

Slavery, servitude and forced or compulsory labour

Modern Slavery Act 2015 section 1

Human trafficking

Modern Slavery Act 2015 section 2

Triable either way

Maximum: life imprisonment

Offence range: high-level community order – 18 years' custody

This is a serious specified offence for the purposes of sections 224 and 225(2) (life sentence for serious offences) of the Criminal Justice Act 2003. **[To be updated]**

These are offences listed in Part 1 of Schedule 15B for the purposes of section 224A (life sentence for second listed offence) of the Criminal Justice Act 2003. **[To be updated]**

These are specified offences for the purposes of section 226A (extended sentence for certain violent, sexual or terrorism offences) of the Criminal Justice Act 2003. **[To be updated]**

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

In assessing culpability, the court should weigh up all the factors of the case, including the offender's role, to determine the appropriate level. Where there are characteristics present which fall under different categories, or where the level of the offender's role is affected by the very small scale of the operation, 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"> • Leading role in the offending • Expectation of substantial financial or other material advantage • High degree of planning/premeditation • Use or threat of a substantial degree of physical violence towards victim(s) or their families • Use or threat of a substantial degree of sexual violence or abuse towards victim(s) or their families
B- Medium culpability	<ul style="list-style-type: none"> • Significant role in the offending • Involves others in the offending whether by coercion, intimidation, exploitation or reward • Expectation of significant financial or other material advantage • Some planning/premeditation • Use or threat of some physical violence towards victim(s) or their families • Use or threat of some sexual violence or abuse towards victim(s) or their families • Other threats towards victim(s) or their families and/or substantial psychological abuse • [OR] Psychological abuse and/or coercion beyond that inherent in the offending • Other cases falling between A and C because: <ul style="list-style-type: none"> ○ Factors in both high and lower categories are present 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"> • Engaged by pressure, coercion or intimidation, or has been a victim of slavery or trafficking related to this offence • Performs limited function under direction • Limited understanding/knowledge of the offending • Expectation of limited or no financial or other material advantage • Little or no planning/premeditation

HARM

Use the factors given in the table below to identify the Harm category. If the offence involved multiple victims **or took place over a significant period of time** sentencers may consider moving up a harm category or moving up substantially within a category range.

The assessment of harm may be assisted by available expert evidence, but may be made on the basis of factual evidence from the victim, including evidence contained in a Victim Personal Statement (VPS). Whether a VPS provides evidence which is sufficient for a finding of serious harm depends on the circumstances of the particular case and the contents of the VPS. **However, the absence of a VPS (or other impact statement) should not be taken to indicate the absence of harm.**

Loss of personal autonomy is an inherent feature of this offending and is reflected in sentencing levels. The nature of the relationship between offender and victim in modern slavery cases may mean that the victim does not recognise themselves as such, may minimise the seriousness of their treatment, may see the perpetrator as a friend or supporter, or may choose not to give evidence through shame, regret or fear.

Sentencers should therefore be careful not to assume that absence of evidence of harm from those trafficked or kept in slavery, servitude or in forced or compulsory labour indicates a lack of harm or seriousness. A close examination of all the particular circumstances will be necessary.

Category 1	<ul style="list-style-type: none"> • Exposure of victim(s) to high risk of death <p>A category 2 offence may also be elevated to category 1 by –</p> <ul style="list-style-type: none"> • The extreme nature of one or more factors • The extreme impact caused by a combination of factors
Category 2	<ul style="list-style-type: none"> • Exposure of victim(s) to high risk of death • Serious physical harm which has a substantial and/or long-term effect • Serious psychological harm which has a substantial and/or long-term effect • Substantial and long-term adverse impact on the victim's daily life after the offending has ceased • Victim(s) deceived or coerced into sexual activity
Category 3	<ul style="list-style-type: none"> • Some physical harm • Some psychological harm • Significant financial loss/disadvantage to the victim(s) • Exposure of victim(s) to additional risk of serious physical or psychological harm • Other cases falling between categories 2 and 4 because: <ul style="list-style-type: none"> ○ Factors in both categories 2 and 4 are present which balance each other out and/or ○ The level of harm falls between the factors as described in categories 2 and 4
Category 4	<ul style="list-style-type: none"> • Limited physical harm • Limited psychological harm • Limited financial loss/disadvantage to the victim(s)

STEP TWO**Starting point and category range**

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

Harm	Culpability		
	A	B	C
Category 1	Starting Point 14 years' custody Category Range 10 - 18 years' custody	Starting Point 12 years' custody Category Range 9 - 14 years' custody	Starting Point 8 years' custody Category Range 6 - 10 years' custody
Category 2	Starting Point 10 years' custody Category Range 8 - 12 years' custody	Starting Point 8 years' custody Category Range 6 - 10 years' custody	Starting Point 4 years' custody Category Range 3 - 7 years' custody
Category 3	Starting Point 8 years' custody Category Range 6 - 10 years' custody	Starting Point 6 years' custody Category Range 5 - 8 years' custody	Starting Point 2 years' custody Category Range 1 - 4 years' custody
Category 4	Starting Point 5 years' custody Category Range 4 - 7 years' custody	Starting Point 3 years' custody Category Range 1 - 5 years' custody	Starting Point 26 weeks' custody Category Range High level Community Order – 18 months' custody

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality* guideline and step six of this guideline.

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 in assessing culpability

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:

A1 – Offending took place over a long period of time (in the context of these offences, this is likely to mean months or years) where not taken into account at step 1

A2 – ~~Deliberate isolation of the victim, including s~~ Steps taken to prevent the victim reporting the offence or obtaining assistance ~~(above that which is inherent in the offence)~~

A3 – Deliberate targeting of ~~particularly vulnerable victims~~ ~~victim who is particularly vulnerable (due to age or other reason)~~

A4 – Victim's passport or identity documents removed

A5 – Gratuitous degradation of victim

A6 – Large-scale, sophisticated and/or commercial operation (where not taken into account at step 1)

A7 – Abuse of ~~a significant degree of~~ trust/responsibility

A8 – Substantial measures taken to restrain the victim

A9 – ~~Victim(s) under 18~~

Factors reducing seriousness or reflecting personal mitigation

M1 – No recent or relevant convictions

M2 – Offender has been a victim of slavery/trafficking, ~~whether or not in circumstances related to this offence (where not taken into account at step 1)~~ in circumstances ~~unrelated to this offence~~

M3 – Good character and/or exemplary conduct

M4 – Remorse

M5 – Sole or primary carer for dependent relatives

M6 – Age/lack of maturity

M7 – Mental disorder or learning disability

M8 – Physical disability or serious medical condition requiring urgent, intensive or long-term treatment

M9 - ~~Offender co-operated with investigation, made early admissions and/or voluntarily reported offending~~

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

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Dangerousness**

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

STEP SIX**Totality principle**

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

STEP SEVEN**Ancillary orders**

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders. The following are most relevant in modern slavery cases:

Slavery and trafficking prevention orders

Under section 14 of the Modern Slavery Act 2015, a court may make a slavery and trafficking prevention order against an offender convicted of a slavery or human trafficking offence, if it is satisfied that

- there is a risk that the offender may commit a slavery or human trafficking offence, and
- it is necessary to make the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the offender committed such an offence.

DROP-DOWN

- *The effect of a slavery and trafficking prevention order is set out in section 17 of the Modern Slavery Act 2015, the power to make such an order on convictions is contained in section 14 of the Act.*
- *An order can only be made if the court is satisfied that (i) there is a risk that the offender may commit a slavery or human trafficking offence and (ii) the order is necessary (not merely desirable or helpful) for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the offender committed such an offence. The Act does not require the court to apply any particular standard of proof.*
- *The risk that the offender may commit a slavery or human trafficking offence must be real, not remote, and must be sufficient to justify the making of such an order. In considering whether such a risk is present in a particular case, the court is entitled to have regard to all the information before it, including in relation to any previous convictions, or in relation to any previous failure to comply with court orders.*
- *In determining whether any order is necessary, the court must consider whether the risk is sufficiently addressed by the nature and length of the sentence imposed, and/or the presence of other controls on the offender. The court should consider the ability of a Chief Officer of Police to apply for an order if it becomes necessary to do so in the future.*
- *The criterion of necessity also applies to the individual terms of the order. The order may prohibit the defendant from doing things in any part of the United Kingdom, and anywhere outside the United Kingdom. These prohibitions must be both reasonable and proportionate to the purpose for which it is made. The court should take into account any adverse effect of the order on the offender's rehabilitation, and the realities of life in an age of electronic means of communication.*
- *The terms of the order must be clear, so that the offender can readily understand what they are prohibited from doing and those responsible for enforcing the order can readily identify any breach.*
- *The order can be for a fixed period of at least 5 years or until further order. The order may specify that some of its prohibitions have effect until further order and some for a fixed period and may specify different periods for different prohibitions.*
- *A draft order must be provided to the court and to all defence advocates in good time to enable its terms to be considered before the sentencing hearing.*

Slavery and trafficking reparation orders

Where a confiscation order has been made **by the Crown Court** under section 6 of the Proceeds of Crime Act 2002 the court may make a slavery and trafficking reparation order under section 8 of the 2015 Act, requiring the offender to pay compensation to the victim for any harm resulting from an offence under sections 1, 2 or 4 of that Act. In practice, the reparation will come out of the amount taken under the confiscation order. **In every eligible case, the court must consider whether to make a slavery and trafficking reparation order, and if one is not made the judge must give reasons.** However, a slavery and trafficking reparation order cannot be made if the court has made a compensation order under section 130 of the Powers of Criminal Courts (Sentencing) Act 2000. [\[Update\]](#)

Restraining order

Where an offender is convicted of any offence, the court may make a restraining order (section 360 of the Sentencing Code). The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence.

The order may have effect for a specified period or until further order.

Forfeiture

A court convicting someone on indictment of human trafficking under section 2 of the 2015 Act may order the forfeiture of a vehicle, ship or aircraft used or intended to be used in connection with the offence of which the person is convicted (see section 11 of the 2015 Act).

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail

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

Final Resource Assessment

Modern Slavery Offences

Introduction

This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.¹

Rationale and objectives for new guideline

There is currently no definitive guideline for sentencing offences under the Modern Slavery Act 2015. This Act covers the offences of holding someone in slavery, servitude, and forced or compulsory labour (section 1) and of trafficking for the purposes of exploitation (section 2). The Modern Slavery Act 2015 repealed and replaced several pre-existing trafficking and slavery offences, including:

- the Asylum and Immigration (Treatment of Claimants etc) Act 2004 (section 4);
- the Coroners and Justice Act 2009 (section 71); and
- the Sexual Offences Act 2003 (section 59A)

It also increased the maximum penalty for these offences from 14 years' imprisonment to life imprisonment.

Since the provisions relating to these offences came into force in July 2015, the Act has been the subject of two reviews. The first made a specific recommendation about the development of guidelines for these offences.² More recently, the Independent Review of the Modern Slavery Act 2015 also made mention of the forthcoming sentencing guidelines in its recommendation pertaining to Reparation Orders.³

The Sentencing Council agrees that it will be important to provide courts with clear guidance about the factors to take into account when sentencing modern slavery cases, especially given they are relatively new, and bearing in mind the serious and often long-lasting impact that this offending has on victims.

¹ Coroners and Justice Act 2009 section 127: www.legislation.gov.uk/ukpga/2009/25/section/127

² Conducted by barrister Caroline Haughey in 2016
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/542047/2016_07_31_Haughey_Review_of_Modern_Slavery_Act_-_final_1.0.pdf

³ Led by Baroness Elizabeth Butler-Sloss, Maria Miller MP and Frank Field MP, published in 2019
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guideline on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the following offences under sections 1 and 2 of the Modern Slavery Act 2015:

- Slavery, servitude, and forced or compulsory labour (section 1 of the Act)
- Trafficking for the purposes of exploitation (section 2 of the Act)

Section 4 of the Act (committing an offence with the intention of committing a human trafficking offence) is being covered by an additional brief guideline. However, due to the low volumes so far for a section 4 offence, it has not been included in this resource assessment.

Offences under section 30 of the Act, breach of a slavery and trafficking risk order (STRO) or prevention order (STPO), are proposed to be added to the *Breach Offences* definitive guideline,⁴ to be treated as analogous with the offences of: *Breach of a sexual harm prevention order*, *Breach of a criminal behaviour order* and *Breach of disqualification from acting as a director* and so are also not included in this resource assessment.

The *Modern Slavery Offences* guideline applies to sentencing adults only; it will not directly apply to the sentencing of children and young people.

Current sentencing practice

To ensure that the objectives of the guideline are realised, and to understand better the potential resource impacts of the guideline, the Council has carried out analytical and research work in support of it.

The intention is that the new guideline will encourage consistency of sentencing in an area where no guideline currently exists. The Council has taken into consideration the higher statutory maximum sentence for offences under the Modern Slavery Act 2015 compared to its predecessor offences, and the serious and long-lasting impact that this offending has on victims.

Knowledge of recent sentencing was required to understand how the new guideline may impact sentences. Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks for offenders sentenced for modern slavery offences and sentencing data from the Court Proceedings Database.⁵ The principles informing the guidelines have also been set out in various pieces of case

⁴ <https://www.sentencingcouncil.org.uk/publications/item/breach-offences-definitive-guideline/>

⁵ The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Data on average custodial sentence lengths presented in this resource assessment are those after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

law over the years, which have been reviewed and used to inform the guideline.⁶ Additionally, knowledge of the sentencing starting points, ranges and factors used in previous cases and the existing guideline for trafficking for the purpose of sexual exploitation under section 59A of the Sexual Offences Act 2003,⁷ have helped the Council when developing the guideline.

During the consultation stage, research was conducted with a group of sentencers, to explore whether the guideline will work as anticipated. This research was conducted with a sample of 16 sentencers to provide some further understanding of the potential impact of the guideline on sentencing practice, and the subsequent effect on prison resources.

Detailed sentencing statistics for modern slavery offences covered by the guideline have been published on the Sentencing Council website at the following link: <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year>.

It is difficult accurately to estimate the prevalence of modern slavery in the UK. The increase in the numbers of offenders that come before the courts is likely to represent improvements in recording and greater awareness of the behaviour.⁸ The first offenders convicted under the 2015 Act were sentenced in 2017 so statistics have only been available for a few full calendar years. We are also aware of some data issues which mean that the recorded volume of adult offenders sentenced for a section 1 or 2 modern slavery offence is likely to be an undercount.⁹

Slavery, servitude, and forced or compulsory labour (section 1)

Between 2017 and 2019, around 30 adult offenders were sentenced for an offence under section 1 of the Modern Slavery Act 2015. The most frequent sentence outcome in 2019 was immediate custody, comprising 88 per cent of adult offenders sentenced, with the remainder receiving a suspended sentence. The average custodial sentence length (ACSL)¹⁰ for section 1 offences between 2017 and 2019 was 5 years 5 months and the longest custodial sentence was 11 years.

Human trafficking (section 2)

There were around 40 adult offenders sentenced for a section 2 offence under the 2015 Act between 2017 and 2019. As with the section 1 offence, the majority received immediate custody (89 per cent in 2019). The remaining 11 per cent

⁶ *R v Khan [2010] EWCA Crim 2880* set out the factors to be taken into account in sentencing the offence of trafficking people for exploitation. Notable other cases are *R v Connors [2013] EWCA Crim 324* and, more recently, *R v Zielinski [2017] EWCA Crim 758*

⁷ <https://www.sentencingcouncil.org.uk/offences/crown-court/item/trafficking/>

⁸ 'Modern Slavery in the UK', Office for National Statistics, March 2020 <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/modernslaveryintheuk/march2020#the-criminal-justice-system>

⁹ Some modern slavery offences are being recorded with incorrect offence codes which have not yet been able to be corrected. Additionally, cases which span multiple years straddling the change in legislation in 2015 may be recorded under old offence codes predating the Modern Slavery Act, even if they were sentenced more recently. As a result, these volumes will not be included in the figures in this report and underlying data tables and may be contributing to the known underestimate.

¹⁰ The average custodial sentence lengths presented in this report are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea. The ACSLs in this section relate to the estimates using Court Proceedings Database (CPD) data.

received a suspended sentence. The ACSL between 2017 and 2019 was also 5 years 7 months, slightly higher than for section 1 offences, and the longest custodial sentence for a section 2 offence was also higher at 17 years.

Key assumptions

To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guideline and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guideline are therefore subject to a substantial degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed new guideline, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

While data exist on the number of offenders and the sentences imposed, the low volume of offenders sentenced under the new legislation to date and the knowledge that the data may represent an undercount of offenders mean that it is hard to assess the accuracy of the evidence or how representative the sample of transcripts is that has been examined. As a consequence, the estimated impacts should be interpreted as being indicative of the direction and approximate magnitude of any change, rather than a strict prediction of how sentence levels will look under the new guideline.

It therefore remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources. To support the development of the guideline and to mitigate the risk of the guideline having an unintended impact, research interviews were undertaken with sentencers during the consultation period, utilising different modern slavery scenarios.

The resource impact of the new guideline is measured in terms of the change in sentencing practice that is expected to occur as a result of it. The Police, Crime, Sentencing and Courts Bill, currently before Parliament proposes changes to release policy for those serving certain offences and serving sentences of over four years custody. These proposed future changes in release policy have not been included in the estimates as they have not yet become law. Therefore, this may affect the impact on prison places in the future.

Resource impacts

This section should be read in conjunction with the guideline available at: <http://www.sentencingcouncil.org.uk/>.

Overall impacts

The definitive guideline for sentencing modern slavery offences has three levels of culpability and four levels of harm, leading to a 12-category sentencing table, in which the lowest starting point is 26 weeks' custody and the highest is 14 years' custody.

Transcripts of Crown Court judges' sentencing remarks for modern slavery cases have been used to assess how sentences might change under the guideline.¹¹ A subset of 28 transcripts were included for analysis, containing the sentence outcomes for 55 adult offenders sentenced for a modern slavery offence, from 2017 onwards. While issues with the data mean that it is not possible to know the true volume of offenders sentenced for these offences, it is expected that these transcripts comprise a large proportion of the offenders sentenced to date and therefore it has been assumed that these are broadly representative of all sentencing practice for these offences, although this cannot be verified.

The analysis of these 28 transcripts found that the average final custodial sentence increased on average by 1 year 4 months across both sections 1 and 2 of the Act combined, under the guideline (from 4 years 6 months to 5 years 10 months).¹² Based on this analysis, if the transcript sample can be deemed to be broadly representative, it is estimated that the guideline may result in a requirement for up to around 40 additional prison places per year.^{13,14} This is driven by longer custodial sentences under the guideline, and to a lesser extent, by a decreased use of suspended sentences and an associated increased use of immediate custody. It should be noted that this estimate is based on a sample weighted to 2019 volumes of offenders. In addition, given that we know the recorded figures are likely to be an underestimate due to data recording issues, the magnitude of this impact may also be an underestimate, and the actual impact on prison places may be higher.

¹¹ This analysis was based on a sample of modern slavery cases sentenced between 2017 and 2020. This sample included cases categorised at culpability levels A, B and C and harm levels 1, 2, 3 and 4. The exercise involved an analysis of the key features and outcomes in the case, as well as a "resentence" using the draft guideline.

¹² These ACSL calculations have been based on the transcript analysis undertaken. The ACSL calculated using the transcripts differs from the ACSLs presented in the 'Current sentencing practice' section, as these were calculated using CPD data. As the Council is aware that there are some issues with the CPD data, it was thought that the transcripts may provide a more useful estimate for the purposes of the resource impact calculations.

¹³ To calculate the expected resource impact, volumes of sentences have been adjusted in line with 2019 volumes. It has also been assumed that those serving a determinate sentence of less than seven years would be released half-way through their sentence and those serving a determinate sentence of seven years or more would be released after serving two thirds of their sentence. This two-thirds release point took effect for these offences in April 2020, under the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020.

¹⁴ Prison impact estimates have been rounded up to the nearest 10 prison places.

In addition to the transcript analysis, the potential impact of the guideline was explored through consultation stage research interviews¹⁵ and a review of the written responses to the consultation.¹⁶ In reflecting on the findings from the consultation and research with sentencers, the Council made changes to the starting point and sentence range for the lowest culpability categories. It is now possible for sentencers to give a suspended sentence order for three of the categories in the sentencing table, whereas in the version that was consulted on, this outcome was only available for two of the categories, only encompassing offenders who were given the lowest harm categorisation. A decision was also made to include a category 2 harm factor specifically relating to the victim(s) being deceived or coerced into sexual activity. This reflects a factor in the former s.59A offence guideline under the highest harm category and allows sentencers to give appropriate sentences for the high level of harm inherent in these types of offences.

Slavery servitude, and forced or compulsory labour (section 1)

The impact of the guideline on sentencing for section 1 and section 2 offences was examined separately. Section 1 offences comprised 31 per cent of the total 55 cases included for analysis. Within the sample of transcripts, it was found that the impact of the guideline specifically on section 1 offences was greater than for section 2 offences. Average custodial sentence lengths increased by 1 year 7 months: from 4 years 5 months, to 5 years 11 months. It is estimated that if similar increases occur when the guideline comes into force, this would result in the need for up to around 20 additional prison places per year. This estimate is based on a small sample of transcripts and on 2019 volumes of offenders, which may be an underestimate due to data recording issues. Thus, it should be interpreted as an indication of the direction and approximate magnitude of any change and subsequent prison impact, rather than an exact prediction.

In one of the original sentence outcomes for the cases included in the transcript sample, the custodial sentence was suspended. This sentence outcome was first used in 2019¹⁷ and comprised 13 per cent of all section 1 outcomes this year. Under the new modern slavery guideline, this outcome is only possible for a limited subsection of offenders at the bottom ranges of culpability and harm. As such, some offenders who might previously have received a suspended sentence may receive an immediate custodial sentence using the guideline, as only prison sentences of two years or less can be suspended. Given the limited data available to date, in particular the low proportion of cases in the transcript sample with a suspended sentence outcome, the guideline may have an additional increased impact on these types of cases than it has been possible to estimate.

¹⁵ A total of 16 Crown Court judges took part in a two-stage exercise, designed to examine the impact of the draft modern slavery guideline on sentencing practice. The judges were presented with several different scenarios representing both typical and atypical modern slavery cases, and asked to sentence the offenders both as they would if the case came before them in court today and then also to resentence them using the draft guideline, answering some detailed questions about the process and outcome as they went along. The sample size was small, which means the findings cannot be considered representative of all sentencers. However, they provide an insight into how these groups may use and respond to the guideline.

¹⁶ There were 43 responses received to the consultation document published alongside the draft guideline.

¹⁷ Due to the issues with these data, it is possible that suspended sentences were given in previous years for this offence and that these records are missing.

Human trafficking (section 2)

Section 2 offences made up the majority (69 per cent) of the 55 cases in the transcript sample that were resentenced using the guideline. Within the transcript sample, the impact on sentences for these offences specifically was slightly less than for section 1 offences. Average custodial sentence lengths increased by 1 year 3 months: from 4 years 7 months, to 5 years 10 months. It is estimated that if similar increases occur when the guideline comes into force, this would result in the need for up to around 20 additional prison places per year. However, as with the section 1 estimate, since this is based on a small sample of transcripts and on 2019 volumes of offenders, and given that we know the recorded figures are likely to be an underestimate due to data recording issues, this prison impact may also be an underestimate.

As mentioned, under the new modern slavery guideline a suspended sentence outcome is only possible for a limited subset of offenders towards the bottom of the sentencing table, with regards to both harm and culpability. In 2019, 13 per cent of offenders sentenced for a section 2 offence received a suspended sentence. For one of the offenders included in the transcript sample and sentenced under section 2, their original sentence was suspended but using the guideline their custodial sentence length would exceed the two-year threshold for suspension. Although this was only one case and so the impact for section 2 cases is estimated to be small, this change in outcome could have proportionately greater impact relative to the duration of the sentence length, given that the sentence now requires prison resource where it previously did not. Additionally, because of the limited data available to date, the guideline may have an additional increased impact on these types of cases than it has been possible to estimate.

Risks

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guideline has the intended effect and inviting views on the guideline. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated. Transcripts of judges' sentencing remarks have provided a more detailed picture of current sentencing practice for these offences which has formed a large part of the evidence base on which the resource impacts have been estimated, however it should be noted that these are rough estimates which should be interpreted as indicative of the direction and approximate magnitude of any change only.

Risk 2: Sentencers do not interpret the new guideline as intended

If sentencers do not interpret the guideline as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing a new guideline to try to ensure that sentencers interpret it as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of judges' sentencing remarks for 28 cases covering 55 offenders have been studied to ensure that the guideline is developed with current sentencing practice in mind. Additionally, research with sentencers carried out during the consultation period has hopefully enabled any issues with implementation to be identified and addressed.

Consultees have had the opportunity to give their views of the likely effect of the guideline, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.

List of respondents

All Party Parliamentary Group for Human Trafficking and Modern Slavery

Sara Attwood JP

Black County Magistrates Bench

Alistair Borland JP

Baroness Butler-Sloss

Central Kent Bench

Christian Action Research and Education (CARE)

Chris Clarke JP

Professor Ross Coomber (University of Liverpool)

Criminal Bar Association

Crown Prosecution Service

C Delaney

Deborah Eardley JP

Fred Fearn JP

Christopher Goard JP

HM Council of District Judges

The Home Office

Hope for Justice

The Howard League for Penal Reform

International Justice Mission

Justice Legal Advisers' and Court Officers Service

Karen Leyland JP

The London Criminal Courts Solicitors Association

Magistrates Association

The Mayor's Office for Policing and Crime (MOPAC)

The Ministry of Justice

Norfolk Youth Offending Team

North East Wales Magistrates Bench

Ian Pearson JP

Prison Reform Trust

Debbie Rayner JP

Rhys Rosser (2 Bedford Row)

Heather Rothwell JP

Sentencing Academy

John Stroud-Turp JP

Suffolk Magistrates Bench

University of Manchester/University of Liverpool

Welsh Women's Aid

West London Magistrates Bench

West Sussex County Council

Gillian Winn JP

Youth Justice Board

Sentencing Council



Sentencing Council
Annual Report 2020/21

Sentencing Council Annual Report 2020/21

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice

This report is presented to Parliament pursuant to Section 119(2) of the Coroners and Justice Act 2009



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Foreword

by the Chairman



I am pleased to introduce the Sentencing Council's annual report for 2020/21. It is the Council's 11th annual report and my third as Chairman, and it marks the year in

which the Council celebrated its first decade and began to set the scene for the next.

2020/21 was a momentous year the world over. The global pandemic tested us all and presented many challenges to the criminal justice system in England and Wales and, not least, to the Sentencing Council. Our ways of working were profoundly disrupted, with the Council unable to meet in person throughout the year, and many of our plans were subject to change.

I am proud to say that, in spite of these challenges, the Council successfully delivered the core of our work plan for the year. In July 2020, we published a definitive overarching guideline for sentencing offenders with mental disorders, developmental disorders, or neurological impairments, which came into effect on 1 October. On the same day, revised versions of a number of the magistrates' courts sentencing guidelines came into effect, alongside updates of related explanatory materials. On 9 December we published definitive guidelines covering firearms offences, which came into effect on 1 January 2021. January also saw the publication of definitive guidelines for drug offences:

five of these guidelines were revisions of existing drug-offences guidelines; four were new guidelines covering offences under the Psychoactive Substances Act 2016. Together, these guidelines provide sentencers with a comprehensive sentencing framework that recognises the changing nature of drugs and drug offending. The guidelines were published on 27 January 2021 and came into effect on 1 April 2021.

During the year we also ran three consultations on draft offence specific guidelines for assault offences and attempted murder; unauthorised use of trademarks; and modern slavery offences. Consultation is a vital aspect of the Council's work, and one which we take very seriously. As ever, the Council has given close consideration to all the responses we received to this year's consultations, and definitive guidelines for all three will come into effect during the course of 2021.

We also ran a consultation between March and September 2020 in which we posed the question "What next for the Sentencing Council?". The consultation, which was launched to mark the Council's tenth anniversary in April 2020, originated in our decision to use the opportunity of the anniversary to review the Council's achievements to date and consider our future priorities and strategy and the way in which we discharge the Council's statutory duties. We opened the consultation to a wide audience, including: criminal justice professionals; reformers, academics and others working in criminal justice; and other organisations and individuals, including the

public, who have an interest in criminal justice and the work of the Sentencing Council. We received 37 responses, and the Council is in the process of considering the wide variety of suggestions put forward. Deciding on our future priorities is inevitably a work of fine balance and requires great care, particularly in light of the limited resources the Council has available. There is more information on the consultation on pages 14-15; we expect to publish a response in late summer 2021.

“What next for the Sentencing Council?” was just one of a number of activities we had planned for the Council’s tenth anniversary year, and the timing of its launch had been chosen to herald what we had hoped would be a significant, one-day event in April. Sadly, the launch came only days before the nation was put into lockdown on 23 March 2020, and we swiftly had to change our anniversary plans. The change of plans included postponing – and finally cancelling – our event, which was due to be held at the Law Society Hall in London on Friday 3 April. The event would have brought together a wide range of people with interest in the criminal justice system to consider the impact of the Council, the evolution of the sentencing guidelines and what effect these have had on the approach to sentencing and the work of the courts. It would have provided us with an opportunity to hear at first hand from our friends, partners and critics and, along with the anniversary consultation, the Council is considering in what other ways we might continue this dialogue.

Unfortunately, lockdown also forced us to cancel the live finals of our anniversary sentencing competition, which were due to be held at the Royal Courts of Justice on 25 March. The competition, which was open to all students of the Legal Practice Course and Bar Professional Training Course, was designed to give the next generation of solicitors and barristers an opportunity to work with the sentencing guidelines, increase their awareness and understanding of sentencing and how the sentencing guidelines operate, and give them an insight into the Council’s work. The members of the Council are grateful to all the students who entered the competition, and we would like to congratulate again our two winners, both students of the Bar Professional Training Course: Steven Ramesh of the University of the West of England, Bristol, who received first prize, and second-prize winner Lameesa Iqbal of City, University of London. We are only sorry that they have not yet been able to take up their awards: a one-week mini pupillage, kindly offered by Red Lion Chambers, London; and a one-week marshalling experience with a judge.

The impact of the Covid-19 pandemic was felt across the criminal justice system. In the early months, in response to public concerns about Covid-related assaults, the Council published interim guidance to assist the courts in sentencing common assault offences in the context of the pandemic. The interim guidance clarified that, when sentencing common assault offences involving threats or activity relating to transmission of Covid-19, courts should treat this as an aggravating feature of the offence. Responding again

to public concerns about the imposition of custodial sentences during the pandemic, the Council issued a public statement in June that aimed to clarify, for those who are less familiar with the criminal justice system, the well-established sentencing principles which, with sentencing guidelines, are sufficiently flexible to deal with all circumstances, including the consequences of the pandemic.

Despite the pressures of the pandemic, thanks to the efforts of Council members and officials in the Office of the Sentencing Council, we were able to continue to deliver work across the range of the Council's responsibilities. In addition to publishing guidelines, the Council is also required to monitor and evaluate their operation and effect. In October 2020, we published our evaluation of the dangerous dogs sentencing guidelines, which came into effect in July 2016. This was followed in November by the evaluations of two overarching guidelines: *Reduction in sentence for a guilty plea* and *Sentencing children and young people*, both of which have been in effect since June 2017.

Between 4 January and 7 May 2021, the Council ran a data collection exercise across all magistrates' courts in England and Wales. We would like to thank all the magistrates who contributed to this exercise and allowed us to gather information about vital aspects of the sentencing process, including culpability and harm factors, aggravating and mitigating factors, guilty plea reductions and sentence outcomes.

We were particularly pleased to release, in December 2020, data on the factors taken into account by magistrates' courts when sentencing offences of theft from a shop or stall. This publication marked the Council's first data release of its kind for a magistrates' court offence and represents a significant step forward in filling the gap in detailed, publicly available, sentencing data from the magistrates' courts. There is more on this data release on pages 38-9. We expect in the next year to publish releases of similar data on drug offences sentenced at magistrates' courts and robbery offences sentenced in the Crown Court.

We continue to publish resource assessments alongside each of our new and revised guidelines. This year, these included resource assessments for the revised drug offences guidelines, the firearms guidelines, the changes to magistrates' courts sentencing guidelines and the overarching guideline on sentencing offenders with mental disorders, developmental disorders, or neurological impairments.

In last year's annual report, we reported on the research we conducted to support the consultation on draft drug offences guidelines. The research analysed sentencing data to consider the association between different factors and sentencing outcomes in the Crown Court for selected drug offences. In particular, the Council wanted to investigate the possible association between an offender's sex and ethnicity and the sentence imposed for these offences. This year, the Council has undertaken further work to understand more about potential

disparities in sentencing outcomes for particular groups. We also conducted an analysis in support of the firearms offences consultation that opened in December 2020, in which we identified disparities in sentence outcomes based on ethnicity. The Council has taken measures in the drug offences and firearms offences guidelines to address these disparities. These measures include drawing sentencers' attention to evidence of sentencing disparities in specific offences as an integral part the sentencing process. The Council is committed to continuing to investigate apparent disparity in sentencing outcomes across all offences. We have set up a working group to look at this specific issue and the Council will take further action as and when there is evidence of effective measures that can be applied to guidelines.

This year, we also began the process of commissioning a research project to examine the potential for our guidelines to cause disparities in sentencing. The project is intended to review the language used in the guidelines and the structure of guidelines, and it will ask whether any aspects of the way in which we develop guidelines could have implications for equalities and disparity in sentencing. The review will also consider how the Council can best increase awareness and understanding of sentencing guidelines among people with protected characteristics under the Equality Act 2010. This is work of vital importance in helping to maintain confidence in the sentencing guidelines and the wider criminal justice system, and we look forward to seeing the results. There is more information on pages 32-3 on the work we are doing to examine the procedures and

processes for developing guidelines and the sentencing guidelines themselves within the context of equality and diversity.

On 1 December 2020 the Sentencing Act 2020 came into force. The Act contains within it the Sentencing Code, which consolidates all sentencing procedure law of England and Wales. This welcome consolidation brought together sentencing-related provisions spread across a number of different statutes, including the Powers of Criminal Courts (Sentencing) Act 2000, the Criminal Justice Act 2003, the Coroners and Justice Act 2009 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012. To make sure the sentencing guidelines remained accurate and enable sentencers and practitioners to follow the Code, we needed to identify and amend references to any provisions from those pieces of legislation wherever they appeared in the guidelines. This was a painstaking and complex piece of work, which we completed in time to coincide with the commencement of the Act and which we were able to undertake only because of the Council's earlier decision to make the guidelines fully digital.

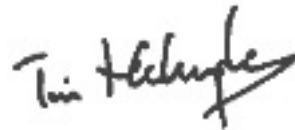
The ready availability of the sentencing guidelines on our website does much to improve the transparency of sentencing and make it more accessible to the public. On 1 December 2020 we launched a new website for the Council. For many people, our website is their first encounter with the Council, and the new site has been designed specifically to promote a greater understanding of sentencing among our public and other non-specialist audiences. For more information

on the new website and how it contributes to the Council's duty to have regard to public confidence in sentencing and the criminal justice system, see pages 24-5.

Since 1 April 2020, the Council has seen a number of changes of personnel, with the appointment of Assistant Commissioner Nick Ephgrave as the policing member; the Honourable Mrs Justice Juliet May from the High Court; and Ms Jo King JP to the magistrates' role. I offer them all a warm welcome. I also offer my sincere thanks to Mr Justice Goose, whose term of appointment came to an end on 25 May 2020. Since joining the Council in April 2014, he has made a most valuable contribution to the Council and as Chairman of the Confidence and Communication sub-group.

I pay tribute to all my fellow members of the Sentencing Council who have approached this difficult year with energy, commitment and good will to make sure that the Council could continue to meet the very high standards for which it is deservedly known and play a significant role in the delivery of justice that is consistent and fair – and can be seen to be consistent and fair. In the year ahead we will work together to face the challenges of, we hope, the return to more traditional ways of working both on the Council and in the Office of the Sentencing Council.

I continue to be enormously impressed by the officials of the Office of the Sentencing Council. They are the Council's most valuable resource, and I am very proud of the high quality of the work they produce, even in exceptional times such as these. We operate within a limited budget and it is testament to their ability and dedication that the Council continues to have the success that it does.



Tim Holroyde
Lord Justice Holroyde
July 2021



Royal Courts of Justice, London

Introduction

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice. It was set up by Part 4 of the Coroners and Justice Act 2009 to promote greater transparency and consistency in sentencing, while maintaining the independence of the judiciary.

The aims of the Sentencing Council are to:

- promote a clear, fair and consistent approach to sentencing;
- produce analysis and research on sentencing; and
- work to improve public confidence in sentencing.

This annual report covers the period from 1 April 2020 to 31 March 2021. For information on past Sentencing Council activity, please refer to our earlier annual reports, which are available on our website at:

www.sentencingcouncil.org.uk.

In 2020/21 the Council's work was aligned to the following four objectives:

- Prepare sentencing guidelines that meet their stated aims, with particular regard to the likely impact on prison, probation and youth justice services, the need to consider the impact on victims, and the need to promote consistency and public confidence.

- Monitor and evaluate the operation and effect of guidelines and draw conclusions.
- Promote awareness of sentencing and sentencing practice.
- Deliver efficiencies, while ensuring that the Council continues to be supported by high-performing and engaged staff.

The activities for 2020/21 that contributed to the delivery of these objectives are outlined in this report.

Also in this report, produced in accordance with the Coroners and Justice Act 2009, are two reports considering the impact of sentencing (pages 34-7) and non-sentencing factors (pages 40-3) on the resources required in the prison, probation and youth justice services to give effect to sentences imposed by the courts in England and Wales.

Key events of 2020/21

2020		
April	15	Magistrates' courts sentencing guidelines and associated explanatory materials consultation closed
	15	Assault offences statistical bulletin published
	16	Assault offences and attempted murder consultation opened
May	7	Drug offences consultation closed
	26	Assistant Commissioner Nick Ephgrave appointed as policing member of the Council
June	23	Statement released on the application of sentencing principles during the Covid-19 pandemic
July	7	Unauthorised use of a trademark statistical bulletin published
	8	Unauthorised use of a trademark consultation opened
	14	Sentencing Council Annual Report 2019/20 laid before Parliament and published
	21	Sentencing offenders with mental disorders, developmental disorders and neurological impairments overarching guideline published
September	9	"What next for the Sentencing Council?" consultation closed
	15	Assault offences and attempted murder consultation closed
	30	Unauthorised use of a trademark consultation closed
October	1	Updates to the magistrates' courts sentencing guidelines published and came into effect
	1	Sentencing offenders with mental disorders, developmental disorders and neurological impairments overarching guideline published
	8	The Hon Mrs Justice May and Jo King JP appointed to the Sentencing Council
	14	Modern slavery offences statistical bulletin published
	15	Modern slavery offences consultation opened
	21	Dangerous dogs offences guidelines assessment published

2020		
November	17	Sentencing children and young people overarching guideline assessment published
	17	Reduction in sentence for a guilty plea guideline assessment published
December	1	New website launched and all guidelines updated to reflect coming into force of the Sentencing Code
	8	Firearms offences data tables published
	9	Firearms offences definitive guidelines published
	17	Theft from a shop or stall data published
2021		
January	1	Firearms offences definitive guidelines came into effect
	15	Modern slavery offences consultation closed
	26	Drug offences data tables published
	27	Drug offences definitive guidelines published



Sentencing guidelines

The sentencing guidelines are intended to help ensure a consistent approach to sentencing, while preserving judicial discretion. Under the Sentencing Act 2020 (formerly the Coroners and Justice Act 2009), a court must follow relevant sentencing guidelines unless satisfied in a particular case that it would be contrary to the interests of justice to do so.

When developing guidelines, the Council has a statutory duty to publish a draft for consultation. At the launch of a consultation, we will seek publicity via mainstream and specialist media, as well as promoting it via social media and on the Sentencing Council website. We make a particular effort to reach relevant professional organisations and representative bodies, especially those representing the judiciary and criminal justice professionals, but also others with an interest in a particular offence or group of offenders. Many of the responses come from organisations representing large groups so the number of replies does not fully reflect the comprehensive nature of the contributions, all of which are given full consideration by the Council.

The work conducted on all the guidelines during the period from 1 April 2020 to 31 March 2021 is set out in this chapter, separated into four key stages:

- development
- consultation
- post-consultation
- evaluation and monitoring

Because guidelines were at different stages of production during the year, reporting varies between guidelines. See Appendix C for more information on the production stages of the guidelines.

Sentencing Code

The Sentencing Act 2020 came into force on 1 December 2020. The Act created the Sentencing Code, which consolidates existing sentencing procedure law. To enable sentencers and practitioners to follow the Code, the Council updated all sentencing guidelines and related explanatory materials to reflect the new provisions.

Assault and attempted murder

Consultation

The assault offences guidelines were the first guidelines produced by the Sentencing Council and were published in 2011. Following an evaluation of the guidelines in 2015, the Council drafted revised guidelines for assault offences and also for attempted murder (an offence covered by a guideline published by the Sentencing Guidelines Council), and opened a consultation on those draft guidelines on 16 April 2020. The consultation sought views on seven sentencing guidelines. These included nearly all offences covered by the existing assault and attempted murder guidelines, as well as an additional guideline for assaults on emergency workers. The consultation closed on 15 September 2020.

Alongside the consultation, the Council also published a resource assessment and statistical bulletin for the offences included.

During the consultation period, to support the development of the guideline, we carried out extensive analysis of court transcripts and qualitative research with Crown Court judges and magistrates to explore how the draft revised guidelines might work in practice. Before and during the consultation we also engaged with external stakeholders and government departments to discuss and explore views on our approach to revising the guidelines.

Post-consultation

There were 67 responses to the consultation and the Council considered changes to the guidelines in the light of these. Potential further changes based on responses and research findings were tested with sentencers. A data collection exercise was also undertaken in magistrates' courts between January and May 2021 that included the collection of data on sentencing factors and outcomes for several assault offences. An early sample of data from this exercise will be used to support the resource assessment of the guideline and, in due course, a similar post-guideline data collection exercise will be undertaken to provide information to evaluate the impact of changes made to the guidelines. The definitive guidelines were finalised in April 2021 and published in May 2021.

Media coverage

The consultation on sentencing guidelines for assault and attempted murder offences was reported in the *Guardian*, *Daily Telegraph* and *Police Oracle*. It was also featured on Sky Radio, LBC, Talk Radio and on over 30 other commercial radio stations.

Burglary

Development

In January 2012, the Sentencing Council's definitive guidelines for sentencing burglary offences came into effect. An evaluation of the guidelines published in January 2016 found that sentencing severity had increased beyond what was expected for non-domestic burglary offences. Sentences were also found to have increased beyond what was expected for aggravated burglary, although due to low volumes for this offence, the findings were less conclusive. Further analysis published in July 2017 found that the guidelines may have contributed to increases in sentencing severity for all three burglary offences, although the increase in domestic burglary was within the expected range. In light of these findings, the Council decided to revise the guidelines.

A consultation on the revised guidelines is expected to take place during summer 2021.

Child sexual offences

Development

The Sentencing Council produced definitive guidelines covering sexual offences, mainly under the Sexual Offences Act 2003, in 2013. These guidelines came into effect on 1 April 2014.

In April 2020, the case of *Privett and Others* [2020] EWCA Crim 557 set out the approach for the courts to take for offences under section 14 of the Sexual Offences Act 2003 (Arranging or facilitating the commission of a child sex offence) when no real child victim exists. This may be because an offender has been deceived into believing they are arranging to meet a child, who is in fact an adult decoy.

At the conclusion of the judgment, the Court of Appeal invited the Sentencing Council to consider whether any and, if so, what clarification of the relevant sentencing guideline might be necessary, and whether further guidance could be given to sentencers.

The Council has agreed to develop revised guidelines for the courts to follow in such cases, and has also developed the first draft guideline for offences committed under section 15A of the Sexual Offences Act 2003 (Sexual communication with a child). We are also considering various other minor amendments to the sexual offence guidelines.

We launched a consultation on these amendments and the draft of the new section 15A guideline in May 2021.

Children and young people

Monitoring and evaluation

The Council undertook an exercise to assess the impact and implementation of the definitive guideline *Sentencing children and young people*, which came into effect on 1 June 2017 and includes overarching principles for sentencing children and young people as well as offence specific guidelines for robbery and sexual offences. The guideline applies to those aged under 18 years only.

We analysed data from the Ministry of Justice's Court Proceedings Database to produce descriptive statistics to observe the changes in the type of disposals being imposed for children and young people and the average custodial sentencing length. We also conducted a time series analysis to forecast likely sentencing trends in the absence of the guideline and compared this to actual trends in sentencing severity. The analysis also included a breakdown of sentencing outcomes over time by ethnicity.

We carried out a survey with sentencers working in the youth court to establish whether the guideline met its stated aim, to understand how sentencers use the guideline and their attitudes to it, and to explore sentencers' perception of whether the guideline has changed sentencing behaviour.

The evaluation was published on 17 November 2020.

Dangerous dogs

Evaluation and monitoring

In October 2020, the Council published a quantitative assessment of the impact of the dangerous dog offences guidelines, which came into effect in July 2016 and replaced the Council's previous guidelines for dangerous dog offences. We produced the updated guidelines in response to legislative changes introduced by Parliament, which came into force in May 2014. The guidelines themselves were not anticipated to change sentencing practice; it was assumed that any changes observed would be attributable to the legislation.

For most offences, sentencing outcomes either remained relatively stable when the guideline came into effect, or the number of offenders sentenced for the period analysed was too low to conduct any meaningful analysis.

For offences involving a dog dangerously out of control where a person is injured, we found that average sentencing severity increased slightly when the guideline came into effect, although mostly within the bounds of what would be expected based on historical trends. The increase we observed was very small so any impact on prison or probation resources would also have been small.

The Council has concluded that, based on the evidence available, there is no immediate need to revisit the guidelines, but we will continue to monitor impact.

What next for the Sentencing Council?

April 2020 marked ten years since the Sentencing Council was set up by the Coroners and Justice Act 2009. This significant anniversary provided us with a natural point at which to take stock of what we have achieved and look forward to what the Council's priorities should be for the next five to 10 years. In March 2020 we launched a consultation seeking views from our partners, supporters and critics as to what the Council's future objectives and priorities should be.

Balance of statutory functions

Our founding legislation sets out a number of duties that the Council *must* fulfil and some that *may* be carried out. The Council's view is that we should continue to focus on the areas where we believe we can add most value, namely developing and revising guidelines; monitoring and evaluating guidelines; and promoting public confidence. We asked our consultees whether they agreed that we should continue to prioritise these statutory duties or whether and, if so to what extent, we should devote some of the Council's limited resources to other functions.

Developing and revising sentencing guidelines

Guidelines have always been at the core of the Council's work. As well as producing new guidelines, during the last 10 years we have also revised some of the Council's early guidelines to take account of changes to legislation and/ or in response to evaluation.

As well as seeking views on the criteria by which the Council decides to develop guidelines, we also asked our consultees whether they thought we could offer more value by: developing new guidelines and revising existing ones; producing guidelines for higher volume or lower volume offences; or developing overarching principles or more offence specific guidelines.

Analysis and research

Analysis and research are an integral part of guideline development. They help the Council identify potential problems with sentencing, for example disproportionate outcomes for particular offenders; set sentencing ranges; and determine the likely implications of a guideline. To inform our work, we draw on external data sources as well as undertaking our own research. There are several analytical areas to which the Council could consider devoting more resources if these were to be regarded as priority areas, more resources were to become available or we could work in collaboration with academics and external partners.

To help us balance our priorities, we asked our consultees whether, and if so how, our analysis and research work could be improved and which areas of this work should we prioritise.

Promoting public confidence

The Council has a statutory duty to have regard to the need to promote public confidence in the criminal justice system when developing sentencing guidelines.

We have interpreted this duty more widely as an obligation to actively promote public confidence in the system and in sentencing.

Our communications aim to promote public confidence by improving people's knowledge about, and understanding of, sentencing and how it works.

We asked our consultees to what extent the Council should be responsible for promoting public confidence in both sentencing and the wider criminal justice system and what we could do to achieve most with our limited resources.

Costs and effectiveness of sentencing

The Council has a statutory duty to have regard to the cost of different sentences and their relative effectiveness in preventing reoffending.

We produce an annual, internal report on the latest research on effectiveness of sentencing to help inform the Council's deliberations. While we have chosen to focus on effectiveness in relation to reducing reoffending, it can of course be considered more broadly.

The Council has chosen not to address costs or cost-effectiveness in our resource assessments beyond those of correctional resources. Interpretation of related data is difficult, and the Council would need to take a view on how to define "effective", which is the subject of much debate.

We asked consultees to help us consider whether the Council has sufficiently addressed this duty and are there broader issues we should consider.

How we work

We are required by legislation to consult on a draft version of our guidelines. We consult widely, particularly among sentencers and other professionals in the criminal justice system, as well as those with an interest in criminal justice or the subject matter of individual guidelines.

Our guidelines stand alone but we have at times published supporting materials. Judicial training on guidelines is a matter for the Judicial College and their interpretation, for the Court of Appeal, but we are open to considering whether we could do more to assist guideline users.

We asked consultees whether the Council's working practices could be improved and should the Council have a role in providing more assistance on the use and interpretation of guidelines.

Reporting on the outcome

We received 37 responses to the consultation, which ran from 10 March to 9 September 2020. We expect to report on our decisions in late summer 2021.

Drug offences

Post-consultation

The drug offences definitive guidelines were published on 27 January 2021 and came into effect on 1 April 2021.

The definitive guidelines include:

- a revision of the Misuse of Drugs Act 1971 guidelines originally published in 2012
 - including offences of importation/exportation; supply/ possession with intent to supply; production/ cultivation; permitting premises to be used for drug related activity and possession of a controlled drug; and
- new guidelines for offences under the Psychoactive Substance Act 2016
 - including offences of importation/exportation; supply/ possession with intent to supply; production/ cultivation.

We held a consultation on the draft guidelines from 15 January 2020 to 7 May 2020.¹ During this consultation 43 responses were received. The responses were broadly supportive of the approach taken by the Council. The Council did, however, make some changes in light of consultation responses, such as removing some proposed ‘leading role’ culpability factors and putting them as aggravating factors instead. A number of respondents indicated that, while the factors might indicate that the offence was more serious, they did not necessarily indicate that the offender had

a ‘leading role’ and could result in an offender receiving a disproportionate sentence.

We had also sought views on whether any aspects of the guidelines could lead to or contribute to any disparities in sentencing outcomes associated with an offender’s ethnicity or gender. As a result of the responses, the Council chose to make some changes to the guidelines including providing new expanded explanations for the mitigating factors ‘remorse’ and ‘mental disorder and learning disability’. The expanded explanation for remorse reflects the fact that offenders will express remorse in many different ways, perhaps reflecting their cultural norms. It warns against making assumptions about an offender’s remorse or lack of remorse based simply upon their demeanour in court. The expanded explanation for ‘mental disorder and learning disability’ links to our overarching principles guideline on this subject and specifically the section that refers to the fact that some offenders from Black, Asian and Minority Ethnic communities may be unlikely to raise this in mitigation due to a perceived stigma.

In addition, a tailored reference to the evidence of disparities in sentencing and to the Equal Treatment Bench Book has been added to those guidelines where there is sufficient evidence of disparity in sentence outcomes.

The guidelines were published alongside a response to consultation document; a final resource assessment; and data tables, showing current sentencing practice for these offences.

¹ The consultation period was extended from 7 April in recognition of the potential impact on consultees of the Covid-19 lockdown.

Newport Magistrates' Court, South Wales



Llys Ynadon
Casnewydd
Newport
Magistrates' Court

Llys Ynadon Casnewydd
Newport Magistrates' Court

Health
Warning

Media coverage

The launch of the sentencing guideline for drug offences in January 2021 was reported in the *Daily Mail*, *Daily Telegraph*, *The Times*, *Independent*, *Police Oracle* and the *Law Society Gazette*.

Firearms offences**Post-consultation**

The firearms offences guidelines were published in December 2020, following a consultation we held between 9 October 2019 and 12 January 2020. There were 21 responses to the consultation, most of which were from groups or organisations. In general, respondents supported the proposals and there were some helpful suggestions for changes that the Council adopted. The research with sentencers conducted during the consultation period also gave rise to some changes to aid clarity. Several respondents, including the Crown Prosecution Service and the National Crime Agency, suggested that in addition to the guidelines consulted on, the Council should develop a guideline for firearms importation offences. The Council agreed and decided to consult on that guideline separately (see below).

The consultation had noted that, while firearms offences are most often committed by White offenders, when compared with the demographics of the population as a whole, there is an over-representation of Black, Asian and Other ethnicity offenders. The consultation sought suggestions as to how issues of equality and diversity could

be addressed by the guidelines. The Council reconsidered the factors in the guidelines in the context of the apparent disparities and removed one factor that could be applied disproportionately to certain ethnic groups. A tailored reference to the evidence of disparities in sentencing and to the *Equal Treatment Bench Book* has been added to those guidelines where there is sufficient evidence of disparity in sentence outcomes.

Eight firearms guidelines were published on 8 December 2020 and came into effect on 1 January 2021. They cover the following offences under the Firearms Act 1968:

- Possession, purchase or acquisition of a prohibited weapon or ammunition – sections 5(1), 5(1A);
- Possession, purchase or acquisition of a firearm/ammunition/shotgun without a certificate – sections 1(1), 2(1);
- Possession of a firearm or ammunition by person with previous convictions prohibited from possessing a firearm or ammunition – sections 21(4), 21(5);
- Carrying a firearm in a public place – section 19;
- Possession of firearm with intent to endanger life – section 16;
- Possession of firearm or imitation firearm with intent to cause fear of violence – section 16A;
- Use of firearm or imitation firearm to resist arrest/possession of firearm or imitation firearm while committing a Schedule 1 offence/carrying firearm or

imitation firearm with criminal intent – sections 17(1), 17(2), 18; and

- Manufacture/sell or transfer/possess for sale or transfer/purchase or acquire for sale or transfer prohibited weapon or ammunition – section 5(2A).

The Council also published a resource assessment and data tables.

Media coverage

The December 2020 launch of the sentencing guidelines for firearms offences received coverage in the *Daily Mail*, the *Guardian* and the *Lancashire Evening Post*. It was also reported in *New Law Journal*, *Police Oracle* and *The Voice*.

Firearms importation

Development

Responses to the consultation on guidelines for offences under the Firearms Act 1968 included a suggestion that a guideline should be developed for firearms importation offences. The Council had made the original decision not to proceed with guidelines for importation offences based on sentencing data from 2017. However, more recent data showed that volumes for importation offences under the Customs and Excise Management Act 1979 had increased. We also considered feedback from judges indicating that a guideline for importation offences would be useful and the Council has subsequently agreed to develop one.

We plan to consult on the guideline in the summer of 2021.

Guilty pleas

Evaluation and monitoring

The *Reduction in sentence for a guilty plea* definitive guideline came into effect on 1 June 2017, following which the Council established a dedicated monitoring group. Members of the group include representatives of the Sentencing Council, the police, the Crown Prosecution Service, Her Majesty's Courts and Tribunal Service, Victim Support, Judicial Office, Her Majesty's Prison and Probation Service, the Justices' Legal Advisers and Court Officers Service and the Ministry of Justice.

Throughout 2020/21, the group continued its work to steer efforts to collect a range of data and information in support of an assessment of the implementation and impact of the guideline.

The assessment concluded that guilty plea reductions were being applied to sentences in magistrates' courts and the Crown Court in line with the guideline in most cases and that there was no indication that the guideline had had an adverse effect on prison or probation resources. However, given the wider context in which the guideline sits, having been introduced during a period of change within the wider criminal justice system, it proved difficult to conclude definitively what the overall impact of it had been, and the Council has agreed to keep the guideline under review and work with the steering group to obtain further feedback.

We published a report outlining the key findings from this analysis on 17 November 2020.

Magistrates' courts sentencing guidelines and associated explanatory materials

Post-consultation

The magistrates' courts sentencing guidelines consists of sentencing guidelines for a wide range of offences that are sentenced in magistrates' courts. A consultation on minor improvements that could usefully be made to these guidelines and the explanatory materials that accompany them closed on 15 April 2020.

Minor changes were proposed to the following guidelines:

- *Drive whilst disqualified*
- *Breach of a community order*
- *Totality*

Changes were also proposed to the following sections of the explanatory materials:

- Fines and financial orders:
 - Approach to the assessment of fines
 - Assessment of financial circumstances
 - Prosecution costs
 - Victim surcharge
- Road traffic offences: disqualification
 - "Totting up" disqualification

There were 219 responses, most of which were broadly in support of the proposals, and several very helpful suggestions were made. The Council carefully considered the responses and made a number of changes to proposals as a result. The amended versions of the guidelines and explanatory materials were published on 1 October 2020 and came into effect on that date.

The Council also published a resource assessment.

Mental disorders, developmental disorders and neurological impairments

Post-consultation

The definitive overarching guideline, *Sentencing offenders with mental disorders, developmental disorders and neurological impairments*, was published on 21 July 2020 and came into effect on 1 October 2020. Following consultation on the draft guideline in 2019 the proposed general approach was maintained but some amendments were made. In particular, section three, Determining the sentence, and Annex C, which covers sentencing disposals, were revised in order to give greater assistance to courts, and a new section on "Effect of hospital orders, restriction orders and 'hybrid' orders and their release provisions" was created at the end of Annex C. The definitive guideline was published alongside a final resource assessment and a response to consultation.

Media coverage

The launch on 21 July of *Sentencing offenders with mental disorders, developmental disorders and neurological impairments* was covered in the *Daily Telegraph*, *Independent*, *Yorkshire Post*, *Shropshire Star* and *New Law Journal*. It was also covered by BBC Radio 4 *Today* and 43 regional radio stations.

Modern slavery offences

Development

The Modern Slavery Act 2015 came into force in July 2015. While there was a guideline for one of the predecessor offences to those in the Act (Trafficking for sexual exploitation, section 59A of the Sexual Offences Act 2003) there were no dedicated sentencing guidelines for the offences under the 2015 Act.

The Act has been the subject of two reviews since its commencement. The first of these reviews,² looking at the effectiveness of the Act's criminal justice provisions, made a specific recommendation about the development of sentencing guidelines for these offences. The Independent Review of the Modern Slavery Act 2015³ also made a recommendation in its March 2019 report relating to Modern Slavery Reparation Orders and sentencing guidelines.

The Council agreed that guidelines should be developed for modern slavery offences and so prepared drafts for consultation. These drafts were informed by the current guideline for trafficking offences as well as by Court of Appeal case law.

Consultation

We consulted on the draft guidelines between 15 October 2020 and 15 January 2021. The principal guideline consulted on offences under both section 1 and section 2 of the 2015 Act:

- Section 1: Slavery, servitude and forced or compulsory labour
- Section 2: Human trafficking

The consultation also sought views on brief guidance for section 4 offences (Committing an offence with intent to commit an offence under section 2), and on an approach to sentencing section 30 offences (Breach of a slavery and trafficking prevention order or a slavery and trafficking risk order).

Alongside the consultation, the Council also published a resource assessment and statistical bulletin, showing current sentencing practice for modern slavery offences.

During the consultation period, to support the development of the guideline, we carried out qualitative research with 16 Crown Court judges to explore how the draft guidelines might work in practice. Before and during the

² Caroline Haughey (2016) Modern Slavery Act Review https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/542047/2016_07_31_Haughey_Review_of_Modern_Slavery_Act_-_final_1.0.pdf

³ Baroness Elizabeth Butler-Sloss, Maria Miller MP, Frank Field MP (2019) <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>

consultation we met several stakeholders on a one-to-one basis to discuss and explore our approach to the guidelines.

Media coverage

The consultation for this guideline was featured on BBC Radio 4, Radio 2, Radio 5 Live and several BBC regional stations. It was also reported by the Press Association and received coverage in *The Times*, *Lancashire Evening Post*, *New Law Journal*, *Law Society Gazette* and *Police Oracle*.

Unauthorised use of a trademark

Development

The Council decided to replace and update the guideline, produced by the Sentencing Guidelines Council (SGC) in 2008, for the offence of unauthorised use of a trademark. The SGC guideline is for use in magistrates' courts and applies only to sentencing individuals convicted of the offence. As part of a commitment to replace all SGC guidelines, the Council developed separate guidelines for individuals and organisations that can be used in both magistrates' courts and the Crown Court. It is an offence that sentencers are unlikely to have much experience of sentencing, and the Council considered that comprehensive guidelines would therefore be of great assistance.

Consultation

The consultation opened on 8 July and ran until 30 September 2020. During the consultation period a roundtable discussion was held with trading standards officers. A series of interviews was also held with magistrates and Crown Court judges in September 2020.

Alongside the consultation, we also published a resource assessment and statistical bulletin, showing current sentencing practice for this offence for both individuals and organisations.

Post-consultation

There were 41 responses to the consultation and the Council is considering changes to the guidelines in the light of these and the results of the research with sentencers. The definitive guidelines will be published in the summer of 2021.

Media coverage

The consultation was reported in the *Daily Telegraph*, *New Law Journal* and *Retail Times*.

Communication

The Sentencing Council has a statutory obligation, in producing guidelines, to have regard to “the need to promote public confidence in the criminal justice system”.⁴ To help the Council meet this duty, we have set ourselves a strategic objective: to improve awareness and understanding of sentencing among victims, witnesses, offenders and the public.

The Communication team has a central role to play in supporting this objective, which we do by delivering high-quality communications that aim to:

- inform and equip our professional audiences, and strengthen their confidence in the Council, the sentencing guidelines and the Council’s sentencing model; and
- inform and educate our public audiences, and improve their understanding of, and confidence in, sentencing and the criminal justice system.

Working with the media

The Council publicises its work via general and specialist media. Our aim is to make sure that sentencers and criminal justice practitioners are aware of what work the Council is undertaking and are kept informed about the publication of new guidelines.

We also make sure that practitioners and stakeholders with an interest in specialist topic areas are aware of our consultations so that they are able to respond and share their knowledge and expertise with the Council.

Achieving media coverage for the publication of new guidelines or consultations also provides us with opportunities to inform the wider public about how sentencing works and the role played by the Council and the guidelines in enabling the courts to take a consistent, fair and transparent approach to sentencing.

The definitive guidelines and consultations published over the period of this annual report were supported by a programme of communication activities targeting the media, including criminal justice publications, national and regional print and broadcast channels and other specialist titles where relevant. Council members were fully briefed and prepared to talk to the media for each announcement and undertook a number of interviews, including on high-profile, national programmes such as Sky News, BBC News, the *Today* programme on BBC Radio 4, BBC *Breakfast*, BBC 2 and BBC Radio 5 Live, as well as on BBC Asian Network and regional radio. There was also coverage on Sky Radio, LBC and a number of commercial radio stations.

⁴ s.120(11)(d) Coroners and Justice Act 2009.

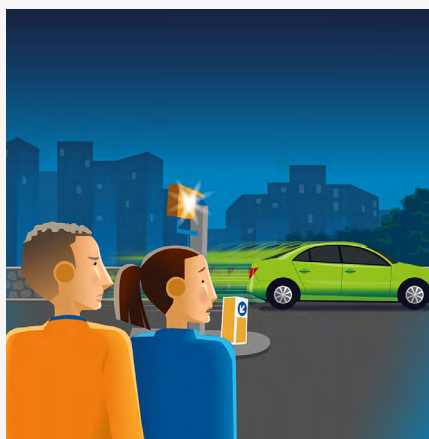
A website for public confidence

The Council's new website, which we launched on 1 December 2020, has been designed specifically to help us meet our statutory duty to have regard to the need to promote public confidence in the criminal justice system.⁵

For many of our public and other non-legal audiences, our website is their first encounter with the Council. Our aim was to deliver for them a modern, user-friendly website that would provide the information they were looking for while also engaging their interest and allowing us to inform them about sentencing and sentencing guidelines in ways that are relevant and easily understood.

In developing the new website, we set ourselves four objectives.

- Engage the public, including victims, witnesses and offenders, to improve their understanding of and confidence in sentencing
- Provide clearer destinations for researchers and academics
- Support the Council's business needs and objectives
- Make sure sentencing guidelines continue to be easy to find and easy to use.



Illustrating offences

We know that many of our public audience arrive at our website having searched for information on particular offences. Where previously these visitors would have landed on the relevant sentencing guideline, which might be confusing for anyone not familiar with the guidelines, they will now find pages explaining in plain language what the offence is, the circumstances in which it might take place, what the penalties could be and how the sentences are worked out. Armed with this information, they are likely to have a far greater understanding of sentencing guidelines and how they work.

Articles and blogs

We have introduced a dedicated news and blogging area to the site designed to allow us to respond more readily to emerging sentencing-related issues and make more of opportunities to inform and educate the public. We use these pages to publish articles or short blog posts to help us explain to the public about the work of the Sentencing Council, how the guidelines are developed and how sentencing works. We promote these pages on our Twitter account, inviting people to visit the website to find out more.

⁵ s.120(11)(d) Coroners and Justice Act 2009.

Going to court

Members of the public who visit our website are likely to have little, if any, legal knowledge, and will not be familiar with the sentencing guidelines or the process of sentencing or know much about what happens in a criminal court. Research tells us that knowing the guidelines exist improves confidence in the fairness of sentencing among victims and the public at least a little. Our new website has an area dedicated to guiding victims, witnesses and defendants through the court system. It aims to provide context for the sentencing guidelines, demystify the sentencing process, debunk common myths and manage expectations.

Research and resources

One of our aims for the new website was to give the Council's analysis and research work a higher profile. Analysis and research are integral to the development of the guidelines, and the website allows us to demonstrate the extent to which the guidelines are evidence based.

On these pages visitors can now easily find our statistical bulletins, resource assessments, guideline evaluations and information on our data collections. Analysis of data from these collections helps us explore what might be influencing outcomes and understand how a guideline has been implemented in practice. We are also now publishing on the website the underlying data from these collections so that users may conduct their own analyses.

These pages also provide access to a wide range of criminal justice statistics from other sources, all the Council's publications and our resources for teachers.

Protecting the sentencing guidelines

One of our prime objectives in redeveloping our website was to protect the area of the site that hosts the guidelines and make sure that nothing would detract from the experience of judges, magistrates and other professional users.

We completed our project to make the sentencing guidelines fully digital in 2018. All offence specific and overarching sentencing guidelines that are used in magistrates' courts and the Crown Court are now available in a digital format in dedicated areas on the website. The move to digital has enabled the Council to introduce features such as expanded explanations and gives users confidence that the guidelines they are looking at are the most up to date. It also makes the guidelines more visible to the public, helping to make sentencing more transparent and accessible.

The work of the Council remained of significant interest to the media and, over the course of the year, there were 124 mentions of the Council in print media, 355 broadcast mentions and 250 mentions in online publications (not including social media).

Our press office also routinely answers media enquiries about sentencing issues, provides background for sentencing related articles and puts forward spokespeople, where appropriate.

The office also handles many calls and emails from members of the public enquiring about sentencing and the guidelines. While we are not able to provide advice or comment on individual cases, we provide information and alternative sources where we can.

Sentencing Council website

For many people, our website, www.sentencingcouncil.org.uk, is their first encounter with the Sentencing Council. On 1 December 2020 we launched a new, more user-friendly website designed specifically to promote a greater understanding of sentencing among our public and other non-specialist audiences, while continuing to provide access to sentencing guidelines for criminal justice professionals.

The site explains how sentencing works in plain, easy-to-understand language. It gives broad information on some often-sentenced offences and debunks common sentencing myths. The public-facing pages provide clear, helpful context to the sentencing guidelines, which aims to improve the transparency of sentencing and make it more accessible to the public.

The website has continued to be a source of information for sentencers and others in the criminal justice system, as well as for victims, witnesses and journalists. The new site has seen an increase in users, with the number of unique visitors in the first quarter of 2020/21 rising to 437,831 compared with 412,986 in the first quarter of 2019/20.

There is more information about the new website and the objectives behind its development on pages 24-5.

Social media: Twitter

Twitter is widely used by legal practitioners and criminal justice commentators, academics and reformers. The Council uses a corporate Twitter account to tell our followers about consultations and guideline launches as well as to monitor and respond to what is being said about sentencing and the Council.

In March 2021, we took advantage of the opportunity offered by Justice Week to increase awareness of our Twitter account and broaden the profile of our followers. Justice Week is an initiative of the Law Society, supported by the Bar Council and the Chartered Institute of Legal Executives (CILEx). It aims to make the criminal justice system more accessible to the public and, in particular, to build public support and understanding for the rule of law and justice. Between 1 and 5 March, we published a series of tweets about the Council and how sentencing and the guidelines work, all of which were designed to encourage people to find out more on our website. Our messages were retweeted or liked by 183 accounts,

including the Law Society, Magistrates' Association and Bar Council who between them have more than 176,000 followers; 40 people clicked through to our profile to find out more about the Council; almost 100 people followed links through to our website; and half the new followers we gained during the week were from outside the criminal justice system, with a number being educators.

Working to engage the public and victims of crime

To assist us in improving understanding of sentencing, particularly among victims and witnesses, the Council continues to nurture our relationships with partner organisations who have direct contact with the public.

We focus on our communication with the police service, aiming to reach the officers who most often engage with the public. Our activities have included ensuring police publications receive Council announcements, working with Police Professional magazine to provide articles and features on aspects of sentencing and establishing relationships with relevant groups of officers, such as Family Liaison Officers, who, among their other duties, provide the link between bereaved families and the police during major investigations.

Throughout the year the Witness Service continued to use our materials about sentencing to support and reassure witnesses and victims.

Reaching young people

To meet our statutory duty to have regard to the need to promote public confidence, the Council must have a clear and detailed picture of current levels of understanding of sentencing among the public. In 2019, we published a report of research into public knowledge of, and confidence in, sentencing and the criminal justice system.⁶ The research told us that young people between school-leaving age and early 30s have greater confidence in the effectiveness and fairness of the criminal justice system than older people, and most say that hearing about the sentencing guidelines increases their levels of confidence. However, young people are less likely than any other age group to know about the guidelines.

To mitigate this lack of knowledge among the next generation of young adults, the Council has identified young people of secondary-school age as a priority audience.

Our aim is to equip them with a knowledge and understanding of sentencing that will improve their confidence in the criminal justice system, whether they encounter it as victims, witnesses or defendants, and enable them to become critical readers of the media's reporting of sentencing.

⁶ ComRes (2019) Public Knowledge of and Confidence in the Criminal Justice System and Sentencing, Sentencing Council: <https://www.sentencingcouncil.org.uk/publications/item/public-confidence-in-sentencing-and-the-criminal-justice-system/>

To help us educate young people, the Council aims to contribute to teaching activities that are run by our partners in the criminal justice system and other organisations who have far greater reach into schools than the Council could achieve alone.

In autumn 2020 we continued our work with Young Citizens, an education charity that works in primary and secondary schools to help educate, inspire and motivate young people. We developed sentencing-related content for the charity's Court Reporter Competition, which is set in the Crown Court and runs alongside their Bar Mock Trials. The competition provides an opportunity for students at key stages 3 and 4 to play the part of court reporter. It teaches them about the relevant law and the importance of producing accurate and factual reports. The Council's contribution includes guidance on the accurate use of language to describe sentencing and the guidelines, and sentencing myths to avoid. Our contribution complements the materials we developed last year for Young Citizens' Bar Mock Trials competition, which the charity runs every year.

During the year we also began work to develop a lesson plan for Go-Givers, another Young Citizens programme that has the potential to reach more than 48,000 children at key stages 1 and 2.

Our new website features a page of resources for teachers. The page currently hosts the teaching pack we have developed for schools to deliver as part of the citizenship curriculum for key stage 3 and 4 pupils. These resources help pupils in England and Wales develop an

understanding of how criminal sentencing works and give them the opportunity to try sentencing for themselves through interactive scenarios. As well as being published on our website, the pack is also available through Young Citizens, the Association for Citizenship Teaching, and the Times and Guardian educational pages. The page also includes links to the teaching materials provided by Young Citizens to which we have contributed.

In the first three months of 2021, 572 visits were made to the Council's teaching resources webpage, 302 of which were by new users.

Developing relationships with partners and interested parties

To further our work to engage stakeholders and build relationships across the criminal justice system, Council members and staff from the Office of the Sentencing Council (OSC) frequently give speeches and presentations covering all aspects of sentencing and developing guidelines. Our ability to do so between April 2020 and March 2021 was inevitably significantly curtailed by the Covid-19 pandemic. However, the few events we did contribute to were conducted online, which meant that we were able to reach far larger audiences than usual. In March, Her Honour Judge Rosa Dean spoke on the subject of sentencing offenders with mental disorders at a meeting of the Royal College of Psychiatrists, reaching an audience of almost 600 forensic psychiatrists. Also in March 2021, an official from the OSC presented to a Probation Service audience, talking about the imposition of community

and custodial sentences to 600 probation officers, including those responsible for writing pre-sentence reports. The Chairman presented at both the Murder induction and Murder continuation courses led by the Judicial College and spoke about the Council and the sentencing guidelines to an audience of bar pupils and young barristers of the Northern and North-Eastern Circuits.

In more normal times, the Council could expect to host visitors from overseas seeking to learn more about the Sentencing Council and to understand how the guidelines are developed and used. We hope soon to be able to resume these visits, which allow us in turn to learn about the criminal justice systems of other nations and discover whether and how sentencing guidelines are used in other jurisdictions.



Analysis and research

The statutory duties of the Council include requirements to carry out analysis and research into sentencing. Our work in this area includes the following.

Undertaking research and analysis to support the development of guidelines and other statutory duties

The Council regularly carries out social research and analysis that aims to augment the evidence base underpinning guidelines, ensuring, in particular, that guidelines are informed by the views and experiences of those who sentence. We conduct primary research with users of the guidelines: primarily Crown Court judges, district judges and magistrates, using a range of methods. These methods include surveys, interviews (conducted face-to-face, over the telephone and using MS Teams) and group discussions. Our researchers also review sentencing literature and analyse the content of Crown Court sentencing-remark transcripts. This work helps to inform the content of the guidelines at an early stage of development and explore any behavioural implications. Where relevant, we also conduct research with victims, offenders and members of the public.

During the development of draft guidelines, we also draw on a range of data sources to produce statistical information about current sentencing practice, including offence

volumes, average custodial sentence lengths and breakdowns by age, gender and ethnicity. We use this information to understand the parameters of current sentencing practice and to fulfil the Council's public sector equality duty⁷ (see also page 48).

Where necessary, the Council also undertakes research and analysis to support some of our wider statutory duties or to provide further information in specific areas. This includes work to support our public confidence duties and issues related to effectiveness and consistency in sentencing and judicial attitudes to guidelines. It also includes research on equality and diversity in the work of the Sentencing Council.

Conducting an assessment of the resource implications of guidelines

The Council has a statutory duty to produce a resource assessment to accompany each sentencing guideline that estimates the effects of the guideline on the resource requirements of the prison, probation and youth justice services. This assessment enables the Council and our stakeholders to better understand the consequences of the guidelines in terms of impact on correctional resources. The work that goes into resource assessments also results in wider benefits for the Council.

⁷ The public sector Equality Duty, s.149 of the Equality Act 2010, applies to the public bodies listed in Schedule 19 <https://www.gov.uk/government/publications/equality-act-2010-schedule-19-consolidated-april-2011>

The process involves close scrutiny of current sentencing practice, including analysis of how sentences may be affected by guilty plea reductions and consideration of the factors that influence sentences. This analysis provides a “point of departure” for the Council when we are considering the appropriate sentencing ranges for a guideline.

Where the Council intends a guideline to improve consistency, while causing no change to the overall severity of sentencing, the guideline sentencing ranges will aim to reflect current sentencing practice, as identified from the analysis. Where we intend a guideline to effect changes in the severity of sentencing for an offence, the Council may set sentencing ranges higher or lower than those indicated by current sentencing practice.

We publish resource assessments alongside our consultations and our definitive guidelines. Alongside our draft guidelines for consultation we also publish a statistical bulletin summarising the statistical information that has helped inform their development.

Monitoring the operation and effect of sentencing guidelines and drawing conclusions

The actual impact of the guideline on sentencing and, consequently, on resources, is assessed through monitoring and evaluation after the guidelines have been implemented. To achieve this, we use a range of different approaches and types of analysis, including putting in place bespoke, targeted data

collections in courts, qualitative interviews with sentencers, transcript analysis and analysis of administrative data. These data are supplemented by data collected through the Crown Court Sentencing Survey (which ran between October 2010 and March 2015).

We have published data from the Crown Court Sentencing Survey on our website as well as more recent data collected from magistrates’ courts on theft from a shop or stall. We will be publishing data from other data collection exercises in due course.⁸

Publishing Sentencing Council research

We publish our research and statistical outputs on the analysis and research pages of our website.⁹ More information about the analysis and research we have undertaken to support the development of new guidelines or to evaluate existing guidelines is included in the Sentencing guidelines chapter of this report (see pages 10-22).

Reporting on sentencing factors and non-sentencing factors

The Council has a statutory duty to produce sentencing factors and non-sentencing factors reports. These reports can be found on the following pages.

⁸ Data collections on the Council website: <https://www.sentencingcouncil.org.uk/research-and-resources/data-collections/>

⁹ <https://www.sentencingcouncil.org.uk/research-and-resources/sentencing-council-research-and-analysis/>

Having regard to equality and diversity

The Sentencing Council is committed to exploring fully and taking action on the equality and diversity implications of our work – both in its outcomes and in how we carry it out. During the reporting year, we have taken further steps to consider how equality and diversity is reflected in our guidelines and in the ways in which we work.

Preventing discrimination

Sentencing guidelines are intended to apply equally to all offenders and the Council takes great care to guard against any unintended impact. We also have an obligation under the Public Sector Equality Duty to consider the effects of our guidelines on different groups (see page 48 for more).

We recognise that draft guidelines could be interpreted in different ways and ask consultees specifically for views on whether any of the factors in draft guidelines, or the ways in which they are expressed, could risk being interpreted in ways that could lead to discrimination against particular groups.

Guarding against disparity of outcomes

When drafting new guidelines for consultation, we look at sentencing data for those offences grouped by offenders' age, sex and ethnicity, and we also consider statistics on the age, sex and ethnicity of offenders when evaluating whether our existing guidelines have affected the sentences of different groups in different ways.

Clearly, guidelines cannot alone preclude disparity of outcomes for different groups. However, where the Council has identified disparities of sentencing outcomes for specific offences, we have consulted on and taken pre-emptive measures in guidelines. These measures have included drawing sentencers' attention, as an integral part the sentencing process, both to relevant sections of the Equal Treatment Bench Book and to evidence of sentencing disparities.

During 2020/21, these special measures have been reflected in definitive guidelines for drug and firearms offences where there was sufficient evidence of disparity in sentence outcomes, and in new expanded explanations for the mitigating factors "remorse" and "mental disorder and learning disability". We know that offenders will express remorse in many different ways, perhaps reflecting their cultural norms, and the new guidance warns sentencers against making assumptions about an offender's remorse based on their demeanour in court. The expanded explanation for "mental disorder and learning disability" links to our guideline on sentencing offenders with mental disorders, developmental disorders or neurological impairments, which advises that, due to perceived stigma, some offenders from Black, Asian and Minority Ethnic communities may be unlikely to raise this in mitigation.

This year, we began the process of commissioning a research project to examine the potential for the factors, language or structure of our guidelines to cause disparities in sentencing.

Equality and diversity working group

On 10 February 2021 the Council’s equality and diversity working group held its first meeting. The group has been set up to advise the Council on matters relating to equality and diversity and make sure we have regard to the full range of protected characteristics in our work.¹⁰ The group will consider ways in which the Council could more effectively engage with, and take account of the views and perspectives of, people with protected characteristics, and with offenders and victims.

Extending our reach

To make sure that the sentencing guidelines take into account the perspectives of all those who could potentially be affected by their implementation, we aim to elicit a broad and representative body of responses.

The Council asked the Equality and Diversity working group to consider our approach to identifying and reaching audiences for consultation. In May, the group began to review how we could improve the value of our consultations, specifically with regard to hearing the voices of offenders, victims and people under probation supervision; Black, Asian and Minority Ethnic audiences; and individuals and organisations representing people with protected characteristics.

Building our capability

Officials from the Office of the Sentencing Council (OSC) held several internal events during the year to consider race relations, diversity and inclusion. They considered how language may be perceived differently by people of different ethnicities and explored what steps could be taken to improve diversity and inclusion not just within the Office but also in their work for the Council.

The conversations are now an integral part of the landscape of the OSC, with more planned for the future.

Steps already taken

All sentencing guidelines now include a link to the Equal Treatment Bench Book and a reminder to sentencers that the Book covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system.

Guidelines also now include expanded explanations to many aggravating and mitigating factors designed to help ensure that relevant considerations are taken into account in sentencing. These include, for example, an expanded explanation for the mitigating factor “age and/ or lack of maturity” that sets out the latest information on how immaturity can impact on offending.

¹⁰ s149(7) of the Equality Act 2010 defines protected characteristics as: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

Sentencing factors report

In accordance with section 130 of the Coroners and Justice Act 2009, the Sentencing Council's annual report must contain a sentencing factors report. This report considers changes in the sentencing practice of courts and their possible effects on the resources required in the prison, probation and youth justice services.

Sentencing guidelines are a key driver of change in sentencing practice. Some guidelines aim to increase the consistency of approach to sentencing while maintaining the average severity of sentencing. Other guidelines explicitly aim to cause changes to the severity of sentencing.

Changes in sentencing practice can also occur in the absence of new sentencing guidelines and could be the result of many factors such as Court of Appeal guideline judgments, legislation and changing attitudes towards different offences.

This report considers only changes in sentencing practice caused by changes in sentencing guidelines.

Sentencing guidelines

Between 1 April 2020 and 31 March 2021, the Council published:

- The definitive overarching principles guideline: *Sentencing offenders with mental disorders, developmental disorders or neurological impairments*
- Changes to the magistrates' courts sentencing guidelines and associated explanatory materials
- Definitive guidelines for sentencing firearms offences
- Definitive guidelines for sentencing drug offences

Sentencing offenders with mental disorders, developmental disorders or neurological impairments

The Council's aim in developing the overarching principles for sentencing offenders with mental disorders, developmental disorders, or neurological impairments was to consolidate and provide information that would assist courts to pass appropriate sentences when dealing with offenders who have mental disorders, developmental disorders or neurological impairments, and to promote consistency of approach in sentencing.

Our intention was that the new guideline would encourage consistency of sentencing through bringing together information on these disorders and impairments in one place. We did not intend directly to cause changes to sentencing practice. However, it is possible that by bringing this information together in a guideline for the first time, there may be an impact on sentencing practice, and we have explored this possibility through consultation-stage research interviews and a review of written responses to the consultation.

Both the interview findings and a review of consultation responses showed that there was a perception from some that the guideline would not have an impact on sentencing, while others thought that there could be a change (for example, an increased use of lower culpability factors and mitigating factors relating to mental health, a decrease in sentencing severity, and an increased use of medical reports in the Crown Court and of some community sentence requirements). However, while there was a perception from some that there could be some changes in these areas, the interview findings also showed that when sentencers were given scenarios to sentence under current practice and then under the draft guideline, there was no clear evidence of any changes in sentencing practice. Therefore, the guideline is not expected to have an impact on these areas.

For hospital orders, it was generally thought that the guideline would not have an impact, as the guideline reflects current legislation and recent case law in this area. Therefore, again, the guideline is not expected to have an impact on the use of hospital orders.

Interview participants felt that the guideline was part of wider trends of moving towards a more understanding approach to these disorders and impairments throughout the criminal justice system. Many of the consultation respondents felt that the guideline would improve consistency of sentencing, with some others commenting that it would increase transparency. Therefore, it may be that the guideline is part of a wider focus on offenders' mental health, which may gradually change the way in which mental health is treated in the criminal justice system.

Changes to the magistrates' courts sentencing guidelines and associated explanatory materials

Several changes were made to the explanatory materials to the magistrates' courts sentencing guidelines (MCSG), including removing and replacing the guidance on fines for high-income offenders. This may cause an increase in the value of fines for some high-income individuals but any increase is expected to be small when compared to the total value of fines imposed across all offenders each year.

The other changes to the explanatory materials to the MCSG relate to the surcharge, prosecution costs and disqualification. As these do not relate to prison or probation services, they will not have an impact on these correctional resources.

The change made to the *Driving whilst disqualified* guideline involves including additional wording about disqualification

only. This change will therefore not have an impact on prison or probation services or on the value of fines.

There are two amendments to the wording of the *Breach of a community order* guideline. The first amendment clarifies that the court may extend the length of requirement(s) or the length of the order to allow time for the completion of requirement(s), but this is not a standalone option for dealing with a breach. This amendment reflects the correct legal position as set out in guidance issued to magistrates' courts by the Justices' Legal Advisers and Court Officers Service in March 2019. Analysis of data collected from magistrates' courts in 2019 led the Council to conclude that some individuals may receive fines or more onerous community order requirements when the changes are made. However, it should be noted that imposing a stand-alone extension to the order is not a lawful way of dealing with a breach and, therefore, any change in practice that results from the amendments will be correcting an erroneous interpretation of the law and the guideline.

The second amendment to the wording of the *Breach of a community order* guideline relates to where an offender is convicted by a magistrates' court for a new offence while a community order issued in the Crown Court is in force. The Court of Appeal has clarified that the breach legislation does not give magistrates' courts the power to commit the new offence to the Crown Court, but feedback suggested that the wording in the guideline around this issue was potentially misleading. The wording has therefore been

amended to clarify the correct legal position. It is expected that the principles set out in the amendment are already being followed but, if the amendment did affect sentencer behaviour, then any impact would relate to the venue for sentence and not to average sentencing severity. The amendment will therefore not have an impact on prison or probation resources or on the value of fines.

Firearms offences

The definitive guidelines for sentencing firearms offences aim to improve consistency of sentencing but, for the majority of cases, the Council does not anticipate a change to sentencing practice.

For carrying a firearm in a public place, analysis of transcripts of Crown Court judges' sentencing remarks indicated that some offenders would receive a less severe sentence under the new guideline; specifically, some offenders who previously received a suspended sentence order would instead receive a community order. In addition, some offenders who were previously sentenced to immediate custody would also receive a community order, resulting in a small impact on correctional resources (an estimated reduction of fewer than five prison places per year and a small requirement for additional probation resources). Research with magistrates' court sentencers also suggested that some offenders may receive less severe sentences at magistrates' courts, specifically that more offenders may receive a fine instead of a community order.

For manufacturing, selling or transferring, possession for sale or transfer, purchase or acquire for sale or transfer prohibited weapon or ammunition, there were previously no guidelines in place. Analysis of judges' sentencing remarks found that some sentences would be likely to increase under the new guideline, some would be likely to decrease, and some would remain the same. The lack of a clear pattern indicates there is currently some variation in sentencing for these offences. Due to a lack of data available we are not able to say whether the guideline for these offences will have an impact on prison or probation resources overall. It is anticipated, however, that sentencing will become more consistent following the introduction of the guideline.

For all other offences covered by the guidelines, we do not expect there to be any impact on prison or probation resources.

Drug offences

Overall, the definitive guidelines for sentencing drug offences aim to improve consistency of sentencing but not to change average sentencing practice. However, there are a few exceptions to this, where changes may be seen.

For importation of a class A drug, there may be a decrease in sentences for offenders categorised as lesser role culpability and harm level 3, due to a reduction in the starting point sentence when compared with the existing guideline. It is estimated that this may lead to a need for around 10 fewer prison places per year.

For importation offences, supplying or offering to supply a controlled drug/ possession of a controlled drug with intent to supply it to another and production/ cultivation offences, there have been some changes to the ecstasy tablets, cannabis plants and MDMA quantities provided in the revised guidelines. These changes mean that it is possible the guidelines may have an impact on correctional resources (although it is not possible to quantify what this impact might be). As the new guideline takes account of the fact that the average purity/ yield is now higher (so no adjustments need to be made by sentencers), the net impact of revising these quantities may be small.

A new window on magistrates' courts

On 17 December 2020 the Council released, for the first time, some data collected from magistrates' courts sentencing the offence of theft from a shop or stall. The release represents a significant first step in filling the gap in detailed, publicly available, sentencing data from the magistrates' courts.

Between October 2010 and March 2015, the Council ran the Crown Court Sentencing Survey (CCSS). The survey collected information on sentencing reasons, including harm and culpability factors, aggravating and mitigating factors, guilty pleas and sentence outcomes, but only, as the name suggests, for the Crown Court.

Since 2015, we have conducted targeted and bespoke collections to gather similar data from both the Crown Court and magistrates' courts. Our December 2020 release is the first of its kind for a magistrates' court offence.

What can the data tell us?

Where possible, we collect data both before and after a new guideline has come into force. Analysis of data from these rich and detailed collections helps us explore what might be influencing outcomes and understand how the guideline has been implemented in practice.

The data can tell us about the variety of factors sentencers are taking into account when arriving at their sentencing decision. They include factors related to the culpability of the offender and the harm caused by the offence. For theft from a shop or stall, this includes information such as the value of the stolen goods and whether emotional distress was caused to the victim. The datasets contain details of any aggravating or mitigating factors as well as information about whether the defendant pleaded guilty and, if so, how the sentencers subsequently adjusted the sentence.

The data also tell us about the final sentence the sentencers imposed, including what type of sentence and how long it was. They give us a level of detail not seen before, even in the CCSS, with regards to the sentencing outcome, for example: the level of a community order, the fine band and the length of a suspended sentence. The collection also includes a new 'single most important factor' variable, from which we can identify the most important factor sentencers took into account when making their sentencing decision.

What will the data be used for?

This collection will help inform the Council's understanding of sentencing for lower-level theft offences. It will also be a valuable resource for criminal justice researchers and others interested in the sentencing decision-making process and the key factors that contribute to final sentencing outcomes.

Single factor data

A comparison of the five, most-frequent, identifiable, single most important factors recorded in both the pre- and post-guideline data.¹¹



¹¹ The proportions provided are out of the total number of single factors indicated, which is higher than the number of cases in the published data, since some sentencers indicated multiple reasons (pre guideline total 3,377, post guideline total 2,733)

Non-sentencing factors report

The Sentencing Council is required under the Coroners and Justice Act 2009 to prepare a report of non-sentencing factors to identify the quantitative effect that non-sentencing factors are having, or are likely to have, on the resources needed or available to give effect to sentences imposed by courts in England and Wales.

We begin this report by defining non-sentencing factors and explaining their importance to resource requirements in the criminal justice system. We then signpost the most recently published evidence on these factors.

Definition of non-sentencing factors and their significance

The approach taken by the courts to sentencing offenders is a primary driver of requirements for correctional resources in the criminal justice system. We discuss this in our report on sentencing factors (see pages 34-7). However, non-sentencing factors also exert an important influence on requirements for correctional resources.

Non-sentencing factors are factors that do not relate to the sentencing practice of the

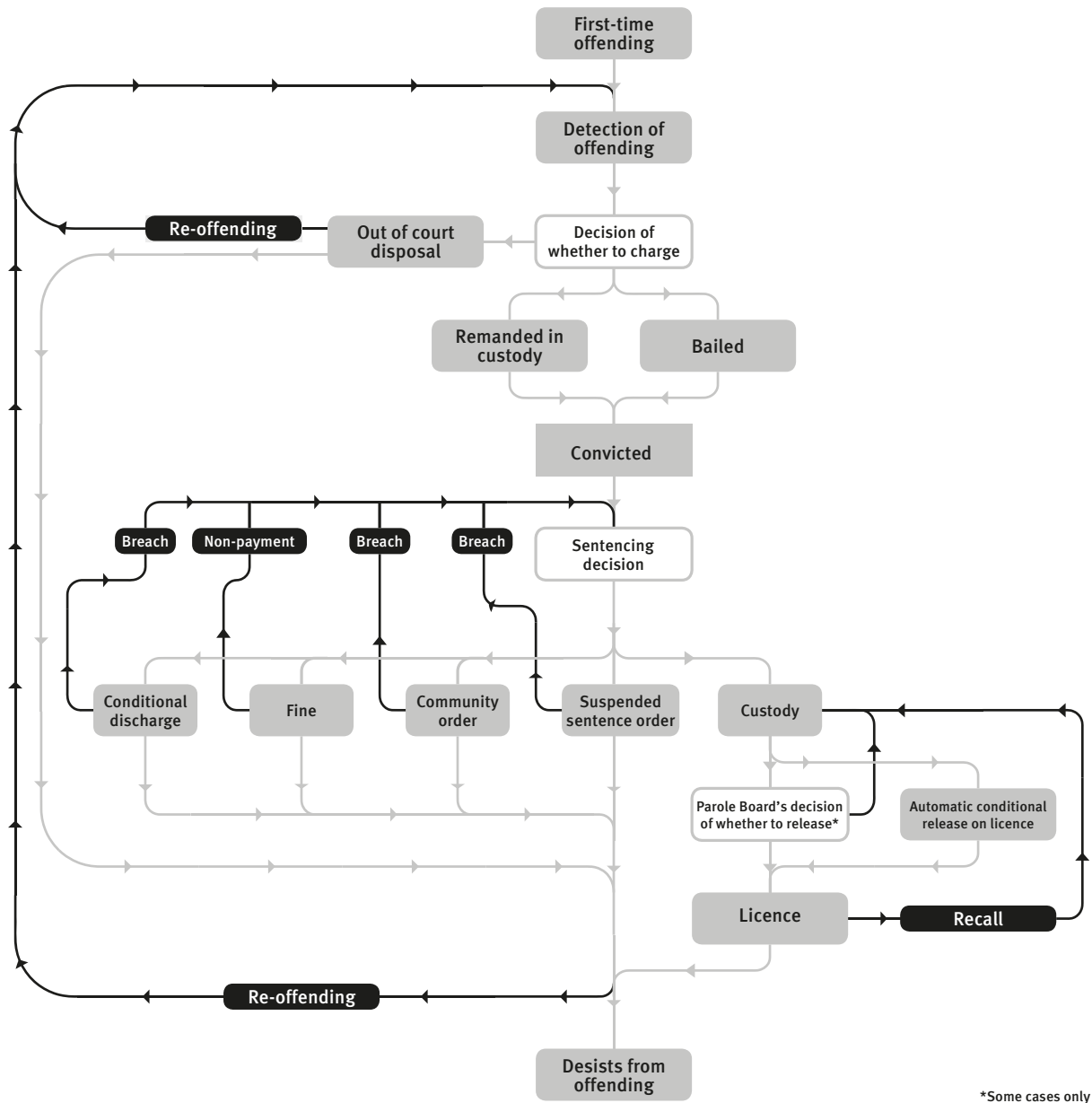
courts but which may affect the resources required to give effect to sentences. For example, the volume of offenders coming before the courts is a non-sentencing factor: greater sentencing volumes lead to greater pressure on correctional resources, even if the courts' treatment of individual cases does not change. Release provisions are another example: changes in the length of time spent in prison for a given custodial sentence have obvious resource consequences.

Statistics on the effect of non-sentencing factors on resource requirements

It is relatively straightforward to analyse the available data on non-sentencing factors. However, it is extremely difficult to identify why changes have occurred and to isolate the resource effect of any individual change to the system. This is because the criminal justice system is dynamic and its processes are interconnected.

Figure 1 shows a stylised representation of the flow of offenders through the criminal justice system. This figure demonstrates the interdependence of the system and how changes to any one aspect will have knock-on effects in many other parts.

Figure 1



On the following pages we examine the available data on non-sentencing factors. Because of the complexities explained above, we have not attempted to untangle the interactions between different non-sentencing factors to explain the causes of observed changes and their impact on resources.

Volume of sentences and composition of offences coming before the courts

The Ministry of Justice (MoJ) publishes on www.gov.uk *Criminal Justice System Statistics Quarterly*, which gives quarterly statistics on the volume of sentences and the offence types for which offenders are sentenced.¹²

For the most detailed information on sentencing outcomes, follow the link on www.gov.uk for *Criminal Justice System Statistics Quarterly: December 2020* to use the sentencing tool. The tool provides statistics on the total number of sentences passed and how this has changed through time. The statistics can be broken down by sex, age group, ethnicity, court type and offence group.

The rate of recall from licence

An offender is recalled to custody by the Secretary of State if they have been released from custody but then breach the conditions of their licence or appear to be at risk of doing so. Because time served in custody is considerably more costly than time spent on licence, recall decisions have a substantial resource cost. Statistics on recall from licence can be found in the MoJ publication, *Offender Management Statistics Quarterly*.¹³ The tables concerning licence recalls, Table 5.1 to Table 5.12, can be found on www.gov.uk via

the link *Offender Management Statistics Quarterly: October to December 2020*. For example, Table 5.1 contains a summary of the number of licence recalls since 1984.

Post-sentence supervision

The Offender Rehabilitation Act 2014 expanded licence supervision, which means that since 1 February 2015, all offenders who receive a custodial sentence of less than two years are subject to compulsory post-sentence supervision (PSS) on their release for 12 months. MoJ publishes statistics on the number of offenders under PSS in *Offender Management Statistics Quarterly*.¹⁴ Follow the link *Probation: October to December 2020* and see Table 4.6.

The rate at which court orders are breached

If an offender breaches a court order, they must return to court. Their revised sentence will typically add or augment requirements to the order or involve custody. Breaches can therefore have significant resource implications.

Statistics on breaches can also be found in *Offender Management Statistics Quarterly*. Follow the link *Probation: October to December 2020* and see Table 4.9, for a breakdown of terminations of court orders by reason.¹⁵

¹² <https://www.gov.uk/government/collections/criminal-justice-statistics-quarterly>

¹³ <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

¹⁴ Ibid

¹⁵ Ibid

Patterns of reoffending

MoJ publishes reoffending statistics in *Proven Reoffending Statistics*.¹⁶

The frequency and severity of reoffending is an important driver of changes in requirements for criminal justice resources. Detailed statistics of how reoffending rates are changing through time can be found in the report. Additional statistics can be found in supplementary tables.

Release decisions by the Parole Board

Many offenders are released from prison automatically under release provisions that are set by Parliament and MoJ. However, in a minority of cases, which are usually those of very high severity, the Parole Board makes release decisions.

Statistics on release rates for these cases can be found in the annual reports of the Parole Board for England and Wales.¹⁷

Remand

Decisions to hold suspected offenders on remand are a significant contributor to the prison population. The remand population can be broken down into the untried population and the convicted but yet to be sentenced population.

Statistics on the number of offenders in prison on remand can be found in MoJ's *Offender Management Statistics Quarterly*.¹⁸ The prison population tables can be found via the link *Offender Management Statistics Quarterly: October to December 2020*. For example, Table 1.1 contains data on how the remand population has changed through time.

¹⁶ <https://www.gov.uk/government/collections/proven-reoffending-statistics>

¹⁷ <https://www.gov.uk/government/publications/the-parole-board-for-england-wales-annual-report-and-accounts-201920>

¹⁸ <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

Budget

Financial report

The cost of the Sentencing Council

The Sentencing Council's resources are made available through the Ministry of Justice; the Council is not required to produce its own audited accounts. However, the Council's expenditure is an integral part of the Ministry's resource account, which is subject to audit. The summary below reflects expenses directly incurred by the Council and is shown on an accrual basis.

	2020/21 (actual) ¹⁹ £000s
Total funding allocation	1,495
Staff costs	1,166
Non-staff costs	119
Total expenditure	1,285

¹⁹ The total expenditure has been rounded to the nearest £1,000 independently from the constituent parts, therefore summing the parts may not equal the rounded total.

Appendices

Appendix A: About the Sentencing Council

The primary function of the Sentencing Council is to prepare sentencing guidelines,²⁰ which the courts must follow unless it is contrary to the interests of justice to do so.²¹

The Council also fulfils other statutory functions:

- Publishing the resource implications in respect of draft guidelines²²
- Preparing a resource assessment to accompany new guidelines²³
- Monitoring the operation and effect of our sentencing guidelines, and drawing conclusions²⁴
- Consulting when preparing guidelines²⁵
- Promoting awareness of sentencing and sentencing practice²⁶
- Publishing a sentencing factors report²⁷

- Publishing a non-sentencing factors report²⁸
- Publishing an annual report²⁹

Governance

The Sentencing Council is an advisory non-departmental public body (NDPB) of the Ministry of Justice (MoJ). Unlike most advisory NDPBs, however, the Council's primary role is not to advise Government ministers but to provide guidance to sentencers.

The Council is independent of the government and the judiciary with regard to the guidelines we issue to courts, our resource assessments, our publications, how we promote awareness of sentencing and our approach to delivering these duties.

The Council is accountable to Parliament for the delivery of our statutory remit set out in the Coroners and Justice Act 2009. Under section 119 of the Act, the Council must make an annual report to the Lord Chancellor on how we have exercised our functions.

20 s.120 Coroners and Justice Act 2009.

21 s.59(1) Sentencing Code.

22 s.127 Coroners and Justice Act 2009.

23 s.127 *ibid.*

24 s.128 *ibid.*

25 s.120(6) *ibid.*

26 s.129 *ibid.*

27 s.130 *ibid.*

28 s.131 *ibid.*

29 s.119 *ibid.*

The Lord Chancellor will lay a copy of the report before Parliament, and the Council will publish the report.

Ministers are ultimately accountable to Parliament for the Council's effectiveness and efficiency, for our use of public funds and for protecting our independence.

Section 133 of the 2009 Act states that the Lord Chancellor may provide the Council with such assistance as we request in connection with the performance of our functions.

The Council is accountable to the Permanent Secretary at MoJ as Accounting Officer and to ministers for the efficient and proper use of public funds delegated to the Council, in accordance with MoJ systems and with the principles of governance and finance set out in Managing Public Money, and other relevant Treasury instructions and guidance.

The budget is delegated to the Head of the Office of the Sentencing Council (OSC) from the Chief Finance Officer, Ministry of Justice. The Head of the OSC is responsible for the management and proper use of the budget.

The Director General, Policy, Communications and Analysis Group at MoJ is accountable for ensuring that there are effective arrangements for oversight of the Council in its statutory functions and as one of MoJ's arm's-length bodies.

How the Council operates

The Council is outward-facing, responsive and consultative. We draw on expertise from relevant fields where necessary while ensuring the legal sustainability of our work. The Council aims to bring clarity in sentencing matters, in a legally and politically complex environment.

The Council aims to foster close working relationships with judicial, governmental and non-governmental organisations and individuals while retaining our independence. These include: the Attorney General's Office; the College of Policing; the Council of Her Majesty's Circuit Judges; the Council of Her Majesty's District Judges (magistrates' courts); the Criminal Procedure Rules Committee; the Crown Prosecution Service; the Home Office; the Judicial Office; Justices' Legal Advisers and Court Officers Service; the Magistrates Association; the Ministry of Justice; the Magistrates' Leadership Executive, the National Police Chiefs' Council and many academics in related fields.

The Council engages with the public on sentencing, providing information and improving understanding.

The Council meets 10 times a year to discuss current work and agree how it should be progressed. The minutes of these meetings are published on our website.³⁰

³⁰ www.sentencingcouncil.org.uk

The Council has sub-groups to enable detailed work on three key areas of activity:

Analysis and research – to advise and steer the analysis and research strategy, including identifying research priorities so that it aligns with the Council’s statutory commitments and work plan. Chaired by: Dr Alpa Parmar.

Confidence and communication – to advise on and steer the work programme for the Communication team so that it aligns with the Council’s statutory commitments and work plan. Chaired by: Her Honour Judge Rosa Dean.

Governance – to support the Council in responsibilities for issues of risk, control and governance, by reviewing the comprehensiveness and reliability of assurances on governance, risk management, the control environment and the integrity of financial statements. Independent member: Elaine Lorimer, Chief Executive, Revenue Scotland. Chaired by: Beverley Thompson OBE.

The sub-groups’ roles are mandated by the Council, and all key decisions are escalated to the full membership.

Equality and diversity working group

At the Sentencing Council meeting on 20 November 2020 it was decided to establish a working group to advise the Council on matters relating to equality and diversity and make sure that the full range of protected characteristics are considered in our work: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The group will also consider ways in which the Council could engage more effectively with, and take account of the views and perspectives of, representatives of people with protected characteristics, and with offenders and victims more. The group held its first meeting in February 2021.

Ad hoc working groups and contributions

Where necessary, the Council sets up working groups to consider particular aspects of the development of a guideline or specific areas of business. In 2020 we established a working group to oversee the tenth anniversary and the Council’s consideration of our future priorities in response to the anniversary consultation. We also sometimes invite contributions from people who are not members of the Council but who have particular experience and expertise in fields of relevance to the guidelines.

Public sector equality duty

The Council is committed to meeting its obligations under the public sector equality duty (PSED).³¹ The PSED is a legal duty that requires public authorities, when considering a new policy or operational proposal, to have due regard to three needs:

- to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act;
- to advance equality of opportunity between those who share a protected characteristic and those who do not; and
- to foster good relations between those who share a protected characteristic and those who do not.³²

In developing guidelines, the Council considers the PSED in the context of the individual offence(s). Where there are offences that are aggravated by reasons of being related to a protected characteristic, this will be of particular relevance. Most guidelines include statutory aggravating factors at step two, relating to offences motivated by, or demonstrating hostility based on, protected characteristics. In addition, to assist sentencers in employing the principles of fair treatment and equality, we have placed links in all the guidelines to the Equal Treatment Bench Book.³³

The Council also considers data in relation to offenders sentenced for individual offence(s), including data on volumes of offenders sentenced grouped by gender, ethnicity and age and this is published alongside the draft and definitive guidelines. Consultations include a consideration of the issues raised by the data and seek views as to whether there are any other equality or diversity implications the guideline has not considered. In all our communications, we actively seek to engage diverse audiences and ensure multiple voices and interests are represented, particularly in our consultations.

Relationship with Parliament

The Council has a statutory requirement to consult Parliament, specifically the House of Commons Justice Select Committee.

The Council informs all organisations and individuals who respond to our consultations that their responses may be shared with the Committee in order to facilitate its work.

On 2 February 2021, Lord Justice Holroyde, Chairman of the Sentencing Council, and Steve Wade, Head of the Office of the Sentencing Council, gave evidence to the Justice Select Committee at a session dedicated to the work of the Sentencing Council.

³¹ s.149 Equality Act 2010.

³² Protected characteristics under the PSED are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

³³ Judicial College, Equal Treatment Bench Book: <https://www.judiciary.uk/publications/new-edition-of-the-equal-treatment-bench-book-launched/>.

The Office of the Sentencing Council

The Council is supported in its work by the Office of the Sentencing Council (OSC), in particular in:

- preparing draft guidelines for consultation and publication, subject to approval from the Council;
- ensuring that the analytical obligations under the Act are met;
- providing legal advice to ensure that the Council exercises its functions in a legally sound manner;
- delivering communication activity to support the Council's business; and
- providing efficient and accurate budget management, with an emphasis on value for money.

At 31 March 2021 there were 18 members of staff, including the Head of the Office of the Sentencing Council.

In the 2020 Civil Service Staff Engagement Survey, the OSC recorded a staff engagement index of 83 per cent. This places the Office 16 percentage points ahead of other MoJ arm's-length bodies and 13 percentage points ahead of other high-performing units across the Civil Service.

Senior management team

The work of the OSC is overseen by a senior management team comprising the Head of Office and senior staff. The role of the team is to:

- monitor and evaluate progress of the Council's workplan, as published in the Business Plan;
- monitor and evaluate budget expenditure, and make decisions regarding budget allocation;
- undertake regular review of the risk register on behalf of the Governance sub-group, with a view to ensuring that all information regarding delivery of the Sentencing Council's objectives and mitigation of risks is current and updated; and
- consider and make decisions on any other issues relating to the work of the OSC as may be relevant.

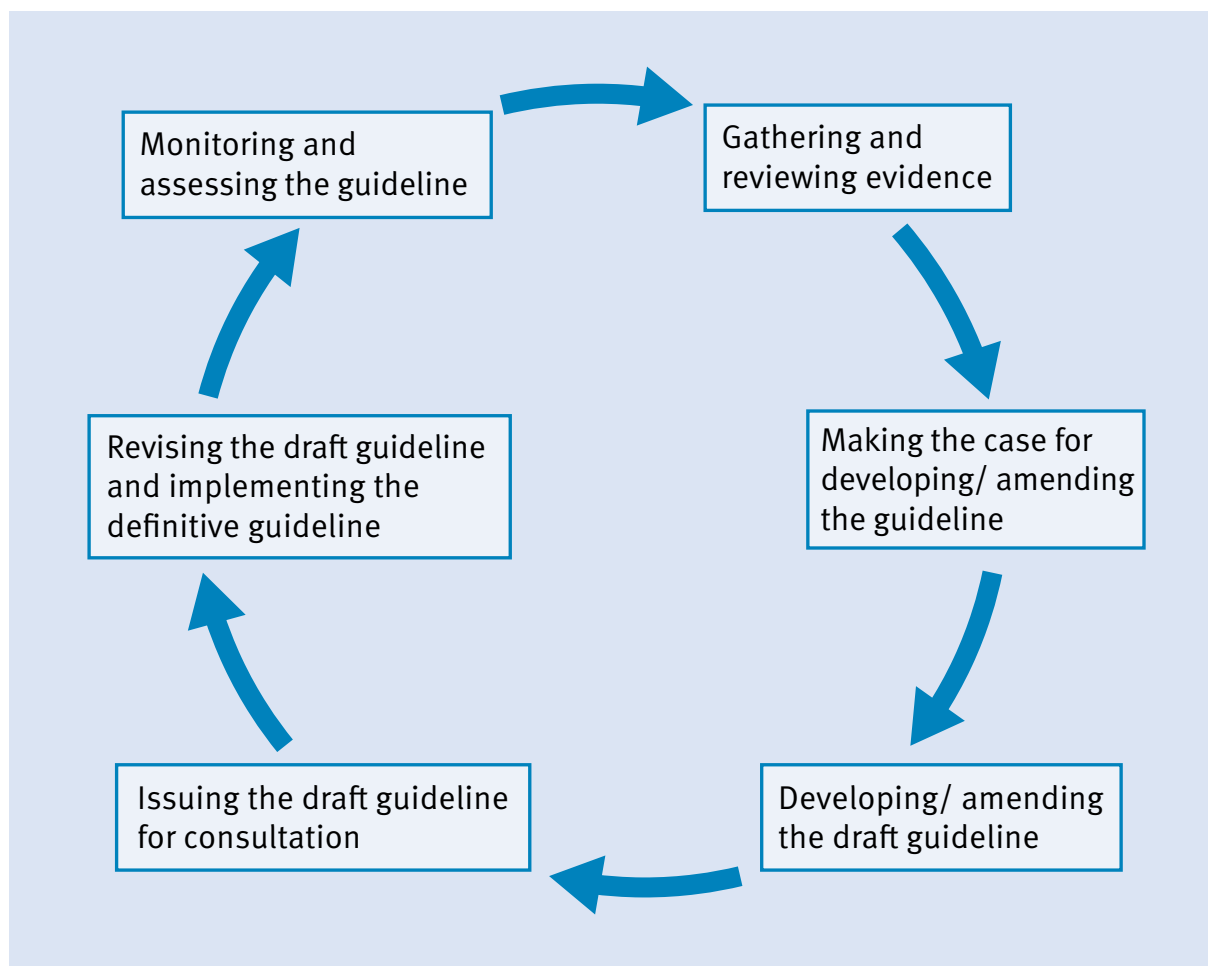
Guideline development

In developing guidelines, the Council follows a process that is based on the policy cycle set out by HM Treasury in the *Green Book: Central Government Guidance on Appraisal and Evaluation* (2018) and allows a culture of continuous improvement to be embedded.

The process, from first consideration by the Council to publication of a definitive guideline, can extend to 18 months or more. However, if the Council believes there to be a pressing need, it can be expedited.

Figure 2 illustrates the guideline development cycle.

Figure 2



Appendix B: Membership of the Sentencing Council

The Lord Chief Justice of England and Wales, the Right Honourable the Lord Burnett of Maldon, is President of the Council. In this role he oversees Council business and appoints judicial members, with the agreement of the Lord Chancellor.

The Right Honourable Lord Justice Holroyde, a Court of Appeal judge, was appointed Chairman of the Sentencing Council from 1 August 2018.

The Lord Chancellor and Secretary of State for Justice appoints non-judicial members, with the agreement of the Lord Chief Justice.

Membership of the Council at 31 March 2021

Judicial members

Chairman: the Right Honourable Lord Justice Holroyde, appointed 6 April 2015, appointed as Chairman 1 August 2018

In order of appointment:

The Honourable Mrs Justice McGowan,
2 January 2017

Her Honour Judge Rebecca Crane,
1 April 2017

Her Honour Judge Rosa Dean, 6 April 2018

The Right Honourable Lord Justice Adrian Fulford, 1 September 2019

District Judge (Magistrates' Courts)
Mike Fanning, 1 September 2019

The Honourable Mrs Justice May, 8
October 2020

Jo King JP, 8 October 2020

Non-judicial members

In order of appointment:

Rosina Cottage QC, barrister, 18 July 2016

Dr Alpa Parmar, academic, University of Oxford, 6 April 2018

Beverley Thompson OBE, CJS Consultant and former CEO of Probation, 15 June 2018

Max Hill QC, Director of Public Prosecutions and Head of the Crown Prosecution Service, 1 November 2018

Diana Fawcett, Chief Executive, Victim Support, 5 April 2019

Nick Ephgrave, Assistant Commissioner (Frontline Policing), Metropolitan Police, 26 May 2020

Register of members' interests

At 31 March 2021, only one member of the Council had a personal or business interests to declare: a close family member of Jo King JP is a serving member of the Metropolitan Police.

Appendix C: Sentencing guidelines production stages

Guideline	Production stage	Timing
Arson and criminal damage	Development	Throughout 2016/17
	Consultation	March to June 2018
	Post-consultation	Published 3 July 2019 Came into effect 1 October 2019
	Evaluation and monitoring	In progress 2020
Assault and attempted murder	Development	Throughout 2018/19 and 2019/20
	Consultation	April to September 2020
	Post-consultation	September 2020 to May 2021
	Evaluation and monitoring	Some data collected 2021
Bladed articles and offensive weapons	Development	Throughout 2015/16
	Consultation	October 2016 to January 2017
	Post-consultation	Published 1 March 2018 Came into effect 1 June 2018
	Evaluation and monitoring	April to September 2019
Breach offences	Development	Throughout 2016/17
	Consultation	October 2016 to January 2017
	Post-consultation	Published 7 June 2018 Came into effect 1 October 2018
	Evaluation and monitoring	April to September 2019
Burglary (revised)	Development	2020/2021
	Consultation	June to September 2021
	Post-consultation	
	Evaluation and monitoring	
Children and young people	Development	Throughout 2015/16
	Consultation	May to August 2016
	Post-consultation	Published 7 March 2017 Came into effect 1 June 2017
	Evaluation and monitoring	Published 17 November 2020

Guideline	Production stage	Timing
Dangerous dogs	Development	Throughout 2014/15
	Consultation	March to June 2015
	Post-consultation	Published 17 March 2016 Came into effect 1 July 2016
	Evaluation and monitoring	Published October 2020
Drug offences (revised)	Development	Assessment of original guidelines and interim guidance published June 2018
	Consultation	January to May 2020
	Post-consultation	Published 27 January 2021 Came into effect 1 April 2021
	Evaluation and monitoring	
Firearms	Development	Throughout 2018/19 and 2019/20
	Consultation	October 2019 to January 2020
	Post-consultation	Published 8 December 2020 Came into effect 1 January 2021
	Evaluation and monitoring	
Firearms importation	Development	2020/21
	Consultation	Summer 2021
	Post-consultation	
	Evaluation and monitoring	
General guideline and expanded explanations	Development	Throughout 2017/18 and 2018/19
	Consultation	June to September 2018
	Post-consultation	Published 24 July 2019 Came into effect 1 October 2019
	Evaluation and monitoring	

Guideline	Production stage	Timing
Guilty plea	Development	Throughout 2015/16
	Consultation	February to May 2016
	Post-consultation	Published 7 March 2017 Came into effect 1 June 2017
	Evaluation and monitoring	Published 17 November 2020
Health and safety offences, corporate manslaughter and food safety and hygiene offences	Development	Throughout 2013/14
	Consultation	November 2014 to February 2015
	Post-consultation	Published 3 November 2015 Came into effect 1 February 2016
	Evaluation and monitoring	Guideline assessment published 4 April 2019
Intimidatory offences	Development	Throughout 2016/17
	Consultation	March to June 2017
	Post-consultation	Published 5 July 2018 Came into effect 1 October 2018
	Evaluation and monitoring	Impact assessment conducted autumn 2019, for later publication
Mental disorders, developmental disorders or neurological impairments	Development	Throughout 2018
	Consultation	April to July 2019
	Post-consultation	Published 21 July 2020 Came into effect 1 October 2020
	Evaluation and monitoring	
Modern slavery	Development	Throughout 2020/21
	Consultation	15 October 2020 to 15 January 2021
	Post-consultation	
	Evaluation and monitoring	

Guideline	Production stage	Timing
Public order offences	Development	Throughout 2017/18
	Consultation	May to August 2018
	Post-consultation	Published 16 October 2019 Came into effect 1 January 2020
	Evaluation and monitoring	
Terrorism (revised)	Development	From April 2019 (Counter Terrorism and Border Security Act 2018 came into force)
	Consultation	October 2019 to December 2019
	Post-consultation	
	Evaluation and monitoring	
Unauthorised use of a trademark	Development	2020
	Consultation	8 July 2020 to 30 September 2020
	Post-consultation	
	Evaluation and monitoring	



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Preparation of terrorist acts Terrorism Act 2006, s.5

Step 1 – Determining the offence category

Triable only on indictment

Maximum: Life imprisonment

Offence range: 3 years' custody – Life Imprisonment (minimum term 40 years)

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

For offences committed on or after 3 December 2012, this is an offence listed in [Part 1 of Schedule 15](#) for the purposes of sections [273](#) and [283](#) (life sentence for second listed offence) 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.

This is an offence listed in [Schedule 13](#) for the purposes of sections [265](#) and [278](#) (required special sentence for certain offenders of particular concern) of the Sentencing Code.

For offences committed on or after 29 June 2021, this is a serious terrorism offence listed in Part 1 of Schedule 17A for the purposes of sections 268B and 282B (serious terrorism sentence), section 323 (minimum term order: other life sentences), and section 268(4)(b)(iii) and 281(4)(b)(iii) (increase in extension period for serious terrorism offenders) of the Sentencing Code.

This guideline applies only to offenders aged 18 and older.

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

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

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

Culpability demonstrated by one or more of the following:

A

- **Acting alone**, or in a **leading** role, in terrorist activity where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out

B

- **Acting alone**, or in a **leading** role, in terrorist activity where preparations were advanced and, but for apprehension, the activity was likely to have been carried out
- **Significant** role in terrorist activity where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out
- Offender has coordinated others to take part in terrorist activity, whether in the UK or abroad (where not falling within A)

C

- **Leading** role in terrorist activity where preparations were not far advanced
- **Significant** role in terrorist activity where preparations were advanced and, but for apprehension, the activity was likely to have been carried out
- **Lesser** role in terrorist activity where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out
- Offender acquires training or skills for purpose of terrorist activity (where not falling within A or B)
- Acts of significant assistance or encouragement of other(s) (where not falling within A or B)

D

- Offender has engaged in very limited preparation for terrorist activity
- Act(s) of lesser assistance or encouragement of other(s)
- Other cases not falling within A, B or C

Harm

Harm is assessed based on the type of harm risked and the likelihood of that harm being caused. When considering the likelihood of harm, the court should consider the viability of any plan.

In cases that involve undercover police or others, to the extent that actual harm was never likely to be caused, the court should identify the category of harm on the basis of the harm that the offender intended and the viability of the plan, and then apply a downward adjustment at step two.

The extent of this adjustment will be specific to the facts of the case. In cases where an offender is only prevented by the police or others from conducting the intended terrorist activity at a late stage, or where but for the police or others involvement, the offender would have carried out the intended terrorist act, a small reduction within the category range will usually be appropriate.

Where, for instance, an offender voluntarily desisted at an early stage a larger reduction is likely to be appropriate, potentially going outside the category range.

In either instance, it may be the case that a more severe sentence is imposed in a case where very serious terrorist activity was intended but did not take place than in a case where relatively less serious terrorist activity did take place.

Category 1

- Multiple deaths risked and very likely to be caused

Category 2

- Multiple deaths risked but not very likely to be caused
- Any death risked and very likely to be caused

Category 3

- Any death risked but not very likely to be caused
- Risk of widespread or serious damage to property or economic interests
- Risk of a substantial impact upon civic infrastructure
- Any other cases

Step 2 - Starting point and category range

Offenders committing the most serious offences are likely to be found dangerous and so the table below includes options for life sentences. However, the court should consider the dangerousness provisions in *all* cases, having regard to the criteria contained in section 308 of the Sentencing Code to make the appropriate determination. (See STEP 6 below). The court must also consider the provisions set out in s323 (3) of the Sentencing Code (minimum term order for serious terrorism offenders).(See STEP 3 below).

Where the dangerousness provisions are met but a life sentence is not justified, the court should consider whether the provisions for the imposition of a serious terrorism sentence have been met, having regard to the criteria

contained in s268B (adult offenders aged under 21) or s282B (offenders aged 21 and over) of the Sentencing Code. If the criteria are met, a minimum custodial sentence of 14 years applies. (see STEP 3 below).

The court must also consider the provisions set out in sections 265 and 278 of the Sentencing Code (required special sentence for certain offenders of particular concern). (See STEP 7 below).

Harm	Culpability			
	A	B	C	D
1	Starting point Life imprisonment - minimum term 35 years' custody	Starting point Life imprisonment - minimum term 25 years' custody	Starting point Life imprisonment - minimum term 15 years' custody	Starting point 15 years' custody
	Category range Life imprisonment - minimum term 30 – 40 years' custody	Category range Life imprisonment - minimum term 20 - 30 years' custody	Category range Life imprisonment - minimum term 10 – 20 years' custody*	Category range 10-20 years' custody**
2	Starting point Life imprisonment - minimum term 25 years' custody	Starting point Life imprisonment - minimum term 15 years' custody	Starting point 15 years' custody	Starting point 8 years' custody**
	Category range Life imprisonment - minimum term 20 - 30 years' custody	Category range Life imprisonment - minimum term 10- 20 years' custody*	Category range 10- 20 years' custody**	Category range 6-10 years' custody**
3	Starting point 16 years' custody	Starting point 12 years' custody	Starting point 8 years' custody	Starting point 4 years' custody
	Category range 12 – 20 years' custody	Category range 8- 16 years' custody	Category range 6 - 10 years' custody	Category range 3– 6 years' custody

* For serious terrorism cases the minimum term must be at least 14 years' unless exceptional circumstances apply. See s323 (3) of the Sentencing Code.

**If a serious terrorism sentence is imposed the minimum custodial term is 14 years unless exceptional circumstances apply. See s268B (adult offenders aged under 21) or s282B (adult offenders aged 21 and over) of the Sentencing Code.

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

Factors increasing seriousness

Statutory aggravating factors

- 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 (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

Other aggravating factors

- Recent and/or repeated possession or accessing of extremist material
- Communication with other extremists
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede detection
- Offender attempted to disguise their identity to prevent detection
- Indoctrinated or encouraged others
- Preparation was with a view to engage in combat with UK armed forces
- Conduct in preparation includes the actual or planned commission of other offences, where not taken into account in step one
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender involved through coercion, intimidation or exploitation
- Clear evidence of a change of mind set prior to arrest
- Offender's responsibility substantially reduced by mental disorder or learning disability
- Age and/or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

Step 3 – Minimum terms and exceptional circumstances

Life Sentence Minimum Terms

For serious terrorism cases the life sentence minimum term must be at least 14 years' **unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify not doing so.**

A "serious terrorism case" is a case where, but for the fact that the court passes a life sentence, the court would be required by section 268B(2) or 282B(2) to impose a serious terrorism sentence (s323 (3) of the Sentencing Code).

Serious Terrorism Sentence - Minimum Custodial Sentence

Where the criteria for a serious terrorism sentence are met, as set out in s268B (adult offenders aged under 21) or s282B (offenders aged 21 and over) of the Sentencing Code, then a minimum custodial sentence of 14 years applies **unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify not doing so.**

Exceptional circumstances

In considering whether there are exceptional circumstances that would justify not imposing the minimum term, the court must have regard to:

- the particular circumstances of the offence **and**
- the particular circumstances of the offender.

either of which may give rise to exceptional circumstances

Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see Criminal Practice Directions VII: Sentencing B.

Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

Principles

Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.

The circumstances must truly be exceptional. It is important that courts do not undermine the intention of Parliament and the deterrent purpose of the minimum term provisions by too readily accepting exceptional circumstances.

The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.

The mere presence of one or more of the following should not *in itself* be regarded as exceptional:

- One or more lower culpability factors
- One or more mitigating factors
- A plea of guilty

Where exceptional circumstances are found

If there are exceptional circumstances that justify not imposing the minimum then the court **must impose either a shorter minimum term/ custodial sentence or an alternative sentence**. Note: a guilty plea reduction applies in the normal way if the minimum term is not imposed (see step 5 – Reduction for guilty pleas).

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 plea

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 **serious terrorism sentence** has been imposed, the court must ensure that any reduction for a guilty plea does not reduce the sentence to less than 80 per cent of the statutory minimum.

Step 6 – Dangerousness

The court should consider:

- 1) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose a life sentence (sections [274](#) and [285](#))
- 2) whether having regard to sections [273](#) and [283](#) of the Sentencing Code it would be appropriate to impose a life sentence.
- 3) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose 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 7 – Required special sentence for certain offenders of particular concern

Where the court does not impose a sentence of imprisonment for life or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence (sections [265](#) and [278](#) of the Sentencing Code).

Step 8 – 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 9 – Ancillary orders

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

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

Step 10 – Reasons

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

Step 10 – 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](#).

Terrorism offences

Effective from: 27 April 2018

Sentencing for offences not covered by offence specific terrorism guidelines but with a terrorist connection, section 69 of the Sentencing Code.

Where a court is considering the seriousness of an offence specified in [Schedule 1 of the Sentencing Code](#), and it appears that the offence has or may have a terrorist connection, the court must determine whether that is the case. To make this determination the court may hear evidence, and must take account of any representations made by the parties.

If the court determines that the offence has a terrorist connection it must treat that fact as a statutory aggravating factor and state in open court that the offence was so aggravated.

Notification requirements apply to these offences.

Offences not covered by Schedule 1 of the Sentencing Code

Where a court is considering the seriousness of an offence not specified in [Schedule 1 of the Sentencing Code](#), and it appears that the offence has or may have a terrorist connection, the court should determine whether that is the case by hearing evidence where necessary. If the court determines that the offence has a terrorist connection it may treat that fact as a non-statutory aggravating factor where it appears relevant and appropriate to do so.

Notification requirements do not apply to these offences.

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R v Naa'imur Zakariyah Rahman (sentenced 31 August 2018)Facts

The offender was found guilty of one count contrary to s.5(1) (a) and (3) of the Terrorism Act 2006. The offender was arrested walking east along Crowthorne Road in North Kensington carrying a padlocked blue holdall bag containing (as he believed) a rucksack which had been fitted with a pressure cooker improvised explosive device, a puffa jacket which had been modified as an explosive suicide vest, a pepper spray device and a set of plastic gloves. His plan had involved blowing up the security gates of Downing Street; killing or disabling police officers posted at the security gates at the Whitehall end of Downing Street by explosion or knife wounds (or incapacitating them with pepper spray); and then entering No. 10 Downing Street itself and making a determined attack with a knife and explosives on those inside, with the ultimate target being the Prime Minister herself.

Unbeknown to Rahman, the devices were inert and simply made to look real and his 3 contacts that he believed to be members of IS were law enforcement operatives ("LEOs") all working for the security services.

Sentencing

I am sure that, at all material times, Rahman believed the devices to be real and capable of the most serious harm: (i) he was told and believed that the rucksack bomb would be capable of causing casualties on a scale comparable to those caused at the Manchester Arena bombing, to police officers, bystanders and tourists in and around the entrance to Downing Street; (ii) he was told and believed that the suicide vest within his jacket would be capable of creating a lethal area of 10 metres to his front, with some degree of lethality to his rear; and (iii) both devices were expertly constructed to be indistinguishable from the real thing. (3) In light of the capabilities of the improvised explosive devices, any attack on Downing Street would have been very likely to have caused multiple deaths. It was a viable operation.

Mr Bajwa QC submitted that there was little or no risk of what he called 'actual' harm and accordingly this was a Category 3 case. He relied upon the wording in the Guideline that: "Harm is assessed based on the type of harm risked and the likelihood of that harm being caused" and "When considering the likelihood of harm, the court should consider the viability of any plan." He submitted that the Guideline is directed only to the actual risk and likelihood of the contemplated or intended harm being realised; and, in the present case, notwithstanding Rahman's beliefs and plans at the time, there was no actual likelihood of

any harm being caused and the plan was not viable given (i) his only accomplices were LEOs, (ii) the provision to the defendant of a dummy explosive device in his jacket and rucksack and (iii) the security precautions taken throughout the investigation, in particular on the day of the defendant's arrest; and, accordingly, there was no risk to the public from the conduct of Rahman in relation to Count 1. He submitted that this case falls within harm category 3 on the basis that it fits the description of: "Any death risked but not very likely to be caused" or "Any other cases".

I reject Mr Bajwa QC's submissions and his narrow construction of the Guideline. His reference to "actual" risk represents a gloss on the Guideline. The fact that Rahman was supplied with dummy improvised explosive devices and pepper spray which were inert is irrelevant to the legal analysis of the level of 'harm'. **It is the harm intended by the offender that is relevant, i.e. the level of harm that the defendant intended to cause judged from his perspective as to what he knew or believed at the time. If Mr Bajwa QC's narrow construction is correct, it would logically disentitle the courts from imposing appropriate sentences in cases where covert operations by the security services interdict terrorist operations before harm was caused (which, by definition, is every s.5 case). This cannot be correct and, in my view, was plainly not the intention of the authors of the Guideline.**

R v Boular (Safaa) [2019] EWCA Crim 798 (Appeal heard 16 April 2019)

In 2016, SB (then aged 16) began to communicate with persons seeking to recruit her to the cause of ISIS. She formed a plan to travel to Syria and marry one of the recruiters, X. That plan was thwarted when SB was stopped at a UK airport. SB continued to communicate with her intended husband, engaging with him and others in the online planning of a terrorist attack in the UK. Unbeknown to her and her intended husband, others who purported to be planning this attack with them were, in fact, members of the Security Services.

It was decided that SB (together with her accomplices) would carry out an attack using semi-automatic firearms and/or grenades at the British Museum in London.

The judge placed both SB's offences within Category 2B, finding that SB had played a leading role where multiple deaths were risked but not very likely to be caused. On appeal against sentence, SB challenged the guideline categorisation of the offences:

Sentencing

The culpability factors reflect how determined the offender was to carry out that intention and how close the offender came to doing so. The inclusion in the guideline of the phrase "but for

apprehension” confirms that approach. The fact that Security Services were monitoring the activities of the offender and aimed to prevent the commission of the offence does not reduce the culpability of the offender. The involvement of the Security Services may, however, be relevant to harm.

We do not accept the submission of [...] the prosecution, that in circumstances such as the present case, the participation of the Security Service in planning the attack comes within the phrase “but for apprehension”. We do, however, accept the submission as to the proper approach to the harm factors which, we observe, are preceded in the guideline by the words: “When considering the likelihood of harm, the court should consider the viability of any plan.” In our view, the reference to “risk” focuses on what was intended: that is, the consequences if the plan had succeeded. The reference to “likelihood of occurrence” requires the court to consider how likely it was that the plan would actually succeed. The answer to that question will depend, of course, on all the facts and circumstances of the case.

Here, the judge was entitled to find that multiple deaths were risked. That, after all, is what the applicant planned and intended. But, as the judge found, it was not a plan which was very likely to succeed. The judge, therefore, rightly assessed the harm as falling within Category 2. We do not accept Mr Bennathan’s submission that, in the circumstances of this case, the involvement of the Security Services made it necessary for the sentencing judge to put the offence into Category 3. That would equate a plan to cause multiple deaths (properly falling within Category 2 in the circumstances of this case) with a plan to cause a single death, for which (amongst other things) Category 3 provides.

R v Fatah Abdullah (sentenced 26 June 2020)

Facts

The offender pleaded guilty to two offences; Count 1, engaging in conduct in preparation for giving effect to an intention to assist others to commit terrorist acts in that with the intention of assisting Omar Babek and Ahmed Hussein to commit acts of terrorism in the Federal Republic of Germany, in that you 1. Purchased 8,000 plus matches, explosive precursors, fireworks, a one metre electric ignitor fuse, miscellaneous fuses, saltpetre powder, digital scales and a remote-controlled detonator. 2. Searched the internet for guides on how to make explosives, how to operate a remote detonation system and for components for making an improvised explosive device. 3. Tested a remote detonation system. Count two, inciting terrorism overseas in that you incited others to commit acts of terrorism in Germany which, if committed

in England and Wales would have constituted the offence of murder, namely, to drive a car into a crowd, to attack people with a meat cleaver and to cause an explosion.

Sentencing

The prosecution suggests category 1B because multiple deaths were intended and were very likely to be caused, and yours was a significant role, where preparations were so close to completion that but for apprehension the activity was likely to be carried out and or because you co-ordinated others to take part in the terrorist activity.

On your behalf it is suggested that the correct category is 2C because, although multiple deaths were intended, they were not very likely to be caused. Preparations were not so close to completion that but for apprehension the activity was likely to be carried out. And you carried out acts of significant assistance and encouragement of others, rather than conducting yourself by way of co-ordinating others.

Applying the guideline in accordance with recent authority, I have no doubt, in your case, that harm falls into category two because it is relevant in relation to harm, to take into account that the German authorities had Hussein and Babek under active surveillance and that thus, multiple deaths were not very likely to be caused by Hussein and Babek.

R v Safiyya Amira Shaikh (sentenced 3 July 2020)

The offender pleaded guilty to preparing to commit acts of terrorism in that she made contact with a person she believed to be able to assist in preparing explosives (this person was in fact an Undercover Officer – UCO), researched methods and decided on a plan to carry out a terrorist act. The offender travelled to Central London and stayed at a hotel in order to conduct reconnaissance. She selected the hotel as a target for an explosive device and attended St Pauls cathedral to scope it for security and for the best place to plant a second explosive device. The offender met a person (another UCO) and supplied her with two bags with the intention and belief that explosive devices would be fitted into the two bags, she prepared the words of a pledge of allegiance to Daesh, also known as the Islamic State.

Sentencing

The first issue ...is as to the correct categorization of the offence. The prosecution submitted that yours was a Category B1 offence with a starting point of life imprisonment, and a minimum term of 25 years' imprisonment. Whereas it was submitted on your behalf, by reliance on your claim in interview, that you had had doubts, that was why you had not attended the second meeting with the UCO and that you would not have gone through with any attack and it was

thus a Category C2 offence with a starting point of 15 years' imprisonment.

However, in your case, I had already reached the sure conclusion on all the original evidence that your claim of doubts to the police and others was a lie, that your intention had been and remained throughout strong, and that the correct categorisation of the offence in count one was B2 given that it involved, as to culpability, you acting in a leading role in terrorist activities where preparations were advanced, and, but for apprehension, the activity was likely to have been carried out and, as to harm, multiple deaths were risked, but because of the nature of the involvement of the authorities, and their consequent ability to prevent you from doing anything, were not likely to be caused. Thus, as already touched on, the starting point is one of life imprisonment at a minimum term of 15 years.

R v Mohiussunnath Chowdhury (sentenced 9 Jul 2020)

Facts

On 10 February 2020, Mohiussunnath Chowdhury was convicted of engaging in preparations for acts of terrorism over a six-month period in 2019, contrary to section 5 of the Terrorism Act 2006 (count 1).

Sentencing

In respect of harm, the section 5 offence falls within category 1: multiple deaths risked and very likely to be caused if your intention to commit the terrorist acts you planned had been carried out.

In the sentencing remarks, the Judge referred to law enforcement operatives, noting the defendant's 'indoctrination or encouragement of others, including the UCOs' and 'communication with other extremists (i.e. communications with the UCOs, whom you believed to be of a similar mindset)' as aggravating factors.

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ANNEX A: Potential approach to categorising the actions from the Vision

Please note: this is a draft and provided as an example; the text and detail may change and will be available for comment in the full draft documents, to be circulated in due course.

High level statement of intent: *The Council will maintain its independence as the body that produces sentencing guidelines for England and Wales, which is committed to drawing on a broad evidence base, being open and responsive and preserving the confidence of the public.*

Strategic objective 1: *The Council will focus on the development of sentencing guidelines to promote consistency and transparency in sentencing*

In order to achieve this, we will:

- Prioritise the Council's available resources on the policy, analysis, research and communication work that supports the development of guidelines (whether new or revised).
- Update our criteria for the development and revision of guidelines to ensure these reflect all of the relevant considerations. *[NB we may add more detail here once the criteria have been agreed]*
- Consider at the outset of each guideline project whether to draw on external expertise to inform its development.
- Consult publicly on draft guidelines and renew our efforts to ensure that our consultations draw responses from a broad range of interested groups and individuals, including criminal justice professionals, academics, victims and offenders.
- Undertake an annual consultation on cross-cutting and minor revisions to guidelines to ensure they remain relevant and up to date.
- Liaise with the Judicial College to determine the best way to ensure end users are prepared for the introduction of new guidelines, with an aim of shortening the period between publication and implementation of a definitive guideline.

- Provide a mechanism for users to submit rapid feedback on any errors or difficulties with guidelines.
- Make corrections and minor uncontentious amendments to guidelines as issues are drawn to our attention and publish a log of all such changes.

Strategic objective 2: The Council will work to enhance and strengthen the data and evidence that underpins its work

In order to achieve this, we will:

- Review our approaches to data collection and the sources that we currently draw upon; this will include exploring with HMCTS opportunities for accessing information recorded on the Common Platform.
- Review our approaches to resource assessments and evaluations and the way in which we measure and interpret “impact”.
- Dedicate more resource to collecting and analysing, where possible, data on groups with protected characteristics, and then publishing this. Where data permits, we will undertake in-depth analytical work on the potential impact of specific sentencing guidelines on different demographic groups.
- Commission independent external contractors to undertake a project to review a sample of the Council’s guidelines and processes for the potential to cause disparity in sentencing across demographic groups.
- Undertake an evaluation of the Council’s expanded explanations to explore how these are being interpreted and applied by sentencers in practice.
- Undertake a small study to explore sentencers’ view on the *Totality* guideline.
- Continue our current 2021/2022 evaluation work and then prioritise evaluations of the Council’s intimidatory guideline and domestic abuse guidelines; thereafter evaluation of other guidelines will be undertaken as resources permit.

- Support the development and revision of sentencing guidelines through the use of relevant qualitative research techniques. This will include considering the need for research with victims, offenders and other relevant groups on a case by case basis, as well as local criminal justice professionals.
- Consider how best to measure and undertake research on some of the Council's more cross-cutting duties. As part of this, we will: collate relevant evidence on issues related to effectiveness of sentencing and publish the outcome of this synthesis on a biennial basis; consider how best to measure consistency of sentencing; and undertake a review of relevant local area data and consider how best to make use of this in the Council's work.
- If resources permit in the future, we will re-run previous public confidence survey questions to obtain a measure over time.
- If resources permit in the future, we will consider reviewing the relevant data in respect of potential work on multiple offences.
- Prepare the data from our bespoke data collections, as resources permit, and then publish these.
- Seek opportunities to collaborate with academics and external organisations to broaden the range of analytical work we can input into and draw upon.

Strategic objective 3: The Council will fully embed consideration of all relevant equality and diversity issues across the entire range of its work

In order to achieve this, we will:

- Set up a dedicated Council working group to oversee work in this area and with the specific objective of advising on and steering work to ensure that all relevant issues are considered and actioned (where appropriate) across the whole range of the Council's work. The group's remit will encompass all the protected characteristics of age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation in relation to both victims and offenders, and as relevant to sentencing or a specific area of the Sentencing Council's work.

- Where data is available, dedicate more resource to collecting and analysing and data on groups with protected characteristics and then publishing this. Where data permits and resources are available, we will undertake in-depth analytical work on the potential impact of specific sentencing guidelines on different demographic groups.
- Provide tailored references in guidelines to evidence of disparity if this is found to exist, with a reference to the Equal Treatment Bench Book and the need to apply guidelines fairly across all groups of offenders.
- Commission independent external contractors to undertake a project to review a sample of the Council's guidelines and processes for the potential to cause disparity in sentencing across demographic groups.
- Broaden out the scope of the Council's target audience, to include reaching victims and offenders from relevant demographic groups, as well as criminal justice professionals working in organisations that represent different demographic groups. We will also, where possible, support the development and revision of sentencing guidelines through the use of qualitative research techniques with these individuals and groups.
- Include in the criteria that the Council uses to decide if a guideline should be developed or reviewed a specific point about evidence of disparity in sentencing between different demographic groups or evidence of disproportionately severe or lenient sentencing for a category of offence or category of offender.
- Ensure that Council members and Officials from the Office of the Sentencing Council (OSC) are aware of, and receive, relevant information in the area of race relations, diversity and inclusion and that this is updated as necessary. The Council will action any relevant recommendations emerging from the externally commissioned research work in this area

Strategic objective 4: The Council will consider the impact of all aspects of its work on public confidence and will work to strengthen public confidence by improving knowledge and understanding of sentencing and the criminal justice system

In order to achieve this, we will:

- Broaden the scope of the Council's target audiences for consultation, in particular to reach: BAME audiences; offenders, victims and people under probation supervision; and individuals and organisations representing groups with protected characteristics. We will also engage with Local Criminal Justice Boards and use this as an avenue for seeking more local and regional views on consultations.
- Extend our reach into schools, working in partnership with other organisations such as Young Citizens, Youth Justice Board and the Magistrates' Association.
- Work more in partnership with other organisations to take advantage of their audience reach and existing networks.
- Work with the Justice Committee to establish regular evidence sessions on the work of the Council, as well as further outreach work with parliamentarians.
- Undertake work to include a more simplified introduction into consultation documents that is more easily accessible to the Council's non-expert audiences.
- Provide more information about the issues the Council considers when undertaking its work and in particular the importance of consultation responses for the development and revision of guidelines.
- If resources permit in the future, we will re-run previous public confidence survey questions to obtain a measure over time.

Strategic objective 5: The Council will have regard to the relative effectiveness of sentencing and seek to enhance the ways in which it raises awareness of the relevant issues

In order to achieve this, we will:

- Collate and consider the relevant evidence on issues related to effectiveness of sentencing as part of guideline development and revision.
- Publish a synthesis of relevant evidence related to effectiveness of sentencing on a biennial basis from autumn 2022.
- Consider whether the Imposition guideline needs any additional text to highlight to sentencers the need to consider issues relating to effectiveness of sentencing.
- Consider undertaking research with offenders to understand which elements of their sentence may have influenced their rehabilitation.

Note: there is an additional action of seeking further sources of funding, which we plan to discuss more fully in the consultation response document, rather than in any specific section here (primarily because it is interlinked with all of the above - if we managed to secure extra funding in any area, we could add to the actions above, undertake them in more depth or undertake them at an earlier stage).