

7 December 2018

Dear Members

Meeting of the Sentencing Council – 14 December 2018

The next Council meeting will be held in the **Queens Building Conference Suite, 2nd Floor Mezzanine at the Royal Courts of Justice**, on Friday 14 December 2018 at 9:45.

A security pass is not needed to gain access to this building and members can head straight to the meeting room. Once at the Queen's building, go to the lifts and the floor is 2M. Alternatively, call the office on 020 7071 5793 and a member of staff will come and escort you to the meeting room.

The agenda items for the Council meeting are:

- | | |
|--|-------------|
| ▪ Agenda | SC(18)DEC00 |
| ▪ Minutes of meeting held on 16 November | SC(18)NOV01 |
| ▪ Action Log | SC(18)DEC02 |
| ▪ Mental Health | SC(18)DEC03 |
| ▪ Additional research to support the drugs guideline | No paper |
| ▪ Assault | SC(18)DEC04 |
| ▪ General guideline | SC(18)DEC05 |
| ▪ Website update | No paper |
| ▪ Firearms | SC(18)DEC06 |

Members can access papers via the members' area of the website. If you are unable to attend the meeting, we would welcome your comments in advance.

This is a shorter meeting, finishing at 14:15. A table has been booked for 14:30 at Brasserie Blanc, Chancery Lane for Christmas lunch. Please remember to bring cash for the balance of the meal and also for the lunch kitty 'top up' as per my email last month.

Best wishes



Steve Wade

Head of the Office of the Sentencing Council

Blank page

COUNCIL MEETING AGENDA

14 December 2018
Royal Courts of Justice
Queen's Building

- | | |
|---------------|---|
| 09:45 – 10:00 | Minutes of the last meeting and matters arising (papers 1 & 2) |
| 10:00 – 11:00 | Mental Health - presented by Mandy Banks (paper 3) |
| 11:00 – 11:15 | Additional research to support the drugs guideline - presented by Amber Isaac |
| 11:15 – 12:15 | Assault - presented by Lisa Frost (paper 4) |
| 12:15– 13:00 | General Guideline - presented by Ruth Pope (paper 5) |
| 13:00 – 13:15 | Website update - presented by Phil Hodgson |
| 13:15 – 14:15 | Firearms - presented by Sophie Klinger (paper 6) |

Sentencing Council

COUNCIL MEETING AGENDA

Blank page

MEETING OF THE SENTENCING COUNCIL

16 NOVEMBER 2018

MINUTES

Members present:

Tim Holroyde (Chairman)
Rob Butler
Rosina Cottage
Rebecca Crane
Rosa Dean
Julian Goose
Heather Hallett
Max Hill
Maura McGowan
Alpa Parmar
Beverley Thompson

Apologies:

Mark Castle
Sarah Munro

Representatives:

Chief Constable Nick Ephgrave for the police,
Phil Douglas for the Lord Chancellor (Director,
Offender and Youth Justice Policy)

Members of Office in
Attendance:

Steve Wade (Head of Office)
Mandy Banks
Lisa Frost
Eleanor Nicholls
Caroline Nauth-Misir
Ruth Pope

1. MINUTES OF LAST MEETING

- 1.1. The minutes from the meeting of 19 October 2018 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman welcomed two Kosovan judges who were observing the meeting.

3. UPDATE ON THE SENTENCING CODE – PRESENTED BY LAW COMMISSION

- 3.1 Professor David Ormerod and Sebastian Walker from the Law Commission updated the Council on the progress of the Sentencing Code, which was welcomed by members.

4. DISCUSSION ON MENTAL HEALTH – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

- 4.1 The Council considered a revised draft of the guideline, which had benefited from the input of a small group of experts, including academics, charities, and the medical profession. The Council agreed that the guideline should only apply to offenders aged over 18 and also discussed issues relating to offenders who have privately funded healthcare and treatment plans.
- 4.2 The Council noted that the publication of the report of the independent review of the Mental Health Act was due in December, and considered the potential implications for the guideline were changes to legislation to be recommended.

5. PRESENTATION ON HEALTH AND SAFETY EVALUATION – PRESENTED BY CAROLINE NAUTH-MISIR, OFFICE OF THE SENTENCING COUNCIL

- 5.1 The Council considered the findings from an assessment of the definitive guideline covering health and safety, corporate manslaughter, and food safety and hygiene offences. The Council noted that the guideline appeared to be working well and agreed that it did not need to be reviewed at this time. It was agreed that it would continue to be monitored using data from the Ministry of Justice.
- 5.2 The Council agreed to publish the findings from this assessment by the end of March 2019.

6. DISCUSSION ON ASSAULT – PRESENTED BY LISA FROST, OFFICE OF THE SENTENCING COUNCIL

- 6.1 The Council agreed that the revised guidelines for section 20 GBH/wounding and ABH should share the same culpability factors. Wording of culpability factors was agreed and transcript analysis

findings regarding which factors are relevant to the most serious offences were considered.

- 6.2 Harm models were also agreed for GBH and ABH. The Council agreed that, as Parliament has determined that the offences share the same statutory maximum sentence, they are distinct offences and the Council should not seek to provide for assessing harm as a continuum between the offences and sentences should be set accordingly. Sentence levels were agreed.
- 6.3 A number of aggravating and mitigating factors were agreed and it was decided that early testing of the revised draft guidelines should be undertaken with sentencers to identify any issues with factor application and proportionality of sentences.

7. PRESENTATION AND Q & A WITH NATIONAL CRIME AGENCY – PRESENTED BY NATIONAL CRIME AGENCY

- 7.1 Richard Prosser, Coordinator of the NCA's Expert Evidence Team (Drugs and Firearms Trafficking), gave an interesting and informative presentation to the Council on current and emerging drug offending and threats. He particularly focused on purity, how the sentencing guidelines are currently used, the challenges facing law enforcement agencies, and emerging threats from new types of offending and new drugs. He also provided a view on some areas which were under discussion at this meeting: supply directly to users and exposing others to more than usual danger.

8. DISCUSSION ON DRUGS – PRESENTED BY ELEANOR NICHOLLS, OFFICE OF THE SENTENCING COUNCIL

- 8.1 The Council discussed the guideline for offences of "Permitting premises to be used for drug-related activity" under s8 of the Misuse of Drugs Act 1971. The Council heard that this guideline was, for the most part, working well and no major changes were needed.
- 8.2 The Council agreed to some small changes to culpability, in relation to exploitation, and to some changes relating to frequency/duration of the drug-related activity, to ensure consistency with current sentencing practice. The Council also agreed to present the starting points and ranges differently, to be consistent with other guidelines.
- 8.3 The Council then discussed changes to the assessment of harm for the importation/exportation, supply/possession with intent to supply and production/cultivation offences. Following information from Mr Prosser's presentation, and with input from the CPS, the Council agreed to minor changes to the wording of guidance on "supplying directly to users", and on how to approach cases where the offender has exposed others to more than usual danger, recognising that this can include harm to drug users, to others involved in the drug-related activity, and to unconnected third parties.

8.2 The Council agreed to maintain the current approach to assessing culpability and harm, but to make some changes to culpability factors relating to financial or other advantage, and to add in new culpability factors relating to exploitation of children and vulnerable people. The Council also made some small changes to aggravating and mitigating factors.

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

9.1 The Council continued reviewing the draft guideline in the light of consultation responses. Amendments were agreed to clarify aggravating and mitigating factors. It was agreed to expand the information relating to sentencing young adults. The expanded explanations of factors in this guideline will form the basis of those for offence specific guidelines which will be consulted on in 2019.

ACTION AND ACTIVITY LOG – as at 7 December 2018

	Topic	What	Who	Actions to date	Outcome
SENTENCING COUNCIL MEETING 13 April 2018					
1	Robbery	Full report for the robbery evaluation to be circulated to Council, once the time series analysis has been updated. Council will then decide whether or not to put robbery back on the workplan.	Sarah Poppleton	ACTION ONGOING: The report will be sent to members in January (put back due to delay in publishing sex offences assessment).	
SENTENCING COUNCIL MEETING 22 June 2018					
2	Expanded factors in offence specific guidelines	Council members to assist with reviewing factors in digital guidelines over the summer	Ruth Pope/ Council members	ACTION ONGOING: This has been delayed while we await the digital version of the guidelines. Members will be asked to assist in January 2019	
SENTENCING COUNCIL MEETING 27 July 2018					
3	Mental Health	Claire agreed to check the data held in relation to probation reports, specifically, what percentage of reports (oral and written) suggested that psychiatric reports were ordered.	Pamela Jooman	ACTION ONGOING- It has been determined that any information available in the reports is likely to be limited (in terms of both coverage and detail), and would require a large amount of resource to extract. SC A&R are instead investigating other sources of data and working with MoJ colleagues to determine what information may be available.	

SENTENCING COUNCIL MEETING 28 September 2018					
4	Media Coverage	It was agreed that the suggested actions arising from Nick Mann's presentation on changing trends in media coverage be remitted to the Communications and Confidence Subgroup	Phil Hodgson	ACTION ONGOING - to be discussed at next C&C subgroup meeting in the new year	
SENTENCING COUNCIL MEETING 19 October 2018					
5	Firearms	Sophie to circulate draft guidance on the approach to minimum terms in firearms cases to Council members for comment, prior to consideration at the December Council meeting	Sophie Klinger/ Council members		ACTION CLOSED: – draft circulated on 1 November and comments received.
SENTENCING COUNCIL MEETING 16 November 2018					
6	Mental Health	Mandy to circulate a redrafted paragraph regarding private treatment/hospitals to Council members for comment, prior to confirmation of revised wording at the December meeting.	Mandy Banks/ Council members		ACTION CLOSED – draft circulated and comments received.
7	Drug Offences (revision)	Eleanor to circulate revised aggravating factors relating to “more than usual harm” to Council members for comment prior to January meeting.	Eleanor Nicholls/ Council members	ACTION ONGOING – Eleanor to circulate revised wording after December papers.	

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

14 December 2018
SC(18)DEC03 – Mental Health
Rosa Dean
Mandy Banks
0207 071 5785

1 ISSUE

1.1 This is the last meeting to agree the draft guideline ahead of the consultation in Spring next year. The changes discussed at the last meeting have been made, and any major changes made to the draft since the last meeting have been highlighted in the attached draft at **Annex A**.

2 RECOMMENDATION

2.1 At this meeting the Council are asked to note the revised draft and in particular:

- To note the changes that have been made to the wording following the last Council meeting, and in particular, the revised **Annex A**
- To note the proposed plan for the draft resource assessment for the guideline
- To consider the questions regarding the objectives for the guideline
- To sign off the draft guideline ahead of consultation

3 CONSIDERATION

Applicability of guidelines

3.1 At the last meeting the Council agreed that the guideline would only be for offenders aged over 18, but that there should be some text to explain why the guideline was not applicable to under 18s. This has been done and can be seen at the top of page 3 of **Annex A**. It is suggested that the explanation should be brief, as it is quite difficult otherwise succinctly to explain the complex issues around differences between adult and adolescent psychology as it relates to offending behaviour.

3.2 There is also a link now to the Children and Young People guideline, and it is proposed that this guideline may alone be sufficient in terms of providing guidance on sentencing under 18s. This guideline outlines the principle that courts must have regard to the welfare of the young person, specifically that the court must be alert to any mental health problems or learning difficulties/disabilities, or brain injury, and that that the approach to sentencing must be individualistic, as set out in the extracts from the guideline below:

While the seriousness of the offence will be the starting point, the approach to sentencing should be individualistic and focused on the child or young person, as opposed to offence focused. For a child or young person the sentence should focus on rehabilitation where possible. A court should also consider the effect the sentence is likely to have on the child or young person (both positive and negative) as well as any underlying factors contributing to the offending behaviour.

In having regard to the welfare of the child or young person, a court should ensure that it is alert to:

- *any mental health problems or learning difficulties/disabilities;*
- *any experiences of brain injury or traumatic life experience (including exposure to drug and alcohol abuse) and the developmental impact this may have had;*
- *any speech and language difficulties and the effect this may have on the ability of the child or young person (or any accompanying adult) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction;*
- *the vulnerability of children and young people to self harm, particularly within a custodial environment; and*
- *the effect on children and young people of experiences of loss and neglect and/or abuse*

Question 1: Are the Council content with the proposed wording relating to the age applicability of the guideline? And does the Council agree that there doesn't need to be any new guidance for under 18s, that the existing Children and Young People guideline is sufficient?

Section One: General Approach:

3.3 The minor changes to wording agreed at the last meeting to this section have been made. In addition, as requested at the last meeting the last bullet point in paragraph 2 has been reworded, and can be seen in highlighted text at the bottom of page 4.

3.4 In relation to paragraph 4, at the last meeting the Council agreed to ask the Criminal Procedure Rules Committee, to add a requirement that sentencers should ensure that reports follow an offender to custody. The Rules Committee secretariat has confirmed that a rule amendment will be proposed to the Rules Committee at its December meeting. With rule amendments only being made twice a year, this amendment would be made in June 2019, to come into effect on the 1st of October 2019. It is therefore proposed that the wording is left as it is in paragraph 4, but the situation is outlined in the consultation paper.

3.5 Following the last meeting the Council commented on and agreed a revised draft of paragraph 6 via email. This paragraph relates to private treatment and hospitals, and can be seen highlighted on page 5.

3.6 At the last meeting the Council discussed whether there should be a glossary of mental health terms appended to the guideline. A search has been conducted to see if a glossary could be found, but there doesn't appear to be anything suitable. It is suggested that the document mentioned during the meeting, '*Defining Mental Health Services*', isn't really suitable for the purposes of the guideline. It discusses different mental health services available, and their definitions, e.g. 'acute inpatient bed'. Charities such as Mind do provide a glossary of common mental health terms on their website, which the guideline could link to, but the risk with this is it could become out of date. Therefore, it is recommended that the guideline doesn't include a glossary. The consultation paper could ask a question around this, to see if respondents think there should be something and, if so, ask for suggestions.

Question 2: Are the Council content with the changes made to section one? Does the Council agree to not including a glossary of mental health terms?

Section Two- Assessing Culpability

3.7 The minor changes to wording agreed at the last meeting to this section have been made. In addition, as requested at the last meeting the last lines of paragraph 8 relating to when it may not be appropriate to follow expert opinion have been reworded and can be seen highlighted on page six.

Question 3: Are the Council content with the changes made to section two?

Section Three – Determining the Sentence and Section Four – Sentencing Disposals

3.8 At the last meeting the Council discussed paragraph 10, which refers to the purposes of sentencing, and the new wording which had been proposed to deal with when the requirement to have regard to the purposes of sentencing may not apply. The Council requested that this paragraph be reworded. This has been done and can be seen in highlighted text on page 7. This was the main change to this section, other than minor changes to wording agreed at the last meeting. Similarly there has only been one minor change to section 4, the text regarding sentencing disposals.

Question 4: Are the Council content with section three and four of the guideline? Are the Council content with the reworded paragraph 10?

Annex A

3.9 Since the last meeting Professor Pamela Taylor, Chair of the Forensic Psychiatry Faculty at the Royal College of Psychiatrists has reviewed Annex A, the information on conditions and disorders. She has substantially revised this information, which can be seen at page 10 onwards. The previous version was perhaps too simplified an overview of what are very complex conditions. Professor Taylor's amendments rectify this and also correct some erroneous information at the same time. Soundings of reactions to this revised version were taken with Maura and Rosa, who both felt that the information contained would be very useful to courts. Although presented in a more descriptive style than previously, this is only supplementary information and is contained within an annex to the main guideline.

Question 5: Are the Council content with the revised Annex A?

Annex B - reports

3.10 The minor changes to wording agreed at the last meeting have been made to this section. The only other change concerns a suggestion made by Sophie Marlow, that as well as the guideline containing a link to the Criminal Procedure Rules, there should also be a link to the new Criminal Practice Directions on commissioning psychiatric reports, as they supplement the rules and provide guidance on how to request reports. A link has been inserted to this effect on page 16, and signposts the user to which are the relevant sections.

Question 6: Is the Council content that the guideline contains a link to the Criminal Procedure Rules?

Annex C – sentencing disposals

3.11 At the last meeting the Council asked that the legislation be checked regarding MHTRs, for the text within the box at the top of page 19. This has been done and the wording is correct. The Council also discussed the bullet points under the table, relating to the custody threshold and when a MHTR might be appropriate, and asked that they be amended, into three separate bullet points. This has been done and can be seen highlighted towards the end of page 19. A link to the Imposition guideline has also been included, as requested at the last meeting. There were no other changes to Annex C since the last meeting.

Question 7: is the Council content with the changes made to Annex C?

Purpose/Objectives for the guideline

3.12 At this stage it would be very helpful, not least for the draft resource assessment, and the communications/press strategy for consultation, if the Council confirmed what the purpose/objective of the guideline is. For example:

- Is the guideline intended to change sentencing practice in any way? Perhaps by increasing awareness of MHTRs and thereby driving up their usage?
- Or, is the purpose of the guideline awareness raising? Providing details of conditions/disorders which perhaps courts had not previously given as much thought to how they might affect sentencing?
- Or is the guideline to encourage courts to give greater consideration to the treatment of a condition in order to prevent further offending, which may increase hospital orders?
- Or, is the guideline simply consolidating useful information in one place to provide assistance in areas courts are already increasingly grappling with, in which case it won't radically change sentencing practice?
- Or is there another objective/purpose for the guideline not listed above?

Question 8: What is the purpose of the guideline?

Independent Review of the Mental Health Act

3.13 The final report into the Review was published on the 6 December. As this was on the same day this paper was circulated to Council it has not been possible to study the 300 odd page report in depth. It may be helpful to recall at this stage that the Review was set up to look at how MHA legislation is used, and how practice can improve. The stated purpose of the Review was to understand the reasons for:

- rising rates of detention under the Act;
- the disproportionate number of people from black and minority ethnic groups detained under the Act; and
- processes that are out of step with a modern mental health care system

3.14 The final report makes a number of recommendations, which the Government will now take time to consider. The Government has only thus far committed to accept the principle of 2 of the review's proposals on 'nominated person' (alternative to nearest relative) and 'advanced directives' (allowing patients to set out their wishes in advance for consideration by health professionals). The relevant recommendations the review makes for the Criminal Justice System are set out below:

- Magistrates' courts should have the following powers, to bring them in line with Crown Courts:

- remand for assessment without conviction under section 35 of the Mental Health Act (MHA)
 - remand for treatment under section 36 of the MHA
 - the power to commit a case to the Crown Court for consideration of a restriction order following an 'actus reus' finding
 - the power to hand down a supervision order following an 'actus reus' finding (where a person is not fit to enter a plea, but has been found to have committed the offence) under S1a of the Criminal Procedure (Insanity) Act
- Prison should never be used as 'a place of safety' for individuals who meet the criteria for detention under the Mental Health Act
 - A new statutory, independent role should be created to manage transfers from prisons and immigration removal centres
 - The time from referral for a first assessment to transfer should have a statutory time limit of 28 days. It is suggested that this could be split into two new, sequential, statutory time limits of 14 days each: i) from the point of initial referral to the first psychiatric assessment; ii) from the first psychiatric assessment until the transfer takes place (this incorporates the time between the first and second psychiatric assessment and the time to transfer).
 - Decisions concerning leave and transfer of restricted patients should be categorised by the Ministry of Justice according to risk and complexity. Straightforward and / or low risk decisions should be taken by the responsible clinician. The Ministry of Justice would have 14 days to override this decision.
 - The new statutory Care and Treatment Plan should include a plan for readmission and consider what factors should be taken into account concerning use of informal admission, section 2 and recall;
 - The powers of the Tribunal should be expanded so that they are able, when deciding not to grant an application for discharge, to direct leave or transfer.

- The Government should legislate to give the Tribunal the power to discharge patients with conditions that restrict their freedom in the community, potentially with a new set of safeguards
- There should be an automatic referral for people on conditional discharge to the tribunal after 12 months and at regular intervals after that for patients who have not applied directly.
- The Government should consider giving the Parole Board Tribunal status and combining hearings where appropriate. At the very least the Government should streamline processes so that hearings could be convened back to back
- There should be a common framework for assessment of risk across criminal courts, clinicians and the Justice Secretary. The assessment needs to be regularly reviewed (at least annually and before every Tribunal hearing). Every patient should have written in to the Care and Treatment Plan what their risk levels are.

3.15 In anticipation of the publication of the report, thought had been given to the possible impact of the review on the draft guideline, and the forthcoming consultation. Any changes to legislation (if they happen at all) will clearly be some way away. The main body of the draft guideline only deals with general principles and the approach to sentencing in this area. The main areas that refer to legislation are contained within annexes: primarily Annexes B and C. Accordingly, the Council could consider taking a similar approach to the one taken in the Guilty Plea guideline¹, where in the appendices at the back of the guideline, which contain flowcharts, it states: *'this flowchart is provided as an illustration of the operation of the guideline as at 1 June 2017. It does not form part of the guideline'*.

3.16 There could be similar wording inserted in annexes B and C, regarding references to legislation, to the effect of: *'This information provided is correct as of xx/xx/xx (date guideline comes into force). It does not form part of the guideline.'*

The position would be outlined in the consultation paper: that the recommendations of the Review have been noted, and that the Council will continue to monitor developments while it consults on a draft guideline. On the current timetable the definitive guideline will not be

¹ <https://www.sentencingcouncil.org.uk/publications/item/reduction-in-sentence-for-a-guilty-plea-definitive-guideline-2/>.

published until Spring 2020, which gives plenty of time to see what the position is with regards to legislation, and make any changes as appropriate. The link to the report is:

<https://www.gov.uk/government/publications/modernising-the-mental-health-act-final-report-from-the-independent-review>.

Question 9: Are the Council content with the approach outlined with regards to the Review? Does the Council want to include a form of words within Annex B/C as suggested?

Consultation paper

3.17 The draft consultation paper and final version of the guideline will be sent around to Council members for comment via email. As the Council are aware officials have worked with a number of groups who have an interest in the area, academics, charities and the medical profession, to try to ensure the draft guideline is as robust and thoroughly researched as possible, in advance of consultation. We know that there is demand for such a guideline, so it is hoped that the reaction to the draft guideline will be a positive one, with it being seen that the Council is responsive to calls for a guideline in this area. The title of the guideline has been reworded, following the discussion at the last meeting.

4 IMPACT/RISK

4.1 A draft resource assessment, considering the likely impact of the guideline on sentencing practice, will be published alongside the consultation. The resource assessment will set out the purpose of the guideline and include statistics related to mental health, where available. Officials are maintaining close links with officials in the MoJ and other government departments to keep up to speed with the latest available data, which includes current volumes of mental health treatment orders and numbers of offenders sentenced to hospital orders.

4.2 Analysis of the Sentencing Council's Crown Court Sentencing Survey data and other data collections has also been undertaken to look at how often mitigating factors such as 'Mental health issues' were ticked, and the Ministry of Justice have shared figures, which are for internal use only, relating to the proportion of OASys assessments in prison which are marked as 'severe' mental health problems (see **Annex B**).

4.3 However, there remains a lack of data about how mental health is currently treated by the courts and therefore what the precise impact of the guideline may be. It is therefore expected that the resource assessment will take a narrative form, setting out the expectations of the guideline but without quantifying its expected impact. There is a risk that this approach may be criticised by the Justice Select Committee, who have previously called for more robust resource assessments, especially given that a large number of offenders may potentially be affected by the guideline. Officials will make contact in advance with the Committee to explain

why the assessment has been conducted in this way, to try to head off any criticism by the Committee of the approach taken.

4.4 To address the risks and to improve Council's understanding of what the impact of this guideline is likely to be, the A&R team plan to conduct interviews with experts in this field to help inform the draft resource assessment. It is also planned to carry out interviews with sentencers to further help inform the definitive guideline and final resource assessment.

4.5 There is also a risk that, if the guideline affects the use of hospital orders, this could disproportionately affect BAME groups. Statistics relating to detentions under the MHA suggest that rates of detention for the 'Black or Black British' ethnic group are four times that of the 'White' group, while the proportion of offenders sentenced to hospital orders is about 70% higher for Black offenders, compared to White offenders (see **Annex B**). The Council will be aware of the sensitivity around BAME issues post Lammy, and as noted in para 3.13 above, the Review into the MHA stated that higher rates of detention amongst BAME groups was an area of concern. Officials will look into these issues, but the general lack of data in this area, as discussed above, may mean that this is a risk that cannot fully be overcome.

4.6 A draft resource assessment will be cascaded for comment to the Analysis and Research subgroup, followed by all of Council, in spring 2019.

Question 10: Are the Council content with the proposed plan for the draft resource assessment? Are the Council content that the impact/risks have been sufficiently considered at this stage?

Blank page

Sentencing Council

Overarching Principles:

Sentencing offenders with Mental
Health conditions or disorders

Contents

Applicability of guideline	3
Section one: General approach	4
Section two: Assessing culpability	5
Section three: Determining the sentence	7
Section four: Sentencing disposals	8
Annex A: List of conditions/disorders	10
Annex B: Reports	16
Annex C: Sentencing Disposals-further details	19

Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after xxxx, regardless of the date of the offence. [This guideline does not apply to offenders under the age of 18 as the considerations for these offenders in this regard are substantially different from those of adult offenders. Courts should instead use the Sentencing Children and Young People guideline, a link to which is attached below.](#)
<https://www.sentencingcouncil.org.uk/publications/item/sentencing-children-and-young-people-definitive-guideline/>

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

“Every court -

(a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender’s case, and

(b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

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

This guideline applies only to the sentencing of convicted offenders: it does not address issues of fitness to plead or disposals for those found unfit to plead.

Section one: General approach

4. The guidance given in this guideline will assist sentencers when sentencing offenders who have any of the conditions or disorders outlined in **Annex A**. The mere fact that an offender has such a condition or disorder does not necessarily mean that it will have an impact on sentencing.
2. There are a wide range of mental health conditions, neurological impairments and developmental disorders, and the level of any impairment will vary between individuals. Accordingly, in assessing whether the condition or disorder has any impact on sentencing, the approach to sentencing should be individualistic and focused on the particular issues relevant in the case concerned. In particular:
- care should be taken to avoid making assumptions, as unlike some physical conditions, many mental health conditions, neurological impairments or learning disabilities are not easily recognisable
 - no adverse inference should necessarily be drawn if an offender had not previously been formally diagnosed, or had not previously declared a condition (possibly due to a fear of stigmatisation or because they are unaware they have a condition)
 - it is not uncommon for people to have a number of different conditions, ‘co-morbidity’, and for drug and/or alcohol dependence to be a factor,
 - difficulties of definition and classification in this field are common, there may be differences of expert opinion and diagnosis in relation to the offender, or it may be that no specific condition can be identified
 - [sentencers should be wary of acting on the basis of self- diagnosis or on diagnosis from those unqualified, which alone will rarely be sufficient](#)
3. In any case where the offender is or appears to be mentally disordered, the court must obtain and consider a medical report before passing a custodial sentence other than one fixed by law, unless, in the circumstances of the case, the court is of the opinion that it is unnecessary (s.157 Criminal Justice Act 2003). There is more information on s.157 at **Annex B**. It may be unnecessary if existing sources of information can be used, such as from probation, defence representatives, prison, police or court mental health teams, or family members. In addition, s.39 of the Mental Health Act (MHA)1983 provides that a court may request information about a patient from local health services if considering making a hospital

or interim hospital order. Further information about requests for reports can be found at **Annex B** of this document.

4. Where a custodial sentence is passed the court should forward psychiatric, medical and pre-sentence reports to the prison, to ensure that the prison has appropriate information about the offender's condition and can ensure their welfare.
5. Courts should always be alive to the impact of a condition on an offender's ability to understand and participate in proceedings. To avoid misunderstandings, which could lead to further offences, it is important to ensure that offenders understand their sentence and what will happen if they reoffend and or breach the terms of their licence or supervision. Courts should therefore consider putting the key points in an accessible way. Further information can be found at Chapter Four of the Equal Treatment Bench Book:

<https://www.judiciary.uk/publications/new-edition-of-the-equal-treatment-bench-book-launched/>

6. In all cases where the court is considering a mental health disposal, the court must be satisfied that treatment is and will continue to be available. If the treatment proposed is not within a NHS hospital, courts should take particular care to confirm the proposed hospital/ treatment centre has the appropriate level of security and specialist staff able to address the offending behaviour in addition to treating the mental health condition. In all cases, courts should consider whether a restraining order or other ancillary order may be appropriate. In addition, if the court is considering making a mental health treatment requirement, sentencers should first seek assurance that the proposed treating psychiatrist is aware of the duty to the court to inform the court of any non-compliance with the order.

Section two: assessing culpability

7. Courts should refer to offence specific guidelines to assess culpability, in conjunction with this guideline. If an offender has any of the conditions or disorders listed in **Annex A**, it is possible that it may affect their level of responsibility for an offence. The relevance of any condition will depend on the nature, extent and effect of the condition on an individual and whether there is a causal connection between the condition and the offence. It is for sentencers to decide how much responsibility the offender retains for the offence, given the particular disorder or condition and the specific facts of the case at hand.

8. In some cases the condition may mean that culpability is significantly reduced, in others, the condition may have no relevance to culpability. Assessments of culpability will vary between cases due to the differences in the nature and severity of conditions, and the fluctuation of some conditions; it is not possible to be prescriptive in this regard. Careful analysis of the evidence is required to make this assessment, which the sentencer, who will be in possession of all the relevant information, is best placed to make. Expert evidence, where offered and relevant, should be taken into account, but sentencers must make their own decisions and should not feel bound to follow expert opinion. [Examples of when it may not be appropriate to follow expert opinion include, but are not limited to, where there is conflicting expert advice or](#) where experts suggest a diagnosis without a clear indication of how it affects culpability.

9. Courts may find the following list of questions to consider helpful, to assist in deciding the level of culpability:

- Did the offender's condition mean it impaired their ability to exercise appropriate judgement?
- Did the offender's condition impair their ability to make rational choices, or to think clearly?
- Did the offender's condition impair their ability to understand the nature and consequences of their actions?
- Did the offender's condition have the effect of making them disinhibited?
- Were there any elements of premeditation or pre-planning in the offence, which might indicate a higher degree of culpability?
- Were there attempts to minimise their wrongdoing or to conceal their actions, which might indicate a higher degree of culpability?
- Did the offender have any insight into their illness, or did they lack insight?
- Did the offender seek help, and fail to receive appropriate treatment or care?
- If there was a lack of compliance in taking medication or following medical advice, was this influenced by the condition or not?
- If the offender exacerbated their condition by drinking/taking drugs, were they aware of the potential effects of doing so?

This is not an exhaustive list.

Section three: determining the sentence

10. Courts should consider all the purposes of sentencing during the sentencing exercise: the punishment of offenders, reduction of crime, rehabilitation of offenders, protection of the public, and reparation. [Although the statutory requirement to have regard to the purposes of sentencing does not apply when making a hospital order, a hospital order with restrictions, or a hospital and limitation direction, consideration of the purposes of sentencing may still be relevant in such cases.](#) Just because an offender has a mental health condition, neurological impairment or disability, it does not mean they should not be punished, and in the case of serious offences protection of the public may be paramount. For offenders whose condition has contributed to their offending the effective treatment of their condition should in turn reduce further offending and protect the public.

11. Decisions will need to be made on a case by case basis. For example, in a case where an offender's culpability was high, the sentence **may** be more weighted towards punishment. In a case where an offender's culpability was low, the sentence **may** be more weighted towards rehabilitation.

12. An offender's condition at the point of sentence could have a bearing on the type, length or nature of sentence that is imposed, including or whether a disposal under the Mental Health Act is appropriate. Some points to consider are:

- The existence of a condition at the date of sentencing, or its foreseeable recurrence, could mean that a given sentence could weigh more heavily on the offender than it would on an offender without that particular condition
- Custody can exacerbate poor mental health and in some cases increase the risk of self-harm
- Some requirements of community orders may be impractical, consideration should be given to tailoring the requirements of orders, as necessary in individual cases. An offender should not receive a more severe sentence, such as custody, because they would be unable to do unpaid work as part of a community order, for example

13. In deciding on a sentence, courts should also carefully consider the criteria for, and regime on release. It should not be assumed that one order is better than another, or that one order offers greater protection to the public than another. Careful analysis of all the facts is required in each case, including what is practically available, before deciding on the appropriate disposal. The graver the offence and the greater risk to the public on release of the offender, the greater

emphasis the court must place upon the protection of the public and the release regime.

Further details are given at **Annex C**, but in summary:

- A **s37 hospital order** lasts initially for six months but can be renewed for a further six months and then for a year at a time. Discharge from a hospital order can be made by the responsible clinician (RC) or the hospital at any time. The RC can also make a Community Treatment Order (CTO) which allows for the patient to be treated in the community but provides for recall to hospital if needed to ensure that the patient receives the treatment needed. The patient can apply to the tribunal (First Tier Tribunal (Mental Health) in England and the Mental Health Review Tribunal in Wales) for discharge after six months and annually thereafter.
- A **restriction order under s41** lasts indefinitely and does not need to be renewed. The Secretary of State for Justice (SoS) can lift the restriction order at any time if satisfied that it is no longer necessary to protect the public from serious harm. A patient who is still in hospital when the restriction order is lifted is treated as if admitted under a hospital order on the day the restriction order ended.
- A **limitation direction under s45A** ends automatically on the patient's 'release date'. The effect of this is that the limitation direction will end at the halfway point of a determinate sentence. If the patient is serving a life sentence, or an indeterminate sentence, the release date is the date (if any) on which the person's release is ordered by the parole board. Although the limitation direction ends on the release date, the hospital direction does not. So a patient who is still detained in hospital on the basis of the hospital direction on their release date, remains liable to be detained in hospital from then on as an unrestricted hospital order patient. While the limitation direction remains in effect, if the patient no longer requires treatment in hospital for a mental disorder, the SoS may direct that the patient be removed to prison (or equivalent) to serve the remainder of their sentence, or else release them on licence.

Section four: sentencing disposals

14. The following is a non- exhaustive list of available mental health disposals/orders and relevant guidance (further details on each are at **Annex C**).

Magistrates' courts

- Community Order with a Mental Health Treatment Requirement (MHTR)
- Section 37 Hospital order
- Section 37 Guardianship order
- Section 43 Committal to the Crown Court (with a view to a restriction order)

Crown Court

- Community Order with a Mental Health Treatment Requirement (MHTR)

- Section 37 Hospital order
- Section 37 Guardianship order
- Section 41 Restriction order
- Section 45A Hospital and limitation direction

The following guidance applies in the Crown Court only:

Where:

- (i) the evidence of medical practitioners suggests that the offender is currently suffering from a mental disorder,
- (ii) treatment is available, and
- (iii) the court considers that a hospital order (with or without a restriction) may be an appropriate way of dealing with the case,

the court should consider **all sentencing options** including a section 45A direction and consider the importance of a penal element in the sentence taking into account the level of culpability assessed at section two above.

Section 45A hospital and limitation direction

- a. Before a hospital order is made under s.37 MHA (with or without a restriction order under s.41), consider whether the mental disorder can appropriately be dealt with by custody with a hospital and limitation direction under s.45A MHA. In deciding whether a s.45A direction is appropriate the court should bear in mind that the limitation direction will cease to have effect at the automatic release date of a determinate sentence.
- b. If a penal element is appropriate and the mental disorder can appropriately be dealt with by a direction under s.45A MHA, then the judge should make such a direction. (Not available for a person under the age of 21 at the time of conviction).

Section 37 hospital order and s41 restriction order

If a s.45A direction is not appropriate the court must then consider whether, (assuming the conditions in s.37(2) (a) are satisfied), the matters referred to in s. 37(2)(b) would make a hospital order (with or without a restriction order under s.41) the most suitable disposal. The court should explain why a penal element is not appropriate.

Annex A

MAIN CLASSES OF MENTAL DISORDERS AND PRESENTING FEATURES

Mental disorder is a catch-all term for illnesses and developmental disorders. Mental disorder is a collection of symptoms (the sufferer's experiences) and signs (features that may be observed by an outside observer). For categorisation as a disorder, these problems should be associated with distress and/or interference with personal functions.

Broadly the concept of **illness** is used for disorders with onset after a sustained period – often a lifetime – of health or average/normal psychological function e.g. schizophrenia, depression.

Developmental disorders are conditions which may be apparent at birth, but always have early enough onset that the individual never quite fitted within the average behavioural range. Behaviour has three main components – thinking (cognitions), feeling (emotions, affect) and actions. Autism, generalised or specific intellectual (learning) disabilities, and personality disorders are examples.

Other disorders which may be relevant in court lie at the interface between psychiatry and neurology. Epilepsy in its various forms is an example.

Brief descriptions of some of the more common disorders likely to be relevant in court

Psychotic illnesses

These too affect cognitions, emotional capacities and actions.

There are two main groups – those which are associated with more generalised illness or bodily problems, often called 'delirium', and those which are not – often referred to as 'primary psychosis', which include schizophrenia and bipolar disorders.

Delirium is likely to present with some impairment in consciousness. It may occur as an acute phase of a dementing process, but also with serious infections or generalised problems with bodily functions, such as hormonal disturbances. They may also occur in the context of drug (including alcohol) taking or withdrawal from such substances.

Sufferers may misinterpret sensory input in any of its main forms (sight, hearing, smell, taste, touch), thus having 'illusions'; their sensory experiences may be so disturbed that they see or hear or smell or taste or feel things which are not there at all to the external observer (hallucinations). Their thinking may be disturbed in its own right, or following from these perceptual problems, such that they have pathological beliefs (delusions).

Delirium is likely to resolve as the underlying condition is treated.

Schizophrenia and bipolar disorders are disorders in which consciousness is unimpaired, but sensory (illusions, hallucinations) and cognitive (delusions, formal thought disorder) disturbances occur.

In **schizophrenia**, serious disturbances of emotion also occur in which the person either cannot experience or express emotions accurately, or both, and may be unaware of the difficulty. Terms like – ‘incongruous affect’, when the emotional experience or expression is the opposite from what a healthy observer might expect for the situation, or ‘flattened affect’, when the person seems to have little or no emotion at all, are quite common. Tests for empathy may show that this is reduced.

People may also present with ‘formal thought disorder’ – when the form of thought, and thus speech is hard to follow and may include nonsensical, made-up words. Hallucinations most commonly take the form of ‘third person hallucinations’ when the person hears others talking about them, but when no-one is doing so.

Delusions are beliefs which, in full form, are wholly impervious to reason, generally, but not always based on a false premise. Persecutory/paranoid delusions are probably the most common. Passivity delusions – when the individual ‘knows’ that his/her thoughts, feelings or actions are controlled by another person or an external system – may be particularly associated with violence. If hypochondriacal delusions occur, they tend to be bizarre and may be dangerous to the sufferer – for example a belief in a machine causing all the problems implanted in his/her eye. Many aspects of schizophrenia are treatable, but ‘cure’ is unlikely and deterioration over years quite common. Nevertheless, sufferers can attain a good quality of life and safety if a full range of relevant treatments can be sustained.

Delusional disorder is sometimes diagnosed when the only abnormality appears to be the presence of a single delusion. Vexatious litigants sometimes have this disorder.

Bipolar illness – also referred to by the older, now less used term ‘manic depression’ – is characterised by repeated episodes of depression (low mood and low activity levels) and (hypo)mania (high mood and high activity levels). Psychotic symptoms are not invariably present at either extreme, but depressive psychotic symptoms include hypochondriacal delusions of a kind that the person believes his/her body is rotting away, or delusions of catastrophe; suicidal ideas are common and the rare situation of family killings with suicide of the perpetrator may occur in such states. In a manic phase, the individual may have grandiose or omnipotent delusions, accompanied by reckless and/or disinhibited acts.

Unipolar affective illnesses - people may have recurrent depressions or recurrent manic episodes, but not both.

Schizoaffective illness looks like a hybrid of schizophrenia and bipolar disorder; it may not be a distinct disorder.

Non-psychotic illnesses

These include 'simple' depression (seriously low mood and perhaps suicide related behaviours, but without delusions) and anxiety disorders. The latter include a range of conditions; the more common include phobic disorders (sufferers recognise that their fear is not well founded in fact), obsessive compulsive disorders (again, the fear recognised for what it is, but still thoughts and fears intrude and maybe rituals must be performed), panic attacks and post-traumatic stress disorders [PTSD]. PTSD can only be diagnosed if it follows a seriously traumatic event – the condition must emerge within six months of this. As well as mental and physiological symptoms and signs of anxiety, and often some depressive features, extremely distressing intrusions of memories or experiences of the event – disrupt sleep and/or waking life.

Developmental disorders

Intellectual disability [ID] (learning disability, mental retardation) – names for these conditions keep changing over time in a constant effort to reduce stigma. Problems may be generalised (probably most relevant in court) or specific – for example relating to a particular language function. As the labels suggest, the core problem is cognitive – sufferers have a lower than average ability to learn at all and to acquire language. Inevitably, this is an oversimplification as there are often problems with emotions and actions too, and it is hard to distinguish the extent to which these are part of the primary condition and the extent to which they follow from difficulties in learning. A tested 'intelligence quotient' (IQ) is often used to indicate severity – mild, moderate, severe. Average intelligence is taken as 80-120. A person with severe generalised intellectual disability mental will have a tested IQ under 35, and cannot live independently. In varying degrees those with moderate (IQ 35-49), mild (IQ 50-69) or borderline ID (70-80) can live independently, but are particularly vulnerable if they enter the criminal justice system.

Autism and autistic spectrum disorder (the latter sometimes known as Asperger's syndrome) are pervasive developmental disorders in which intelligence may or may not be impaired, but emotional and relationship capacities, often with aspects of speech development, are. Generally, parents are always aware that their child is 'different', but this will certainly be clear by the age of 3 years.

Attentional deficit hyperactivity disorder [ADHD] is similarly apparent from a very early age, although may not be completely recognised until the individual starts school. It is not uncommonly associated with other developmental disorders, but also occurs alone, when it is characterised by profound difficulties in concentrating in ordinary social situations or on tasks (many can focus on computer based activities) and very high levels of physical activity. Children are seen as 'disruptive' and can easily be made worse under conventional behavioural control efforts. As with all developmental disorders, it may persist into adult life.

Substance misuse disorders

Substance misuse *per se* is widespread – although evidence on safe drinking limits is not finite. Substances which are illegal are, by definition, legally abused if consumed. Substance misuse disorders, however, arise when the individual no longer has significant personal control over intake and/or s/he has signs and symptoms of secondary disease. Substances of abuse affect the nervous system, often altering its activity so that the experience of the consumer is that when they do not have the substance they have very unpleasant symptoms or signs ranging, from intense anxiety through to psychotic symptoms (withdrawal symptoms/signs), and so they have to keep taking the substance in order to feel almost normal. Secondary disease may affect any part of the body, although most commonly those areas that process the substances – like the gut or the liver – and the brain.

Conduct disorders, if unresolved, are the childhood precursors of personality disorders. Emphasis is on repeated patterns of extreme dissocial, aggressive or defiant behaviours, persistent through childhood, which cannot be completely explained by one of the other developmental disorders.

Personality disorders. The personality is not considered to be fully formed until adulthood, so, by definition these are conditions which can affect only adults. Although adulthood is often taken as 18 years old, there isn't a set time threshold when the brain and physiology is one day that of a child and the next of an adult. For a diagnosis of personality disorder, there must be evidence of continuity with problems such as conduct disorder throughout childhood and adolescence. Similar conditions may arise in adulthood after, say, brain injury or disease, but this would be *personality change*.

Specific personality disorder labels are generally descriptive, following from their most prominent characteristics. Treatment needs mean that is probably most helpful to think of the personality disorder clusters rather than specific disorders – thus

Cluster A – the paranoid, eccentric, schizoid

Cluster B – the emotionally unstable, histrionic, narcissistic, antisocial

Cluster C – the anxious, avoidant, obsessional (anankastic), dependent.

'Psychopathic disorder' is not a recognised diagnosis; its use should be avoided as pejorative and unscientific. 'Psychopathy' is similarly not a diagnosis, but rather a term that has been introduced to indicate whether a person had crossed a threshold on one of a number of possible psychopathy scales. Generally, these scales measure two things – the extent to which antisocial behaviours are widespread and have been repeated through the life course, and the extent to which the individual have capacity for variants of empathy.

Both these elements have, correctly, been used as indicators of risks or repetition of unwanted behaviours. It is obvious that established behaviour patterns are likely to continue that way unless deliberately disrupted; on the other hand, it is always easier to tell if progress has been made when a previously repeated behaviour ceases over a substantial period of time under a range of circumstances.

If empathy is severely impaired – for example the capacity to recognised distress in others and make appropriate use of that information – this may severely impair capacity to desist from harming others.

Risk of harm to self is very high among people with personality disorder.

The dementias

Dementia follows from brain damage. Each aspect of behaviour may be affected. The most obvious is the cluster of cognitive problems, with forgetfulness, difficulties in following a train of thought and making judgements prominent. There are commonly also directly related emotional problems, as the brain can no longer control emotions, and also secondary emotional problems when the sufferer retains insight and is aware of progressively losing his or her mental abilities. Capacity for control of actions may also be impaired, resulting in what is often referred to as 'disinhibited behaviour'.

Evidence for dementia will come in several forms – the clinical examination, which should include asking the affected person about his/her experiences and for a history of the development of the condition; for obvious reasons it is more than usually important to get a history from relatives and friends too. People with dementia may retain the capacity to give a long and fascinating account of their problems which has little basis in reality (referred to as confabulation).

Simple tests of memory and other cognitive functions may be enough for basic diagnosis and to help the court, but it is generally best to map cognitive functions with detailed psychological testing, and there may be some very specific deficits which are relevant in

court – for example difficulties in recognising people or experience of perceptual distortions. Brain imaging techniques may have particular value in verifying the nature and extent of the brain damage underpinning the problems.

The dementias are progressive. People may be helped to manage their difficulties, sometimes the progress may be slowed, and sometimes worsening of some aspects of the condition may render other aspects less problematic or risky, but these are not conditions from which people recover.

The most common dementias are a function of unhealthy aging. There has been an increase in offending among older people, so these are conditions increasingly likely to be seen in the courts. A few have a clear genetic cause; there is evidence that there is a genetic contribution to most. Dementias may also, however, follow from brain damage from external causes, for example a serious head injury, in relation to other disorders affecting the whole body, like diabetes, or from having taken noxious substances – especially excessive alcohol, but a range of other drugs too.

Multi-morbidity and comorbidity

These terms are often used interchangeably to mean that the individual has more than one disorder although, strictly, comorbidity means that the conditions arose simultaneously. This is a very common situation among people who have a disorder of mental health. The truth is that it is generally very hard to disentangle which disorder came first or whether they did arise simultaneously.

It is not clear that it matters clinically, except insofar as the idea that a psychotic condition is 'drug induced' may, in the context of scarce service resources, be used to deny services. In addition to having several mental disorders – for example schizophrenia, personality disorder, cannabis use disorder and reactive depression – an individual is likely to be multiply disadvantaged socially – for example homeless or disconnected from family – and some clinicians will include these social disadvantages in the sum of comorbidities. They are certainly relevant to outcomes.

Annex B

Where the court considers a report is necessary, it should make the request specific, so that the report writer is clear as to **what** is required, and **when** the report is required by. Examples of information that might be requested are:

- background/history of the condition
- diagnosis, symptoms, treatment of the condition
- the level of impairment due to the condition
- how the condition relates to the offences committed
- dangerousness
- risk to self and others
- if there has been a failure of compliance (e.g not attending appointments, failing to take prescribed medication) what is thought to be driving that behaviour
- the suitability of the available disposals in a case
- if a particular disposal is recommended, the expected length of time that might be required for treatment, and details of the regime on release/post release supervision
- the impact of any such disposals on the offender
- any communication difficulties and/or requirement for an intermediary
- and any other information the court considers relevant.

Further information on requests for reports can be found within the Criminal Procedure Rules ([part 28.8 Sentencing Procedures in Special Cases](#)), [and within the Criminal Practice Directions \(I General Matters 3P Commissioning Medical Reports and VII Medical Reports for Sentencing Purposes R\)](#) both of which can be found here:

<https://www.justice.gov.uk/courts/procedure-rules/criminal/rulesmenu-2015#Anchor8>.

<https://www.judiciary.uk/wp-content/uploads/2018/08/crim-pd-amendment-no-7-consolidated-oct-2018.pdf>.

When requested by clinicians wanting to undertake an inpatient assessment, for offences punishable with imprisonment, courts may wish to consider making an interim hospital order (s.38 MHA). Before making a s.38 order the court must be satisfied a bed is available, and that a s.38 order is necessary in the circumstances of the case.

Where appropriate, assessments can also be made in the community.

Power to order reports- magistrates courts

There are limited powers to order reports in the magistrates' courts. s.11 Powers of Criminal Courts (Sentencing) Act 2000¹ provides for the ordering a report, but it is only post- conviction or a finding under s.37 (3) Mental Health Act 1983 that the defendant did the act or made the omission charged. However, the court can request a report and a duly qualified medical practitioner who provides such a report can be paid out of central funds, using s.19 Prosecution of Offences Act 1985² plus Regulation 25(1) Costs in Criminal Cases (General) Regulations 1986³.

Additional requirements in case of mentally disordered offender (s.157 Criminal Justice Act 2003)

(1) Subject to subsection (2), in any case where the offender is or appears to be mentally disordered, the court must obtain and consider a medical report before passing a custodial sentence other than one fixed by law.

(2) Subsection (1) does not apply if, in the circumstances of the case, the court is of the opinion that it is unnecessary to obtain a medical report.

(3) Before passing a custodial sentence other than one fixed by law on an offender who is or appears to be mentally disordered, a court must consider—

(a) any information before it which relates to his mental condition (whether given in a medical report, a pre-sentence report or otherwise), and

(b) the likely effect of such a sentence on that condition and on any treatment which may be available for it.

(4) No custodial sentence which is passed in a case to which subsection (1) applies is invalidated by the failure of a court to comply with that subsection, but any court on an appeal against such a sentence—

(a) must obtain a medical report if none was obtained by the court below, and

(b) must consider any such report obtained by it or by that court.

¹ <https://www.legislation.gov.uk/ukpga/2000/6/section/11>

² <https://www.legislation.gov.uk/ukpga/1985/23/section/19>

³ <https://www.legislation.gov.uk/uksi/1986/1335/regulation/25/made>

(5) In this section “mentally disordered”, in relation to any person, means suffering from a mental disorder within the meaning of the [Mental Health Act 1983 \(c. 20\)](#).

(6) In this section “medical report” means a report as to an offender's mental condition made or submitted orally or in writing by a registered medical practitioner who is approved for the purposes of [section 12](#) of the [Mental Health Act 1983](#) by the Secretary of State [or by another person by virtue of [section 12ZA or 12ZB](#) of that Act] ¹ as having special experience in the diagnosis or treatment of mental disorder.

(7) Nothing in this section is to be taken to limit the generality of [section 156](#).

Annex C

Mental Health Treatment Requirement (section 207 CJA 2003)	
May be made by:	A magistrates' court or Crown Court
In respect of an offender who is:	Convicted of an offence punishable with imprisonment
If the court is of the opinion	<p>That the mental condition of the offender is such as requires and may be susceptible to treatment but does not warrant detention under a hospital order. The treatment required must be such one of the following kinds of treatment as may be specified in the relevant order—</p> <p>(a) treatment as a resident patient in a care home an independent hospital or a hospital within the meaning of the Mental Health Act 1983, but not in hospital premises where high security psychiatric services within the meaning of that Act are provided;</p> <p>(b) treatment as a non-resident patient at such institution or place as may be specified in the order;</p> <p>(c) treatment by or under the direction of such registered medical practitioner or registered psychologist (or both) as may be so specified;</p> <p>but the nature of the treatment is not to be specified in the order except as mentioned in paragraph (a), (b) or (c).</p>
And the court is satisfied	That arrangements have been or can be made for the treatment to be specified in the order and that the offender has expressed a willingness to comply with the requirement.

- MHTRs provide a useful option for offenders who would otherwise not qualify for treatment under the Mental Health Act 1983, to receive treatment
- Use of MHTRs attached to court orders for those offenders with identified mental health issues may result in reductions in reoffending, compared to the use of short term custodial sentences.
- Courts may also wish to consider a drug rehabilitation requirement and/or an alcohol treatment requirement in appropriate cases.
- [A community order with a MHTR may be appropriate where the offence is not serious enough to cross the custody threshold.](#)
- [Where the defendant's culpability is substantially reduced by their mental state at the time of the commission of the offence, and where the public interest is served by ensuring they continue to receive treatment, a MHTR may be more appropriate than custody.](#)
- [Even when the custody threshold is crossed, a community order with a MHTR may be a proper alternative to a short or moderate custodial sentence](#)
- A MHTR is not suitable for an offender who is unlikely to comply with the treatment or who has a chaotic lifestyle.

See also the [Imposition of Community and Custodial Sentences definitive guideline](#):

<https://www.sentencingcouncil.org.uk/publications/item/imposition-of-community-custodial-sentences-definitive-guideline/>

Hospital order (section 37 Mental Health Act 1983)		
May be made by:	A magistrates' court or Crown Court	
In respect of a defendant who is:	<i>Where made by a magistrates' court:</i>	<i>Where made by the Crown Court:</i>
	Convicted by that court of an offence punishable on summary conviction with imprisonment, or Charged before that court with such an offence but who has not been convicted or whose case has not proceeded to trial, if the court is satisfied that the person did the act or made the omission charged	Convicted before that court for an offence punishable with imprisonment (other than murder)
If the court is satisfied	On the written or oral evidence of two doctors, at least one of whom must be approved under section 12, that <ul style="list-style-type: none"> • the offender is suffering from mental disorder of a nature or degree which makes it appropriate for the offender to be detained in a hospital for medical treatment, and • appropriate medical treatment is available. 	
And the court is of the opinion	Having regard to all the circumstances, including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with the offender, that a hospital order is the most suitable method of dealing with the case	
And it is also satisfied	On the written or oral evidence of the approved clinician who would have overall responsibility for the offender's case, or of some other person representing the managers of the relevant hospital, that arrangements have been made for the offender to be admitted to that hospital within the period of 28 days starting with the day of the order.	

A hospital order is, an alternative to punishment. The court may not, at the same time as making a hospital order in respect of an offender, pass a sentence of imprisonment, impose a fine or make a community order, a youth rehabilitation order, or a referral order. Nor can the court make an order for a young offender's parent or guardian to enter into a recognizance to take proper care of and exercise proper control over the offender. The court may make any other order which it has the power to make, eg a compensation order.

A hospital order made **under s37** (without a restriction order) authorises the detention of the patient in hospital for medical treatment

- Discharge from the order can be made by the responsible clinician (RC) or the hospital at any time. The order initially lasts for six months but can be renewed by the hospital for a further six months and then for a year at a time if the conditions for making the order are still satisfied. There is no limit to the number of times that the order can be renewed.
- The patient can apply to the tribunal⁴ for discharge after six months and annually thereafter.

⁴ First Tier Tribunal (Mental Health) in England and the Mental Health Review Tribunal in Wales

- The RC can authorise a leave of absence for a limited period or indefinitely; such leave can be subject to conditions and the patient can be recalled at any time if the RC considers it necessary in the interests of the patient's health or safety or for the protection of other people (the order can be renewed during a period of absence if hospital treatment remains necessary).
- The RC can make a Community Treatment Order (CTO) which allows for the patient to be treated in the community but provides for recall to hospital if needed to ensure that the patient receives the treatment needed. The CTO lasts for an initial six months and can be extended for a further six months and annually thereafter.

Restriction Order (section 41 Mental Health Act 1983)	
A restriction order (section 41) may be imposed by the Crown Court where a hospital order has been made and:	
If	At least one of the doctors whose evidence is taken into account by the Court before deciding to give the hospital order has given evidence orally
And, having regard to	<ul style="list-style-type: none"> • the nature of the offence • the antecedents of the offender, and • the risk of the offender committing further offences if set at large
The Court thinks	It necessary for the protection of the public from serious harm for the person to be subject to the special restrictions which flow from a restriction order

A restriction order lasts until it is lifted by the Secretary of State under section 42, or the patient is absolutely discharged from detention by the responsible clinician or hospital managers with the Secretary of State's consent under section 23 or by the Tribunal under section 73.

While the restriction order remains in force, the hospital order also remains in force and does not have to be renewed.

- The Secretary of State for Justice (SoS) can lift the restriction order at any time if satisfied that it is no longer necessary to protect the public from serious harm. A patient who is still in hospital when the restriction order is lifted is treated as if admitted under a hospital order on the day the restriction order ended. A patient who has been conditionally discharged from hospital will be automatically discharged absolutely on that date.
- A restricted patient may not be discharged, transferred to another hospital or given leave of absence by the responsible clinician (RC) or hospital without the SoS's consent. Either the RC or the SoS can recall a patient from leave.
- The SoS has the power to discharge the patient conditionally or absolutely.
- The Tribunal has no general discretion to discharge restricted patients but must discharge patients who are subject to a restriction order (other than patients who have been conditionally discharged and not recalled to hospital) if it is not satisfied that the criteria for continued detention for treatment under a hospital order are met.
- The discharge must be conditional, unless the Tribunal is satisfied that it is not appropriate for the patient to remain liable to be recalled to hospital for further treatment, i.e. to be made subject to conditional discharge.

- Where the Tribunal is required to discharge a restricted patient conditionally it may, but does not have to, impose conditions with which the patient is to comply. The SoS may impose conditions and vary those imposed by the Tribunal.

Hospital and limitation directions (section 45A Mental Health Act 1983)	
May be given by:	Crown Court
In respect of a person who is	Aged 21 or over and convicted before that court of an offence punishable with imprisonment (other than murder)
If the court is satisfied	On the written or oral evidence of two doctors, at least one of whom must be approved under section 12, and at least one of whom must have given evidence orally, that: <ul style="list-style-type: none"> • the offender is suffering from mental disorder of a nature or degree which makes it appropriate for the offender to be detained in a hospital for medical treatment, and • appropriate medical treatment is available
And the Court	Has first considered making a hospital order under section 37, but has decided instead to impose a sentence of imprisonment
And it is also satisfied	On the written or oral evidence of the approved clinician who would have overall responsibility for the offender's case or of some other person representing the managers of the relevant hospital, that arrangements have been made for the offender to be admitted to that hospital within the 28 days starting with the day of the order.

This so-called 'hybrid order' enables the court to combine a hospital order with restrictions with a prison sentence. A hospital direction is a direction for a person's detention in hospital. A limitation direction is a direction that they be subject to the special restrictions in section 41 of the Act which also apply to people given restriction orders. A hospital direction may not be given without an accompanying limitation direction (although, as described below, a hospital direction may remain in force after the limitation direction has expired).

- A limitation direction ends automatically on the patient's 'release date'. The patient's release date is the day that the patient would have been entitled to be released from custody had the patient not been detained in hospital. Discretionary early release such as home detention curfew is not taken into account. For these purposes, any prison sentence which the patient was already serving when the hospital direction was given is taken into account as well as the sentence(s) passed at the same time as the direction was given. The effect of this is that the limitation direction will end at the halfway point of a determinate sentence.
- If the patient is serving a life sentence, or an indeterminate sentence, the release date is the date (if any) on which the person's release is ordered by the parole board.
- Although the limitation direction ends on the release date, the hospital direction does not. So if patients are still detained in hospital on the basis of the hospital direction on their release date, they remain liable to be detained in hospital from then on like unrestricted hospital order patients. This includes patients who are on leave of absence from hospital on their release date, but not those who have been conditionally discharged and who have not been recalled to hospital.
- Unlike hospital order patients, hospital and limitation direction patients are detained primarily on the basis of a prison sentence. While the limitation direction remains in effect, the Secretary of State may direct that they be removed to prison (or equivalent) to serve the remainder of their sentence, or else release them on licence.

This is only possible where the SoS is notified by the offender's responsible clinician, any other approved clinician, or by the Tribunal, that:

- the offender no longer requires treatment in hospital for mental disorder, or
- no effective treatment for the disorder can be given in the hospital in which the offender is detained.
- When notified in this way by the responsible clinician, or any other approved clinician, the SoS may:
 - direct the offender's removal to a prison (or another penal institution) where the offender could have been detained if not in hospital, or
 - discharge the offender from the hospital on the same terms on which the offender could be released from prison.
- If the Tribunal thinks that a patient subject to a restriction order would be entitled to be discharged, but the SoS does not consent, the patient will be removed to prison. That is because the Tribunal has decided that the patient should not be detained in hospital, but the prison sentence remains in force until the patient's release date.

Committal to the Crown court (section 43 Mental Health Act 1983)	
A magistrates' court may commit a person to the Crown Court with a view to a restriction order if (s43(1))	
The person	Is aged 14 or over, and Has been convicted* by the court of an offence punishable on summary conviction by imprisonment
And	The court could make a hospital order under section 37
But having regard to	The nature of the offence The antecedents of the offender, and The risk of the offender committing further offences if set at large
The court thinks	That if a hospital order is made, a restriction order should also be made.

*Note: there is no power to commit to the Crown Court for a restriction order where a magistrates' court has made a finding that a defendant has done the act/made the omission charged under s 37(3) MHA.

The Crown Court is required to inquire into the circumstances of the patient's case and either:

- make a hospital order (with or without a restriction order), as if the offender had been convicted before the Crown Court, rather than by the magistrates' court, or
- deal with the offender in some other way the magistrates' court would have been able to originally.

Guardianship order (section 37 Mental Health Act 1983)		
May be made by	a magistrates' court or the Crown Court	
	where made by a magistrates' court	where made by the Crown Court
	convicted by that court of an offence punishable (in the case of an adult) on	convicted before that court for an offence punishable with

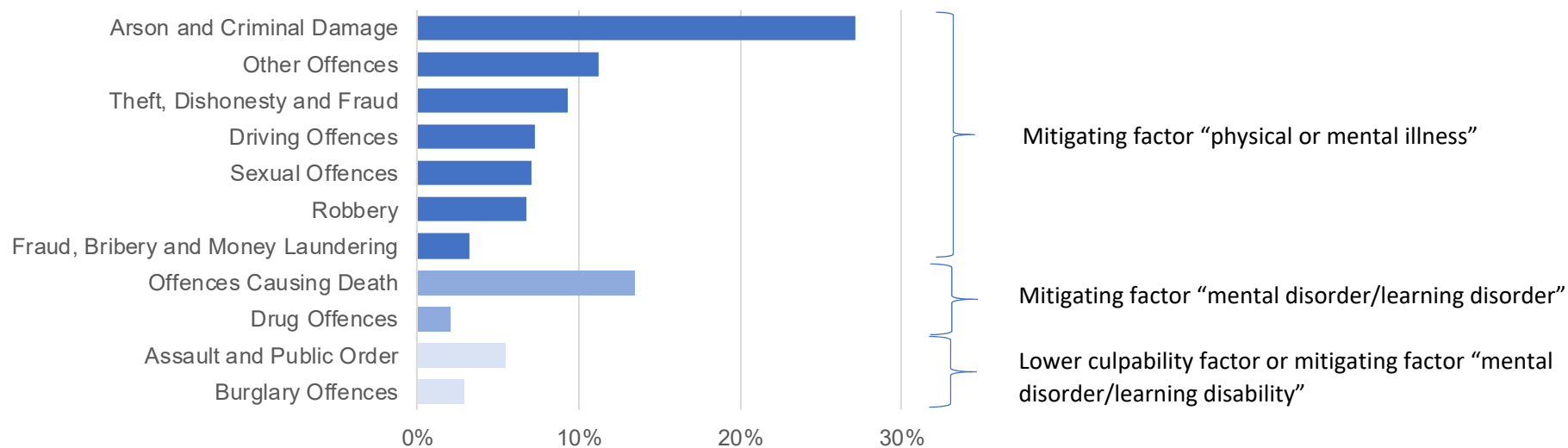
In respect of a person who is aged 16 or over and who is	summary conviction with custody or charged before (but not convicted by) that court with such an offence, if the court is satisfied that the person did the act or made the omission charged	imprisonment (other than murder)
if the court is satisfied	on the written or oral evidence of two doctors, at least one of whom must be approved under section 12, that the offender is 16 or over, and is suffering from mental disorder of a nature or degree which warrants the offender's reception into guardianship under the Act	
and the court is of the opinion	having regard to all the circumstances including the nature of the offence and the character and antecedents of the offender, and to the other available methods of dealing with the offender, that a guardianship order is the most suitable method of dealing with the case	
and it is also satisfied	that the local authority or proposed private guardian is willing to receive the offender into guardianship	

Guardianship enables patients to receive care outside hospital where it cannot be provided without the use of compulsory powers. The Act allows for people ('patients') to be placed under the guardianship of a guardian. The guardian may be a local authority, or an individual ('a private guardian'), such as a relative of the patient, who is approved by a local authority. Guardians have three specific powers: residence, attendance and access.

- The *residence power* allows guardians to require patients to live at a specified place.
- The *attendance power* lets guardians require the patient to attend specified places at specified times for medical treatment, occupation, education or training. This might include a day centre, or a hospital, surgery or clinic.
- The *access power* means guardians may require access to the patient to be given at the place where the patient is living, to any doctor, approved mental health professional, or other specified person. This power could be used, for example, to ensure that patients do not neglect themselves.

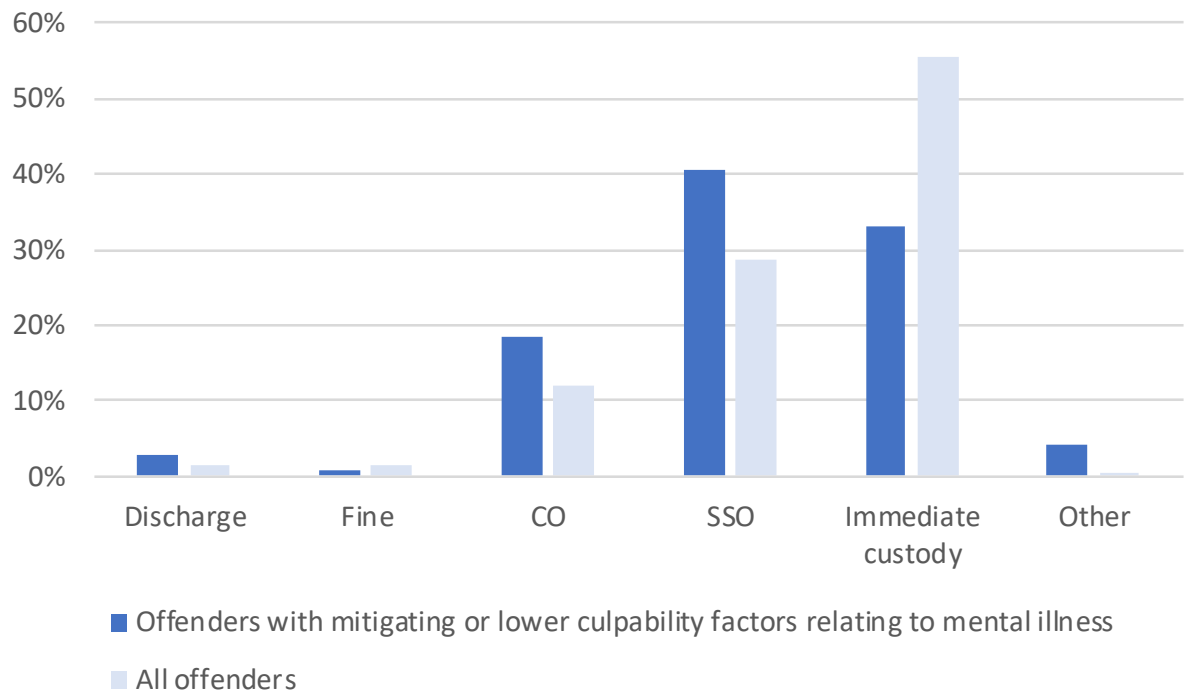
Crown Court Sentencing Survey data, 2014^{1,2}

Proportion of offenders with factors relating to mental illness taken into account in sentencing, by offence type



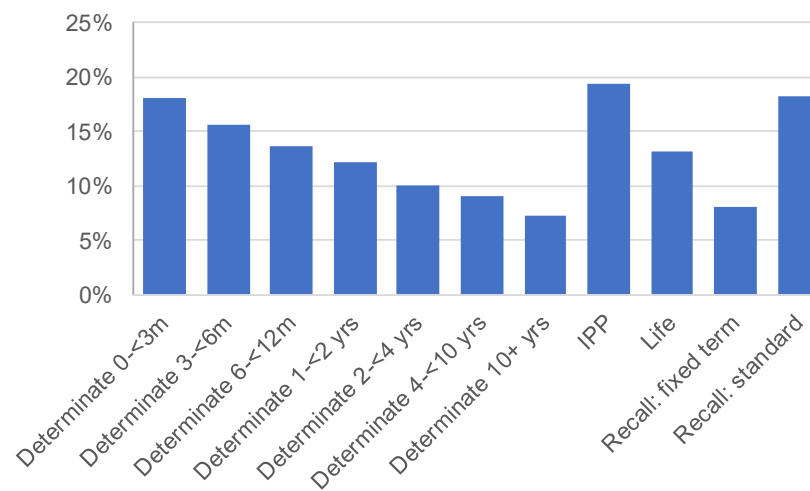
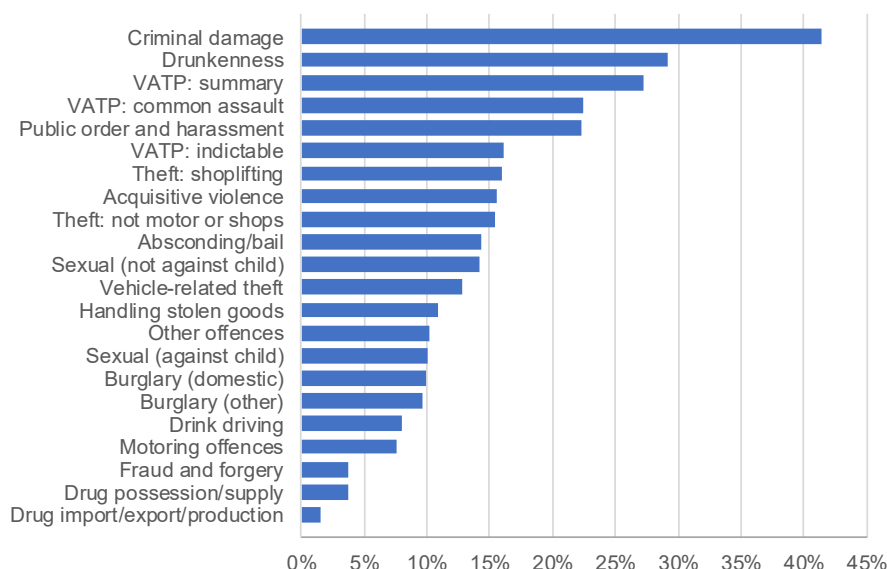
¹ Source: Crown Court Sentencing Survey.

² Excludes youths.

Distribution of sentences for offenders in the CCSS, for offenders with factors relating to mental illness taken into account in sentencing, and all offenders, 2014

OFFICIAL SENSITIVE – UNPUBLISHED MANAGEMENT INFORMATION – STRICTLY NOT FOR ONWARD FORWARDING

Prevalence of severe mental health problems³ among prisoners by offence and prisoner type, HMPPS data⁴⁵



Notes:

- In order to obtain reasonably wide OASys coverage, assessments from past as well as current sentences are utilised. It is assumed that the prevalence of mental health problems is stable over time for these offenders. Various past OASys data exploration and research exercises have found that, in general, individuals' profiles on most OASys sections change slowly over time.
- Among short-term prisoners, OASys is more likely to be available for those who have previously experienced longer custodial sentences, been managed in the community by the NPS and/or had a full Pre Sentence Report. These offenders will in general be higher-risk and may have more criminogenic needs.
- Limited coverage: as of 30th June 2017, 73% of those in custody had an assessment that included a full criminogenic need profile and a Risk of Serious Harm rating.
- This data is primarily used to support operations and is not a clinically approved tool for medical diagnosis (although assessors are required to place substantial weight on information from medical sources). Data is subject to the limitations of any self-reporting tool.
- Data doesn't have information on specific mental health problems, i.e. the offender's specific psychological or psychiatric problem.

³ Those who have been scored 2 - significant problems - on a 0/1/2 rating scale for one/both of the OASys questions on psychological and psychiatric problems.

⁴ Source: the "segmentation" dataset, which combines prison, probation, Offender Assessment System and Police National Computer data, for the adult (age 18+) HMPPS caseload on 30 June 2017

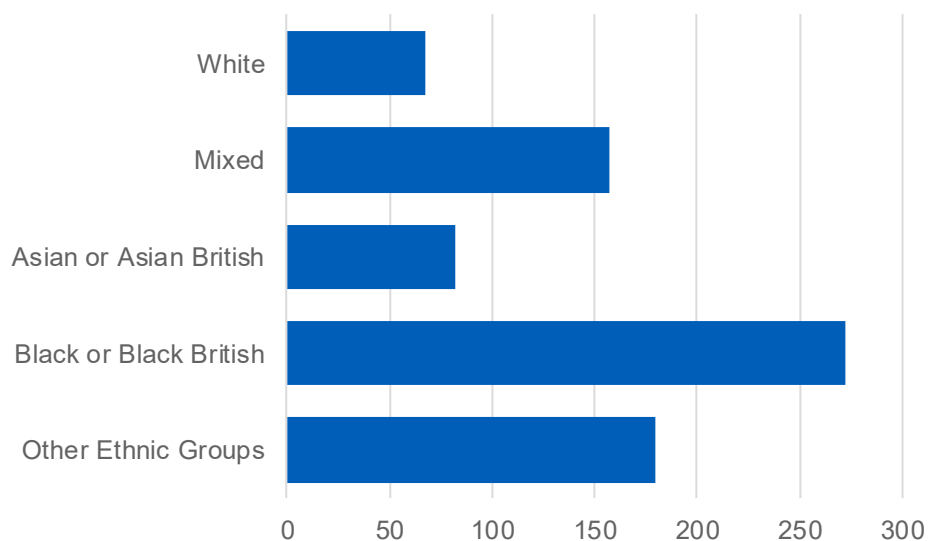
⁵ VATP stands for "Violence Against The Person"

Statistics on detentions under the Mental Health Act and hospital orders, by ethnicity

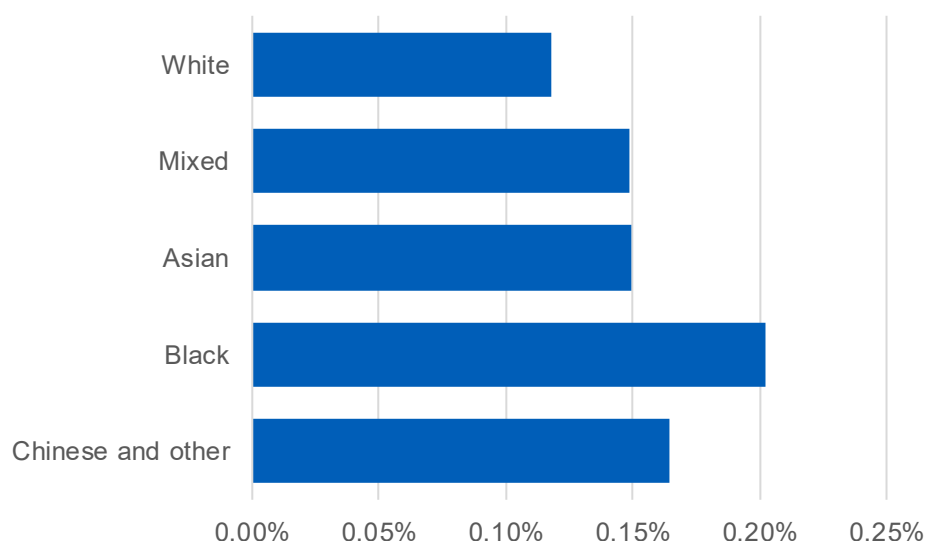
NHS Mental Health Act Statistics, 2016/17

Rates of detention under the Mental Health Act 1983 (including both civil detentions under Part II and detentions via the Criminal Justice System under Part III of The Act). Published figures are not broken down by the different parts of the Act.

Standardised hospital detention rate (includes both civil and criminal detentions) per 100,000 population, by ethnicity



Proportion of offenders sentenced receiving hospital orders, by ethnicity, 2017⁶



⁶ Source: Court Proceedings Database, Ministry of Justice. Excludes youths.

Sentencing Council meeting: 14 December 2018
Paper number: SC(18)DEC04 – Assault
Lead Council member: Julian Goose & Rob Butler
Lead officials: Lisa Frost & Caroline Nauth-Misir
0207 071 5784

1 ISSUE

1.1 This paper includes discussion and consideration of the evaluation findings for the existing s18 GBH/Wounding guideline, and proposes revised culpability factors and sentence levels for these offences.

2 RECOMMENDATION

That the Council:

- considers the evaluation findings for the existing s18 GBH/wounding guideline;
- considers and agrees culpability factors for s18 GBH/wounding; and
- considers and agrees sentence levels.

3 CONSIDERATION

3.1 At the November meeting the Council agreed a draft revised guideline for s20 GBH and wounding and for ABH offences, subject to any issues which may be identified in pre-consultation road testing. This meeting requires consideration of a revised draft guideline for the s18 offence of GBH with intent. A draft guideline is included at Annex C.

GBH/Wounding s18 – Evaluation findings

3.2 Evaluation findings were discussed at the last meeting, and it was highlighted that in relation to s18 sentences there was an unanticipated impact of the guideline with sentences significantly increasing. Sentences for s20 also increased, but within the range of forecasted severity.

3.3 The evaluation highlighted the following findings in relation to sentence increases for s18;

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

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

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

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

¹ These figures differ from those in the offence categorisation chart on page 4 as they cover different time periods.

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

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

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

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

3.4 The existing guideline sentences for s18 offences are as follows;

Offence Category	Starting Point (Applicable to all offenders)	Category Range (Applicable to all offenders)
Category 1	12 years' custody	9–16 years' custody
Category 2	6 years' custody	5–9 years' custody
Category 3	4 years' custody	3–5 years' custody

Prior to the introduction of the guideline SGC sentences for s18 offences were as follows:

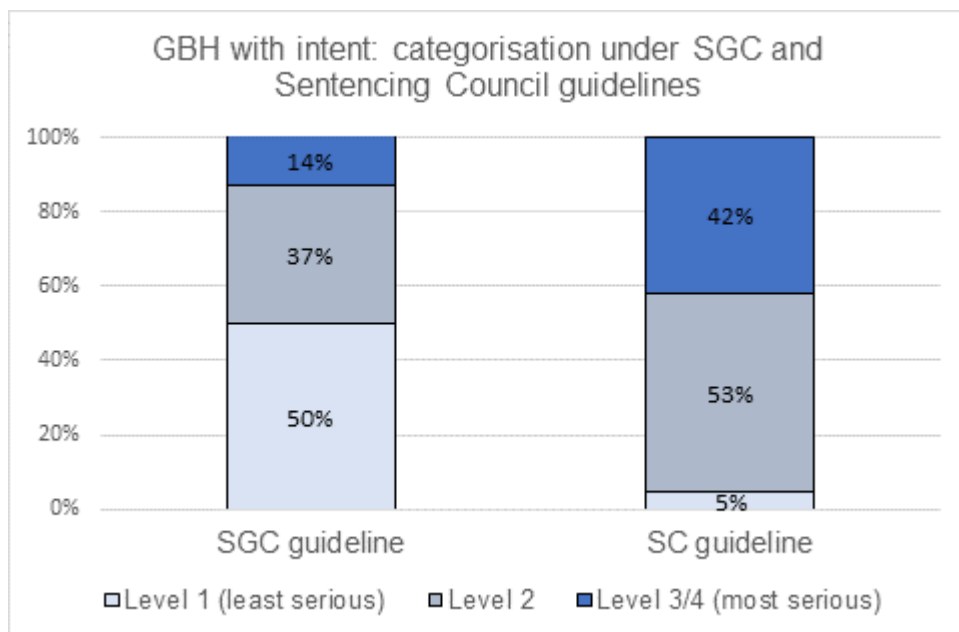
Type/nature of activity	Starting point	Sentencing range
Victim suffered life-threatening injury or particularly grave injury from a pre-meditated wounding or GBH involving the use of a weapon acquired prior to the offence and carried to the scene with specific intent to injure the victim	13 years custody	10 – 16 years custody
Victim suffered life-threatening injury or particularly grave injury (where the offence was not pre-meditated) OR Pre-meditated wounding or GBH involving the use of a weapon acquired prior to the offence and carried to the scene with specific intent to injure the victim (but not resulting in a life threatening injury or particularly grave injury)	8 years custody	7 – 10 years custody
Victim suffered a very serious injury or permanent disfigurement OR Pre-meditated wounding or GBH OR Other wounding or GBH involving the use of a weapon that came to hand at the scene	5 years custody	4 – 6 years custody
Other wounding or GBH	4 years custody	3 – 5 years custody

3.5 While factors defined seriousness categorisation differently between the guidelines, it was anticipated that there would be a small increase in average sentence lengths following the introduction of the definitive guideline. However, the evaluation highlighted that the actual impact was greater than that anticipated:

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

3.6 Discussion of the influence of factors on this trend took place at the last meeting, with a specific focus on the potential for a high volume of offences to fall within the greater harm and culpability categories in the existing GBH guidelines. The

shift in seriousness categorisations between the previous SGC guideline and the existing guideline for s18 offences in particular was highlighted, as illustrated by the diagram below. This demonstrates that with the introduction of the existing guideline lower seriousness categorisations shifted from 50% to 5%, while cases falling within the top end of seriousness expanded from 14% to 42%;



3.7 As sentences were not markedly different from the SGC guideline, it is highly likely that the factors and offence categorisations have contributed to sentence increases, and a perception that sentences have increased. Revisions to factors already agreed should address this and provide for proportionate seriousness categorisation.

3.8 Annex A includes a summary of analysis of sentences for s18 offences. This highlights the trend of a high volume of category 1 offence categorisations.

3.9 A point raised during the early consideration of revising the assault guideline was that consideration of sentences for GBH and wounding for s18 offences would be required, as it was thought GBH sentences may be higher. The statistical analysis has confirmed that this is the case, as highlighted at Annex A. It is thought that this could be due to the existing guideline making it more likely a GBH offence would attract a category 1 assessment, as numerous greater culpability factors may apply as well as greater harm due to the existing greater harm factor 'sustained and repeated assault'. As an offence not involving a weapon is more likely to be sustained or repeated to cause GBH type harm, and statistics illustrate that this factor is the most frequently occurring greater harm factor with the frequency increasing over time, this is likely to have contributed to higher GBH sentences.

While use of a weapon in a wounding offence would attract a high culpability categorisation, a wound may currently attract a lesser harm categorisation if the injury is not considered to be serious in the context of other woundings. It is thought that previously agreed harm factors will categorise all types of injuries, including wounds, appropriately.

3.10 Factors were revised at the last meeting to address disproportionate categorisations for s20 offences. Consideration of whether different factors would be appropriate for s18 cases is now required.

Culpability factors

3.11 The culpability factors agreed at the last meeting for both s20 and ABH offences are included at Annex B. In the existing guideline the same factors are included across the ABH and both GBH/wounding guidelines.

3.12 Consideration has been given to whether for s18 offences culpability factors in the revised guideline should differ to reflect the level of intent present in this offence. However, when testing factors against actual cases it appears that the appropriate categorisation was achieved and there were no cases that the factors agreed for s20 offences would not have captured. There was also no apparent necessity for a higher threshold to be applied to factors already agreed for a s18 offence.

3.13 A distinction in seriousness was, however, apparent in cases involving multiple or extreme examples of high culpability factors. Some examples of these are included in the case list at Annex D. One example was an offender who had planned an attack on his estranged wife, and involved him dousing her in petrol then chasing her while throwing lit matches at her (this was originally charged as attempted murder). Others include acid attacks, such as the highly publicised case of Arthur Collins, and the case of Darryl Rowe which involved intentional HIV transmission. Sentences in these cases were found by the Court of Appeal to be justifiably higher than the highest starting point in the existing GBH guideline.

3.14 To provide for such offences and reflect the distinction between those at the most serious end of the scale and those that are still serious, and also to provide for proportionate sentences for cases not involving multiple features, it is thought a similar culpability model to the one used in manslaughter would be appropriate. This includes a very high culpability categorisation, which provides for cases with extreme high culpability factors or multiple culpability B factors to be captured. The highest

sentences would be reserved for such cases. Annex C illustrates the proposed culpability model.

Question 1: Does the Council agree that an additional very high culpability factor should be included for s18 offences?

3.15 Testing of cases against agreed factors also identified that currently there is limited potential for an offence to be captured by the balancing factor at medium culpability. At present, to achieve a medium culpability categorisation where a high culpability factor is also present, the offence will need to involve no weapon, excessive self-defence, or a mental disorder. The agreed lesser culpability factors applied in very few cases considered, and there is potential for a high volume of cases to achieve a high culpability categorisation when this may not fully reflect the circumstances of the offence.

3.16 A number of cases analysed where the balancing factor may be appropriate included such situations as those involving a high degree of provocation, and cases where the offender may not have been the instigator of an offence but excessive self-defence could not be argued. Cases which would fall within this category could also include the domestic abuse victim who 'snaps' and attacks her abuser with a knife or high culpability weapon (as the Council discussed at the last meeting) and victims of abuse who attack a childhood abuser. In such cases an offender cannot escape a high culpability categorisation if a knife is involved in the commission of the offence, and mitigating factors do not provide for a sentence which is too remote from the starting point. Given the higher starting points and sentences for s18 offences, this could result in a sentence which would not be a proportionate reflection of an offender's responsibility in committing the offence. Sentencers in some cases have referred to 'a moment of madness' and have either gone outside of the guidelines to achieve a sentence which they believe to be a more proportionate response to the offence, or expressed regret that even strong offender mitigation cannot provide for a lesser sentence to be imposed.

3.17 The Council are asked to consider if an additional lesser culpability factor should be included to address such cases. Essentially, the issue relates to provocation which causes an offender to lose control, but the Council has previously decided provocation should not reduce culpability and should be restricted to mitigation for an offence. The existing guideline does include a low culpability factor of 'a greater degree of provocation than normally expected' which the Council has removed to be consistent with the approach to provocation in other guidelines. For

example, the domestic abuse guideline states that ‘provocation is no mitigation to an offence within a domestic context, except for in rare circumstances.’ While some discussion of the issue took place at the last meeting, it is thought highly likely this will arise as a point during the consultation and the impact of not providing for provocation amounting to a loss of control on seriousness categorisations should be fully considered. The practical effect of the guideline not providing for provocation at step one is likely to mean higher sentences where the most serious level of non-fatal injury result than in cases where death results for an offence committed in similar circumstances.

3.18 In the manslaughter by reason of loss of control guideline ‘a very high degree of provocation’ is included, but only where it represents a ‘qualifying trigger’ resulting in a loss of control which offers a partial defence to murder. Although the partial defence of loss of control applies only to murder, an analogous situation could occur in a case where a death does not result and which results in a charge of GBH or wounding with intent. The Council is asked to consider if the guideline should provide for extreme provocation or circumstances which could have amounted to a loss of control defence to a murder charge to reduce culpability in a s18 offence. This is also likely to be relevant to the attempted murder guideline. It is not suggested this be included across the other assault guidelines, but does have particular relevance to s18 given the shared level of intent in a murder offence.

3.19 Phrasing such a factor is problematic. The concept of provocation affecting an offender’s culpability is controversial due to the removal of it as a specific defence when murder legislation was revised, and there is a potential for it to appear to present a concession to acts of revenge and have broad application. It is included in manslaughter as it is provided for by loss of control with the legislation including qualifications as to when it is applicable. It would not be appropriate to attempt to replicate the legislative definition of loss of control as a partial defence to murder, but a number of cases and academic articles have discussed features which may be relevant to the capacity and intent of an individual who loses control which are also relevant to a s18 offence. These have included reference to ‘extremely grave circumstances reducing tolerance and self restraint’², ‘extreme emotional disturbance’³ and ‘a loss of the ability to act in accordance with considered judgement or normal powers of reasoning.’⁴

² Lord Chief Justice in *Dawes* [2013] EWCA Crim 322

³ Suggested by the Law Commission as a potential qualifying feature of loss of control

⁴ Observed by Rafferty LJ (in *R v Jewell* [2014] EWCA Crim 414) as a definition included in Smith and Hogan’s *Criminal Law* (13th edn, 2011)

3.20 If the Council thinks a factor should be included at lesser culpability to address such cases two options are proposed. One could be to allow for severe provocation to reduce culpability and include 'very high degree of provocation' as in the manslaughter guideline. Alternatively a factor which alludes to loss of control while not specifically referencing it could be included, such as '*offender's responsibility substantially reduced due to circumstances of extreme gravity related to the commission of the offence.*' However, the legislation and legal tests around application of loss of control as a partial defence to murder are complex, and it may not be thought suitable to attempt to encapsulate the concept within a culpability factor.

3.21 If it is agreed that a factor reflecting loss of control and reduced culpability is appropriate, it is important to consider an analogous loss of control manslaughter sentence to ensure that where a death is caused in a loss of control offence a higher sentence is imposed, which is necessary to reflect the principle established in *Appleby*⁵ that crimes resulting in death should be treated more seriously.

3.22 The manslaughter loss of control factors and sentences are as follows;

A – High culpability

- Planning of criminal activity (including the carrying of a weapon) **before** the loss of control
- Offence committed in the context of other serious criminal activity
- Use of a firearm (whether or not taken to the scene)
- Loss of self-control in circumstances which only just met the criteria for a qualifying trigger
- Concealment, destruction, defilement or dismemberment of the body (where not separately charged)

B – Medium culpability

Cases falling between high and lower because:

- factors are present in high and lower which balance each other out **and/or**
- the offender's culpability falls between the factors as described in high and lower

C – Lower culpability

- Qualifying trigger represented a very high degree of provocation

⁵ AG Reference 60, 62 and 63 (*Appleby*) [2009] EWCA Crim 2693

Harm

For all cases of manslaughter the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

Culpability		
A	B	C
Starting point 14 years' custody	Starting point 8 years' custody	Starting point 5 years' custody
Category range 10 – 20 years' custody	Category range 5 – 12 years' custody	Category range 3 – 6 years' custody

Sentences

3.23 If a loss of control type factor is considered appropriate, to reflect Appleby and achieve proportionate sentences, the s18 sentences would need to be lower than a Category B and a Category C loss of control manslaughter case. The comparative categories in the s18 guideline would be C1 and D1, which would need to have starting points lower than 8 years and 5 years respectively.

3.24 This could represent a decrease from current sentencing practice. While a starting point of 4 years was available in both the SGC and existing guidelines, these were not for the cases involving the most serious harm which a category D1 case would be.

3.25 To summarise, the Council is asked to consider if a lesser culpability factor relating to provocation should be included, and if so should sentences take into account Manslaughter loss of control sentences and Appleby, and a category D1 sentence include a 4 year starting point. If culpability and harm are to be equally weighted, this would then need to be replicated across C2 and B3, and lower level sentences revised downwards. Subject to the Council agreeing to the inclusion of a very high culpability factor, sentences would be as follows;

HARM	CULPABILITY			
	A	B	C	D
Harm 1	Starting point 12 years	Starting point 9 years	Starting point 7	Starting point 4
	Category Range 10-16	Category Range 7-12	Category Range 5-10	Category Range 3-7
Harm 2	Starting point 9 years	Starting point 7	Starting point 4	Starting point 3
	Category Range 7-12	Category Range 5-10	Category Range 3-7	Category Range 2-6
Harm 3	Starting point 7	Starting point 4	Starting point 3	Starting point 2
	Category Range 5-10	Category Range 3-7	Category Range 2-6	Category Range 1-4

3.26 A further point to consider is that any case involving lesser culpability and high harm would also attract these sentences. These would be cases involving no weapon, excessive self defence or a mental disorder.

Question 2: Does the Council agree that an additional factor should be included at lesser culpability to address cases where an offender's responsibility is substantially reduced by provocation or loss of control, and if so, that sentences should be lower than sentences for an analogous manslaughter offence?

3.27 Should the Council not wish to include a factor relating to provocation/loss of control and for sentences at the lower end of the scale to be lower than currently, an alternative sentencing table is proposed. These have been developed with reference to the proposed revised framework of factors, and without adjustment to the highest starting points in the existing guideline. The seriousness assessment should ensure the very worst cases attract the highest seriousness categorisation, while reflecting gradations in seriousness throughout the other starting points and ranges. Proposed sentences are as follows;

HARM	CULPABILITY			
	A	B	C	D
Harm 1	Starting point 12 years Category Range 10-16	Starting point 10 years Category Range 7-12	Starting point 8 Category Range 5-10	Starting point 6 Category Range 4-7
Harm 2	Starting point 10 years Category Range 7-12	Starting point 8 Category Range 5-10	Starting point 6 Category Range 4-7	Starting point 4 Category Range 2-6
Harm 3	Starting point 8 Category Range 5-10	Starting point 6 Category Range 4-7	Starting point 4 Category Range 2-6	Starting point 3 Category Range 1-4

3.28 Statistics regarding current sentencing practice are included at Annex E. These have not directly informed sentences, particularly at the higher end (in terms of sentence distribution being considered), given the inflationary issues with sentences. However, they do illustrate a number of post guilty plea sentences are three years or less which has informed the proposed sentences at the bottom end of the scale. The case list included at Annex D illustrates a range of offending behaviour and provides context to sentences. Sentences have also been informed with reference to Court of Appeal and first instance sentencing remarks, as well as by considering proportionality of sentence across a range of illustrated culpability and harm.

Question 3: If the Council did not agree to question 2, does the Council agree with the alternative proposed sentences?

Aggravating and mitigating factors

3.29 The aggravating and mitigating factors included for s20 GBH offences have been included. Subject to decisions made at the meeting as to how provocation should be treated, these may require revision.

Question 4: Does the Council agree with the proposed aggravating and mitigating factors?

4 IMPACT /RISKS

4.1 It will be important reputationally to ensure decisions made in revising the guideline are based on evidence of issues identified in the evaluation, to ensure the Council is seen to be responsive to issues with the guideline. Revision proposals seek to address inflationary issues by revising factors rather than sentences where appropriate, and clearer factors should provide for appropriate seriousness categorisations and address inflationary issues for s18 offences.

4.2 There is a risk that the Council could be seen to be taking steps to reduce sentences for serious offences, particularly if a factor is included to address loss of control type situations. Clear rationales for revision of factors and any impact upon sentences will be provided at consultation to mitigate this risk.

4.3 Early testing of the guidelines with sentencers will continue to be undertaken to identify potential issues and impact prior to sign off and consultation on the revised guidelines. Subject to the Council agreeing factors and sentences at the meeting, immediate testing of the revised s18 guideline is planned to commence. This will help with early identification of any potential risk of the guideline appearing unjustifiably deflationary.

Blank page

GBH with intent (section 18) – data trends

Evaluation findings

The evaluation found that following the introduction of the guideline, there was an increase in sentence severity and ACSLs for GBH with intent (s18) offences, in excess of that anticipated in the resource assessment. There was **strong statistical evidence that the guideline caused a change in sentencing practice** for this offence.

Overall trends

From 2007 to 2017 there was a steady increase in average sentencing severity, which has been driven by an increase in average custodial sentence lengths (ACSLs).

The majority of offenders are sentenced to immediate custody (90% in 2017). A small proportion of offenders also received a suspended sentence in 2017 (1%).

There has been a steady increase in ACSLs over the last 10 years, and since the guideline came into force. These increases are due to a shift from estimated pre-guilty plea sentences of up to 6 years towards pre-guilty plea sentences of over 6 years.

The majority of offenders sentenced for GBH with intent are sentenced for 'wounding' (63% in 2017) as opposed to 'GBH'. For GBH offences, 92% of offenders were sentenced to immediate custody in 2017, and 7% were otherwise dealt with.¹ For wounding offences, 89% were sentenced to immediate custody, 1% received SSOs, and 10% were otherwise dealt with. Sentence severity has been gradually increasing for both offences, but since 2014 it has been marginally higher for GBH. This is driven by a slightly higher ACSL for GBH offences; in 2017 the estimated pre-guilty plea ACSL for GBH was 8 years 8 months, compared to 8 years 5 months for wounding.

In the first quarter of 2015 (the most recent data available from the Crown Court Sentencing Survey), 38% of offenders fell in the highest category of seriousness, 60% were in the middle category and 3% in the lowest category. Before the guideline came into force, the majority of offenders sentenced (85%) were placed in the two middle levels of seriousness. Over time there has been a decrease in the proportion of offenders placed in the lowest category of seriousness (from 14% in the second half of 2011 to 3% in Q1 2015). The proportion placed in the highest category has fluctuated over the last few years at around 40%.

Category 1

Of those offenders placed in category 1, the vast majority receive an immediate custodial sentence (94% in Q1 2015). The estimated pre-guilty plea ACSL in category 1 has generally been increasing since the guideline came into force, from 9 years 8 months in the second half of 2011 to 11 years in Q1 2015. The starting point for this category is 12 years' custody. Overall this shows that generally around 40% of offenders are falling into category 1, and they are receiving increasingly longer sentences.

Category 2

For those placed in category 2, most offenders receive a custodial sentence (95% in Q1 2015). This proportion has marginally decreased over time, and there has been a slight increase in SSOs in the past few years. In the second half of 2011, all offenders in category

¹ This includes hospital orders and other miscellaneous disposals.

2 received an immediate custodial sentence, but by Q1 2015 this had decreased to 95%, with 4% receiving an SSO. The estimated pre-guilty plea ACSL has been fairly stable since the guideline came into force, at around 6 years (the starting point for this category).

Category 3

Immediate custody was the most common sentencing outcome for offenders placed in category 3 (82% in 2014), followed by SSOs (13%). The estimated pre-guilty plea ACSL in category 3 has fluctuated over the past few years at an average of around 3 years 9 months. The starting point for this category is 4 years.

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 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 giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:**A - High culpability**

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent*
- Leading role in group activity
- Prolonged assault

B – Medium culpability

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category A or C because:
 - Factors in both high and lesser categories are present which balance each other out; and/or
 - The offender's culpability falls between the factors as described in high and lesser culpability

C – Lesser culpability

- No weapon used
- Excessive self defence
- Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon includes weapons such as knives and firearms. Weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; *'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.

Harm	
All cases will involve 'really serious harm' or wounding, which can be physical or psychological. The court should assess the level of harm caused with reference to the impact on the victim	
Category 1	<p>Particularly grave and/or life-threatening injury caused</p> <p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 2	<p>Grave but non life-threatening injury caused</p> <p>Offence results in a permanent, irreversible injury or condition but no substantial and long term effect on victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 3	<p>All other cases of really serious harm</p> <p>All other cases of wounding</p>

STEP TWO

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.

Where the offence is committed in a domestic context, consideration must be given to the definitive guideline ‘Overarching Principles: Domestic Abuse’ and any aggravating features appropriately reflected in the sentence.

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point 3 years</p> <p>Category Range 2 years– 4 years</p>	<p>Starting point 2 years</p> <p>Category Range 1 year – 3 years</p>	<p>Starting point 1 year 6 months</p> <p>Category Range 36 weeks - 2 years 6 months</p>
Harm 2	<p>Starting point 2 years</p> <p>Category Range 1 year – 3 years</p>	<p>Starting point 1 year 6 months</p> <p>Category Range 36 weeks - 2 years 6 months</p>	<p>Starting point 36 weeks</p> <p>Category Range High Level Community Order – 1 year 6 months</p>
Harm 3	<p>Starting point 1 year 6 months</p> <p>Category Range 36 weeks - 2 years 6 months</p>	<p>Starting point 36 weeks</p> <p>Category Range High Level Community Order – 1 year 6 months</p>	<p>Starting point High Level Community Order</p> <p>Category Range Low Level Community Order – 36 weeks 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 some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When considering imposing a custodial sentence, the court should also consider the Imposition guideline, and specifically the section on imposition of custodial sentences. In particular the following must be considered;

- 1) **Has the custody threshold been passed?**
- 2) **If so, is it unavoidable that a custodial sentence be imposed?**

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 of the victim: disability, sexual orientation or gender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

Spitting

Offence committed against those working in the public sector or providing a service to the public

Offence committed in prison

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Threatened with weapon

Victim vulnerable (where not taken into account at step one)

Revenge attack

Steps taken to prevent the victim from seeking or receiving medical assistance,

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

Commission of offence whilst under the influence of alcohol/drugs

Other offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim

Age and/or lack of maturity

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

Sole or primary carer for dependent relative(s)

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

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

Blank page

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 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 giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:**A – Very High culpability**

Very high culpability **may** be indicated by:

- The extreme character of one or more culpability B factors
- Multiple culpability B factors

B - High culpability

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent*
- Leading role in group activity
- Prolonged assault

C – Medium culpability

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category high and low culpability because:
 - Factors in both high and lesser categories are present which balance each other out; **and/or**
 - The offender's culpability falls between the factors as described in high and lesser culpability

D – Lesser culpability

- No weapon used
- Excessive self defence
- Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon includes weapons such as knives and firearms. Weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; *'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.

Harm	
All cases will involve 'really serious harm', which can be physical or psychological, or wounding. The court should assess the level of harm caused with reference to the impact on the victim	
Category 1	<p>Particularly grave and/or life-threatening injury caused</p> <p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 2	<p>Grave but non life-threatening injury caused</p> <p>Offence results in a permanent, irreversible injury or condition but no substantial and long term effect on victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 3	<p>All other cases of really serious harm</p> <p>All other cases of wounding</p>

STEP TWO

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.

Where the offence is committed in a domestic context, consideration must be given to the definitive guideline 'Overarching Principles: Domestic Abuse' and any aggravating features appropriately reflected in the sentence.

***** SENTENCES TO BE AGREED*****

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

Factors increasing seriousness

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 of the victim: disability, sexual orientation or gender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

Spitting

Offence committed against those working in the public sector or providing a service to the public

Offence committed in prison

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Threatened with weapon

Victim vulnerable (where not taken into account at step one)

Revenge attack

Steps taken to prevent the victim from seeking or receiving medical assistance,

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

Commission of offence whilst under the influence of alcohol/drugs

Other offences taken into consideration (TICs)

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim

Age and/or lack of maturity

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

Sole or primary carer for dependent relative(s)

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

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

GBH S18	
<p>R V Laverick (att GBH) Court of Appeal case- D attempted to set estranged wife on fire. Two days before the offence, the appellant had sent a message on Facebook to a relative of his wife saying, among other things, "I'm just waiting for the right time, don't give a fuck anymore ... I've got a can of petrol and a two foot long machete ... it's going to be hell or a cell for me and mate I really don't care anymore." On the day of the offence he followed her home after she dropped their child off at school, produced a bottle filled with petrol and threw the contents over her. It went into her face and burned her eyes. She tried to run away but had difficulty because she could not see where she was going. The appellant chased her, continuing to throw petrol over her. Victim ran towards a nearby house, screaming for help. As she did so, the appellant struck matches and threw them in her direction. After the event eight spent matches were found at the scene. Fortunately it was a windy day so the matches did not ignite. Throughout she was begging the appellant to stop. She ran into a nearby garden and tried to get into the house, but no one was in and the door was locked. The appellant pushed her against a fence. He took out a cigarette lighter and flicked the lighter a number of times close to her clothing, by now doused with petrol. She was absolutely terrified and thought she was going to die. She was able to push the appellant away and ran to another property where the occupant was able to allow her into the home and the appellant ran off. The police were called. The appellant was arrested outside his home with a lighter in his possession. He said he was intending to pour petrol over her to scare her with no intention of harming her, and lighting of matches and sparking of the lighter had been purely to scare her. Judge said it was "nothing short of miraculous that petrol did not ignite and had the petrol ignited, she would have become a human torch, she would have suffered injuries which would have been painful in the extreme and disfiguring, almost certainly for the rest of her life. One can think of few crueller crimes short of murder than setting someone alight".</p>	<p>Guilty plea. The judge's conclusion was, taking into account the seriousness of the offence, that the appropriate starting point for a determinate sentence after trial would have been 15 years. There was full credit to be given for the plea and therefore the custodial term was 10 years. Having determined that offender was dangerous, Judge concluded that a life sentence was not necessary; rather an extended licence period would be sufficient to protect the public. He set that licence period at five years – so 15 year sentence. Court of Appeal dismissed appeal</p> <p>With revised factors A1 Culpability A- significant planning, use of a highly dangerous weapon equivalent (petrol). Harm 1 intended</p>
<p>Transcript case 16 – 2016 D and victim had 'bad blood' between them, although history not clear. Victim threw a bottle at outside window of a café where D was with friends and family and gesticulated to him. They had words and victim left and so did D, going in opposite directions. Victim returned with a knife and went into</p>	<p>Found Guilty after trial. Cat 1 offence. Starting point 12 years immediate custody. Extended sentence for dangerousness imposed of 16 years and extended licence period of 4 years, so 20 years in total.</p>

<p>cafe looking for D. D had gone to a flat nearby and retrieved a hidden gun and put disposable gloves and bag on himself, and pulled his hoody up and went to victim to confront him. J said D made a 'conscious decision to teach victim a lesson'. Victim refused to give account of what happened, but J said he had no doubt victim had lunged with his knife at D and that D advanced on him and fired gun, at least two shots, before walking away returning gun to its hiding place and setting off out for a day out paintballing. Victim found at his flat by police, gunshot wound to upper left abdomen and another to his shoulder. Had to have part of his liver removed, repair of a gastric perforation and the removal of bottom half of his pancreas. An operation on his shoulder a week later showed splintering and fragmentation of bone which needed a shortening of the arm and fusing of the damage by the attachment of a metal plate and the removal of dead tissue. In intensive care and HDU for three weeks.</p>	<p>With revised guideline A1 Culpability B – use of a highly dangerous weapon (firearm) Harm 1 – particularly grave injury, requiring removal of parts of internal organs.</p>
<p>Transcript case 17 – 2016 Offence involved kidnap, false imprisonment and blackmail. Gang kidnapped victim and subjected him to 36 hours of torture and violence; stabbing, punching, kicking and burning him with a heated fork, torture with a fork, stabbing and restabbing right arm leading to permanent weakness (and victim is a barber), cutting his beard and forcing him to drink alcohol - deeply degrading as victim a muslim. Made threats/implied he would be killed to terrify him. Ongoing and life changing effect on victim.</p>	<p>Guilty plea – 33% reduction. Starting point 18 years, 12 years for GBH after plea.</p> <p>Revised guideline categorisation A1 Multiple culpability B factors - Planning/premeditation, use of heated instrument to burn/brand victim, prolonged assault. Harm 1 – permanent injury to arm, ongoing and life changing effect.</p>
<p>Transcript case 20 – 2016 Offender got into an argument with victim and victim very aggressively racially abused her. Offender headbutted victim and followed her outside and using a stiletto she was holding hit the victim over the head aiming nine blows, two of which landed. Deep laceration to right eye requiring 20 stitches and a deep laceration to the top of her head along with marks and bruises. High culpability as used two weapons; head and shoe. Greater harm categorisation as attack assessed as sustained and repeated.</p>	<p>Guilty plea – full credit. Starting point 6 years, reduced to 3 years 4 months for plea.</p> <p>Revised guideline categorisation B3 Culpability B – Weapon not in category A Harm 3 – injuries not grave, permanent, irreversible or life changing</p>

<p>Transcript case 36 – 2016 Victim was on way home and saw homeless man and gave him £10, and offender asked for money too (not clear if he was also homeless.) Victim refused and offender attempted to punch and kick him. Then followed him and armed himself with a large bottle and attacked victim from behind. Struck him on side of head causing him to fall to ground then stamped on his head, kicked him, punched him and used the bottle again to hit him. Injuries included numerous facial fractures including cheekbones on both sides, orbit of eye, base of skull and nose. Victim has permanent scarring, ongoing tenderness and pain, nerve damage, interrupted sleep and will not enter city centre.</p>	<p>Starting point 10 years. NG plea, offender refused to attend sentencing hearing. Offence category 2. Offender had a number of previous convictions for violence, including a previous s1 conviction, although not recent enough to provide for dangerousness assessment. Offender described as an entrenched offender and a man of violence. Judge said significant number of aggravating factors take case beyond category range, these included a very clear suggestion of premeditation, he went looking for victim and he armed himself with a weapon. It was in the city centre in the very early morning. There was at least one other person present and a risk of others being present. Defendant concealed his coat and he must have concealed the bottle. A further very significantly aggravating feature is the fact that he was on licence for his last offences of robbery and attempted robbery. Antecedents seriously aggravate this offence. There is little that was said or could be said in mitigation on his behalf. Final sentence 10 years.</p> <p>Revised guideline categorisation – A3 Culpability – Premeditation and use of weapon Harm 3</p>
<p>Transcript case 37 - 2016 - Victim in relationship with offender's sister. All alcoholics. While drunk celebrating sister's birthday offender launched a sustained and savage attack on victim as he hadn't wished his sister a happy birthday. Repeated punches to head and face, sister tried to stop him but couldn't so she called police and offender shouted out comments suggestive of intention to kill or seriously injure victim. Asked sister how many bones he should break, and told police if they were not there in 15 mins he would execute victim, and threatened to throw him out of window and kill him. Rendered victim unconscious during attack and continued to beat him. Injuries included cut/laceration to nose, longer laceration to left cheek beneath left eye. Both eyes severely bruised and there was extensive deep bruising down left side of his face and neck area, as well as left ear. Extensive bruising and cut to back of his hands (defensive injuries). Most serious injury was subdural haematoma. Spent six weeks in hospital and could not return</p>	<p>Cat 1, starting point 10 years. Guilty plea, 33% reduction. Final sentence 7 years.</p> <p>Revised guideline categorisation – B1 Culpability – prolonged, victim vulnerable (became unconscious during attack and continued to beat him) Harm – 1 Life threatening injury (blood clot to brain)</p>

to flat where attack happened.	
<p>Transcript case 40 - 2016 Described as nasty and mean offence; two person attack on victim – offender lead assailant. Victim was knocked unconscious by blow then struck a number of times by both offenders, kicking, stamping and offender used a lump of wood to hit him with. Injuries included a number of facial fractures, continues to suffer effects particularly with sight and some soreness. Not clear if they will resolve in time. Greater culpability, use of shod foot (weapon), harm not serious in the context of the offence.</p>	<p>Category 2 – 6 year starting point. Guilty plea, 33% reduction. Final sentence 4 years imprisonment.</p> <p>Revised guideline categorisation – B3 Culpability B – Leading role in group, weapon other than highly dangerous (wood) Harm – category 3</p>
<p>Transcript case 42 - 2016 Offender was a serving prisoner, boiled a kettle and added 40 sachets of sugar (to maximise pain and suffering of victim) and poured it over head of fellow inmate. Deliberately sadistic and premeditated assault. Told probation officer if it had not been victim, it would have been somebody else. The following day offender telephoned and bragged about it to his mother, telling her that he hoped that victim died. Judge said motivation was clearly and simply to cause him pain and thereby to experience pleasure from doing so. Judge described offender as ‘chillingly dangerous’. Offender has an extensive history of violence and told probation officer he likes violence and derives pleasure from it. Injuries not described but cannot have been severe as Judge says “whilst I acknowledge that in the event the injury was not such as to make it the completed offence, your motivation was such, in my view, to put it at the top of Category 2”.</p>	<p>Guilty plea but Judge said offender did not have much choice (witnesses). Credit not specified. 11 year extended sentence (6 custody, 5 on licence) imposed and dangerousness found.</p> <p>Revised guideline categorisation – A2 Culpability A – Planning/premeditation, highly dangerous weapon equivalent (boiling water and sugar combination) Harm – 2 intended. Grave injuries, burns, potential permanent scarring.</p>
<p>Transcript case 1 - D inflicted injuries on three women using a bottle and then stabbed them all with knives taken from the kitchen of one of the victims. Children were present for at least one of the attacks, but no further information is given for the motive, the situation or any other details of the offence. Judge considered the three counts as one, so imposed one sentence to be served concurrently, reflecting all three. The three women all sustained multiple cuts to the head, and one had a wound to the neck, which didn't cut a major vein/artery but came close. One of the victims sustained defensive injuries to one of her hands causing short term pain and inconvenience to her occupation. Judge said "It is fortunate...that their injuries</p>	<p>Category 1 16 years immediate custody G plea 25% reduction. 12 years custody with extended licence for 5 years (dangerousness)</p> <p>Revised guideline categorisation – B2 – but multiple victims</p>

<p>were not more serious than they turned out to be". D had drunk a lot of alcohol, which he said hadn't affected his conduct, but judge said that even if he was drunk, it is no mitigation.</p>	
<p>R v Henning - The victim and the offender were known to each other. There was a history of bad blood between their families. On 5th June 2014, victim and her cousin went to a house and went to the back garden where there were a number of people, including the offender. The victim asked one of those present about buying some cannabis. The offender said that he had some, but victim said to him "no thanks" and she and her cousin left. The offender lost his temper and started shouting at her and threatening to knock her out. The victim went to the front of the house but the offender followed her and continued to goad her. He slapped her to the face and when she tried to hit him back, he struck her again, causing her to go to the ground. He then stamped on her head twice. Her cousin helped her home but she felt dizzy and sick. She attended hospital. She was found to have a fractured jaw which required surgery and the insertion of metal plates under general anaesthetic. She also had to have a tooth repositioned. While she had made a full recovery from the injury to her jaw, she had been left with the cosmetic disfigurement of a blackened front tooth. She also had anxiety and sleep disturbance which required medication and was still continuing some four months later. Her anxiety led to her sustaining substantial weight loss for some weeks. Offender had no of pre cons. Admitted offence and showed remorse.</p>	<p>Guilty plea on day of trial and 10 per cent discount. Judge found offence fell within category 1. It was a sustained and repeated assault (greater harm) and factors indicated higher culpability, in particular the use of a shod foot to inflict the injuries. She said that the starting point after a trial was one of 12 years with a range of nine to 16 years. The aggravating features here included the previous convictions, but the plea, the appellant's age and his remorse meant that the starting point could be brought down. The sentence was one of 10 years' imprisonment. Upheld on appeal – C of A said it was a severe sentence, but this was a vicious attack by someone with a long history of offending, including offences of violence. They agreed with the approach taken by the judge and did not consider that the sentence was manifestly excessive.</p> <p>Revised guideline categorisation – C2 Culpability C – Shod foot Harm – 2</p>
<p>R v Smallwood at about 1.45 in the morning, the victim and his female companion were walking through the centre of Brighton. By chance they encountered the offender. The female and the offender had formerly been in a relationship. The offender approached the victim and instigated a fight, punching him to the floor. Whilst he was lying prone on the floor, the offender kicked him to the head three times. Witnesses described the kicks "as if taking a conversion in a rugby match", each involving the offender taking a few steps back before each kick. The offender then ran away and went to a night club leaving victim unconscious. He was taken to hospital and found to have a number of injuries - a laceration under his left eye that required 18 stitches, a laceration above his left eyebrow that required gluing, cuts</p>	<p>Judge departed from guideline of a 6 year SP for a category 2 (<i>lesser harm but higher culpability – use of shod foot as a weapon</i>) and imposed 2 years custody for the purpose of suspending it. Referred to C of A by AG. Increased to 4 years by C of A.</p> <p>Revised guideline categorisation – C3 Culpability C – Shod foot Harm – 3</p>

<p>and grazes to his left elbow, a bruised ear and a bruised head. When reviewed in hospital six weeks later he was still experiencing numbness to the left side of his face due to nerve damage caused by the assault and the numbness lasted for some three months. As a result of the attack, victim remains permanently scarred to a very visible part of his face. Offender had no pre cons, in employment and number of good character references. Was drunk at time of offence.</p>	
<p>Transcript case 4 - Both defendants were parents of V (a premature and sickly baby, who's due date was the day of the offence). There was a heightened state of emotion between the parents (including the mother shouting), and V was distressed. D, presumably frustrated by V crying, took hold of V under her arms, shook her briefly and, realising his actions, put her on the floor and alerted the mother to the fact that V "did not look right". D was prone to violent outbursts and was addicted to cannabis. Injuries were fractures to the ribs, the clavicles and damage/bleeding to the brain. A consultant community paediatrician stated that although V is now aged more than 2 years and 4 months, her developmental age is between 12 and 18 months.</p>	<p>Top end of category 2. 8 years 4 months custody starting point 20% discount for plea. Final sentence 6 years and 8 months custody.</p> <p>Revised guideline categorisation – B2 Culpability B – Vulnerable victim Harm – 2</p>
<p>Transcript case 7 - Sustained and repeated attack on victim using shod foot, outside a 30th birthday party where a child and others saw the incident. Caused fractured eye socket and fractured left arm. Defendant was on licence for another offence of violence at time (history of assaults).</p>	<p>Category 1. Starting point not specified but 1/3 reduction for plea and final sentence 10 years custody plus 8 years concurrent for additional attempted s18 offence.</p> <p>Revised guideline categorisation – C3 Culpability C – Weapon (shod foot) Harm – 3</p>
S18 WOUNDING WITH INTENT	
<p>R v Bourke – charged as attempted murder, pleaded to s18 as alternative. DA case. History of frequent and often violent arguments to which Police were called. Victim often attacked offender. Drunken argument resulted in victim being stabbed. She had multiple stab wounds to neck, belly and back including penetration of lung and into stomach area, kidney and liver and defence wounds to forearms. Placed in medically induced coma. At least 20 stab wounds but her life never in danger. Attack was sustained and violent. Victim left with scars to body and a drooping left</p>	<p>Category 1 case. Guilty plea at first opportunity. 15 year starting point reduced to 10 and 5 years extended licence. Quashed on appeal and replaced with 13 and a half year starting point with credit for plea; 9 years and a 3 year extended sentence. Revised guideline categorisation – A1 Culpability A – use of highly dangerous weapon (knife), prolonged assault (20 stab wounds)</p>

<p>eye. No longer capable of work and no longer felt safe in her own home. Provocation and DA on both sides found.</p>	<p>Harm 1 – particularly grave, multiple stab wounds</p>
<p>R v Matthews – Offender had been on a three-day cocaine binge and then visited his adoptive parents' house. He was angry with them because he had not been able to attend his grandfather's funeral a year earlier. He assaulted his mother by pulling her head down and punching her to the shoulder. Concerned by his general violent behaviour, his mother had earlier removed the knives from the house. However, he found a knife and went towards his mother with it and said "I'll kill someone one of these days. I'll kill you". He tried to stab her in the neck but she took the brunt of the cut to her left arm as she tried to defend herself. After seemingly calming down, he stabbed her in the leg and refused to let his father call an ambulance. He then sat down to drink a beer. His mother required surgery to remove the knife from her leg which was embedded in her shin bone and stitches to the lacerations to her neck and arm. She suffered deep vein thrombosis as a result of the knife wounded her leg. Offender was 35 years old and had numerous previous convictions including violent offences, some of which had been committed against his parents. The judge noted the effect of the offending on the mother, the progress he had made in custody, and that his psychological issues had led to substance abuse.</p>	<p>Offender pleaded guilty to two sequential attacks on his mother. Extended sentence, comprising a 10-year custodial term and a four-year extended licence period.</p> <p>C of A held sentence was appropriate.</p> <p>Revised guideline categorisation – B2 Culpability – highly dangerous weapon (knife) Harm – 2 grave but non life threatening injury (surgery required, DVT caused)</p>
<p>Transcript case 10 - D and V had a long-standing family dispute. They bumped into each other, by chance, at a supermarket. D went and armed himself with a Sabatier knife, encouraged V to "Come outside" for a fight, and stabbed V in the chest and elbow, wounding both.</p>	<p>Category 2. Plea not specified. 6 years immediate custody. Extended sentence of 7 years 6 months and extended licence of 18 months – 9 years in total.</p> <p>Revised guideline categorisation – B3 Culpability – highly dangerous weapon (knife) Harm - 2</p>
<p>Transcript case 29 - 2016 Breach of RO and a S18 towards ex girlfriend. RO imposed and two months later he visited her home at 6.45 in morning armed with a vegetable knife 8 inches long with a serrated pointed edge. As she left front door he was waiting and repeatedly punched her in face. Then used knife to stab her, principally in head and neck. Whispered in her ear 'you ruined my life'. She begged him to stop. Police were called and he went into her home. Injuries included cuts and stab wounds to her neck. Broken nose, cuts to eyebrow, hand, cheek and ear. Persistent blows, fractured right eye socket, cuts had to be stitched. She thought</p>	<p>Starting point 12 years. 33% discount for Guilty plea. Final sentence 8 years custody.</p> <p>Revised guideline categorisation – A1/2 Culpability – Planning/premeditation, use of highly dangerous weapon (knife) Harm – 1/2. Very high degree of psychological harm</p>

<p>she would be killed and was terrified. She has had to move home and continues to have problems sleeping. Has eye socket injury requiring specialist attention as do other injuries and scars she received.</p>	
<p>Transcript case 31 - 2016 Bottled victim while drunk - not clear if already broken or he broke it. Caused neck injuries and permanent scarring and Judge says victim psychologically scarred for life.</p>	<p>Category 2. Starting point 6 years custody. 33% discount for plea. Final sentence 4 years. Revised guideline categorisation – A/B3 Culpability – Use of weapon (bottle) likely to be highly dangerous if broken, maybe not highly dangerous if not? Harm – A/B3.</p>
<p>Transcript case 38 - 2016 - Offender and brothers (co-d's) attended a house party where words were exchanged with others, although everything seemed to be resolved. Knives then appeared on scene and offender struck victim who was walking away with knife, causing wound to his face. 7 cm very deep laceration, and only through intervention of expert medical assistance was facial nerve undamaged. Scar left but not permanent and barely noticeable.</p>	<p>Category 2 – 4 year starting point (departed from guideline) Judge said case falls towards the bottom end of Cat 2 range, it was a single blow. Great deal of mitigation found; only one previous conviction - when aged 15, some years ago - for an offence of burglary, so no history of violence, described in PSR as posing a medium risk of reoffending. Having regard to the fact that this was a moment of madness and the injury, whilst still serious, is not as bad as it might have been. 25% credit as plea on day of trial, final sentence 3 years. Revised guideline categorisation – A3 Culpability – A - highly dangerous weapon (knife) Harm – 3</p>
<p>R v Smith - The victim had gone to S's house to complain about repairs that S had carried out on his partner's vehicle. An argument ensued, S asked V to leave and was shouting and threatening him. S took a metal pole from his car, V got into his vehicle and the S struck the car with the pole. V came out of the vehicle and was assaulted with the pole, causing lacerations to his forehead and bruising to his left arm. The jury rejected the appellant's defence of self-defence. When passing sentence, the judge stated that the appellant could have retreated but had instead grabbed the pole causing injury.</p>	<p>The offence was a Category 2 offence with a six-year starting point and a range of between five to nine years' imprisonment. Six years imposed. Court of Appeal found sentence was towards the bottom of the range but did not merit uplift. The sentence was manifestly excessive. The altercation was over car repairs and the assault was not the most serious kind for such cases. The injuries were not so severe. The correct sentence should have been five years' imprisonment. Revised guideline categorisation – C3 Culpability – C – non highly dangerous weapon (pole) Harm – 3</p>

Sentencing trends for GBH with intent, 2007-2017^{1,2}

Proportion of adult offenders sentenced for GBH with intent, by sentence outcome, all courts, 2007-2017³

Outcome	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Absolute and conditional discharge	<0.5%	0%	0%	0%	<0.5%	<0.5%	0%	<0.5%	0%	0%	0%
Fine	<0.5%	0%	0%	0%	0%	0%	0%	<0.5%	<0.5%	<0.5%	0%
Community sentence	1%	<0.5%	<0.5%	1%	1%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%
Suspended sentence	2%	2%	2%	2%	1%	1%	2%	3%	3%	3%	1%
Immediate custody	93%	95%	95%	95%	95%	97%	95%	90%	89%	89%	90%
Otherwise dealt with	3%	3%	3%	3%	3%	2%	3%	6%	7%	8%	9%

GBH with intent sentence lengths

Post guilty plea sentence length bands received by adult offenders sentenced to immediate custody for GBH with intent, all courts, 2007-2017⁴

Sentence length band	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
3 years or less	31%	23%	26%	21%	17%	13%	11%	10%	10%	9%	8%
Between 3 and 6 years	36%	44%	48%	50%	51%	48%	48%	48%	48%	47%	44%
Between 6 and 9 years	5%	8%	11%	11%	15%	20%	26%	26%	25%	27%	28%
Between 9 and 12 years	0%	2%	2%	3%	4%	7%	10%	12%	11%	12%	14%
Between 12 and 15 years	0%	0%	0%	0%	1%	1%	3%	3%	3%	3%	4%
More than 15 years	0%	0%	0%	0%	0%	0%	0%	1%	1%	1%	1%
Indeterminate	28%	23%	14%	15%	11%	10%	1%	1%	1%	1%	1%

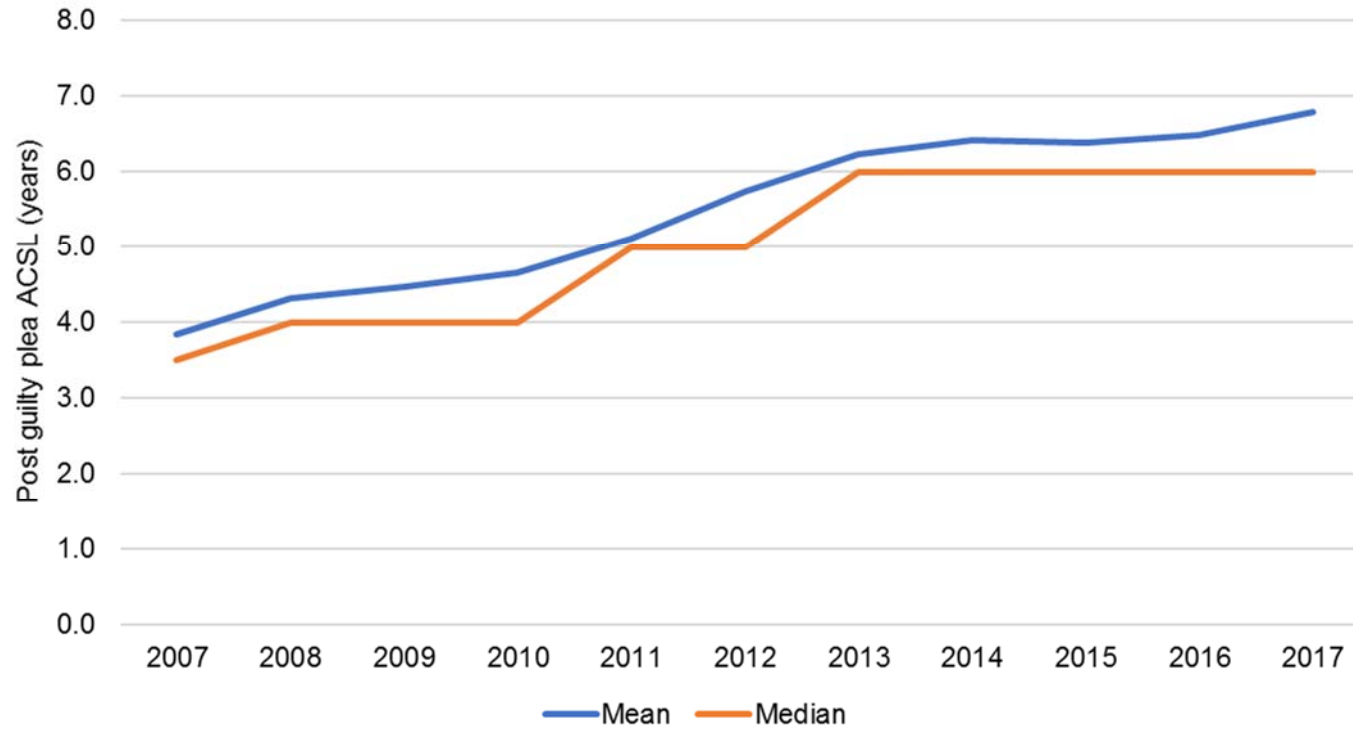
¹ Source: Court Proceedings Database, Ministry of Justice.

² Excludes youths.

³ Percentages may not add up to 100 per cent, due to rounding.

⁴ Sentence length bands do not include the lower bound, but do include the upper bound sentence length. For example, the category '3 years or less' includes sentence lengths less than and equal to 3 years, and 'Between 3 and 6 years' includes sentence lengths over 3 years, and up to and including 6 years.

Post guilty plea average custodial sentence lengths (ACSLs) received by adult offenders sentenced to immediate custody for GBH with intent, all courts, 2007-2017



Sentencing Council meeting:
Paper number:

14 December 2018
**SC(18)DEC05 – General guideline and
expanded explanations in offence
specific guidelines**
Maura McGowan
Ruth Pope
0207 071 5781

Lead Council member:
Lead official:

1 ISSUE

1.1 At the November meeting the Council agreed changes to the General guideline in response to the consultation. At this meeting the Council will be asked to consider how these explanations apply to factors in offence specific guidelines.

1.2 The consultation on providing explanations for factors in offence specific guidelines is scheduled to start at the end of February. This will mean that it will need to be signed off for consultation at the January 2019 meeting.

1.3 The plan is then to consider the responses to that consultation in June 2019 and to publish both phases of the project to replace the SGC Seriousness guideline at the end of July 2019. This will allow for training on the guidelines in September and October 2019.

2 RECOMMENDATION

2.1 That the Council considers the draft guideline at Annex A (suggested additions are shown underlined; deletions struck through) and approves the changes made since the November meeting (paragraphs 3.1 to 3.6).

2.2 That the Council agrees in principle to consulting on including further guidance on PSRs in the Imposition guideline and embedded in in the digital guidelines (paragraphs 3.7 to 3.12).

2.3 That the Council reviews the first 11 offence specific guidelines to which expanded explanation have been applied and decides whether the explanations need to be modified. (paragraphs 3.13 to 3.24)

2.4 That the Council considers confirms plans to consult on other changes previous agreed. (paragraphs 3.25 to 3.27)

3 CONSIDERATION

Review of changes made to date

3.1 A version of the General guideline incorporating all the changes agreed to date is provided at Annex A. Comments are welcome on any of the content of Annex A, but attention is particularly drawn to the passages addressed below.

3.2 An additional harm factor has been included on page 3 of Annex A in response to the request for additional examples of vulnerability relating to endangered species, sensitive environments and the suffering of animals. This was discussed at the November meeting and the Council agreed not to add non-human examples to the aggravating factor of vulnerability, but that the issues raised should be considered for inclusion elsewhere.

Question 1: Does the Council agree with the inclusion of this additional harm factor?

Mitigating factors

3.3 The highlighted wording in factor M9 relating to limited understanding of the offence on page 26 of Annex A has been redrafted following discussions at the last meeting.

Question 2: Does the Council agree with the wording at M9?

3.4 Following a request for clarification at the last meeting, the wording relating to care leavers in factor M13 on page 28 of Annex A has been reworded with assistance from the Howard League and T2A. They also made other suggestions for changes which are shown on page 28.

Question 3: Is the Council content with the redrafted wording at M13?

3.5 At the last meeting the Council considered and rejected a request to include reference to pregnant women in the guideline. After the meeting Rosa and Alpa reflected on this and proposed that it might, in fact, be useful to include such a reference. Suggested wording is shown highlighted in factor M14 on page 28 of Annex A.

Question 4: Does the Council agree to add the highlighted wording at M14?

Offenders of particular concern

3.6 A new Step 6 on page 30 has been added to the guideline relating to offenders of particular concern. (A similar step has been added to the digital guidelines for Assault of a child under 13 by penetration and rape of a child under 13 on the Council's website.)

Question 5: Is the Council content with the wording of step 6?

Pre-sentence reports

3.7 A working group (comprising a judge, and representatives or officials, from probation, the JCS, the defence community, the Judicial Office and the Sentencing Council) has recently been convened to look at the seemingly growing trend across all courts to sentence

to community orders or custody without a pre-sentence report. The concern is that this is leading to higher levels of breach and that important considerations about an offender's background, circumstances, risk factors and vulnerabilities are not being brought to the court's attention. There is some evidence that the practice of sentencing without reports relates disproportionately to women and BAME offenders.

3.8 Increasingly the Council's overarching guidelines and offence specific guidelines require courts to consider factors about an offender that might not be immediately apparent and suggest that such matters might be addressed in a PSR. Therefore guidelines are being drafted on the basis that a PSR will be ordered in most cases where most community orders or short to medium custodial sentences are being considered.

3.9 The proposal of the working group is to draft a Criminal Practice Direction to clarify when a report is necessary. This will be considered by the Criminal Procedure Rules Committee when it meets in January 2019. However, the working party felt that the most effective way to get the information to sentencers is through sentencing guidelines.

3.10 The Imposition guideline already includes references to obtaining pre-sentence reports when considering community orders or custody, stating that the court should obtain a report 'unless the court is of the opinion that a report is unnecessary in all the circumstances of the case' / 'unless the court considers a report to be unnecessary'. See pages 7 and 9 of Annex A. This wording reflects legislation.

3.11 The Council could use the consultation on expanded factors in offence specific guidelines to consult on adding some clarification as to when a report might be 'unnecessary'. Reference could be made to the practice direction (or a short extract quoted – depending on length) so that the information is readily available to sentencers. A first draft of potential additional wording is shown underlined.

3.12 At this stage, the Council is not being asked to agree the wording (as it will depend on what is agreed for the practice direction) but agreement is sought in principle to the approach outlined above.

Question 6: Should the consultation on the expanded explanations in offence specific guidelines include giving more information on ordering PSRs?

Explanations in offence specific guidelines

3.13 The explanations agreed for the General guideline have been applied to offence specific guidelines on a test site that mirrors the Council's website. To view these:

Go to: <https://sentencing-staging.bang-on.net/>

User name: sentencing_staging

Password: surcharging-footwork

You may be asked to enter these more than once (sorry).

This will take you to the homepage of the test website.

3.14 On the test website click on sentencing guidelines for the Crown Court. This will bring you to the search offences screen. The expanded explanations from the General guideline have been applied to **Step 2** factors in the following guidelines:

- Assault occasioning actual bodily harm / Racially and religiously aggravated ABH
- Possession of an article with blade/point in a public place,
- Non-domestic burglary
- Breach of criminal behaviour order/ ASBO
- Owner or person in charge of a dog dangerously out of control
- Possession of a controlled drug with intent to supply it to another
- Organisations: Unauthorised or harmful deposit, treatment or disposal etc of waste
- Fraud
- Individuals: Breach of food safety and food hygiene regulations
- Harassment (putting people in fear of violence)
- Sexual assault

3.15 It would be helpful if members could look at all of these guidelines on the test site to see how the expanded explanations could work in practice in offence specific guidelines. If any members have difficulty accessing the guidelines on the test site please email: ruth.pope@sentencingcouncil.gov.uk or call 0207 071 5781.

3.16 As noted above, the expanded explanations have not been applied to step one factors. This is because the wording of factors at step one tends to be tailored specifically for each guideline and the placement of factors at step one indicates whether it is a factor for example indicating high culpability or low harm, whereas at step two that context is not available. There is a danger that by using the expanded explanations at step one the carefully crafted balance of the factors could be altered.

3.17 Therefore, the changes made to the guidelines on the test site have chiefly been the addition of explanations to aggravating and mitigating factors. Instances where other changes have been made are outlined at paragraphs 3.25 to 3.27 below.

Question 7: Does the Council agree that the expanded explanations should be applied to step two factors only?

3.18 The explanations were drafted to work for the factors in the General guideline. Some of these factors appear frequently and in similar forms in many of the offence specific guidelines and therefore pose no problems when applied. Those explanations that have

been identified so far which may need to be revised are considered at paragraphs 3.19 to 3.24 below. Others may come to light as the explanations are applied to more guidelines and the approach agreed by the Council at this meeting can then be applied to those and reviewed by the Council before consultation.

Actions after the event including but not limited to attempts to cover up/ conceal evidence

3.19 The explanation for this factor (A13 in the General guideline on page 19 of Annex A) has been applied to various factors in offence specific guidelines on the test site with the consequence that in some cases the same explanation appears for two different factors in the same guideline. For example in [fraud](#) (if prompted - User name: sentencing_staging Password: surcharging-footwork) the explanation has been applied to the factors:

- 'Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution' and
- 'Attempts to conceal/dispose of evidence'.

3.20 Other guidelines have similarly worded factors. Environmental and food safety guidelines have a factor 'Obstruction of justice' to which the explanation has been applied. Clearly, some of these factors are more closely related to the factor in the General guideline than others but all relate to conduct after the offence has been committed.

Question 8: Should the same explanation be applied to the various factors relating to conduct after the offence has been committed?

Offence committed on licence or post sentence supervision or while subject to court orders

3.21 This appears as a single factor in the General guideline (A16 on page 20 of Annex A) but is generally split across two factors in offence specific guidelines. Consequently, on the test website the explanation is repeated for each factor. It may be preferable to split the explanation so that each factor only has the relevant information attached to it. The suggestion is that the explanations for the individual factors could read:

Offence committed on licence or post sentence supervision

- An offender who is subject to licence or post sentence supervision is under a particular obligation to desist from further offending.
- The extent to which the offender has complied with the conditions of a licence or supervision will be a relevant consideration.
- Where the offender is dealt with separately for a breach of a licence or supervision regard should be had to totality (see Totality principle step below)
- Care should be taken to avoid double counting matters taken into account when considering previous convictions.

Failure to comply with current court orders

- Commission of an offence while subject to a **relevant** court order makes the offence more serious.
- The extent to which the offender has complied with the conditions of an order will be a relevant consideration.
- Where the offender is dealt with separately for a breach of an order regard should be had to totality (see Totality principle step below)
- Care should be taken to avoid double counting matters taken into account when considering previous convictions.

3.22 In the General guideline the factor could remain as a single factor or be split in the way that it is in offence specific guidelines.

Question 9: Should the explanation for offences committed on licence or while subject to court orders be split in offence specific guidelines?

Question 10: Should the factor be split in the General guideline?

Location and/or timing of the offence

3.23 Similarly, this is one factor in the General guideline (A21 on page 22 of Annex A), but where it appears in offence specific guidelines it is two factors. Again this means that the explanation is repeated for the two factors on the test website see for example [ABH](#) (if prompted - User name: sentencing_staging Password: surcharging-footwork). The explanations could be separated to read:

Location of the offence

- In general, an offence is not made more serious by the location of the offence except in ways taken into account by other factors in guidelines (such as planning, vulnerable victim, offence committed in a domestic context, maximising distress to victim, others put at risk of harm by the offending, offence committed in the presence of others). Care should be taken to avoid double counting.
- Courts should be cautious about aggravating an offence by reason of it being committed for example, in a crowded place or in an isolated place unless it also indicates increased harm or culpability not already accounted for.
- An offence may be more serious when it is committed in places in which there is a particular need for discipline or safety such as prisons, courts, schools or hospitals.

Timing of the offence

- In general, an offence is not made more serious by the timing of the offence except in ways taken into account by other factors in guidelines (such as planning, vulnerable victim, offence committed in a domestic context, maximising distress to victim, others put at risk of harm by the offending, offence committed in the presence of others). Care should be taken to avoid double counting.
- Courts should be cautious about aggravating an offence by reason of it being committed for example at night, or in broad daylight unless it also indicates increased harm or culpability not already accounted for.

Question 11: Should the explanation for timing and location of the offence be split in offence specific guidelines?

Question 12: Should the timing and location factor be split in the General guideline?

Established evidence of community/ wider impact

3.24 The explanation for this factor in the General guideline (A22 at page 23 of Annex A) refers to the guidance on prevalence that follows it. However, in almost all of the offence specific guidelines where this factor appears, there is no 'Prevalence' factor so guidance on prevalence will not be available. The easiest solution to this would be to add the prevalence guidance to the explanation so that it reads:

- This factor should increase the sentence only where there is clear evidence of wider harm not already taken into account elsewhere. A community impact statement will assist the court in assessing the level of impact.
- For issues of prevalence see the separate guidance below.

Prevalence

- Sentencing levels in offence specific guidelines take account of collective social harm. Accordingly offenders should normally be sentenced by straightforward application of the guidelines without aggravation for the fact that their activity contributed to a harmful social effect upon a neighbourhood or community.
- It is not open to a sentencer to increase a sentence for prevalence in ordinary circumstances or in response to a personal view that there is 'too much of this sort of thing going on in this area'.
- First, there must be evidence provided to the court by a responsible body or by a senior police officer.
- Secondly, that evidence must be before the court in the specific case being considered with the relevant statements or reports having been made available to the Crown and defence in good time so that meaningful representations about that material can be made.
- Even if such material is provided, a sentencer will only be entitled to treat prevalence as an aggravating factor if satisfied
 - that the level of harm caused in a particular locality is significantly higher than that caused elsewhere (and thus already inherent in the guideline levels);
 - that the circumstances can properly be described as exceptional; **and**
 - that it is just and proportionate to increase the sentence for such a factor in the particular case being sentenced.

Question 13: Should the guidance on prevalence be added to the community impact factor in offence-specific guidelines?

Other changes made to offence specific guidelines.

3.25 The drop down boxes for 'Band ranges', 'Community orders table' and 'Custodial sentences' have the additional information agreed for the General guideline.

3.26 At step one of the [Fraud](#) guideline, medium culpability has been expanded as previously agreed by the Council. The proposal is to do the same in robbery, theft and the other fraud guidelines. The factor in the guideline current reads:

B – Medium culpability

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

3.27 The proposal is to change it to:

B – Medium culpability

- A significant role where offending is part of a group activity
- Other cases that fall between categories A or C because:
 - Factors are present in A and C which balance each other out **and/or**
 - The offender's culpability falls between the factors as described in A and C

Question 14: Does the Council agree to consult on these changes?

4 RISKS/IMPACT

4.1 There was some criticism of the Council for the lack of a detailed impact assessment for the General guideline. The same is likely to apply to the addition of explanations to offence specific guidelines. It will not be possible to assess the likely impact of the guideline, with any certainty although the nature of the changes makes it likely that any impact on correctional resources would be negligible.

General guideline

For sentencing offences for which there is no offence specific sentencing guideline

Applicability of guideline

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

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

“Every court –

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

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

This guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, [Sentencing children and young people - overarching principles](#).

STEP ONE – reaching a provisional sentence

- a) Where there is no definitive sentencing guideline for the offence, to arrive at a provisional sentence the court should take account of all of the following (if they apply):
- the statutory maximum sentence (and if appropriate minimum sentence) for the offence;
 - sentencing judgments of the Court of Appeal (Criminal Division) for the offence; and
 - definitive sentencing guidelines for analogous offences

The court will be assisted by the parties in identifying the above.

For the avoidance of doubt the court should **not** take account of any draft sentencing guidelines.

When considering definitive guidelines for analogous offences the court must apply these carefully, making adjustments for any differences in the statutory maximum sentence and in the elements of the offence. This will not be a merely arithmetical exercise.

- b) Where possible the court should follow the stepped approach of sentencing guidelines to arrive at the sentence.

The seriousness of the offence is assessed by considering:

- the **culpability** of the offender and
- the **harm** caused by the offending.

- c) The initial assessment of harm and culpability should take no account of plea or previous convictions.

The court should consider which of the five purposes of sentencing (below) it is seeking to achieve through the sentence that is imposed. More than one purpose might be relevant and the importance of each must be weighed against the particular offence and offender characteristics when determining sentence.


- the punishment of offenders
- the reduction of crime (including its reduction by deterrence)
- the reform and rehabilitation of offenders
- the protection of the public
- the making of reparation by offenders to persons affected by their offences

More information:


Culpability is assessed with reference to the offender's role, level of intention and/or premeditation and the extent and sophistication of planning.

- The court should balance these factors to reach a fair assessment of the offender's overall culpability in all the circumstances of the case and the offender.

- The mere presence of a factor that is inherent in the offence should not be used in assessing culpability.
- Deliberate or gratuitous violence, or damage to property, over and above what is needed to carry out the offence will normally indicate a higher level of culpability
- For offences where there is no requirement for the offender to have any level of intention, recklessness, negligence, dishonesty, knowledge, understanding or foresight for the offence to be made out, the range of culpability **may** be inferred from the circumstances of the offence as follows:

Highest level  Lowest level	Deliberate - intentional act or omission
	Reckless - acted or failed to act regardless of the foreseeable risk
	Negligent - failed to take steps to guard against the act or omission
	Low/no culpability - act or omission with none of the above features

- For offences that require some level of culpability (eg intention, recklessness or knowledge) to be made out, the range of culpability will be narrower. Relevant factors **may** typically include but are not limited to:

Highest level  Lowest level	High level of planning/ sophistication/ leading role
	Some planning/ significant role
	Little or no planning/ minor role

- These models of assessing culpability will not be applicable to all offences


Harm – which the offence caused, was intended to cause or might foreseeably have caused.

- There may be primary and secondary victims of an offence and, depending on the offence, victims may include one or more individuals, a community, the general public, the state, the environment and/or animal(s). In some cases there may not be an identifiable victim.
- An assessment of harm should generally reflect the overall impact of the offence upon the victim(s) and may include direct harm (including physical injury, psychological harm and financial loss) and consequential harm.
- When considering the value of property lost or damaged the court should also take account of any sentimental value to the victim(s) and any disruption caused to a victim’s life, activities or business.
- When considering harm to animals or the environment relevant considerations will include the impact on rare or endangered species or sensitive locations, and any suffering caused.

Question 1

- Where harm was intended but no harm or a lower level of harm resulted – the sentence will normally be assessed with reference to the level of harm intended.
- Where the harm caused is greater than that intended - the sentence will normally be assessed with reference to the level of harm suffered by the victim.
- Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.
- Risk of harm is less serious than the same actual harm. Where the offence has caused risk of harm but no (or less) actual harm the normal approach is to move down to the next category of harm. This may not be appropriate if either the likelihood or extent of potential harm is particularly high.

- A Victim Personal Statement (VPS) or other impact statement may assist the court in assessing harm, but the absence of a VPS or other impact statement should not be taken to indicate the absence of harm.
- The court should balance these characteristics to reach a fair assessment of harm in the context of the circumstances of the offence

Highest level  Lowest level	Very serious harm caused to individual victim(s) or to wider public/ environment etc
	Serious harm caused OR high risk of very serious harm
	Significant harm caused OR high risk of serious harm
	Low/ no harm caused OR high risk significant harm

The table should be used in conjunction with the notes above and may not be applicable to all offences.

STEP TWO

Once a provisional sentence is arrived at the court should take into account factors that may make the offence more serious and factors which may reduce seriousness or reflect personal mitigation.

- Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.
- It is for the sentencing court to determine how much weight should be assigned to the aggravating and mitigating factors taking into account all of the circumstances of the offence and the offender. Not all factors that apply will necessarily influence the sentence.
- When sentencing an offence for which a **fixed penalty notice [link to information below]** was available the reason why the offender did not take advantage of the fixed penalty will be a relevant consideration.
- **If considering a community or custodial sentence refer also to the *Imposition of community and custodial sentences definitive guideline*. [link to information below]**
- **If considering a fine – see information on fine bands [link to information below]**

More information:

Penalty notices may be issued as an alternative to prosecution in respect of a range of offences. An admission of guilt is not a prerequisite to issuing a penalty notice. An offender who is issued with a penalty notice may nevertheless be prosecuted for the offence if he or she:

- asks to be tried for the offence; or
- fails to pay the penalty within the period stipulated in the notice and the prosecutor decides to proceed with charges.

In some cases of non-payment, the penalty is automatically registered and enforceable as a fine without need for recourse to the courts. This procedure applies to penalty notices for

disorder and fixed penalty notices issued in respect of certain road traffic offences but not to fixed penalty notices issued for most other criminal offences

When sentencing in cases in which a penalty notice was available:

- the fact that the offender did not take advantage of the penalty (whether that was by requesting a hearing or failing to pay within the specified timeframe) does not increase the seriousness of the offence and must not be regarded as an aggravating factor. The appropriate sentence must be determined in accordance with the sentencing principles set out in this guideline (including the amount of any fine, which must take an offender’s financial circumstances into account), disregarding the availability of the penalty. In some cases this may result in a fine that is lower than the fixed penalty.
- where a penalty notice could not be offered or taken up for reasons unconnected with the offence itself, such as administrative difficulties outside the control of the offender, the starting point should be a fine equivalent to the amount of the penalty and no order of costs should be imposed. The offender should not be disadvantaged by the unavailability of the penalty notice in these circumstances.

Where an offender has had previous penalty notice(s), the fact that an offender has previously been issued with a penalty notice does not increase the seriousness of the current offence and must not be regarded as an aggravating factor. It may, however, properly influence the court’s assessment of the offender’s suitability for a particular sentence, so long as it remains within the limits established by the seriousness of the current offence.

More information - fines

	Starting point	Range
Fine Band A	50% of relevant weekly income	25 – 75% of relevant weekly income
Fine Band B	100% of relevant weekly income	75 – 125% of relevant weekly income
Fine Band C	150% of relevant weekly income	125 – 175% of relevant weekly income
Fine Band D	250% of relevant weekly income	200 – 300% of relevant weekly income
Fine Band E	400% of relevant weekly income	300 – 500% of relevant weekly income
Fine Band F	600% of relevant weekly income	500 – 700% of relevant weekly income

- Where possible, if a financial penalty is imposed, it should remove any economic benefit the offender has derived through the commission of the offence including:
 - avoided costs;
 - operating savings;
 - any gain made as a direct result of the offence.

- The fine should meet, in a fair and proportionate way, the objectives of punishment, deterrence and the removal of gain derived through the commission of the offence; **it should not be cheaper to offend than to comply with the law.**
- In considering economic benefit, the court should avoid double recovery. Where the means of the offender are limited, priority should be given to compensation (where applicable) over payment of any other financial penalty (see further step eight below)
- Where it is not possible to calculate or estimate the economic benefit, the court may wish to draw on information from the enforcing authorities about the general costs of operating within the law.
- When sentencing **organisations** the fine must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with the law.
- Obtaining financial information: It is for the offender to disclose to the court such data relevant to their financial position as will enable it to assess what they can reasonably afford to pay. If necessary, the court may compel the disclosure of an individual offender's financial circumstances pursuant to section 162 of the Criminal Justice Act 2003. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case. In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied financial information to the contrary.

More information – community orders

For further information see the [Imposition of community and Custodial Sentences guideline](#)

- The seriousness of the offence should be the **initial** factor in determining which requirements to include in a community order. Offence specific guidelines refer to three sentencing levels within the community order band based on offence seriousness (low, medium and high). The culpability and harm present in the offence(s) should be considered to identify which of the three sentencing levels within the community order band is appropriate. See below for **non-exhaustive** examples of requirements that might be appropriate in each.
- At least one requirement **MUST** be imposed for the purpose of punishment and/or a fine imposed in addition to the community order unless there are exceptional circumstances which relate to the offence or the offender that would make it unjust in all the circumstances to do so.
- A suspended sentence **MUST NOT** be imposed as a more severe form of community order. A suspended sentence is a custodial sentence.
- Community orders can fulfil all of the purposes of sentencing. In particular, they can have the effect of restricting the offender's liberty while providing punishment in the community, rehabilitation for the offender, and/or ensuring that the offender engages in reparative activities.

- A community order must not be imposed unless the offence is ‘serious enough to warrant such a sentence’. Where an offender is being sentenced for a non-imprisonable offence, there is no power to make a community order.
- Sentencers must consider all available disposals at the time of sentence; even where the threshold for a community sentence has been passed, a fine or discharge may be an appropriate penalty. In particular, a Band D fine may be an appropriate alternative to a community order.
- The court must ensure that the restriction on the offender’s liberty is commensurate with the seriousness of the offence and that the requirements imposed are the most suitable for the offender.
- Sentences should not necessarily escalate from one community order range to the next on each sentencing occasion. The decision as to the appropriate range of community order should be based upon the seriousness of the new offence(s) (which will take into account any previous convictions).
- 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 request a pre-sentence report (whether written or verbal) unless the court is of the opinion that a report is unnecessary in all the circumstances of the case. 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 a pre-sentence report should be completed on the same day to avoid adjourning the case. If an adjournment cannot be avoided, the information should be provided to the National Probation Service in written form and a copy retained on the court file for the benefit of the sentencing court. However, the court must make clear to the offender that all sentencing options remain open including, in appropriate cases, committal for sentence to the Crown Court.
- Cases where a pre-sentence report is unnecessary are likely to be limited but may include where a recently prepared report is available and there has been no change in the offender’s circumstances
- For further guidance on PSRs see Criminal Practice Direction [link]

Question 6

Low	Medium	High
<p>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</p> <p>In general, only one requirement will be appropriate and the length</p>	<p>Offences that obviously fall within the community order band</p>	<p>Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances</p> <p>More intensive sentences which combine two or</p>

may be curtailed if additional requirements are necessary

more requirements may be appropriate

- | | | |
|---|--|--|
| <ul style="list-style-type: none"> • Suitable requirements might include: • Any appropriate rehabilitative requirement(s) • 40 – 80 hours of unpaid work • Curfew requirement for example up to 16 hours per day for a few weeks • Exclusion requirement, for a few months • Prohibited activity requirement • Attendance centre requirement (where available) | <ul style="list-style-type: none"> • Suitable requirements might include: • Any appropriate rehabilitative requirement(s) • 80 – 150 hours of unpaid work • Curfew requirement for example up to 16 hours for 2 – 3 months • Exclusion requirement lasting in the region of 6 months • Prohibited activity requirement | <ul style="list-style-type: none"> • Suitable requirements might include: • Any appropriate rehabilitative requirement(s) • 150 – 300 hours of unpaid work • Curfew requirement for example up to 16 hours per day for 4 – 12 months • Exclusion requirement lasting in the region of 12 months |
|---|--|--|

If order does not contain a punitive requirement, suggested fine levels are indicated below:

BAND A FINE

BAND B FINE

BAND C FINE

More information – custodial sentences

Taken from the [Imposition of Community and Custodial Sentences guideline](#)

The approach to the imposition of a custodial sentence should be as follows:

1) Has the custody threshold been passed?

- A custodial sentence must not be imposed unless the offence or the combination of the offence and one or more offences associated with it was so serious that neither a fine alone nor a community sentence can be justified for the offence.
- There is no general definition of where the custody threshold lies. The circumstances of the individual offence and the factors assessed by offence-specific guidelines will determine whether an offence is so serious that neither a fine alone nor a community sentence can be justified. Where no offence specific guideline is available to determine seriousness, the harm caused by the offence, the culpability of the offender and any previous convictions will be relevant to the assessment.
- The clear intention of the threshold test is to reserve prison as a punishment for the most serious offences.

2) Is it unavoidable that a sentence of imprisonment be imposed?

- Passing the custody threshold does not mean that a custodial sentence should be deemed inevitable. Custody should not be imposed where a community order could provide sufficient restriction on an offender’s liberty (by way of punishment) while addressing the rehabilitation of the offender to prevent future crime.
- For offenders on the cusp of custody, imprisonment should not be imposed where there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing.

3) What is the shortest term commensurate with the seriousness of the offence?

- In considering this the court must NOT consider any licence or post sentence supervision requirements which may subsequently be imposed upon the offender’s release.

4) Can the sentence be suspended?

- A suspended sentence **MUST NOT** be imposed as a more severe form of community order. A suspended sentence is a custodial sentence. **Sentencers should be clear that they would impose an immediate custodial sentence if the power to suspend were not available.** If not, a non-custodial sentence should be imposed.
- The following factors should be weighed in considering whether it is possible to suspend the sentence:

Factors indicating that it would not be appropriate to suspend a custodial sentence

- Offender presents a risk/danger to the public
- Appropriate punishment can only be achieved by immediate custody
- History of poor compliance with court orders

Factors indicating that it may be appropriate to suspend a custodial sentence

- Realistic prospect of rehabilitation
- Strong personal mitigation
- Immediate custody will result in significant harmful impact upon others

The imposition of a custodial sentence is both punishment and a deterrent. To ensure that the overall terms of the suspended sentence are commensurate with offence seriousness, care must be taken to ensure requirements imposed are not excessive. A court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate.

Pre-sentence report

Whenever the court reaches the provisional view that:

- the custody threshold has been passed; and, if so
- the length of imprisonment which represents the shortest term commensurate with the seriousness of the offence;

the court should obtain a pre-sentence report, whether verbal or written, **unless** the court considers a report to be unnecessary. Ideally a pre-sentence report should be completed on the same day to avoid adjourning the case.

Cases where a report is unnecessary are likely to be limited but may include:

- where a recently prepared report is available and there has been no change in the offender's circumstances
- where a lengthy prison sentence is inevitable and an assessment of dangerousness is not required.

Question 6

For further guidance on PSRs see [Criminal Practice Direction](#) [link]

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

Suspended Sentences: General Guidance

- The guidance regarding pre-sentence reports applies if suspending custody.
- If the court imposes a term of imprisonment of between 14 days and 2 years (subject to magistrates' courts sentencing powers), it may suspend the sentence for between 6 months and 2 years (the 'operational period'). 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.
- 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 2 years (subject to magistrates' courts sentencing powers).
- When the court suspends a sentence, it may impose one or more requirements for the offender to undertake in the community. The requirements are identical to those available for community orders, see the guideline on [Imposition of Community and Custodial Sentences](#).
- A custodial sentence that is suspended should be for the same term that would have applied if the sentence was to be served immediately.

For sentencing flowcharts see the guideline on [Imposition of Community and Custodial Sentences](#).

Statutory aggravating factors

Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence

Short description:

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

More information:

Guidance on the Use of Previous Convictions

The following guidance should be considered when seeking to determine the degree to which previous convictions should aggravate sentence:

Section 143 of the Criminal Justice Act states that:

In considering the seriousness of an offence (“the current offence”) committed by an offender who has one or more previous convictions, the court must treat each previous conviction as an aggravating factor if (in the case of that conviction) the court considers that it can reasonably be so treated having regard, in particular, 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.

1. Previous convictions are considered at step two in the Council's offence specific guidelines.
2. The primary significance of previous convictions (including convictions in other jurisdictions) is the extent to which they indicate trends in offending behaviour and possibly the offender's response to earlier sentences;
3. Previous convictions are normally **relevant** to the current offence when they are of a similar type;
4. Previous convictions of a type different from the current offence **may** be relevant where they are an indication of persistent offending or escalation and/or a failure to comply with previous court orders;
5. Numerous and frequent previous convictions might indicate an underlying problem (for example, an addiction) that could be addressed more effectively in the community and will not necessarily indicate that a custodial sentence is necessary;
6. If the offender received a non-custodial disposal for the previous offence, a court should not necessarily move to a custodial sentence for the fresh offence;
7. In cases involving significant persistent offending, the community and custody thresholds may be crossed even though the current offence normally warrants a lesser sentence. If a custodial sentence is it should be proportionate and kept to the necessary minimum.
8. The aggravating effect of relevant previous convictions reduces with the passage of time; **older convictions are less relevant** to the offender's culpability for the current offence and less likely to be predictive of future offending.
9. Where the previous offence is particularly old it will normally have little relevance for the current sentencing exercise;
10. The court should consider the time gap since the previous conviction and the reason for it. Where there has been a significant gap between previous and current convictions or a reduction in the frequency of offending this may indicate that the offender has made attempts to desist from offending in which case the aggravating effect of the previous offending will diminish.
11. Where the current offence is significantly less serious than the previous conviction (suggesting a decline in the gravity of offending), the previous conviction may carry less weight.
12. When considering the totality of previous offending a court should take a rounded view of the previous crimes and not simply aggregate the individual offences.
13. Where information is available on the context of previous offending this may assist the court in assessing the relevance of that prior offending to the current offence.

Short description:

Offence committed whilst on bail

More information:

S143 (3) Criminal Justice Act 2003 states:

In considering the seriousness of any offence committed while the offender was on bail, the court must treat the fact that it was committed in those circumstances as an aggravating factor.

Short description:

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.

More information:

See below for the statutory provisions.

- **Note the requirement for the court to state that the offence has been aggravated by the relevant hostility.**
- **Where the element of hostility is core to the offending, the aggravation will be higher than where it plays a lesser role.**

Increase in sentences for racial or religious aggravation

s145(2) of the Criminal Justice Act 2003 states:

If the offence was racially or religiously aggravated, the court—

(a) must treat that fact as an aggravating factor, and

(b) must state in open court that the offence was so aggravated.

An offence is racially or religiously aggravated for these purposes if—

- at the time of committing the offence, or immediately before or after doing so, the offender demonstrates towards the victim of the offence, hostility based on the victim's membership (or presumed membership) of a racial or religious group; **or**
- the offence is motivated (wholly or partly) by hostility towards members of a racial or religious group based on their membership of that group.

“membership”, in relation to a racial or religious group, includes association with members of that group;

“presumed” means presumed by the offender.

It is immaterial whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned above.

“racial group” means a group of persons defined by reference to race, colour, nationality (including citizenship) or ethnic or national origins.

“religious group” means a group of persons defined by reference to religious belief or lack of religious belief.

Increase in sentences for aggravation related to disability, sexual orientation or transgender identity

s146 of the Criminal Justice Act 2003 states:

(1) This section applies where the court is considering the seriousness of an offence committed in any of the circumstances mentioned in subsection (2).

(2) Those circumstances are—

(a) that, at the time of committing the offence, or immediately before or after doing so, the offender demonstrated towards the victim of the offence hostility based on—

- (i) the sexual orientation (or presumed sexual orientation) of the victim,
- (ii) a disability (or presumed disability) of the victim, or
- (iii) the victim being (or being presumed to be) transgender, or

(b) that the offence is motivated (wholly or partly)—

- (i) by hostility towards persons who are of a particular sexual orientation,
- (ii) by hostility towards persons who have a disability or a particular disability or
- (iii) by hostility towards persons who are transgender.

(3) The court—

(a) must treat the fact that the offence was committed in any of those circumstances as an aggravating factor, and

(b) must state in open court that the offence was committed in such circumstances.

(4) It is immaterial for the purposes of paragraph (a) or (b) of subsection (2) whether or not the offender's hostility is also based, to any extent, on any other factor not mentioned in that paragraph.

(5) In this section “disability” means any physical or mental impairment.

(6) In this section references to being transgender include references to being transsexual, or undergoing, proposing to undergo or having undergone a process or part of a process of gender reassignment.

Short description:

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

More information:

See below for the statutory provisions.

- **Note the requirement for the court to state that the offence has been so aggravated.**
- **Note this statutory factor only applies to certain violent or sexual offences as listed below which were committed on or after 13 November 2018.**
- **For other offences the factor ‘Victim was providing a public service or performing a public duty at the time of the offence’ can be applied where relevant.**

The Assaults on Emergency Worker (Offences) Act 2018 states:

2 Aggravating factor

- (1) This section applies where—
- (a) the court is considering for the purposes of sentencing the seriousness of an offence listed in subsection (3), and
 - (b) the offence was committed against an emergency worker acting in the exercise of functions as such a worker.
- (2) The court—
- (a) must treat the fact mentioned in subsection (1)(b) as an aggravating factor (that is to say, a factor that increases the seriousness of the offence), and
 - (b) must state in open court that the offence is so aggravated.
- (3) The offences referred to in subsection (1)(a) are—
- (a) an offence under any of the following provisions of the Offences against the Person Act 1861—
 - (i) section 16 (threats to kill);
 - (ii) section 18 (wounding with intent to cause grievous bodily harm);
 - (iii) section 20 (malicious wounding);
 - (iv) section 23 (administering poison etc);
 - (v) section 28 (causing bodily injury by gunpowder etc);
 - (vi) section 29 (using explosive substances etc with intent to cause grievous bodily harm);
 - (vii) section 47 (assault occasioning actual bodily harm);
 - (b) an offence under section 3 of the Sexual Offences Act 2003 (sexual assault);
 - (c) manslaughter;
 - (d) kidnapping;
 - (e) an ancillary offence in relation to any of the preceding offences.

(4) For the purposes of subsection (1)(b), the circumstances in which an offence is to be taken as committed against a person acting in the exercise of functions as an emergency worker include circumstances where the offence takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of functions as an emergency worker.

- (5) In this section—
- “ancillary offence”, in relation to an offence, means any of the following—
 - (a) aiding, abetting, counselling or procuring the commission of the offence;
 - (b) an offence under Part 2 of the Serious Crime Act 2007 (encouraging or assisting crime) in relation to the offence;
 - (c) attempting or conspiring to commit the offence;
 - “emergency worker” has the meaning given by section 3.

(6) Nothing in this section prevents a court from treating the fact mentioned in subsection (1)(b) as an aggravating factor in relation to offences not listed in subsection (3).

(7) This section applies only in relation to offences committed on or after the day it comes into force.

3 Meaning of “emergency worker”

- (1) In sections 1 and 2, “emergency worker” means—
- (a) a constable;
 - (b) a person (other than a constable) who has the powers of a constable or is otherwise employed for police purposes or is engaged to provide services for police purposes;

- (c) a National Crime Agency officer;
- (d) a prison officer;
- (e) a person (other than a prison officer) employed or engaged to carry out functions in a custodial institution of a corresponding kind to those carried out by a prison officer;
- (f) a prisoner custody officer, so far as relating to the exercise of escort functions;
- (g) a custody officer, so far as relating to the exercise of escort functions;
- (h) a person employed for the purposes of providing, or engaged to provide, fire services or fire and rescue services;
- (i) a person employed for the purposes of providing, or engaged to provide, search services or rescue services (or both);
- (j) a person employed for the purposes of providing, or engaged to provide—
 - (i) NHS health services, or
 - (ii) services in the support of the provision of NHS health services, and whose general activities in doing so involve face to face interaction with individuals receiving the services or with other members of the public.

(2) It is immaterial for the purposes of subsection (1) whether the employment or engagement is paid or unpaid.

(3) In this section—

“custodial institution” means any of the following—

- (a) a prison;
- (b) a young offender institution, secure training centre, secure college or remand centre;
- (c) a removal centre, a short-term holding facility or pre-departure accommodation, as defined by section 147 of the Immigration and Asylum Act 1999;
- (d) services custody premises, as defined by section 300(7) of the Armed Forces Act 2006;

“custody officer” has the meaning given by section 12(3) of the Criminal Justice and Public Order Act 1994;

“escort functions”—

- (a) in the case of a prisoner custody officer, means the functions specified in section 80(1) of the Criminal Justice Act 1991;
- (b) in the case of a custody officer, means the functions specified in paragraph 1 of Schedule 1 to the Criminal Justice and Public Order Act 1994;

“NHS health services” means any kind of health services provided as part of the health service continued under section 1(1) of the National Health Service Act 2006 and under section 1(1) of the National Health Service (Wales) Act 2006;

“prisoner custody officer” has the meaning given by section 89(1) of the Criminal Justice Act 1991.

Other aggravating factors: (factors are not listed in any particular order and are **not** exhaustive)

Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence

Short description:

A1. Commission of offence whilst under the influence of alcohol or drugs

More information:

- The fact that an offender is **voluntarily** intoxicated at the time of the offence will tend to increase the seriousness of the offence provided that the intoxication has **contributed to the offending**.
- In the case of a person addicted to drugs or alcohol the intoxication may be considered not to be voluntary, but the court should have regard to the extent to which the offender has engaged with any assistance in dealing with the addiction in making that assessment.
- An offender who has voluntarily consumed drugs and/or alcohol must accept the consequences of the behaviour that results, even if it is out of character.

Short description:

A2. Offence was committed as part of a group

More information:

The mere membership of a group (two or more persons) should not be used to increase the sentence, but where the **offence was committed as part** of a group this will normally make it more serious because:

- the **harm** caused (both physical or psychological) or the potential for harm may be greater and/or
- the **culpability** of the offender may be higher (the role of the offender within the group will be a relevant consideration).

Culpability based on role in group offending could range from:

Higher culpability indicated by a leading role in the group and/or the involvement by the offender of others through coercion, intimidation or exploitation, to

Lower culpability indicated by a lesser or subordinate role under direction and/or involvement of the offender through coercion, intimidation or exploitation.

Where the offending is part of an organised criminal network, this will make it more serious, and the role of the offender in the organisation will also be relevant.

When sentencing young adult offenders (typically aged 18-25), consideration should also be given to the guidance on the mitigating factor relating to age and lack of maturity when considering the significance of group offending.

Short description:

A3. Offence involved use or threat of use of a weapon

More information:

- A 'weapon' can take many forms and may include a shod foot
- The use or production of a weapon has relevance
 - to the **culpability** of the offender where it indicates planning or intention to cause harm; and
 - to the **harm** caused (both physical or psychological) or the potential for harm.
- Relevant considerations will include:
 - the dangerousness of the weapon;

- whether the offender brought the weapon to the scene, or just used what was available on impulse;
 - whether the offender made or adapted something for use as a weapon;
 - the context in which the weapon was threatened, used or produced.
-

Short description:

A4. Planning of an offence

More information:

- Evidence of planning normally indicates a higher level of intention and pre-meditation which increases the level of culpability.
 - Planning may be inferred from the scale and sophistication of the offending
 - The greater the degree of planning the greater the culpability
-

Short description:

A5. Commission of the offence for financial gain

More information:

- Where an offence (which is not one which by its nature is an acquisitive offence) has been committed wholly or in part for financial gain or the avoidance of cost, this will increase the seriousness.
 - Where the offending is committed in a commercial context for financial gain or the avoidance of costs, this will normally indicate a higher level of culpability.
 - examples would include, but are not limited to, dealing in unlawful goods, failing to disclose relevant matters to an authority or regulator, failing to comply with a regulation or failing to obtain the necessary licence or permission in order to avoid costs.
 - offending of this type can undermine legitimate businesses.
 - See the guidance on fines if considering a financial penalty
-

Short description:

A6. High level of profit from the offence

More information:

- A high level of profit is likely to indicate:
 - high culpability in terms of planning and
 - a high level of harm in terms of loss caused to victims or the undermining of legitimate businesses
 - In most situations a high level of gain will be a factor taken in to account at step one – care should be taken to avoid double counting.
 - See the guidance on fines if considering a financial penalty
-

Short description:

A7. Abuse of trust or dominant position

More information:

- In order for an abuse of trust to make an offence more serious the relationship between the offender and victim(s) must be one that would give rise to the offender having a significant level of responsibility towards the victim(s) on which the victim(s) would be entitled to rely.
 - Abuse of trust may occur in many factual situations. Examples may include relationships such as teacher and pupil, parent and child, professional adviser and client, or carer (whether paid or unpaid) and dependant. It may also include ad hoc situations such as a late-night taxi driver and a lone passenger. These examples are not exhaustive and do not necessarily indicate that abuse of trust is present.
 - Where an offender has been given an inappropriate level of responsibility, abuse of trust is unlikely to apply.
 - A close examination of the facts is necessary and a clear justification should be given if abuse of trust is to be found.
-

Short description:

A8. Gratuitous degradation of victim / maximising distress to victim

More information:

Where an offender deliberately causes **additional** harm to a victim over and above that which is an essential element of the offence - this will increase seriousness. Examples may include, but are not limited to, posts of images on social media designed to cause additional distress to the victim (where not separately charged).

Short description:

A9. Vulnerable victim

More information:

- An offence is more serious if the victim is vulnerable because of personal circumstances such as (but not limited to) age, illness or disability (unless the vulnerability of the victim is an element of the offence).
 - Other factors such as the victim being isolated, incapacitated through drink or being in an unfamiliar situation **may** lead to a court considering that the offence is more serious.
 - The extent to which any vulnerability may impact on the sentence is a matter for the court to weigh up in each case.
 - Culpability will be increased if the offender **targeted** a victim because of an actual or perceived vulnerability.
 - Culpability will be increased if the victim is made vulnerable by the actions of the offender (such as a victim who has been intimidated or isolated by the offender).
 - Culpability is increased if an offender persisted in the offending once it was obvious that the victim was vulnerable (for example continuing to attack an injured victim).
 - The level of harm (physical, psychological or financial) is likely to be increased if the victim is vulnerable.
-

Short description:

A10. Victim was providing a public service or performing a public duty at the time of the offence

More information:

This reflects:

- the fact that people in public facing roles are more exposed to the possibility of harm and consequently more vulnerable and/or
- the fact that someone is working for the public good merits the additional protection of the courts.

Care should be taken to avoid double counting where the statutory aggravating factor relating to emergency workers applies.

Short description:

A11. Other(s) put at risk of harm by the offending

More information:

- Where there is risk of harm to other(s) not taken in account at step one and not subject to a separate charge, this makes the offence more serious.
 - Dealing with a risk of harm involves consideration of both the likelihood of harm occurring and the extent of it if it does.
-

Short description:

A12. Offence committed in the presence of other(s) (especially children)

More information:

- This reflects the psychological harm that may be caused to those who witnessed the offence.
 - The presence of one or more children may in some situations make the primary victim more vulnerable – for example an adult may be less able to resist the offender if concerned about the safety or welfare of children present.
-

Short description:

A13. Actions after the event including but not limited to attempts to cover up/ conceal evidence

Question 8

More information:

The more sophisticated, extensive or persistent the actions after the event, the more likely they are to increase the seriousness of the offence.

When sentencing young adult offenders (typically aged 18-25), consideration should also be given to the guidance on the mitigating factor relating to age and lack of maturity when considering the significance of such conduct.

Where any such actions are the subject of separate charges, they should be taken into account when assessing totality at step seven.

Short description:

A14. Blame wrongly placed on other(s)

More information:

- Where the investigation has been hindered and/or other(s) have suffered as a result of being wrongly blamed by the offender, this will make the offence more serious.
- This factor will **not** be engaged where an offender has simply exercised his or her right not to assist the investigation or accept responsibility for the offending.
- When sentencing young adult offenders (typically aged 18-25), consideration should also be given to the guidance on the mitigating factor relating to age and lack of maturity when considering the significance of such conduct.

Short description:

A15. Failure to respond to warnings or concerns expressed by others about the offender's behaviour

More information:

Where an offender has had the benefit of warnings or advice about their conduct but has failed to heed it, this would make the offender more blameworthy.

This may particularly be the case when:

- such warning(s) or advice were of an official nature or from a professional source and/or
- the warning(s) were made at the time of or shortly before the commission of the offence.

Short description:

A16. Offence committed on licence or post sentence supervision or while subject to court order(s)

Question 9

More information:

- An offender who is subject to licence or post sentence supervision is under a particular obligation to desist from further offending.
- Commission of an offence while subject to a **relevant** court order makes the offence more serious.
- The extent to which the offender has complied with the conditions of a licence or order will be a relevant consideration.
- Where the offender is dealt with separately for a breach of a licence or order regard should be had to totality (see step seven)
- Care should be taken to avoid double counting matters taken into account when considering previous convictions.

Short description:

A17. Offence committed in custody

More information:

- Offences committed in custody are more serious because they undermine the fundamental need for control and order which is necessary for the running of prisons and maintaining safety.
- Generally the sentence for the new offence will be consecutive to the sentence being served as it will have arisen out of an unrelated incident. The court must have regard to

the totality of the offender's criminality when passing the second sentence, to ensure that the total sentence to be served is just and proportionate. Refer to the [Totality guideline](#) for detailed guidance.

- Care should be taken to avoid double counting matters taken into account when considering previous convictions.

Short description:

A18. Offences taken into consideration

More information:

Taken from the [Offences Taken into Consideration Definitive Guideline](#):

General principles

When sentencing an offender who requests offences to be taken into consideration (TICs), courts should pass a total sentence which reflects all the offending behaviour. The sentence must be just and proportionate and must not exceed the statutory maximum for the conviction offence.

Offences to be Taken into Consideration

The court has discretion as to whether or not to take TICs into account. In exercising its discretion the court should take into account that TICs are capable of reflecting the offender's overall criminality. The court is likely to consider that the fact that the offender has assisted the police (particularly if the offences would not otherwise have been detected) and avoided the need for further proceedings demonstrates a genuine determination by the offender to 'wipe the slate clean'.

It is generally **undesirable** for TICs to be accepted in the following circumstances:

- where the TIC is likely to attract a greater sentence than the conviction offence;
- where it is in the public interest that the TIC should be the subject of a separate charge;
- where the offender would avoid a prohibition, ancillary order or similar consequence which it would have been desirable to impose on conviction. For example:
 - where the TIC attracts mandatory disqualification or endorsement and the offence(s) for which the defendant is to be sentenced do not;
- where the TIC constitutes a breach of an earlier sentence;
- where the TIC is a specified offence for the purposes of section 224 of the Criminal Justice Act 2003, but the conviction offence is non-specified; or
- where the TIC is not founded on the same facts or evidence or part of a series of offences of the same or similar character (unless the court is satisfied that it is in the interests of justice to do so).

Jurisdiction

The magistrates' court cannot take into consideration an indictable only offence. The Crown Court can take into account summary only offences provided the TICs are founded on the same facts or evidence as the indictable charge, or are part of a series of offences of the same or similar character as the indictable conviction offence

Procedural safeguards

A court should generally only take offences into consideration if the following procedural provisions have been satisfied:

- the police or prosecuting authorities have prepared a schedule of offences (TIC schedule) that they consider suitable to be taken into consideration. The TIC schedule should set out the nature of each offence, the date of the offence(s), relevant detail about the offence(s) (including, for example, monetary values of items) and any other brief details that the court should be aware of;
- a copy of the TIC schedule must be provided to the defendant and his representative (if he has one) before the sentence hearing. The defendant should sign the TIC schedule to provisionally admit the offences;
- at the sentence hearing, the court should ask the defendant in open court whether he admits each of the offences on the TIC schedule and whether he wishes to have them taken into consideration;
- if there is any doubt about the admission of a particular offence, it should not be accepted as a TIC. Special care should be taken with vulnerable and/or unrepresented defendants;
- if the defendant is committed to the Crown Court for sentence, this procedure must take place again at the Crown Court even if the defendant has agreed to the schedule in the magistrates' court.

Application

The sentence imposed on an offender should, in most circumstances, be increased to reflect the fact that other offences have been taken into consideration. The court should:

1. Determine the sentencing starting point for the conviction offence, referring to the relevant definitive sentencing guidelines. No regard should be had to the presence of TICs at this stage.
2. Consider whether there are any aggravating or mitigating factors that justify an upward or downward adjustment from the starting point.

The presence of TICs should generally be treated as an aggravating feature that justifies an adjustment from the starting point. Where there is a large number of TICs, it may be appropriate to move outside the category range, although this must be considered in the context of the case and subject to the principle of totality. The court is limited to the statutory maximum for the conviction offence.

3. Continue through the sentencing process including:
 - consider whether the frank admission of a number of offences is an indication of a defendant's remorse or determination and/ or demonstration of steps taken to address addiction or offending behaviour;
 - any reduction for a guilty plea should be applied to the overall sentence;
 - the principle of totality;
 - when considering ancillary orders these can be considered in relation to any or all of the TICs, specifically:
 - compensation orders;
 - restitution orders

Short description:

A19. Offence committed in a domestic context

More information:

Refer to the [Overarching Principles: Domestic Abuse Definitive Guideline](#)

Short description:

A20. Offence committed in a terrorist context

More information:

Where there is a terrorist element to the offence, refer also to the [Terrorism Offences Definitive Guideline](#)

Short description:

A21. Location and/or timing of offence

Question 11

More information:

- In general, an offence is not made more serious by the location and/or timing of the offence except in ways taken into account by other factors in this guideline (such as planning, vulnerable victim, offence committed in a domestic context, maximising distress to victim, others put at risk of harm by the offending, offence committed in the presence of others). Care should be taken to avoid double counting.
 - Courts should be cautious about aggravating an offence by reason of it being committed for example at night, or in broad daylight, in a crowded place or in an isolated place unless it also indicates increased harm or culpability not already accounted for.
 - An offence may be more serious when it is committed in places in which there is a particular need for discipline or safety such as prisons, courts, schools or hospitals.
-

Short description:

A22. Established evidence of community/ wider impact

Question 13

More information:

- This factor should increase the sentence only where there is clear evidence of wider harm not already taken into account elsewhere. A community impact statement will assist the court in assessing the level of impact.
 - For issues of prevalence see the separate guidance.
-

Short description:

A23. Prevalence

More information:

- Sentencing levels in offence specific guidelines take account of collective social harm. Accordingly offenders should normally be sentenced by straightforward application of the guidelines without aggravation for the fact that their activity contributed to a harmful social effect upon a neighbourhood or community.

- It is not open to a sentencer to increase a sentence for prevalence in ordinary circumstances or in response to a personal view that there is 'too much of this sort of thing going on in this area'.
- First, there must be evidence provided to the court by a responsible body or by a senior police officer.
- Secondly, that evidence must be before the court in the specific case being considered with the relevant statements or reports having been made available to the Crown and defence in good time so that meaningful representations about that material can be made.
- Even if such material is provided, a sentencer will only be entitled to treat prevalence as an aggravating factor if satisfied
 - that the level of harm caused in a particular locality is significantly higher than that caused elsewhere (and thus already inherent in the guideline levels);
 - that the circumstances can properly be described as exceptional; **and**
 - that it is just and proportionate to increase the sentence for such a factor in the particular case being sentenced.

Factors reducing seriousness or reflecting personal mitigation (factors are not listed in any particular order and are not exhaustive)

Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm

Short description:

M1. No previous convictions or no relevant/recent convictions

More information:

- First time offenders usually represent a lower risk of re-offending. Re-offending rates for first offenders are significantly lower than rates for repeat offenders. In addition, first offenders are normally regarded as less blameworthy than offenders who have committed the same crime several times already. For these reasons first offenders receive a mitigated sentence.
- Where there are previous offences but these are old and /or are for offending of a different nature, the sentence will normally be reduced to reflect that the new offence is not part of a pattern of offending and there is therefore a lower likelihood of reoffending.
- When assessing whether a previous conviction is 'recent' the court should consider the time gap since the previous conviction and the reason for it.
- Previous convictions are likely to be 'relevant' when they share characteristics with the current offence (examples of such characteristics include, but are not limited to: dishonesty, violence, abuse of position or trust, use or possession of weapons, disobedience of court orders). In general the more serious the previous offending the longer it will retain relevance.

Short description:

M2. Good character and/or exemplary conduct

More information:

This factor may apply whether or not the offender has previous convictions. Evidence that an offender has demonstrated positive good character through, for example, charitable works may reduce the sentence.

However, this factor is less likely to be relevant where the offending is very serious. Where an offender has used their good character or status to facilitate or conceal the offending it could be treated as an aggravating factor.

Short description:

M3. Remorse

More information:

The court will need to be satisfied that the offender is genuinely remorseful for the offending behaviour in order to reduce the sentence (separate from any guilty plea reduction at step four).

Lack of remorse should never be treated as an aggravating factor.

Short description:

M4. Self-reporting

More information:

Where an offender has self-reported to the authorities, particularly in circumstances where the offence may otherwise have gone undetected, this should reduce the sentence (separate from any guilty plea reduction at step four).

Short description:

M5. Cooperation with the investigation/ early admissions

More information:

Assisting or cooperating with the investigation and /or making pre-court admissions may ease the effect on victims and witnesses and save valuable police time justifying a reduction in sentence (separate from any guilty plea reduction at step four).

Short description:

M6. Little or no planning

More information:

Where an offender has committed the offence with little or no prior thought, this is likely to indicate a lower level of culpability and therefore justify a reduction in sentence.

However, impulsive acts of unprovoked violence or other types of offending may indicate a propensity to behave in a manner that would not normally justify a reduction in sentence.

Short description:

M7. The offender was in a lesser or subordinate role if acting with others / performed limited role under direction

More information:

Whereas acting as part of a group may make an offence more serious, if the offender's role was minor this may indicate lower culpability and justify a reduction in sentence.

Short description:

M8. Involved through coercion, intimidation or exploitation

More information:

- Where this applies it will reduce the culpability of the offender.
 - This factor may be of particular relevance where the offender has been the victim of domestic abuse, trafficking or modern slavery, but may also apply in other contexts.
 - Courts should be alert to factors that suggest that an offender may have been the subject of coercion, intimidation or exploitation which the offender may find difficult to articulate, and where appropriate ask for this to be addressed in a PSR.
 - This factor **may** indicate that the offender is vulnerable and would find it more difficult to cope with custody or to complete a community order.
-

Short description:

M9. Limited awareness or understanding of the offence

Question 2

More information:

The factor may apply to reduce the culpability of an offender

- acting alone who has not appreciated the seriousness of the offence **or**
- where an offender is acting with others and does not appreciate the extent of the overall offending.

If the offender had genuinely failed to understand or appreciate the seriousness of the offence, the sentence may be reduced from that which would have applied if the offender had understood the full extent of the offence and the likely harm that would be caused.

Where an offender lacks capacity to understand the full extent of the offending see the guidance under 'Mental disorder or learning disability' below.

Short description:

M10. Little or no financial gain

More information:

Where an offence (which is not one which by its nature is an acquisitive offence) is committed in a context where financial gain could arise, the culpability of the offender may be reduced where it can be shown that the offender **did not seek to gain financially** from the conduct and did not in fact do so.

Short description:

M11. Delay since apprehension

More information:

Where there has been an **unreasonable** delay in proceedings since apprehension which is **not the fault of the offender**, and which has had a detrimental effect on the offender, the court may take this into account by reducing the sentence.

Note: No fault should attach to an offender for not admitting an offence and/or putting the prosecution to proof of its case.

Short description:

M12. Activity originally legitimate

More information:

Where the offending arose from an activity which was originally legitimate, but became unlawful (for example because of a change in the offender's circumstances or a change in regulations), this **may** indicate lower culpability and thereby a reduction in sentence.

This factor will not apply where the offender has used a legitimate activity to mask a criminal activity.

Short description:

M13. Age and/or lack of maturity

More information:

Age and/or lack of maturity can affect:

- the offender's responsibility for the offence and
- the effect of the sentence on the offender.

Either or both of these considerations may justify a reduction in the sentence.

The emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater).

In particular young adults (typically aged 18-25) **may are still be** developing neurologically and consequently be less able to:

- evaluate the consequences of their actions
- limit impulsivity
- limit risk taking

Young adults are likely to be susceptible to peer pressure and are more likely to take risks or behave impulsively when in company with their peers.

Environment plays a role in neurological development and factors such as childhood adversity including deprivation and/or abuse will affect development.

An immature offender may find it particularly more difficult to cope with custody and therefore may be more susceptible to self-harm in custody.

An immature offender may find it particularly difficult to cope with the requirements of a community order without appropriate support, or to complete a community order.

There is a greater capacity for change in immature offenders and they may be receptive to opportunities to address their offending behaviour and change their conduct.

Where the offender is a care leaver, regard should be had to (1) the opportunity to make use of support available to them during a community order and (2) the effect of any custodial sentence on opportunity for the care leaver to make use of time limited support (*leaving care services may change at the age of 21 and cease at the age of 25, unless the young adult is in education at that point*). See also the Sentencing Children and Young People Guideline (paragraphs 1.16 and 1.17).

Question 3

Where an offender has turned 18 between the commission of the offence and conviction the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed, but taking into account the purposes of sentencing adult offenders. See also the Sentencing Children and Young People Guideline (paragraphs 6.1 to 6.3).

When considering a custodial or community sentence for a young adult the National Probation Service should address these issues in a PSR.

Short description:

M14. Sole or primary carer for dependent relatives

More information:

This factor is particularly relevant where an offender is on the cusp of custody or where the suitability of a community order is being considered. For offenders on the cusp of custody, imprisonment should not be imposed where there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing. Where custody is unavoidable consideration of the impact on dependants may be relevant to the length of the sentence imposed. For more serious offences where a substantial period of custody is appropriate, this factor will carry less weight.

The consideration of the impact of a sentence on dependent children will be equally relevant when sentencing an offender who is pregnant. In such situations courts should ensure that they have information on the offender's health and the facilities available for the care of any child born in custody.

Question 4

Short description:

M15. Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment

More information:

Such conditions as may affect the impact of a sentence on the offender may justify a reduction in sentence.

Short description:

M16. Mental disorder or learning disability

More information:

Mental disorders and learning disabilities are different things, although an individual may suffer from both. A **learning disability** is a permanent condition developing in childhood, whereas **mental illness** (or a mental health problem) can develop at any time, and is not necessarily permanent; people can get better and resolve mental health problems with help and treatment.

In the context of sentencing a broad interpretation of the terms ‘mental disorder’ and learning disabilities’ should be adopted to include:

- Offenders with an intellectual impairment (low IQ);
- Offenders with a cognitive impairment such as (but not limited to) dyslexia, attention deficit hyperactivity disorder (ADHD);
- Offenders with an autistic spectrum disorder (ASD) including Asperger’s syndrome;
- Offenders with a personality disorder;
- Offenders with a mental illness.

Offenders may have a combination of the above conditions.

Sentencers should be alert to the fact that not all mental disorders or learning disabilities are visible or obvious.

A mental disorder or learning disability can affect both:

1. the offender’s responsibility for the offence and
2. the impact of the sentence on the offender.

The court will be assisted by a PSR and, where appropriate, medical reports (including from court mental health teams) in assessing:

1. the degree to which a mental disorder or learning disability has reduced the offender’s responsibility for the offence. This may be because the condition had an impact on the offender’s ability to understand the consequences of their actions, to limit impulsivity and/or to exercise self-control.
 - a relevant factor will be the degree to which a mental disorder or learning disability has been exacerbated by the actions of the offender (for example by the **voluntary** abuse of drugs or alcohol or by **voluntarily** failing to follow medical advice);
 - in considering the extent to which the offender’s actions were voluntary, the extent to which a mental disorder or learning disability has an impact on the offender’s ability to exercise self-control or to engage with medical services will be a relevant consideration.

2. any effect of the mental disorder or learning disability on the impact of the sentence on the offender; a mental disorder or learning disability may make it more difficult for the offender to cope with custody or comply with a community order.

Short description:

M17. Determination and /or demonstration of steps having been taken to address addiction or offending behaviour

More information:

Where offending is driven by or closely associated with drug or alcohol abuse (for example stealing to feed a habit, or committing acts of disorder or violence whilst drunk) a commitment to address the underlying issue may justify a reduction in sentence. This will be particularly relevant where the court is considering whether to impose a sentence that focuses on rehabilitation.

Similarly, a commitment to address other underlying issues that may influence the offender's behaviour may justify the imposition of a sentence that focusses on rehabilitation.

The court will be assisted by a PSR in making this assessment.

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

Where the offence is listed in Schedule 15 and/or Schedule 15B of the Criminal Justice Act 2003

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) 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.

Question 5

STEP SIX

Special custodial sentence for certain offenders of particular concern (section 236A)

Where the offence is listed in Schedule 18A of the Criminal Justice Act 2003 and the court does not impose a sentence of imprisonment for life or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of one year for which the offender is to be subject to a licence.

See the Crown Court Compendium, Part II Sentencing S4-3 [\[link\]](#) for further details

STEP SEVEN

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 EIGHT

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders. The court will be assisted by the parties in identifying relevant ancillary orders.

Where the offence involves a firearm, an imitation 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 NINE

Reasons

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

STEP TEN

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.

Blank page

Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

14 December 2018
SC(18)DEC06 – Firearms paper
Maura McGowan
Sophie Klinger
07976 300962

1 ISSUE

1.1 This is the fourth meeting to consider the firearms guideline. This paper asks the Council to consider some outstanding issues in culpability, sentence levels, and guidance on the minimum sentence in the possession of a prohibited weapon guideline.

1.2 Currently, there are three further meetings scheduled to discuss the firearms guideline. The aim is to sign off the consultation version at the April 2019 meeting, if possible, with consultation planned for June to September 2019. These timelines will continue to be monitored and amended as required.

2 RECOMMENDATION

- That the Council considers the type of weapon categorisation in culpability step A of the possession of prohibited weapon guideline at **Annex A** (paragraph 3.2-3.7);
- That the Council considers the sentence levels for this guideline and agrees to have two sentencing tables for this guideline, rather than one (paragraph 3.10-3.22)
- That the Council considers the revised guidance on the minimum term provisions and specific questions posed (paragraph 3.23-3.37);
- That the Council considers the text in steps four to nine (paragraph 3.38).

3 CONSIDERATION

3.1 This paper focuses on the possession of a prohibited weapon guideline (**Annex A**). The remaining guidelines (possession of a prohibited weapon, possession without a certificate, possession by a person prohibited) will be considered separately due to time constraints. For information, section 5 of the Firearms Act 1968 is at **Annex B**, with subsections where the minimum term applies in bold.

Culpability step A – Type of weapon

3.2 The Council previously considered the type of weapon table at the October meeting. The Council wanted further revision to the general wording in type 1 and for indicative categories to be set out for the different weapon types in each subsection of section 5. The

general wording for type 1 has been slightly revised, to read “Weapon that is capable of killing two or more people at the same time or in rapid succession”. There is also general wording for type 3 of “Weapon that is not designed to be lethal”.

3.3 The weapons under section 5 have been set out under each category in the table. Previously there had been some descriptive wording accompanying each subsection, but the statutory wording is too long and complex to include in full and it is difficult to summarise concisely, so now only the references to the statutory sections have been included. All of the weapons attracting the minimum term are at type 1, except for air weapons (section 5(1)(af)) and disguised firearms (section 5(1A)(a)),¹ which are at type 2. Type 1 also includes weapons under 5(1A)(c), another type of rocket launcher/projecting apparatus designed to be used with certain military ammunition; this item is not subject to the mandatory minimum but appears to be of a very serious type. The allocation of items to type 1 and type 2 are broadly consistent with the overall sentence levels and outcomes for those weapon types (see **Annex C** tables 5 and 6). The ammunition category (type 2 unless a very small quantity which is at type 3) covers all ammunition including 5(1)(c) ammunition which is subject to the minimum term.

3.4 There is a potential issue arising with the breadth of the weapons in type 1. As noted above, type 1 includes most items subject to the minimum term. Per the table below, the current proposal means that nearly one third of all section 5 cases (and more than 60% of cases subject to the minimum term) will fall into type 1. This is largely due to the inclusion of section 5(1)(aba), firearms with a barrel less than 30 cm or less than 60 cm overall. These (aba) cases comprise more than 25% of all section 5 cases, and more than half of cases subject to the minimum term (see **Annex C** table 4). Other items under type 1 are much lower in volume.

3.5 There is a possibility that the current settings could lead to too many cases falling in culpability A, although it is not straightforward to assess, due to the two-pronged culpability model. Cases can end up in culpability A either by being a type 1 weapon with medium or high other culpability factors, or a type 2 weapon with high other culpability factors. The following table illustrates the issue:

¹ In practice the vast majority of section 5(1A)(a) cases are stun guns that are disguised, often as torches or mobile phones. The CPS have indicated that while they have seen a small number of pen guns, anything other than a disguised stun gun is rare. According to Home Office guidance, the section was originally brought in to cover potential items such as walking stick shotguns but these appear to be very uncommon.

Culpability A – Type of weapon	Section 5 subsection (in bold where minimum term applies)	Percentage of section 5 cases (approx. based on 2017 volumes)	Culpability category (depending on culpability step B level)
Type 1	5(1)(a) 5(1)(ab) 5(1)(aba) 5(1)(ac) 5(1)(ad) 5(1)(ae) 5(1A)(c)	32%	A/B
Type 2	5(1)(af) 5(1A)(a) Ammunition unless at Type 3 (5(1)(c) , 5(1A)(b), (d)-(g))	21%	A/B/C
Type 3	5(1)(b) Ammunition in very small quantity	47%	B/C

3.6 If too many cases fall into culpability category A, this may have an inflationary effect on sentences. Therefore I wanted to confirm that the Council is content with the type of weapon categorisations, in terms of proportions of cases falling under each culpability category. If the Council is not content with the categorisations, it may be necessary to shift some other type 1 weapons into type 2 or consider adjusting the final culpability categories.

3.7 Another point to note is that the categorisation is indicative so the court can adjust the type of weapon where appropriate. For instance, while automatic weapons will “normally” fit under type 1, courts may encounter an air rifle that has an automatic firing mechanism but is particularly low-powered, so does not fit under the general definition in type 1. Conversely a weapon falling under section 5(1)(b) (a weapon designed or adapted for the discharge of noxious liquid, gas or other thing) would normally fall under type 3; the majority of these are stun guns properly falling under type 3, but could be a more serious weapon such as a flamethrower or tear gas projector. This could be put in a higher category (or the starting point adjusted, as flagged in the text sitting above the type of weapon table).

Question 1: Is the Council content with the categorisation under each type of weapon, and the likely effect on culpability categories, given current volumes?

Other changes in culpability and harm

3.8 There are several other points to note in step 1. These were highlighted in the draft circulated by email to Council in November but it is not proposed to discuss them further at this meeting unless there are any further queries:

- **Removal of ‘Firearm/ammunition not produced’ from lower culpability in Culpability step B** – this is covered under the other lower culpability factor ‘No use or intention to use’ so was considered unnecessary. A query was raised by email about whether removal of this factor left a gap in cases where the firearm is produced but there was no intention to use it. In such a case, there would be one medium culpability factor (firearm produced) and one lower culpability factor (no intention), so the court should balance these to reach a fair assessment of the offender’s culpability.
- **Removal of ‘Limited harm/distress caused’ from harm category 2** – it was agreed at the October meeting this factor was unnecessary as it was covered under the catch-all factor in category 2.
- **Addition of new balancing words to catch-all factor in harm category 2** – in October it was agreed to include some additional wording to provide more detail to the catch-all factor. The new wording is consistent with other guidelines including manslaughter and child cruelty. A query was raised about what was intended with this wording and whether it was sufficiently clear. Given this text has already been used in other guidelines it seems preferable to continue with the same wording.

Aggravating and mitigating factors

3.9 Minor revisions have also been made to the aggravating and mitigating factors in step two, across the four possession guidelines, following Council’s discussion in October. It is not proposed to discuss these further but they can be revisited if there are any queries.

Question 2: Is the Council content with the other revisions to culpability, harm and aggravating and mitigating factors?

Possession of a prohibited weapon – sentence levels

3.10 This offence has a maximum penalty of 10 years’ custody. In 2017 there were around 760 offenders sentenced across section 5(1) and (1A) Firearms Act 1968. Around 400 of these were subject to the minimum term (offences under section 5(1)(a)-(af), (c), and 5(1A)(a)). A further 360 offences were not subject to the minimum term (section 5(1)(b), and 5(1A)(b)-(g)), the vast majority of which were cases under section 5(1)(b), mainly stun guns.

3.11 In 2017, for section 5 cases where the minimum term applied, immediate custody formed 87% of offences, with a further 11% receiving suspended sentences (see **Annex C** table 2). One per cent received a community order, less than one per cent received a fine and none received a discharge. Minimum term cases as a whole had an estimated median pre-guilty plea length of 7 years 6 months, but the median for disguised firearms under section

5(1A)(a) was much lower at 5 years. The higher rates of section 5(1A)(a) cases receiving sentences below the minimum term is discussed further later in the paper. However, despite being lower than other minimum term weapons, the sentence levels for the section 5(1A)(a) disguised firearms remain significantly higher than the offences not covered by the minimum term.

3.12 Offences not covered by the minimum term had much lower rates of immediate custody, at 22%, and higher rates of suspended sentence (28%), community orders (27%), fines (13%) and conditional discharge (8%). The estimated median pre-guilty plea custodial length was 1 year 1 month overall for non-minimum term cases. However, there is a significant disparity in this group: the section 5(1)(b) cases, mainly stun guns, mostly received either non-custodial sentences or suspended sentence orders, and had a 10 month median sentence for custody cases, while the handful of cases involving military equipment (section 5(1A)(b)-(g)) mostly received immediate custody and attracted a median sentence of 3 years 5 months (see **Annex C** table 6). With the exception of one higher outlying case, the section 5(1)(b) custody lengths do not exceed 4 years and the majority are under 2 years.

3.13 The Council has previously expressed a preference for having separate sentencing tables for this guideline, one for offences with the minimum term, starting at 5 years, and one for other offences. However the Council had not come to a final view on this and wished to see the possible sentence levels before making a decision. Accordingly, two options have both been included in the guideline, either two separate tables (table 1 and table 2), or one single table (table 0) (see **Annex A** pages 5 and 6). The numbers in either table are fairly indicative at this stage, based on analysis of the sentence levels and outcomes (see **Annex C**) and testing against transcripts. Further testing against transcripts will be carried out to refine the detail of the tables once the Council has agreed its preferred option.

3.14 The sentence tables need to be considered in light of the final table in the culpability model (**Annex A** at page 3). This table allows for type 1 weapons with lower other culpability factors to fall into culpability category B. Type 3 weapons with high other culpability factors will also fall into culpability category B. Type 2 weapons may fall into culpability category A, B or C depending on whether the other culpability factors are high, medium or lower.

3.15 Each option has its advantages and disadvantages. One table is simpler to use and avoids the risk that the incorrect table will be used. It is in keeping with the unified approach in the rest of the guideline, which covers all offences together, and the principle that the guideline should be applied and then the sentence checked to ensure it is at or above the minimum term, where applicable. Having two tables is more complex, particularly in the context of this guideline, with its two-pronged culpability model.

3.16 In the one table model, there is an issue arising with the ranges in the columns for culpability categories B and C. Under one table, the culpability category B column could include the various type 1 weapons, such as automatic weapons, with lower other culpability factors, and type 2 weapons including disguised stun guns, air weapons or ammunition with medium or lower other culpability factors, all subject to the minimum term, as well as undisguised stun guns with high other culpability factors (no minimum term). It is difficult to set ranges in this column that are suitable for these two groups of cases, one set of which needs to start at 5 years, and the other which usually only goes up to 4 years. A similar issue arises with the column for culpability category C in respect of minimum term cases falling in this column (being type 2, lower other culpability).

3.17 Providing wide ranges in these columns with a higher upper limit than would otherwise be needed, to cater for the minimum term cases, carries a risk of driving up sentence levels for section 5(1)(b) cases, which comprise nearly half of all section 5 cases overall. A wider range with a higher upper limit may also provide less guidance to magistrates in sentencing at the lower levels and cause more section 5(1)(b) cases to be allocated to the Crown Court (over half are currently sentenced in the magistrates' courts).

3.18 If one single table is the Council's preference, then it is likely these issues could be addressed through adjustments to the culpability model (for example by changing the table setting out final culpability categories, to avoid or reduce overlap between minimum term and non-minimum term cases) or by adding some qualifications to the single table. Alternatively, it could be possible to set the culpability B and C ranges with a lower limit, accepting that some sentences would come out below 5 years and need to be raised where the minimum applies. Options will be explored if the Council favours the single table option.

3.19 In comparison, having two separate tables avoids the potential issue of higher-end stun gun cases and lower-end minimum term cases falling into the same boxes/columns in the sentencing table. The two table option provides more nuance, both in table 1 for minimum term cases and at the lower levels in table 2, which would provide improved guidance for magistrates allocating and sentencing non-minimum term cases (particularly those under 5(1)(b) which are high-volume). However, with the range in table 1 being only 5-10 years, there is only a limited range in which to differentiate between the different levels of culpability and harm. This has led to some crowding at the lower end of table 1, with several boxes with 5 years as the bottom of the range.

3.20 In the two table model, there is a separate difficulty in table 2 (non-minimum term cases). Non-minimum term cases comprise mainly stun gun-type items under section 5(1)(b), but with a very small number of military equipment cases (section 5(1A)(b)-(g)),

which attract much higher sentence levels and fewer non-custodial dispositions. The section 5(1)(b) cases could come under culpability category B or C. The military equipment items are mainly ammunition, so would generally come under culpability category B or C, plus one type of military item currently under type 1, which could fall under culpability A or B. The military items are very low-volume offences (8 in 2017 compared with 347 stun guns etc under section 5(1)(b)). The top of box A1 has been set at 5 years rather than 4 to accommodate these higher ranges but there are risks of sentence inflation for the section 5(1)(b) cases if the ranges in the other boxes are also raised for these cases.

3.21 Overall, the two table option is recommended at this stage, given that it offers more helpful guidance for sentencers both at the higher and lower end, and is more workable with the current culpability model. It could be possible to consult on both options together, or only the one table option if that is preferred. That said, as outlined above, further work and testing would be required to make the one table option effective, because of the overlap of cases with incompatible sentencing ranges outlined above.

3.22 If the Council prefers the two table option, there is a further question about whether it will be necessary for consistency to have two tables for the other guidelines where the minimum term may apply (such as carrying a firearm in a public place). Rather than committing to separate tables for all of these guidelines, it is proposed that this be considered on a guideline-by-guideline basis depending on the data for each offence.

Question 3: Does the Council agree to use two separate tables, or would it prefer to use one single table?

Minimum sentence guidance

3.23 The minimum term guidance is included in the guideline on possession of a prohibited weapon at step three (**Annex A** at page 7). It will also be included in the guideline on carrying a firearm in a public place, and possession with intent offences and transfer/sale/manufacture of prohibited weapons, once drafted. Citations have been included in this draft for the Council's information but will not be included in the final guideline. The paragraphs have also been numbered to aid the Council's discussion.

3.24 This guidance is intended to:

- clarify for sentencers where the minimum term applies;
- clarify the general approach that should be taken to the minimum term in the context of the guideline; and
- set out relevant high-level principles relating to exceptional circumstances.

3.25 An initial draft was circulated to the Council in November. Several amendments have been made in response to comments and issues raised. The guidance has been shortened and repetition removed. The section on procedure has been removed and replaced with a short reference to Newton hearings and a link to the Criminal Practice Directions. Various paragraphs have been reworded for clarity, and type 2 weapons have been added to the second bullet in paragraph 12.

General approach

3.26 The section under 'General approach' has been slightly reworded to make it more concise. It also now clarifies that the sentence should be increased to 5 years where it would otherwise be lower and the minimum term applies. If the Council decides to proceed with two separate tables, with the minimum sentence table starting at 5 years, this point would not apply so the text should be removed.

Question 4: Does the Council agree with the wording in the minimum term guidance under 'General approach'?

Exceptional circumstances – data and implications for aim of guideline

3.27 Data has been provided on the outcomes in section 5 cases where the minimum term applies (see **Annex C** table 7). This data is intended to highlight differences between certain types of weapon, showing how many cases received below the minimum term, for each type of weapon. It should be noted that while the minimum term may also apply in other offences where specified prohibited weapons are possessed,² this data only covers section 5 possession cases, because it is not possible from the data to isolate the minimum term cases within those other offences. Table 7 indicates that when looking at all of the section 5 offences to which the minimum term applies, in 2017 around 33% of those cases received a sentence below the minimum, comprising 20% receiving immediate custody of less than 5 years, and 13% receiving a discharge, fine, community order or suspended sentence.

² In addition to possession offences under section 5(1) and (1A), the minimum term provisions also apply to the following offences in respect of a firearm or ammunition specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a):

- section 5(2A) (manufacture, sale or transfer of firearm, or possession etc for sale or transfer);
- section 16 (possession of firearm with intent to injure);
- section 16A (possession of firearm with intent to cause fear of violence);
- section 17 (use of firearm to resist arrest);
- section 18 (carrying firearm with criminal intent);
- section 19 (carrying a firearm in a public place);
- section 20(1) (trespassing in a building carrying a firearm).

3.28 A higher proportion of offenders sentenced for the section 5(1A)(a) offence (disguised firearms) receive a sentence below the minimum term compared with other offences: in 2017 63% of section 5(1A)(a) cases received below the minimum term (38% a shorter immediate custody sentence and 25% an alternative sentence), compared with 17% of other minimum term cases (10% shorter immediate custody sentences and 6% alternative sentences). A higher proportion of ammunition offences also received sentences under the minimum term (80%). The bar chart at **Annex C** figure 14 shows the proportion for each minimum term offence under section 5(1) and (1A) receiving a sentence below the minimum term, in 2017.

3.29 The chart in **Annex C** figure 15 shows all sentences falling below the minimum term in 2017, broken down by type of weapon. Nearly 70% of the sentences below the minimum are for section 5(1A)(a) (disguised firearms), with the next most common offence being section 5(1)(aba) (small firearms under 30cm), at nearly 25%.

3.30 The relatively high rate of sentences falling below the minimum term raises the question of whether the Council agrees with this approach, and would like the guidance to aim to maintain current practice in this respect, or would like the guidance to aim to change the current approach. If the aim is to change the current approach by seeking to ensure exceptional circumstances are found in fewer cases, this will have an inflationary effect on sentence levels, which will need to be taken into account in the resource assessment. It is also possible that even if not seeking to change current practice, there will be an impact on sentence levels merely by the introduction of any new guidance in this area.

Question 5: Should the guideline aim to maintain or change current sentencing practice in respect of exceptional circumstances?

Exceptional circumstances – wording and scope of guidance

3.31 The Council has previously indicated that it does not wish for the guidance to go into detail on particular matters that may or may not constitute exceptional circumstances. As previously noted, there is demand from conversations with judges and with stakeholders, in part due to frequent appeals and the perception of inconsistent approaches from the Court of Appeal.

3.32 It is acknowledged that ultimately whether exceptional circumstances are found is very fact-specific and findings about factors in individual cases cannot necessarily be applied to other cases. There may be difficulties with singling out only certain matters for discussion in the guideline. There is also a need to avoid encouraging claims of exceptional circumstances in unsuitable cases.

3.33 Nonetheless, the relatively high rate at which exceptional circumstances are being found (at around 33% overall) suggests greater guidance in this area could be beneficial, given that the absence of detailed guidance on exceptional circumstances has so far resulted in fairly wide application of the proviso. With only high-level guidance there is a greater risk of the high rate of sentences below the minimum term continuing, ongoing appeals and unduly lenient sentence applications, and inconsistent treatment of very similar cases.

3.34 Paragraph 12 of the current draft goes some way towards reducing exceptional circumstances claims based on the mere presence of one or more lower culpability or mitigating factors. There could still be merit in providing further guidance for some common factors that have given rise to frequent appeals. The guidance could be drafted to avoid suggesting that particular factors may or may not constitute exceptional circumstances, yet still help to discourage reliance on certain factors in unsuitable cases. For example, the guidance could highlight that the weapon being of limited power and/or is a disguised stun gun can be a common feature of the offending and does not *in itself* give rise to exceptional circumstances.³ The same point could be made in respect of the fact that the offender stored the firearm under pressure or threats.⁴

3.35 There is some precedent for a guideline referring to specific factors in the context of a minimum term. The guideline for *Possession of an offensive weapon in a public place* includes wording at step three about circumstances relating to the offence and offender that may make it unjust to impose the minimum sentence. There is a risk that by taking a different approach compared with the offensive weapon guidance, against demand for more detailed guidance, the guidelines would appear inconsistent. The text in the offensive weapons guidance includes the following, as well as a broader paragraph about the offence:

The offender

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

Question 6: Is the Council content that it can justify including only high-level principles on exceptional circumstances in this guidance and does not wish to provide any guidance on specific factors relating to the offending or offender?

³ R v McCarthy [2013] EWCA Crim 2500; R v Manders [2017] EWCA Crim 1474.

⁴ Attorney General's Reference No 37 of 2013 (R v Culpeper) [2013] EWCA Crim 1466.

Guidance on determining sentence where exceptional circumstances are found

3.36 The Council is also asked to consider whether the draft provides sufficient guidance on the appropriate sentence when exceptional circumstances are found. Currently the guidance provides the following at paragraph 13:

Where exceptional circumstances are found

13. If there are exceptional circumstances that justify not imposing the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

3.37 The above wording leaves open the level and type of sentence, save that it must be below the minimum or be an alternative sentence. This depends in part on the decision that is taken in respect of the sentencing tables. If there is only one sentence table, in most instances the court will have reached a sentence below the minimum term through application of the guideline or will have determined that a sentence below the category range is appropriate, but this point is not currently highlighted in this section of the guideline. If there are two separate tables, it may be helpful to clarify whether to refer to the non-minimum term table instead or whether the sentence is simply at large. The Council may consider the current wording is sufficient or may wish to include further detail about the approach to be taken, to the level of sentence and/or determining whether a non-custodial sentence or suspended sentence is appropriate.

Question 7: Should further guidance be provided about the approach to determining sentence where exceptional circumstances are found?

Wording – steps four to nine

3.38 The Council is also asked to consider the wording for step four onwards in **Annex A**. The text is consistent across the four possession guidelines and adopts wording from previous guidelines. The wording in step five (reduction for guilty pleas) highlights that any guilty plea reduction where the minimum sentence has been imposed cannot reduce the sentence to less than the minimum term, consistent with the *Guilty Plea* guideline. There is some additional wording in step seven (ancillary orders) covering forfeiture and destruction of firearms, cancellation of any firearms or shotgun certificates, and Serious Crime Prevention Orders.

Question 8: Does the Council agree the wording for steps four to nine in the possession of prohibited weapon guideline?

4 IMPACT

4.1 A draft resource assessment will be considered in due course. The resource assessment will be developed in line with the Council's decision at the September meeting that the guideline should aim to replicate current sentencing practice (subject to consideration of the sentencing tables and any decisions from this paper at Question 5 regarding practice around exceptional circumstances). The impact on resources within the system is likely to be negligible if the guideline continues to be developed in line with the aim of replicating current practice.

5 RISK

5.1 As outlined above, there are risks in the Council deciding to take a 'light touch' principles-based approach on guidance in respect of exceptional circumstances, in terms of providing inadequate direction to sentencers, not meeting stakeholder expectations, and relatively high rates of sentencing below the minimum term continuing. To mitigate these risks, road-testing will be carried out to get sentencers' feedback on the minimum term guidance. The feasibility of pre-consultation road-testing will be explored but there may not be the capacity to carry this out until the launch of the consultation.

5.2 Firearms offending continues to be an area of media interest, with the screening of BBC2 documentary *Gun No. 6* on 2 December and coverage given to the air gun shooting of swans in Kent. Policy and communications colleagues are working on a communications brief on developing thinking.

5.3 The Offensive Weapons Bill had its first reading in the House of Lords on 29 November. The second reading is yet to be scheduled. The Bill will prohibit two further items: rapid firing rifles⁵ and bump stock devices.⁶ Both items will be subject to the minimum sentence. I will come back to the Council for confirmation once the legislation is passed, but in light of the nature of the items and the minimum term applying, it is provisionally intended to include them both under type 1. It is understood that bump stocks are not currently in circulation in the United Kingdom and the rapid firing rifles are infrequently used, if at all, in criminal activity. Therefore it is anticipated adding these two items to type 1 will not have a significant impact on overall volumes.

⁵ Certain chambered weapons from which cartridge cases are extracted by propellant gas. According to the Home Office, these fire at a rate that is significantly greater than a conventional bolt-action rifle, making them closer to self-loading rifles, which are already prohibited.

⁶ A bump stock is an attachment that increases the rate of fire, so that a semi-automatic weapon can fire almost as quickly as an automatic weapon.

Firearms – Possession of prohibited weapon

Possession, purchase or acquisition of a prohibited weapon or ammunition

Firearms Act 1968 (section 5(1), 5(1A))

Indictable only:

Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c)
Section 5(1A)(a)

Triable either way:

Section 5(1)(b)
Section 5(1A)(b), (c), (d), (e), (f), (g)

Maximum: 10 years' custody

Offence range: Discharge – 9 years 6 months' custody

This offence is subject to statutory minimum sentencing provisions.
See STEPS TWO AND THREE for further details.

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**.

Culpability A – Type of weapon

Use the table below to identify an initial culpability category based on the **type of weapon** only. This assessment focuses on the nature of the weapon itself only, not whether the weapon was loaded or in working order.

Where the weapon or ammunition does not fall squarely in one category, the court may need to adjust the starting point in STEP TWO.

References to weapon below include a component part of such a weapon.

Type 1	<p>Weapon that is capable of killing two or more people at the same time or in rapid succession</p> <ul style="list-style-type: none"> • This would normally include a weapon under: <ul style="list-style-type: none"> ○ section 5(1)(a) ○ section 5(1)(ab) ○ section 5(1)(aba) ○ section 5(1)(ac) ○ section 5(1)(ad) ○ section 5(1)(ae) ○ section 5(1A)(c)
Type 2	<p>All other weapons falling between Type 1 and Type 3</p> <ul style="list-style-type: none"> • This would normally include a weapon under: <ul style="list-style-type: none"> ○ section 5(1)(af) ○ section 5(1A)(a) <p>Ammunition under section 5(1)(c), 5(1A)(b) and (d)-(g) (where not at Type 3)</p>
Type 3	<p>Weapon that is not designed to be lethal</p> <ul style="list-style-type: none"> • This would normally include a weapon under section 5(1)(b) <p>Very small quantity of ammunition</p>

Culpability B – Other culpability factors

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:
High culpability: <ul style="list-style-type: none"> • Firearm discharged • Firearm loaded • Firearm/ammunition used or intended for use for criminal purpose
Medium culpability: <ul style="list-style-type: none"> • Firearm/ammunition produced (where not at High culpability) • Firearm held with compatible ammunition • Firearm/ammunition intended for use (where not at High culpability)
Lower culpability: <ul style="list-style-type: none"> • No use or intention to use

Culpability category

Identify the final culpability category in the table below, considering both **A – Type of weapon** and **B – Other culpability factors**.

		A – Type of weapon		
		1	2	3
B – Other culpability factors	High	Culpability category A	Culpability category A	Culpability category B
	Medium	Culpability category A	Culpability category B	Culpability category C
	Lower	Culpability category B	Culpability category C	Culpability category C

Harm	
The court should consider the steps set out below to determine the level of harm that has been caused or was risked .	
This step is assessed by reference to the risk of injury/death or disorder occurring and/or actual alarm/distress caused.	
When considering the risk of harm, relevant considerations may include the number and vulnerability of people exposed, especially children, accessibility and visibility of the weapon, and the location of the offence.	
Category 1	<ul style="list-style-type: none"> • Serious alarm/distress caused • Offence committed in circumstances where others put at high risk of serious injury or death • Offence committed in circumstances where there is a high risk of serious disorder
Category 2	<ul style="list-style-type: none"> • All other cases falling between category 1 and category 3 because: <ul style="list-style-type: none"> ○ Factors in both 1 and 3 are present which balance each other out; and/or ○ The harm falls between the factors as described in 1 and 3
Category 3	<ul style="list-style-type: none"> • No/minimal alarm/distress caused • Offence committed in circumstances where others put at no/minimal risk of serious injury or death • Offence committed in circumstances where there is no/minimal risk of serious disorder

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

STEP TWO			
Starting point and category range			
Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.			
Table 1 should be used if the offence is subject to statutory minimum sentencing provisions, unless there are exceptional circumstances. Table 2 should be used for all other cases. See STEP THREE for further details on the minimum sentencing provisions and exceptional circumstances.			
TABLE 1	Offences subject to the statutory minimum sentence (Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c), section 5(1A)(a))		
Harm	Culpability		
	A	B	C
Category 1	Starting point 8 years' 6 months custody Category range 7-9 years' 6 months custody	Starting point 7 years' 6 months' custody Category range 6-8 years 6 months' custody	Starting point 6 years' custody Category range 5-7 years' custody
Category 2	Starting point 7 years 6 months' custody Category range 6-8 years' 6 months' custody	Starting point 6 years' custody Category range 5-7 years' custody	Starting point 5 years 6 months' custody Category range 5-7 years' custody
Category 3	Starting point 6 years' custody Category range 5-7 years' custody	Starting point 5 years 6 months' custody Category range 5-7 years' custody	Starting point 5 years' custody Category range 5 – 6 years' custody
TABLE 2	Offences not subject to the statutory minimum sentence		
Harm	Culpability		
	A	B	C
Category 1	Starting point 3 years' custody Category range 2 years' 6 months – 5 years' custody	Starting point 2 years' custody Category range 1 – 3 years 6 months' custody	Starting point 1 year's custody Category range 26 weeks – 2 years' custody
Category 2	Starting point 2 years' custody Category range 1 – 3 years 6 months' custody	Starting point 1 years' custody Category range 26 weeks – 2 years' custody	Starting point Medium level community order Category range Low level – High level community order
Category 3	Starting point 1 years' custody Category range 26 weeks – 2 years' custody	Starting point Medium level community order Category range Low level – High level community order	Starting point Band B fine Category range Discharge – Low level community order

[Note: The following table is an alternative option to tables 1 and 2 above:]

TABLE 0	All offences		
Harm	Culpability		
	A	B	C
Category 1	Starting point 8 years 6 months' custody Category range 7 – 9 years 6 months' custody	Starting point 7 years' 6 months' custody Category range 6 – 8 years 6 months' custody	Starting point 4 years' custody Category range 2 – 6 years' custody
Category 2	Starting point 7 years 6 months' custody Category range 6 – 8 years 6 months' custody	Starting point 4 years' custody Category range 2 – 6 years' custody	Starting point 1 year 6 months' custody Category range High level community order – 2 years 6 months' custody
Category 3	Starting point 5 years' custody Category range 3 – 7 years' custody	Starting point 1 year 6 months' custody Category range High level community order – 2 years 6 months' custody	Starting point Low level community order Category range Discharge – High level community order

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far. 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:

- A1. 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
- A2. Offence committed whilst on bail

Other aggravating factors:

- A3. Offence was committed as part of a group (except where already taken into account at step one)
- A4. Offender has contact with criminal associates, including through the purchase or supply of drugs (except where already taken into account at step one)
- A5. Commission of offence whilst under the influence of alcohol or drugs

- A6. Firearm/ammunition kept with multiple weapons
- A7. Firearm modified to make it more lethal
- A8. Steps taken to disguise firearm (where not firearm under section 5(1A)(a))
- A9. Abuse of position as registered firearms dealer
- A10. Offender prohibited from possessing weapon or ammunition because of previous conviction (where not charged separately)
- A11. Offences taken into consideration
- A12. Failure to comply with current court orders
- A13. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- M1. No previous convictions **or** no relevant/recent convictions
- M2. Good character and/or exemplary conduct
- M3. Firearm incomplete or incapable of being discharged
- M4. Voluntary surrender of firearm/ammunition
- M5. No knowledge or suspicion that item possessed was firearm/ammunition
- M6. Unaware firearm/ammunition is prohibited
- M7. Held on behalf of another through coercion, intimidation, or exploitation
- M8. Serious medical condition requiring urgent, intensive or long-term treatment
- M9. Age and/or lack of maturity
- M10. Mental disorder or learning disability
- M11. Sole or primary carer for dependent relatives
- M12. Co-operation with the police

STEP THREE**Minimum Term**

1. Where the minimum term provisions under section 51A of the Firearms Act 1968 apply, a court must impose a sentence of at least 5 years' custody **unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify its not doing so.**

Applicability

2. The minimum terms provisions apply when sentencing:
 - an offence under section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a); or
 - certain other offences committed in respect of a firearm or ammunition specified in the provisions above.¹
3. The minimum term applies to *all* such offences including the first offence, and regardless of plea.
4. The minimum term of 5 years applies to offenders aged 18 or over at the date of conviction. Where the offender is aged 16 or 17, the minimum term is 3 years' custody.

General approach

5. The court should follow STEP ONE and STEP TWO to arrive at a sentence. The court should then ensure that the sentence is not less than the minimum sentence required by section 51A.² Where the sentence reached by application of the guideline would be lower than the minimum term, it should be increased to 5 years, unless there are exceptional circumstances.
6. Where the minimum term applies, this should be stated expressly.

Exceptional circumstances

7. In considering whether there are 'exceptional circumstances' that would justify not imposing the statutory minimum sentence, the court must have regard to the particular circumstances of the offence and the offender.
8. Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing:³ see Sentencing B in [Criminal Practice Directions](#) VII: Sentencing. Where the offender has sought to rely on exceptional circumstances, a clear justification should be given for why exceptional circumstances are found or not found.

¹ s51A(1)-(1A) Firearms Act 1968: The minimum term provisions also apply to the following offences in respect of a firearm or ammunition specified in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or section 5(1A)(a):

- section 5(2A) (manufacture, sale or transfer of firearm, or possession etc for sale or transfer);
- section 16 (possession of firearm with intent to injure);
- section 16A (possession of firearm with intent to cause fear of violence);
- section 17 (use of firearm to resist arrest);
- section 18 (carrying firearm with criminal intent);
- section 19 (carrying a firearm in a public place);
- section 20(1) (trespassing in a building carrying a firearm).

² R v Silvera [2013] EWCA Crim 1764.

³ R v Rogers Re B 2016 EWCA Crim 801.

Principles

9. Cases where exceptional circumstances arise will be rare. The circumstances must be truly exceptional.⁴ It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the minimum term by too readily accepting exceptional circumstances.⁵ The court should consider whether the imposition of the minimum term would result in an arbitrary and disproportionate sentence.⁶
10. The court should look at all of the circumstances as a whole. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.⁷
11. The fact that, absent the minimum term, the sentence reached by application of the guideline would be less than 5 years does not *in itself* give rise to exceptional circumstances.
12. The mere presence of one or more of the following should not *in itself* be regarded as exceptional:
- One or more lower culpability factors;
 - The type of weapon or ammunition falling under type 2 or 3;
 - One or more mitigating factors;
 - A plea of guilty.⁸

Where exceptional circumstances are found

13. If there are exceptional circumstances that justify not imposing the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

STEP FOUR**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 FIVE**Reduction for guilty pleas**

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

Where a **minimum sentence** has been imposed under section 51A of the Firearms Act 1968, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than the required minimum term.

⁴ R Wilkinson [2009] EWCA Crim 1925.

⁵ R v Dawson 2017 EWCA Crim 2244.

⁶ R v Rehman and Wood 2005 EWCA Crim 2056, 2006 1 Cr App R (S).

⁷ R v Rehman and Wood 2005 EWCA Crim 2056, 2006 1 Cr App R (S).

⁸ R v Shaw 2011 EWCA Crim 167.

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

Ancillary orders

In all cases the court should consider whether to make ancillary orders.

Forfeiture and destruction of firearms and cancellation of certificate

The court should consider ordering forfeiture or disposal of any firearm or ammunition and the cancellation of any firearms certificate. Section 52 Firearms Act 1968 provides for the forfeiture and disposal of firearms and the cancellation of firearms and shotgun certificates where a person is convicted of one or more offence under the Firearms Act 1968 (other than an offence relating to an air weapon) and is given a custodial sentence or a community order containing a requirement not to possess, use or carry a firearm. The court may order the forfeiture or disposal of air weapons under paragraphs 7 and 8 Part II to Schedule Six Firearms Act 1968.

Serious Crime Prevention Order

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.

Firearms Act 1968 Section 5

Note: Offences subject to the minimum term are in **bold**.

5.— Weapons subject to general prohibition.

(1) A person commits an offence if, [without authority]¹, he has in his possession, or purchases or acquires [...] ² —

[(a) any firearm which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger;

(ab) any self-loading or pump-action [rifled gun]⁴ other than one which is chambered for .22 rim-fire cartridges;

[(aba) any firearm which either has a barrel less than 30 centimetres in length or is less than 60 centimetres in length overall, other than an air weapon, [...] ⁶ a muzzle-loading gun or a firearm designed as signalling apparatus;]⁵

(ac) any self-loading or pump-action smooth-bore gun which is not [an air weapon or]⁷ chambered for .22 rim-fire cartridges and either has a barrel less than 24 inches in length or [...] ⁸ is less than 40 inches in length overall;

(ad) any smooth-bore revolver gun other than one which is chambered for 9mm. rim-fire cartridges or [a muzzle-loading gun]⁹ ;

(ae) any rocket launcher, or any mortar, for projecting a stabilised missile, other than a launcher or mortar designed for line-throwing or pyrotechnic purposes or as signalling apparatus;]³

[(af) any air rifle, air gun or air pistol which uses, or is designed or adapted for use with, a self-contained gas cartridge system;]¹⁰

(b) any weapon of whatever description designed or adapted for the discharge of any noxious liquid, gas or other thing; and

[(c) any cartridge with a bullet designed to explode on or immediately before impact, any ammunition containing or designed or adapted to contain any such noxious thing as is mentioned in paragraph (b) above and, if capable of being used with a firearm of any description, any grenade, bomb (or other like missile), or rocket or shell designed to explode as aforesaid.]¹¹

[(1A) Subject to section 5A of this Act, a person commits an offence if, [without authority]¹, he has in his possession, or purchases or acquires [...] ¹³ -

(a) any firearm which is disguised as another object;

(b) any rocket or ammunition not falling within paragraph (c) of subsection (1) of this section which consists in or incorporates a missile designed to explode on or immediately before impact and is for military use;

(c) any launcher or other projecting apparatus not falling within paragraph (ae) of that subsection which is designed to be used with any rocket or ammunition falling within paragraph (b) above or with ammunition which would fall within that paragraph but for its being ammunition falling within paragraph (c) of that subsection;

(d) any ammunition for military use which consists in or incorporates a missile designed so that a substance contained in the missile will ignite on or immediately before impact;

(e) any ammunition for military use which consists in or incorporates a missile designed, on account of its having a jacket and hard-core, to penetrate armour plating, armour screening or body armour;

[(f) any ammunition which is designed to be used with a pistol and incorporates a missile designed or adapted to expand on impact;] ¹⁴

(g) anything which is designed to be projected as a missile from any weapon and is designed to be, or has been, incorporated in-

(i) any ammunition falling within any of the preceding paragraphs; or

(ii) any ammunition which would fall within any of those paragraphs but for its being specified in subsection (1) of this section.] ¹²

(2) The weapons and ammunition specified in [subsections (1) and (1A) of this section (including, in the case of ammunition, any missiles falling within subsection (1A)(g) of this section)] ¹⁵ are referred to in this Act as “*prohibited weapons*” and “*prohibited ammunition*” respectively.

[(2A) A person commits an offence if without authority—

(a) he manufactures any weapon or ammunition specified in subsection (1) of this section,

(b) he sells or transfers any prohibited weapon or prohibited ammunition,

(c) he has in his possession for sale or transfer any prohibited weapon or prohibited ammunition, or

(d) he purchases or acquires for sale or transfer any prohibited weapon or prohibited ammunition.] ¹⁶

[(3) In this section “*authority*” means an authority given in writing by—

(a) the Secretary of State (in or as regards England and Wales), or

(b) the Scottish Ministers (in or as regards Scotland).] ¹⁷

(4) [An authority shall be subject to conditions specified in it, including such as the Secretary of State or the Scottish Ministers (as appropriate)] ¹⁸ having regard to the circumstances of each particular case, [thinks] ¹⁹ fit to impose for the purpose of securing that the prohibited weapon or ammunition to which the authority relates will not endanger the public safety or the peace.

(5) It is an offence for a person to whom an authority is given under this section to fail to comply with any condition of the authority.

(6) [The Secretary of State or the Scottish Ministers (as appropriate) may at any time, if they think fit,] ²⁰ revoke an authority given to a person under this section by notice in writing requiring him to deliver up the authority to such person as may be specified in the notice within twenty-one days from the date of the notice; and it is an offence for him to fail to comply with that requirement.

[(7) For the purposes of this section and section 5A of this Act-

(a) any rocket or ammunition which is designed to be capable of being used with a military weapon shall be taken to be for military use;

(b) references to a missile designed so that a substance contained in the missile will ignite on or immediately before impact include references to any missile containing a substance that ignites on exposure to air; and

(c) references to a missile's expanding on impact include references to its deforming in any

predictable manner on or immediately after impact.] ²¹

[(8) For the purposes of subsection (1)(aba) and (ac) above, any detachable, folding, retractable or other movable butt-stock shall be disregarded in measuring the length of any firearm.

(9) Any reference in this section to a muzzle-loading gun is a reference to a gun which is designed to be loaded at the muzzle end of the barrel or chamber with a loose charge and a separate ball (or other missile).] ²²

Notes

- [1.](#) Words substituted by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.109(1)(a) (July 14, 2014)
- [2.](#) Words repealed by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.108(2)(a) (July 14, 2014)
- [3.](#) S. 5(1)(a)-(ae) substituted for s. 5(1)(a) by Firearms (Amendment) Act 1988 (c.45), s. 1(2)
- [4.](#) Words substituted subject to savings specified in SI 1997/1535 art.5 by Firearms (Amendment) Act 1997 c. 5 Pt I s.1(3) (July 1, 1997: substitution has effect subject to savings specified in SI 1997/1535 art.5)
- [5.](#) Added by Firearms (Amendment) Act 1997 c. 5 Pt I s.1(2) (July 1, 1997: insertion has effect from July 1, 1997 for purposes specified in SI 1997/1535 art.4; October 1, 1997 otherwise)
- [6.](#) Words repealed by Firearms (Amendment) (No. 2) Act 1997 c. 64 Sch.1 para.1 (February 1, 1998 as SI 1997/3114)
- [7.](#) Words added by Firearms (Amendment) Act 1997 c. 5 Pt I s.1(4) (July 1, 1997)
- [8.](#) Words repealed by Firearms (Amendment) Act 1997 c. 5 Sch.3 para.1 (July 1, 1997 as SI 1997/1535)
- [9.](#) Words substituted by Firearms (Amendment) Act 1997 c. 5 Pt I s.1(5) (July 1, 1997)
- [10.](#) Inserted subject to transitional provisions specified in SI 2003/3300 art.5 by Anti-social Behaviour Act 2003 c. 38 Pt 5 s.39(3) (January 20, 2004: insertion has effect from January 20, 2004 for purposes specified in SI 2003/3300 art.2(c)(iii); April 30, 2004 subject to transitional provisions specified in SI 2003/3300 art.5 otherwise)
- [11.](#) S. 5(1)(c) substituted by Firearms (Amendment) Act 1988 (c.45), s. 1(3)
- [12.](#) Added by Firearms Acts (Amendment) Regulations 1992/2823 reg.3(1) (January 1, 1993)
- [13.](#) Words repealed by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.108(2)(b) (July 14, 2014)
- [14.](#) Substituted by Policing and Crime Act 2017 c. 3 Pt 6 s.129(2) (May 2, 2017)
- [15.](#) Words substituted by Firearms Acts (Amendment) Regulations 1992/2823 reg.3(2) (January 1, 1993)
- [16.](#) Added by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.108(3) (July 14, 2014)
- [17.](#) Substituted by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.108(4) (July 14, 2014)
- [18.](#) Words substituted by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.109(1)(b) (July 14, 2014)
- [19.](#) Words substituted by virtue of S.I. 1968/1200, arts. 2, 3
- [20.](#) Words substituted by Anti-social Behaviour, Crime and Policing Act 2014 c. 12 Pt 8 s.109(1)(c) (July 14, 2014)
- [21.](#) Added by Firearms Acts (Amendment) Regulations 1992/2823 reg.3(3) (January 1, 1993)
- [22.](#) Added by Firearms (Amendment) Act 1997 c. 5 Pt I s.1(6) (July 1, 1997)

Blank page

Table 1: Number of adult offenders sentenced for offences under the Firearms Act 1968, by court type, 2007-2017

Annex C

Guideline group	Legislation	Section	Offence	Court type	Number of adult offenders sentenced												
					2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017		
Group 1	Firearms Act 1968	Minimum term applies 5(1)(a)-(af), (c) 5(1A)(a)	Possess/purchase/acquire a prohibited weapon (automatic)/ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	MC	4	4	11	7	3	2	1	0	0	3	0		
				CC	245	336	349	301	204	170	205	253	364	460	402		
			Total	249	340	360	308	207	172	206	253	364	463	402			
		Minimum term does not apply 5(1)(b) 5(1A)(b)-(g)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	MC	654	635	647	613	537	436	411	314	304	293	205		
			Possess/ purchase/ sell or transfer military equipment	CC	181	254	249	227	234	198	170	171	165	189	153		
			Total	835	889	896	840	771	634	581	485	469	482	358			
		TOTAL SECTION 5 OFFENCES				MC	658	639	658	620	540	438	412	314	304	296	205
						CC	426	590	598	528	438	368	375	424	529	649	555
						Total	1,084	1,229	1,256	1,148	978	806	787	738	833	945	760
		Group 2	Firearms Act 1968	1(1)	Possess a firearm/ammunition without a certificate ¹	MC	-	-	-	-	68	59	50	56	31	49	29
	CC				-	-	-	-	95	80	78	70	70	79	68		
Total	-				-	-	-	163	139	128	126	101	128	97			
2(1)	Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form) ¹			MC	-	-	-	-	0	1	0	2	0	0	0		
				CC	-	-	-	-	13	12	6	13	8	6	14		
	Total			-	-	-	-	13	13	6	15	8	6	14			
2(1)	Possess shotgun without a certificate			MC	36	36	27	29	19	23	21	22	14	16	22		
				CC	15	19	12	25	19	12	9	15	22	15	19		
	Total			51	55	39	54	38	35	30	37	36	31	41			
TOTAL 1(1) & 2(1)				MC	133	123	108	103	87	83	71	80	45	65	51		
				CC	113	117	122	148	129	111	93	98	100	103	101		
				Total	246	240	230	251	216	194	164	178	145	168	152		
Group 3	Firearms Act 1968	21(1) & (4) 21(2) & (4) & Sch 6	Possess a firearm/ shotgun/ air weapon/ ammunition when prohibited for life/ five years	MC	54	34	43	33	41	29	27	26	21	24	20		
				CC	48	55	68	62	48	45	35	27	28	36	28		
			Total	102	89	111	95	89	74	62	53	49	60	48			
Group 4	Firearms Act 1968	19	Possess loaded/unloaded firearm and suitable ammunition in public place	MC	76	38	17	15	10	6	9	5	7	6	2		
				CC	20	15	14	8	11	6	7	5	7	6	5		
			Total	96	53	31	23	21	12	16	10	14	12	7			
		19	Possess a loaded shotgun in a public place	MC	16	12	4	0	2	1	0	0	0	0	0		
				CC	8	9	7	7	1	5	4	2	1	2	2		
			Total	24	21	11	7	3	6	4	2	1	2	2			
		19	Possess a loaded / unloaded air weapon in a public place	MC	340	243	218	178	123	117	95	87	96	62	68		
				CC	26	31	32	43	28	10	6	5	7	7	6		
			Total	366	274	250	221	151	127	101	92	103	69	74			
		19	Possess an imitation firearm in a public place	MC	0	32	70	60	61	55	43	53	55	60	85		
	CC		0	15	26	24	23	32	46	50	43	52	35				
Total	0		47	96	84	84	87	89	103	98	112	120					

Source: Court Proceedings Database, Ministry of Justice

Note

1) Data for these offences not available prior to 2011.

Table 2: Sentence outcomes for adult offenders sentenced for offences under the Firearms Act 1968, 2017

Guideline group	Section	Offence	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with ¹	Total
Group 1	Minimum term applies 5(1)(a)-(af), (c) 5(1A)(a)	Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle Possess/ purchase disguised firearm	0	0	1	5	46	348	2	402
	Minimum term does not apply 5(1)(b) 5(1A)(b)-(g)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing Possess/ purchase/ sell or transfer military equipment	1	30	47	96	99	78	7	358
	TOTAL SECTION 5 OFFENCES		1	30	48	101	145	426	9	760
Group 2		Possess a firearm/ammunition without a certificate	2	11	12	5	27	39	1	97
	1(1)	Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form)	0	0	0	0	2	12	0	14
	2(1)	Possess shotgun without a certificate	0	8	9	1	9	13	1	41
	TOTAL 1(1) & 2(1)		2	19	21	6	38	64	2	152
Group 3	21	Possess a firearm when prohibited for life / five years due to previous conviction	0	4	6	5	9	24	0	48
Group 4	19	Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place	0	10	25	75	48	43	2	203

Source: Court Proceedings Database, Ministry of Justice

Guideline group	Section	Offence	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with ¹	Total
Group 1	Minimum term applies 5(1)(a)-(af), (c) 5(1A)(a)	Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle Possess/ purchase disguised firearm	0%	0%	<0.5%	1%	11%	87%	<0.5%	100%
	Minimum term does not apply 5(1)(b) 5(1A)(b)-(g)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing Possess/ purchase/ sell or transfer military equipment	<0.5%	8%	13%	27%	28%	22%	2%	100%
	TOTAL SECTION 5 OFFENCES		<0.5%	4%	6%	13%	19%	56%	1%	100%
Group 2		Possess a firearm/ammunition without a certificate	2%	11%	12%	5%	28%	40%	1%	100%
	1(1)	Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form)	0%	0%	0%	0%	14%	86%	0%	100%
	2(1)	Possess shotgun without a certificate	0%	20%	22%	2%	22%	32%	2%	100%
	TOTAL 1(1) & 2(1)		1%	13%	14%	4%	25%	42%	1%	100%
Group 3	21	Possess a firearm when prohibited for life / five years due to previous conviction	0%	8%	13%	10%	19%	50%	0%	100%
Group 4	19	Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place	0%	5%	12%	37%	24%	21%	1%	100%

Source: Court Proceedings Database, Ministry of Justice

Note

1) Includes a number of orders, for example hospital orders, confiscation orders and compensation orders.

Table 3: Estimated average custodial sentence lengths (pre guilty plea) for adult offenders sentenced to immediate custody, and sentence ranges for offences under the Firearms Act 1968, 2017

Guideline group	Section	Offence	Mean sentence length ^{1,3}	Median sentence length ^{2,3}	Sentence range (using estimated pre GP sentence lengths)
Group 1	Minimum term applies 5(1)(a)-(af), (c) 5(1A)(a)	Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle Possess/ purchase disguised firearm	6 years 6 months	7 years 6 months	Fine - 10 years' custody
	Minimum term does not apply 5(1)(b) 5(1A)(b)-(g)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing Possess/ purchase/ sell or transfer military equipment	1 year 7 months	1 year 1 month	Discharge - 8 year's custody
	TOTAL SECTION 5 OFFENCES		5 years 7 months	6 years 5 months	Discharge - 10 year's custody
Group 2	1(1)	Possess a firearm/ammunition without a certificate Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form) ⁴	3 years 1 month 2 years 5 months	3 years 1 year 11 months	Discharge - 5 years' custody SSO - 4 years' custody
	2(1)	Possess shotgun without a certificate ⁴	2 years 10 months	2 years 3 months	Discharge - 5 years' custody
	TOTAL 1(1) & 2(1)		2 years 11 months	3 years	Discharge - 5 years' custody
Group 3	21	Possess a firearm when prohibited for life / five years due to previous conviction	1 year 8 months	1 year 3 months	Discharge - 4.5 years' custody
Group 4	19	Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place	10 months	6 months	Discharge - 4.5 years' custody

Source: Court Proceedings Database, Ministry of Justice

Notes

- 1) The mean is calculated by taking the sum of all values and then dividing by the number of values.
- 2) The median is the value which lies in the middle of a set of numbers when those numbers are placed in ascending or descending order.
- 3) Excludes life and indeterminate sentences.
- 4) These figures should be treated with caution, due to the low number of offenders sentenced to immediate custody for this offence.

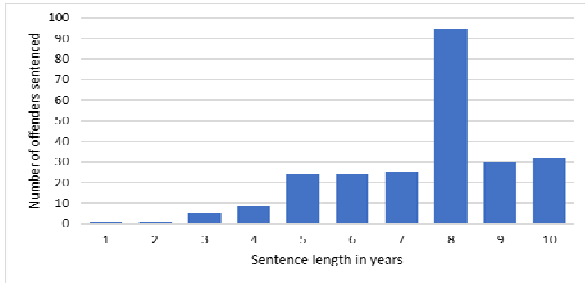
Estimated distribution of custodial sentence lengths for adult offenders sentenced to immediate custody for offences under the Firearms Act 1968, before any reduction for guilty plea, 2017

Note: Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category "1" includes sentence lengths less than, and equal to, 1 year, and "2" includes sentence lengths over 1 year, and up to and including 2 years.

Group 1

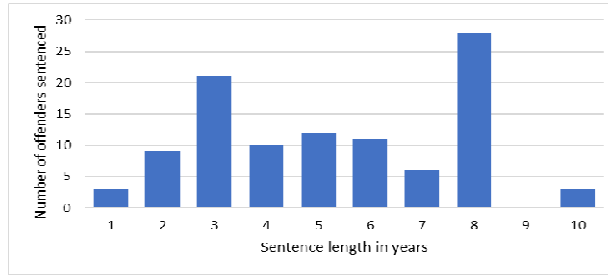
Minimum term applies

Figure 1: 5(1)(a)-(af), (c) - Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle, 2017



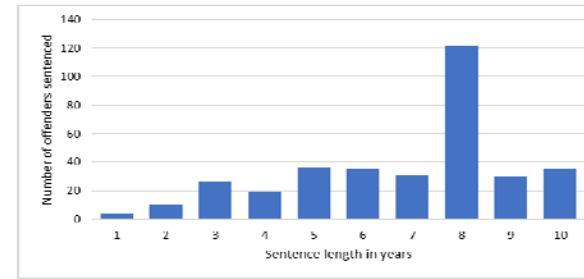
Minimum term applies

Figure 2: 5(1A)(a) - Possess/ purchase prohibited weapon (disguised firearm), 2017



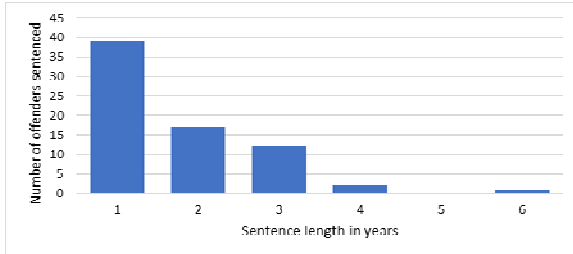
Minimum term applies (all)

Figure 3: 5(1)(a)-(af),(c) & 5(1A)(a) combined, 2017



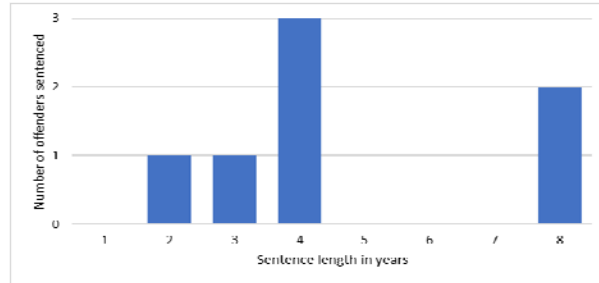
Minimum term does not apply

Figure 4: 5(1)(b) - Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing, 2017



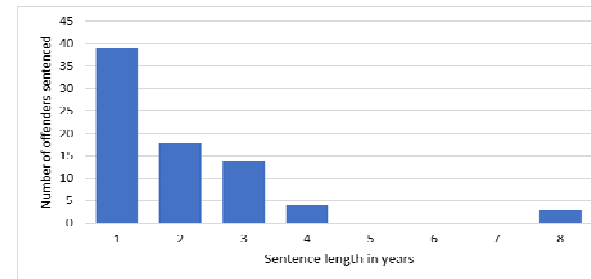
Minimum term does not apply

Figure 5: 5(1A)(b)-(g) - Possess/ purchase/ sell or transfer military equipment, 2017



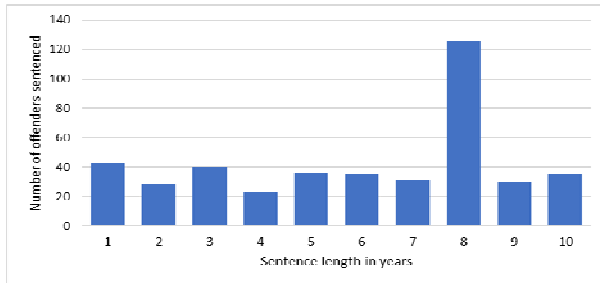
Minimum term does not apply (all)

Figure 6: 5(1)(b) & 5(1A)(b)-(g) combined, 2017



All Group 1 offences

Figure 7: 5(1)(a)-(af),(c), 5(1A)(a), 5(1)(b) & 5(1A)(b)-(g) combined, 2017



Group 2

Figure 8: 1(1) - Possess a firearm/ammunition without a certificate, 2017

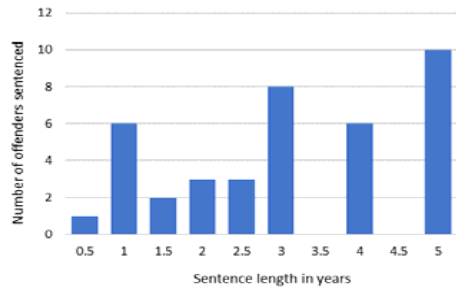


Figure 9: 1(1) & 2(1) - Possess a shortened shotgun without a certificate; possess a thing converted into a firearm (aggravated form), 2017

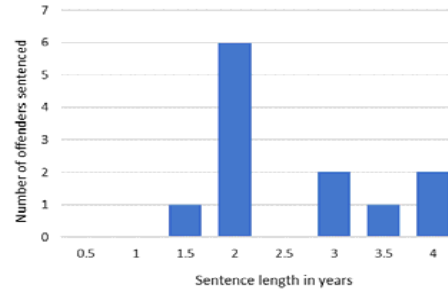


Figure 10: 2(1) - Possess shotgun without a certificate, 2017

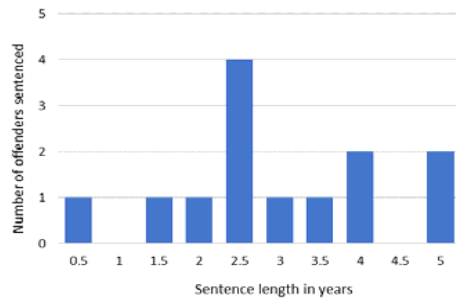
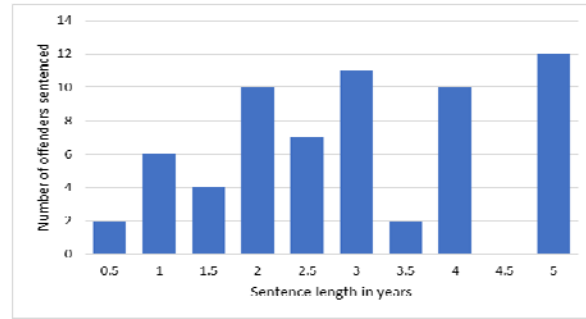
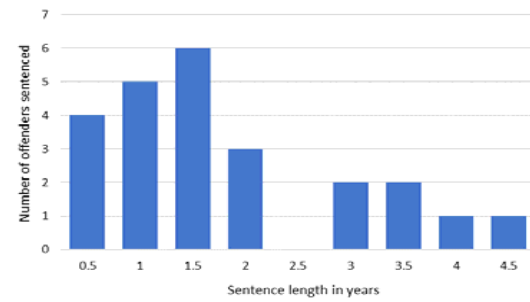


Figure 11: 1(1) & 2(1) combined - Possess a firearm/ ammunition/ shortened shotgun/ shotgun without a certificate, 2017



Group 3

Figure 12: 21 - Possess a firearm when prohibited for life / five years due to previous conviction, 2017



Group 4

Figure 13: 19 - Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place, 2017

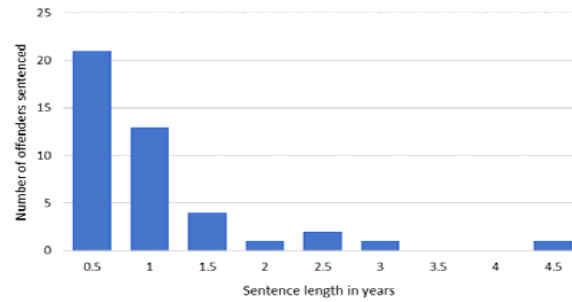


Table 4: Number of adult offenders sentenced for section 5 offences, by type of weapon, 2017

Offences under 5(1), 5(1A) where minimum term applies

Section	Sub-section	Offence	Number of offenders sentenced	Proportion of all offences where minimum term applies	Proportion of all 5(1) & 5(1A) offences
5(1)	(a)	Possess/sell/transfer an automatic prohibited weapon	26	7%	4%
	(ab)	Possess prohibited weapon - self loading/pump action rifle	0	0%	0%
	(aba)	Possess a small firearm (less than 30cm)	200	52%	27%
	(ac)	Possess prohibited weapon - smooth bore gun	8	2%	1%
	(ad)	Possess prohibited weapon - smooth bore revolver	2	1%	0%
	(ae)	Possess prohibited weapon - mortar/rocket launcher	0	0%	0%
	(af)	Possess an air weapon using self contained gas cartridge system	4	1%	1%
	(c)	Possess prohibited ammunition	5	1%	1%
5(1A)	(a)	Possess/ purchase prohibited weapon (disguised firearm)	138	36%	19%
		Total	383	100%	52%

Offences under 5(1), 5(1A) where minimum term does not apply

Section	Sub-section	Offence	Number of offenders sentenced	Proportion of all offences where minimum term does not apply	Proportion of all 5(1) & 5(1A) offences
5(1)	(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	347	98%	47%
5(1A)	(b)	Possess prohibited weapon - rocket/ exploding ammunition	0	0%	0%
	(c)	Possess prohibited weapon - launcher	0	0%	0%
	(d)	Possess prohibited ammunition - incendiary	0	0%	0%
	(e)	Possess prohibited ammunition (armour- piercing)	0	0%	0%
	(f)	Possess prohibited ammunition - expanding	7	2%	1%
	(g)	Possess prohibited ammunition - a missile	1	0%	0%
		Total	355	100%	48%

Source: Court Proceedings Database, Ministry of Justice

Table 5: Estimated average custodial sentence lengths (pre guilty plea) for adult offenders sentenced to immediate custody, and sentence ranges for section 5 offences, by type of weapon¹

Section	Sub-section	Offence	No. sentenced to immediate custody	Mean sentence length ^{2,4}	Median sentence length ^{3,4}	Custodial sentence range (using estimated pre GP sentence lengths)	
Minimum term applies	(a)	Possess/sell/transfer an automatic prohibited weapon	24	7 years 11 months	7 years 9 months	2 years 3 months - 10 years	
	(ab)	Possess prohibited weapon - self loading/pump action rifle ⁵	23	6 years 8 months	7 years 1 month	1 year 8 months - 9 years 9 months	
	(aba)	Possess a small firearm (less than 30cm)	188	7 years	7 years 6 months	11 months - 10 years	
	(ac)	Possess prohibited weapon - smooth bore gun ⁵	68	6 years 10 months	7 years 6 months	11 months - 10 years	
	(ad)	Possess prohibited weapon - smooth bore revolver ⁵	25	6 years	5 years 11 months	1 year 4 months - 10 years	
	(ae)	Possess prohibited weapon - mortar/rocket launcher ⁵	1	*	*	3 years	
	(af)	Possess an air weapon using self contained gas cartridge system ⁵	24	6 years	7 years 1 month	1 year 4 months - 9 years	
	(c)	Possess prohibited ammunition ⁵	15	4 years 3 months	4 years 6 months	1 month - 7 years 6 months	
5(1A)	(a)	Possess/ purchase prohibited weapon (disguised firearm)	103	4 years 11 months	5 years	9 months - 10 years	
Minimum term does not apply	5(1)	(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	71	1 year 4 months	10 months	1 month - 5 years 7 months
	(b)	Possess prohibited weapon - rocket/ exploding ammunition	0	-	-	-	
	(c)	Possess prohibited weapon - launcher ⁵	1	*	*	7 years 6 months	
	(d)	Possess prohibited ammunition - incendiary ⁵	1	*	*	4 months	
	(e)	Possess prohibited ammunition (armour- piercing)	0	-	-	-	
	(f)	Possess prohibited ammunition - expanding ⁵	46	3 years 4 months	2 years 4 months	1 month - 10 years	
	(g)	Possess prohibited ammunition - a missile ⁵	3	*	*	1 year 6 months - 7 years 6 months	

Source: Court Proceedings Database, Ministry of Justice

Table 6: Estimated average custodial sentence lengths (pre guilty plea) for adult offenders sentenced to immediate custody, and sentence ranges for section 5 offences, 2017

Section	Sub-section	Offence	No. sentenced to immediate custody	Mean sentence length ^{2,4}	Median sentence length ^{3,4}	Custodial sentence range	
Minimum term applies	5(1)	(a)-(af),(c)	Possess/sell/transfer a prohibited weapon	245	7 years 2 months	7 years 6 months	11 months - 10 years
	5(1A)	(a)	Possess/ purchase prohibited weapon (disguised firearm)	103	4 years 11 months	5 years	9 months - 10 years
Minimum term does not apply	5(1)	(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	71	1 year 4 months	10 months	1 month - 5 years 7 months
	5(1A)	(b)-(g)	Possess prohibited weapon (military equipment)	7	4 years 3 months	3 years 5 months	1 year 9 months - 8 years

Source: Court Proceedings Database, Ministry of Justice

Notes

- 1) Where possible, the most recent data available (relating to 2017) has been provided. For some offences, however, figures shown cover the period 2011-2017 due to low volumes.
- 2) The mean is calculated by taking the sum of all values and then dividing by the number of values.
- 3) The median is the value which lies in the middle of a set of numbers when those numbers are placed in ascending or descending order.
- 4) Excludes life and indeterminate sentences.
- 5) Figures for this offence cover the period 2011-2017 due to low volumes.

* ACSLs have not been shown due to the extremely low number of offenders sentenced to immediate custody for this offence.

- No offenders sentenced to immediate custody for this offence.

Analysis on adult offenders sentenced for section 5 offences where the minimum term applies

Table 7: Proportion of adult offenders receiving a sentence below the minimum term, 2007-2017¹

All section 5 offences sentenced below the minimum term

Type of disposal	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Discharge, fine, CO or SSO	18%	14%	16%	17%	14%	13%	12%	16%	22%	16%	13%
Immediate custodial sentence of less than 5 years	25%	20%	25%	24%	24%	22%	28%	21%	20%	22%	20%
Total	43%	34%	41%	41%	38%	35%	40%	37%	42%	39%	33%

5(1)(a)-(af), (c) - Possess/ purchase prohibited weapon

Type of disposal	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Discharge, fine, CO or SSO	17%	14%	16%	16%	13%	13%	10%	9%	10%	5%	6%
Immediate custodial sentence of less than 5 years	25%	20%	25%	24%	23%	16%	23%	14%	12%	14%	10%
Total	42%	34%	41%	40%	36%	28%	32%	23%	22%	19%	17%

5(1A)(a) - Possess/ purchase prohibited weapon (disguised firearm)

Type of disposal	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Discharge, fine, CO or SSO	*	*	*	*	*	18%	17%	30%	41%	32%	25%
Immediate custodial sentence of less than 5 years	*	*	*	*	*	54%	44%	33%	34%	34%	38%
Total						71%	62%	63%	75%	66%	63%

* Proportions not shown due to very low volumes

Figure 14: Proportion of adult offenders receiving a sentence below the minimum term, for each type of weapon, 2017

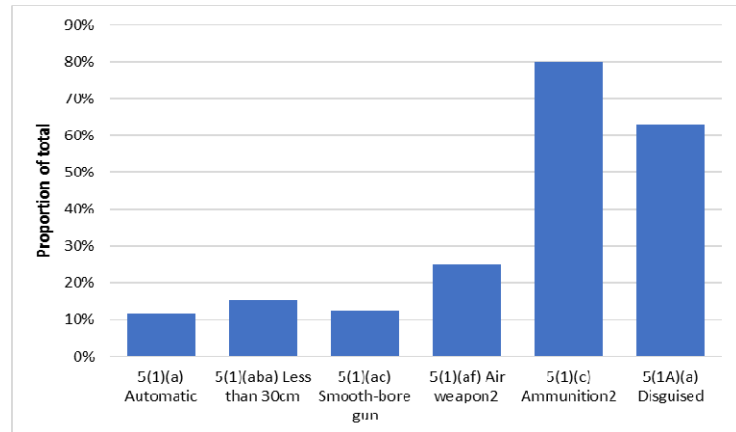


Table 8: Adult offenders receiving a sentence below the minimum term, as a proportion of the total number sentenced for each type of weapon, 2011-2017

Offence	2011	2012	2013	2014	2015	2016	2017
5(1)(a) Automatic	30%	44%	29%	20%	30%	33%	12%
5(1)(ab) Pump action rifle	50%	18%	*	*	*	*	*
5(1)(aba) Less than 30cm	37%	27%	31%	20%	17%	14%	16%
5(1)(ac) Smooth-bore gun	31%	0%	8%	23%	17%	30%	13%
5(1)(ad) Smooth-bore revolver	27%	*	*	*	*	*	*
5(1)(ae) Mortar/ rocket launcher	*	*	*	*	*	*	*
5(1)(af) Air weapon ²	0%	60%	40%	50%	64%	75%	25%
5(1)(c) Ammunition ²	67%	100%	83%	100%	75%	60%	80%
5(1A)(a) Disguised	52%	71%	62%	63%	75%	66%	63%

* Proportions not shown due to very low volumes

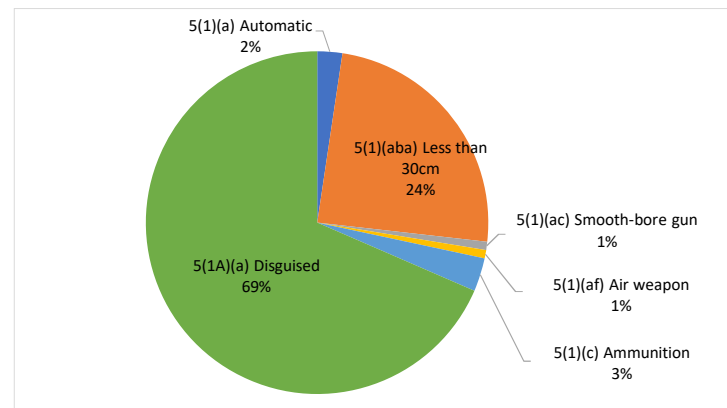
Table 9: Number of adult offenders receiving a sentence below the minimum term, 2011-2017

Offence	2011	2012	2013	2014	2015	2016	2017
5(1)(a) Automatic	47	9	7	5	10	21	26
5(1)(ab) Pump action rifle	4	2	0	1	0	0	0
5(1)(aba) Less than 30cm	75	93	103	127	173	189	200
5(1)(ac) Smooth-bore gun	16	9	12	13	6	10	8
5(1)(ad) Smooth-bore revolver	3	0	1	1	1	0	0
5(1)(ae) Mortar/ rocket launcher	1	0	1	0	0	0	0
5(1)(af) Air weapon	2	5	5	6	11	8	4
5(1)(c) Ammunition	6	2	6	1	4	5	5
5(1A)(a) Disguised	23	28	52	86	138	191	138

Table 10 and figure 15: Number and proportion of adult offenders receiving a sentence below the minimum term in 2017, by type of weapon³

Type of weapon	Number	Proportion
5(1)(a) Automatic	3	2%
5(1)(aba) Less than 30cm	31	24%
5(1)(ac) Smooth-bore gun	1	1%
5(1)(af) Air weapon	1	1%
5(1)(c) Ammunition	4	3%
5(1A)(a) Disguised	87	69%
Total	127	100%

Source: Court Proceedings Database, Ministry of Justice



Notes

- 1) Cases sentenced below the minimum term are those where the sentence outcome was either a discharge, fine, community order or suspended sentence order, along with cases where the offender was sentenced to an immediate custodial sentence length of less than 5 years (after any reduction for guilty plea).
- 2) Percentages should be treated with caution due to low volumes.
- 3) Excludes 5(1)(ab) & (ae) as no offenders were sentenced for these offences in 2017. Excludes 5(1)(ad) as no offenders received a sentence below the minimum term for this offence in 2017.

Blank page