

23 March 2023

Dear Members

## Meeting of the Sentencing Council – 31 March 2023

The next Council meeting will be held in the **Queens Building, Judges Conference Room, 1<sup>st</sup> Floor Mezzanine at the Royal Courts of Justice**. This will be a hybrid meeting, so a Microsoft Teams invite is also included below. **The meeting is Friday 31 March 2023 and will from 9:45 to 15:15.**

**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:

- |                                      |               |
|--------------------------------------|---------------|
| ▪ Agenda                             | SC(23)31MAR00 |
| ▪ Minutes of meeting held on 3 March | SC(23)MAR01   |
| ▪ Action log                         | SC(23)31MAR02 |
| ▪ Immigration                        | SC(23)31MAR03 |
| ▪ Totality                           | SC(23)31MAR04 |
| ▪ Imposition                         | SC(23)31MAR05 |
| ▪ Motoring offences                  | SC(23)31MAR06 |

The external communication evaluation for February is also included with the papers.

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



**Steve Wade**

Head of the Office of the Sentencing Council

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## COUNCIL MEETING AGENDA

**31 March 2023**  
**Royal Courts of Justice**  
**Queen's Building**

- |               |  |
|---------------|--|
| 09:45 – 10:00 | Minutes of the last meeting and matters arising (papers 1 and 2) |
| 10:00 – 11:00 | Immigration - presented by Vicky Hunt (paper 3)                  |
| 11:00 – 11:15 | Break  |
| 11:15 – 12:30 | Totality - presented by Ruth Pope (paper 4)                      |
| 12:30 – 13:00 | Lunch  |
| 13:00 – 14:00 | Imposition - presented by Jessie Stanbrook (paper 5)             |
| 14:00 – 15:15 | Motoring - presented by Ollie Simpson (paper 6)                  |

OFFICIAL - SENSITIVE

# Sentencing Council

## **COUNCIL MEETING AGENDA**

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# Sentencing Council

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## MEETING OF THE SENTENCING COUNCIL

3 MARCH 2023

### MINUTES

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Members present:

Bill Davis (Chairman)  
Tim Holroyde  
Rebecca Crane  
Rosa Dean  
Nick Ephgrave  
Diana Fawcett  
Elaine Freer  
Max Hill  
Jo King  
Stephen Leake  
Juliet May  
Beverley Thompson  
Mark Wall  
Richard Wright

Representatives:

Claire Fielder for the Lord Chancellor (Director,  
Youth Justice and Offender Policy)

Members of Office in  
attendance:

Steve Wade  
Mandy Banks  
Ruth Pope  
Ollie Simpson  
Jessie Stanbrook

**1. MINUTES OF LAST MEETING**

- 1.1 The minutes from the meeting of 27 January 2023 were agreed.

**2. MATTERS ARISING**

- 2.1 The Chairman noted that the publication in February of the sentencing guidelines for sale of knives by retailers to children had received good coverage in print media including trade media.

**3. DISCUSSION ON IMPOSITION – PRESENTED BY JESSIE STANBROOK, OFFICE OF THE SENTENCING COUNCIL**

- 3.1 The Council discussed proposed amendments to the imposition of custodial orders section, including amendments to the questions asked to sentencers when considering suspending custodial sentences.
- 3.2 The Council also considered proposed amendments to the sentencing flow chart, aligning with the proposed amendments to the custodial sentence section, and looked at a first draft of a potential new section on the purposes of sentencing and effectiveness. Most proposals were approved with various amendments to the specific drafting, which a working group would look at in more detail.
- 3.3 The Council preliminarily agreed to the new section on purposes of sentencing and effectiveness with more work to be done in particular on the paragraphs about sentencing particular cohorts of offenders.

**4. DISCUSSION ON MOTORING – PRESENTED BY OLLIE SIMPSON, OFFICE OF THE SENTENCING COUNCIL**

- 4.1 The Council discussed responses received on the driving disqualification guidance which had been consulted on as part of the motoring consultation in 2022.

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

- 5.1 The Council considered the results of a small scale resentencing exercise that had taken place amongst judicial members using a draft combined kidnap and false imprisonment guideline. The Council agreed on a number of changes to the draft guideline, to assist in the appropriate categorisation of cases, and that a second resentencing exercise would take place to see if the changes agreed upon resulted in the desired effect. The results of this exercise would then be discussed at a future meeting.

**6. DISCUSSION ON PERVERTING THE COURSE OF JUSTICE AND WITNESS INTIMIDATION – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL**

- 6.1 The Council considered consultation responses regarding sentence levels and aggravating and mitigating factors. The Council noted that the consultation responses broadly agreed with the proposed sentence levels and step two factors, and so agreed just some small amendments to the guidelines after considering some points of detail.
- 6.2 The Council also considered consultation responses and updated sentencing data relating to equality and diversity within the guidelines. There will be one further meeting to consider the final resource assessment ahead of the publication of the definitive guidelines later in the year.

**7. DISCUSSION ON TOTALITY – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL**

- 7.1 Following the consultation on a revised Totality guideline, the Council considered the responses to the consultation relating to the structure and basic outline of the guideline. The Council agreed to retain the overall structure of the guideline but to make some changes to the text and the order of some parts based on helpful suggestions from respondents.
- 7.2 The responses to the consultation relating to the examples and more detailed information in the guideline will be discussed at the meeting at the end of March.

**8. DISCUSSION ON ENVIRONMENTAL REVISION – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL**

- 8.1 The Council agreed to include some minor proposed changes to the environmental guideline for individuals (Individuals: Unauthorised or harmful deposit, treatment or disposal etc of waste/ Illegal discharges to air, land and water) in the miscellaneous amendments consultation in the autumn of 2023. The proposals are designed to give slightly more emphasis to community sentences over fines for some levels of offending.

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# Sentencing Council

## SC(23)31MAR02 March Action Log

### ACTION AND ACTIVITY LOG – as at 23 March 2023

	Topic	What	Who	Actions to date	Outcome
<b>SENTENCING COUNCIL MEETING 27 January 2023</b>					
1	<b>Animal Cruelty</b>	VH to amend the explanatory materials in line with the comments made at Council and will circulate the revised draft via email seeking agreement.	<b>Vicky Hunt All members</b>		<b>ACTION COMPLETE:</b> Has now been circulated alongside the consultation response document
<b>SENTENCING COUNCIL MEETING 3 March 2023</b>					
2	<b>Kidnap and false imprisonment</b>	Judicial members (including Richard Wright/minus Jo King) to participate in a second resentencing exercise using the revised kidnap and false imprisonment guideline	<b>Mandy Banks Judicial members</b>	<b>ACTION ONGOING:</b> Exercise has been sent out to members. Results to be analysed ready for the May Council meeting	

OFFICIAL - SENSITIVE

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# Sentencing Council

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

**31 March 2023**  
**SC(23)31MAR03 – Immigration**  
**Stephen Leake**  
**Vicky Hunt**  
**vicky.hunt@sentencingcouncil.gov.uk**

## 1 ISSUE

The Council is invited to consider the first draft of a guideline covering the offences of facilitation.

## 2 RECOMMENDATION

That the Council discuss and agree the content of the draft guideline.

## 3 CONSIDERATION

3.1 This paper provides a first draft of a guideline for the offences of facilitation. This includes both the section 25 and s25A Immigration Act 1971 offences:

### **25 Assisting unlawful immigration to member State[ or the United Kingdom]2**

(1) A person commits an offence if he—

(a) does an act which facilitates the commission of a breach [ or attempted breach]3 of immigration law by an individual who is not [a national of the United Kingdom]4 ,

(b) knows or has reasonable cause for believing that the act facilitates the commission of a breach [ or attempted breach]3 of immigration law by the individual, and

(c) knows or has reasonable cause for believing that the individual is not [a national of the United Kingdom]4 .

(2) In subsection (1) “*immigration law*” means a law which has effect in a member State [ or the United Kingdom]5 and which controls, in respect of some or all persons who are not nationals of the State [ or, as the case may be, of the United Kingdom]6 , entitlement to—

(a) enter [ or arrive in]7 the State [ or the United Kingdom]8 ,

(b) transit across the State [ or the United Kingdom]8 , or

(c) be in the State [ or the United Kingdom]8 .

...

- (6) A person guilty of an offence under this section shall be liable—
- (a) on conviction on indictment, to [imprisonment for life]<sup>11</sup> , to a fine or to both, or
- (b) on summary conviction, to imprisonment for a term not exceeding six months, to a fine not exceeding the statutory maximum or to both.

**25A Helping asylum-seeker to enter United Kingdom**

- (1) A person commits an offence if—
- (a) he knowingly [...] <sup>2</sup> facilitates the arrival [ or attempted arrival] <sup>3</sup> in [ , or the entry [ or attempted entry] <sup>5</sup> into, ] <sup>4</sup> the United Kingdom of an individual, and
- (b) he knows or has reasonable cause to believe that the individual is an asylum-seeker.
- (2) In this section “*asylum-seeker*” means a person who intends to claim that to remove him from or require him to leave the United Kingdom would be contrary to the United Kingdom's obligations under—
- (a) the Refugee Convention (within the meaning given by section 167(1) of the Immigration and Asylum Act 1999 (c. 33) (interpretation)), or
- (b) the Human Rights Convention (within the meaning given by that section).
- (3) Subsection (1) does not apply to anything done by a person acting on behalf of an organisation which—
- (a) aims to assist asylum-seekers, and
- (b) does not charge for its services.
- ...

3.2 Both offences now carry a maximum penalty of life imprisonment following a change made by the Nationality and Borders Act 2022. Prior to the amendment the maximum penalty was 14 years imprisonment.

3.3 The main ways in which the facilitation offences are committed are:

- **Assisting illegal entry or arrival, for example by smuggling someone in a small boat or other vehicle or by providing false documents for presentation at a port. (s25)**
- **Harbouring an illegal entrant, a person who stays longer than allowed by their leave, or a person who fails to observe a condition of their leave. (s25)**

- **Assisting someone to remain by deception, for example by entering into a sham marriage or by procuring false documents such as education certificates to obtain a visa. (s25)**
- **Bringing asylum seekers to the UK to enable them to claim asylum. (s25A)**

3.4 Relevant case law can be seen at **Annex A**, and a draft guideline can be seen at **Annex B**.

**Culpability factors**

A	<ul style="list-style-type: none"> <li>• Leading role in a commercial activity</li> <li>• Sophisticated nature of offence/ significant planning</li> <li>• Significant financial gain/ expectation of significant financial gain</li> </ul>
B	<ul style="list-style-type: none"> <li>• Significant role in a commercial activity</li> <li>• Some planning</li> <li>• Some financial gain/ expectation of financial gain</li> </ul>
C	<ul style="list-style-type: none"> <li>• Facilitating a breach of immigration law by family members</li> <li>• Humanitarian motivation</li> <li>• Minor role in group activity</li> <li>• Involved due to coercion or pressure</li> </ul>

3.5 From the case law it appears that the types of case currently attracting the highest sentences are those that involve an offender who plays a leading role in a large-scale or sophisticated operation which results in significant profits. Not all of these factors need to be present to attract a high sentence.

3.6 The cases receiving the lowest sentences are those where the offender is either coerced into taking part in an offence or where the offender is acting in an altruistic fashion for the benefit of family/ friends or others in need of assistance. In addition, where the offending is taking place in a group, an offender who plays a minor or peripheral role would also receive a lower sentence.

3.7 As the most and least serious cases seem to have quite specific features it is easier to capture them in terms of culpability factors but, as is often the case, the middle level of seriousness is not so easy. I have attempted to include factors that would fall in between high and low. Alternatively, the Council could simply choose to have the balancing factor that we use in many other guidelines:

Other cases that fall between categories A and C because:

- Factors are present in A and C which balance each other out and/or
- The offender’s culpability falls between the factors as described in A and C

**Question 1: Does the Council agree with the proposed culpability factors?**

**Harm factors**

1	<ul style="list-style-type: none"> <li>• Endangerment to life</li> <li>• Facilitating large numbers of individuals to illegally enter/ arrive in the UK</li> <li>• Exploited/ put pressure on others</li> </ul>
2	<ul style="list-style-type: none"> <li>• Assisted individuals to remain unlawfully</li> </ul> <p>Other cases that fall between categories 1 and 3 because:</p> <ul style="list-style-type: none"> <li>• Factors are present in 1 and 3 which balance each other out and/or</li> <li>• The harm caused falls between the factors as described in 1 and 3</li> </ul>
3	<ul style="list-style-type: none"> <li>• Isolated incident</li> <li>• Facilitated the entry/ arrival of asylum seekers</li> </ul>

3.8 It is proposed that the highest harm factors include cases where there is a risk to life which is most likely to arise due to the method of entry/ arrival into the UK. In addition, as is seen in the case law, facilitating entry into the UK, as opposed to facilitating the unlawful extension of a person’s stay in the UK, is considered more serious, and therefore facilitating the entry of large numbers of individuals has been placed into the highest category of harm. This factor is included in harm, rather than culpability, as many cases refer to the harm to the public of such offending, or to the fact that such offending is of ‘grave public concern’.

3.9 Finally, the exploitation of others has also been added to the highest harm category. Examples of this in the case law include instances where the offender has pressured others into sham marriages or set up a false education establishment which enables people to get visas to remain in the country and does so in such a way that the individuals involved do not realise that they are not completing legitimate courses. In addition to exploitation the category includes, putting pressure on others. This might include cases where the offender puts pressure on others to take part in the offending behaviour.

3.10 In the middle category there are just two factors, the balancing factor and, ‘assisted individuals to remain unlawfully’. This means that those committing document offences are likely to fall into the middle category unless they exploit others (move to category 1) or it is an isolated incident (move to category 3).

3.11 The lowest harm category includes ‘isolated incident’. This comes up in numerous cases as a reason for imposing a lower sentence. This seems appropriate in the sham

marriage/ false visa cases but perhaps in a case where an offender facilitates the entry of a large number of individuals into the UK on one occasion this would not be appropriate. The addition of the balancing factor in category 2 will ensure that such cases would not go to the lowest harm category.

3.12 The last factor in the lowest harm category is 'facilitating the entry/ arrival of asylum seekers'. Including this factor in the lowest harm category will result in most section 25A offences falling into harm category 3, but some may end up in category 2 if they are balanced against the category 1 factor 'Facilitating large numbers of individuals to illegally enter/ arrive in the UK'.

### **Question 2: Does the Council agree with the proposed harm factors?**

#### **Aggravating factors**

In addition to the standard factors:

- Repeat offending (unless charged as separate offences)
- Offending went on for a lengthy duration
- Abuse of position of trust
- Recruited others to take part in offending (unless already taken into account at step 1)

3.13 The top two proposed aggravating factors are designed to capture those cases where the offender is continuously breaching immigration laws, unless that has already been captured at step 1.

3.14 Abuse of position of trust may arise in some document offences, for example, an offender who uses his position as a teacher or examiner to provide false university acceptance letters and certificates. Similar scenarios are also likely to exist with sham marriages, for example a clerical leader facilitating a sham marriage.

3.15 The last factor, 'recruited others to take part in offending' will mean that those offenders who take actions to ensure that offending can be committed on a larger scale receive higher sentences. If the offender has pressured others into taking part this will already be captured at step 1, but if it appears that they have recruited willing participants then this would be a step 2 factor.

### **Question 3: Does the Council agree with the proposed aggravating factors?**

## Mitigating factors

In addition to the standard factors:

- Limited understanding of scale of activity

3.16 This one mitigating factor is for those offenders who are part of a large-scale operation but who have little understanding of the scale. Whilst there may be some cross over with the low culpability factor, 'minor role in group activity', it seems possible that some offenders who play a minor role may be aware of the scale of the operation but there may be others who have very little understanding, and it seems appropriate that this second group of offenders receive lower sentences.

### Question 4: Does the Council agree with the proposed mitigating factors?

## Sentence Levels

3.17 At **Annex C** the statistics show 11 years of sentence data up to 2021. The statistics show almost all offenders sentenced for both the section 25 and section 25A offences received a custodial sentence, and the majority are immediate custodial sentences. In 2021, around 140 offenders were sentenced for s25 offences, of which 99 per cent received a custodial sentence and 87 per cent were given immediate custody.

3.18 The volumes for the s25A offence are extremely low (fewer than 10 offenders are sentenced each year) and so it is hard to draw any conclusions from them. However, the highest sentence received in the eleven-year period fell in the bracket 6-8 years. As this is the final sentence received it is possible that the sentence was reduced following a guilty plea. The highest possible sentence would be 12 years.

3.19 Looking at the section 25 data, the majority of those sentenced to immediate custody each year receive 4 years or less as a final sentence (up to a maximum of 6 years before guilty plea reduction). In 2021, around 81 per cent of immediate custodial outcomes were 4 years or less. It seems that sentences are slowly rising in that prior to 2018 the majority of offenders were receiving less than 2 years and from 2018 onwards the majority receive 2-4 years. The highest sentence received was in the 10-12 year bracket. Taking into account reductions for guilty plea it is possible that these offenders were given the maximum sentence of 14 years.

3.20 As the statutory maximum sentence for both offences has risen to life there may be an expectation that the sentences in the table go higher than the previous statutory



maximum sentence of 14 years. Whilst any increase in sentencing practice will be linked to the change in legislation rather than the guideline, the Council will want to ensure that sentences are appropriate and proportionate to the offending behaviour.

3.21 Looking at the caselaw many cases refer to ‘deterrence’ as being one of the purposes of sentence. This suggests that Judges do consider that a severe sentence is necessary in some cases in the hope that it deters others from such offending behaviour. The Council will, however, be mindful of the conclusions that came out of the literature review on effectiveness that was published last September. The review found that there is little evidence to justify increasing a sentence purely for the purposes of deterrence.

3.22 The Council could look to other similarly serious offences to help reach a suitable highest sentence level. The modern slavery guideline is probably the best comparison, and the new guideline has a highest sentence of 18 years. The modern slavery offences also had a statutory maximum of 14 years which was subsequently changed to life. In addition, the Council is currently working on the death by dangerous driving guideline which again had a statutory maximum of 14 years which was increased to life. At consultation the Council proposed that the highest sentence should be 18 years, and this is looking likely to remain.

3.23 These other offences which involve death, or the serious abuse of victims are potentially more serious than the immigration offences and it is therefore proposed that a top sentence of 16 years might be appropriate.

**Question 5: Does the Council agree with the proposed highest sentence?**

3.24 The Council may consider that the sentence levels currently imposed in courts are acceptable and that there is no desire, in general terms, to inflate sentences. In which case the sentences could reflect current sentencing practice in all but the most serious categories where the sentences could be increased up to and beyond the old statutory maximum.

3.25 The rationale by the government for increasing the statutory maximum from 14 years to life, as set out in the ‘New Plan for Immigration policy statement’, dated March 2021, was that ‘Each attempt at illegal entry risks life and the penalties for those who facilitate illegal entry should reflect that. We will therefore increase the maximum sentence from 14 years to life imprisonment.’ In the explanatory notes to the Bill it also stated:

Section 25 offences currently attract a prison sentence of up to 14 years. This clause increases the penalty to life imprisonment in order to discourage unlawful facilitation of migrants to the UK.

Subsection 1 amends subsection (6)(a) of section 25, increasing the maximum custodial penalty for assisting unlawful immigration from 14 years to life imprisonment. By virtue of section 25A(4), the maximum penalty set out here also applies to the other offence of facilitating the arrival or entry of an asylum seeker to the UK.

3.26 It seems that the main concern is illegal entry, especially in cases where life is at risk. Under the proposals in this paper such offences fall into the highest harm category (category 1). It is therefore proposed that A1 and B1 include sentences up to and above 14 years but that the sentences in the other boxes broadly reflect existing sentencing practice.

3.27 The draft guideline at **Annex B** attempts to achieve that proposal.

**Question 6: Does the Council agree with the proposed sentence levels as set out in the draft guideline at Annex B?**

#### **4 EQUALITIES**

4.1 The demographics of the offenders sentenced for s25 in 2021 can be seen in **Annex C** at tabs 1.5-1.8. For s25A offenders, demographic data is presented for the period 2017 to 2021 at tabs 2.5-2.8. The volume of offenders sentenced for the s25A offence are very low overall so do not assist.

4.2 The volumes for the s25 offence (tab 1.5) are more useful. They show that the majority of offenders sentenced are male (89 per cent in 2021), and from tab 1.6 we can see that for both male and female offenders practically all are sentenced to custody (immediate or suspended). However, for women this is much more likely to be suspended than for men. Note that the volume of female offenders is much smaller than male (around 20 female offenders compared to 130 male offenders in 2021).

4.3 Looking at ethnicity you will note that for around 90 (61 per cent) out of the 140 offenders sentenced, the ethnicity is not recorded or not known, and volumes for ethnicity groups other than white are also very small (fewer than 10). Therefore, conclusions that can be drawn based upon the known ethnicity figures may be unreliable. However, with the information available, looking at tab 1.6 there does not appear to be any disparity in sentence for these offences that would require the Council to take action at this stage.

**Question 7: Does the Council agree that no further action is required as a result of the demographics data for these two offences?**

## **5 IMPACT AND RISKS**

We will consider the impact of the guidelines in the usual way, although existing trends in sentencing volumes may not be indicative of the future because of a change in enforcement strategy because of the new legislation.

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# Sentencing Council

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

**31 March 2023**  
**SC(23)31MAR04 – Totality**  
**Mark Wall**  
**Ruth Pope**  
[Ruth.pope@sentencingcouncil.gov.uk](mailto:Ruth.pope@sentencingcouncil.gov.uk)

## **1 ISSUE**

1.1 The Council consulted on a revised version of the Totality guideline from 5 October 2022 to 11 January 2023. Research with sentencers had shown that they generally found the guideline to be useful and clear and a practical help in sentencing. The scope of the revisions was therefore limited to updating the guideline without changing the essentials of the content.

1.2 This is the second of two planned meetings to discuss the responses to the consultation. The aim is to publish the revised guideline at the end of May to come into force on 1 July 2023.

## **2 RECOMMENDATION**

2.1 That the Council:

- considers the response from the Justice Committee and reviews the outline of the guideline agreed at the last meeting;
- considers the suggestions for changes to the detailed sections of the guideline; and
- considers the responses relating to the impact of the guideline and issues of equality and diversity.

## **3 CONSIDERATION**

3.1 We have now received the response to the consultation from the Justice Committee (attached at **Annex C**) in addition to the 25 responses already received. At the last meeting the Council considered the basic outline of the guideline without the drop-down sections. At this meeting we will look at the response from the Justice Committee in relation to the outline of the guideline and then consider the content of the drop-down sections. **Annex A** contains a version of the guideline with the changes **suggested** in this paper. **Annex B** contains the outline of the guideline with the changes agreed at the last meeting; the online consultation version of the guideline can be viewed [here](#).

## The Justice Committee response

3.2 The Committee welcomed the decision to revisit the Totality guideline and overall was supportive of the changes proposed. On 7 March 2023 the Committee took [oral evidence](#) on the changes proposed by the Council in order to inform its response as well as its ongoing inquiry on public opinion and understanding of sentencing. They heard from Professor Andrew Ashworth, Professor Mandeep Dhimi and Dr Rory Kelly.

3.3 Regarding the **General principles** section the Committee suggested:

There does seem to be a risk of some confusion arising from the inclusion of the statement about “no inflexible rule” alongside statements such as “concurrent sentences will ordinarily be appropriate where offences arise out of the same incident or facts”. At the very least, the statement of “there is no inflexible rule” is superfluous when the relevant guidance uses the language of “will ordinarily be appropriate”. Removing the “there is no inflexible rule” statement could encourage sentencers to make greater use of the expanded guidance and examples included in the guideline.

3.4 The revised version of this section, agreed at the last meeting, now reads:

### General principles

When sentencing for more than one offence, the overriding principle of totality is that the overall sentence should:

- reflect all of the offending behaviour with reference to overall harm and culpability, together with the aggravating and mitigating factors relating to the offences and those personal to the offender; and
- be just and proportionate.

Sentences can be structured as **concurrent** (to be served at the same time) or **consecutive** (to be served one after the other). There is no inflexible rule as to how the sentence should be structured.

- If consecutive, it is usually impossible to arrive at a just and proportionate sentence simply by adding together notional single sentences. Ordinarily some downward adjustment is required.
- If concurrent, it will often be the case that the notional sentence on any single offence will not adequately reflect the overall offending. Ordinarily some upward adjustment is required and may have the effect of going outside the category range appropriate for a single offence.

3.5 The Council felt that there was no contradiction in saying that there is no inflexible rule and then giving examples of how in different circumstances the court should approach the issue. The issue was only raised by one respondent (prior to the Justice Committee’s response) but if the Council feels that the use of the term ‘no inflexible rule’ is liable to cause misunderstanding we could consider removing or rephrasing it.

**Question 1: Does the Council wish to rephrase or remove the reference to ‘no inflexible rule’?**

3.6 In the **General approach** section, the Justice Committee welcomed the Council’s decision to make explicit reference to the need for the sentencer to ‘explain how the sentence is structured in a way that will be best understood by all concerned’. They recommended that:

the Council considers going further and includes within the guideline specific reference to the elements that the sentencer should explain when applying the totality guideline, or the principles of totality more generally. We would recommend that there is a stand-alone principle in the general approach section on how to explain the application of totality to the sentence, as was recommended by the Justices’ Legal Advisers and Court Officers’ Service. We also support the Ministry of Justice’s suggestion of an inclusion of a further explanation box to assist sentencers with explaining how sentences are constructed in the context of totality. The principle and the box should set out what the explanation of the application of totality to the sentence should cover. Giving evidence to the Committee, Professor Andrew Ashworth, said that the Council’s guidance on the explanation of the application of the principles should also ask the sentencer to explain how the sentence is calculated. The Office of the Attorney General also recommended included a reminder that “greater clarity may be achieved by explaining the effect of totality on the notional sentence”.

3.7 We have discussed the Ministry of Justice’s suggestion with officials and they proposed adding some wording to the totality step in guidelines to remind sentencers to explain who the overall sentence has been arrived at. For example:

**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 **and consider and explain how the sentence is structured in a way that will be best understood by all concerned**. See [Totality](#) guideline.

3.8 The Committee also supported the Crown Prosecution Service’s recommendation:

- Where consecutive sentences are imposed, is it good practice to identify and explain in open court what the notional sentence on each count is, and then indicate where any downward adjustment has been made and to what extent, so that the application of totality is clear?
- Where concurrent sentences are imposed, is it good practice to identify and explain in open court what sentence would have been imposed for a notional single offence, and what upward adjustment and to what extent has been made to reflect the commission of more than a single offence?

3.9 The Council considered these matters at the last meeting and the revised version of this section now reads:

## General approach (as applied to determinate custodial sentences)

1. Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.
2. Following the guidance provided below, determine whether the case calls for concurrent or consecutive sentences. When sentencing more than two offences, a combination of concurrent and consecutive sentences may be appropriate.
3. Test the overall sentence against the requirement that the total sentence is just and proportionate to the offending as a whole.
4. Consider and explain how the sentence is structured in a way that will be best understood by all concerned.

### Concurrent sentences will ordinarily be appropriate where:

- a. offences arise out of the same incident or facts.

Examples include:

V

- b. there is a series of offences of the same or similar kind, especially when committed against the same person.

Examples include:

V

**Where concurrent sentences are to be passed the lead sentence should reflect the overall criminality involved which may take the lead offence outside the category range appropriate for a single offence.**

Concurrent custodial sentence examples:

V

### Structuring concurrent sentences:

When sentencing for two or more offences of differing levels of seriousness the court can consider structuring the sentence using concurrent sentences, for example:

- consider whether some offences are of such very low seriousness that they can be recorded as 'no separate penalty' (for example technical breaches or minor driving offences not involving mandatory disqualification)
- consider whether some of the offences are of lesser seriousness such that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified.

### Consecutive sentences will ordinarily be appropriate where:

- a. offences arise out of unrelated facts or incidents.

Examples include:

V

- b. offences that are unrelated because whilst they were committed simultaneously they are distinct and there is an aggravating element that requires separate recognition.

Examples include:

V

- c. offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences.

Examples include:

V



- d. one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would result in an overall sentence that undermines the statutory minimum sentence.

Examples include: V

However, it is **not** permissible to impose consecutive sentences for offences committed **in a single incident** in order to evade the statutory maximum penalty.

Examples include: V

**Where consecutive sentences are to be passed, add up the sentences for each offence and consider the extent of any downward adjustment required to ensure the aggregate length is just and proportionate.**

#### Structuring consecutive sentences:

When sentencing for similar offence types or offences of a similar level of severity the court can consider structuring the sentence using consecutive sentences, for example:

- consider whether all of the sentences can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively
- consider whether, despite their similarity, a most serious principal offence can be identified and the other sentences can all be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively in order that the sentence for the lead offence can be clearly identified

3.10 The Council did not adopt the suggestion that the guideline should require the court to state the notional sentence for each offence and then explain how that has been reflected in the overall sentence. The instruction in the guideline is to: ‘Consider and explain how the sentence is structured in a way that will be best understood by all concerned’. The Council may feel that while in many cases this would involve stating the notional sentence for each offence, in others that would be an artificial and over-complicated process.

**Question 2: Does the Council wish to make any further changes regarding how the sentence should be explained, including to the Totality step in offence specific guidelines?**

3.11 The Committee commented on the inclusion of a separate **Reaching a just and proportionate sentence** section in the draft guideline, stating:

We support the aim of seeking to make the guidance on reaching a just and proportionate sentence more prominent within the guidelines. However, the Council should consider whether this point might be more prominent if it was integrated within each section, as the “golden thread” that runs throughout the guideline, rather than as a standalone section.

3.12 At the last meeting the Council agreed to integrate the information in that section into the **General approach** section under the subheadings ‘Structuring concurrent sentences’ and ‘Structuring consecutive sentences’.

3.13 The Council may wish to consider whether the revisions agreed at the last meeting, taken as a whole, provide adequate guidance on what is meant by ‘just and proportionate’ over and above reflecting all of the offending behaviour (as set out in the **General principles** section). The Committee’s suggestion of a ‘golden thread’ sounds appealing and to some extent may already have been achieved in the wording:

**Where consecutive sentences are to be passed, add up the sentences for each offence and consider the extent of any downward adjustment required to ensure the aggregate length is just and proportionate.**

However, ‘just and proportionate’ is not mentioned in the equivalent wording on concurrent sentences:

**Where concurrent sentences are to be passed the lead sentence should reflect the overall criminality involved which may take the lead offence outside the category range appropriate for a single offence.**

3.14 This could be revised to read:

**Where concurrent sentences are to be passed the lead sentence should reflect the overall criminality involved which may take the lead offence outside the category range appropriate for a single offence to ensure the sentence length is just and proportionate.**

**Question 3: Does the Council wish to make any further references to ‘just and proportionate’ and, if so, should the proposed amendment be adopted?**

3.15 Moving on to issues relating to the examples given in the guideline that were not considered at the last meeting. The Justice Committee noted that responses had drawn attention to the application of the totality principles to cases involving multiple offences against the same victim in the concurrent sentences examples in the General approach section:

- b. there is a series of offences of the same or similar kind, especially when committed against the same person.

Examples include: [dropdown]

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

3.16 Rory Kelly queried why the fact that it was the same victim was relevant, stating: “This may risk creating the misimpression that there is a discount for targeting one person.” He suggested removing the words ‘especially when committed against the same person’ and

suggested that the first example could be changed to read 'repetitive small thefts from an employer'.

3.17 Several respondents were concerned that while the examples relate to theft and fraud offences, this approach could be applied to sexual offences and domestic abuse cases and result in sentences that fail to take account of the overall offending. The Attorney-General's Office (AGO) provided some evidence, from sentences increased on referral to the Court of Appeal, that courts have fallen into error in this regard.

3.18 The guideline includes the following under the consecutive sentences examples:

- c. offences that are of the same or similar kind but where the overall criminality will not sufficiently be reflected by concurrent sentences.

Examples include: [dropdown]

- where offences committed against different people, such as repeated thefts involving attacks on several different shop assistants
- where offences of domestic violence or sexual offences are committed against the same individual

3.19 The AGO and CPS both suggested that the guideline should include examples of how concurrent sentences can be applied to sexual offending. The AGO suggested adding a fourth bullet to the dropdown list 'Concurrent custodial sentences: examples':

- Repeated sexual offences against the same victim. The sentences can be passed concurrently, but the lead offence should be aggravated to take into account the overall criminality carried out

3.20 In order that this is not missed it might be preferable to include similar wording in the entry under concurrent sentences (either as well as or instead of the AGO suggestion). It might also be helpful to cross-reference to the consecutive sentence example. Taking into account all the various suggestions the following is proposed:

- b. there is a series of offences of the same or similar kind, especially when committed against the same person (but note this may not apply in all cases – see below under consecutive sentences at point c.).

Examples include: [dropdown]

- repetitive small thefts from an employer
- repetitive benefit frauds of the same kind, committed in each payment period
- repeated sexual offences against the same victim where the lead offence can be aggravated sufficiently to take account of the overall criminality

3.21 In the consecutive sentences example it would be preferable to refer to 'domestic abuse' rather than 'domestic violence'. This change and the addition of the wording proposed at 3.18 above can be seen in Annex A.

3.22 The CPS made the additional point of the importance of a clear explanation of the sentences for the benefit of victims:

In particular with serious sexual offending where a maximum life sentence is available, in our experience consecutive sentences are not always necessary to achieve a just and proportionate sentence. A lead offence or offences of rape, for instance, can be appropriately adjusted upwards with all sentences running concurrently to reach an appropriate sentence. This further emphasises the importance of a clear explanation to ensure that victims understand how the sentence has been reached.

3.23 The Council may feel that the important points that the guideline needs to convey are that a) however sentences are constructed the final sentence needs to reflect the overall offending and b) this should be explained to offenders and victims. It will be important to ensure that these messages are clear in the final version.

**Question 4: Does the Council wish to make the changes proposed above relating to sexual offences?**

**Question 5: Does the Council wish to make any other changes relating to sexual offences or other offending against the same victim?**

**Other matters raised by respondents**

3.24 A magistrate asked for more examples that relate more to the offences sentenced in magistrates' courts. The difficulty with this suggestion is that the examples can never cover all eventualities. It is important that sentencers focus on the principles rather than look for an example to match the case before them.

3.25 The CPS commented on the examples given under concurrent sentences 'a. offences arise out of the same incident or facts':

Examples include:	[dropdown]
<ul style="list-style-type: none"> <li>• a single incident of dangerous driving resulting in injuries to multiple victims</li> <li>• robbery with a weapon where the weapon offence is ancillary to the robbery and is not distinct and independent of it</li> <li>• fraud and associated forgery</li> <li>• separate counts of supplying different types of drugs of the same class as part of the same transaction</li> </ul>	

3.26 In relation to the second bullet they suggest it might be clearer to express this as:

- robbery with a weapon where the use of a weapon has been taken into account in categorising the robbery

3.27 In relation to the third bullet they suggest that this could be clearer if it also referred to the possession/making an article used in that fraud. Suggested wording:

- fraud and associated forgery or possession or making an article used in the fraud

3.28 In relation to the fourth bullet they state:

This might imply, by “transaction”, an actual single physical occasion of supplying a drug. We would also suggest that this principle could equally apply when sentencing for more than one conspiracy charge which cover the same offending period but relate to different types of drugs of the same class. There would also be no issue, from our perspective, with concurrent sentences for drugs of different classes, provided the more serious offence was taken as the lead offence.

3.29 It is not clear if the CPS are suggesting that that particular example should be expanded. The list of examples is clearly non-exhaustive and so no change is proposed.

3.30 The West London Bench suggested that it would be clearer if, under the examples for consecutive sentences option (a) (offences arise out of unrelated facts or incidents), each example listed comprised of at least two offences. They suggested that the third and fourth bullet points could be reworded as:

- where one of the offences is a Bail Act offence
- where one of the offences is committed within a prison context

3.31 This is a helpful suggestion, but for the final bullet perhaps it would be better to say:

- offences committed within a prison context should be ordered to run consecutively to any sentence currently being served

**Question 6: Does the Council wish to make the changes proposed above to the examples of concurrent and consecutive sentences?**

3.32 HM Council of District Judges (Magistrates’ Courts) felt that it was confusing in the General approach section to list examples of when consecutive sentences should be used and then to state what the sentencer should not do:

However, it is **not** permissible to impose consecutive sentences for offences committed **in a single incident** in order to evade the statutory maximum penalty.

3.33 They thought it was not clear what the sentencer might do wrong from the examples given:

Examples include:

[dropdown]

- more than one offence of causing serious injury in a single incident of dangerous driving
- possession of several prohibited weapons and/or ammunition acquired at the same time

3.34 No other respondent expressed a concern with these examples.

**Question 7: Does the Council wish to make any changes to the guidance or examples relating to evading the statutory maximum penalty?**

3.35 The dropdown information headed 'Sentencing for offences committed prior to other offences for which an offender has been sentenced' was new in the draft guideline.

**Sentencing for offences committed prior to other offences for which an offender has been sentenced** [Dropdown]

The court should first reach the appropriate sentence for the instant offences, taking into account totality in respect of the instant offences alone. The court then has a discretion whether to make further allowance to take into account the earlier sentence (whether or not that sentence has been served in full). The court should consider all the circumstances in deciding what, if any, impact the earlier sentence should have on the new sentence. It is not simply a matter of considering the overall sentence as though the previous court had been seized of all the offences and deducting from that figure the sentence already imposed.

A non-exhaustive list of circumstances could include:

- (a) how recently the earlier sentence had been imposed;
- (b) the similarity of the offences sentenced earlier to the instant offences;
- (c) whether the offences sentenced earlier and instant offences overlapped in time;
- (d) whether on a previous occasion the offender could have "cleaned the slate" by bringing the instant offences to the police's attention;
- (e) whether taking the earlier sentences into account would give the offender an undeserved bonus - this will particularly be the case where a technical rule of sentencing has been avoided or where, for example, the court has been denied the opportunity to consider totality in terms of dangerousness;
- (f) the offender's age and health, and whether their health had significantly deteriorated;
- (g) whether, if the earlier and instant sentences had been passed together as consecutive sentences, the totality principle would have been offended.

**If the offender is still subject to the previous sentence:**

1. Where the offender is currently serving a custodial sentence for the offence(s) sentenced earlier, consider whether the new sentence should be concurrent with or consecutive to that sentence taking into account the circumstances set out above and the general principles in this guideline.
2. Where the offender is serving an indeterminate sentence for the offence(s) sentenced earlier, see also the guidance in the section 'Indeterminate sentences' below.
3. Where the offender has been released on licence or post sentence supervision from a custodial sentence for the offence(s) sentenced earlier see also the relevant guidance in the section below 'Existing determinate sentence, where determinate sentence to be passed'.

3.36 HM Council of District Judges (Magistrates' Courts) wondered whether at point 3 it should make more explicit reference to the restriction on ordering a consecutive sentence where an offender who is still subject to a previous sentence has been released rather than cross-referencing to the information below. A magistrate asked if a link could be provided to the relevant information

3.37 The West London Magistrates' Bench welcomed this content and had some suggestions for clarifying the language, a view echoed by other magistrates. Professor Dhimi also thought that some of the language could be simplified and suggested it would be helpful for the non-exhaustive list of circumstances to be divided into those that would increase the sentence and those that would decrease it. The Sentencing Academy made a similar point:

Surely it would be more helpful if each circumstance was worded clearly as a plus or minus factor; thus, (a) if the earlier sentence was imposed recently, that would tend to be more serious than if it was long ago; (b) if the previous offending was of a similar nature, that would tend to be more serious than if it was dissimilar. The present non-exhaustive list hints at this, but holds back from utter clarity.

3.38 It would be difficult to divide the list of circumstances into those that increase and those that decrease the sentence, because some are not clear cut. For example '(a) how recently the earlier sentence had been imposed'. If the earlier sentence had been imposed only a very short time ago that might indicate that the offences should have all been dealt with together and therefore the offender should have the benefit of treating them all as one sentencing exercise. On the other hand, if the earlier sentence had been imposed and served many years ago and the offender had lived a blameless life since, that too might indicate that the sentence for the instant offence should be adjusted downwards.

3.39 A magistrate was confused by the sentence: 'It is not simply a matter of considering the overall sentence as though the previous court had been seized of all the offences and deducting from that figure the sentence already imposed.' The West London Bench suggested it could be re-worded as:

g) whether, if the earlier and instant sentences had been passed together as consecutive sentences, it would not have been appropriate to pass a simple cumulative consecutive sentence without taking account of the totality principle.

3.40 Taking all of these comments into account the following is proposed:

## Sentencing for offences committed prior to other offences for which an offender has been sentenced [Dropdown]

The court should first reach the appropriate sentence for the instant offences, taking into account totality in respect of the instant offences alone. The court then has a discretion whether to make further allowance to take into account the earlier sentence (whether or not that sentence has been served in full). The court should consider all the circumstances in deciding what, if any, impact the earlier sentence should have on the new sentence. It is not simply a matter of considering the overall sentence as though the previous court had been seized of **able to sentence** all the offences and deducting **the earlier sentence** from that figure ~~the sentence already imposed~~.

A non-exhaustive list of circumstances could include:

- (a) how recently the earlier sentence had been imposed, **taking account of the reason for the gap and the offender's conduct in the interim**;
- (b) the similarity of the offences sentenced earlier to the instant offences;
- (c) whether the offences sentenced earlier and instant offences overlapped in time;
- (d) whether on a previous occasion the offender could have "cleaned the slate" by bringing the instant offences to the police's attention;
- (e) whether taking the earlier sentences into account would give the offender an undeserved bonus - this will particularly be the case where a technical rule of sentencing has been avoided or where, for example, the court has been denied the opportunity to consider totality in terms of dangerousness;
- (f) the offender's age and health **at the point of sentence**, and whether their health ~~has had~~ significantly deteriorated;
- (g) whether, if the earlier and instant sentences had been passed together as consecutive sentences, the **overall sentence would have required downward adjustment to achieve a just and proportionate sentence** ~~totality principle would have been offended~~.

### **If the offender is still subject to the previous sentence:**

1. Where the offender is currently serving a custodial sentence for the offence(s) sentenced earlier, consider whether the new sentence should be concurrent with or consecutive to that sentence taking into account the circumstances set out above and the general principles in this guideline.
2. Where the offender is serving an indeterminate sentence for the offence(s) sentenced earlier, see also the guidance in the section 'Indeterminate sentences' below.
3. Where the offender has been released on licence or post sentence supervision from a custodial sentence for the offence(s) sentenced earlier **a custodial sentence for the instant offences cannot run consecutively to that earlier sentence** – see also the relevant guidance in the section below 'Existing determinate sentence, where determinate sentence to be passed'.

**Question 8: Does the Council wish to make changes to the 'Sentencing for offences committed prior to other offences for which an offender has been sentenced' guidance?**



3.41 There were no suggestions for changes to the Specific applications – custodial sentences section aside from one magistrate who had difficulty understanding the sentence: ‘However, the sentence must be commensurate with the new offence and cannot be artificially inflated with a view to ensuring that the offender serves a period in custody additional to any recall period (which will be an unknown quantity in most cases); this is so even if the new sentence will in consequence add nothing to the period actually served.’ He suggested that it could be re-worded or an example provided. No other respondent commented on this and, although as currently worded it is long, it is not apparent how it could be made clearer.

3.42 The only other comments on this section related to inconsistencies in how legislation is referred to. This has been addressed and will be checked again before publication.

3.43 In the Specific applications – non-custodial sentences section, HM Council of District Judges (Magistrates’ Courts) queried the wording relating to multiple offences attracting fines crossing the community threshold:

The references to situations where the offences being dealt with are “all imprisonable”, in both the fines and community orders sections, may be misleading to a sentencer who is also dealing with one or more non-imprisonable offences as part of the sentencing exercise. Words similar to “...in relation to those offences being dealt with which are imprisonable...” might be clearer.

3.44 There seems to be no clear and succinct way of expressing this which takes into account the different combination of imprisonable and non-imprisonable offences that a court may be sentencing. One proposal is to re-word as follows:

<p><b>Multiple offences attracting fines – crossing the community threshold</b></p>	<p>If <b>more than one</b> of the offences being dealt with are <b>all</b> imprisonable, then the community threshold can be crossed by reason of multiple offending, when it would not be crossed for a single offence (<a href="#">section 204(2) of the Sentencing Code</a>). However, if <b>all</b> the offences are non-imprisonable (e.g. driving without insurance) the threshold cannot be crossed (<a href="#">section 202 of the Sentencing Code</a>).</p>
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3.45 A further proposed change is to remove the words ‘for non-imprisonable offences’ from the heading to this part of the guidance, as it refers to both imprisonable and non-imprisonable offences.

**Question 9: Does the Council agree to make the proposed changes to the multiple fines guidance?**

3.46 The Council of District Judges also commented that it was not clear which of the bullet points listed in relation to fines and determinate custodial sentences were intended to be conjunctive and which disjunctive. A simple addition might assist:

<p><b>Fines and determinate custodial sentences</b></p>	<p>A fine should not generally be imposed in combination with a custodial sentence because of the effect of imprisonment on the means of the offender. However, exceptionally, it may be appropriate to impose a fine in addition to a custodial sentence where:</p> <ul style="list-style-type: none"> <li>• the sentence is suspended <b>or</b></li> <li>• a confiscation order is not contemplated <b>and</b></li> <li>• there is no obvious victim to whom compensation can be awarded <b>and</b></li> <li>• the offender has, or will have, resources from which a fine can be paid</li> </ul>
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**Question 10: Does the Council agree to the proposed clarification in the fines and determinate custodial sentences guidance?**

3.47 In the Community orders dropdown there were some comments on the information on 'Offender convicted of an offence while serving a community order'. A circuit judge commented:

My only reservation for this part relates to the section dealing with offenders convicted during the currency of a community order and the proposed wording - Where the magistrates' court has no power to commit the new offence it should sentence the new offence and commit the offender to the Crown Court to be re-sentenced for the original offence.

Whilst delay is generally inimical to justice, sentencing by the magistrates' court before (rather than after) an offender has been dealt with by the Crown Court does on occasion risk very real difficulties. For example the magistrates' may raise expectations by dealing with an offence by way of a community order in circumstances where the Crown Court would be minded to revoke the existing Crown Court Community Order and re-sentence the offender to a custodial sentence; whilst not a legitimate expectation it can lead to a sense of grievance. More importantly, in circumstances where a community order is imposed by the lower court and the Crown Court determines to leave in place the existing Crown Court Community Order, it risks an offender being subject to two Community Orders and perhaps overly onerous requirements.

3.48 The Justices' Legal Advisers and Court Officers' Service by contrast said:

We welcome the clarity that magistrates' courts when committing for sentence should sentence for offences which they cannot commit.

3.49 The only changes proposed to this guidance are to make the language gender neutral and to correct a minor error.

**Question 11: Does the Council wish to make any substantive changes to the community orders guidance?**

**4 EQUALITY AND DIVERSITY**

4.1 The consultation asked a question about the reference to the Equal Treatment Bench Book (ETBB) at the top of the guideline and the addition of the words:

Sentencers should have this in mind in relation to individual sentences but also when considering the total sentence.

4.2 Respondents welcomed this addition and, when asked if there were aspects of the guideline that might cause disparity in sentencing or if there were any other equality and diversity issues, most were unable to identify anything. Professor Dhami commented:

There is clearly potential for disparity if factors such as race/ethnicity are associated with multiple-offending v. single-offence offending behaviour; and in the former case, if factors such as race/ethnicity are associated with multiple-offending that would lead to consecutive sentences. For instance, Stott et al.'s (2021) review of existing governmental studies concluded that there were "demonstrable, quantifiable and robust" patterns of ethnic disparity in relation to various offence types (including drugs, violent crime, burglary, robbery and theft, as well as anti-social behaviour), primarily due to policing practices. Dhami's (2021) study suggests that multiple-offence cases represent over half of sentenced drugs offences, and around 40% each of sentenced robbery and sentenced burglary offences. Hence, the totality guideline likely disproportionately applies to offenders with ethnic backgrounds.

4.3 The Justice Committee noted:

Professor Dhami's response to the Council's consultation draws attention to the fact that the lack of data on multiple offences impinges analysis of the potential for the guideline to cause or increase disparity in sentencing. One of the Council's five strategic aims for 2021-26 is "to explore and consider issues of equality and diversity relevant to our work and take any necessary action in response within our remit". It is therefore especially problematic that the Council cannot undertake such analysis to inform its revision of this guideline.

4.4 This may be a valid point, but the fact remains that we do not have the data necessary to do the analysis nor currently the resources to obtain such data.

**Question 12: Are there any changes that should be made to the guideline to address issues of disparity in sentencing?**

**5 IMPACT AND RISKS**

5.1 As anticipated, the limited nature of the revisions to the guideline has attracted some criticism from academics. However, overall responses have been positive.

5.2 The guideline is of wide application and therefore any changes could theoretically have a significant impact on sentencing practice. The nature of the revisions, which are designed to clarify and encourage existing best practice, are unlikely to lead to substantive changes. In view of this and the lack of data on multiple offences, a narrative resource assessment was published with the consultation, rather than a statistically based one. A similar document will be prepared for the publication of the definitive guideline and will be circulated to the Council for approval.

5.3 To cover some of the gaps in data, we have added a small number of questions to our ongoing data collection to capture information on whether offences have been adjusted to take account of totality and if so in what way.

5.4 The Justice Committee commented:

It was notable that a number of responses to the Council's consultation highlighted the lack of data on multiple offences. The lack of official data on sentencing for multiple offences and, in particular, the sentences imposed for secondary/non principal offences is a significant problem, which we will raise with the Ministry of Justice. We welcome the fact that the Council is planning to gather some data on multiple offences in its pilot data collection exercise, but the Committee would hope that the Common Platform should be able to provide better data to analyse sentencing for multiple offences. We would be grateful if the Council could keep the Committee informed on any developments in this area.

Despite the valuable research conducted by the Council in 2021, the Committee regrets the limited data, and therefore analysis, that has informed the Council's revision of the Totality guideline. The Council's resource assessment does not provide any assistance to the Committee, or indeed to the public, in assessing how the proposed changes may affect sentencing. The resource assessment sets out that the Council is unable to provide a reliable estimate of how many cases the guideline is relevant to. The Council then says that it estimates that the changes will have "no resource impact". While we recognise that the Council is not responsible for the lack of data on sentencing multiple offences, it is a regrettable state of affairs that there is so little useful data to inform the assessment of how changes to such a significant guideline may affect sentencing in the future.

5.5 We set out in the resource assessment published with the consultation that the Ministry of Justice does not publish figures on multiple offences and the Council does not currently have access to extensive information on secondary or non-principal offences nor the sentences imposed for them. The resource assessment noted that the Council would like to explore this area in the future but to do so would be resource intensive and the Council has decided to prioritise other areas of work in the short and medium term but once we have a clearer idea of the data that may be available from the Common Platform, we can reconsider this. Despite the lack of data we felt able to estimate that the revised guideline would not have a resource impact because the changes proposed are not designed or expected to affect sentencing severity.

5.6 This view was shared by many respondents who thought that that the changes to the guideline were unlikely to have a substantial impact on sentencing outcomes but should improve the usability of the guideline and the way in which sentences are crafted and explained. The AGO thought that there was a particular issue with sentencing sexual offences (as evidenced by their analysis of cases successfully referred to the CACD) and were unsure that the changes would make any difference to sentencing unless the guideline highlighted sexual offences.

5.7 The Justice Committee also noted that the Attorney General's response refers to a review they conducted of 67 cases they had referred to the Court of Appeal and the Committee asks whether the Council had carried out any such analysis of judgments. The answer to that we have not. We have, of course, looked at CACD judgments where totality has been an issue and these judgments, predictably, reflect the approach in the current guideline. Without data on multiple offences it would be difficult to identify a representative sample of cases and to draw useful conclusions from a review of judgments.

5.8 The Justice Committee expressed an interest in any plans the Council has to monitor the impact of the guideline stating:

It would be particularly interesting and valuable to understand what effect the new guidance on explaining the application of totality principles was having.

5.9 While the Council would, no doubt, concur with that sentiment it is unlikely that we will have large amounts of robust data with which to do this. However, we will be able to consider the evidence we are currently collecting along with evidence from future data collections to explore how best to use it to monitor the impact of the guideline.

**Question 13: Is the Council content to proceed on the basis of the limited data that we currently have?**

**Question 14: Is the Council content to sign off the guideline for publication subject to the changes agreed at this meeting?**

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

**31 March 2023**  
**SC(23)31MAR05 - Imposition**  
**Jo King**  
**Jessie Stanbrook**  
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## **1 ISSUE**

1.1 This paper looks in detail at the Imposition of Community Orders section of the Imposition Guideline ('the guideline'), and a sub section on Requirements. The community order levels table will be discussed in the next Imposition Working group meeting.

## **2 RECOMMENDATION**

2.1 It is recommended that the Council agrees to the updated Imposition of Community Orders section, and provides feedback on the draft of the requirements table/list:

## **3 CONSIDERATION**

### Imposition of Community Orders

3.1 The Imposition working group met for their second meeting in mid-March and considered draft text in the 'Imposition of Community Orders' section. The version of this section contained in this paper has been updated after discussion at this meeting.

3.2 This section currently comes fourth, after an initial note on Deferred Sentences, a first section on thresholds, a second section on pre-sentence reports and a third section on purposes and effectiveness of sentencing.

3.3 The key updates to this section are lines of text related to thresholds being moved to the new threshold section, the requirements section being moved to prior to the community order levels table (which will not be discussed today), text in the 'specific considerations in determining requirements' section being condensed and brought into the main section under Imposition of Community orders, and the inclusion of more information about each of the requirements for consistency, as agreed in the October Council meeting.

3.4 It is of note that the working group agreed that while requirements are relevant both to community orders and suspended sentence orders (SSOs), there should be no mention of SSOs in this section to ensure the guideline promotes the correct principles of the imposition of SSOs. Instead, there is a new sub section on requirements in the Imposition of Custodial Orders section which gives information about the inclusion of requirements on SSOs.

3.5 The updated version of the Imposition of Community Orders section is below.

#### 4. Imposition of community orders

A community order can only be imposed for an offence which is punishable by imprisonment. The maximum length of a community order is three years.

Community orders can fulfil all of the purposes of sentencing. In particular, they can have the effect of restricting the offender's liberty while providing punishment in the community, rehabilitation for the offender, and/or ensuring that the offender engages in reparative activities.

The court must ensure that the restriction on the offender's liberty is commensurate with the seriousness of the offence and that the requirements imposed are the most suitable for the offender.

#### Requirements

Community orders consist of one or more requirements. At least one requirement must be imposed for the purpose of punishment and/or a fine imposed, unless there are exceptional circumstances which relate to the offence or the offender that would make it unjust in all the circumstances to do so. It is a matter for the court to decide which requirements amount to a punishment in each case.

**The court must ensure that the requirements imposed are the most suitable for the offender. This means that requirements reflect:**

- the purpose(s) of the sentence
- the risk of re-offending
- the needs and rehabilitation of the offender, including any mental health or addiction issues
- the ability of the offender to comply taking into account the offender's accommodation, employment and family situation including any dependants
- the availability of the requirements in the local area

The court must ensure that where two or more requirements are included they are compatible with one another and are not excessive. So far as practicable, any requirements imposed should not conflict or interfere with:

- an offender's religious beliefs
- the requirements of any other court order to which they may be subject
- an offender's attendance at work or educational establishment

**Question 1: Does the Council wish to make any amendments to the updated draft of the Imposition of Community Orders section?**

#### Requirements

3.6 Council members agreed in the October Council meeting that the requirements list should be updated due to the current inconsistency of information. It was also agreed in this meeting that the requirements list should be reformatted, and the guideline should present both a table, and a suitable drop-down list format, for the requirements list.



3.7 A new table of requirements can be seen at **Annex A**. The order of the requirements in this table is the same as the current guideline, which reflects the order in which they are set out in [schedule 9 to the Sentencing Act](#).

3.8 The Council could decide to order these requirements differently. One option is to order these by how often they are imposed. The current number of requirements commenced under community orders for the years 2018-2021 can be seen in published Probation data below (the only differences in the order for requirements commenced under SSOs is more drug treatment than alcohol treatment requirements, and more mental health requirements than exclusion requirements.)

**Figure 1: Table showing number of requirements commenced under community orders for the years 2018-2021, according to Probation Data**

	2018	2019	2020	2021
<b>Community order</b>	<b>122,912</b>	<b>123,181</b>	<b>84,520</b>	<b>101,138</b>
Rehabilitation activity requirement	47,818	48,653	33,661	41,923
Unpaid work	40,526	39,645	25,762	29,171
Curfew	13,058	12,362	9,991	11,430
Accredited programme	8,814	8,767	6,800	6,458
Alcohol treatment	3,441	3,900	2,412	3,291
Drug treatment	5,069	5,143	2,646	3,203
Electronic monitoring	1,505	1,710	1,265	1,643
Alcohol abstinence and monitoring	-	-	23	1,580
Exclusion	971	1,204	861	893
Mental health	489	535	453	865
Attendance centre	646	699	283	305
Prohibited activity	231	227	166	172
Residential	189	209	133	132
Supervision	152	127	63	72
Specified activity	3	0	1	0



*To note: this data does not include standalone curfews as most of these are not supervised by Probation; numbers for all requirements were impacted significantly by COVID especially in 2020; Alcohol abstinence and monitoring was only rolled out nationally in Winter 2020; and 'supervision' is likely to be an error due to confusion between Probation supervision as part of a RAR, given this is not a legal standalone requirement anymore.*

3.9 Another option for amending the order is ordering the requirements alphabetically. This may make requirements easier to find on the page if sentencers are aware they are ordered alphabetically, but may not work in practice if all requirements are not commonly called by the same term (e.g. 'accredited programme' or 'programme requirement'.)




**Question 2: Does the Council wish to order the requirements in differently? If so, how?**

3.10 In the October Council meeting, Council members discussed that there should both be a requirements list, in a possible drop-down format, and a new table of requirements that could be downloaded or printed.

3.11 While we are awaiting the final report of the ongoing user testing project, initial findings coming out of this research shows that sentencers are not always aware that the dotted line underneath words, e.g. aggravating and mitigating factors, is expandable, and that other drop-down boxes in the guidelines that have a small downwards arrow are more clearly understood to be expandable. One of the draft recommendations in this report (not yet finalised) is therefore to make this consistent across the guidelines, ideally using drop down arrows for expandable information, such as what is already in the imposition guideline and all other offence specific guidelines that have fines in the range, as per the below.

Band ranges 		
Band ranges 		
	Starting point	Range
Fine Band A	50% of relevant weekly income	25 - 75% of relevant weekly income
Fine Band B	100% of relevant weekly income	75 - 125% of relevant weekly income
Fine Band C	150% of relevant weekly income	125 - 175% of relevant weekly income
Fine Band D	250% of relevant weekly income	200 - 300% of relevant weekly income
Fine Band E	400% of relevant weekly income	300 - 500% of relevant weekly income
Fine Band F	600% of relevant weekly income	500 - 700% of relevant weekly income

3.12 Therefore, an initial proposal for the presentation of requirements is that each requirement is listed similar to that of 'band ranges' above, with information relating to each requirement contained in the drop-down box below, similar to the below.

Unpaid work requirement (UPW)	
Rehabilitation activity requirement (RAR)	
Programme requirement	

Prohibited activity requirement	√
Curfew requirement	√
Exclusion requirement	√
Residence requirement	√
Foreign travel prohibition requirement	√
Mental health treatment requirement	√
Drug rehabilitation requirement	√
Alcohol treatment requirement	√
Alcohol abstinence and monitoring requirement (where available)	√
Electronic monitoring	√

3.13 The disadvantage of this format is that information cannot be seen and read without expanding the boxes, however having the table contained or downloadable in addition to this list, would go some way to mitigating this disadvantage.

3.14 Another option is for the table to be included within the body of the guideline, either alone, or in addition to the list proposed above. Depending on how this can be formatted, this is likely to take up considerable space, but this may be deemed necessary by the Council given the importance of consistency of information across the requirements. This could look similar, pending any amendments and formatting, to **Annex A**.

**Question 3: Does the Council still wish to include both a list with drop-downs, and a table, or only a table within the guideline?**

**Question 4: Would the Council like the table of requirements to be embedded in the body of the guideline, or contained within a link which can be downloaded/opened in a new window and/or printed?**

3.15 As per the agreement in the October meeting, information against each of the requirements has been updated in a table with support from relevant MoJ policy teams and Probation. The intention of this update is to ensure that each requirement has a brief overview of what the offender will receive when this requirement is imposed, legislative information about the volume/length range, and considerations and factors that will be helpful to sentencers when perusing the requirements list. This update includes reference to the rehabilitative need and eligibility assessments made by Probation to ensure suitable and effective interventions/programmes are available and can be delivered in the time allowed. The updated table was considered by the Imposition working group, and an updated version of this requirements list can be seen in **Annex A**.

3.16 For the purposes of this discussion, it will be useful to focus on the information against each of the requirements in turn, rather than the presentation of the table itself, which may differ when published and for which options need to be considered.

**Question 5: What amendments does the Council wish to make to the information against each of the requirements in Annex A?**

- **Unpaid work requirement (UPW)**
- **Rehabilitation activity requirement (RAR)**
- **Programme requirement**
- **Prohibited activity requirement**
- **Curfew requirement**
- **Exclusion requirement**
- **Residence requirement**
- **Foreign travel prohibition requirement**
- **Mental health treatment requirement**
- **Drug rehabilitation requirement**
- **Alcohol treatment requirement**
- **Alcohol abstinence and monitoring requirement (where available)**
- **Electronic monitoring**

#### **4 EQUALITIES**

4.1 Equalities considerations will be considered in detail once an initial decision has been made on the above questions, in particular the formatting of the requirements list. It will be ensured that any formatting agreed will fulfil accessibility requirements.

#### **5 IMPACT AND RISKS**

This will be considered in full at a later date. Any risks around the accessibility of information suggested to be formatted differently in this paper can be considered in road testing.



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

**31 March 2023**  
**SC(23)31MAR06 – Motoring offences**  
**Rebecca Crane**  
**Ollie Simpson**  
**ollie.simpson@sentencingcouncil.gov.uk**

## **1 ISSUE**

- 1.1 Signing off current drafts of the motoring guidelines, subject to Council's view on the estimated impact of the guideline on dangerous driving.
- 1.2 Scope of the next motoring consultation.

## **2 RECOMMENDATIONS**

### **2.1 That:**

- Council sign off the motoring guidelines as revised post-consultation, subject to any further work required to finalise the resource assessment of the dangerous driving guideline;
- the scope of the next motoring consultation be:
  - revised aggravated vehicle taking guidelines;
  - revised vehicle licence/registration fraud guideline;
  - disqualification guidance; and
  - consequential changes to the unfit through drink/drugs guidelines.

## **3 CONSIDERATION (SIGN OFF)**

3.1 We have now considered all points related to the motoring guidelines on which we consulted last year. The guidelines as amended post-consultation are at **Annex A** with changes marked in red.

3.2 As a (non-exhaustive) summary of the main changes which we have made as a result of consultation responses and road testing:

- the culpability factors of dangerous driving guidelines have been altered:
  - removing “brief but obviously highly dangerous manoeuvre” and “engaging in a brief but avoidable distraction” from medium culpability and adding “obviously highly dangerous manoeuvre” to high culpability
  - adding specific reference to mobile phones and electronic devices at high and medium culpability;
  - removing “momentary lapse of concentration” from low culpability.
- amendments have been made to the aggravating and mitigating factors:
  - to refer to motorcyclists as vulnerable road users;
  - to raise the bar to “obstructed or hindered attempts to assist”, rather than just failing to help at the scene as an aggravating factor;
  - changing “impeccable” driving record to “good” driving record;
  - the mitigating factor “no previous convictions” has been removed for the “whilst disqualified” offences;
  - the reference to accident in the drug driving guideline is changed to “collision”
- there is wording in the causing injury/serious injury offences on the approach to multiple victims, similar to that found in the causing death guidelines.
- the sentencing levels for causing serious injury by careless driving and causing injury by wanton or furious driving have been adjusted downwards;
- in the drug driving guidelines we clarify that the high culpability “mixing” factor is activated even where one element does not meet the legal limit, remove the erroneous reference to diazepam and temazepam co-occurring, and warn against counting trace readings of alcohol or drugs;
- amended disqualification guidance, taking out the reference to not imposing lengthy disqualifications which may encourage reoffending, and expanding the guidance to situations where the offender is already serving a custodial sentence. I have also added a paragraph into the disqualification guidance for causing death by careless driving and causing serious injury by careless driving providing the principles for requiring an extended retest, based on that agreed for the draft aggravated vehicle taking offences.

3.3 One further possible addition to the aggravating factors in the causing death or causing serious injury guidelines could be “victim was providing a public service or

performing a public duty at the time of the offence, or was an emergency worker”. This was not raised in consultation, but is included in the current draft of the aggravated vehicle taking guidelines for death and injury.

3.4 However, that factor has particular relevance to the aggravated vehicle-taking offences, and adding it to the general motoring guidelines risks creating a hierarchy of victims based on occupation. In many cases the occupation of the victim will be entirely unconnected to the standard of driving. I therefore recommend not including it in these guidelines.

3.5 We have conducted some further re-sentencing exercises in the office following these changes. Although the post-consultation amendments did not change outcomes across the board some cases were affected, principally because of the changes to the dangerous driving culpability factors.

3.6 A few of these cases had the potential to move from medium to high culpability because a “brief but obviously highly dangerous manoeuvre” would now simply be classed as an “obviously highly dangerous manoeuvre”, and in one case because of the use of a mobile phone. However, as a counter balance some cases might have moved from Culpability B to C because they were clearly “brief manoeuvres” that could be classed as just over the threshold for dangerous driving.

3.7 In most cases our resentencing kept offences in the same category as at consultation stage, but I flag the potential for some recategorization, particularly in light of the wider discussion around impacts (see ‘impact and risks’ section below).

**Question 1: is Council content not to add “victim was providing a public service or performing a public duty at the time of the offence, or was an emergency worker” to the aggravating factors for the causing death or causing injury guidelines?**

**Question 2: (without prejudice to the later discussion) are there any further amendments which Council members would like to make at this stage, or any changes that Council members do not think have been reflected?**

## **4 IMPACT AND RISKS**

4.1 The draft resource assessment published alongside the consultation estimated significant impact on prison resources. We said then that the new causing death by dangerous driving guideline could result in a requirement for up to around 260 additional prison places, with around 20 additional prison places for causing death by careless driving when under the influence of drink or drugs, and around 80 additional prison places for

causing serious injury by dangerous driving. We are in the process of revising these figures for the final resource assessment, noting that for some of the more serious offences part of that assessment takes into account the two-thirds release provisions that would now apply following commencement of the Police, Crime, Sentencing and Courts Act 2022.

4.2 We did not quantify the impact caused by simple dangerous driving at the draft stage but noted that sentence outcomes using the draft guideline “are broadly in line with the outcomes given by sentencers prior to the guideline”. We also noted that there might be an increase in sentence length for offenders receiving a suspended sentence order and for some offenders sentenced to immediate custody. Although the increases in immediate custodial sentence lengths were small, we acknowledged that there was the potential for a large resource impact due to the fact that dangerous driving is a high volume offence. However, we urged caution as this was based on a very small sample of transcripts and we committed to doing further analysis.

4.3 We have now looked at more transcripts, done further analysis and reviewed the results of the research with sentencers and this has confirmed our initial findings that there could be a significant impact on prison places as a result of the revised guideline, driven by the fact this is a high volume offence (around 1,800 immediate custodial sentences were imposed in 2021, 41% of all 4,400 sentences). Analysts will present a more refined estimate at the meeting, but it has the potential to at least double the 360 prison places already quantified as part of this project.

4.4 Council may be comfortable with this. All sentences for dangerous driving are suspendable (38% of sentences imposed in 2021 were SSOs); we need to reflect the seriousness of the offending, where only luck means serious injury or death are avoided; we need to keep in proportion with causing death by dangerous driving, causing serious injury by dangerous driving and other offences; and consultees were generally content with the levels we proposed.

4.5 We will in any event continue work in April to refine this figure to ensure we have the most accurate picture of the projected impact on the prison population of the current draft. Getting the clearest picture possible is especially important here given the impact is relatively high and bearing in mind the capacity issues currently facing the prison estate.

4.6 If, however, the possible impact does give concern that the proposed guideline is increasing sentences more than intended, we could consider what effect further revisions to the guideline would have. For example, we could consider revising sentence levels down, which would a) reduce them below the levels of the equivalent aggravated vehicle taking guideline as currently drafted, which are equal to those in the draft dangerous driving



guideline, and b) bring them into proportion to the levels for [simple careless driving](#), which range from a Band A to a Band C fine. As an opening suggestion:

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

Arguably, however, these levels are too low given the culpability of offenders is precisely the same as where death or serious injury has occurred.

4.7 Beyond sentence levels, whilst keeping culpability elements consistent across all guidelines involving dangerous driving, there may be scope to look at harm factors. Most notably, the category 1 harm factor “circumstances of offence created a high risk of serious harm to others” arguably double-counts culpability - there is usually something inherent in high culpability dangerous driving which creates a high risk of serious harm - resulting in too many offences being placed by default in the top box. Removing it would mean high harm is focussed on harm *actually* caused.

4.8 Alternatively that factor could be amended. In the simple careless driving guideline we have “high level of traffic or pedestrians in vicinity” which effectively narrows down the circumstances where risk qualifies an offender for high harm. Or we could raise the bar, for example: “circumstances of offence created a **very** high risk of serious harm to others”, or “circumstances of offence created a **very** high risk of **death or serious injury** to others”.

4.9 I am unconvinced on the grounds of impact on prison places alone that we should change the guideline we consulted on. If Council *did* want to explore an amendment, I would recommend it being a change to that harm factor to make it more likely cases would fall into category A2 rather than A1.

4.10 Depending on what Council decides, we can present the results of the revised/final resource assessment back to Council on the papers ahead of the May meeting and could set aside some time for discussion then if Council thought revisions were needed in light of the updated figures. This should allow us then to publish the definitive guidelines in June ahead of coming into force on 1 July. However, if any further work is needed beyond that we would be looking to push publication back, with an in-force date of 1 October at the earliest.

**Question 3a: ahead of formally signing off the dangerous driving guideline, should we undertake further work to assess the impact of a revised version of the draft guideline?**

**Question 3b: if so, would you like to:**

- **adjust sentence levels downwards; or**
- **amend the harm factors by altering or removing the reference to risk in high harm?**

## **5 CONSIDERATION (SCOPE OF NEXT MOTORING CONSULTATION)**

5.1 In 2021 Council decided to split off aggravated vehicle taking offences from the other motoring offences being consulted on. The latest drafts of these guidelines, which take into account the revisions made to the other guidelines, are at **Annex B**.

5.2 The language on consumption of alcohol and/or drugs and evading police under culpability has been aligned with that of the other motoring guidelines. The aggravated vehicle taking dangerous driving guideline culpability factors now mirror the latest for dangerous driving (for example, mentioning electronic devices, and omitting “momentary lapse”). In aggravating factors, motorcyclists are added to the list of vulnerable road users, the bar “failing to assist” at the scene is raised to obstructing attempts to assist (understanding that offenders may be too shocked to assist themselves), and it is clarified that “passengers, including children” refers to passengers in the offender’s vehicle.

5.3 As currently drafted we are providing slightly different wording for the guidance related to multiple fatalities between the aggravated vehicle taking (death) guideline:

The starting points and category ranges below relate to a single offence resulting in a single death. Where another offence or offences arise out of the same incident or facts, concurrent sentences reflecting the overall criminality will ordinarily be appropriate.

Where more than one death is caused, it will be appropriate to make an upwards adjustment from the starting point within or above the relevant category range before consideration of other aggravating features. In the most serious cases, the interests of justice may require a total sentence in excess of the offence range for a single offence. See the Totality guideline and step six of this guideline

and the other motoring causing death guidelines:

Note: The table is for a single offence of aggravated vehicle taking causing death, resulting in a single fatality. 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 six of this guideline

This difference may be related to the impossibility of going outside the offence range for an offence with a 14 year maximum (though this is equally true of causing death by careless driving). We also do not have equivalent text for the aggravated vehicle taking (injury) guideline, which was in line with our initial approach on motoring generally. "Multiple victims" is currently an aggravating factor in both the death and injury aggravated vehicle taking guidelines.

**Question 4: does Council wish to harmonise the wording between all the motoring and aggravated vehicle-taking guidelines on the approach to take to multiple deaths and injured victims?**

5.4 There are further motoring-related matters which could be included within scope of this follow-up consultation. Firstly, Council considered that we should respond to the strength of feeling in consultation responses on the use of disqualification by considering further guidance for sentencers. This might take the form of starting points and ranges, and/or provide a more thorough set of factors to take into account in relation to the offender and the offence in setting a disqualification period.

5.5 A more discrete part of the consultation could be to revise the [vehicle licence/registration fraud magistrates guideline](#) which dates from 2008 and would, alongside the aggravated vehicle taking guidelines, be the last of the Sentencing Guidelines Council guidelines still in force to be revised.

5.6 The offence is triable either way. When heard summarily the maximum penalty is a fine; on indictment it is two years' imprisonment. There were around 120 offenders sentenced in 2021, and the majority (60 per cent) received fines. The average (median) fine in 2021 was £200. This guideline is really more related to fraud than motoring, but the link is

arguably close enough to include in scope, and this presents the likeliest means of updating this guideline.

5.7 The drug driving guidelines on which we consulted were based on the existing equivalent guidelines for unfit through drink or drugs. Some post-consultation amendments made at this point to the drug driving guidelines should probably be retrofitted to the unfit guidelines:

- clarifying that the high culpability factors apply to both driving *and* attempting to drive;
- changing the word “accident” to “collision” in aggravating factors;
- adding “alcohol or drugs consumed unknowingly” to the mitigating factors [arguably – there may be a case that anyone “unfit” should know that they are unfit]

5.8 There are discrepancies in the sentencing levels between in charge (excess alcohol) and in charge (unfit through drink and drugs): the former has a lower starting point and range at high seriousness (and a range between Band A and Band C fines at low seriousness). There is no clear reason why there should be a difference in the levels between these offences.

5.9 These are relatively minor changes, and we could simply announce that we are going to make them, without seeking views.

5.10 Issues around penalty points and offenders avoiding totting-up disqualifications arise frequently. Many respondents to the 2022 consultation raised the point, saying that the use of exceptional hardship should be restricted. The Council’s guidance on this was revised in 2020, and we are refining the guidance on prioritising a totting disqualification over another disqualification as part of the latest round of miscellaneous amendments. It is hard to see what more we can do in this area, so I would not recommend including anything on it in the forthcoming consultation.

**Question 5: do you agree the scope of the next motoring consultation should be:**

- **revised aggravated vehicle taking guidelines**
- **revised vehicle licence/registration fraud guideline**
- **disqualification guidance**
- **consequential changes to unfit through drink/drugs guidelines**

**Are there any other motoring-related matters Council members believe could be included?**



# External communication evaluation

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**February 2023**

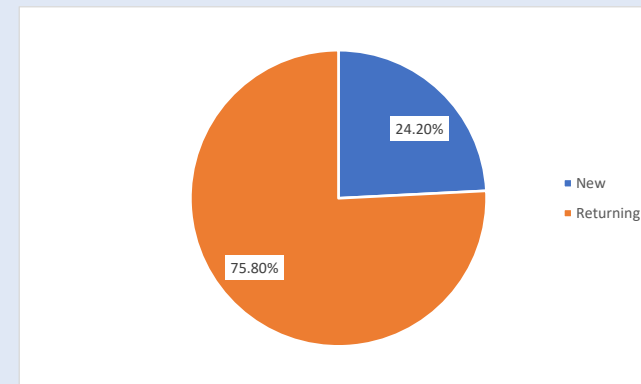
## Visits to [www.sentencingcouncil.gov.uk](http://www.sentencingcouncil.gov.uk)

	This month	Last month
Users*	151,233	461,862
Sessions per user	1.79	1.31
Pages per session	2.69	2.82
Ave time on site	4:26	02:20
Bounce rate**	55.95%	55.0%

## Announcements

8th	Criminal justice statistics produced across government – updated resource
14th	Publication of the sale of knives etc to persons under 18 data tables
15th	Sentencing guidelines for underage sale of knives published
22nd	Official statistics pre-announcement: review of trend analysis of the Imposition guideline

## Visitors: new and returning



\*Users: Number of people who have visited the website at least once within the date range

\*\*Bounce rate: Percentage of people who land on a page on the website, then leave

Most visited pages	Pageviews	Unique Pageviews
Magistrates' court guidelines search page	122,374	54,228
Crown Court guidelines homepage	25,682	17,114
Magistrates' court homepage	21,708	14,822
/Homepage	21,416	16,904
/fine-calculator/	19,295	12,890
/offences/magistrates-court/item/common-assault- racially-or-religiously-aggravated-common-assault-on-emergency-worker/	14,958	12,246
/offences/magistrates-court/item/excess-alcohol-driveattempt-to-drive-revised-2017/	11,763	9,618
Common offence illustrations	10,617	6,343
Common offence illustrations: assault*	10,039	9,024
/offences/magistrates-court/item/assault-occasioning-actual-bodily-harm- racially-or-religiously-aggravated-abh/	9,502	8,428

Most visited guidelines	
<b>Magistrates</b>	Common assault / Racially or religiously aggravated common assault/ Common assault on emergency worker
<b>Crown Court</b>	Causing grievous bodily harm with intent to do grievous bodily harm / Wounding with intent to do GBH

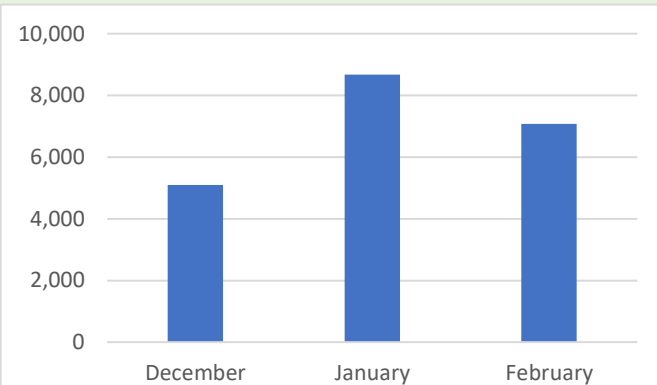
Top searches
Theft
Assault
Speeding
Burglary
Dangerous driving

\* Outlines: offence descriptions on the public-facing pages of the website: [www.sentencingcouncil.org.uk/outlines/](http://www.sentencingcouncil.org.uk/outlines/)

## Subscribers

**+15 = 1,266**

## Video views per month



## Most watched video



How offenders are sentenced in England and Wales

## Watch time average

**02:20**

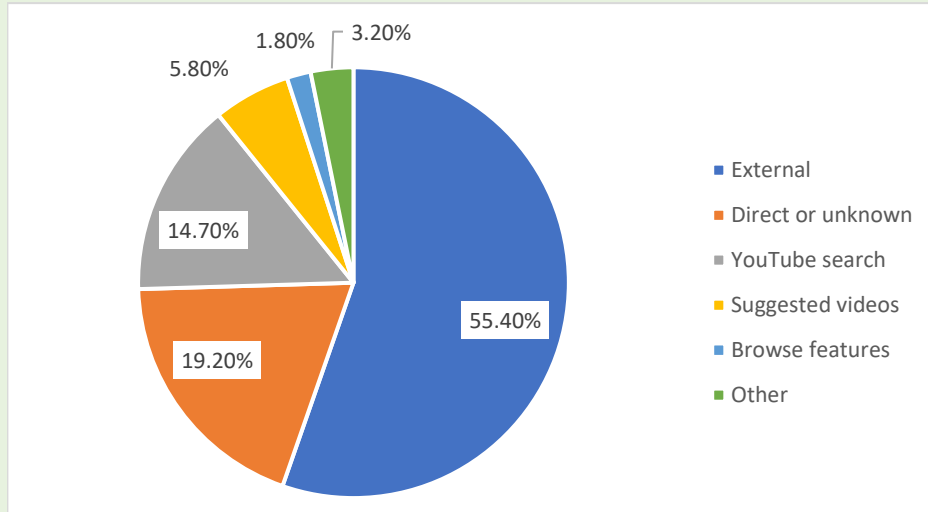
## Impressions\*

**23,125**

\* Impressions: Number of times our video thumbnails are shown to viewers on YouTube



## How viewers find our videos



## YouTube search: terms used

1	Crown Court
2	Magistrates court UK
3	Magistrate
4	Crown Court sentencing UK
5	Pleading guilty in court

- External: Traffic from websites and apps embedding or linking to our videos on YouTube (60% [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk))
- Direct or unknown: using direct link or bookmark to our YouTube channel or unknown
- Suggested videos: suggested to users viewing other videos on YouTube

### Subscribers

**+275 = 5,781**

### Highest engagement\*

Official statistics pre-announcement: review of trend analysis of Imposition guideline

### All bulletins

<b>Sent</b>	<b>3</b>
<b>Delivered</b>	<b>16,290</b>
<b>Opened</b>	<b>30.3%</b>
<b>Engagement rate*</b>	<b>4.2%</b>

### Most clicked-through links

Criminal justice statistics produced across government – updated resource

Official statistics pre-announcement: Review of trend analysis of Imposition guideline

Sentencing guidelines for underage sale of knives published

- Engagement rate: % of recipients clicking through at least one link in the bulletin(s)
- Highest engagement: topic of most “clicked through” bulletin

## Followers

**+18 = 6,086**

## Highlights

	Tweets	Impressions	Mentions	Profile visits
This month	3	1,734	98	652
Last month	19	18,700	*	*

(\*these figures not available 1/23)

## Top tweet

Report of our 2023 seminar out now – discussions covered equality and diversity in sentencing, sentencing young adults, purposes of sentencing, IPPs and the custody threshold plus an update from the Council. Co-hosts [@CityLawSchool](#) [@SentencingAcad](#) [bit.ly/3xZo2lc](https://bit.ly/3xZo2lc)

Impressions: 745

Total engagements: 32

## Top mention

This awful case highlights an urgent need to review sentencing for coercive and controlling behaviour. 4 years is not commensurate with the seriousness of this offence. 20 years of this level of abuse will have a long lasting impact on the victim [@SentencingCCL](#) [@SentencingAcad](#)

**Victims' Commissioner London @LDNVictimsComm**

Claire Waxman OBE addresses barriers to justice and support to help improve victims' experiences [#VictimsVoice](#). 19.2k followers

- Impressions: number of times a tweet has been seen
- Mentions: mentions of the Council in other people's tweets
- Profile visits: number of times people have clicked through our tweets to see the Council's twitter profile
- Engagements: number of time someone has liked, retweeted, opened or clicked a link in a tweet or viewed our profile

Blank page