

17 June 2021

Dear Members

Meeting of the Sentencing Council – 25 June 2021

The next Council meeting will be held via Microsoft Teams, the link to join the meeting is included below. **The meeting is Friday 25 June 2021 from 9:30 to 14:15.** Members of the office will be logged in shortly before if people wanted to join early to confirm the link is working.

The agenda items for the Council meeting are:

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| ▪ Agenda | SC(21)JUN00 |
| ▪ Minutes of meeting held on 21 May | SC(21)MAY01 |
| ▪ Action log | SC(21)JUN02 |
| ▪ Modern slavery | SC(21)JUN03 |
| ▪ Annual Report | SC(21)JUN04 |
| ▪ Terrorism | SC(21)JUN05 |
| ▪ Motoring | SC(21)JUN06 |
| ▪ What next for the SC? – Consultation responses | SC(21)JUN07 |
| ▪ What next for the SC? – Criteria for development of guidelines | SC(21)JUN08 |

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

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

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

Best wishes



Steve Wade

Head of the Office of the Sentencing Council

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COUNCIL MEETING AGENDA

25 June 2021
Royal Courts of Justice
Queen's Building

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| 09:30 – 09:45 | Minutes of the last meeting and matters arising - (papers 1 and 2) |
| 09:45 – 10:45 | Modern Slavery - presented by Ollie Simpson (paper 3) |
| 10:45 – 11:15 | Annual Report - presented by Phil Hodgson (paper 4) |
| 11:15 – 11:30 | Break |
| 11:30 – 12:30 | Terrorism - presented by Vicky Hunt (paper 5) |
| 12:30 – 13:00 | Motoring - presented by Lisa Frost (paper 6) |
| 13:00 -13:15 | Break |
| 13:15 – 13:55 | What next for the Sentencing Council? - Consultation responses - presented by Emma Marshall (paper 7) |
| 13:55 – 14:15 | What next for the Sentencing Council? - Criteria for development of guidelines - presented by Ruth Pope (paper 8) |

Sentencing Council

COUNCIL MEETING AGENDA

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MEETING OF THE SENTENCING COUNCIL

21 MAY 2021

MINUTES

Members present:

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

Apologies:

Juliet May

Representatives:

Elena Morecroft for the Lord Chief Justice (Legal and Policy Advisor to the Head of Criminal Justice)
Phil Douglas for the Lord Chancellor (Head of Custodial Sentencing Policy)

Members of Office in attendance:

Steve Wade
Vicky Hunt
Emma Marshall
Ruth Pope
Ollie Simpson

1. MINUTES OF LAST MEETING

- 1.1 The minutes from the meeting of 16 April 2021 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman noted that the data collection that had been running for four months in magistrates' courts had closed. The response rate was higher than for previous collections and this would provide the Council with valuable data. The Chairman expressed the Council's gratitude to all those involved.

3. DISCUSSION ON TRADE MARK – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

- 3.1 The Council agreed some final modifications to the harm and culpability factors in the guideline for sentencing individuals to take account of points made by respondents to the consultation.
- 3.2 The Council considered the situation where an offence was already in the highest category of harm because of the value of the counterfeit goods and there were additional harm factors. It was agreed to add a note above the sentence table to instruct sentencers to consider moving up within the category range in such cases and to increase the top of the offence range to seven years to accommodate this.
- 3.3 In the guideline for organisations the Council made changes to harm and culpability factors at step three and aggravating and mitigating factors at step four to be consistent with the guideline for individuals. Changes were agreed to the wording on confiscation in both guidelines to aid clarity. In the guideline for organisations some wording was added at the beginning of the guideline to explain why compensation and confiscation were at steps one and two in that guideline.
- 3.4 The Council considered the resource assessment for the guidelines and noted that any impact in terms of prison and probation places would be small. It was agreed to sign off the definitive versions of both guidelines for publication in the summer, to come into effect on 1 October 2021.

4. DISCUSSION ON TERRORISM – PRESENTED BY VICKY HUNT, OFFICE OF THE SENTENCING COUNCIL

- 4.1 The Council discussed the terrorism guidelines for the first time since March 2020 when work was paused as a result of the introduction of the Counter-Terrorism and Sentencing Bill. This Bill was set to make significant changes to terrorism legislation which would have a substantial impact on the guidelines and so work was paused to await the full details of the changes. As that Bill has now become an Act the Council's work was able to proceed.

- 4.2 The Council discussed and agreed immediate changes that can be made to the Funding (s15-18 Terrorism Act 2000), and Failure to Disclose Information (s38B Terrorism Act 2000) guidelines to ensure that they comply with the new legislation. The changes will make clear to sentencers that these offences are now covered by the Special Custodial Sentences for Offenders of Particular Concern (SOPC) provisions.
- 4.3 The Council also discussed when to publish the 2019 revised guidelines, and it was agreed that they should not be published until the Council has revised, consulted on and finalised changes to guidelines that will be required as a result of the new 2021 Act. The Council considered that the 2021 Act changes are so significant that the full package of guidelines could be impacted and that the Council should have the opportunity to consider them all before publishing any definitive guidelines. In the meantime a note can be put on all guidelines that are now out of date highlighting the relevant provisions in the 2021 Act.

**5. DISCUSSION ON WHAT NEXT FOR THE SENTENCING COUNCIL?
– PRESENTED BY EMMA MARSHALL, OFFICE OF THE
SENTENCING COUNCIL**

- 5.1 The Council reviewed all the areas of work that had previously been discussed and that had been put forward as part of responses to the consultation. This included discussing actions to address these areas and in relation to the themes set out in the consultation document. Further work is needed on these areas and to consider how best to resource them in the context of the Council's current workplan.

**6. DISCUSSION ON MODERN SLAVERY– PRESENTED BY OLLIE
SIMPSON, OFFICE OF THE SENTENCING COUNCIL**

- 6.1 The Council had its first discussion on responses to its consultation on a new guideline for modern slavery offences. The Council agreed various amendments to the draft guidelines following responses from consultees and research conducted with sentencers during the consultation period, including in relation to the wording of culpability and harm factors, sentencing levels for low culpability offenders, and altering some aggravating and mitigating factors. Further possible changes arising from the consultation were noted for discussion at the next Council meeting in June.

**7. DISCUSSION ON MISCELLANEOUS GUIDELINE AMENDMENTS –
PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING
COUNCIL**

- 7.1 The Council considered a range of unrelated matters relating to issues that had arisen with existing guidelines for inclusion in a consultation to

take place in the autumn. It was agreed that a similar exercise could be conducted on an annual basis, if there was a need for it.

- 7.2 The Council agreed to consult on: a minor addition to the guideline for Breach of a sexual harm prevention order; adding a reference in relevant guidelines to the need for a court to give reasons if it decides not to award compensation; changing the wording on confiscation in guidelines to aid clarity; and putting the uplift for racially or religiously aggravated offences in a separate step.
- 7.3 The Council agreed that further work should be done to explore if the expanded explanation for the mitigating factor 'Involved through coercion, intimidation or exploitation' should be revised. In response to recent legislative changes, it was agreed to investigate whether some interim guidance could be issued pending a revision of the Animal cruelty guideline and whether an amendment could be made to the Domestic abuse overarching guideline. These would be considered at the July Council meeting.
- 7.4 The Council noted that fuller revisions of guidelines or the development of new guidelines arising out of legislative changes would have to be undertaken as a separate exercise when resources permitted.

SC(21)JUN02 June Action Log

ACTION AND ACTIVITY LOG – as at 17 June 2021

	Topic	What	Who	Actions to date	Outcome
SENTENCING COUNCIL MEETING 14 April 2021					
1	Vision consultation	Council members to email Steve with any suggestions for organisations that could be approached for funding	Council members	ACTION ONGOING: No suggestions have been received to date.	

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

25 June 2021
SC(21)JUN03 – Modern Slavery
Rosina Cottage
Ollie Simpson
07900 395719

1 ISSUE

1.1 Further consideration of responses to the consultation on new Modern Slavery guidelines, which ran between October 2020 and January 2021. Subject to that consideration we may be able to sign off these guidelines for publication at the end of July to come into force on 1 October.

1.2 The amendments to the draft guideline discussed at the last Council meeting and this stem from the total of 43 responses received. 17 of these were from magistrates and benches, plus a response from the Magistrates' Association. Two responses came from academics, and the Sentencing Academy also responded. We also had responses from charities such as International Justice Mission, Christian Action Research and Education (CARE) and Hope for Justice. A full list of the respondents is at **Annex C**.

1.3 The draft section 1/section 2 guideline consulted on is at **Annex A**, with amendments agreed at the May Council meeting in blue and those proposed in this paper in red.

2 RECOMMENDATION

2.1 That the Council makes the amendments to the draft guideline as set out below and in **Annex A**, in particular:

- considering whether to add a separate culpability factor related to psychological abuse;
- adjusting the existing culpability factor of pressure, coercion or intimidation to add the offender being the victims of modern slavery in relation to the present offending;
- adding an aggravating factor where the child was under 18 in light of the UK's obligations under the European Convention on Action against Trafficking in Human Beings;
- providing further guidance on the principles of imposing a Slavery and Trafficking Prevention Order (STPO).

3 CONSIDERATION

Culpability and harm

3.1 Several responses questioned whether the draft culpability factors should better reflect the psychological/mental abuse which takes place in modern slavery offending. Arguably we already take account of this by treating the threat of violence as seriously as its use (noting that the Sentencing Academy query whether this is correct), including “other threats” under category B culpability, including psychological harm in the harm table, and aggravating factors such as “gratuitous degradation of victim”.

3.2 Equally, some degree of psychological abuse is inherent in the offending, or at least a high proportion of it, and we would not want to see offenders categorised too highly because they have applied a “standard” level of pressure on their victims.

3.3 Nonetheless, I wanted to draw Council’s attention to the strength and breadth of feeling on this. The charity Hope for Justice set out the argument as follows:

“Whilst use or threat of a substantial degree of physical violence or sexual violence or abuse can be features of offences, psychological abuse needs to be taken into account as a key part of high culpability. Emotional/psychological abuse as a means of control is present in a significant number if not all cases Hope for Justice have dealt with. This includes as a method of control including the restriction of movement.

[...]

We would therefore recommend that psychological abuse including control methods are taken into account in “high” and “medium” categories of culpability and take into account threat and/or actual use of these different forms of abuse and control i.e. use or threat of a substantial degree of psychological abuse and/or control for category A and some use of psychological abuse and/or control for category B.”

3.4 The point was echoed by some magistrate respondents. Christopher Goard JP proposed a high culpability factor “*Use or threat of a substantial degree of psychological abuse*”. The Home Office mentioned a range of coercive behaviours common to this offending and Baroness Butler-Sloss said:

“Much of the way in which the perpetrators act is by coercive control rather than physical violence. Coercive control might usefully be added to A and to B. It is now in the Domestic Abuse Bill as an element of domestic abuse. It is equally to be found in almost as types of modern slavery [sic]. So with section 1 and section 2 cases in A high culpability should include coercive control.”

The Justices' Legal Advisors and Court Officers' Service (formerly the Justices' Clerks Society) said:

"We would suggest that the assessment of culpability should also take into account behaviour which does, or is designed to, control the victim in a non-physical but psychological way. As we know, many of the victims of this type of offending act out of fear which may not necessarily be in response to physical or sexual violence/abuse, but because of other behaviour or threats (e.g. threats relating to finances, the victim's family, deprivation of food etc). This psychological fear can be as harmful as physical violence/threats of violence and should therefore be treated as a factor going to an offender's culpability. We would suggest that 'behaviour designed to cause significant (high culpability) or some (medium culpability) psychological fear' should be included as a factor in the assessment of an offender's culpability."

3.5 There are not many precedents in guidelines for precisely this sort of concept. As Hope for Justice set out in their response it is mentioned in the overarching guideline on domestic abuse. The current sexual trafficking and child exploitation guidelines include "sustained and systemic psychological abuse" as a factor indicating raised harm.

3.6 The following could be a culpability B factor:

"Psychological abuse and/or coercion beyond that inherent in the offending".

We could include a "substantial and systemic" version of that factor at culpability A, although again note the risk of too many offenders being classified as high culpability this way.

Alternatively, recalling that "other threats to victim(s) or their families" was intended to cover wider threatening behaviour than just violence/sexual violence we could incorporate it here:

"Other threats towards victim(s) or their families, and/or substantial psychological abuse"

This again leaves the question of whether we need an equivalent factor under high culpability, or whether "Use or threat of a substantial degree of physical/sexual violence or abuse towards victim(s) or their families" should remain marked out as particularly culpable. If we are to have such a factor my recommendation is to have it as a culpability B factor only.

Question 1: do you want to add a further element to the culpability factors about psychological abuse? Are there alternative formulations? Or do you believe we can/already cover the point under harm and aggravating factors?

3.7 Many respondents welcomed our treatment of offenders who had been engaged by pressure, coercion or intimidation as having low culpability, although there were some

suggestions for refining this. One suggestion came from the Sentencing Academy (supported by the Prison Reform Trust):

“The consultation document recognises the significance of the offender’s previous victimisation. The culpability factors include this: ‘engaged by pressure, coercion or intimidation’ – a slight variation on the ‘involved through coercion, intimidation or exploitation’ found in other guidelines such as Robbery. Then, at Step 2 we find the following factor: ‘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)’. This factor – previously being subject to slavery or trafficking – is central to culpability, and this should be recognised at Step 1. We recommend ‘offender has been a victim of slavery/ trafficking related to this offence’ as a lower culpability bullet. In addition, the Council’s proposed factor could remain at Step 2 as mitigation for unrelated previous victimisation. As a general approach, however, we caution against overlapping factors, or what we term ‘factor splitting’ – incorporating a factor at Step 1, then adding a variant of the factor at Step 2 along with the caveat ‘where not taken into account at Step 1’”

3.8 It is unclear whether the Sentencing Academy would consider this *in addition* to the existing low culpability factor, but I believe it would be important not to remove coercive factors falling short of slavery/trafficking from low culpability.

3.9 A further point about wording: as the Sentencing Academy points out the Robbery guideline uses the formula “involved through...” rather than “engaged by...” Both are used in existing guidelines. The drugs guidelines (as recently revised) and the existing sexual trafficking guideline use “engaged by” where the burglary guidelines currently out for consultation continue with “involved through”. I suspect both would ultimately be interpreted in the same way: perhaps “involved through” represents plainer English.

3.10 So the culpability factor would read:

- “Offender involved through pressure, coercion or intimidation, or has been a victim of slavery or trafficking related to this offence.”

The related mitigating factor would read:

- Offender has been a victim of slavery/trafficking in circumstances unrelated to this offence.

Question 2: do you want to add/amend the existing culpability factor as proposed, and make the mitigating factor about victimisation *unrelated* to the present offending?

3.11 Hope for Justice pointed out the possibility of offenders receiving gains beyond purely financial ones, citing the United Nations Office on Drugs and Crime Anti-Human Trafficking Manual for Criminal Justice Practitioners 2009:

“[Financial or material gain is] likely to be present in virtually all trafficking cases to some degree and should be a significant factor for sentencing purposes. Financial gain should not simply be seen in terms of money; payment in kind, such as free accommodation, food, access to vehicles, and gifts all represents a financial or material gain for the offender’

We would therefore recommend that culpability factors reflect an expectation of substantial financial and/or material gain for category A and significant financial and/or material gain for category B.”

3.12 It may be that situations where the offender *receives* food and other gifts from their victim are rare, but more broadly there are certainly common examples – particularly in domestic servitude cases - where the offender receives non-pecuniary benefits from their victim. This point was echoed by the Criminal Bar Association (CBA). In addition, several respondents pointed out, in line with the Government’s modern slavery typology, that some offenders expect or receive *no* financial gain – so for the avoidance of doubt I would amend the culpability factor as follows:

- Expectation of substantial financial **or other material** advantage (culpability A)
- Expectation of significant financial **or other material** advantage (culpability B)
- Expectation of limited **or no** financial **or other material** advantage (culpability C)

Question 3: do you want to amend the wording around financial advantage in this way?

Aggravating and mitigating factors

3.13 At June’s meeting, we reflected concerns raised by consultees about child victims by amending a draft aggravating factor to become “Deliberate targeting of victim who is particularly vulnerable (due to age or other reason)”. Our prime concerns in specifying victims under 18 were to avoid over-penalising offenders who themselves may be very young, to avoid a cliff-edge distinction between victims who cross that threshold and to allow for a broad range of vulnerabilities still to be taken into account.

3.14 Those concerns remain reasonable, but one response (from CARE) pointed out that the victim being a child is one of the factors that the European Convention on Action against

Trafficking in Human Beings requires states parties to provide aggravated penalties for. In full, Article 24 of that convention states:

“Each Party shall ensure that the following circumstances are regarded as aggravating circumstances in the determination of the penalty for offences established in accordance with Article 18 of this Convention:

- (a) the offence deliberately or by gross negligence endangered the life of the victim;*
- (b) the offence was committed against a child*
- (c) the offence was committed by a public official in the performance of her/his duties;*
- (d) the offence was committed within the framework of a criminal organisation.”*

3.15 Aggravations (a) and (d) are certainly covered by other factors in the guideline, and (c) is covered below (at paras 3.21-3.22). In its 2012 assessment of the UK’s implementation of the convention the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (GRETA) noted:

“Aggravating circumstances for trafficking in human beings are not enshrined in the legislation, but are provided for in sentencing guidelines... In April 2007, the Sentencing Council published guidelines on the Sexual Offences Act 2003. The British authorities have informed GRETA that the aggravating circumstances under Article 24(a), (c) and (d) of the Convention would be taken into account in sentencing, if evidenced...However, there is not yet a Sentencing Council guideline for THB [Trafficking in Human Beings] for non-sexual types of exploitation, an issue which the CPS has raised. Comments from judgments on cases referred to the Court of Appeal in relation to THB for non-sexual types of exploitation can be, and are, cited in subsequent cases to ensure aggravating factors are consistently accounted for.”

3.16 In its 2016 follow-up GRETA observed again that no guidelines for trafficking for non-sexual exploitation had been produced. They did note however, that Scotland and Northern Ireland had provided statutory aggravating factors for the victim being a child and the offender being a public official.¹

3.17 This aggravation is arguably covered sufficiently in our revised wording, but the context of an international obligation (even if on the UK Government, not on the Sentencing Council per se) may merit revisiting this aggravating factor. There may be other ways of loosely covering various vulnerabilities, but I propose simply a separate aggravating factor

¹ The Human Trafficking and Exploitation (Scotland) Act 2015, sections 6 and 7; the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) (Northern Ireland) Act 2015, section 6.

related to child victims (“victim(s) under 18”). In mitigation of our earlier concerns, we should bear in mind that broader sentencing principles are in place to protect young offenders from over-penalisation, and that the vulnerability of a young adult (or anyone else) can still be considered in the “targeting” aggravating factor.

Question 4: do you want to include a new aggravating factor “victim(s) under 18”?

3.18 There were various other suggestions for aggravating and mitigating factors which appeared to merit consideration, mainly suggested by the West London Magistrates Bench and some others, including particularising further the targeting of vulnerable victims.

3.19 Alerting the authorities/whistleblowing was suggested by Professor David Gadd, Dr Rose Broad, Dr Carly Lightowers; the West London Bench mooted it, but thought it was covered by Step Three - any factors which indicate a reduction for assistance to the prosecution. There is a distinction between formal agreements and someone actively engaging with the criminal justice process. We have existing mitigating factors in other guidelines along these lines:

- “cooperation with the investigation/early admissions”, from the General Guideline and used in Firearms;
- “cooperation with the investigation”, used in child cruelty, animal cruelty and failure to protect a girl from female genital mutilation; and “co-operation with the police” from bladed article and offensive weapons guidelines;
- “offender co-operated with investigation, made early admissions and/or voluntarily reported offending”, used in fraud, bribery, money laundering and the new trade mark guidelines;
- both “high level of co-operation with the investigation, beyond that which will always be expected” and “self-reporting, co-operation and acceptance of responsibility” used in health and safety, environmental and corporate manslaughter guidelines
- “ready co-operation with authorities”, used in various older guidelines (though not replicated in the recently published attempted murder guideline).

3.20 Of these, I believe “**offender co-operated with investigation, made early admissions and/or voluntarily reported offending**” closest fits what those consultees suggested and therefore recommend we add this as a mitigating factor.

3.21 Removing the qualifier “significant” from “Abuse of a significant degree of trust/responsibility was suggested by the Justice Legal Advisers’ and Court Officers Service.

We originally included the words “significant degree” when this was proposed as a high culpability factor to ensure it was not over-used. This appears to be less of an imperative as a mitigating factor.

3.22 There is readacross here to the requirement of the European Convention (Article 24, strand (c) – commission of offence by a public official, which is a statutory aggravating factor in Scotland and Northern Ireland). In principle we could amend this aggravating factor to become: “Abuse of trust/responsibility, *including where the offender is a public official acting in the course of their official duties*”. On the other hand, I am not aware of this being a significant problem in this jurisdiction and moreover the current wording would almost certainly satisfy the international obligation. Other formulations used in guidelines do not particularise the type of power being abused (and the revised drug supply guidelines took out a reference to prison employees and medical professionals under culpability). On balance I would recommend leaving it as “Abuse of trust/responsibility”.

Question 5: do you want to amend the wording of these mitigating and aggravating factors as proposed?

Ancillary orders

3.23 The Sentencing Academy agreed it was useful for the guideline to highlight Slavery and Trafficking Prevention Orders. They directed us to the judgment in *R. v Wabelua [2020] EWCA Crim 783* which set out various principles for making an STPO. CARE and Hope for Justice also thought that extra guidance for sentencers may be useful here.

3.24 I propose including an abridged version of the principles found at paragraph 36 of *Wabelua* as a dropdown at the ancillary order stage:

- 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.

Question 6: do you want to add the above drop-down setting out the principles for imposing STPOs?

3.25 The paper considered in May included a proposal to amend the wording of the section on Slavery and Trafficking Reparation Orders to make it broad enough to have applied to both the Crown Court and magistrates courts. However, HM Council of District Judges have made the point that under the Proceeds of Crime Act 2002, confiscation orders can only be made in the Crown Court, and they are a precondition of an STRO. I therefore propose the following clarification:

*“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 etc etc”*

Question 7: are you content to make this clarification to the section on STROs?

3.26 The Justice Legal Advisers’ and Court Officers Service suggested that a further possible ancillary order that could be useful to mention in this context would be restraining orders. There appears to be no harm in including them here, as there may particularly be cases of domestic servitude where they may be relevant. We have existing text we can use:

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.

Question 8: do you want to include the standard text on restraining orders here?

Breach of a Slavery and Trafficking Prevention Order - analogous breach offences

3.27 The vast majority of respondents agreed with our approach of directing sentencers towards analogous breach offences for the section 30 offence of breach of an STPO. However, two responses (HM Council of District Judges and the Justice Legal Advisers’ and Court Officers Service) questioned whether the guideline for breach of a disqualification from acting as a director was an apt comparator.

3.28 In favour of keeping it, there may well be instances of modern slavery offending which are analogous to criminally bad business practice. However, the argument is made that not only is the disqualification breach offence only punishable by two years’ imprisonment (whereas breach of an STPO is five), but most of the step one factors do seem irrelevant in a modern slavery context – for example:

- Breach involves deceit/dishonesty in relation to actual role within company;
- Breach involves deliberate concealment of disqualified status;
- Breach results in significant risk of or actual serious financial loss

3.29 It may be a marginal point but I cannot find any of the earlier reasoning as to why it was initially included as an analogous guideline. The arguments, such as they are, seem evenly balanced.

Question 9: do you want to remove “Disqualification from being a company director” from the list of analogous breach offences?

4 EQUALITIES

4.1 The consultation asked:

- Do you consider that any of the factors in the draft guidelines, or the ways in which they are expressed could risk being interpreted in ways which could lead to discrimination against particular groups?
- Are there any other equality and diversity issues the guidelines should consider?

Most respondents had no comments on these questions. As per our last meeting, I do not propose at this stage adding any particular wording in the guideline in the absence of evidence of any disparities.

5 IMPACT AND RISKS

5.1 A revised resource assessment for the definitive guideline is attached at **Annex B**. It is estimated that the guideline may result in a requirement for up to around 40 additional prison places per year, driven by longer custodial sentence lengths under the guideline and, to a lesser extent, by a decreased use of suspended sentences and an associated increased use of immediate custody. This overall position has not changed since the consultation draft stage resource assessment.

5.2 It is possible that our amendments post-consultation to the sentencing levels in low culpability cases could reduce the scale of the impact of the guideline on the use of suspended sentences, but this impact has not been able to be quantified at either the draft or final resource assessment stage. For further details of the data limitations, see the full resource assessment.

5.3 Amongst the changes being made to the guideline following consultation, there is the potential to misinterpret any elevation of sexual exploitation above other forms of exploitation, although the revised harm table should still allow for sentencers to reflect the serious harms caused by (for example) domestic servitude or manual labour.

5.4 Some groups may be concerned about the decrease in sentencing levels for low culpability offenders. We can explain the reasoning behind this in the consultation response document, making the point that sentencing levels for this category are still higher than under the existing section 59A guideline.

Question 10: bearing in mind the above impacts, and incorporating any changes agreed as a result of this paper are you content to sign off the guidelines for publication?

Sentencing Council

Sentencing Council meeting: 25 June 2021
Paper number: SC(21)JUN04 – Annual Report
Lead official: Phil Hodgson 020 7071 5788

1. Issue

- 1.1 This paper presents the Sentencing Council Annual Report 2020/21 for consideration by members of the Council. The full Report is at annex A.

2. Recommendation

- 2.1 That the Council approves the Annual Report for submission to the Lord Chancellor and subsequent laying before Parliament.

3. Consideration

- 3.1 The Annual Report is a summary of the activities and achievements of the Sentencing Council between 1 April 2020 to 31 March 2021.
- 3.2 This year's report follows the same structure as has been used in previous years. It includes:
- Foreword from the Chairman
 - Table of key events
 - A report for each guideline detailing the work that was done during the year
 - Sentencing and non-sentencing factors reports
 - Accounts of work completed by the Analysis and Research and Communication functions
 - The Council's budget
 - Membership of the Council

- 3.3 The Council is required by statute to provide the Lord Chancellor with a report on the exercise of the Council's functions during the year. The Lord Chancellor must lay a copy of the report before Parliament, after which the Council will publish it. The schedule for this year is as follows:
- Friday 25 June – consideration at Council meeting
 - Wednesday 30 June – submission to the Lord Chancellor and sponsoring Minister Chris Philp MP and circulation to MoJ Bail, Sentencing and Release Policy Unit
 - Wednesday 21 July – laid in Parliament (am) and published (pm)
- 3.4 Prior to the 25 June Council meeting, the report was circulated for comment to members of the Governance and Confidence and Communication sub-groups. All comments received have been taken into account or responded to.
- 3.5 Members are asked to discuss any substantive corrections or suggestions for changes to the report at the Council meeting on Friday 25 June and to forward any further minor changes to Phil (phil.hodgson@sentencingcouncil.gov.uk) by end of Monday 28 June.

Question: Subject to any minor changes, does the Council approve the Annual Report 2020/21 for submission to the Lord Chancellor?

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

25 June 2021
SC(21)JUN05 – Terrorism
Maura McGowan
Vicky Hunt
0207 0715786

1 ISSUE

1.1 This month the Council is invited to consider a draft approach to revising the Preparation of Terrorist Acts (Terrorism Act 2006, section 5) guideline and the Explosive Substance Act guideline (which is largely a replica of the preparation guideline) in light of the changes made to terrorism legislation in the Counter Terrorism and Sentencing Act 2021.

2 RECOMMENDATION

2.1 It is recommended that the Council consider this paper and proposed approach.

3 CONSIDERATION

Legislative Changes

3.1 The 2021 Act creates a new category of terrorism offence called a 'serious terrorism offence'. There is a schedule which sets out which offences this new provision applies to. It is separated into terrorism offences and other serious offences where there is a terrorist connection. Preparation of Terrorist Acts (Terrorism Act 2006, section 5) is included in the first part of the schedule and Explosive Substance offences (sections 2 and 3 Explosive Substance Act 1883) in the latter part.

3.2 Where an offender commits a serious terrorism offence a 'serious terrorism sentence' can be imposed (where the criteria are met), or an extended sentence (where the dangerousness criteria are met) which has a licence period of up to 10 years.

3.3 The 'serious terrorism sentence' comprises a period of imprisonment (or detention in a young offender institution for those aged 18-21) for a minimum period of 14 years, and an extension period to be served on licence (between 7 and 25 years). The sentence applies where:

- the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further serious terrorism offences or other specified offences,
- the court does not impose a sentence of custody for life, and
- the risk of multiple deaths condition is met. (That the serious terrorism offence or the combination of the offence and one or more offences associated with it was very likely to result in or contribute to (whether directly or indirectly) the deaths of at least two people as a result of an act of terrorism).

3.4 The court *must* impose a serious terrorism sentence unless the court is of the opinion that there are exceptional circumstances which relate to the offence or to the offender and justify not doing so.

3.5 In a case where the court imposes a life sentence (because the dangerousness criteria are met and a life sentence is justified), but a serious terrorism sentence would have been given but for the fact that a life sentence was imposed (i.e. the remaining criteria for a serious terrorism sentence were met), then this is called a ‘serious terrorism case’ and the minimum term of that life sentence must be 14 years unless exceptional circumstances apply.

Guideline Amendments

3.6 The current Preparation of Terrorist Acts guideline can be seen [here](#). The draft Preparation of Terrorist Acts guideline containing the proposals is attached at **Annex A**.

Sentencing Table and Guidance Above

3.7 At Step 2 of the current guideline there is some brief guidance above the sentencing table which explains why we have included life sentences on the face of the guideline:

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 [Chapter 6 of Part 10 of the Sentencing Code](#) to make the appropriate determination, before imposing either a life sentence or an extended sentence. (See STEP FIVE 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 SIX below).

3.8 The Council chose not to go into too much detail in this section as the pool of Judges dealing with these cases would be very familiar with the dangerousness provisions and it was not deemed necessary. The Council chose to include life sentences in the table as this was a fair reflection of the sentences that offenders would likely receive in the most serious cases. We had at one point considered just putting in the equivalent determinate sentences rather than make a presumption that the dangerousness criteria would be met and a life sentence justified, but it resulted in sentences in the region of 70- 80 years and it seemed undesirable to have such figures in the table.

3.9 In order to provide for the changes, I am proposing simply amending and expanding the text in the box above the sentence table. The proposed text (as seen in **Annex A** page 3) now includes information relevant to serious terrorism offences. It does not provide all of the detail that a Judge will need i.e. it does not set out the criteria that must be satisfied before imposing a serious terrorism sentence but it does include the relevant legislative references. To include all of the relevant criteria could lead to quite a lengthy guide, and in any event, it is better that judges interpret the legislation for themselves, that is not generally the function of the Council's guidelines.

3.10 This new expanded text also cross refers to a new STEP 3 of the guideline on minimum terms. It explains that some sentences may need adjustment if the criteria for a serious terrorism sentence are met, or if a life sentence of below 14 years is imposed in a serious terrorism case.

3.11 The benefit of simply adding this text is that the sentencing table below can remain largely as it is and ensures that sentencers base the sentence on the seriousness of the specific case in front of them following the usual analysis of culpability and harm.

3.12 The guideline has now been in force since April 2018, and whilst we have not yet evaluated it, there seem to be no indications from the cases we have looked at that the guideline is not working well.

When might a Judge need to make an adjustment to the sentence?

3.13 If a serious terrorism sentence is to be imposed but the sentencing table would lead to a sentence of below 14 years then at Step 3, once the seriousness has been determined, the Judge may need to increase the sentence to the minimum. This is an easy adjustment to make and one that would clearly warrant a move only up to the minimum sentence.

3.14 There are not actually many sentences within the table that might require adjustment. The serious terrorism sentence criteria includes the multiple deaths condition,

this means that category 3 harm cases (all sentences in the bottom row of the sentencing table) are unlikely to ever be eligible for a serious terrorism sentence, and so no adjustment would be necessary.

3.15 The sentences highlighted pink in the sentencing table; **C2** (within the sentencing range), **D1** (within the sentencing range) and **D2** (starting point and sentencing range) may, however, meet the criteria for a serious terrorism sentence and if so, might need adjusting at step 3. However, there are just as likely to be cases that do not meet the criteria as they may not meet the first main test (that the court is of the opinion that there is a significant risk to members of the public of serious harm occasioned by the commission by the offender of further serious terrorism offences or other specified offences) and in those cases it is surely helpful for the sentencer to be given a suitable starting point and range that is based on the offence seriousness.

3.16 The only other adjustment that might be needed would be in those instances where a life sentence is imposed, but the 'serious terrorism case' criteria is met (i.e this would have been a serious terrorism sentence but for the imposition of a life sentence). In these situations, the minimum term must be at least 14 years. There are currently two boxes, **C1** and **B2** (highlighted in yellow), where there are lower minimum terms within the range. For **B2** I would suggest that this is not a problem as there could be cases where a life sentence is imposed but the serious terrorism criteria are not met because of the multiple deaths condition. For example, an offender in a significant role was preparing for an attack against a single victim. The Judge may consider that life with a minimum term of less than 14 years is appropriate when taking into account mitigating circumstances. In this case no adjustment would be needed.

3.17 In the case of a **C1** offence it is harder to imagine a scenario whereby the serious terrorism sentence criteria would not have been met given that harm category 1 is 'multiple deaths risked and very likely to be caused', and the Council have already assumed that in the majority of cases the dangerousness criteria would be met. The Council may, therefore, consider amending the range for the minimum term to start at 14 years.

Question 1: Does the Council agree with the addition of the text and maintaining the existing sentencing table (subject to question 2 below)?

Question 2: Does the Council want to amend the sentences in C1 to ensure that the minimum term range does not go below 14 years?

Step 3 - Minimum Terms and Exceptional Circumstances (page 4 Annex A)

3.18 This is a new step added to ensure that any adjustments that are needed to the sentence are made at the correct stage, in order to comply with the legislation.

3.19 Large parts of the wording have been replicated from the recently published firearms guideline. The principles appear to fit well, and it demonstrates consistency across the Council's guidelines.

Question 3: Does the Council agree with the wording at Step 3?

Other Minor Changes

3.20 A couple of additional changes have been made to the guideline. The first is on the front page and is in red, it is simply a legislative reference to show that from the date of the commencement of the relevant section of the 2021 Act, this offence is a serious terrorism offence.

Question 4: Is the Council content with this additional reference?

3.21 The second change is the amendments to the reduction for a guilty plea wording at Step 5 in the case of a serious terrorism sentence.

Question 5: Is the Council content with this amendment?

Preparation of Terrorist Acts - Harm

3.22 The CPS has recently asked us to consider the parallels that exist in the offences under section 14 of the Sexual Offences Act 2003 (Arranging or facilitating the commission of a child sexual offence) and offences under section 5 of the Terrorist Act 2006 (Preparation of Terrorist Acts) specifically where undercover police/ security services are involved.

3.23 The issue concerns how harm is assessed in an inchoate offence where there could never be (or it is highly unlikely that there would be) any actual harm because of the police or security service involvement. An example of a sexual offence case (under s14 SOA 2003) would be one where there is no actual child victim but instead an undercover officer is pretending to be a child. A relevant terrorism case might involve the offender 'working with' what they perceive to be a like-minded person wanting to carry out an act of terrorism, but in fact they are a member of the security services.

3.24 The parallels, it is suggested, could be reflected in the way in which harm is assessed. The Council has recently published a consultation on a new approach to handling s14 SOA cases which states the following:

The level of harm should be determined by reference to the type of activity arranged or facilitated. Where the activity takes place, sentences commensurate with the applicable starting point and range will ordinarily be appropriate.

No sexual activity need take place for a section 14 offence to be committed, including in instances where no child victim exists. In such cases the court should identify the category of harm on the basis of the sexual activity the offender intended, and then apply a downward adjustment at step two to reflect the fact that no or lesser harm actually resulted.

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 sexual activity at a late stage, or where a child victim does not exist and, but for this fact, the offender would have carried out the intended sexual activity, 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 sexual activity was intended but did not take place than in a case where relatively less serious sexual activity did take place.

The sentence will then be subject to further adjustment for aggravating and mitigating features, in the usual way.

3.25 In the Preparation for Terrorist Acts guideline there is no specific reference to how to approach a case where the security services were involved. The harm model states the following:

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.

3.26 The Council discussed the addition of 'likelihood' at length during the initial drafting of the guideline. The main issue under consideration was whether the offender's plan was viable, taking into consideration matters such as their capability and the credibility of the plan. It was agreed that the addition of 'likelihood' was useful in ensuring that those offenders who intend to cause a major terrorist act but who were highly unlikely to ever be successful do not receive disproportionate sentences.

3.27 The Council did not discuss how the likelihood should be considered from the perspective of the involvement of the security services.

3.28 The way that the courts have approached such issues in terrorism has varied over time. This can be seen in the examples at **Annex C**.

3.29 The Council is invited to consider whether additional guidance is needed in the guideline to help Judges address these issues in a consistent manner, and if so, should it take a similar form to that in the Sexual Offences consultation paper that has recently been launched.

Question 6: Does the Council agree to the addition of guidance in the assessment of harm to direct Judges on how to deal with cases involving the security services?

3.30 If the Council were minded to agree, this could involve some additional wording under the Harm heading. I have proposed some wording in **Annex A** highlighted in yellow. Whilst the wording has been taken from that proposed in SOA cases, I have suggested some changes. The removed wording concerns how close the offender had come to carrying out the act, in terrorism cases this is something that is already covered under culpability; *'but for apprehension, the activity was (very) likely to have been carried out'*. I have also added in some wording to ensure that the viability of the plan is still taken into consideration even where the security services were involved.

Question 7: If the Council is in agreement with the addition of some wording, does the Council agree with the proposed wording at Annex A?

Amendments needed to other Guidelines

3.31 At the last Council meeting the Council agreed to some immediate changes to the Funding and Failure to Disclose Information guidelines to make clear that for convictions on or after 30 April 2021 these offences fall within the special sentence for certain offenders of particular concern provisions. This change was needed as the relevant provision in the new legislation had already come into force.

3.32 The remaining legislative changes that impact our guidelines are due to come into force from 29 June, making a number of guidelines out of date. It was proposed at the last meeting that I consider some wording to be put on each affected guideline to inform sentencers of this fact and to highlight the relevant provisions. The proposed amendments are set out below:

Section 5 TA 2006– Preparation of Terrorist Acts

Section 2-3 Explosive Substances Act 1883 – Explosive Substances (Terrorism Only)

Note for offences **committed** on or after **29 June 2021**:

This offence is a serious terrorism offence listed in Part 1 of Schedule 17A for the purposes of sections 268B and 282B (serious terrorism sentence) and section 323 (minimum term order: other life sentences) of the Sentencing Code.

Where the criteria for a serious terrorism sentence are met a **minimum custodial sentence of 14 years** must be imposed unless exceptional circumstances apply.

In a serious terrorism case (s323(4) Sentencing Code) the **minimum term must be at least 14 years** unless exceptional circumstances apply.

These provisions have not yet been reflected in this guideline.

Section 11 TA 2000 – Membership of a Proscribed Organisation

Note for offences **committed** on or after **29 June 2021**:

The maximum sentence is increased to **14 years** (section 26 (1)(a) and (2) Counter Terrorism and Sentencing Act 2021). **This increase has not yet been reflected in the sentence levels in this guideline.**

Section 12 TA 2000 – Support for a Proscribed Organisation

Note for offences **committed** on or after **29 June 2021**:

The maximum sentence is increased to **14 years** (section 26 (1)(b) and (2) Counter Terrorism and Sentencing Act 2021). **This increase has not yet been reflected in the sentence levels in this guideline.**

Question 8: Does the Council agree to the above proposed changes?

3.33 The other main change in the legislation is the change to the ‘terrorist connection’ provisions which enable any non-terrorist offence with a statutory maximum of more than two years to be deemed to have a ‘terrorist connection’, whereas currently this provision only applies to offences included in a schedule.

3.34 The Council provided some guidance on the ‘terrorist connection’ provisions within the first package of terrorism guidelines (**Annex B**). The general guideline also links to this guidance.

It is proposed that this page should be changed to include the following:

Note for offences **committed** on or after **29 June 2021**:

Any offence which is punishable on indictment with imprisonment for more than 2 years and is not specified in Schedule A1 of the Sentencing Code may be deemed to have a terrorist connection.

3.35 The Council may wish to revisit this page more fully as part of this package of amendments. The Council could consider changing the guidance and may also consider, for example, specifically including ‘terrorist connection’ as an aggravating factor on the face of some non -terrorist guidelines where it is most likely to arise.

Question 9: Does the Council agree to the change to the guidance on ‘terrorist connection’ offences?

4 IMPACT AND RISKS

The Analysis and Research team have gathered up to date statistics on all guideline terrorist offences and will start to prepare an initial Resource Assessment in preparation for the consultation paper.

With regard to ethnicity statistics, the data we currently use (self-identified ethnicity) is rather limited as a large proportion of cases (up to 100% for some offences) are unreported/ unknown ethnicity. The other readily available source of ethnicity data (perceived ethnicity, i.e. ethnicity as perceived by the police officer handling the case) has a similarly large proportion of ‘unknowns’. We are currently exploring other avenues we might pursue to obtain more comprehensive data in this area.

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Sentencing Council meeting:
Paper number:

25 June 2021
SC(21)JUN06 – Motoring offences
causing death or injury

Lead Council member:
Lead official:

TBC
Lisa Frost
0207 071 5784

1 ISSUE

1.1 A revised guideline for motoring offences has been on the Council's workplan for some time and work has not commenced due to expectations that the government may legislate to increase sentences for some offences. This legislation is now imminent and it is thought the project should now commence to ensure guidance is available to support the introduction of the legislative changes. This is the first meeting to consider the scope of the motoring offences guideline and which offences should be included.

2 RECOMMENDATION

2.1 The Council is asked to:

- Consider and agree the scope of the motoring offences guideline.

3 CONSIDERATION

3.1 Motoring offences are among the highest volume offences dealt with by the courts and there has been demand for revised guidelines for some time, as well as legislative changes for some offences. Guidelines for offences which are summary only were updated in 2016 as part of the MCSG project. The MCSG also includes limited guidance for sentencing dangerous driving and careless driving offences, but no guidance is available in the Crown Court for these offences. Offences where a death is involved are included in the SGC Causing Death by Driving guideline which was published in 2008, and it is proposed that this project will provide for revised and updated guidelines for these offences, and replace the SGC guideline.

3.2 It is anticipated that the Police, Crime, Sentencing and Courts (PCSC) Bill currently before Parliament will result in changes to statutory maximum sentences for some offences. These include increasing the statutory maximum sentences for causing death by dangerous driving and causing death by careless driving under the influence of drink or drugs to life

imprisonment. This does not prevent work to revise guidelines commencing, but consideration of sentences for these offences will be left towards the latter end of the project to enable the Bill to progress through Parliament.

Scope of guideline.

3.3 The offences within scope of the guideline are as follows;

Offence	Provision and statutory maximum sentence	Existing guidance
Dangerous driving	(s2, Road Traffic Act 1988) Stat max 2 years	SGC
Causing death by dangerous driving	(s1 Road Traffic Act 1988) Stat max currently 14 years to increase to life under PCSC Bill	SGC
Causing death by careless driving	(s2B RTA 1988) Stat max 5 years	SGC
Causing death by careless driving under the influence of drink or drugs	(s3A, RTA 1988) Stat max currently 14 years to increase to life under PCSC Bill)	SGC
Causing death by driving whilst unlicensed or uninsured	(s3ZB, RTA 1988) Stat max 2 years imprisonment	SGC
Causing death by driving whilst disqualified	(s3ZC, Road Traffic Act 1988) Stat max 10 years imprisonment	SGC
Causing serious injury by dangerous driving	(s1A, Road Traffic Act 1988) Stat max 5 years	None
Causing serious injury by driving whilst disqualified	(s3ZD, Road Traffic Act 1988) Stat max 5 years	None
Aggravated vehicle taking without consent – death caused	(s12A 2(b), Theft Act 1968) Stat max 14 years	None
Aggravated vehicle taking without consent – injury caused	(s12A 2(b), Theft Act 1968) Stat max 2 years	MCSG
Aggravated vehicle taking without consent – dangerous driving	s12A 2(a) Theft Act 1968) Stat max 2 years	MCSG
Aggravated vehicle taking without consent – vehicle/property damage of £5,000 or over	(s12A 2(c) and (d), Theft Act 1968) Stat max 2 years	MCSG
Aggravated vehicle taking without consent – vehicle/property damage of less than £5,000	(s12A 2(c) and (d), Theft Act 1968) Stat max 2 years (6 months in magistrate’s court)	MCSG

3.4 Volumes of offences for the period 2015-2019 are as follows:

Offence	2015	2016	2017	2018	2019
Dangerous driving	3,189	3,599	3,592	3,437	3,712
Causing death by dangerous driving	120	156	188	152	173
Causing death by careless driving	170	226	187	183	149
Causing death by careless driving under the influence of drink or drugs	21	32	22	21	19
Causing death by driving whilst unlicensed or uninsured	2	5	3	6	6
Causing death by driving whilst disqualified	0	0	0	0	2
Causing serious injury by dangerous driving	266	297	353	350	351
Causing serious injury by driving whilst disqualified	2	2	3	4	5
Aggravated vehicle taking without consent – death caused	2	0	0	0	2
Aggravated vehicle taking without consent – injury caused	101	90	65	53	55
Aggravated vehicle taking without consent – dangerous driving	346	286	286	242	261
Aggravated vehicle taking without consent – vehicle/property damage of £5,000 or over	276	287	286	227	229
Aggravated vehicle taking without consent – vehicle/property damage of less than £5,000	1,139	1,067	832	679	598

3.5 The PCSC Bill also includes a new offence of causing serious injury by careless or inconsiderate driving which will have a statutory maximum sentence of 2 years imprisonment. It is proposed that this should also be included.

3.6 The Council may wish to consider if guidelines are required for offences which are very low volume. These include; Causing death by driving whilst unlicensed or uninsured; Causing death by driving whilst disqualified; Causing serious injury by driving whilst disqualified and Aggravated vehicle taking without consent – death caused. The first two offences listed are provided for in the SGC guideline which combines the offences in the guideline Causing death by driving: unlicensed, disqualified or uninsured drivers. There have been less than five offenders sentenced for Aggravated vehicle taking without consent – death caused since 2015 and no guidance exists. CPS charging guidance confirms that where there is evidence of dangerous driving and that the defendant was the driver, prosecutors should charge an offence of causing death by dangerous driving. There is no existing guidance for sentencing Causing serious injury by driving whilst disqualified.

3.7 While these offences are low volume, it is thought that all should initially remain within the scope of the project given that there is either existing guidance, which it might be

considered we ought to replace as opposed simply to withdrawing; or, in terms of the low volume offences, they share features with the higher volume offences which are within scope. For example, if guidelines will be developed for offences involving aggravated vehicle taking where serious injury is caused it may be difficult to justify not providing a guideline for offences where a death is involved. It is proposed the offences listed remain within the scope of the project given that no unnecessary work would be required to consider relevant factors.

Question 1: Does the Council agree that the guideline should include the offences listed at paragraph 3.4?

3.8 It is also proposed that work is undertaken to identify if the MCSG drug driving guidance can be improved. The MCSG drug driving guidance currently states:

The Sentencing Council will, in due course produce a guideline with the assistance of evidence and data gathered by the Department for Transport. Any new guideline will be made subject to public consultation before it is finalised.

It is proposed that we explore whether evidence supports the development of guidance relating to types and levels of drugs and impact upon driver impairment, as is the case for alcohol levels in drink driving offences. Initial discussions with DfT officials have been undertaken and it has been suggested that this may be possible. It should be noted that this may require expert advice which may incur a small cost.

Question 2: Does the Council agree that the project should include consideration of improved guidance for drug driving offences?

3.9 The guidelines for the following offences were updated as part of the MCSG project and came into force in April 2017 and are therefore not proposed for inclusion in the guideline;

- Driving without due care and attention
- Driving without reasonable consideration
- Drink driving
- Speeding offences

Question 3: Does the Council agree that the guideline should not include the offences recently updated in the MCSG?

3.10 Other offences exist for wanton and furious driving. These are included at s35 of the Offences Against the Person Act which provides:

S35 OAPA 1861 Drivers of carriages injuring persons by furious driving.

Whosoever, having the charge of any carriage or vehicle, shall by wanton or furious driving or racing, or other wilful misconduct, or by wilful neglect, do or cause to be done any bodily harm to any person whatsoever, shall be guilty of a misdemeanor, and being convicted thereof shall be liable, at the discretion of the court, to be imprisoned for any term not exceeding two years.

CPS charging guidance confirms that these offences should only be charged where an offence cannot be charged as a Road Traffic Act offence, such as when the driving was not on a road or other public place or when the vehicle used was not a mechanically propelled vehicle (such as a bicycle or horse drawn vehicle). Volumes are therefore low with only four offenders sentenced in 2019. While volumes are low, this offence is likely to be charged where a cyclist injures another person when cycling. An alternative view may be that that these could be considered as analogous offences to others with the same statutory maximum sentence which would be included in the guideline, and it is therefore not necessary to include them.

Question 4: Should the guideline include the offence of wanton and furious driving?

4 IMPACT AND RISKS

4.1 There are no risks identified at this point, although the passage of the PCSC Bill will be monitored closely as will have an impact upon when some work can be completed.

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Sentencing Council

Sentencing Council meeting:	25 June 2021
Paper number:	SC(21)JUN08 – The ‘<i>What Next for the Sentencing Council?</i>’ consultation response document
Lead official:	Emma Marshall

1 ISSUE

1.1 The approach to presenting the actions emerging from the ‘*What Next for the Sentencing Council?*’ (‘Vision’) consultation response/strategy documents.

2 RECOMMENDATION

2.1 That the Council agrees the proposed approach and high-level themes to be covered in the response/strategy documents; this will enable us to work on the detail of the documents in time for a late September publication date.

3 CONSIDERATION

3.1 The Council discussed the actions arising from the Vision consultation at the May meeting. This discussion included a categorisation based on prioritisation and resources and in the context of the Council’s current core ‘business as usual’ work.

3.2 In the meeting, it was agreed that a thematic approach, rather than a list of priorities, would be the most suitable approach to presenting the actions the Council wishes to take forward. In doing so, we can flag high level work areas for the future, and then highlight specific actions within those areas. This has the benefit of enabling us to indicate relative priorities for future work without being so specific that we cannot retain flexibility in the

workplan for other work that may arise. It also helps to align our response to the themes contained in the original consultation and the questions that respondents answered.

3.3 We have therefore worked on drafting a high-level statement of intent that has a series of strategic objectives sitting underneath it. These objectives align with the themes put forward in the consultation; others reflect themes that emerged as strong issues in the responses – for example the need to more strongly embed consideration of equality and diversity issues in the Council’s work.

3.4 The draft statement of intent and strategic objectives at this stage for the Council’s consideration are set out below. If the Council are content with these, we will set them out in a consultation response document, alongside our discussion on the responses we received to the consultation and our rationale for the actions we plan to take forward. Alongside this, we also plan to publish a standalone strategy document that would contain these strategic objectives and more detail on the associated actions.

3.5 **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*
- **Strategic objective 2:** *The Council will work to enhance and strengthen the data and evidence that underpins its work*
- **Strategic objective 3:** *The Council will fully embed consideration of all relevant equality and diversity issues across the entire range of its work*
- **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*
- **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*

Question 1: Is the Council content with a thematic approach to drafting the Vision consultation response document?

Question 2: Is the Council content with the above draft statement of intent and strategic objectives for its future work?

3.6 Underneath the strategic objectives we propose providing more detail on the activities we will undertake to realise these intentions/aims (some of which will necessarily overlap between the different themes). These will cover the actions that have been agreed over the last few Council discussions on the Vision. Annex A provides some information on how these might be drafted, although it should be noted that this is for illustrative purposes only: if the Council agrees with this overall approach, we will work further on this and consider carefully the type of wording that we adopt and the level of detail that it would be appropriate to include.

3.7 Given some of the discussion at the May Council meeting in relation to the difficulty of specifying exact priorities and timings for work (e.g. some areas are contingent on the successful completion of other areas, there may be issues with availability and quality of data and there may be staffing issues in the future), we would suggest that do not specify the exact timing of most of the actions. However, where it has been agreed that the work should be commenced within a year of publication of the response document (the category 1 high priority list from the May Council paper), we suggest indicating that the work is considered to be high priority for the Council and will be commenced as soon possible. This will provide some information on relative priorities without starkly flagging that other areas may be regarded as “lower” priority.

3.8 The one exception to this is those areas of work where it has been decided that no action is necessary. It will be important to be transparent in the response document that this will be the case and to provide a rationale for this decision. We will therefore include a section relating the small numbers of actions to which this applies.

Question 3: Is the Council generally content with the approach as outlined above?

4 IMPACT AND RISKS

4.1 It will be important to ensure that we provide a full and justified explanation in the consultation response document for all the decisions that have been made. If not, this may attract criticism that the Council has not fully taken account of the views put forward and is not being responsive to recommendations. This could undermine confidence in the Council and the decisions it takes.

4.2 It will also be important to be seen to be actioning those areas of work that are flagged in the document as higher priority. We have already placed these on the Office's planning spreadsheet and are currently working on how best to resource these.

Sentencing Council

Sentencing Council meeting:
Paper number:

25 June 2021
SC(21)JUN08 – What next for the
Sentencing Council – guideline
development criteria
Ruth Pope

Lead official:

1 ISSUE

1.1 As part of the ‘What next for the Sentencing Council’ consultation the Council consulted on revised criteria for developing guidelines. At the December 2020 meeting the Council considered the responses on the issue and agreed that further work should be done to reconsider the criteria.

2 RECOMMENDATION

2.1 That the Council agrees criteria for publication on its website that reflect the factors that go into the decision on whether and when to develop or revise guidelines.

3 CONSIDERATION

The existing criteria

3.1 The Sentencing Council website currently says:

<https://www.sentencingcouncil.org.uk/sentencing-and-the-council/about-the-sentencing-council/how-the-council-works/>:

How the Council decides to produce a guideline

The overarching aim of the Council in publishing guidelines is to promote a clear, fair and consistent approach to sentencing. In agreeing our three-year, rolling work plan, the Council prioritises the publication of guidelines that will fulfil that aim, and schedules guideline production on the basis of one or more of the following factors:

- The Lord Chancellor or the Court of Appeal (Criminal Division) formally requests the review of sentencing for a particular offence, particular category of offence or particular category of offender and the production of a guideline.
- New legislation requires supporting sentencing guidelines.
- Guidelines issued by our predecessor body the Sentencing Guidelines Council require conversion into the Council’s step by step approach to sentencing, or current guidelines are out of date or incomplete.
- A substantial body of interested parties request a guideline to be issued for a particular area of sentencing.
- Sentencing data suggests that there may be inconsistency in sentencing for a particular offence, particular category of offence or particular category of offender.

- Evidence suggests that the guideline would have a significant effect on sentencing practice, for example the potential range of available sentences is wide and/or the number of offences sentenced is significant.
- Consideration of the resources required to produce a guideline and other work pressures.

The criteria proposed in the consultation

3.2 The consultation suggested the following criteria:

- The Lord Chancellor or the Court of Appeal formally requests the review of sentencing for a particular offence, category of offence or category of offender, and the production or revision of a guideline.
- A substantial body of interested parties request a guideline to be issued or revised for a particular area of sentencing and there is evidence to suggest that a guideline would have a significant impact on sentencing.
- Existing guideline(s) have become significantly out of date, or new guidelines may be required because of new legislation, amendments to legislation or other external factors.
- Evidence indicates that existing guideline(s) have had a problematic, unintended impact on sentencing severity.
- Evidence indicates that there is currently inconsistency in the sentencing of an offence or group of offences.

3.3 As outlined at the December Council meeting, 15 respondents commented on the criteria. Around half of those who responded felt the criteria overall were generally acceptable and appropriate. However, there were also various comments (including from those who were generally in support of the criteria) about how they could be refined or changed.

3.4 One recurring theme was what constituted a “substantial body of interested parties” and there was a suggestion that this might set the bar too high. There was also a concern that the criteria were weighted towards more serious offences (as the Lord Chancellor or Court of Appeal were unlikely to raise issues relating to low level crime).

3.5 The Prison Reform Trust suggested the following wording:

A substantial body of interested parties request a guideline to be issued or revised for a particular area of sentencing, and there is evidence to suggest that this would lead to a significant improvement in sentencing in this area, which:

- *helps to deliver on the statutory purposes of sentencing, while retaining an appropriate balance between those purposes; and/or*
- *helps to improve outcomes, including addressing any disproportionate outcomes, for people with protected characteristics.*

3.6 There were helpful suggestions that issues of equality and disparity could be integrated into the criteria.

3.7 Several respondents commented on the wording: 'Evidence indicates that existing guideline(s) have had a problematic, unintended impact on sentencing severity'. There were questions as to whether it was relevant that an impact was intended if it was problematic. There were also suggestions that sentencing severity was not the only measure that should be considered.

The proposed criteria

3.8 Taking all of these points into account alongside the practical issues of evidence, resources and external factors, the following wording is proposed (numbering is for ease of reference – in any published version these would be bullet points to avoid appearing to demonstrate an order of priority):

The overarching aim of the Council in publishing guidelines is to promote a clear, fair and consistent approach to sentencing. In agreeing our work plan, the Council prioritises the publication of guidelines that will fulfil that aim and schedules guideline production and revision on the basis of one or more of the following factors:

1. The Lord Chancellor or the Court of Appeal formally requests the review of sentencing for a particular offence, category of offence or category of offender **and** the Council considers that the production or revision of one or more guidelines is justified.
2. Existing guideline(s) have become significantly out of date because of amendments to legislation or other external factors.
3. New legislation or other external factors have created a demand for new guideline(s) among court users, and the Council considers that the necessary evidence is available to develop such guideline(s).
4. There is evidence (from the Council's own research or evaluations, interested groups or other sources) of issues relating to sentencing **that the Council considers could be addressed by the development or revision of one or more guidelines**. Such issues may include but are not limited to:
 - (a) evidence of inconsistency in the sentencing of an offence or group of offences
 - (b) evidence of disparity in sentencing between different demographic groups
 - (c) evidence of disproportionately severe or lenient sentencing for a category of offence or category of offender
 - (d) evidence relating to the effectiveness of different sentences.

A further factor that the Council will take into account in all cases is the resource available to produce or revise guidelines.

Important note: the Council is unlikely to undertake the development or revision of a guideline at a time when legislative changes that would affect that guideline are pending.

Question 1: Are the proposed criteria the right ones?

Question 2: Subject to any changes – should the revised criteria be published?

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