

21 January 2022

Dear Members

Meeting of the Sentencing Council – 28 January 2022

The next Council meeting will be held via Microsoft Teams, the link to join the meeting is included below. **The meeting is Friday 28 January 2022 from 9:30 to 14:45.** Members of the office will be logged in shortly before if people wanted to join early to confirm the link is working.

The agenda items for the Council meeting are:

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| ▪ Agenda | SC(22)JAN00 |
| ▪ Minutes of meeting held on 17 December | SC(21)DEC01 |
| ▪ Burglary | SC(22)JAN02 |
| ▪ Guideline priorities | SC(22)JAN03 |
| ▪ Miscellaneous guideline amendments | SC(22)JAN04 |
| ▪ Totality | SC(22)JAN05 |
| ▪ Perverting the Course of Justice | SC(22)JAN06 |
| ▪ Sexual Offences | SC(22)JAN07 |

Members can access papers via the members' area of the website.

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

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Sentencing Council

COUNCIL MEETING AGENDA

28 January 2022

Virtual Meeting by Microsoft Teams

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| 09:30 - 09:45 | Minutes of the last meeting and matters arising (paper 1) |
| 09:45 - 10:45 | Burglary - presented by Mandy Banks (paper 2) |
| 10:45 - 11:00 | Break |
| 11:00 - 11:30 | Guideline priorities – presented by Steve Wade (paper 3) |
| 11:30 - 12:00 | Miscellaneous guideline amendments – presented by Ruth Pope (paper 4) |
| 12:00 - 12:15 | Totality – presented by Ruth Pope (paper 5) |
| 12:15 - 12:45 | Lunch |
| 12:45 - 13:45 | Perverting the Course of Justice - presented by Mandy Banks (paper 6) |
| 13:45 - 14:45 | Sexual Offences - presented by Ollie Simpson (paper 7) |

Sentencing Council

COUNCIL MEETING AGENDA

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MEETING OF THE SENTENCING COUNCIL

17 DECEMBER 2021

MINUTES

<u>Members present:</u>	Tim Holroyde (Chairman) Rosina Cottage Rebecca Crane Rosa Dean Nick Ephgrave Michael Fanning Diana Fawcett Adrian Fulford Max Hill Jo King Juliet May Maura McGowan Alpa Parmar Beverley Thompson
<u>Representatives:</u>	Elena Morecroft for the Lord Chief Justice (Legal and Policy Advisor to the Head of Criminal Justice) Claire Fielder for the Lord Chancellor (Director, Youth Justice and Offender Policy)
<u>Observers:</u>	Eliot Porritt, Metropolitan Police Lynette Woodrow, Crown Prosecution Service
<u>Members of Office in attendance:</u>	Steve Wade Mandy Banks Lisa Frost Ruth Pope Ollie Simpson

1. MINUTES OF LAST MEETING

- 1.1 The minutes from the meeting of 19 November 2021 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman welcomed Zeinab Shaikh a new member of the team who has joined as a senior policy officer.

3. DISCUSSION ON BURGLARY – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

- 3.1 The Council considered consultation responses relating to harm factors across the three guidelines. The Council agreed to a number of amendments to factors in response to suggestions by respondents. The Council also looked at responses regarding proposed sentence levels for non-domestic burglary, and agreed to some small changes at the lower end of the sentencing table.
- 3.2 Next month the Council will look at sentence levels for the other two burglary offences, and aggravating and mitigating factors across all three guidelines.

4. DISCUSSION ON MISCELLANEOUS GUIDELINE AMENDMENTS – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

- 4.1 The Council considered the responses to the consultation. The Council agreed to amend and expand the wording relating to the court's powers on breach of a sexual harm prevention order in accordance with suggestions from consultees. A small addition to the wording relating to confiscation was also agreed.
- 4.2 The Council discussed the responses in relation to changes to the Domestic abuse guideline and agreed wording to clarify the scope of that guideline.

5. DISCUSSION ON MOTORING – PRESENTED BY LISA FROST, OFFICE OF THE SENTENCING COUNCIL

- 5.1 The Council finalised draft culpability factors for careless driving offences, agreeing an additional factor at medium culpability for driving a vehicle where visibility or controls are obstructed.
- 5.2 The Council discussed issues related to the development of enhanced guidance for drug driving offences. The Council considered a range of information which highlighted the lack of evidence available to provide for development of drug driving guidelines which specify the level of

drug at which a driver's impairment worsens. The Council also noted evidential issues which would cause the operation of a guideline specifying drug levels to be problematic.

5.3 The Council agreed to monitor the development of work being undertaken by the Department of Transport in respect of drug driving to identify if further evidence becomes available in the future. In the interim it was agreed that a previously developed guideline for the section 5A offence of driving or being in charge with specified drug above specified limit should be included in the consultation for motoring offences.

5.4 Finally, the Council agreed the approach to assessing culpability for careless driving when under the influence of drink or drugs. The approach to assessing the seriousness of drugs and alcohol in this offence was agreed, and it was decided that any deliberate failure to provide a specimen for analysis should be assessed at the highest level of culpability.

6. DISCUSSION ON ANIMAL CRUELTY – PRESENTED BY OLLIE SIMPSON, OFFICE OF THE SENTENCING COUNCIL

6.1 The Council discussed amendments to be made to the existing magistrates' sentencing guideline for failure to provide for the welfare of an animal (section 9 of the Animal Welfare Act 2006), consequential to amendments made to the guideline for other animal cruelty offences (ss4-8 of the 2006 Act).

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

7.1 The Council discussed culpability and harm factors and it was decided to seek clarification from police and trading standards on the issue of the sale of multiple knives by online retailers before these factors were agreed.

7.2 Sentence levels for organisations were discussed. The Council agreed that these should be proportionate to those for other offences of similar gravity and generally would be higher than sentences currently being passed.

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Sentencing Council

Sentencing Council meeting: 28 January 2022
Paper number: SC(22)JAN02 – Burglary Revision
Lead Council member: Rebecca Crane
Lead officials: Mandy Banks
0207 071 5785

1 ISSUE

1.1 This is the third meeting to discuss the burglary guideline post consultation. There is one further scheduled meeting to sign off the definitive guideline and consider the resource assessment in March. The guideline will then be published in May and come into force in July. It is necessary to adhere to this timetable due to the data collection starting in the courts in the Autumn.

1.2 This meeting will focus on looking at responses relating to aggravating and mitigating factors across all three guidelines and continue considering sentence levels across the three guidelines. The changes agreed to the harm factors at the last meeting can be seen in track changes within the guidelines.

2 RECOMMENDATION

2.1 That the Council:

- Considers the responses relating to aggravating and mitigating factors
- Agrees to reword the aggravating factor regarding weapon carried
- Continues considering issues regarding sentence levels

3 CONSIDERATION

Aggravating and mitigating factors

3.1 Three magistrates' benches asked for '*offence committed at night*' to be included within the non-domestic burglary guideline. In the consultation it was an aggravating factor within both aggravated and domestic burglary, but not non-

domestic burglary. In the original guideline there was an aggravating factor of *'offence committed at night especially where staff present or likely to be present'*. This factor was not included at consultation as there was a reference at step one of *'victim on the premises (or returns) while offender present.'* However, it is the reference to the offence occurring at night that these consultees felt was important, they commented that those present at night in non-domestic premises often have less support, with fewer staff on, sometimes working alone, hence aggravating the overall effect of the offence.

3.2 The Justice Committee (JC) questioned why *'use of a face covering or disguise'* was only an aggravating factor in aggravated burglary, and not in the other two guidelines.

Question 1: Does the Council wish to add 'offence committed at night' to non-domestic burglary?

Question 2: Does the Council wish to add 'use of a face covering or disguise' to domestic and non-domestic burglary?

3.3 The JCS suggested that there should be an additional aggravating factor of *'presence of a child, especially where used to facilitate the commission of an offence'*, in relation to distraction burglaries. Rory Kelly, an academic, suggested a number of additional aggravating and mitigating factors:

- *Stealing, attempting or intending to steal goods to order*
- *Attempts to conceal/dispose of evidence*
- *Offender motivated by revenge*
- *Self-reporting*
- *Co-operation with the investigation/early admissions*

It is not clear how often these factors may apply, particularly the presence of child factor. It may be appropriate not to include that factor as the list is non-exhaustive and courts could take it into account where appropriate. The other factors are more standard, the first three appear in the general theft guideline, and the mitigating factors are standard ones, therefore it may be more appropriate to add these to the guideline.

Question 3: Does the Council agree not to include the presence of a child factor but include the rest in the list above?

3.4 The Chief Magistrate and Council of Her Majesty's Circuit Judges questioned the inclusion of '*delay since apprehension*' as a mitigating factor, stating they did not think this was an appropriate factor to include. This was a mitigating factor in the original guideline, although it was '*lapse of time since the offence where this is not the fault of the offender*'. Some newer guidelines have '*delay since apprehension*' as a factor, and others don't, so its inclusion is decided on a guideline by guideline basis. There is an expanded explanation for this factor which explains it more fully. The Council did discuss this factor previously and had some reservations about its inclusion, so it may be appropriate to remove it.

Question 4: Does the Council wish to remove '*delay since apprehension*'?

3.5 Turning now specifically to the aggravated burglary guideline, attached at **Annex A**. The Council may recall that it was decided to move the '*weapon present on entry*' factor in culpability to become an aggravating factor. This was due to concerns around double counting, following *R v Sage*¹. To assist sentencers to decide whether or not the factor applied, text was provided in a drop down box, shown here in print form on page four of **Annex A**. This movement of the factor and additional guidance was supported by consultation respondents, including CPS, CLSA, JCS, and HM Council of District Judges. The Council of HM Circuit Judges also agreed but commented that where a particularly dangerous weapon is used/carried to the property, then this should be a further aggravating factor

3.6 However, the results from the road testing (page five of **Annex B**) show that the additional guidance in the drop down box was misunderstood. Nine Judges sentenced scenario C, five out of the nine Judges incorrectly applied it as an aggravating factor, and two incorrectly applied it at step one. Only two correctly applied the guidance. In this case as it was a s.9(1)(a) offence, intent to steal, having a weapon present on entry was an essential element of the offence, so it should not have been taken into account a second time. When the expanded explanation text was pointed in the interviews Judges took note, however some Judges still chose to apply the factor in order to make an assessment of the dangerousness of the weapon. Although this was a small scale exercise, with nine Judges, the results of the road testing are never the less concerning.

3.7 Rebecca, the guideline lead, and the Chairman have discussed these findings prior to the meeting, and propose alternative, simplified wording than that consulted on. The aggravating factor would become: '*In a s.9(1)(b) offence, weapon*

¹ AG's Ref Sage [2019] EWCA Crim 934 [2019] 2 Cr App R (S) 50, paras 38 and 45.

carried when entering premises'. Then in a drop down box the additional information would read:

'This factor does not apply to s.9(1)(a) offences because it is an inherent part of such offences: see AG's Ref Sage [2019] EWCA Crim 934, [2019] 2 Cr App (S) 50. In s9(1)(b) offences, however, the fact that the offender had taken a weapon to the premises, and was in possession of it when entering, will normally aggravate the offence.'

3.8 It is also proposed to remove the reference to a weapon within the harm factor at step one, *'violence used or threatened against the victim, particularly involving a weapon'*, so it would just read: *'violence used or threatened against the victim'*. The dangerousness of the weapon used was raised by some Judges in road testing and by the Council of HM Circuit Judges, however it is suggested that the aggravating factors do not reference this, as it may over complicate the issue. As the list of aggravating factors is not exhaustive sentencers could take the dangerousness of the weapon into account when applicable.

Question 5: Does the Council agree to reword the aggravating factor involving a weapon in the way proposed?

Question 6: Does the Council agree to remove the reference to a weapon at step one?

3.9 At the last meeting the Council discussed the response from English Heritage which asked that a harm factor of *'loss or damage caused to heritage and/or cultural assets'* be included at step one. The Council asked that the guidelines be checked to see if this factor occurs elsewhere at either step one, or at step two. This has been done. The factor is a step 2 aggravating factor of *'damage caused to heritage and/or cultural assets'* within:

- Criminal damage
- Arson
- Arson/criminal damage with intent to endanger life or reckless as to whether life was endangered

It occurs at step one in harm as *'damage to heritage assets'* in:

- Handling stolen goods
- General Theft

It may be more appropriate to add this as a step one factor for these guidelines as it

is an acquisitive crime like theft, so the loss of irreplaceable items should be captured within harm at step one. It is suggested it goes into category two harm.

Question 7: Does the Council agree to add ‘loss or damage caused to heritage and/or cultural assets’ at step one harm?

3.10 Turning now to sentence ranges, firstly non-domestic burglary at **Annex C**. At the last meeting the Council agreed to make some increases at the lower end of the table, as shown in the table below, specifically to C2, C3 and B3. This was because some respondents thought the gap between the starting points of C1 and C2 was too great. The comments from the Chief Magistrate were also considered, that compared to the sentences for going equipped, the sentences consulted on were too low. However, Rebecca has requested that we consider those decisions again, this time reflecting on the Council’s rationale for setting the sentence ranges at consultation. Sentencing data for this offence can be seen at tabs 1.1-1.8 of **Annex D** and shows that the average custodial sentence length (ACSL) was 10.6 months, 74 per cent of offenders receive sentences of one year or less, and only one per cent receive sentences above five years, the top of the range.

Changes made at the last meeting to the non -domestic guideline

Harm	Culpability		
	A	B	C
Category 1	Starting Point 2 years’ custody Category Range 1 -5 years’ custody	Starting Point 1 years’ custody Category Range High level community order - 2 years’ custody	Starting Point 6 months custody Category Range Medium level community order – 1 years’ custody
Category 2	Starting Point 1 years’ custody Category Range High level community order - 2 years’ custody	Starting Point 6 months custody Category Range Medium level community order – 1 years’ custody	Starting Point High level community order Category Range Low level community order – 6 months custody
Category 3	Starting Point 6 months custody Category Range Medium level community order - 1 years’ custody	Starting Point High level community order Category Range Low level community order- 6 months custody	Starting Point Medium level community order Category Range Band B fine –High level community order

3.11 At consultation, the Council set out the findings of the evaluation of the original [guideline](#), which had shown some unanticipated increases in sentence severity. Accordingly, some changes were made at the lower end of the sentencing range, to slightly decrease the sentence ranges, to assist in the appropriate sentence being given for low level offences. The sentence ranges consulted on can be seen below.

Consultation version of the non- domestic guideline

Harm	Culpability		
	A	B	C
Category 1	Starting Point 2 years' custody Category Range 1 -5 years' custody	Starting Point 1 years' custody Category Range High level community order - 2 years' custody	Starting Point 6 months custody Category Range Medium level community order – 1 years' custody
Category 2	Starting Point 1 years' custody Category Range High level community order - 2 years' custody	Starting Point 6 months custody Category Range Medium level community order – 1 years' custody	Starting Point Medium level community order Category Range Low -high level community order
Category 3	Starting Point 6 months custody Category Range Medium level community order - 1 years' custody	Starting Point Medium level community order Category Range Low – high level community	Starting Point Band B fine Category Range Discharge – Low level community order

3.12 Rebecca is concerned that in making any changes to the sentence levels consulted on, the Council should be mindful of the impact any changes would have, and to reflect on the rationale for setting the ranges at consultation. So that the ranges are not lower than those in going equipped, but are not increased as much as agreed at the last meeting, Rebecca proposes that in C3, the starting point could just be raised to a lower level community order, instead of a medium level community order, with the range a band B fine to a medium level community order. In addition, since there was rationale in the large gap between C1 and C2 at consultation, there is justification for leaving the ranges as they are, with a starting point of 6 months custody in C1, and a medium level community order in C2 and B3.

Question 8: Does the Council wish to revise the decisions made at the last meeting and leave the starting point of C2 as a medium level community order?

Question 9: Does the Council wish to reconsider the changes at C3, so the starting point is a lower level community order, with the range a band B fine to a medium level community order.

3.13 Turning now to the sentence levels for domestic burglary, at **Annex E**. Sentencing data can be seen at tabs 2.1 to 2.8 of **Annex D** and show that in 2020 the mean ACSL is two years four months, 91 per cent of offenders received a sentence of four years or less, and two per cent received sentences above six years, the top of the range. At the last meeting the Council agreed to remove the wording above the sentence table: *'for cases of particular gravity, sentences above the top of the range may be appropriate'*. Also at the last meeting the Council discussed whether or not there should be any increases to the top of the range in A1, as some respondents and some Judges at road testing thought the ranges and starting points were too low, particularly at A1.

3.14 To summarise the responses, one Judge commented that all the starting points and ranges were too low, and that he believed most Judges thought this, and that the reason why only 2 per cent of cases went above the top of the existing range was due to fear of the case being appealed if they sentenced above the range, which they may have wished to. Another judge and a magistrate bench thought the starting point for A1 was far too low, that it should be far closer to the statutory maximum. The JC also queried the large gap between the top of the range and the statutory maximum. The Judge thought the starting point should be nearer six years in a range of three - nine years. A barrister also said that the starting point in A1 was too low at three years, and it would lead to too many suspended sentences being given.

3.15 Another magistrate thought that all the sentences should be increased by one level. The JC thought the gap between the starting points in C2 and C3 was too great, at 1 year's custody and a high level community order, they suggested that the starting point in C3 should be six months' custody to reflect the seriousness of domestic burglary. The Council of Circuit Judges thought the ranges were too low, but with the additional wording above the table *'for cases of particular gravity'* etc, that it worked (although this wording is now being removed). In contrast, PRT thought there should be more community orders available within the table, and the MA

queried the ranges in A3/B2/C1, saying that they were higher than the equivalent in [the existing guideline](#), and asked if this was deliberate.

3.16 In road testing, a number of Judges felt from past experience that the area was under sentenced, and felt the proposed levels were too low, especially in A1. Alternative ranges of three to ten years with a starting point of four years, and four to eight years with a starting point of five years were suggested.

3.17 Before any decisions were made the Council asked that further work be carried out to look at the impact of making any of the changes to sentence levels of the various options suggested at the meeting. This has been done and is shown below. Also considered as part of this analysis was the estimated and actual impact of the original guideline published in 2012. Council may recall that there was unexpected increase in sentence severity following the publication of the guideline, although this was mainly seen in relation to non-domestic burglary, but it is thought that the domestic burglary guideline may have had a slight effect on increasing sentence severity. Given that this is revision of an existing guideline there may be an increased focus on the stated impact of the revised guideline. It is also worth noting here that the sentence levels of the original guideline were maintained at consultation, and not decreased, and that domestic burglary is a reasonably high-volume offence, with 3,700 offenders sentenced in 2020.

3.18 The Burglary resource assessment (published in October 2011) stated that the Burglary guideline would have no impact on prison places and resources. The Burglary guideline assessment (published in July 2017) stated:

‘For domestic burglary there has been a shift towards more severe sentences. However, this was anticipated and appears to be part of a long-term trend, and therefore unlikely to be as a result of the release of the guideline.’

Additional analysis of domestic burglary data has shown that the guideline may have had a slight effect on increasing severity for these offences: more offenders are now placed in category 1; the custody rate in category 1 has been increasing; and greater harm/higher culpability factors are taken into account more often than their counterparts.

3.19 The Burglary offences draft resource assessment (published June 2021) stated in the rationale and objectives section:

'The Council's aim in developing the guidelines has been to ensure that sentencing for these offences is proportionate to the offence committed and to promote a consistent approach to sentencing. It was accepted by the Council that sentencing levels had increased since the guideline came into force, and the draft revised guidelines have been developed with recent sentencing levels in mind.'

In relation to domestic burglary, the resource impacts section stated:

'Overall, aside from the specific issues mentioned above which will be explored during the consultation, for all three offences (non-domestic, domestic and aggravated burglary), analysis suggests that sentences should remain similar under the revised guidelines, and at this stage, there is no conclusive evidence to suggest that the guidelines will have a notable impact on prison or probation resources. Due to the small sample of transcripts, it is recommended that further analysis and research is undertaken during the consultation stage to better understand the possible impact of the revised domestic burglary guideline on sentences, and subsequently on prison and probation resources. '

3.20 Transcript analysis from the draft stage was available to use with this modelling. The majority of offenders sentenced for domestic burglary and all offenders for aggravated burglary are sentenced at Crown Court, so the transcripts should be representative of the majority of offending. However, the sample of domestic and aggravated burglary transcripts containing enough details for resentencing was extremely low (14 offender transcripts for domestic burglary compared to 5,100 offenders sentenced in 2018² and 20 offender transcripts for aggravated burglary compared with 170 offenders sentenced in 2018). Therefore, it was decided that any analysis using these volumes would not be robust enough on its own. Instead, pre-guilty plea estimates from the Court Proceedings Database (CPD) were used to compare the different options and to give an idea of the relative impacts.

A number of assumptions have been made for this analysis:

- Since the guideline sentence tables are developed with pre-guilty plea sentences, the estimated pre-guilty plea custodial sentence lengths from the CPD were used

² 2018 is used as the comparison year for these volumes as this is the year in which sentencing occurred that the transcript sample was taken from. The impact calculations use 2019 instead since this is the most recent year of data for which volumes were not potentially impacted by the COVID-19 pandemic.

instead. These are calculated using an algorithm to estimate what the pre-guilty plea sentence could be, using the known final sentence and proportions from the CCSS, since guilty plea details are not available in the CPD.

The aggregate impacts give an indication of the pre-guilty plea sentence levels, but these estimates are not reliable on an individual case level.

- The CPD does not include detail on the offence categorisation e.g. A1. Therefore, when it comes to modelling the impacts of changes to cases falling within A1, the scope of these impacts have been assumed based on the length of the pre-guilty plea custodial sentence alone.

An offender receiving a sentence of four years pre-guilty plea could have been categorised as A1 but they also could have been categorised as an A2 or B1.

However, since four years' custody is above the starting point for category A1, this case would be included in the scope of potential impacts regardless.

Table 1: comparison of impacts of options for increasing sentence levels for domestic burglary

Option	Impacts	Assumption
1 – No change	No impacts.	No changes to sentence levels from current draft.
2 – Increase top of A1 range by 2 years (from 6 to 8)	<ul style="list-style-type: none"> • At least 7 per cent of adult offenders (around 260) could get a custodial sentence 2 years longer. Findings consistent with transcript analysis where 1/14 transcripts (7 per cent) were categorised as A1 receiving exactly the top of range. • Further 38 per cent (1,300) could also be in scope of increase of up to 2 years who currently receive above starting point but below top of range. • Further 5 per cent (160) could also be in scope of increase of up to 2 years who currently receive above top of current category range but below top of new range. • Total: 49 per cent of adult offenders (around 1,800) 	<ul style="list-style-type: none"> • Assumes all offenders previously receiving a pre-GP sentence at top of category range (5-6 years) get 2 years longer • Assumes offenders with pre-GP sentence between starting point (3-4 years) and top of category range (5-6 years) could get 2 years longer. • Assumes offenders currently receiving pre-GP sentence above 6 but less than 8 years could get 2 years longer.
3 – Increase top of A1 range by 1 year (from 6 to 7 years)	<ul style="list-style-type: none"> • At least 7 per cent of adult offenders (around 260) could get a custodial sentence 1 year longer. • Further 38 per cent (1,300) could also be in scope of increase of up to 1 year who currently receive above starting point but below top of range. • Further 3 per cent (100) could also be in scope of increase of up to 1 year who currently receive above 	<ul style="list-style-type: none"> • Assumes all offenders previously receiving a pre-GP sentence at top of category range (5-6 years) get 1 year longer • Assumes offenders with pre-GP sentence between starting point (3-4 years) and top of category range (5-6 years) could get 1 year longer.

	<p>top of current category range but below top of new range.</p> <ul style="list-style-type: none"> • Total: 48 per cent of adult offenders (around 1,700) 	<ul style="list-style-type: none"> • Assumes offenders currently receiving pre-GP sentence 6-7 years could get 1 year longer.
<p>4 – As with option 2 but also increase starting point for A1 by 2 years (from 3 to 5)</p>	<ul style="list-style-type: none"> • At least 45 per cent of adult offenders (around 1,600) could get a custodial sentence 2 years longer. Findings consistent with transcript analysis where 7/14 offenders were categorised as A1. • Further 5 per cent (160) could also be in scope of increase of up to 2 years who currently receive above top of current category range but below top of new range. • Further 17 per cent (600) receiving between bottom of range and starting point currently could also be in scope of increase of up to 2 years. • Total: 66 per cent of adult offenders (around 2,400) 	<ul style="list-style-type: none"> • Assumes all offenders with pre-GP sentence higher than current starting point (3-4 years) and up to top of current category range (5-6 years) will get up to 2 years longer. • Assumes offenders currently receiving pre-GP sentence above 6 but less than 8 years could get 2 years longer. • Assumes offenders receiving pre-GP sentence between bottom of range and current starting point (2-3 years) could get 2 years longer. Please note it is likely that a high proportion of offenders currently receiving a pre-GP sentence in this bracket are not A1.
<p>5 – Same as option 4 but increasing all other sentences proportionately</p>	<ul style="list-style-type: none"> • At least as much impact as option 4 but possibly all offenders in scope of some increase since all categories except C3 have a starting point of custody. 1/14 offenders in the domestic burglary transcript sample was categorised as C3. 	

Source: Court Proceedings Database (2019 data)

3.21 The Council can see from this analysis that there could be a considerable impact in implementing any of the options above, except for option one. In the response to consultation the Council would need to set out the reasons for making any increases to levels, given the potential impact and the fact that the guideline consulted on already incorporated the increase in sentence severity from the original guideline. The Council would need to explain why it thought the levels were still too low and what had happened since setting the levels for consultation to merit increases. As noted above, some respondents felt the levels were too low, but it was not an overwhelming majority of respondents that thought so.

Question 10: In light of the analysis above, does the Council wish to make any changes to sentence levels? If so, what are the reasons for doing so?

Aggravated burglary

3.22 The guideline is attached at **Annex A**. Sentencing data can be seen at tabs 3.1 to 3.8 and show that the mean ACSL in 2020 is seven years two months, 89 per cent of offenders received sentences of 10 years or less, and only two per cent

received a sentence above 12 years. The vast majority of respondents agreed with the proposed sentence levels, with just one Judge saying he thought the levels were too low and the starting point should be closer to the top of the range. In road testing, the majority of the Judges were comfortable with the proposed sentence levels. At the last meeting the Council asked that further work be carried out to consider the impact of making any increases to the ranges. This has been done and is shown below.

3.23 Volumes for aggravated burglary are much lower, with around 200 offenders sentenced in both 2019 and 2020. The 2011 Resource Assessment had forecasted that no change in sentencing severity would occur as a result of the original guideline. The evaluation of the original guideline showed that there was an increase in sentence severity for these offences following the introduction of the guideline, and it was thought that the increase was attributable to the guideline; custodial sentence lengths increased and a higher proportion of offenders were placed in category one. However, these findings need to be treated with caution due to the low numbers involved.

Table 2: comparison of impacts of options for increasing sentence levels for aggravated burglary

Option	Impacts	Assumption
1 – No change	No impacts.	No changes to sentence levels from current draft.
2 – Increase top of A1 range by 2 years (from 13 to 15)	<ul style="list-style-type: none"> At least 2 per cent of adult offenders (fewer than 5) could get a custodial sentence 2 years longer. In transcript analysis no offenders received exactly 13 years' custody pre-GP, but in 13/20 transcripts the offender was categorised as A1. Further 27 per cent (around 50) could also be in scope of increase of up to 2 years who currently receive above starting point but below top of range. Further 8 per cent (around 10) could also be in scope of increase of up to 2 years who currently receive above top of current category range but below top of new range. Total: 36 per cent of adult offenders (around 60) 	<ul style="list-style-type: none"> Assumes all offenders previously receiving a pre-GP sentence at top of category range (12-13 years) get 2 years longer Assumes offenders with pre-GP sentence between starting point (10-11 years) and top of category range (12-13 years) could get 2 years longer. Assumes offenders currently receiving pre-GP sentence above 13 but less than 15 years could get 2 years longer.
3 – Increase top of A1 range by 1 year (from 13 to 14 years)	<ul style="list-style-type: none"> At least 2 per cent of adult offenders (fewer than 5) could get a custodial sentence 1 year longer. Further 27 per cent (around 50) 	<ul style="list-style-type: none"> Assumes all offenders previously receiving a pre-GP sentence at top of category range (12-13 years) get 1 year longer

	<p>could also be in scope of increase of up to 1 year who currently receive above starting point but below top of range.</p> <ul style="list-style-type: none"> • Further 5 per cent (around 10) could also be in scope of increase of up to 1 year who currently receive above top of current category range but below top of new range. • Total: 34 per cent of adult offenders (around 60) 	<ul style="list-style-type: none"> • Assumes offenders with pre-GP sentence between starting point (10-11 years) and top of category range (12-13 years) could get 1 year longer. • Assumes offenders currently receiving pre-GP sentence 13-14 years could get 1 year longer.
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3.24 The Council can see that there could be a considerable impact if either option two or three was implemented. The majority of consultation respondents were content with the proposed sentence levels, so the Council would need to articulate in the consultation response document the reasons for any increase to sentence levels.

Question 11: In light of this analysis, does the Council wish to make any changes to sentence levels? If so, what are the reasons why?

Aggravated burglary and the minimum term

3.25 Whilst working on the ACE tool Ruth has noticed that it differentiates between domestic and non-domestic aggravated burglary. This is because for the domestic version it says that the minimum term applies. This has led Ruth to consider whether we should include some minimum term wording within the aggravated burglary guideline. The domestic burglary guideline contains wording relating to the minimum three-year term for a third domestic burglary:

‘Where sentencing an offender for a qualifying **third domestic burglary**, the Court must apply [section 314 of the Sentencing Code](#) and impose a custodial term of at least three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.’

It is arguable that the minimum term also applies to an aggravated burglary committed in respect of a dwelling. Section 10 of the Theft Act 1968 defines the aggravated offence in the following terms:

(1) A person is guilty of aggravated burglary if he commits any burglary and at the time has with him any firearm or imitation firearm, any weapon of offence, or any explosive; etc...

The provisions relating to the minimum term are in the Sentencing Code which states:

314 Minimum sentence of 3 years for third domestic burglary

- (1) This section applies where—
- (a) a person is convicted of a domestic burglary (“the index offence”) committed on or after 1 December 1999,
-
- (5) In this section “domestic burglary” means a burglary committed in respect of a building or part of a building which is a dwelling.

Very few offenders convicted of aggravated burglary receive sentences of less than three years and it is likely that where the offence takes place in a dwelling, higher harm factors would apply and so the guideline would lead to a sentence in excess of three years in any event. However, for completeness it is proposed that the minimum term wording is included in the aggravated burglary guideline.

Question 12: Does the Council agree to include the minimum term wording in the aggravated burglary guideline?

4. EQUALITIES

4.1 The available demographic data is provided for each guideline within **Annex D**. The Council may recall that at the consultation stage the available demographic data had shown that Black offenders seemed to represent a larger proportion of those sentenced for aggravated burglary. In their consultation response the Howard League suggested that the Council should carry out some further analysis in this area, which has now been done. The analysis added in 2020 data and looked at the last five years of data, from 2016, grouped together for higher volumes, looking at volumes, sentence outcomes, ACSLs and sentence lengths split by the offender’s self-reported ethnicity. In summary the results of this analysis showed:

- For aggravated burglary, a larger proportion of Black adults are getting custodial sentences over 10 years when compared to White adults sentenced for the same offence between 2016 and 2020 (20 per cent versus 14 per cent). However, despite grouping five years of data, numbers are still very low (the 20% equates to 17 Black adults and the 14 per cent equates to 82 White adults) so unable to say if this is a statistically significant difference and not just down to chance.
- No large differences could be seen in sentence outcomes or ACSLs for the different ethnic groups who had been sentenced for aggravated burglary.

- No large differences could be seen in sentence outcomes, ACSLs or sentence lengths banded for the different ethnic groups sentenced for the other types of burglary (domestic and non-domestic).
- In terms of volumes for each year from 2016 to 2020, the proportion of each ethnic group sentenced stayed fairly stable for all three offences. The only trend worth picking out was in aggravated burglary where the number of Black adults dropped in 2020 and White adults increased. However, aggravated burglary numbers are low each year and so any small change in volumes can lead to substantial changes in proportions.

4.2 This further work will be outlined in the response to consultation paper. Since no strong evidence of disparities in sentencing relating to ethnicity were found as a result of this further analysis, it will not be necessary to include any text on this within the guideline. All guidelines have text stating:

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.

Question 13: Does the Council have any comments or concerns on this further analysis?

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Annex A

Aggravated burglary

Theft Act 1968 (section 10)

Triable only on indictment

Maximum: Life imprisonment

Offence range: 1 – 13 years' custody

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

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

STEP ONE

Determining the offence category

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

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

Culpability demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Targeting of vulnerable victim• A significant degree of planning or organisation
B- Medium culpability	<ul style="list-style-type: none">• Some degree of planning or organisation• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Involved through coercion, intimidation or exploitation• Mental disorder or learning disability, where linked to the commission of the offence

Harm

The level of harm is assessed by weighing up all the factors of the case

Category 1	<ul style="list-style-type: none">• Substantial physical or psychological injury or other substantial impact on the victim• Victim at home or on the premises (or returns) while offender present• Violence used or threatened against the victim, particularly involving a weapon• Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value)• Soiling of property and/or extensive damage or disturbance to property• Context of public disorder
Category 2	<ul style="list-style-type: none">• Some physical or psychological injury or some other impact on the victim• Theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value)

	<ul style="list-style-type: none"> • Ransacking or vandalism to the property
Category 3	<ul style="list-style-type: none"> • No violence used or threatened and a weapon is not produced • Limited physical or psychological injury or other limited impact on the victim

STEP TWO

Starting point and category range

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

Harm	Culpability		
	A	B	C
Category 1	Starting Point 10 years' custody Category Range 9 -13 years' custody	Starting Point 8 years' custody Category Range 6 -11 years' custody	Starting Point 6 years' custody Category Range 4 – 9 years' custody
Category 2	Starting Point 8 years' custody Category Range 6 -11 years' custody	Starting Point 6 years' custody Category Range 4– 9 years' custody	Starting Point 4 years' custody Category Range 2-6 years' custody
Category 3	Starting Point 6 years' custody Category Range 4-9 years' custody	Starting Point 4 years' custody Category Range 2-6 years' custody	Starting Point 2 years' custody Category Range 1-4 years' custody

<https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/imposition-of-community-and-custodial-sentences/>.

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

Care should be taken to avoid double counting factors already taken into account at step one

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Weapon carried when entering premises ([consultation version](#))
Care should be taken to avoid double counting in these cases. If an offender commits an aggravated burglary with intent to steal/inflict GBH/ do criminal damage [a 9(1)(a) burglary], they commit the offence at the point of the trespass when they enter the building. So for these offences, all aggravated burglaries would have the weapon present on entry. For the aggravated version of s.9(1)(b) the offence is not committed until the point of the theft/attempted theft or GBH/attempt GBH and therefore the offender may have the weapon on entry or have picked it up in the address. *R v Sage (AG's ref SAGE [2019] EWCA Crim 934, [2019] 2 Cr App R (S) 50)* sets out that having a weapon present on entry is an essential element of an aggravated s.9(1)(a) offence and so care needs to be taken in s.9(1)(a) cases that the fact the offender has a weapon present on entry is not taken into account a second time. In s9(1)(b) cases, however, the fact that the offender had taken a weapon to the premises, and was in possession of it when entering, will normally aggravate the offence (unless already taken into account at step 1).
- [In a s.9\(1\)\(b\) offence, weapon carried when entering premises \(reworded version\)](#)
[This factor does not apply to s.9\(1\)\(a\) offences because it is an inherent part of such offences: see AG's Ref Sage \[2019\] EWCA Crim 934, \[2019\] 2 Cr App \(S\) 50. In s9\(1\)\(b\) offences, however, the fact that the offender had taken a weapon to the premises, and was in possession of it when entering, will normally aggravate the offence.'](#)
- Use of face covering or disguise
- Offence committed in a dwelling
- Child at home (or returns home) when offence committed
- Offence committed at night
- Abuse of power and/or position of trust
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim (where not captured at category one)
- Victim compelled to leave their home

- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- Nothing stolen or only property of low value to the victim (whether economic, commercial or personal)
- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability, where not linked to the commission of the offence
- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Dangerousness

The court should consider whether having regard to the criteria contained in [section 308 of the Sentencing Code](#) it would be appropriate to impose a life sentence (sections [274](#) and [285](#)) or an extended sentence (sections [266](#) and [279](#)). When sentencing offenders to a life sentence under these provisions the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

Totality principle

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

STEP SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders. The court must give reasons if it decides not to order compensation. ([Sentencing Code, s.55](#)).

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

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail (tagged curfew)

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

Road testing with Crown Court judges and magistrates: Domestic, Non-domestic and Aggravated burglary

Introduction

The current burglary guidelines were published by the Council in January 2012. At this time, the resource assessment did not predict any impact on prison and probation services. However, when reviewed in 2016, the initial assessment indicated that since the guidelines had come into force, sentencing severity had increased for domestic (s.9), non-domestic (s.9) and aggravated burglary (s.10). Further research indicated that the increase in sentence severity for non-domestic burglary in the magistrates' court and Crown Court, could be attributable to the guideline, though for domestic burglary this appeared to be part of a longer-term trend rather than resulting from the guideline. Due to low volumes of cases of aggravated burglary, it was not possible to conclude if this increase was caused by the implementation of the guideline.

Alongside amendments to some factors, as outlined below, the draft guidelines update the existing guidelines to reflect the stepped approach used in more recent guidelines produced by the Council and introduces new medium levels of culpability/harm. Therefore, research was needed to understand how amendments to the structure of the guideline, and changes to factors could impact sentencing practice; and to ensure the draft guidelines are clear and usable. As they were new elements to the guidelines, particular attention was paid to the following elements of the draft guidelines to understand:

Domestic burglary: How sentencers interpreted guidance on the application of flexibility regarding cases of particular gravity and whether guidance wording in relation to imposing community orders with drug or alcohol treatment requirements is clear.

Non-domestic burglary: What, if any, are the issues being seen by magistrates when sentencing cases of non-domestic burglary, that could contribute to the increase in sentence severity in this court.

Aggravated burglary: How sentencers applied new guidance on carrying a weapon on entry of the premises as an aggravating factor as compared with a factor used in assessing culpability.

Methodology

Twenty-one interviews were conducted, consisting of nine magistrates and twelve Crown Court judges. Participants were selected by random sample from the Council's research pool. Qualitative interviews were conducted via MS Teams with sentencers from across England and Wales. Judges considered three scenarios (summarised below) and magistrates, two, relating to the Non-domestic burglary guideline only. Participants received the draft guidelines a week prior to the interview and sentenced each scenario twice, using the draft and existing guidelines.

Scenario	Summary of scenario
A – Domestic	<p>K, with another defendant, broke into a home of an elderly couple at night by smashing glass in the back door. The resident confronted K who threatened him with a screwdriver. Keys, a wallet, jewellery and a brand new Motability car valued at £23,000 were stolen. The couple felt violated and felt they had to install extra security measures to make them feel safe.</p> <p>CCTV captured the defendant approaching the property, alongside the number plate of the vehicle, with his hood up partially obscuring his face, using a torch and holding a screwdriver. CCTV from the day before captured K loitering outside the house, peering through the window.</p> <p>The court heard that K had been on a burglary expedition that evening, with two other attempted burglaries taking place nearby (subject to separate charges), both of which were foiled by passers-by. K was convicted after trial. He has over 100 previous convictions for theft, burglary and robbery and was out on licence at the time of the offence.</p>
B – Domestic	<p>A, 21, entered a home through an open ground floor window during the afternoon. He had been drinking for most of the day and needed money to buy alcohol, which led to the offence. He was disturbed by the victim, who found him in the living room, going through her handbag but left emptyhanded. He pleaded guilty at the first opportunity and has one previous conviction for domestic burglary. The pre-sentence report detailed that he has had a troubled background and suffered a trauma which led to him having problems with alcohol addiction. He is now willing to accept he has an alcohol problem and wants to tackle it. The victim was very upset and scared by the incident, leaving her anxious about security and being at home on her own.</p>
C – Aggravated	<p>R, 21, forced his way into a convenience store, along with two others, just as it was closing for the night and the shutters were being rolled down. R was carrying a machete which he used to force the shutters back up. Two staff members had seen this on CCTV and retreated to a locked back room and called the police. R and the others emptied the tills and contents of the cigarette store into bags they had brought with them for that purpose. Police came in time to apprehend them.</p> <p>Damage was done to the shutters, costing around £500 to repair. R pleaded guilty at the first opportunity. He has two previous unrelated convictions. The victim impact statements said they were terrified in the incident.</p>
D - Non-domestic	<p>W, 50, stole a handbag from behind a reception desk at a local hospital whilst there for an appointment. The receptionist was in the back room. The handbag (an expensive one) contained a purse with £70 cash, bank cards and the victim's driving licence and the only copy of an assignment for the receptionist's college course. The bag was found in a nearby alleyway, minus the cash, cards and licence. The handbag and assignment were ruined by heavy rain. W pleaded guilty at the first opportunity. He had many previous convictions for dishonesty. The victim was upset by what had happened and had the inconvenience of having to cancel all her cards, wait for new ones, and apply for a new licence. She was also upset by the loss of the handbag (a 21st Birthday gift).</p>
E – Non-domestic	<p>P, aged 29, and a friend who had been drinking most of the day, broke into an office on a new housing development. They vandalised some of the walls, damaged some furnishings, and broke a window. P said he committed the offence on impulse whilst walking past on the way home. He has one unrelated previous conviction and pleaded guilty at the first possible opportunity.</p>

Key Points

- The guidelines road tested well, and judges and magistrates found the draft guidelines clear and usable. The update to the stepped approach was highly favoured across each of the draft guidelines, especially three levels of culpability and harm.
- Under the s.9 Domestic and Non-domestic draft guidelines, a theme of concern arose surrounding assessment of two harm factors: ‘much greater emotional impact on the victim than would normally be expected’ and ‘greater emotional impact on the victim than would normally be expected’. Multiple sentencers thought this to be highly subjective and thought the harm categories lacked a position for a normal level of emotional impact.
- One scenario (A – Domestic burglary) was sentenced consistently across the draft and existing guidelines and between judges. Sentences for scenarios B-E remained largely consistent between the draft and existing guidelines however, varied depending on sentencer. For the most part, the differences are small.¹
- Domestic burglary: Additional wording relating to cases of particular gravity was found to be clear and usable. Additional wording on Alcohol Treatment Requirements (ATR) as an alternative to short or moderate custodial sentences was not opposed although some judges stated they would have to be persuaded to apply this in the case of domestic burglary or they would need evidence that addiction was the root cause of the offending behaviour.
- Aggravated burglary: On the whole, there was not opposition to the movement of the ‘weapon carried when entering premises’ from a factor of culpability to an aggravating factor. Five of the nine judges that considered the Aggravated burglary scenario (C), applied this factor under aggravation, hence double counting the factor, and two judges applied it at step one. One did so on the basis that it may need to be taken into account when considering taking the sentence outside of the guideline and the other was initially undecided on harm categories, but focused on the weapon element of the harm factor: ‘Violence used or threatened against the victim, particularly involving a weapon’, and thought the carrying of the machete to be applicable to the factor. When reading the aggravating factor of ‘weapon carried when entering premises’, they said ‘that effectively confirms it’s category one [harm]’.
- Magistrates reported they had not perceived changes to the types of non-domestic burglary cases seen in court and there were no particular difficulties in sentencing non-domestic burglaries.

¹ A breakdown of the sentences can be seen at the end of this document.

s.9 Domestic burglary

Scenario A (s.9 Domestic burglary)

Sentencing as expected by policy:

In Scenario A, the offender was expected to be placed in Category 1A, with a 3 year starting point. The sentence could go above the top of the range, because it was a case of particular gravity, leading to a sentence of above 6 years.

- Eight of the nine judges assessed Scenario A, relating to Domestic burglary to be category A1 as expected. Due to uncertainty surrounding if the screwdriver would constitute a weapon, one judge assessed this as B1. Five of the nine judges applied the wording 'for cases of particular gravity, sentences above the top of the range may be appropriate' and their final sentences ranged from 7-9 years. The four remaining sentences ranged between three and a half and six years.
 - It was agreed the wording was clear and workable.
 - To emphasise the additional wording, it was suggested this wording be highlighted or put in larger type.
- A point to note in relevance to the Domestic and Non-domestic draft guidelines is the assessment of 'much greater' or 'greater emotional harm than is normally expected'. Multiple judges and magistrates expressed concern about this element and felt this was highly subjective. One judge commented there was no categorisation of emotional impact on the victim that was not more than would normally be expected. They therefore felt the guideline would exclude a case of what would be thought to be a 'normal' level of emotional impact as this would automatically be assigned to a category three, which was thought to be too low to reflect the impact on victims. However, this did not appear to produce inconsistencies in the assessment of harm.

Scenario B (s.9 Domestic burglary)

Sentencing as expected by policy:

In Scenario B, the offender was expected to be placed in Category B1, with a starting point of 2 years and then a reduction for guilty plea. A community order with an alcohol treatment requirement may be a proper alternative to a short of moderate custodial sentence.

Two of the nine judges categorised Scenario B, relating to Domestic burglary, as B1 as expected. Three assessed it to be C1, three C2 and one B2. Five judges imposed suspended sentence orders (SSO) ranging between six months and one year and two months. Eight imposed custodial sentences ranging from one year to two years and six months. One judge did not state their sentence pre and post-guilty plea and imposed a suspended sentence of 6 months with an ATR and unpaid work.

- Those who assessed culpability to be category B (as expected) agreed that the offence was committed on impulse, but that there was more than 'limited intrusion'.

Those who assessed it as category C said there was limited intrusion, and some pointed out that there was no targeting in the case.

- Those categorising the offender under high harm (as expected) agreed this was due to the occupier being present. Those who assessed harm as category two agreed on the factor of the victim being present, but balanced this with the fact nothing was stolen.
- The wording in relation to imposing community orders with drug or alcohol treatment requirements was generally accepted, with judges saying they would be applied if alcohol was the root cause of the offending behaviour. However, two judges said they would need '*some persuasion*' that it would be an appropriate sentence for Domestic burglary. Another judge said they would be hesitant to impose non-custodial penalties due to this area being 'under sentenced': "*The impact on some of this sort of thing is just enormous, and to the extent that deterrence works for those who are inclined to commit offences, which is, I think very much in doubt, but to the extent it does work, they need to know that if you break into someone's house, you're going in.*"
- Participants were positive about the guideline and liked the flexibility of the stepped approach. Concerns were raised on the assessment of the '*normally expected*' emotional impact on victims included within the harm categorisation. Additional wording relating to cases of particular gravity was found to be clear and usable.
- Judges were happy with the culpability under the Domestic burglary guideline and favoured the addition of the third category of culpability, which was thought to give more flexibility and scope to analyse the case in a more critical and detailed way. '*The guidelines really identify the factors that touch upon culpability and harm.*'
- Aggravating and mitigating factors were widely accepted. One comment was made, suggesting the factors relating to the offence itself should be grouped together, followed by the remaining factors.

s.10 Aggravated burglary

Scenario C (s.10 Aggravated burglary)

Sentencing as expected by policy:

In Scenario C, the offender was expected to be placed in category B2 with a starting point of 6 years, with an increase within the range for aggravating factors.

- Four judges placed the offender in culpability A and five judges in culpability B. Those placing the offender in the higher category did so on the basis of a significant degree of planning and targeting of a vulnerable victim. Those placing the offender in category B did so on the basis of some degree of planning or organisation.
- Six judges assessed harm to be category one and three as category two. Those placing the offender in category one did so on the basis of the presence of the victim, trauma to the victim and a significant degree of loss. Those placing the offender in category two did so on the basis of some degree of loss and psychological impact to the victim.
- Five of nine judges applied the factor 'weapon carried when entering premises' under Step 2, double counting, and two applied the factor under Step 1. Of the two,

one did so on the basis that the factor should remain in culpability as, 'it might be the fact that you feel it should be taken into account when taking it outside of the guideline.' The other judge was initially undecided between harm categories one and two but focused on the weapon element of the harm factor: *'Violence used or threatened against the victim, particularly involving a weapon'*, and thought the carrying of the machete to be applicable to the factor. When reading the aggravating factor of *'weapon carried when entering premises'*, they said *'that effectively confirms it's category one [harm]'*.

- Judges imposed custodial sentences ranging from six to ten years.
- The guideline was well received and sentencers were in favour of the stepped approach. On the whole, there was not opposition to the movement of the factor *'weapon carried when entering premises'* from a factor of culpability to an aggravating factor. However, some clarification was called for on the wording and whether the weapon need be visible or concealed.
- Under Scenario C, no judges made an increase in their imposed sentence using the draft guideline in comparison to that using the existing guidelines. Five judges imposed sentences that were less than that under the existing guideline, the decreases range between one (three judges) and three years (one judge). One judge made a decrease of a year and a half.
- It was noted that the addition of the middle category was helpful to have in terms of starting points: *'It's a very useful area and there's a nice degree of overlap as well between the ranges with different categories, which is always good to see because it enables you to finesse things more than if the guideline categories were hard edged between the different brackets'*.
- There were no points to note on aggravating or mitigating factors. One judge commended the Council on the addition of the factor *'Offence committed in a dwelling'* – *'I think that's a very useful addition to reflect in the new guideline that isn't present in the old [existing] one.'*

s.9 Non-domestic burglary

Scenario D (s.9 Non-domestic burglary)

Sentencing as expected by policy:

In Scenario D, the offender was expected to be placed in category C1 with a starting point of 6 months, aggravated by previous convictions to around 1 year. Reduced to around 6 months following guilty plea.

- Nine judges and nine magistrates were asked to sentence scenario D. Thirteen judges and magistrates assessed Scenario D (Non-domestic burglary) to be category C2, three C1 (as expected), one B2 and one C1 or 2. Those categorising harm to be level two, did so on the basis of the factors of *'some degree of loss'*, *'greater emotional impact than expected'*, *'soiling of property'* and *'victim on premises'*.
- Sentences imposed by judges ranged from a Community Order to 8 months custody. Pre-GP sentences by magistrates ranged from Medium-Level Community Order to six months custody. Five judges' sentences remained consistent across the existing and draft guidelines and two of the magistrates sentences remained consistent.

- Two judges made increases of two months to their sentences using the draft guideline. Three magistrates made increases using the draft guideline. Two increased their sentence by one and a half months and one increased from a high-level community order to six months custody. One judge and three magistrates made a decrease using the draft guideline, all of which reduced a custodial sentence to community orders.

Scenario E (s.9 Non-domestic burglary)

Sentencing as expected by policy:

In Scenario E, the offender was expected to be placed in category C2 with a starting point of a medium-level community order. This could be aggravated to a high-level community order however, credit for a guilty plea could reduce the sentence back to a medium-level community order.

- Four of nine magistrates assessed Scenario E (Non-domestic burglary) to be category C2 as expected, four as B2, and one as C3. Those categorising under category C based the decision on the factor of the offence being committed on impulse with limited intrusion. Three of four of those under category B based this on the offence committed on impulse but with more than limited intrusion.
- Most (8 of 9) magistrates assessed harm to be category 2 based on 'some degree of loss' and 'ransacking or vandalism'. One magistrate categorised the scenario as category 3 and alongside 'some degree of loss', applied the factor of 'nothing stolen'.
- Sentences included Band B fine (2), medium-level community order (4) and 6 months custody (4). Four magistrates imposed a higher sentence using the draft guideline. Increases range from one and a half months to four months. One magistrate increased their sentence from a low-level community order to six months custody. Four magistrates sentences remained consistent and one made a decrease from four and a half months custody to a MLCO.

Comments on the s.9 Non-domestic burglary guideline:

- It was generally thought the guideline worked well and was relatively easy to follow. A point to note in relevance to the Domestic and Non-domestic draft guidelines is the assessment 'much greater' or 'greater emotional harm than is normally expected'. It was felt this was highly subjective. One judge commented there was no categorisation of emotional impact on the victim that was not more than would normally be expected. They therefore felt the guideline would exclude a case of what would be thought to be a 'normal' level of emotional impact as this would automatically be assigned to a category three, which was thought to be too low to reflect the impact on victims.
- Other than the above note on emotional impact, most judges and magistrates were happy with the three levels of harm and culpability and felt that there was a greater range of factors 'which fit better with the nuanced nature of the offence'.
- One magistrate thought the draft guideline to be pitched at a better starting point than the existing Non-domestic burglary guideline.
- There were no objections to aggravating or mitigating factors.

- Magistrates reported they had not perceived changes to the types of non-domestic burglary cases seen in court and there were no particular difficulties in sentencing non-domestic burglaries.

Scenario A – Domestic burglary

Existing guideline		Draft guideline									
	SP (years)	Final sentence (years)	Culpability	Factors	Harm	Factors	SP (years)	Aggravating factors	Mitigating factors	Final sentence (years)	
Expected			A	<ul style="list-style-type: none"> Targeting of vulnerable victims Significant degree of planning Other weapon carried Equipped for burglary 	1	<ul style="list-style-type: none"> Occupier at home Violence used or threatened against the victim Substantial degree of loss 	3	<ul style="list-style-type: none"> Previous convictions Offence committed at night Vulnerable victim(s) Offence committed as part of a group Offence committed on licence 	None	Above 6 years	
	1	3.5 years	3.5 years	A	<ul style="list-style-type: none"> Targeting of vulnerable victim <i>Threat of violence**</i> 	1	<ul style="list-style-type: none"> Occupier at home Economic loss to victim 	3.5 years*	<ul style="list-style-type: none"> Previous convictions Offence committed as part of a group Offence committed on licence 	None	3.5 years
	2	4.5 years	6 years	A	<ul style="list-style-type: none"> Targeting of vulnerable victim Significant degree of planning 	1	<ul style="list-style-type: none"> Occupier at home Violence or threatened against victim 	6 years	<ul style="list-style-type: none"> Previous convictions Offence committed at night Offence committed as part of a group Steps taken to prevent the victim reporting Offence committed on licence 	None	7 years
	3	3 years	6 years	B	<ul style="list-style-type: none"> Culpability falls between A and C <i>Other weapon carried?</i> 	1	<ul style="list-style-type: none"> Occupier at home Violence threatened against victim 	3 years	<ul style="list-style-type: none"> Previous convictions Offence committed at night Offence was committed as part of a group Steps taken to prevent the victim reporting Offence committed on licence <i>Other offending</i> 	None	6 years
	4	3 years	7 years	A	<ul style="list-style-type: none"> Significant degree of planning Other weapon carried 	1	<ul style="list-style-type: none"> emotional impact Occupier at home Violence threatened against victim Substantial degree of loss 	3 years	<ul style="list-style-type: none"> Offence committed at night Offence committed as part of a group Offence committed on licence <i>Serious consequences for the victims</i> 	None	7 years
	5	6 years	6-8 years	A	<ul style="list-style-type: none"> Significant degree of planning Equipped for burglary 	1	<ul style="list-style-type: none"> Substantial degree of loss <i>Age of victims</i> <i>Significant impact on the victims</i> <i>Violation</i> 	6 years	<ul style="list-style-type: none"> Previous convictions Offence committed at night Offence committed on licence <i>Homeowner present</i> <i>Value of property stolen</i> 	None	6-8 years

									• <i>Evidence of bad character</i>		
6	6 years	9 years	A	<ul style="list-style-type: none"> • Degree of planning • Other weapon carried 	1	<ul style="list-style-type: none"> • Much greater emotional impact than expected • Occupier at home • Violence threatened against victim • Substantial degree of loss 	6 years	<ul style="list-style-type: none"> • Previous convictions • Offence committed at night • Vulnerable victim • Offence committed as part of a group • Offence committed on licence 	None	9 years	
7	3 years	4.5 years	A	<ul style="list-style-type: none"> • Planning • Other weapon carried 	1	<ul style="list-style-type: none"> • Greater emotional impact than expected • Occupier at home • Violence threatened against victim • Substantial degree of loss 	3 years	<ul style="list-style-type: none"> • Previous convictions • Offence committed at night • Offence committed on licence 	None	4.5-5 years	
8	5-6 years	5-6 years	A	<ul style="list-style-type: none"> • Targeting of vulnerable victims • Other weapon carried • Some degree of planning • Equipped for burglary 	1	<ul style="list-style-type: none"> • Occupier at home • Violence threatened against victim • Substantial degree of loss 	3 years	<ul style="list-style-type: none"> • Previous convictions • Offence committed at night • Vulnerable victim • Offence committed as part of a group • <i>Threatening</i> 	None	5-6 years	
9	3 years	8 years	A	<ul style="list-style-type: none"> • Significant degree of planning 	1	<ul style="list-style-type: none"> • Emotional impact • Occupier at home • Violence threatened against victim • <i>Significant</i> substantial loss 	3 years	<ul style="list-style-type: none"> • Offence committed at night • Vulnerable victim • Offence committed as part of a group • Offence committed on licence 	None	8 years	

* raised from 3 years to reflect previous convictions.

** a harm factor but applied in culpability

Scenario B – Domestic burglary

Existing guideline			Draft guideline								
	SP (years and months)	Pre-GP sentence (years and months)	Culpability	Factors	Harm	Factors	SP (years and months)	Aggravating	Mitigating	Pre – GP sentence	Final sentence, Post-GP (years)
Expected			B	<ul style="list-style-type: none"> Some degree of planning 	1	<ul style="list-style-type: none"> Occupier at home Confrontation 	2 years	<ul style="list-style-type: none"> Previous conviction Commission of offence whilst under the influence of alcohol 	<ul style="list-style-type: none"> Determination to address addiction Age 	2 years	Around 1 or CO with an ATR
1	1 year	1 year	B	<ul style="list-style-type: none"> Committed on impulse 	1	<ul style="list-style-type: none"> Occupier at home Nothing stolen 	1 year, 9 months	<ul style="list-style-type: none"> Commission of offence whilst under the influence of alcohol 	<ul style="list-style-type: none"> Determination to address addiction Age and/or lack of maturity 	1 year 9 months	1 year 2 months susp. 2 years
2	1 year	1 year	C	<ul style="list-style-type: none"> No targeting not equipped 	1	<ul style="list-style-type: none"> Occupier at home 	6 months	-	-	-	6 months susp. 1 year (ATR/UPW)
3	1 year	10-13 months	C	-	2	<ul style="list-style-type: none"> Occupier at home 	1 year	<ul style="list-style-type: none"> Previous conviction Commission of offence whilst under the influence of alcohol 	<ul style="list-style-type: none"> Determination to address addiction Age and/or lack of maturity 	1 year 3 months	10 months
4	1 year	1 year	C	<ul style="list-style-type: none"> Committed on impulse No targeting 	2	<ul style="list-style-type: none"> Occupier at home Property of low value stolen 	1 year	-	<ul style="list-style-type: none"> Determination to address addiction origins of problem guilty plea 	1 year	8 months susp. 2 years (RAR/UPW/curfew)
5	1 year	8 months susp. 2 years (ATR)	C	<ul style="list-style-type: none"> Committed on impulse with limited intrusion. 	1	<ul style="list-style-type: none"> Occupier at home Greater degree of emotional impact 	-	<ul style="list-style-type: none"> Previous conviction 	<ul style="list-style-type: none"> Remorse Determination of steps taken to address offending behaviour Age and/or lack of maturity 	1 year 6 months	1 year susp. 2 years
6	1 year 6 months	1 year 6 months	C	-	2	<ul style="list-style-type: none"> Nothing stolen or only property of 	1 year	<ul style="list-style-type: none"> Previous conviction 	<ul style="list-style-type: none"> Remorse Some indication to address 	1 year	9 months

						<ul style="list-style-type: none"> low value to the victim Limited damage to property 		<ul style="list-style-type: none"> Commission of offence whilst under the influence of alcohol 	<ul style="list-style-type: none"> addiction/offending behaviour Age 		
7	1 year	1 year 9 months	B	<ul style="list-style-type: none"> Committed on impulse <i>but not limited intrusion</i> 	1	<ul style="list-style-type: none"> Greater emotional impact than expected Nothing stolen 	2 year	<ul style="list-style-type: none"> Previous convictions Commission of offence whilst under the influence of alcohol 	<ul style="list-style-type: none"> <i>Willingness</i> to address addiction <i>Traumatic background</i> 	2 year 6 months	1 year 8 months
8	9 months	1 year	B	<ul style="list-style-type: none"> Committed on impulse <i>but not limited intrusion</i> 	2	<ul style="list-style-type: none"> Occupier at home Nothing stolen or only property of low value to the victim 	1 year	<ul style="list-style-type: none"> Previous convictions 	<ul style="list-style-type: none"> Remorse <i>Willingness</i> to address addiction 	1 year 3 months	1 year
9	1 year	1 year 3 months	C	<ul style="list-style-type: none"> Committed on impulse 	1	<ul style="list-style-type: none"> Occupier at home Much greater impact than expected 	1 year, 6 months	<ul style="list-style-type: none"> Previous convictions 	<ul style="list-style-type: none"> <i>Acceptance of alcohol problem</i> 	1 year 9 months	1 year 2 months susp. 2 years

Scenario C – Aggravated burglary

Existing guideline		Draft guideline									
SP (years)	Final Sentence Pre-GP (years and months)	Culpability	Factors	Harm	Factors	SP (years)	Aggravating	Mitigating	Pre-GP (years)	Final sentence Post-GP (years)	
Expected			B	<ul style="list-style-type: none"> Some degree of planning 	2	<ul style="list-style-type: none"> Some psychological harm Some degree of loss to the victim 	6 years	<ul style="list-style-type: none"> Use of face covering Offence committed at night Offence committed as part of a group 	<ul style="list-style-type: none"> No relevant previous convictions Age 	7 years	4 years, 8 months
1	10 years	9 years	A	<ul style="list-style-type: none"> Targeting of vulnerable victim Degree of planning 	1	<ul style="list-style-type: none"> Victim on the premises <i>Violence against property</i> Substantial degree of loss Psychological impact to the victim Ransacking or vandalism <i>Weapon carried</i> 	10 years	<ul style="list-style-type: none"> Weapon carried when entering premises Offence committed as part of a group 	<ul style="list-style-type: none"> No relevant convictions Age and lack of maturity 	7 years, 6 months	5 years
2	11 years	10 years	A	<ul style="list-style-type: none"> Some impact or loss <i>Victim on premises</i> 	1	<ul style="list-style-type: none"> Victim on the premises Some degree of loss 	10 years	<ul style="list-style-type: none"> Weapon carried when entering premises Use of face covering Offence committed at night Offence was committed as part of a group 	<ul style="list-style-type: none"> No relevant convictions Remorse Age and lack of maturity 	10 years	6 years, 6 months
3	10 years	10 years	A	<ul style="list-style-type: none"> Significant degree of planning 	1	<ul style="list-style-type: none"> Victim on the premises 	10 years	-	-	10 years	6 years, 8 months
4	10 years	8 years	A	<ul style="list-style-type: none"> Significant planning and targeting and <i>slight</i> vulnerability Weapon 	1 or 2	<ul style="list-style-type: none"> Victim on the premises Violence threatened <i>Attempt to steal what would be a substantial loss</i> 	10 years	<ul style="list-style-type: none"> Weapon carried when entering premises Use of face covering 	<ul style="list-style-type: none"> Nothing stolen No previous convictions 	8 years	5 years, 4 months

						<ul style="list-style-type: none"> • <i>Equipped for burglary</i> • Some psychological impact • <i>Weapon produced</i> 		<ul style="list-style-type: none"> • Offence committed in a dwelling • Offence committed as part of a group 	<ul style="list-style-type: none"> • Age and lack of maturity 		
5	10 years	9 years	B	-	1	<ul style="list-style-type: none"> • Significant psychological trauma to the victim • Victim on the premises • <i>Some degree of violence threatened, involving a weapon</i> 	8 years	<ul style="list-style-type: none"> • Use of face covering • Vulnerable victim • Offence committed as part of a group 	<ul style="list-style-type: none"> • No relevant previous conviction • Age and lack of maturity 	8 years	5 years, 4 months
6	10 years	9 years	B	<ul style="list-style-type: none"> • Some planning or organisation 	2	<ul style="list-style-type: none"> • Victim on the premises • <i>Significant degree of loss</i> • Vulnerable victim 	9 years	<ul style="list-style-type: none"> • Unrelated previous convictions • Weapon carried when entering premises • Use of face covering • Vulnerable victim (taken into account at step 1) • Committed at night 	<ul style="list-style-type: none"> • Age 	8 years	5 years, 4 months
7	10 years	9 years	B	<ul style="list-style-type: none"> • Some degree of planning • <i>Part of a group</i> • <i>Committed at night</i> 	1	<ul style="list-style-type: none"> • Violence used or threatened against the victim • Some psychological injury to the victim • Some degree of loss • Victim on the premises 	9 years	<ul style="list-style-type: none"> • <i>Unrelated previous convictions*</i> • Weapon carried when entering premises (taken into account at step 1) • Use of face covering • Committed at night 	<ul style="list-style-type: none"> • No relevant previous convictions • Age and lack of maturity 	9 years	6 years
8	9 years	9 years	B	<ul style="list-style-type: none"> • Some degree of planning 	1	-	8 years	-	-	8 years	5 years, 4 months
9	10 years	9 years	B	<ul style="list-style-type: none"> • Targeting of vulnerable victim • Some degree of planning or organisation 	2	<ul style="list-style-type: none"> • Victims on the premises • Some degree of loss • Some psychological injury or impact on the victim 	6 years	<ul style="list-style-type: none"> • Weapon carried when entering premises • Use of face covering • Offence committed at night • Offence committed as part of a group 	<ul style="list-style-type: none"> • No relevant previous convictions • Age 	6 years	4 years

* a mitigating factor but applied under aggravation

Scenario D – Non-domestic burglary (judges)

	Existing guideline		Draft guideline							
	SP (mths)	Final Sentence (months)	Culpability	Factors	Harm	Factors	SP (mths)	Aggravating	Mitigating	Final sentence (years and mths)
Expected			C	<ul style="list-style-type: none"> Committed on impulse with limited intrusion 	1	<ul style="list-style-type: none"> Victim on premises Substantial degree of loss 	6 months	<ul style="list-style-type: none"> Previous convictions 	None	1 year
1	4.5 months	6 months	C	<ul style="list-style-type: none"> Committed on impulse 	1	<ul style="list-style-type: none"> Victim on premises Substantial degree of loss Limited damage or disturbance to property 	6 months	<ul style="list-style-type: none"> Previous convictions 	None	8 months
2	4.5 months	6 months	C	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss 	HLCO	<ul style="list-style-type: none"> Previous convictions 	None	6 months
3	MLCO	HLCO	C	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	HLCO
4	CO	HLCO/SO	C	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss 	MLCO	None	None	CO
5	HLCO	-	C	<ul style="list-style-type: none"> Committed on impulse with limited intrusion into property 	2	<ul style="list-style-type: none"> Loss Impact on victim 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	HLCO (UW/RAR)
6	4.5 months/LLCO	6 months	C	<ul style="list-style-type: none"> Committed on impulse (<i>opportunistic</i>) 	2	<ul style="list-style-type: none"> Some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	6 months
7	4.5 months	6 months possibly susp.	C	<ul style="list-style-type: none"> Committed on impulse with limited intrusion into property 	2	<ul style="list-style-type: none"> Greater emotional impact 	CO	<ul style="list-style-type: none"> Previous convictions 	None	MLCO (curfew)
8	9 months	6 months (assuming GP)	C	<ul style="list-style-type: none"> Committed on impulse 	1/2	<ul style="list-style-type: none"> Substantial degree of loss Emotional impact (greater or much greater) 	6 months/MLCO	-	None	6 months

9	4.5 months/ MLCO	6 months	C	• Committed on impulse	1	• Substantial degree of loss	6 months/ MLCO	• Previous convictions	None	8 months
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Scenario D – Non-domestic burglary (Magistrates)

Existing guideline		Draft guideline									
Expected	SP (mths)	Final Sentence Pre-GP	Culpability	Factors	Harm	Factors	SP	Aggravating	Mitigating	Sentence (Pre-GP)	Final sentence (Post-GP)
				C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	1	<ul style="list-style-type: none"> Victim on premises Substantial degree of loss 	6 months	<ul style="list-style-type: none"> Previous convictions 	None	1 year
1	4.5 months	MLCO	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	MLCO	MLCO
2	4.5 months	4.5 months	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	HLCO (200hr UW)	HLCO (180hr UW)
3	HLCO	HLCO	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Greater emotional impact Damage of property causing some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	HLCO (UPW?)	HLCO (discount hrs)
4	4.5 months	3 months	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion Victim on premises 	2	<ul style="list-style-type: none"> Greater emotional impact Some degree of loss 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	MLCO/ Band B fine (100hr UW)	MLCO/Band B fine (66% WI and 66hr UW)
5	4.5 months	2 months 1week	C	<ul style="list-style-type: none"> <i>Defendant was not an intruder as was at the hospital when the offence was committed</i> 	2	<ul style="list-style-type: none"> Greater emotional impact <i>Multiple items stolen</i> 	MLCO	<ul style="list-style-type: none"> Previous convictions Abuse of a position of trust 	<ul style="list-style-type: none"> <i>GP at earliest opportunity</i> 	Custody*	HLCO
6	MLCO	HLCO	B	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss 	6 months	<ul style="list-style-type: none"> Previous convictions 	None	6 months	4 months possibly susp

7	MLCO	4.5 months	C	<ul style="list-style-type: none"> Limited intrusion 	2	<ul style="list-style-type: none"> Victim on premises Soiling of property Some degree of loss Theft/damage to property 	MLCO	<ul style="list-style-type: none"> Previous convictions 	None	HLCO (victim comp)	HLCO (lower hours)
8	4.5 months	4.5 months	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion <i>Little planning</i> 	1	<ul style="list-style-type: none"> Victim on premises Some degree of loss 	6 months	<ul style="list-style-type: none"> Previous convictions 	None	6 months	6 months (credit for GP is not sending to CC)
9	4.5 months	4.5 months	C	<ul style="list-style-type: none"> Committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss Emotional impact on victim 	6 months	<ul style="list-style-type: none"> Previous convictions <i>Emotional impact on the victim</i> <i>A place of work</i> <i>Public place</i> <i>Damage to property</i> 	<ul style="list-style-type: none"> <i>Committed on impulse with limited intrusion</i> <i>Low value property but high sentimental value</i> 	6 months	4 months sups. 1 year

* unspecified length.

Scenario E – Non-domestic burglary (Magistrates)

Existing guideline		Draft guideline									
SP (years)	Final Sentence Pre-GP (months)	Culpability	Factors	Harm	Factors	SP (mths)	Aggravating	Mitigating	Pre-GP (months)	Final sentence Post-GP (months)	
Expected			C	<ul style="list-style-type: none"> Offence committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss Ransacking or vandalism 	MLCO	<ul style="list-style-type: none"> Part of a group Under the influence of alcohol 	None	HLCO	MLCO
1	4.5 months	MLCO	C	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Ransacking or vandalism 	MLCO	<ul style="list-style-type: none"> Part of a group Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions <i>Guilty plea</i> 	MLCO	LLCO (ATR; RAR)
2	MLCO	MLCO	C	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss Ransacking or vandalism 	MLCO	<ul style="list-style-type: none"> Part of a group Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions <i>Guilty plea</i> 	MLCO (100 hrs UPW)	MLCO (50 hrs UPW)
3	LLCO	LLCO	B	<ul style="list-style-type: none"> <i>More than limited intrusion</i> 	2	<ul style="list-style-type: none"> Some degree of loss 	6 months	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions <i>Guilty plea</i> 	6 months	HLCO
4	MLCO	MLCO (120hr UPW) and Band B fine	C	<ul style="list-style-type: none"> Committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss <i>Some degree of damage to property</i> 	MLCO	<ul style="list-style-type: none"> Part of a group Under influence of alcohol 	-	MLCO (120hr UPW) Band B fine (70% weekly income)	MLCO (80 hrs UPW) Band B fine (100% weekly income)
5	4.5 months	2 months	B	<ul style="list-style-type: none"> <i>Not limited intrusion</i> 	2	<ul style="list-style-type: none"> Some degree of loss Ransacking or vandalism 	6 months	-	<ul style="list-style-type: none"> No relevant previous convictions <i>Guilty plea</i> 	6 months	4 months

6	4.5 months	4.5 months	B	<ul style="list-style-type: none"> Committed on impulse <i>Intrusion on property</i> 	2	<ul style="list-style-type: none"> Some degree of loss <i>Some damage to property</i> 	6 months	<ul style="list-style-type: none"> previous convictions Under influence of alcohol 	-	6 months	4 months SSO
7	4.5 months	4.5 months	C	<ul style="list-style-type: none"> Offence committed on impulse 	2	<ul style="list-style-type: none"> Some degree of loss Ransacking or vandalism 	MLCO	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions 	MLCO	MLCO
8	LLCO (40hr UPW)	LLCO	C	<ul style="list-style-type: none"> Offence committed on impulse, with limited intrusion 	3	<ul style="list-style-type: none"> Some degree of loss Nothing stolen 	Band B fine	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions <i>Reasonably good character</i> <i>Guilty plea</i> 	Band B fine	Band B fine (1/3 reduction)
9	4.5 months	4.5 months	B	<ul style="list-style-type: none"> Offence committed on impulse, with limited intrusion 	2	<ul style="list-style-type: none"> Some degree of loss Ransacking or vandalism <i>Intrusion</i> 	6 months	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> No relevant previous convictions 	6 months	M-HLCO

Annex C

Non-domestic burglary

Theft Act 1968 (section 9)

Triable either way (except as noted below)

Maximum: 10 years' custody

Offence range: Discharge – five years' custody

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code if it was committed with intent to:

- a. inflict grievous bodily harm on a person, or
- b. do unlawful damage to a building or anything in it.

This offence is **indictable only** where it is a burglary comprising the commission of, or an intention to commit, an offence which is triable only on indictment.

STEP ONE

Determining the offence category

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

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

Culpability demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• A significant degree of planning or organisation• Knife or other weapon carried (<u>see step 6 on totality when sentencing more than one offence</u>)
B- Medium culpability	<ul style="list-style-type: none">• Some degree of planning or organisation• Equipped for burglary (where not in high culpability)• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Offence committed on impulse, with limited intrusion into property• Involved through coercion, intimidation or exploitation• Mental disorder or learning disability, where linked to the commission of the offence

Harm

The level of harm is assessed by weighing up all the factors of the case

Category 1	<ul style="list-style-type: none">• <u>Violence used/serious violence threatened against the victim</u>• <u>Substantial physical or psychological injury or substantial emotional or other impact on the victim</u>• <u>Person(s) on premises or returns or attends while offender present</u>• Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value)• Soiling of property and/or extensive damage or disturbance to property• <u>Offence committed in the context of public disorder</u>
Category 2	<ul style="list-style-type: none">• <u>Violence threatened but not used against the victim (where not at category 1)</u>• <u>Moderate physical or psychological injury or some emotional or other impact on the victim</u>

	<ul style="list-style-type: none"> Theft of/damage to property causing a moderate degree of loss to the victim (whether economic, commercial or personal value) Moderate damage or disturbance to property
Category 3	<ul style="list-style-type: none"> Limited physical or psychological injury or limited emotional or other impact on the victim Nothing stolen or only property of low value to the victim (whether economic, commercial or personal) Limited damage or disturbance to property

STEP TWO

Starting point and category range

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

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under [part 10](#), or an alcohol treatment requirement under [part 11](#), of Schedule 9 of the Sentencing Code may be a proper alternative to a short or moderate custodial sentence.

Harm	Culpability		
	A	B	C
Category 1	Starting Point 2 years' custody Category Range 1 -5 years' custody	Starting Point 1 years' custody Category Range High level community order - 2 years' custody	Starting Point 6 months custody Category Range Medium level community order – 1 years' custody
Category 2	Starting Point 1 years' custody Category Range High level community order - 2 years' custody	Starting Point 6 months custody Category Range Medium level community order – 1 years' custody	Starting Point High level community order Category Range Low level community order - 6 months custody
Category 3	Starting Point 6 months custody Category Range Medium level community order - 1 years' custody	Starting Point High level community order Category Range Low level community order- 6 months custody	Starting Point Medium level community order Category Range Band B fine –High level community order

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

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Loss or damage caused to heritage and/or cultural assets
- Abuse of a position of trust
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability, where not linked to the commission of the offence

- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Dangerousness

A burglary offence under section 9 Theft Act 1968 is a specified offence if it was committed with the intent to (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it. The court should consider whether having regard to the criteria contained [section 308 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

STEP SIX

Totality principle

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

STEP SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders. The court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

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

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail (tagged curfew)

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

Burglary offences

These data tables provide statistics on the outcomes and demographics of offenders sentenced for offences covered by the Sentencing Council definitive guideline for burglary offences, which can be found here

<https://www.sentencingcouncil.org.uk/crown-court/>

Section 1: Non-domestic burglary

Table 1 1	Number of adult offenders sentenced for non-domestic burglary covered by the definitive guideline, all courts, 2010-2020
Table 1 2	Number and proportion of adult offenders sentenced for non-domestic burglary covered by the definitive guideline, by sentence outcome, 2010-2020
Table 1 3	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for non-domestic burglary covered by the definitive guideline, 2010-2020
Table 1 4	Sentence lengths received by adult offenders sentenced to immediate custody for non-domestic burglary covered by the definitive guideline, 2020
Table 1 5	Demographics of adult offenders sentenced for non-domestic burglary covered by the definitive guideline, by sex, age and ethnicity, 2020
Table 1 6	Number and proportion of adult offenders sentenced for non-domestic burglary covered by the definitive guideline, by sex, age and ethnicity and sentence outcome, 2020
Table 1 7	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for non-domestic burglary covered by the definitive guideline, by sex, age and ethnicity, 2020
Table 1 8	Sentence lengths received by adult offenders sentenced to immediate custody for non-domestic burglary covered by the definitive guideline, by sex, age and ethnicity, 2020

Section 2: Domestic burglary

Table 2 1	Number of adult offenders sentenced for domestic burglary covered by the definitive guideline, all courts, 2010-2020
Table 2 2	Number and proportion of adult offenders sentenced for domestic burglary covered by the definitive guideline, by sentence outcome, 2010-2020
Table 2 3	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for domestic burglary covered by the definitive guideline, 2010-2020
Table 2 4	Sentence lengths received by adult offenders sentenced to immediate custody for domestic burglary covered by the definitive guideline, 2020
Table 2 5	Demographics of adult offenders sentenced for domestic burglary covered by the definitive guideline, by sex, age and ethnicity, 2020
Table 2 6	Number and proportion of adult offenders sentenced for domestic burglary covered by the definitive guideline, by sex, age and ethnicity and sentence outcome, 2020
Table 2 7	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for domestic burglary covered by the definitive guideline, by sex, age and ethnicity, 2020
Table 2 8	Sentence lengths received by adult offenders sentenced to immediate custody for domestic burglary covered by the definitive guideline, by sex, age and ethnicity, 2020

Section 3: Aggravated burglary

Table 3 1	Number of adult offenders sentenced for aggravated burglary covered by the definitive guideline, all courts, 2010-2020
Table 3 2	Number and proportion of adult offenders sentenced for aggravated burglary covered by the definitive guideline, by sentence outcome, 2010-2020
Table 3 3	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for aggravated burglary covered by the definitive guideline, 2010-2020
Table 3 4	Sentence lengths received by adult offenders sentenced to immediate custody for aggravated burglary covered by the definitive guideline, various years
Table 3 5	Demographics of adult offenders sentenced for aggravated burglary covered by the definitive guideline, by sex, age and ethnicity, 2020
Table 3 6	Number and proportion of adult offenders sentenced for aggravated burglary covered by the definitive guideline, by sex, age and ethnicity and sentence outcome, 2020
Table 3 7	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for aggravated burglary covered by the definitive guideline, by sex, age and ethnicity, 2020
Table 3 8	Sentence lengths received by adult offenders sentenced to immediate custody for aggravated burglary covered by the definitive guideline, by sex, age and ethnicity, 2020

Notes

Annex D

Data sources and quality

The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the source of the data for these data tables. Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. These restrictions resulted in reduction of court activity to adhere to new rules on movement and social interaction and the prioritisation of certain types of court case involving cases that are more likely to result in custody. This means that the figures presented on an offence specific basis may reflect these rules to varying degrees depending on the offence in question and whether these cases continued to be heard throughout the time period. Therefore, it is important to note that these short-term trends might mostly reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the long term. From September 2020, some cases proceeded at Derby Crown and magistrates' courts were recorded on the new Common Platform (CP) case management system. Data processing development is currently underway on this new system, and as a result the small number of cases recorded on the CP system during the latter part of 2020 are not included in the CPD.

Further details of the processes by which the Ministry of Justice validate the records in the Court Proceedings Database can be found within the guide to their Criminal Justice Statistics publication which can be downloaded via the link:

<https://www.gov.uk/government/collections/criminal-justice-statistics>

Volumes of sentences

The data presented in these data tables only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented in these data tables.

Sentence outcomes

The outcomes presented are the final sentence outcomes, after taking into account all factors of the case, including whether a guilty plea was made. This is because the sentence length information available in the Court Proceedings Database is the final sentence imposed, after any reduction for guilty plea.

The sentence outcome shown is the most severe sentence or order given for the principal offence (i.e. the principal sentence), secondary sentences given for the principal offence are not included in the tables.

Offender demographics

Ethnicity is the self-identified ethnicity as defined by the individual and is categorised using the 5+1 self-identified classification. The Not recorded/not known category includes all others for whom ethnicity information is not available, either because they have chosen not to state their ethnicity or because no information has been recorded. Prior to May 2020, this was based on the 16+1 classification used in the 2001 census. Since May 2020, this has been replaced by the 18+1 classification used in the 2011 Census. This had caused two key changes to the data presented in our publications:

1) The data now captures a further two ethnicity classifications: Gypsy or Irish Traveller which will fall into the broader category of 'White' and Arab which will fall into the broader category of 'Other'. While the data suggests that no offenders from these ethnic backgrounds have been sentenced since the 18+1 classification was introduced, these ethnic groups will begin to be captured in the 2021 data.

2) The movement of the Chinese ethnicity classification from the broad category of 'Chinese and Other' into 'Asian'. Due to the small number of offenders sentenced who identified as Chinese (around 310 offenders in 2020 across all offences), this change has had little impact on overall trends presented in the data, we have also applied this change to the whole timeseries presented to allow for continued comparison across years. However, it means that the 'Chinese and Other' category will be renamed 'Other' within our data tables to account for this change.

Therefore, the ethnicity categories for self-identified ethnicity are: Asian, Black, Mixed, Other, White, Not recorded/not known. More information on the 18+1 classification can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691544/self-defined-ethnicity-18plus1.pdf

The proportions reflected amongst those for whom data was provided may not reflect the demographics of the full population sentenced. In the CPD, prior to 2017 adults of unknown ages were defaulted to 25. From 2017 onwards, the majority of records where the age is unknown have been grouped within an 'age unknown' variable, however there may still be some cases where the age is unknown and has therefore been defaulted to 25.

Due to the small number of offenders sentenced for some offences, care should be taken when comparing figures across different groups. This is particularly true where there are only a small number of offenders within a specific demographic group, as small numeric changes can present as large percentage changes when they are calculated using small volumes. This should be considered when comparing percentages across groups.

General conventions

The following conventions have been applied to the data:

- Percentages derived from the data have been provided in the tables to the nearest whole percentage, except when the nearest whole percentage is zero. In some instances, this may mean that percentages shown do not add up to 100 per cent.
- Where the nearest whole per cent is zero, the convention '<0.5' has been used.
- Where totals have been provided, these have been calculated using unrounded data and then rounded.

Uses made of the data

Data provided in the Council's range of statistical bulletins and tables are used to inform public debate of the Council's work.

Background information

Further information on the Sentencing Council and its work, as well as information on general sentencing practice in England and Wales can be found on the Council's website at:

<https://sentencingcouncil.org.uk>

The Ministry of Justice publishes a quarterly statistical publication, Criminal Justice Statistics, which includes a chapter focusing on sentencing in England and Wales. This chapter includes information on the number of offenders sentenced by offence group and by demographic factors such as age, sex and self-identified ethnicity. The full publication can be accessed via the Ministry of Justice website at:

<https://www.gov.uk/government/collections/criminal-justice-statistics-quarterly>

Detailed sentencing data from the Ministry of Justice's Court Proceedings Database can be accessed via the data tool published alongside the annual Criminal Justice Statistics publication. The tool enables data covering the last decade to be viewed by offence, sex, age range and ethnicity, and can be accessed via the following link (for example, see the 'Outcomes by Offence data tool'):

<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2020>

Contact points for further information

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Table 1.1: Number of adult offenders sentenced for non-domestic burglary, all courts, 2010-2020²

[Index](#)

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Magistrates' court	5,848	6,420	5,474	4,995	4,414	3,942	3,856	4,031	3,703	3,364	2,833
Crown Court	1,789	2,477	2,459	2,044	2,139	2,094	1,849	1,772	1,759	1,879	1,557
Total	7,637	8,897	7,933	7,039	6,553	6,036	5,705	5,803	5,462	5,243	4,390

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Magistrates' court	77%	72%	69%	71%	67%	65%	68%	69%	68%	64%	65%
Crown Court	23%	28%	31%	29%	33%	35%	32%	31%	32%	36%	35%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

2) In August 2011, riots occurred in London and other major cities across England and Wales. Around 50 per cent of the people arrested in connection with the riots were charged with burglary offences. Around 670 offenders sentenced for non-domestic burglary and 60 offenders sentenced for domestic burglary included in these data tables 2011 and 2012 were sentenced for offences relating to the riots. Sentencing trends for these cases and for others dealt with around the same time may have been affected the severity of the riots, and so users should bear this in mind when interpreting data from around this period.

Table 1.2: Number and proportion of adult offenders sentenced for non-domestic burglary, by sentence outcome, 2010-2020^{1,2}

[Index](#)

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Absolute and conditional discharge	329	355	233	209	230	197	139	102	109	91	85
Fine	318	340	234	218	259	205	168	188	157	113	131
Community sentence	3,107	3,189	2,534	1,911	1,462	1,375	1,132	1,122	1,163	1,147	796
Suspended sentence	1,014	1,198	1,100	1,169	1,209	1,227	1,211	1,205	1,034	912	877
Immediate custody	2,736	3,639	3,581	3,151	3,004	2,911	2,980	3,110	2,896	2,881	2,398
Otherwise dealt with ³	133	176	251	381	389	121	75	76	103	99	103
Total	7,637	8,897	7,933	7,039	6,553	6,036	5,705	5,803	5,462	5,243	4,390

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Absolute and conditional discharge	4%	4%	3%	3%	4%	3%	2%	2%	2%	2%	2%
Fine	4%	4%	3%	3%	4%	3%	3%	3%	3%	2%	3%
Community sentence	41%	36%	32%	27%	22%	23%	20%	19%	21%	22%	18%
Suspended sentence	13%	13%	14%	17%	18%	20%	21%	21%	19%	17%	20%
Immediate custody	36%	41%	45%	45%	46%	48%	52%	54%	53%	55%	55%
Otherwise dealt with ³	2%	2%	3%	5%	6%	2%	1%	1%	2%	2%	2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

2) In August 2011, riots occurred in London and other major cities across England and Wales. Around 50 per cent of the people arrested in connection with the riots were charged with burglary offences. Around 670 offenders sentenced for non-domestic burglary and 60 offenders sentenced for domestic burglary included in these data tables for 2011 and 2012 were sentenced for offences relating to the riots. Sentencing trends for these cases and for others dealt with around the same time may have been affected by the severity of the riots, and so users should bear this in mind when interpreting data from around this period.

3) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

Table 1.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for non-domestic burglary, 2010-2020²[Index](#)

ACSL (months) ^{3,4}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Mean	8.5	9.0	9.4	8.5	9.2	9.8	10.0	9.4	9.9	11.3	10.6
Median	4.0	4.2	4.7	4.2	4.2	5.1	4.7	4.7	4.7	5.0	5.6
Indeterminates as percentage of custodial sentences ^{5,6}	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 2) In August 2011, riots occurred in London and other major cities across England and Wales. Around 50 per cent of the people arrested in connection with the riots were charged with burglary offences. Around 670 offenders sentenced for non-domestic burglary and 60 offenders sentenced for domestic burglary included in these data tables for 2011 and 2012 were sentenced for offences relating to the riots. Sentencing trends for these cases and for others dealt with around the same time may have been affected by the severity of the riots, and so users should bear this in mind when interpreting data from around 2011 and 2012.
- 3) Excludes life and indeterminate sentences.
- 4) Excludes two cases of non-domestic burglary over the period 2010-2020 where the data suggested that the sentence was above the statutory maximum for this offence (10 years' custody).
- 5) This is calculated as the number of offenders given an indeterminate custodial sentence, out of the number of offenders given a sentence of immediate custody.
- 6) For 2010-2012, the indeterminate sentence figures include the sentences of Imprisonment for Public Protection (IPP) and Extended Sentences for Public Protection (EPP). These sentences were introduced in 2005 and abolished in 2012.

Table 1.4: Sentence lengths received by adult offenders sentenced to immediate custody for non-domestic burglary, 2010-2020¹

[Index](#)

Sentence length (years)^{2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	2,282	2,828	2,777	2,587	2,352	2,238	2,263	2,413	2,203	2,090	1,786
1 to 2	247	568	543	352	413	412	434	422	399	438	377
2 to 3	125	149	159	128	138	160	175	188	200	211	134
3 to 4	39	47	65	46	71	63	57	50	65	66	45
4 to 5	26	28	17	22	15	25	25	22	17	37	21
Greater than 5 years	17	19	20	15	15	13	26	14	12	39	35
Total	2,736	3,639	3,581	3,150	3,004	2,911	2,980	3,109	2,896	2,881	2,398

Sentence length (years)^{2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	83%	78%	78%	82%	78%	77%	76%	78%	76%	73%	74%
1 to 2	9%	16%	15%	11%	14%	14%	15%	14%	14%	15%	16%
2 to 3	5%	4%	4%	4%	5%	5%	6%	6%	7%	7%	6%
3 to 4	1%	1%	2%	1%	2%	2%	2%	2%	2%	2%	2%
4 to 5	1%	1%	<0.5%	1%	<0.5%	1%	1%	1%	1%	1%	1%
Greater than 5 years	1%	1%	1%	<0.5%	<0.5%	<0.5%	1%	<0.5%	<0.5%	1%	1%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

2) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than or equal to 1 year, and '1 to 2' includes sentence lengths over 1 year, and up to and including 2 years.

3) Excludes two cases of non-domestic burglary over the period 2010-2020 where the data suggested that the sentence was above the statutory maximum for this offence (10 years' custody).

Table 1.5: Demographics of adult offenders sentenced for non-domestic burglary, by sex, age and ethnicity, 2020¹

Sex	Number of adults sentenced	Percentage of all adults sentenced⁴
Female	203	5%
Male	4,146	95%
Not recorded/not known	41	
Total	4,390	100%

Age group	Number of adults sentenced	Percentage of all adults sentenced⁴
18 to 20	216	5%
21 to 24	320	7%
25 to 29	579	13%
30 to 39	1,695	39%
40 to 49	1,281	29%
50 to 59	285	6%
60 to 69	14	<0.5%
70 and over	0	0%
Not recorded/not known	0	
Total	4,390	100%

Ethnicity^{2,3}	Number of adults sentenced	Percentage of all adults sentenced⁴
Asian	75	2%
Black	185	5%
Mixed	105	3%
Other	40	1%
White	3,155	89%
Not recorded/not known	830	
Total	4,390	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

2) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

3) For a proportion of adults sentenced (19%), their ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.

4) Percentage calculations do not include cases where sex, age group or ethnicity was unknown.

Table 1.6: Number and proportion of adult offenders sentenced for non-domestic burglary, by sex, age and ethnicity, and sent outcome, 2020¹

[Index](#)

Sex	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Female	6	13	55	40	79	10	203
Male	78	114	731	829	2,302	92	4,146
Not recorded/not known	1	4	10	8	17	1	41

Age group	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
18 to 20	14	11	94	32	58	7	216
21 to 24	13	9	62	83	146	7	320
25 to 29	7	19	88	119	334	12	579
30 to 39	23	51	295	311	969	46	1,695
40 to 49	21	31	200	263	739	27	1,281
50 to 59	7	10	53	66	145	4	285
60 to 69	0	0	4	3	7	0	14
70 and over	0	0	0	0	0	0	0
Not recorded/not known	0	0	0	0	0	0	0

Ethnicity ³	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Asian	2	5	13	17	38	0	75
Black	2	5	35	37	104	2	185
Mixed	2	0	16	21	62	4	105
Other	0	1	4	15	20	0	40
White	59	88	582	630	1,726	70	3,155
Not recorded/not known	20	32	146	157	448	27	830

Sex	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Female	3%	6%	27%	20%	39%	5%	100%
Male	2%	3%	18%	20%	56%	2%	100%
Not recorded/not known	2%	10%	24%	20%	41%	2%	100%

Age group	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
18 to 20	6%	5%	44%	15%	27%	3%	100%
21 to 24	4%	3%	19%	26%	46%	2%	100%
25 to 29	1%	3%	15%	21%	58%	2%	100%
30 to 39	1%	3%	17%	18%	57%	3%	100%
40 to 49	2%	2%	16%	21%	58%	2%	100%
50 to 59	2%	4%	19%	23%	51%	1%	100%
60 to 69	0%	0%	29%	21%	50%	0%	100%
70 and over	-	-	-	-	-	-	-
Not recorded/not known	-	-	-	-	-	-	-

Ethnicity ³	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Asian	3%	7%	17%	23%	51%	0%	100%
Black	1%	3%	19%	20%	56%	1%	100%
Mixed	2%	0%	15%	20%	59%	4%	100%
Other	0%	3%	10%	38%	50%	0%	100%
White	2%	3%	18%	20%	55%	2%	100%
Not recorded/not known	2%	4%	18%	19%	54%	3%	100%

Source: Court Proceedings Database, Ministry of Justice

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

Notes:

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

2) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

3) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Table 1.7: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for non-domestic burglary, by sex, age and ethnicity, 2020¹

[Index](#)

Sex	ACSL (months)^{2,3}	
	Mean	Median
Female	5.1	3.3
Male	10.8	6.0
Not recorded/not known	3.0	2.3

Age group	Mean	Median
18 to 20	10.5	6.0
21 to 24	10.2	5.6
25 to 29	12.8	6.0
30 to 39	10.2	5.6
40 to 49	10.1	4.7
50 to 59	9.6	4.2
60 to 69	25.4	4.2
70 and over	-	-
Not recorded/not known	-	-

Ethnicity⁴	Mean	Median
Asian	8.4	6.0
Black	8.6	4.2
Mixed	11.8	6.0
Other	14.4	10.0
White	10.7	6.0
Not recorded/not known	10.3	4.7

Source: Court Proceedings Database, Ministry of Justice

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

- = No offenders were sentenced to a determinate custodial sentence.

Notes:

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

2) Excludes life and indeterminate sentences.

3) The statutory maximum sentence for this offence is 10 years' custody.

4) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Table 1.8: Sentence lengths received by adult offenders sentenced to immediate custody for non-domestic burglary, by sex, age and ethnicity, 2020¹

[Index](#)

Sex	Number of adults sentenced to each sentence length (years) ^{2,3}						Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	Greater than 5 years	
Female	73	5	1	0	0	0	79
Male	1,696	372	133	45	21	35	2,302
Not recorded/not known	17	0	0	0	0	0	17

Age group	Number of adults sentenced to each sentence length (years) ^{2,3}						Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	Greater than 5 years	
18 to 20	43	11	2	0	2	0	58
21 to 24	112	20	7	3	3	1	146
25 to 29	225	61	27	11	2	8	334
30 to 39	735	138	59	19	6	12	969
40 to 49	556	121	35	8	8	11	739
50 to 59	111	24	4	4	0	2	145
60 to 69	4	2	0	0	0	1	7
70 and over	0	0	0	0	0	0	0
Not recorded/not known	0	0	0	0	0	0	0

Ethnicity ⁴	Number of adults sentenced to each sentence length (years) ^{2,3}						Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	Greater than 5 years	
Asian	32	4	2	0	0	0	38
Black	84	13	6	0	0	1	104
Mixed	48	5	6	0	0	3	62
Other	12	3	4	0	0	1	20
White	1,275	287	87	33	20	24	1,726
Not recorded/not known	335	65	29	12	1	6	448

Sex	Proportion of adults sentenced to each sentence length (years) ^{2,3}						Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	Greater than 5 years	
Female	92%	6%	1%	0%	0%	0%	100%
Male	74%	16%	6%	2%	1%	2%	100%
Not recorded/not known	100%	0%	0%	0%	0%	0%	100%

Age group	Proportion of adults sentenced to each sentence length (years) ^{2,3}						Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	Greater than 5 years	
18 to 20	74%	19%	3%	0%	3%	0%	100%
21 to 24	77%	14%	5%	2%	2%	1%	100%
25 to 29	67%	18%	8%	3%	1%	2%	100%
30 to 39	76%	14%	6%	2%	1%	1%	100%
40 to 49	75%	16%	5%	1%	1%	1%	100%
50 to 59	77%	17%	3%	3%	0%	1%	100%
60 to 69	57%	29%	0%	0%	0%	14%	100%
70 and over	-	-	-	-	-	-	-
Not recorded/not known	-	-	-	-	-	-	-

Ethnicity ⁴	Proportion of adults sentenced to each sentence length (years) ^{2,3}						Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	Greater than 5 years	
Asian	84%	11%	5%	0%	0%	0%	100%
Black	81%	13%	6%	0%	0%	1%	100%
Mixed	77%	8%	10%	0%	0%	5%	100%
Other	60%	15%	20%	0%	0%	5%	100%
White	74%	17%	5%	2%	1%	1%	100%
Not recorded/not known	75%	15%	6%	3%	0%	1%	100%

Source: Court Proceedings Database, Ministry of Justice

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

Notes:

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

2) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than or equal to 1 year, and '1 to 2' includes sentence lengths over 1 year, and up to and including 2 years.

3) The statutory maximum sentence for this offence is 10 years' custody.

4) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Table 2.1: Number of adult offenders sentenced for domestic burglary, all courts, 2010-2020²

[Index](#)

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Magistrates' court	2,237	2,322	1,904	1,508	1,256	1,035	989	921	720	598	462
Crown Court	8,272	8,799	8,375	8,183	7,500	6,370	5,261	4,915	4,400	4,053	3,229
Total	10,509	11,121	10,279	9,691	8,756	7,405	6,250	5,836	5,120	4,651	3,691

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Magistrates' court	21%	21%	19%	16%	14%	14%	16%	16%	14%	13%	13%
Crown Court	79%	79%	81%	84%	86%	86%	84%	84%	86%	87%	87%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

2) In August 2011, riots occurred in London and other major cities across England and Wales. Around 50 per cent of the people arrested in connection with the riots were charged with burglary offences. Around 670 offenders sentenced for non-domestic burglary and 60 offenders sentenced for domestic burglary included in these data tables 2011 and 2012 were sentenced for offences relating to the riots. Sentencing trends for these cases and for others dealt with around the same time may have been affected the severity of the riots, and so users should bear this in mind when interpreting data from around this period.

Table 2.2: Number and proportion of adult offenders sentenced for domestic burglary, by sentence outcome, 2010-2020¹

[Index](#)

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Absolute and conditional discharge	103	82	57	46	59	48	37	35	32	30	16
Fine	44	32	34	38	41	38	21	18	18	16	10
Community sentence	2,116	2,012	1,649	1,181	895	740	529	451	459	423	317
Suspended sentence	1,571	1,563	1,497	1,547	1,524	1,352	962	805	653	546	513
Immediate custody	6,575	7,337	6,940	6,737	6,086	5,149	4,637	4,454	3,876	3,563	2,770
Otherwise dealt with ²	100	95	102	142	151	78	64	73	82	73	65
Total	10,509	11,121	10,279	9,691	8,756	7,405	6,250	5,836	5,120	4,651	3,691

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Absolute and conditional discharge	1%	1%	1%	<0.5%	1%	1%	1%	1%	1%	1%	<0.5%
Fine	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%	1%	<0.5%	<0.5%	<0.5%	<0.5%	<0.5%
Community sentence	20%	18%	16%	12%	10%	10%	8%	8%	9%	9%	9%
Suspended sentence	15%	14%	15%	16%	17%	18%	15%	14%	13%	12%	14%
Immediate custody	63%	66%	68%	70%	70%	70%	74%	76%	76%	77%	75%
Otherwise dealt with ²	1%	1%	1%	1%	2%	1%	1%	1%	2%	2%	2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

2) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

Table 2.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for domestic burglary, 2010-2020²[Index](#)

ACSL (years) ³	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Mean	1.9	1.9	1.9	2.0	2.1	2.2	2.2	2.3	2.3	2.4	2.4
Median	1.7	1.7	1.7	2.0	2.0	2.2	2.3	2.4	2.4	2.4	2.4
Indeterminates as percentage of custodial sentences ^{4,5}	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

2) In August 2011, riots occurred in London and other major cities across England and Wales. Around 50 per cent of the people arrested in connection with the riots were charged with burglary offences. Around 670 offenders sentenced for non-domestic burglary and 60 offenders sentenced for domestic burglary included in these data tables for 2011 and 2012 were sentenced for offences relating to the riots. Sentencing trends for these cases and for others dealt with around the same time may have been affected by the severity of the riots, and so users should bear this in mind when interpreting data from around this period.

3) Excludes life and indeterminate sentences. Excludes two cases of domestic burglary over the period 2010-2020 where the data suggested that the sentence was above the statutory maximum for this offence (14 years' custody).

4) This is calculated as the number of offenders given an indeterminate custodial sentence, out of the number of offenders given a sentence of immediate custody.

5) For 2010-2012, the indeterminate sentence figures include the sentences of Imprisonment for Public Protection (IPP) and Extended Sentences for Public Protection (EPP). These sentences were introduced in 2005 and abolished in 2012.

Table 2.4: Sentence lengths received by adult offenders sentenced to immediate custody for domestic burglary, 2010-2020¹

[Index](#)

Sentence length (years)^{2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	2,120	2,408	2,209	1,968	1,687	1,347	1,187	1,041	848	760	637
1 to 2	1,958	2,109	1,898	1,762	1,558	1,214	1,095	1,018	893	778	559
2 to 3	1,699	1,854	1,898	2,037	1,858	1,635	1,482	1,476	1,265	1,218	961
3 to 4	553	679	651	690	652	605	572	611	536	490	372
4 to 5	143	170	179	175	183	192	164	185	180	169	131
5 to 6	61	73	65	55	87	84	83	76	95	79	53
Greater than 6 years	41	44	40	50	61	72	54	46	58	69	57
Total	6,575	7,337	6,940	6,737	6,086	5,149	4,637	4,453	3,875	3,563	2,770

Sentence length (years)^{2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	32%	33%	32%	29%	28%	26%	26%	23%	22%	21%	23%
1 to 2	30%	29%	27%	26%	26%	24%	24%	23%	23%	22%	20%
2 to 3	26%	25%	27%	30%	31%	32%	32%	33%	33%	34%	35%
3 to 4	8%	9%	9%	10%	11%	12%	12%	14%	14%	14%	13%
4 to 5	2%	2%	3%	3%	3%	4%	4%	4%	5%	5%	5%
5 to 6	1%	1%	1%	1%	1%	2%	2%	2%	2%	2%	2%
Greater than 6 years	1%	1%	1%	1%	1%	1%	1%	1%	1%	2%	2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

2) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than or equal to 1 year, and '1 to 2' includes sentence lengths over 1 year, and up to and including 2 years.

3) Excludes two cases of domestic burglary over the period 2010-2020 where the data suggested that the sentence was above the statutory maximum for this offence (14 years' custody).

Table 2.5: Demographics of adult offenders sentenced for domestic burglary, by sex, age and ethnicity, 2020¹

[Index](#)

Sex	Number of adults sentenced	Percentage of all adults sentenced⁴
Female	299	8%
Male	3,388	92%
Not recorded/not known	4	
Total	3,691	100%

Age group	Number of adults sentenced	Percentage of all adults sentenced⁴
18 to 20	335	9%
21 to 24	397	11%
25 to 29	588	16%
30 to 39	1,267	34%
40 to 49	865	23%
50 to 59	217	6%
60 to 69	20	1%
70 and over	2	<0.5%
Not recorded/not known	0	
Total	3,691	100%

Ethnicity^{2,3}	Number of adults sentenced	Percentage of all adults sentenced⁴
Asian	53	2%
Black	166	5%
Mixed	92	3%
Other	39	1%
White	2,684	88%
Not recorded/not known	657	
Total	3,691	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

2) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

3) For a proportion of adults sentenced (18%), their ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.

4) Percentage calculations do not include cases where sex, age group or ethnicity was unknown.

Table 2.6: Number and proportion of adult offenders sentenced for domestic burglary, by sex, age and ethnicity, and sentence outcome 2020¹

[Index](#)

Sex	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Female	3	0	63	58	162	13	299
Male	13	10	252	453	2,608	52	3,388
Not recorded/not known	0	0	2	2	0	0	4

Age group	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
18 to 20	4	0	65	76	186	4	335
21 to 24	2	2	34	76	275	8	397
25 to 29	0	1	35	79	463	10	588
30 to 39	6	3	99	160	979	20	1,267
40 to 49	3	3	64	93	690	12	865
50 to 59	1	0	17	27	161	11	217
60 to 69	0	0	3	2	15	0	20
70 and over	0	1	0	0	1	0	2
Not recorded/not known	0	0	0	0	0	0	0

Ethnicity ³	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Asian	0	0	6	5	41	1	53
Black	2	0	12	25	123	4	166
Mixed	1	0	6	13	69	3	92
Other	0	0	2	5	30	2	39
White	8	7	233	356	2,039	41	2,684
Not recorded/not known	5	3	58	109	468	14	657

Sex	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Female	1%	0%	21%	19%	54%	4%	100%
Male	<0.5%	<0.5%	7%	13%	77%	2%	100%
Not recorded/not known	0%	0%	50%	50%	0%	0%	100%

Age group	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
18 to 20	1%	0%	19%	23%	56%	1%	100%
21 to 24	1%	1%	9%	19%	69%	2%	100%
25 to 29	0%	<0.5%	6%	13%	79%	2%	100%
30 to 39	<0.5%	<0.5%	8%	13%	77%	2%	100%
40 to 49	<0.5%	<0.5%	7%	11%	80%	1%	100%
50 to 59	<0.5%	0%	8%	12%	74%	5%	100%
60 to 69	0%	0%	15%	10%	75%	0%	100%
70 and over	0%	50%	0%	0%	50%	0%	100%
Not recorded/not known	-	-	-	-	-	-	-

Ethnicity ³	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Asian	0%	0%	11%	9%	77%	2%	100%
Black	1%	0%	7%	15%	74%	2%	100%
Mixed	1%	0%	7%	14%	75%	3%	100%
Other	0%	0%	5%	13%	77%	5%	100%
White	<0.5%	<0.5%	9%	13%	76%	2%	100%
Not recorded/not known	1%	<0.5%	9%	17%	71%	2%	100%

Source: Court Proceedings Database, Ministry of Justice

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

Notes:

- 1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 2) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.
- 3) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Table 2.7: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for domestic burglary, by sex, age and ethnicity, 2020

[Index](#)

Sex	ACSL (years) ^{2,3}	
	Mean	Median
Female	2.0	2.0
Male	2.4	2.4
Not recorded/not known	-	-

Age group	Mean	Median
18 to 20	2.0	1.8
21 to 24	2.2	2.0
25 to 29	2.3	2.4
30 to 39	2.4	2.4
40 to 49	2.4	2.4
50 to 59	2.7	2.4
60 to 69	2.4	2.0
70 and over	*	*
Not recorded/not known	-	-

Ethnicity ⁴	Mean	Median
Asian	1.8	1.6
Black	2.1	2.3
Mixed	2.5	2.5
Other	2.2	1.9
White	2.4	2.4
Not recorded/not known	2.3	2.3

Source: Court Proceedings Database, Ministry of Justice

* = ACSL has not been calculated where the number of offenders sentenced to immediate custody is fewer than 5.
 - = No offenders were sentenced to a determinate custodial sentence.

Notes:

- 1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 2) Excludes life and indeterminate sentences.
- 3) The statutory maximum sentence for this offence is 14 years' custody.
- 4) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Table 2.8: Sentence lengths received by adult offenders sentenced to immediate custody for domestic burglary, by sex, age and ethnicity, 2020¹

Sex	Number of adults sentenced to each sentence length (years) ^{2,3}							Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	Greater than 6 years	
Female	50	32	57	17	5	1	0	162
Male	587	527	904	355	126	52	57	2,608
Not recorded/not known	0	0	0	0	0	0	0	0

Age group	Number of adults sentenced to each sentence length (years) ^{2,3}							Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	Greater than 6 years	
18 to 20	53	57	52	11	7	4	2	186
21 to 24	76	71	70	32	12	6	8	275
25 to 29	102	104	160	65	14	6	12	463
30 to 39	209	194	366	127	46	22	15	979
40 to 49	158	110	254	109	38	10	11	690
50 to 59	34	20	57	25	13	3	9	161
60 to 69	5	3	2	2	1	2	0	15
70 and over	0	0	0	1	0	0	0	1
Not recorded/not known	0	0	0	0	0	0	0	0

Ethnicity ⁴	Number of adults sentenced to each sentence length (years) ^{2,3}							Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	Greater than 6 years	
Asian	14	9	15	2	0	1	0	41
Black	33	21	51	12	4	0	2	123
Mixed	11	13	23	17	4	1	0	69
Other	12	5	5	4	3	0	1	30
White	450	407	720	281	99	40	42	2,039
Not recorded/not known	117	104	147	56	21	11	12	468

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

Notes:

- 1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 2) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than or equal to 1 year, and '1 to 2' includes sentence lengths over 1 year, and up to and including 2 years.
- 3) The statutory maximum sentence for this offence is 14 years' custody.
- 4) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

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Sex	Proportion of adults sentenced to each sentence length (years) ^{2,3}							Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	Greater than 6 years	
Female	31%	20%	35%	10%	3%	1%	0%	100%
Male	23%	20%	35%	14%	5%	2%	2%	100%
Not recorded/not known	-	-	-	-	-	-	-	-

Age group	Proportion of adults sentenced to each sentence length (years) ^{2,3}							Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	Greater than 6 years	
18 to 20	28%	31%	28%	6%	4%	2%	1%	100%
21 to 24	28%	26%	25%	12%	4%	2%	3%	100%
25 to 29	22%	22%	35%	14%	3%	1%	3%	100%
30 to 39	21%	20%	37%	13%	5%	2%	2%	100%
40 to 49	23%	16%	37%	16%	6%	1%	2%	100%
50 to 59	21%	12%	35%	16%	8%	2%	6%	100%
60 to 69	33%	20%	13%	13%	7%	13%	0%	100%
70 and over	0%	0%	0%	100%	0%	0%	0%	100%
Not recorded/not known	-	-	-	-	-	-	-	-

Ethnicity ⁴	Proportion of adults sentenced to each sentence length (years) ^{2,3}							Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	Greater than 6 years	
Asian	34%	22%	37%	5%	0%	2%	0%	100%
Black	27%	17%	41%	10%	3%	0%	2%	100%
Mixed	16%	19%	33%	25%	6%	1%	0%	100%
Other	40%	17%	17%	13%	10%	0%	3%	100%
White	22%	20%	35%	14%	5%	2%	2%	100%
Not recorded/not known	25%	22%	31%	12%	4%	2%	3%	100%

Source: Court Proceedings Database, Ministry of Justice

Table 3.1: Number of adult offenders sentenced for aggravated burglary, all courts, 2010-2020²[Index](#)

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Crown Court	309	318	303	257	227	217	193	200	170	190	196
Total	309	318	303	257	227	217	193	200	170	190	196

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

2) Figures shown here differ from those published by the MoJ, as there were seven aggravated burglary cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

Table 3.2: Number and proportion of adult offenders sentenced for aggravated burglary, by sentence outcome, 2010-2020

[Index](#)

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Absolute and conditional discharge	0	0	0	0	0	0	0	0	0	0	0
Fine	0	0	0	0	0	1	0	0	0	0	0
Community sentence	11	4	3	0	3	1	0	2	1	0	3
Suspended sentence	15	8	3	4	2	6	2	2	1	0	7
Immediate custody	278	302	293	251	217	199	179	183	159	173	185
Otherwise dealt with ³	5	4	4	2	5	10	12	13	9	17	1
Total	309	318	303	257	227	217	193	200	170	190	196

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Absolute and conditional discharge	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Fine	0%	0%	0%	0%	0%	<0.5%	0%	0%	0%	0%	0%
Community sentence	4%	1%	1%	0%	1%	<0.5%	0%	1%	1%	0%	2%
Suspended sentence	5%	3%	1%	2%	1%	3%	1%	1%	1%	0%	4%
Immediate custody	90%	95%	97%	98%	96%	92%	93%	92%	94%	91%	94%
Otherwise dealt with ³	2%	1%	1%	1%	2%	5%	6%	7%	5%	9%	1%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 2) Figures shown here differ from those published by the MoJ, as there were seven aggravated burglary cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 3) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

Table 3.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for aggravated burglary, 2010-2020²[Index](#)

ACSL (years) ^{3,4}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Mean	4.8	4.9	6.2	6.7	6.5	8.0	7.3	7.7	8.1	7.5	7.2
Median	4.0	4.7	6.0	6.7	6.1	8.0	7.0	7.5	8.0	7.5	7.3
Indeterminates as percentage of custodial sentences ^{5,6}	9%	8%	8%	1%	<0.5%	1%	0%	0%	0%	1%	0%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 2) Figures shown here differ from those published by the MoJ, as there were seven aggravated burglary cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 3) Excludes life and indeterminate sentences.
- 4) The statutory maximum sentence for this offence is life imprisonment.
- 5) This is calculated as the number of offenders given an indeterminate custodial sentence, out of the number of offenders given a sentence of immediate custody.
- 6) For 2010-2012, the indeterminate sentence figures include the sentences of Imprisonment for Public Protection (IPP) and Extended Sentences for Public Protection (EPP). These sentences were introduced in 2005 and abolished in 2012.

Table 3.4: Sentence lengths received by adult offenders sentenced to immediate custody for aggravated burglary, 2010-2020^{1,2}

[Index](#)

Sentence length (years)^{3,4}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 2 years	29	28	12	8	5	3	2	3	1	4	6
2 to 4	104	91	50	37	41	20	19	20	17	20	19
4 to 6	67	102	94	70	62	37	43	41	30	36	42
6 to 8	31	39	69	69	66	49	59	55	45	46	58
8 to 10	11	12	29	51	29	51	39	38	36	34	40
10 to 12	7	4	15	10	12	25	11	15	18	29	17
Greater than 12 years	4	3	2	4	1	13	6	11	12	3	3
Indeterminate	25	23	22	2	1	1	0	0	0	1	0
Total	278	302	293	251	217	199	179	183	159	173	185

Sentence length (years)^{3,4}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 2 years	10%	9%	4%	3%	2%	2%	1%	2%	1%	2%	3%
2 to 4	37%	30%	17%	15%	19%	10%	11%	11%	11%	12%	10%
4 to 6	24%	34%	32%	28%	29%	19%	24%	22%	19%	21%	23%
6 to 8	11%	13%	24%	27%	30%	25%	33%	30%	28%	27%	31%
8 to 10	4%	4%	10%	20%	13%	26%	22%	21%	23%	20%	22%
10 to 12	3%	1%	5%	4%	6%	13%	6%	8%	11%	17%	9%
Greater than 12 years	1%	1%	1%	2%	<0.5%	7%	3%	6%	8%	2%	2%
Indeterminate	9%	8%	8%	1%	<0.5%	1%	0%	0%	0%	1%	0%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

2) Figures shown here differ from those published by the MoJ, as there were seven aggravated burglary cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

3) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 2 years' includes sentence lengths less than or equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.

4) The statutory maximum sentence for this offence is life imprisonment.

Table 3.5: Demographics of adult offenders sentenced for aggravated burglary, by sex, age and ethnicity, 2020^{1,2}

[Index](#)

Sex	Number of adults sentenced	Percentage of all adults sentenced⁵
Female	7	4%
Male	189	96%
Not recorded/not known	0	
Total	196	100%

Age group	Number of adults sentenced	Percentage of all adults sentenced⁵
18 to 20	36	18%
21 to 24	33	17%
25 to 29	41	21%
30 to 39	53	27%
40 to 49	25	13%
50 to 59	6	3%
60 to 69	2	1%
70 and over	0	0%
Not recorded/not known	0	
Total	196	100%

Ethnicity^{3,4}	Number of adults sentenced	Percentage of all adults sentenced⁵
Asian	6	4%
Black	11	7%
Mixed	9	6%
Other	1	1%
White	135	83%
Not recorded/not known	34	
Total	196	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

2) Figures shown here differ from those published by the MoJ, as there were seven aggravated burglary cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

3) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

4) For a proportion of adults sentenced (17%), their ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.

5) Percentage calculations do not include cases where sex, age group or ethnicity was unknown.

Table 3.6: Number and proportion of adult offenders sentenced for aggravated burglary, by sex, age and ethnicity, and sentence outcome, 2020^{1,2}

[Index](#)

Sex	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ³	
Female	0	0	0	1	6	0	7
Male	0	0	3	6	179	1	189
Not recorded/not known	0	0	0	0	0	0	0

Age group	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ³	
18 to 20	0	0	3	3	30	0	36
21 to 24	0	0	0	0	33	0	33
25 to 29	0	0	0	0	41	0	41
30 to 39	0	0	0	1	51	1	53
40 to 49	0	0	0	3	22	0	25
50 to 59	0	0	0	0	6	0	6
60 to 69	0	0	0	0	2	0	2
70 and over	0	0	0	0	0	0	0
Not recorded/not known	0	0	0	0	0	0	0

Ethnicity ⁴	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ³	
Asian	0	0	0	1	5	0	6
Black	0	0	1	0	10	0	11
Mixed	0	0	0	0	9	0	9
Other	0	0	0	0	1	0	1
White	0	0	2	6	126	1	135
Not recorded/not known	0	0	0	0	34	0	34

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

Notes:

- 1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and t subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 2) Figures shown here differ from those published by the MoJ, as there were seven aggravated burglary cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 3) Due to a data issue currently under investigation, there are a number of aggravated burglary cases incorrectly categorised in the CPD as 'Otherwise dealt with'. The figures shown for 'Otherwise dealt with' should therefore be treated with caution.
- 4) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Sex	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ³	
Female	0%	0%	0%	14%	86%	0%	100%
Male	0%	0%	2%	3%	95%	1%	100%
Not recorded/not known	-	-	-	-	-	-	-

Age group	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ³	
18 to 20	0%	0%	8%	8%	83%	0%	100%
21 to 24	0%	0%	0%	0%	100%	0%	100%
25 to 29	0%	0%	0%	0%	100%	0%	100%
30 to 39	0%	0%	0%	2%	96%	2%	100%
40 to 49	0%	0%	0%	12%	88%	0%	100%
50 to 59	0%	0%	0%	0%	100%	0%	100%
60 to 69	0%	0%	0%	0%	100%	0%	100%
70 and over	-	-	-	-	-	-	-
Not recorded/not known	-	-	-	-	-	-	-

Ethnicity ⁴	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ³	
Asian	0%	0%	0%	17%	83%	0%	100%
Black	0%	0%	9%	0%	91%	0%	100%
Mixed	0%	0%	0%	0%	100%	0%	100%
Other	0%	0%	0%	0%	100%	0%	100%
White	0%	0%	1%	4%	93%	1%	100%
Not recorded/not known	0%	0%	0%	0%	100%	0%	100%

Source: Court Proceedings Database, Ministry of Justice

Table 3.7: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for aggravated burglary, by sex, age and ethnicity, 2020²

[Index](#)

Sex	ACSL (years) ^{3,4}	
	Mean	Median
Female	5.9	6.0
Male	7.2	7.3
Not recorded/not known	-	-

Age group	Mean	Median
18 to 20	5.7	5.8
21 to 24	6.4	6.7
25 to 29	7.8	7.7
30 to 39	7.7	8.0
40 to 49	8.2	7.2
50 to 59	7.0	7.4
60 to 69	*	*
70 and over	-	-
Not recorded/not known	-	-

Ethnicity ⁵	Mean	Median
Asian	7.7	8.0
Black	7.3	7.3
Mixed	5.3	5.7
Other	*	*
White	7.2	7.1
Not recorded/not known	7.5	7.6

Source: Court Proceedings Database, Ministry of Justice

* = ACSL has not been calculated where the number of offenders sentenced to immediate custody is fewer than 5.
 - = No offenders were sentenced to a determinate custodial sentence.

Notes:

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

2) Figures shown here differ from those published by the MoJ, as there were seven aggravated burglary cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

3) Excludes life and indeterminate sentences.

4) The statutory maximum sentence for this offence is life imprisonment.

5) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Table 3.8: Sentence lengths received by adult offenders sentenced to immediate custody for aggravated burglary, by sex, age and ethnicity, 2020^{1,2}

[Index](#)

Sex	Number of adults sentenced to each sentence length (years) ^{3,4}								Indeterminate	Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	8 to 10	10 to 12	Greater than 12 years			
Female	0	1	3	2	0	0	0	0	0	6
Male	6	18	39	56	40	17	3	0	0	179
Not recorded/not known	0	0	0	0	0	0	0	0	0	0

Age group	Number of adults sentenced to each sentence length (years) ^{3,4}								Indeterminate	Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	8 to 10	10 to 12	Greater than 12 years			
18 to 20	1	7	13	6	2	1	0	0	0	30
21 to 24	2	4	9	11	5	2	0	0	0	33
25 to 29	3	0	3	19	11	5	0	0	0	41
30 to 39	0	6	9	12	19	3	2	0	0	51
40 to 49	0	0	7	6	3	5	1	0	0	22
50 to 59	0	1	1	3	0	1	0	0	0	6
60 to 69	0	1	0	1	0	0	0	0	0	2
70 and over	0	0	0	0	0	0	0	0	0	0
Not recorded/not known	0	0	0	0	0	0	0	0	0	0

Ethnicity ⁵	Number of adults sentenced to each sentence length (years) ^{3,4}								Indeterminate	Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	8 to 10	10 to 12	Greater than 12 years			
Asian	0	0	1	2	2	0	0	0	0	5
Black	0	1	3	3	2	1	0	0	0	10
Mixed	2	2	1	2	2	0	0	0	0	9
Other	0	0	1	0	0	0	0	0	0	1
White	3	12	32	38	25	13	3	0	0	126
Not recorded/not known	1	4	4	13	9	3	0	0	0	34

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

Notes:

- 1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 2) Figures shown here differ from those published by the MoJ, as there were seven aggravated burglary cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 3) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 2 years' includes sentence lengths less than or equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.
- 4) The statutory maximum sentence for this offence is life imprisonment.
- 5) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Sex	Proportion of adults sentenced to each sentence length (years) ^{3,4}								Indeterminate	Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	8 to 10	10 to 12	Greater than 12 years			
Female	0%	17%	50%	33%	0%	0%	0%	0%	0%	100%
Male	3%	10%	22%	31%	22%	9%	2%	0%	0%	100%
Not recorded/not known	-	-	-	-	-	-	-	-	-	0%

Age group	Proportion of adults sentenced to each sentence length (years) ^{3,4}								Indeterminate	Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	8 to 10	10 to 12	Greater than 12 years			
18 to 20	3%	23%	43%	20%	7%	3%	0%	0%	0%	100%
21 to 24	6%	12%	27%	33%	15%	6%	0%	0%	0%	100%
25 to 29	7%	0%	7%	46%	27%	12%	0%	0%	0%	100%
30 to 39	0%	12%	18%	24%	37%	6%	4%	0%	0%	100%
40 to 49	0%	0%	32%	27%	14%	23%	5%	0%	0%	100%
50 to 59	0%	17%	17%	50%	0%	17%	0%	0%	0%	100%
60 to 69	0%	50%	0%	50%	0%	0%	0%	0%	0%	100%
70 and over	-	-	-	-	-	-	-	-	-	0%
Not recorded/not known	-	-	-	-	-	-	-	-	-	0%

Ethnicity ⁵	Proportion of adults sentenced to each sentence length (years) ^{3,4}								Indeterminate	Total
	Less than 2 years	2 to 4	4 to 6	6 to 8	8 to 10	10 to 12	Greater than 12 years			
Asian	0%	0%	20%	40%	40%	0%	0%	0%	0%	100%
Black	0%	10%	30%	30%	20%	10%	0%	0%	0%	100%
Mixed	22%	22%	11%	22%	22%	0%	0%	0%	0%	100%
Other	0%	0%	100%	0%	0%	0%	0%	0%	0%	100%
White	2%	10%	25%	30%	20%	10%	2%	0%	0%	100%
Not recorded/not known	3%	12%	12%	38%	26%	9%	0%	0%	0%	100%

Source: Court Proceedings Database, Ministry of Justice

Annex E

Domestic burglary

Theft Act 1968 (section 9)

Triable either way (except as noted below)

Maximum: 14 years' custody

Offence range: Low level community order- six years' custody

This is a **specified offence** for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code if it was committed with intent to:

- a. inflict grievous bodily harm on a person, or
- b. do unlawful damage to a building or anything in it.

This offence is **indictable only** where:

- a. it is a burglary comprising the commission of, or an intention to commit, an offence which is triable only on indictment; or
- b. any person in the dwelling was subjected to violence or the threat of violence; or
- c. if the defendant were convicted, it would be a third qualifying conviction for domestic burglary.

Where sentencing an offender for a qualifying **third domestic burglary**, the Court must apply [section 314 of the Sentencing Code](#) and impose a custodial term of at least three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.

STEP ONE

Determining the offence category

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

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

Culpability demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Targeting of vulnerable victim• A significant degree of planning or organisation• Knife or other weapon carried (<u>see step six on totality when sentencing more than one offence</u>)
B- Medium culpability	<ul style="list-style-type: none">• Some degree of planning or organisation• Equipped for burglary (where not in high culpability)• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Offence committed on impulse, with limited intrusion into property• Involved through coercion, intimidation or exploitation• Mental disorder or learning disability, where linked to the commission of the offence

Harm

The level of harm is assessed by weighing up all the factors of the case

Category 1	<ul style="list-style-type: none">• <u>Violence used/serious violence threatened against the victim</u>• <u>Substantial physical or psychological injury or substantial emotional or other injury on the victim</u>• <u>Persons(s) on premises or returns or attends while offender present</u>• Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value)• Soiling of property and/or extensive damage or disturbance to property• <u>Offence committed in the context of public disorder</u>
Category 2	<ul style="list-style-type: none">• _____

	<ul style="list-style-type: none"> • <u>Violence threatened but not used against the victim (where not at category 1)</u> • <u>Moderate physical or psychological injury or some emotional or other impact on the victim</u> • Theft of/damage to property causing <u>a moderate some</u> degree of loss to the victim (whether economic, commercial or personal value) • <u>Moderate damage or disturbance</u> to property
Category 3	<ul style="list-style-type: none"> • <u>Limited physical or psychological injury or limited emotional or other impact on the victim</u> • Nothing stolen or only property of low value to the victim (whether economic, commercial or personal) • Limited damage or disturbance to property

STEP TWO

Starting point and category range

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

Where sentencing an offender for a qualifying **third domestic burglary**, the Court must apply [section 314 of the Sentencing Code](#) and impose a custodial term of at least three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under [part 10](#), or an alcohol treatment requirement under [part 11](#), of Schedule 9 of the Sentencing Code may be a proper alternative to a short or moderate custodial sentence.

For cases of particular gravity, sentences above the top of the range may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	Starting Point 3 years' custody Category Range 2 -6 years' custody	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 year 6 months' custody Category Range 6 months – 3 years' custody
Category 2	Starting Point 2 years' custody	Starting Point	Starting Point 1 years' custody

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

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

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Child at home (or returns home) when offence committed
- Offence committed at night
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim (where not already taken into account at step one)
- Victim compelled to leave their home
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability, where not linked to the commission of the offence
- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the *Reduction in Sentence for a Guilty Plea* guideline. Where a minimum sentence is imposed under [section 314 of the Sentencing Code](#), the sentence must not be less than 80 percent of the appropriate custodial period after any reduction for a guilty plea.

STEP FIVE

Dangerousness

A burglary offence under section 9 Theft Act 1968 is a specified offence if it was committed with the intent to (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it. The court should consider whether having regard to the criteria contained in [section 308 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

STEP SIX

Totality principle

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

STEP SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders. The court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

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

STEP EIGHT

Reasons

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

STEP NINE

Consideration for time spent on bail (tagged curfew)

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

Sentencing Council meeting:
Paper number:

28 January 2022
SC(22)JAN03 – Priorities for the next 12 months

Lead Council member:
Lead official:

N/A
Steve Wade
Steve.wade@sentencingcouncil.gov.uk

1 ISSUE

1.1 To agree the Council's immediate priorities for upcoming guidelines over the next few months.

2 RECOMMENDATION

2.1 That the Council agrees to the ordering of priorities as outlined below.

3 CONSIDERATION

Background information

3.1 The Council published its most recent business plan on 19 May 2021 (Annex A). Due to the combination of issues arising from the Covid-19 situation and our (then) ongoing deliberations to finalise our 5-year strategy, the business plan covered two years: 2019/20 (retrospectively) and 2020/21. Ordinarily each year's business plan includes a rolling 3-year work plan that is then updated annually. Given at the time of publication of our most recent plan, the Council was still settling its priorities for the next five years it only included a workplan covering the period April 2020 – Mar 2022. This was so as not to overcommit ourselves in advance of finalising our longer-term priorities.

3.2 As the Council will be aware, we have had a number of changes in staffing over the last few months. With Lauren's arrival the Analysis and Research team is now at full strength as she fills Charlotte's old role, while Charlotte covers Amber's role during her maternity leave (however, we anticipate another staff change by early April which is likely to leave another vacancy in the team for at least a short period). On the policy side of the office, although Zeinab's arrival to cover Vicky's maternity leave meant we were very briefly at full strength we have since lost Lisa and now advertising to fill her role: this will likely not be filled until April.

3.3 In addition to our usual work schedule of producing and revising guidelines we of course now have a wider range of work across the office to take forward our strategic objectives for 2021-26, which will require input and resource from across the office.

3.4 Today's discussion is to make decisions on what the ordering of guidelines should be in terms of priorities for the policy team to pick up as they become available. Those decisions will then feed into this year's business plan which is due to come to Council to be considered at our March meeting for publication in April. This will be the first business plan under our new 5-year strategy and will revert to our usual practice of including a rolling plan for the next 3 years.

Discussion

3.5 In terms of sentencing guidelines our current activity is as follows:

- Motoring Offences (minus some guidelines that the Council agreed to remove in order to be able to consult as soon as possible on the most serious offences that have been out of date for some time) – currently at the drafting stage;
- revision of Terrorism – consultation now closed but yet to commence post-consultation work;
- Underage Sale of Knives – currently at the drafting stage
- Minor Amendments (the first of what will be an annual update of minor or consequential amendments to guidelines) – currently being revised post-consultation;
- revision of Sex Offences – currently being revised post-consultation;
- Perverting the Course of Justice – currently at the drafting stage;
- revision of Burglary – currently being revised post-consultation;
- revision of Totality – currently at the drafting stage; and
- Animal Cruelty – currently at the drafting stage.

3.6 All the above guidelines have previously been identified by the Council as priorities and significant work has been put into all of them. There are no compelling reasons to cease or pause work on any of them and the rationale for each remains strong. We propose to continue with each of these (absent any compelling reason that may arise to give us reason to reconsider) through to their completion.

Question 1: Do you agree we should continue as is with the guidelines above?

3.7 You will note that, taking into account the work in progress above, there are relatively few remaining guidelines listed in the current business plan at Annex A, that are not either in progress or already completed. Those yet to be started are:

- Immigration Offences;
- the remaining Motoring Offences; and
- Cybercrime.

3.8 Of these, both Immigration offences and the remaining Motoring offences (Motoring 2) have been at the top of our work plan for some time. Each would have been taken forward already (Immigration offences alongside Modern Slavery offences, the motoring offences as part of the main guideline) were they not to have been disconnected from other guidelines and paused. For each, when Council made the decision to pause it was on the basis that they would be picked up again as soon as time allowed. Immigration offences have been listed for some time as our next guidelines in business plans. The one potential reason to pause on Immigration was that previously Government was planning to legislate in this space but that legislation is nearly complete with Royal Assent expected in March, with high profile changes to the criminal law and raised maximum penalties. We therefore propose that these two guidelines are to be picked up when policy resource becomes free.

Question 2: Do you agree we should pick up Immigration and Motoring (2) as our next two guidelines?

3.9 Cybercrime is in a slightly different position. Despite it being on our work programme for some time, and currently listed in our business plan, no work of any real substance has been committed this far and we have not had any representations from others to pick it up for some years now. When Council considered the potential scope for such a guideline previously, once those 'cyber offences' that are already covered by other guidelines are excluded (e.g. digital fraud, online public order offences, sexual offending committed via digital medium) the offences not yet covered are probably limited to computer hacking offences. We therefore propose keeping it on our list but, unless we receive further representations as to why it is a priority, or become aware of a more pressing reason to start work, we propose parking it for the moment until some of the guidelines listed below are picked up.

3.10 In addition to the work above (that is either ongoing or had otherwise already been identified as a priority) other possible guideline work that has arisen since last year includes:

- any revisions that may be necessary as a result of recently announced changes to increase magistrates' sentencing powers from 6 months' custody to 12 months' custody.

- any other revisions consequent to the various provisions of the Police, Crime, Sentencing and Courts (PCSC) Bill not covered specifically below;
- revisions to Child Cruelty guidelines resulting from changes under the PCSC Bill to increase statutory maxima;
- revisions/ additions to the Intimidatory guidelines resulting from changes under the Domestic Abuse Act 2021 to create a new offence of threats to disclose private photographs and films with intent to cause distress, which commenced in June 21, and to create a new offence of non-fatal strangulation or suffocation, which is to be commenced spring 2022;

possible revisions/additions to the Bladed articles/offensive weapons guidelines resulting from provisions in the Offensive Weapons Act 2019 due to be commenced spring 2022 (we are also currently in the middle of an evaluation of this guideline which may also necessitate changes);

- Creation of a guideline covering the new offence of pet abduction.

3.11 Taking these in order, the changes relating to magistrates' sentencing powers should require relatively little work. Most either way guidelines already refer to 'the statutory maximum' as opposed to 'six months' imprisonment' and Ruth has already made some minimal amendments to a few guidelines that did not have the more general wording. There will be some other textual amendments to a few specific guidelines that will be required but it does not appear at present that the change to 12 months requires anything more substantial by way of amendment to guidelines. We therefore intend to take forward any necessary changes as soon as possible but are confident the resource requirements (on Ruth's side) will not be great and can be fitted in alongside the more substantial work that is ongoing.

3.12 There are a number of more detailed changes that may be required to guidelines relating to changes to the PCSC Bill, some of which may require minor changes to Imposition. We are also currently evaluating the Imposition Guideline which may itself result in the guideline requiring amendment and much if the work we are doing on effectiveness as part of the 5-year plan may also raise the possibility of amending Imposition. All of these potential changes are likely to require a little more drafting and at least some changes that are more than technical in nature (as opposed merely to updating wording). Again, we intend to take forward any such changes as a priority but our provisional view is that this year's Miscellaneous Amendments consultation is the best vehicle to achieve this. We propose that Ruth continues to maintain a watch on the Bill and brings a paper for discussion once this has been finalised and we are clearer of what changes are required. Again, we do not see this as

requiring significant resource and will be picked up in the now usual annual process of miscellaneous amendments.

Question 3: Do you agree that we should take forward consequential amendments arising from the PCSC Bill and the changes to magistrates' sentencing powers as soon as practicable?

3.13 Both the change to the statutory maxima for serious offences under the Child Cruelty guidelines, as well as the two new offences introduced as a result of the Domestic Abuse Act 2021, seem to us to be significant changes to areas that require a response sooner rather than later. The child cruelty changes are a significant change to offences in an existing guideline and we believe there is merit in amending those guidelines as a priority. This would be a self-contained discrete project. Although the non-fatal strangulation and threats to disclose offences are new, they again cut across existing offences for which there are guidelines and we feel there is merit in drafting new guidelines for these as a priority. However, given they are new, we propose that we hold off starting work until we have an opportunity to see how many of the new offences are brought, and what their essential features are, before fully committing and starting work. With that proviso, we propose that the two new offences are dealt with together as one small project.

Question 4: Do you agree that we should take forward two separate projects to deal with the changes to the Child Cruelty statutory maxima and the new Domestic Abuse legislation offences as the next two priority projects (the DA offences once sufficient cases have been brought)?

3.14 There are also a number of changes that may require changes to the scope of the current work on Under-age Sale of Knives and our Bladed Articles guidelines. There are changes to legislation in the Offensive Weapons Act 2019 due to be commenced in the next few months that will bring in measures to strengthen the law on the sale and delivery of knives to under 18s and delivery to residential premises. There is an argument for including these in the current underage sale of knives project **and Ruth will discuss this in a paper to the Council in March**. There are also new offences relating to the sale, delivery and possession of corrosive substances which could be added to the current suite of guidelines relating to bladed articles and offensive weapons as well as other provisions that may require minor changes to the existing guidelines. One option would be to make any small changes required by legislation as part of the miscellaneous amendments in 2022/23 and to await more detail on the volume and nature of cases for new offences before embarking on new guidelines. In addition, Emma's team is currently taking forward the evaluation of the Bladed Articles and

Offensive weapons guidelines and we should have the results of that by the summer; further argument that we hold fire for now on anything other than immediately necessary changes.

Question 5: Do you agree that we should take forward any immediately necessary amendments as part of the next miscellaneous amendments consultation and pause on more substantive work until we have the result of the evaluation and more detail on the volume and nature of any cases for the new legislation?

3.15 Finally in this category we have the new pet abduction offence. This is a novel offence and at present it is impossible to predict the range or volume of cases that may come to the courts under this offence or what the most salient features will be. We feel to rush to produce a guideline would be precipitous and that we are better off waiting to see how the offence beds in, what cases come to the courts, and how they are dealt with before embarking on a guideline. We therefore propose putting this on the longer list to be considered in due course.

Question 6: Do you agree that we should pause any work on a pet abduction guideline for now?

3.16 Finally, there are a number of guidelines that we have kept on our 'long list' of potential guidelines to be picked up once our current workplan is complete. These are:

- Vehicle Excise and Registration Act offences;
- Blackmail;
- Kidnap and False Imprisonment;
- Wildlife offences;
- Fire Regulation offences;
- Landlord offences and offences relating to houses of multiple occupation;
- Data Protection Offences;
- Female Genital Mutilation;
- Child Abduction;
- Offences against vulnerable adults;
- Sentencing of Young Adults;
- Prisoner Offences;
- Sentencing of (much) older adults;
- Sentencing of Women

3.17 This is quite a mixed assortment of offences/ issues! A number of these offences are ones that we have captured as they were raised as part of the 'Vision' consultation or which we have skirted around for various reasons over the last few years: female offenders/ a fuller guideline on young adults etc. Our 5-year strategy proposes to revisit the need for some of these guidelines as a result of other work we are doing or research undertaken (for example, an evaluation of the Expanded Evaluations which has not yet started) and so there is a rationale for leaving these here for the moment. Others are here either because others may have raised them in the past (fire regulation offences), but we have had no recent strong representations or evidence that a guideline is needed; others because we thought there may be pressure to pick them up as a result of other guidelines (FGM offences for example) but that pressure, or any strong evidence of a need, has not yet materialised. Most of these therefore seem safe to leave on this 'long list'. However the first three items on the list are ones that we feel merit moving up to be on our current priorities list (albeit at the back end). Vehicle Excise and Registration Act offences are relatively minor and rarely prosecuted but are still current and are the very final offences for which there is an SGC guideline. We therefore do need to pick them up at some point for completeness. Blackmail and offences of Kidnap and False Imprisonment are serious offences with not insignificant numbers and are offences for which the Council has previously felt there would be some merit in producing a guideline. The scope of kidnap and false imprisonment could also potentially be broadened to include Child Abduction if it was felt to be appropriate.

Question 7: Do you agree that these three offences should be moved up to the end of the current priorities list?

3.18 Below is a final version of the proposed priority list categorised as either (1) – immediate next guidelines high priority (2) – medium priority and (3) – lower priority. Depending on decisions as we have gone through this paper, the proposed ordering is:

- Motoring '2' – 1
- Immigration – 1
- Amends resulting from magistrates' sentencing powers – 1 (within Ruth's work schedule)
- PCSC wider changes arising – 1 (next Misc. Amends consultation)
- Possible PCSC minor changes to Imposition – 1 (possibly next Misc. Amends consultation)
- New Domestic Abuse Act offences – 2

- Child Cruelty statutory max changes – 2
- Bladed articles and other dangerous weapons - 2 (necessary changes only by way of next Misc. Amends consultation)
- Vehicle Excise and Registration Act Offences – 3
- Kidnap and False Imprisonment (possibly including child abduction) – 3
- Blackmail – 3
- Cybercrime (hacking) – 3

Question 8: Do you agree that this is the correct list of priorities and the correct ordering of those priorities?

4 RISKS AND ISSUES

4.1 It should be noted that this paper has just been to agree the list and ordering of priorities. Timing for when each guideline is picked up will depend on when policy and analytical resource becomes available and will need to be balanced against the other 'non-guideline' elements to our 5-year plan. In addition, our ongoing evaluations of existing guidelines could throw up additional work that may require revision of guidelines not currently on our existing plans. Our business plan (due for discussion in March) will set out the fuller range of work we are undertaking and the indicative timings for the guidelines listed above.

4.2 As ever, the work programme is dependent on us continuing to have the same level of resources currently assigned to us and there not being any other changes or requests that might affect the ordering of priorities above. Currently we expect our budget to remain at least at current levels for the next FY.

4.3 However, in any event, our business plan always makes clear that the published work programme is subject to change depending on new priorities arising. Were anything significant to materialise, we would come back to the Council to seek a decision on whether to amend the work programme.

Sentencing Council

Business Plan **Financial years 2020/21 and** **2021/22**

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Sentencing Council

Chairman's introduction



I am pleased to present the Sentencing Council's eighth business plan, setting out the Council's aims for the financial years 2020/21 and 2021/22.

This past year has clearly been an unusual one and the Council, like every other organisation, has had to change its plans and adapt its ways of working as a result of the pandemic. 2020 saw the milestone of the 10th anniversary of the Sentencing Council, and we have spent time reflecting on the achievements of the Council's first decade and considering our objectives and challenges for the years ahead. We extended our consultation on the Council's future direction 'What Next for the Sentencing Council?' to account for the pandemic. The future priorities set out here are therefore provisional until the Council has finalised a response to that consultation. This also accounts for the business plan covering two years of the Council's activities, with our future objectives subject to decisions which may emerge from the findings of the consultation on the Council's vision.

Regardless of the change in circumstances, it is important to record the work that the Council continues to do to produce new guidelines, revise existing ones and assess the impact of guidelines on sentencing. In 2020/21 the Council has published two new definitive guidelines: an overarching guideline for use when sentencing offenders with mental disorders, developmental disorders, or neurological impairments; and offence specific guidelines for firearms offences. We have also published major revisions to existing guidelines, including amendments to the sentencing guidelines used by the magistrates' courts, which came into effect in October 2020, and changes to the sentencing guidelines for drug offences, which are due to come into force in April 2021.

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

organisations who give their valuable time to contribute to our consultations, and who help us to make improvements before publishing definitive guidelines.

In 2020/21 consultations have taken place on proposed revisions to the assault and attempted murder sentencing guidelines, and on new guidelines for unauthorised use of a trade mark and for offences under the Modern Slavery Act 2015. We continue to work on these guidelines and revisions with the aim of finalising and publishing them during the first half of the financial year 2021/22. We also plan in 2021/22 to launch consultations on the following:

- revisions to the 2012 burglary guidelines,
- revisions to the 2014 sexual offences guidelines (following a request from the Court of Appeal) alongside a new guideline for sexual communication with a child;
- a new guideline for firearms importation offences;
- new and revised guidelines for immigration offences; and
- revisions to the 2018 terrorism offence guidelines and the 2008 Sentencing Guidelines Council guidelines on motoring offences (see below).

In addition to publishing guidelines, the Council is required to monitor and evaluate their operation and effect. In 2020/21, we have published our evaluation of the dangerous dogs sentencing guideline, as well as evaluations of two overarching guidelines: *Reduction in Sentence for a Guilty Plea* and *Sentencing Children and Young People*.

2020/21 has seen the release of data on the factors taken into account when sentencing offences of theft from a shop or stall, the first publication of magistrates' courts data since the Council moved to conducting bespoke data collections in courts. We are currently running a further data collection in magistrates' courts to collect information to feed into the evaluation of three assault guidelines and two criminal damage guidelines. This will run until early May 2021.

The Council is also furthering its work in the area of equality and diversity. In the past year we have included information in both the new firearms offences guidelines and the revised drug offences guidelines highlighting disparities in sentencing outcomes in these areas. We are now in the process of commissioning a research project to examine the potential for our guidelines to cause disparities in sentencing. This will include a review of the language used, the structure of guidelines, and whether any aspects of the way in which we develop guidelines could have any implications for equalities and disparity in sentencing. The review will also consider how the Council may best engage with underrepresented groups to increase awareness and understanding of sentencing guidelines. This is work of vital importance in helping to maintain confidence in the criminal justice system and I look forward to seeing the results of this review in due course.

In addition, we aim to publish a number of other items of research in the year 2021/22. These include the research already conducted on judicial attitudes to sentencing guidelines, consistency in sentencing and on the changes in sentencing severity and requirements for prison places associated with the Sentencing Council's guidelines. We are also currently undertaking a small piece of exploratory work on

the Council's Totality guideline to consider whether we need to revisit this. As always, each consultation on new guidelines or revisions of existing ones will be accompanied by a draft resource assessment.

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

For example, the Police, Crime, Sentencing and Courts Bill is currently before Parliament, arising in part from the Government's 2020 White Paper 'A Smarter Approach to Sentencing'. This legislation may well require alterations to a wide range of existing guidelines, including those for causing death by driving. We also anticipate the enactment of the Counter-Terrorism and Sentencing Bill, which will require changes to existing guidelines. We therefore plan to consult on revisions to the existing guidelines on terrorism offences and motoring offences during the year 2021/22. These and other such changes may have an impact on our budget and resources, and work may have to be either brought forward or pushed back to accommodate new requests.

Since April last year, the Council has seen a number of changes of personnel. In June 2020 Mr Justice Julian Goose concluded his term of appointment. I would like to take this opportunity to thank Julian for his valuable contribution to the work of the Council over 6 years.

In 2020 we have seen the appointment of Assistant Commissioner Nick Ephgrave as the Police representative on the Council; Mrs Justice Juliet May from the High Court; and Mrs Jo King JP as a representative from the magistrates' courts. We welcome them all warmly to the Council.

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

A handwritten signature in black ink, appearing to read 'Tim Hinchey', enclosed in a thin black rectangular border.

April 2021

Background and membership

The Sentencing Council is an independent, non-departmental public body (NDPB) of the Ministry of Justice (MoJ). It was set up by Part 4 of the Coroners and Justice Act 2009 (“the Act”) to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary. Its primary role is to issue guidelines, which the courts must follow unless it is in the interests of justice not to do so. The Council generally meets 10 times a year, although an extraordinary meeting was held in February 2021; minutes are published on its website.

Appointments to the Council

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

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

All appointments are for a period of three years, with the possibility of extending up to a maximum of 10 years. Membership of the Council as of 1 March 2021 is as follows:

Members

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

Chair: The Right Honourable Lord Justice Holroyde

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

Vice-Chair: The Right Honourable Lord Justice Fulford

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

Rosina Cottage QC

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

The Honourable Mrs Justice McGowan DBE

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

Her Honour Judge Rebecca Crane

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

Her Honour Judge Rosa Dean

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

Dr Alpa Parmar

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

Beverley Thompson OBE

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

Max Hill QC

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

Diana Fawcett

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

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

District Judge (Magistrates' Courts) Michael Fanning

Mike Fanning was appointed as a District Judge in 2012. He works between the magistrates' and youth courts in West Yorkshire and also sits as an extradition judge in London. He was appointed a Recorder of the Crown Court in 2019 and joined the Sentencing Council with effect from 1 September 2019. He is also a prison adjudicator.

Nick Ephgrave

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

Jo King JP

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

The Honourable Mrs Justice May DBE

Juliet May was called to the Bar by the Inner Temple in 1988, becoming a bencher in 2010. She was appointed a recorder in 2001 and took silk in 2008, being appointed to the Circuit

Bench later the same year. She was appointed to the High Court (Queen's Bench Division) in 2015. From 2016-2020 she was a Presiding Judge on the Western Circuit. Dame Juliet was appointed to the Sentencing Council on 8 October 2020.

Sub-groups

The Council has sub-groups to provide oversight in three areas: analysis and research, confidence and communications and governance. The sub-groups' roles are mandated by the Council and all key decisions are made by the full membership. The sub-groups are internal rather than public-facing.

Objectives

Statement of Purpose

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

Objectives

The Council's objectives are informed by its statutory duties under the Act.

We will:

- 1. Prepare sentencing guidelines that meet their stated aims, with particular regard to the likely impact on prison, probation and youth justice services, the impact on victims, the need to promote consistency and public confidence, and the cost of different sentences and their relative effectiveness in preventing reoffending.**

This will be met by:

- developing evidence-based guidelines, fully considering the policy, legal and resource implications;
- publishing consultations which clearly set out the rationale for the approach and likely resource implications;
- taking into account responses and research to make improvements before publication of definitive guidelines; and
- engaging with stakeholders, practitioners, the media and others to explain the implications of guidelines.

- 2. Monitor and evaluate the operation and effect of our guidelines and draw conclusions**

This will be met by:

- putting in place bespoke, targeted evaluations and assessments of the impact and/or implementation of guidelines and collecting the necessary monitoring data; and
- by using evaluation evidence to review and, if necessary, amend guidelines.

- 3. Promote awareness of sentencing and sentencing practice**

This will be met by:

- making effective use of consultation events, proactive engagement of the media, and maximising the Council's digital capability and online presence to promote awareness and to improve and strengthen engagement with stakeholders; and
- by publishing relevant material, in particular evaluations of guidelines and an annual report of the Council's activities.

- 4. Deliver efficiencies, while ensuring that the Council continues to be supported by high-performing and engaged staff**

This will be met by:

- delivering our objectives within the budget we are allocated;

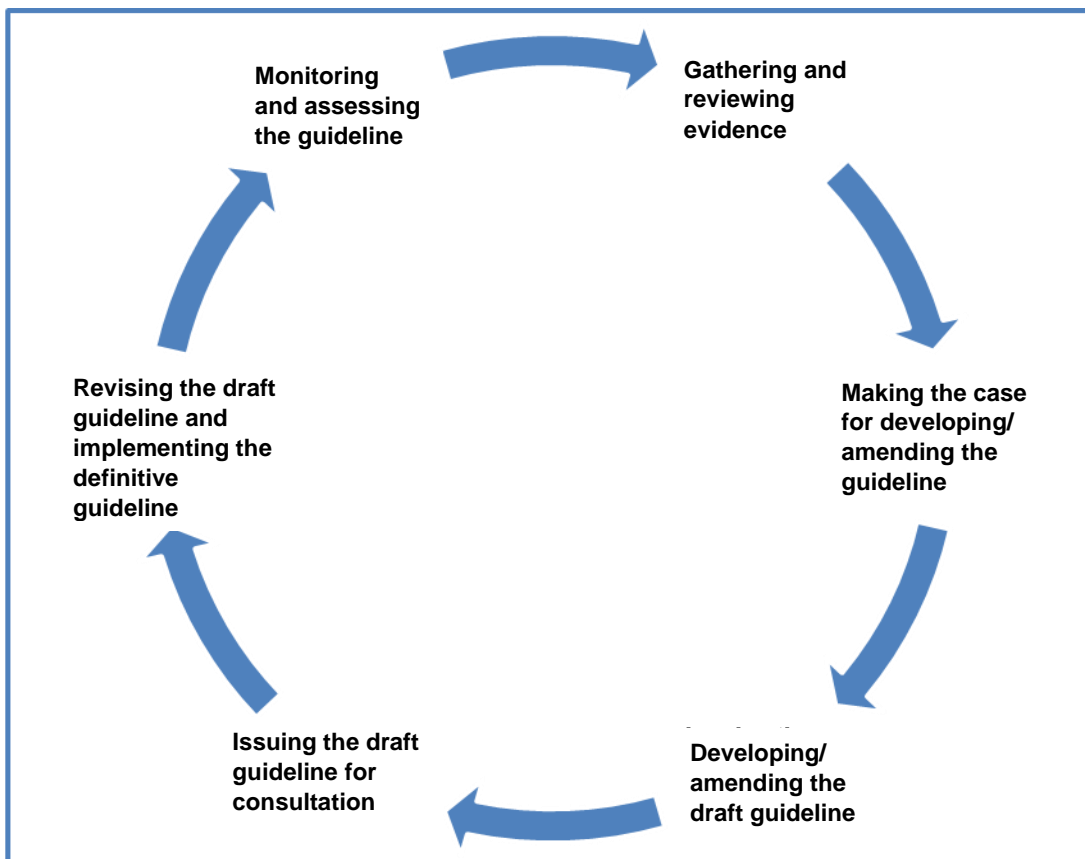
- ensuring that the Office has a motivated and collaborative team who feel valued and engaged, and have the necessary capability and autonomy to deliver clear objectives; and
- working together to identify and implement more efficient ways of working and to ensure value for money.

The activities for 2020/21 and 2021/22 to deliver these objectives are outlined in **Table 1**.

Delivering the Sentencing Council’s objectives

The Council approaches the delivery of its objectives by adopting a guideline development cycle. This is based on the policy cycle set out by HM Treasury in the *Green Book on Appraisal and Evaluation in Central Government (2003)* and allows a culture of continuous improvement to be embedded within the development process.

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



Making the case for developing/amending the guideline

Annex A outlines the Council’s rationale for prioritising which guidelines to produce (or which existing guidelines to amend), after which options for the actual guideline are considered. This may include conducting research, assessing options for the scope and remit of a guideline, its objectives, or whether there is in fact a need for the guideline. If the guideline has been requested by the Lord Chancellor, Lord Chief Justice, Court of Appeal or a substantial body of interested parties, this would also be given due consideration.

We are considering as part of the work on the future vision for the Council whether these considerations remain the right ones or whether they could usefully be refreshed.

Developing/amending the draft guideline

Once the Council has decided that a new guideline will be produced, or an existing one amended, and has agreed the objectives, work is undertaken to produce a draft guideline that will be issued for consultation. This involves a variety of different activities including consideration of relevant case law and existing sentencing guidelines or guidance; analysis of current sentencing practice; research and analysis to assess any practical, behavioural or resource implications of draft guideline proposals; stakeholder mapping and engagement and analysis of media reports. The guideline proceeds through a number of iterations of drafting in order to ensure that different options are fully considered. A monitoring and evaluation strategy is also drawn up to ensure that the guideline can be assessed and evaluated after implementation.

Issuing the draft guideline for public consultation

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

Revising the draft guideline and implementing the definitive guideline

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

The guideline is published online on the Council's website. Updated data on sentencing practice and a new resource assessment to reflect the final guideline are published at the same time, and a link to the guideline is sent electronically to stakeholders. The media are briefed, and a range of channels, including social media, is used to ensure that the public is informed and that all key parties are aware of and able to access the guideline.

The Council works with the Judicial College to help facilitate training for sentencers on using the guideline. There will generally be an implementation period before the guideline comes into effect to allow for awareness-raising and any training to take place.

Monitoring and assessing the guideline

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

We use a range of different methods for evaluations, drawing on analysis of existing data on sentencing trends over time, collection of data from sentencers on the factors that influence their sentencing of different offences, interviews and focus groups, and content analysis of

Crown Court sentencing transcripts; if possible data will be collected “before” the guideline comes into force as well as “after” in order to provide a comparison between the two time periods.

A variety of different methods of data collection and analysis may therefore be utilised, both quantitative and qualitative, as necessary.

Gathering and reviewing evidence

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

Timing and prioritisation

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

Table 1: The main activities to deliver our objectives and planned timescales are as follows:

Work area	Objectives addressed	Key planned deliverables	Target (end of quarter)
SECTION 1: GUIDELINES			
Assault and Attempted Murder	1, 2, 3	Publication of consultation, resource assessment and statistical bulletin	Quarter 1 2020/21
		Publication of revised definitive guideline, consultation response, and resource assessment	Quarter 1 2021/22
Offenders with mental disorders	1, 2, 3	Publication of definitive guideline, consultation response, and resource assessment	Quarter 2 2020/21
Unauthorised use of a trade mark	1, 2, 3	Publication of consultation, resource assessment and statistical bulletin	Quarter 2 2020/21
		Publication of definitive guideline, consultation response, and resource assessment	Quarter 2 2021/22
Dangerous dogs	2, 3	Publication of findings from guideline assessment	Quarter 3 2020/21
Magistrates Courts Sentencing Guidelines	1, 2, 3	Publication of revised guidelines, consultation response and updated resource assessment	Quarter 3 2020/21
Modern Slavery offences	1, 2, 3	Publication of consultation, resource assessment and statistical bulletin	Quarter 3 2020/21
		Publication of definitive guideline, consultation response, and resource assessment	Quarter 2 2021/22
Reduction in Sentence for a Guilty Plea	2, 3	Publication of findings from guideline assessment	Quarter 3 2020/21

Sentencing Children and Young People	2, 3	Publication of findings from guideline assessment	Quarter 3 2020/21
Firearms offences	1, 2, 3	Publication of definitive guideline, consultation response, and resource assessment	Quarter 3 2020/21
Drugs	1, 2, 3	Publication of revised guidelines, consultation response and updated resource assessment	Quarter 4 2020/ 21
Sex offences (revision)	1, 2, 3	Publication of consultation, resource assessment and statistical bulletin	Quarter 1 2021/22
Burglary (revision)		Publication of consultation, resource assessment and statistical bulletin	Quarter 1 2021/22
		Publication of revised guideline, consultation response, and resource assessment	Quarter 4 2021/22
Firearms importation	1, 2, 3	Publication of consultation, resource assessment and statistical bulletin	Quarter 1 2021/22
Breach guideline	2, 3	Publication of findings from guideline assessment	Quarter 4 2021/22
Bladed Articles and offensive weapons	2, 3	Publication of findings from guideline assessment	Quarter 4 2021/22
SECTION 2: CROSS-CUTTING WORK			
Future Vision	1, 2, 3, 4	Development of future strategic direction for Sentencing Council post 2020	Ongoing throughout 2020-21
		Publication of response to future strategic direction consultation: What next for the Sentencing Council?	Quarter 2 2021/22
Digitisation of guidelines	3	Continue to maintain, refine and support online and offline versions of sentencing guidelines for magistrates (MCSG)	Ongoing
	3	Continue to maintain, refine and support online and offline versions of sentencing guidelines for Crown Court Judges	Ongoing

	3	Launch of redeveloped Sentencing Council website	Quarter 3 2020/21
Research on attitudes to guidelines	2	Publication of research report on attitudes to guidelines	Quarter 1 2021/22
Research on consistency in sentencing	2	Publication of research report on consistency in sentencing	Quarter 1 2021/22
Research on cumulative impacts of guidelines on sentencing severity and prison places	2	Publication of research report on cumulative impacts of guidelines	Quarter 1 2021/22
Research on equality and diversity issues related to guidelines	1, 2	Publication of research report on equality and diversity issues related to guidelines	Quarter 4 2021/22
Sentencing Competition	3	Sentencing Competition results announced	Quarter 1 2020/21
Annual Report	3	Publish 2019-20 Annual Report	Quarter 1 2020/21
		Publish 2020-21 Annual Report	Quarter 1 2021/22
Business Plan	3	Publish 2020/21 and 2021/22 version of rolling 2-3 year plan	Quarter 1 2021/22
References received from Lord Chancellor or Court of Appeal under section 124	1, 2, 3	Respond as required	Reactive only
External representation	1, 3	Council members and office staff speak at external events throughout the year targeting the judiciary, criminal justice practitioners, academics and special interest groups.	Ongoing

	3	Promote sentencing guidelines and the Council using all channels, including via proactive and positive engagement with the media, to engage with Government, its Arm's Length Bodies, the Judicial College and organisations with an interest in criminal justice and sentencing.	Ongoing
	3	Promote public confidence in sentencing by tailoring and targeting our external communications, developing relationships with key advocates such as the police service and developing the public-facing content of our website.	Ongoing
	3	Provide assistance to foreign jurisdictions via visits, advice and support work.	Ongoing
SECTION 3: EFFICIENCY AND OUR PEOPLE			
Efficiency	4	<p>Publishing all guidelines and other documents online, with the exception of the annual report.</p> <p>Ensure value for money in the procurement of goods and services, making savings where possible, in particular from printing costs and complying with departmental finance, procurement and contract management rules.</p> <p>Learn from lessons of each project, making improvements to future guidelines as a result; and improving efficiency on the basis of experience of what works.</p>	Ongoing; review quarterly
Capability	4	Enable the Council to operate digitally, through development and support of secure online members' area, digital Council papers and online collaboration tools.	

		<p>Ensure all staff undertake at least five days of targeted learning and development to develop skills, capability and career.</p> <p>Hold lunchtime seminars for staff to share knowledge and expertise about the work of the Council, the criminal justice system and Whitehall/ Government.</p>	
Engagement	4	Implement an action plan arising from the findings of the people survey, based on priorities identified by staff.	

TIMELINE OF PUBLICATIONS AND GUIDELINE EFFECTIVE DATES 2020 to 2022		
April 2020	Assault and attempted murder	Launch of consultation
July 2020	Unauthorised Use of a Trade Mark	Launch of consultation
July 2020	Annual Report and Accounts	Publication of statutory annual report to the Lord Chancellor
July 2020	Offenders with mental disorders	Publication of definitive guideline
October 2020	Magistrates' Courts Sentencing Guidelines	Revised definitive guidelines published and in effect
October 2020	Offenders with mental disorders	Definitive guideline in effect
October 2020	Modern Slavery Offences	Launch of consultation
October 2020	Dangerous Dogs Offences	Publication of evaluation report
November 2020	Reduction in Sentence for a Guilty Plea	Publication of evaluation report
November 2020	Sentencing Children and Young People	Publication of evaluation report
December 2020	Firearms Offences	Publication of definitive guideline
December 2020	Theft from a Shop or Stall	Publication of sentencing data
January 2021	Firearms Offences	Definitive guidelines in effect
January 2021	Drug Offences	Publication of revised definitive guideline
April 2021	Drug Offences	Definitive guideline in effect
April 2021	Sex Offences (revision)	Launch of consultation
May 2021	Assault and attempted murder	Publication of revised definitive guideline
June 2021	Firearms importation	Launch of consultation
June 2021	Burglary (revision)	Launch of consultation
July 2021	Assault and attempted murder	Definitive guideline in effect
July 2022	Annual Report and Accounts	Publication of statutory annual report to the Lord Chancellor
July 2021	Modern Slavery Offences	Publication of definitive guideline
August 2021	Unauthorised Use of a Trade Mark	Publication of definitive guideline
October 2021	Modern Slavery Offences	Definitive guideline in effect
October 2021	Unauthorised Use of a Trade Mark	Definitive guideline in effect
January 2022	Burglary (revision)	Publication of definitive guideline

Resources

Staff headcount (as at 1 April 2021)

Area of activity	FTE ¹
Head of Office and support	2
Policy	3.6
Analysis and research	5.5
Legal	1
Communications	3
Total	15.1

Budget

Summary of budget and resource allocation

	2019/20 (actual) ² £000s	2020/21 (budget) £000s	2021/22 (budget) £000s
Total funding allocation	1,466	1,495	1,745
Staff costs	1,184	1,166	1,172
Non staff costs	162	119	573
Total expenditure	1,347	1,285	1,745

¹ FTE: full-time equivalents

² The total expenditure has been rounded to the nearest £1,000 independently from the constituent parts, therefore summing the parts may not equal the rounded total.

Annex A: Rationale for the prioritisation of guidelines

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

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

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

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

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

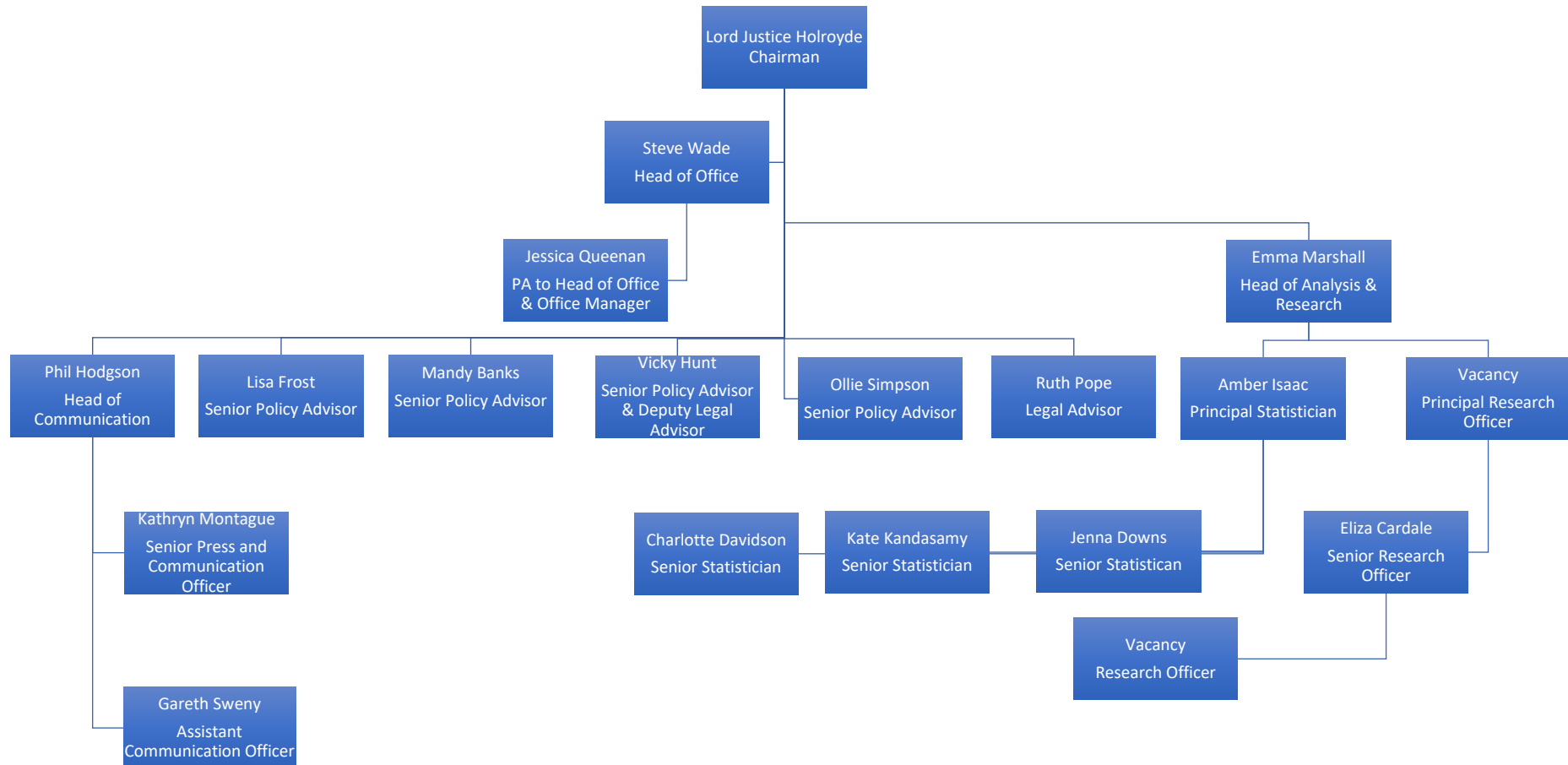
- The Lord Chancellor or the Court of Appeal formally requests the review of sentencing for a particular offence, particular category of offence or particular category of offender and the production of a guideline.
- New legislation requires supporting sentencing guidelines.
- Guidelines issued by the Sentencing Guidelines Council require conversion into the Council's step by step approach to sentencing or current guidelines are out of date or incomplete.
- A substantial body of interested parties request a guideline to be issued for a particular area of sentencing.
- Sentencing data suggests that there may be inconsistency in sentencing for a particular offence, particular category of offence or particular category of offender.
- Evidence suggests that the guideline would have a significant effect on sentencing practice, for example, the potential range of available sentences is wide and/or the number of offences sentenced is significant.
- The resource required to produce a guideline and other work pressures.

³ s.120 (3)(a)

⁴ s.120 (3)(b)

Annex B: The Office of the Sentencing Council as at 1 April 2021

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



Annex C: Sentencing Council Guideline Work Plan – 2020-2022¹ (as at 1 April 2021)

Guideline	Consultation period	Publish definitive guideline	Definitive guideline in force ²
Revision of SC assault and SGC attempted murder guidelines	16 April 2020 – 15 September 2020	May 2021	1 July 2021
Drug Offences: revision of SC guideline	15 January 2020 – 7 May 2020	January 2021	1 April 2021
Firearms importation offence	June 2021 – August 2021	TBC	TBC
What next for the Sentencing Council (Vision)	10 March 2020 – 9 September 2020	September 2021	TBC
Modern Slavery	October 2020 – December 2020	July 2021	1 October 2021
Sexual Offences (partial revision)	April 2021 – June 2021	TBC	TBC
Terrorism: revision of SC guideline ³	22 October 2019 – 3 December 2019	TBC	TBC
Trademark offences	July – October 2020	August 2021	1 October 2021
Burglary: revision of SC guideline	June 2021 to September 2021	January 2022	April 2022
Perverting the course of justice etc ⁴	TBC	TBC	TBC

Guideline	Consultation period	Publish definitive guideline	Definitive guideline in force²
Motoring offences ⁵	TBC	TBC	TBC
Immigration ⁴	TBC	TBC	TBC
Cybercrime ⁴	TBC	TBC	TBC

¹ The dates shown in this work plan are indicative; the Council will be revisiting its priorities and objectives, in particular following the 'Vision' consultation so the timetable for upcoming guidelines may change.

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

³ Timetable dependent on progress of the Counter-Terrorism and Sentencing Bill.

⁴ Dates for these guidelines are dependent on resource availability as other guidelines are completed.

⁵ Timetable dependent on progress of Police, Crime, Sentencing and Courts Bill.

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Sentencing Council meeting:
Paper number:

28 January 2022
**SC(22)JAN04 – Miscellaneous guideline
amendments**

Lead Council member:
Lead official:

Jo King
Ruth Pope
ruth.pope@sentencingcouncil.gov.uk

1 ISSUE

1.1 The annual consultation on overarching issues and miscellaneous minor updates to guidelines ran from 9 September to 2 December 2021. At the December meeting the Council considered the responses to the consultation and agreed some changes.

1.2 At this meeting the Council is asked to sign off the changes which will come into effect on 1 April 2022. The annual process will then begin again.

2 RECOMMENDATION

2.1 That the Council signs off the changes for publication.

3 CONSIDERATION

3.1 To briefly recap the changes that have been agreed:

Breach of a sexual harm prevention order (SHPO)

3.2 The additional wording agreed upon for this guideline is highlighted below:

Step 6 – Ancillary orders

In all cases the court should consider whether to make compensation and/or ancillary orders.

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

Note: when dealing with a breach of a sexual harm prevention order, the court has no standalone power to make a fresh order or to vary the order.

The court only has power to vary an order if an application is made in accordance with section 103E of the Sexual Offences Act 2003 or section 350 of the Sentencing Code.

The court only has the power to make an order in the circumstances set out in section 103A of the Sexual Offences Act 2003 or section 345 of the Sentencing Code.

Compensation

3.3 The additional wording agreed for inclusion in all relevant guidelines is highlighted below:

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

Confiscation

3.4 The following wording relating to confiscation was agreed for all relevant guidelines:

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a **confiscation order** if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

Where, following conviction in a magistrates' court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates' court must commit the offender to the Crown Court to be sentenced there (section 70 of the Proceeds of Crime Act 2002). This applies to summary only and either-way offences.

Where, but for the prosecutor's application under s.70, the magistrates' court would have committed the offender for sentence to the Crown Court anyway it must say so. Otherwise the powers of sentence of the Crown Court will be limited to those of the magistrates' court.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation).
(See Proceeds of Crime Act 2002 sections 6 and 13)

The court should also consider whether to make [ancillary orders](#).

Uplift for racially or religiously aggravated offences

3.5 It was agreed to amend existing guidelines to create a separate step for the uplift for racial/ religious aggravation as has been done with the new assault guidelines. The guidelines it would apply to are:

- [criminal damage \(under £5,000\)](#) and [criminal damage \(over £5,000\)](#)
- [s4](#), [s4A](#) and [s5](#) Public Order Act offences
- [harassment/ stalking](#) and [harassment/ stalking \(with fear of violence\)](#)

Domestic abuse – overarching principles

3.6 It was agreed to amend the definition of domestic abuse as follows (paragraphs 2, 3 and 4 are new or revised):

1. This guideline identifies the principles relevant to the sentencing of cases involving domestic abuse. Domestic abuse is a general term describing a range of violent and/or controlling or coercive behaviour.

2. This guideline applies (but is not limited) to cases which fall within the statutory definition of domestic abuse as defined by [Part 1 of the Domestic Abuse Act 2021](#). In summary domestic abuse is defined for the purposes of that Act as:

Behaviour (whether a single act or a course of conduct) consisting of one or more of:

- physical or sexual abuse;
- violent or threatening behaviour;
- controlling or coercive behaviour;
- economic abuse (any behaviour that has a substantial adverse effect on the victim's ability to acquire, use or maintain money or other property, or obtain goods or services);
- psychological, emotional or other abuse

between those aged 16 or over:

- who are, or have been married to or civil partners of each other;
- who have agreed to marry or enter into a civil partnership agreement one another (whether or not the agreement has been terminated);
- who are, or have been, in an intimate personal relationship with each other;
- who each have, or have had, a parental relationship in relation to the same child; **or**
- who are relatives.

This definition applies whether the behaviour is directed to the victim or directed at another person (for example, the victim's child). A victim of domestic abuse can include a child who sees or hears, or experiences the effects of, the abuse, and is related to the primary victim or offender.

3. For the purposes of this guideline domestic abuse also includes so-called 'honour' based abuse, female genital mutilation (FGM) and forced marriage.

4. The principles in this guideline will also apply to persons living in the same household whose relationship, though not precisely within the categories described in para 2 above, involves a similar expectation of mutual trust and security.

5. Controlling behaviour is a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capabilities for personal gain, depriving them of the means needed for independence, resistance and escape and/or regulating their everyday behaviour.

6. Coercive behaviour is an act or pattern of acts of assault, threats, humiliation (whether public or private) and intimidation or other abuse that is used to harm, punish, or frighten the victim. Abuse may take place through person to person contact, or through other methods, including but not limited to, telephone calls, text, email, social networking sites or use of GPS tracking devices.

7. Care should be taken to avoid stereotypical assumptions regarding domestic abuse. Irrespective of gender, domestic abuse occurs amongst people of all ethnicities, sexualities, ages, disabilities, religion or beliefs, immigration status or socio-economic backgrounds. Domestic abuse can occur between family members as well as between intimate partners.

8. Many different criminal offences can involve domestic abuse and, where they do, the court should ensure that the sentence reflects that an offence has been committed within this context.

Publication of the changes

3.7 As these are minor changes to existing guidelines it is not practicable to publish the changes ahead of them being live on the Council's website. The plan is to publish the response to consultation on 1 April and to make the changes to the guidelines on or soon after that date.

Question 1: Is the Council content to sign off the above changes for publication on 1 April?

4 EQUALITIES

4.1 The consultation did not include any proposals expressly relating to equalities. Only three respondents responded to a question in the consultation paper asking if there were any equality issues relating to the proposals and none identified any issues.

5 IMPACT AND RISKS

5.1 No resource assessment was produced at the consultation stage, but the consultation document briefly addressed the potential impact of each proposal. The same approach is proposed for the published changes – the response to consultation document will address the impact of each change.

5.2 There were only a few comments relating to the impact of the changes and these generally welcomed the clarity that the changes would bring. The exception was the Prison Reform Trust who stated:

We understand that proposed changes to the guidelines are to aid clarity and consistency between a broad range of guidelines for offences which can attract a confiscation order. We also recognise that similar wording on the use of confiscation orders is already used in a number of existing guidelines.

However, we are concerned that there are currently insufficient measures to enable effective monitoring of this change. Yet despite this admission consultees are being asked to take on trust that this amendment will not lead to a change in their use.

We welcome any changes that improve clarity and that ultimately deliver greater consistency, however we question how the council can make such a declaratory statement, given that it has no way of monitoring the impact of such a change?

Should the change be made, we would recommend that the council sets out what actions they would take to ensure that this does not lead to a change in their use—as stated.

5.3 The consultation document stated: *'There are no published figures for the number of confiscation orders made but the proposed changes to wording in guidelines is unlikely to*

influence the making of confiscation orders – the changes simply seek to aid clarity and transparency.’ The Ministry of Justice does not publish data on the imposition of confiscation orders. We have access to some unpublished figures from the MoJ Courts Proceedings Database (CPD) on the volumes of confiscation orders made, but these figures are not considered to be reliable and so would not assist in monitoring any impact of the changes. The consultation response document can acknowledge that the lack of reliable data is regrettable but say that it is not a justification for failing to make changes which will aid clarity and transparency.

Question 2: Is the Council content that there are no further issues relating to the impact of the changes?

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Sentencing Council meeting:
Paper number:
Lead official:

28 January 2022
SC(22)JAN05 - Totality
Ruth Pope
Ruth.pope@sentencingcouncil.gov.uk

1 ISSUE

1.1 In July 2021 the Council agreed to publish a research report on the Totality guideline: [Exploring sentencers' views of the Sentencing Council's Totality guideline](#). The Council stated that in the light of the findings of the research it would review the guideline and consult on the proposed changes in 2022.

2 RECOMMENDATION

2.1 That the Council agrees the scope and timing of revisions to the Totality guideline.

3 CONSIDERATION

Background

3.1 The Council has a statutory duty to 'prepare sentencing guidelines about the application of any rule of law as to the totality of sentences.'¹ The [Totality guideline](#) has been in force since 11 June 2012 and is used in all criminal courts. When sentencing an offender for more than one offence, or where the offender is already serving a sentence, courts must consider whether the total sentence is just and proportionate to the overall offending behaviour. The Totality guideline sets out the principles to be followed, the approach for different types of sentence and gives examples of how sentences should be structured in different circumstances.

3.2 There are no published figures on multiple offences and data issues make obtaining reliable figures very difficult,² but an estimate of how often more than one offence was sentenced (this does not include cases where the offender was already serving a sentence) for adult offenders (rounded to the nearest 1,000) in 2019 is:

- Around 84% (912,000 offenders) were sentenced for one offence and around 16% (179,000 offenders) were sentenced for two or more offences in magistrates' courts.
- Around 40% (28,000 offenders) were sentenced for one offence and around 60% (41,000 offenders) were sentenced for two or more offences in the Crown Court.

¹ Coroners and Justice Act 2009 s120(3)(b)

² There is an action arising from the 'Vision' consultation to look at data on multiple offences which the Council decided should be lower priority.

3.3 As set out at the July 2021 meeting, there has been some criticism of the Totality guideline from academics who consider that it does not give sufficient principled or practical guidance on totality.

The research and findings

3.4 In response to this, in 2021, the Council carried out qualitative research with sentencers to explore their views of the guideline and how it is used in practice. The key findings of the research can be summarised as follows:

- Most survey respondents thought that the guideline provides practical help in sentencing. Several made positive comments regarding the guideline's examples, clarity and usefulness.
- Survey respondents and interviewees both said that they do not always refer to the guideline. The most common way that survey respondents use the guideline is to apply its principles, based on their knowledge of its contents, and consult it only for difficult or unusual cases.
- Nearly half the survey respondents said that they can find it difficult to apply the guideline in some circumstances, for example when sentencing offences that are dissimilar or have multiple victims, and some specific offences.
- Sentencers also told us that, in cases with multiple victims and a range of offending, it can be difficult to reflect the seriousness of the offending against each individual victim in the final sentence.
- To counter a perception among the public and victims that the totality principle is lenient, some interviewees thought it could be helpful to include in the guideline a reminder to the court to explain how a sentence has been constructed.
- Most survey respondents commented on the length of the guideline, and some requested improvements to its format. We showed interviewees ideas for improving the format of the guideline (bullet points, drop-down menus and tables) and most were positive about the proposals.

Proposals for reviewing the guideline

3.5 The Council has said that it will review the guideline and consult on changes this year. The proposal put to the Council last July was that the guideline should be updated without changing the essentials of the content. The revised version would be subject to consultation which would also serve to bring the guideline to attention of users.

3.6 The publication of the research findings prompted Mandeep Dhami, Professor in Decision Psychology at Middlesex University, to contact us enclosing a report on the application of the Totality guideline. The report (at Annex A) details research carried out using data from the Crown Court Sentencing Survey (CCSS) comparing sentences for multiple offence and single offence cases after controlling for potential differences between the two types of case, i.e., offender gender and age, offence seriousness, aggravating and mitigating factors and guilty plea reduction.

3.7 The report indicates that in many (but not all) cases there is no clear association between the number of offences being sentenced and either the likelihood of receiving a custodial sentence or the length of that sentence – contrary to what might be expected, multiple offences sentenced at the same time were not always more likely to receive a custodial sentence or a longer custodial sentence than comparable single offences. The report acknowledges limitations of the data³ and therefore the findings, but we have considered the implications of the findings taken at face value.

3.8 The report (at the top of page 9) identifies several reasons why the issue is important:

- because cases involving multiple offences are common;
- because perceptions of fairness may shape public confidence in the criminal justice system; and
- sentences may be appealed on the basis that they are too severe or too lenient.

3.9 The report (from midway on page 9) also puts forward several potential explanations for the findings:

- personal mitigation may be considered multiple times in multiple offence cases (when the initial sentence is considered for each offence and again when the totality principle is applied);
- personal mitigation may be over-weighted relative to aggravating factors;
- the adjustment made to the sentence for the principal offence (upwards for concurrent sentences or downwards for consecutive sentences) may be too low or too high respectively.

3.10 The first of these potential explanations is based on the wording in the General principles section of the guideline which states:

It is necessary to address the offending behaviour, together with the factors personal to the offender as a whole.

3.11 This seems to have been interpreted in the report as though ‘factors personal to the offender’ are always matters of mitigation, but they could equally be aggravating factors, for example, the lack or presence of previous convictions. If the Council thought that this was a point that required clarification, it could be addressed in any revision of the guideline.

3.12 The second and third potential explanations relate to how sentencers exercise their discretion and (as discussed at 3.17 below) our research indicates that sentencers are broadly content with the level of guidance provided by the guideline.

3.13 The report highlights several areas where further research would be useful, including:

³ in particular the sentence information in the CCSS relates only to the principal offence and there is no data on whether sentences are concurrent or consecutive.

- comparing data on concurrent and consecutive sentences;
- taking into account the seriousness of the ‘other’ (i.e. not the principal) offence(s);
- taking into account whether the other offence(s) were related to the principal offence;
- taking into account whether all of the offences were of the same type; and
- examining the order of reasoning in guidelines.

3.14 Professor Dhimi suggests that she could assist the Council to improve the guideline using rigorous evidence-based approaches.

The suggested approach

3.15 The Council has already considered devoting resources to obtaining improved data on multiple offences and has said the following in the response to the ‘What next for the Sentencing Council’ consultation:

[I]n relation to analysis on multiple offences, we do not currently have access to extensive information on secondary/ non-principal offences or the sentences imposed for them. An approach based on the principal offence is therefore considered the most effective and pragmatic way of conducting our analysis given the data that is available and the difficulties of disentangling the effect of secondary offences on the overall sentence. We do agree that this might be an area to explore in the future but have decided that we need to prioritise other areas of work in the short and medium term. Once we have a clearer idea of the data we might be able to draw from the Common Platform, we will be able to reconsider this. We have therefore not included this as a specific action in our five year strategy but have included it in our longer-term analytical plan.

3.16 Consequently, there is little prospect of obtaining the data required to carry out further meaningful research in this area in the short to medium term without changing our strategy and workplan. Other approaches to research could be considered, such as analysing transcripts of sentencing remarks or carrying out road testing, but these would have limitations as well as having resource implications.

3.17 The way sentencers apply the Totality guideline is inevitably at least partially subjective. The basic principle of the guideline: that the court ‘should pass a total sentence which reflects all the offending behaviour before it and is just and proportionate’, requires sentencers to exercise judgment and discretion. Much of the academic criticism relates to the perceived imprecision of the guideline, but the work that we carried out with sentencers showed that they were generally content with the approach of the guideline and agreed with the content.

3.18 The report at Annex A implies that multiple offence cases are sentenced too leniently and this would negatively affect confidence in the sentencing process. The issue of

perceived leniency in multiple offence cases and public confidence is one that sentencers also raised, but in terms of ensuring that the sentences reflect the seriousness of the offending against each individual victim and explaining how the sentence has been constructed.

3.19 In view of the lack of evidence that there is problem with the approach taken by the existing guideline (which was based on case law), the recommended approach remains one of updating the guideline without radically changing the content.

3.20 Consideration can be given to whether there are any ways the guideline could provide more assistance to sentencers when there are multiple victims or dissimilar offences.

Question 1: Should the revision of the Totality guideline be limited to making adjustments within the current structure/ approach?

3.21 If the Council is content to proceed on the basis of a limited revision, proposals could be brought to the Council in March and April and the consultation could be held from June to August.

Question 2: Is the Council content with the proposed timings?

4 EQUALITIES

4.1 The nature of the guideline and the lack of reliable data on multiple offences will make it difficult to draw any conclusions about how the guideline applies to different demographic groups. However, in reviewing the guideline, the Council can have regard to how the provisions may apply to different offences or cohorts of offenders and consider whether there are potential inequities that can be addressed. Consideration could be given to cross referencing to material in the Equal Treatment Bench Book or elsewhere in guidelines if appropriate.

5 IMPACT AND RISKS

5.1 If the Council limits the review of the guideline as proposed, this is likely to attract some criticism from academics. The consultation document will need to explain why the Council is taking this approach and leave open the possibility of a future revision if and when better data become available.

5.2 The guideline is of wide application and therefore any changes could have a significant impact on sentencing practice, although the proposed revision of the guideline is unlikely to make substantive changes.

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Sentencing Multiple- Versus Single-Offence Cases: Does More Crime Mean Less Punishment?

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The 'totality principle' in law aims to show mercy to offenders in multiple-offence (MO) cases and retain ordinal proportionality in punishing those who commit different categories of offence. The effect of this principle in practice, however, is largely unknown. The present study involved an analysis of data released by the Sentencing Council for England and Wales to estimate the prevalence of MO cases and compare the penalties they received against comparable single-offence (SO) cases. MO cases represented approximately half of the cases in the sample which included violent, property, drugs and driving offences. Offence-specific regression analyses revealed that MO/SO case status was not a significant predictor of receiving a custodial sentence or of custody length. Thus, by applying the totality principle, sentencers may be letting MO offenders 'off lightly'. Potential explanations for this unintentional effect on decision-making lies in how the totality principle is defined and interpreted, and recommendations are made for revising the guideline on application of the totality principle.

Key Words: courts, punishment, sentencing, totality principle

INTRODUCTION

Sentencing represents an important stage of the criminal justice process. At this stage, society (via the sentencer) officially responds to those who break its rules. The punishments meted out to offenders (e.g., fines, custody, community penalties and compensation orders) aim to give them their just deserts, incapacitate or deter them (and others) from committing crimes in the future, rehabilitate them, or enable them to make reparations. Although these competing, and sometimes, contradictory aims can create problems for the formal measurement of sentence effectiveness, these responses to crime may be informally evaluated by the public in terms of their perceived fairness (e.g., Jones *et al.* 2008; Jansson 2015). Scholarly debates and research on the fairness of sentences have often centred around different types of offenders such as those with previous convictions (e.g., Bagaric 2014) and those from different racial backgrounds (e.g., Albonetti 2017). However, to date, relatively little has been said about offenders who are to be sentenced for more than one offence in what are called multiple-offence (MO) cases (for a recent exception, see Ryberg *et al.* 2017).¹

1 In the literature, multiple offence is sometimes called 'simultaneous offence' and this is contrasted with single offence or 'sequential offence'. Multiple offence may also be referred to as multiple 'offender', and this is distinguished from repeat, persistent or serial offenders.

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In MO cases, the crimes defendants are to be sentenced for are typically linked in some way.² For example, crimes may be committed in conjunction with one another (e.g., assault of a homeowner during a residential burglary), they may be committed contemporaneously (e.g., theft from different shops on the same day), or against the same victim, perhaps over a period of time (e.g., sexual abuse). Thus, MO cases may involve the same type of offence or different types and the same or different victims.

Retributive and desert-based theories of punishment suggest that offenders should receive a punishment that is proportionate to the offence and offender (see [Bagaric 2000](#)). Indeed, the concept of proportionality is considered by many to be pivotal to effective and fair sentencing (see e.g., [Smith 2005](#); [von Hirsch and Ashworth 2005](#); [Schneider 2012](#)). However, the question of whether a specific punishment is proportionate is a difficult one to answer. And, this question becomes even more challenging when faced with offenders who must be sentenced for more than one offence. Legal commentators have debated whether the penalties meted out to offenders in MO cases ought to be more or less severe than those passed on offenders in single-offence (SO) cases (e.g., [Lippke 2011](#); [Bagaric and Alexander 2013](#); [Frase 2017](#)). Sentencing laws and policies in common law jurisdictions appear to suggest that offenders in MO cases ought to be treated more punitively than their SO counterparts (e.g., those who committed one burglary only or one assault only; see e.g., Sentencing Council 2012; [United States Sentencing Commission 2018](#); [National Judicial College of Australia 2019](#)). Whether this actually occurs in practice, however, is largely unknown.

In fact, surprisingly little is known about sentencing in MO cases. Official sentencing statistics refer only to the sentence meted out to the 'primary' or 'principal' offence; defined as that which received the highest penalty or, in a tie, which carries the highest maximum penalty. Although there is a wealth of past research on sentencing (for reviews, see [Spohn 2000](#); [Ulmer 2012](#); [Baumer 2013](#)), the fact that much of it has relied on official data means that researchers have focused on sentencing for the primary/principal offence and have not distinguished between MO and SO cases. Studies relying on other sources of sentencing data such as court records have also not appeared to delineate sentencing practice in MO as opposed to SO cases (for a review, see [Dhami and Belton 2015](#)). Laws and policies for sentencing in MO cases do exist, and these shed some light on how the legal system believes offences in MO cases *ought* to be sentenced.

Sentencing MO cases

The sentencing process in MO cases typically stems from that followed in SO cases. Beyond this, traditionally, when sentencing MO cases, many common law jurisdictions (e.g., United States, Canada, England and Wales, Australia, New Zealand) have rejected a simple cumulative approach whereby sentences for each offence are aggregated to produce a final sentence (e.g., Sentencing Council 2012; [United States Sentencing Commission 2018](#); [National Judicial College of Australia 2019](#)). A cumulative approach is deemed to be unacceptable partly because it could lead to crippling or crushing prison terms for offenders, and reduces their opportunity to lead a worthwhile life after release ([Bottoms 1998](#)). In addition, a simple cumulative approach could distort important distinctions between different categories of offence so that a series of less serious offences together receive a more severe penalty than a single more serious offence, thus violating the notion of ordinal proportionality ([Ashworth 2015](#); see also [Jareborg 1998](#)).

2 Although as [Wasik \(2012\)](#) points out, sometimes the 'associated' crimes may not be linked in any way, but are simply being sentenced on the same occasion. Also note that the prosecution has discretion in charging decisions, and as [Ashworth \(2015\)](#) suggests, prosecutors may or may not charge all offences. Similarly, defendants may not plead guilty to all offences and/or they may not be convicted of all offences.

The intricacies of different sentencing laws and policies aside, there are several approaches to sentencing in MO cases that aim to demonstrate ‘mercy’ or humanity and retain some notion of ordinal (or overall) proportionality. One approach that is used in several common law jurisdictions (e.g., England and Wales, Canada, Australia, New Zealand), but not the United States, is to apply the so-called ‘totality principle.’³ Thomas (1979) was the first to identify the use of this principle in his examination of sentencing in the Court of Appeal in England and Wales. In this jurisdiction, where the present study is based, the totality principle is now interpreted as comprising two elements (Sentencing Council 2012: 5, italics as in original):

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

Thus, in England and Wales, the totality principle is applied after the *initial* sentence for each offence in a MO case has been reached with reference to the relevant offence-specific sentencing guidelines. These guidelines apply equally to MO and SO cases and have low departure rates (e.g., 97–98 per cent of sentences fell within the stipulated ranges for some guidelines; Sentencing Council 2015b). In essence, the totality principle is applied after the sentencer has taken the steps for sentencing a SO case, i.e., after the sentence has (1) judged the offender’s culpability and the harm caused by the offence, (2) determined the seriousness of the offence in accordance with relevant aggravating factors (including previous convictions) and mitigating factors and (3) considered a reduction in sentence for a guilty plea.

Of course, as the above quote states, in MO cases, the sentencer must also decide if the sentences for each offence should be served (wholly or partly) concurrently or consecutively. This decision may be influenced by the strength of the association between the offences such that sentences for closely intertwined offences are likely to be served concurrently. The sentencing guideline on application of the totality principle in England and Wales states that where the sentences are to be served concurrently, the final sentence should be ‘appropriately aggravated by the presence of the associated offences’ (Sentencing Council 2012: 6). By contrast, where the sentences are to be served consecutively, sentencers should ‘add up the sentences for each offence and consider if the aggregate length is just and proportionate’ (7). Therefore, in both situations, an *adjustment* may be made to the initial sentence for one or more of the offences in a MO case; upwards for concurrent sentences and most likely downwards for consecutive sentences.

Comparing outcomes for MO- versus SO cases

It is clear that application of the totality principle would result in a final (overall) sentence for a MO case that is less severe than what would be passed following a simple cumulative approach. Beyond this, some legal commentators have noted that offenders in MO cases may receive a less

3 In the United States, one way to deal with MO cases is to reconfigure the offences into one, i.e., ‘when the conduct involves fungible items (e.g., separate drug transactions or thefts of money), the amounts are added and the guidelines apply to the total amount’ (United States Sentencing Commission 2018: 10; see also 363–78). Another way is to focus mainly (but not solely) on what is considered to be the most serious offence, i.e., ‘when nonfungible harms are involved, the offense level for the most serious count is increased (according to a diminishing scale) to reflect the existence of other counts of conviction’ (10; see also 363–78). Here, the sentence for the ‘focal’ (most serious) offence is increased or aggravated by the presence of other offences while the penalties for the other offences are reduced. Readers interested in sentencing for MO cases in the United States are referred to Frase (2017).

severe penalty than if they were sentenced for each offence on different occasions, i.e., if they were treated as SO cases (e.g., Wasik 2012). This is sometimes referred to as a ‘bulk discount’.⁴ It is useful to consider how sentences in MO cases compare to SO cases not only because the public may expect such cases to be treated differently, but also because the law appears to do so.

Following the sentencing process in England and Wales described above, it would appear that an empirical comparison between MO and SO cases may be performed in at least three ways. One is to compare the *final* (overall) sentence meted out in a MO case with that in a SO case. This is problematic because it is unclear what a ‘comparable’ SO case would look like. For example, imagine a MO case involving a burglary and an assault that received three years in prison (one year for the burglary and two years for the assault to be served consecutively or even concurrently). Should the outcome in this case be compared to a SO case involving a burglary offence or a SO case involving an assault offence? Another way is to compare the *initial* sentence given to each offence in a MO case with its counterpart in a SO case. Using the above example, the one-year prison sentence for the burglary offence in the MO case would be compared to the outcome for a SO case involving a burglary, and the two-year prison sentence for the assault offence in the MO case would be compared to the outcome for a SO case involving an assault. The problem here is that the initial sentence does not reflect application of the totality principle in MO cases. Therefore, a third and preferable option is to compare the *adjusted* sentence given to each offence in a MO case with a comparable offence in a SO case. Here, comparability may refer to factors such as offence seriousness in the offence-specific guidelines. This analysis has the potential to demonstrate the impact of the totality principle on sentencing a specific offence in a MO case. The present study uses this latter approach.

THE PRESENT STUDY

The main aim of the present study was to examine application of the totality principle in England and Wales. This involves comparing the sentences meted out to offences in MO cases with those meted out to comparable offences in SO cases. For example, what sentence does an offender convicted of Robbery plus one or more other offences receive, compared to an offender convicted only of Robbery? Importantly, the present analyses aim to answer this question after controlling for potential differences between the two types of case, i.e., offender gender and age, offence seriousness, aggravating and mitigating factors and guilty plea reduction. A secondary aim was to measure the prevalence of MO and SO cases appearing at the sentencing stage of the justice process in England and Wales. An understanding of the prevalence of MO cases and the sentences they receive can be used to test theories of sentencing, evaluate the fairness of sentencing decisions and inform the development of sentencing guidelines and judicial training.

Dataset and variables

The present study used data collected in 2015 by the Sentencing Council for England and Wales, from Crown Courts, using the Crown Court Sentencing Survey (CCSS). In the Crown Court, sentences are passed on serious offences by professional judges. The CCSS has been used to gather information on factors that the Sentencing Council believes ought to influence sentencing decisions (often because they reflect the contents of offence-specific guidelines) so that it can monitor sentencing practice (Sentencing Council 2018). Courts are asked to complete the relevant form for every new criminal case sentenced. In MO cases, only information for the principal offence is provided, although the court does indicate the whether the case involved one or more than one offence status of a case.

4 It is sometimes contrasted with the penalty enhancing effect of prior convictions.

The Sentencing Council conducted the final iteration of the CCSS from 1 January to 31 March 2015 and released the data in 2018. The data collected are anonymized and organized into separate datasets reflecting groups of offences, many (but not all) of which are covered by offence-specific guidelines. The datasets released in 2018 were as follows: Arson, Assault, Burglary, Death, Driving, Drugs, Fraud, Robbery, Sexual offences⁵ and Theft. Although not all of the information collected by the CCSS is made available in the datasets, for the first time in the short history of the CCSS which started in October 2010, the datasets included a variable indicating whether the case involved MO or SO.⁶

In addition, two outcome variables are recorded in the datasets. The first is sentence type, which refers to immediate custody and various non-custodial options (e.g., discharge, fine, community order, suspended sentencing order). The second outcome variable is applicable only to cases where the offender was sentenced to immediate custody. Here, the length of time in custody is coded into several categories from less than 12 months up to life or an indeterminate period. The present study examines both outcome variables.

Finally, beyond the gender and age of the offender, the datasets also contain information on offence type (i.e., the offence for which the offender was either found guilty or pled guilty) and sentencing relevant factors. These latter factors are the steps followed by sentencers in all cases (and before they apply the totality principle in MO cases), namely determination of offence seriousness, identification of the presence of a range of aggravating and mitigating factors including previous convictions and the percentage reduction in sentence given for a guilty plea. All of these variables are included in the present study.

The definition and coding of the predictor variables in the present study are as follows:

- *Offender gender*: In the CCSS datasets, offender gender is coded as male or female.
- *Offender age*: In the CCSS datasets, offender age is coded into five categories (i.e., 18–24, 25–34, 35–44, 45–54, 55 and over). For present purposes, these were recoded into two categories (i.e., 18–24 versus 25 and over).
- *MO/SO case status*: In the CCSS datasets, this variable is coded as SO or MO.
- *Offence seriousness*: This variable refers to a categorical judgement made after examination of specific factors indicating greater/lesser harm and higher/lower culpability as they are listed in the offence-specific guideline.⁷ In the CCSS datasets, offence seriousness was coded into three categories (i.e., 1 = most serious, 2 = medium, 3 = least) for actual bodily harm (ABH), Domestic burglary and Robbery and into five categories (from 1 = most serious to 5 = least) for shoplifting. Offence seriousness is not a distinct variable in the sentencing guidelines for three offence types (i.e., Dangerous driving, Possession with intent to supply and Fraud) and so is not in the respective datasets.
- *Aggravating factors*: The aggravating factors contained in each guideline differ depending on the specific offence, but often include factors such as previous convictions, offence committed on bail, being under the influence of alcohol/drugs, failure to comply with a current court order and being on licence. The CCSS datasets code the presence (or absence) of each factor.

5 For present purposes, the dataset for indecent photographs of children was amalgamated with the one for sexual offences because they are covered by the same guideline.

6 It was thus not possible to study multiple years because data on MO/SO case status were not made available in previous releases of the CCSS data.

7 For example, in the Assault offences, guideline factors indicating:

- Greater harm are injury/fear of injury which is serious in the context of the offence; victim particularly vulnerable; and sustained or repeated assault on same person.
- Lesser harm are injury/fear of injury which is less serious in the context of the offence.
- Higher culpability are offence motivated by/demonstrating hostility to race/religion, disability and/or sexual orientation/transgender identity; significant degree of premeditation; threatened/actual use of weapon/equivalent; intention to cause more serious harm; deliberately causes more harm than necessary; targeting of vulnerable victim(s); leading role in group or gang; offence motivated by/demonstrating hostility to age or sex.
- Lower culpability are subordinate role in group or gang; greater degree of provocation; lack of premeditation; mental disorder/learning disability were linked to the commission of the offence; and excessive self-defence.

For present purposes, small sample sizes precluded examination of specific aggravating and mitigating factors, and so the number of aggravating factors in each case was calculated.

- *Mitigating factors*: The mitigating factors contained in each guideline also differ depending on the specific offence, but often include factors such as showing remorse, good character, addressing addiction, medical condition, lack of maturity, mental disorder and having dependents. The CCSS datasets code the presence (or absence) of each factor. For the reasons mentioned above, the number of mitigating factors in each case was calculated.
- *Reduction in sentence for guilty plea*: In England and Wales, the reduction in sentence for a guilty plea is determined by an 'overarching' guideline (see [Sentencing Council 2007](#)). The reduction in sentence is not an aspect of mitigation. The reduction may be anywhere from one-third (for a guilty plea at the earliest reasonable opportunity) to one-tenth (for a guilty plea during trial), although there is some discretion allowed. In the CCSS datasets, this is a continuous measure.

Before moving to the present analyses and findings, it is worth noting some more limitations of the CCSS. First, the CCSS datasets refer to a sample of sentenced cases, although the average response rate is relatively high for a paper-based survey of professionals (e.g., over 60 per cent; Sentencing Council 2015a), and sentencers who completed the survey may have been more likely to comply with the guidelines. Second, the CCSS does not collect data on offender race, and although data on court was collected it was not released for 2015. Evidence suggests that both of these factors may play an unwanted role in sentencing (e.g., [Hood 1992](#); [Pina-Sánchez and Linacre 2013](#)). However, the present study is unable to capture the effect of such factors on sentencing in MO and SO cases. Finally, some other potentially useful information (i.e., details of the other offences in MO cases, the sentences passed on these offences, and whether the overall sentence in MO cases was concurrent or consecutive) was not available. The implications will be discussed later. Nonetheless, the CCSS provides the most detailed and comprehensive picture of sentencing practice in England and Wales that is currently available, and it has been the source of data for numerous quantitative studies of sentencing in this jurisdiction (e.g., [Pina-Sánchez and Linacre 2013](#); [Roberts and Pina-Sánchez 2014](#); [Pina-Sánchez et al. 2017](#); [2018](#); [Lightowlers and Pina-Sánchez 2018](#)).

ANALYSES AND FINDINGS

In order to ensure there were a sufficient number of cases for comparison between MO and SO cases while also examining a broad range of offences, data on the most common offence type were extracted from each dataset. These were as follows: Arson endangering life ($n = 57$), S.47 ($n = 1,057$; hereafter called ABH), Dangerous driving ($n = 351$), Domestic burglary ($n = 1,036$), Section 1 Fraud Act 2006 ($n = 280$; this refers to fraud by false representation, failing to disclose information or abuse of position; hereafter called Fraud), Making threats to kill ($n = 37$), Possession with intent to supply ($n = 933$), Possession of indecent photograph of child ($n = 185$), Robbery ($n = 605$) and Theft from shops and stalls ($n = 204$; hereafter called Shoplifting).

Prevalence of MO and SO cases

Information on the MO/SO status of a case was available in 67.2 per cent of the sample ($n = 3,187$ out of 4,745). Of these cases, 48.7 per cent ($n = 1,551$) were MO cases and 51.3 per cent ($n = 1,636$) were SO cases. [Figure 1](#) shows the proportion of MO and SO cases within each offence type. As can be seen, MO cases represented half or more of the cases sentenced for six of the ten offence types studied. Indeed, MO cases accounted for the vast majority of cases of Possession of indecent photograph of child.

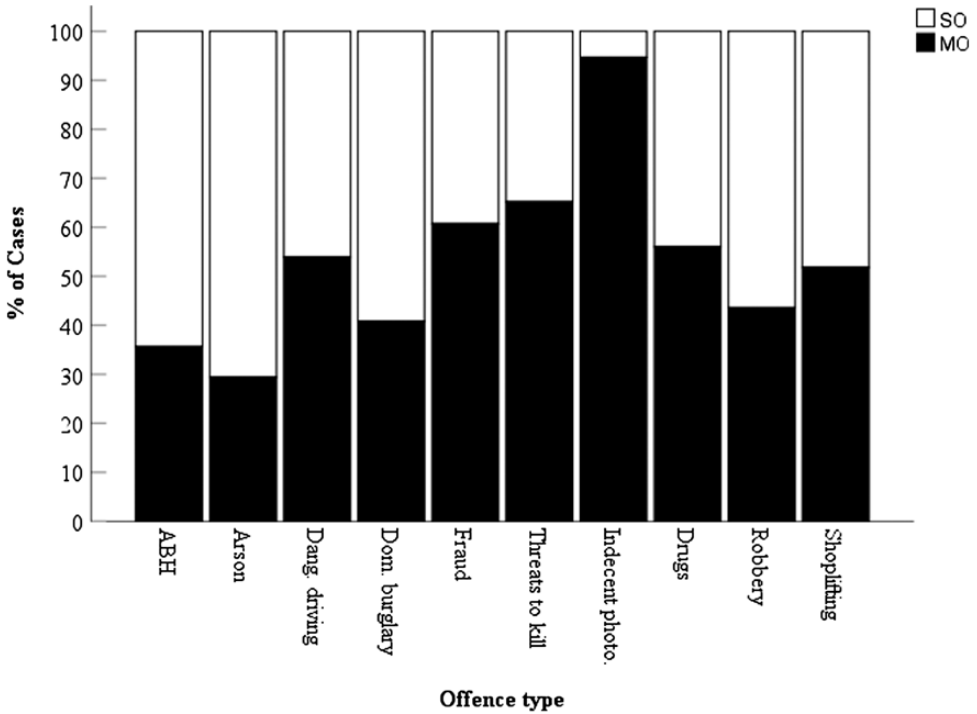


Fig. 1. Percentage of MO and SO cases within offence type.

Comparison of outcomes between MO and SO cases⁸

Logistic regression analyses were performed to examine the association between MO/SO case status and outcome, controlling for offender characteristics (i.e., gender and age) and sentencing relevant factors (i.e., offence seriousness, aggravating and mitigating factors and guilty plea reduction). It is important to control for any differences between MO and SO cases that could account for differences in their outcomes. As mentioned earlier, the totality principle is applied after the sentencer has followed the steps applicable to both MO and SO cases, i.e., he/she has judged the offender's culpability and the harm caused by the offence, determined the seriousness of the offence in accordance with relevant aggravating factors including previous convictions as well as mitigating factors and considered a reduction in sentence for a guilty plea (e.g., see Sentencing Council 2011). Each of these factors may influence outcomes. Specifically, penalty severity ought to be positively associated with offence seriousness and aggravating factors including previous convictions, but negatively associated with mitigating factors and percentage reduction in sentence for a guilty plea. Thus, in the following analyses, these factors were taken into consideration when comparing outcomes between MO and SO cases.

Immediate custody

Binary logistic regression models were computed for each offence type. The criterion variable in the models was custody, which was measured as whether the offence received a non-custodial penalty or immediate custody. The predictor variables were: offender gender and age, MO/SO case status, offence seriousness, number of aggravating factors including previous convictions,

⁸ Further analyses were not conducted on three offence types. This was due to the small sample size for Arson endangering life and Making threats to kill and due to the small number of SO cases for Possession of indecent photograph of child.

number of mitigating factors and percentage reduction in sentence for a guilty plea. All variables were entered simultaneously into the models.

Appendix A (Table A1) presents the full results of the regression analyses.⁹ In summary, Nagelkerke's R^2 values ranged from 0.29 (for Fraud) to 0.51 (for ABH), indicating that the models contributed to prediction of the outcome. In fact, the model chi-square statistics show that all of the models predicted the data better than their respective constant only models. The models' rates of successfully predicting immediate custody rose and ranged from 68.8 per cent (for Fraud) to 92.6 per cent (for Robbery).

MO/SO case status was a significant predictor in only one model (i.e., Possession with intent to supply). Here, the odds of a MO case receiving immediate custody were 2.03 times greater than its SO counterpart. Thus, for the remaining six offence types, offenders in MO cases were not significantly more likely to receive immediate custody than their counterparts in SO cases.

Custody length

For those cases that received immediate custody, the association between MO/SO case status and length of time in custody was also examined. As noted earlier, this variable is coded into several categories in the available datasets. Preliminary analyses revealed that the majority of all MO and SO cases that received immediate custody for each of the seven offence types were given a sentence length that fell into only two categories, and so the sentence length categories were divided into two for present purposes.

Binary logistic regression models were then computed for each offence type. The criterion variable was up to one year versus over one year in custody for five offence types (i.e., ABH, Dangerous driving, Domestic burglary, Fraud and Shoplifting), and up to three years versus over three years for two offence types (i.e., Possession of drugs with intent to supply and Robbery). As before, the predictor variables were: offender gender and age, MO/SO case status, offence seriousness, number of aggravating factors including previous convictions, number of mitigating factors and percentage reduction in sentence for a guilty plea. All variables were entered simultaneously into the models.

Appendix B (Table B1) presents the full results of the regression analyses. To summarize, Nagelkerke's R^2 values ranged from 0.12 (for Dangerous driving) to 0.57 (for Robbery) indicating that the models contributed to prediction of sentence length. The model chi-square statistics show that six of the seven models predicted the data better than their respective constant only models. The exception was the model for Fraud, which will not be interpreted further. For the other six models, prediction success rates rose and ranged from 69.2 per cent (for Dangerous driving) to 83.7 per cent (for ABH).

MO/SO case status was only a significant predictor of custody length in one model (i.e., Robbery). Here, the odds of a MO case receiving over three years in custody were 2.49 times greater than its SO counterpart. Thus, for the majority of offence types, offenders in MO cases were not significantly more likely to receive longer terms in custody than their counterparts in SO cases.

DISCUSSION

Several common law jurisdictions suggest that when faced with MO cases, sentencers should apply the totality principle (e.g., Sentencing Council 2012; [National Judicial College of Australia](#)

⁹ Although the coefficients for the control variables are reported in the present paper, their effects will generally not be interpreted following the advice of [Westreich and Greenland \(2013\)](#), who point to the problem of treating such effects as independent even though they were estimated in an adjusted model. Since the main focus of the present study is to examine the effect of MO/SO case status, only the coefficient for this variable will therefore be interpreted.

2019). The present study represents a first attempt at empirically examining how application of this principle in England and Wales affects outcomes for offences in MO cases as compared to their counterparts in SO cases. This is an important issue for several reasons. First, MO cases represent common court business—they represented approximately half of the sentenced cases in the samples derived from CCSS datasets examined in the present study. Second, perceptions of the fairness of sentences may shape public confidence in the justice system as a whole (e.g., [Hough and Roberts 2004](#)). Finally, sentences may be appealed on the basis that they are too severe or too lenient ([Wasik 2012](#)).

Thinking along the lines of retributive or just desert theories, the public might expect that the penalties meted out to offences in MO cases would be more severe (i.e., more likely to receive immediate custody and/or longer custodial sentence lengths) than those passed on comparable offences in SO cases. However, the present analyses revealed that for six of the seven offence types examined, MO/SO case status was not a significant predictor of immediate custody or custody length. Importantly, this was true after taking into account the effect of offender gender and age, as well as other sentencing relevant variables such as offence seriousness, number of aggravating factors (including previous convictions) and mitigating factors and guilty plea reduction. Thus, offenders in MO cases were not significantly more likely to receive immediate custody (or a longer period in custody) than their counterparts in SO cases.

The sentencing ranges in the current offence-specific guidelines in England and Wales are equally applicable to offences in MO and SO cases. The fact that the present study compared application of the totality guideline against several different offence-specific guidelines, and found similar results suggest that the explanation for the observed findings may lie in the current guideline on the totality principle. This guideline is applied in MO cases after application of the offence-specific guidelines (see [Wasik 2012](#) who argues that the totality principle should instead be incorporated into the offence-specific guidelines). It appears that application of the totality principle as stated in the guideline means that some offenders in MO cases (especially those serving their sentences concurrently) may be ‘getting off lightly’ compared to their SO counterparts. The impact of this principle on sentencing may appear unfair to the public. The extent to which it is effective in reducing crime is unknown. Regardless, the present findings are unlikely to inspire confidence in the justice system.

Potential explanations

The following discussion of the potential explanations in relation to the totality guideline ought to be considered tentative, given this is the first empirical study of this issue, and given the limitations of the study (which will be mentioned later). A close examination of the guideline on application of the totality principle in England and Wales points to several possible explanations for why an offence in a MO case may receive the same or a less severe penalty than its counterpart in a SO case. These explanations may act alone or in conjunction with one another and ought to be examined in future research.

First, although personal mitigation, which has the effect of reducing penalty severity, is common to both MO and SO cases, it may be that personal mitigation is considered (at least) twice in MO cases. The first opportunity is when an initial sentence is considered for each offence (as per the offence-specific guidelines) and the second is when the totality principle is applied (see quote from Sentencing Council 2012 presented earlier). In fact, [Pina-Sánchez et al. \(2018\)](#) revealed that for a combination of assault offences, some factors including personal mitigation may be considered twice even before the totality principle is applied. In the present context, personal mitigating factors such as remorse, previous good character and addressing addiction may be double-counted (or even triple-counted) in MO cases compared to SO cases. In order to test this explanation, a comparison of the initial and adjusted sentences given to offences in MO

cases is required, taking account of the presence of personal mitigating factors. This, however, cannot be easily done using real sentencing data because sentencers faced with MO cases do not typically record their initial sentences before adjustments are applied, and so another methodological approach is required to test this potential explanation.

Second, in MO cases as opposed to SO cases, the effect of personal mitigation may be over-weighted relative to the effect of aggravating factors, which are meant to increase penalty severity. This is because application of the totality principle explicitly requires sentencers to consider personal mitigation again (as mentioned above), but not aggravating factors. The offence-specific guidelines do not indicate the weight that should be attached to specific aggravating and mitigating factors, or the relative weight that should be given to each set of factors. This means that sentencers are afforded considerable discretion. Indeed, the CCSS only collected data on aggravating and mitigating factors that were specified in the guidelines. The fact that these lists of factors are non-exhaustive means that sentencers could have considered other factors. Past research points to some of the mitigating factors that may be particularly influential in sentencing (e.g., [Jacobson and Hough 2007](#); [Irwin-Rogers and Perry 2015](#); [Maslen 2015](#); [Belton 2018](#)). Consistent with the second potential explanation, in the present study, the number of *mitigating* factors present in a case was a significant predictor of immediate custody for all of the seven offence types studied (and this variable was a significant predictor of custody length in five models). The weight attached to this variable was greater than that attached to the number of aggravating factors in most of the models (i.e., five out of seven models predicting immediate custody and three out of six models predicting custody length). The few exceptions included Possession with intent to supply (when predicting immediate custody) and Robbery (when predicting custody length), which, consistent with this second explanation, were both offence types where MO cases were more likely to be treated punitively compared to their SO counterparts.

Finally, as mentioned earlier, the sentence for one or more of the offences in a MO case may be adjusted downwards if sentences are to be served consecutively, and adjusted upwards if they are to be served concurrently. It may be that the downwards adjustment is too much, and/or the upwards adjustment is too little, especially when considering the aforementioned penalty reducing effects of personal mitigation, or that the two adjustments cancel each other out. Unfortunately, the CCSS dataset did not include information on how the sentence was meant to be served. Since offences in MO cases are typically intertwined it is likely that sentences in the majority of MO cases would be served concurrently (Sentencing Council 2012).¹⁰ As an extreme example, imagine if the sentences in all of the MO cases in the present study were to be served concurrently—the fact that the dataset contains information on the sentence for the offence which received the highest penalty suggests that any upwards adjustment for concurrent sentences was insufficient. This situation would undermine [Wasik's \(2012\)](#) assertion that concurrent sentences result in a greater 'internal sum' and better reflect the sentences for individual offences compared to consecutive sentences which require some offences to be 'undersentenced' and so should be preferred. Clearly, further research is needed to empirically examine the effect of how a sentence is served to properly test this final explanation (see [Lippke 2011](#) for forms of 'consecutivism' and 'concurrentivism').

Limitations and future research directions

The present study relied on data from the CCSS. Although this source of data provides some external validity and generalizability (see [Dhami and Belton 2017](#)), it limited the breadth of ques-

10 In some jurisdictions such as the State of Victoria, Australia, where the totality principle is applied, there is a statutory presumption in favour of passing concurrent sentences ([Wasik 2012](#)). This is also true for some American jurisdictions (see [Frase 2017](#)).

tions that could be asked about application of the totality principle as well as the depth of the answers that could be provided. Thus, several avenues for future research remain. These include testing the robustness of the present findings and their potential explanations using a variety of methods and other data sources, as well as building on these findings in order to provide a more comprehensive understanding of sentencing in MO cases.

First, beyond issues discussed above regarding whether sentences in MO cases were concurrent or consecutive, the CCSS datasets did not contain information on the other offences in MO cases (e.g., their nature, when they were committed), or the sentences that these other offences received. Research ought to examine the effect of whether or not the other offences occurred in a single transaction. Roberts and de Keijser (2017) suggest that offenders convicted of more than one offence committed close in time should not be viewed as culpable as those whose offences were committed over a longer time period. Consistent with their view, they cite Robinson's (2013) finding that research participants gave greater punishment discounts when offences were temporally contiguous. Future research could also be directed at how application of the totality principle is affected by whether or not the other offences in a MO case are similar or different. In addition, the research could investigate how application of the totality principle is affected by whether or not the applicable sentences in a MO case are of the same type (i.e., all custodial) or different types (i.e., custodial and non-custodial). It is reasonable to expect that sentencers may find their task more difficult when sentencing a variety of offence types (partly because they fall within different guidelines), and when applicable sentences are measured in different units that need to be aggregated somehow (e.g., amount of fine, length of time in custody). As the cognitive task becomes more complex, people may increasingly resort to intuitive (rather than analytic) judgement strategies (Hammond 1996; 2000). The extent to which task complexity and any resultant changes in cognitive strategy may lead to penalty reducing effects for MO cases should be investigated.

The generalizability of the present findings should also be established in the context of other jurisdictions that apply the totality principle when sentencing MO cases. For instance, in Australia, interpretation and application of the principle is left to the discretion of individual sentencers (see Bagaric and Alexander 2013). While some are attracted to this holistic approach (for a review, see Dhimi *et al.* 2015), there is considerable research across jurisdictions, using different methodologies and examining different decisions that has attested to the problems associated with judicial discretion (e.g., Konečni and Ebbesen 1982; English *et al.* 2006; Guthrie *et al.* 2007; von Helversen and Rieskamp 2009; Rachlinski *et al.* 2015; Dhimi *et al.* 2020) and lack of guidance (see Dhimi *et al.* 2015). Although some have raised concerns about what guidelines can achieve in terms of tailoring sentences to the circumstances of individual offences and offenders (Roberts *et al.* 2018), the effect of judicial discretion on sentencing MO cases compared to their SO counterparts remains to be examined.¹¹

There may be several reasons for applying the totality principle beyond demonstrating mercy and retaining ordinal proportionality (see Ryberg 2005; Lippke 2011; Bagaric and Alexander 2013), however, the laws and policies dictating its delineation are typically vague and ill-defined, even in jurisdictions such as England and Wales where guidelines exist on this principle (Wasik 2012). Therefore, an alternative approach may be warranted. Legal scholars have debated the principles that ought to underlie sentencing in MO cases and called for alternative approaches to deal with such cases (e.g., Lovegrove 2004; Ryberg 2005; Lippke 2011; Wasik 2012; Bagaric and Alexander 2013; Manson 2013; Frase 2017; Hoskins 2017). For now, the potential ex-

11 Researchers may have to use other methods because although official Australian sentencing data is collected on the MO/SO status of a case, these 'do not provide details about how many other counts [offences] there were, what offences they were or what penalties they incurred' (Personal e-communication dated 23 April 2019 to the author from the Judicial Commission of New South Wales Australia).

planations for the present findings discussed above in relation to the guidelines in England and Wales, which although needing further investigation, suggest that attention should be paid to how sentencers are asked to use personal mitigating factors in MO cases, as well as how they increase or reduce sentences in these cases depending on whether they are to be served concurrently or consecutively. In addition, the order of reasoning specified in the guidelines could be examined.¹² Wasik (2012), e.g., questions whether the issue of how the sentence is to be served (concurrently versus consecutively) ought to come before or after applying the totality principle.

In addition to the above avenues for future research, the outcomes (e.g., reoffending rates) of sentences meted out to offenders in MO versus SO cases could also be measured because such knowledge could inform more effective sentencing. In addition, public opinion surveys could glean levels of support for sentencing policies that result in more lenient or more harsh sentences for offenders in MO cases compared to their SO counterparts.

A scientific, evidence-based approach to policy-making in sentencing may be fruitful. In order for researchers to properly investigate and understand sentencing practice, jurisdictions should not only release data on the MO/SO status of sentenced cases, but also on all of the offences being sentenced in MO cases, the sentences that each offence received, and whether these were to be served concurrently or consecutively. Without such information, both research and official statistics provide only a partial and skewed picture of sentencing. The need for an effective and fair system is clear—sentencing has implications for the lives of offenders and their families, victim satisfaction with the justice process, the work and resources of criminal justice agencies, and ultimately for public safety.

FUNDING

12 It has been noted that in Australia, some sentencers may start the reasoning process in MO cases with application of the totality principle (Wells 1992; Lovegrove 2004).

APPENDIX A

Table A1. Regression models predicting non-custodial penalty versus immediate custody for each offence type

Predictor	B (SE)	Wald (df)	Exp(B)	Lower, upper 95% CI
ABH				
Constant	1.27 (1.17)	1.18 (1)	3.56	
Gender**	-1.94 (0.70)	7.80 (1)	0.14	0.04, 0.56
Age	-0.04 (0.27)	0.02 (1)	0.96	0.57, 1.64
MO/SO case status	0.14 (0.27)	0.27 (1)	1.15	0.68, 1.93
Offence seriousness***		31.93 (2)		
Offence seriousness (1)**	1.77 (0.59)	8.96 (1)	5.85	1.84, 18.59
Offence seriousness (2)	0.36 (0.59)	0.38 (1)	1.44	0.45, 4.58
Num. of aggravating factors***	0.48 (0.07)	42.66 (1)	1.62	1.40, 1.87
Num. of mitigating factors***	-0.94 (0.12)	63.51 (1)	0.39	0.31, 0.49
% guilty plea reduction	-0.03 (0.02)	3.57 (1)	0.97	0.95, 1.00
Dangerous driving				
Constant	1.47 (1.54)	0.91 (1)	4.34	
Gender	-0.69 (0.94)	0.54 (1)	0.50	0.08, 3.14
Age	-0.10 (0.37)	0.07 (1)	0.91	0.44, 1.86
MO/SO case status	-0.16 (0.35)	0.20 (1)	0.85	0.43, 1.71
Num. of aggravating factors***	-0.99 (0.17)	36.46 (1)	0.37	0.27, 0.51
Num. of mitigating factors***	0.89 (0.16)	31.58 (1)	2.42	1.78, 3.30
% guilty plea reduction	-0.03 (0.03)	1.29 (1)	0.97	0.92, 1.02
Domestic burglary				
Constant*	2.67	6.53 (1)	14.42	
Gender***	-1.82 (0.52)	12.19 (1)	0.16	0.06, 0.45
Age	0.14 (0.29)	0.25 (1)	1.16	0.66, 2.02
MO/SO case status	0.36 (0.30)	1.40 (1)	1.43	0.79, 2.58
Offence seriousness***		21.61 (2)		
Offence seriousness (1)***	2.24 (0.54)	17.17 (1)	9.35	3.25, 26.92
Offence seriousness (2)	0.34 (0.39)	0.74 (1)	1.40	0.65, 3.01
Num. of aggravating factors***	0.90 (0.15)	34.88 (1)	2.47	1.83, 3.33
Num. of mitigating factors***	-0.94 (0.13)	49.72 (1)	0.39	0.30, 0.51
% guilty plea reduction	-0.04 (0.02)	3.75 (1)	0.96	0.92, 1.00
Fraud				
Constant	-1.08	0.37 (1)	0.34	
Gender	-0.76 (0.43)	3.23 (1)	0.47	0.20, 1.07
Age	0.71 (0.68)	1.09 (1)	2.03	0.54, 7.72
MO/SO case status	-0.07 (0.39)	0.031 (1)	0.93	0.44, 2.00
Num. of aggravating factors	0.08 (0.19)	0.19 (1)	1.09	0.75, 1.58
Num. of mitigating factors***	-0.64 (0.14)	19.43 (1)	0.53	0.40, 0.70
% guilty plea reduction*	0.05 (0.03)	3.99 (1)	1.05	1.00, 1.10

Table A1. Continued

Predictor	B (SE)	Wald (df)	Exp(B)	Lower, upper 95% CI
Possession with intent to supply ^a				
Constant	0.57 (0.77)	0.56 (1)	1.78	
Gender***	-0.70 (0.48)	12.54 (1)	0.18	0.07, 0.47
Age	0.08 (0.21)	0.14 (1)	1.08	0.72, 1.61
MO/SO case status***	0.71 (0.20)	12.21 (1)	2.03	1.37, 3.02
Num. of aggravating factors***	0.44 (0.11)	17.65 (1)	1.56	1.27, 1.91
Num. of mitigating factors***	-0.39 (0.06)	46.54 (1)	0.68	0.61, 0.76
% guilty plea reduction	0.02 (0.01)	1.79 (1)	1.02	0.99, 1.05
Robbery				
Constant	-0.68 (1.64)	0.17 (1)	0.51	
Gender	0.72 (1.13)	0.41 (1)	2.05	0.23, 18.64
Age	0.25 (0.55)	0.21 (1)	1.28	0.44, 3.74
MO/SO case status	0.68 (0.58)	1.41 (1)	1.98	0.64, 6.11
Offence seriousness		3.97 (2)		
Offence seriousness (1)	1.78 (1.23)	2.10 (1)	5.93	0.53, 65.91
Offence seriousness (2)	0.86 (0.55)	2.44 (1)	2.37	0.80, 6.98
Num. of aggravating factors**	0.63 (0.20)	10.47 (1)	1.88	1.28, 2.76
Num. of mitigating factors***	-0.79 (0.19)	18.41 (1)	0.45	0.32, 0.65
% guilty plea reduction	0.01 (0.03)	0.20 (1)	1.01	0.96, 1.08
Shoplifting				
Constant	-6.28 (3.34)	3.53 (1)	0.00	
Gender	0.28 (0.80)	0.12 (1)	1.33	0.28, 6.35
Age	-0.22 (0.82)	0.07 (1)	0.81	0.16, 4.04
MO/SO case status	0.19 (0.65)	0.09 (1)	1.21	0.34, 4.33
Offence seriousness		4.61 (4)		
Offence seriousness (1)	0.74 (1.21)	0.37 (1)	2.09	0.19, 22.62
Offence seriousness (2)	1.40 (1.00)	1.96 (1)	4.05	0.57, 28.71
Offence seriousness (3)	1.37 (1.00)	1.88 (1)	3.95	0.55, 28.15
Seriousness (4)	1.68 (0.89)	3.59 (1)	5.35	0.95, 30.29
Num. of aggravating factors	0.53 (0.31)	2.90 (1)	1.70	0.92, 3.14
Num. of mitigating factors***	-0.98 (0.27)	12.83 (1)	0.38	0.22, 0.64
% guilty plea reduction*	0.18 (0.09)	4.16 (1)	1.19	1.01, 1.41

Note. Gender (1 = male, 2 = female), Age (1 = 18–24, 2 = 25 and over), MO/SO status (1 = single offence, 2 = multiple offence), seriousness (for ABH, Domestic burglary and Robbery: 1 = most serious, 2 = medium, 3 = least; for shoplifting: 1 = most serious to 5 = least). The last category (least serious) was used as the reference category in the regression models. * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$. ^aGender was not entered into the model for Possession with intent to supply due to large standard errors associated with the coefficient of this variable. ABH: $N = 455$, Nagelkerke $R^2 = 0.51$, Model $\chi^2 = 220.91$ (8), $p < 0.001$. Dangerous driving: $N = 208$, Nagelkerke $R^2 = 0.47$, Model $\chi^2 = 89.68$ (6), $p < 0.001$. Domestic burglary: $N = 545$, Nagelkerke $R^2 = 0.46$, Model $\chi^2 = 183.84$ (8), $p < 0.001$. Fraud: $N = 278$, Nagelkerke $R^2 = 0.19$, Model $\chi^2 = 38.47$ (5), $p < 0.001$. Possession with intent to supply: $N = 520$, Nagelkerke $R^2 = 0.31$, Model $\chi^2 = 135.34$ (6), $p < 0.001$. Robbery: $N = 272$, Nagelkerke $R^2 = 0.42$, Model $\chi^2 = 58.38$ (8), $p < 0.001$. Shoplifting: $N = 86$, Nagelkerke $R^2 = 0.50$, Model $\chi^2 = 40.02$ (10), $p < 0.001$.

APPENDIX B

Table B1. Regression models predicting custody length for each offence type

Predictor	B (SE)	Wald (df)	Exp(B)	Lower, upper 95% CI
ABH				
Constant	0.08 (1.93)	0.01 (1)	1.09	
Gender	0.78 (0.65)	1.45 (1)	2.18	0.61, 7.70
Age	0.10 (0.30)	0.11 (1)	1.10	0.62, 1.97
MO/SO case status	0.34 (0.30)	1.32 (1)	1.40	0.79, 2.50
Offence seriousness***		23.45 (2)		
Offence seriousness (1)	1.02 (0.62)	2.69 (1)	2.76	0.82, 9.31
Offence seriousness (2)	-0.47 (0.58)	0.66 (1)	0.63	0.20, 1.95
Num. of aggravating factors*	-0.15 (0.07)	4.51 (1)	0.86	0.75, 0.99
Num. of mitigating factors***	0.46 (0.13)	13.22 (1)	1.59	1.24, 2.04
% guilty plea reduction	-0.00 (0.02)	0.02 (1)	1.00	0.97, 1.03
Dangerous driving				
Constant	-0.29 (1.34)	0.05 (1)	0.75	
Gender	-0.20 (0.87)	1.34 (1)	0.82	0.15, 4.50
Age	0.38 (0.33)	0.30 (1)	1.47	0.77, 2.82
MO/SO case status	0.17 (0.32)	10.28 (1)	1.19	0.64, 2.23
Num. of aggravating factors**	0.42 (0.13)	5.62 (1)	1.51	1.18, 1.95
Num. of mitigating factors*	-0.27 (0.11)	0.83 (1)	0.76	0.61, 0.96
% guilty plea reduction	0.02 (0.02)	0.05 (1)	1.02	0.98, 1.07
Domestic burglary				
Constant	3.35 (1.37)	5.96 (1)	28.53	
Gender	0.54 (0.80)	0.45 (1)	1.71	0.36, 8.18
Age	0.26 (0.30)	0.79 (1)	1.30	0.73, 2.33
MO/SO case status	0.05 (0.30)	0.03 (1)	1.05	0.58, 1.91
Offence seriousness**		13.16 (2)		
Offence seriousness (1)***	3.89 (1.08)	13.03 (1)	48.65	5.90, 401.05
Offence seriousness (2)	0.34 (0.40)	0.70 (1)	1.40	0.64, 3.08
Num. of aggravating factors	-0.04 (0.13)	0.10 (1)	0.96	0.75, 1.23
Num. of mitigating factors	-0.07 (0.13)	0.30 (1)	0.93	0.73, 1.20
% guilty plea reduction**	-0.10 (0.03)	11.89 (1)	0.90	0.85, 0.96
Possession with intent to supply				
Constant	-1.01 (0.96)	1.11 (1)	0.37	
Age*	0.72 (0.33)	4.85 (1)	2.05	1.08, 3.89
MO/SO case status	0.29 (0.32)	0.81 (1)	1.33	0.72, 2.48
Num. of aggravating factors**	0.41 (0.13)	9.66 (1)	1.51	1.16, 1.96
Num. of mitigating factors*	-0.31 (0.13)	5.83 (1)	0.74	0.57, 0.94
% guilty plea reduction***	-0.07 (0.02)	12.93 (1)	0.93	0.90, 0.97
Robbery				
Constant***	-7.22 (1.87)	14.86 (1)	0.00	
Gender	0.30 (1.02)	0.09 (1)	1.35	0.18, 9.85

Table B1. Continued

Predictor	B (SE)	Wald (df)	Exp(B)	Lower, upper 95% CI
Age**	1.04 (0.38)	7.60 (1)	2.82	1.35, 5.88
MO/SO case status*	0.91 (0.36)	6.32 (1)	2.49	1.22, 5.06
Offence seriousness***		18.61 (2)		
Offence seriousness (1)***	4.24 (0.98)	18.14 (1)	69.72	9.89, 491.59
Offence seriousness (2)***	3.56 (.88)	16.30 (1)	35.31	6.26, 199.23
Num. of aggravating factors***	0.65 (0.12)	30.24 (1)	1.19	1.52, 2.41
Num. of mitigating factors**	-0.40 (0.15)	7.46 (1)	0.67	0.51, 0.89
% guilty plea reduction	-0.05 (0.02)	3.73 (1)	0.96	0.91, 1.00
Shoplifting				
Constant*	6.80 (3.20)	4.54 (1)	904.97	
Gender	-0.76 (0.71)	1.13 (1)	0.47	0.12, 1.89
Age	0.26 (0.72)	0.13 (1)	1.29	0.32, 5.31
MO/SO case status	-0.44 (0.56)	0.64 (1)	0.64	0.22, 1.91
Offence seriousness		4.24 (4)		
Offence seriousness (1)	-1.34 (1.08)	1.55 (1)	0.26	0.03, 2.16
Offence seriousness (2)	-1.33 (0.87)	2.32 (1)	0.27	0.05, 1.46
Offence seriousness (3)	-1.68 (0.87)	3.72 (1)	0.19	0.03, 1.03
Seriousness (4)	-0.88 (0.74)	1.40 (1)	0.42	0.10, 1.78
Num. of aggravating factors	0.17 (0.22)	0.63 (1)	1.19	0.77, 1.83
Num. of mitigating factors*	0.52 (0.22)	5.79 (1)	1.68	1.10, 2.58
% guilty plea reduction*	-0.18 (0.08)	4.66 (1)	0.83	0.71, 0.98

Note. The model for Fraud was not statistically significant ($N = 157$, Nagelkerke $R^2 = 0.17$, Model $\chi^2 = 11.82$ [6], $p = 0.066$), and so it is not presented. * $p < 0.05$, ** $p < 0.01$, *** $p < 0.001$. ABH: $N = 455$, Nagelkerke $R^2 = 0.16$, Model $\chi^2 = 43.47$ (8), $p < 0.001$. Dangerous driving: $N = 208$, Nagelkerke $R^2 = 0.12$, Model $\chi^2 = 18.62$ (6), $p = 0.005$. Domestic burglary: $N = 545$, Nagelkerke $R^2 = 0.22$, Model $\chi^2 = 63.21$ (8), $p < 0.001$. Possession with intent to supply: $N = 278$, Nagelkerke $R^2 = 0.20$, Model $\chi^2 = 41.05$ (6), $p < 0.001$. Robbery: $N = 245$, Nagelkerke $R^2 = 0.57$, Model $\chi^2 = 134.86$ (8), $p < 0.001$. Shoplifting: $N = 86$, Nagelkerke $R^2 = 0.30$, Model $\chi^2 = 21.96$ (10), $p = 0.015$.

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Sentencing Council meeting:
Paper number:

28 January 2022
**SC(22)JAN06 - Perverting the Course of
Justice and Witness intimidation**

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1 ISSUE

1.1 This is the final meeting to sign off the guidelines ahead of a planned consultation in March. This meeting will look at the proposed draft resource assessment (RA) and ask the Council to confirm it is content with the guidelines ahead of consultation. During the 12 week consultation we will also do some road testing of the guidelines.

2 RECOMMENDATION

2.1 At today's meeting the Council are asked:

- To consider the draft RA
- To sign off the guidelines ahead of consultation

3 CONSIDERATION

Perverting the Course of Justice (PTCJ)- Annex A

3.1 The changes agreed at the meeting in November have been made, and can be seen within **Annex A**. The Council agreed that the top of the range in A1 should increase from six to seven years, with the consultation explaining the reasons for the gap between the top of the range and the maximum sentence. As shown on page 2 of **Annex B**, only two offenders received a sentence greater than seven years in 2020. The Council also agreed to include the wording '*for cases of particular gravity, sentence above the top of the range may be appropriate*', as can be seen on page three. In light of the decision made on the burglary guideline at the last meeting to remove that exact wording from the guideline, the Council are asked to confirm whether this wording should remain or not. It may be that the Council feels it is appropriate to include this wording for this guideline, given the maximum sentence of life imprisonment.

Question 1: Does the Council want the wording 'for cases of particular gravity, sentences above the top of the range may be appropriate' to remain or not?

3.2 In considering the guideline for PTCJ ahead of sign off a further aggravating factor is

suggested. This is prompted by the recent case of *R v Ahmed*¹, which concerned a barrister who conducted a prolonged campaign against an ex-partner when the relationship ended acrimoniously. This took the form of forging emails and texts to propret that the victim was harassing her, falsely accused him of rape, which resulted in him being arrested and questioned, and culminated in the offender stabbing herself, claiming the victim had stabbed her. In reading transcripts of cases there was also a similar case of a police officer who framed his partner, also a serving police officer, to make it look as if she was dealing drugs, was part of a drugs crime gang, was tampering with evidence and so on, seemingly because he was jealous of her success at work.

3.3 The fact that both these offenders used their knowledge of the criminal justice system to help them commit the crimes seems to make the offending worse. In addition, there is arguably something about the fact that as police officers/barristers the fall into criminality seems that much greater than for an ordinary citizen. There may not be many of these cases but it still may be appropriate to have an aggravating factor for when these cases arise. Therefore, a new aggravating factor of '*Offender was in a position of responsibility within the criminal justice system (e,g police officer, solicitor)*' is proposed. It may not be as relevant in witness intimidation although conceivably could still arise.

Question 2: Does the Council wish to include a new aggravating factor of 'Offender was in a position of responsibility within the criminal justice system' for PTCJ? Should it also go into witness intimidation?

3.4 There are not many other offence specific aggravating and mitigating factors currently for both guidelines. It may be that there are not any further relevant ones, but at this stage the Council are asked to consider whether there are any others that should be added. The witness intimidation guideline is at **Annex C**.

Question 3: Are there any further aggravating or mitigating factors that should be included for both offences?

3.5 The changes agreed at the last meeting to the witness intimidation guideline have been made and can be seen at **Annex C**, namely the removal of '*unsophisticated nature of conduct*' from low culpability.

Sign off of final guideline for consultation

3.6 The Council are now asked to review both guidelines for the last time prior to the consultation and confirm that it is content to sign them off ahead of the consultation. The

¹ R v Ahmed (Anisah Arif) [2021] EWCA Crim 1786

draft consultation document will be circulated to the Council for comment via email in February.

Question 4: Is the Council content to sign both guidelines off ahead of the consultation?

4 EQUALITIES

4.1 At this stage of guideline development, there are no obvious disparities in sentencing outcome or sentence lengths between offenders of each age, sex and ethnicity. However, this will continued to be monitored during the consultation stage and the decision whether or not to add wording regarding disparities to the published guidelines will be made alongside the development of the definitive guideline as we will have an extra year of data available to check the trends and make a more informed, up-to-date decision.

4.2. The consultation document will include a section on equalities and outline the work we have done so far and will ask respondents questions on the issues to see if there are any other equalities issues not already considered that should be.

5 IMPACT AND RISKS

5.1 Overall, it is anticipated that the new draft guidelines will improve consistency of sentencing for these offences, but not lead to any notable changes in sentencing severity. The full draft resource assessment for these offences can be found at **Annex D**.

5.2 For perverting the course of justice, estimating the impact is made more difficult by the varied nature of the underlying offences and the somewhat limited information in the transcripts available, so it's important to note that these findings should be treated as indicative only. However, using the information available, we anticipate that sentences and sentence lengths using the draft guideline will remain broadly in line with the outcomes given by sentencers prior to the draft guideline. Therefore, we anticipate that there will be limited impact on prison and probation resources.

5.3 For witness intimidation, it is also anticipated that sentencing levels will remain relatively stable under the new draft guideline. There was some variation in the lengths of sentences given in transcript resentencing, but overall, it is anticipated that the length of sentences received by offenders will remain broadly stable. As such, it is anticipated that any impact the guideline has on prison or probation resources would be limited.

5.4 During the consultation road testing will be conducted on the guidelines which will test how sentencers use the draft guidelines which can highlight areas that cause confusion and will generally aid our understanding of how the guidelines will operate in practice.

Question 5: Is the Council content with the draft resource assessment at Annex D?

Annex A

Perverting the Course of Justice

Common law

Triable only on indictment

Maximum: Life imprisonment

Offence range: Community order – 7 years' custody

STEP ONE

Determining the offence category

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

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

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

HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none">• Serious consequences for an innocent person(s) as a result of the offence (for example time spent in custody/arrest)• Serious distress caused to innocent party (for example loss of reputation)• Serious impact on administration of justice• Substantial delay caused to the course of justice
Category 2	<ul style="list-style-type: none">• Suspicion cast upon an innocent person as a result of the offence• Some distress caused to innocent party• Some impact on administration of justice• Some delay caused to the course of justice
Category 3	<ul style="list-style-type: none">• Limited effects of the offence

STEP TWO

Starting point and category range

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

For cases of particular gravity, sentences above the top of the range may be appropriate

Harm	Culpability		
	A	B	C
Category 1	Starting Point 4 years' custody Category Range 2 - 7 years' custody	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 9 months - 2 years' custody
Category 2	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 9 months - 2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody
Category 3	Starting Point 1 years' custody Category Range 9 months - 2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody	Starting Point High level community order Category Range Medium level community order - 6 months custody

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

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- Offender was in a position of responsibility within the justice system (e.g police officer, solicitor)
- Offender involves others in the conduct
- Vulnerable victim
- Offence committed in a domestic context
- Commission of offence whilst under the influence of alcohol or drugs
- Evidence concealed/destroyed
- Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

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

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Totality principle

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

STEP SIX

Compensation and ancillary orders

In all cases, the court should consider whether to make compensation and/or other ancillary orders. Where the offence has resulted in personal injury, loss or damage

the court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

STEP SEVEN

Reasons

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

STEP EIGHT

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 52 of the Sentencing Code](#)

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Annex B: Perverting the course of justice and witness intimidation data tables

Perverting the Course of Justice

Number and proportion of adult offenders sentenced for perverting the course of justice, 2010-2020

	Number of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Discharge	27	11	9	6	11	12	5	5	4	4	2
Fine	17	6	2	5	6	7	3	5	1	2	1
Community sentence	176	91	81	46	70	47	25	18	26	14	15
Suspended sentence	446	406	352	360	409	380	341	350	245	246	171
Immediate custody	441	463	420	510	430	447	402	394	338	294	206
Otherwise dealt with	7	7	6	5	3	5	5	16	15	16	9
Total	1,114	984	870	932	929	898	781	788	629	576	404

	Proportion of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Discharge	2%	1%	1%	1%	1%	1%	1%	1%	1%	1%	0%
Fine	2%	1%	0%	1%	1%	1%	0%	1%	0%	0%	0%
Community sentence	16%	9%	9%	5%	8%	5%	3%	2%	4%	2%	4%
Suspended sentence	40%	41%	40%	39%	44%	42%	44%	44%	39%	43%	42%
Immediate custody	40%	47%	48%	55%	46%	50%	51%	50%	54%	51%	51%
Otherwise dealt with	1%	1%	1%	1%	0%	1%	1%	2%	2%	3%	2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Final average custodial sentence length (ACSL) for adult offenders sentenced to immediate custody for perverting the course of justice, 2010-2020

ACSL (years) ¹	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Mean	0.9	0.9	1.0	1.0	0.9	1.1	1.0	1.1	1.0	1.1	1.2
Median	0.7	0.7	0.7	0.7	0.7	0.7	0.7	0.8	0.7	0.8	0.7
Proportion of indeterminates ^{2,3}	0.2%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Notes:

1) Excludes life and indeterminate sentences

2) This is calculated as the number of offenders given an indeterminate custodial sentence, out of the number of offenders given a sentence of immediate custody.

3) For 2010-2012, the indeterminate sentence figures include the sentences of Imprisonment for Public Protection (IPP) and Extended Sentences for Public Protection (EPP). These sentences were introduced in 2005 and abolished in 2012.

Final sentence lengths⁴ received by adult offenders sentenced to immediate custody for perverting the course of justice, 2010-2020

	Number of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	340	359	298	389	345	329	300	270	259	197	140
1 to 2	78	73	88	73	53	75	70	76	54	72	38
2 to 3	12	20	19	29	20	24	20	27	16	17	17
3 to 4	0	2	0	0	0	0	0	1	0	1	1
4 to 5	9	7	11	12	12	13	8	16	6	5	6
5 to 6	0	1	1	1	0	1	2	2	2	0	0
6 to 7	0	1	1	1	0	0	1	2	0	0	2
7 to 8	0	0	2	4	0	0	0	0	0	0	1
8 to 9	0	0	0	0	0	1	0	0	0	0	0
9 to 10	0	0	0	1	0	1	1	0	0	0	0
Greater than 10 years	2	0	0	0	0	3	0	0	1	2	1
Indeterminate	0	0	0	0	0	0	0	0	0	0	0
Total	441	463	420	510	430	447	402	394	338	294	206

	Proportion of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	77%	78%	71%	76%	80%	74%	75%	69%	77%	67%	68%
1 to 2	18%	16%	21%	14%	12%	17%	17%	19%	16%	24%	18%
2 to 3	3%	4%	5%	6%	5%	5%	5%	7%	5%	6%	8%
3 to 4	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
4 to 5	2%	2%	3%	2%	3%	3%	2%	4%	2%	2%	3%
5 to 6	0%	0%	0%	0%	0%	0%	0%	1%	1%	0%	0%
6 to 7	0%	0%	0%	0%	0%	0%	0%	1%	0%	0%	1%
7 to 8	0%	0%	0%	1%	0%	0%	0%	0%	0%	0%	0%
8 to 9	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
9 to 10	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Greater than 10 years	0%	0%	0%	0%	0%	1%	0%	0%	0%	1%	0%
Indeterminate	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Notes:

- 4) Sentence length intervals do not include the lower bound but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than or equal to 1 year, and '1 to 2 years' includes sentence lengths over 1 year and up to and including 2 years.

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

Sex	Number of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Female	2	1	4	60	33	7	107
Male	0	0	11	111	173	2	297
Not recorded/not known	0	0	0	0	0	0	0

Sex	Proportion of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
Female	2%	1%	4%	56%	31%	7%	100%
Male	0%	0%	4%	37%	58%	1%	100%
Not recorded/not known	-	-	-	-	-	-	-

Number and proportion of adult offenders sentenced for perverting the course of justice, by **age group** and sentence outcome, 20'20

Age group	Number of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
18 to 20	0	0	1	8	13	1	23
21 to 24	0	0	0	0	0	0	0
25 to 29	2	0	3	50	78	5	138
30 to 39	0	0	2	43	68	1	114
40 to 49	0	1	4	40	28	1	74
50 to 59	0	0	3	26	15	1	45
60 to 69	0	0	2	4	4	0	10
70 and over	0	0	0	0	0	0	0
Not recorded/not known	0	0	0	0	0	0	0

Age group	Proportion of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
18 to 20	0%	0%	4%	35%	57%	4%	100%
21 to 24	-	-	-	-	-	-	-
25 to 29	1%	0%	2%	36%	57%	4%	100%
30 to 39	0%	0%	2%	38%	60%	1%	100%
40 to 49	0%	1%	5%	54%	38%	1%	100%
50 to 59	0%	0%	7%	58%	33%	2%	100%
60 to 69	0%	0%	20%	40%	40%	0%	100%
70 and over	-	-	-	-	-	-	-
Not recorded/not known	-	-	-	-	-	-	-

Number and proportion of adult offenders sentenced for perverting the course of justice, by **ethnicity** and sentence outcome, 2020

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

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

Final average custodial sentence lengths (ACSL) received by adult offenders sentenced for perverting the course of justice, by sex, 2020

Sex	ACSL (years) ⁵	
	Mean	Median
Female	1.1	1.0
Male	1.2	0.7
Not recorded/not known	-	-

Final average custodial sentence lengths (ACSL) received by adult offenders sentenced for perverting the course of justice, by sex, 2020

Age group	Mean	Median
18 to 20	1.1	0.8
21 to 24		
25 to 29	0.9	0.7
30 to 39	1.1	0.7
40 to 49	1.5	0.9
50 to 59	2.5	0.7
60 to 69	*	*
70 and over	-	-
Not recorded/not known	-	-

Final average custodial sentence lengths (ACSL) received by adult offenders sentenced for perverting the course of justice, by sex, 2020

Ethnicity	Mean	Median
Asian	1.0	0.8
Black	1.1	1.0
Mixed	0.6	0.5
Other	*	*
White	1.2	0.7
Not recorded/not known	1.4	0.8

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

- = No offenders were sentenced to immediate custody.

Notes:

5) Excludes life and indeterminate sentences

Witness Intimidation

Number and proportion of adult offenders sentenced for witness intimidation, 2010-2020

	Number of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Discharge	13	7	5	2	4	3	6	4	2	1	0
Fine	4	3	0	2	0	5	3	2	1	1	1
Community sentence	106	73	54	39	46	51	32	22	29	15	13
Suspended sentence	145	140	95	102	115	147	143	128	88	71	46
Immediate custody	256	277	227	223	238	243	266	208	178	142	110
Otherwise dealt with	11	18	8	7	11	8	11	8	7	7	5
Total	535	518	389	375	414	457	461	372	305	237	175

	Proportion of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Discharge	2%	1%	1%	1%	1%	1%	1%	1%	1%	0%	0%
Fine	1%	1%	0%	1%	0%	1%	1%	1%	0%	0%	1%
Community sentence	20%	14%	14%	10%	11%	11%	7%	6%	10%	6%	7%
Suspended sentence	27%	27%	24%	27%	28%	32%	31%	34%	29%	30%	26%
Immediate custody	48%	53%	58%	59%	57%	53%	58%	56%	58%	60%	63%
Otherwise dealt with	2%	3%	2%	2%	3%	2%	2%	2%	2%	3%	3%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Final average custodial sentence length (ACSL) for adult offenders sentenced to immediate custody for witness intimidation, 2010-2020

ACSL (years) ¹	2010	2011 ⁶	2012	2013	2014	2015	2016	2017	2018	2019	2020
Mean	0.8	0.8	0.8	0.7	0.8	0.8	0.8	0.9	0.9	0.9	0.9
Median	0.6	0.7	0.7	0.5	0.7	0.7	0.7	0.8	0.8	0.8	0.8
Proportion of indeterminates ^{2,3}	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%

Notes:

6) Excludes 1 case of witness intimidation in 2011, where the data suggested that the sentence was above the statutory maximum for this offence (5 years' custody).

Final sentence lengths⁴ received by adult offenders sentenced to immediate custody for witness intimidation, 2010-2020

	Number of adult offenders sentenced										
	2010	2011 ⁶	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	200	220	185	185	187	191	198	152	128	102	79
1 to 2	41	48	38	31	45	44	60	48	40	36	28
2 to 3	10	6	2	6	5	8	7	6	7	3	3
3 to 4	1	0	0	0	0	0	0	0	0	0	0
4 to 5 years	4	2	2	1	1	0	1	2	3	1	0
Total	256	276	227	223	238	243	266	208	178	142	110

	Proportion of adult offenders sentenced										
	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Less than 1 year	78%	80%	81%	83%	79%	79%	74%	73%	72%	72%	72%
1 to 2	16%	17%	17%	14%	19%	18%	23%	23%	22%	25%	25%
2 to 3	4%	2%	1%	3%	2%	3%	3%	3%	4%	2%	3%
3 to 4	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
4 to 5	2%	1%	1%	0%	0%	0%	0%	1%	2%	1%	0%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Number and proportion of adult offenders sentenced for witness intimidation, by sex and sentence outcome, 2020

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

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

Number and proportion of adult offenders sentenced for witness intimidation, by **age group** and sentence outcome, 2020

Age group	Number of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
18 to 20	0	1	4	8	15	0	28
21 to 24	0	0	0	0	0	0	0
25 to 29	0	0	3	11	28	3	45
30 to 39	0	0	5	17	44	1	67
40 to 49	0	0	1	5	12	0	18
50 to 59	0	0	0	4	7	1	12
60 to 69	0	0	0	1	4	0	5
70 and over	0	0	0	0	0	0	0
Not recorded/not known	0	0	0	0	0	0	0

Age group	Proportion of adult offenders sentenced						
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
18 to 20	0%	4%	14%	29%	54%	0%	100%
21 to 24	-	-	-	-	-	-	-
25 to 29	0%	0%	7%	24%	62%	7%	100%
30 to 39	0%	0%	7%	25%	66%	1%	100%
40 to 49	0%	0%	6%	28%	67%	0%	100%
50 to 59	0%	0%	0%	33%	58%	8%	100%
60 to 69	0%	0%	0%	20%	80%	0%	100%
70 and over	-	-	-	-	-	-	-
Not recorded/not known	-	-	-	-	-	-	-

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

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

Final average custodial sentence lengths (ACSL) received by adult offenders sentenced for witness intimidation, by sex, age and ethnicity, 2020

Sex	ACSL (years) ⁵	
	Mean	Median
Female	0.6	0.5
Male	0.9	0.8
Not recorded/not known	*	*

Age group	Mean	Median
18 to 20	0.9	0.8
21 to 24	-	-
25 to 29	0.9	0.8
30 to 39	0.8	0.7

40 to 49	0.6	0.6
50 to 59	1.4	1.5
60 to 69	*	*
70 and over	-	-
Not recorded/not known	-	-

Ethnicity	Mean	Median
Asian	0.7	0.5
Black	*	*
Mixed	-	-
Other	-	-
White	0.9	0.8
Not recorded/not known	0.9	0.8

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

Annex C

Witness Intimidation

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

Triable either way

Maximum: 5 years' custody

Offence range: Community Order- 4 years' custody

STEP ONE

Determining the offence category

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

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

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Actual or threat of violence to witnesses and/or their families• Deliberately seeking out witnesses• Breach of bail conditions• Conduct over a sustained period of time• Sophisticated and/or planned nature of conduct
B- Medium culpability	<ul style="list-style-type: none">• Non-violent conduct amounting to a threat• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Unplanned and/or limited in scope and duration• Involved through coercion, intimidation or exploitation• Offender's responsibility substantially reduced by mental disorder or learning disability
HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none">• Serious impact on administration of justice• Serious distress caused to victim• Contact made at or in vicinity of victim's home
Category 2	<ul style="list-style-type: none">• Some impact on administration of justice• Some distress caused to the victim
Category 3	<ul style="list-style-type: none">• Limited effects of the offence

STEP TWO

Starting point and category range

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

Harm	Culpability		
	A	B	C
Category 1	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 9 months-2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody
Category 2	Starting Point 1 years' custody Category Range 9 months -2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody	Starting Point 6 months custody Category Range High level community order - 9 months' custody
Category 3	Starting Point 9 months' custody Category Range 6 months -1 years' custody	Starting Point 6 months custody Category Range High level community order – 9 months' custody	Starting Point Medium level community order Category Range Low level community order – 6 months custody

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

Factors increasing seriousness

Statutory aggravating factors:


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

Other aggravating factors:

- Offender involves others in the conduct
- Use of social media

- Vulnerable victim
- Offence committed in a domestic context
- Commission of offence whilst under the influence of alcohol or drugs
- Evidence concealed/destroyed
- Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

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

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

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Totality principle**

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

STEP SIX**Compensation and ancillary orders**

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

STEP SEVEN**Reasons**

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

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 52 of the Sentencing Code](#)

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Consultation Stage Resource Assessment

Perverting the Course of Justice and Witness Intimidation

Introduction

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

Rationale and objectives for new guideline

No current guideline exists for offences relating to perverting the course of justice, a common law offence. The Council is consulting on a new sentencing guideline for these offences, for use in all courts in England and Wales.

In May 2008, the Sentencing Guidelines Council (SGC) published the Magistrates' Court Sentencing Guidelines (MCSG), covering most of the offences regularly going before magistrates' courts. This included the offence of witness intimidation under section 51(1) and section 51(2) of the Criminal Justice and Public Order Act 1994. The MCSG only apply to sentences passed at magistrates' courts, and so there are no existing guidelines for this offence for use in the Crown Court. The Council is consulting on a new sentencing guideline for this offence, for use at all courts.

The Council's aim in developing the new and revised guidelines is to provide sentencers with a clear approach to sentencing these offences that will ensure that sentences are proportionate to the offence committed and in relation to other offences. It should also promote a consistent approach to sentencing.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guideline on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the new and revised guidelines for the following offences:

- Perverting the course of justice contrary to Common Law.

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

- Intimidating a witness contrary to sections 51(1) and 51(2) of the Criminal Justice and Public Order Act 1994.

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

Current sentencing practice

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

The intention is that the new and revised guidelines will encourage consistency of sentencing, especially where no guideline currently exists to better reflect current case law.

Knowledge of recent sentencing was required to understand how the new guideline may impact sentences. Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks for offenders sentenced for perverting the course of justice and witness intimidation, as well as sentencing data from the Court Proceedings Database.^{2,3} Knowledge of the sentences and factors used in previous cases, in conjunction with Council members' experience of sentencing, has helped to inform the development of the guidelines.

During the consultation stage, we intend to conduct research with sentencers, to explore whether the draft guidelines will work as anticipated. This research should also provide some further understanding of the potential impact of the guidelines on sentencing practice, and the subsequent effect on prison and probation resources.

Detailed sentencing statistics for the offences covered by the draft guideline have been published on the Sentencing Council website at the following link:
<http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year>.

Perverting the course of justice

In 2020, around 400 offenders were sentenced for perverting the course of justice and all of these were sentenced at the Crown Court. Around half of these offenders

² The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. The average custodial sentence lengths presented in this resource assessment are average custodial sentence length values for offenders sentenced to determinate, immediate custodial sentences, after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>.

³ Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

(51 per cent) were sentenced to immediate custody and a further 42 per cent were given a suspended sentence order. Community orders accounted for 4 per cent of sentences and 2 per cent were recorded as otherwise dealt with.^{4,5}

Perverting the course of justice is a Common Law offence and, as such, the statutory maximum sentence is life imprisonment. For those receiving immediate custody in 2020, the average (mean) custodial sentence length (ACSL) was 1 year 2 months.

Witness intimidation

In 2020, around 180 offenders were sentenced for intimidating a witness, with most (63 per cent) sentenced to immediate custody. A further 26 per cent received a suspended sentence, 7 per cent received a community order, 1 per cent received a fine and 2 per cent were recorded as otherwise dealt with.^{4,5}

The statutory maximum sentence for witness intimidation is 5 years' custody and in 2020, the ACSL for this offence was 11 months.

Key assumptions

To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guideline and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guideline are therefore subject to a substantial degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. In addition, for low volume offences, and those which have only recently been created, there are limited data available. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed new guideline, and an assessment of the effects of changes to the wording of the guideline where a previous guideline existed.

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

In developing sentence levels for the new guidelines, existing guidance and data on current sentence levels has been considered. While data exists on the number of offenders and the sentences imposed, assumptions have been made about how

⁴ The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

⁵ Percentages may not sum to 100 per cent due to rounding.

current cases would be categorised across the levels of culpability and harm proposed in the draft guidelines using relevant transcripts, due to a lack of data available regarding the seriousness of current cases. As a consequence, it is difficult to ascertain how sentence levels may change under the draft guideline.

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To support the development of the new guidelines, and to mitigate the risk of the changes having an unintended impact, research will be undertaken with sentencers during the consultation period, utilising different scenarios. Along with consultation responses, this should hopefully provide more information on which to base the final resource assessment accompanying the definitive guidelines.

Resource impacts

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

Overall impacts

The expected impact of each guideline is provided in detail below.

For both perverting the course of justice and witness intimidation offences, it is difficult to estimate the impact of the draft guidelines. However, it is anticipated that the new guidelines will improve consistency of sentencing for these offences, but not lead to any notable changes in sentencing severity.

Perverting the course of justice

There is currently no guideline for perverting the course of justice and the proposed guideline has three levels of culpability and three levels of harm. This leads to nine offence categories with sentences ranging from a community order to seven years' custody. The Council's intention with the new guideline is not to change sentencing practice and, as such, sentencing ranges have been set with current sentencing practice in mind.

Perverting the course of justice is an indictable only offence and as such all offenders are sentenced at the Crown Court. Analysis of a sample of Crown Court judges' sentencing remarks⁶ has been undertaken to understand the possible effects of the guideline on sentencing practice. However, it should be noted that these types of cases vary as there are a number of different underlying offences for which an offender could be sentenced for perverting the course of justice. The sample of transcripts analysed covers a range of these underlying offences and as such offers some insight into the circumstances of the cases and the reasoning behind the sentence given. However, it is not possible to obtain information on all relevant underlying offences and for those cases for which we do have transcripts, they do not always provide all the information needed to accurately assess the seriousness and

⁶ A total of 27 transcripts of Crown Court sentencing remarks for perverting the course of justice from 2015, 2016 and 2017 were analysed to assess the impact this guideline may have on prison and probation services.

nature of the offence, as this can often vary from case to case. Therefore, findings presented in the resource assessment should be treated as indicative only.

Case law suggests that offences of perverting the course of justice often warrant a custodial sentence but that these do not always need to be long custodial sentences.⁷ Only one sentence range in the guideline has a non-custodial sentence outcome (category C3) and the analysis suggests that very few cases would fall into this category (none of the transcripts in the sample analysed). This is in line with current sentencing practice that shows that fewer than 10 per cent of offenders received a non-custodial sentence in 2020.

The analysis also suggested that sentences using the draft guideline are broadly in line with the outcomes given by sentencers prior to the guideline. It suggested that the sentence types would remain similar under the new guideline; for example, offenders currently receiving a suspended sentence order would continue to do so, as would offenders currently receiving a sentence of immediate custody. The analysis did suggest that the small number of offenders currently receiving a non-custodial sentence (fines or community orders) may receive a short custodial sentence instead, under the new guideline.⁸ However, current sentencing practice indicates that non-custodial sentences account for fewer than five per cent of sentences each year and so these would likely be eligible for suspension.⁹ Therefore, it is anticipated that there will be limited impact on prison and probation resources.

The analysis further suggested that the sentence lengths for immediate custody given for these offences would remain broadly similar under the new draft guideline and that there would be limited, if any, need for additional prison places. However, further research will be conducted during the consultation stage to estimate the potential resource impact of the guideline and to understand how the guideline will be applied in practice.

Witness intimidation

The existing MCSG guideline for witness intimidation contains three categories of seriousness reflecting the 'nature of activity'. The new draft guideline adopts the Sentencing Council's standard stepped approach and applies to all courts. It is based on three levels of harm and three levels of culpability. The sentencing ranges have been set with current sentencing practice in mind, with a sentencing table ranging from a community order to four years' custody.

Most offenders sentenced for offences of witness intimidation are sentenced at the Crown Court (73 per cent in 2020) and analysis of a sample of Crown Court judges' sentencing remarks¹⁰ has been undertaken to understand the possible effects of the guideline on sentencing practice. As with perverting the course of justice, it is

⁷ *Abdulwahab* [2018] EWCA Crim 1399.

⁸ Very few transcripts were analysed for those sentenced to fines or community orders, however, all those that were included in the analysis, saw the sentence increased to custodial sentence. Therefore, this estimate provides an indication of the movement of sentences in relation to these cases.

⁹ Sentencers are able to suspend sentences of between 14 days and two years.

¹⁰ A total of 18 transcripts of Crown Court sentencing remarks for witness intimidation from 2015, 2017 and 2020 were analysed to assess the impact this guideline may have on prison and probation services.

anticipated that the sentencing levels will remain relatively stable under the new guideline.

The analysis also suggested that the sentence outcomes for witness intimidation would remain generally the same under the new draft guideline; for example, offenders currently receiving a suspended sentence order would continue to do so. There was some variation in the lengths of sentences given but, overall, it is anticipated that the lengths of sentences received by offenders sentenced to immediate custody will remain broadly stable. As such, it is anticipated that any impact the guideline has on prison or probation resources would be limited. However, further research will be conducted during the consultation stage to estimate the potential resource impact of the guideline and to understand how the guideline would be applied in practice.

Risks

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guidelines comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guidelines have the intended effect and inviting views on the guidelines. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated. Transcripts of judges' sentencing remarks have provided a more detailed picture of current sentencing practice for these offences which has formed a large part of the evidence base on which the resource impacts have been assessed. However, it should be noted that due to the limited information within the transcripts and the case-specific nature of these offences, the findings of the resource assessment should only be interpreted as indicative of any resource impacts.

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

If sentencers do not interpret the guidelines as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers interpret them as intended. For the new draft guidelines, sentencing ranges have been decided on by considering sentence ranges in the MCSG witness intimidation guideline, in conjunction with sentencing data and Council members' experience of sentencing. Transcripts of sentencing remarks of relevant perverting the course of justice and witness intimidation cases have been studied to gain a greater understanding of current sentencing practice and to ensure that the guidelines are developed with current sentencing practice in mind. Research with sentencers due to be carried out during the consultation period should also enable

issues with implementation to be identified and addressed prior to the publication of the definitive guidelines.

Consultees can also feed back their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines.

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

28 January 2022
SC(22)JAN07 – Sexual Offences
Adrian Fulford
Ollie Simpson
07900 395719

1 ISSUE

1.1 Signing off finalised revisions to the sexual offence guidelines and a new guideline for sexual communication with a child.

2 RECOMMENDATIONS

2.1 That Council:

- signs off the revisions to the sexual offences guidelines and the new section 15A guideline (subject to two final points in relation to the new guideline) as set out in **Annex A**; and
- signs off the revised publication stage resource assessment at **Annex B**;
- agrees that, with the exception of the new section 15A guideline, the changes should come into effect from the point of publication.

3 CONSIDERATION

3.1 The consultation on revisions to the sexual offences guidelines ran between 13 May and 13 August 2021. This paper summarises revisions made to the draft guidelines and the resource assessment following consultation, and raises a specific point covered in the resource assessment relating to the new proposed aggravating factor on age disparity.

Section 14

3.2 The draft revised guideline for section 14 of the Sexual Offences Act 2003 is at page 1 of Annex A, with post-consultation amendments in red. As agreed by Council, it remains a brief textual guideline directing sentencers to the guideline for the offence which was being facilitated or arranged.

3.3 Currently those are the guidelines for sections 9 to 12 of the 2003 Act: sexual activity with a child/causing or inciting sexual activity with a child, and engaging in sexual activity in the presence of a child/causing a child to watch a sexual act. When the relevant provisions in the Police, Crime, Sentencing and Courts Bill are commenced that will be extended to the

guidelines for offences under sections 5 to 8: rape of a child under 13, assault of a child under 13 by penetration, sexual assault of a child under 13 and causing or inciting a child under 13 to engage in sexual activity.

3.4 Following consultation and road testing, we amended the section 14 text to:

*“In cases where an offender is only prevented by the police or others from conducting the intended sexual activity at a late stage, or where a child victim does not exist and, but for this fact, the offender would have carried out the intended sexual activity, **only a very small reduction within the category range will usually be appropriate.**”*

to mitigate the risk that sentencers give too much of a discount to reflect the lack of a real victim. We have also added brackets to the text consulted on to be clearer that the guidance covers all cases where no sexual activity takes place, including but not limited to cases where the victim is fictional:

“No sexual activity need take place for a section 14 offence to be committed (including in instances where no child victim exists). In such cases the court should identify the category of harm on the basis of the sexual activity the offender intended etc etc”

“Causing or inciting” offences

3.5 The additional text being added to the guidelines for the “causing or inciting” offences in the Sexual Offences Act¹ is on page 3 of Annex A. This simply mirrors the change outlined above for section 14. Whilst the fictional victim scenario is unlikely to occur with some of those offences, it was agreed that it could not hurt to include the guidance. The reference to a “child victim” will simply be to a “victim” if the offence involves adult victims.

3.6 Council has agreed to add a drop down in the guidelines for the child sex offences covered by section 14 which replicates in full the guidance from the section 14 guideline, in response to concerns that this could get missed by sentencers in the process of cross-referencing.

Drop down explanations

3.7 The drop down text proposed as a step one “expanded explanation” for the harm factor “significant psychological harm” is at page 4 of Annex A, again with post-consultation changes in red. In response to various comments received on the text we have amended the

¹ These are section 8 (causing or inciting a child under 13 to engage in sexual activity); section 10 (causing or inciting a child to engage in sexual activity); section 17 (abuse of position of trust: causing or inciting a child to engage in sexual activity); section 26 (inciting a child family member to engage in sexual activity); section 31 (causing or inciting a person with a mental disorder impeding choice to engage in sexual activity); section 39 (care workers: causing or inciting sexual activity); sections 48 (causing or inciting sexual exploitation of a child); and section 52 (causing or inciting sexual exploitation for gain).

text for clarity, to be clear that a degree of psychological harm is inherent in the offending and taken into account in setting sentencing levels, and that the absence of a finding of significant psychological harm is not to diminish the psychological harm which has occurred.

3.8 The proposed drop down text on abuse of trust, which is based on the existing expanded explanation, is on page 5 of Annex A. No changes are being made to this post-consultation.

Mitigating factors

3.9 Council has also agreed to amend the mitigating factor “age and/or lack of maturity where it affects the responsibility of the offender” to the new standard “age and/or lack of maturity” and to add the now standard “physical disability or serious medical condition requiring urgent, intensive or long-term treatment” to all relevant sexual offence guidelines.

Overseas victims/remote offending

3.10 In response to the concerns about the potential for confusion, Council has agreed to revise the text consulted on in relation to remote offending and the approach to victims who are overseas (see page 6 of Annex A, post-consultation changes in red). This reflects the fact that there may be factual elements in an individual case related to the location of offender or victim, and the remote nature of the offending that *do* merit consideration as part of the assessment of seriousness, but the *approach* to that assessment should be the same regardless.

3.11 We consulted on adding this text to the guidelines for section 8 (causing or inciting a child under 13 to engage in sexual activity); section 10 (causing or inciting a child to engage in sexual activity); section 48 (causing or inciting sexual exploitation of a child); and section 52 (causing or inciting sexual exploitation for gain). Following responses to the consultation, we will also add it to the guidelines for section 17 (abuse of a position of trust: causing or inciting a child to engage in sexual activity) and section 47 (paying for sexual services of a child).

Sexual Harm Prevention Orders

3.12 We are amending the wording on information on sexual harm prevention orders in response to requests for additional information from consultees (see page 7 of Annex A). These cover the time limits on foreign travel restrictions, and the effect on existing orders, Although we are not providing exhaustive information on SHPOs, we will provide a link to the relevant part of statute. The changes also reflect the fact that the Police, Crime, Sentencing and Courts Bill will permit positive obligations to be imposed via SHPOs.

Historical sexual offences

3.13 We had proposed two changes to the guidance on historical sexual offences to bring its wording more into line with Court of Appeal case law, and following consultation we are changing these amendments. The final text (with our proposed changes as they now stand) is at page 8 of Annex A.

3.14 For the third bullet, we had consulted on the text “The court should sentence by reference to any applicable sentencing guidelines for equivalent offences under the Sexual Offences Act 2003.” However to avoid creating yet another formulation for the Courts to follow, this will now be “The court should sentence by **measured** reference to...” which is the exact wording used in *R v H [2011] EWCA Crim 2753*.

3.15 The existing guidance speaks of youth/immaturity being a mitigating factor. The Court of Appeal in *R v Forbes [2016] EWCA Crim 1388* said in fact this should be a culpability factor (presumably because it related to the circumstances of the historical offending, not the offender currently before the courts). We consulted on moving to this approach, but concerns were raised about the difference in treatment between these and present-day cases (where youth/immaturity is a step two factor under the guidelines). In practice, a mitigating factor can relate both to the circumstances of the offence and the offender. The proposed wording therefore acts as a compromise and says “...[youth/immaturity] may be regarded as mitigation affecting the offender’s culpability.”

3.16 We will also change the title of the guidance to “Approach to sentencing historicala sexual offences” following feedback provided during consultation.

Section 15 A – Sexual communication with a child

3.17 The proposed section 15A guideline with post-consultation amendments is at page 10 of Annex A. In the raised harm category we are expanding sending or receiving “images” out to “digital media” in response to consultation responses.

3.18 Council also wanted to reflect in this category the raised harm that was likely to have been caused to a victim, bearing in mind many are fictitious. I have inserted “Significant psychological harm or distress caused, **or very likely to have been caused**, to victim/**intended victim**”. At the meeting where we considered this the wording suggested was “Significant psychological harm or distress caused to victim, **or very likely to result from intended conduct**”. The difficulty with that wording is that with section 15A no particular further conduct is intended. So I recommend adopting the amendment I have suggested.

Question 1: are you content with the raised culpability factor now being “Significant psychological harm or distress caused, or very likely to have been caused, to victim/intended victim”?

3.19 In raised culpability, we have expanded “Use of threats (including blackmail)” to include gifts and bribes in response to suggestions from consultees. We have also added “Offender acted together with others to commit the offence” which appears in a number of child sexual offence guidelines.

3.20 We have removed the aggravating factor “Commission of offence whilst under the influence of alcohol or drugs” as it is irrelevant to this offence. In response to one respondent’s suggestion we have amended the aggravating factor “attempts to dispose of or conceal evidence” to include “asking the victim to conceal the offending”.

3.21 Council agreed to include “substantial disparity between age of offender and victim/intended victim” as an aggravating factor (where it appears as a culpability factor in other child sexual offence guidelines). This arose from a discussion which concluded that lying about one’s age was so commonplace in this offending that it should not be included as an aggravating factor. On reflection, the same could be said of this factor: this is discussed further in the Impact section below.

3.22 We have added the mitigating factor common in sexual offence guidelines “steps taken to address offending behaviour” in response to a suggestion from consultees.

4 EQUALITIES

4.1 The consultation asked

- Do you consider that any elements of the draft guidelines and revisions presented here, or the ways in which they are expressed, could risk being interpreted in ways which could lead to discrimination against particular groups?
- Are there any other equality and diversity issues these guidelines and revisions should consider?

4.2 We are not making any amendments in relation to the few points raised in response to this question. The only substantive response on this had suggested that offending by women should be treated more seriously (which the Council did not propose to take up) and that, in general, there were disparities in sentencing between different ethnic groups. Given the low volumes of Black, Asian, Mixed and Other ethnicity offenders for these offences, this is difficult to evidence.

5 IMPACT AND RISKS

5.1 The resource assessment to accompany the definitive guideline is at Annex B. There are only a few substantive changes to the resource assessment which was published at the point of consultation, but the new resource assessment updates the latest statistics, and highlights some findings from road testing and changes made as a result of consultation.

5.2 There has been little change to the guideline for sexual communication with a child (section 15A) since the draft stage that would have any further impact on resource.

Therefore, we still estimate that there may be a small increase in sentencing severity, with some offenders who would previously have received a community order now receiving a short immediate custodial sentence. However, it is likely that most of these would be suspended resulting in minimal impact on prison resources.

5.3 The revised resource assessment highlights that post-consultation we have tightened the language used for the section 14 guideline and the “causing or inciting” offences to ensure that sentencers do not provide too great a discount where no sexual activity takes place (“...**only** a **very** small adjustment...”). This change should confirm our original assessment about the expected impact of the revised guidance as the new wording should be in line with our original intentions. We therefore still estimate that there may be a small increase overall in sentence levels for cases in which no actual child is present for section 14 offences, with the potential requirement for approximately 40 additional prison places per year. For causing or inciting a child to engage in sexual activity (section 10), there may be an increase in sentencing severity for cases where no child exists, with the potential requirement for around 190 additional prison places per year.² The changes for the other “causing or inciting” guidelines are likely to have negligible impact on prisons or probation resources due to the small number of offenders sentenced for these offences.

5.4 Note, in any case, that these changes arise from the Court of Appeal case law so the changes in sentencing practice can be attributed to this rather than any intention of the Council to influence sentencing practice, albeit we publish these guidelines in the knowledge of what future sentencing practice will be.

5.5 Another post consultation change highlighted by the revised resource assessment is the addition of the aggravating factor “substantial disparity between age of offender and victim/intended victim” to the section 15A guideline. As mentioned above, this is likely to be

² As set out at Annex B, the transcripts used for the estimates for section 10 and 14 are cases from 2019, before the Court of Appeal ruling occurred in May 2020, therefore, the findings presented here represent the estimated impact of the guideline on 2019 sentencing practice.

present in a large number of these cases. Looking at the transcripts we have, in 89 per cent of cases, there was an age disparity of 10 years or more and the average difference in age between offender and victim was 24 years. Although not possible to quantify, this may lead to an increase in sentencing severity, although, based on current sentencing practice, these are likely to be suspended and as such would have limited impact on prison resource.

Question 2: can Council confirm it still wishes to add an aggravating factor of “substantial disparity between age of offender and victim/intended victim”?

Question 3: subject to that, is Council content with the revised resource assessment at Annex B?

5.6 Despite the public focus last year on sexual offences, particularly the safety of women and girls, it was readily understood that our consultation was seeking views on a specific and discrete issue. As covered in previous papers, there were a variety of views about how to deal with the central issue of cases where no sexual activity took place, with respondents from academia and the judiciary arguing in favour of a greater discount than we were suggesting. Others, such as the Howard League, were concerned that the sentencing levels for section 15A (sexual communication with a child) were too high. They may be disappointed by our ultimate approach.

5.7 Our rationale for the definitive guideline and any changes made (or not made) as a result of consultation will be set out in the consultation response document, which I will circulate in due course, and in communications material that we shall develop at the time of publication, which is scheduled for April.

5.8 The section 15A guideline would therefore come into effect from 1 July. Most of the other changes we are making involve clarifications to wording and expanded explanations which should reflect current case law. There is no particular necessity therefore for the changes to come into effect a period after publication.

5.9 The changes to the section 14 guideline and the insertion of text into the “causing or inciting” offences for cases where there is no victim is perhaps less clear cut as this could have a material impact on sentences (albeit in line with current Court of Appeal case law). In the case of the section 14 guideline the new addition adds significantly to the existing guideline.

5.10 I nonetheless propose that given the courts should be applying these rules already the changes come into effect upon publication of the changes. The “Effective from” date on the guideline should remain as 1 April 2014, but we will add a note to the guideline to be clear of the date that the revisions we are making have come into effect.

Question 4: does the Council agree to sign off the revisions to the existing sexual offence guidelines and guidance, and the new guideline for sexual communication with a child?

Question 5: are you content for all the changes to be effective from the point that we publish, with the exception of the new section 15 A guideline?

Arranging or facilitating the commission of a child sex offence - for consultation only

Sexual Offences Act 2003, s.14

Effective from: XXXXXXXXX

Triable either way

Maximum: 14 years' custody

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

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

When sentencing a section 14 offence, sentencers should refer to the guideline for the applicable, substantive offence of arranging or facilitating under sections 9 to 12:

- [Sexual activity with a child](#), Sexual Offences Act 2003, s.9
- [Causing or inciting a child to engage in sexual activity](#), Sexual Offences Act 2003, s.10
- [Engaging in sexual activity in the presence of a child](#), Sexual Offences Act 2003, s.11
- [Causing a child to watch a sexual act](#), Sexual Offences Act 2003, s.12

The level of harm should be determined by reference to the type of activity arranged or facilitated. Where the activity takes place, sentences commensurate with the applicable starting point and range will ordinarily be appropriate.

No sexual activity need take place for a section 14 offence to be committed (including in instances where no child victim exists). In such cases the court should identify the category of harm on the basis of the sexual activity the offender intended, and then apply a downward adjustment at step two to reflect the fact that no or lesser harm actually resulted.

The extent of this adjustment will be specific to the facts of the case. In cases where an offender is only prevented by the police or others from conducting the intended sexual activity at a late stage, or where a child victim does not exist and, but for this fact, the offender would have carried out the intended sexual activity, **only** a **very** small reduction within the category range will usually be appropriate.

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

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

The sentence will then be subject to further adjustment for aggravating and mitigating features, in the usual way.

For offences involving significant commercial exploitation and/or an international element, it may be appropriate to increase a sentence to a point above the category range. In exceptional cases, such as where a vulnerable offender performed a limited role, having been coerced or exploited by others, sentences below the range may be appropriate.

Other “causing or inciting” offences text

In section 10 cases where activity is incited but does not take place the court should identify the category of harm on the basis of the sexual activity the offender intended, and then apply a downward adjustment at step two to reflect the fact that no or lesser harm actually resulted.

The extent of downward adjustment will be specific to the facts of the case. Where an offender is only prevented by the police or others from carrying out the offence at a late stage, or in attempts where a [child] victim does not exist and, but for this fact, the offender would have carried out the offence, **only a very** small reduction within the category range will usually be appropriate. No additional reduction should be made for the fact that the offending is an attempt.

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

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

The sentence will then be subject to further adjustment for aggravating and mitigating features.

Significant psychological harm - dropdown text

The sentence levels in this guideline take into account a basic level of psychological harm which is inherent in the nature of the offence. The assessment of psychological harm experienced by the victim **beyond this** is for the sentencer. Whilst **the court** may be assisted by expert evidence, such evidence is not necessary for a finding of psychological harm, including severe psychological harm. A sentencer may assess that such harm has been suffered on the basis of evidence from the victim, including evidence contained in a Victim Personal Statement (VPS), or on his or her observation of the victim whilst giving evidence. **It is important to be clear that the absence of such a finding does not imply that the psychological harm suffered by the victim is minor or trivial.**

Abuse of trust - dropdown text (no change)

A close examination of the facts is necessary and a clear justification should be given if abuse of trust is to be found.

In order for an abuse of trust to make an offence more serious the relationship between the offender and victim(s) must be one that would give rise to the offender having a significant level of responsibility towards the victim(s) on which the victim(s) would be entitled to rely.

Abuse of trust may occur in many factual situations. Examples may include relationships such as teacher and pupil, parent and child, employer and employee, professional adviser and client, or carer (whether paid or unpaid) and dependant. It may also include ad hoc situations such as a late-night taxi driver and a lone passenger. These examples are not exhaustive and do not necessarily indicate that abuse of trust is present.

Additionally an offence may be made more serious where an offender has abused their position to facilitate and/or conceal offending.

Where an offender has been given an inappropriate level of responsibility, abuse of trust is unlikely to apply.

Overseas victims/remote offending text

Sentencers should approach the assessment of seriousness in the same way regardless of whether ~~draw no distinction between~~ activity was caused/incited in person ~~or remotely~~ and ~~activity caused or incited remotely,~~ ~~nor between the~~ regardless of whether harm was caused to a victim in this jurisdiction ~~and that caused~~ or to a victim anywhere else in the world.

Sexual Harm Prevention Order text

Sexual harm prevention orders (SHPOs) Sexual Offences Act 2003, s103A

To make an SHPO, the court must be satisfied that the offender presents a risk of sexual harm to the public (or particular members of the public) and that an order is necessary to protect against this risk. The only prohibitions which can be imposed by an SHPO are those which are necessary for the purpose of protecting the public from sexual harm from the offender. ~~The order may include only negative prohibitions; there is no power to impose positive obligations.~~

The order may have effect for a fixed period (not less than five years) or until further order, ~~with the exception of a foreign travel prohibition which must be a fixed period of no more than five years (renewable). Different time periods may be specified for individual restrictions and requirements.~~

~~Where an SHPO is made in respect of an offender who is already subject to an SHPO, the earlier SHPO ceases to have effect. If the offender is already subject to a Sexual Offences Prevention Order or Foreign Travel Order made in Scotland or Northern Ireland, that order ceases to have effect unless the court orders otherwise.~~

~~Chapter 2 of Part 11 of the Sentencing Code [LINK] sets out further matters related to making SHPOs.~~

Approach to sentencing historical sexual offences

When sentencing sexual offences under the Sexual Offences Act 1956, or other legislation pre-dating the 2003 Act, the court should apply the following principles:^[1]

1. The offender must be sentenced in accordance with the sentencing regime applicable at the date of sentence. Under sections 57 and 63 of the Sentencing Code the court must have regard to the statutory purposes of sentencing and must base the sentencing exercise on its assessment of the seriousness of the offence.
2. The sentence is limited to the maximum sentence available at the date of the commission of the offence. If the maximum sentence has been reduced, the lower maximum will be applicable.
3. The court should sentence by **measured** reference to any applicable sentencing guidelines for equivalent offences under the Sexual Offences Act 2003. Where the offence, if committed on the day on which the offender was convicted, would have constituted an offence contrary to section 5 or section 6 of the Sexual Offences Act 2003, sections 265 and 278 of the Sentencing Code (special custodial sentence for certain offenders of particular concern) apply.
4. The seriousness of the offence, assessed by the culpability of the offender and the harm caused or intended, is the main consideration for the court. The court should not seek to establish the likely sentence had the offender been convicted shortly after the date of the offence.
5. When assessing the culpability of the offender, the court should have regard to relevant culpability factors set out in any applicable guideline.
6. The court must assess carefully the harm done to the victim based on the facts available to it, having regard to relevant harm factors set out in any applicable guideline. Consideration of the circumstances which brought the offence to light will be of importance.
7. The court must consider the relevance of the passage of time carefully as it has the potential to aggravate or mitigate the

seriousness of the offence. It will be an aggravating factor where the offender has continued to commit sexual offences against the victim or others or has continued to prevent the victim reporting the offence.

8. Where there is an absence of further offending over a long period of time, especially combined with evidence of good character, this may be treated by the court as a mitigating factor. However, as with offences dealt with under the Sexual Offences Act 2003, previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.
9. If the offender was very young and immature at the time of the offence, depending on the circumstances of the offence, this may be **be regarded as mitigation significantly reduce affecting** the offender's culpability.
10. If the offender made admissions at the time of the offence that were not investigated this is likely to be regarded as personal mitigation. Even greater mitigation is available to the offender who reported himself to the police and/or made early admissions.
11. A reduction for an early guilty plea should be made in the usual manner.

[1] R v H and others [2011] EWCA Crim 2753

Sexual communication with a child

Sexual Offences Act 2003, s.15A

Effective from: XXXXXXXXXX

Triable either way

Maximum: 2 years' custody

Offence range: Community order – 2 years' custody

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

Step 1 – Determining the offence category

The court should determine which categories of harm and culpability the offence falls into by reference only to the tables below.

Harm

Use the factors given in the table below to identify the Harm category. If the offence involved multiple victims, sentencers may consider moving up a harm category or moving up substantially within a category range.

In cases of attempts where an offender tries to communicate with a child victim who does not exist, the court should identify the category of harm on the basis of the sexual activity the offender intended, and then apply a downward adjustment at step two to reflect the fact that no or lesser harm has actually resulted. In such cases **only a very** small reduction within the category range will usually be appropriate. No additional reduction should be made for the fact that the offending is an attempt.

Category 1

- Sexual images **or digital media** sent or received
- Significant psychological harm or distress caused, **or very likely to have been caused**, to victim/intended victim.

Category 2

- Factor(s) in category 1 not present

Culpability

Culpability A

- Abuse of trust

- Use of threats (including blackmail), **gifts or bribes**
- Targeting of a particularly vulnerable child
- Commercial exploitation and/or motivation
- Soliciting images
- **Offender acted together with others to commit the offence**

Culpability B

- Factor(s) in category A not present

Step 2 – Starting point and category range

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

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

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under Part 3 of Schedule 9 to the Sentencing Code can be a proper alternative to a short or moderate length custodial sentence.

	Culpability A	Culpability B
Harm category 1	<p>Starting point 18 months' custody</p> <p>Category range 9 – 24 months' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range High level community order – 18 months' custody</p>
Harm category 2	<p>Starting point 1 year's custody</p> <p>Category range High level community order – 18 months' custody</p>	<p>Starting point 6 months' custody</p> <p>Category range Medium level community order – 1 year's custody</p>

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

Aggravating factors

Statutory aggravating factors

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors

- Failure to comply with current court orders
- Offence committed whilst on licence
- Financial or other reward offered to victim
- Offender lied about age or used a false identity
- **Substantial disparity between age of offender and victim/intended victim**
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence (**including asking the victim to conceal the offending**)
- Failure of offender to respond to previous warnings
- ~~Commission of offence whilst under the influence of alcohol or drugs~~
- Victim encouraged to recruit others
- Victim particularly vulnerable (where not taken into account at step one)
- Offence involved sustained or persistent communication

Mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct*
- Isolated offence
- Age and/or lack of maturity
- **Demonstration of steps taken to address offending behaviour**

- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Physical disability or serious medical condition requiring urgent, intensive or long-term treatment

* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

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

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

Step 4 – Reduction for guilty pleas

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

Step 5 – Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279).

Step 6 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour. See Totality guideline.

Step 7 – Ancillary Orders

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may automatically apply.

- Ancillary orders – Crown Court Compendium

Additional ancillary orders – sexual offences

Step 8 – Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

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

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

Final Resource Assessment

Sexual Offences

Introduction

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

Rationale and objectives for new guideline

In April 2014, the Sentencing Council's *Sexual Offences Definitive Guideline* came into force, covering most sexual offences regularly sentenced by courts in England and Wales. It included guidelines for sentencing over 50 offences including offences relating to causing or inciting sexual offences and arranging and facilitating sexual offences under the Sexual Offences Act 2003 (SOA).

Recent Court of Appeal case law has clarified the approach that the courts should take in cases where no sexual activity takes place, including instances where no child victim exists, usually because the offender is the subject of a so-called "sting" operation. This will typically involve either the police, or an informal group, pretending to be a fictitious child or the parent of a fictitious child in order to identify those trying to commit sexual offences with children. The Court of Appeal requested that the Council consider clarifying the guideline for section 14 of the SOA to cater for these cases. The Council has considered that such an update is necessary. Additionally, following this case law, the Council has considered how the guidelines for causing or inciting offences (for example, section 10 of the SOA) would apply to the situation where activity is incited but not caused, and have revisited these to provide further clarification.

Section 67 of the Serious Crime Act 2015 inserted a new section 15A into the SOA making sexual communication with a child a specific offence. This offence came into effect on 3 April 2017, and no current guideline exists.

The Council has produced a new sentencing guideline covering the new offence under section 15A and has updated and revised the other relevant sexual offence guidelines, for use in all courts in England and Wales.

The Council's aim in developing these guidelines is to provide sentencers with a clear approach to sentencing sexual offences – including those where no sexual

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

activity has occurred – that will ensure that sentences are proportionate to the offence committed and in relation to other offences, and to promote a consistent approach to sentencing.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guideline on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the guidelines for the following offences under the Sexual Offences Act 2003:

- Sexual communication with a child (section 15A)
- Arranging or facilitating the commission of a child sex offence (section 14)
- Causing or inciting a child to engage in sexual activity (section 10)
- Causing or inciting a child under 13 to engage in sexual activity (section 8)
- Abuse of position of trust: causing or inciting a child to engage in sexual activity (section 17)
- Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity (section 31)
- Care workers: causing or inciting sexual activity (section 39)
- Causing or inciting sexual exploitation of a child (section 48)
- Causing or inciting prostitution for gain (section 52)

The offences shown above include all the guidelines that will see some change as a result of this revision. Some changes, like those made to sections 8, 10, 14 and 15A are more substantive and as such the resource implications of these guidelines has been discussed individually. For the remaining offences, the changes made are minor and as such are anticipated to have little or no impact, so the resource implications for these guidelines have been jointly presented within the resource assessment.

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

Current sentencing practice

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

The intention is that the new section 15A guideline will encourage consistency of sentencing in an area where no guideline currently exists and that the revisions to existing guidelines will encourage consistency of sentencing and better reflect current case law.

Knowledge of recent sentencing was required to understand how the new guidelines may impact sentences. Sources of evidence have included the analysis of transcripts

of Crown Court judges' sentencing remarks for offenders sentenced for sexual offences and sentencing data from the Court Proceedings Database.^{2,3} A review of case law has informed the guidelines⁴ and knowledge of the sentences and factors used in previous cases, in conjunction with Council members' experience of sentencing, has helped to inform the development of the guidelines.

Research with sentencers has also been conducted, to explore whether the guidelines would be implemented as anticipated. This research has provided some further understanding of the likely impact of the guidelines on sentencing practice, and the subsequent effect on the prison population and probation resources.

Detailed sentencing statistics for sexual offences covered by the guidelines have been published on the Sentencing Council website at the following link: <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year>.

Sexual communication with a child (section 15A)

The offence of sexual communication with a child came into force in April 2017 and has a statutory maximum sentence of 2 years' custody. Since then, the number of offenders sentenced has grown year on year, increasing by 65 per cent in the latest year, from around 280 in 2019 to around 470 in 2020. Of these offenders, 42 per cent were sentenced to a community order, a further 38 per cent received a suspended sentence order, 13 per cent received an immediate custodial sentence and 1 per cent received a fine. The remaining 6 per cent were recorded as otherwise dealt with.⁵ For those receiving immediate custody in 2020, the average (mean) custodial sentence length (ACSL) was 10 months.

Arranging or facilitating the commission of a child sex offence (section 14)

The statutory maximum sentence for arranging or facilitating the commission of a child sex offence is 14 years' custody. In 2020, around 120 offenders were sentenced for this offence, with the majority (78 per cent) sentenced to immediate custody. A further 18 per cent received a suspended sentence order, and 4 per cent

² The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. The average custodial sentence lengths presented in this resource assessment are average custodial sentence length values for offenders sentenced to determinate, immediate custodial sentences, after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>.

³ Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

⁴ Notably the case of *Privett and Others [2020] EWCA Crim 557*. More recently *Reed and Others [2021] EWCA Crim 572* confirmed the principles set out in *Privett* apply in cases beyond section 14.

⁵ Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

received a community order. The ACSL for those sentenced to immediate custody was 3 years 3 months.⁶

Causing or inciting a child to engage in sexual activity (section 10)

The statutory maximum sentence for causing or inciting a child to engage in sexual activity is 14 years. In 2020, around 240 offenders were sentenced for this offence and over half were sentenced to immediate custody (55 per cent). A further 30 per cent received a suspended sentence order, 13 per cent received a community order and 3 per cent were recorded as otherwise dealt with.^{5,7} For those receiving immediate custody, the ACSL was 3 years.⁶

Causing or inciting a child under 13 to engage in sexual activity (section 8)

The statutory maximum sentence for causing or inciting a child under 13 to engage in sexual activity is life imprisonment. In 2020, around 140 offenders were sentenced for this offence and most offenders received an immediate custodial sentence (78 per cent). A further 13 per cent received a suspended sentence order, 6 per cent received a community order and 3 per cent were recorded as otherwise dealt with.⁵ In 2020, the ACSL for this offence was 4 years 4 months.

Other causing and inciting sexual offences (sections 17, 31, 39, 48 and 52)⁸

The statutory maximum sentence varies across these causing and offences under the sections of the SOA mentioned above, from 5 years' for section 17 (abuse of position of trust: causing or inciting a child to engage in sexual activity) to life imprisonment for section 31 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity where penetration was involved).⁹

Between 2016 and 2020, around 180 offenders were sentenced for the offences under the sections of the SOA mentioned above. Most of these (around 110 offenders, 70 per cent) were sentenced under section 48: causing or inciting sexual exploitation of a child. Around 20 offenders were sentenced under section 17 and section 52, around 10 offenders were sentenced under section 31 and fewer than 5 offenders were sentenced under section 52.¹⁰

For offenders sentenced under section 48 (the highest volume of these offences) between 2016 and 2020, 59 per cent of offenders were sentenced to immediate custody. Suspended sentence orders accounted for 22 per cent of sentences, community orders accounted for 14 per cent, 4 per cent were recorded as otherwise

⁶ Figures presented here include offending where there was a real child victim as well as offending where there was not. It should be noted that figures presented in the resource impact sections relate only to offending where there was no real child. Therefore, care should be taken when drawing comparisons between the two sets of figures

⁷ Percentages may not sum to 100 per cent due to rounding.

⁸ Due to the small number of offenders sentenced for these offences, 5 years of data have been presented. For offences with very low volumes, further breakdowns of sentence outcomes and ACSLs have not been provided.

⁹ The statutory maximum for section 39 offences is 14 years' custody, for section 48 offences the statutory maximum is 14 years' custody and for section 52 offences the statutory maximum is 7 years.

¹⁰ Figures on sentence outcomes have been presented for the highest volume offence (section 48), figures of sentencing outcomes for the other sections are available in the accompanying data tables.

dealt⁵ with and fines and discharges accounted for 1 per cent each.⁷ The ACSL for section 48 over the 5-year period was 3 years 8 months.

Key assumptions

To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the guideline and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guideline are therefore subject to a substantial degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. In addition, for low volume offences, and those which have only recently been created, there are limited data available. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the guideline, and an assessment of the effects of changes to the wording of the guideline where a previous guideline existed.

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

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

During the consultation stage, research was conducted with sentencers, to examine how the guidelines may be applied in practice.¹¹ This research provided evidence to help further understand the likely impact of the guidelines on sentencing practice, and the subsequent effect on prison and probation resources.

¹¹ Interviews were conducted with 14 Crown Court judges (who were ticketed to sentence sexual offences), 3 district judges and 3 magistrates to further understand how the guidelines would be implemented in practice, specifically for cases where no sexual activity had taken place. Sentencers were presented with several different scenarios representing section 10, section 14 and section 15A offences and were first asked to sentence the case as if it were before them in court today and then to sentence the case using the new or revised guideline, answering some detailed questions about the process and outcomes as they went along. The sample size was small, which means the findings cannot be considered representative of all sentencers. However, they provide an insight into how these groups may use and respond to the guideline.

Resource impacts

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

Overall impacts

The expected impact of each guideline and revision is shown in detail below. Analysis of Crown Court judges' sentencing remarks for the relevant sexual offence cases has been conducted to assess how sentences may change under the guidelines. Research with sentencers during the consultation stage has enabled us to further understand the application of the guideline and to make changes accordingly.

For sexual communication with a child (section 15A), there is currently no guideline in place, so the aim of this guideline is to improve consistency of sentencing. However, it is estimated that there may be a small increase in sentencing severity, with some offenders who would previously have received a community order now receiving a short immediate custodial sentence; in practice it is likely that most of these sentences would be suspended and so there would be minimal impact on prison resources.

For arranging or facilitating the commission of a child sexual offence (section 14), there may be a small increase overall in sentence levels for cases in which no actual child is present. It is estimated that there may be a small increase in the ACSL for these cases with the potential requirement for approximately 40 additional prison places per year.¹²

For causing or inciting a child to engage in sexual activity (section 10), there may be an increase in sentencing severity for cases where no child exists (which are charged as attempts), or where the child does exist and the offence was incited but did not occur. It is estimated that for these cases, the ACSL may increase, with the potential requirement for around 190 additional prison places per year.¹²

For causing or inciting a child under 13 to engage in sexual activity (section 8) it is anticipated that there will be little change in sentencing practice and, as such, there will be little impact on prison resources.

For other causing and inciting sexual offences under sections 17, 31, 39, 42 and 52 of the SOA 2003, there may be a small increase in sentencing severity for cases where no real victim exists, or where a victim does exist and the offence was incited but did not occur. As volumes are low, it is difficult to ascertain the impact for these offences, but it is anticipated that any changes would have very little impact on prison and probation resources.

The revised guidelines for all arranging or facilitating and causing or inciting offences (sections 8, 10, 14, 17, 31, 39, 48 and 52 of the SOA) have been updated following guidance from the Court of Appeal and, as such, the estimated changes in

¹² These estimates are based on 2019 data and as such should be treated with caution, as current sentencing practice after May 2020 (and subsequently April 2021 for non-section 14 cases) may already be accounting for the Court of Appeal guidance. For more information on how the impacts were calculated, see page 8 for section 14 offences and page 9 for section 10 offences.

sentencing practice presented above are attributable to the case law which is now incorporated within the guideline, rather than it being a separate intention of the Council to influence sentencing practice.

Sexual communication with a child (section 15A)

The offence of sexual communication with a child, inserted by section 67 of the Serious Crime Act 2015, came into force on 3 April 2017; there is currently no guideline for this offence.

The new guideline has two levels of culpability and two levels of harm, leading to four offence categories. The sentencing range for this offence has been set with evidence of current sentencing practice in mind, spanning from a community order to 2 years' custody, which is the statutory maximum sentence for this offence. Since the offence came into force in April 2017, almost all offenders have received a sentence within this range (93 per cent).

Most offenders who are sentenced for sexual communication with a child are sentenced at the Crown Court (86 per cent in 2020) and analysis of a sample of Crown Court judges' sentencing remarks was undertaken during guideline development to understand the possible effects of the guideline on sentencing practice.¹³ This analysis suggests that offenders who would currently receive a community order may receive a short custodial sentence using the new guideline. However, based on current sentencing practice, it is likely that most of these sentences would be suspended and so there would be minimal impact on prison resources. If a higher proportion of custodial sentences are not suspended, this would require additional prison places. However, research with sentencers conducted during the consultation stage indicated that sentencing outcomes pre and post guideline were broadly stable, with most custodial sentences being suspended and as such it is still anticipated that this guideline will have minimal impact on prison resources.

Arranging or facilitating the commission of a child sex offence (section 14)

The existing guideline for section 14 offences asks sentencers to refer to the guideline for the applicable, substantive offence of arranging or facilitating under sections 9 to 12 of the SOA 2003 and provides brief guidance on how to apply those guidelines to section 14 cases. This approach remains suitable and appropriate; however, following a request from the Court of Appeal to consider whether further guidance was required, the Council proposes to amend the guideline to provide additional information for sentencers in cases in which no child exists.

The Court of Appeal case of *R. v Privett* highlighted that no sexual activity needs to take place for a section 14 offence to be committed and raised concerns about the previous approach taken regarding harm when no child existed. The Court of Appeal in *Privett* said that the court is required to consider the sexual activity intended (even if it does not occur) as part of its assessment of harm, and as such these offences should not automatically be treated as the lowest level of seriousness simply on the basis that no real child was involved. The revised guideline echoes this approach and

¹³ A total of 20 transcripts of Crown Court sentencing remarks for sexual communication with a child from 2019 were analysed to assess the impact this guideline may have on prison and probation services.

advises sentencers to identify the category of harm at step 1 based on the sexual activity intended and then apply a downward adjustment at step 2 to reflect the lack of harm which has actually resulted.

In 2020, all adult offenders sentenced for arranging or facilitating a child sexual offence were sentenced at the Crown Court. Analysis of a sample of Crown Court judges' sentencing remarks was undertaken to assess whether there might be any potential resource impact related to these changes. It found that 75 per cent of transcripts involved cases in which no real child existed. These transcripts were then used to identify possible impacts of the additional wording provided in the guideline.¹⁴

The transcripts were analysed with reference to the guidance provided in the revised guideline for these types of cases, to try to determine how sentences may change. For cases involving no actual child, original sentence practice varied, with most being placed in the lower levels of harm (around 70 per cent were placed in level 2 or 3, with around 30 per cent in level 1). The analysis suggests that overall, sentences would be likely to increase because most of these cases would now be placed into the highest harm category (about 90 per cent in level 1 and 10 per cent in level 2), and then adjusted accordingly. It was estimated that for cases where no real child was involved, most offences that previously attracted a community order or suspended sentence order would now be given an immediate custodial sentence instead,¹⁵ and custodial sentence lengths would increase. Sentence lengths are estimated to increase on average by 5 months for these offences, from 2 years 10 months to 3 years 3 months¹⁶ and, as a result, may lead to the need for approximately 40 additional prison places per year.¹⁷ This anticipated increase is lower than that for section 10 cases (see below) as some cases already appear to be taking a similar approach to that set out in the case of *Privett*. It should be noted that this increase in sentence severity would be attributable to the change in case law which is now incorporated within the guideline, rather than an intention of the Council to influence sentencing practice.

The transcripts used for this analysis are cases from 2019, before the Court of Appeal ruling occurred in May 2020; therefore, the findings presented here represent the estimated impact of the guideline on 2019 sentencing practice. To calculate the estimated impact, case specific details from the transcripts and knowledge of the case law was used to establish the appropriate reduction to make for cases in which no real child was present. Firstly, the harm and culpability levels were established, then an assumed reduction (for the purposes of this assessment only) of up to one year was applied from the starting point, before any other aggravation or mitigation

¹⁴ Of the 28 Crown Court transcripts analysed, 21 transcripts (75 per cent) were identified as relating to cases in which no real child was present; most of these were identified as police undercover operations, but a small proportion were identified as vigilante action.

¹⁵ Very few transcripts were analysed for those sentenced to community orders or suspended sentence orders, however, all those that were included in the analysis, saw the sentence increased to an immediate custodial sentence. Therefore, this estimate provides an indication of the movement of sentences in relation to these cases.

¹⁶ This ACSL was calculated using the sampled transcripts and represents the estimated average custodial sentence length of the section 14 offences within the transcript analysed where no real child was involved. It does not reflect the whole case mix of this offence and as such is not comparable to the ACSL set out in the 'Current sentencing practice' section of this document.

¹⁷ Using evidence from the transcript analysis, it has been estimated that around 75 per cent of offenders sentenced for the section 14 offence were sentenced for cases in which no real child existed, therefore this proportion has been applied to the overall number of offenders sentenced for this offence in 2019 to allow an estimation of the impact of this change

was applied. This was then compared to the original sentence to allow an estimate of the impact based on 2019 sentencing outcomes. The transcripts used for this analysis are cases from 2019, as such, the findings presented here represent the estimated impact of the guideline on 2019 sentencing practice. To calculate the estimated impact, case specific details from the transcripts and knowledge of the case law was used to establish the appropriate reduction to make for cases in which no real child was present. Firstly, the harm and culpability levels were established, then an assumed reduction (for the purposes of this assessment only) of up to one year was applied from the starting point, before any other aggravation or mitigation was applied. This was then compared to the original sentence to allow an estimate of the impact based on 2019 sentencing outcomes.

At the draft stage resource assessment (for which the latest available data was from 2019), it was anticipated that after May 2020, more sentencers would follow the approach set out by the Court of Appeal and that subsequently sentences may increase for offences in which no real child was present and that the revised guideline itself would have little impact on sentencing practice. However, the most recent sentencing data shows that the overall ACSL (which includes offending where there was a real child victim as well as offending where there was not) has remained stable at around 3 years across both 2019 and 2020. If sentencers had begun applying the guidance in May 2020, given that in 75 per cent of the transcripts studied by the Council no real child was present, we may have expected to see at least a small increase in the length of sentences given to offenders receiving immediate custody; however, this does not appear to have been the case. This may reflect the fact that some sentencers were following this approach even before May 2020, that the reductions being made for the lack of a real victim are substantial, and/or the case mix before the courts. However, it is possible that the guideline may help to further reinforce a change in sentencing practice when it comes into force, with the courts applying the guidance to cases in which no real child was present, resulting in an increase in sentence length for these cases and a subsequent need for some additional prison places.¹⁸

During the consultation period, research with sentencers was conducted to understand how the guideline would be applied in practice. Sentencers were presented with scenarios in which an offender had engaged in a section 10 offence where the child victim was not real. All sentencers arrived at the same categorisation and all made downwards adjustments as the case involved no actual child. However, the size of the adjustments made varied and, as such, the guideline has been altered since the draft stage to ensure a consistent approach, to be clearer that only a very small reduction will usually be appropriate in such cases. Therefore, it is still anticipated that the guideline will mean Courts follow the Court of Appeal approach closely and sentencing severity for section 10 cases where no actual child is involved will increase. It is important to note that the Police, Crime, Sentencing and Courts Act 2022 is expanding the list of offences that may be arranged or facilitated for a section 14 offence to occur to include sexual offences committed against children under 13 (sections 5 to 8 of the SOA). The Council intends to make consequential amendments to the guidelines to reflect these changes. Any resource impact from these further amendments would be the result of legislative changes, rather than changes the Sentencing Council has initiated. However, due to the nature of these

¹⁸ The estimations presented in this resource assessment are upper estimates of what the Council anticipate will happen, based on the information available

offences and the harm factors presented in their guidelines, it is anticipated that this change will have little impact on sentencing outcomes for this offence and, as such, any impact on prison or probation resources will be negligible (see further detail below on section 8).

Causing or inciting a child to engage in sexual activity (section 10)

The revised guideline for causing or inciting a child to engage in sexual activity repeats the guidance set out in the offence of arranging or facilitating the commission of a child sexual offence: that sentencers should identify the category of harm on the basis of the sexual activity the offender intended, rather than the sexual activity that occurred, then apply an appropriate downward adjustment at step 2.

Transcripts of Crown Court judges' sentencing remarks have been analysed in relation to the new guideline and cases where there was no real child or where the activity was incited with a real child but did not take place have been identified. These cases have been analysed to try to determine how sentences may change under the additional guidance.¹⁹

Similarly to the section 14 offence, the categorisation of harm for section 10 offences is expected to increase for cases where there is no real child or where the activity was incited with a real child but did not take place. These cases account for just over half (54 per cent) of those sentenced for section 10 offences and the analysis suggested that the harm would increase from level 3 under 2019 sentencing practice to level 1 under the revised guideline, with a reduction applied to allow for the lesser harm actually caused. Due to this, it is estimated that on average, immediate custodial sentences for cases where there was no real child or where the activity was incited with a real child but did not take place may increase by about 2 years 4 months, from 1 year 2 months to 3 years 6 months,²⁰ resulting in a need for approximately 190 additional prison places per year. This increase in sentence severity would be attributable to the change in case law which is now incorporated within the guideline, rather than an intention of the Council to influence sentencing practice. It is also expected that in cases where a real child was present or the sexual activity took place, sentences will remain unaffected by this change.²¹

As with the section 14 offence, the transcripts used for this analysis are cases from 2019, before the Court of Appeal ruling occurred in May 2020; therefore, the findings presented here represent the estimated impact of the guideline on 2019 sentencing practice. To calculate the estimated impact, case-specific details from the transcripts and knowledge of the case law was used to establish the appropriate reduction to make for cases in which no real child was present. Firstly, the harm and culpability levels were established, then an assumed reduction (for the purposes of this assessment only) of up to one year was applied from the starting point, before any

¹⁹ Of the 26 transcripts relating to causing or inciting a child to engage in sexual activity analysed, 14 were identified as involving no real child or where the activity was incited with a real child but did not take place.

²⁰ This ACSL was calculated using the sampled section 10 transcripts and represents the estimated average custodial sentence length of the specific offence within the transcript analysed where no real child was involved

²¹ Using evidence from the transcript analysis, where 54 per cent of offenders sentenced for section 10 offences were sentenced for offences in which no child was harmed, this proportion has been applied to the overall number of offenders sentenced for this offence in 2019 to allow an estimation of the impact of this change.

other aggravation or mitigation was applied. This was then compared to the original sentence to allow an estimate of the impact based on 2019 sentencing outcomes.

As with the section 14 offences, at the draft stage resource assessment (for which the latest available data was from 2019) it was anticipated that after May 2020, sentencers would follow the approach by the Court of Appeal and that subsequently sentences may increase for offences in which no real child was present and that the revised guideline itself would have little impact on sentencing practice. However, the most recent sentencing data shows a slight decrease in the overall mean ACSL (which includes offending where there was a real child victim as well as offending where there was not) between 2019 and 2020, from 3 years 11 months to 3 years 3 months. If sentencers had begun applying the guidance in May 2020, given that in 54 per cent of the transcripts studied by the Council no real child was present, we may have expected to see at least a small increase in the length of sentences given to offenders receiving immediate custody but, this does not appear to have been the case. This may reflect the fact that some sentencers were following this approach even before May 2020, that the reductions being made for the lack of a real victim are substantial, and/ or the case mix before the courts. Furthermore, given that the recent case of *Reed and Others [2021] EWCA Crim 57* in April 2021 confirmed that the principles set out in the May 2020 Court of Appeal ruling are relevant to section 10 offences, it may be possible that sentencing severity increases following this more recent guidance. It is therefore difficult to determine the impact of including the Court of Appeal guidance within the new guideline. It is possible that the guideline may help to further reinforce a change in sentencing practice when it comes into force, with the courts applying the guidance to cases in which no real child was present. If this is the case, we might expect an increase in sentence length for these cases and a subsequent need for some additional prison places.¹⁸

Research with sentencers was conducted during the consultation stage. This explored how sentencing practice may be influenced by the additional wording in the guideline after the Court of Appeal ruling when sentencing section 14 cases where there was no real child victim. As with the section 14 offences, the research suggested that there was a consistent approach to the offence categorisation and a subsequent reduction was made at the start of step 2 to account for the lack of real child. However, there was a varied approach to the adjustment, so the guidelines have been altered to account for this to be clearer that only a very small reduction will usually be appropriate in such cases. We therefore still anticipate that the severity of these sentences may increase under the new guideline, in line with the guidance given by the Court of Appeal.

The revised guideline also adds additional guidance for sentencers on cases where offences are committed remotely or online, clarifying that sentencers should draw no distinction between activity caused or incited in person and activity caused or incited remotely, nor between the harm caused to a victim in this jurisdiction and that caused to a victim anywhere else in the world. Due to the small number of offences of this nature captured by the transcripts, it is difficult to estimate the effect of this change on sentencing outcomes. However, it is expected that the changes to the guideline (and similar changes to other relevant guidelines) will help improve consistency when sentencing these cases, that it reflects current practice to a large extent, and any impact on sentences is likely to be small since the number of offenders sentenced for this type of offence is so low.

Causing or inciting a child under 13 to engage in sexual activity (section 8)

The revised guideline for causing or inciting a child under 13 to engage in sexual activity follows the same structure as the section 10 offence and advises sentencers to identify the category of harm on the basis of the sexual activity the offender intended rather than the sexual activity that occurred, then apply an appropriate downward adjustment at step 2.

Due to the nature of this offence and the harm factors presented in the guideline as it currently exists, it is not anticipated that this additional information would cause the harm category to increase for cases where no real child is involved, or the offence is incited but does not occur. The factors within the guideline that would lead to the higher levels of harm would usually require a real child to exist or for some aspect of the offending to have actually occurred, (for example, abduction and forcing entry into the victim's home). It is therefore anticipated that this change will have little impact on sentencing outcomes for this offence and as such any impact of correctional resources will be negligible.

Other causing and inciting sexual offences (sections 17, 31, 39, 48 and 52)

Due to very low volumes, the resource impacts for causing and inciting sexual offences (sections 17, 31, 39, 48 and 52) have been grouped together.

The additional explanatory wording provided within the guidelines for the section 8 and 10 offences, highlighting that sentencers should identify the category of harm on the basis of the sexual activity the offender intended rather than the sexual activity that occurred, then apply an appropriate downward adjustment at step 2, is also being applied to all other causing and inciting offence guidelines, to provide clarity on how sentencers should approach cases where no real victim is involved, or the offence is incited but does not occur.

Due to small volumes of these offences, it is difficult to estimate the effect of this change on sentencing outcomes, however, it is possible that this change may increase sentencing severity for these specific cases and consequently have an impact on correctional resources. Although it is not possible to quantify what this impact might be, it is anticipated to be minimal due to the small number of offenders sentenced for these offences, with a negligible impact on prison and probation resources.

Risks

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guidelines comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case

scenarios as part of the consultation exercise which are intended to test whether the guidelines have the intended effect and inviting views on the guidelines. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated. Transcripts of judges' sentencing remarks have provided a more detailed picture of current sentencing practice for these offences which has formed a large part of the evidence base on which the resource impacts have been estimated, however it should be noted that these are rough estimates which should be interpreted as indicative of the direction and approximate magnitude of any change only.

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

If sentencers do not interpret the guidelines as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers interpret them as intended. For the new section 15A guideline, sentencing ranges have been decided on by considering sentence ranges in the existing Sexual Offences guidelines, in conjunction with sentencing data and Council members' experience of sentencing. Transcripts of sentencing remarks of relevant sexual offence cases have been studied to gain a greater understanding of current sentencing practice and to ensure that the guidelines are developed with current sentencing practice in mind. Research with sentencers carried out during the consultation period has helped to identify possible issues with the interpretation and application of the guideline, and amendments have subsequently been made to the definitive guideline.

Consultees have also fed back their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.

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