

18 January 2023

Dear Members

Meeting of the Sentencing Council – 27 January 2023

The next Council meeting will be held in the **Queens Building Conference Suite, 2nd Floor Mezzanine** at the Royal Courts of Justice, on Friday 27 January 2023 at 9:45. This will be a hybrid meeting, so a Microsoft Teams invite is also included below..

A security pass is **not** needed to gain access to this meeting room and members can head straight to the room. Once at the Queen's building, go to the lifts and the floor is **2M**. Alternatively, call the office on 020 7071 5793 and a member of staff will come and escort you to the meeting room.

The agenda items for the Council meeting are:

- | | |
|---|-------------|
| ▪ Agenda | SC(23)JAN00 |
| ▪ Minutes of meeting held on 16 December | SC(22)JAN01 |
| ▪ Action log | SC(23)JAN02 |
| ▪ Immigration | SC(23)JAN03 |
| ▪ Miscellaneous amendments | SC(23)JAN04 |
| ▪ Animal cruelty | SC(23)JAN05 |
| ▪ Theft | SC(23)JAN06 |
| ▪ Perverting the course of justice | SC(23)JAN07 |
| ▪ Motoring offences | SC(23)JAN08 |
| ▪ Reduction in sentence for a guilty plea | SC(23)JAN09 |

The external communication evaluation for December 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

Blank page

COUNCIL MEETING AGENDA

**27 January 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 – 10:45 | Immigration - presented by Vicky Hunt (paper 3) |
| 10:45 – 11:30 | Miscellaneous amendments - presented by Ruth Pope (paper 4) |
| 11:30 - 11:45 | Break |
| 11:45 – 12:30 | Animal cruelty - presented by Vicky Hunt (paper 5) |
| 12:30 – 13:00 | Theft - presented by Mandy Banks (paper 6) |
| 13:00 – 13:30 | Lunch |
| 13:30 -14:30 | Perverting the course of justice - presented by Mandy Banks (paper 7) |
| 14:30- 14:45 | Break |
| 14:45 – 15:45 | Motoring offences - presented by Ollie Simpson (paper 8) |
| 15:45 – 16:15 | Reduction in sentence for a guilty plea - presented by Ruth Pope (paper 9) |

Sentencing Council

COUNCIL MEETING AGENDA

Blank page

MEETING OF THE SENTENCING COUNCIL

16 DECEMBER 2022

MINUTES

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
Maura McGowan
Beverley Thompson
Richard Wright

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

Members of Office in
attendance: Steve Wade
Jessie Stanbrook
Ruth Pope
Ollie Simpson

1. MINUTES OF LAST MEETING

- 1.1 The minutes from the meeting of 18 November 2022 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman noted that this was Maura McGowan's last meeting as a High Court member of the Sentencing Council. He thanked her for all her valuable contributions over the last six years.

3. DISCUSSION ON CHILD CRUELTY – PRESENTED BY OLLIE SIMPSON, OFFICE OF THE SENTENCING COUNCIL

- 3.1 The Council considered responses to the consultation on revisions to the child cruelty guideline. Given the balance of responses were in favour of the amendments to the guideline that were consulted on, the Council agreed to publish those amendments without making any changes.

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

- 4.1 The Council considered the responses to the consultation and noted that respondents were generally supportive of the proposals with some making helpful suggestions for changes.
- 4.2 In response to a suggestion, the Council agreed to amend the wording on disqualification in the drug driving guidance and the excess alcohol, unfit through drink or drugs (drive/attempt to drive) and fail to provide specimen for analysis (drive/attempt to drive) guidelines.
- 4.3 The Council considered suggestions for changes to the proposed wording obligatory disqualification guidance and agreed to make two suggested changes. The Council also agreed to some changes suggested by respondents to the wording on minimum terms.

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

- 5.1 The Council considered responses to the consultation on revised motoring guidelines, looking particularly at culpability elements and aggravating and mitigating factors.
- 5.2 A number of changes were made to the draft culpability factors for dangerous and careless driving offences, including some relating to drink and drug driving, driving being impaired as a result of medical conditions and the use of mobile phones and other devices. Refinements were also made to the wording of step two factors.

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

- 6.1 The Council considered three potential new sections for inclusion in the Imposition of custodial and community sentences guideline: deferred sentencing, the five purposes of sentencing and points of principle on issues affecting specific cohorts of offenders.
- 6.2 The Council agreed to include reference to deferred sentencing at the beginning of the guideline, with more work to be done on the level of detail of the information to be included. It was also agreed to include reference to the five purposes of sentencing, with further consideration to be given to the information attached to each of these purposes.
- 6.3 Finally, it was agreed that the Imposition guideline should also include direct reference to the Equal Treatment Bench Book, a direct link to relevant overarching guidelines and points of principle on issues affecting sentencing female offenders, to be drafted at a later date.

Blank page

SC(23)JAN02 January Action Log

ACTION AND ACTIVITY LOG – as at 19 January 2023

	Topic	What	Who	Actions to date	Outcome
SENTENCING COUNCIL MEETING 23 September 2022					
1	False Imprisonment and Kidnap offences	Mandy to devise a combined false imprisonment and kidnap guideline to be used in a resentencing exercise by Judicial Council members to test the viability of such a guideline for both offences with one sentence table. Results of this exercise to be discussed at the next meeting for this guideline (March).	Judicial members (minus Jo king and plus Richard Wright.) to take part in the resentencing exercise	ACTION ONGOING: The majority of Judicial members have completed the resentencing exercise but there is still time for it to be completed by all taking part. Mandy then to bring the results to full Council in due course.	
SENTENCING COUNCIL MEETING 18 November 2022					
2	Animal Cruelty	SL to share information from District Judges' training materials on disqualifying offenders from keeping animals	Stephen Leake		

Blank page

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

27 January 2023
SC(23)JAN03 – Immigration
Stephen Leake
Vicky Hunt
vicky.hunt@sentencingcouncil.gov.uk

1 ISSUE

1.1 The Council is invited to consider commencing work on an Immigration guideline and, if in agreement, to consider the offences that should be in scope.

2 RECOMMENDATION

2.1 That the Council agree to commence work on an immigration guideline and the proposed scope.

3 CONSIDERATION

3.1 In May 2019 the Council commenced work on a package of guidelines which included modern slavery and immigration. In 2020 it was decided that the guidelines should be separated to prioritise the work on modern slavery and leave immigration until the end of the Brexit implementation period to see what changes might result for immigration offences. In addition, the Council was aware that new legislation was being proposed in this area under the, then named, Nationality and Borders Bill. However, the Council also indicated that it would not wish to delay unduly producing guidelines in this area.

3.2 As the Brexit implementation period has passed, the new legislation is largely in force and there is space within the work schedule, we consider that now is a good time to return to the immigration guidelines.

Question 1: Does the Council agree to start work on immigration guidelines?

3.3 Should the Council agree to commence work on immigration guidelines, the first issue to consider will be the scope of the package.

3.4 The scope was originally discussed and agreed back in May 2019 and confirmed in 2020. The table below shows the offences that were previously agreed, along with the volumes that were known at the time.

LEGISLATION	Offence Legislation	2018	2019	2020
Immigration Act 1971 s25(1) and (6)	Do an act to facilitate the commission of a breach of UK immigration law by a non-UK national.	226	184	107
Immigration Act 1971 s24A(1)(a), s24A(1)(b) and (3)	Seek / obtain leave to enter / remain in UK by deceptive means - immigration. Secure avoidance of enforcement action by deceptive means	12	6	6
Immigration and Asylum Act 1999 s91(1)	Provide an immigration service in contravention of a prohibition. Provide an immigration service in contravention of a restraining order.	7	4	3
Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 s2(1)	Entering the UK without a passport	1	0	0
Identity Documents Act 2010 s4	Possessing or controlling identity documents with intent	409	361	235
Identity Documents Act 2010 s6	Possessing or controlling a false or improperly obtained or another person's identity document	110	87	68

3.5 Two of the offences that were previously included in scope (as seen above) have very low volumes. The first is the offence of providing an immigration service in contravention of a prohibition, (s91(1) Immigration and Asylum Act 1999). This offence was included following a request from the Office of the Immigration Services Commissioner (OISC). However, it is understood that the OISC is content that our general guideline could be used to deal with these cases. The latest data (**Annex A**), shows that these offences continue to be very low in volume.

The second is the offence of entering the UK without a passport, (s2(1) Asylum and Immigration (Treatment of Claimants, etc.) Act 2004). This offence continues to be very low volume with zero cases sentenced since 2019. The CPS have said that this offence is not aimed at those entering the UK without a passport or identity document, but at those who fail to provide them at a leave or asylum interview. It is used to discourage people from destroying identity documents to increase their chances of an asylum claim or frustrate their removal. The CPS have indicated that there are challenges in prosecuting such cases which explains why volumes are so low.

3.6 It is, therefore, proposed that both of these two low volume offences are removed from the scope of this project.

Question 2: Does the Council agree to remove these two offences from the scope of the immigration project?

3.7 It is proposed that the remaining offences remain within scope as they are either key offences or have sufficient volume to justify a guideline.

Question 3: Does the Council agree to keep the remaining offences within scope?

Changes to Legislation

3.8 Since 2020, a number of changes have been made to the Immigration Act 1971 by the Nationality and Borders Act 2022 (NABA).

3.9 NABA increased the statutory maximum penalty for the section 25 (facilitating the commission of a breach of immigration law), and section 25A (facilitating entry by asylum seekers) Immigration Act 1971 offences raising them from 14 years to life imprisonment.

3.10 The Act also amended the offence of knowingly entering the UK in breach of a deportation order (section 24(1)(a) of the Immigration Act 1971), which was summary only, by splitting it into a number of new offences with statutory maximum penalties of 4-5 years.

- knowingly entering the UK in breach of a deportation order (maximum: 5 years' imprisonment); (section 24(A1))
- knowingly entering the UK without permission to do so (maximum 4 years' imprisonment); (section 24(B1))
- has only limited leave to enter or remain and knowingly remains beyond the time limited- Overstayers (maximum: 4 years' imprisonment); (section 24(C1))
- knowingly arriving in the UK without valid entry clearance (maximum 4 years' imprisonment); (section 24(D1))
- is required not to travel to the UK without an Electronic Travel Authorisation (ETA) and knowingly arrives without such an ETA (maximum 4 years' imprisonment); (section 24(E1)).

3.11 The Council had previously agreed not to include any offences that were summary only and so the pre-NABA offence had never been included within scope. However, as the

new offences set out above have a statutory maximum of 4-5 years the Council may wish to include some, or all of them.

3.12 Some of the s24 offences may be considered controversial as they focus on those seeking to enter the country rather than traffickers, and the s25A offence of assisting asylum seekers to enter the UK has been amended to remove the requirement that assistance be for gain.

3.13 The s24(E1) Immigration Act 1971 offence has not yet come into force (it is expected to do so later this year). The other s24 offences only came into effect in June 2022 and so data is very limited. The CPS have, however been able to share some data which shows the number of convictions from April 2022 to March 2023 for some of the offences.

Offence	Convictions
Knowingly enters the UK without leave (s24(B1) Immigration act 1971) Combined with Arrives in the UK without valid entry clearance (s24(D1) Immigration act 1971)	Total 86 (includes 23 small boat cases)
Knowingly entering the UK in breach of a deportation order (s24(A1) Immigration act 1971)	43
Overstayers (s24(C1) Immigration act 1971)	0

3.14 The CPS' have informed us that the number of convictions since NABA came into effect have risen significantly, mostly attributed to a greater response to the small boats' crisis. For this reason, the CPS say that they would welcome guidelines on all NABA offences.

3.15 The CPS also indicate that it would be useful to have guidelines for the two facilitation offences under section 25 (section 25 facilitating the commission of a breach of immigration law, and section 25A facilitating entry by asylum seekers) as they now both carry life imprisonment. The Council had previously agreed that s25 should be included in scope but not s25A (possibly due to low volume).

3.16 Including all of these offences (an additional 6) would significantly increase the size of the project. The Council could, however, choose to only include those offences with

sufficient volume: (s24(A1) Immigration act 1971, s24(B1) Immigration act 1971 and s24(D1) Immigration act 1971).

Question 3: Does the Council want to include all offences created/ amended by NABA namely, s24(A1) Immigration act 1971; s24(B1) Immigration act 1971; s24(C1) Immigration act 1971; s24(D1) Immigration act 1971; s24(E1) Immigration act 1971; and s25A immigration Act 1971?

Other Offences

3.17 In considering scope this time around we have obtained up to date statistics on a far wider set of immigration and associated offences. The table produced by the Analysis and Research team can be seen at **Annex A**. The offences that were previously agreed to be in scope have been highlighted.

3.18 As can be seen from the table, the offences of *Obstructing engines or carriages on railways* (s36, Malicious Damage Act 1861) and to a lesser extent, *Doing or omitting anything to endanger passengers by railway* (s34, Offences Against the Person Act 1861) have reasonably high volumes. Whilst both of these offences have in the past been treated as immigration offences, as they were used at a time when migrants were entering through the channel tunnel and disrupting Eurostar rail services, it seems that such offending is not as common anymore and so these volumes are likely to relate to non-immigration type offending. For this reason, it is not proposed that they be included in the scope of this project.

4 EQUALITIES

We will consider equalities issues in the usual way as part of guideline development and publish breakdowns of the demographics of offenders. We will consider the demographic data as part of the project.

5 IMPACT AND RISKS

5.1 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.

5.2 In addition, as outlined above, some of these offences may be viewed as controversial and so the production of guidelines in this area will require careful handling.

Blank page

Number of adult offenders sentenced by legislation/ offence, 2017 to 2021

Source: Court Proceedings Database, Ministry of Justice

Legislation	Offence	2017	2018	2019	2020	2021
a. Immigration Act 1971 s24A(1)	Seek / obtain leave to enter / remain in UK by deceptive means - Deception	22	12	6	6	5
b. Immigration Act 1971, s25A	Facilitating entry by asylum-seekers to the UK	9	6	3	2	2
c. Immigration Act 1971 s25(1) and (6), Criminal Law Act 1977 s1(1)	Do an act or conspire to do an act to facilitate the commission of a breach of UK immigration law by a non EU person/ non UK national	237	226	184	107	142
d. Immigration Act 1971, s26A ss(3)(a), (b), (d), (e), (f) and (g)	Making etc. a false registration card	0	0	0	0	0
e. Immigration Act 1971, s26A ss (c) and (h)	Has false article etc in possession	0	0	0	0	0
f. Immigration Act 1971, s26B	Possession of immigration stamp	0	0	0	0	0
g. Immigration, Asylum and Nationality Act 2006, s21	Knowingly employing adults subject to immigration control	2	0	0	0	0
h. Identity Documents Act 2010 s4	Possessing or controlling identity documents with intent	625	409	360	235	247
i. Identity Documents Act 2010, s5	Apparatus designed or adapted for the making of false identity documents	4	4	1	0	4
j. Identity Documents Act 2010 s6	Possession of false identity documents	131	110	87	67	77
k. Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 s35(3) and (4)	Failure to cooperate with arrangements for removal	9	3	4	2	1
l. Asylum and Immigration (Treatment of Claimants, etc.) Act 2004 s2(1) and (9)	Entering the UK without a passport	1	1	0	0	0

m. Immigration and Asylum Act 1999, s84 and s91(1)	Provide an immigration service in contravention of a prohibition/ restraining order	3	7	4	3	5
n. Malicious Damage Act 1861, s36	Obstructing engines or carriages on railways	75	93	92	73	67
o. Malicious Damage Act 1861, s35	Placing wood etc. on railway, with intent to obstruct or overthrow any engine etc.	0	1	4	0	1
p. Offences Against the Person Act 1861, s32	Placing wood etc. on a railway, with intent to endanger passengers	0	0	0	1	0
q. Offences Against the Person Act 1861, s34	Doing or omitting anything to endanger passengers by railway	7	17	10	12	8

Sentencing Council meeting:
Paper number:

Lead Council member:
Lead official:

27 January 2023
**SC(23)JAN04 – Miscellaneous
Amendments**
Jo King
Ruth Pope
Ruth.pope@sentencingcouncil.gov.uk

1 ISSUE

1.1 This is the sign off meeting for the miscellaneous amendments for 2022-2023. A response document setting out the changes will be published in March and the changes will be made to the digital guidelines on 1 April 2023.

2 RECOMMENDATION

2.1 The Council is asked to consider the remaining issues arising from the consultation and agree any changes for publication.

3 CONSIDERATION

3.1 We received 24 responses to the consultation 18 from individuals and six from organisations. The majority were supportive of the proposals and some made helpful suggestions for changes. The more critical responses tended to focus on issues that were outside the scope of the consultation.

Disqualification from driving

3.2 At the December meeting the Council agreed revised wording on disqualification in the drug driving guidance and the excess alcohol, unfit through drink or drugs (drive/attempt to drive) and fail to provide specimen for analysis (drive/attempt to drive) guidelines. The agreed wording is:

- Must endorse and disqualify for at least 12 months
- Must disqualify for at least 2 years if offender has had two or more disqualifications for periods of 56 days or more **imposed** in the 3 years preceding the **commission** of the current offence – refer to [disqualification guidance](#) and consult your legal adviser for further guidance
- Must disqualify for at least 3 years if offender has been **convicted** of a relevant offence in the 10 years preceding the **commission** of the current offence – refer to [disqualification guidance](#) and consult your legal adviser for further guidance
- [Extend disqualification](#) if imposing immediate custody

3.3 Changes to the obligatory disqualification guidance were also agreed as set out below:

1. Obligatory disqualification

Note: The following guidance applies to offences with a 12 month minimum disqualification.

Some offences carry obligatory disqualification for a minimum of 12 months (Road Traffic Offenders Act (“RTOA”) 1988, s.34). The minimum period is automatically increased where there have been certain previous convictions or disqualifications.

An offender must be disqualified for at least two years if more than one disqualification of at least 56 days has been imposed on them in the three years preceding the commission of the offence (RTOA 1988, s.34(4)(b)). The following disqualifications are to be disregarded for the purposes of this provision:

- interim disqualification;
- disqualification where vehicle used for the purpose of crime;
- disqualification for stealing or taking a vehicle or going equipped to steal or take a vehicle.

An offender must be disqualified for at least three years if he or she is convicted of one of the following offences:

- driving or attempting to drive while unfit;
- driving or attempting to drive with excess alcohol;
- driving or attempting to drive with concentration of specified controlled drug above specified limit;
- failing to provide a specimen (drive/attempting to drive).

and has within the 10 years preceding the commission of the offence been convicted of any of those offences or causing death by careless driving when under the influence of drink or drugs (RTOA 1988, s.34(3)):

The individual offence guidelines indicate whether disqualification is mandatory for the offence and the applicable minimum period. **Consult your legal adviser for further guidance.**

3.4 At the December meeting a query was raised as to whether a non-UK disqualification would be relevant under section 34(4)(b) which raises the minimum disqualification to two years. The only non-UK disqualifications that are recognised in courts in England and Wales are those from Ireland. There are also provisions for mutual recognition of disqualifications between Great Britain and Northern Ireland, the Isle of Man, Gibraltar and the Channel Islands. A British driving licence can be endorsed with a disqualification imposed in these jurisdictions and in those circumstances the disqualification would presumably be relevant under 34(4)(b). It seems that any other evidence of previous convictions or disqualifications would not be caught by the mandatory requirements to impose a longer disqualification but courts would be justified in taking them into account when deciding the length of the disqualification.

3.5 However, I have not been able to find an authoritative source for what exactly the legal implications of non-UK disqualifications or convictions are and so am unable to propose suitable wording to add to the guidance. If the Council wishes to add a note on this issue, further work could be done and the results circulated by email. If uncontroversial the note could be added this year, if not, it could be consulted on for the next round of miscellaneous amendments.

Question 1: Does the Council wish to add a note regarding non-UK disqualifications?

3.6 The Council agreed to retain the consultation versions of the discretionary and ‘totting up’ disqualification guidance.

‘Totting-up’ guidance:

Incurring 12 or more penalty points means a minimum period of disqualification must be imposed (a ‘totting up disqualification’) – s.35 Road Traffic Offenders Act (RTOA) 1988. Points are **not** to be taken into account for offences **committed** more than three years before the **commission** of the current offence – s.29 RTOA 1988.

[...]

The court should first consider the circumstances of the offence, and determine whether the offence should attract a [discretionary period of disqualification](#). But the court must note the statutory obligation to disqualify those repeat offenders who would, were penalty points imposed, be liable to the mandatory “totting” disqualification and, unless the court is of the view that the offence should be marked by a period of discretionary disqualification in excess of the minimum totting up disqualification period, **the court should impose penalty points rather than discretionary disqualification** so that the minimum totting up disqualification period applies.

Discretionary disqualification guidance:

In some cases in which the court is considering discretionary disqualification, the offender may already have sufficient penalty points on **his or her** licence that **he or she** would be liable to a ‘totting up’ disqualification if further points were imposed. In these circumstances, unless the court is of the view that the offence should be marked by a period of discretionary disqualification in excess of the minimum totting up disqualification period, the court should impose penalty points rather than discretionary disqualification so that the minimum totting up disqualification period applies ([see ‘totting up’](#)).

3.7 The only issue that remained to be resolved was raised by a judge who suggested replacing ‘he or she’ with ‘they’ and ‘his or her’ with ‘their’. This ties in with a suggestion we have had for being more consistent and inclusive in the use of personal pronouns in guidelines.

3.8 A search through guidelines and associated materials has shown that gendered pronouns are used in various circumstances. In some cases the guidelines are quoting from

legislation. For example, in the [Bladed articles and offensive weapons - possession](#) guideline it states:

*NB an offensive weapon is defined in legislation as ‘any article made or adapted for use for causing injury, or is intended by the person having it with **him** for such use’. A highly dangerous weapon is, therefore, a weapon, including a corrosive substance (such as acid), whose dangerous nature must be substantially above and beyond this. The court must determine whether the weapon is highly dangerous on the facts and circumstances of the case.

3.9 Where the guidelines are using statutory language, no change is proposed.

3.10 In other situations using ‘they’ or ‘their’ may be preferable. A selection of examples are provided below:

Wording	Where found
<ul style="list-style-type: none"> • Where the investigation has been hindered and/or other(s) have suffered as a result of being wrongly blamed by the offender, this will make the offence more serious. • This factor will not be engaged where an offender has simply exercised his or her right not to assist the investigation or accept responsibility for the offending. <p>When sentencing young adult offenders (typically aged 18-25), consideration should also be given to the guidance on the mitigating factor relating to age and lack of maturity when considering the significance of such conduct.</p>	<p>Expanded explanation for aggravating factor ‘Blame wrongly placed on others’</p> <p>This is used in around 20 guidelines.</p>
<p>The order requires the offender to report to a police station within five days, may require the offender to surrender his or her passport, and may impose requirements on the offender in relation to any regulated football matches.</p>	<p>Explanatory materials on Football banning orders in MCSG</p>
<p>Where the offender’s living expenses are substantially lower than would normally be expected, it may be appropriate to adjust the amount of the fine to reflect this. This may apply, for example, where an offender does not make any financial contribution towards his or her living costs.</p> <p>...</p> <p>Where there is reason to believe that an offender’s potential earning capacity is greater than his or her current income, the court may wish to adjust the amount of the fine to reflect this</p>	<p>Explanatory materials on assessment of income in MCSG</p>

<p>Confiscation A confiscation order may be made by the Crown Court in circumstances in which the offender has obtained a financial benefit as a result of, or in connection with, his criminal conduct.</p>	<p>Offences with a Terrorism connection-Guidance Additional guidance – dropdown</p>
--	---

3.11 In other situations it may be preferable to revise the wording to avoid the need for a pronoun at all. Some suggested examples are:

Wording	Where found
<ul style="list-style-type: none"> • Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) • Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability) 	<p>In around 20 sexual offences guidelines</p>
<p>The assessment of psychological harm experienced by the victim beyond this is for the sentencer. Whilst the court may be assisted by expert evidence, such evidence is not necessary for a finding of psychological harm, including severe psychological harm. A sentencer may assess that such harm has been suffered on the basis of evidence from the victim, including evidence contained in a Victim Personal Statement (VPS), or on his or her observation of the victim whilst giving evidence.</p>	<p>In an expanded explanation for the harm factor ‘Severe psychological or physical harm’ in 11 sexual offences guidelines</p>
<p>Victim forced to commit criminal offences (whether or not he/she would be able to raise a defence if charged with those offences), where not taken into account at step 1.</p>	<p>Aggravating factor in the Slavery, servitude and forced or compulsory labour/ Human trafficking guideline</p>

3.12 In the first and third example it might be preferable to replace ‘his or her’ with ‘the victim’s’ and in the second example with ‘the sentencer’s’.

3.13 The suggested changes would not alter the meaning of guidelines and so could be made without consultation. The changes would be logged and notified to publishers in accordance with our [minor revisions policy](#). Reference to the changes could also be made in the response to consultation to the miscellaneous amendments.

Question 2: Does the Council wish to avoid gendered pronouns in guidelines and associated materials?

Question 3: If so, should gendered pronouns be retained where they reflect statutory language?

Question 4: In other cases does the Council agree with the approach outlined at 3.10 and 3.12 above?

Question 5: Should any changes be made without consultation?

Minimum sentences

3.14 At the December meeting the Council agreed to some changes suggested by respondents to the wording on exceptional circumstances across the affected guidelines:

- Bladed articles and offensive weapons – possession
- Bladed articles and offensive weapons – threats
- Bladed articles and offensive weapons (possession and threats) – children and young people
- Supplying or offering to supply a controlled drug/ Possession of a controlled drug with intent to supply it to another
- Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug
- Domestic burglary
- Aggravated burglary

3.15 It was pointed out to us in December that the wording on the website did not reflect the statutory wording for all the offences. Specifically, in the domestic burglary guideline it said ‘the court is of the opinion that there are exceptional circumstances that relate to the offence or to the offender’ where it should say ‘the court is of the opinion that there are exceptional circumstances that relate to **any of the offences** or to the offender’ (emphasis added). This error has been corrected on the website and care will be taken to ensure that the revised versions reflect the statutory wording in all cases.

3.16 There were a few additional comments from respondents on the proposed wording in specific guidelines. A magistrate commented on the [Bladed articles and offensive weapons \(possession and threats\) - children and young people guideline](#). He asked: ‘Has consideration been given, in the exceptional circumstances section, to the young person under controlling or cohesive (sic) behaviour from adults or gang-related pressures?’

3.17 The guideline (both currently and in the proposed version) contains a list of matters to have regard to when considering the welfare of the child in deciding whether to impose the minimum term:

- any mental health problems or learning difficulties/disabilities;
- any experiences of brain injury or traumatic life experience (including exposure to drug and alcohol abuse) and the developmental impact this may have had;

- any speech and language difficulties and the effect this may have on the ability of the young person (or any accompanying adult) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction;
- the vulnerability of young people to self harm, particularly within a custodial environment; and
- the effect on young people of experiences of loss and neglect and/or abuse.

3.18 The mitigating factors in the guideline include ‘Participated in offence due to bullying, peer pressure, coercion or manipulation’. It could, therefore, be argued that this type of situation is covered by factors in the guideline.

3.19 A barrister responding to the consultation queried the use of the word ‘arbitrary’ in the test for exceptional circumstances saying, ‘The sentence is not arbitrary if it is in accordance with the law and Wednesbury reasonable’. The wording we consulted on was:

Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.

3.20 This wording is used across all the guidelines that currently have the ‘exceptional circumstances’ test and is taken from case law relating to firearms (R v Rehman [2005] EWCA Crim 2056) which in turn reflects human rights case law under article 5 of the ECHR. No other respondents questioned the use of the term and no change is proposed.

3.21 An individual respondent questioned the reference to ‘a significant period of time between the offences’ in the [Bladed articles and offensive weapons \(possession and threats\) - children and young people guideline](#) saying:

‘Where there has been a significant period of time between the offences’ is not an exceptional circumstance within the meaning of the legislation in my view. Furthermore, a ‘significant period of time’ is not specific enough and may lead to serious inconsistencies in sentencing. As this guideline applies to offenders aged 16 or 17 only (spanning just 2 years), it is difficult to see how an ‘exceptionally significant period of time’ could arise in such cases anyway.

It should be removed from the guideline, particularly in the context of offences that cause high levels of harm and concern among young people and adults alike.

Where exceptional circumstances are found in relation to the young person, if a further offence is committed, the presumption should be that the previous exceptional circumstance is no longer exceptional and the minimum sentence should be imposed, wording should be added to this effect.

3.22 The respondent repeated the point in relation to adult guidelines saying:

Again, what period of time between the offences would be so exceptional as to justify not imposing the minimum sentence? Again it should not usually be relevant as a consideration. Perhaps the guideline should give an idea as to what period of time may constitute exceptional circumstances, or remove it from the guideline. If

parliament had intended for there to be a maximum period of time after which the minimum sentence for a further offence shouldn't apply, it would have legislated to that effect.

3.23 The point made about the guideline for children and young people spanning just two years is slightly misconceived. While the minimum term provisions only apply to those aged 16 and over, the previous conviction could predate the offender's sixteenth birthday. The Council may feel that particularly for children and young people the passage of time is a very relevant consideration.

3.24 More generally, it should be noted that the proposed wording does not say that a gap between offences will amount to exceptional circumstances – it says that it will be a relevant consideration along with the seriousness of the previous offence.

3.25 The point about exceptional circumstances having been found once leading to a presumption that the same circumstances are not exceptional for a subsequent conviction is valid. However, the Council may feel that this is implicit in the wording agreed in December for exceptional circumstances in the adult guidelines:

Principles

The circumstances must truly be exceptional. Circumstances are exceptional if the imposition of the minimum term would result in an arbitrary and disproportionate sentence.

It is important that courts adhere to the statutory requirement and do not too readily accept that the circumstances are exceptional. A factor is unlikely to be regarded as exceptional if it would apply to a significant number of cases.

The court should look at all of the circumstances of the case taken together. A single striking factor may amount to exceptional circumstances, or it may be the collective impact of all of the relevant circumstances. The seriousness of the previous offence(s) and the period of time that has elapsed between offences will be a relevant consideration.

The mere presence of one or more of the following should not **in itself** be regarded as exceptional:

- One or more lower culpability factors
- One or more mitigating factors
- A plea of guilty

Question 6: Is the Council satisfied with the wording relating to the previous offence(s)?

4 EQUALITIES

4.1 No significant issues relating to equality or diversity were identified by respondents.

5 IMPACT AND RISKS

5.1 The consultation stated:

Impact

The Council anticipates that any impact on prison and probation resources from the majority of the changes proposed in this consultation will be minor. Where changes may be more substantial, these impacts would be attributable to the legislative changes and not to the guidelines. In view of the nature of the consultation, a separate resource assessment has not been produced but a brief discussion on impact has been included in relation to each proposal.

5.2 The 'brief discussion' in relation to each proposal was either a statement that the proposals would not affect sentence levels or that the proposals were necessitated by legislative changes. The revisions agreed to the proposals post-consultation have not altered the anticipated impact of the proposals.

5.3 The response document will include a similar note.

Question 7: Is the Council content to sign off the changes for publication in March and to come into effect in April?

Blank page

Sentencing Council

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

27 January 2023
SC(23)JAN05 – Animal Cruelty
Rosa Dean
Vicky Hunt (taking over from Zeinab Shaikh)
Vicky.hunt@sentencingcouncil.gov.uk

1 ISSUE

1.1 This is the final meeting to discuss the animal cruelty guidelines post-consultation. The guidelines will be published in spring, to come into force in late summer.

1.2 The Council will be asked to sign-off the Animal cruelty and Failure to ensure animal welfare guidelines, and to consider the resource assessment. The consultation response document will be circulated to Council members via email in due course.

1.3 The Council will also be asked to consider revisions to the explanatory guidance on disqualification and deprivation orders.

2 RECOMMENDATIONS

2.1 That the Council:

- signs off the Animal cruelty and Failure to ensure animal welfare guidelines (as included at Annexes A and B) for publication in spring
- considers the revised resource assessment included at Annex C
- agrees to add further detailed guidance to the explanatory materials on disqualification from ownership of animals and on deprivation from keeping animals (as included at Annex D).

3 CONSIDERATION

Animal cruelty (s.4-8 offences)

3.1 Following the increase in the statutory maximum sentence for particular animal cruelty offences, from six months' to five years' custody, the Council agreed to revise the Animal cruelty guideline. A standalone guideline has been created for s.4-8 offences (covering unnecessary suffering, mutilation, poisoning and animal fighting), as these are all impacted by the change in the statutory maximum sentence. The revised guideline is included at Annex A. The revisions detailed below have been agreed by the Council in previous post-consultation meetings.

Culpability

3.2 The revised culpability table includes detailed factors in high culpability, reflecting Parliament's focus on the most serious cases when deciding to increase the statutory maximum. Factors in high culpability cover serious, intentional violence such as sadistic behaviour, or cases where the offender either had a leading role in illegal activity or had coerced others. This also includes a mechanism to upgrade medium culpability offences if they are extreme.

3.3 To reflect the significant increase in statutory maximum, many factors in medium culpability have been brought down from high culpability in the existing guideline. Medium culpability factors cover intentional, but less severe, acts of cruelty, including using significant force or ill treatment in a commercial context. These also include a catch all to cover cases where factors in low and high culpability balance each other out, or where a case otherwise falls between the low and high categories.

3.4 By contrast, low culpability factors are focused on cases where the offender did not necessarily intend to cause harm, such as by caring for the animal in a well-intentioned but incompetent way, or where the offender was coerced or exploited into committing the offence.

Harm

3.5 The revised guideline uses a three-tier harm table to reflect the significant increase in statutory maximum and the resulting need for more detailed guidance for sentencers. The table is focused solely on harm caused to animals, with the impact on owners and others considered within aggravating factors instead.

3.6 Category 1 is focused on fatal or life-threatening injuries, or injuries otherwise causing severe pain to the animal. Category 2 factors focus on substantial pain or where the effect of the injury is lasting. We have specifically mentioned s.5-6 offences under this harm category (mutilation including tail docking and ear cropping) as they fall under this general grouping of injuries that are long-lasting but not life-threatening. Category 3 includes a catch-all for all other levels of pain or suffering, as well as a factor for instances where little or no harm is caused.

Sentence table

3.7 Following the public consultation, the Council agreed to raise the top of the offence range to 3 years 6 months' custody, and to raise the starting point for the most serious offences to 2 years' custody. This is substantially higher than the current guideline, which only goes to six months. The bottom end of the range for category 1 harm offences was also

brought up slightly, to a low level community order, and the gaps between boxes 1B and 1C narrowed to aid sentencers when dealing with borderline cases.

3.8 We have kept the ranges and starting points for low culpability offences close to current sentence levels in recognition of the fact that these cases may involve well-intentioned but misguided care, rather than active cruelty.

3.9 As discussed in the November meeting, we can expect to face some criticism that we are not raising the top of the table to mirror the new statutory maximum. However, the Council has agreed that there is a need for proportionality when viewing animal cruelty alongside assaults against human beings. In the consultation response document, we will carefully explain our rationale for capping the top of offence range at 3 years and 6 months to pre-empt some of this criticism.

Aggravating and mitigating factors

3.10 The list of non-statutory aggravating factors covers factors that are often present in animal cruelty cases, such as where the offender is under the influence of alcohol or offending involving a significant number of animals.

3.11 The existing factor on use of technology has been expanded to specifically refer to the circulation of photographs or videos of abuse on social media. The factor on the offender being in a position of responsibility has also been clarified so that it is more relevant to the offences in question.

3.12 We have added new factors on the offence being committed in presence of children, and on the offending being motivated by significant financial gain, to reflect the greater harm caused and the greater culpability of the offender respectively.

3.13 To relevant factors, we have added caveats to ensure these are not double counted alongside animal fighting offences themselves (where the offence and aggravating factor are the same), or alongside the culpability factors included at step 1 of the guideline.

3.14 Distress caused to the owner has also been moved to the bottom of the list of aggravating factors, to mirror the focus placed on animals within the harm table.

Question 1: Are you content to sign off the Animal cruelty guideline for publication?

Failure to ensure animal welfare (s.9 offence)

3.15 This guideline covers the remaining summary only s.9 offence (of failure of duty of person responsible for animal to ensure welfare), which retains a six-month maximum sentence. The revised guideline, at Annex B, is similar to the current Animal cruelty

guideline, but has been tailored to focus on this offence alone. The revisions detailed below have been agreed by the Council in previous post-consultation meetings.

Culpability

3.16 The culpability table has been amended in places to mirror the revised Animal cruelty guideline for consistency. To high culpability, we have added a factor on involving others through coercion. The catch-all wording in medium culpability has been expanded to cover cases where factors balance each other out, or where factors fall between the high and low categories.

3.17 A low culpability factor on a momentary or brief lapse in judgment has also been added, in line with the revised Animal cruelty guideline and other, similar guidelines.

Harm

3.18 We have retained the two-tier harm table as in the current guideline, for the purposes of simplicity for sentencers. The table uses wording from the existing guideline, with death, serious injury or a high level of suffering all placed in greater harm. Harm category 3 acts as catch all for all other cases.

3.19 We have also retained the starting points and category ranges in the sentence table as under the current guideline, as the statutory maximum for this offence has not changed.

Aggravating and mitigating factors

3.20 The main change to the list of non-statutory aggravating factors has been to remove factors that are not relevant to the s.9 offence, such as the use of a weapon or technology. Given the focus of the s.9 offence, on neglect rather than on active violence, these factors are unlikely to apply to these cases.

3.21 Otherwise, the list of aggravating factors has been amended in line with many of the changes to the s.4-8 guideline, such as including caveats to avoid double counting with culpability factors at step 1, and a new factor on involving a significant number of animals. We have also mirrored the new factor for instances where the offender was motivated by financial gain.

Question 2: Are you content to sign off the Failure to ensure animal welfare guideline for publication?

Resource assessment

3.22 The final resource assessment at Annex C discusses the anticipated impacts of the revised guidelines in detail.

Animal cruelty guideline (s.4-8)

3.23 The revised guideline is expected to increase sentence severity in a small number of cases involving the most serious types of offending, and may have a small impact on prison and probation places. More broadly, any impact is anticipated to be limited due to the small volumes involved for the majority of these offences and the low proportion of immediate custodial outcomes currently. There may be an impact on the proportion of cases committed to the Crown Court for sentencing, due to the change from summary only to either way offences and increase to the top of the offence range, although the majority of cases are still expected to remain within the threshold of magistrates' sentencing powers.

3.24 For the most serious offences, sitting within category 1 harm and high culpability, an increase in sentence severity is anticipated. While the starting point for these offences sits just above the threshold for a suspended sentence, at two years' custody, once the impact of any reduction for a guilty plea is taken into account, it is anticipated that a large proportion of cases of the highest severity will still be eligible for suspension, limiting the impact on prison places.

Failure to ensure animal welfare guideline (s.9)

3.25 As this guideline retains much of the existing Animal cruelty guideline and the statutory maximum sentence is unchanged, we do not anticipate that this will lead to a change in sentencing practice.

3.26 Given the low volume of offenders sentenced for this offence, and the small proportion that receive a custodial sentence, it is anticipated that the revisions to the guideline will have a limited impact on prison and probation places.

Question 3: Do you have any comments and/or questions on the final resource assessment?

Explanatory materials on disqualifications

3.27 In the November meeting, the Council agreed to update the explanatory materials on disqualification, rather than amending the wording on the face of the guidelines. We have revised this wording (included at Annex D) to provide more detailed guidance to sentencers.

3.28 This includes wording to clearly set out the purpose of disqualifications and to refer to relevant parts of the Animal Welfare Act 2006. We have also reiterated that, while sentencers can order a disqualification in addition to, or instead of, dealing with the offender in other ways, the most appropriate sentence is likely to sit within the sentence table as set out in the relevant guideline.

3.29 We have also mirrored any relevant changes in the explanatory materials on deprivation, signposting to underlying legislation and directing sentencers to the guidelines for sentence levels.

Question 4: Do you agree to these revisions to the explanatory materials on disqualification and deprivation orders?

4 EQUALITIES

4.1 As animal cruelty offences were summary only until the legislative change in 2021, limited demographic data are available on these cases, particularly for ethnicity (this was either not recorded or not known for 81 per cent of offenders sentenced in 2021 for s.4 offences and 86 per cent for offenders sentenced for s.9 offences). However, the data available on sex and age do not suggest any disproportionate impacts in relation to the guidelines.

4.2 As discussed in the November meeting, a small number of consultation respondents highlighted a potential disproportionate impact on vulnerable offenders, particularly those who are financially vulnerable. We believe, however, that there are sufficient safeguards in place on the face of the guidelines, either in the form of mitigating factors or in terms of the guidance we provide as standard on fines and in considering the wider means of the offender.

4.3 A handful of respondents also raised the potential impact of the guidelines on offenders from Gypsy, Roma or Traveller backgrounds, but the Council agreed that the limited demographic data available makes it difficult to understand what more needs to go on the face of the guidelines, beyond the standard signposting to the Equal Treatment Bench Book.

5 IMPACTS AND RISKS

5.1 The likely impact of the revised guidelines on prison and probation places is discussed in the resource assessment.

5.2 There is a risk that the Council may face criticism from major animal charities and other high-profile stakeholders regarding sentence levels for the s.4-8 guideline, where it may be perceived as ignoring the will of Parliament. We will, however, use the consultation response to show that we have raised sentence levels at the top end of the table, in recognition of the views of consultation respondents, but will reiterate the need to keep proportionality between these offences and those involving attacks on human beings.

Animal Cruelty

Animal Welfare Act 2006, s.4 (unnecessary suffering), s.5 (mutilation), s.6 (docking of dogs' tails), s.7 (administration of poisons etc), s.8 (fighting etc)

Effective from: XXXXXXXXX

Triable either way

Maximum: 5 years' custody

Offence range: Band A fine – 3 years 6 months' custody

Step 1 – Determining the offence category

The court should determine culpability and harm caused with reference **only** to the factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Culpability demonstrated by one or more of the following

The court should weigh all the factors set out below in determining the offender's culpability. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

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

	<ul style="list-style-type: none"> ○ The offender's culpability falls between the factors as described in A and C
C Lower culpability	<ul style="list-style-type: none"> ● Well-intentioned but incompetent care ● Momentary or brief lapse in judgement ● Involved through coercion, intimidation or exploitation ● Mental disorder or learning disability, where linked to the commission of the offence

Harm demonstrated by one or more of the following

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the animal(s).

Category 1	<ul style="list-style-type: none"> ● Death (including injury necessitating euthanasia) ● Particularly Grave or life-threatening injury or condition caused ● Very high level of pain and/or suffering caused to animal(s)
Category 2	<ul style="list-style-type: none"> ● Offence results in an injury or condition which has a substantial and/or lasting effect (including cases of tail docking, ear cropping and similar forms of mutilation) ● Substantial level of pain and/or suffering caused to animal(s)
Category 3	<ul style="list-style-type: none"> ● Little or no physical/developmental harm or distress to animal(s) ● All other levels of pain and/or suffering to animal(s)

Step 2 – Starting point and category range

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

	Category range Medium level community order – 26 weeks' custody	Category range Low level community order – High level community order	Category range Band A fine – Band C fine
--	---	---	---

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the owner/keeper of the animal: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors

- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Significant number of animals involved
- Use of a weapon
- Allowing person of insufficient experience or training to have care of animal(s)
- Use of technology, including circulating details/photographs/videos etc of the offence on social media, to record, publicise or promote cruelty (with the exception of s.8(3) offences)
- Ignores warning/professional advice/declines to obtain professional advice
- Use of another animal to inflict death or injury (with the exception of s.8(1)(a) and (f) offences)
- Motivated by significant financial gain (where not already taken into account at step 1)
- Offence committed while under influence of alcohol or drugs
- Offender in position of professional responsibility for animals (where not already taken into account at step 1)
- Offence committed in the presence of other(s), especially children
- Animal requires significant intervention to recover
- Animal being used in public service or as an assistance dog
- Distress caused to owner where not responsible for the offence

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions

- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Offender has been given an inappropriate level of trust or responsibility
- Voluntary surrender of animals to authorities
- Cooperation with the investigation
- Isolated incident

Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

Step 5 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

Step 6 – Compensation and ancillary orders

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

- Ancillary orders – Magistrates' Court
- Ancillary orders – Crown Court Compendium

Step 7 – Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 8 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

Blank page

Failure to ensure animal welfare

Animal Welfare Act 2006, s.9 (breach of duty of person responsible for animal to ensure welfare)

Effective from: XXXXXX

Triable only summarily

Maximum: Unlimited fine and/or 6 months

Offence range: Band A fine – 26 weeks' custody

Step 1 – Determining the offence category

The court should determine culpability and harm caused with reference **only** to the factors below. Where an offence does not fall squarely into a category, individual factors may require a degree of weighting before making an overall assessment and determining the appropriate offence category.

Culpability demonstrated by one or more of the following

The court should weigh all the factors set out below in determining the offender's culpability. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

A High Culpability	<ul style="list-style-type: none"> • Prolonged or deliberate ill treatment or neglect • Ill treatment or neglect in a commercial context • Leading role in illegal activity • Involvement of others through coercion, intimidation or exploitation
B Medium culpability	<ul style="list-style-type: none"> • Cases that fall between categories A or C because: <ul style="list-style-type: none"> ◦ Factors are present in A and C which balance each other out, and/or, ◦ The offender's culpability falls between the factors as described in A and C
C Lower culpability	<ul style="list-style-type: none"> • Well-intentioned but incompetent care • Momentary or brief lapse in judgement • Involved through coercion, intimidation or exploitation • Mental disorder or learning disability, where linked to the commission of the offence

Harm demonstrated by one or more of the following

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Factors indicating greater harm	<ul style="list-style-type: none"> • Death or serious injury/harm to animal • High level of suffering caused
Factors indicating lesser harm	<ul style="list-style-type: none"> • All other cases

Step 2 – Starting point and category range

	High culpability	Medium culpability	Lower culpability
Greater harm	Starting point 18 weeks' custody	Starting point Medium level community order	Starting point Band C fine
	Category range 12-26 weeks' custody	Category range Low level community order – High level community order	Category range Band B fine – Low level community order
Lesser harm	Starting point High level community order	Starting point Low level community order	Starting point Band B fine
	Category range Low level community order – 12 weeks' custody	Category range Band C fine – Medium level community order	Category range Band A fine – Band C fine

The court should then consider further adjustment for any aggravating or mitigating factors. The following is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the owner/keeper of the animal: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors

- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Significant number of animals involved
- Allowing person of insufficient experience or training to have care of animal(s)

- Ignores warning/professional advice/declines to obtain professional advice
- Offender in position of professional responsibility for animals (where not already taken into account at step 1)
- Motivated by financial gain (where not already taken into account at step 1)
- Animal requires significant intervention to recover
- Animal being used in public service or as an assistance dog
- Distress caused to owner where not responsible for the offence

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability, where not linked to the commission of the offence
- Sole or primary carer for dependent relatives
- Offender has been given an inappropriate level of trust or responsibility
- Voluntary surrender of animals to authorities
- Cooperation with the investigation
- Isolated incident

Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

Step 5 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

Step 6 – Compensation and ancillary orders

In all cases, the court should consider whether to make [compensation](#) and/or other ancillary orders including [deprivation of ownership](#) and [disqualification of ownership of animals](#). Where the offence has resulted in personal injury, loss or damage the

court must give reasons if it decides not to order compensation ([Sentencing Code, s.55](#)).

- Ancillary orders – Magistrates' Court

Step 7 – Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

Step 8 – Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and section 325 of the Sentencing Code.

Final Resource Assessment

Animal Cruelty Offences

Introduction

This document fulfils the Sentencing Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.¹

Rationale and objectives for new guideline

A single magistrates' courts sentencing guideline currently exists for animal cruelty offences, which covers offences contrary to sections 4, 8 and 9 of the Animal Welfare Act 2006. This existing Animal cruelty guideline² first came into force in 2008 but was revised in 2017 following concern that it was not nuanced enough, particularly for those cases falling between the lowest and highest levels of seriousness.

On 29 June 2021, the Animal Welfare (Sentencing) Act 2021 came into force, which increased the statutory maximum penalty for sections 4, 5, 6, 7 and 8 of the Animal Welfare Act 2006 from 6 months' to 5 years' custody. Parliament discussions around the rationale behind this increase referenced a desire to increase penalties for offences involving particularly sadistic behaviour, and/or the involvement of organised criminality. There was no change to the maximum penalty for the section 9 offence, which remains at 6 months.

The Council has consulted on two new definitive sentencing guidelines for use in England and Wales to cover these animal cruelty offences. One is an Animal cruelty guideline for use in all courts, to cover offences contrary to sections 4 to 8, where the offences have changed from being summary only to triable either way and the statutory maximum penalty has increased. The other is a Failure to ensure animal welfare magistrates' courts sentencing guideline. This retains much of the existing magistrates' courts sentencing guideline for animal cruelty offences, but with changes to reflect the scope of the guideline no longer covering sections 4 and 8 and now simply covering the section 9 offence.

The Council's aim in developing these guidelines is to provide sentencers with a structured approach to sentencing animal cruelty offences, that will ensure that sentences are proportionate to the offence committed and in relation to other offences. They should also promote a consistent approach to sentencing and provide

¹ Coroners and Justice Act 2009 section 127: www.legislation.gov.uk/ukpga/2009/25/section/127

² <https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/animal-cruelty-revised-2017/>

guidance to sentencers, especially where the maximum sentence has recently increased from 6 months to 5 years' custody.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guidelines on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the following offences under the Animal Welfare Act 2006, which will be covered by two guidelines:

- Causing unnecessary suffering (section 4);
- Carrying out a non-exempted mutilation (section 5);
- Docking the tail of a dog except where permitted (section 6);
- Administering poison to an animal (section 7);
- Involvement in an animal fight (section 8); and
- Breach of duty of person responsible for animal to ensure welfare (section 9).

These guidelines apply to sentencing adults only; they will not directly apply to the sentencing of children and young people.

Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guidelines, the Council has carried out analytical and research work in support of them.

The intention is that the guidelines will encourage consistency of sentencing, especially for those offences which have seen an increase in statutory maximum penalty, and will ensure that, for all offences, sentences are proportionate to the severity of the offence committed and in relation to other offences.

In order to develop effective guidelines for these offences, knowledge of recent sentencing practice was required. Sources of evidence have included examples of cases from the RSPCA, case studies from the passage of the Animal Welfare (Sentencing) Act 2021 Bill, analysis of transcripts of judges' sentencing remarks relating to the very small number of offenders who have been sentenced in the Crown Court and sentencing data from the MoJ Court Proceedings Database.³

³ The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. Further information about this sentencing data can be found in the accompanying tables published here: <https://www.sentencingcouncil.org.uk/research-and-resources/publications?s&cat=statistical-bulletin>

In addition to consultation responses covering both guidelines, discussions with sentencers held during the consultation stage to explore whether the new Animal cruelty guideline will work as anticipated have provided further understanding of the likely impact of this guideline on sentencing practice, and the subsequent effect on prison and probation resources.

Detailed sentencing statistics for the offences covered by the guidelines have been published on the Sentencing Council website at the following link:

<https://www.sentencingcouncil.org.uk/research-and-resources/publications?s&cat=statistical-bulletin>.

Causing unnecessary suffering (section 4)

In 2021, around 340 adult offenders were sentenced for this offence, which is a slight increase on 2020 but still only around half of the volume of offenders sentenced in each year prior to 2020. The most common outcome was a community order (37 per cent), followed by a suspended sentence order (31 per cent). A further 18 per cent received a fine and 10 per cent received immediate custody.⁴

For those that were sentenced to immediate custody in 2021, the average (mean) custodial sentence length (ACSL)⁵ was 4 months, after any reductions for guilty plea. The statutory maximum sentence for this offence increased from 6 months to 5 years' custody on 29 June 2021, for offences committed on or after this date, so these figures do include the period before and after this change in statutory maximum, although no sentences exceeded 6 months' custody. However, owing to the time taken for cases to progress through the courts, the volume of offenders sentenced in this period who committed their offence on or after 29 June 2021 are likely to only represent a small proportion of cases sentenced in 2021 and these outcomes may not be representative of future sentencing outcomes for this offence.

Carrying out a non-exempted mutilation (section 5); Docking the tail of a dog except where permitted (section 6); Administering poison to an animal (section 7); and Involvement in an animal fight (section 8)

Due to low volumes, sentencing data for these four sections of the Animal Welfare Act 2006 are presented together and it has not been possible to provide an average custodial sentence length (ACSL). These offences are almost exclusively sentenced in magistrates' courts. In total, in 2021, there were around 10 adult offenders sentenced for these offences, of which almost all were sentenced for an offence of carrying out a non-exempted mutilation (section 5). Of these, almost half (45 per cent) received a community order, around one quarter received a fine (27 per cent) and the remainder received a custodial sentence (18 per cent immediate custody and 9 per cent a suspended sentence order).⁶

⁴ A further 3 per cent received a discharge and 1 per cent were 'Otherwise dealt with', which covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

⁵ The average custodial sentence lengths presented in this resource assessment are mean average custodial sentence length values for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea.

⁶ Percentages may not appear to sum to 100 per cent due to rounding.

Breach of duty of person responsible for animal to ensure welfare (section 9)

In 2021, around 80 adult offenders were sentenced for this offence, which is almost double the volume sentenced in 2020, but still lower than volumes seen in previous years. The majority are sentenced in magistrates' courts, although 2021 saw the highest proportion of offenders sentenced at the Crown Court (10 per cent, compared to an average of 1 per cent across 2011 to 2020 inclusive). In 2021, around one third of offenders sentenced received a community order (31 per cent, same as 2020), 26 per cent received a fine and 20 per cent received a suspended sentence order. The proportion of offenders receiving a discharge for this offence in 2021 is high compared to the other animal cruelty offences, at 14 per cent. A further 9 per cent were sentenced to immediate custody, for which the ACSL was 4 months (against a statutory maximum sentence for this offence of 6 months' custody).⁶

Key assumptions

To estimate the resource effect of new guidelines, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the guideline and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guidelines are therefore subject to a large degree of uncertainty.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed new guidelines, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

The resource impact of the new guidelines is measured in terms of the change in sentencing practice that is expected to occur as a result of them. Any future changes in sentencing practice which are unrelated to the publication of the guidelines are therefore not included in the estimates.

In developing sentence levels for the guidelines, the latest available data on current sentence levels have been considered. While this now includes the period since the increase in statutory maximum sentence for sections 4 to 8, owing to the time taken for cases to progress through the courts, any offenders sentenced who committed their offence on or after 29 June 2021 are likely to only represent a small proportion of cases sentenced in 2021 and are unlikely to be wholly representative of future sentencing practice for this offence. Existing guidance and case studies, as well as limited transcripts of judges' sentencing remarks (only available for Crown Court cases) have also been reviewed.

While data exist on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guidelines, due to a lack of data available regarding the detailed sentencing factors for current cases.

Additionally, given that offences contrary to sections 4 to 8 were summary only until halfway through 2021, past sentencing data is unlikely to be fully representative of how sentencing will look in the future for this guideline. As a consequence, it is difficult to ascertain how sentence levels may change under the new animal cruelty guidelines.

This also means that it remains difficult to estimate with any precision the impact the new guidelines may have on prison and probation resources. To support the development of the guidelines and mitigate the risk of them having an unintended impact, discussions with sentencers were undertaken during the consultation stage which have supported this final resource assessment.

Resource impacts

This section should be read in conjunction with the guidelines available at: <https://www.sentencingcouncil.org.uk/>.

The two guidelines cover animal cruelty offences contrary to sections 4 to 8 and section 9 of the Animal Welfare Act 2006 separately. Due to the shared statutory maximum penalty of offences contrary to sections 4 to 8, and because they are covered by the same guideline, the resource impacts have been assessed and presented for these offences collectively. The resource impacts for the new section 9 offence guideline have been considered separately.

In relation to the rationale for the increases to the statutory maximum under the Animal Welfare (Sentencing) Act 2021, discussions in Parliament focussed on a particular desire to increase penalties for offences involving particularly sadistic behaviour, and/or the involvement of organised criminality. As such, the expectation of the new guideline is that it will increase sentences for these most serious cases and provide consistency of approach to sentencing a wider range of animal cruelty offences than the current guideline offers, whilst ensuring that sentences are proportionate to the offence committed and in relation to other offences.

Overall, it is likely that the increase in statutory maximum reflected in the new animal cruelty guideline may increase sentencing severity for a very small subset of offences at the highest end of severity, for offending contrary to sections 4 to 8. It is not expected that this will lead to a substantial impact on prison and probation resources, owing to the small volumes involved for these relevant cases. For the section 9 offence, since the guideline has been developed with current sentencing practice in mind and the statutory maximum remains unchanged, this is also not anticipated to lead to a change in sentencing practice or have a notable resource impact.

Animal cruelty guideline (sections 4 to 8, Animal Welfare Act 2006)

Offences contrary to sections 4, 8 and 9 of the Animal Welfare Act 2006 are currently covered in the existing Animal cruelty guideline, which has only two categories of harm and a six-point sentencing table.

The new Animal cruelty guideline additionally covers sections 5, 6 and 7 but no longer covers section 9. This guideline has three levels of culpability and three levels

of harm, leading to a nine-point sentencing table with a sentencing range from a Band A fine⁷ up to 3 years' 6 months custody.

The statutory maximum penalty for sections 4 to 8 increased from 6 months' custody (summary only offence), to 5 years' custody (triable either way offence) in June 2021. This increase has influenced the increased sentence range within the new guideline (now going beyond magistrates' current powers) and, as such, it is possible there may be an impact on the proportion of cases being sentenced in Crown Court in the future, compared with now. However, since the ACSL is currently 4 months' custody and the starting point for all offences except those falling into the highest harm and culpability category (A1) is no greater than 6 months' custody before any reductions for a guilty plea, the majority of cases are expected to remain within the threshold of magistrates' courts sentencing powers. This expectation was supported by research discussions with sentencers during the consultation stage. When asked, sentencers did not think that there would be a large increase in the number of cases committed to the Crown Court for sentencing.

In relation to the rationale for the increases to the statutory maximum under the Animal Welfare (Sentencing) Act 2021, the Act set out that sentences above the previous 6 month statutory maximum sentence should be reserved for those offences involving particularly sadistic behaviour, and/or the involvement of organised criminality. As such, the guideline includes a number of updates to the way culpability is assessed, primarily to clearly separate out these more extreme cases and ensure they are appropriately categorised. Most high culpability factors within the existing magistrates' court Animal cruelty guideline have been moved into medium culpability, and a new set of factors covering the most severe types of offending have been added to high culpability, to reflect the substantial increase in maximum sentence for these offences. As such, the majority of cases that were previously categorised into the highest culpability level in the old guideline might be expected to sit within B medium culpability under the new guideline, which has a range of starting points from a medium level community order for harm category 3, up to 26 weeks' custody for harm category 1, which was the previous statutory maximum sentence.

For those cases for which the highest harm and culpability level (A1) are deemed appropriate, it is expected that there might be an increase in sentencing severity under the new guideline. The starting point and top of the category range have been increased by 6 months since the draft stage in response to feedback received at the consultation stage. Nevertheless, given that the starting point (before any reductions for a guilty plea) for A1 is 2 years' custody, a large proportion of cases receiving a custodial sentence under the new guideline remain within the eligible threshold for suspension, for which the anticipated resource impacts are less, especially with regard to prison places. Furthermore, given that the majority of offenders do not currently receive a custodial sentence for these offences, and the guideline is not expected to substantially change sentencing outcomes in general, this further reduces the estimated impacts on prison resources.

⁷ The starting point for a Band A fine is 50% of the offender's relevant weekly income.

Analysis of a small number⁸ of transcripts of Crown Court judges' sentencing remarks⁹ was conducted to assess how sentencing might change under the new guideline. Although it was found that there may be some increases in the length of immediate custody received in individual cases, these were particularly those cases at the highest levels of culpability and harm, for example involving the death of the animal/animals. Due to the data limitations (only 1 per cent of offenders sentenced in 2019 and 2020 were sentenced at Crown Court, so it is unlikely that this sample of cases is representative of typical sentencing for this offence), the likely resource impact cannot be quantified, but the analysis did not provide any evidence of substantial increases for the majority of cases, or changes in sentence outcome.

The expectation that the guideline is unlikely to lead to substantial changes in sentencing outcomes for these offences was mostly supported by research with magistrates and district judges conducted during the consultation stage, using sentencing scenarios. While there was a tendency for some sentencers to categorise the level of culpability and harm slightly higher than anticipated for the two scenarios, the sample was small and feedback from sentencers overall was that sentencing severity may increase for the most serious cases under the guideline, which could be justified in light of the increase in statutory maximum sentence. This is in line with the guideline intention.

It should be noted that the latest full year of data available to analyse for this resource assessment is 2021. Given the increase in statutory maximum sentence applies for offences committed on or after 29 June 2021, the figures are likely to only contain a small proportion of offenders for whom the increase in statutory maximum sentence applied. This means that current sentencing practice for this offence will not be fully representative of expected future sentencing using the guideline, which limits how reliably we can estimate the resource impacts for this guideline.

Overall, due to a lack of available data, the very recent change in offence category from summary only to triable either way and the very small number of offenders sentenced for the majority of these offences, it is not possible to quantify with any confidence the impact of the guideline on prison and probation resources overall. Nevertheless, the intention of the guideline, in line with the rationale behind Parliament's decision to increase the statutory maximum sentence¹⁰ is not to increase the volume of offenders receiving a custodial sentence, only the length of time for the small subset of offences at the highest end of severity, which has been supported by the available evidence. Therefore, it is anticipated that any impact on prison and probation resources should be small, and would be driven by the change in legislation.

⁸ Sentencing remarks are only available at the Crown Court, and there were only 11 offenders sentenced for animal cruelty offences at the Crown Court in 2019 and 2020, all for causing unnecessary suffering (section 4).

⁹ Of the 11 possible transcripts which were ordered, only 8 transcripts covering 9 offenders sentenced in 2019 and 2020 for causing unnecessary suffering (section 4) as either a principal or secondary offence contained enough detail to be analysed. In all cases, multiple offences were being sentenced; in one transcript, the secondary offences included offending contrary to section 9.

¹⁰ Explanatory notes of the Animal Welfare (Sentencing) Bill, 'Financial implications of the Bill', page 5: <https://publications.parliament.uk/pa/bills/cbill/58-01/0014/en/200014en.pdf>

Failure to ensure animal welfare guideline (section 9, Animal Welfare Act 2006)

The existing magistrates' courts sentencing guideline which covers section 9 of Animal Welfare Act 2006 also covers the animal cruelty offences under sections 4 and 8.

The new Failure to ensure animal welfare guideline, to cover purely the section 9 offence (breach of duty of person responsible for animal to ensure welfare), retains three levels of culpability and two levels of harm from the existing Animal cruelty guideline, leading to a six-point sentencing table, with a sentencing range from a Band A fine⁷ up to 26 weeks' custody to reflect the summary only nature of the offence.

Compared to the existing guideline, certain factors have been removed to ensure that all the factors are relevant, and that sentencing is proportionate for the narrower scope of the new guideline.

Due to a lack of available data and the small number of offenders sentenced for this offence (only around 80 in 2021), it is not possible to confidently anticipate the impact the new guideline will have on prison and probation resources overall. However, it is anticipated that any impact would be minimal, given the low volume of offenders sentenced for this offence currently and the low proportion of these offenders who are currently receiving a custodial outcome.

Risks

In attempting to estimate the likely resource impacts of these guidelines, there are two main risks to consider:

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect.

This risk is mitigated by information that was gathered by the Council as part of the consultation phase. This included inviting views on the guidelines through the consultation exercise and research with sentencers using case scenarios to explore whether the guidelines could have any unintended effects. However, given there were limitations on the number of scenarios which could be explored, the risk cannot be fully eliminated. The Council also included a question in the consultation document, asking for consultees' views on the potential impact of the proposals, and these views have been considered for this final resource assessment.

Risk 2: Sentencers do not interpret the new guideline as intended

If sentencers do not interpret the guidelines as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing a new guideline to try to ensure that sentencers interpret it as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Limited transcripts of Crown Court sentencing remarks and case studies of animal cruelty offences have also been studied to ensure that the guidelines are developed with current sentencing practice in mind. Additionally, research with sentencers which was carried out during the consultation period has hopefully enabled any issues with implementation to be identified and addressed.

Consultees have also had the opportunity to provide their opinion of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.

Blank page

10. Disqualification from ownership of animals

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Where an offender is convicted of one of the following offences under the Animal Welfare Act 2006, the court may disqualify him or her from owning or keeping animals, dealing in animals, and/or transporting animals ([Animal Welfare Act 2006, s.34](#)):

1. causing unnecessary suffering (s.4);
2. mutilation (s.5);
3. docking of dogs' tails (ss.6(1) and 6(2));
4. administration of poisons etc. (s.7);
5. fighting etc. (s.8);
6. breach of duty to ensure welfare (s.9);
7. breach of licensing or registration requirements (s.13(6));
8. breach of disqualification order (s.34(9)).

When considering disqualification, the court should review whether the order will sufficiently limit harm to animal(s) in the offender's care or for whom he/she is responsible, at present and in the future. The court should also take into consideration whether the order should apply to all types of animals or whether certain exemptions are appropriate. The court is required to give reasons if it decides not to make such an order.

The court may specify the minimum period before an offender may apply for termination of the order under section 43 of the Animal Welfare Act 2006; if no period is specified, an offender may not apply for termination of the order until one year after the order was made.

As set out in s.34(1) of the Animal Welfare Act 2006, disqualification may be imposed instead of or in addition to dealing with the offender in any other way. In most instances, however, a sentence as set out in the relevant sentencing guidelines for these offences will be most appropriate as the primary penalty, with an ancillary order of disqualification.

Where an offender is convicted of an offence contrary to s.4-9 under the Animal Welfare Act 2006, and is the owner of an animal in relation to which the offence is committed, the court may also make an [order depriving him or her of ownership of the animal and for its disposal](#) (Animal Welfare Act 2006, s.33).

6. Deprivation of ownership of animal

Guideline users should be aware that the [Equal Treatment Bench Book](#) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. It provides guidance which sentencers are encouraged to

take into account wherever applicable, to ensure that there is fairness for all involved in court proceedings.

Where an offender convicted of one of the following offences under the Animal Welfare Act 2006, is the owner of an animal in relation to which the offence is committed, the court may make an order depriving him or her of ownership of the animal and for its disposal (Animal Welfare Act 2006, s.33).

1. causing unnecessary suffering (s.4);
2. mutilation (s.5);
3. docking of dogs' tails (ss.6(1) and 6(2));
4. administration of poisons etc. (s.7);
5. fighting etc. (s.8);
6. breach of duty to ensure welfare (s.9);
7. breach of disqualification order (s.34(9)).

The court is required to give reasons if it decides not to make such an order.

As set out in ss.33(1) and 33(2) of the Animal Welfare Act 2006, deprivation of ownership may be ordered instead of or in addition to dealing with the offender in any other way. In most instances, however, a sentence as set out in the relevant sentencing guidelines for these offences will be most appropriate as the primary penalty, with an ancillary order of deprivation of ownership.

Where an offender is convicted of any of the offences listed above, the court may also [disqualify him or her from owning or keeping animals, dealing in animals, and/or transporting animals](#) (Animal Welfare Act 2006, s.34).

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

27 January 2023
SC(23)JAN06 - Theft

Mandy Banks
Mandy.Banks@sentencingcouncil.gov.uk

1 ISSUE

1.1 To update the Council on the further work that has been carried out post the publication of the evaluation of the definitive guideline in 2019.

2 RECOMMENDATION

2.1 At today's Council meeting the Council are asked:

- To note the results of the further work that has been carried out following the initial evaluation in 2019
- To indicate what course of action, if any, it wishes to take after considering the results of this further work

3 CONSIDERATION

Definitive Theft Guideline

3.1 The definitive guideline was published in October 2015 and came into force in February 2016, and is comprised of guidelines for: shop theft, handling stolen goods, abstracting electricity, going equipped, making off without payment and general theft (for all s.1 Theft act offences except shop theft). The resource assessment stated that the approach taken with the new guideline was not intended to change the average severity of sentencing, but to ensure consistency of approach to sentencing of theft offences.

3.2 The [evaluation of the guidelines](#) was published in February 2019. For all theft offences, it was found that sentencing increased beyond the upper boundary of what might have been expected at some point in the year after the guideline was introduced. However, for most offences there was no clear-cut evidence that the guideline caused the uplift. For example, for some offences the increase happened some months after the guideline was introduced, rather than immediately, as would normally be expected if the guideline caused the uplift. For two low volume offences (abstracting electricity and going equipped for theft or burglary) there did appear to be an increase in sentencing severity as a result of the guideline.

3.3 The evaluation found that the effect of the guideline on sentencing severity varied by individual offence. When considering the overall theft picture, sentence severity did exceed the upper limit of where it was expected sentencing would be had the guideline not been introduced but only by a very small amount: less than one severity score point from a scale of 1-100. To put this into context, a community order has a severity score of around 15 and a SSO of around 31. Additionally, the trend then returned to the expected sentencing severity region by the end of 2017 for all theft offences combined.

3.4 For shop theft, sentencing severity increased beyond what would be expected by a small amount, six months after the introduction of the guideline. This was driven by small increases in the use of immediate custody (23 to 25 per cent) and suspended sentence orders (SSOs) (10 to 12 per cent) between July 2016 and August 2016. Sentencing severity was higher than expected had the guideline not been introduced. Whilst sentencing severity fluctuated in and out of the expected levels until the end of 2017 there was a drop at the end of the period back into the expected region. This meant that sentencing severity returned to around the same level as it had been before the sudden increase. Further analysis using data collected through the magistrates' courts data collection exercise in 2015/16 suggested that the increase in severity could be related to previous convictions and value of goods being more influential post-guideline, however this does not explain why this increase was delayed by six months.

3.5 It was concluded that it did not seem likely that the increase in severity was caused by an external change that affected sentencing severity more widely, as we did not see a similar shift in severity at this point across comparable offences. Because the shift was particular to the offence of shop theft, the increase may have been related to the introduction of the guideline, given there were no other known factors which may have impacted this offence alone.

3.6 Given that the overall trend returned to the sentencing severity region only at the end of 2017 the Council at the time of the evaluation decided to continue to monitor the trend over time before deciding on whether or not to revisit the guideline. Accordingly the A&R team have kept the guidelines, and in particular the offence of shop theft under review and now the latest sentencing data for shop theft is being presented to the Council for consideration.

3.7 The A&R team have considered the latest sentencing data from the Court Proceedings Database (CPD) covering the calendar year 2021. This analysis included updating volumes, sentence outcomes, average custodial sentence lengths (ACSL) and custodial sentence distributions for shop theft. Since the guideline came into force in June

2016, the number of offenders sentenced each year for this offence has continued to decrease steadily each year; in 2015 around 62,300 offenders were sentenced, which has decreased to 17,800 in 2021.

3.8 There have been some small shifts in the proportions of sentencing outcomes since the guideline came into force, most notably a reduction in the proportion of offenders receiving a discharge from 25 per cent in 2015 to 16 per cent in 2021. The proportion of offenders receiving immediate custody has remained relatively stable, however the ACSL (mean) has continued to increase. This had been decreasing before the guideline came into force but since 2015 has increased each year and in 2021 was 2.1 months, a 30 per cent increase from 1.7 months in 2015. This increase is driven by a reduction in the proportion of offenders receiving an immediate custodial sentence of up to one month, and an increase in the proportion of those receiving sentences between two and six months.

3.9 It should be noted that while some of these trends have been observed to occur from 2016 onwards, we cannot say for sure that the guideline is the cause of these changes. Regression analysis conducted for the evaluation showed that where an offender had a lot of previous convictions (20+) this was most strongly associated with a change in sentencing severity out of all factors. It was theorised this could be because the [information on previous convictions](#) had more of an effect on sentencer behaviour in the new guideline than previously. This guidance states:

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

Relevant recent convictions **may** justify an upward adjustment, including outside the category range. In cases involving significant persistent offending, the community and custodial thresholds may be crossed even though the offence otherwise warrants a lesser sentence. Any custodial sentence must be kept to the necessary minimum.’

The previous 2008 theft guideline stated:

‘Any recent previous convictions for theft and dishonesty offences will need to be taken into account in sentencing. Where an offender demonstrates a level of ‘persistent’ or ‘seriously persistent’ offending, the community and custody thresholds may be crossed even though the other characteristics of the offence would otherwise warrant a lesser sentence’.

The difference being that the wording in the new guideline stated that previous convictions may justify an upward adjustment, including outside the category range. We are not aware of any other changes in relation to the weighting of previous convictions during this period.

3.10 However, these impacts were only seen six months after the guideline came into force, which is contrary to the immediate effect normally seen when a guideline is seen to have changed sentencing practice. It has not been possible to conduct any further regression analysis yet, although the data collection between January- June this year does include the offence of shop theft, which may offer us the ability to conduct further analysis.

3.11 Given that the findings from the further monitoring of the guideline show a continuation of the trend seen in the initial evaluation, regarding the increase in ACSL and sentencing severity for shop theft, beyond what was anticipated, there are a number of courses of action for the Council now to consider.

Option one

3.12 As the reasons for the increasing sentence severity seen in shop theft are still not clear, the Council may wish to wait for the results of the ongoing data collection (which includes the offence of shop theft) to be analysed before deciding whether or not any work to revise the guideline should be undertaken. However, it cannot be guaranteed that this further set of data will provide any clearer explanation for why sentence severity increased in 2016 and continues to increase beyond what was anticipated. There is also a question of the priority to be afforded to the analysis of data from the data collection, given the available resource in the team.

3.13 There are other guidelines that have had no evaluation conducted on them, such as domestic abuse, and data that has been collected and yet to be analysed from previous collections, such as criminal damage. It may be difficult to justify prioritising any further Theft work over and above these guidelines given the relatively small increase and given that Criminal Damage and Domestic Abuse offences continue to have some degree of topicality and, to date, no evaluation has yet been carried out on them at all. Therefore, unless Council felt so strongly that this work should be prioritised above the evaluations of the other guidelines, any further evaluative work on theft would need to be added to the workplan to be considered more in the medium term.

Option two

3.14 The Council may feel that it has enough information now to make a decision about whether any revision of the guideline is necessary. Although there have been increases in sentence severity for some theft offences, we cannot be sure that these are attributable to the guideline as they occurred some months after the guideline was introduced, rather than immediately afterwards which would generally happen if the guideline was responsible.

3.15 And, even if the guideline is thought to be responsible, the Council may feel that the consequences can be tolerated. The evaluation found that the severity score increased by only less than one severity score point in a scale of 1-100, and the increases since have been of a similar size. And if the findings of the evaluation continue to be relevant and the continued increases within shop theft are driven at least in part by the effect of an offender's previous convictions, Council may conclude that the guideline is working as intended, even if the full nature of the impact was not anticipated. The text in the guideline outlined at para 3.9 was developed due to the very high proportion of shop theft offenders with previous convictions, which can present sentencers with particular difficulty, no means to pay fines, community orders may be impractical due to difficulty with complying with requirements, and so on.

3.16 The guideline did try to assist courts with this difficult cohort of offenders- often shop theft offenders have drug and/or alcohol and/or mental health problems which lie behind the offending, so there is guidance on these points. There is also the text that says: 'previous diversionary work with an offender does not preclude the court from considering this type of offending again'. It may be that some of the increases seen recently reflect the particular cohort of offenders coming before the courts post-covid: perhaps they represent the more serious instances of shop theft.

Therefore, one course of action may be to decide, based on the available information, and the fact that the change is relatively small that it is not necessary to conduct any further analysis or revise the guideline.

Option three

3.17 The Council may feel on the basis of the available information that it can take the decision now that the guideline should be revised. However, the Council would need to be clear what the aim in revising the guideline would be – is it to revise the shop theft guideline to try to reduce the increase in sentence severity? If so, the Council would need to be clear that the unanticipated increase was undesirable and that sentences ought to be returned, insofar as it is possible, to their pre-2016 levels. This of course may cause handling issues but if the Council felt current levels were too high it is a course of action it could take. It would also not be the most straightforward piece of work for the Council to undertake, the guideline took over two years to produce and the shop theft guideline was particularly difficult to develop and required balancing a number of different concerns in an appropriate way. It is hard currently to see how the guideline could be constructed differently. Revising the guideline is likely to be resource intensive across both policy and analytical teams (further analysis would still be likely required as per Option 1 in order to assist in any

redrafting) and a decision would need to be made as to what priority to give it, given the other projects waiting. As noted earlier there are other guidelines waiting for initial evaluation. These are not reasons of course to stop the Council deciding to revise the guideline if it was felt the reasons for revisiting it were pressing.

Question 1: Which option does the Council prefer?

Question 2: If option 1, or Option 3 does the Council agree that any further work on theft would be added to the work plan to be considered in the medium term rather than given priority over any current or other already prioritised projects on the work plan?

4 EQUALITIES

4.1 Any equality issues will be considered in light of whichever option the Council chooses to proceed with.

5 IMPACT AND RISKS

5.1 Depending on the answers to the questions above-there may be an impact on workload/other priorities. A decision to prioritise further analysis and/or revision of this guideline carries the impact from a resource perspective of needing to deprioritise other work. Depending on what that work is, the Council may need to rationalise why the work on theft has been viewed as a higher priority.

Sentencing Council meeting:
Paper number:

Lead Council member:
Lead official:

27 January 2023
**SC(23)JAN07 - Perverting the Course of
Justice and Witness intimidation**
Juliet May
Mandy Banks
Mandy.Banks@sentencingcouncil.gov.uk
0207 071 5785

1 ISSUE

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

2 RECOMMENDATION

2.1 At today's meeting the Council is asked:

- To consider the information on orders/police warnings in relation to witness intimidation
- To consider the consultation responses regarding harm

3 CONSIDERATION

3.1 The changes agreed at the last meeting to the culpability factors have been made and can be seen in track changes with the PTCJ and witness intimidation guidelines, attached at **Annexes A** and **B** respectively. An issue was raised on the witness intimidation guideline during the discussion last time on the high culpability factor of 'breach of bail conditions'. The Chief Magistrate and others had raised a concern that as drafted this factor could cause too many cases to fall into culpability A. They suggested that a distinction needs to be drawn between cases where it is a breach of a condition expressly imposed to prevent an offence of witness intimidation, and cases where the breach occurs incidentally to the offence. The Chief Magistrate also suggested that the words 'and/or protective order and/or after Police warning re conduct' be added to the factor. The Council debated what types of police warnings there are, and their status, and wanted further information before making a

decision. Nick and his colleagues have kindly looked into this issue for the Council and have provided information attached at **Annex C**.

3.2 The Council can see that there are a number of orders and notices available. The high culpability factor could be reworded to 'breach of specific bail conditions imposed to prevent witness intimidation' to deal with the concern that otherwise too many cases could fall into culpability A. Or the factor could be reworded to 'breach of specific bail conditions imposed to prevent witness intimidation and/or protective order and/or after Police warning re conduct'.

Question one: How does the Council wish to reword this high culpability factor?

3.3 Turning now to the consideration of consultation responses regarding harm factors. The proposed harm factors were generally agreed with by respondents, subject to some points of detail discussed below. During the road testing of guidelines sentencers felt the draft guidelines helped them determine which harm category to apply. Starting with the witness intimidation guideline (**Annex B**). A considerable number of respondents including the Magistrates Association (MA), the Justice Committee (JC), the Chief Magistrate, Council of HM Council of District Judges, and the Justices' Clerks' Society (JCS) all suggested that place of work should be added to the first harm factor in category one. This factor currently is 'contact made at or in vicinity of victim's home'. As this is a location in which victims can easily be found, respondents argued that contact at a victim's workplace is also common, particularly in cases with a domestic abuse context, and that this can be very distressing for victims. However, the risk with doing this is that contact at most places a victim could be found could end up falling into category one harm. There is an argument for identifying 'home' within category one as contact there, a place people are entitled to feel safe, is particularly intrusive and threatening, but less so for other places. Therefore, it is suggested that the Council do not reword this factor.

Question two: Does the Council agree not to reword the first category one harm factor to include reference to place of work?

3.4 A number of respondents suggested that there should be a reference to the families or children of victims within the harm factors. Professor Alisdair Gillespie from Lancaster University and the JC both suggested that there should be a reference to harm caused to the family or children of the victim within category one harm. HM Council of Judges suggest that there should be a reference to the impact on family members/children if the contact occurs in

their presence either at step one, or if not, as an aggravating factor. If the Council wish to incorporate harm caused to the victim's family/children this could be done at step one or two. The second factor within category one harm could be reworded to 'serious distress caused to the victim and/or their family and/or children'. Or there could be an aggravating factor of 'contact made in the presence of the victim's family and/or children'. As with the discussion above, the risk in broadening the category one factors is that many more cases will fall into the top category, with far fewer cases captured by the other categories. So, it is recommended that if the Council wish to include a reference to families and children, it is done as a step two factor. If of course contact is made at home in their presence then this will be captured by category one in any case.

Question three: If the Council wishes to include a reference to families and children, does it agree it should be as a step two factor?

3.5 A small number of individual magistrates, one magistrates' bench and the JCS commented on the 'limited effects of the offence' factor in category three harm. The JCS said that this factor is unclear and proposed instead 'harm which falls below categories one and two'. One magistrate disliked the factor saying there were never just 'limited' effects of the offence, another magistrate said that it left too much judgement to the sentencer so instead suggested 'no effect'. One magistrate said this factor needed to be more specific. The magistrates bench suggested instead rewording to 'minimal distress and/or harm caused to the victim'. The JC said that generally additional guidance was needed to distinguish between category two and three harm.

3.6 The proposal by the JCS to reword it as 'harm which falls below categories one and two' is perhaps an attractive one as it avoids the need to use a descriptive word of either 'little', 'limited', or 'minimal', terms people often object to as it can be seen to minimising the harm caused to victims. Although some respondents call for more guidance, the use of more neutral terminology here is an important consideration. Also, some guidance is still provided in that this category is for harm which is below that in category two. The JCS also suggest making the same change within the PTCJ guideline.

3.7 However, it is quite difficult to get the wording of category three right, to ensure that the appropriate level of harm is captured, and the wording does not have the opposite effect and instead push cases into categories one and two. On balance, it is suggested that the original wording of 'limited effects of the offence is kept', so that sentencers can see it as a meaningful option below 'some' harm in category three.

Question four: Does the Council agree not to reword the category three factor, but

leave as consulted on?

3.8 West London Magistrates bench commented that one of the most harmful things that can happen as a result of this offence is victims having to significantly change their lifestyle, either their home or work situation for fear of the consequences to them or their families of further contact. They stated that they did not feel the category one harm factors adequately reflect this. They propose an additional category one factor: 'victim caused to change lifestyle to avoid contact, e.g victim forced to move home or change employment'. Again, the risk with adding this factor is making category one harm top heavy, so it is suggested that if the Council wish to include reference to this impact, it is done as a step two factor.

Question five: Does the Council agree that if reference to a victim having to change their lifestyle to avoid contact is to be added, this should be as an aggravating factor?

3.9 The JCS suggest that there should be a category one factor relating to offences which occur in a custodial establishment. They argue that those in custody may be witnesses in other cases and may have significant grounds to fear violence as unlike other witnesses they are unlikely to be able to move location to avoid the intimidation. There could be a category one factor of 'offence occurred within a custodial establishment.' Perhaps there is a stronger argument for including this factor than the others discussed above, as it is akin to contact in a person's home which is in category one-except here the victim cannot move location.

Question six: Does the Council wish to add an additional category one harm factor of 'offence occurred within a custodial establishment'?

3.10 Now turning to the PTCJ guideline attached at **Annex A**. A small number of respondents questioned the use of terms used such as 'serious' 'substantial' 'some' etc, one magistrate saying they were 'woolly' and another saying they were too open to debate and needed better definition. In particular, the Sentencing Academy and Andrew Ashworth and The JC raised a concern with the harm factors relating to the impact on the administration of justice. They state that by virtue of the offence, almost all cases will result in some impact on the administration of justice. So as currently drafted, they argue almost all cases will be swept into category two harm, it being difficult to see which cases would fall into category three. They also suggest that courts may struggle to see the difference between 'some impact' and 'limited impact', although the difference in sentence severity between the two is significant.

3.11 They suggest rewording the harm factors to 'very significant impact on the administration of justice' in category one, 'significant impact on the administration of justice' in category two and 'low impact on the administration of justice' in category three. The Council will be aware that there have been previous discussions on the gradations of factors between the categories within many guidelines, whether to say 'serious' 'significant' etc. However, for this particular harm factor within this offence, these suggestions seem sensible, and should assist to make sure the appropriate category is selected. The risk otherwise as the respondents suggest is that cases would fall into category two rather than three. As there are the same factors within witness intimidation they also suggest this change is made on both guidelines.

3.12 One Judge within the road testing of the guideline commented that they did not like the phrase 'limited effects of the offence' page five of **Annex D**. As discussed earlier, the JCS proposed that category three within both guidelines is amended to 'harm which falls below categories one and two', but it is recommended that 'limited effects of the offence' is retained. To incorporate the 'low impact on the administration of justice' factor category three could be:

- Limited effects of the offence including, but not limited to, low impact on the administration of justice

Question seven: Does the Council agree to the rewording of the impact on administration of justice factors within both guidelines? And to retaining 'limited effects of the offence' within category three?

3.13 In the road testing of this guideline some comments were made by Judges that when words like 'some' rather than serious or significant were used in category two harm this leads to arguments by Counsel whether a case falls into category one or two. They asked whether there could be some guidance as to what is some or serious distress, like in the manslaughter or death by dangerous guidelines. As noted in paragraphs 3.10 and 3.11 these terms are very carefully considered by the Council. However, people sometimes still take issue with the terms, some like 'serious', some prefer 'significant, others dislike the word 'some' and so on. As they are very different offences and the guidelines are constructed differently It is not thought that anything could be usefully taken from the manslaughter or death by dangerous guidelines, and that additional guidance shouldn't really be needed to decide what constitutes serious harm.

3.14 However one Judge suggested the addition of the word 'some' in front of the first factor in category two harm so that it reads: 'some suspicion cast upon an innocent party as

a result of the offence' and another suggested that the fourth bullet point in category one is amended to: 'serious or substantial delay caused to the course of justice'. The addition of these words may be helpful to address concerns raised about these factors. One Judge noted that there was no explicit reference to the cost/impact on police in investigating false narratives, for example. The Council did consider doing so during guideline development but decided that this type of impact could be captured within the impact on administration of justice factors.

Question eight: Does the Council agree just to add the words 'some' to the category two harm factor and 'serious' to the category one factor but no other changes to the harm factors?

Question nine: Does the Council wish to include an explicit reference to the impact on police time/costs?

3.15 The London Criminal Courts Solicitors' Association (LCCSA) and the Suffolk Magistrates Bench both asked if it was necessary to have a separate harm factor for delay caused to the course of justice, as well as impact on the course of justice, arguing that delay would be captured within the impact on the course of justice. In developing the draft guidelines the Council felt it was right to have two separate factors on these points, but it is arguable that delay would be captured within the impact on the course of justice factor.

Question ten: Does the Council still wish to have two separate harm factors? Or just impact on the course of justice?

3.16 The JC, the Criminal Solicitors' Law Association (CLSA) and a magistrate raised a concern about the category one harm factor of 'serious consequences for an innocent party(ies) as a result of the offence' and the category two factor of 'suspicion cast upon an innocent party as a result of the offence (for example time spent in custody/arrest)'. They state that the casting of 'suspicion' could itself be considered to have serious consequences for an innocent party, including serious distress and loss of reputation, a false accusation made against a teacher for example. The magistrate felt that suspicion should also be a category three harm factor. Although there could be real consequences for innocent person of having suspicion cast upon them as suggested- it would not be the same level of harm caused as if they had been arrested or falsely convicted and sent to prison for a time.

Question eleven: Does the Council agree that the harm factor relating to suspicion stays within category two?

4 EQUALITIES

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

5 IMPACT AND RISKS

5.1 There have been no risks identified at this time.

Blank page

Perverting the Course of Justice

Common law

Triable only on indictment

Maximum: Life imprisonment

Offence range: Community order – 7 years' custody

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors in the table below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

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

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

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

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

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

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

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

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder, learning disability (where not taken into account at step one)
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

STEP SIX

Compensation and ancillary orders

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

- [Ancillary orders – Magistrates’ Court](#)
- [Ancillary orders – Crown Court Compendium](#)

STEP SEVEN**Reasons**

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

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 52 of the Sentencing Code](#)

Blank page

Annex B

Witness Intimidation

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

Triable either way

Maximum: 5 years' custody

Offence range: Community Order- 4 years' custody

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors in the table below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Actual or threat of violence to witnesses and/or their families• Deliberately seeking out witnesses• Breach of bail conditions• Conduct over a sustained period of time• Sophisticated and/or planned nature of conduct
B- Medium culpability	<ul style="list-style-type: none">• Non-violent conduct amounting to a threat• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Contact with witness uUnplanned and or limited in scope and duration• Involved through coercion, intimidation or exploitation• Offender's responsibility substantially reduced by mental disorder or learning disability

HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none">• Contact made at or in vicinity of victim's home• Serious distress caused to victim• Serious impact on administration of justice
Category 2	<ul style="list-style-type: none">• Some distress caused to the victim• Some impact on administration of justice
Category 3	<ul style="list-style-type: none">• Limited effects of the offence

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions

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

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

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

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

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
 - Remorse
 - Good character and/or exemplary conduct
 - The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
 - Determination, and/or demonstration of steps taken to address addiction or offending behaviour.
 - Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
 - Mental disorder, learning disability (where not taken into account at step one)
 - Age and/or lack of maturity
 - Sole or primary carer for dependent relatives
-

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the [Reduction in Sentence for a Guilty Plea](#) guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the [Totality](#) guideline.

STEP SIX**Compensation and ancillary orders**

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

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

STEP SEVEN**Reasons**

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

STEP EIGHT**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 52 of the Sentencing Code](#)

Blank page

Sentencing Council

NPCC Criminal Justice Co-ordination Committee: Police use of Warnings & Notices.

Action: Use of Police Warnings in Witness Intimidation cases.

Security Classification NPCC Policy: Documents <u>cannot</u> be accepted or ratified without a security classification (Protective Marking may assist in assessing whether exemptions to FOIA <u>may</u> apply):	
OFFICIAL / OFFICIAL-SENSITIVE / OFFICIAL-SENSITIVE-COMMERCIAL/ OFFICIAL-SENSITIVE-PERSONAL / OFFICIAL-SENSITIVE-OPERATIONAL	
Freedom of information (FOI)	
This document (including attachments and appendices) may be subject to an FOI request and the NPCC FOI Officer & Decision Maker will consult with you on receipt of a request prior to any disclosure. For external Public Authorities in receipt of an FOI, please consult with npcc.foi.request@cru.pnn.police.uk	
Author:	AC Nick Ephgrave / CS Darius Hemmatpour
Force/Organisation:	National Police Chiefs' Council
Date Created:	2 nd November 2022
Coordination Committee:	Criminal Justice Co-ordination Committee
Portfolio:	Criminal Justice
Attachments @ para	N/A
Information Governance & Security	
In compliance with the Government's Security Policy Framework's (SPF) mandatory requirements, please ensure any onsite printing is supervised, and storage and security of papers are in compliance with the SPF. Dissemination or further distribution of this paper is strictly on a need to know basis and in compliance with other security controls and legislative obligations. If you require any advice, please contact npcc.foi.request@cru.pnn.police.uk	
https://www.gov.uk/government/publications/security-policy-framework/hmg-security-policy-framework#risk-management	

This paper sets out the types of warnings and notices available to the Police in supporting victims and witnesses against certain acts or behaviour by an offender that may be considered Witness Intimidation or Interfere with the Course of Justice.

In the majority of cases such warnings and notices are available through existing legislation that target areas of high harm or vulnerability. In these instances the legislation provides the opportunity for the Police to apply for a notice from the courts, considered to be an order of the court, restricting the subject/offender on carrying out certain types of act or behaviour or threats thereof, whether directly or indirectly.

In the majority of cases such ancillary orders can be applied from both criminal and civil courts, providing a range of notices that are considered criminal offences if breached.

Such restrictions imposed on the subject of any order often includes a focus on the prevention of witness intimidation and the interference of justice, in addition to any harmful acts towards those it aims to protect.



For the purpose of this document the various types of warnings, notices and orders have been listed into 3 categories:

- 1) Warnings, Notices & Civil Orders directly linked to the prevention of harm, witness intimidation and the interference of justice.
- 2) Warnings, Notices & Civil Orders directly linked to the prevention of harm and further offending **and could also be considered for using** to prevent witness intimidation or interference of justice.
- 3) Warnings, Notices & Civil Orders that solely relate to the prevention of harm or protection of others.

In practice many of the orders listed will be applied for in consultation with other agencies and third party advocacy services. Whilst those working in Police Public Protection and Safeguarding Teams are often seen as being critical in supporting vulnerable victims and witnesses, equally there a number of orders that are more appropriate for Neighbourhood Policing Teams (NPT) or Serious & Organised Crime Units (SOCU) to apply for.

1: Warnings, Notices & Civil Orders that are directly linked to the prevention of harm, witness intimidation and the interference of justice.

This first list of Civil Orders are frequently sought in order to support and protect victims and witnesses from a range of behaviours associated to the perpetrator of both reported crimes and non-crime incidents.

- **Domestic Violence Protection Notice and Order (DVPN/DVPO) - Section 24-33 Crime and Security Act 2010**

DVPNs/DVPOs are a civil order that fills a “gap” in providing protection to victims by enabling the police & magistrates to put in place protective measures in the immediate aftermath of a Domestic Abuse (DA) incident where there is insufficient evidence to charge a perpetrator.

DVPNs are prepared by dedicated officers within Police Safeguarding Teams. They are generally used for DA cases that are likely to end up NFA based on the victim’s limited engagement and history of abuse where the cases have failed to proceed. The focus of the DVPN is to provide an element of “breathing space” for the victim so that support & advocacy services can engage with and support the victim. They can only be obtained whilst the suspect is in custody for a DA related crime where the use of Bail conditions is unlikely.

A Superintendent or above must authorise a DVPN who will consider factors such as proportionality, necessity and protective measures for the victim. Once obtained an application to make the DVPN into a DVPO must occur within 48 hours of the DVPN being issued. The order will come with a power of arrest and if breached is a criminal offence.

Police present the DVPO case to court, either in person or virtually. Once issued details of the DVPO are loaded onto PNC. Management of those on DVPOs varies across forces, in the Metropolitan Police Service (MPS) the Prolific Offender Unit will manage these and target high harm offenders where breaches have occurred, including incidents of victim & witness interference.

DVPNs/DVPOs are soon to be replaced by the Domestic Abuse Prevention Order (DAPO) under the Domestic Act 2021.

- **Stalking Protection Order (SPO) - The Stalking Protection Act 2019**

This 2019 Act provides for early police intervention at the pre-conviction stage, to address stalking behaviour, before it escalates or becomes entrenched, by placing restrictions and/or positive requirements on suspects.

SPOs are generated following details of a reported Harassment or Stalking case recorded on the respective force crime recording system (MPS: CRIS & soon to be CONNECT). The case is reviewed by a nominated Detective within the Safeguarding team to establish if the incident meets the threshold for an SPO, with the OIC subsequently tasked to obtaining the order. The OIC then collates the relevant Statements and arrests the suspect before seeking authorisation from a Superintendent for the SPO. Once authorised a DC within the Safeguarding Unit will present the SPO request to the local court, highlighting the 3 main criteria of: Stalking is occurring, the risk to the victim and necessity to protect the victim.

Once granted a summons is issued which is served by the Safeguarding team on the suspect. Courts can issue full or Interim orders depending if there are issues raised by the defence team during application, however ultimately a full order will be sought and issued. Breach of the order is a criminal offence.

SPOs can be a standalone order- the burden of proof is civil for interim orders but become criminal for a full order. Victims are not required for SPO hearings.

- **Restraining Orders - Restraining Order (RO)- s.5 of the Protection from Harassment Act 1997**

ROs are issued either post-conviction or post-acquittal for the purpose of protecting a victim or victims, or any other person named, from conduct by the perpetrator which amounts to harassment or cause a fear of violence. This could include post-conviction witness intimidation.

In practice the orders can include the same conditions as those documented within an SPO and often sought as part of the post-investigation process by Safeguarding teams once the case has gone to trial and a conviction is likely. Any breach is considered a criminal offence and similar to DVPOs, will be pro-actively monitored by the Police and support services available to the victim. Such breaches often feature during MARAC and MASH meetings.

- **Non-Molestation Order (NMO)- s.42 of the Family Law Act 1996**

An NMO is a type of injunction that you can apply for through the family court. These orders are granted in order to prevent a perpetrator from causing harm to the victim or their children. The term "Harm" includes physical abuse, harassment, intimidation, psychological abuse, threats to cause harm, coercive/controlling behaviour and financial abuse.

Safeguarding teams will consider a non-molestation application alongside any SPO where the investigation is for a DA offence only, as both can run hand in hand. Often the restrictions in the NMO are the same as that in an SPO. Any breach of a NMO is a criminal offence with the breach recorded on PNC. Like ROs they are often monitored by Police Safeguarding Teams and 3rd party support services (for example IDVAs), again featuring frequently at MARAC & MASH meetings.

- **Protection from Harassment Order - Section 3A Protection from Harassment Act 1997**

Harassment warnings/notices. These no longer exist and were replaced by SPOs.

2: Warnings, Notices & Civil Orders directly linked to the prevention of harm and further offending and could also be considered to assist in preventing witness intimidation or interference of justice.

The following category of orders are not specifically designed to prevent offences such as witness intimidation or the interference of justice. However the behaviours they are associated with and the restrictions available within these orders can be considered in the management or prevention of such offences.

- **Violent Offences Protection Order and Notification (VOPO) - Section 98 of the Criminal Justice and Immigration Act 2008**

These orders are issued post-conviction for a specified offence or where the subject would have been convicted but is not guilty by reason of insanity or unfit to be tried (but charged).

VOPOs are used for offenders who continue to pose a risk of serious violence after their release from prison or when their licence has ceased. They are a preventative measure which are used to place controls on violent offenders in circumstances where they could potentially pose a danger to the public by placing restrictions on their behaviour.

Restrictions can include banning or limiting the offender from doing certain activities, visiting certain places or seeing certain people. In doing so the restrictions on seeing other people may well prevent cases of witness intimidation.

In practice these often form part of the MAPPA process as a consideration in managing Category 3 offenders who are deemed particularly violent individuals. They can also be applied for subjects who have committed offences & crimes abroad.

- **Serious Crime Prevention Order (SCPO)- Serious Crime Act 2007**

SCPOs are applied for via the Crown Court if a person has been convicted of a serious offence, or the High Court for a standalone application where the person has been involved in serious crime.

The aim of the order is to protect the public by preventing, restricting or disrupting involvement of the subject in serious crime. Restrictions imposed include financial, property or business dealings, travel restrictions and association/communication with other persons.

Given the severity of the cases these relate to in practice they are generally applied for by Police SOCUs and other specialist commands. Depending on the restrictions applied for regarding people associations, SCPOs could be considered for cases of witness intimidation or interference of justice.

- **Criminal Behaviour Order (CBO) - Section 22 Anti-social Behaviour, Crime and Policing Act 2014**

A CBO is designed to tackle the most serious and persistent anti-social individuals where their behaviour has brought them before a criminal court. The anti-social behaviour to be addressed does not need to be connected to the criminal activity which led to the conviction.

CBOs replaced Anti-Social Behaviour Order's (ASBO). They can be issued following conviction for any criminal offence by the courts and can prohibit the offender from doing anything described in the order. Courts must be satisfied that the offender has engaged in activity that amounts to harassment, alarm or distress. They typically last 1 to 3 years.

In practice CBOs are often coordinated through a multi-agency approach and can address typical ASB related issues, Hate Crime, Gang related crime and occasionally Domestic Abuse (DA). Whilst not often used for DA they can be an effective tool where a lesser type of order is required or where other civil orders may not be deemed suitable or available. These will often be considered at a MARAC or MASH. Given the issues of ASB linked to vulnerable victims they can be a useful notice/order in preventing witness intimidation or further offences.

Civil versions of CBOs namely Community Protection Notices (CPN) are available but only to address ASB, therefore not appropriate for managing witness intimidation.

- **Civil Injunction - Section 1 Anti-Social Behaviour, Crime and Policing Act 2014**

An injunction can be made against any person aged ten or over who has acted in an anti-social manner. It's a type of civil law remedy and isn't intended to punish the offender. An injunction is a court order to prohibit a person from continuing to carry out specified anti-social acts.

Injunctions can include a power of arrest in cases where the perpetrator has used or threatened violence, or if there is a significant risk of harm to others. Breaching an injunction is not a criminal offence. These could be considered for witness intimidation but in practice other available orders are more likely to be sought.

[3: Warnings, Notices & Civil Orders that solely relate to the prevention of harm or protection of others.](#)

The following listed set of orders and notices are based on protecting the wider public from harm and/or to prevent the subject from committing further offences. Whilst commonly used by Police Forces they do not have a direct correlation to offences of witness intimidation.

- **Gang Related Violence Injunction - Sections 34-50 Policing and Crime Act 2009**

Gang injunctions allow courts to place a range of prohibitions and requirements on the behaviour and activities of a person involved in gang-related violence. These conditions could include prohibiting someone from being in a particular place or requiring them to participate in rehabilitative activities.

Police and local authorities can apply for injunctions to prevent gang related violence and drug dealing activity. They typically last for 2 years.

- **Sexual Risk Order (SRO) - Section 122A of the Sexual Offences Act 2003**
- **Sexual Harm Prevention Order (SHPO) - Section 103A of the Sexual Offences Act 2003**

SHPO/SROs can be applied for either whilst the offender is in court in relation to an offence in Schedule 3 or 5 of the SOA 2003 or where a Chief Officer of Police or the Director General of the National Crime Agency applies by complaint to a Magistrates' Court.

Prohibitions imposed by a SHPO are those which are necessary for the purpose of protecting the public from sexual harm from the defendant. An order may, for example, prohibit someone from undertaking certain forms of employment or prohibit the offender from engaging in particular activities on the internet. Breach of an SHPO is a criminal offence.

- **Notification Order (NO) - Section 97 Sexual Offences Act 2003**

Section 97 provides a power for the police to apply to the magistrates' court for an order making an offender who has been convicted, cautioned or had a relevant finding made against them, in respect of a "relevant offence" (certain Sexual related offences within the 2003 Sexual Offences Act & relevant offence if abroad). The order requires the subject to register their personal details with the Police. Breaches will result in arrest and conviction at court for a more stringent sentence.

Notification Orders can be made where a person has a conviction for an equivalent sexual offence, outside of the United Kingdom and they are found, or anticipated to reside within the force area. There is no requirement to consider that the person is currently subject of investigation for another matter, or poses an identified risk of harm, mere confirmation of a qualifying foreign offence is sufficient for the order to be made.

- **Slavery and Trafficking Prevention Order - Section 14 & 15 of the Modern Slavery Act 2015**
- **Slavery and Trafficking Risk Order - Section 23 of the Modern Slavery Act 2015**

STPOs are civil orders aimed at protecting the public in general or specific persons from the physical or psychological harm which would result if the defendant committed a slavery or trafficking offence. They are a preventative measure to deter unlawful and harmful activity.

An STPO on conviction can be made by a court at the point of conviction of a defendant convicted of a slavery or trafficking offence where there is a risk that the defendant may commit another slavery or human trafficking offence and poses a risk of harm to the public.

- **Threats to Life Warning Notices (Osman Warning)- 1998 legal case of Osman vs United Kingdom**

Threat to life warnings (Commonly known as Osman warnings) are issued if police have intelligence of a real and immediate threat to the life of an individual. Police officers will visit the subject at home to inform them of the potential danger. Advice to the subject will include changing their daily schedule, vigilance for suspicious activity and a temporary home move.

Threat to life warnings' are a police response to the human rights court's requirement that the state sometimes has to be proactive in protecting people from threats.

- **Female Genital Mutilation Order (FGMO) - Section 5A of the FGM Act 2003**

Protecting persons at risk or known to be at risk of FGM or had FGM carried out on them.

- **Forced Marriage Protection Order (FMPO) - Section 63A Family Law Act 1996**

Protecting people from being forced into marriages or already in a forced marriage.

- **Section 59 warning - Section 59 Police Reform Act 2002.**

For the anti-social use of motor vehicles.

- **Premises Closure Order (PCO)- ASB Anti-social Behaviour, Crime and Policing Act 2014**

Applications for PCOs are effective in targeting premises where residents have engaged in disorderly, offensive or criminal behaviour on the premises, or that the use of the premises has resulted in serious nuisance to members of the public. The PCO is necessary to prevent the behaviour, nuisance or disorder from continuing, recurring or occurring.

Darius Hemmatpour
C/Supt
National Criminal Justice Coordinator

Blank page

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

Introduction

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

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

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

Methodology

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

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

Summary of main points

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

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

Perverting the course of justice

Scenario A

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

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

Key findings

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

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

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

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

Scenario B

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

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

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

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

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

Key findings

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

Comments on the guideline

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

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

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

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

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

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

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

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

Witness intimidation

Scenario A

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

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

Key findings

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

⁶ One judge did not state a starting point.

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

Scenario B

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

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

Key findings

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

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

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

Comments on the guideline

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

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

⁸ Two did not give pre-guilty plea sentences.

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

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

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

Annex A: Summary tables

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

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

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

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

¹² Factors in italics are not listed in the guideline.

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

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

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

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

¹⁶ The judge noted 'not double counting'.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

27 January 2023
SC(23)JAN08 – Motoring offences paper 1
Rebecca Crane
Ollie Simpson
ollie.simpson@sentencingcouncil.gov.uk

1 ISSUE

1.1 Considering consultation responses on guidelines relating to:

- causing death by driving whilst disqualified;
- causing serious injury by driving whilst disqualified;
- causing death by driving whilst unlicensed/uninsured;
- driving/attempting to drive with a specified drug above the specified limit;
- being in charge of a motor vehicle with a specified drug above the specified limit.

1.2 There is a point raised in relation to the drug driving guidelines which has readacross to the draft guideline for causing death by careless driving whilst under the influence.

2 RECOMMENDATIONS

2.1 That Council makes amendments to the proposed guidelines, as set out below.

2.2 That where amendments to the drug driving guidelines would read across to the existing guidelines for excess alcohol and unfit through drink or drugs, these are flagged in a future consultation, either on motoring or miscellaneous amendments.

3 CONSIDERATION

Death and serious injury whilst disqualified

3.1 Given the nature of the offence, and assuming the question of quality of driving is dealt with via other offences or not at all, there are a limited number of factors which can come into play to make one offence more serious than another for this and the other “whilst disqualified/unlicensed/uninsured” offences. Many of the points raised in relation to these guidelines would also apply to causing death by driving whilst unlicensed or uninsured.

3.2 Various respondents suggested a high culpability factor relating to repeated breaches of the disqualification:

“It might be added that where there is evidence that D frequently drove in contravention of the disqualification, this should fall within A High Culpability. This would be different to the aggravating factor of previous convictions, as it would not require the offender to have been convicted of driving whilst disqualified, but there would need to be evidence presented to the court that disqualified driving was habitual.” – *Professor Sally Kyd*

“We agree with the culpability factors. However we suggest adding a further ‘high culpability’ factor for cases where the driver is known to have driven on more than one occasion while disqualified.” – *Cycling UK*

“Agree but would believe high culpability should include cases of a recidivist nature.” – *Transport for London*

3.3 We have proposed an aggravating factor of “history of disobedience to disqualification orders (where not already taken into account as a previous conviction)”. The main argument against adding anything about disobedience to the current order is what the evidence would be to determine this, unless it came from the offender themselves. I therefore do not propose making this change.

3.4 Another theme of some responses was whether “driving shortly after disqualification imposed”, and whether the time elapsed since imposition of a ban was relevant:

“Driving whilst disqualified whether 1 day after disqualification or 6 months should increase culpability equally” – *Member of the public*

“With driving shortly after being disqualified cited as a high culpability reason, there is a danger that someone who is close to the end of their driving ban will be regarded more leniently.” – *Member of the public*

“We consider that driving shortly after disqualification has been imposed will not always be a higher culpability factor. There will be situations as envisaged in the lower culpability factors proposed where driving takes place that could be immediately after disqualification is imposed but that nevertheless ought not to be aggravated by the driving taking place soon

after disqualification. We consider there is a tension between the two, for example between the second lower culpability factor (Decision to drive was brought about by a genuine and proven emergency) and driving again shortly after a disqualification is imposed. It may be useful for there to be some clarification on what “shortly after” would mean in this context.” – *Kennedy’s law firm*

3.5 We had discussed this question ahead of consultation, and concluded there was a difference in culpability at least between someone reaching the end of their (say, lengthy) disqualification and someone flouting a ban freshly imposed by the court – the latter showing a clearer snub to the court’s authority. But as these responses show the point is debateable.

3.6 A key question is to what extent quality of driving is reflected at either step one or step two. We deliberately did not include any reference to this in these offences, as it should be the subject of separate charges, and therefore taken into account as part of totality, or otherwise irrelevant to the offence in question. Some challenged this approach:

“The question here is really whether the culpability and/or aggravating and mitigating factors should take account of the standard of driving. The statutory provision does not require that D’s driving fell below the standard of the competent and careful driver but, following the Supreme Court’s decision in *Hughes* [2013] UKSC 56, it is required that there is something to be criticised about D’s driving. This offence is likely to be charged alongside other causing death by driving offences. The extent to which D’s driving departed from the required standard should be reflected in sentence (that might include listing as a mitigating factor that there was little to criticise in relation to D’s standard of driving at the time of the offence)” – *Professor Sally Kyd*

“Although the quality of driving does not affect culpability for the offence, I believe that some characteristics of dangerous or careless driving should be included as an aggravating factor.” – *Member of the public*

3.7 I remain of the view that the factors in this guideline should relate closely to the offence itself and where the offender has also been convicted of careless or dangerous driving, those guidelines will apply. It is worth noting that this offence carries double the maximum penalty of causing death by careless driving, so may well be the lead offence of the two.

3.8 There is an elegance to Professor Kyd’s suggestion of reflecting the standard of driving as a mitigating factor in that it does not “intrude” too much into what should be the real substance of the guideline, but allows for the situation where the driver’s actions have

not been a significant contributory factor to the death (alongside “actions of the victim or third party contributed significantly to collision or death”).

3.9 I therefore propose “no evidence of careless or dangerous driving which contributed to the collision or death” as an additional mitigating factor across all the guidelines in this group (suitably amended for causing serious injury whilst disqualified).

Question 1: does the Council wish to add the mitigating factor “no evidence of careless or dangerous driving which contributed to the collision or death”?

3.10 On step two factors, several respondents raised the same sorts of general issues we considered in relation to standard of driving offences (for example, whether the victim being a close friend or relative was relevant, or whether “sole or primary carer” should mitigate).

3.11 HM Council of District Judges picked up on our note (copied from the existing driving whilst disqualified guideline) relating to the statutory aggravating factor of previous convictions:

“An offender convicted of this offence will always have at least one relevant previous conviction for the offence that resulted in disqualification. The starting points and ranges take this into account; any other previous convictions should be considered in the usual way.”

3.12 They point out that a disqualification may have been imposed for an offence using the general disqualification power in section 163 of the Sentencing Code (the common example they suggest is taxi touting, but it could be any offence). They also point out that a disqualification may be imposed for not paying child maintenance, though this is rare. Given the rarity, and the argument that if a disqualification has been imposed and still in force it is by definition recent and relevant, I do not propose amending the note.

3.13 On the other hand, several respondents, including the CPS, pointed out that the mitigating factor “No previous convictions or no relevant convictions” could not apply to this offence. This is almost correct, subject to the points made by HM Council of District Judges above.

3.14 Our breach guidelines do not contain this as a mitigating factor, although the magistrates’ courts guideline for driving whilst disqualified does. One could argue that offenders who breach a disqualification, particularly where it results in death or serious injury, should not be afforded the mitigation of another offender who has not committed *any* previous offences. However, the strictly logical and just corollary of the note on the aggravating factor (see above) is that the previous conviction has been taken into account in setting the starting point, and the offender then has a right to the mitigation that any another

offender would have at step 2. We could therefore alter the factor to refer to any previous convictions *other* than that which gave rise to the disqualification.

3.15 If we did change this there would be a strong case to amend the mitigating factor as it appears in the driving whilst disqualified guideline. I suggest this can be done without consultation, although (as per below with the drink and drug driving guidelines) Council may wish to mention or consult on the change, either as part of the next motoring consultation (covering aggravated vehicle taking and other things) or as part of the next round of miscellaneous amendments.

Question 2: do you agree to amend the mitigating factor “No previous convictions or no relevant convictions” to “No previous convictions or no relevant convictions, other than that for which the current order for disqualification was imposed”?

Death whilst unlicensed/uninsured

3.16 There were further points made in relation to culpability and step two factors which specifically related to causing death whilst unlicensed or uninsured.

3.17 The West London Bench and an individual magistrate thought that never having passed a test should be a high culpability factor. I am not immediately clear why this should be the case. In any case the blame which could be attached to not ever having been qualified to drive would be matched by the culpability of having been at one stage but now knowingly driving (and killing someone) without a licence.

3.18 The West London Bench also proposed additional step two factors:

“We propose an additional aggravating factor where the driver has been uninsured for a long period of time and is purposely avoiding paying for insurance. We therefore propose the addition of the following aggravating factor:

- Evidence that the driver has been uninsured for a long period of time.

On the flip side... we propose an additional mitigating factor where the driver has previously held insurance but has recently failed to renew that insurance. We therefore propose the following additional mitigating factor:

- Recent failure to renew insurance where insurance was previously held.”

3.19 There may be a case for these factors, particularly as the equivalents of the previously-mentioned culpability factor relating to a recently imposed disqualification. However, the aggravating factor would need the qualification that the offender was *driving* whilst uninsured and that creates the same evidential problems as for someone who has been previously driving whilst disqualified (see para 3.3 above).

3.20 The suggested mitigating factor does seem more convincing, and could capture that offender who didn't have a genuine belief they were insured, but who has a history of being insured and may credibly have been planning to again. We may, though, want to add a warning against double mitigation for the person who had a genuine belief they were insured to drive (being categorised as low culpability).

Question 3: do you agree to add the mitigating factor “recent failure to renew insurance where insurance was previously held (where not taken into account at step one)”.

3.21 The Motor Insurers Bureau, which has a particular interest in deaths caused by uninsured drivers, wanted to see two additional aggravating factors:

“We agree with the proposed guidelines and suggest adding the following:

- Vehicle itself uninsured as opposed to an insured vehicle being driven by an uninsured person. This can indicate a conscious choice to break the law over a prolonged period.

- Evidence of previous knowledge that vehicle was uninsured – e.g. a Continuous Insurance Enforcement (CIE) or police warning letter sent to the registered keeper if they are the offender being sentenced.”

3.22 On the former, I am not sure about creating a hierarchy between those who are personally uninsured set against those whose vehicles are. The issue of long term offenders is caught more broadly (and more directly) by the proposal above from the West London Bench.

3.23 For the latter we already include “disregarding warnings of others about driving whilst unlicensed or uninsured”, although we could add “for example, a Continuous Insurance Enforcement (CIE) or police warning letter” to provide some help.

Question 4: do you want to add to the current aggravating factor so it reads: “disregarding warnings of others about driving whilst unlicensed or uninsured (for example, a Continuous Insurance Enforcement (CIE) or police warning letter)?

Drug driving guidelines

3.24 Our proposed drug driving (drive/attempt to drive and in charge) were based on the existing equivalents for unfit through drink or drugs, and we should bear in mind that any changes we make in response to this consultation may well have readacross to these guidelines and those for drive/attempt to drive and in charge over the alcohol limit.

3.25 Most respondents were content with our approach to culpability, working within the current limitations of understanding of how different amounts of different drugs affect driving. However, despite our explanation, two magistrates did want to see different amounts of drug reflected in the culpability table (as with alcohol) and felt our proposed guidance was too vague.

3.26 An issue arose in road testing related to the high culpability factor “evidence of another specified drug or of alcohol in the body”. In a drop down explanation we say (among other things), “This factor may apply whether or not the ‘other’ specified drug or alcohol is present at a level that could give rise to separate charges.” However, magistrates were unclear on whether a small level of drink not proven to be above the legal limit (taken alongside cocaine) met this factor.

3.27 Taking the wording at face value, with the explanation, this does capture another drug or alcohol present even if not above the legal limit. But should it? I put the question to Professor Kym Wolff from the Department for Transport’s Advisory Panel on Alcohol, Drugs & Substance Misuse & Driving. She said

“The interpretation of the magistrates is probably correct [i.e. only to apply the factor where each drug/alcohol is over the limit] – certainly for the highest tariff offences. Whilst it is also true that a combination of drugs and alcohol when not every substance is above the legal limit should also be recognised as very unsafe for drivers.

Generally, it would be better to use the legal cut-off for drugs and alcohol and consider that the higher the concentration of alcohol or drug detected above the limit the greater, the degree of impairment and risk of a RTC.

So, alcohol and drugs used alone have a certain risk associated with their use when driving. When drugs are combined with other drugs or with alcohol that risk is multiplicative.”

3.28 This question has a readacross to the guideline for causing death by careless driving whilst under the influence, where we propose “mixing” as a high culpability factor. For this guideline, Professor Wolff recommends that the top level include mixing above the legal limits, and medium include mixing drugs and alcohol *below* the legal limits.

3.29 There may be a case for constructive ambiguity here: by leaving the explanation as “This factor may apply...” we are letting magistrates consider whether the mixing merits higher culpability on the facts of the case (or whether (eg) a can of lager drunk the night before can be ignored for these purposes). But given the confusion in road testing and the

significant consequences attaching to categorisation in the causing death by careless under the influence guideline, we should probably provide a clear steer.

3.30 For the drug driving guidelines I propose that the culpability factor be amended to “evidence of another specified drug or of alcohol in the body above the legal limit”, amending the relevant line in the explanatory dropdown to “this factor applies even where the presence of the ‘other’ specified drug or alcohol is the subject of separate charges”.

3.31 For the causing death by careless under the influence guideline, I have slightly adapted Professor Wolff’s proposal where it contained some internal inconsistencies. Also adding in the blood and urine measurements as discussed ahead of consultation, I propose (with additions/amendments to the version consulted on in red bold):

The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	High culpability	Medium culpability	Lesser culpability
71µg/ 163mg/216mg or above of alcohol OR Deliberate refusal to provide specimen for analysis OR Evidence of substantial impairment and/or multiple drugs above legal limit or combination of drugs and alcohol above the legal limit	Starting point: 12 years Sentencing range: 8 – 18 years	Starting point: 9 years Sentencing range: 6 – 12 years	Starting point: 6 years Sentencing range: 5 – 10 years
51- 70µg/ 117-162mg/156-215mg of alcohol OR A single drug detected above the legal limit OR both alcohol and drugs detected together, one or both being below the legal limit	Starting point: 9 years Sentencing range: 6 – 12 years	Starting point: 6 years Sentencing range: 4 – 9 years	Starting point: 4 years Sentencing range: 3 – 7 years
36-50µg/ 81-116mg/108-155mg of alcohol	Starting point: 6 years	Starting point: 3 years	Starting point: 1 year 6 months

<p>OR</p> <p>A single drug detected below the legal limit</p>	<p>Sentencing range: 4 – 9 years</p>	<p>Sentencing range: 2 – 5 years</p>	<p>Sentencing range: 26 weeks - 4 years</p>
---	--	--	---

3.32 On the other hand, as Professor Wolff herself points out, there is an inherent danger and unpredictability in any level of mixing, so Council may want to consider taking a more “zero-tolerance” approach whereby any level of alcohol and/or drug mixing is considered at the highest level.

Question 5: do you agree that the high culpability factor in the drug driving guidelines related to “mixing” be engaged when both substances are above the legal limit?

Question 6: on the same principle, do you agree with the revised table for causing death by careless driving whilst under the influence?

3.33 Various discrete points were made about culpability. Benjamin Damazer, a magistrate with experience in pharmaceuticals questioned our proposed note on not “double counting” certain drugs which may be present as the result of taking one drug. Our explanatory note reads:

“For these purposes where the following pairs of drugs appear together they shall be treated as one drug as they may appear in the body as a result of a single drug use: Cocaine and benzoylecgonine (BZE); 6-Monoacteyl-morphine and morphine; or Diazepam and Temazepam.”

Mr Damazer said:

“Diazepam and Temazepam (and Lorazepam) are three different chemical compounds in the same family. To allow them to be linked as proposed is akin to saying whisky and beer don't both count towards a total alcohol consumption or that skunk and leaf cannabis should not both be considered.

The indications are erroneous. All part of benzodiazepine group but different. Temazepam (Normison, normies) is a short acting drug properly prescribed for very short medical procedures (eg tooth extraction) or to assist inability to get to sleep. Diazepam (Valium) is a longer acting drug. Lorazepam (Ativan) is used for longer surgical procedures to assist memory loss (eg colonoscopy). None of these products is the derivative of any other (unlike the cocaine and heroin examples).”

3.34 Although the comparison with whisky and beer isn't quite right (both contribute to a higher alcohol reading but we would not treat them as different drugs for these purposes), I have checked with Professor Wolff on the point. She agrees that Diazepam and Temazepam can be prescribed in their own right, have different effects and it would be best to remove the reference to them from the note.

Question 7: are you content to remove the reference to Diazepam and Temazepam in the note on mixing drugs?

3.35 The West London Bench wondered whether "passengers in vehicle" should place an offender in high culpability (where we have proposed it as an aggravating factor). There may be some force in this, but I suspect it is such a common occurrence that it would place too many cases in high culpability, and we need to reflect the particular culpability of driving larger vehicles for commercial purposes.

3.36 On that point, two members of the public queried our wording of "driving for hire or reward", taken from the existing drink/drug guidelines but different to "driving for commercial purposes" standard across the other motoring guidelines on which we consulted. I agree that "commercial purposes" is clearer, potentially broader and in any case consistent with the other guidelines. If we were to change it here we will want to consider amending it for the existing drink/drug driving magistrates' guidelines.

Question 8: do you agree to change the culpability factor from "driving for hire or reward" to "driving for commercial purposes"?

3.37 HM Council of District Judges (Magistrates' Courts) thought it would be helpful to "make clear whether the higher culpability factors apply to driving or attempting to drive." I do not think we should legislate by the back door for a different penalty between the two, but for absolute certainty we could amend the factors as follows (additions in bold):

- Driving **(or attempting to drive)** an LGV, HGV or PSV etc
- Driving **(or attempting to drive)** for hire or reward

Again, if you were minded to make this change we would want to make the change for the guideline for driving/attempting to drive while unfit.

Question 9: do you want to add "or attempting to drive" to the relevant culpability factors?

3.38 Under harm, the West London Bench proposed assistance to magistrates in what counts as "obvious signs of impairment". They suggested a list of descriptors, potentially as a drop down with what these signs may be, including,

- Signs of poor driving / road use, such as deviating from lanes, late braking, not using headlights, inability to notice hazards, inability to maintain a constant speed, aggressive or erratic driving, excessive risk taking.
- Pupil dilation / reddening of eyes.
- Slurred speech.
- Slow physical reaction times.
- Unsteady on feet / unable to walk in a straight line.
- Poor physical co-ordination skills.
- Mental confusion – such as strange / inappropriate answers to simple questions.
- Lack of concentration.
- Dizziness.
- Appearance of drowsiness / sleepiness / fatigue.
- Nausea / vomiting / cramps.
- Aggression, panic attacks or paranoia.

This may go some way to providing the extra guidance which magistrates sought in road testing about what “obvious signs of impairment” means (and to whom the impairment should be obvious).

3.39 However, as ever with particularisation this runs the risk of opening up a checklist exercise, and omitting other signs that could result from drug use. On balance, I recommend leaving the harm factor “obvious signs of impairment” open to interpretation.

3.40 A more general issue with harm raised by a few respondents is that in these guidelines (as in simple dangerous driving) it arguably bleeds across from culpability – where any harm which has been caused is not an element of the offence. Unlike other guidelines, in other words, the focus remains on what the offender has done and not the impact on victims (if any). Further, for the offence(s) of being over the specified limit, the only thing that needs to be evidenced is the specimen reading and the fact someone was driving, attempting to drive, or in charge of the vehicle.

3.41 However, that does not mean we are precluded from saying more on harm caused or risked, as we do in the dangerous driving guideline. We have an aggravating factor “*involved in accident (where not taken into account at step 1)*” and this could be brought forward to be

a harm factor (proposed by the West London Bench and Professor Sally Kyd). Or indeed we could go further and reflect some of the harm factors in dangerous driving: “offence results in injury to others”, “circumstances of offence created a [high] risk of serious harm to others” and “damage caused to vehicles or property”.

3.42 Against this, one could argue that if injury caused to others, damage caused to property, and/or the quality of the driving were not such as to attract separate charges or convictions, then they do not merit being counted at step one. There also may be problems of evidence presented to the court if the Police have simply relied on the levels of drug present.

3.43 Additionally, bearing in mind this is a high volume offence, there is a risk that a large number of cases involving minor prangs and collisions would be pushed up into higher harm with the risk of a significant number of short custodial sentences. On balance I would not recommend moving this factor forward.

3.44 In any case, whether we retain “involved in accident” at step two or move it to step one, we were rightly pulled up for our use of the word “accident” by Prof Kyd, Action Vision Zero, Transport for London and Cycling UK:

“This should refer to crash or collision as accident implies unfortunate if not inevitable. Given the guidelines are for cases where criminal culpability has been proven, this language should be updated. It has been over 15 years since the CPS adopted the policy of referring to crash or collision, not accident. The DfT has recently announced it too will refer to collision and not accident.” – *Action Vision Zero*

Question 10: do you want to move “involved in accident” forward to become a harm element (not recommended)?

Question 11: wherever it is placed, are you content to change the word “accident” to the word “collision”?

3.45 Some respondents questioned the mitigating factor “very short distance driven”. As well as the question of subjectivity raised in road testing, several respondents said it was irrelevant whether the journey was a short or a long one given the potential for harm. Another person suggested that it was the *intention* to drive a long journey that was the critical aggravation.

3.46 A member of the public made the following suggestion:

I recommend splitting the "High level of traffic or pedestrians in the vicinity" factor into two parts: "High level of traffic," and "Vulnerable road users in the vicinity, including pedestrians, cyclists and horse riders".

I agree that there are two distinct elements here and we should be promoting the idea of the broader class of vulnerable road users (including motorcyclists).

Question 12: do you agree to create two separate aggravating factors:

- **High level of traffic**
- **Vulnerable road users in the vicinity, including pedestrians, cyclists, horse riders, motorcyclists etc?**

3.47 The West London Bench proposed a mitigating factor to match “spiked drinks” which appears in the guidelines for excess alcohol:

“We believe there should be an equivalent for drugs of the mitigating factor “Spiked drinks” for alcohol. It is possible that certain illegal drugs may be placed in drinks or food for criminal purposes – for example GHB (gamma hydroxybutyric acid – also known as liquid ecstasy). Since many of these types of drugs lead to symptoms such as mental confusion and loss of inhibitions, it is quite possible that an otherwise innocent person might try and drive after consuming such substances unknowingly. We suggest an additional mitigating factor here:

- Illegal drugs consumed unknowingly”

3.48 This seems an unobjectionable proposal, especially as it reflects what is in the equivalent alcohol guidelines. I cannot improve on the wording the West London Bench suggest, given that there is no generic equivalent of “spiked drinks” for drugs.

Question 13: do you agree to add the mitigating factor “illegal drugs consumed unknowingly”?

3.49 As mentioned above, many of these changes could and arguably should be made to the existing equivalent guidelines for excess alcohol and unfit through drink or drugs, although some will be relevant only to guidelines for driving/attempting to drive rather than in charge, and some may be relevant only to unfit or excess.

3.50 We could make those changes without further consultation, if we believe they are appropriate, and assuming that those interested parties who have responded to this consultation value consistency across guidelines. However, some of the changes proposed are more than wording tweaks and do make substantive changes. This would argue in favour of them being either consulted on (or at least mentioned) either in the next motoring consultation or in this year’s round of miscellaneous amendments, so that they can be well

publicised in advance of being made and coming into force. Alternatively, Council may want to look at the changes on a case by case basis. I recommend (if Council agree the consequential changes are appropriate) that we do not make the changes now, but that they be mentioned, not consulted on, in a future consultation.

Question 14: do you agree to make these amendments, as appropriate, to the current drink/drug drive magistrates' guidelines, but only after being included in either the next motoring consultation or in this year's round of miscellaneous amendments?

4 IMPACT AND RISKS

4.1 As set out in the draft resource assessment published alongside the consultation, the revised guidelines as consulted on may result in a requirement for additional prison places running into the hundreds. 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.

4.2 These assessments are far different to [the assessment the Government made at the point of introducing the legislation](#) that a "high" scenario for raising the penalty for causing death by dangerous driving would involve 30 more prison places. That assessment appears to be based on the assumption that only the worst cases would see an increase in sentencing severity. By contrast, as the Justice Select Committee highlight, we are proposing to increase sentencing levels across most categories. This is an especially live consideration bearing in mind current prison capacity issues.

4.3 The decisions that the Council makes post-consultation may affect the final resource assessment. Depending on how consideration of consultation responses proceeds, we aim to present Council with a revised version of the resource assessment at the 31 March meeting.

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

27 January 2023
SC(23)JAN08 – Motoring offences paper 2
Rebecca Crane
Ollie Simpson
ollie.simpson@sentencingcouncil.gov.uk

1 ISSUE

1.1 Considering consultation responses on sentence levels across motoring offences.

2 RECOMMENDATIONS

2.1 That Council keep most of the sentence levels the same as those on which we consulted, but adjust downwards those for causing serious injury by careless driving and causing injury by wanton or furious driving.

3 CONSIDERATION

Standard of driving offences

3.1 The sentence tables we proposed for consultation are set out at **Annex A**.

3.2 In terms of pure volumes of response across most offences there were calls for sentence levels to be higher than our proposals. That said, as discussed in November, there were calls for careless and lower culpability driving to be dealt with not by short custodial sentences but by means of more use of lengthy disqualifications. We will return to disqualification as part of a separate project.

3.3 For causing death by dangerous driving, some respondents, such as the charity Brake, wanted to see exact parity with unlawful act manslaughter (i.e. a very high culpability level with a starting point of 18 years and a range of 11 -24 years' custody). The National Police Chiefs' Council also thought our levels were too low. Others picked up on their desire to see several of our medium culpability factors put into high (thinking, for example, of the person who drives dangerously while over the limit being placed in medium culpability).

3.4 Even amongst those who wanted to see less use of custody generally there was not much complaint that these levels were too high. However, I believe what we have proposed remains justified. The worst cases of dangerous driving will still rarely (if ever) involve any intent to cause harm. Moreover, given the maximums of other offences (such as 5 years for causing serious injury by dangerous) we risk creating a disproportionate gap by inflating these sentences even more. If there is any case for change it may be to raise the middle

category levels marginally (noting that we are keeping deliberate decisions to (eg) drive over the limit or in a defective vehicle or drink over the limit in that category), but I do not recommend this.

3.5 Given they share the same maximum penalties, we based our levels for causing death by careless driving under the influence on these levels. These received more support, and attracted many of the same criticisms. I therefore do not propose making any amendments to those sentence levels either.

Question 1: are you content to leave the sentence levels for death by dangerous and death by careless under the influence unamended?

3.6 For causing serious injury by dangerous driving, again many respondents wanted higher sentences, some not appreciating the limits imposed by the statutory maximum.

3.7 There, were however, several voices – including road safety campaigners such as RoadPeace and Action Vision Zero – who wanted more community orders in the offence range, particularly in the lowest (2C) box (remembering that they would expect more and longer disqualifications as a counterbalance).

3.8 There may be a case for adjusting the lowest box slightly and allowing the range to reach down for a high level community order where (for example) there was significant mitigation and the injury was just over the threshold for serious. I am mindful, however, that our proposed category 2A of causing serious injury by careless driving is already illogically identical to category 2C of causing serious injury by dangerous driving, and think a more pressing question is the levels for careless driving offences (see below).

3.9 Few people took specific issue with our proposals on simple dangerous driving. Many respondents wanted higher sentences but appeared not to recognise the statutory maximum. The Magistrates Association took issue with us describing the levels as a “modest uplift” on those in the current guidelines, but did not indicate they were opposed.

3.10 Building on the point made about causing serious injury by dangerous, several respondents wanted to see less use of custodial sentences alongside greater use of disqualification for careless driving offences. Nicole and Chris Taylor, parents of a road traffic collision victim, said that they wanted to see careless driving mainly punished by non-custodial sentences. Action Vision Zero said of the proposed causing death by careless driving levels:

“We do not agree. We believe [the sentence levels] are too high. The proposed levels all have custody as a starting point with a community order only included in the range proposed for the least culpability level. As shown above, custodial sentences are rarely used with

causing death by careless driving convictions. Only one in four drivers convicted of this offence went to prison in 2021.

We have argued that careless driving includes human errors and lapses. The Safer System approach, adopted by the DfT and transport authorities across the country, acknowledges people make mistakes and aims to design a transport system so that these mistakes do not prove fatal or serious. We do not think it fair to send drivers to prison because transport operators, politicians and policy makers have allowed excess risk in our system.”

(Note that the “one in four drivers”/rarely used statistic does not take into account how many offenders may have had a suspended sentence in the ranges we are proposing – likely a highly pertinent consideration with this sort of offending.)

3.11 Professor Sally Kyd backed this up:

I think [the sentence levels] are too high. The proposed levels all have custody as a starting point with a community order only included in the range proposed for the least culpability level. Whilst there was a need to close the gap between CDDD with a higher maximum penalty, and the sentencing for this offence, I think this goes too far. Whilst a prison sentence is appropriate for level A High Culpability, it is not necessarily appropriate for level B medium culpability. Greater reliance on disqualification (with retest) as a punishment to satisfy utilitarian and retributive aims of sentencing is appropriate here and, again, i would press the Sentencing Council to attempt to provide periods of disqualification in its guidelines, especially for this offence (reducing the reliance on imprisonment).

3.12 By contrast, other voices thought that the levels were too low to reflect the taking of a life. The West London Bench thought that there needed to be more distinction between this and causing serious injury by careless driving, suggesting a fully custodial range for culpability C offences. Nicholas Atkinson KC believed Parliament’s will was being ignored by the offence range not reaching the full 5 year maximum.

3.13 Again, both the Magistrates Association and HM Council of District Judges (Magistrates’ Courts) queried our description of these levels as “modest” uplifts on those currently in force, but neither body said they wanted to see them decreased.

3.14 Bearing in mind the balance of views, and remembering that it is open to the court to suspend most of the sentences we propose where there is a realistic prospect of rehabilitation, I do not recommend making any amendments to the table for causing death by careless driving.

3.15 Although many agreed with our proposals, many of the points already considered about greater use of community orders were made, by the same people but with at least as

much force for causing serious injury by careless driving. Dr Adam Snow believed that the lowest (2C) box should be fully non-custodial, whilst Action Vision Zero and others thought that non-custodial sentences should make up the majority of this table. Professor Kyd made this point:

“The proposed sentence levels are the same as for dangerous driving. If a driver falls far below the standard of a competent and careful driver, they will always display a higher level of culpability than someone who just drives below the standard of a competent and careful driver, no matter the outcome of the driving. Whether a driver causes a RTC is beyond their control (it is reliant on the reactions of other road users in many cases), as is the severity of any injuries that result, as well as whether anyone luckily escapes without injury. The worse the standard of driving, the more likely a collision will ensue, with the risks involved. I would therefore wish to see the sentencing for this offence being below that of dangerous driving, even though the maximum penalty is the same. Although I appreciate the Sentencing Council needs to be mindful of what Parliament has set as the maximum penalty, I would suggest that all but the most serious examples of this offence (where the higher level of harm is caused) would not warrant a prison sentence.”

3.16 I am more persuaded of the case for non-custodial sentences, particularly where harm and culpability are lower. It is the case that Parliament has set a maximum of 2 years, but equally Parliament has set a maximum of a fine for the summary offence of simple careless driving. Our guideline for that offence goes up to a Band C fine.

3.17 A table adjusted downwards to reflect the points made about the lower culpability of careless driving could look as follows (amendments in red):

	Culpability		
	A	B	C
Harm 1	Starting Point: 1 year 6 months Category range: 4 26 weeks - 2 years	Starting Point: 1-year 26 weeks Category range: 26-weeks High level community order – 1 year 6 months	Starting Point: 26-weeks High level community order Category range: High Low level community order – 4 year 26 weeks
Harm 2	Starting Point: 1-year 26 weeks Category range: 26-weeks High level community order – 1 year 6 months	Starting Point: 26-weeks High level community order Category range: High Low level community order – 4 year 26 weeks	Starting Point: High Medium level community order Category range: Low-level community order Band C Fine – 26-weeks High level community order

3.18 Note that this follows diagonally when read alongside the table for causing serious injury by dangerous driving. The Band C fine overlap in box 2C with the simple careless driving guideline can be justified as in that guideline Band C fines are reserved for the worst cases of careless driving where there may have been some injury or property damage, where here these are for borderline cases of careless driving.

3.19 Against this, one might be uneasy about the prospect of someone inflicting lifelong infirmity on someone, even if by the most momentary of mistakes, receiving a community order.

Question 2: do you want to make the changes to the sentencing table for causing serious injury by careless driving as above?

3.20 The levels for causing injury by wanton or furious driving were set in proportion to the other guidelines (culpability A aligning with dangerous driving, B with careless driving and C being all other cases; Harm 1 being death and the equivalent of higher harm in the serious injury guidelines; 2 being other cases of serious harm to the GBH standard; and 3 being all other cases). Similar points were therefore made on our proposals.

3.21 Many responses expressed disbelief about the levels (particularly where a death may have been caused), whilst acknowledging that the statute severely limits what the Council can do. Others suggested there may be a case for distinguishing between the inherent risk of harm caused by bicycle riders compared to motorised vehicles.

3.22 If you agree to make the changes suggested above for causing serious injury by careless driving I would recommend the following changes for wanton or furious:

	Culpability		
	A	B	C
Harm 1	Starting Point: 1 year 6 months Category range: 1 - 2 years	1 year Starting Point: 26 weeks 26 weeks Category range: High level community order – 1 year 6 months	26 weeks Starting Point: High level community order High Category range: Low level community order – 1 year 26 weeks
Harm 2	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	26 weeks Starting Point: High level community order High Category range: Low level community order – 4 year 26 weeks	High Starting Point: Medium level community order Low level Category range: community order Band C Fine – 26 weeks High level community order

Harm 3	<p>Starting Point: 26 weeks</p> <p>Category range: High level community order – 1 year</p>	<p>Starting Point: Starting Point: High Medium level community order</p> <p>Category range: Low level community order Band C Fine – 26 weeks High level community order</p>	<p>Starting Point: Low level community order</p> <p>Category range: Band B-A fine – High Medium level community order</p>
--------	--	---	---

Question 3: do you agree to make those changes (subject to your response on question 2)?

Whilst disqualified, unlicensed or uninsured offences

3.23 Again, the weight of opinion wanted to see sentence levels increased for these offences. In particular, several respondents (including Roadpeace) questioned why we had not used the full 10 year space provided by Parliament for causing death by driving whilst disqualified. Dr Adam Snow was one respondent who made a suggestion for reworking the levels:

“I would propose the high culpability starting point of 7 years, with a category range of 5 – 9 years”... Accordingly I would reassess the medium culpability as follows: Starting Point – 4 years, Category Range – 2-5 years custody and lesser: Starting Point 2 years, Category Range High Level Community Order – 3 years custody.”

Heather Rothwell JP thought the range should be only custodial. Cycling UK, whilst generally pushing for lower sentences in their response, thought high culpability cases should have a starting point of 8 years, and medium cases five years. Only Professor Kyd argued for lower sentences.

3.24 In practice, it is quite likely that such a charge/conviction will be brought alongside one for causing death by dangerous or careless driving; in the latter case it will be the more serious charge, but even in the former it is quite possible that the sentence for the “whilst disqualified” offence will be more severe than for the standard of driving. In any case one will aggravate the other.

3.25 Beyond being responsive to consultation replies and Parliament’s will, I am unpersuaded that these levels should be raised. The nexus between the offending and the harm is weak, and where there is not enough evidence of bad driving (though enough of a link between the driver’s actions and the death for a charge to be brought) the levels we propose could already be seen as being on the severe side. We also need to keep

proportion between this and the causing death by careless and dangerous levels, hindered in this as we are by the respective maximum penalties.

Question 4: are you content to leave the levels for causing death whilst disqualified unamended as consulted on?

3.26 For the other offences in this group, various respondents wanted to see higher sentences, but often without any recognition of the maximum penalty (particularly in the case of the 2 year limit for causing death whilst unlicensed or uninsured). The Motor Insurers Bureau, for example, wanted an increase up to three years of the statutory maximum. There were calls for causing serious injury whilst disqualified to be treated as on a par with causing serious injury whilst driving dangerously.

3.27 In terms of specific suggestions for amendments, the West London Bench thought the lowest level for causing death whilst unlicensed/uninsured should be raised from a medium community order to 13 weeks' custody (with a range of a medium community order up to 26 weeks).

3.28 The Magistrates Association thought the lowest culpability levels for causing serious injury whilst disqualified "*should have the same sentence as just driving while disqualified. This is especially as the standard of driving is not relevant.*". Assuming they mean the highest level of that offence, this would mean decreasing what we have proposed to a starting point of 12 weeks' custody (where life threatening injuries may have resulted) and a range of a high level community order to 26 weeks. This would place this category out of proportion to the other levels.

3.29 Given the weight of responses wanting increased levels for these offences, I certainly do not recommend any downwards changes to the levels we have proposed. For the same reasons as set out for death whilst disqualified I do not believe we should increase levels either, but if we do want to be responsive to people's views there may be a case for adjusting the levels for death whilst unlicensed/uninsured upwards (perhaps to the levels that we *had* proposed for the top harm levels of causing serious injury by careless driving, or at least raising the lowest range to include a custodial sentence).

Question 5: are you content to leave the levels for causing death whilst unlicensed/uninsured and causing serious injury whilst disqualified unamended as consulted on?

Drug driving

3.30 Generally, respondents were content with our proposals for drug driving levels. They were identical to those which exist for the equivalent offences of driving/attempting to drive

and in charge whilst unfit through drink or drugs (the best comparator given the unknown link between quantities of drug and impairment).

3.31 In terms of specific suggestions, Lilian Hobbs JP proposed increases for drive/attempting to drive. She thought category 2 should include custody and a minimum 3 year ban and that category 1 should have a minimum 5 year ban. Heather Rothwell JP thought there should be a starting point of Band D fine (presumably for category C, where we had proposed a Band C starting point).

3.32 Of the few specific comments made about being in charge of a vehicle, some thought that “consider disqualification” in the top and middle boxes was too weak and we should mandate disqualification. The Magistrates Association suggested a mandatory disqualification of 6 -12 months.

3.33 The West London Bench made a more general point:

“[T]he sentence starting point and range are more severe for this offence of being in charge of a vehicle under the influence of illegal drugs rather than excess alcohol (which has a starting point of Medium community order and a range of Low Level community order to 6 weeks custody) [unless we have used an incorrect guideline]. This was not the case for the drive/attempt to drive offence...

We don’t fundamentally disagree with this, because there is an argument to be made that driving or being in charge of a vehicle with an illegal drugs impairment is more serious than driving or being in charge of a vehicle with excess alcohol, as the act of taking those drugs is itself illegal and can have serious and complex effects on an individual and their sensory and decision-making processes. It does however mean that the SC is not treating the offences of “Driving or attempting to drive with a specified drug above the specified limit” and “Being in charge of a motor vehicle with a specified drug above the specified limit” as regards sentence alignment with their excess alcohol equivalents.

The sentences (for driving and for in charge) should either both be the same as those for excess alcohol or both should be higher for illegal drugs impairment than for excess alcohol (as taking specified illegal drugs is per se illegal). We request that the SC looks at this again.”

3.34 As mentioned above, the levels for in charge with drugs over the limit are the same as for unfit through drink or drugs. So this anomaly (if we accept the characterisation) already exists. The main justification may be something similar to that proposed by the West London Bench: that being over the limit or unfit through drugs is inherently more unsafe, with the effect if an offender is called on to drive more unknowable.

3.35 This feels a little weak, and I believe there is a case for consistency between the two guidelines. We could change the top level of in charge whilst over the drug limit to that for the excess alcohol equivalent, and change the lowest level to consolidate the two lower levels. This would mean adjusting that level downwards as follows:

Level of seriousness	Starting point	Range	Disqualification/ points
Category 1	High Medium level community order	Medium Low level community order – 12-6 weeks' custody	Consider disqualification (extend if imposing immediate custody) OR 10 points
Category 2	Band C fine	Band B fine – Medium level community order	Consider disqualification OR 10 points
Category 3	Band B fine	Band B A fine - Band C fine	10 points

3.36 However, there may be a stronger case, given the overall tenor of responses on drug driving, to increase the levels for the existing excess alcohol guideline to the levels we proposed for drugs. We could do this either as part of the next round of miscellaneous amendments, or as part of the next set of motoring offences. On balance I recommend this approach. We may be accused of encouraging sentence inflation (the vast majority of offenders for in charge with excess alcohol receive a fine), but that point can be put to the test in consultation.

Question 6: are you content to leave the levels for in charge as they are, but consult in future on adjusting the levels for in charge with excess alcohol?

4 IMPACT AND RISKS

4.1 As set out in the draft resource assessment published alongside the consultation, the revised guidelines as consulted on may result in a requirement for additional prison places running into the hundreds. 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.

4.2 These assessments are far different to [the assessment the Government made at the point of introducing the legislation](#) that a “high” scenario for raising the penalty for causing death by dangerous driving would involve 30 more prison places. That assessment appears to be based on the assumption that only the worst cases would see an increase in sentencing severity. By contrast, as the Justice Select Committee highlight, we are proposing to increase sentencing levels across most categories. This is an especially live consideration bearing in mind current prison capacity issues.

4.3 The decisions that the Council makes post-consultation may affect the final resource assessment. Depending on how consideration of consultation responses proceeds, we aim to present Council with a revised version of the resource assessment at the 31 March meeting.

Causing death by dangerous driving

Culpability	Starting point	Range
A	12 years	8 – 18 years
B	6 years	4 – 9 years
C	3 years	2 – 5 years

Causing death by careless driving

Culpability	Starting point	Range
A	2 years	1 – 4 years
B	1 year	26 weeks – 3 years
C	26 weeks	Medium level community order – 1 year

Causing death by careless driving whilst under the influence of drink or drugs

The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	High culpability	Medium culpability	Lesser culpability
71µg or above of alcohol OR Deliberate refusal to provide specimen for analysis OR Evidence of substantial impairment and/or multiple drugs or combination of drugs and alcohol	Starting point: 12 years Sentencing range: 8 – 18 years	Starting point: 9 years Sentencing range: 6 – 12 years	Starting point: 6 years Sentencing range: 5 – 10 years
51- 70 µg of alcohol OR Any quantity of a single drug detected	Starting point: 9 years Sentencing range: 6 – 12 years	Starting point: 6 years Sentencing range: 4 – 9 years	Starting point: 4 years Sentencing range: 3 – 7 years
36-50 µg of alcohol	Starting point: 6 years Sentencing range: 4 – 9 years	Starting point: 3 years Sentencing range: 2 – 5 years	Starting point: 1 year 6 months Sentencing range: 26 weeks - 4 years

Causing serious injury by dangerous driving

	Culpability		
	A	B	C
Harm 1	Starting Point: 4 years Category range: 3 – 5 years	Starting Point: 3 years Category range: 2 – 4 years	Starting Point: 2 years Category range: 1 – 3 years
Harm 2	Starting Point: 3 years Category range: 2 – 4 years	Starting Point: 2 years Category range: 1 – 3 years	Starting Point: 1 year Category range: 26 weeks – 2 years

Causing serious injury by careless driving

	Culpability		
	A	B	C
Harm 1	Starting Point: 1 year 6 months Category range: 1 - 2 years	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year
Harm 2	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year	Starting Point: High level community order Category range: Low level community order – 26 weeks

Dangerous driving

	Culpability		
	A	B	C
Harm 1	Starting Point: 1 year 6 months Category range: 1 – 2 years	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year
Harm 2	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year	Starting Point: High level community order Category range: Low level community order – 26 weeks

Causing injury by wanton or furious driving

	Culpability		
	A	B	C
Harm 1	<p>Starting Point: 1 year 6 months Category range: 1 - 2 years</p>	<p>Starting Point: 1 year Category range: 26 weeks – 1 year 6 months</p>	<p>Starting Point: 26 weeks Category range: High level community order – 1 year</p>
Harm 2	<p>Starting Point: 1 year Category range: 26 weeks – 1 year 6 months</p>	<p>Starting Point: 26 weeks Category range: High level community order – 1 year</p>	<p>Starting Point: High level community order Category range: Low level community order – 26 weeks</p>
Harm 3	<p>Starting Point: 26 weeks Category range: High level community order – 1 year</p>	<p>Starting Point: High level community order Category range: Low level community order – 26 weeks</p>	<p>Starting Point: Low level community order Category range: Band B fine – High level community order</p>

Causing death by driving whilst disqualified

Culpability	Starting point	Range
A	5 years	4 – 7 years
B	3 years	2 – 5 years
C	1 year 6 months	High level community order to 2 years

Causing death by driving whilst unlicensed or uninsured

Culpability	Starting point	Range
A	1 year	36 weeks to 2 years
B	26 weeks	High level community order – 36 weeks
C	Medium level community order	Low level community order – high level community order

Causing serious injury by driving whilst disqualified

	Culpability		
	A	B	C
Harm 1	Starting Point: 3 years Category range: 2 – 4 years	Starting Point: 2 years Category range: 1 – 3 years	Starting Point: 1 year Category range: High level community order – 2 years
Harm 2	Starting Point: 2 years Category range: 1 – 3 years	Starting Point: 1 year Category range: High level community order – 2 years	Starting Point: 26 weeks Category range: Low level community order – 1 year

Driving/attempting to drive with a specified drug above the specified limit

Level of seriousness	Starting point	Range	Disqualification	Disqual. 2 nd offence in 10 years
Category 1	12 weeks' custody	High level community order – 26 weeks' custody	29 – 36 months (Extend if imposing immediate custody)	36 – 60 months (Extend if imposing immediate custody)
Category 2	Medium level community order	Low level community order – High level community order	17 – 28 months	36 – 52 months
Category 3	Band C fine	Band B fine – Low level community order	12 – 16 months	36 – 40 months

Being in charge of a motor vehicle with a specified drug above the specified limit

Level of seriousness	Starting point	Range	Disqualification/points
Category 1	High level community order	Medium level community order – 12 weeks' custody	Consider disqualification (extend if imposing immediate custody) OR 10 points
Category 2	Band C fine	Band B fine – Medium level community order	Consider disqualification OR 10 points
Category 3	Band B fine	Band B fine	10 points

Blank page

Sentencing Council meeting:
Paper number:

27 January 2023
**SC(23)JAN09 – Reduction in sentence
for a guilty plea**

Lead Council member:
Lead official:

Ruth Pope
ruth.pope@sentencingcouncil.gov.uk

1 ISSUE

1.1 There is a concern that the [Reduction in sentence for a guilty plea guideline](#) fails to incentivise some offenders to plead before the PTPH in indictable only cases.

2 RECOMMENDATION

2.1 That the Council agrees whether changes are required to the guilty plea guideline and if so what action should be taken.

3 CONSIDERATION

3.1 The Senior Presiding Judge (SPJ) has issued [the Better Case Management Revival Handbook](#) with the aim of increasing efficiency in the Crown Court. His concern is to tackle the very substantial backlog of cases in the Crown Court. One cause of the continuing backlog identified by the SPJ is the need to have more than one hearing in the Crown Court when the defendant pleads guilty at the PTPH in indictable only cases. Sentence often has to be adjourned for a report. While each individual extra hearing is relatively insignificant in terms of court time taken, collectively they result in a considerable amount of court and judge time being taken away from other work.

3.2 The guilty plea guideline requires a defendant to indicate a guilty plea at the first hearing (i.e. the magistrates' court) to be entitled to a one-third reduction. If not and a guilty plea is entered at the first hearing at the Crown Court (the PTPH) the defendant will be entitled to a one-quarter reduction. This is subject to the exceptions set out in the guideline, the first of which reads:

F1. Further information, assistance or advice necessary before indicating plea

Where the sentencing court is satisfied that there were particular circumstances which significantly reduced the defendant's ability to understand what was alleged or otherwise made it unreasonable to expect the defendant to indicate a guilty plea sooner than was done, a reduction of one-third should still be made.

In considering whether this exception applies, sentencers should distinguish between cases in which it is necessary to receive advice and/or have sight of evidence in order to understand whether the defendant is in fact and law guilty of the offence(s) charged, and cases in which a defendant merely delays guilty plea(s) in order to assess the strength of the prosecution evidence and the prospects of conviction or acquittal.

3.3 The scenario which is causing concern is one where a defendant is either unrepresented at the magistrates' court or the representative has insufficient time to advise them properly before sending. The suggestion is that having lost the certainty of a one-third reduction there is then little incentive to indicate a plea before the PTPH.

3.4 It is acknowledged by the SPJ that the court has the discretion to take an indication ahead of the PTPH into account as mitigation or the court could use the exception at F1 to allow a one-third reduction where the plea is indicated as soon as the necessary advice or information is received, but it is argued that these are open to interpretation and therefore lack certainty.

3.5 There appear to be several possible ways in which this issue could be addressed, including:

- Amend the guideline so that for indictable only cases the one-third reduction is available for an indication prior to the first hearing in the Crown Court. This is not recommended as it would disadvantage those who do indicate at the magistrates' court and would undermine the certainty provided by the guideline
- Allow a sliding scale between the one third at the first hearing and the one quarter at the second hearing. This again is not recommended as it would undermine certainty and therefore would not provide the clear incentive sought.
- Make no change to the guideline and leave it to the Court of Appeal to clarify that where a defendant does not receive the information and advice necessary at the first hearing but indicates a plea (through his representative) as soon as possible thereafter, the one-third reduction should be applied. This relies on a suitable case coming before the CACD and the judgment being understood and applied consistently.
- Make an amendment to the F1 exception in the guideline to clarify that an indication of a guilty plea should be made as soon as the defendant has received the necessary advice and information without waiting for the next hearing and that in those circumstances the one-third reduction is preserved.

3.6 The final option appears to be the best solution, subject to finding the right formulation of words. It would have the advantage of applying to all types of cases; a similar

issue could apply to either way offences in the Crown Court and to cases tried in magistrates' courts which are far more numerous (around 15% of cases sentenced in the Crown Court are indictable only).

3.7 If the Council is minded to consider making a change to the guilty plea guideline, the next issue is how and when to go about it. The next two Council meetings are very busy so if the Council wished to respond fairly quickly, we could form a small working group to draft the changes and bring them to the May meeting. Any substantive changes to the guideline would need to be consulted on – this could be done as part of the 2023/24 miscellaneous amendments or, if it was felt that the change should be made more quickly, run as a separate targeted consultation perhaps over a shorter period than usual.

Question 1: Does the Council wish to take any action to address the issue raised by the SPJ?

Question 2: If so, should a working group be set up to discuss potential changes?

Question 3: If changes are agreed by the Council how should these be consulted on?

4 EQUALITIES

4.1 The equalities implications of any proposed changes would need to be considered carefully and raised in consultation.

4.2 There are wider equalities issues relating to guilty plea rates among different demographic groups. The Council was aware of these when the guideline was drafted and while the level of certainty that the guideline provided militates against bias, it does not allow for discretion to take account of the issues of mistrust of the system that are known to exist.

4.3 If the Council wanted to open the project up to an exploration of these issues, the project would become larger and require more time.

5 IMPACT AND RISKS

5.1 The Council has a very full work plan and so any additional projects that we take on may cause delays to others.

5.2 The resource impacts of any changes to the guilty plea guideline are potentially significant (given that it applies to all cases), though on the face of it the proposed changes should not lead to a requirement for more prison places. Nevertheless work would need to be done to assess the impact of any changes.

5.3 If any changes were subject to a targeted consultation over a reduced period there is a risk that the Council would be seen as failing to consult widely and fully. However, if it were

included as part of the miscellaneous amendments it might not receive as much attention as if consulted on separately.

Question 4: Are there particular issues relating to equalities or impact that should be explored further?

Sentencing
Council

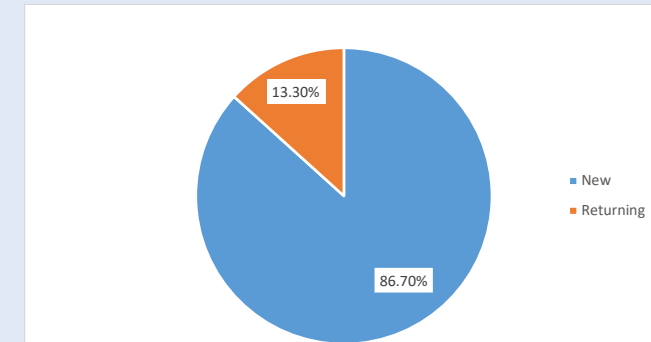
External communication evaluation

December 2022

Visits to www.sentencingcouncil.gov.uk

	This month	Last month
Users*	405,934	244,628
Sessions per user	1.29	1.89
Pages per session	2.59	2.58
Ave time on site	02:06	04:22
Bounce rate**	57.33%	55.10%

Visitors: new and returning



Announcements

12th	Public confidence in the criminal justice system: 2022 - report
16th	Official statistics pre-announcement: exploring equality and diversity in the work of the Sentencing Council
16th	Sentencing seminar: current issues in sentencing policy and research – seminar promotion

Top referring sites

cps.gov.uk
judiciary.sharepoint.com (Judicial Intranet)
Uk.search.yahoo
Judiciary.uk
defence-barrister.co.uk

*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	233,552	95,588
Crown Court guidelines homepage	51,753	28,071
Website homepage	42,777	26,130
Magistrates' court homepage	36,577	19,244
/fine-calculator/	33,556	16,282
/offences/magistrates-court/item/common-assault-racially-or-religiously-aggravated-common-assault-common-assault-on-emergency-worker/	28,417	17,017
/offences/magistrates-court/item/excess-alcohol-driveattempt-to-drive-revised-2017/	22,396	12,933
Common offence illustrations	19,364	9,357
Common offence illustrations /assault/	18,117	11,136
/offences/magistrates-court/item/supplying-or-offering-to-supply-a-controlled-drug-possession-of-a-controlled-drug-with-intent-to-supply-it-to-another/	17,234	10,788

Most visited guidelines

Magistrates	Common assault / Racially or religiously aggravated common assault/ Common assault on emergency worker
Crown Court	Causing grievous bodily harm with intent to do grievous bodily harm / Wounding with intent to do GBH
Other pages	Outlines: Assault Blog post: What's the difference between theft, robbery and burglary?

Top searches

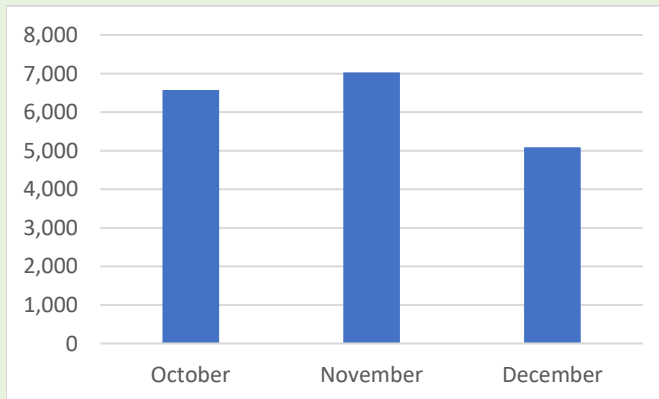
Sentencing guidelines
Section 20 wounding sentencing guidelines
Blog: What is the difference between theft, robbery and burglary
Breach of a protective order

* Outlines: offence descriptions on the public-facing pages of the website: www.sentencingcouncil.org.uk/outlines/

Subscribers

+9 = 1,228

Video views per month



Most watched video



How offenders are sentenced in England and Wales

Watch time average

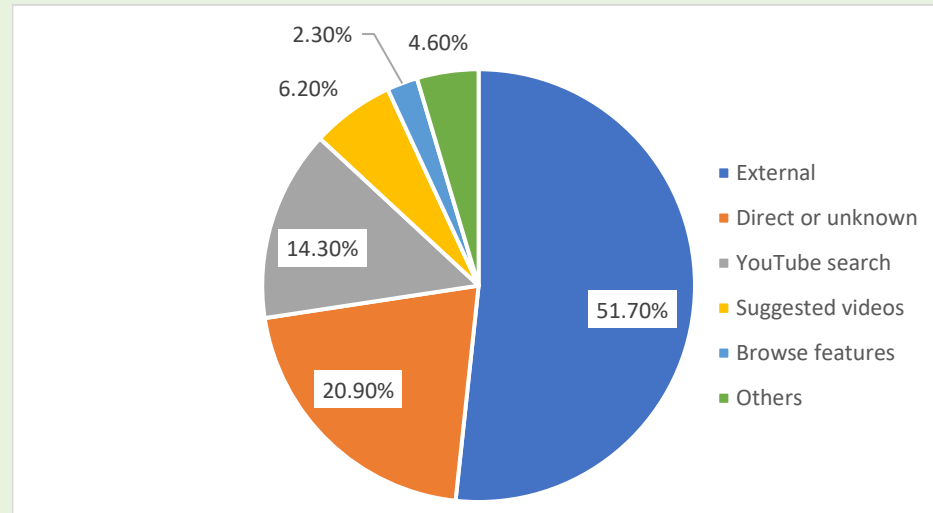
02:10

Impressions*

19,045

* 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	Crown court sentencing UK
3	UK court sentencing
4	How to become a magistrate
5	Magistrate

- External: Traffic from websites and apps embedding or linking to our videos on YouTube (60% 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

+205 = 5,254

All bulletins

Sent	3
Delivered	95.8%
Opened	30.7%
Engagement rate*	3.8%

Most clicked-through links

Official statistics pre-announcement: exploring equality and diversity in the work of the Sentencing Council

Public confidence in sentencing and the criminal justice system: 2022 - news item

Minutes of Council meeting November 2022

Highest engagement*

Public confidence in sentencing and the criminal justice system: 2022

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

Followers

+2 = 6,028

Highlights

	Tweets	Impressions	Mentions	Profile visits
This month	3	1,633	82	780
Last month	4	8,235	52	741

Top tweet

What drives the public's attitudes to and understanding of the criminal justice system? New report published today explores what people know and feel about the CJS and what sort of factors influence their attitudes:

Impressions: 984

Total engagements: 54

Top mention

#PetTheft victims are being let down by authorities. Traumatic for people & pets, its not taken seriously by police @AssocPCCs or courts @SentencingCCL. #PetAbduction is not an offence @DefraGovUK. Scammers are getting away with targeting victims
💔 #PetTheftReform needed in 2023

Dr Daniel Allen @Dr_Dan_1

Animal geographer @KeeleUniversity Interested in Perceptions, Policy and Practice. #PettheftReform founder with @SAMPAuk

- 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