

9 June 2022

Dear Members

## Meeting of the Sentencing Council – 17 June 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 17 June 2022 and will from 9:45 to 14:15.**

**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)JUN00 |
| ▪ Minutes of meeting held on 13 May | SC(22)MAY01 |
| ▪ Action log                        | SC(22)JUN02 |
| ▪ Miscellaneous amendments          | SC(22)JUN03 |
| ▪ Imposition                        | SC(22)JUN04 |
| ▪ Child Cruelty                     | SC(22)JUN05 |
| ▪ Guideline priorities              | SC(22)JUN06 |
| ▪ Annual Report                     | SC(22)JUN07 |
| ▪ Totality                          | SC(22)JUN08 |

## 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

**17 June 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 | Miscellaneous amendments - presented by Ruth Pope (paper 3)    |
| 11:00 - 11:30 | Imposition Guideline - presented by Jessie Stanbrook (paper 4) |
| 11:30- 11:45  | Break  |
| 11:45 - 12:30 | Child cruelty - presented by Ollie Simpson (paper 5)           |
| 12:30 - 12:45 | Guideline priorities - presented by Steve Wade (paper 6)       |
| 12:45 - 13:00 | Annual Report - presented by Phil Hodgson (paper 7)            |
| 13:00 - 13:30 | Lunch  |
| 13:30 - 14:15 | Totality - presented by Ruth Pope (paper 8)                    |

# Sentencing Council

## COUNCIL MEETING AGENDA

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## MEETING OF THE SENTENCING COUNCIL

13 MAY 2022

### MINUTES

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|---|--|
| <u>Members present:</u>                     | Tim Holroyde (Chairman)<br>Rosina Cottage<br>Rebecca Crane<br>Rosa Dean<br>Nick Ephgrave<br>Michael Fanning<br>Diana Fawcett<br>Adrian Fulford<br>Jo King<br>Maura McGowan<br>Alpa Parmar<br>Beverley Thompson   |
| <u>Apologies:</u>                           | Max Hill<br>Juliet May   |
| <u>Representatives:</u>                     | Hanna van den Berg for the Lord Chief Justice<br>(Legal and Policy Advisor to the Head of Criminal<br>Justice)<br>Lynette Woodrow, for the DPP (Head of the<br>Director of Legal Services Team)<br>Claire Fielder for the Lord Chancellor (Director,<br>Youth Justice and Offender Policy) |
| <u>Observers:</u>                           | Sarah Bergstrom, Criminal Appeal Office  |
| <u>Members of Office in<br/>attendance:</u> | Steve Wade<br>Mandy Banks<br>Ruth Pope<br>Zeinab Shaikh<br>Ollie Simpson   |

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

- 1.1 The minutes from the meeting of 8 April 2022 were agreed.

## **2. MATTERS ARISING**

- 2.1 The Chairman noted that this was the last meeting for both Adrian Fulford and Mike Fanning. He thanked them both for their excellent work on behalf of the Council. On behalf of the Council he wished Adrian well for his retirement. He also thanked Mike for having continued to serve after his appointment as a Circuit Judge, in order to allow time for a new District Judge member to be appointed.

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

- 3.1 The Council considered and agreed draft guidance on disqualification periods for inclusion in the proposed motoring guidelines. Following a discussion on the estimated impacts of the proposed guidelines on the prison population, the Council agreed to sign off on the 12 draft motoring guidelines for consultation.

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

- 4.1 The Council considered a diverse range of matters, many of which were raised by guideline users but which also included changes necessitated by the Police, Crime, Sentencing and Courts (PCSC) Act 2022. The Council agreed to consult on changes to the wording on discretionary disqualification in the explanatory materials to the magistrates' courts sentencing guidelines and breach of a post sentence supervision guideline.
- 4.2 The Council also agreed that some of the changes arising from the PCSC Act could be made without consultation, but the exact wording of the revised text in guidelines should be discussed and agreed at the June Council meeting in time for them coming into force on 28 June 2022.

## **5. DISCUSSION ON BLACKMAIL AND THREATS TO DISCLOSE – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL**

- 5.1 The Council considered proposals for work on a new guideline for blackmail offences, noting that blackmail was one of the few serious offences remaining without a guideline. The Council confirmed that work should start on this new guideline.

- 5.2 The Council also discussed some changes brought in by the Domestic Abuse Act 2021, namely the expansion of the disclosing private sexual images offence to include threats to disclose, and the creation of the new strangulation and suffocation offence. The commencement date for the latter offence is to be June 2022.
- 5.3 The Council discussed the merits of either starting work straight away on a new guideline for the strangulation and suffocation offence, or waiting for a period of time to see volumes of likely cases, etc before starting work, and potentially creating some interim guidance in the meantime. The Council asked that thought be given to creating some interim guidance, to be brought back to the meeting next time the project is discussed.
- 5.4 As it has been a year since the changes to the disclosing private sexual images offence came into force, the Council was content for work to begin to either amend the existing guideline or potentially develop a new guideline, to take into account the changes.

**6. DISCUSSION ON TERRORISM – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL**

- 6.1 The Council considered responses to the consultation on the approach to cases involving undercover police or security services in the Preparation of terrorist acts, and Explosive substances (terrorism only) guidelines and agreed changes to take account of those responses and the research carried out with judges.
- 6.2 The Council discussed the remaining issues arising from the consultation and signed-off the revised guidelines for publication in July, to come into force in October.

**7. DISCUSSION ON AGGRAVATED VEHICLE TAKING – PRESENTED BY ZEINAB SHAIKH, OFFICE OF THE SENTENCING COUNCIL**

- 7.1 This was the first meeting to discuss potential revisions to the sentencing guidelines for aggravated vehicle taking without consent, last updated in 2008. The Council considered the scope of this offence and agreed to proceed with four sentencing guidelines for offences involving: vehicle/property damage; dangerous driving; injury; and death.
- 7.2 The Council also discussed how culpability and harm factors could be updated in line with the structure of more recent guidelines, agreeing to a number of revisions and additional factors.

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## SC(22)JUN02 June Action Log

### ACTION AND ACTIVITY LOG – as at 9 June 2022

|  | Topic           | What  | Who                               | Actions to date | Outcome                                      |
|--|-----------------|---|-----------------------------------|-----------------|--|
| <b>SENTENCING COUNCIL MEETING 8 April 2022</b> |                 |   |                                   |                 |  |
| 1  | <b>Totality</b> | Working group to meet to discuss outstanding issues | <b>Tim, Maura, Jo and Rebecca</b> |                 | <b>ACTION CLOSED:</b> Meeting held on 16 May |

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

**17 June 2022**  
**SC(22)JUN03 – Miscellaneous**  
**Amendments**

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

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

## **1 ISSUE**

1.1 This is the second of three meetings to decide the content of this year's annual consultation on miscellaneous changes to guidelines and supporting material.

1.2 At the May meeting the Council considered various possible changes (arising from feedback from users and from legislative changes) and considered whether these could be made with or without consultation. At this meeting the proposed changes will be set out in more detail in order for those decisions to be made. There are further matters arising from legislative changes which will affect the Sentencing children and young people guideline and these will be considered at the July meeting.

1.3 The timetable we aim to keep to is to consult from September to November and consider the responses to the consultation 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 action should be taken in relation to the diverse 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 Imposition guideline*

3.1 This is covered in a separate paper presented by Jessie Stanbrook.

*The wording on obligatory disqualification in guidelines.*

3.2 The Council agreed to update the wording relating to disqualification in the [drug driving guidance](#) and the [excess alcohol guideline](#) subject to clarifying the relevant dates for each provision (commission of offence, conviction or imposition of disqualification). The changes proposed below would also apply to the [unfit through drink or drugs \(drive/ attempt to drive\)](#) and the [fail to provide specimen for analysis \(drive/attempt to drive\)](#) guidelines.

Suggested additions in red and deletions ~~struck through~~:

- Must endorse and disqualify for at least 12 months
- Must disqualify for at least 2 years if offender has had two or more disqualifications for periods of 56 days or more **imposed** in ~~preceding the~~ 3 years **preceding the commission of the current offence** – refer to [disqualification guidance](#) and consult your legal adviser for further guidance
- Must disqualify for at least 3 years if offender has been **convicted** of a relevant offence in ~~preceding the~~ 10 years **preceding the commission of the current offence** – consult your legal adviser for further guidance
- [Extend disqualification](#) if imposing immediate custody

3.3 Confusingly the position is different depending on the statutory provision. The requirement in the Road Traffic Offenders Act 1988 s.34(4)(b) to disqualify for at least two years depends on more than one previous disqualification having been **imposed** in the three years preceding the commission of the current offence. Whereas the requirement under s.34(3) to disqualify for at least three years, depends on being **convicted** of a relevant offence in the ten years preceding the commission of the current offence.

3.4 A further complication relating to totting disqualifications is the way in which points on the licence are taken into account – for these purposes the points that count are any relating to offences **committed** in the three years up to and including commission of the current offence (s.29 RTOA) – see further 3.8 below.

3.5 It may also be helpful to modify the disqualification guidance linked to from the guidelines. Suggested additions in red and deletions ~~struck through~~:

### 1. Obligatory disqualification

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

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

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

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

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

- ~~causing death by careless driving when under the influence of drink or drugs;~~
- **driving or attempting to drive while unfit;**
- **driving or attempting to drive with excess alcohol;**



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

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

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

3.6 The changes proposed above seek to clarify the present position but also to ensure that the guidance is still accurate when the changes brought about by the Police, Crime, Sentencing and Courts Act 2022 ('PCSC') come into force (the minimum disqualification for causing death by careless driving whilst under the influence of drink or drugs will be 5 years, increasing to 6 years for repeat offending).

3.7 Consulting on the proposed changes would ensure that the wording is clear and helpful to guideline users and would serve to draw attention to the changes.

**Question 1: Does the Council agree to consult on the changes proposed for obligatory disqualification?**

*The wording on discretionary bans in the totting guidance*

3.8 At the last meeting the Council agreed to consult on amending the wording in the explanatory materials to the MCSG on 'totting up' disqualifications and discretionary disqualifications. The proposed changes are set out on page 1 of Annex A.

3.9 However, as noted at 3.4 above, the way in which points are taken into account is subtly different to the way previous disqualifications are taken into account and it may also be useful to set this out in the guidance. The ['totting up' guidance](#) currently opens with:

Incurring 12 or more penalty points within a three-year period means a minimum period of disqualification must be imposed (a 'totting up disqualification') – s.35 Road Traffic Offenders Act (RTOA) 1988.

3.10 Section 20 RTOA states:

**29.— Penalty points to be taken into account on conviction.**

(1) Where a person is convicted of an offence involving obligatory endorsement, the penalty points to be taken into account on that occasion are (subject to subsection (2) below)—

- (a) any that are to be attributed to the offence or offences of which he is convicted, disregarding any offence in respect of which an order under section 34 of this Act is made, and

(b) any that were on a previous occasion ordered to be endorsed on his driving record, unless the offender has since that occasion and before the conviction been disqualified under section 35 of this Act.

(2) If any of the offences was committed more than three years before another, the penalty points in respect of that offence shall not be added to those in respect of the other.

3.11 Suggested revised wording:

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

**Question 2: Does the Council agree to consult on the changes to the totting up guidance as set out at Annex A and 3.11 above?**

*Default relevant weekly income amounts*

3.12 The Council considered whether to consult on amending the default relevant weekly income (RWI) figures used to calculate fines, and concluded that in the current financial climate it would not be appropriate to do so. However, it was recognised that the information currently on the website in the explanatory materials setting out how the figures were arrived at was out of date and potentially misleading. The proposal is to remove the detailed explanation of how the amounts were calculated and to simplify the explanation in relation to those on low income/ benefits.

3.13 The proposed wording is in Annex A from page 2. The change to the wording will not affect sentences. If the Council were to consult on the change of wording it risks opening a debate about the default RWI figures and the reasons why the Council has chosen not to review them. Therefore, the recommendation is not to consult on this change but simply to log it in the record of minor amendments. Alternatively, the Council may feel that in the interests of transparency, it should consult on the decision not to review the figures at this time.

**Question 3: Does the Council agree to remove the explanations of how the default RWI figures were calculated, and to do so without consultation?**

*Changes required by legislation*

3.14 The Council asked for detailed proposals for how changes required by provisions in the PCSC relating to sentencing (most of which come into force on 28 June) could be dealt with in guidelines. In drafting the proposals it has become apparent that some of the changes are not entirely straightforward and the Council may feel it appropriate to consult on

the wording. If that is the case, the issue will remain of what changes should be made to guidelines in the short term.

#### *Assaults on emergency workers*

3.15 [Section 2](#) of the PCSC doubles the maximum penalty for assaulting an emergency worker for offences committed on or after 28 June. This is a change that the Council had anticipated when it developed the guideline and referenced in the response to the consultation. Therefore, it is proposed that the necessary changes can be made to the guideline without further consultation.

3.16 The proposal is to change the maximum from 1 year to 2 years and add the highlighted wording at the top of the [guideline](#):

#### **Section 39**

Triable only summarily

Maximum: 6 months' custody

Offence range: Discharge – 26 weeks' custody

#### **Racially or religiously aggravated offence – Section 29**

Triable either way

Maximum: 2 years' custody

#### **Offence committed against an emergency worker – Section 1**

Triable either way

Maximum: 2 years' custody (1 year's custody for offences committed before 28 June 2022)

3.17 Also, at step 3 of the guideline:

### **ASSAULT ON EMERGENCY WORKER AGGRAVATED OFFENCES**

**Maximum sentence for the aggravated offence of assault on an emergency worker is 2 years' custody (1 year's custody for offences committed before 28 June 2022)**

**Question 4: Does the Council agree to make the changes relating to assaults committed against an emergency worker without consultation?**

3.18 [Section 3](#) of the PCSC 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. Section 285A is reproduced at page 4 of Annex A.

3.19 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). This provision will apply only very rarely in practice and so it is proposed to make only minor changes to the [guideline](#).

3.20 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).

3.21 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)

3.22 It is proposed that these changes could be made without consultation, as they simply reflect the change in the legislation. Additionally or alternatively, the Council may feel that it would be preferable to give more detailed guidance, possibly by adding an exceptional circumstances step to the guideline. If so, proposals will be brought to the July meeting.

**Question 5: Does the Council agree to make the changes set out above to the unlawful manslaughter guideline without consultation?**

#### *Criminal damage to memorials*

3.23 [Section 50](#) of the PCSC inserts subsections 11A to 11D and amends schedule 2 to the Magistrates' Courts Act 1980 which has the effect of excluding criminal damage to memorials from offences which are to be tried summarily if the value involved is not more than £5,000 (for offences committed on or after 28 June 2022). Criminal damage which is to be tried summarily has a maximum sentence of 3 months' custody and/or a £2,500 fine whereas the either way offence has a maximum of 10 years.

3.24 The header of the [guideline](#) where the damage does not exceed £5,000 reads:

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

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

Effective from: 01 October 2019

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

Triable only summarily

Maximum: Level 4 fine and/or 3 months' custody

Offence range: Discharge – 3 months' custody

**Note:** Where an offence of criminal damage is **added** to the indictment at the Crown Court (**having not been charged before**) the statutory maximum sentence is 10 years' custody regardless of the value of the damage. In such cases where the value does not exceed £5,000, the exceeding £5,000 guideline should be used but regard should also be had to this guideline.

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

Triable either way

Maximum: 14 years' custody

### Option one

3.25 There are several possible ways of reflecting this change; one would be to add the following text to the header of the under £5,000 guideline:

This guideline does **not** apply to an offence committed by destroying or damaging a memorial as defined by s22(11A) - (11D) of the Magistrates' Courts Act 1980 if committed on or after 28 June 2022. In such cases refer to the [Criminal damage over £5,000 guideline](#).

3.26 If sentencers are to be guided to the [over £5,000 guideline](#), this would need to be amended to indicate that it may apply to cases where the value is less than £5,000 if it is an offence committed by destroying or damaging a memorial, for example by adding:

This guideline also applies to cases where the value is less than £5,000 if it is an offence committed by destroying or damaging a memorial as defined by s22(11A) - (11D) of the Magistrates' Courts Act 1980 committed on or after 28 June 2022.

### Option two

3.27 However, it could be argued that the under £5,000 guideline would still be appropriate for sentencing low value cases of criminal damage to memorials (which could, for example, be a bunch of flowers), in which case the header could be amended to read:

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

Triable only summarily (except as noted below\*)

Maximum: Level 4 fine and/or 3 months' custody

Offence range: Discharge – 3 months' custody

**Note:** Where an offence of criminal damage is **added** to the indictment at the Crown Court (**having not been charged before**) the statutory maximum sentence is 10 years' custody regardless of the value of the damage. In such cases where the value does not exceed £5,000, the exceeding £5,000 guideline should be used but regard should also be had to this guideline.

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

Maximum: 10 years' custody

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

Triable either way

Maximum: 14 years' custody

### Option three

3.28 Another solution would be to amend the existing note in both guidelines relating to cases added to the indictment at the Crown Court. For the under £5,000 guideline:

**Note:** Where an offence of criminal damage:  
a) is **added** to the indictment at the Crown Court (**having not been charged before**)  
**or**  
b) it is an offence committed by destroying or damaging a memorial as defined by s22(11A) - (11D) of the Magistrates' Courts Act 1980 committed on or after 28 June 2022  
the statutory maximum sentence is 10 years' custody regardless of the value of the damage. In such cases where the value does not exceed £5,000, the exceeding £5,000 guideline should be used but regard should also be had to this guideline.

For the exceeding £5,000 guideline:

**Note:** Where an offence of criminal damage:  
a) is **added** to the indictment at the Crown Court (**having not been charged before**)  
**or**  
b) it is an offence committed by destroying or damaging a memorial as defined by s22(11A) - (11D) of the Magistrates' Courts Act 1980 committed on or after 28 June 2022  
the statutory maximum sentence is 10 years' custody regardless of the value of the damage. In such cases where the value does not exceed £5,000 regard should also be had to the not exceeding £5,000 guideline.

3.29 None of the proposed solutions is entirely satisfactory, but option three has the advantage of being fairly straightforward and giving sentencers the maximum flexibility to sentence according to the seriousness of the offending in individual cases.

3.30 The Council may feel, that as the choice of how to approach this could affect the level of sentence, it would be appropriate to consult. If so, the Council will need to consider how the guideline(s) should reflect the change in the short term (possibly option 2?).

**Question 6: Does the Council agree to consult on making the changes in option 3? If so, should any interim changes be made?**

*Minimum terms – exceptional circumstances*

3.31 [Section 124](#) of the PCSC 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.

3.32 Step 3 of the [possession of a bladed article/offensive weapon guideline](#) is reproduced on page 5 of Annex A.

3.33 Any changes to step 3 will need to accommodate both tests (at least in the short term). This could be achieved by having the two different tests as dropdowns within step 3. The proposed wording for the exceptional circumstances test is adapted from the firearms and revised terrorism guidelines:

**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.**

A ‘relevant offence’ includes those offences listed above and the following offences:

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

## Unjust in all of the circumstances

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In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offence or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

### The offence

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offence(s) and the period of time that has elapsed between offences. Where the seriousness of the combined offences is such that it falls far below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

### The offender

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

## Exceptional circumstances

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In considering whether there are exceptional circumstances that would justify not imposing the minimum term the court must have regard to:

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

either of which may give rise to exceptional circumstances.

Where the 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

The circumstances must truly be exceptional. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.

It is important that courts adhere to the statutory requirement and do not too readily accept exceptional circumstances.

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

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



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

Where exceptional circumstances are found

If there are exceptional circumstances that justify not imposing the statutory minimum sentence then the court must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.

3.34 For the [threats guideline](#) the changes could be the same. The only difference being that the first part of step 3 would read:

When sentencing these offences a court must impose a sentence of at least 6 months imprisonment **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.**

3.35 The proposed changes go beyond merely updating the statutory wording, and so it is recommended that they are consulted on. If the Council agrees to consult, consideration will need to be given to what changes should be made in the short term. This could possibly be adding a note to step 3 in both guidelines which says:

For offences committed on or after 28 June 2022 the minimum sentence must be imposed unless 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.

**Question 7: Does the Council agree to consult on the proposed changes to the bladed articles/offensive weapons guidelines? If so, should a note be added to the guidelines in the interim?**

3.36 The same approach could be applied to the [supply of prohibited drugs](#) and [drugs importation](#) guidelines.

**Question 8: Should the same approach be applied to the relevant drugs guidelines?**

3.37 The domestic burglary guideline (which comes into force on 1 July 2022) is different in that there is no minimum term step in the guideline. The following is included in the header and repeated above the sentence table:

Where sentencing an offender for a qualifying third domestic burglary, the Court must apply section 314 of the Sentencing Code and impose a custodial term of at least

three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.

3.38 In this guideline the legislative change could be accommodated by changing both occurrences to:

Where sentencing an offender for a qualifying third domestic burglary, the Court must apply section 314 of the Sentencing Code and impose a custodial term of at least three years, unless:.

- (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 As this change does not go beyond merely reflecting the legislative change, it is proposed that it could be made without consultation.

#### **Question 9: Should the proposed changes be applied to the domestic burglary guideline without consulting?**

*Statutory aggravating factor relating to assaults on those providing a public service*

3.40 [Section 156](#) PCSC inserts section 68A into the Sentencing Code which creates a statutory aggravating factor where the victim is a person providing a public service for five offences: common assault, ABH, s20, s18 and threats to kill. This duplicates a factor that is already in all of the guidelines that cover these offences.

3.41 The common assault, ABH, s20, s18 guidelines have the existing (non-statutory) aggravating factor 'Offence committed against those working in the public sector or providing a service to the public or against a person coming to the assistance of an emergency worker'. The threats to kill guideline has the factor 'Offence committed against those working in the public sector or providing a service to the public'.

3.42 A similar factor with the same expanded explanation also appears in the following guidelines: affray; attempted murder; threatening with bladed article/ offensive weapon; disorderly behaviour with intent (s4A Public Order Act); disorderly behaviour (s5 Public Order Act); Drunk and disorderly; Harassment/stalking (fear of violence); Harassment/stalking; Manslaughter (diminished responsibility); Manslaughter (loss of control); Manslaughter (unlawful act); Owner or person in charge of a dog dangerously out of control; Owner or person in charge of a dog dangerously out of control- person injured; Owner or person in charge of a dog dangerously out of control assistance dog injured;

Owner or person in charge of a dog dangerously out of control death caused; threatening behaviour (s4 Public Order Act).

3.43 The common assault, ABH and s20 guidelines also cover the racially or religiously aggravated version of these offences, so for these guidelines the (non-statutory) aggravating factor would still be relevant. The threats to kill and s18 guidelines apply only to offences covered by the new statutory aggravating factor, so the existing factor could be redundant (though not immediately as the new factor applies to convictions on or after 28 June).

3.44 It is proposed to add the following statutory aggravating factor and expanded explanation to the relevant guidelines:

- Offence was committed against person providing a public service, performing a public duty or providing services to the public

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Effective in relation to convictions on or after 28 June 2022

**Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence**

See below for the statutory provisions.

- **Note the requirement for the court to state that the offence has been so aggravated.**
- **Note this statutory factor only applies to certain violent offences as listed below.**
- **For other offences the aggravating factor relating to offences committed against those working in the public sector or providing a service to the public can be applied where relevant.**

The Sentencing Code states:

#### **68A Assaults on those providing a public service etc**

(1) This section applies where—

- (a) a court is considering the seriousness of an offence listed in subsection (3), and
- (b) the offence is not aggravated under section 67(2).

(2) If the offence was committed against a person providing a public service, performing a public duty or providing services to the public, the court—

- (a) must treat that fact as an aggravating factor, and
- (b) must state in open court that the offence is so aggravated.

(3) The offences referred to in subsection (1) are—

- (a) an offence of common assault or battery, except where section 1 of the Assaults on Emergency Workers (Offences) Act 2018 applies;
- (b) an offence under any of the following provisions of the Offences against the Person Act 1861—
  - (i) section 16 (threats to kill);

- (ii) section 18 (wounding with intent to cause grievous bodily harm);
- (iii) section 20 (malicious wounding);
- (iv) section 47 (assault occasioning actual bodily harm);
- (c) an inchoate offence in relation to any of the preceding offences.

(4) In this section—

- (a) a reference to providing services to the public includes a reference to providing goods or facilities to the public;
- (b) a reference to the public includes a reference to a section of the public.

(5) Nothing in this section prevents a court from treating the fact that an offence was committed against a person providing a public service, performing a public duty or providing services to the public as an aggravating factor in relation to offences not listed in subsection (3).

(6) This section has effect in relation to a person who is convicted of the offence on or after the date on which section 156 of the Police, Crime, Sentencing and Courts Act 2022 comes into force.

3.45 The expanded explanation for the existing (non-statutory) aggravating factor could be amended as follows (additions in red):

This reflects:

- the fact that people in public facing roles are more exposed to the possibility of harm and consequently more vulnerable and/or
- the fact that someone is working in the public interest merits the additional protection of the courts.

This applies whether the victim is a public or private employee or acting in a voluntary capacity.

Care should be taken to avoid double counting where the statutory aggravating factor relating to emergency workers **or to those providing a public service, performing a public duty or providing services to the public** applies.

3.46 There seems little point in consulting on these changes which are largely technical and are unlikely to have any impact on sentencing.

**Question 10: Should the proposed changes to accommodate the new statutory aggravating factor for assaults on those providing a public service be applied to the relevant guidelines without consulting?**

*Explanatory materials SHPOs*

3.47 [Section 175](#) PCSC makes changes to section 343 of the Sentencing Code regarding sexual harm prevention orders (SHPOs) which will enable courts to include positive requirements in SHPOs. There is, as yet, no date appointed for when this change will take effect. The Council has published revised guidance on SHPOs in sexual offences guidelines following consultation as follows:

Sentencing Code s345

To make an SHPO, the court must be satisfied that the offender presents a risk of sexual harm to the public (or particular members of the public) and that an order is necessary to protect against this risk. The only prohibitions which can be imposed by an SHPO are those which are necessary for the purpose of protecting the public from sexual harm from the offender.

The order may have effect for a fixed period (not less than five years) or until further order, with the exception of a foreign travel prohibition which must be a fixed period of no more than five years (renewable). Different time periods may be specified for individual restrictions and requirements.

Where an SHPO is made in respect of an offender who is already subject to an SHPO, the earlier SHPO ceases to have effect. If the offender is already subject to a Sexual Offences Prevention Order or Foreign Travel Order made in Scotland or Northern Ireland, that order ceases to have effect unless the court orders otherwise.

Chapter 2 of Part 11 of the Sentencing Code sets out further matters related to making SHPOs [link to be provided].

3.48 The explanatory materials to the MCSG contains [guidance on SHPOs](#) as an ancillary order. It includes the following statements:

The order may include only negative prohibitions; there is no power to impose positive obligations.

The order may have effect for a fixed period (not less than five years) or until further order.

3.49 When section 175 PCSC comes into force the first sentence will be incorrect and can be removed. The second statement could be expanded immediately to include the text agreed for sexual offences:

with the exception of a foreign travel prohibition which must be a fixed period of no more than five years (renewable). Different time periods may be specified for individual restrictions and requirements.

3.50 Another very minor change that can be made is to change references to the 'national probation service' to the 'probation service' (as noted in the paper on the Imposition guideline). That same correction will be made wherever it appears in guidelines, expanded explanations and explanatory materials.

3.51 Any substantive changes have already been consulted on and so it is proposed that there is no need to consult further.

**Question 11: Should the proposed changes to the guidance on SHPOs be made without consulting?**

*Explanatory materials FBOs*

3.52 The explanatory materials to the MCSG contains some [guidance on football banning orders](#). [Section 190](#) of the PCSC has amended Schedule 1 to the Football Spectators Act

1989 (reproduced from page 6 of Annex A) which sets out the offences for which a football banning order can be imposed. The changes are already in force.

3.53 The changes principally affect the following section in the guidance:

disorderly behaviour – Public Order Act 1986, s.5 – committed: (a) during a period relevant to a football match (see below) at any premises while the offender was at, or was entering or leaving or trying to enter or leave, the premises; (b) on a journey to or from a football match and the court makes a declaration that the offence related to football matches; or (c) during a period relevant to a football match (see below) and the court makes a declaration that the offence related to that match;

3.54 This could be amended to read:

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

3.55 Also, the following could be added:

any offence under section 31 of the Crime and Disorder Act 1998 (racially or religiously aggravated public order offences) which the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation,

any offence under section 1 of the Malicious Communications Act 1988 (offence of sending letter, electronic communication or article with intent to cause distress or anxiety) which the court has stated that the offence is aggravated by hostility of any of the types mentioned in section 66(1) of the Sentencing Code (racial hostility etc), and which the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation,

any offence under section 127(1) of the Communications Act 2003 (improper use of public telecommunications network) which the court has stated that the offence is aggravated by hostility of any of the types mentioned in section 66(1) of the Sentencing Code (racial hostility etc), and which the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation.

3.56 The proposed changes merely reflect changes to legislation but it may be helpful to consult on them to ensure that the information is set out in a way that is helpful to users of the MCSG.

**Question 12: Should the proposed changes to the guidance on football banning orders be consulted on?**

*Other changes not previously considered*

3.57 Feedback (via the website) from a magistrate has questioned the use of the term BAME in the [mental disorders guideline](#), it occurs twice in paragraph 5. [Central Government guidance](#) is now not to use that term. The government's preferred style is to write about ethnic or ethnic minority 'groups' and people from ethnic minority 'backgrounds' but not to use the term ethnic minority 'communities'. In addition 'gender and race' might be better expressed as 'gender and ethnicity'. Suggested revised wording:

It is important that courts are aware of relevant cultural, ethnicity and gender considerations of offenders within a mental health context. This is because a range of evidence suggests that people from ~~BAME communities~~ **ethnic minority backgrounds** may be more likely to experience stigma attached to being labelled as having a mental health concern, may be more likely to have experienced difficulty in accessing mental health services and in acknowledging a disorder and seeking help, may be more likely to enter the mental health services via the courts or the police rather than primary care and are more likely to be treated under a section of the MHA. In addition, female offenders are more likely to have underlying mental health needs and the impact therefore on females from ~~BAME communities~~ **ethnic minority backgrounds** in particular is likely to be higher, given the intersection between gender and ~~race~~ **ethnicity**. Moreover, refugees and asylum seekers may be more likely to experience mental health problems than the general population. Further information can be found at Chapters [six](#) and [eight](#) of the Equal Treatment Bench Book.

3.58 These changes to terminology could be made without consultation as they are not substantive, but the Council may feel that consulting on them would draw attention to the changes.

**Question 13: Should the proposed changes to the mental disorders guideline be made and should they be consulted on?**

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

4.1 The impact on sentencing of the majority of the proposals in this paper will be relatively minor. The most significant changes are those necessitated by legislative changes.

4.2 The proposed changes are largely technical and most are unlikely to be of wide interest, but they present an opportunity to show that the Council is responsive to feedback and makes every effort to keep guidelines relevant and up to date. There is also the possibility that the Council may be criticised for the way in which the legislative changes are dealt with.

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**The wording on discretionary bans in the totting guidance** see para 3.8 of paper

| Current wording   | Proposed wording  |
|---|---|
| <p><b><u>Discretionary disqualification:</u></b><br/>In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on his or her licence that he or she would be liable to a ‘totting up’ disqualification if further points were imposed. In these circumstances, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies (see <a href="#">‘totting up’</a>).</p> | <p><b>Discretionary disqualification:</b><br/>In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on his or her licence that he or she would be liable to a ‘totting up’ disqualification if further points were imposed. In these circumstances, unless the court is of the view that the offence should be marked by a period of discretionary disqualification in excess of the minimum totting up disqualification period, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies (<a href="#">see ‘totting up’</a>).</p>                                 |
| <p><b><u>Totting up:</u></b><br/>The court should first consider the circumstances of the offence, and determine whether the offence should attract a <a href="#">discretionary period of disqualification</a>. But the court must note the statutory obligation to disqualify those repeat offenders who would, were penalty points imposed, be liable to the mandatory “totting” disqualification, and should ordinarily prioritise the “totting” disqualification ahead of a discretionary disqualification.</p>                   | <p><b>Totting up:</b><br/>The court should first consider the circumstances of the offence, and determine whether the offence should attract a <a href="#">discretionary period of disqualification</a>. But the court must note the statutory obligation to disqualify those repeat offenders who would, were penalty points imposed, be liable to the mandatory “totting” disqualification and, unless the court is of the view that the offence should be marked by a period of discretionary disqualification in excess of the minimum totting up disqualification period, <b>the court should impose penalty points rather than discretionary disqualification</b> so that the minimum totting up disqualification period applies.</p> |

**Default relevant weekly income amounts** see para 3.13 of paper

| Current wording  | Proposed wording  |
|--|---|
| <p><b><u>3. Definition of relevant weekly income</u></b></p> <p>Where there is no information on which a determination can be made, the court should proceed on the basis of an <b>assumed relevant weekly income of £440</b>. This is derived from national median pre-tax earnings*; a gross figure is used as, in the absence of financial information from the offender, it is not possible to calculate appropriate deductions.</p> <p>Where there is some information that tends to suggest a significantly lower or higher income than the recommended £440 default sum, the court should make a determination based on that information. A court is empowered to remit a fine in whole or part if the offender subsequently provides information as to means (<a href="#">Sentencing Code, s.127</a>). The assessment of offence seriousness and, therefore, the appropriate fine band and the position of the offence within that band are not affected by the provision of this information.</p> <p>*(This figure is a projected estimate based upon the 2012-13 Survey of Personal Incomes using economic assumptions consistent with the Office for Budget Responsibility's March 2015 economic and fiscal outlook. The latest actual figure available is for 2012-13, when median pre-tax income was £404 per week details can be found in an <a href="#">HMRC report</a>. (This link goes to an external website. It will not work if you are offline.))</p> | <p>Where there is no information on which a determination can be made, the court should proceed on the basis of an <b>assumed relevant weekly income of £440</b>.</p> <p>Where there is some information that tends to suggest a significantly lower or higher income than the recommended £440 default sum, the court should make a determination based on that information. A court is empowered to remit a fine in whole or part if the offender subsequently provides information as to means (<a href="#">Sentencing Code, s.127</a>). The assessment of offence seriousness and, therefore, the appropriate fine band and the position of the offence within that band are not affected by the provision of this information.</p>                 |
| <p><b><u>5. Approach to offenders on low income</u></b></p> <p>An offender whose primary source of income is state benefit will generally receive a base level of benefit (for example, jobseeker's allowance, a relevant disability benefit or income support) and may also be eligible for supplementary benefits depending on his or her individual circumstances (such as child tax credits, housing benefit, council tax benefit and similar). In some cases these benefits may have been replaced by Universal Credit. If relevant weekly income were defined as the amount of benefit received, this would usually result in higher fines being imposed on offenders with a higher level of need; in most circumstances that would not properly</p>   | <p>The income of an offender whose primary source of income is state benefit (for example, Universal Credit) will have an income related to their level of need. If relevant weekly income were defined as the amount of benefit received, this would usually result in higher fines being imposed on offenders with a higher level of need; in most circumstances that would not properly balance the seriousness of the offence with the financial circumstances of the offender. Similar issues can arise where an offender is in receipt of a low earned income since this may trigger eligibility for means related benefits such as Universal Credit. It will not always be possible to determine with any confidence whether such a person's</p> |

balance the seriousness of the offence with the financial circumstances of the offender. While it might be possible to exclude from the calculation any allowance above the basic entitlement of a single person, that could be complicated and time consuming. Similar issues can arise where an offender is in receipt of a low earned income since this may trigger eligibility for means related benefits such as working tax credits and housing benefit depending on the particular circumstances. It will not always be possible to determine with any confidence whether such a person's financial circumstances are significantly different from those of a person whose primary source of income is state benefit.

For these reasons, a simpler and fairer approach to cases involving offenders in receipt of low income (whether primarily earned or as a result of benefit) is to identify an amount that is deemed to represent the offender's relevant weekly income.

While a precise calculation is neither possible nor desirable, it is considered that an amount that is approximately half-way between the base rate for jobseeker's allowance and the net weekly income of an adult earning the minimum wage for 30 hours per week represents a starting point that is both realistic and appropriate; this is currently **£120**. The calculation is based on a 30 hour working week in recognition of the fact that many of those on minimum wage do not work a full 37 hour week and that lower minimum wage rates apply to younger people.

With effect from 1 October 2014, the minimum wage is £6.50 per hour for an adult aged 21 or over. Based on a 30 hour week, this equates to approximately £189 after deductions for tax and national insurance. To ensure equivalence of approach, the level of jobseeker's allowance for a single person aged 18 to 24 has been used for the purpose of calculating the mid point; this is currently £57.90. The figure will be updated in due course in accordance with any changes to benefit and minimum wage levels.

financial circumstances are significantly different from those of a person whose primary source of income is state benefit. For these reasons, a simpler and fairer approach to cases involving offenders in receipt of low income (whether primarily earned or as a result of benefit) is to identify an amount that is deemed to represent the offender's relevant weekly income; this is currently **£120**.

**Unlawful act manslaughter** see para 3.18 of paper

Section 3 of the PCSC Act 2022 inserts new s258A (re 16 and 17 year olds), s274A (re 18-20 year olds) and s285A (re 21 and older) in the Sentencing Code.

**285A Required life sentence for manslaughter of emergency worker**

(1) This section applies where—

(a) a person aged 21 or over is convicted of a relevant offence,

(b) the offence was committed—

(i) when the person was aged 16 or over, and

(ii) on or after the relevant commencement date, and

(c) the offence was committed against an emergency worker acting in the exercise of functions as such a worker.

(2) The court must impose a sentence of imprisonment for life 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.

(3) For the purposes of subsection (1)(c) 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) In this section “relevant offence” means the offence of manslaughter, but does not include—

(a) manslaughter by gross negligence, or

(b) manslaughter mentioned in section 2(3) or 4(1) of the Homicide Act 1957 or section 54(7) of the Coroners and Justice Act 2009 (partial defences to murder).

(5) In this section—

“emergency worker” has the meaning given by section 68;

“relevant commencement date” means the date on which section 3 of the Police, Crime, Sentencing and Courts Act 2022 (required life sentence for manslaughter of emergency worker) comes into force.

(6) An offence the sentence for which is imposed under this section is not to be regarded as an offence the sentence for which is fixed by law.

(7) Where an offence is found to have been committed over a period of 2 or more days, or at some time during a period of 2 or more days, it must be taken for the purposes of subsection (1)(b) to have been committed on the last of those days.”

[Possession of a bladed article/offensive weapon guideline](#) see para 3.32 of paper

### **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 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.**

A 'relevant offence' includes those offences listed above and the following offences:

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

### **Unjust in all of the circumstances**

In considering whether a statutory minimum sentence would be 'unjust in all of the circumstances' the court must have regard to the particular circumstances of the offence and the offender. If the circumstances of the offence, the previous offence or the offender make it unjust to impose the statutory minimum sentence then the court **must impose either a shorter custodial sentence than the statutory minimum provides or an alternative sentence.**

### **The offence**

Having reached this stage of the guideline the court should have made a provisional assessment of the seriousness of the current offence. In addition, the court must consider the seriousness of the previous offence(s) and the period of time that has elapsed between offences. Where the seriousness of the combined offences is such that it falls far below the custody threshold, or where there has been a significant period of time between the offences, the court may consider it unjust to impose the statutory minimum sentence.

### **The offender**

The court should consider the following factors to determine whether it would be unjust to impose the statutory minimum sentence;

- any strong personal mitigation;
- whether there is a realistic prospect of rehabilitation;
- whether custody will result in significant impact on others.

**Football Spectators Act 1989 c. 37** see para 3.52 of paper

**Schedule 1 OFFENCES**

**para. 1**

This Schedule applies to the following offences:

(a) any offence under [14J(1), 19(6), 20(10) or 21C(2)]<sup>2</sup> of this Act [ or section 68(1) or (5) of the [Police, Public Order and Criminal Justice \(Scotland\) Act 2006](#) by virtue of section 106 of the [Policing and Crime Act 2009](#)]<sup>3</sup> ,

(b) any offence under section 2 or 2A of the [Sporting Events \(Control of Alcohol etc.\) Act 1985](#) (alcohol, containers and fireworks) committed by the accused at any football match to which this Schedule applies or while entering or trying to enter the ground,

(c) any offence under [section 4, 4A or 5 of the [Public Order Act 1986](#)]<sup>4</sup> ( [fear or provocation of violence, or ]<sup>5</sup> harassment, alarm or distress) or any provision of [Part 3 or 3A]<sup>6</sup> of that Act [(hatred by reference to race etc)]<sup>7</sup> committed during a period relevant to a football match to which this Schedule applies at any premises while the accused was at, or was entering or leaving or trying to enter or leave, the premises,

(d) any offence involving the use or threat of violence by the accused towards another person committed during a period relevant to a football match to which this Schedule applies at any premises while the accused was at, or was entering or leaving or trying to enter or leave, the premises,

(e) any offence involving the use or threat of violence towards property committed during a period relevant to a football match to which this Schedule applies at any premises while the accused was at, or was entering or leaving or trying to enter or leave, the premises,

(f) any offence involving the use, carrying or possession of an offensive weapon or a firearm committed during a period relevant to a football match to which this Schedule applies at any premises while the accused was at, or was entering or leaving or trying to enter or leave, the premises,

(g) any offence under section 12 of the [Licensing Act 1872](#) (persons found drunk in public places, etc.) of being found drunk in a highway or other public place committed while the accused was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(h) any offence under section 91(1) of the [Criminal Justice Act 1967](#) (disorderly behaviour while drunk in a public place) committed in a highway or other public place while the accused was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(j) any offence under section 1 of the [Sporting Events \(Control of Alcohol etc.\) Act 1985](#) (alcohol on coaches or trains to or from sporting events) committed while the accused was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(k) any offence under [section 4, 4A or 5 of the [Public Order Act 1986](#)]<sup>8</sup> ( [fear or

provocation of violence, or ]<sup>9</sup> harassment, alarm or distress) or any provision of [Part 3 or 3A]<sup>6</sup> of that Act [(hatred by reference to race etc)]<sup>7</sup> committed while the accused was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(l) any offence under [section 4, 5 or 5A of the Road Traffic Act 1988]<sup>10</sup> (driving etc. when under the influence of drink or drugs or with an alcohol concentration above the prescribed limit [ or with a concentration of a specified controlled drug above the specified limit]<sup>11</sup> ) committed while the accused was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(m) any offence involving the use or threat of violence by the accused towards another person committed while one or each of them was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(n) any offence involving the use or threat of violence towards property committed while the accused was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(o) any offence involving the use, carrying or possession of an offensive weapon or a firearm committed while the accused was on a journey to or from a football match to which this Schedule applies being an offence as respects which the court makes a declaration that the offence related to football matches,

(p) any offence under the Football (Offences) Act 1991,

(q) any offence under [section 4, 4A or 5 of the Public Order Act 1986]<sup>12</sup> ( [fear or provocation of violence, or ]<sup>13</sup> harassment, alarm or distress) [...] <sup>14</sup> –

(i) which does not fall within paragraph (c) or (k) above,

(ii) which was committed during a period relevant to a football match to which this Schedule applies, and

(iii) as respects which the court makes a declaration that the offence related to that match or to that match and any other football match which took place during that period,

(r) any offence involving the use or threat of violence by the accused towards another person–

(i) which does not fall within paragraph (d) or (m) above,

(ii) which was committed during a period relevant to a football match to which this Schedule applies, and

(iii) as respects which the court makes a declaration that the offence related to that match or to that match and any other football match which took place during that period,

(s) any offence involving the use or threat of violence towards property–

(i) which does not fall within paragraph (e) or (n) above,

(ii) which was committed during a period relevant to a football match to which this Schedule applies, and



- (iii) as respects which the court makes a declaration that the offence related to that match or to that match and any other football match which took place during that period,
- (t) any offence involving the use, carrying or possession of an offensive weapon or a firearm—
  - (i) which does not fall within paragraph (f) or (o) above,
  - (ii) which was committed during a period relevant to a football match to which this Schedule applies, and
  - (iii) as respects which the court makes a declaration that the offence related to that match or to that match and any other football match which took place during that period.
- (u) any offence under [section 166](#) of the [Criminal Justice and Public Order Act 1994](#) (sale of tickets by unauthorised persons) which relates to tickets for a football match [,]<sup>15</sup>
- (v) any offence under any provision of [Part 3 or 3A](#) of the [Public Order Act 1986](#) (hatred by reference to race etc)—
  - (i) which does not fall within paragraph (c) or (k), and
  - (ii) as respects which the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation,
- (w) any offence under [section 31](#) of the [Crime and Disorder Act 1998](#) (racially or religiously aggravated public order offences) as respects which the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation,
- (x) any offence under [section 1](#) of the [Malicious Communications Act 1988](#) (offence of sending letter, electronic communication or article with intent to cause distress or anxiety)—
  - (i) which does not fall within paragraph (d), (e), (m), (n), (r) or (s),
  - (ii) as respects which the court has stated that the offence is aggravated by hostility of any of the types mentioned in [section 66\(1\)](#) of the Sentencing Code (racial hostility etc), and
  - (iii) as respects which the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation,
- (y) any offence under [section 127\(1\)](#) of the [Communications Act 2003](#) (improper use of public telecommunications network)—
  - (i) which does not fall within paragraph (d), (e), (m), (n), (r) or (s),
  - (ii) as respects which the court has stated that the offence is aggravated by hostility of any of the types mentioned in [section 66\(1\)](#) of the Sentencing Code (racial hostility etc), and
  - (iii) as respects which the court makes a declaration that the offence related to a football match, to a football organisation or to a person whom the accused knew or believed to have a prescribed connection with a football organisation.

<sup>15</sup>1



## Notes

- 1 Existing Sch.1 substituted for a new Sch.1 consisting of paras.1 to 4 by Football (Disorder) Act 2000 c. 25 [Sch.1 para.5](#) (August 28, 2000: as 2000/2125)
- 2 Words inserted by Policing and Crime Act 2009 c. 26 [Pt 8 c.2 s.107\(a\)](#) (April 1, 2010)
- 3 Words inserted by Policing and Crime Act 2009 c. 26 [Pt 8 c.2 s.107\(b\)](#) (April 1, 2010)
- 4 Word inserted by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(3\)\(a\)](#) (April 28, 2022: insertion has effect subject to 2022 c.32 s.190(12))
- 5 Words inserted by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(3\)\(b\)](#) (April 28, 2022: insertion has effect subject to 2022 c.32 s.190(12))
- 6 Words substituted by Criminal Justice and Immigration Act 2008 c. 4 [Sch.26\(2\) para.26\(a\)](#) (July 14, 2008)
- 7 Words substituted by Criminal Justice and Immigration Act 2008 c. 4 [Sch.26\(2\) para.26\(b\)](#) (July 14, 2008)
- 8 Word inserted by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(4\)\(a\)](#) (April 28, 2022: insertion has effect subject to 2022 c.32 s.190(12))
- 9 Words inserted by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(4\)\(b\)](#) (April 28, 2022: insertion has effect subject to 2022 c.32 s.190(12))
- 10 Words substituted by Crime and Courts Act 2013 c. 22 [Sch.22 para.15\(a\)](#) (March 2, 2015: substitution has effect as SI 2014/3268 subject to savings and transitional provisions as specified in 2013 c.22 s.15 and Sch.8)
- 11 Words inserted by Crime and Courts Act 2013 c. 22 [Sch.22 para.15\(b\)](#) (March 2, 2015: insertion has effect as SI 2014/3268 subject to savings and transitional provisions as specified in 2013 c.22 s.15 and Sch.8)
- 12 Words inserted by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(5\)\(a\)](#) (April 28, 2022: insertion has effect subject to 2022 c.32 s.190(12))
- 13 Words inserted by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(5\)\(b\)](#) (April 28, 2022: insertion has effect subject to 2022 c.32 s.190(12))
- 14 Words repealed by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(5\)\(c\)](#) (April 28, 2022: repeal has effect subject to 2022 c.32 s.190(12))
- 15 Added by Police, Crime, Sentencing and Courts Act 2022 c. 32 [Pt 10 c.5 s.190\(6\)](#) (April 28, 2022: insertion has effect subject to 2022 c.32 s.190(12))

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

**17 June 2022**  
**SC(22)JUN[04] – Imposition Guideline**  
**n/a**  
**Jessie Stanbrook**  
**jessie.stanbrook@sentencingcouncil.gov.uk**

## **1 ISSUE**

1.1 In the May Council Meeting, there was a broad consensus that if we were to make any amendments to the Imposition Guideline, it would benefit from a more comprehensive review and as such, be done as a standalone project. If the Council agrees to this, in advance of this project, there are some technical amendments which we recommend are made immediately.

## **2 RECOMMENDATION**

2.1 That the council:

- Agrees to do the Imposition Guideline as a comprehensive standalone project;
- Agrees to amending references to the *National Probation Service* to the *Probation Service* (three instances in the Guideline);
- Agrees to removing reference to *Attendance centres* (two instances in the Guideline);
- Agrees to amending the *curfew* wording under the Requirements heading to align with the legislative changes in the Police, Crime, Sentencing and Courts Act 2022 (“PCSC Act”);
- Agrees to amending inconsistencies in the *curfew* wording across the different levels under the Community Orders Levels Table;
- and; Agrees to amending the *curfew* wording under the Community Orders Levels Table to align with the legislative changes in the PCSC Act according to *Option 2*, outlined below.

## **3 CONSIDERATION**

3.1 Following the May Council meeting, further discussion within the Office has led to our view that there is merit in taking forward a review of the Imposition guideline and, in line with Council’s view at the May meeting, this should be a more considered separate project. The various factors that have led to this view include: the Analysis and Research team will shortly be concluding their evaluation of this Guideline (due to be completed next month) which may

uncover potential amendments to be made; HMCTS Legal Operations colleagues have suggested some potential amendments to the PSR sections of the guideline; and there are a number of possible further amendments that might usefully be made related to the inclusion of the purposes of sentencing and the wording from the Expanded Explanations relating to the sentencing of young adults, primary carers and old/infirm offenders that have previously been suggested. If Council members agree in principle to this approach, an initial scoping paper for this standalone project will be presented in the July Council meeting.

**Question 1: Is the Council content for Imposition to be a standalone project?**

3.2 Notwithstanding this decision, as discussed in the May Council meeting, there are several technical amendments that are recommended to be made immediately, prior to starting a standalone project. We do not believe they require consultation due to the fact they are based on either legislative change (the enactment of the PCSC Act) or policy change (reunification of the National Probation Service), so have the sole purpose of correcting the now outdated elements of the Guideline.

*Probation Service*

3.3 Probation services in England and Wales reunified on 26 June 2021 which brought together the National Probation Service and community rehabilitation companies into one administration. The new Probation Service is now responsible for managing all those on a community order or licence following their release from prison in England and Wales.

3.4 The three references in the Guideline would therefore be amended from:

*National Probation Service*

To:

***Probation Service***

**Question 2: Is the Council content for these changes to be made?**

*Attendance centres*

3.5 The PCSC Act effectively removed attendance centres as an active requirement by amending the applicability of this requirement only to those convicted of the offence before the day on which section 152 of the PCSC Act came into force, which was 28 April 2022 (and as before, only if the offender was aged under 25 when convicted of the offence).

3.6 Therefore, the following text in the Guideline, under the Requirements heading, would be removed:

~~“attendance centre requirement (12–36 hours. Only available for offenders under 25 when convicted).”~~

3.7 Reference to attendance centres would also be removed from the community order levels table:

*~~“Attendance centre requirement (where available)”~~*

**Question 3: Is the Council content for these changes to be made?**

*Curfew – Requirement section of the Guideline*

3.8 The PCSC Act also increased the maximum daily curfew hours and curfew requirement period. The maximum daily curfew hours has been increased from 16 hours to 20 hours, and the curfew requirement period has been increased from 12 months to 2 years, in respect of an offence of which the offender was convicted before the day on which section 152 of the PCSC Act came into force, which was 28 April 2022.

3.9 The Bill also included a third specification for sentencing curfew hours, specifically that they cannot be *“more than 112 hours in any period of 7 days beginning with the day of the week on which the requirement first takes effect.”*

3.10 To align the Imposition Guideline with these changes, wording in the Guideline, under the Requirements heading, would change, from:

- *“curfew requirement (2 – 16 hours in any 24 hours; maximum term 12 months; must consider those likely to be affected; see note on electronic monitoring below)”*

to:

- ***“curfew requirement (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; maximum term 2 years (or 2 – 16 hours in any 24 hours; maximum term 12 months in relation to a relevant order in respect of an offence of which the offender was convicted before 28 April 2022); must consider those likely to be affected; see note on electronic monitoring below)”***

**Question 4: Is the Council content for these changes to be made?**

*Curfew – community order levels table*

3.11 Before setting out the options for amendments to the curfew wording to the community order levels table in line with the PCSC Act, it is worth noting that the current text between the three levels is inconsistent, so at the very least it is recommended that these are made consistent. These inconsistencies are:

- The words “per day” after the number of hours are written in the ‘low’ and ‘high’ levels but not the ‘medium’ level

**“per day” to be added to the ‘medium’ level curfew wording**

- The words “for example up to...” are in parentheses in the ‘low’ and ‘medium’ levels but not the ‘high’ level.

**parentheses to be added to the ‘high’ level curfew wording**

- The words “within the lowest/middle” range are written in the ‘low’ and ‘medium’ levels but not the ‘high’ level

**“within the highest range” to be added to the ‘high’ level curfew wording**

**Question 5: Is the Council content for these inconsistencies to be corrected?**

| Low   | Medium  | High  |
|---|---|---|
| Suitable requirements might include:  | Suitable requirements might include:  | Suitable requirements might include:  |
| <ul style="list-style-type: none"> <li>• Any appropriate rehabilitative requirement(s)</li> <li>• 40 – 80 hours of unpaid work</li> <li>• <b>Curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks)</b></li> <li>• Exclusion requirement, for a few months</li> <li>• Prohibited activity requirement</li> <li>• <del>Attendance centre requirement (where available)</del></li> </ul> | <ul style="list-style-type: none"> <li>• Any appropriate rehabilitative requirement(s)</li> <li>• Greater number of hours of unpaid work (for example 80 – 150 hours)</li> <li>• <b>Curfew requirement within the middle range (for example up to 16 hours for 2 – 3 months)</b></li> <li>• Exclusion requirement lasting in the region of 6 months</li> <li>• Prohibited activity requirement</li> </ul> | <ul style="list-style-type: none"> <li>• Any appropriate rehabilitative requirement(s)</li> <li>• 150 – 300 hours of unpaid work</li> <li>• <b>Curfew requirement for example up to 16 hours per day for 4 – 12 months</b></li> <li>• Exclusion requirement lasting in the region of 12 months</li> </ul> |

3.12 While the amendments to the curfew wording under the Requirements heading (above) are primarily technical to align with the PCSC Act, amendments to the curfew wording under the Community Order Levels Table is not as straightforward, and as such, there are a number of options for the Council to consider.

3.13 To note, as specified by the text “suitable requirements may include”, guidance in the Community Order Levels Table is highly discretionary. However, the council may still wish to reflect the increased maximum daily curfew hours and curfew requirement duration in line with the PCSC Act. We believe there are three main options for how this can be done, which are set out in more detail below. These are:

- Option 1: *Make no changes to the text now beyond correcting the inconsistencies; but include its consideration in the standalone Imposition Guideline project (and subsequent consultation)*
- Option 2: *In addition to correcting the inconsistencies, replace only the new maximum daily curfew hours but do not amend the ranges of the requirement duration;*
- Option 3: *In addition to correcting the inconsistencies, replace the new maximum daily curfew hours and amend the ranges of the requirement duration, either in line with ranges in the exclusion requirement, or using another approach to be agreed.*

3.14 Option 1: *Make no changes to the text now beyond correcting the inconsistencies but include its consideration in the upcoming standalone Imposition Guideline project (and subsequent consultation).* The Requirement section and relevant wording in the current sections of the Community Order Levels Table have been pulled out below.

|   |  |  |
|---|--|--|
| <b>Requirements</b>   |  |  |
| <ul style="list-style-type: none"> <li>• <i>curfew requirement (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; maximum term 2 years (or 2 – 16 hours in any 24 hours; maximum term 12 months in relation to a relevant order in respect of an offence of which the offender was convicted before 28 April 2022)...)</i></li> </ul> |  |  |
| <b>Community Order Levels Table</b>   |  |  |
| <b>Low</b>  | <b>Medium</b>  | <b>High</b>  |
| From:<br><br><i>Curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks)</i>   | From:<br><br><i>Curfew requirement within the middle range (for example up to 16 hours per day for 2 – 3 months)</i> | From:<br><br><i>Curfew requirement within the highest range (for example up to 16 hours per day for 4 – 12 months)</i> |

3.15 If no changes were made to the text in the levels table now, the main disadvantage would be that the maximum number of hours and requirement duration under the Requirements heading and the wording in the Community Order Levels Table would not be aligned. This may be justified by the guidance in the levels table being highly discretionary, and the fact that sentencers can choose to go above the suitable requirement levels.

Advantages of this option would be not pre-judging considerations in the Imposition Guideline consultation of wording in the Community Order Levels Table.

3.16 Option 2: *In addition to correcting the inconsistencies, replace only the new maximum daily curfew hours but do not amend the ranges of the requirement duration.* This option would amend the text in the Community Order Levels Table as per the below (amendments underlined):

| Low   | Medium  | High   |
|---|---|--|
| <p>From:</p> <p><i>Curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks)</i></p> <p>To:</p> <p><b><i>Curfew requirement within the lowest range (for example up to <u>20 hours</u> per day for a few weeks)</i></b></p> | <p>From:</p> <p><i>Curfew requirement within the middle range (for example up to 16 hours for 2 – 3 months)</i></p> <p>To:</p> <p><b><i>Curfew requirement within the middle range (for example up to <u>20 hours</u> per day for 2 – 3 months)</i></b></p> | <p>From:</p> <p><i>Curfew requirement for example up to 16 hours per day for 4 – 12 months</i></p> <p>To:</p> <p><b><i>Curfew requirement within the highest range (for example up to <u>20 hours</u> per day for 4 – 12 months)</i></b></p> |

3.17 If only the maximum daily curfew hours were changed, this would ensure the correct maximum number of hours was stated in the levels table as per the legislation, and would allow the ranges in the levels table to be consulted on. This option may be the best option to balance aligning updated legislation with the need to consult on more detailed application of that legislation, namely the possible sentencing ranges.

3.18 Option 3: *In addition to correcting the inconsistencies, replace the new maximum daily curfew hours as well as amend the ranges of the requirement duration, either in line with ranges in the exclusion requirement, or using another approach to be agreed.*

3.19 If the Council wishes to take the opportunity to amend the ranges as well, there is a risk that these changes may be considered sufficiently complex that they require consultation. Nevertheless, should the Council wish to amend the ranges, we believe the most logical approach is to bring the wording in line with the exclusion requirement ranges (included below), due to the fact that one of the reasons behind the legislative increase of the maximum duration of the curfew requirement was to bring it in line with the maximum period for the exclusion zone requirement. This would amend the text in the community order levels table as per the below (amendments underlined):



| Low  | Medium   | High  |
|--|--|---|
| <p data-bbox="193 259 595 327"><i>("Exclusion requirement, for a few months")</i></p> <p data-bbox="193 439 595 461">From:</p> <p data-bbox="193 506 595 640"><i>Curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks)</i></p> <p data-bbox="193 685 595 707">To:</p> <p data-bbox="193 752 595 887"><b><i>Curfew requirement within the lowest range (for example up to <u>20 hours per day</u> for a few months)</i></b></p> | <p data-bbox="595 259 997 327"><i>("Exclusion requirement lasting in the region of 6 months")</i></p> <p data-bbox="595 439 997 461">From:</p> <p data-bbox="595 506 997 640"><i>Curfew requirement within the middle range (for example up to 16 hours for 2 – 3 months)</i></p> <p data-bbox="595 685 997 707">To:</p> <p data-bbox="595 752 997 909"><b><i>Curfew requirement within the middle range (for example up to <u>20 hours per day</u> lasting in the region of 6 months)</i></b></p> | <p data-bbox="997 259 1396 327"><i>("Exclusion requirement lasting in the region of 12 months")</i></p> <p data-bbox="997 439 1396 461">From:</p> <p data-bbox="997 506 1396 595"><i>Curfew requirement for example up to 16 hours per day for 4 – 12 months</i></p> <p data-bbox="997 640 1396 663">To:</p> <p data-bbox="997 707 1396 887"><b><i>Curfew requirement within the highest range (for example up to <u>20 hours per day</u> lasting in the region of 12 months)</i></b></p> |

3.20 However, while these requirements have similarities, they are not the same, and we do not yet know what the impact of these increases will be on those with curfew requirements, or on probation resources or ability to deliver. As noted above, this more detailed applicability of sentencing ranges may be more appropriate to consult on, especially considering the intention to run a standalone project on the Imposition Guideline.

3.21 The Council may also wish to consider amending the curfew requirement duration ranges using another approach, however the approach outlined above is most consistent with the reason for which the legislative change was made.

3.22 On balance we think Option 2 is the better option as it aligns the new maximum number of hours in the Community Order Levels Table with the new legislation but does not amend sentencing ranges for now. Sentencing ranges and any further changes could then be tested at consultation as part of the standalone Imposition project

**Question 6: Does the Council agree to proceed with Option 2?**

**4 EQUALITIES**

4.1 While most proposals are updating the Guideline in accordance with legislative or policy change, we do not know at this point what the impact would be of amending the curfew requirement duration ranges. This may be another reason for the Council to decide on Option 1 or 2, or 3 as a temporary measure, so that the duration ranges can be consulted on to understand the full impact of any proposal.

## **5 IMPACT AND RISKS**

5.1 The impact of the majority of proposed amendments in this paper will be relatively minor. The amendments to the curfew requirement will have the biggest impact, specifically the increase of the requirement duration ranges in the levels table should the Council favour Option 3. This may increase the length of community orders with curfew requirements which would require increased probation resources to manage.

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

**17 June 2022**  
**SC(22)JUN05 – Child cruelty**  
**N/A**  
**Ollie Simpson**  
**ollie.simpson@sentencingcouncil.gov.uk**

## **1 ISSUE**

1.1 Signing off draft revisions to the child cruelty guidelines for consultation.

## **2 RECOMMENDATIONS**

2.1 That:

- Council consult on the revised drafts at **Annexes A and B**;
- the culpability factor “prolonged and/or multiple incidents of serious cruelty, including serious neglect” remains at Culpability B; and
- Council note the draft consultation-stage resource assessment at **Annex C**.

## **3 CONSIDERATION**

3.1 At April’s Council meeting, Council agreed to a focused revision to the guidelines for causing or allowing a child to die/suffer serious physical harm (section 5 of the Domestic Violence, Crime and Victims Act 2004) and cruelty to a child (section 1 of the Children and Young Persons Act 1933). The revisions are needed to reflect the increase in maximum penalties under the Police, Crime, Sentencing and Courts Act 2022. The maximum for section 5 cases involving physical harm and section 1 cases has increased from 10 to 14 years’ custody; the maximum for section 5 cases involving death has increased from 14 years to life.

3.2 It was agreed the guidelines should be revised by adding new “very high” culpability levels, to allow for the very worst cases to be sentenced in the new ranges above the old maximums. Borrowing wording from the manslaughter guidelines, new Category A cases would be marked out by: the extreme character of one or more culpability B factors; and/or a combination of culpability B factors.

3.3 The range for causing or allowing a child to die goes up to 18 years' custody, with a top category starting point of 14 years, and a range of 12 to 18 years. This places it between the top two levels of unlawful act manslaughter. The non-death guidelines have a range up to 12 years, two years below the statutory maximum. The top box starting point for both of these is 9 years, with a range of 7 to 12 years.

3.4 The revised guidelines, with the sentence levels agreed in April, are at **Annexes A and B**.

3.5 It was suggested that wording could be added to this new very high culpability category, echoing the rape guideline, along the lines of "prolonged detention/sustained incident" to capture particularly sadistic cases. A similar culpability factor already exists in the guidelines "prolonged and/or multiple incidents of serious cruelty, including serious neglect".

3.6 We could add this factor to the new very high culpability category. However, based on a resentencing exercise we have done to inform the resource assessment, there is the strong possibility that this would bring a fairly high proportion of cases currently being categorised as high into the very high category. It is a factor which judges bring out frequently where they have seen repeated assaults and/or a sustained campaign of violence and intimidation towards a victim prior either to intervention or to the child's death, which is quite common in these cases.

3.7 The elevation of these offenders would not have a significant impact on prison resources given the low volumes of these cases. It is also true that all of these cases are very distressing. But I suggest that we would be diluting the purpose of our revisions – allowing for the very worst cases to be sentenced in the very high box – if we allowed every case involving prolonged or multiple incidents into the top category. I therefore recommend leaving that factor at Category B.

**Question 1: do you agree to keep "prolonged and/ or multiple incidents of serious cruelty, including serious neglect" as High (rather than Very High) culpability?**

**Question 2: are you content to sign off the revised guidelines for consultation at Annexes A and B?**

3.8 If you are content, we will prepare a (likely very short) consultation paper with the aim of launching the consultation in early August. That would run to the end of October. Subject to responses and further Council consideration, we may then be able to publish the definitive guideline early in 2023 to come into force in April.

## **4 IMPACT AND RISKS**

4.1 The consultation-stage resource assessment is at **Annex C**. Given that almost all section 5 offenders already receive immediate custody, the proposed revisions are not anticipated to change the proportion of offenders who receive immediate custodial sentences. It is likely that there may be a very small number of offenders at the highest level of culpability across both offences who will receive longer custodial sentences under the draft guideline.

4.2 For section 1 offences, there may be a very small impact on prison and probation resources as offenders at the highest level of culpability currently may receive longer sentences under the draft guideline, reflecting the increase in statutory maximum sentence. There is no indication that the guideline will lead to a change in sentencing outcomes for these offences; the majority of offenders are likely to continue receiving a community order or suspended sentence order since the guideline remains largely unchanged.

4.3 There is a risk that when judges are given an extra culpability category alongside increased sentencing powers, they will be tempted automatically to place a bad case in the worst possible category. That would mean, for example, a case of causing/allowing serious physical harm that would have had a starting point of seven years' custody would now have a starting point of nine years, even though the facts are the same. We have not attempted to capture this risk in the resource assessment.

4.4 In terms of handling the consultation, there have been several high-profile cases recently of incidents of child cruelty resulting in death. Whilst we can show responsiveness to the change in the maximum penalties, we may need to explain carefully why offenders at the lower end of culpability are not deserving of significantly higher sentences.

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

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

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

**Effective from: XXXXXXXXX**

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

Indictable only

Maximum: 14 years' custody

Offence range: Community order – 12 years' custody

## Causing or allowing a child to die

Indictable only Maximum: life imprisonment

Offence range: 1 year's custody – 18 years' custody

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

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

For offences committed on or after 28 June 2022, causing or allowing a child to die is a Schedule 19 offence for the purposes of sections 274 and 285 (required life sentence for offence carrying life sentence) of the Sentencing Code.

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

[User guide for this offence](#)

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

## Applicability

### Step 1 – Determining the offence category

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

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

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

#### Culpability demonstrated

##### A High culpability

Very high culpability may be indicated by:

- the extreme character of one or more culpability B factors and /or
- a combination of culpability B factors

##### B High culpability

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

##### C Medium culpability

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



- The offender's culpability falls between the factors as described in high and lesser culpability

#### D Lesser culpability

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

#### Harm

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

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

#### Category 1

- Death

#### Category 2

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

#### Category 3

- Serious physical harm that does not fall into category 2

## Step 2 – Starting point and category range

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

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

| Harm       | Culpability                                     |   |   |  |
|------------|---|---|---|--|
|            | A   | B   | C   | D  |
| Category 1 | <b>Starting point</b><br>14 years' custody      | <b>Starting point</b><br>9 years' custody                   | <b>Starting point</b><br>5 years' custody                   | <b>Starting point</b><br>2 years' custody                              |
|            | <b>Category range</b><br>12 – 18 years' custody | <b>Category range</b><br>7 – 14 years' custody              | <b>Category range</b><br>3 – 8 years' custody               | <b>Category range</b><br>1 – 4 years' custody                          |
| Category 2 | <b>Starting point</b><br>9 years' custody       | <b>Starting point</b><br>7 years' custody                   | <b>Starting point</b><br>3 years' custody                   | <b>Starting point</b><br>1 year 6 months' custody                      |
|            | <b>Category range</b><br>7 – 12 years' custody  | <b>Category range</b><br>5 – 9 years' custody               | <b>Category range</b><br>1 year 6 months – 6 years' custody | <b>Category range</b><br>6 months – 3 years' custody                   |
| Category 3 | <b>Starting point</b><br>7 years' custody       | <b>Starting point</b><br>3 years' custody                   | <b>Starting point</b><br>1 year 6 months' custody           | <b>Starting point</b><br>9 months' custody                             |
|            | <b>Category range</b><br>5 – 9 years' custody   | <b>Category range</b><br>1 year 6 months – 6 years' custody | <b>Category range</b><br>6 months – 3 years' custody        | <b>Category range</b><br>High level community order – 2 years' custody |

### Community orders

### Custodial sentences

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

these factors, it may be appropriate to move outside the identified category range.

## Factors increasing seriousness

### Statutory aggravating factors

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

### Other aggravating factors

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

## Factors reducing seriousness or reflecting personal mitigation

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

### **Step 3 – Consider any factors which indicate a reduction for assistance to the prosecution**

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

### **Step 4 – Reduction for guilty pleas**

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

### **Step 5 – Parental responsibilities of sole or primary carers**

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

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

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

### **Step 6 – Dangerousness**

The court should consider:

- 1) for offences of causing or allowing the death of a child committed on or after 28 June 2022, whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose a life sentence (sections 274 and 285);

2) for offences committed on or after 3 December 2012, whether having regard to sections 273 and 283 of the Sentencing Code it would be appropriate to impose a life sentence.

3) whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279).

When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

## **Step 7 – Totality principle**

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

## **Step 8 – Ancillary orders**

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

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

## **Step 9 – Reasons**

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

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

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

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

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

**Effective from: XXXXXXXXXXXX**

Triable either way

Maximum: 14 years' custody

Offence range: Community order – 12 years' custody

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

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

## Applicability

### Step 1 – Determining the offence category

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

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

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

## Culpability demonstrated

### A Very high culpability

- Very high culpability may be indicated by:

- the extreme character of one or more culpability B factors and /or
- a combination of culpability B factors

### **B High culpability**

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

### **C Medium culpability**

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

### **D Lesser culpability**

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

## **Harm**



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

### Psychological, developmental or emotional harm

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

#### Category 1

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

#### Category 2

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

#### Category 3

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

## Step 2 – Starting point and category range

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

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

| Harm       | Culpability                        |                                    |                                    |                                    |
|------------|------------------------------------|------------------------------------|------------------------------------|------------------------------------|
|            | A                                  | B                                  | C                                  | D                                  |
| Category 1 | Starting point<br>9 years' custody | Starting point<br>6 years' custody | Starting point<br>3 years' custody | Starting point<br>1 year's custody |

|                   |   |  |  |  |
|-------------------|---|--|--|--|
|                   | <b>Category range</b><br>7 – 12 years’<br>custody | <b>Category range</b><br>4 – 8 years’<br>custody   | <b>Category range</b><br>2 – 6 years’<br>custody   | <b>Category range</b><br>High level<br>community order<br>– 2 years 6<br>months’ custody |
|                   | <b>Starting point</b><br>6 years’ custody         | <b>Starting point</b><br>3 years’ custody  | <b>Starting point</b><br>1 year’s custody  | <b>Starting point</b><br>High level<br>community order                                   |
| <b>Category 2</b> | <b>Category range</b><br>4 – 8 years’<br>custody  | <b>Category range</b><br>2 – 6 years’<br>custody   | <b>Category range</b><br>High level<br>community order<br>– 2 years 6<br>months’ custody | <b>Category range</b><br>Medium level<br>community order<br>– 1 year’s<br>custody        |
|                   | <b>Starting point</b><br>3 years’ custody         | <b>Starting point</b><br>1 year’s custody  | <b>Starting point</b><br>High level<br>community order                                   | <b>Starting point</b><br>Medium level<br>community order                                 |
| <b>Category 3</b> | <b>Category range</b><br>2 – 6 years’<br>custody  | <b>Category range</b><br>High level<br>community order<br>– 2 years 6<br>months’ custody | <b>Category range</b><br>Medium level<br>community order<br>– 1 year’s<br>custody        | <b>Category range</b><br>Low level<br>community order<br>– 6 months’<br>custody          |

### Community orders

### Custodial sentences

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the

sentence arrived at so far. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

## Factors increasing seriousness

### Statutory aggravating factors

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

### Other aggravating factors

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

## Factors reducing seriousness or reflecting personal mitigation

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

lack of maturity  
(where not taken into account at step one)

- Co-operation with the investigation

### **Step 3 – Consider any factors which indicate a reduction for assistance to the prosecution**

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

### **Step 4 – Reduction for guilty pleas**

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

### **Step 5 – Parental responsibilities of sole or primary carers**

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

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

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

### **Step 6 – Dangerousness**

The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

## Step 7 – Totality principle

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

## Step 8 – Ancillary orders

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

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

## Step 9 – Reasons

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

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

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

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## Consultation Stage Resource Assessment

### Child cruelty offences

#### Introduction

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

#### Rationale and objectives for new guideline

In February 2008, the Sentencing Guidelines Council (SGC) published '*Overarching Principles: Assaults on children and Cruelty to a child*', covering the offence of cruelty to a child (section 1 of the Children and Young Persons Act 1933). This guideline did not cover the offence of causing or allowing a child to die (section 5 of the Domestic Violence and Crime Act 2004).

In July 2012, the offence of causing or allowing a child to suffer serious physical harm came into force as part of the Domestic Violence, Crime and Victims (Amendment) Act 2012. The Council subsequently produced guidelines to cover this offence, along with the offence of causing or allowing a child to die and revisions to the previous SGC guideline for cruelty to a child. These were published in September 2018, to come into effect in courts in England and Wales from 1 January 2019.

Under the Police, Crime, Sentencing and Courts (PCSC) Act 2022, for offences committed on or after 28 June 2022, the statutory maxima have increased from 10 years' custody to 14 years' custody for both cruelty to a child and causing or allowing a child or vulnerable adult<sup>2</sup> to suffer serious physical harm, and from 14 years' custody to life imprisonment for causing or allowing a child or vulnerable adult<sup>2</sup> to die. The Council is now consulting on revised sentencing guidelines for these offences, to reflect these increases in the statutory maximum sentences: a Cruelty to a child guideline for sentencing child cruelty offences contrary to section 1(1) of the Children and Young Persons Act 1933, for use in all courts, and another guideline covering both offences of causing or allowing a child to die and causing or allowing a child to suffer serious physical harm, contrary to section 5 of the Domestic Violence, Crime and Victims Act 2004, for use in the Crown Court.

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<sup>1</sup> Coroners and Justice Act 2009 section 127: [www.legislation.gov.uk/ukpga/2009/25/section/127](http://www.legislation.gov.uk/ukpga/2009/25/section/127)

<sup>2</sup> The increase in statutory maximum sentence covers offenders sentenced for causing or allowing a *child or vulnerable adult* to die or suffer serious physical harm, while the guidelines are only applicable for offenders sentenced for causing or allowing a *child* to die or suffer serious physical harm. Analysis of Crown Court judges' sentencing remarks suggests the majority of cases involve child victims, rather than vulnerable adults.

The Council's aim in developing these guidelines is to provide sentencers with a clear approach to sentencing these offences which will ensure that sentences are proportionate to the offence committed and in relation to other offences. They should also promote a consistent approach to sentencing in relation to the increases in statutory maximum sentence.<sup>3</sup>

## Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guidelines on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the following offences:

- Causing or allowing a child to suffer serious physical harm, Domestic Violence, Crime and Victims Act 2004 (section 5);
- Causing or allowing a child to die, Domestic Violence, Crime and Victims Act 2004 (section 5); and
- Cruelty to a child, Children and Young Persons Act 1933 (section 1(1)).

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

## Current sentencing practice

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

The intention is that the guidelines will encourage consistency of sentencing, in relation to the increase in statutory maximum sentences, and also to ensure that, for all offences, sentences are proportionate to the severity of the offence committed and in relation to other offences, whilst incorporating the changes in legislation.

Knowledge of recent sentencing was required to understand how the draft guidelines may impact sentences. Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks for offenders sentenced for child cruelty

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<sup>3</sup> The Ministry of Justice impact assessment, drafted in conjunction with the Home Office, for the increase in statutory maximum sentence for these child cruelty offences can be found here: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1073333/MOJ\\_Criminal\\_Law\\_IA\\_2022\\_Final.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1073333/MOJ_Criminal_Law_IA_2022_Final.pdf)



offences, as well as sentencing data from the Court Proceedings Database.<sup>4,5</sup> Knowledge of the sentences and factors used in previous cases, in conjunction with Council members' experience of sentencing, has helped to inform the development of the guidelines.

Detailed sentencing statistics for the offences covered by the draft guidelines have been published on the Sentencing Council website at the following link:  
<http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year.>

### **Causing or allowing a child to die or suffer serious physical harm (section 5)**

These are both low volume offences. In the years since the existing guideline has been in force (2019 and 2020), around 30 offenders were sentenced for these offences, of which fewer than 10 were sentenced for the offence of causing or allowing a child to die. These offences are both indictable only, and so all offenders are sentenced at the Crown Court.

For causing or allowing a child to die, all offenders were sentenced to immediate custody in 2019 and 2020. In the same years, for the offence of causing or allowing a child to suffer serious physical harm, 50 per cent of offenders received immediate custody, 44 per cent received a suspended sentence order and the remainder were 'Otherwise dealt with'.<sup>6</sup>

For those receiving immediate custody in 2019 and 2020, the average (mean) custodial sentence length (ACSL) was 3 years 9 months for causing or allowing a child to suffer serious physical harm.<sup>7</sup> For causing or allowing a child to die, the ACSL over the same period was 6 years 7 months.<sup>8</sup>

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<sup>4</sup> The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. The average custodial sentence lengths presented in this resource assessment are average custodial sentence length values for offenders sentenced to determinate, immediate custodial sentences, after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here:  
<http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin.>

<sup>5</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>6</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.

<sup>7</sup> The statutory maximum sentence for this offence increased from 10 years' custody to 14 years' custody under the PCSC Act 2022 in relation to offences committed on or after 28 June 2022. The latest full year of data available for analysis at the time of publication was from 2020, before this increase in statutory maximum sentence, so there are no cases exceeding 10 years' custody included in these figures.

<sup>8</sup> The statutory maximum sentence for this offence increased from 14 years' custody to life imprisonment under the PCSC Act 2022 in relation to offences committed on or after 28 June 2022. The latest full year of data available for analysis at the time of publication was from 2020, before this increase in statutory maximum sentence, so there are no cases exceeding 14 years' custody included in these figures.

## Cruelty to a child (section 1)

This is a higher volume offence. In 2020, around 330 offenders were sentenced for cruelty to a child, of which the majority (61 per cent) were sentenced in the Crown Court. Most offenders received a community order (35 per cent), around a third (33 per cent) a suspended sentence order and one fifth (20 per cent) were sentenced to immediate custody. A further 9 per cent were recorded as 'Otherwise dealt with'.<sup>9</sup>

The statutory maximum sentence for cruelty to a child was 10 years' custody for the period covered by these statistics.<sup>10</sup> In 2020, the ACSL for those offenders sentenced to immediate custody was 1 year 11 months for this offence.

## Key assumptions

To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guidelines and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the revised guidelines are therefore subject to a substantial degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. In addition, for low volume offences, there are limited data available. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed revised guidelines, and an assessment of the effects of revising the guidelines by adding a new culpability level.

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

In developing sentence levels for the 'Very high culpability' level of the revised guidelines, data on current sentence levels have been considered, although this covers the period before the increase in statutory maximum sentence under the PCSC Act 2022. Existing guidance and case studies, as well as transcripts of judges' sentencing remarks, have also been reviewed.

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<sup>9</sup> The category 'Otherwise dealt with' covers miscellaneous disposals which, for this offence, includes disposals such as hospital orders and compensation. 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.

<sup>10</sup> The statutory maximum sentence for this offence increased from 10 to 14 years' custody under the PCSC Act 2022 in relation to offences committed on or after 28 June 2022. The latest full year of data available for analysis at the time of publication was from 2020, before this increase in statutory maximum sentence, so there are no cases exceeding 10 years' custody included in these figures.

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

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. Nevertheless, the consultation responses should hopefully provide more information on which to base the final resource assessment accompanying the definitive guidelines.

## Resource impacts

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

### Overall impacts

The expected impact of each guideline is provided in detail below.

Overall, the guidelines are intended to reflect the increase in statutory maxima through the addition of a further culpability level, above the existing 'High culpability' level in both guidelines. As such, the impact is intended to be isolated to those offenders already at the highest culpability of offending behaviour.

### Causing or allowing a child to die or suffer serious physical harm (section 5)

The current section 5 guideline covers both offences and contains three levels of culpability and three levels of harm, leading to a 9-box sentencing table. The highest harm level is reserved for offences of causing or allowing a child to die, with a range of starting points from 2 years' custody for C1 up to 9 years' custody for the highest category A1. For causing or allowing a child to suffer serious physical harm, the lowest starting point is 9 months' custody for category C3 and the highest is category A2 with a starting point of 7 years' custody.

Under the PCSC Act 2022, the statutory maximum sentence for these offences has increased, from 10 to 14 years' custody for causing or allowing a child to suffer serious physical harm and from 14 years' custody to life imprisonment for causing or allowing a child to die. An additional culpability level ('Very high culpability') has been inserted above the existing 'High culpability' level in the draft guideline, to reflect the new statutory maximum sentences set by Parliament. The revised draft guideline therefore has four levels of culpability but maintains three levels of harm, leading to a 12-box sentencing table, with a starting point for A1 of 14 years' custody and a range of 12 – 18 years. The rest of the sentencing table below the new culpability level A remains unchanged from the existing guideline, although the culpability levels have been renamed accordingly.

Analysis of a sample of Crown Court judges' sentencing remarks<sup>11</sup> has been undertaken to understand the possible effects of the guideline on sentencing practice. Both of these offences are indictable only and, as such, all offenders are sentenced at the Crown Court. Therefore, we can assume the findings from this analysis are likely to be representative of all offending.

This transcript analysis indicated that there is likely to be negligible resource impacts relating to the addition of this new 'Very high culpability' level, as there are very few offenders currently falling into 'High culpability', across all levels of harm, for whom it would be appropriate. This is supported by analysis of the CPD data. In 2019 and 2020, for causing or allowing a child to suffer serious physical harm, only two offenders were sentenced to an immediate custodial sentence of 7 years or more, which is the starting point for the A2 offence category in the existing guideline. These might be the types of cases for which an offender could be placed in the new 'Very high culpability' category under the draft guideline, which has a starting point 5 years higher than the existing guideline. However, it is anticipated that only a subset of offenders currently assessed as 'High culpability' across all levels of harm would be suitable for the new 'Very high culpability' category.

Furthermore, over the same period, for the offence of causing or allowing a child to die, no offenders received a final sentence of 9 years or more, which is the starting point for the highest offence category A1 in the existing guideline and remains as such for the comparable B1 offence category of the draft guideline (the sentence ranges for both are also identical).

Given that almost all offenders already receive immediate custody, the draft guideline is not anticipated to change the proportion of offenders who receive immediate custodial sentences. It is likely that there may be a very small number of offenders at the highest level of culpability across both offences who will receive longer custodial sentences under the draft guideline. However, these increases in sentence levels are driven by the recent legislative changes, which have been reflected in the guidelines.

### **Cruelty to a child (section 1)**

The existing guideline for sentencing offences of cruelty to a child contains three levels of culpability and three levels of harm leading to a 9-box sentencing table with a range in starting points from a medium level community order for offence category C3, up to a starting point of 6 years' custody for the highest category A1. The draft guideline mirrors the approach for causing or allowing a child to die or suffer serious physical harm, and inserts a new 'Very high culpability' level above the existing 'High culpability', with a range of starting points from 3 years' custody for the new category A3, up to a starting point of 9 years' custody for the new A1 offence category, thus creating a 12-box sentencing table. As with the Causing or allowing a child to die or suffer serious physical harm guideline, the starting points and ranges in the rest of the sentencing table remain unchanged.

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<sup>11</sup> 22 transcripts of Crown Court sentencing remarks covering 35 offenders sentenced for causing or allowing a child to die or suffer serious physical harm were initially analysed in order to assess the impact these guidelines may have on prison and probation services. For the years when the existing guideline was in force, 2019 and 2020, the analysed transcripts covered 100% of offenders sentenced over this period. Of these, 8 cases where the offender fell into the highest culpability category were resentenced, to understand how the new culpability category might be used (5 for causing or allowing a child to die and 3 for causing or allowing a child to suffer serious physical harm).

Analysis of a sample of Crown Court judges' sentencing remarks<sup>12</sup> has been undertaken to understand the possible effects of the draft guideline on sentencing practice. The analysis suggested that under the revised guideline, there may be a very small impact on prison and probation resources as a subset of offenders who would be within the 'High culpability' level currently may receive longer sentences under the draft guideline if the new 'Very high culpability' category is appropriate instead, which has a starting point three years higher for harm levels 1 and 2 and two years higher for harm level 3, reflecting the increase in statutory maximum sentence. There is no indication that the guideline will lead to a change in sentencing outcomes for these offences; the majority of offenders are likely to continue receiving a community order or suspended sentence order since the guideline remains largely unchanged.

These findings are supported by CPD analysis. In 2019 and 2020, fewer than 1 per cent of offenders received an immediate custodial sentence of 6 years or more: the starting point for the highest offence category A1 under the existing guideline. Given that so few offenders are committing offences of cruelty to a child at the highest level of culpability currently, it is anticipated that the impact of this guideline on prison and probation resources is likely to be minimal, although any increases will be driven by the recent legislative changes which are now reflected in the guideline.

## Risks

### **Risk 1: The Council's assessment of current sentencing practice is inaccurate**

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the revised guidelines comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes analysis of 43 transcripts of judges' sentencing remarks, which have provided a more detailed picture of current sentencing practice for these offences. This analysis has formed a large part of the evidence base on which the resource impacts for these guidelines have been estimated.

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

If sentencers do not interpret the guidelines as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers interpret them as intended. For the draft guidelines, the sentencing ranges for the new 'Very high culpability' level have been decided on by considering case studies, sentencing data and Council members' experience of sentencing.

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<sup>12</sup> A total of 21 transcripts of Crown Court sentencing remarks covering 28 offenders sentenced for cruelty to a child were initially analysed. Of these, 7 cases from 2019 and 2020, where the offender was in the highest culpability category under the existing guideline, were resentenced to assess the impact the revised guideline may have on prison and probation services.

Transcripts of sentencing remarks of relevant child cruelty cases have also been studied to gain a greater understanding of current sentencing practice and to understand how the guidelines may be implemented in practice.

Consultees can also feed back their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines.

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

**17 June 2022**  
**SC(22)JUN06 – Guideline priorities**  
**N/A**  
**Steve Wade**  
**steve.wade@sentencingcouncil.gov.uk**

## **1 ISSUE**

1.1 To seek agreement from the Council on the proposed approach *not* to produce interim guidance for the new strangulation and suffocation offence and to make Council aware of revision to the scope of Mandy's Blackmail and Threats to Disclose Sexual Images paper to include Kidnap, False Imprisonment and Child Abduction and related matters.

## **2 RECOMMENDATIONS**

2.1 That:

- The Council agrees not to produce interim guidance related to non-fatal strangulation and suffocation offences;
- That the Council notes the revised scope of the Mandy's Blackmail and Threats to Disclose project;
- That the Council notes the decision to hold off Immigration offences until the new offences have bedded down a little but for that to be the next guideline picked up.

## **3 CONSIDERATION**

### *Strangulation and suffocation*

3.1 At the last meeting the new strangulation and suffocation offence which commenced on the 7th June was discussed. The merits or otherwise of starting work on a new guideline were debated, bearing in mind that it is a completely new offence. It was decided that it would be wise to wait until there is an opportunity for the Council to see what kinds of cases are coming before the courts, and how they are dealt with, before commencing on a guideline. It was suggested that officials should consider whether it might be feasible or desirable to produce interim 'guidance' to go on the website and for work on a new guideline not to start until it could be seen how the cases were being sentenced. S

3.2 Since that meeting thought has been given to producing guidance, but it is recommended that we do not proceed with this option. To date, the Council has very infrequently produced 'guidance' for sentencing offences instead of guidelines and normally only where there are compelling reasons. Producing interim guidance for this offence may set a precedent or raise expectations about how quickly the Council may be expected to deal with other similar cases in future. Given guideline development is a fairly lengthy process the Council could be asked to produce guidance in lieu of guidelines for other offences which would not be practicable or helpful.

3.3 In addition, in drafting the General Guideline, Council had in mind that that guideline would be it would be capable of accommodating just such cases as the one at hand. Indeed, it is unlikely that any guidance on this topic could say much more than that which the General Guideline already sets out for consideration when sentencing offences without a guideline:

*a) Where there is no definitive sentencing guideline for the offence, to arrive at a provisional sentence the court should take account of all of the following (if they apply):*

- the statutory maximum sentence (and if appropriate minimum sentence) for the offence;*
- sentencing judgments of the Court of Appeal (Criminal Division) for the offence; and*
- definitive sentencing guidelines for analogous offences.*

*The court will be assisted by the parties in identifying the above. For the avoidance of doubt the court should not take account of any draft sentencing guidelines.*

*When considering definitive guidelines for analogous offences the court must apply these carefully, making adjustments for any differences in the statutory maximum sentence and in the elements of the offence. This will not be a merely arithmetical exercise.*

3.4 Although this new offence has attracted a certain amount of interest and attention, it is recommended that the Council does not produce interim guidance, but instead waits to produce a complete guideline in due course, once we can see how the cases are being sentenced. We would argue that the new offence is not so exceptional that it requires special treatment by the Council.



**Question 1: Does the Council agree to the recommendation that guidance is not produced for the new strangulation and suffocation offence, but that work will commence on drafting a new guideline in due course?**

*Blackmail, Kidnap, false imprisonment, child abduction and threats to disclose private sexual images*

3.5 At the last meeting a scoping paper on blackmail and threats to disclose private sexual images presented by Mandy was discussed. Members asked whether or not it would be appropriate for the offences of kidnap and false imprisonment to also be added to this work- there being synergy between the offences. Prior to this discussion it had been planned that Jessie would separately be working on kidnap, false imprisonment and child abduction. Following the meeting the work plan was reviewed and it was agreed that it would make sense for this work to transfer to Mandy, who would now have a project that considered: blackmail, kidnap, false imprisonment, child abduction and threats to disclose private sexual images. This would allow Jessie to concentrate on the changes to the Imposition guideline, which the Council had decided should not be done piecemeal but as part of a considered larger piece of work (and which Council is considering elsewhere on today's agenda).

*Immigration Offences*

3.6 At the May meeting we also briefly discussed the proposed revision of Immigration Offences and inclusion of the new offences arising from changes to legislation. We had pushed this guideline back for two reasons. First, it was not entirely clear that the legislation would have received Royal Assent by the end of the Parliamentary Session. Second, that (in line with our usual practice) it was desirable to allow at least some time for any new offences to 'bed in' and for us to see what was actually being charged as a result of the legislative changes and how the courts were dealing with such cases. By the time of the May meeting it was clear that the changes had reached the statute book in time and Council asked when we were now likely to pick this up.

3.7 At our post-Council planning meeting we agreed this would be the next major guideline to be picked up – likely to be in the autumn / winter 2022-3 – assuming by that stage Council is content that the changes have bedded in sufficiently. At this stage there it is hard to know who will be free to pick the project up next as it will depend on what progress is made on the projects already in train.

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**Sentencing Council meeting:** 17 June 2022  
**Paper number:** SC(22)JUN07 – Annual Report  
**Lead official:** Phil Hodgson 020 7071 5788

## **1. Issue**

- 1.1 This paper presents the Sentencing Council Annual Report 2021/22 for consideration by members of the Council. The full report is at annex A.

## **2. Recommendation**

- 2.1 That the Council approves the Annual Report for submission to the Lord Chancellor and subsequent laying before Parliament.

## **3. Consideration**

- 3.1 The Annual Report is a summary of the activities and achievements of the Sentencing Council between 1 April 2021 to 31 March 2022.
- 3.2 This year's report follows a new structure that reflects the strategic objectives set by the Council in the five-year strategy. It includes:
- Foreword from the Chairman
  - Strategic objective 1: reporting on all work done during the year relating to the development, revision and release of sentencing guidelines, including policy development, consultation, A&R and communication
  - Strategic objective 2: reporting on all other aspects of A&R work
  - Strategic objective 3: reporting on the work we have done in relation to equality and diversity, including the research commissioned from the University of Hertfordshire
  - Strategic objective 4: reporting on our effectiveness research
  - Strategic objective 5: reporting on work done to improve public confidence in sentencing
  - Sentencing and non-sentencing factors reports
  - About the Sentencing Council section, including membership, governance and budget
  - Three feature articles covering research we have conducted into the impact of the Council and the guidelines over 10 years, why and how we conduct data collections and the tools we have developed this year to support sentencers

- 3.3 The Council is required by statute to provide the Lord Chancellor with a report on the exercise of the Council's functions during the year. The Lord Chancellor must lay a copy of the report before Parliament, after which the Council will publish it. The schedule for this year is as follows:
- Friday 17 June – consideration at Council meeting
  - Thursday 23 June – submission to the Lord Chancellor and sponsoring Minister James Cartlidge MP; circulation to MoJ Bail, Sentencing and Release Policy Unit
  - Wednesday 20 July – laid in Parliament (am) and published (pm)
- 3.4 Members are asked to discuss any substantive corrections or suggestions for changes to the report at the Council meeting on Friday 17 June and to forward any further minor changes to Phil ([phil.hodgson@sentencingcouncil.gov.uk](mailto:phil.hodgson@sentencingcouncil.gov.uk)) by end of Monday 20 June.

***Question: Subject to any minor changes, does the Council approve the Annual Report 2021/22 for submission to the Lord Chancellor?***



# Sentencing Council



**Sentencing Council**  
**Annual Report 2021/22**



# **Sentencing Council**

## **Annual Report 2021/22**

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice

This report is presented to Parliament pursuant to Section 119(2) of the Coroners and Justice Act 2009



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# Foreword

## by the Chairman



I am pleased to introduce the Sentencing Council's annual report for 2021/22. It is the Council's 12th annual report and my fourth as Chairman.

This year has presented the Council with fresh challenges as we have begun to recover from the pandemic and settle into new, hybrid ways of working. I am proud to say that, pandemic notwithstanding, we have successfully navigated our way through another productive year in which we largely met the goals we set ourselves in our business plan and delivered a new strategy that will shape the Council's work in the years to come.

### **Developing and revising guidelines**

We opened the year with our revised drug offences guidelines coming into effect on 1 April 2021. These guidelines cover offences under the Misuse of Drugs Act 1971 and the Psychoactive Substances Act 2016 and bring clarity and transparency to the sentencing of modern drug offending.

On 27 May 2021 we reached a historic moment when we published revised guidelines for assault offences and attempted murder, replacing the original assault guidelines, which were the first guidelines ever produced by the Sentencing Council. Our aims were to bring the guidelines up to date

and into line with the Council's more recently developed step-by-step model; to provide guidance for the new offence of assault on an emergency worker; and to replace the attempted murder guideline produced by our predecessor body the Sentencing Guidelines Council (SGC). Sentencing the offence of attempted murder is a complex exercise. Such offences always involve the highest level of intent, but the circumstances of each case vary, and our guideline is intended to assist the courts in grading culpability in a context where the defendant will always have intended to kill. The guidelines came into effect on 1 July 2021.

In August 2021 we released guidelines for sentencing unauthorised use of a trademark. The previous SGC guideline applied only to individuals convicted of the offence in magistrates' courts. Our new guidelines, which came into effect on 1 October 2021, provide guidance for sentencing individuals and organisations in both magistrates' courts and the Crown Court. Also coming into effect on 1 October were the Council's first guidelines for sentencing offences under the Modern Slavery Act 2015. These guidelines recognise the devastating impact this type of offending can have on its victims and provide consistency of sentencing in an area where no guideline previously existed.

Our final definitive guideline of the year provides guidance for sentencing offenders convicted of importing prohibited or restricted firearms. The guideline, which came into effect on 1 January 2022, was developed in response to requests from, among others, the National Crime Agency and Crown

Prosecution Service for clarity around this infrequently sentenced but serious offence.

The Council ran six consultations during the year:

- Burglary
- Firearms importation
- Miscellaneous amendments
- Perverting the course of justice and witness intimidation
- Sexual offences
- Terrorism

Some of these consultations were to seek views on drafts of new guidelines and others were to help us revise existing guidelines. The development of sentencing guidelines is a continuous cycle, throughout which we consult on draft guidelines and proposed revisions, test draft guidelines with sentencers to learn about their potential application and, once guidelines have been in use for a while, evaluate their operation and effect and consider whether revisions are required.

We also keep a watching brief on the steady flow of criminal legislation affecting sentencing that comes into force and decide whether any changes ought to be made to guidelines or new guidelines developed. If work is necessary, the Council will consider how we should deploy our limited resources to meet these needs while maintaining the pace of our planned work programme.

The development of our terrorism offences guidelines demonstrates clearly why we must build flexibility into the Council's work programme. We began developing guidelines in 2016 to cover offences created in the Terrorism Acts 2000 and 2006. The Council considered that the increase in terrorism activity had created an urgent need for guidelines and expedited their production, consulting on and publishing the guidelines within a single year. The guidelines came into effect in April 2018. By April 2019, the Counter Terrorism and Border Security Act had come into force and, in response, we consulted on revisions in October 2019. When the Government then announced further legislation, we decided to delay publication until we were able to assess the full implications of that legislation and, in October last year, consulted on another tranche of revisions to reflect changes brought in by the Counter Terrorism and Sentencing Act 2021. Guidelines reflecting both the 2019 and 2021 Acts will be published in July 2022 and come into effect in October 2022.

### **A strategy for the future**

On 4 November 2021 the Council launched a new strategy identifying five priorities that will shape our work between now and 2026.<sup>1</sup> The strategy results from a public consultation we held in 2020 to mark the Council's 10th anniversary, and we are grateful to all the individuals and organisations who gave us their views on where we should focus the Council's efforts

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<sup>1</sup> Sentencing Council strategic objectives 2021–2026, <https://www.sentencingcouncil.org.uk/sentencing-and-the-council/about-the-sentencing-council/strategic-objectives-2021-2026/>

and how we should balance our priorities against limited resources.

Producing and revising guidelines remains the Council's core focus, a position broadly supported by respondents to our consultation, and the first chapter of this report details the guideline development work we have completed in 2021/22. The Council has also made a commitment in the new strategy to enhance and strengthen the data and evidence upon which our guidelines are built. The progress we have made in this regard is detailed in chapter 2.

The strategy also sets an objective for the Council to explore issues of equality and diversity relevant to our work. Our action plan for meeting this objective extends the work we are already doing around equality and diversity, and this year included a project to examine the language, concepts and factors of guidelines for any potential impact that could unintentionally lead to disparities in sentencing. There is more on this project on [page 00](#).

Our fourth strategic objective outlines the Council's commitment to considering and collating evidence on effectiveness of sentencing in preventing reoffending. Effectiveness is a complex concept, and our founding legislation does not specify how we should have regard to it. To help us meet this strategic objective, in February 2022 we commissioned a literature review that we hope will shine a light on existing evidence relating to effectiveness.

In our fifth strategic objective, the Council has made a commitment to improve confidence in sentencing among the public, including victims, witnesses and defendants. Our challenge here is not just to help people understand more about sentencing but to counter the steady stream of misunderstandings and common myths about sentencing that are repeated in the media. We have continued throughout the last year to use a wide range of approaches to reaching the public, and chapter 5 sets out the work we have done to provide information about sentencing in the media, use our website to show the public how sentencing works, produce materials for schools and develop the online sentencing tool, You be the Judge.

### **Digital by default**

Since November 2018, all sentencing guidelines for use in the magistrates' courts and the Crown Court have been published digitally on our website. The move to digital has revolutionised the way the Council manages the evolution of guidelines. It has enabled us to introduce expanded explanations to the offence-specific guidelines, providing sentencers and advocates with additional information and improving transparency for victims, defendants and the public. It has also allowed us to make minor changes to guidelines such as those we implemented in April 2022 following our first annual consultation on miscellaneous amendments and the widespread changes we made in 2020 to reflect the Sentencing Code in all offence-specific and overarching guidelines,

expanded explanations and explanatory materials. Before the development of the digital guidelines, any one of those exercises would have necessitated the reprinting and redistribution of the entire body of sentencing guidelines.

Our website also allows us to provide digital tools to support magistrates and judges. This year we added to our tools for magistrates with a drink-driving calculator in March 2021 and a pronouncement-card builder in January 2022 and, on 16 December 2021, we introduced SentencingACE to the Crown Court. While not a decision-making tool, SentencingACE allows judges to confirm that all elements of their intended sentence are correct in law and helps practitioners make sure they address the court on all matters relevant to sentencing. You will find more information about these digital tools on [page oo](#).

### **Understanding our impact**

On 11 August 2021, we published research that examined the Council's impact in three key areas: judicial attitudes to sentencing guidelines; changes in sentencing severity and requirements for prison places associated with our offence-specific guidelines; and a review of consistency in sentencing. The Council decided that, as part of the activities to mark our 10-year anniversary, we should take a closer look at what impact the Council and the guidelines had had over the past decade. While we have been aware anecdotally for some time that the guidelines have grown in popularity with judges and magistrates, we were pleased

to see evidence from this research of broad judicial support for the guidelines, and to find that judges and magistrates believe guidelines have improved over time and have had a positive impact on sentencing practice. The outcomes of these research projects, and what we plan to do as a result of the findings, are on [page oo](#).

### **In closing**

I will close by paying tribute to my colleagues on the Sentencing Council. As always, each of them has contributed their considerable experience and expertise to the work of developing guidelines with good grace and humour in sometimes very trying circumstances. I am most grateful to them all. I particularly want to thank His Honour Judge Michael Fanning for the contribution he has made to the Council since his appointment as the District Judge (Magistrates' Courts) member in September 2019. His well-earned promotion to Circuit Judge in September 2021 has sadly led to his departure from the Council.

I also want to commend the staff of the Office of the Sentencing Council, without whom none of the Council's work would be possible. They have worked steadfastly throughout the pandemic, maintaining the quality and quantity of their work, and continue to be a highly effective team. I welcome the new members who joined the team this last year. Despite, in some instances, not meeting their colleagues face to face for many weeks, they have moved quickly and seamlessly into our ways of working and are already making a valuable contribution.

This will be my last annual report as Chairman. It has been a great privilege for me to have held the post for four years, and I am very grateful to all the members of the Council and of the Office team who have made that period so enjoyable and productive. I am proud of all that has been achieved, and I am sure that the same high standard will be maintained in the future. I offer my best wishes to my successor.

A handwritten signature in black ink, reading "Tim Holroyde". The signature is written in a cursive style with a long, sweeping underline that extends to the right.

Tim Holroyde  
**Lord Justice Holroyde**  
July 2022

# Introduction

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice (MoJ). It was set up by Part 4 of the Coroners and Justice Act 2009 to promote greater transparency and consistency in sentencing, while maintaining the independence of the judiciary.

The aims of the Sentencing Council are to:

- promote a clear, fair and consistent approach to sentencing;
- produce analysis and research on sentencing; and
- work to improve public confidence in sentencing.

On 4 November 2021, the Council published a new five-year strategy and supporting work plan, which were developed following a public consultation held to mark the Council's 10th anniversary in 2020.<sup>2</sup> The strategy commits the Council to five objectives.

- To promote consistency and transparency in sentencing through the development and revision of sentencing guidelines.
- To ensure that all our work is evidence-based and to enhance and strengthen the data and evidence that underpins it.
- To explore and consider issues of equality and diversity relevant to our work and

take any necessary action in response within our remit.

- To consider and collate evidence on effectiveness of sentencing and seek to enhance the ways in which we raise awareness of the relevant issues.
- To work to strengthen confidence in sentencing by improving public knowledge and understanding of sentencing, including among victims, witnesses and offenders, as well as the general public.

This annual report documents the work undertaken by the Council between 1 April 2021 and 31 March 2022 in the context of the five strategic objectives.

Also included, in accordance with the Coroners and Justice Act 2009, are two reports considering the impact of sentencing factors (pages 00-0) and non-sentencing factors (pages 00-0) on the resources required in the prison, probation and youth justice services to give effect to sentences imposed by the courts in England and Wales.

For information on past Sentencing Council activity, please refer to our earlier annual reports, which are available on our website at: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

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<sup>2</sup> <https://www.sentencingcouncil.org.uk/publications/item/strategic-objectives-2021-2026/>



# Key events 2021/22

| 2021             |  |   |
|------------------|--|---|
| <b>April</b>     | 1  | Drug offences revised guidelines come into effect   |
|                  | 7  | Drink-driving calculator tool for magistrates' courts launched (see <a href="#">page 00</a> ) |
| <b>May</b>       | 12   | Sexual offences statistical bulletin published  |
|                  | 13   | Sexual offences guidelines consultation opened  |
|                  | 26   | Assault offences data tables published  |
|                  | 27   | Assault offences and attempted murder revised guidelines published                            |
| <b>June</b>      | 8  | Burglary offences statistical bulletin published  |
|                  | 9  | Burglary offences revised guidelines consultation opened                                      |
|                  | 16   | Firearms importation offences statistical bulletin published                                  |
|                  | 17   | Firearms importation offences guideline consultation opened                                   |
| <b>July</b>      | 1  | Assault offences and attempted murder revised guidelines come into effect                     |
|                  | 21   | Annual report 2020/21 laid in Parliament and published  |
| <b>August</b>    | 4  | Unauthorised use of a trade mark data tables published  |
|                  | 5  | Unauthorised use of a trade mark offences guidelines published                                |
|                  | 11   | Modern slavery offences data tables published   |
|                  |  | Research investigating the Sentencing Council's impact in three key areas published           |
| 12               | Modern slavery offences guidelines published |   |
| <b>September</b> | 9  | Miscellaneous amendments to sentencing guidelines consultation opened                         |
|                  | 28   | Research investigating the Totality guideline published                                       |

| 2021            |    |   |
|-----------------|----|---|
| <b>October</b>  | 1  | Unauthorised use of a trade mark guideline comes into effect                                    |
|                 |    | Modern slavery offences guidelines come into effect   |
|                 | 19 | Terrorism offences data tables published  |
|                 | 20 | Terrorism offences consultation opened  |
| <b>November</b> | 4  | Five-year strategy published  |
|                 | 23 | Firearms importation offences data tables published   |
|                 | 24 | Firearms importation offences guidelines published  |
| <b>December</b> | 16 | SentencingACE tool for Crown Court launched (see <a href="#">page oo</a> )                      |
| 2022            |    |   |
| <b>January</b>  | 1  | Firearms importation guidelines come into effect  |
|                 | 18 | Pronouncement-card builder tool for magistrates' courts launched (see <a href="#">page oo</a> ) |
| <b>March</b>    | 11 | Miscellaneous amendments response to consultation published                                     |
|                 | 29 | Perverting the course of justice and witness intimidation statistical bulletin published        |
|                 | 30 | Perverting the course of justice and witness intimidation consultation opened                   |

“The sentencing guidelines we produce are followed by judges and magistrates in every criminal court across England and Wales every day. They play a significant role in the lives of thousands of people, not just those who are being sentenced but also the victims and witnesses of crime.

We need to get the balance right between developing new guidelines, revising existing guidelines, building up the evidence on which the guidelines are based, and fulfilling the Council’s many other duties.”

**Chairman Lord Justice Holroyde on the launch of the Sentencing Council strategic objectives 2021-2026, 4 November 2021**



## **Strategic objective 1:**

Promoting consistency and transparency in sentencing through the development and revision of sentencing guidelines

The purpose of the Sentencing Council for England and Wales is to promote a clear, fair and consistent approach to sentencing by issuing sentencing guidelines that provide clear structures and processes for judges and magistrates to use in court.

This purpose is underpinned by the statutory duties for the Council that are set out in the Coroners and Justice Act 2009.

Responses to the anniversary consultation held by the Council in 2020 provided broad support for our view that the production and revision of guidelines should remain our key focus.

The sentencing guidelines are intended to help ensure a consistent approach to sentencing, while preserving judicial discretion. Under the Sentencing Act 2020, a court must follow relevant sentencing guidelines unless satisfied in a particular case that it would be contrary to the interests of justice to do so.

When developing guidelines, the Council has a statutory duty to publish a draft for consultation. At the launch of a consultation, we will seek publicity via mainstream and specialist media, as well as promoting it via social media and on the Sentencing Council website. We make a particular effort to reach relevant professional organisations and representative bodies, especially those representing the judiciary and criminal justice professionals, but also others with an interest in a particular offence or group of offenders.

Many of the responses come from organisations representing large groups so the number of replies does not fully reflect the comprehensive nature of the contributions, all of which are given full consideration by the Council.

The work conducted on all guidelines during the period from 1 April 2021 to 31 March 2022 is set out in this chapter. To clarify what stage of production a guideline has reached, reports of our work fall under one or more of four key stages:

1. Development
2. Consultation
3. Post-consultation
4. Evaluation and monitoring

The table at Appendix C sets out the production stages of all sentencing guidelines.

## Animal cruelty

In 2021, Parliament passed and Royal Assent was given to the Animal Welfare (Sentencing) Act, which increased the maximum penalty from six months' to five years' imprisonment for a number of animal cruelty offences, including causing unnecessary suffering, tail docking and involvement in an animal fight.

### ***Development***

The Council agreed that the existing guideline for sentencing animal cruelty offences, which came into effect in April 2017, should be updated to reflect the change in maximum penalty. The Council also considered that guidance should be extended to include other offences affected by the 2021 Act and to update the existing guidance for breach of duty of person responsible for animal to ensure welfare, for which the maximum penalty has not changed.

### ***Consultation***

We opened a consultation on 10 May 2022 and will report on the outcome in next year's annual report. Alongside the consultation, the Council published a resource assessment and statistical bulletin covering the relevant offences.

## Assault and attempted murder

The assault offences guidelines, which were published in 2011, were the first guidelines issued by the Council. At the time, attempted murder offences were covered by a guideline issued by the Council's predecessor body, the Sentencing Guidelines Council (SGC), and that guideline was not revised. Following an evaluation in 2015, the Council held a consultation on revised guidelines for assault offences, updated to follow the Council's step-by-step model, and attempted murder, and new guidance for assault on emergency workers.

### ***Post-consultation***

There were 67 responses to the consultation and the Council considered amendments to the guidelines in the light of these, testing potential changes based both on responses and research findings with sentencers.

The definitive guidelines were published in May 2021, accompanied by a resource assessment and data tables covering the relevant offences. They came into effect on 1 July 2021.

We will be conducting a data collection exercise in autumn 2022 to allow us to evaluate the impact of changes made to the guidelines. This will supplement earlier data collected between January and May 2021.

***Media coverage***

We achieved widespread coverage of the launch of the assault guidelines. Reporting was accurate and picked up on a number of different angles, including the new culpability factor relating to 'disease transmission', the inclusion of spitting as an aggravating factor and sentencing assaults on emergency workers. Sky News, Times Radio and TalkRadio covered the launch, as well as national press including the Daily Mail, the Times, Daily Telegraph, Daily Express and Independent. We also received attention in regional titles such as the Manchester Evening News, Evening Chronicle, Lancashire Evening Post and Sheffield Star. Coverage in Ambulance Live and Police Professional featured the new guidance for assaults on emergency workers.

**Bladed articles and offensive weapons**

The guidelines for sentencing offenders convicted of possessing or threatening to use a bladed article or offensive weapon came into effect on 1 June 2018.

***Evaluation and monitoring***

In 2019, we collected data on how cases of possession of a bladed article or offensive weapon were being sentenced across all magistrates' courts. We are using these data to help us assess the impact and implementation of the bladed articles and offensive weapons

definitive guidelines and expect to publish our evaluation in October 2022.

**Breach offences**

In 2018, the Council issued guidelines to assist the courts in sentencing offenders who have not complied with 10 specific types of court order, including suspended sentence orders, community orders, restraining orders and sexual harm prevention orders. The guidelines came into effect on 1 October 2018.

***Monitoring and evaluation***

This year, we have been conducting an evaluation to help us assess the impact and implementation of the 10 sentencing guidelines for breach offences. For the evaluation, we have analysed the information we gathered from our 2019 data collection in magistrates' courts, as well as data from MoJ's court proceedings database, to observe any changes to the factors relevant to sentencing and in the type of disposals being imposed. We have conducted survey research with sentencers and probation practitioners to understand their experience of using the guidelines.

The evaluation will be published later in 2022.

## Burglary

The definitive guidelines for sentencing burglary offences came into effect in January 2012. Following an evaluation exercise, which we completed in July 2017, and to bring the guidelines into line with the Council's step-by-step model, the Council decided to revise the burglary guidelines.

### **Consultation**

We consulted on draft revised guidelines between 9 June and 1 September 2021. To support the consultation, we tested the guidelines with sentencers, completing qualitative interviews with nine magistrates and 12 Crown Court judges. Sentencers found the guidelines clear and useable.

The Council supported the consultation with a draft resource assessment and statistical bulletin.

### **Post-consultation**

The 32 responses we received were broadly supportive of the revised guidelines, with some making suggestions for amendments. As a result, the Council made a number of changes to the harm factors because some respondents felt that, as drafted, they were too subjective and therefore difficult to apply consistently. The changes were also designed to make sure that the harm factors fully reflect the distress suffered by burglary victims. The revised guidelines have also been set out in line with the Council's more recently developed stepped model of sentencing. The guidance around 'weapon carried' within aggravated burglary was also revised.

The definitive guideline was published on 19 May 2022 and came into effect on 1 July 2022. We will be conducting a data collection exercise in autumn 2022 to allow us to evaluate the impact of changes made to the guidelines.

### **Media coverage**

The launch of the consultation in June 2021 was covered in the Daily Telegraph, Daily Mail, Liverpool Echo, Sheffield Star and the specialist publication, Police Oracle. Coverage was factual and, in particular, picked up on the extent to which the revised guidelines recognise the harm caused by these offences to victims.



## Investigating the Sentencing Council's impact

The Council decided that, as part of the activities we undertook to mark our 10th anniversary in 2020, we should take a closer look at what impact the Council and the sentencing guidelines have had over the past decade. We published the outcomes of this research in August 2021.<sup>3</sup>

We wanted to explore the views of sentencers – the principal users of the guidelines – so that we could gain insight into their experience of using sentencing guidelines, as well as their perceptions of the impact of guidelines on aspects such as fairness, transparency and consistency. We also wanted to explore impacts on two areas related to sentencing outcomes, which would feed into work to address some of the Council's statutory duties under the Coroners and Justice Act 2009.

The Council carried out research in three separate areas:

- judicial attitudes to sentencing guidelines;
- changes in sentencing severity and requirements for prison places associated with offence-specific guidelines; and
- consistency in sentencing, with additional analysis investigating the impact of three specific guidelines on consistency of approach to sentencing.

We completed the work using a combination of research and analysis carried out by the Council's statisticians and social researchers, and through commissioning work from external academics and organisations. Our methods included surveying sentencers, analysing court data and reviewing relevant research evidence.

### What were the findings on the Council's impact?

#### Judicial attitudes

Our survey research told us that sentencers have a positive attitude towards sentencing guidelines, both in relation to the introduction of guidelines in 2004 and to the Sentencing Council guidelines that started to come into force from 2011. Overall, the research suggests there is broad judicial support for the guidelines, they have improved over time and they have had a positive impact on sentencing practice.

#### Sentencing severity

For most offences evaluated to date the guidelines appear to have had the impact that the Council expected. However, for some offences, sentencing outcomes differed from what was expected at the time the guideline was published. The analysis showed that, for 31 of 76 offences, both anticipated and unanticipated changes could be seen, 21 of which related to

<sup>3</sup> <https://www.sentencingcouncil.org.uk/publications/item/investigating-the-sentencing-councils-impact-in-three-key-areas/>

increases in sentencing severity. In total, there were 10 offences where changes in sentencing following the introduction of the relevant guideline were related in some way to immediate custody: seven increases in severity and three decreases. Analysis for nine of the 10 offences estimated that these guidelines were associated with a need for a total of around 900 additional prison places per year by 2018, with a range of between 0 and 1,700. Around three quarters of these estimated prison places were associated with the guidelines for two offences: causing grievous bodily harm with intent to do grievous bodily harm, and robbery.

### **Consistency**

The research into consistency showed mixed results, with some positive findings relating to the possible impact of the Council's guidelines on consistency of approach. In some areas there seem to have been smaller gains but this should be seen in the context of the fact that, where we have evidence, sentencing already seems to be relatively consistent, meaning that there may only be narrow room for improvement.

### **Have any changes to guidelines been made as a result of the research?**

The Council considered whether any specific guidelines needed to be revised. Some, such as the assault guidelines, have already been revised, and the Council has committed to revisiting a number of other guidelines in time to consider whether they may require revision or amendment. Where our evaluation findings have been tentative, we will continue to monitor sentencing data before making any decision as to whether they need to be revisited.

### **What further work does the Council intend to do in these areas?**

The Council is committed to continuing to explore the impacts of the guidelines. We do this through our research work, both while guidelines are in development and after they have been implemented. Our research will include examining whether any changes to sentencing have occurred since a guideline has been implemented, considering the ways in which consistency can be monitored and measured over time, and identifying improvements to data sources that could help to support our work.

Future work in these specific areas will supplement the research actions outlined in the strategic objectives document we published in November 2021. In addition, the Council has a programme of work on diversity and inclusion to be applied across the whole range of our guideline development and evaluation activities. This will include considering ways in which we can examine the impact of guidelines on people with protected characteristics under the public sector equality duty.<sup>4</sup> The Council will also continue to capture sentencers' views of the guidelines through research and consultation.

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<sup>4</sup> <https://www.sentencingcouncil.org.uk/research-and-resources/public-sector-equality-duty/>

## Firearms importation

On 1 January 2022 our new guideline for sentencing offenders convicted of importing prohibited or restricted firearms came into effect.

### ***Development***

During a 2019 consultation on draft guidelines for firearms offences, the Council received requests from several respondents including the National Crime Agency and the Crown Prosecution Service to develop guidelines for firearms importation offences.

Having also received similar feedback from judges, the Council agreed to develop a single guideline covering two offences under the Customs and Excise Management Act 1979: sections 50 (improper importation of goods) and 170 (fraudulent evasion of prohibition/restriction on importation).

### ***Consultation***

From 17 June 2021 to 8 September 2021 we consulted on the draft guideline. During this time, the National Crime Agency held a meeting to discuss their response to the consultation, which was attended by representatives of the Council.

We received 14 responses, including one from the Justice Committee.

Alongside the consultation, the Council also published a resource assessment and statistical bulletin showing current sentencing practices for the offences included.

### ***Post-consultation***

Several issues were raised in consultation responses relating to whether some wording in the proposed guideline would be understood or implemented consistently. To address this, we conducted a short survey with 16 Crown Court judges in September 2021. We asked the judges about their experiences of sentencing using the existing prohibited weapons guideline and tested the new draft guideline for assessing culpability and harm.

Findings from this survey, alongside the consultation responses, fed into the further development and refinement of the proposed guideline for consistency and clarity.

The definitive guideline was published on 24 November 2021 alongside a resource assessment and data tables.

### ***Media coverage***

The launch of the definitive guidelines was covered by the Daily Telegraph and the Times, as well as Police Professional, Police Oracle and the New Law Journal.

“Assault is a traumatic offence and can cause great distress to the victim both physically and psychologically, and it is important that sentences reflect the harm and upset that can be caused to many people – both ordinary members of the public and professionals doing their work.

These guidelines provide updated guidance for sentencing a range of assault offences, from common assault to attempted murder, and include guidance for sentencing offences involving assaults on emergency workers. The guidelines will ensure appropriate and proportionate sentences are imposed for these offences that fully recognise the level of harm caused to the victim.”

**Council member Her Honour Judge Dean on the launch of definitive guidelines for assault and attempted murder, 27 May 2021**

## Imposition of community and custodial sentences

The Council's aim in producing the imposition guideline was to provide guidance to the courts about the process that should be followed when deciding whether offenders should be given community or custodial sentences, so as to ensure that the appropriate type of sentence was imposed to reflect the seriousness of their offending.

### *Evaluation and monitoring*

The guideline has been in operation since it came into effect on 1 February 2017. This year, the Council began a process of analysis to look at trends over time for these types of sentences and evaluate whether the guideline has had its intended impact. We expect this work to be published in autumn 2022.

## Intimidatory offences

The Council's definitive guidelines for sentencing intimidatory offences came into effect on 1 October 2018. The guidelines cover offences of harassment, stalking, disclosing private sexual images, controlling or coercive behaviour, and threats to kill.

### *Evaluating and monitoring*

Following a 2019 data-collection exercise in magistrates' courts, we have been working this year to evaluate the impact of the intimidatory offences guidelines and will publish our findings in due course.

## Miscellaneous amendments

The Sentencing Council has published over 180 sentencing guidelines that are in use in courts throughout England and Wales. In order to address any issues that arise with guidelines, the Council decided to hold an annual consultation on miscellaneous amendments to guidelines.

### *Development*

We began work on compiling the first miscellaneous amendments consultation in April 2021. The issues covered were drawn from case law, commentary on sentencing and feedback from guideline users, as well as from work the Council has done on other guidelines.

### *Consultation*

We held the consultation between 9 September 2021 and 2 December 2021, asking consultees for views on the following proposals:

- breach of a sexual harm prevention order adding a note to this guideline to make clear that, when dealing with a breach, the court does not have a standalone power to vary the sexual harm prevention order or make a fresh order;
- compensation: in all relevant guidelines, adding wording relating to giving reasons if compensation is not awarded;
- confiscation: providing fuller information on confiscation in all relevant guidelines;

- racially or religiously aggravated offences: making the uplift for racial or religious aggravation a separate step in the guidelines for criminal damage (under £5,000) and criminal damage (over £5,000); section 4, section 4A and section 5 Public Order Act offences; and harassment/ stalking and harassment/ stalking (with fear of violence); and
- domestic abuse overarching guideline: revising the definition of domestic abuse to include the definition in the Domestic Abuse Act 2021 and expanding it to include a wider range of relationships.

### ***Post-consultation***

There were 20 responses to the consultation. Some of the responses were from groups or organisations, and some from individuals. Most responses were broadly in support of the proposals but some respondents disagreed with individual proposals or suggested where the changes could go further.

The Council published a response to the consultation on 11 March 2022. The amended versions of the guidelines were published on the Council's website on 1 April 2022 and came into force on publication.

The consultation included a general question inviting comment on the proposals. Some respondents used this to make suggestions for future changes to guidelines, which we welcome and will consider alongside other matters as part of the next annual miscellaneous amendments consultation, expected in autumn 2022.

## **Modern slavery**

Between October 2020 and January 2021, the Council consulted on draft guidelines for sentencing offences under the Modern Slavery Act 2015, including: slavery, servitude and forced or compulsory labour; human trafficking; committing an offence with intent to commit an offence under section 2 of the Act; and breach of a slavery and trafficking prevention order or a slavery and trafficking risk order.

### ***Post-consultation***

The definitive guidelines for sentencing modern slavery offences, which we published on 12 August 2021, were informed by the 44 responses we received to the consultation. We made more explicit the guidance about how being a victim of modern slavery might affect an offender's culpability; amended culpability factors to allow for a wider range of advantages and threats to be taken into account; and extended harm factors to include the particular harm of victims being deceived or coerced into sexual activity, among other changes.

A resource assessment and data tables were published alongside the definitive guidelines on 12 August 2021. The guidelines came into effect on 1 October 2021, and we will monitor their impact.

**Media coverage**

The launch of the definitive guidelines was featured in the Daily Telegraph, Law Society Gazette and New Law Journal, all of which noted that these are the first sentencing guidelines for modern slavery offences. There was also coverage on Sky News, Times Radio and BBC Radio Humberside.

**Motoring offences**

The existing sentencing guidelines for offences under the Road Traffic Act 1988 were published in 2008 by the SGC. The guidelines cover:

- causing death by dangerous driving (section 1);
- dangerous driving (section 2);
- causing death by careless driving (section 2B),
- causing death by careless driving whilst under the influence of drink or drugs (section 3A); and
- causing death by driving whilst unlicensed, disqualified or uninsured (section 3ZB).

The motoring offences guidelines are the last of the SGC offence-specific guidelines for the Council to revise and, while we have been conscious of the need for these guidelines to be revised and brought up to date, we also felt it would be prudent to wait until the outcome of a 2016 Government consultation were known and the terms of the resulting legislation became clear.

**Development**

In 2016 the government consulted on proposals to raise the maximum penalties for section 1 and section 3A offences from 14 years' imprisonment to life imprisonment, and on creating a new offence of causing serious injury by careless driving. The Police, Crime, Sentencing and Courts Act 2022, which received Royal Assent on 28 April 2022, brought those proposals into effect.

The Council agreed to revise the existing guidelines and develop new guidelines to reflect those legislative and other changes and take into account developments in sentencing trends. As well as applying the new penalties and offences under the 2022 Act, the draft guidelines cover among other offences:

- causing serious injury by driving whilst disqualified (section 3ZD of the 1988 Act);
- wanton or furious driving (section 35 of the Offences Against the Person Act 1861), which is commonly used where someone has been injured as a result of a cycling incident; and
- offences related to drug driving.

**Consultation**

The consultation on our draft motoring offences guidelines opened in July 2022 accompanied by a resource assessment and statistical bulletin, and we will report on the outcome in next year's annual report.

## **Perverting the course of justice and witness intimidation**

### ***Development***

Perverting the course of justice offences are serious offences with a maximum of life imprisonment. There is currently no guideline for this range of offences and limited guidance for witness intimidation offences only in the magistrates' court.

The Council agreed to develop new guidelines for perverting the course of justice offences and to revise the guideline for witness intimidation offences for use in all courts.

### ***Consultation***

We opened a consultation on the draft guidelines on 30 March 2022. Alongside the consultation, we published a resource assessment and statistical bulletin covering the relevant offences. During the course of the consultation we conducted qualitative interviews with judges to gauge their views of both draft guidelines.

We will report on the outcome of the consultation in next year's annual report.

## **Sale of knives, etc to persons under 18**

### ***Development***

The Council received a submission on behalf of the London Borough of Barking and Dagenham regarding the need for a sentencing guideline for the offence of selling knives and certain articles with a blade or point to persons under the age of 18, contrary to section 141A of the Criminal Justice Act 1988.

In response to the submission, the Council agreed to develop two guidelines for this single offence: one for sentencing individuals and one for sentencing organisations.

This offence is prosecuted by trading standards departments of local authorities, and the Council was greatly assisted in the development of the guidelines by information from trading standards officers on how the offence is investigated and prosecuted in practice.

### ***Consultation***

We opened a consultation on the guidelines on 1 June 2022, publishing a supporting resource assessment and statistical bulletin. During the consultation we will be conducting qualitative interviews with magistrates to gauge their views of both draft guidelines. We will report on the outcome of the consultation in next year's annual report.



## Sexual offences

The Council published our first guidelines for sentencing sexual offences in 2013. The guidelines covered more than 50 offences including rape, child sex offences, indecent images of children, trafficking and voyeurism.

In 2020, the case of *R v Privett and others* [2020] EWCA Crim 557 set out the approach the courts should take for sentencing offences under section 14 of the Sexual Offences Act 2003 (arranging or facilitating the commission of a child sex offence) when no real child victim exists.

In response, the Council agreed to review elements of the 2013 sexual offences guidelines.

### **Consultation**

Between May and August 2021 we consulted on new and revised guidelines covering offences under the 2003 Act:

- arranging or facilitating the commission of a child sex offence (section 14), even where no sexual activity takes place or no child victim exists;
- causing or inciting a child to engage in sexual activity (section 10), and other similar offences, even where activity is incited but does not take place or no child victim exists; and
- sexual communication with a child (section 15A), a relatively new offence created by the Serious Crime Act 2015 and in force since 2017.

We also consulted on minor amendments proposed for several other guidelines, including changes to guidance on the approach when offending is conducted remotely and victims are overseas.

Alongside the consultation, the Council published a resource assessment and statistical bulletin showing current sentencing practices for the offences included.

During the consultation period, to support the development of the guideline, we carried out research with Crown Court judges, district judges and magistrates to explore how the draft guidelines might work in practice.

### **Post-consultation**

Our consultation received 34 responses, which helped to inform the development of the definitive guidelines. We made a number of revisions to the draft, which were designed, for example, to clarify:

- the steps the court should take where no sexual activity has taken place;
- the approach to take in assessing psychological harm;
- the application of the guidance to offences committed remotely/ online; and
- the guidance on sentencing historical sexual offences.

The Council also made various changes to the draft sexual communication with a child guideline, including providing for a broader range of digital content to be taken into account in assessing harm, and better providing for the situation where no real child victim exists.

The definitive guidelines were published on 17 May 2022, accompanied by a resource assessment and data tables. The revisions to existing guidelines came into force on 31 May 2022, and the new guideline for sexual communication with a child came into force on 1 July 2022.

### ***Media coverage***

We achieved coverage for the consultation launch in the New Law Journal and on the BBC Today programme, BBC Radio 2, BBC Radio 5 Live, the BBC News website and across the BBC regional radio stations. There was also coverage on Sky News, LBC, TalkRadio and Times Radio, and stories in the Daily Mail, the Times, the Daily Express and a number of regional titles. The coverage was factual and focused on sentencing offenders based on intent rather than harm.

## **Terrorism**

The Council first published guidelines for sentencing terrorism offences in March 2018. The Counter Terrorism and Sentencing Act 2021, which received Royal Assent on 29 April 2021, made it necessary for the Council to make changes to these guidelines.

The Council had already drafted, and consulted on, changes to the guidelines arising from the Counter-Terrorism and Border Security Act 2019, and took the decision to make any additional revisions to the guidelines before publishing both sets of changes at the same time.

Ahead of consultation, to support the proposed changes to the guidelines, we carried out analysis of court transcripts as well as conducting qualitative interviews with a small number of judges who sentence terrorism offences, to explore how proposed changes might work in practice.

### ***Consultation***

The consultation ran from 20 October 2021 to 11 January 2022. Alongside the consultation, the Council also published a resource assessment and data tables for the offences included.

### ***Post-consultation***

There were 14 responses to the consultation, including from the Justice Committee. Modifications to the guidelines will be considered by the Council in the light of the consultation responses and the research with judges.

The changes resulting from both consultations will be published in mid-2022.

### ***Media coverage***

There was coverage on Sky News, BBC Today and Times Radio. Print coverage appeared in the Daily Mail, the Times, the Daily Telegraph, the Sun, the Daily Express, Wales Online, Manchester Evening News, the Daily Star, Staffordshire Live, Shropshire Star and many other regional titles. Other coverage appeared in the New Law Journal, Counter Terror Business and Tech Register.

“Terrorism offences are serious criminal acts that are constantly evolving, and the law is regularly updated in line with the changing nature of the offences, requiring a new approach to sentencing.

The Council is proposing revisions to existing sentencing guidelines to reflect the new legislation and ensure that the courts have comprehensive and up-to-date guidance for dealing with these extremely serious cases.”

**Council member Mrs Justice McGowan on the launch of the consultation on revised guidelines for sentencing terrorism offences, 20 October 2021**

## **Totality**

The Council's Totality guideline came into effect on 11 June 2012. The guideline provides the courts with guidance on what the total sentence should be when an offender has been convicted of more than one offence and is being sentenced for those offences at the same time.

### ***Evaluation and monitoring***

In September 2021, the Council published a report exploring sentencers' views of the Totality guideline. We carried out a survey and a series of interviews to understand how sentencers use the guideline, explore sentencers' attitudes towards the guideline and identify any potential problems or issues.

The research found that the guideline was considered to be clear and useful. Most sentencers we surveyed agreed with the current content in each section of the guideline and agreed that it provides practical help in sentencing, though some requested improvements to its format. We showed interviewees ideas for improving the format of the guideline and most were positive about the proposals.

Having considered the findings of the research, the Council has taken the decision to review the Totality guideline and will consult on proposed changes in 2022.

## **Unauthorised use of a trade mark**

Draft guidelines for sentencing individuals or companies that sell or possess counterfeit goods intended for sale were published for consultation on 8 July 2020, following the Council's decision to replace and update a guideline produced by the SGC in 2008.

### ***Post-consultation***

In the light of responses to the consultation and research carried out with sentencers, the Council made a number of changes to the draft guidelines to aid clarity. In particular, the Council considered that sentencers would benefit from having some non-exhaustive examples of the behaviour that could come within the different levels of culpability for an offence that sentencers see only rarely.

The definitive versions of the guidelines were published on 5 August 2021, alongside a final resource assessment, and came into effect on 1 October 2021.

### ***Media coverage***

The Law Society Gazette reported on the launch of the definitive guidelines.

## Vehicle taking (aggravated)

Aggravated vehicle-taking falls under section 12A of the Theft Act 1968 and is currently covered by sentencing guidelines for magistrates' courts that were produced by the SGC in 2008.

### ***Development***

As part of a commitment to update and replace all SGC guidelines, the Council decided to revise and replace guidelines for aggravated vehicle taking, and we are in the process of developing new guidelines that will provide comprehensive guidance to sentencers in both magistrates' courts and the Crown Court.

## **Strategic objective 2:**

Ensuring that all our work is evidence-based, and working to enhance and strengthen the data and evidence that underpin it

The Council carries out analysis and research into sentencing in order to enable us to meet the statutory duties set out in the Coroners and Justice Act 2009. Our analysis and research work is integral to ensuring the Council develops guidelines that meet our aims and objectives, and the work contributes to all stages of the guideline development process. We draw upon a range of different data sources, as well as undertaking our own research to inform our work, both quantitative and qualitative.

The high volume and range of responses to the Council's anniversary consultation that related directly to our analytical work indicate how important our stakeholders consider this area to be in terms of the overall functioning of the Council. It is a reflection of the importance placed on this work by our respondents that the Council has committed to prioritising analysis and research and has dedicated to it one of the five strategic objectives.

## Undertaking research and analysis to support the development of guidelines and other statutory duties

The Council regularly carries out social research and analysis that aims to augment the evidence base underpinning guidelines ensuring, in particular, that guidelines are informed by the views and experiences of those who sentence. We conduct primary

research, using a range of methods, with users of the guidelines: primarily Crown Court judges, district judges and magistrates. Our methods include surveys, interviews and group discussions. Our researchers also review sentencing literature and analyse transcripts of Crown Court sentencing remarks. This work helps to inform the content of the guidelines at an early stage of development and explore any behavioural implications. At times, and where relevant, we also conduct research with victims, offenders and members of the public.

During the development of draft guidelines, we also draw on a range of data sources to produce statistical information about current sentencing practice, including offence volumes, average custodial sentence lengths and breakdowns by age, gender and ethnicity. We use this information to understand the parameters of current sentencing practice and to fulfil the Council's public sector equality duty (see also [page 00](#)).<sup>5</sup>

When required, the Council also undertakes research and analysis to support some of our wider statutory duties or to provide further information in specific areas. During 2021/22, this work has included research to support our public confidence duties (see [page 00](#)), examine issues related to effectiveness and consistency in sentencing and judicial attitudes to guidelines (see [page 00](#)) and consider equality and diversity in the work of the Sentencing Council (see [page 00](#)).

<sup>5</sup> The public sector equality duty, s.149 of the Equality Act 2010, applies to the public bodies listed in schedule 19 <https://www.gov.uk/government/publications/equality-act-2010-schedule-19-consolidated-april-2011>

“The changes we are proposing today will make sure the courts give the proper weight to the harm intended by those who commit offences against children. When an offender intends sexual activity with a child, that must be reflected in the sentence imposed, even where that activity does not ultimately take place.

We are asking judges, magistrates and other interested parties for their views on the proposed guidelines to help us protect children from people planning to cause them sexual harm or inciting sexual activity with them.”

**Council member Lord Justice Fulford on the launch of the consultation on revised guidelines for sentencing child sexual offences, 17 May 2021**

## Assessing the resource implications of guidelines

The Council has a statutory duty to produce a resource assessment to accompany each sentencing guideline that estimates the effects of the guideline on the resource requirements of the prison, probation and youth justice services. This assessment enables the Council and our stakeholders to understand better the consequences of the guidelines in terms of impact on correctional resources. The work that goes into resource assessments also results in wider benefits for the Council.

The process involves close scrutiny of current sentencing practice, including consideration of the factors that influence sentences. This analysis provides a 'point of departure' for the Council when we are considering the appropriate sentencing ranges for a guideline.

Where the Council intends a guideline to improve consistency, while causing no change to the overall severity of sentencing, the guideline sentencing ranges will aim to reflect current sentencing practice, as identified from the analysis. Where we intend a guideline to effect changes in the severity of sentencing for an offence, the Council may set sentencing ranges higher or lower than those indicated by current sentencing practice.



We publish resource assessments to accompany our consultations and our definitive guidelines. Alongside our draft guidelines for consultation we also publish a statistical bulletin summarising the statistical information that has helped inform their development.

## Monitoring the operation and effect of guidelines and drawing conclusions

The real impact of a guideline on sentencing and, consequently, on resources is assessed through monitoring and evaluation after the guideline has been implemented. To achieve this, we use a range of different approaches and types of analysis. These include bespoke, targeted data collections in courts, where we collect information on a range of factors relevant to the sentencing decision, including harm and culpability factors, aggravating and mitigating factors, guilty plea reductions and sentence outcomes. We also conduct qualitative interviews with sentencers, analyse sentencing transcripts and undertake statistical analysis of administrative data.

We have published data from the Crown Court Sentencing Survey on our website, as well as more recent data collected from magistrates' courts on theft from a shop or stall. We will be publishing data from other data-collection exercises looking at drug and robbery offences in due course.<sup>6</sup>

## Publishing Sentencing Council research

We publish our research and statistical outputs on the analysis and research pages of our website.<sup>7</sup> More information about the analysis and research we have undertaken to support the development of new guidelines or evaluate existing guidelines is included throughout chapter 1 of this report (see [pages 0–00](#)).

## Reporting on sentencing factors and non-sentencing factors

The Council has a statutory duty to produce sentencing factors and non-sentencing factors reports. These reports can be found on [pages 00-0](#).

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<sup>6</sup> Data collections on the Council website: <https://www.sentencingcouncil.org.uk/research-and-resources/data-collections/>

<sup>7</sup> <https://www.sentencingcouncil.org.uk/research-and-resources/sentencing-council-research-and-analysis>

## **Strategic objective 3:**

Exploring and considering issues of equality and diversity relevant to our work and taking any necessary action in response within our remit

Over half the responses to the Council's 10th anniversary consultation, 'What next for the Sentencing Council?', emphasised the importance of considering equality and diversity in the development of sentencing guidelines. These responses confirmed the Council's long-held view that equality and diversity should be a priority for the Council, which is reflected in our establishment of a dedicated working group to increase our existing focus on equality and diversity issues.

The group advises the Council on matters relating to equality and diversity and makes sure that the full range of protected characteristics are considered in our work. Members also consider ways in which the Council could engage more effectively with, and take account of the views and perspectives of, representatives of people with protected characteristics, and with offenders and victims.

## Understanding the impact of sentencing guidelines

The Council's commitment to ensuring that sentencing guidelines apply fairly across all groups of offenders and do not cause or contribute to any potential disparity of outcome for different demographic groups is reflected throughout the development process.

In August 2021, the Council agreed and published revised criteria by which we decide whether to develop or revise a guideline.

The revised criteria include factors designed specifically to ensure that any evidence of disparity in sentencing outcomes is taken into account as part of our decision-making.

We review any available evidence on disparity in sentencing for each guideline we develop or revise and, if the evidence suggests disparity, we highlight this as part of the consultation process. We place wording in the draft guideline to draw sentencers' attention to the disparities and, when we have examined the data for the offence and reviewed the consultation responses, the Council will then consider whether similar wording should be retained in the published definitive guideline. We include in all definitive guidelines signposts to important information in the Equal Treatment Bench Book and remind sentencers of the need to apply guidelines fairly across all groups of offenders.<sup>8</sup>

To enable the Council to fully explore the potential impact of sentencing guidelines on different demographic groups and groups with protected characteristics, we collect and analyse data where it is available, and undertake in-depth analytical work. We now routinely publish sentencing breakdowns by age, sex and ethnicity alongside definitive guidelines and draft guidelines for consultation.

The Council uses sentencing data from the MoJ's court proceedings database, which contains information on offenders' demographics and includes two variables

<sup>8</sup> <https://www.judiciary.uk/announcements/equal-treatment-bench-book-new-edition/>

identifying ethnicity: 'officer-identified ethnicity' and 'self-identified ethnicity'.

In April 2021, the Council decided to move away from 'officer-identified ethnicity' and instead use 'self-identified ethnicity'. The former relates to ethnicity as recorded by a police officer or administrator, based on their assessment of the offender's visual appearance. The latter refers to the offender's ethnicity as defined by themselves and provides the Council with a more accurate representation of offenders' ethnicity.

## Learning from consultees' insight and experience

The potential for disparities in sentencing to arise from aspects of sentencing guidelines may not be obvious. In 2021/22 we implemented changes in our consultation documents to seek views from as wide an audience as possible on whether such potential exists, specifically asking consultees to consider the following.

- Are there any aspects of the draft guidelines that you feel may cause or increase disparity in sentencing?
- Are there any existing disparities in sentencing of the offences covered in this guideline that you are aware of, which the draft guideline could and should address?
- Are there any other matters relating to equality and diversity that you consider we ought to be aware of and/ or that we could and should address in the guideline?

## Guarding against potential causes of disparity

When agreeing the five strategic objectives for 2021-2026, the Council made a commitment to examine whether there is any potential for our work, or the way in which we carry it out, inadvertently to cause disparity in sentencing across demographic groups.

In autumn 2021, we commissioned the University of Hertfordshire to look at equality and diversity in the work of the Council. The aims of the research are to identify and analyse any such potential and to recommend actions we might take to guard against it.

The researchers used textual analysis of a small sample of guidelines and quantitative analysis of sentencing outcomes for those guidelines. They also reviewed the Council's guideline development process and the ways in which we engage stakeholders at all stages. Throughout the project, the researchers engaged sentencers, defence lawyers and representatives from the civil society sector, following the principles of co-production, a research methodology designed to encourage knowledge exchange and equal contribution between all partners. We expect to publish the final report later in 2022.

“Modern slavery targets vulnerable people who are exploited for financial gain by the offenders and can cause serious physical and psychological harm. Offending can take place over a long period of time, sometimes for years, and these new guidelines take account not only of the actions by the offender, but the impact on the victim.

Offending can range from large-scale operations with substantial financial gain, to offences carried out by offenders who are themselves victims either through coercion and intimidation, and the sentencing range has been developed to reflect this.”

**Council member Rosina Cottage QC on the launch of definitive guidelines for sentencing modern slavery offences, 12 August 2021**

## **Strategic objective 4:**

Considering and collating evidence on effectiveness of sentencing and seeking to enhance the ways in which we raise awareness of the relevant issues

The Council's duty in relation to cost and effectiveness appears in two sections of the Coroners and Justice Act 2009. Section 120 states that the Council should have regard to the cost of different sentences and their relative effectiveness in preventing reoffending when preparing guidelines. Section 129 states that the Council may also promote awareness of these issues.

The approach previously taken to discharging this duty involves the consideration by Council members of an annual internal digest/ review of current research and evidence of effectiveness. This supplements Council members' significant existing expertise and experience in sentencing matters and is brought to bear in Council discussions when considering the development of guidelines.

When publishing our strategic objectives in November 2021, the Council responded to the views of respondents to our anniversary consultation that the annual digest should be publicly available. We agreed to publish a review every two years that will outline the latest research evidence and how the Council has considered this in developing guidelines. The review will allow the Council to be more transparent about the evidence we consider and help us promote knowledge and understanding of effectiveness among sentencers.

To meet this commitment, in February 2022 the Council commissioned a team of academics led by Dr Jay Gormley of the University of Strathclyde to conduct a literature review of evidence relating to effectiveness of sentencing. Although the statute gives particular weight to the need for the Council to have regard to the effectiveness of sentences in preventing reoffending, the review also considers evidence on overlapping and related areas: for example, on the impact of sentencing on long-term desistance from offending and on deterrence, as well as on the cost-effectiveness of different sentences.

We expect to publish the review later in 2022.

“Perverting the course of justice and witness intimidation are serious offences that strike at the heart of justice: they can delay or even derail criminal investigations; they can cast suspicion on innocent people; and victims and witnesses can feel too scared to make a complaint about a crime they have suffered or have witnessed.

These offences can waste police and courts’ time and cause people wrongly accused of crimes to potentially lose their freedom or suffer reputational damage. In cases of witness intimidation, witnesses can be so terrified that they withdraw from proceedings and criminality goes unpunished.”

**Council member Mrs Justice May on the launch of the consultation on draft guidelines for sentencing perverting the course of justice and witness intimidation, 30 March 2022**





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THAMES  
MAGISTRATES  
COURT



## **Strategic objective 5:**

Working to strengthen confidence in sentencing by improving public knowledge and understanding of sentencing

The Sentencing Council has a statutory duty to have regard to the need to promote public confidence in the criminal justice system when developing sentencing guidelines and monitoring their impact. The Council has interpreted this duty more widely and, in November 2021, we set ourselves a specific objective to take direct steps to improve public confidence in sentencing.

## Understanding public attitudes

To meet our statutory duty and our strategic objective to improve public confidence, the Council must have a clear and detailed picture of current levels of understanding of sentencing among the public. In 2019, we published a report of research that explored the public's knowledge of, and attitudes towards, the criminal justice system, sentencing and sentencing guidelines, and identified key audiences for the Council to engage with its communications.<sup>9</sup>

In January 2022, we commissioned independent researchers Savanta ComRes to conduct further survey research to give up-to-date insight into public confidence in the criminal justice system and its drivers, and explore whether there have been any changes over time. To give us a clear picture of where there have been changes, we re-ran some of the questions from the 2019 survey alongside a number of new questions.

We expect to report on this work later in 2022. In the meantime, the Council's communication activities are informed by the findings of the 2019 research.

## Making sentencing more accessible and easy to understand

### Sentencing Council website

For many people, our website is their first encounter with the Sentencing Council.<sup>10</sup> It is designed specifically to promote a greater understanding of sentencing among our public and other non-specialist audiences, while continuing to provide access to sentencing guidelines for criminal justice professionals.

The site explains how sentencing works in plain, easy-to-understand language. It gives broad information on some often-sentenced offences and debunks common sentencing myths. The public-facing pages provide clear, helpful context to the sentencing guidelines, which aims to improve the transparency of sentencing and make it more accessible to the public. During the year we introduced a series of eight short videos designed to illustrate the website content and make it more easily accessible. The videos explain in an engaging way what judges and magistrates do and how sentencing decisions are made.

<sup>9</sup> ComRes (2019) Public Knowledge of and Confidence in the Criminal Justice System and Sentencing, Sentencing Council: <https://www.sentencingcouncil.org.uk/publications/item/public-confidence-in-sentencing-and-the-criminal-justice-system/>  
<sup>10</sup> [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

We have also been making good use of the new blog pages on our website to improve public understanding of how the sentencing decision-making process works and the array of factors that are taken into account. We use these pages to publish articles explaining various aspects of sentencing, which we promote via our Twitter account. The blogs we have published this year include articles explaining how the guidelines recognise the impact of crime on victims, how harm is assessed in child sexual offences where there is no victim and how the Council reflects sentencers' voices in our guideline research.

The website has continued to be a source of information for sentencers and others in the criminal justice system, as well as for victims, witnesses and journalists, and this year has seen an increase in the number of visits. In 2021/22 the site was visited 1,958,664 times and individual pages were viewed 11,356,190 times. This compares with 2020/21, which saw 1,586,551 visits and 6,689,357 pageviews.

### **Using the media**

The Council publicises its work via general and specialist media. Our aim is to make sure that sentencers and criminal justice practitioners are aware of what work the Council is undertaking and are kept informed about the publication of new guidelines.

We also make sure that practitioners and stakeholders with an interest in specialist topic areas are aware of our consultations so that they are able to respond and share their knowledge and expertise with the Council.

Achieving media coverage for the publication of new guidelines or consultations also provides us with opportunities to inform the wider public about how sentencing works and the role played by the Council and the guidelines in enabling the courts to take a consistent, fair and transparent approach to sentencing.

The definitive guidelines and consultations published over the period of this annual report were supported by a programme of communication activities targeting the media, including criminal justice publications, national and regional print and broadcast channels and other specialist titles where relevant. Council members undertook a number of interviews, including on high-profile, national programmes such as Sky News, BBC News, the Today programme on BBC Radio 4, BBC Radio 2 and BBC Radio 5 Live, as well as Times Radio and regional radio. We also achieved coverage across a wide range of print and online outlets, including the Times, Daily Telegraph, Daily Mail, Independent and leading regional titles such as Manchester Evening News, Lancashire Evening Post and the Liverpool Echo.

In November 2021, to support the launch of the Council's five-year strategy, the Times featured an interview with our Chairman. In the interview, Lord Justice Holroyde set out our new strategy and what we aim to achieve in the next five years focusing, in particular, on our objective to improve public understanding of sentencing and how sentences are decided.

On 29 March 2022 Her Honour Judge Rosa Dean was interviewed by BBC Politics Wales for the Sunday Politics programme. Her contribution covered the factors that judges and magistrates use when sentencing women who are sole or primary carers of dependant relatives. The interview was broadcast on Sunday 3 April 2022.

The work of the Council remained of significant interest to the media. Over the course of the year, there were 131 mentions of the Council in print media, 311 broadcast mentions and 303 mentions in online publications.

Our press office routinely answers media enquiries about sentencing issues, provides background for sentencing-related articles and puts forward spokespeople, where appropriate. The office also handles many calls and emails from members of the public enquiring about sentencing and the guidelines. While we are not able to provide advice or comment on individual cases, we provide information and alternative sources where we can.

### **Working with and through partners**

To assist us in improving understanding of sentencing, particularly among victims and witnesses, the Council continues to nurture our relationships with partner organisations who have direct contact with the public.

We focus on our communication with the police service, aiming to reach the officers who most often engage with the public. We ensure that the leading publications that serve the police receive all Council announcements. This year, Nick Ephgrave,

Council member and Assistant Commissioner for Frontline Policing in the Metropolitan Police, gave an interview to Police Oracle. In the interview, he explained his role on the Council, which is to bring his senior policing expertise to the development of sentencing guidelines, and set out the benefits to both the Council and the Metropolitan Police of his participation. We expect the interview to be published in early summer 2022.

Throughout the year, the Witness Service continued to use our information leaflet about sentencing to support and reassure victims and witnesses. The leaflet is written specifically for victims and witnesses and explains the different types of sentences there are and what judges and magistrates take into account when making sentencing decisions.

We have also been working in partnership with the Judicial Office, the independent body that supports the judiciary across the courts of England and Wales, to develop a new version of the online sentencing tool 'You be the Judge'. This tool uses dramatised stories to show the public how sentencing decisions are made in magistrates' courts, youth courts and the Crown Court. It is designed to engage audiences of all ages, in particular school-age children and young adults. We expect the tool to go online later in 2022.

## Building digital tools for sentencers

### Making pronouncements

On 18 January 2022 the Council launched a pronouncement-card builder, a new digital tool for magistrates' courts. Pronouncement cards apply to both the adult and youth courts and are produced in English and Welsh. The cards are compiled to help magistrates explain the court's decision fully and clearly to defendants, victims, the public and all court users.

The new pronouncement-card builder, which has been developed in partnership with the Judicial College, is designed to help magistrates pull together all the pronouncements they need to make into one text. This allows them to read out complex pronouncements compiled from multiple cards while being able to keep their focus on the court.

The screenshot shows the 'Judicial College pronouncement cards - builder' interface. At the top, there is a navigation bar with 'Sentencing Guidelines: Magistrates' and 'Crown Court'. Below this is the 'Sentencing Council' logo and a search bar. A navigation menu includes 'Offences', 'Sentencing and the Council', 'Going to court', 'News and articles', and 'Research and resources'. The main heading is 'Judicial College pronouncement cards - builder'. Below the heading, there is a paragraph explaining the cards and a link to 'contact the Sentencing Council'. To the right is the 'JUDICIAL COLLEGE' logo. Below this is a section titled 'How to use the pronouncement-card builder.' and a note about using a touchpad. A search bar for 'Search adult pronouncement cards' is present. The main content area is titled 'Cymraeg' and features a grid of cards. The grid has two columns: 'Adult' and 'Youth'. The 'Adult' column contains four cards: 'Adjournment for medical reports', 'Adjournment for pre-sentence reports', 'Alcohol abstinence and monitoring requirement (community order/suspended sentence order)', and 'Alcohol treatment requirement (community order/suspended sentence order)'. The 'Youth' column contains two cards: 'Community order' and 'Unpaid work requirement (community order/ suspended sentence order)'. Each card has a plus sign icon in the top right corner. At the top of the grid, there are buttons for 'Clear Pronouncement' and 'Create Pronouncement'.

## SentencingACE

SentencingACE is a digital tool that allows judges sentencing in the Crown Court to make a quick, ready-reckoner-style check of the sentence they intend to impose and to confirm that all the elements of their sentence are correct in law.

The Council launched SentencingACE on our website on 16 December 2021. The tool, which was developed by a High Court judge and tested by Crown Court judges, covers more than 800 offences, including the most commonly sentenced. It is designed to provide support to sentencers and to defence and prosecution practitioners who have a duty to draw the court's attention to all relevant sentencing issues.

SentencingACE does not have the same status as sentencing guidelines. It is not a decision-making tool and its use by judges is entirely voluntary.

Sentencing Council

[Feedback](#)  
[About the tool](#)  
[Copyright and Disclaimer](#)

### Sentencing ACE Tool

Last updated: 28/02/2022

#### Dates

Clear Sentence

For example, day/month/year

|             |            |                    |    |    |    |
|-------------|------------|--------------------|----|----|----|
| Birth:      | 19/04/1971 |                    |    |    |    |
| Offence:    | 17/08/2021 | Age at offence:    | 50 | 50 | 50 |
| Conviction: | 17/05/2022 | Age at conviction: | 51 | 51 | 51 |
| Sentence:   | 17/05/2022 | Age at sentence:   | 51 | 51 | 51 |

#### Offence

Count: 1

Arson and criminal damage offence

Criminal Damage Act 1971 s. 1: Criminal damag

Plea:

- Not Guilty
- Guilty plea indicated at the first stage of the proceedings
- Guilty plea indicated after the first stage of the proceedings but before trial
- Guilty plea entered on the first day of the trial
- Guilty plea entered after the first day of the trial

## Drink-driving calculator

We have also launched this year a new drink-driving calculator for magistrates' courts. The calculator is designed to help magistrates work out:

- by how long a driver's disqualification period will be reduced if they complete an approved rehabilitation course;
- the length of any extension, if custody is imposed;
- the date by which the course must be completed; and
- the date on which they can drive again.

We published a pilot version of the calculator on the website in April 2021 and asked magistrates to try it out in court and send us feedback and ideas for improvements. As a result of their feedback, we made some further developments and published a revised calculator on the website and the Sentencing Council iPad app.

The screenshot shows the 'Drink-driving calculator' page on the Sentencing Council website. The page has a blue header with navigation links for 'Sentencing Guidelines: Magistrates' and 'Crown Court'. Below the header is the Sentencing Council logo and a search bar. A breadcrumb trail shows 'Home > Drink-driving calculator'. The main content area is titled 'Drink-driving calculator' and contains several input fields and a results section.

**Date disqualification imposed:** 4 April 2022

**Period of disqualification:** Months 12

**Was a custodial sentence imposed?** Yes (selected), No

**Length of custodial sentence:** Days 0, Weeks 0

**Length of reduction (1 week/month, minimum 3 months):** 3 months

**Course to be completed by:** 03 November 2022

**Disqualification end date with course reduction:** 03 January 2023

**Disqualification end date with no reduction:** 03 April 2023



“We wanted our consideration of the Council’s future to be informed by the same degree of expertise and experience that informs our guidelines. When we develop or revise a sentencing guideline, we always consult the people who work with the guidelines or whose lives may be affected by them. So we called on others involved in the criminal justice system, and on the Council’s supporters, our critical friends and members of the public, and asked them to tell us where they thought we should focus our energies over the next few years.”

**Chairman Lord Justice Holroyde on the launch of the Sentencing Council strategic objectives 2021-2026, 4 November 2021**



## Reaching young people

The public confidence research we published in 2019 told us that young people between school-leaving age and early 30s have greater confidence in the effectiveness and fairness of the criminal justice system than older people, and most say that hearing about the sentencing guidelines increases their levels of confidence.<sup>11</sup> However, young people are less likely than any other age group to know about the guidelines.

To mitigate this lack of knowledge among the next generation of young adults, the Council has identified young people of secondary-school age as a priority audience.

Our aim is to equip them with a knowledge and understanding of sentencing that will improve their confidence in the criminal justice system, whether they encounter it as victims, witnesses or defendants, and enable them to become critical readers of the media's reporting of sentencing.

To help us educate young people, the Council aims to contribute to teaching activities that are run by our partners in the criminal justice system and other organisations who have far greater reach into schools than the Council could achieve alone.

In 2021/22 we continued our work with Young Citizens, an education charity that works in primary and secondary schools to help educate, inspire and motivate young people. We developed content for the charity's key

stage 1 and 2 (primary) teaching resource, 'What happens when laws are broken?'. The resource supports both citizenship and PHSE (personal, health, social and economic) education and has the potential to reach more than 48,000 children.

Our new website features a page of resources for teachers. The page currently hosts the teaching pack we have developed for schools to deliver as part of the citizenship curriculum for key stage 3 and 4 pupils. These resources help pupils in England and Wales develop an understanding of how criminal sentencing works and give them the opportunity to try sentencing for themselves through interactive scenarios. As well as being published on our website, the pack is also available through Young Citizens, the Association for Citizenship Teaching, and the Times and Guardian educational pages. The page also includes links to the teaching materials provided by Young Citizens to which we have contributed.

In the first three months of 2021, 642 visits were made to the Council's teaching resources webpage (compared with 572 in 2020/21), 304 of which were by new users.

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<sup>11</sup> ComRes (2019) Public Knowledge of and Confidence in the Criminal Justice System and Sentencing, Sentencing Council: <https://www.sentencingcouncil.org.uk/publications/item/public-confidence-in-sentencing-and-the-criminal-justice-system/>

As well as providing education resources for school-age young people, the Council is also keen to reach older students, particularly those who are studying to become the next generation of legal professionals. On 24 February 2022, Mrs Justice May was interviewed about sentencing guidelines by students of the new criminal sentencing module at Queen Mary School of Law, University of London. The interview was made available to all students of the module in a podcast.

## Developing relationships with stakeholders and supporters

To further our work to engage stakeholders and build relationships across the criminal justice system, Council members and staff from the Office of the Sentencing Council (OSC) often give speeches and presentations covering all aspects of sentencing and developing guidelines. Our ability to do this has inevitably been significantly curtailed by the COVID-19 pandemic but we have nonetheless contributed to a number of events during the year.

The Chairman presented at the sentencing and confiscation seminar in July 2021 and the murder continuation course in September 2021, both of which are provided by the Judicial College. In November 2021, he spoke about the Council and the sentencing guidelines to an audience of bar pupils and young barristers of the Northern and North-Eastern Circuits and gave an introduction to the sentencing guidelines to the staff of the

Judicial Office, the independent body that supports the judiciary across the courts of England and Wales. Also in November 2021, he gave a presentation to an audience of senior members of the police service at the National Criminal Justice Conference in Manchester.

On 15 April 2021, Her Honour Judge Dean contributed to a webinar for members of the Criminal Appeals Lawyers Association, giving a presentation on the Council's guideline for sentencing offenders with mental disorders, developmental disorders, or neurological impairments. The webinar was hosted by the Criminal Appeals Lawyers Association and Garden Court Chambers in association with Crime in Mind, a charity concerned with the psychological and medical roots of crime.

On 22 June 2021 Mrs Justice McGowan gave a presentation to the Crown Prosecution Service Sikh Society at the society's hate-crime awareness event. Her presentation outlined how the courts consider hate crime when imposing sentence and explained the ways in which sentencing guidelines reflect various legislative provisions that aggravate offences where racial or religious hostility or motivation is demonstrated in offending.

On 20 October 2021, Council member Jo King JP and the head of our analysis and research team met members of the Dorset Magistrates' Association in Blandford Forum and, on 23 March 2022, staff from the OSC spoke to members of the Birmingham Magistrates' Association about the guidelines and how the views of sentencers help to shape sentencing guidelines.

On 6 December 2021, the Chairman attended a closed meeting of the Justice Committee where he briefed the Committee about the work of the Council and the role of the guidelines in sentencing and answered members' questions about a wide range of sentencing-related subjects.

In March 2022, Mrs Justice McGowan gave a virtual presentation to members of the Scottish judiciary attending a sentencing course provided by the Judicial Institute of Scotland. Her presentation, 'The Sentencing Council of England and Wales: has it helped or hindered?', outlined the stepped model we follow in our guidelines and the approach we take to assessing harm and culpability.

The Council often hosts and meets visitors from overseas seeking to learn more about the Sentencing Council and understand how the guidelines are developed and used. These events allow us in turn to learn about the criminal justice systems of other nations and discover whether and how sentencing guidelines are used in other jurisdictions. In the last few years our international engagements have been conducted online but we hope to be able to host visitors in person in the years ahead.

On 24 May 2021, the Chairman gave a virtual presentation to a delegation of Malaysian judiciary. His presentation provided an introduction to the criminal justice system of England and Wales and outlined the role of the Sentencing Council and sentencing guidelines.

Early in 2022, Mrs Justice McGowan prepared a recorded talk on the role of the Council and the sentencing guidelines for presentation at the High-Level Judicial Symposium in Dodoma, Tanzania. The symposium, which ran between 23 January and 3 February 2022, was organised by the Slynn Foundation, a UK-based charity that works internationally with senior judges and justice institutions to enhance the rule of law. More than 70 delegates attended, including Chief Justice Ibrahim Hamis Juma, justices of the Court of Appeal and the High Court, the Director of Public Prosecutions, the Principal Secretary to the Minister of Constitutional and Legal Affairs and the Chairperson of the Law Reform Commission of Tanzania.

In March 2022, the Chairman delivered another virtual seminar on the Sentencing Council, this time to the Chief Justice of the Supreme Court of Brunei Darussalam, and other justices, judges and judicial officers, at an event organised by the Slynn Foundation and hosted by the British Deputy High Commissioner to Brunei Darussalam, Catherine Pochkhanavala-Cleeve.

Also in March 2022, Mrs Justice McGowan gave a virtual presentation on the importance and use of sentencing guidelines to senior members of the judiciary of Sierra Leone at a judicial roundtable organised by the Judicial and Legal Training Institute of Sierra Leone and the UK Sierra Leone Pro Bono Network.



“Sentencing is a complex procedure, and sentencers must bear in mind a great many matters. SentencingACE will allow Crown Court judges to confirm quickly and easily that the sentence they have decided upon is lawful in all respects.

SentencingACE should reduce the number of appeals that stem from technical sentencing errors. And, by allowing the Court of Appeal to deal more efficiently with other, more complex cases, this new tool will help to improve public confidence in the criminal justice system.”

**Chairman Lord Justice Holroyde on the launch of SentencingACE,  
16 December 2021**



# Sentencing and non-sentencing factors reports

## Sentencing factors report

In accordance with section 130 of the Coroners and Justice Act 2009, the Sentencing Council's annual report must contain a sentencing factors report. This report considers changes in the sentencing practice of courts and their possible effects on the resources required in the prison, probation and youth justice services.

Sentencing guidelines are a key driver of change in sentencing practice. Some guidelines aim to increase the consistency of approach to sentencing while maintaining the average severity of sentencing. Other guidelines explicitly aim to cause changes to the severity of sentencing.

Changes in sentencing practice can also occur in the absence of new sentencing guidelines and could be the result of many factors such as Court of Appeal guideline judgments, legislation and changing attitudes towards different offences.

This report considers only changes in sentencing practice caused by changes in sentencing guidelines.

## Sentencing guidelines

Between 1 April 2021 and 31 March 2022, the Council published definitive guidelines for sentencing:

- assault offences and attempted murder;
- trade mark offences;
- modern slavery offences; and
- unlawful importation of firearms.

## Assault offences and attempted murder

The assault guidelines cover a range of offences. Therefore, resource impacts have been calculated separately, using a variety of offence-specific evidence, including Crown Court sentencing transcripts, bespoke data collections and administrative data.

For common assault, it remains difficult to estimate the impact of the revised guideline. However, analysis of an early extract of data from a bespoke magistrates' court data collection suggests that for common assaults of the lowest severity, there may be increases in the level of fines imposed and a potential shift from fines to community orders. For cases of average/ middling

seriousness and the most serious common assault cases, it is anticipated that sentences will remain broadly similar to current sentencing practice but that the introduction of the middle harm category will allow for a wider range of offending to be appropriately captured, therefore increasing consistency in sentencing and encouraging proportionate harm assessments.

For assaults on emergency workers, limited data are currently available to understand current sentencing practice and how the guideline may impact sentence outcomes, as this is a relatively new offence. Analysis of an early extract of data from a bespoke magistrates' court data collection suggests that there may be some increase in the use of custodial sentences. However, it is not possible to quantify the impact of this shift because of the limited data available.

For assault with intent to resist arrest, there may also be increases in sentence levels. However, this is a low volume offence, and statistics indicate that even if sentences increased more than expected, fewer than 10 additional prison places would be required. Therefore, the actual impact of the guideline is likely to be minimal.

For assault occasioning actual bodily harm, inflicting grievous bodily harm/ unlawful wounding (grievous bodily harm section 20), and causing grievous bodily harm with intent (grievous bodily harm section 18), the revised guidelines have been produced to address some of the issues that had been raised in the evaluation of the existing guideline. The description and placement

of some guideline factors that were found to have had an inflationary impact upon offence categorisation have been revised. The Council's analysis suggests that this could lead to decreases in sentence outcomes for these offences (compared with current levels), with reductions in average custodial sentence lengths (for all three offences), and reductions in the use of immediate custody and suspended sentence orders with consequent increases in the use of community orders (for actual bodily harm). In total across the three offences, a central estimate suggests that these changes could lead to a need for around 500 fewer prison places per year.

For racially or religiously aggravated common assault, because of the limited amount of data available, it is not possible to estimate the impact of the new guideline on sentencing practice. However, it should encourage consistency of approach and ensure an appropriate uplift is being applied to account for the level of aggravation. For racially or religiously aggravated assault occasioning actual bodily harm, and racially or religiously aggravated grievous bodily harm/ unlawful wounding, it is expected that the uplift approach for the racial or religious aggravation may cause increases to sentences. This may partially offset some of the expected decreases for the basic offences of actual bodily harm and grievous bodily harm section 20. However, it has not been possible to assess the impact for these offences robustly.

For attempted murder, it is expected that there will be increases in sentence levels, with a requirement for around 300 additional prison places.

## Trade mark offences

Overall, the definitive guidelines for sentencing both individuals and organisations for trade mark offences are intended to encourage consistency of sentencing and, in the vast majority of cases, will not change average sentencing severity. There may be some increases in custodial sentence lengths for individuals sentenced for the most serious types of cases and some increase in the use of custody for cases of low value but high risk of serious harm. It has been hard to estimate the precise resource impact of the increase in severity of sentence outcomes. However, given the small volumes of custodial outcomes currently, and high proportion of custodial sentences suspended, the guideline for individuals is estimated to result in the need for between 0 and 20 additional prison places per year.

For organisations, there cannot be any impact on prison or probation resources because organisations cannot receive custodial or community sentences, but there may be some increases in fine levels. However, step five of the guideline asks sentencers to ‘step back’ and consider the overall impact of all financial penalties and the means of the offending organisation. They may then adjust the sentence to account for this, reducing the fine level. It is anticipated that fine values may therefore not increase considerably in the majority of cases, if at all.

## Modern slavery offences

The definitive guidelines for sentencing modern slavery offences aim to encourage consistency of sentencing in an area where no guidelines currently exist, while taking into account the serious and often long-lasting impact that this offending has on victims.

It is anticipated that the guidelines may result in a requirement for up to 40 additional prison places per year. Analysis of transcripts of Crown Court judges’ sentencing remarks indicated that this is driven by longer custodial sentences under the guidelines and, to a lesser extent, by a decreased use of suspended sentence orders and an associated increased use of immediate custody.

Given the limited data available to analyse at the date of publication and, in particular, the low proportion of cases in the transcript sample with a suspended sentence order outcome, it was acknowledged that the guidelines may have an additional increased impact on these types of cases than it was possible to estimate. Furthermore, there are known data issues with recording modern slavery offences, which means the actual magnitude of the impact on prison and probation resources may be greater than it has been possible to estimate.



## Tailoring our bespoke data collections

Between January and May 2021, we asked sentencers in all magistrates' courts to tell us how they were sentencing assault offences. We wanted to collect this information to help us with our revision of the assault offences guidelines.

The Council conducts targeted and bespoke data collections in both the magistrates' court and the Crown Court to enable us to meet our statutory duty to monitor and evaluate our guidelines.

Data collections, as an evaluation activity, help us answer questions such as:

- are the guidelines having any impact on sentencing outcomes;
- have there been any unanticipated effects since the guidelines came into effect;
- have sentencers encountered any problems with implementing the guidelines; and
- what have been the resource implications, for example on prison places and the probation service?

We collect data both before and after a guideline has been implemented so that, when we evaluate a guideline, we are able to compare the two sets of data. Only by assessing the guidelines in this way can the Council make any changes or improvements to them.

While preparing the revised guidelines for assault offences in 2021, we used an early extract from the assault data collection to compile a resource assessment. This work provided us with information on how offenders were being sentenced for common assault and assaults on emergency workers and insight into how offenders might be sentenced under the revised guidelines.

The data enabled the Council to investigate the different factors taken into account and the starting point selected by sentencers to make assumptions about where the offence category they used might fall under the new guideline.

The data also allowed the Council to gain an insight into overarching themes such as how the COVID-19 pandemic might have affected sentencing practice or whether the offence was committed in a domestic context. We are able to examine specific aspects of sentencing such as these only because our collections are bespoke and provide us with data that would otherwise not be available.

We published the resource assessment alongside the definitive assault guidelines, which came into effect July 2021.<sup>12</sup>

<sup>12</sup> <https://www.sentencingcouncil.org.uk/publications/item/assault-offences-final-resource-assessment/>

### **Why do we need our own data?**

For the Council to be able to complete the accurate and reliable statistical analysis required to assess guidelines, we must be able to collect a high volume of data. To do this, we draw on a range of sources, including MoJ's court proceedings database, and the data we obtain through our own collections.

While data from MoJ's court proceedings database provides us with information on defendants and sentence outcomes, it does not provide us with insight into the reasons behind sentencing decisions. That insight can be provided only by data obtained directly from sentencers.

### **How do we capture the data?**

Our data collections focus on the principal offence being sentenced. We ask sentencers to give us information that is crucial to understanding their decision-making around sentencing. This includes information on relevant culpability and harm factors in different cases, aggravating and mitigating factors, the sentence starting point, the presence and number of previous relevant convictions, the presence of a guilty plea and the stage at which it was entered and the final sentence outcome.

Sentencers are asked to complete a form every time they sentence a relevant offence. To ease the burden on them and improve efficiency, the Council now runs data collections via online survey, rather than on paper. The forms usually take no longer than eight minutes to complete and are easily accessible to sentencers via our website.

### **Who provides the data?**

The Council is extremely grateful to all the magistrates and judges who take part in our data-collection exercises, despite the many pressures they face and the demands on their time. The contribution they make is invaluable to the development and continuing improvement of sentencing guidelines.

## **Unlawful importation of firearms offences**

The definitive guideline for the unlawful importation of firearms covers both offences under section 50(3),(4),(5A)(a) and offences of fraudulent evasion under section 170(1)(b) and (3), 170(2),(3), and (4A)(a) of the Customs and Excise Management Act 1979. The guideline was produced with current sentencing practices in mind and it is expected that the guideline will improve consistency of sentencing for these offences, but it is not anticipated that it will lead to any notable changes in sentencing.

Analysis of transcripts of Crown Court judges' sentencing remarks was conducted to assess how sentences might change under the new guideline. The analysis suggests that for the most serious offences (generally those sentenced to immediate custody), sentences under the new guideline will remain broadly similar to current sentencing practice. For less serious offences (typically involving non-lethal weapons), the analysis suggested that some offenders previously sentenced to suspended sentence orders may receive community orders under the guideline, but it is anticipated that this change would have minimal impact on prison and probation services. However, it should be noted that offences contrary to sections 50 and 170 of the Customs and Excise Management Act relate to more than just firearms and ammunition, and there is a lack of information on the type of weapon involved in the offence. This means it is possible that the guideline may have a greater or lesser impact than expected because it is unclear how many offenders are sentenced for these offences specifically relating to firearms.

Research with sentencers was also conducted to support the development of the guideline and mitigate the risk of the guideline having an unintended effect. As a result of this work, some minor amendments were made to the draft guideline to ensure that the definitive guideline is interpreted as expected. Therefore, it is not anticipated that these changes will alter the expected impact on resources, rather that they will ensure a consistent interpretation of the guidelines and thereby a consistent approach to sentencing.

Overall, because of a lack of available data, the small number of offenders sentenced for this offence and the current varied sentencing practice, it is not possible to say whether the guideline for these offences will have an impact on prison and probation resources but, if there were to be an impact, it would be small and sentencing will become more consistent following the introduction of the guideline.

“Selling counterfeit goods may appear to be a victimless crime, but it harms not only the owner of the trade mark but also legitimate traders and – in some cases – can put the people who buy them at risk of serious harm.

The new guidelines, which will for the first time apply to organisations, will enable courts to impose sentences that are consistent and proportionate in these cases which can be complicated and, by reason of the relative infrequency with which they come before the courts, unfamiliar to many sentencers.”

**Council member District Judge (Magistrates' Courts) Fanning on the launch of the definitive guidelines for sentencing trade mark offences, 5 August 2021**

## Non-sentencing factors report

The Council is required under the Coroners and Justice Act 2009 to prepare a report identifying the quantitative effect that non-sentencing factors are having, or are likely to have, on the resources needed or available to give effect to sentences imposed by courts in England and Wales.

We begin this report by defining non-sentencing factors and explaining their importance to resource requirements in the criminal justice system. We then signpost the most recently published evidence on these factors.

### Definition of non-sentencing factors and their significance

The approach taken by the courts to sentencing offenders is a primary driver of requirements for correctional resources in the criminal justice system. We discuss this in our report on sentencing factors (see [pages 00–0](#)). However, non-sentencing factors also exert an important influence on requirements for correctional resources.

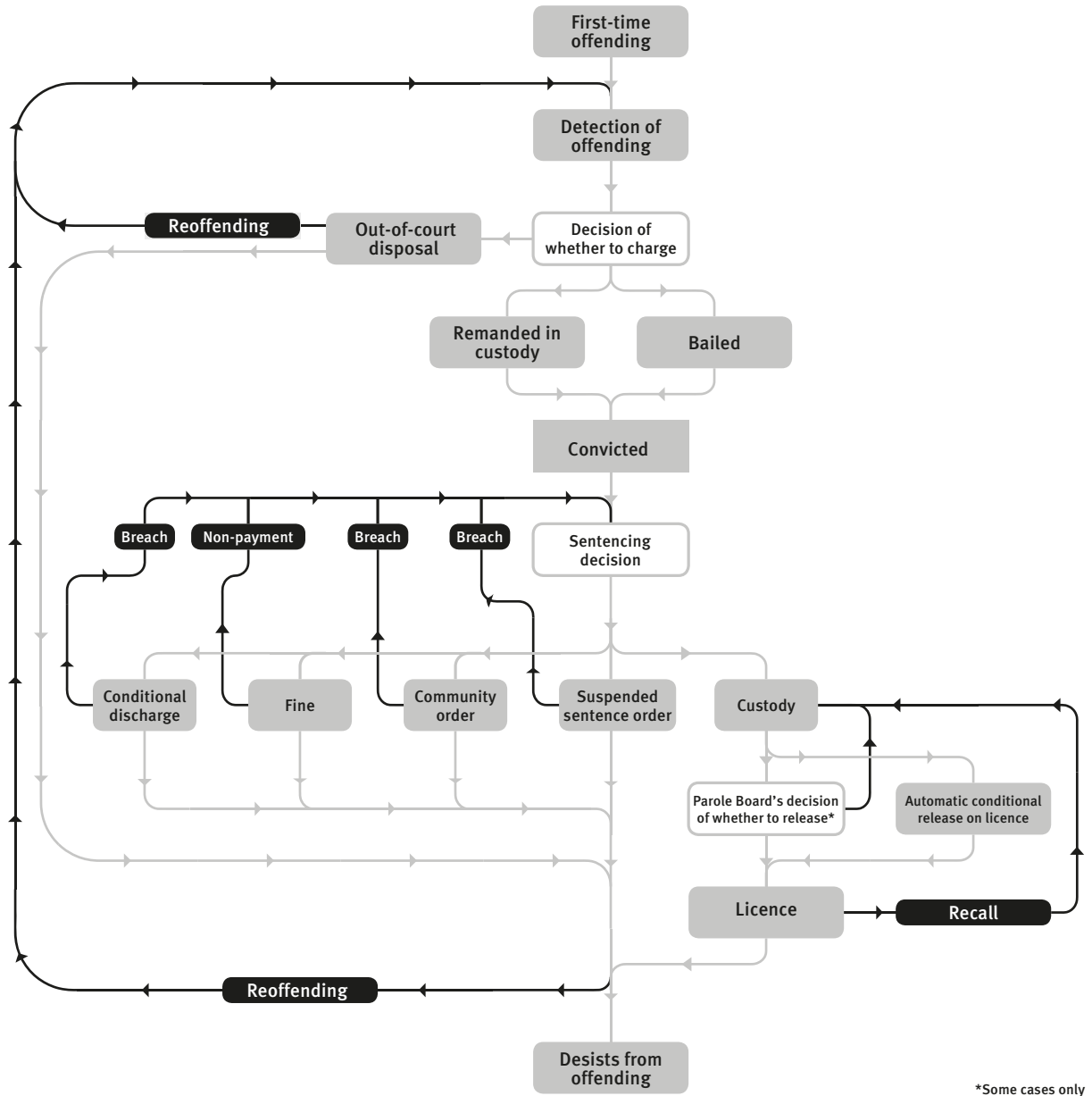
Non-sentencing factors are factors that do not relate to the sentencing practice of the courts but which may affect the resources required to give effect to sentences. For example, the volume of offenders coming before the courts is a non-sentencing factor: greater sentencing volumes lead to greater pressure on correctional resources, even if the courts' treatment of individual cases does not change. Release provisions are another example: changes in the length of time spent in prison for a given custodial sentence have obvious resource consequences.

### Statistics on the effect of non-sentencing factors on resource requirements

It is relatively straightforward to analyse the available data on non-sentencing factors. However, it is extremely difficult to identify why changes have occurred and to isolate the resource effect of any individual change to the system. This is because the criminal justice system is dynamic and its processes are interconnected.

Figure 1 shows a stylised representation of the flow of offenders through the criminal justice system. This figure demonstrates the interdependence of the system and how changes to any one aspect will have knock-on effects in many other parts.

Figure 1



## Volume of sentences and composition of offences coming before the courts

MoJ publishes 'Criminal justice system statistics quarterly' on GOV.UK, which reports on the volume of sentences and the offence types for which offenders are sentenced.<sup>13</sup>

For the most detailed information on sentencing outcomes, follow the link on GOV.UK for 'Criminal justice system statistics quarterly: December 2021' to use the sentencing tool. The tool provides statistics on the total number of sentences passed and how this has changed through time. The statistics can be broken down by sex, age group, ethnicity, court type and offence group.

## The rate of recall from licence

An offender is recalled to custody by the Secretary of State if they have been released from custody but then breach the conditions of their licence or appear to be at risk of doing so. Because time served in custody is considerably more costly than time spent on licence, recall decisions have a substantial resource cost. Statistics on recall from licence can be found in the MoJ publication, 'Offender management statistics quarterly'.<sup>14</sup> The tables concerning licence recalls, Table 5.1 to Table 5.12, can be found on via the link on GOV.UK for 'Offender management statistics quarterly: October to December 2021'. For example, Table 5.1 contains a summary of the number of licence recalls since April 1999.

## Post-sentence supervision

The Offender Rehabilitation Act 2014 expanded licence supervision, which means that since 1 February 2015, all offenders who receive a custodial sentence of less than two years are subject to compulsory post-sentence supervision on their release for 12 months. MoJ publishes statistics on the number of offenders under post-sentence supervision in 'Offender management statistics quarterly'.<sup>15</sup> Follow the link for 'Probation: October to December 2021' and see Table 4.6.

## The rate at which court orders are breached

If an offender breaches a court order, additional requirements may be made to their order or they may face resentencing that could involve custody. Breaches can therefore have significant resource implications.

Statistics on breaches can also be found in 'Offender management statistics quarterly'. Follow the link for 'Probation: October to December 2021' and see Table 4.9 for a breakdown of terminations of court orders by reason.<sup>16</sup>

<sup>13</sup> <https://www.gov.uk/government/collections/criminal-justice-statistics-quarterly>

<sup>14</sup> <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

<sup>15</sup> Ibid

<sup>16</sup> Ibid

## Patterns of reoffending

MoJ publishes reoffending statistics in 'Proven reoffending statistics'.<sup>17</sup>

The frequency and severity of reoffending is an important driver of changes in requirements for criminal justice resources. Detailed statistics of how reoffending rates are changing through time can be found in the report. Additional statistics can be found in supplementary tables.

## Release decisions by the Parole Board

Many offenders are released from prison automatically under release provisions that are set by Parliament and MoJ (with any change to the point at which those provisions apply being in itself a factor which has an effect on the prison population). However, in a minority of cases, which are usually those of very high severity, the Parole Board makes release decisions.

Statistics on release rates for these cases can be found in the annual reports of the Parole Board for England and Wales.<sup>18</sup>

## Remand

Decisions to hold suspected offenders on remand in custody are a significant contributor to the prison population. The remand population can be broken down into the untried population and the convicted but yet to be sentenced population.

Statistics on the number of offenders in prison on remand can be found in MoJ's 'Offender management statistics quarterly'.<sup>19</sup> The prison population tables can be found via the link for 'Offender management statistics quarterly: October to December 2021'. For example, Table 1.1 contains data on how the remand population has changed each month over the past year.

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<sup>17</sup> <https://www.gov.uk/government/collections/proven-reoffending-statistics>

<sup>18</sup> <https://www.gov.uk/government/publications/the-parole-board-for-england-wales-annual-report-and-accounts-202021>

<sup>19</sup> <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>



# Budget

## Financial report

### The cost of the Sentencing Council

The Sentencing Council's resources are made available through the MoJ and the Council is not required to produce its own audited accounts. However, the Council's expenditure is an integral part of MoJ's resource account, which is subject to audit. The summary below reflects expenses directly incurred by the Council and is shown on an accrual basis.

|                                 | 2021/22 (actual) £000s <sup>20</sup> |
|---------------------------------|--------------------------------------|
| <b>Total funding allocation</b> | 1,745                                |
| Staff costs                     | 1,381                                |
| Non-staff costs                 | 194                                  |
| <b>Total expenditure</b>        | <b>1,575</b>                         |

<sup>20</sup>

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

# Appendix A: About the Sentencing Council

The primary function of the Sentencing Council is to prepare sentencing guidelines, which the courts must follow unless it is contrary to the interests of justice to do so.<sup>21, 22</sup>

The Council also fulfils other statutory functions:

- Publishing the resource implications in respect of draft guidelines<sup>23</sup>
- Preparing a resource assessment to accompany new guidelines<sup>24</sup>
- Monitoring the operation and effect of our sentencing guidelines, and drawing conclusions<sup>25</sup>
- Consulting when preparing guidelines<sup>26</sup>
- Promoting awareness of sentencing and sentencing practice<sup>27</sup>
- Publishing a sentencing factors report<sup>28</sup>
- Publishing a non-sentencing factors report<sup>29</sup>
- Publishing an annual report<sup>30</sup>

## Governance

The Sentencing Council is an advisory non-departmental public body (of MoJ). Unlike most advisory non-departmental public bodies, however, the Council's primary role is not to advise government ministers but to provide guidance to sentencers.

The Council is independent of the government and the judiciary with regard to the guidelines we issue to courts, our resource assessments, our publications, how we promote awareness of sentencing and our approach to delivering these duties.

The Council is accountable to Parliament for the delivery of our statutory remit set out in the Coroners and Justice Act 2009. Under section 119 of the Act, the Council must make an annual report to the Lord Chancellor on how we have exercised our functions.

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21 s.120 Coroners and Justice Act 2009.

22 s.59(1) Sentencing Code.

23 s.127 Coroners and Justice Act 2009.

24 s.127 *ibid.*

25 s.128 *ibid.*

26 s.120(6) *ibid.*

27 s.129 *ibid.*

28 s.130 *ibid.*

29 s.131 *ibid.*

30 s.119 *ibid.*

The Lord Chancellor will lay a copy of the report before Parliament, and the Council will publish the report.

Ministers are ultimately accountable to Parliament for the Council's effectiveness and efficiency, for our use of public funds and for protecting our independence.

Section 133 of the 2009 Act states that the Lord Chancellor may provide the Council with such assistance as we request in connection with the performance of our functions.

The Council is accountable to the Permanent Secretary at MoJ as Accounting Officer and to ministers for the efficient and proper use of public funds delegated to the Council, in accordance with MoJ systems and with the principles of governance and finance set out in *Managing Public Money*, and other relevant HM Treasury instructions and guidance.

The budget is delegated to the Head of the OSC from the Chief Finance Officer of MoJ. The Head of the OSC is responsible for the management and proper use of the budget.

The Chief Operating Officer of MoJ is accountable for ensuring that there are effective arrangements for oversight of the Council in its statutory functions and as one of MoJ's arm's-length bodies.

## How the Council operates

The Council is outward-facing, responsive and consultative. We draw on expertise from relevant fields where necessary while ensuring the legal sustainability of our work. The Council aims to bring clarity in sentencing matters, in a legally and politically complex environment.

The Council aims to foster close working relationships with judicial, governmental and non-governmental organisations and individuals while retaining our independence. These include: the Attorney General's Office, the College of Policing, the Council of Her Majesty's Circuit Judges, the Council of Her Majesty's District Judges (Magistrates' Courts), the Criminal Procedure Rules Committee, the Crown Prosecution Service, the Home Office, the Judicial Office, the Justices' Legal Advisers and Court Officers Service, the Magistrates Association, the MOJ, the Magistrates' Leadership Executive, the National Police Chiefs' Council and many academics in related fields.

The Council engages with the public on sentencing, providing information and improving understanding.

The Council meets 10 times a year to discuss current work and agree how it should be progressed. The minutes of these meetings are published on our website.<sup>31</sup>

The Council has sub-groups to enable detailed work on three key areas of activity.

<sup>31</sup> <https://www.sentencingcouncil.org.uk/research-and-resources/publications/>

**Analysis and research** – to advise and steer the analysis and research strategy, including identifying research priorities so that it aligns with the Council’s statutory commitments and work plan. Chaired by: Dr Alpa Parmar.

**Confidence and communication** – to advise on and steer the work programme for the communication team so that it aligns with the Council’s statutory commitments and work plan. Chaired by: Her Honour Judge Dean.

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

The sub-groups’ roles are mandated by the Council, and all key decisions are escalated to the full membership.

### **Equality and diversity working group**

At the Sentencing Council meeting on 20 November 2020 the decision was made to establish a working group to advise the Council on matters relating to equality and diversity and make sure that the full range of protected characteristics are considered in our work: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The group also considers ways in which

the Council could engage more effectively with, and take account of the views and perspectives of, representatives of people with protected characteristics, and with offenders and victims. The group held its first meeting in February 2021.

### **Ad hoc working groups and contributions**

Where necessary, the Council sets up working groups to consider particular aspects of the development of a guideline or specific areas of business. In 2020 we established a working group to oversee the 10th anniversary and the Council's consideration of our future priorities in response to the anniversary consultation. We also sometimes invite contributions from people who are not members of the Council but who have particular experience and expertise in fields of relevance to the guidelines.

### **Public sector equality duty**

The Council is committed to meeting its obligations under the public sector equality duty.<sup>32</sup> This is a legal duty that requires public authorities, when considering a new policy or operational proposal, to have due regard to three needs:

- to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act;
- to advance equality of opportunity between those who share a protected characteristic and those who do not; and

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<sup>32</sup> s.149 Equality Act 2010.

- to foster good relations between those who share a protected characteristic and those who do not.<sup>33</sup>

In developing guidelines, the Council considers the public sector equality duty in the context of the individual offence(s). Where there are offences that are aggravated by reasons of being related to a protected characteristic, this will be of particular relevance. Most guidelines include statutory aggravating factors at step two, relating to offences motivated by, or demonstrating hostility based on, protected characteristics. In addition, to assist sentencers in employing the principles of fair treatment and equality, we have placed links in all the guidelines to the Equal Treatment Bench Book.<sup>34</sup>

The Council also considers data in relation to offenders sentenced for individual offence(s), including data on volumes of offenders sentenced grouped by gender, ethnicity and age, and this is published alongside the draft and definitive guidelines. Consultations include a consideration of the issues raised by the data and seek views as to whether there are any other equality or diversity implications that the guideline has not considered. In all our communications, we actively seek to engage diverse audiences and ensure multiple voices and interests are represented, particularly in our consultations.

## Relationship with Parliament

The Council has a statutory requirement to consult Parliament, specifically the Justice Committee, which is the House of Commons select committee that examines the expenditure, administration and policy of the MOJ and associated public bodies.

The Council informs all organisations and individuals who respond to our consultations that their responses may be shared with the Committee in order to facilitate its work.

## The Office of the Sentencing Council

The Council is supported in its work by the OSC, in particular in:

- preparing draft guidelines for consultation and publication, subject to approval from the Council;
- ensuring that the analytical obligations under the Act are met;
- providing legal advice to ensure that the Council exercises its functions in a legally sound manner;
- delivering communication activity to support the Council's business; and
- providing efficient and accurate budget management, with an emphasis on value for money.

<sup>33</sup> Protected characteristics under the public sector equality duty are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

<sup>34</sup> Judicial College, Equal Treatment Bench Book: <https://www.judiciary.uk/announcements/equal-treatment-bench-book-new-edition/>.

At 31 March 2022 there were 19 members of staff, including the Head of the OSC.

In the 2021 Civil Service People Survey, the OSC recorded a staff engagement index of 82 per cent. This places the Office 15 percentage points ahead of other MoJ arm's-length bodies and 12 percentage points ahead of other high-performing units across the Civil Service.

Asked whether they understood the Sentencing Council's objectives and how their work contributes to those objectives, 97 per cent of OSC staff agreed, placing the Office 10 percentage points ahead of other MoJ arm's-length bodies.

### **Senior management team**

The work of the OSC is overseen by a senior management team comprising the Head of Office and senior staff. The role of the team is to:

- monitor and evaluate progress of the Council's workplan, as published in the business plan;
- monitor and evaluate budget expenditure, and make decisions regarding budget allocation;
- undertake regular review of the risk register on behalf of the governance sub-group, with a view to ensuring that all information regarding delivery of the Sentencing Council's objectives and mitigation of risks is current and updated; and
- consider and make decisions on any other issues relating to the work of the OSC as may be relevant.

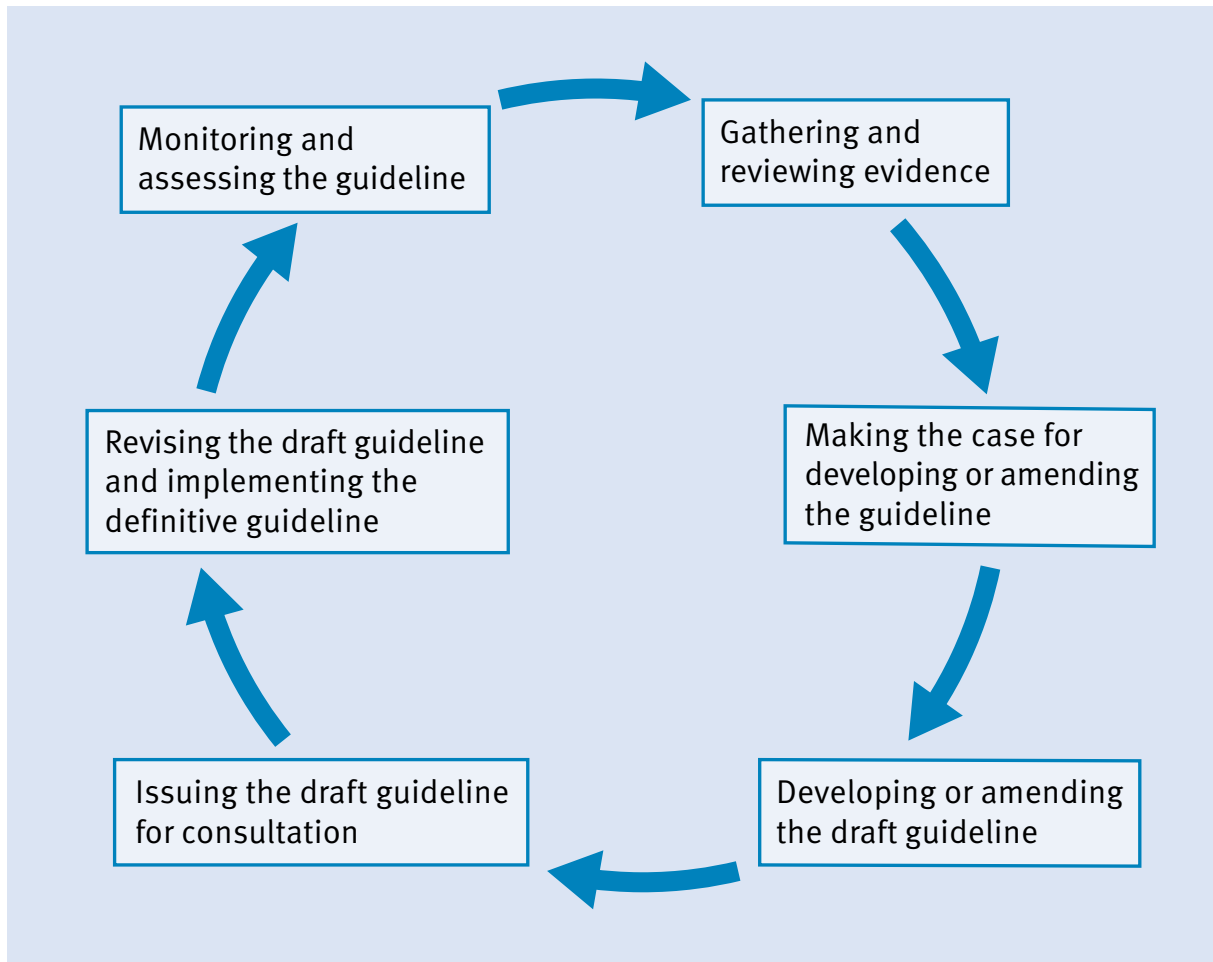
### **Guideline development**

The Council approaches the delivery of its objectives by adopting a guideline delivery cycle that is based on the policy cycle set out by HM Treasury in the Green Book: Central Government Guidance on Appraisal and Evaluation (2018) and allows a culture of continuous improvement to be embedded within the development process.

The process, from first consideration by the Council to publication of a definitive guideline, can extend to 18 months or more. However, if the Council believes there to be a pressing need, it can be expedited. During this period, the Council will examine and discuss in fine detail all factors of the guidelines. The guidelines for assault and attempted murder offences, for example, were discussed at 19 separate meetings of the Council before the definitive guidelines were approved for publication in May 2021.

Figure 2 illustrates the guideline development cycle.

Figure 2



# Appendix B: Membership of the Sentencing Council

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

The Lord Chancellor and Secretary of State for Justice appoints non-judicial members, with the agreement of the Lord Chief Justice.

## Membership of the Council at 31 March 2022

### *Judicial members*

Chairman: the Right Honourable Lord Justice Tim Holroyde, appointed 6 April 2015, appointed as Chairman 1 August 2018.

In order of appointment:

- The Honourable Mrs Justice Maura McGowan, 2 January 2017
- Her Honour Judge Rebecca Crane, 1 April 2017
- Her Honour Judge Rosa Dean, 6 April 2018
- The Right Honourable Lord Justice Adrian Fulford, 1 September 2019
- District Judge (Magistrates' Courts) Mike Fanning, 1 September 2019

- The Honourable Mrs Justice Juliet May, 8 October 2020
- Jo King JP, 8 October 2020

### *Non-judicial members*

In order of appointment:

- Rosina Cottage QC, barrister, 18 July 2016
- Dr Alpa Parmar, academic, University of Oxford, 6 April 2018
- Beverley Thompson OBE, criminal justice system consultant and former Chief Executive Officer of Northampton Probation Service, 15 June 2018
- Max Hill QC, Director of Public Prosecutions and Head of the Crown Prosecution Service, 1 November 2018
- Diana Fawcett, Chief Executive, Victim Support, 5 April 2019
- Nick Ephgrave, Assistant Commissioner (Frontline Policing), Metropolitan Police, 26 May 2020

### **Register of members' interests**

At 31 March 2022, only one member of the Council had a personal or business interest to declare: a close family member of Jo King JP is a serving member of the Metropolitan Police.



# Appendix C: Sentencing guidelines production stages

Activities conducted during the reporting year are highlighted in blue.

| Guideline                           | Production stage          | Timing   |
|-------------------------------------|---------------------------|--|
| <b>Animal cruelty</b>               | Development               | 2021/22  |
|                                     | Consultation              | May to August 2022                                       |
|                                     | Post-consultation         |  |
|                                     | Evaluation and monitoring |  |
| <b>Arson and criminal damage</b>    | Development               | Throughout 2016/17                                       |
|                                     | Consultation              | March to June 2018                                       |
|                                     | Post-consultation         | Published 3 July 2019<br>Came into effect 1 October 2019 |
|                                     | Evaluation and monitoring | In progress 2020   |
| <b>Assault and attempted murder</b> | Development               | Throughout 2018/19 and 2019/20                           |
|                                     | Consultation              | April to September 2020                                  |
|                                     | Post-consultation         | Published 27 May 2021<br>Came into effect 1 July 2021    |
|                                     | Evaluation and monitoring | Data collection autumn 2022                              |

| Guideline                                    | Production stage          | Timing   |
|--|---------------------------|--|
| <b>Bladed articles and offensive weapons</b> | Development               | Throughout 2015/16                                       |
|  | Consultation              | October 2016 to January 2017                             |
|  | Post-consultation         | Published 1 March 2018<br>Came into effect 1 June 2018   |
|  | Evaluation and monitoring | Data collection 2019. Evaluation in progress 2021/22     |
| <b>Breach offences</b>                       | Development               | Throughout 2016/17                                       |
|  | Consultation              | October 2016 to January 2017                             |
|  | Post-consultation         | Published 7 June 2018<br>Came into effect 1 October 2018 |
|  | Evaluation and monitoring | Data collection 2019. Evaluation in progress 2021/22     |
| <b>Burglary (revised)</b>                    | Development               | 2020/2021  |
|  | Consultation              | June to September 2021                                   |
|  | Post-consultation         | Published 19 May 2022<br>Came into effect 1 July 2022    |
|  | Evaluation and monitoring | Data collection autumn 2022                              |
| <b>Children and young people</b>             | Development               | Throughout 2015/16                                       |
|  | Consultation              | May to August 2016                                       |
|  | Post-consultation         | Published 7 March 2017<br>Came into effect 1 June 2017   |
|  | Evaluation and monitoring | Published 17 November 2020                               |

| Guideline                      | Production stage          | Timing   |
|--------------------------------|---------------------------|--|
| <b>Dangerous dogs</b>          | Development               | Throughout 2014/15   |
|                                | Consultation              | March to June 2015   |
|                                | Post-consultation         | Published 17 March 2016<br>Came into effect 1 July 2016                    |
|                                | Evaluation and monitoring | Published October 2020   |
| <b>Drug offences (revised)</b> | Development               | Assessment of original guidelines and interim guidance published June 2018 |
|                                | Consultation              | January to May 2020  |
|                                | Post-consultation         | Published 27 January 2021<br>Came into effect 1 April 2021                 |
|                                | Evaluation and monitoring |  |
| <b>Firearms</b>                | Development               | Throughout 2018/19 and 2019/20   |
|                                | Consultation              | October 2019 to January 2020   |
|                                | Post-consultation         | Published 8 December 2020<br>Came into effect 1 January 2021               |
|                                | Evaluation and monitoring |  |
| <b>Firearms importation</b>    | Development               | 2020/21  |
|                                | Consultation              | June to September 2021   |
|                                | Post-consultation         | Published 24 November 2021<br>Came into effect 1 January 2022              |
|                                | Evaluation and monitoring |  |

| Guideline   | Production stage          | Timing  |
|---|---------------------------|---|
| <b>General guideline and expanded explanations</b>  | Development               | Throughout 2017/18 and 2018/19                                |
|   | Consultation              | June to September 2018  |
|   | Post-consultation         | Published 24 July 2019<br>Came into effect 1 October 2019     |
|   | Evaluation and monitoring |   |
| <b>Guilty plea</b>  | Development               | Throughout 2015/16  |
|   | Consultation              | February to May 2016  |
|   | Post-consultation         | Published 7 March 2017<br>Came into effect 1 June 2017        |
|   | Evaluation and monitoring | Published 17 November 2020                                    |
| <b>Health and safety offences, corporate manslaughter, and food safety and hygiene offences</b> | Development               | Throughout 2013/14  |
|   | Consultation              | November 2014 to February 2015                                |
|   | Post-consultation         | Published 3 November 2015<br>Came into effect 1 February 2016 |
|   | Evaluation and monitoring | Guideline assessment published 4 April 2019                   |
| <b>Intimidatory offences</b>  | Development               | Throughout 2016/17  |
|   | Consultation              | March to June 2017  |
|   | Post-consultation         | Published 5 July 2018<br>Came into effect 1 October 2018      |
|   | Evaluation and monitoring | Data collection 2019. Evaluation in progress 2021/22          |

| Guideline  | Production stage          | Timing   |
|--|---------------------------|--|
| <b>Mental disorders, developmental disorders or neurological impairments</b> | Development               | Throughout 2018  |
|  | Consultation              | April to July 2019   |
|  | Post-consultation         | Published 21 July 2020<br>Came into effect 1 October 2020    |
|  | Evaluation and monitoring |  |
| <b>Modern slavery</b>  | Development               | Throughout 2020/21   |
|  | Consultation              | 15 October 2020 to 15 January 2021                           |
|  | Post-consultation         | Published 12 August 2021<br>Came into effect 1 October 2021  |
|  | Evaluation and monitoring |  |
| <b>Motoring offences</b>   | Development               | 2021/22  |
|  | Consultation              | July to October 2022   |
|  | Post-consultation         |  |
|  | Evaluation and monitoring |  |
| <b>Perverting the course of justice and witness intimidation</b>             | Development               | 2021/22  |
|  | Consultation              | March to June 2022   |
|  | Post-consultation         |  |
|  | Evaluation and monitoring |  |
| <b>Public order offences</b>   | Development               | Throughout 2017/18   |
|  | Consultation              | May to August 2018   |
|  | Post-consultation         | Published 16 October 2019<br>Came into effect 1 January 2020 |
|  | Evaluation and monitoring |  |

| Guideline                                      | Production stage          | Timing   |
|--|---------------------------|--|
| <b>Sale of knives, etc to persons under 18</b> | Development               | 2021/22  |
|  | Consultation              | June to August 2022  |
|  | Post-consultation         |  |
|  | Evaluation and monitoring |  |
| <b>Sexual offences</b>                         | Development               | 2020/21  |
|  | Consultation              | May to August 2021   |
|  | Post-consultation         | Published 17 May 2022<br>Came into effect 31 May and 1 July 2022                 |
|  | Evaluation and monitoring |  |
| <b>Terrorism (revised)</b>                     | Development               | From April 2019 (Counter Terrorism and Border Security Act 2018 came into force) |
|  | Consultation              | October 2019 to December 2019 and October 2021 to January 2022                   |
|  | Post-consultation         |  |
|  | Evaluation and monitoring |  |
| <b>Unauthorised use of a trade mark</b>        | Development               | 2020   |
|  | Consultation              | 8 July 2020 to 30 September 2020   |
|  | Post-consultation         | Published 5 August 2021<br>Came into effect 1 October 2021                       |
|  | Evaluation and monitoring |  |
| <b>Vehicle taking (aggravated)</b>             | Development               | 2021/22  |
|  | Consultation              |  |
|  | Post-consultation         |  |
|  | Evaluation and monitoring |  |





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For enquiries, please contact:

The Office of the Sentencing Council, EB12-16, Royal Courts of Justice, Strand, London WC2A 2LL

Telephone: 020 7071 5793 | Email: [info@sentencingcouncil.gov.uk](mailto:info@sentencingcouncil.gov.uk) | [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk) | [@SentencingCCL](https://twitter.com/SentencingCCL)

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

**17 June 2022**  
**SC(22)JUN08 – Totality**  
**Maura McGowan**  
**Ruth Pope**  
[Ruth.pope@sentencingcouncil.gov.uk](mailto:Ruth.pope@sentencingcouncil.gov.uk)

## **1 ISSUE**

1.1 At the April Council meeting, the content and format of the Totality guideline was agreed subject to consideration of how sentencing for offences committed prior to other offence(s) already sentenced should be dealt with.

1.2 This issue and some other changes were considered by a working group in May and a draft was agreed for consideration by the full Council.

1.3 If the draft revised guideline can be signed off by the Council at this meeting, the consultation will run from September to November (in tandem with the miscellaneous amendments consultation). The aim will then be to publish the revised guideline in March to come into force in April 2023.

## **2 RECOMMENDATION**

2.1 That the Council agrees:

- proposed textual and formatting changes to the draft guideline; and
- the approach to sentencing for offences committed prior to other offence(s) already sentenced.

2.2 That the draft guideline is signed off for consultation.

## **3 CONSIDERATION**

3.1 The current [Totality guideline](#) can be viewed online or in document form at **Annex A**.

3.2 A revised version of the guideline incorporating changes agreed at the March and April meetings is at **Annex B**.

3.3 Annex B also shows proposed additions in red and deletions ~~struck through~~. The suggested revisions taken in the order they appear in the guideline are:

3.4 On Page 1 of Annex B at the end of the second point under General principles, the words 'as a whole' have been removed as unnecessary.

3.5 On Page 3 of Annex B a change to the wording to improve clarity in the dropdown box of examples under paragraph d.

3.6 On Page 3 of Annex B, an additional example (of possession of prohibited firearms) for where consecutive sentences should not be used to evade the statutory maximum penalty – this is the other obvious example of this situation.

3.7 On Page 3 of Annex B, adding a heading 'Reaching a just and proportionate sentence' and rewording the introductory paragraph to this section. In the previous draft this important guidance had followed on from the guidance on passing consecutive sentences, but it is potentially relevant to both consecutive and concurrent sentences (and combinations of the two), so giving it a separate heading should give it due prominence. Some slight changes to the text are also proposed for clarity.

3.8 On page 4 of Annex B, adding wording in the new section on sentencing for offences committed prior to other offences for which an offender is being sentenced, to link it to the more technical information in later sections and making this a dropdown box.

3.9 Related to this, on page 5 of Annex B, changes to the section 'Existing determinate sentence, where determinate sentence to be passed'. See paragraph 3.11 onwards for a discussion on these changes.

3.10 A minor change to the section on extended sentences at the bottom of page 5 of Annex B to remove unnecessary wording.

**Question 1: Does the Council agree to the change proposed at 3.4?**

**Question 2: Does the Council agree to the change proposed at 3.5?**

**Question 3: Does the Council agree to add the example at 3.6?**

**Question 4: Does the Council agree with the creation of a separate heading of 'Reaching a just and proportionate sentence' and the proposed textual changes (at 3.7)?**

**Question 5: Does the Council agree with the proposed change at 3.10?**

3.11 The new section on sentencing for offences committed prior to other offences for which an offender is being sentenced (on page 4 of Annex B) taken from the case of *Green* [2019] EWCA Crim 196 was proposed at the April meeting. The Council agreed that it was useful, but there was concern as to how the guidance might differ depending on whether the offender had been released from or was still serving the previous sentence.

3.12 On reflection it seems as though the guidance in this section can usefully apply whether or not the earlier sentence is still being served and so wording has been added to that effect. However, the structure of the sentence may depend on whether the earlier

sentence is still being served and so some additional wording is proposed to cater for that and to refer to the guidance in the later section.

3.13 Consideration was given to adding further examples of possible combinations of sentences (e.g. currently subject to an SSO and falls to be sentenced for an offence committed before that was imposed) – but the working group agreed that it would be difficult to give any useful guidance of general application and to attempt to do so would risk overcomplicating the guideline.

3.14 As this section is quite long and will not apply to the majority of cases and it is proposed to put it in a dropdown box rather than have it as a core part of the guideline.

3.15 In the next section ‘Existing determinate sentence, where determinate sentence to be passed’ wording relating to an offender who has been released from custody has been changed so that it works for situations when the new offence is committed before or after the previously sentenced offence. Other minor changes are proposed for clarity. Note that the following text from this section has been removed (as discussed at the April meeting):

|  |   |
|--|---|
| <b>Offender serving a determinate sentence (Offence(s) committed before original sentence imposed)</b> | Consider what the sentence length would have been if the court had dealt with the offences at the same time and ensure that the totality of the sentence is just and proportionate in all the circumstances. If it is not, an adjustment should be made to the sentence imposed for the latest offence. |
|--|---|

**Question 7: Is the Council content with the section on sentencing for an offence committed prior to a previous sentence?**

**Question 8: Is the Council content with the proposed changes to the section ‘Existing determinate sentence, where determinate sentence to be passed’?**

3.16 A version of the proposed guideline (incorporating the changes above) showing just the core content without the text of the dropdown boxes is at Annex C. A demonstration of how it will look as a digital guideline will be given at the meeting.

**Question 9: Is the overall structure of the guideline right?**

**Question 10: Are there any other changes that should be made before the guideline is consulted on?**

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

4.1 The limited nature of the revisions to the guideline is likely to attract criticism from academics. The Council has considered the suggestions for more radical change and noted the lack of data on multiple offences. The consultation document will explain that the guideline is a practical document used by sentencers and that our research has shown that overall, sentencers find it to be helpful. Therefore the Council has set out to improve the

guideline without risking changing the aspects of it that are useful to sentencers. We will relate the proposed changes to the findings from our research and also (where relevant) to the issues raised by academics.

4.2 The guideline is of wide application and therefore any changes could theoretically have a significant impact on sentencing practice. The nature of the proposed revisions which are designed to clarify and encourage existing best practice, are unlikely to lead to substantive changes. In view of this and the lack of data on multiple offences, a narrative resource assessment will be published with the consultation, rather than a statistics based one. This will be circulated to Council members for approval along with the consultation document. We are also planning to add a small number of questions to our forthcoming data collection to capture information on whether offences have been adjusted to take account of totality and if so in what way.

## Totality

Effective from: 11 June 2012

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

### Applicability - DROPDOWN

## General principles

The principle of totality comprises two elements:

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

### Concurrent/consecutive sentences

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

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

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

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

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

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

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

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

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

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

Examples include:

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

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

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

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

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

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

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

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

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

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

Examples include:

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

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

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

### Specific applications – custodial sentences

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

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

### Extended sentences for public protection

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

### Indeterminate sentences

| <b>Circumstance</b> | <b>Approach</b> |
|---------------------|-----------------|
|---------------------|-----------------|



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

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

## Specific applications – non-custodial sentences

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

|   |  |
|---|--|
| <b>crossing the community threshold</b> | imprisonable (e.g. driving without insurance) the threshold cannot be crossed. <sup>28</sup> |
|---|--|

### Fines in combination with other sentences

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

### Community orders

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

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

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

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

### Compensation orders

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

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

## Totality

Effective from: tbc

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

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

### Applicability - DROPDOWN

## General principles

The principle of totality comprises two elements:

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

## Concurrent/consecutive sentences

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

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

1. **Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.**
2. **Determine whether the case calls for concurrent or consecutive sentences. When sentencing three or more offences a combination of concurrent and consecutive sentences may be appropriate.**
3. **Test the overall sentence against the requirement that the total sentence is just and proportionate to the offending as a whole.**
4. **Consider and explain how the sentence is structured in a way that will be best understood by all concerned with it.**

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

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

Examples include: [dropdown]

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

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

Examples include: [dropdown]

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

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

Concurrent custodial sentences: examples [dropdown]

Examples of concurrent custodial sentences include:

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

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

a. offences arise out of unrelated facts or incidents.

Examples include: [dropdown]

- where the offender commits a theft on one occasion and a common assault against a different victim on a separate occasion
- an attempt to pervert the course of justice in respect of another offence also charged
- a Bail Act offence
- any offence committed within the prison context

b. offences that are unrelated because while they were committed simultaneously they are distinct and there is an aggravating element that requires separate recognition.



Examples include: [dropdown]

- an assault on a constable committed to try to evade arrest for another offence also charged
- where the offender is convicted of drug dealing and possession of a firearm offence. The firearm offence is not the essence or the intrinsic part of the drugs offence and requires separate recognition
- where the offender is convicted of threats to kill in the context of an indecent assault on the same occasion, the threats to kill could be distinguished as a separate element

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

Examples include: [dropdown]

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

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

Examples include: [dropdown]

- other offences sentenced alongside possession of a prohibited weapon (which attracts a five year minimum term) – any reduction on grounds of totality should not reduce the effect of properly deterrent and commensurate sentences. The court should not reduce an otherwise appropriate consecutive sentence for another offence so as **to remove the impact of** ~~render nugatory the effect of~~ the mandatory minimum sentence for the firearms offence.

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

Examples include: [dropdown]

- more than one offence of causing serious injury in a single incident of dangerous driving.
- **possession of several prohibited weapons and/or ammunition acquired at the same time**

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

### Reaching a just and proportionate sentence

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

- when sentencing for similar offence types or offences of a similar level of severity the court can consider:
  - whether all of the ~~offences~~ **sentences** can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively
  - whether, despite their similarity, a most serious principal offence can be identified and the other sentences can all be proportionately reduced (with particular reference to the

category ranges within sentencing guidelines) and passed consecutively in order that the sentence for the lead offence can be clearly identified

- when sentencing for two or more offences of differing levels of seriousness the court can consider:
  - whether some offences are of such very low seriousness that they can be recorded as ‘no separate penalty’ (for example technical breaches or minor driving offences not involving mandatory disqualification)
  - whether some of the offences are of lesser seriousness ~~and are unrelated to the most serious offence(s)~~, such that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified.

#### Sentencing for offences committed prior to other offences for which an offender has been sentenced [Dropdown]

The court should first reach the appropriate sentence for the instant offences, taking into account totality in respect of the instant offences alone. The court then has a discretion whether to make further allowance to take into account the previous sentence (**whether or not that sentence has been served in full**). The court should consider all the circumstances in deciding what, if any, impact the previous sentence should have on the new sentence. It is not simply a matter of considering the overall sentence as though the previous court had been seized of all the offences and deducting from that figure the sentence already imposed.

A non-exhaustive list of circumstances could include:

- (a) how recently the previous sentence had been imposed;
- (b) the similarity of the previous offences to the instant offences;
- (c) whether the previous and instant offences overlapped in time;
- (d) whether on the previous occasion the offender could have "cleaned the slate" by bringing the instant offences to the police's attention;
- (e) whether taking the previous sentences into account would give the offender an undeserved bonus - this will particularly be the case where a technical rule of sentencing has been avoided or where, for example, the court has been denied the opportunity to consider totality in terms of dangerousness;
- (f) the offender's age and health, and whether their health had significantly deteriorated;
- (g) whether, if the previous and instant sentences had been passed together as consecutive sentences, the totality principle would have been offended.

#### **If the offender is still subject to the previous sentence:**

1. Where the offender is currently serving a custodial sentence for the previously sentenced offence(s), consider whether the new sentence should be concurrent with or consecutive to that sentence taking into account the circumstances set out above and the general principles in this guideline.
2. Where the offender is serving an indeterminate sentence for the previously sentenced offence(s), see also the guidance in the section ‘Indeterminate sentences’ below.

3. Where the offender has been released on licence or post sentence supervision from a custodial sentence for the previously sentenced offence(s) see also the relevant guidance in the section below 'Existing determinate sentence, where determinate sentence to be passed'.

## Specific applications – custodial sentences

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

### Existing determinate sentence, where determinate sentence to be passed

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

Extended sentences [dropdown]

### Extended sentences

| Circumstance   | Approach  |
|--|---|
| <b>Extended sentences – using multiple offences to</b> | In the case of extended sentences imposed under the Sentencing Code, providing there is at least one specified offence, the threshold requirement under <a href="#">s267</a> or <a href="#">s280</a> of the Sentencing Code is reached if |

|  |   |
|--|---|
| <p><b>calculate the requisite determinate term</b></p> | <p>the total determinate sentence for all offences (specified or not) would be four years or more. The extended sentence should be passed either for one specified offence or concurrently on a number of them. Ordinarily either a concurrent determinate sentence or no separate penalty will be appropriate to the remaining offences. The extension period is such as the court considers necessary for the purpose of protecting members of the public from serious harm caused by the offender committing further specified offences. The extension period must not exceed five years (or eight for a sexual offence). The whole aggregate term must not exceed the statutory maximum. The custodial period must be adjusted for totality in the same way as determinate sentences would be. The extension period is measured by the need for protection and therefore does not require adjustment.</p> |
|--|---|

### Indeterminate sentences [dropdown]

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

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|---|--|
| <p><b>Indeterminate sentence (where the offender is already serving an existing indeterminate sentence)</b></p> | <p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition. However, where necessary (such as where the offender falls to be sentenced while still serving the minimum term of a previous sentence and an indeterminate sentence, if imposed concurrently, could not add to the length of the period before which the offender will be considered for release on parole in circumstances where it is clear that the interests of justice require a consecutive sentence), the court can order an indeterminate sentence to run consecutively to an indeterminate sentence passed on an earlier occasion (<a href="#">section 384</a> of the Sentencing Code). The second sentence will commence on the expiration of the minimum term of the original sentence and the offender will become eligible for a parole review after serving both minimum terms (<a href="#">Section 28(1B) of the Crime (Sentences) Act 1997</a>). The court should consider the length of the aggregate minimum terms that must be served before the offender will be eligible for consideration by the Parole Board. If this is not just and proportionate, the court can adjust the minimum term.</p> |
| <p><b>Ordering a determinate sentence to run consecutively to an indeterminate sentence</b></p>                 | <p>The court can order a determinate sentence to run consecutively to an indeterminate sentence. The determinate sentence will commence on the expiry of the minimum term of the indeterminate sentence and the offender will become eligible for a parole review after becoming eligible for release from the determinate sentence. The court should consider the total sentence that the offender will serve before becoming eligible for consideration for release. If this is not just and proportionate, the court can reduce the length of the determinate sentence, or alternatively, can order the second sentence to be served concurrently.</p>  |

## Specific applications – non-custodial sentences

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

| Multiple fines for non-imprisonable offences  |   |
|---|---|
| Circumstance  | Approach  |
| <p><b>Offender convicted of more than one offence where a fine is appropriate</b></p> | <p>The total is inevitably cumulative. The court should determine the fine for each individual offence based on the seriousness of the offence and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court (<a href="#">section 125</a> of the Sentencing Code). The court should add up the fines for each offence and consider if they are just and</p> |

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

#### Fines in combination with other sentences [dropdown]

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

|  |   |
|--|---|
|  | <ul style="list-style-type: none"> <li>• a life sentence imposed under section <a href="#">273</a> or <a href="#">283</a> of the Sentencing Code</li> <li>• a serious terrorism sentence under section <a href="#">268B</a> or <a href="#">282B</a> of the Sentencing Code</li> </ul> <p>(<a href="#">Sections 118 to 121 of the Sentencing Code</a>)</p>   |
| <b>Fines and determinate custodial sentences</b> | <p>A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the offender. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:</p> <ul style="list-style-type: none"> <li>• the sentence is suspended</li> <li>• a confiscation order is not contemplated <b>and</b></li> <li>• there is no obvious victim to whom compensation can be awarded <b>and</b></li> <li>• the offender has, or will have, resources from which a fine can be paid</li> </ul> |

## Community orders [dropdown]

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

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

Disqualifications from driving [dropdown]

| Disqualifications from driving   |   |
|--|---|
| Circumstance   | Approach  |
| <p><b>Offender convicted of two or more obligatory disqualification offences (<a href="#">§34(1) Road Traffic Offender Act 1988</a>)</b></p> | <p>The court must impose an order of disqualification for each offence unless for special reasons it does not disqualify the offender. All orders of disqualification imposed by the court on the same date take effect immediately and cannot be ordered to run consecutively to one another. The court should take into account all offences when determining the disqualification periods and should generally impose like periods for each offence.</p> |



|  |  |
|--|--|
| <p><b>Offender convicted of two or more offences involving either:</b></p> <ol style="list-style-type: none"> <li>1. discretionary disqualification and obligatory endorsement from driving, or</li> <li>2. obligatory disqualification but the court for special reasons does not disqualify the offender</li> </ol> <p>and the penalty points to be taken into account number 12 or more (ss28 and 35 Road Traffic Offenders Act 1988)</p> | <p>Where an offender is convicted on same occasion of more than one offence to which <a href="#">section 35(1) of the Road Traffic Offenders Act 1988</a> applies, only one disqualification shall be imposed on him. However the court must take into account all offences when determining the disqualification period. For the purposes of appeal, any disqualification imposed shall be treated as an order made on conviction of each of the offences. (<a href="#">Section 35(3)</a> of the Road Traffic Offenders Act 1988)</p> |
| <p><b>Other combinations involving more two or offences involving discretionary disqualification</b></p>   | <p>As orders of disqualification take effect immediately, it is generally desirable for the court to impose a single disqualification order that reflects the overall criminality of the offending behaviour.</p>  |

#### Compensation orders [dropdown]

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

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

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

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## General principles

The principle of totality comprises two elements:

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

## Concurrent/consecutive sentences

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

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

1. **Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.**
2. **Determine whether the case calls for concurrent or consecutive sentences. When sentencing three or more offences a combination of concurrent and consecutive sentences may be appropriate.**
3. **Test the overall sentence against the requirement that the total sentence is just and proportionate to the offending as a whole.**
4. **Consider and explain how the sentence is structured in a way that will be best understood by all concerned with it.**

Concurrent sentences will ordinarily be appropriate where:

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

Examples include:

V

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

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

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| Concurrent custodial sentence examples: | V |
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Consecutive sentences will ordinarily be appropriate where:

a. offences arise out of unrelated facts or incidents.

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| Examples include: | V |
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b. offences that are unrelated because while they were committed simultaneously they are distinct and there is an aggravating element that requires separate recognition.

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

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| Examples include: | V |
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d. one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum.

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

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

### Reaching a just and proportionate sentence

There are a number of ways in which the court can achieve a just and proportionate sentence.

Examples include:

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

- whether some of the offences are of lesser seriousness such that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified.

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| Sentencing for offences committed prior to other offences for which an offender has been sentenced | V |
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### Specific applications – custodial sentences

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| Existing determinate sentence, where determinate sentence to be passed | V |
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| Extended sentences | V |
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| Indeterminate sentences | V |
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### Specific applications – non-custodial sentences

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| Multiple fines for non-imprisonable offences | V |
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| Fines in combination with other sentences | V |
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| Community orders | V |
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| Disqualifications from driving | V |
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| Compensation orders | V |
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