

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, 1<sup>st</sup> Floor Mezzanine at the Royal Courts of Justice**. This will be a hybrid meeting, so a Microsoft Teams invite is also included below. **The meeting is Friday 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

# 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

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<u>Members present:</u>	Tim Holroyde (Chairman) Rosina Cottage Rebecca Crane Rosa Dean Nick Ephgrave Michael Fanning Diana Fawcett Adrian Fulford Max Hill Jo King Juliet May Maura McGowan Alpa Parmar Beverley Thompson
<u>Representatives:</u>	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)
<u>Observers:</u>	Francesca Anderson, Criminal Appeal Office
<u>Members of Office in attendance:</u>	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
<b>Starting point:</b> 18 years	<b>Starting point:</b> 12 years	<b>Starting point:</b> 6 years	<b>Starting point:</b> 2 years
<b>Range:</b> 11-24 years	<b>Range:</b> 8 -16 years	<b>Range:</b> 3-9 years	<b>Range:</b> 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:

<b>Culpability</b>	<b>Starting point</b>	<b>Range</b>
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:

<b>Culpability</b>	<b>Starting point</b>	<b>Range</b>
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:

<b>The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)</b>	<b>High culpability</b>	<b>Medium culpability</b>	<b>Lesser culpability</b>
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	<b>Starting point:</b> 12 years <b>Sentencing range:</b> 8 – 18 years	<b>Starting point:</b> 9 years <b>Sentencing range:</b> 6 - 12 years	<b>Starting point:</b> 6 years <b>Sentencing range:</b> 5 – 10 years
51- 70 µg of alcohol OR Any quantity of a single drug detected	<b>Starting point:</b> 9 years <b>Sentencing range:</b> 6 - 12 years	<b>Starting point:</b> 6 years <b>Sentencing range:</b> 4 – 9 years	<b>Starting point:</b> 4 years <b>Sentencing range:</b> 3 – 7 years
35-50 µg of alcohol	<b>Starting point:</b> 6 years <b>Sentencing range:</b> 4 – 9 years	<b>Starting point:</b> 3 years <b>Sentencing range:</b> 2 – 5 years	<b>Starting point:</b> 1 year 6 months <b>Sentencing range:</b> 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.<sup>1</sup> 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.

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<sup>1</sup> 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:

	<b>Culpability</b>		
	A	B	C
Harm 1	<b>Starting Point:</b> 4 years <b>Category range:</b> 3 – 5 years	<b>Starting Point:</b> 3 years <b>Category range:</b> 2 – 4 years	<b>Starting Point:</b> 2 years <b>Category range:</b> 1 year – 3 years
Harm 2	<b>Starting Point:</b> 3 years <b>Category range:</b> 2 – 4 years	<b>Starting Point:</b> 2 years <b>Category range:</b> 1 year – 3 years	<b>Starting Point:</b> 1 year <b>Category range:</b> 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:

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

**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:

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

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:

<b>Culpability</b>	<b>Starting point</b>	<b>Range</b>
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:

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

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

<b>Examples of nature of activity</b>	<b>Starting point</b>	<b>Range</b>
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 driving<sup>2</sup>*

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:

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

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

**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	<p><b>Starting Point:</b> 18 months</p> <p><b>Category range:</b> 12 months - 2 years</p>	<p><b>Starting Point:</b> 12 months</p> <p><b>Category range:</b> 26 weeks – 18 months</p>	<p><b>Starting Point:</b> 26 weeks</p> <p><b>Category range:</b> High level community order – 12 months</p>
Harm 2	<p><b>Starting Point:</b> 12 months</p> <p><b>Category range:</b> 26 weeks – 18 months</p>	<p><b>Starting Point:</b> 26 weeks</p> <p><b>Category range:</b> High level community order – 12 months</p>	<p><b>Starting Point:</b> High level community order</p> <p><b>Category range:</b> Low level community order – 26 weeks</p>
Harm 3	<p><b>Starting Point:</b> 26 weeks</p> <p><b>Category range:</b> High level community order – 12 months</p>	<p><b>Starting Point:</b> High level community order</p> <p><b>Category range:</b> Low level community order – 26 weeks</p>	<p><b>Starting Point:</b> Low level community order</p> <p><b>Category range:</b> Band B fine – High level community order</p>

**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.

# **Causing death by dangerous driving**

**Road Traffic Act 1988 (section 1)**

**Triable only on indictment**

**Maximum: life imprisonment, minimum disqualification of 2 years with compulsory extended re-test**

**Offence range: 2 – 18 years' custody**

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

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify an increased starting point

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



### HARM

For all cases the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

### STEP TWO

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.

#### Starting point and category range

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

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

#### Factors increasing seriousness

##### *Statutory aggravating factors:*

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

##### *Other aggravating factors:*

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

- Serious injury to one or more victims, in addition to the death(s) (see step 6 on totality when sentencing for more than one offence)
- Offence committed on licence or while subject to court order(s)

### **Factors reducing seriousness or reflecting personal mitigation**

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

### **STEP THREE**

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

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

### **STEP FOUR**

#### **Reduction for guilty pleas**

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

### **STEP FIVE**

#### **Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279) When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

### **STEP SIX**

#### **Totality principle**

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

**STEP SEVEN**

**Compensation and ancillary orders**

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

- Ancillary orders – Crown Court Compendium

**STEP EIGHT**

**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE**

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

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

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# **Causing death by careless or inconsiderate driving**

**Road Traffic Act 1988 (section 2B)**

**Triable either way**

**Maximum: 5 years' custody**

**Offence range: Community order – 4 years' custody**

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.

**High**

- Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a medium culpability factor

**Medium**

- Unsafe manoeuvre or positioning
- Engaging in a brief but avoidable distraction
- Driving at a speed that is inappropriate for the prevailing road or weather conditions
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs
- Driving vehicle which is unsafe or where visibility or controls are obstructed
- Driving in disregard of advice relating to the effects of medical condition or medication
- Driving whilst ability to drive impaired as a result of a known medical condition
- Driving when deprived of adequate sleep or rest
- The offender's culpability falls between the factors as described in high and lesser culpability

**Lesser**

- Standard of driving was just over threshold for careless driving
- Momentary lapse of concentration

**HARM**

For all cases the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

**STEP TWO**

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 five of this guideline.

**Starting point and category range**

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

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

**Factors increasing seriousness**

*Statutory aggravating factors:*

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

*Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Disregarding warnings of others
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Serious injury to one or more victims, in addition to the death(s) (see step 5 on totality when sentencing for more than one offence)
- Offence committed on licence or while subject to court order(s)

**Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- Alcohol or drugs consumed unwittingly

- The victim was a close friend or relative
- Actions of the victim or a third party contributed significantly to collision or death
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

### **STEP THREE**

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

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

### **STEP FOUR**

#### **Reduction for guilty pleas**

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

### **STEP FIVE**

#### **Totality principle**

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

### **STEP SIX**

#### **Compensation and ancillary orders**

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

Ancillary orders – Crown Court Compendium

### **STEP SEVEN**

#### **Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

### **STEP EIGHT**

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

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



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

## **Causing death by careless driving when under the influence of drink or drugs or having failed either to provide a specimen for analysis or to permit analysis of a blood sample**

**Road Traffic Act 1988 (section 3A)**

**Triable on indictment only**

**Maximum: life imprisonment**

**Offence range: 26 weeks – 18 years' custody**

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

**STEP ONE****Determining the offence category****HARM**

For all cases the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

**STEP ONE – DETERMINING THE OFFENCE CATEGORY**

There are two aspects to assessing culpability for this offence.

**1)** The court should first determine the standard of driving with reference to the factors below, which comprise the principal factual elements of the offence.

**High**

- Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a medium culpability factor

**Medium**

- Unsafe manoeuvre or positioning
- Engaging in a brief but avoidable distraction
- Driving at a speed that is inappropriate for the prevailing road or weather conditions, although not greatly excessive
- Driving vehicle which is unsafe or where drivers visibility or controls are obstructed
- Driving in disregard of advice relating to the effects of medical condition or medication (where the medication does not form a basis of the offence)
- Driving whilst ability to drive impaired as a result of a known medical condition
- Driving when deprived of adequate sleep or rest
- The offender's culpability falls between the factors as described in high and lesser culpability

**Lesser**

- Standard of driving was just over threshold for careless driving
- Momentary lapse of concentration

**2)** Factors relevant to the presence of alcohol or drugs or a failure to provide a sample for analysis should then be considered to identify the appropriate offence category and starting point of sentence in accordance with the table below

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

<p>the same incident or facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.</p> <p>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</p>			
<p><b>The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)</b></p>	<p>Careless driving -High culpability</p>	<p>Careless driving -Medium culpability</p>	<p>Careless driving -Lesser culpability</p>
<p>H71µ 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</p>	<p>Starting point: 12 years</p> <p>Sentencing range: 8 – 18 years</p>	<p>Starting point: 9 years</p> <p>Sentencing range: 6 – 12 years</p>	<p>Starting point: 6 years</p> <p>Sentencing range: 5 – 10 years</p>
<p>51- 70 µg of alcohol OR Any quantity of a single drug detected</p>	<p>Starting point: 9 years</p> <p>Sentencing range: 6 – 12 years</p>	<p>Starting point: 6 years</p> <p>Sentencing range: 4 – 9 years</p>	<p>Starting point: 4 years</p> <p>Sentencing range: 3 – 7 years</p>
<p>35-50 µg of alcohol</p>	<p>Starting point: 6 years</p> <p>Sentencing range: 4 – 9 years</p>	<p>Starting point: 3 years</p> <p>Sentencing range: 2 – 5 years</p>	<p>Starting point: 1 year 6 months</p> <p>Sentencing range: 26 weeks - 4 years</p>

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

### Factors increasing seriousness

#### *Statutory aggravating factors:*

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

#### *Other aggravating factors:*

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail
- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Disregarding warnings of others
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Serious injury to one or more victims, in addition to the death(s) (see step 6 on totality when sentencing for more than one offence)
- Offence committed on licence or while subject to court order(s)

### Factors reducing seriousness or reflecting personal mitigation

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

**STEP THREE**

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

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

**STEP FOUR**

**Reduction for guilty pleas**

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

**STEP FIVE**

**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 6 of Part 10 of the Sentencing Code it would be appropriate to impose an extended sentence (sections 266 and 279) When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

**STEP SIX**

**Totality principle**

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

**STEP SEVEN**

**Compensation and ancillary orders**

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

Ancillary orders – Crown Court Compendium

**STEP EIGHT**

**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP NINE**

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

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

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# **Causing serious injury by dangerous driving**

**Road Traffic Act 1988 (section 1A)**

**Triable either way**

**Maximum: 5 years' custody, [minimum disqualification of 2 years with compulsory extended re-test]**

**Offence range: 26 weeks – 5 years' custody**

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify an increased starting point

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



<b>HARM</b>	
Category 1	<ul style="list-style-type: none"> <li>• Particularly grave and/or life-threatening injury caused</li> <li>• Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</li> <li>• Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work</li> </ul>
Category 2	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

**STEP TWO****Starting point and category range**

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

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

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

**Factors increasing seriousness***Statutory aggravating factors:*

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

### *Other aggravating factors:*

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail
- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Other driving offences committed at the same time as the dangerous driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Vehicle poorly maintained
- Offence committed on licence or while subject to court order(s)

### **Factors reducing seriousness or reflecting personal mitigation**

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

### **STEP THREE**

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

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

### **STEP FOUR**

#### **Reduction for guilty pleas**

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

**STEP FIVE**

**Totality principle**

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

**STEP SIX**

**Compensation and ancillary orders**

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

- Ancillary orders – Magistrates' Court
- Ancillary orders – Crown Court Compendium

**STEP SEVEN**

**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT**

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

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

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# **Causing serious injury by careless or inconsiderate driving**

**Road Traffic Act 1988 (section 2C)**

**Triable either way**

**Maximum: 2 years' custody**

**Offence range: Community order – 2 years' custody**

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.

**High**

- Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a medium culpability factor

**Medium**

- Unsafe manoeuvre or positioning
- Engaging in a brief but avoidable distraction
- Driving at a speed that is inappropriate for the prevailing road or weather conditions
- Driving whilst ability to drive is impaired as a result of consumption of alcohol or drugs
- Driving vehicle which is unsafe or where visibility or controls are obstructed
- Driving in disregard of advice relating to the effects of medical condition or medication
- Driving whilst ability to drive impaired as a result of a known medical condition
- Driving when deprived of adequate sleep or rest
- The offender's culpability falls between the factors as described in high and lesser culpability

**Lesser**

- Standard of driving was just over threshold for careless driving
- Momentary lapse of concentration

**HARM**

## Category 1

- 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 normal day to day activities or on their ability to work

## Category 2

- All other cases

## STEP TWO

## Starting point and category range

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

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

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

### Factors increasing seriousness

#### *Statutory aggravating factors:*

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

#### *Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Disregarding warnings of others
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children

- Offence committed on licence or while subject to court order(s)

### **Factors reducing seriousness or reflecting personal mitigation**

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

#### **STEP THREE**

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

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

#### **STEP FOUR**

##### **Reduction for guilty pleas**

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

#### **STEP FIVE**

##### **Totality principle**

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

#### **STEP SIX**

##### **Compensation and ancillary orders**

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

- Ancillary orders – Magistrates' Court
- Ancillary orders – Crown Court Compendium



**STEP SEVEN**

**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT**

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

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

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# **Dangerous driving**

**Road Traffic Act 1988 (section 2)**

**Triable either way**

**Maximum: 2 years' custody**

**Offence range: Community order – 2 years' custody**

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category. A combination of factors in any category may justify an increased starting point

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

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

**STEP TWO****Starting point and category range**

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

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

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

**Factors increasing seriousness***Statutory aggravating factors:*

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

### *Other aggravating factors:*

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

### **Factors reducing seriousness or reflecting personal mitigation**

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

### **STEP THREE**

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

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

### **STEP FOUR**

#### **Reduction for guilty pleas**

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

**STEP FIVE**

**Totality principle**

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

**STEP SIX**

**Compensation and ancillary orders**

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

Ancillary orders – Magistrates' Court

Ancillary orders – Crown Court Compendium

**STEP SEVEN**

**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT**

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

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

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# **Causing death by driving; disqualified drivers**

**Road Traffic Act 1988 (section 3ZC)**

**Triable only on indictment**

**Maximum: 10 years' custody**

**Offence range: Community order – 7 years' custody**

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

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.

**High**

- Driving shortly after disqualification imposed
- Vehicle obtained during disqualification period
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Significant distance driven

**Medium**

- 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

**Lesser**

- The offender genuinely believed that he or she was not disqualified to drive
- Decision to drive was brought about by a genuine and proven emergency
- Forced to drive whilst disqualified by pressure, coercion or intimidation

**HARM**

For all cases the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

**STEP TWO**

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.

<b>Starting point and category range</b>
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<b>Culpability</b>	<b>Starting point</b>	<b>Range</b>
High	5 years	4 – 7 years
Medium	3 years	2 – 5 years
Lesser	1 year 6 months	High level community order to 2 years

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

### Factors increasing seriousness

#### *Statutory aggravating factors:*

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

#### *Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- History of disobedience to disqualification orders (where not already taken into account as a previous conviction)
- Disregarding warnings of others about driving whilst disqualified
- Blame wrongly placed on others
- False details given
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Serious injury to one or more victims, in addition to the death(s) (see step 6 on totality when sentencing for more than one offence)
- Offence committed on licence or while subject to court order(s) (not including the current order for disqualification)

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- The victim was a close friend or relative
- Actions of the victim or a third party contributed significantly to collision or death
- Efforts made to assist or seek assistance for victim(s)

- Remorse
- 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 relative(s)

### **STEP THREE**

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

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

### **STEP FOUR**

#### **Reduction for guilty pleas**

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

### **STEP FIVE**

#### **Dangerousness**

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

### **STEP SIX**

#### **Totality principle**

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

### **STEP SEVEN**

#### **Compensation and ancillary orders**

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

Ancillary orders – Crown Court Compendium

### **STEP EIGHT**

#### **Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

### **STEP NINE**

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

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

# **Causing serious injury by driving: disqualified drivers**

**Road Traffic Act 1988 (section 3ZD)**

**Triable either way**

**Maximum: 4 years' custody**

**Offence range: Community order – 4 years' custody**

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.

**High**

- Driving shortly after disqualification imposed
- Vehicle obtained during disqualification period
- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Significant distance driven

**Medium**

- 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

**Lesser**

- The offender genuinely believed that he or she was not disqualified to drive
- Decision to drive was brought about by a genuine and proven emergency
- Forced to drive whilst disqualified by pressure, coercion or intimidation

**HARM**

## Category 1

- 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 normal day to day activities or on their ability to work

## Category 2

- All other cases

## STEP TWO

## Starting point and category range

	Culpability		
	A	B	C
Harm 1	<b>Starting Point:</b> 3 years <b>Category range:</b> 2 – 4 years	<b>Starting Point:</b> 2 years <b>Category range:</b> 1 – 3 years	<b>Starting Point:</b> 1 year <b>Category range:</b> High level community order – 2 years
Harm 2	<b>Starting Point:</b> 2 years <b>Category range:</b> 1 – 3 years	<b>Starting Point:</b> 1 year <b>Category range:</b> High level community order – 2 years	<b>Starting Point:</b> 26 weeks <b>Category range:</b> Low level community order – 1 year

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

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

### Factors increasing seriousness

#### *Statutory aggravating factors:*

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

#### *Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- History of disobedience to disqualification orders (where not already taken into account as a previous conviction)
- Disregarding warnings of others about driving whilst disqualified
- Blame wrongly placed on others
- False details given
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Offence committed on licence or while subject to court order(s) (not including the current order for disqualification)

### Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- The victim was a close friend or relative
- Actions of the victim or a third party contributed significantly to collision or death
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- 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 relative(s)

### **STEP THREE**

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

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

### **STEP FOUR**

#### **Reduction for guilty pleas**

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

### **STEP FIVE**

#### **Totality principle**

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

### **STEP SIX**

#### **Compensation and ancillary orders**

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

- Ancillary orders – Magistrates' Court
- Ancillary orders – Crown Court Compendium

### **STEP SEVEN**

#### **Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

### **STEP EIGHT**

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

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



# **Causing death by driving: unlicensed or uninsured drivers**

**Road Traffic Act 1988 (section 3ZB)**

**Triable either way**

**Maximum: 2 years' custody**

**Offence range: Community order – 2 years' custody**

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.

**High**

- Driving for commercial purposes
- Driving LGV, HGV, PSV
- Significant distance driven

**Medium**

- 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

**Lesser**

- The offender genuinely believed that he or she was insured or licensed to drive
- Decision to drive was brought about by a genuine and proven emergency
- Forced to drive unlicensed or uninsured by pressure, coercion or intimidation

**HARM**

For all cases the harm caused will inevitably be of the utmost seriousness. The loss of life is taken into account in the sentencing levels at step two.

**STEP TWO**

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 five of this guideline.

<b>Starting point and category range</b>
--

<b>Culpability</b>	<b>Starting point</b>	<b>Range</b>
High	1 year	36 weeks to 2 years
Medium	26 weeks	High level community order – 36 weeks
Lesser	Medium level community order	Low level community order – high level community order

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

### **Factors increasing seriousness**

#### *Statutory aggravating factors:*

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

#### *Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Disregarding warnings of others about driving whilst unlicensed or uninsured
- Blame wrongly placed on others
- False details given
- Failed to stop and/or assist or seek assistance at the scene
- Passengers, including children
- Serious injury to one or more victims, in addition to the death(s) (see step 5 on totality when sentencing for more than one offence)
- Offence committed on licence or while subject to court order(s)

### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Impeccable driving record
- The victim was a close friend or relative
- Actions of the victim or a third party contributed significantly to collision or death
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- 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

### **STEP THREE**

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

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

### **STEP FOUR**

#### **Reduction for guilty pleas**

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

### **STEP FIVE**

#### **Totality principle**

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

### **STEP SIX**

#### **Compensation and ancillary orders**

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

- Ancillary orders – Magistrates' Court
- Ancillary orders – Crown Court Compendium

### **STEP SEVEN**

#### **Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

### **STEP EIGHT**

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

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

# **Causing injury by wanton or furious driving**

**Offences Against the Person Act 1861 (section 35)**

**Triable only on indictment**

**Maximum: 2 years' custody**

**Offence range: Fine – 2 years' custody**

**STEP ONE****Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below, which comprise the principal factual elements of the offence.

**High**

- Deliberate decision to ignore the rules of the road and/or disregard for the risk of danger to others.
- Prolonged, persistent and deliberate course of driving or cycling likely to cause a danger to others
- Driving or cycling grossly impaired by consumption of alcohol or drugs
- Offence committed in course of police pursuit
- Racing or competitive driving or cycling against another vehicle or bicycle
- Disregarding warnings of others
- Lack of attention to driving or cycling for a substantial period of time
- Speed greatly in excess of speed limit
- Extreme example of a medium culpability factor

**Medium**

- Unsafe manoeuvre or positioning
- Engaging in a brief but avoidable distraction
- Inappropriate speed for the prevailing conditions
- Driving or cycling impaired by consumption of alcohol or drugs
- Visibility or controls obstructed
- Driving or cycling impaired as a result of a known medical condition
- Disregarding advice relating to the effects of medical condition or medication
- Driving or cycling when deprived of adequate sleep or rest

**Lesser**

- All other cases

**HARM**

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

## STEP TWO

## Starting point and category range

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

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

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

### Factors increasing seriousness

#### *Statutory aggravating factors:*

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

#### *Other aggravating factors:*

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders
- Driving or cycling for commercial purposes
- Driving LGV, HGV, PSV
- Other driving offences committed at or about the same time
- Blame wrongly placed on others

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

### **Factors reducing seriousness or reflecting personal mitigation**

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

### **STEP THREE**

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

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

### **STEP FOUR**

#### **Reduction for guilty pleas**

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

### **STEP FIVE**

#### **Totality principle**

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

### **STEP SIX**

#### **Compensation and ancillary orders**

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

- Ancillary orders – Magistrates' Court
- Ancillary orders – Crown Court Compendium



**STEP SEVEN**

**Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

**STEP EIGHT**

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

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

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## Comparison of sentencing tables

Annex K

### Causing death by dangerous driving

Current:

<b>Culpability</b>	<b>Starting point</b>	<b>Range</b>
High	8 years	7 – 14 years
Medium	5 years	4 – 7 years
Lesser	3 years	2 – 5 years

Proposed:

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

### Causing death by careless driving

Current:

<b>Culpability</b>	<b>Starting point</b>	<b>Range</b>
High	15 months	36 weeks – 3 years
Medium	36 weeks	High level community order – 2 years
Lesser	Medium level community order	Low level community order – high level community order

Proposed:

<b>Culpability</b>	<b>Starting point</b>	<b>Range</b>
High	2 years	12 months – 4 years
Medium	12 months	26 weeks – 3 years
Lesser	26 weeks	Medium level community order – 12 months

### Causing death by careless driving under the influence

Current:

The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	High culpability	Medium culpability	Lesser culpability
H71µ 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	<b>Starting point:</b> 8 years  <b>Sentencing range:</b> 7 - 14 years	<b>Starting point:</b> 7 years  <b>Sentencing range:</b> 6 – 12 years	<b>Starting point:</b> 6 years  <b>Sentencing range:</b> 5 – 10 years
51- 70 µg of alcohol OR Any quantity of a single drug detected	<b>Starting point:</b> 6 years  <b>Sentencing range:</b> 5 – 9 years	<b>Starting point:</b> 5 years  <b>Sentencing range:</b> 4 – 8 years	<b>Starting point:</b> 4 years  <b>Sentencing range:</b> 3 – 7 years
35-50 µg of alcohol	<b>Starting point:</b> 4 years  <b>Sentencing range:</b> 3 years – 6 years	<b>Starting point:</b> 3 years  <b>Sentencing range:</b> 2 – 5 years	<b>Starting point:</b> 18 months  <b>Sentencing range:</b> 26 weeks – 4 years

Proposed:

The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	High culpability	Medium culpability	Lesser culpability
H71µ 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	<b>Starting point:</b> 12 years  <b>Sentencing range:</b> 8 – 18 years	<b>Starting point:</b> 9 years  <b>Sentencing range:</b> 6 – 12 years	<b>Starting point:</b> 6 years  <b>Sentencing range:</b> 5 – 10 years
51- 70 µg of alcohol OR Any quantity of a single drug detected	<b>Starting point:</b> 9 years  <b>Sentencing range:</b> 6 – 12 years	<b>Starting point:</b> 6 years  <b>Sentencing range:</b> 4 – 9 years	<b>Starting point:</b> 4 years  <b>Sentencing range:</b> 3 – 7 years
35-50 µg of alcohol	<b>Starting point:</b> 6 years  <b>Sentencing range:</b> 4 – 9 years	<b>Starting point:</b> 3 years  <b>Sentencing range:</b> 2 – 5 years	<b>Starting point:</b> 18 months  <b>Sentencing range:</b> 26 weeks - 4 years

## Dangerous driving

Current:

Examples of nature of activity	Starting point	Range
<p>Prolonged bad driving involving deliberate disregard for safety of others; OR</p> <p>Incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area, by disqualified driver;</p> <p>OR</p> <p>Driving as described in box above while being pursued by police</p>	Crown Court	Crown Court
<p>Incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area; OR</p> <p>Single incident where little or no damage or risk of personal injury but offender was disqualified driver</p>	12 weeks custody	High level community order to 26 weeks custody Disqualify 15 – 24 months
<p>Single incident where little or no damage or risk of personal injury</p>	Medium level community order	Low level community order to high level community order Disqualify 12 – 15 months

Proposed:

	Culpability		
	A	B	C
Harm 1	<p><b>Starting Point:</b> 18 months</p> <p><b>Category range:</b> 12 months – 2 years</p>	<p><b>Starting Point:</b> 12 months</p> <p><b>Category range:</b> 6 – 18 months</p>	<p><b>Starting Point:</b> 6 months</p> <p><b>Category range:</b> High level community order – 12 months</p>
Harm 2	<p><b>Starting Point:</b> 12 months</p> <p><b>Category range:</b> 6 – 18 months</p>	<p><b>Starting Point:</b> 6 months</p> <p><b>Category range:</b> High level community order – 12 months custody</p>	<p><b>Starting Point:</b> High level community order</p> <p><b>Category range:</b> Low level community order – 6 months</p>

### Causing death whilst disqualified

Current:

Examples of nature of activity	Starting point	Range
The offender was disqualified from driving [...]	12 months' custody	36 weeks – 2 years' custody

### Causing death whilst unlicensed/uninsured

Current:

Examples of nature of activity	Starting point	Range
[...] 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

Proposed:

Culpability	Starting point	Range
High	5 years	4 – 7 years
Medium	3 years	2 – 5 years
Lesser	18 months	High level Community Order to 2 years

Proposed:

Culpability	Starting point	Range
High	12 months	36 weeks to 2 years
Medium	26 weeks	High level community order – 36 weeks
Lesser	Medium level community order	Low level community order – high level community order

# 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.

# Animal Cruelty

Animal Welfare Act 2006, s.4 (unnecessary suffering), **s.5 (mutilation)**, **s.6 (docking of dogs' tails)**, **s.7 (administration of poisons etc)**, s.8 (fighting etc)

Effective from: XXXXXXXXX

**Triable either way**

**Maximum: 5 years' custody**

**Offence range: Band A fine – 3 years' custody**

## Step 1 – Determining the offence category

The court should determine culpability and harm caused with reference **only** to the factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

### Culpability demonstrated by one or more of the following

The court should weigh all the factors set out below in determining the offender's culpability. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

<p><b>A High Culpability</b></p>	<ul style="list-style-type: none"> <li>● Prolonged and/or multiple incidents of serious cruelty and/or sadistic behaviour</li> <li>● Use of very significant force</li> <li>● Leading role in illegal activity</li> <li>● A category B offence may also be elevated to category A by:               <ul style="list-style-type: none"> <li>○ the extreme nature of one or more factors</li> <li>○ the extreme impact caused by a combination of factors</li> </ul> </li> </ul>
<p><b>B Medium culpability</b></p>	<ul style="list-style-type: none"> <li>● Deliberate or gratuitous attempt to cause suffering</li> <li>● Prolonged and/or multiple incidents of cruelty or neglect</li> <li>● Use of significant force</li> <li>● Ill treatment in a commercial context</li> <li>● Deliberate disregard for the welfare of the animal (including failure to seek treatment)</li> <li>● Other cases that fall between categories A or C because:               <ul style="list-style-type: none"> <li>- Factors are present in A and C which balance each other out, and/or,</li> <li>- The offender's culpability falls between the factors as described in A and C</li> </ul> </li> </ul>

<b>C Lower culpability</b>	<ul style="list-style-type: none"> <li>• Well intentioned but incompetent care</li> <li>• <b>Momentary or brief lapse in judgement</b></li> <li>• <b>Involved through coercion, intimidation or exploitation</b></li> <li>• Mental disorder or learning disability, where linked to the commission of the offence</li> </ul>
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### Harm demonstrated by one or more of the following

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

<b>Category 1</b>	<ul style="list-style-type: none"> <li>• <b>Death (including injury necessitating euthanasia)</b></li> <li>• <b>Particularly grave or life-threatening injury or condition caused</b></li> <li>• <b>Very high level of pain and/or suffering caused</b></li> </ul>
<b>Category 2</b>	<ul style="list-style-type: none"> <li>• <b>Offence results in an injury or condition which has a substantial and/or lasting effect (including cases of tail docking, ear clipping and similar forms of mutilation)</b></li> <li>• <b>Substantial level of pain and/or suffering caused</b></li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• <b>Little or no physical, developmental harm or distress</b></li> <li>• <b>All other levels of pain and/or suffering</b></li> </ul>

### Step 2 – Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by a **combination of high culpability factors or significant numbers of animals**, could merit upward adjustment from the starting point, before further adjustment for aggravating or mitigating features, set out below, **and may attract a sentence higher than the category range**.

	<b>High culpability</b>	<b>Medium culpability</b>	<b>Low culpability</b>
<b>Category 1</b>	<b>Starting point</b> 18 months' custody	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> Low level community order
	<b>Category range</b> 26 weeks' custody – 3 years' custody	<b>Category range</b> 18 weeks' – 12 months' custody	<b>Category range</b> Band B fine – Medium level community order
<b>Category 2</b>	<b>Starting point</b> 26 weeks' custody	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Band C fine
	<b>Category range</b> 18 weeks' – 12 months' custody	<b>Category range</b> Medium level community order – 26 weeks' custody	<b>Category range</b> Band B fine – Low level community order

<b>Category 3</b>	<b>Starting point</b> 12 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> Medium level community order – 26 weeks' custody	<b>Category range</b> Low level community order – High level community order	<b>Category range</b> Band A fine – Band C fine

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

### Factors increasing seriousness

#### *Statutory aggravating factors*

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

#### *Other aggravating factors*

- Distress caused to owner where not responsible for the offence
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- **Significant number of animals involved**
- Use of a weapon
- Allowing person of insufficient experience or training to have care of animal(s)
- Use of technology, **including circulating details/photographs/videos etc of the offence on social media, to record**, publicise or promote cruelty
- Ignores warning/professional advice/declines to obtain professional advice
- Use of another animal to inflict death or injury
- Offender in position of **professional responsibility for animal**
- **Offence committed in the presence of other(s), especially children**
- Animal requires significant intervention to recover
- Animal being used in public service or as an assistance dog

#### *Factors reducing seriousness or reflecting personal mitigation*

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity

- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Offender has been given an inappropriate level of trust or responsibility
- Voluntary surrender of animals to authorities
- Cooperation with the investigation
- Isolated incident

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

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

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

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

### **Step 5 – Totality principle**

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

### **Step 6 – Compensation and ancillary orders**

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

- Ancillary orders – Magistrates' Court
- **Ancillary orders – Crown Court Compendium**

### **Step 7 – Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

### **Step 8 – Consideration for time spent on bail (tagged curfew)**

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



## Failure to ensure animal welfare

Animal Welfare Act 2006, s.9 (breach of duty of person responsible for animal to ensure welfare)

Effective from: XXXXXX

Triable only summarily

Maximum: Unlimited fine and/or 6 months

Offence range: Band A fine – 26 weeks' custody

### Step 1 – Determining the offence category

The court should determine culpability and harm caused with reference **only** to the factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

### Culpability demonstrated by one or more of the following

The court should weigh all the factors set out below in determining the offender's culpability. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

A High Culpability	<ul style="list-style-type: none"> <li>• Prolonged or deliberate ill treatment or neglect</li> <li>• Ill treatment <b>or neglect</b> in a commercial context</li> <li>• A leading role in illegal activity</li> </ul>
B Medium culpability	<ul style="list-style-type: none"> <li>• <b>Cases that fall between categories A or C because:</b> <ul style="list-style-type: none"> <li>◦ <b>Factors are present in A and C which balance each other out, and/or,</b></li> <li>◦ <b>The offender's culpability falls between the factors as described in A and C</b></li> </ul> </li> </ul>
C Lower culpability	<ul style="list-style-type: none"> <li>• Well intentioned but incompetent care</li> <li>• <b>Brief lapse in judgement</b></li> <li>• <b>Involved through coercion, intimidation or exploitation</b></li> <li>• Mental disorder or learning disability, where linked to the commission of the offence</li> </ul>

### Harm demonstrated by one or more of the following

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

Factors indicating greater harm	<ul style="list-style-type: none"> <li>• Death or serious injury/harm to animal</li> <li>• High level of suffering caused</li> </ul>
Factors indicating lesser harm	<ul style="list-style-type: none"> <li>• All other cases</li> </ul>

## Step 2 – Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

	High culpability	Medium culpability	Low culpability
<b>Greater harm</b>	<b>Starting point</b> 18 weeks' custody	<b>Starting point</b> Medium level community order	<b>Starting point</b> Band C fine
	<b>Category range</b> 12-26 weeks' custody	<b>Category range</b> Low level community order – High level community order	<b>Category range</b> Band B fine – Low level community order
<b>Lesser harm</b>	<b>Starting point</b> High level community order	<b>Starting point</b> Low level community order	<b>Starting point</b> Band B fine
	<b>Category range</b> Low level community order – 12 weeks' custody	<b>Category range</b> Band C fine – Medium level community order	<b>Category range</b> Band A fine – Band C fine

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

### Factors increasing seriousness

#### *Statutory aggravating factors*

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

*Other aggravating factors*

- Distress caused to owner where not responsible for the offence
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- **Significant number of animals involved**
- Allowing person of insufficient experience or training to have care of animal(s)
- Ignores warning/professional advice/declines to obtain professional advice
- Offender in position of **professional** responsibility **for animal**
- Animal requires significant intervention to recover
- Animal being used in public service or as an assistance dog

*Factors reducing seriousness or reflecting personal mitigation*

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Offender has been given an inappropriate level of trust or responsibility
- Voluntary surrender of animals to authorities
- Cooperation with the investigation
- Isolated incident

**Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution**

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

**Step 4 – Reduction for guilty pleas**

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

**Step 5 – Totality principle**

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

**Step 6 – Compensation and ancillary orders**

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

- Ancillary orders – Magistrates' Court

### **Step 7 – Reasons**

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

### **Step 8 – Consideration for time spent on bail (tagged curfew)**

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

## Consultation Stage Resource Assessment

### Animal Cruelty Offences

#### Introduction

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

#### Rationale and objectives for new guideline

A single magistrates' courts sentencing guideline currently exists for animal cruelty offences, which covers offences contrary to sections 4, 8 and 9 of the Animal Welfare Act 2006. This existing Animal cruelty guideline<sup>2</sup> first came into force in 2008 but was revised in 2017 following concern that it was not nuanced enough, particularly for those cases falling between the lowest and highest levels of seriousness.

On 29 June 2021, the Animal Welfare (Sentencing) Act 2021 came into force, which increased the maximum penalty for sections 4, 5, 6, 7 and 8 of the Animal Welfare Act 2006 from 6 months' (summary only) to 5 years' custody. There was no change to the maximum penalty for the section 9 offence.

The Council is consulting on two new draft sentencing guidelines for use in England and Wales to cover these animal cruelty offences. One is an Animal cruelty guideline for use in all courts, to cover offences contrary to sections 4-8, where the offences have changed from being summary only to triable either way and the statutory maximum penalty has increased. The other is a Failure to ensure animal welfare magistrates' courts sentencing guideline, which retains much of the existing magistrates' courts sentencing guideline for animal cruelty offences, but with changes to reflect the scope of the guideline no longer covering sections 4 and 8 and now simply covering the section 9 offence, which has an unchanged statutory maximum.

The Council's aim in developing these guidelines is to reflect the will of Parliament and provide sentencers with a structured approach to sentencing animal cruelty offences that will ensure that sentences are proportionate to the offence committed and in relation to other offences. They should also promote a consistent approach to

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

<sup>2</sup> <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/animal-cruelty-revised-2017/>

sentencing and provide guidance to sentencers, especially where the maximum sentence has recently increased from 6 months to 5 years' custody.

## Scope

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

This resource assessment covers the following offences under the Animal Welfare Act 2006, which will be covered by two guidelines:

- 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); and
- Breach of duty of person responsible for animal to ensure welfare (section 9).

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

## Current sentencing practice

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

The intention is that the guidelines will encourage consistency of sentencing, especially regarding the increase in statutory maximum penalties for sections 4 to 8, and ensure that, for all offences, sentences are proportionate to the severity of the offence committed and in relation to other offences, whilst incorporating the change in legislation.

In order to develop effective guidelines for these offences, knowledge of recent sentencing practice was required. Sources of evidence have included examples of cases from the RSPCA, case studies from the passage of the Animal Welfare (Sentencing) Act 2021 Bill, analysis of transcripts of judges' sentencing remarks for

the very few cases which are sentenced in the Crown Court currently and sentencing data from the MoJ Court Proceedings Database.<sup>3,4</sup>

During the consultation stage, we intend to hold discussions with sentencers to invite feedback and gauge whether the new guidelines will work as anticipated. This should provide some further understanding of the likely impact of the guidelines on sentencing practice, and the subsequent effect on prison and probation resources.

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

### **Causing unnecessary suffering (section 4)**

In 2020 around 300 adult offenders were sentenced for this offence, although this was a decrease compared to the recent trend of around 600 offenders sentenced in each year. The most common outcome was a community order (39 per cent), followed by a fine (22 per cent) and a suspended sentence order (21 per cent). A further 12 per cent received immediate custody.<sup>5,6</sup>

For those that were sentenced to immediate custody in 2020, the average (mean) custodial sentence length (ACSL) was 4 months, after any reductions for guilty plea, whilst the statutory maximum sentence was still 6 months' custody.<sup>7</sup>

### **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); and Involvement in an animal fight (section 8)**

Due to low volumes, sentencing data for these four sections of the Animal Welfare Act 2006 are presented together and it has not been possible to provide an average custodial sentence length (ACSL). In total, in 2020, there were only 3 adult offenders sentenced for these offences, and around 30 offenders sentenced between 2016 and

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<sup>3</sup> The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here:  
<http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

<sup>4</sup> Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

<sup>5</sup> A further 4 per cent received a discharge and 1 per cent were 'Otherwise dealt with', which covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

<sup>6</sup> Percentages may not appear to sum to 100 per cent due to rounding.

<sup>7</sup> The average custodial sentence lengths presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea. The statutory maximum sentence for this offence increased from 6 months to 5 years' custody in April 2021 however the latest full year of data available at the time of publication was 2020 so there are no cases exceeding 6 months' custody included in these figures.

2020. These offences are almost exclusively sentenced in magistrates' courts, and the majority of the offenders receiving immediate custody are sentenced for the offence of involvement in an animal fight (section 8).

### **Breach of duty of person responsible for animal to ensure welfare (section 9)**

In 2020, around 50 adult offenders were sentenced for this offence, which is a decrease compared to the recent trend of around 150 offenders sentenced per year. In 2020, almost half of offenders sentenced received a fine (44 per cent), one third received a community order (31 per cent) and 17 per cent received a suspended sentence order. A further 4 per cent were sentenced to immediate custody<sup>8</sup> and the statutory maximum sentence for this offence remains at 6 months' custody.<sup>6</sup>

## **Key assumptions**

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

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed draft guideline, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

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

In developing sentence levels for the draft guidelines, data on current sentence levels have been considered, although this does cover the period before the increase in statutory maximum sentence for sections 4-8. Existing guidance and case studies, as well as limited transcripts of judges' sentencing remarks have also been reviewed.

While data exist on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guidelines, due to a lack of data available regarding the detailed sentencing factors for current cases. Additionally, given that offences contrary to sections 4-8 were summary only until very recently, past sentencing data may not be representative of how sentencing will

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<sup>8</sup> Owing to low volumes, an average custodial sentence length (ACSL) for this offence has not been calculated.



look in the future for this guideline. As a consequence, it is difficult to ascertain how sentence levels may change under the new animal cruelty guideline.

It remains difficult to estimate with any precision the impact the new draft guidelines may have on prison and probation resources. To support the development of the guidelines and mitigate the risk of them having an unintended impact, discussions with sentencers will be undertaken during the consultation stage to provide more information on which to base the final resource assessment accompanying the definitive guidelines.

## Resource impacts

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

The two draft guidelines cover animal cruelty offences contrary to sections 4-8 and section 9 of the Animal Welfare Act 2006 separately. Due to the shared statutory maximum penalty of offences contrary to sections 4-8, and because they are covered by the same guideline, the resource impacts have been assessed and presented for these offences collectively. The resource impacts for the new draft section 9 offence guideline have been considered separately.

In relation to the rationale for the increases to the statutory maximum under the Animal Welfare (Sentencing) Act 2021, discussions in Parliament focussed on a particular desire to increase penalties for offences involving particularly sadistic behaviour, and/ or the involvement of organised criminality. As such, the expectation of the new draft guideline is that it will increase sentences for these most serious cases and provide consistency of approach to sentencing a wider range of animal cruelty offences than the current guideline offers, whilst ensuring that sentences are proportionate to the offence committed and in relation to other offences.

Overall, it is likely that the increase in statutory maximum reflected in the new animal cruelty guideline may increase sentencing severity for a very small subset of offences at the highest end of severity, for offending contrary to sections 4-8. It is unlikely that this will lead to a substantial impact on prison and probation resources, owing to the small volumes involved. For the section 9 offence, it is not anticipated that the new draft guideline will lead to a change in sentencing practice, since the guideline has been developed with current sentencing practice in mind and the statutory maximum remains unchanged, so this is not expected to have a notable resource impact either.

### **Animal cruelty guideline (sections 4-8, Animal Welfare Act 2006)**

Offences contrary to sections 4, 8 and 9 of the Animal Welfare Act 2006 are currently covered in the existing Animal cruelty guideline, which has only two categories of harm and a six-point sentencing table.

The new draft Animal cruelty guideline additionally covers sections 5, 6 and 7 but no longer covers section 9. The draft guideline has three levels of culpability and three

levels of harm, leading to a nine-point sentencing table with a sentencing range from a Band A fine<sup>9</sup> up to 3 years' custody.

The statutory maximum penalty for sections 4-8 increased from 6 months' custody (summary only offence), to 5 years' custody (triable either way offence) in June 2021. This increase is reflected in the sentence ranges for the new draft guideline and, as such, it is possible there may be an impact on the proportion of cases being sentenced in Crown Court in the future, compared with now. However, since the ACSL is currently 4 months' custody and the starting point sentence for all offences except those falling into the highest harm and culpability category (A1) is no greater than 6 months' custody before any reductions for a guilty plea, the majority of cases are likely to remain within the threshold of magistrates' courts sentencing powers.

The rationale for these increases to the statutory maximum under the Animal Welfare (Sentencing) Act 2021 set out that sentences above the previous 6-month statutory maximum sentence should be reserved for those offences involving particularly sadistic behaviour, and/ or the involvement of organised criminality. As such, the draft guideline includes a number of updates to the way culpability is assessed, primarily to clearly separate out more extreme cases. High culpability factors within the existing magistrates' court Animal cruelty guideline have been moved into medium culpability, and a new set of factors covered the most severe types of offending have been added to high culpability, to reflect the significant increase in maximum sentence for these offences.

Nevertheless, the starting point pre-guilty plea for even the highest harm and culpability category (1A) under the new draft animal cruelty guideline is 18 months' custody, so it is likely that a high proportion of custodial sentence outcomes will remain within the eligible threshold for suspension, for which the anticipated resource impacts are less, especially with regard to prison places. Furthermore, the majority of offenders do not currently receive a custodial sentence for these offences, which further reduces the estimated impacts on prison resources.

Analysis of a small number<sup>10</sup> of transcripts of Crown Court judges' sentencing remarks<sup>11</sup> was conducted to assess how sentences might change under the new guideline. This also suggests that there are unlikely to be substantial increases in custody length or changes in sentence outcome type for the majority of cases. There may be some increases in the length of custody received in individual cases, particularly those at the highest levels of culpability and harm, for example involving the death of the animal/ animals. However, due to the data limitations, the likely resource impact cannot be quantified.

In addition, it should be noted that only 2 per cent of offenders sentenced in 2020 for these offences were sentenced at Crown Court, therefore, it is likely that this subset

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<sup>9</sup> The starting point for a Band A fine is 50% of the offender's relevant weekly income.

<sup>10</sup> Sentencing remarks are only available at the Crown Court, and there were only 11 offenders sentenced for animal cruelty offences at the Crown Court in 2019 and 2020, all for causing unnecessary suffering (section 4).

<sup>11</sup> Of the 11 possible transcripts which were ordered, only 8 transcripts covering 9 offenders sentenced in 2019 and 2020 for causing unnecessary suffering (section 4) as either a principal or secondary offence contained enough detail to be analysed. In all cases, multiple offences were being sentenced; in one transcript, the secondary offences included offending contrary to section 9.

of cases represents some of the most severe types of offending and/ or cases involving multiple offences.

Furthermore, the latest full year of data available to analyse for this resource assessment is for 2020: before the increase in statutory maximum sentence. This means that the current sentencing practice for this offence is not fully representative of expected future sentencing using the draft guideline, which limits how reliably we can estimate the resource impacts for this guideline.

Overall, due to a lack of available data, the very recent change in offence category from summary only to triable either way and the very small number of offenders sentenced for the majority of these offences, it is not possible to say whether the guideline for these offences will have a significant impact on prison and probation resources overall. Nevertheless, the intention of the guideline, in line with the rationale behind Parliament's decision to increase the statutory maximum sentence<sup>12</sup> is not to increase the volume of offenders receiving a custodial sentence, only the length of time for the small subset of offences at the highest end of severity. Therefore, it is anticipated that any impact on prison and probation resources should be small.

Further work during the consultation should hopefully provide further evidence on which to base the final resource assessment.

### **Failure to ensure animal welfare guideline (section 9, Animal Welfare Act 2006)**

The existing magistrates' courts sentencing guideline which covers section 9 of Animal Welfare Act 2006 also covers the animal cruelty offences under sections 4 and 8.

The new draft Failure to ensure animal welfare guideline, to cover purely the section 9 offence (breach of duty of person responsible for animal to ensure welfare), retains three levels of culpability and two levels of harm from the existing Animal cruelty guideline, leading to a six-point sentencing table, with a sentencing range from a Band A fine<sup>7</sup> up to 26 weeks' custody to reflect the summary only nature of the offence.

Compared to the existing guideline, certain factors have been removed to ensure that all the factors are relevant, and that sentencing is proportionate for the narrower scope of the new draft guideline.

Due to a lack of available data and the small number of offenders sentenced for this offence, it is not possible to confidently anticipate the impact the new draft guideline will have on prison and probation resources overall. However, it is anticipated that any impact would be minimal, given the low volume of offenders sentenced for this offence currently and the low proportion of these offenders who are currently receiving a custodial outcome.

Further work and discussion with sentencers during the consultation should provide further evidence on which to base the final resource assessment.

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<sup>12</sup> Explanatory notes of the Animal Welfare (Sentencing) Bill, 'Financial implications of the Bill', page 5: <https://publications.parliament.uk/pa/bills/cbill/58-01/0014/en/200014en.pdf>

## Risks

In attempting to estimate the likely resource impacts of these guidelines, there are two main risks to consider:

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

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

This risk is mitigated by information that is gathered by the Council as part of the consultation phase. This includes interviews and discussions with sentencers, to test whether the guidelines have the intended effect. However, there are limitations on the number of scenarios which can be explored, so the risk cannot be fully eliminated. The Council has also included a question in the consultation document, asking for consultees' views on the potential impact of the proposals. This information will provide further information on which to base the final resource assessment.

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

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

The Council takes a number of precautions in issuing a new guideline to try to ensure that sentencers interpret it as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Limited transcripts of Crown Court sentencing remarks and case studies of animal cruelty offences have also been studied to ensure that the guidelines are developed with current sentencing practice in mind. Research carried out with sentencers should also enable issues with implementation to be identified and addressed prior to the publication of the definitive guidelines.

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

# 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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# Annex A

## Aggravated burglary

Theft Act 1968 (section 10)

Triable only on indictment

Maximum: Life imprisonment

Offence range: 1 – 13 years' custody

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

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

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

## STEP ONE

### Determining the offence category

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

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

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

## Harm

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

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

	<ul style="list-style-type: none"> <li>Theft of/damage to property causing <u>a moderate <del>some</del></u> degree of loss to the victim (whether economic, commercial or personal value)</li> <li><u>Moderate damage or disturbance</u> <del>Ransacking or vandalism to the</del> property</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>No violence used or threatened and a weapon is not produced</li> <li>Limited physical or psychological injury or <del>other</del> limited <u>impact</u> <del>emotional or other impact</del> on the victim</li> </ul>

## STEP TWO

### Starting point and category range

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

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

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

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

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these

or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

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

### **Factors increasing seriousness**

#### *Statutory aggravating factors:*

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

#### *Other aggravating factors:*

- In a s.9(1)(b) offence, weapon carried when entering premises
- ( 'This factor does not apply to s.9(1)(a) offences because it is an inherent part of such offences: see AG's Ref [Sage](#) [2019] EWCA Crim 934, [2019] 2 Cr App (S) 50. In s9(1)(b) offences, however, the fact that the offender had taken a weapon to the premises, and was in possession of it when entering, will normally aggravate the offence.')
- Use of face covering or disguise
- Offence committed in a dwelling
- Child at home (or returns home) when offence committed
- Offence committed at night
- Abuse of power and/or position of trust
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim (where not already taken into account at category one)
- Victim compelled to leave their home
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

### **Factors reducing seriousness or reflecting personal mitigation**

- Nothing stolen or only property of low value to the victim (whether economic, commercial or personal)

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

### **STEP THREE**

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

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

### **STEP FOUR**

#### **Reduction for guilty pleas**

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

### **STEP FIVE**

#### **Dangerousness**

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

### **STEP SIX**

#### **Totality principle**

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

### **STEP SEVEN**

#### **Compensation and ancillary orders**

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

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

### **STEP EIGHT**

#### **Reasons**

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

### **STEP NINE**

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

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



# Annex B

## Domestic burglary

Theft Act 1968 (section 9)

Triable either way (except as noted below)

Maximum: 14 years' custody

Offence range: Community order- 6 years' custody

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

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

This offence is **indictable only** where:

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

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

**STEP ONE**

**Determining the offence category**

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

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

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

<b>Harm</b>	
<b>The level of harm is assessed by weighing up all the factors of the case</b>	
Category 1	<ul style="list-style-type: none"><li>• Violence used/serious violence threatened against the victim</li><li>• Substantial physical or psychological injury or substantial emotional or other impact on the victim</li><li>• Persons(s) on premises or returns or attends while offender present</li><li>• Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value)</li><li>• Soiling of property and/or extensive damage or disturbance to property</li><li>• Offence committed in the context of public disorder</li></ul>

<b>Category 2</b>	<ul style="list-style-type: none"> <li>• Violence threatened but not used against the victim (where not at category 1)</li> <li>• Moderate physical or psychological injury or some emotional or other impact on the victim</li> <li>• Theft of/damage to property causing a moderate degree of loss to the victim (whether economic, commercial or personal value)</li> <li>• Moderate damage or disturbance to property</li> </ul>
<b>Category 3</b>	<ul style="list-style-type: none"> <li>• Limited physical or psychological injury or limited emotional or other impact on the victim</li> <li>• Nothing stolen or only property of low value to the victim (whether economic, commercial or personal)</li> <li>• Limited damage or disturbance to property</li> </ul>

## STEP TWO

### Starting point and category range

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

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

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

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

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

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

### Factors increasing seriousness

#### *Statutory aggravating factors:*

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

#### *Other aggravating factors:*

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

**Factors reducing seriousness or reflecting personal mitigation**

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

### **STEP THREE**

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

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

### **STEP FOUR**

#### **Reduction for guilty pleas**

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

### **STEP FIVE**

#### **Dangerousness**

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

### **STEP SIX**

#### **Totality principle**

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

### **STEP SEVEN**

#### **Compensation and ancillary orders**

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

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

### **STEP EIGHT**

#### **Reasons**

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

### **STEP NINE**

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

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

# Annex C

## Non-domestic burglary

Theft Act 1968 (section 9)

Triable either way (except as noted below)

Maximum: 10 years' custody

Offence range: Discharge – 5 years' custody

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

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

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

## STEP ONE

### Determining the offence category

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

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

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

## Harm

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

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



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

## STEP TWO

### Starting point and category range

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

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

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<p><b>Starting Point</b> 2 years' custody</p> <p><b>Category Range</b> 1 -5 years' custody</p>	<p><b>Starting Point</b> 1 year's custody</p> <p><b>Category Range</b> High level community order - 2 years' custody</p>	<p><b>Starting Point</b> 6 months' custody</p> <p><b>Category Range</b> Medium level community order - 1 year's custody</p>
<b>Category 2</b>	<p><b>Starting Point</b> 1 years' custody</p> <p><b>Category Range</b> High level community order - 2 years' custody</p>	<p><b>Starting Point</b> 6 months' custody</p> <p><b>Category Range</b> Medium level community order - 1 year's custody</p>	<p><b>Starting Point</b> Medium level community order</p> <p><b>Category Range</b> Low level community order - High level community order</p>
<b>Category 3</b>	<p><b>Starting Point</b> 6 months' custody</p> <p><b>Category Range</b></p>	<p><b>Starting Point</b> Medium level community order</p> <p><b>Category Range</b></p>	<p><b>Starting Point</b> Band B fine</p> <p><b>Category Range</b></p>

	Medium level community order - 1 year's custody	Low level community- High level community order	Discharge –Low level community order
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Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

### Factors increasing seriousness

#### *Statutory aggravating factors:*

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

#### *Other aggravating factors:*

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

### Factors reducing seriousness or reflecting personal mitigation

- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment

- Mental disorder or learning disability, where not linked to the commission of the offence
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives

### **STEP THREE**

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

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

### **STEP FOUR**

#### **Reduction for guilty pleas**

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

### **STEP FIVE**

#### **Dangerousness**

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

### **STEP SIX**

#### **Totality principle**

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

### **STEP SEVEN**

#### **Compensation and ancillary orders**

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

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

### **STEP EIGHT**

#### **Reasons**

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

### **STEP NINE**

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

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

## Final Resource Assessment

### Burglary Offences

#### Introduction

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

#### Rationale and objectives for new guideline

In January 2012, the Sentencing Council's definitive *Burglary Offences* guideline came into force. As evaluation of the guideline published in January 2016 found that sentencing severity had increased beyond that which was expected for non-domestic burglary offences.<sup>2</sup> Sentences were also found to have increased beyond what was expected for aggravated burglary, although due to low volumes for this offence, the findings were less conclusive.

A further evaluation published in July 2017 found that the guideline may have contributed to increases in sentencing severity for all three burglary offences.<sup>3</sup> The increase in domestic burglary was within the expected range, but numbers for aggravated burglary were still too low to be conclusive. For non-domestic burglary, the evaluation found that aggregate sentencing severity had increased. However, further work was carried out to understand current sentencing practice in more detail, and based on this, the Council took the view that in most cases reviewed, sentences appeared to be proportionate to the seriousness of the offence.

Given the findings of the evaluation for non-domestic burglary, for the more serious cases, the Council has decided to retain the current sentencing levels. However, at the lower end of offence seriousness, the Council decided it would be helpful to provide further guidance for disposals that may be appropriate when non-custodial options are being considered and have made changes to the guideline to reflect this.

The Council also decided to bring the guidelines into line with the structure now used for most guidelines. Previously, there were two levels of culpability and two levels of harm, leading to a sentencing table with three starting points. In the guidelines, there

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

<sup>2</sup> <https://www.sentencingcouncil.org.uk/wp-content/uploads/Burglary-assessment.pdf>

<sup>3</sup> <https://www.sentencingcouncil.org.uk/wp-content/uploads/Burglary-further-assessment.pdf>

are now medium levels of culpability and medium levels of harm leading to nine possible starting points in the sentencing table.

The Council's aim in developing the guidelines has been to ensure that sentencing for these offences is proportionate to the offence committed and to promote a consistent approach to sentencing. It was acknowledged by the Council that sentencing levels had increased since the guideline came into force. On reflection the Council considered that current levels, broadly speaking, were not disproportionate to the offences committed and so the revised guidelines have been developed with recent sentencing levels in mind.

## Scope

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

This resource assessment covers the following offences:

- Non-domestic burglary, Theft Act 1968 (section 9);
- Domestic burglary, Theft Act 1968 (section 9); and
- Aggravated burglary, Theft Act 1968 (section 10).

The *Burglary Offences* guidelines apply to sentencing adults only; they will not directly apply to the sentencing of children and young people.

## Current sentencing practice

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

The intention is that the revised guidelines will encourage consistency of sentencing and in the vast majority of cases will not change overall sentencing practice from the current levels under the previous guideline. In order to develop a guideline that maintains current practice, knowledge of recent sentencing was required.

Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks, sentencing data from the Court Proceedings Database,<sup>4</sup> findings from the two burglary evaluations, Council members' experience of sentencing burglary cases and references to case law and news articles. Knowledge of the sentencing starting points, ranges and factors used in previous cases has helped the Council to create guidelines that should maintain current sentencing practice.

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<sup>4</sup> The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Data on average custodial sentence lengths presented in this resource assessment are those after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

During the consultation stage, some small-scale research was conducted with a group of sentencers, to check that the draft guidelines would work as anticipated. This research also provided some further understanding of the likely impact of the guidelines on sentencing practice, and the subsequent effect on the prison population.

Detailed sentencing statistics for burglary offences covered by the guidelines have been published on the Sentencing Council website at the following link:

<https://www.sentencingcouncil.org.uk/research-and-resources/publications?s&cat=statistical-bulletin>.

### **Non-domestic burglary**

Around 4,400 adults were sentenced for a non-domestic burglary offence in 2020.<sup>5</sup> This number has been decreasing since 2011 when 8,900 adults were sentenced for this offence. Around 65 per cent of offenders were sentenced in magistrates' courts in 2020; the remaining 35 per cent were sentenced in the Crown Court.

Just over half (55 per cent) of those sentenced for non-domestic burglary in 2020 were sentenced to immediate custody. A further 20 per cent and 18 per cent of adults received a suspended sentence order and a community order, respectively. The rest received a fine (3 per cent), a discharge (2 per cent) or were 'otherwise dealt with'<sup>6</sup> (2 per cent).

The statutory maximum sentence for this offence is 10 years' custody. In 2020, the average custodial sentence length (ACSL)<sup>7</sup> was 10.6 months (after any reduction for a guilty plea).

### **Domestic burglary**

Around 3,700 adults were sentenced for a domestic burglary offence in 2020. This has been sharply decreasing since a high of 11,100 in 2011. Around 87 per cent of offenders were sentenced in the Crown Court; the remaining 13 per cent were sentenced in magistrates' courts in 2020.

Around 75 per cent of those adults sentenced for domestic burglary in 2020 received an immediate custodial sentence.<sup>8</sup> This was followed by 14 per cent receiving a

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<sup>5</sup> Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

<sup>6</sup> The category 'Otherwise dealt with' in this case includes: one day in police cells; hospital order; forfeiture of property; restraining order; a deferred sentence; compensation; and other miscellaneous disposals. Due to a data issue currently under investigation, there are several non-domestic burglary cases which are incorrectly categorised in the CPD as 'Otherwise dealt with'. The figures shown for 'Otherwise dealt with' should therefore be treated with caution.

<sup>7</sup> The average custodial sentence lengths referred to in this resource assessment are the mean average, which is calculated by adding all the individual values and dividing the total by the number of values.

<sup>8</sup> The Court Proceedings Database does not include any information on the offending histories of the offenders sentenced, so there are no figures from this source on the number or proportion of offenders sentenced for a qualifying third domestic burglary (known as 'third strike' domestic burglary) under section 111 of the Powers of Criminal Courts (Sentencing) Act 2000. However, figures are available on this from a different source – the Police National Computer. These figures show that there were 327 third-time burglary offenders in 2020. Of these, 57 per cent received a custodial sentence of 28.8 months or more (a three-year sentence with a 20 per cent discount for a guilty plea). More detail can be found in the 'Offending Histories' link on the following

suspended sentence order and 9 per cent receiving a community order. The rest received a fine (less than 0.5 per cent), a discharge (less than 0.5 per cent) or were 'otherwise dealt with'<sup>9</sup> (2 per cent).

The statutory maximum sentence for this offence is 14 years' custody. The ACSL in 2020 was 2 years 4 months (after any reduction for a guilty plea).

### **Aggravated burglary**

Around 200 adults were sentenced for an aggravated burglary in 2020. This is a reduction from 2011 when 320 adults were sentenced for the same offence. This offence is indictable only and therefore all offenders are sentenced in the Crown Court.

Nearly all (94 per cent) of the offenders sentenced in 2020 received an immediate custodial sentence, with the remaining offenders either receiving a suspended sentence order, a community order or were 'otherwise dealt with'.<sup>10</sup>

The statutory maximum sentence for this offence is life imprisonment. The ACSL in 2020 was 7 years 2 months (after any reduction for a guilty plea).

## **Key assumptions**

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

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

In developing sentence levels for the different guidelines, existing guidance and data on current sentence levels has been considered.

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webpage: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-march-2021>.

Note that as these figures and those given in the rest of this document are from different sources, they are not directly comparable.

<sup>9</sup> The category 'otherwise dealt with' for this offence includes: one day in police cells; hospital order; compensation; restraining order; and other miscellaneous disposals. Due to a data issue currently under investigation, there are several domestic burglary cases which are incorrectly categorised in the CPD as 'otherwise dealt with'. The figures shown for 'otherwise dealt with' should therefore be treated with caution.

<sup>10</sup> The category 'otherwise dealt with' for this offence includes otherwise dealt with on conviction (or finding of guilt). Due to a data issue currently under investigation, there are several aggravated burglary cases incorrectly categorised in the CPD as 'otherwise dealt with'. The figures shown for 'otherwise dealt with' should therefore be treated with caution.



While data exists on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guidelines, due to a lack of data available regarding the seriousness of current cases. Additionally, the new guidelines have introduced a medium level of culpability and a medium level of harm, which did not exist in the previous guideline. This means that it is difficult to foresee how offences will 'map' from the previous to the revised guidelines. Consequently, it is difficult to ascertain how sentence levels may change under the new guidelines.

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To support the development of the guidelines and mitigate the risk of the guidelines having an unintended impact, interviews were undertaken with sentencers during the consultation period, which have provided more information on which to base this final resource assessment.

## Resource impacts

This section should be read in conjunction with the guidelines available at: <https://www.sentencingcouncil.org.uk/crown-court/>

### Summary

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.

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.

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.

### Non-domestic burglary

The resource assessment published in 2012 for the previous guideline estimated that no change in sentencing severity was expected as a result of the guideline. The

Council has since considered evidence both from the evaluations and additional work undertaken, including analysis of transcripts of Crown Court judges' sentencing remarks and analysis of data from the CPD and the Crown Court Sentencing Survey.<sup>11</sup> The evaluations found that aggregate sentencing severity increased following the introduction of the guideline. However, as a result of the additional work undertaken, whilst the aggregate impact of the original guideline was higher than predicted, the Council is content to retain the current levels for most cases as analysis indicates that for most individual cases, sentencing is proportionate to the seriousness of the offence.

The previous guideline had two levels of culpability and two levels of harm, leading to three levels of seriousness in the sentence starting point and range table. This went from a starting point of a medium level community order for the least serious offence up to a starting point of two years' custody for the most serious.

The revised guideline has three levels of culpability and three levels of harm, leading to nine possible starting points and ranges. This goes from a starting point of a band B fine for the least serious offences up to two years' custody as a starting point for the most serious offences.

The Council decided to look carefully at the top categories of culpability and harm within the guideline, to ensure that only the most serious offences lead to the highest sentences. Accordingly, some changes to the factors in these categories were made. This would ensure that proportionate sentences were imposed relative to the seriousness of the offence. The Council also decided that sentences at the lower end of offending could better address the causes of the offending behaviour. Therefore, it was decided to include a new reference to alcohol treatment requirements alongside the previous reference to drug treatment requirements in the guideline, as alternatives to short or moderate custodial sentences in appropriate cases. It was acknowledged that this may lead to decreases in sentence severity in some cases at the lower end of offending but is intended to help reduce future offending. Furthermore, the Council hope that by not including custody in the B3 or C2 sentencing ranges, this might also encourage more community orders to be given at this lower end of offence severity.

Several other changes have also been made to the wording and placement of the factors in the guideline. For example, the culpability factor of 'member of a group or gang' has been re-worded to 'offence was committed as part of a group' and has been moved from step one to step two of the guideline. Also, 'premises or victim deliberately targeted'<sup>12</sup> has been removed from the guideline factors. Several of the harm factors and aggravating and mitigating factors have also been re-worded.

An analysis of a small sample<sup>13</sup> of transcripts of Crown Court judges' sentencing remarks was undertaken to assess whether there might be any potential resource

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<sup>11</sup> During the period 1 October 2010 to 31 March 2015, the Sentencing Council conducted a data collection exercise called the Crown Court Sentencing Survey (CCSS). The CCSS recorded details on the factors taken into account by the judge when determining the appropriate sentence for an offender (such as harm and culpability factors, and aggravating and mitigating factors), and the final sentence given. For further information see <http://www.sentencingcouncil.org.uk/analysis-and-research/crown-court-sentencing-survey/>.

<sup>12</sup> The factor 'vulnerable victim' appears instead at step two under aggravating factors.

<sup>13</sup> A total of 15 transcripts were analysed for this offence, of which 9 transcripts covering 19 offenders contained enough detail to provide evidence of the possible impact of the revised guideline on sentences.

impact related to these changes. It should be noted that transcripts of judges' sentencing remarks are only available for offenders sentenced at the Crown Court. As around two thirds of offenders (64 per cent in 2019) are sentenced in magistrates' courts for this offence, this means that this transcript analysis covers only the most serious end of offending. Therefore, findings will not be representative of all offenders sentenced for this offence. Additionally, the sample analysed was small, and is unlikely to have accounted for the full range of offending at the Crown Court, and so the transcript analysis findings for this offence are tentative.

However, based on this analysis of a small sample of cases, most of the changes in the guideline are not expected to result in an impact on prison or probation resources. Where a change in sentences was found, it was minimal in size, and where an increase in the sentence under the new guideline was observed for some cases, this was usually balanced out by a decrease of around the same magnitude in other cases.

One particular change of interest in the revised guideline was the movement of the factor relating to group offending from step one to step two. In the transcript analysis, there were several cases where the judge had placed the offence within the higher culpability category under the previous guideline, where one of the relevant factors was that the offender committed the offence as part of a group. Nevertheless, under the revised guideline, the analysis found that other higher culpability factors (such as 'significant planning was involved') would also be applicable in most cases, which would serve to keep the offender within this higher culpability category. This suggests that the movement of the factor relating to group offending to step two of the guideline will not lead to a reduction in sentences in most cases.

This is supported by research with sentencers during the consultation stage. A scenario involving group offending was found to be sentenced consistently between the previous and revised guideline, which further suggests that the movement of this factor is unlikely to lead to a substantial impact on prison or probation resources.

A few of the transcripts of sentencing remarks mentioned the offender having an issue with alcohol addiction. The text above the sentencing table in the previous guideline mentions that sentencers may choose a community order with a drug rehabilitation requirement (DRR) as an alternative to a custodial sentence where the offender is dependent on or has a propensity to misuse of drugs and there is sufficient prospect of success. The revised guideline has the same text but also now mentions alcohol dependency /misuse and alcohol treatment requirements. This may lead to more community orders being given to those with alcohol dependency or misuse issues, leading to a possible decrease in sentencing severity in some cases. However, it has not been possible to estimate the impact of this change from the sample of sentencing remarks, as it was not possible to identify when this factor may be a sufficient reason to impose a community order instead of a custodial sentence, and it may be that community orders with alcohol treatment requirements are already being imposed whenever relevant. Additionally, as the transcripts covered the more serious end of offending for this offence, it may be that the relevant types of cases where this change could occur were just not present in the evidence used to inform this resource assessment.

## Domestic burglary

The original evaluation of the impact of the previous guideline for this offence and the further evaluation conducted in order to explore the evidence in more detail both concluded that sentencing severity had increased following the introduction of the guideline, although severity stayed within the bounds of the expected levels. The Council considered these findings and concluded that the higher sentences imposed under the previous guideline were proportionate to the seriousness of the offences. However, to bring the guideline into line with the Council's standard structure and to revise some of the factors, the Council decided that a revision was still necessary.

The previous guideline has two levels of culpability and two levels of harm, leading to three levels of seriousness in the sentence starting point and range table. This goes from a starting point of a high-level community order for the least serious offence up to a starting point of three years' custody for the most serious.

The revised guideline has three levels of culpability and three levels of harm, leading to nine possible starting points and ranges. This goes from the same starting point as the previous guideline (high level community order for the least serious offences) up to, again, the same starting point for the most serious offences (three years' custody).

Several changes have been made to the wording and placement of the factors in the guideline. For example, similarly to the non-domestic burglary guideline, the culpability factor of 'member of a group or gang' has been re-worded to 'offence was committed as part of a group' and moved from step one of the guideline to step two. Several of the harm factors and aggravating and mitigating factors have also been re-worded.

An analysis of a small sample<sup>14</sup> of transcripts of Crown Court judges' sentencing remarks was undertaken to assess whether there might be any potential resource impact related to these changes. As the majority of offenders are sentenced at the Crown Court for this offence (87 per cent in 2020), it is expected that these transcripts should be broadly representative of most types of offending for this offence, except for those with the very lowest levels of seriousness. However, as this is a high-volume offence and the sample was small, it is unlikely that all types of offending have been captured within the analysis. Therefore, further research was conducted during the consultation stage to better understand the possible impact of the guideline on sentencing.

Based on the transcript analysis of a small sample of cases, most of the changes in the revised guideline are not expected to result in an impact on prison or probation resources. However, there were some exceptions.

The analysis found that in some cases, the movement of the factor related to group offending from step one to step two of the guideline could lead to a lowering of the culpability category under the guideline. Sentencers may consider the relevant aggravating factor, but this may not fully offset any decrease to sentences caused by the lower culpability categorisation. This was tested through research with

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<sup>14</sup> A total of 21 transcripts were analysed for this offence, of which 11 transcripts covering 14 offenders contained enough detail to provide evidence of the possible impact of the revised guideline on sentences.

sentencers during the consultation, using scenarios of offending. In the relevant scenario, there was no evidence that the movement of this factor led to a lowering of the final sentence; the scenario was found to be sentenced consistently when using the previous guideline compared with the revised guideline, in the vast majority of cases. This was because sentencers considered other factors were present in the case which maintained the highest level of culpability.

A few of the transcripts of sentencing remarks mentioned the offender having an issue with alcohol addiction. The text above the sentencing table in the guideline has been revised in the same way as within the non-domestic burglary guideline, to capture dependency on or propensity to misuse alcohol. Similarly, there is the expectation that this may lead to a greater use of community orders for this offence. In the research with sentencers, many sentencers felt that they would follow this guidance but may need evidence that addiction was the root cause of the offending behaviour. As such, this change is unlikely to lead to substantial resource impacts.

### **Aggravated burglary**

The initial evaluation of the impact of the previous guideline for this offence and the further evaluation which was conducted to explore the evidence in more detail both concluded that sentencing severity had increased following the introduction of the guideline. However, as the volume of offenders sentenced for this offence is relatively low, the findings needed to be treated with caution. The Council considered these findings and concluded that the higher sentences imposed under the previous guideline were proportionate to the seriousness of the offences. However, to bring the guideline into line with the Council's standard structure and to revise some of the factors, the Council decided that a revision was still necessary.

The previous guideline had two levels of culpability and two levels of harm, leading to three levels of seriousness in the sentence starting point and range table. This went from a starting point of two years' custody for the least serious offence up to a starting point of 10 years' custody for the most serious.

The revised guideline has three levels of culpability and three levels of harm, leading to nine possible starting points and ranges. This goes from the same starting point as the previous guideline (two years' custody for least serious offences) up to again, the same starting point for most serious offences (10 years' custody).

In addition to the structural changes, several changes have been made to the culpability factors. The factors 'weapon present on entry' and 'member of a group or gang' have been moved from step one to step two (aggravating factors) and re-worded. 'Equipped for burglary' has been removed from all steps of the guideline and 'use of face covering or disguise' has been added to step two (aggravating factors).

An analysis of a small sample<sup>15</sup> of transcripts of Crown Court judges' sentencing remarks was undertaken to assess whether there might be any potential resource impact related to these changes. As all offenders are sentenced at the Crown Court for this offence, the sample should broadly represent the full range of offending, although, as with the burglary offences covered earlier, it is possible that some types

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<sup>15</sup> A total of 20 transcripts were analysed for this offence, of which 13 transcripts covering 20 offenders contained enough detail to provide evidence of the possible impact of the revised guideline on sentences.

of offending have not been captured by these transcripts given that the sample is very small.

Based on this analysis of a sample of cases, the movement of the ‘weapon carried when entering premises’ factor from step one to step two amid concerns of double counting<sup>16</sup> may mean some cases are put into a lower level of culpability at step one, when under the previous guideline they were put into higher culpability. In three of the transcripts analysed, the removal of this factor, ‘weapon carried when entering premises’, from step one led to a lower final sentence. However, in the majority of transcripts analysed, the culpability stayed at the same level due to the ‘significant degree of planning’ factor being present in the case. This was supported by research with sentencers during consultation: the sentencers’ assessment of the degree of planning seemed to drive their culpability categorisations.

Finally, the factor ‘Violence used or threatened against the victim, particularly involving a weapon’ has been amended to remove explicit reference to a weapon, to avoid double counting, whilst ensuring that the most serious cases remain within the higher end of the sentencing table.

## Risks

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

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

This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guidelines have the intended effect and inviting views on the guidelines. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

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

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

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers interpret them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members’ experience of sentencing. Transcripts of sentencing remarks for a number of cases have also been studied to ensure that the guidelines are developed with current sentencing practice in mind. Research with sentencers carried out during the consultation period has also

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<sup>16</sup> Following *R v Sage*; AG’s Ref Sage [2019] EWCA Crim 934 [2019] 2 Cr App R (S) 50, paras 38 and 45.

helped to identify issues with implementation and application of the guidelines, and some amendments have been made. The Council also uses data from the Ministry of Justice as well as a data collection for certain offences including burglary to monitor the effects of its guidelines.

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## Burglary offences

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

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

### Section 1: Non-domestic burglary

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

### Section 2: Domestic burglary

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

### Section 3: Aggravated burglary

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

## Notes

## Annex E

### Data sources and quality

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

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

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

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

### Volumes of sentences

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

### Sentence outcomes

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

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

### Offender demographics

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

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

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

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

[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/691544/self-defined-ethnicity-18plus1.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691544/self-defined-ethnicity-18plus1.pdf)

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

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

### General conventions

The following conventions have been applied to the data:

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

### Uses made of the data

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

### Background information

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

<https://sentencingcouncil.org.uk>

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

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

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

### Contact points for further information

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**Table 1.1: Number of adult offenders sentenced for non-domestic burglary, all courts, 2010-2020<sup>2</sup>**

[Index](#)

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

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

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

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

**Table 1.2: Number and proportion of adult offenders sentenced for non-domestic burglary, by sentence outcome, 2010-2020<sup>1,2</sup>**

[Index](#)

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

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

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

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

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

**Table 1.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for non-domestic burglary, 2010-2020<sup>2</sup>**[Index](#)

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

Source: Court Proceedings Database, Ministry of Justice

## Notes:

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

**Table 1.4: Sentence lengths received by adult offenders sentenced to immediate custody for non-domestic burglary, 2010-2020<sup>1</sup>**

[Index](#)

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

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

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

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

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

**Table 1.5: Demographics of adult offenders sentenced for non-domestic burglary, by sex, age and ethnicity, 2020<sup>1</sup>**

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

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

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

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

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

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

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

**Table 1.6: Number and proportion of adult offenders sentenced for non-domestic burglary, by sex, age and ethnicity, and send outcome, 2020<sup>1</sup>**

[Index](#)

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

  

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

  

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

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

  

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

  

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

Source: Court Proceedings Database, Ministry of Justice

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

Notes:

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

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

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



**Table 1.7: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for non-domestic burglary, by sex, age and ethnicity, 2020<sup>1</sup>**

[Index](#)

Sex	ACSL (months) <sup>2,3</sup>	
	Mean	Median
Female	5.1	3.3
Male	10.8	6.0
Not recorded/not known	3.0	2.3

  

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

  

Ethnicity <sup>4</sup>	Mean	Median
Asian	8.4	6.0
Black	8.6	4.2
Mixed	11.8	6.0
Other	14.4	10.0
White	10.7	6.0
Not recorded/not known	10.3	4.7

Source: Court Proceedings Database, Ministry of Justice

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

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

Notes:

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

2) Excludes life and indeterminate sentences.

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

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

**Table 1.8: Sentence lengths received by adult offenders sentenced to immediate custody for non-domestic burglary, by sex, age and ethnicity, 2020<sup>1</sup>**

[Index](#)

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

  

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

  

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

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

  

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

  

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

Source: Court Proceedings Database, Ministry of Justice

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

**Notes:**

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

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

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

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

**Table 2.1: Number of adult offenders sentenced for domestic burglary, all courts, 2010-2020<sup>2</sup>**

[Index](#)

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

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

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

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

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

[Index](#)

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

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

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

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

**Table 2.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for domestic burglary, 2010-2020<sup>2</sup>**[Index](#)

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

Source: Court Proceedings Database, Ministry of Justice

## Notes:

- 1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 2) In August 2011, riots occurred in London and other major cities across England and Wales. Around 50 per cent of the people arrested in connection with the riots were charged with burglary offences. Around 670 offenders sentenced for non-domestic burglary and 60 offenders sentenced for domestic burglary included in these data tables for 2011 and 2012 were sentenced for offences relating to the riots. Sentencing trends for these cases and for others dealt with around the same time may have been affected by the severity of the riots, and so users should bear this in mind when interpreting data from around this period.
- 3) Excludes life and indeterminate sentences. Excludes two cases of domestic burglary over the period 2010-2020 where the data suggested that the sentence was above the statutory maximum for this offence (14 years' custody).
- 4) This is calculated as the number of offenders given an indeterminate custodial sentence, out of the number of offenders given a sentence of immediate custody.
- 5) For 2010-2012, the indeterminate sentence figures include the sentences of Imprisonment for Public Protection (IPP) and Extended Sentences for Public Protection (EPP). These sentences were introduced in 2005 and abolished in 2012.

**Table 2.4: Sentence lengths received by adult offenders sentenced to immediate custody for domestic burglary, 2010-2020<sup>1</sup>**

[Index](#)

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

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

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

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

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

**Table 2.5: Demographics of adult offenders sentenced for domestic burglary, by sex, age and ethnicity, 2020<sup>1</sup>**

[Index](#)

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

<b>Age group</b>	<b>Number of adults sentenced</b>	<b>Percentage of all adults sentenced<sup>4</sup></b>
18 to 20	335	9%
21 to 24	397	11%
25 to 29	588	16%
30 to 39	1,267	34%
40 to 49	865	23%
50 to 59	217	6%
60 to 69	20	1%
70 and over	2	<0.5%
Not recorded/not known	0	
<b>Total</b>	<b>3,691</b>	<b>100%</b>

<b>Ethnicity<sup>2,3</sup></b>	<b>Number of adults sentenced</b>	<b>Percentage of all adults sentenced<sup>4</sup></b>
Asian	53	2%
Black	166	5%
Mixed	92	3%
Other	39	1%
White	2,684	88%
Not recorded/not known	657	
<b>Total</b>	<b>3,691</b>	<b>100%</b>

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

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

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

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

Table 2.6: Number and proportion of adult offenders sentenced for domestic burglary, by sex, age and ethnicity, and sentence outcome 2020<sup>1</sup>

[Index](#)

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

  

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

  

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

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

  

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

  

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

Source: Court Proceedings Database, Ministry of Justice

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

Notes:

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



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

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Sex	ACSL (years) <sup>2,3</sup>	
	Mean	Median
Female	2.0	2.0
Male	2.4	2.4
Not recorded/not known	-	-

  

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

  

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

Source: Court Proceedings Database, Ministry of Justice

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

Notes:

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

**Table 2.8: Sentence lengths received by adult offenders sentenced to immediate custody for domestic burglary, by sex, age and ethnicity, 2020<sup>1</sup>**

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

  

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

  

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

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

Notes:

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

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

  

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

  

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

Source: Court Proceedings Database, Ministry of Justice

**Table 3.1: Number of adult offenders sentenced for aggravated burglary, all courts, 2010-2020<sup>2</sup>**[Index](#)

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

Source: Court Proceedings Database, Ministry of Justice

## Notes:

- 1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 2) Figures shown here differ from those published by the MoJ, as there were seven aggravated burglary cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

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

[Index](#)

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

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

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

**Table 3.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for aggravated burglary, 2010-2020<sup>2</sup>**

[Index](#)

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

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

**Table 3.4: Sentence lengths received by adult offenders sentenced to immediate custody for aggravated burglary, 2010-2020<sup>1,2</sup>**

[Index](#)

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

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

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

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

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

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

**Table 3.5: Demographics of adult offenders sentenced for aggravated burglary, by sex, age and ethnicity, 2020<sup>1,2</sup>**

[Index](#)

<b>Sex</b>	<b>Number of adults sentenced</b>	<b>Percentage of all adults sentenced<sup>5</sup></b>
Female	7	4%
Male	189	96%
Not recorded/not known	0	
<b>Total</b>	<b>196</b>	<b>100%</b>

<b>Age group</b>	<b>Number of adults sentenced</b>	<b>Percentage of all adults sentenced<sup>5</sup></b>
18 to 20	36	18%
21 to 24	33	17%
25 to 29	41	21%
30 to 39	53	27%
40 to 49	25	13%
50 to 59	6	3%
60 to 69	2	1%
70 and over	0	0%
Not recorded/not known	0	
<b>Total</b>	<b>196</b>	<b>100%</b>

<b>Ethnicity<sup>3,4</sup></b>	<b>Number of adults sentenced</b>	<b>Percentage of all adults sentenced<sup>5</sup></b>
Asian	6	4%
Black	11	7%
Mixed	9	6%
Other	1	1%
White	135	83%
Not recorded/not known	34	
<b>Total</b>	<b>196</b>	<b>100%</b>

Source: Court Proceedings Database, Ministry of Justice

Notes:

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

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

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

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

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

Table 3.6: Number and proportion of adult offenders sentenced for aggravated burglary, by sex, age and ethnicity, and sentence outcome, 2020<sup>1,2</sup>

[Index](#)

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

  

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

  

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

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

Notes:

- 1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 2) Figures shown here differ from those published by the MoJ, as there were seven aggravated burglary cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 3) Due to a data issue currently under investigation, there are a number of aggravated burglary cases incorrectly categorised in the CPD as 'Otherwise dealt with'. The figures shown for 'Otherwise dealt with' should therefore be treated with caution.
- 4) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

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

  

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

  

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

Source: Court Proceedings Database, Ministry of Justice



**Table 3.7: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for aggravated burglary, by sex, age and ethnicity, 2020<sup>2</sup>**

[Index](#)

Sex	ACSL (years) <sup>3,4</sup>	
	Mean	Median
Female	5.9	6.0
Male	7.2	7.3
Not recorded/not known	-	-

  

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

  

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

Source: Court Proceedings Database, Ministry of Justice

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

**Notes:**

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

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

3) Excludes life and indeterminate sentences.

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

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

Table 3.8: Sentence lengths received by adult offenders sentenced to immediate custody for aggravated burglary, by sex, age and ethnicity, 2020<sup>1,2</sup>

[Index](#)

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

  

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

  

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

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

Notes:

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

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

  

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

  

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

Source: Court Proceedings Database, Ministry of Justice

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

**4 March 2022**  
**SC(22)MAR05 - Totality**  
**Ruth Pope**  
[Ruth.pope@sentencingcouncil.gov.uk](mailto: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.

## Totality

Effective from: 11 June 2012

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

### Applicability - DROPDOWN

## General principles

The principle of totality comprises two elements:

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

## Concurrent/consecutive sentences

There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive components. The overriding principle is that the overall sentence must be just and proportionate.

## General approach (as applied to Determinate Custodial Sentences)

**1. Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.**

**2. Determine whether the case calls for concurrent or consecutive sentences.**

**Concurrent sentences will ordinarily be appropriate where:**

a) offences arise out of the same incident or facts. Examples include:

- a single incident of dangerous driving resulting in injuries to multiple victims;<sup>1</sup>
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it;<sup>2</sup>
- fraud and associated forgery;
- separate counts of supplying different types of drugs of the same class as part of the same transaction.

b) there is a series of offences of the same or similar kind, especially when committed against the same person. Examples include:

- repetitive small thefts from the same person, such as by an employee;
- repetitive benefit frauds of the same kind, committed in each payment period.

**Where concurrent sentences are to be passed the sentence should reflect the overall criminality involved. The sentence should be appropriately aggravated by the presence of the associated offences.**

Examples include:

- a single incident of dangerous driving resulting in injuries to multiple victims where there are separate charges relating to each victim. The sentences should generally be passed concurrently, but each sentence should be aggravated to take into account the harm caused;
- repetitive fraud or theft, where charged as a series of small frauds/thefts, would be properly considered in relation to the total amount of money obtained and the period of time over which the offending took place. The sentences should generally be passed concurrently, each one reflecting the overall seriousness;
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it. The principal sentence for the robbery should properly reflect the presence of the weapon. The court must avoid double-counting and may deem it preferable for the possession of the weapon's offence to run concurrently to avoid the appearance of under-sentencing in respect of the robbery.<sup>3</sup>

**Consecutive sentences will ordinarily be appropriate where:**

a) offences arise out of unrelated facts or incidents. Examples include:

- where the offender commits a theft on one occasion and a common assault against a different victim on a separate occasion;
- an attempt to pervert the course of justice in respect of another offence also charged;<sup>4</sup>
- a Bail Act offence;<sup>5</sup>
- any offence committed within the prison context;
- offences that are unrelated because whilst they were committed simultaneously they are distinct and there is an aggravating element that requires separate recognition, for example:
  - an assault on a constable committed to try to evade arrest for another offence also charged;<sup>6</sup>
  - where the defendant is convicted of drug dealing and possession of a firearm offence. The firearm offence is not the essence or the intrinsic part of the drugs offence and requires separate recognition;<sup>7</sup>
  - where the defendant is convicted of threats to kill in the context of an indecent assault on the same occasion, the threats to kill could be distinguished as a separate element.<sup>8</sup>

b) offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences. Examples include:

- where offences committed against different people, such as repeated thefts involving attacks on several different shop assistants;<sup>9</sup>
- where offences of domestic violence or sexual offences are committed against the same individual.

c) one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum.<sup>10</sup>



However, it is not permissible to impose consecutive sentences for offences committed at the same time in order to evade the statutory maximum penalty.<sup>11</sup>

**Where consecutive sentences are to be passed** add up the sentences for each offence and consider if the aggregate length is just and proportionate.

If the aggregate length is not just and proportionate the court should consider how to reach a just and proportionate sentence. There are a number of ways in which this can be achieved.

Examples include:

- when sentencing for similar offence types or offences of a similar level of severity the court can consider:
  - whether all of the offences can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively;
  - whether, despite their similarity, a most serious principal offence can be identified and the other sentences can all be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively in order that the sentence for the lead offence can be clearly identified.
- when sentencing for two or more offences of differing levels of seriousness the court can consider:
  - whether some offences are of such low seriousness in the context of the most serious offence(s) that they can be recorded as ‘no separate penalty’ (for example technical breaches or minor driving offences not involving mandatory disqualification);
  - whether some of the offences are of lesser seriousness and are unrelated to the most serious offence(s), that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified.

**3. Test the overall sentence(s) against the requirement that they be just and proportionate.**

**4. Consider whether the sentence is structured in a way that will be best understood by all concerned with it.**

### Specific applications – custodial sentences

Existing determinate sentence, where determinate sentence to be passed	
Circumstance	Approach
<b>Offender serving a determinate sentence (Offence(s) committed before original sentence imposed)</b>	Consider what the sentence length would have been if the court had dealt with the offences at the same time and ensure that the totality of the sentence is just and proportionate in all the circumstances. If it is not, an adjustment should be made to the sentence imposed for the latest offence.
<b>Offender serving a determinate sentence (Offence(s) committed</b>	Generally the sentence will be consecutive as it will have arisen out of an unrelated incident. The court must have regard to the totality of the offender’s criminality when passing the second sentence, to ensure that the total sentence to be served is just and

<b>after original sentence imposed)</b>	proportionate. Where a prisoner commits acts of violence in prison custody, any reduction for totality is likely to be minimal. <sup>12</sup>
<b>Offender serving a determinate sentence but released from custody</b>	The new sentence should start on the day it is imposed: <a href="#">s225 Sentencing Code</a> prohibits a sentence of imprisonment running consecutively to a sentence from which a prisoner has been released. The sentence for the new offence will take into account the aggravating feature that it was committed on licence. However, it must be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to the recall period (which will be an unknown quantity in most cases); <sup>13</sup> this is so even if the new sentence will in consequence add nothing to the period actually served.
<b>Offender sentenced to a determinate term and subject to an existing suspended sentence order</b>	Where an offender commits an additional offence during the operational period of a suspended sentence and the court orders the suspended sentence to be activated, the additional sentence will generally be consecutive to the activated suspended sentence, as it will arise out of unrelated facts.

### Extended sentences for public protection

<b>Circumstance</b>	<b>Approach</b>
<b>Extended sentences – using multiple offences to calculate the requisite determinate term</b>	In the case of extended sentences imposed under the Sentencing Code, providing there is at least one specified offence, the threshold requirement under <a href="#">s267</a> or <a href="#">s280</a> of the Sentencing Code is reached if the total determinate sentence for all offences (specified or not) would be four years or more. The extended sentence should be passed either for one specified offence or concurrently on a number of them. Ordinarily either a concurrent determinate sentence or no separate penalty will be appropriate to the remaining offences. <sup>17</sup> The extension period is such as the court considers necessary for the purpose of protecting members of the public from serious harm caused by the offender committing further specified offences. <sup>18</sup> The extension period must not exceed five years (or eight for a sexual offence). The whole aggregate term must not exceed the statutory maximum. The custodial period must be adjusted for totality in the same way as determinate sentences would be. The extension period is measured by the need for protection and therefore does not require adjustment.

### Indeterminate sentences

<b>Circumstance</b>	<b>Approach</b>
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<p><b>Imposing multiple indeterminate sentences on the same occasion and using multiple offences to calculate the minimum term for an indeterminate sentence</b></p>	<p>Indeterminate sentences should start on the date of their imposition and so should generally be ordered to run concurrently. If the life sentence provisions in sections <a href="#">272-274</a> or sections <a href="#">283 – 285</a> of the Sentencing Code apply then:</p> <ol style="list-style-type: none"> <li>1. first assess the notional determinate term for all offences (specified or otherwise), adjusting for totality in the usual way;<sup>19</sup></li> <li>2. ascertain whether any relevant sentence condition is met; and</li> <li>3. the indeterminate sentence should generally be passed concurrently on all offences to which it can apply, but there may be some circumstances in which it suffices to pass it on a single such offence.</li> </ol>
<p><b>Indeterminate sentence (where the offender is already serving an existing determinate sentence)</b></p>	<p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition.<sup>20</sup></p> <p>The court should instead order the sentence to run concurrently but can adjust the minimum term for the new offence to reflect half of any period still remaining to be served under the existing sentence (to take account of the early release provisions for determinate sentences). The court should then review the minimum term to ensure that the total sentence is just and proportionate.</p>
<p><b>Indeterminate sentence (where the offender is already serving an existing indeterminate sentence)</b></p>	<p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition. However, where necessary the court can order an indeterminate sentence to run consecutively to an indeterminate sentence passed on an earlier occasion.<sup>21</sup> The second sentence will commence on the expiration of the minimum term of the original sentence and the offender will become eligible for a parole review after serving both minimum terms.<sup>22</sup> The court should consider the length of the aggregate minimum terms that must be served before the offender will be eligible for consideration by the Parole Board. If this is not just and proportionate, the court can adjust the minimum term.</p>
<p><b>Ordering a determinate sentence to run consecutively to an indeterminate sentence</b></p>	<p>The court can order a determinate sentence to run consecutively to an indeterminate sentence. The determinate sentence will commence on the expiry of the minimum term of the indeterminate sentence and the offender will become eligible for a parole review after serving half of the determinate sentence.<sup>23</sup> The court should consider the total</p>

	<p>sentence that the offender will serve before becoming eligible for consideration for release. If this is not just and proportionate, the court can reduce the length of the determinate sentence, or alternatively, can order the second sentence to be served concurrently.</p>
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## Specific applications – non-custodial sentences

Multiple fines for non-imprisonable offences	
Circumstance	Approach
<p><b>Offender convicted of more than one offence where a fine is appropriate</b></p>	<p>The total is inevitably cumulative. The court should determine the fine for each individual offence based on the seriousness of the offence<sup>24</sup> and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court.<sup>25</sup> The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences.</li> <li>• where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.</li> </ul> <p>Where separate fines are passed, the court must be careful to ensure that there is no double-counting.<sup>26</sup></p> <p>Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.</p>
<p><b>Multiple offences attracting fines –</b></p>	<p>If the offences being dealt with are all imprisonable, then the community threshold can be crossed by reason of multiple offending, when it would not be crossed for a single offence.<sup>27</sup> However, if the offences are non-</p>

<b>crossing the community threshold</b>	imprisonable (e.g. driving without insurance) the threshold cannot be crossed. <sup>28</sup>
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### Fines in combination with other sentences

<b>Circumstance</b>	<b>Approach</b>
<b>A fine may be imposed in addition to any other penalty for the same offence except:</b>	<ul style="list-style-type: none"> <li>• a hospital order;<sup>29</sup></li> <li>• a discharge;<sup>30</sup></li> <li>• a sentence fixed by law<sup>31</sup> (minimum sentences, EPP, IPP);</li> <li>• a minimum term imposed under <a href="#">s 313</a> or <a href="#">s 314</a> of the Sentencing Code;<sup>32</sup></li> <li>• a life sentence imposed under section <a href="#">274</a> or <a href="#">285</a> Sentencing Code or a sentence of detention for life for an offender under 18 under section <a href="#">258</a> Sentencing Code.<sup>33</sup></li> </ul>
<b>Fines and determinate custodial sentences</b>	<p>A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the defendant. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:</p> <ul style="list-style-type: none"> <li>• the sentence is suspended;</li> <li>• a confiscation order is not contemplated; <b>and</b></li> <li>• there is no obvious victim to whom compensation can be awarded; <b>and</b></li> <li>• the offender has, or will have, resources from which a fine can be paid.</li> </ul>

### Community orders

<b>Circumstance</b>	<b>Approach</b>
<b>Multiple offences attracting community orders – crossing the custody threshold</b>	If the offences are all imprisonable and none of the individual sentences merit a custodial sentence, the custody threshold can be crossed by reason of multiple offending. <sup>34</sup> If the custody threshold has been passed, the court should refer to the offence ranges in sentencing guidelines for the offences and to the general principles.
<b>Multiple offences, where one offence would merit immediate custody and one offence would merit a community order</b>	A community order should not be ordered to run consecutively to or concurrently with a custodial sentence. Instead the court should generally impose one custodial sentence that is aggravated appropriately by the presence of the associated offence(s). The alternative option is to impose no separate penalty for the offence of lesser seriousness.
<b>Offender convicted of more than one offence where a</b>	A community order is a composite package rather than an accumulation of sentences attached to individual counts. The

<p><b>community order is appropriate</b></p>	<p>court should generally impose a single community order that reflects the overall criminality of the offending behaviour. Where it is necessary to impose more than one community order, these should be ordered to run concurrently and for ease of administration, each of the orders should be identical.</p>
<p><b>Offender convicted of an offence while serving a community order</b></p>	<p>The power to deal with the offender depends on his being convicted whilst the order is still in force;<sup>35</sup> it does not arise where the order has expired, even if the additional offence was committed whilst it was still current.</p> <p>If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a magistrates' court of an additional offence, the magistrates' court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence.</p> <p>Where an offender, in respect of whom a community order made by the Crown Court is in force, is convicted by a magistrates' court, the magistrates' court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence. The magistrates' court may also commit the new offence to the Crown Court for sentence where there is a power to do so.</p> <p>The sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence. If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.</p>

Disqualifications from driving	
Circumstance	Approach
<p><b>Offender convicted of two or more obligatory disqualification offences (s34(1) Road Traffic Offender Act 1988)</b></p>	<p>The court must impose an order of disqualification for each offence unless for special reasons it does not disqualify the offender.<sup>36</sup> All orders of disqualification imposed by the court on the same date take effect immediately and cannot be ordered to run consecutively to one another. The court should take into account all offences when determining the disqualification periods and should generally impose like periods for each offence.</p>
<p><b>Offender convicted of two or more offences involving either:</b></p>	<p>Where an offender is convicted on same occasion of more than one offence to which section 35(1) Road Traffic Offender Act 1988 applies, only one disqualification shall be</p>

<p>1. <b>discretionary disqualification and obligatory endorsement from driving, or</b></p> <p>2. <b>obligatory disqualification but the court for special reasons does not disqualify the offender</b></p> <p><b>and the penalty points to be taken into account number 12 or more (ss28 and 35 Road Traffic Offender Act 1988)</b></p>	<p>imposed on him.<sup>37</sup> However the court must take into account all offences when determining the disqualification period. For the purposes of appeal, any disqualification imposed shall be treated as an order made on conviction of each of the offences.<sup>38</sup></p>
<p><b>Other combinations involving more two or offences involving discretionary disqualification</b></p>	<p>As orders of disqualification take effect immediately, it is generally desirable for the court to impose a single disqualification order that reflects the overall criminality of the offending behaviour.</p>

### Compensation orders

Circumstance	Approach
<p><b>Global compensation orders</b></p>	<p>The court should not fix a global compensation figure unless the offences were committed against the same victim.<sup>39</sup> Where there are competing claims for limited funds, the total compensation available should normally be apportioned on a pro rata basis.<sup>40</sup></p>
<p><b>The court may combine a compensation order with any other form of order.</b></p>	
<p><b>Compensation orders and fines</b></p>	<p>Priority is given to the imposition of a compensation order over a fine.<sup>41</sup> This does not affect sentences other than fines. This means that the fine should be reduced or, if necessary, dispensed with altogether, to enable the compensation to be paid.</p>
<p><b>Compensation orders and confiscation orders</b></p>	<p>A compensation order can be combined with a confiscation order where the amount that may be realised is sufficient. If such an order is made, priority should be given to compensation.<sup>42</sup></p>
<p><b>Compensation orders and community orders</b></p>	<p>A compensation order can be combined with a community order.</p>
<p><b>Compensation orders and suspended sentence orders</b></p>	<p>A compensation order can be combined with a suspended sentence order.<sup>43</sup></p>
<p><b>Compensation orders and custody</b></p>	<p>A compensation order can be combined with a sentence of immediate custody where the offender is clearly able to pay or has good prospects of employment on his release from custody.</p>

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- Notes**
- [1] R v Lawrence (1989) 11 Cr App R (S) 580
  - [2] R v Poulton and Celaire [2002] EWCA Crim 2487; Attorney General’s Reference No 21&22 of 2003 [2003] EWCA Crim 3089
  - [3] Attorney General’s Reference Number 21 and 22 of 2003
  - [4] Attorney General’s Reference No1 of 1990 (1990) 12 Cr App R (S) 245
  - [5] R v Millen (1980) 2 Cr App R (S) 357
  - [6] R v Kastercum (1972) 56 Cr App R 298
  - [7] R v Poulton and Celaire [2002] EWCA Crim 2487; Attorney General’s Reference No 21&22 of 2003 [2003] EWCA Crim 3089
  - [8] R v Fletcher [2002] 2 CAR (S) 127
  - [9] R v Jamieson & Jamieson [2008] EWCA Crim 2761
  - [10] R v Raza [2010] 1 Cr App R (S) 56
  - [11] R v Ralphs [2009] EWCA Crim 2555
  - [12] R. v Ali [1998] 2 Cr.App.R. 123
  - [13] R. v Costello [2010] EWCA Crim 371
  - [14]
  - [15]
  - [16]
  - [17] R. v Pinnell [2010] EWCA Crim 2848
  - [18] R v Cornelius [2002] EWCA Crim 138
  - [19] R v Rahuel Delucca [2010] EWCA Crim 710
  - [20] R. v O’Brien [2006] EWCA Crim 1741
  - [21] R v Hills [2008] EWCA Crim 1871; R v Ashes [2007] EWCA Crim 1848
  - [22] s.28(1B) Crime (Sentences) Act 1997
  - [23] s.28 ibid
  - [24] [s.125\(1\) Sentencing Code](#)
  - [25] [s.125\(2\) Sentencing Code](#)
  - [26] R. v Pointon [2008] EWCA Crim 513
  - [27] [s.204\(2\) Sentencing Code](#)
  - [28] [s.202 Sentencing Code](#) restricts the power to make a community order by limiting it to cases where the offence is punishable with imprisonment.
  - [29] s.37(8) Mental Health Act 1983
  - [30] R. v McClelland [1951] 1 All ER 557
  - [31] [s.120 Sentencing Code](#)
  - [32] [s.120 Sentencing Code](#)
  - [33] [s.120 Sentencing Code](#)
  - [34] [s.230\(2\) Sentencing Code](#)
  - [35] Paragraphs 22 and 25 of [Schedule 10 of the Sentencing Code](#)
  - [36] s.34(1) Road Traffic Offender Act 1998
  - [37] s.35(3) ibid
  - [38] ibid
  - [39] R. v Warton [1976] Crim LR 520
  - [40] R. v Miller [1976] Crim LR 694
  - [41] [s.135\(4\) Sentencing Code](#)
  - [42] R v Mitchell [2001] Cr. L. R239
  - [43] [s.134\(2\) Sentencing Code](#)



## Totality

Effective from: tbc

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

**Applicability - DROPDOWN**

## General principles

The principle of totality comprises two elements:

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

## Concurrent/consecutive sentences

There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive components. The overriding principle is that the overall sentence must be just and proportionate.

## General approach (as applied to determinate custodial sentences)

1. **Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.**
2. **Determine whether the case calls for concurrent or consecutive sentences.**
3. **Test the overall sentence(s) against the requirement that they be just and proportionate.**
4. **Consider whether the sentence is structured in a way that will be best understood by all concerned with it.**

**Concurrent sentences will ordinarily be appropriate where:**

- a. offences arise out of the same incident or facts.

Examples include: [dropdown]

- a single incident of dangerous driving resulting in injuries to multiple victims;
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it
- fraud and associated forgery
- separate counts of supplying different types of drugs of the same class as part of the same transaction

- b. there is a series of offences of the same or similar kind, especially when committed against the same person.

Examples include: [dropdown]

- repetitive small thefts from the same person, such as by an employee
- repetitive benefit frauds of the same kind, committed in each payment period

**Where concurrent sentences are to be passed the sentence should reflect the overall criminality involved. The sentence should be appropriately aggravated by the presence of the associated offences.**

Concurrent custodial sentences: examples [dropdown]

Examples of concurrent custodial sentences include:

- a single incident of dangerous driving resulting in injuries to multiple victims where there are separate charges relating to each victim. The sentences should generally be passed concurrently, but each sentence should be aggravated to take into account the harm caused
- repetitive fraud or theft, where charged as a series of small frauds/thefts, would be properly considered in relation to the total amount of money obtained and the period of time over which the offending took place. The sentences should generally be passed concurrently, each one reflecting the overall seriousness
- robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it. The principal sentence for the robbery should properly reflect the presence of the weapon. The court must avoid double-counting and may deem it preferable for the possession of the weapon's offence to run concurrently to avoid the appearance of under-sentencing in respect of the robbery

**Consecutive sentences will ordinarily be appropriate where:**

- a. offences arise out of unrelated facts or incidents.

Examples include: [dropdown]

- where the offender commits a theft on one occasion and a common assault against a different victim on a separate occasion
- an attempt to pervert the course of justice in respect of another offence also charged
- a Bail Act offence
- any offence committed within the prison context
- offences that are unrelated because whilst they were committed simultaneously they are distinct and there is an aggravating element that requires separate recognition, for example:
  - an assault on a constable committed to try to evade arrest for another offence also charged
  - where the defendant is convicted of drug dealing and possession of a firearm offence. The firearm offence is not the essence or the intrinsic part of the drugs offence and requires separate recognition
  - where the defendant is convicted of threats to kill in the context of an indecent assault on the same occasion, the threats to kill could be distinguished as a separate element

- b. offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences.

Examples include: [dropdown]

- where offences committed against different people, such as repeated thefts involving attacks on several different shop assistants
  - where offences of domestic violence or sexual offences are committed against the same individual
- c. one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum.

However, it is not permissible to impose consecutive sentences for offences committed at the same time in order to evade the statutory maximum penalty.

**Where consecutive sentences are to be passed** add up the sentences for each offence and consider if the aggregate length is just and proportionate.

If the aggregate length is not just and proportionate the court should consider how to reach a just and proportionate sentence. There are a number of ways in which this can be achieved.

Consecutive custodial sentences: examples [dropdown]

Examples of consecutive custodial sentences include:

- when sentencing for similar offence types or offences of a similar level of severity the court can consider:
  - whether all of the offences can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively
  - whether, despite their similarity, a most serious principal offence can be identified and the other sentences can all be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively in order that the sentence for the lead offence can be clearly identified
- when sentencing for two or more offences of differing levels of seriousness the court can consider:
  - whether some offences are of such low seriousness in the context of the most serious offence(s) that they can be recorded as ‘no separate penalty’ (for example technical breaches or minor driving offences not involving mandatory disqualification)
  - whether some of the offences are of lesser seriousness and are unrelated to the most serious offence(s), that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified

## Specific applications – custodial sentences

Existing determinate sentence, where determinate sentence to be passed [Dropdown]

Existing determinate sentence, where determinate sentence to be passed	
Circumstance	Approach
<b>Offender serving a determinate sentence (Offence(s) committed before original sentence imposed)</b>	Consider what the sentence length would have been if the court had dealt with the offences at the same time and ensure that the totality of the sentence is just and proportionate in all the circumstances. If it is not, an adjustment should be made to the sentence imposed for the latest offence.
<b>Offender serving a determinate sentence</b>	Generally the sentence will be consecutive as it will have arisen out of an unrelated incident. The court must have regard to the totality

<b>(Offence(s) committed after original sentence imposed)</b>	of the offender’s criminality when passing the second sentence, to ensure that the total sentence to be served is just and proportionate. Where a prisoner commits acts of violence in prison custody, any reduction for totality is likely to be minimal.
<b>Offender serving a determinate sentence but released from custody</b>	The new sentence should start on the day it is imposed: <a href="#">s225 Sentencing Code</a> prohibits a sentence of imprisonment running consecutively to a sentence from which a prisoner has been released. The sentence for the new offence will take into account the aggravating feature that it was committed on licence. However, it must be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to the recall period (which will be an unknown quantity in most cases); this is so even if the new sentence will in consequence add nothing to the period actually served.
<b>Offender sentenced to a determinate term and subject to an existing suspended sentence order</b>	Where an offender commits an additional offence during the operational period of a suspended sentence and the court orders the suspended sentence to be activated, the additional sentence will generally be consecutive to the activated suspended sentence, as it will arise out of unrelated facts.

#### Extended sentences [dropdown]

##### Extended sentences for public protection

Circumstance	Approach
<b>Extended sentences – using multiple offences to calculate the requisite determinate term</b>	In the case of extended sentences imposed under the Sentencing Code, providing there is at least one specified offence, the threshold requirement under <a href="#">s267</a> or <a href="#">s280</a> of the Sentencing Code is reached if the total determinate sentence for all offences (specified or not) would be four years or more. The extended sentence should be passed either for one specified offence or concurrently on a number of them. Ordinarily either a concurrent determinate sentence or no separate penalty will be appropriate to the remaining offences. The extension period is such as the court considers necessary for the purpose of protecting members of the public from serious harm caused by the offender committing further specified offences. The extension period must not exceed five years (or eight for a sexual offence). The whole aggregate term must not exceed the statutory maximum. The custodial period must be adjusted for totality in the same way as determinate sentences would be. The extension period is measured by the need for protection and therefore does not require adjustment.

## Indeterminate sentences [dropdown]

## Indeterminate sentences

Circumstance	Approach
<p><b>Imposing multiple indeterminate sentences on the same occasion and using multiple offences to calculate the minimum term for an indeterminate sentence</b></p>	<p>Indeterminate sentences should start on the date of their imposition and so should generally be ordered to run concurrently. If the life sentence provisions in sections <a href="#">272-274</a> or sections <a href="#">283 – 285</a> of the Sentencing Code apply then:</p> <ol style="list-style-type: none"> <li>1. first assess the notional determinate term for all offences (specified or otherwise), adjusting for totality in the usual way</li> <li>2. ascertain whether any relevant sentence condition is met and</li> <li>3. the indeterminate sentence should generally be passed concurrently on all offences to which it can apply, but there may be some circumstances in which it suffices to pass it on a single such offence.</li> </ol>
<p><b>Indeterminate sentence (where the offender is already serving an existing determinate sentence)</b></p>	<p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition.</p> <p>The court should instead order the sentence to run concurrently but can adjust the minimum term for the new offence to reflect half of any period still remaining to be served under the existing sentence (to take account of the early release provisions for determinate sentences). The court should then review the minimum term to ensure that the total sentence is just and proportionate.</p>
<p><b>Indeterminate sentence (where the offender is already serving an existing indeterminate sentence)</b></p>	<p>It is generally undesirable to order an indeterminate sentence to be served consecutively to any other period of imprisonment on the basis that indeterminate sentences should start on their imposition. However, where necessary the court can order an indeterminate sentence to run consecutively to an indeterminate sentence passed on an earlier occasion. The second sentence will commence on the expiration of the minimum term of the original sentence and the offender will become eligible for a parole review after serving both minimum terms. The court should consider the length of the aggregate minimum terms that must be served before the offender will be eligible for consideration by the Parole Board. If this is not just and proportionate, the court can adjust the minimum term.</p>

<b>Ordering a determinate sentence to run consecutively to an indeterminate sentence</b>	<p>The court can order a determinate sentence to run consecutively to an indeterminate sentence. The determinate sentence will commence on the expiry of the minimum term of the indeterminate sentence and the offender will become eligible for a parole review after serving half of the determinate sentence. The court should consider the total sentence that the offender will serve before becoming eligible for consideration for release. If this is not just and proportionate, the court can reduce the length of the determinate sentence, or alternatively, can order the second sentence to be served concurrently.</p>
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## Specific applications – non-custodial sentences

### Multiple fines for non-imprisonable offences [dropdown]

Multiple fines for non-imprisonable offences	
Circumstance	Approach
<b>Offender convicted of more than one offence where a fine is appropriate</b>	<p>The total is inevitably cumulative. The court should determine the fine for each individual offence based on the seriousness of the offence<sup>24</sup> and taking into account the circumstances of the case including the financial circumstances of the offender so far as they are known, or appear, to the court. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate total is not just and proportionate the court should consider how to reach a just and proportionate fine. There are a number of ways in which this can be achieved.</p> <p>For example:</p> <ul style="list-style-type: none"> <li>• where an offender is to be fined for two or more offences that arose out of the same incident or where there are multiple offences of a repetitive kind, especially when committed against the same person, it will often be appropriate to impose for the most serious offence a fine which reflects the totality of the offending where this can be achieved within the maximum penalty for that offence. No separate penalty should be imposed for the other offences.</li> <li>• where an offender is to be fined for two or more offences that arose out of different incidents, it will often be appropriate to impose a separate fine for each of the offences. The court should add up the fines for each offence and consider if they are just and proportionate. If the aggregate amount is not just and proportionate the court should consider whether all of the fines can be proportionately reduced. Separate fines should then be passed.</li> </ul>

	<p>Where separate fines are passed, the court must be careful to ensure that there is no double-counting.</p> <p>Where compensation is being ordered, that will need to be attributed to the relevant offence as will any necessary ancillary orders.</p>
<b>Multiple offences attracting fines – crossing the community threshold</b>	<p>If the offences being dealt with are all imprisonable, then the community threshold can be crossed by reason of multiple offending, when it would not be crossed for a single offence. However, if the offences are non-imprisonable (e.g. driving without insurance) the threshold cannot be crossed.</p>

### Fines in combination with other sentences [dropdown]

#### Fines in combination with other sentences

Circumstance	Approach
<b>A fine may be imposed in addition to any other penalty for the same offence except:</b>	<ul style="list-style-type: none"> <li>• a hospital order</li> <li>• a discharge</li> <li>• a sentence fixed by law (<del>minimum sentences, EPP, IPP murder</del>)</li> <li>• a minimum term sentence imposed under <a href="#">section 311, 312, 313, 314, or 315</a> <del>s 313 or s 314</del> of the Sentencing Code</li> <li>• a life sentence imposed under section <a href="#">274</a> or <a href="#">285</a> Sentencing Code or a sentence of detention for life for an offender under 18 under section <a href="#">258</a> Sentencing Code</li> <li>• a life sentence imposed under section <a href="#">273</a> or <a href="#">283</a> Sentencing Code</li> <li>• a serious terrorism sentence under section <a href="#">268B</a> or <a href="#">282B</a> of the Sentencing Code</li> </ul>
<b>Fines and determinate custodial sentences</b>	<p>A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the defendant. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:</p> <ul style="list-style-type: none"> <li>• the sentence is suspended</li> <li>• a confiscation order is not contemplated <b>and</b></li> <li>• there is no obvious victim to whom compensation can be awarded <b>and</b></li> <li>• the offender has, or will have, resources from which a fine can be paid</li> </ul>

### Community orders [dropdown]

#### Community orders

Circumstance	Approach
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<b>Multiple offences attracting community orders – crossing the custody threshold</b>	If the offences are all imprisonable and none of the individual sentences merit a custodial sentence, the custody threshold can be crossed by reason of multiple offending. If the custody threshold has been passed, the court should refer to the offence ranges in sentencing guidelines for the offences and to the general principles.
<b>Multiple offences, where one offence would merit immediate custody and one offence would merit a community order</b>	A community order should not be ordered to run consecutively to or concurrently with a custodial sentence. Instead the court should generally impose one custodial sentence that is aggravated appropriately by the presence of the associated offence(s). The alternative option is to impose no separate penalty for the offence of lesser seriousness.
<b>Offender convicted of more than one offence where a community order is appropriate</b>	A community order is a composite package rather than an accumulation of sentences attached to individual counts. The court should generally impose a single community order that reflects the overall criminality of the offending behaviour. Where it is necessary to impose more than one community order, these should be ordered to run concurrently and for ease of administration, each of the orders should be identical.
<b>Offender convicted of an offence while serving a community order</b>	<p>The power to deal with the offender depends on his being convicted whilst the order is still in force; it does not arise where the order has expired, even if the additional offence was committed whilst it was still current.</p> <p>If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a magistrates' court of an additional offence, the magistrates' court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence.</p> <p>Where an offender, in respect of whom a community order made by the Crown Court is in force, is convicted by a magistrates' court, the magistrates' court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the original offence. The magistrates' court may also commit the new offence to the Crown Court for sentence where there is a power to do so.</p> <p>The sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence. If the court does not consider that custody is necessary, it should impose a single community order that reflects the overall totality of criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.</p>



## Disqualifications from driving [dropdown]

Disqualifications from driving	
Circumstance	Approach
<b>Offender convicted of two or more obligatory disqualification offences (s34(1) Road Traffic Offender Act 1988)</b>	The court must impose an order of disqualification for each offence unless for special reasons it does not disqualify the offender. All orders of disqualification imposed by the court on the same date take effect immediately and cannot be ordered to run consecutively to one another. The court should take into account all offences when determining the disqualification periods and should generally impose like periods for each offence.
<b>Offender convicted of two or more offences involving either:</b> <ol style="list-style-type: none"> <li>1. discretionary disqualification and obligatory endorsement from driving, or</li> <li>2. obligatory disqualification but the court for special reasons does not disqualify the offender</li> </ol> <b>and the penalty points to be taken into account number 12 or more (ss28 and 35 Road Traffic Offender Act 1988)</b>	Where an offender is convicted on same occasion of more than one offence to which section 35(1) Road Traffic Offender Act 1988 applies, only one disqualification shall be imposed on him. However the court must take into account all offences when determining the disqualification period. For the purposes of appeal, any disqualification imposed shall be treated as an order made on conviction of each of the offences.
<b>Other combinations involving more two or offences involving discretionary disqualification</b>	As orders of disqualification take effect immediately, it is generally desirable for the court to impose a single disqualification order that reflects the overall criminality of the offending behaviour.

## Compensation orders [dropdown]

Compensation orders	
Circumstance	Approach
<b>Global compensation orders</b>	The court should not fix a global compensation figure unless the offences were committed against the same victim. Where there are competing claims for limited funds, the total compensation available should normally be apportioned on a pro rata basis.
<b>The court may combine a compensation order with any other form of order.</b>	
<b>Compensation orders and fines</b>	Priority is given to the imposition of a compensation order over a fine. This does not affect sentences other than fines. This means that the

	fine should be reduced or, if necessary, dispensed with altogether, to enable the compensation to be paid.
<b>Compensation orders and confiscation orders</b>	A compensation order can be combined with a confiscation order where the amount that may be realised is sufficient. If such an order is made, priority should be given to compensation.
<b>Compensation orders and community orders</b>	A compensation order can be combined with a community order.
<b>Compensation orders and suspended sentence orders</b>	A compensation order can be combined with a suspended sentence order.
<b>Compensation orders and custody</b>	A compensation order can be combined with a sentence of immediate custody where the offender is clearly able to pay or has good prospects of employment on his release from custody.

**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
<b>Large organisation</b> Turnover or equivalent: £50 million and over	<b>Starting point</b> £250,000 <b>Category range</b> £100,000 – £500,000	<b>Starting point</b> £100,000 <b>Category range</b> £50,000 – £250,000	<b>Starting point</b> £25,000 <b>Category range</b> £10,000 – £50,000
<b>Medium organisation</b> Turnover or equivalent: between £10 million and £50 million	<b>Starting point</b> £100,000 <b>Category range</b> £50,000 – £250,000	<b>Starting point</b> £50,000 <b>Category range</b> £25,000 – £100,000	<b>Starting point</b> £12,000 <b>Category range</b> £5,000 – £25,000
<b>Small organisation</b> Turnover or equivalent: between £2 million and £10 million	<b>Starting point</b> £20,000 <b>Category range</b> £10,000 – £50,000	<b>Starting point</b> £10,000 <b>Category range</b> £5,000 – £20,000	<b>Starting point</b> £2,000 <b>Category range</b> £1,000 – £5,000
<b>Micro organisation</b> Turnover or equivalent: not more than £2 million	<b>Starting point</b> £5,000 <b>Category range</b> £2,000 – £20,000	<b>Starting point</b> £2,000 <b>Category range</b> £1,000 – £5,000	<b>Starting point</b> £500 <b>Category range</b> £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.

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

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



3.20 For reference – the fine bands are:

	<b>Starting point</b>	<b>Range</b>
<b>Fine Band A</b>	50% of relevant weekly income	25 – 75% of relevant weekly income
<b>Fine Band B</b>	100% of relevant weekly income	75 – 125% of relevant weekly income
<b>Fine Band C</b>	150% of relevant weekly income	125 – 175% of relevant weekly income
<b>Fine Band D</b>	250% of relevant weekly income	200 – 300% of relevant weekly income
<b>Fine Band E</b>	400% of relevant weekly income	300 – 500% of relevant weekly income
<b>Fine Band F</b>	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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## Sale of knives etc to persons under eighteen - Organisations

Criminal Justice Act 1988, s141A

Effective from: TBC

Triable only summarily

Maximum: unlimited fine

Offence range: £500 fine - £1,000,000 fine

Use this guideline when the offender is an organisation. If the offender is an individual please refer to the **Sale of knives etc to persons under eighteen – individuals** guideline.

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.

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

### Step 1 – Determining the offence category

The court should determine the offender’s culpability and the harm caused with reference **only** to the factors below.

<b>CULPABILITY</b>
<p><b>High</b></p> <ul style="list-style-type: none"> <li>• Offender failed to put in place standard measures to prevent underage sales -                             <ul style="list-style-type: none"> <li>○ For in store sales standard measures would normally include: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, maintaining refusals log, till prompts</li> <li>○ For online sales standard measures would normally include: identifying restricted products, use of a reliable online age verification tool and/or collect in-store policy with checks on collection.</li> </ul> </li> <li>• Offender failed to act on concerns raised by employees or others</li> <li>• Falsification of documents</li> <li>• Offender failed to make appropriate changes following advice and/or prior incident(s)</li> </ul>
<p><b>Medium</b></p> <ul style="list-style-type: none"> <li>• Systems were in place but these were not sufficiently adhered to or implemented</li> <li>• Other cases that fall between categories A or C because:                             <ul style="list-style-type: none"> <li>○ Factors are present in A and C which balance each other out and/or</li> <li>○ The offender’s culpability falls between the factors as described in A and C</li> </ul> </li> </ul>
<p><b>Low</b></p> <ul style="list-style-type: none"> <li>• Offender made significant efforts to prevent underage sales falling short of a defence</li> </ul>

**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 same level of harm is risked by any such sale to a person aged under 18.

**Step 2 – Starting point and category range**

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

**Very large organisation**

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

**Large organisation - Turnover or equivalent: £50 million and over**

Culpability		
A	B	C
Starting point £400,000	Starting point £200,000	Starting point £50,000
Category range £200,000 – £1,000,000	Category range £100,000 – £400,000	Category range £12,000 – £100,000

**Medium organisation - Turnover or equivalent: between £10 million and £50 million**

Culpability		
A	B	C
Starting point £200,000	Starting point £100,000	Starting point £20,000
Category range £100,000 – £400,000	Category range £50,000 – £200,000	Category range £5,000 – £50,000

**Small organisation - Turnover or equivalent: between £2 million and £10 million**

Culpability		
A	B	C
Starting point £50,000	Starting point £25,000	Starting point £6,000
Category range £25,000 – £100,000	Category range £12,000 – £50,000	Category range £3,000 – £12,000

**Micro organisation - Turnover or equivalent: not more than £2 million**

Culpability		
A	B	C
Starting point £12,500	Starting point £6,000	Starting point £1,500
Category range £6,000 – £25,000	Category range £3,000 – £12,000	Category range £500 – £3,000

The court should then consider adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

#### **Factors increasing seriousness**

##### **Statutory aggravating factors:**

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

##### **Other aggravating factors:**

- Offence was a consequence of cost-cutting
- Obstruction of justice
- Failure to take up offers of training or other assistance from Trading Standards

##### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Evidence of steps taken voluntarily to prevent re-occurrence
- High level of co-operation with the investigation and acceptance of responsibility
- Good record of compliance with Trading Standards

<b>Obtaining financial information [Dropdown box]</b>
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### **Step 3 – Adjustment of fine**

Having arrived at a fine level, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine including outside the category range. The court should 'step back' and consider the overall effect of its orders. The fine ought to achieve:

- the removal of all gain
- appropriate additional punishment, and
- deterrence

The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the size and financial position of the offending organisation and the seriousness of the offence.

The fine must be substantial enough to have a real economic impact which will bring home to both management and shareholders the need to operate within the law. Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

In considering the ability of the offending organisation to pay any financial penalty the court can take into account the power to allow time for payment or to order that the amount be paid in instalments.

The court should consider whether the level of fine would otherwise cause unacceptable harm to third parties.

Below is a **non-exhaustive** list of additional factual elements for the court to consider.

The court should identify whether any combination of these, or other relevant factors, should result in a proportionate increase or reduction in the level of fine.

#### **Factors to consider in adjusting the level of fine**

- Fine fulfils the objectives of punishment, deterrence and removal of gain
- The value, worth or available means of the offender
- Impact of fine on offender's ability to implement effective compliance programmes
- Impact of fine on employment of staff, service users, customers and local economy (but not shareholders)
- Impact of fine on performance of public or charitable function

#### **Step 4 – Consider any factors which indicate a reduction, such as assistance to the prosecution**

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

#### **Step 5 – Reduction for guilty pleas**

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

#### **Step 6 – Totality principle**

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

#### **Step 7 – Compensation and ancillary orders**

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

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

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

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

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

## Step 8 – Reasons

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

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## Sale of knives etc to persons under eighteen - Individuals

Criminal Justice Act 1988, s141A

Effective from: TBC

Triable only summarily

Maximum: 6 months' custody

Offence range: Fine – community order

Use this guideline when the offender is an individual. If the offender is an individual please refer to the **Sale of knives etc to persons under eighteen – organisations** guideline.

**Note:** 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

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

### Step 1 – Determining the offence category

The court should determine the offender’s culpability and the harm caused with reference **only** to the factors below.

<b>CULPABILITY</b>
<p><b>High</b></p> <ul style="list-style-type: none"> <li>• Offender in a management position failed to put in place standard measures to prevent underage sales -                             <ul style="list-style-type: none"> <li>○ For in-store sales standard measures would normally include: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, maintaining refusals log, till prompts</li> <li>○ For online sales standard measures would normally include: identifying restricted products, use of a reliable online age verification tool and/or collect in-store policy with checks on collection.</li> </ul> </li> <li>• Offender in a management position failed to act on concerns raised by employees or others</li> <li>• Offender (whether or not in a management position) falsified documents</li> <li>• Offender (whether or not in a management position) failed to make appropriate changes following advice and/or prior incident(s)</li> <li>• Offender (whether or not in a management position) disregarded clear measures put in place to prevent underage sales</li> </ul>
<p><b>Medium</b></p> <ul style="list-style-type: none"> <li>• Offender in a management position put in place standard measures but these were not sufficiently adhered to or implemented</li> <li>• Offender (whether or not in a management position) failed to fully implement measures put in place to prevent underage sales</li> </ul>

- Other cases that fall between categories A or C because:
  - Factors are present in A and C which balance each other out and/or
  - The offender’s culpability falls between the factors as described in A and C

**Low**

- Offender (whether or not in a management position) made significant efforts to prevent underage sales falling short of a defence

**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.

**Step 2 – Starting point and category range**

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

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

The court should then consider adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

**Factors increasing seriousness**

**Statutory aggravating factors:**

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

**Other aggravating factors:**

- Offence was a consequence of cost-cutting
- Obstruction of justice

- Failure to take up offers of training or other assistance from Trading Standards

#### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions or no relevant/recent convictions
- Evidence of steps taken voluntarily to prevent re-occurrence
- High level of co-operation with the investigation and acceptance of responsibility
- Good record of compliance with Trading Standards
- 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

### **Step 3 – Adjustment of fine**

Where the sentence is or includes a fine, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine including outside the category range. The court should ‘step back’ and consider the overall effect of its orders. The fine ought to achieve:

- the removal of all gain
- appropriate additional punishment, and
- deterrence

The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the financial position of the offender and the seriousness of the offence.

Where the offender is operating as a business, the fine must be substantial enough to have a real economic impact which emphasises the need to operate within the law. Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

In considering the ability of the offender to pay any financial penalty the court can take into account the power to allow time for payment or to order that the amount be paid in instalments.

The court should consider whether the level of fine would otherwise cause unacceptable harm to third parties.

Below is a **non-exhaustive** list of additional factual elements for the court to consider.

The court should identify whether any combination of these, or other relevant factors, should result in a proportionate increase or reduction in the level of fine.

#### **Factors to consider in adjusting the level of fine**

- Fine fulfils the objectives of punishment, deterrence and removal of gain
- The value, worth or available means of the offender
- Impact of fine on offender’s ability to implement effective compliance programmes
- Impact of fine on employment of staff, service users, customers and local economy (but not shareholders/ partners)

- Impact of fine on performance of public or charitable function

#### **Step 4 – Consider any factors which indicate a reduction, such as assistance to the prosecution**

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

#### **Step 5 – Reduction for guilty pleas**

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

#### **Step 6 – Totality principle**

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

#### **Step 7 – Compensation and ancillary orders**

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

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

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

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

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

#### **Step 8 – Reasons**

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

**Equivalent levels in other guidelines****Health & Safety**

Culp: High = fell far short of standard

Med = systems in place but not sufficiently followed

Low = did not fall far short of the appropriate standard

Harm: 3 = low likelihood of death OR medium likelihood of serious injury

**Food Safety**

Culp: High = fell far short of standard

Med = systems in place but not sufficiently implemented

Low = did not fall far short of the appropriate standard

Harm: 2 = med risk of some harm OR low risk or serious harm

**Environmental**

Culp: High = reckless failure to put in place and enforce systems

Med = negligent failure to put in place and enforce systems

Low = offence committed with little or no fault

Harm: 2 = risk of high harm

**Large organisation - Turnover or equivalent: £50 million and over**

Guideline	High	Med	Low
Health & Safety	£540,000 £250,000 – £1,450,000	£300,000 £130,000 – £750,000	£35,000 £10,000 – £140,000
Food Safety	£230,000 £90,000 – £600,000	£90,000 £35,000 – £220,000	£18,000 £9,000 – £50,000
Environmental	£250,000 £100,000 – £650,000	£140,000 £60,000 – £350,000	£25,000 £14,000 – £70,000

**Medium organisation - Turnover or equivalent: between £10 million and £50 million**

Guideline	High	Med	Low
Health & Safety	£210,000 £100,000 – £550,000	£100,000 £50,000 – £300,000	£14,000 £3,000 - £60,000
Food Safety	£90,000 £35,000 – £220,000	£35,000 £14,000 – £90,000	£7,000 £3,500 – £18,000
Environmental	£100,000 £40,000 – £250,000	£55,000 £25,000 – £140,000	£10,000 £5,500 – £25,000

**Small organisation - Turnover or equivalent: between £2 million and £10 million**

Guideline	High	Med	Low
Health & Safety	£54,000 £25,000 – £210,000	£24,000 £12,000 – £100,000	£3,000 £700 – £14,000
Food Safety	£24,000 £8,000 – £90,000	£8,000 £3,000 – £35,000	£1,400 £700 – £7,000
Environmental	£24,000 £10,000 – £100,000	£13,000 £6,000 – £55,000	£2,500 £1,000 – £10,000

**Micro organisation - Turnover or equivalent: not more than £2 million**

Guideline	High	Med	Low
Health & Safety	£30,000 £12,000 – £54,000	£14,000 £6,000 – £25,000	£1,200 £200 - £7,000
Food Safety	£12,000 £4,000 – £22,000	£4,000 £1,400 – £8,000	£500 £200 – £1,400
Environmental	£12,000 £1,500 – £24,000	£6,500 £1,000 – £13,000	£1,000 £350 – £2,400

**Individuals**

Guideline	High	Med	Low
Health & Safety	Band F fine  Band E fine – 26 weeks' custody	Band E fine  Band D fine or low level community order – Band E fine	Band C fine  Band B fine – Band C fine
Food Safety	Band E fine  Band D fine – 26 weeks' custody	Band D fine  Band C fine – Band E fine	Band B fine  Band A fine – Band B fine
Environmental	Band F fine  Band E fine or medium level community order – 26 weeks' custody	Band E fine  Band D fine or low level community order – Band E fine	Band C fine  Band B fine – Band C fine

**ANALYSIS AND RESEARCH SUBGROUP MEETING  
26 JANUARY 2022  
MINUTES**

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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 31<sup>st</sup> 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 3<sup>rd</sup> October 2022 and 31<sup>st</sup> 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).***