

12 November 2015

Dear Members,

Meeting of the Sentencing Council – 20 November 2015

Please note the next Council meeting will be held in Room E200 at the Royal Courts of Justice, on Friday 20 November 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:

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| ▪ Agenda | SC(15)NOV00 |
| ▪ Minutes of meeting held on 23 October | SC(14)OCT01 |
| ▪ Action Log | SC(15)NOV02 |
| ▪ Guilty Plea | SC(15)NOV03 |
| ▪ Assault | SC(15)NOV04 |
| ▪ Imposition | SC(15)NOV05 |
| ▪ Dangerous Dogs | SC(15)NOV06 |
| ▪ Youths | SC(15)NOV07 |

Members can access papers via the members' area of the website. If you are unable to attend the meeting, we would be particularly grateful to receive your comments on guilty plea, dangerous dogs and imposition, which are due to be signed off at this meeting.

Also attached for your information are the meeting notes from both the Confidence and Communications and Governance sub group meetings held since the last Council meeting.

I look forward to seeing you on the 20th.

Yours sincerely



Claire Fielder

Head of the Office of the Sentencing Council

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Sentencing Council

COUNCIL MEETING AGENDA

20 November 2015
Royal Courts of Justice
East Block Room E200

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|---------------|---|
| 09:45 – 10:00 | Minutes of the last meeting and matters arising (papers 1 & 2) |
| 10:00 – 10:10 | Health and Safety presented by Helen Stear |
| 10:15 – 10:30 | Allocation presented by Ruth Pope |
| 10:30 - 11:50 | Guilty plea presented by Ruth Pope (paper 3) |
| 11:50 – 12:50 | Assault presented by Mandy Banks (paper 4) |
| 12:50 – 13:20 | Lunch |
| 13:20 – 13:25 | Matters arising from A & R subgroup presented by Julian Roberts |
| 13:25 – 14:25 | Imposition of community and custodial sentences presented by Lisa Frost (paper 5) |
| 14:25 – 15:25 | Dangerous Dogs presented by Mandy Banks (paper 6) |
| 15:25 – 16:25 | Youths presented by Vicky Hunt (paper 7) |

Sentencing Council

COUNCIL MEETING AGENDA

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Sentencing Council

MEETING OF THE SENTENCING COUNCIL

23 OCTOBER 2015

MINUTES

<u>Members present:</u>	Colman Treacy (Chairman) Michael Caplan Mark Castle Julian Goose Martin Graham Jill Gramann Tim Holroyde Sarah Munro Lynne Owens Alison Saunders John Saunders Richard Williams
<u>Apologies:</u>	Heather Hallett 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 Claire-Louise Manning

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 25 September 2015 were agreed.

3. MATTERS ARISING

3.1 The Chairman welcomed Colin Allars, Director of Probation who spoke to the Council at 10:00 and stayed for the discussion on imposition of community and custodial sentences.

3.2 The Chairman also welcomed Paul Candler, Deputy Director Sentencing Policy at the Ministry of Justice who was observing the meeting.

3.3 The Council noted that today's meeting would be Victoria Obudulu's last as Office of the Sentencing Council statistician after two years in the post. The Chairman thanked her for her excellent work as a member of the analysis and research team and for her contribution to the work of the Council.

4. PRESENTATION ON PROBATION - COLIN ALLARS, DIRECTOR OF PROBATION, NATIONAL OFFENDER MANAGEMENT SERVICE

4.1 The Council heard a presentation from Colin Allars who talked about the reforms to probation services over the past year, including implementation of the Offender Rehabilitation Act 2014 and the transition to the National Probation Service and Community Rehabilitation Companies, and how the reforms were working in practice.

5. DISCUSSION ON IMPOSITION OF COMMUNITY AND CUSTODIAL SENTENCES – PRESENTED BY LISA FROST, OFFICE OF THE SENTENCING COUNCIL

5.1 The Council considered proposed draft guidance for the imposition of community and custodial sentences, to replace the guidance in the outdated SGC guideline 'New Sentences Criminal Justice Act 2003'. The Council agreed that it would be useful for this guidance to be updated and made available to sentencers prior to issuing a definitive guideline on breach of orders.

5.2 The Council discussed the appropriate matters to be considered when imposing these sentences. A number of additional factors were identified to ensure that the guidance would be of optimum use for

sentencers. It was agreed that revised guidance would be considered by the Council at its next meeting.

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

6.1 The Council considered suggested amendments to the draft guilty plea guideline. Amendments to improve clarity were agreed. The Council considered whether there should be an exception to the normal application of the guideline in cases where pre-recorded cross-examination had taken place. It was decided to consult on the basis that the trial would be deemed to have started when pre-recorded cross-examination took place.

6.2 The Council agreed that there would be a further consideration of the draft guideline and consultation document at its next meeting.

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

7.1 This was the Council's final consideration of the robbery guidelines. The Council agreed to a number of minor changes and reviewed and agreed the summary of all amendments that have been made to the guidelines following the consultation. The guidelines were then signed off ready for publication in January 2016.

8. DISCUSSION ON DANGEROUS DOGS – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

8.1 This was the second meeting to discuss the responses to the consultation on the draft guideline. The Council discussed issues regarding the approach to sentence levels and aggravating and mitigating factors throughout the guidelines.

8.2 The Council agreed to include additional wording at step six of the possession of a prohibited dog guideline, on the test to be applied to determine whether a person is a 'fit and proper person'.

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

9.1 The Council considered the remaining issues arising from the consultation on the allocation guideline and agreed the definitive version of the guideline, subject to clarification of the section on youths jointly charged with adults. An amended version of the guideline would be circulated to members for final approval.

9.2 The Council agreed that, to allow time for training, the definitive guideline would be published towards the end of the year and come into effect on 1 March 2015.

**10. UPDATE ON MCSG – PRESENTED BY CLAIRE-LOUISE MANNING,
OFFICE OF THE SENTENCING COUNCIL**

- 10.1 The Council considered the proposed timetable for converting the remaining Sentencing Guidelines Council guidelines within the Magistrates' Court Sentencing Guidelines (MCSG) to the Sentencing Council format. It was agreed that the MCSG working group would assist with the drafting and that the Council would consider the results at its meeting in March 2016. There would then be a targeted consultation with users of the MCSG.

**11. DISCUSSION ON WORK PLAN – PRESENTED BY CLAIRE
FIELDER, OFFICE OF THE SENTENCING COUNCIL**

- 11.1 The Council considered progress against the Business Plan for the financial year 2015/16 and reviewed its priorities. It agreed to publish an update on its website, which would include changes to the work plan published in April 2015.

SC(15)NOV02 November Action Log

ACTION AND ACTIVITY LOG – as at 12 November 2015

	Topic	What	Who	Actions to date	Outcome
SENTENCING COUNCIL MEETING 30 JANUARY 2015					
1	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					
2	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 25 September 2015					
3	Guilty Pleas	Police and CPS to provide data to MoJ to enable their costings to be factored into the resource assessment.	Alison Saunders/ Lynne Owens		ACTION CLOSED: The available figures have been provided and factored into the resource assessment
4	Youth	Sexual Offences guideline seen for the first time. The Council proposed changes to the custodial threshold section, and asked that the guideline be extended to cover some non contact offences (such as inciting child to engage in sexual activity) Overarching Principles document agreed in principal – Council members asked to send any	Vicky Hunt Jo Keatley/ All Council Members		ACTION CLOSED: Amendments made, to be discussed in November meeting. ACTION CLOSED: No comments received.

		proposed drafting changes to Jo Keatley by the end of October.			
5	Guilty Pleas	Resource assessment and consultation document to provide a qualitative assessment of the cost and benefits of the guideline	Ruth Pope / Liz Whiting		ACTION CLOSED: Revised resource assessment and consultation document to be considered at November Council meeting.
SENTENCING COUNCIL MEETING 23 October 2015					
6	Dangerous Dogs	Changes to some sentence ranges to be made. Wording regarding concurrent sentences to be revised, and format of step 6 within Annex E to be revised.	Mandy Banks		ACTION CLOSED: Changes made to be considered at November Council meeting.
7	Robbery	Council members to check that they are content with the rationale for the main changes to the guidelines set out in October's Council paper, and send any proposed changes to Vicky within a fortnight.	All Council members/ Vicky Hunt	ACTION ONGOING: to be completed by Friday 6 th November	ACTION ONGOING: No comments received. Final draft to be circulated by end of month.
8	Work Plan	Review of scope and timing of work on child abuse / online offences, with further input from the police as to the offences of concern, and revert to the Council for confirmation of approach.	Lynne Owens' office Claire Fielder/ Office	ACTION ONGOING: re-prioritised work plan to be confirmed following discussion on assault at November Council.	
9	Work Plan	Update against Business Plan to be published on the website	Claire Fielder		ACTION CLOSED: update published on 6 November.
10	Breach/ Imposition	Amendments to be made to draft imposition guideline, and inclusion of specific guidance for RAR's to be explored.	Lisa Frost		ACTION CLOSED: Final draft prepared to be considered at November Council meeting.
11	Guilty Pleas	Amendments to be made to consultation version of the guideline and circulated to sub-group members for approval	Ruth Pope and GP sub-group		ACTION CLOSED: Consultation version to be presented to November Council meeting
12	Allocation	Amended version of the 'Youths charged with adults' section to be circulated to Council members for approval	Ruth Pope and Council members		ACTION CLOSED: Amended version to be presented to November Council meeting for approval.

Sentencing Council

Sentencing Council meeting: 18 November 2015
Paper number: SC(15)NOV03 – Guilty Pleas
Lead Council members: Alison Saunders, Michael Caplan, Julian Roberts and Tim Holroyde
Lead official(s): Ruth Pope
0207 071 5781

1 ISSUE

1.1 At the meeting in October 2015, the Council considered the draft guilty plea guideline and, subject to some drafting changes, agreed a version for consultation. The draft guideline has been amended with the assistance of the guilty plea sub-group and is provided at **Annex A**.

1.2 The Council had previously asked for further work to be carried out on the resource assessment to ensure that the benefits to the police and CPS are properly reflected and that the assessment is presented in a manner that does not give a spurious accuracy to any estimates based on assumptions about offender and sentencer behaviour. The Council had also required that the consultation document should present the draft guideline in context and reflect potential costs and benefits to the wider criminal justice system.

1.3 The resource assessment will be considered by the analysis and research subgroup at its meeting on Wednesday 18 November 2016 and members can report the views of the sub-group to the Council.

1.4 The guilty plea guideline is likely to be controversial; a communications strategy has been devised to ensure careful handling of media and engagement with stakeholders.

2 RECOMMENDATION

2.1 The Council is asked to consider the consultation document **Annex C** and the resource assessment at **Annex B** and sign these off for consultation from February to May 2016.

2.2 With regard to the resource assessment, the Council is asked to consider in particular the following:

- the use of the 'no change' scenario to illustrate the potential resource implications of the guideline;
- whether the potential wider system benefits of the guideline are adequately covered in the resource assessment; and
- whether the conclusion is correct.

2.3 With regard to the consultation document the Council is asked to consider the following:

- whether the preliminary sections provide the necessary context for the guideline at the right level of detail;
- whether the 'proposals in detail' section is clear and asks the correct questions; and
- whether the 'effects of the guideline' section is clear and the questions are appropriate.

2.4 The Council is asked to consider the communications strategy provided at **Annex D**

3 CONSIDERATION

Resource assessment

3.1 The Council has a statutory duty to publish a resource assessment when it consults on draft guidelines and when it issues definitive guidelines. The statute requires an assessment by the Council of the likely effect of the guidelines on the resources required for the provision of prison places, probation services and the provision of youth justice services.

3.2 A document was presented to the Council at the September meeting which put forward two scenarios for how defendant behaviour might change after the implementation of the proposed guideline. These scenarios were developed with the help of Council members and were designed to represent an optimistic and pessimistic view of how defendant behaviour might change, and the consequent timings and levels of guilty plea reductions. A model was developed that used these scenarios to produce an estimate of the possible resource implications (primarily in

terms of prison places). The central estimate arising from this exercise was that by 2024/2025 2,500 additional prison places would be required.

3.3 The document presented to the Council was not the resource assessment, but the Council was concerned that by using these scenarios in the resource assessment there was a danger of readers attributing undue accuracy to the central estimate. Even if the resource assessment emphasised the limitations of this estimate, there was a real danger that it would be read as providing a prediction as to the likely effects of the guideline.

3.4 The Council was also concerned to ensure that the benefits of the implementation of the guideline to the wider criminal justice system (in particular to the police and CPS) were properly reflected. Further work was therefore undertaken in conjunction with the police and CPS to quantify the potential savings to be made by bringing forward the point at which offenders plead guilty.

3.5 It was suggested that the resource assessment should be in a more narrative form and should include an estimate of the wider system costs and benefits of the guideline.

3.6 The 'optimistic' and 'pessimistic' scenarios represented our best attempt at predicting the likely change in defendant behaviour resulting from the proposed guideline, but it is accepted that they are imperfect. Also, very importantly, these scenarios and the assessments modelled from them provide an incomplete picture. The data we have on plea rates and levels is from 2014 and the criminal justice system has not stood still in the intervening period. We have evidence (from road testing) to suggest that sentencers will understand and apply the guideline correctly, but we cannot say if and by how much sentencers will adjust the sentence before the guilty plea to take account of factors that might previously have been rolled up into the guilty plea reduction. It is not possible to gauge the extent to which the exceptions allowed by the guideline (in particular allowing an extra 14 days for plea in some cases where IDPC is served late) will be engaged and how far they may go to mitigating the predicted increase in sentence lengths.

3.7 The draft resource assessment at **Annex B** does not attempt to forecast the likely effect of the guideline. It shows what the effect on sentence lengths would be if the guideline were superimposed on 2014 plea rates and timings. The purpose of this is to illustrate the potential for significant resource implications if there were to be no change in defendant behaviour. The rationale for using this 'no change' scenario is that it is based on reliable data and provides a useful point of reference.

3.8 One difficulty of using a 'no change' scenario is that it cannot be used to illustrate any potential wider system benefits of the guideline, as these only materialise if earlier pleas are incentivised. The approach taken in the resource assessment is to show a likely average saving per case where a plea is brought forward from day of trial to first hearing in the Crown Court.

3.9 The resource assessment (at paragraph 5.5) also refers to the considerable investment already put in place by the police and CPS and the role of the proposed guideline in incentivising earlier pleas.

3.10 The resource assessment (at paragraph 7.3) identifies the risk of substantial resource implications arising from the guideline and proposes that the Council should put in place a multi-agency group to assist in data gathering and monitoring prior to the guideline coming into force.

Question 1: Is the Council content to publish the resource assessment at Annex B? Specifically:

- a) Does the Council agree to use the 'no change' scenario in the resource assessment to provide context for the potential resource implications of the guideline?***
- b) Is the Council content that the wider system benefits are adequately reflected in the resource assessment?***
- c) Is the Council content with the conclusion expressed in the resource assessment?***
- d) Does the Council agree with the proposals for monitoring the effects of the guideline?***

Consultation document

3.11 Throughout the development of the guilty plea guideline, issues have arisen that the Council has identified as points on which it wishes to consult. The Council has also identified a clear rationale and set of principles underpinning the guideline which should be communicated as part of the consultation process. The consultation document aims address these matters and obtain feedback on every aspect of the draft guideline. Consequently there are a large number of questions in the consultation document, asking about the content and clarity of each provision in the guideline.

3.12 It should be noted that further work will be done in conjunction with the SPJ's office and the CPS to amend the section: 'the guideline in the context of other criminal justice initiatives' to ensure that it gives an up-to-date picture at the point of the launch of the consultation.

3.13 Members are requested to email Ruth Pope by **10 December 2015** with any corrections/ drafting suggestions for the consultation document. The 'final' draft will then be circulated to members in the new year.

Question 2: Is the Council content with the consultation document (subject to drafting changes)? Specifically:

- a) Are there any additional matters that should be explained?***
- b) Are the preliminary sections too long – is there any information that could be left out or moved to annexes?***
- c) Are the right questions being asked?***
- d) Is the 'Effects of the guideline' section useful, and are the questions appropriate?***

4 IMPACT

4.1 The impact of the guideline is considered at paragraphs 3.1 to 3.10 above.

5 RISKS

5.1 The Council will be aware that the guilty plea guideline is likely to be controversial and may attract criticism. To mitigate this risk the consultation will not be launched until February 2016 will allow time for stakeholder engagement and careful media handling.

5.2 The proposed communications strategy can be found at **Annex D**.

Question 3: Is the Council content with the communications strategy?

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A. APPLICABILITY OF GUIDELINE

The Sentencing Council issues this guideline as a draft guideline in accordance with section 120 of the Coroners and Justice Act 2009.

Section 144 of the Criminal Justice Act 2003 provides:

(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence¹ in proceedings before that court or another court, a court must take into account:

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and*
- (b) the circumstances in which this indication was given.*

When issued as a definitive guideline this guideline will apply regardless of the date of the offence to all individual offenders aged 18 and older, to organisations, and to offenders aged under 18, subject to legislative restrictions such as those relevant to the length of Detention and Training orders. The guideline applies equally in magistrates' courts (including youth courts) and the Crown Court.

B. KEY PRINCIPLES

Although an accused is entitled not to admit the offence and to put the prosecution to proof of its case, an acceptance of guilt:

- a) normally reduces the impact of the crime upon victims;
- b) saves victims and witnesses from having to testify;
- c) is in the public interest in that it saves public time and money on investigations and trials.

A guilty plea produces greater benefits the earlier the plea is made. In order to maximise the above benefits and to provide an incentive to those who are guilty to indicate a guilty plea as early as possible, the guideline makes a clear distinction between a reduction in the sentence available at the first stage of the proceedings and a reduction in the sentence available at a later stage of the proceedings.

The purpose of reducing the sentence for a guilty plea is to yield the benefits described above and the guilty plea should be considered by the court to be independent of the offender's personal mitigation. Thus factors such as admissions at interview, co-operation with the investigation and demonstrations of remorse should **not** be taken into account in determining the level of reduction. Rather, they should be considered separately and prior to any guilty plea reduction, as potential mitigating factors.

The benefits apply regardless of the strength of the evidence against an offender. The strength of the evidence should **not** be taken into account when determining the level of reduction.

The guideline applies only to the punitive elements of the sentence and has no impact on ancillary orders including orders of disqualification from driving.

C. THE APPROACH

Stage 1: Determine the appropriate sentence for the offence(s) in accordance with any offence specific sentencing guideline.

Stage 2: Determine the level of reduction for a guilty plea in accordance with this guideline.

Stage 3: State the amount of that reduction.

Stage 4: Apply the reduction to the appropriate sentence.

Stage 5: Follow any further steps in the offence specific guideline to determine the final sentence.

¹ 'offence' includes breach of an order where this constitutes a separate criminal offence but not breach of terms of a sentence or licence.

D. DETERMINING THE LEVEL OF REDUCTION

D1. Where a plea is indicated² at the first stage of the proceedings a reduction of **one-third** (and not more than one-third) should be made (subject to the exceptions in section F). The first stage will be the first point at which the charge is put to the offender in court and a plea (or indication of plea) is sought.

For offenders aged 18 or older the first stage of the proceedings will be:

- For summary offences - up to and including the first hearing at the magistrates' court;
- For either way offences - up to and including the allocation hearing at the magistrates' court;
- For indictable only offences - up to and including the first hearing at the Crown Court.

For offenders under the age of 18 the first stage of the proceedings will be:

- For offences dealt with in the youth court – the first hearing at the youth court;
- For offences sent or committed to the Crown Court as grave crimes – the allocation hearing at the youth³ court **unless** it would be in the interests of justice to treat the first hearing at the Crown Court as the first stage;
- For offences sent to the Crown Court under any other provision⁴ – up to and including first hearing at the Crown Court.

D2. After the first stage of the proceedings the maximum level of reduction is **one-fifth** (subject to the exceptions in section F).

For offenders aged 18 or older the **one-fifth** reduction should be made for pleas indicated:

- For offences dealt with in magistrates' courts – up to 14 days after the first hearing;
- For either way offences sent to the Crown Court for trial – up to and including the first hearing at the Crown Court;
- For indictable only offences - not more than 28 days after the prosecutor states it has complied with s3 Criminal Procedure and Investigations Act 1996.

For offenders under the age of 18 the **one-fifth** reduction should be made for pleas indicated:

- For offences dealt with in the youth court – up to 14 days after the first hearing;
- For offences sent to the Crown Court as grave crimes – up to and including the first hearing at the Crown Court **unless** the interests of justice test above applies, in which case not more than 28 days after the prosecutor states it has complied with s3 Criminal Procedure and Investigations Act 1996.
- For offences sent to the Crown Court under any other provision – not more than 28 days after the prosecutor states it has complied with s3 Criminal Procedure and Investigations Act 1996.

D3. Sliding scale of reduction thereafter

The reduction should be decreased from **one-fifth** to a maximum of **one-tenth** on the first day of trial proportionate to the time when the guilty plea is first indicated relative to the progress of the case and the trial date (subject to the exceptions in section F). The reduction may be decreased further, even to zero, if the guilty plea is entered during the course of the trial. For the purposes of this guideline a trial will be deemed to have started when pre-recorded cross-examination has taken place.

E. APPLYING THE REDUCTION

E1. Imposing one type of sentence rather than another

The reduction in sentence for a guilty plea can be taken into account by imposing one type of sentence rather than another; for example:

- by reducing a custodial sentence to a community sentence,
- by reducing an immediate custodial sentence to a suspended sentence order, or
- by reducing a community sentence to a fine.

If the court has proceeded on that basis there should be no further reduction on account of the guilty plea.

² A plea is indicated for the purpose of this guideline either by entering the plea in court or by a formal notification of the plea to the prosecution and the court. In cases where the offender is given the opportunity to enter a plea by post (in accordance with Criminal Procedure Rule 24.8) doing so will constitute a formal notification of the plea.

³ For youths jointly charged with an adult the allocation hearing may be in the adult magistrates' court.

⁴ Section 51A Crime and Disorder Act 1998

E2. More than one summary offence

When dealing with more than one summary offence, the aggregate sentence is limited to a maximum of six months. Allowing for a reduction for each guilty plea, consecutive sentences might result in the imposition of the maximum six month sentence. Where this is the case, the court **may** make a modest *additional* reduction to the *overall* sentence to reflect the benefits derived from the guilty pleas.

E3. Keeping an either way case in the magistrates' court to reflect a guilty plea

Reducing a custodial sentence to reflect a guilty plea may enable a magistrates' court to retain jurisdiction of an either way offence rather than committing the case for sentence at the Crown Court. In such cases a magistrates' court may pass a sentence of up to six months.

E4. Sentencing up to 24 months detention and training order for youth offences

A detention and training order of 24 months may be imposed on an offender aged under 18 if the offence is one which but for the plea would have attracted a sentence of detention in excess of 24 months under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000.

F. EXCEPTIONS

F1. Further information or advice necessary before indicating plea

Where **all three** of the following apply:

1. At or before the first stage of the proceedings (see D1 above) the offender – although he has not indicated a guilty plea – has identified to the court and/or the prosecutor the conduct which he admits; and
2. had insufficient information about the allegations to know whether he was guilty of the offence; and
3. it was necessary for him to receive advice and/or to see evidence in order for him to decide whether he should plead guilty;

a reduction of one-third should be made where the guilty plea is indicated immediately after he receives the advice and/or sees the evidence.

For the avoidance of doubt this exception does not apply where an offender has exercised his right not to admit what he knows he has done until he sees the strength of the evidence against him.

F2. Initial details of the prosecution case (IDPC) not served before the first hearing

If the prosecutor has not made the IDPC available to an offender charged with an either way or indictable only offence at or before the beginning of the day of the first hearing **and** the offender indicates a guilty plea to the court and the prosecutor within 14 days of service of the IDPC, the plea should be taken as having been indicated at the first stage of proceedings.

F3. Newton Hearings and special reasons hearings

In circumstances where an offender's version of events is rejected at a Newton Hearing⁵ or special reasons hearing⁶, the reduction which would have been available at the stage of proceedings the plea was indicated should normally be halved. Where witnesses are called during such a hearing, it may be appropriate further to decrease the reduction.

F4. Exceptionally complex and time consuming cases in the Crown Court

A reduction **up to** but not exceeding the maximum of one-third **may** be made for a plea indicated later than the first stage of the proceedings if the trial was likely to have taken up a **very** substantial amount of court time and/or would have involved a **very** substantial number of witnesses having to give evidence.

F5. Offender convicted of a lesser or different offence

If an offender is convicted of a lesser or different offence from that originally charged, and he has earlier made an unequivocal indication of a guilty plea to this lesser or different offence to the prosecution and the court, the court should give the level of reduction that is appropriate to the stage in the proceedings at which this indication of plea (to the lesser or different offence) was made.

⁵ A Newton hearing is held when an offender pleads guilty but disputes the case as put forward by the prosecution and the dispute would make a difference to the sentence. The judge will normally hear evidence from witnesses to decide which version of the disputed facts to base the sentence on.

⁶ A special reason hearing occurs when an offender is convicted of an offence carrying mandatory licence endorsement or disqualification from driving and seeks to persuade the court that there are extenuating circumstances relating to the offence that the court should take into account by reducing or avoiding endorsement or disqualification. This may involve calling witnesses to give evidence.

F6. Minimum sentence under section 51A of the Firearms Act 1968

There can be no reduction for a guilty plea if the effect of doing so would be to reduce the length of sentence below the required minimum term.

F7. Appropriate custodial sentences for persons aged 18 or over when convicted under the Prevention of Crime Act 1953 and Criminal Justice Act 1988 and prescribed custodial sentences under the Power of Criminal Courts (Sentencing) Act 2000

In circumstances where:

- an *appropriate* custodial sentence of at least six months falls to be imposed on a person aged 18 or over who has been convicted under sections 1 or 1A of the Prevention of Crime Act 1953; or sections 139, 139AA or 139A of the Criminal Justice Act 1988 (certain possession of knives or offensive weapon offences) **or**
- a *prescribed* custodial sentence falls to be imposed under section 110 of the Power of Criminal Courts (Sentencing) Act 2000 (drug trafficking offences) or section 111 of the Power of Criminal Courts (Sentencing) Act 2000 (burglary offences),

The maximum reduction available for a guilty plea is one-fifth of the *appropriate* or *prescribed* custodial period.

F8. Appropriate custodial sentences for persons aged at least 16 but under 18 when convicted under the Prevention of Crime Act 1953 and Criminal Justice Act 1988

In circumstances where an *appropriate custodial sentence* of a Detention and Training Order of at least four months, falls to be imposed on a person who is aged at least 16 but under 18 who has been convicted under sections 1 or 1A of the Prevention of Crime Act 1953; or sections 139, 139AA or 139A of the Criminal Justice Act 1988 (certain possession of knives or offensive weapon offences) the court may impose any sentence that it considers appropriate, having taken into consideration the general principles in this guideline.

G. MANDATORY LIFE SENTENCES FOR MURDER

Murder is the most serious criminal offence and the sentence prescribed is different from all other sentences. By law, the sentence for murder is imprisonment (detention) for life and an offender will remain subject to the sentence for the rest of his life.

Given the special characteristic of the offence of murder and the unique statutory provision in Schedule 21 of the Criminal Justice Act 2003 of starting points for the minimum term to be served by an offender, careful consideration has to be given to the extent of any reduction for a guilty plea and to the need to ensure that the minimum term properly reflects the seriousness of the offence.

Whilst the general principles continue to apply, (both that a guilty plea should be encouraged and that the extent of any reduction should reduce if the indication of plea is later than the first stage of the proceedings), the process of determining the level of reduction will be different.

Determining the level of reduction

Whereas a court should consider the fact that an offender has pleaded guilty to murder when deciding whether it is appropriate to order a whole life term, where a court determines that there should be a whole life minimum term, there will be no reduction for a guilty plea.

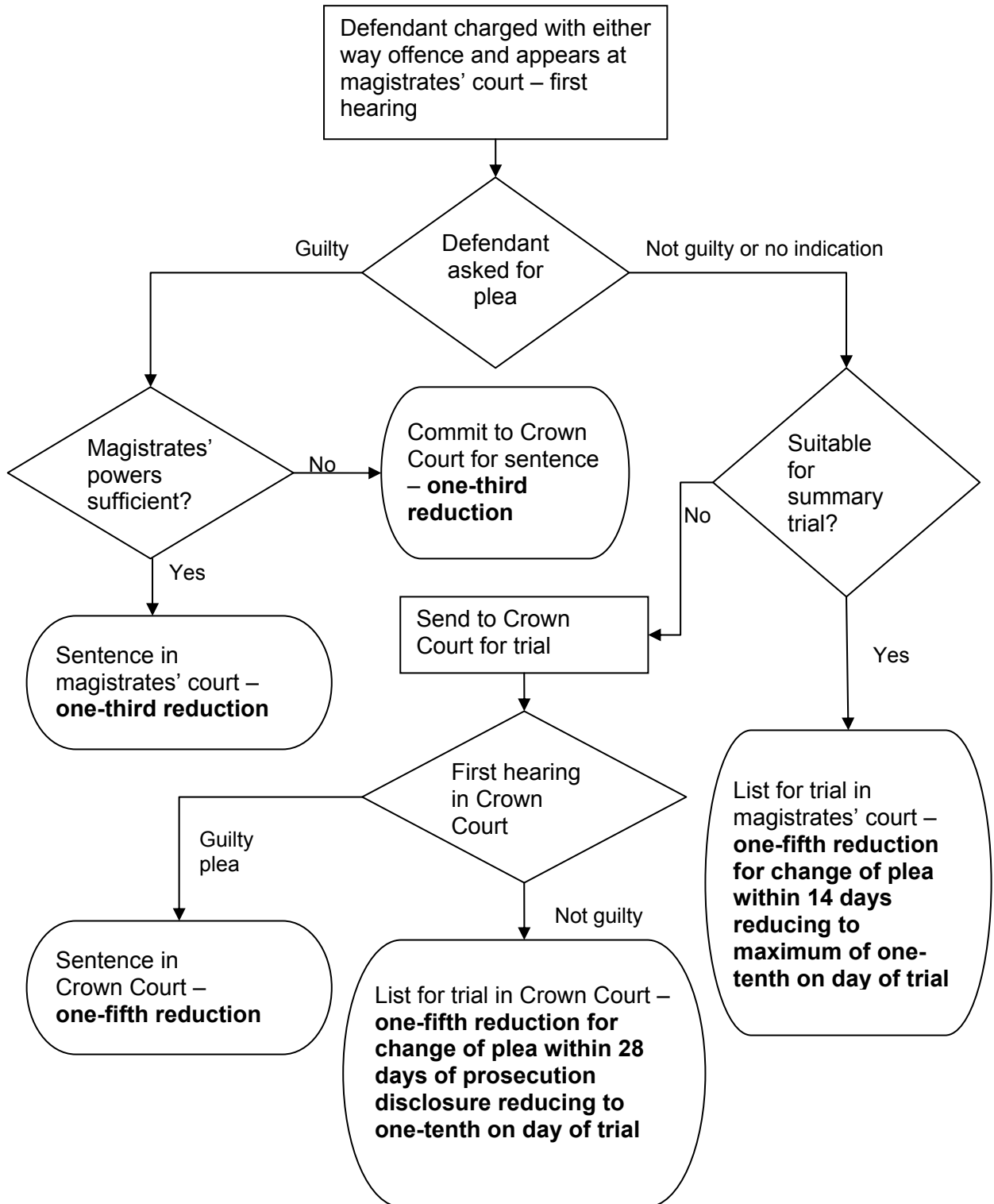
In other circumstances,

- the court will weigh carefully the overall length of the minimum term taking into account other reductions for which the offender may be eligible so as to avoid a combination leading to an inappropriately short sentence;
- where it is appropriate to reduce the minimum term having regard to a plea of guilty, the reduction will not exceed one-sixth and will never exceed five years;
- The maximum reduction of one sixth or five years (whichever is less) should only be given when a guilty plea has been indicated at the first stage of the proceedings. Lesser reductions should be given for guilty pleas after that point, with a maximum of one twentieth being given for a guilty plea on the day of trial.

The exceptions relating to further information or advice necessary before indicating a plea, late service of IDPC and Newton hearings, outlined at F1 to F3 above, apply to murder cases.

Appendix 1

Flowchart illustrating reductions for either way offences
 (offences that can be tried in a magistrates' court or the Crown Court)

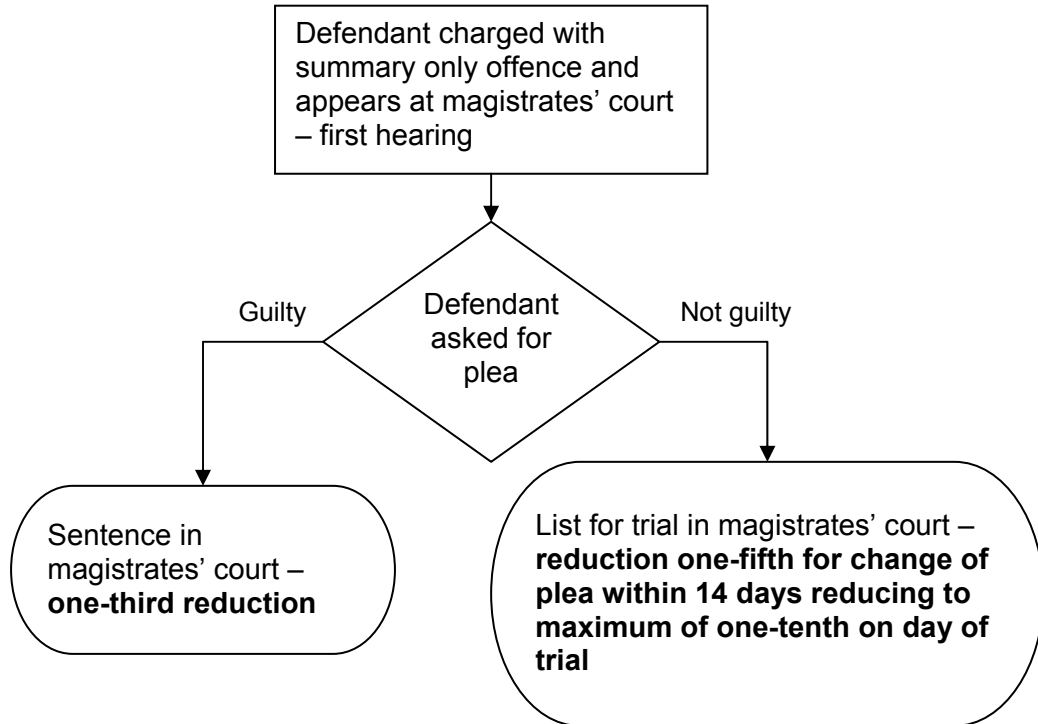


For illustrative purposes only please refer to the guideline for detailed guidance

Appendix 2

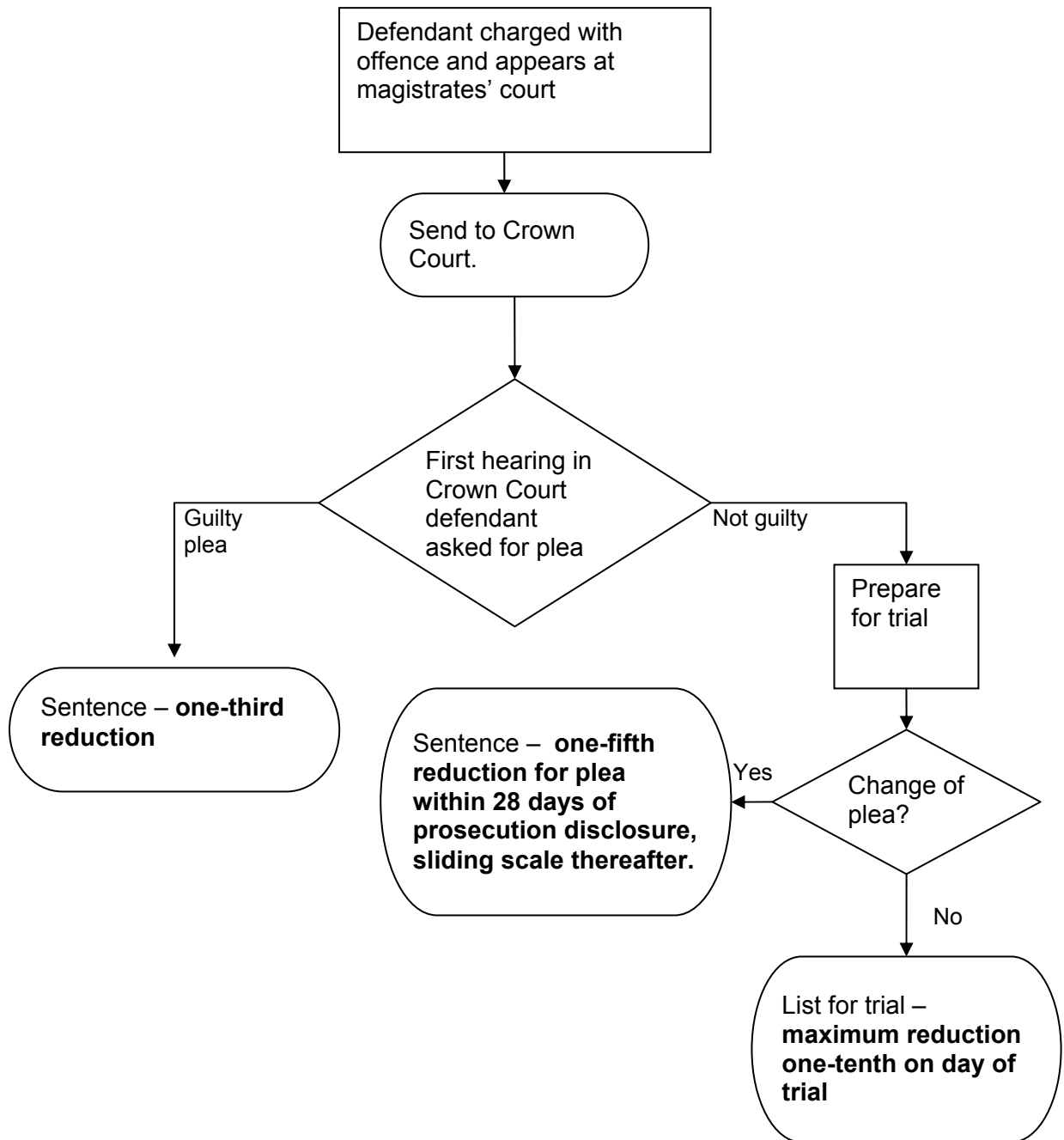
Flowchart illustrating reductions for summary only offences

(offences that can be tried only in a magistrates' court)



Appendix 3

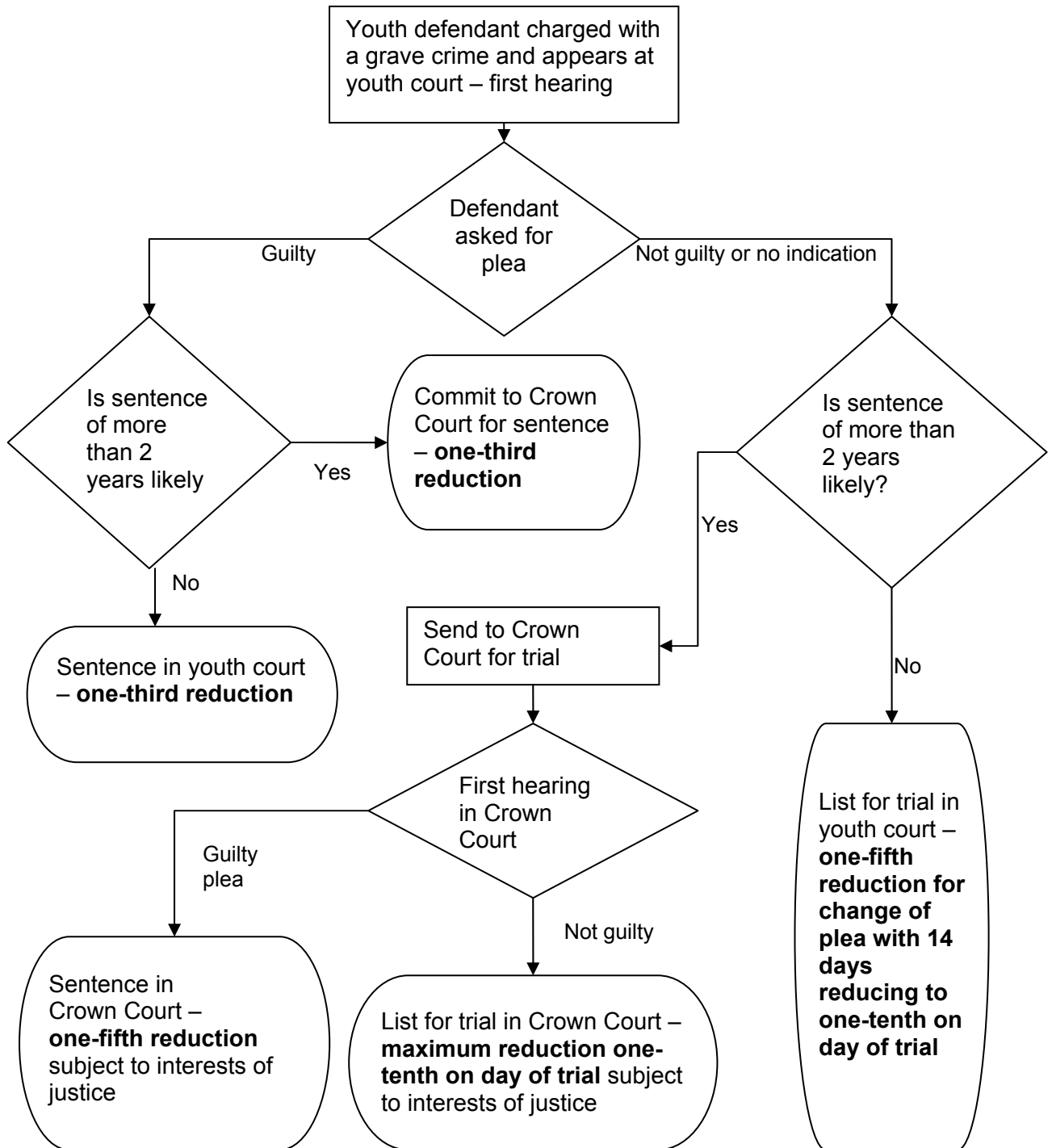
Flowchart illustrating reductions for indictable only offences (excluding murder)
(offences that can be tried only in the Crown Court)



For illustrative purposes only please refer to the guideline for detailed guidance

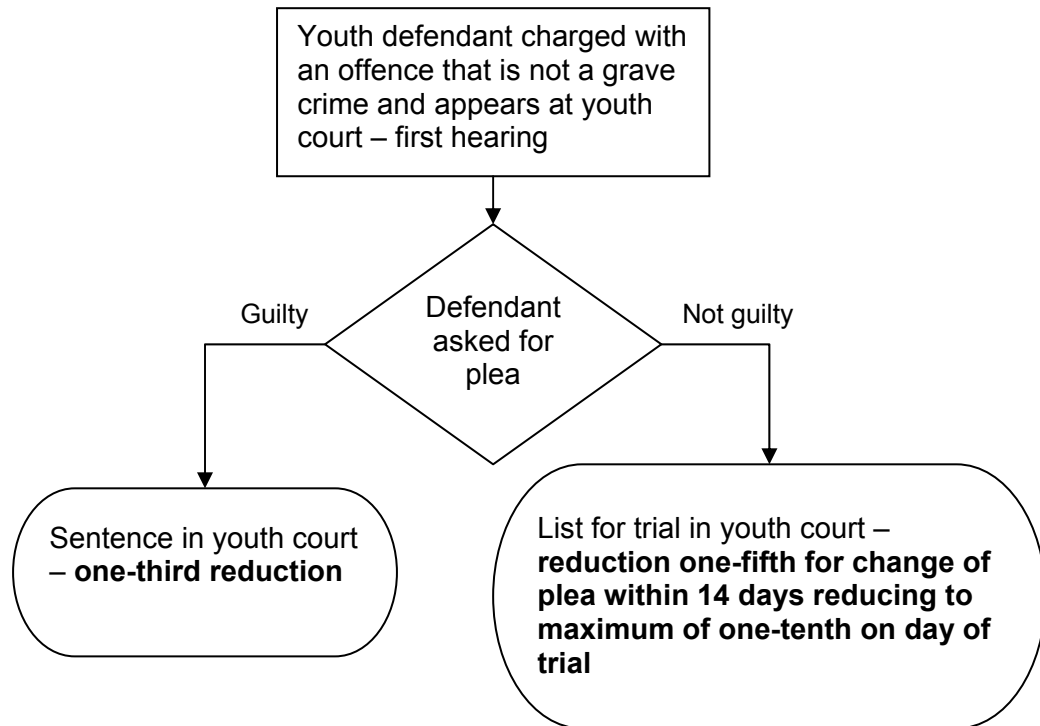
Appendix 4

Flowchart illustrating reductions for offenders aged under 18 years
 (offences that can be tried in a youth court or the Crown Court)



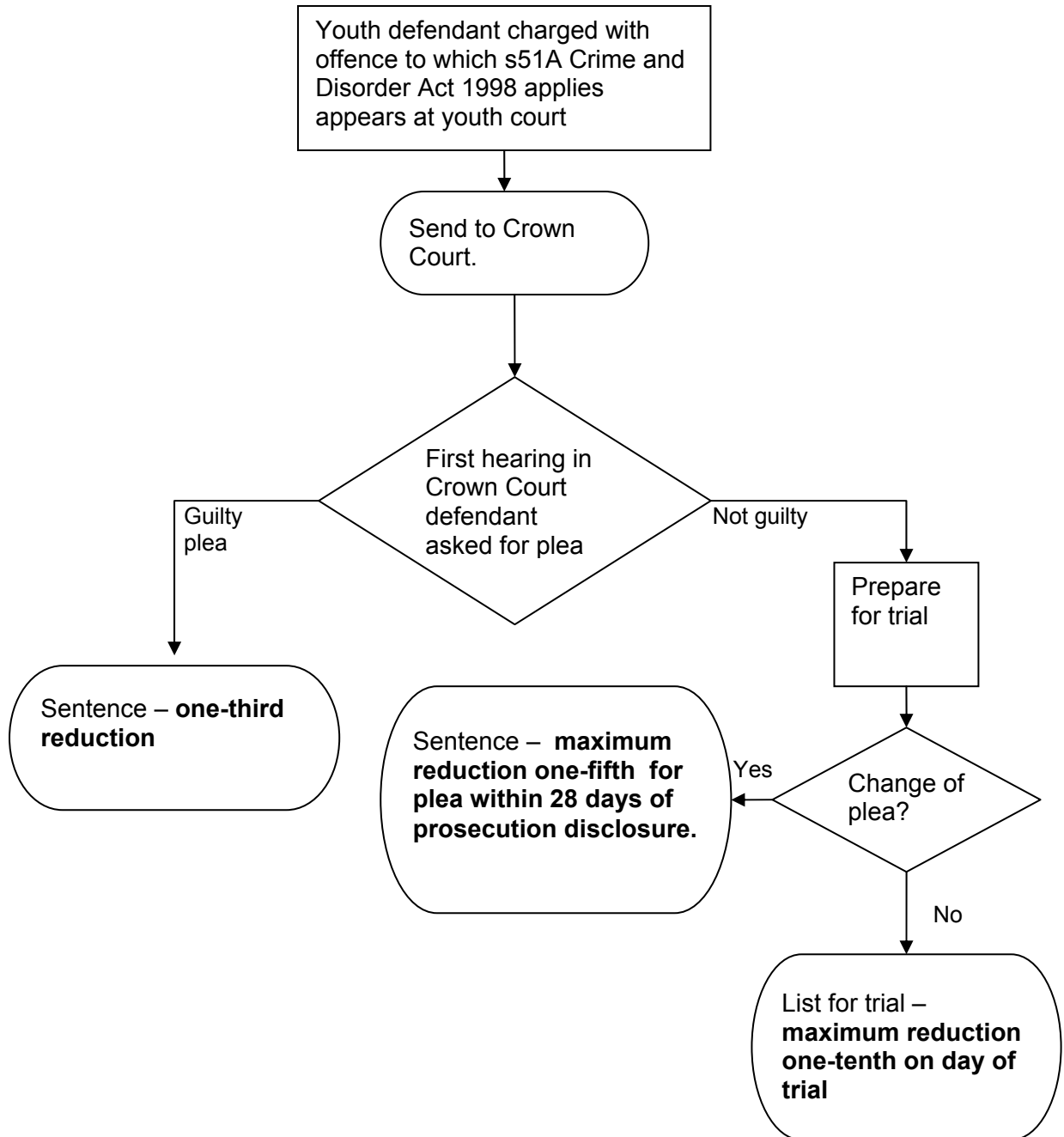
Appendix 5

**Flowchart illustrating reductions for offenders aged under 18 years
- offences that must be dealt with in the Youth Court**



Appendix 6

Flowchart illustrating reductions for offenders aged under 18 years (excluding murder)
(offences that must be tried in the Crown Court)



Consultation Stage resource assessment

Reduction in sentence for a guilty plea

1. Introduction

1.1 This document accompanies the consultation on the draft *reduction in sentence for a guilty plea* guideline and should be read alongside that document. It fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.

2. Rationale and objectives for the new guideline

2.1 The Sentencing Council has a statutory duty under section 120(3) of the Coroners and Justice Act 2009 to prepare "*sentencing guidelines about the discharge of a court's duty under section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentence for guilty pleas)*". In producing this guideline the Council wishes to promote a clear, fair and consistent approach to the way guilty plea reductions are applied in all courts in England and Wales.

2.2 The guideline aims to encourage offenders who are guilty to plead guilty as early in the court process as possible. The goal is to influence the timing of guilty pleas, but not to influence the rate of guilty pleas entered. If the guideline is successful, the proportion of pleas entered at the earliest stage of the court process will increase; the percentage of guilty pleas entered late in the process will decline. However, the overall proportion of cases resolved through a guilty plea should remain largely unchanged.

2.3 Encouraging more offenders to plead guilty at an earlier stage of the process will have a number of benefits, including:

- Overall, victims and witnesses in many cases will be informed earlier than in the past that their testimony is not required as the defendant has pleaded guilty. The earlier the plea is entered, the sooner victims and witnesses can be reassured that the offender has accepted responsibility for the offence and that they will not have to worry about having to go to court. In addition, victims will also benefit from seeing a more consistent approach to determining sentence reductions; and
- There will be resource savings for the police, the Crown Prosecution Service, the Legal Aid Agency and Her Majesty's Courts and Tribunals Service. These savings in turn benefit victims and witnesses in that they allow more time and resources to be concentrated on investigating and prosecuting other cases.

2.4 The guideline also aims to provide the following benefits:

- The guideline will facilitate the work and enhance the effectiveness of early plea schemes and other initiatives to ensure more timely and effective criminal justice decision-making;
- Defence practitioners will have a clearer idea of the likely outcome for the defendant if he or she enters a guilty plea at different stages of the criminal process and they will be better able to advise clients; and
- The enhanced clarity of the guideline will result in more consistent application across courts in England and Wales. A more consistent application would be a positive, non-financial outcome.

3. Assessing the resource implications of the guilty plea guideline

3.1 The Council is required by section 127 of the Coroners and Justice Act 2009, to provide an assessment of the resource impact of the proposed guideline on prison, probation and youth justice services. The main focus of this assessment is on estimating the impact of the proposed guideline on prison places.

3.2 To estimate the resource effect of a new guideline, an assessment is required of how it will affect the levels of reductions awarded and therefore the length of custodial sentences imposed. However, this guideline presents a particular challenge for the Council, because in contrast to offence-specific guidelines which are intended solely to influence sentencer behaviour, it is also intended to affect the behaviour of offenders and their legal representatives. The implications of this challenge are explained below.

Key assumptions

3.3 The Council is unable to predict with any certainty how the proposed guideline will affect offenders' behaviour or that of their legal representatives. The Council considered the possibility of estimating the costs based on assumptions about offender behaviour, but rejected it because of the highly speculative and subjective nature of any such assessment. Therefore in order to undertake this assessment of the resource impact of the guideline on prison places, it has been assumed that offenders will continue to plead at the same stage in the court process as was the case in 2014 (i.e. it is assumed there is no change in offender behaviour). This is not a prediction of what is expected to happen following implementation of the guideline¹, but it does provide a specific scenario against which costs can be applied. The results must therefore be seen in the context of this assumption, and alongside the benefits identified above and the wider system implications identified below at paragraph 5.1. As well as assuming that defendants do not change their

¹ It should also be noted that it is likely that the timings of pleas and levels of reduction have already changed since 2014.

behaviour, it is also assumed that sentencers will follow the proposed guideline at all times.

3.4 The resource assessment takes no account of any exceptions to the normal application of the guideline – it is assumed that the appropriate reduction for the stage of plea would be applied in all cases and that none of the exceptions would apply.²

3.5 In addition, the assessment does not take into account any potential changes to sentence levels prior to the application of the guilty plea reduction (such as treating co-operation with police as mitigation) again, because it is impossible to make any meaningful assessment. Any changes in sentencing practice which may have occurred whether or not a new guideline was introduced (such as those arising through the implementation of the Better Case Management initiative) are also not included.

Sentencing practice 2014

3.6 Data from the Crown Court Sentencing Survey³ (CCSS) linked with the Court Proceedings Database⁴ (CPD) provide information about both the level of reduction made for a guilty plea and the stage at which the plea was entered in the Crown Court in 2014. Less detailed information is available for magistrates' courts but estimates have been made based on sentencing data, including initial plea rates and cracked trial rates⁵. It has not been possible to estimate the impact of the guideline on Detention and Training Orders⁶, and as a result only offenders aged 18 or above are included in this assessment.

3.7 In 2014, 1,215,695 offenders were sentenced in all criminal courts in England and Wales. Of these, 86,297 were in the Crown Court and 1,129,398 in magistrates' courts. Of those offenders sentenced in the Crown Court, 90 per cent entered a guilty plea. As this assessment is based on 2014 data it does not take into account any recent changes due to initiatives in the Criminal Justice System (for example, Early Guilty Plea Scheme and Better Case Management).

3.8 Table 1 shows offenders sentenced to custody in 2014 by plea stage and level of reduction in the Crown Court. As can be seen, a substantial proportion of offenders received the maximum reduction after the initial stage. There are legitimate reasons why this might be the case, for example where the charge is changed at a late stage and therefore the first opportunity the offender has to plead is at a very late stage of proceedings. However, it is thought that these exceptional circumstances do not account for the total

² The draft guideline does provide for a number of exceptions to the levels awarded, the impact of which have not been estimated as part of this assessment.

³ From 1 October 2010 to 31 March 2015 the Council conducted the Crown Court Sentencing Survey (CCSS) which collected data on sentencing practice in the Crown Court.

⁴ Source: Ministry of Justice. For details of data collection and methodology please see <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014>

⁵ A cracked trial is one that does not go ahead either because the defendant enters an acceptable, guilty plea on the day of trial or the prosecution offer no evidence.

⁶ Detention and Training Order are for set lengths of time (4, 6, 8, 10, 12, 18 and 24 months). Therefore it is difficult to assess the impact of the guideline on these.

number of cases where a higher than recommended level of reduction has been awarded and that the figures indicate some inconsistency in how the existing Sentencing Guidelines Council (SGC) guideline is being applied⁷. Interviews with sentencers during the development of this draft guideline confirm that there is some inconsistency in the application of the SGC guideline. The consequence is that some offenders pleading guilty receive a sentence reduction in excess of what is recommended by the SGC guideline.

Table 1: Proportion of offenders sentenced in 2014 in the Crown Court to immediate custody, by plea stage, percentage reduction and offence type.

	1. Indictable only				2. Triable either way			
	% Reduction				% Reduction			
	33%	25%	10%	None	33%	25%	10%	None
1. Magistrates court	-	-	-	-	16%	2%	1%	-
2. Early Guilty Plea Hearing	28%	3%	2%	-	22%	4%	1%	-
3. Pre PCMH	4%	1%	0%	-	4%	1%	0%	-
4. PCMH	13%	7%	1%	-	13%	8%	1%	-
5. Post PCMH	2%	2%	1%	-	2%	2%	1%	-
6. Trial	3%	2%	5%	-	4%	2%	4%	-
7. No Plea	-	-	-	25%	-	-	-	10%

3.9 Table 2 shows the number of offenders who pleaded in the Crown Court at each stage in 2014, and received a custodial sentence, and where this would place them in relation to the draft guideline if there was no behaviour change, for both indictable only and triable either way offences.

Table 2: Number of offenders pleading in the Crown Court at each stage in 2014 and at the equivalent stage in the proposed guideline, by offence type.

4. Resource impact

Current stage of plea	1. Indictable only					2. Triable either way and summary				
	Future stage of plea					Future stage of plea				
	1. First Hearing Crown Court (33%)	2. Within 28 days of disclosure (20%)	3. Pre Trial (10-20%)	4. Trial (10%)	5. No plea	1. Magistrates court (33%)	2. First Hearing Crown Court (20%)	3. Pre Trial (10-20%)	4. Trial (10%)	5. No plea
1. Magistrates court	-	-	-	-	-	19%	-	-	-	-
2. Early Guilty Plea Hearing	33%	-	-	-	-	-	27%	-	-	-
3. Pre PCMH	-	5%	-	-	-	-	3%	3%	-	-
4. PCMH	-	21%	-	-	-	-	-	23%	-	-
5. Post PCMH	-	-	5%	-	-	-	-	5%	-	-
6. Trial	-	-	-	10%	-	-	-	-	10%	-
7. No Plea	-	-	-	-	25%	-	-	-	-	10%

4.1 On the basis of the assumptions set out above, if offenders were to plead at the same stage as in 2014, it is estimated that the effect of the guideline would be an increase in the prison population of approximately five

⁷ <https://www.sentencingcouncil.org.uk/wp-content/uploads/CCSS-Annual-2014.pdf> (page 6)

per cent. This is based on an increase in the number of prison places required of around 4,500, equating to a cost of approximately £115 million per year, having reached steady state. This is as a result of changes in both the magistrates and Crown Court.

4.2 Not all these places, and therefore costs, would come on stream in year one. In addition, there is a cost to the probation service over time (see 4.3). The build up in costs, for both the prison and probation service are shown in table 3, in nominal terms.

Table 3: Estimated nominal total resource costs excluding capital by financial year for the ‘no change’ scenario, £millions

15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25	Steady state
0	15	50	70	85	105	110	115	115	120	120

*rounded to nearest £5m

4.3 The increase in the prison population in both the Crown and magistrates’ court results from longer custodial sentences, as smaller reductions are given. The increase in the prison population would cause a temporary reduction in the expected licence population as offenders would be released later. However, this would not generate a significant saving to the public purse as Community Rehabilitation Companies are paid per licence start (i.e. by how many offenders start a licence period) rather than by caseload (the total number of offenders handled in any given period). The caseload for the National Probation Service would initially decrease, producing a saving of around £4 million in 2018/19, but this would then change to a net cost of £7 million per year in the longer term as a result of offenders spending longer on licence (due to longer overall sentences).

4.4 The costs quoted exclude capital build costs and overheads. On this basis, a year in custody is assumed to cost an average of around £25,000⁸ in resource terms, including local maintenance, but excluding any capital build expenditure and overheads that may be necessary⁹.

5. The Wider System

5.1 If the guideline did not bring about any change in offender behaviour, then no wider system savings would be realised. However, as explained above, and in more detail in the consultation document, the purpose of the guideline is to bring about such behavioural change and incentivise early

⁸ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367551/cost-per-place-and-prisoner-2013-14-summary.pdf

⁹ It should be noted that this is a lower figure than previously used in Sentencing Council resource assessments (£30,000) but this aligns with the new estimates used across the Ministry of Justice (MoJ).

pleas. Where offenders plead earlier then there would be some savings to the administration of justice.

5.2 It is not possible to summarise accurately these wider system savings, as not all of the costs and savings are available to give a total picture. However, it is possible to provide an indication of where savings would be accrued.

5.3 There would be a reduction in the average sitting days per case in the Crown Court, leading to those cases that do go to trial being listed more quickly. The amount of work required to be undertaken by both the police and the Crown Prosecution Service to prepare the case file would reduce. On average an offender who pleads on the day of trial costs the police, CPS and Legal Aid Agency budgets approximately £5,500 in total. If that offender entered their plea at a much earlier stage, such as the first hearing at the Crown Court, this would save the system approximately £3,000 per case. Conversely, if contrary to the aim of the guideline a defendant entered a plea much later in the process than at present, this would increase costs when compared to current levels. These numbers are purely indicative, as costs will vary, and should be treated with caution.

5.4 A positive change in offender behaviour would also have a significant non-monetary benefit, in terms of the relief and reassurance felt by victims and witnesses (see section 2.3).

5.5 If there were no positive change in offender behaviour, not only would the wider system savings not be realised, but also the significant investment by the police and CPS in developing programmes to ensure provision of relevant material in a timely manner to enable a guilty plea to be entered at the first occasion¹⁰ would be undermined. As the purpose of the guideline is to change offender behaviour, a failure to introduce the guideline may risk undermining these initiatives. Although it is too early to have firm evidence, early indications¹¹ are that these initiatives, alongside related judicial initiatives, are having some impact on the stage at which pleas are being entered.

6. Conclusion

6.1 The aim of modelling assumptions under a '*no change*' scenario is to provide more certainty about the starting point for any potential resource implications of the proposed guideline. Under the no change scenario there is a substantial increase in prison places.

¹⁰ For example, the development of the Transforming Summary Justice programme, Early Guilty Plea and Better Case Management Initiatives and recommendations in the President of the Queen's Bench Division's Review of Efficiency in Criminal Proceedings - which are now being built into the Criminal Procedure Rules - place a requirement on all parties to engage early, make the right decisions, identify the issues for the court to resolve and provide sufficient material to facilitate that process. In many cases, the expectation is that the provision of relevant material in a timely manner will enable a just guilty plea to be entered at the first occasion.

¹¹ From Crown Prosecution Service data, based on Crown Court data.

6.2 While there is uncertainty around the exact resource implications, even if some offenders are incentivised to plead earlier, it is still highly likely that the guideline will result in additional prison places. The cost of this will be partly offset by savings in the wider system, but they will not negate this cost completely.

7. Risks

7.1 Since the application of a sentence reduction for a guilty plea has the potential to apply to all sentences passed in the courts, small changes to offenders' behaviour and to practice by sentencers in applying the *reduction for a guilty plea* guideline have the potential to have substantial resource implications, depending on how these behavioural changes manifest themselves.

7.2 It is not possible accurately to predict how offenders' behaviour or sentencing behaviour will change as a result of the guideline, and hence there is considerable uncertainty surrounding the resource implications of the proposed guideline.

7.3 In light of this, it will be important for the Council to conduct early work to assess any consequences of the guideline once it is in force. Prior to the guideline coming into force, the Council will put in place a group – comprising representatives of the Sentencing Council, CPS, police, HMCTS and MoJ - to help steer work to collect a range of information that will feed into an assessment of the implementation and impact of the guideline in 2017 (this may include, for example, interviews with sentencers and other criminal justice professionals, analysis of transcripts of sentencing remarks, case file analysis, and analysis of data from other criminal justice agencies). The group will review the findings from this data collection and advise the Council if it suggests the need for a review of the guideline.

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**Reduction in Sentence for a Guilty Plea
Guideline**
Consultation

About this consultation

- To:** This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.
- Duration:** From xx February 2016 to xx May 2016
- Enquiries (including requests for the paper in an alternative format) to:** Office of the Sentencing Council
Royal Courts of Justice
Tel: 020 7071 5793
Email: info@sentencingcouncil.gsi.gov.uk
- How to respond:** Please send your response by xx May 2016 to:
- Ruth Pope
Office of the Sentencing Council
Room EB20
Royal Courts of Justice
Strand
London
WC2A 2LL
Tel: 020 7071 5793
Email: consultation@sentencingcouncil.gsi.gov.uk
- Additional ways to feed in your views:** This consultation exercise is accompanied by a resource assessment, an equality impact assessment, and an online questionnaire, all of which can be found at:
- www.sentencingcouncil.org.uk
- A series of consultation meetings is also taking place. For further information please use the “Enquiries” contact details above.
- Response paper:** Following the conclusion of this consultation exercise, a response will be published at:
- www.sentencingcouncil.org.uk
- Freedom of information:** We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents’ names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.

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INTRODUCTION

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines for the courts to use when passing a sentence. The Council's remit includes consultation on the sentencing of offenders following conviction.¹

Why are we producing a new guilty plea guideline?

The Council is required by law to produce a guideline on reductions for guilty pleas.

Section 120(3)(a) the Coroners and Justice Act 2009 states:

The Council must prepare—

- (a) sentencing guidelines about the discharge of a court's duty under section 144 of the Criminal Justice Act 2003 (reduction in sentences for guilty pleas)

Section 144 of the Criminal Justice Act 2003 states:

(1) In determining what sentence to pass on an offender who has pleaded guilty to an offence in proceedings before that court or another court, a court must take into account:

- (a) the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and
- (b) the circumstances in which this indication was given.

There is a current definitive guideline issued by the Council's predecessor body the Sentencing Guidelines Council (SGC) in 2007.² Courts are required to follow the SGC guideline and the Court of Appeal has handed down judgments giving further guidance on how the guideline should be applied.³

The Council collected data on the timings and levels of guilty pleas using the Crown Court Sentencing Survey, which ran from 1 October 2010 to 31 March 2015. This data taken together with case law and research carried out with sentencers on the application of the SGC guideline,⁴ suggests that the SGC guideline is not always applied consistently and that levels of reductions in some cases appear to be higher than those recommended by the guideline.

The Council has designed the revised guideline for guilty plea reductions to clarify the levels of reduction appropriate for the different stages at which the plea is entered. The revised guideline seeks

¹ ss.118-136 Coroners and Justice Act 2009

² 'Reduction in Sentence for a Guilty Plea'

³ Most notably *R v Caley and others* [2012] EWCA Crim 2821

⁴ Further details of the research can be found at page x below

to encourage those defendants who are aware of their guilt to enter a plea as early in the court process as possible. When this occurs, victims and witnesses are spared having to appear at court to testify and the police and Crown Prosecution Service can apply their resources to the investigation and prosecution of other cases. Offenders who accept their responsibility in this way benefit from receiving a modest reduction in their sentence.

By producing a new more concise guideline, the Council aims to improve clarity and consistency in the application of guilty plea reductions. The intention is for the decision making process in the proposed guideline to provide a clear structure, not only for sentencers, but to provide more certainty for offenders and their advisers to encourage early pleas, and to enable victims, witnesses and the public to have a better understanding of how a final sentence has been reached.

What is the Council consulting about?

The Council has produced this consultation paper in order to seek the views of people interested in criminal sentencing.

It is important to clarify that in this instance the Council is consulting on the draft guideline on reductions for guilty pleas and **not** the existence of reductions for guilty pleas which is set out in statute. Neither is the Council consulting in this instance on the sentencing levels for individual offences. Sentencing levels are governed by the maximum sentences (and in some cases minimum sentences) laid down by Parliament and relevant offence specific sentencing guidelines.

Through this consultation process, the Council is seeking views on:

- the principles on which the reduction for a guilty plea should be based;
- the levels of reduction that should be available;
- the stage in the court process that the different levels of reduction should apply;
- any exceptions to the reductions available at various stages;
- the regime that should apply in the case of murder;
- the clarity and accessibility of the guideline; and
- anything else that you think should be considered.

A summary of the consultation questions can be found at annex **A**.

What else is happening as part of the consultation process?

This is a **12** week public consultation. During the consultation period, the Council will host a number of consultation meetings to seek views from criminal justice organisations and other groups with an interest in this area as well as sentencers. We will also be conducting interviews with a sample of

defence advocates to explore how they might apply the guideline when advising defendants. Once the consultation exercise is over and the guideline revised, a final guideline will be published and used by all adult courts and youth courts.

Alongside this consultation paper, the Council has produced an **online questionnaire** which allows people to respond to the consultation questions through the Sentencing Council website. The Council has also produced a resource assessment and an **equality impact assessment**. The online questionnaire and these documents can be found on the Sentencing Council's website: www.sentencingcouncil.org.uk

SECTION ONE: OVERARCHING ISSUES AND THE CONTEXT OF THE GUIDELINE**Reductions for guilty pleas**

The principle that a court should take into account the timing and circumstances of any guilty plea in determining sentences, is laid down by Parliament in legislation.⁵ The Sentencing Council is required by legislation to prepare a guideline on reduction in sentences for guilty pleas.⁶

This guideline will be used by courts in conjunction with guidelines for sentencing particular offences, where they exist.

The Council's aim is to ensure that the reduction in sentences for guilty pleas should be applied fairly and consistently and that the guideline should encourage defendants who are guilty to plead guilty as early in the court process as possible.

The purpose of making a reduction in sentences for guilty pleas

The purpose of reducing sentences when offenders plead guilty is to encourage them to admit their guilt as early as possible.

By bringing forward the point at which some offenders plead guilty the proposed guideline will generate, to a greater or lesser degree, the following benefits:

- Overall, victims and witnesses in many cases will be informed earlier than in the past that their testimony is not required as the defendant has pleaded guilty. The earlier the plea is entered, the sooner victims and witnesses can be reassured that the offender has accepted responsibility for the offence and that they will not have to worry about having to go to court. In addition, victims will also benefit from seeing a more consistent approach to determining sentence reductions; and
- There will be resource savings for the police, the Crown Prosecution Service, the Legal Aid Agency and Her Majesty's Courts and Tribunals Service. These savings in turn benefit victims and witnesses in that they allow more time and resources to be concentrated on investigating and prosecuting other cases. As noted in the discussion of resource implications⁷, the magnitude of these savings is hard to estimate as it will be determined by the degree to which the guideline affects the timing of guilty pleas.

Other benefits that are expected to result from the proposed guideline are:

⁵ Criminal Justice Act 2003 s144

⁶ Coroners and Justice Act 2009 s120(3)(a)

- The enhanced clarity of the guideline will result in a more consistent application across courts in England and Wales;
- Defence practitioners will have a clearer idea of the likely outcome for the defendant if he or she enters a guilty plea at different stages of the criminal process and they will be better able to advise clients; and
- The guideline will facilitate the work and enhance the effectiveness of early plea schemes and other initiatives to ensure more timely and effective criminal justice decision-making (see further below).

In addition to noting the goals and likely benefits of the proposed guideline, it is important to state what the guideline is not designed to achieve. Defendants have a clear right to require the state to prove the case against them to a criminal standard. The guideline is directed only at defendants wishing to enter a guilty plea and nothing in the guideline should create pressure on defendants to plead guilty.

The guideline in the context of other criminal justice initiatives NB: This section will be revised prior to the consultation launch to give an up-to-date picture of the various initiatives

The Council recognises that the guilty plea guideline will operate in the context of the wider criminal justice system and that there are many factors that may influence the decision whether and when to plead guilty. The development of the Transforming Summary Justice (TSJ) programme, Early Guilty Plea (EGP) and Better Case Management (BCM) initiatives and the recommendations in the President of the Queen's Bench Division's Review of Efficiency in Criminal Proceedings⁸ which have been incorporated into the Criminal Procedure Rules, place a requirement on all parties to engage early, make the right decisions, identify the issues for the court to resolve and provide sufficient material to facilitate that process.

These initiatives are considered in a little more detail below:

Following police charge a defendant will be released on bail to appear in court either 14 or 28 days later. Defence practitioners and the CPS are required to communicate at the first available opportunity and in any event no later than the beginning of the day of the first hearing.⁹ The Crown Prosecution Service (CPS) is committed to reviewing the case and providing the initial details of the prosecution case (IDPC) to the defence prior to the first hearing. This will ensure that at the first hearing a defendant will be facing the correct charge and will know what the allegation is against him. On that basis, in the vast majority of cases there will be no need for further information before deciding whether

⁷ See page xx below

⁸ <https://www.judiciary.gov.uk/publications/review-of-efficiency-in-criminal-proceedings-final-report/>

⁹ CrimPR 3.3 <http://www.justice.gov.uk/courts/procedure-rules/criminal/docs/2015/criminal-procedure-rules-practice-directions-2015.pdf>

or not to plead guilty because the defendant will know whether or not he is guilty of the offence charged.

Early Guilty Plea Scheme and Better Case Management

The uniform EGP scheme in the Crown Court lists cases according to whether a guilty plea is anticipated, enabling the court to proceed to sentence without delay in such cases. The BCM scheme will result in not guilty cases being listed for a plea and trial preparation hearing (PTPH) within 28 days of being sent from magistrates' courts. The parties will be required to cooperate in the progression of cases and the CPS is required to provide papers as per CPD.

BCM

The prosecution and defence will be expected to engage with each other rapidly after a case has been sent to the Crown Court to review and identify those cases that are likely to plead guilty, and identify the issues in contested cases to enable a Plea and Trial Preparation Hearing (PTPH) to take place within 28 days of being sent from the magistrates' court.

A Further Case Management Hearing (FCMH) will only occur in identified complex cases or if a judge decides that the interests of justice require a further hearing. Following which, the next appearance in court should be for trial.

The CJS Common Platform

The CJS Common Platform is designed to provide a comprehensive, online case-management system. Following charge, the police will make all the relevant documentation available via a digital case file to the CPS. The CPS will give electronic access to the case papers to the defence. The case will be managed entirely online. The parties and the court will be able to work on the electronic "papers", privately highlighting, editing, and making comments.

SECTION TWO: DEVELOPING THE GUIDELINE

Research into attitudes to guilty plea reductions

In 2011 the Council published research¹⁰ into attitudes to guilty plea sentence reductions amongst the general public, victims and witnesses and offenders. The research found that whilst not all the victims who took part supported the idea of offenders receiving a reduced sentence for pleading guilty, the majority recognised the benefits to victims and witnesses especially if the plea was entered at an early stage. Research with a sample of the general public found that there was limited knowledge of the criminal justice system and a general resistance to the idea of giving a reduction for guilty pleas. However, even amongst this group there was recognition that there would be cases where reductions would be justified.

There was greater support among the public for reductions for guilty pleas for less serious offences. Many participating in the study thought that for the most serious violent or sexual offences there should be no reduction. However, amongst those who had been the victims of more serious offending, there was support for providing a reduction to encourage guilty pleas even at a late stage. For this group the prospect of attending court and giving evidence was traumatic.

The research also showed that the majority of people involved in the study assumed that the main motivation for giving reductions for guilty pleas was to save time and money. However, they preferred the idea that the purpose behind reductions for guilty pleas should be saving victims from the emotional trauma of giving evidence.

The Council has also had regard to research into victims' and witnesses' experiences of attending the Crown Court conducted on behalf of Victim Support.¹¹ This research highlights the anxiety experienced by victims and witnesses about giving evidence in court.

Taking into account the experiences and views of witnesses and victims, the Council has designed the guideline to encourage pleas as early in the process as possible to maximise the relief to victims and witnesses, while leaving a small level of reduction for pleas late in the court process where they spare victims and witnesses from giving evidence and provide victims with the satisfaction of knowing that the offender has admitted guilt.

¹⁰ http://www.sentencingcouncil.org.uk/wp-content/uploads/Attitudes_to_Guilty_Plea_Sentence_Reductions_web1.pdf

¹¹ <https://www.victimsupport.org.uk/sites/default/files/Out%20of%20the%20shadows.pdf>

The Council has considered the question of how far offenders are influenced to enter a guilty plea by the availability of a reduction in sentence, and how much different levels of reduction are likely to influence behaviour. The research¹² published in 2011 into attitudes to guilty plea sentence reductions amongst a small number of offenders indicated that the main factor influencing a decision to plead guilty is the strength of the prosecution case. In other words, if an offender thinks and/or is advised that he is more likely than not to be found guilty, he will plead guilty. This aspect of the research would tend to suggest that a guideline for reductions for guilty pleas would have little or no influence on the behaviour of offenders. However, the research was conducted with a very small group of offenders¹³ and so the findings are not representative of offenders more widely. It is also important to note that the practice and procedures of the criminal courts have changed since the research was carried out and are continuing to change (see 'The guideline in the context of other criminal justice initiatives' above). The proposed guideline is one of a number of factors that will change the culture of the criminal justice system by providing sharper, clearer guidance than hitherto as a contribution to consistency of approach to the issue of reductions for guilty pleas.

Statistical research and analysis

Virtually all criminal cases start in magistrates' courts. The most recent annual statistics¹⁴ show that approximately 1.47 million defendants were proceeded against at magistrates' courts in 2014. Of those, 1.22 million resulted in convictions in either magistrates' courts or the Crown Court (which means that the offender either pleaded guilty or was convicted after a trial).

Information on the percentage of offenders who plead guilty is only available for the Crown Court. Of the 86,297 offenders sentenced in the Crown Court in 2014, 77,289 (90 per cent) pleaded guilty and 9,008 were found guilty after a trial. Of the 90 per cent who pleaded guilty in the Crown Court, 72 per cent pleaded guilty at what was adjudged to be the 'first reasonable opportunity'.¹⁵

It would seem likely that there are many factors which influence the decision whether and when to plead guilty. One suggestion is that offenders are likely to be encouraged to plead guilty at an early stage if they believe that by doing so they will avoid a custodial sentence. The published statistics show some evidence of this in the Crown Court; a lower proportion of offenders that pleaded guilty were sentenced to immediate custody (53 per cent) compared to those that pleaded not guilty (71 per cent). There are also differences across offence types, with the rate of guilty pleas amongst those convicted

¹² http://www.sentencingcouncil.org.uk/wp-content/uploads/Attitudes_to_Guilty_Plea_Sentence_Reductions_web1.pdf

¹³ 15 offenders of whom 12 were in custody and three were serving community sentences.

¹⁴ <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014>

¹⁵ <http://www.sentencingcouncil.org.uk/wp-content/uploads/CCSS-Annual-2014.pdf>

of indictable sexual offences at the Crown Court at 61 per cent, which is considerably lower than the overall rate for indictable offences (89 per cent).¹⁶

Research with sentencers

Qualitative research was undertaken with sentencers in June and July 2013 to explore issues surrounding guilty plea sentence reductions. The approach involved semi-structured face-to-face interviews with eight magistrates, 14 Crown Court judges and two District Judges; plus two focus group sessions with Crown Court judges (the first involving 11 circuit judges and the second four Resident Judges). This work supplemented a small content analysis of sentencing transcripts undertaken in May 2013.

Research focused on the factors taken into consideration when deciding on a particular reduction, as well as circumstances in which sentencers might exercise flexibility and give reductions either higher or lower than the guideline recommendations. In addition, those undertaking an individual interview were also asked to consider two offence scenarios and indicate what type of reduction they might give; slight variations to the circumstances or stage of plea were then introduced to establish the influence of these factors on the sentence.

It should be noted that the sample size was small and is therefore not representative of all judges and so the findings should be treated with caution. The key findings were that for all sentencers the timing of the plea was the key consideration when determining the level of reduction. Other factors taken into account by some (but not all) were: the strength of the evidence; the remorse demonstrated; the vulnerability of victims and witnesses and the extent to which the guilty plea spares them the anxiety of giving evidence and other factors in the system such as the availability and timing of legal advice and timing of the service of the prosecution evidence. It was also found that some sentencers tend to approach the sentencing process in an 'holistic' manner arriving at a final sentence without following distinctive steps.

Further qualitative research was carried out with sentencers in March 2015 on a pre-consultation version of the guideline. In-depth interviews were conducted with 20 sentencers (six magistrates, one district judge, three recorders and 10 Crown Court judges). The research examined, in detail, how sentencers construed the guideline, in order to ensure that the final draft was clear, easy to understand and straightforward to apply across courts. As a result of this research, drafting changes were made to the guideline to improve clarity.

¹⁶ <https://www.gov.uk/government/statistics/criminal-justice-statistics-quarterly-december-2013>

SECTION THREE: The proposals in detail (guideline at annex xxx)

This section considers the draft guideline in detail and explains the decisions made by the Council in arriving at the draft guideline. The overall aim of the Council in producing this guideline is to provide a clear and concise guide for sentencers and other court users on reductions in sentences for guilty pleas.

A. APPLICABILITY OF GUIDELINE

The Sentencing Council issues this guideline as a draft guideline in accordance with section 120 of the Coroners and Justice Act 2009.

Section 144 of the Criminal Justice Act 2003 provides:

- (1) *In determining what sentence to pass on an offender who has pleaded guilty to an offence¹⁷ in proceedings before that court or another court, a court must take into account:*
- (a) *the stage in the proceedings for the offence at which the offender indicated his intention to plead guilty, and*
 - (b) *the circumstances in which this indication was given.*

When issued as a definitive guideline this guideline will apply regardless of the date of the offence to all individual offenders aged 18 and older, to organisations and to offenders aged under 18, subject to legislative restrictions such as those relevant to the length of Detention and Training orders. The guideline applies equally in the magistrates' court and the Crown Court.

In common with the existing Sentencing Guidelines Council guideline, this draft guideline will apply to all offences in the Crown Court, magistrates' courts and youth courts. It applies to individual offenders and to organisations.

The guideline will not apply where criminal courts are dealing with offenders for matters that are not a criminal offence. For example where an offender is brought back to court for failing to comply with a condition of community order and the court is dealing with him for that breach, this guideline would not apply.

The reference to legislative restrictions relevant to Detention and Training Orders¹⁸ refers to the fact that these orders (applicable to offenders under the age of 18) can only be of certain fixed lengths (four, six, eight, 10, 12, 18 or 24-four months). The court must take into account any guilty plea when fixing the length of the order, rather than the usual practice of arriving at a sentence and then applying the appropriate reduction as set out at C below.

¹⁷ 'offence' includes breach of an order where this constitutes a separate criminal offence but not breach of terms of a sentence or licence.

¹⁸ Powers of Criminal Courts (Sentencing) Act 2000, section 101

B. KEY PRINCIPLES

Although an accused is entitled not to admit the offence and to put the prosecution to proof of its case, an acceptance of guilt:

- a) normally reduces the impact of the crime upon victims;
- b) saves victims and witnesses from having to testify;
- c) is in the public interest in that it saves public time and money on investigations and trials.

A guilty plea produces greater benefits the earlier the plea is made. In order to maximise the above benefits and to provide an incentive to those who are guilty to indicate a guilty plea as early as possible, the guideline makes a clear distinction between a reduction in the sentence available at the first stage of the proceedings and a reduction in the sentence available at a later stage of the proceedings.

The purpose of reducing the sentence for a guilty plea is to yield the benefits described above and the guilty plea should be considered by the court to be independent of the offender's personal mitigation. Thus factors such as admissions at interview, co-operation with the investigation and demonstrations of remorse should **not** be taken into account in determining the level of reduction. Rather, they should be considered separately and prior to any guilty plea reduction, as potential mitigating factors.

The benefits apply regardless of the strength of the evidence against an offender. The strength of the evidence should **not** be taken into account when determining the level of reduction.

The guideline applies only to the punitive elements of the sentence and has no impact on ancillary orders including orders of disqualification from driving.

The key principles set out the rationale for reducing sentences when an offender pleads guilty and highlights the benefits of such pleas being entered as early as possible in the process. The benefits arising from a guilty plea are considerable, particularly in cases where there are vulnerable victims and witnesses. Indeed, most witnesses (or potential witnesses) find the whole process difficult. A fuller explanation of the purpose of making a reduction for guilty pleas is set out at page **xx** above.

While an early guilty plea is desirable it is important to note that nothing in the draft guideline should be taken to suggest that an accused who is not guilty should be encouraged to plead guilty. The draft guideline explicitly states that it is for the prosecution to prove its case; the guideline does not undermine the presumption of innocence.

The draft guideline makes a distinction between entering a guilty plea at the first stage of the court proceedings (defined at D1 see page **xx** below) and making admissions to police or others earlier. The draft guideline states that any pre-court admissions or cooperation with the investigation is to be taken into account when considering mitigation which may reduce the sentence before any reduction for a

guilty plea. This provides a clear incentive for offenders to cooperate as early in the process as possible and is in line with the interpretation of the existing SGC guideline in the leading case of Caley.¹⁹

Question 1

a) **Is the rationale in the key principles section set out clearly?**

Do you agree:

b) **with the stated purposes of operating a reduction for guilty plea scheme?**

c) **that the guideline does not erode the principle that it is for the prosecution to prove its case?**

d) **that factors such as admissions in the pre-court process should be taken into account as mitigating factors before the application of the reduction for guilty plea?**

Please give reasons where you do not agree.

Overwhelming Evidence

The draft guideline differs from the existing SGC guideline in the approach to cases where the prosecution case is particularly strong.

Extract from the SGC guideline:

- 5.3 Where the prosecution case is overwhelming, it may not be appropriate to give the full reduction that would otherwise have been given. Whilst there is a presumption in favour of the full reduction being given where a plea has been indicated at the first reasonable opportunity, the fact that the prosecution case is overwhelming without relying on admissions from the defendant may be a reason justifying departure from the guideline.
- 5.4 Where a court is satisfied that a lower reduction should be given for this reason, a recommended reduction of 20% is likely to be appropriate where the guilty plea was indicated at the first reasonable opportunity.

The draft guideline makes no provision for treating cases differently because of the strength of the evidence. In the key principles section above the draft guideline explicitly states:

The benefits apply regardless of the strength of the evidence against an offender. The strength of the evidence should **not** be taken into account when determining the level of reduction.

¹⁹ *R v Caley and others* [2012] EWCA Crim 2821

The reasons for this are as follows:

- a) The benefits that derive from a guilty plea still apply in cases where the prosecution evidence is overwhelming. If a defendant in such a case pleads guilty, witnesses and victims will still be spared the anxiety and uncertainty of being required to attend court and give evidence, and the resources of the justice system will still be saved the time and expense of a trial.
- b) In order for the proposed guideline to work effectively, the Crown Prosecution Service (CPS) will need to review cases at an early stage and identify those cases suitable for listing in early guilty plea courts. Such cases where the police and CPS have identified that the evidence is strong and a guilty plea is likely are those in which the guideline aims to encourage a plea at the first stage of proceedings. An important factor in the incentive to plead at that early stage is the certainty of receiving the maximum reduction for a guilty plea. By removing the chance that the reduction might be withheld, the draft guideline will provide defendants and those advising them with certainty regarding the reduction and will provide the greatest possible incentive to plead early.
- c) There is an understandable reluctance to provide those who are guilty with a 'reward' for pleading guilty especially when they have little or no prospect of being acquitted. However, it is important to recognise that the guilty plea reduction is in place to provide an incentive (with all the benefits outlined above) and not a reward. For it to work effectively it is important that it is a clear and unqualified incentive to the defendant.
- d) The Council recognises that this is an aspect of the draft guideline that may be perceived as controversial. It is important that it is considered in the context of the whole guideline, which provides a much tighter framework than the existing guideline and much less scope for offenders to 'play the system' and still receive the maximum discount.
- e) The Council is aware that the removal of the option to withhold the reduction in cases of overwhelming evidence may be seen as an erosion of judicial discretion. As alluded to above, it is the Council's intention to produce a guideline that promotes consistency and certainty. However, the legislation²⁰ does provide that a sentencer may depart from a guideline if it would be contrary to the interests of justice to follow it.
- f) There is evidence from the qualitative research carried out by the Council (referred to at **xx** above) and from reported cases to indicate that the SGC guidance on withholding the guilty plea reduction is not applied consistently. What amounts to an 'overwhelming' case is necessarily a subjective judgement and courts have interpreted it differently. The draft guideline will provide greater certainty and consistency.

The Council has considered an **alternative approach** to cases where the prosecution case is overwhelming without relying on admissions from the defendant. This would require the court to apply the maximum reduction to a plea at the first stage of the proceedings regardless of the strength of the evidence (in order to provide certainty and to incentivise early pleas) but would allow the court the

discretion to take into account the strength of the evidence in determining the level of reduction if the offender pleads at a later stage. Thus if an offender were to plead at a stage where the guideline would otherwise set a reduction of one-fifth, in a case where the court considered that the evidence was overwhelming, the court would have the discretion to apply a smaller reduction, for example of one-tenth.

The advantages of this alternative approach would be:

- to maintain the clear incentive to plead at the first stage of proceedings;
- to give greater discretion to sentencers to apply a smaller reduction in cases where the evidence is overwhelming and a plea is entered after the first stage;
- to allow courts to make a distinction between cases where the strength of the evidence is different.

The disadvantages of the alternative approach would be:

- the removal of certainty as to the reduction to be applied after the first stage;
- the possibility of inconsistent application of the provisions;
- added complication to the guideline with an adverse effect on clarity;
- practical difficulties in determining the appropriate reduction in cases where the reduction stipulated in the guideline is already very small.

Having considered the alternative approach the Council concluded that the disadvantages in terms of complication and lack of clarity outweighed the advantages in terms of increased discretion. However, the Council is keen to hear the views of respondents on this issue.

Question 2

a) Do you agree with the approach taken in the draft guideline to overwhelming evidence i.e. that the reduction for a guilty plea should not be withheld in cases of overwhelming evidence?

If not:

b) Do you think that the alternative approach (of allowing the court discretion to apply a lower reduction after the first stage of the proceedings) is preferable?

Please give reasons.

²⁰ Section 125(a) of the Coroners and Justice Act 2009

C. THE APPROACH

- Stage 1:** Determine the appropriate sentence for the offence(s) in accordance with any offence specific sentencing guideline.
- Stage 2:** Determine the level of reduction for a guilty plea in accordance with this guideline.
- Stage 3:** State the amount of that reduction.
- Stage 4:** Apply the reduction to the appropriate sentence.
- Stage 5:** Follow any further steps in the offence specific guideline to determine the final sentence.

The guideline sets out the approach to applying the guilty plea reduction in the sentencing process. This is unchanged from current practice.

D. DETERMINING THE LEVEL OF REDUCTION

D1. Where a plea is indicated²¹ at the first stage of the proceedings a reduction of **one-third** (and not more than one-third) should be made (subject to the exceptions in section F). The first stage will be the first point at which the charge is put to the offender in court and a plea (or indication of plea) is sought.

For offenders aged 18 or older the first stage of the proceedings will be:

- For summary offences - up to and including the first hearing at the magistrates' court;
- For either way offences - up to and including the allocation hearing at the magistrates' court;
- For indictable only offences - up to and including the first hearing at the Crown Court.

For offenders under the age of 18 the first stage of the proceedings will be:

- For offences dealt with in the youth court – the first hearing at the youth court;
- For offences sent or committed to the Crown Court as grave crimes – the allocation hearing at the youth²² court **unless** it would be in the interests of justice to treat the first hearing at the Crown Court as the first stage;
- For offences sent to the Crown Court under any other provision²³ – up to and including first hearing at the Crown Court.

This part of the draft guideline contains the basic instructions for applying the guilty plea reduction in the vast majority of cases. The draft guideline does not use the SGC wording of entering a plea at the 'first reasonable opportunity' in order to obtain the maximum one-third reduction. Instead it refers to the 'first stage of the proceedings' which is defined by the guideline for different types of offence for adults and for youths.

Comparison between proposed guideline and existing guideline
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²¹ A plea is indicated for the purpose of this guideline either by entering the plea in court or by a formal notification of the plea to the prosecution and the court. In cases where the offender is given the opportunity to enter a plea by post (in accordance with Criminal Procedure Rule 37.8) doing so will constitute a formal notification of the plea.

²² For youths jointly charged with an adult the allocation hearing may be in the adult magistrates' court.

²³ Section 51A Crime and Disorder Act 1998

SGC	Draft guideline	Effect of the change
<p>Recommended one third where the plea is entered at the first reasonable opportunity</p>	<p>One third reduction should be made for a plea entered at the first stage of the proceedings</p> <p>For adults defined as:</p> <ul style="list-style-type: none"> • <u>For summary offences</u>, up to and including the first hearing at the magistrates' court; • <u>For either way offences</u>, up to and including the allocation hearing at the magistrates' court; • <u>For indictable only offences</u>, up to and including the first hearing at the Crown Court. <p>For youths defined as:</p> <ul style="list-style-type: none"> • <u>For offences dealt with in the youth court</u> – the first hearing at the youth court; • <u>For offences sent or committed to the Crown Court as grave crimes</u> – the allocation hearing at the youth court unless it would be in the interests of justice to treat the first hearing at the Crown Court as the first stage; • <u>For offences sent to the Crown Court under any other provision</u> – up to and including first hearing at the Crown Court. 	<p>Under the draft guideline the <u>maximum</u> reduction for a guilty plea is set at one third. The expectation is that the one-third reduction will be applied where the plea is entered at the first stage of proceedings.</p> <p>The 'first stage of proceedings' is defined more tightly than the 'first reasonable opportunity' in the SGC guideline. Note that for either way offences the first stage of proceedings is in the magistrates' court and not the Crown Court.</p> <p>For youths the draft guideline also defines what is meant by the first stage of the proceedings, but a degree of discretion is built in for grave crimes, to account for the fact that these may be indictable only or either way offences. The wording is designed to ensure that a youth would not be unfairly disadvantaged compared to an adult charged with a similar offence.</p>

Question 3

a) Is the method of applying a reduction at the first stage of the proceedings set out clearly?

Do you agree:

b) with capping the maximum reduction at one-third?

c) with restricting the point at which the one-third reduction can be made to the first stage of the proceedings?

d) with the definition of first stage of the proceedings for adults and youths for each type of offence at D1?

D2. After the first stage of the proceedings the maximum level of reduction is **one-fifth** (subject to the exceptions in section F).

For offenders aged 18 or older the **one-fifth** reduction should be made for pleas indicated:

- For offences dealt with in magistrates' courts – up to 14 days after the first hearing;
- For either way offences sent to the Crown Court for trial – up to and including the first hearing at the Crown Court;
- For indictable only offences - not more than 28 days after the prosecutor states it has complied with s3 Criminal Procedure and Investigations Act 1996.

For offenders under the age of 18 the **one-fifth** reduction should be made for pleas indicated:

- For offences dealt with in the youth court – up to 14 days after the first hearing;
- For offences sent to the Crown Court as grave crimes – up to and including the first hearing at the Crown Court **unless** the interests of justice test above applies, in which case not more than 28 days after the prosecutor states it has complied with s3 Criminal Procedure and Investigations Act 1996.
- For offences sent to the Crown Court under any other provision – not more than 28 days after the prosecutor has complied with s3 Criminal Procedure and Investigations Act 1996.

D3. Sliding scale of reduction thereafter

The reduction should be decreased from **one-fifth** to a maximum of **one-tenth** on the first day of trial proportionate to the time when the guilty plea is first indicated relative to the progress of the case and the trial date (subject to the exceptions in section F). The reduction may be decreased further, even to zero, if the guilty plea is entered during the course of the trial. For the purposes of this guideline a trial will be deemed to have started when pre-recorded cross-examination has taken place.

Comparison between proposed guideline and existing guideline		
SGC	Draft guideline	Effect of the change
Recommended quarter where the plea is entered after a trial date is set.	<p>After the first stage of the proceedings the maximum level of reduction is one-fifth.</p> <p>For adults defined as:</p> <ul style="list-style-type: none"> • <u>For offences dealt with in magistrates' courts</u> – up to 14 days after the first hearing. • <u>For either way offences</u> sent to the Crown Court for trial - up to and including the first hearing at the Crown Court. • <u>For indictable only offences</u> - not more than 28 days after the prosecutor has complied with s3 Criminal Procedure and Investigations Act 1996. 	<p>The reduction available under the draft guideline (one-fifth or 20%) is lower than that under the SGC guideline (one quarter or 25%). Thus, there is a steeper drop in the reduction available for an offender who does not plead at the first stage of proceedings than currently.</p> <p>The time period when that reduction is available has been restricted. In magistrates' courts it is available only up to 14 days after the first hearing. In the Crown Court it is available only at the first hearing for either way offences; and for indictable only offences until 28 days after the prosecution serves disclosure.</p>

	<p>For youths defined as:</p> <ul style="list-style-type: none"> • <u>For offences dealt with in the youth court</u> – up to 14 days after the first hearing; • <u>For offences sent to the Crown Court as grave crimes</u> – up to and including the first hearing at the Crown Court unless the interests of justice test at above applies in which case not more than 28 days after the prosecutor has complied with s3 Criminal Procedure and Investigations Act 1996; • <u>For offences sent to the Crown Court under any other provision</u> – not more than 28 days after the prosecutor has complied with s3 Criminal Procedure and Investigations Act 1996. 	<p>For youths dealt with in the youth court the one fifth reduction is available only up to 14 days after the first hearing. For offences sent to the Crown Court as grave crimes the one-fifth reduction will be available only at the first hearing unless the court exercises its discretion to treat the offence as equivalent to an indictable only offence committed by an adult. In such cases and in cases sent to the Crown Court under other provisions the one-fifth reduction is available until 28 days after the prosecution serves disclosure.</p>
<p>Recommended one tenth at the door of the court/ after trial has begun.</p>	<p>A sliding scale then applies: The reduction should be decreased from one-fifth to a maximum of one-tenth on the first day of trial proportionate to the time when the guilty plea is first indicated relative to the progress of the case and the trial date. The reduction may be decreased further, even to zero, if the guilty plea is entered during the course of the trial.</p> <p>For the purposes of this guideline a trial will be deemed to have started when pre-recorded cross-examination has taken place.</p>	<p>For late pleas the current practice of allowing a reduction of up to one-tenth on the day of trial is continued under the proposed guideline. The draft guideline specifically allows for a reduction below one-tenth (or no reduction at all) once the trial has started. The guideline does not attempt to define the circumstances where no reduction would be appropriate for a plea entered during the course of the trial as the trial judge or magistrates would be in the best position to assess this on the facts of individual cases.</p> <p>The draft guideline specifically states that where pre-recorded cross-examination has taken place (in accordance with section 28 of the Youth Justice and Criminal Evidence Act 1999) the trial will be deemed to have started. This means that the maximum reduction available for a plea after the pre-recorded cross-examination has taken place is one-tenth.</p>

Question 4

a) Is the method of determining the reduction after the first stage of the proceedings set out clearly?

Do you agree:

b) with restricting the reduction to one-fifth after the first stage of proceedings?

c) with the definition of the point at which the one-fifth reduction can be given at D2?

d) with the sliding scale reduction (at D3) thereafter?

e) with treating the trial as having started when pre-recording cross-examination has taken place?

Please give reasons where you do not agree.

E. APPLYING THE REDUCTION**E1. Imposing one type of sentence rather than another**

The reduction in sentence for a guilty plea can be taken into account by imposing one type of sentence rather than another; for example:

- by reducing a custodial sentence to a community sentence,
- by reducing an immediate custodial sentence to a suspended sentence order, or
- by reducing a community sentence to a fine.

If the court has proceeded on that basis there should be no further reduction on account of the guilty plea.

E1 maintains the position under the SGC guideline, but aims to set out the position more clearly. It explicitly states that the reduction can be taken into account by imposing a suspended sentence of imprisonment rather than immediate custody.²⁴ The guideline states that where the guilty plea reduction is reflected in the type of sentence imposed, the sentence should not be reduced further to reflect the guilty plea. This does not mean that the court should not make a reduction (to, for example, the custodial period of a suspended sentence order) if the decision to impose a different type of sentence was not a reflection of the guilty plea but of other circumstances of the offence or offender.

²⁴ See, for example *Attorney General v Baines* [2013] EWHC 4326 (Admin) where a guilty plea to contempt resulted in the sentence being suspended.

Question 5

a) Is the paragraph on imposing one type of sentence rather than another clear?

Do you agree:

b) that it may be appropriate to reflect a guilty plea by suspending a period of imprisonment?

c) that when the guilty plea reduction is reflected in imposing a different (less severe) type of sentence that no further reduction should be made?

Please give reasons where you do not agree.

Paragraphs E2 to E4 reflect the position in the SGC guideline on applying the reduction where certain jurisdictional issues apply.

E2. More than one summary offence

When dealing with more than one summary offence, the aggregate sentence is limited to a maximum of six months. Allowing for a reduction for each guilty plea, consecutive sentences might result in the imposition of the maximum six month sentence. Where this is the case, the court **may** make a modest *additional* reduction to the *overall* sentence to reflect the benefits derived from the guilty pleas.

E3. Keeping an either way case in the magistrates' court to reflect a guilty plea

Reducing a custodial sentence to reflect a guilty plea may enable a magistrates' court to retain jurisdiction of an either way offence rather than committing the case for sentence at the Crown Court. In such cases a magistrates' court may pass a sentence of up to six months

E4. Sentencing up to 24 months detention and training order for youth offences

A detention and training order of 24 months may be imposed on an offender aged under 18 if the offence is one which but for the plea would have attracted a sentence of detention in excess of 24 months under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000.

The guidance at E2 would apply when a court is sentencing an offender for more than one summary offence; in this situation the maximum total sentence that the court may pass is six months' custody. For example D is being dealt with for an offence of driving whilst disqualified and a separate offence of common assault (both carry a statutory maximum of six months' imprisonment). He pleads guilty to both offences at the first hearing. He has a very bad record for driving offences and the court determines that the appropriate sentence would be six months' imprisonment before the reduction for a guilty plea, which equates to four months after guilty plea. For the assault the court determines that the sentence before plea should be three months before plea, so two months after plea. The offences were completely separate so consecutive sentences are appropriate, making a total of six months' imprisonment. In this situation the guidance suggests that the court **may** reduce the total sentence below six months to reflect the benefits of the guilty pleas.

While the approach at E2 reflects that of the SGC guideline, an alternative view would be that given that where there are two proper sentences passed there should be no additional reduction.

The guidance at E3 confirms that a magistrates' court may sentence up to six months' imprisonment for an either-way offence where a guilty plea has been entered; the reduction for guilty plea being reflected in the fact that the case has not been committed for sentence to the Crown Court.

The guidance at E4 confirms that a youth court may impose a detention and training order of the maximum length of 24 months where a guilty plea has been entered for an offence which is classified as a grave crime; the reduction being reflected in the fact that the case is not committed to the Crown Court for sentencing under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000.

Question 6

a) Is the guidance at paragraphs E2 to E4 clear?

Do you agree:

b) with the guidance at E2 that there should be provision for a further reduction in cases where consecutive sentences (after guilty plea reduction) for summary offences total the maximum of six months?

c) Are there any other jurisdictional issues that the guideline should address?

Please give reasons where you do not agree.

F. EXCEPTIONS**F1. Further information or advice necessary before indicating plea**

Where **all three** of the following apply:

1. At or before the first stage of the proceedings (see D1 above) the offender – although he has not indicated a guilty plea – has identified to the court and/or the prosecutor the conduct which he admits; and
2. had insufficient information about the allegations to know whether he was guilty of the offence; and
3. it was necessary for him to receive advice and/or to see evidence in order for him to decide whether he should plead guilty,

a reduction of one-third should be made where the guilty plea is indicated immediately after he receives the advice and/or sees the evidence.

For the avoidance of doubt this exception does not apply where an offender has exercised his right not to admit what he knows he has done until he sees the strength of the evidence against him.

Paragraph F1 provides an important exception to the restriction at D1 and D2 which provide that a one-third reduction may only be made when a plea is entered at the first stage of proceedings. There will be a limited number of cases where a defendant is unaware of whether or not he has committed the offence with which he is charged without the benefit of advice and/or sight of the evidence. However, the exception does not permit a defendant to say nothing until the prosecution has served all its evidence and then claim the maximum reduction – the defendant is required to accept what he knows he has done at an early stage, but in certain situations may need to await advice or information before entering a plea.

The situations where this exception would apply are likely to be rare and may vary considerably on their facts. One example of such a situation might be where an offender has been involved in a car crash and is charged with a driving offence but, as a result of injuries sustained, has no memory of the actual incident. He accepts what he knows he has done (for example he may be able to confirm that he was the driver of the car) but he does not enter a plea until the prosecution has served the evidence as to the manner of his driving and he has been able to take advice on whether that would amount to the offence charged. In these circumstances he would still be entitled to a one-third discount provided that he indicated the plea immediately after receiving the advice.

The intention is that the exception should only apply when the offender genuinely does not know whether or not he is guilty, it is not an invitation to ‘play the system’. The rationale is set out in *Caley*:

‘whilst it is perfectly proper for a defendant to require advice from his lawyers on the strength of the evidence (just as he is perfectly entitled to insist on putting the Crown to proof at trial), he does not require it in order to know whether he is guilty or not; he requires it in order to assess the prospects of conviction or acquittal, which is different. Moreover, even though a defendant may need advice on which charge he ought to plead guilty to, there is often no reason why uncertainty about this should inhibit him from admitting, if it is true, what acts he did.’²⁵

²⁵ *R v Caley and others* [2012] EWCA Crim 2821 at paragraph 14.

Question 7

a) Is the guidance at F1 clear?

Do you agree:

b) that the exception is a necessary safeguard?

c) that the right cases are captured by this exception?

Please give reasons where you do not agree.

F2. Initial details of the prosecution case (IDPC) not served before the first hearing

If the prosecutor has not made the IDPC available to an offender charged with an either way or indictable only offence at or before the beginning of the day of the first hearing **and** the offender indicates a guilty plea to the court and the prosecutor within 14 days of service of the IDPC, the plea should be taken as having been indicated at the first stage of proceedings.

The Criminal Procedure Rules²⁶ set out the requirements for the service of the initial details of the prosecution case (IDPC). Rule 8.2 states:

Providing initial details of the prosecution case

(1) The prosecutor must serve initial details of the prosecution case on the court officer—

(a) as soon as practicable; and

(b) in any event, no later than the beginning of the day of the first hearing.

(2) Where a defendant requests those details, the prosecutor must serve them on the defendant—

(a) as soon as practicable; and

(b) in any event, no later than the beginning of the day of the first hearing.

(3) Where a defendant does not request those details, the prosecutor must make them available to the defendant at, or before, the beginning of the day of the first hearing.

The draft guideline is predicated on the assumption that in the majority of cases the prosecution will have complied with its obligations to provide the IDPC and that a defendant will therefore have sufficient information to enter a plea at the first stage of the proceedings. However, there will be cases (especially where a defendant is produced in custody) when the IDPC has not been served by the beginning of the day of the first hearing and the defendant would be unfairly disadvantaged by not having the opportunity to understand the nature of the allegations and discuss these with a lawyer before being required to enter a plea. The exception at F2 therefore provides that in such situations the defendant should have a further 14 days in which to indicate a plea.

The exception only applies to either-way and indictable only offences; not to summary offences. The rationale for this is that potential delays in service of IDPC are likely particularly to affect defendants

²⁶ <http://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015>

charged with either-way offences (especially those produced in custody) who currently would expect to receive a one-third reduction for an early plea at the Crown Court, but under the proposed guideline would only receive a one-fifth reduction for a plea at that stage. In such cases, the time between charge and first appearance may leave insufficient time for the IDPC to be made available by the beginning of the day of the first hearing. Whilst the same time constraints may apply to defendants produced in custody charged with summary only offences, the issues in such cases are likely to be more easily resolved on the day. In all cases, if insufficient information is served for a defendant to know whether or not he has committed the offence the exception at F1 (above) is engaged.

Question 8

a) Is the guidance at F2 clear?

Do you agree:

b) that the exception will ensure that defendants will know what the allegations are against them before being required to enter a plea?

c) that the exception should apply to either-way and indictable only offences but not to summary offences?

d) that 14 days is the appropriate extension?

Please give reasons where you do not agree.

F3. Newton Hearings and special reasons hearings

In circumstances where an offender's version of events is rejected at a Newton Hearing²⁷ or special reasons hearing,²⁸ the reduction which would have been available at the stage of proceedings the plea was indicated should normally be halved. Where witnesses are called during such a hearing, it may be appropriate further to decrease the reduction.

The exception at F3 reflects the current position in the SGC guideline. The draft guideline (like the SGC guideline) suggests that the reduction for a guilty plea should be halved but allows a degree of discretion for the sentencer depending on the circumstances of the case. A key factor will be whether the benefits of the guilty plea (especially to victims and witnesses) have been eroded by the necessity for a Newton or special reasons hearing. Of course, where an offender's version of events is upheld by a Newton or special reasons hearing, there will be no loss of guilty plea reduction.

²⁷ A Newton hearing is held when an offender pleads guilty but disputes the case as put forward by the prosecution and the dispute would make a difference to the sentence. The judge will normally hear evidence from witnesses to decide which version of the disputed facts to base the sentence on.

²⁸ A special reason hearing occurs when an offender is convicted of an offence carrying a mandatory licence endorsement or disqualification from driving and seeks to persuade the court that there are extenuating circumstances relating to the offence that the court should take into account by reducing or avoiding endorsement disqualification. This may involve calling witnesses to give evidence.

Question 9

- a) Is the guidance at F3 clear?
- b) Do you agree with the proposed reduction in cases where an offender's version of events is rejected at a Newton hearing or special reasons?

Please give reasons where you do not agree.

F4. Exceptionally complex and time consuming cases

A reduction up to but not exceeding the maximum of one-third **may** be made for a plea indicated later than the first stage of the proceedings where the trial was likely to have taken up a **very** substantial amount of court time and/or would have involved a **very** substantial number of witnesses having to give evidence.

The exception at F4 is designed to give courts the flexibility to give an incentive to defendants in **very** complex cases to enter guilty pleas even though they have failed to do so at the first stage of the proceedings. An example of the type of case to which this exception is likely to apply is a very complex fraud trial which would otherwise take many months and involve dozens of witnesses. It is envisaged that this exception will apply only rarely. There is no equivalent provision in the SGC guideline, because that guideline does not cap the maximum reduction at one-third and applies a sliding scale compared to the steep drop after the first stage of proceedings in the proposed guideline.

Question 10

- a) Is the guidance at F4 clear?

Do you agree:

- b) that it is a necessary exception for the small number of cases to which it applies?
- c) that the exception is worded appropriately to capture the right cases?

Please give reasons where you do not agree.

F5. Offender convicted of a lesser or different offence

If an offender is convicted of a lesser or different offence from that originally charged, and he has earlier made an unequivocal indication of a guilty plea to this lesser or different offence to the prosecution and the court, the court should give the level of reduction that is appropriate to the stage in the proceedings at which this written indication of plea (to the lesser or different offence) was made.

F5 provides an important exception in cases where an offender pleads to a different or lesser offence during the course of court proceedings. In such cases the offender should not be unfairly

disadvantaged by the change of charge. However, the proposed guideline specifies that the offender can only benefit from a guilty plea reduction from the point at which he has clearly accepted that he is guilty of the different offence. The exception does not enable a defendant to maintain a complete denial (with the consequent disadvantages for victims and witnesses) and still benefit from the maximum reduction.

Taking as an example two defendants charged with dangerous driving.

Offender A accepts that he was driving and that he was at fault, but does not accept that the manner of his driving amounted to dangerous driving. At the outset his representative makes an offer of a plea to careless driving. The prosecution do not accept this so the dangerous driving is put to him at the magistrates' court and he pleads not guilty and is sent to the Crown Court for trial. He continues to maintain his position and a trial date is set. The prosecution then review the case and contact the defence to say that they will accept a plea to careless driving. The case is listed and A duly pleads to careless driving. He receives a one-third reduction to his sentence.

Offender B accepts that he was driving, but makes no further comment. He pleads not guilty to dangerous driving at the magistrates' court and is sent for trial to the Crown Court. He maintains his not guilty plea and a trial date is set. A defence statement is served stating that he does not accept the Crown's evidence as to the manner of his driving. The prosecution review the case and contact the defence to ask if B will plead to careless driving. The case is listed and B pleads guilty to careless driving. He receives a reduction to his sentence of between one-fifth and one-tenth.

In the first example A has maintained a clear intention to plead to the lesser offence from the first stage in the proceedings and so is entitled to the maximum one-third reduction that would have applied if the lesser charge had been put at that point. In the second example B has made no such indication and has simply maintained a denial of the offence. He is therefore only entitled to the reduction that applies at the stage in the proceedings when he indicated a willingness to plead to the lesser offence.

Question 11

- a) Is the guidance at F5 clear?**
- b) Do you agree with the proposed treatment of cases where an offender is convicted of a different or lesser offence?**

Please give reasons where you do not agree.

F6. Minimum sentence under the Firearms Act 1968

There can be no reduction for a guilty plea if the effect of doing so would be to reduce the length of sentence below the required minimum term. Where there is a finding of exceptional

circumstances which justifies not passing the required minimum term, no further reduction for a guilty plea will normally be appropriate.

F7. Appropriate custodial sentences for persons aged 18 or over when convicted under the Prevention of Crime Act 1953 and Criminal Justice Act 1988 and prescribed custodial sentences under the Power of Criminal Courts (Sentencing) Act 2000

In circumstances where:

- an *appropriate* custodial sentence falls to be imposed on a person aged 18 or over upon conviction under Section 1A of the Prevention of Crime Act 1953 (offence of threatening with an offensive weapon in public) or Section 139AA of the Criminal Justice Act 1988 (offence of threatening with an article with a blade or point or offensive weapon) or
- a *prescribed* custodial sentence falls to be imposed under Section 110 of the Power of Criminal Courts (Sentencing) Act 2000 (drug trafficking offences) or Section 111 of the Power of Criminal Courts (Sentencing) Act 2000 (burglary offences),

The maximum reduction available for a guilty plea is one-fifth of the *appropriate* or *prescribed* custodial period

F8. Appropriate custodial sentences for persons aged at least 16 but under 18 when convicted under the Prevention of Crime Act 1953 and Criminal Justice Act 1988

In circumstances where an *appropriate custodial sentence* of a Detention and Training Order of at least four months, falls to be imposed on a person who is aged at least 16 but under 18 who has been convicted under sections 1 or 1A of the Prevention of Crime Act 1953; or sections 139, 139AA or 139A of the Criminal Justice Act 1988 (certain possession of knives or offensive weapon offences) the court may impose any sentence that it considers appropriate, having taken into consideration the general principles in this guideline.

Paragraphs F5 to F7 summarise the position with regard to statutory minimum sentences. The guidance does not represent a change from current practice, but brings the guidance up-to-date.

Question 12

Is the guidance at F6 to F8 accurate and clear?

G. MANDATORY LIFE SENTENCES FOR MURDER

Murder is the most serious criminal offence and the sentence prescribed is different from all other sentences. By law, the sentence for murder is imprisonment (detention) for life and an offender will remain subject to the sentence for the rest of his life.

Given the special characteristic of the offence of murder and the unique statutory provision in Schedule 21 of the Criminal Justice Act 2003 of starting points for the minimum term to be served by an offender, careful consideration has to be given to the extent of any reduction for a guilty plea and to the need to ensure that the minimum term properly reflects the seriousness of the offence.

Whilst the general principles continue to apply (both that a guilty plea should be encouraged and that the extent of any reduction should reduce if the indication of plea is later than the first stage of the proceedings) the process of determining the level of reduction will be different.

Determining the level of reduction

Whereas a court should consider the fact that an offender has pleaded guilty to murder when deciding whether it is appropriate to order a whole life term, where a court determines that there should be a whole life minimum term, there will be no reduction for a guilty plea.

In other circumstances,

- the Court will weigh carefully the overall length of the minimum term taking into account other reductions for which the offender may be eligible so as to avoid a combination leading to an inappropriately short sentence;
- where it is appropriate to reduce the minimum term having regard to a plea of guilty, the reduction will not exceed one-sixth and will never exceed five years;
- The maximum reduction of one sixth or five years (whichever is less) should only be given when a guilty plea has been indicated at the first stage of the proceedings. Lesser reductions should be given for guilty pleas after that point, with a maximum of one twentieth being given for a guilty plea on the day of trial.

The exceptions relating to further information or advice necessary before indicating a plea and Newton hearings outlined at F1 and F3 above, apply to murder cases.

The section on reductions for guilty pleas in cases of murder is largely unchanged from the SGC guideline. However there are some differences which are outlined below:

- The narrative in the SGC guideline explaining the rationale for treating murder differently has been condensed but the rationale remains unchanged.
- To reflect the decision of the Court of Appeal in R v Jones [2005] EWC Crim 3115 the draft guideline explicitly states that the fact that an offender has pleaded guilty may be taken into account in deciding whether it is appropriate to order a whole life term.
- The following paragraph in the SGC guideline has been omitted from the draft guideline. The Council did not consider that it added anything useful to the guidance.

Extract from the SGC guideline at 6.6, paragraph 2.

- (d) the Court should then review the sentence to ensure that the minimum term accurately reflects the seriousness of the offence taking account of the statutory starting point, all aggravating and mitigating factors and any guilty plea entered.

Question 13

- a) Is the guidance in section G on reduction for a guilty plea in cases of murder clear?
b) Do you agree with the guidance in such cases?

Please give reasons where you do not agree.

The SGC guideline contains a section on applying the guideline to other indeterminate sentences:

Extract from the SGC guideline:

G. Application to other Indeterminate Sentences

7.1 There are other circumstances in which an indeterminate sentence will be

imposed. This may be a discretionary life sentence or imprisonment for public protection.

- 7.2 As with the mandatory life sentence imposed following conviction for murder, the Court will be obliged to fix a minimum term to be served before the Parole Board is able to consider whether the offender can be safely released.
- 7.3 However, the process by which that minimum term is fixed is different from that followed in relation to the mandatory life sentence and requires the Court first to determine what the equivalent determinate sentence would have been. Accordingly, the approach to the calculation of the reduction for any guilty plea should follow the process and scale adopted in relation to determinate sentences, as set out in section D above.

The Council considers that the information on other indeterminate sentences is implicit in the draft guideline and will be well understood by judges who pass discretionary life sentences. In the interests of keeping the draft guideline concise and relevant, this section has not been reproduced in the draft guideline.

Question 14

Do you agree that Section G in the SGC guideline can be omitted from the new guideline?

Please give reasons where you do not agree.

Appendices to the guideline

The Council has provided six flowcharts as appendices to the draft guideline which are designed to illustrate how the guilty plea reductions will apply to summary only, either-way and indictable only cases. The flowcharts are necessarily a simplified version of the guideline and are not intended to be used as an alternative to the detailed text.

Question 15

- a) Are the flowcharts at appendices 1 to 6 clear?**
- b) Do you agree that it is helpful to include the flowcharts?**
- c) Is there any other explanatory material that it would be useful to include?**

SECTION FOUR: THE EFFECTS OF THE GUIDELINE

As stated in [section one at page x](#) the purpose of reducing sentences when offenders plead guilty is to encourage them to admit their guilt as early as possible. The draft guideline has been designed to maximise the incentive to plead as early in the process as possible and to provide a clear framework for consistency and fairness in the application of reductions for a guilty pleas.

The Council is aware that the draft guideline is more prescriptive than the existing guideline and that, if offenders do not bring forward the timing of their pleas in response to the new guideline, many offenders will receive a lower reduction, resulting in longer prison terms being served and consequently greater costs in terms of providing prison places. However, if the draft guideline achieves its aim of encouraging earlier pleas, then some offenders will also receive a higher reduction and savings may be made. More importantly, this will bring about the desired benefits for victims and witnesses and for the efficiency of the criminal justice system.

The Council has the benefit of detailed data from the Crown Court Sentencing Survey as to when pleas were being entered in the Crown Court and the level of reduction being made in 2014. This data shows that a substantial proportion (22 per cent) of offenders sentenced to custody for either-way offences in 2014, benefited from a reduction of one-third for guilty pleas entered in the Crown Court. In addition 17 per cent of offenders pleading to either-way offences at the Crown Court in 2014 had their sentences reduced by one-quarter. Under the draft guideline, the maximum that offenders in either of these categories would receive is a reduction of one-fifth.

There are other examples of offenders in the Crown Court who would receive a lower reduction under the draft guideline than they do under current practice. **Without a change in behaviour** there are only a very small number who may benefit from a greater reduction – those who currently receive a lower reduction because they are deemed to have pleaded in the face of overwhelming evidence. In all other cases offenders would receive either the same or a lower reduction than in 2014.

In every case in which a plea is entered and an offender is sentenced to immediate custody, the guilty plea reduction has an impact on the sentence length, and so any small change to average sentence lengths may have a very significant cumulative effect on the overall system.

If brought into force and without a change in behaviour, the draft guideline could result in the need for 4,500 additional prison places each year.²⁹

²⁹ A more detailed assessment of the likely impact on correctional resources can be found here [\[insert link to resource assessment\]](#)

The main factor that will influence the effect of the guideline is the extent to which offenders are incentivised to plead at an early stage. However, there are also other factors to take into account, all of which may vary. For example, the advice given to defendants by legal representatives, the extent to which the CPS reviews and prepares cases at an early stage and the extent to which sentencers (in appropriate cases) apply the guideline to reduce a sentence of immediate custody to a suspended sentence order or non-custodial sentence.

The Council is of the view that the proposals provide unambiguous and fair guidance for sentencers which can be easily understood by defendants, based on clear principles. As stated above, the Council believes that the guideline will produce benefits for victims, witnesses and the criminal justice system more generally by incentivising those who are guilty to plead at an early stage. It will also provide for a fairer and more consistent application of reductions to sentences for a guilty plea. It will form part of the change of culture in the criminal justice system, which will improve efficiency. While the Council recognises its responsibility to draw attention to the possible implications of the proposed guideline, the guideline was not designed with the aim of increasing or decreasing the prison population. Any cumulative decrease in the levels of reductions made to sentences (and thereby increase in overall sentence lengths) can be justified by the positive effect that the proposals will have in terms of benefits for victims and witnesses and certainty for defendants; furthermore, full discount remains available to all offenders should they choose to plead at the first stage.

Question 16

- a) Do you consider that the proposed guideline, operating alongside other criminal justice system initiatives, will produce a change in culture?**
- b) Do you consider that the proposed guideline would promote consistency in the application of guilty pleas?**
- c) Do you consider that the proposed guideline will provide benefits to victims and witnesses?**

Annex A – Summary of consultation questions**Question 1**

a) Is the rationale in the key principles section set out clearly?

Do you agree:

- b) with the stated purpose of operating a reduction for guilty plea scheme?
- c) that the guideline does not erode the principle that it is for the prosecution to prove its case?
- d) that factors such as admissions in interview should be taken into account as mitigating factors before the application of the reduction for guilty plea?

Please give reasons where you do not agree.

Question 2

a) Do you agree with the approach taken in the draft guideline to overwhelming evidence i.e. that the reduction for a guilty plea should not be withheld in cases of overwhelming evidence?

If not:

- b) Do you think that the alternative approach (of allowing the court discretion to apply a lower reduction after the first stage of the proceedings) is preferable?

Please give reasons.

Question 3

a) Is the method of applying a reduction at the first stage of the proceedings set out clearly?

Do you agree:

- b) with capping the maximum reduction at one-third?
- c) with restricting the point at which the one-third reduction can be made to the first stage of the proceedings?
- d) with the definition of first stage of the proceedings for adults and youths for each type of offence at D1?

Question 4

a) Is the method of determining the reduction after the first stage of the proceedings set out clearly?

Do you agree:

b) with restricting the reduction to one-fifth after the first stage of proceedings?

c) with the definition of the point at which the one-fifth reduction can be given at D2?

d) with the sliding scale reduction (at D3) thereafter?

e) with treating the trial as having started when pre-recording cross-examination has taken place?

Please give reasons where you do not agree.

Question 5

d) Is the paragraph on imposing one type of sentence rather than another clear?

Do you agree:

e) that it may be appropriate to reflect a guilty plea by suspending a period of imprisonment?

f) that when the guilty plea reduction is reflected in imposing a different (less severe) type of sentence that no further reduction should be made?

Please give reasons where you do not agree.

Question 6

a) Is the guidance at paragraphs E2 to E4 clear?

b) Do you agree with the guidance at E2 that there should be provision for a further reduction in cases where consecutive sentences (after guilty plea reduction) for summary offences total to the maximum of six months?

c) Are there any other jurisdictional issues that the guideline should address?

Please give reasons where you do not agree.

Question 7

a) Is the guidance at F1 clear?

Do you agree:

b) that the exception is a necessary safeguard?

c) that the right cases are captured by this exception?

Please give reasons where you do not agree.

Question 8

e) Is the guidance at F2 clear?

Do you agree:

f) that the exception will ensure that defendants will know what the allegations are against them before being required to enter a plea?

g) that the exception should apply to either-way and indictable only offences but not to summary offences?

h) that 14 days is the appropriate extension?

Please give reasons where you do not agree.

Question 9

a) Is the guidance at F3 clear?

b) Do you agree with the proposed reduction in cases where an offender's version of events is rejected at a Newton or special reasons hearing?

Please give reasons where you do not agree.

Question 10

d) Is the guidance at F4 clear?

Do you agree:

e) that it is a necessary exception for the small number of cases to which it applies?

f) that the exception is worded appropriately to capture the right cases?

Please give reasons where you do not agree.

Question 11

c) Is the guidance at F5 clear?

d) Do you agree with the proposed treatment of cases where an offender is convicted of a different or lesser offence?

Please give reasons where you do not agree.

Question 12

Is the guidance at F6 to F8 accurate and clear?

Question 13

a) Is the guidance in section G on reduction for a guilty plea in cases of murder clear?

b) Do you agree with the guidance in such cases?

Please give reasons where you do not agree.

Question 14

Do you agree that Section G in the SGC guideline can be omitted from the new guideline?

Please give reasons where you do not agree.

Question 15

- a) Are the flowcharts at appendices 1 to 6 clear?
- b) Do you agree that it is helpful to include the flowcharts?
- c) Is there any other explanatory material that it would be useful to include?

Question 16

- a) Do you consider that the proposed guideline, operating alongside other criminal justice system initiatives, will produce a change in culture?
- b) Do you consider that the proposed guideline would promote consistency in the application of guilty pleas?
- c) Do you consider that the proposed guideline will provide benefits to victims and witnesses?

Annex B – Background to guidelines

STATUTORY REQUIREMENTS

Section 125(1) Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court -

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

In producing this draft guideline, the Council has had regard to a number of statutory requirements.

The purposes of sentencing are stated in section 142 of the Criminal Justice Act 2003:

- 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.

The Sentencing Council has also had regard to the statutory duties in the Coroners and Justice Act 2009 which set out requirements for sentencing guidelines as follows:

- guidelines may be general in nature or limited to a particular offence;
- the Council must publish them as draft guidelines;
- the Council must consult the following persons about draft guidelines: the Lord Chancellor, such persons as the Lord Chancellor may direct, the Justice Select Committee of the House of Commons, such other persons as the Council considers appropriate;
- after making appropriate amendments, the Council must issue definitive guidelines;
- the Council may review the guidelines and may revise them;³⁰
- the Council must publish a resource assessment in respect of the guidelines;³¹ and,
- the Council must monitor the operation and effect of its sentencing guidelines.³²

When preparing sentencing guidelines, the Council must have regard to the following matters:

³⁰ s. 120 Coroners and Justice Act 2009

³¹ s. 127(2) *ibid*

³² s. 128(1) *ibid*

- the sentences imposed by courts in England and Wales for offences;
- the need to promote consistency in sentencing;
- the impact of sentencing decisions on victims of offences;
- the need to promote public confidence in the criminal justice system;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and,
- the results of monitoring the operation and effect of its sentencing guidelines.³³

When publishing any draft guidelines, the Council must publish a resource assessment of the likely effect of the guidelines on:

- the resources required for the provision of prison places;
- the resources required for probation provision; and
- the resources required for the provision of youth justice services.³⁴

³³ s. 120(11) Coroners and Justice Act 2009

³⁴ s. 127(3) Coroners and Justice Act 2009

Communications plan

- guilty pleas consultation

SECTION 1: Context

This plan sets out the communications strategy and plan for the launch of the consultation on the Sentencing Council's draft guilty plea guideline.

The subject areas covered are:

- the principles on which the reduction for a guilty plea should be based;
- the levels of reduction that should be available;
- the stage in the court process that the different levels of reduction should apply;
- any exceptions to the reductions available at various stages;
- the regime that should apply in the case of murder; and
- the clarity and accessibility of the guideline.

In 2013 the Council resumed work it had paused in 2011 on a guideline covering reductions for guilty pleas to replace the guideline issued in 2007 by the Sentencing Guidelines Council (SGC). A draft guideline was developed with the aim of encouraging offenders to admit their guilt as early as possible. Work was again paused on this guideline in March 2014 while the impact of various initiatives in the criminal justice system was assessed, and resumed again in December 2014.

The Council had drawn on research undertaken in 2011 on attitudes to guilty plea reductions and further research in 2013 amongst sentencers on how the SGC guideline was working in practice. In March 2014, the Council carried out further research with sentencers to test the clarity of the proposed guideline which has informed the development of this consultation.

Public launches of other Sentencing Council consultations and guidelines have taken place over the last five years and experience has shown that, with careful media planning, the majority of coverage can be positive/neutral and reasonably accurate even where there are opposing views or sensitive subject matter.

The consultation will be launched in February and be open for three months. Following the consultation period, the definitive guideline will be prepared and published in October 2016 and the guideline would come into force in all courts in England and Wales in January 2017.

More broadly, this strategy should be read in the context of the objectives of the Sentencing Council (which are in line with the functions set out in the Coroners and Justice Act 2009).

The guilty plea guideline will operate in the context of the wider criminal justice system. The development of the Transforming Summary Justice (TSJ) programme, Early Guilty Plea (EGP) and Better Case Management (BCM) initiatives and the recommendations in PQBD's *Review of Efficiency in Criminal Proceedings* which have been incorporated into the Criminal Procedure Rules, place a requirement on all parties to engage early, make the right decisions, identify the issues for the court to resolve and provide sufficient material to facilitate that process.

In terms of what we already know about practice in this area, we know that there is a high degree of flexibility within the system which means that sentencers are using their discretion to determine the size of reduction a defendant might get at various stages but this can lead to a lack of consistency and a lack of clarity for both defence and prosecution on the issue.

SECTION 2: Vision and aim

By producing a more concise guideline with a clear decision making process, the Council aims to improve clarity and consistency in the application of guilty plea reductions.

The **ultimate communications outcomes** desired are:

- the key audiences understand the aims and remit of the consultation and responds constructively and are supportive of the aims of the draft guideline;
- the government is supportive of this consultation and responds constructively;
- academics proactively engage in this consultation, understand the aims and remit and respond constructively; and

- that when the definitive guideline is introduced, it is well received and complied with.

The **key aims** of our communications are therefore to:

- facilitate constructive responses;
- build relationships with stakeholders;
- prepare the way for the best possible reception of the guidelines themselves; and
- raise awareness and understanding of the sentencing process.

We will measure success by looking at the numbers of responses and their relevance, the number and tone of articles published and the level of third party endorsement we receive. In the longer term we will be looking at the overall reception of the definitive guideline and compliance.

SECTION 3: Strategic options

SWOT analysis: using a tool such as the SWOT analysis tool, will help us identify the best strategic options. The items identified under the left hand column ('helpful') feed into the strategic options in this section. The items identified under the right hand column ('harmful') feed into the risks at section 8.

	<i>Helpful</i>	<i>Harmful</i>
<i>Internal</i>	STRENGTH <ul style="list-style-type: none"> - There is a genuine lack of clarity and this guideline provides a much needed structure to this area - We have research and data to support our proposal 	WEAKNESS <ul style="list-style-type: none"> - Our research is only a best guess – we have no idea what will happen in reality - Our resource assessment predicts that this proposal could increase the prison population by 4,500 - Our proposals could result in fewer guilty pleas and thus more cases going to trial
<i>External</i>	OPPORTUNITY <ul style="list-style-type: none"> - There is a general direction of travel in the justice system towards greater efficiency and this proposal contributes to that (courts, CPS, police) - There are very real benefits for victims in that a guilty plea at the earliest opportunity will mean they are relieved of the stress involved in a court case and that they have been publicly believed - Clearer guidelines, consistently applied would improve public confidence 	THREAT <ul style="list-style-type: none"> - Defence will portray this proposal as less likely to encourage guilty pleas - Judges will be unhappy about having less discretion to give a full third off - Success of the guideline depends on factors outside our control (the various IT projects and CPS/police delivering IDPC, LAA successfully awarding contracts etc) - A change of culture is required for guideline to succeed – this will take time

Within existing budgetary constraints, our strategic options are fairly limited. We are obliged by statute to consult and our guidelines must be followed so there is no option to do no communications.

No proactive media: we have an option to undertake no proactive media work and just publish the consultation documents getting them out to the primary audiences and making them available via online channels. The advantages of this are that we would not be opening ourselves to criticism and individual Council members would not have to undertake media interviews. Staff would be freed up to focus on stakeholders.

The risk however is that the media could publish stories unchallenged and in lieu of anyone from the Council being interviewed, could interview anyone else to talk about this topic. Having made ourselves available to the media on previous occasions and being fairly well known by many in the media now, no proactive media is not a good option – journalists could be very quick to conclude that we had something to hide and we would be on the back foot from the outset.

Proactive media: as with previous launches, we could undertake a proactive media launch, issuing a press notice, carrying out media briefings and offering Council spokespeople for media interviews. The advantage of this approach is that it allows the Council a greater degree of control over the story allowing us to steer the narrative used in the media, away from sensationalist headlines and towards more measured and factually correct coverage. It also provides us with an opportunity to communicate positively about sentencing more widely. It is a particularly strong approach when combined with third party endorsements from key bodies within the primary audiences and NGOs. We will also aim to use scenarios in our briefings and online to enable us to tell a story rather than rely on technical language.

Other proactive activity: as with previous launches, materials will be made available online including a means to respond to the consultation online. Council members could speak at events and staff members could engage with stakeholders to build support for our approach. We should also aim to utilise as many other channels of communication as possible including social media channels to keep interested parties informed of developments.

There is almost no budget available for producing any materials – leaflets and other materials could be considered if a significant number of consultation events were to be carried out. Other relevant materials which are available include the Sentencing Explained leaflet and the Sentencing: How it Works leaflet and DVD which includes a section as follows:

“[An offender] might have shown they are genuinely sorry, or come clean and admitted that they committed the crime and pleaded guilty. The earlier an offender admits their guilt the better as it will save victims and witnesses the stress of going through a trial as well as saving court costs and time. If an offender admits to a crime, it usually means they get a lower sentence – up to a third off – when they admit it at the earliest opportunity. The later the guilty plea, the smaller the reduction, which, when you think about it, is a good way of getting offenders to admit their guilt sooner rather than later.”

The favoured option is to carry out proactive media and other proactive activity in the build-up to and throughout the consultation period.

- Particular attention will be given to holding events particularly with the defence community and undertaking any other face to face speaking engagements for spokespeople.
- Key media outlets will be offered off-the-record briefings in the run up to launch.
- Particular attention will be given to identifying third parties who may endorse our work amongst the key audiences and NGO sectors. We will identify our desired ‘partners’ at an early stage and involve them to ensure positive comments in the media.
- We will be proactive with our social media, engaging audiences over a period of time rather than relying on simple ‘announcements’.
- We will also consider our own pieces to camera – a Council member announcing the launch and what it will do, what it stands for, what it means and doesn’t mean. We can be reactive with this format too – we could very quickly release a short clip saying specifically, “*this guideline does not mean ...*” and directly address any misrepresentations in the media.

SECTION 4: Audiences and messages

Messages: We will finalise key messages around the contents of the guideline once it has been signed off. However, we already know that it will be important to use the

right terminology in all communications on this subject. For example, we would want to use 'guilty plea' and 'late guilty plea' not 'early guilty plea', 'reduction' not 'discount', 'incentivise' not 'reward' and so forth.

We would also use generic consultation messages to emphasise that we are a listening organisation, that a consultation provides an opportunity to have your say, and that we are independent from the MOJ.

Audiences: We would ensure that messages addressed the key issues identified for each target audience. In due course methods and channels to circulate these messages will be identified.

Audience	Issues	Messages
Defence	Will not like this guideline as defendants will lose the opportunity for the maximum discount at an earlier stage. It will discourage defendants from holding out until the last minute in order to weigh up the strength of the evidence against them.	<ul style="list-style-type: none"> - This guideline will lead to a fairer, more structured and more consistent approach to determining reductions given for guilty pleas – defendants will have a much clearer structure giving greater certainty to those involved. - For those offenders who are facing overwhelming evidence, the new guidelines set out that they will receive the full third reduction if they plead at the first opportunity. Judges therefore have a clearer set of criteria in this scenario than currently.
Prosecution	Culture change is already underway with Transforming Summary Justice and Better Case Management	This guideline is in line with other changes already underway and will build on those, requiring the CPS to have a fuller and more complete set of evidence ready earlier.
Judiciary	Will not like this guideline as it gives them less discretion, particularly in cases where there is overwhelming evidence against the defendant – currently a judge might not give the full third off whereas the new guideline guarantees a third off as long as the plea is entered at the first opportunity.	<ul style="list-style-type: none"> - This guideline will lead to a fairer, more structured and more consistent approach to determining reductions given for guilty pleas – judges will have a much clearer structure giving greater certainty to those involved. - For those offenders who are facing overwhelming evidence, the new guidelines set out that they will receive the full third reduction if they plead at the first opportunity. Judges therefore have a clearer set of criteria in this scenario than currently.
Law enforcement	Culture change is already underway with Transforming Summary Justice and Better Case Management.	This guideline is in line with other changes already underway and will build on those, requiring the police to have a fuller and more complete set of evidence ready earlier.
NGO's	<ul style="list-style-type: none"> - Bodies such as the Prison Reform Trust will be against anything that might result in more people going to prison. 	<ul style="list-style-type: none"> - This guideline will lead to a fairer, more structured and more consistent approach to determining reductions given for guilty

	<ul style="list-style-type: none"> - Victims groups are generally expected to be supportive but may take issue with the full discount being given even in cases where there is overwhelming evidence. 	<ul style="list-style-type: none"> pleas –victims and witnesses will have a much clearer structure giving greater certainty to those involved. - An admission of guilt reduces the impact of the crime on victims and witnesses and saves them from having to go through the trauma of attending court and giving evidence. A guilty plea publicly tells a victim that they have been believed.
Government	Will not welcome initiatives with a likely impact on resources, namely prison places.	This guideline will lead to a fairer, more structured and more consistent approach to determining reductions given for guilty pleas – judges, defendants and victims and witnesses will have a much clearer structure giving greater certainty to those involved.
The general public	Many are unaware of reductions being available for guilty pleas and the fact that someone could get a third off their sentence may compound already entrenched views that sentencing is not tough enough.	<ul style="list-style-type: none"> - An admission of guilt reduces the impact of the crime on victims and witnesses and saves them from having to go through the trauma of attending court and giving evidence. A guilty plea publicly tells a victim that they have been believed. - This guideline will lead to a fairer, more structured and more consistent approach to determining reductions given for guilty pleas – judges, defendants and victims and witnesses will have a much clearer structure giving greater certainty to those involved.

Brand: All communications on this consultation will use the existing Sentencing Council brand. Printed documents and online content will follow the format of previous consultations.

SECTION 5: Outline of approach

Timing: We would envisage a Thursday launch to allow time for briefings earlier in the week. We would envisage a launch in early February 2016 (w/b 8 February?) to fit in with our work plan.

Detailed timings for these activities will be identified in due course.

Medium	Activity
Media	<ul style="list-style-type: none"> - informal off the record briefings with key media - press office to engage with MOJ, No.10 and other press offices - gain third party endorsements from stakeholders for use in the media
Online	<ul style="list-style-type: none"> - Do an online questionnaire - Make scenarios available and prepare other supporting material - Publicise any events (see below) - Target internal e-bulletins, intranets etc to inform govt partners, agencies and practitioners - Run yes/no web polls or questionnaires on our website if appropriate
Social media	<ul style="list-style-type: none"> - Tweet regarding meetings or articles of interest in the build up to launch - Record short interviews to camera with spokespeople and link to these from our website outlining what the guideline means (and what it doesn't) - Cross reference our web polls in social media - Encourage key partners and stakeholders to retweet messages
Events	<ul style="list-style-type: none"> - Run events or take part in events for defence, prosecution and judiciary as well as NGOs and law enforcement agencies - Speeches and presentations at existing events
Publications	<ul style="list-style-type: none"> - Use scenarios in the consultation document to show respondents how the new guideline would work - Issue one printed consultation document - Target internal publications ie magazines and newsletters to inform govt partners, agencies and practitioners

SECTION 6: Risks

Issues of concern

- Defendants don't plead after the first opportunity as they feel the reduction is not worth it and would prefer to risk a trial meaning the number of cases going to trial increases
- The guideline might be perceived to disadvantage BME groups who are shown to be less likely to plead guilty...?

Other risks for example:

- unknowable reactions from stakeholders or other audiences; or
- the evolving nature of many of the policy areas.

The table below sets out the risks we have identified as well as the likelihood of them occurring, the impact of them occurring and mitigation plans. The colour scheme signifies high likelihood or impact (red), some likelihood or impact (amber) and low likelihood or impact (green).

Risk	Likelihood	Impact	Mitigation
Resource assessment is questioned ie we don't know what the impact will be	Orange	Red	We are planning to monitor the effects of the guideline and will take action if there is an unacceptable impact (we will need to consider this very carefully)
The coverage focuses on a possible increase to the prison population	Orange	Red	As above
The coverage focuses on possibly fewer guilty pleas and more trials	Orange	Red	The guideline was not designed with the aim of increasing or decreasing the prison population. Any cumulative decrease in the levels of reductions made to sentences (and thereby increase in overall sentence lengths) can be justified by the positive effect that the proposals will have in terms of benefits for victims and witnesses and certainty for defendants; furthermore, the full discount remains available to all offenders should they chose to plead at the first stage.
Leaks to the media prior to launch	Green	Orange	Get stakeholders on side and with a clear understanding of our work. In particular, we would actively want relevant press offices to prepare their own lines on certain aspects of the guideline.

SECTION 7: Resources

Having established what we are going to do and for whom, this section now sets out the budget and resources required. The 2015/16 budget has currently allocated a minimal amount to cover the limited print run of the consultation document. Materials will be produced in-house by the Design102; online content will be done by us.

We have flow charts and other visual materials as well as scenarios and a Q&A.

Key personnel:

- The head of communications will lead the delivery of this plan with the press officer leading on media work and the communications assistant leading on printed and online materials.
- Other key personnel are: head of office, policy lead and statistical lead.
- Council spokespeople will be selected on the basis of their suitability for the audiences as well as their expertise in the subject matter and experience in the media.

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Sentencing Council

Sentencing Council meeting: 20 November 2015
Paper number: SC(15)NOV04 – Assault
Lead Council member: Julian Goose
Lead officials: Mandy Banks
0207 071 5785

1 ISSUE

1.1 In March of this year the Council decided to revise comprehensively the existing assault guideline, following consideration of early findings from the assessment of the guideline.

1.2 On the 22 October the full assessment of the guideline was published on the Council's website;¹ the synthesis is attached at **Annex A**. This assessment will be used to inform the revision of the assault guideline. The scheduled date for a consultation on the revised guideline within the work plan is July 2016, with a definitive guideline published in April 2017.

1.3 However, the Council should note that the Law Commission published its final recommendations to Government on 3 November on options to reform offences against the person, which potentially has significant implications for work on a revised assault guideline.

2 RECOMMENDATION

That the Council:

- Decides whether or not to proceed with the work on a revised assault guideline at this time due to the possibility of new legislation on assault offences, as discussed in **para 3.1, page 2**
- Agrees the scope of the project, in particular:
 - not to include child cruelty and domestic violence offences within the scope of a new assault guideline, as discussed at **para 3.3, page 3 onwards;**

¹ <http://www.sentencingcouncil.org.uk/publications/item/assault-offences-assessment-of-guideline/>.

- whether or not to include threats to kill within a revised assault guideline, as discussed at **para 3.6, page 4**;
- to include all of the offences covered by the existing guideline in a new guideline, drawing on the detailed analysis of the guideline already undertaken;
- Decides its approach towards culpability and harm:
 - whether to include three categories of harm and culpability, as discussed at **para 3.10, page 6 onwards**; and
 - The overall balance between culpability and harm in the guideline.

3 CONSIDERATION

Timing

Law Commission recommendations on offences against the person

3.1 On 3 November the Law Commission published its final recommendations² to Government on reforms to offences against the person. An overview of the recommendations is attached at **Annex B**. In summary, the Commission has carried out a project, at the request of the Ministry of Justice (MOJ), to look at modernising and restating the main offences of violence. It recommends the adoption of a modified version of the Home Office's 1998 draft Bill to replace the outdated Offences Against the Person Act of 1861, which would include a logical hierarchy of offences and a requirement that the defendant must have foreseen the level of harm caused. In addition, they propose including within the new legislation a new summary only offence of aggravated assault, carrying a maximum sentence of 12 months custody. This new offence is intended to bridge the gap between the existing offences of common assault and Actual Bodily Harm (ABH). However this would require implementation of the legislation giving magistrates the power to sentence offenders for up to 12 months for a single offence, in addition to the creation of the new offence.

3.2 The process for Law Commission reports is that the Government has to provide an interim response within six months and a full response, setting out what they plan to do, within 12 months. There has been no indication from Government as to what their likely response to the recommendations will be. The possibility of new legislation for assault offences means that the Council may wish to postpone starting

² <http://www.lawcom.gov.uk/project/offences-against-the-person/>.

work on a comprehensive review of the guideline, until the position is clear. Work could be postponed until June 2016, when the Council may be better informed as to the Government's position.

Question 1: Does the Council wish to proceed with work to revise the assault guideline at this time, given the Law Commission's recommendations? As an alternative, does the Council wish to pause work on the guideline and review in June 2016, by which time the Government should have provided an interim response to the recommendations?

Scope

Child Cruelty/Domestic Violence offences

3.3 Regardless of the decision on timing, it would be helpful to confirm the scope of the project. During the discussion in March on plans for a revised assault guideline, consideration was given to the inclusion of revised and updated guidance on child cruelty and domestic violence offences within the new guideline. There is an existing SGC guideline '*Overarching Principles: Assaults on children and cruelty to a child*', published in 2008, which is still up to date. At the time of the March discussion it was thought that there was going to be a new child cruelty offence created, which would possibly require the guideline to be updated. However, it has since been confirmed that the recent legislation on child cruelty was only to clarify the existing offences, not to create a new offence. While we are aware of some political interest in amending these offences, we are unaware of any Government plans to do so.

3.4 In its consideration of the 2015-18 work plan at the April meeting, the Council indicated that it was content for this to be pursued as a separate project, rather than incorporated in the revised assault guideline, so long as it did not get overlooked. As a result, the Council is due to consider revision of the child cruelty guideline from June 2016. It is recommended that this remains a separate project, which may yet be accelerated.

Question 2: Does the Council agree not to include guidance on child cruelty offences within the revised assault guideline, but undertake this revision as a separate project?

3.5 In the March meeting, the Council also discussed whether to include revised guidance on domestic violence offences within a new assault guideline. The existing SGC guideline '*Overarching Principles: Domestic Violence*' was published in 2006 and is broadly still current. Since the March meeting further consideration has been

given to the scope of the project regarding the domestic violence guideline and it is recommended that due to the very particular issues within these offences, the guidance should be kept separately within an overarching guideline, and not subsumed within an assault guideline. The assessment of the assault guideline did show that some users wanted domestic violence to be referenced more explicitly within the guidelines, which could be considered when revising the assault guideline. Revision of the overarching principles on domestic violence is also currently scheduled around June 2016.

Question 3: Does the Council agree not to include guidance on domestic violence within a revised assault guideline?

Threats to kill

3.6 The current work to revise the Magistrates' Court Sentencing Guidelines (MCSG) has identified some offences, such as threats to kill and arson, for which guidance does not sit neatly within the MCSG, given their seriousness and statutory maxima, (threats to kill carries a maximum of 10 years, and arson a maximum of life imprisonment.) It would not be appropriate to include arson within a revised assault guideline, but consideration could be given to including threats to kill. This offence is also prosecuted under the Offences Against the Person Act and the Law Commission has recommended expanding threats to kill to include threats to cause serious injury and threats to rape. In 2014 there were 488 threats to kill cases sentenced, 344 in the Crown Court and 144 in magistrates' courts, of which the large majority received a custodial sentence.

Question 4: Does the Council wish to include threats to kill within a revised assault guideline?

Possible amendments arising from the findings of the assessment of the assault guideline

3.7 The assessment of the guideline showed that most users were positive about the guideline, the first definitive guideline the Sentencing Council published in 2011. However, the following issues merit consideration as part of revision of the guideline:

- Despite the overall decrease in sentence severity, two offences, Grievous Bodily Harm (GBH) s18 and ABH s47 were found to have impacts different to those expected. For GBH, the guideline resulted in offences increasing in excess of that estimated and for ABH sentences increased, despite the estimate that the guideline would result in less severe sentences.

- There was general confusion on how to interpret and apply the step one factors of *'injury which is serious in the context of the offence'* and *'injury which is less serious in the context of the offence'*, across all the assault offences.
- Whether there is potential to double count victim vulnerability in the guideline (victim vulnerability is both a factor in harm and culpability in the guideline).
- That the guideline cannot currently accommodate cases of 'medium' harm: harm that is neither the most or the least serious, which may lead to an inaccurate categorisation of harm when using the guideline.
- Whether *'spitting'* should be reintroduced as a factor increasing seriousness, particularly within the assault on a police officer (s89) cases, where there has been a shift towards less severe disposal types (although this was anticipated).
- Whether the starting points/ranges within the GBH s18 guideline are too high, particularly the starting point in category one of 12 years.
- Whether the sentence ranges in ABH s47 cases are too low (the ranges were lower than those in the preceding SGC guideline) possibly causing some sentencers to go outside the category range.

3.8 The existing assault guideline is attached at **Annex C**, and contains six separate guidelines, all of which have the same structure and use very similar factors:

- Causing grievous bodily harm (GBH) with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm (s18)
- Inflicting grievous bodily harm/Unlawful wounding (s20) and racially/religiously aggravated GBH/Unlawful wounding (s 29)
- Assault occasioning actual bodily harm (ABH) (s47) and racially/ religiously aggravated ABH (s 29)
- Assault with intent to resist arrest (s38)
- Assault on a police constable in execution of his duty (s89)
- Common assault (s39) and racially/religiously aggravated common assault

3.9 Current sentencing statistics are attached at **Annex D**. The volumes of assault offences sentenced in 2014 were high, with the exception of assault with

intent to resist arrest, section 38, for which only 136 were sentenced in 2014. It is recommended that the revised guideline still covers these offences, but that they are revised in light of the findings from the evaluation listed above.

Question 5: Does the Council agree to maintain the inclusion of the existing six offences, with revisions as appropriate in light of the findings from the evaluation listed above?

Culpability and harm

3.10 The structure of the existing assault guideline is in the older³ Sentencing Council style of culpability and harm factors at step one, with a combination of those factors leading to three offence categories being identified:

Category one – Greater harm (serious injury must normally be present) **and** higher culpability

Category two – Greater harm (serious injury must normally be present **and** lower culpability; **or** lesser harm **and** higher culpability

Category three – Lesser harm **and** lower culpability

3.11 This structure does not allow for a medium level of culpability and harm, something which more recent guidelines have incorporated, such as fraud, theft, robbery and the revised dangerous dog guideline. In the 2011 assault consultation paper, the Council stated that *'The Council considered levels which could incorporate medium levels of harm and culpability. However, it was thought to be overly complex and it was considered that sentencers should be able to use their discretion to place medium levels of harm and culpability into the category that most resembled the case'*.

3.12 However, this lack of a medium category level was identified as a specific issue from the research, (although the comments mainly related to the absence of a medium harm category, rather than a medium culpability category), as noted on page five. A medium level has been incorporated in more recent guidelines, in response to feedback from sentencers, so to reflect the breadth of offending that exists.

3.13 Accordingly, thought has been given to incorporating a medium level of culpability and harm into a revised guideline and how that change might affect the structure of the guideline. An illustration of this for GBH s18 can be seen at **Annex E**.

³ This structure is used in the early SC guidelines, assault, burglary, drugs, the first version of Dangerous Dogs.

This is at a very early stage of development, and uses the harm and culpability factors from the existing guideline, with new medium categories of culpability and harm included. There are clear implications for the sentencing table, as three levels of harm and culpability gives rise to nine boxes within the table, compared to three within the existing guideline (currently just the top and bottom of the sentence range from the existing guideline has been included). Fully populating this table with ranges could lead to changes in sentencing practice. Alternatively, three levels of harm could be created, but the two culpability levels could be retained, (given that most comments related to the lack of a medium category for harm rather than culpability) which would give rise to six boxes in the table.

3.14 This is an important issue for the Council to note, as the guideline assessment revealed that most users were supportive of the guideline overall, with comments made that the three category approach was 'sensible, intuitive and provided flexibility'. Moreover, the inference from the research was that although users wanted a medium level within the guideline, they did not necessarily want an extra category to accommodate this, but that the wording of the existing categories two and three should be amended to include it instead. Suggested rewording of the categories during the assessment was as follows:

- Category two: Greater harm and lower culpability; or lesser/**medium** harm and higher culpability
- Category three: Lesser/**medium** and lower culpability

3.15 Alternatively, a respondent to the 2011 consultation suggested a way of including a medium level of harm, within the three category model, which leaves the court to reflect the degree of culpability within the category ranges as below:

- Category 1: greater harm, high to low culpability
- Category 2: medium harm, high to low culpability
- Category 3: lesser harm, high to low culpability

3.16 The 2011 consultation response paper notes that this model gives primacy to harm over culpability, whereas the Council felt it was appropriate to give equal weight to harm and culpability within assault offences, and so this suggested model was not adopted. This raises an important issue for the development of the revised guideline as to whether or not harm and culpability should continue to be equally weighted or whether one should have a greater influence over the sentence than the other. In some recent guidelines, for example, fraud, theft and dangerous dogs, culpability,

what the offender intended, has driven the sentence rather than harm, which can be down to a matter of luck. This consideration is particularly important when it comes to developing any new sentence ranges.

3.17 Accordingly, it would be helpful if the Council indicates at this stage whether further work should be undertaken to revise the existing three category approach in order to accommodate a medium level, without radically changing the structure of the guidelines, or whether work should continue to update the guidelines into the newer format, as illustrated within **Annex E**.

Question 6: Does the Council wish to maintain the existing three category structure of the assault guideline, with additions to resolve issues raised from the evaluation, or should the guidelines be comprehensively revised to the structure of newer guidelines, given the risks of that approach?

Question 7: Does the Council want harm and culpability to continue to be equally weighted within a revised guideline? Or should one be given greater influence than the other?

3.18 Work is at a very early stage to consider possible revisions to the culpability and harm factors within the guidelines. This work will be further informed by analysis of around 100 transcripts of Crown Court sentencing remarks, in order to identify and analyse key issues within assault cases, the most common and significant factors which influence sentence levels, and so on, and by observation of assault cases in the magistrates' courts.

4 IMPACT /RISKS

4.1 As discussed in para 3.1, the Law Commission's recommendations have significant implications to the revision of the assault guideline. If work commences on the revised guideline and new legislation is later introduced then this may render a lot of the work the Council has done obsolete. Postponing work on the guideline until it is clear whether new legislation is going to be introduced or not, and what any likely timescales might be, would allow the Council to revise the assault guideline in an informed manner. However, this inevitably creates uncertainty about the timing of the project. The Council has committed to revising the assault guideline in the work plan and on the website when the assault evaluation was published. However, in light of the recent recommendations by the Law Commission, a delay to the start of the project could be justified.

4.2 In the event of a decision to postpone this project, reprioritisation of the three year work plan will be required. The Council had previously decided that work on a

manslaughter guideline should be linked to the work on assault, so that proportionality between the two guidelines could be considered. Work on manslaughter has already started within the office, with the first Council meeting scheduled for April 2016. It would be possible to continue with the work on manslaughter as planned, even if the work on assault is delayed, as any later work on assault could be used to inform the work on manslaughter as it progresses.

Question 8: Is the Council content that the impact and risks have been adequately at this stage? If not, are there any other actions or considerations that should be undertaken at this stage?

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Assessing the impact and implementation of the Sentencing Council's Assault Definitive Guideline

Summary

- A 3-staged approach was undertaken to assess the impact of the Sentencing Council's Assault Definitive Guideline on sentencing outcomes and whether there were any implementation issues.

- The assumption was that where impacts occur that differ from those expected, sentencers may be implementing the guideline in a way not anticipated by the Council.

- Looking at assault offences as a whole, the guideline has slightly decreased sentencing severity. This is likely to be as a result of the downward impact of the guideline on common assault, which makes up the largest group of assault offences.

- However, despite this overall decrease in sentence severity, two offences in particular – GBH with intent (s18) and ABH (s47) – were found to have impacts different to those expected. For GBH with intent, the guideline resulted in sentences increasing in excess of that estimated. For ABH, sentences increased, despite the estimate that the guideline would result in less severe sentences. For both, issues with applying the step 1 factors in the guideline *"injury which is serious in the context of the offence"/ "injury which is less serious in the context of the offence"* may be one explanation for this.

- For assault on a police officer (s89) offences, there was a shift towards less severe disposal types, as anticipated. Sentencers attributed this to the removal of "spitting" as a factor increasing seriousness. The offence range has also slightly decreased. Likewise, for common assault (s39) offences, sentencing severity decreased and was broadly consistent to that anticipated.

- For GBH (s20) offences, there were minor increases in sentencing severity, but these had been anticipated and were within the bounds of historic fluctuations in sentencing levels; as a result there is no strong statistical evidence that the guideline has caused a change in sentencing practice for these offences.

- In interview, sentencers and lawyers were positive about the guideline and cited many benefits it had brought about. However, the evaluation suggests that there are areas where issues with implementation exist and to support this, sentencers and lawyers highlighted a number of areas that may need clarifying.

- The areas for further consideration include:

* when to apply the factor of *"injury which is serious in the context of the offence"/ "injury which is less serious in the context of the offence"*;

* what constitutes *"sustained or repeated assault on the same victim"* and *"a significant degree of pre-meditation"*;

* whether there is the potential to double count victim vulnerability in the guideline and how this should be interpreted in a domestic context;

* whether "spitting" should be reintroduced as a factor increasing offence seriousness.

Introduction

The Sentencing Council was set up in 2010 and produces guidelines for use by all members of the judiciary who sentence criminal offences. The first guideline to be issued was the Assault Definitive Guideline which came into force in June 2011.¹

One of the Sentencing Council's statutory duties under the Coroners and Justice Act 2009 is to monitor the operation and effect of its sentencing guidelines and to draw conclusions from this information.² Research and analysis was therefore undertaken to assess the impact of the guidelines on sentencing outcomes and whether there were any implementation issues.

A staged approach to evaluation was undertaken in order to ensure that the work covered all aspects necessary and to provide the flexibility needed to tailor resources to these areas. The work therefore comprised:

- Stage 1: Assessment of the resource implications of the assault guideline;³
- Stage 2: A descriptive analysis and time series analysis of changes in sentencing outcomes before and after the guideline came into effect;⁴
- Stage 3: Collection and analysis of qualitative data to explore some of the potential reasons for the issues found in stage 2.

Approach

In conducting this assessment, a distinction has been made between ***impact*** and ***implementation*** issues. The Council's resource assessments are concerned with anticipating any *impact* on sentencing practice that is expected to occur as a result of the guideline, over and above any changes caused by unrelated issues (e.g. changes in the volume and nature of cases coming before the courts).

In this sense, some of the observed impacts of the guideline outlined below were expected and were identified in the resource assessment. Where this is the case, the evaluation has therefore gone no further in investigating these. Likewise, where the guideline has had no impact and none was expected, no further work has been conducted.

However, in cases where either an impact has occurred that was not expected in the Council's resource assessment, or no impact has occurred where one was expected, further work has been conducted; the assumption is that where impacts differ from those expected, this is as a result of sentencers *implementing* the guideline in a way not anticipated by the Council.⁵

¹ See <http://www.sentencingcouncil.org.uk/publications/item/assault-definitive-guideline/>

² The Council must (a) monitor the operation and effect of its sentencing guidelines, and (b) consider what conclusions can be drawn from the information obtained by virtue of paragraph (a) (*Coroners and Justice Act 2009, Section 128*).

³ The resource assessment associated with the definitive assault guideline can be found at: <http://www.sentencingcouncil.org.uk/publications/item/assault-final-resource-assessment/>

⁴ All offences in the guideline except assault with intent to resist arrest, due to the low volume of these offences.

⁵ This assessment did not explore the issue of consistency in sentencing in any quantitative way. Previous research on this issue has been published (Pina-Sanchez, J. and Linacre, R. (2013) *Sentence Consistency in England and Wales*, British Journal of Criminology; Pina-Sanchez, J. and Linacre, R.

Methodology

Stage 1

A resource assessment to accompany the publication of the assault definitive guideline was issued in March 2011. This was undertaken as part of guideline development work and to fulfil the Sentencing Council's statutory duties under s.127 of the Coroners and Justice Act 2009 to consider the likely effect of its guidelines on prison, probation and youth justice resources.

To do this, an analytical model was developed to estimate the change in sentencing practice which might result from the new sentencing guideline. As part of this, the aims and objectives of the new guideline were taken into account.⁶ Assumptions were also made about how sentencers would respond to, and interpret, the new guideline and what sentencing practice would be in the absence of a new guideline. The outcomes were then combined with information on the costs of sentencing to produce an estimation of likely resource impact.

More detail on the methodology employed for this resource assessment can be found at: <http://www.sentencingcouncil.org.uk/publications/item/assault-final-resource-assessment/> and for resource assessments in general at: <http://www.sentencingcouncil.org.uk/publications/item/the-sentencing-council-resource-model/>.

Stage 2

The second stage of the work initially used the Ministry of Justice's Court Proceedings Database⁷ to produce descriptive statistics to observe changes in the type of disposals being imposed for different types of assault offences and the Average Custodial Sentence Length (ACSL)⁸ for each offence, in the 12 months before and the 12 months after the guideline came into effect.

However, this does not account for any fluctuations in the average severity of sentencing over time due to changes in sentencing practice which are unrelated to guidelines – e.g. the changing number and seriousness of cases coming before the courts, changing in charging practice etc. The data was therefore used to produce time series models to help distinguish between the normal fluctuations which are inherent in all sentencing data, and changes in sentencing that, statistically speaking, within the model parameters can be attributed to the new assault guideline. This was designed to assess whether it was likely that the observed changes to sentencing practice would have occurred if no guideline had been released.⁹

(2014) *Enhancing Consistency in Sentencing: Exploring the Effects of Guidelines in England and Wales*, Journal of Quantitative Criminology.

⁶ The principal aims were to promote greater consistency in sentencing and increase public confidence in sentencing; sentences should also relate appropriately to the differing degrees of gravity within the specific offence, the context of other offences of violence and the wider sentencing framework relating to other offences.

⁷ Data covers sentences in all courts, for offenders aged 18 or over. Data has been adjusted to account for potential differences in the rate of guilty pleas between the periods. This adjustment was made using guilty plea rates and reductions from the Crown Court Sentencing Survey database, to estimate pre-guilty plea sentences, to make the figures presented comparable to the sentence ranges in the guideline.

⁸ The average custodial sentence length (ACSL) is the average (mean) sentence length for determinate custodial sentences only. It therefore excludes indeterminate sentences (life or Imprisonment for Public Protection, IPPs). This approach for calculating ACSL is consistent with that used for sentencing statistics produced by the Ministry of Justice. Finally, the ACSLs have been adjusted using data from the CCSS to provide estimates of the sentence length *before* the application of a reduction for any guilty plea. These estimates allow a better assessment of the use of sentencing guidelines as the category ranges specified in the guidelines are those before any guilty plea reduction is applied.

⁹ Additional analyses were also undertaken to ascertain whether the guideline consultation period, beginning on 13 October 2010, affected actual sentencing practice.

The type of time series models which were used required sentencing data to be comparable - but the data was a mix of sentences comprising different sentence types and sentence lengths. To overcome this, sentences were converted into a continuous “severity scale” with scores ranging from 0 to 100, representing the full range of sentence outcomes from a discharge (represented by 0) to 20 years’ custody (represented by 100); this allowed the creation of a consistent and continuous measure of sentencing severity that could be used to evaluate changes in sentencing. However, the scale should **not** be interpreted as an absolute objective measure of sentencing severity.¹⁰

Several time series models were created in order to forecast the likely range of values, and size of average changes, that sentencing severity could take for 18 months after the guideline came into force (the period June 2011 to December 2012), assuming no guideline had been released. These estimates are represented on the graphs in this document as the “*forecasted severity region*”. The actual trend in sentence severity is represented by the red line; by comparing the two, the difference between actual and expected sentencing changes can be seen. This can then be referenced back to the changes (or absence of changes) estimated in the resource assessment. Where differences were found between actual practice and that estimated, regression analysis of Crown Court Sentencing Survey (CCSS)¹¹ data relating to these offences was undertaken to explore whether any of the guideline factors might have been influencing these outcomes.¹²

Stage 3

The third stage of the assessment comprised qualitative research, conducted by Opinion Research Services (ORS), to gather evidence about the operation and perceived effectiveness of the assault definitive guideline and to explore some of the issues emerging from the earlier strands of work.¹³ Sixty-nine individual depth telephone interviews and three small group discussions were conducted with 30 Crown Court judges, 28 magistrates, 14 district judges, six prosecution lawyers and six defence lawyers.¹⁴ Interviewees came from all seven court regions in England and Wales and had varying degrees of experience in their role.

Around half (14) of the Crown Court judges were recruited from the Office of the Sentencing Council’s existing ‘research pool’ and the remainder through a ‘snowballing’ approach whereby those already interviewed were asked to nominate fellow judges to take part. For district judges, a member of the Sentencing Council facilitated recruitment. Six magistrates were accessed via the Magistrates’ Association e-bulletin, and the remainder via a sample of magistrates’ court clerks in each judicial region asking for volunteers (five) and then ‘snowballing’ from these individuals.

To stimulate discussion, participants were presented with a scenario – either representing a case of grievous bodily harm with intent (Crown Court judges only),

¹⁰ The sentencing severity scale was created with reference to previous sentencing guidelines to try to ensure it had an empirical basis. However, there is no single, straightforward way to do this, so there is no guarantee of its robustness.

¹¹ See <http://www.sentencingcouncil.org.uk/analysis-and-research/crown-court-sentencing-survey/> for further information on the Crown Court Sentencing Survey.

¹² This analysis used unadjusted CCSS data (see footnote 8).

¹³ Some data collection was also undertaken in the magistrates’ courts in January 2015 to complement the CCSS data from the Crown Court and examine some of the factors taken into account by sentencers when sentencing common assault, actual bodily harm, assault on a PC and assault with intent to resist arrest. The methodology largely followed that of the CCSS. In total, 339 sentencing forms were returned, of which 82 per cent (278) related to common assault offences. Due to the low volume of forms returned, it has not been possible to undertake any detailed analysis on this data; however, the findings are available on request.

¹⁴ The individual depth discussions typically lasted between 30 and 45 minutes and the group sessions for around an hour.

actual bodily harm (all interviewees) or assault on a police officer (magistrates and district judges only).¹⁵ They were then asked to outline which offence category they would have placed the defendant into and why, and what harm and culpability factors would have influenced their decision. Participants' more general views on the guideline were also discussed and noted.¹⁶

Overall findings

In the 12 months after the guideline came into force, there was a slight increase in the use of some less severe sentencing options, compared to the 12 months before; discharges increased from 10 per cent to 12 per cent and fines from 9 per cent to 12 per cent. On the other hand, community orders reduced (from 38 per cent to 36 per cent) as did suspended sentence orders (from 17 per cent to 15 per cent) while the use of immediate custody remained unchanged at 22 per cent. The adjusted average custodial sentence length also remained broadly unchanged at 2.7 years.

Looking at assault offences as a whole, the guideline has slightly decreased sentencing severity. This is likely to be as a result of the downward impact of the guideline on common assault, which makes up the largest group of assault offences.

Offence specific findings

Despite the overall effect of the guideline being a slight decrease in sentencing severity, different outcomes were found when specific assault offences were analysed. The following outlines the key findings relating to individual assault offences,¹⁷ followed by some general issues highlighted through the qualitative work with sentencers.

Causing grievous bodily harm with intent (GBH with intent)¹⁸

Almost all sentences imposed for causing GBH with intent are immediate custody. It was found that adjusted average custodial sentence lengths (ACSLs) rose by 17 per cent between the 12 months before and 12 months after the definitive guidelines came into force (from 5.9 years to 6.9 years).¹⁹ This was substantially in excess of the small increase anticipated by the resource assessment (a rise of 2 per cent and a requirement for between 20 and 60 additional prison places). In addition, the proportion of sentences greater than seven years increased. The increase in ACSLs occurred in June 2011, and coincided very closely with the guideline coming into force.

There was also an increase in severity of sentences in the month after the guideline came into force²⁰ (see figure 1). The "forecasted severity region" indicates the range of values the sentencing severity might have taken in the absence of the guideline, taking into account the general increase in sentencing severity since 2008. As can be seen, the actual increase in sentencing severity was in excess of that predicted in the resource assessment and may therefore indicate that the guideline is not being implemented in the way anticipated.

¹⁵ Short scenarios were used to reduce the burden on participants, however it is recognised that the details provided were restricted for this reason and that they will thus have some limitations as a research tool.

¹⁶ More information on the methodology, including the scenarios used, and the findings, can be found at <http://www.sentencingcouncil.org.uk/analysis-and-research/>

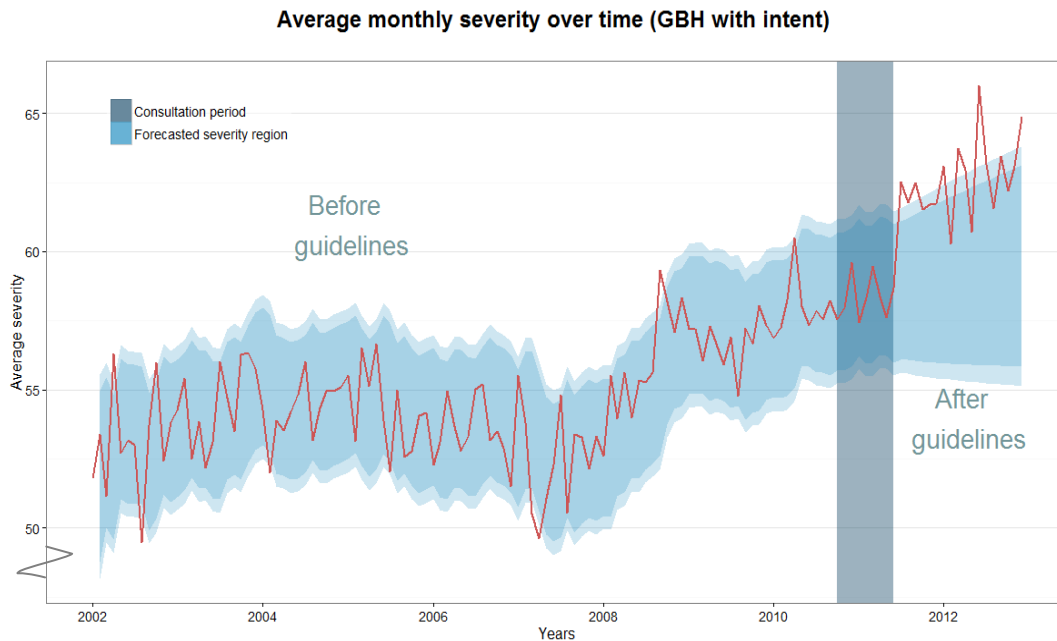
¹⁷ It was not possible to undertake an evaluation of the impact and implementation of the assault with intent to resist arrest guideline. This was due to the small number of sentences for this offence.

¹⁸ Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm; Offences against the Person Act 1861 (section 18).

¹⁹ During this period the use of IPPs for this offence declined by around 2.4 per cent. This could have caused some of the observed changes in sentence lengths. However, further investigation showed that a substantial difference in ACSLs persists even after including the minimum terms for IPPs in average sentence length calculation.

²⁰ There was no equivalent increase during the consultation period for the guideline.

Figure 1



A regression analysis of CCSS data was undertaken to examine why this might have occurred. This indicated that the factor in the new guideline which had the greatest effect on sentences was the step 1 factor “*injury which is serious in the context of the offence*”. The presence of this factor added around 29 per cent (1.7 years) to the average custodial sentence length.

In addition, it was found that there had been an increase in the use of the most serious offence category in the new guideline (from 17 per cent before the guideline to 33 per cent after), when compared to the old guideline. Furthermore, amongst the category 1 cases under the new guideline, the most frequent step 1 factor was “*injury which is serious in the context of the offence*”, which was present in 76 per cent of cases. Again, this suggests that this factor may be the reason for the increase in sentence levels for GBH with intent cases.

The data from the quantitative analysis was supplemented by the qualitative research which further indicated that application of the step 1 factors “*injury which is serious in the context of the offence*” and “*injury which is less serious in the context of the offence*” could be an issue.²¹ Some participants felt that for higher end cases the factor relating to greater harm may lead to double counting and an inflation in sentences (because, for GBH with intent, a high level of harm is required in all instances for the defendant to have been charged with this offence in the first place). For others, it may be that the factor relating to lesser injury (within lesser harm) is not applied when it should be for the same reason:

Under section 18, I'm not quite clear...how the injury can be less serious in the context of the offence where the alleged injury has to be a very serious bodily injury... (Crown Court judge)

Crown Court judges also felt that sentences might have risen due to the increased starting points and ranges in the guideline. Although some thought this was appropriate, others felt the starting points were too high, particularly in relation to category 1:

²¹ Sentencers reported being unclear about when they should apply the factor in general.

I think the level of sentencing has gone up immensely because of the guidelines (Crown Court judge)

The starting point in category 1 is quite high at 12 years (Crown Court judge)

Some judges admitted that they will often go outside the category range to reduce a sentence for GBH with intent.²²

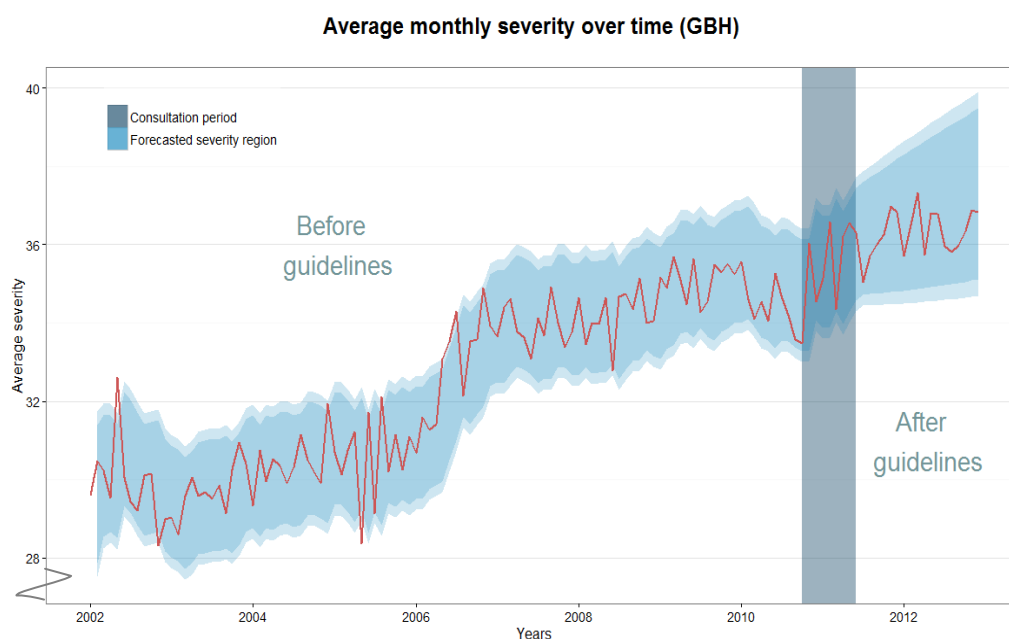
Grievous bodily harm (GBH):²³

There was a small increase in adjusted ACSLs, from 2.1 years in the 12 months before June 2011 to 2.3 years in the 12 months after June 2011. There was also a 2.7 per cent increase in the use of immediate custody, alongside a decrease in the use of community orders and suspended sentences.

Sentence severity also increased, but this was well within the bounds of historic fluctuations in sentencing levels (the “forecasted severity region”) as shown in figure 2. Therefore there is no strong statistical evidence that the guideline caused a change in sentencing practice for GBH. Analysis also indicated that the consultation period did not appear to have a statistically significant effect on sentencing.

This is broadly consistent with the minor changes to sentencing practice anticipated in the resource assessment which estimated increases in ACSLs of 3 per cent, (the result of rises in sentences at the most severe end of the sentencing scale) and a requirement for between 10 and 20 additional prison places.²⁴

Figure 2



Further analysis using CCSS data to explore whether the factor “*injury which is serious in the context of the offence*” was influencing outcomes in a similar way to GBH with

²² See Lock, K. (2015). *Assault Definitive Guideline: Findings from discussions with sentencers and practitioners*.

²³ Inflicting grievous bodily harm/unlawful wounding; Offences against the Person Act 1861 (section 20); Racially/religiously aggravated GBH/Unlawful wounding; Crime and Disorder Act 1998 (section 29).

²⁴ It should be noted, however, that the resource assessment also indicated overall, fewer custodial sentences and more community orders, which has not been observed.

intent showed it added 20 per cent (0.3 years) to the length of immediate custodial sentences.

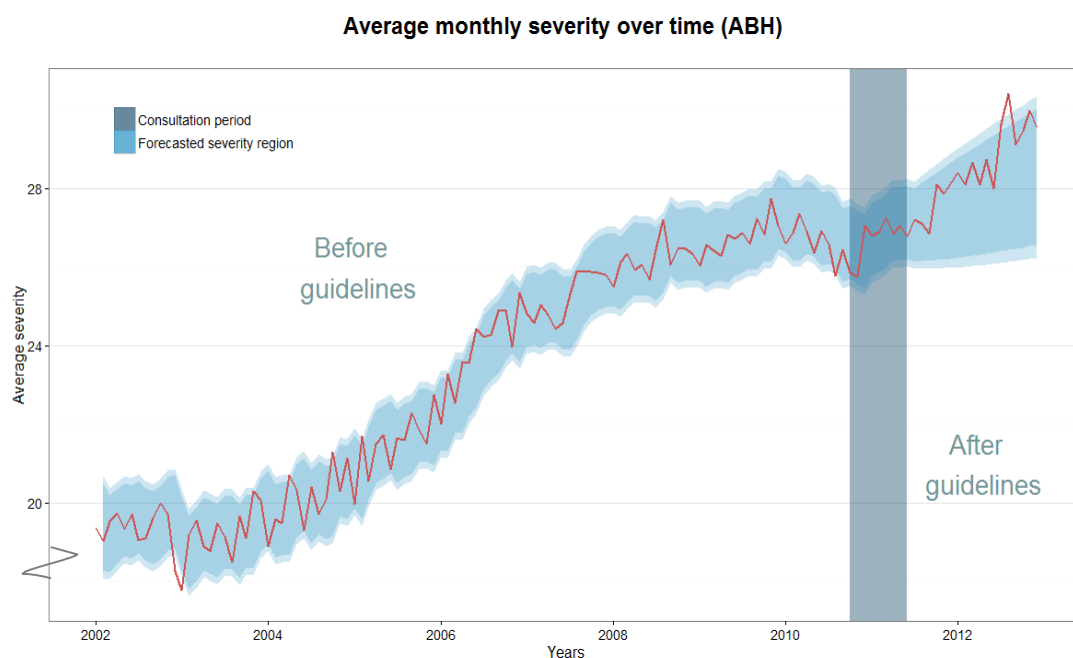
Actual Bodily Harm (ABH):²⁵

Analysis showed that there was a shift towards more serious disposal types being given – an increase in the use of custodial sentences (immediate and suspended) and a corresponding decrease in the use of community orders. The distribution of sentence lengths for immediate custody also changed, with relatively fewer shorter sentences (half a year or less) and an increase in the proportion in the range 0.5 to two years.

A regression analysis using CCSS data was carried out and showed that “*injury which is serious in the context of the offence*” was the most important factor for ABH and added 26 per cent (0.2 years) to the length of immediate custodial sentences.

These findings are in contrast to the prediction in the resource assessment which envisaged a drop in the severity of sentencing, due to the decrease in the sentencing range in the Sentencing Council guideline when compared to the previous guideline.²⁶ This equated to an estimate of between 400 and 900 fewer custodial sentences and 400 to 1,000 community orders becoming fines. The fact that the actual increase in sentence severity was almost entirely within the bounds of that expected if no guideline had come into force (see figure 3), indicates that there is no strong evidence that the guideline had an impact, despite the expectations that it would.

Figure 3



In contrast to the data showing no strong evidence that the guideline had an impact on sentence severity, the perceptions of the sentencers who were interviewed was that sentences had decreased, particularly for the lower level ABH offences. This view may reflect participants’ awareness that the sentencing range had decreased; many felt these were now too low and in interviews, several Crown Court judges said that they

²⁵ Assault occasioning actual bodily harm; Offences against the Person Act 1861 (section 47); Racially/religiously aggravated ABH; Crime and Disorder Act 1998 (section 29).

²⁶ The range was previously a community order to 4 years’ custody and is now a fine to 3 years’ custody.

often go outside the category range to increase a sentence for an actual bodily harm offence:

Section 47...I will probably go outside the guidelines between 20 per cent and 25 per cent of the time because the ranges aren't appropriate in my opinion; they are too low (Crown Court judge)

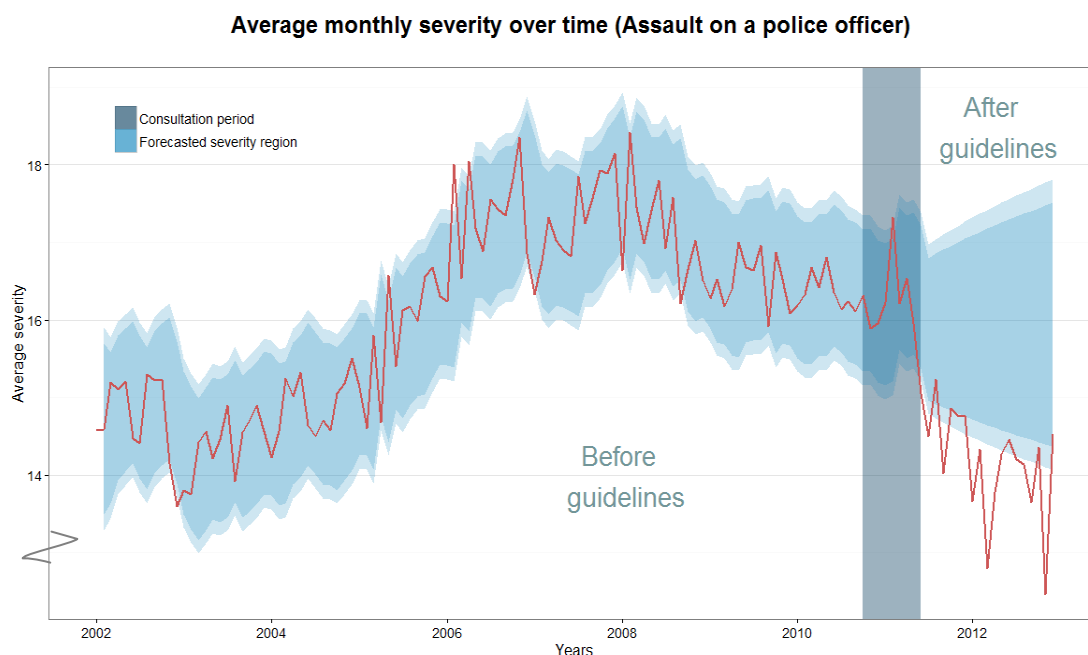
The factors of “injury which is serious in the context of the offence” and “injury which is less serious in the context of the offence” were also again cited²⁷ as factors that may be open to interpretation, due to the wide range of injuries that can be covered within this offence. This could therefore be a potential source of variation in the application of step 1 factors.

Assault on a police officer:²⁸

There was a shift towards less severe disposal types for assault on a police officer after the release of the guideline, with a smaller proportion of custodial sentences and community orders being imposed. The adjusted average custodial sentence length was 0.3 years in the 12 months prior to the guideline and just under 0.3 years in the 12 months afterwards.

Statistical analysis showed that this decrease in sentencing severity was unlikely to have occurred if the definitive guideline had not been released – as can be seen in figure 4, the actual decrease was considerably below that which might have been expected just taking into account historical changes in sentencing.

Figure 4



This impact is broadly consistent with that anticipated in the resource assessment – of between 200 and 600 fewer custodial sentences per year and a shift of some community orders to fines – and so indicates that the guideline is likely to have been implemented in the way anticipated by the Council.²⁹

²⁷ Lock, K. (2015).

²⁸ Assault on a police constable in execution of his duty; Police Act 1996 (section 89).

²⁹ It would not be possible currently to explore the reasons for any changes quantitatively, as this offence is triable only summarily, and it has not been possible to collect data from the magistrates' courts.

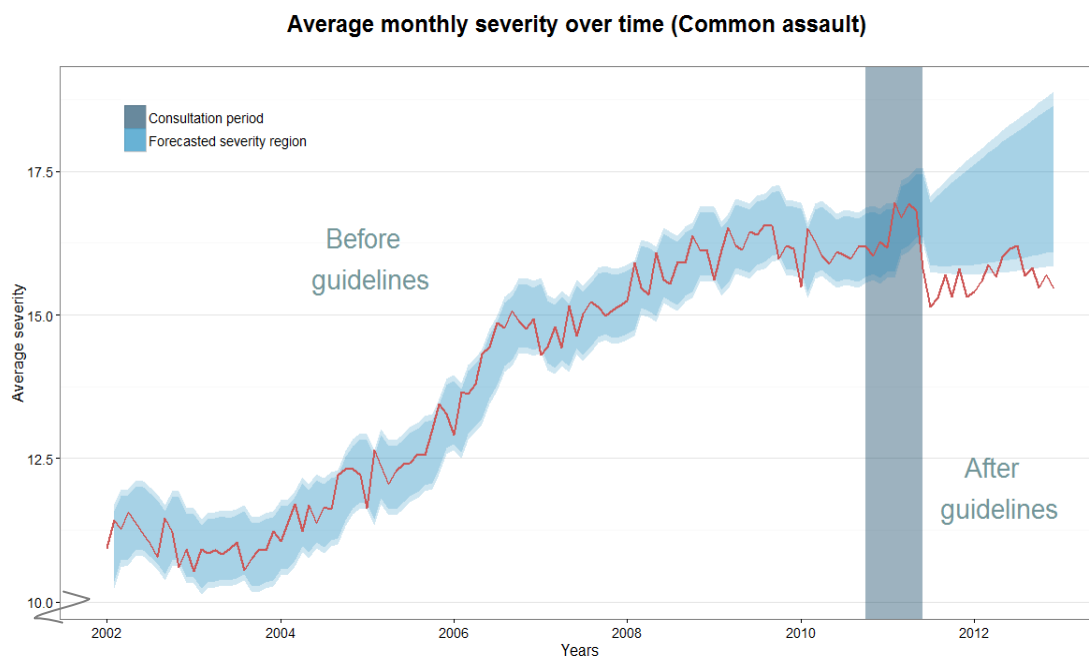
The pattern of changes in sentencing also aligns with the perceptions of the impact of the guideline raised in the interviews with sentencers. However, these perceived reductions in sentences were not always welcomed and the removal of spitting as a factor increasing offence seriousness in the Sentencing Council’s guideline was seen by some to contribute to this reduction:³⁰

I think it must have reduced sentencing in terms of assault on a police officer because a spit in the face can’t be identified as a sustained or repeated assault for greater harm. Yet in my view it is one of the most serious ways of assaulting (district judge)

Common assault:³¹

For common assault, there was a shift away from suspended sentences and community orders, and towards fines and discharges. The use of immediate custody was broadly similar before and after the guideline came into force, as was the adjusted ACSL of 0.3 years. Figure 5 shows that sentence severity also decreased, despite the overall trend of a steady increase since 2004. Analysis suggests these changes were caused by the new guideline, with actual sentencing going outside the “forecasted severity region”.

Figure 5



This impact of the guideline in decreasing sentence severity is broadly consistent with the impact anticipated in the resource assessment – which included between 400 to 900 fewer community orders and additional fines and conditional discharges (between 1,200 and 2,900, and 400 and 900, respectively). However, while the resource assessment anticipated between 1,300 and 3,000 fewer custodial sentences,³² analysis shows there was no change in the use of custodial sentences before and after the guideline came into force. It was also broadly in line with sentencers’ perceptions that sentences have decreased for common assault, which was attributed to the

³⁰ The slight decrease in the sentencing range for this offence may also contribute to this.

³¹ Common Assault; Criminal Justice Act 1988 (section 39); Racially/religiously aggravated common assault; Crime and Disorder Act 1998 (section 29).

³² Overall it was anticipated that between 150 and 350 fewer prison places would be needed.

difficulty in establishing injury in cases of common assault, especially “*in the context of the offence*”.³³

It's often hard to get into category 1 because there really has to be some injury...and common assault doesn't usually involve injury (district judge)

We find that if you follow the guidelines properly that a lot of common assaults end up category 3...if there is no injury then you are automatically down a category (magistrate)

Other issues

Other issues relating to the guideline emerged in the interviews with sentencers and practitioners, which provide useful information relating to the drafting of the guideline and the way in which it might be interpreted.³⁴

Overall, most participants felt that the three category approach in step 1³⁵ was sensible, intuitive and provided flexibility. This was welcomed and most were not in favour of any further categories. However, a very small minority of Crown Court judges and magistrates considered the offence categories to be overly restrictive and prescriptive, thus curbing judicial discretion. These participants suggested that a fourth category might allow them more flexibility in this regard.

Despite the general feeling that three categories were sufficient, a significant number of Crown Court and district judges also felt the guideline should be amended to accommodate cases of ‘neutral’ or ‘middling’ harm (where the injury is neither more nor less serious in the context of the offence).

There's the argument that if a case isn't greater harm then it has to be lesser harm. However, there is a whole spectrum of injury between greater and lesser harm...how do you appropriately fit a case that has medium harm? (Crown Court judge)

Again, most did not desire an extra category to accommodate this inclusion, the inference being that the wording of existing categories could be amended to cater for this.

The actual step 1 harm and culpability factors were generally considered appropriate by the majority of participants and there was no general call for further factors to be added; however, issues with the interpretation of some of the factors were raised and included:

- Significant difficulties with the harm factors “***injury that is serious in the context of the offence***” and “***injury which is less serious in the context of the offence***”; many Crown Court and district judges and magistrates admitted to not knowing exactly what it means or what types of injuries should take a case into greater or lesser harm:

I don't understand what they mean by in the context of the offence. I honestly don't know what it means (magistrate)

Injury more or less serious in the context of the offence is inherently ambiguous...It's such a nebulous issue (magistrate)

³³ It is not possible currently to explore the reasons for any changes quantitatively, as common assault is triable only summarily, and it has not been possible to collect data from the magistrates' courts. Whilst section 29 offences are triable either way, volumes for this offence are low.

³⁴ See Lock, K. (2015).

³⁵ Category 1: Greater harm (serious injury must normally be present) **and** higher culpability; Category 2: Greater harm (serious injury must normally be present) **and** lower culpability; or lesser harm **and** higher culpability; Category 3: lesser harm **and** lower culpability. There had been four categories in the previous SGC guideline.

I think that's probably the biggest issue with the guidelines...it's the one that causes the most amount of discussion at court (Crown Court judge)

This was supported by the findings of the exercise using offence scenarios which indicated disagreements between participants regarding whether the injuries outlined in the scenarios were more or less serious in the context of the offence.

- The potential for differing interpretations of “**sustained or repeated assault on the same victim**” in greater harm:

I genuinely have no idea what that means! Is that saying it's more than one punch or does it have to go on for 20 or 30 minutes? (Crown Court judge)

Some people will call two punches a sustained assault...to me the terms sustained or repeated assault means that it goes on for a long time; even three or four punches is not sustained to me (Defence lawyer)

More explicit guidance was desired on what exactly is meant by both “sustained” and “repeated” to reduce the subjectivity with which it is applied.

- General satisfaction that a shod foot or head should be considered a **weapon equivalent** – though a small minority felt the latter is not (certainly no more than a fist would be). It was also said that the premeditated act of bringing a weapon to the scene of an offence should be considered more seriously than lashing out during the course of a fight.
- Concerns from some participants over the potential to double-count **victim vulnerability** as it is included in both greater harm (*‘victim is particularly vulnerable because of personal circumstances’*) and higher culpability (*‘deliberate targeting of a vulnerable victim’*) – albeit with a different emphasis.
- Difficulties reported from a small number of judges in interpreting **vulnerability**, particularly in a domestic violence context where it seems there are differing views as to which victims should be considered vulnerable and which should not.

The guidelines are quite vague when it comes to victims who are vulnerable. I'm not entirely sure what a “victim who is particularly vulnerable” means. For example, is a woman in a domestic violence case who has fought back particularly vulnerable? (Crown Court judge)
- The wish from many participants to see **domestic violence** – and its psychological effects – referenced more explicitly within the guideline. However, a minority disagreed and felt that domestic violence could be adequately covered by current (albeit mostly non-domestic violence specific) step one and two factors.³⁶

³⁶ ‘Deliberate targeting of vulnerable victim’, ‘location of the offence’, ‘gratuitous degradation of victim’, ‘ongoing effect upon the victim’; and ‘in domestic violence cases, victim forced to leave their home’.

- The potential to interpret the phrase “**a significant degree of premeditation**” in different ways; it was suggested that the word ‘pre-planning’ may be more suitable for situations when the defendant has planned the assault well in advance of perpetrating it.
- The wish from several participants to see ‘**spitting**’ reintroduced as an important consideration within the guideline (particularly in the context of Assault on a Police Officer). Most felt it should be a greater harm or higher culpability factor at step one.

Spitting used to be an aggravating factor; it's gone and I don't know why. It's serious enough to justify a custodial sentence in my view, but it's absent (district judge)

It can be one of the most distressing things that victims experience...most say they would rather be punched. It needs to be highlighted (Prosecution lawyer)

- Further consideration (raised by a small number only) of culpability factors such as “a greater degree of **provocation** than normally expected” – “how can being provoked ever justify GBH?” (Crown Court judge) and anything referencing a **group or gang** as the number making this up can be interpreted differently.

In terms of views on the impact of the assault definitive guideline, participants were generally positive, especially in relation to the consistency they felt it has brought to the sentencing process while still allowing a degree of judicial discretion and flexibility. It should, however, be noted that some responses to the scenario exercise³⁷ indicated that some variation in approach remains. This seemed to be due to the wording and differing interpretation of certain factors, for example, “*injury that is more or less serious in the context of the offence*”; “*sustained or repeated assault*”; and “*use of weapon or weapon equivalent*”, as outlined above.

Participants also felt that the guideline enabled more structured, logical sentencing; gave judges and magistrates confidence in their ‘instinct’; helped guide and build the confidence of inexperienced sentencers; helped mitigate against the potential for overly harsh or lenient sentences; and ensured better transparency in terms of explaining sentencing.

There was also a general view that the guideline allowed judges and magistrates to reach fair and proportionate outcomes, although as already highlighted some participants felt that some of the starting points and ranges were not appropriate. In addition, several Crown Court judges said that they often go outside the category range to reduce a GBH with intent sentence or increase one for ABH.

Conclusion

This exercise has enabled an assessment of the impact and implementation of the Sentencing Council’s assault guideline. By estimating any changes to sentencing practice that are likely to have occurred without the guideline and then comparing this to what actually happened in practice after the guideline came into force in June 2011, it has been possible to ascertain if there has been any change to sentencing

³⁷ Participants were presented with a scenario - either representing a case of grievous bodily harm with intent, actual bodily harm or assault on a police officer - and asked to outline which offence category they would have placed the defendant into and why.

outcomes.³⁸ This has then been compared to the impact estimated as part of producing the resource assessment for the guideline.

Where an impact has been observed but was anticipated, this indicates that the guideline is being implemented in the way anticipated by the Council. However, where an impact/scale of impact has been observed *but was not anticipated* (e.g. GBH with intent and ABH), this suggests there may be an issue with implementation. The further quantitative and qualitative data outlined in this document highlights potential reasons for this, which includes differing interpretation of some factors in the guideline and changing starting points and ranges. Where this leads to outcomes that some sentencers do not regard as appropriate, it may encourage some to go outside of the guideline range and not adhere to it.

This indicates the need to revisit the guideline and consider whether any changes are needed. Although those interviewed tended to view the guideline positively and highlighted a number of benefits it had brought about, some aspects are worthy of consideration, both to address some of the issues highlighted here and also to bring the guideline up-to-date with later guidelines produced by the Sentencing Council. Consequently, the Council has committed to reviewing the guideline again as part of its 2015-2018 work plan.

Acknowledgements

The Sentencing Council would like to acknowledge Opinion Research Services for their work in undertaking data collection and where necessary, analysis and reporting. The quantitative analysis was undertaken by Meng Le Zhang and Robin Linacre and the resource assessment by Robin Linacre. Particular thanks go to all the sentencers and practitioners who took part in various aspects of this evaluation and who provided valuable insights into the impact and implementation of the guideline.

³⁸ However, it is not statistically possible to attribute any changes observed to the guideline.

Introduction

This is a project for the modernisation and restatement of the main offences of violence. These are:

- (a) the offences contained in the Offences Against the Person Act 1861 (“the 1861 Act”),
- (b) the offences of assault and battery, which are common law offences, and
- (c) assault on a constable, which is an offence under the Police Act 1989.

The purpose of the project is to replace all these offences with a single modern and easily understandable statutory code. We recommend that this should be based on a draft Bill published by the Home Office in 1998, with some changes and updating.

The need for reform

Most of the law concerning offences of violence is set out in the 1861 Act. This is in very old-fashioned language and hard to understand. Particular points are as follows:

- the grading of the offences is not clear and is not always reflected in sentencing powers; for example, the offence under s 20 (“GBH”) is meant to be more serious than that under s 47 (“ABH”), but both have the same maximum sentence, 5 years;
- there are too many narrowly specialised offences, involving factual scenarios described in great detail; some of these are of rare occurrence and almost all are covered by more general offences in any case;
- the same section often describes many alternative ways of committing an offence, and it is not clear whether these are meant to be one offence or several;
- there are references to concepts that no longer exist, such as “felony” and “penal servitude”, and some of the offences do not even state the penalty for the offence.

Outline of the reforms

The proposed changes are set out in brief in the following table. In this table “D” means the person said to have committed an offence and “V” means the person said to have been harmed.

Current offence	Replaced by
Wounding or causing grievous bodily harm, with intent to do grievous bodily harm (life)	Intentionally causing serious injury (life)
Malicious wounding or causing grievous bodily harm (GBH): D must intend or foresee a risk of some harm, not necessarily grievous (5 years)	Recklessly causing serious injury: D must foresee a risk of <i>serious</i> injury (7 years)
Assault occasioning actual bodily harm (ABH): D need not intend or foresee any harm at all (5 years)	1. Intentionally or recklessly causing injury, not necessarily by assault: D must foresee a risk of some injury (5 years) 2. Aggravated assault, meaning assault causing injury: no need to foresee risk of injury (12 months)
Assault and battery, sometimes collectively called “common assault” (6 months)	1. Physical assault (6 months) 2. Threatened assault (6 months)

Assaulting police: D need not know or suspect that V is a police officer (6 months)	Assaulting police: D must know or be reckless about whether V is a police officer (12 months)
Assaulting clergy (2 years); assaulting magistrate preserving wrecks (7 years)	Abolished
Grievous bodily harm with intent to resist arrest (life); assault with intent to resist arrest (2 years)	Causing serious injury with intent to resist arrest (sentence not decided, but should be more than 7 years and less than life); assault with intent to resist arrest (2 years)
Various offences of causing injury or danger by means of poisons or explosives or on railways	Replaced by fewer and simpler offences of causing danger (causing actual injury is covered by the main injury offences)
Soliciting murder (life)	Encouraging murder (life)
Threats to kill (10 years)	Threats to kill, cause serious injury or rape (10 years)
Attempting to choke, preventing escape from a shipwreck, failing to feed servants and apprentices	Abolished
Exposing children to danger, setting man-traps, causing harm by furious driving	Left in 1861 Act

A more detailed table is attached both to the full summary and to the full report.

The main changes

The most important offences as recommended by us are about causing injury. This can mean injury of any kind (including disease), caused by any means. In general, when an offence in the draft Bill consists of causing “serious injury” or “injury”, D must also intend or foresee serious injury or injury, as the case may be. This is significantly different from the present law, where there is often a mismatch between what must happen and what must be foreseen by D.

The new offence of “aggravated assault” is intended to bridge the gap between the existing offences of common assault and ABH. There are many cases involving low level injuries which do not fit conveniently into either offence:

- If charged as ABH, they may be tried in the Crown Court and receive a sentence of up to 5 years. In practice, however, over a third of all sentences passed by the Crown Court for this offence are for 6 months or less. We believe that the Crown Court should not be dealing with cases of this kind.
- If charged as common assault, these cases remain in the magistrates’ court and the maximum sentence is 6 months. Victims will rightly feel aggrieved that their injuries are not reflected in the charge.

The new offence of aggravated assault is designed to cover these low level injury cases, in a way that reflects and acknowledges the fact that an injury has been caused. At the same time, these cases will remain in the magistrates’ court and the sentence is limited to 12 months. This ensures that cases are tried in a court of the appropriate level, and avoids incurring the expensive and time-consuming procedures of the Crown Court when they are not necessary.

Assault Definitive Guideline

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Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after 13 June 2011, regardless of the date of the offence.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

Structure, ranges and starting points

For the purposes of section 125(3)-(4) of the Coroners and Justice Act 2009, the guideline specifies *offence ranges* – the range of sentences appropriate for each type of offence. Within each offence, the Council has specified three *categories* which reflect varying degrees of seriousness. The offence range is split into *category ranges* – sentences appropriate for each level of seriousness. The Council has also identified a starting point within each category.

Starting points define the position within a category range from which to start calculating the provisional sentence. **Starting points apply to all offences within the corresponding category and are applicable to all offenders in all cases irrespective of plea or previous convictions.** Once the starting point is established the court should consider further aggravating and mitigating factors and previous convictions so as to adjust the sentence within the range. Credit for a guilty plea is taken into consideration only at step 4 in the process, after the appropriate sentence has been identified.

Information on community orders and fine bands is set out in the annex at page 27.

Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm

Offences against the Person Act 1861 (section 18)

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: 3–16 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm (serious injury must normally be present) and higher culpability
Category 2	Greater harm (serious injury must normally be present) and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm

Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)

Victim is particularly vulnerable because of personal circumstances

Sustained or repeated assault on the same victim

Factors indicating lesser harm

Injury which is less serious in the context of the offence

Factors indicating higher culpability*Statutory aggravating factors:*

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

Other aggravating factors:

A significant degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Deliberate targeting of vulnerable victim

Leading role in group or gang

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Factors indicating lower culpability

Subordinate role in group or gang

A greater degree of provocation than normally expected

Lack of premeditation

Mental disorder or learning disability, where linked to commission of the offence

Excessive self defence

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points 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 in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	12 years' custody	9–16 years' custody
Category 2	6 years' custody	5–9 years' custody
Category 3	4 years' custody	3–5 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 some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness		
<i>Statutory aggravating factors:</i>		
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	Exploiting contact arrangements with a child to commit an offence	
Offence committed whilst on bail	Previous violence or threats to the same victim	
<i>Other aggravating factors include:</i>	Established evidence of community impact	
Location of the offence	Any steps taken to prevent the victim reporting an incident, or obtaining assistance and/or from assisting or supporting the prosecution	
Timing of the offence	Offences taken into consideration (TICs)	
Ongoing effect upon the victim	Factors reducing seriousness or reflecting personal mitigation	
Offence committed against those working in the public sector or providing a service to the public	No previous convictions or no relevant/recent convictions	
Presence of others including relatives, especially children or partner of the victim	Single blow	
Gratuitous degradation of victim	Remorse	
In domestic violence cases, victim forced to leave their home	Good character and/or exemplary conduct	
Failure to comply with current court orders	Determination, and/or demonstration of steps taken to address addiction or offending behaviour	
Offence committed whilst on licence	Serious medical conditions requiring urgent, intensive or long-term treatment	
An attempt to conceal or dispose of evidence	Isolated incident	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Age and/or lack of maturity where it affects the responsibility of the offender	
Commission of offence whilst under the influence of alcohol or drugs	Lapse of time since the offence where this is not the fault of the offender	
Abuse of power and/or position of trust	Mental disorder or learning disability, where not linked to the commission of the offence	
	Sole or primary carer for dependent relatives	

STEP THREE**Consider any other 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**Dangerousness**

Causing grievous bodily harm with intent to do grievous bodily harm/wounding with intent to do grievous bodily harm is a serious offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award a life sentence, imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, 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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

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

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Inflicting grievous bodily harm/ Unlawful wounding

Offences against the Person Act 1861 (section 20)

Racially/religiously aggravated GBH/Unlawful wounding

Crime and Disorder Act 1998 (section 29)

These are specified offences for the purposes of section 224 of the Criminal Justice Act 2003

Triable either way

Maximum (section 20): 5 years

Maximum (section 29): 7 years

Offence range: Community order – 4 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm (serious injury must normally be present) and higher culpability
Category 2	Greater harm (serious injury must normally be present) and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm	Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)	Intention to commit more serious harm than actually resulted from the offence
Victim is particularly vulnerable because of personal circumstances	Deliberately causes more harm than is necessary for commission of offence
Sustained or repeated assault on the same victim	Deliberate targeting of vulnerable victim
Factors indicating lesser harm	Leading role in group or gang
Injury which is less serious in the context of the offence	Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)
Factors indicating higher culpability	Factors indicating lower culpability
<i>Statutory aggravating factors:</i>	Subordinate role in a group or gang
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	Lack of premeditation
<i>Other aggravating factors:</i>	Mental disorder or learning disability, where linked to commission of the offence
A significant degree of premeditation	Excessive self defence

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points 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 in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	3 years' custody	2 years 6 months' – 4 years' custody
Category 2	1 year 6 months' custody	1 – 3 years' custody
Category 3	High level community order	Low level community order – 51 weeks' 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 some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 3** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Factors increasing seriousness		
<i>Statutory aggravating factors:</i>		
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	Exploiting contact arrangements with a child to commit an offence	
Offence committed whilst on bail	Established evidence of community impact	
<i>Other aggravating factors include:</i>	Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution	
Location of the offence	Offences taken into consideration (TICs)	
Timing of the offence	Factors reducing seriousness or reflecting personal mitigation	
Ongoing effect upon the victim	No previous convictions or no relevant/recent convictions	
Offence committed against those working in the public sector or providing a service to the public	Single blow	
Presence of others including relatives, especially children or partner of the victim	Remorse	
Gratuitous degradation of victim	Good character and/or exemplary conduct	
In domestic violence cases, victim forced to leave their home	Determination and/or demonstration of steps taken to address addiction or offending behaviour	
Failure to comply with current court orders	Serious medical conditions requiring urgent, intensive or long-term treatment	
Offence committed whilst on licence	Isolated incident	
An attempt to conceal or dispose of evidence	Age and/or lack of maturity where it affects the responsibility of the offender	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Lapse of time since the offence where this is not the fault of the offender	
Commission of offence whilst under the influence of alcohol or drugs	Mental disorder or learning disability, where not linked to the commission of the offence	
Abuse of power and/or position of trust	Sole or primary carer for dependent relatives	

Section 29 offences only: The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.

STEP THREE**Consider any other 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**Dangerousness**

Inflicting grievous bodily harm/Unlawful wounding and racially/religiously aggravated GBH/Unlawful wounding are specified offences within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

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

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Assault occasioning actual bodily harm

Offences against the Person Act 1861 (section 47)

Racially/religiously aggravated ABH

Crime and Disorder Act 1998 (section 29)

These are specified offences for the purposes of section 224 of the Criminal Justice Act 2003

Triable either way

Maximum (section 47): 5 years' custody

Maximum (section 29): 7 years' custody

Offence range: Fine – 3 years' custody

STEP ONE**Determining the offence category**

The court should determine the offence category using the table below.

Category 1	Greater harm (serious injury must normally be present) and higher culpability
Category 2	Greater harm (serious injury must normally be present) and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors identified in the table below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm	Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)	Intention to commit more serious harm than actually resulted from the offence
Victim is particularly vulnerable because of personal circumstances	Deliberately causes more harm than is necessary for commission of offence
Sustained or repeated assault on the same victim	Deliberate targeting of vulnerable victim
Factors indicating lesser harm	Leading role in group or gang
Injury which is less serious in the context of the offence	Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)
Factors indicating higher culpability	Factors indicating lower culpability
<i>Statutory aggravating factors:</i>	Subordinate role in group or gang
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)	Lack of premeditation
<i>Other aggravating factors:</i>	Mental disorder or learning disability, where linked to commission of the offence
A significant degree of premeditation	Excessive self defence

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points 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 in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	1 year 6 months' custody	1 – 3 years' custody
Category 2	26 weeks' custody	Low level community order – 51 weeks' custody
Category 3	Medium level community order	Band A fine – High level community order

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 some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 2** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 3** offences, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

Factors increasing seriousness	
<i>Statutory aggravating factors:</i>	Exploiting contact arrangements with a child to commit an offence
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	Established evidence of community impact
Offence committed whilst on bail	Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
<i>Other aggravating factors include:</i>	Offences taken into consideration (TICs)
Location of the offence	Factors reducing seriousness or reflecting personal mitigation
Timing of the offence	No previous convictions or no relevant/recent convictions
Ongoing effect upon the victim	Single blow
Offence committed against those working in the public sector or providing a service to the public	Remorse
Presence of others including relatives, especially children or partner of the victim	Good character and/or exemplary conduct
Gratuitous degradation of victim	Determination and/or demonstration of steps taken to address addiction or offending behaviour
In domestic violence cases, victim forced to leave their home	Serious medical conditions requiring urgent, intensive or long-term treatment
Failure to comply with current court orders	Isolated incident
Offence committed whilst on licence	Age and/or lack of maturity where it affects the responsibility of the offender
An attempt to conceal or dispose of evidence	Lapse of time since the offence where this is not the fault of the offender
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	Mental disorder or learning disability, where not linked to the commission of the offence
Commission of offence whilst under the influence of alcohol or drugs	Sole or primary carer for dependent relatives
Abuse of power and/or position of trust	

Section 29 offences only: The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.

STEP THREE**Consider any other 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**Dangerousness**

Assault occasioning actual bodily harm and racially/religiously aggravated ABH are specified offences within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

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

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Assault with intent to resist arrest

Offences against the Person Act 1861 (section 38)

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

Triable either way
Maximum: 2 years' custody

Offence range: Fine – 51 weeks' custody

STEP ONE

Determining the offence category

The court should determine the offence category using the table below.

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 the offender’s culpability and the harm caused, or intended, by reference **only** to the factors identified in the table below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm

Sustained or repeated assault on the same victim

Factors indicating lesser harm

Injury which is less serious in the context of the offence

Factors indicating higher culpability

Statutory aggravating factors:

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim’s disability (or presumed disability)

Other aggravating factors:

A significant degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Leading role in group or gang

Offence motivated by, or demonstrating, hostility based on the victim’s age, sex, gender identity (or presumed gender identity)

Factors indicating lower culpability

Subordinate role in group or gang

Lack of premeditation

Mental disorder or learning disability, where linked to commission of the offence

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points 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 in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	26 weeks' custody	12 weeks' – 51 weeks' custody
Category 2	Medium level community order	Low level community order – High level community order
Category 3	Band B fine	Band A fine – Band C fine

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 some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 1** offences, the court should consider whether the sentence can be suspended.

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 include:

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Gratuitous degradation of victim

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Single blow

Remorse

Good character and/or exemplary conduct

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Isolated incident

Age and/or lack of maturity where it affects the responsibility of the defendant

Mental disorder or learning disability, where **not** linked to the commission of the offence

Sole or primary carer for dependent relatives

STEP THREE**Consider any other 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**Dangerousness**

Assault with intent to resist arrest is a specified offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

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

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Assault on a police constable in execution of his duty

Police Act 1996 (section 89)

Triable only summarily
Maximum: 26 weeks' custody

Offence range: Fine – 26 weeks' custody

STEP ONE

Determining the offence category

The court should determine the offence category using the table below.

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 the offender’s culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm
Sustained or repeated assault on the same victim
Factors indicating lesser harm
Injury which is less serious in the context of the offence

Factors indicating higher culpability
<i>Statutory aggravating factors:</i>
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
Offence motivated by, or demonstrating, hostility to the victim based on the victim’s disability (or presumed disability)
<i>Other aggravating factors:</i>
A significant degree of premeditation
Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Intention to commit more serious harm than actually resulted from the offence
Deliberately causes more harm than is necessary for commission of offence
Leading role in group or gang
Offence motivated by, or demonstrating, hostility based on the victim’s age, sex, gender identity (or presumed gender identity)
Factors indicating lower culpability
Subordinate role in group or gang
Lack of premeditation
Mental disorder or learning disability, where linked to commission of the offence

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points 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 in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	12 weeks' custody	Low level community order – 26 weeks' custody
Category 2	Medium level community order	Low level community order – High level community order
Category 3	Band B fine	Band A fine – Band C fine

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 some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

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 include:

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Gratuitous degradation of victim

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Single blow

Remorse

Good character and/or exemplary conduct

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Isolated incident

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where **not** linked to the commission of the offence

Sole or primary carer for dependent relatives

STEP THREE

Consider any other 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 offending behaviour.

STEP SIX

Compensation and ancillary orders

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

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 remand time

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Common Assault

Criminal Justice Act 1988 (section 39)

Racially/religiously aggravated common assault

Crime and Disorder Act 1998 (section 29)

Racially/religiously aggravated assault is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003

Triable only summarily

Maximum (section 39): 26 weeks' custody

Triable either way

Maximum (section 29): 2 years' custody

Offence range: Discharge – 26 weeks' custody

STEP ONE

Determining the offence category

The court should determine the offence category using the table below.

Category 1	Greater harm (injury or fear of injury must normally be present) and higher culpability
Category 2	Greater harm (injury or fear of injury must normally be present) and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender’s culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm	Threatened or actual use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
Injury or fear of injury which is serious in the context of the offence (must normally be present)	Intention to commit more serious harm than actually resulted from the offence
Victim is particularly vulnerable because of personal circumstances	Deliberately causes more harm than is necessary for commission of offence
Sustained or repeated assault on the same victim	Deliberate targeting of vulnerable victim
Factors indicating lesser harm	Leading role in group or gang
Injury which is less serious in the context of the offence	Offence motivated by, or demonstrating, hostility based on the victim’s age, sex, gender identity (or presumed gender identity)
Factors indicating higher culpability	Factors indicating lower culpability
<i>Statutory aggravating factors:</i>	Subordinate role in group or gang
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)	A greater degree of provocation than normally expected
Offence motivated by, or demonstrating, hostility to the victim based on the victim’s disability (or presumed disability)	Lack of premeditation
<i>Other aggravating factors:</i>	Mental disorder or learning disability, where linked to commission of the offence
A significant degree of premeditation	Excessive self defence

STEP TWO

Starting point and category range

Having determined the category, the court should use the corresponding starting points 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 in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point (Applicable to all offenders)	Category Range (Applicable to all offenders)
Category 1	High level community order	Low level community order – 26 weeks’ custody
Category 2	Medium level community order	Band A fine – High level community order
Category 3	Band A fine	Discharge – Band C fine

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 some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing **category 1** offences, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

When sentencing **category 2** offences, the court should also consider the community order threshold as follows:

- has the community order threshold been passed?

Factors increasing seriousness	
<i>Statutory aggravating factors:</i>	
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	Exploiting contact arrangements with a child to commit an offence
Offence committed whilst on bail	Established evidence of community impact
<i>Other aggravating factors include:</i>	Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
Location of the offence	Offences taken into consideration (TICs)
Timing of the offence	
Ongoing effect upon the victim	
Offence committed against those working in the public sector or providing a service to the public	
Presence of others including relatives, especially children or partner of the victim	
Gratuitous degradation of victim	
In domestic violence cases, victim forced to leave their home	
Failure to comply with current court orders	
Offence committed whilst on licence	
An attempt to conceal or dispose of evidence	
Failure to respond to warnings or concerns expressed by others about the offender's behaviour	
Commission of offence whilst under the influence of alcohol or drugs	
Abuse of power and/or position of trust	
	Factors reducing seriousness or reflecting personal mitigation
	No previous convictions or no relevant/recent convictions
	Single blow
	Remorse
	Good character and/or exemplary conduct
	Determination and/or demonstration of steps taken to address addiction or offending behaviour
	Serious medical conditions requiring urgent, intensive or long-term treatment
	Isolated incident
	Age and/or lack of maturity where it affects the responsibility of the offender
	Lapse of time since the offence where this is not the fault of the offender
	Mental disorder or learning disability, where not linked to the commission of the offence
	Sole or primary carer for dependent relatives

Section 29 offences only: The court should determine the appropriate sentence for the offence without taking account of the element of aggravation and then make an addition to the sentence, considering the level of aggravation involved. It may be appropriate to move outside the identified category range, taking into account the increased statutory maximum.

STEP THREE**Consider any other 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**Dangerousness**

Racially/religiously aggravated common assault is a specified offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

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 offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

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

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 remand time**

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Annex:

Fine bands and community orders

FINE BANDS

In this guideline, fines are expressed as one of three fine bands (A, B or C).

Fine Band	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Band A	50% of relevant weekly income	25–75% of relevant weekly income
Band B	100% of relevant weekly income	75–125% of relevant weekly income
Band C	150% of relevant weekly income	125–175% of relevant weekly income

COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium and high).

A non-exhaustive description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other.

LOW	MEDIUM	HIGH
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> • 40–80 hours unpaid work • Curfew requirement within the lowest range (e.g. up to 12 hours per day for a few weeks) • Exclusion requirement, without electronic monitoring, for a few months • Prohibited activity requirement • Attendance centre requirement (where available) 	Suitable requirements might include: <ul style="list-style-type: none"> • Greater number of hours of unpaid work (e.g. 80–150 hours) • An activity requirement in the middle range (20 to 30 days) • Curfew requirement within the middle range (e.g. up to 12 hours for 2–3 months) • Exclusion requirement, lasting in the region of 6 months • Prohibited activity requirement 	Suitable requirements might include: <ul style="list-style-type: none"> • 150–300 hours unpaid work • Activity requirement up to the maximum of 60 days • Curfew requirement up to 12 hours per day for 4–6 months • Exclusion order lasting in the region of 12 months

The tables above are also set out in the *Magistrates' Court Sentencing Guidelines* which includes further guidance on fines and community orders.

NOTES

Number sentenced, proportion sentenced in the Crown Court, custody rate and average custodial sentence length for offences covered by the Assault offences definitive guideline

Offence	Number sentenced			Percentage increase or decrease in number sentenced		Proportion sentenced in Crown Court in 2014	Custody rate			Average custodial sentence length in years		
	2003	2011	2014	2011 vs 2003	2014 vs 2011		2003	2011	2014	2003	2011	2014
GBH with intent s18	1,332	1,625	1,355	22%	-17%	99.9%	93%	95%	90%	4.3	5.1	6.4
GBH s20	3,811	4,035	3,429	6%	-15%	98%	55%	57%	53%	1.5	1.6	1.8
Religiously or racially aggravated GBH s29	27	17	11	-37%	-35%	91%	70%	41%	73%	1.6	2.8	0.0
ABH s47	11,839	11,762	7,240	-1%	-38%	81%	29%	34%	41%	0.8	1.0	1.1
Religiously or racially aggravated ABH s29	93	85	62	-9%	-27%	89%	69%	55%	68%	1.0	1.3	1.2
Assault with intent to resist arrest s38	431	163	136	-62%	-17%	14%	40%	28%	29%	0.4	0.4	0.3
Assault on a police constable s89	6,837	8,452	6,985	24%	-17%	1%	20%	15%	14%	0.2	0.2	0.2
Common assault s39	25,884	46,102	47,420	78%	3%	4%	12%	15%	14%	0.2	0.2	0.2
Religiously or racially aggravated common assault s29	258	892	866	246%	-3%	11%	36%	23%	23%	0.5	0.4	0.4

Source: Court Proceedings Database, Ministry of Justice

Note:

2003 is the earliest year for which data is available, 2011 is the year the assault offences definitive guideline came into force, and 2014 is the latest year for which data is available.

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Causing grievous bodily harm with intent to do grievous bodily harm/ Wounding with intent to do grievous bodily harm

Offences against the Person Act 1861 (section 18)

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

Triable either way

Triable only on indictment

Maximum: Life imprisonment

Offence range: 3-16 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 culpability.

CULPABILITY demonstrated by one or more of the following:

A - High culpability:

- Offence racially or religiously aggravated
- Offence motivated by or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)
- Offence motivated by or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)
- A significant degree of premeditation
- Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)
- Intention to commit more serious harm than actually resulted from the offence
- Deliberately causes more harm than is necessary for commission of the offence
- Deliberate targeting of vulnerable victim (should this be here? Or in harm?)
- Leading role in group or gang
- Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

B - Medium culpability:

- All other cases where characteristics for categories A or C are not present

C - Lesser culpability:

- Subordinate role in group or gang
- A greater degree of provocation than normally expected
- Lack of premeditation
- Mental disorder or learning disability, where linked to the commission of the offence
- Excessive self defence

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

The court should determine the level of harm caused, or intended, by reference **only** to the factors below.

Category 1	Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present) Victim is particularly vulnerable because of personal circumstances Sustained or repeated assault on the same victim
Category 2	Harm that falls between categories 1 and 3
Category 3	Injury which is less serious in the context of the offence

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	Starting point 12 years' custody Category range 9-16 years' custody	Starting point Category range	Starting point Category range
Category 2	Starting point Category range	Starting point Category range	Starting point Category range
Category 3	Starting point Category range	Starting point Category range	Starting point 4 years' custody Category range 3-5 years' custody

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. 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:

- Location of the offence
- Timing of the offence
- Ongoing effect upon the victim
- Offence committed against those working in the public sector or providing a service to the public
- Presence of others including relatives, especially children or partner of the victim
- Gratuitous degradation of victim
- In domestic violence cases, victim forced to leave their home
- Failure to respond to warnings or concerns expressed by others about the offender's behaviour
- Commission of offence whilst under the influence of alcohol or drugs
- Abuse of power and/or position of trust
- Exploiting contact arrangements with a child to commit an offence
- Previous violence or threats to the same victim
- Any 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 court orders
- Offence committed on licence
- Offences taken into consideration
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Single blow
- Remorse
- Isolated incident
- 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
- Lapse of time since the offence where this is not the fault of the offender

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**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 section 225(2)) 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.

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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Sentencing Council

Sentencing Council meeting: 20 November 2015
Paper number: SC(15)NOV05 – Imposition of
Community and Custodial Sentences
Lead official: Lisa Frost
0207 071 5784
Lead Council Members: Jill Gramann and Martin Graham

1 ISSUE

- 1.1 The Council is asked to review and agree a draft guideline for the imposition of community and custodial sentences. As discussed at the Council meeting in October, subject to its approval, a short targeted consultation on the guideline will commence in January 2016.

2 RECOMMENDATION

- 2.1 That the Council agrees and signs off for consultation the draft guideline at **Annex A**. The Council are asked to;
- note the limitations to including a definition of ‘punitive requirement’;
 - note the limitations to including guidance regarding Rehabilitation Activity Requirements and agree the suggested approach;
 - agree to include a specific instruction that an SSO should not be imposed as a more severe alternative to a CO;
 - review the list of revisions at **Annex B**;
 - note the impact and risks associated with the imposition guideline.

3 CONSIDERATION

- 3.1 The Council reviewed the first draft of an imposition guideline at the October meeting. A final draft guideline has now been prepared for the Council to consider and is attached at **Annex A**. The format of the guideline is in keeping with other Council guidelines, and the amendments suggested in

October have been incorporated. A number of issues raised by the Council in October have not been included, and these are summarised below. A number of other minor amendments have been made which the Council is asked to consider.

3.2 Definition of 'punitive requirement' in a Community Order

At the October meeting the Council discussed whether the guideline could provide more definition of which requirements are considered punitive, as the legislation states 'which requirements amount to punishment is for the court to decide in each case'.¹ During the Council discussion, reference was made to guidance on punitive requirements issued by the Justices' Clerks Society and it was suggested that this could prove helpful in providing guidance for sentencers in this respect. Officials have reviewed the guidance issued by the JCS, which was as follows;

'Part 1 amends Section 177 Criminal Justice Act 2003 so as to require a Court imposing a community order either to include at least one requirement that is imposed for the purpose of punishment or to impose a fine (or to do both) unless there are exceptional circumstances that would make that unjust. For the avoidance of doubt, this is an amendment to legislation which applies only to adults.'

*Arguably any requirement, because it involves a restriction on an offender's liberty, has a punitive effect, but this would not satisfy the wording of the Schedule. The requirement must be imposed for the purpose of punishment and not merely have punishment as a by-product. The legislation does not specify what punitive requirement the Court should impose. It is expected that they would generally represent a recognisable sanction, for example unpaid work, electronically monitored curfew, exclusion or prohibited activity. As an alternative or in addition to a requirement imposed for the purpose of punishment, a fine may be imposed. This would be at a level fixed at the court's discretion with regard to the offender's means. We do not anticipate that a guideline will be issued by the Sentencing Council in this respect.'*²

¹ Criminal Justice Act 2003, s177 as amended by Part 1 Crime & Courts Act 2013

² JCS News Sheet No 13/2013, 9th November 2013.

- 3.3 The Council will note that the JCS guidance does not specify which requirements are considered punitive, but rather gives an indication. The table included at page 5 of the draft guideline does highlight that the examples included within the table focus on punishment, and these also align with the requirements highlighted by the JCS as likely to be considered punitive. However, further guidance options are limited given the broad wording of the legislation. It is suggested that it would not be possible to include any further guidance on this point.

Question 1 – Does the Council agree that sufficient guidance is included regarding punitive requirements, given the limitations for doing so due to the wording of the legislation?

3.4 Rehabilitation Activity Requirements (RAR's)

A further issue the Council asked officials to explore following the October meeting was the inclusion of guidance regarding Rehabilitation Activity Requirements (RARs), which were introduced by the Offender Rehabilitation Act 2014. S200A of ORA states;

'(1)In this Part "rehabilitation activity requirement", in relation to a relevant order, means a requirement that, during the relevant period, the offender must comply with any instructions given by the responsible officer to attend appointments or participate in activities or both.

(2)A relevant order imposing a rehabilitation activity requirement must specify the maximum number of days for which the offender may be instructed to participate in activities.'

- 3.5 Officials have identified that the intention of this requirement was to allow maximum flexibility for responsible officers in managing an offender's rehabilitation post sentence, and the court is therefore limited to specifying the number of activity days an offender must complete. Due to this being prescribed by legislation, sentencers cannot specify which activities should be undertaken under a RAR. The draft guideline clarifies this for sentencers.

- 3.6 Requirements available under a RAR are intended to cover wider elements of rehabilitation, such as education and employment training, anger

management courses, etc. However, the flexibility of the provision allows other issues to be addressed by the RAR if these become apparent post sentence. There are some suggestions that Probation services are recommending RARs with a broader scope than may have been intended, which sometimes include programmes, such as alcohol treatment programmes, which should be covered by separate requirements available to sentencers. Inclusion of these requirements within a RAR could impact upon the quality of the offender's rehabilitation if sufficient days are not available for the completion of all activities required, so it is important that the court is utilising the full range of requirements available.

- 3.7 The draft guideline addresses this by inviting sentencers to consider all requirements available and highlighting that RARs should not be imposed in place of other available requirements.

Question 2 – Is the Council content with the wording included within the guideline in relation to RARs?

- 3.8 Other changes

As the Council is aware, a primary objective of this guidance is to reverse any inappropriate sentencing behaviour where an SSO may be imposed as a more severe form of a CO. However, the draft guidance reviewed by the Council in October did not directly address that point. In order to ensure the guideline is effective in achieving this objective, it is suggested that this should be clearly stated within the guideline. Wording to this effect has been included at page 9 of the draft guideline which contains guidance for suspending custodial sentences.

Question 3 – Does the Council agree to include a direct instruction within the guideline that an SSO must not be imposed as a more severe form of Community Order?

- 3.9 **Annex B** contains a list of other revisions to the draft guideline requested by the Council at the October meeting. The Council is invited to review the list to agree the revisions.

4 IMPACT

- 4.1 The guideline is intended to have the effect of reversing inappropriate impositions of SSO's. If it is effective, SSO volumes should decrease and CO's would increase. A resource assessment will accompany the consultation guideline and is likely to anticipate a neutral impact, as the number of overall sentences will remain unchanged and those that are imposed will still all be community focused. Any activation of SSO issues will be addressed in the breach resource assessment which is separate to this guideline.
- 4.2 The issuing of up to date guidance for these orders is likely to have a positive reputational impact for the Council. The guideline will also provide clarification for sentencers on RARs and some guidance on requirements which may be considered punitive.

5 RISK

- 5.1 There is a risk that the guideline will not be as effective as hoped, and will not adequately address sentencing behaviour to achieve the desired impact. The consultation document will clearly set out what the guideline is seeking to achieve in order to mitigate this risk.

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IMPOSITION OF COMMUNITY AND CUSTODIAL SENTENCES Draft Guideline

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IMPOSITION OF COMMUNITY AND CUSTODIAL SENTENCES GUIDELINE

Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after (TBC), regardless of the date of the offence.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

Imposition of Community Orders

General Principles

Community orders fulfil all of the purposes of sentencing. In particular, they have the effect of restricting the offender's liberty while providing punishment in the community, rehabilitation for the offender, and/or ensuring that the offender engages in reparative activities.

A community order must not be imposed unless the offence is 'serious enough to warrant such a sentence'.¹ Where an offender is being sentenced for a non-imprisonable offence, the court may not make a community order.

Sentencers must consider all available disposals at the time of sentence; even where the threshold for a community sentence has been passed, a fine or discharge may be an appropriate penalty.

The court must ensure that the restriction on the offender's liberty is commensurate with the seriousness of the offence and that the requirements imposed are the most suitable for the offender.²

Sentencers must also ensure the sentence strikes the right balance between proportionality and suitability. The resulting restriction on liberty must be a proportionate response to the offence committed.

¹ Criminal Justice Act 2003, s.148

² Criminal Justice Act 2003, s.148(2)

Community order ranges

The seriousness of the offence should be the initial factor in determining which requirements to include in a community order. Offence guidelines refer to three sentencing ranges within the community order band based on offence seriousness (low, medium and high).

Where no offence specific guideline is available, the culpability and harm present in the offence(s) should be considered to identify which of the three sentencing ranges within the community order band (low, medium and high) is appropriate. See below for **non-exhaustive** examples of requirements that might be appropriate in each. (Full list of requirements at page 6). **The examples focus on punishment** in the community; **other requirements of a rehabilitative nature** may be more appropriate in some cases.

NOTE: To ensure the order is punitive, at least one requirement **MUST** be imposed for the purpose of punishment and/or a fine imposed in addition to the community order **unless** there are exceptional circumstances which relate to the offender that would make it unjust in all the circumstances to do so.

Low	Medium	High
Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate	Offences that obviously fall within the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> • 40 – 80 hours unpaid work • Curfew requirement within the lowest range (e.g. up to 16 hours per day for a few weeks) • Exclusion requirement, for a few months • Prohibited activity requirement • Attendance centre requirement (where available) 	Suitable requirements might include: <ul style="list-style-type: none"> • Greater number of hours of unpaid work (e.g. 80 – 150 hours) • Curfew requirement within the middle range (e.g. up to 16 hours for 2 – 3 months) • Exclusion requirement lasting in the region of 6 months • Prohibited activity requirement 	Suitable requirements might include: <ul style="list-style-type: none"> • 150 – 300 hours unpaid work • Curfew requirement up to 16 hours per day for 4 – 12 months • Exclusion order lasting in the region of 12 months
* If order does not contain a punitive requirement, suggested fine levels are indicated below:		
BAND A FINE	BAND B FINE	BAND C FINE

Requirements

Community orders consist of one or more of the following requirements:

- unpaid work requirement;
- drug rehabilitation requirement;
- alcohol treatment requirement;
- programme requirement;
- prohibited activity requirement;
- curfew requirement;
- exclusion requirement;
- residence requirement;
- foreign travel prohibition requirement;³
- mental health treatment requirement;
- alcohol abstinence and monitoring requirement (where available);⁴
- in a case where the offender is aged under 25, attendance centre requirement (where available).
- rehabilitation activity requirement (RAR);

(RARs provide flexibility for responsible officers in managing an offenders rehabilitation post sentence. When allocating a RAR the court does not prescribe the activities to be included but will specify the maximum number of activity days the offender must complete. The offenders Responsible Officer will decide the activities to be undertaken. Where appropriate this requirement should be made in addition to, and not in place of, other requirements listed above).

³ Criminal Justice Act 2003, s.206A as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, s.72

⁴ Legal Aid, Sentencing and Punishment of Offenders Act 2012, s.77

Specific considerations in determining requirements

i) At least one requirement must be imposed for the purpose of punishment and/or a fine be imposed in addition to the community order.⁵ Which requirements amount to punishment is a matter for the court to decide in each case.

ii) Where two or more requirements are included, they must be compatible with one another.⁶

iii) The particular requirements imposed must be suitable for the individual offender and will be influenced by a range of factors, including;

- the stated (purposes) of the sentence,
- the risk of re-offending,
- the ability of the offender to comply,
- the availability of the requirements in the local area.

⁵ Criminal Justice Act 2003, s.177(2A) as added by the Crime and Courts Act 2013 Sch. 16(1) Para.2 (applies to offences committed on or after 11 December 2013)

⁶ *ibid.*, s.177(6)

Pre-sentence reports

In many cases, a pre-sentence report will be pivotal in helping the court decide whether to impose a community order and, if so, whether particular requirements or combinations of requirements are suitable for an individual offender. Whenever the court reaches the provisional view that a community order may be appropriate, it should usually request a pre-sentence report. It may be helpful to indicate to the National Probation Service the court's preliminary opinion as to which of the three sentencing ranges is relevant and the purpose(s) of sentencing that the package of requirements is expected to fulfil. Ideally the Court should request a stand down report to avoid adjourning the case.

If an adjournment cannot be avoided, the information should be provided to the National Probation Service in written form⁷ and, a copy retained on the court file for the benefit of the sentencing bench. However, the court must make clear to the defendant that all sentencing options remain open including, in appropriate cases, committal for sentence to the Crown Court.

Electronic Monitoring

Subject to limited exceptions, the court must impose an electronic monitoring requirement where it makes a community order with a curfew or exclusion requirement, and may do so in all other cases.⁸ Electronic monitoring should be used with the primary purpose of promoting and monitoring compliance with other requirements, in circumstances where the punishment of the offender and/or the need to safeguard the public and prevent re-offending are the most important concerns.

⁷ This may be in electronic form

⁸ Criminal Justice Act 2003, ss.177(3) and 177(4)

IMPOSITION OF CUSTODIAL SENTENCES

General Principles

The approach to the imposition of a custodial sentence should be as follows:

- 1) Has the custody threshold been passed?
- 2) If so, is it unavoidable that a custodial sentence be imposed?
- 3) What is the shortest term commensurate with the seriousness of the offence.⁹

Specific considerations:

The custody threshold

A custodial sentence must not be imposed unless the offence 'was so serious that neither a fine alone nor a community sentence can be justified for the offence'.¹⁰

The clear intention of the threshold test is to reserve prison as a punishment for the most serious offences. Passing the custody threshold does **not** mean that a custodial sentence should be deemed inevitable; custody can still be avoided in light of offender mitigation or where there is a suitable intervention in the community which provides sufficient restriction on offenders liberty (by way of punishment) while addressing the rehabilitation of the offender to prevent future crime.

Pre-sentence report

Before deciding whether:

- the custody threshold has been passed; and, if so;
- length of imprisonment which represents the shortest term commensurate with the seriousness of the offence;

the court should obtain a pre-sentence report, unless the court considers a report to be unnecessary.¹¹

Magistrates: Consult your legal adviser before deciding to sentence to custody without a pre-sentence report.

Allocation consideration

For either way offences, where the offending is so serious that a magistrates court is of the opinion that the Crown Court should have the power to deal with the offender, the case should be committed to the Crown Court for sentence even if a community order may be the appropriate sentence (this will allow the Crown Court to deal with any breach of a community order, if that is the sentence passed).

⁹ Criminal Justice Act 2003, s.153(2)

¹⁰ Criminal Justice Act 2003, s.152(2)

¹¹ Criminal Justice Act 2003 ss156(3) and 156(4)

Suspending a Custodial Sentence

A suspended sentence is a sentence of imprisonment. The following considerations are paramount in considering whether to suspend a custodial sentence;

- 1) Has the custody threshold been passed? If not, a suspended sentence **cannot** be passed.
- 2) If so, is it unavoidable that a custodial sentence be imposed?
- 3) If so, can that sentence be suspended? Sentencers should be clear that they would have imposed a custodial sentence if the power to suspend had not been available.

A suspended sentence **MUST NOT** be imposed as a more severe form of Community Order.

Specific considerations

The imposition of a custodial sentence is both punishment and a deterrent. To ensure that the overall terms of the sentence are commensurate with offence seriousness, requirements imposed as part of the sentence should generally be less onerous than if a community order had been imposed. A court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate.

Where an offender has breached a suspended sentence, there is a presumption that the suspended prison term will be activated in full or in part. Full consideration should therefore be given to the circumstances of the offender. Careful consideration to imposing a suspended sentence should be given where there are circumstances which would make activation of the custodial sentence undesirable or impractical in the event of a breach. In such cases, the Court may consider imposing a suitably onerous Community Order, to avoid imposing a custodial sentence which a subsequent court is likely to consider it is unjust to activate in the event of a breach or further conviction.

Suspended Sentences: General guidance

- i) The requirement to obtain a pre-sentence report for custodial sentences applies if suspending custody.
- ii) If the court imposes a term of imprisonment between 14 days and 2 years (6 months in magistrates court),¹² it may suspend the sentence for between 6 months and 2 years (the 'operational period').¹³
- iii) Where the court imposes two or more sentences to be served consecutively, the court may suspend the sentence where the aggregate of the terms is between 14 days and 12 months¹⁴. (Magistrates may only impose aggregate sentences of more than 6 months where there are two or more either way offences).
- iv) When the court suspends a sentence, it may impose one or more requirements for the offender to undertake in the community.¹⁵ The requirements are identical to those available for community orders on page 5.
- v) A custodial sentence that is suspended should be for the same term that would have applied if the sentence was to be served immediately.
- vi) The time for which a sentence is suspended should reflect the length of the sentence; up to 12 months might normally be appropriate for a suspended sentence of up to 6 months.
- vii) When the court imposes a suspended sentence with community requirements, it may also order that the sentence be reviewed periodically at a review hearing.¹⁶

¹² Criminal Justice Act 2003, s.189(1) as amended by art.2(2)(a) of the Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005

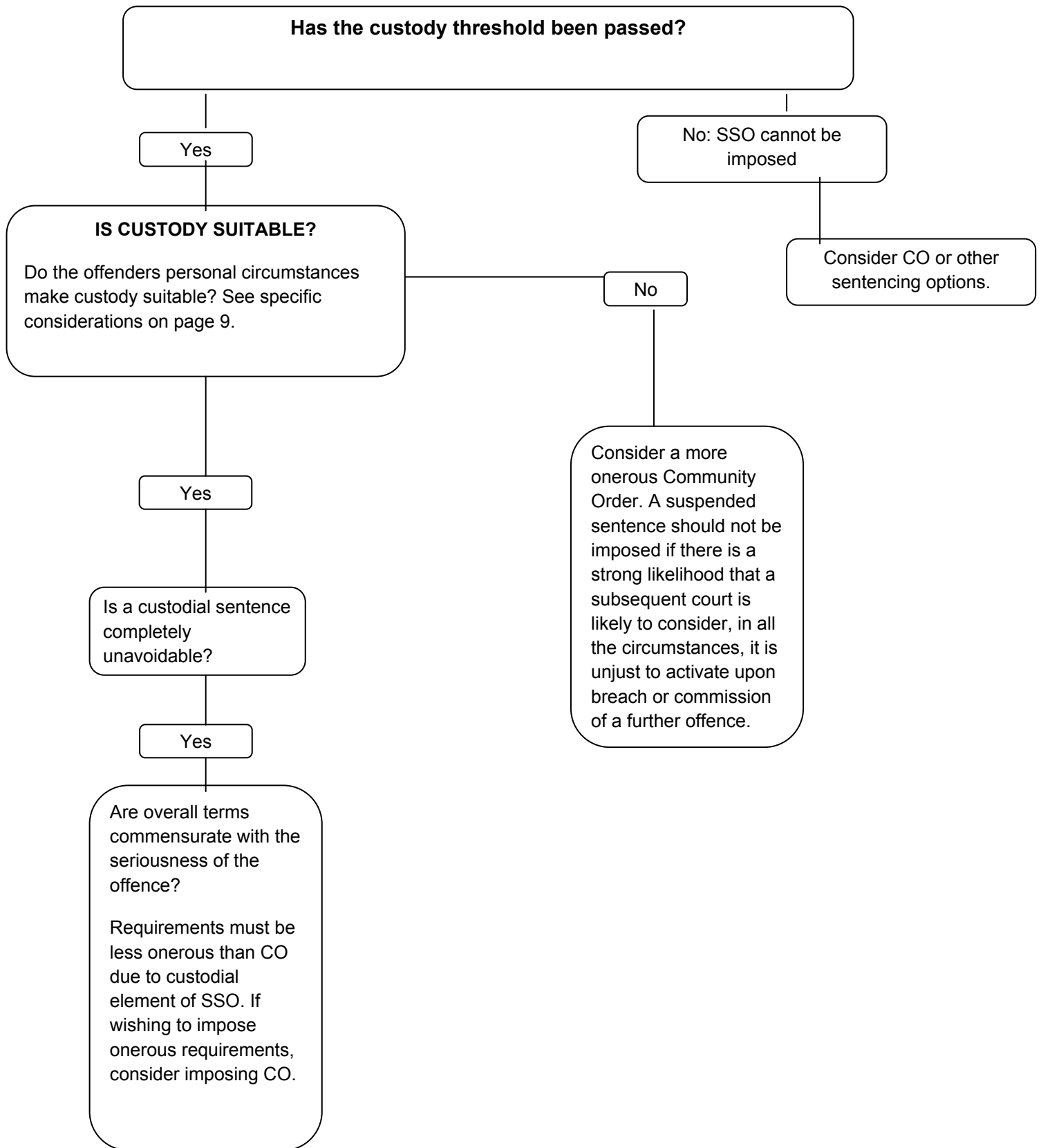
¹³ *ibid.*, s.189(3)

¹⁴ *ibid.*, s.189(2) as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, s.68(2)

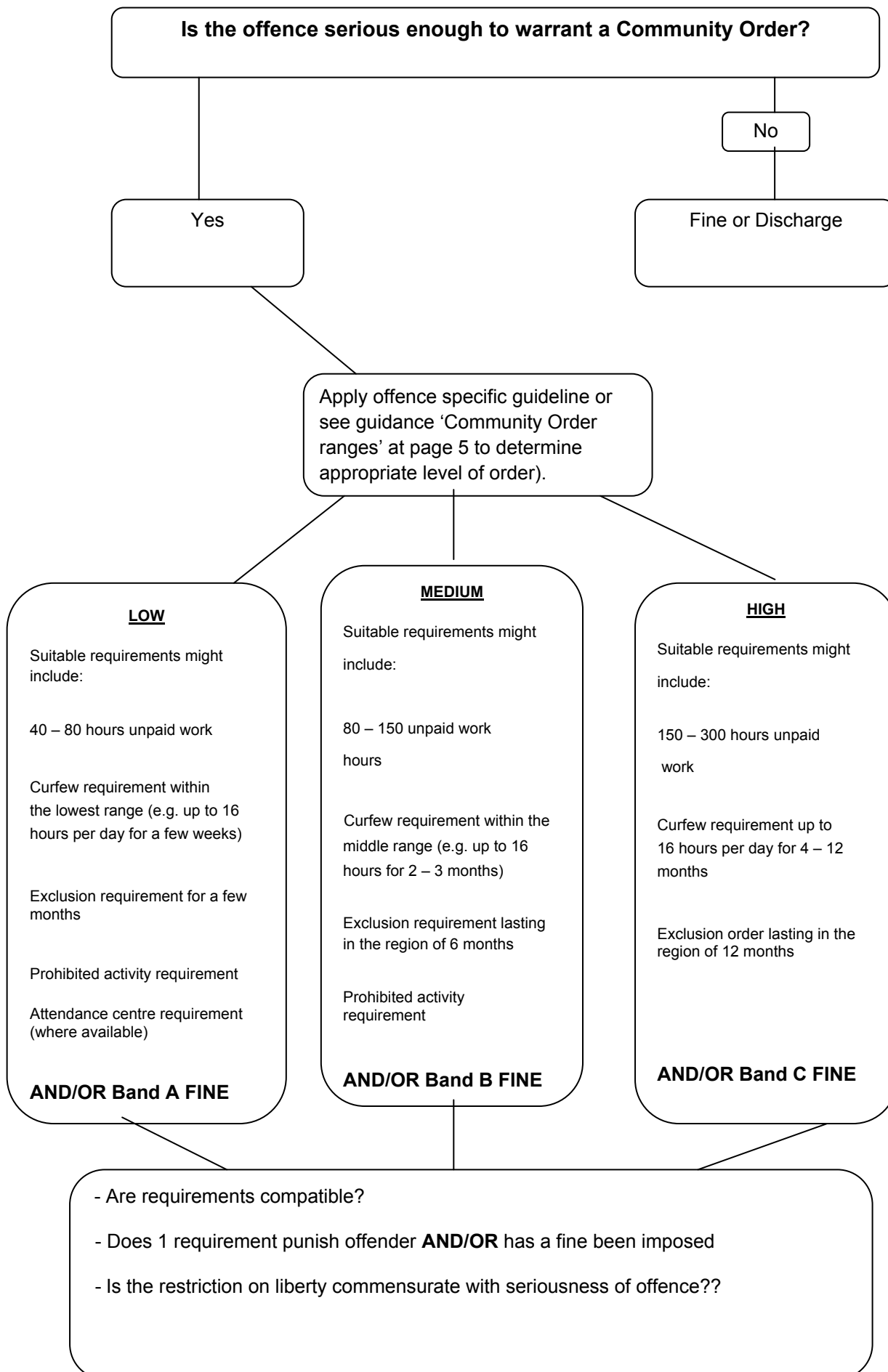
¹⁵ *ibid.*, s.189(1A) as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, s.68(1)

¹⁶ *ibid.*, s.191;

IMPOSING A SUSPENDED SENTENCE
ORDER - FLOWCHART



**IMPOSING A COMMUNITY ORDER –
FLOWCHART**



Summary of changes agreed to Imposition Guideline in October

Provide further guidance on punitive requirements (review JCS guidance on subject)
See para 3.2 of paper

Add further guidance in relation to RAR's; ie; which activities are available.
See para 3.4 of paper

Community Orders

- Prominence to requirements in table being non-exhaustive and focus on punishment
- Inclusion of exceptional circumstances exception to punitive requirement
- PSR's - Reference to stand down report included.

Community Order flowchart;

- Question 'is the offence imprisonable' removed.

Custodial sentences;

- Reference to 'Overarching Principles: Seriousness' removed
- Wording aligned with allocation guideline.
- Approach to imposing custodial sentence; wording amended from first draft.

Suspended Sentences

- Wording amended for 'particular considerations'
- Points restructured.

Suspended Sentence flowchart

- Reference to specific offender issues removed

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Sentencing Council

Sentencing Council meeting: 20 November 2015
Paper number: SC(15)NOV06 – Dangerous Dogs
Lead Council member: Richard Williams
Lead officials: Mandy Banks
0207 071 5785

1 ISSUE

- 1.1 This is the final consideration of the guidelines before the publication of the definitive guideline in March 2016.
- 1.2 The Council is asked to note the summary of all the amendments made to the guidelines since the consultation, and to agree the approach to the consultation response paper. The Council is also asked to agree the rewording of one of the harm factors, the inclusion of an additional aggravating factor, and to agree to some small changes to the sentence levels within the injury to persons guideline.
- 1.3 **Annex A** to this paper is a version of the guidelines which illustrates all of the main changes made to the guidelines post consultation. **Annex B** to the paper is the guideline in the design format that it will appear in when published.

2 RECOMMENDATION

The Council is asked to:

- Agree to make some small changes to the sentence levels in the offence of injury to persons, as discussed in **para 3.2 page 2**
- Agree to the rewording of one of the harm factors regarding attacks on assistance dogs, as set out in **para 3.6, page 4**
- Agree to the inclusion of an additional aggravating factor in the offences causing injury guideline, (and the rewording of a similar factor in the offences causing death guideline) as set out in **para 3.8, page 4**
- Note the summary of the amendments to each guideline, as discussed in **para 3.9, page 5 and sign off the guidelines for publication;** and

- Agree the proposed approach to the consultation response paper, as outlined in **para 3.10, page 5**. Any further comments on the guidelines or the approach to the response paper should be sent to Mandy Banks by email by **4 December**.
- Note the recommended media handling approach at **para 3.13, page 6** and give views.

3 CONSIDERATION

3.1 All of the changes made at the last meeting have been made, and can be seen within the document at **Annex A**, namely:

- Changes to the sentence levels within the offences resulting in injury – **page 10**
- Changes to the sentence levels within the offences resulting in attacks on assistance dogs – **page 17**
- Revised wording regarding consecutive sentences within the offences causing injury - **page 10** (wording which now also appears in the offences causing death guideline- **page 3**)
- The placement of the new wording regarding fit and proper person within step six has been revised within the offence of possessing a prohibited dog – **pages 31 and 32**

Sentence levels

3.2 In preparation for the sign off of the guidelines, all of the sentences ranges across the guidelines were reviewed. As noted above, the changes to the sentence levels to the offences of injury caused to persons and attacks on assistance dogs discussed at the last meeting have been made. It was then noted that these changes, particularly the lowering of the ranges in categories 2B and 3B within the offences causing injury to persons (**page 10 of Annex A**) has had the unintended effect of making some of these ranges the same as some of the ranges in the offence of attacks on assistance dogs (**page 17 of Annex A**). As a principle in developing the ranges, we ensured that the ranges in the offences causing injury to persons were generally higher than the corresponding ranges in the attacks on assistance dogs, to reflect the greater statutory maximum (five years compared to three years), and to differentiate between the relative seriousness of an injury/attack on a person and a injury/attack to a dog.

3.3 If the Council still wishes to ensure that an attack on a person is treated more seriously than an attack on a dog, then either some of the changes in the injury to persons guideline discussed at the last meeting can be reversed back to the higher levels used in the consultation, or the ranges within the attacks on assistance dogs could be decreased. It is recommended that the most appropriate option is the former, to reverse some of the changes discussed last month, as follows:

- the starting point in 2B (injury to persons) reverts back to 6 months custody from high level community order:
- the range in 3B (injury to persons) reverts back to a band C fine from a band B fine, and:
- the high level community order (injury to persons) reverts back to 6 months custody.

3.4 Additionally, the starting point in 3B in attacks on assistance dogs could be lowered to a band C fine. The ranges within 3C in both guidelines are very similar, but at this very lowest point of the table it is difficult to have much difference between the two, although the starting point in 3C in injury to persons could be increased to a band B fine from a band A fine, to create a further point of difference between the two ranges.

3.5 As noted in last month's paper, a range of views were expressed on the proposed sentence ranges in the consultation, but the most commonly expressed view was that the ranges and suggested sentence levels for the case studies in the consultation were too low. This opinion has also recently been expressed in a letter in the November edition of the Criminal Law Review, following an earlier editorial on the draft guidelines, in which the writer states that '... the Sentencing Council has.....adopted an approach of undue leniency' (*in the draft guidelines*). Accordingly, increasing the ranges in the injury to persons guideline is recommended as the appropriate course of action, if the Council wish to maintain the differential between the sentence ranges for the two offences.

Question 1: Does the Council agree to the changes in the sentence ranges in the offence of injury to persons outlined above in order to maintain a differential between sentencing for attacks on persons and attacks on dogs?

Offence of attacks on assistance dogs

3.6 The Council is asked to confirm that it is content with the rewording of one of the harm factors for this offence, as was set out in last month's Council paper (the issue was not discussed at the last meeting). The factor in category one has been reworded due to concerns that sentencers found the wording proposed in consultation ambiguous and confusing, and so it is recommended that the wording is clarified. The new wording suggested is '*Serious impact on the assisted person (whether psychological or other harm caused by the offence)*'. This can be seen on page 16 of **Annex A**.

3.7 Additionally, it is also suggested that the two harm factors separately listed in category 3 form one bullet point, rather than two as previously, as can be seen on page 16. This is to provide further clarity that if there is only a minor injury to the dog **and** a limited impact on the person, then this should be assessed as category 3, low harm.

Question 2: Does the Council agree to the rewording of the category one harm factor for this offence, and the category three harm factor being amalgamated into one bullet point?

Additional aggravating factor in the offences causing injury guideline

3.8 The Council is also asked to agree to the inclusion of an additional aggravating factor in the offences causing injury guideline (this was also outlined in last month's Council paper but not discussed). It is proposed that '*serious injury caused to others (where not charged separately)*' is added for cases where there are additional injuries caused from the same incident, which do not form a charge before the court, this wording can be seen on page 11 of **Annex A**. For consistency, the similar aggravating factor in the offences causing death guideline, '*serious injury caused to others who attempted to intervene in the incident*' has been reworded to the same proposed format of '*serious injury caused to others (where not charged separately)*' (page 4 of **Annex A**)

Question 3: Does the Council agree to the addition of a new aggravating factor for this offence (and the rewording of the similar factor in the offences causing death guideline)?

Summary of changes

3.9 All of the changes that have been made to the guidelines post consultation can be seen in the document at **Annex A**. New wording that has been added post consultation has been highlighted and wording that has been removed post consultation has been struck through with a line. The document at **Annex B** is how the designed version of the Crown Court guidelines will look ready for publication, to give Council members an idea of the proposed style and layout only, (not all of the recent or proposed changes to the guidelines have been reflected in this version). It should also be noted that that magistrates will not be using these versions, but instead will use guidelines in the new digital format.

Question 4: Is the Council content with the overall changes that have been made to the guidelines?

Approach to the response paper

3.10 As can be seen within **Annex A**, the changes to the guidelines post consultation have been relatively minor: some small adjustments to sentence levels, minor changes to some culpability factors, some rewording of harm factors, and some new wording at step six within the offence of possession of a prohibited dog.

3.11 It is therefore proposed that the consultation response paper should be a fairly brief 'light touch' document. There were not substantive changes made to this guideline, unlike other recent guidelines, nor are there particularly controversial points to be explained, therefore it is suggested that a lengthy response paper is unnecessary. Instead, the paper will briefly outline that the general approach proposed in the consultation has been maintained, that the reaction to the proposals was generally favourable, and so on. The main changes to the culpability/harm factors and the minor changes to the sentence levels can be briefly outlined and explained. There will be some brief narrative to explain the Council's reasoning for not making some of the changes suggested by consultation respondents, for example the suggestion

that there should be three levels of culpability/harm for the offences not causing injury and the requests for additional aggravating and mitigating factors.

- 3.12 The draft response paper will be circulated to Council members for comments in due course. A revised resource impact statement will also be prepared to be published alongside the definitive guideline and consultation response paper, and this will set out some of the issues regarding the lack of sentencing data that were discussed last month.

Question 5: Is the Council content with the proposed approach to the consultation response paper?

Communications Strategy for launch of the definitive guideline

- 3.13 This will be the fourth time we have taken the subject of a dangerous dogs guideline to the media after the first dogs consultation (Dec 2011), the first dogs definitive (March 2012) and the second dogs consultation (March 2015). This could lead to an assumption that interest might be lower than for some other guidelines. However, we anticipate that the very significant legislative changes might attract unwanted headlines for the Council if not carefully managed.
- 3.14 Our intention is to undertake a low key launch focussing on the new guidance for sentencers which reflects the will of Parliament for these offences. We would explain the new offence of attacks on assistance dogs and would aim to discourage headlines emphasising the increase in sentences from two to 14 years for offences resulting in death, given that the guidelines reflect the recent changes to the law increasing the maximum for these offences (it is not the Council driving up sentences).
- 3.15 Primary audiences will be within the legal community, criminal justice practitioners and those with an interest in dogs – either owners or those using or providing assistance dogs. We will undertake targeted communications activities with these groups whilst also providing factual information and offering spokespeople to the media.

- 3.16 We would anticipate being asked why we have revised these guidelines whilst not producing new guidelines on other areas of new legislation such as drug driving. Our response would be that the existing guideline sets out incorrect ranges for sentencers so this was a priority to put right. We would also anticipate the risk of being associated with criticism of the dangerous dog legislation generally, with clear lines setting out our role and remit. We would also have a clear rationale for why there is no headroom within the offence causing death, unlike most other guidelines (and the other offences within the guideline).

Question 6: Is the Council content with the proposed approach to the communications handling for the launch of the definitive guideline?

4 Risks/Impact

- 4.1 As set out in last month's paper, there is very little sentencing data to assist in the development of the sentence ranges for these offences. However, the risks posed by this are reasonably low, given the low number of offenders who receive custodial sentences for these offences. Once the definitive guideline is in force an assessment of whether to evaluate the guideline will be taken, although any evaluation would be limited in scope due to the lack of time series data for this offence. It also remains the case that it would be very challenging to distinguish any changes to sentences as a result of the guideline from those attributable to the introduction of the legislation and the Council will need to bear this in mind when deciding whether to evaluate the guideline.

Question 7: Is the Council content that the impact and risks have been adequately considered for this guideline? If not, are there any other actions or considerations that should be undertaken at this stage?

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Dangerous dog offences

Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where death is caused

Dangerous Dogs Act 1991 (section 3 (1))

Triable either way

Maximum: 14 years' custody

Offence range: High level community order – 14 years' custody

STEP ONE

Determining the offence category

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

The level of **culpability** is determined by weighing up all the factors of the case. **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:

- Dog used as a weapon or to intimidate people
- Dog known to be prohibited
- Dog bred or trained to be aggressive
- Offender disqualified from owning a dog, or failed to respond to official warnings, or to comply with orders concerning the dog

B - Medium culpability:

- All other cases where characteristics for categories A or C are not present, and in particular:
- Failure to respond to warnings or concerns expressed by others about the dog's behaviour
- Failure to act on prior knowledge of the dog's aggressive behaviour
- Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen
- Failure to intervene in the incident (where it would have been reasonable to do so)
- Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

C - Lesser culpability:

- Attempts made to regain control of dog and/or intervene
- Provocation of dog without fault of the offender
- Evidence of safety or control measures having been taken
- Incident could not have reasonably been foreseen by the offender
- Momentary lapse of control/attention

Harm

There is no variation in the level of harm caused, as by definition the harm involved in an offence where a death is caused is always of the utmost seriousness.

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.

High culpability	Starting point 8 years' custody	Category range 6 – 14 years' custody
Medium culpability	Starting point 4 years' custody	Category range 2 – 7 years' custody
Lesser culpability	Starting point 1 year's custody	Category range High level community order – 2 years' custody

The table is for single offences. Concurrent sentences reflecting the overall criminality of offending will ordinarily be appropriate where offences arise out of the same incident or facts: please refer to the *Offences Taken Into Consideration and Totality guideline*.

The court should then consider any adjustment for any aggravating or mitigating factors. Below 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
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Victim is a child or otherwise vulnerable because of personal circumstances.
- More than one dog involved
- Location of the offence
- Sustained or repeated attack
- Significant ongoing effect on witness(es)
- Serious injury caused to others (where not charged separately) who attempted to intervene in the incident
- ~~Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex, or disability~~
- ~~Failing to take adequate precautions to prevent dog from escaping~~
- Allowing person insufficiently experienced or trained, to be in charge of dog
- ~~Dog known to be prohibited~~
- Lack or loss of control of dog due to influence of alcohol or drugs
- Offence committed against those working in the public sector or providing a service to the public
- Injury to other animals
- Established evidence of community/wider impact
- Failure to comply with current court orders (other than any referred to at step one)
- Offence committed on licence
- Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- No previous complaints against, or incidents involving the dog
- Evidence of responsible ownership
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition 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 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

Compensation and ancillary orders

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:

Disqualification from having a dog

The court **may** disqualify the offender from having custody of a dog for such period as it thinks fit. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may appoint a person to undertake destruction and** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

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.

Dangerous dog offences

Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where a person is injured

Dangerous Dogs Act 1991 (section 3 (1))

Triable either way

Maximum: 5 years' custody

Offence range: Discharge – 4 years' custody

STEP ONE

Determining the offence category

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

The level of culpability is determined by weighing up all the factors of the case. **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:

- Dog used as a weapon or to intimidate people
- Dog known to be prohibited
- Dog bred or trained to be aggressive
- Offender disqualified from owning a dog, or failed to respond to official warnings, or to comply with orders concerning the dog.

B - Medium culpability:

- All other cases where characteristics for categories A or C are not present, and in particular:
- Failure to respond to warnings or concerns expressed by others about the dog's behaviour.
- Failure to act on prior knowledge of the dog's aggressive behaviour
- Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen
- Failure to intervene in the incident (where it would have been reasonable to do so)
- Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

C - Lesser culpability:

- Attempts made to regain control of dog and/or intervene
- Provocation of dog without fault of the offender
- Evidence of safety or control measures having been taken
- Incident could not have been reasonably foreseen by offender
- Momentary lapse of control/attention

Harm

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

Category 1

- Serious injury (which includes disease transmission)
- Serious psychological harm

Category 2

- Factors in categories 1 or 3 not present. Harm that falls between categories 1 and 3

Category 3

- Minor injury and no significant psychological harm

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.

Maximum 5 years custody

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 3 years' custody</p> <p>Category range 2 years 6 months' – 4 years' custody</p>	<p>Starting point 1 year 6 months' custody</p> <p>Category range 6 months' – 2 years 6 months' custody</p>	<p>Starting point High level community order</p> <p>Category range Medium level community order – 6 months' custody</p>
Category 2	<p>Starting point 2 years' custody</p> <p>Category range 1 year 6 months' – 3 years' custody</p>	<p>Starting point High level community order 6 months' custody</p> <p>Category range Medium level community order High level community order – 1 year 6 months' custody</p>	<p>Starting point Band C fine</p> <p>Category range Band B fine – High level community order</p>
Category 3	<p>Starting point 6 months, 1 year, 6 months custody</p> <p>Category range High level community order 6 months – 12 year 6 months custody</p>	<p>Starting point Low level community order</p> <p>Category range Band C, B fine – High level community order 6 months' custody</p>	<p>Starting point Band A fine</p> <p>Category range Discharge – Band C fine</p>

The table is for single offences. Concurrent sentences reflecting the overall criminality of offending will ordinarily be appropriate where offences arise out of the same incident or facts: please refer to the *Offences Taken Into Consideration and Totality guideline*.

The court should then consider any adjustment for any aggravating or mitigating factors. Below 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
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Victim is a child or otherwise vulnerable because of personal circumstances
- More than 1 dog involved
- Location of the offence
- Sustained or repeated attack
- Significant ongoing effect on witness(es)
- Serious injury caused to others (where not charged separately)
- Significant practical and financial effects of offence on relatives/carers
- ~~Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex, or disability~~
- ~~Failing to take adequate precautions to prevent dog from escaping~~
- ~~Dog known to be prohibited~~
- Allowing person insufficiently experienced or trained, to be in charge of dog
- Lack or loss of control of dog due to influence of alcohol or drugs
- Offence committed against those working in the public sector or providing a service to the public
- Injury to other animals
- Established evidence of community/wider impact
- Failure to comply with current court orders (other than any referred to at step one)
- Offence committed on licence

- Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Isolated incident
- No previous complaints against, or incidents involving the dog
- Evidence of responsible ownership
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition 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 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

Compensation and ancillary orders

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:

Disqualification from having a dog

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may appoint a person to undertake destruction and** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

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.

Dangerous dog offences

Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where an assistance dog is injured or killed

Dangerous Dogs Act 1991 (section 3 (1))

Triable either way

Maximum: 3 years' custody

Offence range: Discharge – 2 years 6 months' custody

STEP ONE

Determining the offence category

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

The level of culpability is determined by weighing up all the factors of the case. **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:

- Dog used as a weapon or to intimidate people **or dogs**
- **Dog known to be prohibited**
- Dog ~~bred~~ or trained to be aggressive
- **Defendant was disqualified from owning a dog or** failed to respond to official warnings or to comply with orders concerning the dog
- **Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)**

B - Medium culpability:

- All other cases where characteristics for categories A or C are not present, and in particular:
- Failure to respond to warnings or concerns expressed by others about the dog's behaviour
- Failure to act on prior knowledge of the dog's aggressive behaviour.
- Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen
- Failure to intervene in the incident (where it would have been reasonable to do so)
- Ill treatment or failure to ensure welfare needs of the dog (where connected to the offence and where not charged separately)

C - Lesser culpability:

- Attempts made to regain control of dog and/or intervene
- Provocation of dog without fault of the offender
- Evidence of safety or control measures having been taken
- Incident could not reasonably have been foreseen by the offender
- Momentary lapse of control/ attention

Harm

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

Category 1

- Fatality or serious injury to an assistance dog and/or
- Serious impact on the assisted person (whether psychological or other harm caused by the offence). Impact of the offence on the assisted person is severe.

Category 2

- Harm that falls between categories 1 and 3 Factors in categories 1 or 3 not present

Category 3

- Minor injury to assistance dog and or Impact of the offence on the assisted person is limited.

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.

Maximum three years' custody

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 2 years' custody</p> <p>Category range 1 year 6 months – 2 years 6 months' custody</p>	<p>Starting point 9 months' custody</p> <p>Category range High Medium level community order – 1 years' custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order – High level community order</p>
Category 2	<p>Starting point 1 year's custody</p> <p>Category range 6 months' – 1 year 6 months' custody</p>	<p>Starting point High level community order</p> <p>Category range Medium Low level community order – 6 months' custody</p>	<p>Starting point Band B fine</p> <p>Category range Band A fine – Low level community order</p>
Category 3	<p>6 months' custody Starting point High level community order</p> <p>Category range High Medium level community order – 9 6 months' 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 A fine</p> <p>Category range Discharge – Band B fine</p>

The court should then consider any adjustment for any aggravating or mitigating factors. Below 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
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, sexual orientation or transgender identity

Other aggravating factors:

- More than 1 dog involved
- Location of the offence
- Sustained or repeated attack
- Significant ongoing effect on witness(es)
- ~~• Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex, or disability~~
- ~~• Failing to take adequate precautions to prevent dog from escaping~~
- ~~• Dog known to be prohibited~~
- Allowing person insufficiently experienced or trained, to be in charge of dog
- Lack or loss of control of dog due to influence of alcohol or drugs
- Offence committed against those working in the public sector or providing a service to the public
- Injury to other animals
- Cost of retraining an assistance dog
- Established evidence of community/wider impact
- Failure to comply with current court orders (other than any referred to at step one)
- Offence committed on licence
- Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Isolated incident

- No previous complaints against, or incidents involving the dog
- Evidence of responsible ownership
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition 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 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

Compensation and ancillary orders

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:

Disqualification from having a dog

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may appoint a person to undertake destruction and** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

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.

Dangerous dog offences

Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place)

Dangerous Dogs Act 1991 (section 3 (1))

Triable only summarily

Maximum: 6 months' custody

Offence range: Discharge – 6 months' custody

STEP ONE

Determining the offence category

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

The level of culpability is determined by weighing up all the factors of the case. **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 - Higher culpability:

- Dog used as a weapon or to intimidate people
- Dog known to be prohibited
- Dog bred or trained to be aggressive
- Offender disqualified from owning a dog, or failed to respond to official warnings, or to comply with orders concerning the dog

B - Lower culpability:

- Attempts made to regain control of dog and/or intervene
- Provocation of dog without fault of the offender
- Evidence of safety or control measures having been taken
- Incident could not have reasonably been foreseen by the offender
- Momentary lapse of control/attention

Harm

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

Greater harm

- Presence of children or others who are vulnerable because of personal circumstances
- Injury to other animals

Lesser harm

- Low risk to the public

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.

Maximum 6 months' custody

Harm	Culpability	
	A	B
Greater harm	Starting point Medium level community order Category range Band C fine – 6 months' custody	Starting point Band B fine Category range Band A fine – Band C fine
Lesser harm	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

The court should then consider any adjustment for any aggravating or mitigating factors. Below 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
- Offence motivated by, or demonstrating hostility based on any of the following

characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Location of the offence
- Significant ongoing effect on the victim and/or others
- ~~Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex, or disability~~
- Failing to take adequate precautions to prevent dog from escaping
- Allowing person insufficiently experienced or trained, to be in charge of dog
- Ill treatment or failure to ensure welfare needs of dog, (where connected to the offence and where not charged separately)
- ~~Dog known to be prohibited~~
- Lack or loss of control of dog due to influence of alcohol or drugs
- Offence committed against those working in the public sector or providing a service to the public
- Established evidence of community/wider impact
- Failure to comply with current court orders (other than any referred to at step one)
- Offence committed on licence
- Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Isolated incident
- No previous complaints against, or incidents involving the dog
- Evidence of responsible ownership
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition 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 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

Compensation and ancillary orders

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:

Disqualification from having a dog

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

If the dog is not prohibited and the court is satisfied that the dog would constitute a danger to public safety the court **may** make a destruction order

In reaching a decision the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:
other relevant circumstances

Where the dog is not a prohibited dog the court **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may appoint a person to undertake destruction and** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

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.

Dangerous dog offences

Possession of a prohibited dog

Dangerous Dogs Act 1991 (section 1 (3))

Breeding, selling, exchanging or advertising a prohibited dog

Dangerous Dogs Act 1991 (section 1 (2))

Triable only summarily

Maximum: 6 months' custody

Offence range: Discharge – 6 months' custody

STEP ONE**Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case. **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 - Higher culpability:

- Possessing a dog known to be prohibited
- Breeding from a dog known to be prohibited
- Selling, exchanging or advertising a dog known to be prohibited
- Offence committed for gain
- Dog used to threaten or intimidate
- Permitting fighting
- Training and/or possession of paraphernalia for dog fighting

B - Lower culpability:

- All other offences

Harm

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

Greater harm

- High risk to the public and/or other animals

Lesser harm

- Low risk to the public and/or other animals

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.

Maximum 6 months' custody

Harm	Culpability	
	A	B
Greater harm	<p>Starting point Medium level community order</p> <p>Category range Band C fine – 6 months' custody</p>	<p>Starting point Band B fine</p> <p>Category range Band A fine – Low level community order</p>
Lesser harm	<p>Starting point Band C fine</p> <p>Category range Band B fine – Medium level community order.</p>	<p>Starting point Band A fine</p> <p>Category range Discharge – Band B fine</p>

The court should then consider any adjustment for any aggravating or mitigating factors. Below 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:

- Presence of children or others who are vulnerable because of personal circumstances
- Ill treatment or failure to ensure welfare needs of dog, (where connected to the offence and where not charged separately)
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Unaware that dog was prohibited type despite reasonable efforts to identify type
- Evidence of safety or control measures having been taken by owner
- Prosecution results from owner notification
- Evidence of responsible ownership
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition 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 offending behaviour
- Lapse of time since the offence where this is not the fault of the offender

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

Compensation and ancillary orders

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:

Disqualification from having a dog

The court **may** disqualify the offender from having custody of a dog for such period as it thinks fit. The test the court should consider is whether the offender is a **fit and proper person** to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances

If the court is satisfied that the dog would not constitute a danger to public safety, it **shall** make a contingent destruction order requiring that the dog be exempted from the prohibition on possession or custody within the requisite period.

Where the court makes a destruction order, it **may** appoint a person to undertake **destruction** and order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

Fit and proper person

In determining whether a person is a fit and proper person to be in charge of a dog the following non-exhaustive factors may be relevant:

- any relevant previous convictions, cautions or penalty notices;

- the nature and suitability of the premises that the dog is to be kept at by the person;
- where the police have released the dog pending the court's decision whether the person has breached conditions imposed by police; and
- any relevant previous breaches of court orders by the person.

Note: the court must be satisfied that the person who is assessed by the court as a fit and proper person can demonstrate that they are the owner or the person ordinarily in charge of that dog at the time the court is considering whether the dog is a danger to public safety. Someone who has previously not been in charge of the dog should not be considered for this assessment because it is an offence under the Dangerous Dogs Act 1991 to gift a prohibited dog.

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.

Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where death is caused
Dangerous Dogs Act 1991 (section 3 (1))

Triable either way

Maximum: 14 years' custody

Offence range: High level community order – 14 years' custody

STEP ONE**Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case. **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:**

Dog used as a weapon or to intimidate people

Dog known to be prohibited

Dog trained to be aggressive

Offender disqualified from owning a dog, or failed to respond to official warnings, or to comply with orders concerning the dog

B – Medium culpability:

All other cases where characteristics for categories A or C are not present, and in particular:

Failure to respond to warnings or concerns expressed by others about the dog's behaviour

Failure to act on prior knowledge of the dog's aggressive behaviour

Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen

Failure to intervene in the incident (where it would have been reasonable to do so)

Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

C – Lesser culpability:

Attempts made to regain control of dog and/or intervene

Provocation of dog without fault of the offender

Evidence of safety or control measures having been taken

Incident could not have reasonably been foreseen by the offender

Momentary lapse of control/attention

Harm

There is no variation in the level of harm caused, as by definition the harm involved in an offence where a death is caused is always of the utmost seriousness.

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.

High culpability	Starting point 8 years' custody	Category range 6 – 14 years' custody
Medium culpability	Starting point 4 years' custody	Category range 2 – 7 years' custody
Lesser culpability	Starting point 1 year's custody	Category range High level community order – 2 years' custody

The table is for single offences. Concurrent sentences reflecting the overall criminality of offending will ordinarily be appropriate where offences arise out of the same incident or facts: please refer to the Offences Taken Into Consideration and Totality guideline.

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page 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.

See page 68.

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

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

Victim is a child or otherwise vulnerable because of personal circumstances

More than one dog involved

Location of the offence

Sustained or repeated attack

Significant ongoing effect on witness(es) to the attack

Serious injury caused to others (where not charged separately)

Allowing person insufficiently experienced or trained, to be in charge of dog

Lack or loss of control of dog due to influence of alcohol or drugs

Offence committed against those working in the public sector or providing a service to the public

Injury to other animals

Established evidence of community/wider impact

Failure to comply with current court orders (other than any referenced in culpability A)

Offence committed on licence

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation:

No previous convictions **or** no relevant/recent convictions

No previous complaints against, or incidents involving the dog

Evidence of responsible ownership

Remorse

Good character and/or exemplary conduct

Serious medical condition 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 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**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**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:**Disqualification from having a dog**

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may appoint a person to undertake destruction and** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

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.

**Owner or person in charge of a dog
dangerously out of control in any place
in England or Wales (whether or not a
public place) where a person is injured**
Dangerous Dogs Act 1991 (section 3 (1))

Triable either way
Maximum: 5 years' custody

Offence range: Discharge – 4 years' custody

STEP ONE**Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case. **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:**

Dog used as a weapon or to intimidate people

Dog known to be prohibited

Dog trained to be aggressive

Failure to respond to official warnings or to comply with orders concerning the dog

Offender disqualified from owning a dog, or failed to respond to official warnings, or to comply with orders concerning the dog.

B – Medium culpability:

All other cases where characteristics for categories A or C are not present, and in particular:

Failure to respond to warnings or concerns expressed by others about the dog's behaviour

Failure to act on prior knowledge of the dog's aggressive behaviour

Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen

Failure to intervene in the incident (where it would have been reasonable to do so)

Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

C – Lesser culpability:

Attempts made to regain control of the dog and/or intervene

Provocation of dog without fault of the offender

Evidence of safety or control measures having been taken

Incident could not have reasonably been foreseen by the offender

Momentary lapse of control/attention

Harm

The level of **harm** is assessed by weighing up all the factors of the case.

Category 1

Serious injury (which includes disease transmission)

Serious psychological harm

Category 2

Harm that falls between categories 1 and 3

Category 3

Minor injury and no significant psychological harm

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.

Maximum: 5 years' custody

Harm	Culpability		
	A	B	C
Category 1	Starting point 3 years' custody	Starting point 1 year 6 months' custody	Starting point High level community order
	Category range 2 years 6 months' – 4 years' custody	Category range 6 months' – 2 years 6 months' custody	Category range Medium level community order – 6 months' custody
Category 2	Starting point 2 years' custody	Starting point High level community order	Starting point Band C fine
	Category range 1 year 6 months' – 3 years' custody	Category range Medium level community order – 1 year's custody	Category range Band B fine – High level community order
Category 3	Starting point 1 year 6 months' custody	Starting point Low level community order	Starting point Band A fine
	Category range Medium level community order – 1 year 6 months' custody	Category range Band B fine – High level community order	Category range Discharge – Band B fine

The table is for single offences. Concurrent sentences reflecting the overall criminality of offending will ordinarily be appropriate where offences arise out of the same incident or facts: please refer to the Offences Taken Into Consideration and Totality guideline.

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page 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

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity.

Other aggravating factors:

Victim is a child or otherwise vulnerable because of personal circumstances

More than one dog involved

Location of the offence

Sustained or repeated attack

Significant ongoing effect on witness(es)

Serious injury caused to others (where not charged separately)

Significant practical and financial effects of offence on relatives/carers

Allowing person insufficiently experienced or trained, to be in charge of dog

Lack or loss of control of dog due to influence of alcohol or drugs

Offence committed against those working in the public sector or providing a service to the public

Injury to other animals

Established evidence of community/wider impact

Failure to comply with current court orders (other than any referenced in culpability A)

Offence committed on licence

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Isolated incident

No previous complaints against, or incidents involving the dog

Evidence of responsible ownership

Remorse

Good character and/or exemplary conduct

Serious medical condition 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 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**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**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:**Disqualification from having a dog**

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may appoint a person to undertake destruction and** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

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.

Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place) where an assistance dog is injured or killed

Dangerous Dogs Act 1991 (section 3 (1))

Triable either way

Maximum: 3 years' custody

Offence range: Discharge – 2 years 6 months' custody

STEP ONE**Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case. **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:**

Dog used as a weapon or to intimidate people or dogs

Dog known to prohibited

Dog trained to be aggressive

Defendant was disqualified from owning a dog or failed to respond to official warnings or to comply with orders concerning the dog

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

B – Medium culpability:

All other cases where characteristics for categories A or C are not present, and in particular:

Failure to respond to warnings or concerns expressed by others about the dog's behaviour

Failure to act on prior knowledge of the dog's aggressive behaviour

Lack of safety or control measures taken in situations where an incident could reasonably have been foreseen

Failure to intervene in the incident (where it would have been reasonable to do so)

Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

C – Lesser culpability:

Attempts made to regain control of the dog and/or intervene

Provocation of dog without fault of the offender

Evidence of safety or control measures having been taken

Incident could not have reasonably been foreseen by the offender

Momentary lapse of control/attention

Harm

The level of **harm** is assessed by weighing up all the factors of the case.

Category 1

Fatality or serious injury to an assistance dog and/or

Serious impact of the offence on the assisted person (whether psychological or other harm caused by the offence)

Category 2

Harm that falls between categories 1 and 3

Category 3

Minor injury to assistance dog and

Impact of the offence on the assisted person is limited

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.

Maximum: 3 years' custody

Harm	Culpability		
	A	B	C
Category 1	Starting point 2 years' custody	Starting point 9 months' custody	Starting point Medium level community order
	Category range 1 year – 2 years 6 months' custody	Category range Medium level community order – 1 year's custody	Category range Low level community order – High level community order
Category 2	Starting point 1 years' custody	Starting point High level community order	Starting point Band B fine
	Category range 6 months' – 1 year 6 months' custody	Category range Low level community order – 6 months' custody	Category range Band A fine – Low level community order
Category 3	Starting point High level community order	Starting point Low level community order	Starting point Band A fine
	Category range Medium level community order – 6 months' custody	Category range Band B fine – High level community order	Category range Discharge – Band B fine

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page 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

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, sexual orientation or transgender identity

Other aggravating factors:

More than one dog involved

Location of the offence

Sustained or repeated attack

Significant ongoing effect on witness(es)

Allowing person insufficiently experienced or trained, to be in charge of dog

Lack or loss of control of dog due to influence of alcohol or drugs

Offence committed against those working in the public sector or providing a service to the public

Injury to other animals

Cost of retraining an assistance dog

Established evidence of community/wider impact

Failure to comply with current court orders (other than any referenced in culpability A)

Offence committed on licence

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Isolated incident

No previous complaints against, or incidents involving the dog

Evidence of responsible ownership

Remorse

Good character and/or exemplary conduct

Serious medical condition 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 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**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**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:**Disqualification from having a dog**

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

If the court is satisfied that the dog would not constitute a danger to public safety and the dog is not prohibited, it **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may appoint a person to undertake destruction and** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

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.

Owner or person in charge of a dog dangerously out of control in any place in England or Wales (whether or not a public place)

Dangerous Dogs Act 1991 (section 3 (1))

Triable only summarily

Maximum: 6 months' custody

Offence range: Discharge – 6 months' custody

STEP ONE**Determining the offence category**

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

The level of culpability is determined by weighing up all the factors of the case. **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 – Higher culpability:**

Dog used as a weapon or to intimidate people
Dog known to be prohibited
Dog trained to be aggressive
Offender disqualified from owning a dog, or failed to respond to official warnings, or to comply with orders concerning the dog

B – Lower culpability:

Attempts made to regain control of dog and/or intervene
Provocation of dog without fault of the offender
Evidence of safety or control measures having been taken
Incident could not have reasonably been foreseen by the offender
Momentary lapse of control/attention

Harm

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

Greater harm

Presence of children or others who are vulnerable because of personal circumstances
Injury to other animals

Lesser harm

Low risk to the public

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.

Maximum: 6 months' custody

Harm	Culpability	
	A	B
Greater harm	Starting point Medium level community order	Starting point Band B fine
	Category range Band C fine – 6 months' custody	Category range Band A fine – Band C fine
Lesser harm	Starting point Band C fine	Starting point Band A fine
	Category range Band B fine – Low level community order	Category range Discharge – Band B fine

The court should then consider any adjustment for any aggravating or mitigating factors. On the next page 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

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

Location of the offence

Significant ongoing effect on the victim and/or others

Failing to take adequate precautions to prevent dog from escaping

Allowing person insufficiently experienced or trained, to be in charge of dog

Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

Lack or loss of control of dog due to influence of alcohol or drugs

Offence committed against those working in the public sector or providing a service to the public

Established evidence of community/wider impact

Failure to comply with current court orders (other than any referred to at step one)

Offence committed on licence

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Isolated incident

No previous complaints against, or incidents involving the dog

Evidence of responsible ownership

Remorse

Good character and/or exemplary conduct

Serious medical condition 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 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**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**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:**Disqualification from having a dog**

The court **may** disqualify the offender from having custody of a dog. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

If the dog is a **prohibited dog** refer to the guideline for possession of a prohibited dog in relation to destruction/contingent destruction orders.

If the dog is not prohibited and the court is satisfied that the dog would constitute a danger to public safety the court **may** make a destruction order.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

Where the dog is not a prohibited dog the court **may** make a contingent destruction order requiring the dog be kept under proper control. A contingent destruction order may specify the measures to be taken by the owner for keeping the dog under proper control, which include:

- muzzling;
- keeping on a lead;
- neutering in appropriate cases; and
- excluding it from a specified place.

Where the court makes a destruction order, it **may** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

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.

Possession of a prohibited dog

Dangerous Dogs Act 1991 (section 1 (7))

Breeding, selling, exchanging or

advertising a prohibited dog

Dangerous Dogs Act 1991 (section 1 (7))

Triable only summarily

Maximum: 6 months' custody

Offence range: Discharge – 6 months' custody

STEP ONE
Determining the offence category

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

The level of culpability is determined by weighing up all the factors of the case. **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:**
- Possessing a dog known to be prohibited
 - Breeding from a dog known to be prohibited
 - Selling, exchanging or advertising a dog known to be prohibited
 - Offence committed for gain
 - Dog used to threaten or intimidate
 - Permitting fighting
 - Training and/or possession of paraphernalia for dog fighting
- B – Lower culpability:**
- All other offences

Harm	
The level of harm is assessed by weighing up all the factors of the case.	
Greater harm	High risk to the public and/or other animals
Lesser harm	Low risk to the public and/or other animals

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.

Maximum: 6 months' custody

Harm	Culpability	
	A	B
Greater harm	Starting point Medium level community order	Starting point Band B fine
	Category range Band C fine – 6 months' custody	Category range Band A fine – Low level community order
Lesser harm	Starting point Band C fine	Starting point Band A fine
	Category range Band B fine – medium level community order	Category range Discharge – Band B fine

See page 92.

The court should then consider any adjustment for any aggravating or mitigating factors. Below 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:

Presence of children or others who are vulnerable because of personal circumstances

Ill treatment or failure to ensure welfare needs of dog (where connected to the offence and where not charged separately)

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Unaware that dog was prohibited type despite reasonable efforts to identify type

Evidence of safety or control measures having been taken by owner

Prosecution results from owner notification

Evidence of responsible ownership

Remorse

Good character and/or exemplary conduct

Serious medical condition 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 offending behaviour

Lapse of time since the offence where this is not the fault of the offender

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**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**Compensation and ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:**Disqualification from having a dog**

The court **may** disqualify the offender from having custody of a dog for such period as it thinks fit. The test the court should consider is whether the offender is a fit and proper person to have custody of a dog.

Destruction order/contingent destruction order

In any case where the offender is not the owner of the dog, the owner must be given an opportunity to be present and make representations to the court.

The court **shall** make a destruction order unless the court is satisfied that the dog would not constitute a danger to public safety.

In reaching a decision, the court should consider the relevant circumstances which **must** include:

- the temperament of the dog and its past behaviour;
- whether the owner of the dog, or the person for the time being in charge of it is a fit and proper person to be in charge of the dog;

and **may** include:

- other relevant circumstances.

If the court is satisfied that the dog would not constitute a danger to public safety, it **shall** make a contingent destruction order requiring that the dog be exempted from the prohibition on possession or custody within the requisite period.

Where the court makes a destruction order, it **may appoint a person to undertake destruction and** order the offender to pay what it determines to be the reasonable expenses of destroying the dog and keeping it pending its destruction.

Fit and proper person

In determining whether a person is a fit and proper person to be in charge of a dog the following non-exhaustive factors may be relevant:

- any relevant previous convictions, cautions or penalty notices;
- the nature and suitability of the premises that the dog is to be kept at by the person;
- where the police have released the dog pending the court's decision whether the person has breached conditions imposed by the police; and
- any relevant previous breaches of court orders by the same person.

Note: the court must be satisfied that the person who is assessed by the court as a fit and proper person can demonstrate that they are the owner or the person ordinarily in charge of that dog at the time the court is considering whether the dog is a danger to public safety. Someone who has previously not been in charge of the dog should not be considered for this assessment because it is an offence under the Dangerous Dogs Act 1991 to gift a prohibited dog.

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.

Sentencing Council

Sentencing Council meeting: 20 November 2015
Paper number: SC(15)NOV07 - Youth
Lead officials: Vicky Hunt & Jo Keatley
020 7071 5786
Lead Council member: John Saunders

1 ISSUE

- 1.1 This is the second consideration of a new draft format sexual offences guideline for youths, and the first consideration of a new draft robbery guideline for youths.
- 1.2 The aim is for both guidelines to be signed off at the Council meeting in January, and out for consultation by April 2016 alongside the Overarching Principles for Sentencing Youths guideline. This is a revised timetable, with the consultation period being later than originally intended so as not to clash with the guilty plea consultation as we anticipate both will receive a high degree of interest.

2 RECOMMENDATION

- The Council is asked to reconsider the sexual offences guideline with regard to the custodial threshold test, and confirm its preferred approach;
- Confirm that it is content with the minor amendments to and the scope of the sexual offences guideline; and
- Confirm that it is content with both the structure and the specific factors for the robbery guideline.

3 CONSIDERATION

Sexual Offences Guideline

- 3.1 At the October meeting the Council considered the attached guideline at **Annex A** and broadly agreed with the draft. There were a number of minor

changes proposed which have now been made and appear in blue on the new version at **Annex B**. In addition I have made a number of other minor changes such as including additional references to the Overarching Principles.

Question 1: Is the Council content with these minor changes in Annex B?

- 3.2 There were a couple of areas where the Council suggested more significant changes.
- 3.3 The main proposed change related to the threshold for custody. The original design (**Annex A**) provided that the custody threshold would be crossed if one of the factors in the box was present plus at least one aggravating factor. Some Council members suggested that this was unnecessarily cumbersome and that the factors in the box alone would be sufficient.
- 3.4 I have now had the opportunity to look again at those factors and to consider them against some transcripts that we had obtained when originally devising the guideline. I have also spoken to a Youth Offending Team senior manager, who has spoken to me about the methods of assessing young people who have committed sexual offences.
- 3.5 Looking at the new draft there is a concern that removing the requirement to find an aggravating factor over simplifies the model, making it far easier for a case to fall into the custodial bracket, and it does not allow for the huge array of circumstances that may exist in each case.
- 3.6 Whilst the guideline only suggests that presence of those factors in the box 'may lead a court to conclude that the threshold has been crossed', it would still lead a sentencer to believe that the 'norm' would be a custodial sentence, and this may be more difficult to move away from in a case with numerous additional aggravating factors.
- 3.7 As the Council will be aware the number of young offenders convicted of the most serious sexual offences is very small and so the data we have, and the number of transcripts we have is very limited. For example in 2013 there were only 20 young offenders sentenced for rape and 13 for assault by penetration.
- 3.8 In the small number of transcripts that we have been able to obtain, none of the offenders ended up receiving a custodial sentence even though the

majority involved repeated offences and many included penetrative activity with coercive behaviour.

3.9 To illustrate here are two cases from the transcripts we have obtained:

Case Study 1

- The offender was 15 at the time of the offences, and the two male victims were aged 7.
- The offender and the two victims were at a public event on a Saturday evening.
- The offender forced his penis into both the victims' mouths in turn, in the presence of four other boys aged 12-16.
- The incident was unplanned. The offender pleaded guilty and had no previous convictions.

In this case study there has been penetrative activity involving coercion, and it was a repeated offence. Additional aggravating factors include deliberately committing the offence before a group of peers; and significant disparity of age.

This offender was sentenced to a YRO with an Intensive Supervision and Surveillance package.

Case Study 2

- The offender was 15 at the time of the offences, and the victim, his cousin, was 6 years old.
- The offender was playing on a computer game, and the victim wanted to play. The offender said he 'had to take the pain if he wanted to play'. The offender then starting thrusting his penis between the victim's buttocks, simulating sex. After a time the offender got lubricant and anally penetrated the victim.
- There were two other occasions of sexual assault.
- The offender was of previous good character, pleaded guilty and recognised he had a problem that he needed help with.

In this case study there was penetrative activity involving coercive behaviour, and there were repeated offences. Additional aggravating factors include abuse of trust, bribery (grooming) and significant disparity of age.

This offender was sentenced to a 2 year YRO with a local authority residence requirement.

3.10 Under the original two stage version of the guideline the sentencer, in both of these scenarios may consider that the custodial threshold has been passed because there is at least one factor present from the first box, and there are additional aggravating factors. These factors would be used together to reach the starting point of custody. The sentencer would then consider the mitigating factors.

3.11 Under the simplified one stage test the sentencer may consider that the custodial threshold has been passed because there is at least one factor in the first box, thus crossing the threshold far sooner. The sentencer would then come on to consider aggravating factors and would find that there are several, perhaps strengthening their view that this is certainly a custody case and maybe increasing the length of custody that would be appropriate. Mitigation would be considered next which may help to reduce the custodial period.

3.12 The simplified approach could therefore have the effect of increasing the likelihood of a young person receiving a custodial sentence.

3.13 In addition when we come on to look at other youth guidelines including robbery (discussed below), and in the future knife offences, there are likely to be similar issues as it will be difficult to find a list of factors that alone should result in a custodial sentence.

Question 2: Is the Council minded to reconsider the two stage test for crossing the custodial threshold?

3.14 There was a concern expressed by some Council members that, if we adopt the originally proposed format, there may be cases which have numerous factors in the first box, but no aggravating factors; these cases are likely to be the most serious but our guideline would suggest that they would not cross the custodial threshold. To overcome this concern I have made all of the

factors in box 1 aggravating factors as well so that once you have found a factor in box 1 you are then able to count the others as aggravating factors. This change is highlighted in blue on the version at **Annex B**.

Question 3: Is the Council content with the addition of the box one factors in the aggravating factors list?

Scope

- 3.15 The last time that the Council saw this guideline I indicated that the factors included in the guideline point toward sexual offences involving contact. However the Council suggested that there may be other offences that we would want to cover including *causing or inciting a child to engage in sexual activity*. The scenario that was envisaged was where an offender has used a webcam over the internet to cause a child to commit sexual acts for his enjoyment.
- 3.16 Looking at the factors listed in the guideline as it is drafted at present, it seems that, whilst this may not be a typical ‘contact offence’, the guideline could be used to sentence a case of this kind. The equivalent adult guideline is copied below to show the factors that had been considered for an adult offender. The majority of the factors present in the adult guideline that would be relevant in an internet type case, are present in our new draft. I do, however, propose adding ‘blackmail’ as an aggravating factor as, although some offenders may threaten violence to encourage a young person to engage in the sexual behaviour, many may use blackmail for example ‘I’ll send this video to your friends/ family unless you do x’.

Harm	
Category 1	<ul style="list-style-type: none"> • Penetration of vagina or anus (using body or object) • Penile penetration of mouth <p>In either case by, or of, the victim</p>
Category 2	Touching, or exposure, of naked genitalia or naked breasts by, or of, the victim
Category 3	Other sexual activity

Culpability
A
Significant degree of planning
Offender acts together with others to commit the offence
Use of alcohol/drugs on victim to facilitate the offence
Grooming behaviour used against victim
Abuse of trust
Use of threats (including blackmail)
Sexual images of victim recorded, retained, solicited or shared
Specific targeting of a particularly vulnerable child
Offender lied about age
Significant disparity in age
Commercial exploitation and/or motivation
Offence racially or religiously aggravated
Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity)
Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
B
Factor(s) in category A not present

Question 4: Is the Council content that the guideline would adequately cover the offence scenario described with that one amendment?

Robbery Guideline

3.17 The draft robbery guideline, attached at **Annex C**, follows much the same structure as the new youth guideline, and aims to cover all types of robbery. The factors have come from a variety of sources including the existing SGC youth guideline, our new adult guideline and sentencing remarks from transcripts of youth robbery cases that we have been able to obtain.

3.18 The factors were also discussed (albeit in a different style of guideline) with magistrates and district judges during the first stage of our road testing on the youth guidelines, where they were met with general support. Further road testing is planned for the consultation stage of the guidelines.

3.19 The number of youth offenders sentenced for robbery offences has been declining year on year, from approximately 3,700 in 2011 to 2,300 in 2013. In 2013, 73% of those sentenced received a community sentence.

Non Custodial Factors

3.20 The factors listed within the first box indicate those cases where it would seem unlikely that a custodial sentence would result. It is intended to capture the lower level type robbery offences.

Question 5: Is the Council content that the factors listed do describe offences that, in most cases, should result in a non custodial sentence?

Custodial Factors

3.21 The factors listed within the second box are intended to be the most serious factors which, when combined with an aggravating factor would lead the case to cross the custodial threshold.

3.22 The structure of the guideline at this stage will depend upon the Council's earlier decision for sexual offences. Should the Council wish to adopt a simplified one stage approach we may need to reconsider the list to ensure that there is no danger of larger numbers of cases falling within the custodial bracket, bearing in mind that in reality 75% of offenders will receive a non custodial sentence.

Question 6: Is the Council content with the factors and the structure of the custodial section within the guideline?

Aggravating & Mitigating Factors

3.23 The aggravating and mitigating factors are the most commonly considered factors, but as always the lists are non exhaustive.

Question 7: Is the Council content with the list of aggravating and mitigating factors?

4 IMPACT

The potential impact of the proposed guidelines will be further explored during the consultation period. The intention is that the new guidelines do not impact sentencing practice but ensure a consistent approach by sentencers.

5 RISK

The youth of the offender requires a different approach to sentencing than that for adults. Sentencing is more individualistic and focuses heavily on the offender. There are differing ideas 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.

Sexual Offences

Sentencing youths for sexual offences requires a number of different considerations from adults to be considered. The primary difference is the age and immaturity of the offender. Young people are less emotionally developed than adults; offending can arise through lack of control; inappropriate sexual experimentation; confusion about sexual identity or orientation; gang or peer group pressure to engage in sexual activity; lack of understanding around consent, and coercion. All these circumstances have the potential to mitigate the young person's level of culpability for the offence.

Background factors may also be relevant to the sentencing decision. These include, but are not limited to the following:-

- A history of abuse within the family (sexual, physical or emotional)
- Exposure to pornography or materials which are unsuitable for a person of the age of the offender
- Involvement in gangs associated with Child Sexual Exploitation
- Unstable living or educational arrangements
- A trigger event such as the death of a close relative or a family breakdown

The approach to sentencing a youth should always be individualistic. However, the starting point of sentencing will require the court to assess the seriousness of the offence. The tables below include offence-related factors that may indicate that the case is either below, or alternatively, has crossed, the custodial threshold. This threshold is likely to be higher for young persons than adults, due to the more harmful effects that custody has upon a juvenile.

If the custodial threshold has been passed the court should consider whether an alternative penalty is available and if so whether that penalty would be appropriate. In particular, in those cases where it is available, the court should consider whether a Youth Rehabilitation Order with Intensive Surveillance and Supervision would be an appropriate alternative to custody.

Presence of one or more of the following factors may lead the court to consider a **community penalty or an appropriate non custodial sentence is the most suitable disposal**

- Any form of non penetrative sexual activity
- Particularly young or immature offender
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Non coerced sexual activity

Presence of one of the following factors combined with one or more aggravating features may lead the court to conclude that the **custodial threshold* has been passed**

- Penetrative activity involving coercive behaviour
- Severe psychological or physical harm caused to the victim
- Coercion through violence or threats of violence
- Sustained or repeated offence

*the court should consider whether a YRO with ISS could be justified before passing a custodial sentence

The Court must also consider the aggravating and mitigating features before deciding upon a final sentence.

Aggravating factors (non exhaustive)

- 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
- Significant degree of planning
- Offender acts together with others to commit the offence
- Use of alcohol/ drugs on victim to facilitate the offence
- Abuse of trust (e.g. where the offender is babysitting the victim or is an older relative of the victim)
- Recording of the offence or other actions designed to humiliate or degrade the victim
- Grooming
- Significant disparity of age between offender and victim
- Specific targeting of particularly vulnerable victim
- Any steps taken to prevent reporting the incident/ seeking assistance
- Pregnancy or STI as a consequence of offence
- Coercion through violence or threats of violence (where not considered above)

Mitigating factors (non exhaustive)

- No previous convictions **or** no relevant/ recent convictions
- Good character and/or exemplary conduct
- Remorse
- 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, exposure to familial criminal

Annex A

- behaviour, exposure to pornography or sexually explicit materials
- Determination and/or demonstration of steps taken to address offending behaviour
 - Participated in offence due to peer pressure/ bullying
 - Genuine belief that activity was lawful
 - Particularly young or immature offender (where not considered above)
 - Mental disorder or learning disability, particularly where linked to the commission of the offence (where not considered above)
 - Non coerced sexual activity (where not considered above)

If satisfied that the offence crosses the custodial threshold, and that no other sentence is appropriate, the court may as a preliminary consideration consult the equivalent adult guideline in order to decide upon the appropriate length of the sentence.

When considering the adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence. This is only a rough guide and must not be applied mechanistically. The individual factors relating to the offence and the offender are of the greatest importance and may present good reason to impose a sentence outside of this range.

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Sexual Offences

Sentencing youths for sexual offences requires a number of different considerations from adults to be considered. The primary difference is the age and immaturity of the offender. Young people are less emotionally developed than adults; offending can arise through inappropriate sexual experimentation; confusion about sexual identity or orientation; gang or peer group pressure to engage in sexual activity; lack of understanding regarding consent, exploitation and coercion.

Background factors may also play a part:-

- A history of abuse within the family (sexual, physical or emotional)
- Exposure to pornography or materials which are unsuitable for a person of the age of the offender
- Involvement in gangs associated with child sexual exploitation
- Unstable living or educational arrangements
- A trigger event such as the death of a close relative or a family breakdown

The approach to sentencing a youth should always be individualistic. However, the starting point of sentencing will require the court to assess the seriousness of the offence. The tables below include offence – related factors that may indicate that the case is either below, or alternatively, has crossed, the custodial threshold. This threshold is likely to be higher for young persons than adults, due to the more punitive effects that custody has upon a young person.

If the custodial threshold has been passed the court should consider whether an alternative penalty is available and if so whether that penalty would be appropriate. In particular the court should consider whether a Youth Rehabilitation Order with Intensive Surveillance and Supervision would be an appropriate alternative to custody.

This guideline should be read alongside the Overarching Principles – Sentencing Youths definitive guideline which provides comprehensive guidance on issues including grave crime determination and reduction for guilty pleas.

A community penalty or an appropriate non custodial sentence may be the most suitable disposal where one or more of the following factors are present

- Any form of non penetrative sexual activity
- Particularly young or immature offender
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Sexual activity (including penetrative activity) not obtained through coercion, exploitation or pressure

A custodial sentence* may be justified where one of the following factors is present along with at least one aggravating factor

- Penetrative activity involving coercion, exploitation or pressure
- Severe psychological or physical harm caused to the victim
- Coercion through violence or threats of violence
- Sustained or repeated offence

*the court should consider whether a YRO with ISS could be justified before passing a custodial sentence.

*refer to the [Overarching Principles – Sentencing Youths definitive guideline](#), for details of the restrictions on imposing custodial sentences on offenders of different ages and the length of custodial sentences that are available.

The Court must also consider the aggravating and mitigating features before deciding upon a final sentence.

Aggravating factors (non exhaustive)

- 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
- Significant degree of planning
- Offender acts together with others to commit the offence
- Use of alcohol/ drugs on victim to facilitate the offence
- Abuse of trust (e.g. where the offender is babysitting the victim or is an older relative of the victim)
- Deliberate humiliation of victim, including but not limited to filming of the offence, deliberately committing the offence before a group of peers with the intent of causing additional distress or circulating details/photos/videos etc of the offence on social media or within peer groups
- Grooming
- Significant disparity of age between offender and victim
- Specific targeting of particularly vulnerable victim
- Any steps taken to prevent reporting the incident/ seeking assistance
- Pregnancy or STI as a consequence of offence
- Blackmail

The following aggravating factors are only to be considered where they have not already been taken into consideration at an earlier stage

- Penetrative activity involving exploitative behaviour

- Severe psychological or physical harm caused to the victim
- Coercion through violence or threats of violence
- Sustained or repeated offence

Mitigating factors (non exhaustive)

- 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, exposure to familial criminal behaviour, exposure by others to pornography or sexually explicit materials
- Determination and/or demonstration of steps taken to address offending behaviour
- Participated in offence due to peer pressure/ bullying
- Genuine belief that activity was lawful
- Particularly young or immature offender (where not considered above)
- Mental disorder or learning disability, particularly where linked to the commission of the offence (where not considered above)
- Non coerced sexual activity (where not considered above)

Once satisfied that the offence crosses the custodial threshold, and that no other sentence is appropriate the court may want to consider the equivalent adult guideline in order to decide upon the appropriate length of the sentence.

If considering the adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the appropriate adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. The individual factors relating to the offence and the offender are of the greatest importance and may present good reason to impose a sentence outside of this range.

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Robbery

Sentencing youths requires a number of different considerations from adults to be considered. The primary difference is the age and immaturity of the offender.

The approach to sentencing a youth should always be individualistic. However, the starting point of sentencing will require the court to assess the seriousness of the offence. The tables below include offence – related factors that may indicate that the case is either below, or alternatively, has crossed, the custodial threshold. This threshold is likely to be higher for young persons than adults, due to the more punitive effects that custody has upon a young person.

If the custodial threshold has been passed the court should consider whether an alternative penalty is available and if so whether that penalty would be appropriate. In particular the court should consider whether a Youth Rehabilitation Order with Intensive Surveillance and Supervision would be an appropriate alternative to custody.

This guideline should be read alongside the Overarching Principles – Sentencing Youths definitive guideline which provides comprehensive guidance on issues including grave crime determination and reduction for guilty pleas.

Presence of one or more of the following factors may lead the court to consider a **community penalty or an appropriate non custodial sentence is the most suitable disposal**

- Threat or use of minimal force
- Mental disability where linked to the commission of the offence
- Particularly young or immature offender
- Involved in offence due to peer pressure/ bullying
- No/ minimal physical or psychological harm caused to the victim

Presence of one of the following factors combined with one or more aggravating features may lead the court to consider that the **custodial threshold* has been passed**

- Use of very significant force
- Use or threaten to use a bladed article, firearm or imitation firearm
- Serious physical or psychological harm caused to the victim

*the court should consider whether a YRO with ISS could be justified before passing a custodial sentence

*refer to the Overarching Principles – Sentencing Youths definitive guideline, for details of the restrictions on imposing custodial sentences on offenders of different ages and the length of custodial sentences that are available.

The Court must also consider the aggravating and mitigating features before deciding upon a final sentence.

Aggravating factors (non exhaustive)

- 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
- Threat or use of a weapon other than a bladed article, firearm or imitation firearm (whether produced or not)
- Victim is target due to vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability
- A leading role where offending is part of a group
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- High value goods or sums targeted or obtained (includes economic, personal or sentimental)
- Restraint, detention or additional degradation of the victim

The following aggravating factors are only to be considered where they have not already been taken into consideration at an earlier stage

- Use of very significant force
- Use or threaten to use a bladed article, firearm or imitation firearm
- Serious physical or psychological harm caused to the victim

Mitigating factors (non exhaustive)

- No previous convictions **or** no relevant/ recent convictions
- Good character and/or exemplary conduct
- Remorse

Annex C

- 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, exposure to familial criminal behaviour, exposure to pornography or sexually explicit materials
- Determination and/or demonstration of steps taken to address offending behaviour
- Participated in offence due to peer pressure/ bullying
- Particularly young or immature offender (where not considered above)
- Mental disorder or learning disability, particularly where linked to the commission of the offence (where not considered above)

Once satisfied that the offence crosses the custodial threshold, and that no other sentence is appropriate the court may want to consider the equivalent adult guideline in order to decide upon the appropriate length of the sentence.

If considering the adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the appropriate adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanically. The individual factors relating to the offence and the offender are of the greatest importance and may present good reason to impose a sentence outside of this range.

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Sentencing Council

CONFIDENCE AND COMMUNICATIONS SUB GROUP 26 October 2015 - Meeting Notes

Attendees

Council:	Michael Caplan (Chair), Jill Gramann, Martin Graham, Julian Goose, Lynne Owens
OSC:	Nick Mann, Gareth Sweny, Anthony Walker
Apologies:	Helen Stear

Aims of meeting

1. To monitor progress against actions
2. To evaluate the media handling of the theft launch and plan for H&S
3. To discuss the proposal for a new film for the website
4. To review our plan for engaging with victims over the next six months.
5. To update on progress on our digital work
6. To discuss comms risks and budget

Introduction

Michael welcomed the members of the sub group and moved to the first item.

1. Action log

Anthony updated the sub group on progress made against the action log. The website survey is live and will be promoted via a pop up when created (action 4). Police engagement is planned to overlap with work with victims (actions 2 and 6) (see later). He talked about the increased interaction with parliamentarians (action 8), in particular on a one to one basis, and resending the pitches for women's magazines (action 9). Nick said that the ACT had now been paid so the materials can now be sent out (action 10). Anthony updated the sub group on progress on Twitter: now over 3,000 followers (action 12) and speeches: 14 delivered, three booked in (action 13). The possibility of new YBTJ scenarios is being explored (action 14). He also indicated the slow progress towards creating a CRM database (action 15) to plan and record stakeholder engagement and contact details.

Julian asked if there were plans to do another Parliamentary event: the plan is to continue with the one to one meetings and possibly target the 'awkward squad' of vociferous MPs at a later date.

Action:

- All members of the comms team to update the action log to reflect latest activities and next steps.

2. Media handling

2.1 Nick and Michael outlined the lessons learned from the theft launch. Nick highlighted the dangers of confusion in the media, in this case it was mistaking burglary for theft, and for H&S it could be trying to relate the guidelines to the horse meat scandal. In future these should be identified and planned for.

2.2 Nick also raised the point that there was some adverse comment in the media that the focus on harm to the victim had gone too far. *Julian pointed out that this is a statutory obligation of the Council.* It was agreed that we have to be prepared for this line of discussion so should be clear about the Council's remit. *Jill said that we should be wary of discussing individual cases and case studies.*

2.3 For the H&S launch Nick said that 2 sector press pieces had been placed so he is now looking at mainstream media, may be the Times. He is looking for a third quote for the press release (SC and HSE so far). *Jill suggested the CBI or IOD but these are wary of guidelines, Julian said trade unions will be supportive but this might be seen as too political or anti business. Martin suggested small business representative organisations might be better as one aim of the guidelines is to make fines more equitable. Jill suggested the Federation of Small Businesses or franchise business representative. She also asked if there were any big cases going through the courts that could be used to boost interest in the launch.*

Actions:

- Nick to look into third quote for the press release
- Nick to select and pitch to mainstream media.
- Nick to check the courts for big H&S cases that might tie in.

3. Film

Michael said that Colman had seen the Law Commission's new video and was keen to do something similar. Nick outlined the work he has done to research this and has drafted a script based on the court system infographic. The Law Commission's video cost around £5,000. It was agreed this video needed a strong message so as not to be a vanity project and be in the format that the audience would most appreciate. Julian asked if something could be done with the stock speeches we have. Jill suggested it might be better to focus on the role of the Sentencing Council and how guidelines are made rather than the court system as a whole. Martin said that the last two boxes of the infographic should be made clearer.

Actions:

- Nick to circulate the script he has drafted.
- Martin to suggest a redraft of the last two boxes of the infographic.

4. Victims

4.1 Nick outlined the ongoing work in this area, he reported on the meeting he and others had with Mark Castle and said he had a meeting scheduled with the Victim Support (VS) Head of Communications. Nick said the meeting would be based around the points identified at which victims need the information. *Jill asked if VS had identified any gaps in our message but it was indicated that it was more a matter of keeping lines of communication open. It was agreed all communications should be clear about the remit of the SC and what is the responsibility of the SC.*

4.2 *Jill pointed out it was important to manage victims' expectations. Lynne pointed out FLOs only really work on murder or manslaughter cases and we have that covered with the leaflets. She said that Police and Crime Commissioners (PCC) have responsibility now for allocating victims' services contracts, so we should approach the PCCs victims sub group to raise the possibility of disseminating sentencing information on their agenda.*

Actions:

- It was agreed that the first of the key messages needed revising to include 'magistrates' and 'consistency of approach'.
- OSC to approach PPC victims sub group to raise sentencing information on their agenda.

5. Digital

5.1 MCSG User Survey

The sub group approved the MCSG survey. It would be timed to go live so that it didn't overlap with the general web survey. Gareth stated that a decision on how long to run the survey will be made after a few weeks and will be dependant on the number of replies.

5.2 Further development of the MCSG

Jill said that the more that can be done from the bench, without recourse to the legal advisors, the better. Some calculators that are on the app, such as driver disqualification, so should be included in the MCSG so as not to be a step back.

5.3 Crown Court guidelines

Some revision will be needed as the Sentencing Guidelines Council materials are in a different format and the sentencing powers are different. *Michael was concerned about the provision of equipment and wifi, especially for part timers like himself, but Julian reassured him about the electronic submission of papers, e-judiciary and wifi. Julian went on to request it was kept succinct with only information relevant to the experience level of Crown Court judges but still include relevant calculators such as the victim surcharge and discount for a guilty plea.*

Action:

- Judges to be surveyed to check they like the format of the guideline.

5.4 Document store

The sub group reserved judgement on this until they had seen it. *Julian was wary that it should not mean that the Council gets into group drafting.* It was resolved that this could be avoided by sticking to specific questions. Gareth clarified that it was intended to be used for documents which had been signed off at a Council meeting subject to specific members' approval.

5.5 Web stats

Gareth reported that following the launch of the online MCSG the number of visitors to the site had improved. There had also been more visits to the online MCSG than to the PDF version.

(Julian leaves the meeting)

6. Risk and budget

6.1 Budget

The sub group was reassured that the overspend was not a problem but asked what the Confidence and Communications budget was. An estimate was made using the percentage overspend figure given in the paper. *Jill was keen the office as a whole should spend its budget.*

6.2 Risk

It was pointed out that the matrix on the front page of the risk register does not match the entries below. The sub group suggested removing risk 3, the loss of support among key stakeholders should be removed from the front page.

Action:

- Suggest to SMT that we remove risk 3 from the front page of the risk register.

7. AOB

Michael requested a collated PDF of all sub group papers for each meeting be produced so everything can be printed off or saved in one, much like it is with Council papers.

NEXT MEETING: 7 DECEMBER

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Sentencing Council

GOVERNANCE SUBGROUP MEETING

RCJ - EB12

Wednesday 28 October 2015 at 3pm

MINUTES

Present:

Mark Castle (MC; Sentencing Council; Chair)
Elaine Lorimer (EL; Law Commission)
Claire Fielder (CF; Head of OSC)
Vicky Hunt (Head of policy)

Apologies:

Sarah Munro (SM; Sentencing Council)

Before discussing the main items on the agenda MC sought the group's agreement to his appointment as chair. This was agreed.

1. Review of actions and approval of July meeting minutes

The minutes of the July meeting were agreed. MC raised a query about item 5 on the minutes regarding the finance and budget. MC sought confirmation from the group that there was sufficient support available to the Council to enable us to confidently manage the budget. CF confirmed there was and there was no need for a forensic accountant. CF explained there have been some problems in this area as Victoria (OSC staff who had been managing the budget) has recently left the Office, and our business partner at MOJ has also recently changed. CF however reassured the group that Caroline (OSC staff) has picked up the role, and will be working with the new business partner to get the budget into the appropriate format.

The Action Log was discussed and it was agreed that all of the closed items on that log could now be removed, and going forward once an item has been closed by the group it will be taken off the log before the next meeting.

AP3 (Action from 1/5/15) this action relates to 'easy read' documents.

MC enquired what was happening with this action as it is 'ongoing'. CF confirmed that there was a discussion with the Chairman at the sub group meeting in May, and a meeting of SMT. Following both of those discussions it had been agreed that we would ensure all our consultations are in plain English, and where we can we will make greater use of interactive videos and blogs. CF also suggested that we could take it back to

Council for further discussion, but given that the main target audience for our guidelines is sentencers there may be little appetite for drafting 'easy read' versions of documents.

MC commented that the main concern would be when the Council produces a consultation, as here we are specifically trying to get engagement from a number of people, not just sentencers. CF agreed, and explained that in the early days of the SC we used to produce two versions of consultation papers; one for the professionals and one for the general public but due to a limited take up of the general public paper the Council stopped producing them. However we have not produced a consultation for some time and we do not intend to adopt a 'one size fits all' approach. Going forward we will consider the issue for each individual guideline and decide what is best. The youth consultation is coming up and that one is likely to have a wide audience, so will require consideration.

MC queried whether we produce our guidelines/ consultation papers in Welsh. CF confirmed that we do not. Given the large volume of material that we produce and because our audience is predominantly sentencers, not the general public, we are exempt from the requirements to do so. However we have been looking at producing some front pages for the website which would include some key information in Welsh and links to further information. MC agreed that this may be desirable as whilst we may not have a statutory requirement we do need to consider how we engage with the public.

AP4 (Action from 1/5/15) this action relates to the Council holding a large scale public engagement event.

MC enquired if there had been any progress on this action. CF confirmed that there has not been, and that given the current climate there was unlikely to be any desire to progress the item. However the Office continues to run small scale consultation events, and undertakes speaking events, with a target that Council or Office members will speak at 20-25 events per year.

2. Risk Register

Risk 2 'Insufficient resources to deliver statutory and Business Plan priorities'.

CF explained SMT had discussed this risk and it was agreed that due to impending budget cuts the risk ought to be higher. The risk has, therefore been increased, and is now red. CF put a paper to Council this month looking at the future work plan with the suggestion that once we know the extent of the budget cuts we can choose either to slow projects down, cease to do some evaluation or even take some guidelines off the work plan. The current work plan includes an expected in year cut of 10% so that level cut would have no impact to the existing work. The Council were content with CF's proposals. CF continues to talk to MoJ to keep up to date with any news.

MC asked whether the Judiciary take opportunities to be vocal about the work of the SC. CF confirmed the LCJ is very protective of the SC and he and those members of the Judiciary that are on the Council take every opportunity to raise our profile in the hope that that will strengthen our position against budget cuts.

EL asked if there was an action to go back to Council once the financial position is known? CF confirmed there was. MC suggested the date of the next meeting (3

February 2016) may be too far off given that we may know the implications of the budget cuts sooner and will need to discuss associated risks.

Action: An additional Governance meeting date to be pencilled into the diaries for January in case it is needed.

Risk 5 'New analytical strategy implemented but unable to meet Council's needs'

CF explained that this risk comes from the A&R sub group and because the risk has gone up, and is now red it has been moved onto the front page of the register. The new analytical strategy is a move away from the old Crown Court Survey to a new data collection within the magistrates' courts. There is a risk that the magistrates may not engage in the collection and we may get insufficient data which will affect our ability to devise evidence based guidelines. In mitigation we have been speaking to lots of groups of magistrates at every opportunity to explain to them why it is so important.

3. Finance and budget:

CF explained that there is a significant under spend in the staff budget. A proportion of this is due to historical errors that have taken months to resolve. In addition the team has been carrying vacancies for a long time, we have had one from April to July and we now have another (Victoria's replacement) that will probably not be filled until at least the end of the year. In addition we have recruited a number of people at the bottom of the pay scale, and in some cases staff are working four days per week not five and so again they are cheaper.

In the non staff areas there is an overspend in the comms budget but that has just because it was misprofiled at the outset. We can easily rectify that by moving some of the A& R under spend across.

The under spend in A&R was in part because money had been allocated to spend on a secondee, but we can not now take on secondees due to the recruitment freeze.

EL agreed that the level of under spend was a concern and that the Office needed to find ways to interpret the spending controls in a way that enables the Office to do the work that it needs to do. CF confirmed that she is going back to MOJ to explain that we need to spend some money in order to comply with our statutory duties, and that includes recruiting a replacement for Victoria. In addition the Office is talking to one of our contractors who we already have a contract with to see if they can take on extra work. There is some analysis that the Office would normally do internally but if the contractor could do it that would free up the staff to do other work.

MC suggested that the under spend should be a separate item on the risk register.

Action: SMT to discuss adding the under spend to the risk register

4. Feed back from other subgroups

VH updated the group on the key items of discussion from each of the other two sub groups.

5. AOB

MC queried whether the changes that the Council proposed making to the work plan should be discussed by the governance group in case there are any associated risks. CF confirmed that the Council were only discussing the possibility of changes to the work plan and that the Office would scope this further to consider the options and present a paper back to Council with a firm proposal. The areas that Lynne Owens suggested are already on the work plan and it may simply be a case of reordering the priorities, which is something we do from time to time. The public version of the work plan is clear that timings can change.

EL commented that the business plan comes at the start of the financial year and it may be beneficial for the group to look at that, to assess whether any alterations to the long term plan have associated risks, in order to provide CF with any support needed. The reason for the governance groups' existence is to provide rigour around the decision making process and provide the chairman with protection.

Action: CF to ensure the subgroup has the opportunity to discuss changes to the business plan at the appropriate time.

The next meeting will be held on Wednesday 3 February 2016 at 3pm in training room 2, Queens Building, RCJ. (Attendees are free to dial in if they would prefer).