Sentencing Council

Independent Sentencing Review 2024-2025

Response of the Sentencing Council for England and Wales

January 2025

Independent Sentencing Review 2024-2025

Response of the Sentencing Council for England and Wales

January 2025

© Crown copyright 2025

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

This publication is available at www.sentencingcouncil.org.uk.

Any enquiries regarding this publication should be sent to us at info@sentencingcouncil.gov.uk.

Contents

1. Executive summary 6

2. Evidence 7

Introduction 7

Theme 1. – Key drivers 14

Theme 2. – Structures and processes 23

Theme 3. – Technology 29

Theme 4. – Alternatives to custody 30

Theme 5. – Custodial sentences: reform 36

Theme 6. – Custodial sentences: progression 39

Theme 7. – Individual needs 40

3. Conclusions 44

4. References 46

1. Executive summary

1. The current prison population crisis has a number of causes, some of which (such as the increasing remand and recall populations, and the increased amount of time spent in prison by offenders) are unrelated to sentencing practice per se.

2. From the 1990s, more offenders were sent to prison and from around the turn of the century, those custodial sentences became longer. There may be various reasons for this, but Parliament has increased the tariffs for murder, increased maximum penalties for other offences, and introduced minimum penalties and various statutory aggravating factors which the courts and sentencing guidelines have had to reflect.

3. In the context of declining numbers of people being i) sentenced, ii) sentenced to custody and iii) sentenced to short term custody, the numbers and proportions of longer term sentences being imposed have remained at historically high levels.

4. Any efforts to prevent an ongoing, long-term crisis in the prison population would need at least to halt the sentence inflation which has occurred at the more serious end of offending. This is a matter for Government and Parliament, and halting, or even reversing the trend, would require political will.

5. There is a body of evidence which suggests that short custodial sentences are not effective at reducing reoffending. The Sentencing Council's revised Imposition guideline, due for publication in early 2025, will highlight this and ensure that judges and magistrates think very carefully about the non-custodial options available to them.

6. An increased reliance on non-custodial options and ancillary orders will need the courts to have confidence that they are available and effective, and that non-compliance will be enforced. This task will largely fall on the Probation Service, which will need to be resourced to carry this out.

7. Longer term solutions based around changing sentencing itself would need to see reform of sentencing for murder (which is outside the scope of this Review). The Sentencing Council could in principle then undertake a review of sentence levels for more serious offences, but would need a mandate from Government or Parliament to do so. This would be a complex, necessarily broad-reaching exercise which would require time and resource.

2. Evidence

Introduction

The Sentencing Council and its work

8. The Sentencing Council for England and Wales is an independent non-departmental public body of the Ministry of Justice and was set up under the Coroners and Justice Act 2009 to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary. The primary role of the Council is to issue guidelines on sentencing, which courts must follow unless it is in the interests of justice not to do so.

9. The Council is currently chaired by Lord Justice William Davis and there are 14 members (including the Chairman) with the qualifications for appointment laid out in statute. Eight are judicial members, appointed by the Lord Chief Justice with the agreement of the Lord Chancellor, who together represent the full range of courts responsible for sentencing in criminal cases – from the lay magistracy through to the Court of Appeal. There are six non-judicial members, who are appointed by the Lord Chancellor with the agreement of the Lord Chief Justice, and together they represent a broad cross section of those who work within the criminal justice system or are affected by it. The non-judicial members include a person with a particular interest and expertise in understanding the interests of victims. The current member who fulfils this role is the National Advisor to the Welsh Government on Violence against Women, Domestic Abuse and Sexual Violence.

10. The Council is supported by an office of around 20 civil servants, including policy experts, analysts and researchers, a communications team and lawyers.

11. The Council meets approximately once every month, with the bulk of its work at those meetings the discussion of draft sentencing guidelines. These drafts are either being prepared for consultation, or will already have been subject to consultation and are being amended in light of responses received. When needed, smaller working groups will look at points of detail outside of the main Council meetings. Three standing subgroups look respectively at matters of governance, analysis and research, and communications. A working group has also been formed to look at issues surrounding disparities in sentencing outcomes for different groups.

12. Consultation is central to the Council's work. The Council's consultations last three months and are open to all members of the public. Statutory consultees include the Lord Chancellor and the House of Commons Justice Select Committee. A very

broad range of views is therefore considered before sentencing guidelines are finalised, published and brought into force.

13. Each guideline is accompanied by a resource assessment which sets out the Council's estimate of the impact of the guideline on prison and, where possible, probation resources. The Council also has a duty to evaluate the guidelines which it produces, which it does wherever possible by considering quantitative and qualitative evidence available from before and after a guideline has come into force. These evaluations have in turn led to revisions of various guidelines, including instances such as the burglary offences guidelines where they were having an unanticipated effect on sentencing practice.

14. The Council's work is also informed by research work in a number of areas, including reviews of disparities in sentencing outcomes across a range of offences, attitudes to sentencing from the judiciary, and consistency in sentencing. It has also commissioned research on equality and diversity in sentencing, literature reviews on effectiveness in sentencing, and research on the public's understanding of sentencing and confidence in the criminal justice system.

15. Sentencing guidelines have been a feature of the criminal justice system in England and Wales for a generation well before the creation of the Sentencing Council. From the mid 1970s onwards, the Court of Appeal began to give guideline judgments. These related to a limited number of offences. They took a broad brush approach. Although these judgments were available via sentencing reports and other publications, they were largely inaccessible to the general public.

16. For the first time in 1998 sentencing guidelines were put on a statutory footing. The Crime and Disorder Act 1998 established the Sentencing Advisory Panel. This was a body with a majority non-judicial membership. It had two functions. First, when the Court of Appeal proposed to deliver a guideline judgment, the court was required to seek the views of the Advisory Panel. Second, the Panel had the power to propose a guideline for a particular offence or set of offences to the Court of Appeal. The Criminal Justice Act 2003 established the Sentencing Guidelines Council. This had a majority judicial membership. It was mandated to produce sentencing guidelines. The Sentencing Advisory Panel remained in existence. The Sentencing Guidelines Council was required to seek the advice of the Panel when devising any guideline. The courts were, at this stage, only required to have regard to any relevant Sentencing Guidelines Council guidelines when sentencing.

17. Given the growing pressures on the prison estate, Lord Carter of Coles was asked in June 2007 to look at options on how to balance the supply and demand for prison places. He recommended a working group look at the feasibility of a Sentencing Commission and sentencing framework along the lines of those seen in some US states. Lord Justice Gage led this working group, reporting in July 2008. The Gage

report rejected the idea of a Sentencing Commission, but recommended the functions of the Sentencing Advisory Panel and the Sentencing Guidelines Council be merged, with that new body tasked with assessing the impact of its guidelines, and government sentencing policy, on prison and probation resource.

18. The Coroners and Justice Act 2009 established the Sentencing Council in its current form. The courts have a duty to follow any of its guidelines which are relevant to a case. This includes a duty to establish a seriousness category where an offence-specific guideline provides for these (which all offence-specific guidelines produced by the Council do), and to remain within the sentencing range of the guideline. Courts must follow any relevant guideline unless satisfied that it would be contrary to the interests of justice to do so (see section 59 of the Sentencing Code).

19. The current system of sentencing guidelines represents a leap forward in terms of transparency and consistency of approach, compared to the situation 30 years ago. As set out above, all guidelines benefit from full public consultation and scrutiny and are published and available on the Council's website. Indeed, definitive guidelines have been digital by default since 2018. A survey of magistrates and judges in 2019 found that 75 per cent of judges and magistrates who took part thought that sentencing guidelines had improved fairness in the sentencing process, 85 per cent thought they had improved transparency, and 87 per cent thought they had improved consistency.

20. That confidence appears to extend to the general public. According to research conducted for the Sentencing Council in 2018 and 2022, providing people with information about sentencing guidelines improved their confidence that sentencing was fair. In both of the studies, two thirds of respondents said that awareness of the existence of guidelines had a positive impact on their confidence in the fairness of sentencing.

21. The Council has now produced over 180 offence specific guidelines covering over 300 of the offences most frequently seen by the courts in England and Wales. It has produced nine overarching guidelines covering cross-cutting matters such as the considerations around imposing community sentences and custodial sentences, the reduction to give for an early guilty plea, offenders with mental disorders, and sentencing cases involving domestic abuse. It has conducted 17 evaluations of its published guidelines, resulting in amendments being made to several of them.

22. The Council has conducted, commissioned and published broader research on sentencing matters, including looking at the effect of an offender's sex and ethnicity on the sentence they receive for drug offences (2020), public knowledge of and confidence in sentencing (2019 and 2022), consistency of sentencing (2021) and on the effectiveness of different sentencing disposals on reoffending (2022). The

Council also conducts outreach work via schools with the aim of improving wider public understanding of sentencing, and has recently relaunched the You Be The Judge online tool, allowing members of the public to take part in realistic mock sentencing exercises to understand more about the considerations that go into sentencing. This work represents part of the Council's statutory functions to promote public confidence in the criminal justice system and to consider the relative effectiveness of different sentences in preventing re-offending.

The current picture

The prison population

23. Ministry of Justice data show that the prison population as a whole has been increasing steadily since the end of the Second World War from around 15,000 in 1945 (Ministry of Justice, 2016) to around 88,000 in 2024 (Ministry of Justice, 2024a), ahead of the recent introduction of early release measures. The rise has been most rapid from 1993 (when the population was below 45,000) to the present (Ministry of Justice, 2020).

24. It is important to stress that the current pressures are caused in part by a starkly increased remand population: this reached a recent low of around 8,800 in December 2018 (Ministry of Justice, 2024b), but as of September 2024 this stood at around 17,700 (Ministry of Justice, 2024a).

25. Another cohort which has increased dramatically is the recalled population. This was negligible in 1993, but following various changes to recall policy it increased from under 1,000 to around 6,000 by 2008 (Ministry of Justice, 2020) when fixed term recalls were introduced. After a period of stability, the volume of recalled prisoners has increased sharply in recent years, almost doubling since 2018 (Ministry of Justice, 2024b). As of September 2024 it stands at 12,600 (Ministry of Justice, 2024a).

26. Focusing on the sentenced population, the MoJ data show that the biggest shift has been towards those serving sentences of four or more years: in 1993 over half (54 per cent) of the sentenced prison population were serving sentences of less than four years (Ministry of Justice, 2016), whereas at the point of the first Covid lockdown (March 2020) this had reduced to 27 per cent (31 per cent of the non-recalled sentenced population) (Ministry of Justice, 2024b).

27. The sentenced population has been volatile in recent years. The Covid pandemic resulted in prisoners leaving at usual rates without an incoming population to replace them, due to a fall in detected crime and a slowing of criminal cases, exacerbating an existing Crown Court backlog. The Court of Appeal established that conditions in prison, firstly related to Covid and then overcrowding, were valid considerations in determining whether an offender should be sentenced to

immediate custody. Finally, successive administrations have had to respond to the prison population pressures by bringing the release point forward for certain categories of prisoner.

28. Any analysis of present day prison population figures needs to bear in mind this context, but the proportion of sentenced prisoners serving less than four years stands at 22 per cent as of September 2024 (29 per cent of the non-recalled sentenced population) (Ministry of Justice, 2024a). Indeed, across most cohorts the population has decreased or remained steady over the past decade with the exceptions of the recalled population, those serving extended determinate sentences and those serving determinate sentences of 14 years or more (Ministry of Justice, 2024b).

Sentencing trends 2013-2023

29. Over the past decade the number of adult offenders sentenced each year, outside of summary motoring cases, has fallen from around 666,000 in 2013 to around 435,000 in 2023. Overall (including summary motoring cases) there has been a fall in the number of those sentenced to immediate custody from around 91,000 in 2013 to around 71,000 in 2023 (Ministry of Justice, 2024c). The issues mentioned above may provide some of the explanation for this fall.

30. Within that, the number of adults sentenced to immediate custodial sentences of 12 months or less has fallen from around 62,000 in 2013 (69 per cent of custodial sentences imposed) to around 43,000 in 2023 (60 per cent of custodial sentences imposed). The volumes sentenced to custodial sentences of four years or more have stayed generally stable over that period, fluctuating between around 8,000 and 10,000, with a short term decrease to around 6,000 around the time of the Covid pandemic. Nonetheless, some bands have seen dramatic relative increases: for example, there were around 680 offenders sentenced to between 10 and 15 years standard determinate sentences in 2013, compared to around 1,050 in 2023 (Ministry of Justice, 2024c).

31. The following table shows the numbers and proportions (of total immediate custody) for adult offenders sentenced to medium, long term and life sentences between 2013 and 2023 (Ministry of Justice, 2024c):

Table 1: Numbers and proportions (of total immediate custody) for adult offenders sentenced to medium, long term and life sentences between 2013 and 2023

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
Over 2 – 4 years (incl)	10,839 (12%)	10,611 (12%)	10,697 (12%)	10,911 (12%)	11,719 (13%)	10,976 (13%)	10,596 (14%)	8,284 (14%)	9,989 (16%)	9,821 (15%)	11,210 (16%)
Over 4 – 7 years (incl)	3,852 (4.3%)	4,030 (4.5%)	4,173 (4.7%)	4,306 (4.9%)	4779 (5.4%)	4,504 (5.5%)	4,238 (5.6%)	2,985 (5.0%)	3,890 (6.1%)	3,884 (6.0%)	4,547 (6.4%)
Over 7 – 10 years (incl)	1,437 (1.59%)	1,508 (1.69%)	1,569 (1.77%)	1,566 (1.77%)	1,815 (2.03%)	1,757 (2.14%)	1,617 (2.13%)	1,075 (1.79%)	1,556 (2.45%)	1,524 (2.37%)	1,693 (2.38%)
Over 10 – 15 years (incl)	679 (0.75%)	732 (0.82%)	836 (0.94%)	804 (0.91%)	1,000 (1.12%)	1,022 (1.25%)	906 (1.19%)	535 (0.89%)	820 (1.29%)	830 (1.29%)	1,050 (1.48%)
Over 15 years	255 (0.28%)	247 (0.28%)	279 (0.32%)	290 (0.33%)	386 (0.43%)	413 (0.50%)	351 (0.46%)	188 (0.31%)	390 (0.61%)	403 (0.63%)	475 (0.67%)
Life	380 (0.42%)	421 (0.47%)	355 (0.40%)	399 (0.45%)	370 (0.41%)	419 (0.51%)	427 (0.56%)	285 (0.47%)	443 (0.70%)	381 (0.59%)	485 (0.68%)

Source: Ministry of Justice, Criminal Justice Statistics quarterly: December 2023

32. Extended determinate sentences were introduced with effect from December 2012. They replaced indeterminate sentences for public protection and extended sentences which were introduced with effect from April 2005. The current volume of extended determinate sentences is comparable with the aggregate volume of indeterminate sentences for public protection and extended sentences for public protection being imposed in the years leading up to their abolition. Whilst the volumes and proportions of life sentences have increased over the period 2013 to 2023, the effect of the backlog, the pandemic and associated issues discussed above make it difficult to establish a clear trend (Ministry of Justice, 2024c).

33. Bearing in mind the overall trends in sentencing volumes over the last decade, it does appear that the upwards pressure in the sentenced prison population stems to a considerable extent from the cumulative impact of offenders serving longer sentences. Added to this, offenders serving extended sentences will serve more of their sentence in prison: at least 2/3rds of the custodial period, and in many cases much more than this. For example, the mean time served, including remand, for prisoners released from extended determinate sentences between April and June 2024 was 86 per cent of their custodial term, and the median time served was 92 per cent (Ministry of Justice, 2024a). Following legislative changes in 2021 and 2022, serious offenders serving standard determinate sentences of seven years or

more (in some cases four years) serve two thirds rather than half of their custodial sentence in prison and this will now be starting to have an impact on the population.

34. Finally, as mentioned above, the recall population has increased dramatically (from around 5,600 in September 2014 (Ministry of Justice, 2024b) to around 12,600 in September 2024 (Ministry of Justice, 2024a)). Successive changes to recall policy since 1998 have undoubtedly driven much of this increase (for example, the supervision of short-term prisoners for a year after their release from custody) but it may also be explained by the longer licence periods associated with longer, and extended, sentences.

Theme 1. What have been the key drivers in changes in sentencing, and how have these changes met the statutory purposes of sentencing?

35. The reasons why greater numbers of longer sentences have been imposed over time were explored in the Council's 2018 evidence to the Justice Select Committee Inquiry ''Prison Population 2022: planning for the future'. Broadly, those reasons stand today and the Council revisits many of them below, where they are relevant and updated as necessary.

Schedule 21 to the Sentencing Code

36. Probably the most significant legislative change since 2000 in respect of sentencing was Schedule 21 to the Criminal Justice Act 2003 (CJA 2003), now consolidated as Schedule 21 to the Sentencing Act 2020 (the "Sentencing Code"). It came into force in April 2005. This sets out the starting points which the courts should adopt in determining the minimum terms for different types of murder cases. As a result of this legislation, sentences for the vast majority of murder cases increased substantially. A case that may previously have attracted a life sentence with a tariff of 10 years before the change might attract a tariff of double that afterwards.

37. A stark example may be seen in the case of Shahid Mohammed who was convicted of eight counts of murder in 2003, but only sentenced in 2019 having absconded before his conviction. The sentencing judge was required to follow pre-Schedule 21 sentencing practice and imposed a life sentence with a minimum term of 23 years (later increased to 27 years following an Attorney General's reference). However, the judge said that had he followed the Schedule 21 provisions, the minimum term would have been 38 years. Other similar examples exist of people sentenced now for offences committed before 2003 where the theoretical increase in the length of sentence is pronounced.

38. For all cases where the murder does not fall into one of the higher categories set out in Schedule 21 the default minimum term is 15 years. From the outset Schedule 21 provided for various circumstances in which the starting point for the minimum term was 30 years. It has been amended over the years to include more instances where the starting point for the murder is set higher than the 15 year default period. In 2010, a new starting point of 25 years was added for cases where a knife or weapon was taken to the scene. Murders motivated by disability or transgender identity were given a 30 year starting point in 2012 (for parity with hostility on the basis of race, religion and sexual orientation). Murders of a police or prison officer were given a starting point of a whole life order by the Criminal Justice and Courts Act 2015. The Police, Crime, Sentencing and Courts Act 2022 added the premeditated murder of a child to the list of murders attracting a whole life order starting point.

39. That Act also changed the position in relation to children who committed the offence of murder. It provided a series of starting points for child offenders linked to the adult starting points. These were higher than would have been expected based on sentencing practice at the time, as Parliament's approach was to bring the minimum terms for child offenders closer in line with those for those aged 18 or over.

40. The effect of this increase has not affected murder sentences alone. Many serious offences carry a maximum term of up to 14 years or of life imprisonment. Over the years, the Court of Appeal, the Sentencing Advisory Panel and the Sentencing Council have grappled with ensuring that sentences for other serious offences, including those which fall just short of murder, are proportionate with the levels set out in Schedule 21.

41. As the Sentencing Advisory Panel set out in its 2007 advice to the Sentencing Guidelines Council on offences against the person:

> "(61) In the recent case of R v Ford, [[2006] 1 Cr App R (S) 36] the Court of Appeal considered what impact, if any, the statutory minimum terms for murder (introduced by the Criminal Justice Act 2003) should have on sentencing for the offence of attempted murder. It commented that 'Any right-thinking member of the public would consider there was an objectionable disparity between the new levels of sentence for murder and the existing levels of sentence for attempted murder'…
>
> (63) The Court in Ford concluded 'It follows that it is only in the correspondingly graver cases of attempted murder that (an) increased level of sentencing is likely to be required.' In cases where, if the attempt had been successful, the murder would have fallen within the category of murders of "particularly high" seriousness then, except where a sentence of imprisonment for public protection is required, it would be appropriate to pass a "determinate sentence which would maintain the proportion between the time served under the sentence for attempted murder and the time which would have been served on conviction for murder."

42. The latter point is worth emphasising. A year of the minimum term in a life sentence would equate to up to two years for a determinate sentence, because of the different ways in which those sentences are served. So, theoretically, if the aim were to retain strict proportionality, a five year increase in the starting point for a certain type of murder would today need an eight year increase in the starting point for a determinate sentence for, say, a similar attempted murder or manslaughter case. That is to take account of the fact that the offender serving life can only apply for release after the minimum term has expired. An offender serving a determinate sentence will either be able to apply for Parole consideration of their release two-

thirds of the way through their custodial term, or will be released automatically at that point.

43. One of the factors to which the Sentencing Council must have regard when developing any guideline is the sentence imposed by courts in England and Wales for the offence in question. At the point when the Sentencing Council was established, sentences for violence against the person had been increasing in severity. In consulting on new sentencing guidelines for assault offences in 2010, the Sentencing Council noted the trend for more severe sentences in this category of offending:

> "The Council examined current sentencing practice for assault offences and recognised two key features: that current sentencing does not always reflect the existing guideline; and, that there has been a significant change in sentencing practice unrelated to the issuing of existing guidelines. Between 1999 and 2008, there was a general trend towards longer sentences for all assault offences but in particular for ABH offences for which the average custodial sentence length increased by 39%.
>
> The draft guideline at Annex B reflects the Council's aim to increase proportionality in sentencing across the range of assault offences. The draft guideline maintains the availability of the existing sentences for the most serious offenders while ensuring that sentencing for less serious offences is proportionate." (p5)

44. In 2020, as well as revising the assault guidelines, the Council revised the guideline for attempted murder and noted

> "The existing guideline [for attempted murder] and sentences are heavily influenced by sentences for murder, which is the offence which would be charged were the attempt successful…
>
> For some time, and particularly since the inclusion of paragraph 5A into Schedule 21 [relating to bringing a knife or other weapon to the scene], there have been concerns that some sentences in the existing guideline for attempted murder are too low, and are in some cases very much lower than a same facts murder offence would have been even though the intention was to cause death. The Council decided that sentences should be revised to ensure the gravity of the offence is properly reflected."

45. The knock-on effect then goes wider. For example, in consulting on modern slavery offences in 2020 the Sentencing Council pointed to the sentence levels for grievous bodily harm with intent as providing a comparator. In setting revised levels for causing death by dangerous driving in 2022, the Council said

> "In setting these new levels the Council is mindful of the comparison with unlawful act manslaughter. Under the guideline for unlawful act manslaughter, cases of very high culpability have a starting point of 18 years' custody and a range of 11 to 24 years. The Council believe that a closer comparator for high culpability cases of causing death by dangerous driving is high culpability manslaughter cases, which have a starting point of 12 years' custody and a range of 11 years to 16 years. However, we propose a higher top of the range for this guideline, bearing in mind how serious the worst cases of dangerous driving can be."

46. It is clear that Schedule 21 has therefore had an effect beyond murder cases. Some suggestions for future change in this area are made in the 'Conclusions' section below. However, other legislative developments in the last 20 years have also contributed to more severe sentencing practice.

New offences and increased maximum penalties

47. There are significant numbers of individual offences where Parliament has chosen either to raise the statutory maximum term of imprisonment for an offence, or to set out a minimum term to be served in certain circumstances. A growing number of statutory aggravating factors have also been introduced over the years. All of these measures have played a part in increasing severity in sentencing.

48. For example, the Sexual Offences Act 2003 introduced new offences and raised the maximum sentence for many sexual offences. This legislation recognised that sexually abusive conduct was unacceptable and that there was a need to protect vulnerable groups from abusive and predatory behaviour. This has led to an increase in sentence severity for sexual offences (including for historical cases where the statutory maximum sentence is lower). For example, indecent assault under sections 14 and 15 of the Sexual Offences Act 1956 had a maximum penalty of 10 years (or two years for offences committed towards a woman before 15 September 1985). The equivalent offence under the 2003 Act carries a maximum penalty of 14 years (section 3), or life imprisonment if penetration is involved (section 2). Indecency with a child under section 1 of the Indecency with Children Act 1960 had a maximum penalty of two years' custody for offences committed before 1 October 1997, when this increased to 10 years. Under the 2003 Act, assault or sexual activity with a child may be punishable by 14 years imprisonment (sections 7 and 9) or life imprisonment where penetration is involved (section 6).

49. The Protection of Freedoms Act 2012 added two offences of stalking to the Protection from Harassment Act 1997. Initially those offences carried the same maximum sentences as the offences of harassment created under the earlier Act. The Policing and Crime Act 2017 then doubled the maximum sentences for stalking and harassment offences from five to 10 years.

50. The Assaults on Emergency Workers Act 2018 doubled the maximum penalty for common assaults against emergency workers from six months to 12 months' imprisonment. Further to evidence of an increase in such offences following the increase, the Police, Crime, Sentencing and Courts Act 2022 doubled the maximum penalty once again to two years (see more on this below).

51. The maximum penalties for various terrorist offences were increased over the years, including by the Counter-Terrorism and Border Security Act 2019 and the Counter Terrorism and Sentencing Act 2021. The maximum sentence for modern slavery offences was increased from 14 years to life by the Modern Slavery Act 2015. The maximum penalties related to various immigration offences were increased under the Nationality and Borders Act 2022: for example, the maximum penalty for facilitating illegal immigration was increased from 14 years to life imprisonment, breach of a deportation order was increased from six months to five years, and knowingly entering the UK without leave was increased from six months to four years.

52. The Animal Welfare (Sentencing) Act 2021 increased the maximum penalty for animal cruelty offences from six months to five years. Following a campaign by the local MP of Tony Hudgell, who had to have both legs amputated as a baby, the maximum penalty for causing or allowing a child to suffer serious physical harm was increased from 10 years to 14 years in 2022. This resulted in a required increase in the maximum penalty for causing or allowing a child to die from 14 years to life imprisonment. The same legislation increased the maximum penalties for hare coursing from a fine to 6 months imprisonment.

Case study: causing death by dangerous driving

The penalties available for motoring offences are a striking example of how penalties can increase over time. The Road Traffic Act 1988 created the offence of causing death by dangerous driving which had a maximum penalty of five years' imprisonment. It replaced the offence of causing death by reckless driving in the Road Traffic Act 1960. That offence also had had a maximum penalty of five years' imprisonment.

The maximum penalty for causing death by dangerous driving was increased to 10 years by the Criminal Justice Act 1993; the Criminal Justice Act 2003 increased the maximum penalty to 14 years; this was increased to a maximum of life imprisonment under the Police, Crime, Sentencing and Courts Act 2022. The offence of causing death by careless driving while under the influence of drink or drugs was created in 1991, also originally with a maximum penalty of five years' imprisonment. This too has increased over the years to life imprisonment, alongside causing death by dangerous driving.

The Road Safety Act 2006 increased the maximum sentence for careless driving from a level 4 fine to a level 5 fine and created the offence of causing death by careless driving with a maximum sentence of five years. The 2006 Act also introduced the offence of causing death by unlicensed, disqualified or uninsured driving with a maximum of two years. The Criminal Justice and Courts Act 2015 removed disqualified driving from section 3ZB of the Road Traffic Act 1988 and created a new offence of causing death by disqualified driving with a maximum sentence of 10 years, thus quintupling the maximum penalty.

53. This is a long list of increases in maximum penalties, but still almost certainly not exhaustive. Conversely, there is a very limited history of any maximum penalty being reduced. The reduction of the maximum sentences for theft and commercial burglary under the Criminal Justice Act 1991 are the only examples in relation to any remotely common offence.

54. In most cases sentencing guidelines will need to be amended to take account of these increases in maximum penalties. There is no simple, arithmetical rule as to how increases in maximum penalties will affect the sentence levels set out in guidelines. For example, when the maximum penalties for child cruelty offences were increased, the Council created a new category for the very worst cases of harm which made use of the top levels of sentence now available to the courts. In the case of causing death by dangerous driving, sentence levels were increased at all levels of culpability, though to different degrees.

Aggravating factors

55. There is an increasing number of statutory aggravating factors set out in the Sentencing Code which have the intention of making sentences more severe where certain factors are present.

56. The statutory aggravating factor of the offence being committed on bail was introduced by the Criminal Justice Act 1993. While this Act permitted previous convictions to be taken into account at sentencing, the Criminal Justice Act 2003 made previous convictions a statutory aggravating factor for the first time.

57. All offences committed with a racial motive were to be aggravated following the Crime and Disorder Act 1998. This sort of aggravation was widened under the Criminal Justice Act 2003 to include offences committed on the basis of hostility towards the victim’s disability and sexual orientation. This was widened again by the Legal Aid, Sentencing, and Punishment of Offenders Act 2012 to include hostility to the victim’s transgender identity.

58. The Crime and Disorder Act 1998 also created racially and religiously aggravated forms of different offences: racially and religiously aggravated assault and racially

and religiously aggravated public order offences carried a two year maximum; racially and religiously aggravated harassment also carried a two year maximum, increased to seven years where there was fear of violence; and racially and religiously aggravated criminal damage carried a 14 year maximum.

59. The Counter-Terrorism Act 2008 required the courts to aggravate certain offences where they were found to have a terrorist connection. The list of offences which could be so aggravated was expanded by the Counter-Terrorism and Border Security Act 2019. The Counter-Terrorism and Sentencing Act 2021 required that any non-terrorism offence found to have a terrorist connection should be aggravated.

60. Most recently, assault offences must be aggravated under statute if the victim is providing a service to the public at the time of the offence. For murder cases, a history of coercive and controlling behaviour and the use of sustained and excessive violence were made aggravating factors within Schedule 21 in 2024. Last month (December 2024) the Government announced plans for murders involving strangulation or the end of a relationship to be aggravated under Schedule 21.

Minimum sentences

61. Aside from the mandatory sentence of life imprisonment for murder, a number of offences are subject to a minimum sentence. The first minimum sentences were enacted shortly before the 1997 General Election in the Crime (Sentences) Act 1997. These were a minimum of seven years' custody for a third class A drug trafficking offence, and a minimum of three years' custody for a third domestic burglary offence.

62. These were followed in the Criminal Justice Act 2003 by five year minimum terms for certain firearms offences, the scope of which was expanded by the Violent Crime Reduction Act 2006. The Legal Aid, Sentencing, and Punishment of Offenders Act 2012 introduced a new offence of threatening with a bladed article in a public place which carried a minimum sentence of six months' custody. The minimum of six months was also applied to repeat possession offences (for both knives and offensive weapons) under the Criminal Justice and Courts Act 2015.

63. On the day after the Fishmongers Hall attack the then Prime Minister announced that those convicted of a "serious terrorist offence" should receive a mandatory minimum sentence of 14 years and that "for all terrorism and extremist offences the sentence announced by the judge must be the time actually served – these criminals must serve every day of their sentence with no exceptions". The result was the serious terrorism sentence of imprisonment enacted in the Counter-Terrorism and Sentencing Act 2021.

64. Following a campaign by the widow of PC Andrew Harper, who was killed in 2019, the Government introduced via the PCSC Act 2022 a requirement for a life sentence for the manslaughter of an emergency worker acting in the exercise of their functions.

65. Minimum sentences remain the exception in England and Wales. The Council welcomes that. A minimum sentence fetters the court's discretion in imposing a sentence fully proportionate to the offence and responsive to the circumstances of the offender before them. Minimum sentences tend to contradict the general rule set out in the Sentencing Code that a custodial sentence is only to be imposed where the offence was so serious that a community order or a fine cannot be justified, and that that custodial sentence must be for the shortest possible period commensurate with the seriousness of the offence.

66. In some cases, the minimum penalties that have been enacted may have little practical effect, given the likely sentence that would have been imposed were there no minimum set out in law. For example, third strike domestic burglary and drugs importation offences are in most cases likely to merit a custodial sentence at least as long as the statutory minimum. However, there may be some cases where a career burglar (and their potential victims) might benefit from a community-based drugs rehabilitation course. Strictly applied, the minimum term would prevent this course being adopted.

67. The introduction of a minimum penalty for firearms offences does appear to have changed sentencing practice. For adult offenders the proportion receiving five years' custody for relevant firearms offences in 2003 was 4 per cent, and in 2004 11 per cent. In 2005 when the minimum came into force this increased to 40%, rising to over 50% in 2006. The average custodial sentence length for adult offenders for these offences rose from 28.1 months in 2003 to 52.4 months in 2006.

68. The minimum sentence also means that the full range available for possession of a prohibited weapon is between five and 10 years' custody, which makes it difficult to gradate different types of offending effectively in guidelines. In addition, it was found that "exceptional circumstances" were being found to avoid applying the minimum in the majority of cases involving disguised stun guns, which led to a change in charging practice.

69. The six month minimum sentence for knives and offensive weapons threats and possession is likely also to have an impact on sentencing in practice. However, there may also be a problem of a gap between public expectation and reality, when a significant minority of offenders caught by the provisions do not receive a six month immediate custodial sentence. This may be because a guilty plea has reduced their sentence under the minimum, or the court has found exceptional circumstances which mean it would be unjust to apply the minimum.

The impact of sentencing guidelines

70. The rapid growth of the prison population from 1993 onwards occurred before the Sentencing Council came into being; indeed the population levels off around the time that the first of its guidelines came into force. As set out above, many of the drivers of longer custodial sentences were being put into place throughout the 1990s and 2000s. As in the example of the assault guidelines, the Council inherited sentence levels that were becoming more severe already, and had a duty to take current sentencing practice into account in preparing guidelines. Nonetheless, it is true that sentencing severity has continued to increase since 2010, and a declining volume of offenders being sentenced has not led to an overall reduction in the prison population.

71. The Sentencing Council's own research from 2021 has shown that sentencing severity had increased for 21 of 76 offences for which guidelines had been evaluated, and had decreased for 10 of the 76, though only some of those offences related to immediate custody. Overall, the nine offences related to immediate custody where estimates were possible were found to have resulted in the need for around 900 additional prison places per year, largely due to two guidelines: causing grievous bodily harm with intent and robbery.

72. Since that 2021 research the Council has also published evaluations for the guideline on the Imposition of Community and Custodial Sentences which came into force in February 2017, and the offence specific guideline for Bladed articles which came into force in June 2018. No evidence was found that the former has had any impact on increasing sentences. Conclusions on the impact of the latter were that the guidelines were found to be operating as intended and did not present any cause for concern regarding unintended impacts, although conclusions were likely to be affected by the impact of the COVID-19 pandemic from early 2020 onwards.

73. Guidelines may therefore have played some part in increasing sentence lengths, although from the available evidence this appears to be limited. More on the Council's approach to considering the impact of guidelines on prison and probation resources can be found in the next section.

Theme 2. How might we reform structures and processes to better meet the purposes of sentencing whilst ensuring a sustainable system?

Government and Parliament

74. As set out in detail above, legislative changes over the past 30 years have established a backdrop of ever-increasing severity in sentencing. Single-issue campaigns have resulted in the introduction of minimum penalties, increasing numbers of statutory aggravating factors and maximum penalties being raised. The Council can identify very little evidence in most cases that these increased penalties will result in deterrence.

75. At the same time successive governments have sought to grapple with the problems of a revolving door of reoffending, and have wanted to identify cost-effective, robust non-custodial options to tackle lower-level offending that command the confidence of the public. The difficulty is that the rhetoric pulls in two directions at once.

Case study: assaults on emergency workers

The review sought out examples of unintended consequences from legislation, and one from recent years may be instructive. The Assaults on Emergency Workers (Offences) Bill was a Private Member's Bill introduced by Chris Bryant MP. Mr Bryant introduced his Bill, which had similar provisions to a PMB introduced by Holly Lynch MP a year earlier, having asked members of the public to select from a shortlist a suitable subject. He proposed to increase the six month maximum penalty for a common assault in cases where an emergency worker carrying out their functions was the victim. Although initially, Mr Bryant had considered two years' imprisonment as the appropriate maximum, this was reduced to one year. The Government ultimately decided to back the Bill and it became law in 2018.

Following data that showed attacks on emergency workers were continuing, Ms Lynch expressed concern that the doubled maximum penalty had not acted as a sufficient deterrent. The 2019 Conservative Party manifesto included a pledge to consult on further doubling the maximum penalty. According to the then Home Secretary, the four week, targeted consultation, launched in July 2020 sent "a clear and simple message to the vile thugs who assault our emergency workers – you will not get away with such appalling behaviour and you will be subject to the force of the law", although it was unclear the extent to which such offenders were aware of the consultation. The Lord Chancellor expressed the view that "Now more than ever [emergency workers] must be able to do their extraordinary work without the fear of being attacked or assaulted",

although there was no explanation of how the increased maximum penalty would keep emergency workers safe.

Following consultation, the maximum penalties were increased under the Police, Crime, Sentencing and Courts Act 2022. The Equalities Impact Assessment published with the Bill recognised that women made up more of a proportion of offenders for this sort of assault than for common assault as a whole:

"There is a lower proportion of males in the affected group of Assault of an Emergency Worker offenders relative to the comparison group of all Common Assault and Battery offenders. Of the 11,091 offenders proceeded against for Assault of an Emergency Worker, 70.7 per cent were male and 29.3 per cent female, compared to 84.8 per cent male and 15.2 per cent female in the comparison group of Common Assault and Battery offenders."

There is some emerging evidence that the increase in maximum penalties has led to an increase in the female prison population. In 2023, around 13,100 adult offenders were sentenced for assaults on emergency workers and around 30% of these were female (3,800). There appears to be a correlation between the introduction of the new offence/aggravation and the number of females sentenced for violence against the person offences: in 2018, there were around 2,900 adult females sentenced but in 2019 this had increased by 83% to around 5,300. The number of females sentenced for assaults on emergency workers seems to have caused this increase, accounting for over half of females sentenced for violence against the person (58 per cent in 2023) (All Ministry of Justice, 2024c).

Pre-2019, the predecessor offence of assault of a constable made up a significant proportion of females sentenced overall and subsequently those sentenced to immediate custody. However, since the introduction of the new aggravated offence, there has been an increase in the number of females sentenced and those sentenced to immediate custody. For assaults on emergency workers the number of females sentenced to immediate custody has been around double the numbers for assault of a constable. This suggests that the introduction of the new offence has had an impact on female sentencing trends.

Notably, the Police, Crime, Sentencing and Courts Act 2022 also introduced a statutory aggravating factor where those providing a public service, performing a public duty or providing services to the public, such as shopworkers, are assaulted. This was already an aggravating factor under the existing sentencing guidelines, so it was unclear what the legislation was intending to achieve: as an addition at Report stage in the Lords, no assessment was published setting out the impact on prison and probation resources.

Following reports that, despite the new statutory aggravating factor, violent incidents against shopworkers had increased in 2022-23, the then government announced shortly before the 2024 general election that it would introduce a new offence of

assaulting a retail worker, although this would have the same six month maximum penalty as common assault. The Crime and Policing Minister echoed the previous Home Secretary's words that this announcement was "sending a clear message to criminals". The proposed offence was never put on the statute book, but the proposal mirrored the provisions relating to emergency workers.

76. It appears to be the case that Ministers in successive governments have looked to increasing maximum penalties, new minimums and statutory aggravating factors as a readily available, cost-free way of sending a message to criminals, and being seen to clamp down on crime. The cumulative effect of this has been ever more severe medium- and long-term sentences which have helped to drive up the prison population. Parliament may wish to continue to do this. The legislature should be aware of the practical and financial consequences.

77. We suggest that whenever increased penalties are proposed those proposals should be tested robustly to ensure they are necessary and proportionate, and that the consequences have been thoroughly modelled. It may be that the Lord Chancellor, backed by Treasury ministers, should take responsibility for making sure that Ministers have made an adequate case for increased penalties and that they have established, realistically, the immediate and indirect costs and consequences of increasing penalties. We suggest that they ought to make those consequences explicit, first as part of the collective clearance process, and then to Parliament. A robust assessment must be made of the impact of more severe sentences on prison and probation resources, and departments should justify any high or increased maximum penalties, particularly where those involve custody. We suggest a similar approach to any proposals which, whilst not specifically increasing a maximum sentence, will affect the prison population: for example, increases in the proportion of a sentence which offenders will have to serve in custody, which obviously add to the prison population and add to the cost of incarceration of the offenders concerned.

78. This approach may help to brake or halt the sentence inflation we have seen in recent years. A much more difficult step would be to seek at least partially to reverse it. It would have to be done in a way that took into account sentencing across the board. Reducing long sentences in a proportionate way, for all offending would be a huge and lengthy undertaking, possibly requiring a Royal Commission. While the Sentencing Council could undertake some targeted adjustment of sentencing levels for some offences, any fundamental change of policy would need to be led by Government, accountable to Parliament and the general public.

79. It may help for MPs, Peers and Ministers at least to understand better how the current framework operate. There are examples of amendments to penalties which do not have the effect intended. For instance, the Police, Crime, Sentencing and Courts Act 2022 increased the maximum penalty for causing death by dangerous

driving and causing death by careless driving whilst under the influence of drink or drugs to life imprisonment. It did not add those offences to Schedule 19 to the Sentencing Code. That omission means that the usual mechanism for imposing a life sentence is not available to the courts. Various MPs have queried, often on behalf of bereaved constituents, why life sentences are not being imposed in these cases. They appear to be unaware that this is because of the failure to made appropriate consequential amendment to the Sentencing Code.

80. Equally, the Council is aware of complaints by MPs (including in the context of pet thefts) that harm in theft cases only takes into account financial harm: in fact the theft guidelines do explicitly take into account the wider personal and sentimental harms caused to victims. Similar concerns were expressed by the Justice Committee in its 2022 report ‘Fraud and the Justice System’ regarding the fraud guidelines, which have always taken non-financial harms into account.

81. There may be other concepts that are not well known, such as why sentences may be suspended, the custody threshold, the use of fines, and the distinction between sentencing and release provisions. The Sentencing Council has tried in the past to provide sessions for MPs on sentencing but there has been little uptake. The Council continues to be ready to provide such information as would be useful for MPs and Peers.

82. The Council provides evidence to the Justice Select Committee of the House of Commons on a periodic basis, both on its own work and as part of the Committee’s other inquiries insofar as they touch on sentencing matters. The Committee is a statutory consultee of the Council on all its guidelines. It may be that the Committee would want to provide more detailed scrutiny of the draft guidelines that the Council puts forward for consultation. However, it would be for the Committee to determine whether this was a good use of its time, and – in the context of the review’s interest – there would be no guarantee that this increased scrutiny would provide a brake on sentence inflation.

The role of the Sentencing Council

83. The Sentencing Council addressed the question of its role in the evidence it gave to the Justice Select Committee in 2018, and the points made then remain true. Since its inception many have believed that the Council should have played a role in helping to limit the prison population by halting sentence inflation and dampening down sentence severity where this was seen to be affecting prison capacity. However, the Council does not consider that its statutory duties under section 120(11) of the Coroners and Justice Act 2009 properly permit this.

84. The Council has regard to the cost and effectiveness of sentencing, as it is required to do by statute, and each of its guidelines is accompanied by a resource assessment of the likely impact on the prison population. But there are a number of

statutory aims of sentencing and the Council is aware that its guidelines must have regard to the 'effectiveness' of sentencing in meeting all those aims. Without a remit set out in statute, the Council believes it would be wrong to seek to raise or lower sentence levels to meet the available penal resources. Were it to do so, it would lose the confidence of sentencers, the public, and Parliament.

85. The Council does of course have a role in ensuring that the imposition of sentences is in line with statutory requirements. Thus, the Council's 'Imposition' guideline reflects that there is a statutory threshold for a custodial sentence and that a custodial sentence must not be imposed unless the court is of the view that the offence (or combination of the offence and one or more offences associated with it) was so serious that neither a fine alone, nor a community sentence, could be justified. Similarly, the Council's Sentencing Children and Young People Guideline makes clear that, for children and young people in particular, a custodial option can only be imposed as a measure of last resort. It also makes clear that, when sentencing, the court must have regard to the principal aims of the youth justice system of reducing reoffending and to the welfare of the child or young person involved.

86. The Council will therefore rarely approach the drafting of a new offence specific guideline with an explicit intention to change overall current sentencing practice to make sentencing for those offences more or less 'severe'. The overarching aims that the Council has in view when considering new guidelines are those of consistency and transparency. It is not the Council's role to 'push' average sentences one way or another. That is not to say that, on occasion, it has not been led by the evidence to frame some guidelines in such a way as to encourage some form of shift. For example, the Environmental and Health and Safety Offences guidelines put in place much higher financial penalties for the most serious types of offending than had previously been the case. Conversely, the 'Drugs' guideline proposed more lenient sentences for so called 'drug mules' after the Council was persuaded that very often such offending was as a result of very serious coercion or manipulation of the persons concerned. Nonetheless, such departures from existing practice are rare.

87. A major difficulty faced by the Council is obtaining in-depth data on sentencing. Headline figures, including those used in this evidence, can mask trends and patterns which make it difficult to assess accurately the respective roles played by, guidelines, judicial attitudes, or other factors like the types of cases coming before the courts in affecting sentencing trends. This makes it challenging to meet the Council's statutory duties under the Coroners and Justice Act 2009, including the need to "monitor the operation of its guidelines and consider what conclusions can be drawn" (section 128).

88. Between 2010 and 2015, the Council ran the Crown Court Sentencing Survey (CCSS) to collect information on sentencing reasons, as well as guilty pleas and sentence outcomes. This provided a rich source of information on the factors that lay behind sentencing outcomes across a broad range of offences. The data allowed the Council to look in-depth, not only at the impact of guidelines on sentencing practice, but also at matters like consistency in sentencing and disparities in how different groups of offenders are sentenced. Whilst the Council has now put in place other more targeted and bespoke data collections that collect similar data in both the Crown Court and magistrates' courts, it is unlikely that the Courts would have the capacity in the foreseeable future to be able to provide information on sentencing decisions to the extent they were between 2010 and 2015.

89. Data are vital to understanding the impact of different sentencing policy decisions. If, for example, Parliament legislates for a statutory aggravating factor of assaulting a shop worker as it did in 2022, it would be reasonable to ask how often that factor has been taken into account by the courts. However, there is no way of knowing from the data held by MoJ, which might be one reason which led the then Government to propose a new, standalone offence of assaulting a shopworker before the last election. However, the courts, as well as the Council, would need the resource to be able to collect, process and analyse such data, and this appears unlikely in the current climate.

Theme 3. How can we use technology to be innovative in our sentencing options, including considering how we administer sentences and manage offenders in the community?

90. The Council is not in a position to provide extensive evidence on the use of new technologies. It is, however, important to bear in mind a point brought out in the 2024 report on Effectiveness commissioned by the Council and written by Dr Jay Gormley (see below). Judges and magistrates must feel confident that any technology must be a) available and b) effective in carrying out the order of the court. They must understand and have confidence about how monitoring of offenders is to take place, and that breaches of their orders will be detected and followed up. The more widespread the dependence on technology, the more vital the need for that confidence.

91. When the Council consulted on a revised guideline on the Imposition of Community and Custodial Sentences in 2024, a major theme of responses was that the Probation Service needs to be adequately resourced, and that it is barely able to manage its current workload. This seems central to the point: any increase in the use of non-custodial options will need to see a properly resourced Probation service. Without it, there is the risk of further reoffending, the real prospect of increased breaches and recalls, and the subsequent loss of confidence from judges and magistrates that these orders will be carried out effectively.

92. The Probation Service has seen a number of changes to its organisation in the past decade. Reforms following 2014, which included the provision of some services by private companies and voluntary organisations, caused sentencers to feel less confidence about imposing community orders in some cases. These changes were reversed with the re-unification of the service in 2021. Probation Reset was launched in April 2024 with the aim of focusing Probation resources on the areas where they can best support offenders. However, the cumulative effect of those changes and resource pressures means that the Probation Service remains overstretched. That comes with the risk not only that offenders on licence will not be supervised and supported, but that they will be recalled to prison more readily for administrative breaches of their licence. That will result in the recalled population continuing its dramatic rise.

93. As explored below, if technology is used to implement a new type of sentencing disposal, the Council will consider the extent to which changes will be needed to offence-specific guidelines and the overarching guideline on the Imposition of Community and Custodial Sentences.

Theme 4. How should we reform the use of community sentences and other alternatives to custody to deliver justice and improve outcomes for offenders, victims and communities?

94. The panel will know that the Sentencing Code provides for a hierarchy of approaches for disposals. Aside from where it provides for mandatory or minimum penalties, the Code prohibits the imposition of a community order unless the offence is serious enough to warrant it (section 204). In turn a custodial sentence can only be imposed if neither a fine alone nor a community sentence can be justified (section 230).

95. To that extent, a presumption against community sentences and custody is already written into the law. Fines represented 80% of sentences imposed in 2023; even removing summary motoring offences, they still made up over half of all sentences imposed in that year. However, it is right to look at whether more could be done to ensure that the courts are able to impose sentences which meet the different purposes of sentencing, particularly where an offender is on the cusp of custody.

Two reports on effectiveness – 2022 and 2024

96. As part of its strategic objectives for 2021 to 2026, the Council pledged to consider and collate evidence on effectiveness of sentencing and seek to enhance the ways in which it raises awareness of the relevant issues. To this end the Council published a literature review of the available evidence on the effectiveness of different sentencing options in September 2022. This was commissioned by The Council, but conducted by Dr Jay Gormley of the University of Glasgow, Professor Melissa Hamilton of the University of Surrey and Dr Ian Belton from Middlesex University. As the review and a subsequent follow-up by Dr Gormley in 2024 set out, what counts as "effectiveness" is a large and complex question, although the 2022 authors were asked to look at it largely from the perspective of reducing reoffending. The review found that

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

Furthermore

    "Community sentences and suspended sentences appear to have an advantage in avoiding some of the criminogenic effects of imprisonment (e.g. negative peer associations within prisons)."

97. The report also looked at the available evidence on deterrence, and in particular noted the quantitative evidence that suspended sentence orders with requirements might be most effective at preventing reoffending.

98. The conclusions on short custodial sentences reflect the consensus amongst those who have studied reoffending rates. Whilst some important caveats are set out below in the discussion on short custodial sentences, it is clear that efforts to explore greater use of non-custodial options as an effective way of reducing reoffending would be in line with the research in this area.

99. Another relevant finding emerged from the 2024 literature review conducted by Dr Jay Gormley. Whilst evidence on sentencers' views of the effectiveness of sentencing was limited, Dr Gormley found that

> "[e]xisting evidence has suggested that communication with sentencers about community sentences could be strengthened to promote greater awareness and confidence in the disposals and that awareness and confidence are linked (Kennefick and Guilfoyle, 2022)…Additionally, views have been expressed by the Magistrates' Association in oral evidence to the Justice and Home Affairs Committee (given by Tom Franklin based on a survey of members) on 23 May 2023. Here it was noted that magistrates have concerning issues with community sentences "to do with their confidence in the options available to them" and that "there was a difference between what was available in theory and what was available in practice" (Justice and Home Affairs Committee, 2023, pp. 2–3)."

The Council would urge the members of the panel to study the two effectiveness reports in detail.

The Imposition guideline

100. The Council is currently undertaking a major revision of its overarching guideline on the Imposition of Community and Custodial Sentences. This guideline, the current version of which came into force in 2017, sets out the principles for the courts to follow when deciding which disposal to impose. Of particular importance are the considerations to take into account when deciding whether to impose a community order or a fine or discharge; when deciding whether to impose a custodial sentence or a community order; and, if the custody threshold has been reached, whether to suspend a custodial sentence.

101. An evaluation of the Imposition guideline published in 2023 found that it was broadly working as intended in providing consistency in the decision making process. There has been a shift away from the volumes of suspended sentence orders towards community orders. This was not the case initially. In April 2018, the then chair of the Sentencing Council, Treacy LJ, had to write to sentencers to

emphasise the need to use the Imposition guideline and to remind them that suspended sentences were not to be used as a more severe form of community order. A custodial sentence which is suspended is still a custodial sentence.

102. The Council consulted on a revised Imposition guideline between November 2023 and February 2024. The proposed revisions expand considerably the guidance offered to sentencers, including provision of: more guidance on the circumstances in which it may be necessary to request a pre-sentence report; new sections on sentencing young adult offenders and female offenders; and new guidance on short custodial sentences, based on the findings of the 2022 effectiveness review on the effectiveness of rehabilitation in the community when compared with short custodial sentences.

103. The revision is not intended to effect any major change in sentencing practice. The expectation is that it will improve consistency of approach and provide more guidance on important considerations to take into account during sentencing. The new proposals would seek to underline the importance of ensuring courts have the most comprehensive information available to them about the circumstances around the offence, the offender (and any history of compliance with previous court orders) and the available sentencing options in their area before making a sentencing determination, and seek to ensure that courts use the full breadth of options available to them and tailor the sentence to the individual offender and their circumstances. It may be that, when courts follow the guidance in the new guideline, alternatives to a custodial sentence will be apparent.

104. The Council received over 150 responses to the consultation, many of which were necessarily detailed, and is in the process of revising the proposals in light of those responses. The current aim is to publish the revised version of the guideline in March 2025 to come into force in April. If fundamental changes to the relationship between community orders and custodial sentences arise from the Sentencing Review, involving, for example, a shift away from short sentences to more robust non-custodial options, the guideline will almost inevitably require further updating and amendment.

Options

105. The Lord Chancellor has suggested that a form of house arrest may provide for a suitably robust alternative to custody. It is unclear whether this would amount to an enhanced version of the curfew requirement which may already be imposed as part of a community sentence, or whether it would be a new type of disposal sitting between, or alongside, community sentences and custody.

106. If the former, existing offence-specific sentencing guidelines should largely be unaffected, although the Council would want to consider providing general guidance on the use of curfew in low, medium and high level community orders.

The Imposition guideline may also need updating insofar as it mentions curfew orders. However, if a new form of disposal were to be created, the sentence tables in a large number of offence-specific guidelines would need revision, with consultation on when it would be appropriate to impose such orders. This would be a significant task.

107. An increase in the use of curfew, or a new disposal of house arrest, would carry with it the increased risk of breach. Even if electronically monitored, resource would need to be found to act on and enforce those breaches. Inevitably breaches, especially repeated breaches, would require further court action, and it is hard to see how the system could operate without some possibility of custody as a means of enforcement. Consideration would also have to be given to questions of fairness. It will be less of a punishment for wealthier offenders to spend time in their homes, than for poorer offenders, many of whom will live chaotic lifestyles. This issue may already exist to some degree in curfew requirements, but increasing their severity and broadening their use would bring such questions to the fore.

108. The Panel may wish to consider if the law could allow for more flexibility in the imposition of community and suspended sentence orders. In particular, the requirement that community orders always contain a punitive element might have unintended consequences. As set out above, the Council has made it clear in the past that suspended sentences are not to be imposed as a more severe form of community order. In fact, the courts may impose a suspended custodial sentence as a punishment, with non-punitive requirements attached. This would seem a perverse outcome, particularly in a case in which the court has decided that rehabilitation of the offender should be the predominant purpose of sentencing. The broad point is that community orders should be tailored appropriately to the offender; its terms can be intensive and onerous even if not explicitly punitive, and it may be that the requirement that at least one requirement be punitive could be revisited.

Fines

109. As set out above, fines are by far the most frequent type of sentence imposed in the courts in England and Wales. However, the system has some weaknesses which may affect sentencers' confidence in using them as an effective disposal.

110. Firstly, it can be very difficult to ascertain an offenders' means, on which the fines available to the court under the sentencing guidelines is based. In practice, any offender who has more than average income can simply avoid telling the court about their means, and is quite likely to be assumed to have a relevant weekly income of £440. The onus lies on the court in such cases to explore whether income is in fact higher than this. Whilst giving false information on a means form is an offence, not providing a means form is not. Getting to the truth of the matter

about an offenders' income and means can therefore be an intensive process for which many courts are not resourced.

111. Secondly, is the matter of enforcement. Around £350 million in fines was imposed between 1 April 2023 and 31 March 2024, and in the same period around £250 million in fines was collected. On 31 March 2024 the total value of fines outstanding stood at around £1.06 billion, up from around £980 million on 1 April 2023. Fines lie at the bottom of a hierarchy of other financial impositions, behind compensation, the victim surcharge, and prosecutor costs in order of descending priority. The total outstanding amount covering all these different types of financial imposition, as well as fixed penalty notices and confiscation orders, stood at around £4.42 billion on 31 March 2024. (source: HMCTS Trust Statement 2023-24).

112. Many offences seen, particularly in the magistrates courts, are fine only. Where other options are available judges and magistrates will need confidence that the penalty they impose will be delivered before imposing a fine. Without that confidence there is a risk they may inflate sentences upwards and impose more community orders. Additionally, the wider public will need confidence that fines will be collected if they are to be seen as a proper punishment and deterrent. For that to happen the fines enforcement processes in the Courts Service will need to be equipped and resourced properly.

Ancillary orders

113. The Council has recently consulted on providing comprehensive guidance on ancillary orders. The project covers 28 ancillary orders. For six of these, the Council is proposing new guidance: animal destruction orders; forfeiture of equipment used in animal welfare offences; parenting orders – child; serious crime prevention orders on conviction; sub-letting – unlawful profit orders; and travel restriction orders. For the remaining 22, the Council has proposed revised and, in some instances, more-detailed guidance.

114. The Council is of the view that ancillary orders can and should be used wherever they are appropriate, and is willing to look at ways to raise awareness of them. For example, the Council has in recent years provided extra guidance on the setting of driving disqualifications in offence-specific guidelines, and consulted earlier in 2024 on an overarching guideline which is due to come into force early in 2025. The Council is also preparing a draft guideline on hare coursing which will signpost magistrates to ancillary orders such as the deprivation orders, recovery orders and disqualification orders which the Council understands play a big part in punishing and deterring offenders, and preventing them reoffending.

115. Again, the point should be made that judges and magistrates must have confidence that ancillary orders will be practical and enforceable if they are to have confidence in imposing them. Sentencing of hare coursing offences provides an

example: whilst it was known that depriving offenders of their dogs was an effective way of punishing offenders and preventing them offending, the Police were often reluctant or unable to take on the costs of kennelling the dogs taken under deprivation orders. The Police, Crime, Sentencing and Courts Act 2022 has resolved this, with forces being able to recoup the costs from offenders, but the point stands that ancillary orders must be cost-efficient and practical.

116. Related, whilst the Council has no objection to the increased use of appropriate ancillary orders, the consequences of breach must be understood in advance. At the least, one would expect more offenders to be brought back to court for breach: ultimately short custodial sentences would have to remain a backstop option for offenders who repeatedly flout orders of the court, and that may have implications for the prison population. On a further point of detail, lengthy ancillary orders will mean that many convictions will not be spent until much later, compared to, say, a short custodial sentence. For example, a conviction will not be spent for the duration of a restraining order or football banning order. Under current rules, therefore, if more ancillary orders are imposed this may have wider implications for more offenders' rehabilitation.

Theme 5. How should custodial sentences be reformed to deliver justice and improve outcomes for offenders, victims and communities?

117. As set out above, the number of immediate custodial sentences imposed in recent years has declined, for a variety of reasons. In particular, the number of short custodial sentences imposed each year has declined considerably in the last decade, although they still represent the majority of immediate custodial sentences imposed. The following table shows the numbers of adult offenders sentenced to six months or less, and over six and up to and including 12 months in each year from 2013 to 2023, also expressed as a proportion of adult offenders sentenced to immediate custody overall (Ministry of Justice, 2024c):

Table 2: Adult offenders sentenced to immediate custody, with sentence lengths of 6 months or less, or over 6 and up to and including 12 months, 2013 to 2023

	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023
0-6m	52,017 (57%)	51,847 (58%)	50,785 (57%)	50,921 (58%)	49,557 (55%)	44,898 (55%)	40,542 (53%)	32,497 (54%)	30,980 (49%)	31,501 (49%)	34,902 (49%)
>6-12m	10,139 (11%)	9,723 (11%)	9,750 (11%)	9,161 (10%)	9,563 (11%)	8,829 (11%)	8,464 (11%)	7,082 (12%)	7,400 (12%)	8,069 (13%)	7,932 (11%)
Total	62,156 (69%)	61,570 (69%)	60,535 (68%)	60,082 (68%)	59,120 (66%)	53,727 (66%)	49,006 (65%)	39,579 (66%)	38,380 (60%)	39,570 (62%)	42,834 (60%)

Source: Ministry of Justice, Criminal Justice Statistics quarterly: December 2023

118. The number and proportion of offenders in prison serving short custodial sentences at a given moment has also decreased significantly over this period. There were 6,800 offenders serving sentences of less than 12 months on 30 June 2013. This stood at around 4,400 on the eve of the pandemic (31 March 2020) and was around 3,600 on 30 June 2023 (i.e. before more recent early release measures came into effect). However, a significant proportion of the recall population, which has increased over this same period, may be made up of those serving short sentences who have been recalled (of around 27,800 recalls in 2023, around 41 per cent were of offenders serving a determinate custodial sentence of less than 12 months). (All Ministry of Justice, 2024b)

119. The direction of travel in sentencing does seem to have been away from the use of short custodial sentences, although that trend may have been accelerated by the challenges faced by the criminal justice system in recent years. As set out above, in the same period there has been an increase in the use of longer sentences, even within the context of a fall in the numbers of sentences imposed overall (outside of summary motoring cases). Whilst it is perfectly valid to look at whether any further efforts can be made to divert offenders from short custodial

sentences to more appropriate disposals, a genuine reduction in the prison population for the future would need to look at longer sentences.

120. The findings of the [2022 report on effectiveness of different sentencing disposals] are discussed above. The academic consensus is that short sentences of immediate custody are ineffective at reducing reoffending. Again, the Council urges the panel to consider those findings in detail, but does offer some caveats: the offenders deemed by the court as appropriate for a community order or suspended sentence order may be precisely those who offer better hope of not reoffending. Looking beyond reoffending, the immediate protection of the public or pressing need to punish the offender will in many cases inevitably outweigh considerations about future rehabilitation.

121. For example, consider the case of the persistent shop thief, for whom fines are not an effective penalty as he has no means to pay. Successive community sentences have either been breached, or have proven no lasting deterrent to criminality. The courts can, and often do, provide many chances for this offender, while the community continues to suffer. A custodial sentence, the shortest commensurate with the seriousness of the offence or associated offences (see section 231 of the Sentencing Code) is inevitable at some point for repeat offenders, including prolific offenders.

122. There may be other offenders who have committed relatively serious offences, such as assault, criminal damage, harassment or lower-level sexual offences. They may face the starting point of a custodial sentence of 18 months to two years or more. Significant numbers of mitigating factors, such as ill health, being the primary carer for dependants and good character, may bring this down to between one and two years, and an early guilty plea could decrease that further to nine months or less. The judge may take the view that the seriousness of the offence is such that the sentence cannot be suspended, and so a short custodial sentence is the only option.

123. On the other hand, many would argue that it is what happens as part of a custodial sentence which is the crucial question relating to their utility. It is widely known that many prisoners are not spending their time in prison carrying out useful rehabilitative activities, and that the prison service is not equipped to provide these in many cases. That situation is made particularly acute by the current population pressures. Custodial sentences may therefore be fulfilling the punishment and public protection purposes of sentencing, but certainly not rehabilitation. The public will also not be protected in the future if these offenders are not supported to stop reoffending. Under these conditions, non-custodial options would appear to be farm more effective at meeting more of the statutory purposes of sentencing.

124. A presumption against short sentences has been suggested in the past, and has been put into law in Scotland. More recently, the previous government put forward a legislative proposal for a presumption that all custodial sentences under 12 months would be suspended, with some exceptions where an offender poses a risk of harm to an individual, or has breached an order of the court, or where there are exceptional circumstances.

125. A presumption of suspension for all custodial sentences of under 12 months would require at least some amendment to the Imposition guideline. Currently this provides a set of considerations which may argue for or against suspension; those considerations are being retained, and augmented, under the proposed revision. The decision making process around suspensions would be changed considerably by a presumption to suspend all sentences up to 12 months, so this at least would require updating.

126. More radical changes to offence-specific guidelines would be needed if a full presumption against short sentences or a full abolition was implemented. The Council would need to identify those guidelines which provide for starting points and ranges of under a year, consider whether they were subject to any exemptions, and consult on replacing them either with longer custodial periods – which would not assist with the current prison population crisis - or with non-custodial disposals. This substantial exercise would also be complicated by the question of how to deal with starting points and ranges of more than 12 months that could be reduced by a guilty plea to under 12 months.

Theme 6. How should we reform the way offenders progress through their custodial sentences to ensure we are delivering justice and improving outcomes for offenders, victims, and communities?

127. The Council is not in a position to provide extensive views on the administration of custodial sentences.

128. However, to maintain public confidence in the criminal justice system the sentence pronounced in court should generally resemble the sentence served by the offender. The case for serving a period in custody and a period in the community on licence can readily be made, and has been a feature of the penal system since the mid-nineteenth century. However, when other factors like time served on remand and early release on home detention curfew are taken into account, the public may already feel, whether justified or not, that the sentence imposed by the court has not been carried out. This can be felt particularly acutely by the victims of stalking, harassment, sexual offending and offences committed in the context of domestic abuse. This view would be exacerbated if further arrangements were introduced which decreased the proportion of their sentence which offenders served in custody, even if perfectly justifiable in terms of the offender's rehabilitation.

129. To reiterate, if more offenders are to be on licence, either following release or on robust forms of community and suspended sentences, the Probation service will need to be resourced. This will be essential if the public is to have confidence that offenders are being appropriately monitored and supported in rehabilitative activities, thereby preventing, or at least reducing, reoffending,

Theme 7. What, if any, changes are needed in sentencing to meet the individual needs of different victims and offenders and to drive better outcomes?

Victims

130. Section 6 of Dr Gormley's 2024 review of effectiveness is significant in relation to the perspective of victims on the effectiveness of sentencing. As Dr Gormley pointed out, victims are not a homogenous group and their views on what makes effective sentencing are not necessarily straightforward:

> "To the extent that generalisations can be made in terms of what a victim will deem effective, perhaps the most profound point to make is that while an appropriate sentence is an important factor, victims' views about whether the outcome is just and fair depend on more than sentence type and length/quantity (Pemberton, Aarten and Mulder, 2017). Indeed, meeting the needs of victims can relate to areas beyond sentencing. For example, matters such as the investigative stages of the criminal process and delays can be important to victims' perceptions of the fairness and justice of an outcome. Of course, this does not mean sentencing is unimportant to victims (Brooks-Hay, Burman and Bradley, 2019). In some cases, meeting victims' needs may involve a severe or custodial sentence. However, what it does mean is that meeting victims' needs can be more complex than just providing the 'right' sentence. Meeting victims' needs can require a sentence plus something else (such as passing the sentence in a particular way – possibly with an explanation that is understood by the victim and demonstrates that the harm done to them has been recognised)."

131. Dr Gormley's review also found evidence that victims often did not feel that they fully understood the sentence which had been imposed on an offender, and that they wanted more information on what the administration of the sentence entailed. Whilst the review concluded that further research should be undertaken in this area,

> "for many victims to feel confident in the effectiveness of a sentence, they must feel that the process is fair; they have a voice; they are listened to; and that they are treated with humanity, dignity and respect. Sentence disposals can contribute to these aspects of fairness but as noted, there are also aspects of communication that are relevant. Additionally, sentences should be understood and explained. Indeed, if victims do not fully understand a sentence and the reasons for it, then they are less likely to feel it can meet key aims such as recognising the harm done to them, punishment, denunciation, holding the offender to account, and rehabilitation."

132. Evidently, where there is a lack of confidence on the part of a victim in the outcome of the sentencing process, this can be due to insufficient understanding of the sentence. Whilst a judge or magistrate in imposing any sentence will explain the effect of that sentence, this does not mean that the victim will understand why it has been imposed. Moreover, what may be more important to the victim will be that they have a voice in the process, that they have been listened to and that they have been treated with dignity and respect. These are issues which go beyond the sentence announced in court. They may require a change of emphasis and approach by different parts of the criminal justice system.

133. That approach should be a nuanced one. There are good examples of agencies within the Criminal Justice System, as well as external groups like Victim Support, working to provide appropriate support to victims through what may be a bewildering process. When it comes specifically to sentencing, realistic expectations should be set from the start. Thanks to sentencing guidelines, a range of reasonable possibilities may be discussed with the victim. But the question of whether (for example) a custodial sentence could be suspended and why should be discussed. The reduction for a guilty plea and the reasons it is given should be explained in advance. Victim Personal Statements are made routinely, but their purpose and limits (for example, that they cannot be used to lobby for particular sentences) must be set out clearly. After sentence is delivered the actual effect of the sentence should be explained: in practice judges and magistrates will have done that in imposing sentence, but i) there may be a limited amount of information that attendees in court can take in and ii) victims may not be present in many cases. Where a custodial sentence is imposed, release, Home Detention Curfew, licence conditions and the consequences of breach should be made clear to the victim. However, all of the above explanation – which it would not be appropriate for judges to undertake with individual witnesses – would likely fall to either the Police or CPS, and would form an increased burden on their resources.

Sentencing for offences committed against women and girls

134. The Council notes the review's particular interest in sentencing for offences which are predominantly committed against women and girls. This could encompass a number of different types of offences, but the Council assumes it covers:

- Rape
- Sexual assault
- Harassment
- Stalking

- Controlling and coercive behaviour
- False Imprisonment/kidnap
- Disclosing/threatening to disclose private sexual images
- Non-fatal strangulation
- Human trafficking and modern slavery
- Female genital mutilation
- Breach of a protective order

135. Many other offences may be committed typically in a domestic context, including murder, manslaughter, threats to kill, assault, criminal damage and witness intimidation.

136. A thorough review of sentencing practice for the above offences would require longer than is available to provide evidence for the review. Headline data on sentencing outcomes are available publicly from the Criminal Justice Statistics Quarterly page. Sentencing guidelines exist, or are in development, for most of the offences committed above, although these do not distinguish by the sex of the victim. The Council has so far evaluated the guidelines for Assault and Sexual Offences, and has recently published a review of how the overarching Domestic Abuse guideline (which stated that the domestic context of an offence makes it more serious) has operated since its publication in 2018. Evaluations of the guidelines for intimidatory offences like stalking and harassment, and breach offences are due to be published early in 2025.

137. To look at sexual offences against women and girls, at a headline level sentences have become more severe over the past decade and more. The custody rate for adults sentenced for rape of female victims (of all ages) has generally been in the range of 97 to 99 per cent over the last ten years as one would expect. The average custodial sentence length has gone from just over nine years in 2013 to over 11 years in 2023. Sexual assault of female victims (of all ages) has a lower custody rate, although this has increased from around 48 per cent in 2013 to around 55 per cent in 2023 for adult offenders. The average custodial sentence length has increased by around a third from around 34 months in 2013 to over 45 months in 2023 (all Ministry of Justice, 2024c).

138. Although not broken down by sex of victim, the custody rate for stalking involving fear of violence has fluctuated around the 50 per cent level since 2013. The average custodial sentence length has increased, again by over 50 per cent from just over a year in 2013 to over 20 months in 2023. The custody rate for

stalking involving serious alarm or distress has been broadly steady over the past decade, largely being a bit above a third, but the average custodial sentence length has increased from just over eight months in 2013 to over 18 months in 2023 (all Ministry of Justice, 2024c).

139. The review of the Council's Domestic Abuse overarching guideline, published in December 2024 showed that 87 per cent of sentencers surveyed thought the guideline was helpful in sentencing and 95 per cent were satisfied with its structure and usability. In light of the findings of the research, the Council concluded that no significant revisions needed to be made to the guideline. However, the review did identify some areas where minor changes would improve the accessibility of the guideline. Also, the Council is consulting on adding the domestic abuse aggravating factor to around 20 further guidelines to help ensure that courts can appropriately sentence offences which occur in a domestic context.

140. The Council's Sexual Offences guidelines were evaluated in collaboration with the University of Leicester in 2018. In general the guidelines were found to have been working as expected, although they were associated with an increase in severity in sexual assault sentencing. Some factors in the guideline were thought to be the source of some confusion and these were clarified as part of a partial revision to some of the child sex offence guidelines in 2022.

141. Although these are headline statistics and findings, it seems clear sexual and intimidatory offending, and offending committed in a domestic context have been taken more and more seriously by the courts as the years have gone by. In general, the sentences imposed for rape and sexual offending are substantial in relation to sentencing in general in England and Wales. Nonetheless, the Sexual Offence guidelines have now been in force for over a decade and the Council may consider in the coming years returning to them to see whether and how revisions could be made.

3. Conclusions

142. As has been explained above, the enactment of Schedule 21 was a very significant change to sentencing practice. It has had an effect well beyond the level of minimum terms for the offence of murder. One way to achieve a significant reduction in the overall levels of sentencing would be to have differing grades of murder, with only the most serious attracting the mandatory life sentence (a matter which is within the terms of reference of the Law Commission project which has recently begun). There could then be an explicitly different, guideline-based approach to sentencing for the lesser grades of murder. That would make it possible to reduce the starting point in the guidelines for other offences (such as attempted murder and causing grievous bodily harm with intent) whilst maintaining broad proportionality with (most) murder sentences. Whilst the issue of sentencing for murder strictly is outside the remit of the Sentencing Review, the wider effect of Schedule 21 has been so great that it is unrealistic to ignore it.

143. Were there to be a change in the approach to the offence of murder, there would be scope for revising the extent to which the sentence imposed can be reduced for a plea of guilty. The current guideline provides that the maximum reduction where an offender pleads guilty to murder is one-sixth of the minimum term. This is to be contrasted with the maximum reduction of one-third for all other offences. The effect of such a change would not be great in terms of numbers. It would be of real importance to those to whom it applied.

144. Brief reference has been made in this submission to the effect of changes to release provisions and recall policy. These are not matters within the control of the sentencing judge or magistrate. Thus, they are not considered in any Sentencing Council guideline. However, the changes have been of real significance to the prison population. In relation to release provisions, reverting to the position as it was as recently as March 2020 would have a substantial effect.

145. Release provisions are important in the sentencing process because a judge sentencing any offender must explain in ordinary language the effect of the sentence being imposed. This is a duty imposed by section 52 of the Sentencing Act. Where the sentence is one of immediate custody, this will include the period which the offender will have to serve before being eligible for release. Despite judges giving such an explanations, interested parties present in the court room frequently do not understand how a custodial term works in practice. Moreover, the explanation given by a judge in an individual case very often will not be reported to any meaningful extent. Thus, general public understanding of the effect of sentences (whether custodial or non-custodial) will be deficient. Transparency in the sentencing process is essential. Whether it should be a function of the

Sentencing Council (under its statutory duty to promote public confidence in the criminal justice system) to provide generic guidance on the effect of sentences of a particular type is a legitimate question.

146. Guidelines issued by the Sentencing Council may have contributed to increases in sentence levels for particular offences. However, the sentence levels in guidelines issued by the Council take account of increases in maximum sentences. In the final version of any guideline, the levels also are the result of a public consultation of the kind already described. Any notion that there could be an across the board reduction of sentence levels by the Council is inappropriate. This kind of arbitrary change in guidelines would lead to a loss of confidence both on the part of judges and magistrates and on the part of the general public. There could be scope for the Council to revisit some sentence levels. This would realistically need some form of mandate from the Government or Parliament, possibly in the form of a formal request from the Lord Chancellor. The outcomes of that sort of review would require political backing.

147. Even if it were undertaken, it could not be done in relation to an offence or group of offences in isolation. It would have to be part of a general review of sentence levels across all offending of a particular type and/or level of seriousness, possibly stemming from the re-calibration of murder minimum terms envisaged above. The review would have to consider the proportionality of sentence levels by reference to all relevant offences and sentence levels. It would still have to bear in mind the maximum penalties set by Parliament, and as a minimum have the political backing already mentioned. This would not be an easy exercise. Were it to be considered to be an appropriate course, the Sentencing Council is best placed to carry it out. However, there would have to be a significant increase in the resources available to the Council. For it to be done properly it could not be expected to yield any quick results.

4. References

Dr Jay Gormley, Professor Melissa Hamilton, Dr Ian Belton 'The Effectiveness of sentencing options on reoffending' (published 30 September 2022)

Dr Jay Gormley 'Reconceptualising the effectiveness of sentencing: four perspectives' (published 24 September 2024)

HM Courts and Tribunals Trust Statement 2023-24 (viewed on 20 December 2024)

Ministry of Justice (2016) Story of the prison population 1993 to 2016 (viewed on 13 December 2024)

Ministry of Justice (2020) Story of the prison population 1993 to 2020 (viewed on 13 December 2024)

Ministry of Justice (2024a) Offender management statistics quarterly: April to June 2024 (viewed on 13 December 2024)

Ministry of Justice (2024b) Offender management statistics quarterly: January to March 2024 (viewed on 13 December 2024)

Ministry of Justice (2024c) Criminal justice statistics quarterly: December 2023 (viewed on 29 November 2024)

The Office of the Sentencing Council, EB12–16, Royal Courts of Justice, Strand,
London WC2A 2LL

Telephone: 020 7071 5793 | Email: info@sentencingcouncil.gov.uk |
www.sentencingcouncil.org.uk | @SentencingCCL