

23 February 2023

Dear Members

Meeting of the Sentencing Council – 3 March 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 3 March 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:

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| ▪ Agenda | SC(23)MAR00 |
| ▪ Minutes of meeting held on 27 January | SC(23)JAN01 |
| ▪ Action log | SC(23)MAR02 |
| ▪ Imposition | SC(23)MAR03 |
| ▪ Motoring offences | SC(23)MAR04 |
| ▪ Blackmail, kidnap etc | SC(23)MAR05 |
| ▪ Perverting the course of justice | SC(23)MAR06 |
| ▪ Totality | SC(23)MAR07 |
| ▪ Environmental revision | SC(23)MAR08 |

The external communication evaluation for January is also included with the papers as well as minutes from all three subgroups which have met since the last meeting.

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

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

Best wishes



Steve Wade

Head of the Office of the Sentencing Council

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COUNCIL MEETING AGENDA

3 March 2023
Royal Courts of Justice
Queen's Building

09:45 – 10:00	Minutes of the last meeting and matters arising (papers 1 and 2)
10:00 – 11:15	Imposition - presented by Jessie Stanbrook (paper 3)
11:15 – 11:30	Break
11:30 – 12:00	Motoring - presented by Ollie Simpson (paper 4)
12:00 – 13:00	Blackmail, kidnap and false imprisonment - presented by Mandy Banks (paper 5)
13:00 – 13:30	Lunch
13:30 – 14:30	Perverting the course of justice and witness intimidation - presented by Mandy Banks (paper 6)
14:30- 14:45	Break
14:45 – 15:45	Totality - presented by Ruth Pope (paper 7)
16:00 – 16:30	Environmental revision - presented by Ruth Pope (paper 8)

Sentencing Council

COUNCIL MEETING AGENDA

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MEETING OF THE SENTENCING COUNCIL

27 JANUARY 2023

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:

Catherine Elkington for the Lord Chancellor (Head of Sentencing Strategy and Policy, MoJ)
Lynette Woodrow for the Director of Public Prosecutions

Members of Office in attendance:

Steve Wade
Vicky Hunt
Ruth Pope
Ollie Simpson
Mandy Banks

Observers:

John Smith, Bail, Sentencing & Release Policy Team, Ministry of Justice

1. MINUTES OF LAST MEETING

- 1.1 The minutes from the meeting of 16 December 2022 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman welcomed Mark Wall to his first meeting as the High Court judge member of the Council.
- 2.2 The Chairman thanked all those involved in several recent activities: the launch of the data collection in magistrates' courts and the Crown Court on 9 January; the publication of the externally-commissioned research report on equality and diversity in the work of the Sentencing Council, and the Council's response paper on 10 January; and the Sentencing seminar on current issues in sentencing policy and research, held in conjunction with City Law School, City, University of London, and the Sentencing Academy on 13 January.

3. DISCUSSION ON IMMIGRATION – PRESENTED BY VICKY HUNT, OFFICE OF THE SENTENCING COUNCIL

- 3.1 The Council agreed to start work on producing a package of immigration guidelines. The Council considered what offences should be included in the package and agreed that ten offences where either key or had sufficient volume to justify a guideline. The agreed package includes a number of offences that were created or amended by the Nationality and Borders Act 2022.

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

- 4.1 The Council discussed the remaining responses to the consultation and agreed to publish a response to the consultation in March with the changes to be made to guidelines on the Council's website on 1 April 2023.

5. DISCUSSION ON ANIMAL CRUELTY – PRESENTED BY VICKY HUNT, OFFICE OF THE SENTENCING COUNCIL

- 5.1 The Council considered some changes to the explanatory materials on disqualification from owning an animal and deprivation from keeping animals and asked for a few more changes to make clearer what considerations should be borne in mind when making such orders.
- 5.2 The Council signed off the Animal cruelty and Failure to ensure animal welfare guidelines and agreed that the guidelines should be published in spring this year alongside a consultation response document.

6. DISCUSSION ON THEFT – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

- 6.1 The Council considered some recent sentencing data on shop theft in relation to the findings from the evaluation of the definitive guideline, which was published in 2019. The Council concluded that there was no evidence to justify any revision to the guideline.

7. DISCUSSION ON PERVERTING THE COURSE OF JUSTICE – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

- 7.1 The Council considered consultation responses relating to harm factors across both perverting the course of justice and witness intimidation and agreed some changes to the wording and placement of factors as a result.
- 7.2 The Council also considered some information in relation to specific police warnings and court orders in relation to witness intimidation offences and agreed an amended culpability factor.

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

- 8.1 The Council considered responses to the consultation on new and revised motoring guidelines, relating to the offences of causing death by driving whilst disqualified, causing serious injury by driving whilst disqualified, causing death by driving whilst unlicensed/uninsured, and the proposed drug driving guidelines.
- 8.2 Among other things, the Council considered the culpability of offenders who drove having taken a combination of different drugs or drugs and alcohol and how this should properly be measured. The Council also looked at sentence levels across all the offences it had consulted on as part of the motoring consultation.

9. DISCUSSION ON REDUCTION IN SENTENCE FOR A GUILTY PLEA – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

- 9.1 The Council discussed a suggestion that the guilty plea guideline could be amended to assist with tackling the backlog of cases in the Crown Court. The Council concluded that problems with delayed pleas were not as a result of the guideline and that changes to the guideline would not achieve a reduction in the backlog of cases.

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SC(23)MAR02 February Action Log

ACTION AND ACTIVITY LOG – as at 23 February 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		ACTION CLOSED: Members have completed the resentencing exercise and findings will be reported at March Council meeting.
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	ACTION ONGOING: Vicky is making further amendments to the proposed explanatory materials in line with the 27 Jan meeting.	
SENTENCING COUNCIL MEETING 27 January 2023					
3	Animal Cruelty	VH to amend the explanatory materials in line with the comments made at Council and will circulate the revised draft via email seeking agreement.	Vicky Hunt All members	ACTION ONGOING: Responses received from some Council members but still awaiting a response from others.	

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

3 March 2023
SC(23)MAR03 – Imposition
Jo King
Jessie Stanbrook
Jessie.stanbrook@sentencingcouncil.gov.uk

1 ISSUE

1.1 This paper considers the *custodial sentences* section of the Imposition guideline, including *suspended sentence orders*, and by virtue of a discussion at the first Imposition working group, a first draft of a new '*Purposes and Effectiveness of Sentencing*' section.

1.2 While these two sections are not strictly related, the consideration of the findings of the Effectiveness literature review are relevant and considered in both, so while questions posed below are separate, members should read the entire paper before forming views.

2 RECOMMENDATION

2.1 It is recommended that the Council agrees to:

- I. Amendments to the suspended sentence order section;*
- II. Amendments to the sentencing flow chart;*
- III. Inclusion of a new section on '*Purposes and Effectiveness of Sentencing*'.*

3 CONSIDERATION

I. Amendments to the Custodial Sentences & Suspended Sentence Orders Section

3.1 As members are aware, a significant driver behind the initial development of the Imposition guideline was to ensure that suspended sentence orders (SSOs) were only being imposed as a custodial sentence that was suitable to be suspended, not as a more severe form of a community order (CO) for cases that had not passed the custodial threshold. It is difficult to ascertain whether the Guideline has addressed this issue; the Imposition guideline evaluation found evidence that showed the anticipated increase in the proportion of COs and a corresponding decrease in the proportion of SSOs after the issuing of a letter to the judiciary by the then Chairman in April 2018 (reminding sentencers of the principles contained in the guideline which was in force from February 2017). However, initial data analysis as part of the ongoing breach evaluation shows that after a breach of an SSO, the proportion of custodial sentences activated remained very similar before and after the introduction of the guideline. *(N.B. This alludes to sentencing data from the magistrates' courts data collection from November 2017 to March 2018, capturing pre-letter data, and*

April 2019 to September 2019, capturing post-letter data. This evaluation is in the relatively early stages and will come to Council later in the year.) This is despite the Breach of SSOs Guideline stating that the custodial sentence should be always activated, unless it is a breach resulting from a further offence that does not require a custodial sentence, or it would be unjust in all the circumstances to activate it. Initial analysis found that the most frequently cited reasons for not activating the custodial sentence were that the offender had a realistic prospect of rehabilitation (50 per cent), or strong personal mitigation (40 per cent), and there was little difference between the reasons pre- and post-guideline.

3.2 This data questions whether the Imposition guideline has indeed resolved the issue of SSOs being imposed as more severe forms of COs where the custodial threshold has not been passed, especially given the high proportion of reasons given being a realistic prospect of rehabilitation or strong personal mitigation, which may have made a CO an appropriate initial sentence. In addition, published offender management data between 2010-2021 shows that sentencers generally impose more requirements on SSOs than on COs, and this has not changed since the introduction of the guideline, despite the Imposition guideline specifying “*A court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate*”. **Annex A** shows this data in a table with the mean number of requirements imposed on COs (1.6 in 2021) as compared to SSOs (1.8 in 2021). Stakeholders in MoJ Sentencing Policy contributed that this lack of distinction between COs and SSOs may be further compounded due to the fact that sentencers can give COs with a duration of up to 3 years in length, compared to an SSO which can only be up to 2 years.

3.3 The *custodial sentences* section of the guideline has been reviewed with these considerations in mind. The first Imposition working group discussed whether guidance currently provided for sentencers to consider a) when a potential custodial sentence should be brought down to a CO and b) when a custodial sentence should be suspended, are distinctive enough from each other. The group also considered whether they were content that similar factors are suggested to sentencers to consider both for the imposition of COs and suspended custodial sentences, such as a realistic prospect of rehabilitation, strong personal mitigation and impact on dependants.

3.4 As part of this discussion, I posed that the difficulty distinguishing between the determinations for these difference sentence outcomes may risk leading to potential unconscious bias in this decision making, for example different factors being considered for either of the decisions depending on the offender’s individual characteristics or background.

3.5 The working group considered an amended sentencing flow chart that attempted to define the two different intended thought processes for the imposition of a CO (especially when the custodial threshold was initially passed), and the decision to suspend a custodial sentence. However, it was concluded that the original sentencing flow chart was more aligned with the direction the working group felt the guideline should be giving, and that the factors to consider both whether a sentence can be brought down to a CO or suspended are necessarily similar, as they should be decided on the individual facts and circumstances of the offence and the offender.

3.6 Instead of defining a different thought process for sentencers to go through, given the possibility that SSOs may still be being imposed in unsuitable cases, it is recommended that amendments are made to the SSO section of the guideline. The potential amendments discussed by the working group are broadly:

- a) Inclusion of reference to the purposes of sentencing**
- b) Highlighting that COs can be punitive**
- c) Defining ‘short custodial sentence’ rather than ‘cusp of custody’ as sentencers perception of the latter differs between magistrates’ courts and the Crown Court, and including findings from the Effectiveness review highlighting potential detrimental impact of short custodial sentences**
- d) Considering the weight of previous convictions on eventual sentence**

3.7 Further potential amendments that were not discussed in detail by the working group but that I have included in this paper are:

- e) Removal of the first question on thresholds and adding an introductory line to custodial sentencing**
- f) Reference to considerations for sentencing pregnant offenders**
- g) Inclusion of reference to assessments done by Probation**
- h) Addition of factors and detail to the factors indicating it would not, or may be, appropriate to suspend**
- i) Reference to suspending sentences for offences with statutory minimum terms**
- j) Inclusion of reference to requirements on community orders**

3.8 I have provided some detail after each of these potential amendments in turn below, however the full proposed new *custodial sentences* section, without changes highlighted as they are within the paper below, can be seen in **Annex B**.

Please note: Proposed amendments to the guideline are in **bold** and **red**:

a) Inclusion of reference to the purposes of sentencing

3.9 Based on the agreement in a previous meeting to include the five purposes of sentencing in the guideline (more on this below), it was considered useful to also make reference to all these purposes in the *custodial sentences* section when advising courts that COs can still be imposed even if a case has passed the custodial threshold.

Passing the custody threshold does not mean that a custodial sentence is inevitable. Custody should not be imposed where **the purposes of sentencing could be achieved by a community order (for example, a community order could provide sufficient restriction on an offender's liberty, by way of punishment, while addressing the rehabilitation of the offender to prevent future crime).**

b) Highlighting that COs can be punitive

3.10 The working group had a significant discussion about the reality of COs being quite punitive, particularly for offenders who may struggle with the rigidity of imposed requirements that can often involve offenders needing to attend a particular place at a particular time, with consequences if they do not. A line has therefore been drafted to make this clear under the question '*Is it unavoidable that a sentence of imprisonment be imposed?*' to make this fact clear to sentencers so this can be considered, particularly when thinking about offenders on the 'cusp' of a custodial sentence.

Community orders can be punitive; they last longer than a short custodial sentence and can restrict an offender's day to day liberties, as well as provide a strong rehabilitative effect, especially imposed on an offender who may find regular attendance at a specific place or time a challenge to manage around their personal life.

c) Defining 'short custodial sentence' rather than 'cusp of custody' as sentencers perception of the latter differs between magistrates' courts and the Crown court, and including findings from the Effectiveness review highlighting potential detrimental impact of short custodial sentences

3.11 Initiated by a conversation on pre-sentence reports, the working group agreed that court and sentencer processes can be quite different in magistrates' courts compared to the Crown Court, and that this guideline must ensure it captures this breadth. Due to this difference, what is meant by 'cusp of custody' for sentencers in the magistrates' and Crown courts may differ considerably. It was therefore concluded that it is more useful to refer to

'short custodial sentences', which can be defined, rather than 'cusp of custody', which is different, and cannot easily be defined, in the section on SSOs. (*This is a different matter to the custodial threshold, which is dealt with in a different section of the guideline, and which courts will have already considered prior to getting to this section.*) I have suggested defining 'short custodial sentences' at 12 months given that this is the measure that the Effectiveness review used in their concluding remarks about their findings (below):

"The evidence strongly suggests that short custodial sentences under twelve months are less effective than other disposals at reducing re-offending. There is little evidence demonstrating any significant benefits of such sentences. Indeed, there is a reasonable body of evidence to suggest short custodial sentences can make negative outcomes (such as reoffending) worse."

3.12 I have therefore drafted a paragraph that takes this into account and directs sentencers to consider these findings when thinking about short custodial sentences. Please note that general reference to findings in the Effectiveness review are also included in the new Purposes of Sentencing and Effectiveness section, included later in this paper.

If the court is considering an immediate custodial sentence of up to 12 months after all calculations have been completed (e.g. reduction for a guilty plea), it should take into account that research suggests that short custodial sentences of less than 12 months are less effective than other disposals at reducing reoffending, that there is little evidence demonstrating any significant benefits to short custodial sentences, and that there is a reasonable body of evidence to suggest that short custodial sentences can lead to negative outcomes. Short custodial sentences can disrupt potential employment or accommodation and interfere with relationships with friends and family. Courts must be confident if they are imposing a custodial sentence of less than 12 months that it is absolutely necessary to do so.

d) Considering the weight of previous convictions on eventual sentence

3.13 Some members of the working group discussed how, in their experience, short custodial sentences can often be given to offenders who have previously been given COs but have reoffended (and hence are back in court), even if the offence being sentenced would not necessarily pass the custodial threshold.

3.14 While the guideline currently states that sentences should not necessarily escalate from one CO range to the next on each sentencing occasion (currently in the *Community Orders: General Guidance* section earlier in the guideline), it does not state this for escalating between COs and custodial sentences. This view is, however, currently contained within the expanded explanation for the statutory aggravating factor of Previous convictions, which can be seen in full at **Annex C**, excerpt below:

“6. If the offender received a non-custodial disposal for the previous offence, a court should not necessarily move to a custodial sentence for the fresh offence.”

3.15 The Council may want to encourage sentencers to think more broadly, and creatively, across the possibilities that different requirements imposed as part of a CO can bring, rather than automatically ‘ratcheting up’ to a custodial sentence when faced with an offender with multiple previous convictions, especially if the offence does not necessarily pass the custodial threshold on its own. This is particularly pertinent given the Effectiveness review outlines that a short custodial sentence is not likely to be any more successful in reducing the offender’s risk of reoffending and is more likely to lead to negative outcomes.

3.16 Further, depending on location/area of the case, Probation is now able to offer a broader variety of support and services against an individual offender’s needs. Since unification in 2020 services newly include referrals to, where available, organisations that support a variety of accommodation, addiction, health, employment, and other personal issues. If an offender’s needs are changing or changed, advice from Probation or a pre-sentence report can recommend alternative and more unique requirements or services, that are available in the local area, that may be able to meet the offender’s needs better than a short custodial sentence, with the intention of reducing the risk of further reoffending.

3.17 This consideration and approach is already used in the expanded explanation for the statutory aggravating factor of Previous Convictions:

“5. Numerous and frequent previous convictions might indicate an underlying problem (for example, an addiction) that could be addressed more effectively in the community and will not necessarily indicate that a custodial sentence is necessary.”

3.18 It is therefore recommended that this is included in the *custodial sentences* section of the Imposition guideline. The following draft paragraph is proposed to come directly after the above proposed paragraph on short custodial sentences of up to 12 months.

This also applies in relation to an offender with previous convictions. If an immediate custodial sentence is considered due to the prior imposition of community sentences for previous convictions, the court should consider whether alternative requirements can be imposed instead of escalating to a custodial sentence. Advice from Probation may be helpful to the court in considering suitable alternative requirements that may be more successful in engaging the offender than requirements imposed previously, and whether Probation considers the offender safe to be managed in the community.

3.19 Of course, there will be cases in which it will be necessary for sentencers to impose a custodial sentence in the face of multiple previous convictions, and the expanded explanation for the statutory aggravating factor of Previous Convictions allows for this:

“7. In cases involving significant persistent offending, the community and custody thresholds may be crossed even though the current offence normally warrants a lesser sentence. If a custodial sentence is imposed it should be proportionate and kept to the necessary minimum.”

3.20 Further potential amendments that were not discussed in detail by the working group but that I have included are:

e) Removal of the first question on thresholds and adding an introductory line to custodial sentencing

3.21 As agreed in the October Council meeting, a new section on Thresholds has been drafted which is currently at the top of the guideline as section 1. This section and the rest of the draft will be presented to Council at a later date once all sections have been considered separately. Text on thresholds in the *custodial sentences* section in the current version of the guideline, including the first question ‘Has the custody threshold been passed’ has therefore been moved to this new section.

3.22 To present information in the guideline more clearly, as requested by some Council members, some of the text from the *Suspended sentences: general guidance* has been moved and amended to introduce the *custodial sentences* section. This includes a new addition of reference to the fact that sentencers will normally use the offence specific or general guideline to determine whether a custodial threshold has been passed, which was discussed in the Imposition working group. This new paragraph is currently drafted as follows:

Imposition of custodial sentences

A custodial sentence should only be considered where the court is satisfied that the seriousness of an offence and all circumstances of the offence mean that no other sentence is suitable. A custodial sentence can be immediate or suspended. If the custodial threshold has been passed according to the sentencer’s determination using the offence specific guideline (or general guideline where no offence specific guideline exists), the court should ask the following questions before committing an offender to an immediate custodial sentence:

~~The approach to the imposition of a custodial sentence should be as follows.~~

Is it unavoidable that a sentence of imprisonment be imposed?

f) Reference to considerations for sentencing pregnant offenders

3.23 The Council has received multiple letters on the subject of sentencing pregnant offenders in the last few months, including in reference to recent and multiple deaths of babies in custody. According to the organisation No Births Behind Bars, Ministry of Justice figures show that the number of pregnant women in prison is rising – in 2021/22, there were 50 births to women in custody, and NHS data last year found that pregnant women in prison are five times more likely to suffer a stillbirth than women in the community.

3.24 While the expanded explanation for Sole Carer currently states that “*when sentencing an offender who is pregnant relevant considerations may include: any effect of the sentence on the health of the offender and any effect of the sentence on the unborn child*”, the Imposition guideline could say more on this topic. The following amendments have been suggested to lines under the subheading ‘Is it unavoidable that a sentence of imprisonment be imposed’:

~~For offenders on the cusp of custody, Imprisonment should not be imposed where there would be an impact on dependants,~~ **including on unborn children where the offender is pregnant**, which would make a custodial sentence disproportionate to achieving the aims of sentencing. **In particular, courts should avoid the possibility of an offender giving birth in prison unless the imposition of a custodial sentence is absolutely necessary due to public protection concerns.**

g) Inclusion of reference to assessments done by Probation

3.25 Under the question ‘Can the sentence be suspended’, I have suggested a line about the fact that the court can benefit from assessments done by Probation. This takes into account the importance of Probation’s assessment of whether an offender can be safely managed in the community, proposed to be added to the factors below, and aligns with the current working draft of the pre-sentence report section (not yet seen by Council in full).

3.26 I have also proposed that it is specified that this list is non-exhaustive, as this was a question posed by the Sentencing and Probation Policy teams in the MoJ. These words can be removed if Council intends this list to be exhaustive. This is currently drafted as:

The court will benefit from Probation’s assessment of any relevant circumstances (such as dependents), whether the offender can be safely managed in the community, and in weighing the ~~The following,~~ **non-exhaustive** ~~factors should be weighed in considering whether it is possible~~ **appropriate** to suspend the sentence.

h) Addition of factors and detail to the factors indicating it would not, or may be, appropriate to suspend

3.27 Based on the discussion at the working group, some additions and amendments have been suggested to the table of factors indicating that it would not be, or may be, appropriate to suspend a sentence. These include the importance of Probation’s assessment of whether the offender can or cannot be safely managed in the community, whether or not the offender presents a high risk of reoffending or harm (which is also assessed by Probation), reference to the seriousness of the offence being the primary factor in considering whether appropriate punishment can only be achieved by immediate custody and giving possible examples of personal mitigation. Finally, based on the discussion mentioned above on encouraging sentencers to think about alternative requirements on COs for offenders who have previously had COs imposed and reoffended, the removal of ‘history of poor compliance with COs’, so that sentencers are given more discretion to potentially be creative with imposing different requirements on a potential SSO, supported by any assessments by Probation.

Factors indicating that it would <u>not</u> be appropriate to suspend a custodial sentence	Factors indicating that it <u>may</u> be appropriate to suspend a custodial sentence
Offender presents a risk/danger to the public	Realistic prospect of rehabilitation
Probation assess that the offender cannot be safely managed in the community	Offender does not present high risk of reoffending or harm
The seriousness of the offence means that appropriate punishment can only be achieved by immediate custody	Strong personal mitigation such as age, mental disorders, remorse, etc
History of poor compliance with court orders	Immediate custody will result in significant harmful impact upon others

i) Reference to suspending sentences for offences with statutory minimum terms

3.28 When the Council discussed the revised minimum term sections of the bladed articles guidelines as part of the miscellaneous amendments consultation, the case law

Where a statutory minimum term for an offence is 24 months or lower, the court may lawfully impose a suspended sentence order, but in practice this will only be appropriate in rare cases.

around the suspending of sentences for offences that have a statutory minimum term of 24 months or lower was discussed. It was suggested that the Imposition guideline could consider directing sentencers on this point. Therefore, the following line has been suggested:

j) Inclusion of reference to requirements on community orders

3.29 Based on the information provided above about data showing that more requirements are imposed on SSOs than on COs, I have suggested a few additional lines in the *Requirements on a SSO* subsection. This includes suggesting that requirements on a SSO should usually be more rehabilitative in nature, given that an SSO is a custodial sentence and by definition a punitive sentence. I have suggested that this section also refers back to the main Requirements section (yet to be discussed in detail by the Council).

Requirements on a Suspended Sentence Order

When the court suspends a sentence, it may impose one or more requirements for the offender to undertake in the community. The requirements that may be considered are identical to those available for community orders. The court must follow the guidance in the requirements section of this guideline (*link up*), including ensuring that any requirements imposed are the most suitable for the offender, and where multiple requirements are imposed, they are compatible with each other.

Requirements imposed as part of a suspended sentence order are more likely to be predominantly rehabilitative in purpose, as the imposition of a custodial sentence, **whether immediate or suspended,** is itself both a punishment and a deterrent. To ensure that the overall terms of the suspended sentence are commensurate with offence seriousness, care must be taken to ensure requirements imposed are not excessive. A court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate.

Question 1: Does the Council agree with the above amendments proposed, resulting in an updated version of the *custodial sentences* section, seen in full in Annex B? What revisions would Council like to be made?

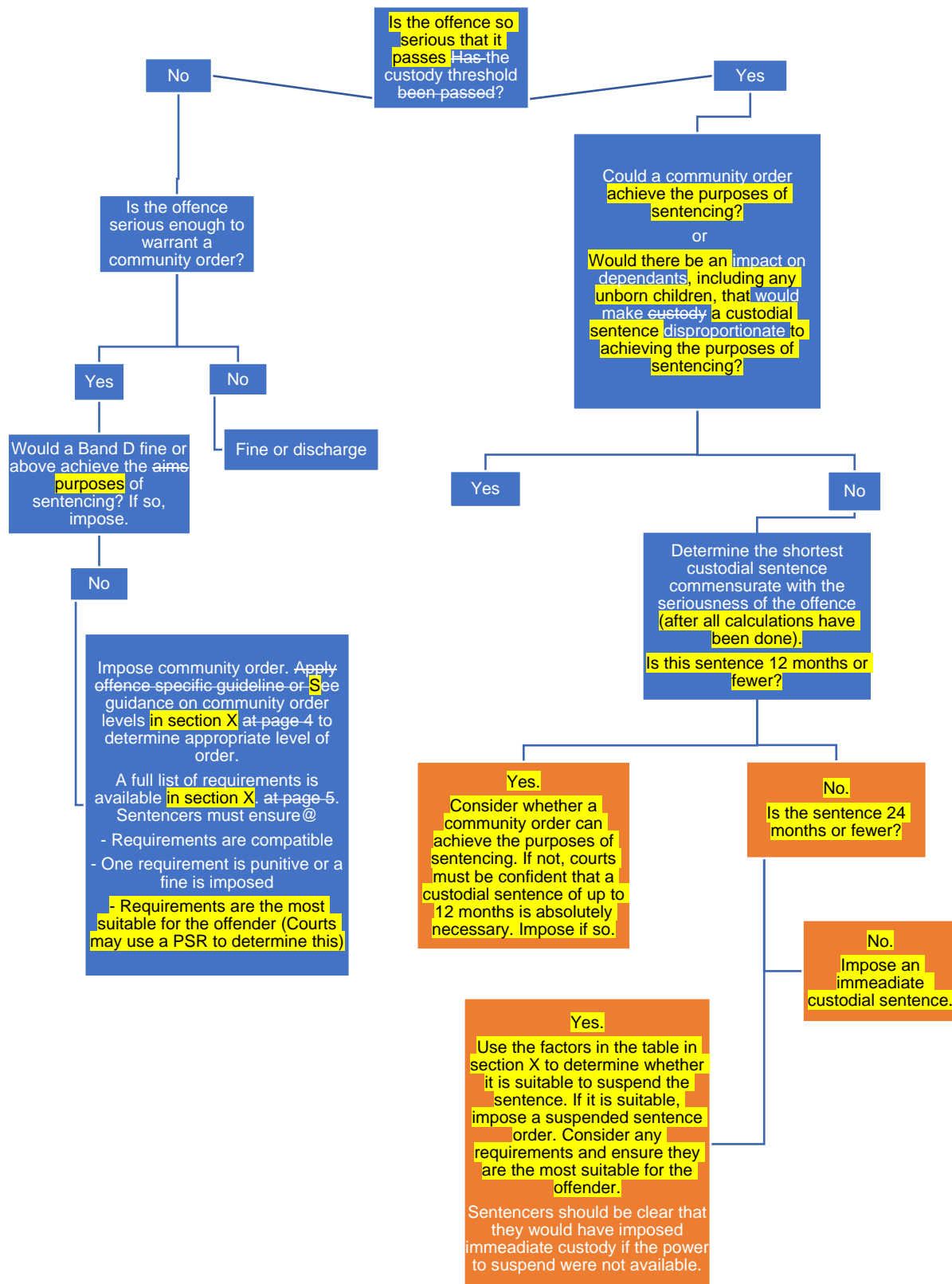
- a) Inclusion of reference to the purposes of sentencing
- b) Highlighting that COs can be quite punitive
- c) Defining ‘short custodial sentence’ rather than ‘cusp of custody’ as sentencers perception of the latter differs between magistrates’ courts and the Crown Court, and including findings from the Effectiveness review highlighting potential detrimental impact of short custodial sentences
- d) Considering the weight of previous convictions on eventual sentence
- e) Removal of the first question on thresholds and adding an introductory line to custodial sentencing
- f) Reference to considerations for sentencing pregnant offenders
- g) Inclusion of reference to assessments done by Probation
- h) Addition of factors and detail to the factors indicating it would not, or may be, appropriate to suspend
- i) Reference to suspending sentences for offences with statutory minimum terms
- j) Inclusion of reference to requirements on community orders

II. Sentencing Flow Chart

3.30 The current version of the sentencing flow chart can be seen at **Annex D**. Even if no substantive amendments are made, the flowchart still needs to be updated due to the references to pages that no longer exist.

3.31 A more detailed version of the flow chart was discussed by the Imposition working group, although it was concluded by most members that the current version of the flow chart is more aligned with the intention of the Council for the thought process that sentencers go through when considering whether to impose a CO, custodial sentence or an SSO. Based firmly on the suggested amendments to the *custodial sentences* section above, proposed amendments have been made to the flow chart which can be seen below. However, if proposed amendments to the *custodial sentences* section are not agreed, it may be unnecessary to consider this flow chart at this point.

Please note: The boxes in *blue* exist in the current version of the sentencing flow chart. New text that has been proposed is *highlighted*, with subtractions in *strike through*, and new boxes that are proposed are in *orange*.



Question 2: Does the Council agree with the proposed amendments to the sentencing flow chart? What revisions would Council like to be made?

III. Inclusion of a new section on 'Purposes and Effectiveness of Sentencing'.

3.32 In the December meeting, Council agreed to include the five purposes of sentencing in the Imposition guideline. There was a discussion on how the guideline could include an overview of each of these purposes, initiated by the Council's intention that the guideline includes information on the importance of rehabilitation, stimulated by the findings in the Effectiveness literature review.

3.33 After consideration of various options to give an overview of each purpose of sentencing within the guideline, given their breadth and overlap, it has been concluded that it would be more impactful to include a more general line about all the purposes, and specifically the fact that both a community and custodial sentence can fulfil all the purposes of sentencing. This is currently drafted as follows. In this example, the non-bold black text is not currently in the guideline, but has been provisionally agreed by the Council in a previous meeting. The bold red text simply highlights the newly proposed lines since this agreement:

The court must have regard to the five purposes of sentencing when determining sentence. **The weighting each purpose should be given will vary from case to case, however both community and custodial sentences can achieve all the purposes of sentencing.**

- The punishment of offenders
- The reduction of crime (including its reduction by deterrence)
- The reform and rehabilitation of offenders
- The protection of the public
- The making of reparation by offenders to persons affected by their offences

The court must ensure that any restriction on the offender's liberty is commensurate with the seriousness of the offence. A restriction on liberty can be achieved by a community or a custodial sentence.

3.34 The Effectiveness literature review was discussed in the October meeting in which it was agreed that the Imposition guideline should be one of the main vehicles in which the Council notes the findings of the work, specifically that "*the evidence strongly suggests that short custodial sentences under twelve months are less effective than other disposals at reducing re-offending*", and that "*there is little evidence demonstrating any significant benefits of such sentences. Indeed, there is a reasonable body of evidence to suggest short custodial sentences can make negative outcomes (such as reoffending) worse.*" A 'step back step' was preliminarily agreed to be included to ask courts to review whether the sentence it has initially arrived at fulfils the purposes of sentencing, noting the findings of the review.

3.35 These proposals have all been pulled together into a new section entitled 'Purposes and Effectiveness of Sentencing'. This can be seen in full at **Annex E**. This section currently comes third, after an initial note on deferring sentences, a first section on thresholds and a second section on pre-sentence reports. (As mentioned earlier, a full first draft will be presented to Council at a later date, once all separate sections have been discussed).

3.36 While Council has seen a variation of all of the paragraphs in this section, these have been updated following the discussion.

Question 3: Does the Council agree with the proposed new section on Purposes and Effectiveness of Sentencing?

Question 3: What amendments would the Council make to the current version of the draft of the section on Purposes and Effectiveness of Sentencing at Annex E?

4 EQUALITIES

4.1 There are several equality issues throughout this paper. These will be kept in close consideration and be outlined in more detail at a later date.

5 IMPACT AND RISKS

There are some risks throughout this paper. These will be considered in more detail at a later date. It is not possible to quantify impact of these decisions yet but this will also be considered in more detail at a later date.

ANNEX A: Offender Management Statistics quarterly: Number of requirements imposed on Suspended Sentence Orders (SSO) and Community Orders (COs) between 2017-2021

	2017	2018	2019	2020	2021	% for 2021
Community order	77,810	75,750	73,871	52,937	60,884	100%
1	47,391	43,574	40,396	29,093	31,822	52%
2	25,483	26,253	26,768	18,813	23,007	38%
3	4,571	5,503	6,158	4,646	5,558	9%
4	339	392	522	358	469	1%
5 or more	26	28	27	27	28	<0.5%
Mean no. of requirements	1.5	1.5	1.6	1.6	1.6	
Suspended sentence order						
Suspended sentence order	42,520	34,257	31,613	26,801	33,068	100%
1	21,146	16,016	13,849	11,742	13,454	41%
2	17,096	14,264	13,462	11,333	14,770	45%
3	3,877	3,583	3,870	3,297	4,333	13%
4	378	377	413	404	480	1%
5 or more	23	17	19	25	31	<0.5%
Mean no. of requirements	1.6	1.7	1.7	1.7	1.8	

Source: Offender Management Statistics Quarterly: October to December 2021

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1094743/Probation_2021-revised.ods

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ANNEX B: Proposed Amended Version of Imposition of Custodial Sentences

Section of the Imposition Guideline (Amendments not highlighted)

Imposition of custodial sentences

A custodial sentence should only be considered where the court is satisfied that the seriousness of an offence and all circumstances of the offence mean that no other sentence is suitable. A custodial sentence can be immediate or suspended. If the custodial threshold has been passed according to the sentencer's determination using the offence specific guideline (or general guideline where no offence specific guideline exists), the court should ask the following questions before committing an offender to an immediate custodial sentence:

Is it unavoidable that a sentence of imprisonment be imposed?

Passing the custody threshold does not mean that a custodial sentence is inevitable. Custody should not be imposed where the purposes of sentencing could be achieved by a community order (for example, a community order may provide sufficient restriction on an offender's liberty, by way of punishment, while allowing rehabilitation to take place to prevent future crime.) Community orders can be punitive; they last longer than a short custodial sentence and can restrict an offender's day to day liberties, as well as provide a strong rehabilitative effect, especially imposed on an offender who may find regular attendance at a specific place or time a challenge to manage around their personal life.

Imprisonment should not be imposed where there would be an impact on dependants, including on unborn children where the offender is pregnant, which would make a custodial sentence disproportionate to achieving the purposes of sentencing. In particular, courts should avoid the possibility of an offender giving birth in prison unless the imposition of a custodial sentence is absolutely necessary due to public protection concerns.

If the purposes of sentencing can be achieved by a community order, or any personal mitigation means that a community order may be a more suitable sentence, please see the Imposition of Community orders section.

What is the shortest term commensurate with the seriousness of the offence?

If the court is considering an immediate custodial sentence of 12 months or fewer after all calculations have been completed (e.g. reduction for a guilty plea), it should take into account that research suggests that short custodial sentences of less than 12 months are less effective than other disposals at reducing reoffending, that there is little evidence demonstrating any significant benefits to short custodial sentences, and that there is a reasonable body of evidence to suggest that short custodial sentences can lead to negative outcomes. Short custodial sentences can disrupt potential employment or accommodation and interfere with relationships with friends and family. Courts must be confident if they are imposing a custodial sentence of less than 12 months that it is absolutely necessary to do so.

This also applies in relation to an offender with previous convictions. If an immediate custodial sentence is considered due to the prior imposition of community sentences for previous convictions, the court should consider whether alternative requirements can be imposed instead of escalating to a custodial sentence. Advice from Probation may be helpful to the court in considering suitable alternative requirements that may be more successful in

engaging the offender than requirements imposed previously, and whether Probation considers the offender safe to be managed in the community.

In considering this the court must NOT consider any licence or post sentence supervision requirements which may subsequently be imposed upon the offender's release.

Suspended Sentence Orders

A custodial sentence between 14 days and 2 years may be suspended for between 6 months and 2 years (this is also applicable for the aggregate of the terms where the court imposes two more sentences to be served consecutively.) The time for which a sentence is suspended should reflect the length of the sentence; up to 12 months might normally be appropriate for a suspended sentence of up to 6 months. A custodial sentence that is suspended should be for the same term that would have applied if the sentence was to be served immediately.

Can the sentence be suspended?

If the custodial threshold has been passed, the court may consider whether it is appropriate to suspend that sentence, so that the offender serves their sentence in the community under the supervision of the Probation Service. If the offender reoffends while under supervision, immediate custody will be activated, unless in certain circumstances set out in the [Breach of Suspended Sentence Orders guideline](#) (*link*).

A suspended sentence is a custodial sentence. A suspended sentence **MUST NOT** be imposed as a more severe form of community order. Sentencers should be clear that they would impose an immediate custodial sentence if the power to suspend were not available. If not, a non-custodial sentence, such as a community order, should be imposed.

The court will benefit from Probation's assessment of any relevant circumstances (such as dependents), whether the offender can be safely managed in the community, and in weighing the following, non-exhaustive factors in considering whether it is appropriate to suspend the sentence.

Where a statutory minimum term for an offence is 24 months or lower, the court may lawfully impose a suspended sentence order, but in practice this will only be appropriate in rare cases.

Factors indicating that it would not be appropriate to suspend a custodial sentence

Factors indicating that it may be appropriate to suspend a custodial sentence

Offender presents a risk/danger to the public

Realistic prospect of rehabilitation

Probation assess that the offender cannot be safely managed in the community

Offender does not present high risk of reoffending or harm

The seriousness of the offence means that appropriate punishment can only be achieved by immediate custody

Strong personal mitigation that may reduce the seriousness of the offence, such as age, mental disorders, remorse, etc

Immediate custody will result in significant harmful impact upon others

Requirements on a Suspended Sentence Order

When the court suspends a sentence, it may impose one or more requirements for the offender to undertake in the community. The requirements that may be considered are identical to those available for community orders. The court must follow the guidance in the requirements section of this guideline (*link up*), including ensuring that any requirements imposed are the most suitable for the offender, and where multiple requirements are imposed, they are compatible with each other.

Requirements imposed as part of a suspended sentence order are more likely to be predominantly rehabilitative in purpose, as the imposition of a custodial sentence, whether immediate or suspended, is itself both a punishment and a deterrent. To ensure that the overall terms of the suspended sentence are commensurate with offence seriousness, care must be taken to ensure requirements imposed are not excessive. A court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate.

ANNEX C: Expanded Explanation for Previous Convictions

Effective from: 01 October 2019

Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence

[Guidance on the use of previous convictions](#)

The following guidance should be considered when seeking to determine the degree to which previous convictions should aggravate sentence:

[Section 65 of the Sentencing Code](#) states that:

(1) This section applies where a court is considering the seriousness of an offence (“the current offence”) committed by an offender who has one or more relevant previous convictions.

(2) The court must treat as an aggravating factor each relevant previous conviction that it considers can reasonably be so treated, having regard in particular 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.

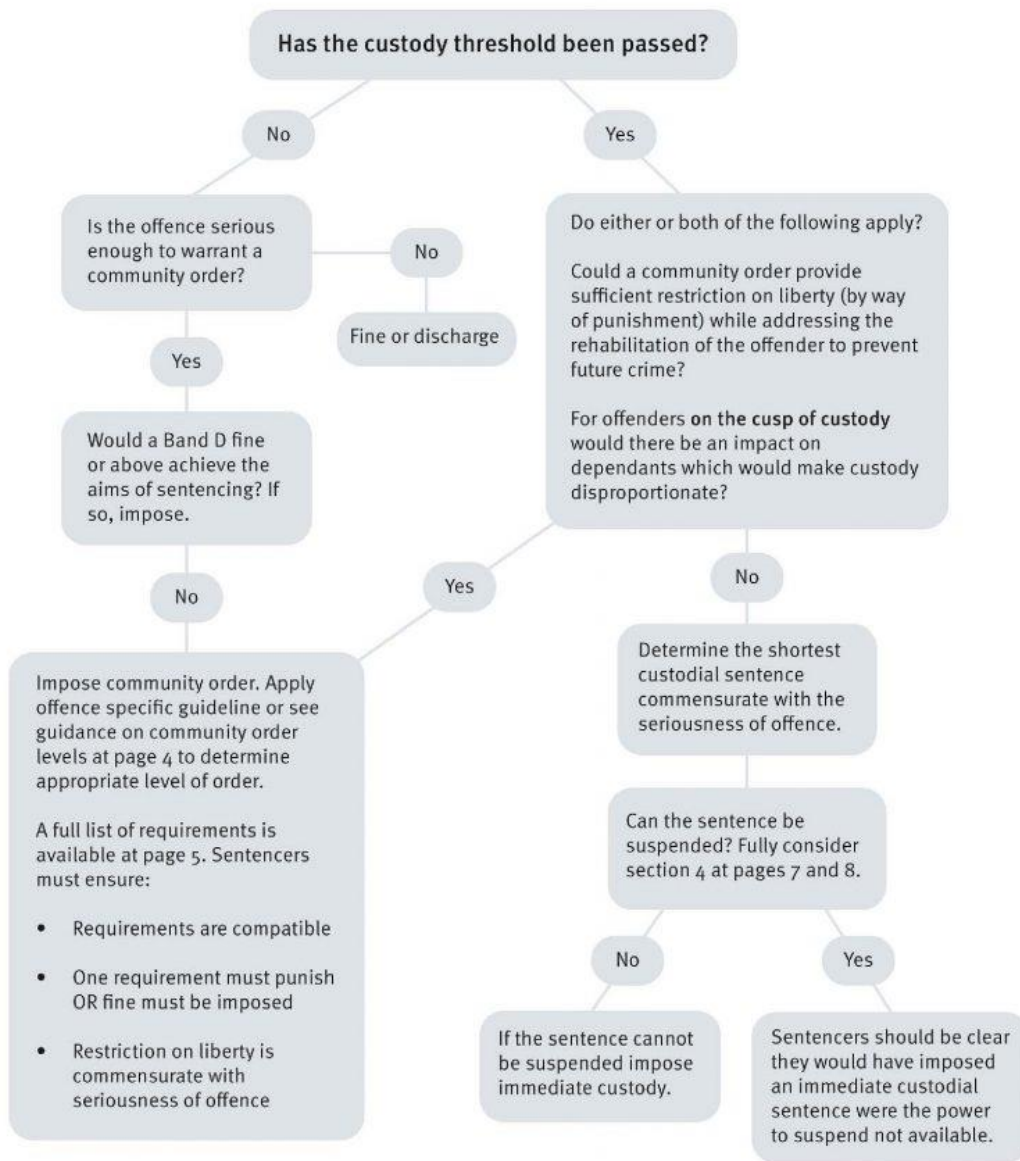
(3) Where the court treats a relevant previous conviction as an aggravating factor under subsection (2) it must state in open court that the offence is so aggravated.

1. Previous convictions are considered at step two in the Council’s offence-specific guidelines.
2. The primary significance of previous convictions (including convictions in other jurisdictions) is the extent to which they indicate trends in offending behaviour and possibly the offender’s response to earlier sentences.
3. Previous convictions are normally **relevant** to the current offence when they are of a similar type.
4. Previous convictions of a type different from the current offence **may** be relevant where they are an indication of persistent offending or escalation and/or a failure to comply with previous court orders.
5. Numerous and frequent previous convictions might indicate an underlying problem (for example, an addiction) that could be addressed more effectively in the community and will not necessarily indicate that a custodial sentence is necessary.
6. If the offender received a non-custodial disposal for the previous offence, a court should not necessarily move to a custodial sentence for the fresh offence.
7. In cases involving significant persistent offending, the community and custody thresholds may be crossed even though the current offence normally

warrants a lesser sentence. If a custodial sentence is imposed it should be proportionate and kept to the necessary minimum.

8. The aggravating effect of relevant previous convictions reduces with the passage of time; **older convictions are less relevant** to the offender's culpability for the current offence and less likely to be predictive of future offending.
9. Where the previous offence is particularly old it will normally have little relevance for the current sentencing exercise.
10. The court should consider the time gap since the previous conviction and the reason for it. Where there has been a significant gap between previous and current convictions or a reduction in the frequency of offending this may indicate that the offender has made attempts to desist from offending in which case the aggravating effect of the previous offending will diminish.
11. Where the current offence is significantly less serious than the previous conviction (suggesting a decline in the gravity of offending), the previous conviction may carry less weight.
12. When considering the totality of previous offending a court should take a rounded view of the previous crimes and not simply aggregate the individual offences.
13. Where information is available on the context of previous offending this may assist the court in assessing the relevance of that prior offending to the current offence

ANNEX D: Current version of the Sentencing Flow Chart



Effective from 1 February 2017

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ANNEX E: Proposed new section entitled ‘Purposes and Effectiveness of Sentencing’

1. Purposes and Effectiveness of Sentencing

The court must have regard to the five purposes of sentencing when determining sentence. The weighting each purpose should be given will vary from case to case, however both community and custodial sentences can achieve all the purposes of sentencing.

- The punishment of offenders
- The reduction of crime (including its reduction by deterrence)
- The reform and rehabilitation of offenders
- The protection of the public
- The making of reparation by offenders to persons affected by their offences

The court must ensure that any restriction on the offender’s liberty is commensurate with the seriousness of the offence. A restriction on liberty can be achieved by a community or a custodial sentence.

Effectiveness

The court should ‘step back’, and review whether the sentence it has preliminarily arrived at fulfils the purposes of sentencing. Where relevant, the court should ensure that a rehabilitative sentence has been fully considered, which research has shown can reduce the risk of reoffending when compared to a short custodial sentence, therefore fulfilling other purposes of sentencing, such as reduction of crime and protection of the public, through its sentencing.

The effectiveness of a sentence will be based on the individual offender. The [Equal Treatment Bench Book](#) (*link*) covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system. The Council has issued overarching guidelines for consideration in the [sentencing of offenders with mental disorders, developmental disorders, or neurological impairments](#) (*link*).

Courts should review this guideline if it applies to the case.

In addition, courts should be aware that research suggests that female offenders have different criminogenic needs than men, and in particular an immediate custodial sentence may not address these needs. Courts should take into consideration that there are fewer female prisons than male prisons which may mean that female offenders are at a greater risk of being housed further away from their families and communities, and that research suggests that female offenders are at a greater risk of being homeless and unemployed than men after release from prison.

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

3 March 2023
SC(23)MAR04 – Motoring offences
Rebecca Crane
Ollie Simpson
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1 ISSUE

1.1 Consultation responses received on proposed driving disqualification guidance.

2 RECOMMENDATIONS

2.1 That:

- Council produces disqualification guidance now, in line with that consulted on, even though it may be replaced or supplemented following further work on disqualification;
- the language about lengthy driving bans is tempered in light of consultation responses;
- we add some more text to clarify the situation for extending a disqualification where an offender is already serving a custodial sentence.

3 CONSIDERATION

3.1 We consulted on overall principles related to imposing disqualification to appear at the ancillary orders stage of each proposed motoring guideline. These would be tailored to the specific offence so the information would vary from guideline to guideline, but a full version is included at **Annex A**. The proposed guidance covers:

- Principles
- Minimum disqualification periods
- Special reasons (not to impose a disqualification or a required minimum period)
- Interaction with a custodial period (same offence)

- Interaction with a custodial period (different offence)

3.2 At November's meeting Council agreed we should do further work on disqualification as part of a separate motoring project, in light of the strength and breadth of feeling in responses urging the Council to look at greater use of disqualifications, including as a more appropriate alternative to time in custody. I propose to undertake that work in parallel with finalising the draft guidelines on aggravated vehicle taking. Subject to a fuller scoping exercise which may identify further motoring-related issues, these would be combined into one follow-up motoring consultation.

3.3 Council may feel in the meantime that we should hold back the disqualification guidance we had proposed, pending a fuller exploration of the issues surrounding disqualification and consultation. However, subject to the points discussed below, I believe there is merit in providing this guidance now, as it provides a helpful steer on matters which can trip sentencers up. We could look to revise, expand or replace it following the next consultation.

Question 1: do you agree to provide the guidance we consulted on now (subject to the discussion points below), on the understanding that further work on disqualification will take place?

3.4 Subject to that decision, we may nonetheless wish to revisit some aspects of our proposed disqualification guidance following consultation responses.

3.5 Many respondents were content with the guidance, welcomed it and offered no suggestions for change. Whilst most judges and magistrates involved road testing did not find the guidance without prompting, when they did access it they generally agreed it was helpful. There were some suggestions, both from road testing and written responses that the guidance was too long. I have sympathy with this, but I believe we have presented the guidance we need to present in a complicated area in the most concise way we can.

3.6 We did receive some more specific recommendations for change.

3.7 There were strong views amongst many consultees about two of the principles set out in the first section of the guidance:

- In setting the length of any disqualification, sentencers should not disqualify for a period that is longer than necessary and should bear in mind the need for rehabilitation (for example, by considering the effects of disqualification on employment or employment prospects).
- Sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully.

The latter in particular provoked strong criticism from several members of the public. Some typical responses:

“That sentence is embarrassing as it seems to place emphasis on there not being further crimes rather than trying to reduce dangerous drivers on the roads.”

“This seems to bias disqualification periods lower inappropriately. Driving vehicles inappropriately is dangerous and should not be treated as a "semi-crime". Would a judge reduce the length of a custodial sentence because a long sentence may tempt the offender to abscond from prison? I think not?”

“Why on earth should long sentences not be used as the offender might be tempted to drive while disqualified? Do we limit prison sentences because a felon with a long sentence might be more likely to attempt escape? Of course not. Who formulated this point? What an extraordinary and wrong headed suggestion.”

“This is tantamount to blackmail of society by offenders – ‘give me a short ban or I'll just drive anyway’. The point being that long bans cause serious thought in would-be offenders and during the duration of the ban, increases the jeopardy of being caught whilst banned leading to custodial punishments.”

3.8 The London Cycling Campaign echoed the views of others:

“The Sentencing Council advises against using longer driving bans because offenders may choose to disregard them and drive without the authority to do so. Enforcement is matter for the police and legislators and we are concerned that the Sentencing Council’s perception of ineffective enforcement should then be considered a factor in determining penalties. The Sentencing Council may wish to advise police and legislators to consider new technologies to monitor and enforce against disqualified drivers using vehicles instead of suggesting more lenient penalties because it considers enforcement is inadequate.”

3.9 On the related, but distinct, subject of rehabilitation some members of the public questioned the extent to which this was a relevant factor:

“In my view, as a non-essential activity that requires training and licensing to legally undertake, longer terms of disqualification should be considered. Part of the problem with the danger on our roads is the false assumption that driving a motor vehicle is a fundamental right, not a privilege or responsibility, leading to instances of aggression against vulnerable

road users, disqualified drivers continuing to drive and cases where those convicted of a driving offence who were able to continue driving legally then go on to cause death or injury at a later date.

There are many people in the UK that are unable to drive a motor vehicle due to disability or poverty that are not excluded from society, and instead must use public transport or active travel such as walking, yet the guidelines here would suggest that those people who have committed an offence would be unfairly hindered by a lack of access to a private, personal motor vehicle”

“Individuals are capable of making decisions regarding the way they conduct themselves in society and also of calculating the risks involved in breaking the law, for example by driving dangerously. Allowing defendants to rely (often repeatedly) on mitigation due to the impacts of disqualification on employment is egregious and undermines the public's confidence in the judiciary. If the defendant needs to drive for employment purposes, they should exercise greater caution when driving and should not expect to receive a lesser or no disqualification merely because they need to drive for work.”

3.10 These principles reflect long-established case law, as rehearsed in cases such as Backhouse [2010] EWCA Crim 1111, Needham [2016] EWCA Crim 455 and Mohammed [2016] EWCA Crim 1380. The origins of the principles are worth considering. The case of Cooksley [2003] 996 EWCA Crim 996 borrowed heavily from advice provided by the Sentencing Advisory Panel (SAP). At paragraph 43 the then Lord Chief Justice, referring to the SAP advice, said:

“we accept that to extend the ban for a substantial period after release can be counter-productive particularly if it is imposed on an offender who is obsessed with cars or who requires a driving licence to earn his or her living because it may tempt the offender to drive while disqualified.”

The relevant SAP advice from February 2003 in context was:

“There is some authority, in Thomas and Matthews that a ban which will extend for a substantial period after release is likely to be counterproductive if it is imposed on an offender who is obsessed with cars, or who requires a driving licence to earn his or her living, because it may tempt the offender to drive while disqualified. Other cases, such as Gibbons, suggest that the safety of the public should outweigh these considerations.

Despite the observations in Gibbons the prevailing view, with which the Panel agrees, is that expressed in the other two cases. The argument there may well be the stronger now since the introduction of the requirement to pass an extended driving test.”

3.11 The cases referred to here date from the 1980s and themselves follow case law dating back further. The language used in them is striking:

“[The sentencing judge] was influenced....[by] accepted sentencing policy in this type of case, that is with persons like the present appellant, who seem to be incapable of leaving motor vehicles alone, to impose a period of disqualification which will extend for a substantial period after their release from prison may well, and in many cases certainly will, invite the offender to commit further offences in relation to motor vehicles. In other words a long period of disqualification may well be counter-productive and so contrary to the public interest”
(Thomas)

“We are impressed that given the history of this particular applicant, the likelihood that he would be able to keep his hands off other people’s motor cars during such a period [five and a half years after release] is so remote that it is undesirable that this Court should in any way increase the probability of the commission of any further similar offence” (Matthews)

3.12 Some observations:

- The cases of Matthews, Thomas and similar cases from the period do not tend to involve egregiously bad driving – unlike Gibbons, also referred to by the SAP – but rather petty offenders who repeatedly drive whilst disqualified and/or refuse to pass a test. In that light, the Court of Appeal may have been instructing the courts not to keep persisting in a disposal that is clearly ineffective.
- The SAP advice conflates this with the related, but separate, issue of rehabilitation in general. The case of *Wright* from 1979 cited in these cases involved a taxi driver who had driven his car to steal some sheet metal and received a disqualification. The Court of Appeal thought it would be more helpful if his disqualification was short so that he could pursue a legitimate enterprise.
- Even in giving that advice, the SAP foresees disqualifications of 5-10 years for bad cases of causing death by dangerous driving, and acknowledges that lifetime bans will be appropriate on occasion.

- Attitudes have moved on, as have the statute and case law: disqualification is now seen as a backwards-looking, punitive measure, as much as a forwards-looking protective one, which was only just beginning to be the case in 2003.

3.13 There appears at least a question to be asked over the received wisdom about not imposing lengthy disqualifications, and I believe this will be worth considering as part of the next project on disqualification. At this stage I do not propose removing it from the advice we proposed (it would stand as case law in any case), but we could temper it in the following way (changes in **bold**):

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

It is also a well established principle that sentencers should also be mindful of the risk of long disqualifications leading to further offences being committed, by reason of a temptation to drive unlawfully. These considerations should be balanced against the need to protect the public, and to provide punishment which is just to the offender and proportionate to the offence.

Question 2: do you want to amend the text on principles as set out above?

3.14 HM Council of District Judges made two suggestions to clarify the situation where a disqualification needs to take account of time spent in custody. First, they pointed out a variant of the scenario where the custodial sentence is not for the offence for which disqualification is being imposed and suggested this addition (new text in bold):

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

3.15 They also suggested that:

“the guidance should also make clear that when ordering an extended disqualification mentioned in the circumstances indicated in D and/or E, [the court] should announce:

- The discretionary period it would have imposed had the defendant not been serving a custodial sentence

- Any extension under D
- Any uplift under E”

I am less convinced by this suggestion, simply because based on transcripts I have seen, explaining the calculation is second nature and I am mindful of adding to the length of the guidance. However, I do see the case for clarifying the first point made by HM Council of District Judges.

Question 3: do you agree to add wording to cater for the scenario where the offender is already in custody for another offence?

3.16 The West London Magistrates Bench believed the information provided was useful, and had suggestions for additional guidance. They asked for additional guidance on “special reasons” not to impose a disqualification, or not to impose a minimum. They suggest:

“The most common examples of what might constitute special reasons include:

- Very short distance driven (for example, moving a car a few yards to safety).
- Driving due to an emergency (medical or otherwise) – if this falls short of a defence.
- A drivers’ drink being laced or spiked without their knowledge.”

3.17 I would be worried about hinting too much at what may or may not constitute special reasons. From the case law, even though the bar is a high one, there may be a variety of special reasons and they are fact-sensitive. On the one hand, we would not want the fact of (say) a short distance driven automatically to amount to special reasons (location and further intention would be just two elements which could negate this). On the other hand, there may be a variety of – by definition, unusual – circumstances which we cannot envisage but that could reasonably amount to special reasons. We are also looking at a range of offences which go beyond those seen commonly in the Magistrates’ courts and I am not confident that these are the “most common examples” of special reasons across all offending.

3.18 The West London Bench then sought more information about “totting-up” disqualifications. For most of the offences in scope, disqualification is mandatory and totting up points should not be an issue. I therefore propose keeping this issue separate as part of the magistrates’ explanatory materials.

3.19 Finally, they sought further guidance on offering a reduction in sentence for taking part in a drink drive rehabilitation scheme. The only offence in scope of this consultation to which this is relevant is causing death by careless driving whilst under the influence. We

could provide a pointer to this possibility by recycling material already in the explanatory materials, but there is a potential handling issue with providing guidance on disqualification reductions in relation to what may be very serious cases of drink driving where a death has been caused. I therefore think we should be silent and let defence teams argue the case for this where they believe it appropriate.

Question 4: do you agree not to add the extra information proposed by the West London Bench?

4 IMPACT AND RISKS

4.1 The disqualification guidance will not have a direct impact on probation and prison resources. A move to greater use of disqualification over custody or even community orders could reduce the impact on prisons and probation, although it could also lead to more offending if those subject to a ban do go on to breach it.

4.2 There may be a handling issue if we present guidance now which is regarded as inadequate, given the strength of feeling about disqualification from consultation responses. We can explain in response to this that we are working on further guidance, but it remains a risk that whatever guidance we produce now is fairly quickly superseded.

4.3 As discussed before, 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. We aim to present Council with a revised version of the resource assessment at the 31 March meeting.

Disqualification

A Principles

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

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

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

B Minimum disqualification period

The minimum disqualification period for this offence is x years.

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

- interim disqualification;
- 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 they have been convicted of any of the following offences once or more in the 10 years preceding the commission of the current [drink/drug-drive] offence

- causing death by careless driving under the influence of drink or drugs
- 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 (where that is an offence involving obligatory disqualification); or
- failing to allow a specimen to be subjected to laboratory test (where that is an offence involving obligatory disqualification).

C Special reasons

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

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

D Interaction with custodial period – same offence

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

- one half of the custodial term imposed for an immediate standard determinate sentence; no extension period should be imposed where a sentence is suspended.
- two thirds of the custodial term for an extended sentence;
- the custodial element of a serious terrorism sentence or extended sentence for a serious terrorism offence (i.e. one which carries a maximum of life imprisonment); or
- the term specified in the minimum term order of a life sentence.

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

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

E Interaction with custodial period – different offence

The court may be imposing a custodial sentence on the offender for another offence, which is not the one for which they are being disqualified. In this instance, under section 35B of the Road Traffic Offenders Act 1988, it should have regard to "the

diminished effect of disqualification as a distinct punishment if the person who is disqualified is also detained in pursuance of a custodial sentence”.

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

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?

YES – the court must impose the appropriate extension period and consider step 2.

NO – go to step 3.

- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?

YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed. Discretionary period + extension period + uplift = total period of disqualification

NO – no further uplift required. Discretionary period + extension period = total period of disqualification

- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?

YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished effect of disqualification as a distinct punishment. Discretionary period + uplift = total period of disqualification

NO – no increase is needed to the discretionary period.

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Sentencing Council meeting:
Paper number:

3 March 2023
SC(23)MAR05 - Blackmail, kidnap, false imprisonment and threats to disclose private sexual images

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1 ISSUE

1.1 This is the fourth meeting to discuss the offences and will focus on draft guidelines for kidnap and false imprisonment. At the next meeting a draft of the disclosing private sexual images guideline will be discussed. This will be revised to incorporate threats to disclose images. On the current schedule there will then be one further meeting to sign the guidelines off ahead of a consultation in the summer.

2 RECOMMENDATION

2.1 At today's meeting the Council is asked:

- To consider the results of the sentencing exercise on the draft combined kidnap and false imprisonment guidelines
- To agree what action to take as a result of the sentencing exercise

3 CONSIDERATION

Kidnap and false imprisonment offences

3.1 At the last meeting that these offences were discussed in September it was agreed to devise a combined guideline for both offences, with one sentence table, which Judicial members would then use to resentence cases using transcripts. This exercise has taken place and the results of the exercise have been analysed. The Council may recall from the discussion at the last meeting that other options for presenting the guidelines were discussed- potentially two separate guidelines, or one guideline for both offences, but two separate sentence tables. It was agreed that as there are similarities between the offences and they are quite interlinked it was unnecessary to have two separate guidelines- otherwise there would be two guidelines with near identical factors in. However, current sentencing practice shows that kidnap offences are sentenced more severely than false imprisonment - so there is a possible risk that by having one sentence table, sentencing severity could increase for false imprisonment.

3.2 For kidnap offences, in 2020, the mean average custodial sentence length (ACSL) estimated pre-guilty plea was seven years three months, with a mean ACSL post guilty plea of five years nine months (tab 1.3 of **Annex A**). For false imprisonment, in 2020, the mean ACSL estimated pre-guilty plea was four years eight months, with a mean ACSL post guilty plea of three years seven months (tab 2.3). Also from the statistics at **Annex A** the Council can see that a greater proportion of offenders sentenced for kidnap receive sentences over 10 years, than offenders for false imprisonment do. Additionally, a greater proportion of offenders for false imprisonment receive sentences at the lower end, 73 per cent receiving a sentence of up to and including four years (post guilty plea), compared to 31 per cent of offenders for kidnap (post guilty plea).

3.3 In the discussion on the issues last time the Council thought one of the risks of having two separate tables, with lower ranges for false imprisonment may be that offenders would then plead to that rather than kidnap, also that perhaps historically sentences for false imprisonment were artificially low. So, the decision was taken to develop one guideline with one sentence table and test it by conducting a resentencing exercise.

3.4 The guideline used in the exercise is attached at **Annex B**, and the results of the exercise at **Annex C**. Six scenarios were tested, three kidnap cases, and three false imprisonment. As can be seen from the table, nearly all scenarios across both offences were categorised as culpability A, high culpability, despite a range of scenarios being selected for resentencing. Within each scenario, final sentence outcomes were reasonably similar with the exception of scenario D, where there was more variability in final sentence lengths. What is most striking from the exercise is that nearly all of the sentences were higher, in some cases considerably so, than the actual sentence given in the case. If these issues are not addressed we would likely see an impact on resources, although volumes for both offences range between around 80 to 120 cases a year (for each offence) the impact of such potential increases could be considerable.

3.5 It must be said of course that this was a very small exercise, and participants were given very brief sentencing remarks with which to sentence the cases, so not an accurate representation of sentencing in reality. However, it does act as a useful tool in identifying potential problems with the initial draft of a guideline, ones that can be resolved ahead of the consultation on the draft guidelines.

3.6 It is interesting from this small sample that the increase in sentence lengths following resentencing for false imprisonment cases were of a similar size increase to the kidnap cases. As false imprisonment cases now have higher starting points due to a combined sentence table (compared to a separate sentence table reflecting current sentencing practice for false imprisonment cases) we may have expected false imprisonment cases to have higher increases to sentence lengths than kidnap cases, where starting points were

more in line with existing sentencing practice. The clear issue remains that nearly all cases were categorised as culpability A. It is not clear whether the false imprisonment cases were sentenced higher due an issue with culpability A, or a combination of that and higher starting points. It is difficult therefore to say with certainty at this stage whether one combined sentence table, or two separate ones would be more appropriate, as it partly depends on what is driving the higher sentences (on average) for kidnap and lower sentences for false imprisonment in current practice.

3.7 However, the sentences were also higher for kidnap offences, using this combined guideline with one table, so the issues with the categorisation of cases is a priority to be addressed, alongside other issues discussed below. At this stage it is proposed that we continue with developing one combined guideline, agree on changes to it to try and address the problems highlighted by the first exercise, and then possibly re-run the resentencing exercise to see if the changes are sufficient.

Question one: Does the Council wish to continue with the guideline with a combined sentence table for both offences (at Annex B)- but address all of the issues raised in the exercise, and then re-run the resentencing exercise? Or should the option of two separate guidelines or two separate sentence tables be revisited?

3.8 One of the key issues highlighted by the exercise was the wording of the high culpability factor regarding violence. A majority of the resentencing participants mentioned this as an issue, as so many cases seemed to automatically fall into category A because of this. Currently the wording of the factor in category A is: 'use of violence and/or use of a weapon', with 'threat of violence to victim and/or others' in culpability B. The proposed rewording of factors in culpability A is: 'use of very significant force and/or use of a weapon in the commission of the offence'. In culpability B the proposed rewording is: 'some force in the commission of the offence' and 'use of a weapon to threaten violence', and a new factor in culpability C of 'limited use of force in the commission of the offence'. These changes can be seen in track changes on page two of **Annex B**. Rewording the factors in this way tries to graduate the assessment of culpability regarding the use of force, with significant force in culpability A, some use of force in culpability B, and so on. Use of a weapon is in culpability A, with the threat of use of a weapon in culpability B. There are now more factors in culpability B, including 'some element of planning in the offence', which resentencing participants suggested was required, and there is an additional factor in category C of 'limited use of force in the commission of the offence'.

Question two: Does the Council agree with the reworded culpability factors regarding use of violence?

Question three: Does the Council agree with the reworded culpability B factors?

3.9 It is also possible that there are too many factors in culpability A, an issue highlighted in the exercise. Clearly the more factors there are, the more likely that cases will be captured in that category. An option would be to move some of the factors to step two, such as 'offence was committed as part of a group', 'offence motivated by financial gain', and 'offence committed in the context of other criminal activity'. However, it is thought that some of these factors, particularly ones relating to financial gain and group activity are often seen in the more serious kidnap cases. Therefore, the Council may not want to move them to step two, potentially reducing the sentence in more serious kidnap cases. So, if the factors remained at step one, the aim of the guideline would be that the more serious kidnap cases are captured in the higher categories, with the less serious false imprisonment ones captured by the lower categories. The proposal therefore is to not move any factors to step two, and perhaps see what sentences result in a second resentencing exercise, if the Council wish to conduct one. However, it may be appropriate to amend the 'offence was committed as part of a group' to 'leading role in group offending' to try to ensure only those playing a more directional role in a group fall into culpability A.

Question four: Does the Council agree not to move the factors from step one to step two, and see what effect this has during a resentencing exercise? And reword the group offending factor?

3.10 It was also suggested during the exercise that the wording of the high culpability factor of 'detention over a substantial period of time' needed to be refined. Options for rewording this could be 'detention over a sustained and prolonged period of time', or 'detention over a protracted period of time' One participant said that there was an overlap with this culpability factor and the step two factor of 'detention in an isolated location', with another participant saying that isolated location needed to be further defined, and that an element of it is implicit in these cases. The aggravating factor was proposed as it was thought worse if the victim is held in an abandoned property miles from anywhere with no-one else around and little hope of rescue, compared to being held in a room in a house, for example. An option would be to add 'where not taken into account at step one' to the wording, to stop double counting, but not make any other changes to allow for the factor to aggravate the sentence in the more serious kidnap cases, for example.

Question five: Does the Council wish to reword the culpability A factor to either ‘detention over a sustained and prolonged period of time’ or ‘detention over a protracted period of time’?

Question six: Does the Council agree to the addition of the wording ‘where not taken into account at step one’ to the aggravating factor of ‘detention in an isolated location’?

3.11 Some of the participants in the exercise suggested that the harm factor of ‘victim forcibly restrained’ needed to be reworded, one saying that an element of this is implicit in these cases. The intention behind this factor was to differentiate between the possible ways a victim may be restrained, and the differing physical effects these methods may result in. A way of rewording this is possibly ‘victim kept in a position of extreme discomfort’. This could be being handcuffed to a radiator which allows for barely any free movement, compared to being kept locked in a room which at least allows the victim to stand up -change position and so on.

Question seven: Does the Council agree with the rewording of the harm factor relating to being forcibly restrained?

3.12 Two participants in the exercise suggested that the word distress in the harm factors was not helpful, that most cases will involve distress. Accordingly, the references to distress could be removed from the harm factors, leaving just reference to psychological harm, which is a higher bar than distress.

Question eight: Does the Council agree to removing the word ‘distress’ from the harm factors?

3.13 The draft combined sentence table for both offences, used in the exercise, can be seen at page three of **Annex B**. Tiny amounts of offenders receive non-custodial disposals each year for both offences, so the range starts at six months custody. The maximum for both offences is life imprisonment. The top of the range in A1 is 16 years. Only a handful of offenders receive custodial sentences above 12 years each year, but the top of the range needs to incorporate the most serious cases of these offences. In AG’s Ref (nos 102 and 103 of 2014) (R v Perkins) the court said that cases involving hostage taking and ransom demands will attract a starting point of close to 16 years for an adult: others, where behaviour is absent, will still attract double figures, regardless of the degree of violence.

3.14 Looking across at comparable (to some extent) offences, the top of the range in robbery in a dwelling is 16 years, in aggravated burglary it is 13 years, for GBH (s.20) it is 16

years and for rape it is 19 years. It is possible that one of the contributing factors to the sentences seen in the exercise was that the draft sentence ranges in the table were too high. Therefore, some of the ranges have been slightly reduced at the lower end of the table, namely within 2C, 3B, 1C, 2B and 3A. These can be seen in track changes in **Annex B**.

Question nine: What are the Council's views on the proposed changes to the combined sentence ranges? Should they be reduced further?

4. EQUALITIES

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

4 IMPACT AND RISKS

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

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

Section 1: Kidnapping

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

Section 2: False imprisonment

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

Section 3: Abduction of child by parent

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

Section 4: Abduction of child by other persons

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

Section 5: Blackmail

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

Section 6: Disclosing private sexual images

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

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

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

Notes:

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

2) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

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

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

Notes:

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

2) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

Table 1.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for kidnapping, 2010-2020

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Estimated pre-guilty plea

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

Post-guilty plea

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

Notes:

- 1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.
- 2) Figures shown here differ from those published by the MoJ, as there was one kidnapping case in the CPD in 2019 which indicate that the offender was sentenced in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be
- 3) The statutory maximum sentence for this offence is life imprisonment.
- 4) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

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

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

Notes:

- 1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 2 years' includes sentence lengths less than and equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.
- 2) Figures shown here differ from those published by the MoJ, as there was one kidnapping case in the CPD in 2019 which indicate that the offender was sentenced in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 3) The statutory maximum sentence for this offence is life imprisonment.
- 4) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

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

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

Notes:

- 1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 2 years' includes sentence lengths less than and equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.
- 2) Figures shown here differ from those published by the MoJ, as there was one kidnapping case in the CPD in 2019 which indicate that the offender was sentenced in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 3) The statutory maximum sentence for this offence is life imprisonment. In 2020 the longest post-guilty plea determinate sentence given was 13 years.
- 4) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

[Index](#)

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

Notes:

1) Figures shown here differ from those published by the MoJ, as there were three false imprisonment cases in the CPD between 2018-2020 which indicate that the offenders were sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

2) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

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

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

Notes:

1) Figures shown here differ from those published by the MoJ, as there were three false imprisonment cases in the CPD between 2018-2020 which indicate that the offenders were sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

2) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

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

[Index](#)

Estimated pre-guilty plea

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

Post-guilty plea

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

Notes:

- 1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.
- 2) Figures shown here differ from those published by the MoJ, as there were three false imprisonment cases in the CPD between 2018-2020 which indicate that the offenders were sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 3) The statutory maximum sentence for this offence is life imprisonment.
- 4) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

[Index](#)

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

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

Notes:

1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 2 years' includes sentence lengths less than and equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.

2) Figures shown here differ from those published by the MoJ, as there were three false imprisonment cases in the CPD between 2018-2020 which indicate that the offenders were sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

3) The statutory maximum sentence for this offence is life imprisonment.

4) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

[Index](#)

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

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

Notes:

- 1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 2 years' includes sentence lengths less than and equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.
- 2) Figures shown here differ from those published by the MoJ, as there were three false imprisonment cases in the CPD between 2018-2020 which indicate that the offenders were sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 3) The statutory maximum sentence for this offence is life imprisonment. In 2020 the longest post-guilty plea determinate sentence given was 14 years.
- 4) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

[Index](#)

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

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

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

[Index](#)

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

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

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

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

[Index](#)

Estimated pre-guilty plea

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

Post-guilty plea

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

Notes:

- 1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.
- 2) The statutory maximum sentence for this offence is 7 years' custody.
- 3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 4) For 2013 onwards this is calculated as the number of offenders given life sentences, out of the number of offenders given a sentence of immediate custody. For 2010-2012, this is calculated as the number of offenders sentenced to Imprisonment for Public Protection (IPP), Extended Sentences for Public Protection (EPP) and life sentences, out of the number of offenders given a sentence of immediate custody. IPP and EPP sentences were introduced in 2005 and abolished in 2012.

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

[Index](#)

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

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

Notes:

- 1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than and equal to 1 year, and '1 to 2' includes sentence lengths over 1 year and up to and including 2 years.
- 2) The statutory maximum sentence for this offence is 7 years' custody.
- 3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 4) While these sentences appear to exceed the statutory maximum, they are estimates only; there are no post guilty plea sentence lengths exceeding the statutory maximum.

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

[Index](#)

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

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

Notes:

1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than and equal to 1 year, and '1 to 2' includes sentence lengths over 1 year and up to and including 2 years.

2) The statutory maximum sentence for this offence is 7 years' custody. In 2020 the longest post-guilty plea determinate sentence given was 4 years.

3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

[Index](#)

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

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

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

[Index](#)

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

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

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

Table 4.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for abduction of child by other persons, etc, 2010-2020[Index](#)**Estimated pre-guilty plea**

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

Post-guilty plea

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

Notes:

- 1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.
- 2) The statutory maximum sentence for this offence is 7 years' custody.
- 3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 4) For 2013 onwards this is calculated as the number of offenders given life sentences, out of the number of offenders given a sentence of immediate custody. For 2010-2012, this is calculated as the number of offenders sentenced to Imprisonment for Public Protection (IPP), Extended Sentences for Public Protection (EPP) and life sentences, out of the number of offenders given a sentence of immediate custody. IPP and EPP sentences were introduced in 2005 and abolished in 2012.

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

[Index](#)

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

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

Notes:

- 1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than and equal to 1 year, and '1 to 2' includes sentence lengths over 1 year and up to and including 2 years.
- 2) The statutory maximum sentence for this offence is 7 years' custody.
- 3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 4) While these sentences appear to exceed the statutory maximum, they are estimates only; there are no post guilty plea sentence lengths exceeding the statutory maximum.

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

[Index](#)

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

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

Notes:

1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than and equal to 1 year, and '1 to 2' includes sentence lengths over 1 year and up to and including 2 years.

2) The statutory maximum sentence for this offence is 7 years' custody. In 2020 the longest post-guilty plea determinate sentence given was 5 years 9 months.

3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

[Index](#)

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

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) Figures shown here differ from those published by the MoJ, as there were four blackmail cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court. There was also an indeterminate sentence in 2012 which has been excluded from the above table.

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

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

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

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) Figures shown here differ from those published by the MoJ, as there were four blackmail cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court. There was also an indeterminate sentence in 2012 which has been excluded from the above table.

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

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

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

Post-guilty plea

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

Notes:

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

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

3) Figures shown here differ from those published by the MoJ, as there were four blackmail cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

4) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

[Index](#)

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

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

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) Figures shown here differ from those published by the MoJ, as there were four blackmail cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court. There was also an indeterminate sentence in 2012 which has been excluded from the above table.

3) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Up to 2 years' includes sentence lengths less than or equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.

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

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

[Index](#)

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

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

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) Figures shown here differ from those published by the MoJ, as there were four blackmail cases in the CPD between 2010-2020 which indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court. There was also an indeterminate sentence in 2012 which has been excluded from the above table.

3) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Up to 2 years' includes sentence lengths less than or equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.

4) The statutory maximum sentence for this offence is 14 years. In 2020 the longest post-guilty plea determinate sentence given was 12 years.

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

[Index](#)

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

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

Notes:

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

2) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

[Index](#)

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

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

Notes:

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

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

3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

[Index](#)

Estimated pre-guilty plea

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

Post-guilty plea

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

Notes:

- 1) This offence came into force in 2015 and the legislation was amended in 2021 to also include threats to disclose private sexual images. Therefore, tables for this offence are presented for the years 2015-2021. Currently, there is no way of disaggregating the threats to disclose offences from the substantive offence using the data, so the figures for 2021 may include some threats to disclose offences (if there were any).
- 2) The statutory maximum sentence for this offence is 2 years' custody.
- 3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

[Index](#)

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

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

Notes:

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

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

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

4) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

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

[Index](#)

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

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

Notes:

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

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

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

4) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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Annex B

Kidnap False Imprisonment

Common Law

Triable only on indictment

Maximum: Life Imprisonment

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

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

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

Where the offence is committed in a criminal context, also refer to the [Overarching Principles-Domestic Abuse guideline](#)

STEP ONE

Determining the offence category

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

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

CULPABILITY

Demonstrated by one or more of the following:

A- High Culpability	<ul style="list-style-type: none">• Detention over a <u>substantial sustained and prolonged</u> period of time• Sophisticated and/or planned nature of conduct• Offence was committed as part of a group• Deliberate targeting of particularly vulnerable victim• Use of <u>very significant force violence</u> and /or use of a weapon <u>in the commission of the offence</u>• Offence motivated by expectation of financial gain• Offence committed in context of other criminal activity•
B- Medium culpability	<ul style="list-style-type: none">• <u>Some use of force in the commission of the offence</u>• <u>Threat of violence to victim and/or others</u>• <u>Use of a weapon to threaten violence</u>• <u>Some element of planning in the offence</u>• 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">• <u>Limited use of force in the commission of the offence</u>• Limited in scope <u>or and</u> duration• Involved through coercion, intimidation or exploitation• Offender's responsibility substantially reduced by mental disorder or learning disability

HARM

The level of harm is assessed by weighing up all the factors in the case.

Category 1	<ul style="list-style-type: none">• Serious distress and or psychological harm caused to the victim and/or others• Serious injury caused to the victim• Use of torture, humiliation or degrading treatment• <u>Victim forcibly restrained</u>• <u>Kept in a position of extreme discomfort</u>•
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Category 2	<ul style="list-style-type: none"> • Some distress and/or psychological harm caused to the victim and/or others • Some injury caused to the victim • Threat of torture
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 11 years' custody Category Range 8 – 16 years' custody	Starting Point 7 years' custody Category Range 5 -10 years' custody	Starting Point 5 years' custody Category Range 3 - 7 8 years' custody
Category 2	Starting Point 7 years' custody Category Range 5 -10 years' custody	Starting Point 5 years' custody Category Range 3 – 7 8 years' custody	Starting Point 2 years 6 months' custody Category Range 1- 3 4 years' custody
Category 3	Starting Point 5 years' custody Category Range 3 – 7 8 years' custody	Starting Point 2 years 6 months' custody Category Range 1- 3 4 years' custody	Starting Point 1 years' custody Category Range 6 months' - 2 year's custody

[Where another offence or offences arise out of the same incident or facts concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the Totality guideline and step five of this guideline.]

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

the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence was committed against an emergency worker acting in the exercise of functions as such a worker (**kidnap only**)

Other aggravating factors:

- Offence was committed against an emergency worker acting in the exercise of functions as such a worker (**false imprisonment only**)
- Detention in an isolated location ([where not taken into account at step one](#))
- Blame wrongly placed on others
- Offence committed in a domestic context (where not taken into account at step one)
- Commission of offence whilst under the influence of alcohol or drugs
- ~~Leading role in group~~
- Abuse of trust or dominant position
- Offender involves others in the conduct
- Offence committed on licence or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- Good character and/or exemplary conduct
- Co-operation with the investigation/early admissions
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability (where not taken into account at step 1)
- Age and/or lack of maturity
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

STEP 3**Consider any factors which indicate a reduction for assistance to the prosecution**

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

STEP 4**Reduction for guilty pleas**

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

STEP 5**Dangerousness**

The court should consider whether having regard to the criteria contained in [Chapter 6 of Part 10](#) of the Sentencing Code it would be appropriate to impose a life sentence (sections [274](#) and [285](#)) or an extended sentence (sections [266](#) and [279](#))

When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP 6**Totality principle**

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

STEP 7**Compensation and ancillary orders**

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

STEP 8**Reasons**

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

STEP 9**Consideration for time spent on bail (tagged curfew)**

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

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Annex C - Results of the sentencing exercise for a combined kidnap and false imprisonment guideline

Kidnap cases	A,B,C							
Scenario A	Culpability	Harm	SP	After aggravating/mitigating factors	GP	Final sentence	Key observations by participants	Actual sentence in case
Participant 1	A, planned, group, violence, substantial period, context of other criminal activity	1, forcibly restrained, serious injury	13yrs	13.5yrs	n/a	13.5yrs		11 yrs
Participant 4	A, all cat A factors except vulnerable victim	1, forcibly restrained, sig injury	12yrs	15yrs	n/a	15yrs	Perhaps adding multiplicity of factors at stage 1 may move the SP up in the range? Many cat A factors present. An overlap between detention over substantial period of time/step 1 and agg factor detention in isolated location?	
Participant 7	A All factors except group&	1 All factors except distress	16yrs	16yrs	n/a	16yrs		

	vulnerable victim							
Scenario B								
Participant 1	A, planned, weapon	1, serious distress	10yrs	11yrs	33%	7 yrs 4mths	Cat A should be 'serious/sustained violence' or most cases will fall into cat A. 'Limited in scope and duration' should be 'or' not 'and'. Add public servants to agg factors	2yrs 8mths
Participant 2	A Weapon, planning	1 Serious distress	11yrs	12yrs	33%	8yrs		
Participant 8	A Weapon, planning	1, significant psychological harm	8yrs	11yrs		7yrs 4 mths		
Scenario C								
Participant 2	A Violence pushed this into A	2 No evidence of serious distress, not forcibly restrained	7yrs	7yrs	10%	6yrs 4mths	Criteria in cat 1 too broad- cat 2 not helpful- cases seemed to fall into cat 1 automatically. Problem with violence. Did not feel like a cat 1 case. Is forcible restraint harm or	2yrs 8 mths

							culp? What does forcible restraint mean? Culp factors need to be reworked re violence. Distress also not helpful. Better physical/psych harm. Or just distress in cat 2.	
Participant 4	A/B violence	2, considerable distress	6yrs	7yrs		7yrs	Not getting different degrees of violence used- some degree of violence inherent in FI/kidnap-what could fall into cat C?	
Participant 6	A significant violence, possibly length of detention	1 serious distress (possibly) forcibly restrained	10yrs	10yrs	10%	9yrs	Resulting cat A1 not appropriate- offence opportunistic, unplanned, not convinced the sentence indicated by A1 is right	
Participant 7	A violence	2 As not a cat 1 case	7yrs	8yrs 6 mths	nil	8 yrs 6 mths	Further define 'substantial period of time'. Threat of torture expanded to inc threats to	

							kill (where not separately charge). Forcible restraint- element of it implicit in these cases? Further define isolated location? Implicit in these cases?	
False Imprisonment cases	D,E,F							
Scenario D								
Participant 1	A, particularly vulnerable, prolonged period of detention	2, evidence of some distress	7yrs	7yrs 6mths	n/a	n/a	Requires 'some violence' in cat B? Otherwise most cases will fall into cat A	6yrs (extended sentence 11 yrs- 6yrs custody, licence ext 5yrs)
Participant 4	A, violence, vul victim, detention over substantial period, planned, motivated by gain	1, serious injury, forcibly restrained	10yrs	14yrs	n/a	n/a	All kidnap will involve some violence, many degrees of violence, but all of which will go into cat A. Drug user vulnerable?	
Participant 7	A violence	1 Torture, serious injury,	11yrs	12yrs 5mths	n/a	n/a	Not much head room in range for more serious offending e.g	

		forcible restraint					professional highly organised offence. Comparison with GBH with intent A2 SP 7Yrs	
Scenario E								
Participant 2	A, Particularly vulnerable, prolonged detention	2, as some distress	7yrs	7yrs	10%	6yrs 4 mths	Little scope to place cases in any other cat than cat A culp. Distress? Most cases will involve distress.	2yrs 8mths
Participant 6	A, violence, vulnerable victim, possibly financial gain, possibly sustained period of time	1, possibly serious distress degrading treatment	11yrs	11yrs	10%	9yrs 10 mths	'Substantial period of time' may need refining	
Participant 8	A Particularly vulnerable, violence, prolonged period	2, as not cat 1 harm	7 yrs	7yrs	10%	6yrs		
Scenario F								
Participant 6	B use of violence but counterbalanced by limited duration	2, some injury	5yrs	5yrs		5 yrs		1yr

Participant 8	A violence	2	3yrs	4yrs		4yrs		
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Sentencing Council meeting:
Paper number:

Lead Council member:
Lead official:

3 March 2023
**SC(23)MAR06 - Perverting the Course of
Justice and Witness intimidation**
Juliet May
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1 ISSUE

1.1 This is the third 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 sentence levels, aggravating and mitigating factors, and equality and diversity issues. There is one final meeting to sign off the guidelines ahead of publication of the definitive guidelines in the summer.

2 RECOMMENDATION

2.1 At today's meeting the Council is asked:

- To agree the high culpability factor in witness intimidation regarding police warnings, court orders, and notices
- To consider the consultation responses regarding sentence levels, aggravating and mitigating factors and equality and diversity issues

3 CONSIDERATION

3.1 The changes agreed at the last meeting to the harm factors have been made and can be seen in track changes within the PTCJ and witness intimidation guidelines, attached at **Annexes A** and **B** respectively. At the last meeting the Council discussed the information on court orders, notices and police warnings, attached at **Annex C**, and how best to present this as a high culpability factor. Officials have looked into the information in **Annex C** further and the only item that could be classed as a police warning that is relevant to witness intimidation, is the Domestic Violence Protection notice- due to be replaced by the Domestic Abuse Protection Notice. In both cases these are notices that the police can issue while applying for a court order. All the other items in the document are court orders (apart from the s.59 warning under the Police Reform Act 2002 which allows the police to seize a vehicle- so not relevant.) The Osman warning is a warning to a potential victim- not to an

offender so is not relevant. Breach of most of the orders is a criminal offence punishable with five years' custody, except the Domestic Violence Protection Order (DVPO) which is treated as a civil breach. The suggestion therefore is to have two factors:

- Breach of specific bail conditions and/or protection notice imposed to protect a witness
- Breach of court order (see step five on totality when sentencing more than one offence)

Question one: Does the Council agree with the proposed two high culpability factors?

3.2 Starting firstly with the consultation responses regarding sentence levels within the PTCJ guideline at **Annex A**. Of those that answered the question, the views expressed were that the sentence ranges were a little low. The Justice Committee (JC), the Justices' Clerks' Society (JCS), Professor Gillespie, Council HM Circuit Judges and Treasury Counsel all felt that the starting point in category 3C should be a custodial one, and not a community order- that having a custodial starting point would act as a deterrent and reflect the gravity of this type of offending. Some participants during road testing also mentioned this (page five of **Annex D**). Treasury Counsel said that a significant amount of cases may fall into 3C, and that having a community order as a starting point would be a significant departure from the principle that these offences ordinarily require a prison sentence. It was suggested that the starting point should be three or four months' custody.

3.3 It may be helpful to consider the updated sentencing statistics attached at **Annex E**. In 2021, only four percent of offenders, 20 in total, received a community order. Around 73 per cent of offenders sentenced to immediate custody received a sentence of one year or less, and a further 16 per cent between one to two years- so the vast majority of offenders receive sentences at the lower end. The mean average custodial sentence length (ACSL) was one year. An option would be to increase the ranges slightly so that the range in 3C becomes a high level community order to 9 months custody, with a starting point of six months. This achieves the request by these consultees that 3C should have a custodial starting point. To remove the community orders altogether would necessitate increasing the ranges across the entire table more substantially, as the current ranges in 2C would need to become the ranges in 3C-with everything increased proportionally across the rest of the ranges. This is because the Council has generally avoided putting sentence ranges of 6 months or less in the guidelines.

Question two: Does the Council wish to revise category 3C so that it now has a starting point of 6 months' custody?

3.4 The CPS and the JC felt that given the maximum sentence is life imprisonment there should be additional wording above the sentence range that states 'for cases of exceptional gravity, sentences above the top of the range may be appropriate'. Treasury Council also suggested similar wording. However, the Council has more recently moved away from using this wording, it was removed from the domestic burglary guideline after the consultation stage, for example. The sentencing statistics show that only a tiny fraction of offenders (less than one per cent) in recent years have received sentences over seven years, and at the consultation stage the Council said it was not seeking to change current sentencing for this offence. Therefore, it is recommended that the top of the range stays at seven years and that the additional wording is not added.

Question three: Does the Council agree not to add the additional wording proposed and to not make any other changes to the sentence table for this offence?

3.5 Now turning to the responses on questions on sentence levels within the witness intimidation guideline at **Annex B**. Sentencing data for 2021 at **Annex E** shows that nine per cent received community orders, and 95 per cent of offenders sentenced to immediate custody received sentences of two years or less. The ACSL (mean) was 10 months. The statutory maximum for this offence is five years. There were few responses offering comments on the sentence levels for this guideline, one or two magistrates said they thought some of the ranges were too low, and the CPS as with PTCJ said that the wording 'for cases of exceptional gravity sentences above the top of the range may be appropriate' should be added. Professor Gillespie and the JC thought that the starting point in 3C should increase from a medium to a high level community order and the JCS thought the ranges in 3C should echo the lowest ranges in the [current guideline](#), which has a starting point of 6 weeks, in a range of a medium level community order to 18 weeks custody. The JCS stated that a custodial sentence as a starting point for all offences of witness intimidation is appropriate to have a deterrent effect, and to demonstrate that any attempt to contact a witness is very serious.

3.6 Given the fact that there were few consultation or road testing responses disagreeing with the proposed ranges, it is suggested that the majority of the sentence ranges remain unchanged. If the Council felt it was appropriate to increase the ranges within 3C slightly, the starting point could increase from a medium level community order to a high level community order, and the bottom of the range from a low level community order to a medium level community order. The top of the range would remain at six months custody. As noted above, we have generally moved away from having very short sentences, such as six weeks, within guidelines. If these changes were made and the changes to the ranges in 3C

in PTCJ discussed earlier were made, then the ranges within PTCJ would still be slightly more severe, which seem appropriate given the differences between the offences.

Question four: Does the Council agree with just the modest changes proposed to the sentence ranges for this offence, within 3C?

3.7 Turning now to consider responses on aggravating and mitigating factors, firstly in the witness intimidation guideline at **Annex B**. A small number of respondents including HM Council of District Judges and a Judge during road testing felt that there should be an aggravating factor relating to domestic abuse- stating that it is fairly common for these offences to have a domestic abuse context. Most of the other guidelines do have domestic abuse as an aggravating factor, as so many offences can have a domestic abuse context, not just assault and so on, and the step two factor links to the domestic abuse overarching guideline. It is suggested therefore that it is added to this guideline as well.

Question five: Does the Council agree to add domestic abuse as an aggravating factor within this guideline?

3.8 A small number including the Chief Magistrate, the London Criminal Courts Solicitors' Association (LCCSA), a Judge during road testing and a few magistrates queried the 'use of social media' as an aggravating factor. They said it is too vague, and risks over aggravating the sentence- that social media can be used in many ways, but that presumably what was meant was using it to trace the victim or publishing the threat on social media and using it to intimidate. These seem sensible observations so the factor could be reworded to 'use of social media to facilitate the offence'. The JC felt that there should be an additional factor of threats conducted in the vicinity of a court, as by doing so it makes the offence more serious. There were no substantive points raised on the mitigating factors.

Question six: Does the Council agree to reword the social media factor? And does the Council wish to add an additional factor of threats conducted in the vicinity of the court?

3.9 There were relatively few points raised in relation to step two factors for PTCJ. In terms of mitigating factors, Treasury Counsel suggested that where an offender voluntarily admits their offending behaviour to police, this should be a mitigating factor. It is thought not uncommon that an offender commits the offence in a moment of madness but then quite quickly admits the truth. The JC, the Centre for Women's Justice and a Judge during road

testing felt there should be a mitigating factor of offender being subject to domestic abuse. The Council has already decided to add a reference to domestic abuse to the lower culpability factor at step one. However, the Council could add 'offender subject to domestic abuse at the time of the offence (where not taken into account at step one)' to the mitigating factors, in a similar way to the mitigating factor of 'mental disorder, learning disability (where not taken into account at step one)'.

3.10 There isn't currently an aggravating factor of domestic abuse within this guideline. It is more likely for this offence that offenders commit the offence under pressure from partners or family members so the issues are ones of culpability or mitigation. However it is also possible that other offenders may be committing the offence within a domestic context, in furtherance of a campaign against partners, etc, so there may be a case for adding it as an aggravating factor as well.

Question seven: Does the Council wish to add mitigating factors relating to voluntarily admitting their offending and/or domestic abuse?

Question eight: Does the Council wish to add 'offence committed within a domestic context' as an aggravating factor?

3.11 Now turning to equality and diversity issues. The consultation asked three questions regarding equality and diversity, whether there were any aspects of the guidelines that may cause or increase disparity, whether there were existing disparities within the sentencing of these offences that the guidelines should address, and if there were any other equality and diversity matters that should be addressed. Very few respondents answered these questions. The few that did respond such as the Centre for Women's Justice and Women Against Rape mentioned that women are much more likely than men to be victims of domestic abuse and exploitation that could lead them to be convicted of a PTCJ offence. In addition that Black, Asian migrant and disabled women face additional barriers to accessing support and accessing justice, that young women and girls have distinct experiences, such as trauma that are overlooked. They argue that the guidelines should be amended to ensure equal treatment in relation to race, gender disability and age. As noted above the Council has already added a reference to domestic abuse within the lower culpability factor so that it now reads 'involved through coercion, intimidation or exploitation or as a result of domestic abuse'. Arguably therefore the guideline has been somewhat amended to try to address some of these concerns.

3.12 During road testing sentencers were also asked specific questions relating to equality and diversity (pages six, seven and ten of **Annex D**). Comments generally focused on the

ETBB, although there was no real consensus on anything else these guidelines could provide, one saying that there should be a reference to the ETBB as a step in every guideline, another saying that there should be an overarching guideline for equality and diversity, but another said that there are so many overarching guidelines that its often not clear which one to use. On the first comment, the Council will be aware that there is already a reference to the ETBB at the start of every guideline.

3.13 The updated sentencing data includes the available demographic data on ethnicity, sex and age (**tabs 1.5-1.8, 2.5-2.8 of Annex E**). Looking at sex, a relatively high proportion of offenders sentenced for PTCJ are female (26 per cent in 2021). However, there is no noticeable disparity in sentence outcomes and ACSL. A similar proportion of males and females are given a custodial sentence, but a higher proportion of females receive a suspended sentence, which is in line with other offences.

3.14 In 2021, a similar proportion of Black and White offenders received a custodial sentence for PTCJ. However, a higher proportion of Black offenders were sentenced to immediate custody compared to White offenders – 62 per cent and 48 per cent respectively. This trend has continued from 2020 but in years prior to 2020, similar proportions of Black and White offenders were sentenced to immediate custody. It should be noted that the number of Black offenders sentenced for this offence is much smaller in comparison to White offenders (37 v 290 in 2021) and there is no noticeable difference in ACSL.

3.15 In 2021, the proportion of offenders receiving immediate custody for witness intimidation was higher for Black offenders compared to White (80 per cent and 58 per cent respectively). This trend has been consistent over the last five years, except in 2020 when a similar proportion of Black and White offenders were sentenced to immediate custody. Additionally, a higher proportion of White offenders received an SSO over recent years. However, volumes for Black offenders are much smaller than White (10 v 141 in 2021) and so, these differences should be interpreted with a degree of caution. There is also no noticeable difference in ACSL.

3.16 For PTCJ, the mean ACSL for younger offenders ('18 to 20' years group) was slightly higher in 2021 compared to other age groups. Offenders aged '18 to 20' received an ACSL of 1 year 9 months, while those aged '30 to 39' received an ACSL of 1 year. However, demographic data for previous years show no noticeable difference between age groups and the number of offenders who were sentenced to immediate custody aged '18 to 20' is much smaller in comparison to those aged '30 to 39' (12 v 108). Therefore, the figures should be treated with a degree of caution.

Question nine: Does the Council have any views or concerns in relation to any equality and diversity issues highlighted during the consultation?

4 IMPACT AND RISKS

5.1 A draft final resource assessment will be produced for the Council's consideration prior to the definitive guidelines being signed off ahead of publication.

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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 as a result of the offence (for example time spent in custody/arrest)• Serious distress caused to an 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 an innocent party• Some impact on administration of justice• Some delay caused to the course of justice
Category 3	<ul style="list-style-type: none">• <u>Limited distress caused to an innocent party effects of the offence</u>

- | | |
|--|---|
| | <ul style="list-style-type: none">• Limited impact on the administration of justice• Limited delay caused to the course of justice |
|--|---|

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](#)

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 <u>and/or workplace</u>• Serious distress <u>and/or impact</u> caused to victim• Serious impact on administration of justice
Category 2	<ul style="list-style-type: none">• Some distress <u>and/or impact</u> caused to the victim• Some impact on administration of justice
Category 3	<ul style="list-style-type: none">• <u>Limited distress and/or impact caused to the victim</u>• <u>Limited impact on administration of justice effects of the offence</u>

STEP TWO

Starting point and category range

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

Harm	Culpability		
	A	B	C
Category 1	Starting Point 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:

- [Child present and/or child caused serious distress](#)
- [Offence committed in custody](#)

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

Factors reducing seriousness or reflecting personal mitigation

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

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Totality principle

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

STEP SIX

Compensation and ancillary orders

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

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

STEP SEVEN

Reasons

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

STEP EIGHT

Consideration for time spent on bail

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

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Sentencing Council

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

Action: Use of Police Warnings in Witness Intimidation cases.

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Author:	AC Nick Ephgrave / CS Darius Hemmatpour
Force/Organisation:	National Police Chiefs' Council
Date Created:	2 nd November 2022
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Portfolio:	Criminal Justice
Attachments @ para	N/A
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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.

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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"'.
particularity like the expression "limited effects of the offence".
- There were a variety of comments about the **starting points and ranges**. The majority thought they were 'about right', noting these were 'pretty much in the expected range', 'the law of the diagonal... makes sense... balancing culpability and harm', 'there are overlaps [which] gives judges the flexibility', that 'it's particularly important that there is scope to pass the custody threshold, even in C3 – to suggest [this offence] could never pass the custody threshold would send out the wrong message', while one was 'surprised it's four years as a starting point in A1, a range of up to 7 is about right'. However, six judges noted some concerns: three commented about the top of the range, asking for 'extra guidance on cases above A1', '[there is a] danger when you have a range of CO to 7 years that some sentencers may feel 7 years is the top end... when it is not' with one noting that 'it might be useful to remind that you can go outside of the range – like you do in other guidelines'; two noted that a 'starting point of a CO... sends out the wrong message/ is inappropriate for this perverting the course of justice; and one that they would like 'more of an overlap between the ranges in C3 and B3, so the top of the range should be nine months in C3'.
- In terms of the **factors increasing seriousness**, five judges had no suggestions for change, with two stating that they were 'fairly standard' and 'cover everything', and two that it's 'better to keep it short and simple because these cases are very different' and 'keep them general [and] short, don't be over prescriptive'. The remaining six did provide some suggestions: three felt that 'being in a position of trust' should be included; one noted 'should it be concealed, destroyed or planted?' while another wondered whether it should be 'an aggravating feature or harm'; one thought influence of alcohol or drugs 'doesn't sit very well... more relates to violence', while another thought it 'could... be a mitigating factor... stupid thing to do and wouldn't have done it had they been sober' (although they noted it 'can be dealt with on a case-by-case basis'). One noted a 'risk of double counting' between offender involves others in the conduct in aggravating and assessment of harm.
- On the **factors reducing seriousness**, 12 judges had no suggestions for change, with two noting they were 'fairly standard', and one that they 'cover everything'; one judge queried 'when you've got no previous convictions and then good character and/ or exemplary conduct, do you mean over and above not having previous convictions? Slightly confusing because no previous convictions would mean someone of good character – exemplary conduct is a description of what you're talking about in the sense that they got things in their like marked out as otherwise being a good, upstanding citizen', and two suggested related factors: 'being subjected to pressure to commit the offence depending on their social circumstance', and 'if you want to consider some kind of impact of a cultural/ religious situation, it may be something that would reduce seriousness/ reflect in personal mitigation, but it may be that it increases seriousness, not

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

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

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

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

Witness intimidation

Scenario A

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

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

Key findings

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

⁶ One judge did not state a starting point.

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

Scenario B

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

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

Key findings

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

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

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

Comments on the guideline

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

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

⁸ Two did not give pre-guilty plea sentences.

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

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

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

Annex A: Summary tables

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

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

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

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

¹² Factors in italics are not listed in the guideline.

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

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

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

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

¹⁶ The judge noted 'not double counting'.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Perverting the course of justice and witness intimidation offences

These data tables provide statistics on the outcomes and demographics of offenders sentenced for offences covered by the Sentencing Council definitive guidelines for the course of justice and witness intimidation, which can be found here:

<https://www.sentencingcouncil.org.uk/crown-court/>

Section 1: Perverting the course of justice

Table 1.1	Number of adult offenders sentenced for perverting the course of justice, Crown Court, 2011-2021
Table 1.2	Number and proportion of adult offenders sentenced for perverting the course of justice, by sentence outcome, 2011-2021
Table 1.3	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for perverting the course of justice, 2011-2021
Table 1.4	Sentence lengths received by adult offenders sentenced to immediate custody for perverting the course of justice, 2011-2021
Table 1.5	Demographics of adult offenders sentenced for perverting the course of justice, by sex, age and ethnicity, 2021
Table 1.6	Number and proportion of adult offenders sentenced for perverting the course of justice, by sex, age and ethnicity and sentence outcome, 2021
Table 1.7	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for perverting the course of justice, by sex, age and ethnicity, 2021
Table 1.8	Sentence lengths received by adult offenders sentenced to immediate custody for perverting the course of justice, by sex, age and ethnicity, 2021

Section 2: Witness intimidation

Table 2.1	Number of adult offenders sentenced for witness intimidation, all courts, 2011-2021
Table 2.2	Number and proportion of adult offenders sentenced for witness intimidation offences, by sentence outcome, 2011-2021
Table 2.3	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for witness intimidation offences, 2011-2021
Table 2.4	Sentence lengths received by adult offenders sentenced to immediate custody for witness intimidation offences, 2011-2021
Table 2.5	Demographics of adult offenders sentenced for witness intimidation offences, by sex, age and ethnicity, 2021
Table 2.6	Number and proportion of adult offenders sentenced for witness intimidation offences, by sex, age and ethnicity and sentence outcome, 2021
Table 2.7	Average custodial sentence lengths (ACSL) received by adult offenders sentenced for witness intimidation offences, by sex, age and ethnicity, 2021
Table 2.8	Sentence lengths received by adult offenders sentenced to immediate custody for witness intimidation offences, by sex, age and ethnicity, 2021

Notes

Data sources and quality

The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the source of the data for these data tables. Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Figures presented for 2020 and 2021 include the time period from March 2020 in which restrictions were initially placed on the criminal justice system due to the COVID-19 pandemic, and the ongoing courts' recovery since. These restrictions resulted in reduction of court activity to adhere to new rules on movement and social interaction and the prioritisation of certain types of cases that are more likely to result in custody. Despite these restrictions having now been eased, we have seen a continued impact on the courts as they recover from the impact of the pandemic on processes and prioritisation. This means that the figures presented on an offence specific basis may be reflecting these restrictions and subsequent impacts to varying degrees depending on the offence in question and whether these cases continued to be heard throughout the time period. Therefore, it is important to note that certain trends might mostly reflect the impact of the pandemic on court processes and prioritisation, and the subsequent recovery, rather than a continuation of the longer-term series. So care should be taken when interpreting these figures.

From September 2020, some cases started to be recorded on the new Common Platform (CP) case management system, but could not initially be included in the CPD. Data processing development is now complete and the CPD has been revised to include these cases. As such, volumes for 2020 may not be consistent with figures previously published.

Further details of the processes by which the Ministry of Justice validate the records in the Court Proceedings Database can be found within the guide to their Criminal Justice Statistics publication which can be downloaded via the link:

<https://www.gov.uk/government/collections/criminal-justice-statistics>

Volumes of sentences

The data presented in this bulletin only include cases where the specified offence was the principal offence committed. When an offender 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 in this bulletin.

Sentence outcomes

The outcomes presented are the final sentence outcomes, after taking into account all factors of the case, including whether a guilty plea was made. This is because the sentence length information available in the Court Proceedings Database is the final sentence imposed, after any reduction for guilty plea. Sentence outcomes presented in these tables are therefore not directly comparable to outcomes in the sentencing guideline tables, which instead show starting point sentences before a guilty plea has been entered.

The sentence outcome shown is the most severe sentence or order given for the principal offence (i.e. the principal sentence); secondary sentences given for the principal offence are not included in the tables.

Offender demographics

The proportions reflected amongst those for whom data were provided may not reflect the demographics of the full population sentenced.

Due to the small number of offenders sentenced for some offences, care should be taken when comparing figures across different groups. This is particularly true where there are only a small number of offenders within a specific demographic group, as small numeric changes can present as large percentage changes when they are calculated using small volumes. This should be considered when comparing percentages across groups.

Ethnicity

The availability of information relating to ethnicity is constrained by data coverage. For offenders sentenced for less serious offences which are mostly sentenced at magistrates' courts, ethnicity data are less readily available: there are different police processes in place for these offences and often offenders are sentenced without attending a police station or the court, meaning there is little or no opportunity to collect ethnicity data. For offenders sentenced for more serious offences that appear in the Crown Court (triable-either-way and indictable only offences), there are more available data on ethnicity as the likelihood of offenders attending a custody interview is higher. Overall, this means that coverage is inconsistent across different offences. Statistics for offences with lower coverage should also be treated with caution, as it is less likely that the available data on ethnicity are representative of all offenders sentenced for those offences.

Ethnicity is the self-identified ethnicity as defined by the individual. The ethnicity categories used in these data tables for self-identified ethnicity are: 'Asian', 'Black', 'Mixed', 'Other', 'White' and 'Not recorded/not known' (referred to as the 5+1 classification). The 'Not recorded/not known' category includes all offenders for whom ethnicity information is not available, either because they have chosen not to state their ethnicity or because no information has been recorded. Prior to May 2020, ethnicity was collected using the 16+1 classification which was used in the 2001 census. Since May 2020, this has been replaced by the 18+1 classification used in the 2011 Census. The data collected using the 18+1 format are then aggregated into the 5+1 classification for analysis. This has caused two key changes to the data presented in our publications:

1) The data now captures a further two ethnicity classifications: Gypsy or Irish Traveller which falls into the broader category of 'White' and Arab which falls into the broader category of 'Other'. These ethnic groups are captured in the data from 2021 onwards.

2) The movement of the Chinese ethnicity classification from the broad category of 'Chinese and Other' into 'Asian'. Due to the small number of offenders sentenced who identified as Chinese, this change has had little impact on overall trends presented in the data. This change has been applied to the whole timeseries presented, to allow for continued comparison across years. However, it means that the 'Chinese and Other' category has been renamed 'Other' within our data tables to account for this change. More information on the 18+1 classification can be found here:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/691544/self-defined-ethnicity-18plus1.pdf

Age

In the CPD, prior to 2017, adults of unknown ages were defaulted to 25. From 2017 onwards, the majority of records where the age is unknown have been grouped within an 'age unknown' variable; however, there may still be some cases where the age is unknown and has therefore been defaulted to 25.

The sentencing guidelines only directly apply to adults aged 18 years or over at the date of conviction, although exceptions apply where stated. However, in the CPD, the age of the offender is calculated from the sentence date. Users should be aware this means there could be a small number of offenders aged under 18 included within the published figures as adults for whom the guideline did not apply at sentencing, if they turned 18 between the date of conviction and the date of sentence.

General conventions

The following conventions have been applied to the data:

- Percentages derived from the data have been provided in the tables to the nearest whole percentage, except when the nearest whole percentage is zero. In some instances, this may mean that percentages shown do not add up to 100 per cent.
- Where the nearest whole per cent is zero, the convention '<0.5' has been used.
- Where totals have been provided, these have been calculated using unrounded data and then rounded.

Uses made of the data

Data provided in the Council's range of statistical bulletins and tables are used to inform public debate of the Council's work.

Background information

Further information on the Sentencing Council and its work, as well as information on general sentencing practice in England and Wales can be found on the Council's website at:

<https://sentencingcouncil.org.uk>

The Ministry of Justice publishes a quarterly statistical publication, Criminal Justice Statistics, which includes a chapter focusing on sentencing in England and Wales. This chapter includes information on the number of offenders sentenced by offence group and by demographic factors such as age, sex and self-identified ethnicity. The full publication can be accessed via the Ministry of Justice website at:

<https://www.gov.uk/government/collections/criminal-justice-statistics-quarterly>

Detailed sentencing data from the Ministry of Justice's Court Proceedings Database can be accessed via the data tool published alongside the annual Criminal Justice Statistics publication. The latest tool enables data covering the last five years to be viewed by offence, sex, age range and ethnicity, and can be accessed via the following link (for example, see the 'Outcomes by Offence data tool'):

<https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2021>

Contact points for further information

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Table 1.1: Number of adult offenders sentenced for perverting the course of justice, Crown Court, 2011-2021 ¹

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Court	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ²	2021
Crown Court	984	870	932	928	895	780	787	629	576	404	570

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures shown here differ from those published by the MoJ, as there were 11 cases in the CPD between 2014-2021 where the record indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

2) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

Table 1.2: Number and proportion of adult offenders sentenced for perverting the course of justice, by sentence outcome, 2011-2021

[Index](#)

Outcome	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ²	2021
Absolute and conditional discharge	11	9	6	11	12	5	5	4	4	2	4
Fine	6	2	5	6	7	3	5	1	2	1	1
Community sentence	91	81	46	69	44	25	17	26	14	15	20
Suspended sentence	406	352	360	409	380	340	350	245	246	171	246
Immediate custody	463	420	510	430	447	402	394	338	294	206	290
Otherwise dealt with ³	7	6	5	3	5	5	16	15	16	9	9
Total	984	870	932	928	895	780	787	629	576	404	570

Outcome	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ²	2021
Absolute and conditional discharge	1%	1%	1%	1%	1%	1%	1%	1%	1%	<0.5%	1%
Fine	1%	<0.5%	1%	1%	1%	<0.5%	1%	<0.5%	<0.5%	<0.5%	<0.5%
Community sentence	9%	9%	5%	7%	5%	3%	2%	4%	2%	4%	4%
Suspended sentence	41%	40%	39%	44%	42%	44%	44%	39%	43%	42%	43%
Immediate custody	47%	48%	55%	46%	50%	52%	50%	54%	51%	51%	51%
Otherwise dealt with ³	1%	1%	1%	<0.5%	1%	1%	2%	2%	3%	2%	2%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures shown here differ from those published by the MoJ, as there were 11 cases in the CPD between 2014-2021 where the record indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

2) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

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

Table 1.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for perverting the course of justice, 2011-2021

[Index](#)

ACSL (years)^{1,2}	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³	2021
Mean	0.9	1.0	1.0	0.9	1.1	1.0	1.1	1.0	1.1	1.2	1.0
Median	0.7	0.7	0.7	0.7	0.7	0.7	0.8	0.7	0.8	0.7	0.7
Indeterminates as percentage of custodial sentences ⁴	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	0.3%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.
- 2) The statutory maximum sentence for this offence is life imprisonment. Figures shown here differ slightly from those published by the MoJ, as there was 1 case in the CPD in 2021 which indicates that the offender was sentenced to immediate custody in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 4) For 2013 onwards this is calculated as the number of offenders given life sentences, out of the number of offenders given a sentence of immediate custody. For 2011-2012, this is calculated as the number of offenders sentenced to Imprisonment for Public Protection (IPP), Extended Sentences for Public Protection (EPP) and life sentences, out of the number of offenders given a sentence of immediate custody. IPP and EPP sentences were introduced in 2005 and abolished in 2012.

Table 1.4: Sentence lengths received by adult offenders sentenced to immediate custody for perverting the course of justice, 2011-2021

[Index](#)

Sentence length (years) ^{1,2}	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³	2021
Less than 1 year	359	298	389	345	329	300	270	259	197	140	212
1 to 2	73	88	73	53	75	70	76	54	72	38	45
2 to 3	20	19	29	20	24	20	27	16	17	17	18
3 to 4	8	10	9	9	9	7	10	5	5	6	5
4 to 5	1	1	3	3	4	1	7	1	1	1	5
5 to 6	1	1	1	0	1	2	2	2	0	0	3
6 to 7	1	1	1	0	0	1	2	0	0	2	1
7 to 8	0	2	4	0	0	0	0	0	0	1	0
8 to 9	0	0	0	0	1	0	0	0	0	0	0
9 to 10	0	0	1	0	1	1	0	0	0	0	0
Greater than 10 years	0	0	0	0	3	0	0	1	2	1	0
Indeterminate ⁴	0	0	0	0	0	0	0	0	0	0	1
Total	463	420	510	430	447	402	394	338	294	206	290

Sentence length (years) ^{1,2}	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ³	2021
Less than 1 year	78%	71%	76%	80%	74%	75%	69%	77%	67%	68%	73%
1 to 2	16%	21%	14%	12%	17%	17%	19%	16%	24%	18%	16%
2 to 3	4%	5%	6%	5%	5%	5%	7%	5%	6%	8%	6%
3 to 4	2%	2%	2%	2%	2%	2%	3%	1%	2%	3%	2%
4 to 5	<0.5%	<0.5%	1%	1%	1%	<0.5%	2%	<0.5%	<0.5%	<0.5%	2%
5 to 6	<0.5%	<0.5%	<0.5%	0%	<0.5%	<0.5%	1%	1%	0%	0%	1%
6 to 7	<0.5%	<0.5%	<0.5%	0%	0%	<0.5%	1%	0%	0%	1%	<0.5%
7 to 8	0%	<0.5%	1%	0%	0%	0%	0%	0%	0%	<0.5%	0%
8 to 9	0%	0%	0%	0%	<0.5%	0%	0%	0%	0%	0%	0%
9 to 10	0%	0%	<0.5%	0%	<0.5%	<0.5%	0%	0%	0%	0%	0%
Greater than 10 years	0%	0%	0%	0%	1%	0%	0%	<0.5%	1%	<0.5%	0%
Indeterminate ⁴	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	<0.5%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than or equal to 1 year, and '1 to 2' includes sentence lengths over 1 year, and up to and including 2 years.

2) The statutory maximum sentence for this offence is life imprisonment. Figures shown here differ slightly from those published by the MoJ, as there was 1 case in the CPD in 2021 which indicates that the offender was sentenced to immediate custody in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

4) This includes life sentences and, for the period 2011-2012, Imprisonment for Public Protection (IPPs), and Extended Sentences for Public Protection (EPPs). IPP and EPP sentences were introduced in 2005 and abolished in 2012.

Table 1.5: Demographics of adult offenders sentenced for perverting the course of justice, by sex, age and ethnicity, 2021¹

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Sex	Number of adults sentenced	Percentage of all adults sentenced²
Female	148	26%
Male	421	74%
Not recorded/not known	1	
Total	570	100%

Age group	Number of adults sentenced	Percentage of all adults sentenced²
18 to 20	38	7%
21 to 24	68	12%
25 to 29	109	19%
30 to 39	203	36%
40 to 49	85	15%
50 to 59	49	9%
60 to 69	15	3%
70 and over	3	1%
Not recorded/not known	0	
Total	570	100%

Ethnicity^{3,4}	Number of adults sentenced	Percentage of all adults sentenced²
Asian	60	15%
Black	37	9%
Mixed	11	3%
Other	6	1%
White	290	72%
Not recorded/not known	166	
Total	570	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures shown here differ from those published by the MoJ, as there were 5 cases in the CPD in 2021 where the record indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

2) Percentage calculations do not include cases where sex, age group or ethnicity was unknown.

3) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

4) For a proportion of adults sentenced (29%), their ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.

Table 1.6: Number and proportion of adult offenders sentenced for perverting the course of justice, by sex, age and ethnicity, : sentence outcome, 2021

[Index](#)

Sex	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Female	1	0	3	96	45	3	148
Male	3	1	17	149	245	6	421
Not recorded/not known	0	0	0	1	0	0	1

Age group	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
18 to 20	2	0	3	21	12	0	38
21 to 24	1	0	5	34	27	1	68
25 to 29	0	0	3	40	64	2	109
30 to 39	0	0	7	84	108	4	203
40 to 49	1	1	2	40	40	1	85
50 to 59	0	0	0	20	28	1	49
60 to 69	0	0	0	4	11	0	15
70 and over	0	0	0	3	0	0	3
Not recorded/not known	0	0	0	0	0	0	0

Ethnicity ³	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Asian	0	0	2	20	36	2	60
Black	0	0	1	12	23	1	37
Mixed	0	0	0	5	6	0	11
Other	0	0	1	1	4	0	6
White	3	0	6	136	140	5	290
Not recorded/not known	1	1	10	72	81	1	166

Sex	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Female	1%	0%	2%	65%	30%	2%	100%
Male	1%	<0.5%	4%	35%	58%	1%	100%
Not recorded/not known	0%	0%	0%	100%	0%	0%	100%

Age group	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
18 to 20	5%	0%	8%	55%	32%	0%	100%
21 to 24	1%	0%	7%	50%	40%	1%	100%
25 to 29	0%	0%	3%	37%	59%	2%	100%
30 to 39	0%	0%	3%	41%	53%	2%	100%
40 to 49	1%	1%	2%	47%	47%	1%	100%
50 to 59	0%	0%	0%	41%	57%	2%	100%
60 to 69	0%	0%	0%	27%	73%	0%	100%
70 and over	0%	0%	0%	100%	0%	0%	100%
Not recorded/not known	-	-	-	-	-	-	-

Ethnicity ³	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ²	
Asian	0%	0%	3%	33%	60%	3%	100%
Black	0%	0%	3%	32%	62%	3%	100%
Mixed	0%	0%	0%	45%	55%	0%	100%
Other	0%	0%	17%	17%	67%	0%	100%
White	1%	0%	2%	47%	48%	2%	100%
Not recorded/not known	1%	1%	6%	43%	49%	1%	100%

Source: Court Proceedings Database, Ministry of Justice

-- No proportions have been calculated as no offenders were sentenced.

Notes:

- 1) Figures shown here differ from those published by the MoJ, as there were 5 cases in the CPD in 2021 where the record indicates that the offender was sentenced in a magistrates' court. These cases have been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 2) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.
- 3) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Table 1.7: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for perverting the course of justice, by sex, age and ethnicity, 2021

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Sex	ACSL (years) ^{1,2}	
	Mean	Median
Female	1.3	0.8
Male	1.0	0.7
Not recorded/not known	-	-

Age group	Mean	Median
18 to 20	1.8	1.6
21 to 24	1.0	0.6
25 to 29	0.8	0.5
30 to 39	1.0	0.7
40 to 49	1.2	0.8
50 to 59	1.2	0.7
60 to 69	0.9	0.5
70 and over	-	-
Not recorded/not known	-	-

Ethnicity ³	Mean	Median
Asian	0.9	0.7
Black	1.0	0.7
Mixed	1.4	1.2
Other	*	*
White	1.1	0.7
Not recorded/not known	1.0	0.7

Source: Court Proceedings Database, Ministry of Justice

* = ACSL has not been calculated where the number of offenders sentenced to a determinate immediate custodial sentence is fewer than 5.

- = No offenders were sentenced to a determinate immediate custodial sentence.

Notes:

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

2) The statutory maximum sentence for this offence is life imprisonment. Figures shown here differ slightly from those published by the MoJ, as there was 1 case in the CPD in 2021 which indicates that the offender was sentenced to immediate custody in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.

3) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Table 1.8: Sentence lengths received by adult offenders sentenced to immediate custody for perverting the course of justice, by sex, age and ethnicity, 2021

Sex	Number of adults sentenced to each sentence length (year) ^{1,2}											Greater than 10 years	Indeterminate ³	Total	
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	6 to 7	7 to 8	8 to 9	9 to 10					
Female	30	6	5	0	1	2	0	0	0	0	0	0	0	1	45
Male	182	39	13	5	4	1	1	0	0	0	0	0	0	0	245
Not recorded/not known	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

Age group	Number of adults sentenced to each sentence length (year) ^{1,2}											Greater than 10 years	Indeterminate ³	Total	
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	6 to 7	7 to 8	8 to 9	9 to 10					
18 to 20	5	5	0	1	0	1	0	0	0	0	0	0	0	0	12
21 to 24	20	4	1	1	1	0	0	0	0	0	0	0	0	0	27
25 to 29	53	9	1	0	1	0	0	0	0	0	0	0	0	64	
30 to 39	80	14	10	0	1	1	1	0	0	0	0	0	1	108	
40 to 49	24	10	2	3	1	0	0	0	0	0	0	0	0	40	
50 to 59	21	3	2	0	1	1	0	0	0	0	0	0	0	28	
60 to 69	9	0	2	0	0	0	0	0	0	0	0	0	0	11	
70 and over	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Not recorded/not known	0	0	0	0	0	0	0	0	0	0	0	0	0	0	

Ethnicity ³	Number of adults sentenced to each sentence length (year) ^{1,2}											Greater than 10 years	Indeterminate ³	Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	6 to 7	7 to 8	8 to 9	9 to 10				
Asian	29	3	1	1	1	0	0	0	0	0	0	0	1	36
Black	18	2	1	1	1	0	0	0	0	0	0	0	0	23
Mixed	3	2	1	0	0	0	0	0	0	0	0	0	0	6
Other	3	0	0	1	0	0	0	0	0	0	0	0	0	4
White	103	21	9	2	2	2	1	0	0	0	0	0	0	140
Not recorded/not known	56	17	6	0	1	1	0	0	0	0	0	0	0	81

- = No proportions have been calculated as no offenders were sentenced to immediate custody.

Notes:

- 1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than or equal to 1 year, and '1 to 2' includes sentence lengths over 1 year, and up to and including 2 years.
- 2) The statutory maximum sentence for this offence is life imprisonment. Figures shown here differ slightly from those published by the MoJ, as there was 1 case in the CPD in 2021 which indicates that the offender was sentenced to immediate custody in a magistrates' court. This case has been excluded from the above table as this offence is indictable only, and can therefore only be sentenced in the Crown Court.
- 3) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.
- 4) This includes life sentences and, for the period 2011-2012, Imprisonment for Public Protection (IPPs), and Extended Sentences for Public Protection (EPPs). IPP and EPP sentences were introduced in 2005 and abolished in 2012.

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Sex	Proportion of adults sentenced to each sentence length (year) ^{1,2}											Greater than 10 years	Indeterminate ³	Total	
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	6 to 7	7 to 8	8 to 9	9 to 10					
Female	87%	13%	11%	0%	2%	4%	0%	0%	0%	0%	0%	0%	0%	2%	100%
Male	74%	16%	5%	2%	2%	<0.5%	<0.5%	0%	0%	0%	0%	0%	0%	0%	100%
Not recorded/not known	-	-	-	-	-	-	-	-	-	-	-	-	-	-	0%

Age group	Proportion of adults sentenced to each sentence length (year) ^{1,2}											Greater than 10 years	Indeterminate ³	Total	
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	6 to 7	7 to 8	8 to 9	9 to 10					
18 to 20	42%	42%	0%	8%	0%	8%	0%	0%	0%	0%	0%	0%	0%	0%	100%
21 to 24	74%	15%	4%	4%	4%	0%	0%	0%	0%	0%	0%	0%	0%	0%	100%
25 to 29	83%	14%	2%	0%	2%	0%	0%	0%	0%	0%	0%	0%	0%	0%	100%
30 to 39	74%	13%	9%	0%	1%	1%	1%	0%	0%	0%	0%	0%	0%	1%	100%
40 to 49	60%	25%	5%	8%	3%	0%	0%	0%	0%	0%	0%	0%	0%	0%	100%
50 to 59	75%	11%	7%	0%	4%	4%	0%	0%	0%	0%	0%	0%	0%	0%	100%
60 to 69	82%	0%	18%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	100%
70 and over	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Not recorded/not known	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-

Ethnicity ³	Proportion of adults sentenced to each sentence length (year) ^{1,2}											Greater than 10 years	Indeterminate ³	Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5	5 to 6	6 to 7	7 to 8	8 to 9	9 to 10				
Asian	81%	8%	3%	3%	3%	0%	0%	0%	0%	0%	0%	0%	3%	100%
Black	78%	9%	4%	4%	4%	0%	0%	0%	0%	0%	0%	0%	0%	100%
Mixed	50%	33%	17%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	100%
Other	75%	0%	0%	25%	0%	0%	0%	0%	0%	0%	0%	0%	0%	100%
White	74%	15%	6%	1%	1%	1%	1%	0%	0%	0%	0%	0%	0%	100%
Not recorded/not known	69%	21%	7%	0%	1%	1%	0%	0%	0%	0%	0%	0%	0%	100%

Source: Court Proceedings Database, Ministry of Justice

Table 2.1: Number of adult offenders sentenced for witness intimidation offences, all courts, 2011-2021[Index](#)

Court	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹	2021
Magistrates' court	140	114	111	96	125	165	129	84	58	47	71
Crown Court	378	275	264	318	332	296	243	221	179	128	137
Total	518	389	375	414	457	461	372	305	237	175	208

Court	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹	2021
Magistrates' court	27%	29%	30%	23%	27%	36%	35%	28%	24%	27%	34%
Crown Court	73%	71%	70%	77%	73%	64%	65%	72%	76%	73%	66%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

Table 2.2: Number and proportion of adult offenders sentenced for witness intimidation offences, by sentence outcome, 2011-2021

[Index](#)

Outcome	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹	2021
Absolute and conditional discharge	7	5	2	4	3	6	4	2	1	0	0
Fine	3	0	2	0	5	3	2	1	1	1	2
Community sentence	73	54	39	46	51	32	22	29	15	13	19
Suspended sentence	140	95	102	115	147	143	128	88	71	46	60
Immediate custody	277	227	223	238	243	266	208	178	142	110	118
Otherwise dealt with ²	18	8	7	11	8	11	8	7	7	5	9
Total	518	389	375	414	457	461	372	305	237	175	208

Outcome	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020 ¹	2021
Absolute and conditional discharge	1%	1%	1%	1%	1%	1%	1%	1%	<0.5%	0%	0%
Fine	1%	0%	1%	0%	1%	1%	1%	<0.5%	<0.5%	1%	1%
Community sentence	14%	14%	10%	11%	11%	7%	6%	10%	6%	7%	9%
Suspended sentence	27%	24%	27%	28%	32%	31%	34%	29%	30%	26%	29%
Immediate custody	53%	58%	59%	57%	53%	58%	56%	58%	60%	63%	57%
Otherwise dealt with ²	3%	2%	2%	3%	2%	2%	2%	2%	3%	3%	4%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

2) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

Table 2.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for witness intimidation offences, 2011-2021

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ACSL (years) ^{1,2}	2011 ³	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴	2021
Mean	0.8	0.8	0.7	0.8	0.8	0.8	0.9	0.9	0.9	0.9	0.9
Median	0.7	0.7	0.5	0.7	0.7	0.7	0.8	0.8	0.8	0.8	0.7
Indeterminates as percentage of custodial sentences ⁵	-	-	-	-	-	-	-	-	-	-	-

Source: Court Proceedings Database, Ministry of Justice

- = not applicable.

Notes:

- 1) The ACSL calculation excludes life and indeterminate sentences, for offences where these types of sentences apply.
- 2) The statutory maximum sentence for this offence is 5 years' custody.
- 3) Excludes 1 case from 2011 that appears to be incorrectly assigned as an indeterminate sentence in the CPD data, therefore figures presented here may not match figures published by the Ministry of Justice.
- 4) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.
- 5) For 2013 onwards this is calculated as the number of offenders given life sentences, out of the number of offenders given a sentence of immediate custody. For 2011-2012, this is calculated as the number of offenders sentenced to Imprisonment for Public Protection (IPP), Extended Sentences for Public Protection (EPP) and life sentences, out of the number of offenders given a sentence of immediate custody. IPP and EPP sentences were introduced in 2005 and abolished in 2012.

Table 2.4: Sentence lengths received by adult offenders sentenced to immediate custody for witness intimidation offences, 2011-2021

[Index](#)

Sentence length (years) ^{1,2}	2011 ³	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴	2021
Less than 1 year	220	185	185	187	191	198	152	128	102	79	93
1 to 2	48	38	31	45	44	60	48	40	36	28	19
2 to 3	6	2	6	5	8	7	6	7	3	3	5
3 to 4	2	2	1	1	0	1	2	3	1	0	1
4 to 5 years	0	0	0	0	0	0	0	0	0	0	0
Total	276	227	223	238	243	266	208	178	142	110	118

Sentence length (years) ^{1,2}	2011 ³	2012	2013	2014	2015	2016	2017	2018	2019	2020 ⁴	2021
Less than 1 year	80%	81%	83%	79%	79%	74%	73%	72%	72%	72%	79%
1 to 2	17%	17%	14%	19%	18%	23%	23%	22%	25%	25%	16%
2 to 3	2%	1%	3%	2%	3%	3%	3%	4%	2%	3%	4%
3 to 4	1%	1%	<0.5%	<0.5%	0%	<0.5%	1%	2%	1%	0%	1%
4 to 5 years	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than or equal to 1 year, and '1 to 2' includes sentence lengths over 1 year, and up to and including 2 years.
- 2) The statutory maximum sentence for this offence is 5 years' custody.
- 3) Excludes 1 case from 2011 that appears to be incorrectly assigned as an indeterminate sentence in the CPD data, therefore figures presented here may not match figures published by the Ministry of Justice.
- 4) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

Table 2.5: Demographics of adult offenders sentenced for witness intimidation offences, by sex, age and ethnicity, 2021

[Index](#)

Sex	Number of adults sentenced	Percentage of all adults sentenced¹
Female	27	13%
Male	181	87%
Not recorded/not known	0	
Total	208	100%

Age group	Number of adults sentenced	Percentage of all adults sentenced¹
18 to 20	12	6%
21 to 24	26	13%
25 to 29	34	16%
30 to 39	78	38%
40 to 49	30	14%
50 to 59	24	12%
60 to 69	2	1%
70 and over	2	1%
Not recorded/not known	0	
Total	208	100%

Ethnicity^{2,3}	Number of adults sentenced	Percentage of all adults sentenced¹
Asian	15	9%
Black	10	6%
Mixed	4	2%
Other	1	1%
White	141	82%
Not recorded/not known	37	
Total	208	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Percentage calculations do not include cases where sex, age group or ethnicity was unknown.
- 2) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.
- 3) For a proportion of adults sentenced (18%), their ethnicity was either not recorded or it was not known. Therefore the proportions amongst those for whom data was provided may not reflect the demographics of the full population, and these figures should be treated with caution.

Table 2.6: Number and proportion of adult offenders sentenced for witness intimidation offences, by sex, age and ethnicity, and sent outcome, 2021

[Index](#)

Sex	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
Female	0	1	2	12	11	1	27
Male	0	1	17	48	107	8	181
Not recorded/not known	0	0	0	0	0	0	0

Age group	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
18 to 20	0	0	4	2	5	1	12
21 to 24	0	1	1	8	15	1	26
25 to 29	0	1	1	6	23	3	34
30 to 39	0	0	5	28	45	0	78
40 to 49	0	0	4	6	20	0	30
50 to 59	0	0	3	9	9	3	24
60 to 69	0	0	1	0	1	0	2
70 and over	0	0	0	1	0	1	2
Not recorded/not known	0	0	0	0	0	0	0

Ethnicity ²	Number of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
Asian	0	0	1	5	6	3	15
Black	0	0	1	1	8	0	10
Mixed	0	1	0	1	2	0	4
Other	0	0	0	0	1	0	1
White	0	1	15	38	82	5	141
Not recorded/not known	0	0	2	15	19	1	37

Sex	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
Female	0%	4%	7%	44%	41%	4%	100%
Male	0%	1%	9%	27%	59%	4%	100%
Not recorded/not known	-	-	-	-	-	-	-

Age group	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
18 to 20	0%	0%	33%	17%	42%	8%	100%
21 to 24	0%	4%	4%	31%	58%	4%	100%
25 to 29	0%	3%	3%	18%	68%	9%	100%
30 to 39	0%	0%	6%	36%	58%	0%	100%
40 to 49	0%	0%	13%	20%	67%	0%	100%
50 to 59	0%	0%	13%	38%	38%	13%	100%
60 to 69	0%	0%	50%	0%	50%	0%	100%
70 and over	0%	0%	0%	50%	0%	50%	100%
Not recorded/not known	-	-	-	-	-	-	-

Ethnicity ²	Proportion of adults sentenced						Total
	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	
Asian	0%	0%	7%	33%	40%	20%	100%
Black	0%	0%	10%	10%	80%	0%	100%
Mixed	0%	25%	0%	25%	50%	0%	100%
Other	0%	0%	0%	0%	100%	0%	100%
White	0%	1%	11%	27%	58%	4%	100%
Not recorded/not known	0%	0%	5%	41%	51%	3%	100%

Source: Court Proceedings Database, Ministry of Justice

- = No proportions have been calculated as no offenders were sentenced.

Notes:

1) The category 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there 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.

2) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Table 2.7: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for witness intimidation offences, by sex, age and ethnicity, 2021

[Index](#)

Sex	ACSL (years) ^{1,2}	
	Mean	Median
Female	0.9	0.7
Male	0.9	0.7
Not recorded/not known	-	-

Age group	Mean	Median
18 to 20	1.0	1.0
21 to 24	0.7	0.7
25 to 29	0.9	0.7
30 to 39	1.0	0.8
40 to 49	0.8	0.5
50 to 59	0.8	0.6
60 to 69	*	*
70 and over	-	-
Not recorded/not known	-	-

Ethnicity ³	Mean	Median
Asian	1.3	0.9
Black	0.8	0.7
Mixed	*	*
Other	*	*
White	0.9	0.7
Not recorded/not known	0.7	0.5

Source: Court Proceedings Database, Ministry of Justice

* = ACSL has not been calculated where the number of offenders sentenced to a determinate immediate custodial sentence is fewer than 5.

- = No offenders were sentenced to a determinate immediate custodial sentence.

Notes:

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

2) The statutory maximum sentence for this offence is 5 years' custody.

3) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

Table 2.8: Sentence lengths received by adult offenders sentenced to immediate custody for witness intimidation offences, by sex, age and ethnicity, 2021

Sex	Number of adults sentenced to each sentence length (years) ^{1,2}					Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5 years	
Female	8	3	0	0	0	11
Male	85	16	5	1	0	107
Not recorded/not known	0	0	0	0	0	0

Age group	Number of adults sentenced to each sentence length (years) ^{1,2}					Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5 years	
18 to 20	3	2	0	0	0	5
21 to 24	14	1	0	0	0	15
25 to 29	18	4	1	0	0	23
30 to 39	32	9	4	0	0	45
40 to 49	17	2	0	1	0	20
50 to 59	8	1	0	0	0	9
60 to 69	1	0	0	0	0	1
70 and over	0	0	0	0	0	0
Not recorded/not known	0	0	0	0	0	0

Ethnicity ³	Number of adults sentenced to each sentence length (years) ^{1,2}					Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5 years	
Asian	4	1	1	0	0	6
Black	6	2	0	0	0	8
Mixed	2	0	0	0	0	2
Other	1	0	0	0	0	1
White	64	13	4	1	0	82
Not recorded/not known	16	3	0	0	0	19

- = No proportions have been calculated as no offenders were sentenced to immediate custody.

Notes:

1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than or equal to 1 year, and '1 to 2' includes sentence lengths over 1 year, and up to and including 2 years.

2) The statutory maximum sentence for this offence is 5 years' custody.

3) Ethnicity is the self-identified ethnicity as defined by the individual, and is categorised using the 5+1 self-identified classification based on the 18+1 classification used in the 2011 Census.

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Sex	Proportion of adults sentenced to each sentence length (years) ^{1,2}					Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5 years	
Female	73%	27%	0%	0%	0%	100%
Male	79%	15%	5%	1%	0%	100%
Not recorded/not known	-	-	-	-	-	-

Age group	Proportion of adults sentenced to each sentence length (years) ^{1,2}					Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5 years	
18 to 20	60%	40%	0%	0%	0%	100%
21 to 24	93%	7%	0%	0%	0%	100%
25 to 29	78%	17%	4%	0%	0%	100%
30 to 39	71%	20%	9%	0%	0%	100%
40 to 49	85%	10%	0%	5%	0%	100%
50 to 59	89%	11%	0%	0%	0%	100%
60 to 69	100%	0%	0%	0%	0%	100%
70 and over	-	-	-	-	-	-
Not recorded/not known	-	-	-	-	-	-

Ethnicity ³	Proportion of adults sentenced to each sentence length (years) ^{1,2}					Total
	Less than 1 year	1 to 2	2 to 3	3 to 4	4 to 5 years	
Asian	67%	17%	17%	0%	0%	100%
Black	75%	25%	0%	0%	0%	100%
Mixed	100%	0%	0%	0%	0%	100%
Other	100%	0%	0%	0%	0%	100%
White	78%	16%	5%	1%	0%	100%
Not recorded/not known	84%	16%	0%	0%	0%	100%

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

3 March 2023
SC(23)MAR07 – Totality
TBC
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1 ISSUE

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

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

2 RECOMMENDATION

2.1 That the Council:

- retains the overall structure of the guideline;
- considers whether an opening statement as to applicability should be added;
- makes textual changes to the General principles and General approach sections; and
- agrees that it is not possible to create an objective test for a just and proportionate sentence.

3 CONSIDERATION

3.1 There were 25 responses to the consultation and a response from the Justice Committee is expected in time for discussion at the next Council meeting. In general, the response to the proposals was positive with many helpful suggestions for limited changes or additions. There were also some responses (chiefly from academics) which made more radical suggestions for change. In order to consider the issues raised and the changes suggested in a logical way, at this meeting we will look at the basic outline of the guideline without the drop-down sections. **Annex A** contains the outline of the guideline; the online version can be viewed [here](#).

General principles

3.2 The first question in the consultation related to the proposed changes to the opening section (deletions are shown struck through and additions are in red):

General principles

The principle of totality comprises two elements:

1. All courts, when sentencing for more than a single offence, should pass a total sentence which reflects all the offending behaviour before it and is just and proportionate. This is so whether the sentences are structured as concurrent or consecutive. Therefore, concurrent sentences will ordinarily be longer than a single sentence for a single offence.
2. It is usually impossible to arrive at a just and proportionate sentence for multiple offences simply by adding together notional single sentences. It is necessary to address the offending behaviour **with reference to overall harm and culpability**, together with the **aggravating and mitigating** factors personal to the offender ~~as a whole~~.

Concurrent/consecutive sentences

There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive ~~components~~. The overriding principle is that the overall sentence must be just and proportionate.

3.3 Professor Mandeep Dhani commented:

What is “just and proportionate” ought to be clearly defined at the outset.

It is unclear how sentencers will calculate “overall” harm and culpability.

There is potential for double-counting of personal mitigating factors. In a recent study (Dhani, 2021), I analysed CCSS data in order to compare the penalties received by multiple-offence (MO) cases and similar single-offence (SO) cases. I found that for the large majority offence types examined an offence in a MO case received the same or a less severe penalty than its counterpart in a SO case. This finding took account of the effect of offender gender and age, as well as other sentencing relevant variables such as offence seriousness, number of aggravating factors (including previous convictions) and mitigating factors, and guilty plea reduction. There are several possible explanations for this potentially unwanted outcome, and the totality guideline could be revised to target at least two of these.

First, although personal mitigation is common to both MO and SO cases, it may be considered twice in MO cases. The first opportunity is when an initial sentence is considered for each offence (as per the offence-specific guidelines) and the second is when the totality principle is applied. Therefore, the overarching guideline should not ask sentencers to apply the same set of personal mitigating factors (again). It should either refrain from applying such factors altogether or ask sentencers to apply mitigating factors that pertain to the ‘multiple’ offence nature of the case and/or the consequences of the sentence. Second, the sentence for one or more of the offences in a MO case may be adjusted downwards if sentences are to be served consecutively, and adjusted upwards if they are to be served concurrently. It may be that the downwards adjustment is too much, and/or the upwards adjustment is too little (especially when considering the aforementioned penalty reducing effects of

personal mitigation) or that the two adjustments cancel each other out. Therefore, the overarching guidelines ought to include clear guidance on how much downwards adjustment should be made for consecutive sentences made up of different combinations of offences, and how much upwards adjustment should be made for concurrent sentences in these cases.

Finally, by saying “There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive”, and then later in the guidelines providing examples of when sentences should be concurrent or consecutive, the Council is undermining the latter guidance and presenting a mixed (confusing) message.

3.4 The Council may feel that defining ‘just and proportionate’ at the outset is not a practicable suggestion. The point about it not being clear about how sentencers will calculate overall harm and culpability was not repeated by any other respondents. Indeed, Dr Rory Kelly in his response welcomed this addition:

The Council proposes adding reference to harm and culpability in the General Principles section of the Totality Guideline. This is an important and positive step. Consideration of harm and culpability may help the sentencing judge to frame the overall seriousness of a series of offences, and to avoid the risk of double counting where the offences have overlapping harm and/or culpability factors.

3.5 The West London Magistrates’ Bench was among those who approved of the reference to harm and culpability, stating: ‘The addition of text that mentions overall harm and culpability is a good idea, as that is where sentencing should start in categorising the seriousness of an offence’.

3.6 In contrast the Justices’ Legal Advisers and Court Officers’ Service (JCS) said:

The deletion of the words "as a whole" renders section two redundant. It is a statutory principle of all sentencing that sentences refer to harm, culpability, aggravating and mitigating circumstances, doesn't need repeating here, and now adds nothing. The essential point of section two was that the TOTAL sentence should reflect those factors. If section two doesn't say that, there is no point in it being there. We recommend that "as a whole" is restored.

3.7 Some Council members may recall discussing the study referred to by Professor Dhami above, in January 2022. The chief flaw we identified in the study is that it purports to draw conclusions from a comparison of sentences passed for a single offence and the lead offence where there were multiple offences without identifying whether the other offences were sentenced consecutively or concurrently to the lead offence. It also works on the misconception that the guideline as currently worded requires consideration only of mitigating factors when it refers to ‘factors personal to the offender’. In order to clarify that point we consulted on adding the words ‘aggravating and mitigating’.

3.8 The Council may feel that the objection to the guideline saying there is ‘no inflexible rule’ on the grounds that it is confusing to then give examples later of when sentences

should be concurrent or consecutive, does not stand up to scrutiny. There is no contradiction in saying that there is no inflexible rule and then giving examples of how in different circumstances the court should approach the issue.

3.9 Among those who were supportive of the General principles section there were suggestions for changes. The CPS said:

Some of the current phrasing may be a little difficult to follow ... we wonder whether the principles might address, first, the lack of an inflexible rule and, secondly, the mirror principles of consecutive and then concurrent sentences and what, in outline, totality means in respect of each in terms of downward/upward adjustment.

We offer the following suggested wording for the Sentencing Council's consideration:

General principles

When sentencing for more than a single offence, the overall sentence must be just and proportionate. There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive.

1. If consecutive, it is usually impossible to arrive at a just and proportionate sentence for more than a single offence simply by adding together notional single sentences. Ordinarily some downward adjustment is required.
2. If concurrent, it will often be the case that the notional sentence on any single offence will not adequately reflect the commission of more than a single offence. Ordinarily some upward adjustment is required.

3.10 HM Council of District Judges (Magistrates' Courts) suggested rewording:

It is necessary to address the offending behaviour with reference to overall harm and culpability, together with the aggravating and mitigating factors personal to the offender.

As:

It is necessary to address the offending behaviour with reference to overall harm and culpability, together with the aggravating and mitigating factors **relating to the offences and those** personal to the offender.

3.11 The Attorney General's Office (AGO) observed "that judges at the Crown Court are routinely passing concurrent sentences when consecutive sentences would have been more appropriate". They suggested adding the words in red:

There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive. The overriding principle is that the overall sentence must be just and proportionate, **taking into account the aggregate effect of all offending. A sentence that is just and proportionate would generally reflect whether the multiple offending had arisen out of the same facts and incidents, or not.**

3.12 The Sentencing Academy suggested the following alterations:

(1) The final sentence in the first element would seem better placed in the section 'Concurrent / Consecutive Sentences'. The general principle here is simply that the

sentence imposed is just and proportionate with regards to all the offending behaviour.

(2) The second principle builds on this by stating that a sentence should consider 'overall harm and culpability' in determining a proportionate sentence (as well as aggravating and mitigating factors if relevant). It would be worth stating that harm includes intended harm or harm that might foreseeably have been caused (s.63 Sentencing Act 2020).

3.13 The Academy go on to say, "sentencing guidelines have multiple audiences and we can see value in providing an example of both concurrent and consecutive sentencing in this section. This would reiterate the fact that concurrent sentences would usually be longer than a sentence for a single offence".

3.14 A circuit judge agreed with the proposed wording but suggested a stylistic changes:

When sentencing for more than a single offence, sentences can be structured as concurrent or consecutive. There is no inflexible rule as to this.

However such a sentence is structured, the court must apply the principle of totality.

The overriding principle is that the **overall** sentence must be just and proportionate.

Accordingly, all courts must pass a sentence which:

- Reflects **all** the offending behaviour before it; AND
- Is just and proportionate.

When considering what is just and proportionate, note:

- Concurrent sentences will ordinarily be longer than a single sentence for a single offence.
- Consecutive sentences will rarely involve simply adding together notional single sentences. Address the offending behaviour with reference to **overall** harm and culpability, together with the aggravating and mitigating factors personal to the offender.

3.15 Looking at the guideline as a whole, there may be scope for spelling out more explicitly than is currently the case that:

- where consecutive sentences are passed some or all of them will usually need to be reduced to achieve a proportionate overall sentence; and
- where concurrent sentences are passed the lead sentence will usually need to be increased to achieve a proportionate overall sentence.

3.16 The Council may feel that the suggestions at 3.9 and 3.14 above have merit but both have the disadvantage that they omit the reference to harm and culpability etc that the Council was keen to introduce and was explicitly welcomed by some respondents. A suggested alternative building on all the suggestions is:

General principles

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

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

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

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

3.17 One further issue that was not raised by any respondents, but which might be worth considering is that the General principles section refers only to sentencing for more than one offence, it makes no mention of the other situation to which the guidelines applies, namely when sentencing an offender who is already subject to a sentence. Every offence specific guideline includes a step:

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.

3.18 There is an 'Applicability' dropdown at the beginning of the existing guideline which states:

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders, whose cases are dealt with on or after 11 June 2012.

[Section 59\(1\) of the Sentencing Code](#) provides that:

"Every court -

- a. must, in sentencing an offender, follow any sentencing guideline which is relevant to the offender's case, and
- b. must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so."

This guideline applies when sentencing an offender for multiple offences or when sentencing an offender who is already serving an existing sentence. In these situations, the courts should apply the principle of totality.

3.19 The Council may consider that this is sufficient. Alternatively an opening paragraph could be added to the face of the guideline stating:

The principle of totality applies when sentencing an offender for multiple offences or when sentencing an offender who is already serving an existing sentence.

Question 1: Should an opening paragraph be added?

Question 2: What changes should be made to the General principles section?

General approach

3.20 The next question in the consultation related to the proposed 'General approach' section (deletions are shown struck through and additions are in red):

General approach (as applied to determinate custodial sentences)

1. Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.
2. Determine whether the case calls for concurrent or consecutive sentences.
When sentencing three or more offences a combination of concurrent and consecutive sentences may be appropriate.
3. Test the overall sentence(s) against the requirement that ~~they be~~ **the total sentence is** just and proportionate to the offending as a whole.
4. Consider ~~whether~~ **and explain how** the sentence is structured in a way that will be best understood by all concerned ~~with it~~.

Concurrent sentences will ordinarily be appropriate where:

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

Examples include: [dropdown]

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

Examples include: [dropdown]

Where concurrent sentences are to be passed the sentence should reflect the overall criminality involved. The sentence should be appropriately aggravated by the presence of the associated offences.

Concurrent custodial sentences: examples [dropdown]

Consecutive sentences will ordinarily be appropriate where:

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

Examples include: [dropdown]

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

Examples include: [dropdown]

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

Examples include:

[dropdown]

- d. one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum

Examples include:

[dropdown]

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

Examples include:

[dropdown]

Where consecutive sentences are to be passed, add up the sentences for each offence and consider if the aggregate length is just and proportionate.

3.21 The AGO suggested some additions to the four steps in this section in part to address their experience that judges often categorise correctly and adopt an appropriate starting point for a lead offence but fail to make uplift for totality (additions in red):

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

3.22 Dr Kelly suggested adding a reference to harm and culpability to step 3 to link the General principles section to the General approach section suggesting:

3. Test the overall sentence(s) against the requirement that the total sentence is just and proportionate to the offending as a whole noting that that the relevant offences may have distinct or overlapping harm and culpability factors.

3.23 Kelly goes on to explain:

The sentencing judge considers the relevant offence specific guidelines independently at part one of the General Approach. At part three they then have an important and complex task in bringing together this information to arrive at a just and proportionate overall sentence. At part one the sentencing judge may rely on the same factor more than once when reaching initial sentences for each individual offence. Take an attack on V where V is badly beaten, and their watch is broken. When sentencing the criminal damage, the judge may, for example, have considered the intention to create a high risk of injury, which would also affect the sentencing of a s. 20 offence. An explicit reminder that harm and culpability factors may overlap at part 3 then would give the judge a test by which to assess overall proportionality in difficult cases as opposed to this being instinct lead.

3.24 Professor Dhimi states:

... in point 3, it is unclear what the Council means by “Test the overall sentence against the requirement that the total sentence is just and proportionate to the offending as a whole.” Specifically, what is the so-called “test”? It appears that the Council is simply asking sentencers to use their own judgment to test if their own judgment meets the requirement. This is an inadequate test. The Council ought to provide a clear and objective test that all sentencers can apply and which can be used by others when reviewing the sentences meted out in multiple-offence cases.

3.25 This reflects her point made earlier that ‘just and proportionate’ should be defined. The obvious difficulty here is how to define an overarching objective test that could be applied. It is not clear what (if anything) Dhimi envisages.

3.26 Professor Dhimi welcomes the reference to explaining how the sentence is structured and suggests that the Council should “monitor the extent to which the explanations given are useful”. She goes on to say that “the Council ought to consider the extent to which reminding sentencers of their obligation to provide reasons for their decision might alter the decision/judgment process they apply in cases, and consequently the decision (outcome) itself.”

3.27 This is not something that we will be able to do. As we set out in the resource assessment published with the consultation, the Ministry of Justice does not publish figures on multiple offences and the Council does not currently have access to extensive information on secondary or non-principal offences nor the sentences imposed for them.

3.28 Dr Kelly also welcomed the addition of a reference to explaining the sentence in step 4 and the JCS suggested that it would be clearer to have this as a distinct step:

4. Check that the sentenced is structured in a way that will be best understood by all concerned with it.
5. Consider how to explain the sentence clearly.

3.29 The CPS also welcomed the emphasis on explaining how the sentence is structured and suggested taking it slightly further to promote greater clarity and transparency, particularly in complicated sentencing exercises, saying:

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

3.30 Regarding the wording:

Where concurrent sentences are to be passed the sentence should reflect the overall criminality involved. The sentence should be appropriately aggravated by the presence of the associated offences.

HM Council of District Judges (Magistrates' Courts) suggested rewording the second sentence to read: "the sentence should appropriately reflect the aggravating feature of the presence of the associated offences".

3.31 The CPS suggested making the need to uplift the sentence clearer:

Where concurrent sentences are to be passed the sentence should reflect the overall criminality involved. Consideration should be given to what increase in sentence is appropriate to reflect the commission of more than a single offence. The increase may be none, minimal or significant, depending on what is required in each individual case to reflect properly the commission of more than a single offence. In some cases a significant uplift is required to reflect properly the offending in its totality.

3.32 The CPS questioned the helpfulness of adding: "When sentencing three or more offences a combination of concurrent and consecutive sentences may be appropriate". Their concern being that "it may give the impression that it is more likely to be appropriate to use a combination". The Sentencing Academy, by contrast, welcomed this addition noting that it will be particularly important where this applies that the sentence is explained "as it may not be apparent to defendants, victims and the public why offences are being treated in different ways".

3.33 In relation to:

Where consecutive sentences are to be passed, add up the sentences for each offence and consider if the aggregate length is just and proportionate.

The CPS suggested it would be more consistent with the general principles section to say: "add up the sentences for each offence and consider the extent of any downward adjustment required to ensure the aggregate length, looked at in totality, is just and proportionate."

3.34 The AGO suggested rewording point d. under consecutive sentences to read:

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

3.35 A suggested revised version taking account of the responses (changes highlighted):

General approach (as applied to determinate custodial sentences)

1. Consider the sentence for each individual offence, referring to the relevant sentencing guidelines.

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

Concurrent sentences will ordinarily be appropriate where:

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

Examples include: [dropdown]

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

Examples include: [dropdown]

Where concurrent sentences are to be passed the lead sentence should reflect the overall criminality involved. The sentence should appropriately reflect the aggravating feature of the presence of the associated offences.

Concurrent custodial sentences: examples [dropdown]

Consecutive sentences will ordinarily be appropriate where:

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

Examples include: [dropdown]

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

Examples include: [dropdown]

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

Examples include: [dropdown]

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

Examples include: [dropdown]

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

Examples include: [dropdown]

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

Question 3: Does the Council wish to make the suggested changes to the General approach section?

Reaching a just and proportionate sentence

3.36 The next section of the draft guideline reads:

Reaching a just and proportionate sentence

There are a number of ways in which the court can achieve a just and proportionate sentence. Examples include:

- when sentencing for similar offence types or offences of a similar level of severity the court can consider:
 - whether all of the sentences can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively
 - whether, despite their similarity, a most serious principal offence can be identified and the other sentences can all be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively in order that the sentence for the lead offence can be clearly identified
- when sentencing for two or more offences of differing levels of seriousness the court can consider:
 - whether some offences are of such **very** low seriousness ~~in the context of the most serious offence(s)~~ that they can be recorded as 'no separate penalty' (for example technical breaches or minor driving offences not involving mandatory disqualification)
 - whether some of the offences are of lesser seriousness such that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified.

3.37 Professor Dhami comments:

The examples that the Council provides for when sentences may run consecutively versus concurrently suggests that some multiple-offence offenders may face longer/harsher penalties than their single-offence counterparts (i.e., an offender whose single offence is the same as the principal offence in the multiple-offence case), whereas other multiple-offence offenders may actually face shorter/less severe penalties than their single-offence counterparts. Specifically, based on the Council's examples, one could predict that multiple-offence offenders sentenced for "similar offence types or offences of a similar level of severity" will face longer/harsher penalties than their single-offence counterparts, whereas multiple-offence offenders sentenced for "two or more offences of differing levels of seriousness" will face shorter/less severe penalties than their single-offence counterparts. Clearly, this would be unjust. [It is also unclear if the Council is referring to different or same offence types in the latter example].

3.38 It is difficult to follow the logic of her argument – the conclusions she draws as the relative severity of sentences does not follow from the examples given in the guideline.

3.39 The Sentencing Academy makes a related point:

The Academy understands why the revised guideline has a bespoke section to emphasise the central aim of achieving a just and proportionate sentence. Inevitably

though there are questions of placement and potential overlap (much of the previous section relates to reaching a just and proportionate sentence in that it considered issues relating to culpability and harm).

The consultation paper is focussed on design and on improving the guideline's practical usefulness. This is indeed an important objective, but a prior question is on what basis the court should decide whether a particular sentence for a multiple offender is 'just and proportionate'. The question 'proportionate to what?' is usually answered by saying 'proportionate to the total offending for which the court is passing sentence'. But as soon as the curtain is drawn back, the complexities are revealed.

...[examples are given from the fines section of the guideline]

All of this is to be seen in the context of general principle (2) stated at the beginning of the Consultation Paper:

It is usually impossible to arrive at a just and proportionate sentence for multiple offences simply by adding together notional single sentences. It is necessary to address the offending behaviour with reference to the overall harm and culpability together with the aggravating and mitigating factors personal to the offender.

This general principle is important, but yet again it does not spell out exactly what factors go to make up 'proportionality' in this context. The various offence guidelines created by the Sentencing Council indicate what proportionality means for a single offence, and for comparisons between single offences. But nowhere, in the Council's documents or the Court of Appeal's judgments, is there any guidance on what a court should do, once it departs from the simple cumulation of sentences. General principle (2) states bluntly that 'it is usually impossible to arrive at a just and proportionate sentence ... by adding together notional single sentences.' But what criteria should guide the court? Often the format will be to identify the most serious offence and then to make some modest increase in the sentence to reflect the other offences. The choice of concurrent or consecutive sentences is largely presentational. But how is the size of the increase to be calculated? Reference to 'overall harm and culpability' and to 'aggravating and mitigating factors' is all very well, but offers no specific guidance to the sentencer.

The proposed text starts by presenting alternatives for situations where (a) the offences are of a similar type or severity (b) the offences are of a differing level of seriousness. This could come earlier in the guideline – perhaps even in the general principles – as it presents the options available. Guidance on the operation of these principles is largely found in the preceding section. Questions can arise about whether offences are of a similar type (e.g. in the context of property offences) or severity, but, particularly with regards to the latter, sentencers will follow offence-specific guidance which typically detail factors which are to be taken into account in assessing offence-severity.

3.40 Rory Kelly makes a similar comment:

The relationship of this new section to the General Approach section could be made clearer. Part three of the General Approach requires the judge to "Test the overall sentence(s) against the requirement that the total sentence is just and proportionate to the offending as a whole." The new section has been taken out of the General Approach section because it is "key and by giving it a separate section it will give it more prominence". A risk may be that it is overlooked if the judge focuses on the earlier requirement in the General Approach. It may then be safer to re-join this section with the previous one, or at least to include a cross-reference.

The new section provides numerous ways for a court to reach a proportionate sentence to include proportionate reductions across similar offences and imposing no further penalty for very low serious offences. The Council though could do more to explain how a judge is to know whether the overarching sentence is proportionate. If the section is to be retained, the following text may usefully be added between the section heading and the current first sentence:

“The judge should assess whether the overall sentence is just and proportionate with reference to the overall seriousness of the offences committed. Overall seriousness may be assessed through reference to the offender’s culpability in committing the offences and any harm the offences caused, were intended to cause, or might foreseeably have caused.”

3.41 The AGO welcomed this section but suggested elaborating further, to remind judges that reaching a just and proportionate sentence can include upwards as well as downwards adjustments. They considered that as currently drafted there is a greater emphasis on the reduction of an overall sentence to reflect totality than on the need to accurately reflect the level of criminality. They refer to examples where the sentence on a lead offence was not aggravated sufficiently to reflect the overall criminality of the multiple offending or the severity of the other offences. They suggested adding a requirement for judges to detail how the sentence has been aggravated for totality, to ensure that it is a just and proportionate sentence and proposed changing the opening paragraph to read:

There are a number of ways in which the court can achieve a just and proportionate sentence. Greater clarity may be achieved by explaining the effect of totality on the notional sentence(s).

3.42 Conversely, a magistrate commented that it would not be helpful to have to announce in court what each element of the sentence should be.

3.43 The Magistrates’ Association (MA) agreed with the content of this section but suggested it should come before the General approach section.

3.44 A circuit judge commented:

I like the principle. The matter that concerns the Judiciary is how much extra to sentence a Defendant to in cases where there are multiple victims, for example Death by Dangerous Driving, or multiple offences against the same victim, for example domestic context rapes. It would be helpful to have a guide as to how much extra for 2 rapes, 3 rapes etc.

3.45 The JCS disagreed with the changes to the wording in the existing guideline:

- whether some offences are of such low seriousness in the context of more serious offences that they can be recorded as ‘no separate penalty’

Arguing:

For example it is common for offenders to commit a number of road traffic offences, which are of only slightly differing seriousness, e.g. defective tyre, no insurance, no MOT certificate. Under the old guideline one offence (probably the defective tyre or no insurance) would bear the fine and the rest No Separate Penalty. But since none of these offences are of VERY low seriousness, it would imply that in future each

should bear a fine, which would not have been the case before. We also think that the removal of the words "relative to each other" has the same tendency. It means that the only offences which would receive a No Separate Penalty would be offences which are in absolute terms of very low seriousness. But for example, while careless driving may seem relatively minor when committed in conjunction with a GBH assault, and might justify NSP, it would not when committed in conjunction with a defective windscreen wiper. We think the old wording should be restored.

3.46 RoadPeace also had concerns about this wording:

We would prefer to see clarity on "technical breaches" and what exactly is considered to be a "minor" driving offence when sentencing. RoadPeace's opinion is that the judicial system is too accepting of unacceptable driver behaviour and that sentencing should always reflect a zero tolerance of offences that challenge Road Danger Reduction (safety) or working towards Vision Zero.

3.47 Leaving aside issues of drafting, there are two points that arise from these comments: firstly what is the relationship between this section and the references to reaching a just and proportionate sentence earlier in the guideline, and secondly, could or should the guideline give a more precise indication of how to identify if a sentence is 'just and proportionate'?

3.48 As to the first point, respondents are right to point out that there is a degree of overlap between the different sections and there is no clear logic as to what information is in each section. One way of restructuring the information would be to place the first two examples (which relate to consecutive sentences) at the end of the consecutive sentences part of the 'General approach' section and the second two examples (which relate to concurrent sentences) at the end of the concurrent sentences part of that section. The reason 'Reaching a just and proportionate sentence' was given its own section was that in the existing guideline it appears to be included in the consecutive sentences part and it does not really fit there. It is worth noting that the General approach section applies to determinate custodial sentences whereas the example relating to no separate penalty in the 'Reaching a just and proportionate sentence section' could be applied to non-custodial sentences. Having said that (bearing in mind the response from the JCS) it could be preferable to restrict the content to considerations of custodial sentences.

3.49 A revised version of the guideline incorporating the changes suggested elsewhere in this paper and a restructuring of the information is provided for consideration at **Annex B**.

3.50 As to giving a more precise indication of how to reach a just and proportionate sentence, it is noticeable that it is primarily academics rather than sentencers or other guideline users who have raised this issue. It is certainly arguable that the more room the guideline leaves for sentencer discretion the more chance there is of bias or uncertainty of outcome. However, if more certainty is desirable, it is by no means clear how to achieve this.

There can be no precise mathematical formula and even employing a 'rule of thumb' would be problematic. For example, the number of charges that an offender faces for a course of conduct could vary depending on prosecutorial decisions. The number of permutations of related and unrelated matters of varying seriousness that a particular sentencing exercise can involve are too great to devise an objective test for what is 'just and proportionate'.

Question 4: Should the information in the Reaching a just and proportionate sentence section be moved?

Question 5: Does the Council agree that it is not possible to create an objective test for a just and proportionate sentence?

Question 6: Should any of the other suggestions be incorporated, for example adding a further reference to harm and culpability?

4 IMPACT AND RISKS

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

4.2 The guideline is of wide application and therefore any changes could theoretically have a significant impact on sentencing practice. The nature of the revisions, which are designed to clarify and encourage existing best practice, are unlikely to lead to substantive changes. In view of this and the lack of data on multiple offences referred to at 3.27 above a narrative resource assessment was published with the consultation, rather than a statistics based one.

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

4.4 The responses to the consultation relating to impact and to equality issues will be discussed at the next meeting

Totality

Effective from: tbc

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.

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

Applicability - DROPDOWN

General principles

The principle of totality comprises two elements:

1. All courts, when sentencing for more than a single offence, should pass a total sentence which reflects all the offending behaviour before it and is just and proportionate. This is so whether the sentences are structured as concurrent or consecutive. Therefore, concurrent sentences will ordinarily be longer than a single sentence for a single offence.
2. It is usually impossible to arrive at a just and proportionate sentence for multiple offending simply by adding together notional single sentences. It is necessary to address the offending behaviour with reference to overall harm and culpability, together with the aggravating and mitigating factors personal to the offender.

Concurrent/consecutive sentences

There is no inflexible rule governing whether sentences should be structured as concurrent or consecutive. The overriding principle is that the overall sentence must be just and proportionate.

General approach (as applied to determinate custodial sentences)

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

Concurrent sentences will ordinarily be appropriate where:

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

Examples include:

V

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

Examples include:	V
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Where concurrent sentences are to be passed the sentence should reflect the overall criminality involved. The sentence should be appropriately aggravated by the presence of the associated offences.

Concurrent custodial sentence examples:	V
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Consecutive sentences will ordinarily be appropriate where:

a. offences arise out of unrelated facts or incidents.

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

Examples include:	V
-------------------	---

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

Examples include:	V
-------------------	---

d. one or more offence(s) qualifies for a statutory minimum sentence and concurrent sentences would improperly undermine that minimum.

Examples include:	V
-------------------	---

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

Examples include:	V
-------------------	---

Where consecutive sentences are to be passed add up the sentences for each offence and consider if the aggregate length is just and proportionate.

Reaching a just and proportionate sentence

There are a number of ways in which the court can achieve a just and proportionate sentence.

Examples include:

- when sentencing for similar offence types or offences of a similar level of severity the court can consider:
 - whether all of the sentences can be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively
 - whether, despite their similarity, a most serious principal offence can be identified and the other sentences can all be proportionately reduced (with particular reference to the category ranges within sentencing guidelines) and passed consecutively in order that the sentence for the lead offence can be clearly identified
- when sentencing for two or more offences of differing levels of seriousness the court can consider:
 - whether some offences are of such very low seriousness that they can be recorded as 'no separate penalty' (for example technical breaches or minor driving offences not involving mandatory disqualification)

- whether some of the offences are of lesser seriousness such that they can be ordered to run concurrently so that the sentence for the most serious offence(s) can be clearly identified.

Sentencing for offences committed prior to other offences for which an offender has been sentenced	V
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Specific applications – custodial sentences

Existing determinate sentence, where determinate sentence to be passed	V
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Extended sentences	V
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Indeterminate sentences	V
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Specific applications – non-custodial sentences

Multiple fines for non-imprisonable offences	V
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Fines in combination with other sentences	V
---	---

Community orders	V
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Disqualifications from driving	V
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Compensation orders	V
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Totality

Effective from: tbc

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.

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

Applicability - DROPDOWN

General principles

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

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

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

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

General approach (as applied to determinate custodial sentences)

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

Concurrent sentences will ordinarily be appropriate where:

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

Examples include: V

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

Examples include: V

Where concurrent sentences are to be passed the lead sentence should reflect the overall criminality involved. The sentence should appropriately reflect the aggravating feature of the presence of the associated offences.

Concurrent custodial sentence examples:	V
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Structuring concurrent sentences:

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

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

Consecutive sentences will ordinarily be appropriate where:

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

Examples include:	V
-------------------	---

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

Examples include:	V
-------------------	---

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

Examples include:	V
-------------------	---

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

Examples include:	V
-------------------	---

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

Examples include:	V
-------------------	---

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

Structuring consecutive sentences:

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

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

Sentencing for offences committed prior to other offences for which an offender has been sentenced V

Specific applications – custodial sentences

Existing determinate sentence, where determinate sentence to be passed V

Extended sentences V

Indeterminate sentences V

Specific applications – non-custodial sentences

Multiple fines for non-imprisonable offences V

Fines in combination with other sentences V

Community orders V

Disqualifications from driving V

Compensation orders V

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

3 March 2023
SC(23)MAR07 – Environmental offences
n/a
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1 ISSUE

1.1 In 2021 and 2022 the Council discussed requests from the Herts Fly Tipping Group to make changes to the Environmental offences guideline specifically in relation to the way it operates in sentencing fly tipping cases.

1.2 The Council rejected the bulk of their arguments but did think that the way in which the guideline emphasises fines over community orders might be worth reconsidering. This paper considers whether and how this should be done.

2 RECOMMENDATION

2.1 That the Council agrees to consider some minor changes to the Environmental offences guideline for individuals as part of the next miscellaneous amendments consultation.

3 CONSIDERATION

Background

3.1 The Environmental offences guidelines came into force on 1 July 2014. There are two guidelines: one for [individuals](#) and one for [organisations](#). The guidelines apply to offences covered by the Environmental Protection Act 1990, s.33; the Environmental Permitting (England and Wales) Regulations 2010, regulations 12 and 38(1), (2) and (3); and the Environmental Permitting (England and Wales) Regulations 2016, regulations 12 and 38(1), (2) and (3). The statutory maximum sentence for an individual is five years' custody and the guideline offence range is a discharge to three years' custody. The statutory maximum sentence for an organisation is an unlimited fine and the guideline offence range is £100 fine – £3 million fine.

3.2 The correspondence regarding fly-tipping cases follows on from various representations since 2016 including from Defra suggesting that the fines imposed on individuals are deemed to be too low to reflect both the costs avoided by the offender and the costs of clearing up; as well as being inadequate as a deterrent.

3.3 In response, we have drawn attention to the fact that the guideline does require sentencers consider awarding compensation and to take account of costs avoided and that the law requires courts to take into account the financial circumstances of the offender in setting the amount of a financial penalty.

3.4 The one aspect of the guideline for individuals that we thought could be usefully revisited is the extent to which it steers sentencers away from community sentences in favour of fines.

3.5 In a response to the Herts Fly tipping group in July last year we said:

The Council has looked again at the references to community orders in the guideline and recognises that while community sentences are available, the guideline does emphasise fines over community orders. While it is not possible to know whether an increased use of community orders would be more effective than financial penalties in deterring offending, the Council felt that there could be some merit in reconsidering this point as part of some wider work it is undertaking into guidance given to courts on the use of community orders.

3.6 The 'wider work' referred to above is the revision of the Imposition guideline.

Currently the [Imposition guideline](#) contains the following statements in the general principles section on community orders:

A community order must not be imposed unless the offence is 'serious enough to warrant the making of such an order'.

Sentencers must consider all available disposals at the time of sentence; even where the threshold for a community sentence has been passed, a fine or discharge may be an appropriate penalty. In particular, a Band D fine may be an appropriate alternative to a community order.

3.7 This aspect of the Imposition guideline has not yet been discussed by the Council but there are no proposals to make significant changes. The issue is with the wording in the Environmental guideline which goes further:

Where the range includes a potential sentence of a community order, the court should consider the community order threshold as follows:

- has the community order threshold been passed?

However, even where the community order threshold has been passed, a fine will normally be the most appropriate disposal. Where confiscation is not applied for, consider, if wishing to remove any economic benefit derived through the commission of the offence, combining a fine with a community order.

3.8 This was a deliberate policy by the Council when the guideline was developed – the idea being that the offending was often financially motivated and so financial penalties were most appropriate.

3.9 What is contemplated is a modest change to bring it into closer alignment with the Imposition guideline and to give less emphasis to fines over community orders, such as:

Where the range includes a potential sentence of a community order, the court should consider the community order threshold as follows:

- a community order must not be imposed unless the offence is serious enough to warrant the making of such an order (section 204 of the Sentencing Code)

Where the community order threshold has been passed, a fine may still be the most appropriate disposal. Where confiscation is not applied for, consider, if wishing to remove any economic benefit derived through the commission of the offence, combining a fine with a community order.

3.10 Also in the sentence tables where a fine and community order are listed as alternatives, the order could be reversed and where a fine is given as a starting point this could be changed to a community order, so that rather than as currently:

Offence category	Starting Point	Range
Category 1	18 months' custody	1 – 3 years' custody
Category 2	1 year's custody	26 weeks' – 18 months' custody
Category 3	Band F fine	Band E fine or medium level community order – 26 weeks' custody
Category 4	Band E fine	Band D fine or low level community order – Band E fine

It could say:

Offence category	Starting Point	Range
Category 1	18 months' custody	1 – 3 years' custody
Category 2	1 year's custody	26 weeks' – 18 months' custody
Category 3	High level community order	Medium level community order or band E fine – 26 weeks' custody
Category 4	Medium level community order	Low level community order or band D fine – Band E fine

3.11 Any such changes would not greatly alter the sentencing severity, but are sufficiently significant to require consultation. The suggestion is, therefore, that proposals could be included in this year's miscellaneous amendments consultation.

Question 1: Does the Council agree to include consideration of proposals for minor changes to the Environmental guideline for individuals in the next miscellaneous amendments consultation?

4 IMPACT AND RISKS

4.1 The number of adult offenders sentenced for offences under s 33 EPA 1990 (which would include fly-tipping):

Court	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Magistrates	662	560	545	538	637	598	671	752	641	311	527
Crown	41	22	27	30	25	26	32	26	53	10	23
Total	703	582	572	568	662	624	703	778	694	321	550

4.2 Not all of these offences will be fly-tipping, but what the figures show is (with the exception of 2020) volumes of prosecutions have been fairly stable for many years. Figures from 2020 onwards may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, so should be treated with caution.

4.3 Sentence outcomes for adult offenders sentenced for offences under s 33 EPA 1990:

Outcome	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Discharge	147	141	111	95	86	76	49	65	47	26	37
Fine	468	377	380	411	484	463	503	572	497	233	418
Fines as a proportion	67%	65%	66%	72%	73%	74%	72%	74%	72%	73%	76%
CO	54	43	43	40	48	46	55	62	57	28	38
SSO	9	10	15	8	22	15	37	20	53	6	21
Immd custody	17	4	12	5	11	7	26	10	18	4	5
Other	8	7	11	9	11	17	33	49	22	24	31
Total	703	582	572	568	662	624	703	778	694	321	550

4.4 Fines appear to have been imposed in around three-quarters of cases since the guideline came into force. Prior to that the proportion of fines was slightly lower and the proportion of discharges higher (although due to a data processing issue, offenders sentenced to a fine of over £10,000 in magistrates' courts during the period 2011 to 2015 may have been excluded from the data and therefore volumes shown for this period may be lower than the actual number sentenced; however, it is likely that the number of missing records is low).

4.5 Median fine amounts received by adult offenders sentenced for offences under s 33 EPA 1990:

	2015	2016	2017	2018	2019	2020	2021
Median fine amount	£250	£300	£320	£300	£320	£320	£320

4.6 As the guideline applies not only to offences under s 33 EPA 1990 but also to offences under the Environmental Permitting (England and Wales) Regulations there is a possibility that any changes to the guideline could have an effect on sentencing for those offences as well. Fines represent a lower proportion of sentences for these offences (around 58% on average for the years 2011-2021) and community orders a slightly higher proportion compared to s.33 EPA 1990. The volumes of offenders sentenced under the regulations are much lower (55 cases in 2021). We would need to consult with the Environment Agency to clarify if there is a likelihood of unintended consequences from any change, but none are apparent at this stage.

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Sentencing
Council

External communication evaluation

January 2023

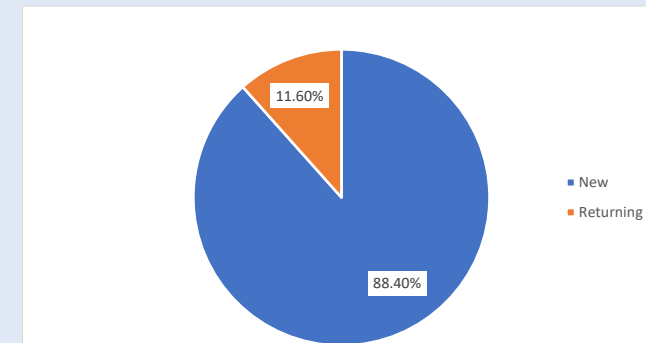
Visits to www.sentencingcouncil.gov.uk

	This month	Last month
Users*	461,862	405,934
Sessions per user	1.31	1.29
Pages per session	2.82	2.59
Ave time on site	02:20	02:06
Bounce rate**	55.0%	57.3%

Announcements

9th	Council vacancy: non-judicial member promoting the welfare of victims of crime
10th	External research on equality and diversity in the work of the Sentencing Council published

Visitors: new and returning



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

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

Most visited pages	Pageviews	Unique Pageviews
Magistrates' court guidelines search page	280,261	108,961
Crown Court guidelines homepage	62,270	32,893
Website homepage	53,735	31,176
Magistrates' court homepage	48,714	24,506
/fine-calculator/	41,169	19,174
/offences/magistrates-court/item/common-assault-racially-or-religiously-aggravated-common-assault-common-assault-on-emergency-worker/	35,791	20,356
/offences/magistrates-court/item/excess-alcohol-driveattempt-to-drive-revised-2017/	27,568	15,265
Common offence illustrations	26,457	11,995
Common offence illustrations /assault/	22,889	13,898
/offences/magistrates-court/item/assault-occasioning-actual-bodily-harm-racially-or-religiously-aggravated-abh/	22,802	13,855

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

Top searches

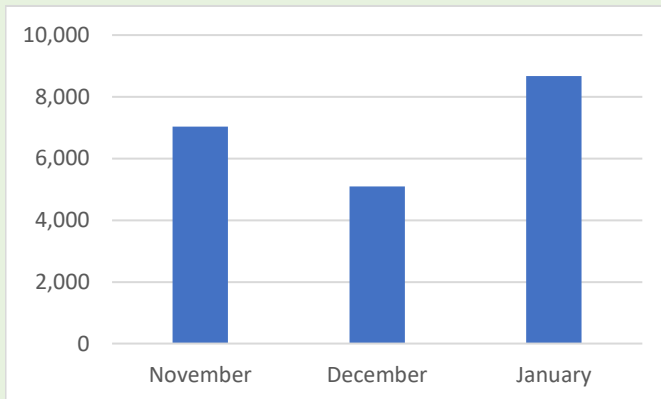
Theft
Assault
Burglary
Dangerous driving
Speeding

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

Subscribers

+27 = 1,251

Video views per month



Most watched video



How offenders are sentenced in England and Wales

Watch time average

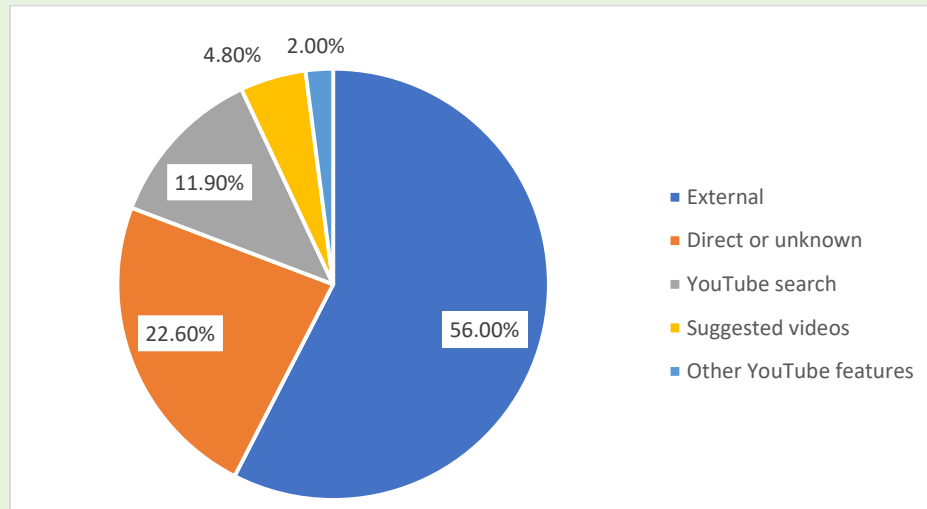
02:36

Impressions*

23,895

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

How viewers find our videos



YouTube search: terms used

1	How offenders are sentenced
2	Sentencing
3	Magistrates court UK
4	Crown Court
5	UK court sentencing

- 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

+252 = 5,506

All bulletins

Sent	4
Delivered	20,473
Opened	32.7%
Engagement rate*	5.8%

Highest engagement*

Minutes of Council meeting: December 2022

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

Followers

+40 = 6,068

Highlights

	Tweets	Impressions	Mentions	Profile visits
This month	19	18,700	*	*
Last month	3	1,633	82	780

(*these figures are no longer available in Twitter)

Top tweet

Do you have experience of promoting the welfare of victims of crime? We're recruiting a new member of the Sentencing Council to represent the interests of victims. Applications due 24 Jan:

Impressions: 2,052

Total engagements: 51

Top mention

@AndyCoxDCS We spoke about this a few months back. Enough is enough and @SentencingCCL need to stop allowing 'exceptional hardship'. There's people legally driving in the UK with more than 50 points on their licences. It's pathetic how lenient the UK is with issues like this.

Michael B Gambin @NumeroUnouk

Approved Driving Instructor, Disability Specialist, DM Medical Assessor, Instructor Trainer, Fleet Assessor, Track & Evasive Instructor. Road safety advocate. 154 followers

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

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**Sentencing Council Governance subgroup
Monday 30th January 2023
MINUTES OF MEETING**

Attendees:

Beverley Thompson (BT; Sentencing Council; Chair)
Juliet May (JM; Sentencing Council)
Richard Wright (RW; Sentencing Council)
Steve Wade (SW; Office of the Sentencing Council, Head of Office)
Ollie Simpson (OS; Office of the Sentencing Council, Governance secretary)
Lauren Maher (LM; Office of the Sentencing Council, Finance lead)

Apologies: Elaine Lorimer (EL; Revenue Scotland)

1. Minutes and action points

The minutes of the october2022 meeting were agreed. Two action points were outstanding, both related to risk and OS would discuss these as part of the risk discussion.

2. General update

SW gave an update on various issues relating to governance. The draft MoJ-Sentencing Council Framework Document remained with MoJ. There was a general question surrounding the status of the chief executives/heads of office of arms length bodies that MoJ was tackling.

SW said that despite various restructures in MoJ, the Council still sat for sponsorship purposes under James McEwan and the Governance, Risk and Assurance Directorate.

One potential call on office resource may be a contribution to the Hallett public inquiry on covid. Legal advice might need to be sourced externally, as MoJ lawyers were likely to be focused on the MoJ HQ response. RW declared an interest as a counsel to the inquiry, though not on criminal justice matters. It was likely that any requests from the inquiry could be in up to 2-3 years' time.

BT said that we should consider what this future work might mean for staffing/resource.

3. Finance

LM gave an overview of the current projected spend for 2022/23.

With a budget of £1.789m and a projected spend of £1.65m there was an underspend predicted of about £140k. Staffing costs were over what had been allocated due in large part

to maternity cover etc. An amount of underspend in the A&R allocation was used to cover this.

A major contribution to the overall underspend was a £107,495 underspend in the Comms allocation, largely down to the fact that You Be The Judge has had to slip back to the Financial Year 2023/24. SW explained that this was because of the difficulty of finding court space with enough advance notice for the Design 102 filming crew to be able to set up.

BT asked whether filming could be done at weekends or after hours. After hours were difficult because of the time needed to set up and the costs of filming would be double at weekends. There may be options for using former courts, or court-like sets, BT asked if the formal could be altered. SW explained that the filmed sections had been received well in the existing tool, but that depending on progress in the new financial year, there might need to be an assessment of alternatives.

SW did not believe this in itself would affect the Council's 2023/24 allocation and BT noted it was a very important strand in the Council's public confidence work. In terms of next year, the Council had been asked to model a "stretch" target of a 1.5% reduction for 2023/24 and a 2.5% reduction for 2024/25. As a working assumption these were the reductions we should expect to see, but they were manageable and we would still be able to continue with projects like You Be The Judge and additional analytical work committed to as part of the five year strategy.

4. Risk Register

OS presented the current risk register. The risks on quality evidence (risk 3) and communications and confidence (risk 5) had been redrawn in line with the wording of the relevant strategic objectives. As it was still being built up following last year's refresh it needed target dates (i.e. the point at which we wanted to see risks managed to their target levels)

Action: OS to insert target dates for consideration by risk owners.

The highest risks related to appointments to the Council (risk 4), staff resource (risk 1) and financial resource (risk 2). The latter two were for review in April when a clearer picture of the 2023/34 settlement might be in sight (if not known till later in the year).

SW talked to the challenges surrounding appointments. Whilst there was a good field of candidates to replace Rebecca Crane, there were greater difficulties finding replacements to the police and victims representatives (both Lord Chancellor appointments). Substitutes may be possible pending the formal appointment of permanent successors. But even on the current timetable these would not be in place until the summer at the earliest.

RW pointed out it was regrettable to be losing both representatives at one go given the unique perspectives they brought to Council discussions. JM agreed that asking the current postholders for suggestions for replacements might be fruitful. BT said there may be benefit in asking other members of the Council to consider.

On risk 3 (quality of evidence) JM asked whether the question of reliance on outdated data should be explicitly reflected. SW explained that we now had various more recent data gathered from bespoke collections post the Crown Court Sentencing Survey. Nonetheless, OS agreed to discuss with Emma Marshall (EM) as to whether it could be reflected in the overall risk register or at least in the Analysis and Research sub group's dedicated risk register.

Action: OS and EM to consider how best to capture the problem of outdated evidence in the risk registers.

In relation to risk 8 on data protection, the Analysis and Research sub group was considering what protective marking to put on council papers. The Business Continuity Plan (BACP) was mentioned in relation to the guidelines becoming unavailable to the courts and loss of access to IT systems for the office. OS had an outstanding action to make sure the BACP was reflected in the risk register, and this appeared to satisfy this although he would check whether the BACP was relevant to any other risks

Action: OS to go through business continuity plan with the office lead to see where else (if anywhere) it should be mentioned.

BT questioned why risk 11 on equality and diversity work had gone from very high to medium. OS explained that we had done a considerable amount of work in this space, so it was felt that the impact on the Council of discrepancies would not be the greatest because we were leading the way in investigating the potential (the University of Hertfordshire publication and the recent academic conference demonstrating this). BT asked whether there was more we could be doing (for example in relation to neurodiverse and other groups) and there was agreement that we should always be considering this question as broadly as possible.

5. AOB

None.

The next meeting (which will look at the annual business plan and the risk to be presented to full Council) will be on Thursday 23 March at 16:30-18:00

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ANALYSIS AND RESEARCH SUBGROUP MEETING 26 JANUARY 2023 MINUTES

Members present: Bill Davis
Rebecca Crane
Elaine Freer
Jo King
Mark Wall

Members of Office
in attendance: Charlotte Davidson
Amber Isaac
Alice Luck-Scotcher
Nic Mackenzie
Lauren Maher
Emma Marshall
Harriet Miles
Sharmi Nath
Caroline Kidd

1. WORK UPDATES

Social Research team

1.1 Nic Mackenzie updated the subgroup on the current work of the team, including the recent publications of externally commissioned research: evidence on the effectiveness of sentencing (September 2022), Public confidence in sentencing and the criminal justice system (December 2022) and the report on Equality and diversity in the work of the Sentencing Council which was published in January of this year. The Behavioural Insights Team (BIT) have been commissioned to conduct research on user testing of digital guidelines.

1.2 On internal work, the subgroup was updated on recent road testing exercises which had been completed: to support the Perverting the course of justice and witness intimidation guideline, as well as the Motoring guideline. A bespoke data collection exercise has also recently been launched in all magistrates' courts and locations of the Crown Court. The survey will run until the end of June. Work is underway on a review of expanded explanations, an evaluation of the Breach guideline, as well as exploring how externally facing outputs that we produce can be made more accessible for users.

1.3 Nic Mackenzie added the team has begun to explore the possibilities of conducting research on lived experience, an issue raised in the equality and diversity report and also mentioned at the recent sentencing seminar.

Statistics team

1.4 Amber Isaac updated the subgroup on current work in the team regarding guideline development: work is underway on producing statistics for the draft guideline for Immigration offences and the definitive guideline for Motoring offences. Evaluations are underway on the guidelines for Bladed articles and offensive weapons and Intimidatory offences, and we are close to signing off the evaluation of the Imposition guideline.

1.5 We have started work on publishing the dataset from our bespoke data collection for robbery offences, as we did with theft from a shop or stall and drug offences. We are also currently working with the Ministry of Justice (MoJ) to prepare for upcoming changes in the Court Proceedings Database (CPD) that we draw on for our work, along with changes to the coding language we use. In addition, the team is working on a review of our official statistics and exploring ways in which we can improve the accessibility of our documents.

1.6 On staffing, Amber Isaac confirmed that Charlotte Davidson's contract has been extended until the end of March 2024; Charlotte will be leading on the team's data strategy.

2. RISK REGISTER AND TERMS OF REFERENCE FOR THE SUBGROUP

2.1 Emma Marshall talked the subgroup through changes to the risk register. Changes have been made and it now encompasses some broader risks that are applicable to all office/ corporate work. Discussion focussed on the controls, actions, and risk ratings.

2.2 There are now two main risks to consider from an analytical perspective. The first risk amalgamates several previously listed risks and covers the risk that guidelines are not informed by evidence and that the impact to guidelines is unknown. The team are currently pursuing the possibility of collecting data via the Common Platform in the future. We have made an application to add a link to the platform that will allow us to have a pop-up shown to sentencers that would take them to a landing page where they then complete and submit sentencing information that we can use for analysis. We hope this will be possible this financial year, but this is not confirmed and there are potential budgeting issues. We also have road testing exercises and evaluations built into our workplan. Subgroup members were content with this risk.

2.3 The second risk concerns data protection breaches. The impact of such breaches could potentially be high, but many actions have already been taken to minimise this risk and bring it down to an overall 'low' rating. Actions include staff training, putting in place a data retention policy, and updating our privacy policy. The contracts we use for commissioned research are clear on data protection expectations and where relevant, we have data sharing agreements in place. Council members will shortly be sent a reminder of their obligations in this area. Subgroup members were content with this risk, although Jo King asked that we consider including security markings on Council papers and include how to handle papers as part of the reminder that will be sent out to Council members.

2.4 Emma Marshall also outlined the key parts of the subgroup's terms of reference for the benefit of new members. The subgroup was content with these.

Action: Emma Marshall to explore the best way to add protective markings onto documents and to include issues relating to the handling of papers in the forthcoming Council data protection/data security reminder.

3. UPDATE ON THE DATA COLLECTION

3.1 Harriet Miles updated the group on the latest data collection that is currently underway in all magistrates' courts and all locations of the Crown Court, and that covers 13 specific offences. This was launched on 9 January and will be running for six months until the end of June.

3.2 The data collection has been publicised on the judicial intranet and in Magistrates' Matters. A point of contact has been secured within each court or local justice area and we have worked with contacts in MoJ and HMCTS to provide additional avenues through which to access the collection in order to ensure a successful collection. We would also like to thank Bill Davis for putting his name to the note that was sent out to try and raise engagement with the survey at its launch.

3.3 The data collection is online only. In addition to general questions in relation to the stepped guideline process and the factors taken into account when deciding on individual sentences, some forms are also collecting data on specific areas of interest, such as whether it was committed in a domestic context. The data collection will provide information to help evaluate guidelines and will also help produce data to feed into work to address some of the University of Hertfordshire's recommendations in the equality and diversity research.

3.4 As of this week we have received around 1,200 forms, with a good spread across all offences. We will be monitoring response rates throughout to ascertain if there are any individual courts that may benefit from increased support, and we have been monitoring our email inbox for any feedback. We are grateful to Rebecca Crane and Jo King for their feedback so far on the forms and we will be making some amendments to the form imminently in response to their helpful points.

3.5 Rebecca Crane also commented that the 'single most important factor' field on the form is often very difficult to answer and asked for the rationale behind it. Amber Isaac clarified that in past data collections we have been able to pick out patterns within this variable which have informed our understanding of the impact of the guideline, for example in the theft data collection it was found that previous convictions were very prevalent in responses about the single most important factor, which was confirmed to be significant by further analysis. Elaine Freer asked whether there was a risk that including this box would deter people from responding, but it was felt that as this is the last question, and it is not marked as compulsory, the risk of this is likely to be low.

3.6 Jo King raised a concern about the number of compulsory questions in the form and that this might deter respondents from participating. The date fields in the form (e.g. date of commission of offence, date of sentence, date of birth), were raised as being particularly problematic, as these appear early in the form and often sentencers may not have these dates to hand. Charlotte Davidson explained that it is necessary to collect date of birth and date of sentence in order to permit the record to be linked to the Court Proceedings Database (CPD) to obtain other information (e.g. the offender's ethnicity). Unfortunately we do not have data on the number of survey forms which have been abandoned part way through. However, we are currently reviewing which questions are obligatory and whether any can become optional, and

are carefully considering the minimum amount of data required for a single form to be useful. We will therefore make any necessary changes to ensure we can reduce burdens on sentencers.

3.7 Jo King raised the issue of maintaining engagement throughout the duration of the collection and Harriet Miles confirmed that we would be approaching Bill Davis in the future for a message to cascade to thank everyone for their hard work and to encourage them to carry on completing forms. There is also the possibility of sending out a mini 'roundup' document in the future to give examples of concrete ways in which the data collection has benefitted the Council and the guidelines, so that sentencers can see their efforts are worthwhile.

4. ACCESSIBILITY ISSUES

4.1 Alice Luck-Scotcher and Sharmi Nath updated the subgroup on the measures the team is taking to ensure the Office of the Sentencing Council meets its legal obligations regarding accessibility requirements. These legal requirements were introduced in 2018 and are primarily concerned with digital accessibility. It is required that all our publications are fully accessible to the public, which includes ensuring our publications are produced in accessible formats that assistive technologies, such as screen readers, can use.

4.2 The changes that will affect the documents, in particular analytical documents, will include: ensuring alternative accessible formats of documents and spreadsheets are available; no longer using footnotes in documents; and modifying the design of tables to ensure they are more compatible with assistive technology. Some of the stylistic changes have already been implemented, while the re-design of accessible tables is a more involved piece of work that is underway. In the future, we aim to publish our documents in HTML.

4.3 Jo King raised concerns about whether the accessible formats of the documents would still meet the needs of the Council, and asked that before final decisions are made, the Council may be able to review these changes. It was confirmed that we wouldn't necessarily be looking to replace existing formats e.g. Council documents are currently in a PDF format, but instead we are looking to ensure that in addition to these we do have an accessible format readily available. However, if there are changes made, these will be circulated to the Council for information/comment.

Action: When completed, the Office to provide the Council with the accessible forms of documents/spreadsheets for review.

5. UPDATE ON REVIEW OF THE EXPANDED EXPLANATIONS

5.1 Alice Luck-Scotcher gave an overview of work underway to scope out a review of the expanded explanations. The need for this work was included as an action in the Council's strategic objectives and links with recommendations in the recent equality and diversity report. The main research questions for the work were outlined for the group, which include how expanded explanations are interpreted and applied and the potential impact on sentencing outcomes. The research design was also outlined. This will involve two phases of research using interviews with sentencers to look at existing and amended explanations, and then focus groups to look at new expanded explanations. Work is underway to draft discussion guides for the interviews and members of the group were asked for their support with piloting these materials.

5.2 Discussion focused on whether this research will ask sentencers if they are aware of expanded explanations. It was noted that this work will focus on the content, wording and interpretation of the expanded explanations themselves, complementing and building on the current user testing research which is focusing on whether sentencers are aware of them and how they access them. There are also related questions included in the current data collection.

6. UPDATE ON THE OFFICIAL STATISTICS REVIEW

6.1 Amber Isaac and Charlotte Davidson gave a brief overview of a review of the Council's official statistics and other statistical products which is currently being undertaken. When producing statistical outputs, the Statistics team follows the Code of Practice for Statistics, which sets the standards that producers of official statistics should commit to. The Code provides a framework based on three pillars: Trustworthiness, Quality, and Value, and together, these pillars support public confidence in statistics.

6.2 Amber Isaac explained that the Sentencing Council publishes several different types of publications that include statistics, some of which are purely official statistics publications, while some are hybrid (including a mix of statistical and non-statistical analysis and research). Others are not strictly considered to be official statistics at all. Charlotte Davidson explained that where the official statistics label is not appropriate, statistics producers can still commit to voluntary application of the Code of Practice to be open and transparent to their users.

6.3 The team have conducted a review of our publications and we are now looking to write a statement of compliance. This will set out how we as an organisation are going to demonstrate to our users that we are committed to these principles in our work, where it would be practical to do so. For those areas where full compliance is not possible, we will be transparent about the reasons why and ensure our users are fully informed about the intended use of our outputs. This statement will be published on the Council website and will also be accessible from the Office for Statistics Regulation's website page on [voluntary application](#).

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Confidence and Communication subgroup

Minutes of meeting 17 January 2023

Present: Rosa Dean, Chair
Diana Fawcett
Stephen Leake

OSC: Phil Hodgson
Kathryn Montague
Gareth Sweny

Apologies: Nick Ephgrave

1. Updating the Confidence and Communication strategy and work plan

Phil presented the findings and recommendations from the recently published research reports on equality and diversity and public confidence in the criminal justice system and sentencing. She set out the implications of these findings for the Confidence and Communication Strategy and work plan.

Members agreed with this approach to revising the strategy and that Phil should bring back to the March meeting a revised strategy, identifying priority audiences and actions, and a work plan. They also suggested some actions for inclusion in the work plan.

In the meantime, members asked the communication team to prioritise work identified in relation to disparities in sentencing outcomes.

Action

Phil to revise the Confidence and Communication strategy and work plan for consideration at the March 2023 meeting.

2. Referring to respondents in consultation response documents

Members considered the paper prepared by Vicky Hunt on how we should refer to consultation respondents in response papers.

Members selected option 4 – a hybrid approach, to name all organisations or those responding in a professional capacity, with an option to opt out, and allow individual members of the public the option to opt in.

Action

Phil to report the subgroup's decision to Vicky Hunt and the policy team.

3. Risk

Members reviewed the controls and actions we have put in place to mitigate risk 5 (Lack of confidence in sentencing and the work of the Council) and recommended inclusion of:

Controls: Monitoring social media; daily news items bulletin

Actions: Periodically revisit equality and diversity and public confidence research

Action

Phil to update the risk register and forward to the governance subgroup.

AOB

Phil notified members that:

- the subgroup will meet in March, July and October. Gareth will circulate potential dates once the governance subgroup have set their dates;
- part of her digital role has moved over to the policy team who will in future be managing the maintenance and development of digital guidelines and related tools; and
- Bill will be invited to all future confidence and communication subgroup meetings.