

10 December 2021

Dear Members

Meeting of the Sentencing Council – 17 December 2021

The next Council meeting will be held via Microsoft Teams, the link to join the meeting is included below. **The meeting is Friday 17 December 2021 from 9:30 to 14:45.** Members of the office will be logged in shortly before if people wanted to join early to confirm the link is working.

The agenda items for the Council meeting are:

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| ▪ Agenda | SC(21)DEC00 |
| ▪ Minutes of meeting held on 19 November | SC(21)NOV01 |
| ▪ Burglary | SC(21)DEC02 |
| ▪ Miscellaneous guideline amendments | SC(21)DEC03 |
| ▪ Motoring | SC(21)DEC04 |
| ▪ Animal Cruelty | SC(21)DEC05 |
| ▪ Underage sale of knives | SC(21)DEC06 |

Members can access papers via the members' area of the website.

If you are unable to attend the meeting, we would welcome your comments in advance.

The link to join the meeting is: [Click here to join the meeting](#)

Best wishes



Steve Wade

Head of the Office of the Sentencing Council

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COUNCIL MEETING AGENDA

17 December 2021

Virtual Meeting by Microsoft Teams

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| 09:30 – 09:45 | Minutes of the last meeting and matters arising (paper 1) |
| 09:45 – 10:45 | Burglary - presented by Mandy Banks (paper 2) |
| 10:45- 11:15 | Miscellaneous guideline amendments - presented by Ruth Pope (paper 3) |
| 11:15 – 11:30 | Break |
| 11:30 – 12:30 | Motoring - presented by Lisa Frost (paper 4) |
| 12:30 – 13:00 | Lunch |
| 13:00 - 13:45 | Animal cruelty - presented by Ollie Simpson (paper 5) |
| 13:45 – 14:00 | Break |
| 14:00 – 14:45 | Underage sale of knives - presented by Ruth Pope (paper 6) |

Sentencing Council

COUNCIL MEETING AGENDA

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MEETING OF THE SENTENCING COUNCIL

19 NOVEMBER 2021

MINUTES

Members present:

Tim Holroyde (Chairman)
Rosina Cottage
Rebecca Crane
Rosa Dean
Nick Ephgrave
Michael Fanning
Diana Fawcett
Adrian Fulford
Max Hill
Jo King
Juliet May
Maura McGowan
Alpa Parmar
Beverley Thompson

Representatives:

Elena Morecroft for the Lord Chief Justice (Legal and Policy Advisor to the Head of Criminal Justice)
Claire Fielder for the Lord Chancellor (Director, Youth Justice and Offender Policy)

Members of Office in attendance:

Steve Wade
Mandy Banks
Lisa Frost
Ollie Simpson

1. MINUTES OF LAST MEETING

- 1.1 The minutes from the meeting of 22 October 2021 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman welcomed Lauren Maher a new member of the Analysis and Research team who has joined as a senior statistical officer.

3. DISCUSSION ON MOTORING OFFENCES – PRESENTED BY LISA FROST, OFFICE OF THE SENTENCING COUNCIL

- 3.1 The Council agreed to revise the scope of the motoring project and detach aggravated vehicle taking offences, as fewer resources were available than was originally anticipated and the consultation may otherwise be delayed. This would risk delaying the publication of guidelines for offences in the PCSC Bill, which the Council agreed it should be responsive to as quickly as possible. It is anticipated that work on the detached guidelines could commence during the consultation for the priority offences.
- 3.2 The Council gave further consideration to culpability factors for careless driving offences and agreed a number of revisions and additional factors. The Council also confirmed the approach to be taken to assessing culpability for causing death by careless driving under the influence, to inform the development of a guideline for consideration at its next meeting.

4. DISCUSSION ON ANIMAL CRUELTY – PRESENTED BY OLLIE SIMPSON, OFFICE OF THE SENTENCING COUNCIL

- 4.1 The Council considered a first draft of revised guidelines for animal cruelty for consultation next year. They agreed proposing that cruelty to multiple animals should be considered an aggravating factor and that, subject to some amendment, the guideline could cover the offences of mutilation, tail docking and poisoning (in addition to causing unnecessary suffering and fighting).

5. DISCUSSION ON PERVERTING THE COURSE OF JUSTICE – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

- 5.1 The Council discussed draft sentence ranges for the perverting the course of justice and witness intimidation guidelines. Current sentencing data for these offences was considered, and the Council agreed that the guidelines should aim to maintain current sentencing practice. There is one further planned meeting to finalise the guidelines ahead of the consultation planned for spring next year.

6. DISCUSSION ON SEXUAL OFFENCES – PRESENTED BY OLLIE SIMPSON, OFFICE OF THE SENTENCING COUNCIL

- 6.1 The Council considered responses to the consultation on sexual offences, including on a new guideline for sexual communication with a child, resulting in amendments to the culpability factors and aggravating and mitigating factors. They also considered consultees' views on new proposals for expanded explanation text and how the Council's guidance should best reflect youth and immaturity in the context of historical sexual offences.

7. DISCUSSION ON BURGLARY – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

- 7.1 This was the first meeting to discuss the guidelines after the consultation over the summer. The Council noted that the proposed revised guidelines were generally well received. The Council considered responses relating to culpability factors across the three guidelines, and agreed to make some small changes following suggestions by consultees.
- 7.2 The Council also considered the responses received relating to equality and diversity issues. Future meetings will look at responses relating to harm, sentence levels and aggravating and mitigating factors.

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Sentencing Council

Sentencing Council meeting: 17 December 2021
Paper number: SC(21)DEC02 – Burglary Revision
Lead Council member: Rebecca Crane
Lead officials: Mandy Banks
0207 071 5785

1 ISSUE

1.1 This is the second meeting to discuss the burglary guideline post consultation. There are two further scheduled meetings to discuss the guideline ahead of sign off of the definitive guideline in March. The guideline will then be published in May and come into force in July. This meeting will focus on looking at responses relating to harm and sentence levels across all three guidelines. Next month we will focus on aggravating and mitigating factors.

2 RECOMMENDATION

2.1 That the Council:

- Considers the responses relating to harm
- Considers the responses relating to sentence levels

3 CONSIDERATION

Harm factors

3.1 There were a number of comments made by respondents about two of the harm factors in non-domestic and domestic burglary, '*much greater emotional impact on the victim than would normally be expected*' in category one, and '*greater emotional impact on the victim than would normally expected*' in category two (page two of **Annex A**). A number of magistrates, two Crown Court Judges, a barrister, the Criminal Law Solicitors Association (CLSA) the Justice Committee (JC), Prison Reform Trust (PRT) and the Justices' Legal Advisers and Court Officers' Service (JCS) all raised concerns. The concerns were that the factors were too subjective,

and that it would be difficult to assess objectively. The issue was also raised as a concern during road testing, with similar comments made that the terms were highly subjective (page seven of **Annex B.**) Respondents made suggestions for alternative wording.

3.2 Firstly, one magistrates bench suggested that instead of the proposed factors, the harm factors from the aggravated burglary guideline (**Annex C**) should be used instead, so:

- Category one: Substantial physical or psychological injury or other substantial impact on the victim
- Category two: Some physical or psychological injury or some other impact on the victim
- Category three: Limited physical or psychological injury or other limited impact on the victim

However, they suggested that the category three factor should be reworded to: *'a degree of physical or psychological injury or other impact on the victim'*.

3.3 The JCS suggest instead that the factors should be: *'very significant emotional harm based on any factors placed before the court'* and *'significant emotional harm based on any factors placed before the court.'* They do not suggest a category three factor but based on the above text it could be: *'a degree of emotional harm based on any factors placed before the court.'*

3.4 Given that so many respondents raised concerns and the issue was highlighted in road testing it is recommended that the harm factors are reworded. Respondents stressed that all burglaries were distressing for victims, and this was a key factor to get right. As the factors in aggravated burglary are broader than the factors suggested by the JCS which just reference emotional harm, they are perhaps more appropriate.

3.5 Although the harm factors within the aggravating guidelines are broader than the ones in the domestic and non-domestic guideline, the CPS suggest broadening them further, to make it clear that emotional impact may be covered even where it does not amount to psychological injury. This seems a good suggestion, given how important the effect on victims of these offences is. They suggest rewording to:

- Substantial physical or psychological injury or substantial emotional or other impact on the victim

- Some physical or psychological injury or some emotional or other impact on the victim
- Limited physical or psychological injury or limited emotional or other impact on the victim

A version of the non-domestic guideline with all the proposed changes in is attached at **Annex D**.

Question one: Does the Council agree to revise the harm factors in domestic and non-domestic burglary to the revised aggravated burglary harm factors proposed by the CPS?

3.6 A number of concerns were also raised about the '*soiling of property and/or extensive damage or disturbance to property*' category one harm factor and '*ransacking and vandalism*' factor in category two, that there isn't enough distinction between the two. Respondents were clear that soiling must remain in category one.

3.7 The CPS suggest that '*ransacking and vandalism*' be changed to '*some degree of damage or disturbance to the property*', as this would provide a clearer sliding scale between '*limited damage or disturbance*' and '*extensive damage or disturbance*'. They also say that by doing so it would better reflect the level of damage/disturbance intended for category two harm, as the natural meaning of ransacking/vandalism is arguably closer to '*extensive damage or disturbance*' in category one.

3.8 HM Council of District Judges said that the difference between '*extensive damage/disturbance*' and '*ransacking or vandalism*' will not be clear, so the latter should read '*some ransacking and vandalism*' to draw a distinction between that and '*extensive damage/disturbance*'.

3.9 Rory Kelly, an academic also said the factors needed revising to avoid confusion, and proposed:

- Category one: Soiling of property and/or extensive damage or disturbance to property
- Category two: Moderate damage or disturbance to property
- Category three: Limited/no damage or disturbance to property

3.10 The JC also proposed that the category two factor should be '*moderate damage or disturbance to property*'. Given the amount of comments on these factors

it is recommended that they should be revised. The common theme seems to be to change the wording of the ransacking/vandalism category two factor, to either 'moderate' or 'some' damage or disturbance to property. 'Moderate' has also been suggested in reference to rewording the category two harm factor relating to loss (see para 3.11 below) so for consistency moderate may be the better term. The category one factor of *'soiling of property and/or extensive damage or disturbance to property'* would remain unchanged.

Question two: Does the Council agree to reword the category two ransacking/vandalism factor to 'moderate damage or disturbance to property'?

3.11 The Sentencing Academy, the JCS and a magistrate commented on the category two factor of *'theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value'*, stating that 'some' is too loose a description, that there is not much difference between 'some degree of loss' and 'property of low value'. They suggest that 'moderate' instead of 'some' might mark more clearly the difference between 'substantial degree of loss' in category one, and property of low value in category three. To avoid problems with the appropriate categorisation of loss suffered it may be appropriate to reword to 'moderate', especially if 'moderate' is also going to be used in relation to the amount of damage caused. The category one and three factors would be unchanged.

Question three: Does the Council agree to revise the category two harm factor to 'theft of/damage to property causing a moderate degree of loss to the victim (whether economic, commercial or personal)'?

3.12 PRT raised a concern that the draft guideline does not distinguish between when violence is used or threatened against the victim-they are both in category one harm. They suggest that *'violence used against the victim'* remains in category one, but *'violence threatened but not used against the victim'* goes to category two. They also suggest that the category one factor of *'context of public disorder'* is amended to *'context of public disorder (when linked to the commission of the offence)'*. They say without this addition it is unclear what 'context' may be relevant- the defendant could be penalised for public disorder which they had no involvement in or may not be aware of, for example, violence after a football match which had taken place nearby.

Question four: Does the Council wish to differentiate between violence used and violence threatened in the way PRT suggest? Does the Council wish to amend the 'context of public disorder' factor also in the way PRT suggest?

3.13 The CPS commented on the '*victim on the premises (or returns) while offender present*' factor in non-domestic burglary. They suggest that it should be reworded to '*victim on the premises (or returns or otherwise attends) while offender present*'. They state that this would better capture situations where a security guard who would not normally be present attends a warehouse after an alarm was triggered, for example.

3.14 The HM Council of District Judges commented on the '*occupier at home (or returns home) while offender present*' factor in domestic burglary, asking if the person returning home has to be the occupier, as opposed to anyone else who had legitimate access to the property, such as a babysitter, cleaner, etc. They ask if the increased harm is only due to the occupier on the basis they would perceive it as a home invasion, or is the intention also to reflect a victim being confronted by the offender? If it is the latter we could simply reword the factor to '*victim in the dwelling (or returns to the dwelling) while offender present*'.

Question five: Does the Council wish to reword the factor in non-domestic burglary in the way the CPS suggest? Does the Council wish to reword the factor in domestic burglary in the way suggested?

3.15 The Howard League raise a different concern about the '*occupier at home (or returns home)*' while offender present factor in domestic burglary (**Annex E**). They point to the evaluation of the original guideline which found that this was the most common step one factor. They argue that whilst it is obviously very frightening to be present during such an incident, the presence of the occupier should not be in the same harm category as actual violence against a victim, so should be a step two factor.

Question six: Does the Council wish to move the occupier at home factor in domestic burglary to be a category two factor instead?

3.16 English Heritage commented that there should be reference to the loss of cultural or heritage assets resulting from these offences within harm. They state that the harm caused can be high because they are finite, irreplaceable often unique resources¹ that belong to the community, forming part of the nation's history. They point to the harm factor within the theft guideline of '*damage to heritage assets*' and the aggravating factor within criminal damage of '*damage caused to heritage and/or cultural assets.*' They request that the guideline specifically includes a harm factor of'

¹ E.g Set of gold rosary beads carried by Queen Mary of Scots at her execution stolen in a burglary.

'Loss or damage caused to heritage and/or cultural assets.' However if the Council do not want this factor at step two it could be a step two aggravating factor.

Question seven: Does the Council wish to add a harm factor relating to loss of heritage/cultural assets? Or as an aggravating factor?

3.17 The Chief Magistrate commented that violence or confrontation with the occupier should be the first item within the list of harm factors, since despite the lack of precedence human instinct is to consider the first items in a list as more important. The items could be reordered so that the first and third factor exchange places, so the 'violence used' factor appears first in the list.

Question eight: Does the Council wish to reorder the list of harm factors?

Wording on Drug Rehabilitation Requirements (DRRs) and Alcohol Treatment requirements (ATRs)

3.18 The non- domestic and domestic burglary guidelines contained wording above the sentence table stating that DRR's/ATR's may be a proper alternative to a short or moderate custodial sentence (page 3 of **Annex A**). The original guideline just referenced DRR's, the Council added in ATR's in recognition of the proportion of offences where alcohol is a factor. In road testing the wording was found to be clear and useable. The additional wording on ATR's was not opposed but some judges stated they would need to be persuaded to apply this in domestic burglary cases or would need evidence that addiction was the root cause of the offending.

3.19 Just over half of the respondents that answered the question agreed with this proposed wording, these respondents included the CPS, Council of HM Circuit Judges and HM Council of District Judges. The JC agreed with the wording but suggested that the Council undertakes research to determine the extent that the inclusion of such wording changes the approach of sentencers. The rest offered a mixed response, one magistrate said the wording was patronising and over-prescriptive, another thought the wording was too vague. The Chief Magistrate and Magistrates Association (MA) thought there should be a link to the Imposition guideline instead. Given that there was broad approval for the inclusion of the wording it is recommended that it remains unaltered in the guideline

Question 9: Does the Council agree that the wording should remain unaltered?

Sentence levels- non- domestic burglary

3.20 The proposed sentence levels (page three of **Annex A**) were based on current sentencing practice. The proposals were met generally with broad approval.

Of those that questioned the ranges, two magistrates thought they were too low, and two Crown Court Judges thought sentencing for more serious cases should be closer to the maximum of 10 years, perhaps six years instead of five in A1, and that the starting point doesn't have to be in the middle of the range. The Chief Magistrate queried having discharge at the bottom of the range in C3, stating that it should remain a requirement that reasons are given for passing such a lenient sentence for a serious offence. Also, that when compared to the sentences for going equipped, a preparatory offence, the sentences in this guideline are too low, the lowest starting point in going equipped is a Band C fine, compared to a Band B fine in this guideline.

3.21 The MA by contrast thought the ranges were an increase on the levels in the existing guideline and queried whether this was intentional. Both the JC and JCS commented on the gap between the starting points of C1 and C2, saying there was too big a gap between a medium level community order and 6 months' custody, and suggested that the top of the range in C2 should be a high level community order instead. Changing this would necessitate increasing the top of the range to 6 months' custody and making the same changes to B3.

3.22 In road testing, sentencers were happy with the proposed levels. Sentencing data for 2020 for this offence is shown on tabs 1.1-1.4 of **Annex F**. The ACSL is 10.6 months, 74 per cent of offenders receive sentences of one year or less, and only 1 per cent receive sentences above 5 years, the top of the range. Therefore, it is not recommended that the top of the range is increased from 5 years.

Question 10: Does the Council agree the top of the range should remain at 5 years?

3.23 However, the Council may like to close the gap between the starting points of C1 and C2, so that the starting point of C2 and B3 becomes a high level community order, with the top of the range increasing to 6 months. As only 2 per cent of offenders receive discharges and 3 per cent receive fines, the Council may wish to act on the comments by the Chief Magistrate and increase the starting point in C3 to a medium level community order, increase the bottom of the range to a band B fine and the top to a high level community order. Doing so would mean the range is higher than the equivalent in going equipped and is closer to the range in the existing guideline.

Question 11: Does the Council wish to increase the starting points of C2 and B3 to a high level community order and the top of the range to 6 months custody? Does the Council wish to increase the starting point of C3 to a

medium level community order, the bottom of the range to a band B fine and the top of the range to a high level community order?

Domestic burglary- Annex E

3.24 The consultation asked for views on the wording '*for cases of particular gravity, sentences above the top of the range may be appropriate*', which appears directly above the sentence table. Of those that responded, most agreed with the proposed wording. Of those that disagreed, one Judge and a magistrate said it was no substitute for increasing the starting points/ranges. The CPS pointed out that Judges can already depart from guidelines if necessary, and that either the wording should be included in all guidelines, or not at all, to avoid a suggestion that some sentences above the ranges are more appropriate for some offences than others. This view was also echoed by a magistrate. This wording was found to be clear and useable during road testing.

3.25 PRT said that it would be necessary to explicitly outline what 'particular gravity' meant, or, reword to 'cases of exceptional gravity'. A Judge said it should be reworded to say that '*where multiple features of harm/culpability are present, it is likely that a sentence outside of the range will be appropriate*'.

3.26 The Sentencing Academy did not agree with including this wording, says courts could already go above the top of the range if necessary, it risked sentence inflation, and it singled out domestic burglary for special treatment. Also, that there is no reference to the statutory test for departing from the range, as laid down by s.59 of the Sentencing Act 2020, which is much tighter than the proposed wording of 'may be appropriate', so is directing courts to ignore the statute. The JC also made the same point and said that the wording should refer to the statutory test.

3.27 A decision on whether to retain this wording or not, and if it is to be retained, whether to reword it or not, is closely linked to consideration of responses on the sentence levels for this offence, the discussion which is below. Therefore, it may be practical to consider the sentences levels and this wording in the round and make decisions at the end of that discussion.

Proposed sentence levels- domestic burglary

3.28 The proposed levels (page three of **Annex E**) were based on current sentencing practice. Most respondents generally agreed with the proposals, with a small number saying they thought the levels were too low. A Judge commented that all the starting points and ranges were too low, and that he believed most Judges

thought this, and that the reason why only 2 per cent of cases went above the top of the existing range was due to fear of the case being appealed if they sentenced above the range, which they may have wished to. Another judge and a magistrate bench thought the starting point for A1 was far too low, that it should be far closer to the statutory maximum. The JC also queried the large gap between the top of the range and the statutory maximum. The Judge thought the starting point should be nearer six years in a range of three - nine years. A barrister also said that the starting point in A1 was too low at three years, and it would lead to too many suspended sentences being given.

3.29 Another magistrate thought that all the sentences should be increased by one level. The JC thought the gap between the starting points in C2 and C3 was too great, at 1 year's custody and a high level community order, they suggested that the starting point in C3 should be six months' custody to reflect the seriousness of domestic burglary. If this is done the top of the range would need to increase to 1 year's custody. The Council of Circuit Judges thought the ranges were too low, but with the additional wording above the table 'for cases of particular gravity' etc, it works. In contrast, PRT thought there should be more community orders available within the table, and the MA queried the ranges in A3/B2/C1, saying that they were higher than the equivalent in [the existing guideline](#), and asked if this was deliberate.

3.30 In road testing, a number of Judges felt from past experience that the area was under sentenced, and felt the proposed levels were too low, especially in A1. Alternative ranges of three to ten years with a starting point of four years, and four to eight years with a starting point of five years were suggested. The sentencing data for 2020 is on tabs 2.1 to 2.4 of **Annex F**. The ACSL is two years four months, 91 per cent of offenders received sentences of four years or less, and only 2 per cent received sentences above six years.

Question 12: Does the Council wish to increase the range or starting point in A1?

Question 13: Does the Council wish to increase the starting point in C3 as the JC suggest, and increase the top of the range to a years' custody?

Question 14: Does the Council wish to retain the wording re cases of particular gravity? If so, should it be reworded at all?

Aggravated burglary

3.31 The proposed sentence levels (page three of **Annex C**) were again based on current sentencing practice. Of those that answered the question, the vast majority of respondents agreed with the proposals, with just one Judge saying he thought the levels were too low and the starting point should be closer to the top of the range. In road testing, the majority of the Judges were comfortable with the proposed sentence levels. The sentencing data for 2020 is on tabs 3.1 to 3.4 of **Annex F**. The ACSL is seven years two months, 89 per cent of offenders received sentences of ten years or less, and only 2 per cent received a sentence above 12 years. Therefore, it is proposed that the sentence ranges remain unchanged.

Question 15: Does the Council agree that the sentence levels for this offence should remain unchanged?

4. EQUALITIES

4.1 An update on some further analysis on any possible racial disparities that has been carried out will be discussed in next month's paper, when the available demographic data will also be provided.

Annex A

(Consultation version)

Non-domestic burglary

Theft Act 1968 (section 9)

Triable either way (except as noted below)

Maximum: 10 years' custody

Offence range: Discharge – five years' custody

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code if it was committed with intent to:

- a. inflict grievous bodily harm on a person, or
- b. do unlawful damage to a building or anything in it.

This offence is **indictable only** where it is a burglary comprising the commission of, or an intention to commit, an offence which is triable only on indictment.

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors in the table 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**

Culpability demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• A significant degree of planning or organisation• Knife or other weapon carried (<u>see step 6 on totality when sentencing more than one offence</u>)
B- Medium culpability	<ul style="list-style-type: none">• Some degree of planning or organisation• Equipped for burglary (where not in high culpability)• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Offence committed on impulse, with limited intrusion into property• Involved through coercion, intimidation or exploitation• Mental disorder or learning disability, where linked to the commission of the offence

Harm

The level of harm is assessed by weighing up all the factors of the case

Category 1	<ul style="list-style-type: none">• Much greater emotional impact on the victim than would normally be expected• Victim on the premises (or returns) while offender present• Violence used or threatened against the victim• Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value)• Soiling of property and/or extensive damage or disturbance to property• Context of public disorder
Category 2	<ul style="list-style-type: none">• Greater emotional impact on the victim than would normally be expected• Theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value)

	<ul style="list-style-type: none"> Ransacking or vandalism of the property
Category 3	<ul style="list-style-type: none"> Nothing stolen or only property of low value to the victim (whether economic, commercial or personal) Limited damage or disturbance to property

STEP TWO

Starting point and category range

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

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under [part 10](#), or an alcohol treatment requirement under [part 11](#), of Schedule 9 of the Sentencing Code may be a proper alternative to a short or moderate custodial sentence.

Harm	Culpability		
	A	B	C
Category 1	Starting Point 2 years' custody Category Range 1 -5 years' custody	Starting Point 1 years' custody Category Range High level community order - 2 years' custody	Starting Point 6 months custody Category Range Medium level community order – 1 years' custody
Category 2	Starting Point 1 years' custody Category Range High level community order - 2 years' custody	Starting Point 6 months custody Category Range Medium level community order – 1 years' custody	Starting Point Medium level community order Category Range Low -high level community order
Category 3	Starting Point 6 months custody Category Range Medium level community order - 1 years' custody	Starting Point Medium level community order Category Range Low – high level community	Starting Point Band B fine Category Range Discharge – Low level community order

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from

the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Abuse of a position of trust
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability, where not linked to the commission of the offence
- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

STEP THREE

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

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 73 of the Sentencing Code](#) and the *Reduction in Sentence for a Guilty Plea* guideline.

STEP FIVE

Dangerousness

A burglary offence under section 9 Theft Act 1968 is a specified offence if it was committed with the intent to (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it. The court should consider whether having regard to the criteria contained [section 308 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

STEP SIX

Totality principle

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

STEP SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders. The court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

STEP EIGHT

Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

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Road testing with Crown Court judges and magistrates: Domestic, Non-domestic and Aggravated burglary

Introduction

The current burglary guidelines were published by the Council in January 2012. At this time, the resource assessment did not predict any impact on prison and probation services. However, when reviewed in 2016, the initial assessment indicated that since the guidelines had come into force, sentencing severity had increased for domestic (s.9), non-domestic (s.9) and aggravated burglary (s.10). Further research indicated that the increase in sentence severity for non-domestic burglary in the magistrates' court and Crown Court, could be attributable to the guideline, though for domestic burglary this appeared to be part of a longer-term trend rather than resulting from the guideline. Due to low volumes of cases of aggravated burglary, it was not possible to conclude if this increase was caused by the implementation of the guideline.

Alongside amendments to some factors, as outlined below, the draft guidelines update the existing guidelines to reflect the stepped approach used in more recent guidelines produced by the Council and introduces new medium levels of culpability/harm. Therefore, research was needed to understand how amendments to the structure of the guideline, and changes to factors could impact sentencing practice; and to ensure the draft guidelines are clear and usable. As they were new elements to the guidelines, particular attention was paid to the following elements of the draft guidelines to understand:

Domestic burglary: How sentencers interpreted guidance on the application of flexibility regarding cases of particular gravity and whether guidance wording in relation to imposing community orders with drug or alcohol treatment requirements is clear.

Non-domestic burglary: What, if any, are the issues being seen by magistrates when sentencing cases of non-domestic burglary, that could contribute to the increase in sentence severity in this court.

Aggravated burglary: How sentencers applied new guidance on carrying a weapon on entry of the premises as an aggravating factor as compared with a factor used in assessing culpability.

Methodology

Twenty-one interviews were conducted, consisting of nine magistrates and twelve Crown Court judges. Participants were selected by random sample from the Council's research pool. Qualitative interviews were conducted via MS Teams with sentencers from across England and Wales. Judges considered three scenarios (summarised below) and magistrates, two, relating to the Non-domestic burglary guideline only. Participants received the draft guidelines a week prior to the interview and sentenced each scenario twice, using the draft and existing guidelines.

Scenario	Summary of scenario
A – Domestic	<p>K, with another defendant, broke into a home of an elderly couple at night by smashing glass in the back door. The resident confronted K who threatened him with a screwdriver. Keys, a wallet, jewellery and a brand new Motability car valued at £23,000 were stolen. The couple felt violated and felt they had to install extra security measures to make them feel safe.</p> <p>CCTV captured the defendant approaching the property, alongside the number plate of the vehicle, with his hood up partially obscuring his face, using a torch and holding a screwdriver. CCTV from the day before captured K loitering outside the house, peering through the window.</p> <p>The court heard that K had been on a burglary expedition that evening, with two other attempted burglaries taking place nearby (subject to separate charges), both of which were foiled by passers-by. K was convicted after trial. He has over 100 previous convictions for theft, burglary and robbery and was out on licence at the time of the offence.</p>
B – Domestic	<p>A, 21, entered a home through an open ground floor window during the afternoon. He had been drinking for most of the day and needed money to buy alcohol, which led to the offence. He was disturbed by the victim, who found him in the living room, going through her handbag but left emptyhanded. He pleaded guilty at the first opportunity and has one previous conviction for domestic burglary. The pre-sentence report detailed that he has had a troubled background and suffered a trauma which led to him having problems with alcohol addiction. He is now willing to accept he has an alcohol problem and wants to tackle it. The victim was very upset and scared by the incident, leaving her anxious about security and being at home on her own.</p>
C – Aggravated	<p>R, 21, forced his way into a convenience store, along with two others, just as it was closing for the night and the shutters were being rolled down. R was carrying a machete which he used to force the shutters back up. Two staff members had seen this on CCTV and retreated to a locked back room and called the police. R and the others emptied the tills and contents of the cigarette store into bags they had brought with them for that purpose. Police came in time to apprehend them.</p> <p>Damage was done to the shutters, costing around £500 to repair. R pleaded guilty at the first opportunity. He has two previous unrelated convictions. The victim impact statements said they were terrified in the incident.</p>
D - Non-domestic	<p>W, 50, stole a handbag from behind a reception desk at a local hospital whilst there for an appointment. The receptionist was in the back room. The handbag (an expensive one) contained a purse with £70 cash, bank cards and the victim's driving licence and the only copy of an assignment for the receptionist's college course. The bag was found in a nearby alleyway, minus the cash, cards and licence. The handbag and assignment were ruined by heavy rain. W pleaded guilty at the first opportunity. He had many previous convictions for dishonesty. The victim was upset by what had happened and had the inconvenience of having to cancel all her cards, wait for new ones, and apply for a new licence. She was also upset by the loss of the handbag (a 21st Birthday gift).</p>
E – Non-domestic	<p>P, aged 29, and a friend who had been drinking most of the day, broke into an office on a new housing development. They vandalised some of the walls, damaged some furnishings, and broke a window. P said he committed the offence on impulse whilst walking past on the way home. He has one unrelated previous conviction and pleaded guilty at the first possible opportunity.</p>

Key Points

- The guidelines road tested well, and judges and magistrates found the draft guidelines clear and usable. The update to the stepped approach was highly favoured across each of the draft guidelines, especially three levels of culpability and harm.
- Under the s.9 Domestic and Non-domestic draft guidelines, a theme of concern arose surrounding assessment of two harm factors: ‘much greater emotional impact on the victim than would normally be expected’ and ‘greater emotional impact on the victim than would normally be expected’. Multiple sentencers thought this to be highly subjective and thought the harm categories lacked a position for a normal level of emotional impact.
- One scenario (A – Domestic burglary) was sentenced consistently across the draft and existing guidelines and between judges. Sentences for scenarios B-E remained largely consistent between the draft and existing guidelines however, varied depending on sentencer. For the most part, the differences are small.¹
- Domestic burglary: Additional wording relating to cases of particular gravity was found to be clear and usable. Additional wording on Alcohol Treatment Requirements (ATR) as an alternative to short or moderate custodial sentences was not opposed although some judges stated they would have to be persuaded to apply this in the case of domestic burglary or they would need evidence that addiction was the root cause of the offending behaviour.
- Aggravated burglary: On the whole, there was not opposition to the movement of the ‘weapon carried when entering premises’ from a factor of culpability to an aggravating factor. Five of the nine judges that considered the Aggravated burglary scenario (C), applied this factor under aggravation, hence double counting the factor, and two judges applied it at step one. One did so on the basis that it may need to be taken into account when considering taking the sentence outside of the guideline and the other was initially undecided on harm categories, but focused on the weapon element of the harm factor: ‘Violence used or threatened against the victim, particularly involving a weapon’, and thought the carrying of the machete to be applicable to the factor. When reading the aggravating factor of ‘weapon carried when entering premises’, they said ‘that effectively confirms it’s category one [harm]’.
- Magistrates reported they had not perceived changes to the types of non-domestic burglary cases seen in court and there were no particular difficulties in sentencing non-domestic burglaries.

¹ A breakdown of the sentences can be seen at the end of this document.

s.9 Domestic burglary

Scenario A (s.9 Domestic burglary)

Sentencing as expected by policy:

In Scenario A, the offender was expected to be placed in Category 1A, with a 3 year starting point. The sentence could go above the top of the range, because it was a case of particular gravity, leading to a sentence of above 6 years.

- Eight of the nine judges assessed Scenario A, relating to Domestic burglary to be category A1 as expected. Due to uncertainty surrounding if the screwdriver would constitute a weapon, one judge assessed this as B1. Five of the nine judges applied the wording 'for cases of particular gravity, sentences above the top of the range may be appropriate' and their final sentences ranged from 7-9 years. The four remaining sentences ranged between three and a half and six years.
 - It was agreed the wording was clear and workable.
 - To emphasise the additional wording, it was suggested this wording be highlighted or put in larger type.
- A point to note in relevance to the Domestic and Non-domestic draft guidelines is the assessment of 'much greater' or 'greater emotional harm than is normally expected'. Multiple judges and magistrates expressed concern about this element and felt this was highly subjective. One judge commented there was no categorisation of emotional impact on the victim that was not more than would normally be expected. They therefore felt the guideline would exclude a case of what would be thought to be a 'normal' level of emotional impact as this would automatically be assigned to a category three, which was thought to be too low to reflect the impact on victims. However, this did not appear to produce inconsistencies in the assessment of harm.

Scenario B (s.9 Domestic burglary)

Sentencing as expected by policy:

In Scenario B, the offender was expected to be placed in Category B1, with a starting point of 2 years and then a reduction for guilty plea. A community order with an alcohol treatment requirement may be a proper alternative to a short of moderate custodial sentence.

Two of the nine judges categorised Scenario B, relating to Domestic burglary, as B1 as expected. Three assessed it to be C1, three C2 and one B2. Five judges imposed suspended sentence orders (SSO) ranging between six months and one year and two months. Eight imposed custodial sentences ranging from one year to two years and six months. One judge did not state their sentence pre and post-guilty plea and imposed a suspended sentence of 6 months with an ATR and unpaid work.

- Those who assessed culpability to be category B (as expected) agreed that the offence was committed on impulse, but that there was more than 'limited intrusion'.

Those who assessed it as category C said there was limited intrusion, and some pointed out that there was no targeting in the case.

- Those categorising the offender under high harm (as expected) agreed this was due to the occupier being present. Those who assessed harm as category two agreed on the factor of the victim being present, but balanced this with the fact nothing was stolen.
- The wording in relation to imposing community orders with drug or alcohol treatment requirements was generally accepted, with judges saying they would be applied if alcohol was the root cause of the offending behaviour. However, two judges said they would need '*some persuasion*' that it would be an appropriate sentence for Domestic burglary. Another judge said they would be hesitant to impose non-custodial penalties due to this area being 'under sentenced': "*The impact on some of this sort of thing is just enormous, and to the extent that deterrence works for those who are inclined to commit offences, which is, I think very much in doubt, but to the extent it does work, they need to know that if you break into someone's house, you're going in.*"
- Participants were positive about the guideline and liked the flexibility of the stepped approach. Concerns were raised on the assessment of the '*normally expected*' emotional impact on victims included within the harm categorisation. Additional wording relating to cases of particular gravity was found to be clear and usable.
- Judges were happy with the culpability under the Domestic burglary guideline and favoured the addition of the third category of culpability, which was thought to give more flexibility and scope to analyse the case in a more critical and detailed way. '*The guidelines really identify the factors that touch upon culpability and harm.*'
- Aggravating and mitigating factors were widely accepted. One comment was made, suggesting the factors relating to the offence itself should be grouped together, followed by the remaining factors.

s.10 Aggravated burglary

Scenario C (s.10 Aggravated burglary)

Sentencing as expected by policy:

In Scenario C, the offender was expected to be placed in category B2 with a starting point of 6 years, with an increase within the range for aggravating factors.

- Four judges placed the offender in culpability A and five judges in culpability B. Those placing the offender in the higher category did so on the basis of a significant degree of planning and targeting of a vulnerable victim. Those placing the offender in category B did so on the basis of some degree of planning or organisation.
- Six judges assessed harm to be category one and three as category two. Those placing the offender in category one did so on the basis of the presence of the victim, trauma to the victim and a significant degree of loss. Those placing the offender in category two did so on the basis of some degree of loss and psychological impact to the victim.
- Five of nine judges applied the factor 'weapon carried when entering premises' under Step 2, double counting, and two applied the factor under Step 1. Of the two,

one did so on the basis that the factor should remain in culpability as, 'it might be the fact that you feel it should be taken into account when taking it outside of the guideline.' The other judge was initially undecided between harm categories one and two but focused on the weapon element of the harm factor: *'Violence used or threatened against the victim, particularly involving a weapon'*, and thought the carrying of the machete to be applicable to the factor. When reading the aggravating factor of 'weapon carried when entering premises', they said *'that effectively confirms it's category one [harm]'*.

- Judges imposed custodial sentences ranging from six to ten years.
- The guideline was well received and sentencers were in favour of the stepped approach. On the whole, there was not opposition to the movement of the factor 'weapon carried when entering premises' from a factor of culpability to an aggravating factor. However, some clarification was called for on the wording and whether the weapon need be visible or concealed.
- Under Scenario C, no judges made an increase in their imposed sentence using the draft guideline in comparison to that using the existing guidelines. Five judges imposed sentences that were less than that under the existing guideline, the decreases range between one (three judges) and three years (one judge). One judge made a decrease of a year and a half.
- It was noted that the addition of the middle category was helpful to have in terms of starting points: *'It's a very useful area and there's a nice degree of overlap as well between the ranges with different categories, which is always good to see because it enables you to finesse things more than if the guideline categories were hard edged between the different brackets'*.
- There were no points to note on aggravating or mitigating factors. One judge commended the Council on the addition of the factor *'Offence committed in a dwelling'* – *'I think that's a very useful addition to reflect in the new guideline that isn't present in the old [existing] one.'*

s.9 Non-domestic burglary

Scenario D (s.9 Non-domestic burglary)

Sentencing as expected by policy:

In Scenario D, the offender was expected to be placed in category C1 with a starting point of 6 months, aggravated by previous convictions to around 1 year. Reduced to around 6 months following guilty plea.

- Nine judges and nine magistrates were asked to sentence scenario D. Thirteen judges and magistrates assessed Scenario D (Non-domestic burglary) to be category C2, three C1 (as expected), one B2 and one C1 or 2. Those categorising harm to be level two, did so on the basis of the factors of 'some degree of loss', 'greater emotional impact than expected', 'soiling of property' and 'victim on premises'.
- Sentences imposed by judges ranged from a Community Order to 8 months custody. Pre-GP sentences by magistrates ranged from Medium-Level Community Order to six months custody. Five judges' sentences remained consistent across the existing and draft guidelines and two of the magistrates sentences remained consistent.

- Two judges made increases of two months to their sentences using the draft guideline. Three magistrates made increases using the draft guideline. Two increased their sentence by one and a half months and one increased from a high-level community order to six months custody. One judge and three magistrates made a decrease using the draft guideline, all of which reduced a custodial sentence to community orders.

Scenario E (s.9 Non-domestic burglary)

Sentencing as expected by policy:

In Scenario E, the offender was expected to be placed in category C2 with a starting point of a medium-level community order. This could be aggravated to a high-level community order however, credit for a guilty plea could reduce the sentence back to a medium-level community order.

- Four of nine magistrates assessed Scenario E (Non-domestic burglary) to be category C2 as expected, four as B2, and one as C3. Those categorising under category C based the decision on the factor of the offence being committed on impulse with limited intrusion. Three of four of those under category B based this on the offence committed on impulse but with more than limited intrusion.
- Most (8 of 9) magistrates assessed harm to be category 2 based on 'some degree of loss' and 'ransacking or vandalism'. One magistrate categorised the scenario as category 3 and alongside 'some degree of loss', applied the factor of 'nothing stolen'.
- Sentences included Band B fine (2), medium-level community order (4) and 6 months custody (4). Four magistrates imposed a higher sentence using the draft guideline. Increases range from one and a half months to four months. One magistrate increased their sentence from a low-level community order to six months custody. Four magistrates sentences remained consistent and one made a decrease from four and a half months custody to a MLCO.

Comments on the s.9 Non-domestic burglary guideline:

- It was generally thought the guideline worked well and was relatively easy to follow. A point to note in relevance to the Domestic and Non-domestic draft guidelines is the assessment 'much greater' or 'greater emotional harm than is normally expected'. It was felt this was highly subjective. One judge commented there was no categorisation of emotional impact on the victim that was not more than would normally be expected. They therefore felt the guideline would exclude a case of what would be thought to be a 'normal' level of emotional impact as this would automatically be assigned to a category three, which was thought to be too low to reflect the impact on victims.
- Other than the above note on emotional impact, most judges and magistrates were happy with the three levels of harm and culpability and felt that there was a greater range of factors 'which fit better with the nuanced nature of the offence'.
- One magistrate thought the draft guideline to be pitched at a better starting point than the existing Non-domestic burglary guideline.
- There were no objections to aggravating or mitigating factors.

- Magistrates reported they had not perceived changes to the types of non-domestic burglary cases seen in court and there were no particular difficulties in sentencing non-domestic burglaries.

Scenario A – Domestic burglary

Existing guideline		Draft guideline									
	SP (years)	Final sentence (years)	Culpability	Factors	Harm	Factors	SP (years)	Aggravating factors	Mitigating factors	Final sentence (years)	
Expected			A	<ul style="list-style-type: none"> Targeting of vulnerable victims Significant degree of planning Other weapon carried Equipped for burglary 	1	<ul style="list-style-type: none"> Occupier at home Violence used or threatened against the victim Substantial degree of loss 	3	<ul style="list-style-type: none"> Previous convictions Offence committed at night Vulnerable victim(s) Offence committed as part of a group Offence committed on licence 	None	Above 6 years	
	1	3.5 years	3.5 years	A	<ul style="list-style-type: none"> Targeting of vulnerable victim <i>Threat of violence**</i> 	1	<ul style="list-style-type: none"> Occupier at home Economic loss to victim 	3.5 years*	<ul style="list-style-type: none"> Previous convictions Offence committed as part of a group Offence committed on licence 	None	3.5 years
	2	4.5 years	6 years	A	<ul style="list-style-type: none"> Targeting of vulnerable victim Significant degree of planning 	1	<ul style="list-style-type: none"> Occupier at home Violence or threatened against victim 	6 years	<ul style="list-style-type: none"> Previous convictions Offence committed at night Offence committed as part of a group Steps taken to prevent the victim reporting Offence committed on licence 	None	7 years
	3	3 years	6 years	B	<ul style="list-style-type: none"> Culpability falls between A and C <i>Other weapon carried?</i> 	1	<ul style="list-style-type: none"> Occupier at home Violence threatened against victim 	3 years	<ul style="list-style-type: none"> Previous convictions Offence committed at night Offence was committed as part of a group Steps taken to prevent the victim reporting Offence committed on licence <i>Other offending</i> 	None	6 years
	4	3 years	7 years	A	<ul style="list-style-type: none"> Significant degree of planning Other weapon carried 	1	<ul style="list-style-type: none"> emotional impact Occupier at home Violence threatened against victim Substantial degree of loss 	3 years	<ul style="list-style-type: none"> Offence committed at night Offence committed as part of a group Offence committed on licence <i>Serious consequences for the victims</i> 	None	7 years
	5	6 years	6-8 years	A	<ul style="list-style-type: none"> Significant degree of planning Equipped for burglary 	1	<ul style="list-style-type: none"> Substantial degree of loss <i>Age of victims</i> <i>Significant impact on the victims</i> <i>Violation</i> 	6 years	<ul style="list-style-type: none"> Previous convictions Offence committed at night Offence committed on licence <i>Homeowner present</i> <i>Value of property stolen</i> 	None	6-8 years

								• <i>Evidence of bad character</i>		
6	6 years	9 years	A	<ul style="list-style-type: none"> • Degree of planning • Other weapon carried 	1	<ul style="list-style-type: none"> • Much greater emotional impact than expected • Occupier at home • Violence threatened against victim • Substantial degree of loss 	6 years	<ul style="list-style-type: none"> • Previous convictions • Offence committed at night • Vulnerable victim • Offence committed as part of a group • Offence committed on licence 	None	9 years
7	3 years	4.5 years	A	<ul style="list-style-type: none"> • Planning • Other weapon carried 	1	<ul style="list-style-type: none"> • Greater emotional impact than expected • Occupier at home • Violence threatened against victim • Substantial degree of loss 	3 years	<ul style="list-style-type: none"> • Previous convictions • Offence committed at night • Offence committed on licence 	None	4.5-5 years
8	5-6 years	5-6 years	A	<ul style="list-style-type: none"> • Targeting of vulnerable victims • Other weapon carried • Some degree of planning • Equipped for burglary 	1	<ul style="list-style-type: none"> • Occupier at home • Violence threatened against victim • Substantial degree of loss 	3 years	<ul style="list-style-type: none"> • Previous convictions • Offence committed at night • Vulnerable victim • Offence committed as part of a group • <i>Threatening</i> 	None	5-6 years
9	3 years	8 years	A	<ul style="list-style-type: none"> • Significant degree of planning 	1	<ul style="list-style-type: none"> • Emotional impact • Occupier at home • Violence threatened against victim • <i>Significant</i> substantial loss 	3 years	<ul style="list-style-type: none"> • Offence committed at night • Vulnerable victim • Offence committed as part of a group • Offence committed on licence 	None	8 years

* raised from 3 years to reflect previous convictions.

** a harm factor but applied in culpability

Scenario B – Domestic burglary

Existing guideline			Draft guideline								
	SP (years and months)	Pre-GP sentence (years and months)	Culpability	Factors	Harm	Factors	SP (years and months)	Aggravating	Mitigating	Pre – GP sentence	Final sentence, Post-GP (years)
Expected			B	<ul style="list-style-type: none"> Some degree of planning 	1	<ul style="list-style-type: none"> Occupier at home Confrontation 	2 years	<ul style="list-style-type: none"> Previous conviction Commission of offence whilst under the influence of alcohol 	<ul style="list-style-type: none"> Determination to address addiction Age 	2 years	Around 1 or CO with an ATR
1	1 year	1 year	B	<ul style="list-style-type: none"> Committed on impulse 	1	<ul style="list-style-type: none"> Occupier at home Nothing stolen 	1 year, 9 months	<ul style="list-style-type: none"> Commission of offence whilst under the influence of alcohol 	<ul style="list-style-type: none"> Determination to address addiction Age and/or lack of maturity 	1 year 9 months	1 year 2 months susp. 2 years
2	1 year	1 year	C	<ul style="list-style-type: none"> No targeting not equipped 	1	<ul style="list-style-type: none"> Occupier at home 	6 months	-	-	-	6 months susp. 1 year (ATR/UPW)
3	1 year	10-13 months	C	-	2	<ul style="list-style-type: none"> Occupier at home 	1 year	<ul style="list-style-type: none"> Previous conviction Commission of offence whilst under the influence of alcohol 	<ul style="list-style-type: none"> Determination to address addiction Age and/or lack of maturity 	1 year 3 months	10 months
4	1 year	1 year	C	<ul style="list-style-type: none"> Committed on impulse No targeting 	2	<ul style="list-style-type: none"> Occupier at home Property of low value stolen 	1 year	-	<ul style="list-style-type: none"> Determination to address addiction origins of problem guilty plea 	1 year	8 months susp. 2 years (RAR/UPW/curfew)
5	1 year	8 months susp. 2 years (ATR)	C	<ul style="list-style-type: none"> Committed on impulse with limited intrusion. 	1	<ul style="list-style-type: none"> Occupier at home Greater degree of emotional impact 	-	<ul style="list-style-type: none"> Previous conviction 	<ul style="list-style-type: none"> Remorse Determination of steps taken to address offending behaviour Age and/or lack of maturity 	1 year 6 months	1 year susp. 2 years
6	1 year 6 months	1 year 6 months	C	-	2	<ul style="list-style-type: none"> Nothing stolen or only property of 	1 year	<ul style="list-style-type: none"> Previous conviction 	<ul style="list-style-type: none"> Remorse Some indication to address 	1 year	9 months

						<ul style="list-style-type: none"> low value to the victim Limited damage to property 		<ul style="list-style-type: none"> Commission of offence whilst under the influence of alcohol 	<ul style="list-style-type: none"> addiction/offending behaviour Age 		
7	1 year	1 year 9 months	B	<ul style="list-style-type: none"> Committed on impulse <i>but not limited intrusion</i> 	1	<ul style="list-style-type: none"> Greater emotional impact than expected Nothing stolen 	2 year	<ul style="list-style-type: none"> Previous convictions Commission of offence whilst under the influence of alcohol 	<ul style="list-style-type: none"> <i>Willingness</i> to address addiction <i>Traumatic background</i> 	2 year 6 months	1 year 8 months
8	9 months	1 year	B	<ul style="list-style-type: none"> Committed on impulse <i>but not limited intrusion</i> 	2	<ul style="list-style-type: none"> Occupier at home Nothing stolen or only property of low value to the victim 	1 year	<ul style="list-style-type: none"> Previous convictions 	<ul style="list-style-type: none"> Remorse <i>Willingness</i> to address addiction 	1 year 3 months	1 year
9	1 year	1 year 3 months	C	<ul style="list-style-type: none"> Committed on impulse 	1	<ul style="list-style-type: none"> Occupier at home Much greater impact than expected 	1 year, 6 months	<ul style="list-style-type: none"> Previous convictions 	<ul style="list-style-type: none"> <i>Acceptance of alcohol problem</i> 	1 year 9 months	1 year 2 months susp. 2 years

Scenario C – Aggravated burglary

Existing guideline		Draft guideline									
SP (years)	Final Sentence Pre-GP (years and months)	Culpability	Factors	Harm	Factors	SP (years)	Aggravating	Mitigating	Pre-GP (years)	Final sentence Post-GP (years)	
Expected			B	<ul style="list-style-type: none"> Some degree of planning 	2	<ul style="list-style-type: none"> Some psychological harm Some degree of loss to the victim 	6 years	<ul style="list-style-type: none"> Use of face covering Offence committed at night Offence committed as part of a group 	<ul style="list-style-type: none"> No relevant previous convictions Age 	7 years	4 years, 8 months
1	10 years	9 years	A	<ul style="list-style-type: none"> Targeting of vulnerable victim Degree of planning 	1	<ul style="list-style-type: none"> Victim on the premises <i>Violence against property</i> Substantial degree of loss Psychological impact to the victim Ransacking or vandalism <i>Weapon carried</i> 	10 years	<ul style="list-style-type: none"> Weapon carried when entering premises Offence committed as part of a group 	<ul style="list-style-type: none"> No relevant convictions Age and lack of maturity 	7 years, 6 months	5 years
2	11 years	10 years	A	<ul style="list-style-type: none"> Some impact or loss <i>Victim on premises</i> 	1	<ul style="list-style-type: none"> Victim on the premises Some degree of loss 	10 years	<ul style="list-style-type: none"> Weapon carried when entering premises Use of face covering Offence committed at night Offence was committed as part of a group 	<ul style="list-style-type: none"> No relevant convictions Remorse Age and lack of maturity 	10 years	6 years, 6 months
3	10 years	10 years	A	<ul style="list-style-type: none"> Significant degree of planning 	1	<ul style="list-style-type: none"> Victim on the premises 	10 years	-	-	10 years	6 years, 8 months
4	10 years	8 years	A	<ul style="list-style-type: none"> Significant planning and targeting and <i>slight</i> vulnerability Weapon 	1 or 2	<ul style="list-style-type: none"> Victim on the premises Violence threatened <i>Attempt to steal what would be a substantial loss</i> 	10 years	<ul style="list-style-type: none"> Weapon carried when entering premises Use of face covering 	<ul style="list-style-type: none"> Nothing stolen No previous convictions 	8 years	5 years, 4 months

						<ul style="list-style-type: none"> • <i>Equipped for burglary</i> • Some psychological impact • <i>Weapon produced</i> 		<ul style="list-style-type: none"> • Offence committed in a dwelling • Offence committed as part of a group 	<ul style="list-style-type: none"> • Age and lack of maturity 		
5	10 years	9 years	B	-	1	<ul style="list-style-type: none"> • Significant psychological trauma to the victim • Victim on the premises • <i>Some degree of violence threatened, involving a weapon</i> 	8 years	<ul style="list-style-type: none"> • Use of face covering • Vulnerable victim • Offence committed as part of a group 	<ul style="list-style-type: none"> • No relevant previous conviction • Age and lack of maturity 	8 years	5 years, 4 months
6	10 years	9 years	B	<ul style="list-style-type: none"> • Some planning or organisation 	2	<ul style="list-style-type: none"> • Victim on the premises • <i>Significant degree of loss</i> • Vulnerable victim 	9 years	<ul style="list-style-type: none"> • Unrelated previous convictions • Weapon carried when entering premises • Use of face covering • Vulnerable victim (taken into account at step 1) • Committed at night 	<ul style="list-style-type: none"> • Age 	8 years	5 years, 4 months
7	10 years	9 years	B	<ul style="list-style-type: none"> • Some degree of planning • <i>Part of a group</i> • <i>Committed at night</i> 	1	<ul style="list-style-type: none"> • Violence used or threatened against the victim • Some psychological injury to the victim • Some degree of loss • Victim on the premises 	9 years	<ul style="list-style-type: none"> • <i>Unrelated previous convictions*</i> • Weapon carried when entering premises (taken into account at step 1) • Use of face covering • Committed at night 	<ul style="list-style-type: none"> • No relevant previous convictions • Age and lack of maturity 	9 years	6 years
8	9 years	9 years	B	<ul style="list-style-type: none"> • Some degree of planning 	1	-	8 years	-	-	8 years	5 years, 4 months
9	10 years	9 years	B	<ul style="list-style-type: none"> • Targeting of vulnerable victim • Some degree of planning or organisation 	2	<ul style="list-style-type: none"> • Victims on the premises • Some degree of loss • Some psychological injury or impact on the victim 	6 years	<ul style="list-style-type: none"> • Weapon carried when entering premises • Use of face covering • Offence committed at night • Offence committed as part of a group 	<ul style="list-style-type: none"> • No relevant previous convictions • Age 	6 years	4 years

* a mitigating factor but applied under aggravation

Scenario D – Non-domestic burglary (judges)

	Existing guideline		Draft guideline							
	SP (mths)	Final Sentence (months)	Culpability	Factors	Harm	Factors	SP (mths)	Aggravating	Mitigating	Final sentence (years and mths)
Expected			C	<ul style="list-style-type: none"> Committed on impulse with limited intrusion 	1	<ul style="list-style-type: none"> Victim on premises Substantial degree of loss 	6 months	<ul style="list-style-type: none"> Previous convictions 	None	1 year
1	4.5 months	6 months	C	<ul style="list-style-type: none"> Committed on impulse 	1	<ul style="list-style-type: none"> Victim on premises Substantial degree of loss Limited damage or disturbance to property 	6 months	<ul style="list-style-type: none"> Previous convictions 	None	8 months
2	4.5 months	6 months	C	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss 	HLCO	<ul style="list-style-type: none"> Previous convictions 	None	6 months
3	MLCO	HLCO	C	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	HLCO
4	CO	HLCO/SO	C	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss 	MLCO	None	None	CO
5	HLCO	-	C	<ul style="list-style-type: none"> Committed on impulse with limited intrusion into property 	2	<ul style="list-style-type: none"> Loss Impact on victim 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	HLCO (UW/RAR)
6	4.5 months/LLCO	6 months	C	<ul style="list-style-type: none"> Committed on impulse (<i>opportunistic</i>) 	2	<ul style="list-style-type: none"> Some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	6 months
7	4.5 months	6 months possibly susp.	C	<ul style="list-style-type: none"> Committed on impulse with limited intrusion into property 	2	<ul style="list-style-type: none"> Greater emotional impact 	CO	<ul style="list-style-type: none"> Previous convictions 	None	MLCO (curfew)
8	9 months	6 months (assuming GP)	C	<ul style="list-style-type: none"> Committed on impulse 	1/2	<ul style="list-style-type: none"> Substantial degree of loss Emotional impact (greater or much greater) 	6 months/MLCO	-	None	6 months

9	4.5 months/ MLCO	6 months	C	• Committed on impulse	1	• Substantial degree of loss	6 months/ MLCO	• Previous convictions	None	8 months
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Scenario D – Non-domestic burglary (Magistrates)

Existing guideline		Draft guideline									
Expected	SP (mths)	Final Sentence Pre-GP	Culpability	Factors	Harm	Factors	SP	Aggravating	Mitigating	Sentence (Pre-GP)	Final sentence (Post-GP)
				C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	1	<ul style="list-style-type: none"> Victim on premises Substantial degree of loss 	6 months	<ul style="list-style-type: none"> Previous convictions 	None	1 year
1	4.5 months	MLCO	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	MLCO	MLCO
2	4.5 months	4.5 months	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	HLCO (200hr UW)	HLCO (180hr UW)
3	HLCO	HLCO	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Greater emotional impact Damage of property causing some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	HLCO (UPW?)	HLCO (discount hrs)
4	4.5 months	3 months	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion Victim on premises 	2	<ul style="list-style-type: none"> Greater emotional impact Some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	MLCO/ Band B fine (100hr UW)	MLCO/Band B fine (66% WI and 66hr UW)
5	4.5 months	2 months 1week	C	<ul style="list-style-type: none"> <i>Defendant was not an intruder as was at the hospital when the offence was committed</i> 	2	<ul style="list-style-type: none"> Greater emotional impact <i>Multiple items stolen</i> 	MLCO	<ul style="list-style-type: none"> Previous convictions Abuse of a position of trust 	<ul style="list-style-type: none"> <i>GP at earliest opportunity</i> 	Custody*	HLCO
6	MLCO	HLCO	B	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss 	6 months	<ul style="list-style-type: none"> Previous convictions 	None	6 months	4 months possibly susp

7	MLCO	4.5 months	C	<ul style="list-style-type: none"> Limited intrusion 	2	<ul style="list-style-type: none"> Victim on premises Soiling of property Some degree of loss Theft/damage to property 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	HLCO (victim comp)	HLCO (lower hours)
8	4.5 months	4.5 months	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion <i>Little planning</i> 	1	<ul style="list-style-type: none"> Victim on premises Some degree of loss 	6 months	<ul style="list-style-type: none"> Previous convictions 	None	6 months	6 months (credit for GP is not sending to CC)
9	4.5 months	4.5 months	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss Emotional impact on victim 	6 months	<ul style="list-style-type: none"> Previous convictions <i>Emotional impact on the victim</i> <i>A place of work</i> <i>Public place</i> <i>Damage to property</i> 	<ul style="list-style-type: none"> <i>Committed on impulse with limited intrusion</i> <i>Low value property but high sentimental value</i> 	6 months	4 months sups. 1 year

* unspecified length.

Scenario E – Non-domestic burglary (Magistrates)

Existing guideline		Draft guideline								
SP (years)	Final Sentence Pre-GP (months)	Culpability	Factors	Harm	Factors	SP (mths)	Aggravating	Mitigating	Pre-GP (months)	Final sentence Post-GP (months)
Expected			<ul style="list-style-type: none"> Offence committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss Ransacking or vandalism 	MLCO	<ul style="list-style-type: none"> Part of a group Under the influence of alcohol 	None	HLCO	MLCO
1	4.5 months	MLCO	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Ransacking or vandalism 	MLCO	<ul style="list-style-type: none"> Part of a group Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions <i>Guilty plea</i> 	MLCO	LLCO (ATR; RAR)
2	MLCO	MLCO	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss Ransacking or vandalism 	MLCO	<ul style="list-style-type: none"> Part of a group Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions <i>Guilty plea</i> 	MLCO (100 hrs UPW)	MLCO (50 hrs UPW)
3	LLCO	LLCO	<ul style="list-style-type: none"> <i>More than limited intrusion</i> 	2	<ul style="list-style-type: none"> Some degree of loss 	6 months	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions <i>Guilty plea</i> 	6 months	HLCO
4	MLCO	MLCO (120hr UPW) and Band B fine	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss <i>Some degree of damage to property</i> 	MLCO	<ul style="list-style-type: none"> Part of a group Under influence of alcohol 	-	MLCO (120hr UPW) Band B fine (70% weekly income)	MLCO (80 hrs UPW) Band B fine (100% weekly income)
5	4.5 months	2 months	<ul style="list-style-type: none"> <i>Not limited intrusion</i> 	2	<ul style="list-style-type: none"> Some degree of loss Ransacking or vandalism 	6 months	-	<ul style="list-style-type: none"> No relevant previous convictions <i>Guilty plea</i> 	6 months	4 months

6	4.5 months	4.5 months	B	<ul style="list-style-type: none"> Committed on impulse <i>Intrusion on property</i> 	2	<ul style="list-style-type: none"> Some degree of loss <i>Some damage to property</i> 	6 months	<ul style="list-style-type: none"> previous convictions Under influence of alcohol 	-	6 months	4 months SSO
7	4.5 months	4.5 months	C	<ul style="list-style-type: none"> Offence committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss Ransacking or vandalism 	MLCO	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions 	MLCO	MLCO
8	LLCO (40hr UPW)	LLCO	C	<ul style="list-style-type: none"> Offence committed on impulse, with limited intrusion 	3	<ul style="list-style-type: none"> Some degree of loss Nothing stolen 	Band B fine	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions <i>Reasonably good character</i> <i>Guilty plea</i> 	Band B fine	Band B fine (1/3 reduction)
9	4.5 months	4.5 months	B	<ul style="list-style-type: none"> Offence committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss Ransacking or vandalism <i>Intrusion</i> 	6 months	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions 	6 months	M-HLCO

Annex C

Aggravated burglary

Theft Act 1968 (section 10)

Triable only on indictment

Maximum: Life imprisonment

Offence range: 1 – 13 years' custody

This is a [Schedule 19](#) offence for the purposes of sections [274](#) and section [285](#) (required life sentence for offence carrying life sentence) of the Sentencing Code.

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors in the table 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**

Culpability demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Targeting of vulnerable victim• A significant degree of planning or organisation
B- Medium culpability	<ul style="list-style-type: none">• Some degree of planning or organisation• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Involved through coercion, intimidation or exploitation• Mental disorder or learning disability, where linked to the commission of the offence

Harm

The level of harm is assessed by weighing up all the factors of the case

Category 1	<ul style="list-style-type: none">• Substantial physical or psychological injury or other substantial impact on the victim• Victim at home or on the premises (or returns) while offender present• Violence used or threatened against the victim, particularly involving a weapon• Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value)• Soiling of property and/or extensive damage or disturbance to property• Context of public disorder
Category 2	<ul style="list-style-type: none">• Some physical or psychological injury or some other impact on the victim• Theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value)

	<ul style="list-style-type: none"> Ransacking or vandalism to the property
Category 3	<ul style="list-style-type: none"> No violence used or threatened and a weapon is not produced Limited physical or psychological injury or other limited impact on the victim

STEP TWO

Starting point and category range

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

Harm	Culpability		
	A	B	C
Category 1	Starting Point 10 years' custody Category Range 9 -13 years' custody	Starting Point 8 years' custody Category Range 6 -11 years' custody	Starting Point 6 years' custody Category Range 4 – 9 years' custody
Category 2	Starting Point 8 years' custody Category Range 6 -11 years' custody	Starting Point 6 years' custody Category Range 4– 9 years' custody	Starting Point 4 years' custody Category Range 2-6 years' custody
Category 3	Starting Point 6 years' custody Category Range 4-9 years' custody	Starting Point 4 years' custody Category Range 2-6 years' custody	Starting Point 2 years' custody Category Range 1-4 years' custody

<https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/imposition-of-community-and-custodial-sentences/>.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Care should be taken to avoid double counting factors already taken into account at step one

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Weapon carried when entering premises
Care should be taken to avoid double counting in these cases. If an offender commits an aggravated burglary with intent to steal/inflict GBH/ do criminal damage [a 9(1)(a) burglary], they commit the offence at the point of the trespass when they enter the building. So for these offences, all aggravated burglaries would have the weapon present on entry. For the aggravated version of s.9(1)(b) the offence is not committed until the point of the theft/attempted theft or GBH/attempt GBH and therefore the offender may have the weapon on entry or have picked it up in the address. *R v Sage (AG's ref SAGE [2019] EWCA Crim 934, [2019] 2 Cr App R (S) 50)* sets out that having a weapon present on entry is an essential element of an aggravated s.9(1)(a) offence and so care needs to be taken in s.9(1)(a) cases that the fact the offender has a weapon present on entry is not taken into account a second time. In s.9(1)(b) cases, however, the fact that the offender had taken a weapon to the premises, and was in possession of it when entering, will normally aggravate the offence (unless already taken into account at step 1).
- Use of face covering or disguise
- Offence committed in a dwelling
- Child at home (or returns home) when offence committed
- Offence committed at night
- Abuse of power and/or position of trust
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim (where not captured at category one)
- Victim compelled to leave their home
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- Nothing stolen or only property of low value to the victim (whether economic, commercial or personal)
- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability, where not linked to the commission of the offence
- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

STEP THREE

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

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 73 of the Sentencing Code](#) and the *Reduction in Sentence for a Guilty Plea* guideline.

STEP FIVE

Dangerousness

The court should consider whether having regard to the criteria contained in [section 308 of the Sentencing Code](#) it would be appropriate to impose a life sentence (sections [274](#) and [285](#)) or an extended sentence (sections [266](#) and [279](#)). When sentencing offenders to a life sentence under these provisions the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

Totality principle

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

STEP SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders. The court must give reasons if it decides not to order compensation. ([Sentencing Code, s.55](#)).

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

STEP EIGHT

Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

Annex D

(Version with proposed changes)

Non-domestic burglary

Theft Act 1968 (section 9)

Triable either way (except as noted below)

Maximum: 10 years' custody

Offence range: Discharge – five years' custody

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code if it was committed with intent to:

- a. inflict grievous bodily harm on a person, or
- b. do unlawful damage to a building or anything in it.

This offence is **indictable only** where it is a burglary comprising the commission of, or an intention to commit, an offence which is triable only on indictment.

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors in the table 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**

Culpability demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• A significant degree of planning or organisation• Knife or other weapon carried (<u>see step 6 on totality when sentencing more than one offence</u>)
B- Medium culpability	<ul style="list-style-type: none">• Some degree of planning or organisation• Equipped for burglary (where not in high culpability)• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Offence committed on impulse, with limited intrusion into property• Involved through coercion, intimidation or exploitation• Mental disorder or learning disability, where linked to the commission of the offence

Harm

The level of harm is assessed by weighing up all the factors of the case

Category 1	<ul style="list-style-type: none">• <u>Violence used against the victim</u>• <u>Substantial physical or psychological injury or substantial emotional or other impact on the victim</u>• Victim on the premises (or returns <u>or otherwise attends</u>) while offender present• Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value)• Soiling of property and/or extensive damage or disturbance to property• Context of public disorder (<u>when linked to the commission of the offence</u>)
Category 2	<ul style="list-style-type: none">• <u>Violence threatened but not used against the victim</u>• <u>Some physical or psychological injury or some emotional or other impact on the victim</u>

	<ul style="list-style-type: none"> • Theft of/damage to property causing <u>a moderate</u> degree of loss to the victim (whether economic, commercial or personal value) • <u>Moderate damage or disturbance to</u> the property
Category 3	<ul style="list-style-type: none"> • <u>Limited physical or psychological injury or limited emotional or other impact on the victim</u> • Nothing stolen or only property of low value to the victim (whether economic, commercial or personal) • Limited damage or disturbance to property

STEP TWO

Starting point and category range

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

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under [part 10](#), or an alcohol treatment requirement under [part 11](#), of Schedule 9 of the Sentencing Code may be a proper alternative to a short or moderate custodial sentence.

Harm	Culpability		
	A	B	C
Category 1	Starting Point 2 years' custody Category Range 1 -5 years' custody	Starting Point 1 years' custody Category Range High level community order - 2 years' custody	Starting Point 6 months custody Category Range Medium level community order – 1 years' custody
Category 2	Starting Point 1 years' custody Category Range High level community order - 2 years' custody	Starting Point 6 months custody Category Range Medium level community order – 1 years' custody	Starting Point <u>High</u> level community order Category Range Low <u>level</u> <u>community order - 6 months custody</u>
Category 3	Starting Point 6 months custody Category Range Medium level community order - 1 years' custody	Starting Point <u>High</u> level community order Category Range Low level community <u>order- 6 months custody</u>	Starting Point <u>Medium level</u> <u>community order</u> Category Range <u>Band B fine –High</u> level community order

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Loss or damage caused to heritage and/or cultural assets
- Abuse of a position of trust
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability, where not linked to the commission of the offence

- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

STEP THREE

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

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 73 of the Sentencing Code](#) and the *Reduction in Sentence for a Guilty Plea* guideline.

STEP FIVE

Dangerousness

A burglary offence under section 9 Theft Act 1968 is a specified offence if it was committed with the intent to (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it. The court should consider whether having regard to the criteria contained [section 308 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

STEP SIX

Totality principle

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

STEP SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders. The court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

STEP EIGHT

Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

Annex E

Domestic burglary

Theft Act 1968 (section 9)

Triable either way (except as noted below)

Maximum: 14 years' custody

Offence range: Low level community order- six years' custody

This is a **specified offence** for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code if it was committed with intent to:

- a. inflict grievous bodily harm on a person, or
- b. do unlawful damage to a building or anything in it.

This offence is **indictable only** where:

- a. it is a burglary comprising the commission of, or an intention to commit, an offence which is triable only on indictment; or
- b. any person in the dwelling was subjected to violence or the threat of violence; or
- c. if the defendant were convicted, it would be a third qualifying conviction for domestic burglary.

Where sentencing an offender for a qualifying **third domestic burglary**, the Court must apply [section 314 of the Sentencing Code](#) and impose a custodial term of at least three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors in the table 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**

Culpability demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Targeting of vulnerable victim• A significant degree of planning or organisation• Knife or other weapon carried (<u>see step six on totality when sentencing more than one offence</u>)
B- Medium culpability	<ul style="list-style-type: none">• Some degree of planning or organisation• Equipped for burglary (where not in high culpability)• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Offence committed on impulse, with limited intrusion into property• Involved through coercion, intimidation or exploitation• Mental disorder or learning disability, where linked to the commission of the offence

Harm

The level of harm is assessed by weighing up all the factors of the case

Category 1	<ul style="list-style-type: none">• Much greater emotional impact on the victim than would normally be expected• Occupier at home (or returns home) while offender present• Violence used or threatened against the victim• Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value)• Soiling of property and/or extensive damage or disturbance to property• Context of public disorder
Category 2	<ul style="list-style-type: none">• Greater emotional impact on the victim than would normally be expected

	<ul style="list-style-type: none"> • Theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value) • Ransacking or vandalism to the property
Category 3	<ul style="list-style-type: none"> • Nothing stolen or only property of low value to the victim (whether economic, commercial or personal) • Limited damage or disturbance to property

STEP TWO

Starting point and category range

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

Where sentencing an offender for a qualifying **third domestic burglary**, the Court must apply [section 314 of the Sentencing Code](#) and impose a custodial term of at least three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under [part 10](#), or an alcohol treatment requirement under [part 11](#), of Schedule 9 of the Sentencing Code may be a proper alternative to a short or moderate custodial sentence.

For cases of particular gravity, sentences above the top of the range may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	Starting Point 3 years' custody Category Range 2 -6 years' custody	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 year 6 months' custody Category Range 6 months – 3 years' custody
Category 2	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 year 6 months' custody Category Range 6 months – 3 years' custody	Starting Point 1 years' custody Category Range High level community order-2 years' custody

Category 3	Starting Point 1 year 6 months' custody Category Range 6 months - 3 years' custody	Starting Point 1 years' custody Category Range High level community order-2 years' custody	Starting Point High level community order Category Range Low level community order-6 months custody
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Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Child at home (or returns home) when offence committed
- Offence committed at night
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim (where not already taken into account at step one)
- Victim compelled to leave their home
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability, where not linked to the commission of the offence
- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

STEP THREE

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

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 73 of the Sentencing Code](#) and the *Reduction in Sentence for a Guilty Plea* guideline. Where a minimum sentence is imposed under [section 314 of the Sentencing Code](#), the sentence must not be less than 80 percent of the appropriate custodial period after any reduction for a guilty plea.

STEP FIVE

Dangerousness

A burglary offence under section 9 Theft Act 1968 is a specified offence if it was committed with the intent to (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it. The court should consider whether having regard to the criteria contained in [section 308 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

STEP SIX

Totality principle

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

STEP SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders. The court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

STEP EIGHT

Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

Burglary offences- Annex F

These data tables provide statistics on the outcomes and demographics of offenders sentenced for offences covered by the Sentencing Council guidelines for burglary offences, which are found here:

<https://www.sentencingcouncil.org.uk/crown-court/>

Section 1: Non-domestic burglary

[Table 1 1](#) Number of adult offenders sentenced for non-domestic burglary covered by the definitive guideline, all courts, 2010-2020

[Table 1 2](#) Number and proportion of adult offenders sentenced for non-domestic burglary covered by the definitive guideline, by sentence outcome, 2010-2020

[Table 1 3](#) Average custodial sentence lengths (ACSL) received by adult offenders sentenced for non-domestic burglary covered by the definitive guideline, 2010-2020

[Table 1 4](#) Sentence lengths received by adult offenders sentenced to immediate custody for non-domestic burglary covered by the definitive guideline, 2010-2020

Section 2: Domestic burglary

[Table 2 1](#) Number of adult offenders sentenced for domestic burglary covered by the definitive guideline, all courts, 2010-2020

[Table 2 2](#) Number and proportion of adult offenders sentenced for domestic burglary covered by the definitive guideline, by sentence outcome, 2010-2020

[Table 2 3](#) Average custodial sentence lengths (ACSL) received by adult offenders sentenced for domestic burglary covered by the definitive guideline, 2010-2020

[Table 2 4](#) Sentence lengths received by adult offenders sentenced to immediate custody for domestic burglary covered by the definitive guideline, 2010-2020

Section 3: Aggravated burglary

[Table 3 1](#) Number of adult offenders sentenced for aggravated burglary covered by the definitive guideline, all courts, 2010-2020

[Table 3 2](#) Number and proportion of adult offenders sentenced for aggravated burglary covered by the definitive guideline, by sentence outcome, 2010-2020

[Table 3 3](#) Average custodial sentence lengths (ACSL) received by adult offenders sentenced for aggravated burglary covered by the definitive guideline, 2010-2020

[Table 3 4](#) Sentence lengths received by adult offenders sentenced to immediate custody for aggravated burglary covered by the definitive guideline, 2010-2020

Notes

Data sources and quality

The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the source of the data for these data tables. Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. These restrictions resulted in reduction of court activity to adhere to new rules on movement and social interaction and the prioritisation of certain types of court case involving cases that are more likely to result in custody. This means that the figures presented on an offence specific basis may reflect these rules to varying degrees depending on the offence in question and whether these cases continued to be heard throughout the time period. Therefore, it is important to note that these short-term trends might mostly reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the long term. From September 2020, some cases proceeded at Derby Crown and magistrates' courts were recorded on the new Common Platform (CP) case management system. Data processing development is currently underway on this new system, and as a result the small number of cases recorded on the CP system during the latter part of 2020 are not included in the CPD.

Further details of the processes by which the Ministry of Justice validate the records in the Court Proceedings Database can be found within the guide to their Criminal Justice Statistics publication which can be downloaded via the link:
<https://www.gov.uk/government/collections/criminal-justice-statistics>

Volumes of sentences

The data presented in these data tables only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented in these data tables.

Sentence outcomes

The outcomes presented are the final sentence outcomes, after taking into account all factors of the case, including whether a guilty plea was made. This is because the sentence length information available in the Court Proceedings Database is the final sentence imposed, after any reduction for guilty plea.

The sentence outcome shown is the most severe sentence or order given for the principal offence (i.e. the principal sentence), secondary sentences given for the principal offence are not included in the tables.

Offender demographics

Ethnicity is the self-identified ethnicity as defined by the individual and is categorised using the 5+1 self-identified classification. The Not recorded/not known category includes all others for whom ethnicity information is not available, either because they have chosen not to state their ethnicity or because no information has been recorded. Prior to May 2020, this was based on the 16+1 classification used in the 2001 census. Since May 2020, this has been replaced by the 18+1 classification used in the 2011 Census. This had caused two key changes to the data presented in our publications:

1) The data now captures a further two ethnicity classifications: Gypsy or Irish Traveller which will fall into the broader category of 'White' and Arab which will fall into the broader category of 'Other'. While the data suggests that no offenders from these ethnic backgrounds have been sentenced since the 18+1 classification was introduced, these ethnic groups will begin to be captured in the 2021 data.

2) The movement of the Chinese ethnicity classification from the broad category of 'Chinese and Other' into 'Asian'. Due to the small number of offenders sentenced who identified as Chinese (around 310 offenders in 2020 across all offences), this change has had little impact on overall trends presented in the data, we have also applied this change to the whole timeseries presented to allow for continued comparison across years. However, it means that the 'Chinese and Other' category will be renamed 'Other' within our data tables to account for this change.

Therefore, the ethnicity categories for self-identified ethnicity are: Asian, Black, Mixed, Other, White, Not recorded/not known. More information on the 18+1 classification can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691544/self-defined-ethnicity-18plus1.pdf

The proportions reflected amongst those for whom data was provided may not reflect the demographics of the full population sentenced. In the CPD, prior to 2017 adults of unknown ages were defaulted to 25. From 2017 onwards, the majority of records where the age is unknown have been grouped within an 'age unknown' variable, however there may still be some cases where the age is unknown and has therefore been defaulted to 25.

Due to the small number of offenders sentenced for some offences, care should be taken when comparing figures across different groups. This is particularly true where there are only a small number of offenders within a specific demographic group, as small numeric changes can present as large percentage changes when they are calculated using small volumes. This should be considered when comparing percentages across groups.

General conventions

The following conventions have been applied to the data:

- Percentages derived from the data have been provided in the tables to the nearest whole percentage, except when the nearest whole percentage is zero. In some instances, this may mean that percentages shown do not add up to 100 per cent.
- Where the nearest whole per cent is zero, the convention '<0.5' has been used.
- Where totals have been provided, these have been calculated using unrounded data and then rounded.

Uses made of the data

Data provided in the Council's range of statistical bulletins and tables are used to inform public debate of the Council's work.

Background information

Further information on the Sentencing Council and its work, as well as information on general sentencing practice in England and Wales can be found on the Council's website at:

<https://sentencingcouncil.org.uk>

The Ministry of Justice publishes a quarterly statistical publication, Criminal Justice Statistics, which includes a chapter focusing on sentencing in England and Wales. This chapter includes information on the number of offenders sentenced by offence group and by demographic factors such as age, sex and self-identified ethnicity. The full publication can be accessed via the Ministry of Justice website at:
<https://www.gov.uk/government/collections/criminal-justice-statistics-quarterly>

Detailed sentencing data from the Ministry of Justice's Court Proceedings Database can be accessed via the data tool published alongside the annual Criminal Justice Statistics publication. The tool enables data covering the last decade to be viewed by offence, sex, age range and ethnicity, and can be accessed via the following link (for example, see the 'Outcomes by Offence data tool'):
<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2020>

Contact points for further information

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Table 1.1: Number of adult offenders sentenced for non-domestic burglary, all courts, 2010-2020²

[Index](#)

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Magistrates' court	5,848	6,420	5,474	4,995	4,414	3,942	3,856	4,031	3,703	3,364	2,833
Crown Court	1,789	2,477	2,459	2,044	2,139	2,094	1,849	1,772	1,759	1,879	1,557
Total	7,637	8,897	7,933	7,039	6,553	6,036	5,705	5,803	5,462	5,243	4,390

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Magistrates' court	77%	72%	69%	71%	67%	65%	68%	69%	68%	64%	65%
Crown Court	23%	28%	31%	29%	33%	35%	32%	31%	32%	36%	35%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) In August 2011, riots occurred in London and other major cities across England and Wales. Around 50 per cent of the people arrested in connection with the riots were charged with burglary offences. Around 670 offenders sentenced for non-domestic burglary and 60 offenders sentenced for domestic burglary included in these data tables 2011 and 2012 were sentenced for offences relating to the riots. Sentencing trends for these cases and for others dealt with around the same time may have been affected the severity of the riots, and so users should bear this in mind when interpreting data from around this period.

Table 1.2: Number and proportion of adult offenders sentenced for non-domestic burglary, by sentence outcome, 2010-2020^{1,2}

[Index](#)

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Absolute and conditional discharge	329	355	233	209	230	197	139	102	109	91	85
Fine	318	340	234	218	259	205	168	188	157	113	131
Community sentence	3,107	3,189	2,534	1,911	1,462	1,375	1,132	1,122	1,163	1,147	796
Suspended sentence	1,014	1,198	1,100	1,169	1,209	1,227	1,211	1,205	1,034	912	877
Immediate custody	2,736	3,639	3,581	3,151	3,004	2,911	2,980	3,110	2,896	2,881	2,398
Otherwise dealt with ³	133	176	251	381	389	121	75	76	103	99	103
Total	7,637	8,897	7,933	7,039	6,553	6,036	5,705	5,803	5,462	5,243	4,390

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Absolute and conditional discharge	4%	4%	3%	3%	4%	3%	2%	2%	2%	2%	2%
Fine	4%	4%	3%	3%	4%	3%	3%	3%	3%	2%	3%
Community sentence	41%	36%	32%	27%	22%	23%	20%	19%	21%	22%	18%
Suspended sentence	13%	13%	14%	17%	18%	20%	21%	21%	19%	17%	20%
Immediate custody	36%	41%	45%	45%	46%	48%	52%	54%	53%	55%	55%
Otherwise dealt with ³	2%	2%	3%	5%	6%	2%	1%	1%	2%	2%	2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) In August 2011, riots occurred in London and other major cities across England and Wales. Around 50 per cent of the people arrested in connection with the riots were charged with burglary offences. Around 670 offenders sentenced for non-domestic burglary and 60 offenders sentenced for domestic burglary included in these data tables for 2011 and 2012 were sentenced for offences relating to the riots. Sentencing trends for these cases and for others dealt with around the same time may have been affected by the severity of the riots, and so users should bear this in mind when interpreting data from around this period.

3) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

Table 1.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for non-domestic burglary, 2010-2020²[Index](#)

ACSL (months) ^{3,4}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Mean	8.5	9.0	9.4	8.5	9.2	9.8	10.0	9.4	9.9	11.3	10.6
Median	4.0	4.2	4.7	4.2	4.2	5.1	4.7	4.7	4.7	5.0	5.6
Indeterminates as percentage of custodial sentences ^{5,6}	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 2) In August 2011, riots occurred in London and other major cities across England and Wales. Around 50 per cent of the people arrested in connection with the riots were charged with burglary offences. Around 670 offenders sentenced for non-domestic burglary and 60 offenders sentenced for domestic burglary included in these data tables for 2011 and 2012 were sentenced for offences relating to the riots. Sentencing trends for these cases and for others dealt with around the same time may have been affected by the severity of the riots, and so users should bear this in mind when interpreting data from around this period.
- 3) Excludes life and indeterminate sentences.
- 4) Excludes two cases of non-domestic burglary over the period 2010-2020 where the data suggested that the sentence was above the statutory maximum for this offence (10 years' custody).
- 5) This is calculated as the number of offenders given an indeterminate custodial sentence, out of the number of offenders given a sentence of immediate custody.
- 6) For 2010-2012, the indeterminate sentence figures include the sentences of Imprisonment for Public Protection (IPP) and Extended Sentences for Public Protection (EPP). These sentences were introduced in 2005 and abolished in 2012.

Table 1.4: Sentence lengths received by adult offenders sentenced to immediate custody for non-domestic burglary, 2010-2020¹

[Index](#)

Sentence length (years)^{2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	2,282	2,828	2,777	2,587	2,352	2,238	2,263	2,413	2,203	2,090	1,786
1 to 2	247	568	543	352	413	412	434	422	399	438	377
2 to 3	125	149	159	128	138	160	175	188	200	211	134
3 to 4	39	47	65	46	71	63	57	50	65	66	45
4 to 5	26	28	17	22	15	25	25	22	17	37	21
Greater than 5 years	17	19	20	15	15	13	26	14	12	39	35
Total	2,736	3,639	3,581	3,150	3,004	2,911	2,980	3,109	2,896	2,881	2,398

Sentence length (years)^{2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	83%	78%	78%	82%	78%	77%	76%	78%	76%	73%	74%
1 to 2	9%	16%	15%	11%	14%	14%	15%	14%	14%	15%	16%
2 to 3	5%	4%	4%	4%	5%	5%	6%	6%	7%	7%	6%
3 to 4	1%	1%	2%	1%	2%	2%	2%	2%	2%	2%	2%
4 to 5	1%	1%	0%	1%	0%	1%	1%	1%	1%	1%	1%
Greater than 5 years	1%	1%	1%	0%	0%	0%	1%	0%	0%	1%	1%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

3) Excludes two cases of non-domestic burglary over the period 2010-2020 where the data suggested that the sentence was above the statutory maximum for this offence (10 years' custody).

Table 2.1: Number of adult offenders sentenced for domestic burglary, all courts, 2010-2020²

[Index](#)

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Magistrates' court	2,237	2,322	1,904	1,508	1,256	1,035	989	921	720	598	462
Crown Court	8,272	8,799	8,375	8,183	7,500	6,370	5,261	4,915	4,400	4,053	3,229
Total	10,509	11,121	10,279	9,691	8,756	7,405	6,250	5,836	5,120	4,651	3,691

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Magistrates' court	21%	21%	19%	16%	14%	14%	16%	16%	14%	13%	13%
Crown Court	79%	79%	81%	84%	86%	86%	84%	84%	86%	87%	87%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) In August 2011, riots occurred in London and other major cities across England and Wales. Around 50 per cent of the people arrested in connection with the riots were charged with burglary offences. Around 670 offenders sentenced for non-domestic burglary and 60 offenders sentenced for domestic burglary included in these data tables 2011 and 2012 were sentenced for offences relating to the riots. Sentencing trends for these cases and for others dealt with around the same time may have been affected the severity of the riots, and so users should bear this in mind when interpreting data from around this period.

Table 2.2: Number and proportion of adult offenders sentenced for domestic burglary, by sentence outcome, 2010-2020¹

[Index](#)

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Absolute and conditional discharge	103	82	57	46	59	48	37	35	32	30	16
Fine	44	32	34	38	41	38	21	18	18	16	10
Community sentence	2,116	2,012	1,649	1,181	895	740	529	451	459	423	317
Suspended sentence	1,571	1,563	1,497	1,547	1,524	1,352	962	805	653	546	513
Immediate custody	6,575	7,337	6,940	6,737	6,086	5,149	4,637	4,454	3,876	3,563	2,770
Otherwise dealt with ²	100	95	102	142	151	78	64	73	82	73	65
Total	10,509	11,121	10,279	9,691	8,756	7,405	6,250	5,836	5,120	4,651	3,691

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Absolute and conditional discharge	1%	1%	1%	0%	1%	1%	1%	1%	1%	1%	0%
Fine	0%	0%	0%	0%	0%	1%	0%	0%	0%	0%	0%
Community sentence	20%	18%	16%	12%	10%	10%	8%	8%	9%	9%	9%
Suspended sentence	15%	14%	15%	16%	17%	18%	15%	14%	13%	12%	14%
Immediate custody	63%	66%	68%	70%	70%	70%	74%	76%	76%	77%	75%
Otherwise dealt with ²	1%	1%	1%	1%	2%	1%	1%	1%	2%	2%	2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

Table 2.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for domestic burglary, 2010-2020²[Index](#)

ACSL (years) ³	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Mean	1.9	1.9	1.9	2.0	2.1	2.2	2.2	2.3	2.3	2.4	2.4
Median	1.7	1.7	1.7	2.0	2.0	2.2	2.3	2.4	2.4	2.4	2.4
Indeterminates as percentage of custodial sentences ^{4,5}	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) In August 2011, riots occurred in London and other major cities across England and Wales. Around 50 per cent of the people arrested in connection with the riots were charged with burglary offences. Around 670 offenders sentenced for non-domestic burglary and 60 offenders sentenced for domestic burglary included in these data tables for 2011 and 2012 were sentenced for offences relating to the riots. Sentencing trends for these cases and for others dealt with around the same time may have been affected by the severity of the riots, and so users should bear this in mind when interpreting data from around this period.

3) Excludes life and indeterminate sentences. Excludes two cases of domestic burglary over the period 2010-2020 where the data suggested that the sentence was above the statutory maximum for this offence (14 years' custody).

4) This is calculated as the number of offenders given an indeterminate custodial sentence, out of the number of offenders given a sentence of immediate custody.

5) For 2010-2012, the indeterminate sentence figures include the sentences of Imprisonment for Public Protection (IPP) and Extended Sentences for Public Protection (EPP). These sentences were introduced in 2005 and abolished in 2012.

Table 2.4: Sentence lengths received by adult offenders sentenced to immediate custody for domestic burglary, 2010-2020¹

[Index](#)

Sentence length (years)^{2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	2,120	2,408	2,209	1,968	1,687	1,347	1,187	1,041	848	760	637
1 to 2	1,958	2,109	1,898	1,762	1,558	1,214	1,095	1,018	893	778	559
2 to 3	1,699	1,854	1,898	2,037	1,858	1,635	1,482	1,476	1,265	1,218	961
3 to 4	553	679	651	690	652	605	572	611	536	490	372
4 to 5	143	170	179	175	183	192	164	185	180	169	131
5 to 6	61	73	65	55	87	84	83	76	95	79	53
Greater than 6 years	41	44	40	50	61	72	54	46	58	69	57
Total	6,575	7,337	6,940	6,737	6,086	5,149	4,637	4,453	3,875	3,563	2,770

Sentence length (years)^{2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	32%	33%	32%	29%	28%	26%	26%	23%	22%	21%	23%
1 to 2	30%	29%	27%	26%	26%	24%	24%	23%	23%	22%	20%
2 to 3	26%	25%	27%	30%	31%	32%	32%	33%	33%	34%	35%
3 to 4	8%	9%	9%	10%	11%	12%	12%	14%	14%	14%	13%
4 to 5	2%	2%	3%	3%	3%	4%	4%	4%	5%	5%	5%
5 to 6	1%	1%	1%	1%	1%	2%	2%	2%	2%	2%	2%
Greater than 6 years	1%	1%	1%	1%	1%	1%	1%	1%	1%	2%	2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

3) Excludes two cases of domestic burglary over the period 2010-2020 where the data suggested that the sentence was above the statutory maximum for this offence (14 years' custody).

Table 3.1: Number of adult offenders sentenced for aggravated burglary, all courts, 2010-2020²[Index](#)

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Crown.Court	309	318	303	257	227	217	193	200	170	190	196
Total	309	318	303	257	227	217	193	200	170	190	196

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 2) Figures shown here differ from those published by the MoJ, as there are seven aggravated burglary cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

Table 3.2: Number and proportion of adult offenders sentenced for aggravated burglary, by sentence outcome, 2010-2020

[Index](#)

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Absolute and conditional discharge	0	0	0	0	0	0	0	0	0	0	0
Fine	0	0	0	0	0	1	0	0	0	0	0
Community sentence	11	4	3	0	3	1	0	2	1	0	3
Suspended sentence	15	8	3	4	2	6	2	2	1	0	7
Immediate custody	278	302	293	251	217	199	179	183	159	173	185
Otherwise dealt with ³	5	4	4	2	5	10	12	13	9	17	1
Total	309	318	303	257	227	217	193	200	170	190	196

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Absolute and conditional discharge	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Fine	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Community sentence	4%	1%	1%	0%	1%	0%	0%	1%	1%	0%	2%
Suspended sentence	5%	3%	1%	2%	1%	3%	1%	1%	1%	0%	4%
Immediate custody	90%	95%	97%	98%	96%	92%	93%	92%	94%	91%	94%
Otherwise dealt with ³	2%	1%	1%	1%	2%	5%	6%	7%	5%	9%	1%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) Figures shown here differ from those published by the MoJ, as there are seven aggravated burglary case in the CPD between 2009-2019 which indicates that the offender was sentenced in a magistrates' court. These case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

3) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

Table 3.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for aggravated burglary, 2010-2020[Index](#)

ACSL (years) ²	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Mean	4.8	4.9	6.2	6.7	6.5	8.0	7.3	7.7	8.1	7.5	7.2
Median	4.0	4.7	6.0	6.7	6.1	8.0	7.0	7.5	8.0	7.5	7.3
Indeterminates as percentage of custodial sentences ^{3,4}	9%	8%	8%	1%	<0.5%	1%	0%	0%	0%	1%	0%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 2) Excludes life and indeterminate sentences.
- 3) This is calculated as the number of offenders given an indeterminate custodial sentence, out of the number of offenders given a sentence of immediate custody.
- 4) For 2010-2012, the indeterminate sentence figures include the sentences of Imprisonment for Public Protection (IPP) and Extended Sentences for Public Protection (EPP). These sentences were introduced in 2005 and abolished in 2012.
- 5) The statutory maximum sentence for this offence is life imprisonment.

Table 3.4: Sentence lengths received by adult offenders sentenced to immediate custody for aggravated burglary, 2010-2020¹

[Index](#)

Sentence length (years)^{2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 2 years	29	28	12	8	5	3	2	3	1	4	6
2 to 4	104	91	50	37	41	20	19	20	17	20	19
4 to 6	67	102	94	70	62	37	43	41	30	36	42
6 to 8	31	39	69	69	66	49	59	55	45	46	58
8 to 10	11	12	29	51	29	51	39	38	36	34	40
10 to 12	7	4	15	10	12	25	11	15	18	29	17
Greater than 12 years	4	3	2	4	1	13	6	11	12	3	3
Indeterminate	25	23	22	2	1	1	0	0	0	1	0
Total	278	302	293	251	217	199	179	183	159	173	185

Sentence length (years)^{2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 2 years	10%	9%	4%	3%	2%	2%	1%	2%	1%	2%	3%
2 to 4	37%	30%	17%	15%	19%	10%	11%	11%	11%	12%	10%
4 to 6	24%	34%	32%	28%	29%	19%	24%	22%	19%	21%	23%
6 to 8	11%	13%	24%	27%	30%	25%	33%	30%	28%	27%	31%
8 to 10	4%	4%	10%	20%	13%	26%	22%	21%	23%	20%	22%
10 to 12	3%	1%	5%	4%	6%	13%	6%	8%	11%	17%	9%
Greater than 12 years	1%	1%	1%	2%	0%	7%	3%	6%	8%	2%	2%
Indeterminate	9%	8%	8%	1%	0%	1%	0%	0%	0%	1%	0%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 2 years' includes sentence lengths less than or equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.

3) Figures shown here differ from those published by the MoJ, as there are seven aggravated burglary cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

4) The statutory maximum sentence for this offence is life imprisonment.

Sentencing Council meeting:
Paper number:

17 December 2021
**SC(21)DEC03 – Miscellaneous guideline
amendments**

Lead Council member:
Lead official:

Jo King
Ruth Pope
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1 ISSUE

1.1 In order to ensure that guidelines are kept up-to-date and accurate the Council has a policy of holding an annual consultation on overarching issues and miscellaneous minor updates to guidelines. The first consultation ran from 9 September to 2 December this year.

1.2 This is the first meeting to consider responses to the consultation. The plan is to sign off the changes at the January meeting with changes coming into effect from 1 April 2022. The annual process will then begin again.

2 RECOMMENDATION

2.1 That the Council considers the responses to the consultation and agrees on any changes to be made.

3 CONSIDERATION

3.1 There are 19 responses to the consultation. The majority support the proposals but there is some disagreement and suggestions for where the changes could go further.

Breach of a sexual harm prevention order (SHPO)

3.2 The Council consulted on adding a note to this guideline to clarify that a court dealing with a breach of a SHPO does not have a power to make a fresh order or vary an existing order – the wording proposed is highlighted below:

Step 6 – Ancillary orders

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

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium](#)

Note: when dealing with a breach of a sexual harm prevention order, the court has no standalone power to make a fresh order or to vary the order. The court only has power to do so if an application is made in accordance with sections 103A and 103E of the Sexual Offences Act 2003.

3.3 With the exception of one respondent who answered every question with an assertion that guidelines should be scrapped, all respondents broadly agreed with the proposal. The Legal committee of HM Council of District Judges (Magistrates' Courts) noted:

The legislation providing the power to vary a SHPO upon application now depends on whether the SHPO was imposed after conviction or upon application on complaint. Section 345 of the Sentencing Code now provides for SHPO upon conviction and section 103A of the SOA 2003 has been amended accordingly.

Hence, the proposed amendment should also make reference to section 350 of the Sentencing Code, which provides for applications to vary a SHPO made on conviction.

3.4 This is a valid point. Section 103A Sexual Offences Act 2003 (SOA 2003) only applies to the making of SHPOs other than on conviction. The power to make a SHPO on conviction is in section 345 of the Sentencing Code (SC). The power to vary orders is in s103E SOA 2003 and s350 SC.

3.5 The wording consulted on uses the phrase 'only has the power to do so' without perhaps making it clear if that refers to varying an existing order, making a new order or both. On reflection it might be clearer to word it as follows:

Note: when dealing with a breach of a sexual harm prevention order, the court has no standalone power to make a fresh order or to vary the order.

The court only has power to vary an order if an application is made in accordance with section 103E of the Sexual Offences Act 2003 or section 350 of the Sentencing Code.

The court only has the power to make an order in the circumstances set out in section 103A of the Sexual Offences Act 2003 or section 345 of the Sentencing Code.

3.6 One magistrate respondent suggested adding a reference to the relevant person for making an application being the Chief Officer of Police. However, this is not necessarily the case so it is preferable just to refer to the relevant legislation.

3.7 The Met Police suggested adding more information about the permitted length and conditions of a SHPO. Since the main message here is that the court should not be making or varying an order it does not seem the appropriate place to give further information of the type suggested.

3.8 The Justices' Legal Advisers and Court Officers' Service (JCS) suggested;

In order to make the position even clearer, especially to lay Justices, we would suggest that the following wording is considered;

"When dealing with a breach of a sexual harm prevention order, the court cannot, of its own motion, make a fresh order or vary the existing order.....".

3.9 The Council had considered using this wording initially but thought that it might be **less** clear to lay magistrates than the wording consulted on. There were 10 responses to the

consultation from individual lay magistrates or on behalf of lay benches and all approved of the proposed wording so no further change is recommended.

Question 1: Should the breach of SHPO guideline be amended as proposed at para 3.5?

Compensation

3.10 The Council consulted on adding a reference in all relevant guidelines to the statutory duty to give reasons if not awarding compensation where injury, loss or damage is suffered. The proposed additional wording is highlighted below:

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders. **Where the offence has resulted in personal injury, loss or damage the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).**

3.11 Most respondents were in favour of this proposal. One magistrate disagreed:

Compensation should not be a default option. There are too many scenarios where it is complex, inappropriate or just impossible to pay compensation.

Giving reasons should not be mandated as they should be part of the entire sentencing announcement rather than specific

3.12 Other magistrates agreed with the proposals but commented on the practical difficulties of awarding compensation in cases where the offender has limited means. One individual magistrate suggested that compensation should be awarded according to the loss suffered and not take account of means, a magistrates' bench noted that awarding a low sum may give the impression that the impact on the victim has not been appreciated.

3.13 A barrister suggested that mention should also be made of offences taken into consideration (TICs). There is guidance in the [explanatory materials](#) for magistrates and in the Compendium (at S3.4) for judges in the Crown Court on the making of compensation orders. The magistrates' court guidance does include a reference to TICs, the Compendium does not. TICs are only relevant in a small proportion of cases typically including theft, burglary and criminal damage offences. Where TICs are likely to be relevant, the offence specific guideline will have this as an aggravating factor and the expanded explanation for the factor includes a reference to compensation orders. It therefore is probably not particularly useful to add a reference to TICs to the wording on compensation in every guideline.

Question 2: Should any changes be made to the wording consulted on regarding compensation?

Confiscation

3.14 In addition to the wording on compensation, the Council consulted on using the following wording relating to confiscation in all relevant guidelines:

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a **confiscation order** if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

Where, following conviction in a magistrates' court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates' court must commit the offender to the Crown Court to be sentenced there (section 70 of the Proceeds of Crime Act 2002). Where, but for the prosecutor's application under s.70, the magistrates' court would have committed the offender for sentence to the Crown Court anyway it must say so. Otherwise the powers of sentence of the Crown Court will be limited to those of the magistrates' court.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation).
(See Proceeds of Crime Act 2002 sections 6 and 13)

The court should also consider whether to make [ancillary orders](#).

3.15 Again, most respondents supported the suggestion. One magistrates' bench queried whether the power to make a confiscation order could be extended (or re-introduced) to magistrates' courts. We can explain in the response to consultation document that this would be a matter for government (Section 97 of the Serious Organised Crime and Police Act 2005 confers a power on the Secretary of State to make provision for magistrates' court to impose confiscation orders but, to date, no such order has been made).

3.16 A barrister suggested that 'mention should be made of the power in relation to summary offences'. Under section 70 of the Proceeds of Crime Act 2002 (POCA) magistrates' courts can commit a case to the Crown Court with a view to confiscation, including for a summary only offence. Although the wording consulted on does not contradict this, neither does it make it clear. Some extra wording could be added to the second paragraph as shown highlighted below:

Where, following conviction in a magistrates' court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates' court must commit the offender to the Crown Court to be sentenced there (section 70 of the Proceeds of Crime Act 2002). **This applies to summary only and either-way offences.** Where, but for the prosecutor's application under s.70, the magistrates' court would have committed the offender for sentence to the Crown Court anyway it must say so. Otherwise the powers of sentence of the Crown Court will be limited to those of the magistrates' court.

3.17 Three respondents mentioned the importance of stressing that magistrates' courts must make it clear if they would have committed an either-way offence anyway. If it was felt to be helpful the text could be split so that the sentence beginning 'Where' starts a new paragraph.

Question 3: Should any changes be made to the wording on confiscation as consulted on?

Uplift for racially or religiously aggravated offences

3.18 The Council consulted on amending existing guidelines to create a separate step for the uplift for racial/ religious aggravation as has been done with the new assault guidelines.

The guidelines it would apply to are:

- [criminal damage \(under £5,000\)](#) and [criminal damage \(over £5,000\)](#)
- [s4, s4A](#) and [s5](#) Public Order Act offences
- [harassment/ stalking](#) and [harassment/ stalking \(with fear of violence\)](#)

3.19 Respondents were overwhelmingly in favour of this proposal and there were no suggestions for changes.

Domestic abuse – overarching principles

The Council consulted on proposals to amend this guideline to align it with the new statutory definition of domestic abuse introduced by the Domestic Abuse Act 2021 (DAA) and to widen the definition of domestic abuse (for the purposes of the guideline) to cover situations such as that in [AG Ref R v Tarbox \[2021\] EWCA Crim 224](#). This would make clear that the guideline may apply in situations where there is no ‘personal connection’ as defined in the Act.

The proposed new wording is as follows (paragraphs 2, 3 and 4 are new or revised):

1. This guideline identifies the principles relevant to the sentencing of cases involving domestic abuse. Domestic abuse is a general term describing a range of violent and/or controlling or coercive behaviour.

2. A statutory definition of domestic abuse is provided by [Part 1 of the Domestic Abuse Act 2021](#). In summary domestic abuse is defined for the purposes of that Act as:

Behaviour (whether a single act or a course of conduct) consisting of one or more of:

- physical or sexual abuse;
- violent or threatening behaviour;
- controlling or coercive behaviour;
- economic abuse (any behaviour that has a substantial adverse effect on the victim’s ability to acquire, use or maintain money or other property, or obtain goods or services);
- psychological, emotional or other abuse

between those aged 16 or over:

- who are, or have been married to or civil partners of each other;
- who have agreed to marry or enter into a civil partnership agreement one another (whether or not the agreement has been terminated);
- who are, or have been, in an intimate personal relationship with each other;
- who each have, or have had, a parental relationship in relation to the same child; **or**
- who are relatives.

This definition applies whether the behaviour is directed to the victim or directed at another person (for example, the victim's child). A victim of domestic abuse can include a child who sees or hears, or experiences the effects of, the abuse, and is related to the primary victim or offender.

3. For the purposes of this guideline domestic abuse includes so-called 'honour' based abuse, female genital mutilation (FGM) and forced marriage.
4. The principles in this guideline will also apply to persons living in the same household whose relationship, though not precisely within the categories described in para 2 above, involves a similar expectation of mutual trust and security.
5. Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capabilities for personal gain, depriving them of the means needed for independence, resistance and escape and/or regulating their everyday behaviour.
6. Coercive behaviour is an act or pattern of acts of assault, threats, humiliation (whether public or private) and intimidation or other abuse that is used to harm, punish, or frighten the victim. Abuse may take place through person to person contact, or through other methods, including but not limited to, telephone calls, text, email, social networking sites or use of GPS tracking devices.
7. Care should be taken to avoid stereotypical assumptions regarding domestic abuse. Irrespective of gender, domestic abuse occurs amongst people of all ethnicities, sexualities, ages, disabilities, religion or beliefs, immigration status or socio-economic backgrounds. Domestic abuse can occur between family members as well as between intimate partners.
8. Many different criminal offences can involve domestic abuse and, where they do, the court should ensure that the sentence reflects that an offence has been committed within this context.

3.20 The majority of respondents were in favour of the proposals and one specifically welcomed para 4. The JCS, however, expressed concern about the inclusion of para 4:

Whilst appreciating the comments in the Tarbox case (para 21), we do not agree that the guideline should be expressly applicable to the situation described above. We are concerned that to apply the guideline to this type of situation is to significantly extend the concept of 'domestic abuse', a concept which Parliament has already specifically defined in wide terms in Part 1 Domestic Abuse Act 2021.

In Tarbox the Court of Appeal found that the killing of the victim represented a violation of the trust and security which, in the circumstances of the case, the victim could reasonably have expected to exist between her and the defendant. However, and notwithstanding the fact that the defendant and victim had twice previously had sexual relations, the Court was satisfied that the nature of their relationship did not fall within the ambit of the existing Domestic Abuse guideline. In view of these observations, we would suggest that a violation/breach of trust and/or security should be regarded as an aggravating feature to the specific offence being sentenced, and should not be used to effectively extend the very clearly defined statutory definition of 'domestic abuse'.

3.21 In the light of all other respondents being content with the inclusion of para 4, no change is proposed.

3.22 The Legal Committee of HM Council of District Judges (Magistrates' Courts) suggested that the guideline should make it clear if it is adopting the definition of domestic abuse in the DAA rather than just stating how it is defined for the purposes of that Act. This is a valid point – while it is implicit that the guideline is adopting the definition (without being limited by it) it is not categorically stated. One solution could be to amend para 3 to read:

3. This guideline applies to domestic abuse as defined in para 2 above and to so-called 'honour' based abuse, female genital mutilation (FGM) and forced marriage.

3.23 There were other points raised by respondents:

What about actions taken by a person at the instructions of the DA perpetrator? For example getting someone else to send a text. Is that covered? In respect of parental responsibility are Foster Carers and other carers "appointed" by a local authority included? *Magistrate*

We agree with the proposed new wording, but not the assumption that such behaviour can only arise "between those aged 16 or over" as members of this committee have, sadly, encountered both domestic and sexual abuse involving under-16s. We strongly recommend that specific reference should be made in the guidelines to the sentencing of youths in such cases. *Magistrates' bench*

3.24 The Council may feel that any attempt in the guideline to further define what circumstances are or are not covered by the guideline would be unhelpful. The guideline is applicable to offenders aged 16 and over – any change to that would require further consideration and consultation.

Question 4: Should the Domestic abuse guideline be amended as suggested at 3.22 above?

Question 5: Should any other changes be made to the Domestic abuse guideline?

4 EQUALITIES

4.1 The consultation did not include any proposals expressly relating to equalities. No issues were identified in response to a question in the consultation paper asking if there were any equality issues relating to the proposals.

5 IMPACT AND RISKS

5.1 In view of the nature of the consultation, no resource assessment was produced but the consultation document briefly addressed the potential impact of each proposal. There were only a few comments relating to the impact of the changes and these generally welcomed the clarity that the changes would bring.

5.2 The Prison Reform Trust expressed concern that there are currently insufficient measures to monitor any effect of the changes in relation to confiscation orders. This can be discussed at the January meeting.

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Sentencing Council meeting:
Paper number:

17 December 2021
SC(21)DEC04 – Motoring offences
causing death or injury

Lead Council member:
Lead official:

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1 ISSUE

1.1 This meeting will ask the Council to finalise culpability factors for careless driving and to consider the potential to develop enhanced guidance for motoring offences involving drug driving. This paper provides an overview of consideration which has been given to developing a drug driving guideline and specific guidance for drug levels in motoring offences, and the limitations which exist to developing a full guideline as exists for drink driving. Consideration of the approach to assessing culpability for careless driving causing death under the influence is also required.

2 RECOMMENDATION

2.1 The Council is asked to:

- Consider and agree draft culpability factors for careless driving offences;
- Consider issues related to the development of enhanced guidance for drug driving offences and;
- Consider approaches to assessing culpability for careless driving when under the influence of drink or drugs.

3 CONSIDERATION

Careless driving culpability factors

3.1 At the November meeting progress was made on agreeing factors for revised careless driving offences guidelines. The Council agreed the following revisions to factors:

- Culpability factors relating to medical conditions and driver impairment should be separated and clarified.
- A factor relating to unsafe manoeuvre or positioning of a vehicle should be included.
- 'Knowingly' should be removed from factors where it was included.

3.2 Two other points were raised. The first was that explanatory wording should be included to clarify that the circumstances and context of the offence should be considered in assessing the culpability of an offender, as this will be relevant to which category of culpability is most appropriate. The following explanatory wording is proposed:

'The court should determine culpability by reference to the factors below, which comprise the principal factual elements of the offence. The circumstances and context of the offence will also be important to assessing the level of culpability.'

Question 1: Does the Council agree with the proposed explanatory wording?

3.3 Another point raised was in relation to offences involving a vehicle being driven in an unsafe condition, including where driver visibility is obstructed. Consideration has been given to the wording of a factor as the dangerous driving offence provides for the driving of a vehicle which is in a dangerous condition. For this reason, the term 'dangerous' has been avoided and the following wording is proposed:

'Driving vehicle which is unsafe or where visibility or controls are obstructed'.

This would capture obstructed windscreens as well as any interior obstructions in a vehicle which impede access to vehicle controls, such as a gear stick being obstructed by objects on the passenger seat of a vehicle.

The culpability factors and assessment would be as follows:

The court should determine culpability by reference to the factors below, which comprise the principal factual elements of the offence. The circumstances and context of the offence will also be important to assessing the level of culpability.	
High	<ul style="list-style-type: none"> • Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a medium culpability factor
Medium	<ul style="list-style-type: none"> • Unsafe manoeuvre or positioning of vehicle • Engaging in a brief but avoidable distraction • Driving at a speed that is inappropriate for the prevailing road or weather conditions, although not greatly excessive • Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs

- Driving vehicle which is unsafe or where visibility or controls obstructed
- Driving in disregard of advice relating to the effects of medical condition or medication
- Driving whilst ability to drive impaired as a result of a known medical condition
- Driving when deprived of adequate sleep or rest
- The offender's culpability falls between the factors as described in high and lesser culpability

Lesser

- Standard of driving was just over threshold for careless driving
- Momentary lapse of concentration

Question 2: Does the Council agree with the proposed culpability factors for careless driving offences?

Drug Driving

3.4 In agreeing the scope of this project, the Council agreed to consider enhanced drug driving guidance. The Council has considered expanding the guidance for drug driving in the MCSG previously, with a view to ultimately developing guidance which linked levels of drugs to offence seriousness similar to the approach used for drink driving offences.

3.5 Developing a guideline for drug driving is complex as, unlike alcohol related driving offences, the legislation provides for a zero tolerance approach to drug driving (but ruling out accidental exposure) rather than providing for a legal limit. Measuring levels of drugs consumed is also highly complex given the potential for drug interactions, different impacts on individuals depending on their physical characteristics and drug potency.

3.6 Specified limits provide for 17 legal and illegal drugs. A recently published report on drug driving confirms that the government used a 'lower limit of detection' to set the limit for eight illegal drugs, a 'risk-based approach' for eight medicinal drugs, and a separate approach for amphetamine to balance its legitimate medical uses and its abuse. The limits are higher for medicinal drugs than for illegal drugs. The limits for illegal drugs are low but not purely presence based (i.e. showing the presence of any level of drugs). Neither are they based purely on impairment because of the scientific and ethical difficulties of objectively measuring, trialling and defining impairment for psychoactive drugs and driving.¹

¹ Drug driving: The tip of an iceberg? The Parliamentary Advisory Council for Transport Safety (PACT) report published February 2021

Illegal drugs	Specified limit in mg per litre of blood
Benzoyllecgonine	50
Cocaine	10
Delta-9-tetrahydrocannabinol (cannabis)	2
Ketamine	20
Lysergic acid diethylamide (LSD)	1
Methylamphetamine	10
Methylenedioxymethamphetamine (MDMA)	10
6-monoacetylmorphine (Heroin)	5
Medicinal controlled drugs	
Clonazepam	50
Diazepam	550
Flunitrazepam	300
Lorazepam	100
Methadone	500
Morphine	80
Oxazepam	300
Temazepam	1000
Amphetamine	250

3.7 The Council issued drug driving guidance in 2016 which can be found here: [Drug driving \(guidance only\) – Sentencing \(sentencingcouncil.org.uk\)](#). In November 2019 the Council were due to consider a draft guideline for the s5A Road Traffic Act 1988 offence of driving or attempting to drive with a specified drug above the specified limit. The draft guideline developed at that time is attached at Annex A. The draft guideline took the approach, in line with the point noted that it was not possible to precisely measure the effect of a drug on a drivers impairment, that courts should not draw a direct connection between the level of substance detected and the level of harm. However, in consulting with DfT on

this approach they highlighted work they were undertaking to explore a high risk offenders scheme for those convicted of drug driving, as is already in place for offenders convicted of drink driving. They noted that such a scheme would likely draw a link between the level of substance detected and seriousness, and that classification of high risk offenders would likely be with reference to levels of any substance detected. This presented the possibility that the readings of specified substances could be used to assess seriousness in the guideline, if these were developed by DfT. It was suggested by DfT officials and agreed by the Council that it may be preferable to wait until this work had concluded to decide how to proceed with the drug-drive guidelines.

3.8 The high risk offender classification is currently in place for those convicted of drink driving and relates to offenders who pose a threat of reoffending, or have impairment levels which pose a high risk. For drink driving, the high risk offenders scheme applies to drivers convicted of the following:

- One disqualification for driving or being in charge of a vehicle when the level of alcohol in the body equalled or exceeded either one of these measures:
 - 87.5 mcg per 100 ml of breath
 - 200.0 mg per 100 ml of blood
 - 267.5 mg per 100 ml of urine
- two disqualifications within the space of 10 years for drinking-driving or being in charge of a vehicle while under the influence of alcohol
- one disqualification for refusing or failing to supply a specimen for alcohol analysis
- one disqualification for refusing to give permission for a laboratory test of a specimen of blood for alcohol analysis

Drivers designated as high risk offenders are not automatically re-issued their driving licence once the period of disqualification has ended. Instead, the offender must apply for a new licence and the Driver Vehicle & Licensing Agency (DVLA) will only issue a licence after a satisfactory medical assessment.

Officials have maintained contact with DfT to monitor the progress of their drug driving work. Two reports have been made available to us recently and officials have had a meeting with Professor Kim Wolff, Professor Analytical, Forensic & Addiction Science, Director of King's Forensics and Head of the Drug Control Centre, a leading expert on drug and drink driving and involved in the development of both reports. Identification of potential high risk drug driving offenders has not progressed as quickly as had been hoped, largely due to the

complexity of the subject matter. A summary of the current position and status of the evidence is provided below.

The PACT report

3.9 The independent report published in February 2021 by The Parliamentary Advisory Council for Transport Safety (PACT) titled 'Drug Driving: The tip of an Iceberg' is attached at Annex B. The report highlights issues with the current approach to drug driving across the legal system and steps that should be taken to resolve them. This report is mostly focused on the practical issues and limitations to effective enforcement of drug driving legislation. Among these are variation in enforcement practices across police forces which is attributed to costs; the lack of availability and effectiveness of roadside testing for most drugs; the necessity for blood samples to be collected to evidence offences which presents resource and evidential issues and; issues relating to analysis of blood samples and the potential for laboratory evidence to be challenged. One issue highlighted is the laboratory test turnaround time. The report notes that *'blood test results generally take at least four to five months to come back. Furthermore, backlogs in laboratories are not uncommon and concerns have been raised that backlogs could lead to the statutory time limit (generally six months in Magistrate's Courts) being missed for some samples.'* In short, there is a lack of infrastructure to robustly identify and enforce drug driving legislation, and to obtaining the evidence necessary for effective prosecutions and sentencing. This differs to drink driving, where standardised roadside tests and equipment enable effective identification of offenders and appropriate criminal justice responses.

3.10 These are important issues to consider as they present potential challenges to the operation of a guideline. It is particularly important to consider the impact of levels of drug being referenced in a guideline given the context of current laboratory testing capability and capacity. Among other testing issues the report also notes variation in how levels are reported by commercial laboratories with some results reported as high medium or low levels and others providing specific readings of substance levels. Given the difference it could make to a sentence, it is likely that experts would be commissioned to challenge analysis of results, and a lack of consistency in reporting of test results would cause application of the guideline to be problematic for sentencers.

Expert views on the potential to develop a sentencing guideline

3.11 In discussions with Professor Wolff specific questions were asked as to the possibility of a guideline specifying drug driving levels in the same way as is possible for drink drive offences. Specifically, it was asked if there is evidence of a relationship between drug levels and driver impairment and if evidence is available to support a similar approach to drink driving by multiplying levels of drug to identify seriousness. Professor Wolff confirmed that there is not currently consensus in scientific literature to be confident of levels at which impairment worsens, but that there is a linear relationship between the concentration of drug and impairment in relation to cannabis. She noted that while there is broad acceptance that multiplication of the legal limit is an appropriate measure for alcohol consumption and impairment, science and expert consensus does not provide for same approach for all drugs included in legislation. She stated that scientific consensus exists in respect of cannabis, cocaine and for some other drugs, but not for others such as metabolites. Professor Wolff suggested that the Council could incrementally improve and enhance its guidance as more research and evidence becomes available, and suggested considering the recently commissioned DfT high risk offender report. It was suggested that information within the report may assist the Council in identifying levels of drugs and associated seriousness for a sentencing guideline.

Report on High Risk Offenders

3.12 An embargoed report commissioned by DfT from an expert panel (including Professor Wolff) on the options and considerations necessary to develop a high risk offender scheme for drug driving has been seen by officials. The report is focused specifically on which offenders should be designated as high risk offenders when convicted of drug driving, as is already established for high risk drink drive offenders.

3.13 The report draws on a wide range of published research and evidence, and is complex. It is limited to considering the point at which an offender should be designated as a high risk offender and subject to the same process in reapplying for their driving licence as a drink drive offender would be.

3.14 One of the recommendations is that where there is evidence of a combination of drugs or of drugs and alcohol being present, offenders should be categorised as high risk offenders. This point was already included in the draft guideline developed in 2019 at Annex A as a high culpability factor.

3.15 The report confirms the following considerations were relevant to identifying limits at which an individual should be considered a high risk offender:

Since there is a wide-ranging list of drugs included in the Section 5A legislation, the Panel agreed that in relation to the need to provide an agreed specified drug limit above which an offender would join the HRO scheme, the specified limits for the HRO scheme would be set through consideration of the following:

- 1) Setting a limit based on the point at which a drug was considered to cause a considerably increased level of risk of a Road Traffic Collision (RTC) as described by an Odds Ratio (OR) or other statistical outcome. This would be based on the scientific evidence in the Driving under the Influence of Drugs: Report from the Expert Panel (2013). This approach was particularly useful when considering the combinatorial effects of more than one drug and drugs and alcohol on driving;*
- 2) Setting a limit based on the point at which a drug was considered to cause a considerably increased level of impairment;*
- 3) Drawing on the historical Section 5A evaluation data, and giving consideration to the proportion of drug drivers with a drug concentration in excess of a particular blood concentration.*

3.16 The report notes the limitations of the same approach to assessing high risk drink drive offenders with reference to multiplication of specified levels of drugs:

In the HRO drink-driving scheme there is a criterion that refers to being over two and a half times the legal alcohol driving limit in blood, breath, or urine. The panel propose that this criterion could not be universally applied to individual drugs included in Section 5A (1) and (2) of the Road Traffic Act 1988 because of the different properties, potency and effects of each drug on ability to drive. However, single offences with high concentrations of specific compounds could be determined. The Panel agreed that for single offences with high concentrations of a single illicit or prescribed drug HRO limits should be based on the evidence at which there is an increased risk of a road traffic collision, as set out in the DfT Expert Panel report [2013]. For comparative purposes, and where sufficient data were available, data obtained as part of the evaluation of the Section 5A offence was examined to give an indication of the proportion of drug-positive Section 5A drivers that would be above the proposed HRO level.

3.17 The report then goes on to provide a comprehensive summary of which drugs and quantities could be specified as the threshold for a high risk offender. These are based on evidence from a report published in 2013²:

² Wolff K Agombar R, C.A., Cowan D, Forrest AR, Osselton MD, Scott-Ham M, Johnston A., *Driving under the Influence of Drugs: Report from the Expert Panel on Drug Driving*, W. k., Editor. 2013, Department for Transport: London.

Illegal drugs	Specified limit in mg per litre of blood	Recommended level for High Risk Offender designation
Benzoyllecgonine	50	Recommended HRO limit would be 500 µg/L. From examination of the Section 5A data [8] approximately 20% of drug-positive Section 5A samples containing BZE were above this concentration.
Cocaine	10	Suggested HRO limit would be 80 µg/L. From examination of the Section 5A data [8], approximately 8% of drug-positive Section 5A samples containing cocaine were above this concentration.
Delta-9-tetrahydrocannabinol (cannabis)	2	Recommended HRO limit would be 5 µg/L. From examination of the Section 5A data [8] approximately 36% of drug-positive Section 5A samples containing THC were above this concentration.
Ketamine	20	Suggested HRO limit would be 200 µg/L. The Norwegian Academic Advisory Group (2010), in preparing for drug driving legislation, reported that a ketamine blood concentration causing impairment was 238 µg/L [76]. Drug-driving concentration data provided to the DfT Expert Panel showed mean blood drug concentration of ketamine was 345 µg/L (range 20 µg/L – 1,300 µg/L, median, 300 µg/L) from 207 cases. A concentration of 200 µg/L ketamine would capture 70% of those drivers tested positive for ketamine in

		England and Wales as documented in the DfT Expert Panel report [2013].
Lysergic acid diethylamide (LSD)	1	Suggested HRO limit would be 1 µg/L since any concentration of LSD in the body was deemed significantly impairing.
Methylamphetamine	10	Suggested HRO limit would be 200 µg/L using DfT Expert Panel report [2013].
Methylenedioxymethamphetamine (MDMA)	10	Suggested HRO limit would be 300 µg/L using DfT Expert Panel report [2013] data, which indicates a median blood drug concentration found in drivers for MDMA 305 µg/L (mean 452 µg/L, range 20 µg/L–2,540 µg/L) from 76 of 2995 cases
6-monoacetylmorphine (Heroin)	5	Suggested HRO limit would be 5 µg/L on the basis that the presence of 6-MAM in blood would indicate very recent use of heroin.
Medicinal controlled drugs		
Clonazepam	50	Suggested HRO limit would be 50 µg/L, which is at the top end of the therapeutic range and associated with problematic use and impaired driving.
Diazepam	550	Suggested HRO limit would be 550 µg/L using DfT Expert Panel report [2013] [18]. From examination of the Section 5A data [8] approximately 9% of drug-positive Section 5A samples containing diazepam were above this concentration. In a retrospective study of blood samples for drivers in England and Wales providing evidential

		<p>samples between 2010 and 2012 12.5% had concentrations of diazepam-over this limit.</p>
Flunitrazepam	300	<p>Suggested HRO limit would be 300 µg/L using DfT Expert Panel report [2013]</p>
Lorazepam	100	<p>Suggested HRO limit would be 100 µg/L using DfT Expert Panel report [2013]</p>
Methadone	500	<p>Suggested HRO limit would be 500 µg/L using DfT Expert Panel report [2013]</p>
Morphine	80	<p>Suggested HRO limit would be 80 µg/L; From examination of the Section 5A data approximately 6% of drug-positive Section 5A samples containing morphine were above this concentration. In a retrospective study of blood samples for drivers in England and Wales, providing evidential samples between 2010 and 2012 4.8% samples containing morphine were above this concentration.</p>
Oxazepam	300	<p>Suggested HRO limit would be 300 µg/L. In a retrospective study of blood samples for drivers in England and Wales providing evidential samples between 2010 and 2012 14.7% samples containing Oxazepam were above this concentration.</p>
Temazepam	1000	<p>Suggested HRO limit would be 1000 µg/L using the DfT Expert Panel</p>

		report [2013]. In a retrospective study of blood samples for drivers in England and Wales, providing evidential samples between 2010 and 2012 5.8% samples containing temazepam were above this concentration.
Amphetamine	250	Suggested HRO limit would be 600 µg/L based on DfT Expert Panel report [2013] [18] . From examination of the Section 5A data approximately 11% of drug-positive S5A samples containing amphetamine were above this concentration.

3.18 As these are levels which are proposed to designate a high risk offender, one option would be to use these levels in a guideline to assess high culpability offenders. However, it would not be possible to quantify an amount for a medium or low culpability offender given the issues which have been noted with mathematical calculations being more complex for drugs than for alcohol. The limits also apply to the presence of one drug rather than multiple drugs, and multiple drugs may interact differently.

3.19 A further issue is that these limits have been developed for a different purpose than for sentencing, and for some drugs the level is the base limit provided for by legislation. While the evidence the levels are based on is comprehensive, it was published in 2013 and may be considered by other experts to be out of date and could be open to challenge. Issues around drug potency and impact upon offenders depending on metabolic effects and physical characteristics are likely to be raised, and this is a complex and evolving landscape.

3.20 The report is not currently widely available, and if a guideline were to be based on its proposals these would need to be justified with reference to it. DfT officials have confirmed that they intend to arrange for a call for evidence on the report and proposals subject to appropriate approval being obtained from Ministers. For the purposes of a guideline which specifies drug levels it is proposed that the Council should await the outcome of work by DfT and monitor the development of their high risk offender policy for drug drivers. It will be important for the basis of a guideline specifying limits to have a scientific and robust evidence base, and to align with other criminal justice responses and policies.

3.21 One option could be to include detail of specified limits for drugs in the guideline to provide context to readings. However, this could be problematic as sentencers will not know how much of a drug is likely to represent a very high reading and significantly impair a driver. An example is THC (cannabis). Professor Wolff confirmed it is widely recognised by experts that a level of 5 is dangerous and likely to impair, but 5 may not seem significantly higher than the legal limit of 2 to a non-expert.

3.22 The draft guideline already developed does reflect broad scientific and expert consensus that multiple drugs, and combinations of drugs and alcohol, do increase the risk posed by a drug driving offender, as noted in the published PACT report:

‘Driving having consumed both alcohol and other drugs is significantly more dangerous than driving with an equivalent amount of alcohol or drugs. This is because the interaction of alcohol and other drugs can be significantly more impairing than in isolation. This can be true for both illicit and medicinal drugs. Drivers could also have low levels of drugs and alcohol in their system and therefore be below the drink and drug driving limit, but still be significantly impaired.’³

3.23 However, it is thought that consideration should be given to whether one element of the previously developed guideline should be removed; specifically, the wording in relation to factors indicating greater harm and signs of obvious impairment which states:

‘The court should not assume that a particular level of impairment necessarily follows from a particular level of a specified substance without evidence to support this.’

It is thought that this without published guidance on levels and impairment this may result in inconsistent assessments and require commissioning of expert evidence, and as this relates to harm in the S5A offence only and obvious signs of impairment it is thought to be unnecessary.

3.24 It is proposed that subject to the points above the Council could proceed with consulting on the guideline previously developed, and reflect the expert views in other draft guidelines being developed for offences which include drug driving. This would be a step towards the incremental development of enhanced guidance as suggested by Professor Wolff and have the benefit of eliciting other evidence which may be available in this field by consulting widely. This would also enable the Council to be transparent regarding consideration that is being given to this issue and the difficulties posed with specifying limits linked to potential driver impairment while the issue is still under consideration by DfT.

³ P.53: Drug driving: The tip of an iceberg? (2021) The Parliamentary Advisory Council for Transport Safety (PACT) report

Question 3: Does the Council wish to consult on the drug driving guideline developed previously at Annex B?

Careless driving causing death while under influence – assessing seriousness

3.25 Decisions made in respect of drug driving will be relevant to the development of a guideline for this offence. At the last meeting the Council briefly considered and discussed the current approach to assessing seriousness of this offence. The existing approach is as follows:

The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	Careless / inconsiderate driving arising from momentary inattention with no aggravating factors	Other cases of careless / inconsiderate driving	Careless / inconsiderate driving falling not far short of dangerousness
71µ or above of alcohol / high quantity of drugs OR deliberate non-provision of specimen where evidence of serious impairment	Starting point: 6 years custody Sentencing range: 5-10 years custody	Starting point: 7 years custody Sentencing range: 6-12 years custody	Starting point: 8 years custody Sentencing range: 7-14 years custody
51- 70 µg of alcohol / moderate quantity of drugs OR deliberate non-provision of specimen	Starting point: 4 years custody Sentencing range: 3-7 years custody	Starting point: 5 years custody Sentencing range: 4-8 years custody	Starting point: 6 years custody Sentencing range: 5-9 years custody
35-50 µg of alcohol / minimum quantity of drugs OR test refused because of honestly held but unreasonable belief	Starting point: 18 months custody Sentencing range: 26 weeks-4 years custody	Starting point: 3 years custody Sentencing range: 2-5 years custody	Starting point: 4 years custody Sentencing range: 3-6 years custody

Failure to provide specimen for analysis

3.26 The Council agreed that any deliberate refusal to provide a specimen would be the most serious type of refusal, and it was agreed that this should inform options regarding a revised draft guideline for this offence. At the last meeting it was noted that factors agreed for this offence should align with failing to provide a specimen for analysis, given that refusal reasons should be the same. The existing MCSG guideline for failing to provide a specimen for analysis assesses the following culpability factors:

CULPABILITY demonstrated by one or more of the following

Factors indicating higher culpability

- Deliberate refusal/ failure
-

Factors indicating lower culpability

- Honestly held belief but unreasonable excuse
- Genuine attempt to comply
- All other cases

3.27 The MCSG guideline provides for 'honestly held belief but unreasonable excuse' at lower culpability. The Council discussed at the last meeting whether refusal relating to needle phobia or beliefs should be included, but as a distinction is provided for in the MCSG for honestly held beliefs it is thought the same factors should apply. Alternatively the factors could be phrased as 'deliberate refusal' and 'all other refusals to provide a specimen' which would capture rare instances where an offender may have a valid, although not legally defensible, reason for not providing a sample.

Driving under the influence of drugs

3.28 Decisions in respect of a drug driving guideline will also be relevant to careless driving causing death when under the influence of drugs. The existing SGC guideline includes three levels of drug quantities; high, moderate and low. As the issues with determining levels discussed earlier in this paper highlight, this relies on sentencers being able to determine the level based on the evidence. As noted earlier, the draft drug driving guideline at Annex A captures cases where there is evidence of another drug or alcohol at high culpability. For this offence it is proposed that high culpability captures the presence of multiple drugs or combinations of drugs and alcohol. Medium culpability could then provide for other cases of driving under the influence of drugs. This would align with expert views and reflect the zero tolerance approach of legislation to drug driving, and would also reflect the S5A draft guideline approach if we proceed to consult as discussed earlier.

Driving under the influence of alcohol

3.29 If this approach is adopted driving under the influence of drugs and alcohol and the highest alcohol limit expressed in the MCSG excess alcohol guideline and the current SGC causing death by careless driving under the influence guideline would be captured in the

highest culpability category. Medium and lesser culpability would also reflect the established excess alcohol limits in other guidelines. Lesser culpability would therefore only be relevant to the lowest alcohol level offences of careless driving causing death under the influence of alcohol, with specimen refusals and drug offences captured at high and medium culpability. The Council could include only two categories for this offence and provide for high and medium alcohol readings at the highest level of culpability, and but this may inflate sentences for offences involving lower alcohol readings. This may also be difficult to justify as it is considered that the assessment can be more nuanced as alcohol levels are specified in other guidelines.

3.30 A proposed draft culpability model is attached at Annex C. An alternative approach would be to retain references to moderate and low levels of drugs in medium and lesser culpability, but provide for multiple drugs and high readings in high culpability. However, the proposed approach would reflect the two categories proposed by the s5A guideline and would reflect the seriousness of drug driving.

3.31 It is however important to note that any drug driving offence involving traces of drugs above the specified limit would likely be categorised higher than currently. This could relate to cases where offenders are regular drug users and traces remain in their system although consumption was not directly before driving took place. It is thought that a mitigating factor of 'trace of drug present through prior use and not consumed shortly before driving' could be included to moderate the impact upon sentences.

Question 4: Does the Council agree with the proposed culpability factors and their placement?

4 IMPACT AND RISKS

4.1 The resource assessment will identify any potential inflationary impacts of proposals in this paper in relation to the categorisation of drug drive offences. These offences are low volume but any changes to offence categorisation would likely inflate sentences. However, proposals are based on expert views and reflect that legislation does not provide for drug consumption and driving in the same way as for alcohol.

Driving or Attempting to Drive with a specified drug above the specified limit

Road Traffic Act 1988, 5A

Effective from: tbc

Triable only summarily

Maximum: Unlimited fine and/or 6 months

Offence range: Band B fine – 26 weeks' custody

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Step 1 – Determining the offence category

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

Category 1	Higher culpability and greater harm
Category 2	Higher culpability and lesser harm or lower culpability and greater harm
Category 3	Lower culpability and lesser harm

The court should determine the offender's culpability and the harm caused with reference **only** to the factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Culpability demonstrated by one or more of the following
<p>Factors indicating higher culpability</p> <ul style="list-style-type: none"> • Driving an LGV, HGV or PSV etc • Driving for hire or reward • Evidence of another specified drug or of alcohol in the body <div style="border: 1px solid black; padding: 5px; margin-top: 5px;"> <ul style="list-style-type: none"> – For these purposes where the following pairs of drugs appear together they shall be treated as one drug as they may appear in the body as a result of a single drug use: Cocaine and benzoylecgonine (BZE); 6-Monoacteyl-morphine and morphine; or Diazepam and Temazepam. – This factor may apply whether or not the 'other' specified drug or alcohol is present at a level that could give rise to separate charges. – Regard should be had to totality (see step 5) if sentencing for more than one offence. </div>
<p>Factors indicating lower culpability</p> <ul style="list-style-type: none"> • All other cases

Harm demonstrated by one or more of the following:

Note: It is not possible to draw a direct connection between the levels of a substance detected and the level of harm

The limits for illegal drugs are set in line with a zero tolerance approach but ruling out accidental exposure. The limits for drugs that may be medically prescribed are set in line with a road safety risk-based approach, at levels above the normal concentrations found with therapeutic use. This is different from the approach taken when setting the limit for alcohol, where the limit was set at a level where the effect of the alcohol would be expected to have impaired a person's driving ability.

The analysis of drugs in blood is more complex than that for alcohol and there is a larger margin of uncertainty in the measurements. Concentrations of specified substances in blood for the purposes of this offence are expressed in terms of 'not less than' which takes account of the margin of uncertainty for the particular substance.

Factors indicating greater harm

- Obvious signs of impairment

The court should not assume that a particular level of impairment necessarily follows from a particular level of a specified substance without evidence to support this.

- Evidence of an unacceptable standard of driving

Factors indicating lesser harm

- All other cases

Step 2 – Starting point and category range

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

- **Must endorse and disqualify for at least 12 months** (rehabilitation courses **do not** apply to this offence)
- **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 the [disqualification guidance](#) and consult your legal adviser for further guidance**
- **Must disqualify for at least 3 years if offender has been convicted of a relevant offence in preceding 10 years – consult your legal adviser for further guidance**
- [Extend disqualification](#) if imposing immediate custody
- **If there is a delay in sentencing after conviction, consider interim disqualification.**

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

Level of seriousness	Starting point	Range	Disqualification	Disqual. 2 nd offence in 10 years
Category 1	12 weeks' custody	High level community order – 26 weeks' custody	29 – 36 months (Extend if imposing immediate custody)	36 – 60 months (Extend if imposing immediate custody)

Category 2	Medium level community order	Low level community order – High level community order	17 – 28 months	36 – 52 months
Category 3	Band C fine	Band B fine – Low level community order	12 – 16 months	36 – 40 months

Note: when considering the guidance regarding the length of disqualification in the case of a second offence, the period to be imposed in any individual case will depend on an assessment of all the relevant circumstances, including the length of time since the earlier ban was imposed and the gravity of the current offence but disqualification must be for at least three years.

Having determined a starting point, the court should consider additional factors that may make the offence more or less serious. A **non-exhaustive** list of aggravating and mitigating factors is set out below.

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

1. High level of traffic or pedestrians in the vicinity
2. Poor road or weather conditions
3. Involved in accident (where not taken into account at step 1)
4. Carrying passengers
5. Failure to comply with current court orders
6. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

1. No previous convictions or no relevant/recent convictions
2. Very short distance driven
3. Genuine emergency established
4. Genuine misunderstanding about safe dosage of prescribed medication
5. Remorse
6. Good character and/or exemplary conduct
7. Age and/or lack of maturity
8. Mental disorder or learning disability
9. Sole or primary carer for dependent relatives

Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

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

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

Step 4 – 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 guideline for Reduction in Sentence for a Guilty Plea (where [first hearing is on or after 1 June 2017](#), or [first hearing before 1 June 2017](#)).

Step 5 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 6 – Compensation and ancillary orders

In all cases, the court should consider whether to make [compensation](#) and/or other [ancillary orders](#) including: [deprivation](#), and [forfeiture or suspension of personal liquor licence](#).

- [Ancillary orders – Magistrates' Court](#)

Step 7 – Reasons

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

Step 8 – Consideration for time spent on bail (tagged curfew)

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

In Charge with a specified drug above the specified limit

Road Traffic Act 1988, 5A

Effective from: tbc

Triable only summarily

Maximum: Level 4 fine and/or 3 months

Offence range: Band B fine – 26 weeks' custody

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Step 1 – Determining the offence category

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

Category 1	Higher culpability and greater harm
Category 2	Higher culpability and lesser harm or lower culpability and greater harm
Category 3	Lower culpability and lesser harm

The court should determine the offender's culpability and the harm caused with reference **only** to the factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Culpability demonstrated by one or more of the following
<p>Factors indicating higher culpability</p> <ul style="list-style-type: none"> • High likelihood of driving • In charge of LGV, HGV or PSV etc. • Offering to drive for hire or reward • Evidence of another specified drug or of alcohol in the body <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"> <ul style="list-style-type: none"> - For these purposes where the following pairs of drugs appear together they shall be treated as one drug as they may appear in the body as a result of a single drug use: Cocaine and benzoylecgonine (BZE); 6-Monoacetyl-morphine and morphine; or Diazepam and Temazepam. - This factor may apply whether or not the 'other' specified drug or alcohol is present at a level that could give rise to separate charges. - Regard should be had to totality (see step 5) if sentencing for more than one offence. </div>
<p>Factors indicating lower culpability</p> <ul style="list-style-type: none"> • All other cases

Harm demonstrated by one or more of the following
Factors indicating greater harm <ul style="list-style-type: none"> • Obvious signs of impairment
<ul style="list-style-type: none"> - The court should not assume that a particular level of impairment necessarily follows from particular level of a specified drug without evidence to support this.
Factors indicating lesser harm <ul style="list-style-type: none"> • All other cases

Step 2 – Starting point and category range

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

- **Must endorse and may disqualify. If no disqualification, impose 10 points**
- [Extend disqualification](#) if imposing immediate custody

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

Level of seriousness	Starting point	Range	Disqualification/ points
Category 1	High level community order	Medium level community order – 12 weeks' custody	Consider disqualification (extend if imposing immediate custody) OR 10 points
Category 2	Band C fine	Band B fine – Medium level community order	Consider disqualification OR 10 points
Category 3	Band B fine	Band B fine	10 points

Having determined a starting point, the court should consider additional factors that may make the offence more or less serious. A **non-exhaustive** list of aggravating and mitigating factors is set out below.

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

1. Failure to comply with current court orders
2. Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

1. No previous convictions or no relevant/recent convictions
2. Genuine misunderstanding about safe dosage of prescribed medication
3. Remorse
4. Good character and/or exemplary conduct
5. Age and/or lack of maturity
6. Mental disorder or learning disability
7. Sole or primary carer for dependent relatives

Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

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

Step 4 – 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 guideline for Reduction in Sentence for a Guilty Plea (where [first hearing is on or after 1 June 2017](#), or [first hearing before 1 June 2017](#)).

Step 5 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 6 – Compensation and ancillary orders

In all cases, the court should consider whether to make [compensation](#) and/or other [ancillary orders](#) including: [deprivation](#), and [forfeiture or suspension of personal liquor licence](#).

- [Ancillary orders – Magistrates' Court](#)

Step 7 – Reasons

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

Step 8 – Consideration for time spent on bail (tagged curfew)

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

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DRUG DRIVING

THE TIP OF AN ICEBERG?



Evan Webster
Policy and Research Officer, PACTS
February 2021

An independent report by PACTS

This is an independent report by PACTS. The topic was proposed, and the scope defined, by PACTS. The DfT provided the funding to enable the project and DfT staff were kept informed of the findings.

For avoidance of doubt, it was not commissioned by the DfT and DfT has not influenced or endorsed the report contents or recommendations.

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Responsibility for the report's contents and conclusions lies with PACTS and the author. The report does not necessarily reflect the views of the advisory panel or others who contributed to the research.

About PACTS

The Parliamentary Advisory Council for Transport Safety (PACTS) promotes evidence-based solutions to achieve safe transport for all. Formally established in 1982, its founder members were responsible for the legislation which made it compulsory to wear seat belts in the fronts of cars in Britain.

The unique features of PACTS are that it is a multi-modal transport safety body and focuses on working with UK parliamentarians, government, professionals and other key stakeholders. It is independent and has no financial or sectoral interests.

PACTS is a charity with over 100 member organisations – our partners – who are all committed to improving safety for people on our roads, railways and when flying. Members provide PACTS with technical and business insights, advice and support. We assist them through our information, events, networking and more. If you would like information about the benefits of PACTS membership for your organisation, please visit [Join Us | PACTS](#) or contact PACTS.

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Executive summary

Over the past five years, great strides have been made in tackling drug driving in the UK. Taking forward the *North Report*, scientific knowledge has been used to improve legislation and enforcement. Strict legal limits (S5a offences) for 17 drugs (legal and illegal) were introduced, akin to the long-established limits for drink driving. THINK! campaigns have sought to increase awareness of the dangers of drug driving and the serious consequences of being convicted. New equipment has been developed and type-approved, enabling the police to test drivers at the roadside for the cannabis and cocaine – the most commonly used illegal drugs. The use of these preliminary tests has increased substantially with some police forces now recording more tests for drug driving than for drink driving. The numbers vary widely across forces – which may reflect enforcement policy more than road safety risk. Significant variations also exist in relation to evidential testing – taking blood samples, laboratory costs and delays. As a result, drug driving remains a significant danger and cause of death and serious injury on UK roads.

This report by PACTS shows that we still do not have answers to many of the vital questions around the impact of drug driving, including how many people are killed as a result of drug driving, and how many roadside drug drive tests are undertaken. There are reasons to believe the problem may be far greater than current systems show and may be growing.

There are steps that the government, the police and others can take to fill these gaps. This report demonstrates the importance of doing so, in order to better prevent drug driving and reduce the number of people killed and injured on UK roads.

The report uses casualty, survey, conviction and reoffending data, along with academic literature, to investigate the profile of drug drivers in the UK. It shows that drug drivers are more likely than the general population to be younger, male, employed in the trades (e.g. carpentry, plumbing etc.) or drive for work, and more likely to have substance use or mental health issues. However, it also shows that 'drug drivers' are a varied group and that different drugs have different user profiles. For example, while those who take cocaine or cannabis and drive are more likely to be younger, those who drive under the influence of prescription drugs tend to be older.

Key statistics

- Current road safety statistics suggest 92 people were killed and 672 seriously injured in collisions where a driver was impaired by drugs in 2019. The true figure is likely to be much higher.
- 12,391 people were convicted of a drug driving offence in 2019. This number has increased significantly since 2015.
- Nearly half (44%) of drug drive offences are committed by a reoffender.

Drug driving can be reduced by better application of many conventional road safety tools. More consistent levels of enforcement of the drug driving law, backed by communications, raise the public perception of enforcement and are an effective way to reduce drug driving. Currently, the level of enforcement varies dramatically from police force to police force. This seems to reflect local enforcement practice rather than level of offending or harm. Some police forces have established better procedures, contracts and training. This should be extended across the UK.

There is evidence that drivers are less aware of the dangers of drug driving or the likelihood of being caught for it, than they are for drink driving. Education and awareness campaigns can also play a role in increasing knowledge of the dangers of drug driving while building a social consensus that drug driving is unacceptable. These education campaigns should avoid alienating those they target.

The report shows that there is also a need for new tools, including some borrowed from other fields such as public health. Not all drug drivers have drug or mental health issues, but these issues are factors for many people who drug drive. Drug drive reoffending remains very high with 44% of recorded offences being committed by reoffenders. To address these issues, a Drug Drive Rehabilitation Course and High Risk Offender Scheme should be introduced, modelled broadly on the existing drink drive programmes, but with better screening for drug and mental health problems and with clear pathways to treatment. Medical professionals can also play a role in identifying drug and mental health issues and the DVLA and relevant professional bodies should continue to raise awareness of these issues and the guidelines for medical professionals.

There is currently no additional penalty for a driver who may have consumed drink and drugs. There is therefore less incentive for the police to test or prosecute for both offences. The impairment effects of combining drink and drugs, even at low levels, are hard to calculate accurately but the risks are known to be high. A new combined drug and drink driving offence should be introduced, with lower blood alcohol limits when alcohol and drugs are combined. This would address the increased risk posed by drivers who have consumed alcohol and drugs.

The effectiveness of the current legal system is also evaluated and small and large steps identified to increase effectiveness. The current blood testing system has resulted in long backlogs and high costs for police. There is the risk that drivers charged with drug driving will avoid being banned from driving only because the blood tests results take too long to come back. The Home Office should review the blood testing process and seek out ways of increasing the efficiency of laboratory testing. They should also investigate the possibility of reclaiming blood testing costs from those who are found guilty of drug driving. The report also recommends steps that could be taken to increase the effectiveness of the system in the short term.

Above all, the report demonstrates the need for a broad strategy to tackle drug driving, which uses the knowledge of experts on drugs and drug testing. This strategy must include research to fill vital knowledge gaps and include conventional road safety interventions as well as those from the field of public health. A strategy to tackle drug driving should seek to address the underlying causes of decisions by some to drug drive, increase drivers' perception of their chance of being caught if they do so, and ensure that those who are caught receive the support they need to avoid drug driving again.

Foreword

Drug driving represents a significant challenge to modern society. Road traffic collisions (RTCs) are the ninth leading cause of death globally across all age groups and are predicted to rise to the fifth highest cause by 2030. The World Health Organisation (WHO) *Global Status Report on Road Safety* recorded that the number of fatalities per year due to RTCs was 1.35 million in 2018. It seems the problem is growing rather than receding.

We have come a long way since the North report in 2010, which recommended strengthening our drug-driving legislation. In March 2015 the Government strengthened the Road Traffic Act 1988 by introducing a new strict liability offence (Section 5a) that specified blood drug concentrations for 17 different compounds to supplement existing legislation concerned with driving under the influence of drink and drugs. This has led to a steady increase in arrests for drug driving, with 10,232 cases going to court in England and Wales in 2018 compared to 5,368 cases in 2017.

However, the playing field is not always even and there is a need to continue our journey of legal and technical progression. The evolution of the drugs themselves and our means of detecting them must be prefaced against changes in the patterns of consumption, particularly by those aged between 18 and 25 years and who are recognised as susceptible to other risky behaviours for safe driving such as speeding, seatbelt and mobile phone misuse.

Our knowledge has grown exponentially since the introduction of the strict liability offence, but it is not complete. Robust, standardised data collection and reporting would significantly help, as would support for evidence collection and sentencing. Drug driving is a multi-faceted phenomenon and requires a multi-disciplinary response.

I welcome this report which brings together some of the key issues and experience of those involved. I hope it will generate thought and debate and by so doing help take our understanding of drug-driving forward.

Professor Kim Wolff, MBE

Professor Analytical, Forensic & Addiction Science,
Director of King's Forensics and Head of the Drug Control Centre.
King's College London
Chair of the Expert Panel on Drug Driving 2013



CHAPTER 1

Introduction



1.1 Drug driving in the UK

Historically, drug driving has been seen as responsible for comparatively few road deaths and received comparatively little study. Drink driving was perceived – probably rightly – as a much bigger problem. A study by the Transport Research Laboratory of drivers involved in fatal road collision casualties between 1985 and 1987 found drugs of abuse were present in 3% of cases, compared to alcohol which was present in 35% of cases.¹ However, similar studies published in 2001 and 2012 showed that drugs were present in more than 20% of cases. These studies used data from coroners to determine the level of drug driving.² In 2019, Stats19 data suggests that 92 people were killed in collisions involving drivers or riders impaired by drugs. This figure has increased in recent years and is almost certainly an underestimate. All this appears to indicate not only an increased awareness of the issue but also real increases in drug driving and associated deaths over the past 20 years or so.

Our knowledge of how different drugs are associated with increased crash risk and the biochemical properties of drugs has also increased in this time, though still lags behind our knowledge of alcohol.

The first drug driving offence was introduced in the Road Traffic Act 1930 where it was made illegal to drive while ‘under the influence of drink or a drug to such an extent as to be incapable of having proper control of the vehicle.’³ Section 4 of the 1988 Road Traffic Act laid out one of the current drug driving offences ‘driving/attempting to drive or being in charge of a motor vehicle whilst unfit’. To convict, a police officer would need to give evidence that the driver was unfit. This would typically require a Field Impairment Test (which consists of various physical tasks, such as walking in a straight line) at the roadside, which presented various challenges to the officer. There was no specified legal drug driving limit or equivalent of the breathalyser. Prosecutions for drug driving were relatively few.

In 2010, Sir Peter North’s *Report of the Review of Drink and Drug Driving Law* was published. This, with the 2013 *Report from the Expert Panel on Drug Driving*, led to the establishment of the offence of ‘driving or attempting to drive with drug level above the specified limit’ in 2015. This new offence is laid out in Section 5a of the 1988 Road Traffic Act, it was inserted by the 2013 Crime and Courts Act. In Scotland, an equivalent offence was introduced in The Drug Driving (Specified Limits) (Scotland) Regulations, 2019. Northern Ireland does not have drug limits set out in law.

Legal limits were set for the levels of drugs permitted in a driver. It was no longer necessary to demonstrate impairment. Along with new devices to enable the police to conduct preliminary tests for drugs at the roadside, this new “strict offence” has led to a significant increase in the number of people convicted of drug driving in the UK.

Ten years after the *North Report*, and five years since the new offence, this report by PACTS reviews the drug driving situation in the UK, looking at the level of casualties, the profile of drug drivers, interventions that could reduce drug driving and how the current policing and justice system could be improved.

¹ Jackson, P.G. (2008) A Review of Methodologies Used in Roadside Surveys of Drinking and Driving, DfT Road User Safety Research Report No. 90, Department for Transport

² Tunbridge, R. et al. (2001). The incidence of drugs and alcohol in road accident fatalities. TRL. Wolff, K. et al (2013). Driving under the influence of drugs. Report from the Expert Panel on Drug Driving

³ Road Traffic Act 1930. https://www.legislation.gov.uk/ukpga/1930/43/pdfs/ukpga_19300043_en.pdf

1.2 Drug driving limits

In Great Britain it is illegal to drive if:

- A driver is unfit to do so because they are on legal or illegal drugs; or
- A driver has certain levels of drugs in their blood.

Northern Ireland has the 'unfit' offence but no legal limits. Legal limits are set out for 17 legal and illegal drugs in Great Britain. The government used a 'lower limit of detection' to set the limit for eight illegal drugs, a 'risk-based approach' for eight medicinal drugs, and a separate approach for amphetamine to balance its legitimate medical uses and its abuse. The limits are higher for medicinal drugs than for illegal drugs. The drug driving law also provides a medical defence if a driver is taking a medicine in accordance with instructions from a health care professional or an accompanying leaflet and is not impaired.

The respective limits are shown in Table 1.

Table 1: Legal drug limits in Great Britain

Drug	Legal limit in microgrammes per litre of blood
Illegal drugs	
Benzoylcegonine	50
Cocaine	10
Delta-9-tetrahydrocannabinol (cannabis)	2
Ketamine	20
Lysergic acid diethylamide (LSD)	1
Methylamphetamine	10
Methylenedioxymethamphetamine (MDMA)	10
6-monoacetylmorphine (Heroin)	5
Medicinal controlled drugs	
Clonazepam	50
Diazepam	550
Flunitrazepam	300
Lorazepam	100
Methadone	500
Morphine	80
Oxazepam	300
Temazepam	1,000
Amphetamine	250

The Great Britain limits are set using a 'per se' approach with risk thresholds, based on the detection of a drug in a driver's body above a defined cutoff concentration in blood that could be related to the risk of a road traffic accident. To convict someone of drug driving in Great Britain under Section 5a, a level of the drug above the specified limit must be demonstrated. The British limits for illegal drugs are low but not purely presence based (i.e.

showing the presence of any level of drugs) as they are, for example, in Australia.⁴ Neither are they based purely on impairment because of the scientific and ethical difficulties of objectively measuring, trialling and defining impairment for psychoactive drugs and driving.

1.3 Drug driving policy

In 2010, *The Report of the Review of Drink and Drug Driving*, led by Sir Peter North was published. The Report had been requested by the then Secretary of State for Transport to study the legal framework governing drink and drug driving in Great Britain. The *North Report*, along with the Transport Select Committee's 2010 inquiry into drink and drug driving law, has informed much of the government's drug driving policy in the last decade.⁵

The Government's policy since 2010 has largely focused on making it easier for police to enforce the law against drug driving.

The most significant change in drug driving enforcement in the last decade was the creation of a new offence 'driving or attempting to drive with drug level above the specified limit' in 2015. Previously, drug driving offences required proof that a driver was impaired or unfit to drive, which was significantly more difficult to prove in court, in part due to the subjectivity of the roadside field impairment test. This new offence came about after the 2013 'Report from the Expert Panel on Drug Driving' led by Professor Kim Wolff which carried out a review of the scientific literature to establish which drugs should be included in regulations and what thresholds should be set.

In the last decade, preliminary drug testing devices (screeners) for use by police have also been type-approved (to Home Office standards), first for station-based use in 2012 and for mobile use in 2015, again making enforcement of drug driving laws simpler and more effective. THINK! campaigns focused on drug driving have also been run since 2010, with the 2016 'Drug Drive: More reason to be paranoid' and 'A breathalyser for drugs' campaigns highlighting the new law and technology.

The *North Report* recommended that the Government consider a wider suite of measures to better understand and reduce drug driving. For example, the Report recommended considering the creation of a drug drive rehabilitation course, including drug drivers in the High Risk Offender Scheme, collecting more accurate drug driving casualty data and commissioning research into evidential saliva testing devices. However, the government either rejected these recommendations or stated that it would consider them having first focused on making drug driving enforcement more effective.⁶

Since 2015, convictions for the new drug driving offence have increased year on year. However, they remain significantly lower than for drink driving. Convictions also vary significantly from police force to police force with some forces recording as many drug driving offences as drink drive offences, while others record less than 10% of the drug driving offences as drink drive offences (see Chapter 3.3 for more details).

It is unclear whether the relative levels of drug and drink drive prosecutions reflect levels of drug and drink driving or the practicalities and polices enforcement. Given the widespread nature of illegal drug use, it seems unlikely that the large disparities between police forces are entirely related to local risks.

⁴ Quilter J and McNamara L (2017) 'Zero tolerance' drug driving laws in Australia: A gap between rationale and form? *International Journal for Crime, Justice and Social Democracy* 6(3): 47-71

⁵ House of Commons Transport Committee. (2010) Drink and drug driving law. <https://publications.parliament.uk/pa/cm201011/cmselect/cmtran/460/460.pdf>

⁶ North, P. (2010). Report of the Review of Drink and Drug Driving Law Wolff, K. et al (2013). Driving under the influence of drugs. Report from the Expert Panel on Drug Driving Government Response to the North Report

Efficient and effective enforcement of the drug driving law has also been hindered by issues and delays with the blood testing needed for convictions. While the UK does not have robust drug driving casualty data, the data available suggests that the current level of enforcement has not led to a decrease in drug driving. The significant percentage of drug drivers who reoffend (24%, see Chapter 3.4 for more details) also shows that there is a need to reassess the rehabilitation options available for drug drivers.⁷

1.4 Drug driving enforcement process

In Great Britain, police can conduct a preliminary drug test if a driver has committed a moving traffic offence, been involved in a road traffic collision or if an officer reasonably suspects that a person is or has been driving having consumed drugs. Preliminary drug tests in Great Britain currently detect cannabis and cocaine. If a driver fails a preliminary drug test they will be arrested and taken to a police station where a blood sample will be taken for evidential testing. This procedure may differ if, for example, a driver has been injured in a collision or is unconscious. Police may arrest a driver and take a blood sample if they believe that the driver is impaired from drugs that cannot be tested for on the preliminary drug test (such as MDMA). Police officers generally will conduct a Field Impairment Test before arresting a driver if this is the case.

After giving a blood sample the driver will be charged and, when fit, released from custody. They will be given the option to take a "B" sample from their blood test if they wish to use it in court. A driver will then await a court date. In most cases they will be free to continue to drive between being charged and appearing in court: this frequently takes several months. There are significant concerns about the amount of time taken for laboratories to process blood tests and the length of the court process in general. Most forces wait around five months for blood test results and a further three to six months for court dates. These are discussed in more detail in 'Policing and Justice.' If found guilty at court, for a first-time offence a driver will typically be banned from driving for 12 months (the legal minimum) and fined. Someone convicted of drug driving can also receive a prison sentence of up to six months.⁸

Chapter 5 'Policing and Justice' discusses the legal system, current issues and potential solutions in greater detail.

⁷ Secretary of State for Transport. (2011). The Government's Response to the Reports by Sir Peter North CBE QC and the Transport Select Committee on Drink and Drug Driving. Cm 8050

⁸ <https://www.gov.uk/drug-driving-law>

CHAPTER 2

Methodology



2.1 Literature review

References to research literature and other robust sources are used throughout this report to provide context and inform the discussion, particularly in relation to potential interventions.

Searches were conducted of the academic literature on drug driving, the profile of drug drivers, treatment of drug issues and interventions to reduce drug driving. This involved using Google Scholar, ProQuest and Web of Science searches and the citations and bibliographies of relevant documents. Searches of key government and parliamentary documents on drug driving at a UK, European and global level were also conducted. These included reviews of drug driving and assessments of policy options. Studies were found from the EU, Denmark, France, the Netherlands, Norway, Switzerland, Canada, the USA, Australia, and New Zealand. Only studies published in English or that provided abstracts in English were selected. Finally, members of PACTS' network and the projects advisory panel were asked to provide relevant articles and documents. Studies were screened at title, abstract and at full text.

Evidence was prioritised based on relevance to the current situation regarding drug driving in the UK. More recent research has been prioritised as has research from other countries with similar road safety records.

Information from the literature was used to provide insights into the profile of drug drivers, reasons for drug driving and how effective different interventions aimed at reducing drug driving could be.

2.2 Interviews and information requests

In-depth semi-structured interviews were conducted with road safety and drug experts as well as with roads police officers and those who work directly in drug treatment. Interviewees included people with expertise on drink driving in the UK, USA, Canada, Australia, New Zealand and Europe. These interviews were conducted in person or over the phone by at least one member of PACTS' staff and lasted between 30 and 90 minutes. Notes were made on the interviews. They were followed up with email requests for further information when necessary. Interviews provided information on best practice on reducing drug driving across the world, they also provided insight into the profile of drug drivers and the enforcement process.

An extensive appeal for information was made to local authorities. Information requests on campaigns, interventions and research on drink driving and alcohol harm reduction were sent to all local authority road safety teams listed by Road Safety GB and to all local authority public health teams. Interviews were then conducted with 7 local authorities. This provided information on campaigns being run at a local level and the profile of drug drivers across the UK.

2.3 Data

Data were obtained from a number of sources. Stats19 road casualty data were used as the primary source of casualty data, both from the *Reported Road Casualties Great Britain* annual reports, published by the DfT, and from further analysis of underlying data. Stats19 data are recorded by police forces, either from having visited the scene or from reports from the public.

PACTS also obtained data on drug driving offences from the *Ministry of Justice Motoring Tool*; *Recorded Crime in Scotland*; and *Police Service of Northern Ireland Recorded Crime Statistics*. Survey data from the *Crime Survey for England and Wales*, *National Travel Attitudes*

Survey and *RAC Report on Motoring* were collated. PACTS also requested and received data from the Driver and Vehicle Licensing Agency (DVLA) on drink/drug driving and reoffending and the number of people who have their licence revoked as a result of drug issues. Data were used to provide insight on the profile of drug drivers in the UK, the effectiveness of current drug driving policy, and the scope for improvement offered by different interventions.

2.4 Advisory panel

PACTS set up an advisory panel which provided input throughout the project. The panel consisted of ten experts from the fields of roads policing, road safety and drug studies. Panel members were asked to share their expertise, recommend key documents and other sources for research, and provide feedback on PACTS' project plans, findings and report drafts.

CHAPTER 3

Drug driving statistics – who, what, when, where



The DfT does not produce a robust estimate for the number of drug driving deaths in the Great Britain based on coroner data, as it does for drink driving (for more details on this see Chapter 6 'Better understanding the problem'). There is also no national data available on the number of drug tests administered and failure rates (see 'Better understanding the problem'). Again, this contrasts with drink driving, where the number of breath tests and failure rates are recorded. As a result, survey data, Stats19 data, data from police forces and conviction data must be used. Each of these data sources has their own disadvantages, though all are valuable in contributing to an understanding of drug driving in Great Britain.

3.1 Stats19 and other casualty data

Stats19 forms are generally filled out by a police officer at the scene of a collision, though occasionally they are based on reports from the public. Stats19 forms provide details about those who are involved in the collision (age, gender, severity of injuries, transport mode etc.) and the collision itself (road type, location etc.). One section of a Stats19 form is contributory factors. These allow police officers to record what they feel has contributed to collisions. One such contributory factor is 'Driver/Rider impaired by drugs (illicit or medicinal)'. Contributory factors are not a definitive guide to what contributed to a collision. Rather they represent the opinion of an officer at the scene, based on the evidence available at the time. Driver/rider impaired by drugs may be particularly challenging for a police officer to determine with little time as there may be little physical evidence of impairment (compared to, for example, 'poor or defective road surface'), particularly if the driver is killed or seriously injured. The potential inaccuracy of contributory factors for assessing the road safety impact of drug driving can be seen by comparing the number of road deaths where 'driver/rider impaired by alcohol' was noted with the more robust data published in *Reported Drinking and Driving* (based on coroner data). Contributory factors suggest that 126 people were killed in road collisions where the driver/rider was impaired by alcohol in 2018. Contrastingly, the figure based on the more in-depth coroner data is 240 deaths. It should also be noted that not all collisions have contributory factors recorded.

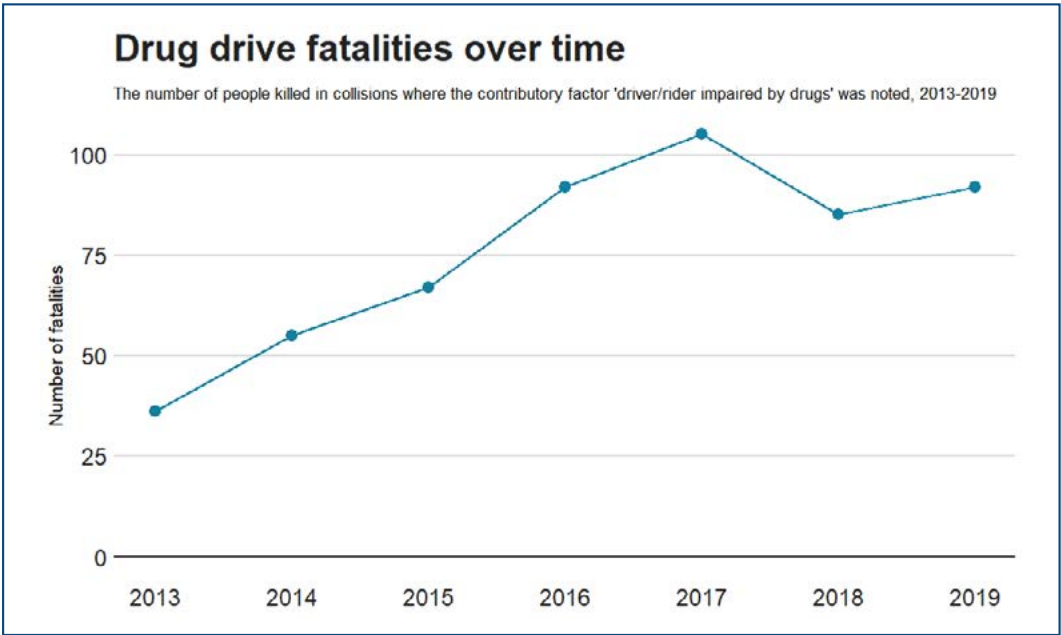


Figure 1: The number of people killed in collisions where the contributory factor 'driver/rider impaired by drugs' was noted, 2013-2019. Source Reported Road Casualties Great Britain (RRCGB)

Stats19 contributory factors suggest that, in Great Britain in 2019, there were 92 people killed and a further 672 people seriously injured where a driver/rider was impaired by drugs. These data suggest an increase in drug driving since 2013 when 36 people were killed and 241 seriously injured in such collisions. However, it is not clear if this increase is driven by an increase in drug driving or an increase in propensity of officers to record this contributory factor.

Drug driving appears to be highest for car drivers. In 2019, 82% of the collisions where the contributory factor was recorded involved a car driver being impaired by drugs (1216 collisions or 1.12% of collisions involving a car). This is also the highest percentage of any vehicle type (closely followed by van/LGV at 1.07%). This percentage is lowest for Bus or Coach drivers at 0.04%.

There is less variation in the percentage of collisions where driver/rider was impaired by drugs when split by road type. This percentage varies from 2.07% on 'other roads' to 1.63% on 'A roads.'

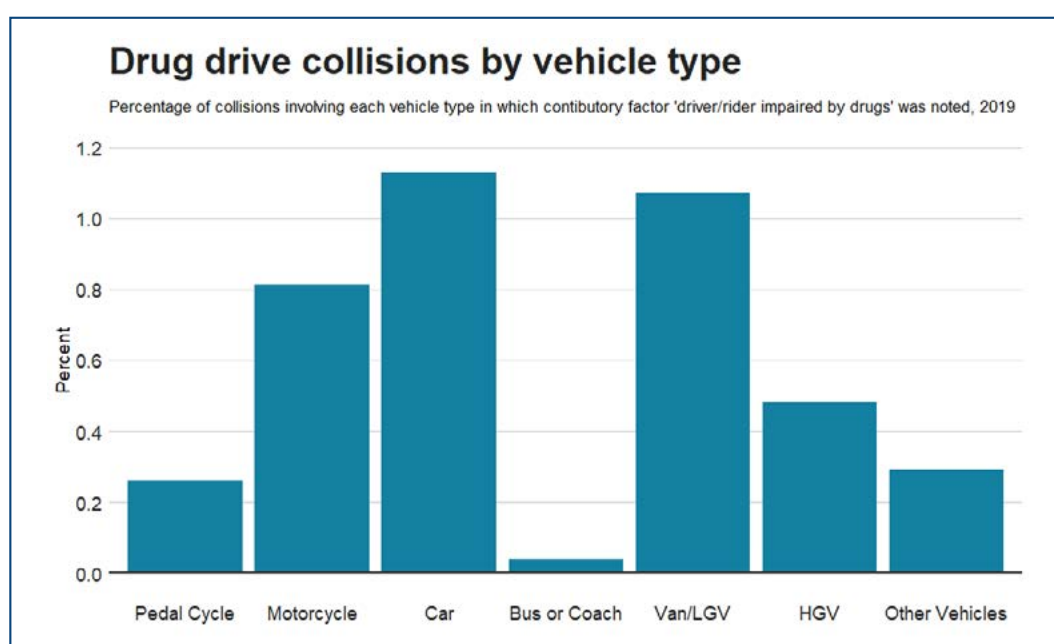


Figure 2: Percentage of collisions where a contributory factor was assigned and 'driver/rider impaired by drugs' was noted (RRCGB)

In 2019, 3.6% of collisions in the North East involved a driver/rider impaired by drugs, the highest in Great Britain. By contrast just 0.9% of collisions in London involved a driver/rider impaired by drugs. It is possible that, because Contributory Factors are officer judgement only, this may simply be a reflection of the different practices of officers completing Stats19 forms rather than the extent of drug driving. Drug driving is likely to vary both in extent and in what drugs are used across regions and even town to town in Great Britain because of the nature of the illicit drug trade and drug use.

Drug driving appears to be closely associated with other high risk driving behaviours, such as failure to wear a seat belt. An analysis by PACTS of seat belt use and contributory factors found that in 34% of KSIs where driver/rider impaired by drugs was recorded, a seat belt was not worn. The report also found that driver/rider impaired by drugs was three times as likely to be noted in a collision where the seat belt was not used than in collisions where the seat belt was worn.⁹

⁹ Webster, E., and Norbury, F. (2019). Seat Belts: The Forgotten Road Safety Priority. PACTS

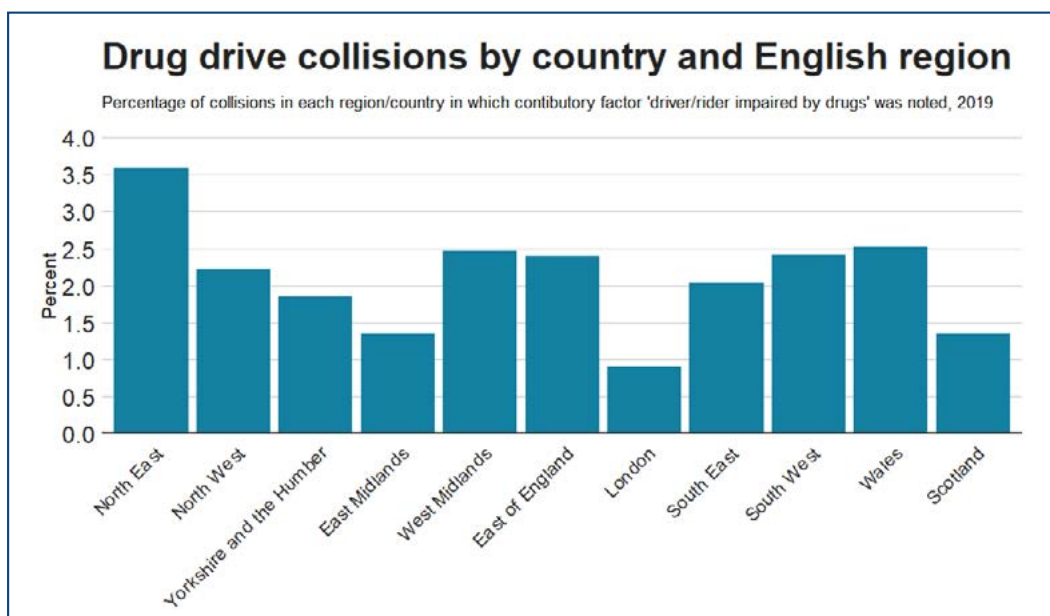


Figure 3: Percentage of collisions where a contributory factor was assigned and ‘driver/rider impaired by drugs’ was noted, by region/country (RRCGB)

In 2001¹⁰ and 2012, TRL produced an analysis of the incidence of drugs and alcohol in road accident fatalities. In 2012, 231 driver fatalities had available drug data and 20% of these fatalities had an illicit drug of abuse present. 31% of these fatalities had a therapeutic drug present.¹¹

The 2001 study had a sample of 1,184 fatalities and at least one medicinal or illicit drug was detected in 24% of the fatalities. The 2001 and 2012 studies do not include all fatalities in part because coroners and procurators fiscal are not required to routinely screen for drugs in road collision fatalities.¹²

More detail on how more accurate casualty data could be produced is available in Chapter 6 ‘Better understanding the problem.’

3.2 Self-reported levels of drug driving

The main source of survey data on drug driving comes from the *Crime Survey England and Wales* (CSEW). The *Crime Survey* is a face-to-face survey undertaken with households in England and Wales. It provides some insight into the extent of drug driving, but not the impact on road safety. Questions on driving over the legal alcohol limit and driving after taking illegal drugs have been in the CSEW since 2009/10. Questions on driving after any drinking and driving after taking legal highs and prescription medication were added to in 2019.

The *Crime Survey* found that 0.4% of drivers reported driving whilst thinking they were under the influence of illegal drugs at least once in the last 12 months (in 2019/2020). 5.4% of drivers reported that they had taken drugs at all in the last 12 months.

¹⁰ Tunbridge, R., Keigan, M., and James, F. (2001). The incidence of drugs and alcohol in road accident fatalities. TRL.

¹¹ 2012 study referred to in Wolff et al. (2013). ‘Driving Under the Influence of Drugs.’ Report from the Expert Panel on Drug Driving.

¹² Tunbridge, R., Keigan, M., and James, F. (2001). The incidence of drugs and alcohol in road accident fatalities. TRL.

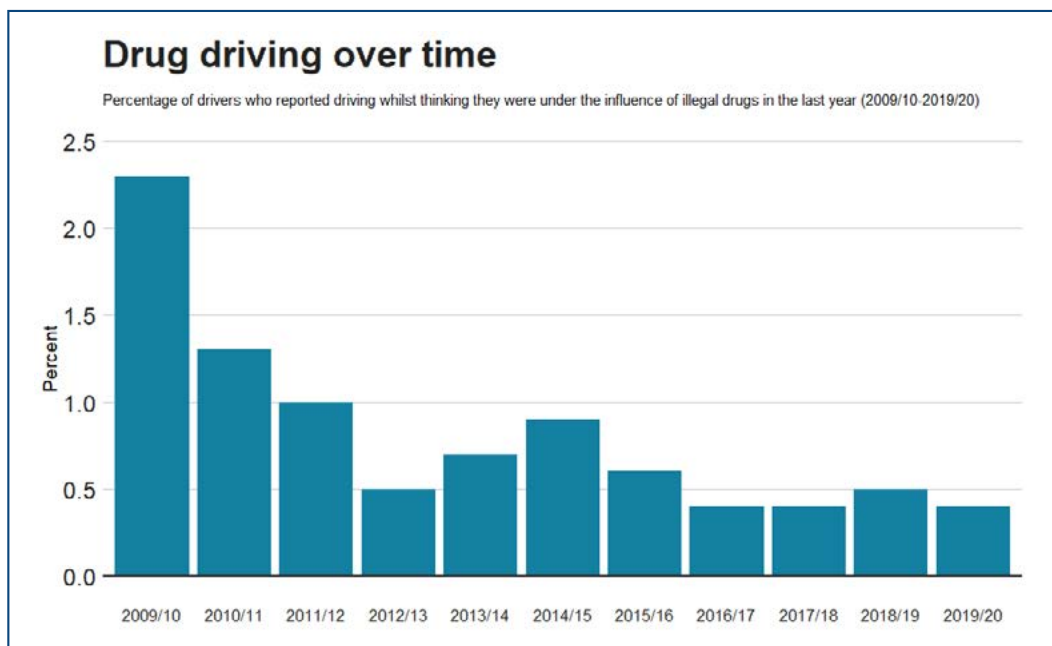


Figure 4: Percentage of drivers who reported driving whilst thinking they were under the influence of illegal drugs (Crime Survey, England and Wales (CSEW))

2.5% of 16-19 year olds reported having driven whilst thinking they are under the influence of illegal drugs at least once in the last 12 months. The figure for 20-24 year olds is also high (1.1%). Self-reported drug driving is much lower amongst 25-29, 30-39, 40-49 and 50+ year olds at 0.5%, 0.5%, 0.2% and 0.1% respectively. 16-19 year olds and 20-24 year olds have consistently been the most likely age groups to report drug driving, while 25-29 year olds have been near the highest percentages. The Crime Survey suggests there may have been a reduction in drug driving since 2009/10, though there is variation year on year.

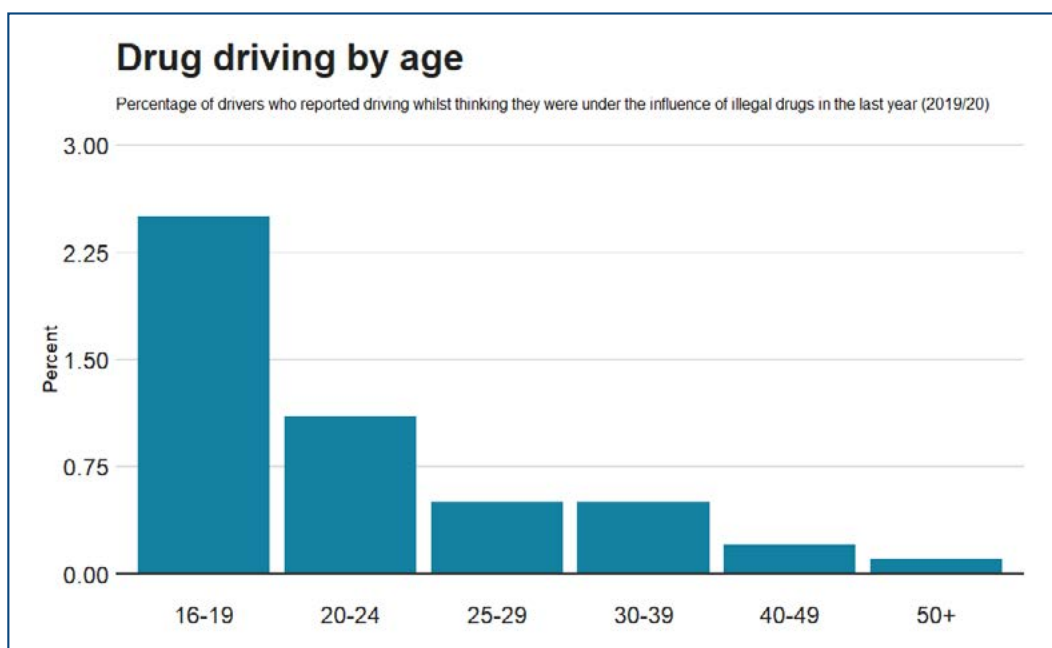


Figure 5: Percentage of drivers who reported driving whilst thinking they were under the influence of illegal drugs, by age (CSEW)

The *Crime Survey* also provides data on the drug driving amongst drivers who have taken drugs in the past twelve months. As a proportion of all drivers who have taken drugs in the

last 12 months, 6.2% had driven whilst thinking they are under the influence of illegal drugs at least once. This was highest amongst 16-19 year olds at 10.8%. Drug driving was also comparatively high amongst drivers who had taken drugs in the last 12 months amongst 20-24 year olds (5.9%), 30-39 year olds (7.8%) and 50+ year olds (7.7%).

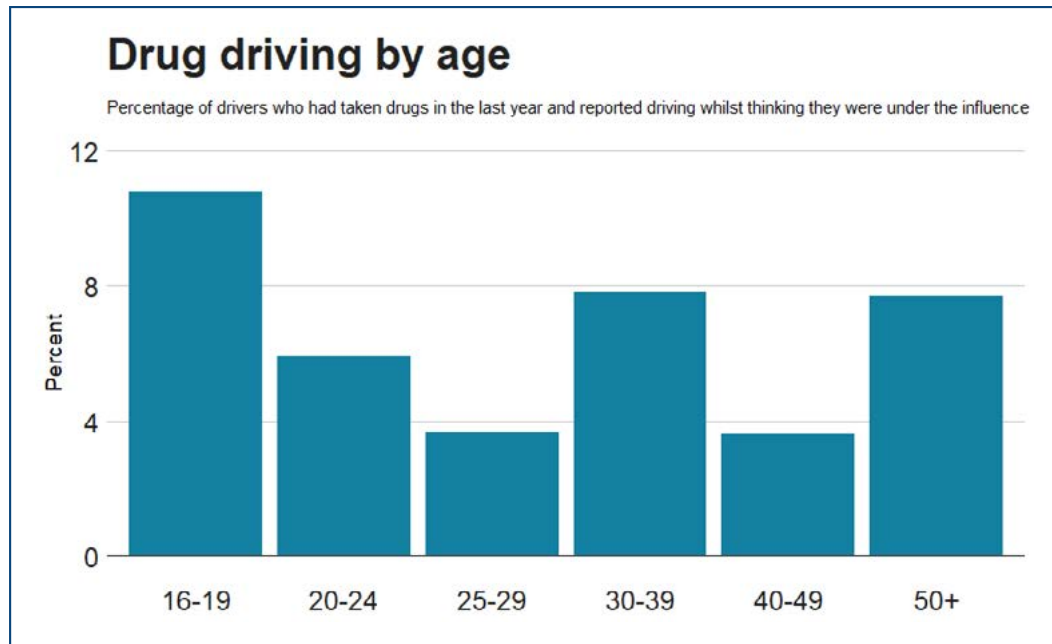


Figure 6: Percentage of drivers who had taken drugs in the past year and reported driving whilst thinking they were under the influence of illegal drugs, by age (CSEW)

The *Crime Survey* suggests that drug driving amongst drivers who have taken drugs in the last 12 months has fallen significantly since it was 19.5% in 2010/11, though it may have risen slightly since 2015/16 (where it was 5.0%). Of all drivers who have taken drugs in the last 12 months, 0.6% had driven when they thought they may have been affected by or under the influence of illegal drugs a few times a week. 93.8% of drivers who had taken drugs in the past 12 months had not driven at all when they thought they may have been affected by or under the influence of illegal drugs compared to 80.5% in 2010/11.

The *Crime Survey* also shows that in 2019/20 3.8% of drivers reported that they had driven after taking medication with advice not to drive after taking. 0.6% of drivers reported that they did this every day/almost every day. 6.6% of those aged 16-19 reported driving after taking medication. This was the highest figure, followed by 25-29 year olds (5.4%), 20-24 year olds (4.8%), 30-39 year olds (3.9%), 40-49 year olds (3.8%) and 50+ year olds (3.2%).

How much faith can be placed in self-reporting?

There will be doubts about the extent to which people will accurately report having broken the law. Studies which compare confidential surveys with roadside observations of behaviour such as seat belt use suggests that robust confidential surveys, such as the CSEW, have validity and reflect behaviour on the roads.¹

¹ Holló, P., Henézi, D., & Berta, T. (2018). Comparison of self-reported and observed road safety performance indicators. *Periodica Polytechnica Transportation Engineering*, 46(3), 117-121.

Drug driving over time

Percentage of drivers who had consumed drugs in the past year and reported driving whilst thinking they were under the influence of illegal drugs in the last year (2009/10-2019/20)

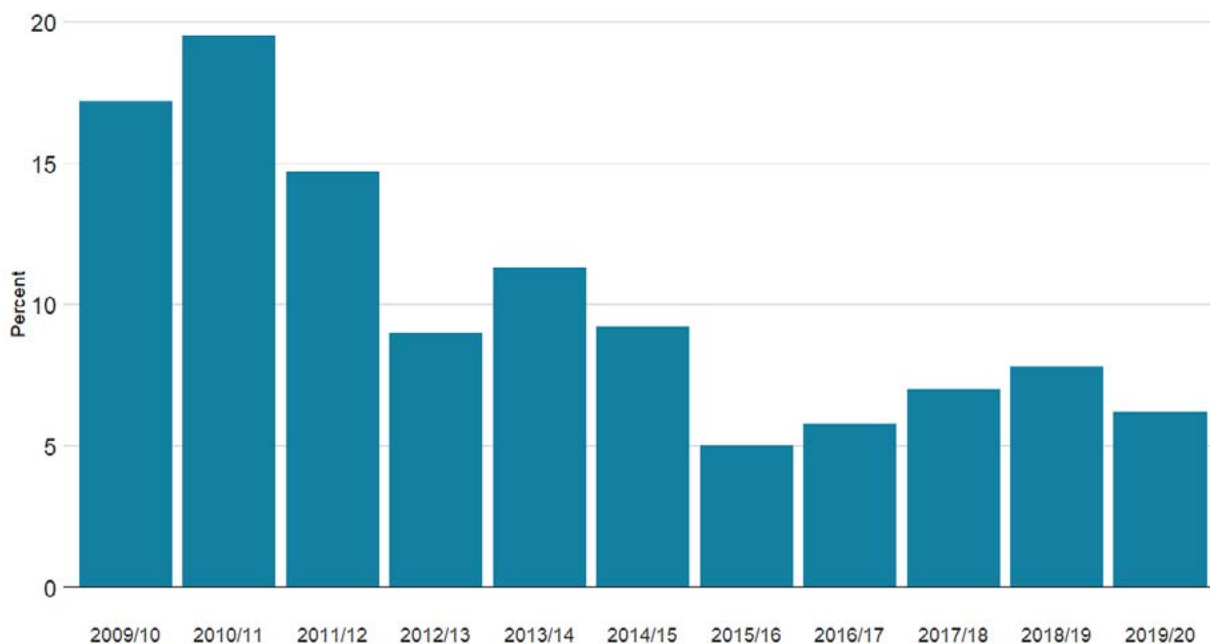


Figure 7: Percentage of divers who had consumed drugs in the past year and reported driving whilst thinking they were under the influence of illegal drugs, by year (CSEW)

0.3% of drivers reported driving after taking legal highs, or drugs formerly known as legal highs in 2019/20. 16-19 year olds were the most likely to report driving after taking legal highs (0.7%) followed by those aged 30-30 and 25-29 (0.5% respectively), 20-24 year olds (0.4%), 50+ year olds (0.2%) and 40-49 year olds (0%).

Data is also available on attitudes towards drug driving from the *National Travel Attitudes Survey* from 2020.¹³ NTAS is commissioned by the Department for Transport and surveys public opinion on a wide variety of travel and transport related issues. 96% of those surveyed in Wave 2 (fieldwork August to September 2019) agreed that if someone has taken illegal drugs, they should not drive any distance, and just 2% disagreed. 50% agreed that if someone has taken legal drugs, they should not drive any distances (20% disagreed and 29% neither agreed or disagree, considerably higher than neither agree nor disagree for illegal drugs). Interestingly, 65% agreed that the laws on driving whilst impaired by illegal or legal drugs are not properly enforced and 62% agreed that the number of people driving whilst impaired by illegal or legal drugs has increased in the last five years (just 10% and 43% disagreed with these statements).

ESRA survey

An alternative source of survey data on drug driving is the *E-Survey of Road Users' Attitudes* (ESRA) an international research project which conducts surveys of road user attitudes in 38 countries.¹⁴ ESRA is conducted by the Belgian Vias Institute and takes the form of an online survey of a representative sample of around 1,000 members of the national adult population.

¹³ Department for Transport. (2020). National Travel Attitudes Study: Wave 2. Department for Transport. <https://www.gov.uk/government/statistics/national-travel-attitudes-study-wave-2>

¹⁴ ESRA (2018). Driving under the influence of alcohol and drugs. ESRA. <https://www.esranet.eu/en/publications/>

ESRA suggests significantly higher levels of self-reported drug driving than the *Crime Survey*. 7.5% of car drivers surveyed in the UK had driven 1 hour after using drugs (other than medication) over the last 30 days in the UK (the highest of countries with a similar road safety record, the average across the European countries was 5%). ESRA also found that 13% of car drivers had driven after taking medication with a warning that it may influence driving ability.

ESRA also surveyed attitudes towards drug driving. 2.6% of drivers surveyed in the UK felt it was acceptable to drive 1 hour after using drugs other than medication (compared to 1.4% on average in Europe) and 4% in the UK felt that where they live, most other people would say it is acceptable for a car driver to drive 1 hour after using drugs (compared to 3.1% on average in Europe).

The figure for self-reported drug driving from ESRA may be higher than the Crime Survey for several reasons. Firstly, while ESRA specifies 'not medicinal' drugs it does not specify 'illegal' like CSEW. Secondly, ESRA is conducted online while CSEW is conducted in person. Thirdly, the surveys use different sampling techniques. ESRA is a quota sample using a panel while CSEW uses a more robust random probability sample. 20,233 people answered the CSEW drug driving question while just 963 answered the ESRA drug driving question. Finally, responses in ESRA are on a scale from 1-5 where 1 is 'never', 5 is '(almost) always' and the numbers in between have no set value, rather they 'can be used to define your response' whereas in the crime survey respondents state 'every day' 'once a week' etc.

3.3 Conviction and arrest data

Data on court proceedings and convictions is available from *Criminal Justice System Statistics*, published by the Ministry of Justice. Court data has the obvious limitation that it records actions by the police and courts rather than driver behaviour itself. As such, trends may reflect changes in policing and the justice system rather than in drug driving. 12,391 people were convicted of drug driving offences in 2019. This is a significant increase on previous years (Figure 8). Comparison to years before 2015 are not useful because the offence 'Drive a motor vehicle with the proportion of specified controlled drug above specified limit' was not introduced until 2015.

Initial data from police forces suggest that the number of drug driving arrests has increased during the coronavirus pandemic. This could be due to increases in drug driving, or it being easier to identify those in the drug trade during lockdown, or in some cases increased time being available to police the roads as other demands on their time were reduced. The offences counted as 'drug driving' in this report include:

- Causing death by driving without due care / consideration while over prescribed limit – specified controlled drug
- Drive a motor vehicle with the proportion of specified controlled drug above specified limit
- Attempt to drive a motor vehicle with the proportion of specified controlled drug above specified limit
- In charge of a motor vehicle with the proportion of specified controlled drug above specified limit
- In charge of a vehicle whilst unfit to drive through drink or drugs (impairment)– Drugs
- Driving or attempting to drive a vehicle whilst unfit to drive through drink or drugs (impairment) – Drugs

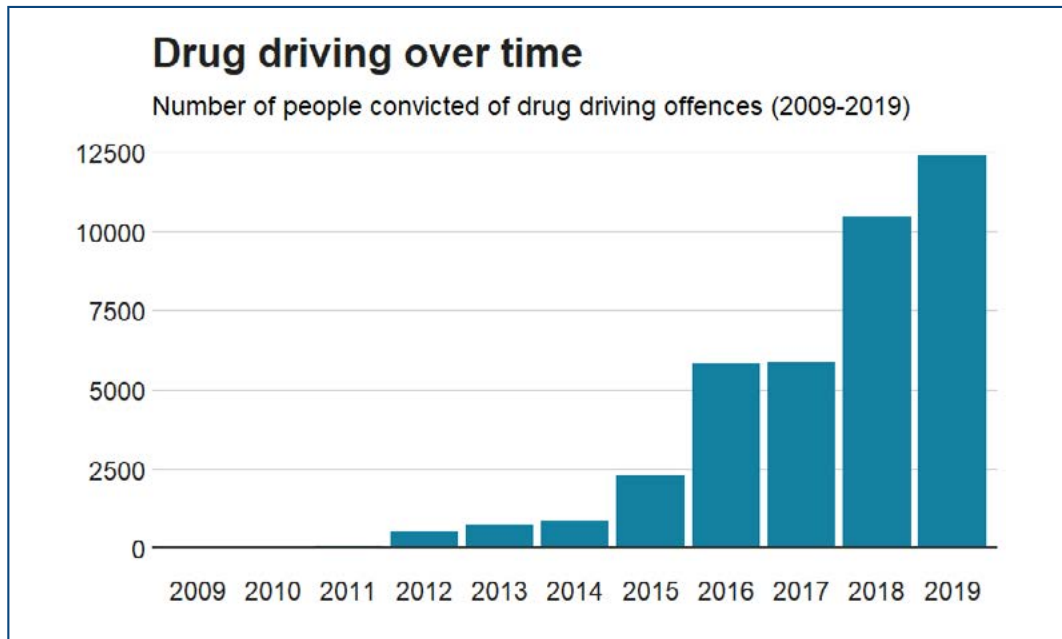


Figure 8: Number of drug drive convictions over time (Criminal Justice System Statistics (CJSS))

Court data also provides information on the age, ethnicity and gender of those convicted of drug driving. This can offer insight into the profile of drug drivers in the UK, though it should be remembered that this data shows who has been arrested and convicted for drug driving, which may not be an accurate picture of the drug driving population. Unfortunately, court data is not published with equal age intervals, though this can be controlled for by calculating the number of arrests per person in each age group. A measure such as per thousand driving licences held would be more useful but the DVLA does not publish driving license by age using the same age groups as court data. Drug driving convictions per thousand population is highest amongst 18-24 year olds and 25-29 year olds (0.65). Convictions per thousand population then decreases with age. There are the highest number of drug driving convictions in 2018 amongst 18-24 year olds (3,734), followed by 30-39 year olds (3,662) and 25-29 year olds (2,921).

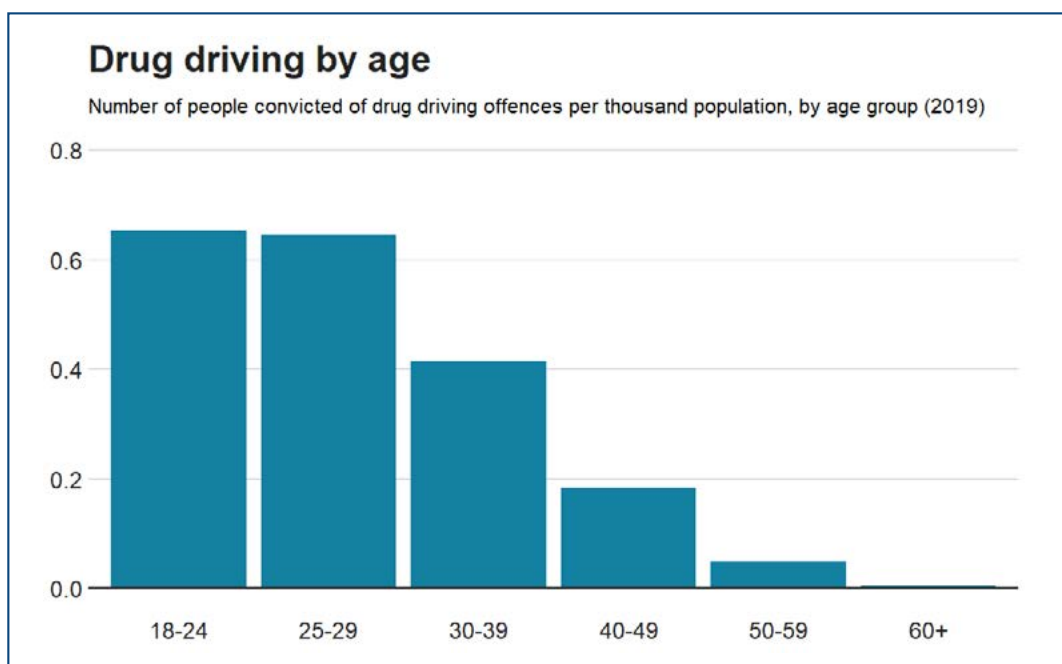


Figure 9: Number of drug drive convictions by age (CJSS)

Conviction data suggests that drug drivers are significantly more likely to be male than female. There were 1,017 women convicted of drug driving in 2019 compared to 12,245 men. The vast majority of people convicted for drug driving were white (8,040, 83% of those convicted). 737 (8%) Asian people, 663 (7%) black people, 264 (3%) mixed ethnicity people and 108 (1%) Chinese and other people were convicted of drug driving. A comparison with ONS population statistics (based on the 2011 census) suggests that black and mixed-race people are overrepresented in these statistics while white and Asian people are underrepresented. However, this could reflect policing behaviour, changing population demographics since 2011 or the driving population having different demographics to the general population rather than the likelihood of people from different ethnic backgrounds drug driving.

Finally, conviction data can be separated by police force area. There were more convictions for drug driving per 1,000 population in Merseyside (0.71) than in any other police force area. There were also more than 0.5 convictions per 1,000 population in North Wales, Dorset, Cleveland, and Norfolk. There were significantly fewer convictions per 1,000 population in the West Midlands (0.06). Northumbria, Northamptonshire, Hertfordshire, Nottinghamshire, Leicestershire and Avon and Somerset also had less than 0.1 conviction per 1,000 population. The highest number of convictions were in the Metropolitan police area (1,093), followed by Merseyside (991) and Essex (784). The lowest numbers were in Warwickshire (56), Northamptonshire (61) and Bedfordshire (63). Conviction data also allows us to compare drink and drug driving convictions. In Merseyside there were more drug convictions than drink convictions (108 drug convictions for every 100 drink convictions) while in Northamptonshire there were only 10 drug convictions for every 100 drink driving convictions. While there may be geographical variations in drug driving, this data likely reflects differing enforcement priorities and resources in different forces.

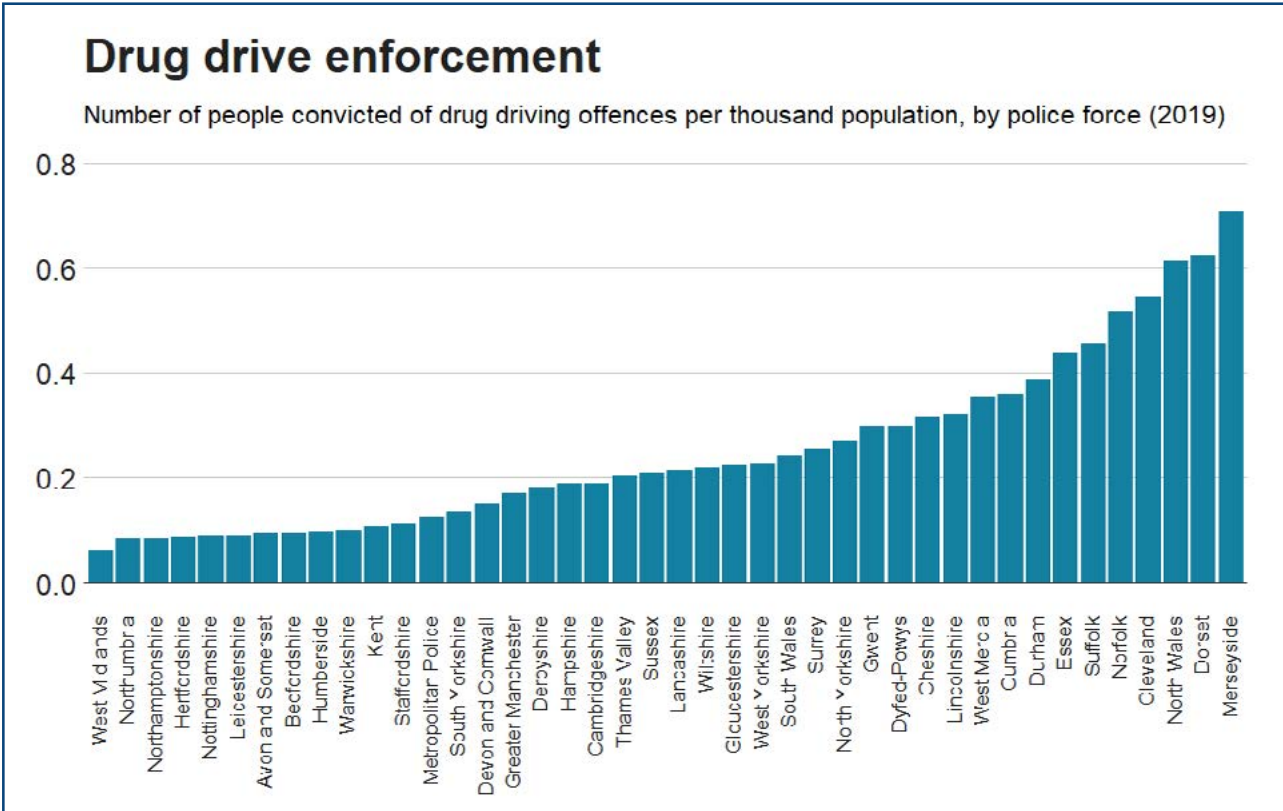


Figure 10: Number of drug drive convictions by police force (CJSS)

3.4 Reoffending

Data provided to PACTS from the DVLA shows that 58,108 people committed a drug driving offence between 2010 and 2019. Of these 14,224 had a previous drink/drug driving offence on their record. This means 24% of drug driving offenders were reoffending.

The same data shows that 78,062 drug driving offences were committed since 2010. Of these, 34,178 were not a first drink/drug driving offence. This means 44% of offences were committed by drivers who were reoffending.

By comparison, 7% of people who had a drink drive offence were reoffending and reoffenders committed 17% of drink drive offences.

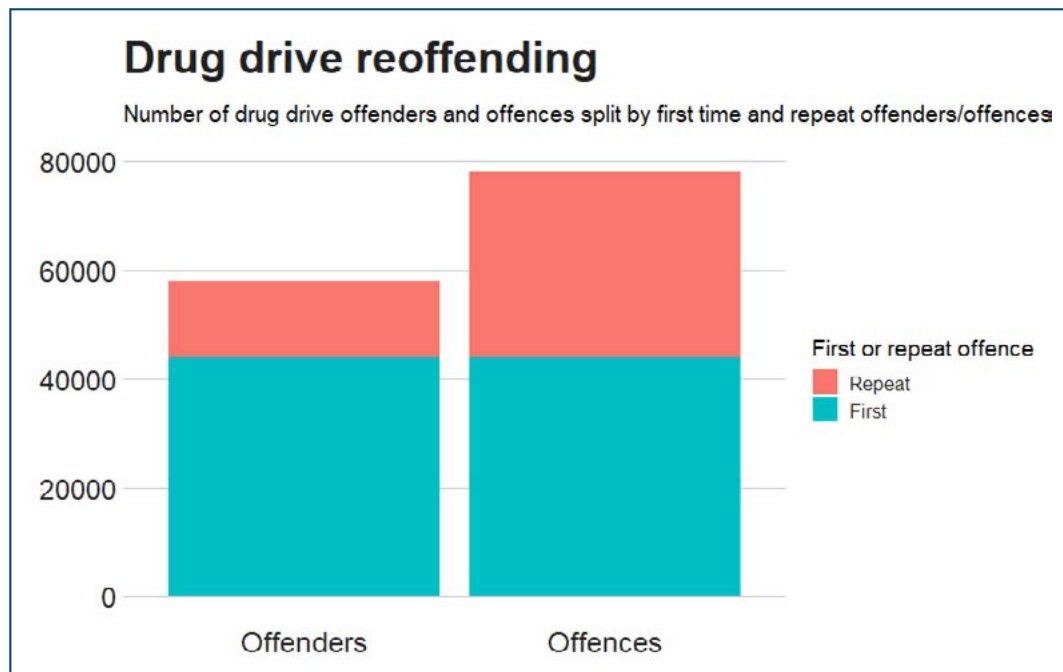


Figure 11: Number of drug drive offenders and offences, split by first time and repeat offenders/offences (CJSS)

Six people were convicted of 'causing death by careless driving when unfit through drugs' with a previous drink or drug offence on their record and a further four people were convicted of 'causing death by careless driving with drug level above the limit' with a previous drink or drug offence on their record.

One person was convicted of 'driving or attempting to drive with drug level above the specified limit' when they had 18 previous drink/drug driving offences on their record. 15 people were convicted of a drug driving offence with more than 10 previous drink/drug driving offences on their record. 425 people were convicted of a drug driving offence with more than five previous drink/drug driving offences on their record.

The overwhelming majority of those who reoffended do so within the first year of their previous offence. The data supplied to PACTS by DVLA shows the time between drug offences for 13,146 reoffenders. Of these reoffenders, 11,402 committed an offence in the year after their previous offence. (Note, data on reoffending were not supplied to PACTS in event time periods.) 1,045 people committed an offence one or two years after their previous offence, 554 two or three years after, 112 four or five years after, 29 six or seven years after and four eight or nine years after. These data do not include those who drug drove but were not caught; this figure is likely to be substantially higher. This pattern is broadly similar to, though

more pronounced than, reoffending by drink drivers. 6,164 people committed a subsequent drink drive offence in the year after their first offence. 9,733 committed an offence one or two years after their first offence, 8,550 reoffended three or four years after, 5,482 five or six years after, 2,954 seven or eight years after and 904 nine or ten years after.

This dataset only shows offences back to 2010 e.g. someone who committed a drug driving offence in 2011 with a previous offence in 2009 would not be counted as reoffending. This is because of the data supplied to PACTS by DVLA from the Impala database. It is therefore likely that these data on reoffending are an underestimate. Furthermore, these data do not include those who drug drove but were not caught, meaning that this picture of reoffending is not a true picture of the extent of repeat drug driving behaviours figure is likely to be substantially higher.

An unknown piece of data on the effectiveness of the legal system is how many people drive having been disqualified. 8,445 people were found guilty of driving while disqualified in 2019. However, the data do not show why these drivers were disqualified. To be included in this dataset a disqualified driver would also have had to be caught by the police. As such, it is likely to be a significant underestimate. Police officers, those involved in the legal system and academics interviewed for this report, expressed concerns over how many people likely drive while disqualified and how unlikely they are to be caught doing so, in part because of significant cuts to roads policing.

3.5 Academic literature on the profile of drug drivers

There is an academic literature on the profile of drug drivers in Europe, Australasia, and North America. However, fewer studies exist on the profile of drug drivers in the UK specifically. This Chapter presents the academic evidence on the profile of drug drivers; when the study is not based on the UK this is noted.

3.5.1 Criminal history

The literature suggests that drug drivers are more likely to have a criminal history than the general public. Typically, these criminal histories are drug related. An analysis of the criminal histories of those convicted of drug driving, undertaken in the 2017 assessment of the changes to drug legislation, found that 67% of those convicted of drug driving offences had one or more previous conviction. 28% of those convicted had 10 or more previous offences. Typically, these offences were for theft/burglary or drug-related.¹⁵ An analysis of those arrested for drug driving by the Metropolitan Police between March 2015 and 2016 found that 82% had a prior criminal record and on average had 14 previous offences. 89% of those had been arrested for drugs offences. 57% of those arrested had a criminal record that met the definition of a persistent offender.¹⁶ By comparison, 53% of those arrested for other recordable motoring offences had a criminal record. Similarly, studies of drug driving amongst young adults in New Zealand have also found that juvenile arrests is a predictor of drug driving as well as previous traffic convictions and collisions.¹⁷ Several police officers interviewed for this project suggested that drug driving laws are a useful tool for disrupting major crime and arresting serious criminals, particularly those involved with county lines drug dealing.

It should be noted that the UK studies of drug driving are based on arrest data, so the profile may reflect the profile of those who are convicted of drug driving rather than the general

¹⁵ Risk Solutions. (2017). Evaluation of the new drug driving legislation, one year after its introduction. Risk Solutions

¹⁶ Nunn, J. (2018) The Criminal Histories of Drug-Drive Offenders. *Policing: A Journal of Policy and Practice*. 14(2), pp.456-468.

¹⁷ Holmes, E., Vanlaar, W., and Robertson, R. (2014). The Problem of Youth Drugged Driving and Approaches to Prevention: A Systematic Literature Review. Canadian Centre on Substance Abuse

drug driving population. Even when considering this, it seems clear that drug drivers are significantly more likely to have a criminal history than the general population and other motoring offenders. This is unsurprising, as possession of a controlled drug is in itself against the law. Furthermore, people who take drugs or have substance use issues are also more likely to have criminal histories than the general population.

Police officers interviewed for this project reported that the offence 'Driving or attempting to drive with drug level above the specified limit' is often used against those involved in the county lines drug trade, and drug dealing more generally. Stops and arrests for drug driving, based on specific intelligence, disrupt the drugs trade and can enable searches to stop drugs being moved across the UK. This police activity where drivers are targeted because of their involvement in other criminal activities may help explain the extensive criminal histories of some drug drivers. This activity also demonstrates the links between road traffic offences and wider crime and it shows the value of roads policing in preventing serious crime.

3.5.2 Age

The 2017 assessment of changes to drug driving legislation found that more than half of those screened for drug driving were under 30. Furthermore, the highest percentage of tests that were positive were those in the 20-25 age group.¹⁸ An evaluation of those arrested for drug driving in Merseyside found that 25% were 17-25, while an analysis in Essex found that 62% of those arrested are 21-34.¹⁹ Similarly, roadside studies of Spanish drivers found that the likelihood of drug driving decreases with age.²⁰ These findings have also been echoed by studies across Europe, in the Netherlands and in Australian Capital Territory.^{21,22,23} A systematic review of studies of drug driving amongst HGV drivers (with most studies coming from the Americas and Australia) also found that drug driving was associated with younger drivers.²⁴ One evaluation of the Queensland 2007-2012 roadside drug testing programme found that those aged 30-39 year olds were the most likely to drug drive. However, the age profile did vary by drug, with younger drivers being more likely to test positive for cannabis while those aged over 30 were more likely to test positive for methamphetamine (the study found particularly high usage of methamphetamine, which is not commonly used in the UK).²⁵

Some studies of the age profile of drug drivers have found that young people are more likely to drug drive because they are more likely to believe that drugs do not impair driving. Young people may also feel they are less likely to be caught and punished for drug driving.²⁶ The age profile of drug driving is similar to other driving offences.

3.5.3 Gender

An analysis of those tested for drug driving in 2017 found that 94% of tests were conducted on men. Men were also more likely to test positive than women (61% of test on men were positive compared to 51% of tests on women).²⁷ There is near consensus that men are more

¹⁸ Risk Solutions. (2017). Evaluation of the new drug driving legislation, one year after its introduction. Risk Solutions

¹⁹ Merseyside Police (2020). Drug20 presentation. Pers. Comms.

²⁰ Gomez-Talegon, T. et al. (2012). Prevalence of psychoactive substances, alcohol, illicit drugs, and medicines, in Spanish drivers: a roadside study. *Forensic Science International*, 233(1), 106-113.

²¹ SWOV (2018). SWOV Fact Sheet: The use of drugs and medicines behind the wheel.

²² Atchison, L. (2017). Preventing Drug Driving in Europe. Policy measures for national and EU action. PACTS/ETSC.

²³ Armstrong, K., Watling, C., and Davey, J. (2018). Deterrence of drug driving: The impact of the ACT drug driving legislation and detection techniques. *Transportation Research Part F: Traffic Psychology and Behaviour*, 54(1), 138-147.

²⁴ Giroto, E., Mesas, A., de Andrade, S., and Biorlim, M. (2013). Psychoactive substance use by truck drivers: a systematic review. *Occupational Environmental Medicine*, 71(1), 71-76.

²⁵ Davey, J., Armstrong, K., Martin, P. (2014). Results of the Queensland 2007-2012 roadside drug testing program: The prevalence of three illicit drugs. *Accident Analysis and Prevention*. 65(1), 11-17.

²⁶ Holmes, E., Vanlaar, W., and Robertson, R. (2014). The Problem of Youth Drugged Driving and Approaches to Prevention: A Systematic Literature Review. Canadian Centre on Substance Abuse

²⁷ Risk Solutions. (2017). Evaluation of the new drug driving legislation, one year after its introduction. Risk Solutions

likely to drug drive than women. This includes evidence from surveys, testing, arrests and collision data and from studies conducted across the world.²⁸ One notable exception is a recent study of the drug driving programme in Australian Capital Territory, which found that gender was not predictive of drug driving. The gender profile of drug driving is similar to other driving offences.

3.5.4 Ethnicity

Though there were small sample sizes, the 2017 assessment of changes to drug driving legislation found no significant differences in the likelihood of a positive drug test by ethnicity.²⁹ Other than this study, the ethnicity of drug drivers has not been studied

3.5.5 Drug profile

The 2017 evaluation of drug driving laws in the England and Wales found that blood tests for those arrested for drug driving showed that THC (the substance tested for to detect cannabis use) was found in 84% of samples and exceeded the legal limit in 62% of samples. Cocaine and its main metabolite BZE was found in 48% of samples and exceeded the legal limit in 34% of cases. Morphine (3.6% of samples, over the legal limit in 0.3% of samples) was the next most common drug followed by diazepam (2.3% and 0.2%), amphetamine (1.8% and 0%), MDMA (1.5% and 1.3%), methadone (1.3% and 0.2%) and oxazepam (1.3% and 0%).³⁰ It is not surprising that cocaine and cannabis are the drugs most commonly associated with drug driving. As well as being the most commonly used illicit drugs in the UK, they are screened for in roadside saliva tests. Drivers can still be arrested and asked to take a blood test if they are suspected of driving when under the influence of another drug though they generally will have failed a field impairment test and the opinion of a healthcare professional is required. This is far less common than a driver being blood tested having failed a roadside saliva screening test.

There is international evidence that controlled prescription drugs may be more common than cannabis and cocaine in drivers. In particular, evidence suggests that benzodiazepines and opioids may be in a comparatively high percentage of drivers and at levels which may impair driving.^{31,32} A study of drug driving across Europe also found that licit drugs, in particular benzodiazepines, were more common in the general driving population than illicit drugs. This study also noted amphetamines, cocaine, cannabis and opiates as high-risk drugs which are comparatively common in the general driving population.³³ Similarly, a study of drug driving across Europe found that THC (the active substance in cannabis) was the most commonly found illicit drug in drivers killed or seriously injured followed by cocaine and amphetamines. This study also found that benzodiazepines and medicinal opioids were the most commonly used medicines amongst drivers who were killed and seriously injured in Europe.³⁴

Roadside studies of the prevalence of drugs in Spanish drivers have been conducted in 2012 and 2015. The studies carried out testing of a representative sample of around 3000 drivers, both saliva analysis and alcohol breath testing was conducted. Interestingly both

²⁸ Davey, J., Armstrong, K., Martin, P. (2014). Results of the Queensland 2007-2012 roadside drug testing program: The prevalence of three illicit drugs. *Accident Analysis and Prevention*, 65(1), 11-17.

²⁹ Risk Solutions. (2017). Evaluation of the new drug driving legislation, one year after its introduction. Risk Solutions

³⁰ Risk Solutions. (2017). Evaluation of the new drug driving legislation, one year after its introduction. Risk Solutions

³¹ Raes, E., Van den Deste, T., and Verstraete, A.G. (2008). EMCDDA Insights: Drug use, impaired driving and traffic accidents. ECDDA.

³² Smith, R.C., Turturici, M., & Camden, M.C. (2018). Countermeasures Against Prescription and Over-the-Counter Drug-Impaired Driving. AAA.

³³ Lillsunde, P., and Gunnar, T. (2005). Drugs and driving: the Finnish perspective. *Bulletin on Narcotics*, 57(1-2), 213-229.

³⁴ Atchison, L. (2017). Preventing Drug Driving in Europe. Policy measures for national and EU action. PACTS/ETSC.

studies found more cannabis use than alcohol use. The 2015 study also found that cocaine was present in the systems of Spanish drivers more frequently than alcohol. Unsurprisingly, prescribed drugs were found to be more prevalent in older drivers, and benzodiazepines were again identified as the most common medicine.^{35,36}

Data on the drug profile of drug drivers is heavily biased by regulation and what drugs are tested for by police. For example, so called 'designer drugs' or new psychoactive substances such as synthetic cannabinoids will not be detected by standard roadside saliva tests because of their novel chemical structures. This may pose a significant road safety risk as these drugs tend to be used in combination with alcohol, increasing how much they impair drivers and are generally stronger than older drugs.³⁷ Both coroners and experts on drug use highlighted the potential risk posed by new psychoactive substances in discussions with PACTS, because of their increasing use and effects on users.

A systematic global review of drug use by HGV drivers found that amphetamine use was particularly high amongst this groups (compared to other studies) particularly amongst drivers who work longer hours or through the night. Cocaine and cannabis use was also high amongst this group.³⁸

It has been suggested that drivers who test positive for drugs may also have alcohol in their system and vice versa. However, there is no available data on this in the UK. This may be in part because being convicted of drug driving alongside drink driving carries no additional penalty so police officers may not conduct a drug test if someone fails a breathalyser. There is some evidence of an overlap between drink and drug driving from Europe. For example, a study of drivers who tested positive for drugs after being involved in a fatal collision in France in 2017 found that half also had a blood alcohol level above the legal limit in France.³⁹ There is the need for better data to understand this issue in the UK, particularly as drugs and alcohol in combination can have a significantly greater impairing effect than either taken in isolation.

3.5.6 Drug driving and HGVs

A systematic review of substance use by truck drivers found that certain truck drivers were more likely to use drugs. The review found that younger drivers, those working night shifts, employees of small and medium sized companies, those with prior involvement in collisions and those with productivity-based earnings were more likely to use drugs and drive. This study was based on international research with most studies reviewed taking place in Brazil, the USA and Australia.⁴⁰ Interviews with police officers and drug driving experts also suggest that drug driving may be comparatively high in those who drive for work, but who may not hold HGV licenses, such as delivery drivers. This is perceived to be particularly amongst those working long hours and night shifts.

3.5.7 Employment

An analysis of those arrested for drug driving in Merseyside found that 50% were from professions such as: the trades, factory workers and delivery drivers. This study also found

³⁵ Domingo-Salvany, A. et al. (2015). Prevalence of psychoactive substances, alcohol and illicit drugs, in Spanish drivers: A roadside study in 2015. *Forensic Science International*, 278(1), 253-259.

³⁶ Gomez-Talegon, T. et al. (2012). Prevalence of psychoactive substances, alcohol, illicit drugs, and medicines, in Spanish drivers: a roadside study. *Forensic Science International*, 233(1), 106-113.

³⁷ Frith, W.J. (2020). Risks of driving when affected by cannabis, MDMA (ecstasy) and methamphetamine and the deterrence of such behaviour: a literature review. NZ Transport Agency research report 664.

³⁸ Giroto, E., Mesas, A., de Andrade, S., and Birolim, M. (2013). Psychoactive substance use by truck drivers: a systematic review. *Occupational Environmental Medicine*, 71(1), 71-76.

³⁹ ETSC. (2019). Half of drug drivers involved in fatal collisions in France were also over the drink drive limit. 2019.

⁴⁰ Giroto, E., Mesas, A., de Andrade, S., and Birolim, M. (2013). Psychoactive substance use by truck drivers: a systematic review. *Occupational Environmental Medicine*, 71(1), 71-76.

that more than 150 taxi drivers had been arrested for drink and drug driving in the last 2 years.⁴¹ A study of drug drivers in West Mercia found that those who were unemployed or who worked in construction were significantly more likely to be arrested for drink driving. Interviews with representatives from other police forces suggest a similar situation across the rest of the UK, with those working in the trades and taxi drivers more likely to be drug driving than the rest of the population.

3.5.8 Drug issues and mental health

The profile of drug drivers has significant overlaps with the profile of people with drug use disorders. Younger people and men are particularly likely to have substance use issues and to be drug drivers.⁴² The DRUID project suggested that chronic drug users are more likely to drug drive than moderate drug users.⁴³ Similarly, many experts in addiction suggested that drug drivers may be particularly likely to have substance use issues as they are unable to separate their drug taking from their other behaviour. As such, their drug driving is a manifestation of their substance use issue. This has implications for both interventions aimed at preventing drug driving and sentencing and treatment options for drug drivers. Alongside issues around problematic substance use, mental health experts, police officers and those involved in the legal process suggested that many drug drivers are likely to have mental health issues such as depression and anxiety. Drug dependence and misuse is significantly more prevalent in adults with various psychiatric problems, including common mental disorders, personality disorders and severe psychotic illness.⁴⁴ More than a third of adults with current signs of dependence on drugs other than cannabis have received treatment, help or advice specifically because of their drug use at some point. Only 14.6% of those with signs of cannabis dependence have received treatment, help or support specifically because of their drug use.⁴⁵ This shows both the high levels of mental health issues amongst those with dependence issues and the significant proportion of those with drug dependency who have not received help.

There is more evidence on the relationship between alcohol issues, mental health and drink driving than there is for drug driving. Drink drivers are significantly more likely to have alcohol and mental health issues than the general population.⁴⁶

More research on the level and impact of drug dependence and poor mental health on drug driving in the UK would be useful. Drug drivers are more likely to have mental health issues and use drugs in a problematic way than the general population. Drug dependence and mental health issues are also likely to contribute to drug driving.

⁴¹ Pers.Comms

⁴² Roberts, C., Lepps, H., Strang, J., and Singleton, N. (2014). Chapter 11, Adult Psychiatric Morbidity Survey 2014 in Drug use and dependence. NHS.

⁴³ EMCDDA 2012, Driving Under the Influence of Drugs, Alcohol and Medicines in Europe: Findings from the DRUID Project

⁴⁴ Roberts, C., Lepps, H., Strang, J., and Singleton, N. (2014). Chapter 11, Adult Psychiatric Morbidity Survey 2014 in Drug use and dependence. NHS.

⁴⁵ Roberts, C., Lepps, H., Strang, J., and Singleton, N. (2014). Chapter 11, Adult Psychiatric Morbidity Survey 2014 in Drug use and dependence. NHS.

⁴⁶ Webster, E. (2020). Drink Driving: Taking Stock, Moving Forward. PACTS

3.6 Summary

While certain groups are more likely to drug drive, such as younger men, 'drug drivers' are a varied group. Different drugs have different user profiles, for example while those who take cocaine or cannabis and drive are more likely to be younger, those who drive under the influence of prescription drugs tend to be older. Even amongst those who drive after taking recreational drugs there will be a different user and journey profile. For example, those who drug drive having taken cannabis will likely have a different profile to those who drive after taking MDMA and other amphetamines. Even amongst those who are taking cannabis, significant differences will exist between heavy habitual users who are likely to regularly be over the drug driving limit and occasional users as well as between those who self-medicate with cannabis and those who use it purely for recreational purposes. It is important to remember this diversity when designing interventions.

CHAPTER 4

Prevention and interventions



4.1 Introduction

A variety of interventions have been suggested and implemented with the aim of reducing drink driving across the world. This includes but is not limited to enforcement campaigns, education and prevention programmes, and rehabilitation and treatment courses. Unfortunately, there has been comparatively little assessment of drug driving interventions compared to other aspects of the Fatal 4/5 (speeding, seat belt non-use, distraction/mobile phone use, drink driving), particularly drink driving and speeding. This is in part because drug driving has only received significant attention relatively recently and because drug driving offences have generally only been introduced in the past twenty years. There is clearly a need for further assessment, particularly in the UK, when interventions are run. However, there is sufficient evidence of the effectiveness of many interventions to evaluate whether they are likely to be effective in reducing drug driving in the UK.

4.2 Enforcement

Enforcement of drug driving aims to increase road safety by removing drug drivers from the roads and increasing general deterrence. The aim of the 2015 and 2019 drug driving laws in Great Britain was to reduce the number of people killed and seriously injured as a result of drug driving by:

- 1 Deterring people from taking illegal drugs in the first place and deterring those who abuse their medication.
- 2 Enabling more effective enforcement against those who persist in taking illegal drugs and those who abuse their medication and continue to drive.
- 3 Increasing the efficiency of enforcement activity against drug drivers.⁴⁷

The changes led to an immediate and dramatic increase in drug driving enforcement which has continued to 2020 (though significant variation remains between different police forces). A 2017 assessment of these changes also found that the increase in enforcement had led to a rise in awareness surrounding drug driving and a small decrease in the percentage of individuals who reported driving under the influence of drugs.⁴⁸ Self-reported drug driving (as reported in the Crime Survey for England and Wales) has remained lower than it was before enforcement increased after 2015 (though the difference remains small - 0.9% of adults in 2014/15 and 0.4% in 2019/20). However, there has been an increase in self-reported drug driving amongst drivers who have taken drugs in the past twelve months (6.2% in 2019/20 compared to 5.0% in 2015/16). This data should be treated with caution because of year-on-year variation in the data and because they are relatively small changes. Unfortunately, the data on drug driving injuries is not robust enough to be used to evaluate the impact of UK enforcement on drug driving deaths and serious injuries. It should also be noted that there is still a relatively low level of drug driving enforcement in the UK. Drug driving enforcement remains significantly lower than drink drive enforcement (10,477 drug driving convictions compared to 35,580 drink driving convictions, though some forces do on occasion record more arrests for drug driving than drink driving) and drink driving enforcement itself is significantly lower than it was before cuts to roads policing began in 2010 (there were 61,437 drink drive convictions in 2009). The decrease in drink drive convictions while drug driving convictions have increased is likely because of the new drug driving offence and the relatively high level of drink drive convictions in 2010. It is possible that we would not expect drug

⁴⁷ Risk Solutions and CPH (2017). Evaluation of the new drug driving legislation, one year after its introduction. DfT

⁴⁸ Risk Solutions and CPH (2017). Evaluation of the new drug driving legislation, one year after its introduction. DfT

driving enforcement to have a significant impact on road safety currently because of its low level. Indeed the HMIcFRS report *Roads Policing Not an Option: An inspection of Roads Policing in England and Wales* concluded that because of the cuts to roads policing, as well as the costs and delays associated with drug driving prosecutions 'offenders who are suspected of driving while under the influence of drugs are being tolerated and allowed to present a continuing threat to communities.'⁴⁹

Using conviction data as a proxy for enforcement activity suggests that drug driving enforcement varies immensely by police force area in England and Wales. In 2019, there were more than ten times more convictions for drug driving (per thousand population) in the Merseyside Police Force Area (0.71) than in the West Midlands (0.06). Seven police forces had less than 0.1 convictions for drink driving per thousand population while seven police forces had a figure four times higher than that. A similar story can be seen when comparing the relative number of drink and drug driving convictions. In Merseyside there were more drug driving convictions than drink driving convictions (108 drug driving convictions for every 100 drink drive convictions), while in Northamptonshire, West Midlands and Nottinghamshire there were ten times as many drink drive as drug driving convictions (ten, eleven and eleven drug driving convictions for every 100 drink drive convictions respectively). Currently, there is a geographical lottery, where in large swathes of the country the drug driving laws are not being effectively enforced. This is often due to resourcing issues and competing priorities for the limited resources already in place.

There is some international evidence that drug driving enforcement is effective. For example, a cost study of tripling drug driving enforcement in three European countries found that the increase reduced drug driving deaths, with more significant effects in countries that originally had lower levels of enforcement. The authors estimated that this enforcement cost around €4000 per conviction and between €1.5m and €13m per prevented fatality (with the lower costs occurring in countries with a lower baseline of enforcement).⁵⁰ Other studies have also found that increasing drug driving enforcement is effective at reducing casualties, particularly when there were already low levels of enforcement, though not when conducted at the cost of lower drink drive enforcement.⁵¹ That finding was echoed by another evaluation of drug driving enforcement which found it would not have a positive road safety impact if it was conducted at the expense of drink drive enforcement.⁵² An evaluation of which enforcement model would be most effective at reducing drug driving in Canada recommended using the model of Victoria, Australia, with a high level of random roadside oral fluid/saliva testing.⁵³ Earlier evaluations of drug driving and drug driving enforcement in Australia had also found that enforcement needed to be at a high level with sustained publicity to be an effective deterrent.⁵⁴

Drug driving enforcement in Victoria, Australia between 2005 and 2009 is the example of drug driving enforcement that has been most studied. The number of drivers screened for drug driving in Victoria increased from 13,158 in 2005 to 27,883 in 2009 with positive rates falling from 2.3% to 1.0% in this period having previously been increasing. Cameron (2013),

⁴⁹ HMIcFRS (2020). *Roads Policing: Not optional*. HMIcFRS

⁵⁰ Veisten, K. et al. (2013). Is law enforcement of drug-impaired driving cost-efficient? An explorative study of a methodology for cost-benefit analysis. *International Journal of Drug Policy*, 24(2), 122-134.

⁵¹ Schulze, H. et al. (2012). Findings from the DRUID Project. European Commission.

⁵² SWOV. (2017). SWOV Fact Sheet: The use of drugs and medicines behind the wheel. <https://s3-ap-southeast-2.amazonaws.com/cdn-nrspp/wp-content/uploads/sites/4/2017/03/19220428/FS-Drugs-and-medicines.pdf>

⁵³ Solomon, R., and Chamberlain, E. (2014). Canada's new drug-impaired driving law: the need to consider other approaches. *Traffic Injury Prevention*, 15(7), 685-693.

⁵⁴ Watling, C., et al. (2010). Applying Stafford and Warr's reconceptualization of deterrence theory to drug driving: Can it predict those likely to offend? *Accident Analysis and Prevention*, 42(2), 452-458.

produced a model based on the impacts of this increase and found that by testing 1.24% of licensed drivers per year, 15.2% of driver deaths could be avoided. It should be noted that this relationship is based on casualty numbers and roads policing procedures in Victoria so it would not be directly applicable to the UK. Moreover, Cameron assumes that all drug driver deaths would have been avoided if they had not consumed drugs.⁵⁵ Nevertheless, the study provides further evidence that drug driving enforcement reduces road casualties. Victoria also continues to see the value of high levels of drug driving enforcement and conducts around 150,000 tests per year.⁵⁶

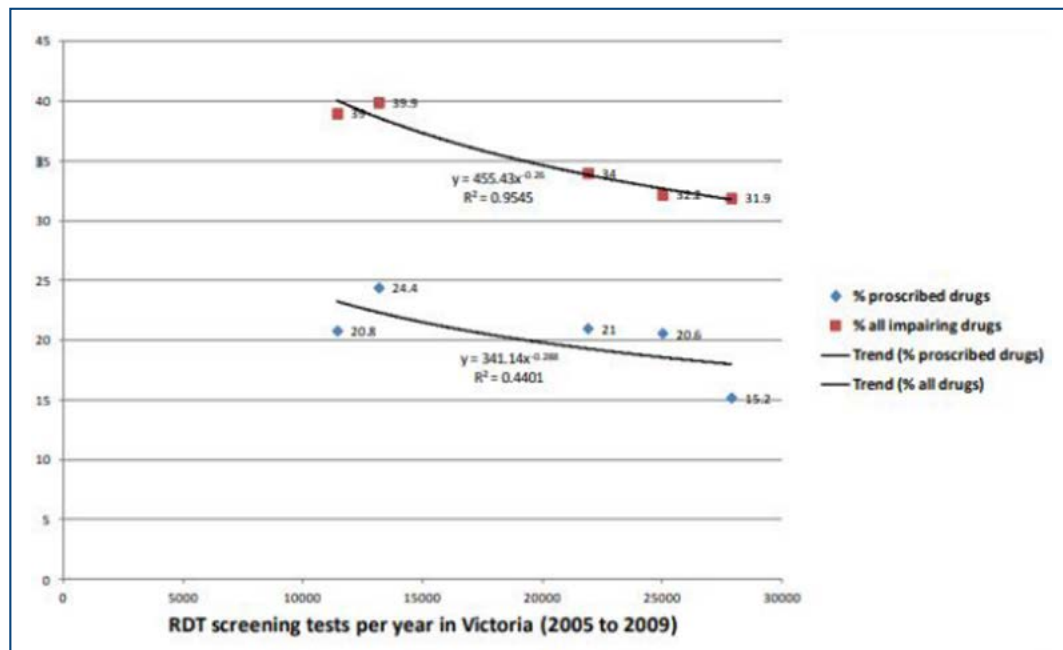


Figure 12: Relationships between percentage of killed drivers with proscribed drugs, or any impairing drug, versus number of drivers screened by ROFTs at RDT in Victoria. Cameron (2013).

Experts on behaviour change and drug use in the UK interviewed for this project suggested that drug driving enforcement may need to be different to other forms of enforcement within roads policing to be effective. This is because, unlike other motorists who commit road traffic offences, a proportion of drug drivers will have committed other criminal offences before drug driving. As such, they may have higher personal risk thresholds or believe that they are more likely to avoid arrest and punishment. Some published literature has also found that 'punishment avoidance' is a predictor of future drug driving.⁵⁷ It is possible that because drug drivers may have higher personal risk thresholds, or may be more likely to attempt to avoid enforcement, the level of drug driving enforcement may have to be higher than for other driving offences such as drink driving to provide an effective deterrent.

The literature is less clear on the effectiveness of drug driving enforcement than other road traffic enforcement, such as speeding or drink driving enforcement. In part, this is due to comparatively few assessments of drug driving enforcement being conducted. However, the evidence suggests that increasing and further publicising drug driving enforcement would

⁵⁵ Cameron, M (2013) Random drug testing in Australia, analogies with RBT, and likely effects with increased intensity levels. 20th International Conference on Alcohol, Drugs and Traffic Safety Conference Proceedings, Brisbane, Australia

⁵⁶ Frith, WJ (2020) Risks of driving when affected by cannabis, MDMA (ecstasy) and methamphetamine and the deterrence of such behaviour: a literature review. NZ Transport Agency research report 644

⁵⁷ Watling, C., et al. (2010). Applying Stafford and Warr's reconceptualization of deterrence theory to drug driving: Can it predict those likely to offend? *Accident Analysis and Prevention*, 42(2), 452-458.

have a positive road safety impact, particularly if it is not increased at the expense of drink drive enforcement.

Levels of drug driving enforcement should be increased in the UK, particularly in those police force areas where levels are low. The impact of increases on road casualties should closely monitored. This would provide useful evidence both for future British drug driving programmes and for the international road safety community. Enforcement could be increased more efficiently if the recommendations in Chapter 5. Policing and Justice of this report are implemented.

4.3 Education and prevention

Experts on drug driving interviewed for this project stated that there is a real need for greater education around drug driving, which was specifically created to reduce drug driving. Experts suggested that key differences between drink and drug driving were not well understood. For example, while people who regularly consume alcohol may be able to drive and be below the legal blood alcohol limit at certain times, people who regularly consume drugs are less likely to be able to drive when below the legal blood drug limit. For example, a person who has consumed cannabis in the evening is much more likely to be over the limit the morning after than someone who consumed alcohol the evening before. Indeed, one expert stated that 'a habitual cannabis user is probably never below the drug drive limit,' because of the lower drug drive limits. Prevention programmes, education and communications can play a role in strengthening the social norm that driving under the influence of drugs is not acceptable.⁵⁸

However, designing education campaigns which are effective at reducing drug driving may be more challenging than designing other road safety education interventions. Education campaigns are also vital because fear is less likely to be effective for drug drivers. Behaviour change experts, including those who specialise in changing the behaviour of people who use drugs, interviewed for this project suggested that drug drivers may have higher personal risk thresholds than other road traffic offenders, such as drink drivers. As such conventional road safety messaging such as the THINK! 'Drug Driving: more reason to be paranoid' are unlikely to significantly impact behaviour. Experts also stated that messaging should not be judgemental or highlight the illegality or negative effects of drug taking generally or this may alienate drug users. Messaging campaigns should not be seen to shame drug users. It was also suggested that messaging around the broader negative impacts of drug use or which sought to address drug use would be more appropriate in clinical settings and where more time was available.

Broadly speaking, education campaigns aimed at reducing drug driving have taken two forms. Prevention programmes which often take place in schools aimed at reducing drug driving and other anti-social behaviour amongst young people and media campaigns aimed at increasing awareness and reducing drug driving.

Most of the evaluation of prevention programmes come from Australasia and North America. These prevention programmes generally take the form of the P.A.R.T.Y programme or Life Skills Training programme. These interventions target school age children and utilise group discussion, modelling exercises and the like.⁵⁹ Some programmes also take place in hospital settings.⁶⁰ Prevention programmes generally increase knowledge and awareness of drug

⁵⁸ SWOV. (2017). SWOV The use of drugs and medicines behind the wheel. <https://s3-ap-southeast-2.amazonaws.com/cdn-nrspp/wp-content/uploads/sites/4/2017/03/19220428/FS-Drugs-and-medicines.pdf>

⁵⁹ Holmes, E., Vanlaar, W., and Robertson, R. (2014). The Problem of Youth Drugged Driving and Approaches to Prevention: A Systematic Literature Review. Canadian Centre on Substance Abuse

⁶⁰ Holmes, E., Vanlaar, W., and Robertson, R. (2014). The Problem of Youth Drugged Driving and Approaches to Prevention: A Systematic Literature Review. Canadian Centre on Substance Abuse

driving issues and some have also found that they play a role in strengthening social norms that drug driving is unacceptable.^{61,62} Some evaluations have also found a positive impact on behaviour. An evaluation of the PARTY programme in Western Australia found that those who participated in the programme had a lower incidence of subsequent traffic or violence related offences. Similarly, students who participated in the US Life Skills Training programme have fewer violations and points on their driving license than those who did not attend.⁶³ Evaluations have also found that participants of similar programmes have fewer alcohol or drug related offences and traumatic injuries.⁶⁴ Unfortunately, these evaluations have not separated the impact on drug driving alone.

The evidence on media campaigns is much weaker than that for prevention campaigns. The evidence does suggest that messaging generally reaches its target audience and increases awareness. However, there is insufficient evidence to suggest that media campaigns are effective at reducing drug driving.⁶⁵

Finally, it has been suggested that education on drug use and its impact on driving performance should be included in professional driver training.⁶⁶ This type of intervention could be particularly impactful if drug use plays a role in driving behaviour (for example to aid alertness or concentration on long-haul journeys or during shift work). Education on drug driving is an option for training as part of professionals maintaining their Driver Certificate of Professional Competence (CPC) required to drive a lorry, bus or coach. Conversations with those who provide training also suggest that it is a popular choice. Unfortunately, no evaluations of this type of programme have been found. However, as evidence suggests that drug driving may be particularly high amongst professional drivers and those driving for work (see Profile), PACTS believes providing education for professional drivers should continue to be investigated, trialled and evaluated. This could include local authorities providing information and training to private hire drivers.

Education campaigns may be effective in increasing awareness and knowledge of drug driving issues. There is also some evidence that prevention programmes may be effective, but there is not evidence of this in a UK context. In its response to the North Report, which recommended running more education campaigns on drug driving, the Government stated that its priority was to fix issues with enforcement before addressing education and publicity.⁶⁷

Education needs to be increased to build and entrench a social norm that drug driving is unacceptable and to raise awareness of enforcement of the drug driving law. These media campaigns should take account of advice from behaviour change experts who specialise in behaviour change amongst drug users.

4.3.1 Education and medicinal drugs

Another educational intervention is based around providing information on the effects of prescription and other medicinal drugs on driving performance. A range of research suggests that those taking prescription drugs have a poor understanding of the impact of these drugs

⁶¹ SWOV. (2017). SWOV Fact Sheet: The use of drugs and medicines behind the wheel. <https://s3-ap-southeast-2.amazonaws.com/cdn-nrspp/wp-content/uploads/sites/4/2017/03/19220428/FS-Drugs-and-medicines.pdf>

⁶² Atchison, L. (2017). Preventing Drug Driving in Europe. Policy measures for national and EU action. PACTS/ETSC.

⁶³ Botvin, G., Griffen, K. and Nichols, J. (2004). Life Skills Training: Empirical Findings and Future Directions. *The Journal of Primary Prevention*, Vol. 25, No. 2.

⁶⁴ Banfield, Gomez & Kiss, 2011, p.732

⁶⁵ Atchison, L. (2017). Preventing Drug Driving in Europe. Policy measures for national and EU action. PACTS/ETSC.

⁶⁶ Atchison, L. (2017). Preventing Drug Driving in Europe. Policy measures for national and EU action. PACTS/ETSC.

⁶⁷ Secretary of State for Transport. (2011). The Government's Response to the Reports by Sir Peter North CBE QC and the Transport Select Committee on Drink and Drug Driving. Cm8050

on their ability to drive safely.^{68,69} For example, a study of over 55s in America found that only 1 in 5 individuals taking five or more prescription drugs had some awareness of their impairing effects.⁷⁰ Interviews with medical and pharmaceutical professionals suggests that information flow to frontline staff on the impairing effect of medicines is slow and that some staff do not feel confident to offer advice to patients. The impact of this on road safety in the UK is not clear, though the international evidence does suggest that those taking medicinal drugs do make up a significant proportion of drug drivers and may, in some settings, outnumber those driving having taken illicit drugs.

One intervention aimed at reducing impaired driving by those taking medicinal drugs is offering education and training to pharmacists and doctors. This includes training on how doctors and pharmacists can best inform patients, as well as training on the effects of the drugs themselves.^{71,72} The research suggests that these schemes are most effective at increasing awareness amongst pharmacists when warnings are integrated into existing computing software for dispensing medications.^{73,74} Road safety experts have also suggested that doctors should discuss possible alternatives with patients during consultations.⁷⁵ Although these studies have found increased awareness amongst doctors and pharmacists, the impact on patient understanding and behaviour and road safety has not yet been assessed.

Improved labelling on medicines has also been implemented. For example, France employs a three-category labelling system, using yellow, amber, and red warning symbols to advise users about the risk of impaired driving with each drug.⁷⁶ However, studies with patients have found very low awareness and understanding of warning labels on medication. For example, a 2013 study of labelling on US medicine found that half of patients did not recall seeing warning labels on medication. Studies have also found that patients frequently fail to understand what labels convey and misjudge how dangerous driving would be when taking their medication.⁷⁷

There are other issues with interventions aimed at providing more information to those taking potentially impairing medicines. Firstly, there is very little research on the impact of many drugs (and their potential alternatives) on driving performance.⁷⁸ Secondly, there is even less research on the effect of different drugs in combination on driving performance.⁷⁹

⁶⁸ Smith, R.C., Turturici, M., & Camden, M.C. (2018). Countermeasures Against Prescription and Over-the-Counter Drug-Impaired Driving. AAA.

⁶⁹ Richard, C. M., Magee, K., Bacon-Abdelmoteleb, P., & Brown, J. L. (2018, April). Countermeasures that work: A highway safety countermeasure guide for State Highway Safety Offices, Ninth edition (Report No. DOT HS 812 478). Washington, DC: National Highway Traffic Safety Administration.

⁷⁰ Smith, R.C., Turturici, M., & Camden, M.C. (2018). Countermeasures Against Prescription and Over-the-Counter Drug-Impaired Driving. AAA.

⁷¹ SWOV Fact Sheet: The use of drugs and medicines behind the wheel. <https://s3-ap-southeast-2.amazonaws.com/cdn-nrpp/wp-content/uploads/sites/4/2017/03/19220428/FS-Drugs-and-medicines.pdf>

⁷² Smith, R.C., Turturici, M., & Camden, M.C. (2018). Countermeasures Against Prescription and Over-the-Counter Drug-Impaired Driving. AAA.

⁷³ Richard, C. M., Magee, K., Bacon-Abdelmoteleb, P., & Brown, J. L. (2018, April). Countermeasures that work: A highway safety countermeasure guide for State Highway Safety Offices, Ninth edition (Report No. DOT HS 812 478). Washington, DC: National Highway Traffic Safety Administration.

⁷⁴ Smith, R.C., Turturici, M., & Camden, M.C. (2018). Countermeasures Against Prescription and Over-the-Counter Drug-Impaired Driving. AAA.

⁷⁵ SWOV Fact Sheet: The use of drugs and medicines behind the wheel. <https://s3-ap-southeast-2.amazonaws.com/cdn-nrpp/wp-content/uploads/sites/4/2017/03/19220428/FS-Drugs-and-medicines.pdf>

⁷⁶ Atchison, L. (2017). Preventing Drug Driving in Europe. Policy measures for national and EU action. PACTS/ETSC.

⁷⁷ Richard, C. M., Magee, K., Bacon-Abdelmoteleb, P., & Brown, J. L. (2018, April). Countermeasures that work: A highway safety countermeasure guide for State Highway Safety Offices, Ninth edition (Report No. DOT HS 812 478). Washington, DC: National Highway Traffic Safety Administration.

⁷⁸ Richard, C. M., Magee, K., Bacon-Abdelmoteleb, P., & Brown, J. L. (2018, April). Countermeasures that work: A highway safety countermeasure guide for State Highway Safety Offices, Ninth edition (Report No. DOT HS 812 478). Washington, DC: National Highway Traffic Safety Administration.

⁷⁹ Smith, R.C., Turturici, M., & Camden, M.C. (2018). Countermeasures Against Prescription and Over-the-Counter Drug-Impaired Driving. AAA.

These gaps in our knowledge pose a significant challenge to any programme that aims to offer comprehensive advice to those taking potentially inhibiting medicinal drugs.

In the UK both the Medicines and Healthcare Products Regulatory Agency (MHPR) and the DVLA issues guidance to doctors to doctors, primarily through their websites though the MHPR does issue safety notifications on specific safety issues through letters and drug safety alerts. The DVLA also issues guidance to people who are taking prescription drugs and the haulage industry.

Overall, despite seeming a common-sense solution to the issues of poor knowledge of the impacts of licit drugs on driving performance, there is little evidence that interventions which have aimed to provide further information to patients have been effective. Furthermore, it is not clear the extent to which this is a road safety issue in the United Kingdom⁸⁰

4.3.2 Driving for work

Interviews with vehicle fleet managers and discussion with drug experts suggests that, in recent years, large fleets have developed stronger drug driving policies, many of which include regular drug testing alongside education. This appears to be expanding, though progress is not universal and still seen as lagging behind drink drive policies. Large fleet operators should still be encouraged to develop, implement and prioritise strong drug driving strategies. Drug policies are less common in smaller fleets and in the grey fleet (drivers who use their own cars for business purposes). This is concerning as there is some evidence that drug driving is high amongst those who drive as part of their work in the trades.⁸¹ Some police forces have also found high levels of drug driving amongst taxi and private hire drivers. Smaller fleets and taxi/private hire fleets should be encouraged to develop effective drug driving policies, with regular education and testing. Local authorities should investigate making taxi and private hire licensing dependent on fleets having effective drug driving policies.

An important part of vehicle fleet safety, relevant to all companies, is having good alcohol policies and providing support for those with alcohol issues. Challenging cultures of workplace drinking has been identified as a key part in the significant progress made in reducing drink driving in Denmark. Denmark introduced no-alcohol policies in the workplace and employees were also offered leave to help support people with alcohol problems.⁸² Providing support for people with drug issues is less common and should be considered.

The Government and agencies, including the Health & Safety Executive, should encourage companies, and others with responsibility for those who drive for work, to develop strong drug driving policies, including education, testing and enforcement. This should include smaller fleets, "grey fleets" and "gig" workers.

4.4 Drug drive rehabilitation course

Since 2010, 24% of drug drive offenders (14,224 people) have been reoffenders. These 14,224 offenders have committed 34,178 offences (44% of drug drive offences).⁸³ This suggests that there is a need for more effective rehabilitation of drug drive offenders. Rehabilitation interventions constitute a wide range of programmes ranging from classroom courses – similar to the current drink drive rehabilitation course – through to regular therapy and drug testing.

A drink drive rehabilitation course is currently offered to many of those in Great Britain who plead guilty to a drink drive offence and are banned from driving for 12 months or more.

⁸⁰ Secretary of State for Transport. (2011). The Government's Response to the Reports by Sir Peter North CBE QC and the Transport Select Committee on Drink and Drug Driving. Cm8050

⁸¹ Merseyside Police. (2018). Drug20 Presentation. Pers. Comms.

⁸² Calinescu, T., and Adinaite, D. (2018). *Progress in reducing drink driving in Europe*. ETSC.

⁸³ Data provided to PACTS by DVLA

The course can cost up to £250. Having taken a course, the offenders driving ban is usually reduced by a quarter. A similar scheme is run in Northern Ireland, though at lower cost (up to £160). The course is taken in person and in groups, though they have been completed virtually during the coronavirus pandemic. It takes places over 16 hours, typically on three days spread over three weeks. The course has two units, one on understanding the impact of alcohol use in relation to driving and one on changing alcohol use in relation to driving. The overall purpose of the course is 'to support [participants] to take responsibility for their actions, recognise where they have acted inappropriately, and recognise that they can and should behave differently in compliance with driving standards, road traffic law and for general health benefits'.⁸⁴

The effectiveness of the drink drive rehabilitation course was first assessed by the Transport Research Laboratory (TRL) during a trial period where the course was offered in some areas of the UK, but not others. TRL found that the course successfully reduced reoffending with the reoffending rate of those who did not attend the course being almost three times higher than the reoffending rate of those who did attend it 3 years after taking the course.⁸⁵ Monitoring of the course was carried out in 2003 and 2007 and it was found to continue to be effective. Non-attendees were 2.15 times more likely to reoffend within three years of conviction.

The drink drive rehabilitation course is not perfect, for example, it may not be appropriate or as effective for offenders with alcohol or mental health issues.⁸⁶ Nevertheless, it demonstrates that a rehabilitation course, aimed at people who have driven while impaired in the UK can be effective at reducing reoffending.

In 2016 the DfT and DVSA collaborated to develop a joint alcohol and drug driving impairment course, which was trialled with drink drivers. The pilot course followed the format of the existing drink driving rehabilitation course, supplementing it with information relevant to drug driving. An evaluation was in 2017 found that the course brought about an immediate and positive change to the attitudes and behaviour of participants. A longer-term study of reoffending rates and a formal consultation on the introduction of the course was recommended. This is yet to be conducted.

The possibility of including drug driving education in drink drive rehabilitation courses was also considered in a 2020 evaluation of the drink drive rehabilitation course, conducted by Ipsos MORI.⁸⁷ This found no major concerns about the practicability of expanding the drink drive course to include drug driving. However, concerns were raised about whether including drug drivers would impact the effectiveness of the course. Course providers and behaviour change experts interviewed for the project suggested that because drink and drug drivers are two distinct groups, they may struggle to interact and cooperate.

Others suggested that the inclusion of materials not directly relevant to some offenders may reduce the impact of the course, causing attendants to switch off. Concerns were also raised about the challenge of including an additional audience when it is already challenging to cater for the different needs of those who do and do not have alcohol issues.

Behaviour change experts and course providers interviewed by PACTS for this project echoed concerns over the impact of including drink and drug drivers on the same course. Other experts interviewed by Ipsos MORI were more positive about the inclusion of drug drivers and felt the materials could be more readily adapted and presented as a generic behaviour

⁸⁴ DVSA. (Undated). Drink-drive rehabilitation scheme course syllabus. DVSA.

⁸⁵ Davies, G., Harland, G., and Broughton, J. (1999). *Drink/driver rehabilitation courses in England and Wales*. TRL Report 426.

⁸⁶ PACTS, *Drink Driving: Taking stock, moving forward*, December 2020

⁸⁷ PACTS understand that the DfT intends to publish the Ipsos MORI report in summer 2021.

change course. The evaluation concluded that more research is required to determine the impacts of mixing drink and drug drivers on a combined course. This study noted the wide support for the introduction of a rehabilitation scheme for drug-drive offenders, but the evidence was less clear whether including drug drivers in the current drink drive scheme would be appropriate.

There would need to be key differences between a drink drive and drug drive rehabilitation course (or from the current drink drive course to a combined drink/drug driving course). As noted earlier, the current drink drive rehabilitation course may not be appropriate, or as effective for people with mental health and substance use issues. A separate course for offenders with these issues, or an effective screening and referral system would need to be introduced. This is discussed in more detail in Chapter 5.3. Furthermore, while regular drinkers may not need to stop drinking to be able to drive when under the limit, it is possible that regular drug users would need to stop taking drugs, in part because of the lower legal limit for drugs. In addition, while the effects of alcohol are broadly the same regardless of the type of alcohol consumed, the effects of drugs vary significantly depending on what drug was consumed. Drug users are also often distinct in their patterns and reasons for drug usage. Designing a course that speaks equally to these groups could therefore be challenging, and would require careful design.

The North Report recommended that the Government consider the case for introducing a drug drive rehabilitation course. In their response the Government noted the complexities associated with creating a drug driving rehabilitation course, such as having a suitable syllabus and links to drug treatment services. The Government also stated that it would return to this recommendation when there were sufficient numbers available to sustain a national scheme. There are now over 10,000 people convicted of a drug driving offence each year.

4.4.1 International courses

While drug drive rehabilitation courses are run internationally, there is limited evidence of their effectiveness. The DRUID project assessed the impact of drug and drink driving rehabilitation courses and found that they reduce recidivism, prevent people from impaired driving and restore mobility in a safe way.⁸⁸ Since 2018, Victoria, Australia has run a course which is mandatory for anyone who has committed a drink, drug or combined drink and drug offence. This programme is designed to help offenders identify the underlying reason for their drink or drug driving offences and identify ways to reduce the risk of reoffending.⁸⁹ Denmark has also run a joint programme since 2014, when their existing drink driving rehabilitation course was extended to include drug drivers. Similarly to the Victorian course, the course is a prerequisite for drivers to regain their license.⁹⁰ Unfortunately, PACTS is not aware of any evaluations of these courses' effectiveness.

4.4.2 Similar programmes

There are also rehabilitation schemes which are offered to drug drivers but are not specifically aimed at them. For example, the Alcohol and Other Drug Treatment Court (AODTC) programme is run in New Zealand to provide an alternative, non-adversarial approach to criminal offending when it is driven by dependency. Courses which form part of sentencing often include sections on driver safety and also seek to address alcohol and drug dependency. Graduates of this programme can now be subject to ongoing drug testing as part of their

⁸⁸ Atchison, L. (2017). Preventing Drug Driving in Europe. Policy measures for national and EU action. PACTS/ETSC.

⁸⁹ VicRoads. (No Date). Victoria Behaviour Change Program. <https://www.vicroads.vic.gov.au/licences/demerit-points-and-offences/behaviour-change-programs>

⁹⁰ Atchison, L. (2017). Preventing Drug Driving in Europe. Policy measures for national and EU action. PACTS/ETSC.

sentence. Evaluations of this programme have found that they reduce reoffending, non-crime related incidents and driving offences compared with equivalent offenders who did not go through the AODTC programme.^{91, 92}

4.4.3 Drug addiction, mental health and rehabilitation

An important part of the AODTC programme is that it addresses drug use disorders that may be the cause of drug driving. Experts on drug addiction and course providers interviewed by PACTS stated that without addressing any underlying dependence, drug drive rehabilitation schemes are unlikely to be effective. This echoes findings from the Ipsos MORI evaluation of the drink drive course where interviewees suggested that some individuals would have needs which were beyond a drug drive rehabilitation course and that those who had alcohol dependence were likely to need more support than the current course provided.

There is strong evidence that chronic drug users and those with dependence issues are more likely to drive under the influence than moderate drug users.⁹³ Those with dependence issues are unlikely to be able to separate their drug taking from the rest of their activities, leading them to drug drive. The increased likelihood of those with dependence issues drug driving is also a challenge to those planning rehabilitation measures because of the co-morbidity of drug dependence and mental health issues. Drug dependence and misuse is significantly more prevalent in adults with various psychiatric problems, including common mental disorders, personality disorders and severe psychotic illness.⁹⁴ More than a third of adults with current signs of dependence on drugs other than cannabis have received treatment, help or advice specifically because of their drug use at some point. However, only 14.6% of those with signs of cannabis dependence have received treatment, help or support specifically because of their drug use.⁹⁵ This shows both the high levels of mental health issues amongst those with dependence issues and the significant proportion of those with dependence who have not received help.

There are a range of clinically proven treatments for some drug use disorders, including talking therapies, pharmacotherapies, detoxification and self-help (groups like Narcotics anonymous).⁹⁶ There are also effective and simple screening tools such as the Drug Abuse Screening Test (DAST) as well as more drug specific screening tools.⁹⁷ Screening and referrals to support are an essential part of reducing drug driving. The Behaviour Change Program in Victoria provides referrals for further support to help attendees address the underlying reason for drink and drug driving offences.⁹⁸ Referrals of support and or therapy being included as part of sentencing is far more effective than signposting support as is currently done in the UK drink drive rehabilitation course.

A drug drive rehabilitation course be introduced in the UK. This course should be based on the UK drink drive rehabilitation course, though run separately for drink and drug drivers if possible. Drug drivers should be screened for dependence issues, using

⁹¹ Ministry of Justice (New Zealand). (2019). Alcohol and Other Drug Treatment Court Outcomes Evaluation 2018-19. Ministry of Justice.

⁹² Katey, T. (2017). Exploring te whare whakapiki/The alcohol and other drug treatment court pilot: Theory, practice and known outcomes. *New Zealand Criminal Law Review*, 11(1), 180-

⁹³ EMCDDA 2012, *Driving Under the Influence of Drugs, Alcohol and Medicines in Europe: Findings from the DRUID Project*

⁹⁴ Roberts, C., Lepps, H., Strang, J., and Singleton, N. (2014). Chapter 11, *Adult Psychiatric Morbidity Survey 2014 in Drug use and dependence*. NHS.

⁹⁵ Roberts, C., Lepps, H., Strang, J., and Singleton, N. (2014). Chapter 11, *Adult Psychiatric Morbidity Survey 2014 in Drug use and dependence*. NHS.

⁹⁶ NHS. (No Date). Drug Addiction: getting help. <https://www.nhs.uk/live-well/healthy-body/drug-addiction-getting-help/>

⁹⁷ SmartCJS. (No Date). Drug Screening Questionnaire (DAST). <https://www.smartcjs.org.uk/wp-content/uploads/2015/07/DAST.pdf>

⁹⁸ NHS. (No Date). Drug Addiction: getting help. <https://www.nhs.uk/live-well/healthy-body/drug-addiction-getting-help/>

a tool such as DAST, in the court process and offered alternative treatment which can more effectively address the underlying cause of their drug driving.

4.5 High Risk Offender Scheme

Currently, a High Risk Offender Scheme is run for drink driving where people convicted of drink driving are placed in the scheme if they have:

- been convicted of two drink driving offences within 10 years,
- were driving with an alcohol reading of at least 87.5 microgrammes of alcohol per 100 millilitres (ml) of breath, 200 milligrammes (mg) of alcohol per 100 ml of blood, or 267.5 mg of alcohol per 100 ml of urine,
- refused to give the police a sample of breath, blood or urine to test for alcohol, or
- refused to allow a sample of blood to be analysed for alcohol (for example, if the sample had been taken when they were incapable of giving consent).

Having been placed on the scheme an offender must reapply for their licence and pass a medical examination, which includes an examination with a doctor and a blood test. A DVLA doctor can then decide to accept or refuse the application or, if alcohol dependency or misuse is uncertain can issue a medically restricted driving licence for up to three years, after which the offender will have to submit to another medical examination.

While the High Risk Offender Scheme has issues, it could for example more accurately identify high risk offenders and should offer support for offenders, it is a useful and practical scheme which enables some dangerous drivers to be prevented from regaining their licence until it is safe to do so. The North Report recommended including drug driving offenders who met certain criteria in the High Risk Offender Scheme. In 2019, the DfT commissioned an Expert Panel to make recommendations for a High Risk Offender scheme, based on the existing drink drive scheme

A separate High Risk Offender Scheme, with evidence-based criteria for inclusion, such as being a repeat offender or Drug Abuse Screening Test scores, could be a useful tool for identifying dangerous drivers and preventing them from regaining their licences until the underlying cause of their drug driving was addressed. A drug drive High Risk Offender Scheme should also include referrals to treatment.

The Department for Transport should develop a High Risk Offender Scheme for drug drivers, with evidenced based criteria for inclusion and clear pathways to treatment.

CHAPTER 5

Policing and justice



5.1 Blood sample and testing procedures

One of the main sources of frustration, delays and legal challenges when moving from initial drug test to convictions is procedures around blood tests. Currently, blood samples must be taken by a healthcare practitioner and a healthcare practitioner in charge of the case must approve the specimen being taken.

However, police officers reported to PACTS that this can require taking people arrested on suspicion of drug driving to A & E where, under the triage systems most hospitals operate, they will be allocated a doctor but it can be some time before the doctor is able to see the patient. Defence solicitors have also asked these A & E doctors to attend court to confirm they were consulted. This system creates unnecessary delays and is an inefficient use of both hospital and police resources. While many stations have force healthcare professionals in attendance, this is by no means universal and discussions with police officers suggest it can be a significant challenge, particularly on busy evenings such as Friday and Saturday nights. Furthermore, even where healthcare practitioners are present at stations, the range of contracts, often negotiated without input from roads police units, can mean they are unable to take blood.

Two possible solutions have been identified for this. In the early 2000s nurses were based in, or made available to attend all stations. These nurses were able to take blood samples and reduced the strain on often over stretched force medical examiners. However, due to funding cuts, this is no longer the case. **Onsite medical personnel should be readily available to all roads police officers to take blood samples.** This would significantly increase the efficiency of taking blood samples, reduce the number of people who may have the amount of drugs in their blood fall below the legal limit when waiting for a blood sample to be taken and be a more efficient use of police and hospital resources.

Currently, defendants can take a blood sample (a "B" sample) with them from the police station when they are released from custody. However, an emerging legal defence is that defendants were not offered this opportunity, or were unable to collect their sample after being released. As a result, some police forces now have different procedures and keep defendant samples after they have been released. This is an issue because of forces then requiring the facilities to store samples and the fact that B samples tested months after the police sample may have deteriorated (this is particularly the case for THC) and provide different results than the original sample. **The Home Office and NPCC should remind police forces and those in the legal system that the police have no obligation to keep B samples. Officers should also ensure that Custody Records record when offenders are given the opportunity to keep their B samples.**

The 2017 assessment of the 2015 drug driving law found that in approximately 1 in 8 arrests, no blood sample was taken. In more than half of cases, this was because of medical issues, typically poor veins. In just under a third of cases suspects refused to provide a sample (and then will likely have been charged with failing to provide a sample), in around 5% of cases needle phobia was the cause and in around 10% of cases other reasons such as religious beliefs or the lack of availability of a healthcare professional were the reason. One simple change that could enable blood to be taken in more cases would be the use of vacuum tube blood extraction, which is currently not permissible under drug driving legislation. Vacuum tube blood extraction is used the vast majority of the time by health professionals in the UK (e.g. for taking blood for medical testing). It is a more efficient method of taking a blood sample and safer for healthcare professionals and patients. **Vacuum tube blood extraction should be legalised in drug driving cases.**

While needle phobia was noted in only 5% of cases where a blood sample could not be taken in the 2017 evaluation, it has emerged as one of the main defences in court from a defendant having been charged with failing to provide a sample. Police officers also suggest it has become a more common reason for not providing a blood sample. Some people arrested for drug driving also refuse to provide a blood sample for religious reasons, though this defence is often not successful as it is not a medical reason to not provide blood. One way to enable more testing is for police to arrest people for being unfit to drive (Section 4) as well as drug driving (Section 5) as this would give police the option of a urine test (though driving while unfit does not have legal drug limits like Section 5a drug driving). Evidential tests with legally set levels in mediums other than blood would be highly beneficial; however, as discussed in Section 6.1, this is not likely to be possible in the UK based on the current system. **Police should be encouraged to consider all options (Section 4, 5 and 5a) when they have stopped a driver they suspect has consumed drugs.** This would help reduce the number of people who avoid prosecution for drug driving.

A related issue is that some medical professionals find they are unable to take blood because of constricted blood vessels. This often occurs because cocaine can elevate blood pressure and constrict blood vessels. In this situation, officers and medical professionals should be encouraged to wait a short period of time – around 15 minutes as the effects of cocaine lessen and blood pressure falls.

It is also worth reiterating the importance of taking blood samples as quickly as possible. West Yorkshire Police highlight a ‘golden hour’ for a blood sample to be taken post roadside drug test and do not train Police Officers to use roadside drug tests unless they themselves can transport those who test positive to have a blood test. Speed is particularly important as the defence of passive inhalation of cannabis has increasingly been used by defendants, and accurate blood sampling is a key tool in assessing the validity of this defence.

5.2. Blood testing delays

Interviewees also raised concerns about the current laboratory test turnaround time. Test results generally take at least four to five months to come back. Furthermore, backlogs in laboratories are not uncommon and concerns have been raised that backlogs could lead to the statutory time limit (generally six months in Magistrate’s Courts) being missed for some samples. Since 2017, forensic service provider capacity has been exceeded by the number of positive roadside breath tests.⁹⁹ Backlogs in laboratories may also have contributed to some forces cancelling or delaying campaigns focused on reducing drug driving. Furthermore, some forces have encouraged officers to focus on other crimes potentially committed before drug testing a driver because of backlogs, such as encouraging officers to test for drink first. Some forces also ‘ration’ the number of drug test kits given to roads police officers, making officers more reluctant to drug test all but the most obvious drug drivers. Other forces have specifically asked officers to reduce their use of drug test kits.

At the least, delayed test results mean that many drug drivers will stay on the road for several months while awaiting trial. Recent delays due to Covid-19, on top of an existing backlog, has also raised the possibility that some samples will not be tested in the statutory time period. While the impacts of coronavirus may seem an exceptional circumstance, a succession of exceptional circumstances at laboratories has led to testing capacity being reduced since 2018. The continued delays with drug testing, and risk of samples not being tested in the

⁹⁹ HMICFRS. (2020). Roads Policing: Not optional. HMICFRS <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/roads-policing-not-optional-an-inspection-of-roads-policing-in-england-and-wales.pdf>

statutory time limit has created a need for a detailed assessment of the issue. Merseyside Police have publicly tendered for the creation of a regional laboratory for Section 5a drug driving cases. The impact of this should be carefully observed by other police forces and the Home Office. **The Home Office should review the blood testing process and seek ways to reduce costs and increase the efficiency of laboratory testing by increasing capacity, improved procurement, or other means. This review should also evaluate the possibility of seeking to reclaim blood testing costs from those who are found guilty.**

5.3. Costs

One issue frequently raised in discussion with police and those involved in drug driving prosecutions is the cost of blood tests. Each police force has its own commissioned testing service and costs vary from around £60 to over £400 from force to force and depending on which tests are conducted. The UK is unusual internationally for requiring police forces to pay for the cost of laboratory testing. More often, laboratory costs are paid by central governments, or in some cases reclaimed from those convicted. The high costs of more detailed testing may also lead to some offences being missed. For example, a driver who had taken cannabis and MDMA could fail a roadside blood test for cocaine, pass the blood test for cocaine because their body had further metabolised the cannabis but not be prosecuted for drug driving under the influence of MDMA because the full range of blood tests were not requested. Not conducting complete blood tests for all samples also reduces the amount of knowledge the police and the road safety community have about drugs in the body of drivers.

A similar concern that has been raised is the cost of drug test kits. Conducting a drug test is significantly more expensive than conducting a breath test because a drug test kit costs around £16 compared to a few pence for the cost of a new breath tube for a breathalyser. The cost of drug test kits contributes to some forces equipping a roads policing officer with a only single drug test kit when they leave stations. As a result, officers are less likely to use the wipe unless there is clear evidence of drug use. Indeed, Her Majesty's Inspectorate of Constabulary and Fire and Rescue Services (HMICFRS) stated that reductions in roadside drugs tests were due to falling police numbers, the capacity of forensic service providers, and the cost. HMICFRS also reported frustration from both officers and supervisors that screening and forensic analysis was being effectively rationed, preventing them from using a powerful and effective tool.¹⁰⁰

The increase in drug driving enforcement, in some forces has significantly increased costs for some. The cost of drug driving enforcement represents a significant challenge to increasing drug driving enforcement in the UK.

The cost of drug tests for police forces could be reduced if courts sought to recover the costs of blood tests from those found guilty. This is currently the case in prosecutions involving alcohol. This change would also encourage police forces to request a broader range of drugs to be tested for in blood, leading to more successful convictions for drug driving and giving police and the road safety community a better understanding of drug driving.

The combination of delays and high costs led HMICFRS to 'the inescapable conclusion is that offenders who are suspected of driving while under the influence of drugs are being tolerated and allowed to present a continuing threat to communities.'¹⁰¹ In 2020, the Forensic

¹⁰⁰ HMICFRS. (2020). Roads Policing: Not optional. HMICFRS <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/roads-policing-not-optional-an-inspection-of-roads-policing-in-england-and-wales.pdf>

¹⁰¹ HMICFRS. (2020). Roads Policing: Not optional. HMICFRS <https://www.justiceinspectorates.gov.uk/hmicfrs/wp-content/uploads/roads-policing-not-optional-an-inspection-of-roads-policing-in-england-and-wales.pdf>

Science Regulator also stated that there is a need to 'ensure that a longer-term strategy for sustainable provision of high-quality forensic science is developed as a matter of urgency'. There is an urgent need to address the high costs and laboratory delays which are preventing police officers from being able to effectively enforce drug driving laws. **The Home Office should review the blood testing process and seek ways to increase the efficiency of laboratory testing by increasing capacity or through other means. This review should also evaluate the possibility of seeking to reclaim blood testing costs from those who are found guilty.**

5.4. Blood test results and saliva tests

One concern raised by police, which echoes concerns raised in the 2017 assessment of the drug driving law, is that a significant proportion of offenders test positive for cocaine or cannabis on roadside drug tests but their blood tests show levels of drugs below the legal limit. For example, in 2017, 30% of blood tests were at or below the legal limit for THC amongst drivers who had tested positive for cannabis on the saliva test. Similarly, 17% of those who tested positive for cocaine on saliva tests were below the specified limit for cocaine and BZE.¹⁰² Overall, in 2017, 61% of those who tested positive on roadside saliva tests were charged with a Section 5a offence. Around 10% were charged for another offence (such as failure to provide a sample) and in 30% of cases no further action was taken, mainly because the blood analysis results did not support a conviction or a blood sample could not be taken.

Officers also expressed frustration about the number of blood tests that they see as showing no drugs present despite the driver having tested positive at the roadside, and in some cases, this has led to scepticism about the effectiveness of road side drug tests in all situations. The failures in blood tests having tested positive in saliva tests is likely as a result of the body continuing to metabolise the drug in the time between the saliva and blood test. Blood tests may also be reported to the police as a zero level when in fact there were very low levels of drugs found if:

- a) there were drugs present but the test was for a Section 5a offence and the level of drugs is below the laboratories limit of quantification (though this could plausibly be used as evidence in a Section 4 test), or
- b) there were drugs but the level was below the level of detection.

It is worth reiterating that in both cases this would be an accurate result for courts and legal process – the offender did not have drugs above the legal limit in their blood. However, it can cause frustration and confusion for police officers.

Clearer communication from laboratories to police forces, and blood samples routinely being tested for both Section 4 and 5a offences may help avoid frustration amongst officers. A more efficient, quicker process of taking a blood sample would also reduce the number of people who test positive on saliva tests before testing negative on a blood test.

5.5. Bodycams

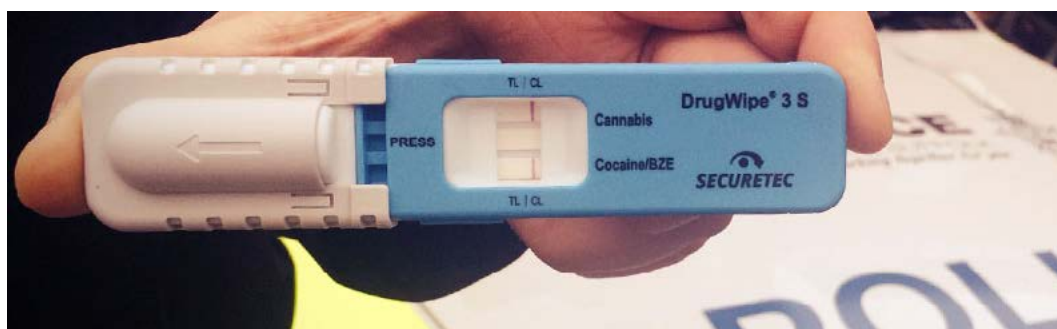
An increasingly used defence in drug driving cases is drivers not disputing blood tests but claiming that they have taken drugs after driving. This issue can be overcome by ensuring all police officers are wearing body worn video cameras and that they monitor any suspect

¹⁰² Risk Solutions and CPH (2017). Evaluation of the new drug driving legislation, one year after its introduction. DfT

arrested on the suspicion of driving under the influence of drugs until after a blood sample is taken. This will provide a clear process from which to abate any challenges in a court of law.

5.6. Adding drugs to the preliminary test

Several interviewees suggested that it would be valuable if additional drugs could be tested for using a preliminary (roadside) test. DrugWipe 3S, the device most commonly used by police in the UK, currently tests for cannabis and cocaine but has the capacity to test for additional drugs. This would require Home Office type approval. Ideally, decisions on what drugs should be included would be made based on road casualty data. However, these data are not presently available in the UK. While drug use varies across the UK and there may be some value in having different tests in different force areas, MDMA was most commonly identified as the additional drug most useful to test for. Heroin, amphetamine and ketamine were also suggested, though it was noted that field impairment testing is likely to be quite effective if a driver has taken particularly impairing drugs such as LSD or ketamine. It is also worth noting that a roadside saliva test for amphetamine would likely also pick up MDMA and methamphetamine. While consultation with all UK police forces would be useful, there would be clear value in expanding the number of drugs which can be tested for at the roadside. This change would require police demonstrating the demand for this feature to manufacturers, given the cost of passing type approval for additional testing strips.



The number of drugs which roadside preliminary drug tests detect should be increased, starting with amphetamine (including MDMA and methamphetamine). Senior police officers and Police and Crime Commissioners should clearly communicate their need for this feature to the Home Office, Department for Transport and manufacturers.

5.7. Court procedures

Those involved in the justice system raised concerns about an emerging trend of defence lawyers submitting requests for Streamline Forensics Report 2 (SFR2) late in the legal process. SFR2s are intended for use only if the defence disagrees with the initial streamline forensics report (SRF1). (The SRF1 procedure was introduced to keep cases on track and avoid delays at court). This causes issues as the tight time margins to get SRF2s from forensic service providers have led to cases being discontinued. The time that it can take to go back to laboratories to get SRF2s, particularly when the CPS is already overstretched, makes this an increasingly concerning issue. Furthermore, toxicologists having to take the time to complete SRF2s or appear in court means they have less time to conduct blood tests in the laboratory. One reform which could help to ensure SRF2 requests are only used legitimately would be to place the cost and timescales of providing SRF2s on defendants rather than the police. Clarity and consistency from magistrates on when SFR1s can be challenged would be useful for the CPS, police forces and laboratories.

5.8. Operation Revoke

There are concerns about people drug driving in the sometimes lengthy period between arrest and conviction. One police campaign which aims to reduce this risk is Operation Revoke. It is now run by several police forces across the UK. It aims to:

- Reduce and prevent organised crime by removing the ability of prolific offenders to drive a vehicle lawfully.
- Reduce the risk of serious collisions through drivers having medical episodes and posing risks to themselves and others thereby increasing community confidence.

'Medical conditions' include substance use issues – typically drugs, though on occasion Operation Revoke has targeted drivers who have alcohol problems. Operation Revoke is often used to prevent people from driving after they have been arrested, but before they appear in court. This is in part because of the time taken to receive laboratory results for drug driving. When someone has their licence revoked, they need to undergo a medical investigation by the DVLA to regain it (as they would if they had informed the DVLA themselves of a medical condition which made them unfit to drive). Operation Revoke has also been used where a person's mental health issues have made them unfit to drive.

Operation Revoke has been successfully used to revoke the licence of drivers who have been frequently arrested for drug driving, admit to consuming large amounts of drugs, and are involved in serious crime.

Operation Revoke may also be relevant for drug driving because of the high levels of mental health issues amongst drug drivers. Interviews with police officers who have been involved with Operation Revoke across the country suggest it has been an effective way of preventing dangerous drivers from using the roads. Police forces have also been able to work effectively with courts and the DVLA on Operation Revoke. While it does not address the underlying issue of long periods between arrest and conviction for drug driving, Operation Revoke has proven to be an effective way of preventing dangerous, and often vulnerable drivers, from using the roads. **All UK police forces should be encouraged to use Operation Revoke, or similar means of preventing dangerous drivers from driving between arrest and conviction, where appropriate.**

5.9. Alternative metrics to blood

The North Report recommended that after roadside screening tests had been developed, research should focus on developing evidential saliva tests.¹⁰³ In 2013, *The Drug Driving Expert Panel Report* considered whether equivalent thresholds to the blood drug limit could be set in other metrics such as saliva or urine.¹⁰⁴ There would be considerable advantages to evidential saliva testing in particular: in theory it could be conducted without the need for a medical professional, it could reduce the amount of time needed for evidential results in court and would be less invasive than blood tests. The Drug Driving Expert Panel, however, stated that oral fluid tests could not at the time be used to give a precise prediction of the concentration of a drug in blood. The Expert Panel also found that other fluids such as urine could not be used.

According to the experts on drug testing interviewed for this project, the evidence has not significantly changed since 2013 and it would still not be possible to calculate equivalent drug thresholds in blood and saliva. While confirmatory saliva testing is more likely to be

¹⁰³ North, P. (2010). Report of the Review of Drink and Drug Driving Law.

¹⁰⁴ Wolff, K. et al (2013). Driving under the influence of drugs. Report from the Expert Panel on Drug Driving.

technically possible for illicit drugs with their lower limits, the legal process focuses on how the amount of drug present related to impairment and this relationships cannot be quantified in saliva. A move towards saliva testing, if the science develops, would require a law change and laboratories applying for Home Office approval to test saliva.

Countries where evidential saliva testing is used, such as in Australia, have presence-based drug driving laws rather than 'per-se' risk threshold-based limits in the UK. As such evidential saliva testing (or testing of any other metric) is more challenging in the UK because a test needs to show the level of a drug in the body, and this level must relate to how much it would impair a driver. By contrast, with presence-based laws tests just need to show the presence of a drug.

While evidential saliva (and other metrics) testing is not currently possible in the UK, research should continue to seek methods that might prove sufficiently reliable. The Government should encourage innovation in this field.

5.10. Drug misuse/dependence and the DVLA

Drivers who have drug misuse or dependence can have their licence refused or revoked by the DVLA. The DVLA guidance *Assessing Fitness to Drive, a guide for medical practitioners* offers several factors which can be considered as associated with drug misuse or dependence. The World Health Organisation's classifications of F11 to F19 (these mental and behavioural disorders due to use of various drugs) are also used by the DVLA in relation to these conditions.

The DVLA groups misuse and dependence by the drug involved. The first group includes cannabis, amphetamines (excluding methamphetamine), ecstasy/MDMA, ketamine and 'other psychoactive substances, including LSD and hallucinogens. Someone who is persistently misusing or dependent on these drugs must not drive and must notify the DVLA. If a medical enquiry confirms this, their licence will be revoked for a minimum of six months, which must be free of misuse or dependence. Relicensing may also require an independent medical assessment and urine screen, arranged by the DVLA. The second group includes heroin, morphine, methadone, cocaine, methamphetamine and benzodiazepines. The same criteria apply for this group except a licence will be revoked for a minimum of one year. Lorry and bus drivers in the first group have their licence revoked for a minimum of one year and in the second group for a minimum of three years.

As well as self-reporting, a driver can be reported to the DVLA by others, such as medical professionals. The General Medical Council (GMC) advises that doctors should ask for the patient's consent to disclose information for the protection of others unless the information is required by law or it is not safe, appropriate or practicable to do so. Where it is not practicable or appropriate to seek consent and in exceptional cases where a patient refuses consent, the GMC states that disclosing personal information may be justified in the public interest, if failure to do so may expose others to a risk of death or serious harm. Unless it is not safe or practicable to do so, a doctor should inform the patient of their intention to disclose personal information. The GMC advises that when deciding whether the public interest in disclosing information outweighs the patient's and public interests in keeping information confidential doctors should consider:

- the potential harm or distress to the patient arising from the disclosure;
- the potential harm to trust in doctors generally;
- the potential harm to others;
- the potential benefits to an individual or to society arising from the release of the information;
- the nature of the information to be disclosed; and

- whether the harms can be avoided or benefits gained without breaching the patient's privacy or what the minimum intrusion is.¹⁰⁵

The GMC summary on the process of dealing with a patient who may not be fit to drive is 'if you become aware that a patient is continuing to drive when they may not be fit to do so, you should make every reasonable effort to persuade them to stop. If you do not manage to persuade the patient to stop driving, or you discover that they are continuing to drive against your advice, you should consider whether the patient's refusal to stop driving leaves others exposed to a risk of death or serious harm. If you believe that it does, you should contact the DVLA or DVA promptly and disclose any relevant medical information, in confidence, to the medical adviser.'¹⁰⁶

3,629 people had their licence revoked or refused on drug misuse grounds in 2019. It is not known if these people self-reported or were reported. By comparison, in 2019, 2,354 people had their licence revoked or refused due to alcohol misuse and a further 5,354 had it revoked/refused for alcohol dependency.¹⁰⁷ There is no available information on how often medical professionals inform the DVLA about drug dependence, or their knowledge of these issues. There is some evidence that doctors have a poor understanding of DVLA guidance on alcohol dependence, though it is not clear if this is also the case for drug misuse and dependence

The DVLA and the relevant professional bodies should continue to raise awareness of the guidance for medical professionals and others regarding informing the DVLA of a patient's drug issues.

5.11. Combination offences

Driving having consumed both alcohol and other drugs is significantly more dangerous than driving with an equivalent amount of alcohol or drugs.¹⁰⁸ This is because the interaction of alcohol and other drugs can be significantly more impairing than in isolation.¹⁰⁹ This can be true for both illicit and medicinal drugs. Drivers could also have low levels of drugs and alcohol in their system and therefore be below the drink and drug driving limit, but still be significantly impaired. Furthermore, while the courts could consider this to be an aggravating circumstance, drivers generally do not receive more severe sentences for driving with both alcohol and drugs in their system and are usually prosecuted, and convicted, for one offence only. As a result, police officers will often not conduct a breath test or roadside drug test if a driver has tested positive for the other test. This means there are poorer data on the level of drink and drug driving in the population. Furthermore, the full danger a driver who could be possibly under the influence of both drink and drugs at the time of the offence is not considered in court and there is no additional penalty or deterrent.

Combination offences (covering driving with both alcohol and other drugs in the system) do exist in Victoria, Australia with similar penalties as for drink and drug driving.¹¹⁰

The Government should introduce a new combined drink and drug driving offence, with a lower blood alcohol limit.

¹⁰⁵ General Medical Council. (Undated). *Confidentiality: patients' fitness to drive and reporting concerns to the DVLA or DVA*

¹⁰⁶ General Medical Council. (Undated). *Confidentiality: patients' fitness to drive and reporting concerns to the DVLA or DVA*

¹⁰⁷ Data supplied to PACTS by DVLA.

¹⁰⁸ Dubois S, Mullen N, Weaver B, Bédard M. (2015). The combined effects of alcohol and cannabis on driving: Impact on crash risk. *Forensic Sci Int.* 248(1), 94-100

¹⁰⁹ Australian Drug Federation (2007). *Drugs and Driving in Australia.*

http://www.onlinelibraryaddictions.stir.ac.uk/files/2017/07/Drugs_and_Driving_in_Australia_fullreport.pdf

Sewell, R. A., Poling, J., & Sofuoglu, M. (2009). The effect of cannabis compared with alcohol on driving. *The American journal on addictions*, 18(3), 185-193.

¹¹⁰ Moxham-Hall, V., and Hughes, C. (2020). Drug driving laws in Australia: What are they and why do they matter? Drug Policy Modelling Program, UNSW Social Policy Research Centre. Bulletin No. 29.

CHAPTER 6

Better understanding the problem



6.1. Casualty data

As discussed in Drug Driving Profile and Statistics above, there is not reliable data on the number of people who are killed or seriously injured in collisions involving drug drivers in Great Britain. Stats19 contributory factors show the number of fatal collisions where a police officer noted that a 'driver/rider impaired by drugs' contributed to the collision taking place. However, contributory factors are not a definitive guide to what contributed to a collision. Rather they represent the opinion of an officer at the scene, based on the evidence available at the time. Driver/rider impaired by drugs may be particularly challenging for a police officer to determine with little time as there may be little physical evidence of impairment (compared to for example 'poor or defective road service'), particularly if the driver is killed or seriously injured. The potential inaccuracy of contributory factors for assessing the road safety impact of drug driving can be seen by comparing the number of road deaths where 'driver/rider impaired by alcohol' was noted with the more robust data published in Reported Drinking and Driving (based on coroner data). Contributory factors suggest that 117 people were killed in road collisions where the driver/rider was impaired by alcohol. Contrastingly, the figure based on coroner data is 240 – more than double.

In 2001 and 2012, TRL produced an analysis of the incidence of drugs and alcohol in road accident fatalities based on coroners reports. In 2012, 231 driver fatalities had available drug data and 20% of these fatalities had an illicit drug of abuse present. 31% of these fatalities had a therapeutic drug present. The 2001 study had a sample of 1,184 casualties from 1996 to 2000 and at least one medicinal or illicit drug was detected in 24% of the fatalities. The relatively small sample size for both is in part because coroners and procurators fiscal are not required to routinely screen for drugs in road collision fatalities.

There would be immense value in the Department for Transport producing an accurate figure for the number of people killed or seriously injured as a result of drug driving. It would enable the road safety community to better understand the scale of the drug drive problem and the road safety impact of interventions which aim to reduce drug driving.

There are two possible ways the DfT could collect this data. The 2013 review of drug driving recommended that the Secretary of State should consider adopting a similar system to that in Norway where blood samples are routinely collected at all RTA following standardised collection procedures and analysed against a universal list of substances.¹¹¹ A similar system has also been implemented in some Australian states. This would provide the DfT with a database of the level of drug driving for serious, fatal, and slight injury collisions which would be an extremely valuable resource in understanding and reducing drug driving. This approach would require new legislation to give police the powers to routinely collect blood samples after collisions and would likely be expensive.

An alternative approach would be to produce statistics in the same way as an accurate figure for drink drive deaths and as the TRL studies in 2001 and 2012 did. TRL are contracted by the DfT to produce this data and combine coroner and Stats19 data to produce a reliable estimate of the number of road deaths involving drink drivers. Coroners and Procurators Fiscal would need to be required to routinely screen for drugs but unlike the Norwegian approach this would not require legislative change. However, it would also be expensive and calculating this figure for drug driving is more complicated than for drink driving because of the range of substances and the deterioration of drugs in the blood.

¹¹¹ Wolff, K. (2013). Driving Under the Influence of Drugs. DfT

The Department for Transport should produce and publish robust casualty data on drink driving using coroner data. Coroners and Procurators Fiscal should routinely screen for drugs in road collisions victims. The Government should consider the plausibility and practicality of following the Norwegian model, where blood samples are collected following collisions.

6.2. Roadside drug test data

While some forces choose to record and publish the number of roadside drug tests they conduct and the number of positive tests results, there is no requirement for forces to do so. In contrast, there is a requirement for forces to record the number of breath tests conducted, whether they were positive or negative, the reason that a test was conducted and some basic demographic details. This is then published by the Home Office in *Police Powers and Procedures England and Wales* and by the Scottish government and Police Service Northern Ireland in similar publications. This data gives the road safety community insight into the level of enforcement over time (as opposed to number of convictions), how effectively enforcement is targeted, and a basic profile of drink drivers.

Requiring police forces to record how many roadside drug tests were conducted would provide significant insight into drug driving and its enforcement. It would also provide further information on the large variation in the level of drug driving enforcement between police forces. In its response to the North Report, the Government stated that when drug driving enforcement was more effective, there would be an opportunity for research into drug drivers.¹¹² The increased number of roadside drug tests being conducted show that this opportunity has arrived. **Police forces should record the number of roadside drug tests conducted, whether they are positive and basic demographic details about those tested. This data should then be published annually by the Home Office or Department for Transport.**



6.3. Other data sources

In 1964, 1988, 1990 and 1998-99 roadside surveys were conducted to determine the level of drink driving on British roads. Around 10,000 drivers were sampled, in a mix of police force areas and urban and rural sites. Police officers worked with civilian staff to select survey sites, police officers randomly pulled over drivers and officers and civilians collected data from drivers. The Department for Transport last planned to commission a survey in 2008, and in 2007 published a review of methodologies for the survey. This review recommended that the survey should become a rolling survey that, over time, would enable the prevalence of drink driving to be determined, provide valuable data on regional, seasonal and temporal differences, and create a platform for collecting data on other issue.¹¹³ Unfortunately, the DfT did not proceed with these plans.

¹¹² Secretary of State for Transport. (2011). The Government's Response to the Reports by Sir Peter North CBE QC and the Transport Select Committee on Drink and Drug Driving. Cm8050

¹¹³ Jackson, P. (2008). A Review of Methodologies Employed in Roadside Surveys of Drinking and Driving

Other countries have done. For example, in 2012 and 2015, the Spanish government carried out roadside surveys to monitor psychoactive substance use amongst Spanish drivers. Around 3,000 drivers were breath tested for alcohol and saliva tested for drugs. This survey provided an outstanding resource to help understand the extent and profile of drink and drug driving in Spain.

Given the comparatively poor data on drug driving in the UK, both in terms of profile and road safety impacts, **the DfT should investigate the feasibility of conducting a roadside survey to monitor drink and drug driving in the UK, such as those conducted to monitor drink driving in the 1980s and 1990s.**

CHAPTER 7

Conclusions and Recommendations



7.1. Conclusions

Drug driving is a significant danger and cause of death and serious injury on UK roads. This report shows that we still do not have robust answers to many of the vital questions regarding drug driving particularly:

- How many people are drug driving?
- How many people are killed as a result of drug driving?
- How many people are drug tested on the roads?

This report shows the steps the government can take to fill these gaps. It also demonstrates the importance of filling these gaps if we are to address drug driving.

The report shows that we can reduce drug driving using many conventional road safety tools. Education campaigns can play a role in increasing knowledge of the dangers of drug driving while building a social consensus that drug driving is unacceptable. These education campaigns should avoid alienating those they target. High levels of enforcement of the drug driving law, which raises the public perception of enforcement is an effective way of reducing drug driving. However, currently, the level of enforcement varies dramatically from police force to police force. A more consistent approach should be taken and drug driving enforcement increased across the UK.

The report highlights issues with the current legal system and the small and large steps that should be taken to resolve them. A new combined drug and drink driving offence should be introduced, with lower blood drug and alcohol limits when alcohol and drugs are combined. The current blood testing system has resulted in long backlogs and high costs for police. There is the risk that people who have been charged with drug driving will not be banned from driving not because they are found not guilty, but because blood tests results take too long to come back. The Home Office should review the blood testing process and seek ways of increasing the efficiency of laboratory testing. They should also investigate the possibility of reclaiming blood testing costs from those who are found guilty of drug driving. In the short-term other steps should be taken to increase the efficiency of the court system.

All UK police forces should be encouraged to use Operation Revoke, where appropriate, to revoke the licences of dangerous drivers in the time between them being charged and their court date. It should be reiterated to police forces, Magistrates and others in the legal system that police forces have no obligation to keep B samples. To increase the efficiency of taking blood samples, vacuum tube blood extractions should be enabled in drug driving cases and onsite medical personnel should be reintroduced at all police stations. To help address the rising issue of needle phobia, police should also be encouraged to arrest drivers for driving when unfit if an offender is medically unable to provide a blood sample. Finally, steps should be taken to increase the number of drugs which roadside drug tests detect, starting with MDMA.

There is also a need for new tools to be utilised to reduce drug driving. Some can be borrowed from other fields such as public health. This would address the increased risk posed by drivers who have consumed alcohol and drugs. Not all drug drivers have drug or mental health issues but these issues do lead to many people drug driving. Drug drive reoffending remains very high with 44% of offences being committed by reoffenders. To address these issues, a Drug Drive Rehabilitation Course and High Risk Offenders Scheme should be introduced, modelled broadly on the existing drink drive programmes but with better screening for drug and mental health problems and with clear pathways to treatment. Medical professionals also have a significant role to play in identifying drug mental health issues and stopping people from driving before they cause harm by informing the DVLA. The DVLA and relevant professional bodies should continue to raise awareness of these issues.

Above all, the report demonstrates the need for a broad strategy to tackle drug driving which uses the knowledge of experts on drugs. This strategy must include research to fill vital knowledge gaps and include conventional road safety interventions as well as those from the field in public health. A strategy to tackle drug driving should seek to address the underlying causes of people's decision to drug drive, increase drivers' perceptions of their chance of being caught if they do drug drive and ensure that those who are caught receive the support they need to stop drug driving.

7.2. Recommendations

Wide-reaching review of policy

1. The Department for Transport, in collaboration with the Department for Health, the Home Office, the Ministry of Justice and the National Police Chiefs' Council, should undertake a review of policy on drug driving.

Education

2. Education needs to be increased to build and entrench a social norm that drug driving is unacceptable and to raise awareness of enforcement of the drug driving law. These media campaigns should take account of advice from behaviour change experts who specialise in behaviour change amongst drug users.
3. The Government and agencies, including the Health & Safety Executive, should encourage companies, and others with responsibility for those who drive for work, to develop strong drug driving policies, including education, testing and enforcement. This should include smaller fleets, "grey fleets" and "gig" workers.
4. The DVLA and the relevant professional bodies should continue to raise awareness of the guidance for medical professionals and others regarding informing the DVLA of a patient's drug issues.

Legislation: Drink and drug driving offence

5. The Government should introduce a new combined drink and drug driving offence, with a lower blood alcohol limit.

Enforcement

6. Levels of drug driving enforcement should be increased in the UK, particularly in those police force areas where levels are low. The impact of increases on road casualties should be closely monitored.
7. The number of drugs which roadside preliminary drug tests detect should be increased, starting with amphetamine (including MDMA and methamphetamine). Senior police officers and Police and Crime Commissioners should clearly communicate their need for this feature to the Home Office, Department for Transport and manufacturers.
8. All UK police forces should be encouraged to use Operation Revoke, or similar means of preventing dangerous drivers from driving between arrest and conviction, where appropriate.
9. Police should be encouraged to consider all options (Section 4, 5 and 5a) when they have stopped a driver they suspect has consumed drugs.
10. Onsite medical personnel should be readily available to all roads police officers to take blood samples.

11. The Home Office and NPCC should remind police forces and those in the legal system that the police have no obligation to keep B samples. Officers should also ensure that Custody Records record when offenders are given the opportunity to keep their B samples.
12. Vacuum tube blood extraction should be legalised in drug driving cases.

Blood testing and the courts

13. The Home Office should review the blood testing process and seek ways to reduce costs and increase the efficiency of laboratory testing by increasing capacity, improved procurement, or other means. This review should also evaluate the possibility of seeking to reclaim blood testing costs from those who are found guilty.
14. While evidential saliva (and other metrics) testing is not currently possible in the UK, research should continue to seek methods that might prove sufficiently reliable. The Government should encourage innovation in this field.

Rehabilitation

15. A drug drive rehabilitation course should be introduced in the UK. This should be based on the UK drink drive rehabilitation course, though run separately for drug drivers when possible.
16. Drug drivers should be screened for drug dependence issues, using a tool such as DAST, in the court process and offered treatments which can more effectively address the underlying cause of their drug driving.
17. The Department for Transport should develop a High Risk Offender Scheme for drug drivers, with evidenced based criteria for inclusion and clear pathways to treatment.

Research and data

18. The DfT should investigate the feasibility of conducting a roadside survey to obtain data on drink and drug driving in the UK, such as those conducted for drink driving in the 1980s and 1990s.
19. Police forces should record the number of preliminary roadside drug test conducted, whether they are positive and basic demographic details about those tested. Drug and breath test data should be linked, to show the order of tests. These data should be published annually by the Home Office or Department for Transport.
20. The Department for Transport should produce and publish robust offence and casualty data on drug driving using coroner data and other sources, as for drink driving.
21. Coroners and Procurators Fiscal should routinely screen for drugs in road collision victims.
22. The Government should consider the practicality of following the Norwegian model, where blood samples are collected from drivers following serious and fatal collisions.



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Causing death by careless driving when under the influence of drink or drugs or having failed either to provide a specimen for analysis or to permit analysis of a blood sample Road Traffic Act 1988 (section 3A)

STEP ONE – DETERMINING THE OFFENCE CATEGORY			
<p>There are two aspects to assessing culpability for this offence.</p> <p>1) The court should first determine the standard of driving with reference to the factors below, which comprise the principal factual elements of the offence. The circumstances and context of the offence will also be important to assessing the level of culpability.</p>			
High			
<ul style="list-style-type: none"> Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a medium culpability factor 			
Medium			
<ul style="list-style-type: none"> Unsafe manoeuvre or positioning Engaging in a brief but avoidable distraction Driving at a speed that is inappropriate for the prevailing road or weather conditions, although not greatly excessive Driving vehicle which is unsafe or where drivers visibility or controls are obstructed Driving in disregard of advice relating to the effects of medical condition or medication (where the medication does not form a basis of the offence) Driving whilst ability to drive impaired as a result of a known medical condition Driving when deprived of adequate sleep or rest The offender's culpability falls between the factors as described in high and lesser culpability 			
Lesser			
<ul style="list-style-type: none"> Standard of driving was just over threshold for careless driving Momentary lapse of concentration 			
2) Factors relevant to the presence of alcohol or drugs or a failure to provide a sample for analysis should then be considered to identify the appropriate offence category and starting point of sentence in accordance with the table below			
The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	Careless driving - High culpability	Careless driving - Medium culpability	Careless driving - Lesser culpability
H71µ or above of alcohol OR Deliberate refusal to provide specimen for analysis OR Evidence of substantial impairment and/or multiple drugs or combination of drugs and alcohol	Starting point: xx Sentencing range: xx	Starting point: xx Sentencing range: xx	Starting point: X Sentencing range: xx
51- 70 µg of alcohol OR	Starting point:	Starting point:	Starting point:

All other cases of refusing to provide specimen OR Any quantity of a single drug detected	xx Sentencing range: xx	xx Sentencing range: xx	xx Sentencing range: xx
35-50 µg of alcohol	Starting point: xx Sentencing range: xx	Starting point: xx Sentencing range: xx	Starting point: xx Sentencing range: xx

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

17 December 2021
SC(21)DEC05 – Animal Cruelty
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1 ISSUE

1.1 Agreeing updates to the guideline for offences committed under section 9 of the Animal Welfare Act 2006 (breach of duty of person responsible for animal to ensure welfare). These arise as a consequence of the revision to the animal cruelty guidelines, following the increase in maximum penalty for other offences under that Act from six months' to five years' imprisonment.

2 RECOMMENDATIONS

2.1 That Council:

- agree the revisions to the section 9 guideline;
- confirm the revisions agreed at November's meeting to the animal cruelty guidelines.

3 CONSIDERATION

3.1 The offence of breach of a duty to ensure animal welfare (set out in full at **Annex A**) has remained a summary only offence with a maximum of six months' imprisonment. Its guideline is currently part of the overall animal cruelty guideline which we are revising to reflect the new maximum penalty for other animal cruelty offences (causing unnecessary suffering, mutilation, tail docking, poisoning and fighting).

3.2 Like all animal welfare offences, section 9 is relatively low volume. There were around 50 offenders sentenced for this offence as the principal offence in 2020. These figures are affected no doubt by the pandemic, but even in 2018 and 2019 there were only around 160 and 140 offenders sentenced, respectively.

3.3 Given this offence alone is remaining summary only, I believe it makes most sense to retain a separate magistrates' guideline for section 9, without the need for substantial changes (it was most recently revised in 2017), but with a few necessary updates to reflect the splitting-off of the guidelines and to ensure the two resulting guidelines are consistent.

Question 1: do you agree to maintain a separate magistrates' guideline for section 9 offences?

3.4 If you agree, the first question to consider is the title of the guideline (a draft of which is at **Annex B**). Currently it is "Animal Cruelty", but this seems misleading if the section 9 offence is the only one being covered, it being more about neglect than deliberate intent to cause suffering. We could simply replicate the title of the section in full: "breach of duty of person responsible for animal to ensure welfare". That would mean anyone searching for the offence could find it easily with a search although it could risk confusion with a breach guideline in the alphabetical online list. A snappier title could be "Failure to ensure animal welfare" or simply "Animal welfare" or "Animal neglect", although it may not be clear to the magistrate in a hurry which offence these last titles refer to, and we want to avoid confusion with the other animal cruelty guideline.

3.5 On balance I recommend "Failure to ensure animal welfare" as a title which is short, readily searchable but which describes the offence adequately and accurately.

Question 2: do you agree to change the title of the guideline to "Failure to ensure animal welfare"?

3.6 Given that Parliament has left this offence as it is, there is no evidence that the guideline is proving difficult to use in practice, and it was last revised in 2017, I do not propose a thoroughgoing revision. However, various of the elements in the existing guideline are unnecessary or inappropriate for the offence of failing to ensure an animal's welfare.

3.7 It seems evident that "Deliberate or gratuitous attempt to cause suffering" from high culpability can be removed as that would be a section 4 offence. The higher culpability factors "Prolonged or deliberate ill treatment or neglect" and "Ill treatment in a commercial context" could stand, although I question whether "ill treatment" should remain. I do not believe it is wrong to describe this offending as "ill treatment", but it seems odd to split out the concepts of ill treatment and neglect for an offence which either of those descriptors alone could cover sufficiently.

3.8 Although marginal, I believe "ill treatment" in the current guideline is meant to cover behaviour seen under section 4 and 8 offences (causing unnecessary suffering and fighting), and that "neglect" is a more apt description for section 9 offending. I therefore propose amending those culpability factors to "Prolonged or deliberate neglect" and "Neglect in a commercial context"

3.9 I see no reason to move away from the current middle category capturing anything between high and low. In the context of neglect, it is possible to envisage grey areas for

offenders who ought to know better, but are still somewhat misguided rather than wilfully neglectful.

3.10 For low culpability, as well as the existing factors I propose adding “Momentary or brief lapse in judgement” and “Involved through coercion, intimidation or exploitation” for consistency with the guideline we are drafting for sections 4 to 8.

Question 3: do you agree to amend the relevant high culpability factors to become “Prolonged or deliberate neglect” and “Neglect in a commercial context”?

Question 4: do you agree that the middle level of culpability should remain anything falling between high and low?

Question 5: do you agree adding “Momentary or brief lapse in judgement” and “Involved through coercion, intimidation or exploitation” to low culpability?

3.11 As I have said in previous papers, the current harm table has the benefit of simplicity (raised harm being indicated by death or serious injury/harm to animal, or a high level of suffering caused) and lower harm being any other case.

3.12 I still think that this basic two-tier system works, bearing in mind this is a summary only offence and extensive inquiries into the nature of any injuries or conditions suffered by the animals and their impact may be disproportionate or impossible. I would therefore recommend keeping this model, but modifying the wording slightly to be “death (including condition necessitating euthanasia) or serious harm to animal” as i) including euthanasia brings this into line with the cruelty guideline we are drafting and ii) injuries are probably less relevant to this offending

3.13 However, if Council members wished to provide more detail, one option could be for us to try and replicate some of the elements we are consulting on for the other animal cruelty guidelines. In/if doing so, we should bear in mind that we are calibrating those in a particular way which could see some quite serious harm be categorised as being medium-level where at present the guideline simply seeks to distinguish the worst sorts of harm.

3.14 To make sure that we did not unintentionally downgrade certain harms, I would therefore propose borrowing heavily from our draft category 2 harm elements:

- Death (including condition necessitating euthanasia) or serious harm to animal;
- Offence results in a condition which has a substantial and/or lasting effect
- High level of pain and/or suffering caused

3.15 However, my recommendation remains to continue with the two harm model, with the above amendments.

Question 6: do you agree to continue with higher harm being marked out with “Death (including condition necessitating euthanasia) or serious harm to animal” and high level of suffering caused”, and lower harm being all other cases?

3.16 The current sentencing table has a range all the way from a Band A fine to 26 weeks’ custody (the statutory maximum). Given Parliament has not changed this offence, I see no reason to change the sentencing levels.

3.17 One might argue that, with the most culpable, sadistic, deliberate acts of cruelty removed from this guideline, there was a case for moving sentencing levels down or decreasing the top of the range. However, the possibility exists for the worst cases of neglect to be captured by the highest culpability now, and very severe cases - where an offender wilfully ignores their responsibilities, and where the results of that neglect are obvious - can certainly be said to justify six months’ custody.

Question 7: do you agree to leave the sentencing table as it stands?

3.18 The step two factors do not need significant adjustment, although several aggravating factors are inappropriate or unnecessary for this offence. I propose retaining the existing factors, but deleting the following:

- Use of weapon;
- Use of technology to publicise or promote cruelty;
- Use of another animal to inflict death or injury;
- Animal being used in public service or as an assistance dog

3.19 There are some further amendments which should be made for consistency’s sake. We are changing “Offender in a position of responsibility” to “Offender in position of professional responsibility for animal” as part of the revision of the guideline for the other animal cruelty offences. The current mitigating factor “Age and/or lack of maturity where it affects the responsibility of the offender” should be amended to simply “Age and/or lack of maturity” in line with the current standard wording.

Question 8: do you agree to amend the step two factors as above?

Question 9: are there any other points you wish to raise in relation to the revised section 9 guideline?

3.20 The draft guideline for consultation for animal cruelty offences (sections 4 to 8 of the 2006 Act) is at **Annex C**. This incorporates the changes discussed at November's meeting, including (among other things):

- the possibility of category B culpability cases being raised to category A by the extreme nature of one or more category B factors or the extreme impact caused by a combination of those factors;
- an explicit reference to tail docking, ear clipping and similar forms of mutilation at Category B harm;
- guidance before the sentencing table which suggests that a particularly culpable case or one involving a significant numbers of animals could see a starting point elevated within a range and aggravated outside of it.

3.21 With apologies, one aspect of culpability was unclear from last month's discussion: should "serious neglect" be counted in the highest category of culpability? On the one hand where there is wilful and wanton neglect from offenders who do know better, and it is perfectly possible for serious and widespread harm to occur as a result, this should be reflected in setting a category. For example, a farmer who leaves tens of horses in a crumbling stable malnourished and dying in their own waste.

3.22 However, we do want to reserve this top category for very serious offenders who reasonably can face in excess of a year in prison because they have deliberately and sadistically caused animals unnecessary suffering. These offenders, as we discussed last month, may face penalties similar to those who inflict life-changing violence on other humans, including children. These sorts of cases were the ones most prominent in parliamentary and public discussion around the increase in maximum penalties. I am minded to remove the reference to neglect from high culpability, but would welcome discussion.

Question 9: do you agree to remove "serious neglect" from the highest category of culpability?

Question 10: otherwise, are you content with the draft guideline for consultation at Annex C?

4 EQUALITIES

4.1 There is very limited data on the demographics of animal cruelty offenders because until earlier this year (2021) the offence was summary only. In the vast majority of cases (85 per cent of offenders sentenced in 2020) the ethnicity of the offender was either not recorded or not known. Most offenders sentenced for section 4 offences are under 40 and in a typical

year, over a third of offenders are female, which corresponds with the average proportion across all summary non-motoring offences.

4.2 Given the lack of data, we have no evidence or suggestion that there are disproportionate outcomes in terms of age, race or sex. However, we will seek views on this point during consultation, and ask if there are ways the proposed guideline could create or contribute to disparities.

5 IMPACT AND RISKS

5.1 We will present a resource assessment to Council in March at the point of sign-off for the consultation stage draft revisions, setting out the expected impacts. As well as potential impacts on prison places, this will consider the impact on Crown Court case load.

5.2 We are likely to face criticism that we have not set sentencing levels for the revised animal welfare guideline high enough within the new maximum set by Parliament. The consultation document can explain in greater or lesser detail why we have set sentencing levels as we have, whilst making clear that it is common to leave “headroom” for the worst types of offending, including offending with significant numbers of victims.

Animal Welfare Act 2006

Section 9 Duty of person responsible for animal to ensure welfare

(1) A person commits an offence if he does not take such steps as are reasonable in all the circumstances to ensure that the needs of an animal for which he is responsible are met to the extent required by good practice.

(2) For the purposes of this Act, an animal's needs shall be taken to include—

- (a) its need for a suitable environment,
- (b) its need for a suitable diet,
- (c) its need to be able to exhibit normal behaviour patterns,
- (d) any need it has to be housed with, or apart from, other animals, and
- (e) its need to be protected from pain, suffering, injury and disease.

(3) The circumstances to which it is relevant to have regard when applying subsection (1) include, in particular—

- (a) any lawful purpose for which the animal is kept, and
- (b) any lawful activity undertaken in relation to the animal.

(4) Nothing in this section applies to the destruction of an animal in an appropriate and humane manner.

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Failure to ensure animal welfare

Animal Welfare Act 2006, s.9 (breach of duty of person responsible for animal to ensure welfare)

Effective from: XXXXXX

Triable only summarily

Maximum: Unlimited fine and/or 6 months

Offence range: Band A fine – 26 weeks' custody

Step 1 – Determining the offence category

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

Culpability demonstrated by one or more of the following

The court should weigh all the factors set out below in determining the offender's culpability. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

A High Culpability	<ul style="list-style-type: none"> ● Deliberate or gratuitous attempt to cause suffering ● Prolonged or deliberate ill treatment or neglect ● ill treatment Neglect in a commercial context ● A leading role in illegal activity
B Medium culpability	<ul style="list-style-type: none"> ● All cases not falling into high or low culpability
C Lower culpability	<ul style="list-style-type: none"> ● Well intentioned but incompetent care ● Momentary or brief lapse in judgement ● Involved through coercion, intimidation or exploitation. ● Mental disorder or learning disability, where linked to the commission of the offence

Harm demonstrated by one or more of the following

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.

Factors indicating greater harm	<ul style="list-style-type: none"> ● Death or serious injury/harm to animal ● High level of suffering caused
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Factors indicating lesser harm	<ul style="list-style-type: none"> All other cases
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[ALTERNATIVE HARM TABLE]

Factors indicating greater harm	<ul style="list-style-type: none"> Death (including condition necessitating euthanasia) or serious harm to animal; Offence results in a condition which has a substantial and/or lasting effect High level of pain and/or suffering caused
Factors indicating lesser harm	<ul style="list-style-type: none"> All other cases

Step 2 – Starting point and category range

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

	High culpability	Medium culpability	Low culpability
Greater harm	Starting point 18 weeks' custody	Starting point Medium level community order	Starting point Band C fine
	Category range 12-26 weeks' custody	Category range Low level community order – High level community order	Category range Band B fine – Low level community order
Lesser harm	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Low level community order – 12 weeks' custody	Category range Band C fine – Medium level community order	Category range Band A fine – Band C fine

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

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the owner/keeper of the animal: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors

- Distress caused to owner where not responsible for the offence
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Significant number of animals involved
- ~~Use of a weapon~~
- Allowing person of insufficient experience or training to have care of animal(s)
- ~~Use of technology, including circulating details/photos/videos etc of the offence on social media to record, publicise or promote cruelty~~
- Ignores warning/professional advice/declines to obtain professional advice
- ~~Use of another animal to inflict death or injury~~
- Offender in position of **professional** responsibility **for animal**
- Animal requires significant intervention to recover
- ~~Animal being used in public service or as an assistance dog~~

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity ~~where it affects the responsibility of the offender~~
- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Offender has been given an inappropriate level of trust or responsibility
- Voluntary surrender of animals to authorities
- Cooperation with the investigation
- Isolated incident

Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

Step 5 – Totality principle

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

Step 6 – Compensation and ancillary orders

In all cases, the court should consider whether to make compensation and/or other ancillary orders including deprivation of ownership and disqualification of ownership of animals.

- Ancillary orders – Magistrates' Court

Step 7 – Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 8 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

Animal Cruelty

Animal Welfare Act 2006, s.4 (unnecessary suffering), s.5 (mutilation), s.6 (docking of dogs' tails), s.7 (administration of poisons etc), s.8 (fighting etc)

Effective from: XXXXXXXXX

Triable either way

Maximum: 5 years' custody

Offence range: Band A fine – 3 years' custody

Step 1 – Determining the offence category

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

Culpability demonstrated by one or more of the following

The court should weigh all the factors set out below in determining the offender's culpability. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

<p>A High Culpability</p>	<ul style="list-style-type: none"> • Prolonged and/or multiple incidents of serious cruelty, [serious neglect?] and/or sadistic behaviour • Use of very significant force • Leading role in illegal activity • A category B offence may also be elevated to category A by – <ul style="list-style-type: none"> ○ the extreme nature of one or more factors ○ the extreme impact caused by a combination of factors
<p>B Medium culpability</p>	<ul style="list-style-type: none"> • Deliberate or gratuitous attempt to cause suffering • Prolonged and/or multiple incidents of cruelty or neglect • Use of significant force • Ill treatment in a commercial context • Deliberate disregard for the welfare of the animal (including failure to seek treatment) • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> - Factors are present in A and C which balance each other out and/or - The offender's culpability falls between the factors as described in A and C

C Lower culpability	<ul style="list-style-type: none"> • Well intentioned but incompetent care • Momentary or brief lapse in judgement • Involved through coercion, intimidation or exploitation. • Mental disorder or learning disability, where linked to the commission of the offence
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Harm demonstrated by one or more of the following

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

Category 1	<ul style="list-style-type: none"> • Death (including injury necessitating euthanasia) • Particularly grave or life-threatening injury or condition caused • Very high level of pain and/or suffering caused
Category 2	<ul style="list-style-type: none"> • Offence results in an injury or condition which has a substantial and/or lasting effect (including cases of tail docking, ear clipping and similar forms of mutilation) • Substantial level of pain and/or suffering caused
Category 3	<ul style="list-style-type: none"> • Little or no physical, developmental harm or distress • All other levels of pain and/or suffering

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by a combination of high culpability factors or significant numbers of animals, could merit upward adjustment from the starting point, before further adjustment for aggravating or mitigating features, set out below, and may attract a sentence higher than the category range

	High culpability	Medium culpability	Low culpability
High harm	Starting point 18 months' custody	Starting point 26 weeks' custody	Starting point Low level community order
	Category range 26 weeks' custody – 3 years' custody	Category range 18 weeks' – 12 months' custody	Category range Band B fine – Medium level community order
Medium harm	Starting point 26 weeks' custody	Starting point 12 weeks' custody	Starting point Band C fine
	Category range 18 weeks' – 12 months' custody	Category range Medium level community order – 26 weeks' custody	Category range Band B fine – Low level community order

Low harm	Starting point 12 weeks' custody	Starting point Medium level community order	Starting point Band B fine
	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – High level community order	Category range Band A fine – Band C fine

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

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the owner/keeper of the animal: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors

- Distress caused to owner where not responsible for the offence
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Significant number of animals involved
- Use of a weapon
- Allowing person of insufficient experience or training to have care of animal(s)
- Use of technology, including circulating details/photos/videos etc of the offence on social media to record, publicise or promote cruelty
- Ignores warning/professional advice/declines to obtain professional advice
- Use of another animal to inflict death or injury
- Offender in position of professional responsibility for animal
- Offence committed in the presence of other(s), especially children
- Animal requires significant intervention to recover
- Animal being used in public service or as an assistance dog

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment

- 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 relatives
- Offender has been given an inappropriate level of trust or responsibility
- Voluntary surrender of animals to authorities
- Cooperation with the investigation
- Isolated incident

Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) 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 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

Step 5 – Totality principle

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

Step 6 – Compensation and ancillary orders

In all cases, the court should consider whether to make compensation and/or other ancillary orders including deprivation of ownership and disqualification of ownership of animals.

- Ancillary orders – Magistrates' Court
- Ancillary orders – Crown Court Compendium

Step 7 – Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 8 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

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

17 December 2021
SC(21)DEC06 – Underage sale of knives
Jo King
Ruth Pope
ruth.pope@sentencing.council.gov.uk

1 ISSUE

1.1 At the October meeting the Council agreed to develop two guidelines for underage sale of knives, one for individuals and one for organisations. It was also agreed that we should work with Trading Standards in developing the guidelines.

1.2 In November we held a very helpful meeting with Trading Standards officers and their input has been fed into the proposals in this paper.

1.3 This meeting will cover the guideline for organisations – the guideline for individuals will be considered at the March meeting, where it is hoped both guidelines can be signed off for consultation. A draft guideline for organisations is provided at **Annex A**.

2 RECOMMENDATION

2.1 The Council is asked to consider the guideline for organisations and:

- Agree culpability factors
- Agree to having just one level of harm
- Agree sentence levels
- Agree the approach to confiscation and compensation
- Agree aggravating and mitigating factors

3 CONSIDERATION

Information from Trading Standards

3.1 The trading standards officers who joined the working group explained how prosecutions generally arise. One issue they face is that (in England and Wales) there is no system of licensing or registering retailers who sell knives so they do not always know who is selling them. This is particularly an issue for online sales. Trading standards have little or no direct information about underage sales and so rely on test purchases. Practice varies between different local authority areas but some will warn retailers 90 days in advance that they will be subject to test purchases. Prior to these taking place retailers may be visited and given advice as to the adequacy of the measures they have in place and may be offered

training. If retailers do not take up the offer of training that may lead to them being the focus of further scrutiny and test purchases. Online retailers may also be warned before test purchasing takes place. For online sales the picture is complicated by the fact that individual trading standards departments only have responsibility for businesses based within their own local authority area. Therefore, if a test purchase is carried out by one local authority, they may then have to pass the information to another to consider what action to take as a result. If a test purchase results in an underage sale a prosecution will not always follow – consideration will be given to factors such as past history and willingness to rectify procedures, training etc. In London retailers may be invited to sign up to a [responsible retailer agreement](#) and if a business does not engage with this process a prosecution is more likely to result.

Culpability

CULPABILITY
<p>High</p> <ul style="list-style-type: none"> • Offender failed to put in place standard measures to prevent underage sales - <ul style="list-style-type: none"> ○ For in store sales standard measures would normally include: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, maintaining refusals log, till prompts ○ For online sales standard measures would normally include: identifying restricted products, use of a reliable online age verification tool and/or collect in-store policy with checks on collection. • Offender failed to act on concerns raised by employees or others • Falsification of documents • Offender failed to make appropriate changes following advice and/or prior incident(s)
<p>Medium</p> <ul style="list-style-type: none"> • Systems were in place but these were not sufficiently adhered to or implemented • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> ○ Factors are present in A and C which balance each other out and/or ○ The offender’s culpability falls between the factors as described in A and C
<p>Low</p> <ul style="list-style-type: none"> • Offender made significant efforts to prevent underage sales falling short of a defence

3.2 The proposed culpability factors are largely the same as those considered at the October meeting with the addition of ‘Falsification of documents’ as a high culpability factor. The examples that are given to assist the sentencer to identify the relevant standards cover the points made by trading standards at the working group meeting. One potential issue is that there are more factors in high culpability than medium or low. In practice a prosecution

is highly unlikely to be brought in a case that would fall into low culpability which is set as cases falling just short of the statutory defence.¹ Nevertheless there is still value in having three levels of culpability to provide context and balance to the factors in high and medium.

Question 1: Does the Council agree to consult on the culpability factors at Annex A?

Harm

3.3 As discussed at the October meeting, harm for this offence is almost always the risk of harm (as the overwhelming majority of prosecutions relate to test purchases). The Council thought that the age of the purchaser was not a relevant factor and was unsure as to what factors might be appropriate. Consideration was given by the working group to the type or size of knife or blade but, while a larger knife might be seen as capable of causing greater harm, a smaller one could be more easily concealed and may pose a greater risk for that reason. The working group came to the conclusion that there was no meaningful way of distinguishing levels of harm for this offence and therefore only one level is proposed.

3.4 Some wording will be required to explain to guideline users why there is only one level of harm. The suggestion is:

HARM

The harm caused by this offence relates to the risks associated with children and young people being in possession of knives. There is just one level of harm, as same level of harm is risked by any such sale to a person aged under 18.

3.5 Any factor that could in rare cases indicate raised harm (such as subsequent use of the weapon) could be considered at step 2.

Question 2: Does the Council agree to consult on having only one level of harm? If so, is the proposed wording right?

Sentence levels

3.6 The majority of these offences are punished by way of a fine. Of 46 organisations sentenced in 2019, one was sentenced to a discharge and 45 were fined.

3.7 For organisations in 2019, the range of fine amounts was £276 to £50,000 (the mean was £5,585 and the median £2,000). All of these fine amounts are after any reduction for a guilty plea.

¹ (4) It shall be a defence for a person charged with an offence under subsection (1) above to prove that he took all reasonable precautions and exercised all due diligence to avoid the commission of the offence.

3.8 There are three existing guidelines for organisations which may provide useful comparators ([health & safety](#), [food safety](#), [environmental](#)). As with these guidelines which apply to organisations of widely varying sizes, the suggested approach to sentence levels is to have four sentence tables: for micro, small, medium and large organisations.

3.9 **Annex C** contains a comparison of sentence levels across the three existing guidelines for what might be considered to be an equivalent level of offending. It is relevant to note that while the maximum fine is unlimited for all of the offences, the underage sale offence has a maximum of six months' imprisonment whereas the other three carry a maximum of two years. Based on the deemed equivalent level of offending, none of the comparator sentences would exceed the maximum of six months for individuals. The Council may feel, therefore, that sentence levels for organisations could justifiably be set at levels comparable to the other guidelines.

3.10 The lack of information about cases sentenced in magistrates' courts makes it difficult to draw conclusions from current sentencing practice. The evidence that we do have from trading standards suggests that without a guideline sentencing practice is inconsistent. One of the motivations for developing guidelines for this offence is to ensure that fines are proportionate particularly in the case of larger companies which would lead to increased fines in some cases.

3.11 The largest fine we are aware of is B&M Retail Limited which has a turnover in excess of £2 billion and was fined £480,000 following guilty pleas to three offences. Before guilty pleas the fines were: £200,000, £220,000 and £300,000, all consecutive. The sentencing remarks of District Judge (MC) Lucie are provided at **Annex B** and show that the judge assessed the offences as being at the high end of medium culpability and obtained some assistance from the [Organisations: Breach of food safety and food hygiene regulations](#) guideline in arriving at the fine levels. The overall fine after plea was subsequently reduced on appeal to £330,000 on the basis that the offending company had subsequently brought in additional measures to prevent a recurrence.

3.12 The proposed sentence levels at **Annex A** (and below) broadly reflect the sentence levels in the food safety guideline for large and medium organisations using harm level 2 from that guideline. This takes a lower level of harm than that considered by DJ(MC) Lucie but is still likely to result in higher fines overall than are currently imposed. The proposed fine levels for small and micro organisations are lower than those in the food safety guideline to reflect a penalty that is a similar proportion of turnover. The starting points for medium culpability are half that for high and the starting points for low culpability are around a quarter of that for medium. The ranges allow for some overlap between high and medium culpability.

Large organisation - Turnover or equivalent: £50 million and over

Culpability		
A	B	C
Starting point £250,000	Starting point £100,000	Starting point £25,000
Category range £100,000 – £500,000	Category range £50,000 – £250,000	Category range £10,000 – £50,000

Medium organisation - Turnover or equivalent: between £10 million and £50 million

Culpability		
A	B	C
Starting point £100,000	Starting point £50,000	Starting point £12,000
Category range £50,000 – £250,000	Category range £25,000 – £100,000	Category range £5,000 – £25,000

Small organisation - Turnover or equivalent: between £2 million and £10 million

Culpability		
A	B	C
Starting point £20,000	Starting point £10,000	Starting point £2,000
Category range £10,000 – £50,000	Category range £5,000 – £20,000	Category range £1,000 – £5,000

Micro organisation - Turnover or equivalent: not more than £2 million

Culpability		
A	B	C
Starting point £5,000	Starting point £2,000	Starting point £500
Category range £2,000 – £20,000	Category range £1,000 – £5,000	Category range £200 – £1,000

3.13 The sentence levels should be considered in the context of step 3 – Adjustment of fine, that requires the court to check that the fine meets the objectives of the removal of all gain, appropriate additional punishment, and deterrence in a fair way taking into account the size and financial position of the offending organisation and the seriousness of the offence. This allows for considerable flexibility in the setting of the fine.

Question 3: Are the proposed sentence levels appropriate?

3.14 Another issue for consideration is whether (in common with other guidelines for offences committed by organisations) this guideline should have confiscation and compensation as steps 1 and 2 or whether any mention should be made of these orders in the guideline. Technically both are available, but in practice they are not used. It is difficult to envisage a situation where compensation would be relevant. The prosecution could apply for confiscation (and the case could then be committed to the Crown Court under section 70 of the Proceeds of Crime Act 2002) but having checked with trading standards it is not something that they consider for this offence.

3.15 As it stands, the guideline does not include any reference to compensation or confiscation (including at step 3, where in other guidelines the court is asked to consider the fine in the context of other financial orders).

Question 4: Should the guideline refer to compensation and confiscation? If so, should this be in separate steps 1 and 2 as with other guidelines for organisations?

Aggravating and mitigating factors

3.16 The aggravating and mitigating factors are those considered at the October meeting with the removal of 'falsification of documents' which is now a culpability factor and the inclusion of 'Supply causes or contributes to antisocial behaviour' which had previously been a harm factor.

Question 5: Are the aggravating and mitigating factors the right ones?

4 IMPACT AND RISKS

4.1 Offences committed by organisations are sentenced by way of a fine and so there will not be any impact on prison and probation resources from this guideline. Once the Council has agreed the sentence levels, some work can be done to estimate the likely increase in fine amounts from the guideline and this can be considered by the Council before sign off for consultation.

Sale of knives etc to persons under eighteen - Organisations

Criminal Justice Act 1988, s141A

Effective from: TBC

Triable only summarily

Maximum: unlimited fine

Offence range:

Use this guideline when the offender is an organisation. If the offender is an individual please refer to the **Sale of knives etc to persons under eighteen – individuals** guideline.

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Step 1 – Determining the offence category

The court should determine the offender’s culpability and the harm caused with reference **only** to the factors below.

CULPABILITY
<p>High</p> <ul style="list-style-type: none"> • Offender failed to put in place standard measures to prevent underage sales - <ul style="list-style-type: none"> ○ For in store sales standard measures would normally include: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, maintaining refusals log, till prompts ○ For online sales standard measures would normally include: identifying restricted products, use of a reliable online age verification tool and/or collect in-store policy with checks on collection. • Offender failed to act on concerns raised by employees or others • Falsification of documents • Offender failed to make appropriate changes following advice and/or prior incident(s)
<p>Medium</p> <ul style="list-style-type: none"> • Systems were in place but these were not sufficiently adhered to or implemented • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> ○ Factors are present in A and C which balance each other out and/or ○ The offender’s culpability falls between the factors as described in A and C
<p>Low</p> <ul style="list-style-type: none"> • Offender made significant efforts to prevent underage sales falling short of a defence

HARM

The harm caused by this offence relates to the risks associated with children and young people being in possession of knives. There is just one level of harm, as same level of harm is risked by any such sale to a person aged under 18.

Step 2 – Starting point and category range

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

Very large organisation

Where an offending organisation's turnover or equivalent very greatly exceeds the threshold for large organisations, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

Large organisation - Turnover or equivalent: £50 million and over

Culpability		
A	B	C
Starting point £250,000	Starting point £100,000	Starting point £25,000
Category range £100,000 – £500,000	Category range £50,000 – £250,000	Category range £10,000 – £50,000

Medium organisation - Turnover or equivalent: between £10 million and £50 million

Culpability		
A	B	C
Starting point £100,000	Starting point £50,000	Starting point £12,000
Category range £50,000 – £250,000	Category range £25,000 – £100,000	Category range £5,000 – £25,000

Small organisation - Turnover or equivalent: between £2 million and £10 million

Culpability		
A	B	C
Starting point £20,000	Starting point £10,000	Starting point £2,000
Category range £10,000 – £50,000	Category range £5,000 – £20,000	Category range £1,000 – £5,000

Micro organisation - Turnover or equivalent: not more than £2 million

Culpability		
A	B	C
Starting point £5,000	Starting point £2,000	Starting point £500
Category range £2,000 – £20,000	Category range £1,000 – £5,000	Category range £200 – £1,000

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

Factors increasing seriousness**Statutory aggravating factors:**

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

Other aggravating factors:

- Offence was a consequence of cost-cutting
- Obstruction of justice
- Failure to take up offers of training or other assistance from Trading Standards
- Supply causes or contributes to antisocial behaviour

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Evidence of steps taken voluntarily to prevent re-occurrence
- High level of co-operation with the investigation and acceptance of responsibility
- Good record of compliance with Trading Standards

Obtaining financial information [Dropdown box]

Step 3 – Adjustment of fine

Having arrived at a fine level, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine including outside the category range. The court should ‘step back’ and consider the overall effect of its orders. The fine ought to achieve:

- the removal of all gain
- appropriate additional punishment, and

- deterrence

The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the size and financial position of the offending organisation and the seriousness of the offence.

The fine must be substantial enough to have a real economic impact which will bring home to both management and shareholders the need to operate within the law. Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

In considering the ability of the offending organisation to pay any financial penalty the court can take into account the power to allow time for payment or to order that the amount be paid in instalments.

The court should consider whether the level of fine would otherwise cause unacceptable harm to third parties.

Below is a **non-exhaustive** list of additional factual elements for the court to consider.

The court should identify whether any combination of these, or other relevant factors, should result in a proportionate increase or reduction in the level of fine.

Factors to consider in adjusting the level of fine

- Fine fulfils the objectives of punishment, deterrence and removal of gain
- The value, worth or available means of the offender
- Impact of fine on offender's ability to implement effective compliance programmes
- Impact of fine on employment of staff, service users, customers and local economy (but not shareholders)
- Impact of fine on performance of public or charitable function

Step 4 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) 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 5 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

Step 6 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

Step 7 – Compensation and ancillary orders

The court should consider whether to make any ancillary orders.

- [Ancillary orders – Magistrates' Court](#)

Step 8 – Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

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JUDICIARY OF
ENGLAND AND WALES

District Judge (MC) Gary Lucie

IN THE BARKINGSIDE MAGISTRATES' COURT
BETWEEN:

LONDON BOROUGH OF BARKING AND DAGENHAM

&

LONDON BOROUGH OF REDBRIDGE

Prosecution

-v-

B & M RETAIL LTD

Defendant

**SENTENCING
REMARKS**

Hearing: 31st August 2018

P: Mr McNally

D: Mr Jessop

The charges

1. B & M Retail Ltd (“B&M”) pleaded guilty at the first opportunity to 3 offences of selling knives to persons under 18 yrs of age contrary to s 141A(1) Criminal Justice Act 1988 (as amended). The offences are summary only and carry a maximum sentence of 6 mths imprisonment or an unlimited fine or both.

The facts

2. B&M, is a company with a very large turnover and operates over 500 stores across the UK. The charges relate to two separate retail premises operated by B&M in Goodmayes and Vicarage Fields on 3 separate dates. The dates of the offences and relevant store involved are as follows:
 - (a) 19 September 2017 - Goodmayes Store in Redbridge;
 - (b) 21 September 2017 - Vicarage Fields Store in Barking;
 - (c) 18 January 2018 - Vicarage Fields Store in Barking.
3. Both stores fall within the sphere of responsibility of the same area manager, Mr Shaun Nightingale.
4. The very detailed facts of the case are to be found in full in the “Sentencing Note” prepared by Mr McNally for the prosecution. There is no dispute about those and I need not, therefore, repeat them in full or make findings of fact I will summarise each below.

19th September 2017 (Goodmayes)

5. On 19th September 2017, at about 19:55 the store at Goodmayes Retail Park was visited as part of a planned test purchase inspection programme. The test was of the sale of knives to underage persons. The inspection was police-led owing to concerns about the availability of knives, and what they considered to be the prevalence of their use in crime locally.
6. The terms of deployment for these test purchase volunteers was that they were to tell the truth if asked their ages; but if asked for identification they were to say that they do not have any.
7. In this instance the two volunteers were a male aged 15 and a female aged 14. The male was 1m 90 tall, and the female 1m 55. The two underage volunteers went into the store for about 10 minutes. They passed through the store together and one purchased a set of knives and sweets. The transaction was observed by an undercover police officer and no inquiry was made as to their

age, nor was any request made for proof of age identification. The volunteers left and surrendered the knives they had bought. The knife set was seized.

8. I have seen photos of the knife set and it contains 4 very sharply pointed knives ranging in size from a small paring knife to a large carving knife and also a pair of scissors and the ticket price is £5.99.
9. The matters were investigated, and the company attended a PACE interview through Mr Shaun Nightingale, the area manager. Mr Nightingale explained his background with the company and the measures they take to avoid the commission of age-related sales offences. He identified:
 - (a) Challenge 25 (if someone looks under 25 they should be asked for ID);
 - (b) Till prompt (which must be answered yes or no by the cashier or the transaction does not progress);
 - (c) Challenge 25 signage on alcohol and in the kitchen aisle, a poster on the wall near the tills (it is supposed to be as close to the till as possible), and cards highlighting challenge on knives and blades around the store.
10. Mr Nightingale said that the company discussed its failings (and he did so in his meetings with store managers). He thought that sometimes people confused the age (18) with the age that the company should challenge to (25). Mr Nightingale was expressly conscious of the social need for such a policy stating:

“One of the things from my background, is about the understanding of confidence. I have two children myself, I have brothers that have children and what I always tell the staff is it’s about getting the reassurance from the public as well. So, mums and dads do have children coming in at 16-17 years old under the influence, especially in London we’ve got the knife crime etc and how would they feel under that situation and if you’re in the back of the queue how are you perceived if you’re not being ID’d, even if they are 21, even if you know them. I really influence my staff to ask every single person, if they know them or not.”
11. Mr Nightingale said that since the incident he had put up an additional POS and was getting the store manager to positively include it in the daily ‘huddle’ as well as reminding cashiers of Challenge 25 when assigning duties each day.

He thought it needed to be kept 'live' every day of every week even if they did the training every three months. Mr Nightingale was asked about the warning letter issued following a failed test purchase at that same store on 25 October 2016. He said that he was aware of it. He did not dispute it had happened. He stated that the Company knew the law relating to age-related sales.

21st September 2017, Vicarage Fields

12. A test-purchase was conducted at the Vicarage Fields by a sixteen-year-old male volunteer accompanied covertly by a Police Officer went into the store at about 16:15 that day. About three minutes later the volunteer exited having purchased a 3-piece knife set which was seized. (The packaging was dated and suggested an age restriction of 21 the stock may have been recycled for sale). Trading Standards Officers then entered the store and the matter was further investigated.
13. Again, I have seen photos of the knife set and it contains 3 very sharply pointed knives ranging in size from a small paring knife to a large chopping knife the ticket price is £5.99.
14. Mr Nightingale was formally interviewed in respect of this offence and he, again, set out B&M's procedures and identified what had gone wrong. He also described, in detail, how staff were trained. He also confirmed he was aware of an unlawful sale having taken place at this store in April 2016 (before he assumed responsibility for the area). The steps that were taken then would have been done by the then area manager. He (Mr Nightingale) had been a store manager and knew that the store manager needed to talk about it and reinforce the message increasing it around school holidays, around Christmas as these were the times you saw increases. He would try to keep it as 'live as possible'.

19th January 2018, Vicarage Fields

15. On 18 January 2018 a test purchase was undertaken by the London Borough of Barking and Dagenham. A 14-year-old male volunteer was deployed to conduct a test purchase of a knife. He did so at the Vicarage Fields B&M Home Store, witnessed by a plain-clothes Police Officer. During the transaction he noted that the till operator was talking to a person behind the volunteer and did not

pay him attention or ask for identification. A packet of three knives was sold to the volunteer. The knives were seized, and Trading Standards Officers entered the store shortly afterwards. It was noted that the knives bore a 'challenge 21' marking on the reverse (old stock). The knives were the same type as those bought on 29th September 2017.

16. As before, the matters were investigated and Mr Nightingale, on behalf of B&M was interviewed in February 2018. He confirmed upon sight of a picture that the volunteer appeared underage, and that the boy was in fact 14. He could produce training records etc. During this interview, Mr Nightingale was asked whether the use of secure cabinets for display of knives had been contemplated. He said it had been discussed but could not say that it was something they were looking to do. He was asked whether they had 'sale cards' (where the product is not displayed but the purchaser takes a card to the till and is given the product from behind the counter). He said no but confirmed some high value items, like fragrances, were kept in cabinets.
17. Mr Nightingale said that he was looking to improve the training programme and materials. He had also asked Head Office suggesting that they instigate a third-party test purchase programme. They had not got back to him.

Mitigation

18. Mr Jessop provided a detailed note regarding mitigation which he supplemented with submissions before me. I was also supplied with a written statement of Simon Arora who is the CEO of B&M, a position he has held since 2004, and a bundle of documents setting out the revised training material given to staff and amended packaging re-enforcing the "Challenge 25" policy. In that he explained that B&M has been trading since 1978 and there are now 569 stores the UK. The company sells 20,000 different products at any one time with 4 million shoppers served on average per week or 208 million shoppers per year.
19. Mr Arora says, "I am conscious about how serious an issue knife crime is at present, particularly in London and the South East". He goes on to explain the procedures in place to avoid underage sales including training, Challenge 25, signage, till prompts, daily huddles etc. He also explains how the company co-operates with local authorities and what subsequent action has been taken to

prevent underage sales. He highlights the fact that the company has passed other test-purchases in other areas (including in Northants in February 2018) and says the company is very regretful. Finally, he invites the court to conclude that, “...the issues identified were specific to these stores and not an indication of the position across the entire B&M estate.”)

20. I have, of course, taken into account Mr Jessop’s submissions and the statement of Mr Arora and bundle of materials in determining the sentence in this case.

Approach to sentence

21. There are no definitive guidelines for these offences. Nor are there any reported cases of any higher courts. P invited me to use the Health & Safety etc Guideline but B&M objected to this citing the case of ***Price v Cheshire East BC [2012] EWHC 2927 (Admin)*** in which it was held that where there were no definitive guidelines specific to the offence in question, it would only be appropriate to have regard to guidelines for other offences if they were truly analogous or of a similar level of seriousness. In this case, Mr Jessop pointed out that most of health and safety / food hygiene offences were “either way” whereas the instant offences are summary only.

22. Whilst I accept that I should not use the starting points set out in the guidelines both P and B&M agreed that I should adopt the same general *approach* in the guidelines to sentencing by reference to culpability, harm and the aims of sentencing set out within them.

23. Mr Jessop referred me to a number of first instance decisions where the highest fine imposed was £20,000 at Lavender Hill Mags Ct in March 2018. I indicated that they were clearly not binding on this court and I am not bound by them. I do not have the reasoning of any of those courts in any event. The LCJ in ***R v Kenneth Thelwall [2016] EWCA Crim 1755*** said it was impermissible for advocates to refer to newspaper or other media reports dealing with similar cases at first instance. I have not, therefore, taken any of those cases into account in setting the fines in this case.

Culpability

24. By reference to the guideline P submits that the appropriate category is “medium” culpability whereas B&M submits that culpability is at the “lower end of the spectrum”.
25. I have decided that culpability is properly assessed as the top end of medium. Clearly, these offences were not deliberate nor were there serious or systemic failures within the organisation regarding the underage sales of knives. However, it appears to me that whilst systems were in place they were deficient and not sufficiently adhered to or implemented at these stores. The volunteers were as young as 14 which is a long way short of 18 and substantially less than B&M’s own Challenge 25 policy. In each case there were inadequacies in the training and refresher training of staff and other faults with labelling and signage.
26. One of the most concerning failures is that B&M did not consider and implement further measures for these stores in what it accepts are high risk areas. These could have involved putting knives in cabinets and/or using a card system of the type described above. This puts the knives beyond the reach of anyone and, in my view, (and that of P) make the process of challenging age much more effective. If it can be done for expensive items such as perfume it can equally be done for knives. I asked why this was what not done at these stores and was told that this would now be considered.
27. Furthermore, these failings could not be properly considered as minor nor isolated – there were 3 offences in a 5-month period at 2 different stores. There had also been a sale at the of a knife to an under 18 at the Vicarage Fields Store relatively recently on 24th April 2016 for which B&M was cautioned. I consider B&M fell short of the appropriate standard in a way that falls between low and high culpability and, as I stated above, I have therefore concluded that culpability is at the top end of medium.

Harm

28. The assessment of risk is more difficult and does not fall neatly within the guideline. P and B&M submit that the connection between the offence and the risk of harm is more remote than in health & safety cases. B&M points out that all the sales were to test purchasers and so the actual risk was very low (in fact it was zero). That, however, ignores the fact that sales were made to underage

buyers and B&M's employees clearly had no idea that this was a test purchase. Whilst there is no direct evidence of sales of knives to genuine purchasers, the real question is, what if they had been? What was the risk of harm if these were not test-purchasers?

29. The stark fact is that knife crime is at record levels across the country, particularly in London. A briefing paper by the House of Commons Library entitled, "Knife crime in England and Wales" (number SN4304, 25 June 2018) provides a summary of widely available and uncontroversial statistics regarding crimes recorded involving the use of a knife or other blade. The summary is sobering:

- (a) Recorded crime: In the year ending March 2017 there were 34,700 (selected) offences involving a knife or sharp instrument in E & W. The highest in 7 yrs. [Note: The Office for National Statistics published the most recent data showing that in the year ending March 2018 this figure had risen to 40,147 a further rise of 16%];
- (b) Homicide: In 2016/17 there were 215 homicides currently recorded using a sharp instrument, including knives and broken bottles, accounting for 30% of all homicides;
- (c) Knife crime by police force: London recorded the highest rate of 137 offences involving a knife per 100,000 population in 2016/17, an increase of 23 offences from 2015/16. Surrey had the lowest rate at 4 offences per 100,000 individuals (down 2 from 2015/16). [Later in the report, at Tab A4b, Redbridge is shown as having the 15th highest rate of knife crime of the London Boroughs (32 in all) and Barking and Dagenham as the 17th in 2016/17];
- (d) Proven offences and offenders: In the year ending March 2018, there were 21,044 disposals given for the possession of a knife or other offensive weapon. Juveniles (ages 10-17) accounted for 21% of cases;
- (e) Hospital admissions: There were 4,434 finished consultant episodes recorded in English hospitals in 2016/17 due to assault by a sharp object. An increase of 7.6% compared to 2015/16 and 21.7% higher than 2014/15.

30. Whilst B&M cannot, of course, be held responsible for those offences the statistics reinforce the policy behind the prohibition of sales to persons under 18. Whilst it might be argued that offenders can obtain knives easily (e.g. from the kitchen drawer at home) that, in my view, is not to the point. Retail premises are a source of knives to which Parliament clearly intended juveniles should not have access. Further, it made the punishment for the offence serious by making it both imprisonable and/or attracting an unlimited fine.
31. The offences are, in my view, very serious. The gravamen of the offence appears to me to be that the sale of knives to under 18s facilitates the commission of offences by them. Not just the obvious offences regarding the use or threatened use of the knife but also if a juvenile buys a knife for an unlawful purpose then the moment he leaves the shop he commits an offence under s139(1) of the Criminal Justice Act 1988 exposing him to a maximum penalty in the Youth Court of up to 2 years detention and training (4 yrs for an adult). The starting point for a youth aged 15 in these circumstances is a “custodial sentence” (in reality, a minimum sentence of a 4 mths detention - see Bladed Articles and Offensive Weapons Definitive Guideline).
32. The potential “harm” is therefore not just the risk that the knife would be used in a crime but to the young purchaser of a knife who will be at risk of a custodial sentence having left the shop unless he could prove he had the knife with him for a “good reason or with lawful authority”. Young people themselves are particularly vulnerable and should simply not have access to knives from shops, not just for the protection and safety of society at large but for their own.
33. For these reasons, I take the view that the selling of a knife to a juvenile will inevitably involve a high risk of harm.

Starting point

34. Without a definitive guideline it is necessary to apply some basic principles when approaching the starting point for a fine in a case like this. S 164 Criminal Justice Act 2003 requires the court, when fixing the amount of a fine, to:
- (a) Enquire into the financial circumstances of the offender;
 - (b) Consider the seriousness of the offence;

- (c) Take into account the financial circumstances of the offender in deciding whether to increase or reduce the amount of the fine.
35. The fine must also meet the objectives of punishment, the reduction of offending through deterrence and removal of gain derived through the commission of the offence. In relation to an organisation the fine must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to operate within the law.
36. I was provided with accounts covering 2015 to 2017. I am somewhat surprised that the most recent accounts filed on 2nd August 2018 were not brought to my attention at the sentencing hearing. No doubt this was inadvertent but as they are public documents I have had regard to the latest accounts in assessing the financial means of B&M.
37. In those accounts, to 31 March 2018, the revenue of the company (turnover) was just over £2.6 billion with profit for the period being approx. £195 million. The total comprehensive income for the period was just over £181 million (a weekly net profit of £3.48 million). Healthy dividends were paid in March 2018 of £55 million and in November 2017 of £23 million. All figures were up on the year ending March 2017.
38. If I were applying the definitive guideline B&M would be a “very large organisation” because it’s turnover very greatly exceeds the threshold for large organisations (£50 million) and it “may be necessary to move outside the suggested range to achieve a proportionate sentence”.
39. Mr Jessop urged me not to focus too heavily on the finances of the company but to bear in mind that I am required to consider seriousness and proportionality in setting the fines. Whilst I accept those submissions, I take the view that these are serious offences and I must also have regard to the other aims of sentencing that are particularly relevant to organisations. The fine must bring home to this company and others that they must ensure that the systems they have in place are robust and effective. The “weakest link” in any system is clearly the person who ultimately sells the knife at the till. It is, therefore, incumbent on companies to ensure that they do everything possible to train and assist those staff to recognise the issue and to be confident about asking for identification and refusing sales where necessary. That was clearly

what went wrong on these 3 occasions. The use of cabinets or display cards are measures that may well have helped prevent these sales.

40. I must have regard to the fact that these offences are summary only. However, it seems to me that I should set fines that will bring home to the management and shareholders of B&M of the need to comply with the law and to ensure that there is no recurrence. On one analysis, I could consider a Band C fine (150% of relevant weekly income). That would produce a fine of over £5 million but this is clearly not how the Sentencing Guidelines Council has approached the sentencing of organisations.
41. Whilst I cannot use the definitive guidelines I think I am entitled to look at the range of sentences within them to get a steer on what might be an appropriate starting point. The food safety guideline seems more appropriate in terms of being more akin to these offences. In which case, for a medium culpability offence for a large company, the starting point for harm category 1 would be £200k. That would require an appropriate uplift to reflect the fact that B&M is a very large organisation by moving to the top of the range (£500k) or beyond.
42. In my view, an appropriate starting point for each offence, considering the very large size of the organisation, top end of medium culpability, high risk of harm and so as to ensure that it fulfils the objectives of sentencing is £300k. That is just a starting figure and must be adjusted to take account of the aggravating and mitigating features identified below.
43. The following factors amount to aggravating features:
 - (a) Previous relevant conviction albeit of some age: Aug 2008 – Knowsley Mags Ct – sale of knife to juvenile - fined £1000 with £500 costs (note prior to 12th March 2015 the maximum sentence was £5000);
 - (b) Formal caution for selling knife to juvenile at Vicarage Fields store on 24th April 2016;
 - (c) Not isolated incident. 3 offences within 5 months, 2 at the same store, all within East London (although in terms of the national picture the number of proven failures is low).

44. The following matters reduce seriousness or reflect mitigation:

- (a) Significant procedures in place to prevent the sale of underage sales;
- (b) Proactive response and the taking of steps to prevent further underage sales occurring. Not a case of a company ignoring or failing to respond;
- (c) Full and active co-operation with P including voluntary attendance at PACE interviews;
- (d) Review of existing procedures at Board level.
- (e) Remorse in the way of an acceptance of and apology for the offending;
- (f) Evidence of successfully passing test-purchases at other stores.

The appropriate fines

45. Applying the Offences Taken into Consideration and Totality Definitive Guideline it appears to me that this is a case where consecutive fines ought to be imposed because the offences took place at separate times, at different stores and because of different failings at each store. Taking account of the aggravating and mitigating features identified above the appropriate fines are:

- (a) 19th September 2017 at Goodmayes – £200k - to reflect the substantial mitigation but also to reflect the previous conviction and more recent caution;
- (b) 21st September 2017 at Vicarage Fields – £220k – increased to reflect that this was committed only two days after the offence at Goodmayes and B&M should have been acutely alert to the issue but also reflecting that B&M had little chance to change systemic procedures during that time;
- (c) 18th January 2018 at Vicarage Fields – £300k - this offence is substantially aggravated by the commission of the previous two offences and has been increased accordingly to reflect that B&M had time to reflect and consider other options, including the use of cabinets or cards by the time this offence had been committed.

Guilty pleas

46. The guilty pleas were entered at the very first opportunity and B&M is entitled to full credit of 1/3rd and so the total fine will be reduced from a total of £720k to £480k.

Totality

47. I am obliged to consider totality. That is, whether the total sentence is one that is just and proportionate to the offending in accordance with the Offences Taken into Consideration and Totality Definitive Guideline. I am satisfied that the overall fine of £480k is just and proportionate in the circumstances. Whilst the overall fine may seem high it is well within B&M's ability to pay it and meets the seriousness of the case and the sentencing objectives set out above. It is approx. 1 days net profit for the company and as I have said, is well within its ability to pay it.

48. I hope that this fine will bring home to the management and shareholders of B&M and other retailers of knives of the need to ensure that none of their premises sell knives to youths. Had it not been for the substantial mitigation in this case, the relatively good record of the company and the early guilty pleas the fines would have been very much greater.

Costs

49. B&M indicated that it would not oppose the making of an order for costs in favour of P in the sum of £12,428.53.

Total financial penalty

50. I must apply the statutory surcharge of £170 and so the total financial penalty is, therefore, £492,598.53.

Application for criminal behaviour order

51. P applied for a criminal behaviour order and set out the reasons in its opening note (**paras 93 – 104**). This application was opposed by B&M for the reasons set out in the Mitigation Note (**paras 45 – 51**). I prefer the arguments of B&M.

On the evidence before me I cannot be satisfied beyond reasonable doubt that B&M has engaged in behaviour that caused or was likely to cause harassment, alarm or distress to any person. I am not satisfied that P have identified any person that was caused or was likely to be caused harassment etc. The suggestion that the Area Manager could be such a person because of what he said in interview cannot, in my view, be used to support the application, it is far too remote. The first condition is not satisfied and so I refuse to make a CBO.

52. Even if I took the view that the first condition was satisfied I would not consider that the making of the order would help the offender from engaging in such behaviour. These are strict liability offences (subject to the statutory defence) and B&M has shown it is aware of its responsibilities under the law, has procedures in place and is considering adopting further measures sought voluntarily at these stores.
53. I decline, therefore, to impose a CBO in the terms sought or at all.

**District Judge (MC) Lucie
21st September 2018**

Equivalent levels in other guidelines**Health & Safety**

Culp: High = fell far short of standard

Med = systems in place but not sufficiently followed

Low = did not fall far short of the appropriate standard

Harm: 3 = low likelihood of death OR medium likelihood of serious injury

Food Safety

Culp: High = fell far short of standard

Med = systems in place but not sufficiently implemented

Low = did not fall far short of the appropriate standard

Harm: 2 = med risk of some harm OR low risk or serious harm

Environmental

Culp: High = reckless failure to put in place and enforce systems

Med = negligent failure to put in place and enforce systems

Low = offence committed with little or no fault

Harm: 2 = risk of high harm

Large organisation - Turnover or equivalent: £50 million and over

Guideline	High	Med	Low
Health & Safety	£540,000 £250,000 – £1,450,000	£300,000 £130,000 – £750,000	£35,000 £10,000 – £140,000
Food Safety	£230,000 £90,000 – £600,000	£90,000 £35,000 – £220,000	£18,000 £9,000 – £50,000
Environmental	£250,000 £100,000 – £650,000	£140,000 £60,000 – £350,000	£25,000 £14,000 – £70,000

Medium organisation - Turnover or equivalent: between £10 million and £50 million

Guideline	High	Med	Low
Health & Safety	£210,000 £100,000 – £550,000	£100,000 £50,000 – £300,000	£14,000 £3,000 - £60,000
Food Safety	£90,000 £35,000 – £220,000	£35,000 £14,000 – £90,000	£7,000 £3,500 – £18,000
Environmental	£100,000 £40,000 – £250,000	£55,000 £25,000 – £140,000	£10,000 £5,500 – £25,000

Small organisation - Turnover or equivalent: between £2 million and £10 million

Guideline	High	Med	Low
Health & Safety	£54,000 £25,000 – £210,000	£24,000 £12,000 – £100,000	£3,000 £700 – £14,000
Food Safety	£24,000 £8,000 – £90,000	£8,000 £3,000 – £35,000	£1,400 £700 – £7,000
Environmental	£24,000 £10,000 – £100,000	£13,000 £6,000 – £55,000	£2,500 £1,000 – £10,000

Micro organisation - Turnover or equivalent: not more than £2 million

Guideline	High	Med	Low
Health & Safety	£30,000 £12,000 – £54,000	£14,000 £6,000 – £25,000	£1,200 £200 - £7,000
Food Safety	£12,000 £4,000 – £22,000	£4,000 £1,400 – £8,000	£500 £200 – £1,400
Environmental	£12,000 £1,500 – £24,000	£6,500 £1,000 – £13,000	£1,000 £350 – £2,400

Individuals

Guideline	High	Med	Low
Health & Safety	Band F fine Band E fine – 26 weeks' custody	Band E fine Band D fine or low level community order – Band E fine	Band C fine Band B fine – Band C fine
Food Safety	Band E fine Band D fine – 26 weeks' custody	Band D fine Band C fine – Band E fine	Band B fine Band A fine – Band B fine
Environmental	Band F fine Band E fine or medium level community order – 26 weeks' custody	Band E fine Band D fine or low level community order – Band E fine	Band C fine Band B fine – Band C fine