

15 September 2022

Dear Members

Meeting of the Sentencing Council – 23 September 2022

The next Council meeting will be held in the **Queens Building, Judges Conference Room, 1st Floor Mezzanine at the Royal Courts of Justice**. This will be a hybrid meeting, so a Microsoft Teams invite is also included below. **The meeting is Friday 23 September 2022 and will from 9:45 to 15:45.**

If you are not planning on attending in person please do let me know ASAP so Jessica and I can plan accordingly.

A **security pass is needed** to gain access to this meeting room. Members who do not know how to access this room can, after entry head straight to the Queen's Building where Jessica and Gareth will meet members at the lifts and escort them up to the meeting room. If you have any problems getting in or finding the Queen's Building, then please call the office number on 020 7071 5793.

The agenda items for the Council meeting are:

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|--------------------------------------|-------------|
| ▪ Agenda | SC(22)SEP00 |
| ▪ Minutes of meeting held on 22 July | SC(22)JUL01 |
| ▪ Underage sale of knives | SC(22)SEP02 |
| ▪ Perverting the course of justice | SC(22)SEP03 |
| ▪ Animal cruelty | SC(22)SEP04 |
| ▪ Blackmail | SC(22)SEP05 |
| ▪ Aggravated vehicle taking | SC(22)SEP06 |

Refreshments

Tea, coffee and water will be provided on the day but, due to the current existing RCJ safety guidance, a buffet style lunch will not be provided. Members are welcome either to bring lunch with them (the kitchen area next door contains a fridge) or to avail themselves of the local lunch options. The lunch break is 30 minutes.

Members can access papers via the members' area of the website. As ever, if you are unable to attend the meeting, we would welcome your comments in advance.

The link to join the meeting is: [Click here to join the meeting](#)

Best wishes

A handwritten signature in black ink, appearing to read 'Steve Wade', with a horizontal line underneath.

Steve Wade

Head of the Office of the Sentencing Council

Sentencing Council

COUNCIL MEETING AGENDA

23 September 2022
Royal Courts of Justice
Queen's Building

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|---------------|--|
| 09:45 – 10:00 | Minutes of the last meeting and matters arising (paper 1) |
| 10:00 – 11:00 | Underage sale of knives - presented by Ruth Pope (paper 2) |
| 11.00 - 11:15 | Break |
| 11:15 – 12:15 | Perverting the Course of Justice and Witness intimidation presented by Mandy Banks (paper 3) |
| 12:15 – 13:15 | Animal cruelty - presented by Zeinab Shaikh (paper 4) |
| 13:15 – 13:45 | Lunch |
| 13:45 – 14:45 | Blackmail, kidnap, false imprisonment and threats to disclose private sexual images - presented by Mandy Banks (paper 5) |
| 14:45 – 15:00 | Break |
| 15:00 – 15:45 | Aggravated vehicle taking - presented by Zeinab Shaikh (paper 6) |

Sentencing Council

COUNCIL MEETING AGENDA

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MEETING OF THE SENTENCING COUNCIL

22 JULY 2022

MINUTES

<u>Members present:</u>	Tim Holroyde (Chairman) Rosina Cottage Rebecca Crane Rosa Dean Diana Fawcett Elaine Freer Max Hill Jo King Stephen Leake Juliet May Maura McGowan
<u>Apologies:</u>	Nick Ephgrave Beverley Thompson
<u>Representatives:</u>	Hanna van den Berg for the Lord Chief Justice (Legal and Policy Advisor to the Head of Criminal Justice) Claire Fielder for the Lord Chancellor (Director, Youth Justice and Offender Policy)
<u>Observers:</u>	Judith Seaborne, Criminal Appeal Office
<u>Members of Office in attendance:</u>	Steve Wade Mandy Banks Ruth Pope Zeinab Shaikh Ollie Simpson Jessie Stanbrook

1. MINUTES OF LAST MEETING

- 1.1 The minutes from the meeting of 17 June 2022 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman welcomed Elaine Freer to her first meeting following her recent appointment as the academic member of the Sentencing Council.

3. DISCUSSION ON BLACKMAIL, THREATS TO DISCLOSE, KIDNAP AND FALSE IMPRISONMENT – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

- 3.1 The Council discussed a draft version of a new guideline for blackmail offences. The Council was broadly content with the proposed structure and factors, but made a number of suggestions for rewording. Recent blackmail cases were discussed, and it was agreed that consideration should be given to the various ways these offences were being committed, with particular reference to more recent examples.
- 3.2 The Council requested that a revised version be prepared for the next meeting. The Council also considered the scope of the rest of the project, and it was agreed that it should include kidnap, false imprisonment and the amendment to legislation to include threats to disclose private sexual images offences.

4. DISCUSSION ON MISCELLANEOUS AMENDMENTS – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

- 4.1 The Council considered amendments to the Children and young people guideline resulting from changes to legislation and concluded that the required changes should be made without consultation as they were an inevitable result of that legislative change. It was also agreed that some minor amendments could be made for clarity and to reflect caselaw.
- 4.2 The Council agreed to remove the word ‘gang’ from the aggravating factor ‘Offence was committed as part of a group or gang’ in the bladed article/offensive weapons guidelines without consultation. This would bring it into line with other guidelines.
- 4.3 Consideration was given to a new step 3 in the Unlawful act manslaughter guideline to give guidance on the required sentence of life for manslaughter of an emergency worker and the Council agreed to consult on the proposed wording.
- 4.4 The Council agreed that the annual consultation on miscellaneous amendments should be published in September.

5. DISCUSSION ON SENTENCING COUNCIL MOJ FRAMEWORK DOCUMENT – PRESENTED BY OLLIE SIMPSON, OFFICE OF THE SENTENCING COUNCIL

- 5.1 The Council considered a draft of the Sentencing Council - Ministry of Justice (MoJ) framework document. A revised draft will be returned to MoJ for consideration before being finalised in due course.
- 6. DISCUSSION ON AGGRAVATED VEHICLE TAKING – PRESENTED BY ZEINAB SHAIKH, OFFICE OF THE SENTENCING COUNCIL**
- 6.1 This was the second meeting to discuss the sentencing guidelines for aggravated vehicle taking without consent. The Council considered the sequencing of work to revise these alongside the public consultation on motoring offences guidelines, given the overlap between these offences.
- 6.2 The Council also discussed revisions to the sentencing tables and aggravating and mitigating factors for aggravated vehicle taking, with the aim of providing more detailed guidance to sentencers and to ensure proportionality with other similar offences.
- 7. DISCUSSION ON ENVIRONMENTAL OFFENCES – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL**
- 7.1 The Council discussed a letter from the Herts Fly Tipping Group calling for changes to the Environmental offences guideline for individuals. The Council agreed that in tandem with the work being undertaken on the Imposition guideline the approach in the guideline to community sentences should be reviewed.
- 7.2 The Council considered a recommendation from the Environmental Audit Committee in the Water quality in rivers report for a review of the Environmental offences guideline for organisations.
- 7.3 The Council noted the 2021 prosecution of Southern Water Services Limited in which a fine of £90 million was imposed following guilty pleas and concluded that the guideline for organisations provides the sentencing court with all the tools and guidance required to impose appropriate sentences in serious cases involving very large organisations.
- 8. DISCUSSION ON IMPOSITION – PRESENTED BY JESSIE STANBROOK, OFFICE OF THE SENTENCING COUNCIL**
- 8.1 The Council considered the first scoping paper for the Imposition guideline project, and agreed all ten recommendations for current and new sections to be included in the review.
- 8.2 The Council agreed to review the sections on community requirements, pre-sentence reports, suspended sentence orders, thresholds and electronic monitoring, as well as exploring potential new sections on points of principle affecting sentencing specific cohorts of offenders, deferred sentencing and the five purposes of sentencing.

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Sentencing Council meeting:
Paper number:

23 September 2022
**SC(22)SEP02 – Sale of knives etc to
persons under eighteen**

Lead Council member:
Lead official:

Jo King
Ruth Pope
ruth.pope@sentencingcouncil.gov.uk

1 ISSUE

1.1 From June to August 2022 the Sentencing Council consulted on two sentencing guidelines for the offence of selling knives to persons under the age of eighteen, contrary to s.141A of the Criminal Justice Act 1988: one for sentencing [individuals](#) and one for sentencing [organisations](#).

1.2 The Council has received 32 responses to the consultation including from sentencers, retailers and prosecutors. A small scale road testing exercise was carried out with ten magistrates during the consultation period. A summary of the road testing is attached at **Annex A**.

1.3 The guidelines were developed with the assistance of the National Trading Standards and the Association of Chief Trading Standards Officers (ACTSO) and we have held a further meeting with trading standards officers since the close of the consultation to discuss some of the issues raised in the responses.

1.4 One further meeting was planned to consider the responses and finalise the definitive guidelines but depending on the progress made an extra meeting may be required.

2 RECOMMENDATION

2.1 The Council is asked to consider the guideline for sentencing organisations and:

- Retain the scope of the guideline
- Amend the culpability factors
- Add a second level of harm
- Consider changes to aggravating and mitigating factors
- Make amendments to step 3
- Consider whether to remove the reference to compensation from step 7
- Consider whether any issues of equity and diversity can be addressed
- Consider the impact and risks associated with the guideline

3 CONSIDERATION

Background

3.1 In 2020 the Council received a submission on behalf of the London Borough of Barking and Dagenham regarding the need for a sentencing guideline for the offence of selling knives to persons under the age of 18. The submission argued that sentences being passed for larger organisations did not adequately reflect the seriousness of the offence and the means of the organisation. The Council agreed to add this to the list of future guidelines to be developed when resources were available.

3.2 The offence is prosecuted by Trading Standards departments within local authorities and almost all prosecutions are as a result of test purchases. This means that the volume of prosecutions is very closely linked to the resources that Trading Standards departments are able to devote to this aspect of their work. It is low volume: around 70 individuals and nearly 90 organisations were prosecuted in the five-year period 2016 to 2020. The Council drew on the expertise of the National Trading Standards and the Association of Chief Trading Standards Officers (ACTSO) in developing the guidelines.

3.3 The offence of selling knives etc to persons under the age of 18 is a summary only offence; it carries a maximum of six months' imprisonment (or, in the case of an organisation, an unlimited fine). It is a strict liability offence (there is no requirement to show intention or knowledge) subject to a defence of proving that all reasonable precautions were taken and all due diligence was exercised to avoid the offence.

3.4 In developing the guideline we also spoke to police about the sale of knives to children through more informal channels (such as peer to peer and via social media) or directly or indirectly by websites that sell knives in bulk. The police voiced concerns that the proposed guideline would not sentence these cases effectively. However, the police also accepted that they do not use this offence to prosecute such offending. Therefore the Council decided to restrict the guideline to the type of offending that is actually coming before the courts. This is discussed further below.

Responses to the consultation

3.5 Many of the consultation responses have been supportive of the proposals, but several have suggested areas for improvement. Most of the areas of contention arise in relation to the guideline for organisations, so this paper concentrates on the factors in that guideline though many of the issues will be common to both guidelines. The sentence levels can be reviewed once decisions have been reached on the factors.

Scope of the guideline

3.6 The consultation asked whether the wording relating to the scope of the guideline was clear:

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. 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.

3.7 Most respondents found the wording to be clear – though some questioned what would amount to a small quantity of knives with some suggesting that it should specifically state that a ‘small quantity’ includes a single knife and others wanting it to make clear that it would include a set of kitchen knives even if there were a relatively large number in that set. In road testing the majority of the magistrates thought the introductory text was clear but again some commented on the interpretation of ‘a small quantity of knives’.

3.8 The question in the consultation related only to whether the scope was clear but several respondents questioned the Council’s decision to limit the scope of the guideline:

The Expert Panel of Age Restrictions believes that the wording is clear as far as it is drafted, but is too narrow in scope. The drafting wording appears to reflect a traditional retail environment, sometimes described as “bricks and mortar retail”. The retail environment, both formal and informal, is however markedly more diverse than that. Regardless of the circumstances of most prosecutions so far, the Expert Panel thinks that the Sentencing Council’s guidelines should reflect the wider range of circumstances and scenarios where knives are sold to children, including those situations where people over the age of 18 buy a knife and then sell it to a child under the age of 18 in a more informal community setting. **Office of Product Safety and Standards (OPSS)**

BRC members believe creating sentencing guidelines for test purchase convictions without also including associated guidelines for actual sales to underage purchasers is fundamentally flawed. The logical approach would be to produce a set of guidelines covering both circumstances, which would then aid the judiciary in understanding the true nature of the offence they are considering. The clear danger in not including such, is that the sentencing court projects the theoretical harm associated with a test purchase into an actual harm associated with an actual sale to an underage purchaser. It is essential for a court determining a test purchase sale to clearly differentiate between the two scenarios and therefore including both scenarios in the guidelines is the key starting point. **British Retail Consortium (BRC)**

We consider that the wording relating to the scope of the guideline is fairly clear, though we wonder what examples are envisaged for cases of a more serious nature such as those involving the sale of “large quantities of knives”.

We have no experience of a sale of a large quantity of knives to children being prosecuted before us. We wonder why such an offence should not be sentenced in accordance with this guideline. Indeed, we are curious why a sale of knives to children following reckless/deliberate marketing of those knives to children is also not included in this guideline. **Her Majesty’s Council of District Judges (Magistrates’ Courts).**

3.9 The explanation given in the consultation document for limiting the scope of the guideline was this:

When developing the guidelines, the Council noted that the offence could also, at least theoretically, be used to prosecute in cases of the deliberate sale of knives to children – perhaps through social media and/or for the sale of knives in large quantities. Consideration was given to expanding the scope of the guideline to cater for such cases, but the Council decided that the guideline should focus on the types of case that actually come before the courts.

3.10 In hindsight perhaps a fuller explanation of the difficulties of devising a guideline for theoretical cases would have been helpful, but having consulted on a guideline that is limited in scope it would not be practicable to broaden the scope without considerable extra work and further consultation even if it were felt to be useful to do so. We can make the rationale clear in the response to consultation.

3.11 As for clarifying the meaning of ‘a small quantity of knives’, this may be less of an issue in practice as test purchases will always follow a fairly similar pattern and are likely to involve either a single knife or a small set (e.g. three to six). They are highly unlikely to involve, for example, a set of 20 specialist chef’s knives. It is difficult to see how the wording could be improved.

Question 1: Does the Council wish to change the scope of the guidelines?

Question 2: Does the Council wish to change the wording on the scope of the guidelines?

Culpability

3.12 The culpability factors consulted on were:

Culpability
A – High culpability <ul style="list-style-type: none">• Offender failed to put in place standard measures to prevent underage sales -<ul style="list-style-type: none">○ For in store sales standard measures would normally include: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, maintaining refusals log, till prompts○ For online sales standard measures would normally include: identifying restricted products, use of a reliable online age verification tool and/or collect in-store policy with checks on collection.• Offender failed to act on concerns raised by employees or others• Falsification of documents• Offender failed to make appropriate changes following advice and/or prior incident(s)
B – Medium culpability <ul style="list-style-type: none">• Systems were in place but these were not sufficiently adhered to or implemented

- Other cases where the offender's culpability falls between the factors as described in A and C

C – Lesser culpability

- Offender made significant efforts to prevent underage sales where not amounting to a defence

3.13 There was some uncertainty among magistrates in road testing as to whether all or just some of the standard measures listed needed to be present to show compliance.

3.14 Some respondents were supportive of the proposals:

The culpability factors set out in the draft sentencing guideline accurately reflect the types of age verification procedures we recommend convenience retailers have in place. ACS' Assured Advice on Preventing Underage Sales acknowledge the need for identifying restricted products, clear signage, age verification checks (best practice is Challenge 25 policy), staff training, maintaining refusals log and where possible till prompts. **Association of Convenience Stores**

3.15 Others had concerns:

The Criminal Justice Act 1988 does not specify what are referred to in the draft guideline as "standard measures" in the "High" culpability category. The draft guideline would therefore indirectly create a checklist by listing "standard measures".

This raises the question of what happens if retailers adhere to different guidance including, perhaps assured advice received from their Primary Authority?

In addition, it removes the element of discretion to creating an effective due diligence system, which is a more of an issue for online retailers. The law does not prescribe what steps should be taken to ensure that you have a defence of due diligence in the context of retail stores and we are not aware of any "standard measures" relating to online age verification.

It is also not clear whether the level of culpability would be "high" if only one or two etc of the "standard measures" was not in place.

For all of these reasons, we consider that the wording of the guideline would benefit from making it clearer that typical measures to prevent age restricted sale *may* include the various steps currently labelled as "standard measures". The Court should be invited to look at the *overall* system that was in place and particular circumstances relating to the offence in question.

The guideline will need to be kept under continuous review as the guidance and/or technology evolves, particularly in respect of online sales. **Womble Bond Dickinson LLP**

The indicators for high culpability seem tougher for in-store sales than on-line sales. There are several proposed measures for shops, many of which make little difference to the offence (e.g, refusal logs), and yet the on-line business does not need to indicate number of refused orders. Yet, relevant authorities, including the police, widely accept that there is a greater risk from on-line sales where it perceived

to be an easier purchase. It seems very easy to be highly culpable in the way the factors are described and that is a concern **British Independent Retailers Association**

The suggestion there is a standard list of due diligence requirements misunderstands the nature of such requirements. For example, not all retailers believe a refusals log serves much purpose even if they use one to please Trading Standards. The due diligence procedures should be seen as a suite of measures possibly based on Primary Authority advice not as a tick box list.

The measures for online sales should not refer to standard approaches. It should reflect the requirements of the Offensive Weapons Act and its statutory guidance including that age verification on delivery can be used as well as collect in store. **BRC**

3.16 The BRC suggested revised culpability factors:

Culpability
<p>A – High culpability</p> <ul style="list-style-type: none"> • Offender failed to put in place standard a suite of appropriate measures to prevent underage sales - <ul style="list-style-type: none"> ○ For in store sales standard measures would normally could include some or all of the following or others appropriate to the business and as its Primary Authority might advise: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, maintaining refusals log, till prompts ○ For online sales standard measures would follow the requirements of the Offensive Weapons Act statutory guidance including normally include: identifying restricted products, age verification on delivery use of a reliable online age verification tool and/or collect in-store policy with checks on collection or if available use of a reliable online age verification tool. • Offender failed to act on concerns raised by employees or others • Falsification of documents • Offender failed to make appropriate changes following advice and/or prior incident(s)
<p>B – Medium culpability</p> <ul style="list-style-type: none"> • Systems were in place but these were not sufficiently adhered to or implemented and there was evidence this was a pattern of behaviour rather than an isolated incidence • Other cases where the offender’s culpability falls between the factors as described in A and C
<p>C – Lesser culpability</p> <ul style="list-style-type: none"> • Offender made significant every efforts to prevent underage sales where not amounting to a defence • The offence resulted from a Test Purchase which as such had no potential for harm or the Test Purchase was not in accordance with the Test Purchase Code and did not represent a pattern of behaviour • The offence resulted from the sale of a type of knife that could not cause harm or injury such as a cutlery knife.

3.17 The changes to the high culpability factors proposed by the BRC have been discussed with Trading Standards and they were broadly content with the suggested

changes. They accept that refusals logs are not appropriate in all situations and suggested reference might instead be made to 'a means of monitoring refusals' which in the case of larger retailers could be an automated function. They also accept that age verification on collection or delivery is the most robust method for online sales.

3.18 The 'primary authority' is the local authority that a retailer with multiple sites around the country works with to give advice on trading standards matters. This means that if a store in one local authority area fails a test purchase exercise and the primary authority for that retailer is elsewhere, the investigating local authority would liaise with the primary authority before proceeding to prosecution.

3.19 The proposed change to medium culpability is problematic because it could indicate that a single incident would always be low culpability – which may not always be appropriate. The proposed change from 'significant efforts' to 'every effort' seems to be setting the bar too high for lesser culpability and it is difficult to see what would amount to 'every effort' while not amounting to a defence of due diligence.

3.20 The suggestion that any sale resulting from a test purchase should be low culpability is misconceived. Prosecutions for many offences result from similar methods of investigation such as undercover police officers buying drugs or intelligence officers infiltrating terrorist organisations. The final suggestion regarding the type of knife may be better addressed under harm.

3.21 Other respondents made suggestions for additional culpability factors:

The MA would suggest that an organisation's failure to protect employees and to act on comments and fears from staff could be meaningfully counted in the suite of culpability factors **Magistrates' Association**

Should there be a direct comment on the following:

- The trader sold with no regard a knife to a minor
- The trader had no knowledge or understanding of preventative measures
- The trader had no regard to any preventative measures to stop underage sales
- How is "offender failed to act on concerns raised by employees or others" proved?

Trading Standards Wales

To make sure every reasonable step is being taken to prevent the sale of knives and other bladed articles to those under 18, we believe that a responsible organisation should not only establish an appropriate set of procedures to prevent underage sales but must ensure these procedures (i) continue to remain effective and (ii) are updated as necessary. We therefore propose that the following additional factors should be added under Medium and Lesser Culpability

Medium Culpability

- *Offender has failed to regularly quality check the systems and procedures they have in place (for example, by working with the Local Authority to arrange test purchases in-store and online).*
- *Offender has failed to regularly review and update the written documentation and procedures in place and the staff training programme, to make sure they continue to be fit for purpose.*
- *Offender has failed to review (and if necessary update) the documentation, procedures and training when there have been relevant statutory changes.*

Lesser Culpability

- *Offender has regularly quality checked the systems and procedures they have in place (for example, by working with the Local Authority to arrange test purchases in-store and online).*
- *Offender has regularly reviewed and updated the written documentation and procedures in place and the staff training programme, to make sure they continue to be fit for purpose.*
- *Offender has reviewed (and if necessary updated) the documentation, procedures and training when there have been relevant statutory changes.*

West London Magistrates' Bench

For online sales high culpability should include offender failed to make contractual arrangements with a delivery company to ensure knives are not handed over to people under the age of 18 when delivered. **London Borough of Tower Hamlets**

With regards the specifics of culpability factors relating to Online, the current text may be misinterpreted and needs to be in line with the Statutory Home Office Guidelines which sets out on Page 22 (Defence to sale of bladed articles to persons under 18: England and Wales)¹ the conditions that must be met to be able to deliver bladed items to residential addresses:

1. The seller has a system in place to verify the age of the purchaser and that they are not under 18, and that the system is likely to prevent purchases by under 18s;
2. The package when dispatched by the seller is clearly marked that it both contains a bladed article and that it can only be delivered and handed over to a person aged 18 or over (whether the purchaser or someone representing them);
3. The seller has taken all reasonable precautions and exercised all due diligence to ensure that when the package is delivered, it is handed over to a person aged 18 or over. This applies whether the seller delivers the package themselves or through a third party e.g. by staff at a collection point; and
4. The seller does not deliver the package, or arrange for it to be delivered, to a locker.

These conditions need to be factored into the culpability and should therefore influence its associated level. The Guidance also specifically states that the Home Office were not looking to endorse or prescribe any specific age verification systems so the direct reference to them in the guideline can be misleading. **Ocado Retail Ltd**

¹ <https://www.gov.uk/government/publications/the-offensive-weapons-act-2019/statutory-guidance-offensive-weapons-act-2019-accessible-version#sale-and-delivery-of-knives-etc---offensive-weapons-act-2019-part-3>

3.22 Taking account of all of these suggestions and the comments of magistrates in the road testing, the following is proposed:

Culpability
A – High culpability <ul style="list-style-type: none">• Offender failed to put in place appropriate measures to prevent underage sales<ul style="list-style-type: none">○ For in-store sales measures could include some or all of the following: identifying restricted products, clear signage, age verification checks/ Challenge 21 or Challenge 25 policy, staff training, a means of monitoring refusals, till prompts○ For online sales measures should follow Home Office guidance including: identifying restricted products, age verification on delivery or collect in-store policy with age verification on collection• Offender failed to act on concerns raised by employees or others• Falsification of documents• Offender failed to make appropriate changes following advice and/or prior incident(s)
B – Medium culpability <ul style="list-style-type: none">• Systems were in place but these were not sufficiently adhered to or implemented• Other cases where the offender’s culpability falls between the factors as described in A and C
C – Lesser culpability <ul style="list-style-type: none">• Offender made significant efforts to prevent underage sales where not amounting to a defence

Question 3: Does the Council agree to the proposed changes to the culpability factors in the guideline for organisations?

Harm

3.23 The Council consulted on having only one level of harm:

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

3.24 Magistrates in road testing and many respondents generally agreed with having only one level of harm. Concern was expressed by several respondents, in particular retailers, that the offence can be committed by the sale of any knife and that by having only one level of harm there was no way of distinguishing between the sale of, for example, a carving knife and a butter knife. Technically, the sale of any knife (even a plastic one) to a person under 18 could result in a prosecution. Some retailers we spoke to expressed a concern that an individual trading standards officer could bring a prosecution for sale of cutlery knives in situations where most would not. Trading standards have reassured us that any prosecution

has to be approved by multiple people and such a prosecution is unlikely to be considered in the public interest. Perhaps more realistically, there was a concern that trading standards might use previous sales of cutlery knives in test purchases that did not result in a prosecution as evidence of a poor record of compliance.

3.25 Retailers explained that in many stores kitchen knives would be kept in a locked cabinet and it would require two members of staff to unlock and approve the sale, whereas sets of cutlery would be on open display and staff would be less likely to appreciate the need for care when selling them even with the benefit of training and till prompts etc.

3.26 Some respondents went further:

[N]o harm whatsoever can arise from a test purchase sale as it is in controlled circumstances and the prosecution should acknowledge the fact that there is no harm if there is no evidence of any actual sales to minors by the retailer in question. This is vital to ensure the matter is considered in the correct context. Potential, and we stress potential, harm only arises from an actual sale and even then there may in fact be no harm arising unless one assumes ALL under- age sales are to people determined to use the item for a crime.

To suggest there is harm in a test purchase sale is to suggest that because the test was failed, there must inevitably be occasions in the past or future when a sale has or will be made and that sale will result in harm. This supposition without any evidence in fact seems a novel approach to law. **BRC**

[W]e propose there should be more than one level of harm. Purchases by minors which are test purchases under the control of adults from the local authority or other agencies can be placed in the lowest level, as there should be no harm caused here. Purchases other than test purchases should then be distinguished by both the type of bladed article sold and the number of bladed articles sold. We propose three levels of harm that should be assessed for a particular offence **West London Magistrates Bench**

3.27 All, or almost all, prosecutions for this offence are as a result of test purchases and the Council has already decided that the harm from the offence is the **risk** of knives falling into the hands of young people. Contrary to what the BRC suggests this approach is based in law. Section 63 of the Sentencing Code states:

Where a court is considering the seriousness of any offence, it must consider—

(a) the offender's culpability in committing the offence, and

(b) any harm which the offence—

(i) caused,

(ii) was intended to cause, or

(iii) might foreseeably have caused.

3.28 Several respondents thought that the age of the purchaser was relevant to the level of harm but the majority accepted that there was no clear correlation between the risk of harm and the age of the purchaser. One respondent thought that the age of the purchaser was relevant to culpability in that a sale to a younger child demonstrated deliberate or

reckless selling. In the context of how test purchases are carried out it is not recommended that the age of the purchaser should be a key factor in assessing seriousness. If it is relevant in a particular case it could be taken into account as an aggravating or mitigating factor.

3.29 Despite the fact that it is unlikely in practice that a prosecution would result from the sale of anything other than a sharp knife, in the light of the way the legislation is worded and the concerns raised by respondents, it is proposed to add a second level of harm. For example:

HARM

The harm caused by this offence relates to the risks, both to themselves and to others as well as the wider community, associated with children and young people being in possession of knives. Where the item(s) sold do not fit clearly into one category the court should consider the level of harm risked by the sale of such item(s)

Higher risk

- Any article with a blade that is capable of causing a serious injury to a person which involves cutting that person's skin
- An axe
- any other article which has a blade or which is sharply pointed and which is made or adapted for use for causing injury to the person.

Lower risk

- Any cutlery knife (excluding steak knives or similar)
- Any other knife which is not likely to be used as a weapon such as:
 - utility knives with small cutting blades
 - snap off cutters
 - pizza cutters
 - small cheese knives

3.30 The wording of the factors is based on [Home Office statutory guidance](#). The views of trading standards and industry representatives on any revised factors could be sought before they are finalised.

Question 4: Does the Council agree to having two levels of harm?

Question 5: Are the proposed revised harm factors the right ones?

Aggravating and mitigating factors

3.31 There were only a limited number of aggravating and mitigating factors in the draft guideline reflecting the fact that most relevant factors are covered in culpability factors and the relatively narrow range of offending that is captured by this offence:

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- Obstruction of justice

3.32 The West London Magistrates' Bench were unsure what was meant by the aggravating factor 'Obstruction of justice'. They suggested rewording to: 'Obstruction of justice – including the hiding or destruction of evidence, blaming others, etc'. Alternatively they suggested two new factors: 'Poor level of co-operation with the investigation' and 'Limited or no acceptance of responsibility'. They also suggested adding: 'No evidence of any steps taken since the current offence to prevent recurrence'. A similar suggestion was made by a magistrate in road testing.

3.33 Womble Bond Dickinson LLP suggested that previous convictions should be considered in the context of the size of the defendant's retail operation by specifically taking into consideration the number of stores operated by the defendant organisation and/or volume of sales of age restricted products.

3.34 London Borough of Tower Hamlets suggested adding a factor relating to failing to adhere to assured advice given by a Primary Authority. The British Transport Police suggested having the age of the child as an aggravating factor as well as the sale occurring in a high violent crime area.

3.35 These suggestions should be considered in the context of the high culpability factors:

- Offender failed to act on concerns raised by employees or others
- Falsification of documents
- Offender failed to make appropriate changes following advice and/or prior incident(s)

3.36 These offences are fairly straightforward and on reflection, it is not entirely clear what conduct 'Obstruction of justice' is aimed at when 'Falsification of documents' is included at step 1. The other suggestions from the West London Magistrates' Bench are mirrors of mitigating factors and it could be argued that it would not be appropriate to aggravate for failure to take positive action/ steps.

3.37 Consideration could be given to providing more context to previous convictions. There is an existing expanded explanation for previous convictions but the content is aimed at individual offenders and has little relevance to organisations. If the Council thought it would be useful some wording could be added either on the face of the guideline or as an expanded explanation. In practice, larger organisations will be represented and these points will, no doubt, be made to the sentencing court whether or not they are in the guideline.

3.38 The only other suggestions not already covered by step 1 factors relate to the age of the purchaser (which was also mentioned by some magistrates in road testing) and the sale taking place in a high violent crime area. Magistrates in road testing also suggested the number of items sold could aggravate the sentence. It is not clear that any of these necessarily make the offence more serious in ways that are not already captured at step 1.

Question 6: Does the Council wish to make any changes to the aggravating factors?

Specifically:

- **adding information about how previous convictions should be considered;**
- **removing the obstruction of justice factor;**
- **adding any new factors**

Factors reducing seriousness or reflecting mitigation

- No previous convictions or no relevant/recent convictions
- Evidence of steps taken voluntarily to prevent re-occurrence
- High level of co-operation with the investigation and acceptance of responsibility
- Good record of compliance with Trading Standards

3.39 There were only a few comments on mitigating factors. The British Independent Retailers Association asked for clarity around ‘high level of co-operation with the investigation’. From their response it appears that they interpreted this as relating to making changes required by trading standards whereas that would be more relevant to ‘Evidence of steps taken voluntarily to prevent re-occurrence’. They make the point that for smaller retailers it is not always financially or physically possible to make changes requested by trading standards (e.g. changing store layout). This could perhaps be addressed by referring to ‘reasonable steps’ or ‘appropriate steps’.

3.40 West London Magistrates’ Bench suggested splitting the third factor into two factors:

- High level of co-operation with the investigation
- Acceptance of responsibility

3.41 The difficulty with this suggestion is that ‘acceptance of responsibility’ could be conflated with a guilty plea, whereas presumably it was intended to indicate pre-court admissions/ acceptance. This could perhaps be solved by rewording to ‘acceptance of responsibility from the outset’. However, in the context of this offence it may not be particularly relevant and could disadvantage larger organisations where there are several layers of decision making. Therefore it is recommended that this part of the factor be removed.

3.42 Womble Bond Dickinson LLP queried what was encompassed by ‘Good record of compliance with Trading Standards’ given the broad remit of Trading Standards. One

solution could be to limit that factor matters relating to age restricted products. They also proposed additional mitigating factors:

- previous test purchase record;
- the target audience – selling and marketing services to the trade creates less of a risk of than selling to consumers, especially those stores which appeal to children;
- engagement with community initiatives and/or the Police to reduce knife-related crime;
- additional efforts to tackle underage sales in areas with high-levels of knife crime;
- engaging in voluntary initiatives to reduce underage sales such as public pledges.

3.43 This last suggestion is echoed in part by the BRC who suggested that being a signatory to the Home Office Voluntary Agreement should be taken into account. However, signing up to various initiatives is not necessarily mitigation if it does not lead to compliance. As the list of mitigating factors is non-exhaustive there is no reason why any relevant matters (insofar as they are not covered elsewhere) could not be taken into account where appropriate.

3.44 The suggested reworded factors are:

- High level of co-operation with the investigation ~~and acceptance of responsibility~~
- Good record of engagement and compliance with Trading Standards (particularly in relation to age restricted sales)

Question 7: Does the Council wish to make any changes to the mitigating factors?

Step 3 – adjustment of fine

Having arrived at a fine level, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine including outside the category range. The court should ‘step back’ and consider the overall effect of its orders. The fine ought to achieve:

- the removal of all gain (including through the avoidance of costs)
- appropriate punishment, and
- deterrence

The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the size and financial position of the offending organisation and the seriousness of the offence.

The fine must be substantial enough to bring home to both management and shareholders the need to operate within the law. Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

In considering the ability of the offending organisation to pay any financial penalty the court can take into account the power to allow time for payment or to order that the amount be paid in instalments.

The court should consider whether the level of fine would otherwise cause unacceptable harm to third parties.

Below is a **non-exhaustive** list of additional factual elements for the court to consider.

The court should identify whether any combination of these, or other relevant factors, should result in a proportionate increase or reduction in the level of fine.

Factors to consider in adjusting the level of fine

- The value, worth or available means of the offender
- Impact of fine on offender's ability to implement effective compliance programmes
- Impact of fine on employment of staff, service users, customers and local economy (but not shareholders)

3.45 Respondents who commented generally agreed with this step. All but one magistrate in road testing thought it was useful though several found it quite complicated. The BRC suggested adding two further factors to consider in adjusting the fine:

- The potential reputational damage that the offender will suffer and be likely to deter any future offence
- Recognition that a fine for a test purchase should reflect only that purchase and not make suppositions that a single failed test purchase is a guide to future behaviour for which there is no evidence

3.46 Reputational damage could be relevant to deterrence – though the extent of the reputational damage may be linked to the amount of the fine.

3.47 West London Magistrates' Bench preferred this wording in the fines dropdown in the guideline for individuals:

When sentencing **organisations** the fine must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with the law. The court should ensure that the effect of the fine (particularly if it will result in closure of the business) is proportionate to the gravity of the offence.

To the wording in the guideline for organisations:

The fine must be substantial enough to bring home to both management and shareholders the need to operate within the law. Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

3.48 Taking these suggestions into account some changes are proposed:

Having arrived at a fine level, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine including outside the category range. The court should 'step back' and consider the overall effect of its orders. The fine ought to achieve:

- the removal of all gain (including through the avoidance of costs)
- appropriate punishment, and
- deterrence

The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the size and financial position of the offending organisation and the seriousness of the offence.

The fine must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with the law. The court should ensure that the effect of the fine (particularly if it will result in closure of the business) is proportionate to the gravity of the offence.

In considering the ability of the offending organisation to pay any financial penalty the court can take into account the power to allow time for payment or to order that the amount be paid in instalments.

The court should consider whether the level of fine would otherwise cause unacceptable harm to third parties.

Below is a **non-exhaustive** list of additional factual elements for the court to consider.

The court should identify whether any combination of these, or other relevant factors, should result in a proportionate increase or reduction in the level of fine.

Factors to consider in adjusting the level of fine

- The value, worth or available means of the offender
- Impact of fine on offender's ability to implement effective compliance programmes
- Impact of fine on employment of staff, service users, customers and local economy (but not shareholders)
- The effect of the reputational damage to the offender of the conviction and fine

Question 7: Does the Council wish to make the proposed changes to step 3?

Steps 4 to 8

Step 7 – Compensation and ancillary orders

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

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a **confiscation order** if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

Where, following conviction in a magistrates' court, the prosecutor applies for the offender to be committed to the Crown Court with a view to a confiscation order being considered, the magistrates' court must commit the offender to the Crown Court to be sentenced there (section 70 of the Proceeds of Crime Act 2002). This applies to summary only and either-way offences.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation). (See Proceeds of Crime Act 2002 sections 6 and 13)

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

3.49 Two respondents queried the relevance of compensation for this offence, bearing in mind the nature of the offence and that in practice prosecutions result from test purchases.

Question 8: Does the Council wish to retain the reference to compensation?

4 EQUALITIES

4.1 There were very few responses to the consultation questions relating to disparities in sentencing and issues of equality and diversity. The Northumbria Violence Reduction Unit commented:

In terms of operational responsibility, should further consideration be given on the expectations on Trading Standards to ensure the new guidelines when communicated to retailers are accessible and easily understood? We are aware that a significant number of small retailers are owned by people from minority communities and language may be a barrier for some. It is important that all retailers understand their responsibilities.

This is also relevant in considering how you ensure there is increased awareness and understanding of sentencing guidelines, there is a need to ensure the guidelines are also clearly understood by people from diverse cultures.

In future how do you ensure there is robust collection of demographic data (for instance, lack of data on ethnicity) where this data is absent it makes it difficult to understand disparity amongst certain groups.

4.2 We have not raised these issues with Trading Standards, but can do so before the next Council meeting to see if there are ways we can work with them (and the retail groups who have responded) to ensure awareness of the definitive guidelines when they are published including among retailers from ethnic minority backgrounds.

Question 9: Aside from exploring how to raise awareness of the guidelines among retailers from ethnic minority backgrounds, are there any equality and diversity issues that we should be addressing?

5 IMPACT AND RISKS

5.1 Various respondents (especially retailers) have raised concerns that increased penalties for reputable retailers will lead to them withdrawing knives from sale:

If retailers believe they can do nothing more in terms of due diligence there is a danger that they will decide the potential reputational damage – and financial damage – is too great and withdraw from the market – as they have largely online – driving customers to less well organised or less reputable retailers or websites. **BRC**

Whilst the guideline will address inconsistency, the levels of fine will undoubtedly increase. The result is that retailers are being held increasingly accountable for knife crime which, as far as we are aware, is not substantiated with evidence. The real harm is caused by those retailers who deliberately or recklessly market knives to children, which are expressly excluded from the guideline. We therefore consider that a number of amendments can be made to the guideline to be more reflective of the

overall risk of harm in the context of bladed articles by national retailers who, in reality, are the primary target of test purchasing activities. **Womble Bond Dickinson LLP**

Independent retailers are responsible but not perfect. Mistakes are made by owners and employees but in general these business owners are practical, sensible and aware of their legal responsibilities. Since the legislation was introduced, many measures have been taken with regards to the sale of knives to ensure that it is safer.

These sentencing guidelines may well deter retailers from selling bladed articles altogether which would be a poor outcome. If shops, where the controls in place are visible and easily assessed, ordinary consumers and criminals will buy more and more on-line - a sales channel that is a far harder to control and regulate. In all our discussions with police forces, on-line sales have been an area of much more concern so these guidelines may well make it even harder to effectively regulate the sale of knives. **British Independent Retailers Association**

5.2 The Council is limited in what it can do or say in this regard. The guideline can only address the sentencing of cases that are successfully prosecuted (as discussed earlier in this paper).

5.3 A slightly different concern has been raised by some respondents:

The Expert Panel considers that publication of these guidelines may, possibly inadvertently, lead to an increase in the number of large organisations being taken to court more frequently, given it may lead to an increase in test purchasing programmes where some sales are identified as a result of a single failure of human judgement in verifying age rather than systemic failure of age restricted sales policies or abuse. **OPSS Expert Panel**

We are concerned that issuing this Guideline to increase fines on large organisations will send the wrong message – that more test purchasing of large retailers is the key to solving the problem. **BRC**

5.4 It is important to note that an increase in fine levels will not increase the resources of trading standards departments and they have pointed out that there was no increase in the number of prosecutions correlating to the maximum fine increase from £5,000 to unlimited in 2015.

5.5 Some respondents welcomed the improvement in consistency that the guidelines would bring:

We believe these guidelines will result in a more consistent approach from the Courts and sentences that better reflect the detriment and harm caused by these type of offences. **ACTSO**

The draft sentencing guideline will address the significant degree of inconsistency in the approach to sentencing which is welcome. It is this inconsistency which has, in our experience, resulted in the better known national retail brands being disproportionately punished when compared with less reputable businesses that may

often present a greater risk from the perspective of allowing under 18s access to knives. **Womble Bond Dickinson LLP**

I welcome the Council's intention to ensure the courts take a consistent approach to sentencing this offence and, in the case of organisations, impose fines linked to turnover to make penalties proportionate to the size of organisation. **Sarah Dines MP
Parliamentary Under-Secretary of State for Justice**

5.6 Before the guidelines are signed off consideration will be given to how best to communicate with sentencers, prosecutors, retailers and other interested parties on publication of the definitive guidelines to ensure that the aims of the guidelines (consistent and proportionate sentences for the offences coming before the courts) are understood and implemented.

Question 10: Are there any issues relating to the risks and impact of the guideline for organisations (not covered elsewhere in this paper) that the Council should address?

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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'*.

- 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:

- 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.
- 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?'*
- 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.
- 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

Sentencing Council meeting:
Paper number:

Lead Council member:
Lead official:

23 September 2022
**SC(22)SEP03 - Perverting the Course of
Justice and Witness intimidation**
Juliet May
Mandy Banks
Mandy.Banks@sentencingcouncil.gov.uk
0207 071 5785

1 ISSUE

1.1 This is the first meeting following the consultation on the draft perverting the course of justice (PTCJ) and revised witness intimidation guidelines. This meeting will focus on responses regarding culpability factors, subsequent meetings will look at the responses regarding the rest of the draft guidelines, harm factors, sentence levels and so on.

2 RECOMMENDATION

2.1 At today's meeting the Council is asked:

- To consider the responses regarding culpability

3 CONSIDERATION

3.1 The consultation ran from 30 March to 22 June this year. In total 48 consultation responses were received, a list of respondents is attached at **Annex A**. The reaction to the draft guidelines was generally positive, subject to points of detail which are discussed below. Road testing of the guidelines was also carried out. A summary of the findings from this is attached at **Annex B**.

3.2 Starting with culpability factors for PTCJ, (**Annex C**) a number of respondents were concerned with the factors '*underlying offence very serious*' in high culpability, and '*underlying offence was not serious*' in lower culpability. The Justice Committee (JC) felt that it could be problematic: that they recognise that the seriousness of the underlying offence is an established factor for the courts to take into account, but that if the factors are to be included it would be beneficial to offer more guidance. For example, whether summary offences should be considered not serious? Without further guidance there may be unintended consequences when sentencers decide what constitutes a very serious offence, they suggest.

3.3 Professor Alisdair Gillespie from Lancaster University was also concerned with the wording of the factors and suggested that mode of trial could be used to decide seriousness.

He suggests that, as a general principle, indictable only offences should be considered the most serious, with summary offences the least serious, with either way offences falling in between the two. Failing that he suggests adding the medium culpability factor the Council considered but discounted of '*underlying offence reasonably serious*'. The Justices' Clerks' Society (JCS) however felt that the wording as is in medium culpability is better than asking courts to decide whether the offence is somewhat or reasonably serious.

3.4 In devising these factors the Council had felt they were self-explanatory, but a small number of respondents felt additional guidance was needed. The Council could add the additional medium culpability factor of '*underlying offence reasonably serious*' or revise the factors completely and use mode of trial instead so high culpability would be '*underlying offence an indictable only offence*', medium culpability would be '*underlying offence an either way offence*' and lower culpability would be '*underlying offence a summary only offence*'.

3.5 However, using the mode of trial could be misleading, as it is the seriousness of the offence committed, rather than the type of offence that is important. For example, a case involving a minor street robbery (indictable only) might be less serious than a highly planned burglary (either way), but under this categorisation the robbery offence would be deemed more serious than the burglary offence. The Council has not previously assessed the seriousness of cases using mode of trial before, and it is quite an arbitrary way of assessing cases. Further, only one respondent made this suggestion so it is proposed that this idea is not practical.

Question 1: Does the Council wish to reword the underlying offence factors? If so, how would the Council wish to reword? Or just add the additional medium culpability factor?

3.6 A small number of respondents felt that there should be a culpability factor of an offender holding a position within the justice system. The absence of such a factor was also raised by some road testing participants (page 4 of **Annex B**.) Professor Gillespie suggested that committing the offence is more serious if the person is involved within the justice system or has an equivalent position of authority, he suggests the office holder is choosing to pervert the course of justice despite having a legal or moral obligation to facilitate justice. Similar comments were made by the Criminal Law Solicitors' Association (CLSA). Professor Gillespie goes further to suggest that where the act is linked to their job, such as a police holder deliberately changing a witness statement, this should go into high culpability, where the act is not linked, such as a Judge giving false details in a speeding offence, that should be in lower culpability.

3.7 The Council may recall that the merits of adding such a factor to step two were debated during guideline development, with the decision ultimately being not to include the factor. Given the comments made during consultation the Council may wish to revise this decision, although perhaps the subdivision of the purpose of the act into two factors suggested by Professor Gillespie is not necessary.

Question 2: Does the Council wish to add a factor of ‘Offender holds a position of responsibility within the criminal justice system’? If so, as a culpability factor or an aggravating factor?

3.8 A solicitor and Professor Gillespie felt that the proposed factors within medium culpability were too vague and asked if more could be added. As noted above Professor Gillespie suggested that there should be a factor relating to the underlying offence within medium culpability, he also suggests that ‘*some planning*’ is added to medium culpability. The Council may recall that during development the possibility of adding additional medium culpability factors was discussed, including ‘*underlying offence reasonably serious*’ and ‘*conduct was somewhat sophisticated*’ but it was decided against including them. However, a small number of consultees thought that at least two additional factors would be helpful, so the Council may wish to rethink including them. Road testing participants offered mixed views on medium culpability, with one saying they didn’t like how medium culpability is treated, and two others saying that they did (page 4 of **Annex B**).

Question 3: Does the Council want to add any additional medium culpability factors? Such as ‘some planning’?

3.9 Women against rape and the Centre for Women’s Justice (CWJ) felt there needed to be better recognition of victims of domestic abuse, predominantly women, who are charged with this offence, and that a history of abuse may make their offending less serious. Some of the concerns they raised are more of a charging issue than a sentencing issue, (whether PTCJ should have been charged or wasting police time, the respondents raising questions of racial and gender discrimination.) The CWJ feel that the lower culpability factor of ‘*involved through coercion, intimidation or exploitation*’ needs to deal more explicitly with the dynamics of domestic abuse. They suggest that a court may look at this factor and think it doesn’t apply in cases where an offender has not been expressly coerced into committing the offence. They suggest adding the words ‘*or as a result of domestic abuse*’ to this lower culpability factor.

3.10 When used as a mitigating factor the [expanded explanation](#) for this factor does

reference domestic abuse, but this additional explanation is only present for the mitigating factor, not the culpability factor.

Question 4: Does the Council wish to make any changes as a result of the issues raised about victims of domestic abuse, such as adding the wording suggested to the lower culpability factor?

Witness Intimidation guideline

3.11 Turning now to the culpability factors in the witness intimidation guideline, **(Annex D)** a small number of respondents commented on the '*breach of bail conditions*' high culpability factor. The Chief Magistrate raised a concern that as worded it could result in a disproportionate number of cases falling into culpability A. He asked whether a distinction could be drawn between those cases where the breach of bail is a breach of a condition expressly imposed to prevent an offence of witness intimidation, such as non-contact with named witnesses etc, and those cases where the breach occurs incidentally to the offence. He suggests the former type might fall into culpability A, and the latter into categories other than A. Professor Gillespie and a magistrate also raised similar concerns.

3.12 The Chief Magistrate also suggests that the words '*and/or protective order and/or after Police warning re conduct*' should be added, whichever category the factor is placed in. The factor as worded is in the current MCSG guideline and presumably was intended to cover situations where the offender breached specific bail conditions such as not to contact the witness, rather than a breach of any bail condition. So the high culpability factor could be reworded to '*breach of specific bail conditions imposed to prevent witness intimidation*'. It is suggested that it is not necessary to have a breach of other bail conditions in medium culpability- it is the breach of the bail conditions specific to the offence that indicate higher culpability.

Question 5: Does the Council wish to reword the bail conditions factor in high culpability in the way suggested? Does the Council wish to add the additional wording suggested by the Chief Magistrate re protective orders/police warnings?

3.13 A number of respondents including the Chief Magistrate were unhappy with the lower culpability factor '*unplanned and/or limited in scope and duration*.' The Chief Magistrate said that many such offences are short, but are extremely serious, so are not lower culpability. Two magistrates queried whether the offence could ever truly be 'unplanned' and that the wording should be removed. West London Magistrates Bench suggested instead that it should be reworded to '*contact with witness unplanned and/or limited in scope and duration*'.

With respect to the Chief Magistrate there does need to be a lower culpability factor- some incidents could be chance encounters and/or brief incidents, which are not as serious as the types of offence in high culpability. Alternatively, the factor could be reworded with the 'or' removed, so it would only fall into lower culpability if unplanned **and** limited, so '*contact with witness unplanned **and** limited in scope and duration*'. The rewording suggested may help clarify the factor and resolve some of the concern.

Question 6: Does the Council wish to reword the lower culpability factor in the way suggested?

3.14 Some respondents, including road testing participants (page 9 of **Annex B**) were concerned with the factors relating to violence or threats of violence. The Chief Magistrate feels that there is a tension regarding the meaning of violence within the guideline, that as worded the high culpability factor of '*actual or threat of violence to witnesses and/or their families*' could include a remote, as opposed to in-person threat of violence, and the medium factor of '*non-violent conduct amounting to a threat*' can include in-person intimidation, as long as it isn't actual violence. He asks if remote and actual contact should be treated equally? He suggests that instead only actual violence should be in high culpability, followed by threats of violence and threats of non-violence, and perhaps a factor of a threat calculated to have a particularly adverse impact on the victim.

3.15 The Council of HM Circuit Judges were also concerned with the wording of these factors, particularly the medium culpability factor, and suggested that it is instead reworded to '*non-violent conduct amounting to a threat which falls short of violence*'. The JC also felt that the distinction between the high and medium culpability factors relating to threats could lead to difficulties for sentencers and asked if the factors could be made clearer. They said that as drafted it is unclear whether an implied threat of violence would be captured within high or medium culpability. West London Magistrates Bench suggested that an additional factor in lower culpability would help to make it clear that there must be no direct or implied threat of violence to the witness or their family for the offence to fall into that category. They propose '*no direct or implied threat of physical violence to the witness or their family*' as a new lower culpability factor.

3.16 Taking all these suggestions into account, the factors could be reworded so that in high culpability there is '*actual violence to witnesses and/or their families*', in medium culpability there is '*threat of violence towards witnesses and/or their families*' and then in lower culpability there is '*no direct or implied threat of physical violence to the witnesses*'.

Question 7: Does the Council wish to reword the factors relating to violence /threats

in the way suggested?

3.17 HM Council of District Judges also queried this factor but asked whether ‘families’ needed to be extended to friends and associates, saying that as worded it opens the door to arguments about who is a member of a family - e.g, is a girl/boyfriend family? Absent a rationale to restricting the factor to families they think it should be extended to friends and/or associates.

3.18 They also query whether the reference should be to ‘witnesses’ in the plural - for this factor and the other factor in high culpability of ‘*deliberately seeking out witnesses*’ or should be in the singular - stating that any offences involving multiple witnesses would be charged as multiple offences. West London Magistrates Bench queried whether the reference should be to both a witness/juror, and the Council of HM Circuit Judges made a similar point- saying that perhaps a more neutral term of ‘person’ should be used than ‘witness’. This is because the legislation covers witnesses, potential witnesses, jurors, potential jurors or others who assist in an investigation. Or, ‘witness’ should be used but it should be made clear that this is intended to cover all persons protected by legislation.

Question 8: Does the Council wish to extend the factor to include friends and associates?

Question 9: Should ‘witnesses’ be changed to ‘witness’? Or should the reference be to witness/juror, or ‘person’?

3.19 HM Council of District Judges also suggest that the high culpability factor of ‘*deliberately seeking witnesses*’ may capture too many cases- that with ‘*unplanned*’ within lower culpability there does not seem to be a situation between these two possibilities which would fall clearly into medium culpability. Potentially then any confrontation with a witness which is not unplanned is likely to be raised into high culpability. A magistrate also made a similar point and some participants in road testing also raised concerns about the wording of this factor (page 9 of **Annex B**). To mitigate against this HM Council of District Judges propose a new high culpability factor of ‘*offender goes to significant effort and lengths to seek out witness*’, with a new medium culpability factor of ‘*deliberate effort to find witness falling short of (A)*’. As discussed above it is proposed that the lower culpability factor would be revised to ‘*contact with witness unplanned **and** limited in scope and duration*’.

Question 10: Does the Council wish to reword the high culpability regarding seeking out the witness, and create a new medium culpability version of this factor?

3.20 Professor Gillespie and West London Magistrates Bench both queried whether the reference to a vulnerable victim should be moved from an aggravating factor to a culpability factor. One road testing participant also stated that they didn't think the vulnerability of the victim was sufficiently emphasised (page 10 of **Annex B**). Professor Gillespie also queries whether the age of the victim, if it is children or the elderly, should be a relevant factor in assessing culpability. He argues that with a significant disparity in age between the victim and the offender, the offender is deliberately exploiting the victim's vulnerability and arguably using it as an additional threat. There could be a new culpability factor of '*targeting victim on the basis of their vulnerability*'.

Question 11: Does the Council wish to move the factor 'vulnerable victim' from step two to become a culpability factor?

3.21 The Magistrates Association (MA) suggest that there should be an additional high culpability factor of '*hire or commission of a group or gang to intimidate witnesses*', as they feel this goes beyond deliberately seeking out witnesses or planned nature of conduct. This would add to a fairly substantial list of high culpability factors, so it may be better placed as an aggravating factor, albeit reworded as we no longer use the term 'gang'. There is already an aggravating factor of '*offender involves others in the conduct*', perhaps it might be better instead to have the standard aggravating factor of: '*offence was committed as part of a group*'.

Question 12: Does the Council wish to add a new high culpability factor as suggested by the MA? Or add the standard 'group' aggravating factor?

4 EQUALITIES

4.1 The consultation asked specific equality and diversity questions-this was also covered during the road testing interviews, this information will be considered at a later meeting.

5 IMPACT AND RISKS

5.1 There have been no risks identified at this time.

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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"'.
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"'.
- 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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Sentencing Council

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

23 September 2022
SC(22)SEP04 – Animal Cruelty
Rosa Dean
Zeinab Shaikh
zeinab.shaikh@sentencingcouncil.gov.uk

1 ISSUE

1.1 This is the first meeting to discuss the animal cruelty guidelines following the public consultation earlier this year. The Council is invited to consider feedback on the revised animal cruelty sentencing guideline (covering sections 4-8 of Animal Welfare Act: unnecessary suffering, mutilation, poisoning and animal fighting). The proposed guideline, as consulted on, is included at Annex A.

1.2 Responses on the standalone welfare guideline (covering section 9 of the Act, on the breach of duty of person responsible for animal to ensure welfare) and wider equalities issues will be brought to the Council for consideration at a following meeting, with the aim of publishing the definitive guidelines in spring 2023.

2 RECOMMENDATIONS

2.1 That the Council:

- agrees to minor revisions to the harm and culpability factors in the guideline;
- approves the amended sentencing table for animal cruelty;
- agrees to include a small number of additional aggravating factors at step two of the guideline.

3 CONSIDERATION

Background

3.1 In 2021, Parliament increased the statutory maximum penalty for animal cruelty from six months' to five years' custody. The change covered s.4-8 offences and made these triable either way.

3.2 In recognition of this, the Council agreed to revise the sentencing guideline for animal cruelty. A [public consultation](#) ran from 10 May to 1 August and proposed a number of changes to the existing guideline. These included splitting the guideline into two, with the first covering all s.4-8 offences impacted by the increase in statutory maximum, and a

separate guideline for s.9, which remains a summary only offence with a six month maximum penalty.

Consultation responses

3.3 103 respondents, from a range of backgrounds, provided feedback to the consultation. Over a third of respondents were members of the public, and 28 responses were received from sentencers. 17 responses came from the major animal charities or welfare activists/lobby groups, with remaining responses coming from the Justices' Clerks' Society (JCS), the CPS, the National Farmers' Union, Mike Radford, an academic specialising in animal law, and others. A full summary of respondents can be found at Annex B.

3.4 A brief cross-Government response was also received, agreeing with the Council's overall approach, and a response from the CPS, with a few suggestions for changes to aggravating factors and culpability. We are still awaiting a formal response from the Justice Select Committee.

3.5 Road testing exercises were also carried out during the consultation period, with 14 sentencers (seven Circuit Judges and seven magistrates) asked to consider two hypothetical scenarios (A and B) involving causing unnecessary suffering, one in a domestic context and the other involving a poultry farmer. Following consideration of scenario A, brief additional information was shared with sentencers to assess the impact of further factors on the final sentence. A report of the findings can be found at Annex C.

Culpability

3.6 88 respondents answered this question. 30 agreed with the revised factors (including the Criminal Sub-Committee of the Council of Circuit Judges).

3.7 12 respondents (including the RSPCA and the JCS) called for the medium culpability factor of "ill treatment in a commercial context" to be upgraded to high culpability, largely in recognition of the financial gain involved in these cases. West London Magistrates' Bench also suggested that factors across the table reflect differing degrees of financial gain involved in the offending, while the CPS called for an additional high culpability factor of "organised criminal activity". While we believe these aspects are sufficiently covered in the proposed culpability factors, we have considered a new aggravating factor (at paragraph 3.39) to try to capture instances where substantial financial gain is involved, but which might not otherwise fall under the proposed culpability factor.

3.8 Two respondents suggested moving "use of a weapon" from aggravating factors and into high culpability, and called for it to be widened to include weapon equivalents. During road testing, one sentencer also suggested moving the factor. There is a risk, however, that

widening this factor will inflate sentences, particularly if cases such as kicking an animal while wearing heavy boots, or throwing an object at an animal, could be considered the equivalent of a weapon. The parameters of what could be considered a “weapon” in relation to animals may also already be quite broad, covering anything from a hammer to implements otherwise used in the everyday handling of animals, such as cattle prods or riding whips. Retaining this as an aggravating factor, with the wording as proposed in the consultation, retains nuance and will allow sentencers to use more discretion in how they apply the factor and to what extent they aggravate for it.

3.9 The Chief Magistrate argued for all factors focused on force to be removed, and for the culpability table to instead focus on the specific action involved, to avoid double counting with harm. However, it is unclear where the risk of double counting arises, particularly as consideration of the level of force the offender intentionally used seems an important factor in determining their intention to inflict cruelty/suffering to an animal. By contrast, Mike Radford wanted the wording of factors to be limited to causing suffering, removing mentions of cruelty entirely, to focus on the language of the legislation alone. We are not limited to adhering to the wording of the legislation so closely, and believe the cruelty involved is an important consideration in determining the offender’s culpability.

3.10 A number of respondents from animal charities and the legal sector, and sentencers, called for clarification of wording used in the factors, with some asking for examples to be included, to spell out what counts as a commercial context and to set out the difference between “significant force” and “very significant force”, or citing the difficulty in establishing what would be gratuitous cruelty as opposed to sadistic behaviour. In road testing, sentencers also flagged the subjectivity of the language used, singling out the factors on force. While there was a clear push for specific definitions and examples to be added, we do not feel that these would have the intended effect, given how broad the guideline is intended to be. An example that focuses on pets or larger animals might cause sentencers to downgrade cases involving multiple smaller animals such as poultry, for example, and it is not feasible to provide exhaustive examples.

3.11 In recognition of respondents’ and road testers’ comments about the subjectivity of the wording of medium and high factors, we have suggested simplifying some of the medium culpability factors so that these sit apart more clearly from their high culpability counterparts. We recommend removing “gratuitous” from medium culpability, so that that factor simply reads “deliberate attempt to cause suffering”, and have suggested removing mention of prolonged incidents in medium culpability, so that the factor simply reads “repeated incidents of cruelty or neglect”. In addition, to prevent confusion in how high culpability factors are applied, we have suggested splitting the factor of “prolonged and/or repeated incidents of

serious cruelty and/or sadistic behaviour” into two, so that “sadistic behaviour” stands alone. With the other suggested changes, this factor would be still be clearly distinct from anything in medium culpability, and from incidents of prolonged/repeated serious cruelty.

3.12 Six respondents, including Battersea and the Dogs’ Trust, argued for a new high culpability factor to be added, where the offender has coerced, intimidated or exploited others to offend, to mirror the low culpability factor for offenders who have been coerced/exploited, such as victims of domestic abuse or children. As this has been considered a common enough aspect of animal cruelty offending to be included in low culpability, we have suggested adding a mirroring factor to high culpability.

Culpability demonstrated by one or more of the following	
A High culpability	<ul style="list-style-type: none"> ● Prolonged and/or repeated incidents of serious cruelty ● Sadistic behaviour ● Use of very significant force ● Leading role in illegal activity ● Involvement of others through coercion, intimidation or exploitation ● 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
B Medium culpability	<ul style="list-style-type: none"> ● Deliberate or gratuitous attempt to cause suffering ● Prolonged 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

Question 1: Do you agree to amend the culpability factors as recommended?

Harm

3.13 85 respondents answered this question in the consultation. 16 agreed with the harm factors as proposed, including the Criminal Sub-Committee of the Council of Circuit Judges.

3.14 Four respondents (including the RSPCA, Battersea and IVC Evidensia, a veterinary organisation) called for the aggravating factor on a significant number of animals to be considered within harm rather than at step two of the guideline, with some suggesting alternative wording of “multiple animals harmed”, and one sentencer proposed “substantial” rather than “significant” during road testing. In road testing, when assessing harm in a scenario where significant number of animals were injured (scenario B), four out of the 14 sentencers interviewed explained that they felt the case belonged in high harm due to this aspect of the offence rather than solely because of the injuries or condition caused, even though this is included later as an aggravating factor. However, as with the aggravating factor on the use of a weapon, we do not feel there is sufficient cause to move this into harm factors. To do so would fix this within a particular level of harm, limiting sentencers’ ability to apply the factor to cases of varying severity.

3.15 12 respondents (including major animal charities) argued for a new factor to be added on the psychological or emotional harm caused to the animal, even though this is included in the wording on distress within the table. West London Magistrates’ Bench called for more consideration of the suffering caused to humans, whether this was emotional distress or financial loss caused to the owners, or where the offence was committed in front of children. More broadly, the JCS wanted consideration of cases where distress has deliberately been caused to those who witness the cruelty within harm rather than in aggravating factors. While emotive, it seems more appropriate to limit the harm table to focus on the animal(s) in question; we have already proposed an aggravating factor that recognises the distress caused to owners and so do not believe there is justification to add this as a new harm factor. We feel there is value, however, in clarifying, across the harm table, that the pain and suffering intended to be covered is that caused to the animal, rather than to the owners or others, in line with a suggestion from West London Magistrates’ Bench. We have suggested adding the wording “to animal(s)” across the table to remove any ambiguity on this point.

3.16 As with the culpability factors, respondents made a number of suggestions to clarify the wording used in the harm table, either by rewording certain factors or by adding examples or definitions. Many of these responses focused on the inclusion of pain and suffering in the harm table, with calls for clarification of how pain and distress would be measured. Some respondents, including the Chief Magistrate, wanted further detail on the difference between substantial levels of pain/suffering (in medium harm) and very high levels of pain/suffering (in high harm).

3.17 The issue of subjectivity in categorising harm was also raised in road testing interviews, particularly for factors on pain/suffering and the effect of an injury or condition

caused to the animal. This was reflected by the variation in how sentencers categorised harm for one of the scenarios (A) provided, with just under half of sentencers choosing either high or low harm, rather than medium as expected. These sentencers expressed uncertainty about whether the level of pain was “substantial” or “very high” or were unsure how to place the offence as they felt it sat on the borderline between categories. One sentencer was swayed to place the offence in lower harm due to the full recovery of the animal.

3.18 It is difficult to see how the harm table could be amended to address these concerns short of adding examples, which would bring other risks. The very nature of pain and suffering is that it is subjective, and the language proposed in the consultation was intentionally broad, to allow sentencers to use their discretion. One solution could be to pare the language back to remove these terms altogether, keeping medium harm as a catch all. This would, however, go against recent efforts to always try to include some descriptive factors in this category, after a previous review of guidelines showed that sentencers struggled to place cases in medium harm when it was simply a catch all. If this encourages sentencers to avoid medium harm altogether, there is a risk of sentence inflation if cases are placed in high harm instead. Another approach may be to provide descriptors of the length of time over which the pain has been endured, alongside the intensity of the suffering, though, as some respondents explained, intense pain over a short period of time may be just as cruel, or may cause just as much suffering to the animal, as moderate pain over an extended period of time. This wording may also risk overlapping with the proposed culpability factors on repeated incidents of cruelty/neglect.

3.19 Two respondents, including the League Against Cruel Sports (the League), cited concern about the intensifiers used in the table, arguing that these might create gaps between medium and high harm or cause confusion over how to categorise an offence. Rewording the factor on life threatening injuries to remove the intensifier “particularly”, so that it simply reads “grave or life-threatening injury or condition caused”, may aid in removing ambiguity, and the simplified wording still stands apart from medium harm factors.

3.20 Two respondents also suggested changing the medium harm factor on mutilation so that it mentions “ear cropping”, rather than “ear clipping”, in reflection of the more commonly used term for this type of animal mutilation. As there is nothing in the Act that limits us to specific wording in this regard, we have recommended correcting this in the harm table.

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~~ animal(s).

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 to animal(s)
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 cropping and similar forms of mutilation) • Substantial level of pain and/or suffering caused to animal(s)
Category 3	<ul style="list-style-type: none"> • Little or no physical/developmental harm or distress to animal(s) • All other levels of pain and/or suffering to animal(s)

Question 2: Do you agree to revise the harm factors as suggested?

Sentencing table

3.21 There were 85 responses to the proposals for the sentencing table. 23 respondents agreed, including the various magistrates' benches that responded to the consultation, Mike Radford, the Legal Committee of the Council of District Judges and the Criminal Sub-Committee of the Council of Circuit Judges. As anticipated, however, the majority of respondents disagreed with our proposals, either regarding the table as a whole or specific aspects of it. Five respondents (including the Magistrates' Association and major animal charities) provided alternative sentencing tables for consideration (included at Annex D).

3.22 25 respondents, including the RSPCA, the Chief Magistrate and the Criminal Law Solicitors' Association, called for an increase to the top of the offence range, arguing that it should go to four or five years. A further 23 respondents wanted increases to sentences across the table as a whole.

"The sentence maximum is now 5 years. The maximum suggested sentence in the guideline is 18m. Many cases (especially on a g plea) will therefore be within the increased powers of the Magistrates' Court, leaving a reduced number of cases that will reach the Crown Court. Whilst there may be practical benefits to this in the current climate, the sentencing range Parliament intended to be available could be under-utilised."

Chief Magistrate

"...the category range for 1A offences should be changed to 52 weeks to 4 years. As Magistrates now have the powers to give longer sentences we feel there should be a higher category range for the most serious offences. The starting point for category 1A offences could then be increased proportionally."

RSPCA

3.23 By contrast, two respondents working in the justice system called for sentences to either be lowered across the board (in line with the existing guideline) or to be kept proportionate with assaults on human beings. This was a consideration reflected in road testing interviews, with many sentencers citing a broader need for proportionality with cruelty against humans, and drawing comparisons between animal cruelty and assault guidelines. Some sentencers commented that the starting points felt high when cross-referenced with offences of assault against the person.

“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 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”.

Sentencers in road testing interviews

Two respondents in the charity sector argued in favour of alternatives to custody for less severe offences to help rehabilitate and prevent reoffending.

3.24 On balance, despite some strength of feeling, respondents did not provide new or compelling evidence to justify an increase to the top of the offence range, beyond points the Council has already considered. To maintain proportionality with s.47 actual bodily harm (which has a statutory maximum of five years, and where the offence range is capped at four years) and grievous bodily harm - unlawful wounding (which also has a statutory maximum of five years and where the offence range is capped at 4 years 6 months), and to keep the worst cases of animal cruelty distinct from the worst cases of these types of assault on human beings, the three-year cap for animal cruelty would need to be retained. While we anticipate further criticism on this point, we can use the formal consultation response to robustly set out our rationale for not making a change in this area, and reiterate the need for proportionality against assault offences directed at human beings.

3.25 Anecdotal evidence suggests that, where sentencers have not regularly dealt with an offence (as is likely with animal cruelty, both in magistrates' courts and the Crown Court), they may be more inclined to categorise a case in high or low severity, rather than placing it in the medium category. This lends further weight to the argument to avoid further increasing starting points and ranges in the sentencing table, as sentences may otherwise be inflated.

3.26 In road testing interviews on the animal cruelty guideline, multiple sentencers noted that the type of animal impacted was not accounted for within the guideline. One sentencer

stated, “there is a difference between turkeys and killing 100 dogs”, implying that there should be consideration of whether the animal is domesticated or a farm animal. While the proposed guideline does not mention specific species of animal, the factors do account for whether the offending occurred in a commercial context, which is phrased broadly enough to capture cases as varied as poultry farms or puppy mills. Adding factors weighting specific types of animal more heavily than others would be highly subjective and likely lead to criticism.

3.27 The JCS recommended narrowing the gap between category ranges for boxes 1B and 1C on the sentencing table, to aid in the sentencing of borderline cases. To avoid sentence inflation for these cases, and acknowledging the point flagged by the JCS, we have suggested raising the starting point for box 1C by one degree (from a low to a medium community order) and doing the same for the top of the category range, changing it from a medium to a high level community order. We have also suggested lowering the bottom of the category range for box 1B, dropping it from 18 weeks’ custody to a high level community order, so that the ranges meet.

3.28 To tighten up sentence severity for high harm offences somewhat, we have also suggested increasing the bottom of the category range for 1C by one degree, to a low level community order, to remove fines from scope of these offences. Given the sorts of cases that are likely to fall under high harm, involving death/euthanasia and very high levels of pain/suffering to the animal, this seems justified, even in cases of low culpability. This change may have a small impact on probation resource, though no impact on prison places.

3.29 During road testing exercises, there was more variation in final sentences than anticipated. This is largely thought to be due to the subjectivity of the harm and culpability factors on pain/suffering and sadistic/gratuitous behaviour, particularly in the threshold between medium and high categories, and we have recommended changes earlier in this paper to try to address some of this potential ambiguity. It should be noted that, while half of the sentencers surveyed did not have previous experience of sentencing animal cruelty offences, no particular differences were observed between how these sentencers categorised cases in comparison to those who had dealt with these offences before. This may be due to the fact that sentencers, as a whole, are not likely to have seen many animal cruelty cases.

3.30 Among sentencers that did have previous experience of animal cruelty cases, 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. Sentencers did not, however, expect a large increase in the number of cases committed to the Crown Court.

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

Question 3: Do you agree to revise the sentencing table as recommended?

Aggravating and mitigating factors

3.31 There were 86 responses to proposals for aggravating and mitigating factors. 34 respondents, including the Criminal Sub-Committee of the Council of Circuit Judges, agreed with the factors as drafted, with some citing the aggravating factors on the use of social media to promote cruelty and offending in front of children as being particularly welcome.

3.32 Refuge and the JCS argued for the aggravating factor on distress caused to the owner to be amended to more clearly reflect where this was intentional and part of the motivation for the offending, such as in cases of domestic abuse. We do not recommend amending this factor as these cases would already be captured under the wording proposed in the guideline.

3.33 There were also calls to clarify or define terms used in the aggravating factors, including questions around how many animals would count as a “significant number”, who would be considered to have “professional responsibility” for animals, and what would count as a “significant intervention” required for an animal to recover from an injury or illness. However, as elsewhere, adding examples or definitions may narrow these factors when it is not the Council’s intention for them to be applied in a limited way.

3.34 Following a suggestion from the Legal Committee of the Council of District Judges, and points raised in road testing interviews, we have added a caveat to the factor on professional responsibility, to avoid double counting alongside the medium culpability factor of “ill treatment in a commercial context”.

3.35 The Chief Magistrate also suggested amending factors on the use of technology to record, publicise or promote animal cruelty, and use of another animal to inflict injury/death, to include a caveat to avoid the risk of double counting with the wording of the s.8 offence on animal fighting. This section of the Act explicitly mentions keeping or training an animal for use in connection with an animal fight, and supplying, publishing or showing a recording of an animal fight. However, given that the guideline is framed around the cruelty inflicted on, and the harm suffered by, the animal, and that this is more likely to be exacerbated in cases of animal fighting, it could be argued that there is not an inherent risk of double counting, and, rather, that this is the guideline working as intended.

3.36 The CPS called for a new factor on the deliberate trapping or restraint of an animal, similar to a suggestion from the RSPCA to include a factor on cruelty to wildlife. We have considered these suggestions and feel that it is difficult to justify this addition when the harm experienced by the animal will be the same regardless of whether it is a domesticated or wild animal. Including this as an aggravating factor would suggest a hierarchy, where cruelty inflicted on a rat that has been caught in a trap, for example, would seemingly be worse than an offender who purchases a hamster with the intention of inflicting suffering. On balance, we do not recommend including this as a new aggravating factor.

3.37 More generally, respondents made a number of suggestions for new aggravating and mitigating factors for the guideline, including adding consideration of training animals for fighting even where this was not for commercial purposes, or where an animal professional was registered as such, to reflect a greater breach of trust. The majority of these suggestions are already captured in the broad list of harm or culpability factors and so we do not recommend creating new aggravating or mitigating factors to address these specific scenarios. In the formal response, we will reiterate that the list is not intended to be exhaustive, and sentencers have discretion to consider other factors where they feel these will increase the seriousness of the offence.

3.38 Five respondents, including West London Magistrates’ Bench and the RSPCA, wanted sexualised offending (whether the cruelty was motivated by sexual gratification or involved sexual abuse of the animal) to be added, with some citing the link to child abuse in the context of extreme pornography. Despite the emotive nature of this specific type of cruelty, we do not believe it warrants a standalone aggravating factor. Cases of bestiality will

be charged separately, while cruelty motivated by sexual gratification is likely to be captured by existing factors, chiefly the high culpability factor of sadistic behaviour and the aggravating factor on recording abuse for the purpose of publicising or promoting cruelty. The RSPCA has also explained that they see very few cases of this kind in reality.

3.39 Four respondents, including the League and Mike Radford, called for a factor to be added on offending motivated by commercial/financial gain, with the League citing that the existing culpability factor of “ill treatment in a commercial context” would not necessarily capture activities leading up to an organised animal fight, such as the breeding or sale of dogs for fighting, and betting. The League also flagged that parliamentarians raised the issue of large sums of money changing hands at dog fighting events during the passage of the Act. In light of this, we have suggested a further aggravating factor, “Motivated by significant financial gain (where not already taken into account at step 1)”, to cover cases that may not strictly count as occurring within a commercial context, but where the offender stands to gain a substantial amount of money through the offending behaviour. Adding the caveat at the end ensures that this will not be double counted where it has already been considered at step one of the guideline.

3.40 In road testing exercises, aggravating and mitigating factors were broadly applied to the scenarios as anticipated, with sentencers feeling that the lists of factors were appropriate. The majority of sentencers stated that they believed that “offender under the influence of alcohol” should appear in the guideline, though acknowledged that the lists were not intended to be exhaustive. Though this may have been influenced somewhat by one of the scenarios (A) provided to sentencers, where the offender had been drinking heavily before hitting their dog, it is likely to be a common aspect of animal cruelty cases. We have therefore suggested including it in the list of factors.

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
- **Motivated by significant financial gain (where not already taken into account at step 1)**
- **Offence committed while under influence of alcohol or drugs**
- Offender in position of professional responsibility for animals **(where not already taken into account at step 1)**
- 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

Question 4: Do you agree to amend the aggravating factors as suggested?

4 IMPACTS AND RISKS

4.1 The suggested revisions to the animal cruelty guideline may have some impact on probation resource, though are not expected to have an impact on prison places beyond what was outlined in the original consultation (where it was anticipated that sentence severity would increase for the most serious cases, but was unlikely to result in increased custodial sentences across the board). A full resource assessment will be shared with the Council alongside the finalised guidelines for sign off.

4.2 There is a risk of criticism from stakeholders and the public as we are not recommending increasing sentences to meet the new statutory maximum. This can be addressed through including careful, thorough wording in the Council's formal response to the consultation, setting out our rationale and reiterating the need for proportionality.

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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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Sentencing Council meeting:
Paper number:

23 September 2022
SC(22)SEP05- Blackmail, kidnap, false imprisonment and threats to disclose private sexual images

Lead Council member:
Lead official:

Juliet May
Mandy Banks
Mandy.Banks@sentencingcouncil.gov.uk
0207 071 5785

1 ISSUE

1.1 This is the third meeting to discuss the offences and will focus on draft guidelines for kidnap and false imprisonment offences. The draft blackmail guideline has also been revised following the discussion at the last meeting.

2 RECOMMENDATION

2.1 At today's meeting the Council are asked:

- To consider the draft kidnap and false imprisonment guidelines
- To consider the changes made to the draft blackmail guideline

3 CONSIDERATION

Blackmail

3.1 The changes that were discussed at the last meeting have been made and can be seen in track changes within the draft guideline at **Annex A**. The Council also asked at the last meeting for the proposed sentence ranges to be looked at again, as it was thought they were too low. During the discussion the Council stated that for this guideline the Council should depart from the usual practice of seeking to replicate current sentencing practice. This is because existing case law doesn't reflect recent trends of increasing seriousness of offending, and the changing nature of offending. The ranges have been looked at again and as a result ranges A1, B1, A2, B2, A3 and C1 have been slightly increased, as shown below. The range in A1 is now proposed as 4-12 years with a starting point of 8 years. This allows for a small amount of headroom to the statutory maximum of 14 years.

As discussed at the last meeting increasing the sentence ranges would likely increase the severity of sentencing for this offence. The mean average custodial sentence length (ACSL) in 2020 was three years eight months (estimated pre-guilty plea) and two years ten months (post-guilty plea). Tab 5.4a of **Annex B** also shows us that 90 per cent of offenders sentenced to immediate custody received an estimated pre-guilty plea custodial sentence of

six years or less. Only two offenders received a post-guilty plea sentence over 10 years' custody within the last five years, with the longest determinate sentence in 2020 of 12 years.

Harm	Culpability		
	A	B	C
Category 1	Starting Point 7-8 years' custody Category Range 4 - 12 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 2	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 years' custody
Category 3	Starting Point 2 years' custody Category Range 1 - 4 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 years' custody

Although volumes of this offence are small there could still be an impact on prison and probation resources as a result.

Question 1: What is the Council's view of the revised draft sentence ranges?

Kidnap and false imprisonment offences

3.2 There are currently no guidelines for these offences. False imprisonment consists of the unlawful and intentional or reckless restraint of a victim's freedom of movement from a particular place. It is unlawful detention which stops the victim from moving away as he or she would wish to move. This can be in a prison, a house or even forcibly detaining a person in the street.

3.3 Kidnap offences are comprised of four elements:

- A) The taking or carrying away of one person by another;

- B) By force (or the threat of force, as in the hijacking of a car with its driver): or fraud;
- C) Without the consent of the person so taken or carried away; and
- D) Without lawful excuse.

3.4 There must be some deprivation of the liberty of the person taken or carried away (so cannot be committed by a person who by fraudulent means induced another to go unaccompanied from one place to another). Both kidnap and false imprisonment are common law offences, with a statutory maximum of life imprisonment, and indictable only.

3.5 Both are specified violent offences listed in the Sentencing Act 2020 Sch.18, Pt 1 (meaning that an extended sentence can be imposed if the offender is 'dangerous' and is listed in Sch.19 (meaning that a life sentence can be imposed if the offender is 'dangerous')). They are both also listed in Schedule 5 of the Sexual Offences Act 2003 meaning that a SHPO is potentially available on conviction. The statutory aggravating factor of an offence committed against an emergency worker acting in the exercise of functions as such a worker applies to kidnap.

3.6 Volumes of kidnap offences sentenced each year are low, 69 in 2020 and 98 in 2019, as can be seen on tab 1.1 of **Annex B**. The vast majority of offenders are sentenced to immediate custody (74 per cent in 2020) with 7 per cent given a suspended sentence. In 2020, the mean ACSL estimated pre-guilty plea was 7 years 3 months, with a mean ACSL post guilty plea of 5 years 9 months.

3.7 Volumes of false imprisonment offences are also low, 82 in 2020 and 113 in 2019. Around 85 per cent of offenders were sentenced to immediate custody in 2020, with 6 per cent given a suspended sentence. In 2020, the mean ACSL estimated pre-guilty plea was 4 years 8 months, with a mean ACSL post guilty plea of 3 years 7 months.

3.8 The case of *R v Gibney (AG's reference no 92 of 2014)* gave general guidance on sentencing and said that close analysis of the facts and circumstances was required.

Relevant factors included:

- the length and circumstances of the detention, including the location and any method of restraint,
- the extent of any violence used,
- the involvement of weapons,
- whether demands were made of others,
- the effect on the victim and others,
- the extent of planning,
- the number of offenders involved,
- the use of torture or humiliation,
- whether what was done arose from, or was in furtherance of, previous criminal

behaviour, and

- any particular vulnerability of the victim (by reason of age or otherwise).

3.9 In *AG's Ref (nos 102 and 103 of 2014) (R V Perkins)* it was said that cases involving hostage taking and ransom demands will attract a starting point of close to 16 years for an adult: others, where such behaviour is absent, will still attract double figures, regardless of the degree of violence.

3.10 In *Jones [2020] EWCA Crim 1870* the court held that any kidnapping incident in which individuals or groups embark on vigilante action is a matter of grave concern and they should anticipate deterrent punishment; long custodial sentences are required in almost every case. The court, having reviewed the authorities, attempted to identify an open list of features that may be relevant to the sentencing of kidnap, namely:

- the degree of preparation and planning;
- the number of offenders working as a group;
- involvement of weapons;
- the infliction of actual or serious injury;
- the presence of torture or threat thereof;
- the degree of fear engendered in the victim;
- the offender's motivation for what was done;
- the specific role the offender played;
- whether there was any provocation;
- whether demands for a ransom were made;
- how the initial capture was effected and how long the false imprisonment extended;
- the conditions under which the captive was held; and
- any particularly personal vulnerabilities of the victim as well as the antecedent history of offenders.

3.11 The offences of kidnap and false imprisonment seem to be similar in nature and are quite interlinked, so much so that it is proposed that we have one guideline for both offences. However, there would be two separate sentence tables, one for kidnap and one for false imprisonment. This is because current sentencing practice shows that kidnap offences are sentenced more severely than false imprisonment offences, so the risk with one sentence table for both offences is that sentencing severity could increase for false imprisonment. The alternative would be to have two separate guidelines, but with near identical factors in. An advantage of having two separate guidelines is that there could be no confusion of using the wrong sentence table, as each guideline would have its own sentence table, unlike one

guideline for both offences with two different sentence tables in.

3.12 The draft guideline for both offences is attached at **Annex C** and reflects the factors set out in *Gibney* and *Jones*. Some of the factors can be seen within culpability, some in harm, and some appear as aggravating factors. Sentencing transcripts of around 60 cases have also been examined to assist in the development of the draft guideline.

Question 2: In principle, does the Council agree with the idea of one guideline for both offences with two separate sentence tables? Or would the Council prefer to have two separate guidelines?

Starting with the culpability factors on page two, the proposed draft high culpability factors are: *'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'* and *'use of violence and/or use of a weapon'*. These factors are designed to capture only the most serious cases. It is a balance to design factors which capture the most serious types of offending but without having too many factors which mean too many cases will fall into this category. The factor of *'offence was committed as part of a group'* is often an aggravating factor but for this offence it is argued that it should be a high culpability factor. Cases often refer to offences committed by a group as being more serious- the involvement of a number of offenders making the experience all the more terrifying for the victim. It is also suggested that there should be a factor in high culpability relating to a vulnerable victim, whether that is due to age, pregnancy or some other vulnerability that the offender is exploiting in furtherance of the crime.

Question 3: Are the Council content with the proposed high culpability factors?

3.13 The medium culpability factors include *'threat of violence to victim and/or others'* and the 'balancing' wording which is often used in guidelines. The lower culpability factors are standard ones used within guidelines.

Question 4: Are the Council content with the proposed medium and lower culpability factors? Are there any other offence specific factors that should be included?

3.14 The proposed harm factors are designed to try and capture the different types of harm that can be caused to victims of this offending, separated out into three categories.

The harm caused can vary considerably, so the proposed factors try to reflect this, without too bluntly 'ranking' the gradations of harm.

Question 5: Are the Council content with the proposed harm factors?

3.15 Turning now to the sentence tables, as stated earlier- it is proposed to have two sentence tables, one for kidnap, and one for false imprisonment, due to the differences in sentencing levels between the two offences. Starting with kidnap, the proposed sentence table is on page 3. Current sentencing data for this offence can be seen on tabs 1.1-1.4b of **Annex B**. As noted earlier, the mean ACSL (estimated pre-guilty plea) is 7 years 3 months. As only a handful of offenders get a fine or community order each year (less than 5 per cent), it is proposed not to have any non-custodial options within the table. The large majority of sentences have been 10 years or less in recent times (88 per cent in 2020, post-guilty plea). The longest determinate sentence ranges from 12 to 21 years in recent years-in 2020 the longest sentence imposed was 13 years (post-guilty plea). The proposed top of the range in A1 is 16 years. Thinking about proportionality with other offences that are comparable (to some extent), the top of the range in robbery in a dwelling is 16 years, in aggravated burglary it is 13 years, for GBH (s.20) it is 16 years and for rape it is 19 years.

Question 6: What are the Council's views on the draft sentence ranges for kidnap?

3.16 The sentence table for false imprisonment can be seen on page 4. Sentencing data can be seen on tabs 2.1-2.4b of **Annex B**. The mean ACSL (estimated pre-guilty plea) is 3 years 8 months. Again there is no non-custodial option within the table as only a handful of offenders receive a fine or community order each year (less than 5 per cent in recent years). The large majority of sentences have been 8 years or less in recent times (93% in 2020). The longest sentence in 2020 was 14 years (post-guilty plea). The proposed top of the range is 13 years. Maximum sentence lengths for other broadly comparable offences are noted in the paragraph above.

Question 7: What are the Council's views on the draft ranges for false imprisonment?

3.17 The draft aggravating factors can be seen on page 5. The proposed offence specific ones are: '*offence committed in context of/in connection with other criminal activity*' and '*detention in an isolated location*'. The latter is proposed as arguably it is worse to be held in an isolated location with little chance of being able to attract attention to call for help- the victim is entirely dependent on the offender freeing them.

Question 8: What are the Council's views on the aggravating factors?

3.18 A number of offences occur within a domestic context- so it is important to have the aggravating factor of: '*offence committed in a domestic context*' as the factor links to the

domestic abuse guideline. *Spence and Thomas (1983) 5 Cr.App.R.(S) 413 CA* first gave general guidance on kidnapping and false imprisonment and discussed the scale of offending, stating that cases arising out of family tiffs or lovers' disputes would seldom require more than 18 months custody. *Gibney* later stated that *Spence and Thomas* no longer provided guidance for cases at the higher end of the scale, but in *Abbas [2017] EWCA Crim 2015* the court said that *Spence* still provides useful guidance as to the spectrum of offending, and that offences arising from 'family tiffs or lovers disputes' will be likely to fall at the lower end of the scale.

3.19 Reading a number of sentencing remarks of cases that have a domestic context they seem to reflect this guidance, with sentences often lower than cases that don't have a domestic context. This raises a question as to whether the sentences are reflecting the guidance in the [domestic abuse](#) guideline, which states that *'the domestic context of the offending behaviour makes the offending more serious because it represents a violation of the trust and security that normally exists between people in an intimate or family relationship'* and *'domestic abuse offences are regarded as particularly serious within the criminal justice system'*. If the Council feels that for this guideline greater prominence should be given to the guidance on domestic abuse, the domestic abuse guideline could be signposted at the start of the guideline – with wording such as *'where the offence is committed in a domestic context, also refer to Overarching principles- domestic abuse'*. Some other guidelines have this wording, such as the arson/criminal damage with intent to endanger life or reckless as to whether life endangered guideline. Having the wording at the start of the guideline rather than hidden within the aggravating factors at step two might give it greater prominence.

Question 9: Does the Council wish to give the guidance on domestic abuse greater prominence within this guideline?

3.20 The proposed mitigating factors are standard ones used within guidelines- there did not seem to be any offence specific ones required.

Question 10: Is the Council content with the proposed mitigating factors? Are there any offence specific ones that should be included?

4 EQUALITIES

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

5 IMPACT AND RISKS

5.1 It is anticipated that the development of these new guidelines will be welcomed by stakeholders. Blackmail, kidnap and false imprisonment are some of the few remaining serious offences without a guideline, so producing a guideline ends that gap.

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 - 12 9 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

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

Section 2: False imprisonment

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

Section 3: Abduction of child by parent

Table 3 1	Number of adult offenders sentenced for abduction of child by parent, etc, all courts, 2010-2020
Table 3 2	Number and proportion of adult offenders sentenced for abduction of child by parent, etc, by sentence outcome, 2010-2020
Table 3 3	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for abduction of child by parent, etc, 2010-2020
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
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

Section 4: Abduction of child by other persons

Table 4 1	Number of adult offenders sentenced for abduction of child by other persons, all courts, 2010-2020
Table 4 2	Number and proportion of adult offenders sentenced for abduction of child by other persons, by sentence outcome, 2010-2020
Table 4 3	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for abduction of child by other persons, 2010-2020
Table 4 4a	Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for abduction of child by other persons, 2010-2020
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

Section 5: Blackmail

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
Table 5 3	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for blackmail, 2010-2020
Table 5 4a	Estimated pre-guilty plea sentence lengths received by adult offenders sentenced to immediate custody for blackmail, 2010-2020
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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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%	100%	100%	100%	100%	100%	100%	100%	100%	100%	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](#).

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

23 September 2022
SC(22)SEP06 – Aggravated vehicle taking
Rebecca Crane
Zeinab Shaikh
zeinab.shaikh@sentencingcouncil.gov.uk

1 ISSUE

1.1 Following discussions on the aggravated vehicle taking guidelines in May and July, the Council is invited to consider further revisions to step one factors for the offence of causing vehicle/property damage. The Council is also asked to consider how information on ancillary orders can be presented across all aggravated vehicle taking guidelines. Further discussions will be scheduled once the consultation on revisions to the motoring guidelines closes.

2 RECOMMENDATIONS

2.1 That the Council:

- Agrees revisions to the harm factors and sentencing table for aggravated vehicle taking causing vehicle/property damage;
- Approves the wording of guidance on disqualifications across the aggravated vehicle taking guidelines;
- Agrees to include a signpost in the guidelines reminding sentencers of their discretionary power to order extended driving tests.

3 CONSIDERATION

Background

3.1 There are currently two guidelines for aggravated vehicle taking offences and these have been in place since 2008. The first guideline covers [vehicle/property damage](#), while the other combines [injury and dangerous driving](#). With the exception of vehicle/property damage of under £5,000, which is a summary only offence, aggravated vehicle taking offences are triable either way. Following a larger piece of work to revise guidelines for motoring offences, the Council also agreed to update the guidelines for aggravated vehicle taking.

3.2 In May, the Council agreed to split aggravated vehicle taking offences into four separate guidelines:

- Causing vehicle or property damage
- Causing injury
- Causing death

- Involving dangerous driving

3.3 Given the overlap with the revised motoring guidelines that are currently out for consultation (due to close in late September), the Council agreed to await the outcome of that consultation before considering the timing of the consultation on aggravated vehicle taking. The Council also provisionally agreed to step one and two factors (at Annex A) across the four guidelines, with the aim of reconsidering these in the round at a later date.

Causing vehicle/property damage

3.4 There are two variations of the offence of causing vehicle/property damage. Lower value damage (of up to and including £5,000) is a summary only offence, with a statutory maximum of six months' custody, while higher value damage (of over £5,000) is triable either way and has a statutory maximum of two years' custody.

3.5 The Council previously agreed to combine both variations of this offence into a single guideline, for simplicity and in recognition of magistrates' increased sentencing powers. It was agreed that lower value damage would be limited to harm category 3, while the high value variation would be split across the other harm categories.

3.6 While the Council has provisionally agreed to step one factors for this offence, a revision to the harm table is suggested for clarity. Currently, the proposed table reads as follows:

Harm	Factors
Category 1	<ul style="list-style-type: none"> • High value damage
Category 2	<ul style="list-style-type: none"> • Cases that fall between categories 1 or 3 because: <ul style="list-style-type: none"> ○ Factors are present in categories 1 and 3 which balance each other out, and/or, ○ The harm caused falls between the factors as described in categories 1 and 3
Category 3	<ul style="list-style-type: none"> • Total damage caused no more than £5,000

3.7 While harm category 2 is intended to be a catch all, we recommend removing the first sub-bullet point ("Factors are present in categories 1 and 3 which balance each other out, and/or") as the harm factors in categories 1 and 3, being based on the value of the damage caused, cannot cancel each other out. This would leave a single factor in category 2, which we suggest simplifying to "Value of damage falls between categories 1 and 3".

Question 1: Do you agree to the suggested change to the category 2 factors in the harm table?

3.8 The provisional wording for harm category 1 (“high value damage”) was agreed by Council as it mirrors factors used in the criminal damage guidelines. However, there is a risk that this may result in some sentence inflation due to the broad wording used, particularly if sentencers interpret this widely. In 2020, 165 adults were sentenced for causing damage of over £5,000, with 27 per cent sentenced to immediate custody and an estimated pre-guilty plea average custodial sentence length (ACSL) of 13.1 months (mean).¹ By contrast, 42 per cent received a community order (full data from 2020 is included at Annex B). If the majority of offenders sentenced for this offence were to be placed in harm category 1 under the draft guideline, the proportion of offenders receiving custodial sentences may rise, with an increase to the average custodial sentence.

3.9 An alternative approach may be to provide examples of the kinds of damage that would fall under harm category 1, to make clear that this category is intended to cover extreme damage, such as crashing into a building and causing extensive structural damage or causing a heavy goods vehicle to be written off. This brings its own issues, however, and could warn sentencers away from using this top category of harm as the examples provided cannot be exhaustive. Similar issues arise if we try to provide an approximate figure for the value of the damage caused at the upper end of the harm table, and this is made more challenging as court transcripts often do not refer to the overall value of the damage caused. On balance, it is recommended that the proposed wording in high harm, of “high value damage”, is retained, and explicitly testing the impact of this as part of road testing exercises during consultation.

Question 2: Do you agree to retain the proposed wording in harm category 1 and to test the impact of this in road testing exercises?

3.10 In July, the Council provided a steer to lower starting points and ranges for cases of category 2 and 3 harm in the sentencing table for vehicle/property damage, citing that rising costs would mean more cases would be categorised as causing damage of over £5,000. We have therefore looked at the table again and have reduced sentence levels accordingly, lowering the bottom of the offence range to a band B fine:

<i>Rubric: Where the total damage caused is valued at no more than £5,000, the offence is summary only with a statutory maximum penalty of six months’ custody. This is reflected in the starting points and ranges for harm category 3 in the sentencing table below.</i>			
Harm/culpability	High culpability A	Medium culpability B	Lower culpability C
Harm category 1	Starting point: 1 year’s custody	Starting point: 18 weeks’ custody	Starting point: High level community order
	Category range:	Category range:	

¹ The ACSL, post-guilty plea, was 9.5 months (mean).

	18 weeks' custody – 2 years' custody	High level community order – 1 year's custody	Category range: Medium level community order – 12 weeks' custody
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

3.11 We have departed, at times, from the diagonal approach to setting starting points and category ranges. This can be justified as the table is aiming to cover two variations of the same offence and intended to cover a wide range of cases. Low culpability, for example, may include cases where a hire car is driven for a day longer than agreed, while high culpability may include cases of egregious driving or a police chase.

3.12 In line with the Council's previous steers, the starting points and ranges for harm category 3 are largely non-custodial (with the exception of box 3A, where the top of the range is 18 weeks' custody), to allow for gradation up to category 2. In 2020, 29 per cent of offenders charged with lower value damage received a custodial sentence (13 per cent received a suspended sentence and 16 per cent were sentenced to immediate custody). For those sentenced to immediate custody, the estimated pre-guilty plea ACSL was 4.0 months (mean).² There is a risk, therefore, that these changes may lead to a change in sentence outcome for this offence, with up to around a third of offenders receiving a community order where they would have previously received a custodial sentence. The rest of the table is not likely to have a significant impact on sentencing practice for cases involving damage of over £5,000.

3.13 In the July meeting, some Council members queried the potential impact of lower starting points for harm categories 2 and 3, given that data on sentencing outcomes is that after any guilty plea reductions have been applied. We have used the Crown Court Sentencing Survey (CCSS) to analyse the limited data available for aggravated vehicle

² The ACSL, post-guilty plea, was 3.0 months (mean).

taking offences³ and did not find any evidence to suggest that sentencers drop a threshold, from a custodial to community sentence, due to the presence of a guilty plea.⁴

Question 3: Are you content to approve changes to the sentencing table for vehicle/property damage, with the ensuing impact on sentencing practice for cases of lower value damage?

Disqualifications

3.14 We have generally sought to align the aggravated vehicle taking guidelines with the revised guidelines on motoring offences, particularly as these offences share many similarities in terms of harm and culpability.

3.15 The revised motoring guidelines provide guidance on how to calculate periods of disqualification from driving, tailored to each offence. This is set out in a drop-down box within the section on ancillary orders. The guidance includes a step-by-step guide to working out any interactions with custodial periods for different offences.

3.16 Given the overlap between these offences, we recommend mirroring the approach to disqualification guidance taken in the motoring guidelines, tailored to aggravated vehicle taking offences as necessary. As with the motoring guidelines, it seems most appropriate to include these as a dropdown at the ancillary orders step of the guidelines. Suggested wording for this guidance is included at Annex C.

Question 4: Do you agree to mirror the wording used in the motoring guidelines on guidance for calculating disqualifications?

Extended driving tests

3.17 While dangerous driving offences require sentencers to order disqualification from driving until an extended test is passed, aggravated vehicle taking offences do not require this. Sentencers do, however, have discretion to order an extended test, as set out in s.36 of the Road Traffic Offenders Act 1988. Operational colleagues have flagged that there may be a benefit in reminding sentencers of this discretionary power, particularly for aggravated vehicle taking causing dangerous driving, as there is a perception that this is not used as often or as consistently as it could be.

3.18 Research commissioned in 2017 by the Department for Transport (extract included at Annex D) found similar inconsistencies, reporting low levels of awareness among sentencers of their discretionary powers. There was also a perception, particularly among magistrates,

³ The data analysed covered the period January – December 2014, as this is the last full year of CCSS data available.

⁴ It should be noted that this finding is based on Crown Court data only, and so may not be indicative of sentencing in magistrates' courts.

that extended tests were rarely ordered in the courts. Despite this, the research found that just over a third of all discretionary driving tests ordered between 2011-2015 were related to aggravated vehicle taking offences.

3.19 Transcripts from the Crown Court for aggravated vehicle taking offences seem to show that sentencers are exercising this discretion at times, with 18 of the 50 cases involving an extended driving test. Of the different offences, cases of lower value vehicle/property damage were most likely to attract an extended retest, though it is difficult to draw firm conclusions as they are likely to be the more extreme cases of lower value damage by virtue of being sent to the Crown Court. We do not know how often magistrates are likely to use this discretionary power.

3.20 As such, there may be value in including a reminder to sentencers of their discretionary power at the ancillary orders step of the aggravated vehicle taking guidelines. If the Council is minded to take this approach, we would suggest wording based on the [explanatory materials for road traffic offences on the Sentencing Council's website](#):

For aggravated vehicle taking offences, the court has discretion to disqualify until an extended driving test is passed. The discretion to order an extended re-test is likely to be exercised where there is evidence of inexperience, incompetence or infirmity, or the disqualification period is lengthy (that is, the offender is going to be 'off the road' for a considerable time).

3.21 This approach would add more information to the guidelines overall, and would be placed at a step of the guideline that perhaps does not draw as much attention as earlier steps. However, there may be a benefit in explicitly reiterating sentencers' discretionary powers in this regard, to prevent confusion or inconsistency.

Question 5: Do you agree to adding a reminder on sentencers' discretionary powers across the guidelines?

4 IMPACT AND RISKS

4.1 As discussed earlier in this paper, lowering starting points and category ranges for the offence of vehicle/property damage under £5,000 is likely to have an impact on sentencing practice, potentially lowering sentences for the 29 per cent of offenders that would have previously received a custodial sentence. There is also a risk that cases of vehicle/property damage of over £5,000 may attract a higher sentence than previously, based on the wording of the harm table for this offence. These are both points we can set out to examine as part of road testing exercises with judges and magistrates during the public consultation on the guidelines.

4.2 Once draft guidelines for aggravated vehicle taking have been finalised, a resource assessment will also be drafted and circulated to the Council for sign off.

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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	Starting point: 1 year's custody Category range: 18 weeks' custody – 2 years' custody	Starting point: 18 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

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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