

Sale of knives etc to persons under 18: road testing summary

Introduction

In May 2020, the Council considered a submission on behalf of the London Borough of Barking and Dagenham for a sentencing guideline for selling knives to persons under the age of 18, and agreed to add this to the list of future guidelines. In March 2022, the Council agreed the content and signed off two guidelines for consultation, which ran from 1 June to 24 August 2022: one for the sale of knives by individuals; and one by organisations.

Methodology

Small-scale qualitative road testing of both guidelines¹ took place in June 2022 to ensure the wording is clear and to test how the new guidelines will work in practice. Ten magistrates were interviewed, with each sentencing three hypothetical scenarios: two to test the organisations guideline, one to test the individuals guideline. Particular attention was paid to issues Council had discussed, including: the introductory explanation² about the focus on small numbers of sales; the inclusion of only one level of harm; the proposed sentences and fines outlined in the sentencing tables³; and Step 3 – ‘Adjustment of fine’.

Summary of main points

1. Magistrates found the **introductory text** to be ‘*self-explanatory*’, agreeing **both guidelines** were generally ‘*clear*’ and ‘*easy to interpret*’.
2. There was a high level of consistency when determining **culpability** using both guidelines.
3. Magistrates generally agreed with the inclusion of only one level of **harm**.
4. There were some mixed views on the **sentencing tables**: some felt the starting points and ranges for larger organisations were about right but a little high for smaller organisations, and on the individuals guideline the ranges could be expanded.
5. There was some inconsistency when applying, or not, **Step 3 – Adjustment of fine** with a large/very large organisation, but greater consistency with a smaller organisation and an individual.

This paper discusses the results of the road testing on the organisations guideline, then the individual guideline, drawing comparisons across both where appropriate. Summary tables for each scenario are presented in Annex A.

¹ [Sale of knives etc to persons under 18: Consultation – Sentencing \(sentencingcouncil.org.uk\)](#)

² The introductory text states: “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 retailers *or those employed by retailers*. It does not apply to cases of a more serious nature such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children”. Text in italic was in the individuals guideline only.

³ For organisations, this covers fines from £500 for a micro-organisation through to £1,000,000+ for a very large organisation, maximum of an unlimited fine; for individuals, it covers discharge through to a MLCO/fines, maximum of six months’ custody.

Organisations guideline

Scenario 1: Online purchase

A 13-year-old test purchaser bought a three-piece knife set from a prominent on-line retailer XX Ltd (one of the largest exclusively online retailers in the UK).

Trading Standards had warned XX Ltd in advance that test purchases would be taking place.

XX Ltd acknowledged that it had specifically considered the risk of knives being purchased by children but decided that such an event was highly unlikely. Age restricted items were identified on its website and purchasers were asked to confirm their age, but no age verification measures were in place to check this information.

XX Ltd was convicted after trial of one offence contrary to s.141A of the Criminal Justice Act 1988. The company had no previous convictions.

XX Ltd had a turnover during the relevant period of approximately £1.5 billion.

This was expected to be high culpability (A); there is only one level of harm. The starting point for a large organisation⁴ is £400,000, range £200,000 - £1,000,000; it could be higher if treated as a very large organisation⁵. There are no aggravating factors, and a mitigating factor of no previous convictions. Step 3 - Adjustment of fine could result in an increase as this is a large/very large organisation. The estimated final fine is £1 million or more. Key findings are below; the summary table can be found in Annex A, Table 1.

Key findings

1. None of the 10 magistrates had previously sentenced any cases of sales of knives.
2. Nine magistrates chose **culpability A**; one B⁶. Factors discussed included the: lack of age verification checks; advance warning a test purchase would take place (some noted this could equate to 'failed to make appropriate changes following advice'); and the organisation thought the risk of knives being bought was very unlikely.
3. Nine magistrates chose a **starting point** of £400,000; the sentencer who chose B selected £200,000. The majority of respondents thought it was '*straightforward*' and '*easy*' to **determine the starting point**, with only one stating that '*you really have to be quite specific to the actual items in the guideline*'. When asked if they had considered whether this was a **very large organisation**, seven said they would and '*that it might be necessary to move outside the range*', with a couple noting they would '*need more information*'; two had missed the instruction, with one noting they '*went straight to the tables*'; and one that it was '*not particularly helpful as it gives you such a wide range*'.
4. Eight respondents said there were no **aggravating factors**; two mentioned the fact that three knives were sold, one of whom '*would want to know if time had lapsed as they would have had time to consider*', and the other that the '*child was only 13*' although they did not increase the sentence.

⁴ 'Turnover or equivalent of £50 million and over'.

⁵ 'Turnover or equivalent very greatly exceeds the threshold for large organisations'.

⁶ They originally thought A but chose B as they felt there was some evidence of systems being in place.

5. Eight magistrates noted that there were no previous convictions under **mitigating factors** with one also stating they *'would want to know if remedial actions had been taken or cooperation'*; the remaining two felt there were no mitigating factors.
6. Four respondents did not apply any additional factors as outlined under **Step 3 – Adjustment of fine**, while six did, citing *'implementing effective compliance programmes'*, *'appropriate punishment'*, and *'deterrence'* from Step 3, and that they would *'make it less financially attractive for them to continue to breach'*, with two noting that as it is a very large organisation, they could go *'outside the range'* and *'a larger fine is necessary'*.
7. While a wide range of **final sentences**⁷ were given, from two extremes of £10,000 through to £10 million, the majority were more aligned: one was for £200,000 from the sentencer who chose culpability B, two chose £400,000, one between £500,000 to £750,000 with another selecting £750,000, and the remaining three £1 million. Of the two extremes, the magistrate who chose £10,000 noted they only had three years' experience and that *'district judges usually deal with these sorts of cases... they are much more used to sentencing organisations... a magistrate's court imposing a fine of £1,000,000 plus feels like... fantasy land'*; the magistrate who chose £10 million noted they *'felt out of their comfort zone dealing with such large numbers and keeping a grasp of proportionality'*.
8. As might be expected, there were a range of **views about their final sentence**:
 - a. The magistrate who selected £10,000 noted that *'fining an organisation £1 million plus for selling some knives online feels... inappropriate... £10,000 still seems a lot but anything smaller... wouldn't be significant'*;
 - b. The one selecting £200,000 noted it *'might go up depending on information such as have things improved since?'*;
 - c. The two selecting £400,000 felt it was a *'hefty amount of money'* or *'it seems heavy'* but both referred to the turnover and that they are *'in favour of robust financial penalties'* or *'they're... in the market of knowing what they're doing'*;
 - d. The two selecting £500,000 to £750,000 and £750,000 had slightly different views: the former noted it is *'a proper and high level of fine towards the upper end'* while the other *'would feel more comfortable [if we could] see some additional things... there needs to be something in place to ensure they comply with regulations... and if it doesn't, we would impose further fines or take some other action'*;
 - e. The three who imposed £1 million agreed that this was *'appropriate'*, *'reasonable'*, and *'will act as a deterrent [but could] imagine a conversation where we would be looking to go higher than that'*; and,
 - f. The sentencer imposing a £10 million fine noted this *'seems an extreme amount'*.

⁷ The scenario noted that this went to trial – there was therefore no reduction for a guilty plea.

Scenario 2: In store purchase⁸

A 14-year-old test purchaser bought a retractable craft knife from Terry's Crafts Ltd (a small independent craft and hobby shop).

The company (through its owner and sole director, Terry Smith) pleaded guilty at the first appearance to one offence contrary to s.141A of the Criminal Justice Act 1988. It accepted that it had failed to identify knives as age-restricted products in its store (though it did have restrictions in place for solvents).

Trading Standards had written to the company 3 months before the test purchase warning that test purchases may be carried out and enclosing a leaflet setting out the obligations of retailers relating to age restricted sales.

The company had no previous convictions.

The company had an annual turnover during the relevant period of approximately £75,000 but was not profitable having made a loss of £5,000 in the most recent trading year.

This is expected to be high culpability (A); only one level of harm. The starting point for a micro-organisation⁹ is £12,500, range of £6,000 - £25,000. There are no aggravating factors, and a mitigating factor of no previous convictions. Step 3 – Adjustment of fine could decrease the fine as the organisation is not profitable, and a reduction of a third for a guilty plea. The estimated final fine is £4,000. Key findings are below; the summary table can be found in Annex A, Table 2.

Key findings

1. Eight magistrates chose **culpability A**; one A or B; and one B¹⁰. Factors discussed included the: lack of age verification checks; failure to identify age-restricted items; advance warning a test purchase would take place (some noted this could equate to 'failed to make appropriate changes following advice'); and having systems in place but not being sufficiently adhered to.
2. The eight magistrates who chose culpability A all chose a **starting point** of £12,500; the one who said A or B chose between £6,000 to £12,500; the remaining one chose £6,000. The majority found it 'easy' or 'straightforward' to **determine the starting point**, with only one noting that they found it 'quite difficult actually' referring to the 'loss of £5,000 last year' but did also note Step 3 considers putting companies out of business.
3. Nine respondents noted there were no **aggravating factors**; one noted the child was 14 but did not increase the sentence.
4. Nine noted a **mitigating factor** of no previous convictions; one stated there were none. Individuals mentioned 'wanting to see if there was any evidence of any steps taken', 'exploring their record of compliance as they had restrictions for solvents', and 'the guilty plea indicates they accept responsibility'.

⁸ Please note: this scenario is very similar to the individual scenario below, to test whether there is any difference if the offender is an individual or an organisation when everything else is similar.

⁹ 'Turnover or equivalent not more than £2 million'.

¹⁰ The magistrate noted the offender had 'pleaded guilty... were sent a detailed list from trading standards they haven't understood or taken heed of... it's a retractable craft knife'.

5. Nine magistrates applied additional factors as per **Step 3 – Adjustment of fine**, reducing the fine; one did not. The majority of those who did noted that the company was very small and not making a profit/ low turnover, and discussed their ability to pay, that it could put them out of business, and the impact of the fine on staff and service users, as well as on their ability to implement a compliance programme.
6. As might be expected due to the discretion allowed under Step 3, there were a range of **pre-guilty plea sentences** given, ranging from £1,000 to £8,000: one respondent gave £1,000; one gave £3,000; another gave £3,000 to £5,000; four gave £6,000; and one chose £8,000¹¹.
7. All respondents took into account a **reduction for a guilty plea**, with final sentences ranging from £300 to £5,280: one gave £300; one gave £660; one gave £2,000; another gave £2,000 to £2,500; one gave £3,000; four gave £4,000; and one gave £5,280.
8. As might be expected, respondents **views of their final sentence** varied. The two at the lower end acknowledged that *'in reality it would be an impossible situation because it is so far below the starting point and the lower limit'* and *'it's way off the guidelines'* noting they felt *'comfortable'* or it was *'fair and proportionate'*. The next three (final sentences between £2,000 to £3,000) noted it was a *'hefty fine which [should] have an impact'*, *'hope it's fair [and] ensures implementation... is undertaken...'* and it *'will have the desired punishment effect and deterrence'*. Of the four choosing £4,000, three thought it was *'fair'*, *'appropriate'* or *'correct'*, while one noted the fact that the company ignored information sent in advance *'keeps the fine at the higher level... if they'd put things in place and staff had forgotten about it, that would have made a difference'*. Finally, the magistrate who gave a final sentence of £5,280 noted *'it's sufficiently punitive for them to get their act together'*.

¹¹ One respondent did not give a pre-guilty plea sentence; another did but then reduced the fine in accordance with Step 3.

Comments on the organisations guideline

The following summarises comments made during the application of the guideline to the scenarios and through follow-up questions. Where similar views are noted across both guidelines, these are summarised at the end:

1. The magistrates all thought the guideline helped them **assess culpability**, with several noting that they were *'very helpful'*, *'familiar format'*, and *'fully explained'*. Some did provide suggestions for amendments: *'you might want to distinguish between identification of restricted products and age verification... should I have moved it down because they had realised it should be age restricted?'* with another similarly noting *'it could be clearer... whether one or all of the matters listed were needed'*. Individuals noted: *'is age of the purchaser relevant? Could make it clearer that it applies to anyone under 18?'*; *'is there any difference based on the type of knife?'* (then decided not); on lower culpability *'if they had made so many efforts, why would Trading Standards bring it to court?'*; and on the middle category, one stated that they say *'something along the lines of anything else not in C, so having a definition of what B means is helpful and clear... I understand and appreciate the clear distinction between the three categories, which isn't always the case'*.
2. There were **mixed views on the starting points and ranges** in the sentencing table: two felt the *'ranges and starting points, particularly for a large organisation... are appropriate'* or *'about right'*; one that *'they are serious amounts, but it allows flexibility'*; one that the *'starting points are fine'* but these *'need to be regularly monitored – perhaps an update every 3 – 5 years'*; while a fifth felt they were *'too high'*. One felt that *'for smaller companies... they are rather steep...but for the larger companies they are about right'*; two others also felt that *'for the smaller companies... they seemed to start relatively high'* or *'the range is quite vast'*, quoting £3,000 to £12,000 on culpability B, and *'there seems to be an awful big drop between the big companies and the smaller ones'*. Magistrates also suggested some changes: two wondered if there *'could be a category below micro'*, with one noting it could be for *'proper micro organisations of up to £100,000 or £200,000'* while another thought it should be for a *'turnover of not more than a million with lower fine ranges'*; three indicated there could be a *'new starting point/ category for the very large organisation'* with two noting they had missed the guidance as it did not fit the table format used for the other organisational sizes so *'it would make it easier'*, and *'could it include some indication of percentage of turnover?'*. Another noted it would be good to have *'more guidance on £50 million or over'*.
3. While four magistrates thought there was nothing to add to the **factors increasing seriousness**, others provided suggestions, including: three about the *'number of items'* such as *'could be an aggravating factor if four or five knives'* while another thought *'a set or maybe eight or a dozen [knives]'*; two about the *'age of the child'*; two wondered about the type of knife, with one referring to the guideline on bladed weapons; and two suggested *'reference to failing to take immediate remedial action'* or *'wilful negligence'*.
4. Seven magistrates thought there was nothing to add to the **factors reducing seriousness**, with positive feedback with two noting that *'steps taken to prevent reoccurrence is good'* while another noted that the *'good record of compliance is*

important as is high level of cooperation and evidence of steps'. One asked 'how do you know about the good record of compliance? Trading Standards? Prosecutor?', another wondered whether there could be more 'opposites as aggravating and mitigating factors', and a third noted 'if the person buying the knife has been sufficiently sophisticated in their approach to proving their age, that could lead a reasonable person to think the person is the age they say they are?'

5. There were mixed views on **Step 3 - Adjustment of fine**: five felt these were 'pretty good', 'fine', had 'nothing to add' or were 'reasonably easy', with a further one noting 'there is a lot of flexibility... many magistrates might feel out of their depth [although] the principles are clear'; two felt it 'took a little time to look through it' or 'I had to reread that a couple of times to understand it', but both then noted it 'sets it out' and 'makes good sense'; one said 'it's not that easy' and another noted that 'you have a clear set of fine ranges within culpability... I would take it out, it's not adding anything'.
6. There were two further comments on **using the guideline**: 'sale of knives to persons under 18 is mentioned at the top and under harm in both guidelines but not elsewhere – should say it throughout i.e. sales to individuals under 18?'; and 'could removal of gain including through the avoidance of costs be made clearer?'

Individual guideline

Scenario 3: In store purchase¹²

A 14-year-old test purchaser bought a retractable craft knife from Terry's Crafts (a small independent craft and hobby shop).

The owner and manager Terry Smith pleaded guilty at the first appearance to one offence contrary to s.141A of the Criminal Justice Act 1988. He accepted that he had failed to identify knives as age-restricted products in the store (though he did have restrictions in place for solvents).

Trading Standards had written to him 3 months before the test purchase warning that test purchases may be carried out and enclosing a leaflet setting out the obligations of retailers relating to age restricted sales.

Mr Smith, aged 47, had no previous convictions.

Mr Smith presents a means form showing he earns approximately £500 per week which is nearly all accounted for by food and household bills. He says he has a wife and 2 children who are dependent on him and he is struggling to make ends meet. He says he would need time to pay any fine.

This is expected to be high culpability (A); there is only one level of harm. The starting point is a medium level community order (MLCO) or Band E fine. Based on his income, the anticipated fine would be £8,000. There are no aggravating factors, and a mitigating factor of no previous convictions. Step 3 could decrease the fine due to affordability¹³, and reduction of a third for a guilty plea. The estimated final fine is £600. Key findings are below; the summary table can be found in Annex A, Table 3.

Key findings

1. Nine magistrates chose **culpability A**; one said A or B. Respondents listed factors such as: failure to identify age-restricted items; had a warning; lack of age verification checks; and failed as a person of responsibility.
2. Eight magistrates chose a **starting point** of a MLCO or Band E fine; two simply stated MLCO.
3. All 10 noted there were no **aggravating factors**.
4. Nine listed no previous convictions as a **mitigating factor**, with two also noting '*sole/primary carer for dependent relatives*', and one the '*guilty plea suggests a high level of cooperation*' and '*they accept responsibility*'. One stated there were no factors.
5. Two magistrates reduced their sentence based on **Step 3 – Adjustment of fine**, the remaining eight did not, although they did discuss options such as '*opting for a financial penalty rather than a CO*', '*giving him time to pay*', '*ensuring the fine is appropriate*' and '*exploring compliance as had one in place for solvents*'.
6. A mix of COs and fines were given for **pre-guilty plea sentences**. Four magistrates gave COs: one gave a LLCO with 80 hours unpaid work, another a LLCO or lower end MLCO,

¹² As noted above, this scenario is very similar to that for scenario 2 (organisation in-store), to test what difference it makes if the offender is an individual or an organisation if everything else is similar.

¹³ 'Having regard to the financial position of the offender'

and the other two MLCO (one with a programme requirement); five gave fines, with two stating Band E fine, and three giving figures (£1,000, £1,500 and £2,000)¹⁴.

7. All respondents gave a **reduction for the guilty plea**. Those who gave COs reduced the number of days, amended from a MLCO to LLCO, or reduced the number of hours of unpaid work; those giving fines reduced the fines, such as from a Band E fine to a Band D fine, or taking a third off where explicit figures were stated (e.g. £1,500 down to £1,000).
8. The magistrates were generally satisfied with their **final sentences**: those who gave COs noted it was a '*perfectly good sentence*', they were '*quite content*', or '*satisfied*', and it '*feels reasonable*'. Four of those giving fines held similar views, while one felt their fine of £300 was '*a bit too high*' and another, who gave £666, that it '*would be interesting to see what probation thought of a LLCO*'.

Comparison with similar scenario using the individuals and organisations guidelines

Across both guidelines:

1. The majority of magistrates chose **culpability A**.
2. The majority of magistrates stated there were no **aggravating factors**.
3. The majority of magistrates stated there was a **mitigating factor** of no previous convictions; more personal factors were noted with the individuals guideline.
4. All respondents took into account a **reduction for a guilty plea**.

Using the organisations guideline, at **Step 3 – Adjustment of fine**, the majority of respondents would reduce the fine: this was not the case with the individuals guideline where only two of the five who selected fines explicitly stated they would, although others did discuss certain elements, as outlined above.

¹⁴ One magistrate did not give a pre-guilty plea sentence.

Comments on the individuals guideline

The following summarises comments made during the application of the guideline and through follow-up questions. Where similar views are noted across both guidelines, these are summarised at the end.

1. The majority of the magistrates thought the guideline was *'helpful', 'straightforward', 'points you in the right direction'* for **assessing culpability**. However, as with the organisations guideline, one queried *'whether one or all of the matters listed were needed, that could be clearer'* and the *'it could make it clearer that it applies to anyone under 18'* and *'is there any difference based on type of knife'*. Another noted it *'could have a bit more differential between B and A culpability'* and another that *'it didn't have a great deal of manoeuvrability for someone struggling with his company – I would have gone culpability C rather than A but you couldn't because of the way it was written'*.
2. Four magistrates thought the **starting points and ranges** in the sentencing table were *'about right'* or *'quite good'*, while another felt the *'starting points are about right [but] the ranges may be expanded somewhat'* noting that *'as an individual, if you are caught with an offensive weapon, the starting points are considerably higher. If you are selling as an individual... and you know you shouldn't, the range could go a bit further into 12 weeks' custody'*. This was echoed by another magistrate who, while also referring to sentencing for carrying a knife, noted *'where a small retailer/ individual is on their third/ fourth offence, a custodial sentence or SSO is needed to get the message across'*. One felt the *'punishments are too high'*; another that *'the possibility of discharge is interesting'*; one had a *'reservation about the starting point for the lower level points of transgressions, [i.e.] at the medium level there should be an starting point of a CO'*; while another thought there was a *'big jump [in fine] from culpability C to B'*.
3. Similarly to comments on the organisations guideline, five magistrates felt there was nothing to add to the **factors increasing seriousness**, three reiterated the quantity involved could be an aggravating factor, and one mentioned the age of the child. One magistrate noted there was *'no recognition of the outcome of whether or not it is involved in any injury'* while another wondered *'does it need to be quite as heavy as the organisation one, i.e. the way its written with aggravating factors – does it have to be quite so determined/ precise?'*
4. Eight magistrates had nothing to add to the **factors reducing seriousness**, while two asked for clarification: *'could you clarify what is expected by voluntarily prevent re-occurrence?'* and *'what is serious medical condition in the context of this one?'*.
5. Eight magistrates were positive about the **Step 3 – Adjustment of fine**, with one suggesting we *'highlight the phrase 'the court should step back and consider the overall effect of its orders' [as] it makes you think about equal opportunities, different cultures, ways of life etc'*; one noted it should *'perhaps look at adjustment of CO as well as it is unfair to talk about adjusting one type of punishment but not the other'*, and one magistrate reiterated that the step *'doesn't add anything'*.
6. Two **further comments were provided on the guideline**: as with the organisations guideline, one magistrate felt that the guideline should say *'sales to individuals under*

18' throughout; and one noted *'I'm not necessarily fully understanding of step 4 – taking into account section 74, not something for the magistrates' court'*.

7. Magistrates were asked whether they thought there were 'any particular words of phrases in the draft [individual] guideline that you think may contribute to **disparities in sentencing**'. The majority thought that there were not, with only one magistrate providing a possible issue: in *'high culpability, I wondered about the inclusion of the word 'standard' in standard measures – it denotes a collective knowledge/ regulation and the small person in an organisation/ employee in corner shop in sections of the community may not have the same access to what may be perceived by a huge organisation as standard measures. Is standard codified anywhere? Could 'standard' be replaced by 'reasonable' or 'acceptable' or some other alternative that does not connote a knowledge of what those measures are?'*

Comments across both guidelines

The following summarises comments applicable to both guidelines:

1. All 10 thought it was **clear which guideline to use** (i.e. when to use the one for an individual or for an organisation): four noted the court would be told which one to use.
2. The majority of the magistrates thought the **introductory text**¹⁵ in both guidelines was *'clear', 'easy to read' or 'self-explanatory'*, with three commenting about the number of knives, i.e. *'what is considered a small quantity of knives?'* and *'could that be made more explicit?'*, with one suggesting that it *'perhaps a definition could be added... could be an aggravating factor if four or five?'*
3. All of the magistrates thought both guidelines were **clear and easy to interpret**, although it must be noted that one initially struggled a little to navigate the individual guideline, until the interviewer displayed the guideline on their screen.
4. Magistrates generally agreed with **only one level of harm**, commenting: *'it is very difficult to determine harm as there doesn't appear to be a 'victim' - harm is to society itself and possibly individuals – it covers it quite well'*; *'the issue here is there is a risk... selling knives to under 18, that the risk doesn't change, the harm is there'*; and *'I don't know how you can put it into different categories, I don't know how else you could do it?'*. However, one noted it would be good to *'spell it out more'*, and another that they were *'moderately surprised there's only one level of harm because of the risk to everyone. You only have to think about a group of 17-year-olds getting knives and going out and stabbing the boy from the school next door. Very different to someone who just buys a kitchen knife for cooking purposes. Puzzled that harm is not said to play any part because harm is always the same. Other guidelines, such as dangerous driving, assault, take into account the degree of injury. Seems to be inconsistent with other guidelines. Should be a consideration of any consequences of selling a knife to an underage person if that does result in injury or even threat – ought to attract a higher sentence.'*

¹⁵ The introductory text states: "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 retailers or those employed by retailers. It does not apply to cases of a more serious nature such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children". Text in italic was in the individual guideline only.

Annex A: Summary tables

Table 1: Scenario 1 – organisation, online purchase

	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine - additional factors considered	Impact on sentence	Final sentence
Expected	A	<ul style="list-style-type: none"> Failed to put in place standard measures to prevent underage sales 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> The value, worth or available means 	<ul style="list-style-type: none"> Increase 	£1 million (or more) ¹⁶
1	A	<ul style="list-style-type: none"> No age verification checks Informed the exercise was going to happen Acknowledge the risk of knives being purchased but thought it was highly unlikely Failure of duty of care 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Would consider how easily and quickly they could implement a compliance programme - given the size of the company, expect them to do something fairly quickly i.e. in a matter of weeks 	<ul style="list-style-type: none"> None stated 	£750,000
2	A	<ul style="list-style-type: none"> No age verification measures Decided, despite being warned, that it was highly unlikely they needed to take any action 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None applied 	<ul style="list-style-type: none"> Could increase as a larger organisation 	£400,000
3	A	<ul style="list-style-type: none"> Identified products as age related but made conscious decision not to implement age verification checks 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions Would want to know if remedial actions had been taken/ cooperation 	<ul style="list-style-type: none"> Want to ensure future compliance and properly punish the organisation Make it less financially attractive for them to continue to breach rather than implement measures to prevent underage sales 	<ul style="list-style-type: none"> None stated 	£500,000-£750,000

¹⁶ Please note: the expected final sentence is not precise – it would depend on the adjustment made at Step 3, at the magistrates’ discretion

	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine - additional factors considered	Impact on sentence	Final sentence
4	A	<ul style="list-style-type: none"> Lack of standard measures of a reliable online age verification tool or a collect in-store with checks Might be said that they failed to make appropriate changes following advice – you could say that the warning in advance of test purchases potentially amounts to advice 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Appropriate punishment – but fining an organisation £1million plus for selling some knives online feels disproportionate. 	<ul style="list-style-type: none"> Decrease 	£10,000
5	A	<ul style="list-style-type: none"> Failed to put in standard measures about age verification checks. Failed to make appropriate changes as had been a warning test purchases would be taking place and they didn't do anything 	£400,000	<ul style="list-style-type: none"> 3-piece knife set Would want to know if time had lapsed as would have had time to consider 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> None, fine has to be about punishment and deterrence. 	<ul style="list-style-type: none"> N/A 	£1 million
6	A	<ul style="list-style-type: none"> Company had been warned Failed to put in place the standard measures for online sales 	£400,000	<ul style="list-style-type: none"> 3 knives Child only 13 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None applied 	<ul style="list-style-type: none"> N/A 	£400,000
7	A	<ul style="list-style-type: none"> Failed to put in place age verification measures Active decision to act against guidance 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Outside the range with a turnover of 1.5 billion. 	<ul style="list-style-type: none"> Increase - calculated 1% of turnover = £12 million, then reduced 	£10 million

	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine - additional factors considered	Impact on sentence	Final sentence
8	A	<ul style="list-style-type: none"> No online age verification tool 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> If £400,000 is applicable to a company with a £50 million turnover, larger fine is necessary for a company with a lot larger turnover They should have the resources available to put the necessary safeguards in place 	<ul style="list-style-type: none"> Increase 	£1 million
9	A	<ul style="list-style-type: none"> Age restricted items were identified on the website, but there was a failure to use reliable online verification tools. 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Very large organisation Fine needs to be substantial enough to bring it home to management etc that they need to operate within the law Got to be appropriate punishment and a deterrent in future 	<ul style="list-style-type: none"> Increase 	£1 million
10	B	<ul style="list-style-type: none"> Originally thought A but moved to B because there were systems in place but not sufficiently adhered to - had put on their website things about knives, but not enough work on the age verification process 	£200,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> None applied 	<ul style="list-style-type: none"> N/A 	£200,000

Table 2: Scenario 2 – organisation, in store purchase

No	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine – additional factors considered	Impact on sentence	Final sentence without GP	Final sentence with GP
Expected	A	<ul style="list-style-type: none"> Failed to put in place standard measures to prevent underage sales 	£12,500	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Micro organisation Not profitable 	<ul style="list-style-type: none"> Decrease 	£6,000	£4,000 ¹⁷
1	A or B	<ul style="list-style-type: none"> System in place for solvents but not knives. Could they adapt and apply to offensive weapons? System in place but not sufficiently adhered to or implemented 	Between £6,000 and £12,500	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions Would want to see if there was evidence of any steps taken 	<ul style="list-style-type: none"> Impact of fine on offender's ability to implement effective compliance programme 	<ul style="list-style-type: none"> Reduction of fine 	£3,000-£5,000	£2,000-£2,500
2	A	<ul style="list-style-type: none"> Failed to identify age restricted items No age verification checks 	£12,500	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Ability to pay 	<ul style="list-style-type: none"> Would do a payment plan with instalments 	£1,000	£660
3	A	<ul style="list-style-type: none"> Failed to identify products as age-related Not taken any action Not checking age Not properly training staff 	£12,500	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Fairness - very small business, precarious financial state, limited income, financial dependants Not very profitable Need to see 3 years Turnover very low 	<ul style="list-style-type: none"> Reduce to £10,000, third off for GP (£6,666), impact on business and ability to pay = £3,000 	None stated	£3,000

¹⁷ Please note: the expected final sentences are not precise – it would depend on the adjustment made at Step 3, at the magistrates' discretion.

No	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine – additional factors considered	Impact on sentence	Final sentence without GP	Final sentence with GP
4	A	<ul style="list-style-type: none"> Absence of measures to prevent underage sales Did have a warning - could see that as failed to make appropriate changes following advice and/or prior incidents 	£12,500	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Appropriate punishment Micro organization, operating on thin margins Impact of fine on the employment of staff, service users May impact future compliance Means of the offender On the edge of viability 	<ul style="list-style-type: none"> Reduce 	None stated	£300
5	A	<ul style="list-style-type: none"> Failed to make appropriate changes following advice – were notified a test purchase was going to happen and they didn't do anything 	£12,500	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions Would explore reasonable record of compliance as had restrictions for solvents 	<ul style="list-style-type: none"> Company was not profitable so would explore impact of a fine on employment of staff 	<ul style="list-style-type: none"> Reduce 	£6,000	£4,000
6	B	<ul style="list-style-type: none"> Sent documentation and notification about test cases which they didn't understand/ take heed of 	£6,000	<ul style="list-style-type: none"> 14-year old 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None applied 	<ul style="list-style-type: none"> N/A 	£6,000	£4,000
7	A	<ul style="list-style-type: none"> Had warning Failed to identify knives as age restricted 	£12,500	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Turnover at low end and not profitable - £12,500 not appropriate 	<ul style="list-style-type: none"> Reduce 	£3,000	£2,000

No	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine – additional factors considered	Impact on sentence	Final sentence without GP	Final sentence with GP
8	A	<ul style="list-style-type: none"> • Hadn't identified knives as age-restricted products • Made no attempts to establish the age of person buying the knife 	£12,500	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No previous convictions 	<ul style="list-style-type: none"> • Company is losing money 	<ul style="list-style-type: none"> • Reduce 	£8,000	£5,280
9	A	<ul style="list-style-type: none"> • Failed to identify knives as age restricted products 	£12,500	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No previous convictions • GP indicates accepts responsibility 	<ul style="list-style-type: none"> • Business made a £5,000 loss in the last year • Fine within category range will potentially wipe the business out • Could be loss of employment • Need more information 	<ul style="list-style-type: none"> • Reduce 	£6,000	£4,000
10	A	<ul style="list-style-type: none"> • Had warning but hadn't done anything about it • Had some restrictions for solvents in place, but nothing for knives 	£12,500	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No previous convictions 	<ul style="list-style-type: none"> • Micro company making a loss • Could put them out of business 	<ul style="list-style-type: none"> • Reduce 	£6,000	£4,000

Table 3: Scenario 3 – individual, in store purchase

No	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine – additional factors considered	Impact on sentence	Final sentence before GP	Final sentence after GP
Expected	A	<ul style="list-style-type: none"> Failed to put in place standard measures to prevent underage sales 	MLCO or Band E fine of £8,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Financial position 	<ul style="list-style-type: none"> Decrease 	£900	£600 ¹⁸
1	A or B	<ul style="list-style-type: none"> If they had something they were going to implement and didn't, it's B. If totally disregarded it, it's A 	MLCO	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Would discuss - may have mental/ physical health problem, lack a skill/ understanding, which could be fixed by a programme 	<ul style="list-style-type: none"> None stated 	MLCO with programme requirement	Depends on requirement of MLCO - reduction in no. of days
2	A	<ul style="list-style-type: none"> Hadn't identified age restricted products Warned 	MLCO	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions Level of cooperation 	<ul style="list-style-type: none"> None applied 	<ul style="list-style-type: none"> N/A 	MLCO	L or M CO, 75 hours UPW or 6 weeks curfew 6am-8pm
3	A	<ul style="list-style-type: none"> Failed as a person or responsibility Didn't identify product as age-related Didn't check age properly Didn't impose a policy/ train staff 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> None applied 	<ul style="list-style-type: none"> N/A 	Band E fine - 300-500%	£1,000

¹⁸ Please note: the expected final sentences are not precise – it would depend on the adjustment made at Step 3, at the magistrates' discretion

No	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine – additional factors considered	Impact on sentence	Final sentence before GP	Final sentence after GP
4	A	<ul style="list-style-type: none"> Absence of measures to prevent underage sales Had a warning - could see that as failed to make appropriate changes following advice and or prior incidents 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> None applied, but gives discretion 	<ul style="list-style-type: none"> N/A 	None stated	£300
5	A	<ul style="list-style-type: none"> Owner/ manager - their responsibility to put in place standard measures Failed to act on concerns 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions Sole/ primary carer for dependent relatives 	<ul style="list-style-type: none"> Ensure fine is proportionate Explore compliance as had them in place for solvents 	<ul style="list-style-type: none"> None stated 	Band E fine	Band D fine
6	A	<ul style="list-style-type: none"> Lack of standard measures 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions GP suggests high level cooperation with investigation Accepts responsibility Sole/ primary carer for dependant relatives 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A 	LLCO with 80 hours UPW	LLCO with 50 hours UPW

No	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine – additional factors considered	Impact on sentence	Final sentence before GP	Final sentence after GP
7	A	<ul style="list-style-type: none"> Warned Failed to identify knives as age restricted 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Fine is most appropriate as CO is more serious Range of 300-500% 	<ul style="list-style-type: none"> Reduce to 300% 	£1,500	£1,000
8	A	<ul style="list-style-type: none"> Hadn't identified knives as age-restricted products Made no attempts to establish age 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> None applied 	<ul style="list-style-type: none"> N/A 	LLCO or lower end MLCO	Third off
9	A	<ul style="list-style-type: none"> Failed to identify knives as age restricted products 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Opt for financial penalty rather than CO Give him time to pay it 	<ul style="list-style-type: none"> N/A 	Band E fine - £2,000	Band E fine - £1,333
10	A	<ul style="list-style-type: none"> Warned but done nothing about it 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Income and levels of fines – he hasn't really got any money 	<ul style="list-style-type: none"> Reduce 	£1,000	£666

Perverting the Course of Justice and Witness Intimidation Responses

1. Pascale Jones (CPS)
2. Chris Hillyard JP
3. Michael Evans JP
4. Jane Fox JP
5. Kim Watson JP
6. Gary Knight JP
7. Diana Chitty
8. Neil Taylor JP
9. Rani
10. Christopher Turner JP
11. Anonymous
12. The Chief Magistrate
13. The Treasury Council
14. Nigel F O'Mara JP
15. Ian Harris JP
16. Paula Yates JP
17. Sarah Cahill JP
18. Suffolk Magistrates Bench
19. The Legal Committee of HM Council of District Judges (Magistrates' Courts)
20. Professor Alisdair A. Gillespie, Professor of Criminal Law and Justice
21. West London Magistrates' Bench
22. Criminal Sub-Committee of HM Council of Circuit Judges
23. CPS
24. Sentencing Academy and Professor Andrew Ashworth
25. Centre for Women's Justice
26. Women Against Rape (WAR)
27. Justices' Legal Advisers and Court Officers' Service
28. Criminal Law Solicitors' Association (CLSA)
29. Magistrates Association
30. Heather Rothwell JP
31. Tom Bell
32. Robert Wade JP
33. Peter Trend JP
34. Bruce Cameron JP
35. Tina Symons JP
36. Anonymous
37. Tim Cosham
38. Paul Ashwell
39. Jacqui Currie JP

40. David King JP
41. Jonathan Law
42. Barbra Aitchison
43. Martin Alderman JP
44. Jean Watt jp
45. Chris Clarke JP
46. Liz Blake JP
47. Edward Jones
48. Justice Committee

Perverting the Course of Justice and Witness Intimidation: road testing summary

Introduction

Perverting the course of justice offences cover a wide range of conduct. Despite being a serious Common Law and indictable-only offence, with a statutory maximum sentence of life imprisonment, no current guideline exists.

Witness intimidation offences include any attempt to threaten or persuade a witness not to give evidence, or to give evidence in a way that is favourable to the defendant. While the Sentencing Guidelines Council (SGC) published Magistrates' Court Sentencing Guidelines (MCSG) in 2008, no current guideline exists for use in Crown Courts.

The Council therefore consulted on (March to June 2022) a new guideline for perverting the course of justice and a revised guideline for witness intimidation.

Methodology

Small-scale qualitative road testing took place in April 2022 to explore if the draft guidelines work as anticipated and to identify any issues. For perverting the course of justice, attention was paid to whether the guideline assists judges to sentence the broad types of behaviour under this offence. For witness intimidation, it was important to understand if the draft guideline reflects the more personal nature of the offence, as well as the broad range of cases covered. For both, sentencing levels are expected to remain consistent after the introduction of the new/ revised guidelines.

As perverting the course of justice is indictable-only and the majority of witness intimidation cases are tried in the Crown Court, interviews were conducted with Crown Court judges only. Fifteen interviews were completed for perverting the course of justice; nine for witness intimidation. Each judge sentenced two scenarios using **either** the draft guideline for perverting the course of justice or for witness intimidation. Scenarios were based on real cases.

Summary of main points

- The judges felt **both guidelines could be applied to the wide range of offending behaviour** covered, and they found **both guidelines** were generally '*clear*' and '*easy to interpret*'.
- The judges felt both guidelines helped them determine the **category of culpability** to apply, although there were some conflicting views on the 'medium' category, and while application of culpability across three of the scenarios was largely consistent, it was more mixed in the scenario that was expected to be medium culpability.
- The judges felt both guidelines helped them determine the **category of harm** to apply, with application of harm largely consistent across the scenarios, with the exception of one scenario that was on the cusp of 2/3, which was reflected in sentencing outcomes.
- There were mixed views on the **sentencing tables for perverting the course of justice**: while some felt the ranges and starting points were '*about right*', others noted a starting point of a community order (CO) '*sends out the wrong message*', and asked for clarification on the more serious (A1) offences. There were no particular comments on the **sentencing tables for witness intimidation**.
- There were **mixed views on whether figures for suspended sentence orders (SSO) would be maintained under either guideline**, with some judges perceiving these would be unchanged, while others felt levels would shift.

This paper discusses the results of road testing on the draft perverting the course of justice guideline, then the revised witness intimidation guideline. Summary tables for each scenario are presented in Annex A.

Perverting the course of justice

Scenario A

R, aged 22, was a passenger in a car driven by her boyfriend when they were involved in an incident with another car. Her boyfriend had been tailgating the car in front and driving aggressively. The two cars then drew level at traffic lights and her boyfriend got out of the car and shouted abuse towards the occupant of the other car and tried to make him get out of the car to fight. The occupant refused and drove off. The cars drew level again and again R's boyfriend got out of the car and behaved aggressively towards the other driver. The other driver did not engage and drove off. He called the police and told them what happened, giving the licence plate of the car R had been travelling in. The police interviewed R's boyfriend who claimed that he was the victim in the incident, and that it was the other driver who had been abusive and threatening towards him. He said his girlfriend could corroborate his version of events. He then persuaded R to back up his version of events. The police telephoned R who maintained her boyfriend's version of events, saying it was the other driver who was the instigator. The police asked her to come in for an interview to discuss the incident during which she admitted what the correct version of events was, that her boyfriend was the instigator. R was charged with perverting the course of justice. She pleaded guilty at the first opportunity. The court saw medical evidence stating that she suffers from depression. She has no previous convictions and is in her final year of university. She was very remorseful. (Her boyfriend was also charged with the same offence.)

This was expected to be medium culpability (C), medium harm (2) case, bordering C3. C2 starting point is nine months, range six months to one years' custody. There are no aggravating factors; there are a number of mitigating factors; and a guilty plea. The sentence could therefore reduce to a six-month suspended sentence order (SSO). Key findings are below; the summary table can be found in Annex A, Table 1.

Key findings

- Fourteen judges sentenced this as **culpability** C, citing factors such as it being unplanned, unsophisticated, and the underlying offence was not serious; one as B¹.
- As anticipated, there was some disagreement about the level of **harm**: three judges sentenced this as 2 (citing there was suspicion cast on an innocent party, some distress caused to an innocent party, or some delay to the course of justice), four were borderline 2/3, and eight stated 3 (all cited 'limited effects of the offence').
- Accordingly, there were a range of **starting points**: the three judges selecting harm level 2 all chose nine months' custody; three of the judges selecting 2/3 gave COs (one explicitly stated six months, the others did not) while the fourth would impose a conditional discharge²; and of the eight who chose level 3 harm, one chose a CO of six months, five chose higher level COs (HLCOs), and two chose custodial sentences (one of six months, one of nine months).
- All 14 of the judges who completed the exercise agreed there were no **aggravating** factors.

¹ The judge noted that it wasn't unplanned but also did not involve coercion, intimidation or exploitation so chose B.

² The judge felt a case of this kind 'should not be tried in the Crown Court' and would therefore impose a conditional discharge; they did not therefore complete the rest of the sentencing exercise for this scenario.

- The majority of the judges completing the exercise noted **mitigating** factors such as: no previous convictions, remorse, and mental disorder (some noted they would require further evidence). Other factors mentioned were: *'final year at university'* with one noting the possible *'consequence of a sentence'*, another *'thus she's got every prospect'* and another *'potential good career'*, as well as *'coercion'* or *'under pressure'*.
- A range of **pre-guilty plea final sentences** were given³: two of those selecting harm level 2 gave six month custodial sentences, one nine months; the three selecting 2/3⁴ all gave COs (with one explicitly stating six months); and a more mixed picture emerged for the eight who chose 3 – one would defer sentencing for six months, one stated it would be *'the bottom of the range [in the table]'*, two would give HLCOs, with one additionally specifying 240 hours of unpaid work and 15 rehabilitation activity requirement (RAR) days, one would suspend the sentence, one would give nine months custody, and two did not give pre-guilty plea sentences.
- The 14 judges completing the exercise all amended their sentences in light of the **guilty plea**: eight gave various levels of CO (CO through to HLCO) with attachments such as unpaid work and RAR, and six judges gave SSOs.
- When asked for their **views of the final sentence**, those who gave COs were generally *'pleased'* or *'happy'* with their sentences, with one noting *'the expectation is custody and at the very least a SSO... ordinarily I would not have considered to justify for a CO, although that is exactly the right disposal in this case'* and another noting they *'cannot ever remember imposing a CO for an offence of this nature... this is giving a judge... some flexibility'*. Those who gave SSOs were also generally content: one noted they were *'very comfortable with it'*, another that it *'may appear lenient but... she has lost her good character – serious impact'*, another that *'she can get her life back on track with a suspended sentence'*, one wondered *'could I have brought it down to HLCO?'*, while another noted a *'HLCO would be too low'* and another noted *'I'm not very happy about a non-custodial sentence for this sort of crime... I take the view it should be marked by a prison sentence'*

Scenario B

W, worked as a police officer investigating the supply of class A drugs and was trusted to do undercover work. He falsely accused another police officer, who was also his romantic partner, of drug use and class A drug dealing. Over a period of months, he made phone calls to other police officers and agencies asserting this allegation, and also involved his brother to act out certain roles to assist in the conspiracy to make the allegations more believable. He also planted drugs within her possessions, for the investigating officers to find. His partner was arrested and spent several hours in custody following her arrest, and then had to wait 6 weeks while the case was investigated. After 6 weeks she was told no further action would be taken, as W's allegations were proved to be false. The court was told that there would be considerable further work for the authorities due to appeals against conviction from cases which he had had involvement in. He was found guilty after a trial. He is aged 30. It seemed the reason he had committed the offence was because he was jealous of her success at work and of her being around male colleagues.

This was expected to be a high culpability (A), high harm (1) case: starting point four years, with a range of two to seven years' custody. There is an aggravating factor of involving others, and mitigation of previous good character, however it is such a serious offence the sentence is likely to be at the top

³ Some did not explicitly state a pre-guilty plea sentence.

⁴ As noted, one Judge did not complete the exercise.

of the range (seven years). Key findings are summarised below, followed by a summary of comments from using the guideline across both scenarios and through further questions. Table 2 is in Annex A.

Key findings

- All 15 judges agreed this was **culpability A**, citing factors such as it was sophisticated and/ or planned, over a sustained period of time, and the underlying offence was very serious.
- Fourteen judges agreed this was **harm 1**, mainly citing there were serious consequences for an innocent party, and a serious impact on the administration of justice; one judge selected level 2 stating there was suspicion cast upon, and some distress caused, to an innocent party.
- The majority of judges chose a **starting point** of four years; of those who did not, one noted the *'quantity of drugs could make a difference to the starting point'* and therefore raised the starting point from four to six years, another stated eight years (but did not specify why), while a third had chosen A2, and chose the corresponding starting point of two years.
- Eleven judges selected **aggravating** factors such as the offender involved others (six judges), evidence concealed/ destroyed (two judges), as well as listing other factors not specified in the guideline such as *'in a position of trust'* or *'abuse/ misuse of that position'*.
- Eight judges said there were no **mitigating** factors, while the remaining seven noted no previous convictions or previous good character.
- There were a range of **final sentences** given, from three years and three months, through to seven years, with most sentences (12) falling between five to seven years.
- When asked for their **views of the final sentence**, there were a range of views. The three judges who gave lower sentences (between three years and three months to three years and eight months) thought their sentences were *'ok'*, they had given a *'reasonably substantial discount for good character [and] it didn't seem out of kilter'*, with those giving sentences between five and six years also generally appearing content with their sentences, noting it *'needs a significant sentence for a police officer to conduct themselves like that'* and *'it's proportionate [to] the serious nature of the offence [and] I may have been tempted to go higher'*, and *'very comfortable with it'* and three between six and seven years noting that *'there was no aggravating feature in terms of position of public duty/trust – I had to put it in to explain why I upped it to 6 years'* and *'the range is not big enough for these top level crimes'* and *'it's a bit higher than I first thought... but the more you look at it... it's hard to actually think of a more serious example'*.

Comments on the guideline

The following summarises a small number of comments made using the guideline across both scenarios, with the majority coming from follow-up questions:

- All of the judges felt the **guideline could be applied to the wide range of offending behaviour** covered by this offence, noting *'it has broadened the way I can approach sentencing offences of this sort... this is much fairer'* and *'the guideline covers a large range of activity and sentences'*. However, a couple of judges also noted *'it's important to give judges leeway'* and *'[I] imagine most of the factors identified will cover most cases, but there are going to be cases where judges may struggle to fit it in and have to use their own discretion'*.
- All of the judges felt the guideline was **clear and easy to interpret**.
- All of the judges felt the guideline helped them determine the **category of culpability** to apply, although there were conflicting views on *'medium'*, with one judge noting *'I don't like how medium culpability it treated in this guideline (and others)... category B seems to be quite large'*, while two noted they *'quite agree that medium has to be whatever isn't in A and C'* and *'it is*

quite well established now and works quite well... if you try and put too many things in medium, people get confused'. One also noted, under high culpability, 'what counts as sustained? Better to have the quantity of activity'.

- The majority of the judges felt the guideline helped them determine the **category of harm** to apply, however, some did raise some thoughts: one noted there's 'nothing really about... cost to the police and impact on police in terms of time spent in man hours and costs and expert costs in investigating the false narrative'; one that 'when we have words like 'some' rather than serious or significant in Harm 2, there is always argument from counsel about whether this falls into 1 or 2... [could] some guidance... be included – what is some or serious distress – like in the death by dangerous or manslaughter guidelines?'; another that 'you could put "some" in front of suspicion in the first bullet... and on point four... add "serious or substantial"'; and one that 'I don't particularly like the expression "limited effects of the offence"'.
particularily like the expression "limited effects of the offence".
- There were a variety of comments about the **starting points and ranges**. The majority thought they were 'about right', noting these were 'pretty much in the expected range', 'the law of the diagonal... makes sense... balancing culpability and harm', 'there are overlaps [which] gives judges the flexibility', that 'it's particularly important that there is scope to pass the custody threshold, even in C3 – to suggest [this offence] could never pass the custody threshold would send out the wrong message', while one was 'surprised it's four years as a starting point in A1, a range of up to 7 is about right'. However, six judges noted some concerns: three commented about the top of the range, asking for 'extra guidance on cases above A1', '[there is a] danger when you have a range of CO to 7 years that some sentencers may feel 7 years is the top end... when it is not' with one noting that 'it might be useful to remind that you can go outside of the range – like you do in other guidelines'; two noted that a 'starting point of a CO... sends out the wrong message/ is inappropriate for this perverting the course of justice; and one that they would like 'more of an overlap between the ranges in C3 and B3, so the top of the range should be nine months in C3'.
- In terms of the **factors increasing seriousness**, five judges had no suggestions for change, with two stating that they were 'fairly standard' and 'cover everything', and two that it's 'better to keep it short and simple because these cases are very different' and 'keep them general [and] short, don't be over prescriptive'. The remaining six did provide some suggestions: three felt that 'being in a position of trust' should be included; one noted 'should it be concealed, destroyed or planted?' while another wondered whether it should be 'an aggravating feature or harm'; one thought influence of alcohol or drugs 'doesn't sit very well... more relates to violence', while another thought it 'could... be a mitigating factor... stupid thing to do and wouldn't have done it had they been sober' (although they noted it 'can be dealt with on a case-by-case basis'). One noted a 'risk of double counting' between offender involves others in the conduct in aggravating and assessment of harm.
- On the **factors reducing seriousness**, 12 judges had no suggestions for change, with two noting they were 'fairly standard', and one that they 'cover everything'; one judge queried 'when you've got no previous convictions and then good character and/ or exemplary conduct, do you mean over and above not having previous convictions? Slightly confusing because no previous convictions would mean someone of good character – exemplary conduct is a description of what you're talking about in the sense that they got things in their like marked out as otherwise being a good, upstanding citizen', and two suggested related factors: 'being subjected to pressure to commit the offence depending on their social circumstance', and 'if you want to consider some kind of impact of a cultural/ religious situation, it may be something that would reduce seriousness/ reflect in personal mitigation, but it may be that it increases seriousness, not

decreases.... *If something was put in, it needs to be sufficiently broad [and refer the sentencer] to the Equal Treatment Bench Book*'.

- Judges also provided **general comments on the guideline**, such as: *'I liked it because it broadened the range, which is absolutely right... [previously], we felt under pressure that it had to be seen to be prison... this will hopefully change that dynamic'*; several commented positively on the clear, familiar, standard format of the guidelines, for example *'they mirror the format of our existing guidelines... before guidelines were introduced, there was no consistency in sentencing'*; *'good to see a guideline on this, beyond case law... judges do struggle sometimes with this type of offence'*.
- There were **mixed views on whether figures for SSO would be maintained**⁵ under the revised guideline: six judges felt levels wouldn't change, noting they will *'be about the same... the guideline will... make it easier to produce the sort of results that we're already producing'*, with one stating the *'draft guideline, unless it's a very minor offence, steers towards immediate custody... could find you've got more prison sentences'* but then said *'for those below the two year custody, judges are under a duty to consider suspending it [and] it probably does allow for that in the lower categories'*; one judge noted they didn't know, *'but... the guideline will help is consider cases more seriously (and rightly so), so we might get better charging decisions'*; the remaining eight judges gave more nuanced responses: one thought figures would stay the *'same for immediate custody but... the non-custodial will get split between suspended sentences and other disposals'*, one thought there could be an increase in non-custodial sentences, with more COs in particular, two judges agreed there could be more COs, two thought there could be an increase in non-custodial sentences/decrease in immediate custody, and two thought there might be an increase in immediate custody. When looking at the results from the first scenario, which tested this, eight of the judges completing the exercise gave various forms of CO, and six gave SSOs.
- The judges were asked to consider two questions relating to equality and diversity. When prompted to think about whether there were **'any particular words in the guideline that may contribute to disparities in sentencing'**, the majority did not think there were any, but some provided thoughts, such as: *'it is important to emphasise being able to speak to a defendant in clear unambiguous language that they understand'*; *'[there] maybe cultural considerations - a lot of types of family issues that may affect people particularly, for example Muslim people - see pressures that come up on them from the mosque, from the imams telling them that Allah will not forgive them if they don't side with their family and things...'*; *'where medium culpability is defined as neither high or low, this might increase discretion and potential disparities'*; and, *'looking at mitigation... the phrase offender was in a lesser or subordinate role... it goes far enough to deal with people who are under pressure... I think pressure goes beyond limited role – limited role in drugs might put somebody in the lowest category of culpability, but being subject to pressure goes beyond that... it is particularly an issue that arises in drugs where you've got young offenders subject to pressure from their peers... and a related issue for young black men in inner city areas. I think there's probably some space for something else in mitigation to reflect that'*. When asked whether they thought the guideline **'gives enough guidance on how to deal with specific equality and diversity issues'**, the judges generally felt it did, noting they have training on it and that the guidance refers them to the Equal Treatment Bench Book (ETBB; one

⁵ It is anticipated that sentencing levels will remain consistent with levels before the new guideline is introduced. To test this, judges were informed that in 2020, about 400 offenders were sentenced to this type of offence, of which 51% received immediate custody and 42% a SSO. They were then asked what their views were regarding future volumes of immediate custody and SSOs, and whether they thought these figures will be maintained under the draft guideline or not.

noted adding ‘*inclusivity, or equality and diversity*’ in the box that refers to ETBB). However, four judges did offer some suggestions, including whether guidelines could ‘*cite parts of ETBB in particular guidelines*’, ‘*make reference to the ETBB as a step in every guideline... [to] force judges to look at it in a more proactive way... and if there are factors from ETBB relevant to a case, to identify them*’, noting that ‘*the practical bits are very useful and could be highlighted, such as in the format of a compendium sidebar or dropdown menus such as in the Judicial College Trial Compendium*’, and that ‘*diversity issues are a much broader topic... a judge has to be much more alive to it... it is a matter we need to have more education about, probably through Judicial College*’, but in terms of guidelines, ‘*I’m not sure how you would do it*’.

Witness intimidation

Scenario A

The victim lived next door to the offender, C aged 50, and there had been a previous incident of anti-social behaviour involving the offender which she had reported to the police. The offender whilst drunk went to her back door, shouting and swearing and generally being abusive. He threatened her and said, ‘I know it’s you who called the police on me before. If you know what’s good for you, you’ll drop the case, or else’. This terrified the victim, who felt too scared to leave her house or go into her back garden in case she met the offender. She did however go ahead with giving evidence. The offender pleaded guilty at the first opportunity. The court heard that the offender had a long-standing drink problem but in recent months had gone to his GP to seek help for it and had been sober for a number of months, attending AA meetings. He had also moved away from the area to live with his daughter in an attempt to turn his life around.

This was expected to be a medium culpability (B), high harm (1): starting point one year, range of nine months to two years’ custody. There is an aggravating factor of commission of offence while under the influence of alcohol or drugs; a mitigating factor of determination and demonstration of steps taken to address addiction or offending behaviour; and a guilty plea. The final sentence could be eight months’ custody, which could be suspended. Key findings are below; Table 3 is in Annex A.

Key findings

- Five judges chose **culpability A** (citing deliberately seeking out witnesses), three chose B (citing non-violent conduct or a factor from A and from C and therefore it would be B), and one was between B and C, noting ‘*there was a threat of violence but it was spontaneous and in drink*’.
- Seven judges chose **harm 1** (citing contact made at the victim’s home), one was between 1 and 2 (noting while there was serious distress, there was no impact on the administration of justice), and one chose 2, noting ‘*it was in the vicinity of the home, but that’s because they are neighbours anyway*’.
- There were a range of **starting points** from nine months (one participant), ten months (one participant), one year (two participants) through to two years (four participants)⁶.
- Eight judges noted the **aggravating factor** under the influence of alcohol with one also adding ‘*previous anti-social behaviour*’; one did not state any factors.
- Eight judges noted **mitigating factors** such as steps taken to address addiction (seven respondents) and remorse (four), with only one stating there were none.

⁶ One judge did not state a starting point.

- **Pre-guilty plea final sentences** ranged from a nine-month SSO, through to a custodial sentence of one year and eight months, with the majority agreeing it would be a sentence between one year and one year and eight months⁷.
- For the **final sentences after GP**, one judge selected a six-month CO, three chose to suspend sentences (which were for six months, ten months and one year and two months), and five gave custodial sentences ranging from 28-30 weeks to one year.
- The judges were asked their **views of the final sentence**: the judge who gave a CO stated *'It's below the custody threshold'*; the three who gave SSOs noted these were *'about right'*, or the *'same as would have passed without the guideline'*; while the five who gave custodial sentences expressed views such as *'the most important question would be whether to suspend it or not'*, and *'it is so serious to interfere with the course of justice... a suspended sentence or community order... [doesn't] reflect how important it is'*.

Scenario B

The victim was due to give evidence against her partner B for a s.20 GBH offence. He had been remanded in custody ahead of the trial. He recently had a previous conviction for turning up at her workplace with a knife. Ahead of the trial B arranged for his cellmate who had recently been released from prison to go to her home and put a letter through the door (while she was at home). The letter warned her not to turn up at court for the trial. He threatened to slash her face, burn her house down, burn her family and friend's houses down, and stab her, and that he was willing to 'do life' for her. Due to his past behaviour the victim believed the threats to be very real. However, she reported this to the police and gave evidence at court. B, aged 35, pleaded guilty on the day of the trial. During the case the judge observed that a year on from the events the victim remained terrified.

This was expected to be a high culpability (A), high harm (1) case: starting point two years, range of one to four years' custody. There are aggravating factors of a recent relevant previous conviction and involving others in the conduct, no mitigating factors, and a small credit for a guilty plea on the day of the trial. The sentence could move up to three years' custody. Key findings are presented below, followed by a summary of comments from using the guideline across both scenarios and further questioning. Table 4 is in Annex A.

Key findings

- All nine judges agreed it was **culpability A**, citing threats of violence, seeking out witnesses, and sophisticated and/ or planned.
- All nine judges agreed it was **harm 1**, citing contact made at the victims' home and serious distress caused.
- The judges selected a range of **starting points**, from one year and eight months (one participant, noting it would *'perhaps be slightly below the starting point'*), through to four years (one participant who stated *'there are a number of factors under culpability... I would increase from the starting point of two years'*). Within that range, one judge stated two to four years, another three years (stating that *'I think I go right to the top of the category and might even go above, but as the statutory maximum is only five years' custody and this isn't actual violence, it can't be in the very top 20 per cent of offences'*), and five selected two years.

⁷ Two judges did not state a pre-guilty plea sentence.

- Eight judges noted the **aggravating factor** of previous convictions, with four also noting offence committed on bail, four that the offender involved others, and three also mentioning domestic abuse/ violence.
- Six judges said there were no **mitigating factors**, while three did note the guilty plea.
- A range of **pre-guilty plea sentences** were given, from two years four months to *'outside of the top of the range'*⁸.
- The six judges who gave specific pre-guilty plea sentences all took into consideration the late guilty plea, and reduced their sentence to give a range of **final sentences**: three explicitly noted a ten per cent reduction, while others adjusted their sentences down (for example, from three years down to two years and eight months). There was a range of final sentences from one year and six months through to an extended sentence, with the majority (six) between two to three years.
- Of those providing their **views of their final sentences**, two noted it was *'about right'* or they were *'happy with the sentence'*, and two felt *'easier about imposing a very severe sentence because it's... acknowledged by the guideline'* or *'the guideline gave me more confidence to go higher than I would have done'*.

Comments on the guideline

The following summarises comments made using the guideline across both scenarios and through follow-up questions:

- All of the judges felt **the guideline could be applied to the wide range of offending behaviour** covered by this offence, commenting that they *'are good and work well'*, *'they cover all the scenes'*, although one did note that *'the one thing I think isn't really set out in the guidelines is the index offence... the offence that leads to the witness intimidation'*.
- All of the judges felt the guideline was **clear and easy to interpret**.
- All of the judges felt the guideline helped them determine which **category of culpability** to apply, although some did provide comments: one noted *'I wonder if it's possible to further differentiate "deliberately seeking out the witness" between medium and high culpability'*, another whether the *'differentiation between A, B and C could be improved'*, and that they *'understand.. that it's difficult to put medium culpability into words that allow for sufficient judicial discretion... you could roll these out... and maybe keep an eye on medium culpability to think whether there's different wording'*, and one noted that they were *'not clear [about] the distinction between an actual or threat of violence... as well as non-violent conduct amounting to a threat... should it read "actual threatening violence"?'.*
- All of the judges felt the guideline helped them determine which **category of harm** to apply, although one commented that they were not sure *'how being by the victim's home is enough to put a case into category 1'*.
- The majority of judges did not have any particular comments on the **starting points and ranges** in the sentencing tables, noting, for example, *'it's important and right that at the bottom of every category... custody is a potential'*, *'sentencing ranges are appropriate'*, *'I'm glad it goes up to four years... I always wonder why it doesn't go up to give years or whatever the maximum is, but judges know you can go above the category range if you need to'* although one did query whether the starting point of two years in A1 is *'too low'*.
- Five judges had no further comments on the **factors increasing seriousness**, while four did raise suggestions: *'not sure whether the use of social media is an aggravating factor?'*, *'should offence*

⁸ Two did not give pre-guilty plea sentences.

committed while on remand be included?’, ‘I would probably add a specific reference to domestic violence’, and ‘I would add ongoing effect on victim, also in the longer term’.

- There were no comments on the **factors reducing seriousness**.
- There were two **comments on the guideline as a whole**: one noted *‘I’m not quite sure that the vulnerability of the victim is sufficiently emphasised’*, while another that *‘The Council ought to think whether or not totality really has a part to play in witness intimidation’* noting *‘let’s say the witness intimidation will get you three years, and the offence would get you three years, if a judge starts sating well, because of totality, I’m going to reduce that to four and a half or five years, it puts a bit of a premium on interfering with witnesses... if you undermine justice by stopping people giving evidence, it seems a bit paradoxical’.*
- Four judges thought that **figures for SSO will be maintained**⁹ under the revised guideline, while four thought there may be less SSO’s as there will be *‘less in “suspendable” territory’* and *‘immediate custodial sentences might increase’*, while one thought *‘in category A case[s] those would all end up being immediate sentence... but B and C would get us a suspended sentence, so it would depend on... what percentage ends up being category A’.*
- The judges were then asked to consider two questions relating to equality and diversity. When prompted to think about whether there were **‘any particular words in the guideline that may contribute to disparities in sentencing’**, the majority did not think there were any, but some provided thoughts, such as: *‘descriptions of the level of distress are always quite difficult – difficult to discern between some and serious’* and another that *“some” and “serious” descriptions of harm may lead to disparity – some victims may be more able and articulate than others’*; and one noted *‘when we come to impose sentence, we have to look at whether there is a realistic prospect of rehabilitation... somebody who’s middle class, got a job, got family support, has gone to their GP and done all of the things that demonstrate they’re capable of rehabilitation is far more likely to get a suspended sentence... someone who is homeless, or has no family support, isn’t going to have that same evidence to convince us that sentence can be suspended’.* When asked whether they thought the guideline **‘gives enough guidance on how to deal with specific equality and diversity issues’**, some judges thought it did, with a couple referring to the ETBB, noting that was *‘enough’* or that *‘it is good on mental health and learning disabilities’.* Others had more specific thoughts, such as: *‘nothing on racial/ religious issues? Possibly not able to do so?’*; another that *‘there may need to be a separate guideline and overarching guideline for [equality and diversity]’*, although another noted *‘we’ve got so many overarching guidelines... many times it’s not clear which one(s) to use in particular... could be useful to state, at Step 3, to consider any other specific guidelines?’.*

⁹ It is anticipated that sentencing levels will remain consistent with levels before the new guideline is introduced. To test this, judges were informed that in 2020, about 180 offenders were sentenced to this type of offence, of which 63% received an immediate custody and 26% an SSO. They were then asked what their views were regarding future volumes of immediate custody and SSO, and whether they thought these figures will be maintained under the draft guideline or not.

Annex A: Summary tables

Table 1: Perverting the course of justice, Scenario A, sentenced using the draft guideline

	Culp	Factors	Harm	Factors	SP	Agg factors	Mitigating factors	Pre-GP sentence	Post-GP sentence
Expected sentencing	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct • Underlying offence was not serious 	2 ¹⁰	<ul style="list-style-type: none"> • Suspicion cast upon an innocent party as a result of the offence • Some impact on administration of justice • Some delay caused to the course of justice 	9 months' custody	• None	<ul style="list-style-type: none"> • No previous convictions • Remorse • Good character and/or exemplary conduct • Offender was in a lesser or subordinate role if acting with others/performed limited role under direction • Mental disorder • Age and/or lack of maturity 	9 months' custody	6 months SSO
1	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct • Underlying offence was not serious • Involved through coercion, intimidation or exploitation 	3	<ul style="list-style-type: none"> • Limited effects of the offence 	HLCO ¹¹	• None	<ul style="list-style-type: none"> • No previous convictions • Remorse • Mental disorder • <i>Final year at university and consequence of sentence</i>¹² 	Bottom of range ¹³	MLCO + 80 hours UPW
2	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct • Underlying offence was not serious 	2/3	<ul style="list-style-type: none"> • None stated 	HLCO 6 months	• None	<ul style="list-style-type: none"> • No previous convictions • Age and/or lack of maturity • Mental disorder • <i>Under pressure</i> 	CO 6 months	CO 2 months suspended for 1 year, UPW
3	C	<ul style="list-style-type: none"> • Unsophisticated nature of conduct 	2/3	<ul style="list-style-type: none"> • Some impact on administration of justice • Borderline 3 as limited effects of the offence 	CO 6 months	• None	<ul style="list-style-type: none"> • No previous convictions • Age and/or lack of maturity • Remorse • Mental disorder • <i>Final year at university may make a difference in how she is dealt with</i> 	CO	CO ¹⁴

¹⁰ This was deemed category 2 harm, but could be at the very bottom, bordering 3 (limited effects of the offence), as evidenced in responses.

¹¹ HLCO – high level community order; MLCO – medium level community order; UPW – unpaid work; RAR – rehabilitation activity requirement.

¹² Factors in italics are not listed in the guideline.

¹³ The judge noted this was 'bottom of the range, difficult to apply a discount for the guilty plea, would say it has been taken into account but not specify how much'.

¹⁴ The judge noted the 'credit for the guilty plea is that the sentence is not custodial and in rejecting use of unpaid work and curfew as not appropriate'

4	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct • Underlying offence was not serious • Involved through coercion, intimidation or exploitation 	3	<ul style="list-style-type: none"> • Limited effects of the offence 	HLCO	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No previous convictions • Remorse • Good character • Mental disorder • <i>Final year at university, thus good prospects</i> 	Defer sentence for 6 months ¹⁵	Then a CO 9 months
5	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct • Involved through coercion, intimidation or exploitation 	3	<ul style="list-style-type: none"> • Limited effects of the offence 	HLCO	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Good character • Remorse • In a lesser or subordinate role¹⁶ • Mental disorder (limited factor) • <i>Coercion</i> • <i>Admitted at first opportunity</i> 	HLCO, 240 hours UPW, 15 days RAR	HLCO, 160 hours UPW, 15 days RAR
6	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct 	2	<ul style="list-style-type: none"> • Suspicion cast upon an innocent party as a result of the offence • Some delay caused to the course of justice 	9 months' custody	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No previous convictions • Good character • Remorse • In a lesser or subordinate role • <i>Offence wasn't committed whilst on bail</i> 	6 months' custody	4 months' custody suspended for 1 year
7	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct 	3	<ul style="list-style-type: none"> • Limited effects of the offence 	HLCO	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No previous convictions • <i>Coercion</i> 	Suspended sentence	Suspended sentence
8	C	<ul style="list-style-type: none"> • Would be a C2/3¹⁷ 	2/3						Cond'l discharge
9	C	<ul style="list-style-type: none"> • None stated 	3	<ul style="list-style-type: none"> • Limited effects of the offence • <i>Dealt with pretty quickly</i> 	CO 6 months	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • Good character • Mental disorder • <i>Pleaded guilty</i> • <i>University and potential good career</i> 	None stated	CO 100 hours

¹⁵ The judge noted they would 'consider deferring the sentence for six months to see if the couple have split up, how she got on in the final part of her university, and how she was getting on with her depression'.

¹⁶ The judge noted 'not double counting'.

¹⁷ The judge felt this 'should not be tried in the Crown Court... and instead I would impose probably a conditional discharge... if I had to apply the guideline, it would be C2/3'.

10	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct • <i>Underlying offence on the cusp to being medium to not serious</i> • <i>Depression (would want to explore to see if relevant or not)</i> 	2/3	<ul style="list-style-type: none"> • Some impact on administration of justice (possibly) • Some delay caused to the course of justice (possibly) • Suspicion cast upon an innocent party as a result of the offence (possibly) 	6 months' custody	• None	<ul style="list-style-type: none"> • No previous convictions • Good character • Remorse • In a lesser or subordinate role • Mental disorder (depression - would need more information) 	CO – would need to look at bands for low/med / high	MLCO (possibly UPW)
11	C	<ul style="list-style-type: none"> • None stated 	3	<ul style="list-style-type: none"> • Limited effects of the offence • <i>Dealt with pretty quickly</i> 	6 months' custody	• None	<ul style="list-style-type: none"> • No previous convictions • Remorse 	None stated	4 months' custody suspended for 1 year
12	B	<ul style="list-style-type: none"> • Between A and C – wasn't unplanned but also not involved through coercion, intimidation or exploitation 	3	<ul style="list-style-type: none"> • Limited effects of the offence • <i>Not much impact on administration of justice</i> • <i>No real delay</i> 	9 months' custody	• None	<ul style="list-style-type: none"> • No previous convictions • Good character • Remorse • In a lesser or subordinate role 	9 months' custody	4 months' custody suspended for 1 year, UPW
13	C	<ul style="list-style-type: none"> • Unplanned and/or limited in scope and duration • Unsophisticated nature of conduct • Underlying offence not serious • Involved through coercion, intimidation or exploitation 	2	<ul style="list-style-type: none"> • Suspicion cast upon an innocent party • Some distress caused to innocent party 	9 months' custody	• None	<ul style="list-style-type: none"> • No previous convictions • Mental disorder 	9 months' custody	6 months' custody suspended for 1 year, UPW/ working with women course
14	C	<ul style="list-style-type: none"> • Unsophisticated nature of conduct • Unplanned and/or limited in scope and duration • Underlying offence not serious • Involved through coercion, intimidation or exploitation 	3	<ul style="list-style-type: none"> • Limited effects of the offence 	HLCO	• None	• None	HLCO	MLCO, RAR, UPW
15	C	<ul style="list-style-type: none"> • <i>Unplanned but of some duration</i> • Unsophisticated nature of conduct • Involved through coercion, intimidation or exploitation 	2	<ul style="list-style-type: none"> • Some distress caused to innocent party • <i>Limited duration</i> 	9 months' custody	• None	<ul style="list-style-type: none"> • No previous convictions • <i>Admitted in interview</i> • <i>GP at earliest opportunity</i> 	6 months' custody	4 months' custody suspended for 1 year, 20 RAR days for thinking skills

Table 2: Perverting the course of justice, Scenario B, sentenced with the draft guideline

	Culp	Factors	Harm	Factors	SP	Aggravating factors	Mitigating factors	Final sentence
Expected sentencing	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for an innocent party as a result of the offence • Serious distress caused to an innocent party • Serious impact on administration of justice • Substantial delay caused to the course of justice 	4 years	<ul style="list-style-type: none"> • Offender involves others in the conduct 	<ul style="list-style-type: none"> • Previous good character and/or exemplary conduct 	7 years
1	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for an innocent party • Serious impact on administration of justice 	4 years	<ul style="list-style-type: none"> • Offender involved others in conduct 	<ul style="list-style-type: none"> • No previous convictions 	5 years
2	A	<ul style="list-style-type: none"> • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious impact on administration of justice 	6 years ¹⁸	<ul style="list-style-type: none"> • Abuse of position as police officer, and an undercover police officer • Domestic violence 	<ul style="list-style-type: none"> • None 	6 years
3	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious impact on administration of justice • Substantial delay caused to the course of justice 	4 years	<ul style="list-style-type: none"> • Evidence concealed/destroyed • Commission of another offence in the course of the activity 	<ul style="list-style-type: none"> • No previous convictions 	7 years
4	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious impact on administration of justice 	4 years	<ul style="list-style-type: none"> • No remorse • In a position of trust as a police officer and in relation to his girlfriend 	<ul style="list-style-type: none"> • No previous convictions • Good character • Offence was not committed on bail 	5 years

¹⁸ Judge noted that the quantity of drugs could make a difference to the starting point.

5	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious distress caused to innocent party • Serious impact on administration of justice 	4 years	<ul style="list-style-type: none"> • Offender involved others in conduct 	<ul style="list-style-type: none"> • None 	5 years
6	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious impact on administration of justice • Substantial delay caused to the course of justice 	4 years	<ul style="list-style-type: none"> • None (thought involvement of others in conduct had been taken care of in harm) 	<ul style="list-style-type: none"> • No previous convictions 	3 years, 6 months
7	A	<ul style="list-style-type: none"> • Sophisticated and/or planned nature of conduct 	2	<ul style="list-style-type: none"> • Some distress caused to an innocent party • Suspicion cast upon an innocent party as a result of the offence 	2 years	<ul style="list-style-type: none"> • Offender involved others in conduct • <i>In a position of trust as a police officer</i> 	<ul style="list-style-type: none"> • None 	3 years, 8 months
8	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious impact on administration of justice 	4 years	<ul style="list-style-type: none"> • Offender involved others in conduct • <i>In a position of trust as a police officer</i> 	<ul style="list-style-type: none"> • None 	6 years
9	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious distress caused to innocent party • Serious impact on administration of justice 	4 years	<ul style="list-style-type: none"> • Evidence concealed/destroyed • <i>In a position of trust as a police officer</i> 	<ul style="list-style-type: none"> • None 	5 years
10	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious distress caused to innocent party • <i>Some</i> impact on administration of justice • Suspicion cast upon an innocent party as a result of the offence 	4 years	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No previous convictions • Good character 	3 years, 3 months

11	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious impact on administration of justice • <i>Ruined her career, long lasting consequences</i> 	8 years	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • None 	6-7 years
12	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious impact on administration of justice • Delay caused to the course of justice 	4 years	<ul style="list-style-type: none"> • Offender involved others in conduct • <i>Interfered with administration of justice</i> • <i>Use of position of authority – grave impact on public trust and confidence</i> 	<ul style="list-style-type: none"> • None 	6 years
13	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious distress caused to innocent party • Serious impact on administration of justice • Delay caused to the course of justice 	4 years	<ul style="list-style-type: none"> • Offender involved others in conduct • <i>Use of position of authority to add credibility to claim</i> • <i>Motivated by malice and hostility</i> 	<ul style="list-style-type: none"> • None 	5 years
14	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct • Underlying offence very serious 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious distress caused to innocent party • Serious impact on administration of justice 	4 years	<ul style="list-style-type: none"> • None (not double counting) 	<ul style="list-style-type: none"> • No previous convictions 	5-6 years
15	A	<ul style="list-style-type: none"> • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Serious consequences for innocent parties • Serious distress caused to innocent party 	4 years	<ul style="list-style-type: none"> • <i>Abuse of position - serving police officer expected to uphold, respect and act within the law</i> 	<ul style="list-style-type: none"> • No previous convictions 	5 years, 6 months

Table 3: Witness Intimidation, Scenario A, sentenced using the draft guideline

	Culp	Factors	Harm	Factors	SP	Aggravating factors	Mitigating factors	Pre-GP sentence	Final sentence
Expected sentencing	B	<ul style="list-style-type: none"> • Non-violent conduct amounting to a threat • Other cases that fall between categories A and C¹⁹ because: <ul style="list-style-type: none"> ○ Factors are present in A and C which balance each other out and/or ○ The offender’s culpability falls between the factors described in A and C 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim’s home • Serious distress caused to victim • Serious impact on administration of justice 	1 years’ custody	<ul style="list-style-type: none"> • Commission of offence whilst under the influence of alcohol or drugs 	<ul style="list-style-type: none"> • Determination, and/or demonstration of steps taken to address addiction or offending behaviour 	1 years’ custody	8 months’ custody ²⁰
1	B	<ul style="list-style-type: none"> • Deliberately seeking out witnesses (A) • Unplanned and/or limited in scope and duration (C) 	1	<ul style="list-style-type: none"> • None stated 	9 months	<ul style="list-style-type: none"> • Under influence of alcohol 	<ul style="list-style-type: none"> • None 	42-45 weeks	28-30 weeks
2	A	<ul style="list-style-type: none"> • Deliberately seeking out witnesses • Breach of bail conditions 	1	<ul style="list-style-type: none"> • Contact made at victim’s home 	2 years	<ul style="list-style-type: none"> • Under influence of alcohol 	<ul style="list-style-type: none"> • Remorse • Steps taken to address addiction 	1 year 8 months	1 year 2 months SSO
3	A	<ul style="list-style-type: none"> • Deliberately seeking out witnesses • Actual or threat of violence to witnesses and/or their families 	1	<ul style="list-style-type: none"> • Contact made at victim’s home • Distress caused to victim 	2 years	<ul style="list-style-type: none"> • Under influence of alcohol 	<ul style="list-style-type: none"> • Remorse • Steps taken to address addiction 	1 year 3 months	10 months, suspended for 1 year 6 months
4	B	<ul style="list-style-type: none"> • Deliberately seeking out witnesses at home 	1	<ul style="list-style-type: none"> • Distress caused to victim 	1 year	<ul style="list-style-type: none"> • Under influence of alcohol • Previous anti-social behaviour 	<ul style="list-style-type: none"> • Pleading guilty 	1 year	8 months

5	A	<ul style="list-style-type: none"> Deliberately seeking out witnesses at home 	1	<ul style="list-style-type: none"> Contact made at victim's home 	2 years	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> Remorse Real prospect of rehabilitation – moved away <i>Pleaded guilty</i> 	1 year 3 months	10 months
6	A	<ul style="list-style-type: none"> Deliberately seeking out witnesses 	1	<ul style="list-style-type: none"> Contact made at or in vicinity of victim's home <i>Confined victim to home</i> 	2 years	<ul style="list-style-type: none"> Under influence of alcohol <i>A single occasion</i> 	<ul style="list-style-type: none"> Steps taken to address alcoholism and moved away 	1 year 6 months	1 year
7	B/C	<ul style="list-style-type: none"> Threat of violence to witnesses and/or their families 	2	<ul style="list-style-type: none"> Contact made at or in vicinity of victim's home (<i>because they were neighbours</i>) 	None stated	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Steps taken to address alcoholism and moved away 	9 months, suspended sentence	6 months, suspends sentence
8	B	<ul style="list-style-type: none"> Non-violent conduct amounting to a threat 	1/2	<ul style="list-style-type: none"> Serious distress caused to victim <i>No impact on admin of justice</i> 	10 months	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> Remorse Steps taken to address issue Pleaded guilty at first opportunity 	-	6 months CO
9	A	<ul style="list-style-type: none"> None stated 	1	<ul style="list-style-type: none"> None stated 	1 year	<ul style="list-style-type: none"> Under influence of alcohol 	<ul style="list-style-type: none"> Steps taken to address issues and moving away 	-	8 months

¹⁹ Factors for A: Actual or threat of violence to witnesses and/or their families; Deliberately seeking out witnesses; Breach of bail conditions; Conduct over a sustained period of time; Sophisticated and/or planned nature of conduct. Factors for C: Unplanned and/or limited in scope and duration; Involved through coercion, intimidation or exploitation; Offender's responsibility substantially reduced by mental disorder or learning disability

²⁰ Could suspend the sentence due to realistic prospects of rehabilitation.

Table 4: Witness Intimidation, Scenario B, sentenced with the draft guideline

	Culp	Factors	Harm	Factors	SP	Aggravating factors	Mitigating factors	Pre-GP sentence	Post-GP sentence
Expected	A	<ul style="list-style-type: none"> • Actual or threat of violence to witnesses and/or their families • Deliberately seeking out witnesses • Breach of bail conditions • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim's home • Serious distress caused to victim • Serious impact on administration of justice 	2 years' custody	<ul style="list-style-type: none"> • Previous convictions • Offender involves others in the conduct 	• None	Up to 10 per cent reduction	3 years' custody
1	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Deliberately seeking out witnesses • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim's home • Serious distress caused to victim 	2 years	<ul style="list-style-type: none"> • Previous convictions 	• GP	2 years 8 months	2 years 4 months
2	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Deliberately seeking out witnesses • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim's home • Serious distress caused to victim 	3 years	<ul style="list-style-type: none"> • Previous convictions • Committed while on bail • <i>Domestic Abuse</i> 	• None	3 years	2 years 8 months
3	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Deliberately seeking out witnesses • Sophisticated and/or planned nature of conduct 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim's home • Serious distress caused to victim • Risk of serious impact on administration of justice 	2 years	<ul style="list-style-type: none"> • Relevant previous convictions • Offender involves others in conduct • Committed while on bail 	• GP	3 years 4 months	3 years
4	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Planned nature of conduct 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim's home (<i>although delivering a letter seems like a loose link to someone's house</i>) 	2 years	<ul style="list-style-type: none"> • Previous convictions • Offender involves others in conduct • Committed whilst on bail 	• GP	2 years 9 months	2 years 6 months

5	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Deliberately seeking out witnesses • Sophisticated nature of conduct 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim's home • Serious distress caused to victim 	2-4 years	<ul style="list-style-type: none"> • Previous convictions 	<ul style="list-style-type: none"> • None 	Outside the top of the range	Extended sentence
6	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Deliberately seeking out witnesses • Planned nature of conduct 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim's home • Serious distress caused to victim 	2 years	<ul style="list-style-type: none"> • Previous convictions • Committed whilst on remand • Offender involved others in conduct • <i>Domestic violence – level of threat</i> 	<ul style="list-style-type: none"> • None 	3 years	2 years 8 months
7	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families (<i>persistent threat</i>) 	1	<ul style="list-style-type: none"> • Serious distress caused to victim • <i>Domestic violence</i> 	1 year 8 months	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • None 	-	1 year 6 months
8	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Deliberately seeking out witnesses 	1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim's home • Serious distress caused to victim 	2 years	<ul style="list-style-type: none"> • Previous convictions • Offender involves others in conduct • <i>Domestic violence – level of threat</i> 	<ul style="list-style-type: none"> • None 	2 years 4 months to 2 years 6 months	2 years 2 months
9	A	<ul style="list-style-type: none"> • Threat of violence to witnesses and/or their families • Deliberately seeking out witnesses • Sophisticated and planned nature of conduct 	1	<ul style="list-style-type: none"> • Serious distress caused to victim 	4 years	<ul style="list-style-type: none"> • Previous convictions 	<ul style="list-style-type: none"> • None 		3 years 4 months

Perverting the Course of Justice

Common law

Triable only on indictment

Maximum: Life imprisonment

Offence range: Community order – 7 years' custody

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.**

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Conduct over a sustained period of time• Sophisticated and/or planned nature of conduct• Underlying offence very serious
B- Medium culpability	<ul style="list-style-type: none">• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Unplanned and/or limited in scope and duration• Unsophisticated nature of conduct• Underlying offence was not serious• Involved through coercion, intimidation or exploitation• Offender's responsibility substantially reduced by mental disorder or learning disability

HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none">• Serious consequences for an innocent party(ies) as a result of the offence (for example time spent in custody/arrest)• Serious distress caused to innocent party (for example loss of reputation)• Serious impact on administration of justice• Substantial delay caused to the course of justice
Category 2	<ul style="list-style-type: none">• Suspicion cast upon an innocent party as a result of the offence• Some distress caused to innocent party• Some impact on administration of justice• Some delay caused to the course of justice
Category 3	<ul style="list-style-type: none">• Limited effects of the offence

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 convictions

Harm	Culpability		
	A	B	C
Category 1	Starting Point 4 years' custody Category Range 2 - 7 years' custody	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 9 months - 2 years' custody
Category 2	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 9 months - 2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody
Category 3	Starting Point 1 years' custody Category Range 9 months - 2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody	Starting Point High level community order Category Range Medium 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

Other aggravating factors:

- Offender involves others in the conduct
- Vulnerable victim
- Commission of offence whilst under the influence of alcohol or drugs

- Evidence concealed/destroyed
- Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- 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, learning disability (where not taken into account at step one)
- 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

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. 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 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**

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 52 of the Sentencing Code](#)

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Witness Intimidation

Criminal Justice and Public Order Act 1994, s.51(1) and s.51(2)

Triable either way

Maximum: 5 years' custody

Offence range: Community Order- 4 years' custody

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.**

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Actual or threat of violence to witnesses and/or their families• Deliberately seeking out witnesses• Breach of bail conditions• Conduct over a sustained period of time• Sophisticated and/or planned nature of conduct
B- Medium culpability	<ul style="list-style-type: none">• Non-violent conduct amounting to a threat• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Unplanned and/or limited in scope and duration• Involved through coercion, intimidation or exploitation• Offender's responsibility substantially reduced by mental disorder or learning disability
HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none">• Contact made at or in vicinity of victim's home• Serious distress caused to victim• Serious impact on administration of justice
Category 2	<ul style="list-style-type: none">• Some distress caused to the victim• Some impact on administration of justice
Category 3	<ul style="list-style-type: none">• Limited effects of the offence

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 convictions

Harm	Culpability		
	A	B	C
Category 1	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 9 months-2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody
Category 2	Starting Point 1 years' custody Category Range 9 months -2 years' custody	Starting Point 9 months' custody Category Range 6 months - 1 years' custody	Starting Point 6 months custody Category Range High level community order - 9 months' custody
Category 3	Starting Point 9 months' custody Category Range 6 months -1 years' custody	Starting Point 6 months custody Category Range High level community order – 9 months' custody	Starting Point Medium level community order Category Range 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

Other aggravating factors:

- Offender involves others in the conduct
- Use of social media

- Vulnerable victim
- Commission of offence whilst under the influence of alcohol or drugs
- Evidence concealed/destroyed
- Offence committed on licence or post sentence supervision or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
 - Remorse
 - Good character and/or exemplary conduct
 - The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
 - 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, learning disability (where not taken into account at step one)
 - 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

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. 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 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

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 52 of the Sentencing Code](#)

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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>A High culpability</p>	<ul style="list-style-type: none"> • Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour • Use of very significant force • Leading role in illegal activity • Category B offence may be elevated to category A by: <ul style="list-style-type: none"> ◦ the extreme nature of one or more medium culpability factors ◦ the extreme impact caused by a combination of medium culpability factors
<p>B Medium culpability</p>	<ul style="list-style-type: none"> • Deliberate or gratuitous attempt to cause suffering • Prolonged and/or repeated incidents of cruelty or neglect • Use of significant force • Ill treatment in a commercial context • Deliberate disregard for the welfare of the animal (including failure to seek treatment) • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> ◦ 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

C Lower culpability	<ul style="list-style-type: none"> • Well-intentioned but incompetent care • Momentary or brief lapse in judgement • Involved through coercion, intimidation or exploitation • Mental disorder or learning disability, where linked to the commission of the offence
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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.

Category 1	<ul style="list-style-type: none"> • Death (including injury necessitating euthanasia) • Particularly grave or life-threatening injury or condition caused • Very high level of pain and/or suffering caused
Category 2	<ul style="list-style-type: none"> • 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) • Substantial level of pain and/or suffering caused
Category 3	<ul style="list-style-type: none"> • Little or no physical/developmental harm or distress • All other levels of pain and/or suffering

Step 2 – Starting point and category range

	High culpability	Medium culpability	Lower culpability
Category 1	Starting point 1 year 6 months' custody	Starting point 26 weeks' custody	Starting point Low level community order
	Category range 26 weeks' custody – 3 years' custody	Category range 18 weeks' – 1 year's custody	Category range Band B fine – Medium level community order
Category 2	Starting point 26 weeks' custody	Starting point 12 weeks' custody	Starting point Band C fine
	Category range 18 weeks' – 1 year's custody	Category range Medium level community order – 26 weeks' custody	Category range Band B fine – Low level community order
Category 3	Starting point 12 weeks' custody	Starting point Medium level community order	Starting point Band B fine
	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – High level community order	Category range 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

- 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 animals
- 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
- Distress caused to owner where not responsible for the offence

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.

Annex B: Animal Cruelty Guidelines Consultation – Summary of respondents

103 responses in total

Sentencers

Magistrates: 25 (including Suffolk Magistrates' Bench, West London Magistrates' Bench, Magistrates' Association and the Chief Magistrate)

Judges: 3 (including Legal Committee of Council of District Judges (Magistrates' Courts), Criminal Sub-Committee of the Council of Circuit Judges)

Animal charities

11 charities:

- IFAW (International Fund for Animal Welfare)
- Donkey Sanctuary
- The Animal Team
- Rainbow Valley Sanctuary
- Naturewatch Foundation
- RSPCA
- Battersea Dogs' and Cats' Home
- Blue Cross
- Dogs' Trust
- League Against Cruel Sports
- World Horse Welfare

Animal welfare activists or lobbying groups

6 (including FOAL [Focus on Animal Law] Group, The Empathy Project, UK Centre for Animal Law, TAAP [The Animal Advocacy Project], Animal Concern Ltd)

Local authority/local government officials

1

Victims' charities

1 (Refuge)

Vets and other animal professionals

4 (including the Links Group and the National Farmers Union)

Members of the public

38

Legal/CJS professionals

- Justices' Clerks' Society
- Lawyers – 6 (including London Criminal Courts Solicitors' Association and Criminal Law Solicitors' Association)
- Other – 2 (from someone working in the Met Police Status Dog and Canine Welfare Unit and another from someone in the CPS)

Miscellaneous companies

- Hidden-in-Sight and European Link Coalition (both responding on the link between animal and child abuse)

Other Government Departments, etc.

- Cross-Government response
- CPS
- Pending – awaiting response from the Justice Select Committee

Academics

- Mike Radford, University of Aberdeen

Annex C - Animal Cruelty: s.4 Unnecessary suffering road testing

Introduction

The current animal cruelty guideline 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 animal welfare) of the Animal Welfare Act 2006. In 2021, Parliament raised the maximum penalty for offences subject to sections 4-8 to five years' custody and changed the mode of trial from summary only to triable either way. For section 9 offences, the statutory maximum remains unchanged, with a statutory maximum of 6 months custody, as summary only.

The Sentencing Council consulted on the decision to create two new guidelines. The first covers offences contrary to sections 4-8 and the second, section 9 alone. As the relevant offences were previously summary offences, a limited number of sentencing transcripts are available. Therefore, it was decided that further research was needed to explore the potential impacts of the new guideline on sentencing practice. As the section 9 guideline remains largely similar to the existing guideline, and sections 5-8 have lower offence volumes, the scope of this research was limited to s.4 of the Animal Welfare Act 2006, unnecessary suffering.

The resource assessment estimated that “the increase in the statutory maximum reflected in the guideline may result in an increase in sentence severity for a very small subset of offences at the highest end of severity, for offending contrary to sections 4-8”¹. However, as there are only a small number of these offences and a small proportion of these result in custodial sentences, it was estimated that the guideline was unlikely to have a significant impact on prison or probation places. However, as a result of the changes brought about by the Animal Welfare (sentencing) Act outlined above, it was estimated that there may be an increase in the proportion of cases referred to the Crown Court. It is anticipated that a high proportion of cases would remain within the eligible threshold for a suspended sentence.

Methodology

Participants were randomly selected from the Council's research pool. Fourteen qualitative interviews with seven magistrates and seven Circuit Judges, were conducted via MS Teams. Sentencers considered two hypothetical sentencing scenarios (A and B) relating to s.4, Unnecessary suffering, using the animal cruelty draft guideline. Following the consideration of Scenario A, brief additional information was shared with sentencers to assess the level of severity at which a case would be committed to the Crown Court as well as the impact of additional factors on the final sentence.

Sentencers with experience of animal cruelty cases were asked additional questions, to inform an assessment of the impact that the introduction of the guideline may have on allocation and sentencing severity, as well as whether the guideline reflects the levels of seriousness of cases seen within the courts. Responses are outlined later in this report.

¹ [Animal cruelty consultation stage resource assessment \(sentencingcouncil.org.uk\)](https://www.sentencingcouncil.org.uk/resources/animal-cruelty-consultation-stage-resource-assessment/)

Findings

Key findings:

- The draft guideline road tested well, and judges and magistrates found it to be clear and useable.
- Scenario A: Just over half of participants categorised the scenario as expected by policy. Variation occurred primarily in the categorization of harm. Due to uncertainty surrounding the subjectivity of the factors, two sentencers stated the scenario to be borderline of two categories. Following the additional information, the majority of participants categorised harm to be high, rather than medium as expected. Due to this, final sentences appear elevated in comparison to that expected.
- Scenario B: Variation against what was expected occurred in the categorisation of culpability in the scenario, with the majority of sentencers selecting high culpability rather than medium as was expected by policy. Similarly to scenario A, it is due to this that the final sentences appear elevated compared to what was expected. Little variation in harm was observed, however, four sentencers unexpectedly considered “multiple” or “substantial” numbers of animals involved to be a question of harm, rather than aggravation.
- The proposed factors for culpability and harm were largely accepted by participants. A general concern of subjectivity was raised regarding the medium and high factors within culpability and harm. A further point was made by multiple sentencers for increased clarity between factors which appear similar in wording across two categories. For example, “use of very significant force” in high culpability in comparison to “use of significant force” which is in medium culpability (more details can be found on page 17). One sentencer suggested that the aggravating factor “use of a weapon” may be better placed in culpability.
- Aggravating and mitigating factors were applied consistently across the scenarios and were considered to be appropriate and comprehensive. A large proportion of sentencers expressed their surprise that the following factor did not appear in the guideline: “commission of offence whilst under the influence of alcohol or drugs”. However, sentencers acknowledged that the list of factors is not exhaustive.
- The sentencing table was widely accepted. A small number of amendments were suggested which are outlined on page 18 of this report. The theme of a need for proportionality of animal cruelty and the assault guidelines presented across multiple interviews.
- Half of the participants in the exercise had previous experience of sentencing cases of animal cruelty. Amongst these participants, it was generally thought that the proposed starting points reflected the level of seriousness of cases seen in court and that, in the context of the increase in the statutory maximum, sentencing severity for the offence could increase. However, due to the recent increase in magistrates’ sentencing powers it was thought that the majority of cases would remain in the magistrates’ court – reserving the most serious cases to be committed to the Crown Court.
- The majority of sentencers were content that there were not any phrases within the guideline that could contribute to possible disparities in sentencing. Small points were noted surrounding disparity between the private individual and farmer as well as consistency in the application of the guideline for rural and urban cases.

Scenario A

A 25-year-old male with no previous convictions repeatedly punched and slapped his medium-sized pet dog on the head and used his phone to record the incident in a 10-minute video in which he could be heard laughing. The offender had been drinking heavily and the dog was hit with enough force to become dizzy. Immediately after the incident, the offender emailed the video to a friend and made jokes about teaching his dog to be obedient. He then went to bed for the night showing no concern for the dog's health.

The partner of the offender's friend contacted the RSPCA to report her concerns about the dog's welfare. After the dog was seized by the RSPCA, a medical examination showed fractures to its skull.

At arrest, the offender acknowledged that what he did was wrong, admitting that he perhaps "went a little too far" and pleading guilty at the earliest opportunity. A pre-sentence report showed that he accepted responsibility and co-operated fully with the RSPCA in getting the dog rehomed after the incident. It also showed an insight into his offending, including the link with alcohol, and that he was at a low risk of reoffending character. The dog fully recovered from its physical injuries but was left acting withdrawn and anxious around humans; it has since been rehomed with a family and is said to be doing well.

Scenario A was expected to be placed in category B2, with a 12 weeks' custodial starting point. Use of technology to record the cruelty may aggravate the offence, whilst the offenders' lack of previous convictions and cooperation with the investigation may mitigate. The sentence could be one of 12 weeks, reduced to 8 weeks' post application of credit for a guilty plea.

- Eight of the fourteen participants categorised the scenario to be of category B2, as expected. Of those who did not categorise the scenario as expected, there was a level of variation, displayed below:

Offence categorisation	Number of sentencers (6)
B1	1
B1 or B2	1
B2 or B3	1
B3	1
A2	2

- Two sentencers considered the scenario to constitute the highest level of culpability. The first did so on account of the following factors: Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour and use of very significant force. The second sentencer considered the following factors: leading role in illegal activity and use of very significant force.
- The sentencer who regarded the scenario to be of a high level of harm did so on account of the assessment of injury to be particularly grave or life-threatening and possibly a very high level of pain and/or suffering caused. The sentencer who selected high/medium harm did so due to uncertainty about whether the level of pain was 'substantial' or 'very high'. Those who selected the lowest category of harm did so because they thought the case was borderline between categories two and three due to the full recovery of the animal.

- Aggravating factors were applied fairly consistently by sentencers. The majority of sentencers stated that they believed that ‘offender under the influence of alcohol’ should appear in the guideline. The following factors were applied: use of technology, use of a weapon, animal requires significant intervention to recover. As the list of aggravating factors in the guideline is not exhaustive, the factors applied broadly reflect those anticipated by the policy team. In a similar nature, mitigating factors were applied fairly consistently. Factors applied included: no previous convictions, remorse, good character, voluntary surrender of animals to authorities, cooperation with investigation, isolated incident, age and/or lack of maturity.
- Final sentences for Scenario A (post application of credit for guilty plea) ranged between a Community Order (HLCO) and 28 weeks custody. The variation in sentence compared with that expected by policy is predominantly thought to be a direct result of the small inconsistency in offence categorisation.
- Overall, participants thought their final sentence using the draft guideline was appropriate and as expected. Two sentencers thought the sentences “*ended up on the low side*”: one, due to not being able to reach the top of the selected category range and the second as the statutory maximum is five years, whereas “no categories go above 3 years”.

Scenario A – Additional information

The video also showed the dog being thrown against a brick wall. The medical examination later showed that this had shattered its pelvis.

With the additional information, aggravating and mitigating factors were expected to remain consistent with that expected for Scenario A. An elevation was expected of culpability from medium to high account for an increased level of force. Therefore, the offence categorisation would rise from B2 to A2. A slight increase in the level of harm was expected however, due to the broad scope of injuries that may fall within the medium harm category it was anticipated that the additional information would not be categorised as high harm. The final sentence was expected to increase in response to the increased categorisation: 26 weeks’ custody, reduced to 18 weeks’ following the application of credit for guilty plea entered at the earliest opportunity.

Most sentencers did not categorise the extension of Scenario A as expected by policy, with the majority increasing the categorisation of harm. Nine sentencers determined the offence category to be A1, rather than A2 as expected. The categorisation is as follows:

Offence categorisation	Number of sentencers (14)
A1	9
A1 or A2	2
A1 or B1	1
B1	1
B2	1

- One sentencer who categorised culpability as medium did so based on prolonged and/or repeated incidents of cruelty or neglect. The second, did not consider there were any additional harm or culpability factors to be applied over and above those already applied

for the main scenario; however, they stated that they would aggravate the offence. One sentencer considered the classification to be borderline between medium and high culpability.

- The majority of sentencers (11) regarded the additional information for Scenario A to constitute a high level of harm due to the following factors: particularly grave or life-threatening injury or condition caused and a very high level of pain and/or suffering caused. One sentencer applied the factor of death (including injury necessitating euthanasia), as the injuries were likely to lead to euthanasia.
- The majority (13) of final sentences (post application of credit for guilty plea) for the extension of Scenario A ranged between 18 weeks and 1 year and 6 months custody. However, one judge (number five in Table 1) thought there to be justification to go outside the guidelines: *“I would probably take [multiple incidents] as reason to take me outside the guideline. I would probably be going up from the starting point in the guideline right up to the top of the range, if not beyond before adjustment for any mitigating factors”*. The judge imposed a final sentence of 3 years. Two magistrates stated that they would commit the case to the Crown Court for sentence.
- After sharing the additional information, the majority of sentencers increased the categorisation of culpability (12) and harm (10), by one category. It should be noted that the two sentencers who did not increase the category of culpability had already assessed the scenario as high culpability prior to receiving the additional information. As a result, thirteen sentencers increased the final sentence imposed previously for Scenario A. Two magistrates believed that the additional information increased the sentence beyond their powers and would therefore commit the case to the Crown Court. The sentence of five participants also increased such that it now crossed the custody threshold: three increased their sentence from a community order to immediate custody, one increased their sentence from a fine to custody, one from a community order to a suspended sentence order. One sentencer also changed their sentence from a suspended sentence to an immediate custodial sentence. Five sentencers imposed immediate custodial sentences for Scenario A and all increased the length of the sentence after considering the additional information; the extension in relation to the additional information ranged between 8 weeks and 2.5 years. Full details of the sentencing of judges and magistrates’ can be seen in Table 1, below.
- Overall, participants thought their final sentence using the draft guideline was appropriate and as expected. Yet, a few sentencers thought that although the sentence was not considered too high in isolation however, when compared to offences involving assault and similar against humans, “it does seem higher”.

Table 1: Scenario A

September 2022

	Culpability	Factors:	Harm	Factors:	Starting point	Aggravation	Mitigation	Pre-GP sentence	Final sentence
Expected ²	B	<ul style="list-style-type: none"> Deliberate disregard for welfare of animal Deliberate/gratuitous attempt to cause suffering Prolonged incident of cruelty 	2	<ul style="list-style-type: none"> Offence results in an injury or condition which has a substantial and/or lasting effect 	12 weeks'	<ul style="list-style-type: none"> Use of technology 	<ul style="list-style-type: none"> No previous convictions Cooperation with the investigation 	12 weeks'	8 weeks'
	A	<ul style="list-style-type: none"> Use of very significant force 	2	<ul style="list-style-type: none"> Substantial level of pain and/or suffering caused 	26 weeks	No additional	No additional	26 weeks	18 weeks
Circuit Judges									
1 ³	B	<ul style="list-style-type: none"> Deliberate or gratuitous attempt to cause suffering Prolonged and/or repeated incidents of cruelty or neglect Deliberate disregard for the welfare of the animal 	2	<ul style="list-style-type: none"> Substantial level of pain and/or suffering caused 	12 weeks'	<ul style="list-style-type: none"> Use of technology <i>Under the influence of alcohol</i> 	<ul style="list-style-type: none"> No previous convictions Cooperation with the investigation 	12 weeks'	HLCO (UPW and curfew)
	A	<ul style="list-style-type: none"> Use of very significant force 	1	<ul style="list-style-type: none"> Offence results in an injury or condition which has a substantial and/or lasting effect 	1 year, 6 months	No additional	No additional	1 year	35 weeks'
2* 4	B	<ul style="list-style-type: none"> Deliberate or gratuitous attempt to cause suffering Prolonged and/or repeated incidents of cruelty or neglect Use of significant force 	2	<ul style="list-style-type: none"> Substantial level of pain and/or suffering caused <i>Distress at the time of offence</i> 	12 weeks'	<ul style="list-style-type: none"> Use of technology <i>Under the influence of alcohol</i> 	<ul style="list-style-type: none"> No previous convictions Remorse <i>Insight into offending shown</i> 	16 weeks'	11/12 weeks'
	A/B	<ul style="list-style-type: none"> Use of very significant force 	1	<ul style="list-style-type: none"> Particularly grave or life-threatening injury or condition caused 	26 weeks	<ul style="list-style-type: none"> Use of a weapon (possibly include) 	No additional	44 weeks – 1 year	30 – 35 weeks
3	B	<ul style="list-style-type: none"> Prolonged and/or repeated incidents of cruelty or neglect 	2	<ul style="list-style-type: none"> Offence results in an injury or condition which has a substantial and/or lasting effect 	12 weeks'	<ul style="list-style-type: none"> <i>Under the influence of alcohol</i> 	<ul style="list-style-type: none"> Remorse <i>Insight into offending shown</i> 	MLCO (1 year 6 months) (Ban on ownership)	Fine (UPW)
	A	<ul style="list-style-type: none"> Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour (probably) 	1	<ul style="list-style-type: none"> Particularly grave or life-threatening injury or condition caused 	1 year 6 months	No additional	No additional	1 year 6 months	1 year 6 months

4*	B	<ul style="list-style-type: none"> Deliberate or gratuitous attempt to cause suffering Momentary or brief lapse in judgement 	2 or 3	<ul style="list-style-type: none"> Offence results in an injury or condition which has a substantial and/or lasting effect 	MLCO (1 year)	<ul style="list-style-type: none"> Use of technology <i>Under the influence of alcohol</i> 	<ul style="list-style-type: none"> No previous convictions 		CO 1 year (ATR; 80hrs UPW)
	A	<ul style="list-style-type: none"> Use of very significant force 	1 or 2	<ul style="list-style-type: none"> Particularly grave or life-threatening injury or condition caused Very high level of pain and/or suffering caused 	12 weeks	No additional	No additional	1 year	8 months'
5	A	<ul style="list-style-type: none"> Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour Use of very significant force 	2	<ul style="list-style-type: none"> Offence results in an injury or condition which has a substantial and/or lasting effect 	26 weeks	<ul style="list-style-type: none"> Use of a weapon <i>Under the influence of alcohol</i> 	<ul style="list-style-type: none"> Remorse Cooperation with the investigation Isolated incident 	42 weeks	28 weeks
	A	No change	1	<ul style="list-style-type: none"> Very high level of pain and/or suffering caused (<i>on more than one occasion</i>) 	5 years	<ul style="list-style-type: none"> Animal requires significant intervention to recover 	No additional	3 years	
6	B	<ul style="list-style-type: none"> Deliberate or gratuitous attempt to cause suffering Prolonged and/or repeated incidents of cruelty or neglect Use of significant force Deliberate disregard for the 	1 or 2	<ul style="list-style-type: none"> Very high level of pain and/or suffering caused OR Substantial level of pain and/or suffering caused 	12 or 26 weeks	<ul style="list-style-type: none"> Use of technology <i>Under the influence of alcohol</i> 	<ul style="list-style-type: none"> Cooperation with the investigation 	20-26 weeks	12-15 weeks SSO (1 year)
	A	<ul style="list-style-type: none"> Use of very significant force 	1	<ul style="list-style-type: none"> Very high level of pain and/or suffering <i>anticipated</i> 	1 year 6 months	<ul style="list-style-type: none"> Animal requires significant intervention to recover 	No additional	1 year 6 months	1 year

² Shaded rows display additional sentencing factors considered for Scenario A after the following additional information had been shared with the sentencer: "The video also showed the dog being thrown against a brick wall. The medical examination later showed that this had shattered its pelvis."

³ Text in italics refers to factors not included within the animal cruelty draft guideline.

⁴ * denotes sentencers with experience of sentencing cases of animal cruelty. However, no particular difference was observed in sentencing practice was observed between those with and those without experience.

7	B	<ul style="list-style-type: none"> Deliberate or gratuitous attempt to cause suffering Prolonged and/or repeated incidents of cruelty or neglect Use of significant force Deliberate disregard for the welfare of the animal 	2	<ul style="list-style-type: none"> Substantial level of pain and/or suffering caused 	12 weeks	<ul style="list-style-type: none"> Use of technology <i>Under the influence of alcohol</i> 	<ul style="list-style-type: none"> No previous convictions Remorse Voluntary surrender of animals to authorities Cooperation with investigation 	18 weeks	12 weeks SSO (1 year) (100hrs UPW; Deprivation of ownership and prohibit ownership for 5 years)
	B	No change	2	No change (would aggravate)	22 weeks	No additional	No additional	30 weeks	20 weeks SSO (1 year) RAR/ 150hrs UPW
Magistrates'									
8 ⁵	B	<ul style="list-style-type: none"> Prolonged and/or repeated incidents of cruelty or neglect 	2	<ul style="list-style-type: none"> Offence results in an injury or condition which has a substantial and/or lasting effect 	12 weeks'	<ul style="list-style-type: none"> Use of technology 	<ul style="list-style-type: none"> No previous convictions Remorse Cooperation with investigation Age and/or lack of maturity <i>Low risk of re-offending</i> 	12 weeks'	MLCO
	A	<ul style="list-style-type: none"> <i>A deliberate act</i> 	1	<ul style="list-style-type: none"> Particularly grave or life-threatening injury or condition caused Very high level of pain and/or suffering caused 	1 year 6 months	<ul style="list-style-type: none"> No additional 	<ul style="list-style-type: none"> Remorse⁶ 	26 weeks	18 weeks
9*	B	<ul style="list-style-type: none"> Deliberate or gratuitous attempt to cause suffering Use of significant force Deliberate disregard for the welfare of the animal 	1	<ul style="list-style-type: none"> Particularly grave or life-threatening injury or condition caused Very high level of pain and/or suffering caused (possibly include) 	26 weeks	<ul style="list-style-type: none"> Animal requires significant intervention to recover <i>Under the influence of alcohol</i> 	<ul style="list-style-type: none"> No previous convictions Remorse Cooperation with investigation 	18 weeks	12 weeks
	A	<ul style="list-style-type: none"> Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour 	1	<ul style="list-style-type: none"> Death (including <i>injury which may necessitate euthanasia</i>) 	26 weeks	<ul style="list-style-type: none"> <i>Sustained assault</i> 	No additional	Commit to the Crown Court	Commit to the Crown Court

⁵ Text in italics refers to factors not included within the animal cruelty draft guideline.

⁶ Text with a strikethrough indicates factor(s) considered for Scenario A that were not thought to be relevant following knowledge of the additional information.

10 *	B	<ul style="list-style-type: none"> • Prolonged and/or repeated incidents of cruelty or neglect • Deliberate disregard for the welfare of the animal 	2	<ul style="list-style-type: none"> • Offence results in an injury or condition which has a substantial and/or lasting effect • Substantial level of pain and/or suffering caused 	12 weeks	<ul style="list-style-type: none"> • Use of technology • Animal requires significant intervention to recover 	<ul style="list-style-type: none"> • No previous convictions • Remorse • Good character • Voluntary surrender of animals to authorities • Isolated incident 	12 weeks	12 weeks SSO (12 months) (UPW, banned from ownership for 5 years)
	A	<ul style="list-style-type: none"> • Use of very significant force 	1	<ul style="list-style-type: none"> • Particularly grave or life-threatening injury or condition caused 	1 year 6 months	<ul style="list-style-type: none"> • No additional 	<ul style="list-style-type: none"> • No additional 	2 years	Commit to the Crown Court.
11 *	A	<ul style="list-style-type: none"> • Use of very significant force • Leading role in illegal activity 	2	<ul style="list-style-type: none"> • Offence results in an injury or condition which has a substantial and/or lasting effect 	26 weeks		<ul style="list-style-type: none"> • No previous convictions • Remorse 	26 weeks	1 year 6 months' SSO (2 years)
	A	<ul style="list-style-type: none"> • Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour 	1	<ul style="list-style-type: none"> • Very high level of pain and/or suffering caused 	1 year 6 months	<ul style="list-style-type: none"> • No additional 	<ul style="list-style-type: none"> • No additional 	1 year 6 months	1 year 6 months SSO (2 years)
12	B	<ul style="list-style-type: none"> • Deliberate or gratuitous attempt to cause suffering • Prolonged and/or repeated incidents of cruelty or neglect • Use of significant force • Deliberate disregard for the welfare of the animal 	3	<ul style="list-style-type: none"> • <i>Full recovery</i> 	26 weeks	<ul style="list-style-type: none"> • Use of a weapon • Use of technology 	<ul style="list-style-type: none"> • No previous convictions • Remorse • Good character • Age and/or lack of maturity 	MLCO (UPW 80 - 100hrs)	MLCO (UPW 53-67hrs)
	A	<ul style="list-style-type: none"> • Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour 	1 or 2	<ul style="list-style-type: none"> • Not stated 	26 weeks	<ul style="list-style-type: none"> • No additional 	<ul style="list-style-type: none"> • No additional 	24 weeks	26 weeks SSO (1 year)
13 *	B	<ul style="list-style-type: none"> • Deliberate or gratuitous attempt to cause suffering • Use of significant force • Deliberate disregard for the welfare of the animal 	2	<ul style="list-style-type: none"> • Substantial level of pain and/or suffering caused 	12 weeks	<ul style="list-style-type: none"> • Use of technology • <i>Under the influence of alcohol</i> • <i>Lack of remorse, except for after the event</i> 	<ul style="list-style-type: none"> • No previous convictions • Voluntary surrender of animals to authorities • Cooperation with investigation • <i>Accepted responsibility</i> 	21 weeks	12 weeks

	A	<ul style="list-style-type: none"> • Use of very significant force 	1	<ul style="list-style-type: none"> • Particularly grave or life-threatening injury or condition caused 	1 year 6 months	<ul style="list-style-type: none"> • No additional 	<ul style="list-style-type: none"> • No additional 	1 year 6 months	1 year
14*	B	<ul style="list-style-type: none"> • Prolonged and/or repeated incidents of cruelty or neglect • Use of significant force 	2	<ul style="list-style-type: none"> • Substantial level of pain and/or suffering caused • <i>No long-term implications</i> 	12 weeks	<ul style="list-style-type: none"> • Use of a weapon • Use of technology • Animal requires significant intervention to recover • <i>Under the influence of alcohol</i> 	<ul style="list-style-type: none"> • No previous convictions • Cooperation with investigation • Isolated incident 	12 weeks	8 weeks
	B	<ul style="list-style-type: none"> • No additional 	1	<ul style="list-style-type: none"> • Particularly grave or life-threatening injury or condition caused • Very high level of pain and/or suffering caused 	26 weeks	<ul style="list-style-type: none"> • No additional 	<ul style="list-style-type: none"> • No additional 	26 weeks	16 weeks

Scenario B

The offender, a 47-year-old male with no previous convictions, was found to have caused the death and suffering of turkeys on his poultry farm.

The offender is a poultry farmer with over 25 years' experience. He had previously been visited by the RSPCA after a neighbouring farmer reported ongoing concerns about the neglected appearance of parts of the farm. RSPCA inspectors visited the farm three times over the 12 months prior to the final arrest. On these visits, they had noted cramped and dark housing for the turkey flock and low-quality feed and gave warnings about the wire debris littering the floors of the turkey housing. At each visit, inspectors had offered the offender advice regarding the potential detrimental impact of the environment on animals' health and had suggested ways to improve conditions. Each time, the offender made little attempt to heed any of the advice, instead becoming argumentative and defensive, and complaining about the potential cost of any improvements to the housing. RSPCA inspectors also noted that the offender's flock of 200 chickens, housed in a separate building in much better condition, seemed healthy and well cared for.

The offender was arrested after the neighbouring farmer reported turkey carcasses on the farm. When the RSPCA arrived, they found that 50 turkeys had died over a period of two months, with the surviving flock showing signs of severe stress and heat exhaustion. The offender had dumped the carcasses in a pile behind the turkey housing, making no attempt to dispose of them or to prevent the surviving turkeys from going near the pile. Of the surviving turkeys, 50 were weak and suffering to the point where they had to be euthanised.

When arrested, the offender admitted he could have addressed the risks on his farm but chose not to save money and pleaded guilty at the earliest opportunity. The surviving turkeys have since been moved to neighbouring farms and have fully recovered. The offender has continued to care for his remaining flock of chickens.

Scenario B was expected to be placed in offence category B1 with a 26 weeks' custodial starting point. The following factors were anticipated to aggravate the offence: significant number of animals involved; ignores warning/professional advice/declines to obtain professional advice; and offender in position of professional responsibility for animals. The only expected mitigation was the offenders' lack of previous convictions. The sentence could be that of 48 weeks' custody reduced to 32 weeks' following application of credit for guilty plea.

- Four sentencers selected the expected offence category of B1. Of those who did not, the categorisation is as follows:

Offence categorisation	Number of sentencers (10)
A1	9
B2	1

- The majority of sentencers considered Scenario B to be of high culpability on account of one or more of the following factors: prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour; leading role in illegal activity; ill treatment in commercial context; and the extreme nature of one or more medium culpability factors, as follows: deliberate or gratuitous attempt to cause suffering; deliberate disregard for

the welfare of the animals; use of significant force. A breakdown of sentencing decisions can be seen within the tables on pages 13 - 16.

- Little variance in the categorisation of harm was observed. Sentencers predominantly assessed harm to be high, as expected and applied the following factors: death (including injury necessitating euthanasia), very high level of pain and/or suffering caused, and particularly grave or life-threatening injury or condition caused. However, one sentencer considered the scenario to reflect medium harm, applying the following harm factors: offence results in an injury or condition which has a substantial and/or lasting effect. When outlining their reasoning for the categorisation of harm, four sentencers mentioned cruelty to multiple animals which appears as an aggravating factor ('significant number of animals involved'), rather than harm.
- Final sentences (post application of credit for guilty plea) for Scenario B ranged from a Medium Level Community order to 1 year 4 months' custody. Table 2 displays the sentences imposed. The majority of sentencers were content with the sentence reached through application of the draft guideline. Two sentencers felt that the sentence was too high and two felt that the final sentences were slightly too low.

Table 2: Scenario B

September 2022

	Culpability	Factors:	Harm	Factors:	Starting point	Aggravation	Mitigation	Pre-GP sentence	Final sentence
Expected	B	<ul style="list-style-type: none"> • Prolonged and/or repeated incidents of cruelty or neglect • Ill treatment in a commercial context • Deliberate disregard for the welfare of the animal 	1	<ul style="list-style-type: none"> • Death (including injury necessitating euthanasia) 	26 weeks	<ul style="list-style-type: none"> • Significant number of animals involved • Ignores warning/professional advice/declines to obtain professional advice • Offender in position of professional responsibility for animals 	<ul style="list-style-type: none"> • No previous convictions 	48 weeks	32 weeks
	Circuit Judges								
1	A	<ul style="list-style-type: none"> • Deliberate or gratuitous attempt to cause suffering • Prolonged and/or repeated incidents of cruelty or neglect • Ill treatment in a commercial context • Deliberate disregard for the welfare of the animal 	1	<ul style="list-style-type: none"> • Death (including injury necessitating euthanasia) 	1 year 6 months	<ul style="list-style-type: none"> • Significant number of animals involved • Offender in position of professional responsibility for animals 	<ul style="list-style-type: none"> • No previous convictions • Voluntary surrender of animals to authorities (possibly include) 	1 year 9 months	1 year 2 months
2 ⁷ *	B	<ul style="list-style-type: none"> • Prolonged and/or repeated incidents of cruelty or neglect • Ill treatment in a commercial context • Deliberate disregard for the welfare of the animal 	1	<ul style="list-style-type: none"> • Death (including injury necessitating euthanasia) 	26 weeks	<ul style="list-style-type: none"> • Ignores warning/professional advice/declines to obtain professional advice 	<ul style="list-style-type: none"> • No previous convictions 	1 year	35 weeks
3 ⁸	A	<ul style="list-style-type: none"> • Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour 	1	<ul style="list-style-type: none"> • <i>Multiple</i> death(s) (including injury necessitating euthanasia) 	1 year 6 months	<ul style="list-style-type: none"> • Ignores warning/professional advice/declines to obtain professional advice • Offender in position of professional responsibility for animals 	<ul style="list-style-type: none"> • No previous convictions 	1 year 6 months	1 year SSO
4*	A	<ul style="list-style-type: none"> • Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour 	1	<ul style="list-style-type: none"> • Death (including injury necessitating euthanasia) 	1 year 6 months	<ul style="list-style-type: none"> • Significant number of animals involved • Ignores warning/professional advice/declines to obtain professional advice 	<ul style="list-style-type: none"> • No previous convictions 	1 year 6 months	1 year
5	A	<ul style="list-style-type: none"> • Deliberate or gratuitous attempt to cause suffering • Ill treatment in a commercial context 	1	<ul style="list-style-type: none"> • Death (including injury necessitating euthanasia) 	1 year 6 months	<ul style="list-style-type: none"> • Significant number of animals involved • Ignores warning/professional advice/declines to obtain professional advice 	<ul style="list-style-type: none"> • Voluntary surrender of animals to authorities 	2 years	1 year 4 months

		<ul style="list-style-type: none"> Deliberate disregard for the welfare of the animal Extreme nature of one or more medium culpability factors 				<ul style="list-style-type: none"> Offender in position of professional responsibility for animals Animal requires significant intervention to recover 	(possibly include)		
6	B	<ul style="list-style-type: none"> Prolonged and/or repeated incidents of cruelty or neglect Ill treatment in a commercial context Deliberate disregard for the welfare of the animal 	1	<ul style="list-style-type: none"> Death of a <i>substantial number of animals</i> (including injury necessitating euthanasia) 	26 weeks	<ul style="list-style-type: none"> Significant number of animals involved Ignores warning/professional advice/declines to obtain professional advice Animal requires significant intervention to recover 	<ul style="list-style-type: none"> No previous convictions Voluntary surrender of animals to authorities Cooperation with investigation 	44 weeks SSO (1 year 3 months)	26 weeks SSO (1 year)
7	A	<ul style="list-style-type: none"> Prolonged and/or repeated incidents of cruelty or neglect Ill treatment in a commercial context Deliberate disregard for the welfare of the animal 	1	<ul style="list-style-type: none"> Death (including injury necessitating euthanasia) 	1 year 6 months ⁷	<ul style="list-style-type: none"> Significant number of animals involved Ignores warning/professional advice/declines to obtain professional advice 	<ul style="list-style-type: none"> No previous convictions Good character 	2 years	1 year 4 months ⁷ SSO (2 years) Deprivation order, disqualification of 15 years. Minimum provision for appeal set to 10 years.
Magistrates⁷									
8	A	<ul style="list-style-type: none"> Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour Ill treatment in a commercial context (possibly include) 	1	<ul style="list-style-type: none"> <i>Multiple</i> death(s) (including injury necessitating euthanasia) Very high level of pain and/or suffering caused 	1 year 6 months	<ul style="list-style-type: none"> Significant number of animals involved Ignores warning/professional advice/declines to obtain professional advice Offender in position of professional responsibility for animals <i>No evidence of remorse</i> 	<ul style="list-style-type: none"> No previous convictions 	1 year 6 months	1 year
9*	B	<ul style="list-style-type: none"> Prolonged and/or repeated incidents of cruelty or neglect 	1	<ul style="list-style-type: none"> <i>Multiple</i> death(s) (including injury necessitating euthanasia) 	26 weeks	<ul style="list-style-type: none"> Significant number of animals involved 	<ul style="list-style-type: none"> No previous convictions 	26 weeks	17 or 18 weeks

⁷ * denotes sentencers with experience of sentencing cases of animal cruelty. However, no particular difference was observed in sentencing practice was observed between those with and those without experience.

⁸ Text in italics refers to factors not included within the animal cruelty draft guideline.

		<ul style="list-style-type: none"> • Ill treatment in a commercial context 		<ul style="list-style-type: none"> • Very high level of pain and/or suffering caused 		<ul style="list-style-type: none"> • Ignores warning/professional advice/declines to obtain professional advice • Offender in position of professional responsibility for animals 			
10*	B	<ul style="list-style-type: none"> • Prolonged and/or repeated incidents of cruelty or neglect • Ill treatment in a commercial context • Deliberate disregard for the welfare of the animal 	1	<ul style="list-style-type: none"> • Death (including injury necessitating euthanasia) • Particularly grave or life-threatening injury or condition caused • Very high level of pain and/or suffering caused 	26 weeks	<ul style="list-style-type: none"> • Significant number of animals involved • Ignores warning/professional advice/declines to obtain professional advice • Offender in position of professional responsibility for animals • Animal requires significant intervention to recover 	<ul style="list-style-type: none"> • No previous convictions 	1 year	34 weeks (surrender of chickens)
11*	A	<ul style="list-style-type: none"> • Prolonged and/or repeated incidents of serious cruelty and/or sadistic behaviour • Leading role in illegal activity 	1	<ul style="list-style-type: none"> • Death (including injury necessitating euthanasia) 	1 year 6 months	<ul style="list-style-type: none"> • Failure to comply with current court orders (possibly include) • Ignores warning/professional advice/declines to obtain professional advice • <i>Impact on surviving animals</i> • <i>No regard for incorrect treatment</i> 	<ul style="list-style-type: none"> • No previous convictions 	1 year 6 months	Commit to the Crown Court.
12	B	<ul style="list-style-type: none"> • Deliberate or gratuitous attempt to cause suffering • Prolonged and/or repeated incidents of cruelty or neglect • Ignored advice • <i>Offender aware of the impact</i> 	2	<ul style="list-style-type: none"> • Offence results in an injury or condition which has a substantial and/or lasting effect 	26 weeks	<ul style="list-style-type: none"> • Ignores warning/professional advice/declines to obtain professional advice • Animal requires significant intervention to recover 	<ul style="list-style-type: none"> • No previous convictions • Good character (possibly include) • Age (no previous convictions in this time) 	26 weeks	MLCO (UPW 80hrs, prosecution costs)
13*	A	<ul style="list-style-type: none"> • Deliberate or gratuitous attempt to cause suffering • Deliberate disregard for the welfare of the animal • The extreme nature of one or more medium culpability factors 	1	<ul style="list-style-type: none"> • Death (including injury necessitating euthanasia) • Particularly grave or life-threatening injury or condition caused 	1 year 6 months	<ul style="list-style-type: none"> • Significant number of animals involved • Ignores warning/professional advice/declines to obtain professional advice • Animal requires significant intervention to recover 	<ul style="list-style-type: none"> • No previous convictions 	2 years	1 year 4 months

14 *	A	<ul style="list-style-type: none"> • Leading role in illegal activity • Prolonged and/or repeated incidents of cruelty or neglect • Ill treatment in a commercial context • The extreme nature of one or more medium culpability factors 	1	<ul style="list-style-type: none"> • Death (including injury necessitating euthanasia) 	1 year 6 months	<ul style="list-style-type: none"> • Significant number of animals involved • Ignores warning/professional advice/declines to obtain professional advice • Offender in position of professional responsibility for animals 	<ul style="list-style-type: none"> • No previous convictions 	Commit to the Crown Court (2 years)	Commit to the Crown Court (1 year 4 months)
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General comments on the guideline:

- The guideline was considered clear and useable and was one sentencer commented it was *“as helpful as can be”*. Concerns were raised about the possibility of double counting with the combination of factors of ‘ill treatment in a commercial context’ in medium culpability and ‘offender in position of professional responsibility’ in aggravation. Clarity was asked for on the issue of totality relating to whether a case involving more than one animal should be considered as multiple separate offences or as one offence then aggravated to reflect multiple animals.

Culpability and harm:

- A point of subjectivity was raised by multiple sentencers on the following factors of culpability and harm:
 - ‘Use of very significant force’ in comparison to ‘use of significant force’.
 - ‘Particularly grave or life-threatening injury or condition caused’ in comparison to ‘offence results in an injury or condition which has a substantial and/or lasting effect’.
 - ‘Very high level of pain and/or suffering’ and ‘substantial level of pain and/or suffering’.
 - ‘Serious harm’.
- It was suggested by one sentencer that the factor ‘use of a weapon’ may be better placed in culpability, rather than as a factor increasing seriousness: *“[the] sentencer might be slightly misdirected and get the wrong culpability figure if they're not considering use of a weapon until a further stage”*. Another sentencer thought that the aggravating factor could be amended to the following: ‘use of a weapon or any instrument e.g., crooks or cattle prods’.
- Wording of the header of the harm table was noted to refer to ‘the victim’, rather than ‘the animal’.
- It was suggested by one sentencer that there was a cause for concern around a slight duplication of the two factors ‘prolonged and repeated incidents of cruelty’ and ‘deliberate or gratuitous attempt to cause suffering’.

Aggravating and mitigating factors:

- Aggravating factors were considered appropriate and comprehensive. Sentencers acknowledged that the list of factors is not exhaustive and therefore other factors may be considered. The majority of sentencers, particularly in the context of Scenario A, expressed surprise that the factor ‘commission of offence whilst under the influence of alcohol or drugs’ was not present in the draft guideline and suggested that this should be included. There was a consensus that the proposed mitigating factors were appropriate and complete.
- One sentencer suggested an additional aggravating factor relating to an offence committed against an emergency services animal: *“a police horse or a police dog by way of example. And people do that – football supporters and demonstrators, the more aggressive ones, do injure emergency service animals”*.

Starting points:

- The sentencing table was widely accepted. One sentencer expressed their surprise at the lower starting point for A1 in relation to the statutory maximum of 5 years for the offence. In addition, a small number of amendments were suggested as follows (each point was mentioned by only one sentencer):
 1. Culpability could be labelled as A, B or C to “make it easier at a glance” within the sentencing table.
 2. A1 should be “at least 2, if not 2.5 years”.
 3. B2 could be increased to 2 years and the sentencing table graduated accordingly.
 4. 2A should be increased to ‘30 or 36 weeks’.
 5. B1 and 2A *‘feel quite tight’*. As there is a *‘huge range of criminality in both categories’*, the range of B1 could be increased to 18 months.
- A broader issue of need for proportionality with cruelty against humans was raised during discussion in many of the interviews. Many sentencers drew comparisons between the proposed animal cruelty and assault guidelines. Comments included: the starting points felt high across all categories, especially when cross-referenced to assault against the person offences in general: the sentencing table felt disproportionate when compared to assault directed at humans - *“You [are] still sentencing more severely than if we’d seen a section 47 domestic violence attack that had resulted in a fractured skull and or, you know, fractured [pelvis]”*; there should not be a difference in terms of the sentence between the animal equivalent of a s.20 GBH. It was acknowledged that *“there is an element of public horror and opprobrium [in relation to animal cruelty], which I think one shouldn’t be led by, but ... be conscious of. It is well known; I mean people do get very upset about cruelty to animals”*.
- It was noted by multiple sentencers that there is an issue of the nature or type of animal as the victim of a case which is not accounted for within the guideline. One sentencer noted: *“there is a difference between turkeys [as demonstrated in Scenario B] and killing 100 dogs”*, implying that there should be consideration to whether the animal is domesticated or a farm animal.

Half of the participants had experience of sentencing cases of animal cruelty or unnecessary suffering. This subgroup of participants was therefore asked the following additional questions regarding whether: the proposed starting points reflected the level of seriousness of cases seen in court, whether sentencing severity may increase, decrease or stay the same, and whether they thought that the draft guideline could lead to more cases being committed to the Crown Court for sentence.

There was general agreement that the guideline reflected the level of seriousness of cases seen within courts as well as a suggestion that, for the more serious cases, sentencing severity could increase following the introduction of the guideline. However, this was noted within the context of the increase in the statutory maximum. It was thought that most cases could be dealt with in the magistrates’ courts, especially following the recent increase in magistrates’ sentencing powers, reserving the most serious cases to be committed to the Crown Court. In turn, sentencers largely thought that there would not be a large increase in the number of cases committed to the Crown Court for sentence.

Equality and Diversity

The majority of sentencers were content that there were not any phrases in the guideline that could contribute to possible disparities in sentencing. A few broader points were noted surrounding the following: ensuring consistency in sentencing between rural and urban cases given the differing prevalence and types of cases seen within the court; differences between the type of animal (as outlined above); due to subjectivity, use of the word 'prolonged' within high and medium culpability could risk disparity between the private individual and the farmer: *“One has to be careful that one is not more penalized than the other. The way these great guidelines have [been] drafted, there's still scope for the farmer who has incompetent care [and the private individual]. I don't see any apparent unfairness with it”*.

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Annex D: Animal cruelty consultation – alternative sentencing tables

We would offer the below specific recommendations on starting points:

Category 1 – High culpability should be 2 years

Category 1 – Medium culpability should be 9 months

Category 1 – Low culpability should be high level community order

Category 2 – High culpability should be 9 months

Category 2 – Medium culpability should be 18 weeks custody

Category 2 – Low culpability should be medium level community order

Category 3 – High culpability leave at 12 weeks

Category 3 – Medium culpability leave at medium level community order

Category 3 – Low culpability leave at Band B fine

Magistrates' Association

Battersea, the Dogs' Trust and the Links Group drew from sentencing guidelines for dangerous dogs and ABH for their suggested sentencing table. IVC Evidensia's suggestions mirrored these exactly:

	High culpability	Med. culpability	Low culpability
Cat 1 harm	SP: 36 months Cat. range: 30 months – 48 months	SP: 18 months Cat. range: 6 months – 30 months	SP: 36 weeks Cat. range: High CO – 18 months
Cat 2 harm	SP: 24 months Cat. range: 12 months – 36 months	SP: 6 months Cat. range: High CO – 18 months	SP: Medium CO Cat. range: Low CO – 36 weeks
Cat 3 harm	SP: 36 weeks Cat. range: High CO – 18 months	SP: Medium CO Cat. range: Low CO – 36 weeks	SP: Band C fine Cat. range: Band B fine – Low CO

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Blackmail

Theft Act 1968 (section 21)

Triable only on indictment

Maximum: 14 years' custody

Offence range: x – xx years' custody

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 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.**

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Conduct <u>repeated or prolonged</u> over a <u>substantial sustained</u> period of time• Sophisticated and/or planned nature of conduct• Deliberate targeting of particularly vulnerable victim <u>and/or their family</u>• Use of violence
B- Medium culpability	<ul style="list-style-type: none">• Violence threatened• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender’s culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Unplanned and/or limited in scope and duration• Involved through coercion, intimidation or exploitation• Offender’s responsibility substantially reduced by mental disorder or learning disability

HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none">• Serious distress <u>and or psychological harm</u> caused to the victim <u>and/or others</u>• Serious distress caused to others• Very large amount of money obtained• Serious consequential financial impact of the offence• <u>Property demanded or obtained is of substantial value (financial or otherwise) regardless of monetary worth to the victim and/or others</u>• Widespread public impact of the offence
Category 2	<ul style="list-style-type: none">• Some distress <u>and/or psychological harm</u> caused to the victim <u>and/or others</u>• Some distress caused to others

	<ul style="list-style-type: none"> • Some consequential financial impact of the offence • Considerable amount of money obtained • <u>Property demanded or obtained is of some value (financial or otherwise) regardless of monetary worth to the victim and/or others</u>
Category 3	<ul style="list-style-type: none"> • Limited effects of the offence • <u>Property demanded or obtained is of a small amount (financial or otherwise) regardless of monetary worth to the victim and/or others</u>

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 convictions

Harm	Culpability		
	A	B	C
Category 1	Starting Point 7 8 years' custody Category Range 4 - 1 2 0 years' custody	Starting Point 4 years' custody Category Range 2 - 6 8 years' custody	Starting Point 2 years' custody Category Range 1 - 4 5 years' custody
Category 2	Starting Point 4 years' custody Category Range 2 - 6 8 years' custody	Starting Point 2 years' custody Category Range 1 - 4 5 years' custody	Starting Point 1 years' custody Category Range 6 months' - 2 years' custody
Category 3	Starting Point 2 years' custody Category Range 1 - 4 5 years' custody	Starting Point 1 years' custody Category Range 6 months' - 2 years' custody	Starting Point 6 months' custody Category Range High level Community order - 1 year's custody

[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
- 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:

- ~~Disturbing nature of the threat(s)~~
- Conduct intended to maximise distress and/or humiliation
- Offence committed in context of/in connection with ~~related to~~ other criminal activity
- Abuse of trust or dominant position or abuse of confidential information
- Victim as a Public official abused their position as a result of the offence
- Offence involved use or threat of a weapon
- Other(s) put at risk of harm by the offending
- Blame wrongly placed on others
- Offence committed in a domestic context (where not taken into account at step one)
- Commission of offence whilst under the influence of alcohol or drugs
- Leading role in group
- Offender involves others in the conduct
- 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
- Remorse
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- Good character and/or exemplary conduct
- ~~Co-operation with the investigation/early admissions~~
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability (where not taken into account at step 1)
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

STEP 3

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 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, [confiscation](#) and ancillary orders

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.

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)

Where the offence has resulted in loss or damage the court must consider whether to make a **compensation order**. The court must give reasons if it decides not to award compensation in such cases ([Sentencing Code, s.55](#)).

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, a serious crime prevention order and disqualification from acting as a company director.

Serious Crime Prevention Order

The Crown Court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

- [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](#).

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Kidnapping, false imprisonment, abduction of child by parent, etc, abduction of child by other persons, blackmail and disclosing private sexual images offences Annex

Section 1: Kidnapping

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Table 2 3	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for false imprisonment, 2010-2020
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Table 5 1	Number of adult offenders sentenced for blackmail, Crown Court, 2010-2020
Table 5 2	Number and proportion of adult offenders sentenced for blackmail, by sentence outcome, 2010-2020
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Table 5 4b	Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for blackmail, 2010-2020

Section 6: Disclosing private sexual images

Table 6 1	Number of adult offenders sentenced for disclosing private sexual images, all courts, 2015-2021
Table 6 2	Number and proportion of adult offenders sentenced for disclosing private sexual images, by sentence outcome, 2015-2021
Table 6 3	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for disclosing private sexual images, 2015-2021
Table 6 4a	Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for disclosing private sexual images, 2015-2021
Table 6 4b	Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for disclosing private sexual images, 2015-2021

Table 1.1: Number of adult offenders sentenced for kidnapping, Crown Court, 2010-2020¹

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ²
Crown Court	147	128	123	95	122	134	136	121	120	98	69

Notes:

1) Figures shown here differ from those published by the MoJ, as there was one kidnapping case in the CPD in 2019 which indicates that the offender was sentenced in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

2) 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.

Table 1.2: Number and proportion of adult offenders sentenced for kidnapping, by sentence outcome, 2010-2020¹

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ²
Absolute and conditional discharge	0	1	0	0	0	1	0	0	0	0	0
Fine	0	0	0	0	0	1	0	0	0	0	0
Community sentence	3	1	0	3	1	3	0	1	3	1	2
Suspended sentence	8	6	8	10	7	10	11	8	4	3	5
Immediate custody	134	117	115	82	113	117	123	105	104	88	51
Otherwise dealt with ³	2	3	0	0	1	2	2	7	9	6	11
Total	147	128	123	95	122	134	136	121	120	98	69

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ²
Absolute and conditional discharge	0%	1%	0%	0%	0%	1%	0%	0%	0%	0%	0%
Fine	0%	0%	0%	0%	0%	1%	0%	0%	0%	0%	0%
Community sentence	2%	1%	0%	3%	1%	2%	0%	1%	3%	1%	3%
Suspended sentence	5%	5%	7%	11%	6%	7%	8%	7%	3%	3%	7%
Immediate custody	91%	91%	93%	86%	93%	87%	90%	87%	87%	90%	74%
Otherwise dealt with ³	1%	2%	0%	0%	1%	1%	1%	6%	8%	6%	16%
Total	100%										

Notes:

1) Figures shown here differ from those published by the MoJ, as there was one kidnapping case in the CPD in 2019 which indicates that the offender was sentenced in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

2) 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.

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 kidnapping, 2010-2020

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Estimated pre-guilty plea

ACSL (years)^{1,2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴
Mean	6.02	5.41	4.8	4.9	6.8	6.6	5.8	6.0	7.6	6.6	7.2
Median	5.3	4	3.8	4.0	5.6	4.5	5.0	4.5	6.8	6.0	6.9

Post-guilty plea

ACSL (years)^{1,2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴
Mean	4.88	4.39	3.8	4.0	5.6	5.8	4.8	5.3	6.7	5.9	5.8
Median	5.0	3.5	3.0	3.3	4.0	4.0	4.0	4.0	6.0	5.5	5.6

Notes:

- 1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.
- 2) Figures shown here differ from those published by the MoJ, as there was one kidnapping case in the CPD in 2019 which indicate that the offender was sentenced in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be
- 3) The statutory maximum sentence for this offence is life imprisonment.
- 4) 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.

Table 1.4a: Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for kidnapping, 2010-2020

Sentence length (years)^{1,2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴
Less than 2 years	23	20	27	15	12	23	18	15	7	11	5
2 to 4	27	37	32	27	24	30	35	31	24	26	6
4 to 6	25	23	18	19	27	17	18	19	20	10	13
6 to 8	21	11	8	5	14	7	22	11	11	12	10
8 to 10	12	4	9	4	12	14	12	8	12	10	7
10 to 12	8	4	5	6	7	6	13	7	16	12	4
12 to 14 years	2	3	3	1	5	5	1	3	7	1	1
Greater than 14 years	7	7	2	1	10	13	3	7	6	5	4
Indeterminate	9	8	11	4	2	2	1	4	1	1	1
Total	134	117	115	82	113	117	123	105	104	88	51

Sentence length (years)^{1,2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴
Less than 2 years	17%	17%	23%	18%	11%	20%	15%	14%	7%	13%	10%
2 to 4	20%	32%	28%	33%	21%	26%	28%	30%	23%	30%	12%
4 to 6	19%	20%	16%	23%	24%	15%	15%	18%	19%	11%	25%
6 to 8	16%	9%	7%	6%	12%	6%	18%	10%	11%	14%	20%
8 to 10	9%	3%	8%	5%	11%	12%	10%	8%	12%	11%	14%
10 to 12	6%	3%	4%	7%	6%	5%	11%	7%	15%	14%	8%
12 to 14 years	1%	3%	3%	1%	4%	4%	1%	3%	7%	1%	2%
Greater than 14 years	5%	6%	2%	1%	9%	11%	2%	7%	6%	6%	8%
Indeterminate	7%	7%	10%	5%	2%	2%	1%	4%	1%	1%	2%
Total	100%										

Notes:

- 1) 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 and equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.
- 2) Figures shown here differ from those published by the MoJ, as there was one kidnapping case in the CPD in 2019 which indicate that the offender was sentenced in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 3) The statutory maximum sentence for this offence is life imprisonment.
- 4) 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.

Table 1.4b: Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for kidnapping, 2010-2020

Sentence length (years)^{1,2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴
Less than 2 years	35	31	39	22	16	31	28	23	11	13	7
2 to 4	25	41	36	31	40	29	34	30	29	27	9
4 to 6	27	16	14	14	22	13	23	18	18	9	15
6 to 8	23	7	4	4	5	8	26	12	10	17	10
8 to 10	6	6	5	3	13	13	6	5	12	10	4
10 to 12	3	5	4	2	9	7	5	7	14	8	4
12 to 14 years	5	2	1	2	2	6	0	1	5	2	1
Greater than 14 years	1	1	1	0	4	8	0	5	4	1	0
Indeterminate	9	8	11	4	2	2	1	4	1	1	1
Total	134	117	115	82	113	117	123	105	104	88	51

Sentence length (years)^{1,2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴
Less than 2 years	26%	26%	34%	27%	14%	26%	23%	22%	11%	15%	14%
2 to 4	19%	35%	31%	38%	35%	25%	28%	29%	28%	31%	18%
4 to 6	20%	14%	12%	17%	19%	11%	19%	17%	17%	10%	29%
6 to 8	17%	6%	3%	5%	4%	7%	21%	11%	10%	19%	20%
8 to 10	4%	5%	4%	4%	12%	11%	5%	5%	12%	11%	8%
10 to 12	2%	4%	3%	2%	8%	6%	4%	7%	13%	9%	8%
12 to 14 years	4%	2%	1%	2%	2%	5%	0%	1%	5%	2%	2%
Greater than 14 years	1%	1%	1%	0%	4%	7%	0%	5%	4%	1%	0%
Indeterminate	7%	7%	10%	5%	2%	2%	1%	4%	1%	1%	2%
Total	100%										

Notes:

- 1) 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 and equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.
- 2) Figures shown here differ from those published by the MoJ, as there was one kidnapping case in the CPD in 2019 which indicate that the offender was sentenced in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 3) The statutory maximum sentence for this offence is life imprisonment. In 2020 the longest post-guilty plea determinate sentence given was 13 years.
- 4) 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.

Table 2.1: Number of adult offenders sentenced for false imprisonment, Crown Court, 2010-2020¹

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ²
Crown Court	199	202	196	171	155	191	189	112	94	113	82

Notes:

1) Figures shown here differ from those published by the MoJ, as there were three false imprisonment cases in the CPD between 2018-2020 which indicate that the offenders were 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.

2) 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.

Table 2.2: Number and proportion of adult offenders sentenced for false imprisonment, by sentence outcome, 2010-2020¹

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ²
Absolute and conditional discharge	1	1	1	1	1	0	7	3	0	0	0
Fine	0	1	0	0	0	0	0	0	0	0	0
Community sentence	11	11	19	7	6	7	2	3	3	4	2
Suspended sentence	20	21	32	15	26	22	27	12	5	4	5
Immediate custody	159	158	137	144	120	149	141	89	76	97	70
Otherwise dealt with ³	8	10	7	4	2	13	12	5	10	8	5
Total	199	202	196	171	155	191	189	112	94	113	82

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ²
Absolute and conditional discharge	1%	<0.5%	1%	1%	1%	0%	4%	3%	0%	0%	0%
Fine	0%	<0.5%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Community sentence	6%	5%	10%	4%	4%	4%	1%	3%	3%	4%	2%
Suspended sentence	10%	10%	16%	9%	17%	12%	14%	11%	5%	4%	6%
Immediate custody	80%	78%	70%	84%	77%	78%	75%	79%	81%	86%	85%
Otherwise dealt with ³	4%	5%	4%	2%	1%	7%	6%	4%	11%	7%	6%
Total	100%										

Notes:

1) Figures shown here differ from those published by the MoJ, as there were three false imprisonment cases in the CPD between 2018-2020 which indicate that the offenders were 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.

2) 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.

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 2.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for false imprisonment, 2010-2020

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Estimated pre-guilty plea

ACSL (years)^{1,2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴
Mean	4.28	4.7	3.6	4.3	4.6	4.6	4.5	5.1	5.0	6.6	4.7
Median	3.3	4	3.1	3.4	3.8	3.3	3.8	4.0	4.0	5.0	3.5

Post-guilty plea

ACSL (years)^{1,2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴
Mean	3.29	3.72	2.8	3.2	3.6	3.9	3.6	4.2	4.1	5.2	3.6
Median	2.7	3	2.5	2.8	2.7	2.7	3.0	3.0	3.0	4.0	3.0

Notes:

- 1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.
- 2) Figures shown here differ from those published by the MoJ, as there were three false imprisonment cases in the CPD between 2018-2020 which indicate that the offenders were 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 statutory maximum sentence for this offence is life imprisonment.
- 4) 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.

Table 2.4a: Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for false imprisonment, 2010-2020

Sentence length (years)^{1,2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴
Less than 2 years	33	25	37	33	25	38	32	23	17	13	13
2 to 4	50	52	48	50	45	50	42	22	21	24	24
4 to 6	24	39	28	37	22	23	37	18	22	20	17
6 to 8	13	18	9	9	11	13	15	10	3	14	8
8 to 10	5	11	2	7	9	5	6	7	5	9	3
10 to 12	3	5	4	4	6	7	0	4	1	5	1
12 to 14 years	2	0	0	2	1	4	4	2	2	6	3
Greater than 14 years	3	1	0	1	1	4	2	3	4	6	1
Indeterminate	26	7	9	1	0	5	3	0	1	0	0
Total	159	158	137	144	120	149	141	89	76	97	70

Sentence length (years)^{1,2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴
Less than 2 years	21%	16%	27%	23%	21%	26%	23%	26%	22%	13%	19%
2 to 4	31%	33%	35%	35%	38%	34%	30%	25%	28%	25%	34%
4 to 6	15%	25%	20%	26%	18%	15%	26%	20%	29%	21%	24%
6 to 8	8%	11%	7%	6%	9%	9%	11%	11%	4%	14%	11%
8 to 10	3%	7%	1%	5%	8%	3%	4%	8%	7%	9%	4%
10 to 12	2%	3%	3%	3%	5%	5%	0%	4%	1%	5%	1%
12 to 14 years	1%	0%	0%	1%	1%	3%	3%	2%	3%	6%	4%
Greater than 14 years	2%	1%	0%	1%	1%	3%	1%	3%	5%	6%	1%
Indeterminate	16%	4%	7%	1%	0%	3%	2%	0%	1%	0%	0%
Total	100%										

Notes:

1) 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 and equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.

2) Figures shown here differ from those published by the MoJ, as there were three false imprisonment cases in the CPD between 2018-2020 which indicate that the offenders were 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 statutory maximum sentence for this offence is life imprisonment.

4) 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.

Table 2.4b: Post guilty-plea sentence lengths received by adult offenders sentenced to immediate custody for false imprisonment, 2010-2020

Sentence length (years)^{1,2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴
Less than 2 years	54	39	56	52	47	59	47	33	27	19	20
2 to 4	48	68	54	59	37	49	48	25	21	31	31
4 to 6	18	26	8	20	21	11	27	14	14	13	12
6 to 8	4	11	9	6	9	9	9	7	5	14	2
8 to 10	5	5	1	4	4	4	3	4	3	14	3
10 to 12	3	1	0	1	1	5	1	2	1	2	1
12 to 14 years	0	0	0	1	1	3	3	2	2	1	1
Greater than 14 years	1	1	0	0	0	4	0	2	2	3	0
Indeterminate	26	7	9	1	0	5	3	0	1	0	0
Total	159	158	137	144	120	149	141	89	76	97	70

Sentence length (years)^{1,2,3}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴
Less than 2 years	34%	25%	41%	36%	39%	40%	33%	37%	36%	20%	29%
2 to 4	30%	43%	39%	41%	31%	33%	34%	28%	28%	32%	44%
4 to 6	11%	16%	6%	14%	18%	7%	19%	16%	18%	13%	17%
6 to 8	3%	7%	7%	4%	8%	6%	6%	8%	7%	14%	3%
8 to 10	3%	3%	1%	3%	3%	3%	2%	4%	4%	14%	4%
10 to 12	2%	1%	0%	1%	1%	3%	1%	2%	1%	2%	1%
12 to 14 years	0%	0%	0%	1%	1%	2%	2%	2%	3%	1%	1%
Greater than 14 years	1%	1%	0%	0%	0%	3%	0%	2%	3%	3%	0%
Indeterminate	16%	4%	7%	1%	0%	3%	2%	0%	1%	0%	0%
Total	100%										

Notes:

- 1) 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 and equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.
- 2) Figures shown here differ from those published by the MoJ, as there were three false imprisonment cases in the CPD between 2018-2020 which indicate that the offenders were 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 statutory maximum sentence for this offence is life imprisonment. In 2020 the longest post-guilty plea determinate sentence given was 14 years.
- 4) 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.

Table 3.1: Number of adult offenders sentenced for abduction of child by parent, etc, all courts, 2010-2020

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹
Magistrates' court	1	0	0	0	0	2	2	0	0	0	0
Crown Court	7	12	6	11	17	15	13	10	9	11	7
Total	8	12	6	11	17	17	15	10	9	11	7

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Magistrates' court	13%	0%	0%	0%	0%	12%	13%	0%	0%	0%	0%
Crown Court	88%	100%	100%	100%	100%	88%	87%	100%	100%	100%	100%
Total	100%										

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.

Table 3.2: Number and proportion of adult offenders sentenced for abduction of child by parent, etc, by sentence outcome, 2010-2020

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹
Absolute and conditional discharge	1	0	0	0	0	1	1	1	0	0	0
Fine	0	0	0	0	0	1	0	0	0	0	0
Community sentence	1	0	0	0	1	0	0	0	0	0	1
Suspended sentence	2	5	1	3	7	6	7	3	4	3	1
Immediate custody	3	7	5	8	9	9	7	6	5	8	5
Otherwise dealt with ²	1	0	0	0	0	0	0	0	0	0	0
Total	8	12	6	11	17	17	15	10	9	11	7

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹
Absolute and conditional discharge	13%	0%	0%	0%	0%	6%	7%	10%	0%	0%	0%
Fine	0%	0%	0%	0%	0%	6%	0%	0%	0%	0%	0%
Community sentence	13%	0%	0%	0%	6%	0%	0%	0%	0%	0%	14%
Suspended sentence	25%	42%	17%	27%	41%	35%	47%	30%	44%	27%	14%
Immediate custody	38%	58%	83%	73%	53%	53%	47%	60%	56%	73%	71%
Otherwise dealt with ²	13%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Total	100%										

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 3.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for abduction of child by parent, etc, 2010-2020

Estimated pre-guilty plea

ACSL (years)^{1,2}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³
Mean	2.15	3.03	3.2	2.1	4.0	2.7	3.1	2.4	3.2	2.2	3.4
Median	1.8	2.25	2.7	1.9	2.5	2.0	2.7	2.6	2.7	1.3	3.0

Post-guilty plea

ACSL (years)^{1,2}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³
Mean	1.83	2.06	2.2	1.7	3.3	2.1	2.3	1.9	2.3	1.6	3.0
Median	1.2	1.5	2.0	1.3	1.7	2.0	2.0	2.0	2.7	1.0	3.0

Notes:

1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.

2) The statutory maximum sentence for this offence is 7 years' custody.

3) 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.

4) For 2013 onwards this is calculated as the number of offenders given life sentences, out of the number of offenders given a sentence of immediate custody. For 2010-2012, this is calculated as the number of offenders sentenced to Imprisonment for Public Protection (IPP), Extended Sentences for Public Protection (EPP) and life sentences, out of the number of offenders given a sentence of immediate custody. IPP and EPP sentences were introduced in 2005 and abolished in 2012.

Table 3.4a: Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for abduction of child by parent, etc, 2010-2020

Sentence length (years)^{1,2}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³
Less than 1 year	0	1	0	2	1	0	1	0	1	1	0
1 to 2	2	2	2	4	2	5	2	2	1	5	0
2 to 3	0	1	2	1	2	1	2	3	1	1	3
3 to 4	1	1	0	0	0	2	1	1	0	0	1
4 to 5	0	1	0	0	2	0	0	0	0	0	1
5 to 6	0	0	0	1	0	1	0	0	2	0	0
6 to 7	0	0	0	0	1	0	0	0	0	0	0
Greater than 7 years ⁴	0	1	1	0	1	0	1	0	0	1	0
Total	3	7	5	8	9	9	7	6	5	8	5

Sentence length (years)^{1,2}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³
Less than 1 year	0%	14%	0%	25%	11%	0%	14%	0%	20%	13%	0%
1 to 2	67%	29%	40%	50%	22%	56%	29%	33%	20%	63%	0%
2 to 3	0%	14%	40%	13%	22%	11%	29%	50%	20%	13%	60%
3 to 4	33%	14%	0%	0%	0%	22%	14%	17%	0%	0%	20%
4 to 5	0%	14%	0%	0%	22%	0%	0%	0%	0%	0%	20%
5 to 6	0%	0%	0%	13%	0%	11%	0%	0%	40%	0%	0%
6 to 7	0%	0%	0%	0%	11%	0%	0%	0%	0%	0%	0%
Greater than 7 years ⁴	0%	14%	20%	0%	11%	0%	14%	0%	0%	13%	0%
Total	100%										

Notes:

- 1) 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 and equal to 1 year, and '1 to 2' includes sentence lengths over 1 year and up to and including 2 years.
- 2) The statutory maximum sentence for this offence is 7 years' custody.
- 3) 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.
- 4) While these sentences appear to exceed the statutory maximum, they are estimates only; there are no post guilty plea sentence lengths exceeding the statutory maximum.

Table 3.4b: Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for abduction of child by parent, etc, 2010-2020

Sentence length (years)^{1,2}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³
Less than 1 year	1	2	2	2	3	1	1	1	2	5	0
1 to 2	1	2	2	5	2	5	3	4	0	2	1
2 to 3	0	2	0	0	0	1	2	1	1	0	2
3 to 4	1	0	0	0	0	2	0	0	2	0	2
4 to 5	0	1	1	0	2	0	0	0	0	0	0
5 to 6	0	0	0	1	0	0	1	0	0	1	0
6 to 7 years	0	0	0	0	2	0	0	0	0	0	0
Total	3	7	5	8	9	9	7	6	5	8	5

Sentence length (years)^{1,2}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³
Less than 1 year	33%	29%	40%	25%	33%	11%	14%	17%	40%	63%	0%
1 to 2	33%	29%	40%	63%	22%	56%	43%	67%	0%	25%	20%
2 to 3	0%	29%	0%	0%	0%	11%	29%	17%	20%	0%	40%
3 to 4	33%	0%	0%	0%	0%	22%	0%	0%	40%	0%	40%
4 to 5	0%	14%	20%	0%	22%	0%	0%	0%	0%	0%	0%
5 to 6	0%	0%	0%	13%	0%	0%	14%	0%	0%	13%	0%
6 to 7 years	0%	0%	0%	0%	22%	0%	0%	0%	0%	0%	0%
Total	100%										

Notes:

- 1) 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 and equal to 1 year, and '1 to 2' includes sentence lengths over 1 year and up to and including 2 years.
- 2) The statutory maximum sentence for this offence is 7 years' custody. In 2020 the longest post-guilty plea determinate sentence given was 4 years.
- 3) 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.

Table 4.1: Number of adult offenders sentenced for abduction of child by other persons, all courts, 2010-2020

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹
Magistrates' court	8	16	14	19	14	26	29	20	30	19	17
Crown Court	60	53	67	48	65	71	59	59	42	41	32
Total	68	69	81	67	79	97	88	79	72	60	49

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Magistrates' court	12%	23%	17%	28%	18%	27%	33%	25%	42%	32%	35%
Crown Court	88%	77%	83%	72%	82%	73%	67%	75%	58%	68%	65%
Total	100%										

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.

Table 4.2: Number and proportion of adult offenders sentenced for abduction of child by other persons, by sentence outcome, 2010-2020

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹
Absolute and conditional discharge	2	4	5	7	5	9	9	5	7	3	4
Fine	1	1	1	1	0	0	1	2	4	0	0
Community sentence	12	20	22	11	11	17	16	11	15	8	12
Suspended sentence	14	11	12	13	18	23	20	19	13	9	6
Immediate custody	38	28	40	30	43	44	40	36	25	32	24
Otherwise dealt with ²	1	5	1	5	2	4	2	6	8	8	3
Total	68	69	81	67	79	97	88	79	72	60	49

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹
Absolute and conditional discharge	3%	6%	6%	10%	6%	9%	10%	6%	10%	5%	8%
Fine	1%	1%	1%	1%	0%	0%	1%	3%	6%	0%	0%
Community sentence	18%	29%	27%	16%	14%	18%	18%	14%	21%	13%	24%
Suspended sentence	21%	16%	15%	19%	23%	24%	23%	24%	18%	15%	12%
Immediate custody	56%	41%	49%	45%	54%	45%	45%	46%	35%	53%	49%
Otherwise dealt with ²	1%	7%	1%	7%	3%	4%	2%	8%	11%	13%	6%
Total	100%										

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 4.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for abduction of child by other persons, etc, 2010-2020

Estimated pre-guilty plea

ACSL (years)^{1,2}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³
Mean	2.53	1.88	1.9	2.2	1.8	2.3	1.8	1.9	2.0	2.0	2.2
Median	2.3	2	1.7	1.6	1.5	1.9	1.5	1.5	1.3	1.8	1.8

Post-guilty plea

ACSL (years)^{1,2}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³
Mean	1.86	1.44	1.4	1.7	1.4	1.7	1.4	1.4	1.6	1.5	1.6
Median	1.6	1.33	1.2	1.3	1.2	1.5	1.1	1.1	1.0	1.3	1.2

Notes:

- 1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.
- 2) The statutory maximum sentence for this offence is 7 years' custody.
- 3) 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.
- 4) For 2013 onwards this is calculated as the number of offenders given life sentences, out of the number of offenders given a sentence of immediate custody. For 2010-2012, this is calculated as the number of offenders sentenced to Imprisonment for Public Protection (IPP), Extended Sentences for Public Protection (EPP) and life sentences, out of the number of offenders given a sentence of immediate custody. IPP and EPP sentences were introduced in 2005 and abolished in 2012.

Table 4.4a: Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for abduction of child by other persons, etc, 2010-2020

Sentence length (years)^{1,2}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³
Less than 1 year	4	10	11	9	12	8	16	10	8	9	8
1 to 2	12	8	16	8	17	16	10	12	9	11	6
2 to 3	12	6	8	6	8	8	5	11	2	4	4
3 to 4	5	4	2	2	3	9	6	1	2	6	2
4 to 5	2	0	2	3	1	3	1	1	3	2	0
5 to 6	2	0	1	2	2	0	2	1	1	0	3
6 to 7	0	0	0	0	0	0	0	0	0	0	0
Greater than 7 years ⁴	1	0	0	0	0	0	0	0	0	0	1
Total	38	28	40	30	43	44	40	36	25	32	24

Sentence length (years)^{1,2}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³
Less than 1 year	11%	36%	28%	30%	28%	18%	40%	28%	32%	28%	33%
1 to 2	32%	29%	40%	27%	40%	36%	25%	33%	36%	34%	25%
2 to 3	32%	21%	20%	20%	19%	18%	13%	31%	8%	13%	17%
3 to 4	13%	14%	5%	7%	7%	20%	15%	3%	8%	19%	8%
4 to 5	5%	0%	5%	10%	2%	7%	3%	3%	12%	6%	0%
5 to 6	5%	0%	3%	7%	5%	0%	5%	3%	4%	0%	13%
6 to 7	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Greater than 7 years ⁴	3%	0%	0%	0%	0%	0%	0%	0%	0%	0%	4%
Total	100%										

Notes:

1) 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 and equal to 1 year, and '1 to 2' includes sentence lengths over 1 year and up to and including 2 years.

2) The statutory maximum sentence for this offence is 7 years' custody.

3) 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.

4) While these sentences appear to exceed the statutory maximum, they are estimates only; there are no post guilty plea sentence lengths exceeding the statutory maximum.

Table 4.4b: Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for abduction of child by other persons, 2010-2020

Sentence length (years)^{1,2}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³
Less than 1 year	10	11	19	14	21	15	20	18	15	12	11
1 to 2	16	12	14	9	14	15	10	12	3	12	6
2 to 3	8	3	5	2	5	11	7	3	4	8	3
3 to 4	3	2	2	2	3	3	1	3	1	0	3
4 to 5	1	0	0	2	0	0	2	0	2	0	0
5 to 6	0	0	0	1	0	0	0	0	0	0	1
6 to 7 years	0	0	0	0	0	0	0	0	0	0	0
Total	38	28	40	30	43	44	40	36	25	32	24

Sentence length (years)^{1,2}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³
Less than 1 year	26%	39%	48%	47%	49%	34%	50%	50%	60%	38%	46%
1 to 2	42%	43%	35%	30%	33%	34%	25%	33%	12%	38%	25%
2 to 3	21%	11%	13%	7%	12%	25%	18%	8%	16%	25%	13%
3 to 4	8%	7%	5%	7%	7%	7%	3%	8%	4%	0%	13%
4 to 5	3%	0%	0%	7%	0%	0%	5%	0%	8%	0%	0%
5 to 6	0%	0%	0%	3%	0%	0%	0%	0%	0%	0%	4%
6 to 7 years	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Total	100%										

Notes:

- 1) 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 and equal to 1 year, and '1 to 2' includes sentence lengths over 1 year and up to and including 2 years.
- 2) The statutory maximum sentence for this offence is 7 years' custody. In 2020 the longest post-guilty plea determinate sentence given was 5 years 9 months.
- 3) 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.

Table 5.1: Number of adult offenders sentenced for blackmail, Crown Court, 2010 to 2020^{1,2}

Court	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Crown Court	170	147	143	137	202	220	179	149	158	134	108
Total	170	147	143	137	202	220	179	149	158	134	108

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 four blackmail 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. There was also an indeterminate sentence in 2012 which has been excluded from the above table.

Table 5.2: Number and proportion of adult offenders sentenced for blackmail, by sentence outcome, 2010-2020^{1,2}

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Community sentence	3	5	3	4	3	4	3	1	2	4	2
Suspended sentence	18	11	14	30	30	39	40	26	29	25	31
Immediate custody	146	126	125	99	168	177	135	120	125	103	70
Otherwise dealt with ³	3	5	1	4	1	0	1	2	2	2	5
Total	170	147	143	137	202	220	179	149	158	134	108

Outcome	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Community sentence	2%	3%	2%	3%	1%	2%	2%	1%	1%	3%	2%
Suspended sentence	11%	7%	10%	22%	15%	18%	22%	17%	18%	19%	29%
Immediate custody	86%	86%	87%	72%	83%	80%	75%	81%	79%	77%	65%
Otherwise dealt with ³	2%	3%	1%	3%	<0.5%	0%	1%	1%	1%	1%	5%
Total	100%										

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 four blackmail 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. There was also an indeterminate sentence in 2012 which has been excluded from the above table.

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 5.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for blackmail, 2010-2020^{1,2,3}

Estimated pre-guilty plea

ACSL (years)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴
Mean	3.5	3.8	3.3	3.8	3.9	3.4	3.7	3.5	3.7	3.8	3.7
Median	3.0	3.1	3.0	3.3	3.4	3.0	3.3	3.2	3.4	3.3	3.1

Post-guilty plea

ACSL (years)	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴
Mean	2.8	3.0	2.6	3.0	3.1	2.7	2.9	2.8	2.8	3.0	2.9
Median	2.5	2.5	2.0	2.5	2.7	2.3	2.5	2.4	2.5	2.3	2.3

Notes:

1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.

2) The statutory maximum sentence for this offence is 14 years.

3) Figures shown here differ from those published by the MoJ, as there were four blackmail 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.

4) 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.

Table 5.4a: Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for blackmail, 2010-2020^{1,2}

Sentence length (years)^{3,4}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Up to 2 years	38	33	28	22	30	54	35	35	28	30	14
2 to 4	63	55	71	44	79	77	61	47	58	39	33
4 to 6	35	20	17	21	39	33	23	27	25	17	16
6 to 8	3	9	6	8	13	8	9	9	7	11	4
8 to 10	4	4	2	2	3	3	3	2	7	6	0
Greater than 10 years	3	5	1	2	4	2	4	0	0	0	3
Total	146	126	125	99	168	177	135	120	125	103	70

Sentence length (years)^{3,4}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Up to 2 years	26%	26%	22%	22%	18%	31%	26%	29%	22%	29%	20%
2 to 4	43%	44%	57%	44%	47%	44%	45%	39%	46%	38%	47%
4 to 6	24%	16%	14%	21%	23%	19%	17%	23%	20%	17%	23%
6 to 8	2%	7%	5%	8%	8%	5%	7%	8%	6%	11%	6%
8 to 10	3%	3%	2%	2%	2%	2%	2%	2%	6%	6%	0%
Greater than 10 years	2%	4%	1%	2%	2%	1%	3%	0%	0%	0%	4%
Total	100%										

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 four blackmail 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. There was also an indeterminate sentence in 2012 which has been excluded from the above table.

3) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Up to 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 14 years.

Table 5.4b: Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for blackmail, 2010-2020^{1,2}

Sentence length (years)^{3,4}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Up to 2 years	65	56	64	42	58	79	55	51	55	45	27
2 to 4	60	46	46	35	76	75	55	47	47	36	33
4 to 6	15	12	12	17	22	16	16	18	19	14	7
6 to 8	3	10	3	4	10	5	5	4	4	6	1
8 to 10	3	0	0	0	0	1	4	0	0	2	0
Greater than 10 years	0	2	0	1	2	1	0	0	0	0	2
Total	146	126	125	99	168	177	135	120	125	103	70

Sentence length (years)^{3,4}	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020
Up to 2 years	45%	44%	51%	42%	35%	45%	41%	43%	44%	44%	39%
2 to 4	41%	37%	37%	35%	45%	42%	41%	39%	38%	35%	47%
4 to 6	10%	10%	10%	17%	13%	9%	12%	15%	15%	14%	10%
6 to 8	2%	8%	2%	4%	6%	3%	4%	3%	3%	6%	1%
8 to 10	2%	0%	0%	0%	0%	1%	3%	0%	0%	2%	0%
Greater than 10 years	0%	2%	0%	1%	1%	1%	0%	0%	0%	0%	3%
Total	100%										

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 four blackmail 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. There was also an indeterminate sentence in 2012 which has been excluded from the above table.

3) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Up to 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 14 years. In 2020 the longest post-guilty plea determinate sentence given was 12 years.

Table 6.1: Number of adult offenders sentenced for disclosing private sexual images, all courts, 2015-2021¹

Court	2015	2016	2017	2018	2019	2020 ²	2021
Magistrates' court	57	190	195	132	113	99	138
Crown Court	5	36	49	49	61	58	58
Total	62	226	244	181	174	157	196

Court	2015	2016	2017	2018	2019	2020 ²	2021
Magistrates' court	92%	84%	80%	73%	65%	63%	70%
Crown Court	8%	16%	20%	27%	35%	37%	30%
Total	100%	100%	100%	100%	100%	100%	100%

Notes:

1) This offence came into force in 2015 and the legislation was amended in 2021 to also include threats to disclose private sexual images. Therefore, tables for this offence are presented for the years 2015-2021. Currently, there is no way of disaggregating the threats to disclose offences from the substantive offence using the data, so the figures for 2021 may include some threats to disclose offences (if there were any).

2) 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.

Table 6.2: Number and proportion of adult offenders sentenced for disclosing private sexual images, by sentence outcome, 2015-2021^{1,2}

Outcome	2015	2016	2017	2018	2019	2020 ³	2021
Conditional discharge	1	10	10	4	7	5	8
Fine	4	16	13	6	7	5	5
Community sentence	23	59	77	62	63	46	63
Suspended sentence	18	85	98	68	56	63	84
Immediate custody	16	52	45	40	41	37	35
Otherwise dealt with	0	4	1	1	0	1	1
Total	62	226	244	181	174	157	196

Outcome	2015	2016	2017	2018	2019	2020 ³	2021
Conditional discharge	2%	4%	4%	2%	4%	3%	4%
Fine	6%	7%	5%	3%	4%	3%	3%
Community sentence	37%	26%	32%	34%	36%	29%	32%
Suspended sentence	29%	38%	40%	38%	32%	40%	43%
Immediate custody	26%	23%	18%	22%	24%	24%	18%
Otherwise dealt with	0%	2%	<0.5%	1%	0%	1%	1%
Total	100%	100%	100%	100%	100%	100%	100%

Notes:

1) This offence came into force in 2015 and the legislation was amended in 2021 to also include threats to disclose private sexual images. Therefore, tables for this offence are presented for the years 2015-2021. Currently, there is no way of disaggregating the threats to disclose offences from the substantive offence using the data, so the figures for 2021 may include some threats to disclose offences (if there were any).

2) The statutory maximum sentence for this offence is 2 years' custody.

3) 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.

Table 6.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for disclosing private sexual images, 2015-2021^{1,2}

Estimated pre-guilty plea

ACSL (months)	2015	2016	2017	2018	2019	2020 ³	2021
Mean	7.3	7.6	7.9	8.4	8.7	9.6	9.3
Median	5.6	5.6	6.7	6.9	6.7	9.0	8.0

Post-guilty plea

ACSL (months)	2015	2016	2017	2018	2019	2020 ³	2021
Mean	5.2	5.5	5.7	6.1	6.3	6.9	6.8
Median	3.7	3.9	5.0	5.2	6.0	6.0	6.0

Notes:

- 1) This offence came into force in 2015 and the legislation was amended in 2021 to also include threats to disclose private sexual images. Therefore, tables for this offence are presented for the years 2015-2021. Currently, there is no way of disaggregating the threats to disclose offences from the substantive offence using the data, so the figures for 2021 may include some threats to disclose offences (if there were any).
- 2) The statutory maximum sentence for this offence is 2 years' custody.
- 3) 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.

Table 6.4a: Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for disclosing private sexual images, 2015-2021 ^{1,2}

Sentence length (months) ³	2015	2016	2017	2018	2019	2020 ⁴	2021
Up to 3 months	3	9	11	4	3	2	3
3 to 6	7	21	7	13	16	12	12
6 to 9	4	12	17	13	8	9	7
9 to 12	1	2	1	2	5	2	5
12 to 15	0	2	6	2	4	7	2
15 to 18	0	4	0	4	4	3	3
18 to 21	0	0	2	1	1	2	2
21 to 24	0	1	1	0	0	0	0
Greater than 24 months ⁵	1	1	0	1	0	0	1
Total	16	52	45	40	41	37	35

Sentence length (months) ³	2015	2016	2017	2018	2019	2020 ⁴	2021
Up to 3 months	19%	17%	24%	10%	7%	5%	9%
3 to 6	44%	40%	16%	33%	39%	32%	34%
6 to 9	25%	23%	38%	33%	20%	24%	20%
9 to 12	6%	4%	2%	5%	12%	5%	14%
12 to 15	0%	4%	13%	5%	10%	19%	6%
15 to 18	0%	8%	0%	10%	10%	8%	9%
18 to 21	0%	0%	4%	3%	2%	5%	6%
21 to 24	0%	2%	2%	0%	0%	0%	0%
Greater than 24 months ⁵	6%	2%	0%	3%	0%	0%	3%
Total	100%	100%	100%	100%	100%	100%	100%

Notes:

1) This offence came into force in 2015 and the legislation was amended in 2021 to also include threats to disclose private sexual images. Therefore, tables for this offence are presented for the years 2015-2021. Currently, there is no way of disaggregating the threats to disclose offences from the substantive offence using the data, so the figures for 2021 may include some threats to disclose offences (if there were any).

2) The statutory maximum sentence for this offence is 2 years' custody.

3) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Up to 3 months' includes sentence lengths less than or equal to 3 months, and '3 to 6' includes sentence lengths over 3 months, and up to and including 6 months.

4) 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.

5) While these sentences appear to exceed the statutory maximum, they are estimates only; there are no post-guilty plea sentence lengths exceeding the statutory maximum.

Table 6.4b: Post-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for disclosing private sexual images, 2015-2021^{1,2}

Sentence length (months) ³	2015	2016	2017	2018	2019	2020 ⁴	2021
Up to 3 months	5	17	12	11	11	6	12
3 to 6	8	25	22	19	14	17	10
6 to 9	2	2	4	2	9	3	4
9 to 12	0	6	3	6	5	8	5
12 to 15	0	1	3	1	1	3	2
15 to 18	0	0	1	0	1	0	2
18 to 21	0	0	0	1	0	0	0
21 to 24	1	1	0	0	0	0	0
Total	16	52	45	40	41	37	35

Sentence length (months) ³	2015	2016	2017	2018	2019	2020 ⁴	2021
Up to 3 months	31%	33%	27%	28%	27%	16%	34%
3 to 6	50%	48%	49%	48%	34%	46%	29%
6 to 9	13%	4%	9%	5%	22%	8%	11%
9 to 12	0%	12%	7%	15%	12%	22%	14%
12 to 15	0%	2%	7%	3%	2%	8%	6%
15 to 18	0%	0%	2%	0%	2%	0%	6%
18 to 21	0%	0%	0%	3%	0%	0%	0%
21 to 24	6%	2%	0%	0%	0%	0%	0%
Total	100%	100%	100%	100%	100%	100%	100%

Notes:

1) This offence came into force in 2015 and the legislation was amended in 2021 to also include threats to disclose private sexual images. Therefore, tables for this offence are presented for the years 2015-2021. Currently, there is no way of disaggregating the threats to disclose offences from the substantive offence using the data, so the figures for 2021 may include some threats to disclose offences (if there were any).

2) The statutory maximum sentence for this offence is 2 years' custody. In 2021 the longest post-guilty plea determinate sentence given was 18 months.

3) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Up to 3 months' includes sentence lengths less than or equal to 3 months, and '3 to 6' includes sentence lengths over 3 months, and up to and including 6 months.

4) 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.

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Kidnap False Imprisonment

Common Law

Triable only on indictment

Maximum: Life Imprisonment

Kidnap

Offence range: x – xx years' custody

False Imprisonment

Offence range: x-xx years' custody

These are [Schedule 19](#) offences for the purposes of sections [274](#) and [285](#) (required life sentence for offence carrying life sentence) of the Sentencing Code.

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

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 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.**

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none"> • Detention over a substantial period of time • Sophisticated and/or planned nature of conduct • Offence was committed as part of a group • Deliberate targeting of particularly vulnerable victim • Use of violence and /or use of a weapon
B- Medium culpability	<ul style="list-style-type: none"> • Threat of violence to victim and/or others • Other cases that fall between categories A and C because: <ul style="list-style-type: none"> ○ Factors are present in A and C which balance each other out and/or ○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none"> • Limited in scope and duration • Involved through coercion, intimidation or exploitation • Offender's responsibility substantially reduced by mental disorder or learning disability

HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none"> • Serious distress and or psychological harm caused to the victim and/or others • Serious injury caused to the victim • Use of torture, humiliation or degrading treatment • Victim forcibly restrained • Ransom demands made for a substantial amount
Category 2	<ul style="list-style-type: none"> • Some distress and/or psychological harm caused to the victim and/or others • Some injury caused to the victim • Threat of torture • Ransom demands made for a considerable amount
Category 3	<ul style="list-style-type: none"> • Limited effects of the offence • Ransom demands made for a small amount

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

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

Harm	Culpability		
	A	B	C
Category 1	Starting Point 11 years' custody Category Range 8 – 16 years' custody	Starting Point 8 years' custody Category Range 5 -10 years' custody	Starting Point 6 years' custody Category Range 3 - 8 years' custody
Category 2	Starting Point 8 years' custody Category Range 5 -10 years' custody	Starting Point 6 years' custody Category Range 3 -8 years' custody	Starting Point 3 years' custody Category Range 2- 4 years' custody
Category 3	Starting Point 6 years' custody Category Range 3 – 8 years' custody	Starting Point 3 years' custody Category Range 2- 4 years' custody	Starting Point 1 years' custody Category Range 6 months' - 3 year's custody

FALSE IMPRISONMENT OFFENCES

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			
Harm	Culpability		
	A	B	C
Category 1	Starting Point 8 years' custody Category Range 5 – 13 years' custody	Starting Point 6 years' custody Category Range 4 -8 years' custody	Starting Point 4 years' custody Category Range 2- 6 years' custody
Category 2	Starting Point 6 years' custody Category Range 4 -8 years' custody	Starting Point 4 years' custody Category Range 2 -6 years' custody	Starting Point 2 years' custody Category Range 1- 4 years' custody
Category 3	Starting Point 4 years' custody Category Range 2 – 6 years' custody	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 years' custody Category Range 6 months' - 2 year's custody

[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
- Offence was committed against an emergency worker acting in the exercise of functions as such a worker (**kidnap only**)

Other aggravating factors:

- Offence committed in context of/in connection with other criminal activity
- Detention in an isolated location
- Blame wrongly placed on others
- Offence committed in a domestic context (where not taken into account at step one)
- Commission of offence whilst under the influence of alcohol or drugs
- Leading role in group
- Abuse of trust or dominant position
- Offender involves others in the conduct
- 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
- Remorse
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- Good character and/or exemplary conduct
- Co-operation with the investigation/early admissions
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability (where not taken into account at step 1)
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

STEP 3**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 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**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 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 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**

Where the offence has resulted in loss or damage the court must consider whether to make a compensation order and must give reasons if it does not do so ([section 55 of the Sentencing Code](#)).

STEP 8**Reasons**

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

STEP 9**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 A: Draft aggravated vehicle taking guidelines (as of September 2022)

Vehicle/property damage

(Including harm factors and sentencing table as taken to Council for agreement in the September meeting)

Harm	Factors
Category 1	<ul style="list-style-type: none"> High value damage
Category 2	<ul style="list-style-type: none"> Value of damage falls between categories 1 and 3
Category 3	<ul style="list-style-type: none"> Total damage caused no more than £5,000

Culpability	Factors
High	<ul style="list-style-type: none"> Vehicle or property deliberately destroyed Intention to cause serious damage Under influence of alcohol/drugs Significant planning Police pursuit Leading role in group offending
Medium	<ul style="list-style-type: none"> Cases that fall between categories A or C because: <ul style="list-style-type: none"> 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
Lower	<ul style="list-style-type: none"> Vehicle not driven in unsafe manner Minor role in group offending Exceeding authorised use of e.g. employer's or relative's vehicle Retention of hire car for short period beyond return date

Rubric: Where the total damage caused is valued at no more than £5,000, this will be a summary-only offence with a statutory maximum penalty of six months' custody. This is reflected in the starting points and ranges for category 3 harm in the sentencing table below.

Harm/culpability	High culpability A	Medium culpability B	Lower culpability C
Harm category 1	<p>Starting point: 1 year's custody</p> <p>Category range: 18 weeks' custody – 2 years' custody</p>	<p>Starting point: 18 weeks' custody</p> <p>Category range: High level community order – 1 year's custody</p>	<p>Starting point: High level community order</p> <p>Category range: Medium level community order – 12 weeks' custody</p>

Harm category 2	Starting point: 12 weeks' custody Category range: High level community order – 1 year's custody	Starting point: High level community order Category range: Medium level community order – 12 weeks' custody	Starting point: Medium level community order Category range: Low level community order – High level community order
Harm category 3	Starting point: High level community order Category range: Medium level community order – 18 weeks' custody	Starting point: Medium level community order Category range: Low level community order – High level community order	Starting point: Low level community order Category range: Band B fine – Medium level community order

Statutory aggravating factors
<ul style="list-style-type: none"> • 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
<ul style="list-style-type: none"> • Vehicle taken as part of burglary • Taken and/or damaged vehicle was an emergency vehicle • Taken and/or damaged vehicle belongs to a vulnerable person • Disregarding warnings of others • Damage caused in moving traffic accident • Victim was a vulnerable road user, including pedestrians, cyclists and horse riders • Taken vehicle is an LGV, HGV or PSV etc • Other driving offences committed at the same time (see step 6 on totality) • 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)
Mitigating factors
<ul style="list-style-type: none"> • Actions of the victim or a third party contributed significantly to collision or damage • Efforts made to assist or seek assistance for victim(s) • No previous convictions or no relevant/recent convictions • 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

Injury

Harm	Factors
Category 1	<ul style="list-style-type: none"> • 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
Category 2	<ul style="list-style-type: none"> • Other cases of serious harm
Category 3	<ul style="list-style-type: none"> • All other cases

Culpability	Factors
High	<ul style="list-style-type: none"> • Risk of serious injury caused to persons • Under influence of alcohol/drugs • Significant planning • Police pursuit • Leading role in group offending
Medium	<ul style="list-style-type: none"> • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> ◦ 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
Lower	<ul style="list-style-type: none"> • Vehicle not driven in unsafe manner • Minor role in group offending • Exceeding authorised use of e.g. employer's or relative's vehicle • Retention of hire car for short period beyond return date

Harm/culpability	High culpability A	Medium culpability B	Lower culpability C
Harm category 1	<p>Starting Point: 1 year 6 months' custody</p> <p>Category range: 1 - 2 years' custody</p>	<p>Starting Point: 1 year's custody</p> <p>Category range: 26 weeks' – 1 year 6 months' custody</p>	<p>Starting Point: 26 weeks' custody</p> <p>Category range: High level community order – 1 year's custody</p>
Harm category 2	<p>Starting Point: 1 year's custody</p> <p>Category range: 26 weeks' – 1 year 6 months' custody</p>	<p>Starting Point: 26 weeks' custody</p> <p>Category range: High level community order – 1 year's custody</p>	<p>Starting Point: High level community order</p> <p>Category range: Medium level community order – 26 weeks' custody</p>
Harm category 3	<p>Starting Point: 26 weeks' custody</p>	<p>Starting Point: High level community order</p>	<p>Starting Point: Medium level community order</p>

	Category range: High level community order – 1 year’s custody	Category range: Medium level community order – 26 weeks’ custody	Category range: Low level community order – High level community order
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Statutory aggravating factors
<ul style="list-style-type: none"> • 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
<ul style="list-style-type: none"> • Vehicle taken as part of burglary • Taken vehicle was an emergency vehicle • Taken vehicle belongs to a vulnerable person • Disregarding warnings of others • Multiple victims involved (see step 6 on totality when sentencing more than one offence) • Victim was providing a public service or performing a public duty at the time of the offence, or was an emergency worker • Victim was a vulnerable road user, including pedestrians, cyclists and horse riders • Taken vehicle is an LGV, HGV or PSV etc • Other driving offences committed at the same time (see step 6 on totality) • 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)
Mitigating factors
<ul style="list-style-type: none"> • Actions of the victim or a third party contributed significantly to collision or injury • Efforts made to assist or seek assistance for victim(s) • No previous convictions or no relevant/recent convictions • Remorse • Victim was a close friend or relative • 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

Death

Harm
For all cases of aggravated vehicle taking causing death, 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.

Culpability	Factors
High	<ul style="list-style-type: none"> • Risk of serious injury caused to persons • Under influence of alcohol/drugs • Significant planning • Police pursuit • Leading role in group offending
Medium	<ul style="list-style-type: none"> • Other cases that fall between categories A or C because: <ul style="list-style-type: none"> ◦ 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
Lower	<ul style="list-style-type: none"> • Vehicle not driven in unsafe manner • Minor role in group offending • Exceeding authorised use of e.g. employer's or relative's vehicle • Retention of hire car for short period beyond return date

Rubric: Where a case does not fall squarely within a category, adjustment from the starting point may be required before adjustment for aggravating or mitigating features.

Culpability	Starting point	Range
High	10 years	7 – 12 years
Medium	5 years	3 – 8 years
Lower	3 years	2 – 4 years

Statutory aggravating factors
<ul style="list-style-type: none"> • 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
<ul style="list-style-type: none"> • Vehicle taken as part of burglary • Taken vehicle was an emergency vehicle • Taken vehicle belongs to a vulnerable person • Disregarding warnings of others • Victim was providing a public service or performing a public duty at the time of the offence, or was an emergency worker • Victim was a vulnerable road user, including pedestrians, cyclists and horse riders • Taken vehicle is an LGV, HGV or PSV etc

- Other driving offences committed at the same time (see step 6 on totality)
- 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)

Mitigating factors

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

Dangerous driving

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

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

Harm/culpability	High culpability A	Medium culpability B	Lower culpability C
Harm category 1	Starting point: 1 year 6 months' custody Category range: 1 – 2 years' custody	Starting point: 1 year's custody Category range: 26 weeks' – 1 year 6 months' custody	Starting point: 26 weeks' custody Category range: High level community order – 1 year's custody
Harm category 2	Starting point: 1 year's custody Category range: 26 weeks' – 1 year 6 months' custody	Starting point: 26 weeks' custody Category range: High level community order – 1 year's custody	Starting point: High level community order Category range: Low level community order – 26 weeks' custody

Statutory aggravating factors
<ul style="list-style-type: none"> • 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
<ul style="list-style-type: none"> • Vehicle taken as part of burglary • Taken vehicle was an emergency vehicle • Taken vehicle belongs to a vulnerable person • Victim was a vulnerable road user, including pedestrians, cyclists and horse riders • Taken vehicle is an LGV, HGV or PSV etc • Other driving offences committed at the same time (see step 6 on totality) • 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)
Mitigating factors
<ul style="list-style-type: none"> • Actions of the victim or a third party contributed significantly to collision or injury • Efforts made to assist or seek assistance for victim(s) • No previous convictions or no relevant/recent convictions • Remorse • Victim was a close friend or relative • 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

Annex B: Aggravated vehicle taking causing vehicle/property damage data – 2020¹

Sentencing outcomes

Offence	Outcome	Volume	Proportion
Damage under £5,000	Absolute and conditional discharge	9	3%
	Fine	25	7%
	Community sentence	212	60%
	Suspended sentence	46	13%
	Immediate custody	57	16%
	Otherwise dealt with ²	7	2%
Damage over £5,000	Absolute and conditional discharge	1	1%
	Fine	5	3%
	Community sentence	69	42%
	Suspended sentence	40	24%
	Immediate custody	45	27%
	Otherwise dealt with ²	5	3%

Source: Court Proceedings Database, Ministry of Justice

Immediate custody sentence distribution

Offence	Sentence band³	Estimated pre-guilty plea proportion	Post-guilty plea proportion
Damage under £5,000	0-1 month	4%	4%
	1-2 months	11%	28%
	2-3 months	21%	25%
	3-4 months	11%	32%
	4-5 months	26%	7%
	5-6 months	19%	5%
	Greater than 6 months ⁴	9%	-
Damage over £5,000	0-6 months	13%	29%
	6-12 months	31%	53%
	12-18 months	44%	18%
	18-24 months	7%	0%
	Greater than 2 years ⁴	4%	-

Source: Court Proceedings Database, Ministry of Justice, adjusted using data from the Crown Court Sentencing Survey (CCSS) to provide estimates of the pre-guilty plea sentence length

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.

³ Sentence length intervals do not include the lower bound but do include the upper bound sentence length. For example, the category '0-6 months' includes sentence lengths less than or equal to 6 months, and '6 to 12 months' includes sentence lengths over 6 months, and up to and including 12 months.

⁴ While these sentences appear to exceed the statutory maximum, they are estimates only; there are no post guilty plea sentence lengths exceeding the statutory maximum.

Average custodial sentence length (ACSL)

Offence		Pre-guilty plea estimated ACSL (months)	Post-guilty plea ACSL (months)
Damage under £5,000	Mean	4.0	3.0
	Median	4.1	2.8
Damage over £5,000	Mean	13.1	9.5
	Median	13.3	10.0

Source: Court Proceedings Database, Ministry of Justice, adjusted using data from the Crown Court Sentencing Survey (CCSS) to provide estimates of the pre-guilty plea sentence length

Annex C: Draft wording for guidance on disqualifications

A Principles

Disqualification is part of the sentence. Accordingly when setting the “discretionary” element of the disqualification (i.e. disregarding any period being spent in custody – see below), the court must have regard to the purposes of sentencing in section 57 of the Sentencing Code, which include: the punishment of offenders, the reduction of crime, the reform and rehabilitation of offenders and the protection of the public, when deciding the length of any disqualification.

In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).

Sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully.

B Minimum disqualification period

The minimum disqualification period for this offence is **12 months**.

An offender must be disqualified for at least **two years** if he or she has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence. The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification (s.26 of the Road Traffic Offenders Act 1988 (RTOA));
- disqualification where vehicle used for the purpose of crime (s.164 of the Sentencing Code);
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle (ss. 12, 25 or 178 RTOA) or an attempt to commit such an offence).

C Special reasons

The period of disqualification may be reduced or avoided if there are special reasons. These must relate to the offence; circumstances peculiar to the offender **cannot** constitute special reasons. To constitute a special reason, a matter must:

- be a mitigating or extenuating circumstance;
- not amount in law to a defence to the charge;
- be directly connected with the commission of the offence;
- be one which the court ought properly to take into consideration when imposing sentence.

The fact that the offender did not drive the vehicle in question at any particular time, or at all, must not be regarded as a special reason

D Interaction with custodial period – same offence

Under section 35A of the Road Traffic Offenders Act 1988. where a court imposes a disqualification in addition to a custodial sentence or a detention and training order for this offence, it must extend the disqualification period to take account of the custodial term imposed by:

- **one half** of the custodial term imposed for an immediate standard determinate sentence (except where release is at the two thirds point – see below); no extension period should be imposed where a sentence is suspended.

- **two thirds** of the custodial term for an extended sentence.

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody. The table at [section 166 of the Sentencing Code](#) provides further detail. (Note: this table applies to disqualification for non-Road Traffic Act 1988 offences but the principles apply to disqualifications imposed under that Act as well.)

Periods of time spent on remand or subject to an electronically monitored curfew are generally ignored. However, If the time spent on remand would lead to a disproportionate result in terms of the period of disqualification, then the court may consider setting the discretionary element (i.e. the period which would have been imposed but for the need to extend for time spent in custody) to take account of time spent on remand. This should not reduce the discretionary term below the statutory minimum period of disqualification.

E Interaction with custodial period - different offence

The Court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified. In this instance, under section 35B of the Road Traffic Offenders Act 1988 it should have regard to "the diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence"

Where the court is intending to impose a disqualification and considering a custodial sentence for that and/or another offence, the following checklist may be useful:

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?
 - YES – the court must impose the appropriate extension period and consider step 2.
 - NO – go to step 3.
- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?
 - YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. **Discretionary period + extension period + uplift = total period of disqualification**
 - NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**
- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?
 - YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**
 - NO – no increase is needed to the discretionary period.

The interventions with the strongest evidence-base include ignition interlock devices, which test breath alcohol before driving have been found to be effective at deterring drink drive reoffending whilst installed. However, some studies such as the Cochrane review by Willis et al. (2009) suggest that the safety effects are limited and disappear once the devices are removed.

Other interventions, such as education-only, behavioural interventions and combined approaches (usually employing education, skills-based training and other behavioural elements) have also been evaluated, though the literature suffers from a number of methodological flaws, including a lack of control groups, non-randomised allocation to intervention groups, and other sampling caveats.

Moreover, meta-analytical studies which have evaluated only work that involves an experimental research designs (randomised allocation to groups, control group inclusion) have failed to find a significant effect of educational interventions on reoffending rates (Masten & Peck, 2004; Ker et al., 2005). In addition, education is mostly used for drink-driving and speeding offences rather than those where the EDT is used. Therefore the only sensible conclusion that can be drawn regarding the effectiveness of such interventions based on the current evidence is 'not proven'.

A view was expressed that Summary Court sentencers would welcome the opportunity to offer more educational courses as part of the sentence, reducing the latter's severity when completed, like drink drive rehabilitation courses. This reflects the conclusion of Beuret and Chorlton (2010) who explored perceptions of this legislative provision in certain circumstances and found sentencers in favour. Currently in law, EDTs are added on to a sentence (and may be seen as punitive as a result).

11.7 Review guidelines for use of mandatory and discretionary EDT

The guidelines for the use of the EDT and standard retest should be reviewed to ensure that there is consistency regarding the standard of driving and the retest required.

11.7.1 Current guidelines

There are currently five offences where the EDT is mandatory:

- Causing death by careless driving under the influence
- Dangerous driving
- Causing serious injury by dangerous driving
- Causing death by dangerous driving
- Motor manslaughter

There are several other offences involving death which do not have a mandatory EDT:

- Causing death by driving while disqualified
- Causing death by careless, or inconsiderate, driving
- Causing death by driving: unlicensed, disqualified or uninsured drivers

EDTs may be used discretionally for any offences when an offender is disqualified, including 'aggravated vehicle taking'.

Aggravated vehicle taking is defined (McCormac & Wallis, 2013, p. 15.30) as occurring when it can be shown:

“After its taking and before its recovery the vehicle is driven, or injury or damage caused:

- That the vehicle was driven dangerously on a road or other public place
- That an accident occurred (owing to the driving of the vehicle) by which injury was caused to any person or damage was caused to any property

Or

- Damage was caused to the vehicle”.

The minimum disqualification for both 'aggravated vehicle taking' and 'dangerous driving' is 12 months and the sentencing guidelines based on the descriptions of the level of seriousness are similar for both offences.

11.7.2 Our findings

Our research showed that three offences accounted for two-thirds of discretionary EDTs being ordered:

- Aggravated vehicle taking
- Driving while disqualified by order of court
- Drink driving

Our consultation and analysis suggested that EDTs were more commonly used:

- For young drivers (high risk)
- For older drivers (whose initial test may be a long time ago, so standards may have lapsed)
- Multiple offences or existing previous offences
- After exceptionally long disqualifications, when drivers may require a retest to ensure their driving standard meets requirements

The data showed that there were a substantial number of drivers who were ordered to take an EDT who did not regain their licence (analysis for standard retests was not possible) and also offenders who committed subsequent offences without regaining their licence.

Our consultation also suggested that there was a low awareness of EDTs amongst members of the judiciary (although the low response rate should be borne in mind), and little guidance given to magistrates for distinguishing when an EDT or a standard retest should be ordered, when discretionary. There was concern from survey respondents as to whether the retest requirement would be observed and whether it would be seen as an obstacle, and therefore drivers would not regain their licence (either not driving or driving unlicensed), and whether this would be greater for EDTs than for standard tests due to the increased length (and cost) of the test.

11.7.3 Recommendations

There is a difference as to whether EDT is ordered based on the driving behaviours exhibited or on their outcome. 'Dangerous driving', 'causing serious injury by dangerous driving' and 'causing death by dangerous driving' all have a mandatory EDT, suggesting that the retest is ordered due to the behaviour (dangerous driving), rather than the outcome (whether no injury or causing serious injury or death). However, 'causing death by careless driving under the influence' has a mandatory EDT, whilst driving, attempting to drive or being in charge of a vehicle under the influence does not, suggesting that the retest is due to the outcome (causing death) rather than the behaviour (driving under the influence). Such a discrepancy in the priority afforded to the risk (behaviour) or the outcome (death and injury) should be reviewed.

It is recommended that a review be undertaken to establish whether a mandatory application of the EDT would be suitable for the 'causing death' offences which do not currently have a mandatory EDT requirement.

The guidance on ordering a standard retest or EDT discretionally could be reviewed, and further examples could be included of when each should be ordered. In particular, the guidelines for 'aggravated vehicle taking' should be reviewed and compared with those for 'dangerous driving' to ensure that cases where driving is dangerous are treated similarly.

Any review of guidelines should ensure that these elements are included as examples or indications of what levels would require an EDT.

Any changes that are made to sentencing guidelines would need to be communicated to judges, magistrates and clerks.

It was suggested by a Crown Court judge respondent that the Probation Service rarely mentioned the suitability of ancillary orders in their pre-sentence reports. It was suggested that it would be helpful to the court if they were mentioned, especially where discretionary use of standard retests or EDTs were possible.

11.8 Improve understanding of driving offenders, testing and collisions

Linking offence data from DVLA and driver testing data with Stats19 collision data, would be of considerable value.

For example, linking offences that involved death with fatalities in Stats19 could be used to enhance knowledge of driving offenders, for example to estimate:

- What percentage of fatalities in Stats19 resulted in a driving offence of 'causing death by...' or another offence?
- Analysis of the linked data set would enable analysis of circumstances of the accident and offence together, for example:
 - When did the driving offences occur (month, day, time)
 - What were the contributory factors to the collision

Since the collision data do not include driver numbers for those drivers or riders involved in collisions, the linking would be based on data available in offence data and in Stats19, for

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