

14 July 2022

Dear Members

## Meeting of the Sentencing Council – 22 July 2022

The next Council meeting will be held in the **Queens Building, Judges Conference Room, 1<sup>st</sup> Floor Mezzanine at the Royal Courts of Justice**. This will be a hybrid meeting, so a Microsoft Teams invite is also included below. **The meeting is Friday 22 July 2022 and will from 9:45 to 16:00.**

**If you are not planning on attending in person please do let me know ASAP so Jessica and I can plan accordingly.**

A **security pass is needed** to gain access to this meeting room. Members who do not know how to access this room can, after entry head straight to the Queen's Building where Jessica and Gareth will meet members at the lifts and escort them up to the meeting room. If you have any problems getting in or finding the Queen's Building, then please call the office number on 020 7071 5793.

## The agenda items for the Council meeting are:

- |                                      |             |
|--------------------------------------|-------------|
| ▪ Agenda                             | SC(22)JUL00 |
| ▪ Minutes of meeting held on 17 June | SC(22)JUN01 |
| ▪ Action log                         | SC(22)JUL02 |
| ▪ Blackmail                          | SC(22)JUL03 |
| ▪ Miscellaneous amendments           | SC(22)JUL04 |
| ▪ SC Framework                       | SC(22)JUL05 |
| ▪ Aggravated vehicle taking          | SC(22)JUL06 |
| ▪ Environmental                      | SC(22)JUL07 |
| ▪ Imposition                         | SC(22)JUL08 |

## Refreshments

Tea, coffee and water will be provided on the day but, due to the current existing RCJ safety guidance, a buffet style lunch will not be provided. Members are welcome either to bring lunch with them (the kitchen area next door contains a fridge) or to avail themselves of the local lunch options. The lunch break is 30 minutes.

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

The link to join the meeting is: [Click here to join the meeting](#)

Best wishes

A handwritten signature in black ink, appearing to read 'Steve Wade', with a horizontal line underneath.

**Steve Wade**

Head of the Office of the Sentencing Council

# Sentencing Council

## COUNCIL MEETING AGENDA

**22 July 2022**  
**Royal Courts of Justice**  
**Queen's Building**

- |               |  |
|---------------|--|
| 09:45 - 10:00 | Minutes of the last meeting and matters arising (papers 1 & 2)                             |
| 10:00 - 11:00 | Blackmail/threats to disclose/kidnap/false imprisonment presented by Mandy Banks (paper 3) |
| 11:00 – 11:15 | Break  |
| 11:15 – 12:15 | Miscellaneous amendments - presented by Ruth Pope (paper 4)                                |
| 12:15 – 12:45 | Sentencing Council MoJ Framework Document - presented by Ollie Simpson (paper 5)           |
| 12:45 – 13:15 | Lunch  |
| 13:15 – 14:15 | Aggravated Vehicle taking presented by Zeinab Shaikh (paper 6)                             |
| 14:15 – 14:45 | Environmental - presented by Ruth Pope (paper 7)   |
| 14:45 - 15:00 | Break  |
| 15:00 – 16:00 | Imposition - presented by Jessie Stanbrook (paper 8)                                       |

# Sentencing Council

## **COUNCIL MEETING AGENDA**

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## MEETING OF THE SENTENCING COUNCIL

17 JUNE 2022

### MINUTES

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Members present:

Tim Holroyde (Chairman)  
Rosina Cottage  
Rebecca Crane  
Rosa Dean  
Nick Ephgrave  
Diana Fawcett  
Max Hill  
Stephen Leake  
Juliet May  
Maura McGowan  
Alpa Parmar  
Beverley Thompson

Apologies:

Jo King

Representatives:

Hanna van den Berg 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)

Members of Office in  
attendance:

Steve Wade  
Phil Hodgson  
Ruth Pope  
Ollie Simpson  
Jessie Stanbrook

## **1. MINUTES OF LAST MEETING**

- 1.1 The minutes from the meeting of 13 May 2022 were agreed.

## **2. MATTERS ARISING**

- 2.1 The Chairman welcomed Stephen Leake to his first meeting following his recent appointment as the district judge member of the Sentencing Council.

## **3. DISCUSSION ON MISCELLANEOUS AMENDMENTS – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL**

- 3.1 The Council considered a series of proposed amendments to guidelines necessitated by changes being brought in by the Police, Crime, Sentencing and Courts Act 2022. It was agreed that the more substantial changes to guidelines should be subject to consultation and that other necessary changes could be made without consultation when the legislation comes into effect. In some cases an interim note would be added to the guidelines pending consultation on the full changes.
- 3.2 The Council agreed that a list of any changes not being consulted on should be included in the consultation document for reference.
- 3.3 The Council also agreed to consult on some amendments to wording on disqualification from driving in guidelines and explanatory materials for magistrates' courts in response to feedback from guideline users.
- 3.4 Some changes to terminology in the Sentencing offenders with mental disorders, developmental disorders, or neurological impairments overarching guideline were discussed and it was agreed that these should be made without consultation.

## **4. DISCUSSION ON IMPOSITION – PRESENTED BY JESSIE STANBROOK, OFFICE OF THE SENTENCING COUNCIL**

- 4.1 The Council considered and agreed a proposal to undertake a standalone review of the Imposition of community and custodial sentences guideline and to consult on any changes proposed.
- 4.2 The Council also agreed a range of proposed amendments to be made prior to this and without consultation, necessitated by the Police, Crime, Sentencing and Courts Act 2022, policy changes (such as the reunification of Probation Services), and correcting inconsistencies. These amendments included updating the increased maximum hours per day and duration for curfew requirements.

**5. DISCUSSION ON CHILD CRUELTY – PRESENTED BY OLLIE SIMPSON, OFFICE OF THE SENTENCING COUNCIL**

- 5.1 The Council discussed the proposed wording of the revised culpability levels for the guidelines for Causing or allowing a child to die/suffer serious physical harm and for Cruelty to a child. The Council considered the accompanying resource assessment and signed off the draft guidelines for consultation.

**6. DISCUSSION ON GUIDELINE PRIORITIES – PRESENTED BY STEVE WADE, OFFICE OF THE SENTENCING COUNCIL**

- 6.1 The Council reviewed the proposed allocation of resources against the work plan and agreed them.
- 6.2 The Council noted the importance of ensuring guidelines for different offences receive separate consideration even if the work to produce them falls under the same overarching project.

**7. DISCUSSION ON ANNUAL REPORT – PRESENTED BY PHIL HODGSON, OFFICE OF THE SENTENCING COUNCIL**

- 7.1 The Council discussed the content of the Sentencing Council Annual Report 2021/22. Subject to amendments agreed at the meeting and any minor corrections, the Council approved the report for submission to the Lord Chancellor.

**8. DISCUSSION ON TOTALITY – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL**

- 8.1 The Council considered revised wording for guidance on sentencing offences committed prior to other offences for which an offender has already been sentenced. Subject to a few minor amendments, the Council agreed that this guidance should be consulted on.
- 8.2 The Council also agreed other minor changes to the guideline to improve clarity. The Council was given a demonstration of how the revised guideline would look as a digital guideline and agreed to consult on this version.

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### ACTION AND ACTIVITY LOG – as at 14 July 2022

	Topic	What	Who	Actions to date	Outcome
<b>SENTENCING COUNCIL MEETING 17 June 2022</b>					
1	<b>Imposition Guideline</b>	Members to email Jessie with proposals for areas/elements to include in scope of upcoming Imposition project.	<b>Council members</b>	Responses received from Max and Rebecca	<b>ACTION CLOSED:</b> Suggestions included in July Council paper

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**Sentencing Council meeting:**  
**Paper number:**

**22 July 2022**  
**SC(22)JUL03 - Blackmail, kidnap, false imprisonment, child abduction and threats to disclose private sexual images**  
**Juliet May**  
**Mandy Banks**  
**Mandy.Banks@sentencingcouncil.gov.uk**  
**0207 071 5785**

**Lead Council member:**  
**Lead official:**

## **1 ISSUE**

1.1 This is the second meeting to discuss blackmail offences and first meeting to discuss the scope of the rest of the project. This meeting will consider a draft guideline for blackmail offences.

1.2 There are currently four Council meetings scheduled to discuss the draft guidelines, with a consultation in Spring 2023. This timetable is indicative only however at this early stage of the project.

## **2 RECOMMENDATION**

2.1 At today's meeting the Council are asked:

- To consider the draft blackmail guideline
- To agree the scope of the rest of the project

## **3 CONSIDERATION**

### *Blackmail*

3.1 There currently is no guideline for this offence. The offence of blackmail is committed when a person with a view to gain for themselves or another, or intending to cause loss to another, makes an unwarranted demand with menaces. ([Section 21 of the 1968 Act](#)). It is a serious offence, indictable only, with a maximum penalty of 14 years' custody. Sentencing data for this offence is attached at **Annex A**, and shows that, in 2020, around 110 offenders were sentenced for this offence with 65 per cent sentenced to immediate custody (tabs 5.1 and 5.2.) However, it is possible that the figures for 2020 may have been impacted by the COVID-19 pandemic: around 130 adult offenders were sentenced in 2019 with 77 per cent being sentenced to immediate custody and around 160 were sentenced in 2018, of which 79 per cent received an immediate custodial sentence. Over the last decade the average custodial sentence length (ACSL) has remained stable at around 2 years 10 months (post guilty plea).

3.2 A draft guideline is attached at **Annex B**. It has been developed by considering around 30 transcripts of sentenced cases, considering the available sentencing data and in conjunction with the guideline lead, Juliet. Sentencing authorities are generally fact specific. In *R v Hadjou* (1989) Lord Lane CJ said blackmail was one of the ugliest and most vicious offences, often involving ‘attempted murder of the soul’ and that deterrence was perhaps the most important part of the sentence. A crucial element will often be the relationship between the amount of money demanded and the means available to the victim; also important will be the psychological harm done or intended to be done to the victim: *R v Ford* [2015].

3.3 In *R v Hutchinson* [2018] the judge sentencing a dentist who had conspired to blackmail his former surgery had been entitled to treat the fraud guideline as an indicator of the proper approach to culpability, and to take the view that blackmail was more serious than an attempt to obtain an equivalent amount of money by fraud alone. The assessment of seriousness in any given case has to take account of the nature of the menaces made, and the sentence should, amongst other matters, reflect the nature of the menaces *R v Atkinson* [2018]. However, even where the menaces consist of a threat to kill it would be unwise to place too much weight on the guideline for threats to kill, because blackmail involves much more than simply making threats and carries a greater maximum sentence: *Murphy* [2019].

3.4 Starting with the culpability factors on page two of **Annex B**, the proposed high culpability factors have been included following consideration of the 30 transcripts of blackmail cases and are designed to capture the most serious cases. Offending over a sustained period of time, in some cases over a number of years, increased the seriousness of the offence, according to courts. If the offending was particularly sophisticated or planned, this again makes the offending more serious, such as the offender who placed contaminated jars of baby food in Tesco, and blackmailed Tesco saying that babies would be harmed unless he was given a large sum of money.

3.5 It is also proposed that there is a factor within high culpability regarding the deliberate targeting of a particularly vulnerable victim. Some offenders target their victims very carefully, exploiting particular vulnerabilities in order to make their demand for money more likely to succeed. For example, an offender who blackmailed his ex-partner that he would tell her family of their relationship and disclose intimate images unless she gave him money. The offender and his girlfriend were of different religions and he knew his ex-partner, who was from a particularly religious family, would do anything to avoid her family finding out and bringing shame upon the family. This type of cruel behaviour makes the offending more serious than cases where victims are picked at random. Lastly it is argued that violence should place an offender in high culpability.

**Question 1: Are the Council content with the proposed high culpability factors? Does the Council feel they adequately capture the most serious types of offending?**

3.6 In medium culpability it is proposed that there should be a factor of '*violence threatened*' and:

- Other cases that fall between categories A and C because:
  - 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

3.7 Thought has been given as to whether there are any other factors that should go into medium culpability, as we know that sentencers find this helpful, but there do not seem to be any other obvious factors.

***Question 2: Are there any other factors the Council think should go into medium culpability? If so, what are they?***

3.8 In lower culpability it is proposed there are factors relating to offences that are unplanned or limited in scope or duration, if the offender was involved through coercion, intimidation or exploitation or the offender's responsibility was reduced due to a mental disorder or learning disability. There are cases at the other end of seriousness where the offending was of a very brief duration, or they were very unsophisticated. Equally there are cases of offenders pressured into the offence by others.

***Question 3: Is the Council content with the proposed lower culpability factors?***

3.9 Turning now to the proposed harm factors, these have been designed to try and capture the varying types of harm caused by the offence. The category one harm factors have been designed to try and capture the serious impact of this offence, which can leave victims feeling violated. It is proposed there is '*serious distress caused to the victim*' and also '*serious distress caused to others*', in recognition that those close to the victim, such as family members can be caused serious distress if their safety etc is threatened. Also proposed is '*very large amount of money obtained*' and '*serious consequential financial impact of the offence*', the latter to reflect instances where victims have gone bankrupt or into severe levels of debt as a result of paying the money demanded. As well as the financial impact on victims there can be the financial impact on a business, Tesco estimated the total costs as a result of the contamination to be £2.7 million. Also proposed is '*widespread public impact of the offence*', a factor cited in the Tesco baby food case as making the offending more serious, as the public feared that not all the contaminated jars had been located.

3.10 Proposed category two harm factors are lesser versions of the factors in category one harm, so: '*some distress caused to the victim*' '*some distress caused to others*' '*some*

*consequential financial impact of the offence* and *considerable amount of money obtained*. In category three harm there is *limited effects of the offence* and *small amount of money obtained*.

**Question 4: Are the Council content with the proposed harm factors? Do the category one factors go far enough to capture the most serious types of harm caused to victims?**

3.11 Turning now to the draft sentence ranges on page three. These are based on current sentencing practice, which tells us that the ACSL in 2020 was three years eight months (estimated pre-guilty plea) and two years ten months (post-guilty plea). This has remained stable over the last decade (tab 5.3 of **Annex A**). The vast majority of offenders received a custodial sentence (65 per cent immediate custody and 29 per cent a suspended sentence order in 2020). Tab 5.4a of **Annex A** also shows us that 90 per cent of offenders sentenced to immediate custody received an estimated pre-guilty plea custodial sentence of six years or less. The range at the top in A1 stops at 10 years as only two offenders received a sentence over 10 years' custody within the last five years, with the longest determinate sentence in 2020 of 12 years. Included at the bottom of the range in C3 is a high level community order, although as only a tiny handful of offenders receive community orders each year (less than 4 per cent) the Council may wish instead to remove this option, so courts would go outside the guideline to sentence offenders to community orders.

3.12 At this early stage the Council will wish to decide whether the guideline should seek to replicate current sentencing practice or seek to change it. Initially the draft ranges were slightly higher, but a resentencing exercise using those draft ranges and transcripts of sentenced cases showed that the higher ranges would have led to higher sentences than were actually given in the case. As a result, the ranges and starting points were lowered to the ones shown below.

Harm	Culpability		
	A	B	C
Category 1	<b>Starting Point</b> 7 years' custody <b>Category Range</b> 4 - 10 years' custody	<b>Starting Point</b> 4 years' custody <b>Category Range</b> 2 -6 years' custody	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 1 -4 years' custody

<b>Category 2</b>	<b>Starting Point</b> 4 years' custody <b>Category Range</b> 2 -6 years' custody	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 1 -4 years' custody	<b>Starting Point</b> 1 years' custody <b>Category Range</b> 6 months'- 2 years' custody
<b>Category 3</b>	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 1 -4 years' custody	<b>Starting Point</b> 1 years' custody <b>Category Range</b> 6 months' - 2 years' custody	<b>Starting Point</b> 6 months' custody <b>Category Range</b> High level Community order – 1 years' custody

3.13 The risk with using any higher ranges is that it is likely to lead to an increase in the severity of sentencing. Although volumes of this offence are small there could still be an impact on prison and probation resources as a result. Given the criticism that the Council contributes to sentence inflation through its guidelines, this is something the Council needs to consider carefully. In deciding what the appropriate ranges should be the Council are asked to consider if there is any evidence to suggest that blackmail offences are currently under sentenced, and also proportionality with other offences.

**Question 5: What is the Council's view on the draft sentence ranges?**

3.14 Looking at the aggravating factors on page four, the first factor '*disturbing nature of the threat(s)*' is proposed to capture really frightening and perturbing threats such as a threat to rape a victim's daughter or to throw acid at their family members. '*Offence related to other criminal activity*' is proposed as a certain number of offences are connected to other offending, often involving drugs. '*Abuse of trust or dominant position*' is designed to capture offenders who abuse their position to commit the offence; knowledge gleaned in a professional capacity, for example. '*Others put at risk of harm by the offending*' is for cases where the victim's family or friends are put at risk - threats to firebomb their house for example.

3.15 The mitigating factors are all standard ones that are used across the guidelines - there are no proposed offence specific ones.

**Question 6: Are the Council content with the proposed aggravating and mitigating factors? Are there any offence-specific mitigating factors that should be included?**

*Remainder of the offences within the scope of the project*

3.16 It is proposed to consider draft guidelines for kidnap and false imprisonment together at the September Council meeting, as there is some overlap between the two offences. It is proposed that consideration of how to reflect the expansion of the legislation to cover threats to disclose private sexual images is dealt with at one of the later meetings.

3.17 There is currently an existing guideline for [disclosing private sexual images](#), it is possible that the Council can just amend this guideline to take into account the change to legislation to include threats to disclose the images.

3.18 However, before doing so, the Council will wish to consider any available information about how these cases are being sentenced. The legislation was amended in June 2021 to include threats to disclose along with disclosing private sexual images. Unfortunately, the Court Proceedings Database (CPD) includes both of these offences under a single offence code, which means we cannot distinguish volumes for the two versions of the offence from one another. We have ordered all the transcripts for those offenders sentenced for disclosing private sexual images in the latter half of 2021, hoping that some of the sentencing outcomes will be for threats to disclose images. Although, given that it will take some time for these cases to reach court, there is a risk that none of these transcripts may ultimately involve the new threats to disclose offence. Until we receive the transcripts, we will not know if any of them are concerning *threats* to disclose images (rather than disclosing private sexual images), in order to understand current sentencing practice for this new offence. To mitigate, we are monitoring media reports of sentenced threats cases to gain some information about how these cases are being sentenced.

3.19 The Council will also wish to note that the Law Commission has recently published a [report](#) following a review of taking, making and sharing intimate images without consent. They are proposing a new offence that would criminalise threatening to share an intimate image that would replace the recently introduced threats to disclose a private sexual image under section 33 of the Criminal Justice and Courts Act 2015.

3.20 As part of this review they also considered that threats to share intimate images are prevalent in the context of controlling and coercive relationships. Accordingly they make a specific recommendation to the Sentencing Council of:

***‘We recommend that the Sentencing Council consider reviewing the sentencing guidelines for domestic abuse offences in light of the recommendations in this report, and the evidence of intimate image abuse perpetrated in the context of abusive relationships in this report and the consultation paper.’***

Arguably, however, such offending within a domestic context would be aggravated in any



case. In terms of the recommendation regarding changes to legislation, the Government will now need to consider the recommendations made as part of the review and respond in due course. This of course could take quite some time, even if Government were minded to respond positively, it is unlikely legislation would be brought forward quickly given other demands on Parliament's time. It is therefore recommended that the Council presses on with the work to amend the existing disclosing private sexual images guideline to reflect the recent change to legislation, albeit that we consider this work at a later meeting once we have examined some transcripts.

***Question 7: Is the Council content to continue with work to amend the existing disclosing private sexual images guideline?***

*Child abduction offences*

3.21 There are two offences under the Child Abduction Act 1984 that could potentially be included within the project, the taking of a child (aged under 16) out of the UK by a parent, guardian etc without consent (s.1), and the taking or detaining of a child (aged under 16) by a person other than a parent or guardian etc without lawful authority or reasonable excuse (s.2). Volumes of these offences are very low, 7 offenders were sentenced in 2020 for the s.1 offence, and around 50 offenders sentenced in 2020 for the s.2 offence. There have been no requests to the Council to produce guidelines for these offences, other than mention in an Andrew Ashworth article in an edition of the Criminal Law Review in 2018, which stated that the CACD felt it necessary to give some guidance to sentencers, so queried whether a guideline should be produced.

3.22 The Law Commission published a [report](#) in 2014 which recommended that both the common law offences of kidnap and false imprisonment should be replaced with statutory offences and the child abduction offence be amended. It was proposed that the maximum penalty for child abduction should be increased to 14 years and the abduction offence extended to situations where a child is lawfully taken abroad but then unlawfully retained abroad. The Government has not formally accepted any of these recommendations, however it is understood that at some point the changes to the child abduction offence might be contemplated, although there are no immediate plans or proposed legislative vehicle to do so.

3.23 There is a link to kidnap offences for the s.2 offences, but no particular links to the s.1 offence with the rest of the offences being considered as part of this project. Including these two offences as part of the project will increase the size of the project and lengthen the time it will take to produce guidelines for the other offences. Given the very low volumes of

cases sentenced, the fact that there have been no requests for guidelines for child abduction, and that these offences are ones that potentially Government may look to amend at some point, it is recommended that we do not include them within this project.

***Question 8: Does the Council agree with the recommendation not to include child abduction offences within the project?***

#### **4 EQUALITIES**

4.1 As part of the development of these guidelines, the available equalities data will be examined for any disparities within the sentencing of these offences. This data will be presented to Council at a future meeting.

#### **5 IMPACT AND RISKS**

5.1 It is anticipated that the development of these new guidelines will be welcomed by stakeholders. Blackmail, kidnap and false imprisonment are some of the few remaining serious offences without a guideline, so producing a guideline ends that gap.

## **Kidnapping, false imprisonment, abduction of child by parent, etc, abduction of child by other persons, blackmail and disclosing private sexual images offences**

### **Section 1: Kidnapping**

- [Table 1 1](#) Number of adult offenders sentenced for kidnapping, Crown Court, 2010-2020
- [Table 1 2](#) Number and proportion of adult offenders sentenced for kidnapping, by sentence outcome, 2010-2020
- [Table 1 3](#) Average custodial sentence lengths (ACSL) received by adult offenders sentenced for kidnapping, 2010-2020
- [Table 1 4a](#) Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for kidnapping, 2010-2020
- [Table 1 4b](#) Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for kidnapping, 2010-2020

### **Section 2: False imprisonment**

- [Table 2 1](#) Number of adult offenders sentenced for false imprisonment, Crown Court, 2010-2020
- [Table 2 2](#) Number and proportion of adult offenders sentenced for false imprisonment, by sentence outcome, 2010-2020
- [Table 2 3](#) Average custodial sentence lengths (ACSL) received by adult offenders sentenced for false imprisonment, 2010-2020
- [Table 2 4a](#) Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for false imprisonment, 2010-2020
- [Table 2 4b](#) Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for false imprisonment, 2010-2020

### **Section 3: Abduction of child by parent**

- [Table 3 1](#) Number of adult offenders sentenced for abduction of child by parent, etc, all courts, 2010-2020
- [Table 3 2](#) Number and proportion of adult offenders sentenced for abduction of child by parent, etc, by sentence outcome, 2010-2020
- [Table 3 3](#) Average custodial sentence lengths (ACSL) received by adult offenders sentenced for abduction of child by parent, etc, 2010-2020
- [Table 3 4a](#) Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for abduction of child by parent, etc, 2010-2020
- [Table 3 4b](#) Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for abduction of child by parent, etc, 2010-2020

### **Section 4: Abduction of child by other persons**

- [Table 4 1](#) Number of adult offenders sentenced for abduction of child by other persons, all courts, 2010-2020
- [Table 4 2](#) Number and proportion of adult offenders sentenced for abduction of child by other persons, by sentence outcome, 2010-2020
- [Table 4 3](#) Average custodial sentence lengths (ACSL) received by adult offenders sentenced for abduction of child by other persons, 2010-2020
- [Table 4 4a](#) Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for abduction of child by other persons, 2010-2020
- [Table 4 4b](#) Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for abduction of child by other persons, 2010-2020

### **Section 5: Blackmail**

- [Table 5 1](#) Number of adult offenders sentenced for blackmail, Crown Court, 2010-2020
- [Table 5 2](#) Number and proportion of adult offenders sentenced for blackmail, by sentence outcome, 2010-2020
- [Table 5 3](#) Average custodial sentence lengths (ACSL) received by adult offenders sentenced for blackmail, 2010-2020
- [Table 5 4a](#) Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for blackmail, 2010-2020
- [Table 5 4b](#) Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for blackmail, 2010-2020

### **Section 6: Disclosing private sexual images**

- [Table 6 1](#) Number of adult offenders sentenced for disclosing private sexual images, all courts, 2015-2021
- [Table 6 2](#) Number and proportion of adult offenders sentenced for disclosing private sexual images, by sentence outcome, 2015-2021
- [Table 6 3](#) Average custodial sentence lengths (ACSL) received by adult offenders sentenced for disclosing private sexual images, 2015-2021
- [Table 6 4a](#) Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for disclosing private sexual images, 2015-2021
- [Table 6 4b](#) Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for disclosing private sexual images, 2015-2021

**Table 1.1: Number of adult offenders sentenced for kidnapping, Crown Court, 2010-2020<sup>1</sup>**

[Index](#)

<b>Court</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>2</sup>
Crown Court	147	128	123	95	122	134	136	121	120	98	69

Notes:

1) Figures shown here differ from those published by the MoJ, as there was one kidnapping case in the CPD in 2019 which indicates that the offender was sentenced in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

2) 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.

**Table 1.2: Number and proportion of adult offenders sentenced for kidnapping, by sentence outcome, 2010-2020<sup>1</sup>**

<b>Outcome</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>2</sup>
Absolute and conditional discharge	0	1	0	0	0	1	0	0	0	0	0
Fine	0	0	0	0	0	1	0	0	0	0	0
Community sentence	3	1	0	3	1	3	0	1	3	1	2
Suspended sentence	8	6	8	10	7	10	11	8	4	3	5
Immediate custody	134	117	115	82	113	117	123	105	104	88	51
Otherwise dealt with <sup>3</sup>	2	3	0	0	1	2	2	7	9	6	11
<b>Total</b>	<b>147</b>	<b>128</b>	<b>123</b>	<b>95</b>	<b>122</b>	<b>134</b>	<b>136</b>	<b>121</b>	<b>120</b>	<b>98</b>	<b>69</b>

<b>Outcome</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>2</sup>
Absolute and conditional discharge	0%	1%	0%	0%	0%	1%	0%	0%	0%	0%	0%
Fine	0%	0%	0%	0%	0%	1%	0%	0%	0%	0%	0%
Community sentence	2%	1%	0%	3%	1%	2%	0%	1%	3%	1%	3%
Suspended sentence	5%	5%	7%	11%	6%	7%	8%	7%	3%	3%	7%
Immediate custody	91%	91%	93%	86%	93%	87%	90%	87%	87%	90%	74%
Otherwise dealt with <sup>3</sup>	1%	2%	0%	0%	1%	1%	1%	6%	8%	6%	16%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

**Notes:**

1) Figures shown here differ from those published by the MoJ, as there was one kidnapping case in the CPD in 2019 which indicates that the offender was sentenced in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

2) 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.

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 kidnapping, 2010-2020**

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**Estimated pre-guilty plea**

<b>ACSL (years)<sup>1,2,3</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>4</sup>
Mean	6.02	5.41	4.8	4.9	6.8	6.6	5.8	6.0	7.6	6.6	7.2
Median	5.3	4	3.8	4.0	5.6	4.5	5.0	4.5	6.8	6.0	6.9

**Post-guilty plea**

<b>ACSL (years)<sup>1,2,3</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>4</sup>
Mean	4.88	4.39	3.8	4.0	5.6	5.8	4.8	5.3	6.7	5.9	5.8
Median	5.0	3.5	3.0	3.3	4.0	4.0	4.0	4.0	6.0	5.5	5.6

Notes:

- 1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.
- 2) Figures shown here differ from those published by the MoJ, as there was one kidnapping case in the CPD in 2019 which indicate that the offender was sentenced in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 3) The statutory maximum sentence for this offence is life imprisonment.
- 4) 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.

**Table 1.4a: Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for kidnapping, 2010-2020**

<b>Sentence length (years)<sup>1,2,3</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>4</sup>
Less than 2 years	23	20	27	15	12	23	18	15	7	11	5
2 to 4	27	37	32	27	24	30	35	31	24	26	6
4 to 6	25	23	18	19	27	17	18	19	20	10	13
6 to 8	21	11	8	5	14	7	22	11	11	12	10
8 to 10	12	4	9	4	12	14	12	8	12	10	7
10 to 12	8	4	5	6	7	6	13	7	16	12	4
12 to 14 years	2	3	3	1	5	5	1	3	7	1	1
Greater than 14 years	7	7	2	1	10	13	3	7	6	5	4
Indeterminate	9	8	11	4	2	2	1	4	1	1	1
<b>Total</b>	<b>134</b>	<b>117</b>	<b>115</b>	<b>82</b>	<b>113</b>	<b>117</b>	<b>123</b>	<b>105</b>	<b>104</b>	<b>88</b>	<b>51</b>

<b>Sentence length (years)<sup>1,2,3</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>4</sup>
Less than 2 years	17%	17%	23%	18%	11%	20%	15%	14%	7%	13%	10%
2 to 4	20%	32%	28%	33%	21%	26%	28%	30%	23%	30%	12%
4 to 6	19%	20%	16%	23%	24%	15%	15%	18%	19%	11%	25%
6 to 8	16%	9%	7%	6%	12%	6%	18%	10%	11%	14%	20%
8 to 10	9%	3%	8%	5%	11%	12%	10%	8%	12%	11%	14%
10 to 12	6%	3%	4%	7%	6%	5%	11%	7%	15%	14%	8%
12 to 14 years	1%	3%	3%	1%	4%	4%	1%	3%	7%	1%	2%
Greater than 14 years	5%	6%	2%	1%	9%	11%	2%	7%	6%	6%	8%
Indeterminate	7%	7%	10%	5%	2%	2%	1%	4%	1%	1%	2%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Notes:

1) 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 and equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.

2) Figures shown here differ from those published by the MoJ, as there was one kidnapping case in the CPD in 2019 which indicate that the offender was sentenced in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

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

4) 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.

**Table 1.4b: Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for kidnapping, 2010-2020**

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<b>Sentence length (years)<sup>1,2,3</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>4</sup>
Less than 2 years	35	31	39	22	16	31	28	23	11	13	7
2 to 4	25	41	36	31	40	29	34	30	29	27	9
4 to 6	27	16	14	14	22	13	23	18	18	9	15
6 to 8	23	7	4	4	5	8	26	12	10	17	10
8 to 10	6	6	5	3	13	13	6	5	12	10	4
10 to 12	3	5	4	2	9	7	5	7	14	8	4
12 to 14 years	5	2	1	2	2	6	0	1	5	2	1
Greater than 14 years	1	1	1	0	4	8	0	5	4	1	0
Indeterminate	9	8	11	4	2	2	1	4	1	1	1
<b>Total</b>	<b>134</b>	<b>117</b>	<b>115</b>	<b>82</b>	<b>113</b>	<b>117</b>	<b>123</b>	<b>105</b>	<b>104</b>	<b>88</b>	<b>51</b>

<b>Sentence length (years)<sup>1,2,3</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>4</sup>
Less than 2 years	26%	26%	34%	27%	14%	26%	23%	22%	11%	15%	14%
2 to 4	19%	35%	31%	38%	35%	25%	28%	29%	28%	31%	18%
4 to 6	20%	14%	12%	17%	19%	11%	19%	17%	17%	10%	29%
6 to 8	17%	6%	3%	5%	4%	7%	21%	11%	10%	19%	20%
8 to 10	4%	5%	4%	4%	12%	11%	5%	5%	12%	11%	8%
10 to 12	2%	4%	3%	2%	8%	6%	4%	7%	13%	9%	8%
12 to 14 years	4%	2%	1%	2%	2%	5%	0%	1%	5%	2%	2%
Greater than 14 years	1%	1%	1%	0%	4%	7%	0%	5%	4%	1%	0%
Indeterminate	7%	7%	10%	5%	2%	2%	1%	4%	1%	1%	2%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Notes:

1) 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 and equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.

2) Figures shown here differ from those published by the MoJ, as there was one kidnapping case in the CPD in 2019 which indicate that the offender was sentenced in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

3) The statutory maximum sentence for this offence is life imprisonment. In 2020 the longest post-guilty plea determinate sentence given was 13 years.

4) 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.



**Table 2.1: Number of adult offenders sentenced for false imprisonment, Crown Court, 2010-2020<sup>1</sup>**

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<b>Court</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>2</sup>
Crown Court	199	202	196	171	155	191	189	112	94	113	82

Notes:

1) Figures shown here differ from those published by the MoJ, as there were three false imprisonment cases in the CPD between 2018-2020 which indicate that the offenders were 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.

2) 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.

**Table 2.2: Number and proportion of adult offenders sentenced for false imprisonment, by sentence outcome, 2010-2020<sup>1</sup>**

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<b>Outcome</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>2</sup>
Absolute and conditional discharge	1	1	1	1	1	0	7	3	0	0	0
Fine	0	1	0	0	0	0	0	0	0	0	0
Community sentence	11	11	19	7	6	7	2	3	3	4	2
Suspended sentence	20	21	32	15	26	22	27	12	5	4	5
Immediate custody	159	158	137	144	120	149	141	89	76	97	70
Otherwise dealt with <sup>3</sup>	8	10	7	4	2	13	12	5	10	8	5
<b>Total</b>	<b>199</b>	<b>202</b>	<b>196</b>	<b>171</b>	<b>155</b>	<b>191</b>	<b>189</b>	<b>112</b>	<b>94</b>	<b>113</b>	<b>82</b>

<b>Outcome</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>2</sup>
Absolute and conditional discharge	1%	<0.5%	1%	1%	1%	0%	4%	3%	0%	0%	0%
Fine	0%	<0.5%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Community sentence	6%	5%	10%	4%	4%	4%	1%	3%	3%	4%	2%
Suspended sentence	10%	10%	16%	9%	17%	12%	14%	11%	5%	4%	6%
Immediate custody	80%	78%	70%	84%	77%	78%	75%	79%	81%	86%	85%
Otherwise dealt with <sup>3</sup>	4%	5%	4%	2%	1%	7%	6%	4%	11%	7%	6%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Notes:

1) Figures shown here differ from those published by the MoJ, as there were three false imprisonment cases in the CPD between 2018-2020 which indicate that the offenders were 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.

2) 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.

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 2.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for false imprisonment, 2010-2020**

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**Estimated pre-guilty plea**

<b>ACSL (years)<sup>1,2,3</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>4</sup>
Mean	4.28	4.7	3.6	4.3	4.6	4.6	4.5	5.1	5.0	6.6	4.7
Median	3.3	4	3.1	3.4	3.8	3.3	3.8	4.0	4.0	5.0	3.5

**Post-guilty plea**

<b>ACSL (years)<sup>1,2,3</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>4</sup>
Mean	3.29	3.72	2.8	3.2	3.6	3.9	3.6	4.2	4.1	5.2	3.6
Median	2.7	3	2.5	2.8	2.7	2.7	3.0	3.0	3.0	4.0	3.0

Notes:

- 1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.
- 2) Figures shown here differ from those published by the MoJ, as there were three false imprisonment cases in the CPD between 2018-2020 which indicate that the offenders were 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 statutory maximum sentence for this offence is life imprisonment.
- 4) 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.

**Table 2.4a: Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for false imprisonment, 2010-2020**

<b>Sentence length (years)<sup>1,2,3</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>4</sup>
Less than 2 years	33	25	37	33	25	38	32	23	17	13	13
2 to 4	50	52	48	50	45	50	42	22	21	24	24
4 to 6	24	39	28	37	22	23	37	18	22	20	17
6 to 8	13	18	9	9	11	13	15	10	3	14	8
8 to 10	5	11	2	7	9	5	6	7	5	9	3
10 to 12	3	5	4	4	6	7	0	4	1	5	1
12 to 14 years	2	0	0	2	1	4	4	2	2	6	3
Greater than 14 years	3	1	0	1	1	4	2	3	4	6	1
Indeterminate	26	7	9	1	0	5	3	0	1	0	0
<b>Total</b>	<b>159</b>	<b>158</b>	<b>137</b>	<b>144</b>	<b>120</b>	<b>149</b>	<b>141</b>	<b>89</b>	<b>76</b>	<b>97</b>	<b>70</b>

<b>Sentence length (years)<sup>1,2,3</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>4</sup>
Less than 2 years	21%	16%	27%	23%	21%	26%	23%	26%	22%	13%	19%
2 to 4	31%	33%	35%	35%	38%	34%	30%	25%	28%	25%	34%
4 to 6	15%	25%	20%	26%	18%	15%	26%	20%	29%	21%	24%
6 to 8	8%	11%	7%	6%	9%	9%	11%	11%	4%	14%	11%
8 to 10	3%	7%	1%	5%	8%	3%	4%	8%	7%	9%	4%
10 to 12	2%	3%	3%	3%	5%	5%	0%	4%	1%	5%	1%
12 to 14 years	1%	0%	0%	1%	1%	3%	3%	2%	3%	6%	4%
Greater than 14 years	2%	1%	0%	1%	1%	3%	1%	3%	5%	6%	1%
Indeterminate	16%	4%	7%	1%	0%	3%	2%	0%	1%	0%	0%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Notes:

1) 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 and equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.

2) Figures shown here differ from those published by the MoJ, as there were three false imprisonment cases in the CPD between 2018-2020 which indicate that the offenders were 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 statutory maximum sentence for this offence is life imprisonment.

4) 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.

**Table 2.4b: Post guilty-plea sentence lengths received by adult offenders sentenced to immediate custody for false imprisonment, 2010-2020**

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Sentence length (years) <sup>1,2,3</sup>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>4</sup>
Less than 2 years	54	39	56	52	47	59	47	33	27	19	20
2 to 4	48	68	54	59	37	49	48	25	21	31	31
4 to 6	18	26	8	20	21	11	27	14	14	13	12
6 to 8	4	11	9	6	9	9	9	7	5	14	2
8 to 10	5	5	1	4	4	4	3	4	3	14	3
10 to 12	3	1	0	1	1	5	1	2	1	2	1
12 to 14 years	0	0	0	1	1	3	3	2	2	1	1
Greater than 14 years	1	1	0	0	0	4	0	2	2	3	0
Indeterminate	26	7	9	1	0	5	3	0	1	0	0
<b>Total</b>	<b>159</b>	<b>158</b>	<b>137</b>	<b>144</b>	<b>120</b>	<b>149</b>	<b>141</b>	<b>89</b>	<b>76</b>	<b>97</b>	<b>70</b>

Sentence length (years) <sup>1,2,3</sup>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>4</sup>
Less than 2 years	34%	25%	41%	36%	39%	40%	33%	37%	36%	20%	29%
2 to 4	30%	43%	39%	41%	31%	33%	34%	28%	28%	32%	44%
4 to 6	11%	16%	6%	14%	18%	7%	19%	16%	18%	13%	17%
6 to 8	3%	7%	7%	4%	8%	6%	6%	8%	7%	14%	3%
8 to 10	3%	3%	1%	3%	3%	3%	2%	4%	4%	14%	4%
10 to 12	2%	1%	0%	1%	1%	3%	1%	2%	1%	2%	1%
12 to 14 years	0%	0%	0%	1%	1%	2%	2%	2%	3%	1%	1%
Greater than 14 years	1%	1%	0%	0%	0%	3%	0%	2%	3%	3%	0%
Indeterminate	16%	4%	7%	1%	0%	3%	2%	0%	1%	0%	0%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Notes:

1) 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 and equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.

2) Figures shown here differ from those published by the MoJ, as there were three false imprisonment cases in the CPD between 2018-2020 which indicate that the offenders were 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 statutory maximum sentence for this offence is life imprisonment. In 2020 the longest post-guilty plea determinate sentence given was 14 years.

4) 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.

**Table 3.1: Number of adult offenders sentenced for abduction of child by parent, etc, all courts, 2010-2020**

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<b>Court</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>1</sup>
Magistrates' court	1	0	0	0	0	2	2	0	0	0	0
Crown Court	7	12	6	11	17	15	13	10	9	11	7
<b>Total</b>	<b>8</b>	<b>12</b>	<b>6</b>	<b>11</b>	<b>17</b>	<b>17</b>	<b>15</b>	<b>10</b>	<b>9</b>	<b>11</b>	<b>7</b>

<b>Court</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Magistrates' court	13%	0%	0%	0%	0%	12%	13%	0%	0%	0%	0%
Crown Court	88%	100%	100%	100%	100%	88%	87%	100%	100%	100%	100%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

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.

**Table 3.2: Number and proportion of adult offenders sentenced for abduction of child by parent, etc, by sentence outcome, 2010-2020**

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<b>Outcome</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>1</sup>
Absolute and conditional discharge	1	0	0	0	0	1	1	1	0	0	0
Fine	0	0	0	0	0	1	0	0	0	0	0
Community sentence	1	0	0	0	1	0	0	0	0	0	1
Suspended sentence	2	5	1	3	7	6	7	3	4	3	1
Immediate custody	3	7	5	8	9	9	7	6	5	8	5
Otherwise dealt with <sup>2</sup>	1	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>8</b>	<b>12</b>	<b>6</b>	<b>11</b>	<b>17</b>	<b>17</b>	<b>15</b>	<b>10</b>	<b>9</b>	<b>11</b>	<b>7</b>

<b>Outcome</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>1</sup>
Absolute and conditional discharge	13%	0%	0%	0%	0%	6%	7%	10%	0%	0%	0%
Fine	0%	0%	0%	0%	0%	6%	0%	0%	0%	0%	0%
Community sentence	13%	0%	0%	0%	6%	0%	0%	0%	0%	0%	14%
Suspended sentence	25%	42%	17%	27%	41%	35%	47%	30%	44%	27%	14%
Immediate custody	38%	58%	83%	73%	53%	53%	47%	60%	56%	73%	71%
Otherwise dealt with <sup>2</sup>	13%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

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 3.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for abduction of child by parent, etc, 2010-2020**[Index](#)**Estimated pre-guilty plea**

<b>ACSL (years)<sup>1,2</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>3</sup>
Mean	2.15	3.03	3.2	2.1	4.0	2.7	3.1	2.4	3.2	2.2	3.4
Median	1.8	2.25	2.7	1.9	2.5	2.0	2.7	2.6	2.7	1.3	3.0

**Post-guilty plea**

<b>ACSL (years)<sup>1,2</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>3</sup>
Mean	1.83	2.06	2.2	1.7	3.3	2.1	2.3	1.9	2.3	1.6	3.0
Median	1.2	1.5	2.0	1.3	1.7	2.0	2.0	2.0	2.7	1.0	3.0

## Notes:

- 1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.
- 2) The statutory maximum sentence for this offence is 7 years' custody.
- 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) For 2013 onwards this is calculated as the number of offenders given life sentences, out of the number of offenders given a sentence of immediate custody. For 2010-2012, this is calculated as the number of offenders sentenced to Imprisonment for Public Protection (IPP), Extended Sentences for Public Protection (EPP) and life sentences, out of the number of offenders given a sentence of immediate custody. IPP and EPP sentences were introduced in 2005 and abolished in 2012.



**Table 3.4a: Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for abduction of child by parent, etc, 2010-2020**

[Index](#)

Sentence length (years) <sup>1,2</sup>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>3</sup>
Less than 1 year	0	1	0	2	1	0	1	0	1	1	0
1 to 2	2	2	2	4	2	5	2	2	1	5	0
2 to 3	0	1	2	1	2	1	2	3	1	1	3
3 to 4	1	1	0	0	0	2	1	1	0	0	1
4 to 5	0	1	0	0	2	0	0	0	0	0	1
5 to 6	0	0	0	1	0	1	0	0	2	0	0
6 to 7	0	0	0	0	1	0	0	0	0	0	0
Greater than 7 years <sup>4</sup>	0	1	1	0	1	0	1	0	0	1	0
<b>Total</b>	<b>3</b>	<b>7</b>	<b>5</b>	<b>8</b>	<b>9</b>	<b>9</b>	<b>7</b>	<b>6</b>	<b>5</b>	<b>8</b>	<b>5</b>

Sentence length (years) <sup>1,2</sup>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>3</sup>
Less than 1 year	0%	14%	0%	25%	11%	0%	14%	0%	20%	13%	0%
1 to 2	67%	29%	40%	50%	22%	56%	29%	33%	20%	63%	0%
2 to 3	0%	14%	40%	13%	22%	11%	29%	50%	20%	13%	60%
3 to 4	33%	14%	0%	0%	0%	22%	14%	17%	0%	0%	20%
4 to 5	0%	14%	0%	0%	22%	0%	0%	0%	0%	0%	20%
5 to 6	0%	0%	0%	13%	0%	11%	0%	0%	40%	0%	0%
6 to 7	0%	0%	0%	0%	11%	0%	0%	0%	0%	0%	0%
Greater than 7 years <sup>4</sup>	0%	14%	20%	0%	11%	0%	14%	0%	0%	13%	0%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Notes:

1) 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 and equal to 1 year, and '1 to 2' includes sentence lengths over 1 year and up to and including 2 years.

2) The statutory maximum sentence for this offence is 7 years' custody.

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) While these sentences appear to exceed the statutory maximum, they are estimates only; there are no post guilty plea sentence lengths exceeding the statutory maximum.

**Table 3.4b: Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for abduction of child by parent, etc, 2010-2020**

[Index](#)

<b>Sentence length (years)<sup>1,2</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>3</sup>
Less than 1 year	1	2	2	2	3	1	1	1	2	5	0
1 to 2	1	2	2	5	2	5	3	4	0	2	1
2 to 3	0	2	0	0	0	1	2	1	1	0	2
3 to 4	1	0	0	0	0	2	0	0	2	0	2
4 to 5	0	1	1	0	2	0	0	0	0	0	0
5 to 6	0	0	0	1	0	0	1	0	0	1	0
6 to 7 years	0	0	0	0	2	0	0	0	0	0	0
<b>Total</b>	<b>3</b>	<b>7</b>	<b>5</b>	<b>8</b>	<b>9</b>	<b>9</b>	<b>7</b>	<b>6</b>	<b>5</b>	<b>8</b>	<b>5</b>

<b>Sentence length (years)<sup>1,2</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>3</sup>
Less than 1 year	33%	29%	40%	25%	33%	11%	14%	17%	40%	63%	0%
1 to 2	33%	29%	40%	63%	22%	56%	43%	67%	0%	25%	20%
2 to 3	0%	29%	0%	0%	0%	11%	29%	17%	20%	0%	40%
3 to 4	33%	0%	0%	0%	0%	22%	0%	0%	40%	0%	40%
4 to 5	0%	14%	20%	0%	22%	0%	0%	0%	0%	0%	0%
5 to 6	0%	0%	0%	13%	0%	0%	14%	0%	0%	13%	0%
6 to 7 years	0%	0%	0%	0%	22%	0%	0%	0%	0%	0%	0%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Notes:

- 1) 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 and equal to 1 year, and '1 to 2' includes sentence lengths over 1 year and up to and including 2 years.
- 2) The statutory maximum sentence for this offence is 7 years' custody. In 2020 the longest post-guilty plea determinate sentence given was 4 years.
- 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.

**Table 4.1: Number of adult offenders sentenced for abduction of child by other persons, all courts, 2010-2020**

[Index](#)

<b>Court</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>1</sup>
Magistrates' court	8	16	14	19	14	26	29	20	30	19	17
Crown Court	60	53	67	48	65	71	59	59	42	41	32
<b>Total</b>	<b>68</b>	<b>69</b>	<b>81</b>	<b>67</b>	<b>79</b>	<b>97</b>	<b>88</b>	<b>79</b>	<b>72</b>	<b>60</b>	<b>49</b>

<b>Court</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Magistrates' court	12%	23%	17%	28%	18%	27%	33%	25%	42%	32%	35%
Crown Court	88%	77%	83%	72%	82%	73%	67%	75%	58%	68%	65%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

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.

**Table 4.2: Number and proportion of adult offenders sentenced for abduction of child by other persons, by sentence outcome, 2010-2020**

[Index](#)

<b>Outcome</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>1</sup>
Absolute and conditional discharge	2	4	5	7	5	9	9	5	7	3	4
Fine	1	1	1	1	0	0	1	2	4	0	0
Community sentence	12	20	22	11	11	17	16	11	15	8	12
Suspended sentence	14	11	12	13	18	23	20	19	13	9	6
Immediate custody	38	28	40	30	43	44	40	36	25	32	24
Otherwise dealt with <sup>2</sup>	1	5	1	5	2	4	2	6	8	8	3
<b>Total</b>	<b>68</b>	<b>69</b>	<b>81</b>	<b>67</b>	<b>79</b>	<b>97</b>	<b>88</b>	<b>79</b>	<b>72</b>	<b>60</b>	<b>49</b>

<b>Outcome</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>1</sup>
Absolute and conditional discharge	3%	6%	6%	10%	6%	9%	10%	6%	10%	5%	8%
Fine	1%	1%	1%	1%	0%	0%	1%	3%	6%	0%	0%
Community sentence	18%	29%	27%	16%	14%	18%	18%	14%	21%	13%	24%
Suspended sentence	21%	16%	15%	19%	23%	24%	23%	24%	18%	15%	12%
Immediate custody	56%	41%	49%	45%	54%	45%	45%	46%	35%	53%	49%
Otherwise dealt with <sup>2</sup>	1%	7%	1%	7%	3%	4%	2%	8%	11%	13%	6%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

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 4.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for abduction of child by other persons, etc, 2010-2020**

[Index](#)

**Estimated pre-guilty plea**

<b>ACSL (years)<sup>1,2</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>3</sup>
Mean	2.53	1.88	1.9	2.2	1.8	2.3	1.8	1.9	2.0	2.0	2.2
Median	2.3	2	1.7	1.6	1.5	1.9	1.5	1.5	1.3	1.8	1.8

**Post-guilty plea**

<b>ACSL (years)<sup>1,2</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>3</sup>
Mean	1.86	1.44	1.4	1.7	1.4	1.7	1.4	1.4	1.6	1.5	1.6
Median	1.6	1.33	1.2	1.3	1.2	1.5	1.1	1.1	1.0	1.3	1.2

Notes:

- 1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.
- 2) The statutory maximum sentence for this offence is 7 years' custody.
- 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) For 2013 onwards this is calculated as the number of offenders given life sentences, out of the number of offenders given a sentence of immediate custody. For 2010-2012, this is calculated as the number of offenders sentenced to Imprisonment for Public Protection (IPP), Extended Sentences for Public Protection (EPP) and life sentences, out of the number of offenders given a sentence of immediate custody. IPP and EPP sentences were introduced in 2005 and abolished in 2012.

**Table 4.4a: Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for abduction of child by other persons, etc, 2010-2020**

[Index](#)

Sentence length (years) <sup>1,2</sup>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>3</sup>
Less than 1 year	4	10	11	9	12	8	16	10	8	9	8
1 to 2	12	8	16	8	17	16	10	12	9	11	6
2 to 3	12	6	8	6	8	8	5	11	2	4	4
3 to 4	5	4	2	2	3	9	6	1	2	6	2
4 to 5	2	0	2	3	1	3	1	1	3	2	0
5 to 6	2	0	1	2	2	0	2	1	1	0	3
6 to 7	0	0	0	0	0	0	0	0	0	0	0
Greater than 7 years <sup>4</sup>	1	0	0	0	0	0	0	0	0	0	1
<b>Total</b>	<b>38</b>	<b>28</b>	<b>40</b>	<b>30</b>	<b>43</b>	<b>44</b>	<b>40</b>	<b>36</b>	<b>25</b>	<b>32</b>	<b>24</b>

Sentence length (years) <sup>1,2</sup>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>3</sup>
Less than 1 year	11%	36%	28%	30%	28%	18%	40%	28%	32%	28%	33%
1 to 2	32%	29%	40%	27%	40%	36%	25%	33%	36%	34%	25%
2 to 3	32%	21%	20%	20%	19%	18%	13%	31%	8%	13%	17%
3 to 4	13%	14%	5%	7%	7%	20%	15%	3%	8%	19%	8%
4 to 5	5%	0%	5%	10%	2%	7%	3%	3%	12%	6%	0%
5 to 6	5%	0%	3%	7%	5%	0%	5%	3%	4%	0%	13%
6 to 7	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Greater than 7 years <sup>4</sup>	3%	0%	0%	0%	0%	0%	0%	0%	0%	0%	4%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Notes:

1) 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 and equal to 1 year, and '1 to 2' includes sentence lengths over 1 year and up to and including 2 years.

2) The statutory maximum sentence for this offence is 7 years' custody.

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) While these sentences appear to exceed the statutory maximum, they are estimates only; there are no post guilty plea sentence lengths exceeding the statutory maximum.

**Table 4.4b: Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for abduction of child by other persons, 2010-2020**

[Index](#)

<b>Sentence length (years)<sup>1,2</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>3</sup>
Less than 1 year	10	11	19	14	21	15	20	18	15	12	11
1 to 2	16	12	14	9	14	15	10	12	3	12	6
2 to 3	8	3	5	2	5	11	7	3	4	8	3
3 to 4	3	2	2	2	3	3	1	3	1	0	3
4 to 5	1	0	0	2	0	0	2	0	2	0	0
5 to 6	0	0	0	1	0	0	0	0	0	0	1
6 to 7 years	0	0	0	0	0	0	0	0	0	0	0
<b>Total</b>	<b>38</b>	<b>28</b>	<b>40</b>	<b>30</b>	<b>43</b>	<b>44</b>	<b>40</b>	<b>36</b>	<b>25</b>	<b>32</b>	<b>24</b>

<b>Sentence length (years)<sup>1,2</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>3</sup>
Less than 1 year	26%	39%	48%	47%	49%	34%	50%	50%	60%	38%	46%
1 to 2	42%	43%	35%	30%	33%	34%	25%	33%	12%	38%	25%
2 to 3	21%	11%	13%	7%	12%	25%	18%	8%	16%	25%	13%
3 to 4	8%	7%	5%	7%	7%	7%	3%	8%	4%	0%	13%
4 to 5	3%	0%	0%	7%	0%	0%	5%	0%	8%	0%	0%
5 to 6	0%	0%	0%	3%	0%	0%	0%	0%	0%	0%	4%
6 to 7 years	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Notes:

- 1) 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 and equal to 1 year, and '1 to 2' includes sentence lengths over 1 year and up to and including 2 years.
- 2) The statutory maximum sentence for this offence is 7 years' custody. In 2020 the longest post-guilty plea determinate sentence given was 5 years 9 months.
- 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.

**Table 5.1: Number of adult offenders sentenced for blackmail, Crown Court, 2010 to 2020<sup>1,2</sup>**

<b>Court</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Crown Court	170	147	143	137	202	220	179	149	158	134	108
<b>Total</b>	<b>170</b>	<b>147</b>	<b>143</b>	<b>137</b>	<b>202</b>	<b>220</b>	<b>179</b>	<b>149</b>	<b>158</b>	<b>134</b>	<b>108</b>

**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 four blackmail 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. There was also an indeterminate sentence in 2012 which has been excluded from the above table.



**Table 5.2: Number and proportion of adult offenders sentenced for blackmail, by sentence outcome, 2010-2020<sup>1,2</sup>**[Index](#)

<b>Outcome</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Community sentence	3	5	3	4	3	4	3	1	2	4	2
Suspended sentence	18	11	14	30	30	39	40	26	29	25	31
Immediate custody	146	126	125	99	168	177	135	120	125	103	70
Otherwise dealt with <sup>3</sup>	3	5	1	4	1	0	1	2	2	2	5
<b>Total</b>	<b>170</b>	<b>147</b>	<b>143</b>	<b>137</b>	<b>202</b>	<b>220</b>	<b>179</b>	<b>149</b>	<b>158</b>	<b>134</b>	<b>108</b>

<b>Outcome</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Community sentence	2%	3%	2%	3%	1%	2%	2%	1%	1%	3%	2%
Suspended sentence	11%	7%	10%	22%	15%	18%	22%	17%	18%	19%	29%
Immediate custody	86%	86%	87%	72%	83%	80%	75%	81%	79%	77%	65%
Otherwise dealt with <sup>3</sup>	2%	3%	1%	3%	<0.5%	0%	1%	1%	1%	1%	5%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

## 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 four blackmail 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. There was also an indeterminate sentence in 2012 which has been excluded from the above table.

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 5.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for blackmail, 2010-2020<sup>1,2,3</sup>**

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**Estimated pre-guilty plea**

<b>ACSL (years)</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>4</sup>
Mean	3.5	3.8	3.3	3.8	3.9	3.4	3.7	3.5	3.7	3.8	3.7
Median	3.0	3.1	3.0	3.3	3.4	3.0	3.3	3.2	3.4	3.3	3.1

**Post-guilty plea**

<b>ACSL (years)</b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 <sup>4</sup>
Mean	2.8	3.0	2.6	3.0	3.1	2.7	2.9	2.8	2.8	3.0	2.9
Median	2.5	2.5	2.0	2.5	2.7	2.3	2.5	2.4	2.5	2.3	2.3

Notes:

1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.

2) The statutory maximum sentence for this offence is 14 years.

3) Figures shown here differ from those published by the MoJ, as there were four blackmail 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.

4) 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.

**Table 5.4a: Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for blackmail, 2010-2020<sup>1,2</sup>**

[Index](#)

<b>Sentence length (years)<sup>3,4</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Up to 2 years	38	33	28	22	30	54	35	35	28	30	14
2 to 4	63	55	71	44	79	77	61	47	58	39	33
4 to 6	35	20	17	21	39	33	23	27	25	17	16
6 to 8	3	9	6	8	13	8	9	9	7	11	4
8 to 10	4	4	2	2	3	3	3	2	7	6	0
Greater than 10 years	3	5	1	2	4	2	4	0	0	0	3
<b>Total</b>	<b>146</b>	<b>126</b>	<b>125</b>	<b>99</b>	<b>168</b>	<b>177</b>	<b>135</b>	<b>120</b>	<b>125</b>	<b>103</b>	<b>70</b>

<b>Sentence length (years)<sup>3,4</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Up to 2 years	26%	26%	22%	22%	18%	31%	26%	29%	22%	29%	20%
2 to 4	43%	44%	57%	44%	47%	44%	45%	39%	46%	38%	47%
4 to 6	24%	16%	14%	21%	23%	19%	17%	23%	20%	17%	23%
6 to 8	2%	7%	5%	8%	8%	5%	7%	8%	6%	11%	6%
8 to 10	3%	3%	2%	2%	2%	2%	2%	2%	6%	6%	0%
Greater than 10 years	2%	4%	1%	2%	2%	1%	3%	0%	0%	0%	4%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

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 four blackmail 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. There was also an indeterminate sentence in 2012 which has been excluded from the above table.

3) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Up to 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 14 years.

**Table 5.4b: Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for blackmail, 2010-2020<sup>1,2</sup>**

[Index](#)

<b>Sentence length (years)<sup>3,4</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Up to 2 years	65	56	64	42	58	79	55	51	55	45	27
2 to 4	60	46	46	35	76	75	55	47	47	36	33
4 to 6	15	12	12	17	22	16	16	18	19	14	7
6 to 8	3	10	3	4	10	5	5	4	4	6	1
8 to 10	3	0	0	0	0	1	4	0	0	2	0
Greater than 10 years	0	2	0	1	2	1	0	0	0	0	2
<b>Total</b>	<b>146</b>	<b>126</b>	<b>125</b>	<b>99</b>	<b>168</b>	<b>177</b>	<b>135</b>	<b>120</b>	<b>125</b>	<b>103</b>	<b>70</b>

<b>Sentence length (years)<sup>3,4</sup></b>	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Up to 2 years	45%	44%	51%	42%	35%	45%	41%	43%	44%	44%	39%
2 to 4	41%	37%	37%	35%	45%	42%	41%	39%	38%	35%	47%
4 to 6	10%	10%	10%	17%	13%	9%	12%	15%	15%	14%	10%
6 to 8	2%	8%	2%	4%	6%	3%	4%	3%	3%	6%	1%
8 to 10	2%	0%	0%	0%	0%	1%	3%	0%	0%	2%	0%
Greater than 10 years	0%	2%	0%	1%	1%	1%	0%	0%	0%	0%	3%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

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 four blackmail 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. There was also an indeterminate sentence in 2012 which has been excluded from the above table.

3) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Up to 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 14 years. In 2020 the longest post-guilty plea determinate sentence given was 12 years.

**Table 6.1: Number of adult offenders sentenced for disclosing private sexual images, all courts, 2015-2021<sup>1</sup>**

<b>Court</b>	2015	2016	2017	2018	2019	2020 <sup>2</sup>	2021
Magistrates' court	57	190	195	132	113	99	138
Crown Court	5	36	49	49	61	58	58
<b>Total</b>	<b>62</b>	<b>226</b>	<b>244</b>	<b>181</b>	<b>174</b>	<b>157</b>	<b>196</b>

<b>Court</b>	2015	2016	2017	2018	2019	2020 <sup>2</sup>	2021
Magistrates' court	92%	84%	80%	73%	65%	63%	70%
Crown Court	8%	16%	20%	27%	35%	37%	30%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

## Notes:

1) This offence came into force in 2015 and the legislation was amended in 2021 to also include threats to disclose private sexual images. Therefore, tables for this offence are presented for the years 2015-2021. Currently, there is no way of disaggregating the threats to disclose offences from the substantive offence using the data, so the figures for 2021 may include some threats to disclose offences (if there were any).

2) 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.

**Table 6.2: Number and proportion of adult offenders sentenced for disclosing private sexual images, by sentence outcome, 2015-2021<sup>1,2</sup>**

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<b>Outcome</b>	2015	2016	2017	2018	2019	2020 <sup>3</sup>	2021
Conditional discharge	1	10	10	4	7	5	8
Fine	4	16	13	6	7	5	5
Community sentence	23	59	77	62	63	46	63
Suspended sentence	18	85	98	68	56	63	84
Immediate custody	16	52	45	40	41	37	35
Otherwise dealt with	0	4	1	1	0	1	1
<b>Total</b>	<b>62</b>	<b>226</b>	<b>244</b>	<b>181</b>	<b>174</b>	<b>157</b>	<b>196</b>

<b>Outcome</b>	2015	2016	2017	2018	2019	2020 <sup>3</sup>	2021
Conditional discharge	2%	4%	4%	2%	4%	3%	4%
Fine	6%	7%	5%	3%	4%	3%	3%
Community sentence	37%	26%	32%	34%	36%	29%	32%
Suspended sentence	29%	38%	40%	38%	32%	40%	43%
Immediate custody	26%	23%	18%	22%	24%	24%	18%
Otherwise dealt with	0%	2%	<0.5%	1%	0%	1%	1%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Notes:

1) This offence came into force in 2015 and the legislation was amended in 2021 to also include threats to disclose private sexual images. Therefore, tables for this offence are presented for the years 2015-2021. Currently, there is no way of disaggregating the threats to disclose offences from the substantive offence using the data, so the figures for 2021 may include some threats to disclose offences (if there were any).

2) The statutory maximum sentence for this offence is 2 years' custody.

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.

**Table 6.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for disclosing private sexual images, 2015-2021<sup>1,2</sup>**

**Estimated pre-guilty plea**

<b>ACSL (months)</b>	2015	2016	2017	2018	2019	2020 <sup>3</sup>	2021
Mean	7.3	7.6	7.9	8.4	8.7	9.6	9.3
Median	5.6	5.6	6.7	6.9	6.7	9.0	8.0

**Post-guilty plea**

<b>ACSL (months)</b>	2015	2016	2017	2018	2019	2020 <sup>3</sup>	2021
Mean	5.2	5.5	5.7	6.1	6.3	6.9	6.8
Median	3.7	3.9	5.0	5.2	6.0	6.0	6.0

Notes:

1) This offence came into force in 2015 and the legislation was amended in 2021 to also include threats to disclose private sexual images. Therefore, tables for this offence are presented for the years 2015-2021. Currently, there is no way of disaggregating the threats to disclose offences from the substantive offence using the data, so the figures for 2021 may include some threats to disclose offences (if there were any).

2) The statutory maximum sentence for this offence is 2 years' custody.

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.

**Table 6.4a: Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for disclosing private sexual images, 2015-2021<sup>1,2</sup>**

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Sentence length (months) <sup>3</sup>	2015	2016	2017	2018	2019	2020 <sup>4</sup>	2021
Up to 3 months	3	9	11	4	3	2	3
3 to 6	7	21	7	13	16	12	12
6 to 9	4	12	17	13	8	9	7
9 to 12	1	2	1	2	5	2	5
12 to 15	0	2	6	2	4	7	2
15 to 18	0	4	0	4	4	3	3
18 to 21	0	0	2	1	1	2	2
21 to 24	0	1	1	0	0	0	0
Greater than 24 months <sup>5</sup>	1	1	0	1	0	0	1
<b>Total</b>	<b>16</b>	<b>52</b>	<b>45</b>	<b>40</b>	<b>41</b>	<b>37</b>	<b>35</b>

Sentence length (months) <sup>3</sup>	2015	2016	2017	2018	2019	2020 <sup>4</sup>	2021
Up to 3 months	19%	17%	24%	10%	7%	5%	9%
3 to 6	44%	40%	16%	33%	39%	32%	34%
6 to 9	25%	23%	38%	33%	20%	24%	20%
9 to 12	6%	4%	2%	5%	12%	5%	14%
12 to 15	0%	4%	13%	5%	10%	19%	6%
15 to 18	0%	8%	0%	10%	10%	8%	9%
18 to 21	0%	0%	4%	3%	2%	5%	6%
21 to 24	0%	2%	2%	0%	0%	0%	0%
Greater than 24 months <sup>5</sup>	6%	2%	0%	3%	0%	0%	3%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Notes:

1) This offence came into force in 2015 and the legislation was amended in 2021 to also include threats to disclose private sexual images. Therefore, tables for this offence are presented for the years 2015-2021. Currently, there is no way of disaggregating the threats to disclose offences from the substantive offence using the data, so the figures for 2021 may include some threats to disclose offences (if there were any).

2) The statutory maximum sentence for this offence is 2 years' custody.

3) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Up to 3 months' includes sentence lengths less than or equal to 3 months, and '3 to 6' includes sentence lengths over 3 months, and up to and including 6 months.

4) 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.

5) While these sentences appear to exceed the statutory maximum, they are estimates only; there are no post-guilty plea sentence lengths exceeding the statutory maximum.



**Table 6.4b: Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for disclosing private sexual images, 2015-2021<sup>1,2</sup>**

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Sentence length (months) <sup>3</sup>	2015	2016	2017	2018	2019	2020 <sup>4</sup>	2021
Up to 3 months	5	17	12	11	11	6	12
3 to 6	8	25	22	19	14	17	10
6 to 9	2	2	4	2	9	3	4
9 to 12	0	6	3	6	5	8	5
12 to 15	0	1	3	1	1	3	2
15 to 18	0	0	1	0	1	0	2
18 to 21	0	0	0	1	0	0	0
21 to 24	1	1	0	0	0	0	0
<b>Total</b>	<b>16</b>	<b>52</b>	<b>45</b>	<b>40</b>	<b>41</b>	<b>37</b>	<b>35</b>

Sentence length (months) <sup>3</sup>	2015	2016	2017	2018	2019	2020 <sup>4</sup>	2021
Up to 3 months	31%	33%	27%	28%	27%	16%	34%
3 to 6	50%	48%	49%	48%	34%	46%	29%
6 to 9	13%	4%	9%	5%	22%	8%	11%
9 to 12	0%	12%	7%	15%	12%	22%	14%
12 to 15	0%	2%	7%	3%	2%	8%	6%
15 to 18	0%	0%	2%	0%	2%	0%	6%
18 to 21	0%	0%	0%	3%	0%	0%	0%
21 to 24	6%	2%	0%	0%	0%	0%	0%
<b>Total</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>	<b>100%</b>

Notes:

1) This offence came into force in 2015 and the legislation was amended in 2021 to also include threats to disclose private sexual images. Therefore, tables for this offence are presented for the years 2015-2021. Currently, there is no way of disaggregating the threats to disclose offences from the substantive offence using the data, so the figures for 2021 may include some threats to disclose offences (if there were any).

2) The statutory maximum sentence for this offence is 2 years' custody. In 2021 the longest post-guilty plea determinate sentence given was 18 months.

3) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Up to 3 months' includes sentence lengths less than or equal to 3 months, and '3 to 6' includes sentence lengths over 3 months, and up to and including 6 months.

4) 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.

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# Blackmail

**Theft Act 1968 (section 21)**

**Triable only on indictment**

**Maximum: 14 years' custody**

**Offence range: x – xx years' custody**

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

**STEP 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.**

<b>CULPABILITY</b>	
Demonstrated by one or more of the following:	
<b>A-</b> High Culpability	<ul style="list-style-type: none"><li>• Conduct over a sustained period of time</li><li>• Sophisticated and/or planned nature of conduct</li><li>• Deliberate targeting of particularly vulnerable victim</li><li>• Use of violence</li></ul>
<b>B-</b> Medium culpability	<ul style="list-style-type: none"><li>• Violence threatened</li><li>• Other cases that fall between categories A and C because:<ul style="list-style-type: none"><li>○ Factors are present in A and C which balance each other out <b>and/or</b></li><li>○ The offender's culpability falls between the factors described in A and C</li></ul></li></ul>
<b>C-</b> Lower culpability	<ul style="list-style-type: none"><li>• Unplanned and/or limited in scope and duration</li><li>• Involved through coercion, intimidation or exploitation</li><li>• Offender's responsibility substantially reduced by mental disorder or learning disability</li></ul>

<b>HARM</b>	
<b>The level of harm is assessed by weighing up all the factors in the case.</b>	
Category 1	<ul style="list-style-type: none"><li>• Serious distress caused to the victim</li><li>• Serious distress caused to others</li><li>• Very large amount of money obtained</li><li>• Serious consequential financial impact of the offence</li><li>• Widespread public impact of the offence</li></ul>
Category 2	<ul style="list-style-type: none"><li>• Some distress caused to the victim</li><li>• Some distress caused to others</li><li>• Some consequential financial impact of the offence</li><li>• Considerable amount of money obtained</li></ul>
Category 3	<ul style="list-style-type: none"><li>• Limited effects of the offence</li><li>• Small amount of money obtained</li></ul>

## 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
<b>Category 1</b>	<b>Starting Point</b> 7 years' custody <b>Category Range</b> 4 - 10 years' custody	<b>Starting Point</b> 4 years' custody <b>Category Range</b> 2 -6 years' custody	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 1 -4 years' custody
<b>Category 2</b>	<b>Starting Point</b> 4 years' custody <b>Category Range</b> 2 -6 years' custody	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 1 -4 years' custody	<b>Starting Point</b> 1 years' custody <b>Category Range</b> 6 months'- 2 years' custody
<b>Category 3</b>	<b>Starting Point</b> 2 years' custody <b>Category Range</b> 1 -4 years' custody	<b>Starting Point</b> 1 years' custody <b>Category Range</b> 6 months' - 2 years' custody	<b>Starting Point</b> 6 months' custody <b>Category Range</b> High level Community order - 1 year's custody

[Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the Totality guideline and step five of this guideline.]

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

#### 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:*

- Disturbing nature of the threat(s)
- Offence related to other criminal activity
- Abuse of trust or dominant position
- Other(s) put at risk of harm by the offending
- Blame wrongly placed on others
- Offence committed in a domestic context
- Commission of offence whilst under the influence of alcohol or drugs
- Leading role in group
- Offender involves others in the conduct
- Offence committed on licence or while subject to court order(s)

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions **or** no relevant/recent convictions
- Remorse
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- Good character and/or exemplary conduct
- Co-operation with the investigation/early admissions
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability (where not taken into account at step 1)
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

**STEP 3****Consider any factors which indicate a reduction for assistance to the prosecution**

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

**STEP 4****Reduction for guilty pleas**

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

**STEP 5****Totality principle**

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

**STEP 6****Compensation and ancillary orders**

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order and must give reasons if it does not do so ([section 55 of the Sentencing Code](#)).

**STEP 7****Reasons**

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

**STEP 8****Consideration for time spent on bail (tagged curfew)**

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

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**Sentencing Council meeting:**  
**Paper number:**

**22 July 2022**  
**SC(22)JUL04 – Miscellaneous  
Amendments**

**Lead Council member:**  
**Lead official:**

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## **1 ISSUE**

1.1 This is the third of three meetings to discuss the miscellaneous amendments prior to consultation in September. The responses to the consultation will be discussed in December and January to enable any changes agreed upon to be made on 1 April 2023.

## **2 RECOMMENDATION**

2.1 The Council is asked to consider what if any action should be taken in relation to the matters set out in the paper and whether these should be consulted on as part of the miscellaneous amendments consultation.

## **3 CONSIDERATION**

*Changes to the Sentencing children and young people guideline*

3.1 The Police, Crime, Sentencing and Courts Act 2022 (PCSC) makes changes to detention and training orders (DTOs) and youth rehabilitation orders (YROs). Stephen Leake has made some helpful suggestions for this section of the paper.

3.2 For offences **sentenced** on or after 28 June 2022, section 158 PCSC removes the fixed lengths of DTOs so that any length of DTO from 4 months up to 24 months can be given. Section 160 and Schedule 16 makes time spent on remand or on qualifying bail credited as time served rather than being taken into account when setting the length of the DTO (as it was previously).

3.3 The 'Custodial sentences' part in section six of the [Children and young people guideline](#) needs to be amended to take account of this change. The opening paragraph currently reads:

**A custodial sentence should always be used as a last resort. If offence specific guidelines for children and young people are available then the court should consult them in the first instance to assess whether custody is the most appropriate disposal.**

The available custodial sentences for children and young people are:

## Youth Court

Detention and training order for the following periods:

- 4 months;
- 6 months;
- 8 months;
- 10 months;
- 12 months;
- 18 months; or
- 24 months.

## Crown Court

- Detention and training order (the same periods are available as in the youth court)
- Long-term detention (under [section 250 Sentencing Code](#))
- Extended sentence of detention or detention for life (if dangerousness criteria are met)
- Detention at Her Majesty's pleasure (for offences of murder)

3.4 This could be updated by changing the wording in the first column to:

- Detention and training order for at least 4 months but not more than 24 months

3.5 At present the version of the Sentencing Code on [legislation.gov.uk](http://legislation.gov.uk) has not been updated with these changes, but once it has, a link could be added: ([section 236 of the Sentencing Code](#)).

3.6 A further proposed change to this table is to add the following to each column:

- Required special sentence of detention for terrorist offenders of particular concern (under [section 252A of the Sentencing Code](#))

3.7 In the section headed: **Detention and training order (DTO)** the following paragraph requires amendment:

6.53 A DTO can be made only for the periods prescribed – 4, 6, 8, 10, 12, 18 or 24 months. Any time spent on remand in custody or on bail subject to a qualifying curfew condition should be taken into account when calculating the length of the order. The accepted approach is to double the time spent on remand before deciding the appropriate period of detention, in order to ensure that the regime is in line with that applied to adult offenders.<sup>35</sup> After doubling the time spent on remand the court should then adopt the nearest prescribed period available for a DTO.

3.8 Following amendment by the PCSC, section 240ZA of the Criminal Justice Act 2003, now reads:

### **240ZA Time remanded in custody to count as time served: terms of imprisonment or detention and detention and training orders**

(1) This section applies where—

- (a) an offender is serving a term of imprisonment in respect of an offence, and

(b) the offender has been remanded in custody (within the meaning given by section 242) in connection with the offence or a related offence.

(1A) This section also applies where—

(a) a court, on or after the day on which Schedule 16 to the Police, Crime, Sentencing and Courts Act 2022 came into force, makes a detention and training order in respect of an offender for an offence, and

(b) the offender concerned has been remanded in custody in connection with the offence or a related offence.

(1B) In this section any reference to a "*sentence*", in relation to an offender, is to—

(a) a term of imprisonment being served by the offender as mentioned in subsection (1)(a), or

(b) a detention and training order made in respect of the offender as mentioned in subsection (1A)(a).

(2) It is immaterial for subsection (1)(b) or (1A)(b) whether, for all or part of the period during which the offender was remanded in custody, the offender was also remanded in custody in connection with other offences (but see subsection (5)).

(3) The number of days for which the offender was remanded in custody in connection with the offence or a related offence is to count as time served by the offender as part of the sentence. But this is subject to subsections (4) to (6).

(4) If, on any day on which the offender was remanded in custody, the offender was also detained in connection with any other matter, that day is not to count as time served.

(5) A day counts as time served—

(a) in relation to only one sentence, and

(b) only once in relation to that sentence.

(6) A day is not to count as time served as part of any automatic release period served by the offender (see section 255B(1))

(6A) Where a court has made a declaration under section 327 of the Sentencing Code in relation to the offender in respect of the offence, this section applies to days specified under subsection (3) of that section as if they were days for which the offender was remanded in custody in connection with the offence or a related offence.

(7) For the purposes of this section a suspended sentence—

(a) is to be treated as a sentence of imprisonment when it takes effect under paragraph 13(1)(a) or (b) of Schedule 16 to the Sentencing Code, and

(b) is to be treated as being imposed by the order under which it takes effect.

(8) In this section "*related offence*" means an offence, other than the offence for which the sentence is imposed ("offence A"), with which the offender was charged and the charge for which was founded on the same facts or evidence as offence A.

(8A) Subsection (9) applies in relation to an offender who is sentenced to two or more consecutive sentences or sentences which are wholly or partly concurrent if—

- (a) the sentences were imposed on the same occasion, or
- (b) where they were imposed on different occasions, the offender has not been released during the period beginning with the first and ending with the last of those occasions.

(9) For the purposes of subsections (3) and (5), the sentences are to be treated as a single sentence.

(10) The reference in subsection (4) to detention in connection with any other matter does not include remand in custody in connection with another offence but includes—

- (a) detention pursuant to any custodial sentence;
- (b) committal in default of payment of any sum of money;
- (c) committal for want of sufficient distress to satisfy any sum of money;
- (d) committal for failure to do or abstain from doing anything required to be done or left undone.

(11) This section applies to a determinate sentence of detention under section 91 or 96 of the PCC(S)A 2000, under section 250, 252A, 254, 262, 265, 266 or 268A of the Sentencing Code or under or section 226A, 226B, 227, 228 or 236A of this Act as it applies to an equivalent sentence of imprisonment.

3.9 Section 242 Criminal Justice Act 2003 reads:

**242 Interpretation of sections 240ZA, 240A and 241**

(1) [NOT REPRODUCED].

(2) References in sections 240ZA and 241 to an offender's being remanded in custody are references to his being—

- (a) remanded in or committed to custody by order of a court,
- (b) remanded to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012, or
- (c) remanded, admitted or removed to hospital under section 35, 36, 38 or 48 of the Mental Health Act 1983.

(3) In sections 240ZA and 240A, "detention and training order" has the meaning given by section 233 of the Sentencing Code.

3.10 The effect of this is that time spent on remand in custody (but not to local authority accommodation) prior to the imposition of a DTO is automatically deducted and the sentencing court no longer needs to make an adjustment. The court will be required to 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 (as is the case with adult offenders).

3.11 The proposal is to amend paragraph 6.53 to read:

For cases sentenced on or after 28 June 2022, any time spent on remand in custody to youth detention accommodation under section 91(4) of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 will automatically be taken into account under section 240ZA of the Criminal Justice Act 2003 and does not need to be deducted from the length of the order. The court must consider whether to give credit for time spent on bail subject to a qualifying curfew in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

A remand to local authority accommodation under section 91(3) of the 2012 Act is neither a remand in custody for the purposes of section 240ZA of the 2003 Act nor a remand on bail for the purposes of section 240A of the 2003 Act and section 325 of the Sentencing Code. **Therefore, if the offender was subject to a qualifying curfew while remanded to local authority accommodation the relevant credit should be given by the court by reducing the sentence as if a direction under section 240 or 325 had been given.**

3.12 As these changes apply immediately it may be preferable to make them now, without consulting and add them to the annex of changes made in the consultation document. However, some of the proposed changes (highlighted in yellow at 3.6 and 3.11) are not entirely straightforward or uncontroversial and the Council may consider it appropriate to consult on these.

**Question 1: Does the Council agree to the proposed amendments to the C&YP guideline (at 3.4, 3.6 and 3.11) relating to custodial sentences and which changes should be made without consulting?**

3.13 A further change is required in respect of DTOs in the Guilty pleas section of the guideline. Paragraph 5.9 currently reads:

5.9 A detention and training order (DTO) can only be imposed for the periods prescribed – 4, 6, 8, 10, 12, 18 or 24 months. If the reduction in sentence for a guilty plea results in a sentence that falls between two prescribed periods the court must impose the lesser of those two periods. This may result in a reduction greater than a third, in order that the full reduction is given and a lawful sentence imposed.

3.14 This could be amended to read:

5.9 A detention and training order (DTO) must be for a term of at least 4 months but must not exceed 24 months. If the reduction in sentence for a guilty plea results in a sentence that falls below 4 months a non-custodial sentence should be imposed.

3.15 This would reflect what is said later in the guideline:

6.43 The term of a custodial sentence must be the shortest commensurate with the seriousness of the offence; any case that warrants a DTO of less than four months must result in a non-custodial sentence. The court should take account of the circumstances, age and maturity of the child or young person.

3.16 Again, it is proposed that this change could be made without consultation.

**Question 2: Does the Council agree to make the proposed amendment to the C&YP guideline (at 3.14) relating to guilty pleas without consulting?**

3.17 In respect of YROs, the guideline lists the available requirements:

6.27 The available requirements within a YRO are:

- activity requirement (maximum 90 days);
- supervision requirement;
- unpaid work requirement (between 40 and 240 hours);\*
- programme requirement;
- attendance centre requirement (maximum 12 hours for children aged 10–13, between 12 and 24 hours for young people aged 14 or 15 and between 12 and 36 hours for young people aged 16 or over (all ages refer to age at date of the finding of guilt);
- prohibited activity requirement;
- **curfew requirement (maximum 12 months and between 2 and 16 hours a day);**
- exclusion requirement (maximum 3 months);
- electronic monitoring requirement;
- residence requirement;\*
- local authority residence requirement (maximum 6 months but not for any period after young person attains age of 18);
- fostering requirement (maximum 12 months but not for any period after young person attains age of 18);\*\*
- mental health treatment requirement;
- drug treatment requirement (with or without drug testing);
- intoxicating substance requirement;
- education requirement; and
- intensive supervision and surveillance requirement.\*\*

\* These requirements are only available for young people aged 16 or 17 years old on the date of the finding of guilt.

\*\* These requirements can only be imposed if the offence is an imprisonable one AND the custody threshold has been passed. For children and young people aged under 15 they must be deemed a persistent offender.

**Many of the above requirements have additional restrictions.**

**Magistrates, always consult your legal adviser before imposing a YRO.**

3.18 Section 161 and Schedule 17(4) PCSC amends para 18 of Schedule 6 to the Sentencing Code which now reads:

**18 Curfew requirement**

(1) In this Code "*curfew requirement*", in relation to a youth rehabilitation order, means a requirement that the offender must remain, for particular periods ("*curfew periods*"), at a particular place.

(2) A youth rehabilitation order which imposes a curfew requirement must specify—

- (a) the curfew periods, and

- (b) the place at which the offender must remain for each curfew period.
- (3) Different places or different curfew periods may be specified for different days.
- (4) The curfew periods must amount to—
  - (a) not less than 2 hours in any day,
  - (b) not more than the relevant number of hours in any day, and
  - (c) not more than 112 hours in any period of 7 days beginning with the day of the week on which the requirement first takes effect.
- (4A) In sub-paragraph (4)(b), "*the relevant number of hours*" —
  - (a) in relation to a youth rehabilitation order in respect of an offence of which the offender was convicted before the day on which [paragraph 19 of Schedule 17](#) to the [Police, Crime, Sentencing and Courts Act 2022](#) came into force, means 16 hours, and
  - (b) in relation to a youth rehabilitation order in respect of an offence of which the offender was convicted on or after that day, means 20 hours.
- (5) The specified curfew periods must fall within the period of 12 months beginning with the day on which the requirement first takes effect.

3.19 This change could be accommodated by replacing the highlighted bullet point at 3.17 above with wording similar to that recently added to the Imposition guideline:

- curfew requirement (maximum 12 months);
  - for an offence of which the offender was convicted on or after 28 June 2022: 2–20 hours in any 24 hours; maximum 112 hours in any period of 7 days beginning with the day of the week on which the requirement first takes effect; or
  - for an offence of which the offender was convicted before 28 June 2022: 2-16 hours in any 24 hours

3.20 Amendments in Schedule 17(4) in relation to education requirements are also in force. It is not considered necessary to make any amendments in relation to them as they are infrequently made and the guideline does not currently give any details but directs the user to the statutory provisions by the words “Many of the above requirements have additional restrictions.”

**Question 3: Does the Council agree to make the change proposed at 3.19 without consulting?**

3.21 Section 162 PCSC abolishes reparation orders in respect of an offence for which an offender is convicted on or after 28 June 2022. Reparation orders are referenced in the following places in the guideline:

(At paragraph 6.10)

## Sentences available by age

Sentence	Age of child or young person			Rehabilitation period
	10-11	12-14	15-17	
Absolute or conditional discharge or reparation order	√	√	√	Absolute discharge and reparation: spent on day of sentence Conditional discharge: spent on last day of the period of discharge

### Absolute or conditional discharge and reparation orders

6.15 A reparation order can require a child or young person to make reparation to the victim of the offence, where a victim wishes it, or to the community as a whole. Before making an order the court must consider a written report from a relevant authority, e.g. a youth offending team (YOT), and the order must be commensurate with the seriousness of the offence.

6.16 If the court has the power to make a reparation order but chooses not to do so, it must give its reasons.

### Breach of a reparation order

7.4 If it is proved to the appropriate court that the child or young person has failed to comply with any requirement of a reparation order that is currently in force then the court can:

- order the child or young person to pay a fine not exceeding £1,000; or
- revoke the order and re-sentence the child or young person using the range of sentencing options that are currently available. However the sentence imposed must be one that could be imposed on a child or young person who was the age that the offender was when in fact convicted.

If re-sentencing the child or young person the court must take into account the extent to which the child or young person has complied with the requirements of this order.

7.5 If the order was made by the Crown Court then the youth court can commit the child or young person in custody or release them on bail until they can be brought or appear before the Crown Court.

7.6 The child or young person or a Youth Offending Team (YOT) officer can also apply for the order to be revoked or amended. There is no power to re-sentence in this situation as the child or young person has not been found to be in breach of requirements.

3.22 In the short term it is proposed to reword paragraph 6.15 to read:

6.15 A reparation order is available only if the offender was **convicted of the offence before 28 June 2022**. It can require a child or young person to make reparation to the victim of the offence, where a victim wishes it, or to the community as a whole. Before making an order the court must consider a written report from a



relevant authority, e.g. a youth offending team (YOT), and the order must be commensurate with the seriousness of the offence

3.23 We could then consult on removing all or most of the references to reparation orders on the basis that by the time the changes are implemented in April 2023, there will be very few if any being made. It could be argued that the section on breach of a reparation order should be left in place for slightly longer – views could be sought on that point.

**Question 4: Does the Council agree to make the change proposed at 3.22 without consulting?**

**Question 5: Does the Council agree to consult on whether to remove all references to reparation orders with effect from April 2023?**

#### *Other proposed changes*

3.24 There has been a judgment giving guidance on the application of the guilty plea section of the C&YP guideline and the Council may feel it would be helpful to consult on referring to this in the guideline.

3.25 In [R v B \[2000\] EWCA Crim 643](#) the court held that it will sometimes be appropriate to treat a young person as needing further information, assistance or advice before indicating their plea, and thereby to allow the maximum level of reduction for a guilty plea that was not entered at the first stage of the proceedings, even though it would not do so in the case of an adult.

3.26 The relevant paragraphs in the guideline are:

**5.5 Plea indicated at the first stage of the proceedings:** Where a guilty plea is indicated at the first stage of proceedings a reduction of **one-third** should be made (subject to the exceptions below). The first stage will normally be the first hearing in the magistrates' or youth court at which a plea is sought and recorded by the court.<sup>21</sup>

#### **Exceptions**

##### **Further information, assistance or advice necessary before indicating plea**

5.16 Where the sentencing court is satisfied that there were particular circumstances which significantly reduced the child or young person's ability to understand what was alleged, or otherwise made it unreasonable to expect the child or young person to indicate a guilty plea **sooner than was done**, a reduction of one-third should still be made.

3.27 A sentence could be added to the end of para 5.16 such as:

It may sometimes be appropriate to treat a child or young person as needing such information, assistance or advice, where it would not be needed in the case of an adult.

3.28 Alternatively a similarly worded footnote could be added to para 5.16 (and/or a reference to the case could be footnoted).

3.29 The same case also made it clear that the correct sequence when using an adult guideline to arrive at a sentence for a child or young person is to apply the appropriate reduction for youth, and then apply the guilty plea reduction. This could be accommodated by adding the highlighted sentence to the end of para 6.46:

6.46 When considering the relevant adult guideline, the court **may** feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence **the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age. This reduction should be applied before any reduction for a plea of guilty.**

**Question 6: Does the Council agree to consult on the proposed changes to the C&YP guideline arising from case law?**

*Use of the word 'gang' in the bladed articles/offensive weapons guidelines*

3.30 The Council has stopped using the word 'gang' in factors in guidelines because of the potential for this to disadvantage certain demographic groups. The [Possession of a bladed article/offensive weapon](#), the [Bladed articles and offensive weapons - threats](#) and the [Bladed articles and offensive weapons \(possession and threats\) - children and young people](#) guidelines still have the following aggravating factor:

- Offence was committed as part of a group or gang

3.31 The factor in all three guidelines has the expanded explanation which reads:

The mere membership of a group (two or more persons) should not be used to increase the sentence, but where the **offence was committed as part** of a group this will normally make it more serious because:

- the **harm** caused (both physical or psychological) or the potential for harm may be greater and/or
- the **culpability** of the offender may be higher (the role of the offender within the group will be a relevant consideration).

Culpability based on role in group offending could range from:

- Higher culpability indicated by a leading role in the group and/or the involvement by the offender of others through coercion, intimidation or exploitation, to

- Lower culpability indicated by a lesser or subordinate role under direction and/or involvement of the offender through coercion, intimidation or exploitation.

Courts should be alert to factors that suggest that an offender may have been the subject of coercion, intimidation or exploitation (including as a result of domestic abuse, trafficking or modern slavery) which the offender may find difficult to articulate, and where appropriate ask for this to be addressed in a PSR.

Where the offending is part of an organised criminal network, this will make it more serious, and the role of the offender in the organisation will also be relevant.

When sentencing young adult offenders (typically aged 18-25), consideration should also be given to the guidance on the mitigating factor relating to age and/or lack of maturity when considering the significance of group offending.

3.32 It is proposed that the factor should be amended to:

- Offence was committed as part of a group

3.33 As this is now standard wording across guidelines it is proposed that the change can be made without consultation, and it can be added to the annex of changes to be included in the consultation document.

**Question 7: Does the Council remove the word ‘gang’ from the bladed articles/ offensive weapons guidelines, without consultation?**

*Minimum terms for bladed article/ offensive weapon possession and threats offences*

3.34 At the June meeting the Council agreed to consult on changes to possession and threats guidelines to take account of changes the threshold for passing a sentence below the minimum term for repeat offenders for certain offences from ‘unjust in all the circumstances’ to ‘exceptional circumstances’ for offences committed on or after 28 June 2022. In the interim a note has been added to the guidelines.

3.35 The recent case of Uddin [2022] EWCA Crim 751 clarifies a point of law relating to whether it is permissible to suspend a sentence imposed under the minimum term provisions.

3.36 The Court concluded (at para 25):

it is lawful to impose a minimum sentence of imprisonment or detention in a young offender institution, pursuant to section 315, but to suspend it. Although not unlawful, however, we are also satisfied that suspending such a sentence will only rarely be appropriate, because in most cases the suspending of the sentence would undermine the punitive and deterrent effect which Parliament plainly intended the minimum sentencing provisions to have. There will be few circumstances in which a court concludes that the imposition of an appropriate custodial sentence would not be unjust but, notwithstanding the clear intention of Parliament, that the sentence can nonetheless be suspended.

3.37 Consideration has been given to adding a note to the [Possession of a bladed article/offensive weapon](#) and the [Bladed articles and offensive weapons - threats](#) guidelines setting out that it would be lawful to suspend the minimum term but it would rarely be appropriate. However, offence specific guidelines do not generally refer to suspended sentences and there is no obvious way of addressing the point in the guideline without appearing to encourage the practice of suspending the minimum term.

3.38 The wording the Council agreed to consult on for the possession guideline includes:

**Step 3 – Minimum Terms – second or further relevant offence**

When sentencing the offences of:

- possession of an offensive weapon in a public place;
- possession of an article with a blade/point in a public place;
- possession of an offensive weapon on school premises; and
- possession of an article with blade/point on school premises

a court must impose a sentence of at least 6 months' imprisonment where this is a second or further relevant offence **unless:**

- (If the offence was committed before 28 June 2022) **the court is of the opinion that there are particular circumstances relating to the offence, the previous offence or the offender which make it unjust to do so in all the circumstances;** or
- (If the offence was committed on or after 28 June 2022) **the court is of the opinion that there are exceptional circumstances which relate to the offence or to the offender, and justify not doing so.**

3.39 Views are sought as to whether and how a reference could be added to the availability of suspending the sentence imposed.

**Question 8: Should any further changes be made to the bladed article/ offensive weapon guidelines?**

*Life sentence for manslaughter of an emergency worker*

3.40 At the June meeting the Council considered a proposal to amend the [Unlawful act manslaughter](#) guideline to take account of [Section 3](#) of the PCSC which inserts a new s258A (re 16 and 17 year olds), s274A (re 18-20 year olds) and s285A (re 21 and older) in the Sentencing Code. The effect of this is that for unlawful act manslaughter where the victim is an emergency worker acting in that capacity, the court must impose a life sentence (unless there are exceptional circumstances). The proposal was to make only minimal changes to the guideline on the grounds that such cases will be very rare.

3.41 However, the Council felt that more guidance should be provided to sentencers on the consideration of exceptional circumstances in such cases. Accordingly the proposed changes have been amended (new wording in red):

- Firstly, adding the following to the header of the guideline (immediately before the text on the type of manslaughter):

For offences committed on or after 28 June 2022, if the offence was committed against an emergency worker acting in the exercise of functions as such a worker, the court **must** impose a life sentence **unless** the court is of the opinion that there are exceptional circumstances which (a) relate to the offence or the offender, and (b) justify not doing so (sections 274A and 285A of the Sentencing Code). **See step 3**

- Secondly, in statutory aggravating factors at step 2, changing:

Offence was committed against an emergency worker acting in the exercise of functions as such a worker

To:

Offence was committed against an emergency worker acting in the exercise of functions as such a worker. NOTE: For offences committed on or after 28 June 2022, if the offence was committed against an emergency worker acting in the exercise of functions as such a worker, the court **must** impose a life sentence **unless** the court is of the opinion that there are exceptional circumstances which (a) relate to the offence or the offender, and (b) justify not doing so. (sections 274A and 285A of the Sentencing Code) **see step 3**

3.42 Then it is proposed to add a new step 3 to the guideline as follows:

### **Step 3 – Required sentence and exceptional circumstances**

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

#### **Required sentence**

1. Where the offence was committed against an emergency worker acting in the exercise of functions as such a worker, the court **must** impose a life sentence **unless** the court is of the opinion that there are exceptional circumstances which (a) relate to the offence or the offender, and (b) justify not doing so (sections 274A and 285A of the Sentencing Code).

#### Applicability

2. The required sentence provisions apply when a person is convicted of unlawful act manslaughter committed on or after 28 June 2022, the offender was aged 16 or over at the offence date and the offence was committed against an emergency worker acting in the exercise of functions as such a worker.
3. The circumstances in which an offence is to be taken as committed against a person acting in the exercise of functions as an emergency worker include circumstances where the offence takes place at a time when the person is not at work but is carrying

out functions which, if done in work time, would have been in the exercise of functions as an emergency worker.

4. An emergency worker has the meaning given by [section 68](#) of the Sentencing Code.
5. Where the required sentence provisions apply a guilty plea reduction applies in the normal way (see step 5 – Reduction for guilty pleas).
6. Where the required sentence provisions apply and a life sentence is imposed, the notional determinate sentence should be used as the basis for the setting of a minimum term to be served.
7. Where the required sentence provisions apply, this should be stated expressly.

### **Exceptional circumstances**

8. In considering whether there are exceptional circumstances that would justify not imposing the statutory minimum sentence, the court must have regard to:
  - the particular circumstances of the offence **and**
  - the particular circumstances of the offendereither of which may give rise to exceptional circumstances.
9. Where the factual circumstances are disputed, the procedure should follow that of a Newton hearing: see [Criminal Practice Directions](#) VII: Sentencing B.
10. Where the issue of exceptional circumstances has been raised the court should give a clear explanation as to why those circumstances have or have not been found.

### Principles

11. Circumstances are exceptional if the imposition of the required sentence would result in an arbitrary and disproportionate sentence.
12. The court should look at all of the circumstances of the case taken together, including circumstances personal to the offender. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances.

### Where exceptional circumstances are found

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

### **Sentencing offenders aged under 18 at the date of conviction [Dropdown]**

1. Where the offender is aged 16 or 17 **at the date of conviction**, the required sentence provisions apply only if the offender is aged 16 or over **when the offence was committed** and the offence was committed against an emergency worker acting in the exercise of functions as such a worker (section 258A of the Sentencing Code).
2. Subject to the required sentence provisions, where the offender is aged under 18 **at the date of conviction** the court should determine the sentence in accordance with the [Sentencing Children and Young People guideline](#), particularly paragraphs 6.42-6.49 on custodial sentences.

3. This guidance states at paragraph 6.46: “When considering the relevant adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. In most cases when considering the appropriate reduction from the adult sentence the emotional and developmental age and maturity of the child or young person is of at least equal importance as their chronological age.”
4. The considerations above on exceptional circumstances relating to the offence or offender apply equally when sentencing offenders aged 16 or 17 at the date of the conviction.

3.43 The proposed wording reflects that in other guidelines (notably [firearms](#) and that proposed for terrorism) but omitting some of the wording designed to discourage overuse of exceptional circumstances.

**Question 9: Does the Council agree to consult on the proposed additions to the unlawful act manslaughter guideline?**

**4 EQUALITIES**

- 4.1 No significant issues relating to equality or diversity have been identified.

**5 IMPACT AND RISKS**

- 5.1 The impact of majority of the proposals in this paper (and those agreed previously) on prison or probation resources will be relatively minor. The most significant changes are those necessitated by legislative changes. The consultation will be accompanied by a narrative resource assessment which will be circulated to Council members in August.

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**Sentencing Council meeting:**  
**Paper number:**  
**Lead Council member:**  
**Lead official:**

**22 July 2022**  
**SC(22)JUL05 - Framework Document**  
**n/a**  
**Ollie Simpson**  
**ollie.simpson@sentencingcouncil.gov.uk**

## **1 ISSUE**

1.1 Finalising a draft framework agreement between the Sentencing Council and the Ministry of Justice.

## **2 RECOMMENDATIONS**

2.1 That Council notes the current draft of the proposed framework agreement at **Annex A**, and in particular sections 14 and 16 on the roles of the Council and its individual members.

## **3 CONSIDERATION**

3.1 Despite some attempts in previous years, there has never been a finalised and agreed framework document drawn up to set out the relationship and respective duties of the Sentencing Council and its sponsor department, the Ministry of Justice. This was one of the recommendations arising out of the Tailored Review of the Council conducted by the Cabinet Office, which reported in 2019.

3.2 Since then, we have worked with the Arms Length Body (ALB) Centre of Expertise in MoJ to develop such a document. The draft at **Annex A** is similar in structure to, and shares wording with, similar documents used to govern the working relationship between ALBs and their sponsor departments across Whitehall. However, we have been especially careful to ensure that there is no suggestion that the independence of the Council be compromised. For example, we have been clear that we can and should follow guidance from the department to the extent to which it relates to good governance, including financial and management practice, but this cannot extend into the policy sphere.

3.3 The Governance sub-Group has overseen several iterations of the document over time and in practice it is this group that will consider matters relating to the budget, risk and other governance issues on an ongoing basis. Section 14 of the attached draft sets out the composition and duties of the Council as a whole. Beyond its statutory functions, these include reviewing performance against the objectives we have set out in the annual business plan, making appropriate financial management decisions, and ensuring that effective arrangements are in place for risk management.

3.4 Paragraph 16.1 sets out the responsibilities of individual Council members, which are to:

- comply at all times with the Code of Conduct for Board Members of Public Bodies, which covers conduct in the role and includes the Nolan Principles of Public Life as well as rules relating to the use of public funds and to conflicts of interest;
- not misuse information gained in the course of their public service for personal gain or for political profit, nor seek to use the opportunity of public service to promote their private interests or those of connected persons or organisations;
- comply with the MoJ's rules on the acceptance of gifts and hospitality, and of business appointments;
- act in good faith and in the best interests of the Council; and
- ensure they are familiar with any applicable guidance on the role of Public Sector Boards that may be issued from time to time by the Cabinet Office, HM Treasury or wider government.

3.5 Subject to clearance by the Chair, there will be a further process on MoJ's side, working with Cabinet Office, to finalise the document. Whilst nothing specific is asked of Council members, this meeting provides an opportunity to raise awareness of the document and the duties it sets out for the Council, and for Council members to raise any questions they may have on it.



**Framework Document between**

**THE MINISTRY OF JUSTICE**

**AND**

**THE SENTENCING COUNCIL**

**FOR ENGLAND AND WALES**

**Effective from XXXX 2022**



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## Introduction and Background

### 1. Purpose of document

- 1.1 This Framework Document (the “Framework Document”) has been agreed between the Ministry of Justice (“MoJ”) and the Sentencing Council of England and Wales (“the Council”) in accordance with HM Treasury’s handbook Managing Public Money (“MPM”) (as updated from time to time) and has been approved by HM Treasury.
- 1.2 The Framework Document sets out the broad governance framework within which the Sentencing Council and the MoJ operate. It sets out the Sentencing Council’s core responsibilities; describes the governance and accountability framework that applies between the roles of the MoJ, and the Sentencing Council, and sets out how the day-to-day relationship works in practice, including in relation to governance and financial matters. This framework maintains the independence of the Council whilst recognising the responsibilities of the Council, Ministers and the Permanent Secretary.
- 1.3 The document does not convey any legal powers or responsibilities but both parties agree to operate within its terms.
- 1.4 Copies of the document and any subsequent amendments have been placed in the Libraries of both Houses of Parliament and made available to members of the public on <https://www.sentencingcouncil.org.uk/>.
- 1.5 This Framework Document should be reviewed and updated at least every 3 years unless there are exceptional reasons that render this inappropriate that have been agreed with HM Treasury and the Principal Accounting Officer of the sponsor department. The latest date for review and updating of this document is [xxx] 2025.

### 2. Objectives

- 2.1. The MoJ and the Sentencing Council share the common objective of promoting greater transparency and consistency in sentencing, while maintaining the independence of the judiciary. To achieve this the Sentencing Council and the MoJ will work together in recognition of each other's roles and areas of expertise, providing an effective environment for the Sentencing Council to achieve its objectives in support of transparent and consistent sentencing.

### 3. Classification

- 3.1 For the purposes of administration and governance, the Sentencing Council is classified by Cabinet Office as a Non-Departmental Public Body with Advisory Function. Unlike most advisory NDPBs, however, the Council does not advise Ministers. The Council is independent of the Government, Parliament and of the Judiciary as regards the guidelines it issues to courts, its monitoring of their use, its resource assessments, its publications, its promotion of awareness of sentencing and in its approach to delivering these.

## **Purposes, Aims and Duties**

### **4. Purposes**

4.1 The Sentencing Council for England and Wales (referred to herein as 'the Council') was established by Part 4 of the Coroners and Justice Act 2009 (referred to herein as 'the 2009 Act').

### **5. Powers and duties**

5.1 The Council's powers and functions stem from Part 4 of the 2009 Act. Its primary statutory function is to promote greater transparency and consistency in sentencing, while maintaining the independence of the judiciary.

5.2 The Council has three main areas of responsibility:

- preparing and revising sentencing guidelines, having regard to:
  - o the sentences imposed by courts in England and Wales for offences;
  - o the need to promote consistency in sentencing;
  - o the impact of sentencing decisions on victims of offences;
  - o the need to promote public confidence in the criminal justice system;
  - o the cost of different sentences and their relative effectiveness in preventing re-offending;
  - o the results of any monitoring it has carried out.
- Monitoring the operation and effect of its guidelines;
- Promoting awareness of matters relating to the sentencing of offenders by courts in England and Wales.

### **6. Aims**

6.1 The Council will set out its strategic aims in an annual business plan. The plan will include key targets and milestones for the year. The Council will publish this plan on its website and separately make it available to the Lord Chancellor, the sponsorship team in MoJ and its own staff.

### **7 Governance and Accountability**

7.1 The Council shall operate corporate governance arrangements that, so far as practicable and in the light of the other provisions of this Framework Document or as otherwise may be mutually agreed, accord with good corporate governance practice and applicable regulatory requirements and expectations.

7.2 In particular (but without limitation), the Council should:

- comply with the principles and provisions of the Corporate Governance in Central Government Departments Code of Good Practice (as amended and updated from time to time) to the extent appropriate and in line with their statutory duties or specify and explain any non-compliance in its annual report;

- comply with MPM;
  - in line with MPM have regard to the relevant Functional Standards<sup>1</sup> as appropriate and in particular those concerning Finance, Commercial and Counter Fraud; and
  - take into account the codes of good practice and guidance set out in Annex A of this Framework Document as they apply to the Council.
- 7.3 The Council Head of Office shall provide the MoJ functional leads with such information about their function's operation, performance and capabilities within the Council as may reasonably be required. In the event of any significant concerns being identified, the MoJ functional lead will draw these to the attention of the Council.
- 7.4 In line with MPM Annex 3.1 the Council shall provide an account of corporate governance in its Annual Report including the Council's assessment of its compliance with the Code with explanations of any material departures. To the extent that the Council intends to materially depart from the Code, the MoJ should be notified in advance and their agreement sought to this approach.
- 7.5 The lead officials responsible for managing each function in the Office of the Sentencing Council are accountable to the Council's Head of Office for:
- the delivery of the Council business plan objectives relevant to the function and the direction and control of associated resources;
  - the quality and value for money of the service provision; and
  - ensuring the Council adopts the relevant function's policies, controls and standards, so far as consistent with the other provisions of this framework document.
- 7.6 The lead officials responsible for managing each function in the Council are accountable to the respective Ministry of Justice function leads for:
- providing assurance over compliance with functional standards, so far as consistent with the other provisions of this framework document;
  - implementing consistent policies, systems, processes and capabilities that support and promote interoperability and efficiency; and
  - supporting the on-going development of the function.
- 7.7 The lead officials responsible for managing each function in the Council shall provide the Ministry of Justice function leads with such information about their operations, performance and capabilities as may reasonably be required and so far as consistent with the provisions of this framework document. In the event of any significant concerns being identified, the MoJ function lead will draw these to the attention of the Principle Accounting Officer (PAO).
- 7.8 The Ministry of Justice may provide additional functional services to the Council. The PAO may seek to change the precise nature of the delivery model for these functions during the lifetime of the framework document to support better delivery of the Council objectives, more consistency, increased innovation and enhanced efficiency. Where there is proposed to be significant change in the way these additional functions are delivered, the Council will be consulted. When considering the extent of the services that can be

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<sup>1</sup> <https://www.gov.uk/government/collections/functional-standards>



provided to the Council, its operational independence from Government will be a central consideration.

## **Role of the MoJ**

### **8. The Lord Chancellor**

8.1 The Lord Chancellor will account in Parliament for the Council's business.

8.2 The Lord Chancellor's statutory powers in respect of the Council are set out in Part 4 of, and Schedule 15 to the 2009 Act.

8.3 Responsibilities of the Lord Chancellor include:

- Appointing 6 members of the Council ("non-judicial members") with the agreement of the Lord Chief Justice. Appointments of non-judicial members are made under the Commissioner for Public Appointments [Governance Code on Public Appointments](#);
- Agreeing the appointment of 8 members appointed by the Lord Chief Justice ("judicial members"). The appointments of the Chair and judicial members are made by the Lord Chief Justice and are not subject to the Code of Practice (as they are not appointments under the Public Appointments Order);
- Laying the annual report of the Council before Parliament;
- Approving the resources framework within which the Council should operate; and
- Providing the Council with such assistance as it requests in connection with the performance of its functions, under the power provided in section 133 of the 2009 Act.

8.4 The Lord Chancellor will, unless other arrangements have been agreed, meet the Chair and the Head of Office at least once a year to discuss matters of mutual interest in relation to sentencing, and any other relevant issues.

### **9. The Principal Accounting Officer**

9.1 The Principal Accounting Officer ("PAO") is the Permanent Secretary of the MoJ. The PAO is also the Accounting Officer for the Council.

9.2 The PAO of MoJ designates the Head of Office as the Council's Budget Holder and ensures that they are fully aware of their responsibilities. The Senior Sponsor issues a letter appointing the Budget Holder, setting out his or her responsibilities and delegated authorities.

9.3 The respective responsibilities of the PAO and accounting officers for Arm's Length Bodies (ALB)s are set out in Chapter 3 of MPM.

9.4 The PAO is accountable to Parliament for the issue of any grant-in-aid to the Council. The PAO may delegate the exercise of their responsibilities to an appropriately senior official within the department to act as Senior Sponsor to the Council. Where these responsibilities are delegated to a Senior Sponsor, the PAO does so based on the continuing assurances provided by the Senior Sponsor, supported by the policy sponsorship team and the ALB Centre of Expertise (CoE) and MoJ functions (where applicable).

9.5 The PAO is also responsible, via the Senior Sponsor and policy sponsorship team, for advising the Lord Chancellor on:

- an appropriate budget for the Council in the light of the sponsor department's overall public expenditure priorities;
- whether the internal controls applied by the Council conform to the requirements of regularity, propriety and good financial management;
- how well the Council is achieving its objectives and whether it is delivering value for money; and
- the exercise of the Lord Chancellor's statutory responsibilities concerning the Council.

9.6 The PAO, via the Senior Sponsor and ALB CoE team (in collaboration with the MoJ policy sponsorship team) and MoJ's functions (where applicable), is also responsible for ensuring arrangements are in place in order to:

- monitor the Council's delivery against plans and expenditure within its budget allocations on a continuing basis, ensuring that such monitoring is relevant and proportionate;
- address any significant problems in the governance or management of the Council, making such interventions, with the agreement of the Council as are judged necessary;
- periodically and at such frequency as is proportionate to the level of risk carry out an assessment of the risks both to the department and the Council's objectives and activities in line with the wider departmental risk assessment process;
- inform the ALB of relevant government policy in a timely manner; and,
- bring Ministerial or departmental concerns on the governance and financial management (as set out in box 3.1 of [MPM](#)) of the Council to the full Council, and, as appropriate to the departmental Board, requiring explanations and assurances that appropriate action has been taken.

## **10 The Sponsorship Team**

10.1 The Senior Sponsor supported by the ALB Centre of Expertise and the policy sponsorship team in the MoJ and the department's functions (where applicable) is the primary contact for the Council. The responsible Senior Civil Servant for supporting this sponsorship relationship is the Head of the ALB Centre of Expertise. The Senior Sponsor is the main source of advice to the Lord Chancellor on the discharge of their responsibilities in respect of the Council. They also support the PAO in their responsibilities toward the Council. This sponsorship engagement will be guided by the principles set out in the [Cabinet Office Code of Good Practice: Partnerships between departments and arm's length bodies](#).

10.2 Officials of the ALB Centre of Expertise in the MoJ will liaise regularly with Council officials to review delivery against plans and expenditure against its budget allocations.

10.3 Liaison with the Council on matters of policy is led by the sentencing policy team within the MoJ. They will support the PAO, in advising the Lord Chancellor on the Council's activities. They will also liaise with Council officials to explain wider policy developments that might have an impact on the Council. In particular they will:

- act as an advocate for the Council in the MoJ and wider government;
- inform the Council of relevant government policy and prospective legislation in a timely manner
- ensure that, where relevant and appropriate, the Council's views are considered in policy development;
- encourage - as far as possible - policy colleagues to engage with the Council at the earliest possible opportunity in formulating policy and assist in facilitating this engagement when/where required; and
- maintain regular contact via meetings with Council officials to ensure there is ongoing dialogue around policy issues within the Council's remit;
- lead on Parliamentary Questions (PQs) related to policy relating to and affecting the Council, in consultation with the Council.

10.4 The ALB Centre of Expertise and the MoJ sentencing policy team will work closely together in matters relating to the work of the Council.

## **11 Resolution of disputes between the Council and MoJ**

11.1 Any disputes between the MoJ and the Council will be resolved in as timely a manner as possible. The MoJ and the Council will seek to resolve any disputes through an informal process in the first instance. If this is not possible, then a formal process, overseen by the Senior Sponsor, will oversee the dispute. They may then choose to ask the Permanent Secretary to nominate a non-executive member of the MoJ's Board to review the dispute, mediate with both sides, and reach an outcome, in consultation with the Lord Chancellor and Lord Chief Justice.

11.2 The above arrangement shall not prejudice the overall independence of the Council from Government, in particular with regard to conducting reviews and producing recommendations.

## **12 Freedom of information requests**

12.1 Where a request for information is received by either party under the Freedom of Information Act 2000, or the Data Protection Act 1998 or 2018, the party receiving the request will consult with the other party prior to any disclosure of information that may affect the other party's responsibilities.

## **13 Reporting on legal risk and litigation**

13.1 The Council shall provide updates when necessary to the Sponsor on the existence of any active litigation and any threatened or reasonably anticipated litigation. The parties acknowledge the importance of ensuring that legal risks are communicated appropriately to the Sponsor in a timely manner.

13.2 In the event of any substantial piece of litigation involving the Council, the parties will agree a litigation protocol which will include specific provisions to ensure appropriate and timely reporting on the status of the litigation and the protection of legally privileged information transmitted to the Sponsor to facilitate this. Until such time as a protocol is agreed, the parties will ensure that:

- material developments in the litigation are communicated to the Sponsor in an appropriate and timely manner;
- legally privileged documents and information are clearly marked as such;
- individual employees handling the legally privileged documents are familiar with principles to which they must adhere to protect legal privilege; and
- circulation of privileged information within government occurs only as necessary.

## Sentencing Council Governance Structure

### **14 The Council**

#### Composition of the Council

14.1 The Council will abide by standards of Corporate Governance consistent with the Government Code of Good Practice for Corporate Governance. The Council shall deliver its objectives, in accordance with the purposes as set out above, their statutory, regulatory, common law duties and their responsibilities under this Framework Document. Remuneration of the Council will be disclosed in line with the guidance in the Government Financial Reporting manual.

14.2 The Council will consist of 8 judicial members and 6 non-judicial members. The Lord Chief Justice is to have the title of President of the Council but is not a member of the Council.

#### Appointments to the Council

14.3 The appointment of all members of the Council are initially for a period of three years. The Chair of the Council is appointed by the Lord Chief Justice with the agreement of the Lord Chancellor also for an initial period of three years.

14.4 Under paragraph 9 of Schedule 15 to the 2009 Act the Lord Chancellor may pay —

- to any judicial member who is appointed by virtue of being a lay justice, such remuneration or expenses as the Lord Chancellor may determine, and
- to any other judicial member, such expenses as the Lord Chancellor may determine.

14.5 The Lord Chancellor may pay to any non-judicial member such remuneration or expenses as the Lord Chancellor may determine (except that, where the Director of Public Prosecutions is such a member, no remuneration may be paid to the Director).

- 14.6 Pursuant to paragraph 4 of Schedule 15 a person is eligible for appointment as a non-judicial member if the person appears to the Lord Chancellor to have experience in one or more of the following areas —
- criminal defence;
  - criminal prosecution;
  - policing;
  - sentencing policy and the administration of justice;
  - the promotion of the welfare of victims of crime;
  - academic study or research relating to criminal law or criminology;
  - the use of statistics; or
  - the rehabilitation of offenders.
- 14.7 The persons eligible for appointment as a non-judicial member by virtue of experience of criminal prosecution include the Director of Public Prosecutions.
- 14.8 Pursuant to paragraph 3 of Schedule 15 a person is eligible for appointment as a judicial member if the person is—
- a judge of the Court of Appeal,
  - a puisne judge of the High Court,
  - a Circuit judge,
  - a District Judge (Magistrates' Courts), or
  - a lay justice.
- 14.9 The judicial members must include at least one Circuit judge, one District Judge (Magistrates' Courts) and one lay justice.
- 14.10 When appointing judicial members, the Lord Chief Justice must have regard to the desirability of the judicial members including at least one person who appears to the Lord Chief Justice to have responsibilities relating to the training of judicial office-holders who exercise criminal jurisdiction in England and Wales.
- 14.11 All such appointments should have regard to the principle that appointments should reflect the diversity of the society in which we live, and appointments should be made taking account of the need to appoint boards which include a balance of skills and backgrounds.

#### Duties of the Council

- 14.12 The Council will deliver its statutory responsibilities as set out in the 2009 Act. Specific provisions engage communication between the Council and the MoJ. These are;
- a. the provision of an annual report to the Lord Chancellor (s 119);
  - b. consultation with the Lord Chancellor and others about draft guidelines (s 120(6));
  - c. consideration of any proposals made by the Lord Chancellor as to guidelines (s 124);
  - d. resource assessment of policy and legislative proposals referred by the Lord Chancellor (s 132);
  - e. requests for assistance from the Lord Chancellor (s 133); and

f. appointment of Council Members under Schedule 15.

14.13 The Council is also responsible for:

- establishing and taking forward its strategic aims and objectives within the resources framework determined by the Lord Chancellor;
- working within a framework of prudent and effective controls which enables risk to be assessed and managed;
- ensuring resources are used appropriately to ensure that the SC meets its objectives
- reviewing performance against its strategic objectives;
- demonstrating high standards of corporate governance at all times;
- regularly reviewing financial and management information concerning its management;
- informing the Lord Chancellor of any changes likely to impact on the attainability of its targets or the reputation of the MoJ, determining the steps needed to deal with such changes and where appropriate bringing such matters to the attention of the Responsible Minister and Principal Accounting Officer via the executive team, sponsorship team or directly;
- ensuring compliance with any statutory or administrative requirements for the use of public funds. The Council is responsible for its own expenditure and for operating within the limits of its statutory authority and any delegated authority agreed with the MoJ, as well as in accordance with any other guidance or conditions relating to the use of public funds;
- that, in reaching financial management decisions, the Council takes into account relevant and appropriate guidance issued by the sponsor department;
- ensuring that as part of the above compliance the Council is familiar with:
  - this framework document;
  - any delegation letter issued to the Council; and,
- determining all such other things which the Council considers ancillary or conducive to the attainment or fulfilment by the Council of its objectives.

14.14 The Council should ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control. The Council does not operate a separate Audit and Risk Assurance Committee. The Council is expected to assure itself of the adequacy and effectiveness of the risk management framework and the operation of internal control with reporting, by exception, provided to the Departmental Audit and

Risk Assurance Committee to ensure assurance is provided on governance and risk management where required.

- 14.15 The Council should make its own strategic choice about the style, shape and quality of risk management and should lead the assessment and management of opportunity and risk. The Council should ensure that effective arrangements are in place to provide assurance over the design and operation of risk management, governance and internal control in line with the Management of Risk – Principles and Concepts (The Orange Book). The Council is expected to assure itself of the adequacy and effectiveness of the risk management framework and the operation of internal control.

## **15 The Chair's roles and responsibilities**

- 15.1 The Chair is responsible for leading the Council in the delivery of its responsibilities. Such responsibility should be exercised in the light of their duties and responsibilities as set out in their appointment letter, the priorities in the Chair's appointment letter, the statutory authority governing the Council, this document and the documents and guidance referred to within this document.
- 15.2 Communications between the Council and the Lord Chancellor should normally be through the Chair.
- 15.3 The Chair is bound by the Code of Conduct for Board Members of Public Bodies<sup>2</sup>, which covers conduct in the role and includes the Nolan Principles of Public Life<sup>3</sup>.
- 15.4 In addition, the Chair is responsible for ensuring that by monitoring and engaging with appropriate governance arrangements the Council's affairs are conducted with probity.
- 15.5 The Chair has the following leadership responsibilities:
- formulating the Council's strategy;
  - ensuring that the Council, in reaching financial management decisions, takes proper account of guidance provided by the Responsible Minister or the department
  - promoting the efficient and effective use of staff and other resources;
  - delivering high standards of regularity and propriety; and
  - representing the views of the Council to the general public.
- 15.6 The Chair also has an obligation to ensure that:
- the work of the Council and its members is reviewed and is working effectively;

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<sup>2</sup> <https://www.gov.uk/government/publications/code-of-conduct-for-Board-members-of-public-bodies>

<sup>3</sup> <https://www.gov.uk/government/publications/the-7-principles-of-public-life>

- the Council has a balance of skills appropriate to its business, and that the best use is made of the skills and knowledge of Council members in Council and in committees;
- with the Head of Office, Council members are fully briefed on terms of appointment, duties, rights and responsibilities;
- the Lord Chancellor and Lord Chief Justice are advised as appropriate of the Council's needs when Council vacancies arise;
- the work of the Council and its members are reviewed including ongoing assessment of the performance of individual Council members with an annual evaluation. These evaluations can be used when individual Council members are considered for reappointment; and that in conducting assessments the view of relevant stakeholders is considered.
- the Council is aware of this Framework Document and the role and responsibilities of Council Members under it;
- the Council has appropriate internal mechanisms for the monitoring, governance and external reporting regarding any conditions arising from the Framework Document and any delegation letter issued to the Council, and ensures that the Head of Office and the Sentencing Council as a whole act in accordance with their obligations under them; and
- Council members are aware of the Cabinet Office Code of Conduct for Board Members of Public Bodies.

## **16 Individual Council Members' responsibilities**

### 16.1 Individual Council Members should:

- comply at all times with the Code of Conduct for Board Members of Public Bodies, which covers conduct in the role and includes the Nolan Principles of Public Life as well as rules relating to the use of public funds and to conflicts of interest;
- not misuse information gained in the course of their public service for personal gain or for political profit, nor seek to use the opportunity of public service to promote their private interests or those of connected persons or organisations;
- comply with the MoJ's rules on the acceptance of gifts and hospitality, and of business appointments;
- act in good faith and in the best interests of the Council;
- ensure they are familiar with any applicable guidance on the role of Public Sector Boards that may be issued from time to time by the Cabinet Office, HM Treasury or wider government.



## 17 The Head of Office

### Appointment

- 17.1 The Head of the OSC is a Civil Servant appointed by the MoJ after agreement with the Chairman.
- 17.2 The Head of Office is a member of the Senior Civil Service. The Head of Office's line manager for day-to-day purposes in terms of performance management and objective setting is the Chair of the Council. As the Chair is not a serving civil servant, he or she will be supported in the role of line manager by an appropriate Senior Civil Servant in the MoJ, agreed with the Head of Office. The Head of Office will be appointed on the basis of fair and open competition, per the terms outlined in the Civil Service Commission's Recruitment Principles.<sup>4</sup>

### Responsibilities of the Head of Office as Budget Holder

- 17.3 The Head of Office as budget holder is personally responsible for safeguarding the public funds for which they have charge; for ensuring propriety, regularity, value for money and feasibility in the handling of those public funds; and for the day-to-day operations and management of the Council. In addition, they should ensure that the Council as a whole is run on the basis of the standards, in terms of governance, decision-making and financial management, that are set out in Box 3.1 of MPM. These responsibilities include the below and those that are set in the budget delegation letter by the Senior Sponsor.

### Responsibilities to Parliament and the public

- 17.4 Responsibilities to Parliament and the public include:
- ensuring that effective and proportionate procedures for handling complaints about the Council in accordance with Parliamentary and Health Service Ombudsman's Principles of Good Complaint Handling are established and made widely known within the Council and published on the Council's website;
  - acting in accordance with the terms of MPM and other instructions and guidance issued from time to time by the Department, the Treasury and the Cabinet Office;
  - ensuring that as part of the above compliance they are familiar with and act in accordance with:
    - o any governing legislation;
    - o this framework document;
    - o any delegation letter issued to the Council;
  - ensuring they have appropriate internal mechanisms for the monitoring, governance and external reporting regarding non-compliance with any conditions arising from the above documents;

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<sup>4</sup> <https://civilservicecommission.independent.gov.uk/recruitment/recruitment-principles/>

- being subject to the scrutiny of the House of Commons Justice Select Committee and giving evidence when called to do so; and
- giving evidence, normally with the PAO, when summoned before the Public Accounts Committee on the Council's stewardship of public funds.

#### Responsibilities to the MoJ

17.5 Responsibilities to the MoJ include:

- establishing the Council's corporate and business plans, and ensuring that they align with and support the delivery of the Council's statutory functions;
- informing the department of progress in achieving the Council's objectives and in demonstrating how resources are being used within its budget allocations to achieve those objectives; and
- ensuring that timely forecasts and monitoring information on performance and finance are provided to the department; that the department is notified promptly if over or under spends are likely and that corrective action is taken; and that any significant problems whether financial or otherwise, and whether detected by internal audit or by other means, are notified to the department in a timely fashion.

#### Responsibilities to the Council

17.6 The Head of Office is responsible for:

- supporting the Council in ensuring that effective systems and arrangements are in place to provide assurance on risk management, governance and internal control;
- working with the Chair to advise the Council on the discharge of the Council's responsibilities as set out in this document, in the founding legislation and in any other relevant instructions and guidance that may be issued from time to time;
- advising the Council on its performance compared with its aims and objectives;
- assisting the Council to establish and take forward the strategic aims and objectives consistent with its overall strategic direction and within the resource framework approved by the Lord Chancellor;
- regularly reviewing financial information about the management of the Council, ensuring they are informed in a timely manner about any concerns about the activities of the Council; and can assure MoJ that appropriate action has been taken on such concerns; and
- that they have appropriate internal mechanisms for the monitoring, governance and external reporting regarding any conditions arising from this Framework Document and any delegation letter issued to the Council, and ensure that they act in accordance with their obligations under those documents.
-

Managing conflicts

- 17.7 Save as provided in paragraph 16.9, the Head of Office should follow the advice and direction of the Council.
- 17.8 If the Council, or its Chair, is contemplating a course of action involving a transaction which the Head of Office considers would infringe the requirements of propriety or regularity or does not represent prudent or economical administration, efficiency or effectiveness, is of questionable feasibility, or is unethical the Head of Office in their role as budget holder should reject that course of action and ensure that the Council have a full opportunity to discuss the rationale for that rejection.
- 17.9 Such conflicts should be brought to the attention of the Senior Sponsor and the PAO as soon as possible.
- 17.10 Furthermore, and if agreed with the Lord Chancellor, the budget holder must write a letter of justification to the Chair of the Council setting out the rationale for not following the advice and recommendation of the Council and copy that letter to the Treasury Officer of Accounts, and Lord Chief Justice as the President of the Council.
- 17.11 If the Lord Chancellor agrees with the proposed course of action of the Council it may be appropriate for the Minister to direct the budget holder in the manner as set out in Managing Public Money paragraph 3.6.6 onwards.

## Management and financial responsibilities and controls

### **18 Delegated authority**

- 18.1 The ALB's delegated authorities are set out in the delegation letter. This delegation letter may be updated and superseded by later versions which may be issued by MoJ, in agreement with HM Treasury. The Council's budget is delegated to it through its Senior Sponsor.
- 18.2 In line with MPM Annex 2.2 these delegations will be reviewed on an annual basis.
- 18.3 At all times, the Council shall uphold the principles and duties set out in MPM and it is the responsibility of the Council Budget Holder to ensure compliance is maintained. If the Budget Holder is intending to pursue a course of action that might conflict with those duties, before proceeding they should consult with the Senior Sponsor and where appropriate seek PAO and HM Treasury's prior written approval before:
- entering into any undertaking to incur any expenditure that falls outside the delegations or which is not provided for in the Council's annual budget as approved by the department;
  - incurring expenditure for any purpose that is or might be considered novel or contentious, or which has or could have significant future cost implications;
  - making any significant change in the scale of operation or funding of any initiative or particular scheme previously approved by the department;

- making any change of policy or practice which has wider financial implications that might prove repercussive or which might significantly affect the future level of resources required; or
- carrying out policies that go against the principles, rules, guidance and advice in Managing Public Money.

## **19 Spending authority**

19.1 Once the budget has been approved by the MoJ the Council shall have authority to incur expenditure approved in the budget without further reference to the sponsor department, on the following conditions:

- the Council shall comply with the delegations set out in the delegation letter. These delegations shall not be altered without the prior agreement of the MoJ and as agreed by HM Treasury and Cabinet Office as appropriate;
- the Council shall comply with MPM regarding novel, contentious or repercussive proposals;
- inclusion of any planned and approved expenditure in the budget shall not remove the need to seek formal departmental approval where any proposed expenditure is outside the delegated limits or is for new schemes not previously agreed;
- the Council shall provide the MoJ with such information about its operations, performance, individual projects or other expenditure as the sponsor department may reasonably require.

## **20 Procurement**

- 20.1 Where the Council undertakes procurement activities, it shall ensure that its procurement policies are aligned with and comply with any relevant UK or other international procurement rules and in particular the Public Contracts Regulations 2015.
- 20.2 The Council shall follow MoJ procurement policies.
- 20.3 In procurement cases where the Council is likely to exceed its delegated authority limit, procurement strategy approval for the specific planned purchase must be sought from the Department's sponsor team.
- 20.4 Goods, services, and works should be acquired by competition. Proposals to let single-tender or restricted contracts shall be limited and exceptional, and a quarterly report explaining those exceptions should be sent to the Department.
- 20.5 Procurement by the Council of works, equipment, goods, and services shall be based on, a full option appraisal and value for money (VfM), i.e. the optimum combination and whole life costs and quality (fitness for purpose).

20.6 The Council shall:

- a) engage fully with Department and Government wide procurement initiatives that seek to achieve VfM from collaborative projects,
- b) comply with all relevant Procurement Policy Notes issued by Cabinet Office and
- c) co-operate fully with initiatives to improve the availability of procurement data to facilitate the achievement of VfM.

20.7 The Council shall comply with the Commercial and Grants Standards. These standards apply to the planning, delivery, and management of government commercial activity, including management of grants in all departments and ALBs, regardless of commercial approach used and form part of a suite of functional standards that set expectations for management within government<sup>5</sup>.

## **21 Risk Management**

21.1 The Council shall ensure that the risks that it faces are dealt with in an appropriate manner, in accordance with relevant aspects of best practice in corporate governance, and develop a risk management strategy, in accordance with the Treasury guidance *Management of Risk – Principles and Concepts (The Orange Book)*.

## **22 Fraud, Bribery and Corruption**

22.1 The Council should adopt and implement policies and practices to safeguard itself against fraud, bribery and corruption. This includes staff fraud and theft.

22.2 The Council should act in line with guidance as issued by the Counter Fraud Function and in compliance with the procedures and considerations as set out in Managing Public Money Annex 4.9 and the Counter Fraud Functional Standard<sup>6</sup>. It should also take all reasonable steps to appraise the financial standing of any firm or other body with which it intends to enter a contract, outside of the work entered into on behalf of other government departments.

22.3 The Council should keep records of and prepare and forward to the department an annual report on fraud, bribery and corruption suffered by the Council and notify the sponsor department of any unusual or major incidents as soon as possible. The Council should also report detected loss from fraud, bribery, corruption and error, alongside associated recoveries and prevented losses, to the MoJ Counter Fraud Centre of Expertise in line with the agreed government definitions as set out in Counter Fraud Functional Standard.

## **23 Staff**

### Broad responsibilities for staff

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<sup>5</sup> <https://www.gov.uk/government/publications/commercial-operating-standards-for-government>  
<https://www.gov.uk/government/publications/grants-standards>

<sup>6</sup> <https://www.gov.uk/government/publications/government-functional-standard-govs-013-counter-fraud>

23.1 Within the arrangements approved by the Lord Chancellor and HM Treasury the Council will have responsibility for the recruitment, retention and motivation of its staff. The broad responsibilities toward its staff are to ensure that:

- the rules for recruitment and management of staff create an inclusive culture in which diversity is fully valued; appointment and advancement is based on merit: there is no discrimination against employees with protected characteristics under the Equality Act 2010;
- the level and structure of its staffing, including grading and staff numbers, are appropriate to its functions and the requirements of economy, efficiency and effectiveness;
- the performance of its staff at all levels is satisfactorily appraised and the Council's performance measurement systems are reviewed from time to time;
- its staff are encouraged to acquire the appropriate professional, management and other expertise necessary to achieve the Council's objectives;
- proper consultation with staff takes place on key issues affecting them;
- adequate grievance and disciplinary procedures are in place; and
- whistle-blowing procedures consistent with the Public Interest Disclosure Act are in place.

#### Staff costs

23.2 Subject to its delegated authorities, the Council shall ensure that the creation of any additional posts does not incur forward commitments that will exceed its ability to pay for them.

#### Pay and conditions of service

23.3 The Council's staff are subject to levels of remuneration and terms and conditions of service (including pensions) within the general pay structure approved by the MoJ and the Treasury. The Council has no delegated power to amend these terms and conditions.

23.4 Civil Service terms and conditions of service apply to the rates of pay and non-pay allowances paid to the staff and to any other party entitled to payment in respect of travel expenses or other allowances. Payment shall be made in accordance with the Civil Service Management Code<sup>7</sup> and the annual Civil Service Pay Remit Guidance<sup>8</sup>, except where prior approval has been given by the department to vary such rates.

23.5 Staff terms and conditions should be set out in relevant sections of the MoJ Intranet.

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<sup>7</sup> <https://www.gov.uk/government/publications/civil-servants-terms-and-conditions>

<sup>8</sup> <https://www.gov.uk/government/publications/civil-servants-terms-and-conditions>

- 23.6 The Council shall abide by public sector pay controls, including the relevant approvals process dependent on the organisation's classification, as detailed in the Senior Pay Guidance<sup>9</sup> and the public sector pay and terms guidance.<sup>10</sup>
- 23.7 The travel expenses of Council members shall be tied to the departmental rates. Reasonable actual costs shall be reimbursed.

Pensions, redundancy and compensation

- 23.8 Compensation scheme rules and pension scheme rules should reflect legislative and HM Treasury guidance requirements regarding exit payments.
- 23.9 Council staff are eligible for the Civil Service pension scheme. Staff may opt out of the occupational pension scheme provided by the MoJ, but that employer's contribution to any personal pension arrangement, including stakeholder pension shall normally be limited to the national insurance rebate level.
- 23.10 Any proposal by the Council to move from the existing pension arrangements, or to pay any redundancy or compensation for loss of office, requires the prior approval of the MoJ. Proposals on severance must comply with the rules in chapter 4 of MPM.

## Business Plans, Financial Reporting and Management Information

### **24 Business Plans, Financial Reporting and Management Information**

- 24.1 The Council shall share annually with the ALB Centre of Expertise and the policy sponsorship team in the MoJ, a business plan setting out the objectives for the coming year, as well as information on plans and objectives for future years, which will be published on the Council's website. A draft will be shared by the Summer Recess. The plan shall reflect the Council's statutory and/or other duties.
- 24.2 The business plan shall be updated to include key targets and milestones for the year immediately ahead and where possible shall be linked to budgeting information so that resources allocated to achieve specific objectives can readily be identified by the department. Subject to any commercial considerations, the business plan should be published by the Council on its website and separately be made available to staff.
- 24.3 The following key matters should be included in the plan:
- key objectives and associated key performance targets for the forward years, and the strategy for achieving those objectives;
  - key non-financial performance targets;

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<sup>9</sup> <https://www.gov.uk/government/publications/senior-civil-service-pay-and-reward>

<sup>10</sup> <https://www.gov.uk/government/publications/public-sector-pay-and-terms-guidance-note>

- a review of performance in the preceding financial year, together with comparable outturns for previous years, and an estimate of performance in the current year; and
- alternative scenarios and an assessment of the risk factors that may significantly affect the execution of the plan but that cannot be accurately forecast.

## **25 Budgeting procedures**

- 25.1 Each year, the MoJ will send to the Council as close as possible to the end of the preceding financial year a formal statement of the annual budgetary provision allocated by the department. This shall be agreed in accordance with the Departmental Allocations processes.
- 25.2 The approved annual business plan will take account both of approved funding provision and any forecast receipts and will include a budget of estimated payments and receipts together with a profile of expected expenditure. These elements form part of the approved business plan for the year in question.

## **26 Grant-in-aid**

- 26.1 Any grant-in-aid provided by the department for the year in question will be voted in the department's Supply Estimate and derive from the monies voted to the MoJ by Parliament.
- 26.2 The grant-in-aid will normally be paid in monthly instalments on the basis of written applications showing evidence of need. The Council will comply with the general principle, that there is no payment in advance of need. Cash balances accumulated during the course of the year from grant-in-aid or other Exchequer funds shall be kept to a minimum level consistent with the efficient operation of the Council. Grant-in-aid not drawn down by the end of the financial year shall lapse. Subject to approval by Parliament of the relevant Estimates provision, where grant-in-aid is delayed to avoid excess cash balances at the year-end, the MoJ will make available in the next financial year any such grant-in-aid that is required to meet any liabilities at the year end, such as creditors.

## **27 Annual report**

- 27.1 The Council must publish an annual report of its activities. A draft of the report should be submitted to the department at least two weeks before the proposed publication date.
- 27.2 The annual report must outline main activities and performance during the previous financial year and set out in summary form forward plans.
- 27.3 The report shall be laid in Parliament by the Lord Chancellor pursuant to section 119(2) of the 2009 Act and be made available on the Council's website.

## **28 Reporting performance to the department**

- 28.1 The Council shall operate management, information and accounting systems that enable it to review in a timely and effective manner its financial and non-financial performance against the budgets and targets set out in the business plan.



28.2 The Council shall report financial and non-financial performance, including delivery against plans and expenditure within its budget allocations, including in twice-yearly Business Assurance meetings with the Partnerships team.

28.3 The Senior Sponsor will meet the Head of Office at least once a year.

## **29 Information sharing**

29.1 The MoJ has the right of access to all Sentencing Council records and personnel for any purpose including, for example, sponsorship audits and operational investigations, with the exception of data pertaining to independent Sentencing Council work.

29.2 The Council shall provide the sponsor department with such information about its operations, performance, individual projects or other expenditure as the sponsor department may reasonably require.

29.3 The MoJ and HM Treasury may request the sharing of data held by the Council in such a manner as set out in central guidance except insofar as it is prohibited by law. This may include requiring the appointment of a senior official to be responsible for the data sharing relationship.

29.4 As a minimum, the Council shall provide the MoJ with information monthly that will enable the department satisfactorily to monitor:

- the Council's cash management;
- its draw-down of grant-in-aid;
- forecast outturn by resource headings;
- other data required for the Online System for Central Accounting and Reporting (OSCAR); and
- data as required in respect of its compliance with any Cabinet Office Controls pipelines or required in order to meet any condition as set out in any settlement letter.

## **Reviews and winding up arrangements**

### **30 Review of the Sentencing Council**

30.1 The Council will be reviewed in line with the Cabinet Office's Guidance or as per Cabinet Office requirements. These principles aim to ensure public bodies remain fit for purpose, well governed and properly accountable for what they do.

### **31 Arrangements in the event that the Sentencing Council is wound up**

31.1 The abolition of the Council, changes to its functions, or major changes to its structure would require the repeal or amendment of the 2009 Act.

31.2 If the Council were to be abolished, the MoJ shall put in place arrangements to ensure its orderly winding. In particular it should ensure that the assets and liabilities of the Council are passed to any successor organisation and accounted for properly. (In the event that

there is no successor organisation, the assets and liabilities should revert to the sponsor department.) To this end, the department shall:

- have regard to Cabinet Office guidance on winding up of ALBs;
- ensure that procedures are in place in the Council to gain independent assurance on key transactions, financial commitments, cash flows and other information needed to handle the wind-up effectively and to maintain the momentum of work inherited by any residuary body; specify the basis for the valuation and accounting treatment of the Council's assets and liabilities;
- ensure that arrangements are in place to prepare closing accounts and pass to the C&AG (Comptroller and Auditor General) for external audit, and that, for non-Crown bodies funds are in place to pay for such audits. It shall be for the C&AG to lay the final accounts in Parliament, together with his report on the accounts;
- arrange for the most appropriate person to sign the closing accounts. In the event that another ALB takes on the role, responsibilities, assets and liabilities, the succeeding ALB AO should sign the closing accounts. In the event that the department inherits the role, responsibilities, assets and liabilities, the sponsor department's AO should sign.

31.3 The Council should also pass to the MoJ details of any other forms of claw-back due to the Council.

Signatures

This Framework Document is agreed between:

Lord Justice Holroyde - Chair of the Sentencing Council

James McEwen – CFO and Senior Sponsor

Date: [day / month] 2022

## **Compliance with Government-wide corporate guidance and instructions**

The Sentencing Council shall comply with the following general guidance documents and instructions except in so far as they conflict with the Council's independence in discharging its statutory functions:

- appropriate adaptations of sections of Corporate Governance in Central Government Departments: Code of Good Practice <https://www.gov.uk/government/publications/corporate-governance-code-for-central-government-departments-2017>
- Managing Public Money <https://www.gov.uk/government/publications/managing-public-money>;
- Public Sector Internal Audit Standards [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/641252/PSAIS\\_1\\_April\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/641252/PSAIS_1_April_2017.pdf)
- Management of Risk: Principles and Concepts: <https://www.gov.uk/government/publications/orange-book>
- A guide to managing fraud for public bodies <https://www.gov.uk/government/publications/a-guide-to-managing-fraud-for-public-bodies>;
- Government Financial Reporting Manual (FRoM), <https://www.gov.uk/government/publications/government-financial-reporting-manual-2019-20>; Cabinet Office's Policy on Spending Controls.
- <https://www.gov.uk/government/publications/cabinet-office-controls-version-5/cabinet-office-controls-policy-version-5>
- Fees and Charges Guide, Chapter 6 of Managing Public Money;
- Departmental Banking: A Manual for Government Departments, Annex 5.6 of Managing Public Money;
- relevant Dear Accounting Officer letters;
- Regularity, Propriety and Value for Money, <https://esrc.ukri.org/files/about-us/governance-and-structure/regularity-propriety-and-value-for-money-hm-treasury-see-annex-21/>
- The Parliamentary and Health Service Ombudsman's Principles of Good Administration <https://www.ombudsman.org.uk/about-us/our-principles/principles-good-administration>;
- Consolidation Officer Memorandum, and relevant DCO letters;
- Model Code for Staff of Executive Non-departmental Public Bodies, Public Bodies: A Guide for Departments, Chapter 5 Annex A [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/690948/Public\\_Bodies\\_-\\_a\\_guide\\_for\\_departments\\_-\\_chapter\\_5.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/690948/Public_Bodies_-_a_guide_for_departments_-_chapter_5.pdf) (Cabinet Office) and
  - other relevant guidance and instructions issued by HMT in respect of Whole of Government Accounts.

**HM Treasury contacts**

This document can be downloaded from [www.gov.uk](http://www.gov.uk)

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**Annex A**

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**Sentencing Council meeting:**  
**Paper number:**  
**Lead Council member:**  
**Lead official:**

**22 July 2022**  
**SC(22)JUL06 – Aggravated vehicle taking**  
**Rebecca Crane**  
**Zeinab Shaikh**  
**zeinab.shaikh@sentencingcouncil.gov.uk**

## **1 ISSUE**

1.1 The Council is invited to consider how work to revise guidelines for aggravated vehicle taking can be sequenced alongside the public consultation on motoring offences. The Council is also invited to approve revisions to the sentencing tables, and to aggravating and mitigating factors for these guidelines.

## **2 RECOMMENDATIONS**

2.1 That the Council:

- Notes our intention to delay consulting on proposals to revise the guidelines for aggravated vehicle taking while we await the findings of the ongoing consultation on motoring offences;
- Approves the proposed sentencing tables and aggravating and mitigating factors for the aggravated vehicle taking guidelines.

## **3 CONSIDERATION**

### Timing

3.1 Existing sentencing guidelines for aggravated vehicle taking have been in place since 2008. As such, they are now out of date and offer minimal guidance to sentencers. While the statutory maximum penalties for aggravated vehicle taking offences are not changing, the Council has agreed to revise these guidelines alongside wider work on motoring offences.

3.2 In May, the Council agreed to proceed with four revised guidelines for aggravated vehicle taking, covering the following:

- Causing vehicle or property damage
- Causing injury
- Causing death
- Involving dangerous driving

3.3 The Council provisionally agreed culpability and harm factors for each of these guidelines (attached at Annex A). The Council also provided a steer that these guidelines should draw heavily from what has been agreed for motoring offences, particularly in terms

of step one factors for dangerous driving and elements of the guidelines for injury by wanton/furious driving and death by dangerous driving.

3.4 The public consultation on motoring offences runs until late September 2022. Given the overlap between some of the motoring guidelines being consulted on and the proposals for aggravated vehicle taking, we believe it is most sensible to await the outcome of this consultation, potentially including the Council's formal response, before publishing the proposals for aggravated vehicle taking. This will allow us to consider the responses to the motoring consultation and to incorporate any further changes the Council sees fit to make to the motoring guidelines.

3.5 This approach will, however, slow progress on revising the aggravated vehicle taking guidelines. Publication of the consultation will be pushed back to 2023, with resulting delay to the launch of the revised guidelines. Any delay is likely to be extended as it will be challenging to consult on the revised aggravated vehicle taking guidelines before the Council has published its response to the motoring consultation. There is otherwise a risk that we would be committing the Council to a particular approach while the motoring guidelines are still being finalised before publication, or of giving a preview of elements of the motoring guidelines before they are formally published.

3.6 If we do not await the outcome of the consultation on the motoring guidelines, we will likely be launching the aggravated vehicle taking consultation soon after the motoring consultation has closed. As such, there is a risk of reputational damage if the Council is perceived as not having listened to feedback on motoring, and we may receive the same responses again, at least in part, rather than having respondents engage with the detail of our proposals.

3.7 On balance, we believe the best approach is to delay the consultation on aggravated vehicle taking until we can take stock of the findings from the motoring consultation. At this later stage, we can consider how best to sequence the aggravated vehicle taking consultation around publication of the motoring guidelines. In the meantime, we will continue to prepare the draft guidelines and consultation paper as far as possible, so that these can be published as soon as any changes resulting from the motoring consultation are made.

#### Sentencing tables

3.8 Under the existing guidelines for aggravated vehicle taking, the sentencing tables offer minimal guidance to sentencers by providing examples of different types of offence severity, along with a starting point and category range for each. In revising the tables, we have followed the now standard approach of using culpability and harm levels to offer starting points and category ranges for varying levels of offence severity, and have looked at



comparator guidelines to ensure alignment. Data on cases from 2020 (at Annex B) has also been considered, to try to ensure that the revised tables will not inadvertently make sentencing more or less severe.

3.9 When considered as a whole, the proposed sentencing tables treat death as the most serious of the four aggravated vehicle taking offences. Injury and dangerous driving sit beneath this and are roughly on par with one another, as in the [existing guideline](#) (where these offences are combined). Vehicle/property damage sits at the bottom, with lower starting points and category ranges, in line with how the [existing guideline](#) compares to the other offences.

#### *Vehicle/property damage*

3.10 The proposed sentencing table for vehicle/property damage covers both the summary only variation (damage of under £5,000) and the either way variation (damage of £5,000 and over). In May, the Council agreed that lower value damage variation should be limited to harm category 3. To reflect this, a rubric has been included at the top of the sentencing table which sets out that cases falling under harm category 3 are limited to a maximum sentence of six months' custody. Category ranges and starting points in the bottom row of the table have been pitched to allow magistrates to award community orders across all cases of lower value damage where appropriate (as, in 2020, 60 per cent of damage under £5,000 offences received a community order).

3.11 The proposed table covers an offence range of low level community order to 1 year 6 months' custody. The bottom of the range is broadly in line with the existing guideline and the top of the range is capped for proportionality with the injury guideline.

3.12 In effect, boxes 1A to 2C in the proposed table will cover higher value damage (which has a statutory maximum of two years), with the range starting at a medium level community order. While community orders sit within the category ranges for three of these six boxes (1C, 2B and 2C), only one box has this as a starting point (2C). In 2020, 42 per cent of offenders sentenced for higher value damage received a community order, and so there may be a risk that this approach results in an increase in custodial sentences if sentencers are guided by starting points rather than the scope afforded by the category ranges. This can be explored further in road testing exercises at the consultation stage.

3.13 We have taken the general starting points and category ranges from the existing guideline and modified these for the bottom row of the table, staggering starting points and category ranges for medium and high harm upwards to allow for a gradual step up to the top of the range. There is intentional overlap between category ranges across boxes to allow sentencers sufficient scope to account for any relevant aggravating and mitigating factors.

3.14 The proposed sentencing table is more lenient than what is included in the general dangerous driving guideline (at Annex C), which also contains a high harm factor of ‘damage caused to vehicles or property’. This could, arguably, be justified by the increased risk involved in dangerous driving, in contrast with vehicle/property damage. We are limited in our ability to move sentences for vehicle/property damage upwards if we want to retain a distinction between this offence and causing injury, where the latter is treated as the more serious of the two offences. A narrow scope for movement is also imposed by the statutory maximum of two years’ custody across these offences.

<i>Rubric: Where the total damage caused is valued under £5,000, this will be a summary-only offence with a statutory maximum penalty of six months’ custody. This is reflected in the starting points and ranges for category 3 harm in the sentencing table below.</i>			
Harm/culpability	High culpability A	Medium culpability B	Lower culpability C
Harm category 1	Starting point: 1 year’s custody  Category range: 26 weeks’ custody – 1 year 6 months’ custody	Starting point: 26 weeks’ custody  Category range: 18 weeks’ custody – 1 year’s custody	Starting point: 12 weeks’ custody  Category range: High level community order – 26 weeks’ custody
Harm category 2	Starting point: 26 weeks’ custody  Category range: 18 weeks’ custody – 1 year’s custody	Starting point: 12 weeks’ custody  Category range: High level community order – 26 weeks’ custody	Starting point: High level community order  Category range: Medium level community order – 12 weeks’ custody
Harm category 3	Starting point: 12 weeks’ custody  Category range: High level community order – 26 weeks’ custody	Starting point: High level community order  Category range: Medium level community order – 12 weeks’ custody	Starting point: Medium level community order  Category range: Low level community order – High level community order

**Question 1a: Are you content to approve the sentencing table for vehicle/property damage as proposed?**

*Injury*

3.15 The proposed sentencing table for aggravated vehicle taking causing injury largely mirrors what was agreed by the Council for the comparator guideline of causing injury by wanton or furious driving (at Annex D). However, the bottom of the offence range here has been revised upwards slightly, to a low level community order rather than a fine. This reflects

that very few fines are handed out for this offence in practice (usually less than five per cent in recent years), with low volumes for this offence overall, and aligns with what is being proposed for vehicle/property damage. The bottom of the category ranges for 3B and 2C have also been revised upwards slightly as a result, to a medium level community order. The starting points and category ranges in the proposed table are otherwise generally higher than what is being proposed for vehicle/property damage, which seems right given that physical and/or psychological harm is involved here.

Harm/culpability	High culpability A	Medium culpability B	Lower culpability C
Harm category 1	Starting Point: 1 year 6 months' custody  Category range: 1 - 2 years' custody	Starting Point: 1 year's custody  Category range: 26 weeks' – 1 year 6 months' custody	Starting Point: 26 weeks' custody  Category range: High level community order – 1 year's custody
Harm category 2	Starting Point: 1 year's custody  Category range: 26 weeks' – 1 year 6 months' custody	Starting Point: 26 weeks' custody  Category range: High level community order – 1 year's custody	Starting Point: High level community order  Category range: Medium level community order – 26 weeks' custody
Harm category 3	Starting Point: 26 weeks' custody  Category range: High level community order – 1 year's custody	Starting Point: High level community order  Category range: Medium level community order – 26 weeks' custody	Starting Point: Medium level community order  Category range: Low level community order – High level community order

**Question 1b: Are you content to approve the sentencing table for causing injury as proposed?**

*Death*

3.16 The Council previously agreed to a separate guideline for aggravated vehicle taking causing death, given the markedly different statutory maximum of 14 years' custody. The sentencing table proposed below borrows heavily from what has been agreed for causing death by dangerous driving (at Annex E), and the rubric is lifted unchanged. The starting points and category ranges, however, are tailored to sit within the statutory maximum for this offence, with overlapping category ranges to allow for significant increase or reduction if aggravating or mitigating factors apply.

3.17 The bottom of the offence range here starts at two years' custody, which is the top of the offence range for aggravated vehicle taking causing injury, recognising that this is a more serious offence. The top of the offence range has been capped at 12 years' custody, to allow sentencers some leeway to further increase sentences in exceptional cases (such as where multiple deaths have been caused and where a number of aggravating factors apply).

**Starting points and category ranges**

*Rubric: Where more than one death is caused, it will be appropriate to make an upwards adjustment from the starting point within or above the relevant category range before consideration of other aggravating features. In the most serious cases, the interests of justice may require a total sentence in excess of the offence range for a single offence. See the Totality guideline and step six of this guideline.*

Culpability	Starting point	Range
High	10 years	7 – 12 years
Medium	5 years	3 – 8 years
Lower	3 years	2 – 4 years

**Question 1c: Are you content to approve the sentencing table for causing death as proposed?**

*Dangerous driving*

3.18 The Council previously provided a steer that the harm table for aggravated vehicle taking involving dangerous driving should mirror what was approved for the general dangerous driving offence. As a result, the sentencing table proposed here is taken unchanged from the general dangerous driving guideline. While consideration was given to increasing some of the category ranges and starting points to reflect the additional vehicle taking aspect of this offence, the statutory maximum penalty of two years' custody across the two offences limits our ability to do this. Arguably, there is also already some consideration of this aspect of the offence in the culpability and aggravating factors being proposed for the guideline.

Harm/culpability	High culpability A	Medium culpability B	Lower culpability C
Harm category 1	Starting point: 1 year 6 months' custody  Category range: 1 – 2 years' custody	Starting point: 1 year's custody  Category range: 26 weeks' – 1 year 6 months' custody	Starting point: 26 weeks' custody  Category range: High level community order – 1 year's custody
Harm category 2	Starting point: 1 year's custody	Starting point: 26 weeks' custody	Starting point: High level community order

	Category range: 26 weeks' – 1 year 6 months' custody	Category range: High level community order – 1 year's custody	Category range: Low level community order – 26 weeks' custody
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**Question 1d: Are you content to approve the sentencing table for dangerous driving as proposed?**

Aggravating and mitigating factors

3.19 In drafting aggravating and mitigating factors, our general approach has been to draw together a core list from what the Council has agreed for the motoring guidelines (namely, the general dangerous driving guideline) and, in a more limited way, from existing guidelines for aggravated vehicle taking. These factors have been tailored to each variation of aggravated vehicle taking as necessary, with reference to Crown Court transcripts (at Annex F) to ensure common factors are represented.

3.20 The core list also includes four factors that the Council suggested moving out of culpability and harm for aggravated vehicle taking in the May meeting. These are 'vehicle taken as part of burglary', 'taken vehicle was an emergency vehicle', 'taken vehicle belongs to a vulnerable person' and 'disregarding warnings of others'.

3.21 For the draft guidelines covering vehicle/property damage, injury and death, consideration was given to recognising the standard of the offender's driving. In particular, we explored including an additional aggravating factor of 'bad driving' (such as speeding or driving in the wrong direction, particularly in residential areas). However, on balance, bad driving occurs so frequently as to almost be a prerequisite for aggravated vehicle taking, and it is treated as such in the provisional step one factors through the inclusion of a lower culpability factor of 'vehicle not driven in an unsafe manner' (which is included for all offences aside from aggravated vehicle taking involving dangerous driving). An alternative approach would be to include a mitigating factor of 'impeccable driving record', in line with the general motoring guidelines and the mitigating factors being proposed for dangerous driving. However, this may risk inadvertently 'double counting' the issue when considered alongside the provisional lower culpability factor.

*Vehicle/property damage*

3.22 The list of non-statutory aggravating factors for vehicle/property damage has been expanded to reflect the aspect of this offence of causing damage, either to the taken vehicle, another vehicle, or other property, such as in the additional factor of 'damage caused in moving traffic accident'.

Statutory aggravating factors
<ul style="list-style-type: none"> <li>• Previous convictions, having regard to a) the <b>nature</b> of the offence to which the conviction relates and its <b>relevance</b> to the current offence; and b) the <b>time</b> that has elapsed since the conviction</li> <li>• Offence committed on bail</li> </ul>
Other aggravating factors
<ul style="list-style-type: none"> <li>• Vehicle taken as part of burglary</li> <li>• Taken and/or damaged vehicle was an emergency vehicle</li> <li>• Taken and/or damaged vehicle belongs to a vulnerable person</li> <li>• Disregarding warnings of others</li> <li>• Damage caused in moving traffic accident</li> <li>• Victim was a vulnerable road user, including cyclists and horse riders</li> <li>• Taken vehicle is an LGV, HGV or PSV etc</li> <li>• Other driving offences committed at the same time</li> <li>• Blame wrongly placed on others</li> <li>• Failed to stop and/or assist, or seek assistance at the scene</li> <li>• Passengers, including children</li> <li>• Offence committed on licence or while subject to court order(s)</li> </ul>
Mitigating factors
<ul style="list-style-type: none"> <li>• Actions of the victim or a third party contributed significantly to collision or damage</li> <li>• Efforts made to assist or seek assistance for victim(s)</li> <li>• No previous convictions or no relevant/recent convictions</li> <li>• Remorse</li> <li>• Serious medical condition requiring urgent, intensive or long-term treatment</li> <li>• Age and/or lack of maturity</li> <li>• Mental disorder or learning disability</li> <li>• Sole or primary carer for dependent relatives</li> </ul>

**Question 2a: Are you content to approve the aggravating and mitigating factors for vehicle/property damage as proposed?**

*Injury*

3.23 The aggravating and mitigating factors for causing injury largely mirror what is proposed for vehicle/property damage. Two additional aggravating factors have been added to account for instances where there may be multiple victims, or where the victim is a worker providing a public service or an emergency worker, and to increase offence severity as a result. This is intended to reflect the fact that police officers are likely to be the injured victims in these cases, and borrows from the approach taken in the [assault guidelines](#). While this is not currently included as an aggravating factor in the general motoring guidelines, there may be a case for its addition at the post-consultation stage, for purposes of parity across the guidelines.

Statutory aggravating factors
<ul style="list-style-type: none"> <li>• Previous convictions, having regard to a) the <b>nature</b> of the offence to which the conviction relates and its <b>relevance</b> to the current offence; and b) the <b>time</b> that has elapsed since the conviction</li> <li>• Offence committed on bail</li> </ul>
Other aggravating factors
<ul style="list-style-type: none"> <li>• Vehicle taken as part of burglary</li> <li>• Taken vehicle was an emergency vehicle</li> <li>• Taken vehicle belongs to a vulnerable person</li> <li>• Disregarding warnings of others</li> <li>• Multiple victims involved (see step 6 on totality when sentencing more than one offence)</li> <li>• Victim was providing a public service or performing a public duty at the time of the offence, or was an emergency worker</li> <li>• Victim was a vulnerable road user, including pedestrians, cyclists and horse riders</li> <li>• Taken vehicle is an LGV, HGV or PSV etc</li> <li>• Other driving offences committed at the same time</li> <li>• Blame wrongly placed on others</li> <li>• Failed to stop and/or assist, or seek assistance at the scene</li> <li>• Passengers, including children</li> <li>• Offence committed on licence or while subject to court order(s)</li> </ul>
Mitigating factors
<ul style="list-style-type: none"> <li>• Actions of the victim or a third party contributed significantly to collision or injury</li> <li>• Efforts made to assist or seek assistance for victim(s)</li> <li>• No previous convictions or no relevant/recent convictions</li> <li>• Remorse</li> <li>• Victim was a close friend or relative</li> <li>• Serious medical condition requiring urgent, intensive or long-term treatment</li> <li>• Age and/or lack of maturity</li> <li>• Mental disorder or learning disability</li> <li>• Sole or primary carer for dependent relatives</li> </ul>

**Question 2b: Are you content to approve the aggravating and mitigating factors for causing injury as proposed?**

*Death*

3.24 In line with the agreed approach to culpability, the list of aggravating and mitigating factors for causing death mirrors what is being proposed for causing injury. The only change has been to remove the aggravating factor for multiple victims, as this is already explicitly considered within the sentencing table and accompanying rubric for causing death.

Statutory aggravating factors
<ul style="list-style-type: none"> <li>• Previous convictions, having regard to a) the <b>nature</b> of the offence to which the conviction relates and its <b>relevance</b> to the current offence; and b) the <b>time</b> that has elapsed since the conviction</li> </ul>

<ul style="list-style-type: none"> <li>• Offence committed on bail</li> </ul>
Other aggravating factors
<ul style="list-style-type: none"> <li>• Vehicle taken as part of burglary</li> <li>• Taken vehicle was an emergency vehicle</li> <li>• Taken vehicle belongs to a vulnerable person</li> <li>• Disregarding warnings of others</li> <li>• Victim was providing a public service or performing a public duty at the time of the offence, or was an emergency worker</li> <li>• Victim was a vulnerable road user, including pedestrians, cyclists and horse riders</li> <li>• Taken vehicle is an LGV, HGV or PSV etc</li> <li>• Other driving offences committed at the same time</li> <li>• Blame wrongly placed on others</li> <li>• Failed to stop and/or assist, or seek assistance at the scene</li> <li>• Passengers, including children</li> <li>• Offence committed on licence or while subject to court order(s)</li> </ul>
Mitigating factors
<ul style="list-style-type: none"> <li>• Actions of the victim or a third party contributed significantly to collision or death</li> <li>• Efforts made to assist or seek assistance for victim(s)</li> <li>• No previous convictions or no relevant/recent convictions</li> <li>• Remorse</li> <li>• Victim was a close friend or relative</li> <li>• Serious medical condition requiring urgent, intensive or long-term treatment</li> <li>• Age and/or lack of maturity</li> <li>• Mental disorder or learning disability</li> <li>• Sole or primary carer for dependent relatives</li> </ul>

**Question 2c: Are you content to approve the aggravating and mitigating factors for causing death as proposed?**

*Dangerous driving*

3.25 The aggravating and mitigating factors proposed for dangerous driving most closely mirror what the Council has agreed for the general dangerous driving offence. We have retained the lower culpability factor of 'impeccable driving record', but other factors that are not likely to be relevant to this specific offence have been removed, such as the vehicle being poorly maintained or the offending arising out of a genuine emergency.

3.26 In May, the Council agreed that step 1 factors for the aggravated vehicle taking - dangerous driving offence should mirror those proposed for the general dangerous driving offence. This approach means that consideration of whether the offender had a leading or minor role in group offending, which is placed at step 1 for the other aggravated vehicle taking guidelines, is not included in culpability for dangerous driving. These factors are intended to capture passengers who may have been highly culpable but who did not drive the vehicle themselves. While we could include these elements in aggravating and mitigating



factors for this guideline as an alternative, there is a risk of inconsistency with sentencing of the other aggravated vehicle taking offences. As such, we recommend departing from the general dangerous driving guideline in this single respect, adding leading/minor role in group offending to the culpability factors as with the other aggravated vehicle taking guidelines.

Statutory aggravating factors
<ul style="list-style-type: none"> <li>• Previous convictions, having regard to a) the <b>nature</b> of the offence to which the conviction relates and its <b>relevance</b> to the current offence; and b) the <b>time</b> that has elapsed since the conviction</li> <li>• Offence committed on bail</li> </ul>
Other aggravating factors
<ul style="list-style-type: none"> <li>• Vehicle taken as part of burglary</li> <li>• Taken vehicle was an emergency vehicle</li> <li>• Taken vehicle belongs to a vulnerable person</li> <li>• Victim was a vulnerable road user, including pedestrians, cyclists and horse riders</li> <li>• Taken vehicle is an LGV, HGV or PSV etc</li> <li>• Other driving offences committed at the same time</li> <li>• Blame wrongly placed on others</li> <li>• Failed to stop and/or assist, or seek assistance at the scene</li> <li>• Passengers, including children</li> <li>• Offence committed on licence or while subject to court order(s)</li> </ul>
Mitigating factors
<ul style="list-style-type: none"> <li>• Actions of the victim or a third party contributed significantly to collision or injury</li> <li>• Efforts made to assist or seek assistance for victim(s)</li> <li>• Impeccable driving record</li> <li>• No previous convictions or no relevant/recent convictions</li> <li>• Remorse</li> <li>• Victim was a close friend or relative</li> <li>• Serious medical condition requiring urgent, intensive or long-term treatment</li> <li>• Age and/or lack of maturity</li> <li>• Mental disorder or learning disability</li> <li>• Sole or primary carer for dependent relatives</li> </ul>

**Question 2d: Are you content to approve the aggravating and mitigating factors for dangerous driving as proposed?**

**Question 2e: Do you agree to include factors covering leading/minor roles in group offending within culpability for this offence?**

#### **4 IMPACT AND RISKS**

4.1 As discussed earlier in this paper, the sequencing of the public consultation on the revised aggravated vehicle taking guidelines will need to be considered alongside timings for the work on general motoring offences, particularly given the overlap between the two pieces of work. We will need to balance the requirement for revised guidelines with full

consideration of feedback on the proposed changes, to ensure that we minimise the risk of reputational damage to the Council.

4.2 The impact of the proposed changes to the sentencing tables and aggravating/mitigating factors is anticipated to be limited as the statutory maximum penalties for these offences are not changing and as the sentencing levels proposed are intended to reflect current sentencing practice. This is also the case for higher volume variations of aggravated vehicle taking, such as causing vehicle/property damage of under £5,000 and involving dangerous driving. Once draft guidelines for aggravated vehicle taking have been finalised, a resource assessment will be drafted and circulated to the Council for sign off.

**Aggravated vehicle taking – step 1 factors (provisionally agreed by Council in the May meeting)**

***Vehicle/property damage***

<b>HARM</b>	
Category 1	<ul style="list-style-type: none"> <li>• High value damage</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• Cases that fall between categories A or C because:               <ul style="list-style-type: none"> <li>○ Factors are present in A and C which balance each other out, and/or,</li> <li>○ The offender's culpability falls between the factors as described in A and C</li> </ul> </li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• Total damage caused of under £5,000</li> </ul>

<b>CULPABILITY</b>	
A - High	<ul style="list-style-type: none"> <li>• Vehicle or property deliberately destroyed</li> <li>• Intention to cause serious damage</li> <li>• Under influence of alcohol/drugs</li> <li>• Significant planning</li> <li>• Police pursuit</li> <li>• Leading role in group offending</li> </ul>
B - Medium	<ul style="list-style-type: none"> <li>• Cases that fall between categories A or C because:               <ul style="list-style-type: none"> <li>○ Factors are present in A and C which balance each other out, and/or,</li> <li>○ The offender's culpability falls between the factors as described in A and C</li> </ul> </li> </ul>
C - Lower	<ul style="list-style-type: none"> <li>• Vehicle not driven in unsafe manner</li> <li>• Minor role in group offending</li> <li>• Exceeding authorised use of e.g. employer's or relative's vehicle</li> <li>• Retention of hire car for short period beyond return date</li> </ul>

**Injury**

<b>HARM</b>	
Category 1	<ul style="list-style-type: none"> <li>• Grave and/or life-threatening injury caused</li> <li>• Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</li> <li>• Offence results in a permanent, irreversible injury or condition</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• Other cases of serious harm</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

<b>CULPABILITY</b>	
A - High	<ul style="list-style-type: none"> <li>• Risk of serious injury caused to persons</li> <li>• Under influence of alcohol/drugs</li> <li>• Significant planning</li> <li>• Police pursuit</li> <li>• Leading role in group offending</li> </ul>
B - Medium	<ul style="list-style-type: none"> <li>• Other cases that fall between categories A or C because: <ul style="list-style-type: none"> <li>○ Factors are present in A and C which balance each other out, and/or,</li> <li>○ The offender's culpability falls between the factors as described in A and C</li> </ul> </li> </ul>
C - Lower	<ul style="list-style-type: none"> <li>• Vehicle not driven in unsafe manner</li> <li>• Minor role in group offending</li> <li>• Exceeding authorised use of e.g. employer's or relative's vehicle</li> <li>• Retention of hire car for short period beyond return date</li> </ul>

**Death**

<b>HARM</b>
For all cases of aggravated vehicle taking causing death, the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

<b>CULPABILITY</b>	
A - High	<ul style="list-style-type: none"> <li>• Risk of serious injury caused to persons</li> <li>• Under influence of alcohol/drugs</li> <li>• Significant planning</li> <li>• Police pursuit</li> <li>• Leading role in group offending</li> </ul>
B - Medium	<ul style="list-style-type: none"> <li>• Other cases that fall between categories A or C because:               <ul style="list-style-type: none"> <li>○ Factors are present in A and C which balance each other out, and/or,</li> <li>○ The offender's culpability falls between the factors as described in A and C</li> </ul> </li> </ul>
C - Lower	<ul style="list-style-type: none"> <li>• Vehicle not driven in unsafe manner</li> <li>• Minor role in group offending</li> <li>• Exceeding authorised use of e.g. employer's or relative's vehicle</li> <li>• Retention of hire car for short period beyond return date</li> </ul>

**Dangerous driving**

<b>HARM</b>	
Category 1	<ul style="list-style-type: none"> <li>• Offence results in injury to others</li> <li>• Circumstances of offence created a high risk of serious harm to others</li> <li>• Damage caused to vehicles or property</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

<b>CULPABILITY</b>	
<b>A-</b> High Culpability	<ul style="list-style-type: none"> <li>• Deliberate decision to ignore the rules of the road and disregard for the risk of danger to others.</li> <li>• Prolonged, persistent and deliberate course of dangerous driving</li> <li>• Consumption of substantial amounts of alcohol or drugs leading to gross impairment</li> <li>• Offence committed in course of police pursuit</li> <li>• Racing or competitive driving against another vehicle</li> <li>• Disregarding warnings of others</li> <li>• Lack of attention to driving for a substantial period of time</li> <li>• Speed greatly in excess of speed limit</li> <li>• <b>Leading role in group offending</b></li> </ul>
<b>B-</b> Medium culpability	<ul style="list-style-type: none"> <li>• Brief but obviously highly dangerous manoeuvre</li> <li>• Engaging in a brief but avoidable distraction</li> <li>• Driving knowing that the vehicle has a dangerous defect or is dangerously loaded</li> <li>• Driving at a speed that is inappropriate for the prevailing road or weather conditions, although not greatly excessive</li> <li>• Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs</li> <li>• Disregarding advice relating to driving when taking medication or as a result of a known medical condition which significantly impaired the offender's driving skills</li> <li>• Driving when knowingly deprived of adequate sleep or rest</li> <li>• The offender's culpability falls between the factors as described in high and lower culpability</li> </ul>
<b>C-</b> Lower culpability	<ul style="list-style-type: none"> <li>• Standard of driving was just over threshold for dangerous driving</li> <li>• Momentary lapse of concentration</li> <li>• <b>Minor role in group offending</b></li> </ul>

## Aggravated vehicle taking data – 2020<sup>1</sup>

### Sentencing outcomes

<b>Offence</b>	<b>Outcome</b>	<b>Volume</b>	<b>Proportion</b>
Damage under £5,000	Absolute and conditional discharge	9	3%
	Fine	25	7%
	Community sentence	212	60%
	Suspended sentence	46	13%
	Immediate custody	57	16%
	Otherwise dealt with <sup>2</sup>	7	2%
Damage over £5,000	Absolute and conditional discharge	1	1%
	Fine	5	3%
	Community sentence	69	42%
	Suspended sentence	40	24%
	Immediate custody	45	27%
	Otherwise dealt with <sup>2</sup>	5	3%
Injury	Absolute and conditional discharge	0	0%
	Fine	0	0%
	Community sentence	11	32%
	Suspended sentence	11	32%
	Immediate custody	12	35%
	Otherwise dealt with <sup>2</sup>	0	0%
Death	Absolute and conditional discharge	0	0%
	Fine	0	0%
	Community sentence	0	0%
	Suspended sentence	1	100%
	Immediate custody	0	0%
	Otherwise dealt with <sup>2</sup>	0	0%
Dangerous driving	Absolute and conditional discharge	1	<0.5%
	Fine	1	<0.5%
	Community sentence	30	15%
	Suspended sentence	42	20%
	Immediate custody	126	61%
	Otherwise dealt with <sup>2</sup>	6	3%

Source: Court Proceedings Database, Ministry of Justice

<sup>1</sup> 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.

<sup>2</sup> 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.

### Immediate custody sentence distribution

<b>Offence</b>	<b>Sentence band<sup>3</sup></b>	<b>Estimated pre-guilty plea proportion</b>	<b>Post-guilty plea proportion</b>
Damage under £5,000	0-1 month	4%	4%
	1-2 months	11%	28%
	2-3 months	21%	25%
	3-4 months	11%	32%
	4-5 months	26%	7%
	5-6 months	19%	5%
	Greater than 6 months <sup>4</sup>	9%	-
Damage over £5,000	0-6 months	13%	29%
	6-12 months	31%	53%
	12-18 months	44%	18%
	18-24 months	7%	0%
	Greater than 2 years <sup>4</sup>	4%	-
Injury	0-6 months	17%	25%
	6-12 months	17%	58%
	12-18 months	50%	17%
	18-24 months	17%	0%
Death <sup>5</sup>	-	-	-
Dangerous driving	0-6 months	10%	23%
	6-12 months	33%	52%
	12-18 months	37%	25%
	18-24 months	18%	1%
	Greater than 2 years <sup>4</sup>	2%	-

Source: Court Proceedings Database, Ministry of Justice, adjusted using data from the Crown Court Sentencing Survey (CCSS) to provide estimates of the pre-guilty plea sentence length

<sup>3</sup> Sentence length intervals do not include the lower bound but do include the upper bound sentence length. For example, the category '0-6 months' includes sentence lengths less than or equal to 6 months, and '6 to 12 months' includes sentence lengths over 6 months, and up to and including 12 months.

<sup>4</sup> While these sentences appear to exceed the statutory maximum, they are estimates only; there are no post guilty plea sentence lengths exceeding the statutory maximum.

<sup>5</sup> No offenders were sentenced to immediate custody for *aggravated vehicle taking causing death* in 2020. In 2019, two offenders received custodial sentences between 6 to 8 years for this offence.



**Average custodial sentence length (ACSL)**

<b>Offence</b>		<b>Pre-guilty plea estimated ACSL (months)</b>	<b>Post-guilty plea ACSL (months)</b>
Damage under £5,000	Mean	4.0	3.0
	Median	4.1	2.8
Damage over £5,000	Mean	13.1	9.5
	Median	13.3	10.0
Injury	Mean	14.4	9.8
	Median	15.0	10.0
Death <sup>5</sup>	Mean	-	-
	Median	-	-
Dangerous driving	Mean	14.0	10.0
	Median	13.5	10.0

Source: Court Proceedings Database, Ministry of Justice, adjusted using data from the Crown Court Sentencing Survey (CCSS) to provide estimates of the pre-guilty plea sentence length

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## Dangerous driving – step 2 factors

### Starting point and category range

	Culpability		
	A	B	C
Harm 1	<b>Starting Point:</b> 1 year 6 months <b>Category range:</b> 1 – 2 years	<b>Starting Point:</b> 1 year <b>Category range:</b> 26 weeks – 1 year 6 months	<b>Starting Point:</b> 26 weeks <b>Category range:</b> High level community order – 1 year
Harm 2	<b>Starting Point:</b> 1 year <b>Category range:</b> 26 weeks – 1 year 6 months	<b>Starting Point:</b> 26 weeks <b>Category range:</b> High level community order – 1 year	<b>Starting Point:</b> High level community order <b>Category range:</b> Low level community order – 26 weeks

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

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

#### 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:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
- Other driving offences committed at the same time as the dangerous driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Vehicle poorly maintained
- Offence committed on licence or while subject to court order(s)

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- The victim was a close friend or relative
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

## Causing injury by wanton or furious driving – step 2 factors

### Starting point and category range

	Culpability		
	A	B	C
Harm 1	<b>Starting Point:</b> 1 year 6 months <b>Category range:</b> 1 - 2 years	<b>Starting Point:</b> 1 year <b>Category range:</b> 26 weeks – 1 year 6 months	<b>Starting Point:</b> 26 weeks <b>Category range:</b> High level community order – 1 year
Harm 2	<b>Starting Point:</b> 1 year <b>Category range:</b> 26 weeks – 1 year 6 months	<b>Starting Point:</b> 26 weeks <b>Category range:</b> High level community order – 1 year	<b>Starting Point:</b> High level community order <b>Category range:</b> Low level community order – 26 weeks
Harm 3	<b>Starting Point:</b> 26 weeks <b>Category range:</b> High level community order – 1 year	<b>Starting Point:</b> High level community order <b>Category range:</b> Low level community order – 26 weeks	<b>Starting Point:</b> Low level community order <b>Category range:</b> Band B fine – High level community order

Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Totality* guideline and step five of this guideline.

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

### 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:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
- Other driving offences committed at or about the same time

- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Offence committed on licence or while subject to court order(s)

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision
- Offence due to inexperience rather than irresponsibility
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- The victim was a close friend or relative
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

## Causing death by dangerous driving – step 2 factors

The starting points and category ranges below relate to a single offence resulting in a single death. Where another offence or offences arise out of the same incident or facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.

Where more than one death is caused, it will be appropriate to make an upwards adjustment from the starting point within or above the relevant category range before consideration of other aggravating features. In the most serious cases, the interests of justice may require a total sentence in excess of the offence range for a single offence. See the Totality guideline and step six of this guideline.

### Starting point and category range

Culpability	Starting point	Range
High	12 years	8 – 18 years
Medium	6 years	4 – 9 years
Lesser	3 years	2 – 5 years

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:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Driving for commercial purposes
- Driving an LGV, HGV or PSV etc
- Other driving offences committed at the same time as the dangerous driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Vehicle poorly maintained
- Serious injury to one or more victims, in addition to the death(s) (see step 6 on totality when sentencing for more than one offence)
- Offence committed on licence or while subject to court order(s)

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- Actions of the victim or a third party contributed significantly to collision or death
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- The victim was a close friend or relative
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives



## Aggravated vehicle taking – Crown court transcript summaries

### Vehicle/property damage

Details	Aggravating and mitigating factors	Pre-guilty plea sentence
Took partner's car and became engaged in police chase, speeding in residential areas and on busy roads. Lost control and crashed into railings	<p>Aggravating factors: Intoxicated (cannabis), no licence, uninsured</p> <p>Mitigating factors: Caring responsibilities for partner and child; mental health issues; lack of maturity; no previous relevant convictions</p>	12 months' suspended sentence
While significantly intoxicated, opportunistically took vehicle and drove above speed limit, on wrong side of road and in wrong direction around a roundabout. Refused to stop for police cars and almost hit a pedestrian. Collided with signpost, writing vehicle off	<p>Aggravating factors: Previous relevant convictions, intoxicated, no licence, uninsured</p> <p>Mitigating factors: N/A</p>	18 months' custody
Two offenders stole high-powered vehicle, speeding and involved in police pursuit. Collided with two cars and continued to drive wrong way around a roundabout and on wrong side of road. Only stopped once police rammed car. Driver was encouraged by passenger to offend	<p>Aggravating factors: Ignored warnings, no licence, uninsured, driver on an order at time of incident, passenger had previous relevant convictions</p> <p>Mitigating factors: Driver aged 18 at time of incident</p>	16 months' custody for driver; 8 months' custody for passenger
Took girlfriend's hire car and was in a crash. No evidence of intoxication; no police pursuit involved	<p>Aggravating factors: Uninsured, no licence</p> <p>Mitigating factors: N/A</p>	Community order of 180 hours unpaid work
Took grandmother's car and used it to help his friend run a 'drugs line operation' for one hour, selling cannabis. During this time, was in an accident with another car, causing substantial damage to the other vehicle	<p>Aggravating factors: N/A</p> <p>Mitigating factors: Good character, remorse</p>	16 weeks' suspended sentence
Drove car without owner's consent, hitting and damaging four other vehicles in the process, including a car with a young child inside,	<p>Aggravating factors: N/A</p> <p>Mitigating factors: N/A</p>	1 year's custody

and a mobility vehicle. Attempted to evade police but was eventually arrested		
Stole car from father while disqualified from driving. Crashed into church lychgate and gravestones	Aggravating factors: On licence; previous relevant convictions, driving while disqualified  Mitigating factors: N/A	14 months' custody
Stole two motorcycles with another offender; crashed and abandoned the first motorcycle, then rode second in highly dangerous police chase	Aggravating factors: N/A  Mitigating factors: N/A	21 months' suspended sentence
After drinking at a party, stole another party goer's car keys and smashed car into telephone pole, damaging fences and walls	Aggravating factors: Fled the scene  Mitigating factors: No previous convictions	6 months' suspended sentence
Stole car keys from victim's jacket pocket and was in a collision, hitting a bus stop and writing the car off	Aggravating factors: Uninsured, failed to stop and to report incident, committed offence while on bail  Mitigating factors: Suffered bereavement days before, difficult childhood	1 year's custody
While under influence of cocaine and cannabis, stole girlfriend's car and attempted to evade police, crashing into lamp post and post-box, writing the car off. Fled scene and later claimed he was just a passenger in the car	Aggravating factors: Intoxicated, previous relevant convictions, police pursuit, under suspended sentence order at time, driving while disqualified  Mitigating factors: Addressing addiction since incident occurred	12 months' custody
Took a friend's car without permission and went to collect someone else; lost control of car due to rain and crashed through a fence, hitting and damaging several other vehicles	Aggravating factors: Previous relevant conviction, uninsured  Mitigating factors: Pre-sentence report	6 months' suspended sentence

**Injury**

Details	Aggravating and mitigating factors	Pre-guilty plea sentence
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<p>Took vehicle while working on it for the owner; vehicle clipped kerb and was in head-on collision, injuring two occupants in the other car. One was left with broken vertebrae and required a back brace for a period of time, while other occupant required a cast for their injured hand</p>	<p>Aggravating factors: Previous relevant convictions</p> <p>Mitigating factors: N/A</p>	<p>2 years' custody</p>
<p>While under the influence of alcohol, offender was driving a car he knew to be stolen and was carrying passengers. When stopped by police, offender attempted to drive off, dragging two police officers by a few feet, and leaving them with cuts and bruises</p>	<p>Aggravating factors: Intoxication, disregarding warnings, police injured</p> <p>Mitigating factors: Caring responsibilities (pregnant partner, daughter and offender's mother)</p>	<p>12 months' custody</p>
<p>Opportunistically took vehicle from a front drive and was later seen by police stealing fuel. Drove into police officer in attempt to evade arrest, causing minor injuries that led to him being off work for some time</p>	<p>Aggravating factors: Police officer injured</p> <p>Mitigating factors: Lack of maturity and mental health issues</p>	<p>12 months' custody</p>

### **Death**

Details	Aggravating and mitigating factors	Pre-guilty plea sentence
<p>Involved multiple offenders. Both offenders charged with aggravated TWOC causing death were passengers in the taken vehicle, while the driver of the vehicle was charged with the offence of dangerous driving causing death. The incident involved a police chase, with the car colliding with another vehicle carrying a family. Four people died as a result, while three others were left with serious and/or life-changing injuries.</p>	<p>Aggravating factors: stolen car was disguised, dangerous/wet driving conditions, police taunted on social media beforehand, relevant previous convictions</p> <p>Mitigating factors: N/A</p>	<p>10 years' custody</p>

### **Dangerous driving**

Details	Aggravating and mitigating factors	Pre-guilty plea sentence
<p>Offender was staying at house of the victim and took her car and drove off. Car crashed and was written off. Refused to provide specimen for analysis when arrested</p>	<p>Aggravating factors: Previous relevant convictions</p> <p>Mitigating factors: N/A</p>	<p>18 months' custody</p>

Driving stolen car without licence and ended up in police pursuit, speeding in residential areas. Car collided with a taxi, injuring driver and passenger	<p>Aggravating factors: No licence, previous relevant convictions, police pursuit</p> <p>Mitigating factors: Pre-sentence report and letter from partner</p>	20 months' custody
Took 15-tonne road sweeper while intoxicated and drove through city centre, hitting multiple parked cars. Collided with a car with an elderly passenger at traffic lights	<p>Aggravating factors: Intoxicated, previous relevant convictions</p> <p>Mitigating factors: Taking steps to address addiction and seeking support</p>	18 months' suspended sentence
Drove dangerously over 18 miles with police in pursuit and a scared passenger in the car, speeding, going through red lights and driving on wrong side of the road. Crashed into roundabout and traffic lights, injuring passenger	<p>Aggravating factors: Police pursuit, ignored passenger asking him to stop, passenger injured, previous relevant convictions</p> <p>Mitigating factors: Mental health issues</p>	21 months' custody
Took car after victim had left car/house keys in vehicle. After stealing property from the house, drove off at speed, with police in pursuit	<p>Aggravating factors: Police pursuit</p> <p>Mitigating factors: N/A</p>	12 months' custody
Took employer's Range Rover and drove for a short period at excessive speeds on motorway. Involved in police pursuit. No immediate danger was posed, however	<p>Aggravating factors: Police pursuit</p> <p>Mitigating factors: N/A</p>	9 months' custody
Took car that had been left with keys in ignition. Drove off and began to speed in residential areas with police in pursuit. Offender only had provisional licence	<p>Aggravating factors: Police pursuit</p> <p>Mitigating factors: Young age (18 at time of incident), personal circumstances (family tragedy)</p>	16 weeks' custody
Drove powerful vehicle dangerously, and involved in police pursuit. Was speeding on residential roads, driving on paths and on the wrong side of a dual carriageway. Stopped after collision with police car	<p>Aggravating factors: Previous relevant convictions, police pursuit, significant risk posed</p> <p>Mitigating factors: N/A</p>	2 years' custody

**Sentencing Council meeting:**  
**Paper number:**  
**Lead Council member:**  
**Lead official:**

**22 July 2022**  
**SC(22)JUL07 – Environmental Offences**  
**n/a**  
**Ruth Pope**  
**Ruth.pope@sentencngcouncil.gov.uk**

## **1 ISSUE**

1.1 In September 2021 the Council discussed a letter from the Herts Fly Tipping Group (attached at Annex A) requesting that the Council consider making changes to the Environmental offences guideline specifically in relation to the way it operates in sentencing fly tipping cases.

1.2 A response was sent in October 2021 (see Annex B) explaining in detail why the Council would not be reviewing the guideline as requested. In March this year a further letter was received (see Annex C) requesting further consideration of issues and we agreed to raise these points with the Council at the next opportunity.

1.3 Separately the Environmental Audit Committee Report has produced the [Water quality in rivers report](#) which makes a recommendation directed at the Council.

## **2 RECOMMENDATION**

2.1 That the Council considers if further work should be done to:

- establish if there are any ways in which the environmental guideline for individuals could be revised to ensure that it operates effectively in fly-tipping cases.
- investigate if any changes could usefully be made to the environmental guideline for organisations to ensure that sentences for very large organisations are proportionate.

## **3 CONSIDERATION**

### *Background*

3.1 The Environmental offences guidelines came into force on 1 July 2014. There are two guidelines: one for [individuals](#) and one for [organisations](#). The guidelines apply to offences covered by section 33, Environmental Protection Act 1990 (EPA 1990); and Regulations 12 and 38(1), (2) and (3) of the Environmental Permitting (England and Wales) Regulations 2010 (EPR 2010). The statutory maximum sentence for an individual is five years' custody and the guideline offence range is a discharge to three years' custody. The

statutory maximum sentence for an organisation is an unlimited fine and the guideline offence range is £100 fine – £3 million fine.

3.2 The correspondence regarding fly-tipping cases follows on from various representations since 2016 including from Defra suggesting that the fines imposed on individuals are deemed to be too low to reflect both the costs avoided by the offender and the costs of clearing up; as well as being inadequate as a deterrent.

3.3 In response, we have drawn attention to the fact that the guideline does require sentencers consider awarding compensation and to take account of costs avoided and that the law requires courts to take into account the financial circumstances of the offender in setting the amount of a financial penalty.

3.4 Recently the [National Fly-Tipping Prevention Group](#) (NFTPG) has published a document: '[Fly-tipping toolkit: How to present robust cases to the courts](#)' which may go some way to ensure that prosecutors provide courts with the necessary information to assist them to apply the guideline effectively to the cases before them. We had sight of this document when it was being developed and took the opportunity to provide feedback on the elements relating to guidelines (without endorsing it).

#### *Issues raised relating to fly-tipping*

3.5 In their most recent letter the Herts Fly Tipping Group state:

- a) Whilst we appreciate the SC drawing to our attention to the guidance to magistrates on fixed penalty notices which appears in essence to require magistrates to ignore the availability of an FPN [fixed penalty notice], we note this is guidance. Therefore this suggests that guidance can be updated to take into account current realities in relation to fly tipping and the lack of deterrent impact court judgements are having.

3.6 The [guidance to magistrates on fixed penalty notices](#) contained in the explanatory materials to the MCSG states:

- the fact that the offender did not take advantage of the penalty (whether that was by requesting a hearing or failing to pay within the specified timeframe) does not increase the seriousness of the offence and must not be regarded as an aggravating factor. The appropriate sentence must be determined in accordance with the sentencing principles set out in this guidance (including the amount of any fine, which must take an offender's financial circumstances into account), disregarding the availability of the penalty

3.7 While it is certainly true that the Council *could* review this guidance – it is difficult to see what grounds there would be for treating an offender who was offered an FPN but did not accept it, more severely (or in any other way differently) than one who was not offered an

FPN. Any change to the guidance could not alter the fact that the court is bound by legislation ([s124 Sentencing Code](#)) to take into account the offender's financial circumstances in setting a fine.

3.8 As noted when this was considered previously, although the fine imposed may in some cases be lower than the FPN, when costs and the surcharge (now 40% of any fine) are added, the overall amount is still likely to be as high or higher than an FPN for most of those who go to court.

3.9 The next point raised is:

- b) Linked to point a) we note in your letter of the 15th October 2021 reference to Section 57 of the Sentencing Council Act 2021(sic). Section 2b explicitly refers to reducing crime including by deterrence. In contrast however, given our consultations with those that represent the majority of frontline enforcement capability across the country, it would be difficult to find anyone that thinks typical court judgements in response to successful prosecutions represent any form of effective deterrent; and on that basis it would appear advisable to revisit this to ensure that the intention is matched by the reality.

3.10 There is very little evidence that sentencing in general is an effective deterrent – though there are occasions when it can be. Where fly-tipping is carried out for commercial gain, there is an argument that substantial financial penalties would make unlawful disposal less attractive compared to lawful disposal.

3.11 If it is accepted that in some cases more severe penalties could be effective as a deterrent in fly-tipping cases, the question remains of what more the guideline could do to achieve that. Simply imposing higher fines that an offender cannot or will not pay would not be effective and would not comply with the legal requirement to take into account the offender's financial circumstances. The guideline already provides steps that require the court to consider compensation, confiscation, and removing economic benefit from the offending. It may be that the guidance issued to prosecutors in the tool-kit will encourage more challenges to assertions of limited means and more information being provided to the court of the costs avoided by the offending and the costs incurred in cleaning up afterwards, which in turn may lead to higher financial penalties in appropriate cases.

3.12 The third point raised is:

- c) Community Orders. We note the SC's reference to community orders being available for offences in band D and F fines. However, the point raised in our letter was for more use of such powers based on making such orders available across more bands. Stakeholders do not feel this issue has been addressed and therefore urge you to revisit this to help ensure that the optimum (sic) across bands is evident to all.

3.13 It could be argued that the guideline steers sentencers away from community sentences. Wording above the sentence table states:

### Starting points and ranges

Where the range includes a potential sentence of custody, the court should consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Where the range includes a potential sentence of a community order, the court should consider the community order threshold as follows:

- has the community order threshold been passed?

**However, even where the community order threshold has been passed, a fine will normally be the most appropriate disposal.** Where confiscation is not applied for, consider, if wishing to remove any economic benefit derived through the commission of the offence, combining a fine with a community order.

3.14 It is likely that most fly-tipping cases would be assessed as ‘deliberate’ culpability and category 3 harm. As can be seen from the table below, a community order is available for all levels of harm where the culpability is deliberate:

Offence category	Starting Point	Range
Category 1	18 months’ custody	1 – 3 years’ custody
Category 2	1 year’s custody	26 weeks’ – 18 months’ custody
Category 3	Band F fine	Band E fine or medium level community order – 26 weeks’ custody
Category 4	Band E fine	Band D fine or low level community order – Band E fine

3.15 One difficulty is that it is not clear whether an increased use of community orders would be more effective than financial penalties in deterring offending or how that could be measured. In September 2021, the Council rejected a suggestion that consideration could be given to removing the reference to Band D, E and F fines from the face of the guideline and replacing them with community orders.

3.16 Perhaps though there could be some merit in reconsidering the emphasis that the guideline puts on fines over community penalties. This guideline was developed before the



Imposition guideline existed and perhaps the inclusion of the text quoted at 3.13 above over-emphasises fines at the expense of other disposals. Fines have been imposed in around three-quarters of cases since the guideline came into force. Prior to that the proportion of fines was slightly lower and the proportion of discharges higher.<sup>1</sup>

**Question 1: Does the Council wish to investigate further whether any aspects of the environmental guideline for individuals should be reviewed?**

*Issues raised by the Environmental Audit Committee Report*

3.17 The [Water quality in rivers report](#) makes the following recommendation relating to enforcement and prosecution:

206. We further recommend that, in the interests of promoting public confidence in the criminal justice system and reducing the likelihood of reoffending, the Sentencing Council review the sentencing guidelines for water pollution offences. In our view, penalties for such offences should be set at a level that will ensure that the relevant risk assessments are routinely on the agenda of the boards of each water company.

3.18 The report (at para 194) reports on the prosecution of Southern Water in 2021 which resulted in a £90 million fine. It refers to the sentencing remarks in that case which stated that despite having been fined substantial amounts for offences in 2013 - 2015 there was 'no evidence that the Defendant took any notice of the penalty imposed or the court's remarks. Its offending simply continued'. The report quotes Sir James Bevan (Chief Executive of the Environment Agency), speaking a month **before** Southern Water was sentenced, saying:

... the fines are not big enough. Even the biggest one, which we secured against Thames Water of about £20 million, is peanuts compared with the daily turnover of a company like Thames Water. We don't control the amount fined, which is a matter for the sentencing guidelines. It is good that courts have started to impose higher fines than they were a few years ago, but we would still like to see, frankly, eye-watering fines for water companies. Until they are big enough to concentrate the minds of boards, we will not have the effect that we want.

3.19 The Southern Water case illustrates that application of the guideline *does* result in very substantial fines (the fine was £135 million before guilty plea reduction which amounted to 10% of its net assets and compared to an annual pre-tax profit of £213 million).

3.20 The environmental guideline for organisations (and those for health and safety and food safety) have sentence tables for 4 sizes of organisation (micro, small medium and large) and above them the following rubric:

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<sup>1</sup> This relates to all adult offenders sentenced for offences covered by the guideline – not all of which will be fly-tipping offences.

## Very large organisations

Where a defendant company's turnover or equivalent very greatly exceeds the threshold for large companies, it may be necessary to move outside the suggested range to achieve a proportionate sentence.

3.21 The Court of Appeal in [R v Thames Water Utilities Ltd](#) [2015] EWCA Crim 960 in upholding a £20 million fine, set out (at para 40) the approach to be adopted when sentencing very large organisations for these offences stating:

there must not be a mechanistic extrapolation from the levels of fine suggested at step 4 of the guideline for large companies. This is made clear by (1) the fact that by definition a very large commercial organisation's turnover very greatly exceeds the threshold for a large company, and (2) the requirement at step 6 of the guideline to examine the financial circumstances of the organisation in the round.

3.22 Reflecting the wording in the guideline, the court went on to say (at para 42):

Even in the case of a large organisation with a hitherto impeccable record, the fine must be large enough to bring the appropriate message home to the directors and shareholders and to punish them. In the case of repeat offenders, the fine should be far higher and should rise to the level necessary to ensure that the directors and shareholders of the organisation take effective measures properly to reform themselves and ensure that they fulfil their environmental obligations.

3.23 The impression from these cases is that by applying the guideline courts are imposing very large fines and that these fines are being upheld on appeal. There is, however, some anecdotal evidence from our road-testing of guidelines that some sentencers are unused to and uncomfortable with imposing very large fines. The Court of Appeal in the *Thames* case noted that the Recorder at first instance had faced a difficult sentencing exercise and 'we would have had no hesitation in upholding a very substantially higher fine'.

3.24 The concluding observation was:

Sentencing very large organisations involves complex issues as is clear from this judgment. It is for that reason that special provision is made for such cases in Crim PD XIII, listing and classification. Such cases are categorised as class 2 C cases and must therefore be tried either by a High Court Judge or by another judge only where either the Presiding Judge has released the case or the Resident judge has allocated the case to that judge. It is essential that the terms of this Practice Direction are strictly observed.

3.25 The Council may feel that the guideline for organisations provides the sentencing court with all the tools and guidance required to impose appropriate sentences in serious

cases involving very large offending organisations and that nothing would be gained by re-visiting the guideline.

**Question 2: Does the Council agree that the guideline for organisations does not need to be reviewed?**

#### **4 IMPACT AND RISKS**

4.1 There is clearly a risk of the Council appearing unresponsive if nothing is done to address the matters raised in this paper. However, even if the Council felt some of the points raised had merit and were minded to consider making appropriate amendments the Council has many competing demands and limited resources and will want also to ensure that its resources are directed where they can have most benefit.

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My Ref: FTG-SC-02  
Your Ref:  
Date: 2<sup>nd</sup> August 2021

Dear Mr Wade,

#### **Review of the Environmental Offences Definitive Guideline (2014)**

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

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

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

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

## **Court imposed fines and costs versus Fixed Penalty Notices**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## **Community Based Sentences**

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

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

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

We believe such an approach would do three things.

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

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

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

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



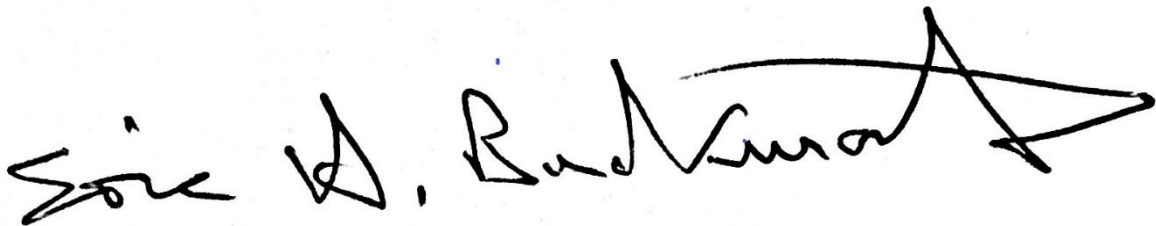
## Use of More Suspended Sentences

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

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

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

Yours sincerely,

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

Cllr Eric Buckmaster  
**Chair – Hertfordshire Waste Partnership**

*Please see overleaf for a list of signatories:*

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


On behalf of:

Waste Partnerships & Authorities

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

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

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

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

**Individual local authorities:**

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

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



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

On behalf of:

Professional Bodies

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



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

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Your Ref: FTG-SC-02

By email to: [duncan.jones@hertfordshire.gov.uk](mailto:duncan.jones@hertfordshire.gov.uk)

15 October 2021

Dear Mr Jones,

## **Review of the Environmental Offences Definitive Guideline (2014)**

Further to my letter of 3 August, the Sentencing Council met on 24 September and discussed the contents of the letter from Councillor Buckmaster and I am now in a position to respond more fully.

The Council considered the representations in the letter in detail and while it was accepted that fly tipping can be a serious problem, the Council was not convinced that making changes to sentencing guidelines would be the solution to the problem. In addition, the Council noted that some of the suggestions made would potentially be contrary to law.

I provide below a summary of the Council's view in response to each of the points raised in your letter:

### **Court imposed fines and costs versus Fixed Penalty Notices**

The letter suggests that where a fixed penalty notice (FPN) has been offered and a defendant opts to go to court and is convicted, the fine should exceed the maximum FPN available (currently £400). The Council noted the argument in the letter that fines lower than the FPN undermine the purposes of FPNs which are said to include reducing costs for prosecutors and alleviating pressure on courts. The Council was unable to agree with this argument. Guidance to [magistrates on fixed penalty notices](#) contained in the explanatory materials to the magistrates courts sentencing guidelines states:

- the fact that the offender did not take advantage of the penalty (whether that was by requesting a hearing or failing to pay within the specified timeframe) does not increase the seriousness of the offence and must not be regarded as an aggravating factor. The appropriate

sentence must be determined in accordance with the sentencing principles set out in this guidance (including the amount of any fine, which must take an offender's financial circumstances into account), disregarding the availability of the penalty.

Section 125 of the Sentencing Act 2020 requires that the "court must take into account the circumstances of the case including, *in particular* (our italics), the financial circumstances of the offender so far as they are known, or appear, to the court" and this guidance reflects that. The Council considers that it would be unlawful and arbitrary to impose a higher fine than would normally be justified for offences simply because an FPN has been offered. The availability of an FPN does not deprive a person of the right to put the prosecution to proof of its case or to have their sentence determined by a court in accordance with the normal principles.

The Council also noted that, in practice, taking into account costs and the surcharge, the overall amount that an offender convicted in court is required to pay is unlikely to be lower than the FPN in the vast majority of cases. It is also relevant to note that where loss or damage has been caused an application can be made for compensation (indeed this is the first step in the guideline).

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

The Council noted the suggestion that means declaration forms are not adequately tested by courts and that consequently fines are often being set on the basis of inaccurate information. As quoted in the letter, the guideline does contain guidance on obtaining financial information. If the suggestion is that courts routinely lack the time or resources to test some declarations as fully as they may wish, this is something that is outside the remit of the Council.

The Council also noted the assertion that the problem is exacerbated by the failure of courts to collect the financial penalties imposed. While the Council has provided some [guidance](#) about payment of fines, the way in which fines are enforced after the sentence hearing is, again, outside the Council's remit.

The letter proposes "that fly tipping offences should be looked at as *the offence* in the *first* instance, not the person who committed it, or their ability to pay". As constructed, the guideline does require the court to look at the seriousness of the offence before taking into account matters such as previous convictions, and then deciding on the appropriate penalty. It is only at that point, if the penalty is to be a fine, that the offender's financial circumstances become relevant. As outlined above it would be contrary to legislation to disregard those circumstances and therefore the Council could not adopt such a proposal.

### **Community Based Sentences**

The letter suggests that: "If a defendant cannot pay the fine in full, or in part, then we would ask that consideration is given to changing to the Guideline to allow for a much wider use of community based sentences as a matter of

redress". The guideline *does* provide for community orders as an alternative to band D or F fines. This is because offences that fall into those categories are deemed to be serious enough for a community order. It is a matter for the court (where appropriate with input from the National Probation Service in the form of a pre-sentence report) to determine whether a fine or a community sentence would best meet the purposes of sentencing. These are set out in legislation.

Section 57 of the Sentencing Act 2021 states:

- 1) This section applies where—
  - a) a court is dealing with an offender for an offence, and
  - b) the offender is aged 18 or over when convicted.
- 2) The court must have regard to the following purposes of sentencing—
  - a) the punishment of offenders,
  - b) the reduction of crime (including its reduction by deterrence),
  - c) the reform and rehabilitation of offenders,
  - d) the protection of the public, and
  - e) the making of reparation by offenders to persons affected by their offences.

What it is not open to the court to do is to impose a more severe sentence simply because of an offender's inability to pay a fine, nor (in effect) to allow an offender to escape a more severe sentence by virtue of their better ability to meet any financial penalty imposed by way of a fine.

The Council noted the suggestion that community orders should contain an element of reparation focussing on clearing fly tips and litter. Community orders consist of one or more requirements which are specified by the court imposing the order. One such requirement which is often imposed is unpaid work, which may involve various activities including clearing litter. However, the exact activity will depend on the arrangements that the National Probation Service make and is not possible for guidelines – or courts – to specify the precise nature of the activity to be undertaken in a particular case.

### **Use of More Suspended Sentences**

The letter suggests the greater use of suspended sentence orders to deter offenders from further offending. It is important to be clear that a suspended sentence is still a sentence of imprisonment. As such, it *must not* be imposed unless the offence is so serious that neither a fine alone nor a community sentence can be justified. This is important because if the offender re-offends during the currency of the order, or fails to comply with any of the requirements attached to the order, the default position is that the sentence will be activated and they will be sent to prison – and that can only be justified if the elements of the original offence were such that a custodial sentence was justified.

For the most serious offending the guideline does contain custodial sentences and, if appropriate, the court can suspend such a sentence with requirements (such as those that are attached to community orders)

Information on the court's duties and options in imposing community and custodial sentences is set out in the [Imposition of community and custodial sentences](#) guideline.

### **In conclusion**

The Environmental offences guideline contains a total of 12 steps that require the court to consider the seriousness of the offending (including the harm caused by the offending) and the circumstances offender in arriving at the appropriate sentence. In addition to fines, community orders, and custodial sentences, the guideline also provides for compensation and various ancillary orders which may be appropriate, depending on the circumstances of each individual case. The Council is of the view that the guideline is sufficiently able to allow Courts to deal adequately with the full range of such cases before them. It is also worth noting that the guideline applies to a range of environmental offending, not just to fly tipping, and any review of that guideline would have to take into account the full range of offending that it covers and ensure offences are dealt with consistently and proportionately across that full range.

As such, the Council is not yet persuaded that the evidence suggests that the current environmental offences guidelines are not operating effectively, or that their amendment is the solution to the issue of fly tipping. Consequently, and given the Council's limited resources, it did not agree that it should devote significant time and resources to reviewing the guideline. The Council will of course consider any further evidence that you wish to provide.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Steve Wade', written over a horizontal line.

**Steve Wade**

**Head of Office of the Sentencing Council**



Mr Steve Wade  
Head of the Office of the  
Sentencing Council  
EB16 East Block  
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WC2A 2LL

Reply to:  
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Herts Fly Tipping Group  
c/o Hertfordshire County Council  
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County Hall  
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SG13 8DN

e-mail: [duncan.jones@hertfordshire.gov.uk](mailto:duncan.jones@hertfordshire.gov.uk)  
My Ref: FTG-SC-03  
Your Ref:  
Date: 22<sup>nd</sup> March 2022

Dear Mr Wade,

### **Review of the Environmental Offences Definitive Guideline (2014)**

Thank you for your letter of the 15<sup>th</sup> October 2021 and the detailed response to the points we raised in our letter of the 2<sup>nd</sup> August 2021.

As you will no doubt appreciate your detailed response required conversations with a range of stakeholders in order to determine whether from our perspective there are grounds for any further dialogue on the matter.

Those deliberations have been completed and as a result we wish to highlight the following points with a view to the Sentencing Council (SC) reconsidering the potential for a review of the Environmental Offences Definitive Guideline (2014):

- a) Whilst we appreciate the SC drawing to our attention to the guidance to magistrates on fixed penalty notices which appears in essence to require magistrates to ignore the availability of an FPN, we note this is guidance. Therefore this suggests that guidance can be updated to take into account current realities in relation to fly tipping and the lack of deterrent impact court judgements are having.
- b) Linked to point a) we note in your letter of the 15<sup>th</sup> October 2021 reference to Section 57 of the Sentencing Council Act 2021. Section 2b explicitly refers to reducing crime including by deterrence. In contrast however, given our consultations with those that represent the majority of frontline enforcement capability across the country, it would be difficult to find anyone that thinks typical court judgements in response to successful prosecutions represent any form of effective deterrent; and on that basis it would appear advisable to revisit this to ensure that the intention is matched by the reality

- c) Community Orders. We note the SC's reference to community orders being available for offences in band D and F fines. However, the point raised in our letter was for more use of such powers based on making such orders available across more bands. Stakeholders do not feel this issue has been addressed and therefore urge you to revisit this to help ensure that the optimum across bands is evident to all.

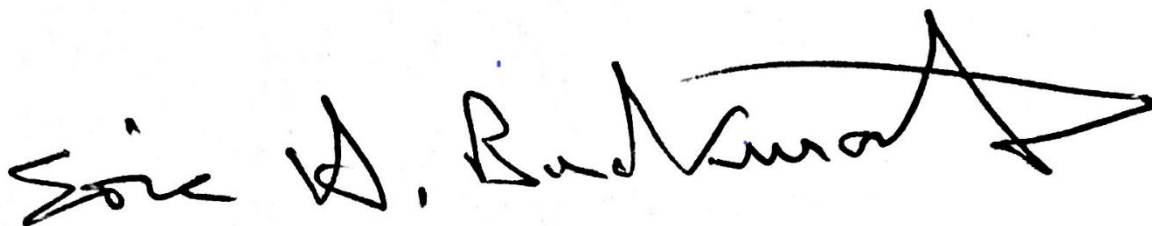
In addition to the above we thank the SC for clarity in relation to means testing as well as the involvement of the National Probation Service with respect to deciding the specifics of work to be undertaken during community service. We will look to advance both issues with the relevant bodies.

In conclusion we are of the view that whilst the SC has addressed the specific points in our letter of the 2<sup>nd</sup> August 2021 we feel that the response does not address the main theme of our efforts, which is that court judgements for fly tipping in no way represent an effective deterrent.

We would further suggest that the SC's response appears not to recognise the strength of feeling in this regard as evidenced by the 158 local authorities, numerous waste partnerships and 10 professional bodies that between them represent both the majority of the enforcement capability in this country as well those stakeholders that continue to have to deal with the scourge of fly tipping.

We look forward to your response.

Yours sincerely,

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

Cllr Eric Buckmaster  
**Chair – Hertfordshire Waste Partnership**

CC: DEFRA – Under Secretary of State Jo Churchill MP  
DEFRA – National Fly Tipping Prevention Group (Thomas Parrot / Pippa Harper)  
Environment Agency (Peter Kellet / Lee Rawlinson / Simon Hawkins / Alex Chown)  
HM Courts & Tribunals Service (South East) (Suzanne Gadd)  
Keep Britain Tidy (Rachel Scarisbrick)  
London Councils (Katharina Winbeck)  
Magistrates Association (Tom Franklin)  
National Farmers Union (Philippa Arnold / Josh Redford)  
CLA (Tim Woodward)



**Sentencing Council meeting:**  
**Paper number:**  
**Lead Council member:**  
**Lead official:**

**22 July 2022**  
**SC(22)JUL08 – Imposition**  
**Jo King**  
**Jessie Stanbrook**  
**[jessie.stanbrook@sentencingcouncil.gov.uk](mailto:jessie.stanbrook@sentencingcouncil.gov.uk)**

## **1 ISSUE**

1.1 This is the first meeting to discuss the scope of the project on the overarching guideline: *Imposition of community and custodial sentences*. The recommendations below cover all the areas currently proposed for review but should further research including the current evaluation underway highlight further areas that would benefit from inclusion, Council may be asked to broaden the scope in the future.

## **2 RECOMMENDATION**

2.2. That the Council agrees to the recommended scope of the Imposition Guideline project, which is proposed to include a review of the *current* sections:

- I. Community requirements
- II. Community order levels table
- III. Pre-Sentence Reports
- IV. Suspended Sentence Orders
- V. Thresholds for custodial and community sentences
- VI. Electronic Monitoring

In addition, inclusion more generally of a review of the:

- VII. Structure and style of the Guideline

And finally, consideration of *new* sections pertaining to:

- VIII. Points of principle on issues affecting sentencing specific cohorts of offenders, including issues raised by the Equality and Diversity Working Group and consideration of the way we currently reference the Equal Treatment Bench Book
- IX. Deferred Sentences
- X. Five purposes of sentencing, including information on rehabilitation preventing crime more generally

### **3 CONSIDERATION**

3.1 The inception of the current Imposition Guideline began in the development of the Breach Guideline in 2015/2016, in which the Office of the Sentencing Council (OSC) identified a potential issue with suspended sentence orders (SSOs) being effectively treated as more severe forms of community orders (CO), and being passed in circumstances where it may be arguable that the custody threshold had not been reached. A significant driver behind the development of the Imposition guideline was to address this issue; to reinforce the principle that a SSO was a custodial sentence, not a standalone sentence to be imposed as a level between a CO and a custodial sentence.

3.2 The Imposition Guideline (hereafter 'the Guideline') is now the main guideline sentencers and other users turn to, not only for information on when to impose a custodial sentence and in what circumstances this can be suspended, but also for direction on the imposition of community orders and the requirements attached to them, guidance on requesting pre-sentence reports, and details on band ranges for fines, amongst other things.

3.3 The last consultation for the Guideline was during its development in 2016. In this consultation, there were a range of views on different sections and detail for inclusion, some of which were taken on board by the Council, and some that were not.

3.4 After the Guideline was published in February 2017, the OSC identified that it may not be being followed as closely as expected – particularly in relation to the imposition of SSOs – and so the then Chairman issued a letter which emphasised the need for sentencers to follow the Guideline. Early analysis of initial data alludes to this letter helping in raising knowledge and use of the Guideline by the courts.

3.5 Five years later, there are now shifting trends and circumstances that may justify updates to the Guideline, as well as a variety of both ad hoc and more general feedback that justify the Guideline being reviewed.

3.6 The following sections have been recommended for initial inclusion in the review of the Guideline for a variety of reasons, some of which will be set out below.

#### **I. Community Requirements**

3.7 There are 14 requirements that may be imposed as part of a community order under legislation, and only 12 of these are listed in the Requirements section under Community Orders. The two requirements that are not listed in this section are Electronic Monitoring requirements and are considered in the Electronic Monitoring part of this paper at VI.

3.8 In addition to this, it is proposed that the way in which the different requirements are presented in the Requirements section of the Guideline is reviewed. Some of the

requirements have detail on their applicability, some have detail on their range and duration and some have detail on the considerations sentencers must take into account before imposing. Consistency between the level of detail for each of the requirements may be beneficial to sentencers as well as other relevant stakeholders, such as probation.

3.9 Rehabilitation activity requirements (RARs) are 1 out of the 14 possible requirements that can be imposed on a CO (or SSO). As per latest probation data, almost 70% of all COs have a RAR imposed on them; and almost 70,000 RARs were commenced in the 12 months to September 2021. Their relative importance therefore is extremely high, however the Guideline does not provide direction on when they may be suitable, nor direction on what number of days may be appropriate in what circumstances (the latter which will be dealt with in the next section covering Community Order Levels Table). In addition, the Guideline states “*Where appropriate this requirement should be made in addition to, and not in place of, other requirements*”, however, as sentencers can decide what requirements are considered punitive and for what purpose they are imposed, it may be beneficial to explore whether this is an unnecessary limitation.

3.10 Further, it may be beneficial to explore the extent to which the Guideline should advise when and in what circumstances certain requirements should and could be imposed, and for how long. For example, using the RAR as an example, ad hoc feedback from the Probation Service has identified inconsistency in the number of days imposed for a RAR. This is because once sentenced, specific activities as part of a RAR are determined by probation according to the *needs* of the offender, and these needs, as well as the activities and the number of days needed, can vary greatly.

3.11 For other requirements, ad hoc feedback from the Probation Service notes that offenders can sometimes be sentenced to requirements that are unsuitable due to their individual circumstances that are only uncovered in the post-sentence assessment. Consequently, probation can sometimes have difficulty getting the offender to engage, and/or have to make an application to court to amend the requirements. From ad hoc engagement, this seems to be most prominent for the (accredited) programme requirement given the specific timings and location this requirement requires. If this section were included in scope, we would consider what further research might be possible to understand these issues. For example, if possible and time allows, it may be beneficial to consider probation data on requirements on COs and SSOs, particularly to understand the scope of potential unsuitable requirements sentenced to understand how the Guideline could reduce this risk.

3.12 The 14 requirements are varied, though mostly fit in either one or both of the categories of punishment, or rehabilitation. While the legislation and Guideline states that

one requirement must be imposed for the purpose of punishment (with some exceptions), it is up to the sentencer to determine what requirement can be considered punishment, and this could theoretically be any of the 14 requirements available. Whether rehabilitation should be considered for a specific requirement could be explored in more detail if Council agrees this section should be in scope of the review.

***Question: Is the Council content for the community requirements to be included in the review of the Imposition Guideline?***

II. Community order levels table

3.13 It is recommended the community order levels table is included for several reasons.

3.14 In the May meeting, the Council agreed to proposed amendments to the curfew requirement in the Requirements section of the Guideline to bring it in line with the increased maximum hours and requirement duration as enacted in the Police, Crime and Sentencing Act (PCSC) 2022. These changes have now been made, as well as addressing the inconsistencies of style across the levels table in the three ranges also agreed at the May meeting.

3.15 The Council agreed, however, that it would be more appropriate to consider changes to the curfew ranges set out in the community order levels table as part of a wider review and subsequent consultation, given the complexity of the ranges. It is therefore proposed, at minimum, this review includes the consideration of a new proposed group of ranges for curfew requirements, in line with the new legislation.

3.16 Further to this, it is not entirely clear why only certain requirements are included in the community order levels table. While the table is discretionary, there does not seem to be a specific purpose for the inclusion of just 5, out of the possible 14 requirements. Inclusion of the community order levels table in the review would allow considering whether the inclusion of more, or all, requirements would be beneficial in the levels table. The table states: "*A full list of requirements, including those aimed at offender rehabilitation, is given below.*" However, this is not a full list of requirements, so arguably may influence sentencers to have particular attention to just those in the table and not others.

3.17 As an example, for RARs specifically, during the last consultation, a number of respondents proposed that ranges of activity days which may be suitable for a RAR should be included for each level of community order. The Council considered this but decided that given the bespoke nature of a RAR and the wide variety of RAR interventions between providers, that this may be restrictive for an offender's rehabilitation.

3.18 There are no longer different providers of probation services in the same way; probation reunified in June 2021 and all community orders are managed by the Probation Service. In addition to this, the variety of possible rehabilitative interventions to be delivered under a RAR has been significantly narrowed; there are now four main rehabilitative interventions or services that can be delivered under a RAR: these are structured interventions, toolkits, accredited programmes and referrals to Commissioned Rehabilitative Services through the Dynamic Framework, which include services to support issues with accommodation, debt, emotional well-being, women’s services and more<sup>1</sup>. It can be posed to Probation colleagues whether ranges would now be a helpful addition to the RAR in the community order levels table if the Council agrees for this area to be included in the review.

***Question: Is the Council content for the community order levels table to be included in the review of the Imposition Guideline?***

### III. Pre-Sentence Reports

3.19 It is recommended that the pre-sentence report (PSR) section is included for a variety of reasons.

3.20 The Guideline currently has separate information on PSRs in both the Imposition of *Community Orders* and the Imposition of *Custodial Sentences* sections. There may be merit in considering both bringing these two sections together into one section and moving that section to the beginning of the Guideline. Section 30(2) of the Sentencing Code 2022 sets out that the “*the court must obtain and consider a pre-sentence report before forming the opinion*”; PSRs are requested prior to a final decision of a sentence and should necessarily influence that sentence should information be contained in them that is helpful to the court. For example, the Guideline encourages sentencers to consider whether a sentence of imprisonment is unavoidable if a community order could provide sufficient restriction on an offender’s liberty and address rehabilitation, which information in a PSR could support.

3.21 Secondly, the colleagues in the Justices’ Legal Advisers and Court Officers’ Service (formerly Justices’ Clerks’ Society) have suggested a variety of amendments to the wording in the pre-sentence report sections. These suggestions have been made to provide sentencers with more guidance on when to give, or not give, an indication of sentence and what information should be highlighted in a report, to the probation service when requesting a PSR. The suggested amendments were posed to the Magistrates Courts Sentencing

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<sup>1</sup> Page 86 of the Target Operating Model sets this out in more detail  
[MOJ7350\\_HMPPS\\_Probation\\_Reform\\_Programme\\_TOM\\_Accessible\\_English\\_LR.pdf](#)  
([publishing.service.gov.uk](http://publishing.service.gov.uk))

Guidelines Working Group as part of the Miscellaneous Amendments project in February 2022 and while some proposals were agreed with, views were split on others, specifically how and when the court should give an indication to probation of the court's preliminary view of the sentence. Inclusion would merit further consideration of the various issues and would allow us to seek views from a broader range of interested parties, not least the Probation Service that produces PSRs.

3.22 A further reason for the inclusion of the pre-sentence report section in the Guideline review pertains to the level of direction the Guideline currently gives sentencers to request a PSR in line with the legislation. In discussions during the development of the Imposition Guideline in 2016, the Council agreed it may be better for more detailed direction on PSRs to be outlined by the Criminal Procedure Rules Committee (CPRC) or the Criminal Practice Directions (CPD). While this topic has been discussed by the CPRC over the years, the Criminal Procedure Rules and the Criminal Practice Directions still say little about the process for getting a PSR, and nothing about what a PSR should contain. Considering this, it may be timely to revisit whether the Guidelines should give more detail.

3.23 Finally, there is an error to be corrected in the pre-sentence report paragraph in the custodial sentence section. The Guideline states: "*Whenever the court reaches the provisional view that:*

- *the custody threshold has been passed; and, if so*
- *the length of imprisonment which represents the shortest term commensurate with the seriousness of the offence;*

*the court should obtain a pre-sentence report, whether verbal or written, unless the court considers a report to be unnecessary. Ideally a pre-sentence report should be completed on the same day to avoid adjourning the case."*

3.24 The second bullet of this paragraph is either missing a word or has an extra word, and, as such, is not easily understandable.

3.25 A review of the PSR section does not necessarily mean that the conclusion would be to bring together the two current texts, or include further direction and detail, however it is recommended that this is explored as to the relative benefits and risks.

***Question: Is the Council content for the pre-sentence reports to be included in the review of the Imposition Guideline?***

#### IV. Suspended sentence orders (SSOs)

3.26 As mentioned previously, a significant driver behind the development of the Guideline was to ensure that SSOs were only being imposed as a custodial sentence that was then suitable to be suspended, not as a more severe form of a CO in which the custody threshold had not been passed and therefore custody could not reasonably be activated in breach. The resource assessment of the Guideline, therefore, set out an anticipated increase in the number of COs and a corresponding decrease in the numbers of SSOs. While this trend was not seen immediately after the publication of the Guideline, ongoing internal analysis has found evidence to support this occurring after the issuing of a letter to the judiciary by the then Chairman of the Sentencing Council, which emphasised the need for sentencers to follow the Guideline. The full findings will be circulated to the Council at a later date.

3.27 It may be beneficial to explore further whether and when SSOs are still being imposed as more severe forms of COs, and/or whether a further increase of SSOs at the expense of immediate custody is expected, intended and/or beneficial. This could be explored through engagement with sentencers to see whether it is now clear that an SSO should only be sentenced once the decision to impose a custodial sentence has been made, what information sentencers use in the decision to suspend, and how sentencers receive that information.

***Question: Is the Council content for suspended sentence orders (SSOs) to be included in the review of the Imposition Guideline?***

## V. Thresholds

3.28 Currently, the community order threshold and the custodial threshold are not presented in the same way. The first mention of the community order threshold is in the general principles, but does not set out what this is, and then it is referred to in the community order levels table. The custodial threshold is then referred to below this in more detail. Similar to the PSR section, thresholds for community and custodial sentences are considered chronologically prior to the detail of the relevant sentences, but this not reflected in the Guideline.

3.29 It would be interesting to explore how well understood the thresholds are by sentencers and whether there is a large ‘cusp of custody’ cohort that the Guideline could provide more direction on. Max has suggested that it may be beneficial to scope what role the Sentencing Council might play in cases around the cusp of custody; specifically those that may cross the custodial threshold but due to mitigating factors (or other), a CO is, or could be, imposed instead. For cusp of custody cases, the Guideline currently states “*imprisonment should not be imposed where there would be an impact on dependants which*

would make a custodial sentence disproportionate to achieving the aims of sentencing.” It is possible that more could be said in cusp of custody cases, especially as this cohort of cases is not well defined. The Crown Prosecution Service applies public interest factors to determine whether prosecution or diversion is the right outcome, so the use of a similar approach for the Council might be one way in which this could be explored.

**Question: Is the Council content for community and custodial thresholds to be included in the review of the Imposition Guideline?**

## VI. Electronic Monitoring

3.30 The recommendation to include electronic monitoring (EM) in the Guideline review does not pertain to the current EM section specifically, but the presentation of electronic monitoring generally across different sections in the guideline.

3.31 Firstly, the list of requirements in the Requirements section does not include EM, in either of its two statutory forms. This is different to the legislation, which lists both the *electronic compliance monitoring requirement* and the *electronic whereabouts monitoring requirement* in the Community Order requirements table at section 201, totalling 14 requirements rather than the 12 listed in the Guideline. While the *electronic compliance monitoring requirement* is linked and therefore not applicable without the imposition of at least another relevant order (such as curfew), the *electronic whereabouts monitoring requirement* may be imposed without the imposition of another requirement (though in reality is likely to be imposed with another requirement). The inclusion of EM in this review would allow Council to consider the benefits of aligning the number of requirements in the Requirements section of the Guideline with the number in the legislation.

3.32 Further to this, recent probation guidance has set out operational expectations for probation court duty officers to do a risk assessment on the suitability of all EM requirements to ensure PSR authors only recommend EM and curfew requirements where it is safe to do so, for example for safeguarding or domestic abuse concerns. This guidance sets out that information must be sourced from the police, the local authority and the main property resident; that EM cannot be recommended if information from the police is not received; and that an adjournment should be requested where time is needed to collate this information.

3.33 Currently, the Guideline states an exception for imposing EM with a curfew or exclusion requirement as, amongst others, “*in the particular circumstances of the case, it considers it inappropriate to do so.*” It may be beneficial to consider whether the Guideline ought to reflect similar points to the issues probation are required to consider, to strengthen



safeguarding for EM cases and ensure consistency in approach. For example, the Guideline could encourage or mandate that when sentencers are considering a CO with a curfew and EM requirement, they either request a PSR or an alternative risk/safeguarding assessment. In cases of EM, it may be reasonable to state that there can be no 'exceptional circumstances' that would preclude a safeguarding check. This could be explored with the inclusion of EM in the review of this Guideline.

***Question: Is the Council content for electronic monitoring to be included in the review of the Imposition Guideline?***

## VII. Structure and style of the Guideline

3.34 The current structure of the Imposition Guideline is arguably not in chronological order, unlike offence-specific guidelines. Ad hoc feedback from a magistrate has raised this as an issue and suggested that it would be helpful for the Imposition Guideline to have the 'step' approach as in the offence-specific guidelines. The Council may wish to consider whether a different structure, more in line with the chronology of a sentencing hearing, may improve the use and understanding of the Guideline.

3.35 For example, pre-sentence reports can, and are encouraged to, be requested before a sentencing decision, and can be before a hearing. Pending the decision of the Council on what amendments may be necessary to the pre-sentence report section, it may be more appropriate for the PSR section to be the first section of the guideline, as mentioned above.

3.36 Further, the current flow chart in the Guideline needs to be reviewed as in its current form it is not suitable for digital use. It references "section 4 at pages 7 and 8", which no longer make sense with the digital guideline which has no numbered sections or pages.

3.37 On that note, it may be helpful to reformat the Guideline to have numbered sections to make it easier to access. The OSC has also received some feedback from a magistrate via the website feedback tool that suggests the Guideline could be condensed into bullet points to make for easier reading and retaining.

3.38 Finally, the Guideline also still contains a variety of footnotes. It should be considered whether this format of legislation references is the best for the digital guideline. All of the above and any related issues will be considered if the Council agrees to include this section.

***Question: Is the Council content for the structure and style of the guideline to be included in the review of the Imposition Guideline?***

VIII. Points of principle on issues affecting sentencing specific cohorts of offenders, including issues raised by the Equality and Diversity Working Group and consideration of the way we currently reference the Equal Treatment Bench Book

3.39 The Guideline does not currently include any information on, or points of principle about sentencing specific cohorts of people, in particular young adults, carers, old/infirm offenders, those with neurodiverse characteristics and female offenders. There are considerable issues affecting the sentencing of these cohorts, some of which are currently dealt with in more detail in the Expanded Explanations, and this review could explore the benefits of including some of these considerations in the main body of the Guideline.

3.40 While there is a specific definitive guideline on sentencing children and young people and on sentencing offenders with *mental disorders, developmental disorders or neurological impairments*, there is no reference to these in the Imposition Guideline, nor is there any separate guideline on sentencing other notable groups, for example female offenders. There is considerable justification for female offenders in particular to be included in the consideration of points of principle due to the volume of research and data evidencing the impact of custody on women, their families and their communities. For example, there are far fewer women's prisons nationally than men's, so the likelihood of a female offender being housed further away from home is much higher, and women are more likely to have dependants who would be detrimentally impacted by their imprisonment. This point is also relevant to old or infirm offenders.

3.41 Finally, there are a number of considerations that are under active consideration by the Council's Equality and Diversity group. This may include, for example, considerations of whether and what additional information ought to be considered when sentencing those from minority ethnic backgrounds, or those from lower social-economic backgrounds. While we do not yet have final findings of this work, the Council may wish for us to explore whether the Imposition Guideline review could be a suitable vehicle for delivering some of these improvements. Similarly, the Council may also wish to consider the way we currently reference the Equal Treatment Bench Book. This will also be included in the review should Council agree various points of principle should be considered.

***Question: Is the Council content for the various points of principle to be included in the review of the Imposition Guideline?***

IX. Deferred sentences

3.42 There is currently no reference to deferred sentences in guidelines but some limited guidance is set out in the explanatory materials to magistrates' guidelines.

3.43 There has been recent literature and discussion mostly in the academic community about deferred sentencing. Julian Roberts suggested in a seminar in November 2021 that the guidance on deferred sentences in the explanatory materials could be reviewed as more offenders, specifically vulnerable or female offenders, may benefit from the opportunity to demonstrate to the court that they can make sufficient progress towards desistance to justify a non-custodial sentence. In addition, Elaine has written about the lack of guidelines for deferred sentencing and is speaking at a Sentencing Academy seminar on this topic on 21 July 2022. Ruth posed the inclusion of deferred sentences to the MCSG working group who agreed it was a topic which warrants fuller consideration as they are currently rarely used.

3.44 The Ministry of Justice's Sentencing White Paper 'A Smarter Approach to Sentencing' published in September 2020 also included a section on Deferred Sentencing, which set out the commitment of the government to encourage courts to use existing legislation on deferred sentencing and services such as Liaison and Diversion to divert vulnerable offenders into services and away from the criminal justice system. The White Paper referenced vulnerable women in particular, whom, they stated, "*are likely to benefit from referral to a woman's centre*" as an example. The White Paper states "*A greater use of deferred sentencing will also provide opportunities for restorative justice practices to be deployed*". The Sentencing Act 2020 specifies a similar circumstance for a deferment order, namely that requirements can be imposed which may include requirements as to the residence of the offender or restorative justice requirements.

3.45 The Council may wish to explore the benefits of including deferred sentencing in the Imposition Guideline. As the Guideline covers the process of sentencing from pre-sentence report stage, it may be reasonable to consider a section or reference to deferred sentencing in this process.

3.46 The inclusion of deferred sentencing in the review would also consider any available data on the volume and efficacy of deferred sentencing, though this data is likely to be limited and may not be accurate.

***Question: Is the Council content for deferred sentencing to be included in the review of the Imposition Guideline?***

- X. Five purposes of sentencing, including information on rehabilitation preventing crime more generally

3.47 Finally, there are currently no guidelines that contain explicit reference to the five statutory purposes of sentencing (though these are set out on a public-facing page on the Council website). Although Council has previously resisted the suggestion to include the five purposes in offence-specific guidelines, it has been suggested more recently that there may be merit in considering whether the five purposes of sentencing should be contained in the Guideline. The relative benefits of this inclusion can be explored in the review.

3.48 Further to this, it may be useful to continue the conversation to consider explicitly referencing rehabilitation being one way to prevent crime and reoffending. There is a wealth of research in this area, and while the Guideline does encourage rehabilitation to be considered in a range of ways, it is not directly set out what impact rehabilitation may have on preventing crime. This can be explored as part of the imposition guideline should the Council wish to include this section for review.

***Question: Is the Council content for the five purposes of sentencing to be included in the review of the Imposition Guideline?***

#### **4 EQUALITIES**

4.1 There are no equalities considerations for the time being as this is a scoping paper for potential areas to be included in a review. The recommendations made simply pose areas to be considered. Equalities will be considered in more detail at the project progresses.

#### **5 IMPACT AND RISKS**

5.1 This scoping paper poses many areas to be considered as part of the review of the Guideline. There is a small possibility that the inclusion of these areas may raise expectations that all sections mentioned will eventually be updated. To mitigate this expectation, it should and will be made clear to all stakeholders that any relevant discussions are preliminary only and may not result in any changes.