

Preparation of terrorist acts Terrorism Act 2006, s.5

Triable only on indictment

Maximum: Life imprisonment

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

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

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

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

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

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

This guideline applies only to offenders aged 18 and older.

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.

Insert Applicability drop down

Step 1 – Determining the offence category

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

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

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

Notes for culpability and harm

In some cases, Law Enforcement Authorities (LEA) may be involved, either posing as terrorists jointly involved in the preparations for terrorist activity, or in keeping the offender under surveillance. Their involvement is likely to ensure that the terrorist activity could never be successfully completed. Irrespective of this, the court should approach the assessment of the offender's culpability and harm as follows:

Culpability

Where an undercover LEA is involved in the preparations for the terrorist activity, the culpability of the offender is not affected by the LEA's involvement. Culpability is to be assessed as if the LEA was a genuine conspirator.

Where the LEA is surveilling the offender and prevents the offender from proceeding further, this should be treated as apprehension of the offender.

Harm

In any case that involves LEA, the court should identify the category of harm on the basis of the harm that the offender intended and the viability of the plan, and then apply a downward adjustment at step two.

The extent of this adjustment will be specific to the facts of the case. In cases where, but for the LEA involvement, the offender would have carried out the intended terrorist act, a small reduction within the category range will usually be appropriate.

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

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

Culpability demonstrated by one or more of the following:**A**

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

B

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

C

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

D

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

Harm

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

See the notes for culpability and harm at the start of this section before proceeding

Category 1

- Very immatver

Category 2

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

Category 3

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

Step 2 - Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features.

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

Where the dangerousness provisions are met but a life sentence is not justified, the court should consider whether the provisions for the imposition of a serious terrorism sentence have been met, having regard to the criteria contained in s268B (adult offenders aged under 21) or s282B (offenders aged 21 and over) of the Sentencing Code. If the criteria are met, a minimum custodial sentence of 14 years applies. (see STEP THREE below).

Where the dangerousness provisions are not met the court must consider the provisions set out in sections [265](#) and [278](#) of the Sentencing Code (required special sentence for certain offenders of particular concern). (See STEP SEVEN below).

Annex A

Harm	Culpability			
	A	B	C	D
1	Starting point Life imprisonment - minimum term 35 years' custody	Starting point Life imprisonment - minimum term 25 years' custody	Starting point Life imprisonment - minimum term 15 years' custody	Starting point 15 years' custody
	Category range Life imprisonment - minimum term 30 – 40 years' custody	Category range Life imprisonment - minimum term 20 - 30 years' custody	Category range Life imprisonment - minimum term 14 – 20 years' custody	Category range 10-20 years' custody**
2	Starting point Life imprisonment - minimum term 25 years' custody	Starting point Life imprisonment - minimum term 15 years' custody	Starting point 15 years' custody	Starting point 8 years' custody**
	Category range Life imprisonment - minimum term 20 - 30 years' custody	Category range Life imprisonment - minimum term 10- 20 years' custody*	Category range 10- 20 years' custody**	Category range 6-10 years' custody**
3	Starting point 16 years' custody	Starting point 12 years' custody	Starting point 8 years' custody	Starting point 4 years' custody
	Category range 12 – 20 years' custody	Category range 8- 16 years' custody	Category range 6 - 10 years' custody	Category range 3– 6 years' custody

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

** Where a Serious Terrorism Sentence is imposed, the appropriate custodial term is a minimum of 14 years (s282C Sentencing Code).

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

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

Other aggravating factors

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

Factors reducing seriousness or reflecting personal mitigation

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

Step 3 – Minimum terms, Serious Terrorism Sentences and exceptional circumstances

Life Sentence Minimum Terms

For serious terrorism cases the life sentence minimum term must be at least 14 years' **unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify a lesser period.**

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

Serious Terrorism Sentence - Minimum Custodial Sentence

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

Where a Serious Terrorism Sentence is imposed, the appropriate custodial term is a minimum of 14 years' custody. (s282C Sentencing Code).

Exceptional circumstances

In considering whether there are exceptional circumstances that would justify not imposing the minimum term (in the case of a life sentence), or not imposing the Serious Terrorism Sentence where the other tests are met, the court must have regard to:

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

either of which may give rise to exceptional circumstances

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

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

Principles

Circumstances are exceptional if the imposition of the minimum term (in the case of a life sentence), or not imposing the Serious Terrorism Sentence would result in an arbitrary and disproportionate sentence.

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

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

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

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

Where exceptional circumstances are found

If there are exceptional circumstances that justify not imposing the minimum term (in the case of a life sentence) then the court **must impose a shorter minimum**.

If there are exceptional circumstances that justify not imposing a Serious Terrorism Sentence, then the court must impose an alternative sentence.

Note: a guilty plea reduction applies in the normal way if a Serious Terrorism Sentence is not imposed (see step 5 – Reduction for guilty pleas).

Step 4 – Consider any factors which indicate a reduction, such as assistance to the prosecution

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

Step 5 – Reduction for guilty plea

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

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

Step 6 – Dangerousness

The court should consider:

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

Step 7 – Required special sentence for certain offenders of particular concern

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

Step 8 – Totality principle

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

Step 9 – Ancillary orders

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

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

Step 10 – Reasons

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

Step 11 – Consideration for time spent on bail (tagged curfew)

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

Explosive Substances (Terrorism only)

Causing explosion likely to endanger life or property - Explosive Substances Act 1883 (section 2)

Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property - Explosive Substances Act 1883 (section 3)

Triable only on indictment

Maximum: Life imprisonment

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

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

For offences committed on or after 13 April 2015, this is an offence listed in [Part 1 of Schedule 15](#) for the purposes of sections [273](#) and [283](#) (life sentence for second listed offence) of the Sentencing Code.

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

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

For offences committed on or after 29 June 2021, this is a serious terrorism offence listed in Part 2 of Schedule 17A for the purposes of sections 268B and 282B (serious terrorism sentence), section 323 (minimum term order: other life sentences), and section 268(4)(b)(iii) and 281(4)(b)(iii) (increase in extension period for serious terrorism offenders) of the Sentencing Code.

This guideline applies only to offenders aged 18 and older.

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.

Insert Applicability drop down

Step 1 – Determining the offence category

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

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

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

Notes for culpability and harm

In some cases, Law Enforcement Authorities (LEA) may be involved, either posing as terrorists jointly involved in the preparations for terrorist activity, or in keeping the offender under surveillance. Their involvement is likely to ensure that the terrorist activity could never be successfully completed. Irrespective of this, the court should approach the assessment of the offender's culpability and harm as follows:

Culpability

Where an undercover LEA is involved in the preparations for the terrorist activity, the culpability of the offender is not affected by the LEA's involvement. Culpability is to be assessed as if the LEA was a genuine conspirator.

Where the LEA is surveilling the offender and prevents the offender from proceeding further, this should be treated as apprehension of the offender.

Harm

In any case that involves LEA, the court should identify the category of harm on the basis of the harm that the offender intended and the viability of the plan, and then apply a downward adjustment at step two.

The extent of this adjustment will be specific to the facts of the case. In cases where, but for the LEA involvement, the offender would have carried out the intended terrorist act, a small reduction within the category range will usually be appropriate.

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

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

Culpability demonstrated by one or more of the following:

A

- Offender caused an explosion or used, developed or was in possession of a viable explosive device
- Acting alone, or in a leading role, in terrorist activity involving explosives, where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out

B

- Offender took significant steps towards creating an explosion or developing or obtaining a viable explosive device
- Acting alone, or in a leading role, in terrorist activity involving explosives where preparations were advanced and, but for apprehension, the activity was likely to have been carried out
- Significant role in terrorist activity involving explosives where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out

C

- Leading role in terrorist activity involving explosives where preparations were not far advanced
- Significant role in terrorist activity involving explosives where preparations were advanced and, but for apprehension, the activity was likely to have been carried out
- Lesser role in terrorist activity involving explosives where preparations were complete or were so close to completion that, but for apprehension, the activity was very likely to have been carried out
- Act(s) of significant assistance or encouragement of other(s) involved in causing, developing or possessing an explosive device (where not falling within A or B)

D

- Offender took very limited steps toward creating an explosion or developing or obtaining a viable explosive device
- Offender has engaged in very limited preparation of terrorist activity involving explosives
- Act(s) of lesser assistance or encouragement of other(s)
- Other cases not falling within A, B or C

Harm

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

See the notes for culpability and harm at the start of this section before proceeding

Category 1

- Multiple deaths risked and very likely to be caused

Category 2

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

Category 3

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

Step 2 - Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features.

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

Where the dangerousness provisions are met but a life sentence is not justified, the court should consider whether the provisions for the imposition of a serious terrorism sentence have been met, having regard to the criteria contained in s268B (adult offenders aged under 21) or s282B (offenders aged 21 and over) of the Sentencing Code. If the criteria are met, a minimum custodial sentence of 14 years applies. (see STEP THREE below).

Where the dangerousness provisions are not met the court must consider the provisions set out in sections [265](#) and [278](#) of the Sentencing Code (required special sentence for certain offenders of particular concern). (See STEP SEVEN below).

Harm	Culpability			
	A	B	C	D
1	Starting point Life imprisonment - minimum term 35 years' custody	Starting point Life imprisonment - minimum term 25 years' custody	Starting point Life imprisonment - minimum term 15 years' custody	Starting point 15 years' custody
	Category range Life imprisonment - minimum term 30 – 40 years' custody	Category range Life imprisonment - minimum term 20 - 30 years' custody	Category range Life imprisonment - minimum term 14 – 20 years' custody	Category range 10-20 years' custody**
2	Starting point Life imprisonment - minimum term 25 years' custody	Starting point Life imprisonment - minimum term 15 years' custody	Starting point 15 years' custody	Starting point 8 years' custody
	Category range Life imprisonment - minimum term 20 - 30 years' custody	Category range Life imprisonment - minimum term 10- 20 years' custody*	Category range 10- 20 years' custody**	Category range 6-10 years' custody**
3	Starting point 16 years' custody	Starting point 12 years' custody	Starting point 8 years' custody	Starting point 4 years' custody
	Category range 12 – 20 years' custody	Category range 8- 16 years' custody	Category range 6 - 10 years' custody	Category range 3– 6 years' custody

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

** Where a Serious Terrorism Sentence is imposed, the appropriate custodial term is a minimum of 14 years (s282C Sentencing Code).

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) the *nature* of the offence to which the conviction relates and its *relevance* to the current offence; and b) the *time* that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting)

Other aggravating factors

- Recent and/or repeated possession or accessing of extremist material
- Communication with other extremists
- Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede detection
- Offender attempted to disguise their identity to prevent detection
- Indoctrinated or encouraged others
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

Factors reducing seriousness or reflecting personal mitigation

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

Step 3 – Minimum terms, Serious Terrorism Sentences and exceptional circumstances

Life Sentence Minimum Terms

For serious terrorism cases the life sentence minimum term must be at least 14 years' **unless the court is of the opinion that there are exceptional circumstances relating to the offence or to the offender which justify a lesser period.**

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

Serious Terrorism Sentence - Minimum Custodial Sentence

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

Where a Serious Terrorism Sentence is imposed, the appropriate custodial term is a minimum of 14 years' custody. (s282C Sentencing Code).

Exceptional circumstances

In considering whether there are exceptional circumstances that would justify not imposing the minimum term (in the case of a life sentence), or not imposing the Serious Terrorism Sentence where the other tests are met, the court must have regard to:

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

either of which may give rise to exceptional circumstances

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

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

Principles

Circumstances are exceptional if the imposition of the minimum term (in the case of a life sentence), or not imposing the Serious Terrorism Sentence would result in an arbitrary and disproportionate sentence.

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

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

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

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

Where exceptional circumstances are found

If there are exceptional circumstances that justify not imposing the minimum term (in the case of a life sentence) then the court **must impose a shorter minimum**.

If there are exceptional circumstances that justify not imposing a Serious Terrorism Sentence, then the court must impose an alternative sentence.

Note: a guilty plea reduction applies in the normal way if a Serious Terrorism Sentence is not imposed (see step 5 – Reduction for guilty pleas).

Step 4 – Consider any factors which indicate a reduction, such as assistance to the prosecution

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

Step 5 – Reduction for guilty plea

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

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

Step 6 – Dangerousness

The court should consider:

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

Step 7 – Required special sentence for certain offenders of particular concern

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

Step 8 – Totality principle

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

Step 9 – Ancillary orders

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

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

Step 10 – Reasons

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

Step 11 – Consideration for time spent on bail (tagged curfew)

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

Proscribed Organisations- Membership

Terrorism Act 2000 (section 11)

Triable either way

Maximum: 10 years' custody

Offence range: High level Community Order – 9 years' custody

Note for offences **committed** on or after **12 April 2019**:

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

Note for offences **sentenced** on or after **12 April 2019**:

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

This guideline applies only to offenders aged 18 and older

STEP ONE

Determining the offence category

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

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

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

Culpability demonstrated by one or more of the following:

A	<ul style="list-style-type: none">• Prominent member of organisation
B	<ul style="list-style-type: none">• Active (but not prominent) member of organisation
C	<ul style="list-style-type: none">• All other cases

Harm

There is no variation in the level of harm caused. Membership of any organisation which is concerned in terrorism either through the commission, participation, preparation, promotion or encouragement of terrorism is inherently harmful.

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. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Culpability	A	B	C
	Starting point 10 years' custody	Starting point 7 years' custody	Starting point 3 years' custody
	Category range 8 - 13 years' custody	Category range 5-9 years' custody	Category range High level community order - 4 years' custody

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

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

Other aggravating factors:

- Length of time over which offending was committed
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

Factors reducing seriousness or reflecting personal mitigation

- Unaware that organisation was proscribed

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

Step 3 – 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 4 – Reduction for guilty pleas

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

Step 5 – Required special sentence for certain offenders of particular concern

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

Step 6 – Totality principle

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

Step 7 – Ancillary orders

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

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

Step 8 – Reasons

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

Step 9 – Consideration for time spent on bail (tagged curfew)

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

Proscribed Organisations

Support

Terrorism Act 2000 (section 12)

Triable either way

Maximum: 10 years' custody

Offence range: High level community order – 9 years' custody

Note for offences **committed** on or after **12 April 2019**:

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

Note for offences **sentenced** on or after **12 April 2019**:

These are offences listed in Schedule 18A for the purposes of section 236A (special custodial sentence for certain offenders of particular concern) of the Criminal Justice Act 2003.

This guideline applies only to offenders aged 18 and older

Step 1 – Determining the offence category

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

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

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

Culpability demonstrated by one or more of the following:

A

- Intentional offence - Offender in position of trust, authority or influence and abuses their position
- Persistent efforts to gain widespread or significant support for organisation
- Encourages activities intended to cause endangerment to life

B

- Reckless offence - Offender in position of trust, authority or influence and abuses their position
- Arranged or played a significant part in the arrangement of a meeting/event aimed at gaining significant support for organisation
- Intended to gain widespread or significant support for organisation
- Encourages activities intended to cause widespread or serious damage to property, or economic interests or substantial impact upon civic infrastructure

C

- Lesser cases where characteristics for categories A or B are not present
- Other reckless offences

Harm

The court should consider the factors set out below to determine the level of harm.

Category 1

- Evidence that others have acted on or been assisted by the encouragement to carry out activities endangering life
- Significant support for the organisation gained or likely to be gained

Category 2

- Evidence that others have acted on or been assisted by the encouragement to carry out activities not endangering life

Category 3

- All other cases

Step 2 - Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

	A	B	C
1	Starting point 10 years' custody Category range 8-13 years custody	Starting point 7 years' custody Category range 5-9 years custody	Starting point 3 years' custody Category range 2-4 years custody
2	Starting point 8 years' custody Category range 6-9 years custody	Starting point 4 years' custody Category range 3-6 years custody	Starting point 2 years' custody Category range 1-3 years custody
3	Starting point 6 years' custody Category range 4-7 years custody	Starting point 3 years' custody Category range 2-4 years custody	Starting point 1 years' custody Category range High level community order – 2 years custody

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

upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity (*When considering this factor, sentencers should bear in mind the statutory definition of terrorism in section 1 of the Terrorism Act 2000, and should be careful to avoid double counting*)

Other aggravating factors:

- Used multiple social media platforms to reach a wider audience (where not taken into account at Step One)
- Offender has terrorist connections and/ or motivations
- Vulnerable/impressionable audience
- Failure to respond to warnings
- Failure to comply with current court orders
- Offence committed on licence or Post Sentence Supervision
- Offence committed whilst in prison

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Offender has no terrorist connections and/ or motivations
- *Unaware that organisation was proscribed*
- *Clear evidence of a change of mind set prior to arrest*
- Offender involved through coercion, intimidation or exploitation
- Offender's responsibility substantially reduced by mental disorder or learning disability

- Age and/or lack of maturity where it affects the responsibility of the offender
- Sole or primary carer for dependent relatives

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

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

Step 4 – Reduction for guilty plea

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

Step 5 – Dangerousness

The court should consider 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](#))

Step 6 – Required special sentence for certain offenders of particular concern

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

Step 7 – 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 8 – Ancillary orders

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

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

Step 9 – Reasons

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

Step 10 – Consideration for time spent on bail (tagged curfew)

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

106 Life sentence not fixed by law: minimum term

(1) In section 323 of the Sentencing Code (minimum term order for life sentence not fixed by law)—

(a) after subsection (1) insert— “(1A) The starting point, in determining the minimum term, is the relevant portion of the notional determinate sentence. (1B) The “notional determinate sentence”, in relation to a life sentence, is the custodial sentence that the court would have imposed if the court had not imposed the life sentence.

(1C) The “relevant portion” of the notional determinate sentence is— (a) where that sentence is within section 247A(2A) of the Criminal Justice Act 2003 (terrorist prisoners not entitled to early release), the term that the court would have determined as the appropriate custodial term (within the meaning given by subsection (8) of that section); (b) where that sentence is a sentence under section 252A, 254, 265, 266, 278 or 279 (and is not within paragraph (a)), two-thirds of the term that the court would have determined as the appropriate custodial term under that section; (c) where that sentence is any other custodial sentence, two-thirds of the term of the sentence.”;

(b) in subsection (2)— (i) for the words before paragraph (a), substitute “The minimum term must be the starting point adjusted as the court considers appropriate, taking into account—”; (ii) omit paragraph (b) (but not the final “and”)

1.1 The explanatory notes for this clause state the following:

Clause 106 amends section 323 of the Code. That section sets out the approach the court must take to determine a minimum term when it is required to make a minimum term order (rather than a whole life order) for those persons given a discretionary life sentence. A discretionary life sentence is a life sentence for offences other than murder where the judge has a discretion to impose a life sentence if the seriousness of the offence or the previous criminal record of an offender warrants it. The minimum term order must specify a minimum term, commonly referred to as a tariff, which the person is required to serve in custody before being considered for release by the Parole Board. The amendments change the starting point for the determination of the minimum term to at least two-thirds of the equivalent determinate sentence or custodial term of such sentence. The changes will apply to any sentence that is imposed after the provision comes into force, including in respect of offences committed before the provision comes into force.

New subsections (1A) and (1B) set out that the starting point in determining the minimum term is the relevant portion of the notional determinate sentence. The notional determinate

sentence is the custodial sentence that the court would have imposed if the court had not imposed a discretionary life sentence.

New subsection (1C) defines the relevant portion depending on the notional determinate sentence. Paragraph (a) provides that if the notional determinate sentence would be a determinate sentence that attracts no early release before the end of the appropriate custodial term, then the relevant portion is the whole of the appropriate custodial term that the court would have determined for such a sentence. Determinate sentences that attract no early release in this regard are extended determinate sentences (imposed under sections 254, 266 or 279 of the Code) and serious terrorism sentences (imposed under sections 268A or 282A of the Code) where, in accordance with section 247A(2) of the CJA 2003, the early release provisions of that section do not apply. Paragraph (b) provides that if the notional determinate sentence would be any other extended determinate sentence that is not within paragraph (a) or a sentence of particular concern (imposed under sections 252A, 265, or 278 of the Code) then the relevant portion is two-thirds of the appropriate custodial term that the court would have determined for that sentence. Paragraph (c) provides that if the notional determinate sentence is any other custodial sentence, then the relevant portion is two-thirds of the term that the court would have determined for that sentence.

Clause 106(1)(b) amends subsection (2) of section 323 of the Code. It provides that the minimum term must be the starting point (as determined in accordance with new subsections (1A)-(1C)) adjusted as the court considers appropriate, which retains judicial discretion to adjust the starting point for the minimum term where the court considers appropriate. Once the appropriate starting point is determined, the court then takes into account the matters set out in existing paragraphs (a) and (c). Paragraph (a) concerns the seriousness of the offence or the combination of the offence and one or more offences associated with it. Paragraph (c) concerns the crediting of periods on remand or similar. The Clause omits paragraph (b), which was the previous provision by which the court considered the release provisions that applied to determinate sentences against release for those subject to a discretionary life sentence.

Consultation Stage Resource Assessment

Terrorism Offences

Introduction

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

Rationale and objectives for new guideline

The Sentencing Council has previously produced guidelines covering 14 offences related to terrorism. This initial set of guidelines were consulted on in 2017 and then published in March 2018 to come into effect on 27 April 2018.² Less than a year after these new guidelines came into force, terrorism legislation was changed through the Counter-Terrorism and Border Security Act 2019.³ This Act made significant changes to the legislation, some of which impacted upon the existing guidelines, for example by changing the statutory maximum for three offences.

In October 2019, the Council launched a consultation on a revised set of guidelines covering the subset of nine terrorism offences affected by the Act, taking into account these legislative changes, in addition to some other amendments reflecting changes to case law. However, before these draft guidelines were finalised, the Council was made aware of further changes to terrorism legislation which would potentially have an impact on the guidelines. The Council made the decision not to publish guidelines which might soon be superseded, so guideline development was paused in March 2020.

The Counter-Terrorism and Sentencing Act 2021⁴ (the '2021 Act') received Royal Assent on 29 April 2021 and affects a slightly different subset of terrorism offences to those consulted on in 2019. The Council will now be consulting afresh on draft guidelines for the affected terrorism offences, to take into account the legislative changes resulting from the 2021 Act. In addition, one of these draft guidelines (Proscribed organisations – support) will also include amendments made following the 2019 consultation.

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

² <https://www.sentencingcouncil.org.uk/publications/item/terrorism-offences-definitive-guideline/>

³ <https://www.legislation.gov.uk/ukpga/2019/3/contents>

⁴ <https://www.legislation.gov.uk/ukpga/2021/11/contents>

The aim of these draft guidelines is to ensure sentencers have relevant and up-to-date guidance for this very serious type of offending, whilst also ensuring consistency of approach to sentencing.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guidelines 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:

- Preparation of terrorist acts (Terrorism Act 2006, section 5);
- Causing explosion likely to endanger life or property/ Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property ('Explosive substances offences') (Explosive Substances Act 1883, sections 2 and 3);
- Membership of a proscribed organisation (Terrorism Act 2000, section 11); and
- Support for a proscribed organisation (Terrorism Act 2000, section 12).

The other offences covered by the existing terrorism guidelines are not being revised at the moment and, consequently, are not covered in this resource assessment.

These revised terrorism guidelines apply to sentencing adults only; they will not directly apply to the sentencing of children and young people.

Current sentencing practice

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

The intention is that the new guidelines will reflect the latest changes to terrorism legislation and also provide additional guidance for situations concerning the involvement of law enforcement authorities.⁵ The guidelines are intended to encourage consistency of sentencing and ensure that the most serious offenders receive appropriate sentences, acknowledging the latest legislation.

In order to develop successful guidelines, knowledge of recent sentencing was required. Sources of evidence have included the analysis of sentencing transcripts of 33 cases, and references to case law and news articles. Knowledge of the sentencing starting points, ranges and factors used in previous cases has helped the Council to create guidelines that should encourage consistency of sentencing and reflect the serious nature of the offending.

Some small-scale research will also be conducted with a group of sentencers with the Preparation of terrorist acts guideline (Terrorism Act 2006, section 5) to check that the draft guideline will work as anticipated in practice.

⁵ Relevant for the Preparation of terrorist acts and Explosive substances offences guidelines.

Detailed sentencing statistics for terrorism offences covered by the draft guidelines have been published on the Sentencing Council website at the following link:

<https://www.sentencingcouncil.org.uk/research-and-resources/publications?s&cat=statistical-bulletin>.

The offences covered by the draft revised terrorism guidelines are mostly low volume, with around 80 adult offenders⁶ sentenced in total across all of the relevant offences over the period 2018 to 2020 (the period since the current guidelines have been in force).⁷ However, this figure should be treated with caution; between 2018 and 2020, a little over half (55 per cent) of these offenders were sentenced for the offences of causing explosion likely to endanger life or property/ attempt to cause explosion, or making or keeping explosive with intent to endanger life or property ('explosive substances offences'). This figure includes all adult offenders sentenced under this legislation as it is not possible to separate these cases in the data and, from transcript analysis undertaken on these offences,⁸ we can conclude that a high proportion will not be related to terrorism. Therefore, the true number of terrorist offenders sentenced between 2018 and 2020 for the offences covered by the draft guidelines is likely to be far fewer.⁹

The majority of offenders (91 per cent over the period 2018 to 2020) were sentenced to immediate custody. Average custodial sentence lengths vary across the different offences, due to their different statutory maximum sentences.

Preparation of terrorist acts (Terrorism Act 2006, section 5)

There were around 20 adult offenders¹⁰ sentenced between 2018 and 2020 for this offence, of whom 78 per cent were sentenced to immediate custody. The average custodial sentence length (ACSL)¹¹ was 11 years 5 months.¹²

⁶ Offenders aged 18 or over at the time of conviction.

⁷ 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 data tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

⁸ Of the 20 cases sentenced in 2019, reading through the transcript of the judge's sentencing remarks indicates that all 20 were non-terrorism related offences.

⁹ As a result of these issues, this terrorism consultation and resource assessment are not accompanied by a separate statistical bulletin, however, sentencing data for these offences can still be found in the data tables, published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

¹⁰ Figures may not appear to sum to totals, due to rounding. The volumes of offenders presented in this report have been rounded to the nearest 10 offenders.

¹¹ 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.

¹² Due to a data issue currently under investigation, there are a number of cases of immediate custody which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. This will impact upon the proportion of sentencing outcomes, sentence distributions and ACSLs for this offence, which should therefore be treated with caution.

Causing explosion likely to endanger life or property/ Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property (Explosive Substances Act 1883, sections 2 and 3)

There were around 40 adult offenders sentenced for these offences between 2018 and 2020. However, as previously stated, it is likely that a high proportion of these cases were non-terrorist related and the guideline would not have been applicable.¹³

Membership of a proscribed organisation (Terrorism Act 2000, section 11)

Between 2018 and 2020, around 20 adult offenders were sentenced for membership of a proscribed organisation and 94 per cent received an immediate custodial sentence. The ACSL over this period was 5 years and all offenders received a sentence length of 8 years or less.

Support for a proscribed organisation (Terrorism Act 2000, section 12)

Since the existing guideline came into force in 2018, no offenders have been sentenced for the offence of support for a proscribed organisation (section 12, Terrorism Act 2000), where this was the principal offence.¹⁴

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 guidelines 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.

The resource impact of the new guidelines is measured in terms of the change in sentencing practice that is expected to occur as a result of them. Any future changes in sentencing practice which are unrelated to the publication of the new guidelines are therefore not included in the estimates.

¹³ As such, sentence outcomes and ACSLs have not been provided for these offences in this report. They are still available from the data tables published alongside this resource assessment.

¹⁴ When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

In developing sentence levels for the different guidelines, existing guidance and data on current sentence levels has been considered, where available, as well as consideration of the impact of the legislative changes, for example increases in the statutory maxima, for the relevant offences.

While data exists on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guidelines, due to a lack of data available regarding the seriousness of current cases. As a consequence, it is difficult to ascertain how sentence levels may change under the new guidelines.

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To mitigate against the risk of the guidelines having an unintended impact and to support the development of the definitive guidelines and the final resource assessment, interviews will be undertaken with sentencers using the Preparation of terrorist acts draft guideline.

Resource impacts

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

Summary

Overall, the guideline is anticipated to increase sentences in some cases. These increases are mainly expected to affect offenders categorised at the highest levels of harm and culpability, where the sentence levels have been driven by the changes to legislation introduced in the 2021 Act. In addition, there may be increases to cases sentenced using the Preparation of terrorist acts and Explosive substances guidelines where there was Law Enforcement Authority (LEA) involvement.

There has been little evidence on which to base any estimates of the impact of these guidelines, due to the infrequent nature of these offences, and so no attempt has been made to quantify the prison impacts. However, given that very few offenders overall are sentenced for these terrorism offences (since few offenders are prosecuted), it is expected that any anticipated longer sentences imposed as a result of the guidelines will have only a minimal impact on prison and probation services.

Preparation of terrorist acts (Terrorism Act 2006, section 5)

The legislative changes introduced by the 2021 Act create a new category of terrorism offence called a 'serious terrorism offence' which has implications for the current Preparation of terrorist acts guideline. As a result, expanded wording has been proposed above the sentencing table in the new draft guideline and an additional step 3 has been added which sets out when a minimum sentence or serious terrorism sentence will apply, and also provides guidance on when exceptional circumstances might apply. Furthermore, in the case of a category C1 offence (category C culpability, highest harm level), the category range has been amended so that the minimum term (within the range) starts at 14 years, rather than the current 10 years. These changes have been proposed so that the guideline will comply with the latest legislation.

It is possible that these changes might increase sentence lengths in specific cases where the additional guidance applies, or for cases falling into category C1. However, given the very low number of offenders sentenced for this offence, any prison or probation¹⁵ impacts are expected to be small. Additionally, conducting small-scale research with sentencers will provide an indication of how sentencers might apply the new provisions and should hopefully mitigate against the risk of any unanticipated impacts of the draft guideline.

In addition to these changes driven by the legislation, there is a further change proposed in the draft guideline: additional guidance for sentencing terrorist cases concerning Law Enforcement Authority (LEA) involvement. The draft guideline recommends that the court should identify the category of harm on the basis of the harm that the offender intended and the viability of the plan, and then apply a downward adjustment at step two. Similarly, culpability is to be assessed as if the LEA was a genuine conspirator or, where the offender is under surveillance by LEA, thus preventing the offender from proceeding further, this should be treated the same as apprehension of the offender. It suggests that a small reduction within the category range will usually be appropriate in cases where, but for the LEA involvement, the offender would have carried out the intended terrorist act.

It cannot yet be estimated what the likely impact of this additional guidance will be on prison or probation resources, given the scarcity of relevant cases available to be analysed. However, it is hoped that the small-scale research taking place with sentencers will help to provide additional information to support the final resource assessment.

Causing explosion likely to endanger life or property/ Attempt to cause explosion, or making or keeping explosive with intent to endanger life or property (Explosive Substances Act 1883, sections 2 and 3)

The current guideline for these offences is also affected by the 2021 Act in the same way as the Preparation of terrorist acts guideline. It is possible that these changes might increase sentence lengths in specific cases where the additional guidance applies, or for cases falling in the lowest culpability and highest harm category. However, given that the draft guideline applies only to those offences which relate to terrorism, and a large proportion of the offenders sentenced for explosive substances offences are understood to be non-terrorism related,¹⁶ any impacts on the prison and probation¹⁷ services are expected to be minimal.

¹⁵ Changes to licence provisions resulting from the new legislation are likely to have some additional resource implications for the probation service, as calculated in the published impact assessment: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886106/cts-impact-assessment.pdf.

¹⁶ Of the 20 cases sentenced in 2019, transcript analysis suggests that all 20 are non-terrorism related.

¹⁷ Changes to licence provisions resulting from the new legislation are likely to have some additional resource implications for the probation service, as calculated in the published impact assessment: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/886106/cts-impact-assessment.pdf.

Membership of a proscribed organisation (Terrorism Act 2000, section 11)

The 2021 Act increased the statutory maximum for this offence from 10 years to 14 years. The draft guideline has been updated to ensure it complies with the will of Parliament.

The current definitive guideline for this offence contains three categories of culpability and one level of harm. The proposed draft guideline increases the starting points for all three culpability categories to reflect the increase in statutory maximum. It also broadens the category range for the highest culpability level and increases the sentence levels for the middle culpability, whilst maintaining a five year range, and retains the category range for the lowest culpability level so that the least serious cases can still receive a non-custodial sentence.

The estimated impact of these changes is that it may increase sentence lengths for this offence, particularly for the most serious type of offending. However, given the small volume of offenders sentenced for this offence, any prison or probation impact is not expected to be large.

Support for a proscribed organisation (Terrorism Act 2000, section 12)

A revised version of the existing Proscribed organisations – support guideline was consulted on in 2019. The 2021 Act has since increased the statutory maximum for this offence from 10 years to 14 years. The aim of the new draft guideline is to reflect this new legislative change and ensure that the most serious offenders receive tougher sentences, whilst incorporating the previously consulted-on changes. Thus, in the current draft guideline, within the sentencing table, the starting points in the highest culpability categories and harm levels have been raised and the sentence ranges broadened compared with the existing guideline, to give sentencers greater discretion.

It is possible that this change may increase the severity of sentences for this offence, particularly at the top end of seriousness. However, since no offenders have been sentenced for this offence on a principal offence basis since 2017, the impact of the draft guideline on prison and probation resources is estimated to be negligible.

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 guidelines come into effect.

The low volumes for all of the terrorism offences make it difficult to determine average sentence lengths or to be confident that cases that have gone before the courts in the past few years are representative of the sorts of cases that will be sentenced in future.

This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes inviting views on the guidelines through the consultation exercise and research with sentencers using case scenarios, which are intended to explore whether the guideline has any unintended effects. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

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

If sentencers do not interpret the guidelines 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 new guidelines 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 sentencing remarks for 33 cases have also been studied to ensure that the guidelines are developed with current sentencing practice in mind. Planned research with sentencers should also enable any issues with implementation to be identified and addressed prior to the publication of the definitive guidelines.

Consultees can also feed back their views of the likely effect of the guidelines, 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.

Sentencing Council strategic objectives 2021–2026

Sentencing Council strategic objectives 2021–2026

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Foreword

I am pleased to introduce the Sentencing Council's strategy for the next five years.

2020 marked the 10th anniversary of the Sentencing Council. On reaching this milestone, we undertook a review of what we had achieved so far and sought views on what our priorities should be for the next five to ten years. On behalf of the Council I would like to thank all those who contributed to this process, which is set out in the consultation response document published alongside this strategy.



It is clear from the responses to the consultation that the Council is seen as an important and integral part of criminal justice system. We are committed to fulfilling the duties set out for us in legislation as well as undertaking other work that helps ensure we have a clear, fair and consistent approach to sentencing and that we are able to promote awareness and understanding of sentencing among victims, witnesses, offenders and the public.

In this document we set out the strategic objectives and supporting priorities and actions for the Council over the next five years, taking into account the statutory duties of the Council, responses to the consultation, and the resources we have at our disposal. We have also responded to consultees' comments by placing a consideration of issues around equality and diversity at the heart of our work and exploring ways in which we can address any concerns that might arise where it is within our power and appropriate for us to do so.

I hope that you will find that this strategy document provides a useful summary of the Council's aims and priorities as we enter our second decade.

A handwritten signature in black ink that reads "Tim Holroyde". The signature is written in a cursive, slightly slanted style.

Lord Justice Holroyde
Chairman of the Sentencing Council

Introduction

Purpose

The Sentencing Council for England and Wales promotes a clear, fair and consistent approach to sentencing by issuing sentencing guidelines which provide clear structures and processes for judges and magistrates to use in court and promotes awareness and understanding of sentencing among victims, witnesses, offenders and the public.

This purpose is underpinned by the statutory duties for the Council that are set out in the Coroners and Justice Act 2009 (see Annex A for further details).

Leadership and governance

The Council

The Lord Chief Justice, the Right Honourable Lord Burnett of Maldon is President of the Council and appoints judicial members, with the agreement of the Lord Chancellor. The Lord Chancellor appoints non-judicial members, with the agreement of the Lord Chief Justice. All appointments are for a period of three years, with the possibility of extending up to a maximum of 10 years.

The Chairman of the Council is Lord Justice Holroyde who was appointed to this role on 1 August 2018. He is supported by seven additional judicial members and six non-judicial members.

The Sentencing Council meets for a full day ten times a year to consider business and is the primary decision-making body. The Council also has three sub-groups to provide oversight in specific areas: analysis and research, confidence and communication, and governance. The sub-groups' roles are mandated by the Council and, although some decision-making responsibilities are delegated to the sub-groups, all key decisions are made by the full membership. The sub-groups are internal rather than public-facing. From February 2020, the Council also set up a dedicated working group to explore and consider issues of equality and diversity as relevant to our work and recommend any necessary actions or further work in response.

The Office of the Sentencing Council

The Council is supported in delivering its responsibilities by the Office of the Sentencing Council (OSC) The OSC is led by the Head of the Office of the Sentencing Council, Steve Wade who was appointed in October 2016, and staffed by civil servants employed via the Ministry of Justice (MoJ). The Office is funded by the MoJ and its budget is delegated to the Head of the OSC from the Chief Finance Officer MoJ, who is also accountable for ensuring that there are effective arrangements for oversight of the Council in its statutory functions and as one of the Ministry's arm's-length bodies.

The work of the OSC is overseen by a senior management team comprising the Head of Office and senior staff. The role of the team is to monitor and evaluate the progress of the Council's workplan, monitor budgetary expenditure, manage risks and make decisions on

issues relating to the work of the OSC in line with the priorities agreed by the Sentencing Council.

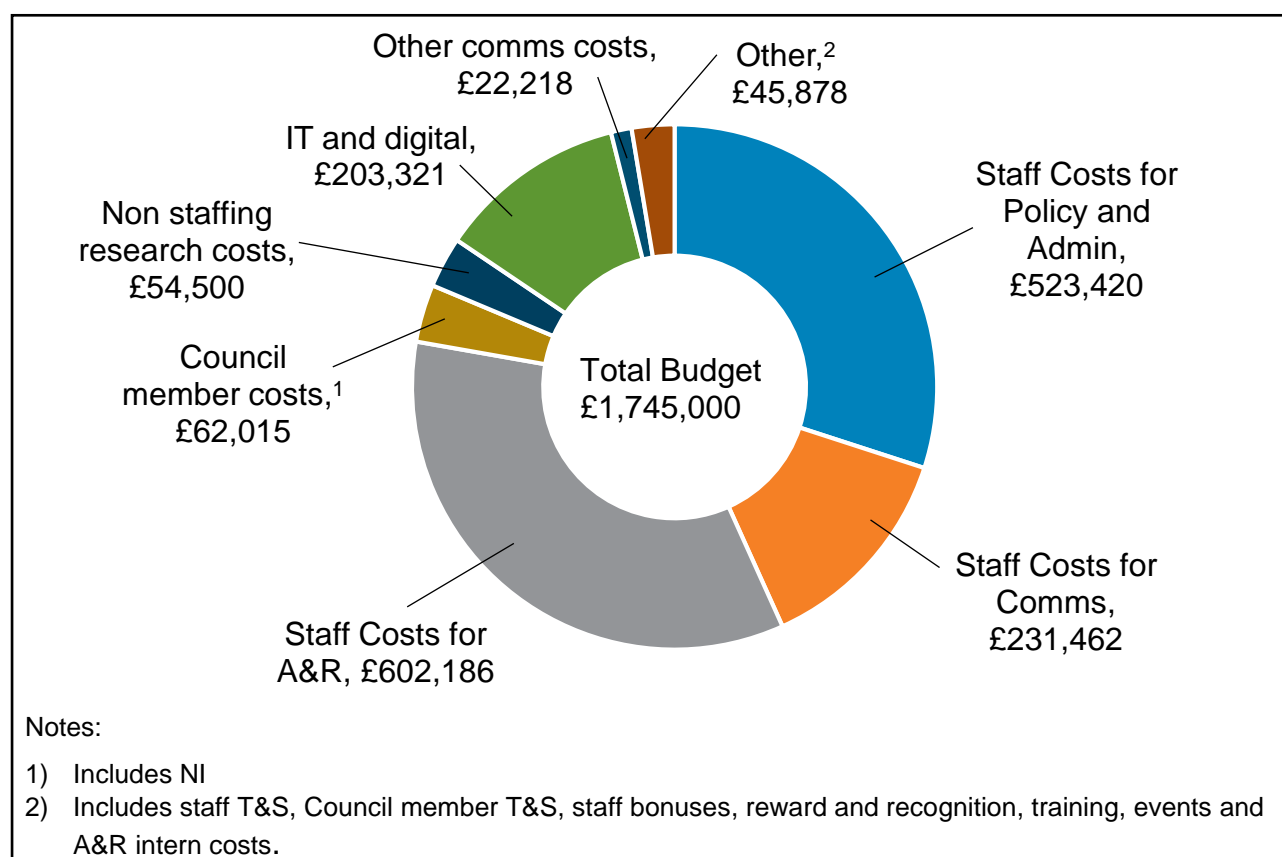
Resources

The Sentencing Council is supported in its work by a multi-disciplinary team that comprises lawyers, policy officials, analysts, communication specialists and administrative support. As of April 2021, there were 15.1 full-time equivalent (FTE) members of staff.

The Sentencing Council's resources are made available through the Ministry of Justice. In the financial year 2021/22 the Council's budget is £1.745m. The Council's strategic objectives have been set in line with that level of funding.

The majority of the budget is allocated to staffing costs and in 2021/22 this accounted for 91 per cent of expenditure. The majority of the non-staffing budget is allocated to the development and maintenance of our digital resources and tools, with a small amount allocated to external contracts for analysis and research.

Figure 1: Pie chart of budget breakdown, financial year 2020/2021



Background to developing this five-year strategy

The production and revision of guidelines (including analysis, research and communication activities to support guidelines) has formed a large part of the Council's focus. By 2020, we had produced 27 sets of definitive guidelines encompassing 145 separate guidelines covering 227 offences, as well as guidelines on eight overarching topics.

As part of our 10th anniversary year and in consideration of what our priorities should be for the next five to 10 years, we opened a consultation to seek the views of all those with

an interest in our work. The consultation covered what the Council's future objectives and priorities should be.

In anticipation of reviewing our achievements and future priorities at our 10-year point, the Council put in place some early work to consider:

- the statutory duties set out in the Coroners and Justice Act 2009;
- the independent review of the Council, conducted by Professor Sir Anthony Bottoms;
- the report from a Tailored Review undertaken by the Ministry of Justice; and
- commentaries published on the Council's work throughout the last 10 years (for example, from academics or interest groups).

In the autumn of 2019, Sentencing Council officials also undertook a series of informal discussions with internal and external partners in the criminal justice system and those with an interest in the system to discuss a range of issues that could feed into this consultation.

The consultation was published on 10 March 2020 and closed on 9 September 2020.

This strategy document

A full consultation response document accompanies this document and provides further information on the rationale for the strategic objectives and priorities set out here. These priorities and actions will inform the Council's business plans for the next five years, which will be updated annually.

The last business plan published in May 2021 was an interim business plan setting out our aims for the financial years 2020/21 and 2021/22. It included some areas of work covered by this strategy document that the Council was keen to begin work on as soon as possible. The first business plan to focus fully on delivering the objectives set out in this document will be that relating to financial year 2022/23.

Ongoing annual business plans for the period covered by this document will continue to set out in more detail how the individual priorities falling under each strategic objective will be delivered each year.

Given the nature of our work and the increasing volume of legislation relating to sentencing that is being produced, the Council may need to respond flexibly to meet any urgent future demands. We will, therefore, look again at this document at least annually, at the time we publish each year's business plan, to consider whether wider events or priorities may require us to amend any of the dates indicated or to reflect any new priorities that may have arisen as a result of external circumstances.

Strategic objectives

Strategic objectives 2021–2026

The Sentencing Council for England and Wales promotes a clear, fair and consistent approach to sentencing by issuing sentencing guidelines which provide clear structure and processes for judges and magistrates to use in court and promotes awareness and understanding of sentencing among victims, witnesses, offenders and the public.

Based on our role and remit under the Coroners and Justice Act 2009 and as the independent body responsible for producing sentencing guidelines for England and Wales, the Sentencing Council will prioritise the following strategic objectives.

As stated above, the timings outlined in this document are provisional; more precise timings will be provided in the relevant business plan.

Sentencing Council strategic objectives 2021–2026

- Strategic objective 1: The Council will promote consistency and transparency in sentencing through the development and revision of sentencing guidelines
- Strategic objective 2: The Council will ensure that all our work is evidence-based and will work to enhance and strengthen the data and evidence that underpins it
- Strategic objective 3: The Council will explore and consider issues of equality and diversity relevant to our work and take any necessary action in response
- Strategic objective 4: The Council will consider and collate evidence on effectiveness of sentencing and seek to enhance the ways in which we raise awareness of the relevant issues
- Strategic objective 5: The Council will work to strengthen public confidence in sentencing by improving public knowledge and understanding of sentencing and showing the Council to be responsive and transparent

Further detail on more specific actions that underpin these objectives is provided below, along with estimated timings. Please note that some actions are ongoing, particularly those relating to the core business of producing and evaluating guidelines, or will be undertaken when they become relevant, for example where they are dependent on the completion of a prior action.

Achieving our strategic objectives

Strategic objective 1: The Council will promote consistency and transparency in sentencing through the development and revision of sentencing guidelines

In order to achieve this, the Council will:

Actions for strategic objective 1	Provisional timing
Support consistent and transparent sentencing by continuing to produce and revise guidelines in accordance with published criteria. Specific guidelines produced or revised will be a result of the Council's annual discussions on priorities and will be included in annual business plans.	Ongoing
Ensure that all relevant issues are taken into account when considering guidelines for development, or evaluation, by reviewing and updating our guideline development/ revision criteria.	Completed; published in August 2021
Review the Totality guideline in the light of research findings and make any necessary changes	Consult on draft guideline by October 2022
Ensure that we draw fully on all relevant perspectives by formally considering at the outset of each guideline project whether to bring in additional external expertise to support a guideline's development.	Ongoing from June 2021
Ensure guidelines remain relevant and up to date by undertaking an annual consultation on cross-cutting and/ or minor revisions to guidelines.	Consultation to be issued annually from September 2021
Ensure minor uncontentious amendments to guidelines, that do not require consultation, are clear and transparent to all users by publishing a log of these.	Published as changes are made
Enable users to feedback on guidelines by providing a mechanism to report errors or difficulties.	By December 2021

Strategic objective 2: The Council will ensure that all our work is evidence-based and will work to enhance and strengthen the data and evidence that underpins it

In order to achieve this, the Council will:

Actions for strategic objective 2	Provisional Timing
Support the development and evaluation of guidelines by continuing to access and analyse sentencing data - including on impacts and resources - and ensure this is understood and informs Council decision-making.	Ongoing
Provide evidence and analysis to support the Council's work across all of its statutory duties.	Ongoing
Finalise approach as to how we might access a great volume of data via the Common Platform and explore whether this might bring about efficiencies in the way in which we currently collect data from the courts.	By September 2022
Consider whether enhancements can be made to the way in which we measure and interpret the impact of our guidelines and our approaches to resource assessments by undertaking a review of our current practice.	By June 2022
Explore how the Council's expanded explanations are being interpreted and applied by sentencers in practice by undertaking an evaluation of these.	Start by March 2022
Inform development of Totality guideline by undertaking a small research study with sentencers.	Completed; published in October 2021
Explore the impact and implementation of the intimidatory offences guidelines by undertaking an evaluation.	Start by March 2022
Explore the impact and implementation of the domestic abuse overarching guideline by undertaking an evaluation.	Start by March 2022
Ensure the views of all relevant parties are fully considered in the development and revision of guidelines by considering on a case by case basis whether additional specific qualitative research is required.	Ongoing from June 2021
Collate the relevant evidence on issues related to effectiveness of sentencing and consider this as part of work to develop and revise guidelines by undertaking and publishing a review of the relevant evidence	Biennially from September 2022
Consider what further work in the area of consistency of sentencing is needed by reviewing the updated evidence in this area.	By September 2022

Consider how best to make use of local area data in our work by undertaking a review of the relevant data sources.	By March 2022
Permit access to data collected by the Council by preparing and publishing our drugs data collection.	By June 2022
Permit access to data collected by the Council by preparing and publishing our robbery offences data collection.	By September 2022
Continue to broaden the range of analytical work we can contribute to and draw on by seeking opportunities to collaborate with academics and external organisations.	Ongoing from June 2021

Strategic objective 3: The Council will explore and consider issues of equality and diversity relevant to our work and take any necessary action in response

In order to achieve this, the Council has set up a dedicated working group and will:

Actions for strategic objective 3	Provisional timing
Explore the potential impact of sentencing guidelines on different demographic groups and groups with protected characteristics by collecting, analysing, and publishing data, where this is available, and undertaking more in-depth analytical work.	Ongoing from December 2020
Draw attention to any relevant issues relating to disparities in sentencing by providing tailored references to relevant information, to the Equal Treatment Bench Book, and to the need to apply guidelines fairly across all groups of offenders after reviewing evidence on disparity in sentencing for each guideline being developed or revised.	Ongoing from December 2020
Explore the potential for the Council's work inadvertently to cause disparity in sentencing across demographic groups by commissioning independent external contractors to undertake a project to review a sample of key guidelines and processes.	By December 2021
Ensure any evidence of disparity in sentencing between different demographic groups is taken into account when deciding whether to develop or review a guideline by including this as a consideration in the Council's criteria for developing and revising guidelines.	Completed; published August 2021
Consider whether separate guidance is needed for female offenders or young adults by conducting an evaluation of the relevant expanded explanations and, if so, add this to our workplan.	To be considered as part of the evaluation of expanded explanations

Strategic objective 4: The Council will consider and collate evidence on effectiveness of sentencing and seek to enhance the ways in which we raise awareness of the relevant issues

In order to achieve this, the Council will:

Actions for strategic objective 4	Provisional timing
Ensure the Council continue to be informed on issues related to effectiveness of sentencing by publishing a research review of the relevant evidence and publishing that review.	Biennially from September 2022
Consider the possibility of future work with offenders to understand which elements of their sentence may have influenced their rehabilitation by undertaking a scoping exercise in this area.	By September 2022
Consider whether any changes are required to highlight to sentencers the need to consider issues relating to effectiveness of sentencing as a result of research work in this area and any work undertaken on the Imposition guideline.	From September 2022

Strategic objective 5: The Council will work to strengthen public confidence in sentencing by improving public knowledge and understanding of sentencing and showing the Council to be responsive and transparent

In order to achieve this, the Council will:

Actions for strategic objective 5	Provisional timing
Ensure sentencers and other practitioners have easy and immediate access to sentencing guidelines by continuing to develop digital tools that meet their needs.	Ongoing
Inform public audiences, including victims, witnesses and offenders, about sentencing and sentencing guidelines by continuing to develop content for our website and seek media coverage relating to key Council activities.	Ongoing
Support the effective development of guidelines by continuing to promote Council consultations to practitioners who use the guidelines and individuals and groups who could potentially be affected by the guidelines.	Ongoing
Elicit a broader and more representative body of consultation responses to inform the development of guidelines by	By December 2021

undertaking a review of our target audiences and how we reach them.	
Teach young people about sentencing by developing sentencing-related materials for use by organisations such as Young Citizens who already engage extensively with schools.	Ongoing
Improve our ability to inform the public about sentencing by identifying relevant organisations willing to help us engage with their stakeholders.	Ongoing
Make our consultations more easily accessible to the Council’s public audiences by developing a template for more simplified introductions to consultation documents and embedding this within the Council’s processes.	Completed May 2021
Illustrate for our audiences the range of issues considered by the Council when developing and revising guidelines and the extent to which guidelines are influenced by consultation responses, by publishing information about the Council’s processes and procedures on our website.	By March 2022
Maintain an up-to-date insight into public confidence in the criminal justice system and its drivers, and explore whether there have been any changes over time, by re-running our previous survey questions and comparing findings to our previous research.	By September 2022
Increase parliamentarians’ knowledge and understanding of our work including by discussing how best to establish regular evidence sessions with the Justice Committee.	Ongoing by December 2021

Lord Justice Holroyde

4th November 2021

Steve Wade

4th November 2021

Annex A: Sentencing Council statutory duties

Duty under Coroners' and Justice Act 2009	Description
s.119	Publish report on the exercise of the Council's functions during the year
s.120(3)(a)	Prepare sentencing guidelines about guilty pleas
S.120(3)(b)	Prepare guidelines about the rule of law as to the totality of sentences
S.120(4)	(May) prepare other guidelines
s.120(5),(6a-d), (7), (8)	Must publish draft guidelines and consult when preparing guidelines (including the Lord Chancellor and Justice Select Committee); must then publish definitive guidelines after making necessary amendments
s.120(11a-f)	<p>When exercising the function of preparing guidelines, the Council should have regard to:</p> <ul style="list-style-type: none"> - The sentences imposed by courts - The need to promote consistency - The impact of sentencing on victims - The need to promote public confidence in the CJS - The cost of different sentences and their relative effectiveness in preventing re-offending - The results of monitoring
S121 (2), (3a-c)	Guidelines should illustrate varying degrees of seriousness with which offences are committed with factors relating to culpability, harm, and other relevant factors
s.121(4a,b), (5a,b), (6a-c)	Guidelines should provide an offence range, category range, starting point, aggravating and mitigating factors and criteria for determining the weight to be given to previous convictions.
s.121(7a-c)	Additional to mitigating factors are factors relating to guilty plea reductions, discounts for assistance to the prosecution, totality and these should be reflected in guidelines
s.121(10a, bii)	Starting points should relate to sentences that assume an offender has pleaded not guilty
s.122(2), (3), (4), (5), (6)	The Council must prepare allocation guidelines, issue them as draft, consult on them and then publish them as definitive guidelines; they may from time to time review the allocation guidelines; they should have regard to need to promote consistency and the results of monitoring.

s.123	The Council may prepare or revise guidelines and if urgent may dispense with the need to publish in draft and to consult (other than with the Lord Chancellor)
s.124 (1), (3), (5)	The Council may be asked to prepare guidelines by the Lord Chancellor or the Court of Appeal and it should consider doing so
s.127(1), (2)	The Council must prepare and publish resource assessments for both draft and definitive guidelines
s.127(3a-c)	Resource assessments must assess the resources required for the provision of prison places, probation provision and youth justice services
s.128(1), (2)	The Council must monitor the operation of its guidelines and consider what conclusions can be drawn, including: <ul style="list-style-type: none"> - The frequency with which, and extent to which, courts depart from sentencing guidelines - Factors which influence the sentences imposed by the courts - The effect of guidelines in promoting consistency - The effect of guidelines on the promotion of public confidence in the criminal justice system
s.128(3)	The Council should include in its Annual Report a summary of monitoring work undertaken and any conclusions drawn from this
s.129(1)	The Council must publish information regarding the sentencing practice of magistrates in relation to each local justice area; and information regarding the practice of the Crown Court in relation to each location at which the Crown Court sits
s.129(2)	The Council may also promote awareness of matters in relation to the sentencing of offenders, in particular the sentences imposed, the costs of different sentences and their relative effectiveness in preventing reoffending, and the operation and effect of guidelines
s.130(1), (2)	The Annual Report must contain a sentencing factors report which contains an assessment of the effect which any changes in sentencing practice is having on the resources required for: the provision of prison places; probation provisions; the provision of youth justice services
s.131(1),(2), (3), (4)	The Annual Report must contain a non-sentencing factors report (and at other times the Council may publish this type of information having provided it to the Lord Chancellor). The report should cover which non-sentencing factors are having/likely to have a significant quantitative effect on resources. These factors include prison recall, breach of orders, patterns of re-offending, Parole Board release decisions, remand issues etc
s.132(1)(3)	The Council has a duty to assess the effect, and prepare a report, where the Lord Chancellor refers any government policy or proposals

	likely to have a significant effect on resources for prison, probation or youth justice services
Schedule 15	This outlines the constitution of the Council and the experience members need to have to be appointed



Mr Steve Wade
Head of the Office of the
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Reply to:
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Pegs Lane
Hertford
SG13 8DN

e-mail: duncan.jones@hertfordshire.gov.uk

My Ref: FTG-SC-02

Your Ref:

Date: 2nd August 2021

Dear Mr Wade,

Review of the Environmental Offences Definitive Guideline (2014)

We are writing to you as the Executive Members responsible for waste and fly tipping issues in our respective resource and waste partnerships covering Bedfordshire, Buckinghamshire, Cambridgeshire, Devon, Hampshire, Hertfordshire, Kent, Lancashire, Lincolnshire, Merseyside, Norfolk, Oxfordshire, Somerset, Staffordshire, Suffolk and Warwickshire. Together with a number of other local authorities and other organisations who have co-signed this letter (see pages 6 – 13) we are experiencing significant challenges in relation to sentences handed down by the courts for offences under Section 33 of the Environmental Protection Act ('fly tipping offences') resulting in a lack of any serious deterrent arising from the justice system.

Between us we cover 158 local authorities and 10 professional bodies working in partnership to reduce the menace of fly tipping including its associated significant costs and damage to the environment. Our partnerships have been working with various stakeholders including the National Fly Tipping Prevention Group for some time to identify potential changes to the legislative framework to better address fly tipping. Part of this work has considered the penalties given to those found guilty of fly tipping; a matter which is also a concern for both the National Farmers' Union and the CLA, whose members are often directly affected by the illegal depositing of waste on their land and with whom we continue to work closely on this issue.

Whilst the Environmental Offences Definitive Guideline gives consideration to the culpability of the defendant and the harm caused by the offence, it is widely agreed that sentences handed down do not always match the severity of the offence committed; fairly reflect the costs incurred by the public purse; or therefore act as a suitable deterrent. This has become particularly noticeable following a surge in fly tipping and littering during the pandemic combined with a much wider use and appreciation of outdoor spaces. The media and public reaction to this has seriously questioned the existing level of deterrence. It seems that fly tipping has become a far more attractive option for criminals.

Under this context we would like to highlight the following areas for the Sentencing Council to consider with a view to reviewing and possibly updating the Definitive Guideline (2014) as needed.

Court imposed fines and costs versus Fixed Penalty Notices

Recent experience in the local authorities who have contributed to this letter indicates a propensity for courts to issue fines for fly tipping below the level of a fixed penalty notice (FPN) for the same offence. For example in Hertfordshire during 2018/19, 2019/20 and 2020/21 the average fine for fly tipping issued by the courts was £341, £365 and £297 respectively versus a potential maximum FPN of £400. Linked to this at the other end of the scale in Buckinghamshire from 56 cases successfully prosecuted for fly tipping and duty of care offences (March 2020-Feb 2021) the average fine imposed was £738, with the highest fine imposed being £3500.

Further analysis demonstrates it is usual for fly tipping offences to be designated to incur 'minor' or risk of 'minor' environmental harm. Yet the Guideline for such an offence is a fine with starting point of Band F, which is 600% of weekly earnings. If we take the average UK earnings (£514 a week), then a Band F fine would be £3,084; anecdotally much larger than most of the fines issued by the courts. This would be a very welcome fine in our experience, and we believe it would go some way to restoring public confidence.

As you will be aware FPNs were introduced partly to alleviate pressure on the courts. However, current practice is having the opposite effect. This appears to be due to the current Guideline which instructs magistrates to ignore the availability of an FPN compounded by anecdotal evidence which suggests solicitors are aware that courts regularly render fines less than the FPN and therefore advise clients to go to court rather than pay the FPN.

It must be considered that the purpose of an FPN is to discharge the defendant's liability to prosecution, as well as the prospect of a higher financial penalty through a correctly functioning court system. As such, if a defendant chooses to go to court as is their right, then we believe it is only reasonable that the potential consequences of such a choice are considered.

As such the signatories to this letter believe it is vital that the Guideline allows for a strong deterrence factor to be built into court judgements where cases for fly tipping are successfully prosecuted. With deterrent sentencing FPN levels should be less of an issue as paying the FPN would be seen as the better option. Linked to this whilst we appreciate FPNs may be an issue for local authorities to deal with, our suggestions are based on the reasonable assumption that we agree the need to work together to ensure that fly tipping offences are dealt with fairly, consistently and as efficiently as possible by the justice system.

Taking the above into account we suggest that in cases where a defendant opts to go to court and loses, it seems logical that in order to encourage the use of FPNs and reduce pressure on the courts, court fines should exceed the maximum FPN available currently set in legislation at £400. Such an approach should also take into account costs incurred by the public purse in bringing the case to court including local authority related costs, as well as any costs incurred by the police especially where warrants for arrest have had to be issued for previous no shows. In addition we would suggest that when relevant aggravating factors related to fly tipping on private land are present including costs related to clear up and restoration these should be included as a default and therefore reflected in any such judgements.

Introduce stronger means testing, and Court Fine "maximum payment periods"

Whilst we understand the role that means testing has to play, it would appear that its primary purpose is to determine the level of fine. However, we would submit that there is little evidence to suggest whether means declarations are being adequately tested by the courts. A number of local authorities have found in practice that little is done by the courts to test means declarations beyond the defendant's sworn assurance and this is despite the Guideline stating:

“Obtaining financial information. In setting a fine, the court may conclude that the offender is able to pay any fine imposed unless the offender has supplied any financial information to the contrary. It is for the offender to disclose to the court such data relevant to their financial position as will enable it to assess what they can reasonably afford to pay. If necessary, the court may compel the disclosure of an individual offender’s financial circumstances pursuant to section 162 of the Criminal Justice Act 2003. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender’s means from evidence it has heard and from all the circumstances of the case.”

Much more needs to be done to reinforce the need for courts to undertake robust checks of means declarations in line with the existing guidance above.

A number of local authorities have also observed that around 80% of people prosecuted for fly tipping offences already have previous varied court convictions underlining that their assumed integrity should not be taken for granted. The issue is further compounded by some defendants declaring low official income levels but often benefitting from large undeclared sums of the type that can be gained through fly tipping.

If someone does not have the ability to pay a fine in full then ‘payment plans’ should not be used to tacitly discharge their liability to the extent that the defendant incurs no practical significant inconvenience or penalty that would hopefully motivate correct behaviours in the future.

At the moment such plans often have the practical consequence of relieving defendants of their responsibility for the negative impacts of their actions. A situation which is then exacerbated when defendants choose to stop paying, with the ‘court system’ unwilling to pursue such matters when the costs of doing so quickly outweigh the level of fine(s) and cost(s) involved. As a result the courts often look ‘soft’ on fly tipping, which can only encourage more defendants to opt for the court route as opposed to accepting an FPN.

We suggest that fly tipping offences should be looked at as *the offence* in the *first* instance, not the person who committed it, or their ability to pay. Arguably, all fines could be set like this i.e. in line with the Guideline but before a means test. Based on this approach we would suggest means testing should therefore be used to ascertain what *type* of fine(s) to give, and never how much.

Under this context we also suggest that a review of the Definitive Guideline needs to consider how can a Section 33 (fly tipping) offence be anything but deliberate? A person may refer to “previous good character” in the Court, but they clearly did not act as such when the offence was committed so why should there be an option to reduce the fine? To this end it also needs to be considered that much of the time people also have “better character” when they are on trial as they are presenting themselves in Court and need to come across as well as possible – this underlines the need to go back to the principle suggested above – fly tipping offences should be looked at as *the offence* in the *first* instance.

Community Based Sentences

If a defendant cannot pay the fine in full, or in part, then we would ask that consideration is given to changing to the Guideline to allow for a much wider use of community based sentences as a matter of redress; such as the recent example in April of this year from Basingstoke where a defendant was ordered to pay £784 in costs and was also given a community punishment order requiring 80 hours of community service (*case brought by Basingstoke and Deane Borough Council*).

Whilst we appreciate the Guideline has the practical consequence of creating bespoke judgements for individual cases, logic suggests that the Guideline could be updated in a way that community orders become available in all offence categories and penalty ranges. We would therefore urge the Sentencing Council to review the Guideline to support much wider use of community sentences in circumstances where the defendant claims a lack of means.

To this end a review may also conclude there is opportunity to align any revisions to the Guideline with wider anti-social behaviour legislation including specifically the use of criminal behaviour orders. When considering fly tipping and similar offences under such a context the courts are required to take into account the inherent distress arising from fly tipping to landowners and the public alike. Such an alignment would also support police and local authority duties and strategies under section 6 Crime and Disorder Act which places an emphasis upon harm to environment as matter of crime and disorder.

We believe such an approach would do three things.

- Firstly it would send a clear message about the willingness of the courts to seek redress from defendants who claim a lack of means likely leading to a greater willingness to settle financial penalties as opposed to the longer term 'inconvenience' of a community based sentence.
- Secondly from a practical standpoint using money and time as sanctions should in turn lead to a perception that going to court is unlikely to be seen as the better option leading to a greater willingness on the part of defendants to pay an FPN if available, therefore relieving pressure on the courts as originally intended.
- Thirdly, properly executed, community based sentences should relieve the courts and other agencies from getting involved in ensuring 'payment plans' for fines are paid or chased up when payments are not made as agreed.

Under this context we further believe that the application of community sentences could be enhanced by introducing the principle of reparation where activities arising from community sentences are focused on clearing fly tips and litter as part of an overall rehabilitation strategy. Such an approach would likely be widely supported by the general public leading to greater recognition of the issue. Parallel discussions with Defra and the Ministry of Justice note that both departments support the use of community sentences especially where they involve training and rehabilitation for those carrying out unpaid work on probation, potentially further reducing the likelihood of reoffending.

Additionally, community based sentences address the issue of higher earners receiving greater fines, and vice versa. As we are suggesting sentencing based on the gravity of the offence, combining monetary fines and community sentences could enable the Courts to sentence more fairly. Just because someone has more money does not mean they should necessarily receive a greater punishment. Individuals should not be treated as businesses, where fine levels based on turnover makes sense; as the larger a company becomes, the more there is a reasonable expectation that responsibility and experience will encourage correct behaviours.

However, clearly individuals do not work like this and therefore the Guideline and the sentences arising from them should reflect this. Individuals should be dealt with on a level playing field, with all that separates them being the offence they may have committed, and the seriousness of that offence.

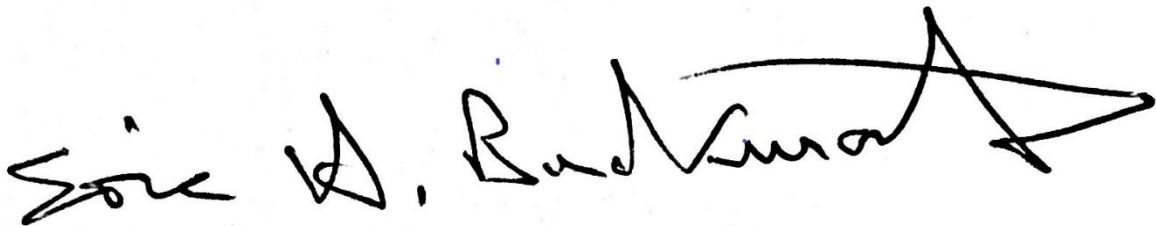
Use of More Suspended Sentences

Evidence arising from 793 convictions secured in Buckinghamshire suggests the single most effective deterrent to reoffending by even the most aggressive serial fly-tippers has been a suspended prison sentence with Buckinghamshire suggesting that such an approach has prevented 20 case offenders from reoffending.

More specifically it is suggested that whilst a 24 month suspension is preferable to 12 months, the prospect of possible incarceration works as a worthwhile deterrent. As such we suggest that anyone convicted of a fly tipping offence for a second time is not given another suspended sentence.

Thank you for taking the time to consider the views expressed above. The local authorities and other organisations who have contributed to this letter stand ready to assist with any further queries you may have in preparation for responding to our suggestions as noted.

Yours sincerely,

A handwritten signature in black ink, reading "Eric W. Buckmaster". The signature is written in a cursive style with a large, sweeping flourish at the end.

Cllr Eric Buckmaster
Chair – Hertfordshire Waste Partnership

Please see overleaf for a list of signatories:

CC: DEFRA – Under Secretary of State Rebecca Pow MP
DEFRA – National Fly Tipping Prevention Group (Thomas Parrot / Pippa Harper)
Chartered Institution of Wastes Management (Ray Parmenter / Tina Benfield)
Environment Agency (Peter Kellet / Lee Rawlinson / Simon Hawkins / Alex Chown)
HM Courts & Tribunals Service (South East) (Suzanne Gadd)
Keep Britain Tidy (Rachel Scarisbrick)
London Councils (Katharina Winbeck)
Magistrates Association (Tom Franklin)
National Farmers Union (Philippa Arnold / Rosalind David)
Members of Parliament (as determined by each co-signing local authority / organisation)
Natural Resources Wales
Welsh Government – Environment Quality Department


On behalf of:

Waste Partnerships & Authorities

	<p>Cambridge City Council East Cambridgeshire DC Fenland District Council Huntingdonshire DC Peterborough City Council South Cambridgeshire DC Cambridgeshire CC</p>	 <p>Cllr Peter Murphy RECAP Partnership</p>
<p>Devon Authorities Strategic Waste Committee (DASWC)</p>	<p>East Devon District Council Exeter City Council Mid Devon District Council North Devon District Council South Hams District Council Teignbridge District Council Torbay Council Torridge District Council West Devon Borough Council Devon County Council</p>	 <p>Councillor Geoff Jung Chairman DASWC</p>
	<p>Broxbourne Borough Council Dacorum Borough Council East Hertfordshire DC Hertsmere Borough Council North Hertfordshire DC St Albans District Council Stevenage Borough Council Three Rivers District Council Watford Borough Council Welwyn Hatfield BC Hertfordshire County Council</p>	 <p>Cllr Eric Buckmaster Chair - Hertfordshire Waste Partnership</p>
	<p>Ashford Borough Council Canterbury City Council Dartford Borough Council Dover District Council Folkestone & Hythe DC Gravesham Borough Council Maidstone Borough Council Sevenoaks District Council Swale Borough Council Thanet District Council Tonbridge & Malling BC Tunbridge Wells BC Kent County Council</p>	 <p>Cllr Nick Kenton Chair – Kent Resource Partnership</p>

 <p>LANCASHIRE WASTE PARTNERSHIP LWPP</p>	<p>Blackpool Council Blackburn with Darwen BC Burnley Borough Council Chorley Council Fylde Council Hyndburn Borough Council Lancaster City Council Pendle Borough Council Preston City Council Ribble Valley BC Rossendale Borough Council South Ribble Borough Council West Lancashire BC Wyre Council Lancaster County Council</p>	 <p>Cllr Shaun Turner Cabinet Member for Environment and Climate Change Chair of the Lancashire Waste Partnership.</p>
 <p>CLEANER GREENER today tomorrow <small>Lincolnshire Waste Partnership Tackling waste together</small></p>	<p>Boston Borough Council City of Lincoln Council East Lindsey District Council North Kesteven DC North East Lincolnshire Council North Lincolnshire Council South Holland District Council South Kesteven DC West Lindsey District Council Lincolnshire County Council</p>	 <p>Cllr Danny McNally Chair Lincolnshire Waste Partnership</p>
 <p>MRWA MERSEYSIDE RECYCLING & WASTE AUTHORITY</p>	<p>Merseyside and Halton Waste Partnership:</p> <p>Liverpool City Council Halton Council Knowsley Council Sefton Council St Helens Council Wirral Council Halton Council</p>	 <p>Carl Beer - Chief Executive Merseyside Recycling and Waste Authority</p>
 <p>Norfolk Waste Partnership</p>	<p>Breckland District Council Broadland District Council Great Yarmouth BC Kings Lynn & West Norfolk DC Norwich City Council North Norfolk District Council South Norfolk District Council Norfolk County Council</p>	 <p>Cllr Andy Grant Chair – Norfolk Waste Partnership</p>
<p>Oxfordshire Resources & Waste Partnership</p>	<p>Cherwell District Council Oxford City Council South Oxfordshire DC Vale of White Horse DC West Oxfordshire DC Oxfordshire County Council</p>	<p>Cllr Lubna Arshad, Chair – Oxfordshire Resources & Waste Partnership</p>

 	<p>Basingstoke & Deane BC East Hampshire DC Eastleigh Borough Council Fareham Borough Council Gosport Borough Council Hart District Council Havant Borough Council New Forest District Council Portsmouth City Council Rushmoor Borough Council Southampton City Council Test Valley Borough Council Winchester City Council Hampshire County Council</p>	<p>Cllr Eachus Chair – Project Integra</p>  <p>Cllr Rob Humby Deputy Leader of Hampshire County Council, Executive Lead Member for Economy, Transport and Environment</p>
	<p>Mendip District Council Sedgemoor District Council Somerset West & Taunton South Somerset DC Somerset County Council</p>	 <p>Cllr Sarah Dyke – Chair Somerset Waste Partnership</p>
	<p>Cannock Chase DC East Staffordshire BC Lichfield District Council Newcastle under Lyme BC Stafford Borough Council Staffordshire Moorland DC South Staffordshire DC Tamworth Borough Council Stoke on Trent City Council Staffordshire County Council</p>	 <p>Cllr Jonathan Price – Chair Joint Waste Management Board Somerset Waste Partnership</p>
	<p>Babergh District Council East Suffolk Council Ipswich Borough Council Mid Suffolk District Council West Suffolk Council Suffolk County Council</p>	 <p>Cllr James Mallinder Chair - Suffolk Waste Partnership</p>
	<p>Elmbridge Borough Council Epsom & Ewell BC Guildford Borough Council Mole Valley District Council Reigate & Banstead BC Runnymede Borough Council Spelthorne Borough Council Surrey Heath BC Tandridge District Council Waverley Borough Council Woking Borough Council Surrey County Council</p>	 <p>Cllr Neil Dallen Chair – Surrey Environment Partnership</p>

	<p>North Warwickshire BC Nuneaton & Bedworth BC Rugby Borough Council Stratford District Council Warwick District Council Warwickshire County Council</p>	<p><i>Heather Timms</i></p> <p>Cllr Heather Timms Chair – Warwickshire Waste Partnership</p>
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On behalf of:

Individual local authorities:

	<p><i>C. Lamb</i></p> <p><i>J. Platts</i></p> <p>Cllr Chris Lamb / Cllr Jenny Platts Barnsley Council</p>
	<p><i>Charles Royden</i></p> <p>Cllr Charles Royden Deputy Mayor & Portfolio Holder for Environment, Highways and Transport</p>
	<p><i>W. Schmitt</i></p> <p>Cabinet Member, Environment Braintree District Council</p>
	<p><i>Maria Pearson</i></p> <p>Cllr Maria Pearson Chair of Environment, Enforcement and Housing Committee</p>
	<p>Cllr Peter Strachan – Portfolio Holder for Environment & Climate Change Buckinghamshire Council</p>

 <p>Central Bedfordshire</p>	 <p>Cllr Ian Dalgarno Executive Member for Community Services</p>
 <p>Chelmsford City Council</p>	 <p>Councillor Rose Moore Cabinet Member for Greener and Safer Chelmsford</p>
 <p>Devon County Council</p>	 <p>Cllr Roger Croad Devon County Council</p>
 <p>Doncaster Metropolitan Borough Council</p>	 <p>Cllr Joe Blackman Cabinet Member for Highways, Infrastructure and Enforcement Doncaster Borough Council</p>
 <p>Dorset Council</p>	 <p>Cllr Jill Haynes Cabinet Member for Customers Services & Community Dorset Council</p>
 <p>Epping Forest District Council www.eppingforestdc.gov.uk</p>	 <p>James Warwick / Cllr Nigel Avey Service Director – Contracts / Portfolio Holder Environmental and Technical Epping Forest District Council</p>
 <p>Essex County Council</p>	 <p>Cllr Malcolm Buckley (Cabinet Member for Waste Reduction and Recycling)</p>

	 <p>Cllr Abbas Hussain Portfolio Holder – Neighbourhood Services</p>
	 <p>Cllr Sarah Rouse Leader of Malvern Hills District Council</p>
	 <p>Cllr Wendy Stamp Leader – Maldon District Council</p>
	 <p>Cllr Heather Shearer Portfolio holder for Community Health Services</p>
	 <p>Cllr Dominic Beck Portfolio Holder for Transport & Environment Rotherham Metropolitan Borough Council</p>
	 <p>Cllr Paul Wood Executive Member for Housing, Roads and Waste Management</p>
	 <p>Cllr Bradley Thomas Leader of Wychavon District Council</p>

On behalf of:

Professional Bodies

 <p>Association of Directors of Environment, Economy, Planning & Transport</p>	 <p>Steve Palfrey Chair of ADEPT Waste Group</p>
 <p>Association of London Cleansing Officers</p>	 <p>Neil Carret – Chair Association of London Street Cleansing Officers</p>
	 <p>Mark Tufnell CLA Deputy President</p>
	 <p>Jacob Hayler Executive Director Environmental Services Association</p>
 <p>www.hertfordshire.gov.uk/flytipping</p>	 <p>Duncan Jones – Chair Hertfordshire Fly Tipping Group</p>
 <p>Local Authority Recycling Advisory Committee</p>	 <p>Carole Taylor - Chair Local Authority Recycling Advisory Committee</p>
<p>London Environment Directors' Network</p> 	 <p>Chair London Environment Directors Network</p>

<p>LINCOLNSHIRE Environmental Crime Partnership</p> 	<p><i>A. Kirkham.</i></p> <p>Ayeisha Kirkham (MCIEH; CEnvH) Chair – Lincolnshire Environmental Crime Partnership</p>
 <p>Local Government Association</p>	<p><i>David Renard</i></p> <p>Cllr David Renard Leader, Swindon Council Haydon Wick Ward (Conservative)</p> <p>Chairman - Economy, Environment, Housing and Transport Board Local Government Association (LGA)</p>
 <p>NAWDO NATIONAL ASSOCIATION OF WASTE DISPOSAL OFFICERS</p>	<p><i>Emma Beal</i></p> <p>Emma Beal – Chair National Association of Waste Disposal Officers</p>

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Mr Duncan Jones
Herts Fly Tipping Group
c/o Hertfordshire County Council
Postal Point CHN104
County Hall
Pegs Lane
Hertford
SG13 8DN

Your Ref: FTG-SC-02

By email to: duncan.jones@hertfordshire.gov.uk

3 August 2021

Dear Mr Jones

Review of the Environmental Offences Definitive Guideline (2014)

Thank you for the letter from Councillor Buckmaster on behalf of the various local authorities and other organisations who co-signed.

The letter raises a number of very interesting points, and while some of the suggestions made may be outside of the remit of the Sentencing Council (for example there is a requirement in law for a court to take into account the financial circumstances of the offender in setting a fine), others could possibly be addressed by changes to the sentencing guideline. As such, the views and suggestions will require careful consideration and my team will look at them in detail and refer the matter to the Sentencing Council for a decision as to whether the guideline should be revised.

The Sentencing Council next meets at the end of September and so no decision can be made before then. I will revert to you once the Council has considered the letter.

Yours sincerely,



Steve Wade

Head of Office of the Sentencing Council

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Sentencing statistics

Table 1: Number of adults sentenced for animal cruelty offences under the Animal Welfare Act 2006, 2010-2020

Section of Animal Welfare Act 2006	Sex	Number of adults sentenced										
		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
S4 & 32(1): Causing, permitting or failing to prevent unnecessary suffering	Female	309	351	394	369	268	205	178	189	192	157	94
	Male	457	550	576	492	445	317	287	316	297	278	153
	Unknown	66	92	109	132	75	76	107	83	119	116	51
	Total	832	993	1,079	993	788	598	572	588	608	551	298
S5 & 32(1): Carrying out, permitting or causing to be carried out or failing to prevent prohibited procedure on a protected animal	Female	0	0	0	0	0	0	0	0	0	0	0
	Male	4	0	0	1	1	0	1	1	1	3	0
	Unknown	0	0	0	0	0	0	0	0	0	0	2
	Total	4	0	0	1	1	0	1	1	1	3	2
S6(1) & (2) & 32(1): Removing or causing or permitting or failing to prevent removal of dog's tail other than for medical treatment	Female	0	2	2	0	0	0	0	0	0	0	0
	Male	0	5	7	1	1	1	0	1	1	0	1
	Unknown	0	0	1	0	1	0	0	0	0	0	0
	Total	0	7	10	1	2	1	0	1	1	0	1
S7 & 32(1): Administration of poisons etc to a protected animal	Female	0	0	0	0	0	0	0	0	0	0	0
	Male	1	0	1	0	2	0	0	2	0	0	0
	Unknown	0	0	0	0	0	0	0	0	0	0	0
	Total	1	0	1	0	2	0	0	2	0	0	0
S8 & 32(1): Offences relating to animal fights	Female	0	0	0	0	0	1	0	0	0	0	0
	Male	2	9	13	11	9	4	2	5	9	0	0
	Unknown	0	0	0	1	0	3	0	0	0	0	0
	Total	2	9	13	12	9	8	2	5	9	0	0

S9 & 32(2): Failing to ensure needs of animal are met as required by good practice	Female	64	101	134	108	92	79	61	52	56	38	15
	Male	85	136	159	166	137	103	80	54	76	61	29
	Unknown	11	28	34	31	34	26	26	25	24	37	4
	Total	160	265	327	305	263	208	167	131	156	136	48
Total	Female	376	456	532	477	360	285	239	241	248	195	109
	Male	557	700	759	671	595	426	370	379	384	342	183
	Unknown	77	120	144	164	110	105	133	108	143	153	57
	Total	1,010	1,276	1,435	1,312	1,065	816	742	728	775	690	349

Section of Animal Welfare Act 2006	Sex	Percentage of adults sentenced ¹										
		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
S4 & 32(1): Causing, permitting or failing to prevent unnecessary suffering	Female	40%	39%	41%	43%	38%	39%	38%	37%	39%	36%	38%
	Male	60%	61%	59%	57%	62%	61%	62%	63%	61%	64%	62%
	Unknown											
	Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
S5 & 32(1): Carrying out, permitting or causing to be carried out or failing to prevent prohibited procedure on a protected animal	Female	0%	-	-	0%	0%	-	0%	0%	0%	0%	-
	Male	100%	-	-	100%	100%	-	100%	100%	100%	100%	-
	Unknown											
	Total	100%	0%	0%	100%	100%	0%	100%	100%	100%	100%	0%
S6(1) & (2) & 32(1): Removing or causing or permitting or failing to prevent removal of dog's tail other than for medical treatment	Female	-	29%	22%	0%	0%	0%	-	0%	0%	-	0%
	Male	-	71%	78%	100%	100%	100%	-	100%	100%	-	100%
	Unknown											
	Total	0%	100%	100%	100%	100%	100%	0%	100%	100%	0%	100%
S7 & 32(1): Administration of poisons etc to a protected animal	Female	0%	-	0%	-	0%	-	-	0%	-	-	-
	Male	100%	-	100%	-	100%	-	-	100%	-	-	-
	Unknown											
	Total	100%	0%	100%	0%	100%	0%	0%	100%	0%	0%	0%

S8 & 32(1): Offences relating to animal fights	Female	0%	0%	0%	0%	0%	20%	0%	0%	0%	-	-
	Male	100%	100%	100%	100%	100%	80%	100%	100%	100%	-	-
	Unknown											
	Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	0%
S9 & 32(2): Failing to ensure needs of animal are met as required by good practice	Female	43%	43%	46%	39%	40%	43%	43%	49%	42%	38%	34%
	Male	57%	57%	54%	61%	60%	57%	57%	51%	58%	62%	66%
	Unknown											
	Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total	Female	40%	39%	41%	42%	38%	40%	39%	39%	39%	36%	37%
	Male	60%	61%	59%	58%	62%	60%	61%	61%	61%	64%	63%
	Unknown											
	Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

¹Percentage calculations do not include cases where the sex was unknown.

Table 2: Sentencing outcomes for adults sentenced for animal cruelty offences under the Animal Welfare Act 2006, 2010-2020

Section of Animal Welfare Act 2006	Outcome	Number of adults sentenced										
		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
S4 & 32(1): Causing, permitting or failing to prevent unnecessary suffering	Discharge	140	168	177	130	79	51	44	46	26	21	12
	Fine	192	203	175	169	145	95	114	113	152	110	65
	Community sentence	367	399	465	423	278	239	210	193	216	201	117
	Suspended sentence	74	131	149	177	184	147	128	173	144	151	64
	Immediate custody	47	81	101	78	77	55	61	49	61	61	36
	Otherwise dealt with	12	11	12	16	25	11	15	14	9	7	4
	Total	832	993	1079	993	788	598	572	588	608	551	298
S8 & 32(1): Offences relating to animal fights	Discharge	0	0	0	0	0	0	0	0	0	0	0
	Fine	0	0	1	0	0	0	0	0	0	0	0
	Community sentence	1	0	2	5	0	0	0	4	2	0	0
	Suspended sentence	0	3	5	1	4	5	0	1	4	0	0
	Immediate custody	1	6	5	6	4	3	2	0	3	0	0
	Otherwise dealt with	0	0	0	0	1	0	0	0	0	0	0
	Total	2	9	13	12	9	8	2	5	9	0	0
S9 & 32(2): Failing to ensure needs of animal are met as required by good practice	Discharge	41	50	90	49	50	36	18	15	20	11	1
	Fine	46	93	86	93	73	46	46	45	45	57	21
	Community sentence	50	89	121	97	85	68	72	42	51	41	15
	Suspended sentence	11	20	16	48	31	30	21	17	25	24	8
	Immediate custody	7	6	7	8	10	21	6	8	7	1	2
	Otherwise dealt with	5	7	7	10	14	7	4	4	8	2	1
	Total	160	265	327	305	263	208	167	131	156	136	48

Table 3: Final average custodial sentence lengths (ACSL) in months for adults sentenced to immediate custody under section 4 and section 9 of the Animal Welfare Act 2006, 2010-2020

		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
S4 & 32(1): Causing, permitting or failing to prevent unnecessary suffering ¹	Mean	3.1	3.3	3.5	3.6	3.3	3.4	3.6	3.6	3.7	3.7	3.7
	Median	2.8	2.8	3.7	3.9	3.3	3.7	4.0	3.7	4.0	3.7	4.2
S9 & 32(2): Failing to ensure needs of animal are met as required by good practice ²	Mean	3.2	2.6	3.0	2.1	2.4	3.3	3.5	3.1	3.5	*	*
	Median	2.8	2.7	3.3	2.1	2.5	3.0	4.0	3.0	3.0	*	*

Table 3a: Pre guilty-plea average custodial sentence lengths (ACSL) for adults sentenced to immediate custody under section 4 and section 9 of the Animal Welfare Act 2006, 2010-2020

		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
S4 & 32(1): Causing, permitting or failing to prevent unnecessary suffering ¹	Mean	4.2	4.6	4.9	4.9	4.7	4.7	5.1	4.9	5.2	5.0	5.3
	Median	4.2	4.2	4.9	4.7	4.9	4.2	5.3	5.0	5.6	5.3	5.6
S9 & 32(2): Failing to ensure needs of animal are met as required by good practice ²	Mean	4.2	3.4	4.3	2.9	3.4	4.7	4.8	4.5	5.0	*	*
	Median	3.3	3.9	4.9	2.22	3.15	4.5	5.63	4.55	4.4	*	*

* = ACSL has not been calculated where the number of offenders sentenced to immediate custody is fewer than 5.

Table 4: Final sentence length distributions for adults sentenced to immediate custody for animal cruelty offences under the Animal Welfare Act 2006, 2010-2020

Section of Animal Welfare Act 2006	Sentence band ²	Number of adults sentenced to immediate custody										
		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
S4 & 32(1): Causing, permitting or failing to prevent unnecessary suffering ¹	Less than 1 month	2	3	3	1	5	4	1	1	1	0	1
	1 to 2	9	16	13	11	10	7	8	7	4	6	3
	2 to 3	18	24	23	20	17	11	17	9	15	15	9
	3 to 4	6	12	27	11	25	14	8	14	11	14	4
	4 to 5	9	17	25	26	13	12	20	11	22	18	14
	5 to 6 months	3	9	9	9	7	7	7	7	8	7	5
	Total	47	81	100	78	77	55	61	49	61	60	36
S8 & 32(1): Offences relating to animal fights	Less than 1 month	0	0	0	0	0	0	0	0	0	0	0
	1 to 2	0	1	0	0	0	0	1	0	0	0	0
	2 to 3	0	3	0	0	1	0	0	0	0	0	0
	3 to 4	0	1	0	4	1	1	0	0	1	0	0
	4 to 5	0	1	2	1	2	1	1	0	1	0	0
	5 to 6 months	1	0	3	1	0	1	0	0	1	0	0
	Total	1	6	5	6	4	3	2	0	3	0	0
S9 & 32(2): Failing to ensure needs of animal are met as required by good practice	Less than 1 month	1	1	1	2	2	2	1	1	0	0	0
	1 to 2	2	1	1	2	2	2	1	0	1	0	1
	2 to 3	1	2	1	3	5	8	0	3	3	0	0
	3 to 4	0	1	3	1	0	2	1	3	1	0	1
	4 to 5	2	1	1	0	1	4	2	0	1	1	0
	5 to 6 months	1	0	0	0	0	3	1	1	1	0	0
	Total	7	6	7	8	10	21	6	8	7	1	2

Section of Animal Welfare Act 2006	Sentence band ²	Proportion of adults sentenced										
		2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
S4 & 32(1): Causing, permitting or failing to prevent unnecessary suffering ¹	Less than 1 month	4%	4%	3%	1%	6%	7%	2%	2%	2%	0%	3%
	1 to 2	19%	20%	13%	14%	13%	13%	13%	14%	7%	10%	8%
	2 to 3	38%	30%	23%	26%	22%	20%	28%	18%	25%	25%	25%
	3 to 4	13%	15%	27%	14%	32%	25%	13%	29%	18%	23%	11%
	4 to 5	19%	21%	25%	33%	17%	22%	33%	22%	36%	30%	39%
	5 to 6 months	6%	11%	9%	12%	9%	13%	11%	14%	13%	12%	14%
	Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
S8 & 32(1): Offences relating to animal fights	Less than 1 month	0%	0%	0%	0%	0%	0%	0%	-	0%	-	-
	1 to 2	0%	17%	0%	0%	0%	0%	50%	-	0%	-	-
	2 to 3	0%	50%	0%	0%	25%	0%	0%	-	0%	-	-
	3 to 4	0%	17%	0%	67%	25%	33%	0%	-	33%	-	-
	4 to 5	0%	17%	40%	17%	50%	33%	50%	-	33%	-	-
	5 to 6 months	100%	0%	60%	17%	0%	33%	0%	-	33%	-	-
	Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
S9 & 32(2): Failing to ensure needs of animal are met as required by good practice	Less than 1 month	14%	17%	14%	25%	20%	10%	17%	13%	0%	0%	0%
	1 to 2	29%	17%	14%	25%	20%	10%	17%	0%	14%	0%	50%
	2 to 3	14%	33%	14%	38%	50%	38%	0%	38%	43%	0%	0%
	3 to 4	0%	17%	43%	13%	0%	10%	17%	38%	14%	0%	50%
	4 to 5	29%	17%	14%	0%	10%	19%	33%	0%	14%	100%	0%
	5 to 6 months	14%	0%	0%	0%	0%	14%	17%	13%	14%	0%	0%
	Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Case studies shared by the RSPCA

Cases where sentencing reached the ceiling under the Animal Welfare Act 2006

Case 1 (18 November 2020) A dead dog was found hidden under a tyre at the bottom of a garden with five sharp trauma wounds to his neck, shoulder, and left leg. These wounds were believed to have been caused by a knife and the vet who examined him stated that it could have taken the animal hours to die as the wounds missed the main arteries. The man convicted of causing unnecessary suffering first claimed he had no memory of the incident, then claimed someone else had killed the dog.

Sentencing: He was sentenced to 26 weeks imprisonment.

Case 2 (18 November 2020) A man was found guilty of twelve charges; eight under the Animal Welfare Act 2006 and four under the Protection of Badgers Act 1992 of causing unnecessary suffering to two dogs and badger baiting. It was the opinion of an expert vet that the man had caused his dogs to suffer unnecessarily on multiple occasions by allowing and encouraging them to fight with wild mammals including badgers causing them to sustain injuries which led to their unnecessary suffering by a failure to seek appropriate and timely veterinary intervention.

Sentencing: He was sentenced to 20 weeks imprisonment and disqualified him from keeping dogs for eight years. A deprivation order was also issued with regard to the two dogs.

Case 3 (3 November 2020) A man who tortured a hedgehog by cutting off its limbs and covering its face with candle wax was jailed for 26 weeks. He caused unnecessary suffering to a hedgehog by cutting its legs, by burning/singeing the animal and covering the hedgehog's head and eyes with molten candle wax. He was also charged with a second offence under the Wild Mammals (Protection) Act 1996.

Sentencing: The District Judge sentenced him to the maximum 26 weeks imprisonment, disqualified him from keeping all animals for 10 years and ordered him to pay £122 victim surcharge.

Case 4 (7 September 2020) A man who burned a cat in a hot oven, tried to flush her down the toilet, attempted to strangle her and threw her against the wall was given a suspended prison sentence. He was given the cat, Sweetie, by his sister as she thought it would be good for him but the defendant said the cat disobeyed him and he heard the voice of a wrestler who told him to attack the cat. The cat was taken to the vet and found to have third degree burns and loss of skin. The owner admitted putting her in the oven for up to five minutes. The magistrate called him "extremely dangerous and she "would have liked to put him in prison for as long as she could".

Sentencing: He was sentenced to 18 weeks suspended for two years, banned from keeping pets for ten years, pay £440 costs and ordered to undertake six months mental health treatment.

Case 5 (12 January 2020) Two brothers were convicted for mistreating animals after one repeatedly stabbed a deer and the other let a bay horse starve to death. One was found guilty of causing unnecessary suffering to two dogs just a month after a gruesome video emerged of him knifing the deer. His brother was sentenced in the same court after he let a bay horse starve to death.

A third man was convicted following the seizure of three horses in March, just two months after RSPCA officials rescued a mare and its foal. He had been previously convicted last year of causing

unnecessary suffering to a foal which was seen hauling a cart of people at a horse fair. Four of the horses were emaciated and the foal had breathing problems, fleas and was described as "very thin." A Shetland Pony was also found with a deep cut across the nose.

Sentencing: The first brother was jailed for seven and a half months and will spend half that time in custody. He was also banned from keeping dogs for five years and ordered to pay £5,115. The second brother was given a 12 month community order, will have to do 150 hours unpaid work and pay £1,585.

The third man was also convicted alongside the two brothers, after four of his horses were found emaciated in the same RSPCA raid. He was jailed for 26 weeks after previously pleading not guilty to five counts of causing unnecessary suffering to horses. He was also banned from owning horses for five years and fined £5,000.

Case 6 (20 December 2019) A man kicked his pet dog to death in a "cowardly and vicious" attack after drinking. The Staffordshire bull terrier, Diesel, was called by the man into the kitchen where the dog was kicked six of seven times. Sentencing: He pled guilty and was jailed for 17 weeks and banned from keeping animals for life.

Case 7 (29 November 2019) A man admitted causing suffering after beating his 11 month old German Shepherd puppy to death. The puppy was punched to death before her body was dumped near some trees.

Sentencing: He was jailed for four months and banned from keeping animals for the rest of his life.

Case 8 (14 November 2019) A man deliberately set his dog on a pet cat, which was mauled to death. This incident was caught on CCTV and his actions caused outrage on social media after the video footage was released in a bid to identify him.

The owner of the cat made a victim impact statement which was read to the Court and said that "The attack has affected my sleep. My cat Cleo would always be there in the morning but now she is not. "I don't want to go home because I know Cleo is not there. I feel as if a big part of my life is missing."

Sentencing: He was jailed for 18 weeks after admitting causing cruelty and was also banned from keeping animals for life. He was also ordered to pay a victim surcharge of £122 and £250 in compensation to the cat's owner.

Passing sentence, chairman of the bench Brian Benton told the defendant: "This court is restricted to a maximum sentence of 26 weeks for the offence to which you have pleaded. "Due to your guilty plea, you are entitled to a reduction of one-third, to 18 weeks. However, due to the circumstances, we would if we were actually permitted to do so have imposed a far greater custodial sentence."

Case 9 (13 September 2019) A dog breeder who was breeding dogs but struggling to sell them. Her house was full of over 100 dogs in poor conditions, including some with injuries and disease, many living in cages and none having access to clean fresh water. Some were so suffering so much they had to be euthanised.

Sentencing: The defendant was found guilty of 16 charges of cruelty and neglect. She was given a 21 week prison sentence, disqualified from keeping or breeding animals for at least 15 years and ordered to pay £50,000 in costs.

Case 10 (17 August 2019) Two people fed their dog anti-freeze then beat her with a metal pole to death and stabbed her. Their crimes came to light when an RSPCA inspector was contacted by environmental health officers.

Sentencing: The defendants admitted two counts of causing unnecessary suffering to a protected animal, one count of poisoning and one count of failing to see an animal receive proper medical attention. The judge jailed the pair for ten weeks and banned them from keeping animals for life. They can appeal after a 10-year period.

Case 11 (1 May 2019) A man from Fulham was jailed and banned from keeping animals for life after he was found guilty of kicking his four-month-old puppy to death. A post-mortem examination of the dog's body revealed that there were also three historical injuries of blunt force trauma to the dog's body which occurred between May and June before the final incident which led to her death.

Sentencing: The defendant was found guilty of four offences for causing unnecessary suffering to a Staffordshire bull terrier by the infliction of physical abuse, namely blunt force trauma. Sentenced to an immediate 26-week custodial sentence in total for the four charges and banned from keeping all animals for life and ordered to pay £1,000 in costs.

Case 12 (4 December 2018) The RSPCA joined Lancashire police to execute a warrant after intelligence suggested the person was involved in wildlife crimes with his two dogs. The RSPCA obtained videos of him setting his dogs on a pet cat and a fox and images of a dog being encouraged to attack a gerbil and still images of the fox attack which showed the animal being baited by the dog.

Sentencing: The defendant pleaded guilty to four offences under the Animal Welfare Act in relation to encouraging his two dogs to attack a cat and a fox, as well as failing to provide veterinary attention for the dogs themselves. The person was jailed for 22 weeks and disqualified from keeping animals for life. He was also ordered to pay £375 in costs and £115 victim surcharge.

Other cases referenced during the Bill's passage (taken from Hansard)

Case 1

Last year the RSPCA was called to a property in Wales, and inspectors found 35 ponies trapped in dilapidated barns, outbuildings and overgrown paddocks. During the inspection, three other ponies were discovered trapped underneath a fallen metal roof, pinned to the ground by its weight. The trapped ponies could not move and were found with lacerations and injuries across their bodies. Elsewhere on the property, starving ponies were found in tiny paddocks, and all had overgrown hooves and various injuries. Six of the ponies were lame, and another horse was found dumped on a rubbish heap. It is just horrendous.

Sentencing: In that case, the owners were sentenced to 16 weeks and 12 weeks respectively, suspended for one year. It seems that the courts are not taking animal cruelty offences most seriously, and we need to change that in Parliament. As has been said, we must also ensure that we enforce these regulations, not just bring them in.

Case 2

In November 2019, a man admitted to beating his 11-month-old German Shepherd puppy to death.

Sentencing: He was sent to prison for four months.

Case 3

In 2018, there was the Northampton cat killer, a man who killed and mutilated seven family pets before leaving them outside their homes for their owners to find them.

Sentencing: That case was horrific, but he was sentenced to just three months in prison.

Case 4

In 2019 in Wellingborough, a man stabbed a miniature horse over 20 times with a kitchen knife. He also cut the wings off three chickens. All those animals had to be put down.

Sentence: He received just a two-month sentence and, in fact, a longer sentence for carrying the knife, which is obviously a serious offence as well. I do not think anyone would consider two or three-month sentences at all appropriate in both those cases.

Case 5

A bulldog called Baby, was lifted above her owner's head and thrown down the stairs repeatedly. Not content with simply abusing Baby, the two young men video-recorded their actions for further entertainment and thank goodness they did or perhaps they would have never faced justice. The RSPCA investigated the case of Baby and took forward a private prosecution after a secure digital card was found in a supermarket some three years after the original incident, which had the video evidence filmed by one of the abusers. The RSPCA inspector Gemma Lynch described the clip for the court, saying that Baby was "totally submissive throughout, not even making a noise when she lands on the stairs, bouncing to the foot of them where there is a baby gate which she crashes into before hitting the ground." She described how a second clip showed Baby's abuser "stamping on her neck repeatedly at the bottom of the stairs, then picking her up and throwing her to the ground with force over and over again...Another clip shows him standing on Baby's chest...before jumping up and down on her. This is the only time you hear her make a noise, and she is crying throughout." During the RSPCA's investigation, it discovered that Baby had to be put down three months following the incident, after losing the use of her hindlegs.

Sentencing: The two men pleaded guilty to animal cruelty and were sentenced to 21 weeks in prison, suspended for two years, given a six-month tagged evening curfew, and ordered to pay £300 in costs. They were also banned from keeping animals for life, with no appeal for 20 years.

Case 6

A little terrier called Scamp was found buried alive with a nail hammered in his head in a shallow grave in Redcar. Scamp was discovered by a walker who heard grunting from a mound in Kirkleatham woods and took the animal to a vet. The vet who examined the terrier described the abusers' actions as the worst case of animal cruelty that he had ever seen.

Sentencing: The two men who admitted the charges and pled guilty to the offence relating to the dog's death were jailed for just four months, the maximum that they could have received owing to their guilty pleas, and banned from keeping animals for life.

Case 7

In one case, a cat was left in a washing machine for hours before it ultimately died.

Sentencing: The perpetrator received only a disqualification from keeping animals for five years.

Case 8

4 1/2yrs ago, Jimmy was a cross-breed dog who had been mistreated for some time. Eventually, his owner had strung him up in the garden, taken a hammer and an air rifle to him, and then left him to experience what must have been a truly horrific and painful death. When we got into court, we were presented with photographs and mobile phone footage recovered by the RSPCA, which was bringing the prosecution. It was one of the most harrowing, deliberate and gratuitous attempts to cause suffering to an animal that I could ever imagine. The deliberate and prolonged nature of it, alongside what had obviously been neglect as a result of malnutrition for some time, was truly harrowing for everyone in the court. Jimmy the dog died a painful, slow and deliberate death as a result of a barbaric and irrational act by a 23-year-old man.

Sentencing: The individual on trial pleaded guilty at the first opportunity and was being convicted for a first offence. The sentence he received after mitigation was nowhere near the level that any one of us may have wanted to award, even within the current guidelines.

Case 9

Archie, a dog who was so badly beaten, almost literally to a pulp, that only the whites of his eyes and his fast breathing could be seen. He suffered severe swelling on the left of his face, his neck, his left eye, the left side of his jaw and the base of his skull. An X-ray showed that Archie had a fractured spine and blood was also found in his urine. If someone had done that to a human being, they would meet the full force of law.

Sentencing: The man who had beaten Archie and put him in that life-threatening state, who was his former owner, his carer and the man responsible for his wellbeing, was sentenced to just 18 weeks' imprisonment—18 weeks for all that—and ordered to pay £500 in costs.

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Cruelty to a child – assault and ill treatment, abandonment, neglect, and failure to protect

Children and Young Persons Act 1933, s.1(1)

Culpability

A High culpability

- Prolonged and/or multiple incidents of serious cruelty, including serious neglect
- Gratuitous degradation of victim and/or sadistic behaviour
- Use of very significant force
- Use of a weapon
- Deliberate disregard for the welfare of the victim
- Failure to take any steps to protect the victim from offences in which the above factors are present
- Offender with professional responsibility for the victim (where linked to the commission of the offence)

B Medium culpability

- Use of significant force
- Prolonged and/or multiple incidents of cruelty, including neglect
- Limited steps taken to protect victim in cases with category A factors present
- Other cases falling between A and C because:
 - Factors in both high and lesser categories are present which balance each other out; and/or
 - The offender's culpability falls between the factors as described in high and lesser culpability

C Lesser culpability

- Offender's responsibility substantially reduced by mental disorder or learning disability or lack of maturity
- Offender is victim of domestic abuse, including coercion and/or intimidation (where linked to the commission of the offence)
- Steps taken to protect victim but fell just short of what could reasonably be expected
- Momentary or brief lapse in judgement including in cases of neglect
- Use of some force or failure to protect the victim from an incident involving some force
- Low level of neglect

Harm

Category 1

- Serious psychological, developmental, and/or emotional harm
- Serious physical harm (including illnesses contracted due to neglect)

Category 2

- Cases falling between categories 1 and 3
- A high likelihood of category 1 harm being caused

Category 3

- Little or no psychological, developmental, and/or emotional harm
- Little or no physical harm

Harm	Culpability		
	A	B	C
Category 1	Starting point 6 years' custody	Starting point 3 years' custody	Starting point 1 year's custody
	Category range 4 – 8 years' custody	Category range 2 – 6 years' custody	Category range High level community order – 2 years 6 months' custody
Category 2	Starting point 3 years' custody	Starting point 1 year's custody	Starting point High level community order
	Category range 2 – 6 years' custody	Category range High level community order – 2 years 6 months' custody	Category range Medium level community order – 1 year's custody
Category 3	Starting point 1 year's custody	Starting point High level community order	Starting point Medium level community order
	Category range High level community order – 2 years 6 months' custody	Category range Medium level community order – 1 year's custody	Category range Low level community order – 6 months' custody

Causing or allowing a child to suffer serious physical harm/ Causing or allowing a child to die

Domestic Violence, Crime and Victims Act 2004, s.5

Culpability

A High culpability

- Prolonged and/or multiple incidents of serious cruelty, including serious neglect
- Gratuitous degradation of victim and/or sadistic behaviour
- Use of very significant force
- Use of a weapon
- Deliberate disregard for the welfare of the victim
- Failure to take any steps to protect the victim from offences in which the above factors are present
- Offender with professional responsibility for the victim (where linked to the commission of the offence)

B Medium culpability

- Use of significant force
- Prolonged and/or multiple incidents of cruelty, including neglect
- Limited steps taken to protect victim in cases with category A factors present
- Other cases falling between A and C because:
 - Factors in both high and lesser categories are present which balance each other out; and/or
 - The offender's culpability falls between the factors as described in high and lesser culpability

C Lesser culpability

- Offender's responsibility substantially reduced by mental disorder or learning disability or lack of maturity
- Offender is victim of domestic abuse, including coercion and/or intimidation (where linked to the commission of the offence)
- Steps taken to protect victim but fell just short of what could reasonably be expected
- Momentary or brief lapse in judgement including in cases of neglect
- Use of some force or failure to protect the victim from an incident involving some force
- Low level of neglect

Harm

Category 1

- Death

Category 2

- Serious physical harm which has a substantial and/or long term effect
- Serious psychological, developmental and/or emotional harm
- Significantly reduced life expectancy
- A progressive, permanent or irreversible condition

Category 3

- Serious physical harm that does not fall into category 2

Harm	Culpability		
	A	B	C
Category 1	Starting point 9 years' custody	Starting point 5 years' custody	Starting point 2 years' custody
	Category range 7 – 14 years' custody	Category range 3 – 8 years' custody	Category range 1 – 4 years' custody
Category 2	Starting point 7 years' custody	Starting point 3 years' custody	Starting point 1 year 6 months' custody
	Category range 5 – 9 years' custody	Category range 1 year 6 months – 6 years' custody	Category range 6 months – 3 years' custody
Category 3	Starting point 3 years' custody	Starting point 1 year 6 months' custody	Starting point 9 months' custody
	Category range 1 year 6 months – 6 years' custody	Category range 6 months – 3 years' custody	Category range High level community order – 2 years' custody

Assault occasioning actual bodily harm / Racially or religiously aggravated ABH

Crime and Disorder Act 1998, s.29, Offences against the Person Act 1861, s.47

Culpability

The level of culpability is determined by weighing all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

A – High culpability

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent*
- Strangulation/suffocation/asphyxiation
- Leading role in group activity
- Prolonged/persistent assault

B – Medium culpability

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category A or C because:
 - Factors in both high and lesser categories are present which balance each other out; and/or
 - The offender's culpability falls between the factors as described in high and lesser culpability

C – Lesser culpability

- No weapon used
- Excessive self defence
- Impulsive/spontaneous and short-lived assault
- Mental disorder or learning disability, where linked to the commission of the offence

Harm

Category 1

- Serious physical injury or serious psychological harm and/or substantial impact upon victim

Category 2

- Harm falling between categories 1 and 3

Category 3

- Some level of physical injury or psychological harm with limited impact upon victim

Harm	Culpability		
	A	B	C
	Starting point 2 years 6 months' custody	Starting point 1 year 6 months' custody	Starting point 36 weeks' custody
Harm 1	Category range 1 year 6 months' – 4 years' custody	Category range 36 weeks' – 2 years 6 months' custody	Category range High level community order – 1 year 6 months' custody
	Starting point 1 year 6 months' custody	Starting point 36 weeks' custody	Starting point High level community order
Harm 2	Category range 36 weeks' – 2 years 6 months' custody	Category range High level community order – 1 year 6 months' custody	Category range Low level community order – 36 weeks' custody
	Starting point 36 weeks' custody	Starting point High level community order	Starting point Medium level community order
Harm 3	Category range High level community order – 1 year 6 months' custody	Category range Low level community order – 36 weeks' custody	Category range Band B fine – 26 weeks' custody



Sentencing Guidelines Council

Causing Death by Driving

Definitive Guideline

Foreword

In accordance with section 170(9) of the Criminal Justice Act (CJA) 2003, the Sentencing Guidelines Council issues this guideline as a definitive guideline.

By virtue of section 172 of the CJA 2003, every court must have regard to relevant guideline. This guideline applies to the sentencing of offenders convicted of any of the offences dealt with herein who are sentenced on or after **4 August 2008**.

This guideline applies only to the sentencing of offenders aged 18 and older. The legislative provisions relating to the sentencing of youths are different; the younger the age, the greater the difference. A separate guideline setting out general principles relating to the sentencing of youths is planned.

The Council has appreciated the work of the Sentencing Advisory Panel in preparing the advice on which this guideline is based and is grateful to those who responded to the consultation of both the Panel and Council.

The advice and this guideline are available on www.sentencing-guidelines.gov.uk or can be obtained from the Sentencing Guidelines Secretariat at 4th Floor, 8–10 Great George Street, London SW1P 3AE.

A summary of the responses to the Council's consultation also appears on the website.

Chairman of the Council
July 2008

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Introduction

1. This guideline applies to the four offences of *causing death by dangerous driving*, *causing death by driving under the influence of alcohol or drugs*, *causing death by careless driving* and *causing death by driving: unlicensed, disqualified or uninsured drivers*.

2. The Crown Prosecution Service's *Policy for Prosecuting Cases of Bad Driving* sets out the approach for prosecutors when considering the appropriate charge based on an assessment of the standard of the offender's driving. This has been taken into account when formulating this guideline. Annex A sets out the statutory definitions for dangerous, careless and inconsiderate driving together with examples of the types of driving behaviour likely to result in the charge of one offence rather than another.

3. Because the principal harm done by these offences (the death of a person) is an element of the offence, the factor that primarily determines the starting point for sentence is the culpability of the offender. Accordingly, for all offences other than *causing death by driving: unlicensed, disqualified or uninsured drivers*, the central feature should be an evaluation of the quality of the driving involved and the degree of danger that it foreseeably created. These guidelines draw a distinction between those factors of an offence that are intrinsic to the quality of driving (referred to as "determinants of seriousness") and those which, while they aggravate the offence, are not.

4. The levels of seriousness in the guidelines for those offences based on dangerous or careless driving alone have been determined by reference only to determinants of seriousness. Aggravating factors will have the effect of either increasing the starting point within the sentencing range provided or, in certain circumstances, of moving the offence up to the next sentencing range.¹ The outcome will depend on both the number of aggravating factors present and the potency of those factors. Thus, the same outcome could follow from the presence of one particularly bad aggravating factor or two or more less serious factors.

5. The determinants of seriousness likely to be relevant in relation to *causing death by careless driving under the influence* are both the degree of carelessness and the level of intoxication. The guideline sets out an approach to assessing both those aspects but giving greater weight to the degree of intoxication since Parliament has provided for a maximum of 14 years imprisonment rather than the maximum of 5 years where the death is caused by careless driving only.

6. Since there will be no allegation of bad driving, the guideline for *causing death by driving: unlicensed, disqualified or uninsured drivers* links the assessment of offender culpability to the nature of the prohibition on the offender's driving and includes a list of factors that may aggravate an offence.

7. The degree to which an aggravating factor is present (and its interaction with any other aggravating and mitigating factors) will be immensely variable and the court is best placed to judge the appropriate impact on sentence. Clear identification of those factors relating to the standard of driving as the initial determinants of offence seriousness is intended to assist the adoption of a common approach. 2.

¹ See page 8 for a description of the meaning of range, starting point etc. in the context of these guidelines.

A. Assessing seriousness

(i) Determinants of seriousness

8. There are five factors that may be regarded as determinants of offence seriousness, each of which can be demonstrated in a number of ways. Common examples of each of the determinants are set out below and key issues are discussed in the text that follows in paragraphs 10-18.

Examples of the determinants are:

- **Awareness of risk**

- (a) a prolonged, persistent and deliberate course of very bad driving

- **Effect of alcohol or drugs**

- (b) consumption of alcohol above the legal limit

- (c) consumption of alcohol at or below the legal limit where this impaired the offender's ability to drive

- (d) failure to supply a specimen for analysis

- (e) consumption of illegal drugs, where this impaired the offender's ability to drive

- (f) consumption of legal drugs or medication where this impaired the offender's ability to drive (including legal medication known to cause drowsiness) where the driver knew, or should have known, about the likelihood of impairment

- **Inappropriate speed of vehicle**

- (g) greatly excessive speed; racing; competitive driving against another vehicle

- (h) driving above the speed limit

- (i) driving at a speed that is inappropriate for the prevailing road or weather conditions

- (j) driving a PSV, HGV or other goods vehicle at a speed that is inappropriate either because of the nature of the vehicle or its load, especially when carrying passengers

- **Seriously culpable behaviour of offender**

- (k) aggressive driving (such as driving much too close to the vehicle in front, persistent inappropriate attempts to overtake, or cutting in after overtaking)

- (l) driving while using a hand-held mobile phone

- (m) driving whilst the driver's attention is avoidably distracted, for example by reading or adjusting the controls of electronic equipment such as a radio, hands-free mobile phone or satellite navigation equipment

- (n) driving when knowingly suffering from a medical or physical condition that significantly impairs the offender's driving skills, including failure to take prescribed medication

- (o) driving when knowingly deprived of adequate sleep or rest, especially where commercial concerns had a bearing on the commission of the offence

- (p) driving a poorly maintained or dangerously loaded vehicle, especially where commercial concerns had a bearing on the commission of the offence

- **Victim**

- (q) failing to have proper regard to vulnerable road users

9. Issues relating to the determinants of seriousness are considered below.

(a) Alcohol/drugs

10. For those offences where the presence of alcohol or drugs is not an element of the offence, where there is sufficient evidence of driving impairment attributable to alcohol or drugs, the consumption of alcohol or drugs prior to driving will make an offence more serious. Where the drugs were legally purchased or prescribed, the offence will only be regarded as more serious if the offender knew or should have known that the drugs were likely to impair driving ability.

11. Unless inherent in the offence or charged separately, failure to provide a specimen for analysis (or to allow a blood specimen taken without consent to be analysed) should be regarded as a determinant of offence seriousness.

12. Where it is established to the satisfaction of the court that an offender had consumed alcohol or drugs unwittingly before driving, that may be regarded as a mitigating factor. However, consideration should be given to the circumstances in which the offender decided to drive or continue to drive when driving ability was impaired.

(b) Avoidable distractions

13. A distinction has been drawn between **ordinary** avoidable distractions and those that are more significant because they divert the attention of the driver for longer periods or to a greater extent; in this guideline these are referred to as a **gross** avoidable distraction. The guideline for *causing death by dangerous driving* provides for a *gross* avoidable distraction to place the offence in a higher level of seriousness.

14. Any avoidable distraction will make an offence more serious but the degree to which an offender's driving will be impaired will vary. Where the reaction to the distraction is significant, it may be the factor that determines whether the offence is based on *dangerous* driving or on *careless* driving; in those circumstances, care must be taken to avoid "double counting".

15. Using a hand-held mobile phone when driving is, in itself, an unlawful act; the fact that an offender was avoidably distracted by using a hand-held mobile phone when a causing death by driving offence was committed will always make an offence more serious. Reading or composing text messages *over a period of time* will be a *gross* avoidable distraction and is likely to result in an offence of causing death by dangerous driving being in the highest level of seriousness.

16. Where it is proved that an offender was briefly distracted by reading a text message or adjusting a hands-free set or its controls at the time of the collision, this would be on a par with consulting a map or adjusting a radio or satellite navigation equipment, activities that would be considered an avoidable distraction.

(c) Vulnerable road users

17. Cyclists, motorbike riders, horse riders, pedestrians and those working in the road are vulnerable road users and a driver is expected to take extra care when driving near them. Driving too close to a bike or horse; allowing a vehicle to mount the pavement; driving into a cycle lane; and driving without the care needed in the vicinity of a pedestrian crossing, hospital, school or residential home, are all examples of factors that should be taken into account when determining the seriousness of

an offence. See paragraph 24 below for the approach where the actions of another person contributed to the collision.

18. The fact that the victim of a causing death by driving offence was a particularly vulnerable road user is a factor that should be taken into account when determining the seriousness of an offence.

(ii) Aggravating and mitigating factors

(a) More than one person killed

19. The seriousness of any offence included in these guidelines will generally be greater where more than one person is killed since it is inevitable that the degree of harm will be greater. In relation to the assessment of culpability, whilst there will be circumstances in which a driver could reasonably anticipate the possible death of more than one person (for example, the driver of a vehicle with passengers (whether that is a bus, taxi or private car) or a person driving badly in an area where there are many people), there will be many circumstances where the driver could not anticipate the number of people who would be killed.

20. The greater obligation on those responsible for driving other people is not an element essential to the quality of the driving and so has not been included amongst the determinants of seriousness that affect the choice of sentencing range. In practical terms, separate charges are likely to be brought in relation to each death caused. Although concurrent sentences are likely to be imposed (in recognition of the fact that the charges relate to one episode of offending behaviour), each individual sentence is likely to be higher because the offence is aggravated by the fact that more than one death has been caused.

21. Where more than one person is killed, that will aggravate the seriousness of the offence because of the increase in harm. Where the number of people killed is high and that was reasonably foreseeable, the number of deaths is likely to provide sufficient justification for moving an offence into the next highest sentencing band.

(b) Effect on offender

22. Injury to the offender may be a mitigating factor when the offender has suffered very serious injuries. In most circumstances, the weighting it is given will be dictated by the circumstances of the offence and the effect should bear a direct relationship to the extent to which the offender's driving was at fault – the greater the fault, the less the effect on mitigation; this distinction will be of particular relevance where an offence did not involve any fault in the offender's standard of driving.

23. Where one or more of the victims was in a close personal or family relationship with the offender, this may be a mitigating factor. In line with the approach where the offender is very seriously injured, the degree to which the relationship influences the sentence should be linked to offender culpability in relation to the commission of the offence; mitigation for this reason is likely to have less effect where the culpability of the driver is particularly high.

(c) Actions of others

24. Where the actions of the victim or a third party contributed to the commission of an offence, this should be acknowledged and taken into account as a mitigating factor.

(d) Offender's age/lack of driving experience

25. The Council guideline *Overarching Principles: Seriousness*² includes a generic mitigating factor “*youth or age, where it affects the responsibility of the individual defendant*”. There is a great deal of difference between recklessness or irresponsibility – which may be due to youth – and inexperience in dealing with prevailing conditions or an unexpected or unusual situation that presents itself – which may be present regardless of the age of the offender. The fact that an offender's lack of driving experience contributed to the commission of an offence should be treated as a mitigating factor; in this regard, the age of the offender is not relevant.

(iii) Personal mitigation

(a) Good driving record

26. This is not a factor that automatically should be treated as a mitigating factor, especially now that the presence of previous convictions is a statutory aggravating factor. However, any evidence to show that an offender has previously been an exemplary driver, for example having driven an ambulance, police vehicle, bus, taxi or similar vehicle conscientiously and without incident for many years, is a fact that the courts may well wish to take into account by way of personal mitigation. This is likely to have even greater effect where the driver is driving on public duty (for example, on ambulance, fire services or police duties) and was responding to an emergency.

(b) Conduct after the offence

- Giving assistance at the scene

27. There may be many reasons why an offender does not offer help to the victims at the scene – the offender may be injured, traumatised by shock, afraid of causing further injury or simply have no idea what action to take – and it would be inappropriate to assess the offence as more serious on this ground (and so increase the level of sentence). However, where an offender gave direct, positive, assistance to victim(s) at the scene of a collision, this should be regarded as personal mitigation.

- Remorse

28. Whilst it can be expected that anyone who has caused death by driving would be expected to feel remorseful, this cannot undermine its importance for sentencing purposes. Remorse is identified as personal mitigation in the Council guideline³ and the Council can see no reason for it to be treated differently for this group of offences. It is for the court to determine whether an expression of remorse is genuine; where it is, this should be taken into account as personal mitigation.

(c) Summary

29. Evidence that an offender is normally a careful and conscientious driver, giving direct, positive assistance to a victim and genuine remorse may be taken into account as personal mitigation and may justify a reduction in sentence.

² *Overarching Principles: Seriousness*, paragraph 1.25, published 16 December 2004, www.sentencing-guidelines.gov.uk

³ *ibid.*, paragraph 1.27

B. Ancillary orders

(i) Disqualification for driving

30. For each offence, disqualification is a mandatory part of the sentence (subject to the usual (very limited) exceptions), and therefore an important element of the overall punishment for the offence. In addition, an order that the disqualification continues until the offender passes an extended driving test order is compulsory⁴ for those convicted of causing death by dangerous driving or by careless driving when under the influence, and discretionary⁵ in relation to the two other offences.

31. Any disqualification is effective from the date on which it is imposed. When ordering disqualification from driving, the duration of the order should allow for the length of any custodial period in order to ensure that the disqualification has the desired impact. In principle, the minimum period of disqualification should either equate to the length of the custodial sentence imposed (in the knowledge that the offender is likely to be released having served half of that term), or the relevant statutory minimum disqualification period, whichever results in the longer period of disqualification.

(ii) Deprivation order

32. A general sentencing power exists which enables courts to deprive an offender of property used for the purposes of committing an offence.⁶ A vehicle used to commit an offence included in this guideline can be regarded as being used for the purposes of committing the offence.

⁴ Road Traffic Offenders Act 1988, s.36(1)

⁵ *ibid.*, s.36(4)

⁶ Powers of Criminal Courts (Sentencing) Act 2000, s.143

C. Sentencing ranges and starting points

1. Typically, a guideline will apply to an offence that can be committed in a variety of circumstances with different levels of seriousness. It will apply to a "*first time offender*" who has been **convicted after a trial**. Within the guidelines, a "*first time offender*" is a person who does not have a conviction which, by virtue of section 143(2) of the Criminal Justice Act 2003, must be treated as an aggravating factor.
2. As an aid to consistency of approach, the guideline describes a number of levels or types of activity which would fall within the broad definition of the offence.
3. The expected approach is for a court to identify the description that most nearly matches the particular facts of the offence for which sentence is being imposed. This will identify a **starting point** from which the sentencer can depart to reflect aggravating or mitigating factors affecting the seriousness of the offence (beyond those contained within the column describing the nature of the offence) to reach a **provisional sentence**.
4. The **sentencing range** is the bracket into which the provisional sentence will normally fall after having regard to factors which aggravate or mitigate the seriousness of the offence. The particular circumstances may, however, make it appropriate that the provisional sentence falls outside the range.
5. Where the offender has previous convictions which aggravate the seriousness of the current offence, that may take the provisional sentence beyond the range given particularly where there are significant other aggravating factors present.
6. Once the provisional sentence has been identified by reference to those factors affecting the seriousness of the offence, the court will take into account any relevant factors of personal mitigation, which may take the sentence beyond the range given.
7. Where there has been a guilty plea, any reduction attributable to that plea will be applied to the sentence at this stage. This reduction may take the sentence below the range provided.
8. A court must give its reasons for imposing a sentence of a different kind or outside the range provided in the guidelines.

The decision making process

The process set out below is intended to show that the sentencing approach for offences of causing death by driving is fluid and requires the structured exercise of discretion.

1. Identify Dangerous Offenders

Offences under s.1 and s.3A of the Road Traffic Act 1988 are specified offences for the purposes of the public protection provisions in the 2003 Act (as amended). The court must determine whether there is a significant risk of serious harm by the commission of a further specified offence. The starting points in the guidelines are a) for offenders for whom a sentence under the public protection provisions is not appropriate and b) as the basis for the setting of a minimum term within an indeterminate sentence under those provisions.

2. Identify the appropriate starting point

Identify the level or description that most nearly matches the particular facts of the offence for which sentence is being imposed.

3. Consider relevant aggravating factors, both general and those specific to the type of offence

This may result in a sentence level being identified that is higher than the suggested starting point, sometimes substantially so.

4. Consider mitigating factors and personal mitigation

There may be general or offence specific mitigating factors and matters of personal mitigation which could result in a sentence that is lower than the suggested starting point (possibly substantially so), or a sentence of a different type.

5. Reduction for guilty plea

The court will then apply any reduction for a guilty plea following the approach set out in the Council's Guideline "*Reduction in Sentence for a Guilty Plea*" (revised July 2007).

6. Consider ancillary orders

The court should consider whether ancillary orders are appropriate or necessary.

7. The totality principle

The court should review the total sentence to ensure that it is proportionate to the offending behaviour and properly balanced.

8. Reasons

When a court moves from the suggested starting points and sentencing ranges identified in the guidelines, it should explain its reasons for doing so.

D. Offence guidelines

Causing Death by Dangerous Driving Factors to take into consideration

1. The following guideline applies to a “*first-time offender*” aged 18 or over convicted after trial (see page 8 above), who has **not** been assessed as a dangerous offender requiring a sentence under ss. 224-228 Criminal Justice Act 2003 (as amended).
2. When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness⁷ as well as those set out in the adjacent table as being particularly relevant to this type of offending behaviour.

3. **Levels of seriousness**

The 3 levels are distinguished by factors related predominantly to the standard of driving; the general description of the degree of risk is complemented by examples of the type of bad driving arising. The presence of aggravating factors or combinations of a small number of determinants of seriousness will increase the starting point within the range. Where there is a larger group of determinants of seriousness and/or aggravating factors, this may justify moving the starting point to the next level.

Level 1 - The most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others. Such offences are likely to be characterised by:

- A prolonged, persistent and deliberate course of very bad driving **AND/OR**
- Consumption of substantial amounts of alcohol or drugs leading to gross impairment **AND/OR**
- A group of determinants of seriousness which in isolation or smaller number would place the offence in level 2

Level 1 is that for which the increase in maximum penalty was aimed primarily. Where an offence involves both of the determinants of seriousness identified, particularly if accompanied by aggravating factors such as multiple deaths or injuries, or a very bad driving record, this may move an offence towards the top of the sentencing range.

Level 2 - This is driving that created a *substantial* risk of danger and is likely to be characterised by:

- Greatly excessive speed, racing or competitive driving against another driver **OR**
- Gross avoidable distraction such as reading or composing text messages over a period of time **OR**
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs, failing to take prescribed medication or as a result of a known medical condition **OR**
- A group of determinants of seriousness which in isolation or smaller number would place the offence in level 3

Level 3 - This is driving that created a *significant* risk of danger and is likely to be characterised by:

- Driving above the speed limit/at a speed that is inappropriate for the prevailing conditions **OR**
- Driving when knowingly deprived of adequate sleep or rest or knowing that the vehicle has a dangerous defect or is poorly maintained or is dangerously loaded **OR**
- A brief but obvious danger arising from a seriously dangerous manoeuvre **OR**
- Driving whilst avoidably distracted **OR**
- Failing to have proper regard to vulnerable road users

The starting point and range overlap with Level 2 is to allow the breadth of discretion necessary to accommodate circumstances where there are significant aggravating factors.

4. Sentencers should take into account relevant matters of personal mitigation; see in particular guidance on **good driving record, giving assistance at the scene** and **remorse** in paragraphs 26-29 above.

⁷ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

Causing death by dangerous driving

Road Traffic Act 1988 (section 1)

THIS IS A SERIOUS OFFENCE FOR THE PURPOSES OF SECTION 224 CRIMINAL JUSTICE ACT 2003

**Maximum penalty: 14 years imprisonment
minimum disqualification of 2 years with compulsory extended re-test**

Nature of offence	Starting point	Sentencing range
Level 1 The most serious offences encompassing driving that involved a deliberate decision to ignore (or a flagrant disregard for) the rules of the road and an apparent disregard for the great danger being caused to others	8 years custody	7 - 14 years custody
Level 2 Driving that created a <i>substantial</i> risk of danger	5 years custody	4 - 7 years custody
Level 3 Driving that created a <i>significant</i> risk of danger <i>[Where the driving is markedly less culpable than for this level, reference should be made to the starting point and range for the most serious level of causing death by careless driving]</i>	3 years custody	2 - 5 years custody

Additional aggravating factors	Additional mitigating factors
<ol style="list-style-type: none"> 1. Previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol or drugs before driving 2. More than one person killed as a result of the offence 3. Serious injury to one or more victims, in addition to the death(s) 4. Disregard of warnings 5. Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle 6. The offender's irresponsible behaviour such as failing to stop, falsely claiming that one of the victims was responsible for the collision, or trying to throw the victim off the car by swerving in order to escape 7. Driving off in an attempt to avoid detection or apprehension 	<ol style="list-style-type: none"> 1. Alcohol or drugs consumed unwittingly 2. Offender was seriously injured in the collision 3. The victim was a close friend or relative 4. Actions of the victim or a third party contributed significantly to the likelihood of a collision occurring and/or death resulting 5. The offender's lack of driving experience contributed to the commission of the offence 6. The driving was in response to a proven and genuine emergency falling short of a defence

Causing Death by Careless Driving when under the influence of Drink or Drugs or having failed without reasonable excuse either to provide a specimen for analysis or to permit the analysis of a blood sample

Factors to take into consideration

1. The following guideline applies to a “*first-time offender*” aged 18 or over convicted after trial (see page 8 above), who has **not** been assessed as a dangerous offender requiring a sentence under ss. 224-228 Criminal Justice Act 2003 (as amended).
2. When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness⁸ as well as those set out on the facing page as being particularly relevant to this type of offending behaviour.
3. This offence can be committed through:
 - (i) being unfit to drive through drink or drugs;
 - (ii) having consumed so much alcohol as to be over the prescribed limit;
 - (iii) failing without reasonable excuse to provide a specimen for analysis within the timescale allowed; or
 - (iv) failing without reasonable excuse to permit the analysis of a blood sample taken when incapable of giving consent.
5. In comparison with *causing death by dangerous driving*, the level of culpability in the actual manner of driving is lower but that culpability is increased in all cases by the fact that the offender has driven after consuming drugs or an excessive amount of alcohol. Accordingly, there is considerable parity in the levels of seriousness with the deliberate decision to drive after consuming alcohol or drugs aggravating the *careless* standard of driving onto a par with *dangerous* driving.
6. The fact that the offender was under the influence of drink or drugs is an inherent element of this offence. For discussion on the significance of driving after having consumed drink or drugs, see paragraphs 10-12 above.
7. The guideline is based both on the level of alcohol or drug consumption and on the degree of carelessness.
8. The increase in sentence is more marked where there is an increase in the level of intoxication than where there is an increase in the degree of carelessness reflecting the 14 year imprisonment maximum for this offence compared with a 5 year maximum for causing death by careless or inconsiderate driving alone.
9. A refusal to supply a specimen for analysis may be a calculated step by an offender to avoid prosecution for driving when having consumed in excess of the prescribed amount of alcohol, with a view to seeking to persuade the court that the amount consumed was relatively small. A court is entitled to draw adverse inferences from a refusal to supply a specimen without reasonable excuse and should treat with caution any attempt to persuade the court that only a limited amount of alcohol had been consumed.⁹ The three levels of seriousness where the offence has been committed in this way derive from the classification in the Magistrates' Court Sentencing Guidelines.
10. Sentencers should take into account relevant matters of personal mitigation; see in particular guidance on **good driving record, giving assistance at the scene and remorse** in paragraphs 26-29 above. 12.

⁸ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

⁹ *Attorney-General's Reference No. 21 of 2000* [2001] 1 Cr App R (S) 173

Causing death by careless driving when under the influence of drink or drugs or having failed either to provide a specimen for analysis or to permit analysis of a blood sample

Road Traffic Act 1988 (section 3A)

THIS IS A SERIOUS OFFENCE FOR THE PURPOSES OF SECTION 224 CRIMINAL JUSTICE ACT 2003

Maximum penalty: 14 years imprisonment
 minimum disqualification of 2 years with compulsory extended re-test

The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	Careless / inconsiderate driving arising from momentary inattention with no aggravating factors	Other cases of careless / inconsiderate driving	Careless / inconsiderate driving falling not far short of dangerousness
71µ or above of alcohol / high quantity of drugs OR deliberate non-provision of specimen where evidence of serious impairment	Starting point: 6 years custody Sentencing range: 5-10 years custody	Starting point: 7 years custody Sentencing range: 6-12 years custody	Starting point: 8 years custody Sentencing range: 7-14 years custody
51- 70 µg of alcohol / moderate quantity of drugs OR deliberate non-provision of specimen	Starting point: 4 years custody Sentencing range: 3-7 years custody	Starting point: 5 years custody Sentencing range: 4-8 years custody	Starting point: 6 years custody Sentencing range: 5-9 years custody
35-50 µg of alcohol / minimum quantity of drugs OR test refused because of honestly held but unreasonable belief	Starting point: 18 months custody Sentencing range: 26 weeks-4 years custody	Starting point: 3 years custody Sentencing range: 2-5 years custody	Starting point: 4 years custody Sentencing range: 3-6 years custody
Additional aggravating factors		Additional mitigating factors	
<ol style="list-style-type: none"> 1. Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle 2. Previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol before driving 3. More than one person was killed as a result of the offence 4. Serious injury to one or more persons in addition to the death(s) 5. Irresponsible behaviour such as failing to stop or falsely claiming that one of the victims was responsible for the collision 		<ol style="list-style-type: none"> 1. Alcohol or drugs consumed unwittingly 2. Offender was seriously injured in the collision 3. The victim was a close friend or relative 4. The actions of the victim or a third party contributed significantly to the likelihood of a collision occurring and/or death resulting 5. The driving was in response to a proven and genuine emergency falling short of a defence 	

Causing death by careless or inconsiderate driving

Factors to take into consideration

1. The following guideline applies to a “*first-time offender*” aged 18 or over convicted after trial (see page 8 above).
2. When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness¹⁰ as well as those set out in the table below as being particularly relevant to this type of offending behaviour.
3. The maximum penalty on indictment is 5 years imprisonment. The offence is triable either way and, in a magistrates’ court, statute provides that the maximum sentence is 12 months imprisonment; this will be revised to 6 months imprisonment until such time as the statutory provisions increasing the sentencing powers of a magistrates’ court are implemented.¹¹
4. Disqualification of the offender from driving and endorsement of the offender’s driving licence are mandatory, and the offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification. There is a discretionary power¹² to order an extended driving test where a person is convicted of this offence.
5. Since the maximum sentence has been set at 5 years imprisonment, the sentence ranges are generally lower for this offence than for the offences of *causing death by dangerous driving* or *causing death by careless driving under the influence*, for which the maximum sentence is 14 years imprisonment. However, it is unavoidable that some cases will be on the borderline between *dangerous* and *careless* driving, or may involve a number of factors that significantly increase the seriousness of an offence. As a result, the guideline for this offence identifies three levels of seriousness, the range for the highest of which overlaps with ranges for the lowest level of seriousness for *causing death by dangerous driving*.
6. The three levels of seriousness are defined by the degree of carelessness involved in the standard of driving. The most serious level for this offence is where the offender’s driving fell *not that far short of dangerous*. The least serious group of offences relates to those cases where the level of culpability is low – for example in a case involving an offender who misjudges the speed of another vehicle, or turns without seeing an oncoming vehicle because of restricted visibility. Other cases will fall into the intermediate level.
7. The starting point for the most serious offence of *causing death by careless driving* is lower than that for the least serious offence of *causing death by dangerous driving* in recognition of the different standards of driving behaviour. However, the range still leaves scope, within the 5 year maximum, to impose longer sentences where the case is particularly serious.

¹⁰ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

¹¹ Criminal Justice Act 2003, ss.154(1) and 282; Road Safety Act 2006, s.61(5)

¹² Road Traffic Offenders Act 1988, s.36(4)

8. Where the level of carelessness is low and there are no aggravating factors, even the fact that death was caused is not sufficient to justify a prison sentence.
9. A fine is unlikely to be an appropriate sentence for this offence; where a non-custodial sentence is considered appropriate, this should be a community order. The nature of the requirements will be determined by the purpose¹³ identified by the court as of primary importance. Requirements most likely to be relevant include unpaid work requirement, activity requirement, programme requirement and curfew requirement.
10. Sentencers should take into account relevant matters of personal mitigation; see in particular guidance on **good driving record, giving assistance at the scene and remorse** in paragraphs 26-29 above.

Causing death by careless or inconsiderate driving

Road Traffic Act 1988 (section 2B)

Maximum penalty: 5 years imprisonment
minimum disqualification of 12 months, discretionary re-test

Nature of offence	Starting Point	Sentencing range
Careless or inconsiderate driving falling not far short of dangerous driving	15 months custody	36 weeks - 3 years custody
Other cases of careless or inconsiderate driving	36 weeks custody	Community order (HIGH) - 2 years custody
Careless or inconsiderate driving arising from momentary inattention with no aggravating factors	Community order (MEDIUM)	Community order (LOW) – Community order (HIGH)

Additional aggravating factors	Additional mitigating factors
<ol style="list-style-type: none"> 1. Other offences committed at the same time, such as driving other than in accordance with the terms of a valid licence; driving while disqualified; driving without insurance; taking a vehicle without consent; driving a stolen vehicle 2. Previous convictions for motoring offences, particularly offences that involve bad driving 3. More than one person was killed as a result of the offence 4. Serious injury to one or more persons in addition to the death(s) 5. Irresponsible behaviour, such as failing to stop or falsely claiming that one of the victims was responsible for the collision 	<ol style="list-style-type: none"> 1. Offender seriously injured in the collision 2. The victim was a close friend or relative 3. The actions of the victim or a third party contributed to the commission of the offence 4. The offender's lack of driving experience contributed significantly to the likelihood of a collision occurring and/or death resulting 5. The driving was in response to a proven and genuine emergency falling short of a defence

¹³ Criminal Justice Act 2003, s.142(1)

Causing death by driving: unlicensed, disqualified or uninsured drivers

Factors to take into consideration

1. The following guideline applies to a “*first-time offender*” aged 18 or over convicted after trial (see page 8 above). An offender convicted of causing death by driving whilst disqualified will always have at least one relevant previous conviction for the offence that resulted in the disqualification. The starting point and range take this into account; any other previous convictions should be considered in the usual way.
2. When assessing the seriousness of any offence, the court must always refer to the full list of aggravating and mitigating factors in the Council guideline on Seriousness¹⁴ as well as those set out in the table below as being particularly relevant to this type of offending behaviour.
3. This offence has a maximum penalty of 2 years imprisonment and is triable either way. In a magistrates’ court, statute provides that the maximum sentence is 12 months imprisonment; this will be revised to 6 months imprisonment until such time as the statutory provisions increasing the sentencing powers of a magistrates’ court are implemented.¹⁵
4. Disqualification of the offender from driving and endorsement of the offender’s driving licence are mandatory, and the offence carries between 3 and 11 penalty points when the court finds special reasons for not imposing disqualification. There is a discretionary power¹⁶ to order an extended driving test where a person is convicted of this offence.
5. Culpability arises from the offender driving a vehicle on a road or other public place when, by law, not allowed to do so; the offence does not require proof of any fault in the standard of driving.
6. Because of the significantly lower maximum penalty, the sentencing ranges are considerably lower than for the other three offences covered in this guideline; many cases may be sentenced in a magistrates’ court, particularly where there is an early guilty plea.
7. A fine is unlikely to be an appropriate sentence for this offence; where a non-custodial sentence is considered appropriate, this should be a community order.
8. Since driving whilst disqualified is more culpable than driving whilst unlicensed or uninsured, a higher starting point is proposed when the offender was disqualified from driving at the time of the offence.
9. Being uninsured, unlicensed or disqualified are the only determinants of seriousness for this offence, as there are no factors relating to the standard of driving. The list of aggravating factors identified is slightly different as the emphasis is on the decision to drive by an offender who is not permitted by law to do so.

16.

¹⁴ *Overarching Principles: Seriousness*, published 16 December 2004, www.sentencing-guidelines.gov.uk

¹⁵ Criminal Justice Act 2003, ss.154(1) and 282; Road Safety Act 2006, s.61(5)

¹⁶ Road Traffic Offenders Act 1988, s.36(4)

10. In some cases, the extreme circumstances that led an offender to drive whilst unlicensed, disqualified or uninsured may result in a successful defence of 'duress of circumstances.'¹⁷ In less extreme circumstances, where the *decision to drive was brought about by a genuine and proven emergency*, that may mitigate offence seriousness and so it is included as an additional mitigating factor.
11. A driver may hold a reasonable belief in relation to the validity of insurance (for example having just missed a renewal date or relied on a third party to make an application) and also the validity of a licence (for example incorrectly believing that a licence covered a particular category of vehicle). In light of this, an additional mitigating factor covers those situations where an offender genuinely believed that there was valid insurance or a valid licence.
12. Sentencers should take into account relevant matters of personal mitigation; see in particular guidance on **good driving record, giving assistance at the scene and remorse** in paragraphs 26-29 above.

Causing death by driving: unlicensed, disqualified or uninsured drivers

Road Traffic Act 1988 (section 3ZB)

Maximum penalty: 2 years imprisonment

minimum disqualification of 12 months, discretionary re-test

Nature of offence	Starting point	Sentencing range
The offender was disqualified from driving OR The offender was unlicensed or uninsured plus 2 or more aggravating factors from the list below	12 months custody	36 weeks - 2 years custody
The offender was unlicensed or uninsured plus at least 1 aggravating factor from the list below	26 weeks custody	Community order (HIGH) - 36 weeks custody
The offender was unlicensed or uninsured – no aggravating factors	Community order (MEDIUM)	Community order (LOW) – Community order (HIGH)

Additional aggravating factors	Additional mitigating factors
<ol style="list-style-type: none"> 1. Previous convictions for motoring offences, whether involving bad driving or involving an offence of the same kind that forms part of the present conviction (i.e. unlicensed, disqualified or uninsured driving) 2. More than one person was killed as a result of the offence 3. Serious injury to one or more persons in addition to the death(s) 4. Irresponsible behaviour such as failing to stop or falsely claiming that someone else was driving 	<ol style="list-style-type: none"> 1. The decision to drive was brought about by a proven and genuine emergency falling short of a defence 2. The offender genuinely believed that he or she was insured or licensed to drive 3. The offender was seriously injured as a result of the collision 4. The victim was a close friend or relative

¹⁷ In *DPP v Mullally* [2006] EWHC 3448 the Divisional Court held that the defence of necessity must be strictly controlled and that it must be proved that the actions of the defendant were reasonable in the given circumstances. See also *Hasan* [2005] UKHL 22

Annex A: DANGEROUS AND CARELESS DRIVING

Statutory definitions and examples

Dangerous driving

A person is to be regarded as driving dangerously if the standard of driving falls *far below* what would be expected of a competent and careful driver and it would be obvious to a competent and careful driver that driving in that way would be dangerous.

Examples of the types of driving behaviour likely to result in this offence being charged include:

- Aggressive driving (such as sudden lane changes or cutting into a line of vehicles) **or** Racing or competitive driving **or** Speed that is highly inappropriate for the prevailing road or traffic conditions
- Disregard of traffic lights and other road signs which, on an objective analysis, would appear to be deliberate
- Driving a vehicle knowing it has a dangerous defect or with a load which presents a danger to other road users
- Using a hand-held mobile phone or other hand-held electronic equipment when the driver was avoidably and dangerously distracted by that use
- Driving when too tired to stay awake or where the driver is suffering from impaired ability such as having an arm or leg in plaster, or impaired eyesight

Careless driving

Careless driving is driving that “falls *below* what would be expected of a competent and careful driver” and a person is to be regarded as driving without reasonable consideration for other persons “only if those persons are inconvenienced by his driving”.¹⁸

Examples of the types of driving behaviour likely to result in an offence of *causing death by careless or inconsiderate driving* being charged are:

(i) Careless Driving

- overtaking on the inside or driving inappropriately close to another vehicle
- inadvertent mistakes such as driving through a red light or emerging from a side road into the path of another vehicle
- short distractions such as tuning a car radio

(ii) Inconsiderate Driving

- flashing of lights to force other drivers in front to give way
- misuse of any lane to avoid queuing or gain some other advantage over other drivers
- driving that inconveniences other road users or causes unnecessary hazards such as unnecessarily remaining in an overtaking lane, unnecessarily slow driving or braking without good cause, driving with un-dipped headlights which dazzle oncoming drivers or driving through a puddle causing pedestrians to be splashed

Depending on the circumstances, it is possible that some of the examples listed above could be classified as *dangerous* driving (see the revised CPS guidance). However, experience shows that these types of behaviour predominantly result in prosecution for *careless* driving.

A typical piece of *careless* driving may be that it is a momentary negligent error of judgement or a single negligent manoeuvre, so long as neither falls so far below the standard of the competent and careful driver as to amount to *dangerous* driving.

¹⁸ 1988 Act, s.3ZA as inserted by the Road Safety Act 2006

Perverting the Course of Justice

Common law

Triable only on indictment

Maximum: Life imprisonment

Offence range: x – xx years' custody

STEP ONE

Determining the offence category

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

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Conduct over a sustained period of time• Extremely sophisticated nature of conduct• Underlying offence extremely serious• Offence committed in the context of other serious criminal activity
B- Medium culpability	<ul style="list-style-type: none">• Conduct of more than a brief duration• Conduct was somewhat sophisticated• Underlying offence reasonably serious• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Conduct was of a brief duration• Unsophisticated nature of conduct• Underlying offence was not serious• Involved through coercion, intimidation or exploitation• Offender's responsibility substantially reduced by mental disorder or learning disability

HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none">• Serious consequences for an innocent person(s) as a result of the offence (for example time spent in custody/arrest)• Serious distress caused to innocent party (for example loss of reputation)• High level of financial costs (police/prosecution/court) incurred as a result of the offence• Conduct succeeded in perverting the course of justice
Category 2	<ul style="list-style-type: none">• Suspicion cast upon an innocent person as a result of the offence• Some costs incurred as a result of the offence

	<ul style="list-style-type: none">• Conduct partially successful in perverting the course of justice
Category 3	<ul style="list-style-type: none">• Conduct did not succeed in perverting the course of justice• Limited effects of the offence on victim/costs incurred

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 4 years' custody Category Range 2 - 6 years' custody	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 6 months - 2 years' custody
Category 2	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 6 months - 2 years' custody	Starting Point 6 months' custody Category Range High level community order - 1 years' custody
Category 3	Starting Point 1 years' custody Category Range 6 months -2 years' custody	Starting Point 6 months' custody Category Range High level community order - 1 years' custody	Starting Point High level community order Category Range Low level community order - 6 months custody

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

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Offence committed in a domestic context
- Commission of offence whilst under the influence of alcohol or drugs
- Leading role in group

- Evidence concealed/destroyed
- Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder, learning disability (where not taken into account at step one)
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

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 SIX

Compensation and ancillary orders

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

STEP SEVEN

Reasons

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

STEP EIGHT

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 52 of the Sentencing Code](#)

Witness Intimidation

Criminal Justice and Public Order Act 1994, s.51(1) and s.51(2)

Triable either way

Maximum when tried summarily: 6 months or level 5 fine

Maximum when tried on indictment: 5 years

Offence range: x – xx years' custody

STEP ONE

Determining the offence category

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

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Threats of violence to witnesses and/or their families; deliberately seeking out witnesses• Breach of bail conditions• Sustained period of conduct• Offender involves others in the conduct• Offence committed in the context of other serious criminal activity
B- Medium culpability	<ul style="list-style-type: none">• Non-violent conduct amounting to a threat (for example staring at, approaching or following witnesses)• Attempts to alter or stop evidence• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Offence limited in scope and duration• Involved through coercion, intimidation or exploitation• Offender's responsibility substantially reduced by mental disorder or learning disability
HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none">• Considerable detrimental impact on administration of justice• Considerable distress caused to victim• Contact made at or in vicinity of victim's home
Category 2	<ul style="list-style-type: none">• Some detrimental impact on administration of justice• Some distress caused to the victim
Category 3	<ul style="list-style-type: none">• Limited effect of the offence

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 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 6 months-2 years' custody	Starting Point 6 months' custody Category Range High level community order - 1 years' custody
Category 2	Starting Point 1 years' custody Category Range 6 months -2 years' custody	Starting Point 6 months' custody Category Range High level community order - 1 years' custody	Starting Point High level community order Category Range Medium level community order - 6 months' custody
Category 3	Starting Point 6 months' custody Category Range High level community order - 1 years' custody	Starting Point High level community order Category Range Medium level community order – 6 months' custody	Starting Point Medium level community order Category Range Low level community order – High level community order

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

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Offence committed in a domestic context
- Commission of offence whilst under the influence of alcohol or drugs

- Leading role in group
- Evidence concealed/destroyed
- Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
 - Remorse
 - Admissions to police in interview
 - Ready co-operation with the authorities
 - Good character and/or exemplary conduct
 - The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
 - Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
 - Mental disorder, learning disability (where not taken into account at step one)
 - Age and/or lack of maturity
 - Sole or primary carer for dependent relatives
-

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

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 SIX

Compensation and ancillary orders

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

STEP SEVEN

Reasons

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

STEP EIGHT

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 52 of the Sentencing Code](#)

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Annex C: Demographic data for perverting the course of justice and witness intimidation offences, 2020.

Perverting the course of justice

Number and proportion of adult offenders sentenced for perverting the course of justice, by sex, 2020

Sex	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with²	
Female	2	1	4	60	33	7	107
Male	0	0	11	111	173	2	297

Sex	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with²	
Female	2%	1%	4%	56%	31%	7%	100%
Male	0%	0%	4%	37%	58%	1%	100%

Number and proportion of adult offenders sentenced for perverting the course of justice, by age group, 2020

Age group	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with²	
18 to 21	0	0	1	8	13	1	23
22 to 29	2	0	3	50	78	5	138
30 to 39	0	0	2	43	68	1	114
40 to 49	0	1	4	40	28	1	74
50 to 59	0	0	3	26	15	1	45
60 and over	0	0	2	4	4	0	10

Age group	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
18 to 21	0%	0%	4%	35%	57%	4%	100%
22 to 29	1%	0%	2%	36%	57%	4%	100%
30 to 39	0%	0%	2%	38%	60%	1%	100%
40 to 49	0%	1%	5%	54%	38%	1%	100%
50 to 59	0%	0%	7%	58%	33%	2%	100%
60 and over	0%	0%	20%	40%	40%	0%	100%

Number and proportion of adult offenders sentenced for perverting the course of justice, by age group, 2020

Ethnicity	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Asian	0	0	3	14	14	0	31
Black	0	0	0	8	16	1	25
Mixed	0	0	0	4	9	1	14
Other	0	1	1	0	2	0	4
White	1	0	11	81	111	5	209
Not recorded/not known	1	0	0	64	54	2	121

Ethnicity	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Asian	0%	0%	10%	45%	45%	0%	100%
Black	0%	0%	0%	32%	64%	4%	100%
Mixed	0%	0%	0%	29%	64%	7%	100%
Other	0%	25%	25%	0%	50%	0%	100%
White	0%	0%	5%	39%	53%	2%	100%
Not recorded/not known	1%	0%	0%	53%	45%	2%	100%

Intimidating a witness (section 51(1) and 51(2) combined)

Number and proportion of adult offenders sentenced for intimidating a witness, by sex, 2020

Sex	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Female	0	0	5	4	6	1	16
Male	0	1	8	42	103	4	158
Not recorded/not known	0	0	0	0	1	0	1

Sex	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Female	0%	0%	31%	25%	38%	6%	100%
Male	0%	1%	5%	27%	65%	3%	100%
Not recorded/not known	0%	0%	0%	0%	100%	0%	100%

Number and proportion of adult offenders sentenced for intimidating a witness, by age group, 2020

Age group	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
18 to 21	0	1	4	8	15	0	28
22 to 29	0	0	3	11	28	3	45
30 to 39	0	0	5	17	44	1	67
40 to 49	0	0	1	5	12	0	18
50 to 59	0	0	0	4	7	1	12
60 and over	0	0	0	1	4	0	5

Age group	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
18 to 21	0%	4%	14%	29%	54%	0%	100%
22 to 29	0%	0%	7%	24%	62%	7%	100%
30 to 39	0%	0%	7%	25%	66%	1%	100%
40 to 49	0%	0%	6%	28%	67%	0%	100%
50 to 59	0%	0%	0%	33%	58%	8%	100%
60 and over	0%	0%	0%	20%	80%	0%	100%

Number and proportion of adult offenders sentenced for intimidating a witness, by ethnicity, 2020

Ethnicity	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Asian	0	0	0	0	6	0	6
Black	0	0	1	1	3	0	5
Mixed	0	0	1	1	0	0	2
Other	0	0	0	0	0	0	0
White	0	1	9	37	77	4	128
Not recorded/not known	0	0	2	7	24	1	34

Ethnicity	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Asian	0%	0%	0%	0%	100%	0%	100%
Black	0%	0%	20%	20%	60%	0%	100%
Mixed	0%	0%	50%	50%	0%	0%	100%
Other	-	-	-	-	-	-	-
White	0%	1%	7%	29%	60%	3%	100%
Not recorded/not known	0%	0%	6%	21%	71%	3%	100%

Source: Court Proceedings Database, Ministry of Justice

- = No proportions have been calculated as no offenders were sentenced.

Notes:

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

- 2) 2) The category 'Otherwise dealt with' includes victim surcharge, restraining order and otherwise dealt with on conviction.
- 3) 3) Ethnicity is the self-identified ethnicity as defined by the individual and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Firearms – Importation

Improper importation of goods

Customs and Excise Management Act 1979 (section 50(3), (4) and (5A)(a))

Fraudulent evasion of prohibition / restriction

Customs and Excise Management Act 1979 (section 170(1)(b), (2), (3) and (4A)(a))

Triable either way

Maximum: 7 years unless committed in Great Britain in connection with a prohibition or restriction on the importation or exportation of any weapon or ammunition that is of a kind mentioned in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or (1A)(a) of the Firearms Act 1968 in which case the maximum is life imprisonment

Offence range: Fine – 28 years' custody

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

Step 1 – Determining the offence category

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

Culpability – Type of weapon

Use the table below to identify an initial culpability category based on the **type of weapon** only. This assessment focuses on the nature of the weapon itself only, not whether the weapon was loaded or in working order.

Courts should take care to ensure the categorisation is appropriate for the specific weapon. Where the weapon or ammunition does not fall squarely in one category, the court may need to adjust the starting point in step 2.

References to weapon below include a component part of such a weapon.

Type 1

Weapon that is designed to be capable of killing two or more people at the same time or in rapid succession

- This would **normally** include a weapon prohibited under the following sections of the Firearms Act 1968:
 - section 5(1)(a)
 - section 5(1)(ab)
 - section 5(1)(aba)
 - section 5(1)(ac)
 - section 5(1)(ad)
 - section 5(1)(ae)
 - section 5(1A)(c)

Type 2

All other weapons falling between Type 1 and Type 3

- This would **normally** include a weapon requiring certification or prohibited under the following sections of the Firearms Act 1968:
 - section 1
 - section 5(1)(af)

Ammunition (where not at Type 3)

- This would **normally** include ammunition requiring certification or prohibited under the following sections of the Firearms Act 1968:
 - section 1
 - section 5(1)(c)
 - section 5(1A)(b) and (d)-(g)

Type 3

Weapon that is not designed to be lethal

- This would **normally** include:
 - a weapon under section 5(1)(b)
 - a stun gun under section 5(1A)(a)

Very small quantity of ammunition

Culpability – other culpability factors

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

High culpability:

- Leading role where offending is part of a group activity
- Significant planning, including but not limited to significant steps to evade detection
- Abuse of position of trust or responsibility, for example registered firearms dealer, customs official
- Expectation of substantial financial or other advantage
- Involves others through coercion, intimidation or exploitation

Medium culpability:

- Significant role where offending is part of a group activity
- Some degree of planning, including but not limited to some steps to evade detection
- Expectation of significant financial or other advantage
- Other cases falling between higher and lower culpability because:
 - Factors are present in higher and lower which balance each other out and/or
 - The offender's culpability falls between the factors as described in higher and lower

Lower culpability:

- Lesser role where offending is part of a group activity, including but not limited to performing a limited function under direction
- Involved through coercion, intimidation or exploitation
- Little or no planning
- Expectation of limited, if any, financial or other advantage

	Type of weapon		
	1	2	3
Other culpability factors			
High	Culpability category A	Culpability category B	Culpability category C
Medium	Culpability category B	Culpability category C	Culpability category C
Lower	Culpability category C	Culpability category D	Culpability category D

Harm

Harm is assessed by reference to the **scale** and **nature of the importation** regardless of the offender's role and regardless of whether the importation was intercepted.

Category 1

- Large-scale commercial enterprise – indicators may include:
 - Large number of firearms/ ammunition involved
 - Operation over significant time period
 - Close connection to organised criminal group(s)

Category 2

- Medium-scale enterprise and/or some degree of sophistication, including cases falling between category 1 and category 3 because:
 - Factors in both 1 and 3 are present which balance each other out; and/or
 - The harm falls between the factors as described in 1 and 3

Category 3

- Smaller-scale and/or unsophisticated enterprise – indicators may include:
 - Limited number of firearms/ ammunition involved
 - Minimal/no connection to organised criminal group(s)

Step 2 – Starting point and category range

Having determined the category at step 1, 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.

Table 1 should be used if the offence is subject to a maximum life sentence
Table 2 should be used if the offence is subject to a maximum 7 year sentence

TABLE 1: Offences subject to the statutory maximum of a life sentence (offence relates to weapon or ammunition that is of a kind mentioned in Section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af), (c), section 5(1A)(a) Firearms Act 1968)

Harm	Culpability			
	A	B	C	D
Cat 1	Starting point 20 years' custody Category range 16 – 28 years' custody	Starting point 14 years' custody Category range 10 – 17 years' custody	Starting point 10 years' custody Category range 8 – 12 years' custody	Starting point 6 years' custody Category range 4 – 8 years' custody
Cat 2	Starting point 14 years' custody Category range 10 – 17 years' custody	Starting point 10 years' custody Category range 8 – 12 years' custody	Starting point 6 years' custody Category range 4 – 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody
Cat 3	Starting point 10 years' custody Category range 8 – 12 years' custody	Starting point 5 years' custody Category range 3 – 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 2 years' custody Category range 1 – 3 years' custody

TABLE 2: Offences subject to the statutory maximum sentence of 7 years

Harm	Culpability		
	A / B	C	D
Category 1	Starting point 5 years' custody Category range 4 – 7 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 2 years' custody Category range 1 – 3 years' custody
Category 2	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 2 years' custody Category range 1 – 3 years' custody	Starting point 1 year's custody Category range High level community order – 2 years' custody
Category 3	Starting point 2 years' custody Category range 1 – 3 years' custody	Starting point 1 year's custody Category range High level community order – 2 years' custody	Starting point Low level community order Category range Band A fine – High level community order

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

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Firearm under section 5(1)(a) (automatic weapon)
- Compatible ammunition and/or silencer(s) imported with firearm (See step 6 on totality when sentencing for more than one offence)
- Others put at risk of harm by method of importation
- Offender intends firearm/ammunition to be used or is reckless as to whether it would be used (where not taken into account at step 1)
- Use of business as a cover
- Attempts to dispose of the firearm or other evidence
- Commission of offence whilst under the influence of alcohol or drugs
- Offender prohibited from possessing weapon or ammunition because of previous conviction (See step six on totality when sentencing for more than one offence)
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Good character and/or exemplary conduct
- Firearm incomplete or incapable of being discharged (including stun gun that is not charged and not held with a functioning charger)
- Very small scale importation **and** very low risk of harm to others
- Genuine belief that firearm/ammunition will not be used for criminal purpose
- No knowledge or suspicion that importation was unlawful
- Offender co-operated with investigation and/or made early admissions
- Remorse
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

Step 3 – 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 4 – Reduction for guilty pleas

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

Step 5 – Totality principle

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

Step 6 – Ancillary orders

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

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

Forfeiture of firearms

Where the offender is convicted of an offence contrary to section 170 of the Customs and Excise Management Act 1979 the court may consider making an order for forfeiture under section 170(6).

For any offence, the court may consider making an order for deprivation under [section 153 of the Sentencing Code](#) of any property used in the commission of the offence.

Serious Crime Prevention Order

Where the offender is convicted of an offence contrary to section 170 Customs and Excise Management Act 1979, the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

Step 7 – Reasons

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

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

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