

Sentencing Council meeting:
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Lead Council member:
Lead official:

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SC(21)MAY06 – Modern Slavery
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1 ISSUE

1.1 Considering responses to the consultation on new Modern Slavery guidelines, which ran between October 2020 and January 2021.

1.2 We received 28 responses, 15 of which were from magistrates plus a response from the Magistrates' Association; we also received responses from the Home Office and Ministry of Justice, the Justice Select Committee and the All-Party Parliamentary Group for Human Trafficking and Modern Slavery. The full list of respondents is at **Annex B**. In addition, during the consultation period we conducted road testing with 16 Crown Court judges whose views on the guidelines have been fed into the consideration below.

1.3 We held two working group meetings in April to discuss the findings of the consultation and road testing, and I thank working group members for their invaluable contribution to the proposals set out here. If we can agree any changes to the draft guidelines at this meeting and June's, the definitive guidelines can be published at the end of July to come into force on 1 October.

1.4 The draft section 1/section 2 guideline consulted on with the amendments proposed in this paper is at **Annex A**.

2 RECOMMENDATION

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

- the guideline should reflect the particular seriousness of sexual exploitation in category 2 harm;
- we retain four categories of harm, but move "Exposure of victim(s) to high risk of death" to the highest category; and
- all but one of the sentencing levels for category C culpability cases be lowered.

CONSIDERATION

2.2 All respondents agreed with our approach of combining sections 1 and 2 of the Modern Slavery Act 2015 into one guideline, with a brief guideline for committing an offence with intent to commit a modern slavery offence. One respondent did, however, believe that a separate bespoke guideline for breach of a Slavery and Harm Prevention Order (SHPO) should be made, rather than relying on comparable breach offences (and another response appears to agree with this).

2.3 The major practical issue with drawing up a bespoke breach guideline would be the need to go out for consultation again, even if it was a limited one. This would delay publication of the guidelines on sections 1 and 2 which are now anticipated. Given the low volumes for the breach offence (six from 2017 to 2019) I believe our initial argument for not preparing a standalone guideline but directing sentencers to analogous breach guidelines can stand. This can be reviewed if there is evidence of a problem.

Culpability factors

2.4 For both culpability and harm factors several respondents and road testers asked about the difference in gradation between levels, so for example in our proposed culpability table: “substantial” (Category A) vs “significant” (Category B) financial advantage. Another response asked whether the different levels of threat presented here were too subjective.

2.5 There will always be an element of subjectivity with regard to these terms. Currently, in sexual trafficking and prostitution guidelines the highest culpability refers to expectation of “significant” financial or other gain, but it is not mentioned in other categories. Bribery mentions “substantial” financial gain at Culpability A, while the latest drugs guidelines follow the formula “substantial” (Category A), “significant” (Category B) and “Limited, if any” (Category C). These respondents made similar points in relation to the assessment of harm. On balance I do not believe a change is necessary to either harm or culpability descriptors.

2.6 Two respondents (both magistrates) asked whether threats made to families should place an offender in Culpability A. In practice, if the threats made to families were very serious in terms of physical or sexual violence, a sentencer could consider these as higher culpability. From transcripts I have not seen any examples of this. Our prime intention is to capture the worst cases where victims are intimidated by violence into remaining in slavery or servitude to the offender, but it is easy to imagine a victim being intimidated into submission if they knew their family was being threatened.

2.7 For complete avoidance of doubt the working group agreed we should add something in Category A, similar to the factor “Other threats towards victim(s) or their families” in Category B. One option is to add this to the existing factors - So “Use or threat of

a substantial degree of physical violence” would become “Use or threat of a substantial degree of physical violence **towards victim(s) or their families**”, and “Use or threat of a substantial degree of sexual violence or abuse” would become “Use or threat of a substantial degree of sexual violence or abuse **towards victim(s) or their families**”. However, that would be different to the formulation at Category B which lists “other threats” separately. Another option would be to say “Other similar threats towards victim(s) or their families” at Category A, referring back to the substantial use or threat of violence just listed.

Question 1: Do you agree to have a Culpability A factor to reflect threats made towards victims’ families? If so, which of the above options would you prefer?

Harm factors

2.8 The majority of respondents were broadly content with the harm table, but a few respondents (all magistrates) suggested that it should be constructed of three categories, rather than the four we have proposed. Our approach (in broad terms) took the previous levels from the s59A Sexual Offences Act 2003 sexual exploitation guideline and added a higher level to capture the most serious cases. This reflected the parliamentary intention that the increase in maximum penalty from 14 years to life imprisonment should capture the most serious cases.

2.9 Simply amalgamating the top two harm categories would lead to a very broad sentencing range. It is likely that a large number of offenders could be categorised as A1 or B1 and face sentences of over 10 years (using our current sentencing levels).

2.10 The West London Magistrates Bench asked how “Exposure of victim(s) to high risk of death” could be anything but Category 1, a point raised by Council members ahead of consultation. I propose to leave four categories, but add “Exposure to high risk of death” to Category 1 to mark those cases out as amongst the worst.

Question 2: do you agree to maintain four levels of harm? If so, do you agree that “Exposure of victim(s) to high risk of death” should be included in the highest category?

2.11 At least one road tester considered sexual exploitation to be a particularly culpable offence compared to other forms of modern slavery, arguably on a par with rape. Related to this, the Magistrates Association thought that there should be a specific harm factor of sexual harm.

2.12 The working group considered this in some depth. On the one hand, it has been a guiding principle that we do not elevate certain forms of exploitation over others, and Parliament has not legislated in this way. On the other hand, sexual exploitation is a

particularly heinous form of slavery and it is likely that the courts are going to seek to reflect that harm in sentencing.

2.13 The working group concluded that we should reflect the serious nature of sexual exploitation in some way in the guideline, and the most appropriate place to do this would be under harm. The section 59A guideline has the harm factors “Victim(s) forced or coerced to participate in unsafe/degrading sexual activity”, “Victim(s) forced/coerced into prostitution”, and “Victim(s) tricked/deceived as to purpose of visit”. Amalgamating these, we considered adding the following as a harm category 2 factor:

- “Victim(s) tricked or coerced into serious sexual activity”

“Serious” is intended to distinguish between sexual harassment which might take place incidentally to (say) domestic servitude and more commercial sexual activity, whether full prostitution or otherwise. We believe the phrase is well understood, but are aware that there may be better alternatives.

Question 3: do you want to add “victim(s) tricked or coerced into serious sexual activity” added as a harm category 2 factor?

2.14 Both the Home Office and the Ministry of Justice wanted the Council to consider the fuller harms caused by modern slavery, directing us to the 2018 Home Office report ‘The Economic and Social Costs of Modern Slavery’ (available at <https://www.gov.uk/government/publications/the-economic-and-social-costs-of-modern-slavery>).

2.15 The report assesses the “unit cost” of modern slavery (i.e. the harm caused to an individual, measured in monetary terms) as being £328,720. Aside from the costs to healthcare and criminal justice, and otherwise lost output, the bulk of this cost for modern slavery victims is in physical and emotional costs, arrived at by considering the annual quality of life reduction of the harms typically caused to victims, noting their likelihood and duration, and calculating these as a proportion of the “value of a year of life at full health” (estimated at £70,0000 in 2018 prices). The same methodology finds only the unit cost of homicide (£3.2 million) to be higher than modern slavery, with the next costliest being rape (£39,360).

2.16 Following discussion in the working group, we consider that we do take into account the broader harms of modern slavery in setting relatively high sentencing levels, even for lower culpability offenders. We can therefore use the consultation response document to highlight those broader costs and be clear that our sentencing levels reflect that.

2.17 The Home Office also asked whether “duration of time” should be counted in step one under harm, rather than as an aggravating factor as we initially proposed. This question was also raised in road testing. This is similar to the difficulties in assessing harm caused to different numbers of people – we already say before the harm table “If the offence involved multiple victims, sentencers may consider moving up a harm category or moving up substantially within a category range.” We could therefore add “...involved multiple victims, **or took place over a long period of time**, sentencers may....” although we would have to consider whether to keep it as an aggravating factor as well.

Question 4: do you want to include duration alongside multiple victims in the harm table?

2.18 The Justice Select Committee suggested that the use of the word “loss” does not adequately capture the nuances of the financial harm caused to a victim of modern slavery and that a phrase other than “loss” may work better. This appears to be getting at the fact that victims may not have had money to lose, and the exploitation of their labour for very little gain is not captured by the word “loss”. One road tester asked whether the guideline sufficiently covered “bonded labour” where living conditions are acceptable but all earnings are taken by the offender. I believe this aspect of harm is covered here, but I propose that we amend “financial loss” in the harm table to “financial loss/disadvantage”.

Question 5: do you want to amend the wording around “financial loss” to “financial loss/disadvantage”?

Sentencing levels

2.19 Overall, respondents to the consultation thought that the sentencing levels were right. Reflecting this, although judges in road testing sometimes gave quite different sentences before using the guideline compared to after, they generally viewed the sentences arrived at using the guideline as about right, with some exceptions.

2.20 Two respondents questioned whether a community order could ever be appropriate for a modern slavery offence, even at the lower end of seriousness. However, contrary to this the Howard League questioned whether at the lower end of culpability the sentencing levels were too high.

2.21 Two of the scenarios we road tested involved lower culpability offenders alongside leading figures: one a handyman involved in a forced labour case, and one a submissive partner in a domestic servitude case who had showed some sympathy for the victim. For the handyman, roadtesters generally gave a slightly higher sentence with the guideline than

without: some were content, others were concerned that their sentences (generally around four years' custody) were too high given the offender's culpability.

2.22 For the submissive partner, some road testers felt that although she played a more minor role she nonetheless knew what was going on, imposing a sentence deliberately beyond the possibility of suspension. Others placed more emphasis on coercion and other mitigating features and deliberately pushed sentences below two years' imprisonment in order to suspend (which was the case for three of the six road testers). Although views were mixed, then, overall some contortions were required to arrive at a "fair" sentence to reflect low culpability. Partly this is down to the ruthless logic of assigning the same level of harm between a group of offenders, even where roles are different.

2.23 The Howard League also asked us to consider the implications for child offenders: they suggest a child sentenced as Category 3 would receive a sentence of two to three years' custody (presumably based on the overarching guideline for Sentencing Children and Young People saying "*When considering the relevant adult guideline, the court **may** feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15*"). I doubt this would be the case: four years is the starting point for adult 3C offenders and the Sentencing Children and Young People guideline is clear that the half to two-thirds calculation is not to be applied mechanistically.

2.24 Nonetheless, there is a point about people who have been coerced, may be vulnerable, and/or have little idea about the operation nonetheless receiving lengthy custodial sentences. It is very hard to conceive of a very high harm low culpability offender in this area but we need to provide for the possibility. I would therefore propose a reduction in at least some of the Category C starting points, but keep the upper limit of ranges relatively high above those starting point to allow for cases where an offender, despite being low culpability, did involve themselves knowingly in a harmful slavery operation.

2.25 For comparison here are the current section 59A Trafficking for Sexual Exploitation sentencing levels:

Harm	Culpability		
	A	B	C
Category 1	Starting Point 8 years' custody Category Range 6 - 12 years' custody	Starting Point 6 years' custody Category Range 4 - 8 years' custody	Starting Point 18 months' custody Category Range 26 weeks' - 2 years' custody

Category 2	Starting Point 6 years' custody Category Range 4 - 8 years' custody	Starting Point 4 years' custody Category Range 2 - 6 years' custody	Starting Point 26 weeks' custody Category Range High level community order - 18 months' custody
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2.26 The starting point and range for our proposed Category 4C is identical to that of the lowest category of the current section 59A guideline, and I would propose to keep this the same (starting point: 26 weeks; range: high level community order to 18 months). Our draft categories 2C and 3C, however, are significantly higher than the section 59A category 2C (six and four year starting points with an overall range of three years to eight years, compared to an 18 month starting point and a range of 26 weeks to two years). And obviously the proposed 1C range is far above that. I suggest reducing the Culpability C levels as follows to bring them slightly more with the current s59A levels:

Harm	Culpability		
	A	B	C
Category 1	Starting Point 14 years' custody Category Range 10 - 18 years' custody	Starting Point 12 years' custody Category Range 9 - 14 years' custody	Starting Point 9 years' custody 8 years' custody Category Range 7 - 11 years' custody 6 - 10 years' custody
Category 2	Starting Point 10 years' custody Category Range 8 - 12 years' custody	Starting Point 8 years' custody Category Range 6 - 10 years' custody	Starting Point 6 years' custody 4 years' custody Category Range 5 - 8 years' custody 3 - 7 years' custody
Category 3	Starting Point 8 years' custody Category Range 6 - 10 years' custody	Starting Point 6 years' custody Category Range 5 - 8 years' custody	Starting Point 4 years' custody 2 years' custody Category Range 3 - 6 years' custody 1 - 4 years' custody
Category 4	Starting Point 5 years' custody	Starting Point 3 years' custody	Starting Point 26 weeks' custody

	Category Range 4 - 7 years' custody	Category Range 1 - 5 years' custody	Category Range High level Community Order – 18 months' custody
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Question 6: do you agree that we should reduce the lower culpability starting points and ranges as proposed?

Aggravating and mitigating factors

2.27 A recurring theme in responses was the question of victims under 18. Two magistrates from the Central Kent Bench suggested this should be reflected in high culpability, although other respondents considered that it should be an aggravating factor. In either case it would be particularly pertinent in county lines cases (noting that the West Kent Magistrates Bench wished to see a greater emphasis in the guideline on this sort of offending). The current section 59A sexual trafficking guideline includes “Victim(s) under 18” as a Category 1 Culpability factor.

2.28 Of almost 30 transcripts we have analysed, four involved child victims: three involved transporting underage girls for sex (none on a commercial basis), and one was a county lines case. In all cases the offenders were themselves very young. This is likely to be true in many county lines cases where the offenders may also have been the victims of exploitation. I am therefore reluctant to make this a step one factor. However, we could amend the existing aggravating factor “Deliberate targeting of particularly vulnerable victims” (which arguably already covers child victims) to “Deliberate targeting of victim who is particularly vulnerable (due to age or other reason)”.

Question 7: do you want to amend this aggravating factor to “Deliberate targeting of victim who is particularly vulnerable (due to age or other reason)”?

2.29 One magistrate respondent from the West London Bench said:

“Some of the aggravating factors are almost inherent in the nature of the offence - victims will usually be isolated and prevented from obtaining assistance; equally the victims will almost certainly be venerable [sic] - this tends to be the nature of these offences. therefore, these factors will almost certainly be present and should be included as a given and only there [sic] absence should be considered as a mitigation.”

2.30 There is a case that some of the aggravating factors may result in a large proportion of these offences being increased from the starting point. The Home Office suggested that some of the aggravating factors such as “duration of harm” or “deliberate isolation” or

“targeting of particularly vulnerable victims” could move to step one, and I already propose to mention duration under the preamble to the harm table (see para 2.17 above).

2.31 Reflecting on these points, whilst most of our proposed aggravating factors are reasonable, it would be possible to delete the words in A2 as follows:

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

making this factor more specifically about preventing victims obtaining help. Degradation, the targeting of vulnerability, removal of ID documents and restraint of the victim remain as other aggravating factors.

Question 8: do you want to amend the wording of this aggravating factor as proposed?

Further steps

2.32 We consulted on proposed wording in relation to slavery and trafficking reparation orders, under the ancillary orders step. Most respondents to the consultation were content with and welcomed the proposed wording.

2.33 One respondent pointed out that, although rare, these cases may be sentenced in the magistrates court so suggested that the wording: *“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”* be amended to refer to “presiding justices”. However, I suggest a simpler amendment to cater for this highly unlikely event would be:

“In every eligible case, the court must consider whether to make a slavery and trafficking reparation order, and must give reasons if one is not made”.

Question 9: do you agree to amend the wording on reparation orders in this way?

3 EQUALITIES

3.1 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. A few made points beyond the scope of guidelines (for example, whether the Modern Slavery Act 2015 was the best way of prosecuting young county lines offenders, and enshrining survivors’ rights in law, and the

suitability of the court layout for disabled defendants and witnesses). One respondent wanted us to consider forced marriage, but this appears to be a separate issue.

3.2 One magistrate respondent asked us to consider specific categories of people as victims. I doubt we could go as far as listing these groups in (say) an aggravating factor, but we already have “Deliberate targeting of particularly vulnerable victims” and are considering adding something about age to this. We are also considering how best to reflect the seriousness of sexual exploitation, which is likely to affect female victims predominantly. I think this point is therefore covered.

3.3 The Howard League said this in response to the first question:

“The proposed guideline does not appear to include any particular warnings about the need to avoid bias, such as that at paragraph 1.18 of the children’s guideline or paragraph five of the mental health guideline. A general warning will support practitioners to draw the risk of discrimination to the court’s attention where appropriate.

While convictions are currently too low to draw firm conclusions about bias in sentencing, if more prosecutions for county lines exploitation are brought under the Modern Slavery Act, there is a risk of sentences under the Modern Slavery Act importing racial bias that exists in the use gang intelligence and drug sentencing. The Sentencing Council should take steps to prevent this.

The guideline should caution against the risk that intelligence concerning gang membership will be given undue weight given the known risk of bias.”

This is clearly a matter that the Council is dedicating increasing attention to. However, the Howard League are correct that conviction/sentencing rates are too low for this offending to draw firm conclusions about sentencing trends with regard to different demographics of offenders. A general warning along the lines they suggest may be an idea, but one that the Council would have to consider across the board for guidelines. In any case, the guideline will start with a reference and link to the Equal Treatment Bench Book, as all definitive guidelines do now.

3.4 I do not propose at this stage adding any warning like this in the absence of evidence of any discrepancies. Equally, the guideline does not mention gang membership, rather referring to “Large-scale, sophisticated and/or commercial operation” as an aggravating factor. Rather this sort of consideration can be picked up as part of the Equality and Diversity working group’s broader work.

Question 10: do you agree not to make any specific amendments in light of responses to the questions on equality and diversity?

4 IMPACT AND RISKS

4.1 We will present a revised resource assessment to Council next month ahead of finalising the guideline, setting out the expected impacts of the guideline as revised in light of consultation responses.

4.2 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.

4.3 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.

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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

These are Schedule 19 offences for the purposes of sections 274 and 285 (required life sentence for offence carrying life sentence) of the Sentencing Code.

These are offences listed in Part 1 of Schedule 15 for the purposes of sections 273 and 283 (life sentence for second listed offence) of the Sentencing Code.

These are specified offences for the purposes of sections 266 and 279 (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

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

STEP 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.

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

HARM

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

STEP TWO

Starting point and category range

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

Harm	Culpability		
	A	B	C
Category 1	Starting Point 14 years' custody Category Range 10 - 18 years' custody	Starting Point 12 years' custody Category Range 9 - 14 years' custody	Starting Point 9 years' custody Category Range 7 - 11 years' custody 6 - 10 years' custody
Category 2	Starting Point 10 years' custody Category Range 8 - 12 years' custody	Starting Point 8 years' custody Category Range 6 - 10 years' custody	Starting Point 6 years' custody Category Range 5 - 8 years' custody 3 - 7 years' custody
Category 3	Starting Point 8 years' custody Category Range 6 - 10 years' custody	Starting Point 6 years' custody Category Range 5 - 8 years' custody	Starting Point 4 years' custody Category Range 3 - 6 years' custody 1 - 4 years' custody
Category 4	Starting Point 5 years' custody Category Range 4 - 7 years' custody	Starting Point 3 years' custody Category Range 1 - 5 years' custody	Starting Point 26 weeks' custody Category Range High level Community Order - 18 months' custody

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to *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

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)

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

STEP THREE

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

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

STEP FIVE

Dangerousness

The court should consider:

- 1) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose a life sentence (sections [274](#) and [285](#))
- 2) whether having regard to sections [273](#) and [283](#) of the Sentencing Code it would be appropriate to impose a life sentence.
- 3) whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#))

When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

Totality principle

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

STEP SEVEN

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.

Slavery and trafficking reparation orders

Where a confiscation order has been made 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 if one is not made.** However, a slavery and trafficking reparation order cannot be made if the court has made a compensation order under section [133 of the Sentencing Code](#)

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

STEP NINE

Consideration for time spent on bail

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

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List of respondents

Sara Attwood JP

Black County Magistrates Bench

Alistair Borland JP

All Party Parliamentary Group for Human Trafficking and Modern Slavery

Central Kent Bench

Chris Clarke JP

Professor Ross Coomber (University of Liverpool)

Crown Prosecution Service

C Delaney

Deborah Eardley JP

Christopher Goard JP

The Home Office

The Howard League for Penal Reform

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

Debbie Rayner JP

Rhys Rosser (2 Bedford Row)

Heather Rothwell JP

West London Bench

West Sussex County Council

Gillian Winn JP

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