

15 October 2015

Dear Members,

Meeting of the Sentencing Council – 23 October 2015

Please note there is a change of room for the next Council meeting. It will be held in Room E200 at the Royal Courts of Justice, on Friday 23 October 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)OCT00 |
| ▪ Minutes of meeting held on 25 September | SC(14)SEP01 |
| ▪ Action Log | SC(15)OCT02 |
| ▪ Breach | SC(15)OCT03 |
| ▪ Guilty Plea | SC(15)OCT04 |
| ▪ Robbery | SC(15)OCT05 |
| ▪ Dangerous Dogs | SC(15)OCT06 |
| ▪ Allocation | SC(15)OCT07 |
| ▪ MCSG | SC(15)OCT08 |
| ▪ Work plan | SC(15)OCT09 |

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 robbery and allocation, which are due to be signed off at this meeting.

Due to popular consensus for a Christmas lunch a table has been provisionally booked at Cigalon, on Chancery Lane on Friday 18th December at 14:00. A £10 deposit is required to book the table; please can all members bring this along to this meeting as well as your menu preferences (menu attached and available on the members' area). Jess will have hard copies of the menu on the day.

I look forward to seeing you on the 23rd.

Yours sincerely



Claire Fielder

Head of the Office of the Sentencing Council

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Sentencing Council

COUNCIL MEETING AGENDA

23 October 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, including update on theft launch (papers 1 & 2) |
| 10:00 – 10:30 | Presentation from Colin Allars, Director of Probation |
| 10:30 – 11:20 | Breach presented by Lisa Frost (paper 3) |
| 11:20 – 12:35 | Guilty Plea presented by Ruth Pope (paper 4) |
| 12:35 – 13:20 | Robbery presented by Vicky Hunt (paper 5) |
| 13:20 – 13:50 | Lunch |
| 13:50 – 14:45 | Dangerous dogs presented by Mandy Banks (paper 6) |
| 14:45 – 15:35 | Allocation presented by Ruth Pope (paper 7) |
| 15:35 – 16:05 | MCSG update presented by Claire-Louise Manning (paper 8) |
| 16:05 – 16:30 | Mid year review of work plan and Business Plan presented by Claire Fielder (paper 9) |

Sentencing Council

COUNCIL MEETING AGENDA

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MEETING OF THE SENTENCING COUNCIL

25 SEPTEMBER 2015

MINUTES

Members present:

Colman Treacy (Chairman)
Michael Caplan
Mark Castle
Julian Goose
Martin Graham
Jill Gramann
Tim Holroyde
Sarah Munro
Lynne Owens
Julian Roberts
Alison Saunders
Richard Williams

Apologies:

Heather Hallett
John Saunders
Paul Wiles

Representatives:

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)

Members of Office in
Attendance

Claire Fielder (Head of Office)
Mandy Banks
Vicky Hunt
Joanne Keatley
Ruth Pope
Claire-Louise Manning
Anthony Walker

1. WELCOME AND APOLOGIES FOR ABSENCE

1.1 Apologies were received as set out above.

2. MINUTES OF LAST MEETING

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

3. MATTERS ARISING

3.1 The Chairman welcomed Mark Castle to his first Council meeting since his appointment on 1 August 2015.

3.2 The Chairman also welcomed Elaine Lorimer, Chief Executive of the Law Commission who was observing the Council meeting.

3.3 The Chairman welcomed and introduced Claire-Louise Manning who joined the Office on 7 September 2015 on secondment from HMCTS. Claire-Lou will be leading the MCSG review project.

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

4.1 The Council discussed the analysis carried out jointly by the Office of the Sentencing Council and the Ministry of Justice to assess the likely system wide impact of the draft guilty plea guideline. A decision was made to continue to prepare the guideline for consultation and that the consultation document should give a rounded view of the likely costs and benefits of the proposals including, importantly, the benefits to witnesses and victims. There would be a further consideration of the guideline at the October meeting.

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

5.1 The Council considered the robbery guidelines and confirmed the sentencing levels. They also agreed that value should only be considered at step 2 within the combined street and less sophisticated commercial robbery guideline. It is intended that the guideline will be signed off at the next Council meeting.

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

6.1 The Council considered responses to the Allocation guideline consultation. Michael Caplan and Tim Holroyde reported on a meeting that had been held with representatives of the defence community on

24 September 2015. The Council discussed concerns that had been raised regarding the guidance that magistrates' courts should retain jurisdiction in some cases with a view to committing to the Crown Court for sentence after a trial. The meeting concluded that this guidance should remain in the guideline, but be clarified.

- 6.2 The Council agreed to discuss the remainder of the issues arising from the consultation at its October meeting with a view to publishing the definitive guideline in November 2015.

7. DISCUSSION ON YOUTHS – PRESENTED BY VICKY HUNT AND JOANNE KEATLEY, OFFICE OF THE SENTENCING COUNCIL

- 7.1 The Council considered the first draft of the youth sexual offences guideline, and confirmed the broad approach. It was agreed that minor changes be made to the draft and that it return to the Council in November.

- 7.2 The Council were asked to review the Overarching Principles: Youths draft guideline for the third time before consultation. They agreed with minor changes that had been made to the allocation and seriousness sections and approved the draft guideline overall.

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

- 8.1 The Council discussed the consultation responses to the revised dangerous dog guideline, which were generally favourable. The Council discussed issues highlighted regarding the approach to harm and culpability across the guidelines. The Council agreed to examine the responses regarding sentence levels and aggravating and mitigating factors at a future meeting.

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

- 9.1 The Council was updated on the MCSG Review Project. This will run for 12 months and include keeping a watching brief on the new online MCSG, responding to feedback from users and updating the material as required; reviewing offences within the MCSG that are otherwise included on the three year work plan; reviewing every offence guideline to ensure that it is accurate and fit for purpose; and finally to deliver a system to ensure that future updating of this material can continue to be managed after the project ends.

10. DISCUSSION ON ANNUAL REPORT – PRESENTED BY ANTHONY WALKER, OFFICE OF THE SENTENCING COUNCIL

- 10.1 The Council was presented with a draft version of the Annual Report 2014-15. The Council was informed of the timetable and publishing

requirements for the report, which is due to be published on 20 October 2015.

10.2 The Annual Report was approved by the Council subject to minor alterations.

11. UPDATE FROM THE ANALYSIS AND RESEARCH SUB-GROUP – PRESENTED BY JULIAN ROBERTS, SENTENCING COUNCIL

11.1 The Council considered an update on several issues which had been discussed at the subgroup. It received a summary of the key findings from an evaluation of the assault guideline, which will be published in October 2015. It also considered an approach to determining the scale and type of monitoring and evaluation work that would be put in place for different guidelines, using criteria to determine the most appropriate and proportionate form of evaluation in each case, and agreed to publish these criteria on the website in due course. A second set of criteria for deciding whether the Council should endorse academic requests for support were agreed and will also be published on the website in due course.

SC(15)OCT02 October Action Log

ACTION AND ACTIVITY LOG – as at 15 October 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	Dangerous Dogs	Revisions to the culpability and harm factors discussed at the meeting to be made and brought back to the October Council meeting.	Mandy Banks		ACTION CLOSED: Revision to be presented at October meeting.
4	Allocation	Timetable agreed: guideline to be signed off at October meeting and definitive published in November 2015.	Ruth Pope		ACTION CLOSED: Revision to be presented at October meeting.
5	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 ONGOING: CPS and police officials are liaising with MoJ analyst to provide the relevant costings.	

6	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 ONGOING: This will be presented to the November Council meeting.	
7	Robbery	Minor changes to the order of the aggravating factors discussed at meet. Changes to be made and brought back to the October Council meeting along ready for sign off.	Vicky Hunt		ACTION CLOSED: Revision to be presented at October meeting.
8	Youth	<p>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)</p> <p>Overarching Principles document agreed in principal – Council members asked to send any proposed drafting changes to Jo Keatley by the End of October.</p>	<p>Vicky Hunt</p> <p>Jo Keatley/ All Council Members</p>	<p>ACTION ONGOING: Revisions to be made in time for November meeting.</p> <p>ACTION ONGOING: To be completed by end of October</p>	

Sentencing Council

Sentencing Council meeting: 23 October 2015
Paper number: SC(15)OCT03 – Breach
Lead official: Lisa Frost
0207 071 5784
Lead Council Members: Jill Gramann & Martin Graham

1 ISSUE

- 1.1 The Council is asked to consider issuing updated guidance for the imposition of custodial and community sentences, to complement the breach guideline which is in development. The objective of this is to address issues set out at the June Council meeting, which related to evidence of some suspended sentences (SSOs) being imposed as a more severe alternative to a community order. This can result in a reluctance to activate SSOs upon any subsequent breach, if imprisoning the offender would be unjust in all the circumstances.

2 RECOMMENDATION

- 2.1 That the Council considers the draft guidance for imposition of custodial and non custodial sentences and agrees to issue this to replace the existing SGC guideline 'New Sentences Criminal Justice Act 2003'.
- 2.2 The Council is asked to;
- i) Review and agree the content of the draft guidance;
 - ii) Agree the timeframe for issuing the updated guidance. It is recommended that this is as soon as possible to optimise the use and effectiveness of the guidance in anticipation of the definitive breach guideline;
 - iii) Consider whether to include breach guidance within the imposition guidance.

3 CONSIDERATION

3.1 In June the Council considered issues with the development of the breach guideline, and agreed to postpone the consultation on the guideline for a minimum of six months. This was to allow time to explore a number of issues, one of which related to the imposition of SSOs and community orders (COs) which were identified during policy development stages and were set out at the Council meeting in June. These related to evidence that SSOs were sometimes being imposed as a more severe alternative to COs. This could cause a reluctance to activate the SSO if it was subsequently breached, as the offender's circumstances may cause activation to be deemed unjust in all the circumstances. One of the options discussed at Council at that time was the issuing of updated guidance in relation to the imposition of SSOs and COs. Current guidance for imposing these orders is contained within the SGC guideline, 'New Sentences Criminal Justice Act 2003'. This is attached at **ANNEX A**.

3.2 The SGC guideline was issued to outline the sentences available on the commencement of the CJA 2003. However, this has now become out of date as these are no longer 'new' sentences and there have been legislative changes affecting the requirements attached to SSOs and COs. The SGC guideline also contains reference to sentences of intermittent custody which have been repealed, and deferred sentences for which a guideline is not necessary.¹ In relation to the breach guideline, a benefit of updating this guidance would be that it could address inappropriate sentencing behaviour in imposing an SSO as a more severe alternative to a CO where this may exist.

It is therefore recommended that the Council agrees to replace the SGC guidance with updated guidance on the imposition of custodial and community sentences. As well as the removal of outdated guidance, this would provide a mechanism for clarifying the considerations for sentencers in considering suspending custodial sentences.

¹ Guidance for deferred sentences is available in the adult bench book for Magistrates and Crown Court Index for Crown Court Judges.

- 3.3 **ANNEX B** provides draft guidance for the Council’s consideration. The draft guidance retains the narrative format of the existing guidance to ensure it is comprehensive, but also includes flowcharts highlighting primary considerations for sentencers when suspending sentences. These were highlighted in discussions at forums held with sentencers earlier in the year as factors that may influence whether suspended sentences are activated, and they align with the wider rehabilitation of offenders programme. The guidance requires sentencers to consider the suitability of a custodial sentence at the imposition stage, to avoid a reluctance to activate sentences upon any subsequent breach.
- 3.4 The draft guidance is considerably shorter than the existing SGC guidance on imposition of COs and SSOs, as it is thought much of the narrative in the existing guidance is superfluous. The wording has largely been adopted from the MCSG guidance on the imposition of custodial sentences, COs and SSOs, which was developed by the MCSG working group.² Minor amendments to the MCSG format have been made to ensure the guidance is appropriate for sentencers in all courts, and information is presented in such a way as to highlight predominant considerations for sentencers. Where changes have been made to the wording drafted by the MCSG working group, or new wording has been added, this appears in bold type and is highlighted on digital and paper versions of the annex.

Question 1 – Does the Council agree to replace the SGC ‘New Sentences Criminal Justice Act 2003’ guideline with new guidance relating to the imposition of custodial and community sentences?

CO imposition guidance

- 3.5 The section of draft guidance dealing with imposition of COs retains some narrative guidance, but this is restricted to statutory or other important considerations which it is considered would be useful for sentencers. The draft guideline also includes a table of sentence ranges. Sentencers are directed to consider the level of order required by conducting an assessment of the offence seriousness, which relates to the culpability and harm caused by the

² The current MCSG guidance can be found here: <https://www.sentencingcouncil.org.uk/explanatory-material/>

offence(s). It is not possible to include factors due to the range of offences which could attract a sentence of a CO, but it is thought the familiarity of sentencers with the approach to assessing offence seriousness in other guidelines issued by the Council will assist. The sentence levels included have not been revised from the SGC guideline, as it is not thought that this is necessary. An additional factor included in the guidance relates to the new legal requirement to impose either a punitive requirement and/or a fine when making a community order, as no guidance for this is currently available for sentencers. A flow chart is also included, which seeks to guide sentencers through the considerations required when imposing a sentence.

Question 2 – Does the Council agree with the content and presentation of the new CO imposition guidance? Are there any additions, omissions or amendments to be made?

Custodial and SSO guidance

3.6 In the new draft guidance proposed, guidance on the imposition of custodial sentences appears after guidance on COs and before guidance on SSOs. This is to restate the message that an SSO is a custodial sentence and not an escalation from a CO. The guideline wording seeks to ensure that sentencers are fully considering the impact of custody at the time of imposing an SSO, and makes particular reference to offender specific issues which may make custody less desirable. In such cases the guideline encourages sentencers to consider a more onerous but workable CO, to avoid issues with activating custodial sentences upon breach.

Again, a flow chart is included to act as a guide to the most important considerations when imposing a suspended custodial sentence.

Question 3 – Does the Council agree with the content and presentation of the new custodial and SSO guidance? Are there any additions, omissions or amendments to be made?

Timing

3.7 In the development of the breach guideline for SSOs, a concern has been the potential impact upon the prison population, as there is a possibility that it could result in a greater number of suspended sentence activations. It is

therefore recommended that this new imposition guidance be agreed and disseminated at the earliest opportunity and prior to the consultation on the breach guideline. The breach guideline is currently timetabled for publication in June 2017 and will come into effect in September 2017. If the imposition guideline could be published approximately 12 months before the breach guideline, many SSOs which may have been inappropriately imposed would have expired,³ which could mitigate the risk of a high volume of SSOs being activated upon publication of the breach guideline.

Early discussions have been held with Judicial College representatives to explore training options and communication of the new guidance, and these were positive in terms of the timing being achievable.

3.8 There are three options available in relation to the issuing of new imposition guidance;

- i) The first option is that a short, targeted consultation is held for the imposition guidance in spring 2016, with a view to the guidance coming into effect in the summer of 2016. This consultation could be limited to seeking views from sentencers on the content and adequacy of the guidance. A benefit of this approach, as outlined above, is that if the imposition guidance comes into effect some time prior to the breach guideline, this would have the potential to address inappropriate imposition of SSOs, and mitigate the risk that the definitive breach guideline would cause these to be activated.
- ii) A second option is that no consultation is held and the guidance is issued as updated guidance only. The guidance contains very minor substantive changes, and seeks only to change sentencing behaviour in courts where this may be an issue. However, if this option is elected the communication of the new guidance would be crucial to optimise its use and effectiveness.
- iii) A third option is that the imposition guidance is issued at the same time as the definitive breach guideline. This would enable a full consultation on both aspects of the guidance together. However, it would delay

³ Those with an operational period of 12 months or less, which would apply to many orders imposed in the magistrates courts.

addressing inappropriate imposition of these orders and remove the potential to mitigate the risk of activations (post implementation of the breach guidelines) of orders imposed inappropriately (pre implementation of the breach guidelines).

Question 4 – Which option does the Council prefer for issue of the imposition guidance?

Breach guidance

3.9 The current SGC guideline includes information on breaches of SSOs and COs. Should the Council agree that the imposition guidance should be issued prior to the breach guideline, the breach information will be lost. However officials understand that other breach guidance is more widely used by sentencers, with Magistrates mostly using breach guidance in the MCSG, while sentencers in the Crown Court use guidance in the Crown Court Index and Crown Court Compendium. It is not recommended that the imposition guidance includes any breach information, as with the definitive breach guideline to follow shortly after this would appear as if the Council are issuing two sets of breach guidance in a short space of time. This could also cause the imposition guideline to look out of date very quickly if the annex subsequently becomes redundant. Breach guidance could remain within the MCSG, and a note included in the imposition guidance to refer sentencers to available breach guidance pending the publication of the definitive breach guideline.

Question 5 – Does the Council agree that the imposition guideline should not contain guidance on breach of community orders and SSO's?

4 IMPACT

4.1 The new guidance will have the potential to reverse any inappropriate behaviour in imposing these orders, although the impact of this will be limited to where such sentencing behaviour exists. Reputationally, the issuing of up to date guidance would be positive for the Council, and will also ensure sentencing practice is aligned with the wider rehabilitation of offenders programme.

Officials have engaged in discussions with the Judicial College regarding the new guidance, and they have agreed to work with us to develop and issue training materials if required.

5 RISK

- 5.1 There are limited risks to issuing updated imposition guidance, as the existing guidance is very outdated. Although there is a risk the guidance will not prove as effective as it is hoped, there are limited other options to address inappropriate sentences being passed that do not require careful handling. Other options may also be outside of the remit of the Council if not dealt with in a guidance format.
- 5.2 It would be difficult to conduct a resource assessment for the imposition guidance. The impact of the guidance could be monitored by observing volumes of SSOs and COs imposed pre and post the imposition guidance being issued, although it is important to note that other factors may influence the relative proportion of orders imposed pre and post implementation of an imposition guideline.
- 5.3 The Council may have concerns that the guidance may be overshadowed by other guidelines for which consultations and launches are imminent, so the method and timing of any consultation or communication of this guidance will be important.

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Sentencing Guidelines Council

**New Sentences:
Criminal Justice Act 2003**

Guideline

FOREWORD

In accordance with the provisions of section 170(9) Criminal Justice Act 2003, the Sentencing Guidelines Council issues this guideline as a definitive guideline. By virtue of section 172 of the Act, every court must have regard to a relevant guideline.

The Council was created in 2004 in order to frame Guidelines to assist Courts as they deal with criminal cases across the whole of England and Wales.

This guideline relates to the new sentencing framework introduced by the Criminal Justice Act 2003, which affects the nature of community and custodial sentences. Only those sentences and related provisions which are expected to come into force by April 2005 are dealt with in this guideline. It will be followed by further guidelines in due course. This is an unusual guideline since it covers a range of sentences outside the context of individual offences and does so in readiness for the coming into force of the statutory provisions creating the sentences. It is designed with the object of ensuring a consistent approach when the sentences become available.

This guideline applies only to sentences passed under the sentencing framework applicable to those aged 18 or over.

The guideline is divided into two sections:

- ❑ Sections 1 covers the practical aspects of implementing the non-custodial powers namely the new community sentence and the new form of deferred sentence;
- ❑ Section 2 deals with the new custodial sentence provisions relating to suspended sentences, prison sentences of 12 months or more, and intermittent custody.¹

The Act also contains an extensive range of provisions to protect the public from dangerous offenders. These will be dealt with separately.

The Advice of the Sentencing Advisory Panel to the Council (published on 20th September 2004) has been broadly accepted by the Council and forms the basis of this guideline. Further information on the issues covered in this guideline can be found in that Advice or in the discussion document that preceded it. All these documents are available on www.sentencing-guidelines.gov.uk or from the Sentencing Guidelines Secretariat.



Chairman of the Council
December 2004

¹ References to the Probation Service reflect current roles and responsibilities. By the time these provisions come into force, some or all of those roles and responsibilities may be those of the National Offender Management Service (NOMS).

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SECTION 1 PART 1 – COMMUNITY SENTENCES

A. Statutory Provisions

(i) The Thresholds for Community Sentences

1.1.1 Seriousness – Section 148 Criminal Justice Act 2003:

- (1) A court must not pass a community sentence on an offender unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was serious enough to warrant such a sentence.

1.1.2 Persistent Offenders – Section 151 Criminal Justice Act 2003:

(1) Subsection (2) applies where –

- (a) a person aged 16 or over is convicted of an offence (“the current offence”),
- (b) on three or more previous occasions he has, on conviction by a court in the United Kingdom of any offence committed by him after attaining the age of 16, had passed on him a sentence consisting only of a fine, and
- (c) despite the effect of section 143(2), the court would not (apart from this section) regard the current offence, or the combination of the current offence and one or more offences associated with it, as being serious enough to warrant a community sentence.

- (2) The court may make a community order in respect of the current offence instead of imposing a fine if it considers that, having regard to all the circumstances including the matters mentioned in subsection (3), it would be in the interests of justice to make such an order.

(ii) The Sentences Available

1.1.3 Meaning of Community Sentence – Section 147 Criminal Justice Act 2003

- (1) In this Part “community sentence” means a sentence which consists of or includes –

- (a) a community order (as defined by section 177), or
- (b) one or more youth community orders.

1.1.4 Offenders aged 16 or over – Section 177 Criminal Justice Act 2003:

- (1) Where a person aged 16 or over is convicted of an offence, the court by or before which he is convicted may make an order (in this Part referred to as a “community order”) imposing on him any one or more of the following requirements –

- (a) an unpaid work requirement (as defined by section 199),
- (b) an activity requirement (as defined by section 201),
- (c) a programme requirement (as defined by section 202),
- (d) a prohibited activity requirement (as defined by section 203),
- (e) a curfew requirement (as defined by section 204),
- (f) an exclusion requirement (as defined by section 205),

- (g) a residence requirement (as defined by section 206),
- (h) a mental health treatment requirement (as defined by section 207),
- (i) a drug rehabilitation requirement (as defined by section 209),
- (j) an alcohol treatment requirement (as defined by section 212),
- (k) a supervision requirement (as defined by section 213), and
- (l) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).

(2) Subsection (1) has effect subject to sections 150 and 218 and to the following provisions of Chapter 4 relating to particular requirements –

- (a) section 199(3)(unpaid work requirement),
- (b) section 201(3) and (4)(activity requirement),
- (c) section 202(4) and (5)(programme requirement),
- (d) section 203(2)(prohibited activity requirement),
- (e) section 207(3)(mental health treatment requirement),
- (f) section 209(2)(drug rehabilitation requirement), and
- (g) section 212(2) and (3)(alcohol treatment requirement).

(3) Where the court makes a community order imposing a curfew requirement or an exclusion requirement, the court must also impose an electronic monitoring requirement (as defined by section 215) unless –

- (a) it is prevented from doing so by section 215(2) or 218(4), or
- (b) in the particular circumstances of the case, it considers it inappropriate to do so.

(4) Where the court makes a community order imposing an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity requirement, a residence requirement, a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement, a supervision requirement or an attendance centre requirement, the court may also impose an electronic monitoring requirement unless prevented from doing so by section 215(2) or 218(4).

(iii) Determining Which Orders to make & Requirements to Include

1.1.5 Suitability – Section 148 Criminal Justice Act 2003

(2) Where a court passes a community sentence which consists of or includes a community order –

- (a) the particular requirement or requirements forming part of the community order must be such as, in the opinion of the court, is, or taken together are, the most suitable for the offender, and
- (b) the restrictions on liberty imposed by the order must be such as in the opinion of the court are commensurate with the seriousness of the offence, or the combination of the offence and one or more offences associated with it.

1.1.6 Restrictions on liberty – Section 149 Criminal Justice Act 2003

- (1) In determining the restrictions on liberty to be imposed by a community order or youth community order in respect of an offence, the court may have regard to any period for which the offender has been remanded in custody in connection with the offence or any other offence the charge for which was founded on the same facts or evidence.

1.1.7 Compatibility – Section 177 Criminal Justice Act 2003

- (6) Before making a community order imposing two or more different requirements falling within subsection (1), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

(iv) Electronic Monitoring

1.1.8 Section 177 Criminal Justice Act 2003

- (3) Where the court makes a community order imposing a curfew requirement or an exclusion requirement, the court must also impose an electronic monitoring requirement (as defined by section 215) unless –
 - (a) it is prevented from doing so by section 215(2) or 218(4), or
 - (b) in the particular circumstances of the case, it considers it inappropriate to do so.
- (4) Where the court makes a community order imposing an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity requirement, a residence requirement, a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement, a supervision requirement or an attendance centre requirement, the court may also impose an electronic monitoring requirement unless prevented from doing so by section 215(2) or 218(4).

B. Imposing a Community Sentence – The Approach

1.1.9 On pages 8 and 9 of the Seriousness guideline the two thresholds for the imposition of a community sentence are considered. Sentencers must consider all of the disposals available (within or below the threshold passed) at the time of sentence, and reject them before reaching the provisional decision to make a community sentence, so that even where the threshold for a community sentence has been passed a financial penalty or discharge may still be an appropriate penalty. Where an offender has a low risk of re-offending, particular care needs to be taken in the light of evidence that indicates that there are circumstances where inappropriate intervention can increase the risk of re-offending rather than decrease it. In addition, recent improvements in enforcement of financial penalties make them a more viable sentence in a wider range of cases.

1.1.10 Where an offender is being sentenced for a non-imprisonable offence or offences, great care will be needed in assessing whether a community sentence is appropriate since failure to comply could result in a custodial sentence.

1.1.11 Having decided (in consultation with the Probation Service where appropriate) that a community sentence is justified, the court must decide which requirements should be included in the community order. The requirements or orders imposed will have the effect of restricting the offender's liberty, whilst providing punishment in the community, rehabilitation for the offender, and/or ensuring that the offender engages in reparative activities.

The key issues arising are:

- (i) which requirements to impose;**
- (ii) how to make allowance for time spent on remand; and**
- (iii) how to deal with breaches.**

(i) Requirements

1.1.12 When deciding which requirements to include, the court must be satisfied on three matters –

- i. that the **restriction on liberty is commensurate with the seriousness** of the offence(s);²
- ii. that the **requirements are the most suitable** for the offender;³ and
- iii. that, where there are two or more requirements included, they are **compatible with each other**.⁴

1.1.13 Sentencers should have the possibility of breach firmly in mind when passing sentence for the original offence. If a court is to reflect the seriousness of an offence, there is little value in setting requirements as part of a community sentence that are not demanding enough for an offender. On the other hand, there is equally little value in imposing requirements that would 'set an offender up to fail' and almost inevitably lead to sanctions for a breach.

In community sentences, the guiding principles are proportionality and suitability. Once a court has decided that the offence has crossed the community sentence threshold and that a community sentence is justified, the initial factor in defining which requirements to include in a community sentence should be the seriousness of the offence committed.

1.1.14 This means that "seriousness" is an important factor in deciding whether the Court chooses the low, medium or high range (see below) but, having taken that decision, selection of the content of the order within the range will be determined by a much wider range of factors.

² Criminal Justice Act 2003 section 148(2)(b)

³ *ibid* section 148(2)(a)

⁴ *ibid* section 177(6)

- ❑ **Sentencing ranges must remain flexible enough to take account of the suitability of the offender, his or her ability to comply with particular requirements and their availability in the local area.**
- ❑ **The justification for imposing a community sentence in response to persistent petty offending is the persistence of the offending behaviour rather than the seriousness of the offences being committed. The requirements imposed should ensure that the restriction on liberty is proportionate to the seriousness of the offending, to reflect the fact that the offences, of themselves, are not sufficiently serious to merit a community sentence.**

(a) Information for Sentencers

1.1.15 In many cases, a pre-sentence report⁵ will be pivotal in helping a sentencer decide whether to impose a custodial sentence or whether to impose a community sentence and, if so, whether particular requirements, or combinations of requirements, are suitable for an individual offender. The court must always ensure (especially where there are multiple requirements) that the restriction on liberty placed on the offender is proportionate to the seriousness of the offence committed.⁶ The court must also consider the likely effect of one requirement on another, and that they do not place conflicting demands upon the offender.⁷

1.1.16 The Council supports the approach proposed by the Panel at paragraph 78 of its Advice that, having reached the provisional view that a community sentence is the most appropriate disposal, the sentencer should request a pre-sentence report, indicating which of the three sentencing ranges is relevant and the purpose(s) of sentencing that the package of requirements is required to fulfil. Usually the most helpful way for the court to do this would be to produce a written note for the report writer, copied on the court file. If it is known that the same tribunal and defence advocate will be present at the sentencing hearing and a probation officer is present in court when the request for a report is made, it may not be necessary to commit details of the request to writing. However, events may change during the period of an adjournment and it is good practice to ensure that there is a clear record of the request for the court. These two factors will guide the Probation Service in determining the nature and combination of requirements that may be appropriate and the onerousness and intensity of those requirements. A similar procedure should apply when ordering a pre-sentence report when a custodial sentence is being considered.

1.1.17 There will be occasions when any type of report may be unnecessary despite the intention to pass a community sentence though this is likely to be infrequent. A court could consider dispensing with the need to obtain a pre-sentence report for adult offenders –

- ❑ where the offence falls within the **LOW** range of seriousness (see pp9–10) and
- ❑ where the sentencer was minded to impose a single requirement, such as an exclusion requirement (where the circumstances of the case mean that this would be an appropriate disposal without electronic monitoring) and

⁵ Under the Act, a pre-sentence report includes a full report following adjournment, a specific sentence report, a short format report or an oral report. The type of report supplied will depend on the level of information requested. Wherever it appears, the term “pre-sentence report” includes all these types of report.

⁶ Criminal Justice Act 2003 section 148(2)

⁷ *ibid* section 177(6)

- ❑ where the sentence will not require the involvement of the Probation Service, for example an electronically monitored curfew (subject to the court being satisfied that there is an appropriate address at which the curfew can operate).

(b) Ranges of Sentence Within the Community Sentence Band

1.1.18 To enable the court to benefit from the flexibility that community sentences provide and also to meet its statutory obligations, any structure governing the use of community requirements must allow the courts to choose the most appropriate sentence for each individual offender.

1.1.19 Sentencers have a statutory obligation to pass sentences that are commensurate with the seriousness of an offence. However, within the range of sentence justified by the seriousness of the offence(s), courts will quite properly consider those factors that heighten the risk of the offender committing further offences or causing further harm with a view to lessening that risk. The extent to which requirements are imposed must be capable of being varied to ensure that the restriction on liberty is commensurate with the seriousness of the offence.

1.1.20 The Council recognises that it would be helpful for sentencers to have a framework to help them decide on the most appropriate use of the new community sentence. While there is no single guiding principle, the seriousness of the offence that has been committed is an important factor. Three sentencing ranges (low, medium and high) within the community sentence band can be identified. It is not possible to position particular types of offence at firm points within the three ranges because the seriousness level of an offence is largely dependent upon the culpability of the offender and this is uniquely variable. The difficulty is particularly acute in relation to the medium range where it is clear that requirements will need to be tailored across a relatively wide range of offending behaviour.

1.1.21 In general terms, the lowest range of community sentence would be for those offenders whose offence was relatively minor within the community sentence band and would include persistent petty offenders whose offences only merit a community sentence by virtue of failing to respond to the previous imposition of fines. Such offenders would merit a 'light touch' approach, for example, normally a single requirement such as a short period of unpaid work, or a curfew, or a prohibited activity requirement or an exclusion requirement (where the circumstances of the case mean that this would be an appropriate disposal without electronic monitoring).

1.1.22 The top range would be for those offenders who have only just fallen short of a custodial sentence and for those who have passed the threshold but for whom a community sentence is deemed appropriate.

1.1.23 In all three ranges there must be sufficient flexibility to allow the sentence to be varied to take account of the suitability of particular requirements for the individual offender and whether a particular requirement or package of requirements might be more effective at reducing any identified risk of re-offending. It will fall to the sentencer to ensure that the sentence strikes the right balance between proportionality and suitability.

There should be three sentencing ranges (low, medium and high) within the community sentence band based upon seriousness.

It is not intended that an offender necessarily progress from one range to the next on each sentencing occasion. The decision as to the appropriate range each time is based upon the seriousness of the new offence(s).

The decision on the nature and severity of the requirements to be included in a community sentence should be guided by:

- (i) the assessment of offence seriousness (LOW, MEDIUM OR HIGH);**
- (ii) the purpose(s) of sentencing the court wishes to achieve;**
- (iii) the risk of re-offending;**
- (iv) the ability of the offender to comply, and**
- (v) the availability of requirements in the local area.**

The resulting restriction on liberty must be a proportionate response to the offence that was committed.

1.1.24 Below we set out a non-exhaustive description of examples of requirements that might be appropriate in the three sentencing ranges. These examples focus on punishment in the community, although it is recognised that not all packages will necessarily need to include a punitive requirement. There will clearly be other requirements of a rehabilitative nature, such as a treatment requirement or an accredited programme, which may be appropriate depending on the specific needs of the offender and assessment of suitability. Given the intensity of such interventions, it is expected that these would normally only be appropriate at medium and high levels of seriousness, and where assessed as having a medium or high risk of re-offending. In addition, when passing sentence in any one of the three ranges, the court should consider whether a rehabilitative intervention such as a programme requirement, or a restorative justice intervention might be suitable as an additional or alternative part of the sentence.

LOW

1.1.25 For offences only just crossing the community sentence threshold (such as persistent petty offending, some public order offences, some thefts from shops, or interference with a motor vehicle, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate).

1.1.26 Suitable requirements might include:

- 40 to 80 hours of unpaid work or
- a curfew requirement within the lowest range (e.g. up to 12 hours per day for a few weeks) or
- an exclusion requirement (where the circumstances of the case mean that this would be an appropriate disposal without electronic monitoring) lasting a few months or
- a prohibited activity requirement or
- an attendance centre requirement (where available).

1.1.27 Since the restriction on liberty must be commensurate with the seriousness of the offence, particular care needs to be taken with this band to ensure that this obligation is complied with. In most cases, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary.

MEDIUM

1.1.28 For offences that obviously fall within the community sentence band such as handling stolen goods worth less than £1000 acquired for resale or somewhat more valuable goods acquired for the handler's own use, some cases of burglary in commercial premises, some cases of taking a motor vehicle without consent, or some cases of obtaining property by deception.

1.1.29 Suitable requirements might include:

- a greater number (e.g. 80 to 150) of hours of unpaid work or
- an activity requirement in the middle range (20 to 30 days) or
- a curfew requirement within the middle range (e.g. up to 12 hours for 2–3 months) or
- an exclusion requirement lasting in the region of 6 months or
- a prohibited activity requirement.

1.1.30 Since the restriction on liberty must be commensurate with the seriousness of the offence, particular care needs to be taken with this band to ensure that this obligation is complied with.

HIGH

1.1.31 For offences that only just fall below the custody threshold or where the custody threshold is crossed but a community sentence is more appropriate in all the circumstances, for example some cases displaying the features of a standard domestic burglary committed by a first-time offender.

1.1.32 More intensive sentences which combine two or more requirements may be appropriate at this level. Suitable requirements might include an unpaid work order of between 150 and 300 hours; an activity requirement up to the maximum 60 days; an exclusion order lasting in the region of 12 months; a curfew requirement of up to 12 hours a day for 4–6 months.

(c) Electronic Monitoring

1.1.33 The court must also consider whether an electronic monitoring requirement⁸ should be imposed which is mandatory⁹ in some circumstances.

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.

(d) Recording the Sentence Imposed

1.1.34 Under the new framework there is only one (generic) community sentence provided by statute. This does not mean that offenders who have completed a community sentence and have then re-offended should be regarded as ineligible for a second community sentence on the basis that this has been tried and failed. Further community sentences, perhaps with different requirements, may well be justified.

1.1.35 Those imposing sentence will wish to be clear about the ‘purposes’ that the community sentence is designed to achieve when setting the requirements. Sharing those purposes with the offender and Probation Service will enable them to be clear about the goals that are to be achieved.

1.1.36 Any future sentencer must have full information about the requirements that were inserted by the court into the previous community sentence imposed on the offender (including whether it was a low/medium/high level order) and also about the offender’s response. This will enable the court to consider the merits of imposing the same or different requirements as part of another community sentence. The requirements should be recorded in such a way as to ensure that they can be made available to another court if another offence is committed.

When an offender is required to serve a community sentence, the court records should be clearly annotated to show which particular requirements have been imposed.

⁸ *ibid* section 177(3) and (4)

⁹ unless the necessary facilities are not available or, in the particular circumstances of the case, the court considers it inappropriate.

(ii) Time Spent on Remand

1.1.37 The court will need to consider whether to give any credit for time spent in custody on remand.¹⁰ (For further detail from the Panel's Advice, see Annex A)

The court should seek to give credit for time spent on remand (in custody or equivalent status) in all cases. It should make clear, when announcing sentence, whether or not credit for time on remand has been given (bearing in mind that there will be no automatic reduction in sentence once section 67 of the Criminal Justice Act 1967 is repealed) and should explain its reasons for not giving credit when it considers either that this is not justified, would not be practical, or would not be in the best interests of the offender.

1.1.38 Where an offender has spent a period of time in custody on remand, there will be occasions where a custodial sentence is warranted but the length of the sentence justified by the seriousness of the offence would mean that the offender would be released immediately. Under the present framework, it may be more appropriate to pass a community sentence since that will ensure supervision on release.

1.1.39 However, given the changes in the content of the second part of a custodial sentence of 12 months or longer, a court in this situation where the custodial sentence would be 12 months or more should, under the new framework, pass a custodial sentence in the knowledge that licence requirements will be imposed on release from custody. This will ensure that the sentence imposed properly reflects the seriousness of the offence.

1.1.40 Recommendations made by the court at the point of sentence will be of particular importance in influencing the content of the licence. This will properly reflect the gravity of the offence(s) committed.

(iii) Breaches

1.1.41 Where an offender fails, without reasonable excuse, to comply with one or more requirements, the 'responsible officer'¹¹ can either give a warning or initiate breach proceedings. Where the offender fails to comply without reasonable excuse for the second time within a 12-month period, the 'responsible officer' must initiate proceedings.

1.1.42 In such proceedings the court must¹² either **increase the severity of the existing sentence** (i.e. impose more onerous conditions including requirements aimed at enforcement, such as a curfew or supervision requirement) or **revoke the existing sentence and proceed as though sentencing for the original offence**. The court is required to take account of the circumstances of the breach,¹³ which will inevitably have an impact on its response.

1.1.43 In certain circumstances (where an offender has wilfully and persistently failed to comply with an order made in respect of an offence that is not itself punishable by imprisonment), the court can **impose a maximum of 51 weeks custody**.¹⁴

10 Criminal Justice Act 2003 section 149

11 Criminal Justice Act 2003 schedule 8, paragraphs 5–6

12 *ibid* paragraphs 9–10

13 *ibid* paragraph 9(2)

14 *ibid* paragraph 9(1)(c)

1.1.44 When increasing the onerousness of requirements, the court must consider the impact on the offender's ability to comply and the possibility of precipitating a custodial sentence for further breach. For that reason, and particularly where the breach occurs towards the end of the sentence, the court should take account of compliance to date and may consider that extending the supervision or operational periods will be more sensible; in other cases it might choose to add punitive or rehabilitative requirements instead. In making these changes the court must be mindful of the legislative restrictions on the overall length of community sentences and on the supervision and operational periods allowed for each type of requirement.

1.1.45 The court dealing with breach of a community sentence should have as its primary objective ensuring that the requirements of the sentence are finished, and this is important if the court is to have regard to the statutory purposes of sentencing. A court that imposes a custodial sentence for breach without giving adequate consideration to alternatives is in danger of imposing a sentence that is not commensurate with the seriousness of the original offence and is solely a punishment for breach. This risks undermining the purposes it has identified as being important. Nonetheless, courts will need to be vigilant to ensure that there is a realistic prospect of the purposes of the order being achieved.

Having decided that a community sentence is commensurate with the seriousness of the offence, the primary objective when sentencing for breach of requirements is to ensure that those requirements are completed.

1.1.46 A court sentencing for breach must take account of the extent to which the offender has complied with the requirements of the community order, the reasons for breach and the point at which the breach has occurred. Where a breach takes place towards the end of the operational period and the court is satisfied that the offender's appearance before the court is likely to be sufficient in itself to ensure future compliance, then given that it is not open to the court to make no order, an approach that the court might wish to adopt could be to re-sentence in a way that enables the original order to be completed properly – for example, a differently constructed community sentence that aims to secure compliance with the purposes of the original sentence.

1.1.47 If the court decides to increase the onerousness of an order, it must give careful consideration, with advice from the Probation Service, to the offender's ability to comply. A custodial sentence should be the last resort, where all reasonable efforts to ensure that an offender completes a community sentence have failed.

- ❑ The Act allows for a custodial sentence to be imposed in response to breach of a community sentence. Custody should be the last resort, reserved for those cases of deliberate and repeated breach where all reasonable efforts to ensure that the offender complies have failed.**
- ❑ Before increasing the onerousness of requirements, sentencers should take account of the offender's ability to comply and should avoid precipitating further breach by overloading the offender with too many or conflicting requirements.**
- ❑ There may be cases where the court will need to consider re-sentencing to a differently constructed community sentence in order to secure compliance with the purposes of the original sentence, perhaps where there has already been partial compliance or where events since the sentence was imposed have shown that a different course of action is likely to be effective.**

SECTION 1 PART 2 – DEFERRED SENTENCES

A. Statutory Provisions

1.2.1 Under the existing legislation,¹⁵ a court can defer a sentence for up to six months, provided the offender consents and the court considers that deferring the sentence is in the interests of justice.

1.2.2 The new provisions¹⁶ continue to require the consent of the offender and that the court be satisfied that the making of such a decision is in the interests of justice. However, it is also stated that the power to defer sentence can only be exercised where:

“the offender undertakes to comply with any requirements as to his conduct during the period of the deferment that the court considers it appropriate to impose;”¹⁷

1.2.3 This enables the court to impose a wide variety of conditions (including a residence requirement).¹⁸ The Act allows the court to appoint the probation service or other responsible person to oversee the offender’s conduct during this period and prepare a report for the court at the point of sentence i.e. the end of the deferment period.

1.2.4 As under the existing legislation, if the offender commits another offence during the deferment period the court may have the power to sentence for both the original and the new offence at once. Sentence cannot be deferred for more than six months and, in most circumstances, no more than one period of deferment can be granted.¹⁹

1.2.5 A significant change is the provision enabling a court to deal with an offender before the end of the period of deferment.²⁰ For example if the court is satisfied that the offender has failed to comply with one or more requirements imposed in connection with the deferment, the offender can be brought back before the court and the court can proceed to sentence.

B. Use of Deferred Sentences

1.2.6 Under the new framework, there is a wider range of sentencing options open to the courts, including the increased availability of suspended sentences, and deferred sentences are likely to be used in very limited circumstances. A deferred sentence enables the court to review the conduct of the defendant before passing sentence, having first prescribed certain requirements. It also provides several opportunities for an offender to have some influence as to the sentence passed –

- a) it tests the commitment of the offender not to re-offend;
- b) it gives the offender an opportunity to do something where progress can be shown within a short period;
- c) it provides the offender with an opportunity to behave or refrain from behaving in a particular way that will be relevant to sentence.

15 Powers of Criminal Courts (Sentencing) Act 2000 sections 1 and 2

16 Criminal Justice Act 2003 schedule 23 repealing and replacing sections 1 and 2 of the 2000 Act

17 *ibid* new section 1(3)(b) as inserted by schedule 23 to the Criminal Justice Act 2003

18 *ibid* new section 1A(1)

19 *ibid* new section 1(4)

20 *ibid* new section 1B

1.2.7 Given the new power to require undertakings and the ability to enforce those undertakings before the end of the period of deferral, the decision to defer sentence should be predominantly for a small group of cases at either the custody threshold or the community sentence threshold where the sentencer feels that there would be particular value in giving the offender the opportunities listed because, if the offender complies with the requirements, a different sentence will be justified at the end of the deferment period. This could be a community sentence instead of a custodial sentence or a fine or discharge instead of a community sentence. It may, rarely, enable a custodial sentence to be suspended rather than imposed immediately.

The use of deferred sentences should be predominantly for a small group of cases close to a significant threshold where, should the defendant be prepared to adapt his behaviour in a way clearly specified by the sentencer, the court may be prepared to impose a lesser sentence.

1.2.8 A court may impose any conditions during the period of deferment that it considers appropriate.²¹ These could be specific requirements as set out in the provisions for community sentences,²² or requirements that are drawn more widely. These should be specific, measurable conditions so that the offender knows exactly what is required and the court can assess compliance; the restriction on liberty should be limited to ensure that the offender has a reasonable expectation of being able to comply whilst maintaining his or her social responsibilities.

1.2.9 Given the need for clarity in the mind of the offender and the possibility of sentence by another court, the court should give a clear indication (and make a written record) of the type of sentence it would be minded to impose if it had not decided to defer and ensure that the offender understands the consequences of failure to comply with the court's wishes during the deferral period.

When deferring sentence, the sentencer must make clear the consequence of not complying with any requirements and should indicate the type of sentence it would be minded to impose. Sentencers should impose specific, measurable conditions that do not involve a serious restriction on liberty.

²¹ *ibid* new section 1 (3)(b) as inserted by schedule 23 to the Criminal Justice Act 2003
²² Criminal Justice Act 2003 section 177

SECTION 2 – CUSTODIAL SENTENCES

PART 1 – CUSTODIAL SENTENCES OF 12 MONTHS OR MORE

A. Statutory Provisions

2.1.1 Under existing legislation:

- ❑ an adult offender receiving a custodial sentence of at least 12 months and below 4 years will automatically be released at the halfway point and will then be supervised under licence until the three-quarter point of the sentence. [For some, the actual release date may be earlier as a result of release on Home Detention Curfew (HDC).]
- ❑ an adult offender receiving a determinate sentence of 4 years or above will be eligible for release from the halfway point and, if not released before, will automatically be released at the two-thirds point. After release, the offender will be supervised under licence until the three-quarter point of the sentence.

2.1.2 Under the new framework, the impact of a custodial sentence will be more severe since the period in custody and under supervision will be for the whole of the sentence term set by the court. Additionally, separate provisions for the protection of the public will be introduced for those offenders designated as “dangerous” under the Act which are designed to ensure that release only occurs when it is considered safe to do so.

2.1.3 Where a prison sentence of 12 months or more is imposed on an offender who is not classified as “dangerous”, that offender will be entitled to be released from custody after completing half of the sentence. The whole of the second half of the sentence will be subject to licence requirements. These requirements will be set shortly before release by the Secretary of State (with advice from the Governor responsible for authorising the prisoner’s release in consultation with the Probation Service) but a court will be able to make recommendations at the sentencing stage on the content of those requirements.²³ The conditions that the Secretary of State may attach to a licence are to be prescribed by order.²⁴

2.1.4 The Act requires that a custodial sentence for a fixed term should be for the shortest term that is commensurate with the seriousness of the offence.²⁵

²³ Criminal Justice Act 2003 section 238(1)

²⁴ *ibid* section 250

²⁵ *ibid* section 153(2)

B. Imposition of Custodial Sentences of 12 Months or more

(i) Length of Sentence

2.1.5 The requirement that the second half of a prison sentence will be served in the community subject to conditions imposed prior to release is a major new development and will require offenders to be under supervision for the full duration of the sentence prescribed by the court. The Probation Service will be able to impose a number of complementary requirements on the offender during the second half of a custodial sentence and these are expected to be more demanding and involve a greater restriction on liberty than current licence conditions.

2.1.6 As well as restricting liberty to a greater extent, the new requirements will last until the very end of the sentence, rather than to the three-quarter point as at present, potentially making a custodial sentence significantly more demanding than under existing legislation. Breach of these requirements at any stage is likely to result in the offender being returned to custody and this risk continues, therefore, for longer under the new framework than under the existing legislation.

Transitional arrangements

2.1.7 In general, a fixed term custodial sentence of 12 months or more under the new framework will increase the sentence actually served (whether in custody or in the community) since it continues to the end of the term imposed. Existing guidelines issued since 1991 have been based on a different framework and so, in order to maintain consistency between the lengths of sentence under the current and the new framework, there will need to be some adjustment to the starting points for custodial sentences contained in those guidelines (subject to the special sentences under the 2003 Act where the offender is a “dangerous” offender).

2.1.8 This aspect of the guideline will be temporary to overcome the short-term situation where sentencing guidelines (issued since implementation of the reforms to custodial sentences introduced by the Criminal Justice Act 1991) are based on a different framework and the new framework has made those sentences more demanding. As new guidelines are issued they will take into account the new framework in providing starting points and ranges of appropriate sentence lengths for offences and an adjustment will not be necessary.

2.1.9 Since there are so many factors that will vary, it is difficult to calculate precisely how much more demanding a sentence under the new framework will be. The Council’s conclusion is that the sentencer should seek to achieve the best match between a sentence under the new framework and its equivalent under the old framework so as to maintain the same level of punishment. As a guide, the Council suggests the sentence length should be reduced by in the region of 15%.

2.1.10 The changes in the nature of a custodial sentence will require changes in the way the sentence is announced. Sentencers will need to continue²⁶ to spell out the practical implications of the sentence being imposed so that offenders, victims and the public alike all understand that the sentence does not end when the offender is released from custody. The fact that a breach of the requirements imposed in the second half of the sentence is likely to result in a return to custody should also be made very clear at the point of sentence.

²⁶ having reference to the *Consolidated Criminal Practice Direction* [2002] 2 Cr App R 533, Annex C, as suitably amended

- ❑ When imposing a fixed term custodial sentence of 12 months or more under the new provisions, courts should consider reducing the overall length of the sentence that would have been imposed under the current provisions by in the region of 15%.**
- ❑ When announcing sentence, sentencers should explain the way in which the sentence has been calculated, how it will be served and the implications of non-compliance with licence requirements. In particular, it needs to be stated clearly that the sentence is in two parts, one in custody and one under supervision in the community.**
- ❑ This proposal does not apply to sentences for dangerous offenders, for which separate provision has been made in the Act.**

(ii) Licence conditions

2.1.11 Under the Act, a court imposing a prison sentence of 12 months or more may recommend conditions that should be imposed by the Secretary of State (with advice from the Governor responsible for authorising the prisoner's release in consultation with the Probation Service) on release from custody.²⁷ Recommendations do not form part of the sentence and they are not binding on the Secretary of State.²⁸

2.1.12 When passing such a sentence, the court will not know with any certainty to what extent the offender's behaviour may have been addressed in custody or what the offender's health and other personal circumstances might be on release and so it will be extremely difficult, especially in the case of longer custodial sentences, for sentencers to make an informed judgement about the most appropriate licence conditions to be imposed on release. However, in most cases, it would be extremely helpful for sentencers to indicate areas of an offender's behaviour about which they have the most concern and to make suggestions about the types of intervention whether this, in practice, takes place in prison or in the community.

2.1.13 The involvement of the Probation Service at the pre-sentence stage will clearly be pivotal. A recommendation on the likely post-release requirements included in a pre-sentence report will assist the court with the decision on overall sentence length, although any recommendation would still have to be open to review when release is being considered. A curfew, exclusion requirement or prohibited activity requirement might be suitable conditions to recommend for the licence period. A court might also wish to suggest that the offender should complete a rehabilitation programme, for example for drug abuse, anger management, or improving skills such as literacy and could recommend that this should be considered as a licence requirement if the programme has not been undertaken or completed in custody.

²⁷ Criminal Justice Act 2003 section 238(1)

²⁸ *ibid* section 250

2.1.14 The Governor responsible for authorising the prisoner's release, in consultation with the Probation Service, is best placed to make recommendations at the point of release; this is the case at present and continues to be provided for in the Act. *Specific* court recommendations will only generally be appropriate in the context of relatively short sentences, where it would not be unreasonable for the sentencer to anticipate the relevance of particular requirements at the point of release. Making recommendations in relation to longer sentences (other than suggestions about the types of intervention that might be appropriate at some point during the sentence) would be unrealistic. The Governor and Probation Service should have due regard to any recommendations made by the sentencing court and the final recommendation to the Secretary of State on licence conditions will need to build upon any interventions during the custodial period and any other changes in the offender's circumstances.

□ A court may sensibly suggest interventions that could be useful when passing sentence, but should only make specific recommendations about the requirements to be imposed on licence when announcing short sentences and where it is reasonable to anticipate their relevance at the point of release. The Governor and Probation Service should have due regard to any recommendations made by the sentencing court but its decision should be contingent upon any changed circumstances during the custodial period.

□ The court should make it clear, at the point of sentence, that the requirements to be imposed on licence will ultimately be the responsibility of the Governor and Probation Service and that they are entitled to review any recommendations made by the court in the light of any changed circumstances.

SECTION 2 PART 2 – SUSPENDED SENTENCES OF IMPRISONMENT

A. Statutory Provisions

2.2.1 Section 189 Criminal Justice Act 2003

- (1) A court which passes a sentence of imprisonment for a term of at least 28 weeks but not more than 51 weeks²⁹ in accordance with section 181 may –
 - (a) order the offender to comply during a period specified for the purposes of this paragraph in the order (in this Chapter referred to as “the supervision period”) with one or more requirements falling within section 190(1) and specified in the order, and
 - (b) order that the sentence of imprisonment is not to take effect unless either –
 - (i) during the supervision period the offender fails to comply with a requirement imposed under paragraph (a), or
 - (ii) during a period specified in the order for the purposes of this subparagraph (in this Chapter referred to as “the operational period “) the offender commits in the United Kingdom another offence (whether or not punishable with imprisonment), and (in either case) a court having power to do so subsequently orders under paragraph 8 of Schedule 12 that the original sentence is to take effect.
- (2) Where two or more sentences imposed on the same occasion are to be served consecutively, the power conferred by subsection (1) is not exercisable in relation to any of them unless the aggregate of the terms of the sentences does not exceed 65 weeks.
- (3) The supervision period and the operational period must each be a period of not less than six months and not more than two years beginning with the date of the order.
- (4) The supervision period must not end later than the operational period.
- (5) A court which passes a suspended sentence on any person for an offence may not impose a community sentence in his case in respect of that offence or any other offence of which he is convicted by or before the court or for which he is dealt with by the court.
- (6) Subject to any provision to the contrary contained in the Criminal Justice Act 1967 (c.80), the Sentencing Act or any other enactment passed or instrument made under any enactment after 31st December 1967, a suspended sentence which has not taken effect under paragraph 8 of Schedule 12 is to be treated as a sentence of imprisonment for the purposes of all enactments and instruments made under enactments.
- (7) In this Part –
 - (a) “suspended sentence order “ means an order under subsection (1),
 - (b) “suspended sentence “ means a sentence to which a suspended sentence order relates, and

²⁹ Since “custody plus” is not expected to be brought into force until a later date, it is likely that transitional provisions will provide for this power to be used for any sentence of imprisonment of less than 12 months.

- (c) “community requirement”, in relation to a suspended sentence order, means a requirement imposed under subsection (1)(a).

2.2.2 Imposition of requirements – Section 190 Criminal Justice Act 2003

- (1) The requirements falling within this subsection are –
 - (a) an unpaid work requirement (as defined by section 199),
 - (b) an activity requirement (as defined by section 201),
 - (c) a programme requirement (as defined by section 202),
 - (d) a prohibited activity requirement (as defined by section 203),
 - (e) a curfew requirement (as defined by section 204),
 - (f) an exclusion requirement (as defined by section 205),
 - (g) a residence requirement (as defined by section 206),
 - (h) a mental health treatment requirement (as defined by section 207),
 - (i) a drug rehabilitation requirement (as defined by section 209),
 - (j) an alcohol treatment requirement (as defined by section 212),
 - (k) a supervision requirement (as defined by section 213), and
 - (l) in a case where the offender is aged under 25, an attendance centre requirement (as defined by section 214).
- (2) Section 189(1)(a) has effect subject to section 218 and to the following provisions of Chapter 4 relating to particular requirements-
 - (a) section 199(3) (unpaid work requirement),
 - (b) section 201(3) and (4) (activity requirement),
 - (c) section 202(4) and (5) (programme requirement),
 - (d) section 203(2) (prohibited activity requirement),
 - (e) section 207(3) (mental health treatment requirement),
 - (f) section 209(2) (drug rehabilitation requirement), and
 - (g) section 212(2) and (3) (alcohol treatment requirement).
- (3) Where the court makes a suspended sentence order imposing a curfew requirement or an exclusion requirement, it must also impose an electronic monitoring requirement (as defined by section 215) unless –
 - (a) the court is prevented from doing so by section 215(2) or 218(4), or
 - (b) in the particular circumstances of the case, it considers it inappropriate to do so.
- (4) Where the court makes a suspended sentence order imposing an unpaid work requirement, an activity requirement, a programme requirement, a prohibited activity requirement, a residence requirement, a mental health treatment requirement, a drug rehabilitation requirement, an alcohol treatment requirement, a supervision requirement or an attendance centre requirement, the court may also impose an electronic monitoring requirement unless the court is prevented from doing so by section 215(2) or 218(4).
- (5) Before making a suspended sentence order imposing two or more different requirements falling within subsection (1), the court must consider whether, in the circumstances of the case, the requirements are compatible with each other.

2.2.3 Power to provide for review – Section 191 Criminal Justice Act 2003

- (1) A suspended sentence order may –
 - (a) provide for the order to be reviewed periodically at specified intervals,
 - (b) provide for each review to be made, subject to section 192(4), at a hearing held for the purpose by the court responsible for the order (a “review hearing”),
 - (c) require the offender to attend each review hearing, and
 - (d) provide for the responsible officer to make to the court responsible for the order, before each review, a report on the offender’s progress in complying with the community requirements of the order.
- (2) Subsection (1) does not apply in the case of an order imposing a drug rehabilitation requirement (provision for such a requirement to be subject to review being made by section 210).
- (3) In this section references to the court responsible for a suspended sentence order are references –
 - (a) where a court is specified in the order in accordance with subsection (4), to that court;
 - (b) in any other case, to the court by which the order is made.
- (4) Where the area specified in a suspended sentence order made by a magistrates’ court is not the area for which the court acts, the court may, if it thinks fit, include in the order provision specifying for the purpose of subsection (3) a magistrates’ court which acts for the area specified in the order.
- (5) Where a suspended sentence order has been made on an appeal brought from the Crown Court or from the criminal division of the Court of Appeal, it is to be taken for the purposes of subsection (3)(b) to have been made by the Crown Court.

2.2.4 Periodic reviews – Section 192 Criminal Justice Act 2003

- (1) At a review hearing (within the meaning of subsection (1) of section 191) the court may, after considering the responsible officer’s report referred to in that, subsection, amend the community requirements of the suspended sentence order, or any provision of the order which relates to those requirements.
- (2) The court –
 - (a) may not amend the community requirements of the order so as to impose a requirement of a different kind unless the offender expresses his willingness to comply with that requirement,
 - (b) may not amend a mental health treatment requirement, a drug rehabilitation requirement or an alcohol treatment requirement unless the offender expresses his willingness to comply with the requirement as amended,
 - (c) may amend the supervision period only if the period as amended complies with section 189(3) and (4),
 - (d) may not amend the operational period of the suspended sentence, and
 - (e) except with the consent of the offender, may not amend the order while an appeal against the order is pending.

- (3) For the purposes of subsection (2)(a)–
- (a) a community requirement falling within any paragraph of section 190(1) is of the same kind as any other community requirement falling within that paragraph, and
 - (b) an electronic monitoring requirement is a community requirement of the same kind as any requirement falling within section 190(1) to which it relates.
- (4) If before a review hearing is held at any review the court, after considering the responsible officer's report, is of the opinion that the offender's progress in complying with the community requirements of the order is satisfactory, it may order that no review hearing is to be held at that review; and if before a review hearing is held at any review, or at a review hearing, the court, after considering that report, is of that opinion, it may amend the suspended sentence order so as to provide for each subsequent review to be held without a hearing.
- (5) If at a review held without a hearing the court, after considering the responsible officer's report, is of the opinion that the offender's progress under the order is no longer satisfactory, the court may require the offender to attend a hearing of the court at a specified time and place.
- (6) If at a review hearing the court is of the opinion that the offender has without reasonable excuse failed to comply with any of the community requirements of the order, the court may adjourn the hearing for the purpose of dealing with the case under paragraph 8 of Schedule 12.
- (7) At a review hearing the court may amend the suspended sentence order so as to vary the intervals specified under section 191(1).
- (8) In this section any reference to the court, in relation to a review without a hearing is to be read –
- (a) in the case of the Crown Court, as a reference to a judge of the court, and
 - (b) in the case of a magistrates' court, as a reference to a justice of the peace acting for the commission area for which the court acts.

2.2.5 *Breach, revocation or amendment of orders, and effect of further conviction–
Section 193 Criminal Justice Act 2003*

Schedule 12 (which relates to the breach, revocation or amendment of the community requirements of suspended sentence orders, and to the effect of any further conviction) shall have effect.

B. Imposing a Suspended Sentence

2.2.6 A suspended sentence is a sentence of imprisonment. It is subject to the same criteria as a sentence of imprisonment which is to commence immediately. In particular, this requires a court to be satisfied that the custody threshold has been passed and that the length of the term is the shortest term commensurate with the seriousness of the offence.

2.2.7 A court which passes a prison sentence of less than 12 months may suspend it for between 6 months and 2 years (the operational period).³⁰ During that period, the court can impose one or more requirements for the offender to undertake in the community. The requirements are identical to those available for the new community sentence.

2.2.8 The period during which the offender undertakes community requirements is “the supervision period” when the offender will be under the supervision of a “responsible officer”; this period may be shorter than the operational period. The court may periodically review the progress of the offender in complying with the requirements and the reviews will be informed by a report from the responsible officer.

2.2.9 If the offender fails to comply with a requirement during the supervision period, or commits a further offence during the operational period, the suspended sentence can be activated in full or in part or the terms of the supervision made more onerous. There is a presumption that the suspended sentence will be activated either in full or in part.

(i) The decision to suspend

2.2.10 There are many similarities between the suspended sentence and the community sentence. In both cases, requirements can be imposed during the supervision period and the court can respond to breach by sending the offender to custody. The crucial difference is that the suspended sentence is a prison sentence and is appropriate only for an offence that passes the custody threshold and for which imprisonment is the only option. A community sentence may also be imposed for an offence that passes the custody threshold where the court considers that to be appropriate.

2.2.11 The full decision making process for imposition of custodial sentences under the new framework (including the custody threshold test) is set out in paragraphs 1.31–1.33 of the Seriousness guideline. For the purposes of suspended sentences the relevant steps are:

- (a) has the custody threshold been passed?**
- (b) if so, is it unavoidable that a custodial sentence be imposed?**
- (c) 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)**
- (d) if not, can the sentence be served intermittently?
- (e) if not, impose a sentence which takes immediate effect for the term commensurate with the seriousness of the offence.

³⁰ The power to suspend a sentence is expected to come into force earlier than the provisions implementing “custody plus” and transitional provisions are expected to enable any sentence of imprisonment of under 12 months to be suspended. This guideline therefore is written in the language of the expected transitional provisions.

(ii) Length of sentence

2.2.12 Before making the decision to suspend sentence, the court must already have decided that a prison sentence is justified and should also have decided the length of sentence that would be the shortest term commensurate with the seriousness of the offence if it were to be imposed immediately. The decision to suspend the sentence should not lead to a longer term being imposed than if the sentence were to take effect immediately.

A prison sentence that is suspended should be for the same term that would have applied if the offender were being sentenced to immediate custody.

2.2.13 When assessing the length of the operational period of a suspended sentence, the court should have in mind the relatively short length of the sentence being suspended and the advantages to be gained by retaining the opportunity to extend the operational period at a later stage (see below).

The operational period of a suspended sentence should reflect the length of the sentence being suspended. As an approximate guide, an operational period of up to 12 months might normally be appropriate for a suspended sentence of up to 6 months and an operational period of up to 18 months might normally be appropriate for a suspended sentence of up to 12 months.

(iii) Requirements

2.2.14 The court will set the requirements to be complied with during the supervision period. Whilst the offence for which a suspended sentence is imposed is generally likely to be more serious than one for which a community sentence is imposed, the imposition of the custodial sentence is a clear punishment and deterrent. In order to ensure that the overall terms of the sentence are commensurate with the seriousness of the offence, it is likely that the requirements to be undertaken during the supervision period would be less onerous than if a community sentence had been imposed. These requirements will need to ensure that they properly address those factors that are most likely to reduce the risk of re-offending.

Because of the very clear deterrent threat involved in a suspended sentence, requirements imposed as part of that sentence should generally be less onerous than those imposed as part of a community sentence. A court wishing to impose onerous or intensive requirements on an offender should reconsider its decision to suspend sentence and consider whether a community sentence might be more appropriate.

C. Breaches

2.2.15 The essence of a suspended sentence is to make it abundantly clear to an offender that failure to comply with the requirements of the order or commission of another offence will almost certainly result in a custodial sentence. Where an offender has breached any of the requirements without reasonable excuse for the first time, the responsible officer must either give a warning or initiate breach proceedings.³¹ Where there is a further breach within a twelve-month period, breach proceedings must be initiated.³²

2.2.16 Where proceedings are brought the court has several options, including extending the operational period. However, the presumption (which also applies where breach is by virtue of the commission of a further offence) is that the suspended prison sentence will be activated (either with its original custodial term or a lesser term) unless the court takes the view that this would, in all the circumstances, be unjust. In reaching that decision, the court may take into account both the extent to which the offender has complied with the requirements and the facts of the new offence.³³

2.2.17 Where a court considers that the sentence needs to be activated, it may activate it in full or with a reduced term. Again, the extent to which the requirements have been complied with will be very relevant to this decision.

2.2.18 If a court amends the order rather than activating the suspended prison sentence, it must either make the requirements more onerous, or extend the supervision or operational periods (provided that these remain within the limits defined by the Act).³⁴ In such cases, the court must state its reasons for not activating the prison sentence,³⁵ which could include the extent to which the offender has complied with requirements or the facts of the subsequent offence.

2.2.19 If an offender near the end of an operational period (having complied with the requirements imposed) commits another offence, it may be more appropriate to amend the order rather than activate it.

2.2.20 If a new offence committed is of a less serious nature than the offence for which the suspended sentence was passed, it may justify activating the sentence with a reduced term or amending the terms of the order.

2.2.21 It is expected that any activated suspended sentence will be consecutive to the sentence imposed for the new offence.

2.2.22 If the new offence is non-imprisonable, the sentencer should consider whether it is appropriate to activate the suspended sentence at all.

Where the court decides to amend a suspended sentence order rather than activate the custodial sentence, it should give serious consideration to extending the supervision or operational periods (within statutory limits) rather than making the requirements more onerous.

31 Criminal Justice Act 2003 schedule 12, para 4

32 *ibid* para 5

33 *ibid* para 8(4)

34 *ibid* section 189 (3) and (4)

35 *ibid* schedule 12, para. 8(3)

SECTION 2 PART 3 – INTERMITTENT CUSTODY

A. Statutory Provisions

2.3.1 Section 183 Criminal Justice Act 2003

- (1) A court may, when passing a sentence of imprisonment for a term complying with subsection (4)–
 - (a) specify the number of days that the offender must serve in prison under the sentence before being released on licence for the remainder of the term, and
 - (b) by order –
 - (i) specify periods during which the offender is to be released temporarily on licence before he has served that number of days in prison, and
 - (ii) require any licence to be granted subject to conditions requiring the offender's compliance during the licence periods with one or more requirements falling within section 182(1) and specified in the order.
- (2) In this Part “intermittent custody order” means an order under subsection (1)(b).
- (3) In this Chapter –

“licence period”, in relation to a term of imprisonment to which an intermittent custody order relates, means any period during which the offender is released on licence by virtue of subsection (1)(a) or (b)(i); “the number of custodial days”, in relation to a term of imprisonment to which an intermittent custody order relates, means the number of days specified under subsection (1)(a).
- (4) The term of the sentence –
 - (a) must be expressed in weeks,
 - (b) must be at least 28 weeks,
 - (c) must not be more than 51 weeks in respect of any one offence, and
 - (d) must not exceed the maximum term permitted for the offence.
- (5) The number of custodial days –
 - (a) must be at least 14, and
 - (b) in respect of any one offence, must not be more than 90.
- (6) A court may not exercise its powers under subsection (1) unless the offender has expressed his willingness to serve the custodial part of the proposed sentence intermittently, during the parts of the sentence that are not to be licence periods.
- (7) Where a court exercises its powers under subsection (1) in respect of two or more terms of imprisonment that are to be served consecutively –
 - (a) the aggregate length of the terms of imprisonment must not be more than 65 weeks, and
 - (b) the aggregate of the numbers of custodial days must not be more than 180.
- (8) The Secretary of State may by order require a court, in specifying licence periods under subsection (1)(b)(i), to specify only –
 - (a) periods of a prescribed duration,
 - (b) periods beginning or ending at prescribed times, or
 - (c) periods including, or not including, specified parts of the week.

- (9) An intermittent custody order which specifies two or more requirements may, in relation to any requirement, refer to compliance within such licence period or periods, or part of a licence period, as is specified in the order.

2.3.2 *Restrictions on power to make orders – Section 184 Criminal Justice Act 2003*

- (1) A court may not make an intermittent custody order unless it has been notified by the Secretary of State that arrangements for implementing such orders are available in the area proposed to be specified in the intermittent custody order and the notice has not been withdrawn.
- (2) The court may not make an intermittent custody order in respect of any offender unless –
- (a) it has consulted an officer of a local probation board,
 - (b) it has received from the Secretary of State notification that suitable prison accommodation is available for the offender during the custodial periods, and
 - (c) it appears to the court that the offender will have suitable accommodation available to him during the licence periods.
- (3) In this section “custodial period”, in relation to a sentence to which an intermittent custody order relates, means any part of the sentence that is not a licence period.

2.3.3 *Licence conditions – Section 185 Criminal Justice Act 2003*

- (1) Section 183(1)(b) has effect subject to section 218 and to the following provisions of Chapter 4 limiting the power to require the licence to contain particular requirements –
- (a) section 199(3) (unpaid work requirement),
 - (b) section 201(3) and (4) (activity requirement),
 - (c) section 202(4) and (5) (programme requirement), and
 - (d) section 203(2) (prohibited activity requirement).
- (2) Subsections (3) to (5) of section 182 have effect in relation to an intermittent custody order as they have effect in relation to a custody plus order.

2.3.4 *Further provisions – Section 186 Criminal Justice Act 2003*

- (1) Section 21 of the 1952 Act (expenses of conveyance to prison) does not apply in relation to the conveyance to prison at the end of any licence period of an offender to whom an intermittent custody order relates.
- (2) The Secretary of State may pay to any offender to whom an intermittent custody order relates the whole or part of any expenses incurred by the offender in travelling to and from prison during licence periods.
- (3) In section 49 of the 1952 Act (persons unlawfully at large) after subsection (4) there is inserted –
- “(4A) For the purposes of this section a person shall also be deemed to be unlawfully at large if, having been temporarily released in pursuance of an intermittent custody order made under section 183 of the Criminal Justice Act 2003, he remains at large at a time when, by reason of the expiry of the period for which he was temporarily released, he is liable to be detained in pursuance of his sentence.”

- (4) In section 23 of the Criminal Justice Act 1961 (c.39)(prison rules), in subsection (3) for “The days “there is substituted “Subject to subsection (3A), the days” and after subsection (3) there is inserted –
“(3A) In relation to a prisoner to whom an intermittent custody order under section 183 of the Criminal Justice Act 2003 relates, the only days to which subsection (3) applies are Christmas Day, Good Friday and any day which under the Banking and Financial Dealings Act 1971 is a bank holiday in England and Wales.”
- (5) In section 1 of the Prisoners (Return to Custody) Act 1995 (c.16) (remaining at large after temporary release) after subsection (1) there is inserted –
“(1A) A person who has been temporarily released in pursuance of an intermittent custody order made under section 183 of the Criminal Justice Act 2003 is guilty of an offence if, without reasonable excuse, he remains unlawfully at large at any time after becoming so at large by virtue of the expiry of the period for which he was temporarily released.”
- (6) In this section “the 1952 Act “ means the Prison Act 1952 (c.52).

2.3.5 *Revocation or amendment – Section 187 Criminal Justice Act 2003*

Schedule 10 (which contains provisions relating to the revocation or amendment of custody plus orders and the amendment of intermittent custody orders) shall have effect.

B. Imposing an Intermittent Custody Order

2.3.6 Intermittent custody must be used only for offences that have crossed the custodial threshold. It is an alternative to immediate full-time custody and so must meet all the criteria that apply to such a sentence, in particular the need to pass the custody threshold and the need to ensure that the sentence is for the shortest term commensurate with the seriousness of the offence.

2.3.7 The prison sentence is not continuous but is interspersed by periods when the offender is released on temporary licence in the community. A court may only impose intermittent custody if the offender consents to serving the custodial part of the sentence intermittently. The court must also make sure that the relevant resources are available in the local area and must consult the Probation Service³⁶ to confirm that the offender is an appropriate candidate for such a sentence.

2.3.8 This sentence is currently being piloted and this guidance will be reviewed and may need to be developed further in the light of the outcome.

(i) Circumstances when intermittent custody may be appropriate

2.3.9 Guidance supporting the pilots³⁷ states that intermittent custody is not intended to be used for sex offenders or those convicted of *serious* offences of either violence or burglary. There may be other offences which by their nature would make intermittent custody inappropriate and public safety should always be the paramount consideration.

³⁶ Criminal Justice Act 2003 section 184(2)

³⁷ IC Pilot Project “A Brief Guide to Intermittent Custody” 02/03/04 HMPS

2.3.10 The circumstances of the offender are likely to be the determining factor in deciding whether an intermittent custody order is appropriate. It is only appropriate where the custody threshold has been crossed and where suspending the custodial sentence or imposing a non-custodial sentence have been ruled out. Suitable candidates for weekend custody might include offenders who are: full-time carers; employed; or in education.

2.3.11 The full decision making process for imposition of custodial sentences under the new framework (including the custody threshold test) is set out in paragraphs 1.31–1.33 of the Seriousness guideline. For the purposes of intermittent custody the relevant steps are:

- (a) **has the custody threshold been passed?**
- (b) **if so, is it unavoidable that a custodial sentence be imposed?**
- (c) **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)**
- (d) **if not, can it be served intermittently?**
- (e) if not, impose a sentence which takes immediate effect for the term commensurate with the seriousness of the offence.

- Courts must be satisfied that a custodial sentence of less than 12 months is justified and that neither a community sentence nor a suspended sentence is appropriate before considering whether to make an intermittent custody order.**
- When imposing a custodial sentence of less than 12 months, the court should always consider whether it would be appropriate to sentence an offender to intermittent custody; primary considerations will be public safety, offender suitability and sentence availability.**
- Courts should strive to ensure that the intermittent custody provisions are applied in a way that limits discrimination and they should, in principle, be considered for all offenders.**

(ii) Licence requirements

2.3.12 As a primary objective of being able to serve a custodial sentence intermittently is to enable offenders to continue to fulfil existing obligations in the community, and since the time spent in custody is utilised extensively for activities, experience has so far shown that additional, similar, requirements to be completed whilst on licence are not practical. However, requirements such as curfews, prohibited activity and exclusion requirements might be appropriate in a particular case.

The practical workings of an intermittent custody sentence will effectively rule out the use of some of the longer or more intensive community requirements. Requirements such as curfews, prohibited activity and exclusion requirements might be appropriate in a particular case.

(iii) Sentence length

2.3.13 The demands made on the offender by this sentence will generally be considerably greater than for a custodial sentence to be served immediately in full. The disruptive effect on family life, the psychological impact of going in and out of custody and the responsibility on the offender to travel to and from the custodial establishment on many occasions all make the sentence more onerous.

Once a court has decided that an offender should be sent to prison and has determined the length of the sentence, it should reduce the overall length of the sentence because it is to be served intermittently.

ANNEX A

Time Spent on Remand – Sentencing Advisory Panel’s Advice

The Act makes provision for a sentencer to give credit for time spent on remand in custody where a custodial sentence is passed.³⁸ It also empowers the court to have regard to time spent on remand in custody when determining the restrictions on liberty to be imposed by a community order or youth community order.³⁹ Where an offender has spent several weeks in custody, this may affect the nature of the sentence that is passed. For example, where the court decides that a custodial sentence is justified some sentencers may decide to pass a community sentence instead, on the basis that the offender has already completed the equivalent of a punitive element in a sentence. The Panel takes the view that, given the changes in the content of the second part of a custodial sentence, in such cases it will be more appropriate to pass a custodial sentence knowing that licence requirements will be imposed on release from custody (which may be immediate). Recommendations made by the court at the point of sentence will then be of particular importance in influencing the content of the licence. This will help to ensure that the record clearly shows the assessment of seriousness of the offending behaviour.

Whereas the Act clearly states that time spent on remand is to be regarded as part of a custodial sentence unless the Court considers it unjust,⁴⁰ it states that sentencers passing a community sentence *may* have regard to time spent on remand, but no further information is given on how this discretion should be exercised. The Panel recognises that giving credit for time spent on remand is likely to be easier to apply in relation to punitive requirements rather than the rehabilitative elements of a community sentence. For example, reducing the number of unpaid work hours could be fairly easy, whereas reducing the length of a rehabilitation programme might not be appropriate as it could undermine its effectiveness. Where an offender has been kept on remand, one could take the view that this action was justified by the bail provisions and that the sentencer should not, therefore, feel obliged to adjust the terms of the community sentence. However, in principle, the Panel recommends that the court should seek to give credit for time spent on remand in all cases and should explain its reasons for not doing so when it considers either that this is not justified, would not be practical, or would not be in the best interests of the offender.

The court should seek to give credit for time spent on remand in all cases. It should make clear, when announcing sentence, whether or not credit for time on remand has been given and should explain its reasons for not giving credit when it considers either that this is not justified, would not be practical, or would not be in the best interests of the offender.

³⁸ Criminal Justice Act 2003 section 240.

³⁹ *ibid* section 149.

⁴⁰ *ibid* section 240 (which will, at a future date, replace Criminal Justice Act 1967, section 67, by which such period is now deducted automatically).

Where, following a period of time spent in custody on remand, the court decides that a custodial sentence is justified then, given the changes in the content of the second part of a custodial sentence, the court should pass a custodial sentence in the knowledge that licence requirements will be imposed on release from custody. Recommendations made by the court at the point of sentence will be of particular importance in influencing the content of the licence.⁴¹

⁴¹ This recommendation only applies to sentences of 12 months and above pending the implementation of 'custody plus'.

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**DRAFT GUIDELINE:
COMMUNITY AND CUSTODIAL
SENTENCES**

Community Orders

Introduction

1. Community orders 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.
2. A community order must not be imposed unless the offence is 'serious enough to warrant such a sentence'.¹
 - 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;
 - where an offender is being sentenced for a non-imprisonable offence, the court may not make a community order.²
3. Community orders consist of one or more of the following requirements:
 - rehabilitation activity requirement;
 - unpaid work requirement;
 - programme requirement;
 - prohibited activity requirement;
 - curfew requirement;
 - exclusion requirement;
 - residence requirement;
 - foreign travel prohibition requirement;³
 - mental health treatment requirement;
 - drug rehabilitation requirement;
 - alcohol treatment requirement;
 - alcohol abstinence and monitoring requirement (in pilot areas);⁴
 - in a case where the offender is aged under 25, attendance centre requirement (where available).
4. Where a court makes a community order it must include at least one requirement imposed for the purpose of punishment and/or impose a fine in addition to the community order.⁵ Which requirements amount to punishment is a matter for the court to decide in each case.
5. The court must ensure that the restriction on the offender's liberty is commensurate with the seriousness of the offence and that the requirements are the most suitable for the offender⁶. Where two or more requirements are included, they must be compatible with each other⁷.

¹ Criminal Justice Act 2003, s.148

² *ibid.*, s.150A as amended by the Criminal Justice and Immigration Act 2008, s.11(1)

³ *ibid.*, 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

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 Criminal Justice Act 2003, s.148(2)

⁷ *ibid.*, s.177(6)

Community order ranges

6. 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 there 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. The examples focus on punishment in the community; other requirements of a rehabilitative nature may be more appropriate in some cases.

NOTE: *To ensure order is punitive one requirement MUST be imposed for the purpose of punishment and/or a fine imposed in addition to the community order.

Comment [C1]: New wording

Comment [C2]: Additional wording

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, 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) • 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 punitive requirement, suggested fine levels are indicated below:		
BAND A FINE	BAND B FINE	BAND C FINE

7. The particular requirements imposed within the range must be suitable for the individual offender and will be influenced by a wide range of factors including the stated purpose(s) of the sentence, the risk of re-offending, the ability of the offender to comply, and the availability of the requirements in the local area. Sentencers must ensure that the sentence strikes the right balance between proportionality and suitability. The resulting restriction on liberty must be a proportionate response to the offence that was committed.

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 this should be provided to the National Probation Service in written form⁸ and, if the sentence is to be adjourned to a future date, 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.⁹ 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.

⁸ This may be in electronic form

⁹ Criminal Justice Act 2003, ss.177(3) and 177(4)

Custodial Sentences

The custody threshold

1. 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 Guidance regarding this threshold and the approach to the imposition of custodial sentences is set out in the Sentencing Guidelines Council's definitive guideline *Overarching Principles: Seriousness*, published 16 December 2004.
2. The guideline emphasises that:
 - 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 (by way of punishment) while addressing the rehabilitation of the offender to prevent future crime;
 - however, when dealing with either way offences, where the offending is so serious that the 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 sentence¹¹ notwithstanding that 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);
 - the approach to the imposition of a custodial sentence should be as follows:
 - (a) Has the custody threshold been passed?
 - (b) If so, is it unavoidable that a custodial sentence be imposed?
 - (c) 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.)
 - (d) If not, impose a sentence which takes immediate effect for the shortest term commensurate with the seriousness of the offence.¹²

Pre-sentence report

3. 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 unnecessary¹³. **Magistrates: Consult your legal adviser before deciding to sentence to custody without a pre-sentence report.**

¹⁰ Criminal Justice Act 2003, s.152(2)

¹¹ Powers of Criminal Courts Sentencing Act 2000, s.3

¹² *ibid.*, s.153(2)

¹³ Criminal Justice Act 2003 ss156(3) and 156(4)

Suspended sentences

1. The following considerations are paramount in considering whether to suspend a custodial sentence;

- i) Has the custody threshold been passed? If not, a suspended sentence **cannot** be passed.
- ii) If so, is it unavoidable that a custodial sentence be imposed?
- iii) 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.)

Full consideration should be given to the circumstances of the offender. Are there circumstances which would prevent activation of the sentence in the event of a breach? Particular considerations are whether the offender is a primary carer or has mental health or substance misuse issues. In such cases, the Court should 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.

Comment [C3]: New wording

If a custodial sentence (suspended) is appropriate the following must be noted:

2. 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**;

Comment [C4]: Wording in MCSG but given prominence

- 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

3. The requirement to obtain a pre-sentence report at paragraph X above, applies to suspended sentence orders.

4. If the court imposes a term of imprisonment between 14 days and 2 years (6 months in magistrates court),¹⁴ it may suspend the sentence for between 6 months and 2 years ('operational period').¹⁵

Comment [C5]: Amended from MCSG to be applicable for all courts

5. 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 months¹⁶.

6. When the court suspends a sentence, it may impose one or more requirements for the offender to undertake in the community.¹⁷ The requirements are identical to those available for community orders on page X.

7. A custodial sentence that is suspended should be for the same term that would have applied if the sentence was to be served immediately;

8. 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;

9. When the court imposes a suspended sentence with community requirements, it may also order that the sentence be reviewed periodically at a review hearing.¹⁸

¹⁴ *ibid.*, s.189(1) as amended by art.2(2)(a) of the Criminal Justice Act 2003 (Sentencing) (Transitory Provisions) Order 2005

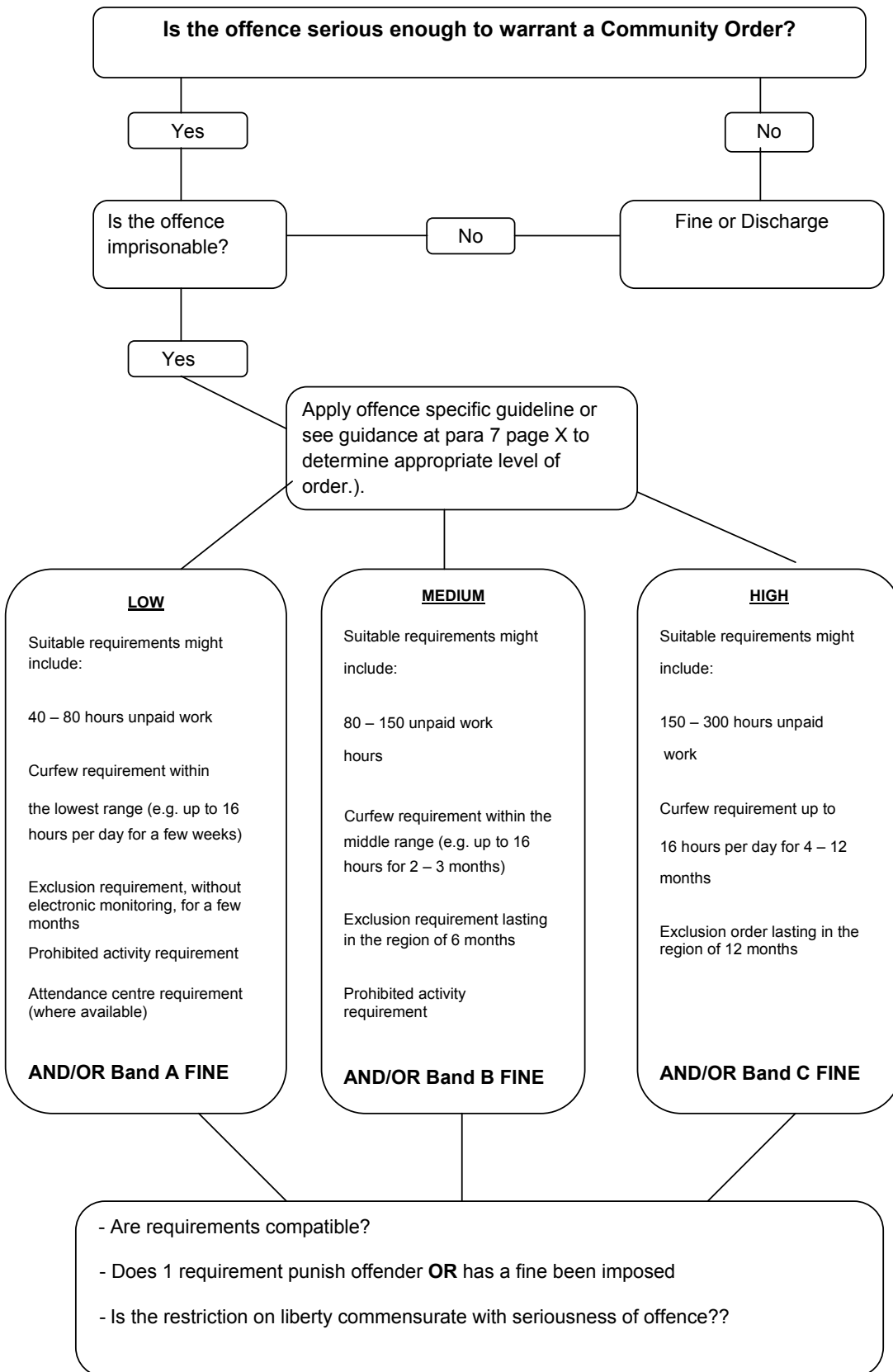
¹⁵ *ibid.*, s.189(3)

¹⁶ *ibid.*, s.189(2) as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, s.68(2)

¹⁷ *ibid.*, s.189(1A) as amended by the Legal Aid, Sentencing and Punishment of Offenders Act 2012, s.68(1)

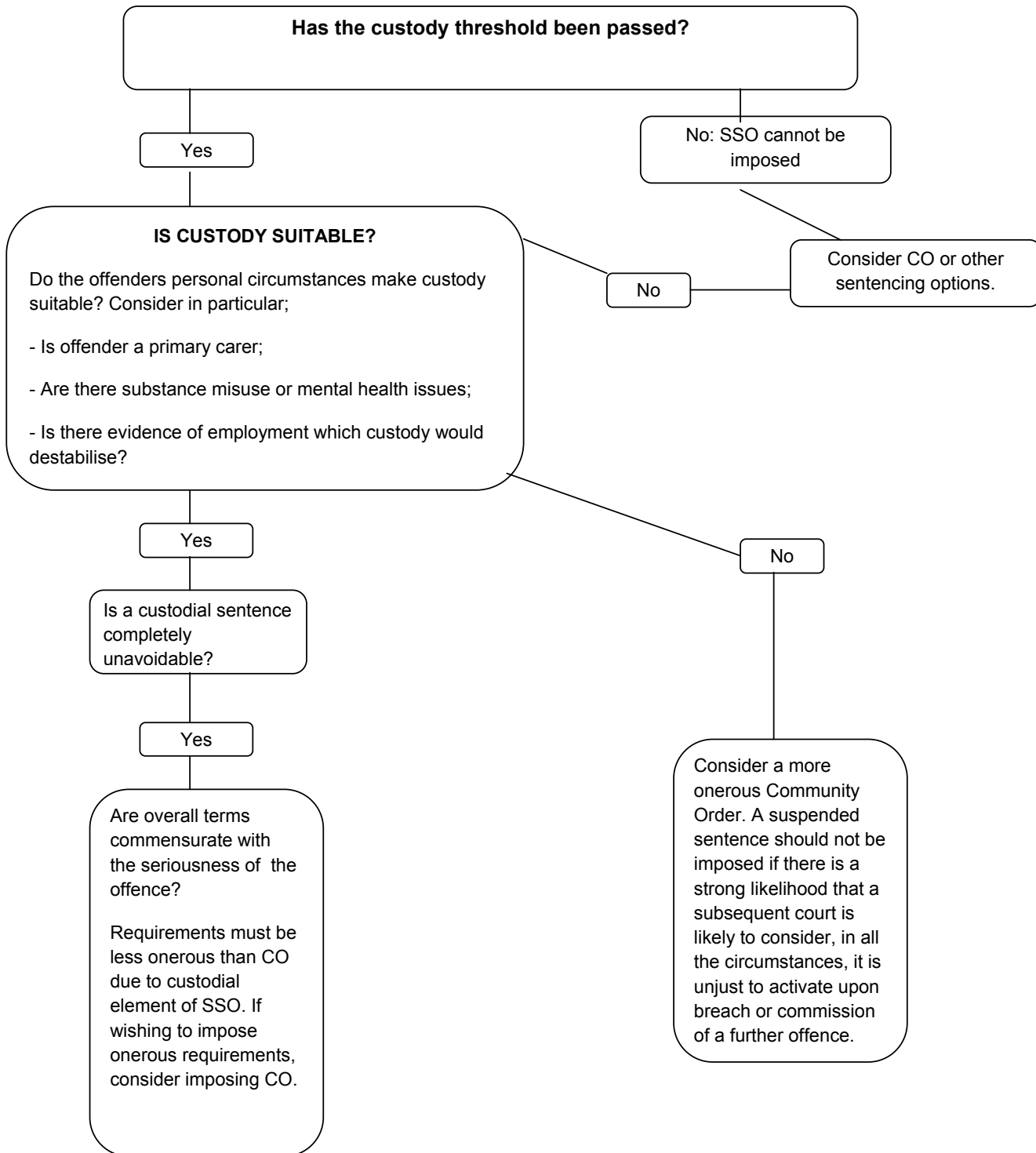
¹⁸ *ibid.*, s.191;

IMPOSING A COMMUNITY ORDER – FLOWCHART



IMPOSING A SUSPENDED SENTENCE ORDER - FLOWCHART

IMPOSING A SUSPENDED SENTENCE – FLOWCHART



Sentencing Council

Sentencing Council meeting: 23 October 2015
Paper number: SC(15)OCT04 – 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 September 2015, the Council agreed, subject to two caveats, to consult on the draft guilty plea guideline, with emphasis in the consultation paper on presenting the proposals in the context of the changes and initiatives in the criminal justice system and explaining the wider system benefits associated with the guideline.

1.2 It was also agreed that further work should 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. This will be presented to the Council in November, as it should be seen as part of a package with the consultation document.

1.3 The last time the Council considered the content and format of the guideline in any detail was at the March 2015 meeting. Changes were subsequently made to aid clarity and a small research exercise was carried out in March 2015 with sentencers to test how the guideline would be construed. The version the Council is asked to consider today takes into account the results of that research. Some of these issues were covered in the paper to the May Council meeting, but were not discussed by Council.

2 RECOMMENDATION

2.1 The Council is asked to consider the draft guideline at **Annex A** and finalise the version of the guideline for consultation. The consultation document and revised, narrative resource assessment can then be presented to the November meeting to be signed off for consultation from February to April 2016.

2.2 The Council is asked to consider the results of the research exercise which are provided at **Annex B** and to consider the issues arising from this. (see paragraphs 3.2 – 3.5)

2.3 The Council is asked to consider the draft guideline in its entirety, but in particular the following:

- amendments to allow discretion in some youth cases D1 and D2 (see paragraphs 3.6 – 3.8);
- an exception at F2 which allows an additional seven days for plea where the initial details of the prosecution case (IDPC) is not served before the first hearing (see paragraphs 3.9 – 3.12);
- an exception at F3 to allow for discretion in cases where cross examination is pre-recorded (see paragraphs 3.13 – 3.14); and
- additions to the offences to which an appropriate custodial sentence may apply at F8 and F9 (see paragraphs 3.15 – 3.16).

3 CONSIDERATION

Clarity of the guideline (amendments made in March-May 2015)

3.1 Following the March Council meeting Katharine Rainsford suggested amendments to the guideline to make it clearer and easier to read and understand. The amended version was ‘road tested’ with sentencers and some further amendments were made as a result. The various amendments are summarised below:

- The extract from the Criminal Justice Act 2003 in section A has been slightly reformatted to make it clearer.
- Section B of the guideline has been re-named ‘Key principles’, and has been slightly reworded.
- At section C the word ‘stage’ has replaced the word ‘step’ to avoid any possible suggestion that these equate to steps in an offence specific guideline.
- Section D has been altered to move the contents of the initial paragraph to a footnote. Paragraphs D1 and D2 have been re-worded.
- In E2 the words ‘additional’ and ‘overall’ have been italicised to give them emphasis. E3 has been re-worded.

- F1 has been re-worded to make it clear that all three conditions must be present for the exception to apply.
- F4, F5, F6 and F7 have been reworded to make them clearer.
- Minor changes have been made to section G; splitting a paragraph into two and removing a footnote.

Question 1: Does the Council agree with the proposed drafting changes?

Further issues raised by the road testing exercise

3.2 A number of judges in the research voiced concerns about the reference to suspended sentences at E1. The Council has previously approved the inclusion of ‘reducing a custodial sentence to a suspended sentence order’ as an example of how a guilty plea may be taken into account by imposing one type of sentence rather than another. In such cases the guideline states that there should be no further reduction for the guilty plea. Judges in the research exercise said that it was normal practice to both suspend a sentence and reduce the term in response to a guilty plea. At previous Council discussions on this point members agreed that in most cases the decision to suspend was made for reasons other than the plea (such as the offender having caring responsibilities) and the guilty plea reduction was applied by reducing the term. The option to use the guilty plea to change an immediate custodial sentence to a suspended sentence was therefore included in the guideline as an example of an alternative to reducing the term. In the light of this, the concerns raised by the judges in the research are surprising, but it is significant that a number of judges commented on this.

Question 2: Does the Council wish to amend or clarify the wording at E1?

3.3 Some of the participants raised the question of what mechanism would be used for a defendant to satisfy the first condition at F1:

The offender has stated to the court and/or the prosecutor what he knows he has done at or before the first stage of the proceedings

Some alternative phrases were suggested by participants, but these do not provide a much clearer indication of the mechanism that should be used. The Council may feel that any attempt to specify the means by which such admissions should be made are likely to cause more problems than they solve and that the use of the simple English phrase of ‘what he knows he has done’ is clear and unambiguous.

Question 3: Does the Council wish to amend the wording at F1?

3.4 The results of the road testing indicate that sentencers are likely to interpret the exception at F4 (which in the version tested was F2) more widely than the Council had intended. Members will recall that this exception was intended to give judges in very complex cases the flexibility to incentivise a guilty plea after the first stage. The Council had envisaged this applying chiefly to serious fraud cases such as those commonly tried at Southwark Crown Court.

3.5 Interpretations by research participants of what is meant by 'a very substantial amount of court time' vary but start as low as four weeks. If the intention is for only a very small number of cases to be caught by this exception, then an alternative form of words is needed. Alternative suggestions include:

if the trial was likely to have taken in excess of eight weeks and/or would have involved a **very** substantial number of witnesses having to give evidence.

in cases of serious or complex fraud or if the trial was likely to have involved a **very** substantial number of witnesses having to give evidence.

Question 4: To which cases and in what circumstances should the exception at F4 apply?

Parity between youths and adults

3.6 At the March meeting of the Council it was pointed out that a youth charged with an indictable only offence which is treated as a grave crime would be required to plead at the allocation hearing in order to obtain the maximum reduction, whereas an adult charged with the same offence would not be required to plead until the first hearing in the Crown Court.

3.7 The proposed solution to this potential inequality or unfairness is to give the court the discretion to treat the first hearing at the Crown Court as the first stage of proceedings for youths in appropriate cases. The proposed wording at D1 (with footnotes) is as follows:

- (e) For offences sent or committed to the Crown Court as grave crimes – the allocation hearing at the youth¹ court **unless** it would be in the interests of justice to treat the first hearing at the Crown Court as the first stage²;

And at D2:

- (e) 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 at D1(e) above applies in which case until the time expires for the service of a defence statement;

¹ For youths jointly charged with an adult the allocation hearing may be in the adult magistrates' court.

² If, taking into account all the circumstances of the case, the Crown Court considers that for reasons of parity with an adult (whether or not there is a co-accused adult) it would be in the interests of justice to do so, it can treat the first hearing at the Crown Court as the first stage of the proceedings.

3.8 The flowchart at page A8 has also been amended accordingly.

Question 4: Does the Council consider that the proposed wording on youths adequately deals with the concerns raised at the March meeting?

Suggested additions to the guideline

3.9 The guideline is predicated on the assumption that in the vast majority of cases a defendant will have all the information he needs to plead at the first stage of proceedings. Part 8 of the Criminal Procedure Rules sets out the requirements for providing the initial details of the prosecution case (IDPC):

- 8.2.**—(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.

3.10 In situations where the prosecution fails to serve the IDPC in accordance with the rules, it is submitted that a defendant should not be disadvantaged in terms of the available guilty plea reduction. This is particularly likely to be an issue when a defendant is produced in custody. The additional exception at F2 is designed to deal with this situation.

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

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

3.11 As drafted, the exception does not apply to summary offences. The rationale for this is that potential delays in service of IDPC are likely to particularly affect defendants 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.

3.12 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 is engaged.

Question 5: Does the Council agree to include the exception at F2 in the draft guideline? If so, should this exception apply in section G (murder)?

3.13 An exception has been added at F3 to deal with cases where cross-examination of a vulnerable witness is pre-recorded:

F3. Pre-recorded cross-examination

Where cross-examination has taken place pursuant to section 28 of the Youth Justice and Criminal Evidence Act 1999 a reduction **up to** but not exceeding the maximum of one-third **may** be made for a plea indicated after the section 28 hearing if it would benefit victims or witnesses in the case to do so.

3.14 Currently, for the purposes of legal aid, in section 28 cases the trial is deemed to have begun when the cross-examination takes place and, if that interpretation is applied to the guideline, any plea entered after that point would receive a maximum reduction of one-tenth in accordance with D3. In such cases there is, in effect, an additional stage in proceedings: that between the s28 hearing and the remainder of the trial. It will frequently be the case that the cross-examination will have taken place before all of the evidence is available, in particular forensic evidence. A plea shortly after the hearing has taken place would therefore still result in savings across the criminal justice system. Trials are frequently fixed as much as a year after the cross-examination (they are fixed because they involve vulnerable witnesses), so a plea after the cross-examination could benefit both the witness who has been recorded (by providing an outcome) and other witnesses still scheduled to give evidence. On the other hand, it is important that any exception does not undermine the overall principles of the guideline. The proposed factor allows a judge discretion to award a higher reduction if it would benefit victims or witnesses in the case to do so, but as worded would not allow a higher reduction on the basis of savings in terms of time and resources.

Question 6: Does the Council agree to include the exception as drafted at F2 in the draft guideline? If so, should this exception apply in section G (murder)?

3.15 The exceptions at F8 and F9 relating to minimum sentences have been amended to include the following offences:

- section 139 Criminal Justice Act 1988 and section 1 Prevention of Crime Act 1953: offences of having article with blade or point or offensive weapon in public place where the offender has a relevant previous conviction;
- sections 139AA Criminal Justice Act 1988: offence of threatening with article with blade or point in public or on school premises or offensive weapon on school premises.

3.16 In view of the number of offences to which an 'appropriate custodial sentence' can now apply, the description of the offences has been simplified.

Question 7: Does the Council agree to the revisions to F8 and F9 in the draft guideline?

3.17 It is hoped that the content of the draft guideline for consultation can be agreed at this meeting which will allow a final consideration of the guideline, consultation document, resource assessment and communications handling at the November Council meeting, with a view to launching the consultation in February 2016.

Question 8: Looking at the content overall, is the Council content to consult on this version of the guideline?

4 IMPACT

4.1 The resource impact of the guideline has been discussed by the Council at previous meetings. A further consideration of this issue will take place next month.

5 RISKS

5.1 The Council will be aware that the guilty plea guideline is likely to be controversial and may attract criticism. The time between signing off the consultation paper at next month's Council meeting and the consultation launch in February 2016 has been allowed to enable stakeholder engagement and careful media handling.

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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 defendant'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). This 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:

- (a) For summary offences - up to and including the first hearing at the magistrates' court;
- (b) For either way offences - up to and including the allocation hearing at the magistrates' court;
- (c) 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:

- (d) For offences dealt with in the youth court – the first hearing at the youth court;
- (e) 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 stage⁴;
- (f) For offences sent to the Crown Court under any other provision⁵ – 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:

- (a) For offences dealt with in magistrates' courts – up to 14 days after the first hearing;
- (b) For either way offences sent to the Crown Court for trial – up to and including the first hearing at the Crown Court;
- (c) For indictable only offences - until the time expires for the service of a defence statement.

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

- (d) For offences dealt with in the youth court – up to 14 days after the first hearing;
- (e) 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 at D1(e) above applies in which case until the time expires for the service of a defence statement;
- (f) For offences sent to the Crown Court under any other provision – until the time expires for the service of a defence statement.

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.

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.

In such cases 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 37.8) 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 If, taking into account all the circumstances of the case, the Crown Court considers that for reasons of parity with an adult (whether or not there is a co-accused adult) it would be in the interests of justice to do so, it can treat the first hearing at the Crown Court as the first stage of the proceedings.

⁵ 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. The offender has stated to the court and/or the prosecutor what he knows he has done at or before the first stage of the proceedings (see D1 above); 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 an offender charged with an either way or indictable only offence who has requested the IDPC, is not served with those details at or before the beginning of the day of the first hearing **and** he indicates a guilty plea to the court and the prosecutor within seven days of service of the IDPC, the plea should be taken as having been indicated at the first stage of proceedings.

F3. Pre-recorded cross-examination

Where cross-examination has taken place pursuant to section 28 of the Youth Justice and Criminal Evidence Act 1999 a reduction **up to** but not exceeding the maximum of one-third **may** be made for a plea indicated after the section 28 hearing if it would benefit victims or witnesses in the case to do so.

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. Newton Hearings and special reasons hearings

In circumstances where an offender's version of events is rejected at a Newton Hearing⁶ or special reasons hearing⁷, 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.

⁶ 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.

⁷ A special reason hearing occurs when an offender is convicted of an offence carrying a mandatory 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 disqualification. This may involve calling witnesses to give evidence.

F6. Offender convicted of a lesser or different offence

If an offender is convicted of a lesser or different offence to 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.

F7. 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. 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.

F8. 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.

F9. 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.

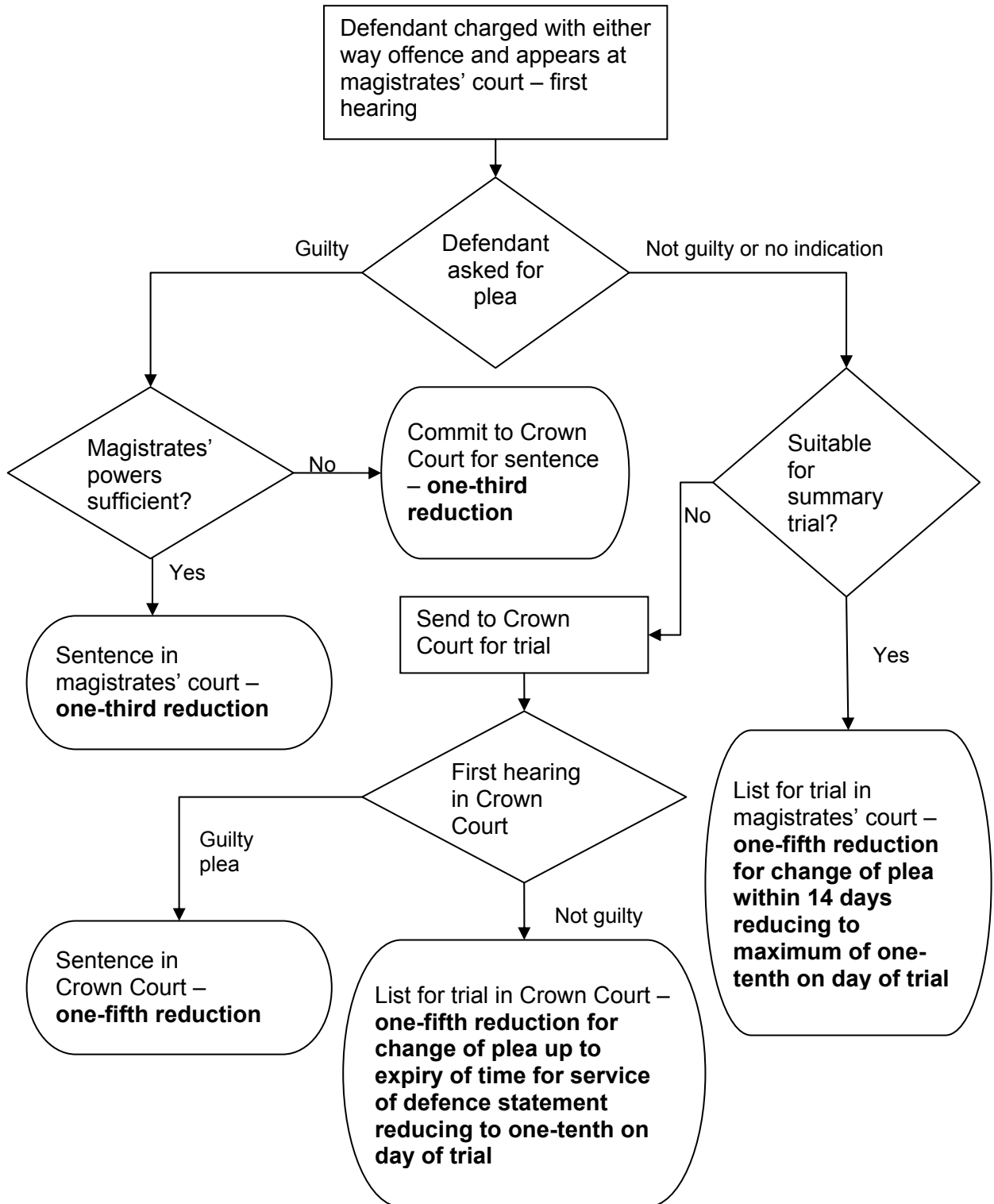
In other circumstances,

- 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 and Newton hearings outlined at F1 and F4 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)

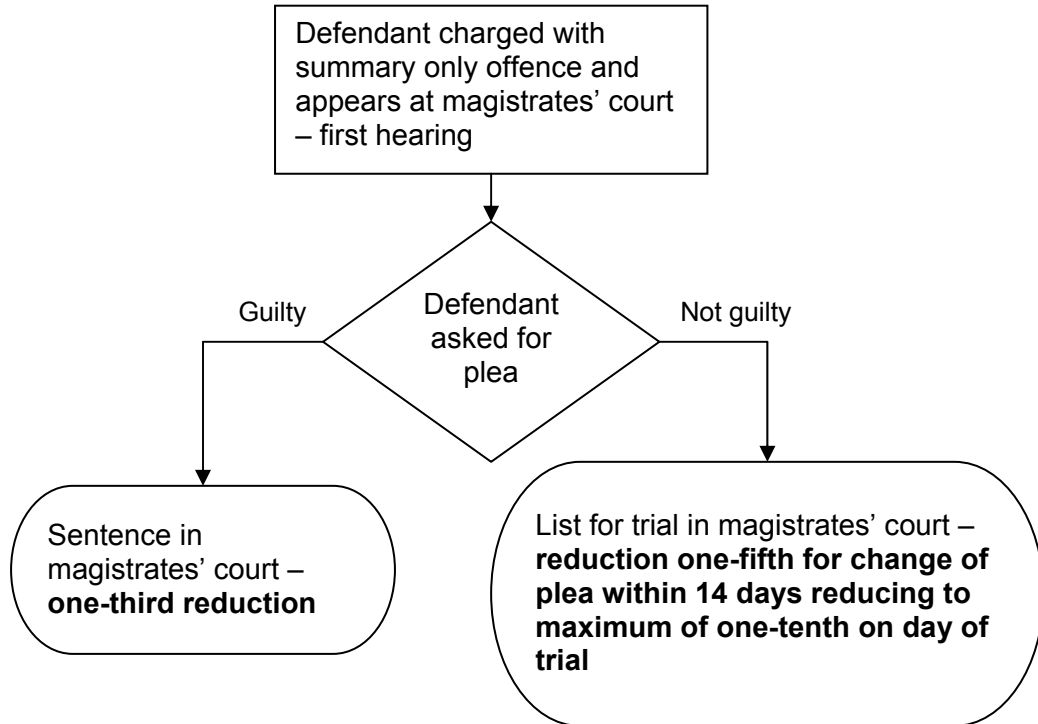


For illustrative purposes only please refer to the guideline for detailed guidance

Appendix 2

Flowchart illustrating reductions for summary only offences

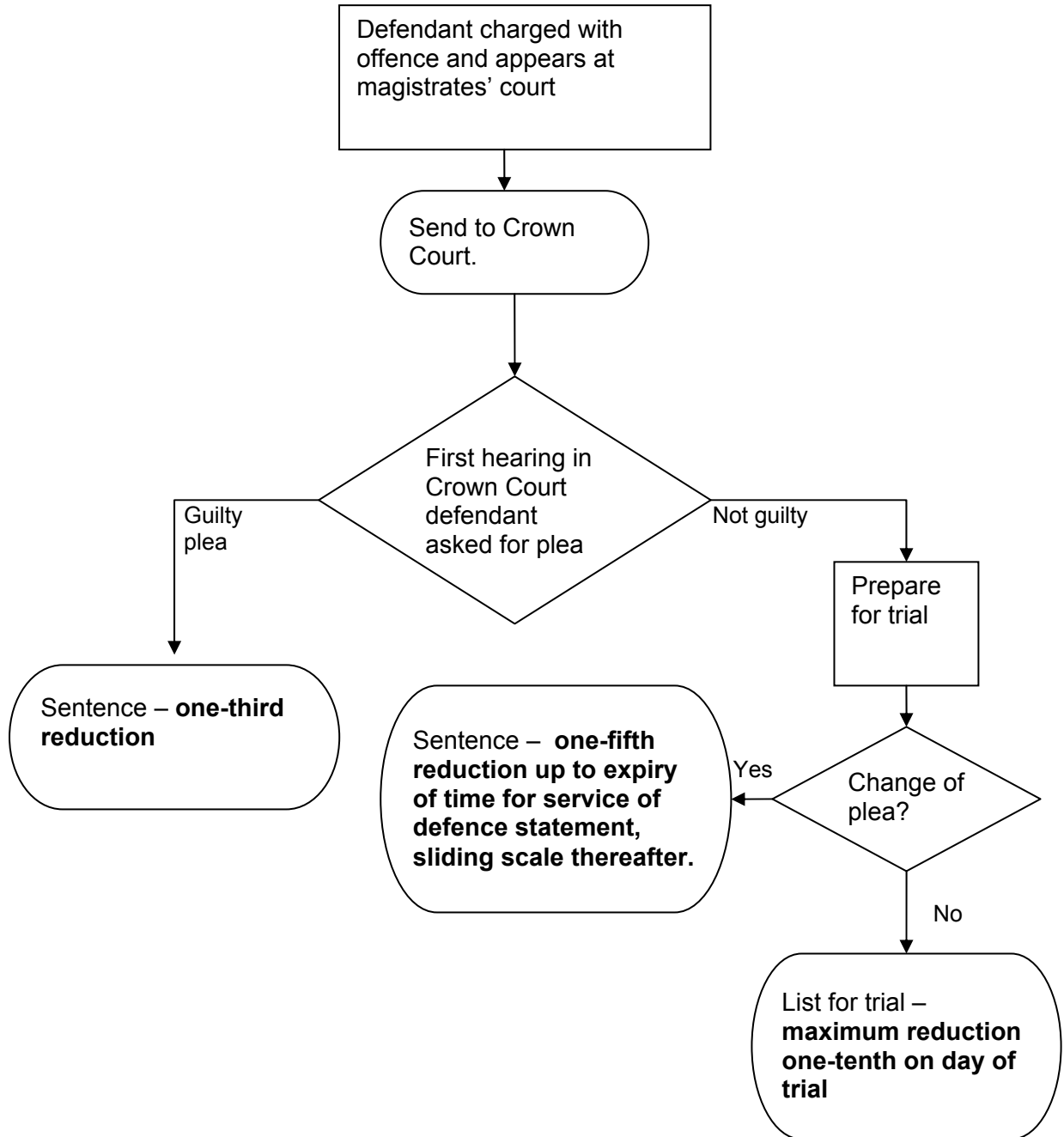
(offences that can be tried only in a magistrates' court)



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

Appendix 3

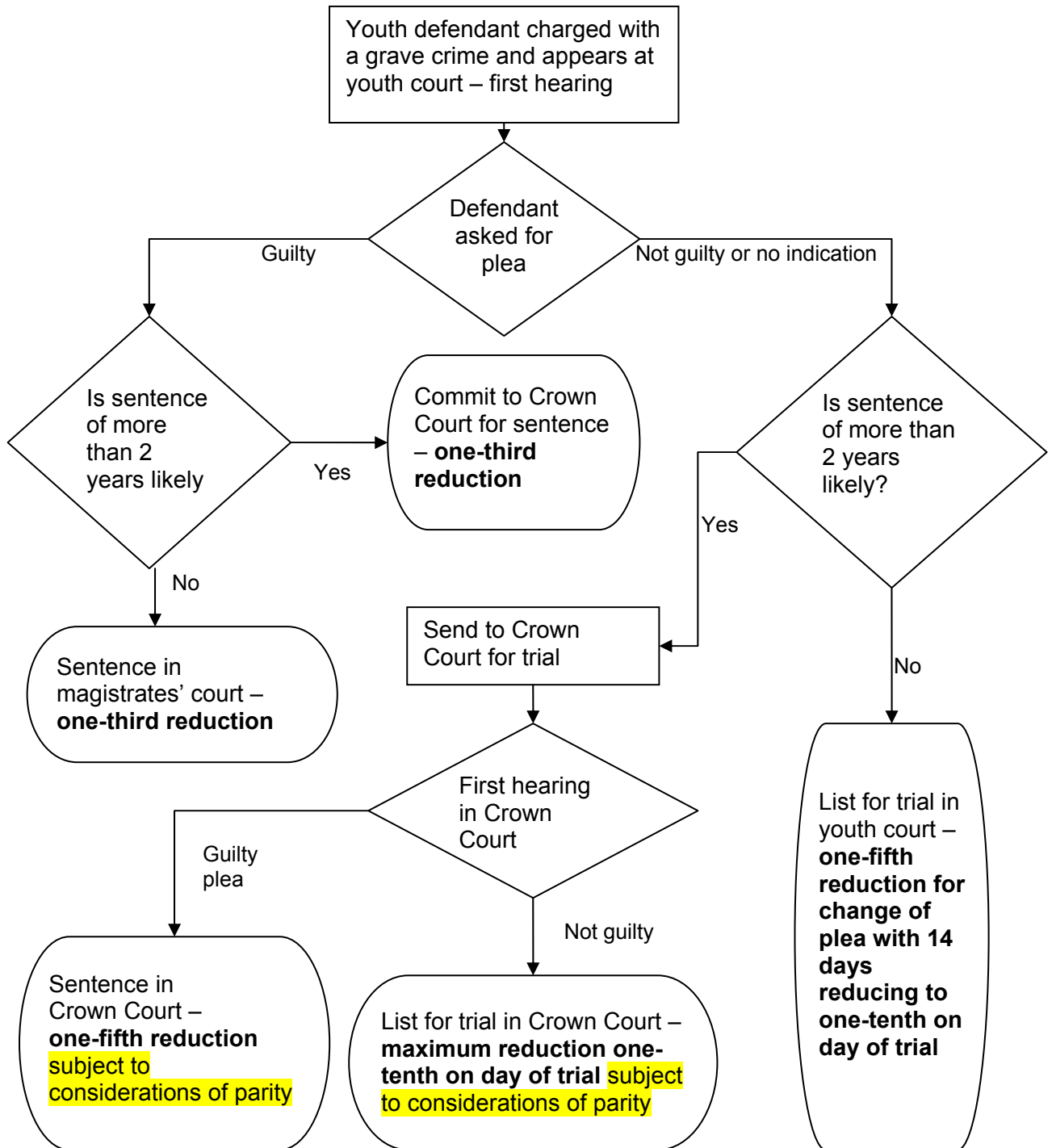
Flowchart illustrating reductions for indictable only offences (excluding murder)
(offences that can be tried only in the Crown Court)



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

Appendix 4

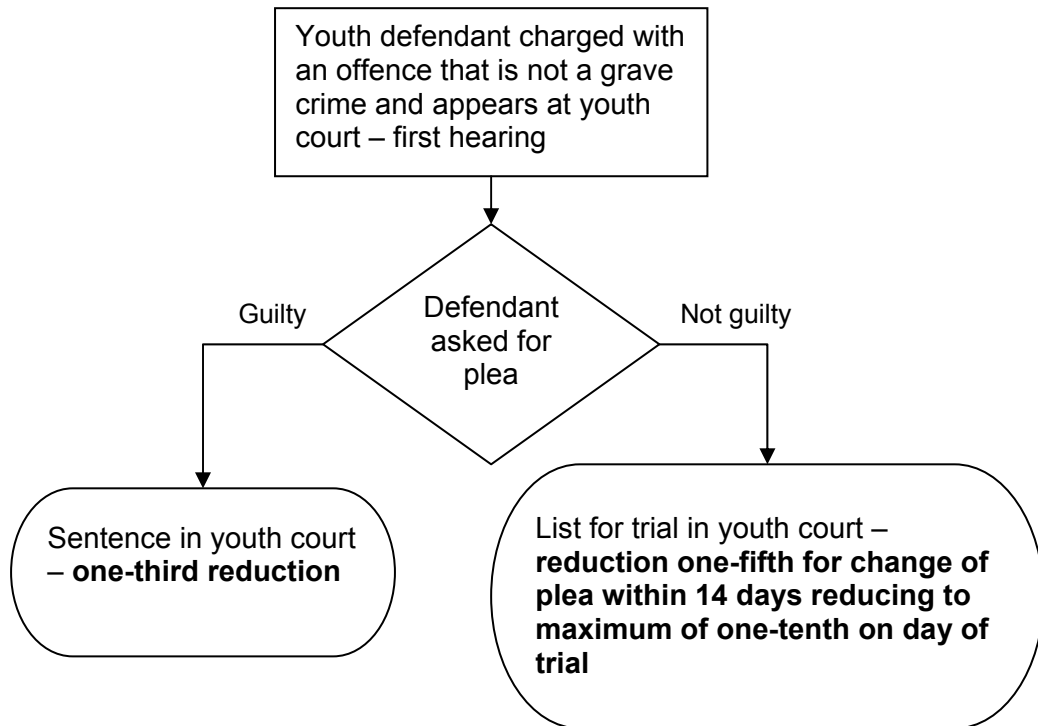
Flowchart illustrating reductions for offenders aged under 18 years
 (offences that can be tried in a youth court or the Crown Court)



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

Appendix 5

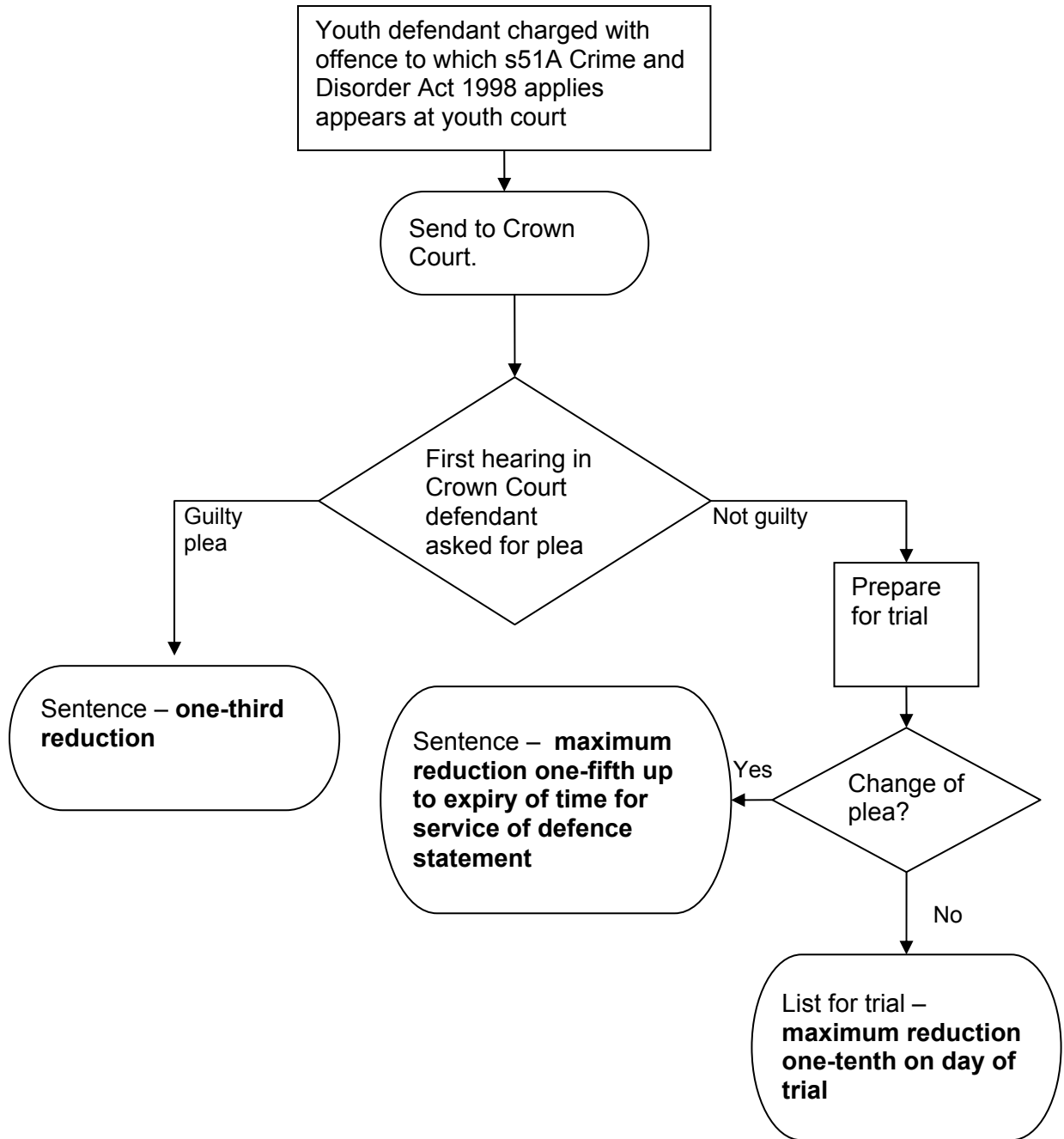
**Flowchart illustrating reductions for offenders aged under 18 years
- offences that must be dealt with in the Youth Court**



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

Appendix 6

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



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

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Notes on research to explore sentencers' understanding of the draft sentence reduction for a guilty plea guideline

Background and aims

This research feeds into the final stages of development of the draft sentence reduction for a guilty plea guideline. It aimed to examine, in detail, how sentencers construe the guideline, in order to ensure that the final draft is clear, easy to understand and straightforward to apply across courts (where there are different processes and different cultures regarding guilty pleas and the reductions given).

Method

The research consisted of twenty in-depth interviews in total, held with 10 Crown Court judges, 3 recorders, 1 district judge and 6 magistrates. Participants were spread across courts and across the country. The discussion focused exclusively on sentencers' understanding of the text (e.g. 'Is anything unclear or ambiguous in this section?' 'Please can you summarise this section in your own words') and some guilty plea reduction scenarios were also tested.

This summary covers only the more substantive points that sentencers made, so not all the sections of the guideline are referred to.

Findings are preliminary only at this stage; analysis and quality assurance is continuing. The sample size is small and findings should therefore be interpreted with caution, since they are the views of an interested few, which should not be taken as representative of all sentencers. The research exercise also required sentencers' to scrutinise the guideline in a way that probably would not mirror real life. Therefore when we say, for example, that sentencers gave the expected reduction in our scenarios, this serves our current purpose in inferring that the guideline is clear. However, it may not give a very good indication of how the judges and magistrates would act had they not been directed to read parts of the guideline very closely.

Summary of findings

Section B – Key principles

1. Section B was generally clear to sentencers. The only ambiguity was that one judge and one magistrate both said they were not clear what 'greater benefits' are (in bullet point d) over and above bullet points a. to c., so they misconstrued this as meaning *other* benefits not mentioned above, rather than as intended (benefits are greater if the defendant pleads earlier).
2. Almost all of the judges spontaneously spotted the change regarding overwhelming evidence in Section B, although some of the magistrates had to be prompted to notice this. All the sentencers gave the expected 1/3 reduction in a scenario where the defendants were caught red handed or caught on CCTV i.e. they did not reduce the credit because of overwhelming evidence, further suggesting this point was understood.

Section C – The approach

3. Section C was also generally seen as clear. However, a couple of the judges noted that there is no guidance as to where totality fits (they said they would consider this before guilty plea, so the reduction is from the overall sentence). Several also seemed to think that the 'steps' were meant to correspond to those in the offence-specific guidelines, and so they were confused that Step 1 in the guilty plea guideline encompasses multiple steps in, say, the drug offences guideline.
4. Linked to the misunderstanding that Step 1 maps directly onto Step 1 in other guidelines (encompassing culpability, harm and starting points and ranges but *not* aggravating and mitigating factors), a couple of the judges and one magistrate felt that Section C contradicted the key principles, because these state that consideration of mitigation *precedes* reduction for plea, whereas they thought C inferred that aggravation and mitigation are, by default, part of 'Step 5 – follow the remainder of the decision-making process' i.e. to be considered *following* reduction for a guilty plea.

Section D – Determining the level of reduction

5. Judges noticed the changes to the percentage reductions awarded at different stages in the proceedings as outlined in Section D, although for a small minority this was only after prompting. A number of the magistrates did not notice the changes until prompted, but this was perhaps not surprising given that their knowledge of reductions for guilty plea beyond the standard 1/3 at the first hearing, and 1/10 on the day of trial, seemed to be generally low.
6. The judges had no difficulties in understanding Section D, but some judges were resistant to treating either way and indictable only cases differently, given that arrive in the Crown Court through the same mechanism, and, in some courts, very quickly after the allocation hearing, a period in which no additional work has been carried out by the CPS. Fairness was also seen as a consideration in this respect: one judge pointed out that because something is an 'either way' offence it is not necessarily less serious than an indictable only, using the example of a very serious theft compared to a low key robbery, implying he did not think it was necessarily fair that the latter would be given a longer window for full credit than the former.
7. There was also some general resistance to denying the either way cases full credit at their first appearance in the Crown Court, because this tends to focus the defendant's mind on the seriousness of his circumstances and prompts pleas. However, one judge noted that this change supports comments he has heard from district judges to the effect that they warn either way defendants that their credit will diminish if they fail to plead in the lower court, but they feel this is then undermined by the judges giving full credit in the Crown Court. The district judge we spoke to welcomed this change.
8. For indictable only cases, many judges characterised service of the defence statement as a movable feast, which leaves open the question of what happens when the judge extends this time, and made some judges wonder whether there is a perverse incentive to ask for extensions. There was some sense that the meaning (statutory time, or court time?) should be clarified.

9. One judge noticed a possible practical problem with the guideline if the single case management hearing is introduced. He said that he could not imagine how you could have this single hearing without either a plea of guilty or a defence statement. If this were the case, it would mean that the time for a defence statement would expire before the first hearing in the Crown Court, rendering the two key points in indictable only cases problematic.
10. The flowcharts were generally welcomed as a good innovation. A recorder and relatively newly appointed judge both said that they could imagine solicitors using these to explain guilty plea reduction in its simplest terms to defendants. Because of this, one felt that the guilty and not guilty pathways should be reversed in the chart, to facilitate explaining the process to someone on the other side of a desk. One judge suggested that the flowcharts should be ordered in levels of seriousness, and some judges noted the need for consistent terminology across the guideline and the chart (e.g. the term 'allocation hearing' does not appear on the 'either way' flowchart). A couple of magistrates said they could envisage using the flowcharts in the retiring room, or in a training context.

Section E1 – imposing one type of sentence rather than another

11. The phrasing of Section E1 was seen as unambiguous, but with specific reference to suspended sentences, a number of judges noted that in practice they often reduce *and* suspend the sentence in response to the guilty plea, which would seem to contradict the guideline's instruction that the reduction can only be the transformation of the sentence, implying that otherwise this is double-counting.
12. One judge in particular felt that this stipulation in the guideline contravened all '*existing principles*' in suspending a sentence. He and another judge noted that if the reduction could only be used *either* to transform the sentence *or* reduce its length, the suspended sentence would be longer than the immediate custodial term (e.g. a 12 month immediate custodial sentence would reduce to 8 months for an early guilty plea, but the suspended sentence would remain at 12). If the sentence was breached and subsequently invoked, the time served would then be longer than if an immediate custodial sentence had been imposed in the first instance. Additional consideration might therefore be given to how the transformation from an immediate custodial to a suspended sentence should work.

Section E2 – more than one summary offence

13. Magistrates understood Section E2 about giving a small additional discount in cases of more than one summary offence, and they all gave the expected third reduction in a scenario which tested this. However, it jarred with several who felt this was a double discount, or reward for committing more offences. The district judge, however, said that this was something he often did, to make sure the guilty plea is really incentivised in a situation where the maximum total sentence is 26 weeks.

Section E3 – keeping an either way case in the magistrates’ court to reflect a guilty plea

14. For Section E3, there was some sense from less experienced magistrates that they would only retain jurisdiction if the likely or maximum sentence was 9 months’ (rather than, for example, if the MSCG says ‘Crown Court’). However, more experienced magistrates and the district judge said they did retain jurisdiction in these cases, basing the decision on a general sense of the severity of an offence, rather than the predicted outcome if it was sent to the Crown Court. In this context, for a couple of the magistrates, the phrase ‘*may enable*’ seemed to have overtones of manipulating the sentence in order to retain jurisdiction.

Section F1 – further information or advice needed

15. In Section F1, although a few judges and magistrates liked the phrase ‘what he knows he has done’, some found it very hard to envisage, in practice, how the defendant would state this, i.e. through what mechanism? How formal does this have to be? There was also sense that expecting the defendant to state what he knows he was done was a little unrealistic, particularly from the more advocacy-minded judges, who noted that a solicitor will have advised a client not to make admissions, and that if the defendant makes some admissions and then chooses to plead not guilty this could damage his case. Those judges who found the phrase imprecise or were concerned about its implementation suggested alternative wordings e.g. ‘*he has admitted an element of the offence*’ or ‘*the offender has by himself or through his representative made it clear to the court or the prosecution that there are matters in the case with which he takes no issue.*’
16. Some of the sentencers also failed to read the three bullet points in F1 as conditions that all need to be met.
17. Despite these issues, almost all of the judges gave the expected 1/5 reduction in a scenario which necessitated a judgement call as to whether or not the defendant needed more advice. One judge who gave 1/4 seemingly invoked the current sliding scale, rather than the new one, when he sentenced this case.

Other exceptions in F

18. The remaining Sections in F did not present any problems in terms of clarity. In particular, judges were given a scenario with a Newton hearing (Section F3) and all gave the expected reduction. Asked about what length of trial they thought would think worthy of qualifying under exception Section F2, many judges said a trial lasting more than 4 weeks, but there was no consensus around a ‘rule of thumb’ for a substantial number of witnesses. A couple of judges noted that large amounts of material to read can also constitute complexity. A couple of judges also suggested that some sex offence trials could also be included under exceptions, because of the particular value of the plea in saving very vulnerable witnesses from having to give evidence, and in having the victim’s version of events accepted by the defendant.

General comments

19. There were indications in this research that judges felt it would be challenging to change the status quo in guilty plea reduction. In particular one or two judges referred to holistic sentencing and back calculating the sentence, and their own or their colleagues' cultural resistance to, for example, no longer giving a $\frac{1}{4}$ reduction for a plea at PCMH. One or two judges also inferred that they did not think defendant behaviour would change easily – for example, several said that a $\frac{1}{5}$ reduction may be so low that defendants will decide to 'take their chance' and go to trial, and one judge noted the importance of other factors in determining when defendants plead e.g. retention of privileges such as visiting rights whilst on remand.
20. However, when asked about the draft guideline compared to the current, sentencers almost universally said the draft is clearer, albeit more prescriptive.

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Sentencing Council

Sentencing Council meeting: 23 October 2015
Paper number: SC(15)OCT05 Robbery
Lead officials: Vicky Hunt & Jo Keatley
020 7071 5786
Lead Council member: Julian Goose

1 ISSUE

- 1.1 This paper presents the final consideration of the Robbery guidelines. The Council is required to sign off the definitive guidelines at this meeting in order to achieve publication of the guidelines in January 2016.
- 1.2 The Council will be asked to consider some very minor changes to the guidelines and to note the summary of all amendments made to the Robbery guideline since consultation. The Council will also be asked to consider the rationale given for the main changes made to the guideline since consultation.
- 1.3 **Annex A** to this paper is the final version of the guideline, in the design format that it will appear when published. It incorporates the proposed minor changes for which I seek the Council's approval. **Annex B** to this paper illustrates all of the changes made to the guidelines post consultation.

2 RECOMMENDATION

The Council is asked to

- Agree to the minor changes made to each of the guidelines
- Note the summary of amendments to each guideline
- Agree the rationale for the main changes made to the guidelines, that will appear in the Consultation Response Document
- Provide any drafting comments on the rationale, or any comments on the guidelines themselves. These should be sent to vicky.hunt@sentencingcouncil.gsi.gov.uk by close of Friday 6th November.

3 CONSIDERATION

Minor Changes

3.1 Each of the three guidelines includes a high culpability factor; 'Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example **sex**, race, sexual orientation (or presumed sexual orientation))'. This factor is similar to the statutory aggravating factor that appears in a number of our other guidelines, but as it includes sex it goes beyond statutory factors. The Council may feel that a better example might be disability, this is a statutory aggravating factor and an example that we use in other guidelines.

Question 1: Is the Council content to make this change to the high culpability factors?

3.2 At the Council meeting in September members suggested that the list of aggravating factors in the guideline was rather sporadic. Whilst it was agreed that there should not be a hierarchy of factors, it was felt that it may be helpful to put some of the more offence specific (rather than generic factors) higher up. I have, therefore, reorganised the factors across all three guidelines, and used the same order across each guideline so that it appears consistent.

Question 2: Is the Council content with the rearranged list of aggravating factors?

3.3 In addition I have made a couple of minor changes to two of the aggravating factors. Firstly I have combined the two factors; 'targeting of large sums of money or valuable goods' and 'high value goods or sums (whether economic, personal or sentimental)' to read 'High value goods or sums targeted or obtained (whether economic, personal or sentimental)'. This can be seen in the new guideline at **Annex A**.

Question 3: Is the Council content to make this change to the value factor within the aggravating factors?

3.4 I have also combined the two factors 'location of offence' with 'location of offence also victim's residence' to read 'Location of offence (including if location of offence is victim's residence)'. I have sought to keep in reference to

the victim's residence as there was a strong voice of opinion through the consultation, and at the Justice Committee, that this should be captured.

Question 4: Is the Council content to make this change to the location factor within the aggravating factors?

Summary of Changes

3.5 All of the changes that have been made to the guidelines post consultation have been highlighted in the document at **Annex B** so that the Council can review them.

Question 5: Is the Council content with the overall changes that have been made to the guidelines?

Rationale for the Consultation Responses Document

3.6 The Consultation Responses Document has been drafted and will be circulated to the Council over the next few weeks. The most important issues in that document are the rationale that the Council provide for making the main changes to the guidelines since consultation. I set out below the relevant sections of the Consultation Responses Document for the Council's approval.

The groupings of the guidelines

The robbery guidelines in the consultation paper were grouped into three separate areas:

Street robbery

Commercial robbery

Robbery in a dwelling

The consultation paper did not include any specific questions about these groupings, but questions 34 – 79 invited respondents to use the guidelines to sentence example cases via case studies. Responses to these questions revealed that some respondents felt unsure about which guideline they should be using. For example case study 2 involved the robbery of a taxi driver; some respondents were unclear as to whether this should be a street robbery, or a commercial robbery. This issue also arose in the qualitative research that was carried out with Crown Court Judges and Recorders to test the draft guidelines against case scenarios. Judges were used to the structure of the existing SGC guideline which combined street robbery, robberies of small businesses and less sophisticated commercial robberies, and so did not normally have to draw such distinctions.

When considering the sentencing levels within the commercial robbery guideline the Council also became concerned that combining all types of commercial robbery within one guideline could result in the sentence levels of robberies of small businesses and less sophisticated commercial robberies being inflated. Conversely one respondent was concerned that combining them could devalue the significance of a robbery committed against a small business, as comparatively the loss from a small store will always seem low, even if to the business the loss had a major impact.

“Bringing together both the ‘unsophisticated’ and ‘highly sophisticated’ robberies into one set of sentencing guidelines may devalue the definition of “high value goods” – the size and type of business should be distinguished in guidelines and at the forefront of a magistrates/ courts deliberations. Convenience store owners stock a wide range of general grocery products and the highest value items are likely to be alcohol and tobacco products. There are limited parallels between a convenience store and a jewellers yet the guidance does not include an assessment of business type.” - Association of British Convenience Stores

For these reasons the Council decided to change the groupings of the guidelines into the following three:

- *Street and less sophisticated commercial robbery*
- *Professionally planned commercial robbery*
- *Dwelling robbery*

This structure should ensure that sentencers will not struggle to decide which guideline to use, and will ensure that lower level commercial robberies are sentenced appropriately.

Question 6: Does the Council agree with the rationale to be provided in the consultation response document regarding the change to the grouping of the guidelines?

The distinction to be drawn between use of a weapon; producing a weapon and using it to threaten; and threats to use a weapon without producing it (and potentially not even having a weapon)

Questions 1, 13 and 24 of the consultation sought views on the approach to the assessment of culpability within each of the three guidelines. The majority of the respondents agreed with the approach (84 per cent, 82 per cent, 94 per cent respectively). Of those that disagreed, the main concern was with the distinctions drawn between the use, production and threats of use, of different types of weapon. Many believed that there should be no distinction between threats to use a bladed article, firearm or imitation firearm which is actually produced or threats to use such a weapon that is not in fact produced, as the fear elicited would likely be the same.

This was considered by the Council and it was decided that the distinction should remain in place. The rationale behind this decision was that someone who threatens to use a bladed article or firearm but does not produce it may not actually have a

weapon, which means they are less culpable than someone who has planned the offence to the extent of arming themselves with a weapon of this nature. It was also considered that, although the threat may elicit a high amount of fear, there is a fundamental difference in culpability between someone who states they have a bladed article or firearm and someone who produces it to assist in the committal of the offence. The level of fear caused and any psychological effects as a result of this threat will be taken into account in the assessment of harm.

Question two asked respondents whether it was appropriate to distinguish between cases involving a bladed article, firearm or imitation firearm from those involving other types of weapons; 56 per cent agreed.

This issue was carefully considered by the Council, and it was decided that the guideline would maintain the distinction. There is clear public concern about knife crime. R v Monteiro and others¹, confirmed the guidance given in R v Povey² which made clear that sentences passed in cases involving knives, particularly cases involving knives being carried in public places, must focus on reducing this type of crime. Drawing the distinction between these types of weapons within the guidelines ensures that those offences involving knives will fall within the highest brackets of culpability so that the sentence imposed is appropriate, and in line with current case law and sentencing practice.

Question 7: Does the Council agree with the rationale regarding weapons?

Difficulties in assessing the level of physical/ psychological harm

Several respondents, across all three of the guidelines, supported the inclusion of psychological harm in the assessment of harm. However, in response to question six, which asked whether the levels of harm in the street robbery guideline are simple to interpret, 39 per cent of respondents disagreed. The majority of these expressed concern with the factor ‘above the level of harm inherent in the offence’. Others felt that assessing the difference between serious or some psychological harm, and serious or some physical harm would be very difficult. These factors are common across all three of the robbery guidelines and the comments were raised in responses to commercial and dwelling robbery also.

The Council discussed the factor ‘Some physical and/or psychological harm caused to the victim above the level of harm inherent in this offence’ and the difficulty that respondents had in interpreting this phrase.

“Robbery can be committed in so many different ways [...] the ‘inherent’ level of harm is therefore very variable.” - Academic

The Council decided to rearrange the harm model so that just the most serious and least serious harm is described. The Council felt that sentencers would find it easier to recognise those levels of harm, thus leaving the middle factor for those cases

¹ R v Monteiro and others [2014] EWCA Crim 747

² R v Povey [2008] EWCA Crim 1261

where 'factors in categories 1 or 3 are not present'. This also removes the need for a sentencer to decide what level of harm is 'inherent' in the offence of robbery.

Question 8: Does the Council agree with the rationale regarding the assessment of physical/ psychological harm?

The consideration of group activity when assessing seriousness

Questions 3, 15 and 25 asked respondents whether there are any additional factors that should be considered at step one. Across all three guidelines a minority of respondents answered yes (17 per cent of those who responded to the street robbery guideline, 21 per cent of those who responded to the commercial robbery guideline and 44 per cent of those who responded to the dwelling robbery guideline). Out of those, four respondents (Gloucestershire Bench, West Yorkshire Police, Mayor's Office for Policing and Crime and a magistrate) suggested that group activity should be considered at step one for street robbery.

The positioning of the group activity factor within the street robbery guideline was given great thought and the Council is still content that the original rationale is valid. There is a concern that including this factor at step one could inflate sentences as a couple of friends who commit a very unsophisticated and unplanned 'mugging' could be classed as a group or gang and find themselves in high or medium culpability. The Council's intention in revising this guideline is not to alter significantly current sentencing practice. As this was also arguably a risk for a similarly unplanned and unsophisticated low level commercial robbery it was agreed that this would also be better suited as a step two factor.

Question 9: Does the Council agree with the rationale regarding 'group activity'?

The importance of the value of the item(s) taken when considering harm caused to the victim.

The street robbery guideline consulted on two versions of the harm model. Harm model A was the preferred model and considered only the physical and/or psychological harm caused to the victim with the value of the goods being considered at step two. Harm model B considered both the physical and/or psychological harm caused to the victim and the value of the goods (whether economic, sentimental or personal) at step one.

Question five asked respondents if they agreed with the proposed approach to the assessment of harm, as set out in Harm Model A. 87 per cent of respondents agreed with the approach.

*"The Victims' Commissioner welcomes the greater priority given to the harm caused rather than the value of the loss. She also welcomes the reference to assessing the psychological as well as the physical impact of the crime." - **The Victims' Commissioners Office***

"We strongly support the emphasis placed on the harm caused to the victim rather than the value of the goods stolen." – Victim Support

A number of respondents felt that the guidelines should give greater consideration to the impact on victims of offences, by specifically requiring consideration of victim personal statements (VPS).

The Council would highlight that it does not include a reference to VPS statements in Sentencing Guidelines. The existence or otherwise of a VPS is not the remit of the sentencer; it is the responsibility of the police. It would be inappropriate for the Council, through its guidelines, to go further than the law or the Victims' Code in setting an expectation that a VPS will be available to the court or in placing a requirement on the prosecutor to produce a VPS. Courts must facilitate presentation of a VPS, if one exists. The rules for this are set out in the Criminal Practice Directions. It would be inappropriate and outside the Council's remit to seek to prescribe such elements of criminal procedure.

All guidelines include consideration of the impact on victims as an integral component of assessing seriousness. This need not be based on a VPS, although where one exists, it will be taken into account by the court.

At questions 18 and 28, respondents were asked, within both the commercial robbery guideline and the dwelling robbery guideline, whether value should be considered at step two. 60 per cent of respondents answered yes for commercial robbery and 50 per cent for dwelling robbery. However, across both questions some of the comments appeared contradictory to the answer given and it is suspected that some respondents may have misunderstood this question and not realised that this is instead of considering it in the assessment of harm at step one. The fact that the majority of respondents across both guidelines also stated that they agreed with the assessment of harm (90 per cent for commercial robbery and 80 per cent for dwelling robbery) further reinforces the doubt that this question was understood by all.

The Council did deliberate over this point but decided that for professionally planned commercial robbery, businesses are usually targeted due to the belief that there are high value goods available and therefore the factor is key to the offence and better retained at step one. For dwelling robbery it was proposed that value also remain in the assessment of harm at step one as this approach mirrors that in the Aggravated Burglary Definitive Guideline where the impact on the victim, the value of the goods and any damage caused to the dwelling are all part of the assessment of harm.

In the combined street and less sophisticated commercial robbery guideline it was decided that value should be considered at step 2 as value of the goods taken is often down to chance rather than due to specific targeting. The majority of respondents felt that the real harm, in these types of offences, was the effect the offence has had on the victim, whether an individual or a business, which is covered by the other harm factors at step 1 such as 'serious physical/ psychological harm caused to the victim' and 'serious detrimental effect on the business'. Instead it was felt appropriate to place value at step 2.

“The Sentencing Council should consider how the operational disruption caused by a robbery can be included in the harm factors. For example the loss of goods or sums of money may be of less value compared to the day(s) the store needs to close or the additional cost incurred by the retailer to cover and support staff after the robbery” – The Association of British Convenience Stores

Question 10: Does the Council agree with the rationale regarding value?

3.7 Should members of the Council have any drafting comments on the rationale or the guidelines please could they be sent by close of play **Friday 6th November**. I will then make any necessary changes and circulate the full document to members for final approval.

4 IMPACT

The guidelines were developed based on a careful assessment of current sentencing practice and were then tested via roadtesting with sentencers. The guidelines put to Council today have been tested by a transcript exercise in which the new guideline was tested against real cases that were sentenced in the Crown Court to ensure that the impact of the proposals on the criminal justice system is neutral, and to ensure that the guideline is easy to follow.

5 RISK

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

Robbery – street and less sophisticated commercial

Theft Act 1968 (section 8(1))

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

Triable only on indictment
Maximum: Life imprisonment

Offence range: Community order – 12 years' custody

This guideline applies only to offenders aged 18 and older.

Street/less sophisticated commercial robbery refers to robberies committed in public places, including those committed in taxis or on public transport. It also refers to unsophisticated robberies within commercial premises or targeting commercial goods.

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

General principles to be considered in the sentencing of youths are available in the Sentencing Guidelines Council's definitive guideline, *Overarching principles – Sentencing Youths*, which will continue to be in force pending new and updated youth guidance.

Check www.sentencingcouncil.org.uk for amendments to guidance for youth offenders.

STEP ONE**Determining the offence category**

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

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

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

Culpability demonstrated by one or more of the following

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

Harm

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

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

STEP TWO

Starting point and category range

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

Consecutive sentences for multiple offences may be appropriate.

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

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

Factors increasing seriousness**Statutory aggravating factors:**

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

Offence committed whilst on bail

Other aggravating factors:

High value goods or sums targeted or obtained (whether economic, personal or sentimental)

Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability

Sophisticated organised nature of offence

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

Prolonged nature of event

Restraint, detention or additional degradation of the victim

A leading role where offending is part of a group activity

Involvement of others through coercion, intimidation or exploitation

Location of the offence (including cases where the location of the offence is also the victim's residence)

Timing of the offence

Attempt to conceal identity (for example, wearing a balaclava or hood)

Commission of offence whilst under the influence of alcohol or drugs

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Failure to respond to warnings about behaviour

Factors reducing seriousness or reflecting personal mitigation

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

Remorse, particularly where evidenced by voluntary reparation to the victim

Good character and/or exemplary conduct

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

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

Mental disorder or learning disability

Little or no planning

Sole or primary carer for dependent relatives

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

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

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Dangerousness**

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

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SEVEN**Compensation and ancillary orders**

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

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

STEP EIGHT**Reasons**

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

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

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

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

Theft Act 1968 (section 8(1))

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

Triable only on indictment
Maximum: Life imprisonment

Offence range: 18 months' – 20 years' custody

This guideline applies only to offenders aged 18 and older.

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

STEP ONE**Determining the offence category**

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

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

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

Culpability demonstrated by one or more of the following

A – High culpability	<ul style="list-style-type: none"> • Use of a weapon to inflict violence • Production of a bladed article or firearm or imitation firearm to threaten violence • Use of very significant force in the commission of the offence • A leading role where offending is part of a group activity • Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, disability, race, sexual orientation (or presumed sexual orientation)) • Abuse of position
B – Medium culpability	<ul style="list-style-type: none"> • Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence • Threat of violence by any weapon (but which is not produced) • A significant role where offending is part of a group activity • Other cases where characteristics for categories A or C are not present
C – Lesser culpability	<ul style="list-style-type: none"> • Performed limited function under direction • Involved through coercion, intimidation or exploitation • Threat or use of minimal force • Mental disability where linked to the commission of the offence

Harm

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

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

STEP TWO**Starting point and category range**

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

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

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

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

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

Factors increasing seriousness**Statutory aggravating factors:**

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

Offence committed whilst on bail

Other aggravating factors:

High value goods or sums targeted or obtained (whether economic, personal or sentimental) (except where considered at step one)

Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability

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

Prolonged nature of attack

Restraint, detention or additional degradation of the victim

Involvement of others through coercion, intimidation or exploitation

Location of the offence (including cases where the location of the offence is also the victim's residence)

Timing of the offence

Attempt to conceal identity (for example, wearing a balaclava or hood)

Commission of offence whilst under the influence of alcohol or drugs

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Failure to respond to warnings about behaviour

Factors reducing seriousness or reflecting personal mitigation

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

Remorse, particularly where evidenced by voluntary reparation to the victim

Good character and/or exemplary conduct

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

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

Mental disorder or learning disability

Sole or primary carer for dependent relatives

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

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

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Dangerousness**

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

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SEVEN**Compensation and ancillary orders**

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

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

STEP EIGHT**Reasons**

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

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

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

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Robbery – dwelling

Theft Act 1968 (section 8(1))

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

Triable only on indictment
Maximum: Life imprisonment

Offence range: 1 year's custody – 16 years' custody

This guideline applies only to offenders aged 18 and older.

STEP ONE**Determining the offence category**

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

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

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

Culpability demonstrated by one or more of the following

A – High culpability	<ul style="list-style-type: none"> • Use of a weapon to inflict violence • Production of a bladed article or firearm or imitation firearm to threaten violence • Use of very significant force in the commission of the offence • Sophisticated organised nature of offence • A leading role where offending is part of a group activity • Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, disability, race, sexual orientation (or presumed sexual orientation)) • Abuse of position
B – Medium culpability	<ul style="list-style-type: none"> • Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence • Threat of violence by any weapon (but which is not produced) • A significant role where offending is part of a group activity • Other cases where characteristics for categories A or C are not present
C – Lesser culpability	<ul style="list-style-type: none"> • Performed limited function under direction • Involved through coercion, intimidation or exploitation • Threat or use of minimal force • Very little or no planning • Mental disability where linked to the commission of the offence

Harm

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

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

STEP TWO

Starting point and category range

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

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

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

Harm	Culpability		
	A	B	C
Category 1	Starting point 13 years' custody	Starting point 8 years' custody	Starting point 5 years' custody
	Category range 10 – 16 years' custody	Category range 6 – 10 years' custody	Category range 4 – 8 years' custody
Category 2	Starting point 8 years' custody	Starting point 5 years' custody	Starting point 3 years' custody
	Category range 6 – 10 years' custody	Category range 4 – 8 years' custody	Category range 2 – 5 years' custody
Category 3	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 18 months' custody
	Category range 4 – 8 years' custody	Category range 2 – 5 years' custody	Category range 1 – 3 years' custody

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

Factors increasing seriousness**Statutory aggravating factors:**

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

Offence committed whilst on bail

Other aggravating factors:

Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability

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

Prolonged nature of event

Restraint, detention or additional degradation of the victim

Involvement of others through coercion, intimidation or exploitation

Timing of the offence

Attempt to conceal identity (for example, wearing a balaclava or hood)

Commission of offence whilst under the influence of alcohol or drugs

Child or vulnerable person at home (or returns home) when offence committed

Victim compelled to leave their home

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Failure to respond to warnings about behaviour

Factors reducing seriousness or reflecting personal mitigation

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

Remorse, particularly where evidenced by voluntary reparation to the victim

Good character and/or exemplary conduct

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

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

Mental disorder or learning disability

Sole or primary carer for dependent relatives

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

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

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Dangerousness**

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

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Offences Taken into Consideration and Totality* guideline.

STEP SEVEN**Compensation and ancillary orders**

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

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

STEP EIGHT**Reasons**

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

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

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

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Robbery – street and less sophisticated commercial

This guideline applies only to offenders aged 18 and older.

Street/ less sophisticated commercial robbery refers to robberies committed in public places, including those committed in taxis or on public transport. It also refers to unsophisticated robberies within commercial premises or targeting commercial goods.

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

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

Theft Act 1968 (section 8(1))

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

Triable only on indictment

Maximum: Life imprisonment

Offence range: Community order – 12 years' custody

STEP ONE
Determining the offence category

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

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

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

Culpability demonstrated by one or more of the following:

A - High culpability:

- ~~Production and use of a weapon to inflict violence~~
- Production of a bladed article or firearm or imitation firearm to threaten violence
- Use of very significant force in the commission of the offence
- Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, **disability**, race, sexual orientation (or presumed sexual orientation))
- ~~Deliberately targeting victim on basis of particular vulnerability (due to factors including but not limited to age, mental or physical disability)~~

B - Medium culpability:

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

C - Lesser culpability:

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

Harm

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

Category 1

- Serious physical and/or psychological harm caused to the victim
- Serious detrimental effect on the business

Category 2	<ul style="list-style-type: none"> • Other cases where characteristics for categories 1 or 3 are not present • Some physical and/or psychological harm caused to the victim above the level of harm inherent in the offence of robbery
Category 3	<ul style="list-style-type: none"> • No/ minimal physical or psychological harm • No/ minimal detrimental effect on the business • Factors in categories 1 and 2 not present
STEP TWO	
Starting point and category range	
<p>Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.</p> <p>Consecutive sentences for multiple offences may be appropriate.</p>	

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 8 years' custody</p> <p>Category range 7 – 12 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category range (5) 4 – 8 years' custody</p>	<p>Starting point (3 years 6 months) 4 years' custody</p> <p>Category range (18 months – 5 years) 3 - 6 years' custody</p>
Category 2	<p>Starting point 5 years' custody</p> <p>Category range (5) 4 – 8 years' custody</p>	<p>Starting point 4 years' custody</p> <p>Category range (18 months – 5 years) 3 - 6 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category range (18 months – 3 years 6 months) 1 year – 4 years' custody</p>
Category 3	<p>Starting point 4 years' custody</p> <p>Category range (18 months – 5 years) 3 - 6 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category range (18 months – 3 years 6 months) 1 year – 4 years' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range High level community order – (2) 3 years' custody</p>

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

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

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

- Failure to respond to warnings about behaviour

Factors reducing seriousness or reflecting personal mitigation

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

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Dangerousness

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

STEP SIX

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour **in accordance with the Offences Taken into Consideration and Totality guideline.**

STEP SEVEN

Compensation and ancillary orders

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

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

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail

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

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

This guideline applies only to offenders aged 18 and older.

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

Theft Act 1968 (section 8(1))

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

Triable only on indictment

Maximum: Life imprisonment

Offence range: 18 months – 20 years' custody

STEP ONE Determining the offence category

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

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

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

Culpability demonstrated by one or more of the following:

A - High culpability:

- Production and use of a weapon to inflict violence
- Production of a bladed article or firearm or imitation firearm to threaten violence
- Use of very significant force in the commission of the offence
- ~~Sophisticated organised nature of offence/significant planning~~
- A leading role where offending is part of a group activity
- Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, ~~sex~~, **disability**, race, sexual orientation (or presumed sexual orientation))
- Abuse of position
- ~~Deliberately targeting victim on basis of vulnerability (due to factors including but not limited to age, mental or physical disability)~~

B - Medium culpability:

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

C - Lesser culpability:

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

Harm

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

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

STEP TWO**Starting point and category range**

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

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

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

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

Category 3	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category range 2 – 5 years' custody</p>	<p>Starting point 2 year's custody</p> <p>Category range (High level community order – 3 years') 18 months custody - 4 years' custody</p>
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The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- High value goods or sums targeted or obtained (whether economic, personal or sentimental) (except where considered at step one)
- Targeting of large sums of money or valuable goods
- Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability
- Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability
- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Prolonged nature of attack
- Restraint, detention or additional degradation of the victim
- Involvement of others through coercion, intimidation or exploitation
- Location of the offence (including cases where the location of the offence is also the victim's residence)
- Timing of the offence
- Attempt to conceal identity (for example, wearing a balaclava or hood)

- Commission of offence whilst under the influence of alcohol or drugs
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Failure to respond to warnings about behaviour

Factors reducing seriousness or reflecting personal mitigation

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

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Dangerousness

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

STEP SIX

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Offences Taken into Consideration and Totality guideline.

STEP SEVEN

Compensation and ancillary orders

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

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

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail

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

Robbery – dwelling

This guideline applies only to offenders aged 18 and older.

Theft Act 1968 (section 8(1))

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

Triable only on indictment

Maximum: Life imprisonment

Offence range: 1 year's custody – 16 years' custody

STEP ONE Determining the offence category

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

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

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

Culpability demonstrated by one or more of the following:

A - High culpability:

- ~~Production and use of a weapon to inflict violence~~
- Production of a bladed article or firearm or imitation firearm to threaten violence
- Use of very significant force in the commission of the offence
- **Sophisticated organised nature of offence**
- A leading role where offending is part of a group activity
- Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, ~~sex~~, **disability**, race, sexual orientation (or presumed sexual orientation))
- ~~Deliberately targeting victim on basis of vulnerability (due to factors including but not limited to age, mental or physical disability)~~
- Abuse of position

B - Medium culpability:

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

C - Lesser culpability:

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

Harm

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

Category 1

- Serious physical and/or psychological harm caused to the victim
- Very high value of goods (whether economic,

	<ul style="list-style-type: none"> sentimental or personal) • Soiling, ransacking or vandalism of property
Category 2	<ul style="list-style-type: none"> • Other cases where characteristics for categories 1 or 3 are not present • Some physical and/or psychological harm caused to the victim above the level of harm inherent in this offence • High or medium value of goods (whether economic, sentimental or personal) • Damage caused to dwelling
Category 3	<ul style="list-style-type: none"> • No/ minimal physical or psychological harm • Low value goods or sums (whether economic, personal or sentimental) • Limited damage or disturbance to property • Factors in categories 1 and 2 not present

STEP TWO**Starting point and category range**

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

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

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

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point (11) 13 years' custody</p> <p>Category range (9-13) 10 – 16 years' custody</p>	<p>Starting point (7) 8 years' custody</p> <p>Category range (5) 6 – 10 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>
Category 2	<p>Starting point (7) 8 years' custody</p> <p>Category range (5) 6 – 10 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category range 2 – (6) 5 years' custody</p>
Category 3	<p>Starting point 5 years' custody</p> <p>Category range 4 – 8 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category range 2 – (6) 5 years' custody</p>	<p>Starting point 18 months custody</p> <p>Category range 1– 3 years' custody</p>

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

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability
- ~~Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability~~
- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Prolonged nature of event
- Restraint, detention or additional degradation of the victim

- ~~Sophisticated organised nature of offence/ significant planning~~
- Involvement of others through coercion, intimidation or exploitation
- Timing of the offence
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Commission of offence whilst under the influence of alcohol or drugs
- Child **or vulnerable person** at home (or returns home) when offence committed
- Victim compelled to leave their home (~~in particular victims of domestic violence~~)
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Failure to respond to warnings about behaviour

Factors reducing seriousness or reflecting personal mitigation

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

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life

sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Offences Taken into Consideration and Totality guideline.

STEP SEVEN

Compensation and ancillary orders

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

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

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail

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

Sentencing Council

Sentencing Council meeting: 23 October 2015
Paper number: SC(15)OCT06 – Dangerous Dogs
Lead Council member: Richard Williams
Lead officials: Mandy Banks
0207 071 5785

1 ISSUE

1.1 This is the second consideration of the guidelines post consultation, and will consider the responses to all the guidelines on sentence levels and aggravating and mitigating factors. All of the changes to the culpability and harm factors agreed at the last meeting have been made, and can be seen in track changes on the guidelines at **Annexes A-E**. Sentencing statistics for these offences are attached at **Annex F**.

1.2 The timetable is for the guidelines to be signed off by December, and published in March 2016.

2 RECOMMENDATION

- The Council is asked to note the comments and agree the changes to the sentence levels, as discussed at **para 3.2, page two onwards**
- The Council is asked to agree the changes to the aggravating and mitigating factors, as discussed at **para 3.27, page 11 onwards**
- The Council is asked to agree the changes proposed to step six regarding destruction orders/contingent destruction orders at **Annex E**, as discussed at **para 3.33, page 12 onwards**.

3 CONSIDERATION

Sentence ranges within the guidelines

3.1 The Council will recall that there was a lack of data to assist in the development of the ranges for the revised guideline so existing dangerous dog sentencing data was used, along with data for assault and dangerous driving offences, as these two offences were considered by the Government when deciding

on the increased maxima for dangerous dog offences. The ranges were developed so that culpability is the principal determinant of the sentence, the more culpable the offender is, the more severe the sentence (although appropriate sentence levels are available for offences where high levels of harm have been caused). The 'law of the diagonal' applies within the ranges, so that the ranges moving diagonally from C, B to A are either the same as, or increasingly more severe, as culpability increases. There is generally a small overlap between the sentence ranges, to reflect the fact that some offences sit on the cusp between the top of one range and the bottom of the next, higher range.

Sentence levels - Offence causing death- Annex A

3.2 The majority of respondents to the consultation agreed with the starting points and ranges (which can be seen at page three of **Annex A**) proposed for this offence. Of those that disagreed, there was no consensus: a few people felt the ranges and starting points should be higher, and a few felt that they should be lower. Only two respondents disagreed with the range going up to the statutory maximum of 14 years. The majority of respondents agreed that the bottom of the range starting at a high level community order was appropriate. Of those that disagreed with the proposed bottom of the range, there was no consensus: some felt it was too high, including the Magistrates Association, who thought it should start at a low level community order to mirror the lowest range for causing death by careless driving. A small number felt it was too low, including the Communication Workers Union (CWU) and that the bottom of the range should be custody.

3.3 Three sentencing case studies¹ concerning a death were included in the consultation, providing scenarios which fell into each of the three levels of culpability. Respondents who commented on the scenarios provided a range of views on the suggested sentences, but of those that disagreed, most thought that the suggested sentence levels were too low.

3.4 The Council will recall from the pre consultation work on this guideline that, prior to the legislation changing, there were few prosecutions of dangerous dog offences causing death and the few cases sentenced were of limited use in determining sentence levels due to the large increase in the statutory maximum. Since the legislation changed in May 2014 only one case has been sentenced, that of Craig Greve. Greve was sentenced to five and a half years' imprisonment, with

¹ <https://www.sentencingcouncil.org.uk/publications/item/dangerous-dog-offences-consultation-2/>.

maximum credit for a guilty plea (sentence prior to discount of eight years, three months' custody). The main facts of the case are as follows:

Greve, aged 23, had previously been convicted twice of having a dog dangerously out of control, which led to him being disqualified indefinitely from owning a dog. However Greve at some point obtained another dog, an American bulldog named Solo. Greve lived with his grandmother, Rhona Greve, who Solo had attacked on four previous occasions, Solo had also attacked Mrs Greve's own dog. One night Solo attacked Mrs Greve as Greve was returning to the house; Greve intervened and got the dog off Mrs Greve, but failed to call an ambulance. It was suggested that Greve was reluctant to alert the authorities to this incident, as he knew he had contravened the court order by having Solo. Neighbours called the police, who in turn called an ambulance. Mrs Greve had been bitten over 15 times, causing severe blood loss, broken bones and trauma. Her cause of death was identified as cardiac arrest following multiple dog bites. Mrs Greve, aged 64, had been in poor health and suffered from heart disease. Greve had other previous convictions, including one for assaulting his grandmother. He had coerced his grandmother into saying that Solo was her dog, when visiting the vet, and so on. In mitigation, Greve's extreme remorse was highlighted, and some immaturity and learning difficulties.

3.5 The Judge in this case concluded that Greve's culpability was high, referencing the fact that he was disqualified from owning a dog, he had previous convictions for having a dog dangerously out of control, and that the dog had previously attacked Mrs Greve. The Judge referred to the consultation proposals in the sentencing remarks.

3.6 As the Council discussed at the last meeting, the high culpability factors only referred to offenders failing to comply with orders concerning a dog, not an order concerning themselves, namely that they had been banned from owning a dog. This factor has now been revised, and can be seen on page two of **Annex A**. This rewording would allow for an offender such as Greve to be placed in high culpability (without the addition of this wording, the case may have fallen into medium culpability). However, the facts of the case show how the culpability factors have to be balanced: in this case, Greve did intervene and gain control of the dog, a factor in lesser culpability, but had failed to act on prior knowledge of the dog's aggressive behaviour, a factor in medium culpability. The inclusion of the new factor in high culpability would apply to Greve, as he had deliberately ignored a court order regarding dog ownership, an act which ultimately led to his grandmother's death.

3.7 As only one dangerous dog case causing death has been sentenced post the legislative changes, it may be helpful to consider three other cases where a death occurred. The first was sentenced whilst the statutory maximum was still two years, the second the defendant was charged with manslaughter and the third was prosecuted for animal welfare offences.

Case study one

Clifford Clarke, aged 79 was killed in his garden by his neighbour's dog, a Presa Canario cross breed. The two owners had not fed the dog for 45 hours before the incident. The dog had been left in the owners' garden on a hot day without food, water or shade. The dog got through a gap in the fence, and went into Mr Clarke's garden and attacked him. Mr Clarke died from multiple injuries and blood loss. The dog was subsequently destroyed. The two owners pleaded guilty, there was some mitigation in that both owners showed great remorse and were primary carers for dependant relatives.

Actual Sentence - each offender was sentenced to 12 months custody, after the Judge gave a reduction of 25 per cent for the guilty plea, so a total sentence of 16 months.

Possible sentence using draft guideline – SP of four years custody and range of two to seven years. The offence places the offenders in medium culpability, due to the ill treatment of the dog/failing to ensure its welfare needs, and a lack of safety or control measures to stop the dog escaping from the garden. There was no evidence of previous aggressive behaviour by the dog and the owners did not actively cause the incident by using the dog to intimidate the victim. There are aggravating factors of the location of the offence, the victim's own garden, (it may have been more difficult for him to get help than if it had occurred in public) and the victim's vulnerability (his age), which increase it from the SP. Within this sentence range there would be a reduction for the guilty plea and the mitigating factors mentioned above. Using the guideline, a sentence of around three years is likely (from a SP of four years, with the aggravating and mitigating factors cancelling each other out and a 25 per cent reduction for the guilty plea).

Case Study two

Ellie Lawrenson, aged five, was killed by a pit-bull terrier, a prohibited breed, whilst at her grandmother's home. The grandmother, Jacqueline Simpson, broke a family rule by allowing the dog into the house while Ellie was there. Ellie sustained 72 injuries leading to her death. The grandmother was charged with manslaughter. She had

drunk a considerable amount and taken drugs on the evening of the incident. The dog had previously bitten another relative, and attacked another dog. The dog was destroyed. The grandmother was acquitted of manslaughter. It was not possible to bring charges under the dangerous dogs legislation in force at the time as the attack happened where the dog had a right to be but it now would be possible now to bring charges under the amended legislation. (The uncle of Ellie was prosecuted for possession of a prohibited breed and sentenced to eight weeks imprisonment).

Possible sentence using the draft guideline – *SP of eight years' custody with a range of six to 14 years. The draft guidelines would place the offender in high culpability, as the dog was a prohibited breed. There are also factors pertinent to medium culpability; failing to act on prior knowledge of the dog's aggressiveness, given the dog had previously attacked on two other occasions and ignoring the family ban on the dog entering the house when the victim was present, and in lower culpability as she tried to intervene in the incident. There would be considerable aggravating factors which would likely increase the sentence from the starting point (the victim being a child, a sustained attack, loss of control due to alcohol or drugs, the ongoing effect of the incident on the victim's parents, the location of the offence). There is mitigation in the effect on the grandmother of seeing her granddaughter killed in this way and she suffered severe injuries herself in trying to intervene (after the incident she was described as a broken woman due to the events). A possible sentence would be around eight years' custody, against a statutory maximum of 14 years.*

Case Study three

Jade Anderson, aged 14 was killed by four dogs, two bull mastiffs and two Staffordshire bull terriers whilst at a friend's house. The dogs were not walked and kept in a confined space all day. The defendant, Beverley Concannon, the friend's mother, had previously been warned about the condition in which she kept her dogs; neighbours had complained to the local Council. Concannon received a 16 week suspended sentence for causing unnecessary suffering to the dogs in her care. It was decided that there was insufficient evidence for a charge of manslaughter through gross negligence, and a dangerous dog prosecution could not be brought at the time as the incident took place in the home.

Sentence using the draft guideline – *If the offender had ignored an official warning regarding the dogs issued by the local Council, as opposed to ignoring concerns raised by neighbours (information about the case is not clear on this point) then under the draft guidelines this would place the offender in high culpability, with a SP of 8 years' custody with a range of six to 14 years. If the offender had ignored*

concerns expressed by others, this would place her within medium culpability, with a SP of 4 years custody, in a range of two to seven years' custody. There is considerable aggravation: the victim was a child, there was more than one dog involved, it was a sustained attack, the offender left her daughter in charge of the four dogs. There may have been some mitigation, although this is not known from the facts of the case.

3.8 Given that the majority of the respondents to the consultation agreed with the proposed sentence ranges and starting points, and that the guideline, albeit needing a few small adjustments, seems to work appropriately for the only case sentenced involving death so far, it is suggested that no changes are made to the sentence levels for this offence. The ranges are fairly broad which will allow for courts to sentence offenders appropriately in cases which may cover a wide range of offending behaviour.

Question 1- Does the Council agree that no changes should be made to the sentence levels for this offence?

Offences causing injury –Annex B

3.9 The majority of consultation respondents provided no comments on the starting points and ranges for this offence, which can be seen at page three of **Annex B**. There was no consensus between those who did offer comments, the police, Council of Circuit Judges and some magistrates' benches all proposed that category 1A should go to the statutory maximum. However, the Justices' Clerks Society and the Blue Cross agreed that there should be headroom between the top of the range and the maximum. Other respondents, mainly the public, thought the sentences were too low, others thought they were too high.

3.10 One sentencing case study regarding an injury offence was provided in the consultation (with culpability A and category 1 harm and a suggested sentence of around two and a half years' custody) to which 64 per cent of respondents agreed. All those that disagreed thought the suggested level was too low.

3.11 The sentencing statistics for these offences can be seen at page two of **Annex F**. These figures only include data from magistrates' courts; it is not currently possible to obtain full data from the Crown Court for this offence due to a data recording issue which we understand will not be fixed until February 2016 at the earliest. It is estimated that the missing Crown Court cases may only number around 60, based on the split of cases between the magistrates' and Crown Court in 2013

and the number of cases that seem to have been sent to the Crown Court for trial. We therefore do not recommend postponing the guideline until such time as data becomes available from the CPD.

3.12 Some indicative information from dangerous dog cases in the Crown Court has been obtained, and can be seen on page 1 of **Annex F**. This indicates that in the majority of cases the sentence outcome was within the magistrates' courts sentencing powers.

3.13 In addition to the sentencing data available a small transcript exercise has been conducted, using injury cases² sentenced in the Crown Courts prior to the legislative changes. This exercise compared the sentences actually given by the sentencer, against what the likely sentences would be using the new guideline. This revealed broadly similar, or slightly increased sentences in a few cases, using the new guideline. It is therefore suggested that the combination of data shown on pages one and two, and the findings from the transcript exercise is sufficient to review the sentence levels for this offence.

3.14 If the Council is concerned with the gaps in the data, it would be possible to gather some more data on sentencing levels for these offences by obtaining and studying transcripts of recent cases reported in the media, and by doing some observational research, once suitable cases had been identified in the courts. As this would be a lengthy and time consuming process which is unlikely to add a substantial amount of additional hard data, it is not recommended that we undertake this; instead we recommend that we use the available evidence to review the ranges.

3.15 Looking at the distribution of sentence outcomes on page two of **Annex F**, 43 per cent of offenders received a fine, 23 per cent received a discharge, 19 per cent a community order and only 5 per cent received a suspended sentence or immediate custody. Accordingly, some amendments to the ranges are suggested, as can be seen on page three of **Annex B**. These amendments increase the availability of fines as a sentencing option within the ranges and reduce the proportion of custody and community orders. Some of the custody ranges have also been slightly reduced, although most of the ranges at the upper end of the table, A1, A2, A3, B1 remain unchanged to allow for appropriate sentencing for the most serious of offences.

Question 2 - Is the Council content to proceed on the basis of the data that is currently available? If so, is the Council content with the proposed changes to the sentence ranges for this offence?

² Some cases were sentenced under Dangerous Dog legislation, others were charged as assault cases.

3.16 During the consultation the Chairman raised an issue regarding cases where two people are injured or killed in the same attack. Although separate charges may be brought the court will ordinarily pass a concurrent sentence because the offending arises out of the same incident. If more than one fatality occurred (and there have not been any cases to date) then the maximum sentence of 14 years for this offence ought to be able to cater for this situation. However, this situation may arise more acutely in the causing injury offence if two people were seriously injured in the same incident.

3.17 It may therefore be helpful to including some wording on this point from the *Offences Taken Into Consideration and Totality Definitive* Guideline,³ underneath the sentencing table, as follows:

'The table is for single offences. Concurrent sentences 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 wording can also be seen on page four of **Annex C**.

3.18 In addition, an aggravating factor of *'Injury caused to others during the incident (where not taken into account at step one)'* could be added. This could be relevant if there are additional injuries caused from the same incident, which do not form a charge before the court.

Question 3 – Does the Council wish to include the wording regarding consecutive sentences? And should the additional aggravating factor regarding injury caused to others be added?

Offence of attacks on assistance dogs – Annex C

3.19 Over half of the respondents either provided no comments on the sentence levels for this offence, or agreed with the proposed ranges. The sentence ranges can be seen at page three of **Annex C**. A number of respondents, including a police officer, a small number of magistrates' benches, and the RSPCA all thought that the sentence range should go to the statutory maximum. There was no consensus on other views expressed on the ranges although a small number of respondents thought that the ranges and starting points were too low. One respondent thought that there should be a non-custodial penalty for all starting points, another respondent said that there was an over-emphasis on custody within the ranges. One

³ <http://www.sentencingcouncil.org.uk/publications/item/offences-taken-into-consideration-and-totality-definitive-guideline/>.

sentencing scenario for this offence was provided (with medium culpability and harm category one, giving a suggested sentence of a high level community order) to which 65 per cent of respondents agreed. The large majority of those that disagreed thought the suggested sentence was too low.

3.20 The Association of Lawyers for Animal Welfare (ALAW) said that if the harm factors for this offence remained unchanged, a high proportion of cases will be category one, due to the impact on the assisted person, therefore the bottom end of the sentencing range should be lowered.

3.21 As set out above in paragraph 3.11, sentencing data is only available for cases in magistrates' courts sentenced for this offence. This data shows only seven cases have been sentenced since May 2014, as can be seen on page three of **Annex F**. Although we cannot be sure, we think it is unlikely that many of these cases will have been sentenced in the Crown Court, given that this is a completely new offence and volumes will probably be low, so again it is recommended that the data that is available is used to review these ranges.

3.22 Using the limited data available to review the sentence ranges, it is suggested that the ranges generally remain unaltered, with just a slight broadening of the ranges within culpability B, as can be seen on page three. Unless offenders commit a very deliberate act, or are very unlucky, most offenders will probably fall into culpability B⁴ so this justifies broad ranges.

Question 4 – Does the Council agree with the limited changes made to the sentence levels for this offence?

3.23 At the last meeting the wording in category one harm for this offence '*impact of the offence on the assisted person is severe*' was discussed. The Council did not agree with the wording that was proposed at the last meeting in order to clarify this factor. However, while the factor is clear to the Council as currently drafted, in light of concerns raised by some sentencers that the drafting was ambiguous and may not be interpreted as intended, officials and Council members have given further thought to this point and a new form of wording is proposed: '*Serious impact on the assisted person (whether psychological or other harm caused by the offence).*'

Question 5 – Does the Council agree to the new wording for the category one harm factor for this offence?

Offence of dog dangerously out of control (no injury caused) –Annex D

⁴ Three press reports of sentenced cases of an attack on assistance dogs indicate that all three offenders fell into medium culpability

3.24 The majority of consultation respondents agreed with the sentence levels, or made no comment on the proposals. The sentence levels can be seen at page 3 of **Annex D**. Of those that disagreed, a small number, including Battersea Dogs Home, thought that the ranges were too low and that they should be higher to deter offenders from becoming involved in more serious dangerous dog offences in the future. The current sentencing statistics for this offence are at page four of **Annex F**. These show that 62 per cent of those sentenced received a fine, 17 per cent received a discharge, 12 per cent a community order and only a very small number received custody. The ranges proposed in consultation were based on the sentence ranges in the existing guideline as the maximum for this offence was not amended by the changes to legislation. It is suggested that the sentence levels for this offence are not changed.

Question 6 – Does the Council agree to leave the sentence levels for this offence unchanged?

Offence of possessing, breeding, selling, exchanging or advertising a prohibited dog – Annex E

3.25 The majority of respondents either had no comment on, or agreed with the proposed sentence levels for this offence. The sentence levels for this offence can be seen at page three of **Annex E** (and are very similar to the ranges for the offence discussed in the paragraph above). Some comments referred to the levels being too low, although this was mainly due to dissatisfaction with legislation and the statutory maximum being six months only. Battersea Dogs Home again thought that the starting points were too low, stating that the cases are serious and offenders may go on to commit offences resulting in serious injury in the future if not dealt with adequately at this stage. The current sentencing statistics for this offence can be seen at page five of **Annex F**. These show that 39 per cent of those sentenced received a fine, 43 per cent received a discharge and there were broadly similar levels of community orders and custody as the previous offence.

3.26 The ranges proposed in consultation were based on the sentence levels in the existing guideline as again the maximum for this offence was not amended by the changes to the legislation. Although there is some difference in sentencing outcomes between this offence and the offence discussed in the preceding paragraph, it is suggested that the ranges for this offence are appropriate as they are; the ranges are fairly broad within the confines of a six month statutory maximum and there is limited scope to make further adjustments.

Question 7 – Does the Council agree to leave the sentence levels unchanged for this offence?

Aggravating factors

3.27 Respondents strongly supported the proposed aggravating factors across the guidelines, with only a few comments and suggestions. The only factor that a number of respondents commented on was the aggravating factor of '*Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex or disability,*' which was included across all the guidelines except for the offence of possessing, breeding, selling, exchanging or advertising a prohibited dog (**Annex E**). Respondents said that all the statutory aggravating factors listed in sections 145 and 146 of the Criminal Justice Act 2003 should be listed. It is recommended therefore that a new factor of '*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*' should be placed within the list of statutory aggravating factors, as can be seen on page four of **Annex A**. This would be replicated throughout all the guidelines except for **Annex E**. Within the offence of attacks on assistance dogs, as agreed at the last meeting, a factor regarding offences motivated by a person's disability has been added as a high culpability factor for this offence, as can be seen on page two of **Annex C**, so the reference to disability would be removed from the list of statutory aggravating factors.

3.28 Given the facts of the Craig Greve case discussed earlier in the paper, it is suggested that a factor of '*failure to call for medical assistance*' could be added to the list of aggravating factors for **Annexes A and B**.

3.29 Following the discussion last month, the factor of '*failing to take adequate precautions to stop the dog escaping*' has been removed from the list of aggravating factors, and '*dog known to be prohibited*' has moved to high culpability.

Question 8 – Does the Council agree to the proposed changes to the aggravating factors?

Mitigating factors

3.30 Respondents supported the majority of the proposed mitigating factors. The most commonly suggested additional mitigating factor was if the dog had acted out of character due to an undiagnosed illness or condition. This was suggested by the MA, RSPCA and the National Bench Chairmen's Forum.

3.31 There was also some support for a mitigating factor regarding the victim being a close friend or relative. The Council will recall that consideration was given to the inclusion of this factor prior to consultation, but on balance it was decided not to include it, as the list is non-exhaustive. However, there was some support for this factor from the Council of Circuit Judges and the Kennel Club, so the Council may wish to reconsider its inclusion.

3.32 A small number of respondents, including the Police and Royal Mail, also suggested that evidence of responsibility following an incident, by voluntarily handing the dog over for destruction, should be included within the list of mitigating factors.

Question 9 - Does the Council wish to include any of the three additional mitigating factors suggested?

Destruction order/contingent destruction orders - offence of possessing a prohibited dog –Annex E

3.33 During the consultation two organisations suggested that additional wording is included within step six of **Annex E**, for the offence of possessing a prohibited dog, specifically within the text relating to disqualification from having a dog/destruction orders and contingent destruction orders. Lawyers at DEFRA, the department who were responsible for the recent amendments to the legislation suggested that it may be helpful to courts to include some additional wording regarding the fit and proper person test, as this is a new statutory requirement and to clarify that the court is able to appoint a person to undertake destruction in accordance with s.4(4) of the Dangerous Dog Act. The suggested wording can be seen in track changes on page six of **Annex E**.

3.34 The CPS suggested that some wording should be included to guide courts that a fit and proper person must be someone who can demonstrate that they are the owner or person ordinarily in charge of the dog at the time the court considers 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 1991 Act to gift a prohibited dog. This suggested wording can also be seen in track changes on page six of **Annex E**. This information (except that relating to appointing a person to undertake destruction) would just be contained within the possessing a prohibited dog guideline, the rest of the guidelines would signpost to this guideline if a prohibited dog is involved.

Question 10 - Does the Council agree with the new wording at step six of the guideline at Annex E?

4 IMPACT/RISKS

4.1 As set out earlier in the paper, there are some gaps in the sentencing data and some of the data used to review the sentence ranges are indicative only. However, it is not thought that there is a significant advantage in postponing the work on this guideline, to wait for, or to try to source further data. The gap in the sentencing data is thought to relate to a small number of Crown Court cases only, and any potential impact on correctional resources is thought to be low, given the proportion of offenders that receive custodial sentences. The delay to the timetable would be significant, as the courts will only start recording the missing data in February 2016. Once the definitive guideline is in force, an assessment of whether to evaluate the guideline will be taken, although any evaluation may be limited in its scope due to the lack of time series data for this offence.

4.2 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 11 – Is the Council satisfied that the risks arising from the data limitations do not merit postponing the guideline, and is it content to proceed as planned? Are there any other actions that should be undertaken at this stage?

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Annex A

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 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](#)

Deleted: bred or

Deleted: Failure 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 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 who attempted to intervene in the incident
- [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

Deleted: <#>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¶

Deleted: <#>Dog known to be prohibited¶

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.

Annex B

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 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.](#)

Deleted: bred or

Deleted: Failure 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

- [Harm that falls between categories 1 and 3](#)

Category 3

- Minor injury [and no significant psychological harm](#)

Deleted: Factors in categories 1 or 3 not present

STEP TWO

Starting point and category range

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

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 Medium level community order
	Category range 2 years 6 months' – 4 years' custody	Category range 6 months' – 2 years 6 months' custody	Category range Band C fine – 6 months' custody
Category 2	Starting point 2 years' custody	Starting point High level community order	Starting point Band B fine
	Category range 1 year – 3 years' custody	Category range Band C fine – 1 years' custody	Category range Band A fine – High level community order
Category 3	Starting point 1 year's custody	Starting point Low level community order	Starting point Band A fine
	Category range 6 months' – 1 year 6 months' custody	Category range Band B fine – High level community order	Category range Discharge – Band B fine

- Deleted: High
- Deleted: Medium level community order
- Deleted: C
- Deleted: 6 months' custody
- Deleted: 6 months'
- Deleted: High level community order
- Deleted: B
- Deleted: 6 months
- Deleted: 6 month
- Deleted: 2
- Deleted: B
- Deleted: C
- Deleted: 6 months' custody

The table is for single offences. Concurrent sentences 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)
- 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 referred to at step one)
- Offence committed on licence
- Offences taken into consideration

Deleted: <#>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¶

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.

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Annex C

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 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)

Deleted: bred or

Deleted: Failure 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 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).

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Category 2

- Harm that falls between categories 1 and 3

Deleted: <#>Impact of the offence on the assisted person is severe* this can be if the person is very reliant on the dog and the person is not able to work for any period of time, or emotional distress, fear or severe trauma caused to the person by the attack ¶

Category 3

- Minor injury to assistance dog and,
- Impact of the offence on the assisted person is limited.

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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	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 <u>Medium</u> level community order – 1 years' custody	Category range Low level community order – High level community order
Category 2	Starting point 1 year's custody	Starting point High level community order	Starting point Band B fine
	Category range 6 months' – 1 year 6 months' custody	Category range <u>Low</u> level community order – 6 months' custody	Category range Band A fine – Low level community order
Category 3	Starting point 6 months' custody	Starting point Low level community order	Starting point Band A fine
	Category range High level community order – 9 months' custody	Category range Band <u>B</u> fine – High level community order	Category range Discharge – Band B fine

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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)
- [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

Deleted: <#>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¶

Deleted: <#>Dog known to be prohibited¶

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.

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Annex D

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 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.](#)

Deleted: bred or

Deleted: Failure 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
- [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

Deleted: <#>Offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex, or disability¶

Deleted: <#>Dog known to be prohibited¶

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.

Annex E

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	Starting point Medium level community order Category range Band C fine – 6 months' custody	Starting point Band B fine Category range Band A fine – Low level community order
Lesser harm	Starting point Band C fine Category range Band B fine – Medium 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

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

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.

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.

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.

Number of adult offenders sentenced in magistrates' courts for dangerous dog offences covered by the guideline, 2013 and May 2014-April 2015 ¹

Offence	Jan - Dec 2013		May 2014 - April 2015 ²	
	Number of offenders sentenced	Proportion of total	Number of offenders sentenced	Proportion of total
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	N/A	N/A	0	0%
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	577	61%	514	62%
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	N/A	N/A	7	1%
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)	167	18%	130	16%
Possession of a prohibited dog, breeding, selling, exchanging or advertising a prohibited dog	195	21%	180	22%
Total	939	100%	831	100%

Source: Court Proceedings Database, Ministry of Justice

Notes

- 1) Includes offenders sentenced in magistrates' courts only. This is due to a data coding issue in the Crown Courts, which means that since these new offences came into effect in May 2014, MoJ's Court Proceedings Database is missing cases which were sentenced in the Crown Court.
- 2) Data shown covers the period May 2014 to April 2015, in order to show 12 months of data since the new legislation came into effect.

Sample of Crown Court cases

A sample of 21 cases which were committed to the Crown Court either for trial or sentence, in the period January to August 2015, have been analysed. The offences related to being in charge of a dog dangerously out of control, where injury was caused. In the majority of cases, the sentence outcome was within magistrates' courts' sentencing powers.

Sentence outcomes received by adult offenders sentenced in magistrates' courts for the offence dog out of control causing injury, 2013 and May 2014 - April 2015¹

Outcome	Jan - Dec 2013		May 2014 - April 2015 ^{2,3}	
	Number of offenders	Proportion of total	Number of offenders	Proportion of total
Absolute and conditional discharge	150	26%	120	23%
Fine	221	38%	221	43%
Community order	115	20%	96	19%
Suspended sentence	29	5%	25	5%
Immediate custody	10	2%	1	0%
Otherwise dealt with	52	9%	51	10%
Total	577	100%	514	100%

Source: Court Proceedings Database, Ministry of Justice

Notes

1) Includes offenders sentenced in magistrates' courts only. This is due to a data coding issue in the Crown Courts, which means that since these new offences came into effect in May 2014, MoJ's Court Proceedings Database is missing cases which were sentenced in the Crown Court.

2) Data shown covers the period May 2014 to April 2015, in order to show 12 months of data since the new legislation came into effect.

3) Custodial sentence length was 3 months.

Annex F

Sentence outcomes received by adult offenders sentenced in magistrates' courts for the offence dog out of control where an assistance dog is injured or killed, May 2014 - April 2015^{1,2}

Outcome	Number of offenders	Proportion of total
Absolute and conditional discharge	2	29%
Fine	2	29%
Community order	3	43%
Total	7	100%

Source: Court Proceedings Database, Ministry of Justice

Notes

- 1) Includes offenders sentenced in magistrates' courts only. This is due to a data coding issue in the Crown Courts, which means that since these new offences came into effect in May 2014, MoJ's Court Proceedings Database is missing cases which were sentenced in the Crown Court.
- 2) Data shown covers the period May 2014 to April 2015, in order to show 12 months of data since the new legislation came into effect.

Sentence outcomes received by adult offenders sentenced in magistrates' courts for the offence dog out of control, no injury caused, 2013 and May 2014 - April 2015¹

Outcome	Jan - Dec 2013		May 2014 - April 2015 ^{2,3}	
	Number of offenders	Proportion of total	Number of offenders	Proportion of total
Absolute and conditional discharge	44	26%	22	17%
Fine	79	47%	80	62%
Community order	26	16%	16	12%
Suspended sentence	0	0%	1	1%
Immediate custody	3	2%	1	1%
Otherwise dealt with	15	9%	10	8%
Total	167	100%	130	100%

Source: Court Proceedings Database, Ministry of Justice

Notes

1) Includes offenders sentenced in magistrates' courts only. This is due to a data coding issue in the Crown Courts, which means that since these new offences came into effect in May 2014, MoJ's Court Proceedings Database is missing cases which were sentenced in the Crown Court.

2) Data shown covers the period May 2014 to April 2015, in order to show 12 months of data since the new legislation came into effect.

3) Custodial sentence length was 1 month.

Sentence outcomes received by adult offenders sentenced in magistrates' courts for offences related to possession of a prohibited dog, 2013 and May 2014 - April 2015¹

Outcome	Jan - Dec 2013		May 2014 - April 2015 ^{2,3}	
	Number of offenders	Proportion of total	Number of offenders	Proportion of total
Absolute and conditional discharge	89	46%	77	43%
Fine	86	44%	71	39%
Community order	14	7%	17	9%
Suspended sentence	3	2%	2	1%
Immediate custody	2	1%	2	1%
Otherwise dealt with	1	1%	11	6%
Total	195	100%	180	100%

Source: Court Proceedings Database, Ministry of Justice

Notes

1) Includes offenders sentenced in magistrates' courts only. This is due to a data coding issue in the Crown Courts, which means that since these new offences came into effect in May 2014, MoJ's Court Proceedings Database is missing cases which were sentenced in the Crown Court.

2) Data shown covers the period May 2014 to April 2015, in order to show 12 months of data since the new legislation came into effect.

3) Custodial sentence lengths were 1 month and 2 months.

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Sentencing Council

Sentencing Council meeting: 23 October 2015
Paper number: SC(15)OCT07 – Allocation
Lead officials: Ruth Pope
Lead Council member: Heather Hallett

1 ISSUE

1.1 The Council agreed to amend the Allocation Guideline and, in light of the level of consultation and consensus already achieved on this matter, undertook a short, targeted, consultation with stakeholders in June and July 2015.

1.2 48 responses were received from individuals and stakeholder groups which were largely supportive of the proposals.

1.3 At the September meeting, the Council discussed paragraph two of the guidance relating to a court retaining jurisdiction in straightforward cases where the likely sentence could exceed its powers, and agreed to retain this guidance with some amendments.

1.4 The aim at this month's meeting is to:

- discuss the remaining issues arising from the consultation;
- agree the content of the definitive guideline; and
- agree a timetable for publication and coming into force.

2 RECOMMENDATION

2.1 The Council is asked to consider the suggested amendments to the guideline at **Annex A** and agree the definitive version for publication (on-line only with paper copies available on request) on 26 November 2015.

2.2 A consultation response document explaining any changes to the consultation version will be circulated to members after the meeting for comments to enable this to be published alongside the revised guideline in November.

3 CONSIDERATION

3.1 A version of the guideline with suggested amendments is attached at **Annex A**. Deletions are struck through and additions are underlined.

Responses to the consultation

Consultation question 1: Do you agree with the proposed changes to the Applicability of guideline and Statutory framework sections? Please give your reasons if you do not agree.

3.2 The new layout was welcomed by respondents and all approved of quoting the legislation in the Statutory Framework section. Some respondents pointed out errors in the Statutory Framework section – these have been corrected in the version at Annex A.

3.3 The Justice Committee pointed out that the allocation guideline also applies in the Crown Court (when making decisions in cases sent for trial under s51 Crime and Disorder Act 1998 where no indictable only offence remains) as specified in CDA 1998 Schedule 3 para 9(3). A suggested addition (underlined) to the Applicability of guideline section is shown below:

Applicability of guideline

In accordance with section 122(2) of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all defendants in the magistrates' court (including youths jointly charged with adults) whose cases are dealt with on or after [tbc].

It also applies to allocation decisions made in the Crown Court pursuant to Schedule 3 of the Crime and Disorder Act 1988.

It will not be applicable in the youth court where a separate statutory procedure applies.

Question 1: Does the Council agree to amend the applicability of guideline section to include the Crown Court?

3.4 The Justice Committee also queried why the four factors listed in the existing guideline to which the court should have regard (see below) have been omitted in the draft guideline, noting that whilst these factors are no longer enshrined in s19 MCA 1980, the Criminal Practice Directions (CPD) (at para 9A.2) 'treat these factors as part of the guideline and therefore of freestanding force.'

The court must also have regard to:

- a) the nature of the case;
- b) whether the circumstances make the offence one of a serious character;
- c) whether the punishment which a magistrates' court would have the power to inflict for the offence would be adequate; and
- d) any other circumstances which appear to the court to make the offence more suitable for it to be tried in one way rather than the other.

3.5 As we understand it, the Lord Chief Justice's intention is that once a revised Allocation guideline is in force, the CPD will be amended to simply refer to the revised guideline.

Question 2: Is the Council satisfied that the relevant factors in this list are covered by the guideline?

Consultation question 2: Do you agree with the proposed wording at paragraph 1 of the Guidance section? Please give your reasons if you do not agree.

Guidance

It is important to ensure that all cases are tried at the appropriate level.

1. In general, either way offences should be tried summarily unless:

- the outcome would result in a sentence in excess of the court's powers for a single offence after taking into account personal mitigation and any reduction for a guilty plea; or
- the case involves complex questions of fact or difficult questions of law, including difficult issues of disclosure of sensitive material, in which case the court should consider sending for trial notwithstanding that its powers may be sufficient.

3.6 Approximately half of respondents agreed without further comment. Of the rest, a significant number (including the Justice Committee, the Law Society and the National Bench Chairs' Forum) queried in the first bullet point whether it was appropriate to consider personal mitigation and/or a reduction for a guilty plea in an allocation decision as the defendant will have pleaded not guilty (or not indicated a plea). Others suggested that consideration of these factors at this stage would pose practical difficulties and could cause delays.

3.7 The Justices' Clerks Society and the Magistrates' Association supported the principle behind the first bullet point. Council members will recall that the reason for including a reference to mitigation and guilty plea reductions is to encourage magistrates to consider that the final sentence for an offence may be lower than the starting point in the relevant offence specific guideline.

3.8 The reference to a 'single offence' was questioned and there was a suggestion that the guideline should refer to the courts' powers to sentence to up to

12 months for more than one either-way offence. For example the Law Society suggested:

‘.. a sentence in excess of the court’s powers for a single offence (or the combination of either-way offences)..’

3.9 Several respondents suggested alternative wording for clarification and some of these are reflected in the minor amendments below. Other suggestions include explicitly stating that if magistrates are uncertain as to whether their powers are adequate, they should accept jurisdiction.

3.10 Regarding the second bullet point, many respondents stated that the purpose of this factor as explained in the consultation document was not apparent from the wording in the draft guideline. It is therefore proposed to reword this factor to state clearly the circumstances in which it is likely to apply.

Guidance

It is important to ensure that all cases are tried at the appropriate level.

1. In general, either way offences should be tried summarily unless:

- the outcome would ~~result in~~ be a sentence in excess of the court’s powers for a single offence after taking into account personal mitigation and any potential reduction for a guilty plea; or
- for reasons of very unusual legal, procedural or factual complexity, the case should be tried in the Crown Court. This exception may apply in cases where a very substantial fine is the likely sentence. Other circumstances where this exception will apply are likely to be rare and case specific; the court will rely on the submissions of the parties to identify relevant cases. ~~the case is serious or grave involves complex questions of fact or difficult questions of law, including difficult issues of disclosure of sensitive material, in which case the court should consider sending for trial notwithstanding that its powers may be sufficient.~~

Question 3: Does the Council agree to retain the references to personal mitigation and guilty plea reductions at paragraph 1?

Question 4: Does the Council agree to the proposed amendments to paragraph 1?

Question 5: Does the Council wish to include any other amendments as suggested by respondents?

Consultation question 3: Do you agree with the proposed change of practice as set out at paragraph 2? Is the wording clear? Please give your reasons if you do not agree.

2. However, in **straightforward cases** the court should bear in mind its **power to commit for sentence after a trial** and may **retain jurisdiction** notwithstanding that the likely sentence would exceed its powers.

3.11 The Council discussed the responses to this question at the September meeting. The agreed amendments are shown below:

2. However, In **straightforward cases with no factual or legal complications** the court should bear in mind its **power to commit for sentence after a trial** and may **retain jurisdiction** notwithstanding that the likely sentence ~~would~~ might exceed its powers.

Question 6: Is the Council content with the amended wording of paragraph 2?

Consultation question 4: Do you agree with the proposed guidance at paragraph 3? Please give your reasons if you do not agree.

3. In addition, straightforward cases should be tried summarily even when it is apparent from the list of previous convictions that the defendant is subject to a Crown Court Suspended Sentence Order or Community Order.¹

¹ The power to commit the case to the Crown Court to be dealt with under para 11(1) of Schedule 12 or para 22 of Schedule 8 to the Criminal Justice Act 2003 can be exercised if the defendant is convicted.

3.12 The majority of respondents agreed with paragraph 3 without further comment. Several of those who commented appeared to misunderstand the guidance. This may be a training issue and will be drawn to the attention of the Judicial College and the Legal Trainer Network who will deliver training on the revised guideline. The Criminal Law Solicitors' Association disagreed with this factor stating that if the Crown Court is ultimately going to sentence, then the case should be dealt with in the Crown Court. This is an argument that the Council considered and discounted in relation to paragraph 2 at the September meeting. The remainder of those who commented (including the Law Society, HM Council of Circuit Judges and the Justices' Clerks Society) supported the guidance. One respondent suggested removing the words 'in addition' at the start of the sentence.

3.13 The following minor change is proposed:

3. ~~In addition,~~ Cases should be tried summarily even when it is apparent from the list of previous convictions that the defendant is subject to a Crown Court Suspended Sentence Order or Community Order.

Question 7: Does the Council agree to retain paragraph 3 subject to the minor amendment to the wording?

Consultation question 5: Do you agree with the proposed guidance at paragraph 4? Please give your reasons if you do not agree.

4. All parties should be asked by the court to make representations as to whether the case is suitable for summary trial. The court should refer to definitive guidelines to assess the likely sentence for the offence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence to include personal mitigation.

3.14 The majority of respondents agreed with paragraph 4 without further comment. Several respondents welcomed the emphasis on engaging the defence at this stage. There was some doubt as to whether this factor would make any practical difference as the defence will not make representations if they would prefer Crown Court trial. Others again queried whether it was appropriate to seek personal mitigation at this stage. Concerns were also raised that additional representations would cause delays.

3.15 Alternative wording was suggested by some respondents:

“All parties should be asked by the court to make representations as to whether the case is suitable for summary trial. The court should refer to definitive guidelines (if any) to assess the likely sentence for the offence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case, including those advanced by the defence (both as regards the seriousness of the alleged offence and any personal mitigation) that would be relevant to the sentence to be imposed in the event of conviction.” (Professor Hungerford-Welch)

“All parties should be asked by the court to make representations as to whether the case is suitable for summary trial, if they so wish. The court should refer to the definitive guidelines to assess the likely sentence for the offence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including any if advanced by the defence.” (the Law Society)

3.16 The following minor amendment is proposed:

4. All parties should be asked by the court to make representations as to whether the case is suitable for summary trial. The court should refer to definitive guidelines (if any) to assess the likely sentence for the offence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence to include personal mitigation.

Question 8: Is the Council content with the proposed amendment to paragraph 4?

Consultation question 6: Do you agree with the proposed final paragraph of the Guidance section? Please give your reasons if you do not agree.

Where the court decides that the case is suitable to be dealt with in the magistrates' court, it must warn the defendant that all sentencing options remain open and, that if the defendant consents to summary trial and is convicted by the court, the defendant may be committed to the Crown Court for sentence.

3.17 The majority of respondents agreed with this paragraph without further comment. The remainder of respondents agreed that a clear warning to defendants is important and most agreed with the proposed wording. Some respondents pointed out that by giving this warning in all cases, no distinction is made between those cases where committal for sentence is a real possibility and those where the defendant will certainly be sentenced in the magistrates' court. Some defence representatives suggested that this paragraph (and the guidance that precedes it) will lead to an increase in elections for trial.

3.18 The Council discussed some of these concerns at the September meeting and took the view that an unfettered power to commit for sentence was necessary to enable the retention of more cases in magistrates' court. It follows therefore that a clear warning of this must be given. A very similar paragraph appears in the current guideline, the main change has been to the emphasis given to it. It is not proposed to amend this paragraph.

Question 9: Does the Council agree to retain this paragraph without amendment ?

Consultation question 7: Do you agree that the Linked cases section should be unchanged? Please give your reasons if you do not agree.

Linked Cases

Where a youth and an adult are jointly charged, the youth must be tried summarily unless the court considers it to be in the interests of justice for both the youth and the adult to be sent to the Crown Court for trial. Examples of factors that should be considered when deciding whether to separate the youth and adult defendants include:

- whether separate trials can take place without causing undue inconvenience to witnesses or injustice to the case as a whole;
- the age of the youth, particularly where the age gap between the youth and adult defendant is substantial;
- the immaturity of the youth;
- the relative culpability of the youth compared with the adult and whether or not the role played by the youth was minor; and the lack of previous convictions on the part of the youth.

3.19 There were a number of helpful responses to this question several of which suggested that the guidance was an over-simplification and could be improved. Just for Kids Youth Justice Legal Centre and William Davies J suggested amended wording. The proposed wording below incorporates those suggestions and has been endorsed by William Davis J. It is compatible with the guidance in the draft youth guideline. The suggested change to the title of this section is to aid clarity.

Youths jointly charged with adults

The proper venue for the trial of any youth is normally the youth court. That remains the case where a youth is charged jointly with an adult. Where the decision as to the proper venue first must be taken in relation to the adult, the court then will consider where the youth should be tried. The youth must be tried separately in the youth court unless the adult is being sent for trial to the Crown Court and it is in the interests of justice for the youth and the adult to be tried jointly.

Examples of factors that should be considered when deciding whether to send the youth to the Crown Court (rather than having a trial in the youth court) include:

- whether separate trials will cause injustice to witnesses or to the case as a whole (consideration should be given to the provisions of sections 27 and 28 of the Youth Justice and Criminal Evidence Act 1999).
- the age of the youth. The younger the youth, the greater the desirability that the youth be tried in the youth court.
- the age gap between the youth and the adult. A substantial gap in age militates in favour of the youth being tried in the youth court.
- the lack of maturity of the youth.
- the relative culpability of the youth compared with the adult and whether the alleged role played by the youth was minor.
- the lack of previous convictions on the part of the youth.

The court should bear in mind that a youth court now has a general power to commit for sentence following conviction pursuant to Section 3B of the Powers of Criminal Courts (Sentencing) Act 2000 (as amended). In appropriate cases this will permit sentence to be imposed by the same court on adults and youths who have been tried separately.

Question 10: Is the Council content with the title and content of this section?

Consultation question 8: Do you agree with the proposed guidance in the Committal for sentence section? Please give your reasons if you do not agree.

Committal for sentence

There is ordinarily no statutory restriction on committing an either way case for sentence following conviction. The general power of the magistrates' court to commit to the Crown Court for sentence after a finding that a case is suitable for summary trial and/or conviction continues to be available where the court is of the opinion 'that the offence or the combination of offence and one or more offences associated with it was so serious that the Crown Court, should in the court's opinion, have the power to deal with the offender in any way it could deal with him if he had been convicted on indictment'.²

However, where the court proceeds to the summary trial of certain offences relating to criminal damage, upon conviction there is no power to commit to Crown Court for sentence.³

2. Powers of Criminal Courts (Sentencing) Act 2000, s.3.

3. Magistrates' Courts Act 1980, s.3(4) and s.22.

3.20 The majority of respondents agreed with the committal for sentence section. Any objections to this section repeated the concerns about the lack of an incentive to consent to summary trial where there is an unfettered power to commit for sentence. Some respondents suggested the inclusion an explicit statement to the effect that the fact that the magistrates' court has accepted jurisdiction does not fetter the court's jurisdiction to commit for sentence and that there does not have to be any additional information to justify this.

3.21 The committal for sentence section is largely unchanged from the current guideline except that it now reflects the correct statutory test. No changes are proposed to the version consulted on; there is a danger that any attempts to reinforce the message would be repetitive and detract from clarity.

Question 11: Is the Council content with the proposed Committal for sentence section?

Consultation question 9: Please provide any additional comments or suggestions that you have about the proposals.

3.22 Those comments that raised objections or proposed radical amendments were discussed at the Council meeting in September. Most of the other comments were either supportive of the proposals or repeated points made earlier. Some suggested that training (of magistrates and also of CPS) would be needed to bring about change. Mention was made of how the success of the guideline would depend on the implementation of the Transforming Summary Justice and Better Case Management initiatives.

3.23 The original plan had been to implement the guideline almost immediately after publication, on the basis that it represents a change of emphasis rather than a

change of policy and the maximum benefits would be achieved by early implementation. However, the Judicial College have asked for the usual three month period between publication and coming into force to allow them to deliver effective training. They argue that this will have a greater impact than a training programme after the guideline is in force.

3.24 If the Council is able to sign off the guideline at this meeting (with the formatted version circulated to members by email for final checks) it is proposed that the definitive guideline could be published on 26 November 2015 and come into force on 1 March 2016. This would allow time for training and for stakeholder engagement.

Question 12: Subject to any amendments agreed, is the Council content sign off the definitive guideline?

Question 13: Does the Council agree to the proposed timetable?

4 IMPACT

4.1 The impact assessment does not envisage any impact on correctional resources as the guideline does not affect sentence levels. The impact of any change to the definitive guideline will be very difficult to quantify, given the range of other factors that influence allocation decisions and the retention of the option of election for Crown Court trial.

4.2 Due to the complexities of the issues involved it has not been possible to monitor the effects of the current guideline and for the same reasons, there are no plans to monitor in any detailed way the effects of any revisions. However, it will be possible to obtain descriptive statistics on sendings for trial and committal for sentence over time.

4.3 However, an increase in the number of defendants electing trial on the Crown Court would have an impact on caseload and resources. While this is not something the Council has a duty to monitor and nor, for the reasons above, would it be possible to do so, it is something that the Council must bear in mind.

5 RISKS

5.1 There is an expectation that the Council will provide an updated allocation guideline which will result in fewer cases being sent for trial. Allocation decisions are influenced by a number of factors and the guideline is only one part of that wider picture. Publicity and training would ensure that a new guideline had the maximum

impact, but at the same time the Council would want to ensure that unrealistic expectations are not raised as to what a revised guideline can achieve in isolation.

5.2 As outlined above, respondents have suggested a risk of unintended consequences, with a greater number of defendants electing Crown Court trial, which needs to be considered.

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Allocation Guideline

Determining whether cases should be dealt with by a magistrates' court or the Crown Court

Applicability of guideline

In accordance with section 122(2) of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all defendants in the magistrates' court (including youths jointly charged with adults) whose cases are dealt with on or after [tbc]. It also applies to allocation decisions made in the Crown Court pursuant to Schedule 3 of the Crime and Disorder Act 1988. It will not be applicable in the youth court where a separate statutory procedure applies.

Guidance

It is important to ensure that all cases are tried at the appropriate level.

1. In general, either way offences should be tried summarily unless:

- the outcome would ~~result in~~ be a sentence in excess of the court's powers for a single offence after taking into account personal mitigation and any potential reduction for a guilty plea; or
 - for reasons of very unusual legal, procedural or factual complexity, the case should be tried in the Crown Court. This exception may apply in cases where a very substantial fine is the likely sentence. Other circumstances where this exception will apply are likely to be rare and case specific; the court will rely on the submissions of the parties to identify relevant cases. ~~the case is serious or grave involves complex questions of fact or difficult questions of law, including difficult issues of disclosure of sensitive material, in which case the court should consider sending for trial notwithstanding that its powers may be sufficient.~~
2. ~~However,~~ In **straightforward** cases with no factual or legal complications the court should bear in mind its **power to commit for sentence after a trial** and may **retain jurisdiction** notwithstanding that the likely sentence ~~would~~ might exceed its powers.
 3. ~~In addition,~~ Cases should be tried summarily even when it is apparent from the list of previous convictions that the defendant is subject to a Crown Court Suspended Sentence Order or Community Order.¹
 4. All parties should be asked by the court to make representations as to whether the case is suitable for summary trial. The court should refer to definitive guidelines to assess the likely sentence for the offence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence to include personal mitigation.

Where the court decides that the case is suitable to be dealt with in the magistrates' court, it must warn the defendant that all sentencing options remain open and, that if the defendant consents to summary trial and is convicted by the court, the defendant may be committed to the Crown Court for sentence.

¹ The power to commit the case to the Crown Court to be dealt with under para 11(1) of Schedule 12 or para 22 of Schedule 8 to the Criminal Justice Act 2003 can be exercised if the defendant is convicted.

Youths jointly charged with adults

Where a youth and an adult are jointly charged, the youth must be tried summarily unless the court considers it to be in the interests of justice for both the youth and the adult to be committed to the Crown Court for trial. Examples of factors that should be considered when deciding whether to separate the youth and adult defendants include:

- whether separate trials can take place without causing undue inconvenience to witnesses or injustice to the case as a whole;
- the age of the youth, particularly where the age gap between the youth and adult defendant is substantial;
- the immaturity of the youth;
- the relative culpability of the youth compared with the adult and whether or not the role played by the youth was minor; and
- the lack of previous convictions on the part of the youth.

The proper venue for the trial of any youth is normally the youth court. That remains the case where a youth is charged jointly with an adult. Where the decision as to the proper venue first must be taken in relation to the adult, the court then will consider where the youth should be tried. The youth must be tried separately in the youth court unless the adult is being sent for trial to the Crown Court and it is in the interests of justice for the youth and the adult to be tried jointly.

Examples of factors that should be considered when deciding whether to send the youth to the Crown Court (rather than having a trial in the youth court) include:

- whether separate trials will cause injustice to witnesses or to the case as a whole (consideration should be given to the provisions of sections 27 and 28 of the Youth Justice and Criminal Evidence Act 1999).
- the age of the youth. The younger the youth, the greater the desirability that the youth be tried in the youth court.
- the age gap between the youth and the adult. A substantial gap in age militates in favour of the youth being tried in the youth court.
- the lack of maturity of the youth.
- the relative culpability of the youth compared with the adult and whether the alleged role played by the youth was minor.
- the lack of previous convictions on the part of the youth.

The court should bear in mind that a youth court now has a general power to commit for sentence following conviction pursuant to Section 3B of the Powers of Criminal Courts (Sentencing) Act 2000 (as amended). In appropriate cases this will permit sentence to be imposed by the same court on adults and youths who have been tried separately.

Committal for sentence

There is ordinarily no statutory restriction on committing an either way case for sentence following conviction. The general power of the magistrates' court to commit to the Crown Court for sentence after a finding that a case is suitable for summary trial and/or conviction continues to be available where the court is of the opinion 'that the offence or the combination of the offence and one or more offences associated with it was so serious that the Crown Court should, in the court's opinion, have the power to deal with the offender in any way it could deal with him if he had been convicted on indictment'.²

However, where the court proceeds to the summary trial of certain offences relating to criminal damage, upon conviction there is no power to commit to Crown Court for sentence.³

² Powers of Criminal Courts (Sentencing) Act 2000, s.3

³ Magistrates' Courts Act 1980, s.3(4) and s.22

Statutory Framework

Section 19 of the Magistrates' Courts Act 1980 provides that:

- (1) "The court shall decide whether the offence appears to it more suitable for summary trial or for trial on indictment.
- (2) Before making a decision under this section, the court—
 - (a) shall give the prosecution an opportunity to inform the court of the accused's previous convictions (if any); and
 - (b) shall give the prosecution and the accused an opportunity to make representations as to whether summary trial or trial on indictment would be more suitable.
- (3) In making a decision under this section, the court shall consider—
 - (a) whether the sentence which a magistrates' court would have power to impose for the offence would be adequate; and
 - (b) any representations made by the prosecution or the accused under subsection (2)(b) above,

and shall have regard to any allocation guidelines (or revised allocation guidelines) issued as definitive guidelines under section 122 of the Coroners and Justice Act 2009.
- (4) Where—
 - (a) the accused is charged with two or more offences; and
 - (b) it appears to the court that the charges for the offences could be joined in the same indictment or that the offences arise out of the same or connected circumstances,

subsection (3)(a) above shall have effect as if references to the sentence which a magistrates' court would have power to impose for the offence were a reference to the maximum aggregate sentence which a magistrates' court would have power to impose for all of the offences taken together."

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."

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Sentencing Council

Sentencing Council meeting: 23 October 2015
Paper number: SC(15)OCT08 – MCSG
Lead Council members: Richard Williams, Jill Gramann
Lead official: Claire-Lou Manning

1 ISSUE

1.1 The Council agreed to review and revise the Magistrates' Court Sentencing Guidelines (MCSG). Now that the review project is underway, a methodology needs to be approved. The project is only scheduled to last 12 months, yet there are 31 guidelines covering 44 offences, plus a further 13 guidelines covering a mixture of 17 either way and summary motoring offences, plus 58 road traffic (bulk process type) offences to cover.

1.2 The Council is invited to consider how to achieve this review in a way that is proportionate to the respective types of work.

1.3 The terms of reference for the project, circulated in hard copy at the September meeting, require formal approval.

2 RECOMMENDATION

2.1 That the Council:

- Agrees that the project proceeds on the basis of the methodology proposed at paragraph 3.1; and
- Approves the terms of reference, attached at **Annex C**.

3 CONSIDERATION

The legacy offence guidelines within the MCSG that require conversion into Sentencing Council format

3.1 The guidelines issued by the Sentencing Guidelines Council ("the legacy offence guidelines") are structured in a way that provides examples of activity of

increasing seriousness to assist with the assessment of harm and culpability. This group of guidelines do not contain any step one or step two stages, and will need to be converted into the Sentencing Council's "step by step" approach. An example of what this conversion process may generate is provided at **Annex A**. The nature of the offence and the examples of activity inform the steps in the revised legacy offences guidelines.

3.2 The following timetable is proposed for the legacy offences:

- November 2015: drafts to MGSG working group. Working group members will in turn take soundings from their organisations;
- January 2016: Approval by MCSG working group;
- March 2016: Approval by the Council and sign-off for consultation;
- May – June 2016: Consultation (six weeks).

3.3 The drunk and disorderly example at **Annex A** highlights three issues:

- The problem with adherence to three categories of seriousness, in line with the SC approach to most guidelines: in some cases, three categories can create overly complex sentencing ranges, which become difficult to distinguish where the overall penalty is low (this offence carries a maximum level three fine (£1000)). It is therefore recommended that we have some flexibility of approach.
- The approach to aggravating and mitigating factors, in particular balancing the need to provide sufficient information against the need to keep the guidelines from becoming unwieldy: previously, the hard copy MCSG contained a pull out card which gave sentencers an at a glance way of accessing the standard lists of aggravating and mitigating factors, alongside the offence specific factors. The recommended solution is to draw on the standard lists and incorporate those parts that seem most pertinent to the offence in hand into steps one and two, as opposed to reproducing all of the standard lists in full. The draft example has done both, to demonstrate to Council the comparative lengths of guideline using both methods.
- The likelihood of amendments which involve more substantive changes: the project has been tasked with reviewing and revising the guidelines. It is anticipated that the organisations represented at the working group will seek

amendments to the wording of the guidelines that would require substantive, rather than formatting changes.

3.4 While consultation will be important, this project is different to the development of a definitive guideline. No amendments are envisaged to be particularly significant or sizeable; and the aggravating and mitigating factors are well established. It is therefore proposed that a light touch consultation process be applied. At this stage, a six week consultation, aimed primarily at the statutory consultees, MCSG end users and other key stakeholders is envisaged.

Question 1: Is the Council happy for the drafting to proceed in the basis of a stepped approach consistent with existing SC guidelines, but with flexibility as to numbers of categories if appropriate?

Question 2: Is the Council willing to allow the MCSG working group to assess and recommend the categories with appropriate adjustment of sentencing ranges (if required) for the MCSG legacy offences?

Question 3: Is the Council willing to delegate to the MCSG working group the drafting of any revisions to the legacy offences?

Question 4: Does this include where substantive drafting changes are proposed?

Question 5: Is the Council willing to agree in principle a light touch consultation process for the changes to the legacy offences brought about by conversion into SC format?

Requests from the working group for new or substantially amended guidelines

3.5 The MCSG working group has identified three distinct areas where they want the project to focus attention. This work is in addition to the re-formatting of legacy offences. The group has high expectations about the scale and scope of the project and it is clear that it will not be possible to deliver all of the changes they would like to see, partly due to the volume and complexity of work, but also due to the nature of some of the offence groups identified as priorities. It would therefore be helpful to have a steer from the Council as to the approach to take, in order to manage expectations. These are:

- the harassment group of offences, including developing a guideline to cover s33 Criminal Justice and Courts Act 2015;
- offences relevant to the misuse of level crossings; and

- “rogue landlords”.

Harassment type offences

3.6 The MCSG provides several guidelines on harassment type offences. Some are likely to be covered by the work on the forthcoming Public Order guideline. The guidelines for offences of harassment under the Protection of Harassment Act 1997 (PHA 1997) (both s2 non-violent and s4 violence/fear of violence harassment) will form part of the review work to convert guidelines into Sentencing Council format. In addition to work to update the existing guidelines, in particular to reflect the increase in the use of social media to commit offences, there is the distinct issue of offences under s33 Criminal Justice and Courts Act 2015: disclosing private sexual photographs and films with intent to cause distress (so called “revenge porn”). Given that this is a new offence, there is not any statistical data available on it yet, but initial soundings have indicated that the offence is being charged. This offence carries up to two years imprisonment, and is a sensitive offence firmly in the public eye at present. Any guideline for this offence would therefore need to be developed in the usual way. Given the time this would take, and the fact that this is not just an offence for the magistrates’ court, development of such a guideline is beyond the scope of the MCSG review project. I would however recommend that the working group considers the development of a guidance note addressing when community, custody and custody in excess of the powers of the magistrates’ court thresholds are likely to have been crossed, to be added to the Explanatory Materials accompanying the MCSG.

3.7 There are also the relatively new offences under ss 2A and 4A PHA 1997; harassment in the form of stalking. Section 2A is a summary only offence, so it is recommended that we could include this in the MCSG, albeit it would be as a new guideline. Pending any development of such, sentencers are likely to be able to find assistance in the existing guidelines for ss2 and 4. Section 4A is an either way offence, and carries up to five years. No data has been collated on these offences yet. It may be the case that in due course scoping work on any future public order or other harassment type offence guidelines would identify if there is a need for a distinct guidelines for these offences. However, it seems unlikely, given the nature of the offence under s4A, that such a guideline would be within the remit of the MCSG. A similar note in the explanatory materials on thresholds for the s4A offence may assist.

Question 6: Does the Council agree that any new guidelines on harassment type offences, in particular “revenge porn” and s4A PHA 1997 is outside the scope of this project, but that guidance is produced (if needed) for offences not already within the MCSG for inclusion in the Explanatory Materials?

Level Crossings

3.8 The mischief that has prompted concern in this area is where drivers in particular “jump” the lights at railway level crossings. This is a difficult area to assist sentencers with given that there are several offences that could be applied to the mischief. This may in turn have led to some feeling amongst some stakeholders in this area that these offences are “under” sentenced (in particular, the Office of the Rail Regulator (as then was) wrote to the Council in 2010 expressing this view), which, if it arises from charging decisions, is not a matter the Council can address. The Legal Aid, Sentencing and Punishment of Offenders Act 2012 introduced additional offences to assist in this area. Given the disparate nature of the offences that could engage in this area, I do not propose that a guideline be developed. What may be of far greater practical assistance would the inclusion of a specific aggravating factor to be highlighted in the existing guidelines for offences such as failing to comply with a traffic signal, careless/inconsiderate driving, and dangerous driving.

Question 7: Does the Council agree not to proceed with the development of a definitive guideline in respect of level crossing offences at this point in time, and instead incorporate a specific aggravating factor in the relevant guidelines?

Rogue Landlords

3.9 The Council will be aware that there are numerous different mischiefs covered by this heading, ranging from planning breaches (the so called “beds in sheds” cases), to not having, or not complying with the conditions of an House of Multiple Occupation (HMO) licence. Not only does this mean that several different offences are contemplated by those prosecuting in this area, but also these are difficult multi-agency cases. Figures reflecting some of the (numerous) offences possible under the Housing Act 2004 being sentenced in the magistrates’ courts appear at **Annex B** Figures received from the Chartered Institute of Environmental Health would suggest that there were just under 700 prosecutions for offences under the Housing Act alone last year. Birmingham MC has advised the working group that

it sees sufficient of this work to create an entire court list of it. The anecdotal evidence collected from the working group is that it is affecting all court areas, rural and urban, and, given that the risks are in the gravest cases occupiers being exposed to lethal conditions, a real source of concern to sentencers.

3.10 The Immigration Bill appears to be incorporating part of the mischief in this area. I would not therefore advocate allocating resources to developing a definitive guideline in this area until the legislative position is clearer. However, given the rate of growth of prosecutions in this area, it may be prudent to consider a short guidance document to cover the most common offences of planning breach, failure to have an HMO licence and failure to comply with the terms of such, to assist sentencers.

Question 8: Does the Council agree not to proceed with the development of a definitive guideline in respect of rogue landlords at this point in time?

Question 9: Does the Council agree that the MCSG review project should assess developing a guidance note in respect of rogue landlord offences?

4 IMPACT AND RISKS

4.1 The MCSG review project has generated considerable interest amongst (in particular) key MC stakeholders. There is considerable appetite to see as much achieved as is practicable, within the time constraints. Any decision to publish revised guidelines significantly beyond the expected delivery date or to fail to commence or plan work on any new guidelines would have to be very carefully explained to stakeholders, in particular end users of the MCSG (e.g. judiciary, courts service, Justices' Clerks' Society, prosecutors and the defence community). The timetable proposed at paragraph 3.2 would enable consultation May 2016 - June 2016. This compliments the current work plan and allows for a significant portion of the work (the conversion of the legacy offences) to be completed within the life of the project, which is scheduled to end in September 2016.

4.2 Slippage from this timetable would result in the bulk of the project not being delivered within the life of the project, which would affect the Office's ability to deliver it at all within a reasonable timescale. It is possible that feedback during the development stage may necessitate a longer consultation period, or a longer period post-consultation.

4.3 It is possible that the introduction of a stepped approach to the legacy offences could have the unintended effect of changing sentencing practice. This could be as a result of providing more options for the assessment of harm. It is difficult to predict what the combined effect if any of the removal of the former approach and the introduction of the stepped approach will have, but a cautious pessimistic scenario would be that some sentences will increase. This risk however is likely to be temporised by the limited statutory maxima for many of these offences, making a cost impact, in terms of any significant increase use of secure estate unlikely, but it is too early in the process to assess impact on community sentences. For offences with sentencing options outside of the MC range, a more precise approach to the assessment of seriousness may assist with allocation, which may go some way to offset any rises in community orders.

Question 10: Is the Council content to proceed notwithstanding the risks identified?

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SC(15)OCT08 MCSG - Annex A (Conversion example)

Drunk and disorderly in a public place

Criminal Justice Act 1967, s.91
Effective from: 04 August 2008

Triable only summarily:
Maximum: Level 3 fine

[User guide for this offence](#)

Offence seriousness (culpability and harm)

A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
<i>Shouting, causing disturbance for some minutes</i>	<i>Band A fine</i>	<i>Conditional discharge to Band B fine</i>
<i>Substantial disturbance caused</i>	<i>Band B fine</i>	<i>Band A fine to band C fine</i>

The above is how this guideline looks now. It uses examples of activity because it is a legacy guideline. Below is an attempt to convert these assessments of seriousness, into standard SC guideline format.

Step One

Determining the offence category

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

Category 1 Greater harm and higher culpability

Category 2 Greater harm and lower culpability or lesser harm and higher culpability

Category 3 **Neither** greater harm **nor** higher culpability

Factors indicating greater harm:

- Substantial disturbance caused
- Offence committed at school, hospital or other place where vulnerable persons may be present
- Offence committed on public transport
- Victim providing public service
- Offence ties up disproportionate police/emergency service/local authority resource - **new**

Factors indicating greater culpability:

Statutory aggravating factors:

- 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:

- Lengthy incident
- Group action
- Disregard of earlier warning regarding conduct - **new**
- Offence during currency of related controls e.g. street drinking controls - **new**
- Swearing and/or abusive language - **new**

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.

Category 1 Band B fine Range: Band B fine to Band C fine

Category 2 Band A 75% Range: Band A fine to Band B fine

Category 3 Band A fine Range: Discharge to Band A fine

[NOTE – having 3 categories is new, and arguably splitting hairs for this offence given the maximum available penalty. But it set out the structure.]

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 (if not incorporated above)
- Timing of the offence (if not incorporated above)
- Offence committed against those working in the public sector or providing a service to the public (if not incorporated above)
- Presence of others including, especially children or vulnerable people
- Failure to comply with current court orders
- Offence committed whilst on licence
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- Isolated incident
- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Remorse
- Determination and/or demonstration of steps taken to address addiction or offending behaviour
- Serious medical conditions requiring urgent, intensive or long-term treatment
- 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

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Housing Act (2004) offences

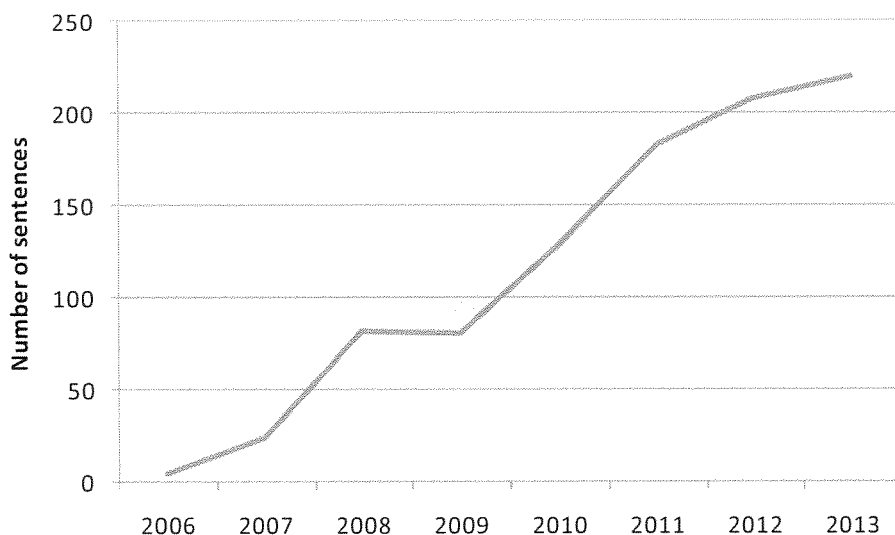
Summary offences

This section includes the following offences:

- Fail to comply with a housing improvement notice (s.30)
- Fail to comply with a housing prohibition order (s.32)
- Licence holder / person restricted by licence of multi occupation house fail to comply with licence conditions (s.72(3) & (7))
- Fail to comply with a housing management order (s.131)
- Disclose document / information contained in a home condition report (s.165)
- Obstruct officer of a housing enforcement authority (s.167)
- Fail to comply with regulations in respect of management of housing in multiple occupation (s.234)
- Aid / abet a failure to comply with regulations in respect of management of housing in multiple occupation (s.234)
- Fail to comply with the requirements of a housing notice under section 235 (s.236(1) & (3))
- Knowingly supply false / misleading information to a housing authority (s.238(1) & (3))
- Knowingly supply false / misleading information to another knowing it will be given to a housing authority (s.238(2) & (3))

In 2013, 220 adult offenders were sentenced for these offences. All offenders were sentenced in magistrates' courts, and the majority of offenders (95 per cent) received a fine. The number of offenders sentenced for these offences has generally been increasing since 2006 (see Figure 1).

Figure 1: Number of adult offenders sentenced for specified summary offences, 2006-2013



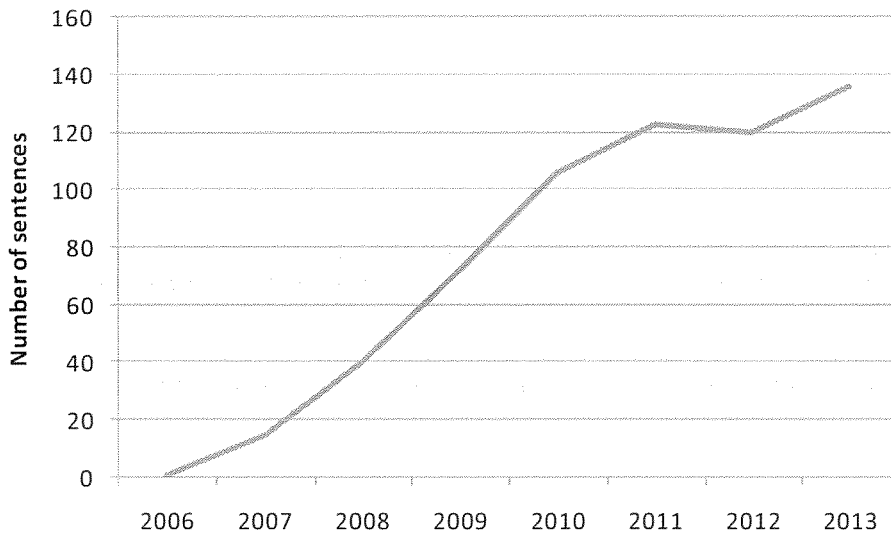
Summary offences connected with housing licences

This section includes the following offences:

- Controller / manager of house in multiple occupation act without a section 6(1) licence (72(1) & (6))
- Controller / manager of licensed multi occupation house knowingly permit unlicensed occupation (72(2) & (6))
- Controller / manager of residential accommodation required to be licensed under Part 3 of the Act (95(1) & (5))
- Licence holder / person fail to comply restriction of s. 90(6) licence condition (95(2) & (6))

In 2013, approximately 140 adult offenders were sentenced for these offences and the majority (96 per cent) were sentenced in magistrates' courts. The most common sentence outcome for these offences is a fine. In 2013 fines comprised 93 per cent of all sentence outcomes. Since 2006 the number of offenders sentenced for these offences has generally been increasing (see Figure 2).

Figure 2: Number of adult offenders sentenced for specified offences, 2006-2013



Other housing offences

This section includes the following offences:

- Fail to comply with a housing overcrowding order (s.139)
- Obstruct a relevant person in performance of anything required by Parts 1 to 4 of the Housing Act 2004 (s.241)

Over the last ten years, 10 adult offenders have been sentenced for these offences. All of these offenders received a fine.

Magistrates' Court Sentencing Guidelines Working Group

TERMS OF REFERENCE

Composition of the Working Group

1. The working group is composed of representatives of organisations with an interest in the MCSG and is chaired by a representative of the Sentencing Council.

Objectives

2. To assist in the development and revision of offences in the MCSG that are not currently on the workplan of the Sentencing Council .
2. To make recommendations to the Sentencing Council regarding:
 - a. the approach to revising the MCSG;
 - b. the content of a revised MCSG including guidelines, overarching principles and explanatory material;
 - c. the overall format of a revised MCSG; and
 - d. the future distribution of guidelines and updates to magistrates, district judges, justices' clerks and legal advisers.

Scope

3. The working group will consider the content and format of a revised MCSG including the number of guidelines and the extent of the specific guidance contained therein.
4. The Sentencing Council has agreed a model for guidelines which will be replicated in the revised MCSG. Therefore, the format of individual guidelines is outside the scope of the working group.

5. The working group will make recommendations to Council as to which offences to cover and the content of any new or revised guideline which are exclusive to the MCSG
6. The working group will make recommendations to Council regarding offences which should be considered for inclusion in the Council's work plan or are dealt with a MCSG exclusive guidelines.

Timescales

7. The working group will meet as often as necessary to complete its recommendations. Frequency of meetings will be agreed at the meeting of the working group 24.09.15, and can be varied according to business need.

Sentencing Council

Sentencing Council meeting:
Paper number:
Lead official:

23 October 2015
SC(15)OCT 09 – Work Plan and
Business Plan
Claire Fielder 020 7071 5779

1 ISSUE

- 1.1 At the mid year point, this is an opportunity for the Council to review progress against its current work plan; consider amendments to the work plan and consider the risks to delivery.

2 RECOMMENDATION

- 2.1 That the Council:
- Notes progress against the work plan and confirms that it remains content with current priorities;
 - Approves the update to the Business Plan 2015-16 for publication on the website (at pages 8-9);
 - Notes the risks and agrees with the proposed approach.

3 CONSIDERATION

Progress over past 6 months

- 3.1 Excellent progress has been made over the past six months:
- The **theft** definitive guideline was published on 6 October. In a minor change to the published plan, it will come into force on 1 February 2016, to allow sufficient time for training.
 - The **health & safety, corporate manslaughter and food** offences definitive guidelines will be published as planned on 3 November 2015; again coming into force on 1 February 2016, to allow time for training.
 - Following the consultation in the summer, the **allocation** definitive guideline will be published on 26 November (one month later than originally planned, and subject to sign off today) and will now come into force on 1 March 2016, in order to allow sufficient time for training.

- The **robbery** definitive guideline remains on track to be published in January 2016. We are working to a provisional date of 26 January.
- Following the consultation at the start of the year, work on the **dangerous dog** definitive guideline is on track, although launch has been postponed by one month to March 2016, as a result of the decision to launch the guilty plea consultation in February.
- The **guilty plea guideline** consultation is now expected to start in February, subject to decisions today and in November: a delay to the timetable published in April, but in line with decisions taken in May.
- The digital version of the **Magistrates' Courts Sentencing Guidelines** was launched on 10 September.
- This week, the Council is due to publish its **annual report**, and its first evaluation of one of its own guidelines, **assault**. This is later than scheduled in light of a decision to undertake additional analysis.
- An external contract to scope out **data collection in the magistrates' court**, and in support of the Council's new analytical strategy, has been let and work is underway. An external contract to undertake **evaluations of the drugs and theft guidelines** has also been let; data collection is due to start on 16 November.

3.2 In summary, the Council is on track to publish five definitive guidelines during the financial year 2015-16, as well as holding three consultations (dogs, allocation and guilty plea), implementing major digital reform and publishing its first evaluation of one of its guidelines. By any measure, this makes it the Council's most productive and successful year.

Forward look: plans for second half of 2015/16 and beyond

3.3 The work plan remains busy and challenging for the rest of the year and beyond. Progress and changes to the original plans are as follows:

- The Council decided to postpone the consultation on the **breach of order** guideline. Subject to separate discussions today on the overall approach, this has been moved from the published date of December 2015 to July 2016, with publication of the definitive guideline by June 2017.
- Consultation on the **youth offences** guideline and overarching principles was due to start in January 2016. However, in light of other pressures on our publication timetable, and in particular to allow a reasonable time between

launching guilty plea and youth (likely to be two of our largest and highest profile consultations for some time), we intend to postpone the consultation slightly, from January to April. We anticipate that publication of the definitive guideline will be in February 2017.

- Revision of the **Magistrates' Courts Sentencing Guidelines (MCSG)** is underway. Today the Council is considering a proposal to consult from around June 2016.
- As planned, the **assault** guideline will return to the Council in November 2015 and we intend to consult from around July 2016.
- The **knife/ offensive weapon** guideline will be considered for the first time in December, as planned, with consultation scheduled for September 2016.
- The Council is due to consider **public order** for the first time in January 2016 and to consult from October; again this remains in line with the published timetable.
- We hope to bring the **manslaughter** guideline to the Council in April 2016, with the consultation still scheduled for February 2017. The timetable for manslaughter is contingent on that for assault, and in light of the number of consultations currently scheduled for 16/17, is fairly likely to be postponed.
- **Motoring** offences causing death or injury remain at the end of the list, pending the outcome of a Government review. There is no progress on this, so the timetable remains provisional, pencilled in to come to the Council in October 2016.

Longer term work plan

i) Revising SGC guidelines

3.4 In April 2015 the Council agreed that its priority was to replace SGC guidelines, to bring them all up to date. Corporate identity was an important but not overriding factor. In order of priority, it suggested:

- Attempt murder;
- Overarching Principles - Assault on Children and Cruelty to a Child; and
- Overarching Principles on Domestic Violence.

3.5 Consideration had been given to incorporating both Overarching Principles in the assault guideline. When it considers assault in November, the Council will be invited to consider a recommendation that they are better treated as two separate projects. The New Sentences: Criminal Justice Act 2003 guideline, which was lower on the priority list, is (subject to a decision today) likely to be

replaced with the introduction of guidance on the imposition and approach to breaches of suspended sentence orders and community orders. The Council did not identify amendment of the Overarching Principles: Seriousness guideline as a priority, but this is referred to in many other guidelines and should remain on the list.

ii) Monitoring, evaluation and possible revision of SC guidelines

3.6 The Council also agreed an approach to monitoring and evaluation of SC guidelines, and agreed that on the basis of the monitoring evidence it would decide first, whether a full evaluation was required; and second, whether on the basis of such an evaluation, revision of a guideline was required.

3.7 A scoping study to explore what data is held in the magistrates' courts that could support the Sentencing Council's monitoring and evaluation work has been commissioned and will be published early in 16/17.

3.8 The status of the monitoring and evaluation of SC guidelines is as follows:

- The outcomes of initial analysis on **burglary** offences are being considered, along with the need to conduct further work to support this evaluation.
- An external evaluation of **theft** and **drugs** offences has also been commissioned; data collection will start in November 2015, with a second phase in 16/17.
- Monitoring to support the **environmental offences** guideline was extended by six months until the end of December 2015, after which analysis will take place. Similar monitoring to support the health and safety, food hygiene and corporate manslaughter guideline will commence in February 2016.

iii) New guidelines

3.9 The Council identified a number of priorities for new offence-specific guidelines in April 2015 :

- **Cyber offences**: hacking, online stalking, revenge porn; and
- **Terrorism offences**, subject to the case volume.

3.10 The MCSG working group has identified revenge porn amongst the offences it considers to be high priorities for new guidelines, which probably fall outside the scope of the project to revise the MCSG. These are being considered separately at today's meeting and depending on those decisions, may also

need to be factored in to the longer term work plan. Other elements of the “cyber offences” may be picked up in the MCSG project.

3.11 The Council will continue to receive ad hoc requests for new guidelines or for guidelines to be amended, which it will need to consider. Arson/ criminal damage remains a longer-term priority.

3.12 In summary, on the basis of earlier Council decisions, the work plan for consultations and definitive guidelines into 2018/19 is as follows:

	2015/16	2016/17	2017/18	2018/19
Consultations	Dogs	Youth	Manslaughter	Attempt murder
	Allocation	Breach	Motoring	<i>Burglary*</i>
	Guilty Pleas	Assault	OP: Child Cruelty	<i>Drugs*</i>
		Knives	OP: DV	Terrorism
		Public Order	Revenge porn/ cyber	<i>Environment*</i>
Definitive	MCSG digital & explan material	Guilty Pleas	Assault	Motoring
	Theft	Youths	Breach	OP: Child Cruelty
	Health and Safety	MCSG offence specific	Knife offences	OP: DV
	Allocation		Public Order	Revenge porn/ cyber
	Robbery		Manslaughter	<i>Environment*</i>
	Dogs			

* Depending on outcome of monitoring and evaluation, which will inform the decision whether or not to revise the guideline.

4. RISKS

4.1 The work plan is based on a number of assumptions, which are very likely to require amendment over the coming year:

- Relatively stable financial resources (up to 10% budget reduction);
- Relatively stable staff numbers, and no extended vacancies;
- No fundamental reform of the sentencing regime and/ or the structure of the criminal courts.

4.2 The scale of the financial challenge facing our sponsor department cannot be overstated. We are already planning to be able to accommodate an in-year budget reduction of up to 10% without any further negative impact on the work plan.

4.3 The plans from April 2016 will need to remain under review as further details of the MOJ's spending review settlement emerge, and will almost certainly require substantial revision. Rather than speculatively adjusting the work plan at this stage, it is proposed that we wait until the scale of the budget cut for next year and subsequent years, as well as details of any staff reductions and/ or voluntary early departure schemes, become clearer.

4.4 However, at this stage it is possible to identify a number of possible ways of approaching a substantial reduction in the Council's budget. The most appropriate options would depend on the size and pace of budget cuts and the mix of staff resources:

- Slow down the pace of guideline production;
- Postpone indefinitely the work to revise existing SC guidelines, unless evaluation demonstrates very significant problems which are having a serious impact on prison, probation or youth offending resources;
- Raise the threshold for agreeing to requests for new guidelines, revising the Council's rationale;
- Re-launch, rather than revise, the old SGC Overarching Principles, or leave them in force and unamended.

4.5 The more immediate risk to the work plan is a restriction on filling vacancies imposed by the MOJ, which in a small team comprised of a mix of specialists, creates particular challenges, as there are obvious limitations on our ability to move resources around to accommodate departures. While we have plans in place to ensure that the imminent departure of a statistician does not affect publications between now and the end of March, for which work is fairly well advanced, it is likely that a prolonged vacancy will result in delays to all of our planned guideline evaluations, and potentially have knock on effects on our ability to meet the current timetable for consultations and publications of definitive guidelines from April onwards.

4.6 We will continue to look for ways to improve efficiency and make savings, including using other organisations to support consultation events; streamlining processes; exploring options for lower key consultations; moving away from printing guidelines and other materials (although the move to digital incurs increased costs in the short to medium term, both in terms of development costs and the need to print until the courts are fully digital); and using video or telephone conferencing rather than travelling, wherever possible.

4.7 At the same time, the Council is increasingly viewed as the solution to perceived problems in the criminal justice system, whether in relation to sentencing new offences (e.g. drug driving); complex offences where there is a perception of lenient sentencing (e.g. housing and immigration offences); particular groups (young adults or women); or to fill a perceived evidence gap. Any reduction in resources will have a direct impact on the Council's ability to respond positively to any of these requests.

Question 1: Does the Council have any observations about the current work plan? Are the priorities agreed in April still the right ones?

Question 2: Is the Council content to publish the short update to the Business Plan on the website?

Question 3: Are Council members content with the current approach in light of the risks identified?

Draft update for publication on the website:

The Sentencing Council's Business Plan 2015/16 includes a commitment to review the indicative timeline for preparation and publication of guidelines on a bi-annual basis and to publish updates as appropriate. While there are no major changes to the work plan, the timing of some projects has changed, which may have an impact on stakeholders' planning.

The table [attached/ linked] highlights the changes that have been made to the guideline development and publication timetable.

The implementation dates for three definitive guidelines: theft offences; health and safety, food hygiene and safety and corporate manslaughter offences; and allocation will now come into force on 1 February 2016, in order to allow sufficient time for training and implementation.

The dangerous dogs definitive guideline will be published in March 2016, one month later than originally planned, in order to accommodate the revised timetable for the consultation on the guilty plea guideline, which is now scheduled for February 2016. The consultations on youths and breach of orders have been postponed to the next financial year because of additional work required at the development stage for both guidelines.

In addition to changes to the publication timetable, some changes have been made to the milestones relating to objective 3 of the Business Plan (monitoring and evaluation). Further analysis to support the evaluation of the assault guideline means that this will now be published in October 2015, rather than in the second quarter.

The outcomes of initial analysis on burglary offences are still being considered, and as part of this the Council will consider whether there is a need to conduct further work to support the evaluation. As a result, publication of an evaluation report is postponed.

In addition to the priorities included in the Business Plan, a scoping study to explore what data is held in the magistrates' courts that could support the Sentencing Council's monitoring and evaluation work has been commissioned and will be published early in 2016/17.

An external evaluation of theft and drugs offences has also been commissioned; data collection will start in the third quarter of the current financial year, with a second phase in 16/17. Final reports will therefore not be published until the Council has had an opportunity to analyse the data from both phases.

Monitoring to support the environmental offences guideline has been extended by six months, until the end of December 2015, after which analysis will take place. Similar monitoring to support the health and safety, food hygiene and corporate manslaughter guideline will commence in quarter four of the current financial year.

Sentencing Council Guideline Work Plan – 2015 to 2018: updated October 2015

Guideline	First discussion of guideline by Council	Consultation period	Publish definitive guideline	Definitive guideline in force
Theft	July 2013	April – June 2014	October 2015	February 2016
Health & Safety	October 2013	November 2014 – February 2015	November 2015	February 2016
Robbery	January 2014	October 2014 – January 2015	January 2016	April 2016
Dangerous Dogs	June 2014	March – June 2015	March 2016	July 2016
Allocation	March 2015	June – July 2015	November 2015	March 2015
MCSG explanatory material	January 2014	December 2014 – January 2015	Autumn 2015	Autumn 2015
MCSG offence specific guidelines	March 2015	June – July 2016	September 2016	January 2017
Breach of order	October 2014	July - September 2016	June 2017	September 2017
Guilty pleas	November 2014	February – April 2016	October 2016	January 2017
Youths	October 2014	April - June 2016	February 2017	June 2017
Assault	March 2015	July – October 2016	April 2017	July 2017
Knife/ bladed article possession	December 2015	September – November 2016	July 2017	October 2017
Public order	January 2016	October 2016 – January 2017	October 2017	January 2018

Guideline	First discussion of guideline by Council	Consultation period	Publish definitive guideline	Definitive guideline in force
Manslaughter (including SGC provocation guideline)	April 2016	March – June 2017	January 2018	April 2018
Motoring (death/injury)	October 2016	May – August 2017	April 2018	July 2018