

25 February 2022

Dear Members

Meeting of the Sentencing Council – 4 March 2022

The next Council meeting will be held in the **Queens Building, Judges Conference Room, 1st 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 4 March 2022 from 9:45 to 16:00.**

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)MAR00 |
| ▪ Minutes of meeting held on 28 January | SC(22)JAN01 |
| ▪ Motoring | SC(22)MAR02 |
| ▪ Animal Cruelty | SC(22)MAR03 |
| ▪ Burglary | SC(22)MAR04 |
| ▪ Totality | SC(22)MAR05 |
| ▪ Underage sale of knives | SC(22)MAR06 |

Also included for your information is a copy of the Analysis and Research subgroup minutes from their last meeting on 26/01/22.

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 has been extended to 45 minutes to accommodate people leaving the RCJ to purchase lunch if they wish.

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

COUNCIL MEETING AGENDA

4 March 2022
Royal Courts of Justice
1M Judges Conference Room
Queens Building

09:45 – 10:00	Minutes of the last meeting and matters arising (paper 1)
10:00 – 11:00	Motoring offences - presented by Ollie Simpson (paper 2)
11:00 – 11:45	Animal Cruelty - presented by Zeinab Shaikh (paper 3)
11:45 – 12:00	Break
12:00 – 13:00	Burglary - presented by Mandy Banks (paper 4)
13:00 – 13:45	Lunch
13:45 – 14:45	Totality - presented by Ruth Pope (paper 5)
14:45 – 15:00	Break
15:00 - 16:00	Underage sale of knives - presented by Ruth Pope (paper 6)

Sentencing Council

COUNCIL MEETING AGENDA

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MEETING OF THE SENTENCING COUNCIL

28 JANUARY 2022

MINUTES

Members present:

Tim Holroyde (Chairman)
Rosina Cottage
Rebecca Crane
Rosa Dean
Nick Ephgrave
Michael Fanning
Diana Fawcett
Adrian Fulford
Max Hill
Jo King
Juliet May
Maura McGowan
Alpa Parmar
Beverley Thompson

Representatives:

Hanna van den Berg for the Lord Chief Justice
(Legal and Policy Advisor to the Head of Criminal
Justice)
Claire Fielder for the Lord Chancellor (Director,
Youth Justice and Offender Policy)

Observers:

Francesca Anderson, Criminal Appeal Office

Members of Office in
attendance:

Steve Wade
Mandy Banks
Ruth Pope
Ollie Simpson

1. MINUTES OF LAST MEETING

- 1.1 The minutes from the meeting of 17 December 2021 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman welcomed Nikita Grabher-Mayer who will be joining the social research team as an intern for a period of three months.

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

- 3.1 The Council considered aggravating and mitigating factors across the three guidelines, with particular focus on the 'weapon carried when entering premises' factor in aggravated burglary. The Council agreed that this factor and the accompanying explanatory text should be reworded.
- 3.2 The Council considered consultation responses regarding sentence levels across the three offences. As a result of this discussion, some minor amendments to the lower part of the sentencing table on non-domestic burglary were agreed. On balance, after carefully considering the responses and sentencing data, the Council decided not to make any changes to the draft sentence levels for aggravated and domestic burglary.
- 3.3 The Council agreed to add some wording on the minimum term provisions for those aggravated burglary offences committed in a dwelling.

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

- 4.1 The Council considered the order in which guideline projects should be commenced as resources become available. It was agreed that the remaining motoring offences (aggravated vehicle taking without consent) should be picked up as soon as time allows and that the development of guidelines for immigration offences should also be a priority.
- 4.2 The Council noted that there were a number of issues to consider as a consequence of forthcoming legislative changes. It was agreed to work on consequential amendments to existing guidelines arising from the Police, Crime and Sentencing Bill and the increase in magistrates' sentencing powers as soon as practicable.

- 5. DISCUSSION ON MISCELLANEOUS GUIDELINE AMENDMENTS – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL**
- 5.1 The Council reviewed the changes to existing guidelines considered at the December meeting and agreed that these should be made on or soon after 1 April 2022. The response to consultation document setting out the changes would be published at least 14 days before that date to give notice to guideline users of the changes.
- 6. DISCUSSION ON TOTALITY – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL**
- 6.1 The Council discussed whether revisions to the Totality guideline should be confined to making adjustments and clarifications within the current approach (as previously agreed) or whether more radical changes should be considered.
- 6.2 The Council noted that the available evidence on multiple offences was limited (for example the data does not distinguish between concurrent and consecutive sentences) and decided to go ahead as planned to make improvements to the guideline without changing the approach.
- 6.3 The Council reaffirmed its long-term analytical plan to consider undertaking an analysis of multiple offences potentially using data from the Common Platform after which a further review of the guideline could be considered.
- 6.4 It was agreed to consider the details of the limited revision at the next two Council meetings with a view to consulting on changes in the summer.
- 7. DISCUSSION ON PERVERTING THE COURSE OF JUSTICE – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL**
- 7.1 The Council considered draft guidelines for perverting the course of justice and witness intimidation offences for the final time ahead of consultation on the proposals in the spring. The aggravating and mitigating factors were agreed and the guidelines were approved for consultation.
- 7.2 The Council also considered and agreed a draft resource assessment to accompany the draft guidelines at consultation.
- 8. DISCUSSION ON SEXUAL OFFENCES – PRESENTED BY OLLIE SIMPSON, OFFICE OF THE SENTENCING COUNCIL**
- 8.1 The Council signed off revisions to the sex offences guidelines following consultation in 2021, including in relation to situations where there is no real child victim and a new guideline for sexual

communication with a child. The changes will be published in May, with the amendments to existing guidelines coming into force 14 days later, and the new guideline for sexual communication with a child coming into force in July.

- 8.2 The Council also discussed the recent case of Limon which had implications for sentencing guidance for historical sexual offences where the offender was under 18 at the time of the offending and agreed further related revisions to the Council's guidance on historical sexual offences.

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

4 March 2022
SC(22)MAR02 – Motoring offences
Rebecca Crane
Ollie Simpson
ollie.simpson@sentencingcouncil.gov.uk

1 ISSUE

1.1 Setting sentence levels for dangerous and careless driving offences; and drafting guidelines for causing death and serious injury whilst disqualified/unlicensed/uninsured, and causing injury by wanton or furious driving.

2 RECOMMENDATIONS

2.1 That Council agree the sentencing levels set out below, and the draft guidelines in the annexes, in particular that:

- sentencing levels for dangerous and careless offences be set by reference to the levels for unlawful act manslaughter and inflicting grievous bodily harm;
- sentencing levels for dangerous driving be increased to some degree to reflect the increased levels for causing death and serious injury by dangerous driving;
- there be two levels of harm for causing serious injury offences and simple dangerous driving (resulting in a six box sentencing grid), but three levels of harm for causing injury by wanton or furious driving (resulting in a nine box grid);
- culpability elements for disqualified/unlicensed/uninsured offences do not make any reference to the standard of driving, but harm and aggravating/mitigating factors be drawn from our proposed dangerous/careless guidelines;
- culpability and aggravating/mitigating factors for causing injury by wanton or furious driving be brought across from careless/dangerous guidelines, with wording adapted as necessary.

3 CONSIDERATION

Sentence levels for dangerous and careless offences

3.1 The Council has agreed the step one and two elements for:

- causing death by dangerous driving (**Annex A**);
- causing death by careless driving (**Annex B**);
- causing death by careless driving under the influence (**Annex C**),
- causing serious injury by dangerous driving (**Annex D**).
- causing serious injury by careless driving (**Annex E**); and
- dangerous driving (**Annex F**)

Annex K provides a side by side comparison of existing and proposed sentencing tables, where guidelines currently exist.

Death by dangerous driving

3.2 The maximum penalty for causing death by dangerous driving is increasing from 14 years to life imprisonment under the Police, Crime, Sentencing and Courts Bill. In 2020, of 153 offenders sentenced, 143 received immediate custody, nine received suspended sentences and one received a community order. The average (mean) custodial sentence (estimated pre-guilty plea) was 6.3 years. There is a fairly even spread of pre-guilty plea sentence levels: over half received up to 6 years, and 22 received between 10 and 14 years. The existing guideline for causing death by dangerous driving can be found [here](#),

3.3 Given the increase in maximum penalty, an obvious comparator is the sentencing table for unlawful act manslaughter:

Culpability			
A	B	C	D
Starting point: 18 years	Starting point: 12 years	Starting point: 6 years	Starting point: 2 years
Range: 11-24 years	Range: 8 -16 years	Range: 3-9 years	Range: 1-4 years

3.4 Bearing in mind that category A is reserved for extreme cases and cases with a combination of category B factors, I propose the following table for causing death by dangerous driving:

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

3.5 These levels indicate that the worst cases of manslaughter are worse than the worst cases of dangerous driving, where there is no intent to cause harm. At the other end, the least serious cases of manslaughter are less serious than the least serious cases of dangerous driving where, inherently, someone is in charge of a machine with the capacity to kill and should be driving it with due responsibility.

Death by careless driving

3.6 This offence has a maximum penalty of five years' custody. In 2020 31% of offenders received immediate custody, 39% received suspended sentences and 25% received a community order. The ACSL (estimated pre-guilty plea) was 16 months, and most immediate custodial sentences imposed (21 of 37) were between 6 and 12 months; a further 10 were between 1 and 2 years.

3.7 The existing guideline can be found [here](#), and the current draft of the revised guideline is at **Annex B**. There is no inherent need to increase levels for this offence. However, we will want to make sure they remain in step with levels for death by dangerous driving, and that there is sufficient space for the new offence of causing serious injury by careless driving. I therefore propose a modest uplift to the existing levels:

Culpability	Starting point	Range
High	2 years	1 year – 4 years
Medium	1 year	26 weeks – 3 years
Lesser	26 weeks	Medium level community order – 1 year

3.8 Arguably, a custodial starting point and a range allowing up to a year are too severe for a momentary lapse of attention. On the other hand, there needs to be some distinction drawn between cases of death and cases of serious injury. In practice this may result in many suspended sentences.

Causing death by careless driving under the influence of drink or drugs

3.9 This offence has a 14 year maximum, rising to life under the PCSC Bill. In 2020, 17 of 19 offenders received immediate custody for this offence, the other two receiving suspended sentences. The estimated pre guilty plea ACSL was six and a half years and

there was a fair spread of sentences: about half (eight) received between 2 and 6 years, and the rest between 6 and 14 years.

3.10 The current guideline is [here](#) and the current draft of the guideline is at **Annex C**. We may want to mirror to some extent whatever changes we make for causing death by dangerous driving. The element of intoxication makes a direct comparison with death by dangerous levels difficult, but the top box reflects high culpability in death by dangerous, the middle box, middle culpability, and bottom centre box low culpability. Applying that approach to my proposed new death by dangerous table results in the following:

The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	High culpability	Medium culpability	Lesser culpability
71µ or above of alcohol OR Deliberate refusal to provide specimen for analysis OR Evidence of substantial impairment and/or multiple drugs or combination of drugs and alcohol	Starting point: 12 years Sentencing range: 8 – 18 years	Starting point: 9 years Sentencing range: 6 - 12 years	Starting point: 6 years Sentencing range: 5 – 10 years
51- 70 µg of alcohol OR Any quantity of a single drug detected	Starting point: 9 years Sentencing range: 6 - 12 years	Starting point: 6 years Sentencing range: 4 – 9 years	Starting point: 4 years Sentencing range: 3 – 7 years
35-50 µg of alcohol	Starting point: 6 years Sentencing range: 4 – 9 years	Starting point: 3 years Sentencing range: 2 – 5 years	Starting point: 1 year 6 months Sentencing range: 26 weeks – 4 years

3.11 This means the lowest intoxication starting points are all three times the starting points for causing death by careless driving at all respective culpability levels. This reflects the current, very large discrepancy between cases of death by careless and death by careless under the influence. However, this table keeps the levels for the lesser culpability

column at the same level as the current guideline. It does mean that the lowest level of culpability and intoxication is lower than the highest level for causing death by careless driving. That could be justified as the standard of driving is different, but there is a judgement call about how much more serious the fact of intoxication should make the offending than for simple causing death by careless.

Question 1: are you content with the proposed sentencing levels for the causing death offences?

Question 2: are you content that the lower culpability levels for causing death by careless are lower than the highest level for causing death by careless, or would you like to reflect better both the increase in maximum penalty and the inherent seriousness of intoxication?

3.12 One criticism of the current 14 year maximum penalty ([including from at least one judge](#)) is how it constrains the sentence in cases of more than one death, given that case law and the current guideline dictate that sentences for different counts should normally be concurrent.¹ In drafts thus far more than one death has been treated as an aggravating factor. However, the working group considered that additional guidance before the harm table would help address the question head on:

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

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

Question 3: do you agree with the approach to multiple deaths?

Serious injury offences

3.13 The definition of “serious injury” for England and Wales in the Road Traffic Act 1988 is “physical harm which amounts to grievous bodily harm for the purposes of the Offences against the Person Act 1861”. I therefore propose using [the guideline for inflicting grievous bodily harm/ Unlawful wounding, section 20 of the 1861 Act](#) as a model for sentence levels. This has a five year maximum, as does causing serious injury by dangerous driving.

¹ See [R v Jaynesh Chudasama \[2018\] EWCA Crim 2867](#) for a recent example and summary of the case law

3.14 There is no current guideline for causing serious injury by dangerous driving. In 2020, two thirds (67%) of offenders received immediate custody, just over a quarter (26%) received a suspended sentence and 5% received a fine. The estimated pre-guilty plea ACSL was just under three years (35.5 months) and a fair spread of custodial sentence lengths right up to the maximum (most getting in the two to four year range, but very few below a year). The current draft of the new guideline is at **Annex D**.

3.15 We have discussed previously whether we should have a two or three harm scheme for the serious injury offences. Given the maximum penalties for the causing serious injury offences are relatively low (five years for dangerous, two years for careless) I believe there is a good case for a straightforward two harm model based on the section 20 high harm elements and sentencing levels. So the top harm level would encompass:

- Particularly grave and/or life-threatening injury caused;
- Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment;
- Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim’s ability to carry out their normal day to day activities or on their ability to work.

and the lower category would be “All other cases”. The sentence levels for causing serious injury by dangerous driving would be:

	Culpability		
	A	B	C
Harm 1	Starting Point: 4 years Category range: 3 – 5 years	Starting Point: 3 years Category range: 2 – 4 years	Starting Point: 2 years Category range: 1 year – 3 years
Harm 2	Starting Point: 3 years Category range: 2 – 4 years	Starting Point: 2 years Category range: 1 year – 3 years	Starting Point: 1 year Category range: 26 weeks – 2 years

That means that the higher culpability starting points and ranges are higher than those for the lower culpability levels for causing death by dangerous, but this can be justified on the grounds of differing levels of culpability and simply replicates the existing relationship between manslaughter and GBH.

3.16 The table for the new offence of causing serious injury by careless driving (see draft at **Annex E**) effectively needs to continue this table across through a gradation of culpability:

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

Question 4: are you content with the proposed causing serious injury sentencing levels?

Dangerous driving

3.17 Dangerous driving has a two year maximum which is staying unchanged. In 2020 almost half of dangerous driving offenders received immediate custody (49%), a further third (32%) received suspended sentences and 15% received community orders. Of those that received immediate custody the estimated average pre-guilty plea sentence was 14.3 months. There was a fairly even spread above the six month point, with nearly four in ten offenders receiving between 12 and 18 months, pre-guilty plea.

3.18 The current magistrates court guideline can be found [here](#) and the current draft of the revised guideline is at **Annex F**. The existing table can provide a starting point, and there is no automatic reason to increase/adjust sentences. However, we are moving to a harm and culpability model, will want to be mindful of readacross to offences where death and injury are caused, and will want to provide sentence levels for the Crown Court.

3.19 I propose the following:

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

3.20 Note that these levels are identical to those for causing serious injury by careless driving. This is not intentional, but may attract comment. In practice this is the result of the attempt to reflect six levels of culpability and harm within a relatively low maximum. In comparing the two offences one could argue that dangerous driving even without any injury carries higher culpability, but that is balanced by the harm actually caused by careless drivers.

3.21 The current magistrates' court dangerous driving guideline, like other magistrates' driving guidelines, sets lengths of disqualification (12 to 15 months for low level, 15 to 24 months for medium level). I do not recommend providing disqualification lengths for every possible category of offending across all the guidelines. Rather, I propose in general providing some high level information about minimum disqualification periods, including for repeat offending, and distilling some of the information contained in the [magistrates' explanatory materials on driving disqualifications](#). (Some of these minimum periods are changing under the Police, Crime, Sentencing and Courts Bill). By way of exception, as specific guidance is provided now on disqualification lengths for dangerous driving, we should retain these so as not to leave magistrates with less guidance than now).

3.22 I believe this information is most likely to be seen and read if placed just after the sentencing table, as a drop-down box alongside the usual drop down boxes for community orders and custodial sentences. Alternatively, it could form part of the standard step six or step seven on ancillary orders. However, given they are obligatory for most offences in scope it seems right for them to be considered at the point of determining the sentence at the main sentencing box.

3.23 If Council agrees, I will draft the content for a drop-down and demonstrate it at the planned sign-off meeting in May.

Question 5: are you content with the proposed sentencing levels for dangerous driving?

Question 6: do you agree in principle with the addition of information on disqualification after the sentencing table?

Further guidelines: disqualified/unlicensed/uninsured and wanton or furious driving

3.24 There is currently a Sentencing Guidelines Council guideline for [causing death by driving whilst disqualified, unlicensed or uninsured](#). However, as the online guideline notes, the maximum penalty for causing death by driving whilst disqualified was raised from 2 years' imprisonment to 10 years in 2015 (with death whilst unlicensed and uninsured remaining at 2 years). There is a [magistrates' court guideline for driving whilst disqualified](#)

(i.e. no death, maximum 6 months), revised in 2017 which we are not updating. There are no existing guidelines for causing serious injury by driving whilst disqualified (maximum penalty 4 years) or causing injury by wanton or furious driving (maximum penalty 2 years).

3.25 These are low volume offences, with only three sentences imposed for causing death by driving whilst disqualified in as many years (2018-20). The other offences are in single figures annually for 2018 to 2020, although there were 11 offenders sentenced in 2020 for causing injury by wanton or furious driving.

Whilst disqualified, unlicensed and uninsured offences – culpability

3.26 It is challenging to articulate different grades of culpability for these offences, and the standard of driving is irrelevant to this offending. The drafts at **Annexes G and H** for the disqualified offences present a high culpability marked by various elements which are considered aggravating in other motoring guidelines. Breaching a court order shortly after its imposition is commonly considered aggravating in breach guidelines and is in the driving whilst disqualified guideline. “Vehicle obtained during disqualification period” is also a culpability factor in that guideline and “Significant distance travelled” is a harm factor.

3.27 Low culpability is distinguished by “Decision to drive was brought about by a genuine and proven emergency”, “Forced to drive whilst disqualified by pressure, coercion or intimidation” and “The offender genuinely believed that he or she was not disqualified to drive” (which could occur if someone has been disqualified in absentia). The medium category represents everything in between (“*Cases falling between higher and lesser culpability because: Factors are present in higher and lesser culpability which balance each other out and/or; The offender’s culpability falls between the factors as described in higher and lesser culpability*”).

3.28 I suggest a similar approach for causing death by driving whilst unlicensed/uninsured (see **Annex I**), with some tweaks, given that driving shortly after disqualification or vehicle obtained during disqualification period are not relevant here.

Question 7: are you content with the culpability factors for the disqualified, unlicensed and uninsured offences?

Harm

3.29 Harm for the causing death offences is set at one level and I propose we include the explanatory text agreed for other offences where more than one death occurs. For causing serious injury by driving whilst disqualified, I propose following the same approach that we

have agreed for the other serious injury offences: a high category based on the highest level for GBH, and a lower category for all other cases.

Question 8: are you content with this approach to harm?

Sentencing levels for disqualified, unlicensed/uninsured offences

3.30 The hierarchy that Parliament has set places causing death by driving whilst disqualified as less serious than causing death by dangerous driving, but considerably more serious than causing death by careless driving. Similarly causing serious injury whilst disqualified is less serious than causing serious injury by dangerous driving, but more serious than causing serious injury by careless driving.

3.31 Being mindful that there may be little or no connection between the offender’s driving and the incident, the following proposal for causing death whilst disqualified takes its medium levels from the death by dangerous driving low levels:

Culpability	Starting point	Range
High	6 years	4 – 9 years
Medium	3 years	2 – 5 years
Lesser	18 months	High level community order to 2 years

The high levels are adjusted down from the death by dangerous medium levels, and the lesser levels are set in a fully suspendable range, given this would be for a genuine emergency, where the offender was coerced, or where they genuinely believed they were able lawfully to drive.

3.32 For causing serious injury whilst disqualified, I suggest for its highest culpability levels taking the medium culpability levels of causing serious injury by dangerous, for its medium culpability levels taking the lowest culpability levels of serious injury by dangerous, and for its lowest level broadly taking the medium culpability levels from serious injury by careless driving:

	Culpability		
	A	B	C
Harm 1	Starting Point: 3 years Category range: 2 – 4 years	Starting Point: 2 years Category range: 12 months – 3 years	Starting Point: 12 months Category range: High level community order – 2 years
Harm 2	Starting Point: 2 years Category range: 12 months – 3 years	Starting Point: 12 months Category range: High level community order – 2 years	Starting Point: 26 weeks Category range: Low level community order – 12 months

3.33 For causing death whilst unlicensed/uninsured, the current table is as follows:

Examples of nature of activity	Starting point	Range
The offender was disqualified from driving OR the offender was unlicensed or uninsured plus two or more aggravating factors	12 months' custody	36 weeks – 2 years' custody
The offender was unlicensed or uninsured plus at least one aggravating factor	26 weeks' custody	High level community order – 36 weeks' custody
The offender was unlicensed or uninsured – no aggravating factors	Medium level community order	Low level community order – high level community order

3.34 There is no particular need to amend the sentencing levels here. At the upper end we could increase levels in an attempt to reflect the markedly higher levels for death whilst disqualified. However, we might equally want to decrease levels at the lower end to distinguish a new category of lower culpability marked by driving whilst unknowingly unlicensed/uninsured, coerced or in an emergency. On balance, I propose leaving the sentencing levels alone for this offence.

Question 9: do you agree with the sentencing levels for the disqualified, unlicensed and uninsured offences?

Aggravating and mitigating factors

3.35 The proposed step two factors are similar to the ones we have already agreed across the other death and serious injury offences. We can include a note relating to previous convictions which currently appears in the driving whilst disqualified guideline:

“Note: An offender convicted of this offence will always have at least one relevant previous conviction for the offence that resulted in disqualification. The starting points and ranges take this into account; any other previous convictions should be considered in the usual way.”

3.36 One aggravating factor which I have modified from the breach guidelines is “History of disobedience of disqualification orders (where not already taken into account as a previous conviction)”.

3.37 “Actions of the victim or a third party contributed significantly to collision or death” could be included at step one as low culpability, but this could be present in a significant number of these cases and is totally unrelated to the question of whether someone should legally be on the road.

Question 10: do you agree with the aggravating and mitigating factors for the disqualified, unlicensed and uninsured offences?

Causing injury by wanton or furious driving²

3.38 This offence will be charged either where a motorised vehicle causes injury off-road or (as in at least [one well-publicised case](#)) where a cyclist causes injury in any setting. The phrase “wanton or furious” encompasses both dangerous and careless driving. The level of injury need not be the serious injury/GBH level required in other driving offences, although equally it is charged where a death has resulted.

3.39 The draft at **Annex J** adapts top culpability elements from top culpability for death/serious injury by dangerous driving, and medium culpability elements from medium culpability for death/serious injury by careless. The lowest category is all other cases. There are specific references to cycling as well as driving for the avoidance of doubt.

Question 11: are you content with the culpability elements for causing injury by wanton or furious driving?

3.40 For harm, whilst the simplest option would be to bring across our two-harm model from the other serious injury guidelines, we should be allowing for a broader range of injury/harm. The test in the statute is “any bodily harm to any person whatsoever”. Such a harm table could see high harm broadly equate to GBH, a middle category capturing other serious harm, and a low category to capture lesser harm:

HARM	
Category 1	<ul style="list-style-type: none">• Death• Grave and/or life-threatening injury caused• Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment

² I propose to call this guideline “causing injury by wanton or furious driving”, although the 1861 Act only refers to “injuring persons by furious driving” in its section title; colloquially it is known as “wanton or furious” as described in the body of the section.

	<ul style="list-style-type: none"> • Offence results in a permanent, irreversible injury or condition
Category 2	<ul style="list-style-type: none"> • Other cases of serious harm
Category 3	<ul style="list-style-type: none"> • All other cases

Question 12: are you content with the harm elements for causing injury by wanton or furious driving?

3.41 For sentence levels, I propose that the top two harm levels be the same as for causing serious injury by careless driving: broadly speaking they equate to the harm covered by that and the two offences share a two year maximum penalty. Harm 3 levels simply follow diagonally:

	Culpability		
	A	B	C
Harm 1	Starting Point: 18 months Category range: 12 months - 2 years	Starting Point: 12 months Category range: 26 weeks – 18 months	Starting Point: 26 weeks Category range: High level community order – 12 months
Harm 2	Starting Point: 12 months Category range: 26 weeks – 18 months	Starting Point: 26 weeks Category range: High level community order – 12 months	Starting Point: High level community order Category range: Low level community order – 26 weeks
Harm 3	Starting Point: 26 weeks Category range: High level community order – 12 months	Starting Point: High level community order Category range: Low level community order – 26 weeks	Starting Point: Low level community order Category range: Band B fine – High level community order

Question 13: are you content with sentencing levels for causing injury by wanton or furious driving?

3.42 The aggravating and mitigating factors would be the standard ones we are proposing for other driving offences. I have adapted “other driving/cycling offences committed at the same time” to “Other driving offences committed at *or about* the same time” as it may be the case that the course of offending involved someone going on-road and off-road at different points.

Question 14: are you content with the aggravating and mitigating factors for causing injury by wanton or furious driving?

4 IMPACT AND RISKS

4.1 A consultation stage resource assessment is being prepared and will be presented to Council in May.

4.2 We may face criticism from both directions, that our proposed sentence levels are not high enough to reflect the harm caused by dangerous and careless driving, but also that in raising sentencing levels to reflect the new maximum penalties we are contributing to sentence inflation.

4.3 Many of these offences are complex in that harm and culpability can be distinctly out of proportion to each other. Some of the offences relate to the standard of driving, whilst others relate to whether someone should lawfully be on the road, regardless of how they drive. This complexity is compounded by a piecemeal approach to legislating in an emotive area which has resulted in very differing maximum penalties which our guidelines need to navigate. All of this will require careful explanation at consultation, including an upfront explanation of what is in our gift and what the parameters set by Parliament are.

Sentencing Council

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

04 March 2022
SC(22)MAR03 – Animal Cruelty
Rosa Dean
Zeinab Shaikh
zeinab.shaikh@sentencingcouncil.gov.uk

1 ISSUE

1.1 The Council is invited to sign off draft revisions to the animal cruelty guidelines in preparation for consultation.

2 RECOMMENDATIONS

2.1 That the Council:

- signs off revisions to the animal cruelty guidelines for consultation (**Annexes A and B**);
- considers the consultation stage resource assessment at **Annex C**.

3 CONSIDERATION

Revisions to the animal cruelty guidelines

3.1 The current animal cruelty guideline, originally in place from 2008 (and updated in 2017), covers offences contrary to sections 4 (causing unnecessary suffering), 8 (involvement in an animal fight) and 9 (breach of duty of person responsible for animal to ensure welfare) of the Animal Welfare Act 2006. In 2021, Parliament approved the Animal Welfare (Sentencing) Bill, raising the maximum penalty for offences under sections 4-8 to five years' custody, with these offences now triable either way. This change covers:

- Causing unnecessary suffering (section 4);
- Carrying out a non-exempted mutilation (section 5);
- Docking the tail of a dog except where permitted (section 6);
- Administering poison to an animal (section 7);
- Involvement in an animal fight (section 8).

The Section 9 offence remains unchanged, with a maximum penalty of 6 months' custody. We have therefore proposed to create two new guidelines, one which combines offences under sections 4-8, with the other covering the section 9 offence alone (which remains summary only).

3.2 As agreed in previous Council meetings, we have made a number of revisions and updates to the guidelines to provide clarity to sentencers and ensure consistency with guidelines for other similar offences. We have also updated the information at step 6 in both guidelines, on compensation and ancillary orders, in line with proposed miscellaneous amendments to all guidelines. All changes have been highlighted in the draft guidelines included at Annexes A and B.

Sections 4 to 8 – Unnecessary suffering, mutilation, tail docking, administration of poisons, and animal fighting (at Annex A)

3.3 The draft guideline includes a number of updates to the culpability table, primarily to separate out clearly the more extreme cases. High culpability factors under the existing guideline have been moved into medium culpability, and a new set of factors have been added for high culpability, to reflect the significant increase in maximum sentence for these offences. This includes the option for sentencers to 'uprate' cases that would otherwise sit in medium culpability, by virtue of their extreme nature or impact.

3.4 While it is included in low and medium culpability, we have not added neglect to the list of factors for high culpability, as discussed and agreed in December's Council meeting. There is, however, scope for sentencers to include extreme examples of neglect in category A, allowing for cases of medium culpability to be elevated where appropriate.

3.5 We have added more detail to the medium and low culpability factors to provide clarity. This includes, for medium culpability, consideration of whether there were multiple incidents, the use of significant force, or deliberate disregard for the welfare of the animal. To low culpability, in line with comparator guidelines for child cruelty, we have added consideration of whether the perpetrator was coerced or intimidated to offend, or if the offence resulted from a momentary or brief lapse in judgement.

3.6 We have moved from a two-category harm table to three categories, to reflect better the more extreme cases intended to be the target of the change in maximum penalty, with more detail added to the factors to aid sentencers. In the new category 2, we have included factors covering offences involving tail docking, ear clipping and similar mutilation, to explicitly refer to sections 5 and 6 offences. More detail has also been added to the factors under category 3 to better distinguish between low and medium harm and make the threshold between these clearer.

3.7 The sentencing table at step 2 has been restructured and aligned with changes to the harm table, with the majority of boxes revised upwards, to allow for a graduated approach to the new three-year upper limit of the offence range. Low culpability/low harm is unchanged, while medium offences are increased slightly, and high harm/culpability offences are

increased beyond the previous maximum penalty. The explanation ahead of the table flags that there is scope for sentencers to go beyond the category range dependent on relevant culpability and aggravating factors.

3.8 We have proposed that the category range for high culpability/high harm offences go from 26 weeks' custody to three years' custody. This allows 'headroom' for sentencers to go beyond this, up to the five year maximum, for the very worst sadistic or extreme cases, while ensuring that sentences as a whole are not inflated under the changes. We believe that this reflects Parliament's intention in raising the maximum penalty, including the sorts of examples that were discussed during the passing of the Bill, and in the low numbers of predicted prison places as per the justice impact test provided at the time. We anticipate that we may face some criticism for not increasing the top end of the category range further, but intend to pre-empt this by explaining our rationale for this approach in the consultation narrative.

3.9 While the standard list of aggravating and mitigating factors is retained, there are some additions. To the list of 'other' aggravating factors, we have included consideration of the number of animals involved (where significant) and whether the offender is in a position of professional responsibility for the animal. We have also revised wording on the use of technology to publicise or promote cruelty, to include mention of recording or circulating images or footage of the offending on social media. This reflects an amendment suggested during the passage of the Bill, to address concerns that animal abuse footage and images are increasingly being shared on social media. To bring this into line with the comparator guidelines for child cruelty and assault, we have also included a factor which considers whether the offence was committed in the presence of children or others. In line with standard wording for other revised guidelines, we have also updated the wording around age/lack of maturity to remove the phrase '... where it affects the responsibility of the offender'.

Question 1: Are you content to consult on the new guideline for offences contrary to section 4 to 8 as set out in Annex A?

Section 9 – Breach of duty of person responsible for animal to ensure welfare (at Annex B)

3.10 As the section 9 offence remains summary only, we have placed this in a separate guideline. This retains much of the wording of the current animal cruelty guideline, but we have revised it in places to align with the proposed guideline for sections 4-8. In order to ensure sentencers can easily search for and find the guideline, and distinguish it from the guideline for sections 4-8, we are giving it a new title of 'failure to ensure animal welfare'.

3.11 In the culpability table, we have removed the high culpability factor of a ‘deliberate or gratuitous attempt to cause suffering’, as this is likely to be more relevant to offences committed under section 4 of the Act, but have retained reference to ill treatment and neglect (though now with additional wording to reflect where this occurs in a commercial context). To lower culpability, we have added two new factors, of a brief lapse in judgment, and involvement through coercion, intimidation or exploitation, to broadly align with the draft revisions to the guideline for sections 4-8. In addition to these changes previously agreed by the Council, we also propose to amend the wording for the medium culpability factor to align with the proposed guideline for sections 4-8, explaining that cases may fall into this category where factors balance each other out, or fall between high and low culpability.

3.12 We have decided to retain a two-harm model for this guideline, to avoid introducing unnecessary complexity for a summary only offence. We have also retained the existing sentencing table, as there is no clear rationale to alter this when the maximum sentence of 6 months’ custody for this offence still stands.

3.13 Finally, in line with changes to the guideline for sections 4-8, we have made additions to the list of other aggravating factors, including consideration of the number of animals involved and whether the offender was in a position of professional responsibility for the animal. Unlike the other guideline, we have retained the aggravating factor where the animal is being used in public service or as an assistance dog, to capture cases where handlers may neglect their own service animals. We have removed mention of technology being used to promote neglect or cruelty as it is not necessarily relevant or likely to be a factor in cases which fall under section 9.

Question 2: Are you content to consult on the new standalone guideline for section 9 as set out in Annex B?

Resource assessment (Annex C)

3.14 *Sections 4 to 8 – Unnecessary suffering, mutilation, tail docking, administration of poisons, and animal fighting:* The proposed guideline is expected to increase sentence severity in a small number of cases involving the most serious types of offending, but it is unlikely to have a significant impact on prison or probation places due to the small volumes involved and low proportion of immediate custodial outcomes. It may, however, have an impact on the proportion of cases being heard at the Crown Court due to the change from summary only to either way offences. We anticipate that a high proportion of cases will remain within the eligible threshold for suspension; even in the case of high harm/high culpability offending, the starting point of 18 months’ custody is within this threshold.

3.15 *Section 9 – Breach of duty of person responsible for animal to ensure welfare:* As this guideline is being separated out from other animal cruelty offences, but remains largely similar to the current animal cruelty guideline (with no changes to the sentencing table), we do not anticipate that this will lead to a change in sentencing practice. As such, the proposed guideline is not expected to have a notable resource impact for prisons or probation.

Question 3: Do you have any comments on the resource assessment at Annex C?

4 EQUALITIES

4.1 As animal cruelty offences were summary only until the legislative change in 2021, limited data is available on these cases, particularly for ethnicity. In 2020, due to the impact of the pandemic, the number of adults that were sentenced under the Animal Welfare Act 2006 reduced further.

4.2 In 2020, where the ethnicity of adult offenders sentenced under the Act was known, 90 per cent were White, 6 per cent were Asian and 4 per cent were Black.

4.3 The data available for sex and age is broadly in line with demographic breakdowns across all summary non-motoring offences. In 2020, where the sex of offenders was known, just over a third of those sentenced under the Act were female, while 63 per cent were male. In addition, three quarters of offenders were aged between 22-49 years.

4.4 As such, we do not anticipate that changes to the guidelines will have a disproportionate impact on groups with protected characteristics, particularly in terms of an offender's ethnicity, sex or age. However, given the limited data available, we will use the consultation to seek further evidence from respondents on whether they believe the proposed changes to the guidelines could create disparities in outcome.

Question 4: Are there any particular equalities issues you believe the consultation should seek views on, or are you content for us to take the approach described above?

Impact and Risks

4.5 We are aiming to launch the consultation on 21 April and will circulate the consultation document for sign off from Council members in due course.

4.6 The impact of the proposed guidelines is outlined above. Due to limited transcript evidence, and because current sentencing practice for offences contrary to sections 4-8 is not fully representative of expected future sentencing, risk arises in how reliably we can estimate the resource impacts for the animal cruelty guideline. To mitigate against this uncertainty, further research will be carried out during the consultation period to understand likely future sentencing and any impacts.

4.7 Given the emotive subject matter and public interest in the issue following recent high-profile cases of animal cruelty, we are likely to face some criticism for capping the offence range for sections 4-8 at three years' custody, rather than going up to the maximum of five years' as set by Parliament. To mitigate against this, we can use the consultation document to explain our rationale, including to retain leeway for sentencers to go beyond the top of the range for the most severe cases.

Sentencing Council

Sentencing Council meeting: 04 March 2022
Paper number: SC(22)MAR04 – Burglary Revision
Lead Council member: Rebecca Crane
Lead officials: Mandy Banks
0207 071 5785

1 ISSUE

1.1 This is the final meeting to discuss the burglary guideline post consultation. The guideline will then be published in May and come into force in July. It is necessary to adhere to this timetable due to the data collection starting in the courts in the Autumn.

1.2 This meeting will focus on considering the resource assessment and the Council will be asked to sign off the three definitive guidelines ahead of publication. The consultation response document and finalised guidelines will be circulated to Council members via email in due course.

2 RECOMMENDATION

2.1 That the Council:

- Considers the final resource assessment
- Agrees to sign off the definitive guidelines ahead of publication

3 CONSIDERATION

Definitive guidelines

3.1 The final versions of the three guidelines can be seen at **Annexes A-C**. The main changes made to the guidelines post consultation are listed below:

Culpability

- In domestic and non-domestic burglary adding a new reference to step 6 on totality alongside the '*knife or other weapon carried*' factor

Harm

Category one harm – domestic and non-domestic burglary

- Changing the factor '*much greater emotional impact on the victim than would normally be expected*' to '*substantial physical or psychological injury or substantial emotional or other impact on the victim*'
- Changing the factor '*violence used or threatened against the victim*' to '*violence used/serious violence threatened against the victim*'
- Changing the factor '*victim on the premises (or returns) while offender present*' in domestic and non-domestic burglary to '*violence used/serious violence threatened against the victim*'

Category two harm- domestic and non-domestic burglary

- Changing the factor '*greater emotional impact on the victim than would normally be expected*' to '*moderate physical or psychological injury or some emotional or other impact on the victim*'
- Adding in a new factor of '*violence threatened but not used against the victim (where not at category one)*'
- Changing the factor of '*theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value)*' to '*theft of/damage to property causing a moderate degree of loss to the victim (whether economic, commercial or personal value)*'
- Changing '*ransacking or vandalism of the property*' to '*moderate damage or disturbance to property*'

Category three harm- domestic and non-domestic burglary

- Adding a new factor of '*limited physical or psychological injury or limited emotional or other impact on the victim*'

Category one harm- aggravated burglary

- Removing the reference to a weapon, so the factor reads '*violence used or threatened against the victim*'

3.2 In reviewing the changes post consultation any potential inconsistencies within the guidelines can be identified. Some of the changes to the harm factors listed above in non domestic and domestic burglary were not also made within aggravated burglary, so there are similar factors, but worded differently. This can be seen if the harm factors on pages two of **Annexes A and B** are compared.

So that the Council can see what the factors within aggravated burglary would look like if they were worded the same as the relevant factors in the other two guidelines the changes have been made in track changes within aggravated burglary at **Annex A**.

3.3 However, it should be noted that there are deliberate differences between aggravated burglary and the other two guidelines. There is no reference to an offence committed on impulse within lower culpability within aggravated burglary, as for this offence trespassing and having a weapon are hard to describe as an impulsive act. There is also no reference to nothing stolen or limited damage caused to property within harm category three. This is because we want to avoid the potential for a case where there was a significant threat to the victim but no theft resulted, or only minor damage caused because they couldn't get into a safe for example, being regarded as lesser harm. Instead there is a mitigating factor of nothing stolen.

Question 1: Does the Council wish to update the relevant harm factors in aggravated burglary to the factors within the other two guidelines?

3.4 Within aggravated burglary next to the sentence table there is a link to the imposition guideline. This was placed there following the discussion to add text relating to alcohol and drug treatment orders being an alternative to short/moderate sentences only within the other two guidelines, and not within the aggravated burglary guideline. At the time the Council thought it may be useful to link to the guidance within the Imposition guideline here. However all guidelines have the custodial sentences drop down which links to the Imposition guideline so possibly by linking to it here as well it doesn't add any additional guidance. The link could be removed, or more specific bespoke guidance added, if the Council felt additional guidance to sentencers was required.

Question 2: Does the Council wish to remove the link to the Imposition guideline?

Changes to sentence levels

3.5 The only change in domestic burglary is the removal of the phrase '*for cases of particular gravity, sentences above the top of the range may be appropriate*'. There were no changes to sentence levels in aggravated burglary. At the last meeting it was decided that the sentence levels in non-domestic burglary should be the ones consulted on, which can be seen on page three of **Annex C**.

Changes to aggravating and mitigating factors

3.6 Across all guidelines the mitigating factor of *'delay since apprehension'* has been removed. In aggravated burglary, the *'weapon carried when entering premises'* aggravated factor, with its additional explanation, has been changed to *'In a s.9(1)(b) offence, weapon carried when entering premises'*, with a shorter, revised additional explanation.

3.7 Also agreed at the last meeting was to add text to the aggravated burglary guideline on the minimum term in domestic aggravated burglary cases. This can be seen on the front page of the guideline and immediately before the sentence table.

3.8 At the last meeting the Council discussed whether or not to include a factor of *'loss or damage caused to heritage and/or cultural assets'* either at step one harm or as an aggravating factor. The discussion noted that the factor occurs at step two within arson and criminal damage, and as a harm factor at step one within the handling and general theft guidelines. After a majority vote the Council decided not to include it, stating it was not necessary to include it. Because the factor does appear within other acquisitive offences guidelines, it will be necessary to explain fully in the consultation response the rationale for not including it within this guideline. This issue is very important to English Heritage who raised this in consultation, and whom we have a good working relationship with.

3.9 In addition, looking at the factors in harm, is there a possibility that heritage and cultural assets may not come within the definition of the harm factor *'theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value'?* so perhaps could not be taken into account at step one?

Question 3: Could the Council articulate the rationale for not including this factor within this guideline, when it occurs within other similar guidelines? And is the Council of the view that the factor would fall within the definition of 'economic, commercial or personal value'?

Question 4: Is the Council content to sign the three guidelines off ahead of the publication of the definitive guideline?

Final resource assessment

3.10 The final resource assessment can be seen at **Annex D**.

3.11 There have been several changes to the placement of factors in the revised guidelines. These include the factor related to group offending within the non-domestic and domestic burglary guidelines. Additionally, some new wording related to alcohol dependency/ misuse has been added to the domestic and non-domestic burglary guidelines, with the intention that this might encourage more community orders to be given at the lower end of offence severity. Analysis carried out during the development of the guideline and during the consultation stage, involving sentencing remarks and interviews with sentencers, showed evidence that very little change is expected in sentencing for these offences and therefore minimal resource impact is expected.

3.12 The factor related to a weapon carried when entering the premises in the aggravated burglary guideline has been moved from step one to step two of the guideline, and the step one harm factor reworded to avoid any possible double counting of this factor. Analysis suggests that there may be a slight decrease in sentence severity due to this change. However, the sample size analysed was small and therefore while any resource impact is not expected to be substantial, the findings in relation to this should be interpreted as indicative of the expected impacts only.

3.13 Overall, for all three offences (non-domestic, domestic and aggravated burglary), analysis suggests that sentences should remain similar under the revised guidelines to sentencing levels under the previous guidelines, and there is no conclusive evidence to suggest that the guidelines will have a notable impact on prison or probation resources.

Question 5: Does the Council have any comments on the final resource assessment?

4. EQUALITIES

4.1 The available demographic data is provided for each guideline within **Annex E**. The work carried out since the consultation that was discussed last month will be outlined in the response to consultation paper. No strong evidence of disparities in sentencing relating to ethnicity were found as a result of this further analysis.

Question 6: Does the Council have any comments or concerns on the equalities?

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Sentencing Council meeting:
Paper number:
Lead official:

4 March 2022
SC(22)MAR05 - Totality
Ruth Pope
Ruth.pope@sentencingcouncil.gov.uk

1 ISSUE

1.1 At the January meeting the Council agreed to consult on updating the Totality guideline without changing the overall approach or making substantial changes to the content. This decision was informed by the research carried out with sentencers ([Exploring sentencers' views of the Sentencing Council's Totality guideline](#)) which found that the guideline was considered to be useful and clear. At this meeting the Council will be asked to consider suggested changes to the format of the guideline and some small changes to content. There is one further meeting scheduled before consultation on the changes.

2 RECOMMENDATION

2.1 That the Council agrees changes to the format and minor changes to the text of the Totality guideline and considers whether further changes should be made to provide greater assistance to sentencers and to address issues of equality.

3 CONSIDERATION

Background

3.1 The aim of the proposed changes is to ensure that the content of the guideline is up-to-date and to address comments from sentencers in the research regarding the length and format of the guideline without losing useful content. The current [Totality guideline](#) can be viewed online or in document form at **Annex A**.

3.2 In summary, when sentencing an offender for more than one offence, or where the offender is already serving a sentence, courts must consider whether the total sentence is just and proportionate to the overall offending behaviour. The Totality guideline sets out the principles to be followed, the approach for different types of sentence and gives examples of how sentences should be structured in different circumstances.

3.3 The key findings of the research carried out with sentencers were:

- a. The guideline provides practical help in sentencing; there were positive comments regarding the guideline's examples, clarity and usefulness.
- b. The most common way to use the guideline is to apply its principles, based knowledge of its contents, and consult it only for difficult or unusual cases.

- c. It can be difficult to apply the guideline in some circumstances, for example when sentencing offences that are dissimilar or have multiple victims, and sentencing some specific offences.
- d. In cases with multiple victims and a range of offending, it can be difficult to reflect the seriousness of the offending against each individual victim in the final sentence.
- e. It was suggested that it could be helpful to include in the guideline a reminder to the court to explain how a sentence has been constructed.
- f. The length of the guideline was a concern and there were requests for improvements to its format.

The proposed changes

3.4 The proposed changes are set out in **Annex B**. Most of the content remains unchanged, but there are a number of suggested amendments.

3.5 In the 'General principles' section at point 2 the words 'aggravating and mitigating' have been added. This is to address the misapprehension (evident among academics) that the reference to 'factors personal to the offender' applies solely to mitigating factors.

3.6 In the paragraph headed 'Concurrent/consecutive sentences' the word 'components' has been struck through as unnecessary.

3.7 The content of the 'General approach' section remains unaltered, but the order has been changed so that the four steps are listed together followed by the explanation and examples, rather than having steps 3 and 4 at the end.

3.8 Throughout the guideline, where there are examples or tables, these are now in dropdown boxes, to make the guideline quicker to navigate. A demonstration of how this will look in the on-line guideline will be given at the meeting.

3.9 The current guideline has footnotes which give the source of the rules/guidance included in the guideline. These have been removed as they are unnecessary.

3.10 The heading of the table on extended sentences has had the words 'for public protection' removed.

3.11 In the table: 'fines in combination with other sentences' the list of penalties that cannot be combined with a fine has been updated.

Question 1: Does the Council agree to make the proposed changes to the format?

Question 2: Does the Council agree to make the proposed changes to the content?

Further changes

3.12 One of the key findings from our research with sentencers was:

Some survey respondents highlighted perceived problems with the guideline, such as difficulties ascertaining appropriate financial penalties for multiple offences. In addition, nearly half of survey respondents reported that there are certain offences and circumstances where they have problems applying the guideline. This included offences with multiple victims and offences which are dissimilar, as well as specific offences, such as sexual offences, assaults, driving offences, thefts and drug offences. Interviewees largely agreed that these offences presented the most problems when applying the guideline, and highlighted sexual offences and driving offences as posing the greatest difficulties. They also commented that, in cases with multiple victims and a range of offending, they experience problems reflecting the seriousness of the offending against each individual victim in the final sentence.

3.13 The examples given in the guideline do relate to some of these situations but it is not possible to include examples for every combination of offences and cases will be fact specific. It is important that the guideline is not too prescriptive – there is often more than one way to arrive at a just and proportionate sentence. Suggestions are invited as to how the guideline could assist with the difficult sentencing situations highlighted by users.

3.14 There was also a suggestion that the guideline should remind sentencers to explain how the sentence has been constructed. It may be thought that this is already covered by the Reasons step in all offence specific guidelines ('Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence'). If something more explicitly related to the construction of the sentence was thought to be useful, the best place in the Totality guideline to cover this might be in the General approach section, either by expanding point 4 ('Consider whether the sentence is structured in a way that will be best understood by all concerned with it') or by adding an extra point.

3.15 Any suggestions for further changes will be developed and brought back to the Council for consideration at the April meeting.

Question 3: What further changes should be made to the guideline to address the issues raised by sentencers?

4 EQUALITIES

4.1 The nature of the guideline and the lack of reliable data on multiple offences makes it difficult to draw any conclusions about how the guideline applies to different demographic groups.

4.2 At the top of guideline there is the usual reminder about referring to the Equal Treatment Bench Book (ETBB). If the Council felt it to be appropriate, further references to

the ETBB could be included in the body of the guideline. The examples of concurrent and custodial sentences include some offences where disparity between different ethnic groups is potentially an issue (e.g. robbery, possession of weapon, supply of drugs, assault, firearms) but it is difficult to see how references to equal treatment could usefully be incorporated. Other places where mention could be made would be in the General principles section and/or the general approach section – but again it is not clear how this could best be done.

Question 4: Should further references to equalities or disparities be added to the Totality guideline? If so, how can this be achieved?

5 IMPACT AND RISKS

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

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

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

4 March 2022
SC(22)MAR06 – Underage sale of knives
Jo King
Ruth Pope
ruth.pope@sentencing.council.gov.uk

1 ISSUE

1.1 At the December meeting, the Council considered a draft guideline for underage sale of knives for offenders who are organisations. The discussion raised two main issues: the police reported experience of situations where multiple knives were sold by online retailers for onward sale to young people which was not catered for in the draft guideline; and the sentence levels were deemed to be too low.

1.2 At this meeting it is hoped to resolve those issues and also to agree the guideline for offenders who are individuals.

1.3 It is hoped both guidelines can be signed off for a consultation to run from 25 May. A draft guideline for organisations is provided at **Annex A** and for individuals at **Annex B**.

2 RECOMMENDATIONS

2.1 That the Council agrees to limit the scope of the guidelines to offences that are currently prosecuted.

2.2 That the contents of the guidelines are agreed for consultation. In particular:

- The wording for a single level of harm
- The sentence levels for organisations
- The culpability factors in the guideline for individuals
- The sentence levels for individuals

3 CONSIDERATION

The concerns raised by the police

3.1 Nick Ephgrave kindly put me in touch with officers involved in the investigation of knife crime. The police are aware of situations where people are acquiring large quantities of knives from online retailers. These purchases are usually within the law as the purchaser is aged 18 or over. The knives often do not have an obvious legitimate purpose but they are

not of a type that it is unlawful to sell or possess in a private place. The police are aware that these knives are then being sold via social media without regard to the age of the purchaser (or even being targeted at underage purchasers). However, the police are not bringing prosecutions under section 141A of the Criminal Justice Act 1988 for various reasons including the difficulty of obtaining the evidence required within the time limits for a summary only offence. They are unable to use test purchasers in these situations and the purchasers of the knives, if questioned, are not able or willing to identify the seller.

3.2 The police also explained that the type of knives that are used to threaten or attack and those carried unlawfully in public places are generally not the type typically sold by general retailers but are more likely to be 'combat' style knives sold online by specialist sites. This leads to the somewhat uncomfortable conclusion that although there is a range of offending that could be caught by this legislation, in practice, the offenders that come before the courts for this offence are limited to otherwise legitimate retailers who are failing to ensure that the relevant checks are being made. There are other offences that could be used to prosecute those who sell knives, such as section 1 of the Knives Act 1997 (unlawful marketing of knives) and section 38 of the Offensive Weapons Act 2019 (delivery of bladed articles to residential premises). The Knives Act offence is rarely prosecuted (there were no adults or organisations sentenced for this offence in the period 2010 to 2020) and the s38 offence is not yet in force.

3.3 The draft guidelines have been developed to deal with the cases that we know are actually being brought before the courts. The guidelines would not be suitable for sentencing a seller who intentionally sold knives to young people or one who sold them unlawfully in large quantities. It would be possible to amend the guideline to cater for a wider range of cases that could theoretically occur, but that would be of limited if any practical value and could be positively unhelpful to sentencers. An alternative would be to add a note to the guideline setting out the situations to which it applies and inviting sentencers to go outside the guideline in other situations. Suggested wording is:

For the organisations guideline:

<p>This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by retailers who otherwise generally operate within the law. Cases of a different nature (such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children) should be sentenced outside the guideline.</p>
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For the guideline for individuals:

This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by traders who otherwise generally operate within the law, or those employed by such traders. Cases of a different nature (such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children) should be sentenced outside the guideline.

Question 1: Does the Council agree that the guideline should cover only the types of case that are actually being prosecuted?

Question 2: If so, should an explanation be added to the guidelines, how should such and explanation be worded and where in the guideline should it be placed?

The guideline for organisations

3.4 The proposed guideline for organisations is at **Annex A**. The culpability and harm factors are drafted on the basis that the guideline will apply only to the types of cases brought by Trading Standards as a result of test purchases.

3.5 At the December meeting the only objections raised to the culpability and harm assessment related to the range of offending it covered. If the Council agrees to a single level of harm a question remains as to whether the proposed wording is right:

HARM

The harm caused by this offence relates to the risks associated with children and young people being in possession of knives. There is just one level of harm, as the same level of harm is risked by any such sale to a person aged under 18.

3.6 The CPS suggested alternative wording:

HARM

It is recognised that possession of knives by children and young people presents serious risks to their wellbeing and safety as well as to the greater community, therefore there is just one level of harm.

Question 3: Does the Council agree to consult on the culpability factors at Annex A?

Question 4: Does the Council agree to consult on having only one level of harm? If so, how should this be worded?

Sentence levels

3.7 The majority of these offences are punished by way of a fine. Of 46 organisations sentenced in 2019, one was sentenced to a discharge and 45 were fined. In 2019, the range of fine amounts was £276 to £50,000 (the mean was £5,585 and the median £2,000). All of these fine amounts are after any reduction for a guilty plea. The intention in developing

guidelines for this offence is to ensure that fines are proportionate, particularly in the case of larger companies, which would lead to increased fines in some cases.

3.8 The fine amounts proposed in December were:

	Culpability		
	A	B	C
Large organisation Turnover or equivalent: £50 million and over	Starting point £250,000 Category range £100,000 – £500,000	Starting point £100,000 Category range £50,000 – £250,000	Starting point £25,000 Category range £10,000 – £50,000
Medium organisation Turnover or equivalent: between £10 million and £50 million	Starting point £100,000 Category range £50,000 – £250,000	Starting point £50,000 Category range £25,000 – £100,000	Starting point £12,000 Category range £5,000 – £25,000
Small organisation Turnover or equivalent: between £2 million and £10 million	Starting point £20,000 Category range £10,000 – £50,000	Starting point £10,000 Category range £5,000 – £20,000	Starting point £2,000 Category range £1,000 – £5,000
Micro organisation Turnover or equivalent: not more than £2 million	Starting point £5,000 Category range £2,000 – £20,000	Starting point £2,000 Category range £1,000 – £5,000	Starting point £500 Category range £200 – £1,000

3.9 These fine levels were set with reference to existing guidelines for organisations ([health & safety](#), [food safety](#), [environmental](#)). **Annex C** contains a comparison of sentence levels across the three existing guidelines for what might be considered to be an equivalent level of offending. The levels proposed in December were considered to be too low and so they have been revised upwards. The revised levels (see below) are higher than the equivalent sentences for environmental or food safety offences but slightly lower than those for health and safety.

3.10 An attempt has been made to make the sentence levels proportionate across the different organisation sizes, however, there is an overlap between the proposed levels for large and medium organisations, but no overlap between the other sizes of organisation. It is impossible to devise a sentencing structure that is both proportionate to the size of the organisation and to other sentencing guidelines.

3.11 It is important to bear in mind that the sentence levels should be considered in the context of step 3 – Adjustment of fine, that requires the court to check that the fine meets the objectives of the removal of all gain, appropriate additional punishment, and deterrence in a fair way taking into account the size and financial position of the offending organisation and

the seriousness of the offence. This allows for considerable flexibility in the setting of the fine.

	Culpability		
	A	B	C
Large organisation Turnover or equivalent: £50 million and over	Starting point £400,000 Category range £200,000 – £1,000,000	Starting point £200,000 Category range £100,000 – £400,000	Starting point £50,000 Category range £12,000 – £100,000
Medium organisation Turnover or equivalent: between £10 million and £50 million	Starting point £200,000 Category range £100,000 – £400,000	Starting point £100,000 Category range £50,000 – £200,000	Starting point £20,000 Category range £5,000 – £50,000
Small organisation Turnover or equivalent: between £2 million and £10 million	Starting point £50,000 Category range £25,000 – £100,000	Starting point £25,000 Category range £12,000 – £50,000	Starting point £6,000 Category range £3,000 – £12,000
Micro organisation Turnover or equivalent: not more than £2 million	Starting point £12,500 Category range £6,000 – £25,000	Starting point £6,000 Category range £3,000 – £12,000	Starting point £1,500 Category range £500 – £3,000

Question 5: Are the revised sentence levels for organisations appropriate?

3.12 As agreed at the December meeting, reference to compensation and confiscation has been included at the ancillary orders step of this guideline.

Aggravating and mitigating factors

3.13 The aggravating and mitigating factors are those considered at the October meeting with the removal of ‘falsification of documents’ which is now a culpability factor. The aggravating factor ‘Failure to take up offers of training or other assistance from Trading Standards’ is distinct from the culpability factor of ‘Offender failed to make appropriate changes following advice and/or prior incident(s)’ in that the latter refers to ignoring specific advice given while the former is a failure to take advantage of general offers of help. Some Trading Standards departments will contact retailers to offer training etc and will consider making test purchases with those who do not take up the offers.

3.14 Consideration was given to including an aggravating factor of ‘Supply causes or contributes to antisocial behaviour’, however, in recognition of the limited circumstances in which the offence is prosecuted (i.e. as a result of test purchases) this has not been included.

Question 6: Are the aggravating and mitigating factors for organisations the right ones?

The guideline for individuals – culpability and harm

3.15 The draft guideline is at **Annex B**. Individuals prosecuted will generally be owners and/or managers of businesses who fail to put in place the required safeguards, but could also be employees who disregard the safeguards. The proposed culpability factors are similar to those in the guideline for organisations, with the addition of factors to capture that latter category of offender.

3.16 Harm should be treated in the same way as it is for organisations.

Question 7: Does the Council agree to consult on the culpability factors at Annex B?

Sentence levels

3.17 The majority of offences are punished by way of a fine. In 2019, of 27 adult offenders sentenced 24 were fined, two were made subject to a community order and one received a suspended sentence order. In previous years there have also been a small number of discharges. Fine levels for individuals in 2019 ranged from £34 to £2,000 (the mean was £409 and the median £281). All of these sentences are after any reduction for a guilty plea.

3.18 The proposed sentence levels have been set with a view to maintaining current sentencing practice in terms of the type of sentence passed, while allowing for an increase in the level of fines for the more serious cases to align with the guideline for organisations.

3.19 The reasons for not including custody in the range are to avoid sentence inflation for this offence and to recognise the limited situations in which the offence is prosecuted.

Culpability		
A	B	C
<p>Starting point Medium level community order or Band E fine</p> <p>Category range Low level community order or Band D fine – High level community order or Band F fine</p>	<p>Starting point Low level community order or Band D fine</p> <p>Category range Band B fine – Medium level community order or Band E fine</p>	<p>Starting point Band A fine</p> <p>Category range Discharge – Band B fine</p>

3.20 For reference – the fine bands are:

	Starting point	Range
Fine Band A	50% of relevant weekly income	25 – 75% of relevant weekly income
Fine Band B	100% of relevant weekly income	75 – 125% of relevant weekly income
Fine Band C	150% of relevant weekly income	125 – 175% of relevant weekly income
Fine Band D	250% of relevant weekly income	200 – 300% of relevant weekly income
Fine Band E	400% of relevant weekly income	300 – 500% of relevant weekly income
Fine Band F	600% of relevant weekly income	500 – 700% of relevant weekly income

3.21 As with the guideline for organisations, the fines should be considered in the context of step 3 – adjustment of fine which will be particularly applicable where the offender is the business owner. The wording has been adjusted slightly from the guideline for organisations.

Question 8: Does the Council agree to consult on the proposed sentence levels for individuals?

Question 9: Does the Council agree to consult on the proposed step 3 for individuals?

3.22 The aggravating and mitigating factors are the same as those for the guideline for organisations with the addition of standard personal mitigating factors:

- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

4 IMPACT AND RISKS

4.1 The guidelines are unlikely to have any significant impact on prison or probation resources. They may lead to an increase in fine amounts, but the guidelines specifically address the proportionality of the fine at step 3. A resource assessment will be circulated to Council members along with the consultation document.

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ANALYSIS AND RESEARCH SUBGROUP MEETING 26 JANUARY 2022 MINUTES

Members present: Tim Holroyde
Rebecca Crane
Jo King
Maura McGowan
Alpa Parmar

Members of Office
In attendance: Eliza Cardale
Charlotte Davidson
Jenna Downs
Nic Mackenzie
Emma Marshall
Harriet Miles
Kate Kandasamy
Caroline Kidd
Gail Peachey

1. WORK UPDATES

Statistics team

1.1 Charlotte Davidson (CD) updated the subgroup on work of the team regarding guideline development: work is well underway on draft guidelines for animal cruelty, underage sale of knives, and motoring offences. We are also currently working with MoJ and the UCL CAPE project team on a fellowship in the area of equality and diversity - applications for this are due to be submitted by the end of February.

1.2 Evaluations are underway on the guidelines for Imposition, Bladed articles and offensive weapons, and Intimidatory offences. Looking forward, we are close to signing off statistical work on the Burglary, Perverting the course of justice and witness intimidation, and Sexual offences guidelines. We are also starting work on publishing the dataset from our bespoke data collection for drugs offences and robbery offences, as we did with theft from a shop or stall. The team is also exploring possibilities of making further improvements to the way we automate the production of our data tables.

1.3 On staffing, since the last subgroup meeting, the team has welcomed Lauren Maher as a new Senior Statistical Officer. Jenna Downs will be taking a career break for 18 months, from the end of March.

Social Research

1.4 Nic Mackenzie (NM) updated the subgroup on our externally commissioned work by the University of Hertfordshire on equality and diversity in the work of the Council. This is reviewing any potential for the Council's work to cause disparity in sentencing across demographic groups. Work is progressing well: the first set of roundtable meetings with a range of stakeholders took place before Christmas; textual analysis of four guidelines has been conducted; and initial regression analysis has been completed. The second set of roundtable meetings are now taking place and a date is being secured to present the findings to the Equality and Diversity subgroup, ahead of the final report which is due at the end of March.

1.5 The Terrorism road testing has been completed and the Breach evaluation is underway. Looking forward, road testing is planned in the following guideline areas: Animal welfare; Perverting the course of justice and witness intimidation; Underage sale of knives; and Motoring offences.

1.6 Gail Peachey (GP) outlined work to explore how the Common Platform might be used for future data collections. The team has presented to the Judicial Engagement Group, Magistrates' Engagement Group and Judicial Working Group, and following their feedback, collaboration is underway with Common Platform colleagues to discuss where links to future data collection forms might best be placed on the platform.

1.7 We are also moving ahead some of the work from the 'Vision' strategy, some of which it has been decided to externally commission. This includes a literature review on effectiveness of sentencing (tenders are due on 7 February 2022) and survey work on public attitudes to sentencing (this has now been commissioned to Savanta Comres). We also endeavoured to commission some exploratory work on the Overarching principles: Domestic Abuse guideline, but failed to find a suitable contractor for this. The work is now on hold, whilst we await budget details for the financial year 2022-23.

1.8 From 31st January, the team will be joined by an intern (Nikita Grabher-Mayer) for a period of three months. Nikita will work across the social research and statistical sides of the team.

2. DATA COLLECTION

2.1 Harriet Miles (HM) gave an update on preparations for the next data collection which will run in all magistrates' courts and all locations of the Crown Court between 3rd October 2022 and 31st March 2023. Data will be collected on selected offences from the Assault, Burglary, Drugs, Motoring, Theft, and Robbery guidelines.

2.2 The exercise has been approved by the Senior Presiding Judge and an application to the Data Access Panel at HMCTS is currently underway. One key difference with this collection is that the team plans to collect the Unique Reference Number for each case to enable the data to be linked with MoJ data on ethnicity. HM asked about magistrates' access to the URN in court – Jo King (JK) offered to review this in court and feed back regarding how easily the URN can be identified and copied/ pasted by magistrates. CD suggested there might be other identifiers we could use if the URN was difficult to identify.

Action: JK to feed back regarding how easily the URN can be identified and copied/ pasted by magistrates (now completed).

3. FORWARD LOOK

3.1 The team is starting to action work from the Council's 2021-2026 strategy. This includes commissioning out the three pieces of social research detailed in the team update: the public attitudes survey, the effectiveness of sentencing literature review and the exploratory work for the evaluation of the Domestic abuse overarching principles guideline. We are also starting to consider an evaluation of Expanded Explanations and have a meeting scheduled in February to discuss approaches. This will not be a straightforward area to evaluate because it cuts across many guidelines and so we need to consider a range of different approaches/ data.

3.2 We will also be considering whether we need to undertake further work on consistency during the summer. However, it is important to bear in mind that the report on this was only published relatively recently and there is unlikely to be much in the way of new evidence. In addition, we will start to think about the action regarding scoping out research with offenders to understand which aspects they believe best helps with rehabilitation. This work will feed into our understanding around the effectiveness of sentencing.

4. RISK REGISTER AND BUDGET

4.1 Emma Marshall (EM) talked the group through the Analysis & Research risk register, noting that the first risk (*'Guidelines have impact on correctional resources that cannot be assessed or the RA does not anticipate'*) has been updated slightly, but that the risk rating has not changed.

4.2 EM explained that there was no change to the risk rating for risk 5 (*'Sentencers interpret guidelines incorrectly'*), but the comments have been tweaked slightly (user testing has been paused until the next financial year, due to delays recruiting a digital officer). Maura McGowan (MM) queried whether the meaning of risk 5 is that the Council has not made the guidelines clear enough, or if instead it means that sentencers might misinterpret a guideline based on their own understanding. If it is intended to be the latter, concerns were raised about how the Council would be able to mitigate against this. The subgroup agreed that we need to ensure the wording on this is as accurate and clear enough as possible. EM agreed to raise this issue at the next SMT meeting in the office and to discuss the overall wording of the risk.

Action: EM to feed this back at the next risk register discussion at SMT.

5. LOCAL AREA PAPER

5.1 CD recapped the decision made at the October subgroup to keep this work on hold due to resource issues and data limitations, and to publish a note to this effect. She presented draft text for the note which the subgroup agreed to, subject to considering some small amendments: clarifying the meaning of 'type of area' and the difference between this and caseload (adding 'urban/ rural' as an example so that it is clearer it differs from caseload); making it clear that we are often dependant on data that other people collect; and that some of the information we draw on does not contain some important information (e.g. the seriousness of the case).

5.2 The subgroup agreed publish the note in May 2022 alongside an update on progress on all strategy/ Vision actions and to review this action again at the half-way point of the strategy period.

Action: CD to update the note and to circulate it to the group for final approval.

6. REVIEW OF RESOURCE ASSESSMENTS

6.1 Jenna Downs (JD) has begun investigating data sources that might help to improve our resource assessments but has found that data is limited. The Common Platform might provide more information for these in the future, but the roll-out has been slow. It is also not yet known what data would be available through the platform, and what quality this will be, so we will need to wait until the platform is more established to take this forward in more detail. Given this, JD explained that the best use of time currently would be to review the methodology for the assessments.

6.2 JD recommended to the subgroup that we commission an external academic to undertake this review of methodology and to provide an independent view on this. We would want them to start this work as soon as possible as the action was noted in our 'Vision' document and we would want the cost to come out of this year's (2021-22) budget. The subgroup agreed with this recommendation.

Action: the A&R team to issue a specification for this work and invite academics to bid for the work (update: this was issued and we unfortunately received no bids).