

Blackmail, kidnap and false imprisonment guidelines

Consultation

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The consultation will end on 24 April 2024

About this consultation

- To:** This consultation is open to everyone including members of the judiciary, legal practitioners and any individuals who work in or have an interest in criminal justice.
- Duration:** From 31 January 2024 to 24 April 2024
- Enquiries (including requests for the paper in an alternative format) to:** Office of the Sentencing Council
Tel: 020 7071 5793
Email: info@sentencingcouncil.gov.uk
- How to respond:** Please send your response by 24th April 2024 to:
Mandy Banks
Email: consultation@sentencingcouncil.gov.uk
- Additional ways to feed in your views:** This consultation exercise is accompanied by a resource assessment, and an online questionnaire which can be found on the [Sentencing Council website](#).
- Response paper:** Following the conclusion of this consultation exercise, a response will be published on the [Sentencing Council website](#).
- Freedom of information:** We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents' names in any final report we publish. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – We will disregard automatic confidentiality statements generated by an IT system.

In addition, responses may be shared with the Justice Committee of the House of Commons.

Our [privacy notice](#) sets out the standards that you can expect from the Sentencing Council when we request or hold personal information (personal data) about you; how you can get access to a copy of your personal data; and what you can do if you think the standards are not being met.

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Introduction

What is the Sentencing Council?

The Sentencing Council is the independent body responsible for developing sentencing guidelines which courts in England and Wales must follow when passing a sentence. The Council consults on proposed guidelines before they come into force and makes changes to the guidelines as a result of consultations.

Why blackmail, kidnap and false imprisonment offences?

There are currently no guidelines for these serious offences and the Council felt that developing guidelines would be of benefit to courts.

This consultation paper has been produced in order to seek views from as many people as possible interested in the sentencing of these offences.

During the 12 week consultation period, views on the draft guidelines will be explored with sentencers. Following the consultation, all the responses will be considered, and definitive guidelines published. The Council has also produced a resource assessment for the guidelines, along with a statistical bulletin and data tables showing current sentencing practice for these offences. These documents can be found on the [Council's website](#).

Through this consultation process, the Council is seeking views on:

- the principal factors that make any of the offences included within the draft guidelines more or less serious;
- the additional factors that should influence the sentence;
- the types and lengths of sentence that should be passed;
- whether there are any issues relating to disparity of sentencing and/or broader matters relating to equality and diversity that the guidelines could and should address; and
- anything else you think should be considered.

We would like to hear from anyone who uses sentencing guidelines in their work or who has an interest in sentencing. We would also like to hear from individuals and organisations representing anyone who could be affected by the proposals including:

- victims and their families;
- defendants and their families;
- those under probation supervision or youth offending teams/supervision;
- those with protected characteristics: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

It is important to note that the Council is consulting on sentencing these offences and **not on the legislation upon which such offences are based. The relevant legislation is a matter for Parliament and is, therefore, outside the scope of this exercise.**

How to give your views

The paper discusses each draft guideline section by section. A summary of the consultation questions can be found at **Annex A**. You can give your views by answering the questions within each section (you do not need to respond to any questions or sections that are not relevant to you) either by email or using the online questionnaire on the Sentencing Council website.

Age applicability

When issued as definitive guidelines these will only apply to offenders aged 18 and older. General principles to be considered in the sentencing of children and young people are in the Council's [Sentencing children and young people definitive guideline](#).

General approach

Approach to the guidelines

At the start of the project, the Council intended to include revision of the existing disclosing private sexual images guideline. This is because in 2021 as part of the Domestic Abuse Act 2021, the offence was expanded to include threats to disclose private sexual images. This work was included within this project as there was thought to be some synergy between that offence and that of blackmail. However, shortly after the Council started looking at the guideline, further changes to this legislation were announced during the passage of the Online Safety Bill. Therefore, there was little point continuing to look at this guideline in depth. The Council has changed the name of the guideline to '[disclosing, or threatening to disclose private sexual images](#)', to make it clear that the guideline also applies to threats to disclose offences. Once any legislation is repealed/any new legislation is in force, the Council will consider what the appropriate next steps are.

To develop the offences included within this guideline, transcripts of sentencing remarks for cases heard in the Crown Court were considered, along with relevant case law and current sentencing statistics. The combined experience of the Council members was also utilised to draft factors and agree draft sentence ranges. The Council is not aware of any concerns or problems with the sentencing of these offences that new guidelines should address, but of course would be interested to hear any views on issues that should be considered.

Blackmail

This guideline is for blackmail offences (contrary to section 21 of the Theft Act 1968.) In 2022, around 140 offenders were sentenced at the Crown Court. This is an indictable only offence, with a maximum sentence of 14 years' custody. The offence of blackmail is committed when a person with a view to gain for themselves or another or intending to cause loss to another makes an unwarranted demand with menaces.

Around 30 transcripts of sentencing remarks for blackmail cases have been considered as part of the development of the draft guideline and the Council also considered the relevant case law. In *R v Hadjou* (1989) Lord Lane CJ said blackmail was one of the ugliest and most vicious offences and that deterrence was perhaps the most important part of the sentence.

A crucial element will often be the relationship between the amount of money demanded and the means available to the victim; also important will be the psychological harm done or intended to be done to the victim: *R v Ford* (2015).

In *R v Hutchinson* (2018), the judge sentencing a dentist who had conspired to blackmail his former surgery had been entitled to treat the Sentencing Council's guideline on fraud as an indicator of the proper approach to culpability, and to take the view that blackmail was more serious than an attempt to obtain an equivalent amount of money by fraud alone.

The assessment of seriousness in any given case has to take account of the nature of the menaces made, and the sentence should, amongst other matters, reflect the nature of the menaces: *R v Atkinson* (2018). However, even where the menaces consist of a threat to kill it would be unwise to place too much weight on the guideline for threats to kill, because blackmail involves much more than simply making threats and carries a greater maximum sentence: *R v Murphy* (2018).

Step One

The first step of the guidelines is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

Culpability factors

The proposed high culpability factors are designed to capture the most serious types of offending within this offence. The factors proposed are:

- Conduct repeated or prolonged over a substantial period of time
- Sophisticated planning
- Deliberate targeting of particularly vulnerable victim and/or their family
- Use of violence

'Conduct repeated or prolonged over a substantial period of time' is included as offending over a longer, more extended period of time increases the seriousness of the offence. If the offence was particularly sophisticated and planned, this can also make the offending more serious. It is also proposed that there is a factor of 'deliberate targeting of particularly

vulnerable victim and/or their family', to capture offenders who target their victims very carefully, exploiting particular vulnerabilities in order to make their demands for money more likely to succeed. The Council believes that this type of cruel behaviour makes the offending more serious than a victim picked at random. 'Use of violence' has also been included as when it is present, this clearly makes the offence more serious.

The Council gave careful thought as to what factors should go into the medium culpability category. 'Violence threatened' is proposed as this is less serious than 'use of violence' in high culpability. Also included are factors often used in other guidelines which allow courts to identify cases that are neither the most serious nor the least serious of their kind to be identified, as shown below.

The factors proposed for medium culpability are:

- Violence threatened
- Other cases that fall between categories A and C because:
 - Factors are present in A and C which balance each other out **and/or**
 - The offender's culpability falls between the factors described in A and C

The factors proposed within lower culpability are:

- Limited in scope and duration
- Involved through coercion, intimidation or exploitation
- Offender's responsibility substantially reduced by mental disorder or learning disability

These factors are lower culpability factors frequently used in other guidelines. The Council did not feel it was appropriate to include any other offence specific factors.

All the proposed culpability factors are below. The Council is interested in the views of consultation respondents on the factors included, and any additional factors which should be considered.

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

Culpability demonstrated by one or more of the following:

A - High culpability

- Conduct repeated or prolonged over a substantial period of time
- Sophisticated planning
- Deliberate targeting of particularly vulnerable victim and/or their family
- Use of violence

B – Medium culpability

- Violence threatened
- Other cases that fall between categories A and C because:
 - Factors are present in A and C which balance each other out **and/or**

- The offender's culpability falls between the factors described in A and C

C- Lower culpability

- Limited in scope and duration
- Involved through coercion, intimidation or exploitation
- Offender's responsibility substantially reduced by mental disorder or learning disability

Question 1: Do you have any comments on the culpability factors? Are there any that should be removed or added?

Harm factors

Once the court has determined the level of culpability, the next step is to consider the harm caused or intended to be caused by the offence. The types of harm caused in these offences can vary, and the Council has endeavoured to capture the main features. The category one factors have been designed to reflect the most serious impacts of the offence, which can leave victims feeling violated, and in extreme cases, even suicidal, such can be the effects of the offence.

'Serious distress and/or psychological harm caused to the victim and/or others' is proposed in recognition that those close to the victim, such as family members, can be caused serious distress if their safety is threatened, for example. 'Property demanded or obtained is of substantial value (financial or otherwise) regardless of monetary worth to the victim and/or others' is also proposed. This is to recognise the impact of substantial demands made to victims. 'Widespread public impact of the offence' has been included to reflect cases such as the blackmail case against a supermarket, in which jars of baby food were contaminated. This caused fear amongst consumers as to whether these products were safe or not.

The proposed category two factors are 'some distress and/or psychological harm caused to the victim and/or others' and 'property demanded or obtained is of some value (financial or otherwise) regardless of monetary worth to the victim and/or others.' It can be difficult to decide on the appropriate factors for category three harm, to avoid using terminology which minimises the harm caused to victims. After some deliberation, the Council decided that 'limited effects of the offence' was appropriate, in addition to 'property demanded or obtained is of a small amount (financial or otherwise) regardless of monetary worth to the victim and/or others'.

All the proposed harm factors are shown below:

Harm

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

Category 1

- Serious distress and/or psychological harm caused to the victim and/or others
- Property demanded or obtained is of substantial value (financial or otherwise) regardless of monetary worth to the victim and/or others

	<ul style="list-style-type: none"> • Widespread public impact of the offence
Category 2	<ul style="list-style-type: none"> • Some distress and/or psychological harm caused to the victim and/or others • Property demanded or obtained is of some value (financial or otherwise) regardless of monetary worth to the victim and/or others
Category 3	<ul style="list-style-type: none"> • Limited effects of the offence • Property demanded or obtained is of a small amount (financial or otherwise) regardless of monetary worth to the victim and/or others

Question 2: Do you agree with the approach to assessing harm? Are there any factors you think should be removed or included?

Step two

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

Sentence levels

The proposed sentence ranges are shown below. Sentencing data from the Ministry of Justice’s Court Proceedings Database (CPD) shows that in 2022, nearly three quarters (73 per cent) were sentenced to immediate custody and nearly a further quarter (24 per cent) were given a suspended sentence order. Community orders accounted for 1 per cent of offenders sentenced and 2 per cent were recorded as ‘Otherwise dealt with’ (miscellaneous disposals). For those receiving immediate custody in 2022, the average (mean) custodial sentence length (ACSL) was 2 years 10 months, after any reduction for guilty plea.

Current sentencing data shows that nearly all offenders sentenced to immediate custody (greater than 95 per cent over the last ten years) receive a sentence of 10 years or less. After careful consideration, the Council decided that the top of the range in the sentence table should be 12 years’ custody as the Council wanted to ensure that courts would be able to sentence the most serious cases appropriately.

The Council has considered current sentencing practice in setting these ranges but also wanted to ensure that the guideline can adequately deal with cases coming before the courts which are increasing in severity, such as [R v Falder \[2018\]](#).

The resource assessment published alongside the consultation estimates that an additional 50 prison places may be needed each year under the draft guideline. This is expected as transcript analysis suggests that the average custodial sentence length may increase under the draft guideline. Furthermore, transcript analysis indicates that some offenders currently receiving a suspended sentence order may receive an immediate custodial sentence, as the sentence length may exceed the 2 year threshold for suspension. For further information on these impacts please see the accompanying resource assessment. The Council has carefully considered the resource assessment estimates in developing this guideline, but has concluded that the proposed sentencing

levels properly reflect the increased severity of cases which are coming before the courts. The Council will of course be interested to receive any representations on the proposed sentence ranges raised in consultation responses.

Culpability			
Harm	A	B	C
Category 1	Starting point 8 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 4– 12 years' custody	Category range 2 – 8 years' custody	Category range 1 – 5 years' custody
Category 2	Starting point 4 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 2 –8 years' custody	Category range 1 – 5 years' custody	Category range 6 months' – 2 years' custody
Category 3	Starting point 2 years' custody	Starting point 1 year's custody	Starting point 6 months' custody
	Category range 1 – 5 years' custody	Category range 6 months' – 2 years' custody	Category range High level community order – 1 year's custody

Question 3: Do you agree with the proposed sentence table for this offence? If not, please tell us why.

Aggravating and mitigating factors

The proposed aggravating and mitigating factors are shown below. The aggravating factor of 'conduct intended to maximise distress and/or humiliation' captures behaviour which is intended to maximise the distress - for instance where the menaces accompanying demands for money include or are accompanied by threats to reveal embarrassing or discreditable information. 'Offence committed in context of/in connection with other criminal activity' is proposed as some blackmail offences are connected to other offences. 'Abuse of trust or dominant position or abuse of confidential information' is designed to capture offenders who abuse their position to commit the offence, using knowledge obtained in a professional capacity, for example. The factor 'as a result of the offence

victim forced to abuse their position' is to reflect cases where the victim was blackmailed into abusing their position, as a bank employee, for example.

The rest of the aggravating factors and all the mitigating factors are standard factors used in other guidelines, such as the [Sentencing Council General guideline: overarching principles](#). The list is non-exhaustive so courts can take any other factors into account where relevant. The Council will be interested to hear views from respondents as to whether there are any other aggravating or mitigating factors that should be considered.

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

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

Factors reducing seriousness or reflecting personal mitigation

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

Question 4: Do you agree with the proposed aggravating and mitigating factors?

Question 5: Do you have any other comments on this guideline?

Kidnap and false imprisonment

There are currently no guidelines for these offences. False imprisonment consists of the unlawful and intentional or reckless restraint of a victim's freedom of movement from a particular place. It is unlawful detention which stops the victim from moving away as they would wish to move. This can be in a house or even forcibly detaining a person in the street.

Kidnap offences are comprised of four elements:

- A) The taking or carrying away of one person by another;
- B) By force (or the threat of force, as in the hijacking of a car with its driver): or fraud;
- C) Without the consent of the person so taken or carried away; and
- D) Without lawful excuse.

Both kidnap and false imprisonment are common law offences, with a statutory maximum of life imprisonment, and are indictable only.

Both are specified violent offences listed in the Sentencing Act 2020 [Sch.19](#) and in [Sch.18](#), Pt 1 (meaning that a life sentence or an extended sentence can be imposed if the offender is 'dangerous'). They are both also listed in [Sch. 5](#) of the Sexual Offences Act 2003 meaning that a Sexual Harm Prevention Order (SHPO) is potentially available on conviction. The statutory aggravating factor of an offence committed against an emergency worker acting in the exercise of functions as such a worker applies to kidnap only ([Sentencing Code s67\(3\)\(d\)](#)).

Both kidnap and false imprisonment are reasonably low volume offences. There were around 110 offenders sentenced for kidnap in 2022, and around 110 offenders sentenced for false imprisonment in 2022. In considering how to develop guidelines for these offences the Council found a great deal of similarity between them. Culpability and harm factors overlapped to such an extent that a single guideline covering both offences seemed the most appropriate way forward.

The Council has noted that there are currently some differences in sentencing between the two offences, with kidnap sentenced more severely than false imprisonment. In 2022, the ACSL for kidnap was 5 years 9 months after any reduction for guilty plea, compared to an ACSL of 4 years 6 months for false imprisonment. Although this pattern of sentencing can be seen over the last 10 years (as can be seen in the data tables) the Council concluded that the differences in current sentencing for both offences are not so great that there should be separate sentence tables within one guideline. There is a potential risk, however, that in having one guideline to sentence both offences, custodial sentence lengths for false imprisonment may increase. The Council has balanced this risk against unnecessary duplication by having two separate guidelines, but is open to views on the issue.

Question 6: Do you agree with the proposal that there is one combined guideline for both offences? If not, please tell us why.

In developing the guideline the Council considered leading cases, including R v Gibney (AG's reference no 92 of 2014) which gave general guidance on sentencing and said that close analysis of the facts and circumstances was required. Relevant factors included:

- the length and circumstances of the detention, including the location and any method of restraint
- the extent of any violence used
- the involvement of weapons
- whether demands were made of others
- the effect on the victim and others
- the extent of planning
- the number of offenders involved
- the use of torture or humiliation
- whether what was done arose from, or was in furtherance of, previous criminal behaviour, and
- any particular vulnerability of the victim (by reason of age or otherwise).

AG's Ref (nos 102 and 103 of 2014) (R V Perkins) said that cases involving hostage taking and ransom demands will attract a starting point of close to 16 years for an adult; others, where such behaviour is absent, will still attract double figures, regardless of the degree of violence.

In Jones [2020] EWCA Crim 1870 the court held that any kidnapping incident in which individuals or groups embark on vigilante action is a matter of grave concern and they should anticipate deterrent punishment; long custodial sentences are required in almost every case. The court, having reviewed the authorities, attempted to identify an open list of features that may be relevant to the sentencing of kidnap, which included the factors mentioned by Gibney above, and:

- the specific role the offender played
- whether there was any provocation
- whether demands for a ransom were made, and
- the antecedent history of offenders.

Offences of kidnap and false imprisonment cover a wide range of offending, from the most serious offences of criminality, for example, often brutal behaviour in carefully planned crimes with victims suffering horrendous experiences of detention, sometimes in the context of other criminal activity. At the other end of the spectrum are unplanned offences that last a short time, which are still very unpleasant for victims. The guidelines have been designed to try and accommodate the different types of offending seen before the courts.

Step One

The first step of the guidelines is to consider the culpability level of the offender and the harm caused by the offence by the assessment of a series of factors.

Culpability factors

The high culpability factors are designed to capture only the most serious cases, such as 'prolonged or repeated extreme violence, torture or sadistic conduct', 'detention over a protracted period of time' and 'use of a highly dangerous weapon or weapon equivalent* to inflict violence'. This factor has additional text shown underneath the culpability table, as shown below, to clarify the factor further. Also included within high culpability are factors similar to ones used in other guidelines, but more tightly defined within this guideline, again to ensure that only the most serious instances of offending are captured within high culpability. These are: 'deliberate targeting of particularly vulnerable victim' and 'very sophisticated and highly planned nature of the conduct'.

Medium culpability contains a number of offence specific factors, to assist in the appropriate categorisation of culpability for this offence. These are 'very significant force or violence used or threatened to victim and/or others', 'use of any weapon to inflict or threaten violence which does not fall within category A' and 'planned nature of the offence'. As can be seen these factors still reflect quite serious forms of offending as only the most serious cases should fall into culpability A.

Also included are the factors below to help courts assess if offending should fall into medium culpability, being neither the most, nor least serious offending of its type.

- 'Other cases that fall between categories A and C because:
 - Factors are present in A and C which balance each other out **and/or**
 - The offender's culpability falls between the factors described in A and C'

In lower culpability there are the factors listed below. The first is designed to capture offending in which limited force was used, and the second, for incidents of short duration that had very limited planning. The other two factors are common within other guidelines and are designed for offenders who have been coerced into the offending, or whose responsibility for the offence is reduced.

- Limited use of force in the commission of the offence
- Limited planning or duration
- Involved through coercion, intimidation or exploitation
- Offender's responsibility substantially reduced by mental disorder or learning disability.

All the proposed culpability factors are below. The Council is interested in the views of consultation respondents on the factors included, and any additional factors which should be considered.

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

Culpability demonstrated by one or more of the following:

A - High culpability

- Detention over a protracted period of time
- Very sophisticated and highly planned nature of conduct
- Deliberate targeting of particularly vulnerable victim
- Use of a highly dangerous weapon or weapon equivalent* to inflict violence
- Prolonged or repeated extreme violence, torture or sadistic conduct

B – Medium culpability

- Very significant force or violence used or threatened to victim and/or others
- Use of any weapon to inflict or threaten violence which does fall within category A
- Planned nature of the offence
- Other cases that fall between categories A and C because:
 - Factors are present in A and C which balance each other out **and/or**
 - The offender's culpability falls between the factors described in A and C

C- Lower culpability

- Limited use of force in the commission of the offence
- Limited planning or duration
- Involved through coercion, intimidation or exploitation
- Offender's responsibility substantially reduced by mental disorder or learning disability

*A highly dangerous weapon can include weapons such as knives and firearms. Highly dangerous equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; 'any article made or adapted for use for causing injury, or is intended by the person having it with him for such use'. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.

Question 7: Do you have any comments on the culpability factors? Are there any that should be removed or added?

Harm factors

The Council considered the proposed harm factors very carefully, wishing to ensure that they captured the sometimes devastating harm caused to victims of these offences, whilst ensuring that there is appropriate categorisation of cases, with only the most serious forms of harm captured within harm category one. For this reason the factors are quite tightly defined and the wording underneath the harm heading instructs courts to assess the harm that arises over and above that which is inherent in the offence- as in all cases there will be a detrimental impact on the victim.

The proposed category one harm factors for this offence are 'very serious psychological harm caused to the victim and/or others' and 'very serious injury caused to the victim'.

The proposed factors in harm category two are designed to capture offending which is still serious, but not as serious as the offending which would fall into category one harm, so ‘serious psychological harm or serious distress caused to the victim and/or others’ and ‘serious injury or serious pain caused to the victim’.

It can be difficult to appropriately word factors in harm category three to reflect harm caused without using wording that seems to diminish the harm caused to victims. For this reason, instead of trying to define what factors would fall into category three, the Council proposes it is instead ‘all other cases’.

The proposed factors are set out below.

Harm In all cases there will be a detrimental impact on the victim. Courts should assess the harm that arises over and above that which is inherent in the offence. The level of harm is assessed by weighing up all the factors in the case.	
Category 1	<ul style="list-style-type: none"> • Very serious psychological harm caused to the victim and/or others • Very serious injury caused to the victim
Category 2	<ul style="list-style-type: none"> • Serious psychological harm or serious distress caused to the victim and/or others • Serious injury or serious pain caused to the victim
Category 3	<ul style="list-style-type: none"> • All other cases

Question 8: Do you agree with the approach to assessing harm? Are there any factors you think should be removed or included?

Step two

Once the court has determined the culpability and harm categories at step one, the next step is to identify the starting point of the sentence.

Sentence levels

The sentence ranges, as shown in the table below, have been formulated using statistical data from the Ministry of Justice’s CPD. The majority of offenders sentenced for both kidnap and false imprisonment offences are sentenced to immediate custody, 82 per cent for both offences in 2022. A further 6 per cent received a suspended sentence order, for both offences. As such a small proportion of offenders received a community order, 1 per cent for kidnap and 4 per cent for false imprisonment, there are no community orders within the sentence table.

Of those sentenced to immediate custody for kidnap, 82 per cent received a custodial sentence of 8 years or less, after any reduction for guilty plea. Of those sentenced to immediate custody for false imprisonment, 77 per cent received a custodial sentence of 6 years or less, after any reduction for guilty plea. A very small proportion of offenders receive a sentence greater than 14 years in most years (around 2 percent of kidnap

offenders and 1 per cent of false imprisonment offenders were sentenced to greater than 14 years' custody in 2022).

The resource assessment published alongside this consultation estimates that there may be an additional 20 prison places required for kidnap offences as a result of these draft proposals, and potentially an additional 60 prison places for false imprisonment offences. This is due to the potential increase in average custodial sentence lengths for these offences under the draft guideline. For further information on these impacts please see the accompanying resource assessment.

The Council's aim in creating this guideline is to ensure that cases of kidnap and false imprisonment are sentenced appropriately, in particular that the guideline allows for the most serious cases to be sentenced adequately. The Council has carefully considered the resource assessment estimates in developing the culpability/harm factors and the draft sentence ranges for these offences. However, these are reasonably low volume offences and the Council has concluded that the draft sentences ranges are appropriate for the varying levels of severity. Nevertheless, the Council will welcome any feedback on the proposals.

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

Question 9: Do you agree with the proposed sentence table for this offence? If not, please tell us why.

Aggravating and mitigating factors

For kidnap only, 'offence was committed against an emergency worker acting in the exercise of functions as such a worker' is a statutory aggravating factor. Therefore, this factor appears in the list under the heading 'statutory aggravating factors', suitably qualified. A separate version of it appears in the list under 'other aggravating factors', stating that it applies to false imprisonment only.

There is an offence specific aggravating factor of 'offence committed in context of other criminal activity', as some of these offences occur as part of other criminality, kidnapping to enforce a drug debt and so on, also a proposed factor of 'detention in an isolated location (where not taken into account at step one)'. This is suggested as the offence could be more serious if the victim is held miles from anywhere, with no prospect of attracting help, compared to an offence where the victim is held in a locked room in a house with other people nearby. 'Use of humiliation or degrading treatment (where not taken into account at step one)' is suggested to potentially increase sentences where such treatment is involved that has not already been captured at step one.

The rest of the factors are standard factors which are regularly used in other guidelines. The Council did debate whether some of these factors, such as 'offence was committed as part of a group' should instead appear at step one, as it is important this aspect of an offence is captured if it occurs. The Council decided on balance it should be a step two factor as the expanded explanation sets out the differing impact the roles an offender occupies within the group has, such as a leading role, and so on. In addition, having factors at step two, such as 'commission of the offence for financial gain' means the factor could apply to more cases, whereas at step one it would only apply to the culpability category it appeared in.

The proposed mitigating factors are all standard factors which are regularly used in other guidelines. Further details on the factors can be found on the [Sentencing Council's General guideline: overarching principles](#). The list is non-exhaustive so courts can take any other factors into account where relevant. The Council will be interested to hear views from respondents as to whether there are any other aggravating or mitigating factors that should be considered.

Factors increasing seriousness

Statutory aggravating factors:

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

Other aggravating factors:

- Offence committed in context of other criminal activity
- Detention in an isolated location (where not taken into account at step one)

- Use of humiliation or degrading treatment (where not taken into account at step one)
- Offence was committed against an emergency worker acting in the exercise of functions as such a worker (**false imprisonment only**)
- Offence was committed as part of a group
- Commission of the offence for financial gain
- Blame wrongly placed on others
- Offence committed in a domestic context
- Commission of offence whilst under the influence of alcohol or drugs
- Abuse of trust or dominant position
- Offence committed on licence or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

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

Question 10: Do you agree with the proposed aggravating and mitigating factors?

Question 11: Do you have any other comments on this guideline?

Equality and diversity

The Sentencing Council considers matters relating to equality and diversity to be important in its work. The Council is always concerned if it appears that the guidelines have different outcomes for different groups. The Council published the report '[Equality and diversity in the work of the Sentencing Council](#)' in January 2023, designed to identify and analyse any potential for the Council's work to cause disparity in sentencing outcomes across demographic groups.

In addition, the available demographic data, (sex, age group and ethnicity of offenders) is examined as part of the work on each guideline, to see if there are any concerns around potential disparities within sentencing. For some offences it may not be possible to draw any conclusions on whether there are any issues of disparity of sentence outcomes between different groups caused by the guidelines, for example because of a lack of available data or because volumes of data are too low.

There may be many causes for disparities in sentencing, some of which the Council is not able to do anything about. Comparisons are also difficult where the Council cannot control for potentially relevant factors when looking at outcomes for different groups.

The Council has had regard to its duty under the Equality Act 2010 in drafting these proposals, specifically with respect to any potential effect of the proposals on victims and offenders with protected characteristics.

The statistics discussed below are provided for the period 2018 to 2022, rather than for a single year, due to the small number of offenders sentenced for this offence each year. For data on sex and age please see the data tables published on the [Council's website](#).

Ethnicity

Between 2018 and 2022, the volumes of offenders sentenced for kidnap, false imprisonment and blackmail are around 400, 420 and 490 respectively. The number of black and Asian offenders is much smaller than the number of white offenders. The proportions of sentence outcomes and ACSLs derived for these lower volume groups are more sensitive to small changes in volume. Additionally, for these offences, ethnicity is unknown for around 20 to 25 per cent of offenders.

Out of those cases where ethnicity was known, most kidnap offenders (55 per cent) were white. Across ethnicities, similar distributions of sentence outcomes were imposed (the vast majority within each group received immediate custody). White offenders between 2018 and 2022 received a lower ACSL of approximately 5 years 4 months versus either Asian or black offenders who received 6 years 1 month and 7 years 9 months respectively.

Similar to the offence of kidnap, out of those where ethnicity was known, most false imprisonment offenders (72 per cent) were white. Across ethnicities, similar distributions of sentence outcomes were imposed (the vast majority within each group received immediate custody). White offenders between 2018 and 2022 received a lower ACSL of approximately 4 years 1 month compared with Asian and black offenders who received 5 years and 6 years 4 months respectively.

White offenders accounted for the majority (75 per cent) of the blackmail offenders sentenced, where ethnicity was known. Across all ethnicity groups, immediate custody was the most common outcome. However, a higher proportion of black offenders (93 per cent) received immediate custody compared to white offenders (71 per cent). From 2018 to 2022, the ACSL was also higher for Asian offenders, compared with white offenders. Asian offenders received an ACSL of 3 years 6 months, versus 2 years 8 months for white offenders. The ACSL for black offenders was only slightly higher than white offenders at 3 years 1 month.

Proposed additional wording

As can be seen above, there are some differences between groups which may indicate disparities in sentencing. It is difficult to know what might be driving these differences. Furthermore, we are not able to control for various characteristics in the demographic data, such as whether the offender pled guilty and these factors could also contribute to the differences seen between groups.

Although no guidelines exist for these offences, differences in sentencing outcomes between groups can be observed. The Council is concerned that in producing guidelines, any unwarranted disparities are maintained or even exacerbated. As noted above, it is not possible to say why there are these observed differences in sentencing between some groups. The Council is not responsible for any issues occurring further upstream which may be contributing to the disparities but the Council is responsible for the effects of the guideline.

Therefore, the Council wishes to be responsive on this issue and consult on adding wording to the guidelines, in a similar way to which has been done previously within some of the [drugs](#), [assault](#) and [firearms guidelines](#). For blackmail the proposed wording is:

Sentencers should be aware that there is evidence of a disparity in sentence outcomes for this offence which indicates that a higher proportion of black offenders receive immediate custody compared to white offenders and that the average custodial sentence length is also higher for Asian offenders, compared with white offenders.

There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 186 to 206 of the [Equal Treatment Bench Book](#).

For kidnap and false imprisonment the proposed wording is:

Sentencers should be aware that there is evidence of a disparity in sentence lengths for this offence which indicates that the average custodial sentence length is higher for black and Asian offenders, compared with white offenders.

There may be many reasons for these differences, but in order to apply the guidelines fairly sentencers may find useful information and guidance at Chapter 8 paragraphs 186 to 206 of the [Equal Treatment Bench Book](#).

The full available demographic data can be seen within the data tables at: www.sentencingcouncil.org.uk

The potential for disparities in sentencing to arise from aspects of sentencing guidelines may not be obvious and we are therefore seeking views widely on any such potential impacts. We would like to hear from those reading this document on these matters.

We would like to know whether there is anything further in the draft guidelines we are consulting on which could cause, or contribute to, such disparities across different groups, and / or whether any changes to the draft guidelines could be made to address any disparities. These could relate to:

- the language used
- culpability and harm factors
- mitigating and aggravating factors
- the expanded explanations
- the context in which the offending takes place
- the structure of the guidelines.

Question 12: What is your view on the proposed inclusion of the additional wording in the boxes above? Should it be included? If not please tell us why

Question 13: Are there any aspects of the draft guidelines that you feel may cause or increase disparity in sentencing?

Question 14: Are there any existing disparities in sentencing of the offences covered in this guideline that you are aware of, which the draft guideline could and should address?

Question 15: Are there any other matters relating to equality and diversity that you consider we ought to be aware of and/or that we could and should address in the guideline?

Question 16: Do you have any other comments on the proposed guidelines that have not been covered elsewhere?

Annex A

Consultation Questions

Blackmail

Question 1: Do you have any comments on the culpability factors? Are there any that should be removed or added?

Question 2: Do you agree with the approach to assessing harm? Are there any factors you think should be removed or included?

Question 3: Do you agree with the proposed sentence table for this offence? If not, please tell us why.

Question 4: Do you agree with the proposed aggravating and mitigating factors?

Question 5: Do you have any other comments on this guideline?

Kidnap and false imprisonment

Question 6: Do you agree with the proposal that there is one combined guideline for both offences? If not, please tell us why.

Question 7: Do you have any comments on the culpability factors? Are there any that should be removed or added?

Question 8: Do you agree with the approach to assessing harm? Are there any factors you think should be removed or included?

Question 9: Do you agree with the proposed sentence table for this offence? If not, please tell us why.

Question 10: Do you agree with the proposed aggravating and mitigating factors?

Question 11: Do you have any other comments on this guideline?

Equality and Diversity

Question 12: What is your view on the proposed inclusion of the wording in the boxes above? Should it be included? If not please tell us why

Question 13: Are there any aspects of the draft guidelines that you feel may cause or increase disparity in sentencing?

Question 14: Are there any existing disparities in sentencing of the offences covered in this guideline that you are aware of, which the draft guideline could and should address?

Question 15: Are there any other matters relating to equality and diversity that you consider we ought to be aware of and / or that we could and should address in the guideline?

Question 16: Do you have any other comments on the proposed guidelines that have not been covered elsewhere?

