

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) |

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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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Sentencing Council

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 <u>up to 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 <u>up to 12 months, or 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.

Annex A: Imposition of Community Orders Section

1. Imposition of community orders

A community order can only be imposed if the offence committed is punishable by imprisonment. The maximum term that a community order can be imposed is 3 years.

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

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

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 should determine the end date without reference to any time spent in custody on remand or on a qualifying curfew.

Additional text TBC

Requirements

Community orders must consist of one or more requirements.

The court must ensure that requirements imposed are the most suitable for the offender. This means that requirements should be suitable according to:

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

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.

It is a matter for the court to decide which requirements amount to a punishment in each case.

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

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

List of requirements

...

Community order levels

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 have the power to flexibly impose a custom community order 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 requirement or combination of requirements, consideration should be given to the broad variety of sentences a community order can offer to be most effective for a particular offender, including the different lengths 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 might be appropriate in each level of community order.

Low	Medium	High
Offences only just cross the community order threshold, where the seriousness of the offence or the nature of the	Offences that obviously fall within the community order band	Offences only just below the custody threshold, or where the custody threshold is crossed but a community order is more

offender's record means that a discharge or fine is inappropriate.

appropriate in the circumstances

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

- | | | |
|---|--|--|
| <ul style="list-style-type: none"> • 40 – 80 hours of unpaid work • Curfew up to 16 hours per day for up to 4 weeks* • Exclusion requirement for a few months • Prohibited activity requirement | <ul style="list-style-type: none"> • 80 – 150 hours of unpaid work • Curfew up to 16 hours per day for up to 6 months* • Exclusion requirement lasting in the region of 6 months • Prohibited activity requirement | <ul style="list-style-type: none"> • 150 – 300 hours of unpaid work • Curfew up to 20 hours per day for up to 24 months* • Exclusion requirement lasting in the region of 12 months |
|---|--|--|

*Maximum of 112 hours curfew in any period of 7 days

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.

If order does not contain a punitive requirement, suggested fine levels are indicated below:

BAND A FINE

BAND B FINE

BAND C FINE

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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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Dangerous driving

Road Traffic Act 1988 (section 2)

Triable either way

Maximum: 2 years' custody

Offence range: Community order – 2 years' custody

Obligatory disqualification: minimum 1 year with compulsory extended re-test

(Minimum 2 years disqualification if the offender has been disqualified two or more times for a period of at least 56 days in the three years preceding the commission of the offence)

STEP ONE**Determining the offence category****CULPABILITY**

The court should determine culpability by reference only to the factors below. Where there are characteristics present that fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

A	<ul style="list-style-type: none"> • Deliberate decision to ignore the rules of the road and disregard for the risk of danger to others. • Prolonged, persistent and deliberate course of dangerous driving • Obviously highly dangerous manoeuvre • Prolonged use of mobile phone or other electronic device • Driving highly impaired by consumption of alcohol and/or drugs • Offence committed in course of evading police • Racing or competitive driving against another vehicle • Persistent disregard of warnings of others • Lack of attention to driving for a substantial period of time • Speed significantly in excess of speed limit or highly inappropriate for the prevailing road or weather conditions
B	<ul style="list-style-type: none"> • Use of mobile phone or other electronic device (where not culpability A) • Driving knowing that the vehicle has a dangerous defect or is dangerously loaded • Driving at a speed that is inappropriate for the prevailing road or weather conditions (where not culpability A) • Driving impaired by consumption of alcohol and/or drugs (where not culpability A) • Driving significantly impaired as a result of a known medical condition, and/or disregarding advice relating to the effect of a medical condition or medication • Driving when deprived of adequate sleep or rest
C	<ul style="list-style-type: none"> • Standard of driving was just over threshold for dangerous driving

HARM	
Category 1	<ul style="list-style-type: none"> • Offence results in injury to others • Damage caused to vehicles or property • Circumstances of offence created a high risk of serious harm to others
Category 2	<ul style="list-style-type: none"> • All other cases

STEP TWO

Starting point and category range

	Culpability		
	A	B	C
Harm 1	<p>Starting Point: 1 year 6 months</p> <p>Category range: 1 year – 2 years</p>	<p>Starting Point: 1-year 36 weeks</p> <p>Category range: 26-weeks High level community order – 1 year 6 months</p>	<p>Starting Point: 26-weeks High level community order</p> <p>Category range: High Medium level community order – 4-year 36 weeks</p>
Harm 2	<p>Starting Point: 1-year 36 weeks</p> <p>Category range: 26-weeks High level community order – 1 year 6 months</p>	<p>Starting Point: 26-weeks High level community order</p> <p>Category range: High Medium level community order – 4-year 36 weeks</p>	<p>Starting Point: High Medium level community order</p> <p>Category range: Low level community order – 26-weeks high level community order</p>

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

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

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- Victim was a vulnerable road user, including pedestrians, cyclists, horse riders, motorcyclists etc
- Driving for commercial purposes
- Driving a LGV, HGV or PSV
- Other driving offences committed at the same time as the dangerous driving
- Blame wrongly placed on others
- Failed to stop and/or obstructed or hindered attempts to assist at the scene
- Passengers in the offender's vehicle, including children
- Vehicle poorly maintained
- Offence committed on licence or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good driving record
- The victim was a close friend or relative
- Actions of the victim or a third party contributed significantly to collision
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- Remorse
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives

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

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

STEP FOUR**Reduction for guilty pleas**

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

STEP FIVE**Totality principle**

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

STEP SIX**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Ancillary orders – Magistrates' Court

Ancillary orders – Crown Court Compendium

STEP SEVEN**Reasons**

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

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

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

Disqualification guidance

1 Principles

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

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

2 Minimum disqualification period

The minimum disqualification period for this offence is 12 months.

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

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

3 Special reasons

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

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

4 Interaction with custodial period – same offence

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

This will avoid the disqualification expiring, or being significantly diminished, during the period the offender is in custody. No extension period should be imposed where a sentence is suspended.

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

5 Interaction with custodial period – different offence

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

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

- Step 1 – does the court intend to impose a custodial term for the offence for which they are imposing a disqualification?
 - YES – the court must impose the appropriate extension period and consider step 2.
 - NO – go to step 3.
- Step 2 – does the court intend to impose a custodial term for another offence (which is longer or consecutive) or is the defendant already serving a custodial sentence?
 - YES – consider what uplift in the period of discretionary disqualification (i.e. the period which would have been imposed but for the need to extend for time spent in custody) is required, having regard to the diminished effect of disqualification as a distinct punishment. Ignore any custodial term imposed for the offence for which disqualification is being imposed.
Discretionary period + extension period + uplift = total period of disqualification
 - NO – no further uplift required. **Discretionary period + extension period = total period of disqualification**
- Step 3 – does the court intend to impose a custodial term for another offence or is the defendant already serving a custodial sentence?
 - YES – then consider what uplift in the period of discretionary disqualification is required, having regard to the diminished

effect of disqualification as a distinct punishment. **Discretionary period + uplift = total period of disqualification**
NO – no increase is needed to the discretionary period.

Final Resource Assessment

Motoring offences

Introduction

This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services ([s127 Coroners and Justice Act 2009](#)).

Rationale and objectives for new guideline

In May 2008, the Sentencing Guidelines Council (SGC) published the Magistrates' Court Sentencing Guidelines (MCSG), covering most of the offences regularly going before magistrates' courts. This included the offence of dangerous driving under section 2 of the Road Traffic Act 1988. The MCSG only apply to sentences passed at magistrates' courts, and so there are no existing guidelines for this offence for use in the Crown Court. The Council is now publishing a new sentencing guideline for this offence, for use in all courts.

In August 2008, the SGC's Causing death by driving guideline came into force. This included guidelines for the offences of causing death by dangerous driving, causing death by careless or inconsiderate driving, causing death by careless driving when under the influence of drink or drugs, and causing death by driving whilst unlicensed, disqualified or uninsured. Then, in April 2015, the statutory maximum sentence for causing death by driving whilst disqualified increased from 2 years to 10 years' custody. In addition, under the Police, Crime, Sentencing and Courts (PCSC) Act 2022, the statutory maximum sentence for the offences causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs has increased from 14 years' custody to life imprisonment. The Sentencing Council has produced revised guidelines for all of these offences where a death has been caused.

No guidelines currently exist for the offences of causing serious injury by dangerous driving, causing serious injury by driving whilst disqualified, or causing injury by wanton or furious driving. In addition, there are no guidelines for the offences of driving or attempting to drive with a specified drug above the specified limit, and being in charge of a motor vehicle with a specified drug above the specified limit, although the Council previously produced general guidance for these offences. The Council is publishing new sentencing guidelines for all of these offences, for use in all courts in England and Wales.

Furthermore, a new offence of causing serious injury by careless or inconsiderate driving, which has a statutory maximum sentence of 2 years' custody, has been created under the PCSC Act 2022. The Council has therefore produced a new guideline for this offence.

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

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guideline on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are not included in this assessment. The guideline applies to adults only and so an assessment of the impact on youth justice services has not been required.

This resource assessment covers the following offences:

- Causing death by dangerous driving, Road Traffic Act 1988 (section 1);
- Causing death by careless or inconsiderate driving, Road Traffic Act 1988 (section 2B);
- Causing death by careless driving when under the influence of drink or drugs, Road Traffic Act 1988 (section 3A);
- Causing death by driving whilst unlicensed or uninsured, Road Traffic Act 1988 (section 3ZB);
- Causing death by driving whilst disqualified, Road Traffic Act 1988 (section 3ZC);
- Causing serious injury by dangerous driving, Road Traffic Act 1988 (section 1A);
- Causing serious injury by driving whilst disqualified, Road Traffic Act 1988 (section 3ZD);
- Dangerous driving, Road Traffic Act 1988 (section 2);
- Causing injury by wanton or furious driving, Offences against the Person Act 1861 (section 35);
- Driving or attempting to drive with a specified drug above the specified limit, Road Traffic Act 1988 (section 5A); and
- Being in charge of a motor vehicle with a specified drug above the specified limit, Road Traffic Act 1988 (section 5A).

Although the Council has also produced a new guideline for the offence of causing serious injury by careless or inconsiderate driving, no sentencing data are currently available for this offence as it was only created as part of the PCSC Act 2022. It has therefore not been included within this resource assessment. However, resource estimates calculated by the Ministry of Justice for this offence can be found in their [Driving Offences Impact Assessment](#), which was published alongside the PCSC Bill.

Current sentencing practice

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

The intention is that the guidelines will encourage consistency of sentencing, especially where no guideline currently exists, and where there has been an increase to the statutory maximum sentence, and also to ensure that, for all offences, sentences are proportionate to the severity of the offence committed and in relation to other offences, whilst incorporating the changes in legislation.

Knowledge of recent sentencing was required to understand how the new guideline may impact sentences. Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks for offenders sentenced for motoring offences, as well as sentencing data from the Court Proceedings Database. For more information on this data source please see the Further information section at the end of this document. Knowledge of the sentences and factors used in previous cases, in conjunction with Council members' experience of sentencing, has helped to inform the development of the guidelines.

Discussions with sentencers held during the consultation stage to explore whether the motoring guidelines will work as anticipated have provided further understanding of the likely impact of these guidelines on sentencing practice, and the subsequent effect on prison and probation resources.

Detailed sentencing statistics for the offences covered by the new guideline have been published on the [Sentencing Council: Statistical bulletins webpage](#). For more information on data sources and quality, methodology and general conventions used in this resource assessment, please refer to the Further information section at the end of this document.

Causing death by dangerous driving

In 2021, around 150 offenders were sentenced for causing death by dangerous driving and all of these were sentenced at the Crown Court. The majority of offenders (94 per cent) were sentenced to immediate custody, a further 5 per cent were given a suspended sentence order, and 1 per cent were given a community order.

For those receiving immediate custody in 2021, the average (mean) custodial sentence length (ACSL) was 5 years 2 months, whilst the statutory maximum sentence for causing death by dangerous driving was 14 years' custody (under the PCSC Act 2022 the statutory maximum increased to life imprisonment).

Causing death by careless or inconsiderate driving

In 2021, around 210 offenders were sentenced for causing death by careless or inconsiderate driving. Most offenders were either given a suspended sentence order (41 per cent) or a community order (31 per cent). A further 25 per cent were sentenced to immediate custody, 2 per cent received a fine and 1 per cent were recorded as 'otherwise dealt with'.

The statutory maximum sentence for causing death by careless or inconsiderate driving is 5 years' custody and in 2021 the ACSL for this offence was 1 year 2 months.

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

In 2021, around 10 offenders were sentenced for causing death by careless driving when under the influence of drink or drugs, and all offenders were sentenced to immediate custody.

In 2021 the ACSL for this offence was 4 years 11 months, when the statutory maximum sentence was 14 years' custody (under the PCSC Act 2022 the statutory maximum increased to life imprisonment).

Causing death by driving whilst unlicensed or uninsured

Causing death by driving whilst unlicensed or uninsured is an extremely low volume offence. In 2021, fewer than five offenders were sentenced for this offence, and all offenders sentenced were either given a suspended sentence order or sentenced to immediate custody.

The statutory maximum sentence for causing death by driving whilst unlicensed or uninsured is 2 years' custody and over the period 2017 to 2021 the ACSL for this offence was 13 months.

Causing death by driving whilst disqualified

Causing death by driving whilst disqualified is also an extremely low volume offence, with a statutory maximum sentence of 10 years' custody. Prior to 13 April 2015, this offence was combined with the offence of causing death by driving whilst unlicensed or uninsured. Since 2015, fewer than five offenders have been sentenced for causing death by driving whilst disqualified, and all offenders were sentenced to immediate custody.

Causing serious injury by dangerous driving

In 2021, around 410 offenders were sentenced for causing serious injury by dangerous driving. Two thirds of offenders (66 per cent) were sentenced to immediate custody, and a further 26 per cent were given a suspended sentence order. Six per cent received a fine, 2 per cent received a community order and less than 1 per cent were recorded as 'otherwise dealt with'.

The statutory maximum sentence for causing serious injury by dangerous driving is 5 years' custody and in 2021 the ACSL for this offence was 2 years 4 months.

Causing serious injury by driving whilst disqualified

Causing serious injury by driving whilst disqualified is a very low volume offence, with fewer than ten offenders sentenced in 2021. The majority of offenders (78 per cent) were sentenced to immediate custody, and 22 per cent received a suspended sentence order (this equates to two offenders).

The statutory maximum sentence for causing serious injury by driving whilst disqualified is 4 years' custody and over the period 2017 to 2021 the ACSL for this offence was 1 year 8 months.

Dangerous driving

In 2021, around 4,400 offenders were sentenced for dangerous driving, with the majority (80 per cent) being sentenced in the Crown Court. In 2021 most offenders were either sentenced to immediate custody (41 per cent) or were given a suspended sentence order (38 per cent). A further 15 per cent received a community order, 4 per cent received a fine, 2 per cent were recorded as 'otherwise dealt with', and less than 1 per cent received a discharge.

The statutory maximum sentence for dangerous driving is 2 years' custody and in 2021 the ACSL for this offence was 10 months.

Causing injury by wanton or furious driving

Causing injury by wanton or furious driving is a low volume offence, with around 10 offenders sentenced in 2021. One third of offenders sentenced in 2021 (33 per cent) were sentenced to immediate custody, a further 33 per cent were given a suspended sentence order, and the remaining 33 per cent received a community order.

The statutory maximum sentence for this offence is 2 years' custody and over the period 2017 to 2021 the ACSL was 1 year 2 months.

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

Driving or attempting to drive with a specified drug above the specified limit is the highest volume offence covered by the new guidelines, with around 20,200 offenders sentenced in 2021. The majority of offenders sentenced in 2021 (85 per cent) received a fine. A further 9 per cent received a community order, 2 per cent received a suspended sentence order, 1 per cent were sentenced to immediate custody, 1 per cent received a discharge, and 1 per cent were recorded as 'otherwise dealt with'.

The statutory maximum sentence for this offence is an unlimited fine and/or 6 months' custody and in 2021 the ACSL for this offence was 2 months.

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

In 2021, around 500 offenders were sentenced for being in charge of a motor vehicle with a specified drug above the specified limit, and the majority of offenders (91 per cent) received a fine. A further 4 per cent received a community order, 3 per cent were recorded as 'otherwise dealt with', 1 per cent were sentenced to immediate custody, 1 per cent received a suspended sentence order, and 1 per cent received a discharge.

The statutory maximum sentence for this offence is a level 4 fine and/or 3 months' custody and over the period 2017 to 2021 the ACSL for this offence was 1 month.

Key assumptions

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

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. In addition, for low volume offences, and those which have only recently been created, there are limited data available. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the new guideline, and an assessment of the effects of changes to the structure and wording of the guideline where a previous guideline existed.

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

In developing sentence levels for the new guidelines, data on current sentence levels have been considered, although this covers the period before the increase in statutory maximum sentence under the PCSC Act 2022, for sections 1 and 3A of the Road Traffic Act 1988. Existing guidance and case studies, as well as transcripts of judges' sentencing remarks have also been reviewed.

While data exist on the number of offenders and the sentences imposed, due to a lack of data available regarding the seriousness of current cases, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guideline, using relevant transcripts. As a consequence, it is difficult to ascertain how sentence levels may change under the new guideline.

It therefore remains difficult to estimate with any precision the impact the guideline may have on prison and probation resources. To support the development of the new guidelines and to mitigate against the risk of them having an unintended impact, discussions with sentencers were undertaken during the consultation stage. In addition, further analysis of sentencing transcripts was undertaken which has provided more information on which to base the final resource assessment accompanying the definitive guidelines.

Resource impacts

This section should be read in conjunction with the guidelines available on the [Sentencing Council website](#).

Overall impacts

The expected impact of each guideline is provided in detail below.

Overall, the guidelines are anticipated to increase sentences for several offences, where sentence levels in the relevant guidelines have been driven either by the new guidelines reflecting the changes to legislation introduced under the PCSC Act 2022, for sections 1 and 3A of the Road Traffic Act 1988, or by the knock-on effect this has had on the guidelines for other related motoring offences. It is estimated that the definitive guidelines, in reflecting the increase in statutory maximum penalties, may result in a requirement for up to around 470 prison places, comprised of around 300 additional prison places for causing death by dangerous driving, around 10 additional prison places for causing death by careless driving when under the influence of drink or drugs, around 130 additional prison places for causing serious injury by dangerous driving, around 20 additional prison places for causing death by careless or inconsiderate driving, and fewer than 5 additional prison places for dangerous driving.

For the other offences covered by the definitive guidelines, it is difficult to estimate the impact of the guidelines, either due to low volumes or due to a lack of data available on how current cases would be categorised under the new guideline. However, it is anticipated that for these offences the new guidelines will improve consistency of sentencing for these offences, but not lead to any notable changes in sentencing severity.

Causing death by dangerous driving/Causing death by careless driving when under the influence of drink or drugs

The current SGC guideline for causing death by dangerous driving contains three levels of seriousness reflecting the 'nature of [the] offence'. The new guideline has three levels of culpability and one level of harm, as all cases of causing death by dangerous driving will inevitably be of the utmost seriousness.

The SGC guideline for causing death by careless driving when under the influence of drink or drugs contains nine offence categories, based on three levels describing the nature of the offence, and three categories describing factors relevant to the presence of alcohol or drugs. The new guideline follows a similar format, with three levels of culpability and three categories containing factors in relation to the presence of alcohol or drugs.

Under the PCSC Act 2022, the statutory maximum sentence for these offences has increased from 14 years' custody to life imprisonment. The sentence levels in the definitive guidelines have therefore been increased, in order to reflect the new statutory maximum sentences set by Parliament, and ensure sentencing levels in these guidelines are proportionate to other offences. In addition, under the PCSC Act 2022, the release provisions for these offences have been changed; for determinate sentences of less than seven years, offenders will be released halfway through their

sentence, whereas for determinate sentences of seven years or more, offenders will be released after having served two thirds of their sentence. Previously, all offenders who received a determinate sentence for these offences would have been released halfway through their sentence (irrespective of the sentence length).

Following the guideline consultation, some changes have been made to the factors in each culpability category in the causing death by dangerous driving guideline, in addition to several changes to aggravating and mitigating factors. The same changes to aggravating and mitigating factors have been made in the guideline for causing death by careless driving when under the influence of drink or drugs, in addition to some minor wording changes in the sentencing table.

Analysis of a sample of Crown Court judges' sentencing remarks was undertaken to understand the possible effects of the guidelines on sentencing practice (a total of 20 transcripts were analysed from 2019 for causing death by dangerous driving, along with 10 transcripts from the period 2019 to 2020 for causing death by careless driving when under the influence of drink or drugs). Both of these offences are indictable only and, as such, all offenders are sentenced at the Crown Court. We can therefore assume the findings from this analysis are likely to be representative of all offending.

For causing death by dangerous driving, the analysis indicated there may be a shift in how offenders are categorised under the new guideline, from level 3 seriousness in the existing guideline (which has a starting point of 3 years' custody) to level B culpability in the new guideline (which has a starting point of 6 years' custody), and from level 2 seriousness (starting point of 5 years' custody) to level A culpability (starting point of 12 years' custody). This is most likely due to the fact that two factors currently within level 3 seriousness have moved into culpability B in the new guideline, and similarly two factors have moved from level 2 seriousness to culpability A.

The analysis also indicated that the definitive guidelines for both offences are likely to result in an uplift in sentences, due to an increase in sentence lengths for these offences, combined with the changes to culpability categorisation. Research undertaken with judges during the consultation period for the offence of causing death by dangerous driving corroborated this finding, with higher sentences imposed using the draft guideline when compared to the existing guideline.

For causing death by dangerous driving, the transcript analysis found that the average final custodial sentence length increased on average by 2 years 7 months under the new guideline (from 5 years 8 months to 8 years 3 months). It also indicated that the very small number of SSOs imposed each year would become immediate custodial sentences under the new guideline, as these are now expected to be sentences of over 2 years. It is estimated therefore that the definitive guideline may result in a requirement for up to around 300 additional prison places per year. However, this impact is, in part, due to the change to release provisions introduced by the PCSC Act 2022 for this offence (meaning that offenders sentenced to a determinate custodial sentence of 7 years or more will now be released after serving two thirds of their sentence). Based on the transcript analysis undertaken, it is estimated that 100 of the 300 projected additional prison places are the result of the change to release provisions for this offence.

For causing death by careless driving when under the influence of drink or drugs, the transcript analysis found that the average custodial sentence length increased by 1 year 1 month (from 4 years 4 months to 5 years 5 months), and it is estimated that the guideline may result in a requirement for up to around 10 additional prison places per year. It is also estimated that some of the additional prison places would be due to the change to release provisions for this offence (however this would amount to fewer than 5 of the 10 additional prison places).

For both of these offences, these increases in sentence levels are driven by the recent legislative changes, which have been reflected in the guidelines.

Causing death by careless or inconsiderate driving

The existing SGC guideline for causing death by careless or inconsiderate driving contains three categories of seriousness reflecting the 'nature of activity'. The new guideline contains three levels of culpability and one level of harm.

Starting points and sentence ranges in the new guideline have been increased slightly, in order to remain in step with the increased sentence levels in the guidelines for causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs.

Analysis of a sample of Crown Court judges' sentencing remarks has been undertaken to understand the possible effects of the guideline on sentencing practice (a total of 20 transcripts were analysed from 2019). The analysis suggested that under the new guideline, some offenders currently receiving a community order may receive a short custodial sentence instead. This is due to the fact that the starting point for the culpability C category in the new guideline is 26 weeks' custody (compared to a medium level community order in the existing guideline) and, in addition, the sentence range for the culpability C category is now solely custodial (compared to a range of high level community order to 2 years' custody for the medium category in the existing guideline).

The transcript analysis also indicated that overall, the new guideline is likely to result in an uplift in sentences for this offence, with an increase in the average final custodial sentence length of 1 month (from 1 year 4 months to 1 year 6 months) – this finding is corroborated by the research undertaken with judges and magistrates during the consultation period, which found that final sentences were higher using the draft guideline. It is therefore estimated that the definitive guideline may result in a requirement for up to around 20 additional prison places.

Causing death by driving whilst unlicensed or uninsured/Causing death by driving whilst disqualified

The existing SGC guideline for causing death by driving whilst unlicensed, disqualified or uninsured contains three categories of seriousness reflecting the 'nature of activity' and has an offence range of a community order to 2 years' custody (the statutory maximum sentence for causing death by driving whilst unlicensed or uninsured). As the statutory maximum sentence for causing death by driving whilst disqualified is now 10 years' custody, a separate new guideline has been produced for this offence, in addition to a new guideline covering the unlicensed/uninsured offences.

The new guidelines for these offences contain three levels of culpability and one level of harm. The sentencing table in the new guideline for causing death by driving whilst unlicensed or uninsured is the same as that in the existing guideline. As the sentence starting points and ranges have not changed, along with the fact that these offences are very low volume, it is anticipated that any impact of the definitive guideline will be negligible.

In the new guideline for causing death by driving whilst disqualified, the sentencing table ranges from a high level community order to 7 years' custody. The increased starting points and ranges in this guideline reflect the higher statutory maximum for this offence. However, given the extremely low number of offenders sentenced for this offence each year, it is expected that any impact of the definitive guideline on prison and probation resources will be negligible.

Causing serious injury by dangerous driving

There is no current guideline for causing serious injury by dangerous driving. The new guideline has two levels of harm and three levels of culpability. The sentencing ranges have been set with a view to increasing current sentence levels slightly, to reflect the increased sentence levels for causing death by dangerous driving. The sentencing table in the new guideline ranges from 26 weeks to 5 years' custody, the statutory maximum for this offence.

Following the guideline consultation, some changes have been made to factors in each of the culpability categories, in addition to several changes to aggravating and mitigating factors.

Given that the sentence range for this offence is solely custodial, it is expected that any 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 (8 per cent). In addition, three of the six categories in the sentencing table for this offence have a starting point which is eligible for suspension (sentencers are able to suspend sentences of between 14 days and two years).

Analysis of a sample of Crown Court judges' sentencing remarks has been undertaken to understand the possible effects of the guideline on sentencing practice (a total of 18 transcripts were analysed from 2019). The analysis indicated that overall, the new guideline is likely to result in an uplift in sentences for this offence. This is 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) but also due to a shift in sentencing outcomes, with some suspended sentence orders and a small number of community orders now becoming immediate custodial sentences. It is therefore estimated that the definitive guideline may result in a requirement for up to around 130 additional prison places.

Causing serious injury by driving whilst disqualified

There is no current guideline for causing serious injury by driving whilst disqualified. The new guideline for this offence contains three levels of culpability and two levels of harm, with a sentencing table ranging from a community order to 4 years' custody (the statutory maximum for this offence). The intention of this new guideline is to promote consistency in sentencing for this offence, where there is no guidance

currently. Following the consultation on the draft guideline, some minor changes have been made to the culpability A factors and the list of mitigating factors.

Transcript analysis was undertaken of the small number of Crown Court judges' sentencing remarks available for this offence which, although limited by sample size, did not offer any indication that the guideline would result in an increase to sentence levels (a total of six transcripts were analysed from the period 2017 to 2019). Given that this offence is mostly sentenced at the Crown Court, it is likely that the transcripts analysed are fairly representative of this type of offending. In addition, this offence is very low volume. Therefore, it is anticipated that any resource impact of the guideline is likely to be negligible.

Dangerous driving

The existing MCSG guideline for dangerous driving contains three categories of seriousness reflecting the 'nature of activity'. The new guideline differs considerably from the MCSG guideline as it adopts the Sentencing Council's standard stepped approach and applies to the Crown Court in addition to magistrates' courts. It is based on two levels of harm and three levels of culpability, with a sentencing table ranging from a low level community order to two years' custody, the statutory maximum for this offence.

Around 4 per cent of offenders currently receive a fine or discharge for dangerous driving. Fines and discharges are not included in the sentencing range for either the existing or the new guideline. It is not possible to estimate whether sentencing practice would change in these cases, due to a lack of evidence on how these cases may be sentenced under the new guideline.

Research undertaken with sentencers during the consultation period found that, for the scenarios sentenced by magistrates, final sentences were higher using the draft guideline. In addition, some judges and magistrates felt the final sentences reached using the draft guideline were too high.

Following consultation, the same changes to culpability factors and aggravating and mitigating factors have been made to this guideline as in the other guidelines featuring dangerous driving (causing death by dangerous driving and causing serious injury by dangerous driving). In addition, a change has been made to the harm factors, and, with the exception of A1, reductions have been made to starting points and sentence ranges within the sentencing table.

Most offenders sentenced for dangerous driving are sentenced at the Crown Court (80 per cent in 2021) and analysis of a sample of Crown Court judges' sentencing remarks has been undertaken to understand the possible effects of the guideline on sentencing practice (a total of 40 transcripts were analysed from 2019 and 2021). However, given that the number of transcripts analysed represents a very small proportion (1 per cent) of the total number of offenders sentenced, these findings should be viewed as indicative only. In addition, it is important to note that this analysis is based on Crown Court cases only. Although 20 per cent of offenders are sentenced in magistrates' courts, no suitable data sources were available to enable a similar detailed analysis of current sentencing practice to be carried out for magistrates' court cases (sentencing remarks are not available from magistrates' courts).

The analysis suggested that some offenders currently receiving a community order would be sentenced to immediate custody using the new guideline; this would increase prison places. However, the analysis also found that the new guideline is likely to result in a decrease to the average final custodial sentence length of 1 month (from 11 months to 10 months). This is driven by the fact that some original sentences of immediate custody are expected to be shorter using the new guideline, in addition to even shorter custodial sentence lengths on average for those community orders which have become immediate custody. Overall, it is estimated that the net effect of these two changes will largely balance out and result in a requirement for fewer than five prison places.

Causing injury by wanton or furious driving

There is no current guideline for causing injury by wanton or furious driving. The new guideline for this offence contains three levels of culpability and three levels of harm, with a sentencing table ranging from a fine to 2 years' custody (the statutory maximum for this offence). Following the consultation on the draft guideline, several changes have been made to the factors in both culpability A and B categories, along with some changes to aggravating and mitigating factors. In addition, changes have been made to the starting points and sentence ranges for six of the nine boxes in the sentencing table (B1, B2, B3, C1, C2 and C3).

The transcript analysis undertaken of Crown Court judges' sentencing remarks for this offence did not offer any indication that the guideline would result in an increase to sentence levels (a total of 9 transcripts were analysed from the period 2019 to 2020). As this offence is indictable only (and consequently can only be sentenced in the Crown Court), it is expected that the transcripts analysed are representative of all offending. Furthermore, as this is a low volume offence, it is anticipated that any resource impact of the guideline is likely to be negligible.

Driving or attempting to drive with a specified drug above the specified limit/ Being in charge of a motor vehicle with a specified drug above the specified limit

The existing MCSG guidance for these offences contains an exhaustive list of factors that increase seriousness. The new guidelines adopt the Sentencing Council's standard stepped approach and are based on two levels of harm and two levels of culpability. The sentencing ranges have been set to be in line with current sentencing practice and consistent with other relevant guidelines, with a sentencing table ranging from a fine to the respective statutory maxima for these offences (26 weeks' custody for driving or attempting to drive with a specified drug above the specified limit, and 12 weeks' custody for being in charge of a motor vehicle with a specified drug above the specified limit).

As both of these offences are summary only, it has not been possible to undertake an analysis of sentencing remarks for these offences (transcripts of sentencing remarks are only available from the Crown Court). Given the lack of data available on how current cases would be categorised under the new guidelines, it is difficult to estimate what the resource impact of the definitive guidelines might be.

However, research undertaken with magistrates during the consultation period for the offence of driving or attempting to drive with a specified drug above the specified limit

found that, on the whole, magistrates felt the sentencing table for this offence reflected current practice.

Driving or attempting to drive with a specified drug above the specified limit is a high-volume offence (with around 20,200 offenders sentenced in 2021). However just 1 per cent of offenders were sentenced to immediate custody in 2021 (around 210 offenders). Being in charge of a motor vehicle with a specified drug above the specified limit is a much lower volume offence, with 500 offenders sentenced in 2021, and of those fewer than five were sentenced to immediate custody.

Given the low statutory maximum sentences for these offences (which are both within the range of suspension), it is anticipated that any impact of these guidelines on prison and probation resources is likely to be minimal.

Risks

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

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

This risk is mitigated by information that was gathered by the Council as part of the consultation phase. This included inviting views on the guidelines through the consultation exercise and research with sentencers using case scenarios to explore whether the guidelines could have any unintended effects. However, given there were limitations on the number of scenarios which could be explored, the risk cannot be fully eliminated. The Council also included a question in the consultation document, asking for consultees' views on the potential impact of the proposals, and these views have been considered for this final resource assessment. Transcripts of judges' sentencing remarks have provided a more detailed picture of current sentencing practice for some of these offences which has formed a large part of the evidence base on which the resource impacts have been estimated, however it should be noted that these are rough estimates which should be interpreted as indicative of the direction and approximate magnitude of any change only.

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

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

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers interpret them as intended. Sentencing ranges have been decided on by considering sentence ranges in the existing guidelines, in conjunction with sentencing data and Council members' experience of sentencing. Transcripts of sentencing remarks of relevant motoring cases have been studied where possible to gain a greater understanding of current sentencing practice and to ensure that the guidelines are developed with current sentencing practice in mind. Additionally,

research with sentencers which was carried out during the consultation period has hopefully enabled any issues with implementation to be identified and addressed.

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

In addition, for the offence of dangerous driving, data currently being collected from magistrates' courts and the Crown Court will be available in due course for monitoring purposes.

Further information

Data sources and quality

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

Further details of the processes by which MoJ validate the records in the CPD can be found inside the 'Technical Guide to Criminal Justice Statistics' within the [Criminal Justice System Statistics Quarterly \(CJSQ\) publication](#).

The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When an offender has been found guilty of two or more offences, the principal is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. Further information about these sentencing data can be found in the accompanying statistical bulletin and data tables published on the [Sentencing Council: Statistical bulletins webpage](#).

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

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

Figures presented include the time period from March 2020 in which restrictions were initially placed on the criminal justice system due to the coronavirus (COVID-19)

pandemic, and the ongoing courts' recovery since. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

Methodology

Where a resource impact has been calculated, volumes of sentences have been adjusted in line with 2021 volumes. For the offences of causing death by dangerous driving and causing death by careless driving when under the influence of drink or drugs, it has been assumed that those serving a determinate custodial sentence of less than seven years would be released half-way through their sentence and those serving a determinate sentence of seven years or more would be released after serving two thirds of their sentence. This two-thirds release point will take effect for these offences under the PCSC Act 2022. For the other offences where a resource impact has been quantified, it has been assumed that offenders would be released half-way through their sentence.

Data are not available to estimate how many suspended sentence orders would continue to be suspended under the definitive guidelines, however, the estimated resource impacts provided are based on the assumption that offenders who were previously given a suspended sentence order would continue to be given one under the definitive guideline, provided the sentence length was within the range for suspension.

It has also been assumed that offenders who received a community order under existing practice and who are estimated to receive a custodial sentence of 2 years or less under the new guideline would have their sentence suspended at the same rate at which eligible custodial sentences are currently suspended.

General conventions

Actual numbers of sentences have been rounded to the nearest 100, when more than 1,000 offenders were sentenced, and to the nearest 10 when fewer than 1,000 offenders were sentenced.

Proportions of sentencing outcomes have been rounded to the nearest integer. Percentages in this report may not appear to sum to 100 per cent, due to rounding. Prison impact estimates have been rounded to the nearest 10 prison places.

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Sentencing Council meeting:
Paper number:

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

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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.

Annex A

Witness Intimidation

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

Triable either way

Maximum: 5 years' custody

Offence range: Community Order- 4 years' custody

STEP ONE

Determining the offence category

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

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

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none"> • Actual or threat of violence • Breach of specific bail conditions and/or protection notice imposed to protect a witness • Breach of court order (see step five on totality when sentencing more than one offence) • Conduct over a sustained period of time • Sophisticated and/or planned nature of conduct
B- Medium culpability	<ul style="list-style-type: none"> • Non-violent conduct amounting to a threat • Other cases that fall between categories A and C because: <ul style="list-style-type: none"> ○ Factors are present in A and C which balance each other out and/or ○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none"> • Contact with witness unplanned and limited in scope and duration • Involved through coercion, intimidation or exploitation • Offender's responsibility substantially reduced by mental disorder or learning disability
HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none"> • Contact made at or in vicinity of victim's home and/or workplace • Serious distress and/or impact caused to victim • Serious impact on administration of justice
Category 2	<ul style="list-style-type: none"> • Some distress and/or impact caused to the victim • Some impact on administration of justice
Category 3	<ul style="list-style-type: none"> • Limited distress and/or impact caused to the victim • Limited impact on administration of justice

STEP TWO**Starting point and category range**

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

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

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

Factors increasing seriousness*Statutory aggravating factors:*

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

Other aggravating factors:

- Child present and/or child caused serious distress
- Offence committed in custody
- Offence committed in a domestic context

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

Factors reducing seriousness or reflecting personal mitigation

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

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Totality principle

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

STEP SIX

Compensation and ancillary orders

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

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

STEP SEVEN

Reasons

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

STEP EIGHT

Consideration for time spent on bail

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

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Perverting the Course of Justice

Common law

Triable only on indictment

Maximum: Life imprisonment

Offence range: Community order – 7 years' custody

STEP ONE

Determining the offence category

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

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

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

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

STEP TWO

Starting point and category range

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

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

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

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- Offender involves others in the conduct
- Offence committed in a domestic context
- Vulnerable victim

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

Factors reducing seriousness or reflecting personal mitigation

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

STEP THREE

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

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

STEP FOUR

Reduction for guilty pleas

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

STEP FIVE

Totality principle

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

STEP SIX

Compensation and ancillary orders

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

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

STEP SEVEN

Reasons

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

STEP EIGHT

Consideration for time spent on bail

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

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Final Resource Assessment

Perverting the Course of Justice and Witness Intimidation offences

Introduction

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

Rationale and objectives for new guideline

No current guideline exists for offences relating to perverting the course of justice, a common law offence. The Council has produced a new sentencing guideline for this offence, for use in all courts in England and Wales.

In May 2008, the Sentencing Guidelines Council (SGC) published the Magistrates' Court Sentencing Guidelines (MCSG), covering most of the offences regularly going before magistrates' courts. This included the offence of witness intimidation under section 51(1) and section 51(2) of the Criminal Justice and Public Order Act 1994. The MCSG only apply to sentences passed at magistrates' courts, and so there are no existing guidelines for this offence for use in the Crown Court. The Council has produced a new sentencing guideline for this offence, for use at all courts.

The Council's aim in developing the new and revised guidelines is to provide sentencers with a clear approach to sentencing these offences that will ensure that sentences are proportionate to the offence committed and in relation to other offences. It should also promote a consistent approach to sentencing.

Scope

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

This resource assessment covers the new and revised guidelines for the following offences:

- perverting the course of justice contrary to Common Law

- intimidating a witness contrary to sections 51(1) and 51(2) of the Criminal Justice and Public Order Act 1994

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

Current sentencing practice

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

The intention is that the new and revised guidelines will encourage consistency of sentencing, especially where no guideline currently exists, and will better reflect current case law.

Knowledge of recent sentencing was required to understand how the new guideline may impact sentences. Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks for offenders sentenced for perverting the course of justice and witness intimidation. A total of 27 transcripts of Crown Court sentencing remarks for perverting the course of justice from 2015, 2016 and 2017 were analysed. For witness intimidation, a total of 18 transcripts from 2015, 2017 and 2020 were analysed. In addition, sentencing data from the Court Proceedings Database have been used. For more information on this data source please see the Further information section at the end of this document. Knowledge of the sentences and factors used in previous cases, in conjunction with Council members' experience of sentencing, has helped to inform the development of the guidelines.

During the consultation stage, research was conducted with sentencers, to explore whether the draft guidelines would work as anticipated. This research also provided some further understanding of the potential impact of the guidelines on sentencing practice, and the subsequent effect on prison and probation resources.

Detailed sentencing statistics for the offences covered by the guidelines have been published on the [Sentencing Council: Statistical bulletins webpage](#).

Perverting the course of justice

In 2021, around 570 offenders were sentenced for perverting the course of justice and all of these were sentenced at the Crown Court. Around half of these offenders (51 per cent) were sentenced to immediate custody and a further 43 per cent were given a suspended sentence order. Community orders accounted for 4 per cent of offenders sentenced, less than 0.5 per cent were given a fine, 1 per cent were given a discharge and 2 per cent were recorded as otherwise dealt with.

Perverting the course of justice is a Common Law offence and, as such, the maximum sentence is life imprisonment. For those receiving immediate custody in 2021, the (mean) average custodial sentence length (ACSL) was 1 year.

Witness intimidation

In 2021, around 210 offenders were sentenced for intimidating a witness, with around two thirds (66 per cent) sentenced at the Crown Court and the rest (34 per cent) sentenced at the magistrates' courts. Most offenders (57 per cent) were sentenced to immediate custody. A further 29 per cent received a suspended sentence, 9 per cent received a community order, 1 per cent received a fine and 4 per cent were recorded as otherwise dealt with.

The statutory maximum sentence for witness intimidation is 5 years' custody and in 2021, the ACSL for this offence was 10 months.

Key assumptions

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

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

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

In developing sentence levels for the new guidelines, existing guidance and data on current sentence levels has been considered. While data exists on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the guidelines using relevant transcripts, due to a lack of data available regarding the seriousness of current cases. As a consequence, it is difficult to ascertain how sentence levels may change under the guideline.

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To support the development of the new guidelines, and to mitigate the risk of the changes having an unintended impact, research was undertaken with sentencers during the consultation period, utilising different scenarios. Along with consultation responses, this provided more

information on which to base the final resource assessment accompanying the definitive guidelines.

Resource impacts

This section should be read in conjunction with the guidelines available on the [Sentencing Council website](#).

Overall impacts

The expected impact of each guideline is provided in detail below.

For both perverting the course of justice and witness intimidation offences, it is difficult to estimate the impact of the guidelines. However, it is anticipated that the new guidelines will improve consistency of sentencing for these offences, and not lead to any notable changes in sentencing severity.

Perverting the course of justice

There is currently no guideline for perverting the course of justice and the proposed guideline has three levels of culpability and three levels of harm. This leads to nine offence categories with sentences ranging from a community order to seven years' custody. The Council's intention with the new guideline is not to change sentencing practice and, as such, sentencing ranges have been set with current sentencing practice in mind.

Perverting the course of justice is an indictable only offence and as such all offenders are sentenced at the Crown Court. Analysis of a sample of Crown Court judges' sentencing remarks has been undertaken to understand the possible effects of the guideline on sentencing practice.

These types of cases vary as there are a number of different underlying offences for which an offender could be sentenced for perverting the course of justice. The sample of transcripts analysed covers a range of these underlying offences and as such offers some insight into the circumstances of the cases and the reasoning behind the sentences given. However, it is not possible to obtain information on all relevant underlying offences and for those cases for which we do have transcripts, they do not always provide all the information needed to accurately assess the seriousness and nature of the offence, which can often vary from case to case. Therefore, findings presented in this resource assessment should be treated as indicative only.

Case law suggests that offences of perverting the course of justice often warrant a custodial sentence but that these do not always need to be long custodial sentences (Source: Abdulwahab [2018] EWCA Crim 1399). Accordingly, all starting points in the guideline are custodial and only one sentence range in the guideline has a non-custodial sentence outcome (category C3). This is supported by the sample of transcripts analysed, which indicated that very few cases would fall into category C3 and is also in line with current sentencing practice (fewer than 10 per cent of offenders received a non-custodial sentence in 2021).

The transcript analysis suggested that the sentence types would remain similar under the new guideline; for example, offenders currently receiving a suspended sentence order would continue to do so, as would offenders currently receiving a sentence of immediate custody.

Given that all of the starting points for this offence 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 (around 4 per cent received a fine or community order in 2021). In addition, sentencers are able to suspend sentences between 14 days and 2 years, and eight of the nine categories in the sentence table for this offence have a starting point which is eligible for suspension. Therefore, it is anticipated that there will be limited impact on prison and probation resources.

The transcript analysis further suggested that the sentence lengths for immediate custody given for these offences would overall remain broadly similar under the new guideline and that there would be limited need for additional prison places. Although there were some changes (increases and decreases) in the sentence lengths given under the new guideline compared to the original sentences imposed, overall, these were offset by each other. Therefore, the average custodial sentence length is expected to remain broadly similar under the new guideline. Further research with sentencers was conducted during the consultation stage. Sentencers taking part noted that the guideline helped them to determine the category of culpability and harm to apply for the scenarios they were presented with, and these were generally applied consistently.

Witness intimidation

The existing Magistrates' Court Sentencing Guidelines (MCSG) guideline for witness intimidation contains three categories of seriousness reflecting the 'nature of activity'. The new guideline adopts the Sentencing Council's standard stepped approach and applies to all courts. It is based on three levels of harm and three levels of culpability. The sentencing ranges have been set with current sentencing practice in mind, with a sentencing table ranging from a community order to four years' custody.

Most offenders sentenced for offences of witness intimidation are sentenced at the Crown Court (66 per cent in 2021) and analysis of a sample of Crown Court judges' sentencing remarks has been undertaken to understand the possible effects of the guideline on sentencing practice.

The transcripts analysed did not always include all of the information required to accurately assess the level of culpability and harm relevant to the cases detailed within them. 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 where sentencing transcripts are not available). 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). Thus, it is expected that these cases would have a limited impact on prison and probation resources.

For custodial sentences, based on the limited information provided within the transcripts, it is anticipated that sentencing levels will remain relatively stable under the new guideline. For example, offenders currently receiving a suspended sentence order are likely to continue to do so. There were some changes (increases or decreases) in the lengths of custodial sentences given under the new guideline compared to the original sentences imposed. However, broadly speaking, these offset each other and so, overall, the average custodial sentence length is expected to remain broadly stable. As such, it is anticipated that any impact the guideline has on prison or probation resources would be limited. Additionally, sentencers taking part in the research during the consultation stage felt that the guideline helped them to determine which category of culpability and harm to apply for the scenarios they were presented with. These were generally applied consistently.

Risks

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

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

This risk is mitigated by information that was gathered by the Council as part of the guideline development and consultation phase. This included providing case scenarios as part of the consultation exercise which were intended to test whether the guidelines have the intended effect and inviting views on the guidelines. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated. Transcripts of judges' sentencing remarks have provided a more detailed picture of current sentencing practice for these offences which has formed a large part of the evidence base on which the resource impacts have been assessed. However, it should be noted that due to the limited information within the transcripts and the case-specific nature of these offences, the findings of the resource assessment should only be interpreted as indicative of any resource impacts.

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

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

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers interpret them as intended. For the new guidelines, sentencing ranges have been decided on by considering sentence ranges in the MCSG witness intimidation guideline, in conjunction with sentencing data and Council members' experience of sentencing. Transcripts of sentencing remarks of relevant perverting the course of justice and witness intimidation cases have been studied to gain a greater understanding of current sentencing practice and to ensure that the guidelines are developed with current sentencing practice in mind.

Additionally, research with sentencers carried out during the consultation period has helped to identify and address issues with implementing the guidelines. Consultees have also had the opportunity to share their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. Further, the Council uses data from the Ministry of Justice to monitor the effects of its guidelines.

Further information

Data sources and quality

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

Further details of the processes by which MoJ validate the records in the CPD can be found inside the 'Technical Guide to Criminal Justice Statistics' within the [Criminal Justice System Statistics Quarterly \(CJSQ\) publication](#).

The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When an offender has been found guilty of two or more offences, the principal is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. Further information about these sentencing data can be found in the accompanying statistical bulletin and data tables published on the [Sentencing Council: Statistical bulletins webpage](#).

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

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

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

General conventions

Actual numbers of sentences have been rounded to the nearest 10 when fewer than 1,000 offenders were sentenced.

Proportions of sentencing outcomes have been rounded to the nearest integer. Percentages in this report may not appear to sum to 100 per cent, owing to rounding.



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:
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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.

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

Kidnap cases	A,B,C							
	Culpability	Harm	SP	After aggravating/mitigating factors	GP	Final sentence	Key observations by participants	Actual sentence in case
Scenario A								10 yrs 10 mths
Participant 1	A, detention over protracted time, leading role in large group	1, severe psych injury- also psych harm caused to mother	11yrs	12 yrs 6 mths, age of victim-17-detention in isolated place, threats to family members. Mit- no relevant previous, poss exemplary conduct (charity work)	10%	11 yrs 3 mths	Should threats to family members be an agg factor? Should age of victim be an explicit agg factor?	
Participant 2	High, detention over protracted period, leading role in group, use of weapon, motivated by financial gain	1, very serious distress caused to victim and others	12 yrs	No mitigation, 1 precon but not significant	10%	10 yrs 9 mths	Is detention over 3hrs protracted period of time? Should there be an agg factor of vulnerable victim? Not all vul victims will fall into the high culp factor	
Participant 3	A, leading role, use of sig force, motivated by financial gain, Some B factors –	1, serious psych harm/v severe distress caused to the	14 yrs	Multiple culp A factors resulted in upward adjustment from A1 starting point. Element of detention in isolated	10%	12.5 yrs	Possibly no deliberate targeting of the victim- a culp A factor- so	

	use of weapon to make threats -but on balance Culp A	victim/others, serious injury/pain caused to the victim		location but it was limited in duration			should there be an agg factor of vulnerable victim (not taken into account at step 1?). There was a threat to kill - should the cat 2 harm factor be threat of torture or to kill?	
Participant 6	A, leading role, motivated by expectation of financial gain.	1, serious psychological harm, very severe distress	11 yrs	12 yrs, number of others who joined in the violence, use of weapon to threaten by one of them, victim felt obliged to move house, movement between vehicles and location over 3 hrs, little or no apparent mitigation	10%	10yrs 9 mths	Further thought to agg factor of 'offender involves others in conduct- could apply to others joining in with the offenders, others being adversely affected by the offending, or both	
Scenario B								20 mths susp for 2yrs
Participant 4	C, limited force, limited duration	3, limited effects	1 yr	16mths, on bail- domestic context, mit-	25%	12 mths		

				lack of previous convictions				
Participant 5								
Participant 6	C, limited use of force, limited in duration	2, some distress	2yrs- harm was low in the scale for cat 2	2yrs, young, immature, lack of support, but domestic context and in breach of a bail condition in relation to the victim	20%	18 mths	Harm 2 has to cover a wide range of harm	
Participant 3	C, limited use of force, limited in scope/duration	3, limited effects of the offence	1 yr	9mths, offence committed on bail, domestic context but no previous convictions, age/lack of maturity, age significant and outweighed the agg factors	20%	7 mths custody- possibly suspended or CO- due to time remanded in custody		
Scenario C								5 yrs
Participant 1	A, use of weapon to inflict violence	2- some injury/pain, some psych harm	7yrs	8yrs- on licence- leading role being the oldest, driving the car, hitting with brick. Previous cons? No mit	N/A	8yrs		
Participant 4	A, leading role, use of a weapon to inflict violence. Of limited duration in cat C but the cat A factors outweighed this	2 some distress caused	7yrs	8yrs -on licence- previous convictions. No mit	N/A	8yrs		
Participant 7	Borderline between A/B.	Between 2/3. Victim said	8 yrs	9yrs. No mit factors apparent. Agg-	N/A	9yrs		

	A:Use of weapon to inflict injury. Offence committed in furtherance of criminal activity. B: other violence threatened/offence committed by group. C: offence of limited duration	kidnap was the most horrific event he'd ever experienced- but no evidence of anything other than limited effects		previous cons but limited to avoid double counting with step 1- offence on licence- offended wielded the brick				
Participant 8	A-use of brick and violence	2- injuries	7yrs	On licence and pre-cons-fear of being doused in petrol- but short lived and not part planned -up to 8yrs	N/A	8yrs		
False Imprisonment cases	D,E,F							
Scenario D								11yrs custody plus extended licence 4 yrs
Participant 1	A, planned, 'devious', more than some element of planning	Between 1-2, no VPS, but 'absolutely terrified'	10	14 yrs, sexual motive, attempt to inflict GBH. Stat agg of previous similar offending against women. No mit.			Should sexual motive be a high culp factor? Or agg factor? Or rely on being	

							charged separately?	
Participant 2	High, planned, use of weapon	2, v. limited information about effect on victim	5 yrs	7yrs- amount and nature of pre-cons-significant risk to women, and sexual motive. No mit factors	N/A	7yrs	No info from the PSR or psych assessment so difficult to make a full assessment of the case.	
Participant 3	A, elements of A and B, A-vulnerable victim-sophisticated planning-he was intending to commit a sexual offence, B- use of weapon to make threats. On balance a cat A case	2, v. limited info so difficult to assess-assume some psych harm/distress	7 yrs	12 yrs- uplift of 2 yrs to reflect intent to commit a sexual offence (as per guidance note for s.62 SOA 2003). Further 3 yrs to reflect aggravation of the previous conviction, similarity of earlier offence but 20 yrs ago	N/A	12 yrs - possibly an extended sentence if further info available	Nothing currently in g'line which refers to an intent to commit a sexual offence-useful to add something on this- at either step 1 or 2? And/or cross refer to s.62 SOA 2003 note? Sentence using this draft lower than I would have expected	
Participant 8	High, planning and degree of violence	2-due to lack of VPS- with which it may have been 1	7yrs	10yrs due to aggravating factors-possibly an extended sentence	N/A	10yrs		

Scenario E								4yrs custody plus extended licence 3yrs
Participant 4	A, leading role, detention over a protracted period	1, V.serious distress caused? Hard to assess on limited evidence. Or 2?	11yrs	12 yrs, previous cons, possible mit on the psychiatric disorder? But no evidence so cannot assess it	33%	8yrs	V difficult to assess just using limited sentencing remarks	
Participant 6	B, v.sig violence threatened, use of weapon to make threats, offence committed as part of a group	2, some psych harm/distress caused, some injury caused, threats of torture, all present, harm 1 factors not established	5 yrs- adjusted to 6yrs due to multiple culp/harm factors	7yrs, previous cons, victim's vulnerability, filming, no mit of nay significance	33%	4yrs 8mths	Cat 2 harm has to cover a wide range of harm-should we add a year to the upper end of the cat range for each of the harm 2 boxes. 7yrs on the low side- but not app to go outside of the cat range. Add filming as an agg factor?	
Participant 7	Between A/B. Closer to A because of multiple B factors. A factors: detention over prolonged	Between 1/2 could be argued v severe distress but no evidence	9yrs	Previous convictions- not directly relevant/limited effect. Mit was effect on def's children-factors	33%	EDS- 6 yrs cust plus 3 yrs extended licence	Mental disorder not relevant as operative only as failed to	

	period/deliberate targeting of vul victim. B: v.sig violence threatened/use of weapon to make threats/group offence	of long term effect so arguable that harm better described as some distress		balance each other out.			take medication	
Scenario F								10mths custody
Participant 2	Medium-balance of high factor- detention and low factor- offender's resp reduced by MD	3-limited effects, no VPS, no evidence of distress caused to children	1 yr-	Agg/mit factors balance one another out-domestic/children and lack of precons	33%	8mths		
Participant 7	Between B/C. Detention between protracted and limited. No high cul. Factors. Resp reduced by his MD so C	2. Some distress caused to victim and children	2 yrs 9 mths	2yrs 3 mths. Domestic context agg factor. No previous convictions/remorse-mit factors. Mit factors outweigh agg	33%	18mths cust		
Participant 8	B-balance of factors esp MH in low but being locked in overnight with children is A	2, some harm	7yrs	Remorse and character (DA taken into account at step 1) down to 5yrs	33%	3yrs	Difficult to assess harm effectively without VPS and with poor sentencing remarks	

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Annex B

Kidnap False Imprisonment

Common Law

Triable only on indictment

Maximum: Life Imprisonment

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

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

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

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

STEP ONE

Determining the offence category

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

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

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none"> • Detention over a <u>protracted</u> period of time • Sophisticated and/or planned nature of conduct • <u>Leading role in group offending</u> • Deliberate targeting of particularly vulnerable victim • Use of <u>very significant force</u> • Use of a weapon <u>to inflict violence</u> • Offence motivated by expectation of financial gain • Offence committed in context of other criminal activity •
B- Medium culpability	<ul style="list-style-type: none"> • <u>Very significant violence threatened</u> Threat of violence to victim and/or others • <u>Use of a weapon to make threats</u> • <u>Some element of planning in the offence</u> • <u>Offence was committed as part of a group (where not as A)</u> • Other cases that fall between categories A and C because: <ul style="list-style-type: none"> ○ Factors are present in A and C which balance each other out and/or ○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none"> • <u>Limited use of force in the commission of the offence</u> • <u>Non violent threats</u> • Limited in scope <u>or</u> and duration • Involved through coercion, intimidation or exploitation • Offender's responsibility substantially reduced by mental disorder or learning disability

HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none"> • Serious psychological harm <u>or very severe distress</u> caused to the victim and/or others • Serious injury/<u>severe pain</u> caused to the victim • Use of torture, humiliation or degrading treatment •
Category 2	<ul style="list-style-type: none"> • Some psychological harm <u>or some distress</u> caused to the victim and/or others

	<ul style="list-style-type: none"> • Some injury <u>or some pain</u> caused to the victim • Threat of torture
Category 3	<ul style="list-style-type: none"> • Limited effects of the offence

STEP TWO

Starting point and category range

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

Harm	Culpability		
	A	B	C
Category 1	Starting Point 11 years' custody Category Range 8 – 16 years' custody	Starting Point 7 years' custody Category Range 5 -10 years' custody	Starting Point 5 years' custody Category Range 3 - 7 8 years' custody
Category 2	Starting Point 7 years' custody Category Range 5 -10 years' custody	Starting Point 5 years' custody Category Range 3 – 7 8 years' custody	Starting Point 2 years' 6 months custody Category Range 1- 3 4 years' custody
Category 3	Starting Point 5 years' custody Category Range 3 – 7 8 years' custody	Starting Point 2 years' 6 months custody Category Range 1- 3 4 years' custody	Starting Point 1 years' custody Category Range 6 months' - 2 year's custody

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

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

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

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

Factors reducing seriousness or reflecting personal mitigation

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

STEP 3

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

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

STEP 4

Reduction for guilty pleas

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

STEP 5

Dangerousness

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

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

STEP 6

Totality principle

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

STEP 7

Compensation and ancillary orders

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

STEP 8

Reasons

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

STEP 9

Consideration for time spent on bail (tagged curfew)

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

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Kidnapping, false imprisonment, abduction of child by parent, etc, abduction of child by other persons, blackmail and disclosing private sexual images offences Annex**Section 1: Kidnapping**

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

Section 2: False imprisonment

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

Section 3: Abduction of child by parent

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

Section 4: Abduction of child by other persons

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

Section 5: Blackmail

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

Section 6: Disclosing private sexual images

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

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

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

Notes:

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

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

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

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

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

Notes:

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

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

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

Table 1.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for kidnapping, 2010-2020[Index](#)**Estimated pre-guilty plea**

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

Post-guilty plea

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

Notes:

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

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

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

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

Notes:

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

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

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

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

Notes:

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

Table 2.1: Number of adult offenders sentenced for false imprisonment, Crown Court, 2010-2020¹[Index](#)

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

Notes:

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

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

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

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

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

Notes:

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

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

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

Table 2.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for false imprisonment, 2010-2020[Index](#)**Estimated pre-guilty plea**

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

Post-guilty plea

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

Notes:

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

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

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

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

Notes:

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

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

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

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

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

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

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

Notes:

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

Table 3.1: Number of adult offenders sentenced for abduction of child by parent, etc, all courts, 2010-2020[Index](#)

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

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

Notes:

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

Table 3.2: Number and proportion of adult offenders sentenced for abduction of child by parent, etc, by sentence outcome, 2010-2020[Index](#)

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

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

Notes:

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

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

Table 3.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for abduction of child by parent, etc, 2010-2020[Index](#)**Estimated pre-guilty plea**

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

Post-guilty plea

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

Notes:

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

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

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

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

Notes:

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

2) The statutory maximum sentence for this offence is 7 years' custody.

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

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

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

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

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

Notes:

- 1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than and equal to 1 year, and '1 to 2' includes sentence lengths over 1 year and up to and including 2 years.
- 2) The statutory maximum sentence for this offence is 7 years' custody. In 2020 the longest post-guilty plea determinate sentence given was 4 years.
- 3) Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

Table 4.1: Number of adult offenders sentenced for abduction of child by other persons, all courts, 2010-2020[Index](#)

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

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

Notes:

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

Table 4.2: Number and proportion of adult offenders sentenced for abduction of child by other persons, by sentence outcome, 2010-2020[Index](#)

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

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

Notes:

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

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

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

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

Post-guilty plea

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

Notes:

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

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

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

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

Notes:

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

2) The statutory maximum sentence for this offence is 7 years' custody.

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

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

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

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

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

Notes:

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

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

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

Table 5.1: Number of adult offenders sentenced for blackmail, Crown Court, 2010 to 2020^{1,2}[Index](#)

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

Notes:

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

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

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

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

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

Notes:

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

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

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

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

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

Post-guilty plea

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

Notes:

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

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

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

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

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

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

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

Notes:

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

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

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

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

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

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

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

Notes:

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

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

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

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

Table 6.1: Number of adult offenders sentenced for disclosing private sexual images, all courts, 2015-2021¹[Index](#)

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

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

Notes:

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

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

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

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

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

Notes:

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

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

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

Table 6.3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for disclosing private sexual images, 2015-2021^{1,2}[Index](#)**Estimated pre-guilty plea**

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

Post-guilty plea

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

Notes:

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

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

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

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

Notes:

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

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

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

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

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

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

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

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

Notes:

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

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

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

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

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Annex D

Blackmail

Theft Act 1968 (section 21)

Triable only on indictment

Maximum: 14 years' custody

Offence range: x – xx years' custody

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

STEP ONE

Determining the offence category

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

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

CULPABILITY	
Demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none"> • Conduct <u>repeated or prolonged</u> over a <u>substantial sustained</u> period of time • Sophisticated and/or planned nature of conduct • Deliberate targeting of particularly vulnerable victim <u>and/or their family</u> • Use of violence
B- Medium culpability	<ul style="list-style-type: none"> • Violence threatened • Other cases that fall between categories A and C because: <ul style="list-style-type: none"> ○ Factors are present in A and C which balance each other out and/or ○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none"> • Unplanned and/or Offence was limited in scope and duration • Involved through coercion, intimidation or exploitation • Offender's responsibility substantially reduced by mental disorder or learning disability

HARM	
The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none"> • Serious distress <u>and or psychological harm</u> caused to the victim <u>and/or others</u> • Serious distress caused to others • Very large amount of money obtained • Serious consequential financial impact of the offence • <u>Property demanded or obtained is of substantial value (financial or otherwise) regardless of monetary worth to the victim and/or others</u> • Widespread public impact of the offence
Category 2	<ul style="list-style-type: none"> • Some distress <u>and/or psychological harm</u> caused to the victim <u>and/or others</u> • Some distress caused to others

	<ul style="list-style-type: none"> • Some consequential financial impact of the offence • Considerable amount of money obtained • <u>Property demanded or obtained is of some value (financial or otherwise) regardless of monetary worth to the victim and/or others</u>
<p>Category 3</p>	<ul style="list-style-type: none"> • Limited effects of the offence • <u>Property demanded or obtained is of a small amount (financial or otherwise) regardless of monetary worth to the victim and/or others</u>

STEP TWO

Starting point and category range

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

Harm	Culpability		
	A	B	C
Category 1	Starting Point 7 8 years' custody Category Range 4 - 12 0 years' custody	Starting Point 4 years' custody Category Range 2 - 6 8 years' custody	Starting Point 2 years' custody Category Range 1 - 4 5 years' custody
Category 2	Starting Point 4 years' custody Category Range 2 - 6 8 years' custody	Starting Point 2 years' custody Category Range 1 - 4 5 years' custody	Starting Point 1 years' custody Category Range 6 months' - 2 years' custody
Category 3	Starting Point 2 years' custody Category Range 1 - 4 5 years' custody	Starting Point 1 years' custody Category Range 6 months' - 2 years' custody	Starting Point 6 months' custody Category Range High level Community order - 1 year's custody

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

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

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- ~~Disturbing nature of the threat(s)~~
- Conduct intended to maximise distress and/or humiliation
- Offence committed in context of/in connection with ~~related to~~ other criminal activity
- Abuse of trust or dominant position or abuse of confidential information
- As a result of the offence victim (as a public official) forced to abuse their position
- Offence involved use or threat of a weapon
- Other(s) put at risk of harm by the offending
- Blame wrongly placed on others
- Offence committed in a domestic context (where not taken into account at step one)
- Commission of offence whilst under the influence of alcohol or drugs
- Leading role in group
- Offender involves others in the conduct
- Offence committed on licence or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

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

STEP 3

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

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

STEP 4

Reduction for guilty pleas

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

STEP 5

Totality principle

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

STEP 6

Compensation, [confiscation](#) and ancillary orders

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation).

(See Proceeds of Crime Act 2002 sections 6 and 13)

Where the offence has resulted in loss or damage the court must consider whether to make a **compensation order**. The court must give reasons if it decides not to award compensation in such cases ([Sentencing Code, s.55](#)).

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

The court may also consider whether to make ancillary orders. These may include a deprivation order, a serious crime prevention order and disqualification from acting as a company director.

Serious Crime Prevention Order

The Crown Court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

- [Ancillary orders - Crown Court Compendium](#)

STEP 7

Reasons

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

STEP 8

Consideration for time spent on bail (tagged curfew)

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

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Annex E

Disclosing or threatening to disclose private sexual images

Criminal Justice and Courts Act 2015 (section 33)

Triable either way

Maximum: 2 years' custody.

Offence range: Discharge to 1 year 6 months' custody

Where offence committed in a domestic context, also refer to the *Domestic Abuse: Overarching Principles* guideline

STEP ONE**Determining the offence category**

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

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

Culpability demonstrated by one or more of the following:

A- High Culpability

- [Repeated threats to disclose images over a sustained period](#)
- Conduct intended to maximise distress and/or humiliation
- Images circulated widely/publically
- Significant planning and/or sophisticated offence
- Repeated efforts to keep images available for viewing

B – Medium Culpability

- [Threat/s to disclose images widely](#)
- Some planning
- Scope and duration that falls between categories A and C
- All other cases that fall between categories A and C

C – Lesser Culpability

- Offender's responsibility substantially reduced by mental disorder or learning disability.
- Little or no planning
- Conduct intended to cause limited distress and/or humiliation
- Offence was limited in scope and duration

Harm

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

Category 1

- Very serious distress caused to the victim
- Significant psychological harm caused to the victim
- Offence has a considerable practical impact on the victim

Category 2

Harm that falls between categories 1 and 3, and in particular:

- Some distress caused to the victim
- Some psychological harm caused to the victim
- Offence has some practical impact on the victim

Category 3

- Limited distress or harm caused to the victim

STEP TWO
Starting point and category range

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

Harm	Culpability		
	A	B	C
Category 1	<p>Starting point 1 year's custody</p> <p>Category range 26 weeks' - 1 year 6 months' custody</p>	<p>Starting point 26 weeks' custody</p> <p>Category range 12 weeks' custody -1 year's custody</p>	<p>Starting point 12 weeks' custody</p> <p>Category range High level community order - 26 weeks' custody</p>
Category 2	<p>Starting point 26 weeks' custody</p> <p>Category range 12 weeks' - 1 year's custody</p>	<p>Starting point 12 weeks' custody</p> <p>Category range High level community order - 26 weeks' custody</p>	<p>Starting point High level community order</p> <p>Category range Low level community order - 12 weeks' custody</p>
Category 3	<p>Starting point 12 weeks' custody</p> <p>Category range High level community order - 26 weeks' custody</p>	<p>Starting point High level community order</p> <p>Category range Low level community order - 12 weeks' custody.</p>	<p>Starting point Low level community order</p> <p>Category range Discharge - High level community order</p>

The court should then consider any adjustment for any aggravating or mitigating factors. Below is a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender.

Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point.

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- Impact of offence on others, especially children
- Victim is particularly vulnerable (not all vulnerabilities are immediately apparent)
- Failure to comply with current court orders
- Offence committed on licence or post sentence supervision
- Offences taken into consideration

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Offender took steps to limit circulation of images
- Remorse
- Good character and/or exemplary conduct
- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity
- Mental disorder or learning disability (where not taken into account at step one)
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address offending behaviour

STEP THREE

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

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

Totality principle

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

STEP SIX

Compensation and ancillary orders

In all cases, the court must consider whether to make a compensation order and/or other ancillary orders.

Compensation order

The court should consider compensation orders in all cases where personal injury, loss or damage has resulted from the offence. The court must give reasons if it decides not to award compensation in such cases.

Other ancillary orders available include:

Restraining order

Where an offender is convicted of any offence, the court may make a restraining order (section 5 of the Protection from Harassment Act 1997).

The order may prohibit the offender from doing anything for the purpose of protecting the victim of the offence, or any other person mentioned in the order, from further conduct which amounts to harassment or will cause a fear of violence

The order may have effect for a specified period or until further order

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail

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

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Sentencing Council

Sentencing Council meeting:
Paper number:

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

Lead Council member:
Lead official:

TBC
Ruth Pope
ruth.pope@sentencingcouncil.gov.uk

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.



Domestic Homicide Sentencing Review

**Independent Review
Clare Wade KC**

March 2023

CP 814



Domestic Homicide Sentencing Review

Presented to Parliament

by the Lord Chancellor and Secretary of State for Justice
by Command of His Majesty

March 2023



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1. Introduction

1.1 Background

- 1.1.1 This Review of sentencing in cases of domestic homicide was initiated as a response to an open letter (“the letter”) sent on International Women’s Day 2021 from the Victims’ Commissioner and the Domestic Abuse Commissioner to the previous Lord Chancellor the Right Honourable Robert Buckland MP.
- 1.1.2 The letter highlighted systemic misogyny within the criminal justice system and also identified those aspects of the criminal justice process where it was thought female victims were being routinely let down. It coincided with an ongoing campaign by the families of two women who were murdered by their male partners. Ellie Gould was aged 17 at the time of her murder by Thomas Griffith and Poppy Devey Waterhouse was 24 years old when she was murdered by Joe Atkinson. That campaign also formed part of the impetus for the Domestic Homicide Sentencing Review (“the Review”).
- 1.1.3 Both victims were murdered in their own homes where weapons in the form of knives had been readily available to the offender who could therefore not be said to have taken a knife or other weapon to the scene. As we explain in detail at paragraphs 2.3 2.4, if an offender who is aged 18 or over has taken a knife or other weapon to the scene of an offence intending to (a) commit any offence, or (b) have it available to use as a weapon, and (c) used that knife or other weapon when committing the murder, the starting point for the minimum term that the offender must serve in custody as part of a mandatory life sentence is much higher than it would be (all other things being equal) if the offender has not taken a knife or other weapon to the scene. There is a disparity of ten years between the respective starting points.
- 1.1.4 Our terms of reference specifically task us with considering whether the issue of taking a knife or other weapon to the scene of a murder with the ulterior intent (which is described above) and then using it to commit the murder, is something which should be given particular consideration within the context of domestic murders.
- 1.1.5 Thomas Griffith (17 years old at the time of the offence) and Joe Atkinson (25 years old at the time of the offence) were sentenced to detention for life and life imprisonment with minimum terms of 12 years 6 months and 16 years respectively. Legally, there is nothing wrong with either of the sentences imposed in these cases. Both offenders pleaded guilty, and the sentences imposed can

neither be said to be “manifestly excessive”¹ nor “unduly lenient”² but questions have arisen as to whether sentencing guidelines in cases of domestic homicide reflect our growing understanding of the causes, characteristics and harms of fatal domestic abuse.

- 1.1.6 Underlying these questions are broader issues such as: do the sentences imposed in the killings of intimate partners reflect the seriousness of the killings or not? Is there a need for a more specialist approach to these sentences with more account being taken of the specific nature of the offences? Is there a need for higher starting points within the context of the present sentencing framework? Finally, is it possible to address these issues short of detailed consideration of domestic homicides generally?
- 1.1.7 Women comprise the majority of victims in domestic killings. Their voices are silenced not just in virtue of their killing but because at present, there is insufficient recognition in law of the harms which their killings involve. Not only are these women wronged by a breach of trust which is an integral part of domestic abuse, but the harms to them often extend to further harm to secondary victims in the form of the families (many of whom are children) and friends of the victims. There is then the harm to society in general which, to date, may not have been sufficiently considered. Where do domestic murders fit with other murders of women where the murder is clearly motivated by misogyny, but the victim and the offender are not and never have been in an intimate relationship? What inferences as to wider harms do we draw in circumstances where there is no domestic history to contextualise the killing?
- 1.1.8 As far as sentencing for murder is concerned, there is a tension, which is often not acknowledged by proponents of the call for higher starting points or longer sentences. This tension lies in the fact that women, who are victims of domestic abuse and coercive control, sometimes kill their abusive partners. Such women are victims as well as being perpetrators. It would not be in the interests of justice for these women to receive longer minimum terms. Even allowing for judicial discretion, longer minimum terms would be a concomitant of simply increasing starting points for minimum terms.

¹ Pursuant to s 9, 11 Criminal Appeal Act 1968.

² S. 36 of the Criminal Justice Act 1988 empowers the Law Officers to apply to the Court of Appeal for leave to refer any sentence for review which was passed in respect of an offence in proceedings in the Crown Court and which appears to be unduly lenient.

1.1.9 At the outset, it is necessary to remember the purpose of sentencing which is described in the Sentencing Act 2020.³ In cases of murder, the protection of the public is afforded by the life sentence, which includes a minimum term which must be served in full before the offender becomes eligible for parole. After release, he or she is on licence for life. However, the punishment of offenders requires us to identify the conduct and fault to which culpability can be ascribed. This assists with the reduction of crime (of which deterrence is only one part) because identification of the levels of culpability together with the relevant circumstances in which it is formed, means that it is possible to identify and quantify risk. Once risk is appreciated, then we can begin to prevent domestic homicide.

1.2 Terms of Reference

1.2.1 Our Terms of Reference are set out in full at **Appendix A**.

1.2.2 In addition to covering the question of those issues which arise from the disparity in starting points in minimum terms of life sentences when a knife or other weapon is 'taken to the scene', our terms of reference cover the question of whether the current sentencing framework for murder provides an adequate template for sentences in domestic murders.

1.2.3 Further, we were asked to analyse whether a history of domestic abuse between perpetrator and victim or vice versa makes a significant difference in the sentences that are imposed. We were asked to analyse and review the use of minimum terms and aggravating/mitigating factors in cases of domestic murder where an offender has murdered an intimate partner or former partner.

1.2.4 In addition, we have been asked to review sentencing in cases of manslaughter and to analyse the results in terms of gender and to look at any issues arising from sentences imposed where a perpetrator or a survivor of domestic abuse has killed an intimate partner.

1.2.5 We have also been asked to look at the current defences to murder and to make any recommendation for change which we think is necessary

³ The Sentencing Act 2020, s.57 The court must have regard to the following purposes of sentencing —

- (a) the punishment of offenders,
- (b) the reduction of crime (including its reduction by deterrence),
- (c) the reform and rehabilitation of offenders,
- (d) the protection of the public, and
- (e) the making of reparation by offenders to persons affected by their offences.

1.3 Terminology

1.3.1 We are aware that domestic homicides are not limited to relationships between intimate partners. We recognise that domestic homicide also includes other family dynamics. For example, In the Home Office Homicide Index, homicides are recorded as ‘domestic’ when the relationship between a victim aged 16 years and over and the perpetrator falls into one of the following categories: (which include) son, daughter, parent (including step and adopted relationships [and] other relatives.⁴ However, our Terms of Reference define “**domestic**” as being between present or previous intimate partners. This accords with the definition provided in s.2 (1) (a) – (f) of the Domestic Abuse Act 2021⁵ (“the 2021 Act”). It does not include “relatives” who, at s. 2(1) (g) of the 2021 Act also come within the definition of “personally connected”. We hope however that the recommendations we make are sufficiently broad so as to be considered (at some stage) relevant to other relationships within a domestic context. As we go on to explain in this report, we are aiming to achieve theoretical and legal consistency.

1.3.2 We also use the term domestic abuse within the meaning of the 2021 Act. S.1 of the Act defines domestic abuse as:

(2) Behaviour of a person (“A”) towards another person (“B”) is “domestic abuse” if —

(a) A and B are each aged 16 or over and are personally connected to each other, and

(b) the behaviour is abusive.

⁴ When we have drawn on figures in the Home Office Homicide Index, for this analysis we have only included past or present intimate partners.

⁵ S.2(1) of the Domestic Abuse Act 2021: Definition of “personally connected”

(1) For the purposes of this Act, two people are “personally connected” to each other if any of the following applies —

(a) they are, or have been, married to each other.

(b) they are, or have been, civil partners of each other.

(c) they have agreed to marry one another (whether or not the agreement has been terminated);

(d) they have entered into a civil partnership agreement (whether or not the agreement has been terminated);

(e) they are, or have been, in an intimate personal relationship with each other;

(f) they each have, or there has been a time when they each have had, a parental relationship in relation to the same child (see subsection (2))

(g) they are relatives

(3) Behaviour is “abusive” if it consists of any of the following —

- (a) physical or sexual abuse;
- (b) violent or threatening behaviour;
- (c) controlling or coercive behaviour;
- (d) economic abuse (see subsection (4))⁶;
- (e) psychological, emotional or other abuse; and it does not matter whether the behaviour consists of a single incident or a course of conduct.

1.3.3 Accordingly, it incorporates controlling and coercive behaviour (‘**coercive control**’) into the definition. We define coercive control in accordance with Professor Evan Stark’s exposition of the clinical theory of coercive control,⁷ albeit Stark’s definition is not gender neutral.

“Coercive control entails a malevolent course of conduct that subordinates women to an alien will by violating their physical integrity (domestic violence), denying them respect and autonomy (intimidation), depriving them of social connectedness (isolation), and appropriating or denying them access to the resources for personhood and citizenship (control). Nothing men experience in the normal course of their everyday lives resembles this conspicuous form of subjugation.”

1.3.4 This definition underpins the description of the behaviours amounting to the conduct element of the offence of controlling or coercive behaviour provided by s.76 Serious Crime Act 2015. The behaviours envisaged by s.76 were outlined in a statutory guidance framework;⁸

- 10. “Controlling or Coercive behaviour does not relate to a single incident. It is a purposeful pattern of behaviour which takes place over time in order for one individual to exert power, control or coercion over another.
- 11. This new offence focuses responsibility and accountability on the perpetrator who has chosen to carry out these behaviours.

⁶ (4) “Economic abuse” means any behaviour that has a substantial adverse effect on B’s ability to—
 (a) acquire, use or maintain money or other property, or (b) obtain goods or services.

⁷ Stark (Evan) “*Coercive Control How Men Entrap Women in Personal Life*” OUP 2007 p15.

⁸ Controlling or Coercive Behaviour in an Intimate or Family Relationship. Statutory Guidance Framework by the Home Office produced pursuant to s.77 of Serious Crime Act December 2015 see page 3-4 paragraphs 10-13.

12 The Cross Government definition of domestic violence and abuse⁹ outlines controlling and coercive behaviour as follows.

- **Controlling behaviour is:** a range of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their behaviour.
- **Coercive behaviour is:** a continuing act or pattern of acts of assault, threats, humiliation and intimidation or other abuse that is used to harm punish or frighten the victim”. It is noted that the cross-government definition of domestic violence and abuse was not a legal definition and includes so called ‘honour’ based violence, female genital mutilation (FGM) and forced marriage, and is clear that victims are not confined to one gender or ethnic group.

1.3.5 Our reasoning and our recommendations are based on controlling and coercive behaviour (‘coercive control’) because it underpins domestic abuse. We do not use the terms ‘domestic abuse’ and ‘coercive control’ interchangeably.

1.3.6 The reasons for this are: first, controlling and coercive behaviour is a criminal offence whereas domestic abuse is not. Second, there is a strong argument that the criminal law has so far failed to recognise the wrongs of domestic abuse *R v. Dhaliwal*¹⁰ being the paradigm example. In that case the deceased wife had committed suicide after a campaign of psychological abuse which comprised some physical assaults by her husband (who was charged with her manslaughter) but it was held that, psychological injury which did not amount to psychiatric illness was not sufficient to amount to grievous or actual bodily harm and so there was no harm which could be said to be causative of her suicide in the immediate time before the event.¹¹

1.3.7 The Crown appealed against a terminatory ruling but the trial judge’s ruling was upheld. Interestingly, the trial judge, had taken the view “I do not see any reason in principle why the final assault which triggered the suicide should be looked at in isolation.” However, the Crown did not pursue this and disavowed that position on appeal preferring to seek to persuade the court on the basis of a psychiatric illness

⁹ Which was not a legal definition and has now been superseded by the legal definition in the 2021 Act.

¹⁰ *R v. Dhaliwal [2006] EWCA Crim 113* where a wife killed herself after suffering a campaign of what today, would be labelled coercive control.

¹¹ See “Domestic Abuse and Human Rights” Jonathan Herring *Intersentia* (2022 citing) M. Burton *R v. Dhaliwal* Commentary in R Hunter C McGlynn E Rackley (eds) *Feminist Judgments* Hart Publishing Oxford 2010.

which could not be made out because only one out of three experts could testify to it. The other two experts were of the view that there was a psychological impact on the victim which did not amount to a psychiatric illness, but which was consistent with domestic abuse.

- 1.3.8 In *R v. Challen*¹² the Court of Appeal held that a murder conviction was unsafe because evidence of controlling and coercive behaviour towards the appellant by the deceased had not been relied on at trial in the context of provocation and diminished responsibility. It was not until this decision that the potential of the concept of controlling and coercive behaviour (as a means of reflecting the reality of the experience of women who are trapped in abusive relationships) was introduced more widely into the criminal law.
- 1.3.9 Third, coercive control is a particular form of abuse which not only thrives against a background of structural inequality, but it also perpetuates the inequalities which are the preserve of patriarchy, and which need to be addressed in law in a modern society.
- 1.3.10 Fourth, all of the other constituents of domestic abuse which are included in s.1 of the 2021 Act are potentially included in a pattern of controlling and coercive behaviour.
- 1.3.11 In paragraphs 5.2 - 5.4 of this review, we explain that although coercive control has become part of our legal discourse, it has not yet been fully understood. At the heart of our thinking is the proposition that coercive control is a heuristic tool which can be used across the criminal justice system to adopt a more forensic approach to domestic abuse.
- 1.3.12 Throughout the Review we refer to the term “**overkill**” which has been defined in the literature¹³ as a killing involving “the use of excessive, gratuitous violence beyond that necessary to cause the victim’s death”. It is not a legal term and when

¹² *R v. Challen* [2019] EWCA Crim 916.

¹³ See Femicide Census: “*If I am not in Friday, I might have been dead*” Long (Julia), Wertans (Emily), Harper (Keshia), Brennan (Deirdre), Harvey (Heather), Allen (Rosie) and Elliott (Katie) with Ingala Smith (Karen) and O Callaghan (Clarissa). 2009-2018 at p40. See also “*Safety Planning, Danger and Lethality Assessment*” Campbell (Jacquelyn) and Glass (Nancy) in *Intimate Partner Violence: A health-based perspective* C Mitchell and D Anglin (Eds.) Oxford University Press “Overkill is another characteristic of intimate partner femicide that is not usually present where a female kills a male partner. Overkill was first described by Wolfgang in 1958 as two or more acts of shooting or stabbing or beating the victim to death. Several North American studies have found that the majority (46%-90%) of women in Intimate Partner Homicides are the victims of overkill compared to 12% or less of males” citing Campbell (JC) “*If I can’t have you, no one can*”. Power and Control in homicide of female partners. In Russell (JR) Ed. *Femicide: The Politics of Women Killing*, New York: Twayne; 1992 99-113, and Wolfgang (ME) “*Patterns in Criminal Homicide. Philadelphia*”: University of Pennsylvania Press 1958.

ascertained for the purpose of the Review, it was done by recording the use of the wording by the sentencing judge in the present statutory aggravating factor in Schedule 21 paragraph 9(c)¹⁴ namely, “mental or physical suffering inflicted on the victim before death”¹⁵ and /or the non-statutory aggravating factor of the conduct (leading to death) being in the form of a sustained attack or assault. This was in conjunction with consideration of the circumstances of the killing. Further, cases where there was no mention of these particular statutory and non-statutory aggravating factors, but that the circumstances showed far more violence was deployed than was needed to kill the victim were also counted as overkill cases.

1.3.13 Given our terms of reference, much of the discussion in this paper is focused on the general principles for considering seriousness in the provisions of Schedule 21 to the Sentencing Act 2020 (a copy of which is attached at **Appendix C**).

1.3.14 As we explain below, Schedule 21 of the Sentencing Act 2020 sets out the current framework for sentencing where an offender has been convicted of murder. This replaced Schedule 21 to the Criminal Justice Act 2003. Except when detailing the historical legislative developments, we refer to the paragraph numbering in Schedule 21 to the Sentencing Act 2020.

1.3.15 The 120 sample of cases¹⁶ on which this review is founded were separated into two categories based on the gender of the perpetrator. Where referred to individually, cases in our sample are referred to by the gender of the perpetrator and the number in the following format:

- **Male perpetrators: CM1 - CM99**
- **Female perpetrators: CF1 - CF21.**

1.4 Methodology

1.4.1 The first part of the Review involved taking a sample of 120 cases of domestic homicide between 2018 and 2020 where the victim was a partner or ex-partner of the offender. The cases were identified from data supplied by the Crown Prosecution Service/HMCTS, the Home Office Homicide Index and some ad hoc research (from news reports and other sources). The majority of the cases were concluded in the courts during the financial years 2018/2019 and 2019/2020.

¹⁴ The Sentencing Act 2020 Schedule 21 paragraph 9(c).

¹⁵ Which is not consistent with those circumstances where death occurs, but the assault of the victim continues.

¹⁶ See paragraph 1.4.1.

There has not been any guarantee that every relevant case from that period has been identified.

- 1.4.2 The sentencing comments were then analysed by Treasury Counsel. The aim was to ascertain whether and to what extent, there was any difference in the minimum terms imposed for murder and in particular, whether there could be said to be a difference in sentences where a knife or other weapon 'had been taken to the scene' as opposed to cases where a knife or other weapon had not been 'taken to the scene.' Further analysis of the sentencing remarks was conducted to support this Review. Findings are detailed in relevant sections throughout the report and **Appendix D** provides a summary of the methodology and findings.
- 1.4.3 There were 89 murders and 31 manslaughters.¹⁷ In all but one of the cases in the sample, the relationship between the perpetrator and the victim was heterosexual. Men were the perpetrators in the majority (83%) of all the cases analysed. They were the perpetrators in 91% of murders and 58% of manslaughters. Out of the 89 murders, the perpetrator was male in 81 cases and there were just 8 murder cases where the perpetrator was female. Average minimum terms between women and men were calculated as well as the use of weapons and the average minimum terms when a weapon was taken to the scene.
- 1.4.4 The average minimum term out of the 89 murder cases was 20.5 years. Most of the murder cases which were in the sample were eligible for a 15 year starting point but the average minimum term length was higher at 18.7 years. There were 5 females who had a starting point of 15 years and as 2 of them received a lower tariff than this, the average tariff for the five women was 14.6 years compared to men with a 15 year starting point who, on average, received 19 years. These figures should be viewed with caution however given the very low numbers of females involved.
- 1.4.5 A weapon was recorded as being used in 72% of the cases analysed in the sample and in 73% of murder cases.
- 1.4.6 All of the female perpetrators who had killed a male partner used a knife or other weapon. In cases where no weapon was used, all but one of the perpetrators were male. The one female perpetrator who killed a female partner did not use a weapon.

¹⁷ Manslaughters were divided according to those which occurred before and after the bringing into force of the Sentencing Council Manslaughter Definitive Guidelines (November 2018).

- 1.4.7 The average minimum terms which were imposed were higher when a weapon was used and lower when there was no report in the sentencing remarks of a weapon being used.
- 1.4.8 For murder cases, where a weapon was taken to the scene there was an average difference of 6.5 years between such cases and those cases where a weapon was not classed as having been taken to the scene.
- 1.4.9 Thereafter, an analysis of the evidence uploaded to the Crown Court Digital Case System ('CCDCS') in the cases of Thomas Griffith and Joe Atkinson was conducted and, as a result, a number of other terms which are implicit within the coercive control model such as: whether the killing had occurred at or after the end of the relationship and evidence of jealousy were factored into our sample of 120 cases. Where we could not use the CCDCS, we used sentencing comments augmented by media reports.
- 1.4.10 We then conducted an analysis, which factored in '**overkill**'. As we have stated, this is defined in the literature as "the use of excessive, gratuitous violence beyond that necessary to cause the victim's death." For the purpose of our case review analysis, we recorded the use of the wording by the sentencing judge in the present statutory aggravating factor in schedule 21 paragraph 9(c)¹⁸ namely, "mental or physical suffering inflicted on the victim before death" and /or the non-statutory aggravating factor of the conduct (leading to death) being in the form of a sustained attack or assault. This was in conjunction with consideration of the circumstances of the killing; a subjective judgement was made based on the facts of the conduct in a particular case (for example if a victim was stabbed 59 times) to try to identify overkill. The lack of use of the aggravating factors of "sustained attack" or "physical and mental suffering" in these cases and the absence of reference to anything which would come within the definition of '**overkill**' enabled us to see where this factor was not being given weight. The results were then analysed in terms of gender.
- 1.4.11 We went on to examine the role of strangulation in domestic homicide. This was done by taking the previous 'circumstances of the killing' analysis of the 120 case sample and identifying the presence of strangulation in the killing and whether there was any mention in the sentencing remarks of the method of killing being an aggravating factor and whether there was a prior history of strangulation in the relationship. The results were then analysed in terms of gender.
- 1.4.12 We also looked at the proportion of cases where coercive control was mentioned as an aggravating factor. For reasons which we explain in part 5.4 however, we are not confident that the presence or absence of any such reference in

¹⁸ The Sentencing Act 2020 Schedule 21 paragraph 9 (c).

sentencing remarks alone is an accurate way of ascertaining the presence or absence of coercive control in the history of the killing. By way of example, even in the case of Joe Atkinson, a review of the case papers suggests that there were relevant patterns going to controlling and coercive behaviour such as some surveillance, stalking, an incident of physical violence and a lack of individuation between the victim and the perpetrator and yet the investigation into the murder of Poppy Devey Waterhouse appeared not to note this or attribute weight to it.

- 1.4.13 We applied the same criteria to manslaughter within our sample of cases.
- 1.4.14 The above then, is with the caveat that sentencing does not exist in a vacuum and if it is to be analysed with a view to reform, it is necessary to look at the harms (including the wider harms) which it is intended to address in order to punish offenders and reduce crime. As stated above, these harms include the harm to secondary victims namely, the family and friends of the primary victim and tertiary victims in the form of society at large.
- 1.4.15 There is of course no substitute for the examination of the evidence in the individual cases. Where possible, we have looked more closely at the evidence uploaded onto the CCDCS, but this has not been possible in all cases because we have not had the time or resources. Ideally, we would have done case studies in all of the cases from our sample. This is because it is difficult to analyse the relevant issues in isolation.
- 1.4.16 When this review was conceived, it was on the basis that the answers to the issues with which it is concerned would be contained in an analysis of sentencing remarks alone. Proceeding on the basis of sentencing remarks can involve a danger of under or over report. Sentencing remarks are, by their nature, a summary of how the sentence was reached and are not a full representation of the case. The limitations of focusing on sentencing remarks lie in the fact that it may well be wrong to conclude that a judge did not have a particular factor in mind just because it was not remarked specifically. This is particularly so if the judge has heard the evidence in a trial. Had we had further time and resources, it would have been helpful to read the Domestic Homicide Reviews¹⁹ in those cases where they have been completed. Although the purpose of a Domestic Homicide Review is to ascertain what lessons can be learned from the crime of murder or manslaughter,²⁰ many of the reviews provide an insight into the history of the factual matrix leading to the killing because the reviews place weight on the factual

¹⁹ Domestic Homicide Reviews were introduced in England and Wales in 2011 pursuant to the Domestic Violence and Crime Victims Act 2004 as part of a strategy of identifying opportunities to prevent further homicides.

²⁰ Section 9 Domestic Violence, Crime and Victims Act 2004 ('the 2004 Act').

chronology. Since their introduction in 2011, it has become clear that many of the themes going to risk factors in partner killings are consistent.

- 1.4.17 In the cases where there were allegations of previous domestic violence by either the victim or the perpetrator, it would have been useful to look at the evidence closely. We acknowledge that there are challenges in relation to the existence of evidence in domestic abuse cases. Victims of domestic violence and coercive control do not always realise that they are victims. The nature of such abuse is that the victim is led to believe that the abuse is their fault. Victims do not report the abuse or keep a record of it and much abuse can happen by accretion. Victims of abuse often fail to disclose it during an investigation and therefore, this will have an impact on the existence of evidence. It is only through a comprehensive analysis of the history of the relationship that abuse can be discerned. Intersectionality means that there are victims who face further barriers to disclosure such as age, language and cultural pressure. These barriers can include those put up by immigration restrictions and lack of knowledge of rights. It is known that victims and in particular, women who are at risk of honour-based violence are too afraid to report their family members/partners to the authorities due to fear of repercussions from their community. The same fear also prevents such victims from disclosing any abuse (which they suffer in their intimate relationships) to their own family members. Some of these victims are forced to marry their perpetrators by their family and this automatically alienates them from support networks. In cases where there are language barriers which require interpreters, it would have been useful to analyse the cases further to see whether the perpetrator (if she was a woman) had the relevant assistance during the proceedings such as access to an interpreter of her native language (there are different dialects in different languages which can have an impact on interpretation of the evidence). The same consideration applies to whether she had a legal representative who understood the cultural dynamic of the relationship and family.
- 1.4.18 Given our emphasis on secondary victims and of course, the fact that they are often best placed to tell the story that the deceased cannot tell, we would have liked to have been able to conduct structured interviews with them. However, we have been constrained by a combination of ethical considerations and not having sufficient resources to overcome the barriers which the ethical considerations pose and so this has not been possible.
- 1.4.19 The results of the case sample analysis enabled us to discern a number of themes which were then qualitatively analysed with the use of academic and legal literature, consultation in Focus Groups with targeted stakeholders and evidence gathering through some further interviews with stakeholder lawyers, and criminologists.

1.4.20 Additionally, data on police recorded domestic homicides between April 2016 and March 2020 from the Home Office Homicide Index²¹ was shared with the Ministry of Justice (see **Appendix E**). In line with the review’s definition of ‘domestic’, only homicide cases where the perpetrator was an intimate partner and/or ex-partner were included.

1.5 Structure of the Report and Summary of Recommendations

1.5.1 **In Paragraphs 2.1- 2.4** of this report we set out the current sentencing framework in cases of murder as provided by Schedule 21 to the Sentencing Act 2020.

1.5.2 **In Paragraphs 3.1- 3.3** we consider the legislative history of Schedule 21 and the fact that there has never been any particular attention (within the overall framework) paid to murders which are committed in a domestic context. We consider the impact of Schedule 21 prior to 2010 when Schedule 21 was amended to include a new category of seriousness based on an offender taking a knife or other weapon to the scene intending to (a) commit any offence, or (b) have it available to use as a weapon, and (c) used that knife or other weapon when committing the murder. This was by way of introducing paragraph 5A.²² We consider the way in which the courts have construed the relevant provisions and whether the definition of seriousness is consistent with the definitions of seriousness in the other categories of murders. We believe that it is not and that this is because it does not refer to the vulnerability of the victim as a means of ascribing a level of gravity. We conclude that the vulnerability of persons who are trapped in abusive relationships has not yet been considered in policy.

1.5.3 **In Paragraphs 4.1-4.3** we summarise the problematic nature of a category of seriousness based purely on the offender taking a knife or other weapon to the scene. We explain why the harms in domestic murders are different to the harms which were contemplated by Paragraph 5A²³ of Schedule 21 of the Criminal Justice Act 2003.

1.5.4 **In Paragraphs 5.1-5.1.18** we set out those factors, which distinguish domestic murders from other murders. We explain the importance of the history of the relationship between the perpetrator and the victim and the importance of temporal sequencing in domestic murders. We explain that domestic abuse is a gendered

²¹ As of 15 December 2020. Figures are subject to revision as cases are dealt with by the police and by the courts, or as further information becomes available.

²² Now paragraph 4(1), (2) of Schedule 21 to Sentencing Act 2020.

²³ Now paragraph 4(1), (2) of Schedule 21 to Sentencing Act 2020.

crime and that this segues into domestic murder. We also explain that the gendered nature of domestic homicide is a developing jurisprudence and refer to some significant developments in our law which have been intended to introduce gender parity including the introduction of the concept of cumulative provocation and the partial defence of loss of control.

- 1.5.5 **In Paragraphs 5.2-5.2.9** we set out the advantages of the introduction of the concept of coercive control into criminal legal discourse. Namely, (i) a better reflection of the experiences of women in abusive relationships, (ii) the concept of entrapment as a more plausible explanation of why people stay in abusive relationships than those provided by outdated models such as Battered Woman Syndrome (iii) that if properly understood, it enables us to move away from the idea that domestic abuse is about a relationship which has ‘gone wrong’ as opposed to being about a perpetrator’s pathological need to control a victim (iv) that it plays a central part in the sequencing and timeline leading to homicide. Finally, we explain why the concept of coercive control enables criminal justice practitioners to have a more comprehensive and forensic approach to domestic abuse.
- 1.5.6 **In Paragraphs 5.3-5.3.10** we address the question of offenders who are also victims because they are trapped in relationships in virtue of coercive control. We refer to the difficulty of achieving a gender-neutral provision for sentencing those offenders who are also victims which simultaneously encapsulates the very real harms inflicted on the majority of victims with which this review is concerned.
- 1.5.7 **We suggest** that the coercive control model²⁴ is one way of ascribing seriousness to a murder. This is because it speaks to the motivation for killings. For example, many men kill their female partners at the end of a relationship or when she has indicated that she wishes to leave, and he perceives that he will no longer be able to control her.
- 1.5.8 **In Paragraphs 5.4-5.4.24** we look at the evidence from which we infer that coercive control is still poorly understood both by many frontline agencies and by criminal justice practitioners. We examine the bespoke nature of coercion by perpetrators and the way that this factors into intersectional abuse. We consider the way in which coercive control can make victims appear complicit in their own abuse and the impact that this can have on information gathering.

²⁴ By which we mean the behaviours going to coercive control as opposed to the offence in s76 Serious Crime Act 2015.

- 1.5.9 **We recommend** that there should be a separate specific system for the collection of all relevant data in relation to all domestic homicides, which is maintained by the Home Office or the Ministry of Justice in conjunction with the Office of the Domestic Abuse Commissioner. See paragraph 5.4.23 and recommendation 1 in the table in Part 10.
- 1.5.10 **We recommend** training for all lawyers and judges working within the criminal justice system on understanding and applying the concept of coercive control (this is with a view to achieving a more forensic approach to domestic abuse throughout the criminal justice system). See paragraph 5.4.24 and recommendation 2 in the table in Part 10.
- 1.5.11 **In Paragraphs 6.1- 6.7** we look at culpability in terms of the wider harms that attach to domestic murders namely, whether the murder takes place at the end of the relationship, overkill and jealousy. We applied these concepts to our sample of cases and looked at the proportion of cases where they converged. We then looked at the prevalence and implications of strangulation. We explain that all of these factors are contiguous with coercive control.
- 1.5.12 **In Paragraphs 7.1-7.1.3** we consider whether, taking all of the above into account, there should be a category in Schedule 21 to the Sentencing Act 2020 based on coercive control which delineates a new starting point in the case of domestic murders. We explain why we do not think that there should be. Apart from anything else, this is because there would be a danger of creating anomalies between any new paragraph and paragraph 2 in cases where behaviour which is attributable to coercive control is extremely serious because it involves rape or sadistic assault.
- 1.5.13 **We recommend** 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 because the 25 year starting point is one in which the vulnerability of the victim is not given any consideration. (The harms that paragraph 5A of Schedule 21 to the Criminal Justice Act 2003 was introduced to prevent in 2010 are very different from the sort of harms which occur in domestic murders). See recommendation 3 at paragraph 7.13 and in the table in the Part 10.

- 1.5.14 **We recommend** however, that domestic murders should be given specialist consideration within the present sentencing framework under Schedule 21. A level of seriousness should be determined by application of the coercive control model within the 15 year starting point. This is intended to ensure that gendered circumstances (such as killing at the end of a relationship and jealousy are used to ascribe seriousness to the murder and that wider legal harms are identified and reflected in the sentence). See recommendation 4 at paragraph 7.1.14 and table in Part 10.
- 1.5.15 We explain our view that this should be achieved by coercive control being incorporated into the statutory aggravating and mitigating factors in paragraphs 9 and 10 of Schedule 21 to the Sentencing Act 2020. If coercive control is used to measure seriousness, then it should follow that domestic murders will be aggravated or mitigated by the types of harm which obtain.
- 1.5.16 **We recommend** that where there is a history of coercive control of the victim of a murder by the perpetrator of that murder then this should be a statutory aggravating factor and that paragraph 9 of Schedule 21 to the Sentencing Act should be amended accordingly. See recommendation 5 at paragraph 7.1.15 and in the table in Part 10.
- 1.5.17 Conversely, **we recommend** that where there is a history of coercive control having been perpetrated by the victim of the murder against the offender, then this should be a statutory mitigating factor and that paragraph 10 of Schedule 21 of the Sentencing Act 2020 should be amended accordingly. Again, see recommendation 5 at paragraph 7.1.15 and in the table in Part 10.
- 1.5.18 **We recommend** that if a murder takes place at the end of a relationship or when the victim has expressed a desire to leave a relationship then this should be regarded as an aggravating factor and that paragraph 9 of Schedule 21 should be amended accordingly. See recommendation 6 at paragraph 7.1.16 of this report and in the table in Part 10.

- 1.5.19 **We recommend** consistency between law and policy specifically, that present mitigating factors should be consistent with the policy underlying section 55(5)(c) Coroners and Justice Act 2009. As we go on to explain, the legislative intention underpinning the introduction of the partial defence of loss of control was to make it clear that sexual infidelity could not excuse or justify killing. Aggravating and mitigating factors in (what were) paragraphs 10 and 11 of schedule 21 to the Criminal Justice Act 2003 were not amended when provocation was abolished. As the law stands sexual infidelity could still amount to provocation (not amounting to the defence) in the few cases where the court is considering the old law of provocation. See recommendation 7 at paragraph 7.1.17 of this report and in the table in Part 10.
- 1.5.20 **We recommend** that overkill should be defined in law as a specific legal harm and that it should be an aggravating factor in murder. Paragraph 9 of Schedule 21 should be amended accordingly. See recommendation 8 at paragraph 7.1.18 of this report and in table in Part 10.
- 1.5.21 **We recommend** that in the event of murder by strangulation or in a murder where strangulation has occurred, then this method of killing should be a statutory aggravating factor and that paragraph 9 of Schedule 21 to the Sentencing Act 2020 should be amended accordingly. This is because strangulation includes additional suffering and greater harm. See paragraph 7.1.19 of this report and recommendation 9 in the table in Part 10.
- 1.5.22 **We recommend** that the use of a weapon should not necessarily be seen as an aggravating factor in domestic murder. See paragraph 7.1.20 of this report and recommendation 10 in the table in Part 10.
- 1.5.23 Our reasons for concluding that the use of a weapon does not always aggravate an offence of domestic of domestic murder or manslaughter are to do with gender. Women are rarely (if at all) able to kill men without the use of a weapon whereas this is not the same for men who often kill by means of manual strangulation.
- 1.5.24 **In Paragraphs 8.1- 8.3** while acknowledging that sentencing guidelines are a matter for the independent Sentencing Council, we consider the evidence of the case review in relation to voluntary manslaughter in terms of the partial defences of diminished responsibility and loss of control.

- 1.5.25 **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 increasing seriousness. See recommendation 11 at paragraph 8.1.23 of this report and in the table in part 10.
- 1.5.26 In order to maintain consistency, **we recommend** that in case of manslaughter by way of loss of control, consideration should be given to sentencing guidelines being amended to make strangulation an aggravating factor increasing seriousness. See recommendation 12 at paragraph 8.2.3 of this report and in the table at part 10.
- 1.5.27 **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 toward the victim a factor which increases seriousness. Conversely, that consideration should be given to making “coercive control” on the part of the victim of the killing a mitigating factor reducing seriousness. See recommendation 13 at paragraph 8.1.25 and in the table in part 10.
- 1.5.28 **We recommend** that consideration be given to whether the Definitive Guideline on Domestic Abuse be amended to denote that assaults committed by non-fatal strangulation are an aggravating factor. See recommendation 14 at paragraph 8.1.26 of this report and in the table in part 10.
- 1.5.29 **We recommend** that in cases of domestic manslaughter consideration should be given to sentencing guidelines being amended to indicate that the use of a weapon is not necessarily an aggravating factor See recommendation 15 at paragraph 8.2.10 in this report and in the table in part 10.
- 1.5.30 We further looked at involuntary manslaughter in **paragraphs 8.2 - 8.3** in the form of unlawful act manslaughter and gross-negligence manslaughter where this has involved consensual violence in the course of sex. Our analysis of the relevant cases and the sentencing guidelines have led us to **recommend that** where death has been caused in these circumstances, culpability should be categorised as high in the relevant sentencing guidelines because of the high risk and danger (as opposed to the obvious risk) of death in circumstances involving the type of assaults which tend to be perpetrated. Further, killings which occur in these circumstances can either be a result of or mirror the structural inequalities which perpetuate patriarchy and therefore factor into the wider harm with which we are concerned in this review. See paragraph 8.3.29 and recommendation 16 in the table in Part 10.

- 1.5.31 **At paragraphs 8.1.13-8.1.16** we consider the proposition by some stakeholders that where an offender in a domestic killing has been convicted of manslaughter by way of diminished responsibility, they should be subject to further psychiatric examination with a view to assessing risk before they are released on licence. We outline why we do not think this is necessary in light of the Manslaughter Definitive Guidelines on sentence which are effective from 2018 and various other statutory changes to the law on sentencing.
- 1.5.32 **In paragraphs 9.1- 9.7** we highlight some of the issues surrounding present full and partial defences to murder. We identify aspects of defences which are problematic in terms of the trials of women who kill their coercively controlling male partners. We highlight the emergence of the ‘rough sex’ defence and suggest that the issues which this has raised should be further considered in policy.
- 1.5.33 **We recommend** a comprehensive review of defences to murder in the form of a full public consultation involving all stakeholders including the higher courts judiciary. This should involve post-legislative scrutiny of the partial defence of loss of control, consideration of the defence of self-defence and consideration of what commentators have called ‘the rough sex defence.’ See paragraph 9.7.6 and recommendation in the table in Part 10.

2. Sentencing in Murder

- 2.1 By way of introduction, sentencing in cases of murder is governed by the framework of Schedule 21 to the Sentencing Act 2020. Schedule 21 presently sets out the following four “starting points” for the determination of the minimum term.²⁵ First, a whole life term (see paragraph 2(1)) in a case of “exceptionally high seriousness”, The seriousness of an offence falling in paragraph 2 includes the killing of two or more people where the method of the killing involves either (i) a substantial degree of pre-meditation or planning (ii) the abduction of the victim or (iii) sexual or sadistic conduct. Paragraph 2 also includes particular classes of victim; namely a child who has been abducted or a victim in relation to whom the murder is sexually or sadistically motivated, a police or prison officer acting in the execution of their duty, it includes cases where the motive of the murder is for the purpose of advancing a political, religious, racial or ideological cause, and finally, where the offender has previously been convicted of murder then this is also a factor denoting seriousness.
- 2.2 Second, a 30 year starting point applies (see paragraph 3(1)) - in a case of “particularly high seriousness.” Paragraph 3 provides for murders which are sufficiently serious to merit a higher than average starting point and the examples set out in paragraph 3(2) are the murder of a police officer or prison officer in the course of his or her duty if the offence is committed before 13th April 2015, a murder involving the use of a firearm or explosive, a murder done for gain, a murder intended to obstruct or interfere with the course of justice, a murder involving sexual or sadistic conduct, the murder of two or more persons, murders which are aggravated because they are related to hostility towards protected characteristics in hate crime legislation (racial hostility, religious hostility or hostility related to sexual orientation, disability or transgender identity).²⁶ Paragraph 3 also encapsulates a murder committed by an offender under the age of 21 when the offence was committed which would otherwise fall within paragraph 2.²⁷

²⁵ The term that the offender must serve before he or she is eligible to apply to the Parole Board for release on licence. Anyone who is convicted of murder and sentenced to imprisonment for life is subject to life licence.

²⁶ A murder is so aggravated if section 66 Sentencing Act 2020 requires the court to treat the fact that it is so aggravated as an aggravating factor.

²⁷ A concession to age and lack of maturity.

- 2.3 Third, a 25 year starting point applies (see paragraph 4(1)) in cases where a knife or other weapon is taken to the scene with the specified intent and then used in the course of the murder. Paragraph 4 provides that if the offence does not fall within paragraphs 2(1) or paragraph 3(1) and that if the offence falls within subparagraph (2), the offender is aged 18 or over²⁸ when the offence was committed, the offence was committed after the enactment of the Criminal Justice Act 2003 (Mandatory Life Sentence: Determination of Minimum Term) Order 2010²⁹ then the offence is normally to be regarded as sufficiently serious for the appropriate starting point in determining the minimum term to be 25 years.
- 2.4 In cases, which do not normally come within any of the above paragraphs, the starting point for an offender aged 18 or over at the time of the offence is 15 years.³⁰ As explained below, most domestic murders fall into this category.

²⁸ There are now new provisions in section 126 and 127 of Police Crime Sentencing and Courts Act 2022. The provisions in s.127 will amend Schedule 21 paragraph 6 to increase the starting points depending on the age of the offender (whether 17, 16, 15 or 14 at the time of the commission of the offence and subject to the paragraphs in Schedule 21 to which the offence applies i.e. if the offender is 17 at the time of the commission of the offence and the offence is in paragraph 2 then there will be a starting point of 27 years. If the offence comes within paragraph 3 then for an offender of this age there will be a starting point of 23 years and if the offence comes within paragraph 4, a starting point of 14 years. Starting points are adjusted downwards for offenders who come within different (younger) age brackets at the time of the offence.

²⁹ Criminal Justice Act 2003 (Mandatory Life Sentence: Determination of Minimum Term) Order 2010/197 introduced s5A into Schedule 21 to Criminal Justice Act 2003.

³⁰ See Schedule 21 paragraph 5.

3. Schedule 21 of Sentencing Act 2020

3.1 The Legislative History of Schedule 21

- 3.1.1 We set this out in detail for two reasons. First, to demonstrate that domestic murders have never been considered as a specific category within either the previous or the current Schedule 21 framework. Second, to show the legislative impetus for an additional category intended to address the situation where an offender has taken a knife or other weapon to the scene of a murder and then gone on to use that weapon in the course of committing the murder. It is clear that the rationale underlying what was first introduced in 2010 as paragraph 5A of Schedule 21 of the Criminal Justice Act 2003 (and is now paragraph 4 of Schedule 21 to the Sentencing Act 2020) has no connection with the factors which pertain to domestic murders.
- 3.1.2 Prior to the enactment of the Criminal Justice Act 2003, the Home Secretary had the responsibility for determining the length of the minimum term. The trial judge would give advice on the length of the term privately together with the Lord Chief Justice. Although this was generally accepted, it did not bind the Home Secretary.
- 3.1.3 On 10th February 1997, Lord Bingham CJ provided guidance³¹ to trial judges which was intended to achieve consistency. It was recommended to judges that a minimum term of 14 years was to be served for the “average”, “normal” or “unexceptional” murder and a minimum term of 30 years in rare cases. Some cases would merit a whole life term. Lord Bingham CJ did not explain what he meant by “average” “normal” or “unexceptional.”
- 3.1.4 Guidance on matters capable of amounting to mitigation was also given as well as guidance on factors which would aggravate the offence. Many of these factors would come to provide the basis for the statutory framework, which was to become Schedule 21 of the Criminal Justice Act 2003.
- 3.1.5 On 15th March 2002 the then Sentencing Advisory Panel gave guidance to the Court of Appeal on the length of minimum terms.³² The advice noted that the minimum terms recommended, varied widely both above and below the 14 years suggested by Lord Bingham CJ for a “normal” murder and it therefore suggested that there should be a higher, middle and lower starting point. The higher figure was 15-16 years, the middle figure was 12 years and the lower figure was 8/9

³¹ The guidance is set out in *R v. Sullivan [2005] 1 Cr. App. R. 3 at [28]-[29]*.

³² *Minimum Terms in Murder Cases: The Panel's Advice to the Court of Appeal April 2002*

years. The middle figure was intended to be a starting point for a case, which “arises from a quarrel or loss of temper between two people known to each other”.³³ The lower figure was for “cases where the offender’s culpability is significantly reduced. Such cases which in any event come close to the borderline between murder and manslaughter, includes....”³⁴ The advice of the Panel was accepted by the then Lord Chief Justice, Lord Woolf and it was incorporated into Practice Statement (*Crime Life Sentences*) [2002] 1 WLR 1789 and then confirmed in Practice Direction (*Criminal Proceedings: Consolidation* [2002] 1 WLR 2870, 2906- 2910).³⁵

3.1.6 In *R. (Anderson v Secretary of State for the Home Department)*³⁶ the House of Lords made it clear that the involvement of the Home Secretary in setting the tariff was a breach of Article 6 of the European Convention of Human Rights and was unacceptable.³⁷

3.1.7 The enactment of the Criminal Justice Act 2003 transferred the responsibility of setting the minimum term to the trial judge through s.269 (5).³⁸ Schedule 21 sought to define murders in levels of seriousness ranging from a whole life term to starting points of a 30 year term and a 15 year term. Broadly speaking, a sentencing judge complied with the section if he or she had “regard” to the “general principles” set out in Schedule 21.

3.1.8 In *R v Sullivan & others*³⁹ the Court of Appeal considered the wording of s.269 and Schedule 21 in the context of transitional provisions in Schedule 22. It was held that the wording of s.269(3) of the 2003 Act namely;

(3) The part of his sentence is to be such as the court considers appropriate taking into account —

³³ *Ibid* paragraph 17

³⁴ *Ibid* paragraph 18.

³⁵ See paragraphs 49.10-20. The higher figure of 15/16 years applied if the victim was a child or otherwise vulnerable. Many of the examples at 49.13 of the Practice Direction (*Criminal Proceedings: Consolidation* [2002] 1 WLR are now in the 30 year starting point in Schedule 21).

³⁶ *R. (Anderson) v Secretary of State for the Home Department* [2003] 1 A.C. 837.

³⁷ Setting a minimum term is indistinguishable from sentence and is therefore the task of the judiciary exclusively.

³⁸ S.269 (5) “In considering under subsection (3) or (4) the seriousness of the offence (or the combination of an offence and one or more offences associated with it), the court must have regard to

(a) the general principles set out in Schedule 21 and

(b) any guideline relating to offences in general which are relevant to the case and are not Incompatible with the provisions of Schedule 21”.

³⁹ *R v. Sullivan & others* [2005] 1 Cr. App. R. 3,[2004] EWCA Crim 1762 [11]

- a) the seriousness of the offence, or of the combination of the offence and any one or more offences associated with it, and
- b)

meant that notwithstanding the statutory guidance, “the decision [as to length of the minimum term] remains one for the judge.”

“The Schedule sets out a well-established approach to sentencing. It makes clear (in paragraph 9) that despite the starting points, the judge still has a discretion to determine any term of any length as being appropriate because of the particular aggravating and mitigating circumstances that exist in that case. This discretion must, however, be exercised lawfully and this requires the judge to have regard to the guidance set out in Schedule 21, though he is free not to follow the guidance if in his opinion this will not result in an appropriate term for reasons he identifies. His decision is subject to appeal either by the offender or on Attorney General’s Reference in accordance with s.270 and 271.”⁴⁰

3.1.9 The Court made it clear that the word “include” in paragraphs 10 and 11 (aggravating and mitigating factors respectively) meant that the lists were not intended to be exhaustive.

3.1.10 Importantly, the Court held that judicial discretion would operate to reduce the differences in starting points adopted in the non-statutory and statutory guidance see [35]-[37]. See in particular, at [35]:

“[t]he judge would also have to be on his guard against determining a higher figure merely because the starting figure that is taken [under Schedule 21] is greater. This is particularly true where the 15 year figure is the starting point selected. In our judgment it would be wrong to assume that Parliament had intended to raise minimum terms over those recommended by the expert Sentencing Advisory Panel by merely applying the 15 year starting point to all murders other than those whose seriousness is exceptionally or particularly high.”

3.1.11 Further guidance was issued by Woolf CJ in May 2004 see Practice Direction (Crime: Mandatory Life Sentences) [2004] 1 WLR 1874.⁴¹

⁴⁰ *R v Sullivan & others* [2005] 1 Cr. App. R. 3 [2004] EWCA Crim 1762 [16]

⁴¹ Making it clear that the determination of the minimum term involved the following approach (i) determining the starting point (ii) adjustments made for non-exhaustive aggravating and mitigating factors within Schedule 21 (10), (11) and credit given for time on remand.

3.2 Absence of Wording in Schedule 21

- 3.2.1 There is an absence of wording in Schedule 21 going specifically to the issues in our terms of reference and this has been the case since the inception of the statutory framework.
- 3.2.2 By 18th May 2004 when Lord Woolf CJ issued his guidance, there was no specific wording in Schedule 21 to the Criminal Justice Act 2003 to which the seriousness of murders committed in a domestic context could be ascribed. These murders were deemed to fall either side of the 15 year starting point. Concerning weapons, statutory aggravating factors (although not exhaustive) in paragraph 10 did not include the use of a weapon. The use of a firearm was a specific factor, which would lead to a starting point of 30 years.⁴²

3.3 The Impact of Schedule 21 Prior to 2010

- 3.3.1 Criticism that Schedule 21 could lead to anomalous results in terms of sentence was allayed by the Court of Appeal's emphasis on not adopting a mechanistic approach. For example, in *R v Height and Anderson*⁴³ the appellant, Anderson ("A"), pleaded guilty to murder and Height ("H") was convicted of murder. The circumstances were that A (who had been having an affair) discussed with H the possibility of having his wife murdered. He hit her over the head with a saucepan in an attempt to render her unconscious. She suffered serious (but not life threatening) injuries. A then drove his wife over to H's van. H was to dispose of her but as she was still conscious, H gave A a hammer and a knife with which to kill the victim. She was struck repeatedly to the point where she was unconscious. H took her in his van but later called A to say that she was still alive. They drove in convoy to a bank where they rolled the victim down the bank with A then repeatedly stabbing her and then cutting her throat. They were subsequently arrested. A made a full confession and gave evidence against H. He was sentenced to life with a minimum term of 22 years. H's minimum term was 24 years.
- 3.3.2 The Crown had argued that H committed the murder for gain⁴⁴ (whereas A had simply wanted 'to get rid' of his wife). H appealed on the basis that the sentencing judge had described the starting points in Schedule 21 as "arbitrary" and that their nature was "widely spread" and that the sentencing judge had applied them too rigidly. The Court held at [31] that the sentencing judge had fallen into error by

⁴² Schedule 21 paragraph 5(2)(a) now paragraph 3(2)(b) Schedule 21 Sentencing Act 2020.

⁴³ *R v Height and Anderson* [2009] 1 Cr App R (S) 117.

⁴⁴ And therefore, attracted a 30 year starting point under paragraph 3(2)(c).

focusing too loyally on the explicit criteria in the Schedule. There was a flexibility based on circumstances and culpability. Both defendants should be given the same starting point and **H's** sentence would be reduced to 22 years thereby achieving parity with **A** who was the more culpable of the two but who had pleaded guilty.

- 3.3.3 That the explicit starting points in the Schedule were not to be applied mechanistically is a principle, which has been reiterated in a number of decisions. See *R v M, AM and Kika*⁴⁵ where the court said that the provisions of the Schedule were not intended to be applied inflexibly. At [5]-[6] the court discussed the implications of the absence of any reference to the use of a knife in Schedule 21. First, there was nothing to say that a murder with the use of a knife could not be treated in the same way as a murder with the use of a firearm or explosive. Second, accepting that the starting point for the use of a knife would not normally be the same as that for the use of a gun or explosive, the use of a knife and the precise circumstances in which it was used aggravate the seriousness. Paragraph 10⁴⁶ (aggravating factors) is “illustrative” or “inclusive” but not “exhaustive”. Finally, it was always an aggravating feature that an offence had been caused by the use of a knife or other weapon.

⁴⁵ *R v M, AM and Kika* [2010] 2 Cr App R (S) 19 [117].

⁴⁶ Which is now paragraph 9 in Schedule 21 to the Sentencing Act 2020.

4. The Introduction of a New Category of Seriousness in Paragraph 5A

4.1 Background to Paragraph 5A (Taking a Knife or Other Weapon to the Scene)

- 4.1.1 Following a high profile campaign in light of the murder of a teenager (Ben Kinsella) who was stabbed in the street by other teenagers, paragraph 5A was inserted⁴⁷ into Schedule 21 by statutory instrument *Criminal Justice Act 2003 (Mandatory Life Sentence: Determination of Minimum Term) Order 2010/197*. The order imported a new starting point of 25 years for determining the minimum term for murder by an adult using a knife or other weapon taken to the scene with the intention of committing an offence or having it available for use as a weapon and using it in the offence.
- 4.1.2 The Explanatory Memorandum to the Statutory Instrument stated [at 4.3] “[t]he instrument is being made following a review of Schedule 21 in relation to the starting point for murder using a knife (announced in Parliament on 16 June 2009) which was prompted by public concerns that the current starting point of 15 years should be higher, particularly as the starting point for murder using a firearm is 30 years.”
- 4.1.3 The Explanatory Memorandum explains the policy background namely, that “[t]he change has been prompted by considerable concern that the starting point for this type of murder should be higher than the current 15 years, particularly as the starting point for murder using a firearm is 30 years.” It refers to the review which involved consultation with the senior judiciary and the Sentencing Guidelines Council (“SGC”). The response of the latter is summarised at 8.2 of the Explanatory Memorandum.
- 4.1.4 It is clear from the response of the (then) SGC that, at the time of the consultation, the focus was on knives exclusively as opposed to weapons generally. The SGC rightly pointed out that such an exclusive focus on a particular weapon would cause a risk of substantial differences in sentence which would “flow from legal niceties.”
- 4.1.5 Significantly, (for present purposes) the SGC response included the following:

⁴⁷ Under powers provided by s.269(6) (7) of the Criminal Justice Act 2003.

“It is clear that the circumstances in which the knife is used vary widely, it can be picked up in the course of a domestic quarrel or can be taken to a place with a view to it being used- accordingly, the level of culpability will also vary widely.”

- 4.1.6 The SGC response to the 2009 consultation contained the following observation about the wording of schedule 21:

“With one exception, the factors listed [in paragraphs 4 and 5] relate to the circumstances in which the killing took place rather than the means by which death was caused. They identify either a particular need to recognise the vulnerability of potential victims (police officer, prison officer, child or those killed because of their religion, race or sexual orientation) or the purpose for which the murder was committed, political, for gain, to obstruct or interfere with the course of justice....the single exception relates to situations where the murder involves the use of a firearm or explosive. In reality that is likely to have been pre-meditated.”

- 4.1.7 The Statutory Instrument was affirmed by resolution of both houses without debate. It was debated in the Delegated Legislation Committee on 12th January 2010 where the following points of potential interest (to the review) were raised. The then Under-Secretary of State for Justice Claire Ward outlined the purpose of the legislation namely, to bridge the disparity between the 30 year and 15 year starting points and that there should be no difference in starting point if the weapon carried was something other than a knife such as a screw driver or baseball bat.

- 4.1.8 The problems which had been envisaged by the SGC in that aspect of the response cited at paragraph 21 above were touched on in debate. See for example, David Burrows MP:

“It is more often [than in cases involving firearms] the case that a knife is carried and used without such premeditation and might be used in the act of self- protection or partial defence, or under provocation or panic. Will the minister give some assurance that those mitigating factors will be particularly applied in such cases which can be distinguished from cases of a gun or explosive?...Finally, the advent of the proposed additional prescribed starting point based primarily on the reasons [sic] by which death was caused rather than on the circumstances in which the killing took place, reminds me of the Court of Appeal’s concerns, which should be noted by the Committee. Those are that the exercise of determining the minimum term should allow judges a proper discretion and provide a process which is not, in the words of the Lord Chief Justice a mechanistic application.”

- 4.1.9 By December 2010, Schedule 21 was being criticised by previous policy makers as “based on ill thought out and *overly prescriptive policy*. It seeks to analyse in extraordinary detail each and every type of murder.⁴⁸ The result is guidance that is incoherent and unnecessarily complex, and is badly in need of reform so that justice can be done”⁴⁹ (our emphasis). It is not clear from the Green Paper what the evidence for this proposition was said to be as *R v. Kelly*⁵⁰ was argued on May 12th 2011.
- 4.1.10 In the appeals in *R v Kelly*, *R v Bowers*, *R v Singh* and *R v Harding* and others the Court of Appeal stated that Schedule 21 “did not create a stepped sentencing regime with fixed dividing lines between the specified categories”⁵¹ and that it only identifies the appropriate starting point in relation to the categories it establishes. Such a starting point would normally, but not inevitably, apply.
- 4.1.11 In *Kelly* at [10] where the court was considering the wording of paragraph 5A as compared to the wording in paragraph 4(2) and 5(2) (which set starting points of whole life terms and 30 years imprisonment respectively) it was observed (consistently with what the SGC had said⁵²) that “it is striking that unlike paragraphs 4 and 5 this new starting point does not describe the level of seriousness of the offence at all.” The Court went on to say at [11] “it is not the legislative intention that every murder involving the use of a knife or other weapon to inflict fatal injury should normally fall within the 25 year starting point” and further, at [12] “a literal interpretation of paragraph 5A would produce a disparate result.”
- 4.1.12 The wording of paragraph 5A(2) was the subject of criticism by academic commentators. The judgment in *Kelly* was described by Dr David Thomas as “perhaps best regarded as a further plea for the exercise of judicial discretion in fixing minimum terms in cases of murder.”⁵³
- 4.1.13 The potentially arbitrary nature of paragraph 5A⁵⁴ was apparent from the facts and hypothetical circumstances arising from consideration of the conjoined appeals

⁴⁸ We do not agree that it seeks to analyse each and every type of murder because it does not touch upon domestic murders, a matter with which the present review is concerned.

⁴⁹ Ministry of Justice report: *Breaking the Cycle Effective Punishment, Rehabilitation and Sentencing of Offenders Dec 2010 p54*.

⁵⁰ *R v. Kelly, R v. Bowers, R v. Singh and R v. Harding and [2012] 1 WLR 55*

⁵¹ *Ibid* at paragraph 9 of the judgment

⁵² See paragraph 4.1.6 above.

⁵³ David Thomas *Crim LR Crim.L.R.* 2011, 10, 806-809.

⁵⁴ Bild (Jonathan) *Kelly and the 25 year starting point Arch .Rev.2011,8,7 2* “By introducing this clumsy amendment to Schedule 21 all that Parliament has achieved is to create an arbitrary distinction between whether a weapon was or was not taken to the scene.”

“[i]t is difficult to square the logic of the [Court of Appeal’s] decisions in these instances when it runs contrary to their concerns in the hypothetical case they posed.”⁵⁵ “Is a front garden a different scene? How about paths and doorsteps? Could a defendant really be subjected to a two thirds increase in the starting point simply because an offence one foot one side of a door step rather than the other? There is little in Kelly to dispel this concern.”⁵⁶

4.1.14 In *R v Dillon*⁵⁷ the four scenarios in the cases of each of the appellants in *Kelly* were analysed and the following principles then set out at [32]:

We consider that the following emerges from the cases cited to us:

- (a) A knife taken from a kitchen to another part of the same flat or house, including a balcony (Senechko), will not normally be regarded as having been taken to the scene, even if a door is forced open (Kelly);
- (b) Conversely, if the knife is taken out of the house or flat into the street (Bowers), or into another part of the premises (Balraj Singh), or on to a landing outside a flat (Folley), it will normally be regarded as having been taken to the scene.
- (c) However, a starting point is not the same thing as a finishing point. The judgment in Kelly and others emphasises the importance, in cases of similar culpability, of avoiding major differences in sentence based on fine distinctions. As the Lord Chief Justice observed by way of example in the passage cited above, to make a distinction of ten years in the minimum term between the case of a man who kills his partner with a knife from the kitchen of their home and a man who kills his partner with a knife which he bought on the way home would not represent justice in anyone’s assessment. If a case is only just within paragraph 5A, because a knife was taken from a kitchen and used to inflict a fatal wound a short distance outside the door of the flat or house, this principle may well lead to a minimum term of less than 25 years (Bowers, Balraj Singh).

4.1.15 Paragraph 4 of Schedule 21 of the Sentencing Act 2020 now replicates the wording of paragraph 5A of Schedule 21 of the Criminal Justice Act 2003 with the exception of the addition of the words in paragraph 4(1)(d).⁵⁸

⁵⁵ *Ibid.*

⁵⁶ *Ibid.*

⁵⁷ *R v Dillon* [2015] EWCA Crim 3.

⁵⁸ “The offence was committed on or after 2 March 2010.”

4.2 Issues with Wording in Paragraph 4 Schedule 21

- 4.2.1 As we observed at paragraphs 3.2.1 - 3.2.2 above, there is no specific wording in Schedule 21 which explicitly deals with domestic murders.
- 4.2.2 The wording of Schedule 21 followed or was, at least, generated by the non-statutory guidance given by Lord Bingham CJ in 1997 (see paragraph 3.1.3 above). The wording of Schedule 21 in relation to the original descriptions of seriousness (whole life term and 30 years together with aggravating and mitigating factors) shows that Schedule 21 (once enacted) was heavily reliant on the analysis which Lord Bingham CJ had provided in his non-statutory guidance. The factors which, in his view, were aggravating have gone to define the higher starting points which can now⁵⁹ be found in Schedule 21 paragraphs 2 and 3.
- 4.2.3 The early case law makes it clear that “normal” murders which did not come in to the higher categories (whole life terms, 30 year starting point) would attract minimum terms of between 12-16 years.
- 4.2.4 There was no specific reference in Lord Bingham’s guidance to murders committed in a domestic context where either the perpetrator or the victim had a history of suffering or perpetrating domestic abuse. He merely made the following observation,
- “[t]he fact that a defendant was under [the influence of drink or drugs at the time of the killing is so common that I am inclined to treat it as neutral. But in the not unfamiliar case in which a married couple, or two derelicts, or two homosexuals, inflamed by drink, indulge in a violent quarrel in which one dies, often against a background of longstanding drunken violence, I tend to recommend a term somewhat below the norm.”
- 4.2.5 More broadly then, the vulnerability of victims who are trapped in abusive relationships has not been considered within the wording of the statutory framework. This contrasts with the vulnerability of victims which go to define the seriousness of the starting points in paragraphs 2 and 3 of Schedule 21.
- 4.2.6 As we have noted at 2.2 above, Paragraph 3 of Schedule 21 defines seriousness partly by way of reference to vulnerability and in particular, to the killing of persons⁶⁰ with protected characteristics. Women (who comprise the majority of the victims in domestic murders) are not included in the wording of paragraph 3. Sex is not a protected characteristic under hate crime legislation. Whether sex should

⁵⁹ Since the Sentencing Act 2020 was brought into force.

⁶⁰ See paragraph 3(2) (g), (h) which refer to racial or religious hostility or hostility to sexual orientation and disability or transgender identity respectively.

be a protected characteristic for the purpose of hate crime has recently been the basis of a consultation and subsequent report by the Law Commission.

- 4.2.7 For example, in their consultation paper on hate crime,⁶¹ the Law Commission noted that “the possible use of hate crime laws to respond to violence and hostility against women has gained traction in recent years.”⁶² The Commission has further observed (in the context of considering gender/sex based hate crime aggravation and protection) that a consequence of aggravating hate crime offences against women would disrupt the understanding that all sexual and domestic abuse offences against women are inherently misogynistic.⁶³ In their final report,⁶⁴ the Law Commission have not recommended that sex should become one of the protected characteristics in Hate Crime Law. One of their reasons for this is that it would militate against the understanding that violence against women and girls is motivated by misogyny and that it is better tackled in legislation elsewhere.⁶⁵
- 4.2.8 We think that the above provides further support for the proposition that domestic murders should attract specific consideration within the context of factors, such as misogyny, which underlie much violence against women and girls.
- 4.2.9 There is, of course, nothing to prevent a domestic murder from being included in a higher starting point where the facts are consistent with those factors which go to define seriousness see *R v M, AM and Kika* (supra). If a man strangles his wife in the course of a sadistic rape and this is proved to the criminal standard then technically, the offence attracts a higher starting point. We found one case in our sample (**CM55**) where a sentence of 33 years was imposed where the domestic violence appeared to have been classed as sadistic within the overall sentencing framework. The male perpetrator had used an iron and a coat hanger to assault the victim.⁶⁶ He had also seriously assaulted his wife some years earlier and been sentenced to a hospital order with a s.41⁶⁷ restriction order having subsequently been discharged. The victim in **CM55** was the perpetrator’s second partner.
- 4.2.10 However, other cases which had attracted the 30 year starting point pursuant to paragraph 3 tended to be cases where there was no ambiguity about the starting point because the determination of the category did not involve any sort of value judgment on the part of the sentencer. For example, the murder was for gain

⁶¹ Law Commission Consultation Hate Crime Laws CP 250.

⁶² Law Commission Consultation Hate Crime Laws CP 250 at 12.4.

⁶³ *Ibid* 12.117-118...

⁶⁴ Law Commission Hate Crime Law Final Report, Law Com No 402, December 2021.

⁶⁵ Law Commission Hate Crime Law Final Report, Law Com No 402, December 2021 at 5.382 “Our view is that hate crime legislation is not the way to approach the issue of violence against women and girls.”

⁶⁶ With whom he was living but to whom he was not married.

⁶⁷ Mental Health Act 1983 (as amended).

CM59, or where more than one person was murdered as in **CM74** where the perpetrator murdered his wife and two children. In this regard, see also **CM88** in which the victim was stabbed many times, her mother was stabbed by the perpetrator who then returned to stabbing the victim. Other examples comprised cases where a firearm was used (**CM85** and **CM76**) or where a firearm was used to attack and kill more than one victim.

- 4.2.11 Societal understanding of domestic abuse has developed quite separately to sentencing law and policy in murder and, as we explain below, has greatly improved since 1997 when judicial guidance for sentences in murder was first promulgated.⁶⁸ This touches on a wider point which is that to a great extent, Schedule 21 remains a product of its time and frozen in 2003 since when it has been amended in a piecemeal fashion. Ironically, sentencers have more guidance on lesser offences. The Sentencing Council issues up-to-date guidance on the spectrum of criminal offences which is reviewed and designed to take account of societal changes. For example, in January 2021 the Council issued new guidance on drugs in line with the increased misuse of certain psychedelic drugs under the Psychoactive Substances Act 2016 and which was intended to reflect modern offending. There is an argument that there should be a wholesale reform of Schedule 21 with guidance being issued by the Sentencing Council. However, this is not within our terms of reference which are limited to considering the implications of paragraph 4 and the operation of the Schedule within the context of domestic murder.

4.3 Taking a Knife or Other Weapon to the Scene as Prescribed in Schedule 21 Paragraph 4

- 4.3.1 The first part of our review suggests that the provision of what is now paragraph 4 (but was paragraph 5A) has caused problems. The problems can be distilled as follows. First, in construing the paragraph, the courts have had difficulty (except in the most obvious circumstances) in determining when a weapon should be regarded as having been ‘taken to the scene’. See the decision in *R v. Kelly* where it has been said that the potentially arbitrary nature of paragraph 5A⁶⁹ was apparent from the facts and hypothetical circumstances arising from consideration of the conjoined appeals.

⁶⁸ See reference to Lord Bingham CJ in the previous section.

⁶⁹ Bild (Jonathan) *Kelly and the 25 year starting point Arch.Rev.2011,8,72* “By introducing this clumsy amendment to Schedule 21 all that Parliament has achieved is to create an arbitrary distinction between whether a weapon was or was not taken to the scene”

- 4.3.2 Second, the first tranche of our research namely, the case sample analysis, suggests that in practice, there is a significant disparity of 6.5 years in the length of the average minimum term (which an offender must serve before an application for release on licence) between murder cases where a knife or other weapon has been taken to the scene and cases where a weapon was already at the scene. Treasury Counsel's analysis also showed that there were very few cases where the 25 year mark was reached by virtue of aggravating features after determination of a 15 year starting point.
- 4.3.3 In a case of domestic murder, the starting point for the minimum term will normally be one of 15 years unless the offence has a characteristic which brings it into paragraph 3 (for example, it can be proved that the murder was committed in the context of an offence of sexual violence or with a firearm). The disparity between the 15 year starting point and the 25 year starting point has led to calls for the 15-year starting point to be higher in the case of a domestic murder.
- 4.3.4 The arguments for this are, that in a domestic murder where a weapon is likely to be at hand (and therefore not taken to the scene) the offence cannot come within paragraph 4. It is surely wrong that, just because a victim has the misfortune to live with her or his assailant, and a weapon (usually a knife) will therefore be available in the home, the starting point in the event of a conviction is so much lower than that where an assailant and a victim are not known to each other or the offence is committed outside the home and a weapon is taken to the scene. A victim is entitled to feel safe within the confines of her/his home and one of the most perfidious aspects of domestic abuse is that it takes place in the privacy of the home where there are often no witnesses. The discrepancy would be particularly apparent in a case where for example, two people had separated, and the murder took place whilst the victim was on her way to pick up her children from school. These were the circumstances in **CM30** where the youngest (three-year-old) child of the victim and perpetrator, was also present with the victim at the time of the murder. This happened at the end of the relationship. The sentencing remarks in that case also contained reference to coercive control. In our view, the culpability of the perpetrator who kills in the home is aggravated as is that of the perpetrator who kills outside the home and takes a weapon with him/her to do it. The degree of aggravation will depend on individual factors in each case. Culpability does not necessarily lie in the niceties of how the perpetrator came to be armed but rather in the perpetrator's state of mind.
- 4.3.5 It is not therefore clear that the 'weapon issue' in Schedule 21 paragraph 4 is the problem. If it is not the problem (because it does not represent the essence of the perpetrator's culpability) then it is not logical for it to be determinative of the starting point. This proposition was supported by nearly all of the attendees in the focus group discussions.

- 4.3.6 One injustice which is often referred to as emanating from the distinction between the differences in starting points is the seeming absurdity of the following scenarios. An offender who has taken a knife or other weapon to the scene (and therefore potentially attracts a higher starting point) may cause death by stabbing their victim once. Conversely, an offender who does not take a knife (or other weapon) to the scene may cause death by stabbing their victim far more times than needed to cause death. This is what is otherwise described as ‘**overkill**’. If they are convicted of murder, then by definition, the offence has not been mitigated to manslaughter by either diminished responsibility or by loss of control. The question arises as to how such an offender’s culpability can morally be said to be less than that of a person who commits an offence coming within paragraph 4(2) for which there is obviously a higher starting point. We suggest that this anomaly is best addressed independently of consideration of Schedule 21 paragraph 4 and that the focus should be on the harms which pertain specifically to domestic murders.
- 4.3.7 This is for the reasons to which we refer at paragraphs 6.1-6.7 below. Namely, that the harms in domestic murders are very different to those which are contemplated by paragraph 4 of Schedule 21 (where the intention of the legislature was to stop young people from carrying and using knives on the streets). Comparing like with like has the effect of prioritising or privileging factors such as the carrying of a weapon at the expense of other factors which are attributable to domestic abuse, misogyny and not yet part of the dominant forensic discourse because there has not been specific or sufficient consideration of the underlying issues by policy makers. It is necessary to look at domestic murders to explain what distinguishes them from other murders which would normally attract a 15 year starting point.

5. Domestic Murders

5.1 Domestic Homicide as a Developing Jurisprudence

5.1.1 The one thing which differentiates domestic murders (and manslaughters) from many other murders is that in domestic murders there is always a relevant history (notwithstanding that this may not have been explored at trial)⁷⁰ which provides a context and a potential explanation for the killing.

5.1.2 Attendees of Focus Groups agreed as to ‘background’ being one of the defining factors in domestic homicides:

“I think the critical question is where you have a murder in a domestic context it’s not like a stranger killing during a fight or something. The whole background context of the relationship is the critical issue in understanding what leads up to the killing.” **Focus Group attendee.**

“When there is an ongoing intimate relationship of some sort, they need to then go back and back and consider all those dynamics...” “The evidence is history, coercive and controlling behaviour... dynamics ... or there is an issue of very risky behaviour...” **Interview with lawyer.**

5.1.3 There have been miscarriages of justice because the facts of the killing have not been placed in the relevant context in the trial.⁷¹

5.1.4 The ‘context’ proposition is exemplified by the Intimate Partner Femicide Timeline which is at the centre of Professor Monckton-Smith’s work.⁷² The Femicide timeline is a product of the analysis of the history in a sample of detailed case studies of femicide. Broadly speaking, Professor Monckton-Smith works on the basis that “chronologies and temporal sequences are useful in understanding the dynamic nature of risk and how it can escalate.” She identifies eight stages

⁷⁰ Many trials focus on the immediate incident of the killing at the expense of looking at the background which led up to it. In part 8 we refer to a particular case (Brown) where the family of the deceased victim felt that this had happened.

⁷¹ For example, *R v. Farieissia Surayah Shabirah Martin [2020] EWCA Crim 1790* where evidence of previous rapes by another and also by the deceased was not before the jury and so the context of the killing was underinclusive.

⁷² Monckton-Smith (Jane) *Intimate Partner Femicide: Using Foucauldian analysis to track an eight stage relationship progression to homicide*. Violence Against women 26 (11) pp 1267-1286, e-print URI <http://eprints.gloucs.ac.uk/id/eprint6896> see also, Professor Jane Monckton Smith *In Control: Dangerous Relationships and How They End in Murder*, Bloomsbury Publishing, 2021 (2021).

preceding homicide. These stages are categorised as pre-relationship, early relationship, relationship behaviours, trigger event, escalation, change in thinking, planning and homicide. Significantly, this research establishes that there are features common to many cases (although the pattern may change in that stages are repeated or extended) but there is prevalence of planning (which can last anything from a few hours to 12 months) where a man goes on to kill his present or previous intimate partner.

- 5.1.5 Domestic abuse is a gendered crime.⁷³ Women are disproportionately the victims. 27% of women have experienced domestic abuse since the age of 16.⁷⁴ Research by Women's Aid has noted that women are more likely to be seriously hurt in a context of domestic abuse than are men.⁷⁵
- 5.1.6 The above trend extends to domestic homicide whether it is murder or manslaughter. In figures from the Home Office Homicide Index between April 2016 and March 2020 where the perpetrator of the homicide was an intimate partner and/or ex- partner, there were 350 homicides.⁷⁶ Males made up 87% (305) of the perpetrators and females made up 13% (45) of the perpetrators.
- 5.1.7 These figures are consistent with the results of other research projects. For example, the Femicide Census figures for 2018⁷⁷ revealed that 149 women were killed by men in the UK in 2018. The Femicide Census over a 10 year period between 2009- 2018, found that of the 1,425 women who had been killed by men in the UK 888 (62%) were killed by a partner and a history of previous abuse to the victim was evident in 611 (59%)⁷⁸ of these cases.
- 5.1.8 A research project by the Centre for Women's Justice and Justice for Women found that in the 10-year period (between April 2008-March 2018) 840 women

⁷³ The sex of complainants in CPS domestic abuse flagged prosecutions was recorded at 82.5 % being female in 2018-2019. See Crown Prosecution Service "*Violence Against Women and Girls*" Report 2018-2019 available at <https://www.cps.gov.uk/sites/default/files/documents/publications/cps-vawg-report-2019> cited in Law Commission Consultation Hate Crime Laws CP 250 at 12.40 paragraph 5.179 Page 170

⁷⁴ <https://www.gov.uk/government/publications/tackling-violence-against-women-and-girls-strategy/tackling-violence-against-women-and-girls-strategy> Government Violence against women and girls strategy (July 2021) Domestic abuse prevalence and trends, England and Wales

⁷⁵ Women's Aid "Domestic Abuse is a gendered Crime" available at <https://www.womensaid.org.uk/information-support/what-is-domestic-abuse/domestic-abuse-is-a-gendered-crime/> cited in Law Commission Consultation Hate Crime Laws CP 250 at 12.42

⁷⁶ Appendix E

⁷⁷ Femicide Census: "*If I am not in Friday, I might have been dead*" Long (Julia), Wertans (Emily), Harper (Keshia), Brennan (Deirdre), Harvey (Heather), Allen (Rosie) and Elliott (Katie) with Ingala Smith (Karen) and O Callaghan (Clarissa). 2009-2018 Page 62.

⁷⁸ Femicide Census cited in by *Women who Kill: How the state criminalises women we might otherwise be burying* Feb 2021 at page 17. Howes (Sophie).

were killed by partners or ex-partners and 108 men were killed by women with whom they had been in a relationship.⁷⁹ The Office of National Statistics figures for the year 2017 showed that women were more likely than men to be killed by partners or ex-partners. In this regard, 33% of female victims of homicide compares to 1% of male victims of homicide. In 2017, 50% of female victims who were aged 16 and over were killed by a partner or ex-partner compared with 3% of male victims aged 16 and over whereas in the same year, men were more likely to be killed by acquaintances i.e. 32% of male victims aged 16 and over compared with 10% of female victims aged 16 and over.⁸⁰

- 5.1.9 In our own sample of cases, there were 99 killings of women by men and 20 killings of men by women and one killing of a woman by another woman (**CF16**) over the two year period.
- 5.1.10 All the analyses referred to above show the gendered nature of domestic homicides. A further example of this is found in the use of weapons. In our sample, all women who killed their male partners used a weapon to do so. In this regard, see our findings at paragraph 1.4.6. Conversely, in murder cases where no weapon was used, the perpetrator was always male. As we point out in our part on manslaughter at paragraph 8.2 below, feminist scholars have long argued that the use of a weapon on the part of a female perpetrator who kills a male is an inevitable consequence of her having less bodily strength than a male perpetrator. Use of a weapon is not a statutory aggravating factor in cases of murder. Although the Court of Appeal have said that it is always an aggravating factor,⁸¹ we do not think that it should always be viewed as an aggravating factor in domestic murder because to hold that it is so, is gendered.
- 5.1.11 We therefore consider that the use of a weapon should not be an aggravating factor. Participants in all of our focus groups agreed with this proposal. See recommendation 10 in the table in Part 10.
- 5.1.12 The gendered nature of domestic homicide is the subject of a developing jurisprudence. What follows is no more than a summary of the main landmarks. The (now abolished)⁸² partial defence to murder of provocation was thought by policy makers and the Law Commission of England and Wales to traditionally avail men (as opposed to women) of a partial defence because it placed an emphasis on a sudden and temporary loss of control. In doing so, it provided for a typically

⁷⁹ *Op Cit* at p22

⁸⁰ ONS Homicide in England and Wales: Year ending March 2017 cited Law Com CP 250 at 12.43. Also available at: <https://www.ons.gov.uk/peoplepopulationandcommunity/crimeandjustice/articles/homicideinenglandandwales/yearendingmarch2017>.

⁸¹ *R v. M, AM and Kika [2010] 2 Cr App R (S) 19*.

⁸² Coroners and Justice Act 2009 s.56.

male anger which was often connected to jealousy. It was thought men killed in anger in the heat of the moment, but women (through lack of bodily strength) tended to deliberate and so obviate the immediacy. In this regard, see *R v. Duffy*⁸³ a case where an abused woman killed her husband by fetching an axe from the kitchen and then bludgeoning him in the head while he slept in bed. The Court of Appeal upheld Devlin J's direction to the jury that the conduct of the killing had to be sudden with no time for deliberation in order to satisfy the, then, common law partial defence. Professor Susan Edwards describes the contemporaneity of the factual matrix leading up to the killing involving, as it did, physical abuse including non-fatal strangulation and sexual violence together with the matter-of-fact way in which the appellant said that she had killed her husband.⁸⁴ Professor Edwards' exposition of the facts of *Duffy* illustrates the way in which the law has consistently failed to harness the experiences of women who kill because they are trapped in abusive relationships.

- 5.1.13 In *R v. Ahluwalia*⁸⁵ the appellant who had been subjected to a long history of domestic abuse by her husband, killed him by taking petrol to their house and throwing it into his room and then setting it alight. The Court of Appeal upheld a direction on provocation based on the requirement of a "sudden and temporary loss of control." The Court tempered this by indicating that a delay between the provocation and the loss of control would not necessarily negate the partial defence but held that the longer the delay between the provocation and the loss of control, the more likely it would be that the prosecution would be able to disprove the partial defence. The appeal was allowed on the basis of fresh evidence going to the issue of diminished responsibility.
- 5.1.14 In *R Humphreys*,⁸⁶ the Court of Appeal held that in the context of a history of abuse it was incumbent on a trial judge to draw together the strands of evidence which could be said to go to the final provocation rather than to give a mere historical recital thereby introducing the concept of cumulative provocation into law. This change has now been put on a statutory footing. When provocation was abolished and loss of self-control introduced as a partial defence to murder pursuant to ss.54- 55 Coroners and Justice Act 2009, it was specifically provided

⁸³ *R v. Duffy* [1949] 1 All ER 932.

⁸⁴ "Justice Devlin's legacy: *Duffy* a battered woman caught in time" Edwards (Susan) Crim L.R. 2009 12 851-869, where the writer claims that the law reports reporting of the case were of such a brevity that they reflected the seeming irrelevance of the factual background of domestic violence to the development of the law at the time and at 119 "it is most likely that if Rene Duffy were tried today she would again be convicted of murder and would serve a minimum of 15 years."

⁸⁵ (1993) 96 Cr.App.R. 133.

⁸⁶ *R v. Humphreys* [1995] 4 ALL ER 1008.

at s.54 (2) that there was no requirement that the loss of control should be “sudden.”

- 5.1.15 The impetus for the legislative reforms to the partial defences to murder which were introduced by the Coroners and Justice Act 2009 was to enable women who kill their abusive male partners to use the law to defend themselves on a charge of murder. The reforms were intended to effect gender parity in terms of access to the partial defences. The relevant sections of the 2009 Act were largely based on the work of the Law Commission⁸⁷ whose recommendations were devised without an understanding of coercive control and indeed, without any reference to the concept. A search of Hansard reveals that coercive control was not referred to during the Commons Committee stage of The Coroners and Justice Bill.⁸⁸ With one notable exception, the first mention of coercion and control (in terms of legislation) in Hansard appears to be in 2012.⁸⁹
- 5.1.16 In our sample of cases, there were no cases where a male perpetrator had successfully relied on the partial defence of loss of control in order to secure a conviction of manslaughter as opposed to murder. The partial defence specifically disregards sexual infidelity as a trigger to any loss of control⁹⁰ because in so far as defences are concerned, the law cannot concede that jealousy should ever justify killing. Notwithstanding, this clear legislative intent, the statutory mitigating factors in paragraph 10 of schedule 21 have not been amended so as to be specifically aligned with the underlying policy and the wording in s.55(6)(c). Accordingly, sexual infidelity could still be regarded as mitigation in that it can be said to be provocation falling short of a defence. In paragraph 7.1.17, we recommend that this lacuna in the legislation should be filled.
- 5.1.17 Notwithstanding this growing jurisprudence, there has never been a comprehensive forensic approach to domestic abuse or to those murders which are the result of domestic abuse.
- 5.1.18 It is now understood that domestic abuse is underpinned by controlling and coercive behaviour by the perpetrator of the abuse towards the victim.

⁸⁷ *Partial Defences to Murder* Law Com 290 6th August 2004, Murder Manslaughter and Infanticide LC 304 29th November 2006.

⁸⁸ Which was to become the Coroners and Justice Act 2009.

⁸⁹ This is with the exception of the fact that there was a memorandum submitted to the Select Committee on Home Affairs by Women’s Aid in 2006 where the term was in fact used in reference to submissions on sentencing.

⁹⁰ Coroners and Justice Act 2009 s.55(6)(c).

5.2 The Role of Coercive Control and Coercive Control as a Tool for Forensic Analysis

- 5.2.1 2015 saw the enactment of a new offence of controlling and coercive behaviour which was introduced by s.76 of the Serious Crime Act 2015. The offence was based on the work of Evan Stark.⁹¹ Professor Stark characterises coercive control as a crime against liberty in circumstances where a victim is systematically stripped of her autonomy.⁹² Stark's definition is based on a clinical concept derived from the empirical evidence of his practice as a forensic social worker. S.76 converts the concept to something which is actionable in law.⁹³ Here, we are not so much concerned with the offence itself but with the extent and nature of the harm that is caused by the conduct which the offence criminalises.
- 5.2.2 The introduction of the offence and of the concept of controlling and coercive behaviour ('coercive control') into criminal legal discourse has achieved a number of things. First, it has assisted the Government in continuing to meet its international obligations to tackle violence against women and girls.⁹⁴
- 5.2.3 Second, it has introduced a lexicon into criminal law which is capable of facilitating a narrative that better reflects the experience of women who suffer domestic abuse. This is because the theory of coercive control expounds the way in which behaviours of violence, intimidation, isolation and control are used to abuse women in domestic relationships. It thereby shifts the emphasis away from a calculus of individual physical harms to a pattern of control which endangers the victim's physical and psychological integrity and which isolates her, making her feel it is impossible to escape her situation because the emphasis is on the entrapment of the victim which is caused by coercion and the exercise of control by the perpetrator. As an offence against liberty, coercive control also focuses (or ought to focus) legal attention on the victim's constrained strategic choices for survival.

⁹¹ *Coercive Control How men entrap women in personal life. Op cit.* See also Stark (Evan): "Rethinking coercive control". *Violence Against Women* 15(2): 1509–1525.

⁹² The offence provided for by s.76 is, however, gender neutral.

⁹³ Walklate (Sandra) Fitz-Gibbon (Kate) McCulloch (Jude) "*Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories*" *Criminology and Criminal Justice* 2018 Vol 19(1) 15-131 at pp17-18. Broadly speaking, the authors argue that translating a clinical concept into something which is actionable in law is problematic.

⁹⁴ The UK signed the Council of Europe Convention on Preventing and combatting Violence against Women and Domestic Violence (the Istanbul Convention) on 8.6.12 but is yet to ratify the treaty. The Government has said that it will only ratify the treaty when it is satisfied that the UK has met all its obligations under the Convention.

- 5.2.4 An incident-based approach to quantifying domestic abuse is under-inclusive and excludes things like ‘isolation’ and ‘shame’ which have not traditionally been recognised as legal harms, but which are deeply damaging to victims of domestic abuse and which go to compound the perpetuation of domestic abuse because they operate to prevent women from reporting it. The offence of controlling and coercive behaviour has been described by feminist scholars as “entirely unprecedented” in that it has an external element which consists of conduct which, taken in isolation and outside the behavioural pattern, may not necessarily be unlawful.⁹⁵ It identifies the invidious and often intangible quality of much abuse. The shift in emphasis from an incident based approach means that the attack on a woman’s autonomy is explicable in a way that has the potential to be more readily understood by police and other agencies.
- 5.2.5 Third, the concept of entrapment provides a more plausible explanation of why people⁹⁶ stay in abusive relationships than say, theories like ‘battered woman syndrome’ and diagnoses like Post-Traumatic Stress Disorder both of which place emphasis on individual acts/assaults and the consequent psychological status of the victim. This point is emphasised by the facts of *Dhaliwal*⁹⁷ and the decision in that case. Had the facts of that case been viewed through the lens of coercive control, then the outcome may have been different. Although the trial judge had indicated that it should be possible to view the various incidents as a continuum, the concept of coercive control was not appreciated at the time and emphasis was placed on the psychological state of the victim.
- 5.2.6 In forensic terms, the coercive control model also facilitates a move away from the assumption that domestic abuse is ‘situational’ and less about a relationship having ‘gone wrong’ to being a matrix of entrapment caused by a perpetrator who has a pathological need to control. In the words of Professor Monckton-Smith,

“[d]ominant discourses construct domestic abuse as a ‘couple’s problem’ which is generated through the particular dynamics in any relationship between two people. This position considered a domestic abuse myth, suggests that domestic abuse is situational and provoked...in contrast, discourses of coercive control situate the problems and the abuse within the perpetrator, arguing they will continue with the same behaviour pattern in all relationships.”⁹⁸

⁹⁵ Edwards (Susan) “*Coercion and Compulsion re-imagining crimes and defences*” 2016 Crim LR 876.

⁹⁶ Mostly women.

⁹⁷ *Op Cit.* See our comments in part 1 of this report.

⁹⁸ 8 Monckton-Smith (Jane) *Intimate Partner Femicide: Using Foucauldian analysis to track an eight-stage relationship progression to homicide.* *Op Cit.* p 13 citing Dobash and Dobash (2002) and Stark (2009).

“The forensic narratives are dominated [by] the defence and prosecution counsel looking at this as a relationship that's gone wrong rather than the pathological behaviours of somebody who has issues with control.”

Semi-structured interview.

5.2.7 Even without the context of the Intimate Partner Femicide Timeline, a relationship which is governed by controlling and coercive behaviour can, in the worst case, lead to either suicide or homicide.⁹⁹ See also “*Domestic Homicides and Suspected Victim Suicides During the Covid 19 Pandemic*”¹⁰⁰ where it is said that the risk factors for homicide and suicide were domestic abuse and that within domestic abuse, coercive and controlling behaviour is an important risk factor.¹⁰¹ Murder is a concomitant of the coercive control used by abusers.¹⁰² As expounded below, it frequently occurs in circumstances where the abuser fears that the relationship will end.¹⁰³ In this regard, see the Femicide Census at 2.8 on post-separation killings. Of the 888 women who were killed over the 10-year period covered by the census, 378 (43%) were known to have separated or to have taken steps to separate from the perpetrator.¹⁰⁴ This is reinforced by stage 4 of Professor Monkton-Smith’s Femicide Timeline “the reasons given for men killing their partners overwhelmingly

⁹⁹ See Stark (Evan) “*Coercive Control How men entrap women in personal life*” OUP 2007 pp 276-277 citing Nancy Glass et al “*Risk for Intimate Partner Femicide in Violent relationships*” DV report 9 no 2 Dec 2003/Jan 2004 1,2 30-33.

¹⁰⁰ Home Office NCCP, *Vulnerability Knowledge and Practice Programme, Domestic Homicides and Suspected Victims Suicide During the Covid-19 Pandemic 2020-2021*, Lis Bates (Lis), Hoeger (Katherine), Stoneman (Melanie-Jane) Whittikar (Angela).

¹⁰¹ *Ibid* at 4.2.2 (page 54) it also makes the point that coercive control is under reported “as it is a pattern of behaviour that may be less easily identifiable than discrete incidents involving physical assault or verbal argument”.

¹⁰² Monkton-Smith (Jane) 2019 *Intimate Partner Femicide: Using Foucauldian Analysis to track an eight-stage progression to Homicide Violence Against Women 2019*. See also Monkton-Smith (Jane) “*In Control Dangerous relationships and how they end in murder*” (2021).

¹⁰³ The thing, which precipitates the change in thinking from a need to control to a need to kill the object of the control in the homicide timeline, *Intimate Partner Femicide Using Foucauldian Analysis to track an eightstage progression to Homicide Violence Against Women. P 8 Monkton-Smith (Jane)* “[t]he argument proposed is that IPF is part of a journey where the motivation to abuse (need for control) is linked to the motivation to kill (loss of, or threat to control). Breakdown in control can be preceded by a somewhat broad spectrum of triggers, and this often revolves around separation but also financial ruin and mental or physical crises. This means there will be many more relationships where there is a breakdown in control than there are homicides. However, if the response shows signs of last chance thinking, or determined revenge, the risk of homicide escalates”.

¹⁰⁴ Femicide Census: “*If I am not in Friday, I might have been dead*” by Long (Julia), Wertans (Emily), Harper (Keshia), Brennan (Dierdre), Harvey (Heather), Allen (Rosie) and Katie Elliott (Katie) with Ingala Smith (Karen) and O’ Callaghan (Clarissa). 2009-2018 Page 30.

revolved around the withdrawal of commitment and separation. This separation could be real or imagined or just threatened.”¹⁰⁵

- 5.2.8 As we discuss at paragraph 6.2 of this report, there was evidence (within our sample of cases) to support the proposition that the end of a relationship tends to precede a killing.¹⁰⁶ In 43¹⁰⁷ out of 89 murder cases (48%) the sentencing remarks disclosed that there were either reports of jealousy or resentment on the part of the perpetrator at the breakdown of the relationship. In the majority of cases, this appeared to be the catalyst for the murder. The perpetrator was male in 42 out of these 43 cases. There were no cases where a female perpetrator was said to have exhibited coercive control towards the victim prior to the killing. There was one case (**CF1**) where the perpetrator was said to have been “obstructive, abusive, argumentative threatening, aggressive and violent when in drink or craving drink” and in respect of whom the judge did not accept her account of being coercively controlled by the victim.
- 5.2.9 Conversely, homicide (whether manslaughter or murder) can also occur where a party to the relationship’s sense of entrapment (as a result of being subject to controlling and coercive behaviour) means that they feel that there is no way out other than to kill. The victim of the abuse then becomes the perpetrator of the murder.

5.3 Offenders Who Are Also Victims

- 5.3.1 We have so far focused on men and their perpetration of femicide. Research shows that when women are convicted of murdering their male partners, they often tend to be the victims of previous domestic abuse by their partners.¹⁰⁸ Women who have suffered domestic abuse in a relationship which is governed by coercive control are likely to kill because the coercive control had led to such a degree of entrapment that they can see no other or lawful way out of her situation. Stark identifies what he calls “perspecticide”¹⁰⁹ as playing a part in this.

¹⁰⁵ *Op Cit* at p17.

¹⁰⁶ In *Building a temporal sequence for developing prevention strategies, risk assessment and perpetrator interventions in domestic abuse related suicide, honour killing and intimate partner suicide* p35 Monckton Smith (Jane) Siddiqui (Hannana) Haile (Susan) Sandham (Alex) refer to a trigger event in the context of honour killings and suicides.

¹⁰⁷ There was one case in which it was not clear and so this case was excluded in the computation.

¹⁰⁸ *Women who kill: How the State Criminalises Women We Might Otherwise be Burying* Howes (Sophie) p 29 “The triggers to women’s lethal violence”.

¹⁰⁹ Stark (Evan), *Coercive Control “How men entrap women in personal life”* OUP (2007) at p 267 “one of the most devastatingly psychological effects of isolation is the above related incapacity to know what you know.”

5.3.2 In circumstances where such women are convicted of murder, research has shown that this is often because of failings in the criminal justice system. Either, such women are not properly protected from previous domestic abuse or not properly represented at trial.¹¹⁰ **Attendees of focus groups agreed:**

We see that in frontline services and reports and we see that in the media all of the time where women are accused, when arrested. That gendered lens is not just in the judiciary it is throughout our society. **Focus group attendee.**

5.3.3 Another reason we suggest that such women are often convicted of murder is that the dominant discourse¹¹¹ is not yet one of coercive control, which, as we have already argued, underpins domestic abuse. This reasons for this are explored further in Part 9 of this report. It is however now recognised that in principle, coercive control can feature in both partial defences to murder.¹¹²

5.3.4 We did not find that sentences imposed on women for murder were longer than those imposed on men. In fact, the average sentence on women was shorter being 17.6 years for women as opposed to 20.8 years for men – although the small number of women in the case review (8 sentenced for murder) prevents firm conclusions being made. This apparently being the case, it would be wrong, given published research about domestic abuse and coercive control, for there to be an increase in sentences per se. All of our focus group attendees were in agreement with this.

5.3.5 Any policy which did not take account of the fact that a minority of perpetrators are also victims of the very mischief that the sentencing policy is designed to reflect/address would lead to injustice. There would, in other words, be unintended consequences. Professor Jeremy Horder and Kate Fitz-Gibbon make the compelling point that under the current sentencing framework in Schedule 21, *Kiranjit Ahluwalia*¹¹³ if again convicted of murder, would be subject to a starting

¹¹⁰ Howes (Sophie) *Women who Kill: How the state criminalises women we might otherwise be burying* Feb 2021.

¹¹¹ Monckton-Smith (Jane), *Intimate Partner Femicide: Using Foucauldian analysis to track an eight-stage relationship progression to homicide*. *Op. cit.*

¹¹² See the decision in *R v. Challen* [2019] EWCA Crim 916. Although it is important to note that in *Challen* the Court of Appeal were concerned with provocation and not the recently introduced partial defence of loss of control.

¹¹³ Whose case Professor Susan Edwards has argued was the paradigm case of coercive control. Professor Edwards cites Taylor CJ in *R v. Ahluwalia* (1992) 96 Cr. App R. 133 as effectively describing coercive control when he cited a letter the appellant had written to the deceased as evidence of “the state of humiliation and loss of self-esteem to which the deceased’s behaviour had reduced her”. See Edwards (Susan) “*Coercion and Compulsion re-imagining crimes and defences*” 2016 Crim LR 878.

point of 25 years¹¹⁴ because of course, she had taken a weapon (petrol) to the scene and she used it to kill the deceased. There is a disconnect between aspects of the substantive law following the changes brought about by the Coroners and Justice Act 2009 (to which we have referred in paragraph 5.1.16) and the sentencing framework which has remained largely unchanged and as we have stated at paragraph 2.3, remains fixed in 2003. The above research calls for greater flexibility in the sentencing framework so that the culpability of women offenders who are also victims can be better assessed.

- 5.3.6 A way to define the gravity of domestic murder and pre-empt any injustice which flows from the tension described above would be to use the coercive control theory to ascribe a level of seriousness to a murder. Broadly speaking, this is because the coercive control theory/model which is centred on the restriction of liberty reflects pre-existing gender inequalities. In her 2012 work¹¹⁵ Jane Monckton-Smith cites Evan Stark:

“coercive control takes the enforcement of gender stereotypes as its specific aim, the degradation of femininity as a major means, and reinforces sexual inequality in society as a whole in ways that constrain women’s opportunities to ‘do’ femininity, it is about the construction and deconstruction of gender identity in ways that other forms of violence against women are not.”

- 5.3.7 By way of illustration, the focus of coercive control on say, micro-regulation of activities which society has traditionally deemed to be ‘women’s work’ (such as housework and looking after children) also means that women who kill are less likely to have been coercively controlling towards the partner whom they have killed. Such women are unlikely to have proved to have a history of perpetrating the abuse which is common in relationships governed by coercive control namely, non-fatal strangulation and ‘rape as routine’. In his recent book, *Domestic Abuse and Human Rights*, Jonathan Herring cites the work of Professor Marianne Hester and colleagues¹¹⁶ “[who] found that while significant numbers of men reported emotional, physical or sexual harm, only 4.4% of men experience coercive and

¹¹⁴ Horder (Jeremy) and Fitz-Gibbon (Kate) “*When sexual infidelity triggers murder: examining the impact of homicide law reform on judicial attitudes in sentencing.*” C.LJ 2015 74(2). 307-328 which describes the previous paragraph 11(c) in Schedule 21 to the Criminal Justice Act 2003 as “an arguably very weak attempt to take into account circumstances which will include those in which abused women may kill their abusive partners hardly matches the effort devoted to carving out a partial defence to murder, based, when a loss of control is added to the picture, on this very ground.”

¹¹⁵ Monckton Smith (Jane), *Murder, Gender and the Media* 2012 Palgrave Macmillan, Basingstoke. Page 138.

¹¹⁶ M. Hester, C. Jones and E. Williamson “*Is it Coercive Controlling Violence? A Cross-sectional Domestic Violence and Abuse Survey of Men Attending General Practice in England and Wales*” (2017) 17 *Psychology of Violence* 417.

controlling violence, and of these, half admitted doing the same to their partner.”¹¹⁷ In any event, coercive control is capable of aggravating conduct of which it is a continuation specifically, a need to control and it is also capable of mitigating a killing which is explicable by a need to escape control.

- 5.3.8 As explained in paragraph 5.2.8 above, many murders of women by their male intimate partners or ex partners tend to be committed either at the end of the relationship or when the victim of the murder has resolved that she will leave the relationship or even after the relationship has ended. This leads to the change of thinking (which is identified by Professor Monckton-Smith).¹¹⁸ Namely, a change from the need to exert control over a person to the decision to kill that person once it is appreciated that control cannot be maintained. The coercive control theory speaks to the motivation for such killings being about an inability to accept the end of the exploitation of the male privileges which are so common in controlling and coercive relationships. Jealousy is often perceived to be a factor but, in fact, this is but one aspect of the coercive control strategy which is based on male privilege afforded by patriarchy. As Stark says “[t]he ultimate expression of property rights is the right of disposal illustrated by the statement that frequently precedes femicide “If I can’t have you no one will.”¹¹⁹
- 5.3.9 The exception to the above proposition, that the end of a relationship has significance in terms of a motivation to kill, is possibly jealousy which as we have noted in Part 5.1.12¹²⁰ was specifically addressed by Parliament in s.55(6)(c) Coroners and Justice Act 2009.¹²¹ Practice in the criminal courts also shows however, that jealousy is a common narrative relied on in the absence of a proper understanding of coercive control as the basis of domestic abuse.¹²²
- 5.3.10 Of the 99 cases which involved a male perpetrator in our 120 case sample, the perpetrator was said by the sentencer to have exhibited coercive control towards the victim in 46 cases. There was at least one very clear example of the sentencing judge disregarding what the family of the victim said was coercive control but imposing an otherwise high sentence [CM16]. Later in this paper, we address the overlap between coercive control and the other themes we have discerned in the course of the review. Obviously, coercive control had to be

¹¹⁷ *Op. cit* p 44.

¹¹⁸ See paragraph 5.1.4 above.

¹¹⁹ 9 Stark (Evan), *Coercive Control “How men entrap women in personal life”* OUP (2007) p208.

¹²⁰ see above 5.1.15

¹²¹ As already observed, the section provides that sexual infidelity is to be disregarded in considering the trigger to a loss of control the policy underlying this being that jealousy cannot ever justify killing.

¹²² See *R v. Challen [2019] EWCA Crim 916* where jealousy was said to be the motivation of the appellant in her first trial when in fact there was another explanation (gaslighting) which reflected her experiences and her actions.

measured according to sentencing remarks which, as we have already observed, is an imperfect way of identifying all the relevant factors in a case.

5.4 Coercive Control is Still Poorly Understood

- 5.4.1 Concerns were expressed in the majority of our focus groups about the fact that coercive control is still poorly understood and that it is often overlooked in the context of intimate partner killing.
- 5.4.2 Although there is still very limited empirical evidence on this issue, this lack of understanding has been identified elsewhere. A Review of the *controlling or coercive behaviour offence* (March 2021)¹²³ provides a quantitative analysis of data from the criminal justice system together with a qualitative analysis of how the offence is working with a view to identifying the need for policy changes. The key findings of the review included (but were not limited to) the following: (1) there are still difficulties in recognising coercive control (2) there is a lack of systematic data across the criminal justice system on *inter alia* the characteristics of coercive and controlling offences. One research recommendation was that there should be research taken across the criminal justice system to assess the current levels of awareness and understanding of the legislation and its application in practice in order to identify any required changes to the available guidance and training.
- 5.4.3 The report draws on academic research in particular one study of policing in Merseyside.¹²⁴ It is concluded (in the context of promoting the use of the offence of *Controlling and Coercive behaviour* in s.76 of the Serious Crime Act 2015) that “the successful implementation of the coercive control offence is dependent on more than just legislation”¹²⁵ citing Burman and Brooks-Hay who have argued “legislative change cannot on its own lead to improvements. Whatever laws we

¹²³ The Home Office conducted a review of the controlling or coercive behaviour offence, which was introduced in December 2015 and report provided in March 2021 see <https://www.gov.uk/government/publications/review-of-the-controlling-or-coercive-behaviour-offence>.

¹²⁴ Barlow (Charlotte), Walklate (Sandra), Johnson (Kelly), Humphreys (Les) and Kirby (Stuart) in N8 Policing Research Partnership *Police Responses to Coercive Control* where in a study of Merseyside Police key findings were: low use of the law, indicating issues with police understanding and recording of coercive control, potential missed opportunities for identifying coercive control in broader domestic abuse cases, such as Actual Bodily Harm ('ABH'), issues identified with police investigation and prioritisation of coercive control offences compared to other types of domestic abuse related crime, particularly low arrest and solved rate in comparison to other types of domestic abuse-related crime such as ABH, problems identified with effectively evidencing coercive control and issues with officers regarding the extent and implications of risk in coercive control cases.

¹²⁵ *Ibid* at page 37 referencing Burman and Brooks-Hay (2018) '*Aligning policy and law? The creation of a domestic abuse offence incorporating coercive control*', *Criminology and Criminal Justice*, vol. 18 (1) pp 78

have will only be as effective as those who enforce, prosecute and apply them. Improving these practices- through education, training and embedding best practice- is likely to be more effective than the creation of new offences alone.” Further, reliance is also placed on the arguments propounded by feminist scholars that training needs to be at the centre of a unified approach. In the words of Julia Tolmie “[i]f the law is to be successfully applied, shifts will need to be required in the collective response of all key criminal justice decision makers, including prosecution lawyers, judges, juries....”

5.4.4 Insufficient understanding of coercive control means that it may not be readily identified either by investigators or by lawyers and judges. One reason for this can be the way in which it makes victims appear complicit in their own abuse.

5.4.5 As stated by one of the focus group attendees:

“One of the tactics that abusers often use in coercive control cases is to create a context in which she makes the decision. So for example: She becomes isolated because every time she has friends around he behaved in such an embarrassing way that she's the one who stopped them but he's now got plausible deniability - I didn't isolate you, [you] did that to yourself. That makes it even harder to kind of actually be able to have concrete evidence put forward.” **Focus Group attendee.**

5.4.6 Many victims of coercive control do not themselves recognise that they are the victims of this pattern of behaviour. This can be because they are being gaslighted or because as we explain below, there can be an idiosyncratic unspoken language between abuser and victim which has developed over time and exists in a forum of intimacy. In one high profile case (outside the case sample) where a woman had killed her husband the deceased would control the appellant with a stern look alone. In another high profile case also outside the sample, where a woman had killed her husband who she said had coercively controlled her for years, the defendant would be asked “where did you park your car?” as an indication that she should stop talking and or the deceased’s eyes would change in a way which only she would notice.

5.4.7 Another reason for the difficulties in identifying coercive control is that it is often described as a highly personal or bespoke form of abuse. As such, it is often hidden and difficult for a victim to explain:

“What I would say is that- the death threats and other threats are often inferred and subtle and would not be recognised by persons looking for explicit death threats, but they absolutely mean something to the victim.”

Focus Group attendee

- 5.4.8 Coercive control then is a form of ‘bespoke’ abuse in the sense that the perpetrator will discern the victim’s particular and specific vulnerabilities at the outset of the relationship and then proceed to exploit those vulnerabilities. In his book *“Coercive Control: how men entrap women in personal life,”* Professor Evan Stark states “only in coercive control do perpetrators hone their tactics to their special knowledge of everything from a victim’s earnings and phone conversations to her medical problems, personal fears...”.¹²⁶ We found the following clear examples of ‘bespoke’ abuse. First, **CM49** where the perpetrator of the murder was 13 years older than the victim. He knew that she had been sexually abused as a child and physically abused by her former partner. The perpetrator poured hot tea in the bed, spat on it and made the victim lie in it because she had described to him that when she had been abused as a child, her stepfather had spat on her. In the words of the sentencing judge “it is an irresistible inference in my judgment that you spat at her to dredge up her memories and humiliate her.” In this case the tailored abuse clearly aggravated culpability whether the concept of coercive control was mentioned or not. The benefit of the coercive control model is that it provides a forensic template for what this sentencing judge was able to discern and describe.
- 5.4.9 In **CM59** the perpetrator told people that the victim was pregnant and that he had children knowing that this was not the case but that it was what the victim really wanted. In this case the sentencing judge highlighted this by way of background to set the context of the murder but stated that it did not aggravate the offender’s culpability.
- 5.4.10 The fact that acts of coercive control are “often culturally and contextually prescribed.”¹²⁷ means that it can also be hidden by intersectional abuse unless police, the CPS, prosecution and defence lawyers know what to look for. There is frequently an interface between coercive control and other oppressive and/or discriminatory factors like mental health, honour-based violence (and therefore, limited or no family and friends support) or issues such as those pertaining to culture or a lack of recourse to public funds faced by migrant women which will go to compound the entrapment.
- 5.4.11 We found the following apparent examples of intersectional abuse within the case sample. **CM1** was a case where the victim was murdered by her husband because she would not support his application for immigration status. This illustrates a way

¹²⁶ Stark (Evan), *“Coercive Control How men entrap women in personal life”* OUP (2007) p 206.

¹²⁷ Walklate (Sandra), Fitz-Gibbon (Kate) and McCulloch (Jude) *“Is more law the answer? Seeking justice for victims of intimate partner violence through the reform of legal categories”* Op. cit. citing Velonis, *“He never did anything you typically think of as abuse Experiences with violence in controlling and non-controlling relationships in a non-agency sample of women”*, *Violence Against Women* 22(9):1031-1054 2016):1036.

in which women from minority ethnic backgrounds are harmed by coercive control and which may not be picked up on by frontline agencies or other participants within the criminal justice system. Similarly, in **CM2**, we found a clear example of honour-based violence where despite the breakdown of the relationship the perpetrator continued to harass the victim eventually killing her when he found out that she was with another partner. In **CM14**, the victim had begun an affair with the cousin of the perpetrator, the perpetrator eventually found out, he assaulted her and threatened to shame her in the Muslim community. This threat prevented the victim from leaving the relationship in which she was trapped. The perpetrator eventually attacked her with the use of three knives inflicting 75 stab wounds on her body.

- 5.4.12 In **CM67**, the couple had an arranged marriage which was problematic in that there was said to be tensions between the perpetrator and victim’s family from the beginning. Hostilities continued and issues spread into the relationship. On 25 December, an argument broke out between them, and the perpetrator launched a frenzied attack on the victim striking her with a frying pan and then stabbing her 38 times with a large kitchen knife before strangling her.
- 5.4.13 In **CM74** the perpetrator deployed coercive control against the victim which tactics included controlling her use of the internet and the phone thereby preventing her from being able to communicate with her family in Yemen. The victim indicated that she wanted a divorce, but the perpetrator feared that if this happened, she would return to Yemen taking their children with her. He suffocated the victim and went on to drown her children.
- 5.4.14 Recognition of the way in which controlling and coercive behaviour works ought to lead to strategies for addressing domestic abuse. However, the fact that the bespoke nature of coercive control can provide the forensic tools with which to dismantle intersectional abuse will not be appreciated where there continues to be a lack of training:

“The length of time and pattern of abuse. That is really not recognised. We do a lot of work in our sector- both frontline and policy perspective. We do a lot of work around how these forms of abuse interlock. But often what happens in the Criminal Justice System, they take one strand of that form of abuse. I think there needs to be recognition that often – for example for many black and minority women there will be aspects of coercive control but also lack of recognition of honour-based violence that is going on or lack of recognition about a history around forced marriage. What will happen sometimes is that there is a differentiation where one strand of that particular perpetration of the crime is fore fronted by whichever agency initiates the kind of support and that is really problematic.” **Focus group attendee.**

- 5.4.15 One consequential difficulty of the lack of understanding of coercive control (both in front line responders and from investigators) is the capacity it provides for abusers to distort the facts so that police have difficulty in arresting the primary aggressor. Feminist scholars have pointed out their concerns in this regard.¹²⁸ This is particularly the case where front-line responders and lawyers focus on the immediate discrete incident at the expense of taking the time to understand patterns of control and coercion. When individual incidents are focused on, they are often open to the criticism that they do not, in themselves and /or in isolation, constitute conduct which is criminal.¹²⁹ Further, the work of Professor Marianne Hester has revealed that the absence of a questioning of gender dynamics together with a focus on discrete incidents has meant that women are three times more likely than men to be arrested during police call outs to domestic incidents.¹³⁰
- 5.4.16 This, coupled with the fact that it is widely understood that there is limited reporting of domestic abuse,¹³¹ has an impact on the collection of data. The Home Office Homicide Index¹³² for example, consists of information entered onto the Homicide Form at various stages through the progression of a case– whereas this includes an option to tick various suggested methods of killing, matters recorded in terms of domestic violence include a yes/no tick for whether the killing was linked to prior incidents of domestic “violence”¹³³ against the victim/suspect. This is based on the subjective opinion of the Officer in the case, but may also be informed by previous crimes recorded. The officer’s opinion will often just depend on the way the evidence was investigated, framed and the outcome of the trial against a background of a lack of training and knowledge. There is no reference to “coercive control” in the standard form provided for the collation of the information. Some aspects of what we refer to as the coercive control model are referred to in the reasons for the homicide i.e., end of the relationship, jealousy.
- 5.4.17 We do not know how often coercive control could be said to have occurred in our sample of cases in circumstances where we have had to rely solely on sentencing

¹²⁸ Edwards (Susan) (2016) *Coercion and Compulsion-re-imagining crimes and defences*: Criminal Law Review (12) PP876-899.

¹²⁹ “The failure of criminal justice agencies to respond appropriately to domestic abuse is a key factor in the significant under reporting of domestic abuse” see Women who kill which references CWJ launch super complaint. Centre for Women’s Justice Super-Complaint Police failure to use protective measures in cases involving violence against women and girls. March (2019) available at: <https://static1.squarespace.com/static/5aa98420f2e6b1ba0c874e42/t/5c91f55c9b747a252efe260c/1553069406371/Super-complaint+report.FINAL.pdf>

¹³⁰ Hester, *Marianne Portrayal of Women as intimate partner domestic violence perpetrators* Violence Against Women 18(9) 1067-1082.

¹³¹ Op cit. n.127.

¹³² Has a template for the collection of data.

¹³³ Violence” is the word used on the form.

remarks to discern its presence or absence. A lack of proper statistical information in this regard compounds misunderstandings and assumptions.

- 5.4.18 We echo the opinion of Professor Monckton-Smith when we say that it is important to emphasise that, in our view, training is about imparting sufficient knowledge and understanding of coercive control so as to be able to create a consistent forensic approach to domestic abuse by looking at a history and identifying a pattern and within that pattern, the existence of the relevant evidence. Training is not necessarily about developing empathy but should focus on the identification of the relevant evidential patterns.

“... coercive control isn't just psychological abuse, it has got a motivation. So you have to understand the motivation to control somebody, which as Evan Stark says, it's all about just trapping someone in a relationship so they don't have the ability to leave. And just understanding that very one small thing.”

“... police officers maybe come sit and listen to the stories of victims very, very powerful. Very good for empathy and all of that kind of thing. But does it give them the skills going forward? The actual skills to be able to identify coercive control. You know, recognise it when they see it. Get past some of that confirmation bias.” **Interview with criminologist.**

- 5.4.19 The situation in the criminal justice system contrasts with that in the family jurisdiction where there is now considerable emphasis on understanding coercive control. In the family courts, emphasis has been placed on identification of the patterns of coercive control. In *Re H-N and Others* (domestic abuse fact finding hearings)¹³⁴ the Court of Appeal held that the definition in Practice Direction 12J namely,

“Coercive behaviour means an act or a pattern of acts of assault, threats, humiliation or other abuse that is used to harm punish or frighten the victim”

“Controlling behaviour” means an act or pattern of acts designed to make a person subordinate and/or dependent by isolating them from sources of support, exploiting their resources and capacities for personal gain, depriving them of the means needed for independence, resistance and escape and regulating their everyday behaviour”

“is and remains fit for the purpose for which it was designed namely to provide the courts with a structure enabling the courts first to recognise all forms of domestic abuse and thereafter how to approach such allegations when made in private law proceedings” at [28].

¹³⁴ *Re H-N and Others* (domestic abuse fact finding hearings) [2021] EWCA Civ 448

At [29] the Court approved Hayden J's judgment in *F v.M*¹³⁵ where he said;

"[i]n the family court the expression [coercive and controlling behaviour] is given no legal definition, in my judgment it requires none. The term is unambiguous and needs no embellishment. Understanding the scope and ambit of the behaviour however requires a recognition that coercion will usually involve a pattern of acts encompassing for example, assault, intimidation, humiliation and threats. 'Controlling behaviour' really involves a range of acts designed to render an individual subordinate and to corrode their sense of personal autonomy. Key to both behaviours is an appreciation of a 'pattern' or a 'series of acts' the impact of which must be assessed cumulatively and rarely in isolation"

5.4.20 Further, at [30], the Court in HN observed that Hayden J had also undertaken:

"the valuable exercise of highlighting the Home Office statutory guidance produced pursuant to s.77 of the Serious Crime Act 2015 which identified the paradigm behaviours of controlling and coercive behaviour" which guidance was "relevant to the evaluation of evidence in the family court."

We would only add that it is easy to see why controlling and coercive behaviour needs no definition or further exposition in the family court which is largely concerned with fact finding exercises. In the criminal jurisdiction however, practitioners need to be able not just to understand the pattern of controlling and coercive behaviour but need to understand coercive control within the context of full and partial defences which have been developed independently of our understanding of coercive control and so the exercise is more complex. We touch on this in part 9 of this report.

5.4.21 **Recommendation 1: We recommend** that there should be a separate specific system for the collection of all relevant data in relation to all domestic homicides, which is maintained by the Home Office or the Ministry of Justice in conjunction with the Office of the Domestic Abuse Commissioner. See recommendations table in Part 10.

5.4.22 **Recommendation 2: We recommend** mandatory training for all lawyers and judges on understanding and applying the concept of coercive control. (See recommendation table in Part 10)

¹³⁵ *F v.M* [2021] EWFC 4.

6. Wider Harms Which Characterise Domestic Murders

6.1 Summary

6.1.1 We have tried to identify the conduct overlying the culpability and the wider harms which sentences in domestic homicides ought to address having regard to the statutory purposes of sentencing namely, protection of the public, rehabilitation and the reduction of crime (in the form of domestic homicide).

6.2 End of the Relationship or Other Trigger

6.2.1 As stated at paragraph 5.2.8 above, the case sample showed that there did appear to be a link between resentment at the end of the relationship on the part of the male perpetrator and there being a history of coercive control. Indications of feelings of jealousy or of resentment at the end of the relationship were apparent and they could be considered to be the catalyst for a killing in 45 cases (38%). In all but one case, the perpetrator was male.

6.2.2 We were particularly interested to see where common factors (such as the end of the relationship being a catalyst for the killing) converged with other factors which pertain to this type of killing. One of the most striking factors about many domestic murders is overkill. First, we examine the prevalence of overkill.

6.3 Overkill

6.3.1 One of the wider harms is caused by '**overkill**'¹³⁶ because it causes intense distress to the families of victims knowing not only that their loved one has been murdered but that such extensive and gratuitous violence has been perpetrated against her.¹³⁷ It involves mutilation amounting to a violation of the female body and such murders of women resonate with wider misogynistic imagery in violent pornography. There is also something of an anomaly in the fact that concealment destruction or dismemberment of a body is a statutory aggravating factor under Schedule 21 paragraph 9(g) and that overkill (which is not officially recognised)

¹³⁶ As defined in section on terminology 1.3.12 namely, killing involving "the use of excessive, gratuitous violence beyond that necessary to cause the victim's death."

¹³⁷ More often than not, the victim is a woman see the figures at paragraphs 5.1.6-5.1.9.

may involve a similar violation of the body but is not even performed with the intention of hiding evidence.

- 6.3.2 It seemed to us that overkill is one of the things which is at the heart of the issue identified by those who are aggrieved by the disparity between the 15 and 25 year starting points in Schedule 21. It is anomalous that a single stab wound by someone who has taken a knife or other weapon to the scene should attract a higher starting point than someone who has stabbed his partner in her home where a weapon has been readily available and then gone on to ‘**overkill.**’¹³⁸
- 6.3.3 Some of the attendees of our focus groups believed that ‘overkill’ in a murder was an expression of anger at the victim.

“For me overkill speaks to motivation and I am thinking of motivation is not necessarily an instant spontaneous thing in this type of homicide. The motivation kind of comes from the history. I think that's why we need to understand the context of the relationship.” **Focus Group attendee.**

“I think it speaks to the amount of anger, resentment to people - it is a generalisation but quite often there is a huge amount of anger when men kill women. I think that the overkill speaks to that kind of anger” **Focus Group attendee.**

- 6.3.4 The further analysis of cases where there had been a clear indication of overkill¹³⁹ showed that in the sample of 120 cases (of which 99 involved male perpetrators and 21 involved female perpetrators) there were a total of 56 cases (47%) where overkill can be considered to have occurred. Male perpetrators accounted for all but one overkill cases. Of the 56 cases referred to above, 53 (95%) resulted in a murder conviction with the remaining 3 (5%) resulting in a manslaughter conviction. A weapon was used in 49 of the 56 cases (88%) cases where overkill was present.

¹³⁸ Julie Devey in “*The changes we can make.*” The campaign film was directed by Levi James, a final-year student at the University of the West of England <https://youtube/EhBEbMQbIG8> We acknowledge of course that in cases like CM14 (where the victim was unhappy in marriage and had begun an affair with the cousin of the perpetrator. The perpetrator’s brother discovered and blackmailed the victim which caused her depression to worsen. When the perpetrator discovered, he began assaulting the victim, threatened to shame her in the community. This fear prevented the victim from leaving the relationship. On the day of the incident, the perpetrator assaulted and slashed the victim with kitchen knife. When the neighbours tried to intervene, he then dragged the victim back inside and attacked her further with three kitchen knives inflicting 75 stab wounds) the sentence was on a par with a sentence where the starting point is determined by paragraph 4 but as Treasury Counsel pointed out, there were very few cases where the aggravating features brought the sentence up to this level.

¹³⁹ See paragraphs 1.3.14 on terminology and 1.4.10 on methodology of this review.

- 6.3.5 In the 56 cases we identified as being overkill cases, overkill was referred to in sentencing remarks in the form of sustained attack/ prolonged mental/physical suffering and was mentioned as an aggravating factor in 40 cases (71%). There was also one case where it was instead reflected in the harm/culpability assessment. The nature of the killing did not always have significance attributed to it. This is perhaps indicative of the fact that the concept does not sit easily within the statutory aggravating factors in Schedule 21 as they specify prolonged mental and /or physical suffering when overkill by definition is the result of a continued attack after death occurs or after sufficient violence so as to cause death.
- 6.3.6 Further, women did not tend to kill by way of ‘overkill’. Rather, the majority of killings perpetrated by women involved a single and fatal stab wound. For example, in 16 cases in the sample (13%) the killing was carried out by way of infliction of a single stab wound (which could indicate that the stabbing equated to a functional purpose in causing death) in 10 of these cases (63%) the perpetrator was female and in 6 (37%) the perpetrator was male.
- 6.3.7 Overkill featured in one case (**CF17**) of murder where a woman who had killed in a way that could be defined as ‘overkill’. In this case a review of the facts on the CCDCS suggested that the perpetrator had been the victim of coercive control by the deceased. The extent of it was not accepted by the sentencing judge. There were no cases in which a female perpetrator had been said to coercively control the victim of the murder. It was thought (by attendees of focus groups) that in circumstances where overkill is a feature of cases where women kill, then it is attributable to the need to ensure that the abuser/controller is dead:

“I think with the overkill on behalf of women – there is actually evidence of the control because he is coming across as this omnipotent monster that needs overkill. It is a different kind of context for overkill for men when they overkill, that is kind of rage whereas when women are doing the overkill, it comes from a place of desperation at this all powerful [other].” **Focus Group attendee.**

This is further explained by Stark who describes the victim of coercive control’s survival strategy as being one which involves the idealisation of the abuser and the internalisation of his rules. This psychological construction then disintegrates with the killing:

“By internalising the rules by “owning” them Laura found a way to master their unpredictability and the chronic anxiety they elicited. If the rules were hers and not merely Nick’s she could draw a certain satisfaction from meeting them even when he was violent, constructing an image of him within herself that was orderly, reasonable and approving and which could contain

her mounting rage in the obsessive enactment of domesticity. The Nick within was protective, not merely delusional. It enabled Laura to hide her survival self in an internal image of her victimizer and so counter the emptiness that made her victim self so vulnerable to self-loathing. Laura's inner conversation with "Nicky" protected her against annihilation even as her behavioural conformity made her appear lost in the rules. When Nick was killed, the imago's function began to atrophy, the rage surfaced in a suicidal gesture."¹⁴⁰

- 6.3.8 Most focus group attendees shared our views on the wrongs and harms of overkill although attendees at one group observed that they thought we should obtain psychiatric input on this issue. We are not averse to obtaining psychiatric input however, we have not had the resources to do so within the scope of this review. We are also mindful that much of our thinking is about steering the law away from psychiatric explanations for concepts which are better explained by a forensic approach to domestic abuse and/ or coercive control given the progress which has been made in this area. In this regard, see the discussion in the context of *R v. Dhaliwal* in part 1 of this report.
- 6.3.9 How overkill is defined in law is a matter for parliamentary counsel but there is some scope for incorporating the concept within the present paragraph 9(c) and (g) of Schedule 21.
- 6.3.10 If the occurrence of overkill is relevant to anger then it becomes important to explore the background leading up to the killing in any particular case. We were able to discern that it often co-occurred with jealousy and/or possessiveness.

6.4 Jealousy

- 6.4.1 In more than half (56%) of the overkill cases involving a male perpetrator, feelings of jealousy or resentment at the end of the relationship could be considered to be the catalyst for the killing. Of all 99 cases which involved a male perpetrator, jealousy or resentment at the end of the relationship was apparent and a perceived diminution in control thought to be a catalyst in the killing in 44 (44%) cases. In **CM55** there is reference to morbid jealousy¹⁴¹ in the judgment of his renewed application to appeal. This was not mentioned in sentencing remarks. We also noticed that, in one of murders committed by a woman against her male partner, the defence psychiatrist (who had assessed the defendant before trial) had made the point that the account of the behaviour of the deceased was consistent with someone who suffered from morbid jealousy and that there were

¹⁴⁰ Stark (Evan) *Coercive Control How men entrap women in personal life*. Op cit. at p 336.

¹⁴¹ *R v. Mustafa* [2019] EWCA Crim 1926, [21].

other factors one would expect to find in a case of morbid jealousy such as the misuse of cannabis and cocaine. Morbid jealousy is not a psychiatric diagnosis but a psychiatric syndrome and is often linked to alcohol and substance abuse.¹⁴² It affects far more men than women and is thought to be a 'red flag' for homicide. Again, this emphasises our view that any psychiatric explanations for domestic killings should be seen in the context of any patterns of controlling behaviour which exist.

- 6.4.2 Of the 55 overkill cases involving a male perpetrator, 40% were cases in which it was noted that the perpetrator had previously controlled and coerced the victim **and** there were feelings of jealousy or resentment at the end of the relationship that could be considered the catalyst for the killing. Of the total 99 cases which involved a male perpetrator, almost 3 in 10 (29%) were found to be cases where the perpetrator had been coercive and controlling towards the victim and feelings of jealousy or resentment at the ending of the relationship were discernible. As stated at paragraph 5.3.10 above, there were no cases where a female perpetrator was said to have controlled the male victim.

6.5 Strangulation

- 6.5.1 We performed a further analysis on our sample of cases in relation to strangulation. Of the 120 cases in our sample, 35 cases (29%) involved strangulation in some form. In 32 of the 35 cases the method of killing included manual strangulation with the remaining three involving a ligature.¹⁴³ In 77 % of the cases, the perpetrator was convicted of murder. In the remaining 23%, they were convicted of manslaughter.
- 6.5.2 In 15 of the 35 cases which involved strangulation (43%), the sentence was held by the sentencing judge to have been aggravated due to the suffering inflicted by the nature of the attack. In the remaining 20 cases (57%) however there was no acknowledgement of the method of killing in aggravating factors.
- 6.5.3 Significantly, of the 15 cases where the offence was said to be aggravated by the nature of the killing, in 11 cases (73%), the strangulation was accompanied by either an assault or an attack with the use of a weapon.

¹⁴² Morbid Jealousy in Alcoholism Midal (Albert), Mirza, (Sudeshni), Mirza (H), Babu (V.S) CUP 2nd Jan 2018.

¹⁴³ This was higher than the proportion of killings in the Homicide Index 2016-2020 where the proportion of those killings carried out by strangulation was 21%.

- 6.5.4 The average length of the minimum term in the 27 cases of murder which involved strangulation was 18 years and 7 months
- 6.5.5 The context of the use of strangulation in the sample is illustrative. For example, in 13 of the 35 cases (37%) where strangulation had been used, coercive control had been deployed by the perpetrator during or after the relationship.
- 6.5.6 Equally, in 12 of the 35 (34%) cases involving strangulation, the jealousy of the perpetrator or the fact of the relationship being at an end could be construed as the catalyst for the killing.
- 6.5.7 The victim had been a previous victim of domestic abuse by the perpetrator in 16¹⁴⁴ of the 35 cases (46%).
- 6.5.8 Significantly, in 8 of the 35 strangulation cases, the perpetrator was noted to have had a history of perpetrating non-fatal strangulation.

6.6 Strangulation as a Gendered Form of Killing

- 6.6.1 A breakdown in terms of gender showed that strangulation (in which the cause of death is asphyxiation) is a gendered form of killing. By way of example, in 34 of the 35 (97 %) cases, the perpetrator was male. In the one case where the perpetrator was female, the victim was also female. Of the 34 strangulation cases which had a male perpetrator, 27 resulted in a murder conviction. The remaining 7 cases resulted in a manslaughter conviction of which 3 were by way of diminished responsibility and 4 were by way of unlawful act manslaughter. The sole case where the female perpetrator deployed strangulation as the method of killing resulted in a manslaughter conviction by way of diminished responsibility.
- 6.6.2 Of the 34 strangulation cases with a male perpetrator, 16 cases were cases where manual strangulation was the sole method of killing (47%). In the remaining 18 cases, strangulation was carried out with a ligature or was accompanied by an assault or an attack with a weapon. The sole case of strangulation with a female perpetrator was committed by manual strangulation.
- 6.6.3 In 14 of the 34 strangulation cases with a male perpetrator (41%), the sentencer considered the offence was aggravated due to the suffering inflicted by the attack but in the remaining 20 cases (59%) there was no recognition of the method of the killing in those factors which were said to aggravate the offence. However, the sole

¹⁴⁴ In one case, it was unclear on the information to which we had access and so that case has not been included in the computation.

case where there was a female perpetrator was said to have been aggravated by the nature of the killing.

- 6.6.4 Of those 14 cases where the offence was said to have been aggravated by the method of the killing, it is perhaps telling that in 11 cases, the strangulation was accompanied by either an assault or an attack with a weapon. In only 3 cases where manual strangulation was the sole method of the killing was the method of the killing, namely, strangulation, considered to be an aggravating factor.
- 6.6.5 The perpetrator was male in all 13 cases of strangulation (37%) which followed a period of coercive and controlling behaviour. This was similarly the case in the 12 cases where the killing occurred as a result of jealousy or was prompted by a response to the ending of the relationship between the perpetrator and the victim.
- 6.6.6 In 15 of the 34 cases involving a male perpetrator (44%), the victim was noted to have previously been a victim of domestic abuse. This was also the case for the victim in the sole case of strangulation involving a female perpetrator.
- 6.6.7 Of the 13 murder cases committed solely by way of manual strangulation, the average minimum term was 18.1 years. However, there was one case which fell into the 30 year starting point¹⁴⁵ because it was done for gain and when this case was removed from the computation, the average minimum term was 17.1 years.
- 6.6.8 The remaining 14 strangulation cases resulting in a murder conviction involved an additional assault with or without a weapon or the use of a ligature. The average sentence length was 18.6 years.
- 6.6.9 Our findings on strangulation are consistent with the findings in other research. In the 10 years covered by the research carried out by the Centre for Women's Justice and Justice for Women, in 71% of the cases (n=65), women who had killed their abusive partners had stabbed the deceased, in 9% of cases (n=8) women attacked the deceased with another type of weapon, in 5% (n=5) women had physically attacked their partner with the assistance of another person and in 7% (n=6) of cases, women had set fire to their partner or committed arson that had resulted in his death. The research found just one case of strangulation by a woman.¹⁴⁶
- 6.6.10 Further, Professor Susan Edwards points out that in figures collated for cases since 1986,¹⁴⁷ choking, strangling and asphyxiating a female partner (either

¹⁴⁵ See paragraph 2.2 of this report.

¹⁴⁶ Howes (Sophie) *Women who kill; How the state criminalises women we might otherwise be burying* February (2021) p 23.

¹⁴⁷ Edwards (Susan), *The strangulation of female partners* Crim LR 2015 12 949-966.

manually or through the use of a ligature) has been a primary method of killing. Below, we explain our concern that strangulation of women by men has become normalised.

6.7 Discussion of Strangulation in Focus Groups

- 6.7.1 Participants mostly¹⁴⁸ felt that strangulation should be an aggravating factor in murder and indeed, manslaughter. This is partly because of the nature of it. It takes time to strangle a victim causing death by asphyxiation.

“I have read about 900 domestic homicide reviews now, quality assured them. There is something about strangulation I perceived that has this unique horror to it. Using the hands but the eyes- it’s intimate and it’s very hard to describe- the horror is truly unique” **Focus Group attendee.**

“We know often that non- fatal strangulation is used specifically as a warning and a threat for - if you if you step out of line will go like this further. Obviously often this is not captured or recorded. It is only when you ask a woman who is a victim, and you ask them questions that they may identify that, and they sort of brush it off. Where you have a history which is recorded on a DASH or whatever – then the method of killing at the end should be clearly an aggravating factor”. **Focus Group attendee.**

“It is almost always about the perpetrators wanting the last word but if you work with the perpetrators, you hear this over and over again - like I wanted her to shut up I wanted her to be quiet but I wanted to win you have to have the last word. That is what the whole kind of attacking the throat and putting the hands over the mouth – it is all about silencing.” **Focus Group attendee.**

- 6.7.2 At paragraph 7.19 below we make recommendations concerning strangulation in the context of murder and at paragraphs 8.1.23-8.1.24 we make corresponding recommendations in the context of manslaughter. In our view, strangulation should amount to a statutory aggravating factor in murder.
- 6.7.3 This is for the reason that manual strangulation as a method of committing murder has particular significance within the matters under consideration in the review. First, the above suggests that it is a gendered form of killing. Second, incidents of non-fatal strangulation are generally thought to be an accurate predictor of fatal

¹⁴⁸ One person dissented because they were of the view that guidelines generally are unhelpful and the subject of making strangulation an aggravating feature was not discussed in one focus group meeting because the idea was generated in a subsequent focus group discussion.

violence.¹⁴⁹ This is most clearly evidenced by the fact that the occurrence of non-fatal strangulation forms a specific question in the DASH.¹⁵⁰ Third, non-fatal strangulation has been the subject of legislation in the 2021 Act.¹⁵¹ Fourth, non-fatal strangulation is prevalent in relationships which are governed by coercive control.

- 6.7.4 Fifth, we want to achieve consistency throughout the way in which the law addresses the wrong of femicide. Whereas we have been concerned with the specifics of domestic homicide, there is always the question of how such killings sit with killings (whether by way of murder or manslaughter) of women who are not, and never have been in an intimate relationship with the offender. The prevalence of strangulation in these crimes is notable. Part of the rationale of making strangulation a statutory aggravating factor is to achieve consistency in the way in which the law treats gendered killing.
- 6.7.5 Concerning wider harm, feminist scholars- have advocated reform of the law on the question of how we view strangulation.¹⁵² Professor Susan Edwards, writing in 2015, referred to the prevalence of strangulation in the killing of female partners and also referred to the absence of strangulation in non-domestic cases. Further, that previous law reform initiatives¹⁵³ had stopped at considering the implications of strangulation and were limited to other high-risk behaviour such as possession of pornography depicting rape.
- 6.7.6 It is only recently that policy and law have come to accept the role of strangulation in domestic abuse.¹⁵⁴ Recent research on non-fatal strangulation highlights the comprehensive harms involved.¹⁵⁵ The introduction by Parliament of a stand-alone offence of non-fatal strangulation under provision of s.70 of the 2021 Act

¹⁴⁹ See *Domestic Homicides and Suspected Victim Suicides during the Covid 19 Pandemic* at 4.4, page 58 which notes that a review of the literature makes it clear that where the risk factors co-occur, risk of homicide may be further elevated. Further, there is a notable correlation between the three factors of separation, nonfatal strangulation and homicide in that separation may represent a loss of control, non-fatal strangulation is a means of exercising control.

¹⁵⁰ Domestic Abuse Stalking and Honour Based Violence risk identification assessment.

¹⁵¹ See s 70 which inserts s75 A, 75B into the Serious Crime Act 2015.

¹⁵² *Edwards (Susan), The strangulation of female partners Crim LR 2015 12 949-966*

¹⁵³ *Ibid. R v. Coutts [2007] 1 Cr. App. R 6* a conviction of murder in circumstances where the appellant had claimed consent to strangulation and it was held that the trial judge should have left an alternative count of manslaughter to the jury initiated policy on the criminalisation of possession of pornographic images of rape and assault.in the Criminal Justice and Immigration Act 2008 s.63 as amended by Criminal Justice and Courts Act 2015 s.37.

¹⁵⁴ The Domestic Abuse Act 2021 s.70.

¹⁵⁵ *"The Neuropsychological outcomes of non-fatal strangulation in domestic and sexual violence. A systematic review"* Bichard (Helen), Byrne (Christopher), Saville (Christopher WN) and Coetzer (Rudi) PsyArXiv 15th May 2020.

represents a considerable advance in the way the law views strangulation in the context of domestic abuse. This now contrasts with the way in which it is considered within the context of sentencing when death has occurred.

- 6.7.7 Professor Edwards observed (as long ago as 2015) that strangulation was not identified anywhere in Schedule 21 Criminal Justice Act 2003 but that of course, a sentencing judge could consider, what was then, paragraph 5(1) (a) (seriousness) 5(2) (e) (sadistic conduct) and the aggravating factors under what was paragraph 10 the content of which (as we have already noted,¹⁵⁶ were in virtue of the word “include”)¹⁵⁷ not intended to be exhaustive. In other words, there was the opportunity for sentencing judges to take into account the seriousness of strangulation.
- 6.7.8 Importantly, Professor Edwards also pointed out that the Sentencing Guidelines Council’s Overarching Principles Domestic Violence Definitive on domestic abuse,¹⁵⁸ “reversed the previous situation where the domestic context was regarded as a mitigating factor allowing courts to excuse men as “not normally violent” “no danger to the public”¹⁵⁹ or else describe their conduct as “out of character”¹⁶⁰ but nevertheless made the point that strangulation was not mentioned in the guideline. The author noted the Court of Appeal’s willingness to ascribe a proper level of culpability where strangulation was concerned saying that by 2013 there was a growing judicial awareness of the danger and seriousness of strangulation.”¹⁶¹
- 6.7.9 We have considered whether, rather than recommending that strangulation should be a statutory aggravating factor per se we should just say that it should be noted that the presence of strangulation should go to increase a minimum term imposed because making it a specific statutory aggravating factor may have the effect of placing too much emphasis on the mode of killing. Further, it may be possible to incorporate the proposition that an offender’s culpability is increased because of strangulation by modifying paragraph 9(c)¹⁶² of Schedule 21. While we recognise

¹⁵⁶ Edwards (Susan), *The strangulation of female partners* Crim LR 2015 12 949-966

¹⁵⁷ See paragraph 3.1.9 of this report and reference to *R v. Sullivan (supra)*.

¹⁵⁸ Overarching Principles: Domestic Violence Definitive Guideline which applied to sentences imposed on or after December 18th 2006.

¹⁵⁹ *Op. cit. R v. Reilly 1982 4 Cr App R S 288.*

¹⁶⁰ *Op. cit. R v. Beaumont 1992 13 Cr App R S 270.*

¹⁶¹ At p963 citing *R v. Jones [2013] All ER D 181* where the Court of Appeal upheld a sentence of 15 years imprisonment in circumstances where the appellant had strangled his female partner. The writer refers to the court as stating “(i) the fact that the act of violence was one of extreme dangerousness and that...it had been an intentional assault intended to frighten and demonstrate control over the deceased (ii) that it was not an isolated act of violence and (iii) the defendant’s behaviour after having killed the deceased.”

¹⁶² Paragraph 9(c) “mental or physical suffering inflicted on the victim before death.”

that there is a valid argument that there could be a danger with placing too much emphasis on the method of killing, our preferred route would be to make strangulation an aggravating factor. This is because it is both gendered and it is conduct which encapsulates the vulnerability of the victim.

- 6.7.10 We note that there is still no specific reference to strangulation in the definitive guidelines on Domestic Abuse¹⁶³ and in the definitive guidelines on manslaughter.¹⁶⁴
- 6.7.11 We also go on to make parallel recommendations on manslaughter in that we suggest consideration of whether there should be a reference to strangulation in sentencing guidelines on domestic abuse and the Definitive Guideline on manslaughter. We consider that strangulation should be considered to be an aggravating factor in murder and one which increases culpability or at least, aggravates, manslaughter. We address this further in our section on manslaughter at paragraphs 8.1-8.3.
- 6.7.12 At this point, we also note that judges who are sentencing in cases of murder are obliged to take account of the Domestic Abuse Guideline (where the guideline does not conflict with other relevant guidelines) and so any amendment to the guideline may well have an impact on sentencing in murder. However, as we have observed at paragraphs 1.1.8 above, there will always be killings which are motivated by misogyny but where the victim and the offender are not and never have been in an intimate relationship and where accordingly, the Domestic Abuse Guideline does not apply.¹⁶⁵

¹⁶³ Sentencing Council Overarching Principles Domestic Abuse.

¹⁶⁴ See part 8 of this report.

¹⁶⁵ In cases of manslaughter, even where the offender and the deceased are in an intimate relationship, it has been held that the Overarching Principles Domestic Abuse Guideline does not apply to every case in the home see *R v Pybus* at paragraph 8.3.21 of this review. This exemplifies our point in relation to the absence of a forensic understanding of domestic abuse in the criminal justice system- see part 5 above.

7. New Category in Schedule 21

- 7.1.1 Whereas we think that there should be an increased focus on the extent of culpability by way of coercive control in domestic murders (whether the offender has been convicted of murder either because they are a perpetrator of coercive control or because they are a victim of it) we have concerns about how this is to be achieved.
- 7.1.2 We say at the outset that an additional paragraph in Schedule 21 which is intended to provide a new (higher) starting point in domestic murders is not something we recommend. First, we do not need a higher starting point. Notwithstanding what was said by the Court of Appeal in *Sullivan*¹⁶⁶ (supra) sentences have already generally become longer than they were before the statutory framework in Schedule 21 was introduced. Some of our stake holders were clear that they could not support any such proposals for the introduction of a new starting point.¹⁶⁷ We agree with the Prison Reform Trust and other stakeholders that any such change would need to be the subject of extensive public consultation. The limitations of this Review mean that such a proposal is not consistent with its scope. We think that the addition of paragraph 5A in 2010 (which, as already stated, was done without the sort of consultation or debate to which we refer) exemplifies the proposition that ‘hard cases make bad law’ and that legislators should be circumspect about introducing new paragraphs based on particular cases.
- 7.1.3 A further problem with a new paragraph (which would provide a higher starting point in the case of domestic murders) is that it would run the risk of creating inconsistency with the present sentencing framework. For example, a case which ought to fall within Schedule 21 paragraph 3 because it is a murder committed in the course of a rape might have a lower starting point in a new coercive control defined paragraph and yet coercive control is an abuse in which ‘rape as routine’

¹⁶⁶ *R. v Sullivan [2004] EWCA Crim 1762* See paragraph 3.1.8 of this report

¹⁶⁷ The Prison Reform Trust stated that “like many commentators over many years, we regret the piecemeal approach that successive governments have taken to change in both the substantive law on homicide and that in sentencing for that and other serious matters it leads to unintended and normally unwelcome consequences”. They are concerned that the UK has now the highest number of life sentenced prisoners than any other country in Europe. Further, there is little if any evidence that longer sentences have any impact on increased deterrence, long sentences have an impact on protective factors which ultimately serve to prevent offending on release. See generally, Prison Reform Trust: Long-term prisoners: the facts, England and Wales, October 2021.

can feature. This would be anomalous. Schedule 21 is already riddled with anomalies which need to be addressed in law and policy.¹⁶⁸

- 7.1.4 Although coercive control is at the centre of our thinking, and it is clearly a feature in domestic homicides where the perpetrator and the victim are in a relationship there will be cases of femicide where there is no evidence of coercive control. The benefit of the coercive control model is that it is based on structural inequalities between men and women. Accordingly, in killings of women where the evidence of coercive control is lacking there will usually be evidence of some of the features which are significant in coercive control cases whether that be strangulation or something else such as jealousy. In some cases, there may well be a history of coercive control by the offender in his relationships, the killing may signify an escalation of prior domestic abuse in the perpetrators previous relationships. Accordingly, there is likely to be broad consistency between domestic homicides and those which cannot be classed as such but where the latter bear some of the factors or hallmarks with which we have been concerned in this review.
- 7.1.5 We think that statutory aggravating and mitigating factors in paragraphs 9 and 10 respectively should be updated in order to reflect the specific and wider harms that have been identified in domestic murders. This would be consistent with our enhanced (and developing) understanding of domestic abuse.
- 7.1.6 If coercive control is used to define the gravity of domestic murders in more forensic terms, then it would follow, that these murders would be aggravated and mitigated in terms of the type of harms which obtain.
- 7.1.7 If this were to be the case, we think that provision should be made to disapply paragraph 4 in the context of domestic murders as we have defined them. If a knife or other weapon is taken to the scene, then that may be indicative of a level of some sort of planning and premeditation which can be reflected in aggravating factors.¹⁶⁹ However, the culpability and extended harm is best reflected in matters

¹⁶⁸ See Roberts (JV) and Saunders (J) “*Sentencing for murder: the Adverse and Unintended Consequences of Schedule 21 of the Criminal Justice Act 2003*” Crim. L. R (2020) 10 895-906 where the authors argue that the starting points in schedule 21 offend against the concept of ordinal proportionality. They take the example of the disparity in starting points between a defendant who kills after planning but does not trigger the circumstances of a 30 year or 25 year starting point and a defendant who kills a security guard in the course of a commercial burglary having picked up a weapon in a warehouse and intending to cause really serious harm who would have a starting point of 30 years. The authors argue for the introduction of a definitive Sentencing Council style Guideline in cases of murder.

¹⁶⁹ Paragraph 9(a) “a significant degree of planning or premeditation.” We also recognise that a starting point of 25 years can be determined in circumstances where a sentencer can find that a particular murder was not planned.

which are specific features of domestic murders as opposed to being reflected in a starting point determined by paragraph 4.

- 7.1.8 Moreover, there is a strong argument that most domestic murders are planned to some, or even a great, extent. The evidence for this is in the Intimate Partner Femicide Timeline which has been devised by Professor Monckton-Smith and to which we referred at paragraph 5.1.4 above. An application of the coercive control behaviour framework to the facts in many cases of domestic homicide will be likely to reveal a degree of planning. If this is done at the investigation and evidential stages, as we envisage that it should be, then the fact can be represented in the present statutory aggravating factor. A strict application of Paragraph 4 of Schedule 21 is otiose in such circumstances.
- 7.1.9 In the context of defences, there is precedent for a provision to disregard certain factual scenarios if those scenarios run contrary the policy behind the legislation. See for example s.55(6)(c) Coroners and Justice Act 2009, which provides sexual infidelity is to be disregarded when considering the trigger to a loss of control. This is because jealousy caused by infidelity should not be a justification for killing.
- 7.1.10 Such a disapplication as proposed at paragraphs 7.1.7-7.1.8 is justifiable on the basis that the vulnerability of the victim is not a prerequisite for the paragraph 4 starting point and that the harms (which the amendment leading to what is now paragraph 4 were intended to address in 2010) are quite different to those factors which are specific to domestic murders. If the specific harms are seen as aggravating or mitigating the murder, then there is likely to be sufficient flexibility within paragraphs 9 and 10 of Schedule 21.
- 7.1.11 If there is to be a disapplication of paragraph 4 in the context of domestic murders for the reasons which we have set out, the question arises as to why, logically, there should not be a disapplication of paragraph 3 if a firearm is used and the murder is a domestic murder. We are not recommending the general disapplication of paragraph 3. We found two cases where a firearm had been used by a man to kill his intimate partner (**CM76** and **CM85**). We think that the answer to this question lies in the fact that there are strong policy reasons for the prohibition of possession of firearms and that the rationale underlying the policy is to prevent the harm which follows from their illegal possession and use.¹⁷⁰ This policy is the rationale for strict liability offences in relation to the possession of firearms. Unlike knives or other sharp instruments, firearms are not within every-day or easy reach in the home. The use of firearms in a domestic context was considered in *R v Tucker*¹⁷¹ where the court considered the policy of public safety

¹⁷⁰ *R v Braddish* (1990) 90 Cr. App. R. 271.

¹⁷¹ *R v Tucker* [2011] EWCA Crim 3046.

as described in *Jones*¹⁷² but in *Tucker* there was little acknowledgement of the themes which we have identified as being of concern in this review. The Court specifically held that the case did not include a breach of trust. We consider a breach of trust to be an integral aspect of domestic abuse. In *Tucker*, a minimum term of 26 years was reduced to 22 years in respect of an appellant who has been convicted of murder after a trial where he had unsuccessfully relied on the partial defence of provocation having shot his partner in the back of the head while she was in the bath and after she had taunted him about her infidelity.

7.1.12 There may be hard cases as a result of the application of paragraph 3 (in so far as firearms are concerned) in all domestic murders. To take a hypothetical example, a woman who lives on a farm uses a gun which has been left out of the gun cupboard to kill her abusive husband. Given the policy with which this review is concerned, it would be wrong for her to be subjected to a starting point of 30 years. However, all starting points set out in schedule 21 are prefaced by the word “normally” implying that there is scope for a departure from a starting point. If there is a coherent policy pertaining to domestic murders which takes into account structural inequality but is nevertheless gender neutral, we see no reason for a mechanistic application of the schedule in such cases.

7.1.13 Accordingly: **Recommendation 3 we recommend** 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 because the 25 year starting point is one in which the vulnerability of the victim is not given any consideration. The harms that the previous paragraph 5A was introduced to prevent are very different from the sort of harms which occur in domestic murders. See recommendations table in Part 10.

7.1.14 **Recommendation 4: We recommend** that domestic murders should be given specialist consideration within the present sentencing framework under Schedule 21. A level of seriousness should be determined by application of the coercive control model within the 15 year starting point. This is intended to ensure that gendered circumstances (such as killing at the end of a relationship and, jealousy) are used to ascribe seriousness to the murder and that wider legal harms are identified and reflected in the sentence. See recommendations table in Part 10.

¹⁷² *R v. Jones* [2006] 2 Cr. App. R.

- 7.1.15 **Recommendation 5: We recommend** that where there is a history of coercive control that this should be an aggravating or a mitigating factor and that paragraphs 9 and 10 of Schedule 21 should be amended accordingly. See recommendations table in Part 10.
- 7.1.16 **Recommendation 6: We recommend** that if a murder takes place at the end of a relationship or when the victim has expressed the desire to leave then this should be regarded as an aggravating factor and that paragraph 9 of Schedule 21 should be amended accordingly. See recommendations table in Part 10.
- 7.1.17 **Recommendation 7: We recommend** that present mitigating factors in paragraph 10(d) be amended so as to be consistent with the policy underlying s.55(5)(c) Coroners and Justice Act 2009. Specifically, that sexual infidelity on the part of the deceased cannot mitigate the murder. See recommendations table in Part 10.
- 7.1.18 **Recommendation 8: We recommend** that overkill should be defined in law as a specific legal harm and that it should be an aggravating factor in murder. Paragraph 9 of schedule 21 should be amended accordingly. See recommendations table in Part 10.
- 7.1.19 **Recommendation 9: We recommend** that in the event of murder by strangulation or in a murder where strangulation has occurred then this method of killing should be an aggravating factor and that paragraph 9 of schedule 21 should be amended accordingly. See recommendations table in Part 10.
- 7.1.20 **Recommendation 10: We recommend** the use of a weapon in domestic murders should not necessarily be seen as an aggravating factor.

8. Sentencing in Manslaughter – Sentencing Council Guidelines 2018

8.1 Voluntary Manslaughter

- 8.1.1 Voluntary manslaughter comprises the partial defences to murder namely, Diminished Responsibility which is provided for by s.2 of the Homicide Act 1957 (as amended) and Loss of Control which is provided for by s.54-55 Coroners and Justice Act 2009. As already stated at paragraph 5.1.15 above, the partial defences were reformed by the Coroners and Justice Act 2009.
- 8.1.2 In 2018, the Sentencing Council published a definitive guideline in relation to manslaughter¹⁷³ which was effective from 1st November of that year. For ease of reference, the Definitive Guideline is reproduced in **Appendix F**. We noted where cases within our sample, fell either side of the implementation of the definitive guideline and we refer to this factor where it is relevant. Under the guidelines for diminished responsibility (which deal with custodial sentences) harm is obviously of the utmost seriousness involving as it does, death, but culpability ranges from low to high and there is considerable disparity between the low culpability category and the higher culpability category.
- 8.1.3 Statutory aggravating factors under the guideline include “[o]ffence motivated by or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity” they do not include misogyny, coercive control, and strangulation. “Other aggravating factors” include a “history of violence or abuse towards the victim by the offender”. Further, it is an aggravating factor that “the offence involved the use of a weapon.”
- 8.1.4 Clearly, it is understood that the Domestic Abuse Guideline¹⁷⁴ should be considered where it is applicable.
- 8.1.5 In our case sample, there were 11 cases where diminished responsibility was run as a defence but the defendant was nevertheless convicted of murder. There were a total of 8 cases of finding or acceptance of diminished responsibility where a man had killed his intimate partner. Of these cases, 5 were cases (**CM22, CM26,**

¹⁷³ The Sentencing Council: Manslaughter Definitive Guideline Published in July 2018 and in effect from November 2018.

¹⁷⁴ Overarching principles: Domestic Abuse Sentencing Council.

CM27, CM40, and CM48) which involved the perpetrator suffering from a serious mental illness involving schizophrenia, psychosis and/or delusions. These perpetrators were sentenced to hospital orders with restrictions under s.37, s.41 of the Mental Health Act 1983 (as amended) or orders under s.45A Mental Health Act 1983 namely, hospital order and limitation directions¹⁷⁵ and it is accepted that the matters with which this review is concerned cannot impinge on the decisions of sentencing judges informed by medical evidence consistent with the requirements of the Mental Health Act 1983 (as amended).

8.1.6 Two cases; **CM26** (pre guidelines) and **CM57** (post 2018 guidelines) involved older offenders who had pleaded guilty to killing their wives both of whom suffered from dementia with the perpetrators said to be feeling guilty about putting the victim in a care home. They were sentenced to 2 years custody and 2 years custody suspended respectively. The former offender had struck his wife several times with a pole and then smothered her. The latter had stabbed himself and left a suicide note he was treated for superficial wounds. Both offenders were judged to have had lower culpability. Without knowing more about the facts of the cases, it is difficult to comment further. However, it is noteworthy that in each case, asphyxiation (the consequence of strangulation) was the course of death.

8.1.7 It is important to give consideration to issues of ‘caregiver stress’ which carries weight in the public consciousness¹⁷⁶ but simultaneously, to ensure that each of these types of cases are not, in reality, cases where there has been domestic abuse which has continued into old age. In this regard, see Jonathan Herring;

“A middle path is appropriate. There is much elder abuse which can be usefully examined as part of intimate relationship abuse which is simply the continuation of a violent relationship into old age.”¹⁷⁷

8.1.8 More widely, Jane Monckton-Smith has drawn attention to societal willingness to accept violence where it is masked by a discourse of romantic love because this is somehow palatable. In an analysis of cases she found a correlation between the

¹⁷⁵ An order by a judge, which mandates transfer to hospital for treatment with a limitation direction. The limitation direction has the same effect as the s.41 restriction order but ceases to have effect on the expiry of the determinate term. However, the offender continues to be subject to the hospital regime.

¹⁷⁶ Herring (Jonathan) *Domestic Abuse and Human Rights Op. cit. at 225.*

¹⁷⁷ *Ibid* at p227 citing C. Walsh, J. Ploeg, L. Lohfeld et al., Violence across the Lifespan: Interconnections among Forms of abuse as described by Marginalized Canadian Elders and Their Caregivers (1999) 19 *Journal of Interpersonal Violence* 282; B Penhale, ‘Bruises on the soul: Older women, Domestic Violence and Elder Abuse (1999) 11 *Journal of Elder Abuse and Neglect* 1; C. Cooney and A Mortimer, ‘Elder Abuse and Dementia: A Pilot Study (1995) 41 *International Journal of Psychiatry* 276; S Harris, For better or for Worse Spouse Abuse Grown Old (1996) 8 *Journal of Elder Abuse and Neglect* 1; M Lundy and S Grossman ‘Elder Abuse: Spouse/Intimate Partner Abuse and Family Violence Among Elders’ (2004) 16 *Journal of Elder Abuse and Neglect* 85 .

absence of declarations of love by men and their murder convictions. She also found that in “those cases where men were represented as loving the tariff for a manslaughter for example where love was in evidence, was approximately five years.”¹⁷⁸

- 8.1.9 We would hope that as understanding of coercive control and the signs indicating its presence become more widespread, that all cases which have resulted in homicide where the requisite intention for murder is present will be carefully scrutinised.
- 8.1.10 One case, **CM69**, which resulted in a life with a 10 year minimum term sentence together with a s.45A order, involved strangulation preceded by a long history of coercive control including 3 prior incidents of serious violence and asphyxiation. The case bore the hallmarks of risk as identified in Jane Monkton- Smith’s timeline in that the perpetrator and the victim had divorced and they had then resumed their relationship before the killing.
- 8.1.11 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.¹⁷⁹ 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.
- 8.1.12 Finally, in one case, **CM58** (pre the Sentencing Council guideline being implemented in 2018) the perpetrator received a sentence of 5 years in circumstances where he had pleaded guilty to killing his wife during the course of what was said to be a frenzied and sustained attack with a knife, by beating and strangulation. This was after a 25 year relationship and in circumstances where the offender who had been diagnosed with prostate cancer, was said to be suffering from a moderate depression and concerned that his wife was going to leave him. The killing therefore had a number of the indicia about which we have expressed concern within the context of our discussion on murder cases and begs the question of whether the factors, which we consider, aggravate murders, should also be said to aggravate manslaughter by way of diminished responsibility when there is no question of a Mental Health Act disposal. We think that there should be a particularly careful scrutiny of these cases in order to ensure that they do not contain the hallmarks of coercive control.

¹⁷⁸ Monckton-Smith (Jane) “Murder gender and the media narratives of dangerous love” Palgrave Macmillan (2012) p84.

¹⁷⁹ The other 4 were by way of unlawful act manslaughter.

- 8.1.13 One particular matter relating to a case outside our sample of 120 cases was brought to our attention through victims who had approached the Domestic Abuse Commissioner and had worked with Refuge. The mother and daughter of Joanna Simpson who was the primary victim of Robert Brown¹⁸⁰ were concerned about the length of determinate sentences for manslaughter. Although this particular case was not within our sample of 120 cases, it is said that it is the paradigm example of a case of domestic homicide where the context and background was not fully explored at trial. The facts were Joanna Brown (nee Simpson) was killed by her estranged husband, Robert Brown, on Halloween 2010. She was killed in her own home and her children were witnesses to the fact of the attack and to the offender driving their mother's body away from the scene after she had been violently killed by being hit on the head fourteen times with a hammer which the offender had brought to the scene in his daughter's school bag. Despite considerable evidence of pre-planning,¹⁸¹ he was convicted of manslaughter by way of diminished responsibility (with the recognised medical condition being an adjustment disorder) in May 2011. Robert Brown was sentenced to a total of 26 years imprisonment (consisting of 24 years for manslaughter and 2 years for obstructing a coroner, to be served consecutively) of which he must serve half in custody.¹⁸² The Court of Appeal upheld the sentence on appeal. The family of the victim have expressed concern, not only that the background of domestic abuse had not been explored at trial, but that they do not feel protected by a law which enables release at the halfway point of the sentence. This is in circumstances where the appellant had been found to be suffering from what is usually a mild and short lived recognised medical condition of an adjustment disorder. In April 2020, *the Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 SI 2020 No. 158* was enacted and has meant that in a relevant violent or sexual offence where an offender is sentenced to 7 years, then he or she is only eligible for release when he or she has served two thirds of his or her sentence. In addition, s.130 of the Police Crime Sentencing and Courts Act 2022 reduces the period of 7 years to one of 4 in relation to certain offences of which manslaughter is one.
- 8.1.14 Refuge made the point that where perpetrators of domestic abuse and manslaughter are able to rely on conditions which do not require treatment in a secure hospital such as depression or in the case of Robert Brown, an Adjustment Disorder, for the purpose of diminished responsibility then there will be no medical checks as to whether they are still suffering from the condition at the release point

¹⁸⁰ *R v Brown [2011] EWCA Crim 2796*

¹⁸¹ Which took the form of the perpetrator digging a grave prior to the killing.

¹⁸² This would not be the case today. The Release of Prisoners (Alteration of Relevant Proportion of Sentence) Order 2020 which came into force on 1 April 2020 now provides that a violent offence for which a sentence of at least 7 years is imposed, then the offender must serve two thirds.

in the event that they are given a determinate sentence (as many will be).¹⁸³ This is worrying given that the conviction of manslaughter means that at the very least it was a “significant contributory factor”¹⁸⁴ in causing them to kill. The safety of the public and secondary victims ought to be of paramount importance.

- 8.1.15 This is a valid point which was raised in one of our focus groups independently of the case of Robert Brown. It was felt that any question about the length of sentences could not really be addressed in the absence of knowing the full extent of the risks of further killings.
- 8.1.16 We are not making any recommendations in line with the above for the following reasons. First, the case of Robert Brown was decided before the Manslaughter Definitive Guideline was published and brought into force. The case in question would be one of high responsibility under the sentencing structure in the guidelines where the starting point would be 24 years with a range of 15-40 years. The facts of this particular killing suggest that any sentence would now be at the higher end of the range. Second, the alteration to the automatic release provisions referred to in paragraph 8.1.13 above now means that an offender such as Robert Brown will serve two thirds of the custodial term. Third, there are now particular provisions which can be applied in the sentencing of dangerous offenders.¹⁸⁵ However, were there to be any such recommendation, we believe that any future proposal should be the subject of further research and detailed consultation with psychiatrists and the parole board as these professionals would be instrumental in making such assessments. Psychiatric consultation has been beyond the scope of this review.
- 8.1.17 We hope that our recommendation (if adopted) that detailed statistics in relation to domestic homicides should now be maintained by Government, will mean that in the future we are better informed in relation to such proposals. It may well be that the maintenance of such records will reveal that there is a need to further consider the licence provisions of offenders who have been convicted of manslaughter by way of diminished responsibility in virtue of recognised medical conditions for which they are not (and never would be) detainable under the Mental Health act 1983.

¹⁸³ The starting point under the present Definitive Guideline is 24 years where an offender retains a high degree of culpability.

¹⁸⁴ S.2(1)(b)(1B) Homicide Act 1957 (as amended).

¹⁸⁵ There is provision for courts to impose extended sentences comprised of a custodial term and an extended licence period in cases of offenders who are considered dangerous under Part 10 Sentencing Act 2020. An Offender is dangerous if it is considered that he poses a significant risk that he will commit further specified offences and cause serious physical or psychological harm to one or more people. The offence must be one listed in Schedule 18 Sentencing act 2020. Manslaughter is a listed offence. We recognise however, that many domestic abusers are able to slip under the radar of dangerousness for the reasons referred to by Professor Edwards. In this regard, see paragraph 6.7.8 above.

- 8.1.18 In our sample of 120 cases, 4 out of the 13 women sentenced for manslaughter were guilty of the offence by way of diminished responsibility. In **CF9**, the offender was sentenced by way of a hospital order. She had been happily married to the victim for 60 years and had been suffering from dementia.
- 8.1.19 In **CF6**, the offender accepted a plea to manslaughter by way of diminished responsibility which was offered on the day of trial. She was suffering from PTSD and said to be suffering from “battered wife syndrome,” she had lost care of her child partly because of concerns about domestic abuse. However, this plea was not offered by the prosecution until the day of trial.
- 8.1.20 Only one woman (in **CF11**) was found guilty of manslaughter after trial where her defence had been self-defence and Diminished Responsibility. She was initially sentenced to 18 years imprisonment but her conviction for manslaughter was quashed by the Court of Appeal. The Court ordered a re-trial at which she was again convicted of manslaughter (as opposed to being acquitted on the basis of self-defence) and sentenced to 11 years imprisonment.
- 8.1.21 There were only two cases in the whole sample of 120 cases where the partial defence of loss of control had been successfully relied on in the context of a trial for murder. Both cases related to women who were charged and prosecuted for murder and both of whom relied on domestic abuse and coercive control in order to support the partial defence. We return to this in Part 9.
- 8.1.22 The point made below in relation to the use of weapons (usually a knife) in unlawful act manslaughter has equal application to cases of voluntary manslaughter.
- 8.1.23 **Recommendation 11: 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 increasing seriousness.
- 8.1.24 **Recommendation 12: 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 increasing seriousness.
- 8.1.25 **Recommendation 13: 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 an aggravating factor which increases seriousness. Further, that consideration ought to be given to making coercive control by the victim of the killing towards the perpetrator of the killing a mitigating factor reducing seriousness.

8.1.26 **Recommendation 14: We recommend** that consideration be given to whether the Overarching Principles on Domestic Abuse be amended to denote that assaults committed by non-fatal strangulation are an aggravating factor.¹⁸⁶ See recommendations table in Part 10.

8.2 Involuntary Manslaughter

8.2.1 The majority of manslaughter convictions were on the basis of Unlawful Act Manslaughter for which sentencing guidelines now exist. As can be seen from those guidelines, culpability of the offender is ascribed to one of four categories. In cases indicating **very high culpability** there is a starting point of 18 years with a range of 11-24 years, in cases indicating **high culpability**, there is a starting point of 12 years with a range of between 8-16 years custody, in cases indicating **medium culpability** there is a starting point of 6 years with a range of between 3-9 years and in cases indicating **lower culpability** there is a starting point of 2 years with a range of 1-4 years.

8.2.2 Of the 13 women in the sample who were convicted of manslaughter rather than murder, 7 were convicted of unlawful act manslaughter.

8.2.3 Where a weapon has been used, the sentences will fall into category B.¹⁸⁷ They rarely fall into Category D.¹⁸⁸ Case (**CF10**) was one example, with the original sentence of 8 years imprisonment being reduced on appeal to one of 6 years. From a general perspective, it cannot be argued that there is anything wrong or inconsistent with the categories in the sentencing guidelines for unlawful act manslaughter. The real issue is lack of an available defence to murder which is consistent with the experience of women in a situation of entrapment because of domestic abuse.

8.2.4 Of significance is the fact that statutory aggravating factors include the offence being motivated by or demonstrating hostility towards those with protected characteristics in our present hate crime legislation.¹⁸⁹ This has the effect of

¹⁸⁶ Unless, of course, this amounts to double counting in any particular case.

¹⁸⁷ High culpability – where the factual matrices are likely to be death occurs in the course of an unlawful act where there was an intention to cause harm not amounting to grievous bodily harm ('GBH') or in the course of an unlawful act which carried a high risk of death or GBH which ought to have been obvious to the offender.

¹⁸⁸ Which includes factual circumstances in defence of self or another but not amounting to self-defence or where there was no intention to do any harm.

¹⁸⁹ Part 2.2 and 4.2.6 - 4.2.8

excluding misogyny as sex is not a protected characteristic. An aggravating factor is that the offence involved the use of a weapon.

- 8.2.5 Our figures concerning the use of a weapon and the gender divide which exists in this regard were set out in Part 1. Again, these figures are broadly consistent with other research projects. In particular that conducted by The Centre for Women's Justice.¹⁹⁰
- 8.2.6 Feminist scholars have long argued that because of the difference in strength between women and men, women are compelled to use a weapon in order to kill. This raises questions of whether the Court of Appeal are correct in stating or holding that the use of a weapon is always an aggravating factor.¹⁹¹ As death is a consequence element of the act of murder (and manslaughter) and it tends not to take place if perpetrated by women in the absence of the use of a weapon, then what has been deemed to be an aggravating factor is, in fact, accommodated within the offence for which she is convicted.
- 8.2.7 To regard the use of a weapon as an aggravating factor potentially militates against the rule against 'double counting'¹⁹² in sentencing. In this regard, see also Latham LJ in *R v. Richardson (Adam)*¹⁹³
- “[t]he use of a weapon will not necessarily and of itself be an aggravating factor. For example if a knife is picked up in the case of a quarrel, or a fight and then used in a fatal attack, it is difficult to see how the use of a knife can then be said to be an aggravating factor, that is why the offence is one of murder.”
- 8.2.8 As we have explained in paragraph 6.5 above, manual strangulation does not involve a weapon but given its gendered nature, there is no justification for a killing by strangulation to be mitigated or seen as less serious on the basis that a weapon was not used. Our view that the use of a weapon is not necessarily an aggravating feature is theoretically consistent with our observations in relation to strangulation.

¹⁹⁰ Howes (Sophie) *Women who kill; How the state criminalises women we might otherwise be burying* February (2021).

¹⁹¹ *R v. M, AM and Kika* [2010] 2 Cr App R (S) 19 at [7] cited in *R v Dillon (Paul)* [2015] EWCA Crim 3.

¹⁹² Namely that the offence/category can be determined by factors which should not then be counted to aggravate the offence.

¹⁹³ *R v. Richardson (Adam)* [2006] 1 Cr App R (S) 43 p420

8.2.9 All of the participants in the focus groups supported the proposition that the use of a weapon should not be a statutory aggravating factor for the reasons we have outlined.

8.2.10 **Recommendation 15: We recommend** that in cases of *domestic* manslaughter consideration should be given to sentencing guidelines being amended to indicate that the use of a weapon is not necessarily an aggravating factor. See recommendations table in Part 10.

8.3 Gross Negligence Manslaughter

8.3.1 There has been public concern about high profile killings of women following assaults which are alleged to have been consensual during sex which is said to have ‘gone wrong’. This is often referred to by campaigners, academics and policy makers as “the rough sex” defence. In other words, it is said that the victim has consented to an assault short of actual bodily harm. The law has been clear since *Brown*¹⁹⁴ was decided in 1994, that a person cannot consent to actual bodily harm contrary to s.47 Offences Against the Person Act 1868 (‘OAPA’) or to an assault which would amount to grievous bodily harm contrary to s.20 OAPA. The fact that *Brown* has been put on a statutory footing in s. 71 of the 2021¹⁹⁵ Act may mean that offences once charged as gross negligence manslaughter are now charged as unlawful act manslaughter but that may also depend on how such cases are perceived in social terms. By way of explanation, there is a tendency to perceive cases where an assault during sex (which assault is said to be consensual for the purpose of sexual gratification) as being completely distinct from any of the violence and control which exists elsewhere in relationships between intimate partners.

8.3.2 Palmer and Wiener¹⁹⁶ have argued that the essence of the ongoing debate on this subject exists in the narratives which are being played out because of the role that ‘rough sex’ can play as both an instrument and manifestation of coercive control. Taking the highly publicised **CM9** (see below) as their starting point, they analyse the use of rough sex within a coercively controlling, abusive relationship and its construction within the criminal law. The writers argue that there are three

¹⁹⁴ *R v Brown and others* [1994] 1 A.C. 212.

¹⁹⁵ S.71 provides that consent to harm for sexual gratification is not a defence. It applies to offences under s.47, s.20 and s.18 Offences Against the Person Act 1861.

¹⁹⁶ Palmer (Tanya) and Weiner (Cassandra) “*Telling the wrong stories: rough sex, coercive control and the criminal law*” *Child and Family Law Quarterly* Vol 33 No 4 2021.

alternate constructions which have been applied historically within criminal law. Namely, (i) violent sexual assault (ii) deviant sexuality and (iii) accidental injury.

8.3.3 The cases in our sample of 120 cases which are relevant to this discussion, involved findings of accident accepted by investigators and the courts (who are obviously bound by the way in which the case is investigated and presented).

8.3.4 The above researchers make the point that the cases, which they analyse,

“Appear to suggest a particular willingness to apply this narrative [which is one of accident] in cases of men injuring women in the course of sexual activity and to normalise a degree of rough sex, reframed as ‘vigorous sexual activity’ in heterosexual relationships. This has implications for the framing of rough sex in coercive, controlling heterosexual relationships, which are themselves heavily shaped by normative gender roles.”

8.3.5 Elsewhere, it has been argued, correctly in our view, that the issue of what is often referred to as ‘rough sex gone wrong’ now needs to be reconsidered in the light of coercive control¹⁹⁷ where coercion can be achieved by things like “silent treatment” or tailored threats and that it cannot therefore be assumed that particular sexual activity within a settled relationship is always consensual. Of particular concern, is the fact that such sex can involve choking/strangulation.

8.3.6 Where killing in these circumstances results in a conviction of murder, then clearly, Schedule 21 provides the sentencing framework. Academic and other commentators have made the point that the ‘rough sex’ defence is being used to escape liability for murder where such liability should properly be incurred. In this regard, see Part 9 below on defences to murder. See further, Bows and Herring citing Professor Edwards’ research together with briefings by the campaigning group We Can’t Consent To This (WCCTT), previous arguments by commentators and feminist academics that:

“[t]his method of killing as well as the broader context of death occurring during or immediately after sexual activity is thus heavily gendered and reflects wider homicide trends; strangulation as a method of killing in domestic/intimate partner homicide has remained constant over the last three

¹⁹⁷ Herring (Jonathan) and Bows (Hannah) citing Jenny E Mitchell and Chitra Raghaven, “*The impact of coercive control on use of specific sexual coercion tactics*” November 2019 in the 2021 V 27 Violence Against Women and Kathleen C Basile *Histories of Violent Victimization Among Women Who Reported Unwanted Sex in Marriage and Intimate Relationships: Findings From a Qualitative Study* 2008 14 Vol 14 Issue 1 Violence Against Women 29

decades and is the primary method of killing of a female partner in a heterosexual relationship.]”¹⁹⁸

- 8.3.7 The point has been well made that the reason for this is because the perpetrator can argue a lack of the relevant *mens rea* or fault element¹⁹⁹ by saying he had no intent to cause really serious harm. None of the reforms in relation to non-fatal strangulation/consent have dealt with the consequence of a straightforward denial of *mens rea/fault*. In our section on defences to murder, we suggest that consideration should be given to further reform which is aimed at limiting such a defence in murder allegations.
- 8.3.8 Our remit is to consider the adequacy of sentencing provisions when ‘rough sex’ leads to a conviction of manslaughter (whether that is gross negligence manslaughter or unlawful act manslaughter). Our sample of 120 cases contained 3 gross negligence manslaughters. They were all committed by men against female victims. Two of these cases involved killings which occurred in the course of violent sex to which the victim was said to have consented (although strangulation was not the mechanism of killing).
- 8.3.9 By definition, investigations into the circumstances of such killings are circumscribed by the fact that the victim cannot give an account of consent.
- 8.3.10 The Manslaughter Definitive Guideline in relation to sentences for gross negligence manslaughter contain four categories of culpability which are delineated according to prescribed characteristics: lower culpability, medium culpability, high culpability and very high culpability with starting points of 2 years, 4 years, 8 years and 12 years custody. The ranges for each of those starting points are: 1-4, 3-7, 8- 12 and 10-18 years custody respectively.
- 8.3.11 As stated above, our sample contained three cases of gross negligence manslaughter. In two of these cases **CM9**, **CM29** the factual matrix was said to be a sex-game or “rough sex” which had ‘gone wrong’. These cases merit scrutiny. On the basis of the present law, the cases can present difficult sentencing exercises.
- 8.3.12 In **CM29** the offender had held a knife to the neck of the victim during sexual intercourse and it was his case (accepted by the prosecution) that the knife had slipped and cut the carotid artery causing death. It was accepted (not only in virtue of the plea) but on the basis of that plea that there had been no intention to stab

¹⁹⁸ Bows (Hannah) and Herring (Jonathan) “*Getting away with murder a review of the rough sex defence*” JCL 84 (525) December 2020

¹⁹⁹ Herring (Jonathan) and Bows (Hannah) “*Regulating intimate violence: rough sex, consent and death*” [2021] CFLQ 311 at page 3.

the victim but that the holding of the knife at the victim's neck was a form of simulated threatening behaviour "to heighten sexual pleasure". The perpetrator pleaded guilty after the Plea and Trial Preparation Hearing but before the trial and received the appropriate credit for having done so.

- 8.3.13 He was sentenced to six years imprisonment which showed a reduction from the eight years which would have been appropriate after a trial. The danger of stabbing the victim was said to be obvious. 'Consent' was held by the sentencing judge to be of limited mitigation given the "acute risk of serious violence and death being visited on [his] sexual partner". It was accepted by the sentencing judge that the knife was held for the purpose of sexual gratification and of simulating threat²⁰⁰ and this involved repeated and colossal danger. Culpability was said to be high in light of lies to the police, the use of alcohol and drugs. The sentencing judge eschewed the description of the sexual conduct as "rough sex" and "adventurous" saying "it was simply extremely dangerous sadomasochistic sexual conduct." The offending was placed within category B – high culpability.²⁰¹
- 8.3.14 The use of drugs and alcohol were held to be an aggravating feature. Culpability was held to be high in light of the fact that the perpetrator "must have been acutely aware" of the extreme dangers of using a knife in the way that he did. There was said to be a demonstrably obvious risk of death or of really serious injury.
- 8.3.15 In **CM9**²⁰² a plea to gross negligence manslaughter was accepted at the close of the prosecution case in a murder trial and a trial for causing grievous bodily harm with intent. By way of background, the victim had been in an intimate relationship with the perpetrator for a few months. She was 13 years younger than the perpetrator. At the time of the sexual conduct and thereafter, death, the victim's blood alcohol level was dangerously high (at 389 mg per 100 ml of blood) placing her into the toxicological bracket of coma and death. Her cocaine level was at 0.74 mg per litre of blood and her Cocaethylene²⁰³ level was at 0.59 mg per litre. In other words, she was intoxicated to the point where it is difficult to accept that she could have had or retained the capacity to consent.
- 8.3.16 The sentencing judge was sure, to the relevant standard, that the perpetrator had caused the majority of injuries by beating on the night that the victim died. It was the perpetrator's account that in addition to consenting to beating, the victim had asked him to insert a bottle of spray carpet cleaner inside her vagina. This caused

²⁰⁰ The judge specifically said therefore that this was not a case where if it had involved a conviction of murder that there should have been a 25 year starting point.

²⁰¹ The offending is serious because the offender had shown a blatant disregard for a very high risk of death arising from the negligent conduct.

²⁰² Which has been the subject of much academic discussion.

²⁰³ The substance to which cocaine and alcohol are converted within the body.

internal lacerations which resulted in arterial and venous haemorrhage. The perpetrator had noticed obvious injuries but despite this, he did not summon assistance or call an ambulance. Rather, he had left her at the foot of the steps and gone to bed neither did he place her on a pillow, cover her with a blanket or place her in the recovery position.

- 8.3.17 In reaching an assessment of the perpetrator's overall culpability, the sentencing judge bore in mind the contention that the conduct amounting to gross negligence was the failure to get the victim help after the infliction of serious injury (to which it was claimed she had consented). This was in circumstances where there was a risk of death as a result of her condition which would have been obvious to a reasonable and prudent person.
- 8.3.18 The prosecution submitted that the offence fell within Category B, high culpability but did not submit that the injuries which had been caused to the deceased had been inflicted unlawfully and therefore did not submit that the case met the criterion "the negligent conduct was in the context of other serious criminality."
- 8.3.19 The judge held that he was satisfied so that he was sure that the perpetrator had caused the bulk of the injuries to the victim's breasts, bottom/lower back and that they amounted to actual bodily harm of a quite serious type and that the authorities were clear that the victim could not in law, consent to actual bodily harm or grievous bodily harm for the purpose of sexual pleasure. He held that, in *R v BM*²⁰⁴ the Court of Appeal had authoritatively considered whether the consent of a victim could provide a defence to offences contrary to s.47 and s.20 Offences Against the Person Act 1861. The fact that consent was no defence meant that the failure, on the part of the perpetrator, to call for help was therefore negligence in the context of other criminality.²⁰⁵
- 8.3.20 It was held that the insertion of the cleaning spray was not unlawful (the judge having concluded that the victim had the capacity to consent)²⁰⁶ but that it must have been plain to the perpetrator that the insertion of the bottle even if not unlawful, carried a high degree of risk. The question of whether, rather than using lubricant to remove the bottle, it would have been a better idea to call an ambulance, was never put in cross-examination. Further, the offence was aggravated by the perpetrator's failure to try to prevent the victim from becoming potentially fatally intoxicated. In the final analysis, the offending "was not quite the type of 'serious offending 'contemplated in Category B'" however, it was not a

²⁰⁴ *R v M (B)* [2018] 3 WLR 883 [21]. In which case the Court of Appeal was concerned with the question of whether alteration of body parts with consent amounted to Grievous Bodily Harm.

²⁰⁵ Therefore, placing it within category B of the Definitive Guideline.

²⁰⁶ It is difficult to see how the judge could not be sure that the victim did not have the capacity given the level of intoxication.

Category D²⁰⁷ case and the case was properly placed towards the upper end of Category C. There were a number of mitigating factors but the offence was aggravated by drink and drugs. The starting point was 5 years and 6 months after balancing out the aggravating and mitigating factors and a full one third reduction for a guilty plea meant the sentence which was imposed was one of three years and 8 months.

- 8.3.21 The most recent decision of the Court of Appeal on the issue of manslaughter in circumstances where the victim is found to have consented to harm during a sexual encounter was in relation to unlawful act manslaughter. See the Attorney General's application to refer the sentence in *R v. Samuel Pybus*²⁰⁸ as unduly lenient. In refusing to refer, the court held that 6 years imprisonment was an appropriate starting point on a guilty plea to unlawful act manslaughter. The offender had strangled the victim who was said to have consented to "erotic asphyxiation"²⁰⁹ in the course of a sexual encounter. By way of background, the offender was married but saw the victim (S) with whom he was said to have had sexual encounters 6 times a year. This involved "rough sex including choking." The case was presented at first instance as one in which there was uncertainty about the force or duration of the manual strangulation which was said to be the cause of death and about the point at which the victim had reached unconsciousness during the strangulation. In seeking to argue that culpability should have been high as opposed to medium, the Attorney General was constrained by the fact that leading prosecution counsel in the court below had concurred with the sentencing judge that there was a difference between an obvious risk and a high risk and that although while the more obvious the risk, the easier it was to categorise it as high "a foreseeable risk is not a high risk." Further, the Court of Appeal agreed that "[the Crown] were only able to speculate as to the mechanism of death and specifically in relation to the nature of asphyxiation in terms of its duration and the ultimate loss of consciousness. [28]." The sentence on the basis of C (medium culpability) was held to be unassailable.
- 8.3.22 The court distinguished between an obvious risk of harm and a high risk of harm. In finding that there was no demonstrable error of law, the court also emphasised that this was a case which turned on its facts [35].
- 8.3.23 We think 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

²⁰⁷ Lower culpability.

²⁰⁸ *R. v. Pybus (Sam Joseph) [2021] EWCA Crim 1787*

²⁰⁹ At paragraph [19] of the judgment the court observed that in the court below there had been evidence independent of the offender that suggested the victim's "participation was consensual and was initiated by her."

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.²¹⁰

- 8.3.24 It is of course the case that the Court of Appeal's powers in considering a reference are circumscribed and in the context of an Attorney General's reference, the court is bound by the facts as presented to a sentencing judge. In *R v. Pybus* however, the Court of Appeal implicitly sought to categorize the killing of the victim as the consequence of sexual choice as opposed to the consequence of the development of social norms based on structural inequality.
- 8.3.25 To return to the points made by Palmer and Weiner, in addition to the immediate harm of death, the policy underpinning law ought to consider the wider harms which emanate from the behaviour which can and does lead to this category of homicide.
- 8.3.26 The danger is that this type of offending provides a "cultural scaffolding"²¹¹ for the method and circumstances of the types of murder with which this review is also concerned.²¹² This is harmful in itself. By analogy with sexual offences and by way of further illustration, in a research project on sexual violence as a script in mainstream online pornography,²¹³ it has been argued that the availability of certain classes of material to first time users of pornography, raises questions about "the role of the criminal law, self-regulation and corporate accountability".²¹⁴ It is said in this context that "when pornography is understood as a key social institution legitimizing sexual harms then the distortion between what counts as

²¹⁰ See, Shield MDs (Lisa) Corey MD(Tracy S) Weakley-Jones MD (Barbara) Stewart MD (Donna) "*Living Victims of Strangulation 10 year review of cases in a metropolitan community*" Am J Forensic Med Pathol Vol 31Number 4 (2010) at 324 "The fine line between life and death in strangulation depends on a host of factors, including the strength of the victim/perpetrator, drugs involved, natural state of health of the victim and circumstances of whether an onlooker may be present who may disengage the perpetrator from the victim prior to the fatality."

²¹¹ McGlynn (Clare), Vera-Gray (Fiona), Kureshi (Ibad) and Butterby (Kate) "*Sexual violence as a sexual script in mainstream online pornography.*" The British Journal of Criminology, April 2021, 61, 1243–1260] The authors cite Garvey as having referred to 'the cultural scaffolding of rape' "namely, the construction of cultural norms and practices that support rape or set up its preconditions" which move towards "a legitimate framework of sexual norms."

²¹² Concerning our sample of cases, the point is exemplified when it is considered that in one of the two cases in which a woman was convicted of manslaughter by way of loss of control, the deceased who had coercively controlled her kept a knife in the bedroom. In another case where the female perpetrator was convicted of murder it was in circumstances where she had awoken to find the deceased holding a knife over her.

²¹³ McGlynn (Clare), Vera-Gray (Fiona), Kureshi (Ibad) and Butterby (Kate) "*Sexual violence as a sexual script in mainstream online pornography.*" The British Journal of Criminology, April 2021, 61, 1243–1260

²¹⁴ *Ibid.*

criminal, what counts as harmful and what counts as sexual constitutes ‘*in itself*’ a form of cultural harm.”

- 8.3.27 The prevalence of strangulation/choking (i) in pornography, (ii) as a method of deploying control in relationships which are characterised by coercive control and (iii) as a gendered method of committing murder suggests that this type of manslaughter (which can and does arise from choking/ strangulation) should, in our view, always attract a higher starting point within the manslaughter guidelines namely, one in high culpability category.²¹⁵ Whereas strangulation has a particular resonance, the argument extends to other forms of assault which imitate the use of violence in coercive and controlling behaviour. In addition to causing death in the cases with which we are concerned, the wider harm is effected through the normalisation of such behaviour. In our view there are sound policy reasons for the recommendation we make below.
- 8.3.28 There was support for our proposals concerning death following consent to assault the victim during the course of a sexual encounter in all of our focus groups.

- 8.3.29 **Recommendation 16: We recommend** 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. See recommendations table in Part 10.

²¹⁵ Category B Definitive Sentencing Guidelines Manslaughter.

9. Defences

9.1 Summary

9.1.1 We have not had adequate resources to be able to conduct a full or sufficiently detailed review of defences in cases of domestic homicide. In order to do this with reference to our sample of cases it would have been necessary to have access to the CCDCS in every case on the sample and to have carried out structured interviews with the lawyers concerned. Further, in our view, a wholesale review of defences to domestic homicide requires a full public consultation involving all stakeholders including the higher courts judiciary which is outside the practical scope of this project. There are complex matters of law, policy and practice involved. The most we attempt to do in this part is to adumbrate the relevant issues with a recommendation that further work be undertaken in the future.

9.2 Complete Defence of Self Defence

9.2.1 Self-defence and accident are complete defences to murder. In this review, we are concerned with self-defence.

9.2.2 In order to be able to rely on the common law defence of self-defence a defendant must be able to show that he or she only used such force as was necessary in the circumstances as he or she genuinely believed them to be.²¹⁶ The force used has to be proportionate. The exception is in a householder case where force may be disproportionate as long as it is not “grossly disproportionate.”²¹⁷ In such a case, the defendant must believe that the victim is a trespasser in the property at the time of the use of force.²¹⁸ Even if the force used is merely disproportionate, it must still be reasonable in the circumstances.²¹⁹ The question of whether the circumstances were reasonable is determined as a defendant believed them to be. A defendant’s belief may be a mistaken one²²⁰ as long as it is not induced by voluntary intoxication.²²¹ There is no longer a duty to retreat rather it is only a relevant factor to be taken into account.²²² In deciding the question of whether or

²¹⁶ S.76(1)-(3) Criminal Justice and Immigration Act 2008

²¹⁷ S.76(5A) Criminal Justice and Immigration Act 2008

²¹⁸ S.76(8A) Criminal Justice and Immigration Act 2008.

²¹⁹ *R v. Ray (Steven) [2017] EWCA Crim 1391.*

²²⁰ S.76(4) Criminal Justice and Immigration Act 2008.

²²¹ S.76(5) Criminal Justice and Immigration Act 2008.

²²² S.76(6A) Criminal Justice and Immigration Act 2008.

not the force was reasonable in the circumstances as a defendant believed them to be, a person acting for a legitimate purpose is not expected to weigh to a nicety the exact measure of any action.²²³

- 9.2.3 It is rare for perpetrators to be able to rely successfully on self-defence in intimate partner homicides. In the Homicide Index data received to inform the review and where the final outcome was known at the point when the Home Office provided the data, there were 7 acquittals including discontinuation of proceedings in cases of intimate partner homicide in the period between April 2016 and December 2020. This consisted of 2 women who were acquitted on the basis of self-defence (one of whom was finally acquitted on a re-trial) and 5 men. Further research augmented by press reports showed that one man was accused of setting his wife on fire but successfully argued that she had accidentally caught fire while making him porridge. Another, who was acquitted of murder, had been accused of throwing boiling chip oil on his wife but was able to argue that she had pulled it on herself.
- 9.2.4 Self-defence has long been recognised to be problematic in cases where women have killed their male partners and this is so even in situations where there is a history of domestic abuse or coercive control.²²⁴ If a woman is not thought to be under attack at the time of the killing, then it is most unlikely that her actions will be seen to have been reasonable. In theory, the defence of self-defence permits pre-emptive action on the part of the defendant. However, research conducted by the Centre for Women’s Justice²²⁵ found that out of 92 cases over a 10 year period, only 6 women had successfully relied on self-defence and that none of the 6 had been able to rely on pre-emptive force.
- 9.2.5 The reasons as to why self-defence is largely unsuccessful for women who have killed as a result of being trapped in abusive relationships are not always attributable to fault with the substantive law.
- 9.2.6 As one lawyer said:

“Problems include jury perceptions of how a victim of domestic abuse should present. Women who use fatal violence are not seen as vulnerable, trapped or deserving of sympathy”:

²²³ S.76(7) Criminal Justice and Immigration Act 2008.

²²⁴ *Women who kill: why self-defence rarely works for women who kill their abuser* Howes (Sophie Kate), Swaine Williams (Katy), t Wistrich (Harriet) Crim. L.R 2021 947-957 at 947.

²²⁵ *Women who kill; Defending women we might otherwise be burying* Howes (Sophie) cited in *Women who kill: why self-defence rarely works for women who kill their abuser* Howes (Sophie Kate), Swaine Williams (Katy), t Wistrich (Harriet) Crim. L.R 2021 947-957 at 949.

“Men who kill, if they are otherwise upstanding good characters, tend to be treated sympathetically, whereas women who kill are considered as stepping massively out of line....this is incredibly old fashioned” **interview with lawyer.**

9.2.7 In summary it is thought that the reasons why women who kill their male partners are convicted include first, the predominance of myths and stereotypes for example, the erroneous belief that it is always possible to leave a relationship in which a victim is entrapped by coercive control. Second, the criminal justice system operates under constraints of funding and to timetables which militate against early effective disclosure (by defendants who are victims) as to the history of the relationship with the deceased. It is well documented that many victims of coercive control have great difficulty in disclosing the details of their treatment at the hands of their abuser. Third, the fact that experts in domestic abuse including coercive control and consequent risk assessment have not been readily used to date hinders jury understanding and facilitates the perpetuation of domestic abuse myths such as “she gave as good as she got.” Fourth, courts are only just beginning to give juries directions on the myths and stereotypes of domestic abuse. Fifth, this is in circumstances where there is no proper forensic understanding of domestic abuse and its effects. At the heart of a proper understanding of coercive control is the appreciation that discord in a controlling dynamic tends to be manifest in the event of a challenge by the victim to the controlling abuser. However, the challenge usually leads to behaviour which is such that the victim then lives within the rules for fear of upsetting the abuser and causing a repeat of the behaviour. This is commonly misconstrued as the victim not minding the rules and/or enjoying the relationship.

9.2.8 In order for such women to be acquitted, the effects of coercive control need to be appreciated within the context of the defence of self-defence. A woman who has been subjected to coercive control is likely to have been affected by it and have a far greater sense of fear which may lead her to pick up a knife (or other weapon) or take action which is viewed objectively as being disproportionate.

“[There is] increased fear because of the history of abuse and increased perception of the threat of violence that leads to a disproportionate act.”

“Because of the history of domestic violence, the perception of threat is likely to be greater.” **Interview with lawyer.**

9.3 Problems with the Substantive Law

9.3.1 Problems also arise because of the gendered nature of the substantive law. As our case sample analysis shows, women predominantly use a knife or other weapon

when they kill, and this tends to lead to the killing being perceived as disproportionate in the circumstances existing at the time. The focus is on the immediate as opposed to the context and background.

“the predominant issue when representing women who kill is I think: issues that are directly to do with gender; directly to do with the very fact in the context of a domestic homicide and the items and objects coming to hand are weapons such as knives so when it comes to the sentencing regime the focus is on the weapon and not the context that has led to the picking up ultimately that an individual is forced to do of a weapon.” **Focus group attendee.**

‘The critical thing is why somebody picked up a knife. Was it because they were defending themselves? **Focus group attendee.**

- 9.3.2 The reasons why women use weapons are covered extensively in the literature on feminist jurisprudence which has been summarised most recently in a case study of two cases with reference to the research contained in *Women who Kill: defending women we might otherwise be burying*²²⁶ and also by Professor Susan Edwards.²²⁷

9.4 Disproportionate Force Restricted to Householders

- 9.4.1 There is consternation among commentators that the law on self-defence permits the use of disproportionate force by a householder against a person whom the householder believes to be a trespasser at the relevant time but that a victim of abuse cannot use disproportionate force to defend herself from an abuser within the home unless the criteria in s.76 (5A), (8A)(d) are fulfilled.
- 9.4.2 In *R v. Cheeseman*²²⁸ it was held that the engagement of the defence turned on the householder’s belief as to whether V was a trespasser at the time of the violent incident. In other words, the defence does not only apply in the case of intruders.
- 9.4.3 Potentially then, the enhanced defence applies to some, but not all, victims of domestic abuse. For example the defence presumably applies in the following hypothetical examples (i) the case of a householder who has obtained a non-molestation order which is then breached by V who enters the property and is

²²⁶ Howes (Sophie) *Women who kill defending women we might otherwise be burying* Op Cit cited in. Howes (Sophie) Swain Williams (Katy) Wistrich (Harriet) *Women who kill why self-defence rarely works for women who kill their abuser* Crim L. R 2021 11, 945-957

²²⁷ Edwards (Susan) “Demasculinising” the defences of Self-Defence and the “Householder Defence” and “Duress” Crim. L.R. 2022, 2, 111-129

²²⁸ *R v. Cheeseman* [2019] EWCA 149.

violent or (ii) where the property is in the name of the defendant and she has told an abusive V that he must leave before or at the time of the violent act²²⁹ (iii) The defendant (D) owns a property and begins a relationship which is coercive and controlling, her partner (P) moves into her property very quickly after the start of the relationship. On an occasion when P is being violent and threatening to D, she tells him to leave. P refuses to do so and is therefore a trespasser in D's home. He continues to be violent and D reaches for a knife with which to defend herself. She fatally stabs P inflicting a single wound. Under the present law, D is entitled to use force which is disproportionate.

- 9.4.4 By way of contrast, in a situation where P and D live together and bought the home together, P cannot be construed as a trespasser in the property when he begins to use violence. The level of threat would be exactly the same as in the other examples but D in examples (i)-(iii) above would be entitled to a direction from the judge that she could use disproportionate force whereas D from the second example would not. Such women would have the advantage over those who are joint householders with an aggressor.
- 9.4.5 This is anomalous because it is women who do not have the agency support or legal support or who are householders in common with their abusers who would be most in need of the defence in law.
- 9.4.6 From a legal perspective, it could be argued that s. 76(5A) has been construed so as to make little if any real difference. In this regard, see *R v. Ray (Stephen)*²³⁰ where it was held that the jury must first decide whether the force was "grossly disproportionate" and only if it was not, would go on to determine whether it was reasonable in all the circumstances further, that 'disproportionate' and 'reasonable' are not the same things for the purpose of s.76.
- 9.4.7 However, when factors such as the infliction of a single stab wound against a background of say, coercive control are taken into account, it is arguable that the enhanced defence could make a practical difference in some cases.
- 9.4.8 An attempt to extend²³¹ the permissibility of disproportionate force in the 'Householder defence' provided by s.76(5A), (8A)(d) Criminal Justice and

²²⁹ The extent of the application of the law is unclear but at the time of writing, a judgment of the Court of Appeal Criminal Division is pending.

²³⁰ *R v. Cheeseman [2017] EWCA Crim 1391*.

²³¹ By creating an analogous defence.

Immigration Act 2008²³² was rejected by the Government during the passage of the Domestic Abuse Bill (the 2021 Act).²³³ The Government stated that existing full and partial defences cover circumstances in which a defendant is also the victim of domestic abuse. “We are not aware of any significant evidence that demonstrates that the panoply of the current full and partial legal defences available are failing those accused of crimes where being a victim of domestic abuse is a factor to be taken into consideration.”²³⁴ More recently, the case has been made for the introduction of a specific defence to a wide spectrum of offences which have been committed and which are directly referable to domestic abuse²³⁵ and for an extension to s.76 to create a defence for the victims of domestic abuse which would have the effect of creating a defence which is analogous to the ‘householder defence’ for the use victims of domestic abuse.

9.4.9 We think, that at the very least, further consideration needs to be given to the possibility of extending the latitude enjoyed by householders who are confronted by intruders, to victims of domestic abuse who kill their abusers in circumstances of domestic abuse. This is particularly so when it is considered (i) that it is thought that it tends to be the use of a weapon which leads to the force being perceived as disproportionate and (ii) that the majority of killings by women of their male partners are caused by a single stab wound. The benefit of extending the ambit of s.76 (5A), (8A) as suggested above is that there is a legal coherence which comes with extending the ambit of the present law. It would widen the law and prevent anomalies such as those which are implicit in the above examples.

9.4.10 There are alternative possible reforms which could be considered in terms of giving women who kill equal access to self-defence. A partial defence which is a direct alternative to self- defence is one possibility.

²³² S.76(5A) provides “In a householder case, the degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was grossly disproportionate in those circumstances”

(6) In a case other than a householder case, the degree of force used by D is not to be regarded as having been reasonable in the circumstances as D believed them to be if it was disproportionate in those circumstances”. ²³³ The proposed amendments to the Domestic Abuse Bill were part of a wider campaign to provide for a defence of compulsion to commit offences because of domestic abuse in certain types of criminal offences.

²³³ The proposed amendments to the Domestic Abuse Bill were part of a wider campaign to provide for a defence of compulsion to commit offences because of domestic abuse in certain types of criminal offences.

²³⁴ Edwards (Susan) “*Demasculinising*” the defences of self-defence, the householder defence and duress” Crim. L.R. 2022, 2, 111-129 citing Hansard HL deb vol 811 col 1890 21.4April 2021 and written evidence from the Prison Reform Trust

²³⁵ Double Standard: Ending the unjust criminalisation of victims of violence against women and girls. <https://www.centreforwomensjustice.org.uk/double-standard>

- 9.4.11 In this regard, further consideration could be given to the creation of a partial defence of self-preservation. Such a partial defence was considered by the Law Commission during the consultation stage of their review into the partial defences to murder in 2003-6.²³⁶ The partial defence was contemplated in two possible forms. First a wide one which could apply where a defendant faced a threat but not so immediate a one as to justify the use of force. Second, a narrow form where some force was justified but not the degree of force which was actually used.
- 9.4.12 The idea was not pursued in light of the introduction of the partial defence of loss of control. Loss of control may apply when there is a “fear of serious violence” but this is subject to the fulfilment of other statutory requirements which we address at paragraphs 9.5.5 below.
- 9.4.13 Another option which might be considered is the introduction of a partial defence for victims of domestic abuse which is based on an offender having been subjected to coercive control. This would accommodate an offender’s fatal response to a pattern of behaviour which may not amount to serious violence and in circumstances where there is no obvious or immediate trigger.²³⁷ It would be consistent with the more forensic approach to domestic abuse to which we have alluded elsewhere in this report. As such, it would remove many of the problems which have been identified as characteristic of the trials where women have killed their abusive partners. A focus on coercive control would help to redefine those narratives which tend to be employed in the trials of women who kill abusive partners. For example, it would dispel the myth that if a victim stayed in a relationship, then it could not have been that bad. There would be less of a temptation on the part of prosecutors to characterise abusive relationships as “volatile” and “toxic.” This characterisation tends to come into play in situations where victims of controlling and coercive behaviour challenge such behaviour. The principle argument against the concept of a partial defence based on coercive control is that it would mean that coercive control could not constitute the basis of a full defence and, as such, this would hinder the development of our continued developing understanding of domestic abuse.
- 9.4.14 The advantages of such a partial defence include the fact that there would be less use of the bad character provisions in circumstances where an offender’s coercive control in the relationship has been re-framed to the detriment of the victim of that

²³⁶ Law Commission CP173 Partial Defences to murder at 12.82.

²³⁷ For example, in one recent first instance case where a 66 year old woman stabbed her husband of 22 years the press reporting focused on an argument between the defendant and the deceased over some bubble and squeak notwithstanding that the defendant’s defence was loss of control due to years of being exposed to coercive control from which she felt that she could not escape.

coercive control.²³⁸ It would remove the present emphasis on the psychiatric condition of the offender and more readily meet what some experts claim is a normal response to the abuse of coercive control.

- 9.4.15 Any consideration of the above should be predicated on a detailed analysis of the efficacy of the present partial defence of loss of control.
- 9.4.16 There are legal difficulties with running loss of control as an alternative to the complete defence of self-defence. Both partial defences of loss of control and diminished responsibility are theoretically inconsistent with self-defence as they are mitigatory defences reducing what would otherwise be murder to manslaughter. As such, they require an intent to kill or cause really serious harm whereas in a true defence of self-defence *mens rea* or fault will be negated. This makes it difficult for a defendant to rely on self-defence and the partial defences in the alternative. As we point out below, to plead loss of control militates against the use of self-defence.
- 9.4.17 Loss of control is still relatively new. We indicated in paragraph 5.1.15 that the reforms to the partial defences of provocation and diminished responsibility were introduced as a result of consultations by both the Law Commission and the Ministry of Justice on the efficacy of the partial defences in cases where women had killed an abusive partner.²³⁹ The reforms were based on legislative proposals by the Law Commission but nevertheless departed from those proposals in significant respects.
- 9.4.18 As stated in part 5 of this report, the partial defence of provocation was replaced by the new partial defence of loss of control. S.54-55 of the Coroners and Justice Act 2009 have now been in force for over 10 years and it is necessary for a detailed post-legislative scrutiny to be conducted with a view to considering whether the partial defence has fulfilled its legislative aims and those which were envisaged by the Law Commission.

²³⁸ 8 For example, in her first trial Sally Challen's complaint to the police that the deceased had been visiting brothels which used victims of human trafficking was dismissed as her being drunk and unreasonable. It was adduced as bad character evidence notwithstanding that she was not intoxicated at the time she killed the deceased.

²³⁹ Partial Defences to murder L.C 290 at 1.1.

9.5 Voluntary Manslaughter

9.5.1 Loss of Control

- 9.5.2 The analysis of the case sample showed that Loss of control was relied on infrequently and was rarely successfully deployed when it was relied on. It was relied on in 11 (9%) of the 120 cases in the case sample. It was successful in 2 of those cases.
- 9.5.3 It does appear that the partial defence is not being successfully relied on by men who have killed their intimate female partners. Both the two cases in the case sample where it was successful involved women killing their abusive male partners. Both those cases involved the Crown Prosecution Service pursuing a murder allegation and in the case of one woman, it was pursued at a re-trial after the jury in the first trial had failed to agree on a verdict.
- 9.5.4 A principal policy aim underlying the introduction of the partial defence of loss of control was to try and accommodate the concept of excessive force in self-defence.²⁴⁰ This is the basis on which the fear of serious violence constituent of the requisite trigger (either on its own or in combination with the justifiable sense of being seriously wronged) was introduced.
- 9.5.5 The wording of s.54 of the 2009 Act is complex and the courts have had to construe it in a way which seems to defeat the policy objective of the partial defence. In *Clinton*²⁴¹ it was held that in order for the partial defence to be left to the jury there must be evidence of all three components of the defence. The components are (i) a loss of control, (ii) a trigger (as defined in statute) to that loss of control and (iii) the possibility that a properly directed jury could conclude that a person of the age and sex of the defendant with a normal degree of tolerance and self-restraint in the circumstances of the defendant might have reacted in the same or similar way as she/he did. The elements are distinct and in order for the partial defence to be left to the jury, there must be sufficient evidence of each so that a jury could reasonably conclude the defence applies. Each component requires separate consideration. The circumstances in which the partial defence can be left to the jury contrasts with the abolished partial defence of provocation which a judge was obliged to leave to a jury if he or she considered that there was some evidence from which the jury could conclude that the defence might apply.
- 9.5.6 The prosecution has to negate the defence to the criminal standard where it is raised by a defendant and some would argue that the law is too complex for juries

²⁴⁰ See paragraph 9.4.10

²⁴¹ [2012] EWCA Crim 2.

involving, as it does, a threefold consideration of double negatives. This difficulty is compounded by the following. First, the courts have not really decided what is meant by loss of control itself avoiding placing a detailed construction on the words. See *R v Gurrpiner*²⁴² where the Court of Appeal declined to decide exactly what was meant by the words “loss of control.” Second, a construction based on ordinary English language is not consistent with the fact that, research has now shown that many domestic killings are often planned.²⁴³ The law was enacted before coercive control became part of our legal discourse and without any reference to the power/control and entrapment principles which have followed the promulgation of Evan Stark’s work which constructs coercive control as a crime against liberty. The ‘crime of passion’ narrative which still dominates societal thinking is entirely inconsistent with a response to an extreme case of coercive control. This is notwithstanding the caveat in the legislation that the loss of control “does not need to be sudden” which was of course meant to accommodate the way in which women who had been subjected to long term domestic abuse sometimes responded by killing.²⁴⁴

9.5.7 There are a number of problems when it comes to configuring a history of coercive control with the partial defence of loss of control.

9.5.8 First, in terms of the need for there to be sufficient evidence of a loss of control itself a loss of control cannot be inferred from the evidence.²⁴⁵ This has the practical effect of making it a stand-alone partial defence as opposed to an alternative to self-defence. This was the situation in our case reference (**CF21**) where the female defendant ran lack of intent- the trial judge refused to leave loss of control to the jury on the basis that there was no sufficient evidence from which the jury might conclude that the defence applied. In practical terms, the accused or another witness must testify to the loss of control. There are unlikely to be other witnesses in a domestic setting where the likelihood is that only the accused and the deceased were present. In so far as testimony from the defendant is concerned, she must testify to the fact that she lost control and so the partial defence is inconsistent with the complete defence of self- defence which unless it comes within s76 (5A), (8A) of the Criminal Justice and Immigration Act 2008,²⁴⁶ depends on a measured reaction. *Mens rea* or fault is negated in self-defence but the mitigatory status of the partial defences means that all the elements of murder are present and so the two defences are theoretically inconsistent. This has the

²⁴² [2015] 1 Cr. App. R 31 at [20].

²⁴³ See the reference to temporal sequencing in murder and the development of the 8 stage homicide timeline in Part 5 of this report.

²⁴⁴ *R v. Humphreys*. (*supra*)

²⁴⁵ *R v. Goodwin* [2018] EWCA 2287.

²⁴⁶ Allowing the use of force to be disproportionate.

practical effect of meaning that the Crown Prosecution Service tends not to accept guilty pleas to manslaughter by way of loss of control but would rather pursue a murder conviction at trial.

- 9.5.9 Second, although the “trigger” under s.55(6) can be satisfied, because coercive control can lead to a sense of being seriously wronged, it does not always necessarily lead to what can be described as a fear of *serious* violence, which is a particularly high threshold. The wrong which coercive control instigates is the wrong of entrapment not the wrong of putting someone in immediate fear.²⁴⁷ Fear may play a part in coercive control but there are other factors such as dependence which are at play. As such, the victim is as likely to feel rage at the incursion into her autonomy and liberty as she is fear. This is likely to militate against the successful use of the partial defence because anger is too easily conflated with “a considered desire for revenge”²⁴⁸ which prevents reliance on the partial defence. In addition, there are stereotypical perceptions of how victims should present. In the arena of the court room, problems about societal perceptions of who or what sort of woman is a victim are brought into sharp focus.
- 9.5.10 Third, the bespoke or personalised nature of coercive control can go to increase the gravity of the trigger rather than to the loss of control. This is potentially useful for cases of coercive control given the highly personal or bespoke nature of the abuse, but the decision in *Clinton*²⁴⁹ namely, that there must be separate consideration of the three constituents of the partial defence namely, loss of control, the trigger, and whether a person of the age and sex of D with a reasonable degree of tolerance and self-restraint means that if there cannot be said to be a loss of control then the gravity of the trigger cannot even be considered. If the prosecution is able to show that the defendant had not lost her self-control, then the trigger cannot be considered by the jury, however compelling the evidence.
- 9.5.11 There were only two cases in the case sample where loss of control was successfully advanced as a defence. In each case, the perpetrator was a woman who had been subjected to coercive control by the deceased. The sentences were within the manslaughter guidelines. Both convictions were the result of murder trials and in our view, it is significant that the trials were defended by specialist solicitors and/or counsel and/or had considerable input from specialist solicitors.

²⁴⁷ Although fear is causative and plays a role, it is not necessarily sufficient for the partial defence. Further, although entrapment can be caused by fear as a result of acts which are coercive, it can evince other emotions which are not accommodated by the partial defence.

²⁴⁸ Coroners and Justice Act 2009 s5 (4) the section will not apply if in doing or being a party to the killing D acted in a considered desire for revenge.

²⁴⁹ *Ibid.*

Even then, the perpetrator in one case was retried after the first jury had been unable to reach a verdict.

- 9.5.12 In that case, the jury had found the defendant guilty of manslaughter notwithstanding that the trigger was not readily discernible and so the sentence was affected (CF08).

9.6 Diminished Responsibility

- 9.6.1 The partial defence requires a defendant to prove on the balance of probabilities that at the time of the killing, she or he was suffering from an abnormality of mental functioning arising from a recognised medical condition which impaired his or her ability to understand his or her conduct, make a rational judgment and or exercise self-control. Further in order to provide an explanation for the killing, this must be a “significant contributory factor in causing D to carry out the conduct. [of killing].”
- 9.6.2 The principal problem in so far as diminished responsibility is concerned in cases where women use fatal violence is that it pathologises a normal response to domestic abuse. Coercive control is a pattern of behaviour which evinces a predictable response on the part of the victim. Diminished responsibility is predicated on abnormality of mental functioning caused by a medical condition.
- 9.6.3 Previous domestic abuse may lead to diagnoses such as those of PTSD or personality disorder (depending on childhood and adolescent experiences) which go to make a person hypervigilant and react to something in a particular way.
- 9.6.4 It is in such situations that the interface between “recognised medical conditions”²⁵⁰ (such as say, PTSD)²⁵¹ and the results of coercive control should become significant. Such a dynamic was accepted by the Court of Appeal in *Challen*.²⁵²
- 9.6.5 However, psychiatrists are not usually experts in domestic abuse or coercive control and either fail to identify the pattern of coercive control and or the way in which it is either causative of or has interacted with psychiatric conditions. They would be assisted by expert opinion on domestic abuse or coercive control, it is still not the case that such experts are routinely called.

²⁵⁰ See s.2(1)(a) Homicide Act 1957. The statutory test of diminished responsibility requires the defence to prove on the balance of probabilities that D suffered from an “abnormality of mental functioning” which arises from “a recognised medical condition.”

²⁵¹ *R v. Farieissia Surayah Shabirah Martin* [2020] EWCA Crim 1790.

²⁵² Although in that case, the court were considering the interplay between a dependent personality disorder, a mood disorder bordering on bipolar affective disorder and a long history of coercive control.

9.6.6 In our case sample, there were four women convicted of manslaughter on the basis of diminished responsibility.

9.7 Lack of Intent to Cause Really Serious Harm

9.7.1 We have highlighted the context in which this defence to murder has arisen in cases of consensual violence during the course of sex at paragraphs and 8.3.7 of this report.

9.7.2 Within the sample of cases there were two cases which ultimately led to convictions for gross negligence manslaughter where the defence was that death or really serious harm had been unintended and occurred in the course of sex. In case **CM9** the prosecution started as a murder and concluded as a gross negligence manslaughter with the prosecution concluding that they would not be able to prove the requisite intent for murder. There has been concern among academics and other commentators that since the implementation of the reforms to the partial defences brought about by the Coroners and Justice Act 2009, there have been unintended consequences. One unintended consequence of the reform of the partial defences has been to increase reliance by men on other defences which effectively shift the blame onto the (female) victim. Professor Edwards writes that the diminution on reliance on the partial defences of loss of control and diminished responsibility has corresponded with the emergence of the ‘rough sex defence’ where a perpetrator will argue that he²⁵³ cannot be guilty of murder as he had no intent to cause grievous bodily harm. This latest development has been recently summarised as another false narrative by Herring and Bows as follows:

“[Legislative attempts to address the rough sex defence] “have not appreciated that the problem is not with the substantive law itself, but the way evidence is presented at trial and the broader social context within which these offences occur. The history of the law of male violence against women has been marked by excuses for violence, often shifting the blame and focus of the attention on the woman and away from the accountability of the male behaviour. This history of killings in that context is littered with excuses such as ‘she had an affair’ or ‘she kept nagging’ or ‘she was just so annoying’ or now, ‘she enjoyed rough sex.’ So there is a long history of the law enabling men to use stories to justify their abuse. The ‘rough sex defence is the latest in long line of these.”²⁵⁴

²⁵³ It is overwhelmingly men who kill women in these circumstances and not vice versa.

²⁵⁴ Herring (Jonathan) and (Hannah): *Regulating intimate violence: rough sex, consent and death* – [2021] CFLQ 311, page 7.

- 9.7.3 At paragraph 8.3.20 above we referred to the comments of the trial judge in **CM9** that particular questions had not been posed during investigation/prosecution of the perpetrator. This reinforces the views expressed by Herring and Bows.
- 9.7.4 Any review of defences should consider lack of intent in the context of these types of cases.
- 9.7.5 **Recommendation 17: We recommend** a comprehensive review of defences to murder in the form of a full public consultation involving all stakeholders including the higher courts judiciary. This should involve post-legislative scrutiny of the partial defence of loss of control, consideration of the defence of self-defence and consideration of what commentators have called ‘the rough sex defence’



Clare Wade QC

June 2022

10. Table of Recommendations

<p>Recommendation 1 Paragraph 5.4.23</p>	<p>Collection of data We recommend that there should be a specific system for the collection of all relevant data in relation to all domestic homicides, which is maintained by the Home Office or the Ministry of Justice in conjunction with the Office of the Domestic Abuse Commissioner.</p>
<p>Recommendation 2 Paragraph 5.4.24</p>	<p>Training We recommend mandatory training for all lawyers and judges on understanding and applying the concept of coercive control.</p>
<p>Recommendation 3 Paragraph 7.1.13</p>	<p>Taking a knife or a weapon to the scene We recommend 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 because it denotes a starting point in which the vulnerability of the victim is not given any consideration. The harms that the previous paragraph 5A was introduced to prevent are very different from the sort of harms which occur in domestic murders.</p>
<p>Recommendation 4 Paragraph 7.1.14</p>	<p>We recommend that domestic murders should be given specialist consideration within the present sentencing framework under Schedule 21. A level of seriousness should be determined by application of the coercive control model within the normal 15 year starting point.</p>
<p>Recommendation 5 Paragraph 7.1.15</p>	<p>Coercive controlling behaviour as aggravation and mitigation We recommend that where there is a history of coercive control that this should be an aggravating or mitigating factor and that paragraphs 9 and 10 of schedule 21 should be amended accordingly.</p>
<p>Recommendation 6 Paragraph 7.1.16</p>	<p>End of relationship We recommend that if a murder takes place at the end of a relationship or when the victim has expressed the desire to leave the relationship then this should be regarded as an aggravating factor and that paragraph 9 of Schedule 21 should be amended accordingly.</p>

<p>Recommendation 7</p>	<p>We recommend that present mitigating factors in Schedule 21 paragraph 10(d) Sentencing Act 2020 should be amended so as to be consistent with the policy underlying s.55(5)(c) Coroners and Justice Act 2009. Specifically, that sexual infidelity on the part of the deceased cannot mitigate the murder.</p>
<p>Recommendation 8</p>	<p>Overkill We recommend that overkill should be defined in law as a specific legal harm and that it should be an aggravating factor in murder. Paragraph 9 of schedule 21 should be amended accordingly.</p>
<p>Recommendation 9 Paragraph 7.1.19</p>	<p>Strangulation We recommend that in the event of murder by strangulation or in a murder where strangulation has occurred, then this method of killing should be a statutory aggravating factor and that paragraph 9 of Schedule 21 should be amended accordingly. We also make a similar recommendation concerning manslaughter. See our recommendations 11 and 12 below.</p>
<p>Recommendation 10 Paragraph 7.1.20</p>	<p>We recommend that the use of a weapon in domestic murders should not necessarily be seen as an aggravating factor.</p>
<p>Recommendation 11 Paragraph 8.1.23</p>	<p>Voluntary manslaughter 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.</p>
<p>Recommendation 12 Paragraph 8.1.24</p>	<p>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.</p>
<p>Recommendation 13 Paragraph 8.1.25</p>	<p>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.</p>
<p>Recommendation 14 Paragraph 8.1.26</p>	<p>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.</p>

<p>Recommendation 15 Paragraph 8.2.10</p>	<p>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.</p>
<p>Recommendation 16 Paragraph 8.3.29</p>	<p>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.</p>
<p>Recommendation 17</p>	<p>We recommend a comprehensive review of defences to murder in the form of a full public consultation involving all stakeholders including the higher courts judiciary. This should involve post-legislative scrutiny of the partial defence of loss of control, consideration of the defence of self-defence, consideration of what commentators have called the ‘rough sex defence’.</p>

11. Appendices

Appendix A: Terms of Reference

Please see: <https://www.gov.uk/government/publications/domestic-homicide-sentencing-review-terms-of-reference/domestic-homicide-sentencing-review-terms-of-reference>
(Accessed 16th February 2023)

1. Purpose of the Review

A review 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.

2. Objectives

The review will look at a cross-section of cases (in the form of an initial case review) to determine how cases of domestic homicide are dealt with under relevant sections of the current criminal law including statutory principles on sentencing for murder in relation to minimum term orders and relevant Sentencing Guidelines in relation to manslaughter, to assess how perpetrators and victims are being treated within the law.

The review will consider the following:

- The impact of statutory starting points for minimum terms set out in Schedule 21 of the Sentencing Act 2020 and the statutory aggravating and mitigating factors in paragraphs 9 and 10 of the same Schedule on sentences for murder where the victim is an intimate partner or former partner of the perpetrator. This will include an assessment of whether these starting points and the aggravating and mitigating factors are leading to gender (or any other) disparities in terms of sentencing outcomes.
- The review will then assess whether, in the light of this evidence, the statutory starting points in Schedule 21 and the aggravating and mitigating factors, as applied in these cases of domestic homicide, are fit for purpose.
- One particular issue that the review will consider is how the relevant provisions in Schedule 21 to the Sentencing Act 2020 in relation to murder and Sentencing Guidelines in relation to manslaughter are used in cases of domestic homicide where a weapon has been used in various circumstances, notably cases where a weapon has been brought to the scene of a killing with the necessary intent and where a weapon that is already at the scene has been used in a killing.
- The review will also consider any differences in the approach to sentencing of cases where a victim of domestic abuse has used a weapon to kill the perpetrator of such abuse compared to domestic homicide cases where a weapon is not used (by either a

victim or perpetrator of domestic abuse) or where a weapon is used by a perpetrator of domestic abuse against his or her victim, in cases of murder and manslaughter.

- The use of current defences to charges of murder when used by domestic abuse victims who kill their abuser.
- To include specific consideration of any differences, in terms of case outcomes (including sentencing outcomes), arising from the use of these defences, including partial defences, when compared with charges of murder where the victim has not been an abuser.
- The way in which the Definitive Sentencing Guidelines for Manslaughter are being applied in cases of domestic homicide, particularly those which are relevant to domestic abuse and how they may affect sentencing outcomes.

3. Scope

The review will examine cases of domestic homicide where an individual has caused the death of an intimate partner or former partner and has been charged and/or convicted of either murder or manslaughter. Such cases will have been dealt with in England and Wales. The primary focus of the initial case review will be an analysis of sentencing remarks in relation to the cross-section of cases, i.e. cases resulting in a conviction for either offence. The initial case review will also identify and analyse relevant data.

4. Outputs

There will be an initial report which seeks to provide an analysis of a selection of the above issues drawn from information gleaned from previous cases of domestic homicide ('the initial case review') and draw conclusions where possible.

This will be shared with the independent reviewer (see Governance below) who will consider the findings and, where appropriate, make recommendations for change. Any recommendations should be evidence-based in that they can be shown to be directly attributable to the findings from the initial case review, any related data analysis and any additional external analysis which the independent reviewer thinks may be relevant. Further internal analysis may also be conducted by the independent reviewer where it is deemed appropriate.

The findings of both the initial case review and the independent reviewer will be published after consideration by the Secretary of State following the end of the review.

5. Timing

The initial case review should be conducted and report by July 2021. The full review, including any recommendations, must be submitted to the Secretary of State by the end of 2021. The Secretary of State will consider the review and its recommendations before determining whether further consultation is needed or publishing the report.

6. Governance and Methodology

The reviewer will take the form of an independent expert who will be appointed by, and accountable to, the Secretary of State for delivery of the review. Details of the governance which achieves this accountability and the methodology for the review – including analysis of the initial case review and consultation with central government and other relevant bodies – will be agreed between the independent expert and the Secretary of State.

Appendix B: Glossary of Terms

Actus reus – the external element of a criminal offence i.e. the element which does not relate to an offender’s state of mind. The actus reus will usually contain three elements namely the conduct element (the act) the circumstance element (the factual matrix in which the act occurs) and the consequence element (the consequence of the act).

Aggravating factor – a factor which increases seriousness for the purpose of sentence.

Battered Woman/Wife Syndrome – a pattern of signs indicated by women who suffer persistent domestic violence which was researched and coined by Leonore E. Walker. Walker based her theory on a cycle of violence involving tension, explosion crisis and reconciliation through which a woman would pass at least twice. Walker concluded that victims stayed in battering relationships because they developed “learned helplessness” as a result of the incidents of extreme violence.

Controlling and coercive behaviour/ coercive control – a pattern of abuse where an abuser uses a strategy of non-reciprocal tactics of intimidation, isolation and control to undermine a victim’s physical and psychological integrity with the main means to establish control being the microregulation of everyday behaviours associated with stereotypical female roles such as housework, child care and aimed at the deprivation of rights and resources that are an integral part of citizenship and personhood.

Crown Court Digital Case System – an electronic system used by the prosecution, defence and the court for recording, storing, accessing all case material in respect of a prosecution in the Crown Court or Court of Appeal (Criminal Division).

Cumulative Provocation – provocative conduct perpetrated by the deceased towards the defendant which has built up over time.

DASH – Domestic abuse stalking and ‘honour’ based violence risk indicator checklist- a tool for practitioners (police and other) to identify victims of domestic abuse and to assess level of risk.

Defendant – the person accused of an offence.

Diminished Responsibility – one of the partial defences to murder based on an abnormality of mental functioning arising from a recognised medical condition which substantially impacts a defendant’s ability understand the nature of his or her conduct, to form a rational judgment or exercise self-control and which provides an explanation for the killing.

Domestic Homicide Review (DHR) – an examination of the circumstances in which the death of a person aged 16 or over has or appears to have, resulted from violence abuse or neglect by a person to whom he or she was related or with whom he was or had been in an intimate relationship.

External element – see the actus reus.

Fault element – the mens rea of a criminal offence or state of mind of an offender.

Femicide – The killing of women and girls because they are women and girls.

Gaslight – to gaslight is to manipulate someone into questioning their own reality. Gendered-relating or specific to people of one particular gender.

Gross negligence manslaughter – involuntary manslaughter where death results from a negligent breach of a duty of care which is owed by the defendant to the deceased, that in the negligent breach of that duty, the victim was exposed to the risk of death which was obvious and serious and that the circumstances were so reprehensible as to amount to gross negligence.

Intersectionality – the interconnected nature of social categorisations such as race, class and gender as applied to an individual or group which create overlapping and interdependent systems of discrimination or disadvantage.

Involuntary manslaughter – an unlawful killing which is done without the intention to cause really serious harm or to kill and therefore includes unlawful act manslaughter where recklessness is the fault element and gross negligence manslaughter where gross negligence is the fault element.

Law Commission – A statutory independent body which keeps the law of England and Wales under review and makes recommendations for reform.

Loss of control – One of the partial defences to murder which reduces murder to manslaughter if a defendant kills out of a loss of self-control which is triggered by a fear of serious violence or a justifiable sense of being seriously wronged in circumstances where a person of the defendant's sex and age with a normal degree of tolerance and self-restraint might have reacted in the same or similar way.

Mens rea – the fault element of a criminal offence which relates to the offender's state of mind i.e. intent, recklessness or negligence as opposed to their act.

Minimum term – the term which an offender convicted of murder and sentenced to life imprisonment must serve before he or she is eligible to apply for parole.

Misogyny – hatred of women.

Mitigating factor – a factor which goes to make an offence less serious for the purpose of sentence.

Morbid Jealousy – a psychiatric syndrome based on pathological jealousy also known as “Othello syndrome.”

Murder – an offence the actus reus or external element of which is to unlawfully cause the death of the victim and the fault element or mens rea is to intend to kill or to cause grievous bodily harm.

Overkill – the use of excessive, gratuitous violence beyond that necessary to cause death.

Patriarchy – a social system in which men hold the power to their own advantage and women are excluded from power.

Perspecticide – a term used by Evan Stark to describe the loss of perspective by a victim of coercive control who has been gaslighted.

Post-Traumatic Stress Disorder – a psychiatric diagnosis resulting from a person having experienced or witnessing a traumatic event or events in the case of Complex Post-Traumatic Stress Disorder.

Practice Direction – directions issued by the higher courts setting out best practice.

Provocation – an abolished partial defence to murder whereby a defendant could claim that he or she was provoked to lose his or her self-control because of things done or said by the victim.

Recklessness – a fault element where a defendant appreciates that there is a risk and in the circumstances known to him it is unreasonable to take that risk he goes onto take that risk.

Rough sex defence – the term used by commentators to describe the situation where a defendant asserts that a victim was injured or died as a result of rough sex to which she consented.

Sentencing Council – an independent non-departmental public body set up in 2010 which develops guidelines on sentence, monitors the impact of sentencing guidelines on sentencing practice and promotes awareness of sentencing among the public.

Sentencing Guidelines – guidelines issued by the Sentencing Council after formal consultation. The guidelines are intended to create transparency and consistency.

Starting point – figure in sentencing guidelines in respect of sentences other than murder (where guidelines are contained in Schedule 21 Sentencing Act 2020) which applies to all offenders irrespective of plea or previous convictions. The guidelines also provide non-exhaustive lists of aggravating and mitigating factors relating to the context of the offence and the offender. These factors can result in an upward or downward adjustments.

The Appellant – the person who has been granted leave to appeal against conviction or sentence.

The Applicant – the person who applies for leave to appeal against conviction or sentence. Ulterior intent-an intention to bring about a consequence beyond the criminal act or crime concerned.

Unlawful Act Manslaughter – a type of involuntary manslaughter where the fault element is recklessness.

Voluntary manslaughter – manslaughter where intent to cause really serious harm or to kill is the fault element and so all the elements of murder are present but the offence is mitigated to manslaughter by one or other of the partial defences namely, diminished responsibility or loss of control.

Appendix C: Schedule 21 Sentencing Act 2020

Please see: <https://www.legislation.gov.uk/ukpga/2020/17/schedule/21> (Accessed 16th February 2023)

SCHEDULE 21

DETERMINATION OF MINIMUM TERM IN RELATION TO MANDATORY LIFE SENTENCE FOR MURDER ETC

Modifications etc. (not altering text)

C1 [Sch. 21](#) modified (28.6.2022) by 2006 c. 52, s. 261A(5) (as inserted by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), ss. 148, 208(5)(p))

Interpretation

1 In this Schedule—

“child” means a person aged under 18;

“mandatory life sentence” means a mandatory life sentence passed in circumstances where the sentence is fixed by law.

Commencement Information

I1 Sch. 21 para. 1 in force at 1.12.2020 by [S.I. 2020/1236](#), reg. 2

Starting points

2 (1) If—

(a) the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is exceptionally high, and

(b) the offender was aged 21 or over when the offence was committed, the appropriate starting point is a whole life order.

(2) Cases that would normally fall within sub-paragraph (1)(a) include—

(a) the murder of two or more persons, where each murder involves any of the following—

(i) a substantial degree of premeditation or planning,

(ii) the abduction of the victim, or

(iii) sexual or sadistic conduct,

(b) the murder of a child if involving the abduction of the child or sexual or sadistic motivation,

[F1 (ba) the murder of a child involving a substantial degree of premeditation or planning, where the offence was committed on or after the day on which section 125 of the Police, Crime, Sentencing and Courts Act 2022 came into force,]

(c) the murder of a police officer or prison officer in the course of his or her duty, where the offence was committed on or after 13 April 2015,

(d) a murder done for the purpose of advancing a political, religious, racial or ideological cause, or

(e) a murder by an offender previously convicted of murder.

Textual Amendments

F1 [Sch. 21 para. 2\(2\)\(ba\)](#) inserted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\)](#), ss. 125, 208(5)(l)

Commencement Information

I2 Sch. 21 para. 2 in force at 1.12.2020 by [S.I. 2020/1236](#), reg. 2

3 (1) If—

(a) the case does not fall within paragraph 2(1) but the court considers that the seriousness of the offence (or the combination of the offence and one or more offences associated with it) is particularly high, and

(b) the offender was aged 18 or over when the offence was committed,

the appropriate starting point, in determining the minimum term, is 30 years.

(2) Cases that (if not falling within paragraph 2(1)) would normally fall within subparagraph (1)(a) include—

(a) in the case of a offence committed before 13 April 2015, the murder of a police officer or prison officer in the course of his or her duty,

(b) a murder involving the use of a firearm or explosive,

(c) a murder done for gain (such as a murder done in the course or furtherance of robbery or burglary, done for payment or done in the expectation of gain as a result of the death),

- (d) a murder intended to obstruct or interfere with the course of justice,
 - (e) a murder involving sexual or sadistic conduct,
 - (f) the murder of two or more persons,
 - (g) a murder that is aggravated by racial or religious hostility or by hostility related to sexual orientation,
 - (h) a murder that is aggravated by hostility related to disability or transgender identity, where the offence was committed on or after 3 December 2012 (or over a period, or at some time during a period, ending on or after that date),
 - (i) a murder falling within paragraph 2(2) committed by an offender who was aged under 21 when the offence was committed.
- (3) An offence is aggravated in any of the ways mentioned in sub-paragraph (2)(g) or (h) if section 66 requires the court to treat the fact that it is so aggravated as an aggravating factor.

Commencement Information

I3 Sch. 21 para. 3 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

4 (1) If—

- (a) the case does not fall within paragraph 2(1) or 3(1),
- (b) the offence falls within sub-paragraph (2), **F2...**
- (c) the offender was aged 18 or over when the offence was committed, **[F3and]**
- (d) the offence was committed on or after 2 March 2010,

the offence is normally to be regarded as sufficiently serious for the appropriate starting point, in determining the minimum term, to be 25 years.

(2) The offence falls within this sub-paragraph if the offender took a knife or other weapon to the scene intending to—

- (a) commit any offence, or
- (b) have it available to use as a weapon,

and used that knife or other weapon in committing the murder.

Textual Amendments

- F2** Word in [Sch. 21 para. 4\(1\)\(b\)](#) omitted (28.6.2022) by virtue of [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\), s. 208\(5\)\(aa\)](#), [Sch. 21 para. 9\(a\)](#)
- F3** Word in [Sch. 21 para. 4\(1\)\(c\)](#) inserted (28.6.2022) by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\), s. 208\(5\)\(aa\)](#), [Sch. 21 para. 9\(b\)](#)

Commencement Information

- I4** Sch. 21 para. 4 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

- 5 If the offender was aged 18 or over when the offence was committed and the case does not fall within paragraph 2(1), 3(1) or 4(1), the appropriate starting point, in determining the minimum term, is 15 years.

Commencement Information

- I5** Sch. 21 para. 5 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

- [F4 5A** (1) This paragraph applies if—
- (a) the offender was aged under 18 when the offence was committed, and
 - (b) the offender was convicted of the offence on or after the day on which section 127 of the Police, Crime, Sentencing and Courts Act 2022 came into force.
- (2) The appropriate starting point, in determining the minimum term, is the period given in the entry in column 2, 3 or 4 of the following table that corresponds to—
- (a) the age of the offender when the offence was committed, as set out in column 1, and
 - (b) the provision of this Schedule that would have supplied the appropriate starting point had the offender been aged 18 when the offence was committed, as set out in the headings to columns 2, 3 and 4.

1	2	3	4
Age of offender when offence committed	Starting point supplied by paragraph 3(1) had offender been 18	Starting point supplied by paragraph 4(1) had offender been 18	Starting point supplied by paragraph 5 had offender been 18
17	27 years	23 years	14 years
15 or 16	20 years	17 years	10 years
14 or under	15 years	13 years	8 years

Textual Amendments

F4 Sch. 21 paras. 5A and 6 substituted (28.6.2022) for Sch. 21 para. 6 by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\), ss. 127, 208\(5\)\(l\)](#)

6 (1) This paragraph applies if—

- (a) the offender was aged under 18 when the offence was committed, and
- (b) the offender was convicted of the offence before the day on which section 127 of the Police, Crime, Sentencing and Courts Act 2022 came into force.

(2) The appropriate starting point, in determining the minimum term, is 12 years.]

Textual Amendments

F4 Sch. 21 paras. 5A and 6 substituted (28.6.2022) for Sch. 21 para. 6 by [Police, Crime, Sentencing and Courts Act 2022 \(c. 32\), ss. 127, 208\(5\)\(l\)](#)

Aggravating and mitigating factors

7 Having chosen a starting point, the court should take into account any aggravating or mitigating factors, to the extent that it has not allowed for them in its choice of starting point.

Commencement Information

I6 Sch. 21 para. 7 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

8 Detailed consideration of aggravating or mitigating factors may result in a minimum term of any length (whatever the starting point), or in the making of a whole life order.

Commencement Information

I7 Sch. 21 para. 8 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

- 9 Aggravating factors (additional to those mentioned in paragraphs 2(2), 3(2) and 4(2)) that may be relevant to the offence of murder include—
- (a) a significant degree of planning or premeditation,
 - (b) the fact that the victim was particularly vulnerable because of age or disability,
 - (c) mental or physical suffering inflicted on the victim before death,
 - (d) the abuse of a position of trust,
 - (e) the use of duress or threats against another person to facilitate the commission of the offence,
 - (f) the fact that victim was providing a public service or performing a public duty, and
 - (g) concealment, destruction or dismemberment of the body.

Commencement Information

I8 Sch. 21 para. 9 in force at 1.12.2020 by [S.I. 2020/1236, reg. 2](#)

- 10 Mitigating factors that may be relevant to the offence of murder include—
- (a) an intention to cause serious bodily harm rather than to kill,
 - (b) lack of premeditation,
 - (c) the fact that the offender suffered from any mental disorder or mental disability which (although not falling within section 2(1) of the Homicide Act 1957) lowered the offender's degree of culpability,
 - (d) the fact that the offender was provoked (for example, by prolonged stress) but, in the case of a murder committed before 4 October 2010, in a way not amounting to a defence of provocation,
 - (e) the fact that the offender acted to any extent in self-defence or, in the case of a murder committed on or after 4 October 2010, in fear of violence,
 - (f) a belief by the offender that the murder was an act of mercy, and
 - (g) the age of the offender.

Commencement Information

I9 Sch. 21 para. 10 in force at 1.12.2020 by [S.I. 2020/1236](#), reg. 2

11 Nothing in this Schedule restricts the application of—

- (a) section 65 (previous convictions),
- (b) section 64 (bail), or
- (c) section 73 (guilty plea),

or of section 238(1)(b) or (c) or 239 of the Armed Forces Act 2006.

Commencement Information

I10 Sch. 21 para. 11 in force at 1.12.2020 by [S.I. 2020/1236](#), reg. 2

Offences committed before 18 December 2003

12 (1) This paragraph applies where the offence was committed before 18 December 2003.

(2) If the court makes a minimum term order, the minimum term must, in the opinion of the court, be no greater than the period which, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to notify to the offender as the minimum period which in the view of the Secretary of State should be served before the prisoner's release on licence.

(3) The court may not make a whole life order unless it is of the opinion that, under the practice followed by the Secretary of State before December 2002, the Secretary of State would have been likely to notify the prisoner that the Secretary of State did not intend that the prisoner should ever be released on licence.

Commencement Information

I11 Sch. 21 para. 12 in force at 1.12.2020 by [S.I. 2020/1236](#), reg. 2

Appendix D: Summary of Findings from Review Team from Sentencing Remarks

Methodology

For the first stage of this review, the sentencing remarks of a sample of 120 cases of domestic homicide between 2018 and 2020 where the victim was a partner or ex-partner of the offender were analysed. Most cases were concluded in the courts during the financial years 2018/2019 and 2019/2020.

The cases were identified from data supplied by the Crown Prosecution Service/HMCTS, the Home Office Homicide Index and some ad hoc research (from news reports and other sources).

The sentencing remarks were reviewed with a focus on the following areas:

- Gender of perpetrator and victim.
- Offence sentenced for: murder or manslaughter and, for manslaughter, the type (diminished responsibility, unlawful act etc.).
- Sentence given.
- Defence raised.
- Aggravating and mitigating factors.
- Use of a weapon, including whether it was from the scene or taken to the scene.
- Whether the perpetrator and/or victim had experienced domestic abuse during or after the relationship.

This was then added to as the review developed to also include:

- **End of the relationship and jealousy:** Following a review of the evidence uploaded to the Crown Court Digital Case System ('CCDCS') in the cases of Thomas Griffith and Joe Atkinson, whether the killing had occurred at or after the end of the relationship and evidence of jealousy were factored into our sample of 120 cases. Where the CCDCS could not be used, sentencing comments were used, augmented by media reports.
- **'Overkill':** This is defined in the literature as "the use of excessive, gratuitous violence beyond that necessary to cause the victim's death." For this analysis, a subjective judgment on whether overkill had occurred was made based on the circumstance of each case (for example, if a victim was stabbed 20 times). The use of aggravating factors of "sustained attack" or "physical and mental suffering" applied by the judge in the sentencing remarks was used as a proxy for whether overkill was being given weight or not when sentencing.
- **Strangulation:** This was done by identifying the presence of strangulation in the killing from the details of the case and whether there was any mention in the sentencing remarks of the method of killing being an aggravating factor and whether there was a prior history of strangulation in the relationship.

- **Coercive control:** Building on the analysis of domestic abuse during or after the relationship, mention of coercive control was reviewed.

Where numbers allowed, the results were analysed by gender.

Limitations

There are several limitations that need to be considered when interpreting the results from this analysis.

- Due to the methods used to identify relevant cases to analyse, there is no guarantee that every relevant case from the period reviewed has been identified.
- Sentencing remarks are, by their nature, a summary of how the sentence was reached and are not a full representation of the case. As such, findings are limited to what has specifically been mentioned in the remarks. For example, factors have only been coded as aggravating or mitigating where explicitly referred to as such. This does not necessarily mean that a judge did not have a particular factor in mind just because it was not remarked on specifically.
- Likewise, findings on previous domestic abuse and coercive control by the perpetrator or victim were limited to what was mentioned in sentencing remarks. Considering the wider issues of under reporting of domestic abuse and challenges in relation to the existence of evidence in domestic abuse cases, these findings are likely to be an under report.
- Cases included those completed in 2018/19 and 2019/20. The Sentencing Council published new guidelines effective November 2018 of how offenders convicted of manslaughter should be sentenced in England and Wales. However, the guidelines promote consistency in sentencing and transparency in how sentencing decisions should be reached, so are unlikely to change sentence levels for most case types (changes may affect Gross Negligence cases more than others).
- Care must be taken when interpreting small numbers to form conclusions, particularly when working out averages (such as average sentence/tariff length received). This is particularly the case for gender breakdowns due to the relatively small number of cases with female perpetrators.
- Missing data is excluded from calculations.

The findings from the sentencing remarks analysis are limited to what has been recorded and results should therefore be considered indicative and will have an element of subjective interpretation.

Findings

Whilst findings from this review have been included throughout the report, a summary of the findings is provided below. Totals in tables/figures may not add to 100% where they are rounded.

Gender of perpetrator and victim

- As shown in Table 1, most perpetrators were male, accounting for 83% of the total sample, 91% of the murder cases and 58% of manslaughter cases.
- Female perpetrators accounted for 21 (18%) cases in the sample.

Table 1: Offence type by gender of perpetrator

Gender of Perpetrator	Murder	Manslaughter	Total
Male	81 (91%)	18 (58%)	99 (83%)
Female	8 (9%)	13 (42%)	21 (18%)
TOTAL	89 (100%)	31 (100%)	120 (100%)

- In all but one case, the domestic homicides involved those in a heterosexual relationship. There was one case with a female perpetrator and victim.
- Therefore, all male perpetrators had female victims and 20 of the 21 female perpetrators had male victims. As such, most victims (n=100, 83%) were female.

Offence

- There were 89 (74%) sentences for murder and 31 (26%) for manslaughter.
- Table 2 shows the type of manslaughter perpetrators were sentenced for. Unlawful act and diminished responsibility were the two most common types.
- Six of the 12 manslaughter by diminished responsibility perpetrators were sentenced to a hospital order with restrictions, including one female perpetrator.
- Loss of control was a defence made in 11 (9%) of the 120 cases in the case sample. It was successful in 2 of those cases.

Table 2: Type of manslaughter by gender of perpetrator

Type	Female Perpetrator	Male Perpetrator	Total Number (%)
Unlawful Act	7	6	13 (42%)
Diminished Responsibility	4	8	12 (39%)
Gross Negligence	0	3	3 (10%)
Loss of Control	2	0	2 (6%)
Not Recorded	0	1	1 (3%)
TOTAL	13	18	31 (100%)

Sentencing starting points for murder cases

- When sentencing murder cases, a sentencing starting point is allocated based on Schedule 21. The final sentence will also consider aggravating or mitigating factors, previous convictions, and any guilty plea.
- Table 3 sets out the number of murder cases in our sample by their sentencing starting point based on Schedule 21. Most sentences for murder in our sample had a starting point of 15 years. None had a starting point of a whole life order.
- For under-18s, the starting point is 12 years. As shown in Table 3, there was one youth in the sample.

Table 3: Number of murder cases by sentencing starting point

Sentencing Starting Point	Number (%)
12 years	1 (1%)
15 years	68 (76%)
25 years	11 (12%)
30 years	9 (10%)
TOTAL	89 (100%)

- The average minimum term for all 89 murder cases was 20.5 years
- For cases with a starting point of 15 years it was 18.7 years.
- The average tariff for murder cases for male perpetrators was 20.8 years and 17.6 years for female perpetrators. However, the small number of the latter (n=8) prevents any firm conclusions being made.
- There were five female perpetrators who had a starting point of 15 years and, as two of them received a lower tariff than this, the average tariff for the five women was 14.6 years compared to men with a 15 year starting point who, on average, received 19 years. These figures should be viewed with caution however given the very low numbers of females involved.

Use of a weapon

- A weapon was recorded as being used in 72% of the cases analysed and in 73% of murder cases.

Table 4: Use of a weapon by offence

Offence	Murder	Manslaughter	All Cases
Weapon Used	63 (73%)	21 (68%)	86 (72%)
No Weapon Used	24 (27%)	10 (32%)	34 (28%)
TOTAL	89 (100%)	31 (100%)	120 (100%)

- All female perpetrators with a male victim used a weapon. The one female perpetrator who did not use a weapon had a female victim – this was a manslaughter case.
- As shown in Table 5, two thirds of male perpetrators used a weapon.
- In 16 cases in the sample (13%) the killing was carried out by way of infliction of a single stab wound (which could indicate that the stabbing was purely functional in causing death). In 10 of these cases (63%) the perpetrator was female and in 6 (37%) the perpetrator was male.

Table 5: Use of a weapon by gender

Offence	Female Perpetrator	Male Perpetrator
Weapon Used	20 (95%)	66 (67%)
No Weapon Used	1 (5%)	33 (33%)
TOTAL	21 (100%)	99 (100%)

- For murder cases, Schedule 21 was amended to include a new category of seriousness based on an offender taking a knife to the scene intending to (a) commit any offence, or (b) have it available to use as a weapon, and (c) used that knife or other weapon when committing the murder. In this sample, the average minimum tariff for cases where a weapon was taken to the scene was 6.5 years higher than the average for cases where a weapon was not classed as having been taken to the scene.

End of relationship/jealousy

- The end of a relationship and/or jealousy was commented on in 45 cases (38%). Only one of these involved a female perpetrator.
- Of all 99 cases which involved a male perpetrator, jealousy or resentment at the end of the relationship was thought to be a catalyst in the killing in 44 (44%) cases.
- Of the 89 murder cases, 43 (48%) involved the end of a relationship and/or jealousy. All but one of these cases involved a male perpetrator.

Coercive control during or after the relationship

- Coercive control of the victim was recorded as having happened in 46 (38%) of the 120 cases. All perpetrators in these cases were male and 45 of these cases were murder cases.
- In 29% of the total 99 cases which involved a male perpetrator the perpetrator had been coercive and controlling towards the victim and feelings of jealousy or resentment at the ending of the relationship could be considered to be the catalyst for the killing.

Overkill

- In 56 (47%) of the 120 cases a subjective assessment was made that overkill had occurred.
- A weapon was used in 49 (88%) of the overkill cases.

By gender of perpetrator

- Male perpetrators accounted for all but one overkill cases, so 56% of the 99 cases involving a male perpetrator involved overkill whereas one (5%) of the 21 cases with a female perpetrator did.
- In more than half (56%) of the overkill cases involving a male perpetrator, feelings of jealousy or resentment at the end of the relationship could be considered to be the catalyst for the killing.
- Of the 55 overkill cases involving a male perpetrator, two in five (40%, n=22) were cases in which it was noted that the perpetrator had previously controlled and coerced the victim and there were feelings of jealousy or resentment at the end of the relationship that could be considered the catalyst for the killing.

Offence type

- Most (95%, n=53) overkill cases were sentenced for murder, but 3 (5%) were sentenced for manslaughter (all male perpetrator cases). As an aggravating factor.
- Overkill was referred to in sentencing remarks in the form of the aggravating factors of a sustained attack/ prolonged mental/physical suffering in 40 (71%) of the 56 cases. There was also one case where it was instead reflected in the harm/culpability assessment.

Strangulation

- 35 (29%) of the 120 cases involved strangulation. Most (91%, n=32) of these involved manual strangulation, with the remaining three involving the use of a ligature.
- Only one case (manual strangulation) involved a female perpetrator and the victim was also female.
- Of the 34 cases with a male perpetrator, 16 (47%) solely involved manual strangulation and in the remaining 18 (53%) cases, strangulation was carried out with a ligature or was accompanied by an assault or an attack with a weapon.
- 27 (77%) of the 35 strangulation cases were murder cases with an average tariff of 18.6 years.
- Of the 13 murder cases committed solely by way of manual strangulation, the average minimum term was 18.1 years. However, there was one case which fell into the 30 year starting point because it was done for gain and when this case was removed, the average minimum term was 17.1 years. The remaining 14 strangulation cases resulting in a murder conviction involved an additional assault with or without a weapon or the use of a ligature. The average sentence length was 18.6 years.
- The remaining eight were manslaughter – four by diminished responsibility (including the female perpetrator case) and four as an unlawful act.
- In 16 of the 35 (46%) cases there was a history of domestic abuse by the perpetrator (including the one female perpetrator case); in 13 (37%) of the 35 cases coercive control by the perpetrator was recorded (all male perpetrators); and in 8 cases there was a history of previous non-fatal strangulation (all male perpetrators).

- The end of the relationship and/or jealousy was noted as a catalyst for the killing in 12 (34%) of the 35 cases (all male perpetrators).
- In 15 (43%) of the 35 cases (including the case with the female perpetrator) the method of the killing was noted as an aggravating factor. However, in 11 of these 15 cases (all male perpetrators) the strangulation was part of a wider attack or assault.
- In 14 of the 34 (41%) strangulation cases with a male perpetrator, the sentencer considered the offence was aggravated due to the suffering inflicted by the attack but in the remaining 20 cases (59%) there was no recognition of the method of the killing in those factors which were said to aggravate the offence.

Appendix E: Home Office Homicide Index Data

Context

Data on police recorded domestic homicides between April 2016 and March 2020 from the Home Office Homicide Index²⁵⁵ were shared with the Ministry of Justice to support this review.²⁵⁶ In line with the review’s definition of ‘domestic’, only homicide cases where the perpetrator was an intimate partner and/or ex-partner were included in the data received.

Notes

- As at 15 December 2020 and figures are subject to revision as cases are dealt with by the police and by the courts, or as further information becomes available.
- For the purposes of the Homicide Index, analyses are based on the principal suspect in a given homicide case.
- Suspects in a homicide case are defined as either: a person who has been charged with a homicide offence, including those who were subsequently convicted and those awaiting trial or a person who is suspected by the police of having committed the offence but is known to have died or died by suicide. Suspects that were acquitted have been included in this analysis, which departs from published statistics.

Findings

- Between April 2016 and March 2020, there were 350 cases of intimate partner/ex-partner homicides (including those resulting in acquittal).
- Of the 350 principal suspects of intimate partner/ex-partner homicide cases, 87% (305) were male and 13% (45) female.

Table 1: Intimate partner/ex-partner homicide cases, April 2016 to March 2020

12 Months Ending				TOTAL
March 2017	March 2018	March 2019	March 2020	
97	77	104	72	350

- As shown in Table 2, the most common method of killing in intimate partner domestic homicide cases (44%) was by a sharp instrument.
- Strangulation was the next common method of killing (21% of all cases), however, this was almost purely driven by male suspects (24% of all cases with a male principal suspect, compared with 2% of cases with a female principal suspect).

²⁵⁵ As at 15 December 2020. Figures are subject to revision as cases are dealt with by the police and by the courts, or as further information becomes available.

²⁵⁶ A data share agreement was put in place for this data to be shared in line with Data Protection requirements.

Table 2: Method used in intimate partner/ex-partner homicide cases, April 2016 to March 2020

	All Cases	Female Principal Suspects	Male Principal Suspects
Sharp Instrument	44%	67%	41%
Blunt Instrument	10%	11%	10%
Hitting, Kicking etc	9%	7%	10%
Strangulation	21%	2%	24%
Shooting	3%	0%	4%
Explosion	0%	0%	0%
Burning	1%	2%	1%
Drowning	1%	0%	1%
Poison or Drugs	1%	0%	1%
Motor Vehicle	1%	2%	1%
Other	1%	2%	1%
Not Known	7%	7%	7%
Total	350	45	305

- Where final outcome was known, seven principal suspects went on to be acquitted or the proceedings were discontinued.

Appendix F: Manslaughter Definitive Guideline Sentencing Council

Please see: <https://www.sentencingcouncil.org.uk/wp-content/uploads/Manslaughter-definitive-guideline-Web.pdf> (Accessed 16th February 2023)

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Sentencing Council

Sentencing Council meeting:
Paper number:

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

Lead Council member:
Lead official:

Jo King
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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

Business Plan

Financial year 2023/24

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Sentencing Council

Chairman's introduction

I am pleased to present the Sentencing Council's 10th business plan, setting out the Council's aims for the financial year 2023/24.



This is my first business plan as chairman of the Sentencing Council, a role I took over in August 2022. I would firstly like to pay tribute to my predecessor Lord Justice Holroyde, who was chairman of the Council from 2018 until his appointment as Vice President of the Court of Appeal Criminal Division last year. Under his stewardship the Council has continued to embed sentencing guidelines as a central feature of the criminal justice system. Virtually all major offences seen regularly by the courts now have dedicated guidelines and, with the publication of revised Motoring offence guidelines later this year, all the guidelines produced by the predecessor body, the Sentencing Guidelines Council, will have been updated. Lord Justice Holroyde has also set the Council on a clear direction for the coming years in producing the Council's strategy for 2021-26, which guides the priorities set out in this year's business plan.

In the year 2022/23 we have successfully carried out the projects which were set out in last year's business plan. We have published revisions to the Council's existing guidelines for burglary, terrorism, and sexual offences, and consulted on and published new definitive guidelines for underage sale of knives and revised child cruelty guidelines. We have also consulted on and published the second tranche of annual miscellaneous amendments to guidelines, resulting from updates to the law and feedback on how guidelines are operating.

We have consulted on guidelines for perverting the course of justice and witness intimidation, revised Animal cruelty guidelines, new and revised guidelines for motoring offences, and on a revised overarching guideline for totality. In the last year we have also published research on public perceptions of sentencing, a review of the available research on the effectiveness of different sentencing disposals, sentencing data related to drugs offences, and on equality and diversity in the work of the Sentencing Council.

In the coming year, we will:

- publish definitive revisions to animal cruelty guidelines
- publish new and revised guidelines for motoring offences
- consult on revised guidelines for aggravated vehicle taking
- publish definitive guidelines on perverting the course of justice and witness intimidation

- consult on a revised overarching Imposition guideline
- develop new guidelines for immigration offences and
- consult on guidelines for blackmail and threats to disclose private sexual images, kidnap and false imprisonment offences.

Consultation is a vital aspect of the Council's work, and one which we take very seriously. For guidelines to succeed they must be informed by the knowledge and expertise of those people who have legal or practical experience in the area we are examining, and by the views of those with an interest in our work or in the operation of the wider criminal justice system. We are always grateful to the people and organisations who give their valuable time to contribute to our consultations, and who help us to make improvements before publishing definitive guidelines.

In addition to publishing guidelines, the Council is required to monitor and evaluate their operation and effect. In January 2023 we launched a data collection exercise in all magistrates' courts and all locations of the Crown Court. This six-month study covered 13 specific offences. Any data collection exercise of this kind is an imposition on magistrates and judges. It became apparent as the exercise progressed that it was placing too great a burden on sentencers. Consequently we reduced the number of offences to which the data collection applied. We remain grateful to all those magistrates and judges who provide data in relation their sentences. It is of critical importance to all aspects of the Council's work.

In the coming year we will also continue our evaluation work which will cover looking at guidelines covering bladed articles and offensive weapons, intimidatory offences and breach offences. We will also publish findings from an assessment of the impact of the Imposition guideline and undertake work to review the expanded explanations that accompany some of the guideline factors. This review of the expanded explanations will supplement external work being undertaken on user testing of the guidelines and which will explore how sentencers use and access guidelines in practice.

We will continue this year to develop You be the Judge, an online, interactive guide to sentencing. You be the Judge will use video stories to show the public how sentencing works in magistrates' courts and the Crown Court. We are developing the tool in partnership with the Judicial Office and will be promoting it to teachers for use in schools and to public audiences of all ages.

Throughout the year, we will continue to inform public audiences, including victims, witnesses, offenders and their families, about sentencing and sentencing guidelines by developing content for our website designed to reach non-expert audiences, seeking coverage in the mainstream and specialist media relating to key Council activities and working with other organisations that can help us reach a wider public.

The purpose of publishing our business plan is to make sure that everyone who has an interest in our work is kept informed of developments. The Council's priorities can, and do, change throughout the year and from one year to the next. We have a statutory duty to consider requests from the Lord Chancellor and the Court of Appeal to review the sentencing of particular offences. We may also need to consider

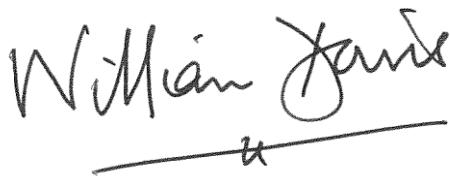
amending our work plan if we are required to undertake work on new or particularly complex areas of sentencing, for example as a result of new legislation.

Subject to other matters arising which may affect our priorities, the current workplan can be seen at Annex C. We will review the plan in the autumn and publish updates, as appropriate, on our website.

There have been a number of changes in personnel on the Council throughout 2022/23. In July 2022, Rosina Cottage KC's tenure on the Council came to an end after two terms. Dr Alpa Parmar served as an academic member on the Council between 2019 and 2022. Maura McGowan KC and HHJ Rebecca Crane left the Council in the first part of 2023, both having served two terms. I would like to thank them all for their service to the Sentencing Council over the years and wish them the very best for the future.

In May 2022, we welcomed Stephen Leake as the district judge representative on the Council, and in July Dr Elaine Freer joined the Council as an academic representative. In August 2022 Richard Wright KC joined the Council to provide the defence community's perspective. Most recently, at the start of 2023 we welcomed Mr Justice Wall as a High Court judge on the Council.

Finally, I would like to pay tribute to the staff of the Office of the Sentencing Council. They are the Council's most valuable resource and I am very proud of the high quality of the work which they produce. We operate within a limited budget and it is testament to the staff's ability and dedication that the Council continues to have the success that it does.

A handwritten signature in black ink that reads "William James". Below the signature is a horizontal line with a small mark in the center, likely a flourish or a signature element.

April 2023

Background and membership (as at 1 April 2023)

The Sentencing Council is an independent, non-departmental public body (NDPB) of the Ministry of Justice (MoJ). The Council was set up by Part 4 of the Coroners and Justice Act 2009 (“the Act”) to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary. Our primary role is to issue guidelines, which the courts must follow unless it is in the interests of justice not to do so. The Council generally meets 10 times a year; minutes are published on our website.

Appointments to the Council

The Lord Chief Justice, the Right Honourable Lord Burnett of Maldon is President of the Council. In this role he oversees Council business and appoints judicial members, with the agreement of the Lord Chancellor.

The Lord Chancellor and Secretary of State for Justice appoints non-judicial members, with the agreement of the Lord Chief Justice.

All appointments are for a period of three years, with the possibility of extending up to a maximum of 10 years. Membership of the Council as of 1 April 2023 is as follows:

Members

The Council comprises eight judicial and six non-judicial members, although there is currently a vacancy for a judicial member following Rebecca Crane’s departure.

Chair: The Right Honourable Lord Justice William Davis

William Davis was appointed as Chairman of the Sentencing Council by the Lord Chief Justice, with the agreement of the Lord Chancellor, with effect from 1 August 2022. He was formerly a judicial member of the Sentencing Council between 2012 and 2015.

William was called to the Bar in 1976. He was appointed an Assistant Recorder in 1992, a Recorder in 1995 and QC in 1998. He was appointed to the Circuit Bench in 2008. During 2009 he was appointed a Deputy High Court Judge (QBD and Admin), a Senior Circuit Judge and Recorder of Birmingham. He was appointed to the High Court Bench in May 2014 and was a Presiding Judge of the Northern Circuit from 2016 to 2019. William was appointed to the Court of Appeal in October 2021.

The Right Honourable Lord Justice Holroyde

Tim Holroyde is a Lord Justice of Appeal and Vice-President of the Court of Appeal (Criminal Division). For many years he practised as a barrister on the Northern Circuit taking silk in 1996. In 2009 he was appointed as a High Court judge, covering a wide range of work including serious criminal cases. He was Course Director of the Judicial College’s Serious Crime Seminar from 2011 to 2015, and judge in charge of the list of terrorism offences from 2016 to 2017, when he was appointed to the Court of Appeal.

He became a member of the Sentencing Council for England and Wales in 2015, and was Chairman between 2018 and 2022.

Her Honour Judge Rosa Dean

Rosa Dean was called to the Bar in 1993. She was appointed as a District Judge (Magistrates' Courts) in 2006, a Recorder in 2009 and a Circuit Judge in 2011. She was appointed to the Sentencing Council on 6 April 2018.

Beverley Thompson OBE

Beverley Thompson has spent over 30 years working in the criminal justice sector initially as a probation officer in London. She was Director for Race, Prisons and Resettlement Services at NACRO for 10 years. She was appointed to the Sentencing Council on 15 June 2018.

Max Hill KC

Max Hill is the Director of Public Prosecutions and head of the Crown Prosecution Service. He was appointed to the Sentencing Council on 1 November 2018.

Diana Fawcett

Diana Fawcett is Chief Executive of Victim Support. She joined the charity as Director of Operations in February 2015 and became Chief Executive in January 2018.

Diana was appointed to the Council on 5 April 2019 and has specific responsibility for promoting the welfare of victims of crime.

Nick Ephgrave QPM

Nick Ephgrave is currently posted to the National Police Chiefs' Council and was previously Assistant Commissioner for Frontline Policing in the Metropolitan Police (Met). He was appointed to that post in March 2020, having previously served as AC for Met Operations and, prior to that, as Chief Constable of Surrey Police. Nick was appointed to the Sentencing Council on 26 May 2020.

Jo King JP

Jo King was appointed to the Sussex Central Bench in 2002. She is currently the lead magistrate on Reform and co-chair of the Magistrates' Engagement Group. She is a member of the Judicial Conduct and Investigations Office disciplinary panels and the Magistrates' Association Board of Trustees. Jo was appointed to the Sentencing Council as the magistrate member on 8 October 2020.

The Honourable Mrs Justice May DBE

Juliet May was called to the Bar by the Inner Temple in 1988, becoming a bencher in 2010. She was appointed a recorder in 2001 and took silk in 2008, being appointed to the Circuit Bench later the same year. She was appointed to the High Court (Queen's Bench Division) in 2015. From 2017-2020 she was a Presiding Judge on the Western Circuit. Dame Juliet was appointed to the Sentencing Council as a High Court member on 8 October 2020.

District Judge (Magistrates' Courts) Stephen Leake

Stephen Leake was called to the Bar by the Middle Temple in 2002 and practiced mainly in criminal law. He was appointed as a Deputy District Judge (Magistrates' Courts) in 2019 and as a District Judge (Magistrates' Courts) in 2021. He is based at Medway Magistrates' Court. Stephen was appointed to the Council as the District Judge member on 23 May 2022.

Dr Elaine Freer

Elaine Freer is a Fellow and College Teaching Officer in law at Robinson College in the University of Cambridge, where she teaches Criminal Law, Criminal Procedure and Evidence, and Criminology, Sentencing and the Penal System, and writes on topics in those areas. She is also a practising barrister at 5 Paper Buildings, where she prosecutes and defends in criminal cases. In 2019 she worked as a Lawyer on the Criminal Team at the Law Commission of England and Wales, involved in the project to reform hate crime laws. Elaine joined the Council as the academic member on 1 July 2022.

Richard Wright KC

Richard Wright was called to the Bar in 1998 and took silk in 2013. He has practised from 6 Park Square in Leeds since 1998 where he has been Head of Chambers since 2013.

Since 2020 he has been Leader of the North Eastern Circuit, leading the professions' response to the Covid-19 emergency and, in 2022, was invited to join the legal team of the UK Covid-19 Inquiry.

Richard was appointed Deputy District Judge (Magistrates' Courts) in 2006, Recorder of the Crown Court in 2012 and Deputy High Court Judge in January 2023. He has been the defence representative on the Sentencing Council since 1 August 2022.

The Honourable Mr Justice Wall

Mark Wall was appointed a High Court Judge in October 2020 having previously been a Circuit Judge based at Birmingham Crown Court. Prior to his appointment to the circuit bench he was a Recorder and Deputy High Court Judge. He was called to the Bar in 1985 and took silk in 2006. He was leader of the Midland Circuit between 2011 and 2014. Mark was appointed to the Sentencing Council as a High Court member on 2 January 2023.

Sub-groups

The Council has sub-groups to provide oversight in three areas: analysis and research, confidence and communication and governance. The sub-groups' roles are mandated by the Council, their membership reflects a broad range of judicial and non-judicial members, and all key decisions are made by the full membership.

Analysis and research: this group advises and steers the analysis and research strategy, including identifying research priorities so that it aligns with the Council's statutory commitments and work plan. Chaired by: Dr Elaine Freer

Confidence and communication: this group advises on and steers the work programme for the Communication team so that it aligns with the Council's statutory commitments and work plan. Chaired by: Her Honour Judge Rosa Dean.

Governance: the Governance sub-group supports the Council in responsibilities for issues of risk, control and governance, by reviewing the comprehensiveness and reliability of assurances on governance, risk management, the control environment and the integrity of financial statements. Independent member: Elaine Lorimer, Chief Executive, Revenue Scotland. Chaired by: Beverley Thompson OBE.

The Council has also established a working group to advise on matters relating to equality and diversity and make sure that the full range of protected characteristics are considered in our work. The group also considers ways in which the Council could engage more effectively with, and take account of the views and perspectives of, representatives of people with protected characteristics, and with offenders and victims. Chaired by: Juliet May.

Where necessary, the Council sets up working groups to consider particular aspects of the development of a guideline or specific areas of business. It also sometimes invites contributions from people who are not members of the Council but who have particular experience and expertise in fields of relevance to the guidelines.

Objectives

Statement of Purpose

The Sentencing Council for England and Wales promotes a clear, fair and consistent approach to sentencing through the publication of sentencing guidelines, which provide clear structure and processes for judges and magistrates, and victims, witnesses, offenders and the public.

Statutory duties

The Council's objectives are informed by our statutory duties under the Act, including:

(Section 120) Publishing draft guidelines and consulting when preparing them (including consulting the Lord Chancellor and Justice Select Committee); publishing definitive guidelines after making necessary amendments.

In preparing guidelines, having regard to:

- the sentences imposed by courts;
- the need to promote consistency;
- the impact of sentencing on victims;
- the need to promote public confidence in the Criminal Justice System;
- the cost of different sentences and their relative effectiveness in preventing re-offending; and
- the results of monitoring.

Under section 124 the Council may be asked to prepare guidelines by the Lord Chancellor or the Court of Appeal and when this happens it should consider whether to do so.

(Section 127) Preparing and publishing resource assessments for both draft and definitive guidelines. These resource assessments should assess the resources required for the provision of prison places, probation provision and youth justice services.

(Section 128) Monitoring the operation of guidelines and considering what conclusions can be drawn, including:

- the frequency with which, and extent to which, courts depart from sentencing guidelines;
- factors which influence the sentences imposed by the courts;
- the effect of guidelines in promoting consistency; and
- the effect of guidelines on the promotion of public confidence in the criminal justice system

(section 119) Publishing a report on the exercise of the Council's functions during the year.

Under section 129 the Council may also promote awareness of matters in relation to the sentencing of offenders, in particular the sentences imposed, the costs of different sentences and their relative effectiveness in preventing reoffending, and the operation and effect of guidelines

Under section 132, the Council has a duty to assess the effect, and prepare a report, where the Lord Chancellor refers any government policy or proposals likely to have a significant effect on resources for prison, probation or youth justice services

The activities for 2022/23 to deliver these statutory duties are outlined in **Table 1**.

Strategic objectives 2021-2026

Following the Council's consultation on our future priorities, coinciding with our tenth anniversary in 2020, the Council set strategic objectives to help shape our work from 2021 to 2026. These objectives set out how we plan to deliver our statutory duties as detailed above, and outline specific actions that the Council will take during the period and from which the activities for the year covered by this business plan flow:

- promote consistency and transparency in sentencing through the development and revision of sentencing guidelines
- ensure that all our work is evidence-based and will work to enhance and strengthen the data and evidence that underpins it
- explore and consider issues of equality and diversity relevant to our work and take any necessary action in response within our remit
- consider and collate evidence on effectiveness of sentencing and seek to enhance the ways in which we raise awareness of the relevant issues
- work to strengthen confidence in sentencing by improving public knowledge and understanding of sentencing, including among victims, witnesses and offenders, as well as the general public

For more information about these strategic objectives and how we are meeting them, you can visit Sentencing Council strategic objectives 2021-2026 [\[LINK\]](#). Alongside this business plan we are publishing an update on the actions under each strategic objective as set out on pages [x to x](#) of the document [\[LINK\]](#).

The Office of the Sentencing Council

In addition to the Council's statutory duties and strategic objectives, as with any successful organisation the Council depends on highly-skilled and well-motivated staff. To that end there are a number of specific objectives focussed on our people, with the goal of:

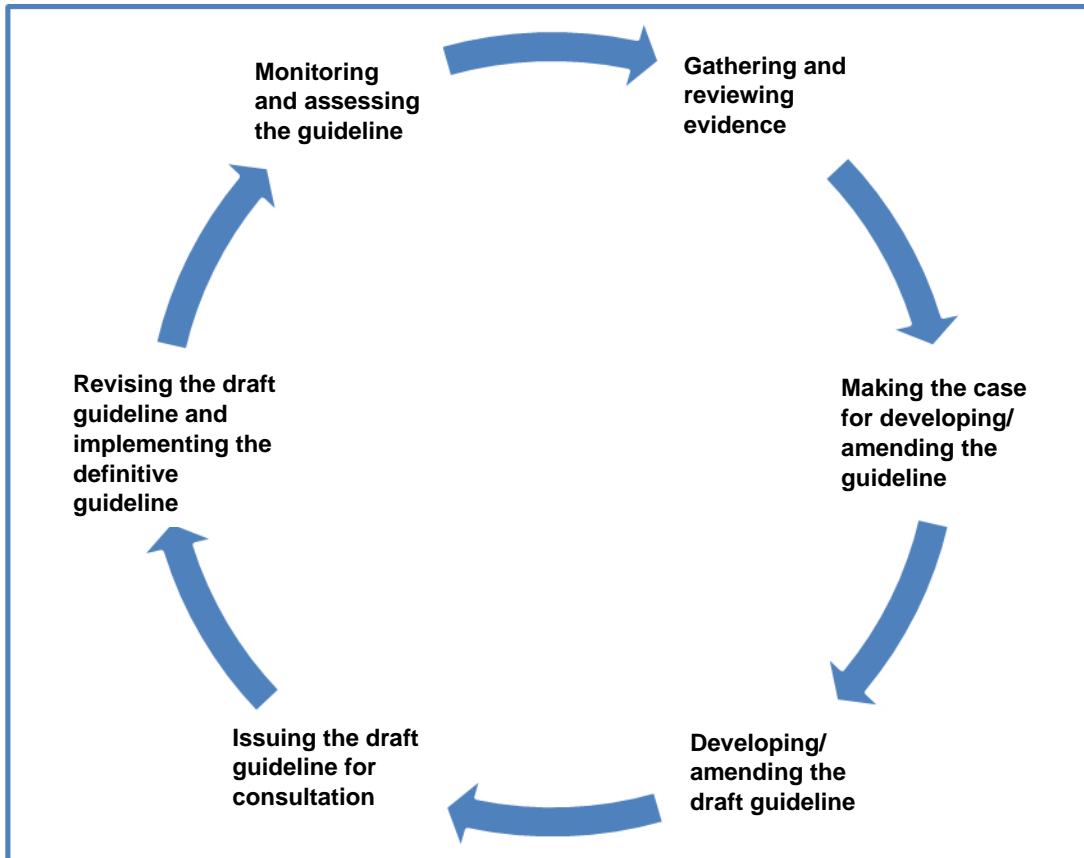
- delivering our objectives within the budget we are allocated;
- ensuring that the Office has a motivated and collaborative team who feel valued and engaged, and have the necessary capability and autonomy to deliver clear objectives; and
- working together to identify and implement more efficient ways of working and to ensure value for money.

These objectives are set out in section 3 of **Table 1**.

Delivering the Sentencing Council's work

The Council approaches the delivery of our guideline-related objectives by adopting a guideline development cycle. This is based on an adaptation of the ROAMEF policy cycle set out by HM Treasury in the 2022 Green Book) and allows a culture of continuous improvement to be embedded within the development process.

Following this cycle, there are several key stages within the development of a sentencing guideline:



Making the case for developing/amending the guideline

Annex A outlines the Council's rationale for prioritising which guidelines to produce (or which existing guidelines to amend), after which options for the actual guideline are considered. The work undertaken at this point may include conducting research, assessing options for the scope and remit of a guideline, its objectives, or whether there is in fact a need for the guideline. If the guideline has been requested by the Lord Chancellor, Lord Chief Justice or Court of Appeal or evidence of a sentencing-related issue is presented to us by an interested organisation, this would also be given due consideration.

Developing/amending the draft guideline

Once the Council has decided that a new guideline will be produced, or an existing one amended, and has agreed the objectives, work is undertaken to produce a draft guideline that will be issued for consultation. This involves a variety of different activities including consideration of relevant case law and existing sentencing guidelines or guidance; analysis of current sentencing practice; research and analysis to assess any practical, behavioural or resource implications of draft guideline proposals; stakeholder mapping and engagement and analysis of media reports. We may discuss relevant issues with experts in the field, and will always consider when preparing or revising a guideline whether to seek formal advice from experts. The guideline proceeds through a number of iterations of drafting in order to ensure that different options are fully considered. A monitoring and evaluation strategy is also drawn up to ensure that the guideline can be assessed and evaluated after implementation.

Issuing the draft guideline for public consultation

A draft guideline is issued for public consultation, alongside the analysis and research that supported its development and an assessment of its resource implications and any equality impact. The media and stakeholders are briefed about the main issues and the purpose of the consultation, in order to bring it to the attention of a wide audience and encourage responses. We promote our consultations on our website, via our email bulletin and on social media, and events are held with stakeholders to ensure that those with particular interest in the guideline are aware of the consultation and able to provide their input. Consultations are usually open for 12 weeks, to allow those who wish to provide a response the chance to do so.

Revising the draft guideline and implementing the definitive guideline

Further work is undertaken after the consultation to revise the guideline to take account of the responses received and to review and if necessary test changes to the guideline.

The guideline is published online on the Council's website. A response to the consultation is also published at this point explaining what changes have been made as a result of the responses we have received. Updated data on sentencing practice and a new resource assessment to reflect the final guideline are published at the same time, and a link to the guideline is emailed to stakeholders. The media are briefed, and we use a range of channels to ensure that the public is informed and that all key parties are aware of and able to access the guideline.

The Council works with the Judicial College to help facilitate training for sentencers on using the guideline. There will generally be an implementation period before the guideline comes into effect to allow for awareness-raising and any training to take place. In most instances we aim to bring definitive guidelines into force quarterly, on 1 January, 1 April, 1 July and 1 October.

Since 2021, the Council has also begun consulting annually on miscellaneous amendments to guidelines. The Council has built up a large body of sentencing guidelines that are in use in courts throughout England and Wales and there are inevitably issues that arise with existing guidelines over time. The annual consultation seeks views on a range of amendments which address those issues.

Monitoring and assessing the guideline

The Council adopts a targeted, bespoke and proportionate approach to assessing each guideline's impact and implementation. This work involves an assessment of whether the guidelines are having any impact on sentencing outcomes or incurring any implementation issues. This information will be set against our resource assessments for the guideline to examine whether there was likely to have been an impact on correctional resources, as well as the Council's intention for a particular guideline.

We use a range of different methods for evaluations, drawing on analysis of existing data on sentencing trends over time, collection of data from sentencers on the factors that influence their sentencing of different offences, surveys, interviews and focus groups, and content analysis of Crown Court sentencing transcripts; if possible data will be collected "before" the guideline comes into force as well as "after" in order to provide a comparison between the two time periods.

We use a variety of different methods of data collection and analysis, both quantitative and qualitative, as necessary.

Gathering and reviewing evidence

The outcomes of monitoring and evaluation, along with any stakeholder or media feedback, are assessed and considered by the Council. Following this assessment, the guideline cycle moves back into the phase of making the case for developing/amending the guideline, this time addressing the potential need to review the guideline and make improvements. If this is found to be necessary, the cycle begins again. The timescale for this process will vary, depending on a number of factors including the extent of monitoring and evaluation and the urgency for taking any action.

Timing and prioritisation

The Business Plan sets out an indicative timeline for preparation and publication of guidelines based on the Council's current priorities and our rolling work programme. The plan will be subject to bi-annual review and updates will be published, as appropriate, on the Sentencing Council website.

Cross-cutting work

The plan also includes timescales for more cross-cutting work that the Council undertakes in support of the whole range of its statutory duties. This includes, for example, publication of data related to sentencing, research on perceptions of guidelines, analysis of the risk that guidelines have unintended impacts on different groups, user testing of guidelines and ongoing work to maintain public confidence in sentencing.

Table 1: The main activities to deliver our statutory duties and planned timescales are as follows:

Work area	Key planned deliverables	Target (end of quarter)
SECTION 1: GUIDELINES		
Animal cruelty (revision)	Publication of definitive guideline, consultation response, and resource assessment	Quarter 1 2023/24
Totality (revision)	Publication of definitive guideline, consultation response, and resource assessment	Quarter 1 2023/24
Perverting the course of justice and witness intimidation	Publication of definitive guideline, consultation response, and resource assessment	Quarter 2 2023/24
Blackmail and threats to disclose private sexual images, kidnap and false imprisonment	Publication of consultation, resource assessment and statistical bulletin	Quarter 3 2023/24
Aggravated vehicle taking	Publication of consultation, resource assessment and statistical bulletin	Quarter 3 2023/24
Imposition (revision)	Publication of consultation and resource assessment	Quarter 3 2023/24
Miscellaneous amendments to guidelines	Publication of consultation	Quarter 3 2023/24
	Publication of revised guidelines and consultation response	Quarter 4 2023/24
Immigration	Publication of consultation, resource assessment and statistical bulletin	Quarter 3 2023/24
Bladed articles and offensive weapons	Publication of findings from guideline evaluation	Quarter 3 2023/24

Breach	Publication of findings from guideline evaluation	Quarter 3 2023/24
Expanded explanations	Publication of findings from guideline evaluation	Quarter 3 2023/24
Intimidatory offences	Publication of findings from guideline evaluation	Quarter 4 2023/24
SECTION 2: CROSS-CUTTING WORK		
Business Plan and Strategic objectives	Publish 2023-24 Business Plan and update on progress on strategic objectives 2021-2026	Quarter 1 2023/24
Annual Report	Publish 2022-23 Annual Report	Quarter 2 2023/24
Digitisation of guidelines	Continue to maintain, refine and support online and offline versions of sentencing guidelines for magistrates (MCSG)	Ongoing
	Continue to maintain, refine and support online versions of sentencing guidelines for Crown Court Judges	Ongoing
	Guidelines user testing project – publish findings of independent review team	Quarter 2 2023/24
You Be the Judge – online tool	Revise and relaunch ‘You Be the Judge’ – interactive sentencing tool on the Sentencing Council website	Quarter 4 2023/24
References received from Lord Chancellor or Court of Appeal under section 124	Respond as required	Reactive only
External representation	Council members and office staff speak at external events throughout the year targeting the judiciary, criminal justice practitioners, academics and special interest groups.	Ongoing
	Promote sentencing guidelines and the Council using all channels, including via proactive and positive engagement with the media, to	Ongoing

	engage with Government, its Arm's Length Bodies, the Judicial College and organisations with an interest in criminal justice and sentencing.	
	Promote public confidence in sentencing by tailoring and targeting our external communications, developing relationships with key advocates such as the police service, working with partner organisations and developing the public-facing content of our website.	Ongoing
	Provide assistance to foreign jurisdictions via visits, advice and support work.	Ongoing
SECTION 3: EFFICIENCY AND OUR PEOPLE		
Efficiency	<p>Publishing all guidelines and other documents online, with the exception of the annual report.</p> <p>Ensure value for money in the procurement of goods and services, making savings where possible and complying with departmental finance, procurement and contract management rules.</p> <p>Learn from lessons of each project, making improvements to future guidelines as a result; and improving efficiency on the basis of experience of what works.</p>	Review quarterly
Capability	<p>Enable the Council to operate digitally, through development and support of secure online members' area, digital Council papers and online collaboration tools.</p> <p>Ensure all staff undertake at least five days of targeted learning and development to develop skills, capability and career.</p>	Touchpoint meetings every 2 months

	Hold lunchtime seminars for staff to share knowledge and expertise about the work of the Council, the criminal justice system and Whitehall/ Government.	
Engagement	Implement an action plan arising from the findings of the people survey, based on priorities identified by staff.	Quarter 2 2023/24

TIMELINE OF PUBLICATIONS AND GUIDELINE EFFECTIVE DATES 2023 to 2024		
April 2023	Miscellaneous amendments to guidelines	Revisions in effect
April 2023	Child cruelty (revision)	Revised definitive guideline in effect
April 2023	Underage sale of knives	Definitive guideline in effect
April 2023	Animal cruelty (revision)	Publication of revised definitive guideline
May 2023	Business Plan	Publication of Business Plan
May 2023	Totality (revision)	Publication of revised definitive guideline
June 2023	Motoring offences	Publication of new and revised definitive guidelines
July 2023	Animal cruelty (revision)	Revised definitive guideline in effect
July 2023	Totality (revision)	Revised definitive guideline in effect
July 2023	Motoring offences	New and revised definitive guidelines in effect
July 2023	Perverting the course of justice and witness intimidation	Publication of definitive guideline
July 2023	Annual report and accounts	Publication of statutory annual report to the Lord Chancellor
September 2023	Miscellaneous amendments to guidelines	Launch of consultation
October 2023	Perverting the course of justice and witness intimidation	Definitive guideline in effect
October 2023	Blackmail, kidnap, false imprisonment and threats to disclose	Launch of consultation

Resources

Staff headcount (as at 1 April 2023)

Area of activity	FTE ¹
Head of Office and support	2
Policy	3.6
Analysis and research	8.7
Legal	1
Communications	3
Total	18.4

Budget

Summary of budget and resource allocation

	2022/23 (actual) £000s	2023/24 (budget) £000s
Total funding allocation	1,789	1,885
Staff costs	1,436	1,546
Non staff costs	224	339
Total expenditure	1,660	1,885

¹ FTE: full-time equivalents

Annex A: Rationale for the prioritisation of guidelines

Under section 120 of the Coroners and Justice Act 2009 the Sentencing Council must prepare sentencing guidelines on:

- the discharge of a court's duty under section 73 of the Sentencing Code (reduction in sentences for guilty plea);² and
 - the application of any rule of law as to the totality of sentences.³

Section 120(4) provides that the Council may prepare sentencing guidelines about any other matter.

The overarching aim of the Council in publishing guidelines is to promote a clear, fair and consistent approach to sentencing. In agreeing its rolling work plan, the Council will prioritise the publication of guidelines that will fulfil that aim.

The Sentencing Council will schedule guideline production on the basis of one or more of the following factors:

- The Lord Chancellor or the Court of Appeal formally requests the review of sentencing for a particular offence, category of offence or category of offender and the Council considers that the production or revision of one or more guidelines is justified.
- Existing guideline(s) have become significantly out of date because of amendments to legislation or other external factors.
- New legislation or other external factors have created a demand for new guideline(s) among court users, and the Council considers that the necessary evidence is available to develop such guideline(s).
- There is evidence (from the Council's own research or evaluations, interested groups or other sources) of issues relating to sentencing that the Council considers could be addressed by the development or revision of one or more guidelines. Such issues may include but are not limited to:
 - evidence of inconsistency in the sentencing of an offence or group of offences;
 - evidence of inequality in sentencing between different demographic groups;
 - evidence of sentencing being too high or too low for a category of offence or category of offender; and/ or
 - evidence relating to the effectiveness of different sentences.

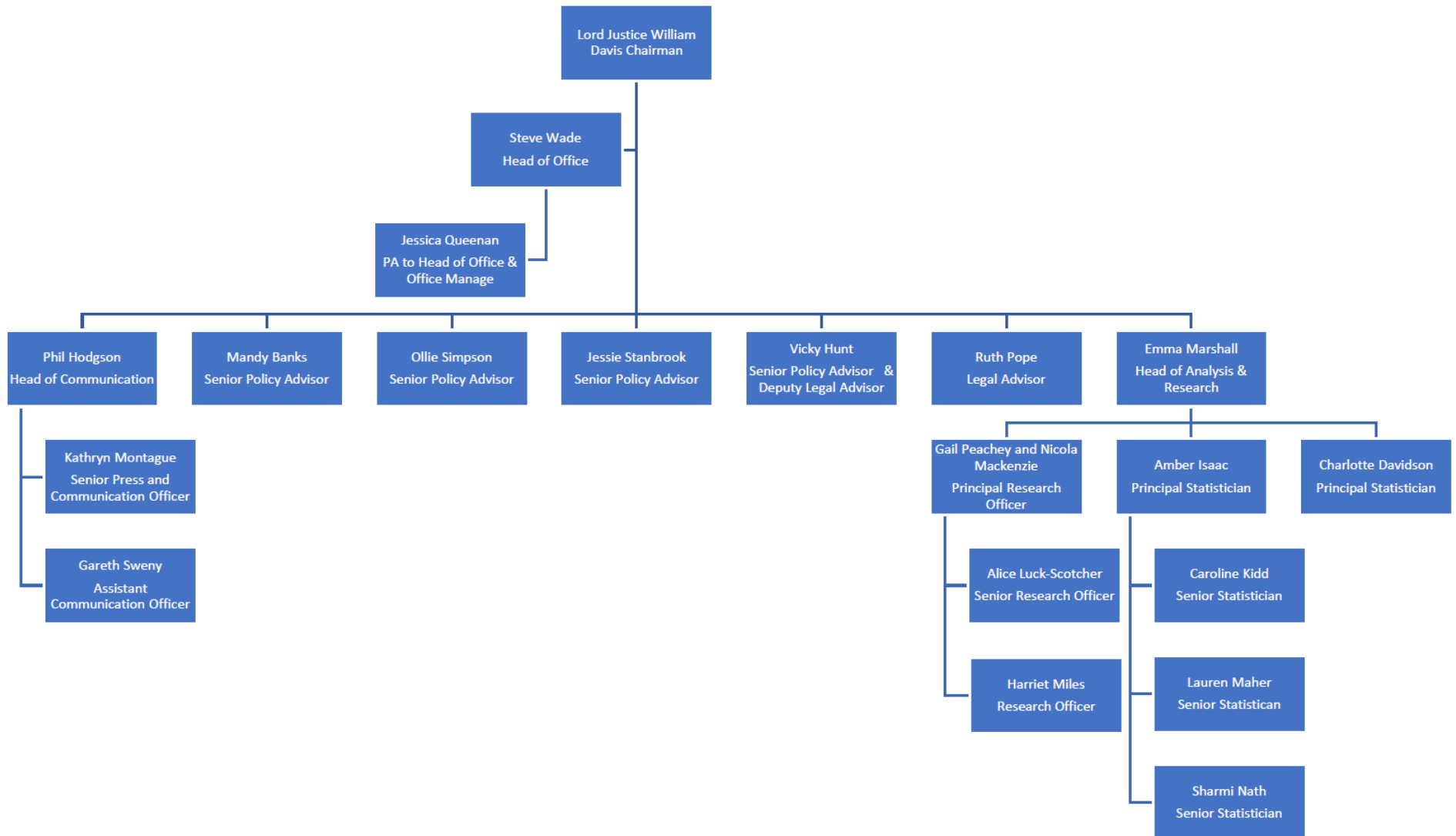
A further factor that the Council will take into account in all cases is the resource available to produce or revise guidelines. The Council is unlikely to undertake the development or revision of a guideline at a time when legislative changes that would affect that guideline are pending.

² s.120 (3)(a)

³ s.120 (3)(b)

Annex B: The Office of the Sentencing Council as at 1 April 2023

The Sentencing Council is supported in its work by a multi-disciplinary team of civil servants, as shown below.



Annex C: Sentencing Council Guideline Work Plan – 2023-2024¹ (as at 1 April 2023)

Guideline	Consultation period	Publish definitive guideline	Definitive guideline in force ²
Animal Cruelty	May 2022 to August 2022	April 2023	1 July 2023
Totality revision	October 2022 to January 2023	May 2023	1 July 2023
Motoring offences	July 2022 to September 2022	June 2023	1 July 2023
Perverting the course of justice and witness intimidation	March 2022 – June 2022	July 2023	October 2023
Annual miscellaneous amendments ³	September 2023 – November 2023	March 2024 – publication of response to consultation	Amendments will come into force annually on 1 April
Imposition	Late 2023	2024	2024
Aggravated vehicle taking	Late 2023	2024	2024
Blackmail, Threats to disclose private sexual images, Kidnap and false imprisonment	Late 2023	2024	2024
Immigration	Late 2023/early 2024	TBC	TBC

¹ The dates shown in this work plan are indicative.

² In most instances we aim to bring definitive guidelines into force quarterly, on 1 January, 1 April, 1 July and 1 October.

³This is an annual rolling programme of updates and corrections to guidelines the content of which will vary from year to year

Sentencing Council strategic objectives and actions 2021-2026: Update on progress (XXXXX 2023)

Note that relevant dates and links to documents will be added at the time of publication

Strategic objective 1: The Council will promote consistency and transparency in sentencing through the development and revision of sentencing guidelines

Action	Provisional timing stated in the Council's strategy document	Progress to date
Support consistent and transparent sentencing by continuing to produce and revise guidelines in accordance with published criteria. Specific guidelines produced or revised will be a result of the Council's annual discussions on priorities and will be included in annual business plans.	Ongoing	Ongoing
Ensure that all relevant issues are taken into account when considering guidelines for development or evaluation by reviewing and updating our guideline development/revision criteria	Completed; published in August 2021	Completed and published.
Review the Totality guideline in the light of research findings and make any necessary changes.	Consult on draft guideline by October 2022	The consultation has taken place and a revised guideline was published on 31 May to come into force on 1 July 2023. This draws on research published in September 2021
Ensure that we draw fully on all relevant perspectives by formally considering at the outset of each guideline project whether to bring in additional external expertise to support a guideline's development.	Ongoing from June 2021	Ongoing; since issuing the strategy document in November 2021, we have engaged with relevant stakeholders, for example Trading Standards on the guidelines on sale of knives etc by retailers to persons under 18, and the RSPCA on the animal cruelty guidelines.
Ensure guidelines remain relevant and up to date by undertaking an annual consultation on cross-cutting and/or minor revisions to guidelines.	Consultation to be issued annually from September 2021	Completed for 2022. Consideration of the 2023 amendments has begun.

Ensure minor uncontentious amendments to guidelines, that do not require consultation, are clear and transparent to all users by publishing a log of these.	Published as changes are made	The log is being updated as necessary and published regularly.
Enable users to feedback on guidelines by providing a mechanism to report errors or difficulties.	Completed; feedback function available from September 2021	Completed; as of xxx we have had xxx queries submitted via this route. Several have resulted in minor corrections to guidelines, others have been noted as requests for guidelines or for consideration in the next round of miscellaneous amendments.

Strategic objective 2: The Council will ensure that all our work is evidence based and will work to enhance and strengthen the data and evidence that underpins it

Action	Provisional timing stated in the Council's strategy document	Progress to date
Support the development and evaluation of guidelines by continuing to access and analyse sentencing data - including on impacts and resources - and ensure this is understood and informs Council decision-making.	Ongoing	Ongoing
Provide evidence and analysis to support the Council's work across all of its statutory duties.	Ongoing	Ongoing
Finalise approach as to how we might access a greater volume of data via the Common Platform and explore whether this might bring about efficiencies in the way in which we currently collect data from the courts.	By September 2022	This work is in progress. We have now met with colleagues working on the Common Platform, engaged with relevant judicial working groups and are continuing discussions in this area. We have submitted an application to potentially collect data from the Common Platform in the future.
Consider whether enhancements can be made to the way in which we measure and interpret the impact of our guidelines and our	By June 2022	An initial review of data sources has been undertaken and we issued an Invitation to

approaches to resource assessments by undertaking a review of our current practice.		Tender (ITT) for a small piece of academic work to support this in January 2021. We unfortunately did not receive any bids for the work and so are continuing to consider refinements to our approach internally.
Explore how the Council's expanded explanations are being interpreted and applied by sentencers in practice by undertaking an evaluation of these.	Start by March 2022	Qualitative work to explore with sentencers their interpretation and application of selected expanded explanations started in March 2023. This was delayed in order to ensure that the work was able to include relevant factors that were highlighted in the Council's research on equality and diversity which was published in January 2023.
Inform development of the Totality guideline by undertaking a small research study with sentencers.	Completed; published in September 2021	Completed and published.
Explore the impact and implementation of the intimidatory offences guidelines by undertaking an evaluation	Start by March 2022	Internal work on this is progressing and we plan to publish a report before the end of the financial year.
Explore the impact and implementation of the domestic abuse overarching guideline by undertaking an evaluation	Start by March 2022	We previously issued an ITT for a small piece of academic work to support this in December 2021. We unfortunately did not receive any bids for this. We are now, however, considering what type of work we might be able to do in this area in the future
Ensure the views of all relevant parties are fully considered in the development and revision of guidelines by considering, on a case-by-case basis, whether additional specific qualitative research is required.	Ongoing from June 2021	Ongoing. The social research team are continuing to undertake qualitative research with sentencers and an internal evaluation of the Breach guideline has drawn on the views of probation officers.
Collate the relevant evidence on issues related to effectiveness of sentencing and consider this as part of work to develop and revise guidelines by undertaking and publishing a review of the relevant evidence.	Biennially from September 2022	We commissioned external academics to conduct a literature review in this area in February 2022. This was published in September 2022.

Consider what further work in the area of consistency of sentencing is needed by reviewing the updated evidence in this area.	By September 2022	We are currently considering what more can be done in this area.
Consider how best to make use of local area data in our work by undertaking a review of options.	By March 2022	An initial review has been undertaken on this and discussed with the Council's Analysis and Research subgroup. A note on the Council's decision on this area has been published on our website.
Permit access to data collected by the Council by preparing and publishing our drugs data collection.	By June 2022	This was published in July 2022.
Permit access to data collected by the Council by preparing and publishing our robbery offences data collection.	By September 2022	Staffing issues internally have necessitated a slight delay to this work; we have now resumed the work and hope to publish this data by late summer 2023.
Continue to broaden the range of analytical work we can contribute to and draw on by seeking opportunities to collaborate with academics and external organisations.	Ongoing from June 2021	This is ongoing. We commissioned external academics and organisations to undertake work on equality and diversity, public confidence, and effectiveness in sentencing and continue to endorse academic work for funding where relevant. We held a one day seminar in January 2023 in conjunction with the Sentencing Academy and City Law School where a number of academics presented work, and we continue to attend and contribute to relevant events (e.g. an academic symposium on sentencing disparities in March 2023). We also attended a symposium on disparities held by the Empirical Research on Sentencing Network (ERoS) in March 2023.

Strategic objective 3: The Council will explore and consider issues of equality and diversity relevant to our work and take any necessary action in response within our remit

Action	Provisional timing stated in the Council's strategy document	Progress to date
Explore the potential impact of sentencing guidelines on different demographic groups and groups with protected characteristics by collecting, analysing and publishing data, where this is available, and undertaking more in-depth analytical work.	Ongoing from December 2020	Ongoing; we now routinely publish sentencing breakdowns by age, sex and ethnicity alongside guidelines and consultations and are exploring what more we can do in this area in the future (e.g. we are collecting case identifiers in our current data collection to enable us to link to data on ethnicity, and there may be more data available in the future via the Common Platform).
Draw attention to any relevant issues relating to disparities in sentencing by providing tailored references to relevant information, to the Equal Treatment Bench Book, and to the need to apply guidelines fairly across all groups of offenders after reviewing evidence on disparity in sentencing for each guideline being developed or revised.	Ongoing from December 2020	Ongoing; the relevant data is considered for all guidelines. The content within the Equality and Diversity chapter in consultation documents has been reviewed and rewritten. There is a new emphasis on trying to explore consultees' views on these matters within each draft guideline. We also include specific questions on equality and diversity in all of our research with sentencers when developing and evaluating guidelines.
Explore the potential for the Council's work inadvertently to cause disparity in sentencing across demographic groups by commissioning independent external contractors to undertake a project to review a sample of key guidelines and processes.	By December 2021	A report on this work, alongside a response from the Council, was published in January 2023.
Ensure any evidence of disparity in sentencing between different demographic groups is taken into account when deciding whether to develop or review a guideline by including this as a consideration in the Council's criteria for developing and revising guidelines.	Completed; published August 2021	Completed; text has been added to the Council's updated criteria.

Consider whether separate guidance is needed for female offenders or young adults by conducting an evaluation of the relevant expanded explanations and, if so, add this to our workplan.	To be considered as part of the evaluation of expanded explanations	The evaluation of the expanded explanations is now underway. Once this is completed the Council will consider the need for separate guidance for sentencing female offenders and/or young adults.
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Strategic objective 4: The Council will consider and collate evidence on effectiveness of sentencing and seek to enhance the ways in which we raise awareness of the relevant issues

Action	Provisional timing stated in the Council's strategy document	Progress to date
Ensure the Council continues to be informed on issues related to effectiveness of sentencing by publishing a research review of the relevant evidence.	Biennially from September 2022	We commissioned external academics to conduct a literature review in this area in February 2022. This was published in September 2022.
Consider the possibility of future work with offenders to understand which elements of their sentence may have influenced their rehabilitation by undertaking a scoping exercise in this area.	By September 2022	We have started preliminary work to consider if, and what, the Council might do in this area.
Consider whether any changes are required to highlight to sentencers the need to consider issues relating to effectiveness of sentencing as a result of research work in this area and any work undertaken on the Imposition guideline.	From September 2022	A review of trend analysis of the Imposition guideline was published in March 2023 which will be considered more widely as part of the revision of the Imposition of Community and Custodial Sentences guidelines and future work in the area of effectiveness of sentencing.

Strategic objective 5: The Council will work to strengthen confidence in sentencing by improving public knowledge and understanding of sentencing, including among victims, witnesses and offenders, as well as the general public

Action	Provisional timing stated in the Council's strategy document	Progress to date
Ensure sentencers and other practitioners have easy and immediate access to sentencing guidelines by continuing to develop digital tools that meet their needs.	Ongoing	Ongoing. The SentencingACE tool for use in the Crown Court has been launched on the Council's website, as well as a pronouncement-card builder for use in magistrates' courts. The card builder and a drink-drive calculator have also been published on the magistrates' courts sentencing guidelines app. We have also commissioned an external organisation to undertake user testing of the to explore how sentencers access, navigate and use the guidelines on the Council's website and whether this could be improved.
Inform public audiences, including victims, witnesses and offenders, about sentencing and sentencing guidelines by continuing to develop content for our website and seek media coverage relating to key Council activities.	Ongoing	Ongoing. We have refined our media strategy to reflect the five strategic objectives. We continue to publicise guideline and consultation launches, making best use of all available channels to reach our intended audiences. We have developed and published a series of short videos to explain how sentencing works and to make it more accessible to the public.
Support the effective development of guidelines by continuing to promote Council consultations to practitioners who use the guidelines and individuals and groups who could potentially be affected by the guidelines.	Ongoing	Ongoing, as consultations are launched.

Elicit a broader and more representative body of consultation responses to inform the development of guidelines by undertaking a review of our target audiences and how we reach them.	By December 2021	Work has been commissioned by the Equality and Diversity working group to extend our field of potential consultees and the ways in which they can contribute is ongoing.
Teach young people about sentencing by developing sentencing-related materials for use by organisations such as Young Citizens who already engage extensively with schools.	Ongoing	Working in collaboration with Young Citizens and Judicial Office, we have developed content for Key Stage 1 and 2 (primary) teaching resource, 'What happens when laws are broken?' The resource supports Citizenship and PHSE (Personal, Health, Social and Economic education). We also continue to provide content for Young Citizens' national mock trial competitions.
Improve our ability to inform the public about sentencing by identifying relevant organisations willing to help us engage with their stakeholders.	Ongoing	Ongoing.
Make our consultations more easily accessible to the Council's public audiences by developing a template for more simplified introductions to consultation documents and embedding this within the Council's processes.	Completed May 2021	Completed; all consultations are now accompanied on our website with introductory material written specifically for public audiences.
Illustrate for our audiences the range of issues considered by the Council when developing and revising guidelines and the extent to which guidelines are influenced by consultation responses, by publishing information about the Council's processes and procedures on our website.	By March 2022	The content has been developed and has been published on the website.
Maintain an up-to-date insight into public confidence in the criminal justice system and its drivers, and explore whether there have been any changes over time, by re-running our previous survey questions and comparing findings to our previous research.	By September 2022	We commissioned an external survey company to undertake this work and a report was published in December 2022.
Increase parliamentarians' knowledge and understanding of our work including by discussing how best to establish regular evidence sessions with the Justice Committee.	Ongoing by December 2021	The Chairman attended a closed meeting of the Justice Select Committee in December 2021 where he spoke about the work of the Council and sentencing more

		generally. In December 2022, the Chairman gave evidence on public understanding of sentencing and in early 2023 the Council assisted the Committee with a project exploring these issues.
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Ministry
of Justice

Sentencing Council Risk Register

Owner: Ollie Simpson
Last Updated: May 2023

[v1.00]

Risk Scoring

Likelihood Scores					
Likelihood Score					
Scale	0 – 5 %	6 – 20 %	21 – 50 %	51 – 80 %	81 – 99 %
Risk Register Value	1	2	3	4	5
Likelihood Level	Very Low	Low	Medium	High	Very High

Impact Scores					
	Very Low (1)	Low (2)	Medium (3)	High (4)	Very High (5)
Objective Level	Minor and containable impact	Affects short term goals within objective without impact to long term goals	Significant short term damage and important to outcome of long term goals	Significant detrimental effect on achievement of objective	Prevents achievement of objective
Cost	Less than 0.5 % of the of total estimated project cost	0.6 – 1 % of the total estimated project cost	1 – 2.5 % of total estimated project cost	2.6 – 5 % of total estimated project cost	Greater than 5 % of estimated project cost
Time	Delays that are less than 2 weeks	Delays that are likely to be in the region of more than 2, and less than 4 weeks	Delays that are likely to be in the region of more than 4, and less than 6 weeks	Delays that are likely to be in the region of more than 6, and less than 8 weeks	Greater than 8 weeks delay
Operational	Very minor operational impact	Minor operational impact	Some operational impact	Major operational impact	Severe and large scale operational impact
Reputation	Very minor reputational impact	Minor reputational impact	Some reputational impact	Major reputational impact	Sever reputational impact

Issue Scoring

The issue score relates to the priority of the need for the issue to be successfully resolved. This criteria should be applied to all issues at programme and project level.

Priority Score	
Qualitative Measure	Severity Score
Highly Problematic – Requires urgent action	5 – Very High
	4 – High
Problematic – Requires actions, some urgent	3 – Medium
Mixed – Some aspects need attention	2 – Low
Good – on track	1 – Very Low

Risk ID	Risk (Event)	Cause(s)	Effect(s)	Last Review	Controls: In Place and Active	Impact	Likelihood	Score (I x P)	BRAG	Risk Trend	Actions to be taken	Action Owner	Due Date	Target Impact	Target Likelihood	Target Score (I x L)	Next Review Target Date	Risk Owner	Risk Cost (£)	
1	Insufficient staff/capability	Reduced budget; Turnover and non retention of talent; Illness and absence (including Covid-19 related); Recruitment controls put in place; Inability to attract talent	Analysis and assessments not undertaken, or completed more slowly; Guidelines not produced/ revised, or produced/ revised more slowly; Statutory requirements not met	01/10/2022	Recruit new staff when vacancies arise Project/guideline priority regularly reviewed to ensure effective focus of Council and office activity Covid ways of working effective and workload being managed accordingly Business continuity plan assesses impact of lack of staff resource Liaison with MoJ to obtain staff as needed	4	2	8	Medium	↓				2	3	6	01/10/2023	01/04/2024	Steve Wade	
2	Insufficient financial resource	Lower budget allocation because of broader government spending decisions; Lower budget allocation because of underspend in previous years; Delayed budget decisions; Overexpenditure in particular areas;	Reduced staffing levels (a cause of Risk 1); Guidelines not produced/ revised, or produced/ revised more slowly; Analytical work not undertaken, or delayed (also a cause of Risk 3); Communications work not undertaken or delayed; Reduction in public confidence and failure to meet statutory requirements.	01/10/2022	Regular engagement with finance colleagues to understand and feed into financial planning process Financial implications of reduced budget made clear to MoJ MoJ providing information as early as possible on budget settlements Engagement with JSC to ensure they speak on our behalf	4	3	12	High	↔	2-1 Review processes for managing and monitoring budget to ensure they're robust 2-2 Identify areas where spend could more easily be stopped 2-3 Explore alternative ways to deliver through others	2-1 Lauren Maher 2-2 Steve Wade 2-3 Phil Hodgson/Emma Marshall	2-1 01/07/2023 2-2 01/07/2023 2-3 01/07/2023	3	3	9	01/07/2023	01/07/2023	Steve Wade	
3	Guidelines not informed by evidence, and impact of guidelines unknown	Poor quality data collected at source; Inability to access better data sources; Lack of resources (see risks 1 and 2); Inconclusive datasets;	Guidelines have unanticipated impact; Lower quality guidelines not based on evidence; Unable to meet statutory requirements (or know whether we are meeting them)	01/10/2022	Evaluations of guidelines in Council workplan Bespoke data collections undertaken in courts, including in relation to ethnicity data Road testing	2	4	8	Medium	↔	3-1 Data collection in all magistrates courts and the Crown Court 3-2 Discussions with MoJ/HMCTS on collection of more robust data, including demographic data, via the Common Platform and other means 3-3 Evaluations of Imposition, Breach, Bladed Articles, Intimidatory offences and expanded explanations	3-1 Harriet Miles 3-2 Emma Marshall 3-3 Emma Marshall	3-1 01/07/2023 3-2 01/07/2023 3-3 01/07/2023	2	3	6	01/01/2024	01/10/2026	Emma Marshall	
4	Council members not appointed	Appointments not made/agreed; Appointments delayed because of internal Government processes; Recruitment fails to secure suitable members	Council unable to make fully informed, quality decisions; Corporate member declines; Questions over legitimacy of decisions if not properly quorate; Inability to operate subgroups; Decline in varied comms	01/10/2022	Dedicated OSC lead on appointments Forecasting to know when vacancies will arise and preparations in advance to fill them when they do Regular discussions with MoJ appointments team	4	4	16	Very High	↔	4-1 Agree with MoJ approach for interim cover for police roles 4-2 Explore alternative approaches internally to appointing non-judicial roles	4-1 Steve Wade 4-2 Steve Wade	4-1 01/04/2023 4-2 01/10/2023	4	2	8	01/07/2023	01/01/2024	Steve Wade	
5	Lack of confidence in sentencing and the work of the Council	Inaccurate and misleading reporting Work of the Council not explained clearly Dissatisfaction with broader sentencing framework and criminal justice system Press team unexpectedly unable to respond to queries	Judiciary less prepared to follow guidelines Increased criticism of Council's work Intensified political interest in sentencing Legislation used instead of guidelines (eg minimum sentences)	01/10/2022	Communications strategy Corrections and clarifications Periodic evidence sessions with the Justice Select Committee Monitor public confidence and inform communications strategy with research Monitor news, social media and Hansard. Business continuity plan when press team unavailable	3	2	6	Medium	↔	5-1 You Be the Judge revamp 5-2 Engagement with schools 5-3 Periodically revisit equality and diversity and public confidence research 5-4 Revision of comms strategy to reflect E&D and Public Confidence research 5-5 Development of crisis communication plan	5-1 to 5-5 Phil Hodgson	5-1 01/04/2024 5-2 Ongoing, regular review of relationships and materials 5-3 Next research commissions 2025 - tbc 5-4 Due for C&C meeting, May 2023 5-5 Due for C&C meeting, May 2023	3	2	6	01/10/2023	n/a	Phil Hodgson	
6	Corporate fraud	Financial risks - inflated T&S claims; misuse of GPC card; Risk of staff bribery/corruption to influence content of guidelines; Lack of guidance and training on fraud	Reputational risks; Financial loss to OSC; Biased and inconsistent guidelines	01/10/2022	T&S fraud risk mitigated by internal process within Shared Services, spot checks conducted on claims. GPC card - sign off and checking/controls and recorded. Staff undertake mandatory fraud training, including modules on bribery and corruption. OSC staff security cleared to at least CRB level. Interns limited role, no influence over content of work. Decision making process involves Head of Office and Council, broad membership of senior members of criminal justice system. Staff discuss conflicts of interest with line managers annually	3	1	3	Low	↔	6-1 Monitor adherence to counter fraud policies	6-1 Ruth Pope	6-1 01/04/2023	3	1	3	01/10/2023	n/a	Steve Wade	

Risk ID	Risk (Event)	Cause(s)	Effect(s)	Last Review	Controls: In Place and Active	Impact	Likelihood	Score (I x P)	BRAG	Risk Trend	Actions to be taken	Action Owner	Due Date	Target Impact	Target Likelihood	Target Score (I x L)	Target Score (I x L)	Next Review	Target Date	Risk Owner	Risk Cost (£)
7	Health and safety breach	Unsafe working environment	Staff incapacitated; Office unable to be used	01/10/2022	See OSC H&S returns to MoJ, HMCTS and RCJ See OSC wellbeing policy	2	2	4	Low	↔	See OSC H&S returns to MoJ, HMCTS and RCJ See OSC wellbeing policy	See OSC H&S returns to MoJ, HMCTS and RCJ See OSC wellbeing policy	See OSC H&S returns to MoJ, HMCTS and RCJ See OSC wellbeing policy	2	1	2	Low	01/07/2023	n/a	Steve Wade	
8	Data protection breach	IT failure; Human error (leaving files on train, disclosing information to the wrong people etc); Failures in training	Loss of privacy; Fining/administrative action from ICO; Loss of confidence in SC, people refusing to provide data or take part in data collection exercises etc	01/10/2022	All staff undertake mandatory data handling and protection training. Council members are reminded of their duties in this area. Any data passed to contractors or MoJ are subject to signed data protection agreements. Retention policy in place to ensure information is only kept for a specified period of time. Privacy policy on website provides details about the type of information we collect and how we handle and store this.	3	1	3	Low	↔	8-1 GDPR issues to be included in induction packs for Council members	8-1 Emma Marshall	8-1 01/02/2023	3	1	3	Low	01/10/2023	n/a	Emma Marshall	
9	Loss of access to IT systems	Servers down (at departmental level or wider); Individual IT failures; Individual wifi failures	Staff unable to carry out core functions; Work delayed, objectives and statutory requirements missed; Queries to OSC unanswered	01/10/2022	Business Continuity Plan in place	4	1	4	Low	↔				4	1	4	Low	01/07/2023	n/a	Phil Hodgson	
10	Definitive guidelines not available to the courts	Website failure; IT failure in courts National grid power cuts affecting Bang servers	Unjust, disproportionate and unlawful sentences imposed; Loss of confidence in the Sentencing Council	01/10/2022	Agreements in place with website provider for backup App available offline Implementation of Business Continuity Plan (i.e. liaison with Bang)	4	1	4	Low	↔				4	1	4	Low	01/10/2023	n/a	Phil Hodgson	
11	Guidelines cause, or fail to address existing disparities in sentencing between different groups	Guidelines constructed in such a way (e.g by the language used or the culpability and harm factors listed) that they cause or contribute to sentencing disparities, e.g by reflecting possible unconscious bias; Guidelines constructed in such a way that they do not reduce (in a way appropriate for guidelines) or remove existing disparities in sentencing; Insufficient knowledge to be able to take effective action	Criticism of Sentencing Council; Failure to meet duties under Equality Act - judicial review of guidelines Unfair/unintended sentencing outcomes between different groups; Undermined public confidence in sentencing and the wider CJS	01/10/2022	Specific Council time dedicated to this work in E&D working group. Issues considered at the start of the guideline development processes (a flag has been added to PID documents); Evidence on disproportionality flagged when relevant in guidelines Breakdowns in relation to ethnicity in all statistical bulletins (where possible) We endorse academic work in this area and collaborate where relevant; Sentencers asked to provide a URN as part of data collections to facilitate linking with MoJ data on ethnicity	3	3	9	Medium	↔	11-1 Relevant actions from the Council's response to the Hertfordshire research to be taken forward 11-2 Review of OSC core mailing list to ensure representative organisations are consulted	11-1 Emma Marshall 11-2 Phil Hodgson	11-1 01/02/2023 11-2 01/07/23	2	2	4	Low	01/04/2023	01/01/2026	Steve Wade	

Sentencing Council

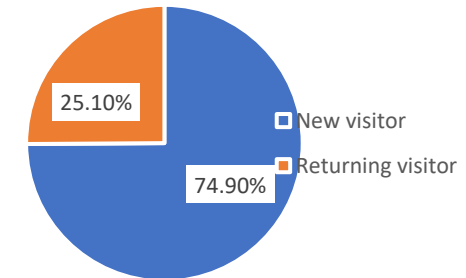
External communication evaluation

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

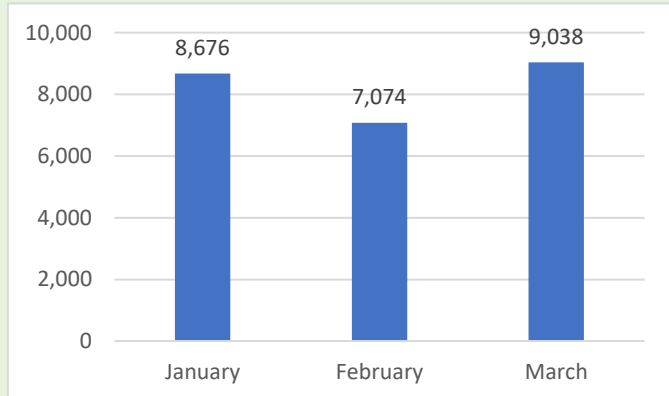
Top searches
Theft
Assault
Speeding
Burglary
Dangerous driving

* 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

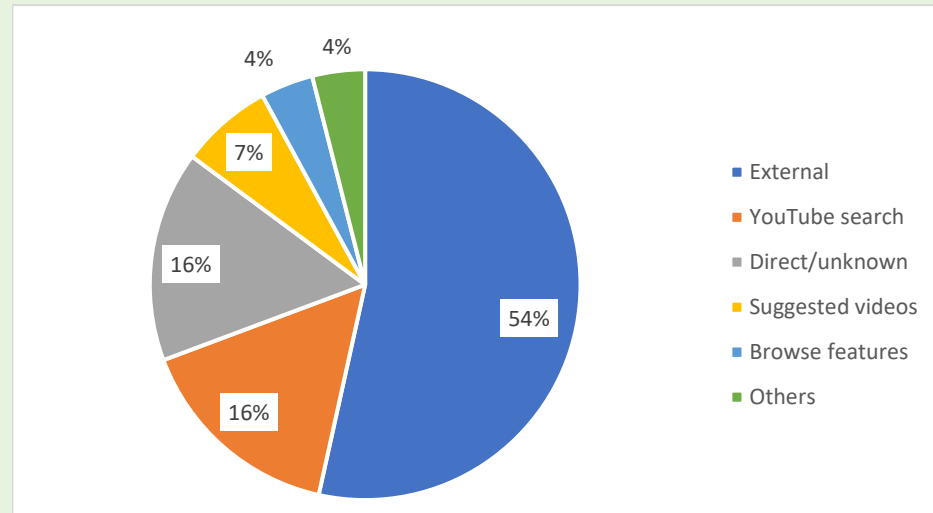
02:17

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

Blank page

Sentencing Council

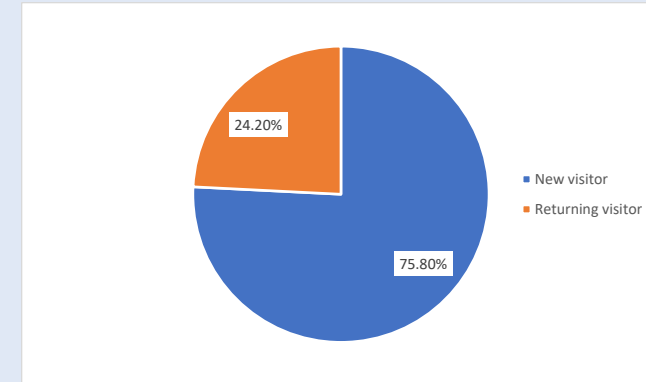
External communication evaluation

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

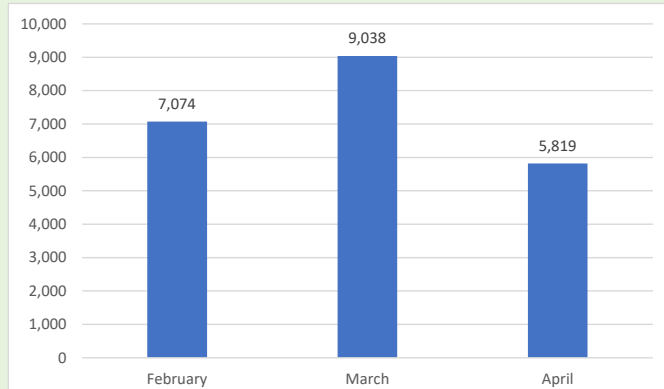
Top searches
Theft
Assault
Speeding
Burglary
Robbery

* 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

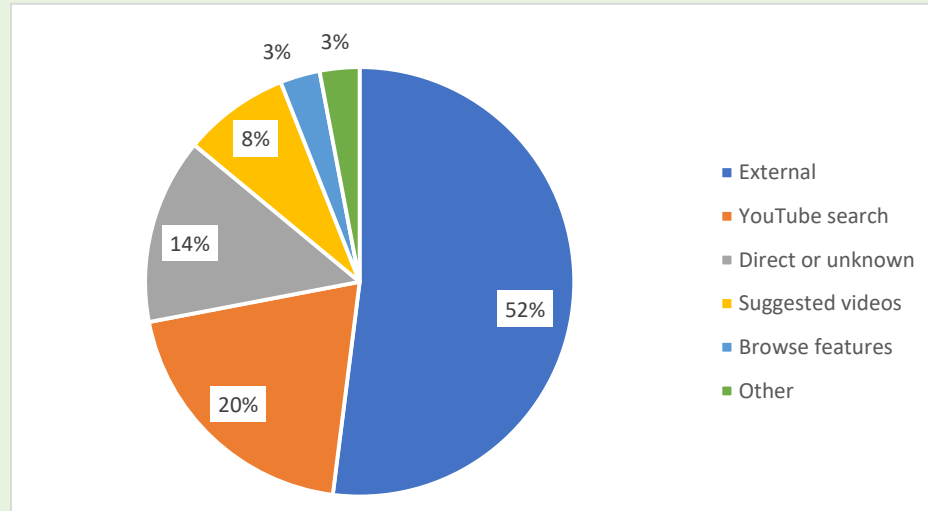
02:07

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

Blank page