

10 November 2023

Dear Members

Meeting of the Sentencing Council – 17 November 2023

The next Council meeting will be held in the **Queens Building, Judges Conference Room, 1st Floor Mezzanine at the Royal Courts of Justice**. This will be a hybrid meeting, so a Microsoft Teams invite is also included below. **The meeting is Friday 17 November 2023 and will be from 9:45 to 15:00.**

A **security pass is needed** to gain access to this meeting room. Members who do not know how to access this room can, after entry head straight to the Queen's Building where Jessica and Gareth will meet members at the lifts and escort them up to the meeting room. If you have any problems getting in or finding the Queen's Building, then please call the office number on 020 7071 5793.

The agenda items for the Council meeting are:

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| ▪ Agenda | SC(23)NOV00 |
| ▪ Minutes of meeting held on 20 October | SC(23)OCT01 |
| ▪ Immigration | SC(23)NOV02 |
| ▪ Ancillary Orders | SC(23)NOV03 |
| ▪ Non-fatal strangulation | SC(23)NOV04 |
| ▪ Wildlife offences | SC(23)NOV05 |
| ▪ Guilty Plea | SC(23)NOV06 |

The main meeting finishes a little earlier than usual this month but, after a short break, we will also be holding the next Equality and Diversity Working Group meeting for those members who are also members of that working group.

The external communication evaluation for October is included with the papers as well as the minutes from the recent Analysis and Research and Governance sub-group meetings.

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.

Please note that these papers are shared strictly for the purposes of guideline development and evaluation only. If you wish to discuss the content with colleagues for any other purposes, please speak to the author of the paper or another member of the Office staff.

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 stylized flourish at the end.

Steve Wade

Head of the Office of the Sentencing Council

COUNCIL MEETING AGENDA

17 November 2023
Royal Courts of Justice
Queen's Building

- 09:45 – 10:00 Minutes of the last meeting and matters arising (paper 1)
- 10:00 – 11:00 Immigration - presented by Vicky Hunt (paper 2)
- 11:00 – 11:15 Break
- 11.15 – 12:15 Ancillary Orders - presented by Ruth Pope (paper 3)
- 12:15 – 13:15 Non-fatal strangulation - presented by Lisa Frost (paper 4)
- 13:15 – 13:45 Lunch
- 13:45 – 14:15 Wildlife offences - presented by Ollie Simpson (paper 5)
- 14:15 – 15:00 Guilty Plea - presented by Ruth Pope (paper 6)

END OF MAIN MEETING

- 15:00 – 15:15 Break
- 15:15 – 16:45 Equality and Diversity Working Group

OFFICIAL - SENSITIVE

Sentencing Council

COUNCIL MEETING AGENDA

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Sentencing Council

MEETING OF THE SENTENCING COUNCIL

20 OCTOBER 2023

MINUTES

<u>Members present:</u>	Bill Davis (Chairman) Rosa Dean Simon Drew Max Hill Tim Holroyde Jo King Stephen Leake Juliet May Rob Nixon Beverley Thompson Mark Wall Richard Wright
<u>Apologies:</u>	Elaine Freer Johanna Robinson
<u>Representatives:</u>	Claire Fielder for the Lord Chancellor (Director, Youth Justice and Offender Policy) Naomi Ryan for the Lord Chief Justice (Legal Adviser to the President of the King's Bench Division)
<u>Observers:</u>	Lynette Woodrow, Deputy Chief Crown Prosecutor, CPS Laura Kaplan, Specialist Prosecutor, CPS
<u>Members of Office in attendance:</u>	Steve Wade Lisa Frost Vicky Hunt Ollie Simpson

1. MINUTES OF LAST MEETING

- 1.1 The minutes from the meeting of 22 September 2023 were agreed.

2. MATTERS ARISING

- 2.1 The Chairman noted that this was Max Hill's last meeting as his term as Director of Public Prosecutions was coming to an end. He thanked him for his valuable contribution to the work on the Council over the last five years and wished him well in for the future.

- 2.2 The Chairman also announced the appointment of the new victims' representative member of the Council - Johanna Robinson. Unfortunately due to travel difficulties she was unable to attend the meeting but would be participating in the work of the Council from now on.

3. DISCUSSION ON BUSINESS PLAN – PRESENTED BY OLLIE SIMPSON, OFFICE OF THE SENTENCING COUNCIL

- 3.1 The Council considered and agree a mid-year update to the Business Plan for publication, which reflected the Council's current guideline workplan.

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

- 4.1 The Council considered a revised draft of a guideline for the immigration offence of deception (s24A, Immigration Act 1971) and agreed to a new harm model and sentencing table.
- 4.2 In addition, the Council considered a first draft of a guideline for the offence of breach of a deportation order (s24(A1) Immigration Act 1971). The Council discussed and agreed the step 1 and 2 factors and will reconsider the sentence table at the next meeting.

5. DISCUSSION ON NON-FATAL STRANULATION – PRESENTED BY LISA FROST, OFFICE OF THE SENTENCING COUNCIL

- 5.1 The Council considered the seriousness assessment for a draft guideline the offence of Non-fatal strangulation. It was agreed that the draft guideline should include two categories of culpability and two of harm with factors to be finalised at the next meeting, along with aggravating and mitigating factors.
- 5.2 The Council agreed that sentences should have some parity with GBH section 20 offences, given the shared statutory maximum sentence and the seriousness of each offence. Although these will inform sentence starting points and ranges they would need to be calibrated to reflect fewer offence categories and different factors and their placement.

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

- 6.1 The Council discussed proposed guidance for driving disqualifications, for inclusion as part of the forthcoming consultation on motoring related matters. The Council agreed that comprehensive guidance would be of value to sentencers at all levels.

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Sentencing Council

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

17 November 2023
SC(23)NOV02 – Immigration
Stephen Leake
Vicky Hunt
vicky.hunt@sentencingcouncil.gov.uk

1 ISSUE

1.1 The Council is asked to consider a first draft of a guideline combining the offences of knowingly enters the UK without leave (s24(B1) Immigration Act 1971), and knowingly arrives in the UK without valid entry clearance (s24(D1) Immigration Act 1971).

2 RECOMMENDATION

2.1 That the Council discuss and agree the content of the draft guideline.

3 CONSIDERATION

3.1 The relevant legislation is set out below:

24.— Illegal entry and similar offences.

(A1) A person who knowingly enters the United Kingdom in breach of a deportation order commits an offence.

(B1) A person who—

(a) requires leave to enter the United Kingdom under this Act, and

(b) knowingly enters the United Kingdom without such leave, commits an offence.

(C1) A person who—

(a) has only a limited leave to enter or remain in the United Kingdom, and

(b) knowingly remains beyond the time limited by the leave, commits an offence.

(D1) A person who—

(a) requires entry clearance under the immigration rules, and

(b) knowingly arrives in the United Kingdom without a valid entry clearance, commits an offence.

]1[

(F1) A person who commits an offence under any of subsections (A1) to (E1) is liable—

- (a) on summary conviction in England and Wales, to imprisonment for a term not exceeding [the general limit in a magistrates' court]² or a fine (or both);
- (b) on summary conviction in Scotland, to imprisonment for a term not exceeding [the general limit in a magistrates' court]² or a fine not exceeding the statutory maximum (or both);
- (c) on summary conviction in Northern Ireland, to imprisonment for a term not exceeding six months or a fine not exceeding the statutory maximum (or both);
- (d) on conviction on indictment—
 - (i) for an offence under subsection (A1), to imprisonment for a term not exceeding five years or a fine (or both);
 - (ii) for an offence under any of subsections (B1) to (E1), to imprisonment for a term not exceeding four years or a fine (or both).

Background to the offences

3.2 Prior to the amendments made by the Nationality and Borders Act 2022 (NABA) the offence of knowingly entering the UK without leave was set out in section 24(1)(a) of the Immigration Act 1971.

3.3 "Leave" refers to permission to enter or remain in the UK – such leave may be limited in terms of duration, or indefinite. The concept of "entering the UK without leave" caused difficulties about precisely what "entering" means in the context of the Act. "Entry" is defined in section 11(1) of the 1971 Act as meaning disembarking and subsequently leaving the immigration control area. Where a person is detained and taken from the area, or granted immigration bail, they are not deemed to have entered the UK.

3.4 The offence of entering the UK without leave was no longer considered sufficient given the changes in the ways in which people have sought to come to the UK through irregular routes. NABA therefore created two new offences so that it encompasses arrival, as well as entry into the UK. This allows prosecutions of individuals who are intercepted in UK territorial seas and brought into the UK, who arrive in but don't technically "enter" the UK.

3.5 Prior to the changes, the penalty for entering the UK without leave was an unlimited fine and/or a maximum of 6 months' imprisonment. The Government's assessment was that this maximum term of imprisonment did not provide a sufficient deterrent to those seeking to enter the UK without leave and did not reflect the seriousness of the offence, in particular where there are factors such as where conduct endangers life. The two new offences were therefore given higher maximum sentences of 4 years' imprisonment.

Draft Guideline

3.6 Due to the similarities between the offences of entry and arrival the proposed guideline combines the two. In drafting this guideline, and looking at the recent case law and transcripts available it is clear that small boat cases are currently the most common method of committing the offence. However, it must be remembered that this offence can also be committed in other ways such as offenders coming into the UK in the back of lorries, or by plane. The draft guideline seeks to cover all scenarios.

3.7 The full proposed guideline can be seen at **Annex A**, and a summary of relevant case law at **Annex B**.

Culpability Factors

CULPABILITY	
A - High Culpability	<ul style="list-style-type: none"> • Significant role played (more than simply a passenger) [OR Exercised some control over means of entry (e.g. control of a vessel or vehicle).] • Sophisticated nature of offence/ significant planning by the offender • Has made previous attempts to unlawfully enter/ arrive in the UK including by use of a false document
B - Medium culpability	<p>Other cases that fall between categories A and C because:</p> <ul style="list-style-type: none"> • Factors are present in A and C which balance each other out and/or • The offender's culpability falls between the factors as described in A and C
C - Lower culpability	<ul style="list-style-type: none"> • Genuinely intends to apply for asylum on grounds which are arguable • Involved due to coercion or pressure

3.8 Many of the proposed factors in this draft come from the recent Court of Appeal case of [R v Aydin Ginar \[2023\] EWCA Crim 1121](#) which concerned the s24(D1) Immigration Act

1971 offence of arrival. In this case the Court was invited to provide guidance and identify factors which may be relevant in sentencing. All of the factors identified by the Court feature in this draft as well as some other proposed factors.

- Significant role played (more than simply a passenger)

3.9 The above factor is likely to be most relevant in small boat cases. It would be used in instances where the offender is seen to have piloted the boat (though not been charged with the facilitation offence). An alternative form of words for this factor could be 'exercised some control over the means of entry (e.g. control of a vessel or vehicle)'.

3.10 The factor could, however, be used in other instances for example where an offender makes the arrangements for a group of people, perhaps their family group, to travel in a small boat or back of a lorry but they are not organising the whole trip, i.e. they are not the facilitator.

3.11 Having read a number of transcripts it seems that piloting the boat for a period of time is a common feature. In some instances, offenders have stated that all those onboard the small boat were required to take it in turns to steer. In one transcript the Crown Court Judge specifically states that although the offender is seen to have piloted the boat, as he has not been charged with the facilitation offence, he is not going to take this as an aggravating factor.

Question 1: Does the Council agree with the inclusion of the factor 'Significant role played (more than simply a passenger)' or 'Exercised some control over the means of entry (e.g. control of a vessel or vehicle)'?

- Sophisticated nature of offence/ significant planning by the offender

3.12 This factor may be relevant to a number of different case types. For example in the transcript cases (**Annex B**), the case of Adel Kadir concerned an offender who flew to the UK from Doha. On arrival Mr Kadir claimed to have lost the identity documents that he had used to board the plane. He gave false details to the border guards, a false account and claimed political asylum.

3.13 The Council may, however consider that this ought to be a step 2 factor?

- **Question 2: Does the Council agree with the inclusion of the factor 'Sophisticated nature of offence/ significant planning by the offender' at Step 1?**

- Has made previous attempts to unlawfully enter/ arrive in the UK including by use of a false document

3.14 Many of the cases concern offenders who have made previous unlawful attempts to enter the UK, some under these provisions and some under the more serious offence of possession of a false identity document with improper intent (statutory maximum sentence of 10 years). Clearly previous relevant convictions will always be captured at step 2 but for this offence the repeated attempts to evade the border might warrant a greater increase in sentence that would be achieved by inclusion of this factor at step 1.

Question 3: Does the Council agree with the inclusion of the factor ‘Has made previous attempts to unlawfully enter/ arrive in the UK including by use of a false document’?

3.15 Further to the above, the Council might consider a further factor, ‘Previously deported, removed or extradited from the UK or deprived of UK citizenship’. This could either appear at step 1 or at step 2.

Question 4: Does the Council want to include a further factor, ‘Previously deported, removed or extradited from the UK or deprived of UK citizenship’?

- Genuinely intends to apply for asylum on grounds which are arguable

3.16 This factor was one that appears in the Court of Appeal guidance provided by R v Aydin Ginar. It is a consideration that frequently comes up in cases but for the most part Judges seem keen to make clear that it is for the Home Office rather than the court to make a determination about the validity of an asylum claim.

3.17 In some cases the factor comes up because the offender has already pursued an asylum claim that has been unsuccessful and so the Judge, without having to assess the situation themselves, can rely on that information in considering the likelihood of any further application being successful.

Question 5: Does the Council agree with the inclusion of the factor ‘Genuinely intends to apply for asylum on grounds which are arguable’?

- Involved due to coercion or pressure

3.18 As with the offence of facilitation there are likely to be cases where an offender is coerced into committing this offence. This might be in a modern slavery type case where the defence is not sufficiently made out.

Question 6: Does the Council agree with the inclusion of the factor ‘Involved due to coercion or pressure’.

Harm Factors

HARM	
Category 1	<ul style="list-style-type: none"> • Means or route of entry/ arrival involved a high risk of serious injury or death • Seeking to enter/ arrive in order to engage in criminal activity • Exploited/ put pressure on others • Involved children or vulnerable adults in the offence
Category 2	<ul style="list-style-type: none"> • Means or route of entry/ arrival involved some risk of serious injury or death
Category 3	<ul style="list-style-type: none"> • All other cases

- Means or route of entry/ arrival involved a high risk of serious injury or death (high harm)
- Means or route of entry/ arrival involved some risk of serious injury or death (medium harm)

3.19 The above two factors are replicated from the facilitation guideline and seem just as relevant here. Clearly in a facilitation case the offender is much more directly responsible for the potential injury or death of others. A passenger is indirectly responsible because their participation and funding encourages such practices to continue.

3.20 The difference in responsibility between a passenger and facilitator is reflected in the sentence levels which are far higher in the facilitation guideline.

Question 7: Does the Council agree with the inclusion of these two factors concerning risk of serious injury or death?

- Seeking to enter/ arrive in order to engage in criminal activity

3.21 This is a common feature in the cases and is also a factor proposed in the Court of Appeal case referred to above. In the Court of Appeal case this factor was included as a consideration of culpability. In this proposed guideline I have listed it under harm as it seems that the harm to society would be greater should the offender's intentions be to commit crime.

3.22 Also, without this factor the other harm factors seem to predominantly relate to small boat cases and so ones which involve travelling to the UK by plane, would almost always fall into category 3.

Question 8: Does the Council agree with the inclusion of the harm factor 'Seeking to enter/ arrive in order to engage in criminal activity'.

- Exploited/ put pressure on others
- Involved children or vulnerable adults in the offence

3.23 These last two factors are self-explanatory.

Question 9: Does the Council agree with the inclusion of the harm factors 'exploited/ put pressure on others' and 'involved children or vulnerable adults in the offence'.

Sentence Levels

3.24 The statistics can be seen below. The offences only came into force in June 2022 and we only have data up until December 2022 so the volumes, especially for the s24(B1) offence are currently very low.

Requires leave to enter the United Kingdom under this Act, and knowingly enters the United Kingdom without such leave, Immigration Act 1971 s24(B1)

Court	June-Dec 2022	
	Volume	Proportion
Magistrates' court*	4	100%
Crown Court	0	0%
Total	4	100%

* NB During this time period the magistrates' court had a maximum penalty of 12 months available to them.

Sentence outcome	June-Dec 2022	
	Volume	Proportion
Absolute and conditional discharge	0	0%
Community sentence	0	0%
Fine	0	0%
Suspended sentence	1	25%
Immediate custody	3	75%
Otherwise dealt with	0	0%
Total	4	100%

Sentence length (months)	June-Dec 2022	
	Volume	Proportion
Less than 6 months	0	0%
6-12 months	3	100%
12-18 months	0	0%
18-24 months	0	0%
Total	3	100%

The average custodial sentence length (ACSL) has not been calculated as fewer than 5 offenders were sentenced to immediate custody for this offence.

Requires entry clearance under the immigration rules, and knowingly arrives in the United Kingdom without a valid entry clearance, Immigration Act 1971 s24(D1)

Court	June-Dec 2022	
	Volume	Proportion
Magistrates' court*	108	91%
Crown Court	11	9%
Total	119	100%

* NB During this time period the magistrates' court had a maximum penalty of 12 months available to them.

Sentence outcome	June-Dec 2022	
	Volume	Proportion
Absolute and conditional discharge	0	0%
Community sentence	0	0%
Fine	0	0%
Suspended sentence	13	11%
Immediate custody	106	89%
Otherwise dealt with	0	0%
Total	119	100%

Average custodial sentence length (ACSL) (months)	June-Dec 2022
Mean	7.9
Median	8.0

Sentence length (months)	June-Dec 2022	
	Volume	Proportion
Less than 6 months	43	41%
6-12 months	60	57%
12-18 months	3	3%
18-24 months	0	0%
Total	106	100%

3.25 The proposed sentence levels in the table below are based upon the statistics, transcripts and Court of Appeal cases and aim to maintain sentencing practice, in so far as we can establish what sentencing practice is or has become since these offences came into effect.

3.26 The highest sentence included is 3 years' custody. The statistics do not include sentences higher than 2 years. However, the statistics only reflect final sentences and in many of those cases we would expect the offender to have pleaded guilty and so for the sentence to have been reduced accordingly. Of the cases that I have read the highest sentence (prior to reduction for guilty plea) was 2 years, but this is a very small number of cases.

3.27 In the Court of Appeal case the following guidance is set out with regard to sentence length:

Before the [NABA] amendments to which we have referred, the maximum penalty for the predecessor of that offence was six months' imprisonment. It is apparent that Parliament regarded that previous level of sentence as insufficient, both for the existing offence of entering without leave and for the new offence of arriving without a valid entry clearance. The four-year maximum is also longer than some other offences which may be committed in an immigration and asylum context.

It is however significantly shorter than the maximum sentence of 10 years' imprisonment for an offence of possessing a false identity document with intent, contrary to section 4 of the Identity Documents Act 2010. As counsel for the respondent pointed out, use of a false identity document will not ordinarily cease at the border but will facilitate life in this country thereafter. It will also tend to undermine the passport system generally. We therefore accept the submission of the respondent that the present offence is inherently less serious than an identity document offence of the kind for which this court in *R v Kolawole* [2004] EWCA Crim 3047 indicated as attracting a sentence in the range of 12 to 18 months, even on a guilty plea and even for a person of previous good character.

3.28 When the Council recently considered the guideline for use of a false identity document with intent the sentence for a Kolawole type case (C1- one or two false documents for own use; Document used to evade immigration controls) was a starting point of 2 years with a range of 18 months – 30 months.

Question 10: Does the Council consider that a top sentence of 3 years is appropriate for this guideline?

3.29 The Council will note that the table includes a community order within the lowest part of the range for C3. Whilst the available statistics do not show that any offender has received a community order it may be appropriate in the least serious cases. In addition, not all offenders who are sentenced for these offences will meet the conditions for immediate removal from the UK under the provisions of the Illegal Migration Act 2003.

Question 11: Does the Council agree with the inclusion of a community sentence?

Harm	Culpability		
	A	B	C
Category 1	Starting Point 2 years' custody Category Range 18 months - 3 years' custody	Starting Point 18 months custody Category Range 1-2 years custody	Starting Point 1 years' custody Category Range 8 – 18 months' custody
Category 2	Starting Point 18 months custody Category Range 1-2 years custody	Starting Point 1 years' custody Category Range 8 – 18 months' custody	Starting Point 8 months' custody Category Range 6 months' – 1 years' custody
Category 3	Starting Point 1 years' custody Category Range 8 – 18 months' custody	Starting Point 8 months' custody Category Range 6 months' – 1 years' custody	Starting Point 6 months' custody Category Range High level Community Order – 8 months' custody

Question 12: Does the Council agree with the proposed sentence table?

Aggravating Factors

3.30 In addition to the relevant statutory aggravating factors the following other aggravating factor has been included:

- Previous history of failed applications for leave to enter/ remain in the UK or for asylum

3.31 The above factor is referenced in the case of R v Aydin Ginar. It was particularly pertinent to that case however so Council members may feel it does not need to be included in a standard list of aggravating factors.

Question 13: Does the Council agree to the inclusion of the aggravating factor

Mitigating Factors

3.32 In many immigration cases there will be significant personal mitigation. In R v Aydin Ginar, the Court of Appeal stated that:

The circumstances which are relied upon as arguable grounds for claiming asylum, such as the offender seeking to escape from persecution and serious danger, are likely also to mitigate the offence of arriving in the United Kingdom without a valid entry clearance. We would add that some offenders may have been misled as to what would await them in this country if they paid large sums of money to the criminals who offered to arrange their transport. Some may have suffered injury or come close to drowning in crossing in a dangerously overcrowded vessel. It will be for the sentencer to evaluate what weight to give to circumstances of that nature in a particular case.

3.33 Does the Council want to list any of these possible avenues of personal mitigation or should these be left for the Court to decide on a case by case basis?

Question 14: Does the Council want to add any further mitigating factors in addition to the standard ones that can be seen in Annex A?

4 EQUALITIES

4.1 Due to the low volumes for these offences, and the fact that the offences are relatively new, it is likely that, as with other offences within this project, the volumes will be too low to draw any robust conclusions. However, it is proposed that the office examines the

data for all of the NABA offences and brings any useful breakdowns to Council's attention once all of the proposed guidelines have been considered.

5 IMPACT AND RISKS

5.1 We will consider the impact of the guidelines in the usual way through the resource assessment.

6 REMAINING GUIDELINES

6.1 In January of this year the Council agreed the scope of the immigration project which included the following guidelines:

Immigration Act 1971 S24A	Seek / Obtain Leave to Enter / Remain In UK by Deceptive Means
Immigration Act 1971 S25(1) And (6)	Do an act to Facilitate the commission of a breach of UK immigration law by a non-UK national.
Identity Documents Act 2010 S4	Possessing or controlling identity documents with intent
Identity Documents Act 2010 S6	Possessing or controlling a false or improperly obtained or another person's identity document
S24(A1) Immigration Act 1971	Breach of deportation order
S24(B1) Immigration Act 1971	Knowingly enters the UK without leave
S24(D1) Immigration Act 1971	Knowingly arrives in the UK without valid entry clearance
S24(C1) Immigration Act 1971	Overstayers
S24(E1) Immigration Act 1971	Knowingly arrives without an Electronic Travel Authorisation (ETA)

6.2 The Council has now seen a first draft of all of the guidelines listed above except for the last two (section 24(C1) and section 24(E1)).

6.3 Having spoken to the CPS about the offence of overstaying (s24(C1)), they inform me that there has been just one offence recorded as being charged and reaching the first hearing since the offence came into effect in June 2022. Prior to the amendments made by

NABA the offence of overstaying was a summary only offence (s24(1)(b)(i) Immigration Act 1971). In most cases offenders were administratively removed rather than prosecuted.

6.4 We therefore have no transcript or statistical data to base a guideline upon, and it appears as though, given the limited number of prosecutions to date, these offences are not likely to be heavily prosecuted. For these reasons the Council may want to reconsider whether we prepare a guideline for this offence?

Question 15: Does the Council want to produce a guideline for the offence of Overstaying?

6.5 The final offence listed above (knowingly arrives without an ETA) has not yet come into force. The Home Office indicate that the offence will come in at some stage but are reluctant to give a time frame. I have considered whether the offence could be covered by the s24(B1) and (D1) guideline however I think the offending behaviour is likely to be quite different.

6.6 The NABA amendments to the Immigration Act 1971 require individuals who do not need a visa, entry clearance or other specified immigration status to obtain permission to travel, in the form of an Electronic Travel Authorisation, in advance of their journey to the UK. During the passage of the Bill the Government said the following:

The UK government is committed to strengthening the security of the UK border by ensuring that everyone wishing to travel to the UK (except British and Irish citizens) has permission to do so in advance of travel. This clause will provide for the creation of an Electronic Travel Authorisation scheme to close the current gap in advance permissions and enhance the government's ability to screen people in advance of arrival and prevent the travel of those who pose a threat to the UK.

6.7 It seems that people who travel without an ETA are unlikely to receive sentences similar to those who commit the s24(B1) or (D1) offence, and the factors relevant to such an offence are also likely to be very different. For these reasons I do not propose incorporating this offence into the draft guideline. Instead, I invite the Council to reconsider including this offence within the scope of the project.

Question 16: Does the Council want to produce a guideline for the offence of Knowingly Arrives without an ETA?

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Sentencing Council meeting:
Paper number:

17 November 2023
SC(23)NOV03 – Ancillary orders scoping paper
tbc

Lead Council member:

Ruth Pope and Vicky Hunt

Lead officials:

ruth.pope@sentencingcouncil.gov.uk

1 ISSUE

1.1 The Council has previously indicated that it would be useful to do some work on ancillary orders.

1.2 The purpose of this paper is to set out what guidance and information is currently available and to discuss what changes or improvements could usefully be made.

2 RECOMMENDATION

2.1 That the Council decides whether further work should be done on ancillary orders and if so, whether this should involve:

- improvements to the consistency, accessibility and presentation of the current information provided
- more detailed information on ancillary orders and/or
- stronger indications in guidelines as to the desirability (or otherwise) of imposing particular ancillary orders

3 CONSIDERATION

Current position

3.1 Ancillary orders are referenced in various ways in guidelines and elsewhere on the Sentencing Council website. Most offence specific guidelines have a step (usually step 6 or 7) entitled 'Ancillary orders' or 'Compensation and ancillary orders' though there are several variations on this. In most guidelines that step includes these hyperlinks:

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

3.2 Some guidelines only have a brief piece of text in addition to those links, such as:

'In all cases the court should consider whether to make ancillary orders' or

'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](#)).'

3.3 Other guidelines contain more information. This can take the form of:

- a reference to ancillary orders that may be relevant to that offence either with or without links to more detailed information
- reference to relevant ancillary orders with text in the guideline giving more details
- a dropdown giving more information (there are three of these – for sexual offences, terrorism offences, and driving offences)

3.4 Examples of the ancillary orders step in guidelines are provided at **Annex A**.

3.5 The ancillary orders hyperlinks in guidelines take users to the explanatory materials to magistrates' courts guidelines which is material provided by the Sentencing Council. As noted, there is usually a general link to these in guidelines (including in a few guidelines for offences that are indictable only). The full list of matters covered is:

[1. Introduction to ancillary orders](#)

[2. Anti-social behaviour orders](#)

[3. Binding over orders](#)

[4. Confiscation orders](#)

[5. Criminal behaviour orders](#)

[6. Deprivation of ownership of animal](#)

[7. Deprivation orders](#)

[8. Destruction orders and contingent destruction orders for dogs](#)

[9. Disqualification from driving – general power](#)

[10. Disqualification from ownership of animals](#)

[11. Disqualification of company directors](#)

[12. Drinking banning orders](#)

[13. Exclusion orders](#)

[14. Football banning orders](#)

[15. Forfeiture and destruction of drugs](#)

[16. Forfeiture and destruction of goods bearing unauthorised trade mark](#)

[17. Forfeiture and destruction of weapons orders](#)

[18. Forfeiture or suspension of liquor licence](#)

[19. Parenting orders](#)

[20. Restitution orders](#)

[21. Restraining orders](#)

[22. Sexual harm prevention orders](#)

[23. Sexual offences prevention orders](#)

[24. Automatic orders on conviction for sexual offences](#)

[Additional note: Availability of ancillary orders](#)

3.6 As part of the work currently being undertaken on improvements to the website, discussed and approved in the September Council meeting, the appearance of explanatory materials page which contains the ancillary orders will change (to make it easier to navigate) but the content will not.

3.7 The hyperlink in most guidelines to the Crown Court Compendium (produced by the Judicial College) is to a landing page on the Judiciary website. From there a user needs to scroll down and download the [Crown Court Compendium Part II Sentencing June 2023](#). There is no section in that document devoted to ancillary orders though several are covered in Section 3 Disposals (General) and others in Section 6 Further Powers of Sentencing.

Developments currently being considered by the Council

3.8 The Council plans to consult on additional guidance for disqualification from driving which will cover the information and guidance on that topic currently contained in the explanatory materials.

Options for improvements

3.9 A review of what information on ancillary orders is provided where and in what format, has shown that there are inconsistencies across guidelines. Some differences are entirely justified as there are some guidelines for which ancillary orders are less likely to be relevant and some where there are particular orders that apply. Allowing for the particular requirements of different guidelines, some changes could be made to provide a more consistent level of assistance with ancillary orders.

3.10 As noted above, most of the information on ancillary orders that the Council itself provides is aimed at magistrates' courts. We could seek to provide a similar level of information for the Crown Court rather than providing the rather unhelpful link to the judiciary website. The most efficient way of doing this would be to update the existing guidance to cater for all courts making clear where the powers of magistrates' courts differ from that of the Crown Court

3.11 Whatever the level of information provided, there are two different options for how this is presented to users. Currently, ancillary orders are accessed via hyperlinks which take users to separate pages. This format could remain with any updates to these pages. The

other option is to put all ancillary order information in drop downs, which would not require any new pages to be opened. We can consider these options internally and make recommendations to a future Council meeting.

3.12 Any information that we provide as part of our guidelines will have to be maintained and kept up to date. For that reason it is preferable that information that is common to several guidelines is accessed from a single source, so that changes will be made to all guidelines to which it applies.

3.13 Additionally, the Council may wish to consider whether in some guidelines, as well as giving factual information on ancillary orders, more guidance should be included on the circumstances in which it is (or is not) appropriate to impose certain discretionary orders in combination with other disposals.

Question 1: Does the Council wish to provide a more consistent level of assistance with ancillary orders?

Question 2: Does the Council wish to provide guidance on ancillary orders aimed at the Crown Court (as well as magistrates' courts)?

Question 3: Does the Council wish to consider providing more of a steer on the use of ancillary orders in individual guidelines?

Question 4: Are there other matters relating to ancillary orders that the Council wishes to explore?

4 EQUALITIES

4.1 There is very little published data on ancillary orders and it may be difficult to identify any potential equalities issues from data. However, we could explore unpublished sources of information depending on the extent of the work that the Council wishes to undertake.

Question 5: Are there any particular equalities issues that should be explored further at this stage?

5 IMPACT AND RISKS

5.1 Again, the lack of published data may make it difficult to quantify the impact of any changes. If changes are limited to providing information, the impact on outcomes for offenders is likely to be low. If the Council seeks to influence the use of ancillary orders there could be more of an impact which we could consider further if relevant.



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

17 November 2023
SC(23)NOV04 – Non Fatal Strangulation
Rosa Dean
Lisa Frost
Lisa.Frost@sentencingcouncil.gov.uk

1 ISSUE

1.1 This is the second meeting to consider a guideline for non-fatal strangulation and suffocation.

2 RECOMMENDATION

2.1 That the Council considers and agrees the draft guideline at **Annex A**.

3 CONSIDERATION

3.1 At the October meeting the Council considered factors which should be included in the seriousness assessment for non-fatal strangulation offences and agreed that sentences should have parity with GBH s20 offences. It was agreed that the draft guideline should include two culpability and two harm categories. A draft guideline informed by the decisions at the meeting is at **Annex A**.

Culpability factors

3.2 The Council considered culpability factors at the last meeting and agreed that only lesser culpability factors should be defined, and that high culpability should capture all other cases. It was highlighted that this would likely mean a high proportion of offences would be captured at high culpability, and the Council agreed this was appropriate.

Question 1: Does the Council agree with the culpability factors at Annex A?

Harm factors

3.3 For the harm assessment it was also agreed that the guideline should include two categories, with the highest level of harm defined and the lower harm category capturing all other cases. It was agreed that explanatory text should be included to recognise that all cases will involve a high degree of harm.

3.4 Given that harm will always be of a very high level due to the terror victims are likely to experience, it was agreed that the highest category should be reserved for cases where there is a severe and ongoing impact. This would align with the approach to assessing harm in GBH offences, where the highest category is reserved for almost fatal injuries and life changing injuries or conditions. For reference, GBH harm factors are as follows:

Harm
All cases will involve 'really serious harm', which can be physical or psychological, or wounding. The court should assess the level of harm caused with reference to the impact on the victim

Category 1

- Particularly grave or life-threatening injury caused
- Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment
- Offence results in a permanent, irreversible injury or psychological condition which has a substantial and long term effect on the victim's ability to carry out their normal day to day activities or on their ability to work

Category 2

- Grave injury
- Offence results in a permanent, irreversible injury or condition not falling within category 1

Category 3

- All other cases of really serious harm
- All other cases of wounding

3.5 At the last meeting the following harm factors were proposed:

Harm
Category 1 – Severe, ongoing psychological and/or physical impacts
Category 2 – All other cases

The factors were agreed in principle subject to minor amendments to separate the factors out, as follows:

Harm

All cases of strangulation involve a very high degree of inherent harm. The court should assess the level of harm caused with reference to the impact on the victim.

Category 1

- Severe, ongoing psychological harm
- Physical injuries resulting in severe long-term impact

Category 2

- All other cases

3.6 Further consideration has been given to these factors in light of proposed sentences. It is thought that it would be appropriate to align the wording of the factor with the relevant GBH harm factor to define the level of harm attracting the highest assessment more clearly. Given that many offences will involve psychological harm, the severity of this may be difficult to assess without some objective measure, risking inconsistent harm assessments. There is also a risk that sentences would be disproportionate in comparison to GBH s20 offences where the impacts of those offences are permanent and life changing.

3.7 To mitigate these risks it is proposed the relevant high GBH harm factor (slightly modified to remove the requirement for permanent, irreversible injuries) be included as Category 1 harm.

Harm

All cases of strangulation involve a very high degree of inherent harm. The court should assess the level of harm caused with reference to the impact on the victim.

Category 1

- Offence results in a severe physical injury or psychological condition which has a substantial and long-term effect on the victim's ability to carry out their normal day to day activities or on their ability to work.

Category 2

- All other cases

3.8 It is thought that aligning the harm assessment in the highest category with GBH s20 offences which cause a victim to be permanently affected by a disability or injury would be appropriate and provide for proportionate sentences.

Question 2: Does the Council agree with the proposed high harm factor?

Aggravating and mitigating factors

3.9 Proposed aggravating and mitigating factors are included at Annex A and are based on the discussion at the last meeting. There are significantly more aggravating than mitigating factors as there is little appropriate mitigation for this offence.

Question 3: Does the Council agree with the proposed aggravating and mitigating factors?

Sentences

3.10 It was agreed at the last meeting that sentence ranges should be broad and starting points should ensure appropriate uplifts can be applied for aggravating factors. It is important to note that as the lesser culpability factors are likely to capture a low proportion of offences, the majority will fall within high culpability and aggravating factors will apply. Based on a review of transcripts and the known prevalence of strangulation within domestic abuse contexts, it is highly likely that several factors are likely to apply in many cases requiring increases to sentence starting points. The Council is asked to bear this mind in considering sentences.

3.11 At the last meeting it was agreed that there should be parity between GBH s20 sentences and non-fatal strangulation sentences. S20 sentences are as follows:

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point 4 years' custody</p> <p>Category Range 3 years– 4 years 6 months' custody</p>	<p>Starting point 3 years' custody</p> <p>Category Range 2 -4 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category Range 1-3 years' custody</p>
Harm 2	<p>Starting point 3 years' custody</p> <p>Category Range 2 -4 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category Range 1-3 years' custody</p>	<p>Starting point 1 years' custody</p> <p>Category Range High Level Community Order - 2 years' custody</p>
Harm 3	<p>Starting point 2 years' custody</p> <p>Category Range 1-3 years' custody</p>	<p>Starting point 1 years' custody</p> <p>Category Range High Level Community Order - 2 years' custody</p>	<p>Starting point 26 weeks' custody</p> <p>Category Range Medium Level Community Order – 1 years' custody</p>

3.12 At the last meeting the Council discussed whether sentences should reflect the upper left quadrant of the GBH sentence table rather than the bottom left quadrant, and consideration has been given to likely categorisations of offences based on factors. It is proposed that the A1 starting point and range be replicated in the NFS guideline. The proposed A2/B1/B2 sentences are slightly lower than comparable category GBH s20 offences, to reflect that the guideline models differ and the non-fatal strangulation guideline will assess many aspects of seriousness at Step 2 rather than Step 1. As discussed at the last meeting this is due to the very specific nature of strangulation, and that many factors reflecting seriousness are aggravating features rather than increasing culpability.

3.13 A2/B1/B2 categories with only one or two aggravating factors will attract sentences which are capable of being suspended should there be an early guilty plea and the relevant Imposition assessment deem it appropriate. Offences with multiple aggravating factors would be higher and less likely to be capable of being suspended. The proposed sentences are included at **Annex A**.

3.14 The A2/B1 proposed starting point of 2 years 6 months is the same for a Category A1 [controlling or coercive behaviour](#) offence and an A1 [ABH](#) offence.

3.15 It is thought the proposed sentences provide for relativity with offences of comparable seriousness and align with sentences for similar offences. However, it is important that factors be appropriately framed to enable proportionate seriousness categorisations and sentences.

Question 4: Does the Council agree with the proposed sentences at Annex A?

4 EQUALITIES

4.1 As already noted the demographic of offenders is mostly males as the offence is predominantly committed by males against females in a domestic abuse context. The guideline is intended to apply equally to females and proposed factors are equally applicable regardless of the gender of the offender.

5 IMPACT AND RISKS

5.1 While the volume of offenders sentenced on a principal offence basis in 2022 was around 230, as indicated by the DPP at the October meeting, volumes of charges for this offence are steadily increasing and are currently around 400 per month. This reflects a robust Criminal Justice response to these offences in line with the ongoing Government

priority to address Violence Against Women and Girls. However, it is likely the resource impacts of the guideline will be substantial which could exacerbate current issues with the prison population.

5.2 There is likely to be considerable interest in the guideline proposals from academics and experts in the field of the offences of strangulation and suffocation. It is intended that a roundtable be held to seek expert views, either before the draft guideline is finalised or during the consultation period.



Sentencing Council meeting:	17 November 2023
Paper number:	SC(23)NOV05 – Wildlife offences
Lead Council member:	n/a
Lead official:	Ollie Simpson ollie.simpson@sentencingcouncil.gov.uk

1 ISSUE

1.1 Scoping the project on guidelines for wildlife offences.

2 RECOMMENDATIONS

2.1 That Council agrees to undertake pre-consultation stakeholder work to determine the problems (if any) to resolve in relation to sentencing wildlife offences.

3 CONSIDERATION

Wildlife crime - background

3.1 In its [2015 report on wildlife offences](#) (Law Com 362), the Law Commission observed:

“In the last two centuries wildlife legislation has developed in a piecemeal fashion, often in reaction to specific pressures on domestic legislation, whether local or international. The result is that the current legislation governing the control, exploitation, welfare and conservation of wild animals and plants in England and Wales has become unnecessarily complex and inconsistent...

We accept that a certain level of complexity is, in part, an inevitable consequence of the breadth of wildlife law. The natural environment is a complex system and the law concerning it needs to apply in a range of different situations and reflect a range of (potentially competing) interests. In many cases, however, there appears to be little obvious rationale for the existing complexity.” (paras 1.7-1.9)

3.2 The Law Commission recommended, among other things, the creation of a single statute to replace (at least) 12 existing pieces of primary legislation. However, as of today, there are no plans to consolidate the law in this way and the landscape across wildlife law

remains vast and overlapping. Indeed, Parliament continues to legislate for wildlife offences, prohibitions and penalties: see for example the Ivory Act 2018, the Glue Traps (Offences) Act 2022, and the Shark Fins Act 2023.

3.3 The United Nations Office on Drugs and Crime produced a [Wildlife and Forest Crime Analytic Toolkit Report](#) in 2021. Whilst acknowledging the UK's good record on wildlife protection, the report also picked up on the disparate nature of the criminal law on wildlife, and specifically mentioned sentencing:

“the absence of any sentencing guidelines across the entire country means that sentencing practice does not appear to present any sort of deterrent. Generally speaking, most sentencing was greeted with disappointment by the stakeholders interviewed during this assessment... there may be difficulty in creating guidelines given the absence of any discernible practice in the courts against which to calibrate and the fact that other areas of law are seen as requiring more urgent attention”

3.4 Indeed, there is limited case law on wildlife offences, with the majority of wildlife offending being tried summarily. [Noonan \[2010\] EWCA Crim 2917](#) upheld a sentence of 10 months for the export of elephant ivory and sperm whale teeth on the basis that:

“a serious deterrent sentence might stop the trade and prevent those who otherwise live law-abiding lives from committing these serious crimes... They are serious because they contribute to the illegal market. Without an illegal market there would be no opportunity or need for the capture of these endangered species from the wild. It is the market which feeds the destruction of these species. It is for that reason that significant and serious sentences ought to be passed for this type of offence.” [38]

In two other Court of Appeal cases, *Sissen* [2001] 1 W.L.R. 902 and *Lendrum* [2011] EWCA Crim 228, sentences of 18 months were substituted for initial sentences of 30 months for live bird importation and egg exportation respectively.

Scope

3.5 Despite the relative lack of precedent and the unwieldy nature of the criminal law framework, the National Wildlife Crime Unit (NWCU, which covers all of the UK) and the CPS do have clear priorities for tackling wildlife crime, which may provide a useful starting point for scoping a project on wildlife guidelines.

3.6 Purely for my own purposes, I split these under the three overall headings of 1) hunting/poaching; 2) cruelty; 3) conservation. In reality, these categories are porous, which will be something to consider later in the project in looking at harm. For now, a longlist of possible offences to consider in scope of wildlife guidelines might be:

1. Hunting/poaching

- Night Poaching Act 1828 (section 1)
- Game Act 1831 (section 30)
- Police, Crime, Sentencing and Courts Act 2022 (sections 63-64)
- Deer Act 1991 (sections 1-4 and 10)
- Hunting Act 2004 (section 1, section 5)

2. Cruelty

- Protection of Badgers Act 1992 (sections 1 to 5)
- Wild Mammals (Protection) Act 1996 (section 1)
- Glue Traps (Offences) Act 2022 (section 1) [subject to coming into force]

3. Conservation

- Wildlife and Countryside Act 1981
 - Sections 1 to 8 = birds
 - Section 9 = wild animals (see Schedule 5 for list)
 - Section 13 = plants
- The Conservation of Habitats and Species Regulations 2017
 - regulation 43 (animals),
 - regulation 47 (plants),
 - regulations 59-60 (licence related)
 - regulation 123-125 (obstruction of enforcement)
- The Control of Trade in Endangered Species Regulations 2018 (Schedule 1)
- Import/export offences under Customs and Excise Management Act 1979 (sections 50, 67-68)
- Ivory Act 2018 (section 12)

3.7 Hare coursing is worthy of particular mention. Depending on the circumstances of the offending, it can be charged under two offences in the Hunting Act 2004, under the Night Poaching Act 1828, the Game Act 1831, and two new offences of trespass and going equipped in the Police Crime Sentencing and Courts (PCSC) Act 2022. The maximum

penalty under the Hunting Act is a fine, but the other offences have had a maximum penalty of six months (or, rather, the current summary limit) since 2022.

3.8 The longstanding complaint had been that those convicted of hare coursing were subject only to a fine, inevitably low as they could claim limited means, and this was not a sufficient deterrent. This was said not to reflect the full harms of hare coursing which, in addition to the cruelty to the hare and impact on its population, will often involve criminal damage for farmers and landowners and threatening and abusive behaviour.

3.9 Alongside the increase in maximum penalties, the PCSC Act provided for recovery orders in hare coursing, requiring an offender to pay the costs of seizure and detention of dogs involved in the offence. Under section 66, offenders may also be subject to orders disqualifying them from owning and/or keeping dogs, breach of which is an offence, with a maximum penalty of a level 3 fine.

3.10 On cruelty, the maximum penalty under the Wild Mammals (Protection) Act 1996 remains at six months' imprisonment. By contrast, the maximum penalty for equivalent offending towards domesticated animals committed under the Animal Welfare Act 2006 was increased to five years in 2021, resulting in the Council revising the animal cruelty guidelines. That revision came into force earlier this year. New guidelines on non-domestic animal cruelty would highlight this significant disparity in the courts' sentencing powers.

3.11 The maximum penalties for import, export and trading in endangered species are higher, and (as seen from the case law) may well result in a prison sentence of at least several months. For example, the maximum penalty for an offence of buying or selling a specimen of a protected species under the Control of Trade in Endangered Species Regulations 2018, and for trading in ivory in breach of the Ivory Act 2018 is five years' imprisonment.

3.12 However, volumes for all these offences are generally low. **Annex A** sets out the volumes for adult offenders for relevant offences (where that is the primary offence), but excludes offences which cannot be distinguished from the offence codes, or where there have been no sentences imposed since 2010 (the latter of which includes offences under the Ivory Act, offences related to plants under the Wildlife and Countryside Act).

3.13 For many of the offences in scope there will be several years without a single sentence being imposed (at least as a principal offence). Hare coursing constitutes the most consistently sentenced of these offences: although declining over the past decade there are still at least 50 sentences imposed each year (and if assault or criminal damage is charged as the primary offence, there may be more). These have, of course, historically resulted in fines, although we may now start to see custody and community orders imposed.

3.14 The Scottish Sentencing Council is also embarking on a project related to environmental and wildlife guidelines. This has been delayed for some years due to its prioritising other projects, but it published a [literature review](#) in 2020 on the subject. Without definitive conclusions, this review did suggest there was some uncertainty and inconsistency in sentencing (at least in Scotland), with the hint that some sentencers did not take wildlife offending very seriously. Scotland does have some fields of interest less relevant to England and Wales (such as salmon poaching and conservation of freshwater pearl mussels), but there may be areas where the two councils can share intelligence where relevant.

Possible approaches

3.15 Given all the above, there are various ways in which we might approach a project on wildlife offences. One option would be to produce guidelines only for some offences: perhaps hare coursing, given the attention it has historically received and the new maximum penalties, and the import/export offences given their high maximum penalties, the relative lack of case law and the international interest.

3.16 Another option is to aim for wider coverage across the offences listed above: it may well be efficient for one guideline to cover a large number of offences where the harms and nature of the offending are similar. More radically, it may be that a guideline for, say, hare coursing does not focus on one or two particular offences, or even provide the usual stepped approach establishing categories of offending and starting points, but rather provide general guidance on the approach for the courts to take, and guidance on a typical totality exercise in such cases, highlighting the various ancillary orders available. There may even be a case for an overarching guideline on wildlife/rural offending.

3.17 In any case, given how complex the landscape is, I believe it would be best informed by more open discussion with groups with firsthand experience of investigating, charging, sentencing and being victims of these offences. The shape of the project so far has benefitted from early discussions with the CPS and Defra, but the options set out above should really be informed by more evidence from the National Wildlife Crime Unit, the Partnership for Action Against Wildlife Crime (PAW), the NPCC as well as rural police and sentencers.

3.18 Those conversations would risk expectations being raised that guidelines would inevitably increase sentence levels, and resolve all issues in relation to enforcement and detection. So whatever format they take, we would need to be clear that the increased consistency, transparency and clarity that should come from guidelines, does not necessarily result in more severe sentences and an associated deterrent effect.

Question 1: do you agree to conduct further, structured engagement with the agencies mentioned above and rural-based magistrates and district judges?

Question 2: subject to those discussions, are there any particular areas/offences that you would like to rule in or out of scope at this stage?

4 IMPACT AND RISKS

4.1 As set out above, volumes for these offences are low and we would not envisage a significant impact on prison and probation resources. However, we will want to be careful about the possibility of increasing numbers of even short custodial sentences, particularly in relation to hare coursing offences.

4.2 The risks of early discussions with stakeholders set out above hold for the project in general. Consultation could raise expectations from pressure groups that sentences should be increased across the board. The offences are also wide-ranging and relatively rare, so there is a risk that we do not (and cannot) fully understand the nature of the potential offending within scope. That should be mitigated to some extent by those early stakeholder discussions recommended above.

4.3 It is perfectly open to you and to the Scottish Sentencing Council to come to different conclusions about what offences should have guidelines, for the design of those guidelines to be different (with different culpability and harm factors, for example) and for sentence levels to be different. This is the case with the motoring guidelines which both councils have recently published. But stakeholders may scrutinise points of difference closely and flag the risk of “forum shopping” should one set be perceived to be more lenient.

5 EQUALITIES

5.1 Demographic data on these offences will be examined in due course. However, as most of these offences are dealt with summarily, data on ethnicity will likely be limited. Furthermore, due to the very low volumes of the offences examined, it may not be possible to draw any conclusions on differences between groups. We can ask the agencies if they have observed any particular trends in the demographics of offenders. From some reports, hare coursing is an activity connected with the traveller community, but certainly not exclusively so.



Sentencing Council meeting:
Paper number:

17 November 2023
**SC(23)NOV06 – Reduction in sentence
for a guilty plea**

Lead Council member:
Lead official:

Ruth Pope
ruth.pope@sentencingcouncil.gov.uk

1 ISSUE

1.1 There is a substantial backlog of cases in the Crown Court and one way of improving the situation would be to incentivise those who eventually plead guilty to do so earlier. This is a key objective of the [Reduction in sentence for a guilty plea guideline](#) and the suggestion is that the guideline could be amended slightly to make it more effective.

2 RECOMMENDATION

2.1 That the Council considers whether changes could usefully be made to the guilty plea guideline and if so what action should be taken.

3 CONSIDERATION

Background

3.1 The [Reduction in sentence for a guilty plea guideline](#) has been in force since June 2017. It replaced a guideline from the Sentencing Guidelines Council. The aim of the new guideline was to provide more certainty by clearly setting out what the reductions are at different stages and thus to incentivise more defendants to plead earlier in the proceedings.

3.2 The guideline provides for a one-third reduction for a plea at the first hearing and a maximum one-quarter reduction thereafter decreasing to a maximum of one-tenth on the day of trial:

D. Determining the level of reduction

The maximum level of reduction in sentence for a guilty plea is one-third

D1. Plea indicated at the first stage of the proceedings

Where a guilty plea is indicated at the first stage of proceedings a reduction of one-third should be made (subject to the exceptions in section F). The first stage will normally be the first hearing at which a plea or indication of plea is sought and recorded by the court.

D2. Plea indicated after the first stage of proceedings – maximum one quarter – sliding scale of reduction thereafter

After the first stage of the proceedings the maximum level of reduction is **one-quarter** (subject to the exceptions in section F).

The reduction should be decreased from **one-quarter** to a maximum of **one-tenth** on the first day of trial having regard to the time when the guilty plea is first indicated to the court relative to the progress of the case and the trial date (subject to the exceptions in section F). The reduction should normally be decreased further, even to zero, if the guilty plea is entered during the course of the trial.

For the purposes of this guideline a trial will be deemed to have started when pre-recorded cross-examination has begun.

3.3 In 2017, the Council published a resource assessment of the guideline which indicated that if the guideline did not have the intended effect of incentivising earlier pleas then offenders would receive smaller reductions, leading to longer prison sentences and a requirement for more prison places. As the guideline applies to all criminal cases, there was a concern that this increased demand could be very significant if the guideline did not work as intended.

3.4 The Council set up a steering group to monitor the impact of the guideline and to report any issues arising. This group consisted of representatives from across the criminal justice system, including the police, the CPS, HMCTS, Victim Support and MoJ. The group met several times from 2017-2019 to discuss the latest analysis and gather views on the impact on the guideline.

3.5 In 2019 The Council published a report: [Assessing the impact and implementation of the Sentencing Council's Reduction in Sentence for a Guilty Plea Definitive Guideline](#). This found that the guideline had **not** had an impact on the stage at which offenders pleaded guilty, but neither had sentence lengths increased. Potential reasons for these findings were explored with the steering group which noted that there was evidence that the guideline was being followed and, that despite the fact that the proportion of early pleas had not increased, this had not translated into longer sentences. Steering group members felt that one potential explanation for this was that, as anticipated in the resource assessment, judges were making a greater allowance for mitigation before the reduction for a guilty plea, in line with the guideline which states:

Factors such as admissions at interview, co-operation with the investigation and demonstrations of remorse should **not** be taken into account in determining the level of reduction. Rather, they should be considered separately and prior to any guilty plea reduction, as potential mitigating factors.

3.6 In addition, in the context of difficulties reported by defence representatives in obtaining information, the exception at F1 of the guideline (further information, assistance or advice necessary before indicating plea) would potentially apply to some cases allowing courts to give full credit at a later stage if it would have been unreasonable to expect the plea to have been entered sooner.

3.7 The report notes that given the wider context within which this guideline sits – having been introduced during a period of changes within the wider criminal justice system – it is difficult to definitively conclude what the overall impact of it has been.

3.8 The steering group last met in January 2020.

3.9 In January 2023 the Council considered an issue raised by the Senior Presiding Judge (SPJ). He noted that one cause of the continuing backlog of cases in the Crown Court is the need to have more than one hearing in the Crown Court when the defendant pleads guilty at the PTPH in indictable only cases. This situation often arises where a defendant is either unrepresented at the magistrates' court or the representative has insufficient time to advise them properly before sending the case to the Crown Court. The suggestion was that having lost the certainty of a one-third reduction there is then little incentive to indicate a plea before the PTPH.

3.10 As noted above, the guilty plea guideline requires a defendant to indicate a guilty plea at the first hearing (i.e. the magistrates' court) to be entitled to a one-third reduction. If a guilty plea is entered at the first hearing at the Crown Court (the PTPH) the reduction will be one-quarter. This is subject to the exceptions set out in the guideline, the first of which reads:

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

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

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

3.11 As was acknowledged by the SPJ, the court has the discretion to take an indication ahead of the PTPH into account as mitigation or the court could use the exception at F1 to allow a one-third reduction where the plea is indicated as soon as the necessary advice or

information is received, but it was argued that this is open to interpretation and therefore lack certainty.

3.12 The Council was not minded to change the guideline and the Chairman wrote to the SPJ explaining that while the Council acknowledged that the problems identified were real, they could not be resolved by changes to the guideline:

... members were clear that the current rigidity of guideline is principled. The guideline was the subject of lengthy discussion in 2015 and 2016. The restriction of full credit to cases where the defendant indicates their plea at the magistrates' court represented a significant change to the SGC guideline. The change was deliberate. As you set out ... judges still have the residual discretion afforded to them by paragraph F1 in the guideline. Of course, they can only exercise that discretion if they are invited to do so and if the evidence establishes particular circumstances which made it unreasonable to expect the defendant to indicate a guilty plea sooner. That will depend on the defence advocate providing such evidence to the court.

The current issue

3.13 Rosa Dean has raised a concern that judges are often not making use of the exception at F1 when it would be appropriate to do so and has suggested that the applicability of the exception and the need for judges to investigate what has happened at the magistrates' court could be made clearer.

3.14 She would also like the guideline to facilitate more active case management by encouraging judges to set out in clear terms to a defendant what the reduction will be at each stage of the proceedings, bringing it to line with the [Better Case Management Revival Handbook](#) (there are now four clear stages in the pre-trial process which are set out in the [Plea and trial preparation hearing \(PTPH\) forms](#)).

3.15 The Council will be aware of the advantages of guilty pleas being entered as early as possible not only from the point of view of reducing the backlog but more importantly because of the benefits to victims and witnesses.

3.16 The suggestion is not that the guideline prevents the appropriate reduction being applied or that it prevents proactive case management, but rather that changes to the guideline could assist with these matters. For example, F1 could be modified to include a reminder to sentencers to make enquiries about what happened at earlier hearings and the guideline could include a requirement for the court to set out what reduction a defendant can expect at each stage of the proceedings.

3.17 If the Council considers that these issues could be addressed by making changes to the guideline, a Council working group could be set out to bring forward proposals.

Alternatively, the Council may feel that some of these issues could be addressed more effectively through the Criminal Procedure Rules or Criminal Practice Directions.

3.18 Another suggestion from Rosa is that the steering group should be restarted to monitor how the guideline is operating in the current conditions.

Question 1: Does the Council wish to consider amendments to the guilty plea guidelines to address the issues raised?

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

Question 3: Should the steering group be convened to discuss the operation in present circumstances?

Potential legislation affecting guilty plea reductions

3.19 As discussed briefly at the October meeting, the Government has announced that it will “consider whether to extend the discount to encourage people to plead guilty at the first opportunity”. As yet, we have no further details as to what these plans might involve. We will provide an update if anything further is known by the time of the Council meeting. We have provided the Ministry of Justice with some of the evidence we have regarding guilty plea reductions and the effect on defendant behaviour. This is attached at **Annex A**.

4 EQUALITIES

4.1 The equalities implications of any changes to the guilty plea guideline would need to be considered carefully and raised in consultation.

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

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

5 IMPACT AND RISKS

5.1 The Council has a very full work plan and so any additional projects that we take on may cause delays to others. However, any reconsideration of the guideline necessitated by legislative changes would have to be prioritised.

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

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

Sentencing Council

External communication evaluation

October 2023

Visits to www.sentencingcouncil.gov.uk

	This month	Last month
Users*	155,000	152,000
Engaged sessions per user**	2.2	2.1
Ave engagement time	8m 10s	7m 41s

Announcements

4th	Data release on sentencing robbery – factors and outcomes
24th	Appointment of non-judicial member to the Council

*Users: Number of people who have visited the website at least once within the date range

**Engaged sessions are visits to the website that lasted longer than 10 seconds or had 2 or more page views

Magistrates' court guidelines search page	139,992	25,916
Crown Court guidelines search page	26,578	6,728
Fine calculator	20,435	9,788
Website homepage	19,188	8,775
offences/magistrates-court/item/common-assault-racially-or-religiously-aggravated-common-assault-common-assault-on-emergency-worker/	15,995	8,756
Magistrates' Court homepage	11,662	5,352
offences/magistrates-court/item/excess-alcohol-driveattempt-to-drive-revised-2017/	11,601	6,071
offences/magistrates-court/item/supplying or offering to supply a controlled drug/possession of a controlled drug with intent to supply to another	10,158	6,754

Top searches

This month	Last month
Theft	Theft
Burglary	Assault
Assault	Burglary
Dangerous driving	Speeding
Speeding	Dangerous driving
Robbery	Criminal damage
Murder	Sexual assault
Fraud	Compensation

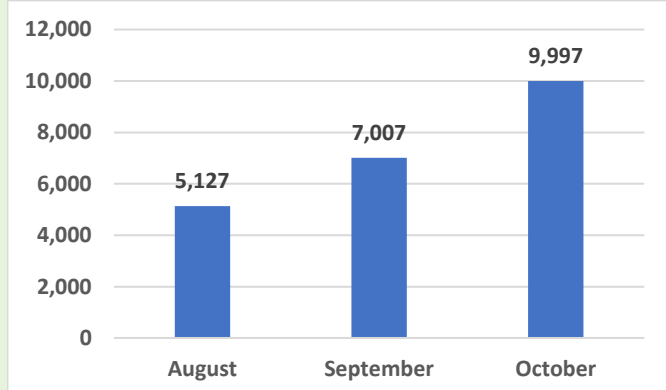
Subscribers

+25 = 1,426

Watch time average

02:09

Video views per month

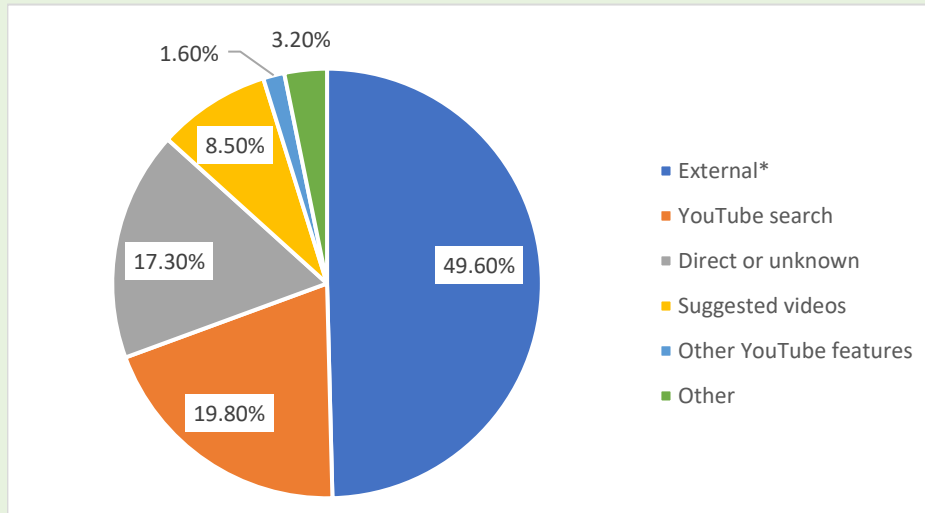


Impressions*

This month	Last month
39,669	32,210

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

How viewers find our videos



Top referring sites for videos

sentencingcouncil.org.uk	51.3%
Google docs	5.4%
Google search	4.4%
law.ac.uk	3.2%
YouTube	3.2%
cps.gov.uk	1.6%

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

+223 = 7,743

Highest engagement*

Minutes of meeting: 22 September 2023

All bulletins

	This month	Last month
Sent	3	5
Delivered	21,570	34,939
Opened	30.6%	31.2%
Engagement rate*	3.7%	4.7

Most clicked-through links

Minutes of meeting: 22 September 2023

Data release on sentencing robbery – factors and outcomes

Appointment of non-judicial member to the Council

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

Followers

+7 = 6,064

Highlights

	Tweets	Impressions	Mentions	Profile visits
This month	4	Not available for October		
Last month	1	1,589	26	211

Top tweet

New data release on adults sentenced for robbery offences: factors taken into account and sentencing outcomes. Includes info on culpability, harm, aggravating and mitigating factors, guilty plea and single most important factor affecting sentence: <https://bit.ly/3Q67zpm>

Impressions: 240

Total engagements: 5

Top mention

Today we are hosting Joanne Bates, lecturer @USW_Law and @coleggwent, delivering an exercise on "Sentencing". A big thank you to Eloise and Richard for creating and facilitating. Our schools and FE college outreach keeps on growing. #FE #outreach @hnevans5 @SentencingCCL

Dr Dean Whitcombe @DrDeanLaw

Immersive Learning Lead/ Hydra Manager at USW. Simulation Designer, Researcher, Collaborator and NTFS nominee
805 followers

- Impressions: number of times a tweet has been seen
- Mentions: mentions of the Council in other people's tweets
- Profile visits: number of times people have clicked through our tweets to see the Council's twitter profile
- Engagements: number of time someone has liked, retweeted, opened or clicked a link in a tweet or viewed our profile

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Sentencing Council

ANALYSIS AND RESEARCH SUBGROUP MEETING 20 OCTOBER 2023 MINUTES

Members present: Simon Drew
Elaine Freer
Jo King
Johanna Robinson
Mark Wall

Members of Office
in attendance: Eliza Cardale
Charlotte Davidson
Alice Luck-Scotcher
Nic Mackenzie
Lauren Maher
Emma Marshall
Erica Mojevwe
Harriet Miles
Sharmi Nath

Apologies: Gail Peachey

1. WORK UPDATES

Social Research team

1.1 Nic Mackenzie updated the subgroup on the current work in the team and upcoming projects. The team is currently comprised of Eliza, Alice, Harriet, Gail and Nic. The team has recently published a round-up of the research activities in which sentencers have been involved over the last 12 months. This included thanking them for their contributions and encouraging more sentencers to join our research pool.

1.2 In the coming months, the team will be publishing the user testing survey analysis report, which looks at how guideline users use and interact with the Sentencing Council's website. This will be published alongside an externally commissioned Behavioural Insight Team report which explores how users access, navigate and use the guidelines. These reports were presented to the Council in September.

1.3 In the new year, they will also be publishing research to review the expanded explanations. This explored how sentencers use and interpret a selection of expanded

explanations. The selection was based on recommendations from the externally commissioned research on [Equality and diversity in the work of the Sentencing Council](#), conducted by the University of Hertfordshire, which was published in January this year. An overview of the findings from the expanded explanations report was covered in Ruth's paper on Miscellaneous Amendments in July.

1.4 Finally, the team are continuing to work on the Assessment of the impact and implementation of the Sentencing Council's Breach guidelines. Once this has been completed, it will be sent to the subgroup for comments.

1.5 Also coming up are five road testing exercises: on the imposition, blackmail, kidnap and false imprisonment, non-fatal strangulation, motoring, and immigration guidelines. The team is in the process of scoping and developing these pieces of work. They are also commissioning work to update the Council's previous literature review on [Effectiveness of sentencing options on reoffending](#) and a second piece of work to review the Sentencing Council's overarching guideline on domestic abuse, and are in the early stages of considering next steps to further explore consistency in sentencing.

1.6 Jo King asked whether we should highlight in the publications instances where changes have already taken place or where the Council has agreed on actions based on findings. This will show we are responsive and act quickly on issues. It was agreed that these instances should be made clear in the publications, if relevant and appropriate.

1.7 Jo King asked whether she could observe any of the focus groups as part of research for the development of the imposition guideline. It was agreed that the team will let her know once we have revised dates for the research.

1.8 Elaine Freer also asked whether district judges and magistrates would be in the same focus groups for the imposition research. She suggested that they should be in separate groups as the different participants may use the guideline very differently, which would affect findings. It was agreed that separate focus groups would be held for magistrates and district judges.

Statistics team

1.4 Charlotte updated the subgroup on the current work in the team and upcoming projects. The statistics team currently includes Charlotte, Sharmi, Lauren and Erica, who has recently joined the team as part of her placement year. Amber and Caroline are currently on maternity leave and Jenna is due to be returning in April from a career break.

1.5 The team are currently working to support policy colleagues across multiple offence specific guidelines, most of which are pre-consultation: the revision of the imposition guideline, and several evaluations, including for the intimidatory offences and bladed articles and offensive weapons guidelines. The team have also recently published the robbery data collection data, which was used for the robbery evaluation which was published a few years ago (permitting access to this was one of the Council's strategic objectives). In future, we hope that evaluations and their supporting data collections will be published closer together in time for better transparency and more timely use of the data.

1.6 The team are also transforming their working practices to be more cloud based and are becoming more self-serving in terms of accessing data from the Ministry of Justice (MoJ). This will be particularly helpful for accessing data sources the MoJ do not currently publish, including data on, for example, secondary disposals. They are also exploring more opportunities to

access additional data - for example on probation - to help us better explore the impact of our guidelines on probation resources.

1.7 In the coming months the statistics team will be working to improve the methodology which produces pre-guilty estimates, alongside guideline development work for the non-fatal strangulation, housing and planning, wildlife offences and protest offences guidelines. The next evaluation lined up is for arson and criminal damage, which will also have data collection evidence data to draw on.

1.8 Emma highlighted to the subgroup that work on the Common Platform continues to be explored, but this has been a challenge. Exploring new options continues to be a priority as data collection response rates from the most recent collection were lower than hoped for. Jo King offered to check the contacts she had been engaged with on the Common Platform to ensure that we are able to discuss options with the appropriate contacts in HMCTS.

Action: Emma Marshall to discuss Common Platform contacts with Jo King

1.9 Emma also flagged a concern that has arisen around whether our plans to embed a link in the Common Platform is the most appropriate approach for future data collection (on the basis that feedback has suggested that not all sentencers regularly access the platform). Simon Drew said that it is often court clerks that fill in information for the Common Platform in the Crown Court, rather than the sentencer. Jo King confirmed that in the magistrates' courts this would be the legal advisor. Emma highlighted that ideally the person filling in the form would be the sentencer, due to the nature of the information collected (e.g., culpability and harm information, aggravation and mitigation).

1.10 Further consideration of how to collect data in the future is needed as the low response rate on the recent data collection means that some of the actions from the equality and diversity work have not been able to be progressed.

2. RISK REGISTER AND TERMS OF REFERENCE FOR THE SUBGROUP

2.1 Emma Marshall talked the subgroup through changes to the risk register. Discussion focussed on the controls, actions, and risk ratings for the two main risks to consider from an analytical perspective.

2.2 The first covers the risk that guidelines are not informed by evidence and that the impact to guidelines is unknown. The controls in place include obtaining quantitative data through bespoke data collection exercises, as well as qualitative data through research exercises with sentencers. Emma briefed the subgroup that responses to the 2023 data collection exercise were lower than anticipated and that there is a backlog of data collected which is yet to be cleaned and analysed due to staff resources, although Erica will be taking forward the outstanding criminal damage data cleaning.

2.3 In relation to work to address this risk, the team is committed to exploring how it can access demographic data and is in discussions with MoJ and HMCTS to explore what could be obtained from the Common Platform (see also paragraph 1.9). The team is also scoping work on consistency in sentencing which should assist in this area. The subgroup were asked to consider if the risk rating was currently correct and due to the issues with data collection and demographic data asked to raise the impact score from 2 to 3.

2.4 The second risk concerns data protection breaches. The impact of such breaches could potentially be high, but many actions have already been taken to minimise this risk and bring it down to an overall 'low' rating. Actions include a dedicated team in the Office for data security and assurance, mandatory staff training and appropriate documentation (privacy policy and data retention schedule). Council members are also reminded of their responsibilities under GDPR at periodic intervals. The subgroup agreed that the Office were aware of the risks of data breaches and were well placed to handle these. No changes were suggested for this risk.

2.5 No comments or concerns were raised in relation to the subgroups' terms of reference.

3. UPDATE ON DOMESTIC VIOLENCE REVIEW

3.1 Harriet Miles updated the subgroup that we have recently commissioned Nottingham Trent University to conduct a review of the Overarching principles: domestic abuse guideline. At the time of discussion, the inception meeting is imminent, and the contract is in process of being signed. The agreed completion date for the project is mid-May 2024.

3.2 The review will focus on how the guideline is used in sentencing, sentencers' understanding, interpretation, implementation, application and thoughts of the guideline, as well as the impact of the presence of domestic abuse on the sentence.

3.3 The University will specifically be looking into: understanding how the guideline is being used in practice, whether there are any reported or observed impacts of the guideline on sentencing behaviour; exploring whether sentencers are content with how the guideline works in practice (including the format/functioning of the guideline itself as well as in conjunction with other guidelines); whether there are any reported issues with equality and diversity; what type of sentences are being imposed and to understand when custodial sentences are given as opposed to domestic abuse programmes; and the factors that are considered when deciding an appropriate sentence.

3.4 Nottingham Trent has proposed that the research takes a mixed-method approach, which includes the following strands:

- a survey (sample TBC)
- up to 40 qualitative interviews using hypothetical scenarios (sample TBC)
- thematic analysis of sentencing transcripts
- analysis of various data collection datasets (assault, criminal damage, stalking and harassment, and breach of a protective order)

3.5 Jo raised that the survey size, scope and sample would likely need some thought given the issues with response rates for the data collection. Emma noted non-data collection surveys have not necessarily run into the same recruitment issues, so it is possible that this will not be a significant concern for this project. However, it will be kept in mind during the design process.

Action: Harriet Miles to discuss sample characteristics for the survey and interviews in the inception meeting with Nottingham Trent University, as well as discuss ways to maximise response rates.

4. UPDATE ON OFFICIAL STATISTICS REVIEW

4.1 Charlotte Davidson updated the subgroup with regards to our statistics publications and how they are labelled. Official statistics are statistics produced by bodies and organisations listed within an official statistics order, which includes the Sentencing Council. Official statistics must comply with a legal framework - the Code of Practice for Statistics - which is framed around the principles of trustworthiness, quality, and value. As government statisticians, the team must comply with the Code of Practice in all work. Compliance to this protects the reputation of the Council and provides the public with confidence in our published statistics. Examples of official statistics produced by the team include our statistical bulletins and tables, which are sent to the A&R subgroup members prior to publication.

4.3 Some of the publications produced by the statistical team are not considered to be official statistics due to their data sources and methodologies, which mean their quality cannot be assured consistently. This includes our resource assessments and evaluations. We do not currently formally acknowledge this distinction, so we will shortly be publishing a written statement - a statement of voluntary compliance - which will apply to these publications.

4.4 The practices within the team will not be changing, as the team always work to the Code of Practice. However, given the importance of the analytical work and frequency with which the Council's work is in the public eye, the statement of voluntary compliance will provide clarification to the users of the data about the quality and methods of the team's publications.

4.5 To further ensure compliance with the code, the team will need to move towards pre-announcing their official statistics publications. This means we can demonstrate fair, open orderly release of information, so that no one group is granted beneficial access, and that data can be released without external interference. It has been agreed with the regulators that the team can pre-announce as close to 1 day before publication, (the recommendation regarding pre-announcement is 4 weeks). Previously, most work (with the exception of evaluations) was not pre-announced to avoid drawing focus away from the guidelines and consultation, where relevant.

4.6 The statistics team will be updating the Council website pages which cover our research publications, as it is also currently not acknowledged that the Sentencing Council is an official statistics producer.

5. PAPER AR23(OCT23) PROPOSAL FOR PROJECT TO LINK COUNCIL DATA TO CREATE FURTHER OPPORTUNITIES FOR ANALYSIS

5.1 Charlotte Davidson talked the subgroup through a proposal to link the Council's data collections to Ministry of Justice's linked datasets through the Data First project, funded by Administrative Data Research UK (ADR UK). This is an innovative project looking to make better use of the wealth of data within government. The linked data are then made available to fully accredited researchers who have undertaken training on data confidentiality and protection, in a trusted research environment.

5.2 Charlotte outlined the key benefits to the Council, which would include allowing both the Council and external researchers to conduct a wider range of analysis, particularly on offender demographics, for which there is currently a lack of robust data available and which is not collected through our data collections.

5.3 It is also hoped the Council would be able to consider potentially widening the types of factors considered within its analysis/evaluations by linking to and utilising data sources we have previously not been able to access, for example prisons and probation data. There is also likely to be a reputational benefit from showing that the Council is open and transparent about these data, and it would help to fulfil our strategic objective to work more with academics.

5.5 Charlotte reassured the subgroup that a robust governance process will be in place once the data is linked, allowing the Council oversight and approval of any projects submitted by researchers who wish to access our data. The exact details of such a process will be discussed at a future meeting and the Council will be asked to approve this work when we have final plans.

5.6 The main risk identified was that this project would have some resource implications since the data would need to be uploaded and linked to the courts data by analysts in the team. Emma assured the team would consider work priorities and suggested that we undertake this project over a longer period of time in order to help balance all priorities in our workplan.

5.7 Subgroup members agreed to pursue this project with MoJ data, subject to the appropriate data security and safety approvals.

Action: A&R to progress governance arrangements, draw up the necessary documents and update the subgroup on progress at a future meeting.

6. DISCUSSION ON GUILTY PLEA FIELDS IN DATA COLLECTION

6.1 Lauren Maher raised an issue seen in the findings from the Council's past data collections that has been uncovered during data cleaning. A proportion of sentencers (10 per cent in harassment and 7 per cent in bladed articles) had responded that a guilty plea was entered but the reduction given for that guilty plea which was selected by the sentencers was 'None'.

6.2 Ruth Pope has advised that there may be some exceptional circumstances in which no reduction for a guilty plea may be given, for example, if the plea was entered very late, but these would be expected to be rare. However, we have checked the data collections and it seems that in most of the cases, the plea was entered at the first hearing.

6.3 The discussion focussed on suggestions for possible reasons as to why this question may have been responded to in this way:

- the sentencer may have forgotten what the reduction was by the time they came to complete the form, or not yet known it if the form was being filled in in advance; 'None' may have been selected in lieu of 'Unknown' as this option was not included in these data collections
- Confusion related to the fact that the question did not explicitly cover a reduction in fine amount

- That the 'None' option may have been interpreted/used in lieu of 'None of the above', if the reduction they applied did not come under the other options provided in the question
- That the sentencer may have suspended the sentence to account for the guilty plea and there was no option included for suspension (sentencers may have interpreted the option 'Dropped down threshold' to not include suspension as a suspended sentence is still a custodial sentence)

Johanna suggested that the team could sense check the findings by comparing the sentences recorded pre- and post-guilty plea. For future data collections, Johanna also recommended that the sentencer is asked to provide a reason in a free text box if they do utilise the 'None' option.

Actions for future data collection survey design:

- **clarify the percentage reduction option to include reference to a reduction in fine amount**
- **rename the 'None' option to 'No guilty plea reduction'**
include additional options for 'Unknown' and an explicit response for suspension of a custodial sentence as a result of the plea
- **include a follow up question asking the sentencer to provide a reason in cases where a guilty plea is entered but no reduction is given**

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**Sentencing Council Governance subgroup
Friday 20th October 2023
MINUTES OF MEETING**

Attendees:

Beverley Thompson (BT; Sentencing Council; Chair)
Elaine Lorimer (EL; Revenue Scotland)
Juliet May (JM; Sentencing Council)
Richard Wright (RW; Sentencing Council)
Steve Wade (SW; Office of the Sentencing Council, Head of Office)
Ollie Simpson (OS; Office of the Sentencing Council, Governance secretary)

Apologies: n/a

1. Minutes and action points

The minutes of the July 2023 meeting were agreed. All outstanding action points were completed, with Lauren Maher having provided further details on the People Survey following July's meeting.

2. Risk

OS talked through the current version of the risk register.

Risk 1 on staff/resource was medium and on course, as discussions had been had at Council level about guideline priorities. This would be reviewed in January. Risk 2 on finance was also medium and on course, but was subject to discussion later in the meeting.

Risk 4 on appointments was still regarded as high, even though various non-judicial appointments had gone through with fewer difficulties recently. There was a later discussion about whether the risk could be lowered to medium.

Various corporate-related risks (data protection, fraud and health and safety) were rated as low, on course and would be reviewed at the end of the reporting year. EL asked about assurance regarding health and safety and whether incidents in the office were being recorded. OS confirmed there were systems in place, although he and SW were unaware of any incidents having taken place. Some actions had been undertaken in response to recommendations from the RCJ (like the removal of the safe in the corridor).

BT and EL also asked about what assurance there was about health and safety for home working. OS said that the team had had a discussion at the team meeting that week about desk and screen equipment. Funds could be made available for any equipment that was required.

Action: OS to invite Gail Peachey and/or Nic Mackenzie as OSC health and safety leads to the January Governance meeting for a fuller discussion on health and safety.

In discussion on Risk 10 (definitive guidelines unavailable to the courts) EL asked whether the back ups had been tested. SW said that in real-life cases where the website had had an outage, the providers (Bang) had rectified the error quickly and within the service level agreement.

Risk 11 on disparities remained at medium and was likely to stay there for some time. The Equality and Diversity working group would meet in November and consider the progress of work arising from the University of Herts project. The risk would be reviewed following that meeting.

With filming completed on You Be the Judge over the summer, there was a good chance that risk 12 would be on course to be low by the early part of 2024.

3. Appointments

SW provided an update on recent appointments (including the victims role and the permanent police representative). The current system was resulting in more timely decisions than previously and there had been good senior level engagement on this within the MoJ.

BT question what the “alternative approaches” to be agreed internally were that were referred to in the risk register. SW explained that these were agreement that the NPCC nomination to be police representative should be the default option and that the DPP should be an ex officio appointment.

EL asked whether having the risk rated as high on the risk register was helping. SW said that it was a good way of showing that the issue was a high priority for the SC’s governance processes. It was agreed in discussion to keep the risk at high for now, pending final agreement on the appointment of the new DPP to the Council and to review it in January.

Action: review risk level on appointments in January.

EL asked whether we were now factoring delay into our internal processes on appointments. SW confirmed that we are now starting the process of new appointments (or re-appointments) 18 months ahead of the necessary time (i.e. half way through a three year appointment).

4. Finance and budget

OS summarised the current budget position and provided an overview of the areas of overspend and underspend.

SMT had made efforts throughout the first part of the year to identify areas of spend so that these were made consistently through the financial year rather than at the end which may be too late. This would mitigate the risk of an unintended underspend. This had included ensuring we were ordering the transcripts required for guideline development and resource assessments, employing an intern on the Analysis and Research team and work on developing and improving the website in response to the user testing work.

There was currently an overspend of around £30k on staffing costs which arose as a result of the pay deal and a one-off payment to non-senior civil servants in August. In the event ALBs were expected to provide for this, but it was understood by MoJ that this would result in overspend.

5. AOB

None. The meetings for 2024 need to be put in calendars.

Action: OS to ask Jess to put dates in for Governance and other sub groups accordingly.

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