

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

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

**Effective from: 01 January 2019**

Triable either way

Maximum: 10 years' custody

Offence range: Community order – 8 years' custody

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.

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.

## Applicability

### 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

### 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**

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

### **Psychological, developmental or emotional harm**

A finding that the psychological, developmental or emotional harm is **serious** may be based on a clinical diagnosis but the court may make such a finding based on other evidence from or on behalf of the victim that serious psychological, developmental or emotional harm exists. It is

important to be clear that the absence of such a finding does **not** imply that the psychological, developmental or emotional harm suffered by the victim

### 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

## 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.

**Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.**

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

	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order
<b>Category 2</b>	<b>Category range</b> 2 – 6 years' custody	<b>Category range</b> High level community order – 2 years 6 months' custody	<b>Category range</b> Medium level community order – 1 year's custody
	<b>Starting point</b> 1 year's custody	<b>Starting point</b> High level community order	<b>Starting point</b> Medium level community order
<b>Category 3</b>	<b>Category range</b> High level community order – 2 years 6 months' custody	<b>Category range</b> Medium level community order – 1 year's custody	<b>Category range</b> Low level community order – 6 months' custody

## Community orders

## Custodial sentences

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

### Other aggravating factors

- Failure to seek medical help (where not taken into account at step one)
- Commission of offence whilst under the influence of alcohol or drugs
- Deliberate concealment and/or covering up of the offence
- Blame wrongly placed on others
- Failure to respond to interventions or warnings about behaviour
- Threats to prevent reporting of the offence
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration
- Offence committed in the presence of another child

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Determination and demonstration of steps having been taken to address addiction or offending behaviour, including co-operation with agencies working for the welfare of the victim
- Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)
- Good character and/or exemplary conduct
  - (where previous good character/exemplary conduct has been used to facilitate or conceal the offence, this should not normally constitute mitigation and such conduct may constitute aggravation)
- Serious medical condition requiring urgent, intensive or long-term treatment
- Mental disorder, learning disability
  - or
  - lack of maturity
  - (where not taken into account at step one)
- Co-operation with the investigation

## 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 – Parental responsibilities of sole or primary carers

In the majority of child cruelty cases the offender will have parental responsibility for the victim.

When considering whether to impose custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children in the offender's care). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lower culpability cases or where the offender has otherwise been a loving and capable parent/carer.

Where custody is unavoidable consideration of the impact on the offender's children may be relevant to the length of the sentence imposed. For more serious offences where a substantial period of custody is appropriate, this consideration will carry less weight.

## Step 6 – 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 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 – Magistrates' Court](#)

- [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](#).

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# 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

**Effective from: 01 January 2019**

## Causing or allowing a child to suffer serious physical harm

Indictable only

Maximum: 10 years' custody

Offence range: Community order – 9 years' custody

## Causing or allowing a child to die

Indictable only Maximum: 14 years' custody

Offence range: 1 year's custody – 14 years' custody

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

**This guideline applies only when the victim of the offence is aged 15 or under.**

[User guide for this offence](#)

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.

### Applicability

## 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**

### **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

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

**Psychological, developmental or emotional harm** A finding that the psychological, developmental or emotional harm is **serious** may be based on a clinical diagnosis but the court may make such a finding based on other evidence from or on behalf of the victim that serious psychological, developmental or emotional harm exists. It is important to be clear that the absence of such a finding does **not** imply that the psychological/developmental harm suffered by the victim is minor or trivial.

### 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

## 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.

**Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.**

Harm	Culpability		
	A	B	C
	<b>Starting point</b> 9 years' custody	<b>Starting point</b> 5 years' custody	<b>Starting point</b> 2 years' custody

<b>Category 1</b>	<b>Category range</b> 7 – 14 years' custody	<b>Category range</b> 3 – 8 years' custody	<b>Category range 1 – 4 years' custody</b>
<b>Category 2</b>	<b>Starting point</b> 7 years' custody	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year 6 months' custody
	<b>Category range</b> 5 – 9 years' custody	<b>Category range</b> 1 year 6 months – 6 years' custody	<b>Category range 6 months – 3 years' custody</b>
<b>Category 3</b>	<b>Starting point</b> 3 years' custody	<b>Starting point</b> 1 year 6 months' custody	<b>Starting point</b> 9 months' custody
	<b>Category range</b> 1 year 6 months – 6 years' custody	<b>Category range</b> 6 months – 3 years' custody	<b>Category range</b> High level community order – 2 years' custody

## Community orders

## Custodial sentences

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

#### Other aggravating factors

- Failure to seek medical help (where not taken into account at step one)

- Prolonged suffering prior to death
- Commission of offence whilst under the influence of alcohol or drugs
- Deliberate concealment and/or covering up of the offence
- Blame wrongly placed on others
- Failure to respond to interventions or warnings about behaviour
- Threats to prevent reporting of the offence
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration
- Offence committed in the presence of another child

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Remorse
- Determination and demonstration of steps having been taken to address addiction or offending behaviour, including co-operation with agencies working for the welfare of the victim
- Sole or primary carer for dependent relatives (**see step five for further guidance on parental responsibilities**)
- Good character and/or exemplary conduct (where previous good character/exemplary conduct has been used to facilitate or conceal the offence, this should not normally constitute mitigation and such conduct may constitute aggravation)
- Serious medical condition requiring urgent, intensive or long-term treatment
- Mental disorder, learning disability or lack of maturity (where not taken into account at step one)
- Co-operation with the investigation

## 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 – Parental responsibilities of sole or primary carers

In the majority of child cruelty cases the offender will have parental responsibility for the victim.

When considering whether to impose custody the court should step back and review whether this sentence will be in the best interests of the victim (as well as other children in the offender's care). This must be balanced with the seriousness of the offence and all sentencing options remain open to the court but careful consideration should be given to the effect that a custodial sentence could have on the family life of the victim and whether this is proportionate to the seriousness of the offence. This may be of particular relevance in lower culpability cases or where the offender has otherwise been a loving and capable parent/carer.

Where custody is unavoidable consideration of the impact on the offender's children may be relevant to the length of the sentence imposed. For more serious offences where a substantial period of custody is appropriate, this consideration will carry less weight.

## Step 6 – 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 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](#).

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## Totality

Effective from: 11 June 2012

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.

### Applicability - DROPDOWN

## General principles

The principle of totality comprises two elements:

1. All courts, when sentencing for more than a single offence, should pass a total sentence which reflects all the offending behaviour before it and is just and proportionate. This is so whether the sentences are structured as concurrent or consecutive. Therefore, concurrent sentences will ordinarily be longer than a single sentence for a single offence.
2. It is usually impossible to arrive at a just and proportionate sentence for multiple offending simply by adding together notional single sentences. It is necessary to address the offending behaviour, together with the factors personal to the offender as a whole.

### Concurrent/consecutive sentences

There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive components. The overriding principle is that the overall sentence must be just and proportionate.

## General approach (as applied to Determinate Custodial Sentences)

**1. Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.**

**2. Determine whether the case calls for concurrent or consecutive sentences.**

**Concurrent sentences will ordinarily be appropriate where:**

a) offences arise out of the same incident or facts. Examples include:

- a single incident of dangerous driving resulting in injuries to multiple victims;<sup>1</sup>
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it;<sup>2</sup>
- fraud and associated forgery;
- separate counts of supplying different types of drugs of the same class as part of the same transaction.

b) there is a series of offences of the same or similar kind, especially when committed against the same person. Examples include:

- repetitive small thefts from the same person, such as by an employee;
- repetitive benefit frauds of the same kind, committed in each payment period.

**Where concurrent sentences are to be passed the sentence should reflect the overall criminality involved. The sentence should be appropriately aggravated by the presence of the associated offences.**

Examples include:

- a single incident of dangerous driving resulting in injuries to multiple victims where there are separate charges relating to each victim. The sentences should generally be passed concurrently, but each sentence should be aggravated to take into account the harm caused;
- repetitive fraud or theft, where charged as a series of small frauds/thefts, would be properly considered in relation to the total amount of money obtained and the period of time over which the offending took place. The sentences should generally be passed concurrently, each one reflecting the overall seriousness;
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it. The principal sentence for the robbery should properly reflect the presence of the weapon. The court must avoid double-counting and may deem it preferable for the possession of the weapon's offence to run concurrently to avoid the appearance of under-sentencing in respect of the robbery.<sup>3</sup>

**Consecutive sentences will ordinarily be appropriate where:**

a) offences arise out of unrelated facts or incidents. Examples include:

- where the offender commits a theft on one occasion and a common assault against a different victim on a separate occasion;
- an attempt to pervert the course of justice in respect of another offence also charged;<sup>4</sup>
- a Bail Act offence;<sup>5</sup>
- any offence committed within the prison context;
- offences that are unrelated because whilst they were committed simultaneously they are distinct and there is an aggravating element that requires separate recognition, for example:
  - an assault on a constable committed to try to evade arrest for another offence also charged;<sup>6</sup>
  - where the defendant is convicted of drug dealing and possession of a firearm offence. The firearm offence is not the essence or the intrinsic part of the drugs offence and requires separate recognition;<sup>7</sup>
  - where the defendant is convicted of threats to kill in the context of an indecent assault on the same occasion, the threats to kill could be distinguished as a separate element.<sup>8</sup>

b) offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences. Examples include:

- where offences committed against different people, such as repeated thefts involving attacks on several different shop assistants;<sup>9</sup>
- where offences of domestic violence or sexual offences are committed against the same individual.

c) one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum.<sup>10</sup>

However, it is not permissible to impose consecutive sentences for offences committed at the same time in order to evade the statutory maximum penalty.<sup>11</sup>

**Where consecutive sentences are to be passed** add up the sentences for each offence and consider if the aggregate length is just and proportionate.

If the aggregate length is not just and proportionate the court should consider how to reach a just and proportionate sentence. There are a number of ways in which this can be achieved.

Examples include:

- when sentencing for similar offence types or offences of a similar level of severity the court can consider:
  - whether all of the offences can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively;
  - whether, despite their similarity, a most serious principal offence can be identified and the other sentences can all be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively in order that the sentence for the lead offence can be clearly identified.
- when sentencing for two or more offences of differing levels of seriousness the court can consider:
  - whether some offences are of such low seriousness in the context of the most serious offence(s) that they can be recorded as ‘no separate penalty’ (for example technical breaches or minor driving offences not involving mandatory disqualification);
  - whether some of the offences are of lesser seriousness and are unrelated to the most serious offence(s), that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified.

**3. Test the overall sentence(s) against the requirement that they be just and proportionate.**

**4. Consider whether the sentence is structured in a way that will be best understood by all concerned with it.**

### Specific applications – custodial sentences

Existing determinate sentence, where determinate sentence to be passed	
Circumstance	Approach
<b>Offender serving a determinate sentence (Offence(s) committed before original sentence imposed)</b>	Consider what the sentence length would have been if the court had dealt with the offences at the same time and ensure that the totality of the sentence is just and proportionate in all the circumstances. If it is not, an adjustment should be made to the sentence imposed for the latest offence.
<b>Offender serving a determinate sentence (Offence(s) committed</b>	Generally the sentence will be consecutive as it will have arisen out of an unrelated incident. The court must have regard to the totality of the offender’s criminality when passing the second sentence, to ensure that the total sentence to be served is just and

<b>after original sentence imposed)</b>	proportionate. Where a prisoner commits acts of violence in prison custody, any reduction for totality is likely to be minimal. <sup>12</sup>
<b>Offender serving a determinate sentence but released from custody</b>	The new sentence should start on the day it is imposed: <a href="#">s225 Sentencing Code</a> prohibits a sentence of imprisonment running consecutively to a sentence from which a prisoner has been released. The sentence for the new offence will take into account the aggravating feature that it was committed on licence. However, it must be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to the recall period (which will be an unknown quantity in most cases); <sup>13</sup> this is so even if the new sentence will in consequence add nothing to the period actually served.
<b>Offender sentenced to a determinate term and subject to an existing suspended sentence order</b>	Where an offender commits an additional offence during the operational period of a suspended sentence and the court orders the suspended sentence to be activated, the additional sentence will generally be consecutive to the activated suspended sentence, as it will arise out of unrelated facts.

### Extended sentences for public protection

<b>Circumstance</b>	<b>Approach</b>
<b>Extended sentences – using multiple offences to calculate the requisite determinate term</b>	In the case of extended sentences imposed under the Sentencing Code, providing there is at least one specified offence, the threshold requirement under <a href="#">s267</a> or <a href="#">s280</a> of the Sentencing Code is reached if the total determinate sentence for all offences (specified or not) would be four years or more. The extended sentence should be passed either for one specified offence or concurrently on a number of them. Ordinarily either a concurrent determinate sentence or no separate penalty will be appropriate to the remaining offences. <sup>17</sup> The extension period is such as the court considers necessary for the purpose of protecting members of the public from serious harm caused by the offender committing further specified offences. <sup>18</sup> The extension period must not exceed five years (or eight for a sexual offence). The whole aggregate term must not exceed the statutory maximum. The custodial period must be adjusted for totality in the same way as determinate sentences would be. The extension period is measured by the need for protection and therefore does not require adjustment.

### Indeterminate sentences

<b>Circumstance</b>	<b>Approach</b>
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<p><b>Imposing multiple indeterminate sentences on the same occasion and using multiple offences to calculate the minimum term for an indeterminate sentence</b></p>	<p>Indeterminate sentences should start on the date of their imposition and so should generally be ordered to run concurrently. If the life sentence provisions in sections <a href="#">272-274</a> or sections <a href="#">283 – 285</a> of the Sentencing Code apply then:</p> <ol style="list-style-type: none"> <li>1. first assess the notional determinate term for all offences (specified or otherwise), adjusting for totality in the usual way;<sup>19</sup></li> <li>2. ascertain whether any relevant sentence condition is met; and</li> <li>3. the indeterminate sentence should generally be passed concurrently on all offences to which it can apply, but there may be some circumstances in which it suffices to pass it on a single such offence.</li> </ol>
<p><b>Indeterminate sentence (where the offender is already serving an existing determinate sentence)</b></p>	<p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition.<sup>20</sup></p> <p>The court should instead order the sentence to run concurrently but can adjust the minimum term for the new offence to reflect half of any period still remaining to be served under the existing sentence (to take account of the early release provisions for determinate sentences). The court should then review the minimum term to ensure that the total sentence is just and proportionate.</p>
<p><b>Indeterminate sentence (where the offender is already serving an existing indeterminate sentence)</b></p>	<p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition. However, where necessary the court can order an indeterminate sentence to run consecutively to an indeterminate sentence passed on an earlier occasion.<sup>21</sup> The second sentence will commence on the expiration of the minimum term of the original sentence and the offender will become eligible for a parole review after serving both minimum terms.<sup>22</sup> The court should consider the length of the aggregate minimum terms that must be served before the offender will be eligible for consideration by the Parole Board. If this is not just and proportionate, the court can adjust the minimum term.</p>
<p><b>Ordering a determinate sentence to run consecutively to an indeterminate sentence</b></p>	<p>The court can order a determinate sentence to run consecutively to an indeterminate sentence. The determinate sentence will commence on the expiry of the minimum term of the indeterminate sentence and the offender will become eligible for a parole review after serving half of the determinate sentence.<sup>23</sup> The court should consider the total</p>

	<p>sentence that the offender will serve before becoming eligible for consideration for release. If this is not just and proportionate, the court can reduce the length of the determinate sentence, or alternatively, can order the second sentence to be served concurrently.</p>
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## Specific applications – non-custodial sentences

Multiple fines for non-imprisonable offences	
Circumstance	Approach
<p><b>Offender convicted of more than one offence where a fine is appropriate</b></p>	<p>The total is inevitably cumulative. The court should determine the fine for each individual offence based on the seriousness of the offence<sup>24</sup> and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court.<sup>25</sup> The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences.</li> <li>• where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.</li> </ul> <p>Where separate fines are passed, the court must be careful to ensure that there is no double-counting.<sup>26</sup></p> <p>Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.</p>
<p><b>Multiple offences attracting fines –</b></p>	<p>If the offences being dealt with are all imprisonable, then the community threshold can be crossed by reason of multiple offending, when it would not be crossed for a single offence.<sup>27</sup> However, if the offences are non-</p>

<b>crossing the community threshold</b>	imprisonable (e.g. driving without insurance) the threshold cannot be crossed. <sup>28</sup>
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### Fines in combination with other sentences

<b>Circumstance</b>	<b>Approach</b>
<b>A fine may be imposed in addition to any other penalty for the same offence except:</b>	<ul style="list-style-type: none"> <li>• a hospital order;<sup>29</sup></li> <li>• a discharge;<sup>30</sup></li> <li>• a sentence fixed by law<sup>31</sup> (minimum sentences, EPP, IPP);</li> <li>• a minimum term imposed under <a href="#">s 313</a> or <a href="#">s 314</a> of the Sentencing Code;<sup>32</sup></li> <li>• a life sentence imposed under section <a href="#">274</a> or <a href="#">285</a> Sentencing Code or a sentence of detention for life for an offender under 18 under section <a href="#">258</a> Sentencing Code.<sup>33</sup></li> </ul>
<b>Fines and determinate custodial sentences</b>	<p>A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the defendant. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:</p> <ul style="list-style-type: none"> <li>• the sentence is suspended;</li> <li>• a confiscation order is not contemplated; <b>and</b></li> <li>• there is no obvious victim to whom compensation can be awarded; <b>and</b></li> <li>• the offender has, or will have, resources from which a fine can be paid.</li> </ul>

### Community orders

<b>Circumstance</b>	<b>Approach</b>
<b>Multiple offences attracting community orders – crossing the custody threshold</b>	If the offences are all imprisonable and none of the individual sentences merit a custodial sentence, the custody threshold can be crossed by reason of multiple offending. <sup>34</sup> If the custody threshold has been passed, the court should refer to the offence ranges in sentencing guidelines for the offences and to the general principles.
<b>Multiple offences, where one offence would merit immediate custody and one offence would merit a community order</b>	A community order should not be ordered to run consecutively to or concurrently with a custodial sentence. Instead the court should generally impose one custodial sentence that is aggravated appropriately by the presence of the associated offence(s). The alternative option is to impose no separate penalty for the offence of lesser seriousness.
<b>Offender convicted of more than one offence where a</b>	A community order is a composite package rather than an accumulation of sentences attached to individual counts. The

<b>community order is appropriate</b>	court should generally impose a single community order that reflects the overall criminality of the offending behaviour. Where it is necessary to impose more than one community order, these should be ordered to run concurrently and for ease of administration, each of the orders should be identical.
<b>Offender convicted of an offence while serving a community order</b>	<p>The power to deal with the offender depends on his being convicted whilst the order is still in force;<sup>35</sup> it does not arise where the order has expired, even if the additional offence was committed whilst it was still current.</p> <p>If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a magistrates' court of an additional offence, the magistrates' court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence.</p> <p>Where an offender, in respect of whom a community order made by the Crown Court is in force, is convicted by a magistrates' court, the magistrates' court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence. The magistrates' court may also commit the new offence to the Crown Court for sentence where there is a power to do so.</p> <p>The sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence. If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.</p>

<b>Disqualifications from driving</b>	
<b>Circumstance</b>	<b>Approach</b>
<b>Offender convicted of two or more obligatory disqualification offences (s34(1) Road Traffic Offender Act 1988)</b>	The court must impose an order of disqualification for each offence unless for special reasons it does not disqualify the offender. <sup>36</sup> All orders of disqualification imposed by the court on the same date take effect immediately and cannot be ordered to run consecutively to one another. The court should take into account all offences when determining the disqualification periods and should generally impose like periods for each offence.
<b>Offender convicted of two or more offences involving either:</b>	Where an offender is convicted on same occasion of more than one offence to which section 35(1) Road Traffic Offender Act 1988 applies, only one disqualification shall be



<p><b>1. discretionary disqualification and obligatory endorsement from driving, or</b></p> <p><b>2. obligatory disqualification but the court for special reasons does not disqualify the offender</b></p> <p><b>and the penalty points to be taken into account number 12 or more (ss28 and 35 Road Traffic Offender Act 1988)</b></p>	<p>imposed on him.<sup>37</sup> However the court must take into account all offences when determining the disqualification period. For the purposes of appeal, any disqualification imposed shall be treated as an order made on conviction of each of the offences.<sup>38</sup></p>
<p><b>Other combinations involving more two or offences involving discretionary disqualification</b></p>	<p>As orders of disqualification take effect immediately, it is generally desirable for the court to impose a single disqualification order that reflects the overall criminality of the offending behaviour.</p>

### Compensation orders

Circumstance	Approach
<p><b>Global compensation orders</b></p>	<p>The court should not fix a global compensation figure unless the offences were committed against the same victim.<sup>39</sup> Where there are competing claims for limited funds, the total compensation available should normally be apportioned on a pro rata basis.<sup>40</sup></p>
<p><b>The court may combine a compensation order with any other form of order.</b></p>	
<p><b>Compensation orders and fines</b></p>	<p>Priority is given to the imposition of a compensation order over a fine.<sup>41</sup> This does not affect sentences other than fines. This means that the fine should be reduced or, if necessary, dispensed with altogether, to enable the compensation to be paid.</p>
<p><b>Compensation orders and confiscation orders</b></p>	<p>A compensation order can be combined with a confiscation order where the amount that may be realised is sufficient. If such an order is made, priority should be given to compensation.<sup>42</sup></p>
<p><b>Compensation orders and community orders</b></p>	<p>A compensation order can be combined with a community order.</p>
<p><b>Compensation orders and suspended sentence orders</b></p>	<p>A compensation order can be combined with a suspended sentence order.<sup>43</sup></p>
<p><b>Compensation orders and custody</b></p>	<p>A compensation order can be combined with a sentence of immediate custody where the offender is clearly able to pay or has good prospects of employment on his release from custody.</p>

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- Notes**
- [1] R v Lawrence (1989) 11 Cr App R (S) 580
  - [2] R v Poulton and Celaire [2002] EWCA Crim 2487; Attorney General’s Reference No 21&22 of 2003 [2003] EWCA Crim 3089
  - [3] Attorney General’s Reference Number 21 and 22 of 2003
  - [4] Attorney General’s Reference No1 of 1990 (1990) 12 Cr App R (S) 245
  - [5] R v Millen (1980) 2 Cr App R (S) 357
  - [6] R v Kastercum (1972) 56 Cr App R 298
  - [7] R v Poulton and Celaire [2002] EWCA Crim 2487; Attorney General’s Reference No 21&22 of 2003 [2003] EWCA Crim 3089
  - [8] R v Fletcher [2002] 2 CAR (S) 127
  - [9] R v Jamieson & Jamieson [2008] EWCA Crim 2761
  - [10] R v Raza [2010] 1 Cr App R (S) 56
  - [11] R v Ralphs [2009] EWCA Crim 2555
  - [12] R. v Ali [1998] 2 Cr.App.R. 123
  - [13] R. v Costello [2010] EWCA Crim 371
  - [14]
  - [15]
  - [16]
  - [17] R. v Pinnell [2010] EWCA Crim 2848
  - [18] R v Cornelius [2002] EWCA Crim 138
  - [19] R v Rahuel Delucca [2010] EWCA Crim 710
  - [20] R. v O’Brien [2006] EWCA Crim 1741
  - [21] R v Hills [2008] EWCA Crim 1871; R v Ashes [2007] EWCA Crim 1848
  - [22] s.28(1B) Crime (Sentences) Act 1997
  - [23] s.28 ibid
  - [24] [s.125\(1\) Sentencing Code](#)
  - [25] [s.125\(2\) Sentencing Code](#)
  - [26] R. v Pointon [2008] EWCA Crim 513
  - [27] [s.204\(2\) Sentencing Code](#)
  - [28] [s.202 Sentencing Code](#) restricts the power to make a community order by limiting it to cases where the offence is punishable with imprisonment.
  - [29] s.37(8) Mental Health Act 1983
  - [30] R. v McClelland [1951] 1 All ER 557
  - [31] [s.120 Sentencing Code](#)
  - [32] [s.120 Sentencing Code](#)
  - [33] [s.120 Sentencing Code](#)
  - [34] [s.230\(2\) Sentencing Code](#)
  - [35] Paragraphs 22 and 25 of [Schedule 10 of the Sentencing Code](#)
  - [36] s.34(1) Road Traffic Offender Act 1998
  - [37] s.35(3) ibid
  - [38] ibid
  - [39] R. v Warton [1976] Crim LR 520
  - [40] R. v Miller [1976] Crim LR 694
  - [41] [s.135\(4\) Sentencing Code](#)
  - [42] R v Mitchell [2001] Cr. L. R239
  - [43] [s.134\(2\) Sentencing Code](#)

## Totality

Effective from: tbc

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.

Sentencers should have this in mind in relation to individual sentences but also when considering the total sentence.

**Applicability - DROPDOWN**

## General principles

The principle of totality comprises two elements:

1. All courts, when sentencing for more than a single offence, should pass a total sentence which reflects all the offending behaviour before it and is just and proportionate. This is so whether the sentences are structured as concurrent or consecutive. Therefore, concurrent sentences will ordinarily be longer than a single sentence for a single offence.
2. It is usually impossible to arrive at a just and proportionate sentence for multiple offending simply by adding together notional single sentences. It is necessary to address the offending behaviour, together with the aggravating and mitigating factors personal to the offender as a whole.

## Concurrent/consecutive sentences

There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive. The overriding principle is that the overall sentence must be just and proportionate.

## General approach (as applied to determinate custodial sentences)

1. **Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.**
2. **Determine whether the case calls for concurrent or consecutive sentences.**
3. **Test the overall sentence against the requirement that the total sentence is just and proportionate to the offending as a whole.**
4. **Consider whether the sentence is structured in a way that will be best understood by all concerned with it and explain how the individual elements have been adjusted to arrive at the total sentence.**

**Concurrent sentences will ordinarily be appropriate where:**

- a. offences arise out of the same incident or facts.

Examples include: [dropdown]

- a single incident of dangerous driving resulting in injuries to multiple victims;
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it

- fraud and associated forgery
  - separate counts of supplying different types of drugs of the same class as part of the same transaction
- b. there is a series of offences of the same or similar kind, especially when committed against the same person.

Examples include: [dropdown]

- repetitive small thefts from the same person, such as by an employee
- repetitive benefit frauds of the same kind, committed in each payment period

**Where concurrent sentences are to be passed the sentence should reflect the overall criminality involved. The sentence should be appropriately aggravated by the presence of the associated offences.**

Concurrent custodial sentences: examples [dropdown]

Examples of concurrent custodial sentences include:

- a single incident of dangerous driving resulting in injuries to multiple victims where there are separate charges relating to each victim. The sentences should generally be passed concurrently, but each sentence should be aggravated to take into account the harm caused
- repetitive fraud or theft, where charged as a series of small frauds/thefts, would be properly considered in relation to the total amount of money obtained and the period of time over which the offending took place. The sentences should generally be passed concurrently, each one reflecting the overall seriousness
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it. The principal sentence for the robbery should properly reflect the presence of the weapon. The court must avoid double-counting and may deem it preferable for the possession of the weapon's offence to run concurrently to avoid the appearance of under-sentencing in respect of the robbery

**Consecutive sentences will ordinarily be appropriate where:**

- a. offences arise out of unrelated facts or incidents.

Examples include: [dropdown]

- where the offender commits a theft on one occasion and a common assault against a different victim on a separate occasion
- an attempt to pervert the course of justice in respect of another offence also charged
- a Bail Act offence
- any offence committed within the prison context
- offences that are unrelated because whilst they were committed simultaneously they are distinct and there is an aggravating element that requires separate recognition, for example:
  - an assault on a constable committed to try to evade arrest for another offence also charged
  - where the defendant is convicted of drug dealing and possession of a firearm offence. The firearm offence is not the essence or the intrinsic part of the drugs offence and requires separate recognition
  - where the defendant is convicted of threats to kill in the context of an indecent assault on the same occasion, the threats to kill could be distinguished as a separate element

- b. offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences.

Examples include: [dropdown]

- where offences committed against different people, such as repeated thefts involving attacks on several different shop assistants
- where offences of domestic violence or sexual offences are committed against the same individual

- c. one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum

Examples include: [dropdown]

- offences relating to the supply of drugs and offences of possession of a prohibited weapon (which attract a five year minimum term) – any reduction on grounds of totality should not reduce the effect of properly deterrent and commensurate sentences. The court should not undermine the will of Parliament by substantially reducing an otherwise appropriate consecutive sentence for another offence so as to render nugatory the effect of the mandatory minimum sentence for the firearms offence.

However, it is **not** permissible to impose consecutive sentences for offences committed **in a single incident** in order to evade the statutory maximum penalty.

**Where consecutive sentences are to be passed** add up the sentences for each offence and consider if the aggregate length is just and proportionate.

If the aggregate length is not just and proportionate the court should consider how to reach a just and proportionate sentence. There are a number of ways in which this can be achieved.

Examples include:

- when sentencing for similar offence types or offences of a similar level of severity the court can consider:
  - whether all of the offences can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively
  - whether, despite their similarity, a most serious principal offence can be identified and the other sentences can all be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively in order that the sentence for the lead offence can be clearly identified
- when sentencing for two or more offences of differing levels of seriousness the court can consider:
  - whether some offences are of such low seriousness that they can be recorded as ‘no separate penalty’ (for example technical breaches or minor driving offences not involving mandatory disqualification)
  - whether some of the offences are of lesser seriousness and are unrelated to the most serious offence(s), that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified

## Specific applications – custodial sentences

## Existing determinate sentence, where determinate sentence to be passed [Dropdown]

Existing determinate sentence, where determinate sentence to be passed	
Circumstance	Approach
<b>Offender serving a determinate sentence (Offence(s) committed before original sentence imposed)</b>	Consider what the sentence length would have been if the court had dealt with the offences at the same time and ensure that the totality of the sentence is just and proportionate in all the circumstances. If it is not, an adjustment should be made to the sentence imposed for the latest offence.
<b>Offender serving a determinate sentence (Offence(s) committed after original sentence imposed)</b>	Generally the sentence will be consecutive as it will have arisen out of an unrelated incident. The court must have regard to the totality of the offender's criminality when passing the second sentence, to ensure that the total sentence to be served is just and proportionate. Where a prisoner commits acts of violence in prison custody, any reduction for totality is likely to be minimal.
<b>Offender serving a determinate sentence but released from custody</b>	The new sentence should start on the day it is imposed: <a href="#">s225 Sentencing Code</a> prohibits a sentence of imprisonment running consecutively to a sentence from which a prisoner has been released. The sentence for the new offence will take into account the aggravating feature that it was committed on licence. However, it must be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to the recall period (which will be an unknown quantity in most cases); this is so even if the new sentence will in consequence add nothing to the period actually served.
<b>Offender sentenced to a determinate term and subject to an existing suspended sentence order</b>	Where an offender commits an additional offence during the operational period of a suspended sentence and the court orders the suspended sentence to be activated, the additional sentence will generally be consecutive to the activated suspended sentence, as it will arise out of unrelated facts.

## Extended sentences [dropdown]

Extended sentences	
Circumstance	Approach
<b>Extended sentences – using multiple offences to calculate the requisite determinate term</b>	In the case of extended sentences imposed under the Sentencing Code, providing there is at least one specified offence, the threshold requirement under <a href="#">s267</a> or <a href="#">s280</a> of the Sentencing Code is reached if the total determinate sentence for all offences (specified or not) would be four years or more. The extended sentence should be passed either for one specified offence or concurrently on a number of them. Ordinarily either a concurrent determinate sentence or no

separate penalty will be appropriate to the remaining offences. The extension period is such as the court considers necessary for the purpose of protecting members of the public from serious harm caused by the offender committing further specified offences. The extension period must not exceed five years (or eight for a sexual offence). The whole aggregate term must not exceed the statutory maximum. The custodial period must be adjusted for totality in the same way as determinate sentences would be. The extension period is measured by the need for protection and therefore does not require adjustment.

## Indeterminate sentences [dropdown]

### Indeterminate sentences

Circumstance	Approach
<p><b>Imposing multiple indeterminate sentences on the same occasion and using multiple offences to calculate the minimum term for an indeterminate sentence</b></p>	<p>Indeterminate sentences should start on the date of their imposition and so should generally be ordered to run concurrently. If the life sentence provisions in sections <a href="#">272-274</a> or sections <a href="#">283 – 285</a> of the Sentencing Code apply then:</p> <ol style="list-style-type: none"> <li>1. first assess the notional determinate term for all offences (specified or otherwise), adjusting for totality in the usual way</li> <li>2. ascertain whether any relevant sentence condition is met and</li> <li>3. the indeterminate sentence should generally be passed concurrently on all offences to which it can apply, but there may be some circumstances in which it suffices to pass it on a single such offence.</li> </ol>
<p><b>Indeterminate sentence (where the offender is already serving an existing determinate sentence)</b></p>	<p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition. The court should instead order the sentence to run concurrently but can adjust the minimum term for the new offence to reflect <b>any period still remaining to be served under the existing sentence (taking account of the relevant early release provisions for the determinate sentence)</b>. The court should then review the minimum term to ensure that the total sentence is just and proportionate.</p>
<p><b>Indeterminate sentence (where the offender is already serving an existing indeterminate sentence)</b></p>	<p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition. However, where necessary <b>(such as where the offender falls to be sentenced while still serving the minimum term of a previous sentence and an</b></p>

	<p>indeterminate sentence, if imposed concurrently, could not add to the length of the period before which the offender will be considered for release on parole in circumstances where it is clear that the interests of justice require a consecutive sentence), the court can order an indeterminate sentence to run consecutively to an indeterminate sentence passed on an earlier occasion (section 384 of the Sentencing Code). The second sentence will commence on the expiration of the minimum term of the original sentence and the offender will become eligible for a parole review after serving both minimum terms (Section 28(1B) of the Crime (Sentences) Act 1997). The court should consider the length of the aggregate minimum terms that must be served before the offender will be eligible for consideration by the Parole Board. If this is not just and proportionate, the court can adjust the minimum term.</p>
<p><b>Ordering a determinate sentence to run consecutively to an indeterminate sentence</b></p>	<p>The court can order a determinate sentence to run consecutively to an indeterminate sentence. The determinate sentence will commence on the expiry of the minimum term of the indeterminate sentence and the offender will become eligible for a parole review after becoming eligible for release from the determinate sentence. The court should consider the total sentence that the offender will serve before becoming eligible for consideration for release. If this is not just and proportionate, the court can reduce the length of the determinate sentence, or alternatively, can order the second sentence to be served concurrently.</p>

## Specific applications – non-custodial sentences

### Multiple fines for non-imprisonable offences [dropdown]

Multiple fines for non-imprisonable offences	
Circumstance	Approach
<p><b>Offender convicted of more than one offence where a fine is appropriate</b></p>	<p>The total is inevitably cumulative. The court should determine the fine for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court (section 125 of the Sentencing Code). The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved.</p> <p>For example:</p>



	<ul style="list-style-type: none"> <li>• where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences.</li> <li>• where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.</li> </ul> <p>Where separate fines are passed, the court must be careful to ensure that there is no double-counting.</p> <p>Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.</p>
<p><b>Multiple offences attracting fines – crossing the community threshold</b></p>	<p>If the offences being dealt with are all imprisonable, then the community threshold can be crossed by reason of multiple offending, when it would not be crossed for a single offence (<a href="#">section 204(2) of the Sentencing Code</a>). However, if the offences are non-imprisonable (e.g. driving without insurance) the threshold cannot be crossed (<a href="#">section 202 of the Sentencing Code</a>).</p>

Fines in combination with other sentences [dropdown]

Fines in combination with other sentences	
Circumstance	Approach
<p><b>A fine may be imposed in addition to any other penalty for the same offence except:</b></p>	<ul style="list-style-type: none"> <li>• a hospital order</li> <li>• a discharge</li> <li>• a sentence fixed by law (murder)</li> <li>• a minimum sentence imposed under section <a href="#">311</a>, <a href="#">312</a>, <a href="#">313</a>, <a href="#">314</a>, or <a href="#">315</a> of the Sentencing Code</li> <li>• a life sentence imposed under section <a href="#">274</a> or <a href="#">285</a> Sentencing Code or a sentence of detention for life for an offender under 18 under section <a href="#">258</a> Sentencing Code</li> <li>• a life sentence imposed under section <a href="#">273</a> or <a href="#">283</a> Sentencing Code</li> <li>• a serious terrorism sentence under section <a href="#">268B</a> or <a href="#">282B</a> of the Sentencing Code (<a href="#">Sections 118 to 121 of the Sentencing Code</a>)</li> </ul>

<b>Fines and determinate custodial sentences</b>	<p>A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the defendant. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:</p> <ul style="list-style-type: none"> <li>• the sentence is suspended</li> <li>• a confiscation order is not contemplated <b>and</b></li> <li>• there is no obvious victim to whom compensation can be awarded <b>and</b></li> <li>• the offender has, or will have, resources from which a fine can be paid</li> </ul>
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## Community orders [dropdown]

Community orders	
Circumstance	Approach
<b>Multiple offences attracting community orders – crossing the custody threshold</b>	<p>If the offences are all imprisonable and none of the individual sentences merit a custodial sentence, the custody threshold can be crossed by reason of multiple offending (<b>section 230(2) of the Sentencing Code</b>). If the custody threshold has been passed, the court should refer to the offence ranges in sentencing guidelines for the offences and to the general principles.</p>
<b>Multiple offences, where one offence would merit immediate custody and one offence would merit a community order</b>	<p>A community order should not be ordered to run consecutively to or concurrently with a custodial sentence. Instead the court should generally impose one custodial sentence that is aggravated appropriately by the presence of the associated offence(s). The alternative option is to impose no separate penalty for the offence of lesser seriousness.</p>
<b>Offender convicted of more than one offence where a community order is appropriate</b>	<p>A community order is a composite package rather than an accumulation of sentences attached to individual counts. The court should generally impose a single community order that reflects the overall criminality of the offending behaviour. Where it is necessary to impose more than one community order, these should be ordered to run concurrently and for ease of administration, each of the orders should be identical.</p>
<b>Offender convicted of an offence while serving a community order</b>	<p>The power to deal with the offender depends on his being convicted whilst the order is still in force; it does not arise where the order has expired, even if the additional offence was committed whilst it was still current. (<b>Paragraphs 22 and 25 of the Sentencing Code</b>)</p> <p><b>Community order imposed by magistrates' court</b>  If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a magistrates' court</p>

	<p>of an additional offence, the magistrates’ court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence.</p> <p><b>Community order imposed by the Crown Court</b>          Where an offender, in respect of whom a community order made by the Crown Court is in force, is convicted by a magistrates’ court, the magistrates’ court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence. The magistrates’ court may also commit the new offence to the Crown Court for sentence where there is a power to do so.</p> <p>Where the magistrates’ court has no power to commit the new offence it should sentence the new offence and commit the offender to the Crown Court to be re-sentenced for the original offence.</p> <p>When sentencing both the original offence and the new offence the sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence. If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.</p>
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Disqualifications from driving [dropdown]

Disqualifications from driving	
Circumstance	Approach
<p><b>Offender convicted of two or more obligatory disqualification offences</b>  <a href="#">(s34(1) Road Traffic Offender Act 1988)</a></p>	<p>The court must impose an order of disqualification for each offence unless for special reasons it does not disqualify the offender. All orders of disqualification imposed by the court on the same date take effect immediately and cannot be ordered to run consecutively to one another. The court should take into account all offences when determining the disqualification periods and should generally impose like periods for each offence.</p>
<p><b>Offender convicted of two or more offences involving either:</b></p> <p>1. discretionary disqualification and</p>	<p>Where an offender is convicted on same occasion of more than one offence to which <a href="#">section 35(1) of the Road Traffic Offenders Act 1988</a> applies, only one disqualification shall be imposed on him. However the court must take into account all offences when determining the disqualification period. For the purposes of appeal, any disqualification</p>

<p><b>obligatory endorsement from driving, or</b></p> <p><b>2. obligatory disqualification but the court for special reasons does not disqualify the offender</b></p> <p><b>and the penalty points to be taken into account number 12 or more (ss28 and 35 Road Traffic Offenders Act 1988)</b></p>	<p>imposed shall be treated as an order made on conviction of each of the offences. <b>(Section 35(3) of the Road Traffic Offenders Act 1988)</b></p>
<p><b>Other combinations involving more two or offences involving discretionary disqualification</b></p>	<p>As orders of disqualification take effect immediately, it is generally desirable for the court to impose a single disqualification order that reflects the overall criminality of the offending behaviour.</p>

Compensation orders [dropdown]

Compensation orders	
Circumstance	Approach
<p><b>Global compensation orders</b></p>	<p>The court should not fix a global compensation figure unless the offences were committed against the same victim. Where there are competing claims for limited funds, the total compensation available should normally be apportioned on a pro rata basis.</p>
<p><b>The court may combine a compensation order with any other form of order</b> <b>(Section 134 of the Sentencing Code)</b></p>	
<p><b>Compensation orders and fines</b></p>	<p>Priority is given to the imposition of a compensation order over a fine <b>(section 135(4) of the Sentencing Code)</b>. This does not affect sentences other than fines. This means that the fine should be reduced or, if necessary, dispensed with altogether, to enable the compensation to be paid.</p>
<p><b>Compensation orders and confiscation orders</b></p>	<p>A compensation order can be combined with a confiscation order where the amount that may be realised is sufficient. If such an order is made, priority should be given to compensation <b>(Section 135 of the Sentencing Code)</b>.</p>
<p><b>Compensation orders and community orders</b></p>	<p>A compensation order can be combined with a community order.</p>
<p><b>Compensation orders and suspended sentence orders</b></p>	<p>A compensation order can be combined with a suspended sentence order.</p>

<b>Compensation orders and custody</b>	A compensation order can be combined with a sentence of immediate custody where the offender is clearly able to pay or has good prospects of employment on his release from custody.
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## Totality

Effective from: tbc

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.

Sentencers should have this in mind in relation to individual sentences but also when considering the total sentence.

## General principles

The principle of totality comprises two elements:

1. All courts, when sentencing for more than a single offence, should pass a total sentence which reflects all the offending behaviour before it and is just and proportionate. This is so whether the sentences are structured as concurrent or consecutive. Therefore, concurrent sentences will ordinarily be longer than a single sentence for a single offence.
2. It is usually impossible to arrive at a just and proportionate sentence for multiple offending simply by adding together notional single sentences. It is necessary to address the offending behaviour **with reference to harm and culpability**, together with the aggravating and mitigating factors personal to the offender as a whole.

## Concurrent/consecutive sentences

There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive. The overriding principle is that the overall sentence must be just and proportionate.

## General approach (as applied to determinate custodial sentences)

1. **Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.**
2. **Determine whether the case calls for concurrent or consecutive sentences. When sentencing three or more offences a combination of concurrent and consecutive sentences may be appropriate.**
3. **Test the overall sentence against the requirement that the total sentence is just and proportionate to the offending as a whole ensuring that the harm relating to all offences and the overall culpability of the offender are reflected in the final sentence while avoiding double counting.**
4. **Consider whether the sentence is structured in a way that will be best understood by all concerned with it and explain how the individual elements have been adjusted to arrive at the total sentence.**

Concurrent sentences will ordinarily be appropriate where:

- a. offences arise out of the same incident or facts.
- b. there is a series of offences of the same or similar kind, especially when committed against the same person.

**Where concurrent sentences are to be passed the sentence should reflect the overall criminality involved. The sentence should be appropriately aggravated by the presence of the associated offences.**

Consecutive sentences will ordinarily be appropriate where:

- a. offences arise out of unrelated facts or incidents.
- b. offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences.
- c. one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum.

However, it is **not** permissible to impose consecutive sentences for offences committed **at the same time** in order to evade the statutory maximum penalty.

**Where consecutive sentences are to be passed** add up the sentences for each offence and consider if the aggregate length is just and proportionate.

If the aggregate length is not just and proportionate the court should consider how to reach a just and proportionate sentence. There are a number of ways in which this can be achieved. Examples include:

- when sentencing for similar offence types or offences of a similar level of severity the court can consider:
  - whether all of the offences can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively
  - whether, despite their similarity, a most serious principal offence can be identified and the other sentences can all be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively in order that the sentence for the lead offence can be clearly identified
- when sentencing for two or more offences of differing levels of seriousness the court can consider:
  - whether some offences are of such low seriousness that they can be recorded as ‘no separate penalty’ (for example technical breaches or minor driving offences not involving mandatory disqualification)
  - whether some of the offences are of lesser seriousness and are unrelated to the most serious offence(s), that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified



# Sentencing Council

## **Business Plan**

### **Financial year 2022/23**

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# Sentencing Council

## Chairman's introduction

I am pleased to present the Sentencing Council's ninth business plan, setting out the Council's aims for the financial year 2022/23.



The past year has continued to be unusual, with meetings of the Council happening remotely due to the pandemic, but this has not affected the pace and quality of delivery of the Council's output. Indeed, in November 2021 I was proud to launch our five-year strategy, which was informed by responses to our 2020 consultation 'What next for the Sentencing Council?' This consists of [five strategic objectives](#), which set out our priorities for the coming years. Alongside the Sentencing Council's overarching objectives, these strategic objectives inform this business plan and will inform future business plans.

We have delivered successfully against our plans for 2021/22 which were set out in last year's business plan. We have published definitive guidelines for assault and attempted murder, unauthorised use of a trademark, modern slavery, and firearms importation. We have consulted on revised burglary guidelines, revisions to the sexual offences guidelines, and on revisions to our terrorism guidelines following changes to legislation. In the last year we have also published research on judges' attitudes to sentencing guidelines, the impacts of guidelines on sentencing severity and prison places, consistency in sentencing, and sentencers' views on the totality guideline.

In the coming year, we will launch:

- revisions to the sexual offences guidelines to take account of case law;
- a new guideline for sexual communication with a child;
- revised burglary guidelines;
- revised terrorism guidelines; and
- new guidelines for perverting the course of justice and witness intimidation.

We will also develop and consult on several further guidelines during the course of the year:

- new and updated guidelines for motoring offences and aggravated vehicle taking offences;
- new guidelines for underage sale of knives;
- a new animal cruelty guideline and revisions to the existing one; and
- new guidelines for immigration offences.

Consultation is a vital aspect of the Council's work, and one which we take very seriously. For guidelines to succeed they must be informed by the knowledge and expertise of those people who have legal or practical experience in the area we are examining, and by the views of those with an interest in our work or in the operation of the wider criminal justice system. We are always grateful to the people and organisations who give their valuable time to contribute to our consultations, and who help us to make improvements before publishing definitive guidelines.

In addition to publishing guidelines, the Council is required to monitor and evaluate their operation and effect. In the coming year we will undertake another data collection exercise – this time in all magistrates' courts and Crown Court centres – to collect data to support the evaluation of a number of our guidelines. We will also be publishing the outcome of evaluation work on our guidelines on bladed articles and offensive weapons offences, breach offences, and our Imposition of Community and Custodial Sentences guideline. We also plan to start work on evaluating the expanded explanations which were introduced to the general guideline and offence-specific guidelines in 2018, reviewing the way in which we conduct our resource assessments, and exploring ways in which we might access more data to support our work in the future.

We will also be publishing research that we commissioned in 2021 to explore the risk of the Council's work inadvertently to cause disparity in sentencing across demographic groups. This is part of wider work across the Council to ensure that relevant issues of equality and diversity are explored and considered across the whole range of our work, something that was placed at the heart of our actions in our five-year strategy.

In setting out our [strategic objectives for 2021 to 2026](#), the Council has restated our commitment to promoting confidence in sentencing. We have set ourselves an objective to strengthen public confidence by "improving public knowledge and understanding of sentencing, including among victims, witnesses and offenders, as well as the general public" and outlined the actions we will take to meet this objective.

One major project we will be undertaking this year is the development of You be the Judge, an online, interactive guide to sentencing. You be the Judge will use video stories to show the public how sentencing works in the magistrates' courts and Crown Court. We are developing the tool in partnership with the Judicial Office and will be promoting it to teachers for use in schools and public audiences of all ages.

Throughout the year, we will continue to inform public audiences, including victims, witnesses, offenders and their families, about sentencing and sentencing guidelines by developing content for our website designed to reach non-expert audiences, seeking coverage in the mainstream and specialist media relating to key Council activities and working with partner organisations that can help us reach a wider public.

In 2018 the Council commissioned research into public confidence in the criminal justice system, which was published the following year.<sup>1</sup> Following a re-run of the survey on which this research was based, we will be publishing a report this year exploring whether there have been any changes over time in the public's knowledge of sentencing and what drives their confidence in the criminal justice system.


The purpose of publishing our business plan is to make sure that everyone who has an interest in our work is kept informed of developments. The Council's priorities can, and do, change throughout the year and from one year to the next. We have a statutory duty to consider requests from the Lord Chancellor and the Court of Appeal to review the sentencing of particular offences. We may also need to consider amending our work plan if we are required to undertake work on new or particularly complex areas of sentencing.

Notably, the Police, Crime, Sentencing and Courts Act 2022 received Royal Assent on **xxxxx** and contains a number of provisions relating to sentencing which have an impact on the work of the Council. Some of these (for example the increase in maximum penalties for causing death by dangerous driving and causing death by careless driving under the influence) will be picked up as part of the work already underway on new and revised guidelines. Others will require amendment to the guidelines as a result of changes to the law (for example, the guidelines for child cruelty offences where the maximum penalties have been increased), and some may form part of our annual consultation on miscellaneous amendments to guidelines.

Subject to other matters arising which may affect our priorities, the current workplan can be seen at Annex C. We will review the plan in the autumn and publish updates, as appropriate, on our website.

In August 2021 Mike Fanning was appointed a Circuit Judge. I would like to congratulate Mike on his appointment, wish him well for the future and thank him for his service since 2019 as a District Judge representative on the Council. [We are in the process of appointing Mike's successor/I am pleased to welcome **XXXXXXXXXX** as Mike's successor].

I would also like to pay tribute to the staff of the Office of the Sentencing Council. They are the Council's most valuable resource and I am very proud of the high quality of the work which they produce, even in exceptional times such as the present. We operate within a limited budget and it is testament to the staff's ability and dedication that the Council continues to have the success that it does.



April 2022

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<sup>1</sup> [Public Knowledge of and Confidence in the Criminal Justice System and Sentencing](#)

## Background and membership

The Sentencing Council is an independent, non-departmental public body (NDPB) of the Ministry of Justice (MoJ). The Council was set up by Part 4 of the Coroners and Justice Act 2009 (“the Act”) to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary. Our primary role is to issue guidelines, which the courts must follow unless it is in the interests of justice not to do so. The Council generally meets 10 times a year; minutes are published on our website.

### Appointments to the Council

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

The Lord Chancellor and Secretary of State for Justice appoints non-judicial members.

All appointments are for a period of three years, with the possibility of extending up to a maximum of 10 years. Membership of the Council as of 1 March 2022 is as follows:

### Members

The Council comprises eight judicial and six non-judicial members.

#### ***Chair: The Right Honourable Lord Justice Holroyde***

Tim Holroyde was appointed as a High Court Judge in January 2009 and was a Presiding Judge on the Northern Circuit from 2012 to 2015. In October 2017 he was appointed a Lord Justice of Appeal. He was appointed to the Sentencing Council on 6 April 2015 and appointed as Chairman on 1 August 2018.

#### ***Vice-Chair: The Right Honourable Lord Justice Fulford***

Adrian Fulford was appointed to the Court of Appeal in 2013 and was appointed Vice President of the Court of Appeal Criminal Division on 20 October 2019. He was appointed to the Sentencing Council with effect from the same date.

#### ***Rosina Cottage QC***

Rosina Cottage has been a barrister since 1988, practising in criminal law, and is a tenant at Red Lion Chambers. She was appointed Queen’s Counsel in 2011 and appointed a Crown Court Recorder in 2012. She was appointed to the Sentencing Council on 18 July 2016.

#### ***The Honourable Mrs Justice McGowan DBE***

Maura McGowan was called to the Bar by the Middle Temple in 1980 and took Silk in 2001. She was appointed an Assistant Recorder in 1997 and a Recorder in 2000. She was appointed as a High Court Judge in 2014. She was appointed to the Sentencing Council on 2 January 2017.

#### ***Her Honour Judge Rebecca Crane***

Rebecca Crane was appointed as a Deputy District Judge (Magistrates’ Courts) and Crown Court Recorder in 2009, a District Judge (Magistrates’ Courts) in 2011 and was then appointed as a Crown Court Judge in 2019. She was appointed to the Sentencing Council on 1 April 2017.

### ***Her Honour Judge Rosa Dean***

Rosa Dean was called to the Bar in 1993. She was appointed as a District Judge (Magistrates' Courts) in 2006, a Recorder in 2009 and a Circuit Judge in 2011. She was appointed to the Sentencing Council on 6 April 2018.

### ***Dr Alpa Parmar***

Alpa Parmar is a departmental lecturer in criminology in the Faculty of Law at the University of Oxford. She was appointed to the Sentencing Council on 6 April 2018.

### ***Beverley Thompson OBE***

Beverley Thompson has spent over 30 years working in the criminal justice sector initially as a probation officer in London. She was Director for Race, Prisons and Resettlement Services at NACRO for 10 years. She was appointed to the Sentencing Council on 15 June 2018.

### ***Max Hill QC***

Max Hill is the Director of Public Prosecutions and head of the Crown Prosecution Service. He was appointed to the Sentencing Council on 1 November 2018.

### ***Diana Fawcett***

Diana Fawcett is Chief Executive of Victim Support. She joined the charity as Director of Operations in February 2015 and became Chief Executive in January 2018.

Diana was appointed to the Council on 5 April 2019 and has specific responsibility for promoting the welfare of victims of crime.

### ***Nick Ephgrave QPM***

Nick Ephgrave is Assistant Commissioner for Frontline Policing in the Metropolitan Police (Met). He was appointed to that post in March 2020, having previously served as AC for Met Operations and, prior to that, as Chief Constable of Surrey Police. Nick was appointed to the Sentencing Council on 26 May 2020.

### ***Jo King JP***

Jo King was appointed to the Sussex Central Bench in 2002. She is currently the lead magistrate on Reform and co-chair of the Magistrates' Engagement Group. She is a member of the Surrey and Sussex Advisory Committee, the South East Region Conduct Committee and Judicial Conduct and Investigations Office disciplinary panels. Jo was appointed to the Sentencing Council on 8 October 2020.

### ***The Honourable Mrs Justice May DBE***

Juliet May was called to the Bar by the Inner Temple in 1988, becoming a bencher in 2010. She was appointed a recorder in 2001 and took Silk in 2008, being appointed to the Circuit Bench later the same year. She was appointed to the High Court (Queen's Bench Division) in 2015. From 2016-2020 she was a Presiding Judge on the Western Circuit. Dame Juliet was appointed to the Sentencing Council on 8 October 2020.

### ***[Vacant – District Judge post]***

## **Sub-groups**

The Council has sub-groups to provide oversight in three areas: analysis and research, confidence and communication and governance. The sub-groups' roles are mandated by the Council, their membership reflects a broad range of judicial and non-judicial members, and all key decisions are made by the full membership.

**Analysis and research:** this group advises and steers the analysis and research strategy, including identifying research priorities so that it aligns with the Council's statutory commitments and work plan. Chaired by: Dr Alpa Parmar.

**Confidence and communication:** this group advises on and steers the work programme for the Communication team so that it aligns with the Council's statutory commitments and work plan. Chaired by: Her Honour Judge Rosa Dean.

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

The Council has also established a working group to advise on matters relating to equality and diversity and make sure that the full range of protected characteristics are considered in our work. The group also considers ways in which the Council could engage more effectively with, and take account of the views and perspectives of, representatives of people with protected characteristics, and with offenders and victims.

Where necessary, the Council sets up working groups to consider particular aspects of the development of a guideline or specific areas of business. It also sometimes invites contributions from people who are not members of the Council but who have particular experience and expertise in fields of relevance to the guidelines.



# Objectives

## Statement of Purpose

The Sentencing Council for England and Wales promotes a clear, fair and consistent approach to sentencing through the publication of sentencing guidelines, which provide clear structure and processes for judges and magistrates, and victims, witnesses, offenders and the public.

## Statutory duties

The Council's objectives are informed by our statutory duties under the Act, including:

(Section 120) Publishing draft guidelines and consulting when preparing them (including consulting the Lord Chancellor and Justice Select Committee); publishing definitive guidelines after making necessary amendments.

In preparing guidelines, having regard to:

- the sentences imposed by courts;
- the need to promote consistency;
- the impact of sentencing on victims;
- the need to promote public confidence in the Criminal Justice System;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and
- the results of monitoring.

Under section 124 the Council may be asked to prepare guidelines by the Lord Chancellor or the Court of Appeal and when this happens it should consider whether to do so.

(Section 127) Preparing and publishing resource assessments for both draft and definitive guidelines. These resource assessments should assess the resources required for the provision of prison places, probation provision and youth justice services.

(Section 128) Monitoring the operation of guidelines and considering what conclusions can be drawn, including:

- 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; and
- the effect of guidelines on the promotion of public confidence in the criminal justice system

(section 119) Publishing a report on the exercise of the Council's functions during the year.

Under section.129 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

Under section 132, 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

The activities for 2022/23 to deliver these statutory duties are outlined in **Table 1**.

### **Strategic objectives 2021-2026**

Following the Council's consultation on our future priorities, coinciding with our tenth anniversary in 2020, the Council has set strategic objectives to help shape our work from 2021 to 2026. These objectives set out how we plan to deliver our statutory duties as set out above, and outline specific actions that the Council will take during the period and from which the activities for the year covered by this business plan flow:

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 within our remit

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 confidence in sentencing by improving public knowledge and understanding of sentencing, including among victims, witnesses and offenders, as well as the general public

For more information about these strategic objectives and how we intend to meet them, you can visit [Sentencing Council strategic objectives 2021-2026](#). Alongside this business plan we are publishing an update on the actions under each strategic objective as set out on pages 7 to 14 of the document [\[provide link\]](#).

### **The Office of the Sentencing Council.**

In addition to the Council's statutory duties and strategic objectives, as with any successful organisation the Council depends on highly-skilled and well-motivated staff. To that end there are a number of specific objectives focussed on our people, with the goal of:

- delivering our objectives within the budget we are allocated;
- ensuring that the Office has a motivated and collaborative team who feel valued and engaged, and have the necessary capability and autonomy to deliver clear objectives; and
- working together to identify and implement more efficient ways of working and to ensure value for money.

These objectives are set out in section 3 of **Table 1**.

### **Delivering the Sentencing Council's work**

The Council approaches the delivery of our guideline-related objectives by adopting a guideline development cycle. This is based on the policy cycle set out by HM Treasury in the

*Green Book on Appraisal and Evaluation in Central Government (2003)* and allows a culture of continuous improvement to be embedded within the development process.

Following this cycle, there are several key stages within the development of a sentencing guideline:



### ***Making the case for developing/amending the guideline***

Annex A outlines the Council's rationale for prioritising which guidelines to produce (or which existing guidelines to amend), after which options for the actual guideline are considered. The work undertaken at this point may include conducting research, assessing options for the scope and remit of a guideline, its objectives, or whether there is in fact a need for the guideline. If the guideline has been requested by the Lord Chancellor, Lord Chief Justice or Court of Appeal or evidence of a sentencing-related issue is presented to us by an interested organisation, this would also be given due consideration.

As part of the work that emerged from the anniversary consultation, we have revised our criteria for developing or revising guidelines. The revised criteria are [published on our website](#) and at Annex A of this business plan.

### ***Developing/amending the draft guideline***

Once the Council has decided that a new guideline will be produced, or an existing one amended, and has agreed the objectives, work is undertaken to produce a draft guideline that will be issued for consultation. This involves a variety of different activities including consideration of relevant case law and existing sentencing guidelines or guidance; analysis of current sentencing practice; research and analysis to assess any practical, behavioural or resource implications of draft guideline proposals; stakeholder mapping and engagement and analysis of media reports. We may discuss relevant issues with experts in the field, and

will always consider when preparing or revising a guideline whether to seek formal advice from experts. The guideline proceeds through a number of iterations of drafting in order to ensure that different options are fully considered. A monitoring and evaluation strategy is also drawn up to ensure that the guideline can be assessed and evaluated after implementation.

### ***Issuing the draft guideline for public consultation***

A draft guideline is issued for public consultation, alongside the analysis and research that supported its development and an assessment of its resource implications and any equality impact. The media and stakeholders are briefed about the main issues and the purpose of the consultation, in order to bring it to the attention of a wide audience and encourage responses. We promote our consultations on our website, via our email bulletin and on social media, and events are held with stakeholders to ensure that those with particular interest in the guideline are aware of the consultation and able to provide their input. Consultations are usually open for 12 weeks, to allow those who wish to provide a response the chance to do so.

### ***Revising the draft guideline and implementing the definitive guideline***

Further work is undertaken after the consultation to revise the guideline to take account of the responses received; and to review and if necessary test changes to the guideline.

The guideline is published online on the Council's website. A response to the consultation is also published at this point explaining what changes have been made as a result of the responses we have received. Updated data on sentencing practice and a new resource assessment to reflect the final guideline are published at the same time, and a link to the guideline is sent electronically to stakeholders. The media are briefed, and we use a range of channels to ensure that the public is informed and that all key parties are aware of and able to access the guideline.

The Council works with the Judicial College to help facilitate training for sentencers on using the guideline. There will generally be an implementation period before the guideline comes into effect to allow for awareness-raising and any training to take place. In most instances we aim to bring definitive guidelines into force quarterly, on 1 January, 1 April, 1 July and 1 October.

### ***Monitoring and assessing the guideline***

The Council adopts a targeted, bespoke and proportionate approach to assessing each guideline's impact and implementation. This work involves an assessment of whether the guidelines are having any impact on sentencing outcomes or incurring any implementation issues. This information will be set against our resource assessments for the guideline to examine whether there was likely to have been an impact on correctional resources, as well as the Council's intention for a particular guideline.

We use a range of different methods for evaluations, drawing on analysis of existing data on sentencing trends over time, collection of data from sentencers on the factors that influence their sentencing of different offences, surveys, interviews and focus groups, and content analysis of Crown Court sentencing transcripts; if possible data will be collected "before" the guideline comes into force as well as "after" in order to provide a comparison between the two time periods.

We use a variety of different methods of data collection and analysis, both quantitative and qualitative, as necessary.

### ***Gathering and reviewing evidence***

The outcomes of monitoring and evaluation, along with any stakeholder or media feedback, are assessed and considered by the Council. Following this assessment, the guideline cycle moves back into the phase of **making the case for developing/amending the guideline**, this time addressing the potential need to review the guideline and make improvements. If this is found to be necessary, the cycle begins again. The timescale for this process will vary, depending on a number of factors including the extent of monitoring and evaluation and the urgency for taking any action.

### ***Timing and prioritisation***

The Business Plan sets out an indicative timeline for preparation and publication of guidelines based on the Council's current priorities and our rolling work programme. The plan will be subject to bi-annual review and updates will be published, as appropriate, on the Sentencing Council website.

### ***Cross-cutting work***

The plan also includes timescales for more cross-cutting work that the Council undertakes in support of the whole range of its statutory duties. This includes, for example, publication of data related to sentencing, research on perceptions of guidelines, analysis of the risk that guidelines have unintended impacts on different groups, and ongoing work to maintain public confidence in sentencing.

**Table 1: The main activities to deliver our statutory duties and planned timescales are as follows:**

<b>Work area</b>	<b>Key planned deliverables</b>	<b>Target (end of quarter)</b>
<b>SECTION 1: GUIDELINES</b>		
<b>Sexual offences</b>	Publication of revised definitive guidelines, consultation response and updated resource assessment	Quarter 1 2022/23
<b>Burglary</b>	Publication of revised definitive guideline, consultation response, and resource assessment	Quarter 1 2022/23
<b>Underage sale of knives</b>	Publication of consultation, resource assessment and statistical bulletin	Quarter 1 2022/23
	Publication of definitive guideline, consultation response, and resource assessment	Quarter 3 2022/23
<b>Totality</b>	Publication of consultation	Quarter 1 2022/23
	Publication of revised guideline, consultation response, and resource assessment	Quarter 4 2022/23
<b>Animal cruelty</b>	Publication of consultation, resource assessment and statistical bulletin	Quarter 1 2022/23
	Publication of definitive guideline, consultation response, and resource assessment	Quarter 4 2022/23
<b>Motoring</b>	Publication of consultation, resource assessment and statistical bulletin	Quarter 2 2022/23
	Publication of definitive guideline, consultation response, and resource assessment	Quarter 4 2022/23
<b>Terrorism</b>	Publication of definitive guideline, consultation response, and resource assessment	Quarter 2 2022/23
<b>Child cruelty</b>	Publication of consultation, resource assessment and statistical bulletin	Quarter 2 2022/23

	Publication of definitive guideline, consultation response, and resource assessment	Quarter 4 2022/23
<b>Evaluation of Imposition of Community and Custodial Sentences guideline</b>	Publication of findings from guideline evaluation	Quarter 2 2022/23
<b>Evaluation of Breach guidelines</b>	Publication of findings from guideline evaluation	Quarter 2 2022/23
<b>Miscellaneous amendments to guidelines</b>	Publication of consultation	Quarter 2 2022/23
<b>Evaluation of bladed articles and offensive weapons guidelines</b>	Publication of findings from guideline evaluation	Quarter 3 2022/23
<b>Evaluation of Intimidatory guidelines</b>	Publication of findings from guideline evaluation	Quarter 3 2022/23
<b>Aggravated vehicle taking</b>	Publication of consultation	Quarter 3 2022/23
<b>Immigration offences</b>	Publication of consultation	Quarter 4 2022/23
<b>Perverting the course of justice and witness intimidation</b>	Publication of definitive guideline, consultation response, and resource assessment	Quarter 4 2022/23
<b>SECTION 2: CROSS-CUTTING WORK</b>		
<b>Business Plan and Strategic objectives</b>	Publish 2021-22 Business Plan and update on progress on strategic objectives 2021-2026	Quarter 1 2022/23
<b>Annual Report</b>	Publish 2021-22 Annual Report	Quarter 2 2022/23
<b>Digitisation of guidelines</b>	Continue to maintain, refine and support online and offline versions of sentencing guidelines for magistrates (MCSG)	Ongoing
	Continue to maintain, refine and support online versions of sentencing guidelines for Crown Court Judges	Ongoing

<b>Literature review on the effectiveness of sentencing</b>	Publication of literature review	Quarter 2 2022/23
<b>Data collection in courts</b>	Plan and undertake data collection in courts; publish datasets used to inform the evaluation of guidelines, including drugs and robbery offences	Ongoing throughout 2022/23
<b>Public confidence survey research</b>	Publish survey findings	Quarter 3 2022/23
<b>Research on the potential for the Council's work inadvertently to cause disparity in sentencing across demographic groups</b>	Publish research findings	Quarter 3 2022/23
<b>You Be the Judge – online tool</b>	Revise and relaunch 'You Be the Judge' – interactive sentencing tool on the Sentencing Council website	Quarter 2 2022/23
<b>References received from Lord Chancellor or Court of Appeal under section 124</b>	Respond as required	Reactive only
<b>External representation</b>	Council members and office staff speak at external events throughout the year targeting the judiciary, criminal justice practitioners, academics and special interest groups.	Ongoing
	Promote sentencing guidelines and the Council using all channels, including via proactive and positive engagement with the media, to engage with Government, its Arm's Length Bodies, the Judicial College and organisations with an interest in criminal justice and sentencing.	Ongoing
	Promote public confidence in sentencing by tailoring and targeting our external communications, developing relationships with key advocates such as the police service, working with partner organisations and developing the public-facing content of our website.	Ongoing



	Provide assistance to foreign jurisdictions via visits, advice and support work.	Ongoing
<b>SECTION 3: EFFICIENCY AND OUR PEOPLE</b>		
<b>Efficiency</b>	<p>Publishing all guidelines and other documents online, with the exception of the annual report.</p> <p>Ensure value for money in the procurement of goods and services, making savings where possible and complying with departmental finance, procurement and contract management rules.</p> <p>Learn from lessons of each project, making improvements to future guidelines as a result; and improving efficiency on the basis of experience of what works.</p>	Review quarterly
<b>Capability</b>	<p>Enable the Council to operate digitally, through development and support of secure online members' area, digital Council papers and online collaboration tools.</p> <p>Ensure all staff undertake at least five days of targeted learning and development to develop skills, capability and career.</p> <p>Hold lunchtime seminars for staff to share knowledge and expertise about the work of the Council, the criminal justice system and Whitehall/ Government.</p>	Touchpoint meetings every 2 months
<b>Engagement</b>	Implement an action plan arising from the findings of the people survey, based on priorities identified by staff.	Quarter 2 2022/23

<b>TIMELINE OF PUBLICATIONS AND GUIDELINE EFFECTIVE DATES 2022 to 2023</b>		
April 2022	Miscellaneous amendments to guidelines	Revisions in effect
April 2022	Animal cruelty (revision)	Launch of consultation
May 2022	Business Plan	Publication of business plan
May 2022	Sexual offences (revisions)	Publication of revisions to definitive guidelines
May 2022	Sexual offences (revisions)	Revisions to definitive guidelines in effect
April 2022	Sexual communication with a child	Publication of definitive guideline
May 2022	Burglary	Publication of revised definitive guideline
May 2022	Underage sale of knives	Launch of consultation
June 2022	Motoring	Launch of consultation
June 2022	Totality (revision)	Launch of consultation
July 2022	Sexual communication with a child	Definitive guideline in effect
July 2022	Burglary	Revised definitive guideline in effect
July 2022	Terrorism (revision)	Publication of revised definitive guideline
July 2022	Annual report and accounts	Publication of statutory annual report to the Lord Chancellor
August 2022	Imposition of Community and Custodial sentences guideline	Publication of evaluation report
August 2022	Breach	Publication of evaluation report
September 2022	Miscellaneous amendments to guidelines	Launch of consultation
TBC Q2 2022/23	Child cruelty (revision)	Launch of consultation
October 2022	Terrorism (revision)	Revised definitive guidelines in effect
October 2022	Bladed articles and offensive weapons	Publication of evaluation report
November 2022	Underage sale of knives	Publication of definitive guideline
TBC Q3 2022/23	Aggravated vehicle taking	Launch of consultation
December 2022	Intimidatory offences	Publication of evaluation report
January 2023	Animal cruelty (revision)	Publication of revised definitive guidelines

January 2023	Underage sale of knives	Definitive guideline in effect
February 2023	Totality (revision)	Publication of revised definitive guideline
March 2023	Motoring	Publication of definitive guidelines
March 2023	Perverting the course of justice and witness intimidation	Publication of definitive guidelines
TBC Q4 2022/23	Child cruelty (revision)	Publication of revised definitive guideline
TBC Q4 2022/23	Immigration offences	Launch of consultation

## Resources

### Staff headcount (as at 1 April 2022)

Area of activity	FTE <sup>2</sup>
Head of Office and support	2
Policy	4.6
Analysis and research	8.5
Legal	1
Communications	3
<b>Total</b>	<b>20.1</b>

## Budget

Summary of budget and resource allocation

	2021/22 (actual) £000s	2022/23 (budget) £000s
<b>Total funding allocation</b>	1,745	tbc
<b>Staff costs</b>	1,172	tbc
<b>Non staff costs</b>	573	tbc

<sup>2</sup> FTE: full-time equivalents

<b>Total expenditure</b>	<b>1,745</b>	<b>tbc</b>
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## Annex A: Rationale for the prioritisation of guidelines

Under section 120 of the Coroners and Justice Act 2009 the Sentencing Council must prepare sentencing guidelines on:

- the discharge of a court's duty under section 73 of the Sentencing Code (reduction in sentences for guilty plea);<sup>3</sup> and
  - the application of any rule of law as to the totality of sentences.<sup>4</sup>

Section 120(4) provides that the Council may prepare sentencing guidelines about any other matter.

The overarching aim of the Council in publishing guidelines is to promote a clear, fair and consistent approach to sentencing. In agreeing its rolling work plan, the Council will prioritise the publication of guidelines that will fulfil that aim.

The Sentencing Council will schedule guideline production on the basis of one or more of the following factors:

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

A further factor that the Council will take into account in all cases is the resource available to produce or revise guidelines. The Council is unlikely to undertake the development or revision of a guideline at a time when legislative changes that would affect that guideline are pending.

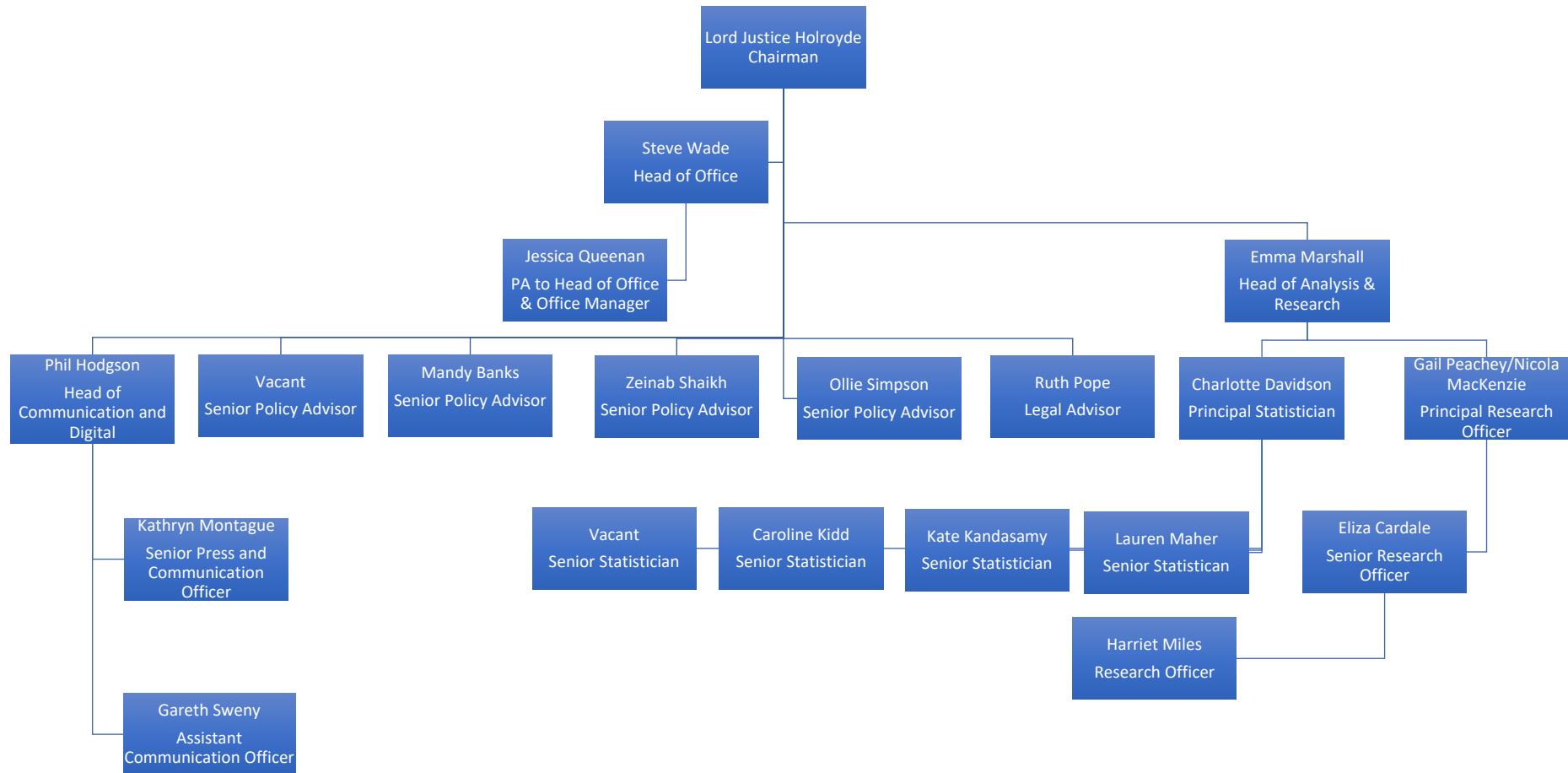
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<sup>3</sup> s.120 (3)(a)

<sup>4</sup> s.120 (3)(b)

## Annex B: The Office of the Sentencing Council as at 1 April 2022

The Sentencing Council is supported in its work by a multi-disciplinary team of civil servants, as shown below.



## Annex C: Sentencing Council Guideline Work Plan – 2022-2023<sup>1</sup> (as at 1 April 2022)

<b>Guideline</b>	<b>Consultation period</b>	<b>Publish definitive guideline</b>	<b>Definitive guideline in force<sup>2</sup></b>
Sexual Offences (partial revision)	May 2021 – August 2021	May 2022	1 July 2022
Terrorism: revision of SC guideline	October 2021 – January 2022	July 2022	1 October 2022
Burglary: revision of SC guideline	June 2021 to September 2021	May 2022	1 July 2022
Perverting the course of justice etc	March 2022 to June 2022	March 2023	1 April 2023
Motoring offences	June 2022 to August 2022	March 2023	1 April 2023
Underage Sale of Knives	May 2022 to July 2022	November 2022	1 January 2023
Animal Cruelty	April 2022 to June 2022	January 2023	1 April 2023
Totality revision	June 2022	February 2023	1 April 2023
Child Cruelty (partial revision)	Quarter 2 2022/23	Quarter 4 2022/23	TBC
Aggravated vehicle taking	Quarter 3 2022/23	TBC	TBC
Immigration offences <sup>2</sup>	Quarter 4 2022/23	TBC	TBC

<b>Guideline</b>	<b>Consultation period</b>	<b>Publish definitive guideline</b>	<b>Definitive guideline in force<sup>2</sup></b>
Annual miscellaneous amendments	September – December 2022	March 2023 – publication of response to consultation	Amendments will come into force annually on 1 April

<sup>1</sup> The dates shown in this work plan are indicative.

<sup>2</sup> In most instances we aim to bring definitive guidelines into force quarterly, on 1 January, 1 April, 1 July and 1 October.



## Sentencing Council strategic objectives and actions 2021-2026: Update on progress (May 2022)

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

Action	Provisional timing stated in the Council's strategy document	Progress to date
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	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	Completed and published. <sup>1</sup>
Review the Totality guideline in the light of research findings and make any necessary changes.	Consult on draft guideline by October 2022	Research was published in September 2021; this has been reviewed and the Council has decided to make changes to the current guideline. A consultation on the changes will be issued in 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	Ongoing; since issuing the strategy document in November 2021, we have engaged with relevant stakeholders, for example Trading Standards on the guideline on Underage Sale of Knives, and the RSPCA on the animal cruelty guidelines.
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	Completed for 2021.

<sup>1</sup>Links to relevant documents will be added in when this table is published on the Sentencing Council's website.

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	The log is being updated as necessary
Enable users to feedback on guidelines by providing a mechanism to report errors or difficulties.	Completed; feedback function available from September 2021	Completed; as of 30 April 2022 we have had xxx queries submitted via this route. <sup>2</sup> Several have resulted in minor corrections to guidelines, others have been noted as requests for guidelines or for consideration in the next round of miscellaneous amendments.

**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**

Action	Provisional timing stated in the Council's strategy document	Progress to date
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	Ongoing
Provide evidence and analysis to support the Council's work across all of its statutory duties.	Ongoing	Ongoing
Finalise approach as to how we might access a greater 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	This work is in progress. We have now met with colleagues working on the Common Platform, engaged with relevant judicial working groups and are continuing discussions in this area.
Consider whether enhancements can be made to the way in which we measure and interpret the impact of our guidelines and our	By June 2022	An initial review of data sources has been undertaken and we issued an Invitation to Tender for a small piece of academic work

<sup>2</sup> We plan to publish this table alongside the business plan in early May and will insert the relevant figures at that point.

approaches to resource assessments by undertaking a review of our current practice.		to support this in January 2021. We unfortunately did not receive any bids for the work. We plan to revisit the specification and reissue it during spring 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	Internal discussions on the scope and approach to such work are underway.
Inform development of the Totality guideline by undertaking a small research study with sentencers.	Completed; published in September 2021	Completed and published.
Explore the impact and implementation of the intimidatory offences guidelines by undertaking an evaluation	Start by March 2022	Internal work on this has started.
Explore the impact and implementation of the domestic abuse overarching guideline by undertaking an evaluation	Start by March 2022	We are in the process of developing a specification to procure external work for an evaluation in this area.
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	Ongoing. For example, the social research team are currently planning four pieces of qualitative research with sentencers and an internal evaluation of the Breach guideline will draw on the views of probation officers.
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	We commissioned external academics to conduct a literature review in this area in February 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	We plan to start reviewing this in the summer.
Consider how best to make use of local area data in our work by undertaking a review of options.	By March 2022	An initial review has been undertaken on this and discussed with the Analysis and Research subgroup. A note on the Council's decision on this area is published alongside this update document.
Permit access to data collected by the Council by preparing and publishing our drugs data collection.	By June 2022	We are currently on track to publish this data by June.

Permit access to data collected by the Council by preparing and publishing our robbery offences data collection.	By September 2022	We are currently on track to publish this data by September.
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	This is ongoing. For example, an advertisement for a research fellow to work with the Council on analysis in the area of race and other protected characteristics was published in January 2022. We have also commissioned external academics to undertake work on equality and diversity and effectiveness in sentencing.

**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 within our remit**

<b>Action</b>	<b>Provisional timing stated in the Council's strategy document</b>	<b>Progress to date</b>
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	Ongoing; we now routinely publish sentencing breakdowns by age, sex and ethnicity alongside guidelines and consultations and are exploring what more we can do in this area in the future (e.g. we plan to collect case identifiers in our forthcoming data collection to enable us to link to data on ethnicity, there may be more data available in the future via the Common Platform and the research fellowship that was advertised at the start of the year will focus on potential opportunities for enhancing access to relevant data).

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	Ongoing; the relevant data is considered for all guidelines. The content within the Equality & Diversity chapter in consultation documents has been reviewed and rewritten. There is a new emphasis on trying to explore consultees' views on these matters within each draft guideline.
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	Work on this has been completed and the Council is currently considering the findings and recommendations.
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	Completed; text has been added to the Council's updated criteria.
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	Internal discussions on the scope and approach to such work are underway.

**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**

Action	Provisional timing stated in the Council's strategy document	Progress to date
Ensure the Council continues to be informed on issues related to effectiveness of sentencing by publishing a research review of the relevant evidence.	Biennially from September 2022	We commissioned external academics to conduct a literature review in this area in February 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	We plan to start scoping work in this area during the summer.
Consider whether any changes are required to highlight to sentencers the need to consider issues relating to effectiveness of	From September 2022	An evaluation of the Imposition guideline is underway and when this is completed we

sentencing as a result of research work in this area and any work undertaken on the Imposition guideline.		will consider the relevance of this to the area of effectiveness.
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**Strategic objective 5: The Council will work to strengthen confidence in sentencing by improving public knowledge and understanding of sentencing, including among victims, witnesses and offenders, as well as the general public**

Action	Provisional timing stated in the Council's strategy document	Progress to date
Ensure sentencers and other practitioners have easy and immediate access to sentencing guidelines by continuing to develop digital tools that meet their needs.	Ongoing	Ongoing. The SentencingACE tool for use in the Crown Court has been launched on the Council's website, as well as a pronouncement-card builder for use in magistrates' courts. The card builder and a drink-drive calculator have also been published on the magistrates' courts sentencing guidelines app. An Android version of the app is in development.
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	Ongoing. We have refined our media strategy to reflect the five strategic objectives. In addition to publicising guideline and consultation launches, we have placed an interview with the Chairman in the Times Law Pages and another with AC Nick Ephgrave, policing member of the Council, with Police Oracle, and are actively pursuing other interview and feature opportunities. We have developed and published a series of short videos to illustrate content on our website and make it more accessible to the public.
Support the effective development of guidelines by continuing to promote Council consultations to practitioners who use the	Ongoing	Ongoing, as consultations are launched.

guidelines and individuals and groups who could potentially be affected by the guidelines.		
Elicit a broader and more representative body of consultation responses to inform the development of guidelines by undertaking a review of our target audiences and how we reach them.	By December 2021	Work has been commissioned by the Equality and Diversity working group to extend our field of potential consultees and the ways in which they can contribute is ongoing.
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	Working in collaboration with Young Citizens and Judicial Office, we have developed content for Key Stage 1 and 2 (primary) teaching resource, 'What happens when laws are broken?' The resource supports Citizenship and PHSE (Personal, Health, Social and Economic education).
Improve our ability to inform the public about sentencing by identifying relevant organisations willing to help us engage with their stakeholders.	Ongoing	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	Completed; all consultations are now accompanied on our website with introductory material written specifically for public audiences.
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	The content has been developed and will shortly be published on the website.
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	We commissioned an external survey company to undertake this work. The Council are currently considering the findings from this work.
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	The Chairman attended a closed meeting of the JSC in December 2021 where he spoke about the work of the Council and sentencing more generally. We are

		continuing to liaise with the Committee about a more formal evidence session in the first half of 2022 but no date or topic has been set yet.
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# Sentencing Council **Risk and Issue Register**

Owner: Lisa Frost  
Last Updated: August 2018 [v1.00]

**Risk Scoring**

Likelihood Scores					
Likelihood Score					
Scale	0 – 5 %	6 – 20 %	21 – 50 %	51 – 80 %	81 – 99 %
Risk Register Value	1	2	3	4	5
Likelihood Level	Very Low	Low	Medium	High	Very High

Impact Scores					
	Very Low (1)	Low (2)	Medium (3)	High (4)	Very High (5)
Objective Level	Minor and containable impact	Affects short term goals within objective without impact to long term goals	Significant short term damage and important to outcome of long term goals	Significant detrimental effect on achievement of objective	Prevents achievement of objective
Cost	Less than 0.5 % of the of total estimated project cost	0.6 – 1 % of the total estimated project cost	1 – 2.5 % of total estimated project cost	2.6 – 5 % of total estimated project cost	Greater than 5 % of estimated project cost
Time	Delays that are less than 2 weeks	Delays that are likely to be in the region of more than 2, and less than 4 weeks	Delays that are likely to be in the region of more than 4, and less than 6 weeks	Delays that are likely to be in the region of more than 6, and less than 8 weeks	Greater than 8 weeks delay
Operational	Very minor operational impact	Minor operational impact	Some operational impact	Major operational impact	Severe and large scale operational impact
Reputation	Very minor reputational impact	Minor reputational impact	Some reputational impact	Major reputational impact	Sever reputational impact

**Issue Scoring**

The issue score relates to the priority of the need for the issue to be successfully resolved. This criteria should be applied to all issues at programme and project level.

Priority Score	
Qualitative Measure	Severity Score
<b>Highly Problematic</b> – Requires urgent action	5 – Very High
	4 – High
<b>Problematic</b> – Requires actions, some urgent	3 – Medium
<b>Mixed</b> – Some aspects need attention	2 – Low
<b>Good</b> – on track	1 – Very Low

[Programme/ Project Name] Risk Register																																
Objective / Business Unit:																																
Risk ID	Date Identified	Risk (Event)	Cause(s)	Effect(s)	Risk Type	Risk Status	Proximity	Last Review	Controls: In Place and Active	Action Owner	Due Date	Impact	Likelihood	BRAG score	Risk Trend	Comments/Notes	Next Review	Target Impact	Target Likelihood	Target Score (IxL)	Target Score (IxL)	Target Date	Date Closed	Risk Owner	Risk Cost (£)							
PRJ-001		<p><b>Shortage of qualified staff</b></p> <p><b>Bold headline title of the risk description</b></p> <p><b>Full description of the risk.</b> This should be as clear &amp; descriptive as possible.</p> <p>Date the risk was placed on the register</p> <p>Date the risk was placed on the register</p> <p>Next two steps:</p>	<p><b>The risk is caused by:</b></p> <p>Provide a list of causes of the risk.</p>	<p><b>If the risk occurred the effects would be:</b></p> <p>State clearly the effects on the project if the risk occurs.</p> <p><b>Risk Types</b> are divided into 5 categories: External, Internal, Financial, People &amp; Process. Select the most appropriate for the risk.</p> <p><b>Risk Status</b> set to: <b>Open</b>; if the risk is still active,</p>	E	O	I		<p>1-001: Control Measure / Action</p> <p>2-001: Control Measure / Action</p> <p>3-001: -Control Measure / Action</p> <p>Mitigating actions/controls should be identified that <b>address the causes</b>. The mitigating actions should have the ability to <b>reduce the impact, the probability or both</b>. Ideally they should be <b>SMART: Specific, Measurable, Achievable, Realistic &amp; Time bound</b>. There can be <b>multiple mitigating actions</b>, each with different action owners if that is appropriate.</p> <p>For ease of identification, each action should have its own number and be identified with the specific risk i.e.</p> <p>1 (First action) - 001 (related to risk number 001)</p> <p>2 (Second action) - 001 (still related to risk number 001)</p> <p>If needed should include details of contingencies</p>	Action Owner Action Owner Action Owner	xx/xx/xx xx/xx/xx xx/xx/xx	3	4	High	↑	<p>E.g. <b>Update 12/06/2010</b>: Reviewed the risk with Owner &amp; it has been raised from a Amber to Red</p> <p>E.g. <b>Update 18/03/2010</b>: Met with owner of action 1.001. Action still progressing. Due date agreed to be delayed by 1 month. Now due 01/01/2011</p> <p>This section allows you to keep a 'commentary' regarding the ongoing management of the risk. It helps to keep others informed of past &amp; current progress in your absence &amp; can act as an audit trail.</p>	Set date (maximum 1 month ahead)	2	2	4	Low		Date the risk was formally closed									<p>The <b>risk owner</b> is the named person <b>accountable</b> if the risk materialises. They also should ensure mitigating actions are completed &amp; <b>managed</b>. <b>Is effectively managed</b>. There should be one owner per risk</p> <p>The <b>risk cost</b> is the cost to the programme/project if the risk materialises.</p>
									<p><b>Proximity</b> is the date the risk is likely to occur: <b>Imminent (I)</b> = risk can occur within 1 month <b>Close (C)</b> = Risk is 2-4 months away from occurring <b>Approaching (A)</b> = Risk is 5-11 months away from occurring <b>Distant (D)</b> = Risk is 12 months or more away from occurring</p>							<p>Identify what level of impact you wish <b>the risk to be reduced to</b> (over the next few weeks/months). The same principle applies to the <b>target likelihood</b>.</p>														<p><b>Target Date</b>: is the date you expect the <b>Target Impact &amp; Likelihood to be reached</b>.</p>		
EXP 001		<p><b>Project delays due to planning/external interventions</b></p> <p>Full description</p>	<p><b>The cause of this risk is:</b></p> <p>Planning not approved, or external authority interventions (e.g. English Heritage)</p>	<p><b>The effect of this risk occurring is:</b></p> <p>Delays in the start of construction, leading to slippage in planned opening dates of new capacity.</p> <p>Operational capacity, local and national population pressure increased due to delay of new accommodation coming online</p>	E	O	C		<p>1-001 Undertake early engagement with Planning Department at Heritage sites. OWNER: DUE: Project Inception &amp; monthly update reports thereafter</p> <p>2-001 Ensure that the Business Case process recognises planning requirements and timescales needed as part of planning process. OWNER: Project Sponsor DUE: Project Inception</p> <p>3-001 Project plans to reflect planning in delivery timescales. OWNER: Project Sponsor DUE: Project Inception</p>	Action Owner Action Owner Action Owner					↔	<p>The BRAG score will then</p>																

[Programme/ Project Name] Risk Register

Objective / Business Unit:														Next Review	Target Impact	Target Likelihood	Target Score (IxL)	Target Score (IxL)	Target Date	Date Closed	Risk Owner	Risk Cost (£)				
Risk ID	Date Identified	Risk (Event)	Cause(s)	Effect(s)	Risk Type	Risk Status	Proximity	Last Review	Controls: In Place and Active	Action Owner	Due Date	Impact	Likelihood	Score (I x P)	Risk Trend	Comments/Notes										
1		Guidelines have impacts that cannot be assessed or are not anticipated or intended	1) Lack of data available from courts to predict and assess the resource impact of guideline. 2) Difficulty in measuring and assessing impact of guidelines after implementation 3) Insufficient volumes of data to look at impacts on different groups	1) Do not effectively fulfil statutory remit 2) Reputational risk in producing guidelines without accurate assessment of impact 3) Unforecast resource impact on prisons and probation services 4) guidelines are implemented that have a different impact than intended	I	O	A	01/03/2022	1) Bespoke data collections undertaken in courts 2) Road testing 3) Working with MOJ colleagues working on the Common Platform to explore collecting more, and more robust, data in the future; 4) a data collection exercise in all magistrates courts and the Crown Court will take place from October 2022 5) The Council's workplan includes as many evaluations of guidelines as resources permit 6) Work to review our approaches to resource assessments is being undertaken to identify any areas for improvement and we hope to obtain some academic input to that.	Emma Marshall	Ongoing	4	3	12	High	↔	Further controls/action to be considered on guideline by guideline basis - e.g. some guidelines may have significant data issues. We have met with the Common Platform team to emphasise the importance of our data and are now taking forward these discussions; we have also had a positive meeting with the Magistrates Engagement Group, Judicial Engagement Group and the Judicial Working Group and are now arranging a further meeting with HMCTS colleagues. Our next (final data collection) has now obtained SPJ approval and we are awaiting HMCTS DAP approval. Evaluation work on Intimidatory offences, Bladed articles and offensive weapons, Breach offences and the Imposition guideline is underway. We are also planning to commission an evaluation of the overarching guideline on Domestic abuse on the forthcoming months.	01-Oct-22	3	2	6	Medium	01/04/2024		Emma Marshall	200k
2		Criticism that Sentencing Council guidelines are inflating the prison population	1) Guidelines actually have had inflationary impact 2) Cannot ascertain we have had an impact 3) No evidence available to assess 4) lack of external audience awareness or understanding of actual impact in RA	1) Government abolish SC or revise statutory remit 2) SC pressurised to revise approach to guidelines and independence undermined 3) General reputational risk 4) lack of confidence by senior political stakeholders	E	O	C	01/03/2022	1) Work undertaken on exploring cross cutting issues to understand structural impact on guidelines 2) Programme of stakeholder engagement planned to raise awareness and understanding particularly in anniversary year as far as possible and these questions specifically asked in vision consultation to understand what we could / should be doing in this space. 3) A&R team ongoing work as under risk 1 4) Lessons learned from earlier work meaning policy now involved at a much earlier stage of evaluations	Steve Wade	Next Governance meeting	2	2	4	Low	↓	1) Working group to consider how conclusions from cross cutting work can be fed into approach. 2) Comms/ public confidence research to feed in to strategy for anniversary year although COVID has meant plans have had to be reduced somewhat. Continue to plan for some form of event in 2021 and identify opportunities for further work as a result of the ongoing vision consultation analysis. 3) see risk 1. 4) Given change in SoS, minister, Perm Sec, DG and SCS working level lead and lack of interest from MoJ we consider this closed unless MoJ were to resurface it at some point. Vision responses may well point to more work that would be useful in this area. 5) Recent JSC report did not find guidelines are predominant inflationary and our own cumulative impacts work shows a range of different effects. Anniversary work will also demonstrate Council impacts beyond purely increase/decrease in sentencing severity. 6) Need to ensure that way we frame our reports / evaluations does not (inadvertently) contribute to incorrect narratives on sentence increases	01-Oct-22	2	2	4	Low	n/a		Steve Wade	-
3		Government policy changes lead to guidelines requiring amendment or being ineffective	1) Legislative changes or wider CJS changes 2) Government changes sentencing approach	1) Guidelines become out of date and not useful to sentencers 2) wasted resources developing guidelines which become obsolete prior to or immediately after publication 3) SC look out of touch or slow to respond to CJS direction 4) Entire work programme undeliverable.	E	O	A	01/03/2022	1) Engagement with MoJ senior officials on regular basis to horizon scan 2) Engagement with individual departments in relation to specific guidelines as and when required 3) MoJ sponsoring director asked for regular updates at Council meetings 4) Continue to put driving offences on hold until legislation brought in. Changes to new legislation now before Parliament. OSC tracking what may need to be done but currently looks manageable. Driving offences now commenced	Steve Wade	Next Governance meeting	3	2	6	Medium	↓	Current legislation before Parliament and appears to have manageable impacts for SC but continue to monitor. Generally shift towards greater legislation means we may need to reconsider. Major sentencing change secured via PCSC Bill, although there remains the possibility of changes to the penalties for individual offences.	01-Oct-22	2	3	6	Medium	01/03/2022		Steve Wade	300k
4		Sentencers do not use guidelines	1) High volume of guidelines/complexity to digest 2) Unwillingness of sentencers to familiarise selves with overarching topics 3) Lack of awareness of guidelines 4) Guidelines and other material not accessible to users 5) Sentencers slow to keep themselves informed 6) Poor uptake of digital guidelines in Crown Court	1) Reputational risk to SC among sentencers 2) Digital transition deemed unsuccessful 3) SC under pressure to reduce number of offence-specific and/or overarching guidelines produced	E	O	I	01/03/2022	1) Participation in work-programme planning 2) Routine assessment and review of communication messages and channels 3) Relationship building with sentencers 4) User engagement and testing, and continuous assessment and review of digital solutions; 5) Analysis is underway of responses to vision consultation re sentencers use of guidelines and users' views on volume and complexity; 6) Survey of magistrates to be conducted following laptop roll-out re using guidelines and devices used	Phil Hodgson	Ongoing; (5) revised schedule; (6) to Nov 2021; (7) November	4	2	8	Medium	↔	Risk adjusted to reflect positive findings of survey of Crown Court users in June 2019 (70% of judges usually or always using the digital guidelines; only 4% not using them). Need to consider how best to evaluate/assess overarching complexity and volume. Magistrates' Digital Lead has agreed to conduct survey on our behalf re magistrates' use of guidelines on new laptops and what range of other devices being used. Plan for future survey (Summer-Autumn 2022) to assess level of use. Note possibility for difference between offence-specific guidelines and overarching, or some guidelines being used more than others.	01-Oct-22	3	1	3	Low	01/04/2023		Phil Hodgson	
5		Sentencers interpret guidelines inconsistently	1) Inadequate testing of guidelines 2) Testing of guidelines does not flag issues 3) Road Testing issues not properly understood 4) Insufficient weight given to road testing findings 5) the impact of the move to a digital format not fully considered	1) Impact of guideline differs to resource assessment 2) Intended impact of guideline not realised 3) sentencers lack understanding of how to use guidelines 4) Guidelines need to be revised	I	O	A	01/03/2022	1) Build rigorous analysis and testing exercises into our work 2) Ensure A&R have sufficient resources (time and money) to test guidelines and then evaluate them after implementation 3) Ensure A&R have opportunity to explain and share findings with Council and that they are embedded in policy development; 4) potential work from vision consultation on how guidelines are used and interpreted in practice. 5) Work to assess any implications of the language/structure used in guidelines, particularly in relation to protected characteristics is being completed. 6) Work on user testing - due to be externally commissioned over the next few months - will help to indicate how guidelines are being used in practice. 7) An evaluation of the expanded explanations is due to start in Spring 2022.	Emma Marshall/Policy	Ongoing	3	2	6	Medium	↓	The Vision work has several areas of work included that will feed into this (e.g. prioritisation of road testing exercises, an evaluation of the expanded explanations, guideline evaluations, user testing etc). Procurement of new projects takes some time and so findings will not be available until some time after we start procuring. The user testing work has been on hold due to delays with recruiting a digital member of staff but we plan to start a procurement exercise for external contractors to undertake this work over the next few months. Methodologies will ensure that work can take place despite Covid (e.g. remotely if possible). It is important to note that training on guidelines falls within the remit of the Judicial College: the Council feeds into this where it falls within its remit and will consider whether it can do any more in this area.	01-Oct-22	3	2	6	Medium	31/10/2022		Emma Marshall/Policy	
6		Loss of support/confidence in SC by Public/Media	1) Media misreporting re sentencing and remit of SC 2) lack of awareness of sentencing and sentencing practice 3) lack of awareness of benefit of guidelines 4) Inaccurate/damaging reporting of guidelines in relation to government legislation and changes to release provisions	1) Increasing government scrutiny and independence compromised 2) Parliamentary and public opinion negative re sentencing and impacts upon statutory objective re confidence in sentencing	E	O	I	19/01/2022	1) Continuous evaluation and review of confidence and communication strategy 2) Routine stakeholder mapping and relationship building (incl media) 3) Internal and external work to assess impact of Council 4) Remaking of You be the Judge public facing tool with JO 5) Media monitoring and pre-emptive preparation of rebuttal lines. 6) Broaden the range of representative voices in consultations; 7) Review of the purpose, objectives and practices of Council's press function 8) Establish routine engagement with Parliamentarians via the JSC	Phil Hodgson	(1,2) Ongoing; (3) Q1 2021; (4) Q1 2022; (5) Ongoing; (6) Ongoing (7) In progress	4	2	8	Medium	↓	Confidence and communication strategy and work programme is reviewed annually, and revised for 2022 to reflect 2021-26 Vision. Development of more-detailed strategies and project plans to support overarching strategy. Development and maintenance of core script to allow swift responses/rebuttals with key messages. Project to revise You be the Judge underway, working with Judicial Office. Project to extend the reach of our consultations commissioned by Equality and Diversity Working Group. Review of Council's press function to (re)consider its objectives and whether it is meeting them (scoping)	01-Jun-22	4	2	8	Medium	01/04/2022		Phil Hodgson	

## Terrorism road testing summary report

### Introduction

In June and July 2021, the Council agreed amendments, consulted on October 2021 to January 2022, to the [Preparation of terrorist acts](#) (Terrorism Act 2006, s.5) guideline to reflect Government changes introduced in the [Counter-Terrorism and Sentencing Act 2021](#):

- Adding **‘Notes for culpability and harm’** on how to approach cases where, due to the involvement of undercover law enforcement agents (LEAs), there is no/minimal likelihood of the terrorist act being committed, including whether to apply a downward adjustment on the basis of the harm intended and viability of the plan;
- Amending the sentence in C1 in the sentencing table to ensure the minimum term range does not go below 14 years; and,
- Adding **‘Step 3 – Minimum Terms, Serious Terrorism Sentences and exceptional circumstances’**, where some sentences may need adjustment if the criteria for a ‘serious terrorism sentence’ are met, or if a life sentence of below 14 years is imposed in a ‘serious terrorism case’, as the act brought in new statutory minimum sentences, which increased previous minimum sentences to 14 years.

### Methodology

This paper focuses on the scenario related specifically to the addition of Step 3; the May Council paper covers other changes.

To examine how the proposed guidance is interpreted and impacts on sentencing practice, small-scale qualitative road testing took place September to October 2021, with 11 judges ticketed for terrorism offences, identified through the Research Pool and a sample of 2019 terrorism case transcripts. Two hypothetical scenarios were developed, each testing different elements of the draft amended guideline. One week prior to interview, participants were sent the existing and draft amended guidelines, with amendments clearly flagged on the draft amended one, and both scenarios, to allow judges time to consider them, due to the complexity of terrorism cases and the likelihood they would not have sentenced a terrorism case since the law changed on 29<sup>th</sup> June 2021.

### Testing the new ‘Step 3 – Minimum Terms, Serious Terrorism Sentences, and exceptional circumstances’.

The scenario was designed to test the new ‘Step 3’: whether sentencers adjust a sentence to bring it up to the new minimum statutory sentence, or whether they apply exceptional circumstances to keep the sentence below 14 years. To note: Where a serious terrorism sentence is imposed, any guilty plea reduction must not reduce the sentence to less than 80 per cent of the 14 year statutory minimum.

Three offenders (A, B and C) are charged with carrying out acts in preparation for the commission of an act of terrorism (section 5 Terrorism Act 2006). Two of those offenders (A and B) pleaded not guilty and were convicted at trial. The third offender (C) pleaded guilty. Only offender C is due to be sentenced today.

During the investigation the police attended the three offenders' separate residences. From offender A's residence they recovered a large amount of explosive material and the offender's mobile telephone. From an examination of the mobile device, it is clear that the offender had become wedded to an extremist ideology and was preparing to take action to give effect to those views. He was in communication with a number of other known terrorists. In addition, he had carried out searches such as 'largest office building in London', 'busiest workday', 'most powerful explosives'. He had also engaged in conversations using an encrypted chat service where he had sought advice and information from others on the best method for making a bomb.

The materials found in A's residence were, according to an expert, sufficient to carry out a large explosion that, if carried out in a populated area, would certainly have caused a high number of deaths. Offender A also had a background in chemistry, and it was believed that he was capable of putting together a viable device.

The search of B's residence revealed blueprints of a large office building in central London. The offender's mobile telephone was also seized and searched. It revealed that he too had become wedded to extremist ideology and had established contact with known terrorists. He had also spoken on an encrypted chat service with others as well as with offender A. Within those conversations it was clear that offender B had carried out reconnaissance of the building for which he had the blueprints, and was making attempts to make contact with someone who worked within the building.

From the search of offender C's residence, the police recovered a mobile telephone. This mobile telephone showed that offender A had befriended offender C through a chat room over the course of about a month. In the most recent conversations offender A had spoken in vague terms about a plot to carry out some form of terrorist attack that would result in mass fatalities. Offender C was encouraging of offender A's comments and said he would offer assistance if he could. Offender A asked if offender C had a car and would he be able to pick up some materials (unspecified in nature) the following week. Offender C agreed and said he would be able to use his mother's car.

Offender C is a 19-year-old student living with his mother and three siblings. He has no previous convictions. Examination of his mobile device indicated that around the same time that he was communicating in the chat room, he was also accessing extremist material. He explains that he started using the chat room on his mobile phone as a friend at college had recommended it. He claims that he did not know the details of offender A's plan but accepts, through his admission of guilt, that he knew offender A was planning a terrorist act and that he had agreed to provide a very small amount of assistance.

The pre-sentence report (PSR) obtained for the hearing indicates that offender C is very immature for his age, and very impressionable. In interview he had shown no signs of remorse and still seemed to believe that there was a justifiable cause for some terrorist actions.

In addition, the offender has a part time job as a lifeguard and helps his mother with family bills. His family are, to some extent, dependant on his income.

Having considered Step 1 of the sentencing guideline, the Judge has assessed this case as falling within the lower range of D1; and due to the offender's lack of previous convictions and other relevant mitigation he has reduced the sentence to 12 years.

While this was deemed a D1 case (starting point 15 years, range 10-20 years), the scenario was designed to be ambiguous to test whether the new Step 3 was useful. As anticipated, different approaches were identified. A different questioning approach to that normally used in road testing was also taken, with judges prompted to continue sentencing the offence at the end of Step 2 rather than from the beginning.

### *Key findings*

- A range of views were elicited on the 12 year sentence at the end of Step 2.
- Three judges stated they **would not** impose a **serious terrorism sentence** as it would be *'disproportionate'*; eight judges **would**, noting there were no exceptional circumstances.
- Of the three judges who **did not** impose a serious terrorism sentence, two gave pre-guilty plea sentences of 12 years, reduced to eight years plus a four year extension and nine years, and one gave a final sentence of 12 years plus a one year Sentence for Offenders of Particular Concern (SOPC), but did not provide a pre-guilty plea sentence as timing of the guilty plea was not clear. These judges were *'happy'* with their sentences.
- Of the eight judges would **did** impose a serious terrorism sentence, four gave pre-guilty plea sentences of 14 years, reduced by 20 per cent to 11.2 years, as per the guidance; one gave a pre-guilty plea sentence of 14 years plus a 10 year extension, and would *'apply a third, if at the earliest'*; two judges stated 15 years, with one reducing by 20 per cent to 12 years, and one who would reduce *'by the book'*; and one judge started at 18 years, reducing by a third to 12 years, so *'within the 20 per cent rule'*. Seven judges felt their final sentence was *'about right'*; one noted they *'found themselves trying to find a reason not to apply serious terrorism sentence'*.
- The judges were generally positive about the **new step 3**. Specific comments included:
  - Summarise S.268 and S.282 of the Sentencing Act in the guideline;
  - Reflect wording used in statute, i.e. 'at least' a minimum of 14 years' custody;
  - Clarification on 'exceptional circumstances': does it *'[apply] just to life sentence exceptions or also to serious terrorism sentences'*; *'use of 'arbitrary' and 'disproportionate' ... risk watering down the requirement to be truly exceptional'*; and should the guideline *'set out the effects of the amendments to the minimum term for deterrent sentences?'*; and;
  - One judge was concerned *'it catches young adults in the 18-21 age bracket'* and suggested it *'might be helpful to say something [in the exceptional circumstances] about age and immaturity'*.

**Table 2: Summary of results for scenario 2 – Step 3 – Minimum Terms, Serious Terrorism Sentences (STS), and exceptional circumstances**

	Views on 12 years	Impose 14 year STS?	Exceptional circumstances?	Pre-GP sentence	Reduction for GP	Final sentence	Views on sentence
1 <sup>1</sup>	Appropriate, fatalities involved	No, disproportionate	Immature, impressionable. STS is disproportionate. Culpability is significantly low.	Credit for GP but unclear when	Unclear	12 years + 1 year SOPC	Right
2	Inadequate, intention is mass fatalities	Yes. Risk of serious harm/deaths. S268 is engaged.	None. He's encouraged terrorism and offered assistance.	14 years	20%	11.2 years	Appropriate
3	Agree with D1, but reduction is too much - would only take 1 year off for mitigation	Yes. Dangerousness provisions met, potential of multiple deaths.	None. Would impose STS of 14 years anyway. Mitigating factors are not exceptional, even taken collectively.	STS. 14 years.	20%	11.2 years	About right under amended. Without, would go for 8/9 years as young, limited assistance, doesn't know full scale.
4	Same result, by different route	Yes.	None.	18 years	33% (within 20% of 14 years STS)	12 years + 7 years extension.	Fair sentence
5	Bit low – agree D1 but would have gone with 15 years.	Yes. Act would direct me to that.	None.	15 years	20%	12 years + 1 year on licence	About right
6	Probably is a D1, but would have gone with 15 years.	Yes. Qualifies for STS, directed to that.	None. Mitigating factors are not exceptional.	14 years plus 10 year extension	If at earliest, one third	Depends on when GP was	14 years statutory minimum - found self trying to find a reason not to apply it.
7	Agree with D1, 12 years seems high, not unduly lenient.	No. Too young, immature, disproportionate.	Young, immature, limited steps taken on encouragement, role on fringes of plot.	12 years	Third	9 years	Alright. What would cause me sleepless nights would be giving 14 years - pretty hefty for a 19 year old.

<sup>1</sup> Judges who did **not** impose the STS are highlighted in grey, as '[do] not reduce the sentence by less than 80 per cent of the statutory minimum' for a GP does not apply.



	<b>Views on 12 years</b>	<b>Impose 14 year STS?</b>	<b>Exceptional circumstances?</b>	<b>Pre-GP sentence</b>	<b>Reduction for GP</b>	<b>Final sentence</b>	<b>Views on sentence</b>
8	Wouldn't sentence C alone, would want to make assessment having heard A and B's trial. However, would have gone for C1.	Yes.	None – mitigating factors are not exceptional.	15 years	Depends when GP was –do by the book.	Depends on when GP was	About right
9	Joint enterprise s5 – would look at full context. However, under the guideline, it's right.	Yes. No remorse, justifiable cause, dangerous. Likely to result/ contribute to deaths.	None. Joint enterprise s5; party to very serious offending.	14 years	Follow 80% rule	11.2 years	Don't feel totally uncomfortable with the sentence. Under Court of Appeal version of the guideline he might have got more.
10	Can see how Judge came to this. 12 years is about right at step 2.	No. Immature. Unjust to apply STS.	Yes. No exceptional circumstances for offence. For the offender, defendant is 19 but PSR says very immature – there are no provisions for someone under 18. Immature people are less culpable - if very immature, a 16/17 year old would expect to have a reduction of a third.	12 years	Full reduction	8 years + 4 year extension	Quite happy as didn't apply STS. 14 years for a minimum for a 19 year old is pretty high, and the same for over 21s - no distinction from adults is a little surprising.
11	Can see how the Judge got there, D1 seems acceptable although may not have gone down the range	Yes. Dangerous, in touch with extremists, just cause, no remorse.	None.	14 years	Follow 80% rule	11.2 years	Proportionate - he knew the plan involved loss of life on mass scale

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**Sentencing Council meeting:**

**20 December 2019**

*Consultation Responses*

The Consultation can be seen here: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Terrorism-offences-guideline-consultation-2019.pdf>

Consultation Question 1

Do you agree with the change to the culpability factors in the Proscribed Organisations – Support guideline?

The consultation version of the Support guideline can be seen here:

<https://www.sentencingcouncil.org.uk/offences/crown-court/item/proscribed-organisations-support-for-consultation-only/>

- 3.3 The offence of inviting support for a proscribed organisation (section 12 Terrorism Act 2000) was amended by the Counter Terrorism and Border Security Act 2019 (the 2019 Act) to create a new offence (section 12(1A)) of expressing an opinion or belief supportive of a proscribed organisation, reckless as to whether a person to whom the expression is directed will be encouraged to support a proscribed organisation.
- 3.4 In the consultation the Council proposed that the culpability factors were amended so that the original factor; 'Offender in position of trust, authority or influence and abuses their position' was separated into an intentional offence and a reckless offence, with the intentional offence appearing in culpability A and the reckless offence in culpability B.
- 3.5 Of the 13 respondents only nine commented; six agreed and three disagreed. Amongst those that agreed were the CPS and the Criminal Bar Association. However, in disagreement was the current Independent Reviewer of Terrorism Legislation, Jonathan Hall;

*The effect of the proposed amendment is to steer the sentencing judge from ever including an offender who has been convicted of the section 12(1A) offence in the highest Culpability bracket (A). This is because the offence will not qualify as an Intentional Offence, and the*

*second (“persistent efforts to”) and third (“encourages activities intended to”) also appear to require intention.*

*The background to the enactment of the section 12(1A) Terrorism Act 2000 offence is the case of R v Choudhary and Rahman [2016] EWCA Crim 61 (see Counter Terrorism and Border Security Act 2019, Explanatory Notes, paragraph 25). Where individuals in positions of significant influence persistently express opinions or belief, reckless as to whether those in the audience will be encouraged to support a proscribed organisation (which the Court of Appeal in Choudhary and Rahman considered would not be an offence, leading to the enactment of the new offence), sentencers ought not to be discouraged from treating suitable cases as falling within Culpability A.*

*The section 12(1A) Terrorism Act 2000 offence requires proof of subjective recklessness. An outcome of the proposed change is that, even for cases in Harm Category 1, for example where there is evidence that individuals have acted on or been assisted by the encouragement to carry out activities endangering life, the starting point will be limited to 5 years.*

*It is therefore suggested that the Culpability factor “Offender in position of trust, authority or influence and abuses their position” should not be split between “Intentional Offence” and “Reckless Offence”. Instead, the fact that the offender has been convicted of the recklessness offence contrary to section 12(1A) Terrorism Act 2000 should be reflected in mitigating factors. This is not inconsistent with what the Council proposes in relation to the section 17 Terrorism Act 2000 offence.*

3.6 However, the other two respondents who disagreed (Prison Reform Trust and a Professor at the University of East Anglia) both expressed their concern about the mere existence of the provisions in legislation. The Prison Reform Trust went on to say;

*Given these concerns, we believe that the addition of recklessness as a factor in culpability should be approached with extreme caution. We do not believe that the current draft guideline meets this test. Indeed, the addition of recklessness to culpability B speaks precisely to the concern highlighted by the JCHR of an academic speaking out in favour of the deproscription of proscribed organisations. Under the current draft guideline, this individual could potentially face a maximum of six years in prison.*

*The current draft guideline also fails to take account of the range of aggravating and mitigating factors which ought to apply when someone is deemed to have committed a reckless – as opposed to an intentional – offence. Relevant factors ought to include:*

- Whether or not the defendant knew if the organisation was on the proscribed list*
  - The context for and motivation of the offence – eg support expressed for a proscribed organisation in the context of an educational setting and in the interests of furthering open debate and democratic accountability and scrutiny should at least be subject to mitigation, and arguably exempt from criminal prosecution entirely*
  - The extent to which the defendant took steps to mitigate or reverse the original reckless offence eg by deleting and / or retracting a tweet made in support of a proscribed organisation.*
- Therefore, rather than seeking to integrate the new recklessness offence into the existing guideline, we recommend that the new offence is drawn up as a separate guideline, so that the full range of factors relating to both culpability and aggravation / mitigation can be properly outlined. This should be subject to separate consultation, with a particular focus on understanding the implications for civil liberties and freedom of expression.*

- 3.7 If we take the course of action recommended by Jonathan Hall the concerns expressed by the PRT would be exacerbated. The type of case they (and the JCHR) refer to, where an academic is speaking about an organisation that should be deproscribed, reckless as to whether his talk will encourage his students to join the proscribed organisation, would remain at culpability A and only receive a small reduction at step 2 through the use of relevant mitigating factors.
- 3.8 When drafting the amendments, the Council understood that the legislative change was intended to capture figures such as Anjem Choudhary but was also mindful of the fact that the guideline must ensure that anyone sentenced for this offence receives an appropriate sentence. It was felt that ensuring that only intentional acts fall into the highest culpability bracket was the most appropriate way to proceed.
- 3.9 It is unclear how the PRT would like their concerns to be addressed beyond the addition of aggravating and mitigating factors. It may be that they would prefer the reckless factor to fall into culpability C. However, when drafting the revised guidelines, the Council was clear that an offender in a position of trust, authority or influence should receive a harsher sentence. Whilst the scenario described of an academic falling foul of the legislation is a concern there will be many other examples that are more likely to be prosecuted that need to be adequately sentenced through the guideline.
- 3.10 A way to address the concerns raised by both parties could be through additional step 2 factors;
- Aggravating: Offender has terrorist connections and/ or motivations
  - Mitigating: Offender has no terrorist connections and/ or motivations
  - Mitigating: Offender did not know that the terrorist organisation was proscribed (could be problematic as many offenders could argue this)
  - Mitigating: Offender has taken steps to retract their support
- 3.11 Alternatively, changes could be made to step one. Instead of separating out the first factor into intentional and reckless acts the Council could instead focus on the offender's motivation:
- Category A - Offender with terrorist connections and/ or motivations, in a position of trust, authority or influence, and abuses their position
  - Category B - Offender with no terrorist connections and/ or motivations, in a position of trust, authority or influence, and abuses their position

**Question 3: Does the Council want to add any additional aggravating and/ or mitigating factors?**

**Agreed to add factors set out below:**

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

Mitigating factors

- Offender has no terrorist connections and/ or motivations
- Unaware that organisation was proscribed

**Question 4: Does the Council want to amend the step 1 factors to remove the reference to reckless and intentional acts?**

**No:**

The Council considered the responses and concluded that separating reckless and intentional acts so as to treat intentional acts as more serious within culpability is common to sentencing guidelines and an important factor in assessing seriousness.

Offender name and year sentenced	Offence	Details	Sentence
Yamin 2019	S11	Went to Syria in 2013 and joined Al Qaeda. Took part in a video recording which showed that he was part of an armed combat group engaged in fighting against Kurdish forces in northern Syria. He promoted the Al Qaeda cause in the video. The video recording demonstrates that the defendant had entrenched extremist views and fully supported and encouraged the use of violence to achieve the group's aims. Due to his own sight and hearing difficulties, the defendant, although armed with a gun, played a limited combat role. However, he was based near the front line of the fighting and provided active support and encouragement for those group members who were engaged in the actual fighting by driving ambulances, caring for Al Qaeda combatants, as well as what has been described as 'cooking and general maintenance' for the group. On 31 May 2014, shortly before ISIS, or IS, declared a new Caliphate over a large part of the Syrian and neighbouring regions, the defendant returned to this country, having become disillusioned with Al Qaeda and the nature and the course of the armed conflict in Syria. He was arrested on his return and interviewed at Heathrow Airport. Having turned his back on the extremist cause, the defendant returned home and, in due course, resumed his studies and has now completed his degree in civil engineering. <b>Culpability B- active but not prominent member.</b>	14 years for preparation of terrorist acts offence and <b>4 years</b> concurrent for membership (after trial).
Ward 2019	S11	Pleaded guilty to being a member of the proscribed organisation, National Action. Joined in October 2016 when it was then not a proscribed organisation. In his application he said, "We are at war and it's time for me to fight". He said he was, "A hundred per cent committed", and, quote, "All I have to offer is my thirst for gratuitous violence". He told the leader, he considered himself fanatical. The organisation was proscribed on 16 December 2016 and shortly thereafter he left because he did not consider that National Action was likely to meet his needs. He "needed to fight" and would "be better use somewhere else". By April he was back and making suggestions for a means of recruitment for further members of what he knew then was a terrorist organisation, suggestions for improved security and particularly training. He was very keen to encourage the others in the need for paramilitary training. He planned a camp and was keen that the organisation was active in its pursuit of its violent, racist objectives and calling	<b>4 years</b> (after trial)

		for the organisation to do something rather than simply talk about it. By May 2017 he was sending messages within the chat group saying, "Our main goal should be to cause conflicts between different groups of people and force society to collapse. We should become agitators". Arrested on 5 September 2018 he was in possession of extreme right-wing material and had two pistols, an air pistol, and a steel ball bearing gun and two air rifles. <b>Culpability B- active but not prominent member.</b>	
Jones, Jack, Cutter <b>2020</b>	S11	<p>Prior to proscription, all three offenders were members of National Action. Following proscription, all 3 defied the ban and continued active membership.</p> <p>Before proscription JONES was the London regional organiser and heavily involved in the creation of propaganda and artwork for the organisation. After proscription, he was one of only a handful of prominent individuals included in two chat groups known as Inner and Sesh. He met with other prominent members in January 2017 and planned how National Action was going to operate underground. He also co-founded a group called NS131. That organisation was an online artwork platform, but on 28 September 2017 it was proscribed as being an alias of National Action. Furthermore, he designed some artwork for an organisation calling itself Scottish Door which in due course was proscribed as being another alias for National Action. He continued to organise training camps for recruits in which boxing and martial arts were taught and weapons were used, including knives. Over a period of several months he was involved in grooming a 16 year-old girl for membership in the organisation. <b>He played a significant role in the continuity of the organisation. Within the definitive guideline his role was prominent.– culpability A. Although it was accepted that others were more central, and his role fell short of being a leader- thus moved down the range.</b></p> <p>JACK became a member of National Action in July 2016. On 9 July 2016 he was involved in placing inflammatory and racist stickers on the grounds of the Aston University. Subsequently, he was involved in a number of National Action demonstrations and meetings. Following proscription, he remained a committed member of the organisation and attended eight meetings involving its membership. That includes a meeting in Birmingham where senior members of the organisation set out plans for the group's continuance. Immediately after the ban he was</p>	<p><b>JONES 5 years 6 months</b> (after trial)</p> <p><b>JACK, 4 years 6 months</b> (after trial)</p> <p><b>CUTTER, 3 years</b> (after trial)</p>



		<p>involved in seeking to introduce one of his friends to the organisation. Subsequently, he put forward an idea to create propaganda on behalf of the continuing organisation. In April 2017 he was arrested for stirring up racial hatred relating to the stickering at Aston University. But notwithstanding that he remained as a member of National Action and attended two further meetings of the organisation.</p> <p><b>Despite his dedication to the group it is accepted that he was never in organising or leadership roles- culpability B.</b></p> <p>CUTTER became a member of National Action in late May or early June of 2016. Following proscription, she continued to express extreme anti-Semitic and racist and revolutionary views and aspirations. She also attended the meeting in Birmingham in which plans were set out by senior members for the group's continuance. She was a trusted confidant of Alex Deakin who was the organiser of the Midland chapter of the continuing group, providing him with encouragement and advice upon recruitment, training and security and spoke of her desire to recruit two women into the organisation.</p> <p><b>It was accepted that she never held any organising or leadership role - culpability B.</b></p>	
Anderson & Khan <b>2016</b>	S12	<p>Set up a stall near Oxford Circus to distribute leaflets urging support for ISIS. 'It is clear that you were at that location that day to promote and invite support for ISIS/IS by engaging with and trying to persuade passers by and by handing out leaflets'. It was no coincidence that the pair chose to set the stall up on a day when there was a pro Gaza event in the vicinity that was likely to pass by the stall. 'The danger is that those invited and who succumb are often young people who then, once recruited, will be lured to Syria or Iraq and to a potential death.'</p>	<b>2 years (after trial)</b>
Kahar <b>2016</b>	S12	<p>Sought to encourage his nephew, brother-in-law and friend to join IS sending documents and material to them to influence them via social media/ internet chat.</p>	3.5 years (after trial) increased as ULS to <b>4 years</b> (consecutive to various other sentences for different terrorism

			offences – total sentence 8 years)
Anjem Choudhary & Mohammed Rahman <b>2016</b>	S12	Both joined in and became signatories to an oath of allegiance document affirming the legitimacy of the caliphate. Both then took part in lectures broadcast via the internet in which it was said that ISIS had established a legitimate caliphate and there was an obligation on every Muslim to obey the caliph (leader of the caliphate) and to fight those who differed from him. It was also said that apostates (those who renounce this belief) would face capital punishment. Both were highly regarded, influential men within a particular section of the Muslim community in the UK and abroad; followers looked to them for advice and guidance. The audiences were very large, and it is likely that a significant proportion were impressionable people looking for guidance as to how they should act. It was very likely that some of their followers would be influenced by the words to commit acts of violence. The offences were repeated and determined.	Each sentenced to <b>5 years 6 months</b> (after trial)

**Funding terrorism** Terrorism Act 2000, s.15 - s.18

<https://www.sentencingcouncil.org.uk/offences/crown-court/item/funding-terrorism/>

Statutory Maximum: 14 years

	A	B	C
1	<b>Starting point</b> 12 years' custody <b>Category range</b> 10-13 years' custody	<b>Starting point</b> 9 years' custody <b>Category range</b> 8-10 years' custody	<b>Starting point</b> 7 years' custody <b>Category range</b> 6-8 years' custody
2	<b>Starting point</b> 9 years' custody <b>Category range</b> 8-10 years' custody	<b>Starting point</b> 7 years' custody <b>Category range</b> 6-8 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 2-5 years' custody
3	<b>Starting point</b> 7 years' custody <b>Category range</b> 6-8 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 2-5 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> High level community order – 3 years' custody

**Collection of terrorist information** Terrorism Act 2000, s.58

<https://www.sentencingcouncil.org.uk/offences/crown-court/item/collection-of-terrorist-information/>

**NB. The Council revised this guideline in 2019 to reflect the stat max increasing from 10 to 15 years. However, that guideline has not yet been published, and so is not in force.**

Statutory Maximum: 15 years

	A	B	C
1	<b>Starting point</b> 10 years' custody <b>Category range</b> 8 - 14 years' custody	<b>Starting point</b> 7 years' custody <b>Category range</b> 5-9 years' custody	<b>Starting point</b> 3 years' custody <b>Category range</b> 1-5 years' custody
2	<b>Starting point</b> 7 years' custody <b>Category range</b> 5-9 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 3 - 5 years' custody	<b>Starting point</b> 1 year 6 months custody <b>Category range</b> 6 months - 3 years' custody
3	<b>Starting point</b> 5 years' custody <b>Category range</b> 3-6 years' custody	<b>Starting point</b> 3 years' custody <b>Category range</b> 2 - 5 years' custody	<b>Starting point</b> 1 year's custody <b>Category range</b> High level community order – 2 years' custody

**Encouragement of terrorism** Terrorism Act 2006, s.1 and s.2

<https://www.sentencingcouncil.org.uk/offences/crown-court/item/encouragement-of-terrorism/>

**NB. The Council revised this guideline in 2019 to reflect the stat max increasing from 7 to 15 years. However, that guideline has not yet been published, and so is not in force.**

Statutory Maximum: 15 years

	A	B	C
1	<b>Starting point</b> 10 years' custody <b>Category range</b> 7 - 14 years' custody	<b>Starting point</b> 7 years' custody <b>Category range</b> 4-9 years' custody	<b>Starting point</b> 3 years' custody <b>Category range</b> 2-4 years' custody
2	<b>Starting point</b> 7 years' custody <b>Category range</b> 4-9 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 3-5 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1-3 years' custody
3	<b>Starting point</b> 4 years' custody <b>Category range</b> 3-5 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1-3 years' custody	<b>Starting point</b> 1 years' custody <b>Category range</b> High level community order – 2 years' custody

**Possession for terrorist purposes** Terrorism Act 2000, s.57

[Possession for terrorist purposes – Sentencing \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk/offences/crown-court/item/possession-for-terrorist-purposes/)

Statutory Maximum: 15 years

	A	B	C
1	<b>Starting point</b> 12 years' custody <b>Category range</b> 9 - 14 years' custody	<b>Starting point</b> 7 years' custody <b>Category range</b> 6-9 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 3-6 years' custody
2	<b>Starting point</b> 8 years' custody <b>Category range</b> 7-9 years' custody	<b>Starting point</b> 6 years' custody <b>Category range</b> 4-7 years' custody	<b>Starting point</b> 3 years' custody <b>Category range</b> 2-4 years' custody
3	<b>Starting point</b> 6 years' custody <b>Category range</b> 4-7 years' custody	<b>Starting point</b> 4 years' custody <b>Category range</b> 2-5 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1-3 years' custody