

Annex A: Key findings from the research

The structure/ stepped approach to sentencing in adult guidelines

The key findings on this issue were as follows:

CCSS data analysis found, as expected, that the level of seriousness of the offence, as identified by the judge completing the CCSS survey form (from the most serious to the least serious), had the largest effect on sentencing outcomes for some offences included in the study: there was a strong and largely consistent relationship between the seriousness of the offence and both the use of immediate custody and the length of custodial sentences for adult robbery cases and three of the four theft offences (theft from the person, theft from a shop or stall, theft in breach of trust). For robbery committed by children and young people, however, offence seriousness was not a significant factor in predicting immediate custody (it was not possible to analyse the impact of offence seriousness for harassment and the fourth theft offence, receiving stolen goods).

Upward factors¹ generally had a stronger effect on outcomes than downward factors, except for the offence of theft from a shop or stall, where certain downward factors were stronger predictors (for example, 'addressing needs/ addiction', 'currently in work/ training'²). However, because the data were collected at a single timepoint, the analysis is unable to account for the order in which judges considered the factors, i.e. the analysis was not able to explore whether, and to what extent, judges completed the steps in the order listed in the sentencing guidelines. Therefore, even though downward factors in general exerted the smallest effect on sentencing outcomes, this does not mean mitigation was considered last³, and downward factors may be considered by sentencers at any stage during sentencing.

Text analysis⁴ also suggests that the text contained in offence-specific guidelines places more emphasis on upward factors than downward factors, with a greater percentage of each guideline devoted to describing upward, as opposed to downward factors.

¹ Upward factors increase a sentence and downward factors decrease a sentence.

² This terminology was used on the CCSS forms.

³ There are also likely to be factors outside of those measured that can further explain sentencing outcomes. Even when the highest number of different upward and downward factors were considered, they only explained about 50 per cent of the variance in the length of sentence, leaving the remaining 50 per cent unexplained.

⁴ Text analysis examined the total number of words in each of the sampled guidelines, what percentage of these words are devoted to describing upward and downward factors, and the most frequently used words or phrases.

CS partners were generally concerned about the stepped approach in offence-specific guidelines, arguing that mitigating factors might not have a sufficient impact on sentencing outcomes because they are considered only at Step 2. In their view, the insufficient consideration of mitigating factors might have a bigger impact on disabled offenders, offenders from ethnic minority groups, and offenders from deprived backgrounds, because compared to other offenders, it can be even harder for these groups to evidence and advocate mitigation at court. Defence lawyers also felt that mitigating factors have very limited impact on sentencing outcomes, and that this might impact offenders from deprived backgrounds more.

CS partners asked whether mitigating factors could come at an earlier stage. Some sentencers agreed with this, though almost all were against it (mainly citing that consistency is achieved by firstly basing the sentence on the seriousness of the crime). Sentencers noted that personal mitigation was always 'at the back of their mind'.

An alternative suggestion was discussed in co-production meetings: adding another step to the current approach to require sentencers to review the sentence they arrived at with mitigating factors and the offender's personal circumstances in mind.

Defence lawyers and CS partners generally agreed this is a better approach: it allows the sentencer to reflect on the sentence at the final stage and see the offender as a 'person' and an 'individual'. Most sentencers supported this suggestion, which would bring sentencing for adults more into line with that in the youth court.

Nevertheless, there were minor concerns about resources. Some sentencers argued that the adult court might not have the resources for this approach in the same way as the youth court does, due to not having pre-sentence reports (PSRs) for all adult offenders, for instance.

Factors within the guidelines

The research highlighted a number of issues related to factors included within the guidelines: either factors that already exist or factors that could be considered for inclusion.

The UH report categorises guideline factors as either 'generic' factors (those that appear across most guidelines, for example 'remorse' or 'previous convictions'), and offence-specific factors (those that are specific to one offence or certain types of offence covered by the guidelines included in this study). The following sections discuss generic factors first, followed by offence-specific factors.

Because the quantitative data analysis used the CCSS dataset, which was based on the way factors were worded seven years ago, whereas other aspects of the research reflect the wording of current factors, they are often combined and referred to as 'upward' factors or 'downward' factors.

Generic upward factors

These are: group or gang membership⁵, failure to comply with current court orders, offence committed on bail or offence committed on licence, and previous convictions.

Group or gang membership

Sentencers, defence lawyers and CS partners all agreed that the word 'gang' indicates too many presumptions and biases, and 'gang membership' is more likely to affect young offenders. CS partners and defence lawyers also argued that this expression might lead to racial disparity, although not all sentencers agreed.

While most co-production partners welcomed the Council's replacement of 'gang' by 'group' in most guidelines, some sentencers felt the scope of 'group' is too broad, and this might affect young offenders more than other groups because they 'just hang out together' (McCulloch et al., 2006). CS partners argued that 'group membership' alone should not be seen as a factor that might increase a sentence, because a person (especially young people and women) might be coerced, manipulated or even groomed to join a group. They felt that their vulnerability should be taken into account instead of being used against them.

However, text analysis showed that none of the sampled guidelines treat group membership *per se* as a factor which could increase sentences. The expression used relates to a role where 'offending is part of a group activity'⁶ or an 'offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence)⁷. Also, where relevant, the expanded explanation of 'offence committed as a group' makes it clear that the mere membership of the group should not be used to increase the sentence, but where the **offence was committed as part**⁸ of a group it will normally make it more serious.

⁵ The text analysis also found use of the expression 'a leading role...' or 'a significant role'... 'where offending is part of a group activity'.

⁶ Robbery and theft guidelines.

⁷ Harassment and stalking guideline.

⁸ Emphasis in original text.

In addition, CCSS analysis indicated that there was very little association between this factor and the likelihood of receiving a custodial sentence or a longer custodial sentence: there was an association in only two offences examined, with higher odds found for receiving immediate custody for offences of receiving stolen goods, and a greater likelihood of receiving a longer custodial sentence in adult robbery offences.

Failure to comply with current court orders/ offence committed on bail/ offence committed on licence

Legal professionals and CS partners had quite different perceptions on these factors. CS partners were concerned judges might be reluctant to take offenders' personal difficulties into account and they may be penalised for non-compliance that is out of their control. However, sentencers argued the judiciary generally adopts a cautious approach to non-compliance, noting it is more about checking whether the current court order is appropriate (this was endorsed by defence lawyers).

CCSS analysis found that the relevant factors on the CCSS forms were associated with both receiving immediate custody and a longer sentence for adult offenders sentenced to robbery offences. For those sentenced for theft, the relevant factors were associated with a greater likelihood of custody for all four theft offences, but there was no association with the length of custody. For harassment offences, there was an association with receiving custody (although this was not as strong as for theft or adult robbery) and with receiving *shorter* sentences.

The factor was not associated with either outcome for robbery offences committed by children and young people.

Previous convictions

CS partners stressed the impact of 'addiction' and the 'age-crime curve'⁹ on re-offending; they felt that sentencers should be reminded, potentially in expanded explanations, that there might be complicated reasons underlying persistent behaviour. In contrast, defence lawyers and sentencers were more concerned with systemic problems in the criminal justice system that might lead to some groups having more previous convictions (e.g. perceived police bias in the application of diversion). Therefore, even if application of 'previous convictions' has a discriminating effect in sentencing, this is not caused by sentencing

⁹ The 'age-crime curve' refers to the phenomenon that criminal behaviour increases in adolescence and decreases in adulthood.

guidelines *per se*. Text analysis showed that the Council had already addressed some of the concerns expressed by co-production partners in the relevant expanded explanation.

CCSS analysis indicated that the presence of previous convictions predicted both a sentence of immediate custody being handed down, and a longer custodial sentence, for adult robbery offences. For robbery offences committed by children and young people, there was a strong association between previous convictions and receipt of custody (especially for offenders with four or more convictions), but only longer custody for those with four to nine previous convictions.

For all theft offences there was a clear association between previous convictions and the likelihood of receiving custody, but a more inconsistent association with sentence length (in some instances there was no association, while in others it was associated with a shorter sentence).

Finally, there was no association between these factors and the harassment offences included in this study.

Generic downward factors

These are: remorse, determination and/ or demonstration of steps taken to address addiction or offending behaviour, physical/ mental illness, mental disorder and learning disability, difficult/ deprived background, and good character and/ or exemplary conduct.

Remorse

There was consensus among the co-production partners that 'remorse' might lead to disparity in sentencing, but they offered different explanations as to why. CS partners and sentencers stressed cultural differences, arguing that offenders from certain ethnic minority groups might find the expression of remorse challenging due to their cultural beliefs. Lack of maturity and the peer pressure of 'staying tough' were also seen to be highly relevant for young offenders. Defence lawyers stressed the impact of learning disabilities and communication difficulties. According to them, it is harder for less articulate offenders to appear remorseful in front of probation officers and sentencers.

CCSS analysis showed that remorse did have an effect on sentences: there were lower odds of receiving immediate custody in adult robbery cases, all theft offences and harassment offences, but not for robbery offences committed by children and young people.

For only one offence – adult robbery – was the factor of remorse found to be associated with sentence length (shorter sentences).

Determination and/ or demonstration of steps taken to address addiction or offending behaviour

CCSS analysis showed this factor was associated with mitigating against immediate custody and receipt of a shorter custodial sentence for adult robbery offences (although the association with length of sentence was relatively small). It was also associated with a lower likelihood of immediate custody for all theft offences and harassment offences, but not with length of sentence. No association was found for robbery offences involving children and young people and either outcome.

Defence lawyers and sentencers felt this factor may in practice lead to disparity between different groups. Some sentencers argued that offenders from ethnic minority backgrounds are more likely to demonstrate determination to address offending behaviour because of a strong family culture/ domestic support. White offenders, especially those from deprived backgrounds, might not have such strong support, which might mean the disparity may affect them more. Defence lawyers generally endorsed this viewpoint.

Other sentencers argued it is not racial disparity that is relevant here, but class inequality: wealthy defendants may be able to more easily access addiction treatment services than those from less privileged backgrounds. Defence lawyers and CS partners agreed, with the latter being concerned that sentencers might not consider offenders' efforts to address addiction or offending behaviour when they tried to seek support, but appointments have been delayed by the system. Some CS partners also argued that offenders (in particular women) with mental health issues may rely on drugs and alcohol for self-medication meaning it might be difficult for them to demonstrate determination to address addiction.

Physical/ mental illness; mental disorder and learning disability

CCSS analysis indicated that the relevant factors¹⁰ mitigated against receiving custody for all adult offences in the study (robbery, theft and harassment)¹¹. They were only associated

¹⁰ Factors relating to physical and mental illness varied between the different guidelines/ CCSS forms and for harassment had to be combined due to low sample sizes.

¹¹ Due to lack of data, regression analysis was not possible on cases involving robbery offences committed by children and young people

with shorter prison sentences for adult robbery offences (the association was a relatively small one).

Co-production partners flagged the potential for these factors to lead to disparities in sentencing between different groups. Sentencers, lawyers and CS partners all agreed that offenders from ethnic minority groups are less likely to disclose mental disorder and learning disability, due to cultural differences and the fear of social stigma. Some sentencers reported that they observed this tendency more frequently among people from African Caribbean and Asian communities. However, others argued that lack of mental health support is becoming a general issue for all offenders, including those from White middle-class backgrounds: they noted that how to evidence mental disorder and learning disability is becoming a real challenge for all social groups.

Difficult/ deprived background

Co-production partners felt that offenders from deprived backgrounds were 'lower hanging fruits' for the criminal justice system and were at a disadvantage because they are more likely to have aggravating boxes ticked and mitigating boxes unticked (e.g. an offender with fewer financial resources might find it harder to devote time to charity work and so be less able to draw on mitigation relating to good character).

After accounting for upward and downward factors, 'difficult/ deprived background' was not associated with the length of sentence nor with a lower likelihood of receiving a custodial sentence, for adult robbery, any type of theft, or robbery committed by children and young people.

It was not possible to conduct extensive analysis to explore how different characteristics intersect in respect of this factor. Therefore, intersectionality was only analysed for adult robbery offences because this was the largest sample: 'difficult/ deprived background' was more frequently ticked on the CCSS form for female offenders compared to male offenders, as well as White offenders compared to Black and Asian ethnic groups.

However, there was no difference in sentencing outcomes between men and women relative to their socio-economic background or for different ethnic groups.

Good character and/ or exemplary conduct

Co-production partners commented that the factor 'good character and/ or exemplary conduct'. is more likely to be applied to wealthier defendants, because the example given in the guideline is 'charitable work'.

For harassment offences, CCSS analysis found that 'good character' was associated with lower odds of immediate custody. Likewise, 'offence out of character' (the factor that was on the CCSS form) was significant for adult robbery offences.

Offence-specific guideline factors

The study also explored factors that were specific to the guidelines selected for this work. The key findings are below. Because the recommendations are often relevant to more than one guideline, these are presented in one section from paragraph 4.63 onwards.

Adult Robbery

Almost all upward factors (including 'targeting vulnerable victims', 'use of weapon', 'significant degree of force or violence', 'wearing of a disguise' and 'high value of items taken') were significant predictors of receiving immediate custody in adult offences (the exception was the factor of 'group or gang membership'). Similarly, almost all upward factors were associated with longer custodial sentences, except 'offender under the influence of alcohol or drugs'. The strongest factors in predicting immediate custody and the length of sentence were 'offender was on bail or licence', 'use of weapon' and 'high value of items taken'.

Generic downward factors were closely associated with sentencing outcomes in adult robbery cases. Factors of 'age', 'genuine remorse', 'offender addressing needs or addiction' and 'co-operation with authorities' were associated with shorter custodial sentences. Among them, 'age' had the strongest predictive power. In terms of reducing the odds of immediate custody, 'physical/ mental illness; mental disorder and learning disability' was the most significant factor, followed by 'offender can/ is addressing needs/ addiction' together with 'offence out of character' and 'unplanned or opportunist crime'. However, it is worth noting that 'offence out of character' is no longer included as a downward factor in the new guidelines.

For 'difficult/ deprived background', while adult offenders seem to serve shorter sentences and were less likely to get immediate custody, after accounting for other factors, this was no longer associated with the length of sentence nor with a lower likelihood of receiving a

custodial sentence. It was not possible to analyse 'in work or training' or 'loss of job or reputation' due to few cases having these factors ticked.

Robbery committed by children and young people

The only upward factors that were significantly associated with longer custodial sentences for these offences were: 'use of weapon', 'degree of force of violence', and 'wearing of a disguise'. 'Targeting vulnerable victim' and 'more than one victim' were also associated with a greater likelihood of receiving immediate custody.

Text analysis explored whether the word 'hood' is more easily associated with young people from certain subgroup cultures such as 'rap gangs'¹². Some sentencers agreed this might be the case, but there were also opposing voices.¹³

Co-production partners also raised concerns about the 'use of weapon' factor. Both CS partners and defence lawyers argued this factor affects young people from ethnic minority backgrounds more than others, because they are often labelled as 'violent' and 'gang members'. However, although CCSS analysis for both adult robbery offences and robbery offences committed by children and young people indicated that 'use of weapon' is a strong factor in predicting the length of custody, this factor was found to have slightly *lower* importance here compared to adult robbery cases. This contradicts the perceptions of the co-production partners.

Fewer downward factors were significant. Only 'unplanned or opportunist crime' and 'currently in, or prospects of work/ training' were associated with a shorter custodial sentence, while 'responds well to current order' was significant in reducing the odds of receiving immediate custody¹⁴.

Theft offences

'Pre-planning or premeditation', 'high value of the property', 'high level of gain', 'targeting of vulnerable victim', and 'victim particularly vulnerable' were generally associated with a higher chance of receiving a custodial sentence for all theft offences (exceptions to this were: 'targeting of vulnerable victim' and receiving stolen goods offences; 'pre-planning and pre-meditation', 'victim particularly vulnerable', and 'high level of gain' for theft from a shop or

¹² Maxwell (1991).

¹³ One sentencer argued that, *'it is not the clothes that matter here, it is whether the defendant used the clothes as disguise'*.

¹⁴ However, this downward factor is excluded from the new guideline.

stall, and 'high level of gain' for theft from the person). 'Pre-planning or premeditation' and 'high value of the property' were associated with longer prison sentences on all theft offences, while 'high level of gain' was for all but 'theft from a shop or stall'.

No downward factors that appeared on the theft from the person or theft from a shop or stall CCSS dataset (which contains more factors than in the guideline), were important for predicting the length of custody. The only two cases where downward factors were significant for the length of the sentence were 'currently in, or prospects of work/ training', which predicted the length of sentence for receiving stolen goods, and 'loss of job or reputation', which predicted the length of immediate custody for theft in breach of trust. The factor 'currently in, or prospects of work/ training' was also a significant predictor of immediate custody for *all* theft offences.

Harassment offences

'Failure to comply with a court order' and 'offence committed under the influence of alcohol/ drugs' were associated with a longer custodial sentence, while 'victim particularly vulnerable', 'failure to comply with current court orders', and 'previous violence/ threats' were associated with a higher likelihood of immediate custody. All these factors had a similar strength of association. The factors related to offences being 'motivated by/ demonstrating hostility' on the basis on race/ religion, disability, sexual orientation or transgender identity were rarely ticked by sentencers in the CCSS dataset and therefore could not be included in quantitative analysis.

No downward factors were significant in predicting the length of custody for harassment. However, three generic downward factors were associated with lower odds of immediate custody, namely, 'genuine remorse', 'good character', and 'addressing needs or addiction'.

Sex/ gender¹⁵

Co-production partners expressed different opinions on gender and sentencing disparity. Some sentencers argued that women tend to be treated more favourably in sentencing. However, CS partners did not believe this because they think female offenders are often blamed for 'double deviance' (Gelsthorpe and Sharpe, 2015)¹⁶. For CS partners, *even if* female offenders receive more lenient sentences compared to males, it is not necessarily because of their gender, but because they are less dangerous offenders and often commit

¹⁵ In the Equality Act 2010, the term used is sex, but in the CCSS dataset, gender is used.

¹⁶ 'Double deviance' means that female offenders are perceived to be twice as deviant as male offenders, once for breaking the law, and once for deviating from traditional gender norms about how a woman should act.

less serious crimes. Moreover, their caring roles and special vulnerability¹⁷ deserve recognition in sentencing. This is a matter of 'equity', not 'inequality'.

The difference of opinions was most evident in discussions about 'being a sole or primary carer for dependant relatives': sentencers tended to believe this is a 'striking' downward factor that often helps offenders (often women, especially single mothers) 'avoid' a prison sentence. CS partners were instead concerned that this downward factor is not applied consistently in practice, and sentencers might give a single mother a harsher sentence, because 'she should have known better'. In contrast, judges and magistrates believed that the difficulty facing single mothers is well recognised, and they would never punish a mother for this reason.

Sentencers' concern was more that because the factor is perceived to be related to women and mothers, other carers might be overlooked in practice (e.g. some argued that in Asian communities, young men are often responsible for taking care of the extended family, something that is not well understood in the British context. The same may apply to other ethnic minority groups where the family structure is different from the European type).

Defence lawyers also argued that in practice, the relationship between carers and dependents can be complicated: a child could be the carer for other children because parents are absent, middle-aged men might take care of older parents, young adults might care for grandparents, and relatives might care for other relatives. In their view, it is the less typical carers who are often being overlooked in sentencing.

CCSS analysis showed that after controlling for other factors, men were more likely to receive a custodial sentence for robbery (adult) and all theft offences. For robbery (adult) offences men also received longer custodial sentences.

In terms of carer status, after controlling for upward and downward factors, the size of the odds of immediate custody for carers was around 60 per cent lower than the odds for those without the carer status present for robbery (adult) offences, receiving stolen goods, and theft from a person. It was one half the size for theft in breach of trust. The 'main carer/ has responsibility' factor was associated with a shorter custodial sentence for robbery (adult), but not for any type of theft. This finding applied regardless of gender. Carer status for harassment and robbery committed by children and young people was not analysed because the number of offenders with that factor ticked was too low.

¹⁷ For example, being exploited by male co-offenders, etc.

A small number of co-production partners flagged the fact that pregnancy and maternity pose very specific challenges for the criminal justice system.

Race/ ethnicity¹⁸

CS partners discussed how factors such as gang membership, carer status, addressing addiction or offending behaviour, expression of remorse, and mental disorder and learning disability can have a disparate effect on offenders from ethnic minorities. They did not mention guilty plea until prompted that existing evidence suggests that defendants from ethnic minority groups are less likely to plead guilty. Sentencers did not rebut this, but believed that when people from ethnic minority groups do enter a plea, the guilty plea reduction applies to them equally. Most sentencers (supported by defence lawyers) think that it is instead offenders who have no legal representation who are adversely affected. Regarding whether those from ethnic minority groups who have pleaded guilty late are less likely to receive a higher reduction, sentencers said they will evaluate the reason for this, and if excusable, they will take this into account and allow a larger reduction.

CCSS analysis indicated that, after controlling for all relevant factors, adult Black offenders convicted of robbery offences were less likely to receive a custodial sentence than White offenders. For the same offence, Asian ethnicity was associated with a shorter custodial sentence compared to White offenders. These findings were therefore not considered to be strong evidence of disparity as this was only present in one out of seven offences explored. The analysis also indicated that with regards to the disparate effect of upward and downward factors on different ethnic groups, unlike co-production partners' suggestions, the data did not provide evidence that any factor had a differential impact on sentencing outcomes of different ethnic groups.

Age

CS partners praised the guideline for Sentencing children and young people for considering the '*capability*' and the '*vulnerability*' of young offenders and the 'more individualistic approach' adopted by it. Some, however, felt it is too long/ not prescriptive enough, that its primary goal is not clear enough, and that it is not suitable for use in an open court where time is a concern. Children's welfare and the prevention of reoffending are emphasised, but no guidance is provided on how to prioritise when necessary.

¹⁸ Please note in the Equality Act 2010, the term used is race, but in the CCSS dataset, the term used is ethnicity.

The main concern related to the difference between 'emotional and developmental age' and 'chronological age'. Although sentencers argued that they are well aware of the differences, some CS partners were concerned that certain young offenders are treated as adults by criminal justice agencies because of their physical appearance ('adulthoodification').

Defence lawyers argued that young offenders who are 18 might not be mentally mature and might still face similar challenges as they did at 17 (arguing this is particularly acute for males, looked-after children, and those leaving care). They thought that removing the protective umbrella from these vulnerable young offenders at 18 is not a sensible approach. Sentencers argued that because age is still a downward factor for young adults, they can use discretionary power to reduce the sentence even if the offender is no longer covered by the overarching guideline.

Vulnerability was also discussed in the context of elderly offenders, with a few co-production partners mentioning that the vulnerability and special needs of elderly offenders should be considered more.

CCSS analysis did not find a strong relationship between age and sentencing outcomes. After controlling for relevant factors, including previous convictions, it was found that older age was significant for receiving custody in only two offences: older offenders were more likely to receive a custodial sentence for adult robbery offences and less likely to receive custody for theft from a shop or stall¹⁹. Older offenders however received longer sentences for robbery offences and all four theft offences.²⁰ The strength of the association was similar for all five offences.

Additionally, the analysis found that age as a downward factor is not used extensively for offenders older than 60. For offenders 60 years or older, in almost 40 per cent of the theft cases, 45 per cent of robbery cases, and 87 per cent of harassment cases, it was not applied.²¹

Dynamic spatiality

¹⁹ With each additional year of age, the odds of immediate custody for robbery are 1.04 times greater. With each additional year of age, the odds of immediate custody for theft from a shop or stall are 0.98 times lower.

²⁰ The impact of age on sentencing children and young people for robbery was not analysed because the age data was not available due to disclosure issues.

²¹ Note that 'age' was a mitigating factor on the CCSS forms for robbery and theft, on the assault form (which covered harassment offences), it was 'age and/ or lack of maturity'.

The research report defines this as: *“a way to characterise the frequent change in residential space of traveller groups that adopt nomadism or semi-nomadism as a lifestyle, specifically referring to the caravan dwelling households of gypsies and Irish travellers. It is used in this context to denote negation of a territorial conception of residence”*.

There was consensus between CS partners and sentencers that travellers (as a group with unique spatial needs) are an ignored group, and they tend to be disadvantaged in sentencing, which was endorsed by some defence lawyers.

It was felt that their unique needs can be met by taking it into account when ‘no shows’ at a hearing are flagged up as an upward factor. For example, an offender might not have turned up in court due to a need to shift their caravan at short notice, or because they didn’t receive the summons in the post due to frequent changes of location.

The broader work of the Sentencing Council

UH discussed broader aspects of the work of the Council in co-production meetings, namely: accessibility and usability of the sentencing guidelines and their impact on the process of sentencing; the guideline development process; and the achievement of EDI (Equality, Diversity and Inclusion) ambitions embedded in the strategic objectives of the Sentencing Council.

Sentencers said the switch to electronic copy makes the guidelines harder to use: not all information is visible at the same time, and multiple clicks or drop downs are necessary for seeing the content; some expanded explanations are quite long and UH cite research, some of which suggests that use of drop-downs may be problematic in terms of comprehension²²; and virtual trials are problematic as they require numerous ‘windows’ to be open on the screen.

The expanded explanations need to be both accessible and meaningful (sentencers need to have some awareness about the ‘lived experience’ that they try to capture and elicit): CS partners raised this and some sentencers concurred. Therefore, a better way to increase use of expanded explanations would be through ‘lived experience’ training delivered through guideline training. Sentencers also need to be able to effectively communicate and justify use of the guidelines/ expanded explanations with offenders.

²² *“The existing research is highly divided over whether hidden text and linked text might cause comprehension loss in online reading (Wei et al., 2005; Tseng, 2010; Fitzsimmons et al., 2014)”*.

There is a lack of familiarity with expanded explanations by sentencers and defence lawyers and with some guidelines. The general consensus was that there does not seem to be a need to refer to the expanded explanations, hence their resort to these is minimal to non-existent. Sentencers usually rely on the Probation Service to get information about personal mitigating factors, but they felt that the Service is not necessarily familiar with the sentencing guidelines and/ or expanded explanations.²³

Given that sometimes the representatives of CS organisations were not aware that the issues they are worried about are already addressed in sentencing guidelines/ expanded explanations, the same can be inferred about members of the public.

Several prompted and unprompted references to the Equal Treatment Bench Book (ETBB) were made by sentencers and sometimes by CS representatives. Several sentencers used it regularly, while also familiarising themselves with the contents of the full volume; other sentencers only used some sections of it, as and when the situation warranted; and others did not recall using it much at all. Although not all sentencers use the ETBB, those who have consulted it speak highly of its practicality and comprehensiveness on the subject of fair treatment and the need to avoid disparity amongst different individuals.

In terms of guideline development, CS partners were keen to understand the levers for this and the different stages, and there was a general appetite to get more involved in the development process. They were particularly interested in the guideline development stages of 'developing the guideline', 'monitoring and assessing the guideline', and 'feedback'. CS partners also felt EDI concerns were not manifested clearly as levers for guideline development, and there was a need to develop standards of evaluation for EDI in the development process. Partners wanted to know what criteria were used in guideline evaluation, and the standards used for assessing guideline effectiveness (generally and for EDI specifically).

Increased involvement in developing guidelines was desired by those who work in EDI areas with a specific focus, such as pregnancy and maternity. It was found that public consultations do not reach all of the CS organisations involved in the study. Lack of resources and disruption caused by the pandemic has disrupted CS organisations working in

²³ The Probation Service was not independently involved in this research, and therefore, the above comment needs to be understood as reported by the sentencers.

criminal justice issues, and therefore engagement with them on EDI issues in sentencing could be more proactive.

A number of organisations would welcome one-to-one engagement with the Sentencing Council in their work, in order that it better understands lived experience. Co-production partners felt the Council's strategic objectives will be best served by more direct engagement with EDI lived experience.

Some representatives of CS organisations said that they don't know (or believe) that judges actually follow the stepped approach in sentencing, which also suggests a lower understanding among the general public.