

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

**25 June 2021**  
**SC(21)JUN03 – Modern Slavery**  
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## **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.<sup>1</sup>

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

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<sup>1</sup> 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 Lightowlers; 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?**

# 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.

|                              |   |
|------------------------------|---|
| <b>A-</b> High Culpability   | <ul style="list-style-type: none"> <li>• Leading role in the offending</li> <li>• Expectation of substantial financial <b>or other material</b> advantage</li> <li>• High degree of planning/premeditation</li> <li>• Use or threat of a substantial degree of physical violence <b>towards victim(s) or their families</b></li> <li>• Use or threat of a substantial degree of sexual violence or abuse <b>towards victim(s) or their families</b></li> </ul>  |
| <b>B-</b> Medium culpability | <ul style="list-style-type: none"> <li>• Significant role in the offending</li> <li>• Involves others in the offending whether by coercion, intimidation, exploitation or reward</li> <li>• Expectation of significant financial <b>or other material</b> advantage</li> <li>• Some planning/premeditation</li> <li>• Use or threat of some physical violence <b>towards victim(s) or their families</b></li> <li>• Use or threat of some sexual violence or abuse <b>towards victim(s) or their families</b></li> <li>• Other threats towards victim(s) or their families <b>and/or substantial psychological abuse</b></li> <li>• <b>[OR] Psychological abuse and/or coercion beyond that inherent in the offending</b></li> <li>• Other cases falling between A and C because: <ul style="list-style-type: none"> <li>○ Factors in both high and lower categories are present which balance each other out and/or</li> <li>○ The offender's culpability falls between the factors as described in A and C</li> </ul> </li> </ul> |
| <b>C-</b> Lower culpability  | <ul style="list-style-type: none"> <li>• Engaged by pressure, coercion or intimidation, <b>or has been a victim of slavery or trafficking related to this offence</b></li> <li>• Performs limited function under direction</li> <li>• Limited understanding/knowledge of the offending</li> <li>• Expectation of limited <b>or no</b> financial <b>or other material</b> advantage</li> <li>• Little or no planning/premeditation</li> </ul>  |

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

**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  |
| <b>Category 1</b> | <b>Starting Point</b><br>14 years' custody<br><b>Category Range</b><br>10 - 18 years' custody | <b>Starting Point</b><br>12 years' custody<br><b>Category Range</b><br>9 - 14 years' custody | <b>Starting Point</b><br>8 years' custody<br><b>Category Range</b><br>6 - 10 years' custody                                  |
| <b>Category 2</b> | <b>Starting Point</b><br>10 years' custody<br><b>Category Range</b><br>8 - 12 years' custody  | <b>Starting Point</b><br>8 years' custody<br><b>Category Range</b><br>6 - 10 years' custody  | <b>Starting Point</b><br>4 years' custody<br><b>Category Range</b><br>3 - 7 years' custody                                   |
| <b>Category 3</b> | <b>Starting Point</b><br>8 years' custody<br><b>Category Range</b><br>6 - 10 years' custody   | <b>Starting Point</b><br>6 years' custody<br><b>Category Range</b><br>5 - 8 years' custody   | <b>Starting Point</b><br>2 years' custody<br><b>Category Range</b><br>1 - 4 years' custody                                   |
| <b>Category 4</b> | <b>Starting Point</b><br>5 years' custody<br><b>Category Range</b><br>4 - 7 years' custody    | <b>Starting Point</b><br>3 years' custody<br><b>Category Range</b><br>1 - 5 years' custody   | <b>Starting Point</b><br>26 weeks' custody<br><b>Category Range</b><br>High level<br>Community Order<br>– 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.<sup>1</sup>

#### 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.<sup>2</sup> 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.<sup>3</sup>

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.

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<sup>1</sup> Coroners and Justice Act 2009 section 127: [www.legislation.gov.uk/ukpga/2009/25/section/127](http://www.legislation.gov.uk/ukpga/2009/25/section/127)

<sup>2</sup> 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](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)

<sup>3</sup> 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](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,<sup>4</sup> 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.<sup>5</sup> The principles informing the guidelines have also been set out in various pieces of case

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

<sup>5</sup> 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.<sup>6</sup> 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,<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

### **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)<sup>10</sup> 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

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<sup>6</sup> *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*

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

<sup>8</sup> '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>

<sup>9</sup> 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.

<sup>10</sup> 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.<sup>11</sup> 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).<sup>12</sup> 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.<sup>13,14</sup> 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.

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<sup>11</sup> 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.

<sup>12</sup> 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.

<sup>13</sup> 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.

<sup>14</sup> 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 interviews<sup>15</sup> and a review of the written responses to the consultation.<sup>16</sup> 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 2019<sup>17</sup> 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.

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<sup>15</sup> 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.

<sup>16</sup> There were 43 responses received to the consultation document published alongside the draft guideline.

<sup>17</sup> 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