

Sentencing Council meeting:
Paper number:

Lead Council member:
Lead official:

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SC(22)MAY05 – Blackmail and Threats to disclose
TBC
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1 ISSUE

1.1 This is the first meeting to discuss the scope of the project. It is proposed to develop new guidelines for the offence of blackmail and the new threats to disclose private sexual images. Potentially the new offence of non fatal strangulation could also be included.

1.2 There are currently four Council meetings scheduled to discuss the draft guidelines, with a consultation to run around the end of 2022. This timetable is indicative only however at this early stage of the project.

2 RECOMMENDATION

2.1 At today's meeting the Council are asked:

- To agree the scope of the project

3 CONSIDERATION

Blackmail

3.1 There currently is no guideline for this offence, and it has been on the Council's list of priority offences to be worked once time allows. Due to a number of reasons including workload within the office, this offence has been picked up ahead of immigration. Immigration offences will then be the next guideline to be picked up once an official has capacity.

3.2 The offence of blackmail is committed when a person with a view to gain for themselves or another or intending to cause loss to another makes an unwarranted demand with menaces. ([Section 21 of the 1968 Act](#)). It is a serious offence, indictable only, with a maximum penalty of 14 years imprisonment. In 2020, around 110 offenders were sentenced for this offence with 65 per cent sentenced to immediate custody. However, it is possible that the figures for 2020 may have been impacted by the COVID-19 pandemic: around 130 adult offenders were sentenced in 2019 with 77 per cent being sentenced to immediate custody and around 160 were sentenced in 2018, of which 79 per cent received an immediate custodial sentence. Over the last decade the average custodial sentence length has

remained stable at around 2 years 10 months (post guilty plea).

Question 1: Is the Council content to start work on a new guideline for blackmail offences?

Threats to disclose private sexual photographs and films with intent to cause distress

3.3 The Council may recall that a guideline for disclosing private sexual images came into force in October 2018. Last year as part of the Domestic Abuse Act 2021 the offence of disclosing private images was expanded to cover threats to disclose private sexual photographs and films with intent to cause distress, with commencement in June 2021 (section 33 of the Criminal Justice and Courts Act 2015). This is an either way offence with a maximum penalty of two years custody. As it has now been nearly a year since the legislation came into force it is proposed to develop a draft guideline, or possibly amend the existing guideline to cater for threats as part of this project alongside blackmail. It is suggested that there is some synergy between the two offences.

3.4 Unfortunately, the Court Proceedings Database (CPD) does not record data separately for disclosing and threats to disclose private sexual images, which means we cannot distinguish volumes for the two versions of the offence from one another. The CPS instead have been asked for any data they hold on prosecutions of threats to disclose cases. It is hoped that we may have some data from the CPS in time for the Council meeting.

3.5 As noted above, it is suggested that there is some synergy between the two offences, so it seems practical to incorporate this work alongside a new blackmail guideline. It is possible that the existing 2018 guideline could be amended to incorporate threats to disclose images, rather than needing a new guideline, so may be a fairly discrete piece of work. It is also suggested that the Council's decision to start work on this will be welcomed, as it is nearly a year since the legislation commenced.

Question 2: For the reasons noted above, is the Council content to include the new threats to disclose private sexual images work within the scope of the project?

Strangulation or suffocation offence

3.6 In addition, the Domestic Abuse Act inserted a new offence of strangulation or suffocation in The Serious Crime Act 2015, section 75A. This is an either way offence with a maximum penalty of five years custody. This is due to be commenced at the end of this month. This clearly is a very new offence and so we do not know what the likely volumes of cases sentenced will be. The Council may prefer to wait and see how the sentencing of this offence develops, and revisit developing a draft guideline at a later date. There is less of a synergy with this offence and the other two offences proposed as part of this project. Or the Council may feel that it is appropriate to include within this project- the Council has

developed guidelines for completely new offences before on occasion. Moreover, there may be read across with assault offences, to provide a basis for developing a guideline, so it may not be a particularly large project and wouldn't significantly lengthen the timescales involved. It again may be a practical way to incorporate work on a new offence within this project, and the Council will be seen to be responsive to new offences in starting work on this new guideline.

Question 3: Does the Council wish to include the new strangulation or suffocation offence within this project? Or postpone to a later date once we have more information on volumes of cases?

3.7 At the next meeting in July a draft blackmail guideline will be prepared for discussion. There is no space on the very full June agenda for this guideline and the gap will allow time for transcripts of sentenced cases to be ordered and considered to assist in the preparation of the draft guideline.

4 EQUALITIES

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

5 IMPACT AND RISKS

5.1 It is anticipated that the development of these new guidelines will be welcomed by stakeholders. Blackmail is one of the few remaining serious offences without a guideline, so producing a guideline ends that gap. The new offences created by the Domestic Abuse Act have attracted a certain amount of attention and so producing guidelines for them will be welcomed by campaign groups in particular.

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