

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

**17 June 2022**  
**SC(22)JUN06 – Guideline priorities**  
**N/A**  
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## **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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