

19 July 2018

Dear Members

## Meeting of the Sentencing Council – 27 July 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 27 July 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)JUL00 |
| ▪ Minutes of meeting held on 22 June | SC(18)JUN01 |
| ▪ Action Log                         | SC(18)JUL02 |
| ▪ Assault                            | SC(18)JUL03 |
| ▪ Mental Health                      | SC(18)JUL04 |
| ▪ Overarching learning               | No paper    |
| ▪ MCSG                               | SC(18)JUL05 |
| ▪ Firearms                           | SC(18)JUL06 |
| ▪ 10 <sup>th</sup> Anniversary       | SC(18)JUL07 |

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.

Best wishes



**Steve Wade**

Head of the Office of the Sentencing Council

Blank page

# Sentencing Council

## COUNCIL MEETING AGENDA

**27 July 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 | Assault – presented by Lisa Frost (paper 3)                       |
| 11:00 – 12:00 | Mental Health – presented by Mandy Banks (paper 4)                |
| 12:00 – 13:00 | Overarching learnings – presented by Sarah Poppleton              |
| 13:00 – 13:30 | Lunch   |
| 13:30 – 14:30 | MCSG – presented by Ruth Pope (paper 5)                           |
| 14:30 – 15:30 | Firearms – presented by Sophie Klinger (paper 6)                  |
| 15:30 – 16:00 | 10-Year anniversary options – presented by Phil Hodgson (paper 7) |

# Sentencing Council

## COUNCIL MEETING AGENDA

Blank page

## MEETING OF THE SENTENCING COUNCIL

22 JUNE 2018

## MINUTES

---

Members present:

Colman Treacy (Chairman)  
Rob Butler  
Mark Castle  
Rosina Cottage  
Rebecca Crane  
Rosa Dean  
Martin Graham  
Heather Hallett  
Tim Holroyde  
Maura McGowan  
Sarah Munro  
Alpa Parmar

Apologies:

Alison Saunders  
Julian Goose

Representatives:

Chief Constable Olivia Pinkney for the police  
Neil Moore, Legal Advisor to DPP for the CPS  
Sophie Marlow for the Lord Chief Justice (Legal  
and Policy Adviser to Sir Brian Leveson, Head of  
Criminal Justice)  
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  
Ruth Pope  
Phil Hodgson

**1. MINUTES OF LAST MEETING**

- 1.1. The minutes from the meeting of 18 May 2018 were agreed.

**2. MATTERS ARISING**

- 2.1 The Chairman welcomed Beverley Thompson to her first Council meeting since her recent appointment.

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

- 3.1 The Council considered factors for a revised guideline for the offence of common assault. The revisions agreed were based on findings from the evaluation of the existing assault guideline and problems with the application of existing factors. The link between the existing guideline factors and the unintended impact of a decrease in sentences for common assault were discussed. It was agreed that sentence levels would be developed and discussed at the next meeting.

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

- 4.1 The Council considered an early draft of the guideline and considered what the objectives should be in producing a guideline. The Council agreed that it should provide information for sentencers to assist courts to understand how mental health and other conditions may affect culpability.
- 4.2 The Council also agreed to provide technical guidance regarding available sentencing disposals.
- 4.3 The Council agreed a number of revisions to be made to the draft guideline for consideration at the next Council meeting.

**5. DISCUSSION ON DRUGS GUIDANCE – PRESENTED BY ELEANOR NICHOLLS, OFFICE OF THE SENTENCING COUNCIL**

- 5.1 The Council discussed and agreed wording for a statement on the sentencing of drug offences involving newer or less common drugs. This statement, which would not have the full status of a guideline, would aim to remind sentencers how to apply the current Drug Offences guideline in cases involving newer or less common drugs (such as synthetic opioids) which are not explicitly listed in the guideline.
- 5.2 The Council agreed that the statement would also refer to the Psychoactive Substances Act 2016. The Council agreed to publish the statement as soon as possible on its website.

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

6.1 The Council noted that evidence was being gathered from a variety of sources into the operation and impact of the Guilty Plea Guideline but that it was too early for the statistical data to give a clear indication as to whether there were any unintended consequences.

6.2 It was agreed that it was not necessary to convene a meeting of the Steering Group but that stakeholders should be encouraged to continue to provide evidence to assist with the monitoring of the guideline.

**7. DISCUSSION ON EXPANDED FACTORS IN OFFENCE SPECIFIC GUIDELINES – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL**

7.1 The Council considered expanded information that could be provided for aggravating factors in existing offence specific guidelines. It was agreed to give further consideration to this out of committee over the summer and for the Council to discuss it again at its September meeting in the light of responses to the General Guideline consultation.

**8. DISCUSSION ON ANNUAL REPORT – PRESENTED BY PHIL HODGSON, OFFICE OF THE SENTENCING COUNCIL**

8.1 The Council approved the final version of the Annual Report and agreed with the publication timetable.

**9. DISCUSSION ON CHILD CRUELTY– PRESENTED BY ELEANOR NICHOLLS, OFFICE OF THE SENTENCING COUNCIL**

9.1 The Council signed off the definitive Child Cruelty Guideline covering the offences of cruelty to a child, causing or allowing a child to die or suffer serious physical harm, and failure to protect a girl from the risk of FGM.

9.2 The Council considered the question of the risk of a shift in sentencing practice as a result of the Child Cruelty Guideline; members felt that the level of risk was acceptable but made one small change to some explanatory text to mitigate this risk.

9.3 The Council also agreed to several minor changes made to ensure consistency between the three guidelines. The final versions will be circulated to members, along with the response to consultation document and resource assessment, prior to publication in September.

Blank page



## SC(18)JUL02 July Action Log

### ACTION AND ACTIVITY LOG – as at 19 July 2018

	Topic	What	Who	Actions to date	Outcome
<b>SENTENCING COUNCIL MEETING 13 April 2018</b>					
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	<b>ACTION ONGOING:</b> The report will be sent to Members in September.	
<b>SENTENCING COUNCIL MEETING 18 May 2018</b>					
2	Business Plan	Council agreed to implement 'standard' commencement dates for guidelines coming into force. Office to consider most appropriate dates and plan accordingly.	Steve Wade / Eleanor Nicholls	<b>ACTION ONGOING:</b> Business plan amended to include standard dates for upcoming guidelines and future dates to be considered at next planning meeting.	
<b>SENTENCING COUNCIL MEETING 22 June 2018</b>					
3	Drug Offences	Statement on sentencing drug offences involving newer or less common drugs to be published on Monday 25 June, following some changes made today.	Eleanor Nicholls	Statement circulated to some Members for comment Friday 22 <sup>nd</sup> . Comments received.	<b>ACTION CLOSED:</b> statement published on website on 25 <sup>th</sup> June.
4	Child Cruelty	Final version of guidelines, incorporating changes signed off today, to be circulated to members for information.	Eleanor Nicholls	<b>ACTION ONGOING:</b> Changes incorporated, final versions to be circulated following publication of Manslaughter guideline	
5	Child Cruelty	Some additional road testing of guideline to be carried out with judges, particularly focusing on the risk of sentence inflation.	Eleanor Nicholls	.	<b>ACTION CLOSED:</b> Road testing carried out with judges who carried out road testing at consultation. Findings indicate no further changes to guideline

6	Expanded factors in offence specific guidelines	Council members to assist with reviewing factors in digital guidelines over the summer	Ruth Pope/ Council members	<b>ACTION ONGOING:</b> Preparations are being made to begin review over the summer.	
---	---	--	-------------------------------	---	--

**Sentencing Council meeting:** 22 July 2018  
**Paper number:** SC(18)JUL03 – Assault  
**Lead Council member:** Julian Goose & Rob Butler  
**Lead officials:** Lisa Frost & Caroline Nauth-Misir  
0207 071 5784

## **1 ISSUE**

1.1 Following on from the last meeting where factors were agreed for a revised common assault guideline, this paper includes finalised factors and sentences for common assault.

1.2 The paper also sets out the findings from the evaluation of the existing guideline for assault occasioning actual bodily harm (ABH), and proposes revised guideline factors. The Council will also be asked to consider current sentencing practice for ABH and principles which should underpin sentence development in the revised guideline.

## **2 RECOMMENDATION**

That the Council:

- considers and agrees one additional culpability factor and sentences for common assault;
- considers and agrees factors for a revised guideline for ABH and principles which should underpin sentence development.

## **3 CONSIDERATION**

3.1 At the last meeting the Council considered factors for a revised guideline for the offence of common assault. Evidence analysed in relation to the existing guideline indicated that factors included had led to an unintended impact of the guideline; namely that a high proportion of cases were attracting a lesser harm categorisation, resulting in a deflationary impact at the lower end of seriousness. Contrary to the anticipated impact of the guideline, there was no decrease in

custodial sentences on its introduction, and instead a decrease in volumes of community orders and an increase in volumes of fines imposed occurred. It was agreed that the impact is likely to be attributable to the combination of a high proportion of cases sentenced as common assault actually being ABH offences requiring a custodial sentence, and the existing guideline factors leaving offences without a high level of harm attracting a starting point of a fine.

3.2 To address these issues, factors highlighted as problematic in the evaluation were removed, and it was agreed that the revision of factors was likely to address the unintended impact of the guideline. Work has now been undertaken to develop sentence levels for this offence. As well as agreeing sentence levels for common assault today, the Council will be asked to consider factors for a revised guideline for ABH offences.

#### Common Assault – finalising factors

3.3 The revised guideline agreed at the last meeting for common assault is available at **Annex A**. At the last meeting a high culpability factor of ‘use of substantial force’ was proposed. It was intended that this would replace the problematic high culpability factors included in the existing guideline of ‘intention to commit more serious harm’ and ‘deliberately causes more harm than necessary’. The presence of these factors would indicate activity with the potential to inflict serious harm, but actual harm caused amounts to a charge of common assault. As the offence involves causing another to apprehend the immediate infliction of unlawful force or application of unlawful force, it was submitted that use of substantial force would cause an offence to be more serious and indicate an intention to cause more serious harm than eventuated. The Council agreed that such a factor was necessary but proposed that alternative wording be considered, as it was considered that the original proposed wording may apply in too many cases and inflate culpability categorisation.

3.4 As an alternative to ‘use of substantial force’ a higher threshold factor has been considered of ‘offence involves a significant degree of violence’. The Council are asked to consider if they prefer this factor to ‘use of substantial force’.

**Question 1: Does the Council agree with the proposed additional high culpability factor?**

### Common Assault – sentences

3.5 As already noted, the evaluation of the guideline identified the impact was not as intended upon the guideline's introduction; specifically a reduction in custodial sentences did not occur, and instead a shift of disposals from community orders to fines occurred at the lower end of offence seriousness. The Council were asked at the last meeting which, if any, principles should inform sentence level revision, and if the revised guideline should seek to effect the original anticipated impact upon sentences.

3.6 As discussed at the last meeting it is likely that a high proportion of current custodial sentences are actually ABH offences which account for a high volume of custodial sentences in the current sentence distribution. It is anticipated that revised CPS guidance will prevent cases which are actually ABH being charged as common assault, which should automatically address the high proportion of custodial sentences. The high proportion of fines and sentencer concerns that the existing guideline does not adequately provide for 'middling' harm will be addressed by the revised factors in the guideline, and that three categories of harm are included with harm gradated more clearly.

3.7 It was suggested at the last meeting that it may be desirable to ensure a category A1 offence attracts a custodial starting point. However, it was noted that the existing guideline does not include a custodial starting point in any category, and such a change in a revised guideline is highly likely to be inflationary. A specific example considered at the last meeting based on agreed factors was a domestic incident where serious injury such as a black eye was caused to the victim, which it was broadly agreed should attract a custodial starting point. Although there were few transcripts available for the offence of common assault given that it is summary only, the few that are available have been considered to identify types of offences attracting custodial sentences in the existing guideline. This analysis has identified that where there is a history of domestic assaults custodial sentences are often imposed, but other domestic type incidents included non-marital familial incidents, which often do not. Examples of such cases included incidents involving a brother and sister and a stepmother and stepson, where threats and low level physical violence such as shoving were involved. In a non-marital context the cases reviewed, although causing distress to the victims, did not attract custodial sentences but fines

and conditional discharges. Even in the absence of a high level of physical harm, it may be more likely that more than minor psychological harm would be present in a familial domestic incident, and it may not be appropriate to have a custodial starting point in all cases. As the guideline includes an instruction to sentencers to refer to the domestic assault guideline when sentencing common assault offences, it is likely that application of this guideline would provide for a custodial sentence to be imposed in appropriate cases.

3.8 Given the wide range of high culpability factors and the fact that appropriate charging should address issues with higher sentences, it is thought that it may be preferable to retain a starting point of a high level community order for the most serious offences, with the presence of aggravating factors then providing for a custodial sentence to be imposed in appropriate cases. Revised factors will provide for appropriate categorisation of harm and ensure that in appropriate cases a community order can be imposed. This should address criticism and concerns in the evaluation findings that sentences in the guideline are too low, while still providing for fines to be imposed in cases of lower seriousness.

3.9 The proposed sentences also take into account the relativity between common assault and more serious assault offences. If sentence starting points are increased, this may then require increases in starting points for other more serious offences.

3.10 Sentence levels are included at **Annex A** for the Council's consideration. Subject to approval sentence levels will be tested over the Summer and findings shared with the Council prior to the sign off of the revised guideline and full consultation, to identify if revisions have addressed the predominant areas of concern for sentencers.

**Question 2: Does the Council agree with the proposed sentence levels for common assault?**

#### Actual Bodily Harm

3.11 This offence is provided for by Section 47 of the Offences Against the Persons Act 1861. The offence is committed when a person intentionally or recklessly assaults another, thereby causing actual bodily harm (ABH). It is an either way offence, which carries a maximum penalty on indictment of five years' imprisonment.

3.12 In law, the only factors that distinguish Common Assault from Assault occasioning Actual Bodily Harm are the degree of injury that results and that ABH may be tried in the Crown Court and attract a significantly higher sentence. There is no statutory definition of ABH. Case law principles which have developed are that the assault must cause any hurt or injury interfering with the health or comfort of the victim. Harm does not need to be permanent but must be more than trifling or transient. The injury can be psychiatric but not merely fear or anxiety.

3.13 The number of adult offenders sentenced for ABH has generally decreased over the last decade, although some of this decline could be attributable to some ABH cases being charged as common assault. In 2017 there were around 6,200 offenders sentenced for ABH, and just over two thirds of offenders were sentenced in the Crown Court.

#### The existing guideline – evaluation findings

3.14 The assessment of the impact and implementation of the actual bodily harm guideline noted the following;

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

*A regression analysis using CCSS data was carried out and showed that “injury which is serious in the context of the offence” was the most important factor for ABH and added 26 per cent (0.2 years) to the length of immediate custodial sentences. These findings are in contrast to the prediction in the resource assessment which envisaged a drop in the severity of sentencing, due to the decrease in the sentencing range in the Sentencing Council guideline when compared to the previous guideline. This equated to an estimate of between 400 and 900 fewer custodial sentences and 400 to 1,000 community orders becoming fines. The fact that the actual increase in sentence severity was almost entirely within the bounds of that expected if no guideline had come into force, indicates that there is no strong evidence that the guideline had an impact, despite the expectations that it would. In contrast to the data showing no strong evidence that the guideline had an impact on sentence severity, the perceptions of the sentencers who were interviewed was that sentences had*

*decreased, particularly for the lower level ABH offences. This view may reflect participants' awareness that the sentencing range had decreased; many felt these were now too low and in interviews, several Crown Court judges said that they often go outside the category range to increase a sentence for an actual bodily harm offence:*

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

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

3.15 As a result of these findings and observations of the Council at the last meeting, a revised guideline is proposed. As with the recently agreed common assault guideline this is in the format of more recent Council guidelines, removing or revising problematic factors and providing for three gradations of harm. The proposed revised draft guideline is included at **Annex B**. The existing guideline is included at pages 12-14 of **Annex C**.

#### Culpability factors

3.16 The culpability factors in the existing ABH guideline are exactly the same as those for common assault, with the exception of use of a weapon which is broader in common assault and includes threat or use of weapon. Given that the difference between the offences is the harm caused, it is proposed that the existing culpability factors for ABH be revised as for common assault, although the high culpability weapon factor restricted to use of weapon as in the existing guideline. The rationale for each factor revised was considered and agreed at the last meeting, with problematic factors removed or revised.

3.17 There is one other culpability factor that may differ depending on the Council's decision in respect of the additional common assault factor discussed at paragraph's 3.3 – 3.4 of this paper. If the factor 'offence involves a significant degree of violence' is agreed as an appropriate high culpability factor for common assault, a similar factor would be required in the ABH guideline. However, due to the fact that a higher degree of injury will have occurred in an ABH offence, it may be appropriate to



increase the threshold of this factor, as many offences are likely to involve significant violence and could cause the proposed common assault factor to have an inflationary effect if included in the ABH guideline. The wording 'offence involves a serious level of violence' is proposed.

**Question 3: Does the Council agree with the proposed high culpability factors for ABH offences?**

Harm

3.18 As for common assault, the harm factors in the existing guideline are the biggest concern as they do not provide for cases of medium harm, and interpretation of the term 'within the context of the offence' has proved problematic. The existing guideline harm factors for ABH are as for common assault, save for the greater harm factor relating to the context of the offence specifying that such harm includes disease transmission and/or psychological harm.

3.19 The revised guideline proposes three harm categories, which graduate harm with reference to the level of injury. Some harm must be present to constitute this offence, so the lowest category includes minor harm. Case transcripts have been analysed to identify the types of harm resulting in the highest sentences for offences of ABH. Due to the wide range of injuries that can be involved, the categories have been limited to describing the level of injury (serious/minor) rather than describing the type of injury. Factors such as injury requiring extensive medical treatment, multiple serious injuries, minor bruising were considered, but it was considered that these could have the potential to leave some cases outside of the correct category so an overall assessment of the level of harm is proposed.

**Question 4: Does the Council agree with the proposed harm factors?**

Aggravating and mitigating factors

3.20 The aggravating and mitigating factors included are as agreed for the common assault guideline at the last meeting. In analysis of cases these factors were all found to be relevant.

**Question 5: Does the Council agree with the proposed aggravating and mitigating factors?**

## Sentences

3.21 Existing sentence starting points and ranges for this offence are available for review at page 12 of **Annex C**. **Annex D** includes statistical information on sentencing trends between the period 2007-2017 for both common assault and ABH, in addition to Crown Court Sentencing Survey (CCSS) data for ABH offences.

3.22 As already noted, a key finding in the evaluation of the guideline was that contrary to expectations ABH sentences increased, although some sentencers reported that sentence ranges were too low. It is thought that sentencer perceptions in this respect could be due to the existing guideline sentences representing a decrease in sentence ranges and starting points compared to the SGC guideline, which were as follows;

Type/nature of activity	Starting point	Sentencing range
Pre-meditated assault <b>EITHER</b> resulting in injuries just falling short of GBH <b>OR</b> involving the use of a weapon	<b>30 months custody</b>	<b>2 – 4 years custody</b>
Pre-meditated assault resulting in relatively serious injury	<b>12 months custody</b>	<b>36 weeks – 2 years custody</b>
Pre-meditated assault resulting in minor, non-permanent injury	<b>24 weeks custody</b>	<b>12 – 36 weeks custody</b>
Other assault resulting in minor, non-permanent injury	<b>Community Order (HIGH)</b>	<b>Community Order (MEDIUM) – 26 weeks custody</b>

3.23 Increases in sentences could also be attributable to the level of injuries present in cases being charged as ABH. The evaluation highlighted that *“injury which is serious in the context of the offence” was the most important factor for ABH and added 26 per cent (0.2 years) to the length of immediate custodial sentences.*” An inference could therefore be drawn that if ABH cases were being charged as common assault, a similar pattern may have occurred with GBH offences being sentenced as ABH, and a GBH type injury in the context of an ABH provided for this factor to be applied. This was evident in a small number of cases analysed, where lacerations were caused with glasses in ABH offences, and some cases involved broken bones which would usually be charged as GBH. As can be seen on page 8 of **Annex D**, the estimated pre guilty plea ACSL in category 1 is 2 years, which is higher

than the starting point of 1 year 6 months. This could indicate a higher level of offence seriousness than sentencers feel the existing starting point is appropriate for.

3.24 A more marked trend of higher sentences above the category range in the lowest category of seriousness can be seen in the last table on page 7 of **Annex D**. The data illustrates a high proportion (around 40%) of custodial sentences were imposed in this category, which does not even provide for a custodial sentence to be imposed. This could suggest that sentencers do not believe the existing guideline sentences are adequate, and that the types of case found to be at the lower end of seriousness in the guideline are considered too serious for the sentencing options available. When comparing sentences for ABH and common assault, it is noted that a case of lower seriousness in ABH, which would presumably still be more serious than a high category common assault, currently attracts a lower starting point than the most serious common assault offence. It is possible that sentencers have sought to correct this by imposing what they consider to be more proportionate sentences at the lower end of ABH seriousness. However, the revised common assault guideline provides for the highest harm categorisation where an injury is more than minor, and the proposed lowest ABH harm factor provides for minor injury. This may justify for sentencers a lower starting point for a minor injury ABH if this is retained although this would need to be considered with a view to the type of injury which may be present in each offence. Alternatively the Council may consider that there should be parity between the highest common assault starting point and lowest ABH starting point.

**Question 6: Should the starting point at the lower end of seriousness for ABH be equivalent to or higher, rather than lower than, the highest starting point in a common assault offence to ensure relativity of sentences?**

3.25 Before sentence levels are developed, further work is required to consider sentences for s.20 GBH, which has the same statutory maximum sentence as ABH. Although the maximum sentence is the same, GBH involves more serious harm and relativity between the sentences will be important. Prior to this work being undertaken the Council are asked to consider whether the revised ABH guideline should seek to address the unintended consequences of the existing guideline and reduce sentences for ABH. However, if the increases are due to the type of offence being charged, the capacity of the guideline to address sentence increases could be

limited, as these may involve more serious injuries and sentencers may continue to impose higher sentences.

3.26 The Council are therefore asked to consider a number of specific questions in relation to ABH sentences.

**Question 7: Should the other ABH sentence starting points be maintained or increased?**

**Question 8: Are there any other principles or considerations that should underpin ABH sentences?**

#### **4 IMPACT /RISKS**

4.1 It will be important reputationally to ensure a thorough assessment of the evidence available and for principled decisions to be made regarding sentences for this offence.

4.2 Early testing of the guidelines with sentencers will be undertaken to identify potential issues and impact prior to sign off of the guideline.

**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 to reach a fair assessment of the offender's culpability.**

**Where the offence is committed in a domestic context, consideration must be given to the definitive guideline 'Overarching Principles: Domestic Abuse'**

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

- Offence committed in domestic context
- Targeting of vulnerable victim, where victim vulnerable by personal characteristics or circumstances
- Prolonged assault
- Offence involves a significant degree of violence
- Threatened or actual use of weapon or weapon equivalent\*
- Leading role in group activity

**B – Lesser culpability**

- Lesser role in group activity
- Mental disorder or learning disability, where linked to the commission of the offence
- All other cases not captured by category 1 factors

\*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.

**Harm**

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

<b>Category 1</b>	More than minor physical or psychological harm
<b>Category 2</b>	Minor physical or psychological harm
<b>Category 3</b>	No physical injury No/very low level of distress

**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.

<b>HARM</b>	<b>CULPABILITY</b>	
	<b>A</b>	<b>B</b>
Harm 1	<p><b>Starting point</b> High level Community Order</p> <p><b>Category Range</b> Low level Community Order - 26 weeks' custody</p>	<p><b>Starting point</b> Medium level Community Order</p> <p><b>Category Range</b> Low level Community Order - 16 weeks' custody</p>
Harm 2	<p><b>Starting point</b> Medium level Community Order</p> <p><b>Category Range</b> Low level Community Order - 16 weeks' custody</p>	<p><b>Starting point</b> Band B fine</p> <p><b>Category Range</b> Band A Fine - low level Community Order</p>
Harm 3	<p><b>Starting point</b> Band B fine</p> <p><b>Category Range</b> Band A Fine - Low level Community Order</p>	<p><b>Starting point</b> Band A Fine</p> <p><b>Category Range</b> Discharge – Band C Fine</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

#### ***Other aggravating factors:***

Spitting

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

Offence committed in prison

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

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

History of failure to comply with 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

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



**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 to reach a fair assessment of the offender's culpability.**

**Where the offence is committed in a domestic context, consideration must be given to the definitive guideline 'Overarching Principles: Domestic Abuse'**

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

- Offence committed in domestic context
- Targeting of vulnerable victim, where victim vulnerable by personal characteristics or circumstances
- Prolonged assault
- Offence involves a serious level of violence
- Use of weapon or weapon equivalent\*
- Leading role in group activity

**B – Lesser culpability**

- Lesser role in group activity
- Mental disorder or learning disability, where linked to the commission of the offence
- All other cases not captured by category 1 factors

\*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.

**Harm**

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

<b>Category 1</b>	Serious physical or psychological harm
<b>Category 2</b>	Cases falling between categories 1 and 3
<b>Category 3</b>	Minor physical or psychological harm

**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.

<b>HARM</b>	<b>CULPABILITY</b>	
	<b>A</b>	<b>B</b>
Harm 1	<b>Starting point</b>  <b>Category Range</b>	<b>Starting point</b>  <b>Category Range</b>
Harm 2	<b>Starting point</b>  <b>Category Range</b>	<b>Starting point</b>  <b>Category Range</b>
Harm 3	<b>Starting point</b>  <b>Category Range</b>	<b>Starting point</b>  <b>Category Range</b>

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

#### ***Other aggravating factors:***

Spitting

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

Offence committed in prison

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

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

History of failure to comply with 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

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

# Assault Definitive Guideline

# Contents

Applicability of guideline	2
Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm (section 18)	3
Inflicting grievous bodily harm/Unlawful wounding (section 20)	7
Assault occasioning actual bodily harm (section 47)	11
Assault with intent to resist arrest (section 38)	15
Assault on a police constable in execution of his duty (section 89)	19
Common assault (section 39)	23
Annex: Fine bands and community orders	27

© Crown copyright 2011

You may re-use this information (not including logos) free of charge in any format or medium, under the terms of the Open Government Licence. To view this licence, visit [www.nationalarchives.gov.uk/doc/open-government-licence/](http://www.nationalarchives.gov.uk/doc/open-government-licence/) or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or e-mail: [psi@nationalarchives.gsi.gov.uk](mailto:psi@nationalarchives.gsi.gov.uk)

# Applicability of guideline

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

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

“Every court –

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

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

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

## Structure, ranges and starting points

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

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

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

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

Offences against the Person Act 1861 (section 18)

---

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

Triable only on indictment  
Maximum: Life imprisonment

Offence range: 3–16 years' custody



**STEP ONE****Determining the offence category**

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

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

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

**Factors indicating greater harm**

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

Victim is particularly vulnerable because of personal circumstances

Sustained or repeated assault on the same victim

**Factors indicating lesser harm**

Injury which is less serious in the context of the offence

**Factors indicating higher culpability***Statutory aggravating factors:*

Offence racially or religiously aggravated

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

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

*Other aggravating factors:*

A significant degree of premeditation

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

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

Deliberately causes more harm than is necessary for commission of offence

Deliberate targeting of vulnerable victim

Leading role in group or gang

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

**Factors indicating lower culpability**

Subordinate role in group or gang

A greater degree of provocation than normally expected

Lack of premeditation

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

Excessive self defence

**STEP TWO****Starting point and category range**

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

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

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

**Factors increasing seriousness***Statutory aggravating factors:*

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

Offence committed whilst on bail

*Other aggravating factors include:*

Location of the offence

Timing of the offence

Ongoing effect upon the victim

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

Presence of others including relatives, especially children or partner of the victim

Gratuitous degradation of victim

In domestic violence cases, victim forced to leave their home

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

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

Commission of offence whilst under the influence of alcohol or drugs

Abuse of power and/or position of trust

Exploiting contact arrangements with a child to commit an offence

Previous violence or threats to the same victim

Established evidence of community impact

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

Offences taken into consideration (TICs)

**Factors reducing seriousness or reflecting personal mitigation**

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

Single blow

Remorse

Good character and/or exemplary conduct

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

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

Isolated incident

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

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

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

Sole or primary carer for dependent relatives

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

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

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

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

**STEP FIVE****Dangerousness**

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

**STEP SIX****Totality principle**

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

**STEP SEVEN****Compensation and ancillary orders**

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

**STEP EIGHT****Reasons**

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

**STEP NINE****Consideration for remand time**

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

# Inflicting grievous bodily harm/ Unlawful wounding

Offences against the Person Act 1861 (section 20)

# Racially/religiously aggravated GBH/Unlawful wounding

Crime and Disorder Act 1998 (section 29)

---

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

Triable either way

Maximum (section 20): 5 years

Maximum (section 29): 7 years

Offence range: Community order – 4 years' custody

**STEP ONE****Determining the offence category**

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

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

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

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

**STEP TWO****Starting point and category range**

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

<b>Offence Category</b>	<b>Starting Point</b> ( <i>Applicable to all offenders</i> )	<b>Category Range</b> ( <i>Applicable to all offenders</i> )
<b>Category 1</b>	3 years' custody	2 years 6 months' – 4 years' custody
<b>Category 2</b>	1 year 6 months' custody	1 – 3 years' custody
<b>Category 3</b>	High level community order	Low level community order – 51 weeks' custody

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

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

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

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

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

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

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

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

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

**STEP FIVE****Dangerousness**

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

**STEP SIX****Totality principle**

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

**STEP SEVEN****Compensation and ancillary orders**

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

**STEP EIGHT****Reasons**

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

**STEP NINE****Consideration for remand time**

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

# Assault occasioning actual bodily harm

Offences against the Person Act 1861 (section 47)

# Racially/religiously aggravated ABH

Crime and Disorder Act 1998 (section 29)

---

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

Triable either way

Maximum (section 47): 5 years' custody

Maximum (section 29): 7 years' custody

Offence range: Fine – 3 years' custody



**STEP ONE****Determining the offence category**

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

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

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

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

**STEP TWO****Starting point and category range**

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

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

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

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

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

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

- has the community order threshold been passed?

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

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

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

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

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

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

**STEP FIVE****Dangerousness**

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

**STEP SIX****Totality principle**

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

**STEP SEVEN****Compensation and ancillary orders**

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

**STEP EIGHT****Reasons**

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

**STEP NINE****Consideration for remand time**

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

# Assault with intent to resist arrest

## Offences against the Person Act 1861 (section 38)

---

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

Triable either way  
Maximum: 2 years' custody

Offence range: Fine – 51 weeks' custody

**STEP ONE****Determining the offence category**

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

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability; <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

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

**Factors indicating greater harm**

Sustained or repeated assault on the same victim

**Factors indicating lesser harm**

Injury which is less serious in the context of the offence

**Factors indicating higher culpability***Statutory aggravating factors:*

Offence racially or religiously aggravated

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

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

*Other aggravating factors:*

A significant degree of premeditation

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

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

Deliberately causes more harm than is necessary for commission of offence

Leading role in group or gang

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

**Factors indicating lower culpability**

Subordinate role in group or gang

Lack of premeditation

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

**STEP TWO****Starting point and category range**

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

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

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

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

**Factors increasing seriousness***Statutory aggravating factors:*

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

Offence committed whilst on bail

*Other aggravating factors include:*

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Gratuitous degradation of victim

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

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

Commission of offence whilst under the influence of alcohol or drugs

Established evidence of community impact

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

Offences taken into consideration (TICs)

**Factors reducing seriousness or reflecting personal mitigation**

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

Single blow

Remorse

Good character and/or exemplary conduct

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

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

Isolated incident

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

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

Sole or primary carer for dependent relatives

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

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

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

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

**STEP FIVE****Dangerousness**

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

**STEP SIX****Totality principle**

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

**STEP SEVEN****Compensation and ancillary orders**

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

**STEP EIGHT****Reasons**

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

**STEP NINE****Consideration for remand time**

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

# Assault on a police constable in execution of his duty

Police Act 1996 (section 89)

---

Triable only summarily  
Maximum: 26 weeks' custody

Offence range: Fine – 26 weeks' custody



**STEP ONE**

**Determining the offence category**

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

<b>Category 1</b>	Greater harm <b>and</b> higher culpability
<b>Category 2</b>	Greater harm <b>and</b> lower culpability; <b>or</b> lesser harm <b>and</b> higher culpability
<b>Category 3</b>	Lesser harm <b>and</b> lower culpability

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

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

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

**STEP TWO****Starting point and category range**

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

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

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

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

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

**Factors increasing seriousness***Statutory aggravating factors:*

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

Offence committed whilst on bail

*Other aggravating factors include:*

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Gratuitous degradation of victim

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

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

Commission of offence whilst under the influence of alcohol or drugs

Established evidence of community impact

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

Offences taken into consideration (TICs)

**Factors reducing seriousness or reflecting personal mitigation**

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

Single blow

Remorse

Good character and/or exemplary conduct

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

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

Isolated incident

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

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

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

Sole or primary carer for dependent relatives

### STEP THREE

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

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

### STEP FOUR

#### **Reduction for guilty pleas**

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

### STEP FIVE

#### **Totality principle**

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

### STEP SIX

#### **Compensation and ancillary orders**

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

### STEP SEVEN

#### **Reasons**

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

### STEP EIGHT

#### **Consideration for remand time**

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

# Common Assault

Criminal Justice Act 1988 (section 39)

# Racially/religiously aggravated common assault

Crime and Disorder Act 1998 (section 29)

---

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

Triable only summarily

Maximum (section 39): 26 weeks' custody

Triable either way

Maximum (section 29): 2 years' custody

Offence range: Discharge – 26 weeks' custody

## STEP ONE

### Determining the offence category

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

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

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

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

## STEP TWO

### Starting point and category range

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

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



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

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

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

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

**STEP FIVE****Dangerousness**

Racially/religiously aggravated common assault is a specified offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award an extended sentence.

**STEP SIX****Totality principle**

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

**STEP SEVEN****Compensation and ancillary orders**

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

**STEP EIGHT****Reasons**

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

**STEP NINE****Consideration for remand time**

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

# Annex:

## Fine bands and community orders

### FINE BANDS

In this guideline, fines are expressed as one of three fine bands (A, B or C).

<b>Fine Band</b>	<b>Starting Point</b> ( <i>Applicable to all offenders</i> )	<b>Category Range</b> ( <i>Applicable to all offenders</i> )
<b>Band A</b>	50% of relevant weekly income	25–75% of relevant weekly income
<b>Band B</b>	100% of relevant weekly income	75–125% of relevant weekly income
<b>Band C</b>	150% of relevant weekly income	125–175% of relevant weekly income

### COMMUNITY ORDERS

In this guideline, community sentences are expressed as one of three levels (low, medium and high).

A non-exhaustive description of examples of requirements that might be appropriate for each level is provided below. Where two or more requirements are ordered, they must be compatible with each other.

<b>LOW</b>	<b>MEDIUM</b>	<b>HIGH</b>
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> <li>• 40–80 hours unpaid work</li> <li>• Curfew requirement within the lowest range (e.g. up to 12 hours per day for a few weeks)</li> <li>• Exclusion requirement, without electronic monitoring, for a few months</li> <li>• Prohibited activity requirement</li> <li>• Attendance centre requirement (where available)</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• Greater number of hours of unpaid work (e.g. 80–150 hours)</li> <li>• An activity requirement in the middle range (20 to 30 days)</li> <li>• Curfew requirement within the middle range (e.g. up to 12 hours for 2–3 months)</li> <li>• Exclusion requirement, lasting in the region of 6 months</li> <li>• Prohibited activity requirement</li> </ul>	Suitable requirements might include: <ul style="list-style-type: none"> <li>• 150–300 hours unpaid work</li> <li>• Activity requirement up to the maximum of 60 days</li> <li>• Curfew requirement up to 12 hours per day for 4–6 months</li> <li>• Exclusion order lasting in the region of 12 months</li> </ul>

The tables above are also set out in the *Magistrates' Court Sentencing Guidelines* which includes further guidance on fines and community orders.



## NOTES

---



## Sentencing trends for common assault and ABH, 2007-2017<sup>1,2</sup>

### Proportion of adult offenders sentenced for common assault, by sentence outcome, all courts, 2007-2017<sup>3</sup>

Outcome	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Absolute and conditional discharge	20%	16%	13%	15%	15%	15%	15%	16%	15%	15%	14%
Fine	11%	11%	12%	11%	13%	14%	14%	15%	16%	16%	16%
Community sentence	42%	44%	46%	45%	43%	42%	39%	37%	39%	38%	39%
Suspended sentence	10%	10%	12%	12%	12%	11%	12%	12%	13%	14%	14%
Immediate custody	14%	15%	15%	14%	15%	15%	14%	14%	14%	14%	14%
Otherwise dealt with	4%	4%	2%	3%	3%	3%	5%	5%	3%	3%	3%

### Proportion of adult offenders sentenced for ABH, by sentence outcome, all courts, 2007-2017

Outcome	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
Absolute and conditional discharge	4%	3%	2%	2%	2%	2%	1%	1%	1%	1%	1%
Fine	3%	2%	2%	1%	2%	2%	1%	1%	1%	1%	1%
Community sentence	32%	32%	31%	32%	30%	23%	20%	17%	16%	15%	15%
Suspended sentence	28%	30%	31%	31%	31%	34%	36%	38%	41%	39%	38%
Immediate custody	29%	31%	32%	31%	34%	38%	40%	41%	39%	40%	42%
Otherwise dealt with	4%	3%	2%	2%	2%	1%	2%	2%	2%	2%	2%

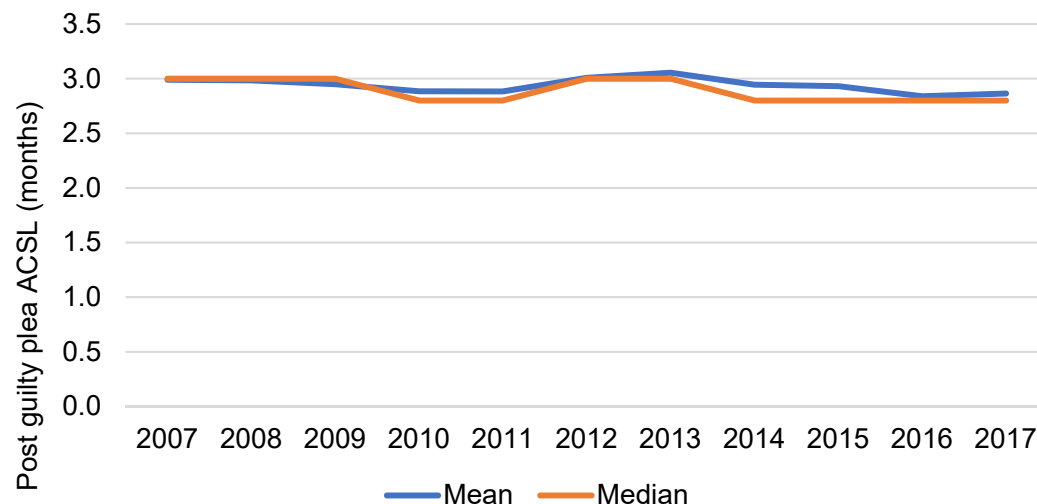
<sup>1</sup> Source: Court Proceedings Database, Ministry of Justice

<sup>2</sup> Excludes youths, section 29 offences (racially/religiously aggravated), and custodial sentences of over 6 months for common assault, and over 5 years for ABH (the statutory maximum sentences for these offences)

<sup>3</sup> Percentages may not add up to 100 per cent, due to rounding.

## Common assault sentence lengths

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

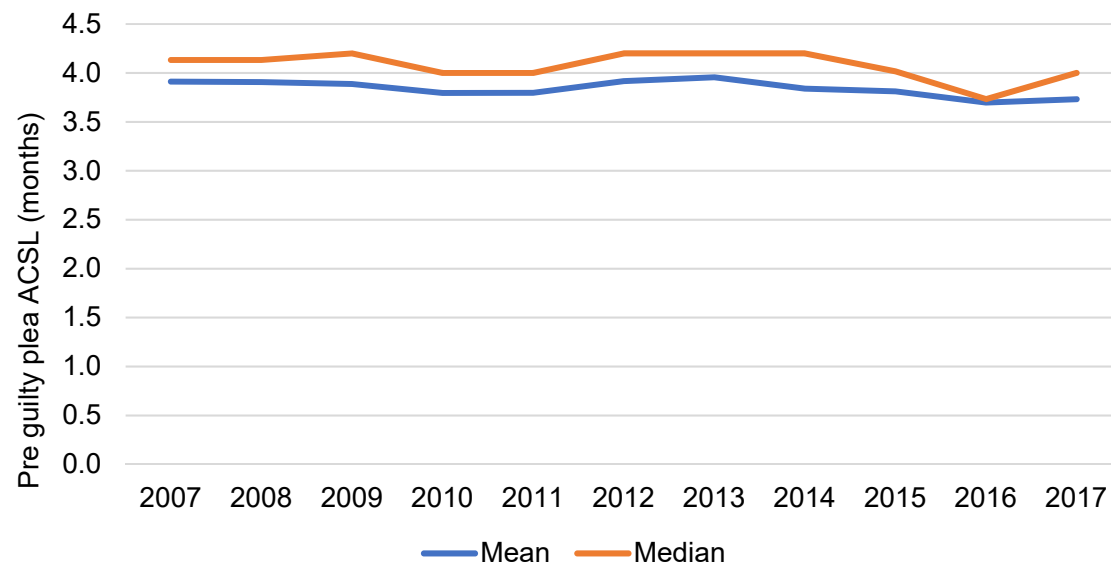


Post guilty plea sentence length bands received by adult offenders sentenced to immediate custody for common assault, all courts, 2007-2017<sup>4</sup>

Sentence length band	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
1 month or less	13%	13%	12%	13%	14%	13%	13%	14%	14%	16%	16%
Between 1 and 2 months	22%	21%	21%	22%	21%	19%	18%	20%	20%	21%	21%
Between 2 and 3 months	24%	23%	25%	25%	24%	23%	22%	22%	22%	23%	21%
Between 3 and 4 months	27%	27%	26%	24%	24%	25%	25%	23%	22%	21%	21%
Between 4 and 5 months	8%	10%	11%	10%	11%	13%	13%	13%	13%	12%	13%
Between 5 and 6 months	6%	6%	6%	5%	6%	8%	9%	8%	8%	8%	8%

<sup>4</sup> Sentence length bands do not include the lower bound, but do include the upper bound sentence length. For example, the category '1 month or less' includes sentence lengths less than and equal to 1 month, and 'Between 1 and 2 months' includes sentence lengths over 1 month, and up to and including 2 months.

**Estimated pre guilty plea average custodial sentence lengths (ACSLs) received by adult offenders sentenced to immediate custody for common assault, all courts, 2007-2017**



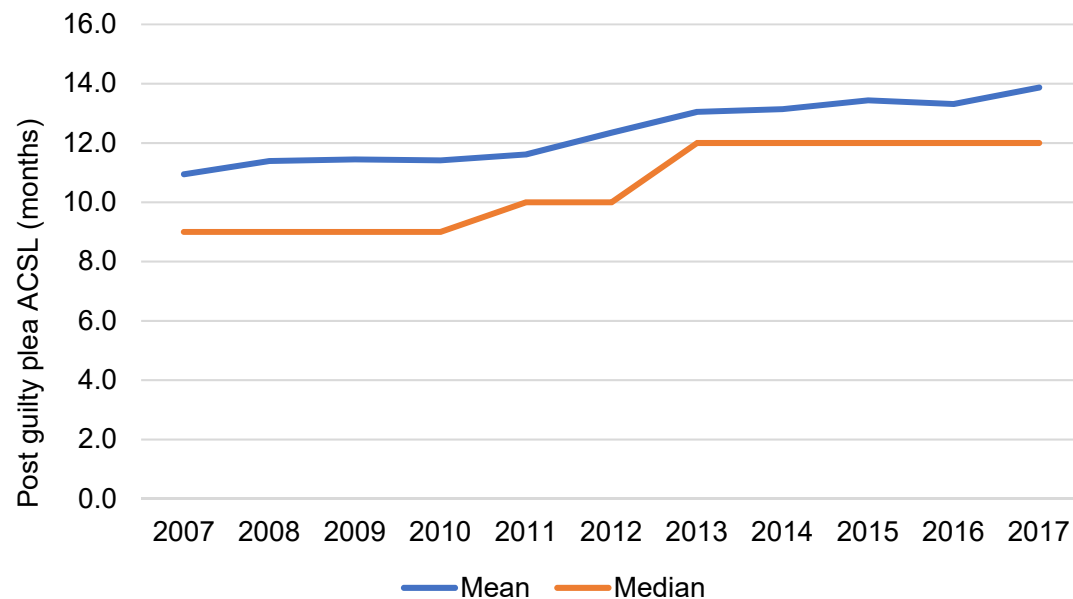
**Estimated pre guilty plea sentence length bands received by adult offenders sentenced to immediate custody for common assault, all courts, 2007-2017<sup>5</sup>**

Sentence length band	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
1 month or less	4%	4%	5%	5%	5%	5%	4%	5%	5%	6%	7%
Between 1 and 2 months	14%	13%	13%	13%	14%	13%	12%	14%	14%	15%	14%
Between 2 and 3 months	20%	20%	19%	20%	21%	17%	18%	19%	19%	20%	19%
Between 3 and 4 months	12%	12%	12%	12%	12%	12%	12%	11%	12%	11%	11%
Between 4 and 5 months	19%	19%	20%	20%	20%	20%	19%	20%	18%	19%	18%
Between 5 and 6 months	31%	32%	31%	29%	29%	33%	34%	32%	32%	29%	31%

<sup>5</sup> Sentence length bands do not include the lower bound, but do include the upper bound sentence length. For example, the category '1 month or less' includes sentence lengths less than and equal to 1 month, and 'Between 1 and 2 months' includes sentence lengths over 1 month, and up to and including 2 months.

## ABH sentence lengths

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

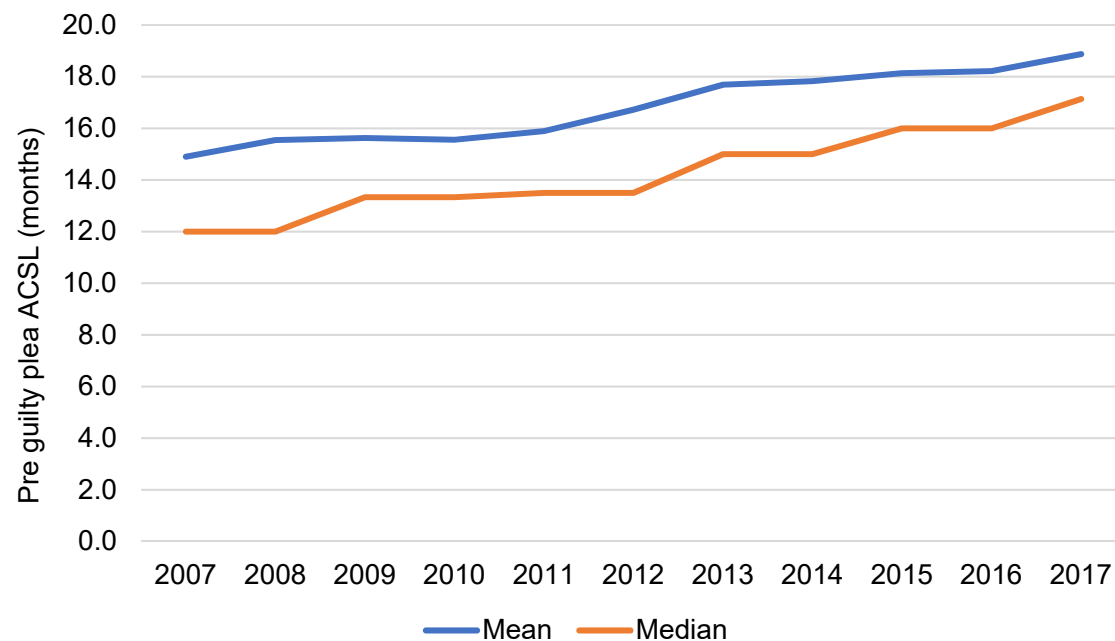


Post guilty plea sentence length bands received by adult offenders sentenced to immediate custody for ABH, all courts, 2007-2017<sup>6</sup>

Sentence length band	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
1 year or less	71%	70%	69%	70%	69%	65%	60%	59%	58%	57%	55%
Between 1 and 2 years	24%	25%	25%	26%	26%	29%	33%	34%	35%	35%	36%
Between 2 and 3 years	4%	5%	5%	4%	4%	5%	6%	6%	6%	7%	8%
Between 3 and 4 years	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
Between 4 and 5 years	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%

<sup>6</sup> Sentence length bands do not include the lower bound, but do include the upper bound sentence length. For example, the category '1 year or less' includes sentence lengths less than and equal to 1 year, and 'Between 1 and 2 years' includes sentence lengths over 1 year, and up to and including 2 years.

**Estimated pre guilty plea average custodial sentence lengths (ACSLs) received by adult offenders sentenced to immediate custody for ABH, all courts, 2007-2017**



**Estimated pre guilty plea sentence length bands received by adult offenders sentenced to immediate custody for ABH, all courts, 2007-2017<sup>7</sup>**

Sentence length band	2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017
1 year or less	51%	50%	49%	48%	46%	43%	38%	38%	37%	37%	37%
Between 1 and 2 years	34%	33%	35%	37%	38%	40%	43%	42%	42%	42%	38%
Between 2 and 3 years	12%	12%	12%	12%	12%	13%	15%	15%	17%	15%	19%
Between 3 and 4 years	2%	3%	3%	2%	2%	3%	4%	4%	4%	5%	5%
Between 4 and 5 years	1%	2%	1%	1%	1%	1%	1%	2%	1%	1%	1%

<sup>7</sup> Sentence length bands do not include the lower bound, but do include the upper bound sentence length. For example, the category '1 year or less' includes sentence lengths less than and equal to 1 year, and 'Between 1 and 2 years' includes sentence lengths over 1 year, and up to and including 2 years.

## Crown Court Sentencing Survey data for ABH offences, 2013 - 2015 (Q1)<sup>8,9</sup>

### Sentence table in Sentencing Council ABH definitive guideline

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

### Proportion of offenders placed in each offence category, Crown Court Sentencing Survey

Offence category	2013	2014	2015 Q1
	(n=3,422)	(n=3,781)	(n=932)
Level 1 (most serious)	37%	39%	42%
Level 2	54%	53%	50%
Level 3 (least serious)	9%	9%	8%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>



Around half of offenders sentenced in the Crown Court are placed within the middle category of seriousness. Over time there's been a shift towards more offenders being placed in the highest category.

### Proportion of offenders receiving each sentence outcome: Offence category 1 (most serious), Crown Court Sentencing Survey

Sentence outcome	2013	2014	2015 Q1
	(n=1,263)	(n=1,457)	(n=392)
Immediate custody	73%	68%	61%
SSO	25%	30%	36%
CO	2%	2%	3%
Conditional discharge	0%	0%	0%
Other	0%	0%	0%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

<sup>8</sup> Source: Crown Court Sentencing Survey, 2011-2015 (Q1)

<sup>9</sup> Excludes youths, section 29 offences (racially/religiously aggravated), and custodial sentences of over 5 years (the statutory maximum sentence for this offence)



**Proportion of offenders receiving each sentence outcome: Offence category 2 (middle category), Crown Court Sentencing Survey**

Sentence outcome	2013	2014	2015 Q1
	(n=1,847)	(n=1,997)	(n=464)
Immediate custody	34%	36%	30%
SSO	49%	49%	53%
CO	16%	14%	16%
Fine	0%	0%	0%
Conditional discharge	0%	0%	0%
Absolute discharge	0%	0%	0%
Other	0%	1%	1%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

**Proportion of offenders receiving each sentence outcome: Offence category 3 (least serious), Crown Court Sentencing Survey**

Sentence outcome	2013	2014	2015 Q1
	(n=312)	(n=327)	(n=76)
Immediate custody	12%	17%	13%
SSO	23%	30%	30%
CO	54%	42%	39%
Fine	4%	5%	5%
Conditional discharge	6%	6%	12%
Absolute discharge	0%	1%	0%
Other	1%	0%	0%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>



On average, around 40% of offenders in category 3 received a custodial sentence (immediate custody or SSO), which isn't in this category range.

**Post guilty plea mean ACSLs for offenders sentenced to immediate custody, Crown Court Sentencing Survey**

Offence category	ACSL in years		
	2013	2014	2015 Q1
Level 1 (most serious)	1.5	1.5	1.5
Level 2	0.8	0.8	0.8
Level 3 (least serious)	0.7	0.6	0.6

**Estimated pre guilty plea mean ACSLs for offenders sentenced to immediate custody, Crown Court Sentencing Survey**

Offence category	ACSL in years		
	2013	2014	2015 Q1
Level 1 (most serious)	2.0	2.0	2.0
Level 2	1.1	1.1	1.0
Level 3 (least serious)	0.9	0.7	0.8

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

**27 July 2018**  
**SC(18)JUL04 – Mental Health**  
**Rosa Dean**  
**Mandy Banks**  
**0207 071 5785**

## **1 ISSUE**

1.1 At the last meeting the Council considered an early draft of the guideline, and made a number of suggestions for rewording and amendments. The Council also discussed a number of objectives for the guideline, as set out below:

- to provide information and increase awareness, and assist sentencers to understand how mental health and other conditions affect culpability;
- to provide technical guidance about what is available in terms of disposals and to deal with distinctions and particular issues that can cause difficulty, e.g. distinction between learning difficulty and disability;
- to be useable in practical terms and not be too lengthy;
- to avoid increasing the number of reports/adjournments required; and
- possibly to affect resource allocation indirectly and the issues of sentencer confidence in community orders, related to practical problems of availability and issues within the probation system

1.2 In order to take the work further, Council recommended that officials visited a magistrates' court to speak to sentencers and mental health practitioners, to better understand the issues in that context, and to consider the report by the Prison Reform Trust. A visit to Camberwell Green magistrates court was made, and discussions held with District Judge Susan Green and a Consultant Forensic Psychiatrist who works at the court. A redraft of the guideline was prepared, and sent to Rosa, Rebecca and Tim for comment, ahead of the Council papers going out. Following this, all three members agreed that before going any further in trying to redraft the guideline, a review should be carried out of caselaw to establish what guidance has so far been given by the CACD, which would then form the basis of consideration of what topics the guideline should cover. Within the time available before the July Council meeting, a preliminary review of CACD cases was then conducted.

## 2 RECOMMENDATION

2.1 At this meeting the Council are asked:

- To note the review of CACD cases, attached at **Annex A**
- To consider what guidance the review has revealed, and to indicate if further work should be carried out, and if so, on what particular areas
- To consider and answer the key questions posed regarding the scope and focus of the guideline (paras 3.13-3.18)

## 3 CONSIDERATION

3.1 The draft guideline is attached at **Annex B**, but is attached for reference only-**it is not intended that it forms the basis of discussion at this meeting.** The changes that the Council asked for at the last meeting have been made, and it also incorporates some changes suggested by Rebecca and Rosa. However, as outlined in paragraph 1.2, it is suggested that the Council need to consider the review of caselaw before attempting to redraft the guideline any further.

### *Review of CACD cases*

3.2 A summary of the cases studied as part of the review is attached at **Annex A** (with key words/sentences bolded for emphasis). The search for relevant cases focused primarily on cases that considered issues pertaining to assessments of levels of culpability, one of the main areas of difficulty in providing guidance within the guideline. Cases 1-14 broadly discuss factors which were considered to make the offenders have greater culpability, and cases 16-24 factors which made the offenders have lesser culpability for their offences.

3.3 The factors that were highlighted that may increase culpability were:

- Offenders having insight into their illness
- Elements of premeditation or pre-planning for the offences
- Attempting to minimise their wrongdoing or to conceal their actions
- Drinking/taking drugs
- Not taking prescribed medication
- Committing violent offences long before the onset of any illness

3.4 The factors that were highlighted that may lesser culpability were:

- Offenders lacking insight into their illness
- Lack of compliance in taking medication being due to the mental illness

- Being unaware of the effects of drinking given their condition/the illness itself leading to drinking
- Due to an offender's disordered state it couldn't be said there was real premeditation/pre-planning
- That some conditions are latent for many years before clearly manifesting themselves, so may have been a factor in early offending pre- diagnosis

3.5 The contents of paragraphs 3.3 and 3.4 highlight that the review of CACD has revealed that for every factor that indicates greater culpability, there are arguments for the same factor to indicate lesser culpability, the issue of drinking, for example. Case no 24 in **Annex A**, *R v Przybylski*, is a good example of this, the sentencing Judge had assessed there was culpability, as the offender had been drinking alcohol. On appeal, it was found that culpability in fact was much reduced: it was the mental illness that drove him to drink; and he wouldn't have appreciated the disinhibiting effect of alcohol. In the discussion of the case of Knapper within case no 25, *R v Edwards*, the sentencing Judge had found that the offender knew his condition affected his behaviour, but had chosen to stop taking his medication because it affected his weight, and concluded he remained criminally responsible to a moderate degree. On appeal, it was found that his responsibility was low, as he had no reason to know that he would become violent if he failed to take prescribed drugs.

3.6 This leads to the conclusion that cases are very fact specific, and that providing guidance on this within the guideline cannot be prescriptive, but can only provide factors for courts to consider to what degree they affect levels of culpability in a case. It was noted during the review that the CACD will often remark that their decisions on a particular case were heavily fact specific, and would be unlikely to be of wider application. Or, in a case where a prison term was replaced with a community order, the court commented that '*it would not be right to say that a custodial sentence could never be justified in such a case*'. Similar comments were seen in other cases.

3.7 In the review of cases it has also been noted that often expert psychiatrists disagree about diagnosis and the extent to which any condition affected an offender's responsibility for their actions in a case.

**Question 1: What are the Council's views on what the review has revealed?**

3.8 The general principles set out in paragraph 34 in *R. v Edwards* (and as set out in case no 25 in **Annex A**) it is suggested should be referred to within the draft guideline. In addition, some of the principles relating to when a s.37/s.41 order may be appropriate to be included within the guidelines, as set out in paragraph 50(iii) in *R. v Vowles* (no 26 in *Annex A*). *Vowles*

also notes that a Judge should not feel circumscribed by psychiatric opinion, and the fact that two psychiatrists supported a s.37/41 order was never, alone, a reason to make one (paras 51-53).

**Question 2: Does the Council agree that the principles discussed above from Vowles and Edwards should be referred to within the guideline?**

3.9 The Council may recall that the draft guideline discussed last month gave guidance which suggested that mental disability could justify a reduction in sentence. Tim has commented that the draft gave no reference to caselaw to support this suggested approach. There is established case law (*R. v Bernard*, no 29 in the list at **Annex A**) that sets out the limited circumstances in which, and the limited extent to which, physical disability may justify a reduction in a prison sentence on the grounds that it makes the experience of imprisonment much harder for a particular offender than it is for most other offenders. May's Council paper had noted that the guideline may need to reflect the growing movement to deliver parity of esteem between physical and mental health, and relevant international obligations, such as the *UN Convention on the rights of persons with disabilities*<sup>1</sup> (2006), which was ratified by the UK in 2009.

3.10 The review of CACD cases so far has highlighted four cases in which the offenders' sentence was altered, one had a custodial sentence reduced, one an immediate custodial term replaced with a suspended sentence and two had their custodial sentences replaced by hospital orders, due to their mental disability, *R.v Khelifi*, *R. v Beaver*, *R. v Khan* and *R. v Smith*, nos 3, 28, 12 and 13 at **Annex A**.

3.11 The Council may also note that a factor relating to mental disorder/learning disability is already embedded into most guidelines, appearing as either a factor in lesser culpability, or as a mitigating factor. Accordingly, there is already precedence within guidelines for mental disorder/learning disability potentially reducing or otherwise altering sentences.

**Question 3: Does the Council feel that the caselaw identified so far provides sufficient basis for the guideline to give guidance on a) the appropriate circumstances in which culpability is reduced and thus can reduce sentence, and/or offender mitigation which can reduce or alter sentence in appropriate cases?**

**Question 4: If the Council does think there is sufficient basis, how should any guidance be given?**

---

<sup>1</sup> <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>.

3.12 The review of cases attached at **Annex A** does not claim to be a thorough and complete analysis of all possible relevant CACD cases, but only what it was possible to do in the time between the suggestion being made and the July Council meeting. It has nevertheless highlighted the difficulties and limitations in trying to find guidance from other sources that could be utilised to inform the guideline. It may be that caselaw will only be able to assist so far and the Council may have to set the agenda in providing guidance on these difficult issues. Over the summer the review of caselaw will continue. It would be helpful if the Council could indicate if there are other sources of guidance or particular areas of caselaw that it would be instructive to focus on, to further inform the development of the guideline.

***Question 5: Are there any other particular areas of caselaw or other sources of guidance that the Council think should be considered over the summer?***

3.13 The Council are also asked to consider at this stage some key questions to inform the work of the guideline over the summer. In previous Council discussions concern has been expressed about the guideline potentially widening the scope beyond what is appropriate, in considering an ever-increasing list of conditions that courts would be invited to consider might reduce an offender's culpability, and potentially affect/reduce sentence. As noted within para 4.1, CPD data does not include data about whether offenders have a mental disorder/learning disability, so it is difficult to know exactly in how many cases currently mental health has been an issue which may have made a difference to sentencing. It would be helpful to have an idea of the current numbers, in order to consider what effect the draft guideline might have in terms of numbers of cases affected, and how sentences might be affected. One possible way of getting an indicative idea of the proportions involved would be to conduct an analysis of case transcripts that the office holds for a number of different offences, to see how many have a mental health context, and if/how that has affected sentencing. This could be done over the summer, however it would only give indicative information, not precise numbers involved.

3.14 However, the Council are asked to consider, if the guideline would be thought to widen the scope and consider a wider list of conditions that previously courts would not have considered relevant in sentencing – is that wrong in principle? If the approach to be taken in a new guideline were to apply to a greater number of offenders than before such guidance existed, potentially affecting the sentence they receive, does that just reflect the numbers of these offenders coming before the courts and a wider awareness of the way in which the factors influence offending? The guideline would be providing assistance in areas courts are increasingly grappling with, which may either have the effect of a) reflecting how the courts are trying to take such factors into account (in which case it won't radically change sentencing practice or b) changing sentencing practice through increased awareness of relevant issues, which would be an appropriate outcome.

3.15 This guideline is, similarly to the Children and Young Persons guideline, focused on the *offender* - unlike the main body of guidelines which are focused on the *offence* - and which focus primarily on factors which make the offence more serious. The approach to this guideline has to be different, and perhaps reflects a growing focus towards a more offender centric perspective in sentencing, whether this is because of age, mental health or abuse the offender has suffered. The benefit of properly addressing the conditions which lie behind the offending would be to reduce further offending and protect the public, two of the purposes of sentencing.

***Question 6: Does the Council wish to try to limit the scope of the guideline? If so, are there areas or conditions that the Council does not want to include, so to try and restrict the numbers of offenders that the guideline might apply to? Or does the Council wish to develop the guideline based on best evidence, accepting the risk that it may apply to a large number of offenders?***

3.16 Related to the discussion about scope, is the issue of whether drug addiction should be included within the scope of the guideline. Rosa has suggested that it should be considered for inclusion. S1(3) of the Mental Health Act states that drug or alcohol dependence is not a mental disorder of itself, but may co-exist with a condition that is a mental disorder. Accordingly, the Council could decide to include drug addiction within scope, but perhaps not give equal weight to it, compared to other conditions.

***Question 7: Does the Council wish to include drug addiction within the scope of the guideline? If so, should equal weight be attached to it- compared to other conditions?***

3.17 Rebecca has also raised a question as to whether the earlier decision by the Council to exclude fitness to plead from the guideline should be revisited. She notes that there are other guidelines that are wider than sentencing, for example the Children and Young Persons guideline which deals with allocation. There are additional difficulties in the magistrates' courts as there is no fitness to plead procedure which can cause complications, so the draft guideline could address the options available in the magistrates' courts.

***Question 8: Does the Council wish to revise its decision on not including fitness to plead within the guideline?***

3.18 The Council are also asked how far, if at all, as part of the guideline, should consideration be given to the resources available for dealing with mental health and other conditions both within prison and the community? With other guidelines, particular sentences are included on the basis of what is appropriate for that offence, notwithstanding pressures on the prison population, for example. With this guideline, if MHTR are thought to be appropriate, should they be included as a potential disposal, even though currently take up is very low and there are issues with availability? Is it possible that if the guideline includes a particular



disposal, that resources may follow? The Council did indicate last month that one of the objectives was to potentially indirectly affect resource allocation and issues of sentence confidence in community orders (para 1.1).

***Question 9: Does the Council think it should consider resources available within and outside prisons as part of the guideline?***

*Update on the L&D scheme and the Community Sentence Treatment Requirement Protocol (CSTRP)*

3.19 Given the links between the work on the guideline and relevant work elsewhere within the Criminal Justice system, the Council may like to note updated information regarding the liaison and diversion (L&D) schemes that exist in police stations and the courts, following a discussion with officials at NHS England, who have responsibility for the schemes. The scheme places clinical staff at police stations and courts to provide assessments and referrals to treatment and support. Health information can then be shared so that charging and sentencing decisions can be tailored to meet needs. There is currently coverage within 83% of all police stations and magistrates' courts, with the aim to have 100% by 2019/2020. There is limited coverage within Crown Courts, currently the scheme is operational within 13 court centres, with Preston and Sheffield to commence operation within this financial year, and rollout to a further 16 centres between 2019-21.

3.20 There have been concerns raised that information from these assessments does not reach the court. One of the explanations given for this is that people do not consent for the information to be shared with the court (even though it may be in their best interest to do so), as they are happy to for their information to be used within a medical context, but not necessarily within the courts.

3.21 The CSTRP has been developed following concerns about the low use of treatment requirements. The CSTRP will build on the L&D assessment, amounting to a proper treatment plan, tailored for each individual offender as they pass through the criminal justice system and complete their sentence. It will also set out a new maximum waiting time for court-ordered treatment so that offenders will be able to hold agencies to account for the treatment they receive and these waiting times will be in line with those for the general population. The CSTRP is being tested in five areas across England, and there is currently a data collection phase of the evaluation underway, which is due to finish in the Autumn. There will then be a review by Ministers ahead of any further roll out.

#### **4 IMPACT/RISK**

4.1 In terms of the impact of the guideline, the CPD data, which is the court data usually used to develop guidelines, does not include information about whether the offender had a mental health disorder or learning difficulty. The A&R team is continuing to explore what other data is available in this area, including looking at the CCSS, to see if it contains any data to help assess the numbers involved/what the impact of the guideline might be. Officials are maintaining close links with officials in the MOJ and other Government departments to keep up to speed with developments on the various initiatives, the L&D scheme, CSTRP, review of the Mental Health Act, and so on.

***Question 10: is the Council content that the impact/risks have been sufficiently considered at this stage?***

## Annex A

### Review of relevant CACD cases

#### 1. R. v Fox [2011] EWCA Crim 3299

The imposition of a hybrid sentence comprising imprisonment for public protection and hospital and limitation directions under s.45A for offences of kidnapping and causing grievous bodily harm with intent was neither wrong in principle nor manifestly excessive where, although the offender had been suffering from an undiagnosed serious mental illness (paranoid schizophrenia), **criminal culpability was not wholly absent**, and the degree of harm caused together with the significant risk to the public of future serious harm was also taken into account.

#### 2. R. v Welsh [2011] EWCA Crim 73

A Judge had been right to sentence an offender suffering from schizophrenia, who had committed manslaughter on the grounds of diminished responsibility, to life imprisonment rather than make a hospital order under s.37 together with a restriction order under s.41 as, on the evidence, public confidence in the resolution of the case would not be met by a hospital order. The Judge concluded that W had a **bad record of violence before the onset of his illness**, and his **culpability for the unprovoked attack** with the need to protect public safety necessitated a life sentence.

#### 3. R. v Khelifi [2006] EWCA 770

Although medical evidence supported a hospital order, it was held that the Judge had correctly exercised his discretion instead to impose a prison sentence; there is no presumption that a hospital order will be made in these circumstances. The psychotic illness K suffered from had not been so severe at the time of the offences as **to disable him from his culpability for participation in a serious crime** (fraud). The five-year sentence was reduced to three and a half years, partly as the Appeal court had the benefit of evidence to show that a prison term **would be more onerous on K than it would on a person without his condition**.

#### 4. R. v Jenkin [2012] EWCA Crim 2557

Having pleaded guilty to GBH with intent, the appellant was sentenced to life imprisonment with a six-year minimum term, combined with a hospital direction and limitation direction under s.45A. He appealed unsuccessfully against sentence, arguing for a restricted hospital order or alternatively an IPP sentence. A life sentence should be reserved for those cases where the culpability of the offender is particularly high or the offence itself particularly grave, both were met in this case. The s45A hybrid order was appropriate as the criteria were met and the disorder was treatable, but when treatment was no longer necessary the risk to the public required that he be released from hospital to prison and for the Parole Board to make the release decision. It was found that J had **significant responsibility for the offence, before it he was drinking to excess, failing to take prescribed medication, he did not believe he was driven to commit the offence or was under threat, and sought to minimise/excuse his actions. He also had committed violent offences long before becoming delusional**.

#### 5. R. v Graciano [2015] EWCA Crim 980

A sentence of life imprisonment with a minimum term of 7.5 years, was appropriate for an offender who had pleaded guilty to manslaughter. Although psychiatrists recommended a hospital order with restrictions, and his mental illness was a significant contributory factor in causing him to act as he did, the offender retained some **significant elements of rationality**, such that the abnormality of mental functioning did not overwhelm him and he retained a **significant degree of culpability** for the killing. The Judge stated that he had taken account of the requirement for public confidence in his sentencing decision, and the appreciation of the different release regimes which applied to indeterminate sentences.

#### 6. R. v Quirk [2014] EWCA Crim 1052

A Judge had been entitled to impose a sentence of life imprisonment, coupled with hospital and limitation directions under s.45A, on an offender aged 63 who had pleaded guilty to damaging property being reckless as to whether life was endangered, despite medical evidence indicating that his criminal actions were attributable to his autistic spectrum disorder. It was held that the Judge had been right to assess Q's **culpability as high**, despite his condition, there had been a clear element of **planning in his conduct**, and when apprehended Q had sought **to minimise or conceal his wrong doing**. Although such awareness was possibly not entirely to be equated with responsibility, those matters could not simply be disassociated from the assessment of culpability.

#### 7. R. v Watson [2007] EWCA Crim 864

A sentence of five-and-a-half years' imprisonment imposed on a defendant following a conviction for causing death by dangerous driving was not manifestly excessive in the light of the aggravating features. Further, a medical report diagnosing attention deficit hyperactivity disorder **had not provided sufficient reason to reduce the culpability of the offender**. W had exacerbated the situation by **failing to stop and attempting to hide his responsibility** for the accident.

#### 8. R. v Whitnall [2006] EWCA Crim 2292

A defendant **could not seek to reduce culpability** for an offence of causing death by dangerous driving where he admitted the offence and had **insight into the mental illness** (mania/psychosis) that he suffered from at the time of the commission of the offence.

#### 9. R. v Cooper [2010] EWCA Crim 2335

An unsuccessful appeal against a s.45A order. C had been found guilty of manslaughter by reason of diminished responsibility and attempted murder. It was held that **C's responsibility for the crimes was diminished by his mental disorder (psychosis), but not wholly extinguished. A significant degree of responsibility remained**. It was noted that the **psychosis may have been stimulated by his misuse of illegal drugs, (amphetamines)**.

#### 10. R. v Nafei [2004] EWCA Crim 3228

Appeal against 12-year prison sentence for importation of drugs, in circumstances where the medical evidence supported a hospital order, was refused: the Judge had properly exercised his discretion, particularly since there was no causal connection between the mental illness (schizophrenia) and the offending; the 12-year term was not excessive.

#### **11. R. v Costin [2018] EWCA Crim 1381**

The offender had pleaded guilty to seven counts of doing an act tending and intended to pervert the course of justice, and had been sentenced to a community order for 3 years. The offender had autism, a personality disorder, PTSD, ADHD and pathological avoidance demand syndrome. At the time of sentencing the Judge was concerned about the risk of self-harm or suicide if C was given a custodial term, and decided the better option was to treat and divert her away from offending.

It was then referred by the Solicitor General under the unduly lenient scheme. The appeal court acknowledged the extent of the offender's difficulties but stated that the level of seriousness of these offences was such that it was not possible to impose upon her a community penalty, stating that the sentencing judge had placed too much emphasis on the offender's problems and difficulties and insufficient emphasis on the impact of her offences on the victims and for the criminal justice system as a whole. The sentence was increased to 4 years custody.

#### **12. R. v Khan [2017] EWCA Crim 174**

A sentence of five years' imprisonment imposed on K for offences involving fraud would be replaced by a s.37 hospital order given medical evidence as to his mental state (K had bipolar affective disorder) and the serious risk that he would attempt to commit suicide in prison. The Court had **rejected an argument for reduced culpability**, as there was no evidence that of the time of the offence K was affected by the disorder. However, the CACD stated that *'we make it plain that this decision is heavily fact specific and is most unlikely to be of wider application. In the ordinary case the existence of culpability will call for a custodial sentence, but in the circumstance of this case this is not a practical option'*.

#### **13. R. v Smith [2015] EWCA Crim 1685**

An offender's imprisonment for public protection (for unlawful wounding) was replaced with a hospital order under s.37. The offender had suffered mental illness (psychosis) that had **partially contributed to the commission** of the offence and, on the evidence, the court was satisfied that the medical route was better for protecting the public and achieving his return to the community. It was held that S's mental illness had played a significant part in the offence, along with drugs, alcohol and anger, **there was culpability, but not full culpability**. Punishment was required, but in his case it had been imposed and served, as he had spent 3 years in prison, during which time he was suffering very badly due to his mental illness.

#### **14. R. v S [2012] EWCA Crim 92**

An order under s.45A was the most appropriate sentence for an 18-year-old offender with Asperger syndrome who had been convicted of the rape of a teenage boy. The sentence of 10 years' detention would be served in hospital where the offender could receive medical treatment that would be difficult to provide under prison conditions. The Judge held that a s.37 hospital order would **neither properly reflect culpability** nor adequately protect the public, given that it was S's second serious specified offence.

#### **15. R. v Atkinson [2014] EWCA Crim 2010**

An indeterminate sentence of imprisonment for public protection with a minimum term of seven years was appropriate for an offence of wounding with intent involving a sudden attack on a 64-year-old man, where eight severe stab wounds had been inflicted. It had been open to the judge to conclude that the offender posed a risk of serious harm upon release. **Experts disagreed over the diagnosis, and whether the offence had been as a result of his illness, or had a criminal motive.**

#### **16. R. v Jefferson [2016] EWCA Crim 2023**

A sentence of life imprisonment with a minimum term of 10 years was appropriate following a conviction for attempted murder where the offender was suffering from a mental disorder requiring hospital treatment. The judge had not erred in finding that the mental disorder could be appropriately dealt with by imposing a sentence of imprisonment with a hospital and limitation direction under s.45A. However, the mental disorder (psychosis) was a significant factor which **lowered the offender's culpability**. Two psychiatrists stated that the **commission of the offence was directly linked to the illness**, and one stated that he believed the offence would not have taken place if J had not been ill.

#### **17. R. v Ledgard [2010] EWCA 1605**

A suspended 12-month term of imprisonment imposed on a bipolar disorder sufferer in respect of various driving offences was replaced by a community order. L had submitted that when he was in the manic phase of his disorder he had little if any control over what he was doing, so that **significantly reduced his culpability** and meant that the sentence would not work as a disincentive to further offending. It was held that in L's case a custodial sentence was not justified, **although the court stated it would not be right to say that a custodial sentence could never be justified in such a case.**

#### **18. AG's ref no 22 of 2011 (R. v Lloyd [2011] EWCA Crim 1473)**

A three-year community order imposed upon an offender suffering from mental ill-health who had attacked a man in a bar with a hammer was unduly lenient. Although the offender's mental health (depression, paranoia) **significantly reduced his culpability**, it did not eliminate it and his actions deserved retributive punishment. A sentence of five years' imprisonment was appropriate.

#### **19. R. v McFly [2013] EWCA Crim 729**

In setting a minimum term on a mandatory life sentence for murder, a Judge had erred in leaving the offender's anti-social personality disorder entirely out of account. The personality disorder was capable of being and was a relevant mitigating factor within Schedule 21 of the 2003 CJA Act. M submitted that the Judge had **overstated his culpability**, that it had been wrong to leave the disorder entirely out of account, and he should have had regard to it as a relevant mitigating factor, even if it had not **substantially diminished his responsibility**. The 24 year term was replaced with a minimum term of 21 years.

#### **20. R. v Semanshia [2015] EWCA Crim 2479**

A sentence of imprisonment rather than a hospital order had been appropriate for an offender notwithstanding psychiatric reports made after sentencing that indicated that he had paranoid schizophrenia. Even if evidence were to establish that the offender had been mentally unwell at offence and sentence, it would not follow that a hospital order should inevitably have been made. S had pleaded guilty to false imprisonment and GBH with intent. **Experts disagreed as to the extent to which culpability was reduced by his mental illness.**

#### **21. R. v Shaw [2015] EWCA Crim 1489**

A total sentence of 14 months' imprisonment for assault occasioning ABH, affray, and having an article with a blade or point was reduced to 10 months because the Judge had attributed insufficient weight to the offender's psychiatric condition before and at the time of the offending. S had a longstanding diagnosis of paranoid schizophrenia (of a mild severity) and generalised anxiety disorder. It was held that S's mental health problems, particularly his **lack of insight** at the time of the offences **served to lower his culpability** for what were otherwise violent offences which would merit a substantial custodial sentence.

#### **22. R. v Staines [2006] EWCA Crim 15**

There was no reason to quash a discretionary life sentence with a hospital and limitation direction under s.45A, and to substitute for it a hospital order under s.37 and s.41 of the Act where the offender, who had pleaded guilty to manslaughter by reason of diminished responsibility and had been diagnosed with a pathological borderline personality disorder, had later been diagnosed with a mental illness as well. A s.45A order did not, by its terms, preclude its application in cases where the offender suffered from both, and gave a better measure of control without impeding the offender's treatment.

#### **23. R. v Teasdale [2012] EWCA Crim 2071**

Two sentences of discretionary life imprisonment imposed following convictions in 1998 and 2000 for violent offences were replaced on appeal with hospital and restriction orders under s.37 and s.41 as those orders would have been the correct disposal at sentence had the offender's paranoid schizophrenia been identified at the time. The appeal court heard expert evidence that T had significant symptoms of psychosis from as early as the 1990s and that it **was highly likely that his subsequent criminal behaviour had been influenced by that illness.** There was good reason why the expert evidence was not available at the time, namely T's complete refusal to engage with any psychological assessment.

#### **24. R. v Przybylski [2016] EWCA Crim 506**

A sentence of imprisonment together with a direction under s.45A would not adequately protect the public from an offender with serious mental health problems who was at high risk of relapsing into a psychotic state, and who had stabbed a woman after he had been drinking in an unprovoked attack. A s.37 hospital order together with a s.41 restriction order would better protect the public. The appeal court found that that P's **culpability was reduced.** It was **the mental illness which drove him to drink on the morning of his offence and because of his disordered state it could not properly be said that P had premeditated** his attack upon the victim. **P probably would not have realised the disinhibiting effect of alcohol.**

## **25. R. v Edwards [2018] EWCA Crim 595**

The court summarised the general principles to be considered by those representing and those sentencing offenders with mental health problems that might justify a s.37 hospital order, s.41 order, a finding of dangerousness and/or a s.45A order. The court reviewed the statutory framework and case law, and summarised the general principles set out below to be considered by those representing and sentencing offenders with mental health problems that might justify a hospital order, a finding of dangerousness and/or a s.45A order.

- (a) consideration as to whether a hospital order was appropriate under s.37(2);
- b) if yes, the judge should then consider all available sentencing options, including a s.45A order. This had to be considered before making a hospital order because a disposal under s.45A included a penal element and the court had to have "sound reasons" for departing from the usual course of imposing a sentence with a penal element;
- (c) in deciding on the most suitable disposal, the judge had to bear in mind the importance of the penal element of a sentence;
- (d) in deciding whether a penal element was necessary, the judge should assess the offender's culpability and the harm caused by the offence. The fact that an offender would not have committed the offence but for their mental illness **did not necessarily relieve them of all responsibility for their actions**;
- (e) a failure to take prescribed medication was not necessarily a culpable omission. It might be attributable in whole or in part to the offender's mental illness;
- (f) a judge deciding to impose a hospital order under s.37 or s.41 had to explain why a penal element was inappropriate;
- (g) the regimes for release of an offender on licence from a s.45A order and for an offender subject to s.37/s.41 orders were different, but the latter did not necessarily offer a greater protection to the public, as might have been assumed in *Ahmed* and/or by the parties in the instant cases. Each case turned on its own facts;
- (h) if an offender wanted to call fresh psychiatric evidence in their appeal against sentence to support a challenge to a hospital order, a finding of dangerousness or a s.45A order, they should lodge a s.23 application. If the evidence was the same as before the sentencing judge, he was unlikely to admit it;
- (i) grounds of appeal should identify with care each of the grounds the offender wanted to advance. An applicant/appellant wishing to add grounds not considered by the single judge should make an application to vary.

The court also commented that a level of misunderstanding of the guidance offered in *Vowles* appeared to have arisen as to the order in which a judge should approach the making of a s.37 or s.45A order and the precedence allegedly given in *Vowles* to a s.45A order. While s.45A could have been better drafted, the position was clear: s.45A and *Vowles* does not provide a "default" setting of imprisonment, as some had assumed.

## **26. R v Vowles [2015] EWCA Crim 45**

The court gave guidance on the approach to be taken in sentencing offenders suffering from mental disorder who had received indeterminate sentences of imprisonment specifying a minimum term so as to strike an appropriate balance between ensuring treatment in a



hospital and protecting the public. A judge should not feel circumscribed by psychiatric opinion, and the fact that two psychiatrists supported a s.37/41 order was never, alone, a reason to make one (paras 51-53).

A hospital and restriction order under s.37/41 is more likely to be appropriate in a case where the mental disorder is a severe mental illness (particularly a psychotic illness or an organic brain disorder) rather than a personality disorder. That is because it is more likely that such an illness may have a direct bearing on the offender's culpability and because the illness is likely to be more responsive to treatment in a hospital. In contradistinction it is more difficult to attribute a reduction in culpability to a personality disorder and at present individuals with severe personality disorders are less likely to benefit from hospitalisation (para 50 iii).

### **27. R v Birch [1990] 90 Cr. App. R.78**

Case that notes that an offender detained under s37 order passes out of the penal system into the hospital regime. Where sentencer considers that notwithstanding the mental disorder there was an element of culpability which merits punishment a prison sentence can be justified.

### **28. R. v Beaver [2015] EWCA Crim 653**

Although a sentence of three years' imprisonment imposed on an 82-year-old man for the manslaughter of his wife was neither wrong in principle nor manifestly excessive, mercy required that a 24-month term of imprisonment suspended for 24 months with a 12-month residential and mental health requirement be imposed instead. The offender had been the sole carer of his wife, who had dementia; he was in the early stages of dementia himself; and the strain of caring for his wife and serving part of his sentence had led to a decline in his physical and mental health.

### **29. R. v Bernard**

B, aged 63, appealed against sentence of five years' imprisonment for being knowingly concerned in the fraudulent evasion of the prohibition on the importation of a Class B drug, 27.7 kilograms of cannabis. B argued that the six year starting point used by the judge was too high and that the judge had not given sufficient consideration to mitigating factors, particularly B's medical condition. B suffered from a narrowing of the oesophagus, causing difficulty in swallowing, diabetes and hyper-tension. The appeal was allowed, and the sentence reduced to three and a half years' imprisonment, that (1) considering the quantity of cannabis involved, the starting point was too high and (2) B's medical condition was taken into account as an act of mercy by the court.

The following principles for considering the medical condition of offenders were set out by the judge:

(a) the Secretary of State could release a prisoner by means of the royal prerogative of mercy if his medical condition affected his life expectancy or the prison's ability to provide satisfactory treatment. However, the threat of such occurrences at a future date did not provide a reason for interference with an appropriate sentence by the Court of Appeal;

(b) HIV positive offenders and others with a reduced life expectancy

could not expect a reduced sentence;

(c) a reduced sentence was not automatically available to those with a serious medical condition even when the illness was difficult to deal with in prison, and

(d) a court could impose a reduced sentence on an offender with a serious medical condition but it would be as an act of mercy rather than as a result of a principle of law,

# Sentencing Council

## Overarching Principles: Mental Health<sup>1</sup>

---

<sup>1</sup> Working title- precise title to be decided in due course

### **Applicability of guidelines**

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 xx and older, who are sentenced on or after xxxx, regardless of the date of the offence.

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

“Every court -

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

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

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

### **Scope of the Guideline**

1. This guideline identifies the principles relevant to the sentencing of offenders who have:

- A mental disorder
- A learning disability
- A learning difficulty
- Autism Spectrum Disorder
- An acquired or traumatic brain injury
- Dementia

Further information on these can be found within **Annex C**.

2. The guideline seeks to assist courts in assessing culpability and personal mitigation and to assist with identifying an appropriate sentence. Courts should focus on what the available

evidence says about the **nature, extent and effect of the impairment** experienced by the offender at the relevant time. The presence of any of the conditions listed in paragraph one **may** be relevant to sentencing, but in some cases the condition will have **no relevance to sentence**.

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.

### **Sentencing principles**

3. There are a wide range of mental health conditions and developmental disorders, and the level of impairment caused will vary between individuals, for this reason the approach to sentencing should be individualistic and focused on the particular issues relevant to each case.

In particular:

- care should be taken to avoid making assumptions, as unlike some physical conditions, many mental health conditions or learning disabilities are not easily visible
- no inference should necessarily be drawn if an offender had not previously been formally diagnosed (albeit a formal diagnosis **will be required** for a condition to be considered at sentencing)
- 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 'dual diagnosis'.
- 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

4. If an offender has any of the conditions listed in paragraph 1, this may affect their level of responsibility for an offence, and it may also impact upon the suitability of sentencing options in the case. For this reason, when it appears to the court that a condition may be relevant to culpability or disposal, sentencers may seek further information. The relevance of any condition will depend on the nature, extent and effect of the condition on an individual and the circumstances of the particular offences(s). Before considering ordering a new report, courts should utilise all existing sources of information, such as from probation, defence representatives, court mental health teams or GP records. New reports should only be

necessary when a hospital order is being considered, or else in **exceptional** cases. Further information about request for reports<sup>2</sup> can be found at **Annex B** of this document.

5. In cases where custody is the only option for an offender as hospital disposals are not appropriate, then courts should forward psychiatric pre-sentence reports to the prison, to ensure that the prison has appropriate information about the offender's condition and can ensure their welfare.
6. Courts should always be alive to the impact of a condition for the defendant to understand and participate in proceedings. To avoid misunderstandings, which could lead to further offences, (or recall) 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, within the Equal Treatment Bench Book:

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

### **Assessing Culpability – offence mitigation**

7. Courts should refer to offence specific guidelines to assess culpability, in conjunction with the following guidance. The presence of any of the conditions listed within paragraph 1 may impact on an offender's level of culpability, in some cases potentially very significantly, in others the condition will 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 nature and seriousness of the offence (taking into account the level of intent required for the offence), it is not possible to be prescriptive in this regard. However courts may find the following list helpful, of ways in which impaired mental functioning may reduce culpability:

Impaired mental functioning at the time of the offending may reduce the offender's culpability if it had the effect of:

- Impairing the offender's ability to exercise appropriate judgement
- Impairing the offender's ability to make calm and rational choices, or to think clearly
- Making the offender disinhibited
- Impairing the offender's ability to understand the consequences of their actions

---

<sup>2</sup> S.157 Criminal Justice Act 2003 may apply- see further details in Annex B

**This is not an exhaustive list.**

***Acts or omissions by the offender***

8. Any assessment of culpability must be made with reference to the medical diagnosis and all the relevant information available to the court. The degree to which the offender's acts or omissions contributed to the impact of their condition at the time of the offence may be a relevant consideration. For example, where an offender exacerbates their condition by voluntarily abusing drugs or alcohol or by voluntarily failing to seek or follow medical advice this may increase responsibility. In considering the extent to which the offender's behaviour was voluntary, the extent to which a condition has an impact on the offender's ability to have an insight into their condition, or exercise self-control or to engage with medical services will be relevant.

***Undiagnosed/untreated conditions***

9. The degree to which the condition was undiagnosed and/or untreated may be a relevant consideration. For example, where an offender has sought help but not received appropriate treatment this may reduce culpability.

***Purposes of sentencing***

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. The sentence should go some way to fulfilling all of those considerations, however particularly important is the punishment *and* the rehabilitation of an offender. Just because an offender has a mental health condition, it does not mean they should not be punished, particularly in serious offences where protection of the public is paramount. Equally, 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 to punishment. In a case where an offender's culpability was low, the sentence may be more weighted to rehabilitation.

**Deciding on the appropriate sentence - offender mitigation**

12. The court will need to consider as potentially significant mitigation that an offender's condition at the point of sentence could have a bearing on the type of sentence that is imposed, as set out below:

- 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.
- Being in prison can exacerbate poor mental health and in some cases increase the risk of self-harm, and for some prisoners their condition may mean a custodial sentence may have a greater punitive effect than it would for a prisoner without the condition.
- Some levels 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. If there was a serious risk of imprisonment having a gravely adverse effect on the offender's mental health, courts will need to consider this risk very carefully, in exceptional cases potentially looking at alternatives to custody, and potentially stepping outside of the guideline for sentence. Where the offence is very serious and culpability high, custody may be inevitable but the condition may still properly impact on sentence length. Courts should refer to any medical evidence or expert reports on this point to assist them.

14. Courts should consider whether a community order with a mental health treatment requirement (MHTR) might be appropriate (where available).

- 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 may be appropriate where the defendant's culpability is substantially mitigated 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.
- It is not usually suitable for an offender who is unlikely to comply with the treatment or who has a chaotic lifestyle.



## **Sentencing disposals**

15. Relevant mental health disposals/orders are listed below (further details on each are at **Annex A**).

### **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 Courts**

- 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 order

### **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 responsibility assessed at step one.

#### **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

### Mental Health Treatment Requirement (section 207 CJA 2003)

<b>May be made by:</b>	A magistrates' court or Crown Court
Where an offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under section 207 of the Criminal Justice Act 2003 may be appropriate. The offender should express a willingness to comply with the requirement.	

### Hospital order (section 37)

<b>May be made by:</b>	A magistrates' court or Crown Court	
<b>In respect of a defendant who is:</b>	<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)
<b>If the court is satisfied</b>	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"> <li>• 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</li> <li>• appropriate medical treatment is available.</li> </ul>	
<b>And the court is of the opinion</b>	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	
<b>And it is also satisfied</b>	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, essentially, 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.

**Effect of unrestricted hospital orders on patients once detained [section 40(4)]**

The hospital order lasts for six months initially, but can be renewed. The initial six month maximum period of detention runs from the day that the hospital order is made by the court, Patients admitted under a hospital order may not apply to the Tribunal until six months after the date of the making of the order (assuming the order is then renewed).

<b>Restriction Order (section 41)</b>	
<b>A restriction order (section 41) may be imposed by the Crown Court if a hospital order has been made and:</b>	
<b>If</b>	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
<b>And, having regard to</b>	<ul style="list-style-type: none"> <li>• the nature of the offence</li> <li>• the antecedents of the offender, and</li> <li>• the risk of the offender committing further offences if set at large</li> </ul>
<b>The Court thinks</b>	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.

**Hospital and limitation direction (section 45A)**

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).

<b>Hospital and limitation directions (section 45A)</b>	
<b>May be given by:</b>	Crown Court
<b>In respect of a person who is</b>	Aged 21 or over and convicted before that court of an offence punishable with imprisonment (other than murder)
<b>If the court is satisfied</b>	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"> <li>• 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</li> <li>• appropriate medical treatment is available</li> </ul>
<b>And the Court</b>	Has first considered making a hospital order under section 37, but has decided instead to impose a sentence of imprisonment
<b>And it is also satisfied</b>	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.

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 be 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. 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 Secretary of State 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 Secretary of State 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 Secretary of State 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.

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

<b>Guardianship order (section 37)</b>		
<b>May be made by</b>	a magistrates' court or the Crown Court	
<b>In respect of a person who is aged 16 or over and who is</b>	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 summary conviction with custody or	convicted before that court for an offence punishable with imprisonment (other than murder)

	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	
<b>if the court is satisfied</b>	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	
<b>and the court is of the opinion</b>	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	
<b>and it is also satisfied</b>	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.

## **Annex B**

Requests for psychiatric reports should only be necessary in a **limited amount of cases**. If asking for a report courts should make the request sufficiently 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
- 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.

When requested by Clinicians wanting to undertake an inpatient assessment, courts may wish to consider using interim hospital orders (s.38 MHA). Further information on requests for reports can be found within the Criminal Procedure Rules, which can be found here:

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

### **Power to order reports- Magistrates courts**

There are limited additional powers to order reports in the Magistrates courts. S.11 Powers of Criminal Courts (Sentencing) Act 2000<sup>3</sup> provides for ordering a report, but it is only post conviction or finding of fact. Section 19 of the Prosecution of Offences Act 1985<sup>4</sup> plus Regulation 25(1) The Costs in Criminal Cases (General) Regulations 1986<sup>5</sup> allows for payment out of central funds to a duly qualified medical practitioner who provides a report.

---

<sup>3</sup> <https://www.legislation.gov.uk/ukpga/2000/6/section/11>

<sup>4</sup> <https://www.legislation.gov.uk/ukpga/1985/23/section/19>

<sup>5</sup> <https://www.legislation.gov.uk/uksi/1986/1335/regulation/25/made>



**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.

(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] <sup>1</sup> 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

- **A mental disorder** – such as (but not limited to) schizophrenia, bipolar disorder, depression, anxiety, post-traumatic stress disorder (PTSD), or personality disorders. These conditions can affect thought, feelings and behaviour. Conditions can be short or long term, some conditions can fluctuate, and a range of symptoms can be experienced.
- **A learning disability** – a life long condition which includes significant impairment of intelligence (an IQ of less than 70) and social functioning (a reduced ability to cope independently and adapt to the daily demands of a normal social environment). A learning disability can range from mild, moderate to severe. It may mean someone has limited language ability, comprehension and communication skills, be acquiescent and suggestible and have difficulty understanding social norms.
- **A learning difficulty** – such as dyslexia, Attention Deficit Hyperactivity Disorder (ADHD), or Attention Deficit Disorder (ADD). A learning difficulty is different to a learning disability as it is unrelated to intelligence. Symptoms can include impulsiveness, inability to relate to others in socially acceptable ways, inability to express feelings and emotions in an appropriate way or to be able to think clearly.
- **Autism Spectrum Disorder** – (including Asperger’s syndrome) a lifelong developmental disability that affects how people communicate and relate to others, and make sense of the world. Aspects of the condition can be social naivety, difficulty with change or unexpected events, misunderstanding of social cues, adherence to rules and lack of insight into behaviour. It may be characterised by a lack of empathy or a limited ability to express emotion.
- **An acquired or traumatic brain injury** – an injury caused to the brain since birth, (from falls, or road accidents or illness, such as a tumour or stroke). Injuries can range from mild to severe, severe brain injury can cause complex long-term problems such as impaired reasoning, impaired insight into behaviour, loss of control over behaviour and inappropriate behaviour.
- **Dementia** – a syndrome associated with an ongoing decline of brain functioning, such as Alzheimer’s disease or vascular dementia. Symptoms can be difficulty in

controlling emotions, loss of empathy with others, difficulty with social interaction, problems with memory and in some cases, experiencing hallucinations.

Further information about any of these conditions can be found here:

<https://www.nhs.uk/conditions/>.

Blank page

# Sentencing Council

**Sentencing Council meeting:** 27 July 2018  
**Paper number:** SC(18)JUL05 - MCSG  
**Lead Council member:** TBC  
**Lead official:** Ruth Pope  
0207 071 5781

## **1 ISSUE**

1.1 The Magistrates Court Sentencing Guidelines (MCSG) were updated in 2016 and all summary only offences are now in Sentencing Council format with the exception of those that are part of guidelines that are to be updated as part of ongoing projects (for example public order). Most either way offences that appear in the MCSG will also be updated in the same way. There remain eight guidelines in the MCSG which date from 2008 for either way offences that are not part of a current guideline project.

1.2 The Council has a stated aim of replacing all SGC guidelines with Sentencing Council guidelines by 2020. Although these guidelines appear only in the MCSG at present, once updated they would appear also in the online Crown Court guidelines. Currently the guidelines simply say 'Crown Court' for any sentence that is outside magistrates' courts sentencing powers; a fuller guideline would give sentences across the full range. This would be useful to the Crown Court but also importantly provide greater assistance to magistrates when making allocation decisions.

1.3 Some of these guidelines might be suitable for inclusion in forthcoming guidelines. If the remainder are to be retained they will need to be updated and consulted on separately. The Council will be asked to consider whether to prioritise either a driving offences guideline or an immigration and modern slavery offences guideline – both of which could incorporate some of the guideline(s) covered by this paper.

## **2 RECOMMENDATION**

2.1 The Council is asked to:

- Decide which of the guidelines should be retained and updated
- Decide which of driving offences or immigration/ modern slavery offences to prioritise on the Council's work plan.
- Decide whether to proceed with work on any guideline that might later become part of a larger project.

### 3 CONSIDERATION

#### *The offences*

3.1 The guidelines under consideration (which are provided at Annex A) are:

1. Firearm, carrying in a public place
2. Vehicle licence/registration fraud
3. Aggravated vehicle-taking (damage caused to property other than the vehicle in accident or damage caused to vehicle)
4. Aggravated vehicle-taking (dangerous driving or accident causing injury)
5. Dangerous Driving
6. Identity documents – possess false/another's/improperly obtained
7. Trade mark, unauthorised use of etc.
8. Witness intimidation

#### *Carrying a firearm*

3.2 Carrying a firearm in a public place is likely to be included within the firearms guideline subject to decisions made at the July Council meeting. The recommendation is not to include this offence in the revision of the MCSG either way offences.

**Question 1: Does the Council agree to consider this offence as part of the firearms guideline?**

#### *Vehicle registration fraud*

3.3 Vehicle licence/registration fraud contrary to s44 of the Vehicle Excise and Registration Act 1994 is now rarely prosecuted presumably because of changes to the legislation in 2014 which reflected the removal of the requirement to display a 'tax disc' and less reliance being placed on paper documents generally. The offence now relates only to a number plate, trade plate or registration document and so should be described as 'Vehicle registration fraud'. The number of cases has dropped from 859 in 2006 to 38 in 2016 but appears to have increased slightly to 66 in 2017. Most cases (55 out of 66 in 2017) are sentenced in magistrates' courts where the only sentence available is a fine (the volumes for 2017 may be inaccurate as they show 10 sentences that would be unlawful). Historically, even when the number being dealt with overall was much higher only a few have been sentenced in the Crown Court where the maximum sentence is two years' imprisonment and of those only one or two a year are sentenced to immediate custody. The existing guideline is at Annex A page A3.

3.4 The options for this offence are to delete it from the MCSG as no longer required or to update it. The fact that this is an offence where the available sentence in magistrates' courts is different from that that in the Crown Court suggests that the guideline may continue to be useful. The relative rarity of this offence may also be a reason why sentencers would find a guideline helpful.

## **Question 2: Does the Council wish to retain and update the vehicle registration fraud guideline?**

### *Aggravated vehicle taking*

3.5 Aggravated vehicle taking where damage is caused under £5,000 is treated as summary only. There were 1,099 cases sentenced in 2017 (832 adults and 267 youths). Volumes have been falling from a high of 2,422 in 2009. The current guideline in the MCSG (at Annex A page A5) applies also to aggravated vehicle taking where damage is caused over £5,000 – but the guideline merely recommends committal to the Crown Court.

3.6 Aggravated vehicle taking where the vehicle was driven dangerously or injury was caused is always either way. There were 836 cases sentenced in 2017 (638 adults and 198 youths – these figures include cases of damage over £5,000). Volumes have been falling since 2005 when there were 2,962 cases. The current guideline is at Annex A page A7.

### *Dangerous driving*

3.7 Dangerous driving is a relatively high volume offence with 3,829 offenders sentenced in 2017 (3,592 adults and 237 youths). Most adults (2,613) were sentenced in the Crown Court, the vast majority receiving custodial sentences. The current guideline is at Annex A page A9.

3.8 There is also a definitive SGC guideline for offences of causing death by driving published in 2008. The Council planned to revise this guideline by 2020 to bring it into Sentencing Council format and to widen the scope to include newer offences (causing serious injury by dangerous driving and causing serious injury by disqualified driving) and to take account of the change to causing death by disqualified driving which has increased the statutory maximum from two years to ten years. The delay in tackling this has been caused by uncertainty around plans to change legislation.

3.9 In 2017 following a public consultation the Government announced plans to:

- introduce life sentences for causing death by dangerous driving, and for careless driving while under the influence of drink or drugs; and
- create a new offence of causing serious injury through careless driving.

3.10 No such legislation has been introduced and had it appeared unlikely that there would be an opportunity to do so in the foreseeable future. Officials had been preparing to recommend to the Council that now would be a good time to start work on a driving guideline. However, we have learnt that the Department for Transport is about to consult on a review of legislation around cycling safety and it seems likely that this will include plans for legislative change to introduce offences of dangerous and careless cycling causing death or injury in

order to bring cycling into line with driving offences. If there is a consultation in the next few months, any legislation following from that consultation could potentially be introduced from April next year. More details may be available by the time of the meeting, but if a Bill were to be introduced next year, it is likely that consideration would be given to making the planned changes to driving offences at the same time as introducing cycling offences.

3.11 It is difficult to predict how wide any legislative changes would be, as this is an area where individual Members of Parliament may seek to introduce amendments to Government legislation which could attract widespread support. The effect of this uncertainty is that if the Council were to commence work on a guideline for driving offences at this time there is a distinct possibility that relevant new offences could be introduced and the statutory maxima for others could change during the development of the guideline. However, it should be stressed that there is no certainty that any legislation that impacts on a driving offences guideline will actually be introduced next year.

*Identity documents – possess false/another's/improperly obtained*

3.12 Identity document offences in the MCSG (Annex A page A11) relate to the Identity Cards Act 2006 which is no longer in force. There is an equivalent offence contrary to the Identity Documents Act 2010 (IDA) and it seems likely that the MCSG guideline is referred to when sentencing these cases. In 2017 there were 133 offenders (including two youths) sentenced for offences of possessing or controlling a false or improperly obtained identity document (s6 IDA) which carries a maximum sentence of 2 years. There were also 627 offenders (including two youths) sentenced for offences of possessing or controlling identity documents with intent (s4 IDA) which carries a statutory maximum sentence of 10 years.

3.13 The next guideline on the current work plan is immigration and modern slavery offences. The Council has received requests to produce guidelines on various offences within this area ranging from providing unauthorised immigration advice to human trafficking offences. It is envisaged that the revision of the guideline for identity document offences could be included in the scope of this project.

3.14 The volumes of offending involved are smaller than for driving offences but there are no known plans to legislate in this area (further enquiries will be made to confirm this and an update will be provided at the meeting). It is likely that a scoping paper for the next project will be put before the Council late in 2019.

3.15 To summarise, the benefits of prioritising driving offences are:

- these are high volume, high profile offences
- there is an existing SGC guideline that requires updating



- courts would be assisted by a guideline in sentencing offences that can be technically difficult and which raise difficult issues such as the proportionality of sentencing in an area where high harm can be combined with low culpability
- the guideline has been on the Council's work plan for many years albeit always subject to confirmation of the legislative plans.
- there is no certainty that if the guideline were to be delayed that any legislative changes will in fact be made and the Council could be in the same situation in a year's time.

3.16 The benefits of prioritising an immigration/ modern slavery guideline are:

- It is on the current work plan
- There is a demand for guidelines in this area
- The legislation is more settled
- The relatively low volumes mean that sentencers will not be familiar with the offences and so would benefit from guidance.
- Modern slavery is a high profile area.

**Question 3: Does the Council wish to proceed as planned with an immigration and modern slavery guideline or should work commence on a driving offences guideline?**

**Question 4: Depending on the answer to 3 above:**

- Should aggravated vehicle taking and/or dangerous driving be revised independently of a wider driving guideline?**
- Should the Identity document guideline be revised independently of a wider immigration offences guideline?**

*Unauthorised use of trade mark*

3.17 Unauthorised use of a trade mark is sentenced chiefly in magistrates' courts (273 cases in 2017 against 106 cases sentenced in the Crown Court). Overall the volume of cases has been steadily decreasing from 928 in 2006 to 379 in 2017. The statutory maximum is 10 years but sentences in excess of three years are unusual with the majority of offenders in 2017 receiving non-custodial sentences. The current guideline is at Annex A page A13.

3.18 This is an offence that sentencers are unlikely to have much experience of sentencing and a more comprehensive guideline could assist magistrates to retain more cases.

**Question 5: Does the Council agree to revise the guideline for unauthorised use of a trademark?**

### *Witness intimidation*

3.19 Witness intimidation numbers fluctuate but volumes are generally decreasing. In 2017 402 offenders (including 30 youths) were sentenced for either intimidating or threatening a witness or juror; 243 of these were sentenced in the Crown Court. In addition in 2017 there were approximately 245 offenders sentenced for witness intimidation as a secondary offence. The statutory maximum is five years and around half of offenders were sentenced to immediate custody. The current guideline is at Annex A page A15. This is a serious offence which has factors in common with breach of bail, harassment, threats to kill, public order offences and common assault but does not neatly fit within any of those guideline groupings.

**Question 6: Does the Council agree to revise the guideline for witness intimidation?**

#### **4 IMPACT AND RISKS**

4.1 The offences being considered in this paper are diverse and the risks of revising or not revising each of them varies. One risk of leaving any of these guidelines in the 'old' format is that it is confusing to sentencers and it over complicates the online MCSG as it necessitates providing user guides for two types of guideline.

4.2 There are reputational risks of leaving any guidelines that date from 2008 unrevised and it is difficult to justify providing a guideline for magistrates' courts but not the Crown Court.

4.3 Conversely there are risks in terms of wasting resources of commencing work on a project that may need to be suspended or revised in the light of legislative changes.

**Question 7: Are there any other risks that the Council wishes to highlight?**

## Firearm, carrying in a public place

Firearms Act 1968, s.19

Effective from: 04 August 2008

Triable either way (but triable only summarily if the firearm is an air weapon)

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 7 years (12 months for imitation firearms)

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Carrying an unloaded air weapon	Low level community order	Band B fine to medium level community order
Carrying loaded air weapon/imitation firearm/unloaded shot gun without ammunition	High level community order	Medium level community order to 26 weeks custody (air weapon) Medium level community order to Crown Court (imitation firearm, unloaded shot gun)
<i>Carrying loaded shotgun/carrying shot gun or any other firearm together with ammunition for it</i>	<i>Crown Court</i>	<i>Crown Court</i>

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

The following may be particularly relevant but **these lists are not exhaustive**

##### Factors indicating higher culpability

1. Brandishing the firearm
2. Carrying firearm in a busy place
3. Planned illegal use

##### Factors indicating greater degree of harm

1. Person or people put in fear
2. Offender participating in violent incident

##### Factors indicating lower culpability

1. Firearm not in sight
2. No intention to use firearm
3. Firearm to be used for lawful purpose (not amounting to a defence)

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**

**Offender mitigation**

- Genuine remorse
- Admissions to police in interview
- Ready co-operation with authorities

**Consider a reduction for a guilty plea**

**Consider ancillary orders**, including compensation, forfeiture or suspension of personal liquor licence and football banning order (where appropriate)

**Decide sentence**

**Give reasons**

## Vehicle licence/registration fraud

Vehicle Excise and Registration Act 1994, s.44

**Effective from:** 04 August 2008

Triable either way

Maximum when tried summarily: Level 5 fine

Maximum when tried on indictment: 2 years

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Use of unaltered licence from another vehicle	Band B fine	Band B fine
Forged licence bought for own use, or forged/ altered for own use	Band C fine	Band C fine
Use of number plates from another vehicle; or Licence/number plates forged or altered for sale to another	<i>High level community order (in Crown Court)</i>	<i>Medium level community order to Crown Court</i>  <b>Note:</b> <i>community order and custody available only in Crown Court</i>

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

The following may be particularly relevant but **these lists are not exhaustive**

##### Factors indicating higher culpability

1. LGV, PSV, taxi etc.
2. Long-term fraudulent use

##### Factors indicating greater degree of harm

1. High financial gain
2. Innocent victim deceived
3. Legitimate owner inconvenienced

##### Factors indicating lower culpability

1. Licence/registration mark from another vehicle owned by defendant
2. Short-term use

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**

**Offender mitigation**

- Genuine remorse
- Admissions to police in interview
- Ready co-operation with authorities

**Consider a reduction for a guilty plea**

**Consider ancillary orders, including compensation**

**Consider disqualification from driving and deprivation of property (including vehicle)**

**Decide sentence**

**Give reasons**

## Vehicle taking (aggravated). Damage caused to property other than the vehicle in accident or damage caused to vehicle

Theft Act 1968, ss.12A(2)(c) and (d)

**Effective from:** 04 August 2008

Triable either way (triable only summarily if damage under £5,000)

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years

- Must endorse and disqualify for **at least** 12 months
- Must disqualify for **at least** 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – see explanatory material on [obligatory disqualification](#) and consult your legal adviser for further guidance

If there is a delay in sentencing after conviction, consider interim disqualification

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Exceeding authorised use of e.g. employer's or relative's vehicle; retention of hire car beyond return date; minor damage to taken vehicle	Medium level community order	Low level community order to high level community order
Greater damage to taken vehicle and/or moderate damage to another vehicle and/or property	High level community order	Medium level community order to 12 weeks custody
Vehicle taken as part of burglary or from private premises; severe damage	18 weeks custody	12 to 26 weeks custody (Crown Court if damage over £5,000)

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

The following may be particularly relevant but **these lists are not exhaustive**

##### Factors indicating higher culpability

1. Vehicle deliberately damaged/destroyed
2. Offender under influence of alcohol/drugs

##### Factors indicating greater degree of harm

1. Passenger(s) carried
2. Vehicle belonging to elderly or disabled person
3. Emergency services vehicle
4. Medium to large goods vehicle
5. Damage caused in moving traffic accident

**Factors indicating lower culpability**

1. Misunderstanding with owner
2. Damage resulting from actions of another (where this does not provide a defence)

**Common aggravating and mitigating factors**

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**

**Offender mitigation**

- Genuine remorse
- Admissions to police in interview
- Ready co-operation with authorities

**Consider a reduction for a guilty plea**

**Consider ancillary orders, including compensation**

**Decide sentence**

**Give reasons**



## Vehicle taking (aggravated). Dangerous driving or accident causing injury

Theft Act 1968, ss.12A(2)(a) and (b)

**Effective from:** 04 August 2008

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years; 14 years if accident caused death

- Must endorse and disqualify for **at least** 12 months
- Must disqualify for **at least** 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – refer to explanatory material on [obligatory disqualification](#) and consult your legal adviser for further guidance

If there is a delay in sentencing after conviction, consider interim disqualification

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Taken vehicle involved in single incident of bad driving where little or no damage or risk of personal injury	High level community order	Medium level community order to 12 weeks custody
Taken vehicle involved in incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area	18 weeks custody	12 to 26 weeks custody
Taken vehicle involved in prolonged bad driving involving deliberate disregard for safety of others	<i>Crown Court</i>	<i>Crown Court</i>

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

The following may be particularly relevant **but these lists are not exhaustive**

##### Factors indicating higher culpability

1. Disregarding warnings of others
2. Evidence of alcohol or drugs
3. Carrying out other tasks while driving
4. Carrying passengers or heavy load
5. Tiredness
6. Trying to avoid arrest

7. Aggressive driving, such as driving much too close to vehicle in front, inappropriate attempts to overtake, or cutting in after overtaking

**Factors indicating greater degree of harm**

1. Injury to others
2. Damage to other vehicles or property

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**

**Offender mitigation**

- Genuine remorse
- Admissions to police in interview
- Ready co-operation with authorities

**Consider a reduction for a guilty plea**

**Consider ancillary orders, including compensation**

**Decide sentence**

**Give reasons**

## Dangerous driving

Road Traffic Act 1988, s.2

**Effective from:** 04 August 2008

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years

- Must endorse and disqualify for at least 12 months. Must order extended re-test
- Must disqualify for at least 2 years if offender has had two or more disqualifications for periods of 56 days or more in preceding 3 years – refer to [disqualification guidance](#) and consult your legal adviser for further guidance

If there is a delay in sentencing after conviction, consider interim disqualification

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Single incident where little or no damage or risk of personal injury	Medium level community order	Low level community order to high level community order Disqualify 12 – 15 months
Incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area;		
OR	12 weeks custody	High level community order to 26 weeks custody Disqualify 15 – 24 months
Single incident where little or no damage or risk of personal injury but offender was disqualified driver		
<i>Prolonged bad driving involving deliberate disregard for safety of others;</i>		
OR		
<i>Incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area, by disqualified driver;</i>	Crown Court	Crown Court
OR		
<i>Driving as described in box above while being pursued by police</i>		

**B. Consider the effect of aggravating and mitigating factors (other than those within examples above)**

The following may be particularly relevant but **these lists are not exhaustive**

**Factors indicating higher culpability**

1. Disregarding warnings of others
2. Evidence of alcohol or drugs
3. Carrying out other tasks while driving
4. Carrying passengers or heavy load
5. Tiredness
6. Aggressive driving, such as driving much too close to vehicle in front, racing, inappropriate attempts to overtake, or cutting in after overtaking
7. Driving when knowingly suffering from a medical condition which significantly impairs the offender's driving skills
8. Driving a poorly maintained or dangerously loaded vehicle, especially where motivated by commercial concerns

**Factors indicating greater degree of harm**

1. Injury to others
2. Damage to other vehicles or property

**Factors indicating lower culpability**

1. Genuine emergency
2. Speed not excessive
3. Offence due to inexperience rather than irresponsibility of driver

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**

**Offender mitigation**

- Genuine remorse
- Admissions to police in interview
- Ready co-operation with authorities

**Consider a reduction for a guilty plea**

**Consider ancillary orders, including compensation and deprivation of property**

**Decide sentence**

**Give reasons**

## Identity documents – possess false/ another's/ improperly obtained

Identity Cards Act 2006, s.25(5) (possession of a false identity document (as defined in s.26 - includes a passport))

**Effective from:** 04 August 2008

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 2 years (s.25(5))

Note: possession of a false identity document with the intention of using it is an indictable-only offence (Identity Cards Act 2006, s.25(1)). The maximum penalty is 10 years imprisonment.

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Single document possessed	Medium level community order	Band C fine to high level community order
Small number of documents, no evidence of dealing	12 weeks custody	6 weeks custody to Crown Court
Considerable number of documents possessed, evidence of involvement in larger operation	Crown Court	Crown Court

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

The following may be particularly relevant but **these lists are not exhaustive**

##### Factors indicating higher culpability

1. Clear knowledge that documents false
2. Number of documents possessed (where not in offence descriptions above)

##### Factors indicating greater degree of harm

1. Group activity
2. Potential impact of use (where not in offence descriptions above)

##### Factor indicating lower culpability

1. Genuine mistake or ignorance

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**

**Offender mitigation**

- Genuine remorse
- Admissions to police in interview
- Ready co-operation with authorities

**Consider a reduction for a guilty plea**

**Decide sentence**

**Give reasons**

## Trade mark, unauthorised use of etc.

Trade Marks Act 1994, s.92

**Effective from:** 04 August 2008

Triable either way

Maximum when tried summarily: Level 5 fine and/or 6 months

Maximum when tried on indictment: 10 years

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Small number of counterfeit items	Band C fine	Band B fine to low level community order
Larger number of counterfeit items but no involvement in wider operation	Medium level community order, plus fine*	Low level community order to 12 weeks custody, plus fine*
High number of counterfeit items or involvement in wider operation e.g. manufacture or distribution	12 weeks custody	6 weeks custody to Crown Court
Central role in large-scale operation	<i>Crown Court</i>	<i>Crown Court</i>

**\*This may be an offence for which it is appropriate to combine a fine with a community order. Consult your legal adviser for further guidance.**

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

The following may be particularly relevant but **these lists are not exhaustive**

##### Factors indicating higher culpability

1. High degree of professionalism
2. High level of profit

##### Factor indicating greater degree of harm

1. Purchasers at risk of harm e.g. from counterfeit drugs

##### Factor indicating lower culpability

1. Mistake or ignorance about provenance of goods

##### Common aggravating and mitigating factors

**Form a preliminary view of the appropriate sentence, then consider offender mitigation**

**Offender mitigation**

- Genuine remorse
- Admissions to police in interview
- Ready co-operation with authorities

**Consider a reduction for a guilty plea**

**Consider ancillary orders, including compensation**

**Decide sentence**

**Give reasons**



## Witness intimidation

Criminal Justice and Public Order Act 1994, s.51

**Effective from:** 04 August 2008

Triable either way

Maximum when tried summarily: 6 months or level 5 fine

Maximum when tried on indictment: 5 years

**Where offence committed in domestic context, [refer to guidance](#)**

### Offence seriousness (culpability and harm)

#### A. Identify the appropriate starting point

Starting points based on first time offender pleading not guilty

Examples of nature of activity	Starting point	Range
Sudden outburst in chance encounter	6 weeks custody	Medium level community order to 18 weeks custody
Conduct amounting to a threat; staring at, approaching or following witnesses; talking about the case; trying to alter or stop evidence	18 weeks custody	12 weeks custody to Crown Court
Threats of violence to witnesses and/or their families; deliberately seeking out witnesses	<i>Crown Court</i>	<i>Crown Court</i>

#### B. Consider the effect of aggravating and mitigating factors (other than those within examples above)

The following may be particularly relevant but **these lists are not exhaustive**

##### Factors indicating higher culpability

1. Breach of bail conditions
2. Offender involves others

##### Factors indicating greater degree of harm

1. Detrimental impact on administration of justice
2. Contact made at or in vicinity of victim's home

#### Form a preliminary view of the appropriate sentence, then consider offender mitigation

##### Offender mitigation

- Genuine remorse
- Admissions to police in interview
- Ready co-operation with authorities

**Consider a reduction for a guilty plea**

**Consider ancillary orders, including compensation**

**Decide sentence**

**Give reasons**

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

**27 July 2018**  
**SC(18)JUL06 – Firearms**  
**Maura McGowan**  
**Sophie Klinger**  
**07976 300962**

## **1 ISSUE**

1.1 This paper presents the first consideration of the firearms guideline, and asks the Council to consider the scope of the project.

1.2 There are four further meetings scheduled to discuss these guidelines, including sign off of the consultation version to be agreed at the January 2019 Council meeting. The consultation is scheduled to run from April to July 2019, and the definitive guideline to be published in April 2020.

1.3 Evidence to support the development of the new guideline is at **Annex A**. This annex contains volumes over time, sentence outcomes, and ACSLs for adult offenders, and volumes of offenders under 18, for the most common offences.

## **2 RECOMMENDATION**

- That the Council agrees the scope of the guideline
- That the Council agrees the groupings of the guidelines
- That the Council agrees not to produce a separate guideline for children and young people
- That the Council agrees to develop guidance on the statutory minimum sentence for firearms offences and exceptional circumstances proviso

## **3 CONSIDERATION**

3.1 The Council previously decided to include the development of guidelines on firearms offences on its work plan for 2018-19. Currently there is one existing guideline within the MCSG covering the offence of carrying a firearm in a public place (see **Annex B**). This guideline was not updated as part of the MCSG project. There are no guidelines for any other firearms offences.

3.2 Although relatively low volume, firearms is an area of serious offending with several offences carrying statutory maxima of 10 years or life. Firearms legislation is complex with 35 statutes governing the use of firearms as well as numerous pieces of secondary legislation.

A further complexity is introduced by the five year minimum sentence that applies to certain firearms offences, unless there are exceptional circumstances.

3.3 The Law Commission reviewed firearms legislation in 2015 and recommended codification, due to the complexity, volume and incoherence of the legislative provisions. The CPS noted in their submission to the Law Commission that “firearms law is an area of law that consistently, possibly more than any other area of law, causes difficulties for charging lawyers”. The Policing and Crime Act 2017 made some clarifying amendments to the main legislation. According to the Home Office, the Government supports the principle of codification but has no present plans to pursue it due to other priorities. In the absence of steps to codify the law, stakeholders consider that sentencing guidelines would provide some helpful clarification in this area.

3.4 There are no other upcoming legislative changes that would preclude the development of a guideline. The Offensive Weapons Bill, which had its second reading on 27 June, will reclassify two further types of firearm (high energy and rapid firing rifles) and bump stock devices as prohibited weapons under s5 of the Firearms Act 1968. The Home Office is also planning to lay regulations this year which will prohibit certain antique firearms. It is expected the new guideline can be drafted to accommodate any future changes to prohibited weapons.

3.5 To inform the proposals in this paper, I have reviewed offence volumes and held discussions with stakeholders, including the CPS, Home Office, National Police Chiefs’ Council Criminal Use of Firearms group, National Crime Agency, Law Commission, and the National Ballistics Intelligence Service. Colleagues have also had an informal discussion with judges at the Birmingham Crown Court.

3.6 The leading firearms sentencing case is *R v Avis* (1998).<sup>1</sup> *Avis* gives guidance on which offences will generally merit a custodial sentence and sets out a series of questions to consider in determining the appropriate level of sentence (see **Annex C**). Subsequent guideline decisions have covered possession with intent to endanger life<sup>2</sup> in 2009 and transfer of prohibited weapons and ammunition<sup>3</sup> in 2016. Anecdotally, sentencers have commented that these authorities are helpful but do not cover all types of cases, such as possession by a person acting as a custodian, and further guidance on sentence levels would be useful.

---

<sup>1</sup> *R v Avis* (1998) 1 Cr. App. R. 420

<sup>2</sup> *R v Wilkinson* (2009) EWCA Crim 1925 (16 October 2009)

<sup>3</sup> *Attorney-General’s Reference (Nos. 128-141 and 8-10 of 2015) (R v Stephenson)* [2016] 2 Cr. App. R. (S.) 12

*Proposed scope of the guideline*

3.7 There are numerous firearms offences, more than 400 in total, although many are very low volume or appear not to be used at all. The offences are mainly contained within the Firearms Act 1968 with some in other legislation. Broadly, firearms offences can be divided into two categories:

- offences involving the criminal use of firearms, generally prohibited firearms listed in section 5, and
- more minor offences within the licensing regime governing lawful firearms use.

3.8 This section sets out the proposed scope of the guideline. The high number of individual offences mean that it is not feasible to produce a comprehensive guideline covering all offences. It is proposed that the guideline should focus on the higher volume offences, criminal rather than licensing offences, offences with the highest maximum penalties, and on those where stakeholders have indicated sentencing guidance would be particularly helpful. Accordingly, offences have been divided below into three categories: offences recommended to be in scope; additional offences that the Council may wish to be in scope, where considerations point either way; and offences recommended to be out of scope.

*Offences recommended to be in scope*

3.9 Table 1 below sets out the main firearms offences. Guidance does not currently exist for these offences, except the MCSG guideline for the s19 offence, which requires updating.

<b>TABLE 1</b>					
<b>Guide-line group</b>	<b>Legislation</b>	<b>Section</b>	<b>Offence description</b>	<b>Statutory maximum</b>	<b>Volumes (2017)<sup>4</sup></b>
1	Firearms Act 1968	5(1) (a)-(af), (c)	Possess / purchase / acquire a prohibited weapon / ammunition	10 years (Indictable only)	MC: 0 CC: 54 <b>Total: 54</b>
	Firearms Act 1968	5(1)(b)	Possess / purchase / acquire a weapon for the discharge of a noxious liquid / gas / other thing (includes electrical incapacitation devices / stun guns)	10 years (Either way)	MC: 204 CC: 143 <b>Total: 347</b>
	Firearms Act 1968	5(1A)(a)	Possess / purchase firearm disguised as other object	10 years (Indictable only)	MC: 0 CC: 138 <b>Total: 138</b>
	Firearms Act 1968	5(1A)(b)-(g)	Possess / purchase / sell or transfer military equipment	10 years (Either way)	MC: 1 CC: 220 <b>Total: 221</b>

<sup>4</sup> Number of adult offenders sentenced in 2017 (principal offences).

<b>TABLE 1</b>					
<b>Guide-line group</b>	<b>Legislation</b>	<b>Section</b>	<b>Offence description</b>	<b>Statutory maximum</b>	<b>Volumes (2017)<sup>4</sup></b>
2	Firearms Act 1968	16	Possess firearm or ammunition with intent to endanger life / enable another to do so	Life (Indictable only)	MC: 0 CC: 77 <b>Total: 77</b>
3	Firearms Act 1968	16A	Possess firearm with intent to cause fear of violence	10 years (Indictable only)	MC: 3 CC: 261 <b>Total: 264</b>
4	Firearms Act 1968	19	Carry firearm in a public place	7 years  12 months for imitation firearm  (Summary except if the firearm is a specified prohibited firearm; summary if firearm is an air weapon)	MC: 155 CC: 48 <b>Total: 203</b>

3.10 **Possession of prohibited weapons (Guideline group 1):** Sections 5(1) and (1A) set out the types of weapons that are prohibited such as automatic-firing weapons, pump action rifles and rocket launchers. These are offences of strict liability. They span a range of offending from large-scale possession of highly dangerous firearms as part of organised crime, through to a younger or vulnerable person storing a weapon on behalf of another through fear. Possession under s5 forms a large proportion of firearms offences as a whole. While many of these are Crown Court cases, around half are for s5(1)(b) (possession of weapon for discharge of noxious substance), generally used for possession of stun guns. The majority of s5(1)(b) offences are sentenced in the magistrates' courts.

3.11 Sentencing is made more complex by the fact that the five year minimum sentence applies to certain offences under s5 but not others, e.g. possession of a stun gun will attract the mandatory minimum when sentencing for s5(1A)(a) (possession of a disguised firearm), but not for s5(1)(b) (possession of weapon for discharge of noxious substance). Where the minimum applies, the sentencing range is narrow, i.e. 5 to 10 years.

3.12 **Possession with intent (Guideline groups 2 and 3):** There are several possession with intent offences. The most common are s16 (possession with intent to endanger life) and s16A (possession with intent to cause fear of violence). The latter is one of the highest volume firearms offences. The remaining possession with intent offences are much lower in volume (see table 2 below). These offences carry high statutory maxima, of life for s16 and 10 years for s16A. The five year minimum will apply where the firearm is one of a specified type from section 5(1) or 5(1A). The s16 offence is sometimes charged in possession involving larger scale organised criminal offending instead of a trafficking/distribution offence.

3.13 **Carrying in a public place (Guideline group 4):** This offence under s19 covers possession in a public place of a loaded shotgun, an air weapon (whether loaded or not), any other firearm together with ammunition, or an imitation firearm. There is a defence of lawful authority or reasonable excuse. The offence is relatively high volume and is often sentenced in the magistrates' courts, particularly where an air weapon or imitation firearm is involved. Again the five year minimum sentence will apply where the firearm is one of a specified type from section 5(1) or (1A).

3.14 It is recommended to include all of the offences in table 1 above within the new firearms guideline. There is currently no guidance for any of these offences except the outdated MCSG guideline for the s19 offence. Stakeholders including the Home Office, law enforcement and CPS support improved guidance in these areas. Including these offences will ensure that guidance is available to sentencers for the highest volume offences.

**Question 1: Does the Council agree to include all of the offences in table 1 within the guideline?**

*Additional offences that could fall within scope*

3.15 There are several other offences the Council may wish to include within the firearms guideline. Table 2 below sets out the details for these offences. Overall, the offences in table 2 are all of significantly lower volume than the offences in table 1, aside from possession without a firearms certificate, but carry high maximum penalties. If the Council prefers a narrower guideline focused on higher volume firearms offences, the offences in table 1 only could be included. Alternatively, some or all of the offences in table 2 could be added if a broader, more comprehensive guideline is preferred.

TABLE 2					
Guide-line group	Legislation	Section	Offence description	Statutory maximum	Volumes (2017) <sup>5</sup>
5	Firearms Act 1968	1(1)(a), (b)	Possess a firearm / ammunition without a certificate  Aggravated form: Possess shortened shotgun; or thing converted into a firearm	5 years  7 years for aggravated form (Either way)	MC: 29 CC: 82 <b>Total: 111</b>
	Firearms Act 1968	2(1)	Possess shotgun without a certificate	5 years (Either way)	MC: 22 CC: 19 <b>Total: 41</b>
6	Firearms Act 1968	4(1)	Shorten shotgun barrel - less than 60.96 cm / 24 ins	7 years (Either way)	MC: 0 CC: 1 <b>Total: 1</b>
	Firearms (Amendment) Act 1988	6(1)	Shorten smooth-bore gun barrel of section 1 firearm	5 years (Either way)	
	Firearms Act 1968	4(3)	Convert thing / imitation firearm into a firearm	7 years (Either way)	MC: 0 CC: 0 <b>Total: 0</b>
7	Firearms Act 1968	4A(1) <sup>6</sup>	Possession of articles for conversion of imitation firearms	5 years (Either way)	[New in 2018]
8	Firearms Act 1968	5(2A)(a)	Manufacture weapon / ammunition in section 5(1)	Life (Indictable only)	MC: 0 CC: 0 <b>Total: 0</b>
9	Firearms Act 1968	5(2A)(b)	Sell / transfer prohibited weapon	Life (Indictable only)	MC: 0 CC: 19 <b>Total: 19</b>
	Firearms Act 1968	5(2A)(c)	Possess prohibited weapon for sale / transfer	Life (Indictable only)	MC: 0 CC: 5 <b>Total: 5</b>
	Firearms Act 1968	5(2A)(d)	Purchase / acquire for sale / transfer	Life (Indictable only)	MC: 0 CC: 1 <b>Total: 1</b>
10	Customs and Excise Management Act 1979	50(3), (4) and (5A)(a)	Import prohibited weapons / ammunition with intent to evade a prohibition / restriction	Life (Either way)	MC: 3 CC: 2 <b>Total: 5</b>
	Customs and Excise Management Act 1979	170(1)(b) and (3), (3), and (4A)(a)	Fraudulent evasion of prohibition / restriction	Life (Either way)	MC: 0 CC: 3 <b>Total: 3</b>

<sup>5</sup> Number of adult offenders sentenced in 2017 (principal offences).

<sup>6</sup> New offence under the Policing and Crime Act 2017; came into force 2 May 2018.



TABLE 2					
Guide-line group	Legislation	Section	Offence description	Statutory maximum	Volumes (2017) <sup>5</sup>
2 (with s16 offence – see table 1)	Firearms Act 1968	17(1)	Use of firearms to resist arrest	Life (Indictable only)	MC: 0 CC: 1 <b>Total: 1</b>
	Firearms Act 1968	17(2)	Possess firearm while committing a Schedule 1 offence	Life (Indictable only)	MC: 0 CC: 16 <b>Total: 16</b>
	Firearms Act 1968	18(1)	Carry firearm or imitation firearm with intent to commit indictable offence	Life (Indictable only)	MC: 1 CC: 16 <b>Total: 17</b>
11	Firearms Act 1968	21	Possess a firearm when prohibited for life / five years due to previous conviction	5 years (Indictable only)	MC: 20 CC: 28 <b>Total: 48</b>

3.16 **Possession without a certificate:** This applies when the firearm concerned is not prohibited under s5 but requires a firearms certificate to hold it lawfully. It is a strict liability offence. It could be committed in the context of criminal activity, or by a person who is otherwise engaged in lawful, licensed use of firearms but fails to have the required certificate for this particular weapon. The aggravated form of the offence (for converted firearms still falling within s1) attracts a statutory maximum of seven rather than five years. This is the only firearms licensing offence it is suggested the Council may wish to include, due to its slightly higher volumes; the other licensing offences are extremely low volume. It appears that possession without a certificate is often charged as a secondary offence.<sup>7</sup> Around a third of these offences are sentenced in the magistrates' courts. There is lower demand from stakeholders for a guideline here, as their primary concern is prohibited firearms under s5 rather than firearms that require a certificate. If the firearms offence under s1(1) is included then it is logical also to include the corresponding shotgun offence under s2(1). The Council may feel there is a fairly strong case for including these offences, given the relatively high volumes. It may also be desirable to include them in order to cover possession offences for both prohibited and non-prohibited firearms.

3.17 **Manufacture and distribution of prohibited firearms:** There are four types of offence under s5(2A): (a) manufacturing a weapon or ammunition specified in s5(1); (b) selling or transferring a prohibited weapon or ammunition; (c) possession for sale or transfer; and (d) purchasing or acquiring for sale or transfer. This provision was effectively introduced in 2014

<sup>7</sup> When secondary and principal offences are combined, possession without a certificate under s1(1) is the second-highest volume firearms offence after s5(1)(b): in 2017 there were around 500 principal and secondary offences sentenced, compared with around 110 offenders sentenced with this as the principal offence.

when the “transfer” offence was shifted from s5(1) to the new (2A) and offences of possession for sale/transfer were added. It carries a maximum sentence of life imprisonment and attracts the five year minimum sentence where the firearm is one of a specified type from section 5(1) or (1A). Although prosecutions under this section are rare, they are among the most serious types of firearms offending and can attract very high sentences. The Home Office supports the development of guidelines in this area.

3.18 A Court of Appeal decision in 2016<sup>8</sup> on an Attorney General’s reference significantly raised sentences for transferring prohibited weapons and ammunition. It could be beneficial to put this guideline judgment on a stronger footing through sentencing guidelines. Again, the Council may consider there is a fairly strong case for including these offences, along with importation below, given the high statutory maxima of life imprisonment, and the fact that these offences are encountered only rarely but attract high sentences. However, developing a guideline would be quite challenging, given the lack of evidence available from transcripts for these offences.

3.19 **Importation offences:** If the Council favours including the manufacture and distribution offences under s5(2A), it may wish also to include the two main importation offences under the Customs and Excise Management Act 1979, so that the entire chain of offending is covered. These offences similarly carry a maximum of life imprisonment; the penalty was increased from seven years to life in 2014. The Home Office and law enforcement stakeholders would support guidance covering these offences.

3.20 **Conversion:** These offences involve modifying a firearm, either by shortening the barrel of a shotgun to less than 24 inches, or modifying an item that was incapable of being fired into a live firing weapon. A new offence of possessing articles for conversion was introduced in 2017. There is law enforcement concern about increasing conversion of firearms. Stakeholders including law enforcement agencies and the Law Commission consider there would be value in developing a conversion guideline to address any growing offending in this area. However, the offences are currently extremely low volume. There have only been around 20 barrel shortening and conversion offences sentenced since 2007, with none for conversion since 2012. Often firearms are located before or after conversion, so the charge is more often one of possession or transfer. The very low volumes of conversion sentences may make it more difficult to obtain evidence from transcripts to discern the relevant factors and sentencing levels, but it is likely to have similarities to the manufacturing offence so would not be impossible to develop at this time.

---

<sup>8</sup> *R v Stephenson* [2016] 2 Cr. App. R. (S.) 12

3.21 The Council may wish to include conversion given the stakeholder support and concern about the growing use of converted firearms; alternatively, the Council may consider the volumes to be too low to make the development of a guideline worthwhile. It may be possible to consider if any conversion offences could be included as analogous offences. This could be explored during the development of the guideline.

3.22 **Other possession with intent offences:** It was recommended above that the guideline cover the higher volume offences of possession with intent to endanger life (s16) and possession with intent to cause fear of violence (s16A). The remaining possession with intent offences are:

- use of firearms to resist arrest (s17(1));
- possess firearm while committing a Schedule 1 offence (s17(2));
- carry firearm with intent to commit indictable offence (s18(1)).

3.23 These three offences all carry a maximum of life imprisonment and the five year minimum will apply for certain prohibited firearms. They are relatively low volume when principal offences are considered, but are higher in volume when considering both principal and secondary offences together, as would be expected given the nature of the offences.<sup>9</sup> It is not recommended to include these offences.

3.24 If the Council does wish to include them, they could be grouped together with the possession with intent to endanger life offence in group 2, as they share the statutory maximum of life, or perhaps could be covered as analogous offences.

3.25 **Possession by person with previous conviction:** Upon conviction, persons are prohibited from possessing firearms for either five years or life depending on the length of the sentence.<sup>10</sup> This offence applies when the prohibition is contravened. It is reasonably low volume and would appear to be relatively straightforward. It is not recommended to include it in the guideline.

**Question 2: Does the Council wish to include any of the offences in table 2 within the guideline?**

---

<sup>9</sup> For example, in 2017 there were around 20 offenders sentenced under s17(2) (possession while committing a Sch 1 offence) where this was the principal offence, however there were 130 sentences when counting both principal and secondary offences.

<sup>10</sup> A person who has been sentenced to life or imprisonment for three years or more is permanently prohibited from possessing a firearm or ammunition. A person sentenced to imprisonment for three months or more but less than three years is prohibited for five years from the date of release, or from the date of sentence in the case of a suspended sentence.

*Offences recommended to be out of scope*

3.26 It is recommended that all remaining firearms offences are not covered in the guideline. These are the more obscure firearms licensing and criminal offences spread across the Firearms Act 1968, Violent Crime Reduction Act 2006, several Firearms (Amendment) Acts, Customs and Excise Management Act 1979 and other legislation.

3.27 It is also proposed not to cover offences that concern use of a firearm to kill or take particular wildlife, such as offences under the Deer Act 1991 or Wildlife and Countryside Act 1981. These could be considered as part of a separate guideline for wildlife offences in future.

**Question 3: Are there any other offences not mentioned that the Council thinks should be included within this guideline?**

*Proposed groupings for the guidelines*

3.28 The proposed groupings of offences for each guideline are provided in the left-hand column of table 1. For the offences in table 1, four guidelines are suggested:

- Guideline 1 – Possession of prohibited weapon
- Guideline 2 – Possession with intent to endanger life
- Guideline 3 – Possession with intent to cause fear of violence
- Guideline 4 – Carrying in a public place

3.29 Although the two possession with intent offences are likely to involve similar factors, the sentencing levels are very different and the different statutory maxima of life versus 10 years mean that it would be difficult to accommodate sentencing levels for both offences in the same guideline, without using multiple tables. A separate guideline for each offence is preferable.

3.30 Should the Council wish to cover any of the offences in table 2 above, provisional groupings are provided in the left-hand column of the table.

**Question 4: Does the Council agree with the proposed groupings for the guidelines?**

*Sentencing of children and young people*

3.31 There is a question of whether a separate offence-specific guideline is needed for sentencing children and young people for firearms offences. The definitive guideline *Sentencing Children and Young People – Overarching Principles* already applies. This guideline contains some brief references to firearms to highlight the mandatory minimum sentence of three years for 16- and 17-year-olds for certain firearms offences.

3.32 The Council does not ordinarily produce separate offence-specific guidelines for children and young people, unless there is a strong reason to do so. There are offence-specific guidelines for a limited number of offences only, including bladed article possession/threats and robbery offences, which under-18s commit in high volumes, and sexual offences, an area that is complex and has distinct characteristics. Compared with these offences, the firearms volumes are not high, nor is there the same high level of public concern about young people's involvement.

3.33 The volumes of children and young people being sentenced for firearms offences are very low. Generally offending by under-18s forms less than 10% of total offending. For example, in 2017 for possession of a disguised firearm (s5(1A)(a)), there were around 10 under-18s sentenced, and 140 adults. **Annex A** shows volumes of under-18s compared with adults for the offences in table 1.

3.34 On the other hand, the Home Office and law enforcement stakeholders do support having separate guidance for children and young people. In context of 'county lines', some Police areas have observed young people being used to store and transport firearms which are used to reinforce debts or control turf, due to perceptions that young people will attract less law enforcement scrutiny and lower sentences. That said, any increased incidence of youth involvement in firearms possession through county lines is not currently translating into convictions for firearms offences in any significant numbers. Aside from involvement in county lines, no other youth-specific features of firearms offending have been raised.

3.35 It is difficult to see what a separate guideline would add beyond what is already contained in *Sentencing Children and Young People – Overarching Principles*. This guideline directs sentencers to consider factors that may be relevant in county lines cases, such as participation due to peer pressure, coercion or manipulation, and the offender's role if part of a group. It is also worth noting that the exploitation and coercion involved in county lines extends to vulnerable adults such as the elderly and disabled as well as children and young people. Any firearms guideline will need to address this type of case in any event, which will assist sentencers consulting the adult guideline when sentencing a child or young person.

3.36 On balance, it is recommended that the guideline focuses on adult offending and does not include specific guidance for children and young people at this time, given the low volumes. The Council will separately be considering changes to the drug offences guideline to respond to issues raised by county lines. Sentencers can continue to rely on the children and young people guideline to assist with sentencing for a firearms offence.

**Question 5: Does the Council agree not to include separate sentencing guidance for children and young people within the firearms guideline?**

*Guidance on minimum sentence provisions and 'exceptional circumstances'*

3.37 As already highlighted above, under s51A of the Firearms Act 1968, a minimum sentence applies to certain firearms offences (at **Annex D**), unless there are exceptional circumstances relating to the offence or to the offender. It applies to *all* relevant offences, including on first conviction, rather than to repeat offences. The minimum sentence is five years for offenders aged 18 years or over, and three years for offenders aged 16 or 17.

3.38 The 'exceptional circumstances' proviso in s51A is worded differently from the 'particular circumstances' proviso applicable to repeat drug trafficking and bladed article offences. There have been a number of appeals about the scope and effect of s51A and the exceptional circumstances proviso, including Attorney General references for unduly lenient sentences. Anecdotally, both judges and law enforcement stakeholders have observed inconsistent approaches to what constitutes exceptional circumstances, for example the offender being pressured into possession as a custodian or the weapon being a stun gun.

3.39 The guideline will need to set out text to assist sentencers to identify cases where the minimum sentence applies and where exceptional circumstances are present. It would be helpful if the Council could indicate the level of detail it wishes to provide. It is recommended the guidance is comprehensive and includes detail on what may or may not constitute exceptional circumstances of the offence or offender.

**Question 6: Does the Council agree to provide comprehensive guidance on minimum sentences for firearms offences, including the exceptional circumstances proviso?**

**4 IMPACT**

4.1 A draft resource assessment will be developed in due course. If the Council decides that the aim of the guideline is to replicate current sentencing practice, then the impact on resources within the system is likely to be negligible. Transcripts and other data are being analysed to assess this impact.

4.2 The resource impact of developing the guideline itself is greater if the Council decides to include a broader range of offences. A more comprehensive guideline means the guideline may take longer to complete and occupy more staff and Council meeting time. Additional meeting slots will be allocated if needed once the scope of the guideline is decided.

**5 RISK**

5.1 None at this stage. Judicial and stakeholder engagement so far has suggested sentencing guidance in this area will be welcomed. Firearms offending can sometimes be high profile, particularly when linked to organised criminal activity and drug offending. There are also strong interest groups on the lawful use of firearms side, such as shooting organisations, who are likely to take an interest in the development of the guideline.

Number of adult offenders sentenced for firearms offences, by court type, 2007-2017<sup>1</sup>

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	5(1)(a), (c), (ad), (ae)	Possess/purchase/acquire a prohibited weapon (automatic)/ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	MC	4	4	9	4	2	1	1	1	0	1	0		
				CC	242	335	348	301	165	50	46	26	43	68	54		
				<b>Total</b>	<b>246</b>	<b>339</b>	<b>357</b>	<b>305</b>	<b>167</b>	<b>51</b>	<b>47</b>	<b>27</b>	<b>43</b>	<b>69</b>	<b>54</b>		
		5(1)(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	MC	639	625	637	610	531	431	410	313	303	289	204		
				CC	174	232	226	215	213	173	153	151	156	173	143		
				<b>Total</b>	<b>813</b>	<b>857</b>	<b>863</b>	<b>825</b>	<b>744</b>	<b>604</b>	<b>563</b>	<b>464</b>	<b>459</b>	<b>462</b>	<b>347</b>		
		5(1A)(a)	Possess/ purchase prohibited weapon (disguised firearm)	MC	0	0	2	3	1	1	0	0	0	1	0		
				CC	3	1	1	0	3	24	52	86	138	190	138		
				<b>Total</b>	<b>3</b>	<b>1</b>	<b>3</b>	<b>3</b>	<b>4</b>	<b>25</b>	<b>52</b>	<b>86</b>	<b>138</b>	<b>191</b>	<b>138</b>		
		5(1A)(b)-(g)	Possess/ purchase/ sell or transfer military equipment	MC	15	10	10	3	6	5	1	0	1	5	1		
				CC	7	22	23	12	57	121	124	161	192	218	220		
				<b>Total</b>	<b>22</b>	<b>32</b>	<b>33</b>	<b>15</b>	<b>63</b>	<b>126</b>	<b>125</b>	<b>161</b>	<b>193</b>	<b>223</b>	<b>221</b>		
Group 2	Firearms Act 1968	16	Possess a firearm/ ammunition with intent to endanger life / enable another to do so	MC	1	0	1	0	0	0	0	0	0	0			
				CC	45	58	52	43	67	62	68	44	52	52	76		
				<b>Total</b>	<b>46</b>	<b>58</b>	<b>53</b>	<b>43</b>	<b>67</b>	<b>62</b>	<b>68</b>	<b>44</b>	<b>52</b>	<b>52</b>	<b>76</b>		
		16	Possess shotgun with intent to endanger life / enable another to do so	MC	0	0	0	0	0	0	0	0	0	0	0		
				CC	1	3	1	5	0	1	2	0	2	1	1		
				<b>Total</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>5</b>	<b>0</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>1</b>		
		16	Possess air weapon with intent to endanger life / enable another to do so	MC	0	0	0	0	0	0	0	0	0	0	0		
				CC	1	2	0	0	2	1	0	0	0	0	0		
				<b>Total</b>	<b>1</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>		
		Group 3	Firearms Act 1968	16A	Possess a firearm/ imitation firearm with intent to cause fear of violence	MC	3	4	3	0	1	0	0	1	2	3	
						CC	286	315	246	264	238	216	206	205	229	259	251
						<b>Total</b>	<b>289</b>	<b>319</b>	<b>249</b>	<b>264</b>	<b>239</b>	<b>216</b>	<b>206</b>	<b>206</b>	<b>230</b>	<b>261</b>	<b>254</b>
16A	Shotgun - possession with intent to cause fear of violence			MC	0	1	0	0	0	0	0	0	0	0	0		
				CC	4	5	1	6	0	5	1	3	3	7	6		
				<b>Total</b>	<b>4</b>	<b>6</b>	<b>1</b>	<b>6</b>	<b>0</b>	<b>5</b>	<b>1</b>	<b>3</b>	<b>3</b>	<b>7</b>	<b>6</b>		
16A	Air weapon - possession with intent to cause fear of violence			MC	0	0	2	0	0	0	0	0	0	0	0		
				CC	9	7	10	4	12	9	14	13	9	14	4		
				<b>Total</b>	<b>9</b>	<b>7</b>	<b>12</b>	<b>4</b>	<b>12</b>	<b>9</b>	<b>14</b>	<b>13</b>	<b>9</b>	<b>14</b>	<b>4</b>		
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	
						CC	20	15	14	8	11	6	7	5	7	6	
						<b>Total</b>	<b>96</b>	<b>53</b>	<b>31</b>	<b>23</b>	<b>21</b>	<b>12</b>	<b>16</b>	<b>10</b>	<b>14</b>	<b>12</b>	<b>7</b>
		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		
				<b>Total</b>	<b>24</b>	<b>21</b>	<b>11</b>	<b>7</b>	<b>3</b>	<b>6</b>	<b>4</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>2</b>		
		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		
				<b>Total</b>	<b>366</b>	<b>274</b>	<b>250</b>	<b>221</b>	<b>151</b>	<b>127</b>	<b>101</b>	<b>92</b>	<b>103</b>	<b>69</b>	<b>74</b>		
		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		
				<b>Total</b>	<b>0</b>	<b>47</b>	<b>96</b>	<b>84</b>	<b>84</b>	<b>87</b>	<b>89</b>	<b>103</b>	<b>98</b>	<b>112</b>	<b>120</b>		

Group 5	Firearms Act 1968	1(1)(a),(b)	Possess a firearm/ammunition without a certificate; possess a shortened shotgun; possess a thing converted into a firearm	MC	97	87	81	74	68	60	50	58	31	49	29
				CC	98	98	110	123	110	99	84	83	78	88	82
				<b>Total</b>	<b>195</b>	<b>185</b>	<b>191</b>	<b>197</b>	<b>178</b>	<b>159</b>	<b>134</b>	<b>141</b>	<b>109</b>	<b>137</b>	<b>111</b>
Group 6	Firearms Act 1968 Firearms (Amendment) Act 1988	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
				<b>Total</b>	<b>51</b>	<b>55</b>	<b>39</b>	<b>54</b>	<b>38</b>	<b>35</b>	<b>30</b>	<b>37</b>	<b>36</b>	<b>31</b>	<b>41</b>
Group 6	Firearms Act 1968 Firearms (Amendment) Act 1988	4(1) 6(1)	Shorten shotgun barrel - less than 60.96 cm / 24 ins Shorten smooth-bore gun barrel of section 1 firearm (Firearms Amendment Act 1988)	MC	1	0	0	0	0	0	0	0	0	0	0
				CC	2	2	0	1	0	0	0	0	1	0	1
				<b>Total</b>	<b>3</b>	<b>2</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>
Group 7	Firearms Act 1968	4(3)	Convert thing / imitation firearm into a firearm	MC	5	5	0	0	0	0	0	0	0	0	0
				CC	0	0	0	4	0	1	0	0	0	0	0
				<b>Total</b>	<b>5</b>	<b>5</b>	<b>0</b>	<b>4</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Group 7	Firearms Act 1968	4A(1)	Possession of articles for conversion of imitation firearms <sup>2</sup>	MC	-	-	-	-	-	-	-	-	-	-	-
				CC	-	-	-	-	-	-	-	-	-	-	-
				<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
Group 8	Firearms Act 1968	5(2A)(a)	Manufacture weapon / ammunition specified in section 5(1) of the Firearms Act 1968	MC	0	0	0	0	0	0	0	0	0	0	0
				CC	0	0	0	0	0	0	0	0	0	4	0
				<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>4</b>
Group 9	Firearms Act 1968	5(2A)(b)	Sell / transfer prohibited weapon / ammunition	MC	0	0	0	0	0	0	0	1	0	0	0
				CC	0	0	0	0	0	0	0	0	0	10	19
				<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>10</b>	<b>19</b>
Group 9	Firearms Act 1968	5(2A)(c)	Possess prohibited weapon / ammunition for sale / transfer	MC	0	0	0	0	0	0	0	0	0	1	0
				CC	0	0	0	0	0	0	0	0	0	4	5
				<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>5</b>
Group 9	Firearms Act 1968	5(2A)(d)	Purchase / acquire prohibited weapon / ammunition for sale / transfer	MC	0	0	0	0	0	0	0	0	0	0	0
				CC	0	0	0	0	0	0	0	0	0	0	1
				<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
Group 10	Customs and Excise Management Act 1979	50(3), (4) and (5A)(a)	Import prohibited weapons / ammunition with intent to evade a prohibition / restriction	MC	0	0	0	0	0	0	0	0	5	9	3
				CC	0	0	0	0	0	0	0	0	0	0	2
				<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>5</b>	<b>9</b>
Group 10	Customs and Excise Management Act 1979	170(1)(b) & (3) 170(2), (3) & (4A)(a)	Carry / remove / deposit etc. prohibited weapons / ammunition with intent to evade a prohibition / restriction / Knowingly concerned in fraudulent evasion	MC	0	0	0	0	0	0	0	0	2	2	0
				CC	0	0	0	0	0	0	0	0	0	3	3
				<b>Total</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>5</b>
Group 2	Firearms Act 1968	17(1)	Make use / attempt to make use of a firearm/ imitation firearm with intent to resist arrest	MC	0	0	0	1	0	0	1	0	0	0	0
				CC	1	0	5	2	5	3	3	3	1	4	1
				<b>Total</b>	<b>1</b>	<b>0</b>	<b>5</b>	<b>2</b>	<b>5</b>	<b>3</b>	<b>3</b>	<b>3</b>	<b>1</b>	<b>4</b>	<b>1</b>
Group 2	Firearms Act 1968	17(2)	Possess firearm/ imitation firearm/ shotgun/ air weapon while committing Schedule 1 offence	MC	0	0	0	1	0	0	1	0	0	0	0
				CC	52	55	34	24	24	20	13	24	13	13	16
				<b>Total</b>	<b>52</b>	<b>55</b>	<b>34</b>	<b>25</b>	<b>24</b>	<b>20</b>	<b>14</b>	<b>24</b>	<b>13</b>	<b>13</b>	<b>16</b>
Group 11	Firearms Act 1968	18(1)	Have a firearm/ imitation firearm with intent to commit an indictable offence/ resist arrest/ prevent the arrest of another	MC	0	0	0	0	0	0	0	0	0	0	1
				CC	43	26	34	24	23	11	17	11	10	14	16
				<b>Total</b>	<b>43</b>	<b>26</b>	<b>34</b>	<b>24</b>	<b>23</b>	<b>11</b>	<b>17</b>	<b>11</b>	<b>10</b>	<b>14</b>	<b>17</b>
Group 11	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
				<b>Total</b>	<b>102</b>	<b>89</b>	<b>111</b>	<b>95</b>	<b>89</b>	<b>74</b>	<b>62</b>	<b>53</b>	<b>49</b>	<b>60</b>	<b>48</b>

Source: Court Proceedings Database, Ministry of Justice

## Notes

1) Information on sentence volumes has been provided for the firearms offences in tables 1 and 2 of the Council paper.

2) New offence under the Policing and Crime Act 2017; came into force 2 May 2018.



Sentence outcomes for adult offenders sentenced for offences under the Firearms Act 1968, 2017<sup>1</sup>

Guideline group	Section	Offence	Absolute Discharge	Conditional Discharge	Fine	Community Order	Suspended Sentence	Immediate Custody	Otherwise dealt with <sup>2</sup>	Total
Group 1	5(1)(a), (c), (ad), (ae)	Possess/purchase/acquire a prohibited weapon (automatic)/ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	0	0	0	0	6	48	0	54
	5(1)(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	1	30	47	96	95	71	7	347
	5(1A)(a)	Possess/ purchase prohibited weapon (disguised firearm)	0	0	0	3	32	103	0	138
Group 2	5(1A)(b)-(g)	Possess/ purchase/ sell or transfer military equipment	0	0	1	2	12	204	2	221
	16	Possess a firearm/ ammunition/shotgun/air weapon with intent to endanger life / enable an other to do so	0	0	0	0	0	72	5	77
Group 3	16A	Possess a firearm/ imitation firearm/ shotgun/ air weapon with intent to cause fear of violence	0	1	0	10	62	185	6	264
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
Group 5	1(1)(a),(b)	Possess a firearm/ammunition without a certificate; possess a shortened shotgun; possess a thing converted into a firearm	2	11	12	5	29	51	1	111
	2(1)	Possess shotgun without a certificate	0	8	9	1	9	13	1	41

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 <sup>2</sup>	Total
Group 1	5(1)(a), (c), (ad), (ae)	Possess/purchase/acquire a prohibited weapon (automatic)/ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	0%	0%	0%	0%	11%	89%	0%	100%
	5(1)(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	0%	9%	14%	28%	27%	20%	2%	100%
	5(1A)(a)	Possess/ purchase prohibited weapon (disguised firearm)	0%	0%	0%	2%	23%	75%	0%	100%
Group 2	5(1A)(c), (d), (e), (f), (g)	Possess/ purchase/ sell or transfer military equipment	0%	0%	0%	1%	5%	92%	1%	100%
	16	Possess a firearm/ ammunition/shotgun/air weapon with intent to endanger life / enable an other to do so	0%	0%	0%	0%	0%	94%	6%	100%
Group 3	16A	Possess a firearm/ imitation firearm/ shotgun/ air weapon with intent to cause fear of violence	0%	0%	0%	4%	23%	70%	2%	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%
Group 5	1(1)(a),(b)	Possess a firearm/ammunition without a certificate; possess a shortened shotgun; possess a thing converted into a firearm	2%	10%	11%	5%	26%	46%	1%	100%
	2(1)	Possess shotgun without a certificate	0%	20%	22%	2%	22%	32%	2%	100%

Source: Court Proceedings Database, Ministry of Justice

## Notes

1) Information on sentence outcomes has been provided for the most common firearms offences.

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

**Average custodial sentence lengths (post guilty plea) for adult offenders sentenced to immediate custody for offences under the Firearms Act 1968, 2017<sup>1</sup>**

<b>Guideline group</b>	<b>Section</b>	<b>Offence</b>	<b>Mean sentence length<sup>2,4</sup></b>	<b>Median sentence length<sup>3,4</sup></b>
Group 1	5(1)(a), (c), (ad), (ae)	Possess/purchase/acquire a prohibited weapon (automatic)/ ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	6 years 6 months	6 years 5 months
	5(1)(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	11 months	8 months
	5(1A)(a)	Possess/ purchase prohibited weapon (disguised firearm)	3 years 8 months	4 years
Group 2	5(1A)(b)-(g)	Possess/ purchase/ sell or transfer military equipment	5 years 3 months	5 years
	16	Possess a firearm/ ammunition/shotgun/air weapon with intent to endanger life / enable an other to do so	11 years 2 months	12 years
Group 3	16A	Possess a firearm/ imitation firearm/ shotgun/ air weapon with intent to cause fear of violence	2 years 7 months	2 years
Group 4	19	Possess loaded/unloaded firearm and suitable ammunition/shotgun/ airweapon/ imitation firearm in public place	7 months	4 months
Group 5	1(1)(a),(b)	Possess a firearm/ammunition without a certificate; possess a shortened shotgun; possess a thing converted into a firearm	2 years 9 months	2 years
	2(1)	Possess shotgun without a certificate	2 years 5 months	2 years 3 months

Source: Court Proceedings Database, Ministry of Justice

**Notes**

- 1) Information on ACSLs has been provided for the most common firearms offences.
- 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.

Number of children and young people sentenced for firearms offences, by court type, 2007-2017<sup>1</sup>, and number of adult offenders sentenced, 2017

Legislation	Section	Offence	Court type	Number of children and young people sentenced											Number of adults sentenced
				2007	2008	2009	2010	2011	2012	2013	2014	2015	2016	2017	2017
Firearms Act 1968	5(1)(a), (c), (ad), (ae)	Possess/purchase/acquire a prohibited weapon (automatic)/ammunition/ smooth-bore revolver/ rocket launcher/ mortar/ pump action rifle	MC	10	6	1	0	1	1	1	1	1	0	0	0
			CC	6	17	21	17	7	0	0	0	1	1	2	54
			<b>Total</b>	<b>16</b>	<b>23</b>	<b>22</b>	<b>17</b>	<b>8</b>	<b>1</b>	<b>1</b>	<b>1</b>	<b>2</b>	<b>1</b>	<b>2</b>	<b>54</b>
	5(1)(b)	Possess/ purchase a weapon for the discharge of a noxious liquid / gas / electrical incapacitation device / thing	MC	103	87	58	58	52	41	34	27	25	14	23	204
			CC	3	1	1	1	1	0	0	0	0	2	2	143
			<b>Total</b>	<b>106</b>	<b>88</b>	<b>59</b>	<b>59</b>	<b>53</b>	<b>41</b>	<b>34</b>	<b>27</b>	<b>25</b>	<b>16</b>	<b>25</b>	<b>347</b>
	5(1A)(a)	Possess/ purchase prohibited weapon (disguised firearm)	MC	2	0	0	1	0	0	0	2	2	3	4	0
			CC	0	0	0	0	0	0	2	2	1	4	9	138
			<b>Total</b>	<b>2</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>2</b>	<b>4</b>	<b>3</b>	<b>7</b>	<b>13</b>	<b>138</b>
	5(1A)(b)-(g)	Possess/ purchase/ sell or transfer military equipment	MC	3	8	5	5	2	1	6	3	1	2	2	1
			CC	1	1	0	1	5	4	5	1	6	3	12	220
			<b>Total</b>	<b>4</b>	<b>9</b>	<b>5</b>	<b>6</b>	<b>7</b>	<b>5</b>	<b>11</b>	<b>4</b>	<b>7</b>	<b>5</b>	<b>14</b>	<b>221</b>
	16	Possess a firearm/ ammunition with intent to endanger life / enable another to do so	MC	1	2	1	0	0	0	0	0	0	0	0	0
			CC	0	2	2	5	4	6	2	2	1	0	1	76
			<b>Total</b>	<b>1</b>	<b>4</b>	<b>3</b>	<b>5</b>	<b>4</b>	<b>6</b>	<b>2</b>	<b>2</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>76</b>
	16	Possess shotgun with intent to endanger life / enable another to do so	MC	0	0	0	0	0	0	0	0	0	0	0	0
			CC	0	1	0	1	0	0	0	0	0	0	0	1
			<b>Total</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>
	16	Possess air weapon with intent to endanger life / enable another to do so	MC	0	1	0	0	0	0	0	0	0	0	0	0
			CC	0	0	0	0	0	0	0	0	0	0	0	0
			<b>Total</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>0</b>
	16A	Possess a firearm/ imitation firearm with intent to cause fear of violence	MC	71	51	26	33	29	23	22	14	18	17	17	3
			CC	8	9	9	6	4	8	8	6	2	4	2	251
			<b>Total</b>	<b>79</b>	<b>60</b>	<b>35</b>	<b>39</b>	<b>33</b>	<b>31</b>	<b>30</b>	<b>20</b>	<b>20</b>	<b>21</b>	<b>19</b>	<b>254</b>
	16A	Shotgun - possession with intent to cause fear of violence	MC	2	0	0	0	0	0	0	0	1	0	0	0
			CC	0	1	0	0	0	1	0	0	0	0	1	6
<b>Total</b>			<b>2</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>0</b>	<b>1</b>	<b>6</b>	
16A	Air weapon - possession with intent to cause fear of violence	MC	18	18	6	4	1	3	1	1	3	2	1	0	
		CC	0	0	0	0	0	0	0	1	0	0	0	4	
		<b>Total</b>	<b>18</b>	<b>18</b>	<b>6</b>	<b>4</b>	<b>1</b>	<b>3</b>	<b>1</b>	<b>2</b>	<b>3</b>	<b>2</b>	<b>1</b>	<b>4</b>	
19	Possess loaded/unloaded firearm and suitable ammunition in public place	MC	45	22	3	2	1	3	3	2	0	1	0	2	
		CC	2	0	0	0	2	0	1	1	0	1	0	5	
		<b>Total</b>	<b>47</b>	<b>22</b>	<b>3</b>	<b>2</b>	<b>3</b>	<b>3</b>	<b>4</b>	<b>3</b>	<b>0</b>	<b>2</b>	<b>0</b>	<b>7</b>	
19	Possess a loaded shotgun in a public place	MC	6	5	1	0	0	0	1	0	0	0	1	0	
		CC	0	0	0	0	0	0	0	1	0	0	0	2	
		<b>Total</b>	<b>6</b>	<b>5</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>1</b>	<b>0</b>	<b>0</b>	<b>1</b>	<b>2</b>	
19	Possess a loaded / unloaded air weapon in a public place	MC	203	146	64	48	37	28	19	7	17	9	8	68	
		CC	0	1	0	0	1	0	0	0	0	0	0	6	
		<b>Total</b>	<b>203</b>	<b>147</b>	<b>64</b>	<b>48</b>	<b>38</b>	<b>28</b>	<b>19</b>	<b>7</b>	<b>17</b>	<b>9</b>	<b>8</b>	<b>74</b>	
19	Possess an imitation firearm in a public place	MC	0	21	53	42	33	32	22	23	27	31	34	85	
		CC	0	0	1	2	1	2	1	2	3	0	0	35	
		<b>Total</b>	<b>0</b>	<b>21</b>	<b>54</b>	<b>44</b>	<b>34</b>	<b>34</b>	<b>23</b>	<b>25</b>	<b>30</b>	<b>31</b>	<b>34</b>	<b>120</b>	

Source: Court Proceedings Database, Ministry of Justice

## Note

1) Information on sentence volumes has been provided for the firearms offences in table 1 of the Council paper.

Blank page

## MCSG GUIDELINE: CARRYING A FIREARM IN A PUBLIC PLACE

Firearms Act 1968, s.19

## Firearm, carrying in public place

Triable either way (but triable only summarily if the firearm is an air weapon):  
 Maximum when tried summarily: Level 5 fine and/or 6 months  
 Maximum when tried on indictment: 7 years (12 months for imitation firearms)

<b>Offence seriousness (culpability and harm)</b>		
<b>A. Identify the appropriate starting point</b>		
Starting points based on first time offender pleading not guilty		
Examples of nature of activity	Starting point	Range
Carrying an unloaded air weapon	Low level community order	Band B fine to medium level community order
Carrying loaded air weapon/imitation firearm/unloaded shot gun without ammunition	High level community order	Medium level community order to 26 weeks custody (air weapon) Medium level community order to Crown Court (imitation firearm, unloaded shot gun)
Carrying loaded shot gun/carrying shot gun or any other firearm together with ammunition for it	Crown Court	Crown Court

<b>Offence seriousness (culpability and harm)</b>	
<b>B. Consider the effect of aggravating and mitigating factors (other than those within examples above)</b>	
Common aggravating and mitigating factors are identified on page 20 – the following may be particularly relevant but <b>these lists are not exhaustive</b>	
<b>Factors indicating higher culpability</b> 1. Brandishing the firearm 2. Carrying firearm in a busy place 3. Planned illegal use  <b>Factors indicating greater degree of harm</b> 1. Person or people put in fear 2. Offender participating in violent incident	<b>Factors indicating lower culpability</b> 1. Firearm not in sight 2. No intention to use firearm 3. Firearm to be used for lawful purpose (not amounting to a defence)

<b>Form a preliminary view of the appropriate sentence, then consider offender mitigation</b> Common factors are identified on page 20
---

<b>Consider a reduction for a guilty plea</b>
---

<b>Consider ancillary orders, including compensation, forfeiture or suspension of personal liquor licence and football banning order (where appropriate)</b> Refer to pages 433 - 442 for guidance on available ancillary orders
---

<b>Decide sentence</b> <b>Give reasons</b>
---

Blank page

**EXTRACT FROM *R v AVIS* [1998] 1 CR. APP. R. 420**

The appropriate level of sentence for a firearms offence, as for any other offence, will depend on all the facts and circumstances relevant to the offence and the offender, and it would be wrong for this Court to seek to prescribe unduly restrictive sentencing guidelines. It will, however, usually be appropriate for the sentencing court to ask itself a series of questions:

- 1) What sort of weapon is involved? Genuine firearms are more dangerous than imitation firearms. Loaded firearms are more dangerous than unloaded firearms. Unloaded firearms for which ammunition is available are more dangerous than firearms for which no ammunition is available. Possession of a firearm which has no lawful use (such as a sawn-off shotgun) will be viewed even more seriously than possession of a firearm which is capable of lawful use.
- 2) What (if any) use has been made of the firearm? It is necessary for the court, as with any other offence, to take account of all circumstances surrounding any use made of the firearm: the more prolonged and premeditated and violent the use, the more serious the offence is likely to be.
- 3) With what intention (if any) did the defendant possess or use the firearm? Generally speaking, the most serious offences under the Act are those which require proof of a specific criminal intent (to endanger life, to cause fear of violence, to resist arrest, to commit an indictable offence). The more serious the act intended, the more serious the offence.
- 4) What is the defendant's record? The seriousness of any firearm offence is inevitably increased if the offender has an established record of committing firearms offences or crimes of violence.

Blank page



**FIREARMS OFFENCES TO WHICH THE MINIMUM SENTENCE APPLIES***Possession under section 5*

The minimum sentence under s51A Firearms Act 1968 applies to the possession of prohibited weapons or ammunition offences under s5 of the Act under the following sections:

s5(1)(a)	any firearm which is so designed or adapted that two or more missiles can be successively discharged without repeated pressure on the trigger;
s5(1)(ab)	any self-loading or pump-action rifled gun other than one which is chambered for .22 rim-fire cartridges;
s5(1)(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, a muzzle-loading gun or a firearm designed as signalling apparatus;
s5(1)(ac)	any self-loading or pump-action smooth-bore gun which is not an air weapon or chambered for .22 rim-fire cartridges and either has a barrel less than 24 inches in length or is less than 40 inches in length overall;
s5(1)(ad)	any smooth-bore revolver gun other than one which is chambered for 9mm. rim-fire cartridges or a muzzle-loading gun;
s5(1)(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;
s5(1)(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;
s5(1)(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;
s5(1A)(a)	any firearm which is disguised as another object.

*Other offences*

The provisions were extended in 2006 via the Violent Crime Reduction Act 2006 (VCRA) and now also apply to the following offences, where the firearm or ammunition is prohibited under s5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c), or 5(1A)(a):

s5(2A)	manufacture, sale or transfer of firearm, or possession etc for sale or transfer;
s16	possession of firearm with intent to injure;
s16A	possession of firearm with intent to cause fear of violence;
s17	use of firearm to resist arrest;
s18	carrying firearm with criminal intent;
s19	carrying a firearm in a public place;
s20(1)	trespassing in a building with firearm;
s28 VCRA 2006	using someone to mind a weapon.

All of these offences are covered in tables 1 and 2 of the paper, except the last two, s20(1) Firearms Act and s28 Violent Crime Reduction Act, which are extremely low volume (in 2017, one and zero offences respectively).

**Sentencing Council meeting:** 27 July 2018  
**Paper number:** SC(18)JUL07 – 10th anniversary  
**Lead official:** Phil Hodgson  
020 7071 5788

## **1 ISSUE**

1.1 This paper presents for consideration by the Council recommendations for how the Sentencing Council might mark its 10th anniversary.

## **2 RECOMMENDATION**

2.1 That the Council:

- agrees that the Sentencing Council should mark its 10th anniversary, and
- approves, in principle, the recommended programme of anniversary activities for further development.

## **3 CONSIDERATION**

3.1 On 6 April 2020, the Sentencing Council will reach its 10th anniversary. This anniversary is an important milestone that could provide the Council with an opportunity to take stock of our achievements, strengthen awareness and understanding of the Council and the sentencing guidelines, and build on our reputation.

3.2 To make the best use of this opportunity, we recommend that members agree that the Council should mark the anniversary and agree now, in principle, how that might be done. This will allow us to investigate ideas that might take some time to develop and, where necessary, to seek sponsorship and partnership opportunities.

3.3 To help focus our efforts, we suggest the following objectives for the anniversary year:

- Leave a lasting legacy
- Position the Sentencing Council at the centre of the development of academic thinking on sentencing
- Strengthen existing relationships within the criminal justice system to build a body of advocates and friends
- Seek local opportunities to strengthen public confidence in sentencing
- Raise the profile of the Sentencing Council and the guidelines among sentencers internationally

### **SUGGESTED PROGRAMME OF ACTIVITIES**

3.4 In considering how the Council might meet the objectives for the anniversary year, we have followed the principle that each activity should:

- have a clear purpose tied to our objectives and a clear benefit for the Council,
- deliver maximum impact for minimum staff resources, in the short and long term,
- be low or no cost, and
- use existing partnerships and channels.

## **4. Priority projects**

### ***Anniversary symposium***

#### *Proposal*

4.1 A one-day event, hosted by the Sentencing Council. Contributions would be invited from former Council members, academics and high-profile commentators and influencers with an interest in the field of sentencing.

4.2 The theme for the event would be to seek ideas to help shape the development of the Council's priorities for the next 10 years.

#### *Benefit*

4.3 Such an event would help to position the Council at the centre of current thinking about sentencing and could assist in developing its legitimacy with stakeholders. It would also allow us to strengthen our connections with former Council members.

### ***Book on sentencing***

#### *Proposal*

4.4 A collection of papers, pulling together current thought on aspects of sentencing and the role of sentencing council(s). Collated and edited by the Council and introduced by the Chairman of the Council.

#### *Benefit*

4.5 To lead on the production of such a publication would demonstrate the influence of the Council in being able to pull together the work of leading thinkers in the field. It would place the Council at the centre of developing thinking without committing it to taking ownership of any of the ideas or proposals under discussion.

### ***Annual academic conference***

#### *Proposal*

4.6 To establish an annual conference that would provide a forum for academics to explore current sentencing issues.

4.7 We have already laid the groundwork for an annual event. Last year we held a round-table discussion with several of the leading academics in sentencing. We have extended the concept this year to a one-day, public seminar.

4.8 The aims of the conference would be to facilitate greater links between the Sentencing Council and academics, and between academics; to identify gaps in knowledge and research; and to foster opportunities for collaboration.

#### *Benefit*

4.9 Hosting an annual conference of this nature would, again, place the Council at the centre of developing thinking. It would allow the Council to facilitate the investigation and discussion of potentially controversial topics, without committing the Council to taking ownership.

### ***Sentencing competition***

#### *Proposal*

4.10 A sentencing-related competition aimed at undergraduate students of criminology or law.

#### *Benefit*

4.11 The Council currently has a presence in schools, working through the Citizenship Foundation, but we do not have anything similar at university level. A competition would allow us to raise the Council's profile among undergraduates (and their lecturers), to

contribute to their education on sentencing and to build relationships with the next generation of legal practitioners.

## **5. Secondary projects**

5.1 A number of the objectives identified for the 10th anniversary year are extensions of our existing confidence and communication work:

- Strengthen existing relationships within the criminal justice system to build a body of advocates and friends
- Seek local opportunities to strengthen public confidence in sentencing
- Raise the profile of the Sentencing Council and the guidelines among sentencers internationally

5.2 Adopting these objectives for our anniversary year would allow us to prioritise these areas of work and dedicate resources of the whole organisation, including members of the Council, to achieving them.

5.3 Involvement of members of the Council is likely to include invitations to speak at public engagements, as well as requests to make use of existing connections within the CJS and, particularly, internationally, to open doors for the Council.

5.4 Activities for the OSC are likely to include speaking at events, targeted meetings with key stakeholders, invitations to international visitors, presentations and exhibitions, promotional activities within other government departments, contributing to existing public events and a focus on providing content for local media.

## **6. Delivery**

6.1 It is important that we are able to deliver – and be seen to deliver – any anniversary activities at very low or, preferably, no cost.

6.2 In areas where we might require funding, for example staging events or the student competition, we would apply for sponsorship or contributions. We would also explore opportunities to work in partnership, for example with an academic publisher.

## **7. Identity**

7.1 We recommend that the Council develop a logo marking the anniversary for use on all stationery, templates, presentations, tweets and other materials. This would be a clear and simple way to draw attention to the anniversary throughout the year, and could be done at no cost via MoJ.

## **8. Next steps**

8.1 In the event that the Council approves the programme of activities, detailed proposals including feasibility assessments would be worked up for each strand of activity.

### **Questions**

- 1. Do members agree that the Sentencing Council should mark its 10th anniversary?**
- 2. If so, do members approve, in principle, the recommended programme of activities?**

Blank page