

4 May 2023

Dear Members

Meeting of the Sentencing Council – 12 May 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 12 May 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.

There is a planned train strike on 12 May which may affect your journeys. If you are not planning on attending in person please do let me know ASAP so Jessica and I can plan accordingly.

The agenda items for the Council meeting are:

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|---------------------------------------|---------------|
| ▪ Agenda | SC(23)MAY00 |
| ▪ Minutes of meeting held on 31 March | SC(23)31MAR01 |
| ▪ Action log | SC(23)MAY02 |
| ▪ Imposition | SC(23)MAY03 |
| ▪ Motoring offences | SC(23)MAY04 |
| ▪ Perverting the course of justice | SC(23)MAY05 |
| ▪ Blackmail, kidnap etc | SC(23)MAY06 |
| ▪ Domestic homicide review | SC(23)MAY07 |
| ▪ Miscellaneous amendments | SC(23)MAY08 |
| ▪ Business plan | SC(23)MAY09 |

The external communication evaluations for March and April are also included with the papers.

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

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

Best wishes

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

Steve Wade

Head of the Office of the Sentencing Council

COUNCIL MEETING AGENDA

**12 May 2023
Royal Courts of Justice
Queen's Building**

- | | |
|---------------|---|
| 09:45 – 10:00 | Minutes of the last meeting and matters arising (papers 1 and 2) |
| 10:00 – 11:00 | Imposition - presented by Jessie Stanbrook (paper 3) |
| 11:00 – 11:15 | Break |
| 11:15 – 12:15 | Motoring offences - presented by Ollie Simpson (paper 4) |
| 12:15 – 12:45 | Perverting the course of justice - presented by Mandy Banks (paper 5) |
| 12:45 - 13:15 | Lunch |
| 13:15 – 14:15 | Blackmail, kidnap and false imprisonment - presented by Mandy Banks (paper 6) |
| 14:15 – 14:45 | Domestic homicide review presented by Ruth Pope (paper 7) |
| 14:45 - 15:00 | Break |
| 15:00 – 15:45 | Miscellaneous amendments - presented by Ruth Pope (paper 8) |
| 15:45 – 16:00 | Business plan - Presented by Ollie Simpson (paper 9) |

OFFICIAL - SENSITIVE

Sentencing Council

COUNCIL MEETING AGENDA

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Sentencing Council

MEETING OF THE SENTENCING COUNCIL

31 MARCH 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
Beverley Thompson
Mark Wall
Richard Wright

Representatives:

Claire Fielder for the Lord Chancellor (Director,
Youth Justice and Offender Policy)
Elena East for the Lord Chief Justice (Deputy to
the Head of the Criminal Justice Team for the
President of the King's Bench Division)

Observers:

Philippa Mullins, Bail, Sentencing & Release Policy
Team, Ministry of Justice

Members of Office in
attendance:

Steve Wade
Vicky Hunt
Ruth Pope
Ollie Simpson
Jessie Stanbrook

1. MINUTES OF LAST MEETING

1.1 The minutes from the meeting of 3 March 2023 were agreed.

2. MATTERS ARISING

2.1 The Chairman noted that this was the last meeting for Rebecca Crane, after six years as the district judge and then circuit judge member of the Council, and for Nick Ephgrave, who was retiring from the police service. He thanked both Nick and Rebecca for their hard work and valuable contributions to the work of the Council.

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

3.1 The Council discussed the first draft of the immigration guideline for the offences of facilitation. The Council agreed changes to the step one and two factors. At the next meeting the Council will look in detail at the proposed sentence levels.

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

4.1 The Council considered in detail the response from the Justice Committee to the consultation. This covered some of the issues relating to the outline and structure of the guideline discussed at the previous meeting, and so the Council reviewed the decisions made to take account of the Committee's response. The Council went on to consider all the responses relating to the examples and detailed guidance in the guideline, and agreed some changes.

4.2 The Council considered the issue of the impact of the revisions to the guideline, noting that as the revisions are designed to clarify and encourage best practice they were unlikely to lead to substantive changes in sentencing practice.

4.3 It was agreed to publish the revised guideline and a response to consultation in late May to come in to effect on 1 July 2023.

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

5.1 The Council discussed and agreed an updated draft of the imposition of community orders section of the guideline with some minor amendments. The Council discussed the presentation of the list of requirements in the guideline in different formats, and agreed to keep the order the same, with two different formats to be included in the final draft for better accessibility.

5.2 The Council then discussed the content of the draft requirements list in detail and approved the updated information against each with some minor amendments.

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

6.1 The Council considered the draft motoring guidelines as amended post-consultation and made some further minor adjustments to the wording. It also considered an updated assessment of the potential impact of the proposed guidelines.

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SC(23)MAY02 May Action Log

ACTION AND ACTIVITY LOG – as at 4 May 2023

	Topic	What	Who	Actions to date	Outcome
SENTENCING COUNCIL MEETING 3 March 2023					
1	Kidnap and false imprisonment	Judicial members (including Richard Wright/minus Jo King) to participate in a second resentencing exercise using the revised kidnap and false imprisonment guideline	Mandy Banks Judicial members		ACTION CLOSED: results will be presented at the May Council meeting
SENTENCING COUNCIL MEETING 31 March 2023					
2	Pre-Sentence Report Template	Specific members (to be confirmed by Bill) to participate in a meeting to go through the new PSR template for the Probation Central Court Team	Jessie Stanbrook, Jo King and Rosa Dean		ACTION CLOSED: Meeting held on 3 May.

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

12 May 2023
SC(23)MAY03 - Imposition
Jo King
Jessie Stanbrook
Jessie.stanbrook@sentencingcouncil.gov.uk

1 ISSUE

1.1 This paper looks in detail at the levels table section within the 'Imposition of Community Orders' of the Imposition Guideline ('the guideline'), as well as some outstanding questions pertaining to guidance on determining the length of community orders (COs) and operational and supervision periods of suspended sentence orders (SSOs).

2 RECOMMENDATION

2.1 It is recommended that the Council agrees to the various recommendations for the CO levels table section and considers and agrees different options posed.

3 CONSIDERATION

Community order levels table section

3.1 The suggested requirements and corresponding intensity/duration in each of the low, medium and high ranges of the CO levels table has not been updated since their inclusion in the Sentencing Guidelines Council guideline on New Sentences: CJA 2003.

3.2 While the narrative around the levels table states the suggested requirements and corresponding durations are simply 'examples that might be appropriate' and courts have the power to depart from these suggestions, the table alludes to a straight sliding scale of volume/duration of both punitive and rehabilitative requirements according to the level of the CO. Despite this, the SGC guideline included the line "*In all three ranges there must be sufficient flexibility to allow the sentence to be varied to take account of the suitability of particular requirements for the individual offender and whether a particular requirement or package of requirements might be more effective at reducing any identified risk of re-offending. It will fall to the sentencer to ensure that the sentence strikes the right balance between proportionality and suitability,*" alluding to the intention of these suggestions to be used flexibly.

3.3 Members previously expressed a desire to consider how the levels table can encourage greater flexibility and creativity in the imposition of requirements, a suggestion which was strongly echoed in conversations with MoJ Policy teams and Probation.

3.4 The working group recently discussed this and agreed that the levels table should maintain the three levels (low, medium, high) it currently has, particularly given any change to these would require significantly resource intensive work to remove reference to these across other guidelines, and there is no apparent evidence that points to these levels no longer being appropriate.

3.5 Instead, the working group discussed possible adjustments that could be made to the levels table that may encourage sentencers to use greater creativity and flexibility in the imposition of a package of requirements. For example, depending on the needs and risks of the offender, either an imposition of a CO short in length (i.e. 3 months) with a high intensity of requirements (similar to a quick sharp intervention, not dissimilar to the approach in problem solving courts), or a CO long in length (i.e. 3 years) with a low intensity of requirements, may be most appropriate. Encouraging sentencers to consider the breadth of packages of requirements that can be imposed encourages requirements to be imposed after an assessment of the most effective sentence for the particular offender, with the greatest likelihood of the order being completed.

3.6 In line with the approach of encouraging more flexible and creative sentences to align with offender need, I am proposing a number of revisions to the CO levels table section, outlined below.

Number of requirements removal

3.7 The second line in the low range of the current levels table specifies that “*in general, only one requirement will be appropriate, and the length may be curtailed if additional requirements are necessary*”; and the second line in the high range specifies that “*more intensive sentences which combine two or more requirements may be appropriate*”. This arguably unnecessarily limits sentencers in considering effective requirements or packages of requirements that may be effective for a particular offender, and may reduce the sentencers’ ability to address offender need. The seriousness of the offence and the needs of the offender are not necessarily aligned.

3.8 The removal of these lines would allow a court to impose on an offender who has committed a low level offence a low level punitive requirement (e.g. 40 hours UPW) as well as the authority to impose a rehabilitative requirement (e.g. up to 30 RAR days) alongside it so their needs can be addressed through, for example referral to commissioned rehabilitative services, to ensure the most effective sentence and limit the risk of reoffending.

Question 1: Does the Council agree to remove the lines suggesting the number of requirements that are appropriate according to the level of community order?

Seriousness of the offence / Rehabilitative requirements removal

3.9 The first bullet point in the current table under 'suitable requirements might include' reads "*any appropriate rehabilitative requirement(s)*". While it does not suggest any increasing number of days across the three levels, the requirements immediately following it do, which may indicate to some sentencers that rehabilitative requirements should increase in volume with the level of the order in line with the punitive requirements beneath it.

3.10 Rehabilitative requirements however generally address offender needs, which do not necessarily align with the seriousness of the offence. In advice written in 2004 from the Sentencing Advisory Panel to the Sentencing Guidelines Council on the new sentencing framework introduced by the Criminal Justice Act 2003 prior to the first guideline, they alluded to suggested ranges in the levels table focusing only on punitive requirements.

"The non-exhaustive list of examples of requirements that might be appropriate in the three sentencing ranges focus on punishment in the community, although it is recognised that not all packages will necessarily need to include a punitive requirement. There will clearly be other requirements, such as a residence requirement or a mental health treatment requirement that may or may not be appropriate according to the specific needs of the offender. In addition, when passing sentence in any one of the three ranges, the court should consider whether a rehabilitative intervention such as a programme requirement or a restorative justice intervention might be suitable as an additional or alternative part of the sentence."
(para 77, page 22)

3.11 It is clear that requirements being imposed for the purposes of punishment should generally increase in duration/intensity across the levels of CO depending on the seriousness of the offence, however this is not the case for rehabilitative requirements. Therefore, the relevant text is proposed to be amended as per the below (proposed additions highlighted):

"If imposing for the purposes of punishment, suitable requirement ranges might include:"

3.12 For the same reasons, the working group agreed that it would be more suitable for reference to rehabilitative requirements to be removed from the bulleted list of suggested duration/intensity and instead be referenced in narrative across all three levels, with guidance reminding sentencers that requirements imposed for the purpose of rehabilitation should align with offender need.

If imposing for the purposes of punishment, suitable requirement ranges might include:

- 40 – 80 hours of unpaid work, etc

- 80 – 150 hours of unpaid work, etc

- 150 – 300 hours of unpaid work, etc

Any requirement/s imposed for the purpose of rehabilitation should be determined by and aligned with the offender's needs. The court may benefit from Probation's assessment of the offender's needs and recommendation of appropriate rehabilitative interventions.

Question 2: Does the Council agree to specifying that the list under 'suitable requirements may include' is specific to requirements being imposed for the purpose of punishment?

Question 3: Does the Council agree, accordingly, that reference to 'any requirements imposed for the purpose of rehabilitation' should be removed from the bulleted list and instead be referenced below, across the three levels?

Introductory narrative

3.13 Currently the first line of the introductory narrative within the levels table section reads: "*The seriousness of the offence should be the initial factor in determining which requirements to include in a community order.*"

3.14 In line with the above considerations and reasons, I propose that while the seriousness of the offence should be the initial factor in determining the level of the CO and the corresponding ranges of requirements, it should not be the initial factor in determining which requirements, particularly rehabilitative requirements, to include.

3.15 Therefore, I propose that this line is amended to the below, and that it is brought down further into the section.

The seriousness of the offence should be the initial factor in determining the requirement (and/or fine) imposed for the purpose of punishment. Any requirement/s imposed for the purpose of rehabilitation should be determined by and align with the offender's needs.

3.16 I have also proposed additions to the rest of the introductory narrative in the levels table section above and below the line above to go further in encouraging sentencers to be flexible when considering the potential package of requirements on a community or SSOs. These additional lines are highlighted.

~~The seriousness of the offence should be the initial factor in determining which requirements to include in a community order.~~ Offence-specific guidelines refer to three sentencing levels within the community order band based on offence seriousness (low, medium and high).

The culpability and harm present in the offence(s) should be considered to identify which of the three sentencing levels within the community order band (low, medium and high) is appropriate.

Courts should impose community orders flexibly for each offender according to their specific circumstances, including consideration of their risks and needs.

The seriousness of the offence should be the initial factor in determining the requirement (and/or fine) imposed for the purpose of punishment. Any requirement/s imposed for the purpose of rehabilitation should be determined by and align with the offender's needs.

In determining the most effective requirement or combination of requirements for a particular offender, consideration should be given to the broad range of requirements available and appropriate length of the order. Guidance on determining the length of a community order is given below the table.

The levels table below offers non-exhaustive examples of the intensity of requirements that may be appropriate in each level of community order.

See below for ~~non-exhaustive~~ examples of requirements that might be appropriate in each.

~~At least one requirement **MUST** be imposed for the purpose of punishment and/or a fine imposed in addition to the community order unless there are exceptional circumstances which relate to the offence or the offender that would make it unjust in all the circumstances to do so.⁶~~

~~A full list of requirements, including those aimed at offender rehabilitation, is given below.~~

3.17 To remind members, some of the information with strikethrough above has previously been agreed to be moved to the previous section on 'Requirements' prior to the 'Community Order Levels' section so are not necessarily being removed from the guideline; in particular the lines "*At least one requirement must be imposed for the purpose of punishment and/or a fine imposed must be imposed, unless there are exceptional circumstances which relate to the offence or the offender that would make it unjust in all the circumstances to do so.*" A full version of the whole CO section, without the list of individual requirements, is included in **Annex A** to provide context to this decision.

Question 4: Does the Council wish to make any amendments to the proposed new drafting of the Community Order Levels Section?

Amendments to punitive requirements in line with data

3.18 As mentioned above, the requirements and their suggested duration/intensity (i.e. number of unpaid work hours, curfew ranges and length of exclusion requirement) in the current guideline are exactly the same as they were in the Sentencing Advisory Panel's third Advice to the Sentencing Guidelines Council in 2004 and subsequent 'New Sentences: Criminal Justice Act 2003' guideline published in December 2004.

3.19 While there is no evidence that suggests that these suggested hours/durations need to be reviewed, as it has been nearly 20 years since their inclusion, it would be remiss to not attempt to understand whether these levels are still appropriate. For example, while sentencing is not the primary cause of this, there is currently a large unpaid work backlog. As an illustration, data published via a PQ in July 2022 shows that 386,845 unpaid work hours 'expired' on SSOs in 2021, and even prior to the pandemic (which would have been the reason that a lot of these hours could not be worked) 167,071 hours in 2017, 143,262 hours in 2018 and 91,588 hours in 2019 expired without being worked. [The current 'backlog' of unpaid work hours on COs is not publicly available]. It would be useful for Council to consider whether amending the suggested hours of unpaid work in the table would be of value. I am waiting for access to data that will show the proportion of durations/hours of these requirements and if any amendments are proposed as a consequence of these, I will bring this back to Council at a later date.

Curfew requirements

3.20 The PCSC Act brought in changes to the maxima for intensity and duration of curfew requirements. Amendments were made to the current version of the guideline to reflect these statutory changes. However, in the October meeting, members discussed 4 different options for amendments to the suggested intensity/duration for curfew requirements in the CO levels, but Council did not feel it was appropriate to make any amendments outside of the review.

3.21 In this discussion in October about the options presented, members had a number of concerns. First, there was a concern that a proposal for an ability for magistrates' courts to be able to impose a 2 year curfew on a CO (for example) risked the sentence being more onerous than a custodial sentence, which would not be intended. There was another concern that the guideline should not be bringing the curfew duration in line with the exclusion requirement automatically, and a concern that there were only very few circumstances where a 20 hour curfew would be appropriate.

3.22 In this discussion, members considered but rejected the possibility of a 'very high' range, and considered but rejected keeping the table the same but providing in narrative that in exceptional circumstances courts could go over the proposed levels in the table, as some felt there was a risk that this would affect the robustness of the table and allow the possibility for courts to disregard its contents.

3.23 Out of the 4 options presented in that meeting, a majority of members expressed a preference for the fourth option, which was keeping the ranges mostly the same other than extending the top of the highest range, so that the increased number of hours and intensity

of the curfew requirement would only apply to cases that warranted the highest range of CO. However, it was proposed that suggesting up to 20 hours for low and medium ranges, even though the law allows for it, may be too intense, and that there may be further considerations that would warrant making small adjustments to that option.

3.24 The policy background within the published Explanatory Notes to the Police, Crime, Sentencing and Courts Act sets out that:

- the purpose of the amendment from 16 to 20 hours curfew was “*to allow for a curfew to have a greater impact on specified days*”;
- the purpose of specifying the maximum of 112 hours in any period of 7 days was to “*allow for the total hours falling in a seven-day period to be used more creatively and flexibly by decision makers, enabling them to target what could be considered ‘leisure days’ for more punitive hours than is currently available to them*”; and that
- in regard to the increase of the maximum duration of a curfew requirement to two years, it would “*increase the punitive weight of a curfew requirement, but also has the potential to support rehabilitation by providing a longer period during which some of the positive effects of curfew could be established, such as deterring criminal associates*”;
- and that it is “*envisaged that courts will be able to use longer curfews in particularly serious cases, where a sentence served in the community may be more effective in preventing future re-offending, alongside appropriate consideration of a custodial sentence.*”

3.25 With all this in mind, the recommendation is an amended version of Option 4 presented at the October Council meeting, with the following adjustments:

- Changing duration from specifying a range (e.g. currently “for a few weeks...for 2-3 months...for 4-12 months”) to using the words “up to” to give more flexibility and broader range to sentencers to define a length of curfew that is most suitable for the offender and their circumstances;
- Slightly increasing the specified duration with the proposal of ‘up to’, and the increased maximums; in mind; and
- Maintaining 16 hours as the intensity of hours in the low and medium ranges and only changing this to 20 hours in the high range.

3.26 The recommendation for the curfew requirement in the updated levels table is therefore below in highlight; as **option 1**:

Low	Medium	High
<i>Curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks)</i>	<i>Curfew requirement within the middle range (for example up to 16 hours for 2 – 3 months)</i>	<i>Curfew requirement for example up to 16 hours per day for 4 – 12 months</i>
Curfew requirement up to <u>16 hours</u> per day for <u>up to 4 weeks</u>*	Curfew requirement up to <u>16 hours</u> per day for <u>up to 6 months</u>*	Curfew up to <u>20 hours</u> per day for up to <u>24 months</u>*
*Maximum of 112 hours in any period of 7 days.		

3.27 It is relevant to note that the PSCS Act also brought into force the power for a responsible officer to vary a curfew requirement as to the start/end times of the curfew period or to the change in residence of the offender (to such an extent they do not undermine the weight or purpose of the requirement imposed by the court). The primary purpose of this was to reduce the burden on courts in the case of a change in circumstances of the offender that mean that the imposition of the original curfew requirement was no longer suitable (e.g. new employment or moving house). Courts may have this in mind when considering the personal circumstances of the offender in determining the correct duration and intensity of a curfew requirement.

3.28 While the Council may be concerned that a high range CO with the option of up to 24 months curfew may be taken up in more than just the most serious cases, the proposed new narrative on encouraging the courts to be flexible in the imposition of requirements and sentence seeks to balance this out.

3.29 If the Council felt that the risk that a curfew requirement of e.g. 24 months would be imposed too regularly if it was included in the high range in the levels table, an alternative option could be specifying that a curfew between 12-24 months will only be suitable in particularly serious cases; this amendment to the above recommendation highlighted below, as **option 2**:

Low	Medium	High
<i>Curfew requirement within the lowest range (for example up to 16 hours per day for a few weeks)</i>	<i>Curfew requirement within the middle range (for example up to 16 hours for 2 – 3 months)</i>	<i>Curfew requirement for example up to 16 hours per day for 4 – 12 months</i>
Curfew requirement up to <u>16 hours</u> per day for <u>up to 4 weeks</u>*	Curfew requirement up to <u>16 hours</u> per day for <u>up to 6 months</u>*	Curfew up to <u>20 hours</u> per day for up to <u>12 months</u>, or <u>12-24 months in particularly serious cases</u>*
*Maximum of 112 hours in any period of 7 days.		

3.30 A possible disadvantage of this second option is that the court may feel less inclined to take advantage of the ability to be very flexible with their sentence. For example, option 2 may restrict courts from being able to impose a curfew requirement of just 2 hours a day for 2 years (in the case of the offender having a risk of offending at a specific time of day), but Council may believe that on balance this option has less risk of increasing curfews in cases that would not otherwise warrant such a long duration.

3.31 If the Council felt it necessary, the corresponding impact on sentencing between these two options could be considered in road testing.

Question 5: Does the Council agree with the recommended amendments to the curfew requirement duration and intensity in the levels table (option 1)?

Operational and supervision period & remand (SSO section)

3.32 The working group has discussed a suggested new section which provides guidance on determining the operational and supervision periods for SSOs, and how to consider time remanded in custody or on qualifying curfew before imposing an SSO. In the last working group, members agreed with most of this new section with the exception of a few lines, for which it was felt it would be better to have a Council decision.

3.33 These lines, highlighted below, have been slightly updated since the working group discussion. Regarding the line in **green**, some members had concerns that the value of the inclusion of this line is outweighed by the risk that this sentence alludes to activation of the custodial term not being the default response to breach, which Council may not want to encourage given the existing line “*sentencers should be clear they would have imposed an immediate custodial sentence were the power to suspend not available*”.

3.34 Concerns about the inclusion of the **yellow** line were around the line alluding to a SSO needing to have requirements by default, and that an SSO may not be punitive enough without requirements, despite it being a custodial sentence, which may be in conflict with the earlier agreed sentence in the SSO

3.35 section: “*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, even if suspended, is itself both a punishment and a deterrent.*”

3.36 In the last Council paper, I presented data that showed that SSOs already have more requirements on average than COs, which was agreed not to be the intention of the guideline. This line may risk continuing this trend, and lead to SSOs with more onerous requirements. On the other hand, the Council may want to restrict SSOs being imposed

without requirements and ensure that in these cases they have a longer operational period to ensure they are punitive enough.

Determining operational and supervision periods of a Suspended Sentence Order

The court making a suspended sentence order must specify the operational period and supervision period of the order.

Operational period	<p>The length of time for which a sentence is suspended, during which the offender will be liable to go to custody to serve the suspended custodial term if they commit another offence.</p> <p>This period begins on the day on which the order is made and must be at least 6 months and not more than two years.</p> <p>The length of the operational period should be tailored to the particular circumstances of the case. Non exhaustive factors which may be relevant when determining length of the operational period are:</p> <ul style="list-style-type: none"> • the length of the custodial term to be suspended • the nature and duration of any requirements of the order and resulting supervision period • the risks of reoffending or harm <p>If the offender breaches the suspended sentence order, the court has the power to extend the operational period should new or exceptional circumstances make it unjust to activate the custodial term in all the circumstances. Please see the breach of suspended sentence orders (link) guideline for further information.</p> <p>Where the court imposes a suspended sentence order with no requirements, the sentence may be made more punitive by a longer operational period.</p>
Supervision period	<p>The length of time for an offender to complete any requirements of the suspended sentence order, during which the offender will be liable to go to custody to serve the suspended custodial term if they fail to comply with any of the requirements.</p> <p>This period begins with the day on which the order is made and must be at least 6 months and not more than two years, or the operational period if this is less than two years.</p> <p>Non exhaustive factors which may be relevant when determining the supervision period include:</p> <ul style="list-style-type: none"> • the length of time required to complete any requirements • the length of time required for rehabilitative requirements to be most effective (please consult Probation if necessary) <p>If the suspended sentence includes an unpaid work requirement, the supervision period for this requirement continues until the offender has completed the number of hours in the requirement but does not continue beyond the operational period.</p>

Time remanded in custody or on qualifying curfew before imposing a suspended sentence order

The court imposing a suspended sentence order should determine the length of the suspended custodial term without reference to any time spent in custody on remand or on a qualifying curfew. When explaining the effect of the sentence, the court should indicate that the time remanded in custody or on a qualifying curfew would be deducted in the event of breach and activation of that sentence.

If an offender has spent a significant proportion of the custodial term to be suspended on remand or on a qualifying curfew, the court must consider whether it would be appropriate to impose a suspended sentence order at all, as there would be limited effect of the custodial term in the case of activation. Depending upon the circumstances of the case, immediate custody (which may result in immediate release due to time served) or a community order or discharge may be more appropriate, particularly where there is a good prospect of rehabilitation.

Question 6: Does the Council have any concerns that the inclusion of the **green line will make courts think that the sentence will not be activated on breach, and as such should be amended, or removed?**

Question 7: Does the Council have any concerns that the **yellow line may increase the number of requirements on SSOs, and as such should be amended, or removed?**

Question 8: Does the Council approve this new section within the SSO section?

Determining the length of a community order & remand

3.37 Members of the working group agreed that it would be beneficial to have a similar section as the above in the CO section. As such, I have drafted the below with Jo's support.

Determining the length of a Community Order

In general, courts should impose the shortest term commensurate with the seriousness of the offence. The court imposing a community order must specify the length of that order by specifying the end date by which all requirements in it must have been complied with. This end date must not be more than 3 years after the date of the order.

The court should specify a length of an order which reflects both the seriousness of the offence and the length of time the requirements being imposed necessitate (within which a consideration of the offender's individual circumstances will be necessary).

Time remanded in custody or on qualifying curfew before imposing a community order

The court imposing a community order may take any time spent in custody on remand or on a qualifying curfew into account when determining any restrictions on liberty as part of the community order.

Question 9: Does the Council approve this new section in the CO order section?

3.38 Stephen has suggested an addition to this section in line with the judgments in the following cases: R. v. Rakib [2011] EWCA Crim 870; R. v. Pereira-Lee [2016] EWCA Crim 1705; R. v Coates [2022] EWCA Crim 1603; R. v Coates [2022] EWCA Crim 1603, which I have provided a slightly reduced version of below. This would follow directly on from the above final line in the 'Time remanded in custody' section.

However, the court is not precluded from making a community order even if the period of time to be taken into account is equal to, or exceeds, the shortest term of custody commensurate with the seriousness of the offence(s). The court must consider all the purposes of sentencing in its determination. Accordingly, any period spent in custody on remand or a qualifying curfew has to be balanced with the various elements of the potential community order, including both the punitive and rehabilitative elements. A community order might be particularly appropriate where there are great potential benefits for the offender, and for the public. Time spent in custody on remand or on a qualifying curfew may, depending on the length of time and the seriousness of the offence, be an exceptional circumstance relating to the offender which would make it unjust for the court to impose a requirement for the purposes of punishment on a community order. This will be the case where the period of time is equal to or exceeds the shortest term of custody commensurate with the seriousness of the offence(s).

3.39 While this is a helpful addition which supports courts in taking a wider range of specific circumstances into account, the Council may feel that it is a long paragraph that may not apply to very many cases, given it's less likely for offenders who have served periods of time in custody on remand or on qualifying curfew to be considered for a CO. The current updated version of the guideline is approximately 15 pages long as written in Microsoft word, without counting the requirements table at the end. While there will indeed be formatting that will reduce this length when it is eventually put in HTML on the website, the Council may feel that this information is too limited in relevance to warrant inclusion.

Question 10: Does the Council wish to include the suggested lines on remand?**4 EQUALITIES**

4.1 There are no apparent equalities issues for the specific decisions set out in this paper. Equalities will be considered fully when bringing back the first full draft.

5 IMPACT AND RISKS

5.1 There are no discernible impacts or risks of the decisions set out in this paper. More general impacts and risks for the updated version of the guideline as a whole will be considered when bringing back the first full draft to Council.



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

12 May 2023
SC(23)MAY04 – Motoring offences
TBC
Ollie Simpson
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1 ISSUE

1.1 Amending the proposed dangerous driving guideline given its potential effect on sentencing practice.

2 RECOMMENDATIONS

2.1 That Council amends the proposed guideline by:

- removing “circumstances of offence created a high risk of serious harm to others” from category 1 harm; and
- adjusting sentence levels downwards in all categories of the sentence table except A1.

3 CONSIDERATION

3.1 As discussed at the meeting on 31 March, our assessment is that the proposed dangerous driving guideline (**Annex A**) could increase sentencing severity for this offending which, due to its frequency (4,400 offenders sentenced in 2021), could have a significant impact on prison places. Given there was no objective to increase severity for this offence (compared to, for example, offences where the statutory maximum has increased), Council considered options for adjusting the guideline, with a view to assessing whether amendments could mitigate or eliminate any unintended impacts.

3.2 We have now undertaken an internal resentencing exercise based on the amendments discussed in March. This involved a total of 40 transcripts, made up of 21 which we had analysed previously and 19 new transcripts which we were analysing for the first time. We resentenced using a new draft of the guideline which reflected two changes (to a) the harm table and b) the sentence levels) and can disaggregate the estimated difference in impact of each change individually (although the disaggregated impacts are based on an analysis of the 21 “old” transcript cases which had previously been resentenced using the earlier draft).

3.3 Simple dangerous driving is somewhat of an outlier in this suite of motoring offences, in that there is not necessarily an obvious “hook”, like death or injury, for detection and enforcement. The standard of driving in cases which *are* detected is therefore likely to be particularly egregious, and often part of a police pursuit for an unrelated purpose. This may be why so many cases are committed to the Crown Court (80% in 2021), and why the custody rate is so high (41%, with a further 38% suspended in 2021).

Amending the harm table

3.4 The guideline on which we consulted included a category 1 harm factor “circumstances of offence created a high risk of serious harm to others”. This arguably double-counts culpability as there is usually something inherent in high culpability dangerous driving which creates a high risk of serious harm - resulting in too many offences being placed by default in the top, A1 box.

3.5 In dangerous driving cases there is often – almost by definition – no actual injury or damage but it does happen, even if at a relatively low level. Of the 40 cases used in the latest resentencing exercise, 15 involved cases of actual damage or harm, most often damage to a wall or another vehicle.

3.6 Making this change to the harm table alone, without touching sentence levels, would bring a significant number of cases down from category A1 to A2 i.e. a starting point of 1 year rather than 18 months. This would result in an impact of around 130 additional prison places, compared to the 350 we estimate would be needed without making any changes to the consultation draft.

Amending sentence levels

3.7 The sentence levels consulted on were:

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

3.8 We discussed various options for adjusting sentence levels downwards in March. Council was keen to retain the proposed sentence levels for the most serious category, and did not want the lowest range to extend to a fine. With the further parameters of no custodial sentences of under 6 months forming starting points or range boundaries, and a maximum penalty of two years, there are fairly limited options but, in consultation with Rebecca, we used the following levels in resentencing:

	Culpability		
	A	B	C
Harm 1	<p>Starting Point: 1 year 6 months Category range: 1 year – 2 years</p>	<p>Starting Point: 36 weeks Category range: High level community order – 1 year 6 months</p>	<p>Starting Point: High level community order Category range: Medium level community order – 36 weeks</p>
Harm 2	<p>Starting Point: 36 weeks Category range: High level community order – 1 year 6 months</p>	<p>Starting Point: High level community order Category range: Medium level community order – 36 weeks</p>	<p>Starting Point: Medium level community order Category range: Low level community order – high level community order</p>

3.9 Making this change by itself, but not altering the harm table as set out above, would result in an estimated impact of 320 prison places, only a modest change to the estimated impact of the consultation-stage version. This is because many cases would stay as category A1, where sentence levels have not changed.

3.10 However, by combining the two changes i.e. seeing more cases classified as A2 *and* having the sentence levels for those cases reduced reduces the projected impact significantly. Under this revision of the guideline, the prison place impact is estimated to be fewer than five places. We would expect average custodial sentence lengths to decrease a little (the transcript ACSLs went from 11 to 10 months), but that is offset by the fact that we expect to see more people receive immediate custody as opposed to community orders.

Question 1: does Council agree to make both the change to the harm table and the change to sentence levels set out above?

4 IMPACT AND RISKS

4.1 Impacts in relation to dangerous driving are discussed above. The final resource assessment is at **Annex B**. This draft assumes Council agrees with the recommendation

above in relation to dangerous driving, and is still subject to change following consideration by MoJ analysts.

4.2 For other offences in this suite of guidelines, we estimate that the new causing death by dangerous driving guideline could result in a requirement for up to around 300 additional prison places, 100 of which are the result of last year's change to 2/3rds release for sentences over seven years. The guideline for causing death by careless driving when under the influence of drink or drugs is estimated to result in around 10 additional prison places, some of which (less than half) can be attributed to the change in release policy.

4.3 The new guideline for causing death by careless driving is predicted to increase average custodial sentences by a month, resulting in a potential requirement of up to 20 additional prison places. And the new guideline for causing serious injury by dangerous driving may result in a requirement for up to around 130 additional prison places, mainly due to an increase in the average final custodial sentence length of 6 months (from 2 years 2 months to 2 years 8 months).

4.4 Other guidelines involve offences with very low volumes and any impact is likely to be negligible, or where the impact is unquantifiable (such as with causing serious injury by careless driving, which is a new offence).

4.5 If Council agrees with the approach set out above for dangerous driving, this would mean the full suite of motoring guidelines has an estimated quantified impact of 470 prison places (100 of which are due to the new release provisions for custodial sentences over seven years).

4.6 In relation to dangerous driving, we will want to explain why we have amended sentence levels downwards from the levels consulted on. Some may also question why the starting point option of 12 weeks custody available in the 2008 guideline for middle box cases ("Incident(s) involving excessive speed or showing off, especially on busy roads or in built-up area; OR single incident where little or no damage or risk of personal injury but offender was disqualified driver") might now be met with a starting point of a high level community order if classed as a B2 offence.

4.7 In response, we can say that the guideline was estimated to have an unintended impact on sentencing practice and explain that the new and old guidelines are not directly comparable, given the new one is for use across both magistrates courts and Crown Court and the culpability table has been fundamentally reworked.

4.8 If Council is content with the changes proposed above and the current estimated impacts, we will circulate the consultation response document in the coming weeks, with the

aim of publishing the guidelines in mid-June and an in-force date of 1 July (roughly a year after the revised maximum penalties for causing death by dangerous driving came into effect). If Council would like us to undertake further work on impacts, we would need to push this timetable back to publish later in the summer for a 1 October commencement date.

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Sentencing Council meeting:
Paper number:

12 May 2023
SC(00)MAY05 - Perverting the Course of Justice and Witness intimidation

Lead Council member:
Lead official:

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1 ISSUE

1.1 This is the final meeting to sign off the guidelines ahead of publication of the definitive perverting the course of justice (PTCJ) and revised witness intimidation guidelines. This meeting will focus on the final resource assessment. On the current timetable the guidelines will be published in the summer and come into force in the autumn.

2 RECOMMENDATION

2.1 At today's meeting the Council is asked:

- To consider and agree the final resource assessment
- To sign off the guidelines for definitive publication

3 CONSIDERATION

3.1 To summarise, a consultation was held on the draft guidelines during Spring 2022. The proposed draft guidelines were generally well received, so changes agreed by the Council post consultation have been reasonably modest. The finalised guidelines are attached at **Annexes A and B**. The changes that have been made are:

Witness Intimidation -Annex A

High culpability

- First factor amended to read 'actual or threat of violence' - deleting the words 'to witnesses and/or their families'
- Deleting the factor 'deliberately seeking out witnesses'
- 'Breach of bail conditions' factor reworded to 'breach of specific bail conditions and/or protection notice imposed to protect a witness'

- New factor of 'breach of court order (see step five on totality when sentencing more than one offence)'

Low culpability

- First factor reworded to 'contact with witness unplanned and limited in scope and duration'

Harm - category one

- First factor - the words 'and/or workplace' added so it reads 'contact made at or in vicinity of victim's home and/or workplace'
- Second factor - the words 'and/or impact' added so it reads 'serious distress and/or impact caused to victim'

Harm - category two

- First factor - the words 'and/or impact' added so it now reads 'some distress and/or impact caused to the victim'

Harm – category three

- First factor - the words 'and/or impact' added so it now reads 'limited distress and/or impact caused to the victim'
- New factor added of 'limited impact on administration of justice'

Aggravating factors

New factors added:

- 'Offence committed in a domestic context'
- 'Offence committed in custody'
- 'Child present and/or child caused serious distress'
- 'Use of social media' factor - deleted

Sentence levels

- 3C - increase from Low Level Community Order - 6 months custody with a starting point of Medium Low Community Order – to Medium Level Community Order to 6 months custody with a starting point of High Level Community Order

PTCJ -Annex B

High Culpability

- New factor added of 'breach of trust or abuse of position or office'

Low culpability

- New wording of 'or as a result of domestic abuse' added to the fourth factor so it reads 'involved through coercion, intimidation or exploitation or as a result of domestic abuse'

Harm- category three

- First factor reworded to 'limited distress caused to an innocent party'
- New factors added of 'limited impact on the administration of justice' and 'limited delay caused to the course of justice'

Aggravating factors

- New factor of 'offence committed in a domestic context' added

Sentence levels

- In 3C – increase from a Medium Level Community order to 6 months custody with a starting point of a High Level Community order to a High Level Community Order to 9 months custody with a starting point of 6 months custody

Question one: Are Council content to sign off the definitive guidelines for publication?

Resource Assessment

3.2 It is difficult to estimate the impact of the definitive guidelines for these offences. However, it is anticipated that the guidelines will improve consistency of sentencing, and not lead to any notable changes in sentencing severity. The full definitive resource assessment for these offences can be found at **Annex C**.

3.3 For perverting the course of justice, estimating the impact is made more difficult by the varied nature of the underlying offences and the somewhat limited information in the transcripts analysed, therefore, it is important to note that these findings should be treated as indicative only. However, using the information available we anticipate that sentences using the guideline will remain broadly in line with the outcomes given by sentencers prior to the guideline.

3.4 Given that all of the starting points for perverting the course of justice are custodial, it is anticipated that at least some offenders currently receiving a fine or community order would receive a custodial sentence under the new guideline. However, this only affects a small proportion of offenders (4 per cent received a fine or community order in 2021 which

equates to around 20 offenders). In addition, eight of the nine categories in the sentence table for this offence have a starting point which is eligible for suspension. Thus, any impact on prison and probation resources is expected to be limited. The transcript analysis also showed some changes in the lengths of custodial sentences expected to be given, with some increases and decreases in sentences under the new guideline compared with the original sentences imposed. However, these were offset by each other and so overall, the average custodial sentence length is expected to remain broadly similar under the guideline. Therefore, we anticipate that there will be limited impact on prison and probation resources.

3.5 For witness intimidation, the transcripts analysed did not always include all of the information required to accurately assess the level of culpability and harm. Additionally, very few transcripts were analysed for those sentenced to fines or community orders (around a third of cases are sentenced at the magistrates' courts). Therefore, there is insufficient evidence to determine if sentence outcomes given under the new guideline would change for offenders currently receiving non-custodial sentences. However, these represent a small proportion of offenders (around 10 per cent received fines or community orders in 2021- which equates to around 20 offenders). Thus, it is expected that these cases would have a limited impact on prison and probation resources.

3.6 For custodial sentences, based on the information provided, it is also anticipated that sentencing levels for witness intimidation will remain relatively stable under the new guideline. There were some changes (increases and decreases) in the lengths of custodial sentences given in the transcript analysis, but overall, these were offset by each other. Thus, it is anticipated that the average custodial sentence length will remain broadly stable. As such, it is anticipated that any impact the guideline has on prison or probation resources would be limited.

3.7 During the consultation stage, research was conducted with sentencers to understand how the guidelines will be applied in practice. Sentencers taking part noted that the guidelines helped them to determine the category of culpability and harm to apply for the scenarios they were presented with. These were generally applied consistently.

Question two: Does the Council have any questions or concerns on the resource assessment?

4 IMPACT AND RISKS

5.1 It is thought that publication of these guidelines will be welcomed- there is currently no guideline for PTCJ and only limited guidance for witness intimidation in the MCSG.



Sentencing Council meeting:
Paper number:

12 May 2023
SC(23)MAY06 - Blackmail, kidnap, false imprisonment and threats to disclose private sexual images

Lead Council member:
Lead official:

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1 ISSUE

1.1 This is the fifth meeting to discuss the offences and will focus on draft guidelines for kidnap and false imprisonment and a revised version of the disclosing private sexual images guideline. 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 second re sentencing exercise on the draft combined kidnap and false imprisonment guidelines
- To consider and agree a revised version of the disclosing private sexual images guideline

3 CONSIDERATION

Kidnap and false imprisonment offences

3.1 At the last meeting the results of the first resentencing exercise on the combined guideline were discussed, and changes were agreed to try to resolve the issues highlighted by the exercise- namely that sentences were considerably higher using the draft guideline. It was agreed that a second resentencing exercise would take place with Judicial members- to test a revised version of the combined guideline.

3.2 This exercise has taken place and the results have been analysed, the results of the exercise are attached at **Annex A**, and the guideline used in the exercise is attached at **Annex B**. Six different scenarios were tested, three kidnap and three false imprisonment cases- and these scenarios covered a range of offending- from very serious cases to less serious ones.

3.3 The results show that the changes made to the guideline have largely had the desired effect- sentences using the revised version were much closer to the sentences

imposed in the actual cases. Council may recall from the first sentencing exercise that nearly all the sentences were higher, in some cases considerably so, than the actual sentence imposed in the case.

3.4 Notably, in the first exercise, nearly all scenarios across both offences were categorised as culpability A, high culpability, despite cases ranging in levels of seriousness. This seemed primarily due to issues around the wording of the factor relating to violence and use of a weapon- so at the last meeting changes were agreed to remedy this problem.

3.5 This time, cases were more appropriately categorised across the scenarios- the most serious cases for kidnap and false imprisonment, scenarios A and D were still categorised as culpability A, but the less serious cases, scenarios B, E and F were categorised as culpability B or C.

3.6 The only scenario which was sentenced considerably higher than in the original case was scenario C. However, it is arguable that the original case was lightly sentenced, given that a brick was used to hit the victim with, he was kicked, beaten and had suspicious liquid sprayed on him, with threats to cut open his arteries. All of the participants categorised the case as A2- which has a range of 5-10 years with a starting point of seven years, so the actual sentence given in the case (5 years) was within the range- albeit at the very bottom. Participants did note that it was on the cusp of A/B or at the very bottom of culpability A. So although the sentence using the guideline was some way off from the original sentence, for only one case given its particular facts it is suggested that the draft guideline should not be amended.

3.7 However when amendments such as additional aggravating factors or increases to the ranges are considered in the discussion below, the results of this case should be borne in mind- and may be a reason why further amendments which could increase sentences may not be appropriate.

3.8 Generally, the improvement to the categorisation of cases was seen even with retaining multiple culpability A factors such as 'offence motivated by expectation of financial gain' and 'offence committed in the context of other criminal activity.' At the last meeting it was debated whether or not these factors should be moved to step two- the thought being that possibly there were too many factors within culpability A, which might have been contributing to the problem. It was decided on balance however to retain them, as these are factors often present in the more serious kidnap cases.

3.9 One of the issues the Council has also been considering was whether or not combining the kidnap and false imprisonment guidelines together would inflate sentences for false imprisonment. In the last sentencing exercise sentences increased so much for all cases that it wasn't possible to see whether or not sentences increased more for false imprisonment cases than for kidnap. Considering the results of this very small sample from

the second exercise it seems false imprisonment cases haven't increased much higher than the kidnap cases- but there **may** be slightly higher increases- with such a small sample of cases it is difficult to draw any firm conclusions. It is proposed that the Council continues with the combined version of the guideline and seeks views during the consultation on its structure.

3.10 Overall it is suggested therefore that the changes made to the combined guideline since the last meeting have largely had the desired effect, with the caveat that only a small sentencing exercise was conducted so the results are indicative only. Subject to considering some other minor issues highlighted in the second exercise discussed below, the Council are asked to agree that this guideline can form the basis for consultation.

Question 1: Does the Council agree with the recommendation to proceed to consultation with this version of the combined guideline- subject to some minor changes discussed below?

3.11 During the second resentencing exercise two participants mentioned that there may be a need for an aggravating factor of vulnerable victim, as the high culpability factor of 'deliberate targeting of particularly vulnerable victim' may not apply to all vulnerable victims, especially if there was no deliberate targeting. The suggestion therefore is that there is a new aggravating factor of 'vulnerable victim (where not taken into account at step one)'. But as noted above- there is a concern about adding too many additional aggravating factors- and potentially increasing sentences using the guideline, particularly as no new mitigating factors were suggested by participants. As step two is exhaustive courts could still take this into account if appropriate, without adding it as a factor.

Question 2: Does the Council agree not to add a new aggravating factor of vulnerable victim?

3.12 There was also a suggestion by one participant that the age of a victim could be an explicit aggravating factor. This presumably could be either due to being young- or elderly. Again, for the reasons set out above- it is recommended that an additional factor is not added.

Question 3: Does the Council agree not to add an aggravating factor specifically relating to age?

3.13 One participant in the exercise suggested that threats to family members should be

an aggravating factor. There previously was a reference of threats to others at step one- as the first factor in culpability B was 'threat of violence to victim and/or others' – but it was amended at the last meeting to 'very significant violence threatened'. The factor could be further amended threats to 'very significant violence threatened to victim and/or others'. Or there could be a new aggravating factor of 'threats to family members'. Another participant questioned whether filming of the offence should be added as an aggravating factor- but there is perhaps less of a strong argument for adding this factor. For the reasons set out above, it is suggested that this factor is not added – step two is non exhaustive so courts could take this into account without adding it as a factor.

Question 4: Does the Council wish to amend the step one factor to incorporate threats to others- or add a new aggravating factor of 'threats to family members'? Does the Council agree not to add a new aggravating factor of 'filming of the offence'?

3.14 One participant questioned whether the aggravating factor of 'offender involves others in the conduct' needed further thought- whether it could apply to others joining in with the offenders, others being adversely affected by the offending, or both. Now that there are two new factors regarding group offending at step one- 'leading role in group offending' and 'offence was committed as part of a group (where not at A)' it is probably unnecessary to have this step two factor, especially if it is open to misinterpretation.

Question 5: Does the Council agree that the aggravating factor of 'offender involves others in the conduct' should be removed?

3.15 Another participant suggested that threats to kill should be incorporated within the harm factors, specifically that the harm two factor is amended so that it becomes 'threat of torture or to kill'.

Question 6: Does the Council wish to amend the harm two factor to 'threat of torture or to kill'?

3.16 One participant noted that in one of the scenarios the offender was also convicted of committing an offence with intent to commit a sexual offence (s.62 of the Sexual Offences Act 2003). The maximum penalty for the s.62 offence is 10 years- but life imprisonment if kidnapping or false imprisonment is the offence intended- suggesting a close relationship between that offence and kidnapping/false imprisonment. They noted that there was nothing in the draft which refers to an intent to commit a sexual offence- and questioned whether it

would be useful to add something on this -at either step one or two, and/or cross refer to the [s.62 offence guidance note](#). Another participant asked whether sexual motive should be a high culpability factor or an aggravating factor- or whether to rely on being charged separately. It is suggested that if the Council wish to do anything on this point it may be more appropriate to refer to the s.62 guidance rather than add additional factors, adding another high culpability factor would risk increasing sentences .

Question 7: Does the Council wish to cross refer to the s.62 guidance? But not add any additional factors?

3.17 A participant commented on sentence levels for category two harm as the category has to cover a wide range of harm, so wondered whether a year should be added to the upper end of the category range for each of the harm 2 boxes. To do so would reverse the decrease to these ranges agreed at the last meeting- as originally the top of the range in B2 was eight years- this was reduced to seven at the last meeting (and the same for 1C and 3A). The top of the range in C2 was also reduced from four years to three- and in 2B at the last meeting.

3.18 This was done as part of the attempts to reduce the sentence inflation seen after the first sentencing exercise- this revised table with the decreased ranges used in the second exercise can be seen at **Annex B**. To add an extra year to the top of the range for all harm two would mean restoring those decreases, and additionally increasing the top of the range in A2 to 11 years from 10- and if following ‘the law of the diagonal’ also increasing the top of the range in B1 to 11 years. Potentially this would also mean increasing the starting point in A2/B1 to 8 years to be more mid range. How the sentence table would look with those increases can be seen below.

Harm	Culpability		
	A	B	C
Category 1	Starting Point 11 years’ custody Category Range 8 – 16 years’ custody	Starting Point 8 years’ custody Category Range 5 -11 years’ custody	Starting Point 5 years’ custody Category Range 3 - 8 years’ custody
Category 2	Starting Point 8 years’ custody Category Range	Starting Point 5 years’ custody Category Range	Starting Point 2 years’ 6 months custody Category Range

	5 -11 years' custody	3 – 8 years' custody	1- 4 years' custody
Category 3	Starting Point 5 years' custody Category Range 3 – 8 years' custody	Starting Point 2 years' 6 months custody Category Range 1- 4 years' custody	Starting Point 1 years' custody Category Range 6 months' - 2 year's custody

3.19 As noted earlier- one case was sentenced considerably higher using the draft guideline- and this case fell into A2- and under this proposal the ranges in A2 would be increased. It is possible that quite a few cases would be categorised as A2 using the guideline- so this may be a reason to be cautious about making any increases to these ranges. Also, to increase the ranges in this way could risk inflating the sentences again in the way seen after the first sentencing exercise. It is difficult to quantify what the risk would be given we have now made substantial changes to the culpability A factors and so on, but after analysing the results of the first sentencing exercise we thought there would likely be an impact on resources if the sentence inflation was not addressed.

3.20 The statistics show that for adults sentenced for kidnapping in 2020 the estimated average (mean) custodial sentence length (ACSL) pre- guilty plea was 7 years 3 months, with an ACSL post-guilty plea of 5 years 9 months (tab 1.3 of **Annex C.**). For false imprisonment, in 2020, the estimated ACSL pre-guilty plea was 4 years 8 months, with an ACSL post-guilty plea of 3 years 7 months (tab 2.3). Given the concern of sentence inflation, which is why the Council agreed to reduce the ranges last month, it is recommended that the ranges are not increased back to the previous levels. Using the slightly reduced levels agreed last month helped bring the sentences seen in the second sentencing exercise closer to the sentences imposed in the actual cases. There is potentially an argument for reducing the ranges further in category A2, rather than increasing them.

Question 8: Does the Council agree not to increase all the ranges within harm 2, and the consequential increases to other ranges, given the potential risk of sentence inflation?

Disclosing private sexual images

3.21 The [guideline for disclosing private sexual images](#) was published in 2018. As part of the Domestic Abuse Act 2021 the offence of disclosing private images was expanded to include threats to disclose private sexual images, this commenced in June 2021. Campaign groups had called for this change for a number of years- arguing that it was a common feature within this type of offending- with victims living in fear that the threat to release the images would be carried out, but not knowing when or how. It was decided to revise the existing guideline as part of this project as it was thought there is some synergy with blackmail offences. The draft blackmail guideline is attached at **Annex D**.

3.22 This is an either way offence with a maximum penalty of two years. Sentencing data attached at **Annex C** (tab 6.1) shows that around 200 offenders were sentenced in 2021. The estimated (mean) ACSL pre-guilty plea was 9 months and the ACSL post-guilty plea was 7 months. As part of this project a small number of sentencing transcripts for this offence have been considered, this included two or three examples of cases where the offender had threatened to release the images. This occurred sometime before releasing the images, but in one case the offender didn't actually have the images- but the victim thought they did and so the threat was very real. It is suggested that any changes to the guideline need only to be minor ones, the guideline is fairly recent and it is only a small change to legislation.

3.23 One option would be to add in two new culpability factors- in medium culpability 'threat/s to disclose images widely' and in high culpability 'repeated threats to disclose images over a sustained period'. This is to try and capture the gradations within the offending, with the high culpability factor for repeated threats over a sustained period. This can be seen within the guideline at **Annex E**. However, another option is to do nothing, as arguably two of the factors in high culpability could already apply to threats- significant planning and conduct intended to maximise distress/humiliation. The title of the guideline will be changed to include reference to threats to disclose images, so it becomes 'Disclosing, or threatening to disclose private sexual images'. But, other than a change to the title and possibly to add the two culpability factors discussed above, no other changes are considered necessary, as there has been just a minor change to the legislation.

Question 9: Does the Council wish to add the two culpability factors- or leave the guideline without amendment?

3.24 Looking at the two guidelines of blackmail and disclosing private sexual images together there may be a need to have some symmetry between guidelines - where it is appropriate. The Council may recall in early discussions about blackmail that some of the newer types of offences include blackmailing the victim with sensitive information they have

acquired about them- activity on certain dating websites and so on. The high culpability factor within disclosing private sexual images 'conduct intended to maximise distress and/or humiliation' is an aggravating factor in the blackmail guideline, potentially it should be a high culpability within both guidelines. Additionally for the first high culpability factor within both guidelines, although worded slightly differently it may be appropriate to use the same term- either 'sustained' or 'substantial'.

Question 10: Does the Council wish to move the factor from step two to high culpability in the blackmail guideline? Does the Council think the same word should be used within both guidelines- either substantial or sustained?

3.25 The disclosing images guideline has more factors in culpability- factors relating to planning within medium and lower culpability, it may be appropriate to add them to the blackmail guideline.

Question 11: Does the Council wish to add the same factors regarding planning within the blackmail guideline? Are there any other changes the Council thinks should be made to appropriately reflect points of commonality between the two guidelines?

3.26 Other than the issues discussed above- it is suggested that for such a minor change to the offence of disclosing private sexual images that there are no other changes necessary to the guideline.

Question 12: Does the Council agree no other changes are necessary to this guideline as a result of the small change to legislation?

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.

Sentencing Council

Sentencing Council meeting:
Paper number:

12 May 2023
**SC(23)MAY07 – Domestic homicide
review**

Lead Council member:
Lead official:

TBC
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1 ISSUE

1.1 The manslaughter guidelines came into force on 1 November 2018. There are four guidelines:

- [Gross negligence manslaughter](#)
- [Manslaughter by reason of diminished responsibility](#)
- [Manslaughter by reason of loss of control](#)
- [Unlawful act manslaughter](#)

1.2 On 17 March 2023 the Government published the Domestic Homicide Sentencing Review (the Review) which is attached at Annex A. The Review made various recommendations relating to murder and manslaughter. Six of these recommendations relate to sentencing guidelines (see 3.2 below). On the same date the then Lord Chancellor wrote to the Chairman of the Council to formally request that the:

Sentencing Council considers one of the review's recommendations which relates to the sentencing guidelines. Namely, Ms Wade proposes that 'where death occurs in the course of violence which is alleged to be consensual during a sexual encounter between the perpetrator and the victim then whether the offender is charged with unlawful act manslaughter or with gross negligence manslaughter, the killing should be categorised as category B high culpability'.

1.3 This request relates only to recommendation 16 in the Review. This paper will address all of the recommendations in the Review relating to sentencing guidelines and make suggestions for some amendments that could be considered for inclusion in the miscellaneous amendments to be consulted on this autumn. Alternatively, the Council may wish to take a preliminary view on the recommendations but await the Government's full response to the Review before taking action on some or all of them. Various options for next steps are set out at 3.35 below.

2 RECOMMENDATION

2.1 That the Council considers the recommendations in the Review and decides:

- whether to propose any changes to guidelines

- if so, when and how these changes should be taken forward.

3 CONSIDERATION

The Review

3.1 The purpose of the review was “to ascertain, to the extent possible, how the current law applies to cases of domestic homicide (prosecuted as either murder or manslaughter) where an individual has caused the death of an intimate partner or former partner, and to identify options for reform where appropriate.”

3.2 The review makes 17 recommendations. The ones relating to sentencing guidelines are:

Recommendation 11
Paragraph 8.1.23

We recommend that in cases of **manslaughter by way of diminished responsibility** consideration should be given to sentencing guidelines being amended to make strangulation an aggravating factor.

Recommendation 12
Paragraph 8.1.24

We recommend that in **manslaughter by way of loss of control**, consideration should be given to sentencing guidelines being amended to make strangulation an aggravating factor.

Recommendation 13
Paragraph 8.1.25

We recommend that in cases of manslaughter, consideration should be given to sentencing guidelines being amended to make coercive control on the part of the perpetrator of the killing towards the victim a factor which indicates higher culpability. Further, that consideration should be given to making coercive control towards the perpetrator of the killing by the victim of the killing a factor denoting lower culpability.

Recommendation 14
Paragraph 8.1.26

We recommend that consideration be given to whether the **Overarching Principles on Domestic Abuse** should be amended to contain explicit reference to assaults consisting of non-fatal strangulation being an aggravating factor.

Recommendation 15
Paragraph 8.2.10

We recommend that in cases of domestic manslaughter, consideration should be given to sentencing guidelines being amended to indicate that use of a weapon is not necessarily an aggravating factor.

Recommendation 16
Paragraph 8.3.29

We recommend that that where death occurs in the course of violence which is alleged to be consensual during a sexual encounter between the perpetrator and the victim then whether the offender is charged with **unlawful act manslaughter or gross negligence manslaughter**, the killing should be categorised as category B high culpability.

The Government response

3.3 In a [written ministerial statement](#) the Government has announced that it will introduce legislation "as soon as possible" to create statutory aggravating factors for murder for the following:

- a history of coercive or controlling behaviour
- 'overkill' – the use of excessive or gratuitous violence, beyond that necessary to kill

3.4 We understand that this will be done by the laying of a Statutory Instrument and that the Council will be consulted. The Government will also launch a public consultation this summer seeking views on whether there should be a starting point of 25 years for cases of murder where the perpetrator has controlled or coerced the victim before killing them.

3.5 The Government has rejected the recommendation in the Review that the starting point of 25 years which applies in circumstances where a knife or other weapon is taken to the scene should be disapplied in cases of domestic murder.

3.6 The Government's position on the remaining recommendations in the review will be outlined in a full response to be published before the summer recess.

Recommendations 11 and 12

3.7 These relate to making strangulation an aggravating factor in loss of control and diminished responsibility manslaughter. In both of these guidelines 'Offence involved use of a weapon' is an aggravating factor and it could be argued that strangulation is analogous to the use of a weapon in that it carries an inherent risk of causing serious harm. An aggravating factor could be added: 'Use of strangulation, suffocation or asphyxiation'.

3.8 The evidence in the Review for the introduction of this factor in voluntary manslaughter guidelines is limited. The Review cites some cases where strangulation was a feature. Two were cases involving older offenders who had pleaded guilty to killing their wives who suffered from dementia and in both cases asphyxiation (the consequence of strangulation) was the course of death. Another case where the offender and victim had divorced and then resumed their relationship involved strangulation preceded by a long history of coercive control including three prior incidents of serious violence and asphyxiation. This last case (sentenced under the guideline) resulted in a life sentence and a section 45A order.

3.9 Our own review of 69 out of 136 transcripts of sentencing remarks in manslaughter cases in 2019 has not revealed any issues with sentencing in cases of voluntary manslaughter involving strangulation.

3.10 At 8.1.11 the Review states:

Strangulation played a significant role within the context of manslaughter. Of all 7 strangulation cases which resulted in manslaughter convictions for men, 3 cases were by way of diminished responsibility. It is difficult to conceive of it playing a significant role in loss of control cases given the time it can take to strangle a victim. However, in order to maintain consistency, we have included loss of control cases in our recommendation on strangulation set out below.

3.11 Although the Review singles out strangulation as an issue, the underlying concern seems to be that many of these cases contain the hallmarks of coercive control. That said, there seems to be no good reason not to include an aggravating factor relating to strangulation.

Question 1: Does the Council wish to consult on adding an aggravating factor relating to strangulation, suffocation or asphyxiation to the loss of control and diminished responsibility guidelines?

3.12 The Review does not recommend adding a similar factor to the unlawful act or gross negligence guidelines (perhaps because it would risk double counting with recommendation 16) but it would seem illogical to add it to the voluntary manslaughter guidelines but not the involuntary ones.

Question 2: Does the Council wish to consult on adding an aggravating factor relating to strangulation, suffocation or asphyxiation to the unlawful act and gross negligence guidelines?

Recommendation 13

3.13 This makes two suggestions which relate to all four manslaughter guidelines:

- Coercive control by the offender towards the victim should be a factor which indicates higher culpability
- Coercive control by the victim towards the offender should be a factor which indicates lower culpability

3.14 It is not clear from the evidence in the Review that are any examples of where courts have failed to take into account coercive control in relevant cases when using the guidelines.

3.15 The guidelines currently have the following factors:

- History of violence or abuse towards victim by offender (aggravating factor in all four guidelines)

- History of significant violence or abuse towards the offender by the victim (mitigating factor in all guidelines except for gross negligence)

3.16 These could be amended to read:

- History of violence or abuse (which may include coercive or controlling behaviour) towards the victim by the offender
- History of significant violence or abuse (which may include coercive or controlling behaviour) towards the offender by the victim

3.17 This would not place consideration of coercive or controlling behaviour at step one as the Review proposes, but it is not apparent how this could be incorporated into step one without a complete re-write of the guidelines.

3.18 Our analysis of 2019 transcripts indicates that courts are taking controlling and coercive behaviour into account (where there is evidence), but it would seem appropriate to make this clear on the face of the guidelines.

Question 3: Does the Council wish to consult on amending the step two factors relating to history of abuse to include a reference to coercive control in the manslaughter guidelines?

Recommendation 14

3.19 This relates to the [Domestic Abuse guideline](#). The Review recommends considering adding an aggravating factor relating to non-fatal strangulation. The current list of non-exhaustive aggravating factors of particular relevance to offences committed in a domestic context is:

- Abuse of trust and abuse of power
- Victim is particularly vulnerable (*all victims of domestic abuse are potentially vulnerable due to the nature of the abuse, but some victims of domestic abuse may be more vulnerable than others, and not all vulnerabilities are immediately apparent*)
- Steps taken to prevent the victim reporting an incident
- Steps taken to prevent the victim obtaining assistance
- Victim forced to leave home, or steps have to be taken to exclude the offender from the home to ensure the victim's safety
- Impact on children (*children can be adversely impacted by both direct and indirect exposure to domestic abuse*)
- Using contact arrangements with a child to instigate an offence
- A proven history of violence or threats by the offender in a domestic context
- A history of disobedience to court orders (*such as, but not limited to, Domestic Violence Protection Orders, non-molestation orders, restraining orders*)

3.20 The evidence for this recommendation appears to be at 6.6 of the Review. The Review points out that strangulation appears to be a gendered form of killing (in 97% of their sample cases involving strangulation the perpetrator was male). It asserts that incidents of

non-fatal strangulation are generally thought to be an accurate predictor of fatal violence and that non-fatal strangulation is prevalent in relationships which feature coercive control.

3.21 The arguments against adding an aggravating factor relating to non-fatal strangulation in the overarching guideline include:

- that it could lead to a risk of double counting as ‘strangulation/ suffocation/ asphyxiation’ is a culpability factor in assault guidelines and is an intrinsic element of the new non-fatal strangulation offence;
- that the guideline does not currently include factors relating to use of weapon or other means that may be used to inflict violence; and
- strangulation can apply in non-domestic cases so it would be preferable to ensure the factor appears in relevant offence specific guidelines.

Question 4: Does the Council wish to consult on making any changes to the Domestic abuse guideline based on the recommendation in the Review?

Recommendation 15

3.22 This recommendation – that the sentencing guidelines should indicate that the use of a weapon in domestic manslaughter cases should not necessarily aggravate the sentence – reflects the argument that because of the difference in strength between women and men, women are compelled to use a weapon in order to kill.

3.23 The mere presence of an applicable aggravating factor in a guideline does not mean that the court will increase the sentence. In the sample of cases we have reviewed from 2019 involving female offenders who killed their partners, courts have been careful to avoid double counting with matters taken into account in assessing culpability (for example, the culpability factor ‘Death was caused in the course of an unlawful act which carried a high risk of death or GBH which was or ought to have been obvious to the offender’ is likely to apply where a knife was used). In one case, where the victim had initially thrown the weapon at the offender, that context was considered to be highly relevant in reducing the impact of the use of a weapon on the sentence. In all cases in our sample any context of domestic abuse in the relationship was taken into account.

3.24 There is an expanded explanation for the aggravating factor of ‘Offence involved use of a weapon’ which states:

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

- A 'weapon' can take many forms
- The use or production of a weapon has relevance
 - to the **culpability** of the offender where it indicates planning or intention to cause harm; and
 - to the **harm** caused (both physical or psychological) or the potential for harm.
- Relevant considerations will include:
 - the dangerousness of the weapon;
 - whether the offender brought the weapon to the scene, or just used what was available on impulse;
 - whether the offender made or adapted something for use as a weapon;
 - the context in which the weapon was threatened, used or produced.

When sentencing young adult offenders (typically aged 18-25), consideration should also be given to the guidance on the mitigating factor relating to age and/or lack of maturity when assessing the relevance of this factor to culpability.

3.25 If the Council thought that there was a need for any clarification of this aggravating factor in the context of manslaughter, or more generally, the solution might be to add something to the expanded explanation. Alternatively the Council may think that point is covered by the reference to 'context'.

Question 5: Does the Council wish to consult on making any changes to manslaughter guidelines or to the expanded explanation relating to use of a weapon to indicate that use of a weapon is not necessarily an aggravating factor?

Recommendation 16

3.26 The Review recommends that "where death occurs in the course of violence which is alleged to be consensual during a sexual encounter between the perpetrator and the victim then whether the offender is charged with unlawful act manslaughter or gross negligence manslaughter, the killing should be categorised as category B high culpability". This is the recommendation that the Lord Chancellor has requested the Council to consider.

3.27 The culpability B factors in the unlawful act guideline include:

- Death was caused in the course of an unlawful act which involved an intention by the offender to cause harm falling just short of GBH
- Death was caused in the course of an unlawful act which carried a high risk of death or GBH which was or ought to have been obvious to the offender

3.28 The culpability B factors in the gross negligence guideline include:

- The negligent conduct was in the context of other serious criminality
- The offence was particularly serious because the offender showed a blatant disregard for a very high risk of death resulting from the negligent conduct

3.29 When drafting the guidelines the Council was conscious of the wide variety of circumstances covered by manslaughter convictions and was careful not to restrict the factors to any particular examples. The rubric above the culpability factors in the unlawful act guideline states:

The characteristics set out below are indications of the level of culpability that may attach to the offender's conduct; the court should balance these characteristics to reach a fair assessment of the offender's overall culpability in the context of the circumstances of the offence. The court should avoid an overly mechanistic application of these factors.

The gross negligence guideline additionally has this wording at the end: "particularly in cases to which they do not readily apply"

3.30 Convictions for manslaughter involving 'rough sex' are rare (we have not found any so far in the 2019 sample) and it is difficult to discern any patterns in offending and sentencing, though there may be an increase in such cases coming before the courts in the future. The Review highlights cases that were dealt with as gross negligence manslaughter and notes that in future such cases are likely to be charged as unlawful act (because of a change in the law which provides that consent to harm for sexual gratification is not a defence to offences under s.47, s.20 and s.18 of the Offences Against the Person Act 1861).

3.31 The Review features the unlawful act case of *Pybus* [2021] EWCA Crim 1787 where the CACD refused permission to refer the sentence as unduly lenient. In this case, where the offender had choked the victim as part of consensual sexual activity, the culpability was assessed as C (medium) by the sentencing judge with a starting point of eight years (i.e. towards the top of culpability C) before mitigation and a reduction for a guilty plea. The CACD stressed that its decision was limited to the facts of this particular case.

3.32 The Review asserts that "where strangulation is practised in this way there must always be a high risk of death and that any attempt to distinguish between obvious and high is a legal nicety. Many experts would argue that an act of strangulation does not just carry with it an obvious risk of death but can equally be said to carry a high risk which ought to be obvious to anybody."

3.33 It seems likely that in most cases involving 'rough sex' resulting in death, courts would assess culpability as high, particularly where strangulation or a weapon was involved because of the high risk of death resulting from such conduct. The Council may feel that there is insufficient evidence of an issue with the guidelines to justify any changes to the culpability factors.

3.34 Adding 'Use of strangulation, suffocation or asphyxiation' as an aggravating factor (see 3.12 above) could help to ensure that in cases where the court is not satisfied that the high culpability factors are made out, the sentence reflects the seriousness of the conduct.

Question 6: Does the Council wish to consult on making any changes to the culpability factors in the unlawful act or gross negligence guidelines?

Next steps

3.35 If the Council is of the view that changes to guidelines are justified in response to the Review there are various steps that could be taken (more than one may apply):

- a) we could set up a working group to discuss the proposals in more detail;
- b) we could await the Government's full response to the Review;
- c) we could consult on any changes agreed today as part of this year's miscellaneous amendments consultation (with the option of further discussion at the June and July Council meetings);
- d) we could await the evaluation of the manslaughter guidelines (early work on which has started) before making any decisions and then consider whether the guidelines should be reviewed more generally in 2024.

Question 7: How does the Council wish to proceed?

4 EQUALITIES

4.1 The issues raised by the Review are focussed on the fair treatment of women as both victims and perpetrators of domestic homicide. The numbers involved are relatively small and so it is unlikely that we would be able to obtain any meaningful breakdown based on other characteristics (such as age or race).

Question 8: Are there equalities issues that require further exploration?

5 IMPACT AND RISKS

5.1 Any impact on prison places from the changes proposed in the Review would be relatively minor because of the low volumes of cases involved. A fuller assessment will be made once the scope of any proposed changes is known.

5.2 There are reputational risks of failing to act on the recommendations in the Review, but the Council may feel that so long as it can show cogent reasons for its decisions such risks will be limited.

5.3 There is also a risk that if the Council does not take steps to address matters in the Review (particularly recommendation 16) that the Government may consider other ways to achieve this, for example by introducing statutory aggravating factors.

Sentencing Council

Sentencing Council meeting:
Paper number:

12 May 2023
**SC(23)May08 – Miscellaneous
amendments**

Lead Council member:
Lead official:

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1 ISSUE

1.1 This is the first of three meetings to consider items for inclusion in this year's consultation on amendments to sentencing guidelines and supporting material. The consultation will take place in September to November to allow time for consideration of the responses in December and January before publication of the changes in March which will come into effect on 1 April 2024.

1.2 Unlike the last round of changes which were mainly prompted by legislative changes, this year most of the items for discussion have been raised by guideline users often by using the feedback function on guidelines.

1.3 A meeting of the Magistrates' Court Sentencing Guidelines (MCSG) working group was held in March to canvass opinions on some of the suggestions relating chiefly to magistrates' courts and these are reflected in this paper.

2 RECOMMENDATION

2.1 The Council is asked to consider the various matters set out below and decide:

- if any changes to guidelines are required;
- if so, whether the changes should be consulted on; and
- if so, should they be included in this year's miscellaneous amendments consultation.

3 CONSIDERATION

Matters relevant to magistrates' courts

3.1 We have received a query from an MP regarding the [Obstruct/ resist a police constable in execution of duty](#) guideline. The query relates to the high culpability factor: 'Deliberate obstruction or interference'. The suggestion is that as the offence is 'wilful obstruction' this factor would apply to all cases.

3.2 The offence is contrary to section 89(2) of the Police Act 1996 which states:

‘Any person who resists or wilfully obstructs a constable in the execution of his duty, or a person assisting a constable in the execution of his duty, shall be guilty of an offence and liable on summary conviction to imprisonment for a term not exceeding one month or to a fine not exceeding level 3 on the standard scale, or to both.’

3.3 Our response to the MP recognised that they had raised an issue regarding how the guideline will apply to cases of ‘obstructing’ (though not necessarily ‘resisting’) a constable which should be considered by the Sentencing Council.

3.4 The CPS have also been in correspondence with the MP and they stated that the CPS guidance addresses obstruction and sets out for prosecutors the relevant principles and law involved. Their guidance does not address resisting. They noted that the statute, the decided cases and the leading practitioner texts are all silent on the point raised, namely the mental element of the “resisting” form of the offence. They concluded that there is a presumption of law that a culpable mental state is required to commit a criminal offence and therefore it is likely, although far from certain, that the act of “resisting” must also be intentional.

3.5 The factors in the guideline are:

Culpability demonstrated by one or more of the following

Factors indicating higher culpability

- Deliberate obstruction or interference
- Use of force, aggression or intimidation
- Group action

Factors indicating lower culpability

- All other cases

Harm demonstrated by one or more of the following

Factors indicating greater harm

- Offender’s actions significantly increase risk to officer or other(s)
- Offender’s actions result in a suspect avoiding arrest
- Offender’s actions result in a significant waste of resources

Factors indicating lesser harm

- All other cases

3.6 The working group discussed whether to recommend removing the factor ‘Deliberate obstruction or interference’ as being inherent in the offence or replacing it with ‘planned

obstruction or interference'. It was suggested that 'wilfully' includes recklessly and therefore there was at least a theoretical possibility that the offence could be committed without falling into culpability A. In the experience of the working group members, most these offences were committed deliberately but were not planned. This is a relatively high volume offence with around 2,000 offenders sentenced per year with fines being the most common disposal. It was noted that this offence has a low statutory maximum sentence (a level 3 fine and/or one month's custody) and that more serious offending would result in other charges. The working group did not come to a firm conclusion, but the general view was to leave the guideline unchanged.

3.7 We may need to justify any decision we make to the MP.

Question 1: Does the Council wish to make any changes to the factor: 'Deliberate obstruction or interference' in the Obstruct/ resist a police constable in execution of duty guideline?

3.8 The MCSG contains tables of very basic sentencing guidelines for minor traffic related offences including seat belt offences. The current [guideline](#) reads:

Offence	Maximum	Points	Starting point
Seat belt offences	L2 (adult or child in front)	–	A
	L2 (child in rear)		

3.9 There is no reference to adults in the rear of a vehicle (probably because the guideline was last updated before that was an offence. There are a number of offences under sections 14 and 15 of the Road Traffic Act 1988 relating to seat belts all of which carry a level 2 fine. It is therefore proposed to update the entry to read:

Offence	Maximum	Points	Starting point
Seat belt offences (Road Traffic Act 1988 ss.14 and 15)	L2	–	A

Question 2: Does the Council agree to the proposed change to the guideline for seat belt offences? If so, should this be consulted on or made without consultation?

3.10 In the [Allocation guideline](#) under the heading "Children or young people jointly charged with adults – interests of justice test" there is a non-exhaustive list of examples of

factors to be considered when deciding whether it is in the interests of justice to send the child to the Crown Court for trial:

- whether separate trials will cause injustice to witnesses or to the case as a whole (consideration should be given to the provisions of sections 27 and 28 of the Youth Justice and Criminal Evidence Act 1999);
- the age of the child or young person: the younger they are, the greater the desirability that they be tried in the youth court;
- the age gap between the child or young person and the adult: a substantial gap in age militates in favour of the child or young person being tried in the youth court;
- the lack of maturity of the child or young person;
- the relative culpability of the child or young person compared with the adult and whether the alleged role played by the child or young person was minor;
- the lack of previous convictions on the part of the child or young person.

3.11 In 2020 the Chairman (who was then youth justice lead) gave some [guidance](#) about the relevance of delay to the interests of justice test during the pandemic. The suggestion is that this guidance is still relevant and should be encapsulated into the appropriate part of the allocation guideline (which is also reproduced in the Sentencing children and young people guideline) in the form of an additional factor about the expected wait time for a trial in the Crown Court. For example:

- the likely delay in trying the youth in the Crown Court as compared to the youth court.

3.12 It appears that the Criminal Procedure Rules Committee is proposing changes to the rules on the procedure for allocation and sending for trial, which includes those relating to under 18s jointly changed with an adult. These proposed changes refer to the interests of justice test, but do not define it or change it and therefore do not affect the sentencing guidelines.

Question 3: Does the Council wish to consult on the proposed change to the Allocation and Sentencing Children and young people guidelines?

Matters relevant to magistrates' courts and the Crown Court

3.13 It has been suggested to us that the [failure to surrender to bail guideline](#) could be clearer about the relative powers of magistrates' courts and the Crown Court. Information on the maximum available in each court is provided under the sentence table:

Maximum sentence in magistrates' court – 3 months' imprisonment

Maximum sentence in Crown Court – 12 months' imprisonment

3.14 The working group thought that this information should be repeated at the top of the guideline.

Question 4: Does the Council agree to the proposed change to the Failure to surrender to bail guideline and if so could this be made without consultation?

3.15 Several matters relating to domestic abuse have been raised. We have created a list of all guidelines noting whether and how domestic abuse is referenced. There are broadly two ways in which domestic abuse can be relevant to sentencing:

- As an aggravating factor when the offender is the perpetrator of domestic abuse in circumstances set out in the [domestic abuse overarching guideline](#); or
- As a mitigating factor when the offender has been the victim of domestic abuse.

3.16 There are some guidelines which have a note containing a link to the Domestic abuse overarching guideline in the header but do not contain a domestic abuse aggravating factor. This may cause sentencers to overlook the factor at the relevant point in the sentencing exercise. The proposal is that where domestic abuse (by the offender) could realistically be a factor it should be listed in the aggravating factors.

3.17 Where the factor does appear, the wording used in most guidelines is: 'Offence committed in a domestic context'. There is potential for misunderstanding the factor and it could perhaps be more helpfully phrased. Where the factor appears, there is an expanded explanation which simply provides a link to the Domestic abuse overarching guideline. While the overarching guideline provides detailed information on the types of conduct that amount to domestic abuse, rewording the factor could provide an opportunity to reference coercive or controlling behaviour on the face of all relevant guidelines. Suggestions for rewording the aggravating factor include:

- Offence committed in a domestic abuse context
- Offence committed in the context of domestic abuse which may include coercive or controlling behaviour
- Offence committed in the context of domestic abuse which may include, but is not limited to, coercive or controlling behaviour

3.18 Domestic abuse features as a low culpability factor in the cruelty to a child guideline but otherwise it is not specifically referenced as a low culpability or mitigating factor in adult guidelines. However, in 58 guidelines there is a factor either at step one or step two relating to the offender being subject to coercion, intimidation or exploitation. The Council recently agreed wording in the proposed Perverting the course of justice guideline to specifically reference domestic abuse in this factor: 'Involved through coercion, intimidation or

exploitation or as a result of domestic abuse'. This wording could be considered in all guidelines where it could be relevant.

3.19 If the Council wishes to consult on these proposals, a comprehensive list of guidelines and the proposed changes for each one can be produced for consideration at the June meeting. In doing so we will also check that any remaining references in guidelines to 'domestic violence' are changed to 'domestic abuse'.

Question 5: Does the Council wish to reword the aggravating factor relating to domestic abuse? If so, what wording should be used (see 3.16)?

Question 6: Does the Council wish to include an aggravating factor relating to domestic abuse in all relevant guidelines?

Question 7: Does the Council wish to reword the low culpability or mitigating factors relating to coercion? If so, should the wording agreed for the perverting the course of justice guideline be used?

Question 8: Does the Council wish to include a low culpability or mitigating factor relating to coercion and domestic abuse in all relevant guidelines?

3.20 The Suzi Lamplugh Trust has asked the Council to consider adding breach of a Stalking Prevention Order (SPO) under [section 8 of the Stalking Protection Act 2019](#) and breach of a Domestic Abuse Prevention Order (DAPO) [under section 39 of the Domestic Abuse Act 2021](#) to the [breach of a protective order guideline](#). This guideline currently applies to breaches of restraining orders and non-molestation orders. All of the offences have the same maximum penalty (5 years).

3.21 The guideline is worded in a way that means that it could be applied to breaches of SPOs and DAPOs without amendment provided that breaches of these offences are considered to be of the same seriousness. It should also be noted that Domestic Abuse prevention orders are not yet in force but they could be considered for inclusion once they are in force.

Question 9: Does the Council wish to consult on adding breach of an SPO and a DAPO to the breach of a protective order guideline?

3.22 In March MoJ ministers wrote to the Chairman on the subject of supply of controlled drugs to children, asking that the Council amend existing relevant guidelines to make clear that supply of a controlled drug to a child is an aggravating factor. The letter states:

In 2019, Leah Heyes tragically died after taking MDMA, a class A drug. Since Leah's death her mother, Kerry Roberts, and Kevin Hollinrake MP have led a tireless campaign for 'Leah's law' - a new offence of supplying controlled drugs to an under-16. Kevin Hollinrake met the then Policing Minister in May 2022 to request this new offence. However, as it is already illegal under s4 of the Misuse of Drugs Act 1971 to supply a controlled drug to any person, including those under the age of 16 (subject to any applicable exemptions and licences), we do not plan to bring forward a new specific offence. Subsequently, Mr Hollinrake brought forward a Private Members' Bill in October 2022 which seeks instead to introduce a new statutory aggravating factor.

3.23 The letter goes on to acknowledge that supply of a controlled drug to a child is already within scope of existing aggravating factors outlined in sentencing guidelines for these offences. In the [Supplying or offering to supply a controlled drug/ Possession of a controlled drug with intent to supply it to another](#) guideline there are already statutory aggravating factors that relate to under 18s:

- Offender used or permitted a person under 18 to deliver a controlled drug to a third person
- Offender 18 or over supplies or offers to supply a drug on, or in the vicinity of, school premises either when school in use as such or at a time between one hour before and one hour after they are to be used.

3.24 There are also several other existing aggravating factors that reference children but do not specifically refer to sale to children:

- Exploitation of children and/or vulnerable persons to assist in drug-related activity
- Targeting of any premises where children or other vulnerable persons are likely to be present
- Presence of others, especially children and/or non-users

3.25 The letter accepts that they are unable to point to any evidence to suggest that the courts are failing to aggravate sentences where drugs have been sold directly to children, but asserts there is merit in adding further clarity in the interests of aiding public understanding of how courts apply these aggravating factors in relevant cases.

3.26 In a response to MoJ ministers, the Chairman said that the Council would consider such a factor for inclusion in the miscellaneous amendments consultation. It is difficult to know how often there is direct evidence of sale to children – prosecutions for supply are often as a result of test purchases by undercover police officers. Nevertheless, the Council may be persuaded that adding an explicit factor is justified. If so possible wording could be:

- Offender supplies or offers to supply a drug to a person under the age of 18

Question 10: Does the Council wish to consult on adding an aggravating factor relating to supply to children to the supply of controlled drugs guideline?

3.27 A recorder has commented on the difficulties of a sentencing exercise involving an organisation which went into administration shortly before it was sentenced for a health and safety offence. He suggested:

The guidance could helpfully be modified to include the approach to the sentencing of companies who have gone into liquidation or administration, and of any steps which can be taken should it be suspected any voluntary administration was entered into to avoid the financial penalty to be imposed for the offence.

3.28 The [Organisations: health and safety](#) guideline (and other guidelines for sentencing organisations) contain the following guidance:

Obtaining financial information

The offender is expected to provide comprehensive accounts for the last three years, to enable the court to make an accurate assessment of its financial status. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case, **which may include the inference that the offender can pay any fine.**

Normally, only information relating to the organisation before the court will be relevant, unless exceptionally it is demonstrated to the court that the resources of a linked organisation are available and can properly be taken into account.

3.29 When the environmental and health and safety guidelines were developed, the Council gave consideration to what, if anything, could be said about piercing the corporate veil and the highlighted sentence above was as far as the Council felt it could go in that regard.

3.30 Clearly a court can only sentence the offender before it and can only sentence the offences for which the offender has been convicted. The guideline sets out that the court must, in accordance with [section 125 of the Sentencing Code](#), set a fine that reflects the seriousness of the offence and takes into account the financial circumstances of the offender. If there are suggestions of any impropriety regarding the process of going into liquidation or administration presumably these would need to be investigated by the relevant body and if an offence had been committed separate charges brought. It is difficult to see what further guidance the guidelines could give.

Question 11: Does the Council consider that any further guidance can be given on sentencing organisations that have gone into administration or liquidation?

3.31 Sian Jones, Head of Legal and Professional Services in the Legal Operations Team at HMCTS has queried the wording at step 3 in the Common assault guideline:

The sentencer should state in open court that the offence was aggravated by reason of the victim being an emergency worker, and should also state what the sentence would have been without that element of aggravation.

3.32 She states:

That is a quote from s. 67 of the Sentencing Act, however common assault is not one of the offences to which s. 67 applies.

I think the decision making process (first work it out as a common assault and then uplift) is a good one, but requiring that pronouncement is wrong and confusing. It gives rise to complaints of double counting, as it sounds as if the sentence has been uplifted twice. It also sounds as if the court has misapplied the law.

3.33 The same wording is used in guidelines for all offences with an aggravated version (and in the racially or religiously aggravated section in the common assault guideline). It is not required by statute but it could be considered good practice. The wording is not new, in 2017 the MCSG contained guidance which said:

When sentencing any offence where such aggravation is found to be present, the following approach should be followed. This applies both to the specific racially or religiously aggravated offences under the Crime and Disorder Act 1998 and to offences which are regarded as aggravated under section 145 or 146 of the Criminal Justice Act 2003:

- sentencers should first determine the appropriate sentence, leaving aside the element of aggravation related to race, religion, disability, sexual orientation or transgender identity but taking into account all other aggravating or mitigating factors;
- the sentence should then be increased to take account of the aggravation related to race, religion, disability, sexual orientation or transgender identity;
- the increase may mean that a more onerous penalty of the same type is appropriate, or that the threshold for a more severe type of sentence is passed;
- the sentencer must state in open court that the offence was aggravated by reason of race, religion, disability, sexual orientation or transgender identity;
- the sentencer should state what the sentence would have been without that element of aggravation.

3.34 The requirement to state the unaggravated sentence may give rise to practical difficulties in some cases, but we have not been made aware of any problems or suggestions of double counting and therefore it is not proposed that any change is made.

Question 12: Does the Council agree that the wording on stating what the sentence would be for the unaggravated offence should remain in all guidelines for aggravated offences?

4 EQUALITIES

4.1 Once the Council has taken a preliminary view on the matters to be included in the consultation, work can be done to explore any equalities impacts.

5 IMPACT AND RISKS

5.1 By their nature the matters that are included in the miscellaneous amendments are unlikely to have a significant impact on correctional resources. An assessment of each proposed change will be made and included in the consultation document.

5.2 There are a number of matters that could be included in this year's consultation that may need careful stakeholder handling. Once the full scope of the consultation is known these potential issues will be explored more fully.



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

12 May 2023
SC(23)MAY09 – Business Plan
N/A
Ollie Simpson
ollie.simpson@sentencingcouncil.gov.uk

1 ISSUE

1.1 The Council's 2023-24 Business Plan and a review of the risk register.

2 RECOMMENDATIONS

2.1 That Council:

- signs off the draft of the Business Plan attached at **Annex A**; and
- notes the current risk register at **Annex C**, alongside the summary below;

3 CONSIDERATION

Business plan

3.1 The annual business plan, published towards the start of the financial year, sets out the planned activities for the forthcoming year. This will be the Council's tenth and follows a very similar format to previous years, with a narrative introduction by the Chair providing a taste of what has been achieved in 2022-23 and looking ahead to the guidelines, research and communications activities for 2023-24.

3.2 There is also standard information about the Council and how it operates. We include details about the Council's members, staffing of the office and budget, as well as how we work, particularly on developing guidelines. We also now provide information about sub-groups, which replicates information we already provide in the annual report, and the criteria for prioritising guidelines, following the 'What next for the Sentencing Council?' consultation.

3.3 There is a section (pages 8 to 12) which sets out our main statutory duties (what we need to do), which then serves to introduce the five-year strategic objectives (how we will do it). This includes a link to a web page documenting current progress against the strategic objectives that we now publish simultaneously with the Business Plan (see **Annex B**).

3.4 Table 1, the timeline and Annex C to the plan then provide more line-by-line detail on the guidelines and analytical and research publications planned for the coming year in the usual way.

Question 1: are you content with the draft 2023-24 business plan at Annex A?

Risk register

3.5 Council agreed last year that it would be proportionate to consider the risk register on an annual basis. Risk is something which in practice the Council delegates to the Governance sub-group. It reviews risk at each of its meetings (which now take place quarterly) and the other sub-groups (analysis and research, and communications and confidence) and the equality and diversity working group consider and adjust the risks relevant to them to feed into that overall consideration. The office Senior Management Team (SMT) also review the risk register (current version at **Annex C**) every other month and provide updates, so there is an almost continual process of review.

3.6 In the last year we have overhauled many of the longstanding risks which had appeared in previous risk registers and which the Council considered in April 2022. Some of these older entries had been on the register since the formation of the Council and we thought that they were outdated considering the risks facing the Council today. We have also tried to ensure that the risks themselves are linked to delivery of the Council's statutory duties and strategic objectives. In an organisation of the Council's size, however, the risk register does also need to reflect more practical matters such as corporate fraud, health and safety and data protection.

3.7 The top five highest risks, according to the risk register are now:

- i) risk 4: Council members not appointed;
- ii) risk 2: insufficient financial resource;
- iii) risk 11: guidelines cause, or fail to address existing disparities in sentencing between different groups;
- iv) risk 1: insufficient staff/capability; and
- v) risk 3: guidelines not informed by evidence, and impact of guidelines unknown

3.8 The risk register sets out the actions that are being taken to mitigate these and all the risks, although it is important to maintain a realistic sense of what risk tolerance the Council is prepared to carry. For example, there will always be a risk of external criticism, or the risk of decreased resources. Some of the response to that will be within our gift, but to some degree the impact and likelihood are beyond our control. Taking that approach means that

risk 5 (loss of support/confidence in the Council by Public/Media), even though at medium, is listed as being on track.

3.9 Some of the risk levels for these risks are subject to review shortly: for example, we should be able to assess better the level of risk for financial resource in July, a few months into the new financial year. Others have been given relatively distant target dates (i.e. the time when we aim for the risk to be at its target level). For example, risk 3 (guidelines not informed by evidence) and risk 11 (guidelines cause, or fail to address existing disparities) both have target dates in 2026. This reflects the fact that these are longstanding risks, unlikely to be resolved in the short term, which require longer term actions.

Question 2: do you have any observations on the risks as set out in the current risk register?

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Sentencing Council

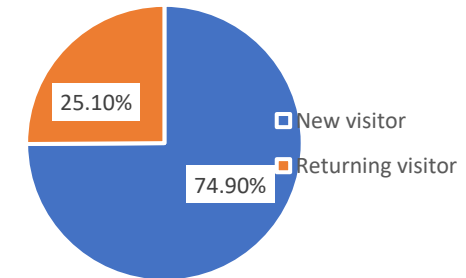
External communication evaluation

March 2023

Visits to www.sentencingcouncil.gov.uk

	This month	Last month
Users*	173,753	151,233
Sessions per user	1.85	1.79
Pages per session	2.65	2.69
Ave time on site	4:26	4:26
Bounce rate**	55.89%	55.95%

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

Announcements

6th	Publication of child cruelty data tables
7th	Updated sentencing guidelines for child cruelty published
9th	Miscellaneous amendments to sentencing guidelines – response to second consultation
20th	Application of sentencing principles during a period when the prison population is very high – statement from the Chairman
22nd	Review of trend analysis of the imposition of community and custodial sentences guideline

Most visited pages	Pageviews	Unique Pageviews
Magistrates' court guidelines search page	142,290	63036
Crown Court guidelines homepage	29,779	20,142
Magistrates' court homepage	24,730	16,994
Website homepage	24,216	18,995
Fine calculator	21,358	14,410
/offences/magistrates-court/item/common-assault-racially-or-religiously-aggravated-common-assault-common-assault-on-emergency-worker/	17,235	14,098
Common offence illustrations	12,234	7,275
offences/magistrates-court/item/excess-alcohol-driveattempt-to-drive-revised-2017/	11,988	9,832
Common offence illustrations - assault	11,105	10,028
/offences/magistrates-court/item/assault-occasioning-actual-bodily-harm-racially-or-religiously-aggravated-abh/	10,961	9,676

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

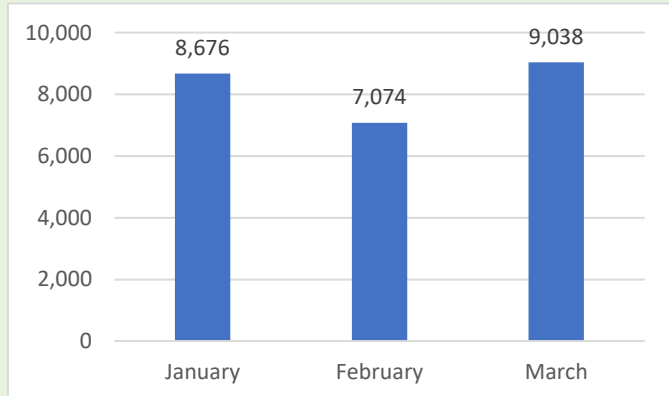
Top searches
Theft
Assault
Speeding
Burglary
Dangerous driving

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

Subscribers

+34 = 1,300

Video views per month



Most watched video



How offenders are sentenced in England and Wales

Watch time average

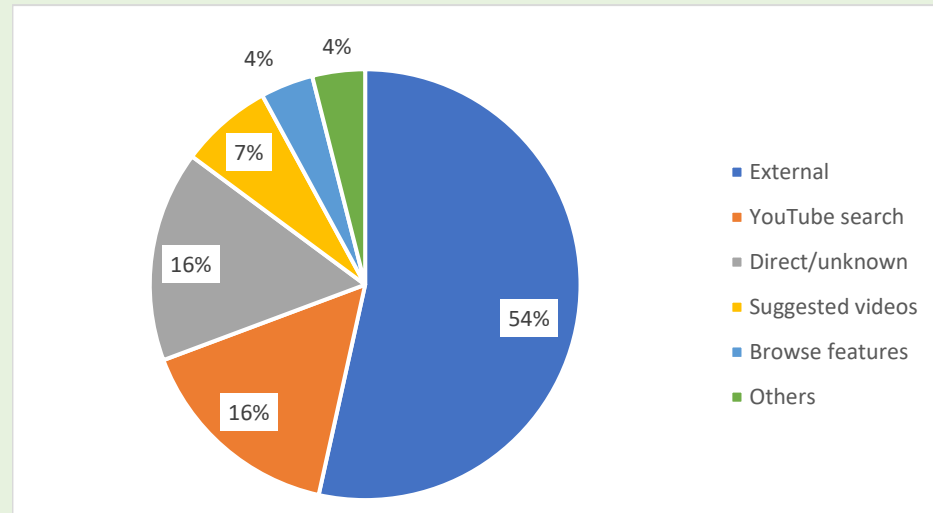
02:17

Impressions*

35,178

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

How viewers find our videos



YouTube search: terms used

1	Magistrates court UK
2	Magistrate
3	How offenders are sentenced
4	UK sentencing
5	Crown Court

- 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

+283 = 6,064

Highest engagement*

The application of sentencing principles during a period when the prison population is very high – statement from the Chairman of the Sentencing Council

All bulletins

Sent	4
Delivered	22,636
Opened	33.8%
Engagement rate*	4.8%

Most clicked-through links

The application of sentencing principles during a period when the prison population is very high – statement from the Chairman of the Sentencing Council

[Review-of-trend-analysis-of-the-imposition-of-community-and-custodial-sentences-guideline/](#)

[Updated-sentencing-guidelines-for-child-cruelty-offences-published/](#)

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

Followers

+5 = 6,091

Highlights

	Tweets	Impressions	Mentions	Profile visits
This month	4	20,300	65	1,114
Last month	3	1,734	98	652

Top tweet

Offenders convicted of child cruelty offences to be sentenced under revised guidelines effective from 1 April. The guidelines reflect the stat max sentences increased by the PCSC Act and include a new “very high culpability” level for most serious cases: bit.ly/3KX3H7Q

Impressions: 18,355

Total engagements: 98

Top mention

Mums and babies gather this morning outside the Royal Courts of Justice with [@NoPrisonBirths](#) to demand the [@SentencingCCL](#) put an end to imprisonment for pregnant women! [#NoBirthsBehindBars](#)

Level up @we_level_up

Feminist campaigns community working together for gender justice & bodily autonomy
10.5k 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

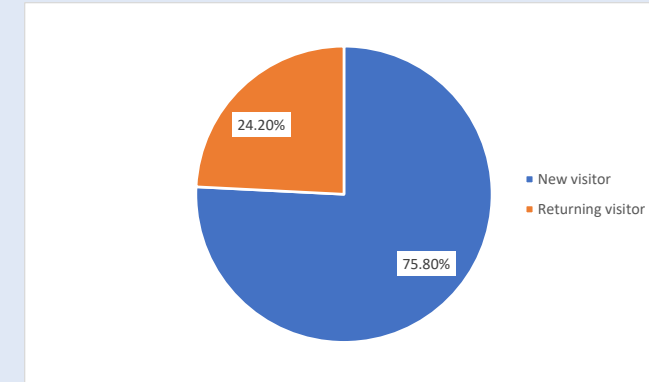
External communication evaluation

April 2023

Visits to www.sentencingcouncil.gov.uk

	This month	Last month
Users*	147,239	173,753
Sessions per user	1.78	1.85
Pages per session	2.61	2.65
Ave time on site	4:16	4:26
Bounce rate**	56.62%	55.89%

Visitors: new and returning



Announcements

- 1st Sentencing guidelines coming into effect on 1 April 2023
- 5th Council vacancy: police role

*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	113,376	50,171
Crown Court guidelines homepage	24,006	15,916
Website homepage	20,220	15,719
Magistrates' court homepage	19,710	13,648
/fine-calculator/	17,156	11,689
/offences/magistrates-court/item/common-assault- racially-or-religiously-aggravated-common-assault- common-assault-on-emergency-worker/	13,701	11,232
/offences/magistrates-court/item/excess-alcohol- driveattempt-to-drive-revised-2017/	9,792	7,982
Common offence* illustrations	9,435	5,644
Common offence illustrations /assault/	9,162	8,291
/offences/magistrates-court/item/supplying-or-offering- to-supply-a-controlled-drug-possession-of-a-controlled- drug-with-intent-to-supply-it-to-another/	8,453	7,565

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

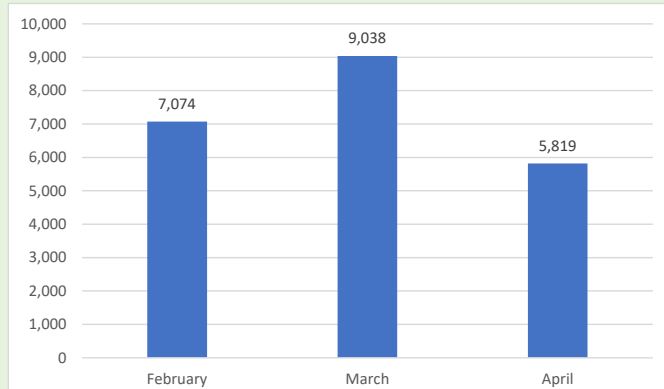
Top searches
Theft
Assault
Speeding
Burglary
Robbery

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

Subscribers

+14 = 1,314

Video views per month



Most watched video



How offenders are sentenced in England and Wales

Watch time average

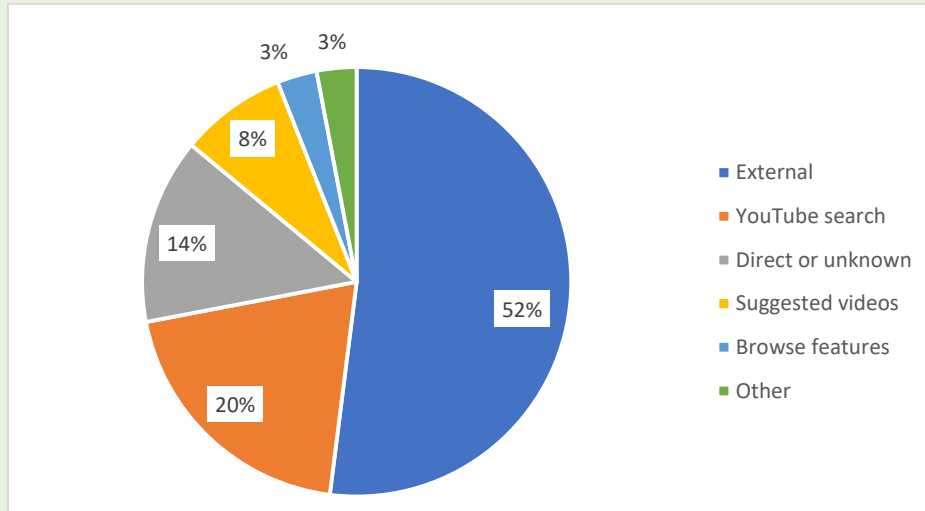
02:07

Impressions*

28,369

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

How viewers find our videos



YouTube search: terms used

1	Magistrates court UK
2	Judge sentencing
3	Magistrate
4	Court sentencing
5	Crown Court sentencing UK

- 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

+230 = 6,294

Highest engagement*

Sentencing guidelines coming into effect on 1 April 2023

All bulletins

Sent	4
Delivered	23,442
Opened	30.8%
Engagement rate*	5.2%

Most clicked-through links

[sentencing-guidelines-coming-into-effect-on-1-april-2023/](#)

[council-vacancy-police-role/](#)

[minutes-of-meeting-3-march-2023/](#)

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

Followers

-10 = 6,081

Highlights

	Tweets	Impressions	Mentions	Profile visits
This month	1	2,354	25	301
Last month	4	20,300	65	1,114

Top tweet

The Council is looking for a new non-judicial member with senior policing experience to help us consider complex issues around the approach to sentencing. You must have good knowledge of the issues and the principles of sentencing. Closes 2 May @ 10am: bit.ly/3m9ljU0

Impressions: 1,836

Total engagements: 33

Top mention

Failing to stop & report, leaving our son to die with over 33 injuries. Abandoning the vehicle which was stolen on cloned plates AND absconding for 5 days to another county while already being a banned driver! [@SentencingCCL](#)
[@Mark J Harper](#) [@RicHolden](#)

Paula @PaulaAllen2002

Raising awareness of Road Safety, Speeding, Dangerous Driving with young drivers in memory of my son Marcus
90 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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