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9 December 2022

Dear Members

Meeting of the Sentencing Council – 16 December 2022

The next Council meeting will be held in the **Queens Building Conference Suite, 2nd Floor Mezzanine** at the Royal Courts of Justice, on Friday 16 December 2022 at 9:45. This will be a hybrid meeting, so a Microsoft Teams invite is also included below.

To note this meeting will be held in the original room used previously for Council meetings on floor 2M of the Queens Building.

A security pass is **not** needed to gain access to this meeting room and members can head straight to the room. Once at the Queen's building, go to the lifts and the floor is **2M** Alternatively, call the office on 020 7071 5793 and a member of staff will come and escort you to the meeting room.

The agenda items for the Council meeting are:

▪ Agenda	SC(22)DEC00
▪ Minutes of meeting held on 18 November	SC(22)NOV01
▪ Action log	SC(22)DEC02
▪ Child Cruelty	SC(22)DEC03
▪ Miscellaneous amendments	SC(22)DEC04
▪ Motoring offences	SC(22)DEC05
▪ Imposition	SC(22)DEC06

Sentencing Council Meeting dates for 2024 and the external communication evaluation for November are also included with the papers.

Christmas Jumpers
Members of the office will be wearing Christmas jumpers for the meeting and we invite Council members to take part if they wish to. You can also donate to the save the children site here:
https://christmas.savethechildren.org.uk/fundraising/amber-isaac-christmas-jumper-day

Members can access papers via the members' area of the website. As ever, if you are unable to attend the meeting, we would welcome your comments in advance.

The link to join the meeting is: Click here to join the meeting

Best wishes

Steve Wade

Head of the Office of the Sentencing Council

Sentencing Council

COUNCIL MEETING AGENDA

16 December 2022
Royal Courts of Justice
Queen's Building

09:45 – 10:00	Minutes of the last meeting and matters arising (papers 1 and 2)
10:00 – 10:45	Child cruelty - presented by Ollie Simpson (paper 3)
10:45 – 11:30	Miscellaneous amendments - presented by Ruth Pope (paper 4)
11:30 – 11:45	Break
11:45 – 12:30	Motoring offences - presented by Ollie Simpson (paper 5)
12:30 – 13:15	Imposition - presented by Jessie Stanbrook (paper 6)

COUNCIL MEETING AGENDA

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Sentencing Council

MEETING OF THE SENTENCING COUNCIL

28 NOVEMBER 2022

MINUTES

Members present:	Bill Davis (Chairman) Tim Holroyde Rebecca Crane Rosa Dean Nick Ephgrave Diana Fawcett Elaine Freer Jo King Stephen Leake Juliet May Maura McGowan Beverley Thompson Richard Wright
Apologies:	Max Hill
Representatives:	Claire Fielder for the Lord Chancellor (Director, Youth Justice and Offender Policy) Lynette Woodrow for the Director of Public Prosecutions
Observer:	Rosie de Coverley of the Criminal Appeal Office
Members of Office in attendance:	Steve Wade Phil Hodgson Emma Marshall Ruth Pope Zeinab Shaikh Ollie Simpson

1. MINUTES OF LAST MEETING

1.1 The minutes from the meeting of 21 October 2022 were agreed subject to one minor amendment.

2. MATTERS ARISING

2.1 The Chairman informed the meeting that he had recently given an interview to Law in Action, the Radio 4 law magazine programme.

3. DISCUSSION ON EQUALITY AND DIVERSITY RESEARCH – PRESENTED BY EMMA MARSHALL, RUTH POPE AND PHIL HODGSON, OFFICE OF THE SENTENCING COUNCIL

3.1 The Council considered the recommendations in a report it had commissioned from the University of Hertfordshire into equality and diversity in the work of the Sentencing Council.

3.2 The Council agreed to publish the report in January 2023 and also to publish a brief response document setting out the actions the Council would be taking as a result of the report's findings and recommendations.

4. DISCUSSION ON MOTORING OFFENCES – PRESENTED BY OLLIE SIMPSON, OFFICE OF THE SENTENCING COUNCIL

4.1 The Council discussed responses to the motoring consultation which ran between July and September. There was a discussion on the general approach to culpability, and the distinction between careless and dangerous driving in the proposed guidelines.

4.2 The Council agreed that, in light of responses received, further work was required to provide the courts with guidance on disqualification.

5. DISCUSSION ON ANIMAL CRUELTY – PRESENTED BY ZEINAB SHAIKH, OFFICE OF THE SENTENCING COUNCIL

5.1 This was the third meeting to review responses to the public consultation on the animal cruelty sentencing guidelines.

5.2 In this meeting, the Council revisited the proposed sentence levels for the animal cruelty guideline (covering section 4 to 8 offences), focusing on cases involving category 1 harm and high culpability.

5.3 The Council also explored how animal fighting offences would be represented in the guideline, looking particularly at the interaction between the nature of some of these offences and the proposed aggravating factors.

5.4 More broadly, the Council also considered equalities issues and other miscellaneous points that had been raised by respondents during the public consultation.

6. DISCUSSION ON UNDERAGE SALE OF KNIVES – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

6.1 The Council considered the responses to the consultation in respect of the guideline for sentencing individuals and agreed to make some changes to the culpability, aggravating and mitigating factors as a result.

6.2 The Council agreed to create a bespoke expanded explanation for previous convictions in guidelines for organisations.

6.3 The Council considered the consultation responses on sentence levels in both the guideline for individuals and the guideline for organisations and agreed the levels for the definitive guidelines taking into account the flexibility afforded by step 3 of the guidelines.

6.4 Subject to some other minor changes, the Council agreed to publish the definitive guidelines in February to come into force on 1 April 2023.

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Sentencing Council

SC(22)DEC02 December Action Log

ACTION AND ACTIVITY LOG – as at 9 DECEMBER 2022

	Topic	What	Who	Actions to date	Outcome
SENTENCING COUNCIL MEETING 23 September 2022					
1	**False Imprisonment and Kidnap offences**	Mandy to devise a combined false imprisonment and kidnap guideline to be used in a resentencing exercise by Judicial Council members to test the viability of such a guideline for both offences with one sentence table. Results of this exercise to be discussed at the next meeting for this guideline (March).	**Judicial members (minus Jo king and plus Richard Wright.) to take part in the resentencing exercise**	**ACTION ONGOING:** The majority of Judicial members have completed the resentencing exercise but there is still time for it to be completed by all taking part. Mandy then to bring the results to full Council in due course.	
2	**Witness intimidation**	Police to provide information about the types of warnings that may be issued that would be relevant to the witness intimidation guideline.	**Nick Ephgrave**		**ACTION COMPLETED:** Nick has sent information to Steve
SENTENCING COUNCIL MEETING 18 November 2022					
3	**Animal Cruelty**	SL to share information from District Judges' training materials on disqualifying offenders from keeping animals	**Stephen Leake**		

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Sentencing Council

Sentencing Council meeting:	**16 December 2022**
Paper number:	**SC(22)DEC03 – Child cruelty**
Lead Council member:	**N/A**
Lead official:	**Ollie Simpson** **ollie.simpson@sentencingcouncil.gov.uk**

1 ISSUE

1.1 Considering responses to the consultation on revised child cruelty guidelines that ran between 4 August and 27 October

2 RECOMMENDATIONS

2.1 That Council publish the revisions as consulted on with no changes (at **Annexes A and B**).

3 CONSIDERATION

3.1 The Police, Crime, Sentencing and Courts Act 2022 increased the maximum penalty for causing or allowing a child to die from 14 years custody to life imprisonment. It also increased the maximum penalty for causing or allowing a child to suffer serious physical harm and cruelty to a child from 10 years to 14 years. Following that, the Council consulted on revisions to the guidelines for these offences to reflect those increases.

3.2 We received 16 responses. Of those, eight were supportive without qualification, and most of the others broadly agreed with our proposals with some observations and suggestions.

3.3 The most substantial criticism came from the group Restore Justice who felt that we should have kept three categories of culpability and raised sentence levels across the board:

> "We disagree with the creation of 'very high culpability' category. We do not believe such a category was intended by the PCSC Act 2022 to capture the worst cases, but that the intention was to increase the statutory maximum sentence to life and for the custodial lengths to be reflected in the existing categories…
>
> "The top end of the highest custodial sentence range for causing or allowing a child to die in the highest harm & culpability category should be more than 18 years. This is because the cases that will fall into that category are extremely serious, often on par with that of murder

or manslaughter offences but charged as 'causing or allowing a child to die' offence, which then potentially creates inequality in the criminal justice system for sentencing of a child's killer to a lower custody than the offender would otherwise receive for killing of an adult for example...

"We believe that the statutory maximum as set out in the PCSC Act 2022 reflects the seriousness of such a crime but the proposed sentence levels do not, and that it was the intention of Parliament to increase the minimum tariffs for the offenders to serve in prison when a life sentence for that offence is imposed by the courts. The starting point for causing or allowing a child to die should be 30 years' custody and category range 28 years to 40 years, as the maximum statutory level is life imprisonment.

"In relation to the causing or allowing a child to suffer serious physical harm and for cruelty to a child the sentence levels are also low for the highest harm & culpability category. The starting point should be a minimum of 15 years custody, and the custodial range should go up to 12 to 20 years minimum, which would still be low in our view." – *Restore Justice*

3.4 The starting points and ranges proposed for causing or allowing a child to suffer serious physical harm and cruelty to a child would, however, be outside the statutory maximum. In terms of Parliament's intent, the West London Magistrates Bench helpfully collated the parliamentary statements linking the rise in maximum penalty to the case of Tony Hudgell, confirming that the rise was intended to capture only the very worst cases – for example:

> *"[24 June 2021 Debate on a new clause 56 to the PCSC Bill] …*
>
> *I respectfully contend that the current maximum sentence of 10 years does not adequately reflect the gravity of cases at the upper end of seriousness."*
>
> *[12 February 2019 Debate from Hansard] …The purpose of this Bill…is to ensure that individuals who commit the most serious acts of cruelty against children face appropriate punishment when convicted of this crime."*

3.5 Indeed, the response from the Ministry of Justice again linked the changes with the case of Tony Hudgell, welcoming them in "reflect[ing] Parliament's clear intent to address the sentencing levels for the most serious cases which fall under these offences".

3.6 A few respondents commented that the word "extreme" was too subjective, and the London Criminal Courts Solicitors' Association believed

"it would make more sense for the very high culpability bracket to be reserved for cases where a combination of high culpability factors is present as we cannot envisage an "extreme" case where no more than one high culpability factor would be present."

I believe sentencers are used to considering "extreme" cases in the context of manslaughter, modern slavery and other guidelines. In the context of this particular offending, it might also be the case that one or other perpetrator has simply "failed to take steps" in a particularly horrific case, and it should be open to the courts to place them in the highest culpability. Alternatively, it might cover a one-off event involving the use of incredibly brutal force.

3.7 Most respondents tacitly or explicitly agreed that we should retain "prolonged and/or multiple incidents of serious cruelty, including serious neglect" at high culpability rather than include it as a very high culpability factor. One anonymous respondent disagreed, and also thought sentence levels were too low:

"Prolonged and/or multiple incidents of serious cruelty, including serious neglect" should be in the very high culpability level. Even if the multiple incidents are a low level of abuse, the fact that this is done on a regular basis brings this into the highest category of culpability. The sentencing council members may not be able to relate to this situation, but low level abuse committed regularly over a period of weeks, months or even years is torture. It is one the most grievous forms of cruelty which can be done to a child. Objectively, this sickening behaviour, irrespective of the level of abuse, would be categorised as very high culpability by the majority of society…

The starting points should be increased for high culpability cases. Causing or allowing a child to die should have a starting point of 18 years, with a sentence range of 16 - 24 years.

Cruelty to a child should have 10 years as its starting point with a sentence range of 8 - 13 years imprisonment.

These are very serious offences and the highest level of culpability should have high sentences beyond the ones proposed in the consultation."

3.8 This response highlights the tension that we grappled with ahead of consultation. Considering the balance of responses in favour of our approach I do not propose to move "prolonged and/or multiple incidents of serious cruelty, including serious neglect" into the very high culpability box, and maintain the view that it is possible to envisage examples of that behaviour that fall below the very worst.

4 EQUALITIES

4.1 Several responses picked up on the potential issues for disparities between male and female offenders, although there was a balance between those observing that women (as carers) would make up a disproportionate number of offenders compared to other types of offending, and those who thought that men received more severe sentences for this offending than women.

4.2 No one had specific suggestions for changes to the guidelines on the basis of these issues. The West London Bench wanted to see sentencing data for males and females separated out in the statistical bulletin. This was available in the sentencing tables but we can highlight this in the consultation response document, with signposts to the updated data tables.

4.3 The Prison Reform Trust said “it remains to be seen whether or not the new guideline will have a disproportionate impact on women and the sentences they receive for these offences. The council should monitor the impact of the new very high culpability factor on the length of sentences handed down, to ensure that in practice it does not lead to general sentence inflation across the culpability levels for these offences”. Such post implementation monitoring will be done in the usual way.

Question 1: does the Council agree not to make amendments to the version on which we consulted?

5 IMPACT AND RISKS

5.1 The consultation stage resource assessment is at **Annex C**. We will circulate the publication stage version to Council shortly: given the lack of changes from the draft guideline, the findings will be the same as those set out in the draft.

5.2 Given that the vast majority of section 5 offenders already receive immediate custody, the revisions we have consulted on are not anticipated to change the proportion of offenders who receive immediate custodial sentences. It is likely that there may be a very small number of offenders at the highest level of culpability across both offences who will receive longer custodial sentences under the draft guideline.

5.3 For section 1 offences, there may be a very small impact on prison and probation resources as offenders at the highest level of culpability currently may receive longer sentences under the draft guideline, reflecting the increase in statutory maximum sentence. There is no indication that the guideline will lead to a change in sentencing outcomes for

these offences; the majority of offenders are likely to continue receiving a community order or suspended sentence order since the guideline remains largely unchanged.

5.4 There is a risk that when judges are given an extra culpability category alongside increased sentencing powers, they will be tempted automatically to place a bad case in the worst possible category. That would mean, for example, a case of causing/allowing serious physical harm that would have had a starting point of seven years' custody would now have a starting point of nine years, even though the facts are the same.

5.5 Arguably, an anomaly remains whereby the worst cases of GBH with intent committed against an adult will be sentenced more severely than cases prosecuted under child cruelty legislation where a child has been killed or left with serious permanent disabilities. At root, this is reflective of the different maximum penalties available for different offences and charging decisions will determine the penalty available. Revised sentencing levels will mitigate this to some extent.

5.6 The Prison Reform Trust were supportive of our approach, but the thrust of their response was to question why we did not take it for other cases where Parliament had raised the maximum penalty. The Justice Select Committee picked up on this point in its response, making the link with its inquiry on public understanding of sentencing:

> "…a number of witnesses have raised the fact that campaigns to raise the maximum penalty offence can give rise to some misunderstandings regarding how the changes to the legislation will affect the actual sentences handed down by the courts. As a result, we would be interested to gain a clearer understanding of how the Council decides whether an increase to the maximum penalty by Parliament should result in a change to all sentence levels or only to the sentences for the most serious cases. We appreciate that every offence will be different, but nonetheless it would be useful to know which factors might influence the Council's approach. In particular, it could help the Government to make a more accurate assessment of how a change to the maximum penalty might affect prison resources." - *Justice Select Committee*

This will be something to address in the consultation response.

5.7 Given this is a very discrete amendment to one set of guidelines, we propose to publish the definitive changes alongside this year's miscellaneous amendments in March, to come into force in April.

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Sentencing Council

Sentencing Council meeting:	**16 December 2022**
Paper number:	**SC(22)DEC04 – Miscellaneous Amendments**
Lead Council member:	**Jo King**
Lead official:	**Ruth Pope**
	Ruth.pope@sentencingcouncil.gov.uk

1 ISSUE

1.1 This is the first of two meetings to discuss the responses to the miscellaneous amendments consultation which closed on 30 November. The amendments need to be finalised at the January meeting to enable any changes agreed upon to be published in March and made on 1 April 2023.

2 RECOMMENDATION

2.1 The Council is asked to consider suggested changes to the proposals as consulted on relating to disqualification from driving the minimum term steps in guidelines.

2.2 The Council is asked to agree to adopt proposals as consulted on relating to Football banning orders, criminal damage and unlawful act manslaughter.

3 CONSIDERATION

3.1 We received 24 responses to the consultation 18 from individuals and six from organisations. The majority were supportive of the proposals and some made helpful suggestions for changes. The more critical responses tended to focus on issues that were outside the scope of the consultation.

Disqualification from driving

3.2 We consulted on revisions to the wording on disqualification in the drug driving guidance and the excess alcohol, unfit through drink or drugs (drive/attempt to drive) and fail to provide specimen for analysis (drive/attempt to drive) guidelines. the proposals aimed to clarify the relevant dates (i.e. the date of the commission of the offence, date of conviction or date of the imposition of a disqualification) for each provision.

The proposed wording (additions shown in red):

- Must endorse and disqualify for at least 12 months
- Must disqualify for at least 2 years if offender has had two or more disqualifications for periods of 56 days or more **imposed** in the 3 years preceding the **commission** of the

current offence – refer to disqualification guidance and consult your legal adviser for further guidance
- Must disqualify for at least 3 years if offender has been **convicted** of a relevant offence in the 10 years preceding the **commission** of the current offence – consult your legal adviser for further guidance
- Extend disqualification if imposing immediate custody

3.3 All those who responded to this question agreed with the changes (though two raised general issues about sentencing for motoring offences). One magistrate suggested that 'relevant offence' (in the third bullet point) should contain a link to further information. The applicable information is in the 'obligatory disqualification guidance' which is linked to from the second bullet point. It seems sensible to add the same link to the third bullet point so it would read:

- Must disqualify for at least 3 years if offender has been **convicted** of a relevant offence in the 10 years preceding the **commission** of the current offence – refer to disqualification guidance and consult your legal adviser for further guidance

Question 1: Does the Council agree make the changes consulted on with the additional wording proposed at 3.3 above?

3.4 We consulted on changes to the obligatory disqualification guidance to clarify the relevant dates and to reflect legislative changes:

The proposed wording (changes shown in red)

1. Obligatory disqualification

Note: The following guidance applies to offences with a 12 month minimum disqualification.

Some offences carry obligatory disqualification for a minimum of 12 months (Road Traffic Offenders Act ("RTOA") 1988, s.34). The minimum period is automatically increased where there have been certain previous convictions and disqualifications.

An offender must be disqualified for at least two years if a disqualification of at least 56 days has been imposed on them in the three years preceding the commission of the offence (RTOA 1988, s.34(4)(b)). The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification;
- disqualification where vehicle used for the purpose of crime;
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.

An offender must be disqualified for at least three years if he or she is convicted of one of the following offences:

- driving or attempting to drive while unfit;
- driving or attempting to drive with excess alcohol;
- driving or attempting to drive with concentration of specified controlled drug above specified limit;
- failing to provide a specimen (drive/attempting to drive).

and has within the 10 years preceding the commission of the offence been convicted of any of those offences or causing death by careless driving when under the influence of drink or drugs (RTOA 1988, s.34(3)):

The individual offence guidelines indicate whether disqualification is mandatory for the offence and the applicable minimum period. **Consult your legal adviser for further guidance.**

3.5 Again, responses were supportive but with a few suggestions for changes. A judge suggested changing 'and' to 'or' as highlighted below:

> Some offences carry obligatory disqualification for a minimum of 12 months (Road Traffic Offenders Act ("RTOA") 1988, s.34). The minimum period is automatically increased where there have been certain previous convictions or disqualifications.

3.6 HM Council of District Judges (MC) pointed out an error in the proposed wording. It should read (revised wording highlighted):

> An offender must be disqualified for at least two years if more than one disqualification of at least 56 days has been imposed on them in the three years preceding the commission of the offence (RTOA 1988, s.34(4)(b)).

3.7 Section 34(4) of the Road Traffic Offenders Act 1988 states:

> (4) Subject to subsection (3) above and subsection (4ZA) below, subsection (1) above shall apply as if the reference to twelve months were a reference to two years—
> …
> (b) in relation to a person on whom more than one disqualification for a fixed period of 56 days or more has been imposed within the three years immediately preceding the commission of the offence.

3.8 The West London Magistrates Bench suggested that it would be helpful to give the statutory reference for the types of disqualification to be ignored. While this might be helpful, the level of detail required to make it comprehensive and accurate could overcomplicate the guidance. The relevant statutory provision reads:

> (4A) For the purposes of subsection (4)(b) above there shall be disregarded any disqualification imposed under section 26 of this Act or section 147 of the Powers of Criminal Courts (Sentencing) Act 2000 or section 164 of the Sentencing Code or section 223A or 436A of the Criminal Procedure (Scotland) Act 1975 (offences committed by using vehicles) and any disqualification imposed in respect of an

offence of stealing a motor vehicle, an offence under section 12 or 25 of the Theft Act 1968, an offence under section 178 of the Road Traffic Act 1988, or an attempt to commit such an offence.

Question 2: Does the Council agree to make the changes to the obligatory disqualification guidance set out at paragraphs 3.5 and 3.6 but not that suggested at 3.8?

3.9 We consulted on changes to the discretionary and 'totting up' disqualification guidance.

The proposed wording (changes shown in red)

'Totting-up' guidance:

Incurring 12 or more penalty points means a minimum period of disqualification must be imposed (a 'totting up disqualification') – s.35 Road Traffic Offenders Act (RTOA) 1988. Points are **not** to be taken into account for offences **committed** more than three years before the **commission** of the current offence – s.29 RTOA 1988.

[…]

The court should first consider the circumstances of the offence, and determine whether the offence should attract a discretionary period of disqualification. But the court must note the statutory obligation to disqualify those repeat offenders who would, were penalty points imposed, be liable to the mandatory "totting" disqualification and, unless the court is of the view that the offence should be marked by a period of discretionary disqualification in excess of the minimum totting up disqualification period, **the court should impose penalty points rather than discretionary disqualification** so that the minimum totting up disqualification period applies.

Discretionary disqualification guidance:

In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on his or her licence that he or she would be liable to a 'totting up' disqualification if further points were imposed. In these circumstances, unless the court is of the view that the offence should be marked by a period of discretionary disqualification in excess of the minimum totting up disqualification period, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies *(*see 'totting up'*)*.

3.10 Several respondents welcomed these changes. One individual suggested adding in guidance on the approach to be taken to new drivers, to discourage the practice of imposing a short disqualification rather than six points so that the offender does not have to retake the driving test. There is some merit in this suggestion but as it is something that we have not consulted on, it would be better to add it to the list of things to consider for next year's consultation.

3.11 A judge suggested replacing ‘he or she’ with ‘they and ‘his or her’ with ‘their’. This ties in with a suggestion we have had for being more consistent and inclusive in the use of personal pronouns in guidelines. Some proposals will be brought to the January meeting on this point.

3.12 A magistrate (whose original suggestion had led to the changes consulted on) suggested that it would be clearer if the wording focussed on the need to prefer points over discretionary disqualification which she suggested gets lost in the explanation consulted on. She suggested combining the wording to read:

> In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on his or her licence that he or she would be liable to a ‘totting up’ disqualification if further points were imposed. In these circumstances, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies (see ‘totting up’).The court should first consider the circumstances of the offence, and determine whether the offence should attract a discretionary period of disqualification. Unless the court is of the view that the offence should be marked by a period of discretionary disqualification in excess of the minimum totting up disqualification period, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies.

3.13 It is not entirely clear whether this wording is proposed for just for the discretionary disqualification guidance or for the totting guidance as well. The proposal would (as the magistrate accepts) make the explanation lengthy and this may make it less effective. Bearing in mind the level of support from other respondents, the recommendation is to retain the wording consulted on.

Question 3: Does the Council agree to make the changes consulted on to the totting and discretionary disqualification guidance?

Football banning orders

3.14 We consulted on changes to the football banning orders guidance.

The proposed wording (changes shown in red)

- public order offences – Public Order Act 1986, Parts 3 and 3A, and s.4, 4A or 5 – committed: (a) during a period relevant to a football match (see below) at any premises while the offender was at, or was entering or leaving or trying to enter or leave, the premises; (b) on a journey to or from a football match and the court makes a declaration

that the offence related to football matches; or (c) during a period relevant to a football match (see below) and the court makes a declaration that the offence related to that match;

- any offence under section 31 of the Crime and Disorder Act 1998 (racially or religiously aggravated public order offences) where the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation,
- any offence under section 1 of the Malicious Communications Act 1988 (offence of sending any letter, electronic communication or article with intent to cause distress or anxiety) where the court has stated that the offence is aggravated by hostility of any of the types mentioned in section 66(1) of the Sentencing Code (racial hostility etc), and where the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation,
- any offence under section 127(1) of the Communications Act 2003 (improper use of public telecommunications network) where the court has stated that the offence is aggravated by hostility of any of the types mentioned in section 66(1) of the Sentencing Code (racial hostility etc), and where the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation.

3.15 All of those who commented agreed with the proposals.

Question 4: Does the Council agree to make the changes consulted on for football banning orders?

Criminal Damage

3.16 We consulted on changes to the headers of the criminal damage guidelines to direct courts to the appropriate guideline when sentencing cases where the value does not exceed £5,000 but the case may be tried in the Crown Court and/or the maximum penalty for the offence is not limited to three months' imprisonment because it relates to a memorial.

The proposed wording (changes shown in red)

Criminal damage (other than by fire) value exceeding £5,000/ Racially or religiously aggravated criminal damage

Crime and Disorder Act 1998, s.30, Criminal Damage Act 1971, s.1(1)

Effective from: 01 October 2019

Criminal damage (other than by fire) value exceeding £5,000, Criminal Damage Act 1971, s.1(1)

Triable either way
Maximum: 10 years' custody
Offence range: Discharge – 4 years' custody

Note: Where an offence of criminal damage:

a) is **added** to the indictment at the Crown Court **(having not been charged before)**

or

b) it is an offence committed by destroying or damaging a memorial as defined by s22(11A) - (11D) of the Magistrates' Courts Act 1980 committed on or after 28 June 2022

the statutory maximum sentence is 10 years' custody regardless of the value of the damage. In such cases where the value does not exceed £5,000 regard should also be had to the not exceeding £5,000 guideline.

Racially or religiously aggravated criminal damage, Crime and Disorder Act 1998, s.30

Triable either way
Maximum: 14 years' custody

Criminal damage (other than by fire) value not exceeding £5,000/ Racially or religiously aggravated criminal damage

Crime and Disorder Act 1998, s.30, Criminal Damage Act 1971, s.1(1)

Effective from: 01 October 2019

Criminal damage (other than by fire) value not exceeding £5,000, Criminal Damage Act 1971, s.1 (1)

Triable only summarily (except as noted below)

Maximum: Level 4 fine and/or 3 months' custody
Offence range: Discharge – 3 months' custody

Note: Where an offence of criminal damage:

a) is **added** to the indictment at the Crown Court ***(having not been charged before)***

or

b) it is an offence committed by destroying or damaging a memorial as defined by s22(11A) - (11D) of the Magistrates' Courts Act 1980 committed on or after 28 June 2022

the statutory maximum sentence is 10 years' custody regardless of the value of the damage. In such cases where the value does not exceed £5,000, the exceeding £5,000 guideline should be used but regard should also be had to this guideline.

Racially or religiously aggravated criminal damage, Crime and Disorder Act 1998, s.30

Triable either way
Maximum: 14 years' custody

3.17 Most respondents who commented agreed with the proposals. Of those who expressed different views, these related to matters outside of the scope of the consultation (one complained about the legislation and two commented on sentencing for criminal damage more generally). One magistrate said that he did not find the drafting particularly clear but was unable to suggest an alternative.

Question 5: Does the Council agree make the changes consulted on to the criminal damage guidelines?

Minimum sentences

3.18 We consulted on changes to reflect the change to the statutory test for the threshold for passing a sentence below the minimum term for relevant offenders for certain offences from 'unjust in all the circumstances' to 'exceptional circumstances' for offences committed on or after 28 June 2022. The guidelines affected are:

- Bladed articles and offensive weapons – possession
- Bladed articles and offensive weapons – threats
- Bladed articles and offensive weapons (possession and threats) – children and young people
- Supplying or offering to supply a controlled drug/ Possession of a controlled drug with intent to supply it to another
- Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug
- Domestic burglary
- Aggravated burglary

3.19 The consultation noted that any changes would need to accommodate both tests (at least in the short term). For clarity and to avoid the guideline becoming to cluttered the proposal was to have some general information and then too put the different tests in drop down boxes. The proposed changes are illustrated in a revised version of the possession of a bladed article/offensive weapon guideline which can be viewed on-line here.

3.20 The proposals were very similar for most of the guidelines and the comments made by respondents were often the same for each guideline. Therefore, it is helpful to consider some cross-cutting suggestions.

3.21 A judge suggested some further exposition of the term exceptional. Another judge suggested changing the wording slightly. These suggestions are illustrated below:

> **Principles**
>
> The circumstances must truly be exceptional. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.
>
> It is important that courts adhere to the statutory requirement and do not too readily accept that the ~~exceptional~~ circumstances are exceptional. A factor is unlikely to be regarded as exceptional if it would apply to a significant number of cases.
>
> The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances. The seriousness of the previous

offence(s) and the period of time that has elapsed between offences will be a relevant consideration.

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

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

3.22 The Criminal Sub-Committee of HM Council of Circuit Judges suggested slightly different wording:

> It is important that courts adhere to the statutory requirement and do not too readily treat or accept ~~exceptional~~ circumstances as being exceptional.

3.23 They also suggested adding in a section similar to that proposed in the unlawful act manslaughter guideline:

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

3.24 The CPS suggested adding a reference to the Totality guideline as this 'may require sentencers to consider imposing a higher overall sentence than the minimum term'. They also suggested (for the six month minimum terms) noting that suspending a minimum term, though lawful, will rarely be appropriate as in the majority of cases suspension would undermine the punitive and deterrent effect of the minimum sentencing provisions, to reflect the judgment in R v Uddin [2022] EWCA Crim 751.

3.25 It is not clear that a reference to totality is necessary as part of this step – it will be considered at step 6. At the July meeting the Council considered consulting on adding a reference to the availability of suspended sentences for the weapons and bladed article offences but concluded that if there were to be any such reference it should be in the Imposition guideline.

3.26 A reference to resolving factual disputes with a Newton hearing could apply whether the test is 'exceptional circumstances' or 'unjust in all the circumstances' so could be included in the general text above the drop down boxes but might sit more logically in the dropdown sections. For example:

> **Exceptional circumstances (offence committed on or after 28 June 2022)**
>
> In considering whether there are exceptional circumstances that would justify not imposing the minimum term the court must have regard to:
>
> - the particular circumstances which relate to any of the offences **and**
> - the particular circumstances of the offender.

either of which may give rise to exceptional circumstances.

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

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

…

Unjust in all of the circumstances (offence committed before 28 June 2022)

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender.

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

If the circumstances of the offence, the previous offence or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence**.

3.27 The remaining points raised in relation to the various minimum term steps will be discussed at the January meeting.

Question 6: Does the Council wish to adopt any of the suggested changes to wording suggested at 3.21 and 3.22?

Question 7: Does the Council agree not to add a reference to totality or to suspending sentences at the minimum term step?

Question 8: Does the Council wish to add a reference to Newton hearings to the minimum term step and, if so, should the wording suggested at 3.26 be adopted?

Life sentence for manslaughter of an emergency worker

3.28 The Council consulted on an additional step 3 in the Unlawful act manslaughter guideline to provide guidance for where the victim is an emergency worker acting in that capacity and the court must impose a life sentence unless there are exceptional circumstances.

3.29 The proposed wording was:

Step 3 – Required sentence and exceptional circumstances

The following paragraphs apply to adult offenders – there is a separate dropdown section for those aged under 18 at the date of conviction below

Required sentence

1. Where the offence was committed against an emergency worker acting in the exercise of functions as such a worker, the court must impose a life sentence unless the court is

of the opinion that there are exceptional circumstances which (a) relate to the offence or the offender, and (b) justify not doing so (sections 274A and 285A of the Sentencing Code).

Applicability

2. The required sentence provisions apply when a person is convicted of unlawful act manslaughter committed on or after 28 June 2022, the offender was aged 16 or over at the offence date and the offence was committed against an emergency worker acting in the exercise of functions as such a worker.

3. The circumstances in which an offence is to be taken as committed against a person acting in the exercise of their functions as an emergency worker include circumstances where the offence takes place at a time when the person is not at work but is carrying out functions which, if done in work time, would have been in the exercise of their functions as an emergency worker.

4. An emergency worker has the meaning given by section 68 of the Sentencing Code.

5. Where the required sentence provisions apply a guilty plea reduction applies in the normal way (see step 5 – Reduction for guilty pleas).

6. Where the required sentence provisions apply and a life sentence is imposed, the notional determinate sentence should be used as the basis for the setting of a minimum term to be served.

7. Where the required sentence provisions apply, this should be stated expressly.

Exceptional circumstances

8. In considering whether there are exceptional circumstances that would justify not imposing the statutory minimum sentence, the court must have regard to:

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

either of which may give rise to exceptional circumstances.

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

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

Principles

11. Circumstances are exceptional if the imposition of the required sentence would result in an arbitrary and disproportionate sentence.

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

Where exceptional circumstances are found

13. If there are exceptional circumstances that justify not imposing the required sentence then the court should impose the sentence arrived at by normal application of this guideline.

Sentencing offenders aged under 18 at the date of conviction

1. Where the offender is aged 16 or 17 at the date of conviction, the required sentence provisions apply only if the offender is aged 16 or over when the offence was committed

and the offence was committed against an emergency worker acting in the exercise of functions as such a worker (section 258A of the Sentencing Code).

2. Subject to the required sentence provisions, where the offender is aged under 18 at the date of conviction the court should determine the sentence in accordance with the Sentencing Children and Young People guideline, particularly paragraphs 6.42-6.49 on custodial sentences.
3. This guidance states at paragraph 6.46: "When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age."
4. The considerations above on exceptional circumstances relating to the offence or offender apply equally when sentencing offenders aged 16 or 17 at the date of the conviction.

3.30 All who responded agreed with the proposals apart from one individual who wanted more whole life orders. No changes to the consultation version are proposed.

Question 9: Does the Council agree to adopt the proposed additions to the Unlawful act manslaughter guideline?

4 EQUALITIES

4.1 No significant issues relating to equality or diversity were identified by respondents.

5 IMPACT AND RISKS

5.1 The consultation noted that the impact of majority of the proposals on prison or probation resources will be relatively minor. The most significant changes are those necessitated by legislative changes.

5.2 Respondents agreed with that analysis. The narrative resource assessment which accompanied the consultation will be updated and discussed at the January meeting.

Sentencing Council

Sentencing Council meeting:	**16 December 2022**
Paper number:	**SC(22)DEC05 – Motoring offences**
Lead Council member:	**Rebecca Crane**
Lead official:	**Ollie Simpson** **ollie.simpson@sentencingcouncil.gov.uk**

1 ISSUE

1.1 This is our second meeting looking at responses to the motoring consultation that ran between July and September. This paper focuses on culpability factors for:

- dangerous driving offences (causing death by dangerous driving; causing serious injury by dangerous driving; dangerous driving)
- careless driving offences (causing death by careless driving; causing death by careless driving whilst under the influence of drink or drugs; causing serious injury by careless driving)
- causing injury by wanton or furious driving (which draws on culpability elements for the above two groups)

A summary of the road testing findings is attached at **Annex A**.

1.2 The response now received from the Justice Select Committee is attached at **Annex B** for Council's consideration.

2 RECOMMENDATIONS

2.1 That Council makes amendments to the culpability factors, as set out below, including that:

- the wording on drink/drug driving be standardised across guidelines;
- engaging in a brief but avoidable distraction be removed from culpability B, but "very brief avoidable distraction" be added at culpability C;
- the mitigating factors relating to a medical condition and the effect of medication be combined and the wording standardised;

- the aggravating factor “failed to stop and/or assist or seek assistance at the scene” be changed to “failed to stop and/or obstructed or hindered attempts to assist at the scene”; and
- the mitigating factor “impeccable driving record” be changed to “clean driving record”.

3 CONSIDERATION

Justice Select Committee response

3.1 Since our November meeting we have received a response from the Justice Select Committee (see **Annex B**). They question why we have not simply added a ”very high” level of culpability and reserved sentences above the previous maximum for these offences (akin to our approach to the child cruelty revisions).

3.2 We discussed the option of four culpability categories at our last meeting and concluded we should stick with three. There are good reasons why we might increase sentence levels across all degrees of offending: in brief, because these levels were last considered 15 years ago and society’s attitude towards bad driving and its consequences has moved on – the majority of consultation responses would appear to back this up by endorsing our proposals. We are also dealing with a range of offences which need to be kept in proportion to one another.

3.3 Parliament’s intention – to the extent it is decisive – does not seem entirely clear cut. The Explanatory Notes say:

“Increasing the maximum penalty to life imprisonment for these offences will provide the courts with enhanced powers to sentence appropriately for the most serious cases.” (paragraph 79)

In other contexts, the Government has said the aim “is to make sure that the penalties available to the courts for such offences are proportionate and reflect the seriousness of the offences committed” and have stressed the comparison with manslaughter.

3.4 Nonetheless, we may wish to discuss whether we should rethink in light of the Committee’s response, particularly noting the potential impact on the prison population.

Question 1: what is Council’s initial view on the Justice Select Committee’s response?

Culpability – dangerous driving

3.5 There were many comments and suggestions on culpability elements for dangerous driving offences, not all of which can be discussed in full. I have included a selection of responses on the culpability elements for dangerous driving, careless driving and wanton or furious driving at **Annex C** which I have considered, but do not propose taking any action on. Council members are welcome to raise these, though, if any appear useful to pursue. Brake and Nicole and Chris Taylor in particular have provided comprehensive proposals for reworking the culpability elements.

3.6 A large number of respondents agreed with our proposed culpability table. However, there were several suggestions for change. We have already discussed a widely held view that several of the medium culpability elements belonged in high, and concluded that they were broadly pitched correctly, and that we should explain that there is a spectrum of culpability, even within a descriptor such as "dangerous". Here is the culpability table for dangerous offences, with my proposed amendments in red over the version we consulted on. As a quick win I have removed "high", "medium" and "lesser" as category headings:

CULPABILITY The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.	
A- ~~High culpability~~	• Deliberate decision to ignore the rules of the road and disregard for the risk of danger to others *[particularly vulnerable road users?]*. • Prolonged, persistent and deliberate course of dangerous driving • *[Prolonged use of mobile phone or other electronic device?]* • ~~Consumption of substantial amounts of alcohol or drugs leading to gross high level of impairment~~ Driving highly impaired by consumption of alcohol or drugs • Offence committed in course of evading police ~~pursuit~~ • Racing or competitive driving against another vehicle • Persistent disregard of warnings of others • Lack of attention to driving for a substantial period of time • Speed ~~greatly~~ significantly in excess of speed limit or highly inappropriate for the prevailing road or weather

	conditions • *[Driving created a risk of harm to vulnerable road users?]*
B- ~~Medium culpability~~	• ~~Brief but obviously highly dangerous manoeuvre~~ • ~~Engaging in a brief but avoidable distraction~~ • *[Brief use of mobile phone or other electronic device?]* • Driving knowing that the vehicle has a dangerous defect or is dangerously loaded • Driving at a speed that is inappropriate for the prevailing road or weather conditions (where not culpability A) • ~~Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs~~ Driving impaired by consumption of alcohol or drugs (where not culpability A) • ~~Disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender's driving skills~~ Driving significantly impaired as a result of a known medical condition, and/or disregarding advice relating to the effects of a medical condition or medication • Driving when ~~knowingly~~ deprived of adequate sleep or rest • Disregarding warnings of others (where not culpability A) • The offender's culpability falls between the factors as described in ~~high~~ A and C ~~lesser culpability~~
C- ~~Lesser culpability~~	• Standard of driving was just over threshold for dangerous driving • Momentary lapse of concentration or very brief avoidable distraction.

3.7 Some respondents wanted to see "Brief but obviously highly dangerous manoeuvre" placed in high culpability. Others, such as Cycling UK, thought it should be low. There was confusion in road testing about whether something counted as a brief but dangerous manoeuvre, a brief but avoidable distraction, or a momentary lapse and this led to inconsistency in several scenarios about whether offences were categorised as B or C.

3.8 One possibility could be to add a category C equivalent: "brief but dangerous manoeuvre" (or even "brief dangerous manoeuvre"), which highlights the "obviously highly dangerous" element as being deserving of the middle category. Another option (recommended) would be to delete it altogether and rely on "The offender's culpability falls

between the factors as described in culpability A and culpability C" to capture offending which is more than just a momentary lapse, but not prolonged, persistent dangerous driving.

3.9 Similarly with "brief but avoidable distraction". Nicole and Chris Taylor (parents of an RTC victim) thought that this didn't belong in dangerous driving at all but was rather an example of careless driving. HM Council of Circuit Judges thought this should be in low culpability. We could add the following to culpability C: "momentary lapse or very brief but avoidable distraction". This would mean anything falling between a "very brief distraction" and "Lack of attention to driving for a substantial period of time" would belong in the middle category.

Question 2: do you want to delete the factor "brief but obviously highly dangerous manoeuvre"?

Question 3: do you want to move "brief but avoidable distraction" to culpability C, to become "momentary lapse or very brief but avoidable distraction"?

3.10 Following last month's meeting, we amended the wording for the high culpability element relating to drink/drugs to be "Consumption of ~~substantial amounts of~~ alcohol or drugs leading to gross impairment". HM Council of District Judges suggested replacing "gross" with "high level of" which is line with the guideline for failing to provide a specimen, and represents a lower bar.

3.11 We have different formulations across the guidelines:

- Consumption of alcohol or drugs leading to gross/high level of impairment (high culpability)
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs (medium culpability)
- Driving impaired by consumption of alcohol or drugs (wanton or furious driving)

3.12 One could argue that each has a subtly different meaning but I believe those differences are marginal and there is a case for consistency across guidelines. The third appears to me the most efficient and so I suggest rewording all the alcohol/drug factors accordingly.

3.13 I reiterate that there were calls – including from bereaved widower Chris Barrow and many others – for alcohol/drug consumption automatically to be a high culpability factor. This would certainly reflect the growing intolerance of drink and drug drivers in society. Further, we should logically make a distinction in sentence levels between careless driving under the

influence (in our separate s3A guideline) and dangerous driving when it happens under the influence.

3.14 That said, I have not found a satisfactory way to do this. We could distinguish between levels of alcohol in the blood as we do in the s3A guideline, but that may or may not be directly linked with the impairment, which may or may not be linked with the incident which caused the death. Ultimately, Parliament has set the two offences at the same level and on balance I think distinguishing in this guideline between "impaired" and "highly impaired" is the least worst solution.

Question 4: are you content to leave a culpability B element renamed "Driving impaired by consumption of alcohol or drugs", with a culpability A equivalent "Driving highly impaired by consumption of alcohol or drugs" (as opposed to "grossly" impaired)?

3.15 Several respondents were worried about vulnerable road users now being "relegated" to step two. Cycling UK suggested splitting "Deliberate decision to ignore the rules of the road and disregard for the risk of danger to others" into "Deliberate decision to ignore the rules of the road in ways that cause obviously foreseeable danger" and "Deliberately driving in a manner which endangered other road users, particularly vulnerable road users such as pedestrians, cyclists or equestrians".

3.16 This is a neat way to get vulnerable road users mentioned at step one, but the first element on its own may capture too much dangerous driving. If we want to mention vulnerable road users we could simply add "particularly vulnerable road users" to the bullet as it is drafted. Alternatively, we could add a new high culpability bullet of "Driving created a risk of harm to vulnerable road users, but again this could capture even relatively low examples of dangerous driving. On balance, I recommend not making any change here.

3.17 I have suggested a form of wording at both high and medium culpability for the use of phones and other electronic devices, as some consultees wanted to see this problem explicitly reflected. On balance I do not believe it is necessary as "Lack of attention to driving for a substantial period of time" and "brief but avoidable distraction" should capture this and other behaviours in a broader way.

Question 5: are you content not to reference i) vulnerable road users or ii) mobiles/electronic devices under culpability on the basis that they are captured in other ways?

3.18 HM Council of Circuit Judges thought that the high culpability factor "disregarding warnings of others", which had been an aggravating factor under the existing guidelines,

could be split across both medium and high culpability, with a high factor of "persistent disregard of warnings of others" and a medium factor of simply "disregarding warnings of others". I believe this is a fair approach, which allows for more flexibility in the extent to which the offender was given the chance to change behaviour.

Question 6: do you agree to move "disregarding warnings of others" to culpability B, with a culpability A equivalent of "persistent disregard of warnings of others"?

3.19 On more detailed drafting points, I have removed the reference to "police pursuits" to become "Offence committed in course of evading police". I considered whether this could capture too wide a range of circumstances (for example simply hiding in a back street), but the driving would still need to be counted as dangerous to have secured a conviction so I believe this wording is acceptable.

3.20 Some members of the public had thoughtful suggestions for the element "Speed greatly in excess of speed limit". Justin Clayton thought "greatly" was too high a bar and suggested "significantly". James Townsend and Ian Hill thought this could be expanded to say "…or highly inappropriate for the prevailing road or weather conditions" to capture the situation where someone has driven far too fast (eg) outside a school or in icy conditions, even if not driving at high speeds. This would provide a more exact counterpart to the medium culpability factor "Driving at a speed that is inappropriate for the prevailing road or weather conditions".

3.21 Dr Adam Snow and Brake suggested that the word "knowingly" was unnecessary in "Driving when knowingly deprived of adequate sleep or rest", as someone is either deprived of sleep or they are not, and requiring an assessment of the offender's knowledge would complicate matters unnecessarily.

3.22 See paras 3.27 to 3.29 below for a discussion on medication and medical conditions.

Question 7: do you agree to:

- **refer to "offence committed in the course of evading police" as opposed to "police pursuits";**
- **amend the existing culpability A speed element to become: "Speed significantly in excess of speed limit or highly inappropriate for the prevailing road or weather conditions"; and**
- **remove the word "knowingly" from "Driving when knowingly deprived of adequate sleep or rest"?**

3.23 There were various comments about terms being too subjective in relation to “gross impairment”, “greatly in excess of the speed limit” and “substantial period of time” etc. These often suggested specific figures in terms of (say) alcohol consumption or cut-offs for what would count as “greatly” excessive speed. I believe we can justify these more general terms on the basis of allowing the courts flexibility to fit the facts of the case. There is a particular risk in motoring offences of creating perverse cliff-edges in relation to speeds and levels of intoxication.

Culpability – careless driving

3.24 Here is the culpability table for careless driving, with my proposed changes in red:

CULPABILITY The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors.	
A ~~High culpability~~	• Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a ~~medium~~ culpability B factor
B ~~Medium culpability~~	• Unsafe manoeuvre or positioning • Engaging in a brief but avoidable distraction • Driving at a speed that is inappropriate for the prevailing road or weather conditions • Driving while ability to drive is impaired as a result of consumption of alcohol or drugs (where not amounting to a separate charge) • Driving vehicle which is unsafe or where driver’s visibility or controls are obstructed ~~• Driving in disregard of advice relating to the effects of medical condition or medication~~ ~~• Driving whilst ability to drive impaired as a result of a known medical condition~~ Driving impaired as a result of a known medical condition, and/or disregarding advice relating to the effects of a medical condition or medication • Driving when deprived of adequate sleep or rest • The offender’s culpability falls between the factors as described in A and C ~~high and lesser culpability~~
C ~~Lesser culpability~~	• Standard of driving was just over threshold for careless driving • Momentary lapse of concentration

3.25 There were general observations on the culpability elements for causing death by careless driving, repeating the point that several deliberate actions such as drinking, driving an unsafe vehicle, or ignoring medication side effects should be in high culpability. Others, such as Action Vision Zero, thought that there was too much overlap between the dangerous and careless culpability tables, which we touched on at our last meeting.

3.26 Professor Sally Kyd and Dr Adam Snow questioned in particular why there was a reference to drink/drugs in the causing death by careless driving guideline, when that would presumably be captured by a s3A offence. I believe it may be reasonable to add "(where not amounting to a separate charge)" as there may be situations where someone was under the legal limit but still impaired, or for whatever reason a section 3A offence could not be made out. An alternative would be to remove the element altogether.

Question 8: do you agree to add the words "(where not amounting to a separate charge)" to cover cases where impairment is in the mix, but a charge of causing death by careless driving under the influence has not been brought?

3.27 The law firm Kennedy's thought that the two elements "Driving in disregard of advice relating to the effects of medical condition or medication" and "Driving whilst ability to drive impaired as a result of a known medical condition" were interlinked and risked double counting. There was a deliberate decision pre-consultation to split out the medical culpability factor for careless driving, although we have not done the same for dangerous driving.

3.28 (Looking again at the wording of the dangerous driving element the phrase "Disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender's driving skills" could be phrased better, although no one picked up on this in consultation.)

3.29 I cannot see a good reason for the elements being split in one guideline but not the other, and am persuaded that they should come under one element with as consistent wording as possible between careless and dangerous. I propose:

> "Driving [significantly] impaired as a result of a known medical condition, and/or disregarding advice relating to the effects of a medical condition or medication"

with "significantly" being added for the dangerous driving guidelines.

Question 9: do you agree to merge the medical condition/medication elements into one, and amend the wording for all guidelines using the wording above?

3.30 I have considered whether to move “engaging in a brief but avoidable” distraction from B to C culpability and attaching it to “momentary lapse”, for consistency with what I propose to do for dangerous driving (see para 3.9 above). However, I believe it is more likely to be an example of a typical piece of careless driving, with only the most momentary, virtually inexplicable lapses reserved for category C. I therefore propose it remains at culpability B.

Question 10: are you content that “engaging in a brief but avoidable distraction” remains at culpability B in careless driving cases?

Culpability - wanton or furious driving

3.31 Here is the culpability table for causing injury by wanton or furious driving with my proposed amendments in red:

CULPABILITY The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify upwards adjustment from the starting point before consideration of aggravating/mitigating factors. References to driving below include driving or riding any kind of vehicle or carriage, including bicycles and scooters.	
A ~~– High culpability~~	• Deliberate decision to ignore the rules of the road and/or disregard for the risk of danger to others. • Prolonged, persistent and deliberate course of driving likely to cause a danger to others • Driving ~~grossly~~ highly impaired by consumption of alcohol or drugs • Offence committed in course of evading police ~~pursuit~~ • Racing or competitive driving against another vehicle • Persistent disregard~~ing~~ of warnings of others • Lack of attention to driving for a substantial period of time • Speed ~~greatly~~ significantly in excess of speed limit or highly inappropriate for the prevailing road or weather conditions • Extreme example of a ~~medium~~ culpability B factor
B ~~– Medium culpability~~	• Unsafe manoeuvre or positioning • Engaging in a brief but avoidable distraction • Inappropriate speed for the prevailing conditions (where not culpability A)

	• Driving impaired by consumption of alcohol or drugs (where not culpability A) • Visibility or controls obstructed • ~~Driving impaired as a result of a known medical condition~~ • ~~Disregarding advice relating to the effects of medical condition or medication~~ Driving impaired as a result of a known medical condition, and/or disregarding advice relating to the effects of a medical condition or medication • Driving when deprived of adequate sleep or rest
C ~~– Lower culpability~~	• All other cases

3.32 Professor Kyd suggested that we should not have a guideline for this offence given it is rarely prosecuted and is somewhat unusual. Action Vision Zero believed that the highest level of culpability should be reserved for motorised vehicles as opposed to bicycles. I believe that it remains worthwhile producing a guideline for the rare occasions it is prosecuted, production of a guideline was welcomed by others, and given the relatively low statutory maximum penalty it would be wrong to exclude from the highest culpability the rare cyclists who cause serious injury or even death.

3.33 Liz Blake JP wanted clarification about whether the reference to "scooters" applied to motorised scooters. It should have become clear by the time a conviction has been secured about what vehicles the offence applies to. Indeed, it may be helpful to keep the matter broadly open to allow for as broad a range as possible of vehicle types.

3.34 Many of the comments covered above in relation to careless and dangerous apply to the culpability table for causing injury by wanton or furious driving. I propose for consistency that we reflect here the dangerous driving wordings set out above in culpability A:

- Driving highly impaired by consumption of alcohol or drugs
- Offence committed in course of evading police
- Persistent disregard of warnings of others
- Speed significantly in excess of speed limit or highly inappropriate for the prevailing road or weather conditions

3.35 For culpability B, I propose we reflect the careless driving wording and include as one element: "Driving impaired as a result of a known medical condition, and/or disregarding advice relating to the effects of a medical condition or medication".

3.36 Some respondents thought there should not be a third culpability category, and others thought that rather than simply saying “all other cases” it should reflect the wording of dangerous and careless guidelines by saying “momentary lapse of concentration” and, as proposed by HM Council of District Judges “just over the threshold for careless driving”.

3.37 There is a case for providing assistance to the courts by including “momentary lapse” but there is a risk that we invent a standard for wanton or furious driving that doesn’t exist by comparing it to careless driving. Given the broad range of off-road and on-road circumstances that could conceivably come under this offending (a farmer reversing his tractor without any expectation of someone being there, an unlucky quad biker etc), I am minded to leave category C as it stands.

Question 11: do you agree to make changes to the wanton and furious culpability table to bring the wording into line with that agreed for careless and dangerous guidelines?

Question 12: are there any other points on culpability (including those at annex C) that Council members would like to consider further?

Aggravating and mitigating factors

3.38 Across the standard-of-driving offences, aggravating and mitigating factors are fairly consistent so we can deal with them as one. There were comments received on virtually all the factors, and a full discussion on each point would be impossible: I have annotated the step two factors at **Annex D** with the more common and cogent suggestions received on which I do not propose to take any action.

3.39 A great number of consultees considered some of the standard mitigating factors to be inappropriate. Some said that “Serious medical condition requiring urgent, intensive or long-term treatment” should be an aggravating factor if it contributed to the collision. Similarly “mental disorder or learning disability” was argued to be justification to impose a lengthy disqualification.

3.40 Some said that “age and/or lack of maturity” was irrelevant given someone has (presumably) reached the age that they can drive. The same logic applied to “Offence due to inexperience rather than irresponsibility (where offender qualified to drive)” and I believe there is a stronger argument here that either someone is qualified to drive or they are not. That said, these are simply mitigating factors not a defence so I am minded to keep these and be clear in the consultation response about the distinction between mitigation in relation to the offending and personal mitigating factors.

3.41 Several were sceptical about “Efforts made to assist or seek assistance for victim(s)” and “Remorse”. These were considered to be, respectively, the least that people should do and an act put on for the judge. Action Vision Zero suggested remorse was double-counting an early guilty plea. Eastgate Cycles Cycling Club suggested that lack of remorse should be an aggravating factor.

3.42 On the other hand, HM Council of Circuit Judges shared our concern about the aggravating counterpart “Failed to stop and/or assist or seek assistance at the scene”, that offenders may be in shock and not able to help. They thought we should raise the bar to be “obstructing or hindering attempts to assist at the scene”. Kennedy’s thought this would unfairly capture HGV drivers who may not be aware that they have hit someone, and Action Vision Zero pointed out that failure to stop is a separate offence.

3.43 I am persuaded by HM Council of Circuit Judges that it is unfair to offenders who have just been involved in what may be a major incident to penalise them for not assisting, but I believe the courts can apply a common-sense approach to failure to stop. If we wished to counterbalance this we could remove the mitigating factor of providing assistance, noting that it is open to the courts to apply mitigating factors not listed. However, I think such assistance at the scene is worthy of mitigation.

Question 13: do you want to change the aggravating factor to “Failed to stop and/or obstructed or hindered attempts to assist at the scene”?

3.44 One road tester and several respondents asked why motorcyclists were not included in the list of vulnerable road users, as they are in the Highway Code. HM Council of Circuit Judges also suggested including “people working in the road”. Whilst the list was not intended to be exhaustive, as it has been raised I see no harm in adding “motorcyclists”, but add “etc” to the end of the sentence to allow the courts to use some discretion beyond the definitions in the Highway Code.

Question 14: do you want to add “motorcyclists” to the list of vulnerable road users, but add “etc” so that sentencers know this could apply to others?

3.45 Two respondents, the West London Magistrates Bench and the Prison Reform Trust, wanted clarification that “Passengers, including children” referred to those travelling in the offender’s car. This is undoubtedly the case as it cannot be right to aggravate for something beyond the offender’s knowledge or control (aside from reflecting the actual increased harm of more victims). So I propose amending the factor to “Passengers in the offender’s vehicle, including children” to put the matter beyond doubt.

Question 15: do you want to amend the factor to "Passengers in the offender's car, including children"

3.46 In road testing, some sentencers questioned why driving an LGV, HGV or PSV or driving for commercial purposes should be an aggravating factor. Kennedy's also thought that these factors would be double counted unfairly for professional drivers. However, I think these factors can be justified by the increased danger posed by large vehicles, and it is the case that driving for commercial purposes and driving a large vehicle are separate matters. The courts can apply common sense in determining the extent to which they interrelate for an individual.

3.47 On this subject, London Buswatch provided comprehensive evidence about how some of the elements in the guidelines could penalise PSV drivers whose bad driving might be due to their working conditions and aspects of their contracts that prioritise speed over safety. They suggest that, whilst these guidelines may be appropriate for private drivers, they should not apply to bus drivers and the like, and that employers' culpability should be accounted for in the guidelines. I am unaware of employers being prosecuted for the bad driving of their employees, but this would appear to be a broader issue than our guidelines can deal with.

3.48 Road testers and some consultation responses also questioned why the victim being a close friend or relative was relevant as a mitigating factor. This can be defended on the grounds that part of the punishment for such an offender will be the harm they have caused to themselves and those around them.

3.49 In road testing and consultation responses, people queried the meaning of "impeccable driving record" as a mitigating factor. HM Council of District Judges asked whether it might (for example) apply to points received 20 years ago. Kennedy's thought it would penalise those who drive for a living and are more likely to receive some kind of endorsement on their licence. Others thought it just rewarded those who had been lucky not to get caught. The Magistrates Association thought "impeccable" was too subjective a term.

3.50 I think there would be merit in changing the wording and agree with the MA that "clean" would be best understood by most sentencers.

Question 16: do you agree to change the mitigating factor "impeccable driving record" to "clean driving record"?

4 IMPACT AND RISKS

4.1 As set out in the draft resource assessment published alongside the consultation, the revised guidelines as consulted on may result in a requirement for additional prison places running into the hundreds. The new causing death by dangerous driving guideline could result in a requirement for up to around 260 additional prison places, with around 20 additional prison places for causing death by careless driving when under the influence of drink or drugs, and around 80 additional prison places for causing serious injury by dangerous driving.

4.2 These assessments are far different to the assessment the Government made at the point of introducing the legislation that a "high" scenario for raising the penalty for causing death by dangerous driving would involve 30 more prison places. That assessment appears to be based on the assumption that only the worst cases would see an increase in sentencing severity. By contrast, as the Justice Select Committee highlight, we are proposing to increase sentencing levels across most categories. This is an especially live consideration bearing in mind current prison capacity issues.

4.3 This paper proposes a few amendments to culpability factors, but it is not anticipated that these will have a significant impact on our resource estimates. Had all drink/drug drive cases been placed in culpability A, that may have had a more significant impact. Placing very brief distraction in culpability C may have the effect of drawing some more cases into that category which could bring estimates down, but this is impossible to quantify with certainty.

4.4 Should Council wish to reduce the sentence levels for lesser culpability careless driving cases (for discussion in the new year), that may have some impact on the resource assessment. Subject to what Council decides at this meeting, and in subsequent meetings we will work to refine our estimates of the impacts.

4.5 In terms of handling, there will be some disappointment that factors such as drink/drug driving and driving whilst deprived of sleep have not been placed into high culpability. As discussed at our last meeting, the consultation response document can explain that even serious offending behaviour can (and needs to be) graded in a spectrum.

4.6 We should provide a reply to the Justice Select Committee setting out our rationale for why we are seeking to provide increases across the board (if that remains the preferred approach). On the question of whether a life sentence could be imposed for causing death by dangerous driving and causing death by careless driving under the influence, I propose we answer factually, pointing the Committee to the relevant case law (*Saunders* [2013] EWCA Crim 1027).

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Sentencing Council

Sentencing Council meeting:	**16 December 2022**
Paper number:	**SC(22)DEC06 – Imposition**
	Jo King
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1. ISSUE

1.1 This is the second substantive paper on the overarching guideline: Imposition of community and custodial sentences. The recommendations below cover proposed new sections: deferred sentencing, the five purposes of sentencing, and points of principle on issues affecting specific cohorts of offenders. Consideration of the remaining in-scope sections will be presented at the February/March Council Meeting; namely: *suspended sentence orders, electronic monitoring and the sentencing flow chart.* Similar to the last Imposition paper, most proposals for specific text for the guideline are a draft suggestion hoped to generate debate and feedback, rather than text to be agreed today.

2. RECOMMENDATION

That the Council considers and agrees the new inclusion of references to:

I. Deferred sentencing

II. the five purposes of sentencing, including information on rehabilitation preventing crime more generally

III. points of principle on issues affecting specific cohorts of offenders

I. Deferred sentences

2.1 Deferred sentences allow a sentencer to defer a sentencing decision for up to six months, with the option to attach specific requirements or conditions for the offender to fulfil/abide by in that period. The Sentencing Act 2020 sets out the purpose of a 'deferment order', namely that it is to enable a court, in dealing with the offender, to have regard to -

(a) the offender's conduct after conviction (including, where appropriate, the offender's making reparation for the offence), or

(b) any change in the offender's circumstances.

2.2 This is commonly done, and is seen as especially suitable, either for offenders who will have a significant change in circumstances between the date of offending and the (potential) date of sentence (which may mean that their risk of re-offending will or can be

reduced), or for offenders on the custody threshold. As our Council member, Dr Elaine Freer, in her 20022 'Review of Practice' for the Sentencing Academy, states: "*a deferment allows the court to assess whether the defendant is committed to a change in lifestyle to move away from criminality*" (page 5). To be clear, deferred sentencing is not the same as a deferred prosecution agreement, nor is it the same as an adjournment, which does not have a specific limit nor conditions attached (other than any bail conditions).

2.3 There is currently no reference to deferred sentences in any of the sentencing guidelines, but some limited guidance is set out in explanatory materials to the MCSG (**Annex A**). This page is not referred to or linked in any guideline and can only be found through the search function or through the explanatory materials page. This guidance emphasises that deferred sentences will only be appropriate in "*very limited circumstances*".

2.4 Scotland also has the legislative power to defer sentencing "*for a period and on such conditions as the court may determine*" (The Criminal Procedure (Scotland) Act 1995). The Scottish Sentencing Council notes on their website that "a *judge can postpone a sentence, usually for good behaviour, to a later date. If offenders stay out of trouble during that time, the judge will normally give a less severe sentence than if they get into trouble*." The Scottish government published a high-level guide to the purpose, policy rationale and operation of structured deferred sentences (SDS) in February 2021, which involves a structured intervention managed by justice social work services. Of this, they note that deferring sentence can help prevent offenders becoming further drawn into the justice system and that it provides an "*opportunity for individuals to stabilise their circumstances and assess their motivation and ability to comply with a period of statutory supervision, again potentially reducing the risk of future breach and providing an alternative to short periods of custody*." In 2020-21, offenders were admonished (i.e. given a warning) in 42 per cent of the 450 SDSs, which alludes to SDSs being given for lower level offending.

2.5 In England and Wales, data on the volume and efficacy of deferred sentencing are very limited, and there is no published research examining their outcomes. It is not possible to isolate and count deferred sentences occurring in the Crown Court. The known volume of deferred sentences in magistrates' courts was around 550 in 2020 and around 450 in 2021, and has been declining since 2011, however, it is not known whether this is accurate.

Requirements

2.6 The Sentencing Act 2020 sets out that the court may impose requirements during a deferment "*as to the offender's conduct*" and specifies examples that these may include requirements as to the residence of the offender, or restorative justice (RJ) requirements. The Act does not limit when a deferment order may be available, but sets out that the

offender must consent, undertake to comply with any requirements, that the order is in the interests of justice and, if the requirement includes RJ, that the participants consent.

2.7 There is no mention of deferred sentencing in the Criminal Procedure Rules or Criminal Practice Directions, nor the Better Case Management (BCM) Handbook. The Equal Treatment Bench Book (ETBB) mentions deferred sentencing, and specifies offender needs that may be addressed during a deferral period, namely addiction or mental health.

2.8 The Adult Court Bench Book and the pronouncement card sets out text on 'deferment of sentence' for magistrates' courts. The example requirements given in the Adult Court Bench Book are "*a requirement as to residence (for the whole or part of the deferment period) and to make appropriate reparation*" (page 17). The Crown Court Compendium (Part II: Sentencing) also sets out text on deferred sentencing for Crown Courts, with examples of requirements including "*residence in a particular place and the making of reparation"* and that the court *"may also impose conditions of residence and co-operation with the person appointed to supervise…"* It states "*the circumstances in which such an order will be appropriate are relatively rare"* (pages 2-8). Roberts, Freer and Bild in 'The Use of Deferred Sentencing in England and Wales (A Review of Law, Guidance and Research)' gave drug or alcohol treatment as examples of commonly imposed requirements (p. iv).

2.9 The explanatory materials on deferred sentencing states that the deferment conditions could be "*specific requirements as set out in the provisions for community sentences, restorative justice activities (Sentencing Code, s.3) or requirements that are drawn more widely*." If the Council considered it beneficial to align with other court guidance and what is common in practice, this list could be amended.

2.10 The court has the same sentencing options after deferment as it would have done had it passed sentence on the day that it made the deferment order (Section 11, Sentencing Act 2020) and will state both the sentence an offender will receive if deferral conditions are complied with (i.e. a less severe sentence), and the sentence they would receive if deferral conditions are not complied with (i.e. a more severe sentence). Where the defendant has complied with the conditions, they have a legitimate expectation of receiving the lesser sentence (Attorney General's References Nos 36 and 38 of 1998 (R v Dean L and Jones) [1999] 2 Cr App R(S) 7).

Sentence length

2.11 Case law has refined the application of deferred sentences over the years. The Court of Appeal confirmed in Attorney-General's Reference 101 of 2006 (R v P) [2006] EWCA Crim 3335 that it is inappropriate to defer a sentence if an immediate custodial sentence is inevitable regardless of the conditions of the deferment. In Davis [2020] EWCA Crim 1701,

the court stated "*deferral is really there for cases where a community order is at least a realistic possibility if the judge were to pass sentence on that day.'* We can therefore assume that deferred sentences are most appropriate for those on the 'cusp' of custody, or between a community sentence and another disposal (whether more or less punitive), and that it is it is inappropriate to defer sentences if an immediate custodial sentence is inevitable. This principle is also backed up by the Crown Court Compendium (Part II).

2.12 Deferring sentence has in the past been used to 'test' an offender's suitability for suspension of a custodial sentence. A deferred sentence may be a good trial for sentencers unsure about whether a suspended sentence will be duly complied with by the offender, without having to go through breach and resentence, particularly if that offender's circumstances may be volatile or changing. Should the offender be on the cusp of custody, this limited period of time may prove whether they are suitable for a suspended sentence. This deferment period may also be a suitable 'test' for the offender's suitability for a particular requirement which could then be attached to a suspended sentence order.

2.13 As such, Council could decide to specify that deferred sentences are appropriate for sentences which have a realistic possibility of a sentence up to 24 months custody (i.e. are possible to be suspended). The more severe sentence, if conditions of deferment are not complied with, could be over this threshold, but the less severe sentence, if conditions of deferment are complied with, could then be a suspended sentence order.

<u>Benefits of referencing deferred sentencing in the imposition guideline</u>

2.14 The Ministry of Justice's Sentencing White Paper 'A Smarter Approach to Sentencing' in September 2020 included a section on Deferred Sentencing, which set out the commitment of the government to encourage courts to use existing legislation on deferred sentencing and services such as Liaison and Diversion to divert vulnerable offenders away from the justice system. The White Paper referenced women, in particular, whom "*are likely to benefit from referral to a woman's centre*" and noted, in reference to the commitment to increase the use of deferred sentencing, that:

> *The majority of women sentenced to custody receive sentences of less than 12 months, often for persistent low-level offences, and there is a higher prevalence of reported needs among women in custody, including around substance misuse, trauma and mental health. (page 52).*

2.15 Julian Roberts in his article 'A fresh look at deferred sentencing' agreed with the notion that a wide range of offenders (including vulnerable female offenders) may benefit from the opportunity to demonstrate sufficient progress towards desistance to justify a noncustodial sentence, but outlined that frequent deferring of sentences may have the

potential to create disparities (page 4). Julian Roberts together with Elaine Freer and Jonathan Bild wrote about the need to revisit the current guidance in their combined paper, questioning the intention of guidance, rather than the information in a guideline (a question/issue relevant more widely than just deferred sentencing).

Proposal

2.16 The first question is whether the Council would be comfortable with a small increase in the numbers of deferred sentences. If Council were content with this, Freer, Bild and Roberts set out in their July paper: "*One way of attracting further attention to the deferral provision would be to issue a guideline for courts contemplating deferral. In the alternate, the Council could introduce reference to deferral into its imposition guideline which provides guidance on the use of the principal disposals*."

2.17 In the July meeting, members of the Council cautioned that it was essential to agree on the purpose and scope of deferred sentencing. The purpose of the recommendation put forward below, therefore, is to ensure all sentencers are aware of this option, particularly in relation to defendants who may benefit from a deferral of sentencing. A possible impact of this may be that the number of deferred sentences for appropriate defendants increase.

2.18 In the last meeting, Council agreed to an updated chronological structure of the guideline, starting with a new section on thresholds, then a section on pre-sentence reports, moving onto imposition of community orders. It is proposed therefore that the imposition guideline begins with a short reference to deferred sentencing, either before or after the (new) section on thresholds. This is proposed as the consideration of a deferral would happen prior to a consideration of sentencing options, however another option is for this to go elsewhere in the guideline. In either case, this could read:

Note: Deferred Sentences

The court may consider whether it would be appropriate, beneficial and in the interests of justice for sentencing to be deferred for up to six months and may attach conditions to that deferment. If the offender complies with these conditions, a different sentence will be justified at the end of the deferment period. As such, deferred sentencing may be appropriate for sentences which have a realistic possibility of a sentence of up to 24 months custody.

If deferring the sentence is a consideration, please see the Deferred Sentencing Guideline/expanded explanation here (link).

2.19 Should the council agree to the inclusion of reference to deferred sentences in the Imposition Guideline, there is a presumption that the number of deferred sentences will increase. Probation consider this to be a positive increase, noting cases in which

requirements have been identified post-sentence as not being suitable for the offender, and have as such been breached and/or had to go back to the court to be resentenced. The Probation central court team consider a deferment period, particularly when requirements overseen by probation are imposed (such as a Rehabilitation Activity Requirement (RAR)), a useful 'trial' to understand whether a particular offender will engage with the type of sentence and its requirements ultimately imposed.

Question 1: Does the Council wish to make reference to deferred sentencing in the imposition guideline?

Question 2: Does the Council have any feedback on where this would be most appropriate to be in the guideline?

Question 3: Does the Council wish to make any amendments to the text at para 2.18?

Question 4: Does the Council wish to link this reference to further information on deferred sentencing, either the explanatory material on deferred sentencing, or to a new guideline on deferred sentencing?

2.20 Should Council agree to the link to the explanatory materials in the imposition guideline, it would be beneficial to review this text. Julian Roberts in his 2021 article states "It *is unclear why the Sentencing Council took such a restricted view of the ambit of deferred sentencing*", noting in particular the line "*Deferred sentences will be appropriate only in very limited circumstances*".

2.21 Recent academic commentary has suggested that courts might benefit from greater guidance on deferred sentencing regarding the kinds of offenders for whom deferral is appropriate (such as specific profiles of individuals or factors indicating when deferring may be appropriate or inappropriate) or guidance that addresses key procedural aspects of the decision, such as the kind of requirements pertinent to deferral, or advice regarding the question of how to amend a sentence if an offender duly complies with a deferment period and its requirements or conditions. The Sentencing Guidelines Council guideline used to read "*if the offender complies with the requirements, a different sentence will be justified at the end of the deferment period'… this could be a community sentence instead of a custodial sentence, or a fine instead of a community sentence'*, so this information may be logical for inclusion again. It may also be worth the guidance being updated re case law, such as when a sentence is deferred, the defendant is no longer on bail (Mizan [2020] EWCA Crim 1553).

2.22 There are therefore a number of specifications that could be made either in the proposed text within the imposition guideline, or in an amendment of the guidance (or new guideline for deferred sentencing). This could be, for example, determining specific requirements or conditions that may be most pertinent when deferring sentence, bringing together the various court documents and legislation, such as the below:

> [Existing line in the explanatory materials] The court may impose any conditions during the period of deferment that it considers appropriate. **The type of requirement/s imposed during a period of deferment should be dependent on the offender's individual needs and circumstances. Requirements may include residence requirements, restorative justice (RJ) requirements, drug or alcohol addiction or mental health treatment requirements or a requirement to make appropriate reparation.**

2.23 Freer, Bild and Roberts make the case for deferred sentences being particularly important for young adults, noting the "*growing consensus in many jurisdictions that when sentencing young adults, courts should make an additional effort to restrict the use of custody as a sanction*." They note that deferred sentencing "*offers an additional means of sparing a young adult imprisonment and also encouraging (and rewarding) their attempts to address the causes of their offending during the period of deferment…[and] a sensible and responsive mechanism that enables the young person to show that they can follow a law-abiding life*", referencing the high proportion of young adults in custody (page 20).

2.24 The different treatment of young adults (18-25 years) was discussed as part of the Equality and Diversity paper in the October Meeting, concluding that this cohort should continue to be considered as part of the expanded explanations evaluation as to whether a separate overarching guideline is necessary, and be considered as part of the imposition project. Highlighting the benefit of deferred sentencing in particular for young adults may be one way in which this cohort is better dealt with in the imposition guideline.

2.25 While different cohorts of offenders are being considered in reference to encouraging PSRs for particular cohorts, should Council wish to include reference to deferred sentencing and for that reference to include specific cohorts, both female offenders and young adults (due to comments listed above, e.g. whose personal and professional lives have a higher possibility of changing rapidly) would be a welcome addition by commentators.

2.26 Therefore, another specification could be a line similar to the below:

> Deferring sentencing may be particularly appropriate for young adults (18-25 years of page) and female offenders.

2.27 Judicial continuity is worth mentioning in this discussion. Some Council members may have a similar view of the purpose of guideline as in the discussion on PSRs in the last

meeting: that the guidelines should state what should happen rather than take into account operational complexities. However, it is worth noting some of the practical realities of the court, in particular the magistrates court, in relation to deferred sentencing. While it is not in legislation, a deferred sentence almost always returns to the same sentencer after the deferment period. Whether this is practicable in magistrates' courts is a matter for discussion, and should Council agree to include reference to deferred sentencing at the beginning of the imposition guideline, further discussion in a later meeting can consider how practical considerations in the magistrates' court should be reflected.

Question 5: Does the Council wish to update the paragraph in the imposition guideline or the current explanatory material on deferred sentencing with any of the above considerations, or indeed develop a guideline on deferred sentencing?

II. The five purposes of sentencing, including information on rehabilitation preventing crime more generally

Purposes of Sentencing

2.28 Currently, the five purposes of sentencing are not listed in the imposition guideline, though the first line of the guideline under 'General Principles' section references them (without direct mention of the reduction of crime/deterrence or the protection of the public):

> *Community orders can fulfil all of the purposes of sentencing. In particular, they can have the effect of restricting the offender's liberty while providing punishment in the community, rehabilitation for the offender, and/or ensuring that the offender engages in reparative activities.*

2.29 In the same section, there is a specific reference to the purpose of punishment, though specifically in reference to the imposition of particular requirements rather than overall sentence, reflecting section 208 of the Sentencing Code:

> *Save in exceptional circumstances at least one requirement must be imposed for the purpose of punishment and/or a fine imposed in addition to the community order. It is a matter for the court to decide which requirements amount to a punishment in each case.*

2.30 The purpose of punishment is also referenced in the Community order levels section, though again in reference to the imposition of requirements rather than overall sentence:

> *At least one requirement MUST be imposed for the purpose of punishment and/or a fine imposed in addition to the community order unless there are exceptional circumstances which relate to the offence or the offender that would make it unjust in all the circumstances to do so.*

2.31 The overarching general guideline however does currently list the five purposes of sentencing in Step 1 (Reaching a provisional sentence). This text can be seen below:

> *The court should consider which of the five purposes of sentencing (below) it is seeking to achieve through the sentence that is imposed. More than one purpose might be relevant and the importance of each must be weighed against the particular offence and offender characteristics when determining sentence.*
>
> - *The punishment of offenders*
> - *The reduction of crime (including its reduction by deterrence)*
> - *The reform and rehabilitation of offenders*
> - *The protection of the public*
> - *The making of reparation by offenders to persons affected by their offences*

2.32 Academic commentary and criminal justice organisations have previously called for greater direction from the Council about the purposes of sentencing. Transform Justice, for example, set out in a 2020 paper (The Sentencing Council and criminal justice: leading role or bit part player?) by Rob Allan, that:

> *"The Council's guideline on overarching principles rightly points out that courts need to consider which of the five statutory purposes they are seeking to achieve through the sentence that is imposed,* ***but offers no guidance about how courts should set about choosing the purpose in a particular case. Prioritising reform, rehabilitation and reparation will in most cases lead to a more effective sentence than simply choosing punishment."*** *(page 11)*

2.33 In the same paper they say:

> *"In the majority of cases the reduction of crime and protection of the public are best achieved through reform and rehabilitation rather than punishment." (page 10)*

2.34 In response to the Council's consultation: What next for the Sentencing Council? In September 2020, the Prison Reform Trust set out a similar view; that rehabilitation is important for reoffending, making reference to guideline development:

> *"The CJA 2003 states that the process of sentencing involves a balance of five purposes, only two of which (the reduction of crime (including its reduction by deterrence) and the reform and rehabilitation of offenders) are relevant to reoffending. However, the Council should be transparent about what purposes it chooses to prioritise and the evidence, including on reoffending, that goes into informing its deliberations." (page 12).*

2.35 We can assume that the general guideline applies mostly where no offence specific guideline exists, and that in reality sentencers do not always open the general guideline when they sentence. Initial data from the first phase survey of the user testing project alludes to this being the case (with a key theme in the reasoning being 'familiarity' with the guideline). This does however need to be triangulated by the ongoing second qualitative phase of the user testing project. We can assume that the imposition guideline is more generally, widely and practically considered and applied, as it is designed to be read alongside offence specific guidelines, rather than standalone.

2.36 It was argued by Anthony Bottoms in his 2017 paper 'A Report on Research to Advise on how the Sentencing Council can best Exercise its Statutory Functions' that inclusion of the purposes of sentencing in offence specific guidelines would improve public awareness. This was noted before there were individual web pages in a dedicated area of the website however, so public awareness may be better addressed through the public facing website pages. They could however be referenced in imposition.

2.37 The terminology used in section 57 of the Sentencing Code is that the "court must have regard to the following purposes of sentencing". The line in the general guideline does not exactly align with the legislation, as it asks courts to consider which of the five purposes of sentencing it is seeking to achieve, rather than having regard to them generally. It would be helpful to have a Council discussion on whether it is correct to ask sentencers to consider which purpose/s of sentencing that the sentence (and/or package of requirements) is expected to fulfil. Given their overlap, in the majority of cases, sentencers should and will be aiming to achieving multiple, or all, of the five. It can also be assumed that the majority of sentencers are already aware of the requirement to have regard to the purposes of sentencing and what these are.

2.38 The text proposed below for the imposition guideline is therefore more aligned with that in the Sentencing Code, as below. Council may wish to consider an amendment to this text in the general guideline at a later date.

The court must have regard to the five purposes of sentencing when determining sentence. These are, in no particular order:

- The punishment of offenders
- The reduction of crime (including its reduction by deterrence)
- The reform and rehabilitation of offenders
- The protection of the public
- The making of reparation by offenders to persons affected by their offences

Question 6: Does the Council wish to include the five purposes of sentencing in the imposition guideline?

Question 7: Does the Council wish to make any amendments to the proposed text?

2.39 As was suggested by members in the discussion on Effectiveness, the inclusion of these purposes may provide an opportunity for the Council to say something about these purposes, over and above simply listing them. It was suggested by several members of the Council in the conversation on effectiveness in the October meeting that this inclusion may offer the opportunity for Council to reflect the findings in the Effectiveness review, by referencing rehabilitation and its role in reducing reoffending and preventing crime.

2.40 There is a wealth of research in this area, and while the Guideline mentions rehabilitation in questioning whether it is unavoidable that a sentence of imprisonment be imposed, it is not set out what impact rehabilitation may have on preventing crime. The findings of the Effectiveness literature review presented to Council in the October meeting highlighted, in short, that short custodial sentences are less effective than other disposals at reducing reoffending, increasing length of sentences is not effective for reducing reoffending for offenders with addiction or mental health issues, sentences served in the community may be more effective at promoting positive outcomes, and more.

2.41 The imposition guideline could mention *effectiveness* in two different ambits: effectiveness of the overall sentence type discussed above, and/or effectiveness of individual requirements according to the individual offender's circumstances. Discussion on the latter will be reserved for a future meeting when the list of requirements is considered. For the former, no academic body or individual have so far suggested *how* the Council might refer to effectiveness, and therefore, there are a number of options for how to proceed.

2.42 One option is that should the Purposes of sentencing are agreed to be added to the guideline, a line underneath the list of purposes could urge courts to consider the research on the relative effectiveness of different sentencing options on reducing reoffending. This could look like something like the below:

> The purpose 'reform and rehabilitation of offenders' in particular can contribute towards the other purposes 'protection of the public' and the 'reduction of crime'. Research shows that in some circumstances, sentences prioritising rehabilitation may be more effective at reducing the risk of reoffending compared to that of a short custodial sentence.

2.43 If the Council wanted to say more, or was minded to be more specific on what the effectiveness research concludes, a new Explanatory Materials page (or similar) could be developed that would be linked in this section (for example, titled something like: 'Effectiveness of Sentencing Options in Reducing Reoffending'). If Council wishes to develop

a separate page, this could be drawn up for consideration at a later date. The text in the imposition guideline could read something like the below:

> Sentencers should consider the research on the relative effectiveness (*link to explanatory materials*) of potential sentencing options on reducing reoffending when considering a suitable sentence.

2.44 Another option is for the Council to say more about each individual purpose, not just reform and rehabilitation as suggested in the last discussion on Effectiveness. A line on each of the purposes can be drawn up at a later date with the support of a working group.

Question 8: Does the Council wish to either a) include a line underneath the purposes of sentencing on the effectiveness of rehabilitation; b) say more via a link to a new Explanatory materials on the topic (to be developed), or c) say more about each of the purpose of sentencing (to be developed)?

Extra step or "step back"

2.45 Bottoms in his 2017 article states that guidelines are mainly 'censure based', (punishment is imposed in order to censure inappropriate behaviour), and that it *"is recommended that, while maintaining the primary focus on censure, appropriate attention is also given to consequentialist purposes [deterrence and rehabilitation]."* He sets out in some detail considerations around how the Council should reflect rehabilitation issues (research on the relative efficiencies of short custodial sentences v community disposals), concluding in suggesting an extra step in offence-specific guidelines as to whether custody is unavoidable – mirroring similar questions already set out in the imposition guideline.

2.46 An "extra step" has been discussed by Council for different reasons over the last few years. In the 'What Next for the Sentencing Council?' consultation in relation to highlighting to sentencers the purposes of sentencing, it was suggested that there could be a "step back" step after aggravation and mitigation to consider whether the sentence arrived at would serve the purposes of sentencing and/or would be "effective" for the offender. Something similar exists in the health and safety guidelines.

2.47 Most recently, an 'extra step' was discussed in relation to the Equality and Diversity paper and the Effectiveness literature review in the October and November meetings. The former suggested that an extra step could allow sentencers to "*review the sentence they have arrived at with mitigating factors and the offender's personal circumstances in mind*", due to a finding that upward factors had a stronger affect that downward factors and that mitigating factors might not have a sufficient impact on sentencing outcomes because they are considered only at Step 2.

2.48 With this in mind, it is proposed that in addition to the new section on Purposes of Sentencing, a line or 'step' is added asking sentencers to 'step back'. This was suggested by some members in the October meeting. This could be after the Imposition of Community Orders section and again after the Imposition of Custodial orders section. This could read something like the below. It would be grateful to have Council's feedback on what elements of this line are necessary and what elements are not.

Review of the Proposed Sentence
The court should 'step back', and review whether the sentence it has preliminarily arrived at fulfils at least one of the purposes of sentencing, and where relevant, rehabilitation in particular, which research shows may be more effective at reducing the risk of reoffending compared to that of a short custodial sentence.

Question 9: Does the Council agree to include some text referring to reviewing the proposed sentence with rehabilitation in mind? What feedback does the Council have on the above draft text?

III. Points of principle on issues affecting specific cohorts of offenders

Equal Treatment Bench book (ETBB)

2.49 The imposition guideline does not currently include any specific information on, or points of principle about, sentencing specific cohorts of people. It was considered necessary in the scoping discussion of this guideline to review this. There are a number of proposals for Council to consider and these are all shown in the same paragraph at the end of this section.

2.50 At the October meeting, Council agreed to include reference to specific cohorts in the PSR section for whom PSRs may be particularly important. While the specific cohorts and the terminology have not yet been agreed, the example cohorts and framing were based on what cohorts are already suggested that a PSR would be particularly important in the expanded explanations for the purpose of bringing these cohorts together. After applying feedback, the draft list (to be considered at a later date) for the PSR section is below:

A pre-sentence report may be particularly important if the offender is:

- *female*
- *a young adult (18-25 years)*
- *a primary carer (see expanded explanation on primary carers which outlines impact of custodial sentences on dependants)*
- *from a minority ethnic background*
- *from a cultural background (whether social class, ethnicity or other) unfamiliar to the judge*
- *has disclosed they are transgender*

- *has any drug or alcohol addiction issues*
- *has a learning disability or mental disorder*
- *Or: the court considers there to be a risk that the offender may have been the victim of domestic abuse, trafficking, modern slavery, or been subject to coercion, intimidation or exploitation.*

2.51 Out of the list above, points of principle for sentencing may be most appropriate for **female offenders, young adults, primary carers** and **offenders from a minority ethnic background**. Arguably, PSRs are a more pertinent consideration for specific cohorts of people than a particular sentencing approach is. For example, 'points of principle' for offenders with drug or alcohol issues would be difficult to develop, but it is clear how this cohort of people would benefit from a PSR assessing suitability for treatment requirements. In any case, most of these cohorts of offenders would be 'caught' by the reference and link to the ETBB at the top of every guideline:

> *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.*

2.52 The first proposal for Council to consider is reiterating this line within the Imposition Guideline, by adding the line "*The Equal Treatment Bench Book (link) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system.*" This can be seen at the end of this section with all the proposed changes below and Council may wish to consider the whole paragraph at once.

Current overarching guidelines

2.53 As Council is aware, there is currently an overarching guideline on one of the above-mentioned cohorts: offenders with mental disorders, developmental disorders or neurological impairments. There is, however, no reference or direct link to this in the Imposition Guideline. The overarching guidelines can only be found via the Overarching Guidelines header from the menu on the left or in certain droppables.

2.54 Initial results from the unpublished survey in phase 1 of the user testing project indicated that just under 46 per cent respondents said that they 'accessed and applied' the sentencing offenders with mental disorders guideline in most or every case where it was relevant to the case. These results are still being analysed and need to be triangulated with the phase 2 qualitative research, it can be concluded that it would at least not be unhelpful to direct sentencers to these within the imposition guideline.

2.55 It is recommended, therefore, that the imposition guideline both refers and provides a direct link to this overarching guideline to ensure these can be easily navigated to when sentencing offenders with mental disorders, developmental disorders or neurological impairments. This would be within a paragraph that refers to sentencing different cohorts of people, which can be seen at the end of this section.

2.56 The Council could also decide to refer and link to other overarching guidelines, such as the Domestic Abuse guideline, but this is considered not relevant to points of principle on issues affecting sentencing particular cohorts (as the domestic abuse guideline is of particular relevance for offences committed in a domestic context).

Female offenders

2.57 The Expanded Explanations, across various categories, give sentencing considerations for some cohorts of offenders; specifically: **young adults, carers, old/infirm offenders, neurodiverse offenders, physical disabled offenders**. It is notable that there is no reference in any of the expanded explanations specifically on **female offenders**, only related references such as 'sole or primary carers'. In November 2021, the Council made a commitment in its response to the ten-year consultation to "*Consider whether separate guidance is needed for female offenders or young adults by conducting an evaluation of the relevant expanded explanations"* after responses to the consultation most frequently called for a guideline or guidance for sentencing female offenders.

2.58 Since this commitment was made, the Justice Select Committee in their report 'Women in Prison' in July 2022 directly recommended the Sentencing Council consider whether an overarching guideline or guidance for sentencing female offenders is required, and it has been called for by various organisations over the years.

2.59 It is worth the Council focusing their attention to the section of the Sentencing Council's Effectiveness literature review that comprehensively sets out the myriad of issues for sentencing female offenders, which can be seen at **Annex B**. Further, the Effectiveness review set out reoffending data: females are least likely to reoffend when cautioned (12.1 per cent) and most likely to reoffend when given custody (56.1 per cent).

2.60 While the expanded explanation review is starting in the new year, it is recommended that before this concludes, the Council already considers some lines referring specifically to sentencing female offenders in the same paragraph as the issues outlined above. An example of this, together with the above proposals, is provided below and it would be useful to hear Council's views on this draft text below.

2.61 If the expanded explanation review concludes before the Imposition guideline consultation, and concludes that the Council should develop a separate overarching guideline for female offenders (or indeed for young adults), this can then be added as a direct link in the below text in a similar way to the mental disorders' guideline reference, replacing the few suggested lines with a link to this new overarching guideline.

> The effectiveness of a sentence will be based on the individual offender. The Equal Treatment Bench Book (*link*) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. The Council has issued overarching guidelines for consideration in the sentencing of offenders with mental disorders, developmental disorders or neurological impairments *(link).* Courts should review this guideline if it applies to the case. In addition, courts should be aware that research suggests that female offenders have different criminogenic needs and an immediate custodial sentence may be less effective if it fails to address these needs. There are fewer female prisons than male prisons which may mean that female offenders are at a greater risk of being housed further away from their families and communities. Research also suggests that female offenders are at a greater risk of being homeless and unemployed than men after release. Courts should take this into consideration.

Question 10: Does Council wish to make reference to the Equal Treatment Bench Book within the guideline?

Question 11: Does Council wish to provide a direct link to the overarching guideline on *sentencing offenders with mental disorders* within this guideline?

Question 12: Does the Council wish to provide a link to any other overarching guideline, such as the Domestic Abuse guideline?

Question 13: Does Council wish to include points of principle for sentencing female offenders within this guideline?

Question 14: Does the Council wish to include points of principle for sentencing any other cohort of offenders?

3. EQUALITIES

3.1 There are several equality issues throughout this paper. These will be kept in close consideration and be outlined in more detail at a later date.

4. IMPACT AND RISKS

There are a number of risks of differing degrees throughout this paper. These will be considered in more detail at a later date. It is not possible to quantify impact of these decisions yet but this will also be considered in more detail at a later date.

Sentencing Council

External communication evaluation

November 2022

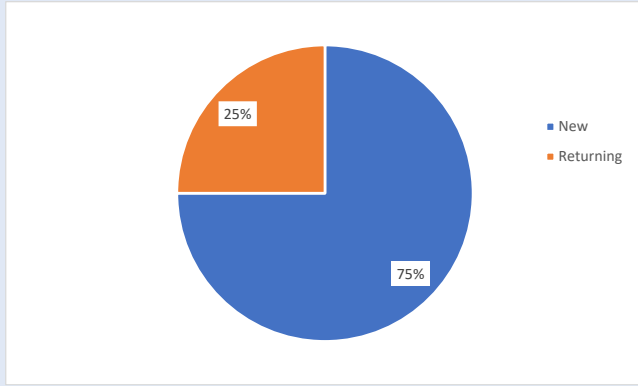
Sentencing Council

sentencingcouncil.gov.uk

Visits to www.sentencingcouncil.gov.uk

	This month	Last month
Users*	244,628	236,828
Sessions per user	1.89	1.84
Pages per session	2.58	2.54
Ave time on site	04:22	04:13
Bounce rate**	55.10%	56.26%

Visitors: new and returning



Announcements

7th	Sentencing seminar: current issues in sentencing policy and research

Top referring sites

cps.gov.uk
Yahoo.com
judiciary.sharepoint.com (Judicial Intranet)
Judiciary.uk
Defence-barrister.co.uk

*Users: Number of people who have visited the website at least once within the date range
**Bounce rate: Percentage of people who land on a page on the website, then leave

Sentencing Council

sentencingcouncil.gov.uk

Most visited pages	Pageviews	Unique Pageviews
Magistrates' court guidelines search page	202,759	91,900
Crown Court guidelines homepage	47,965	32,056
Website homepage	41,857	33,158
Magistrates' court homepage	33,676	23,465
/fine-calculator/	27,784	18,991
/offences/magistrates-court/item/common-assault-racially-or-religiously-aggravated-common-assault-common-assault-on-emergency-worker/	25,846	21,860
Common offence illustrations	18,425	11,068
/offences/magistrates-court/item/excess-alcohol-driveattempt-to-drive-revised-2017/	17,492	14,383
/offences/magistrates-court/item/assault-occasioning-actual-bodily-harm-racially-or-religiously-aggravated-abh/	16,708	14,952
Common offence illustrations /assault/	14,929	13,435

Most visited guidelines

Magistrates	Common assault / Racially or religiously aggravated common assault/ Common assault on emergency worker
Crown Court	Causing grievous bodily harm with intent to do grievous bodily harm / Wounding with intent to do GBH
Other pages	Outlines: Assault Blog post: What's the difference between theft, robbery and burglary?

Top search terms used

Sentencing guidelines
Breach suspended sentence guidelines
Magistrates' Court sentencing guidelines
Breach of dispersal notice

* Outlines: offence descriptions on the public-facing pages of the website: www.sentencingcouncil.org.uk/outlines/

Sentencing Council

YouTube

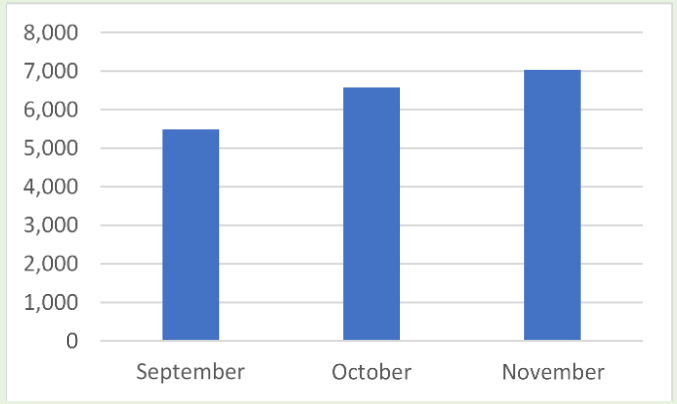
Subscribers

+16 = 1,209

Most watched video

How offenders are sentenced in England and Wales

Video views per month



Watch time average

02:19

Impressions*

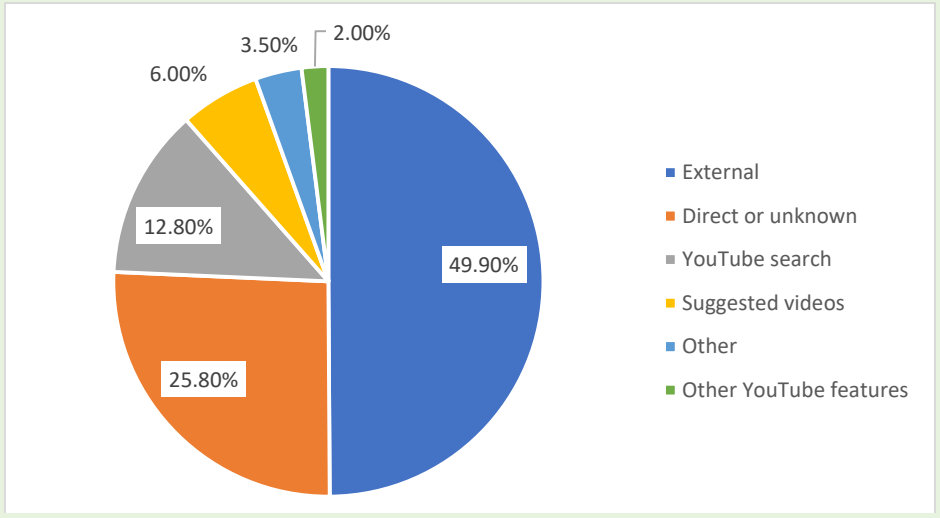
24,227

* Impressions: Number of times our video thumbnails are shown to viewers on YouTube

Sentencing Council

YouTube

How viewers find our videos



YouTube search: terms used

1	Sentencing guidelines UK
2	Work of magistrates in England and Wales
3	Magistrate
4	Magistrates court UK
5	Crown court sentencing UK

- External: Traffic from websites and apps embedding or linking to our videos on YouTube (60% www.sentencingcouncil.org.uk)
- Direct or unknown: using direct link or bookmark to our YouTube channel or unknown
- Suggested videos: suggested to users viewing other videos on YouTube

Sentencing Council

Subscription email bulletin

Subscribers

+233 = 5,049

All bulletins

Sent	2
Delivered	95.4%
Opened	30.9%
Engagement rate*	4.2%

Most clicked-through links

1. Sentencing seminar: current issues in sentencing policy and research
2. Minutes of Council meeting – October 2022
3. Totality – draft resource assessment
4. Sentencing Council website homepage

Highest engagement*

Sentencing seminar: current issues in sentencing policy and research

- Engagement rate: % of recipients clicking through at least one link in the bulletin(s)
- Highest engagement: topic of most “clicked through” bulletin

Sentencing Council

Twitter

Followers

-9 = 6,026

Highlights

	Tweets	Impressions	Mentions	Profile visits
This month	4	8,235	52	741
Last month	2	2,216	19	512

Top tweet

Sentencing policy, practice and research – join the Council, City Law School and Sentencing Academy on 13 January 2023 to hear about our work, discuss current issues in policy and practice and learn from experts about recent research. Free seminar:

Impressions: 2,191	Total engagements: 49

Top mention

Interested in sentencing policy, practice and research in England & Wales? Join us on 13 January 2023 for this free full day event held in conjunction with @SentencingCCL and @CityLawSchool

Sentencing Academy

- Impressions: number of times a tweet has been seen
- Mentions: mentions of the Council in other people's tweets
- Profile visits: number of times people have clicked through our tweets to see the Council's twitter profile
- Engagements: number of time someone has liked, retweeted, opened or clicked a link in a tweet or viewed our profile

Sentencing Council

Other engagement

- Young Citizens – review of revised materials for inclusion in Young Citizens national mock trial schools competition
- National Justice Museum – visit to mock trial school event and review of sentencing-related schools materials
- Four Corners Conference – engagement with Scotland Sentencing Council communication team
- Magistrates' Association – engagement with new Head of Marketing and Communications

Sentencing Council

Sentencing Council Meeting Dates 2024

The meetings will start at 9:45 and end at 16:30, these times may change depending on workload etc.

Friday 26 January 2024 – RCJ Queen's Building 2M Conference Room

Friday 1 March 2024 – RCJ Queen's Building 2M Conference Room

Friday 12 April 2024 – RCJ Queen's Building 2M Conference Room

Friday 17 May 2024 – RCJ Queen's Building 2M Conference Room

Friday 21 June 2024 – RCJ Queen's Building 2M Conference Room

Friday 26 July 2024 – RCJ Queen's Building QB1M Judges' Conference Room

Friday 20 September 2024 – RCJ Queen's Building QB1M Judges' Conference Room

Friday 18 October 2024 – RCJ Queen's Building 2M Conference Room

Friday 22 November 2024 – RCJ Queen's Building 2M Conference Room

Friday 20 December 2024 – RCJ Queen's Building 2M Conference Room

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