

## 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:

<b>A-</b> High Culpability	<ul style="list-style-type: none"><li>• Detention over a <u>substantial sustained and prolonged</u> period of time</li><li>• Sophisticated and/or planned nature of conduct</li><li>• Offence was committed as part of a group</li><li>• Deliberate targeting of particularly vulnerable victim</li><li>• Use of <u>very significant force violence</u> and /or use of a weapon <u>in the commission of the offence</u></li><li>• Offence motivated by expectation of financial gain</li><li>• Offence committed in context of other criminal activity</li><li>•</li></ul>
<b>B-</b> Medium culpability	<ul style="list-style-type: none"><li>• <u>Some use of force in the commission of the offence</u></li><li>• <u>Threat of violence to victim and/or others</u></li><li>• <u>Use of a weapon to threaten violence</u></li><li>• <u>Some element of planning in the offence</u></li><li>• Other cases that fall between categories A and C because:<ul style="list-style-type: none"><li>○ Factors are present in A and C which balance each other out <b>and/or</b></li><li>○ The offender's culpability falls between the factors described in A and C</li></ul></li></ul>
<b>C-</b> Lower culpability	<ul style="list-style-type: none"><li>• <u>Limited use of force in the commission of the offence</u></li><li>• Limited in scope <u>or and</u> duration</li><li>• Involved through coercion, intimidation or exploitation</li><li>• Offender's responsibility substantially reduced by mental disorder or learning disability</li></ul>

### HARM

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

Category 1	<ul style="list-style-type: none"><li>• Serious <del>distress and or</del> psychological harm caused to the victim and/or others</li><li>• Serious injury caused to the victim</li><li>• Use of torture, humiliation or degrading treatment</li><li>• <u>Victim forcibly restrained</u></li><li>• <u>Kept in a position of extreme discomfort</u></li><li>•</li></ul>
------------	---

Category 2	<ul style="list-style-type: none"> <li>• Some <del>distress and/or</del> psychological harm caused to the victim and/or others</li> <li>• Some injury caused to the victim</li> <li>• Threat of torture</li> </ul>
Category 3	<ul style="list-style-type: none"> <li>• Limited effects of the offence</li> </ul>

**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
<b>Category 1</b>	<b>Starting Point</b> 11 years' custody <b>Category Range</b> 8 – 16 years' custody	<b>Starting Point</b> 7 years' custody <b>Category Range</b> 5 -10 years' custody	<b>Starting Point</b> 5 years' custody <b>Category Range</b> 3 - <del>7</del> 8 years' custody
<b>Category 2</b>	<b>Starting Point</b> 7 years' custody <b>Category Range</b> 5 -10 years' custody	<b>Starting Point</b> 5 years' custody <b>Category Range</b> 3 – <del>7</del> 8 years' custody	<b>Starting Point</b> 2 years <del>6 months'</del> custody <b>Category Range</b> 1- <del>3</del> 4 years' custody
<b>Category 3</b>	<b>Starting Point</b> 5 years' custody <b>Category Range</b> 3 – <del>7</del> 8 years' custody	<b>Starting Point</b> 2 years <del>6 months'</del> custody <b>Category Range</b> 1- <del>3</del> 4 years' custody	<b>Starting Point</b> 1 years' custody <b>Category Range</b> 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](#).

Blank page