0%
Assault on a female child under 13 by penetration	17	0%
Aggravated burglary in a dwelling	16	0%

Source: Court Proceedings Database, Ministry of Justice

Sentencing Council

Sentencing Council meeting: 19th June 2014
SC(15)JUN07 Breach of an order
Lead official: Lisa Frost
Lead Council member: Jill Gramman

1 ISSUE

1.1 The Council is asked to consider the timing and scope of the breach sentence guidelines. Currently the draft guideline is due to be signed off in October with a consultation launch in December. The definitive guideline is due for sign off in March 2016 with a publication date of May 2016. However, in light of a number of issues which have emerged during the development of the guideline, which are explained at section 3, more time is required for developing sentence ranges, conducting a robust impact assessment and exploring related matters including training. Revised dates and timescales are not yet available as these will be dependent on the progress of some of the issues highlighted in this paper.

2 RECOMMENDATION

2.1 That the Council considers the issues set out and agrees to extend the breach guideline development timescale, postponing the launch of the consultation for a minimum of 6 months.

3 CONSIDERATION

3.1 In the development of the breach guideline we have encountered significant difficulties in identifying current breach sentencing practice for Community Orders (CO's) and Suspended Sentence Orders (SSO's). This is due to a lack of available data on court disposals for these breaches, and the recent pre election period preventing research being conducted. To overcome these difficulties, a number of forums with Probation Officers and Magistrates have been held to discuss current breach sentencing practice for these orders, and identify factors which influence sentencing. A number of issues have become apparent during

these events which require further consideration, as they pose particular risks to the development of the guideline.

3.2 Three separate forums were held¹ to explore current breach sentencing practice. Forum attendees were invited to review a number of different breach scenarios, and provide feedback regarding the sentences they would recommend in the probation group, and the sentence they would impose in the magistrates' groups. Questions were devised to identify which particular factors within a breach are considered serious, and sentence practice for different types of breach.

Suspended Sentence Orders (SSO)

3.3 The first issue apparent from these events is that there is a fundamental problem with the imposition of SSO's. The legislation provides that an SSO should only be imposed where an offence is so serious that it crosses the custody threshold and that neither a fine nor a community sentence would be sufficient to mark the offending behaviour. However in practice it seems that SSOs are being imposed as a more severe alternative to a Community Order. This leads to difficulties for sentencers when considering activation following a breach, as very often the sentencer would not have intended that a term of imprisonment be served for the original offence, and is reluctant to activate the sentence. If, as suspected, there is a tendency not to activate the sentence, the original orders are unlikely to be acting as an effective deterrent, which might have resulted in volumes of breaches increasing.

3.4 In addition the legislation providing for suspended sentences requires that breach of a suspended sentence must result in activation of the sentence, unless it would be unjust to do so. The 'unjust' test relates to the level of compliance with the order prior to the breach, and case law has determined which factors may or may not deem an activation to be unjust.² However, sentencers are extending the consideration of when activation would be unjust to a consideration of an offender's personal circumstances, which the legislation did not intend. This often results in non activation, as sentencers are often reluctant to imprison offenders;

● _____
¹ One event with probation held in London, and attended by sixteen court probation officers, and two events with magistrates, held in Luton and Kent, attended by eight and ten magistrates respectively.

² These were included in the outline of the Suspended Sentence Order guideline which was considered and agreed by the Council in January 2015.

in particular female offenders if they are carers of children, defendants who have secured employment, or cases in which there are other personal factors which imprisonment may complicate.

3.5 Due to these issues, if the Council wish to maintain the approach agreed in the outline guidelines developed which specify the factors which must be considered when sentencing for breach of an SSO, it is highly likely that the volume of sentence activations will increase, which will have resource implications for prisons.

3.6 One possible means of mitigation may be to improve training, and officials intend to discuss the issues with the Judicial College and ask that further guidance is issued to magistrates and legal advisers to address this. If the current practice of SSO's being imposed when they are not suitable could be reversed or limited, this would reduce the risk of the impact of the guideline increasing the prison population once it is brought into effect. However, even if the College is amenable to this proposal, it would take time to both devise and introduce guidance.

Consistency in Breach Sentencing

3.7 A further issue that was evident during the forum discussions was the very tailored approach Probation and Courts take to sentencing for breach of these orders. The sentencers that participated seemed to struggle to consider the breach as a separate matter to the original order and offence. They wanted to reconsider the terms of the original order and factors which may have contributed to a breach of a CO, with one magistrate stating that a breach is wedded to its original order in a way which makes it impossible to consider only the breach. Their sentencing was very offender focused, with the aim of ensuring compliance with the order. This principle is set out in the SGC guideline on Community Order breaches, and aligns with the wider programme of rehabilitation of offenders.

3.8 However it does appear that sentencers are extending this rehabilitative focus to breach of SSOs, where there was significant reluctance to activate sentences. In one of the forums, one experienced magistrate acknowledged that his behaviour had shifted from defaulting to activation for a breach, to trying to avoid activation if possible, which he attributed to the greater focus on non custodial sentences. This removes the focus of the sentence from the breach itself, and sentencers had concerns that breach guidance may limit their

discretion and ability to deal with a breach while still having regard to these offender-specific factors. This is a complex issue to navigate in developing guidance for breach, as if the Council does not wish to deter sentencers from having regard to rehabilitation of offenders as a primary consideration when breach sentencing, a tailored sentencing approach will limit the extent to which sentences for breach can be developed to promote consistency and to act as a deterrent.

3.9 A further option to consider would be to extend the scope of the guideline to cover the imposition of the original sentences, as well as breaches of such orders. While this would address the problem of inappropriate use of orders, it would require a significant extension to the time required to develop the guideline.

Data on current sentencing practice

3.10 Due to a lack of data regarding current breach sentencing practice, resource assessments for this guideline are complex, may take longer than officials had expected and are likely to be based on very broad assumptions. The Analysis and Research team are currently working on identifying the relevant data for the resource assessment and the type of assumptions that would feed into it. We are aware that MOJ does hold some data regarding these sentences but because of serious concerns regarding data quality, MOJ colleagues are currently unable to share any findings with us. In addition, they had originally planned to review the quality of the data this summer, but are considering if this will still be feasible considering resourcing issues they are currently facing and other higher priority work they are engaged in. Even if they are able to find some resource this summer, MOJ does not expect to be able to share any findings until later in the year. The work on the resource assessment could go ahead in the meantime using modelling techniques, but there is a risk that if the MOJ data become available at a later stage and conflicts with the assumptions made in the model being developed, the Council may have based its decisions in the guideline development stages on inaccurate information.

3.11 A further consideration for the resource assessment of the impact of any guideline relates to the recent introduction of Community Rehabilitation Companies (CRC's) in managing Community Orders. The Council will be aware that as part of the MOJ Transforming Rehabilitation programme, CRC's have now

been established to manage these orders on a payment by results basis. Officials understand that there have been difficulties in effective communication systems being established between CRC's and the National Probation Service which is thought to be inhibiting the escalation of breach cases. While no data is available, this would support early anecdotal indications that since the commencement of these contracts, new breach proceedings have significantly reduced. If this is accurate and the trend continues, the volumes of breaches the Courts are sentencing will reduce, and this could distort any resource assessment which is conducted at the policy development stage.

3.12 We also understand that MOJ are currently in the early stages of developing options for the implementation of the manifesto commitment of the new Government for swift and sure justice. This is a US-inspired idea of immediate consequences for those who breach orders. While we do not know how the new CRC contracts would limit any options that could be developed, any significant change to breach practice would have very significant ramifications for the guideline, or could render it ineffective. Officials will be in contact with MOJ policy leads for this project to identify any potential conflict with the guideline.

Question One: Does the Council agree that the consultation should be postponed and the overall timetable extended, in light of the challenges outlined above?

Question Two: Is the Council content for officials to continue to work on developing a guideline covering breaches of COs and SSOs, in particular to undertake further work to resolve the uncertainties relating to i) training; ii) data; iii) CRCs; and iv) new Government policy?

Question Three: Are there any other issues which Council members think may have an impact on this guideline, which should be taken into account at this stage?

4 IMPACT

4.1 The landscape regarding breach of these orders is complex and currently in a state of flux given the newly established Community Rehabilitation Companies and new Government priorities. The development of the guideline will require careful consideration of the wider issues highlighted within this paper. It is

thought that until further evidence of the issues outlined above is available to enable the Council to make informed decisions, it would be undesirable to develop sentence ranges for these orders. This does not prevent the development of sentence ranges for other breach orders to be covered in the guideline, and this work will continue.

5 RISK

5.1 There are a number of risks at this stage in continuing to develop sentence ranges for breach of Community Orders and Suspended Sentence Orders due to the issues outlined. In particular, without a clear indication of what (if any) robust data may be available from MoJ until later in the year, it will be problematic to provide an accurate picture of the resource implications for the guidance. This means that the Council could make decisions that lead to the guideline having an impact which is undesirable and may result in an increase in pressure on prisons.

5.2 A risk to the guideline also exists due to the potential for the MOJ to develop a policy on the manifesto commitment referred to at paragraph 3.12. It will be important that any potential conflict is identified to ensure an ineffective guideline is not developed.

5.3 Officials will work to minimise the risk of delay to the publication of a definitive breach guideline, although some delay may be unavoidable due to impact of the issues set out in this paper on the guideline development.

Sentencing Council

Sentencing Council meeting: 19 June 2015
Paper number: SC(15)JUN08 – Supporting materials for guidelines
Lead officials: Ruth Pope

1 ISSUE

1.1 To review the Council's current practice and agree its future approach to the provision of supporting information or explanatory material for users of guidelines.

2 RECOMMENDATION

2.1 That the Council decides:

- whether it agrees with the recommendation to provide resources for sentencers and other users of sentencing guidelines to assist them in the correct application of the Council's guidelines;
- whether the existing material on the website is relevant and helpful;
- whether additional information, for example, links to useful Court of Appeal judgments or information of a more general application should be made available.


3 CONSIDERATION

Current position

3.1 There is currently some material available on the Council's website designed to assist users of guidelines. This can be accessed under 'publications' either on a guideline by guideline basis or for a complete list by selecting the publication type 'Information.' The full list is reproduced below (listed in date order, most recent first) and is also available at:

<http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=information&topic=&year=>

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 A case study intended to familiarise sentencers with the guideline and its step-by-step approach in relation to benefit fraud.

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 Publication — Information — 1 October 2014
 A case study intended to familiarise sentencers with the guideline and its step-by-step approach in relation to confidence fraud.

Confidence fraud case study (2) >
 Publication — Information — 1 October 2014
 A case study intended to familiarise sentencers with the guideline and its step-by-step approach in relation to confidence fraud.

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i) Case studies

Benefit fraud case study

A case study intended to familiarise sentencers with the guideline and its step-by-step approach in relation to benefit fraud. (1 October 2014)

Confidence fraud case study (1)

A case study intended to familiarise sentencers with the guideline and its step-by-step approach in relation to confidence fraud. (1 October 2014)

Confidence fraud case study (2)

A case study intended to familiarise sentencers with the guideline and its step-by-step approach in relation to confidence fraud. (1 October 2014)

Mortgage fraud case study

A case study intended to familiarise sentencers with the guideline and its step-by-step approach in relation to mortgage fraud. (1 October 2014)

Environmental offences case study – Company

A case study intended to familiarise sentencers with the environmental offences guideline for organisations and its step-by-step approach. (1 July 2014)

Environmental offences case study – Individual

A case study intended to familiarise sentencers with the environmental offences guideline for individuals and its step-by-step approach. (1 July 2014)

Scenarios: Dangerous dog offences

A selection of scenarios intended to familiarise sentencers with the dangerous dog offences guideline and its step-by-step approach. (20 August 2012)

Scenarios: Drug offences

A selection of scenarios intended to familiarise sentencers with the drug offences guideline and its step-by-step approach. (27 February 2012)

Scenario: sentencing process for burglary offences

Two scenarios intended to familiarise sentencers with the guideline and its step-by-step approach in relation to domestic and non-domestic burglary. (16 January 2012)

Scenario: sentencing process for fictional ABH offence

An illustrative scenario taking the sentencer through the sentencing process in relation to a fictional Actual Bodily Harm offence. (13 June 2011)

ii) Guides

A short guide – Sentencing for offences taken into consideration (TICs)

A short guide on offences taken into consideration to accompany the consultation exercise. (15 September 2011)

A short guide – Making the decision about where trials are heard (Allocation)

A short guide on allocation to accompany the consultation exercise. (15 September 2011)

A short guide – Sentencing for multiple offences (Totality)

A short guide on totality to accompany the consultation exercise. (15 September 2011)

iii) Other

Presentation - researchers and academics

This presentation, designed primarily for use by researchers and academics, provides an introduction to the role of the sentencing council and the history of sentencing guidelines in England and Wales. (2 August 2011)

Assault: Guideline approach

A document intended to familiarise sentencers with the assault guideline and its step-by step approach. (13 June 2011)

3.2 The majority of these documents, listed under subsection i), are scenarios or case studies designed to illustrate how individual guidelines work. Feedback from those involved with training on guidelines, in particular Judicial College officials and some individual sentencers, especially magistrates, suggests that these are very helpful (although such feedback as we have from sentencers is anecdotal; no research has been undertaken on this issue). Therefore, although it is not apparent whether the Council has specifically authorised the production or content of any of these documents, **it is recommended that the Council continues to make them available on the website.**

3.3 The only SC definitive guideline for which there are no scenarios or case studies is the Sexual Offences guideline. We have not been made aware of any issues arising from this and given the wide range of offences covered by the guideline it may not be helpful to attempt to provide any. Extensive training material on this guideline was provided by the Judicial College, which included case studies. The Office provided considerable input both to these and also to police training materials at the time of publication. There are no case studies for any of the guidelines produced by the SGC. **We do not recommend producing case studies retrospectively for any of these guidelines.**

3.4 There are three documents listed at 3.2 subsection ii) above, which relate to the 2011 consultation on Allocation, Totality and Offences Taken Into Consideration. Whilst these documents contain some useful information for a more general audience, **it is recommended that they are re-categorised on the website so that they appear only when selecting consultations.** Consideration could be given to producing an updated document giving the useful general information relating to these guidelines, or to providing this information elsewhere on the website where it would be more accessible to the general public.

3.5 The two remaining documents in the list at 3.2, subsection iii) above were produced early in the Council's existence. **It is recommended that the presentation for researchers and academics is reviewed**, and if it is considered to be useful, either updated or the information added to the research section of the website.

3.6 The document entitled 'Assault: guideline approach' provides a step by step explanation of the Assault guideline including of factors such as 'injury which is serious in the context of the offence' and 'Victim is particularly vulnerable because of personal circumstances'). We know that interpretation of these factors still causes difficulties for the courts, which suggests either that the information in this document is not helpful or that

sentencers are unaware of it. **In light of this, and also because this is the only step by step guide in existence, the Council may wish to consider archiving this content.**

Future approach

3.7 Council members have previously expressed mixed views about the provision of explanatory material. Guidelines are designed to be self-explanatory, although some training is provided to sentencers. The extent of training depends on the complexity of the guideline and the resources and priorities of the Judicial College (for example, there was extensive training on the sex offences guideline but there is unlikely to be much more than awareness-raising on the new dangerous dogs guideline).

3.8 Additionally, when a new definitive guideline comes into force there are often appeals to the Court of Appeal (Criminal Division) relating to the application of the guideline. In such circumstances it is the practice of the Registrar of Criminal Appeals to list several such appeals together so that any common issues can be resolved in a single judgment. Such cases can provide assistance with the particular guideline involved and sometimes more generally in the use of Sentencing Council guidelines. A good example of this is the case of *Healey*¹ in which the Court states as follows:

9. The format which is adopted by the Sentencing Council in producing its guidelines is to present the broad categories of offence frequently encountered pictorially in boxes. That is perhaps convenient, especially since it is necessary to condense the presentation as much as possible and to avoid discursive narrative on so wide a range of offending. It may be that the pictorial boxes which are part of the presentation may lead a superficial reader to think that adjacent boxes are mutually exclusive, one of the other. They are not. There is an inevitable overlap between the scenarios which are described in adjacent boxes. In real life offending is found on a sliding scale of gravity with few hard lines. The guidelines set out to describe such sliding scales and graduations. We wholeheartedly endorse the approach of Mr Wyatt, counsel for one of these defendants (Brearley), who asked us to find that a particular case was to be located on examination somewhere between two of the pictorial boxes.

10. In these guidelines, as in almost all such, there is a recognition that the two principal factors which affect sentencing for crime can broadly be collected together as, first, the harm the offence does, and secondly, the culpability of the offender. Those two root factors are often linked but not always. In some other contexts from that which we are now considering, such as for example offences of impromptu violence or offences which are committed carelessly, the two factors may not march together. In the context of offences which involve a considerable degree of deliberation and planning, such as will normally be the case for the production of drugs, they generally do march broadly together and certainly the one is likely to colour the other. Quantity, which is a broad appreciation of harm, may well colour participation, which is a broad appreciation of culpability, and vice versa. What we

¹ R v Healey and Ors [2012] EWCA Crim 1005

have just said about sliding scales applies equally to both elements, both to culpability and to harm. In neither case do the boxes have hard edges.

3.9 It is recommended that the Council provides three types of supporting explanatory materials for guidelines on the website:

- i. Scenarios or case studies to illustrate the approach to be taken in applying individual guidelines. These can be particularly helpful to those providing training (both the Judicial College and the Legal Trainer Network make use of this resource) and for guidelines where slightly more unusual concepts are used (an example is the mortgage fraud scenario which helps users to understand the approach to risk of harm in the fraud guideline).
- ii. Summaries of and links to Court of Appeal cases which give guidance on specific offences or guidelines (examples would include *Povey*² and *Monteiro*³ on knives, *Caley*⁴ on guilty pleas). It would need to be made clear that the cases should be used for the points of principle that they contain and not as precedents for the actual sentences.
- iii. Cases which provide more general guidance on the application of guidelines, including cases relating to the approach to be taken to cases which pre-date the guidelines (for example *Boakye*⁵ and *Healy*).

3.10 There may also be a case for the Council to provide a fourth category of information and, where available, links to cases, on issues relating to sentencing that are indirectly related to guidelines. One such issue could be the role of victim personal statements (VPS) in sentencing. In that regard the case of *Perkins*⁶ is very useful in explaining what part the VPS should play. Another matter that has previously been raised as an area where guidance might be helpful, is the use of suspended sentence orders (guidance on this is provided within the MCSG, but it could be helpful to give this greater prominence on the website). This would tie in with the work that the Council is currently undertaking on the breach guideline.

² R v Povey [2008] EWCA Crim 1261 (there is an existing additional note to the MCSG summarising this case)

³ R v Monteiro [2014] EWCA Crim 747

⁴ R v Caley and Ors [2012] EWCA Crim 2821

⁵ R v Boakye and Ors [2012] EWCA 838 which states that guidelines are not retrospective

⁶ R v Perkins [2013] EWCA Crim 323

Question 1: Does the Council agree that it is part of its function to provide resources that will assist users of guidelines and if so, that these should take the form of case studies and references to Court of Appeal judgments of both specific and general application?

Question 2: If so, does the Council agree that the content of the existing documents listed at paragraph 3.2(i) should be reviewed by officials and (if appropriate) presented to the Council at a future meeting?

Question 3: Does the Council agree to provide new case studies for future guidelines only; or does it wish to provide case studies for any existing definitive guidelines?

Question 4: Does the Council agree to provide general information relating to allocation, totality and TICs on the website, replacing the guidance listed at paragraph 3.2 (ii)?

Question 5: Does the Council agree to review and update the information for researchers and academics (paragraph 3(iii))?

Question 6: Does the Council agree to consider providing explanatory materials on other sentencing related issues (paragraph 3.10)?

4 RISK

4.1 The Council will need to ensure that any material provided via its website is accurate and up-to-date. By way of mitigation, we will review, with a view to removing or archiving old explanatory material upon introduction of revised guidelines, and will clarify that it is explanatory material and does not purport to have the status of a guideline.

4.2 The Judicial College remains responsible for training judges and magistrates and it will be important to ensure that this distinction is understood. The current case studies and other materials are a resource which the College has confirmed it finds very useful for training purposes. It is content to continue to work with us in developing new case studies, time permitting, and for us to make this material available via the website as explanatory material.

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Sentencing Council

CONFIDENCE AND COMMUNICATIONS SUB GROUP 4 June 2015 - Meeting Notes

Attendees

Council:	Michael Caplan, (Chair), Lynne Owens, Julian Goose, Jill Gramann
OSC:	Nick Mann, Emma Marshall (for A&R team update only), Helen Stear, Anthony Walker, Gareth Sweny
Other:	Marc Birch from <i>Bang</i> joined for the item on digital work

Aims of meeting

1. To discuss revised terms of reference for the sub group.
2. To agree monitor progress against actions listed in the action log.
3. To update on digital work including the members' area and the MCSG.
4. To seek input from the group regarding an opportunity to present to the police.
5. To provide an update from the Analysis and Research team on current priorities.

Opening

Michael updated the group on membership and announced that Martin Graham has agreed to join the group from the next meeting.

1. Terms of Reference

The sub group members agreed that a brief update should be given to Council after every sub group meeting to inform the full Council of our recent activities. Group members also agreed to take on a new role to provide assurance that the communications budget and risks are being reviewed regularly and managed effectively by the office. The Head of Communications has agreed to report to the group on expenditure and risk at every meeting and raise any issues of concern with them. The sub group also agreed to assist with finding and making contacts and networks in areas where they have influence. They also agreed that the frequency of

meetings can be reduced and a discussion was held regarding the best day and time for meetings, with 9am on Mondays being agreed as the best time for everyone.

Action: Helen will circulate dates on the basis of this discussion, for the remainder of 2015 and the whole of 2016 and will confirm these dates once we have heard back from all members.

Action: Helen will circulate the agreed Terms of Reference.

2. Action Log

Helen briefly highlighted four items on the action log where there had been recent activity:

- A **web survey** would be run on the public-facing website as soon as the members' area has been launched. We will be gathering feedback on the site to ensure visitors are able to find what they need as easily as possible. As with previous surveys, we will then make revisions to the site based on the feedback.
- An email from the Chairman has gone to all 130 **new MPs** in England and Wales introducing them to the work of the Council and encouraging them to get involved with the aim of establishing a positive relationship with the new intake from the outset.
- A bid has been submitted to *Good Housekeeping* magazine proposing a feature article on Heather Hallett – we have had a positive response and are developing our plans as part of our efforts to reach more **women** with information about sentencing.
- We have met with Fujitsu, the suppliers of the proposed **stakeholder tool** and are currently testing Microsoft Office 365 which may have the capability to be customised to meet our needs, namely to be able to store all our contacts centrally and sort them by the topic of their interest, their role, their interest in our work, the nature of our relationship, record what they have said or how they have responded to any consultations and so forth. This will enable us to maintain better relationships and produce more targeted communications.

3. Digital work

Members' area

Gareth gave an update on the members' area. He explained that the content had been updated as far as possible, and that it would be continuously updated. The site

had been made live since the last meeting. He explained that he had added the sub group papers to the page for this meeting for completion, and confirmed that in future sub group papers would be provided via the members' area. There had been some feedback that it was important to be able to open annexes to meeting papers at the same time as the covering paper. He showed members a new format for presenting meeting papers in response to this; a new table had been created which showed a PDF of each annex alongside the main paper. He had also found out that it was possible for annexes to be added as separate attachments within a PDF of the meeting paper, and members were able to test this by viewing a PDF where this had been prepared.

Action: Gareth will continue to liaise with individual members to ensure they have papers in a format which works for them.

MCSG

Helen demonstrated where we are with the development of the digital guidelines for magistrates. She showed the speed, accuracy and flexibility of the search function and all agreed that this was working well. She then showed how two guidelines had been presented on screen – one (animal cruelty) is a guideline originally published by a predecessor body, the Sentencing Guidelines Council, and one (GBH) is a newer guideline published by the Council. Due to this difference, the formats are different and Jill pointed out that perhaps they need to be more closely aligned with the step by step approach being made more apparent on the SGC guidelines. Jill also suggested that the left hand navigation was potentially distracting when looking at guidelines.

Action: Helen and Marc to discuss and consider these issues.

4. Police

Anthony gave some more background about the constitution of the Homicide Working Group and the event itself. He also thanked Simon Brough for bringing about this speaking opportunity. Julian Goose is unable to speak at the event but we are hopeful that Tim Holroyde will be able to speak. Lynne described the Homicide Working Group as a highly influential and positive body. She said that the most effective approach to take will be to focus on how the police can build cases more effectively so they can better serve the public. Lynne made the point that police don't always understand sentencing remarks and this can be frustrating. Looking at the

Sexual Offences guideline a year on from its introduction could be a good way to engage, especially in light of the Met Police's recent report into caseload, but the speech should also cover the relevance of victim's personal statements, the timings of guilty pleas and the importance of remorse. The overall tone of the presentation should be to show them what having a better understanding of sentencing will do for them and ask them what they think about sentencing. It should also be clear on how they can get involved in the guideline creation process. Due to the short time slot it was decided that the presentation should limit its interactive element to questions at the end.

Action: Anthony to secure a speaker for the event and circulate a draft speech to Lynne and her staff.

5. Analysis and Research update

Emma Marshall provided the group with an update from the Analysis and Research team. She informed the group that the annual Crown Court Sentencing Survey publication would be issued on 25 June, that they were looking at some extra analysis work on guilty pleas, that there was further work to be done on the paper presented to Council in April on the costs of sentencing and that the comms team would be involved in presenting this, social research on youths ongoing, that they were looking at how to gather data in magistrates' courts and finally at evaluating the drugs and theft guidelines from the autumn.