

Magistrates' Court Sentencing Guidelines

Response to consultation

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Foreword



On behalf of the Sentencing Council I would like to thank all those who responded to the consultation on the Magistrates' Court Sentencing Guidelines. I also extend my thanks to the members of the magistracy and judiciary who gave their time to participate in the research exercises undertaken to inform the development of these guidelines. As with all Sentencing Council consultations, the views put forward by all respondents were carefully considered, and the range of views and expertise were of great value in informing the definitive guidelines.

The magistrates' courts sentence over 1 million offenders across England and Wales each year, and many of these offenders are sentenced using the Magistrates' Court Sentencing Guidelines. It is essential that the guidelines are up to date and that they help to ensure that sentences are applied consistently and effectively. Given the high volume of cases that are dealt with in the magistrates' court it is also necessary to ensure that the guidelines are easy to apply and proportionate.

The Council was pleased to receive a high volume of responses to this consultation. As a result, the general approach outlined in the consultation has been maintained, in that the majority of the guidelines are now in the Sentencing Council stepped format, which provides a consistency of approach. The council has taken account of respondents' representations. For example, we provide for increased penalties for the most serious speeding offences, and have provided the option of a conditional discharge in the least serious cases of TV licence evasion.

The Council hopes that the provision of these up to date new guidelines will assist magistrates' courts to sentence offenders consistently.

Lord Justice Treacy, Chairman, Sentencing Council

Introduction

In May 2016 the Sentencing Council published a consultation on new draft Magistrates' Court Sentencing Guidelines (MCSG). The objective of the consultation was to seek views on the updated, single, uniform format of the new draft guidelines which have been converted into the Sentencing Council format.

The MCSG was last fully updated in 2008 by the predecessor body of the Sentencing Council, the Sentencing Guidelines Council (SGC). The guidelines were therefore in need of updating. In addition the format of the guidelines, as designed by the SGC, differed significantly from the format that has since been adopted by the Sentencing Council. Firstly they do not use the stepped approach; seriousness is indicated by reference to examples of the nature of the activity and sentencers are asked to consider which of these examples corresponds most closely to the circumstances of the particular case being sentenced in order to identify the appropriate starting point. Secondly the sequence in which seriousness is presented, with the least serious situation being presented first, is the reverse to that in Sentencing Council guidelines, where the most serious situation is presented first. Finally the starting points in the SGC guidelines are those for a first time offender pleading not guilty whereas in Sentencing Council guidelines the starting point applies irrespective of previous convictions.

The Sentencing Council considered that in updating the MCSG it was important to draft them in a way that was consistent with other Sentencing Council guidelines to ensure a consistent approach is adopted by sentencers whether they are sentencing for an offence under this package or for another offence such as assault or theft which are already in the revised format.

To achieve this the Sentencing Council has reviewed all existing Magistrates' Court Sentencing Guidelines (MCSG) and made a number of changes. However many of the principles and content underpinning the SGC guidelines remains unchanged.

The Council consulted on the draft guidelines between 19 May 2016 and 11 August 2016. During the consultation period the Council held a number of consultation events with magistrates across the country.

The Justice Committee is a statutory consultee on the Council's draft guidelines. The Council therefore shared all consultee responses with the Justice Committee to assist them in drafting a report in response to this consultation. The Council is very grateful to the Committee for taking the

time to consider the responses and for drafting a very useful report which the Council has fully considered in revising the guidelines post consultation.

The definitive guidelines will apply to all offenders aged 18 and over who are sentenced on or after 24 April 2017, regardless of the date of the offence.

Summary of responses

The consultation sought views from respondents on some general principles and cross cutting issues as well as asking for views on specific guidelines.

There were a total of 67 responses to the consultation of which 19 provided email or paper responses and 48 responded online.

Breakdown of respondents

| Type of respondent | Number |
|---------------------------------|-----------|
| Charity/voluntary organisations | 10 |
| Government | 4 |
| Industry | 2 |
| Judiciary | 2 |
| Legal professionals | 7 |
| Magistrates | 22 |
| Members of the public | 13 |
| Parliament | 1 |
| Police | 2 |
| Prosecution | 1 |
| Public body | 1 |
| Trade union | 1 |
| Victims' representative groups | 1 |
| Total | 67 |

In general, there was a positive response to the proposals. However, the Council was also grateful for constructive criticism and considered suggestions for amending parts of the draft guidelines.

The Council has carefully considered all of the responses it has received from consultation and has made a number of changes. This has resulted in the following main changes:

- Removal of ranges within a fine band.
- Separate sentencing table for possession of alcohol under the football related offences guideline.
- Separate sentencing tables for the different offences covered by the railway fare evasion guideline.
- Conversion of the guideline on school non attendance into the two step structure
- New higher penalty for offenders whose offences fall within the highest bracket of seriousness in the speeding guideline.
- Additional sentencing option of 'conditional discharge' within the range of lowest level seriousness for TV licence evasion.

General principles & cross-cutting issues

The Council's primary aim was to seek to address two particular challenges:

- to design a clear, stepped approach, not reliant on examples, for offences with very little 'headroom' owing to the low maximum sentences available; and
- to ensure that any changes to starting points and ranges do not have a significant impact on sentencing practice and consequential impact on resources.

The Council considered a number of different approaches to the redraft of the MCSG. In particular the Council considered whether some fine only offences might need an alternative structure in order to simplify the approach, and to recognise the fact that there are limited sentencing options available for such offences. However the Council concluded that, on balance, consistency across guidelines should be the guiding principle.

The Council sought the views of consultees on this point. All of those who responded agreed that offences should generally be presented in one consistent format.

"The MCSG is used daily by magistrates, who will over the course of a sitting consult it for several offences. It makes sense, in terms of ease of use and adopting a stepped sentencing approach in general, to adopt the same structured guideline throughout. The MA reinforces its support for the focus on culpability and harm, as part of a stepped sentencing approach." – **The Magistrates' Association**

The final guidelines, therefore follow this approach.

In line with this principle, the Council sought to find a way to assist sentencers in distinguishing between different levels of seriousness for offences where the available sentence range is limited. An approach was proposed that identified starting points within fine bands, for example Fine Band B (middle of the range). This approach was used in the following offences:

- Alcohol sales
- Careless driving
- Drive whilst disqualified
- Excess alcohol drive/in charge
- Fail to provide evidential specimen in charge
- Football offences

- No insurance
- Speeding
- Taxi touting
- TV licence payment evasion
- Unfit through drink or drugs in charge

Whilst many agreed with this approach there were a number of respondents who disagreed and expressed concern.

"It does appear as though this is over complicating the sentencing of an offender" – **London Criminal Courts' Solicitors' Association**

The Council concluded that this approach did not work and that it is better to revert to the use of bands alone.

Offence specific proposals

Alcohol sale offences

The existing MCSG Alcohol sale offences guideline is a flat guideline, with only one example of activity and a range of sentencing from Band A to Band C fine. The new draft uses the stepped approach, where the court is invited to assess culpability and harm factors which leads to a wider range of sentences including, for the first time, an option of conditional discharge.

Consultees views were sought on the introduction of conditional discharge as a sentencing option. 91 per cent of consultees agreed.

"The MA welcomes additional judicial discretion to take individual circumstances into account for a given offence. The inclusion of the option of a conditional discharge is also in line with other low-level offences" – **The Magistrates' Association**

Views were also sought on a specific factor within the draft guideline; "few entries in refusals / incident book (where defendant is licence holder or regularly making alcohol sales)". 32 per cent of respondents did not agree with this proposed factor:

"ACS (Association of Convenience Stores) does not agree that [the proposal] should remain a higher culpability factor. [Inclusion] makes the assumption that the number of entries can directly suggest whether the offender has been due diligent, however this is not the case...few entries in a retailer's refusal log is likely to be the result of having robust procedures in stores over a long period of time. This would deter people attempting to purchase alcohol underage and result in few entries" - **Association of Convenience Stores**

Given the volume of opposition and the valid points raised by the Association of Convenience Stores the Council decided not to include this as a higher culpability factor. Instead the Council has added the factor 'Evidence of failure to police the sale of alcohol' to higher culpability and 'Evidence of substantial effort to police the sale of alcohol' to lower culpability.

Question 5 sought views on the other factors and the sentencing ranges within the guideline. The Magistrates' Association and the CPS shared concerns about how the proposed greater harm factor 'drunk person aggressive' worked with the lower harm factor of 'offence committed to avoid confrontation/intimidation/reprisal'.

The Criminal Bar Association felt that they should be deleted from the guideline.

The Council decided to remove these factors as they did not work together.

Animal cruelty

Consultees were asked whether they agreed with the culpability and harm factors within this guideline, and whether they agreed with the use of three levels of seriousness.

72 per cent of respondents agreed. Almost every respondent who disagreed with the guideline raised concerns that the sentencing levels were not high enough and that offenders should receive sentences greater than six months. An increase to the statutory maximum sentence would require a change to the legislation and is not within the scope of the Sentencing Council's powers. The Council has, however, taken on board a number of other comments and made the following changes: amended the high culpability factor 'deliberate *and* gratuitous attempt to cause suffering' to 'deliberate *or* gratuitous attempt to cause suffering' and added an additional aggravating factor of 'use of technology to publicise or promote cruelty'. Some respondents requested a number of additional factors including 'use of weapons' and 'use of another animal to inflict death or injury'. The Council considered these suggestions but concluded that both of these factors would be covered by the high culpability factor 'deliberate or gratuitous attempt to cause suffering'.

Since the consultation on this guideline the Council has received correspondence from a number of individuals who express concern that the animal cruelty guideline does not adequately deal with the offences which involve death or serious harm to police horses and dogs. The Council considered these concerns and concluded that such an offence would fall into the highest seriousness category under the guideline which has a starting point of 18 weeks custody, and the range goes up to the statutory maximum for the offence. The Council did, however, conclude that it would be useful to have an additional aggravating factor to cover such an offence recognising that the animal is being used for public service. The Council also felt that assistance dogs should be included in such a factor.

Careless driving

Consultees were asked if they agreed with the draft guideline in respect of disqualification. 86 per cent of respondents agreed.

The Law Society and the Magistrates' Association urged caution over the inclusion of 'inexperience of driver', suggesting that its inclusion as a lower culpability factor could create the impression of lowering the standard of driving that constitutes the offence.

"... the offence is clearly committed when the standard of driving falls below that required of a competent driver. To lower this standard in lower culpability would send the wrong message to the public." – **Law Society**

Conversely Road Peace and Transport for London raised the issue of professional drivers.

"... professional drivers should be held to a higher standard than ordinary drivers. To support our desire for safer streets in London we also believe that driving for hire or reward places an additional duty on the driver to drive safely and with care. Professional drivers convicted of careless driving when driving for hire or reward should be considered as more culpable and sanctioned accordingly." – **Transport for London**

In light of these comments the Council decided to remove 'inexperience of the driver' from the lower culpability factors, and added 'vehicle used for the carriage of heavy goods or for the carriage of passengers for reward' to higher culpability.

Communication network offences

The existing MCSG guideline covers the two separate communication offences within the same guideline but using two separate sentencing tables. The new draft combines the two into one sentencing table resulting in a change to the category one starting point of both offences to nine weeks' custody. The consultees were asked if they agreed with the proposed changes to the category one starting points. 96 per cent agreed. There were a small number of other comments and suggestions, including one from the NHS:

"...we would ask that consideration is given to the guideline making specific reference to the misuse of emergency ambulance services" - **NHS**

The Council has added 'false calls to emergency services' to the high culpability factors.

Drugs – Class A – Fail to attend/remain for initial assessment

Consultees were asked if they agree with the treatment of culpability within the guideline. 90 per cent of respondents agreed. They were also asked if they agree with the proposed wording of the harm factor 'aggressive or disruptive during attendance'. 93 per cent of respondents agreed. The Council has made only minor changes to this guideline given the level of support.

Drunk and disorderly

The offence of drunk and disorderly carries a maximum level 3 fine. Given the limited sentencing options available and due to the straightforward nature of the offence the new guideline is a flat structure. Consultees were asked if they had any comments on the draft. The majority of respondents had no comments, and those who did comment were broadly content with the guideline.

Fail to stop/fail to report

The mitigating factor in the existing guideline of 'subsequently reported' was broadened to 'significant attempt made to comply with duty'. Consultees were asked if they agreed with the proposed wording of this mitigating factor.

91 per cent of respondents agreed with the wording.

A number of comments were also received on some of the other factors; Cycling UK and Road Peace disagreed with inclusion of the factor 'believed identity known'. This is a factor that is in the existing guideline, but both respondents felt that this diluted the statutory obligation. One magistrate felt that the factor should be qualified and so should read 'reasonably believed identity known'.

The Council has, therefore changed the factor to 'reasonably believed identity known' in line with the suggestion.

Football related offences

Consultees were asked if they agree with the proposed culpability and harm factors and the inclusion of both generic and specific factors. The Magistrates' Association suggested that, as the football related offences guideline covers a number of different offences carrying different statutory maxima, there ought to be separate guidelines. The Council considered this option and decided that, whilst the guideline works well for all offences the sentencing table would be clearer if it separated out the offences so that the offence of possession of alcohol, the only imprisonable offence, has a separate sentencing table.

Railway fare evasion

Consultees were asked if they agree that the factor “aggressive towards staff” captures both verbal and non verbal behaviour, including offensive language. 80 per cent of respondents agreed. A couple of respondents suggested that the factor should be expanded to cover others as well as staff. The Law Society proposed changing the factor to ‘abusive language and/or aggressive behaviour’. The Council considered these suggestions and amended the factor to ‘aggressive, abusive or disruptive behaviour’.

In addition the railway fare evasion guideline covers two separate offences under the Regulation of Railways Act 1889, namely section 5(3) which is the offence of travelling on a railway without paying the fare, with the intent to avoid payment; and section 5(1), the offence of failing to produce a ticket. The first offence has a statutory maximum of level 3 fine whereas the second offence has a statutory maximum of level 2 fine. Combining these two offences led to a complex sentencing table. The Council have reconsidered this draft and devised two separate sentencing tables for the two separate offences to recognise the different statutory maxima.

School non attendance

The consultation asked specifically about the aggravating and mitigating factors, but respondents’ comments were not restricted to these issues. The Magistrates’ Association felt that this guideline ought to be in the stepped structure, and a couple of respondents felt that there should be two separate guidelines. Respondents also asked for additional factors.

The Council considered these proposals and redrafted the guideline in a stepped approach with the addition of the following factors:

Higher culpability: threats to teachers and/or officials; parent encouraging non attendance

Lower culpability: ‘genuine efforts to secure attendance’; ‘parent concerned by child’s allegation of bullying’; ‘parent put in fear of violence and/ or threats from the child’.

Speeding

The structure of the speeding guideline is different to the other guidelines within the MCSG package as it focuses on the speed that the offender was driving in relation to the speed limit, rather than an assessment of culpability and harm. Consultees were asked if they agreed with the proposed structure of the guideline. 76 per cent agreed.

A number of respondents made additional comments and some called for higher penalties:

“RoadPeace believes that the current banding structure disregards the potential harm of speeding. For instance, breaking a 20 mph speed limit takes the probability of killing a pedestrian in a collision from less than 1% to 14% within the first sentencing range, to 37% at the top of the second and to 83% at the top of the third. This major escalation of potential harm (and actual harm when the deterrence of active travel is considered) only results in a small gradation of penalties.” -

RoadPeace

The Council considered these views and agreed to increase the penalty for the top band of seriousness from a Band B to a Band C fine, to ensure that there is clear increase in penalty as the seriousness of offending increases.

Sexual activity in a public lavatory

Consultees were asked if they agreed with the proposed sentencing ranges within this guideline. 84 per cent agreed. A small number of respondents suggested additional factors; the Sentencing Council has therefore added one additional factor to greater harm: ‘children or young persons present’.

Taxi touting/soliciting for hire

Consultees were asked if they agree with the proposed factors at step one and two. The RMT, the UK’s specialist transport union agreed with the proposal, describing it as “a sound approach”, although it went on to request that the penalties should be higher to include both community orders and imprisonment. The statutory maximum sentence for this offence is level 4 fine and any increase would require legislative change which is outside the scope of the Sentencing Council’s powers.

A number of respondents questioned the harm factor ‘passenger’s safety compromised by status of driver’, as they felt it was unclear whether this referred to the driver’s licence status, medical status or criminal status. The factor was in recognition of the fact that a passenger’s safety might be compromised because the driver has not demonstrated his ability to drive to the requisite standard in order to obtain a PHV licence. However the Council decided to remove the factor as it was unclear, and also it would likely apply to the majority of offenders.

TV licence payment evasion

Consultees were asked if they agreed with the step one and two factors. 79 per cent agreed.

Some respondents questioned the level of the financial penalty that is imposed on some offenders who may be of low means. The Council did look again at the range of penalties available, and have added 'conditional discharge' as a sentencing option within the range for the lowest level offending. The Council considered that in cases where, for example, an offender has been without a television licence for a short period, and had made significant efforts to obtain a licence then this might be the type of case where it would be appropriate to impose a conditional discharge, and sentencers should be given greater discretion in their sentencing powers to do so.

Vehicle interference

Consultees were asked if they agreed with the proposed culpability and harm factors including the new factors 'significant role where offending is part of a group activity' and 'targeting of particular vehicle and/or contents' and 'planning'. 96 per cent of respondents agreed. A couple of respondents suggested changing the first new factor to 'leading role' to be clearer. The Council agreed with this proposal.

Vehicle taking without consent

The new guideline includes disqualification within the sentencing table which is a change from the existing guideline. Consultees were asked whether they agreed with the proposed lengths of disqualification. 56 per cent agreed.

A large number of those who disagreed with the lengths did so as a result of a mistake in the consultation version of the guideline, where the proposed disqualification periods were put in the reverse order. This error has now been corrected.

However even accounting for that error a couple of respondents still did not like the disqualification proposals. The Magistrates' Association commented that they felt it is better simply to leave this to judicial discretion. The Criminal Bar Association also had reservations about the inclusion of disqualification periods at some levels:

“Given that a sentencing court is only permitted to determine the category of the offence by reference to the harm and culpability factors listed in the guideline, we take the view that an offence of lesser harm and lower culpability should not attract a disqualification from driving at all. Examples of such offences (with reference to the factors listed in the guidelines) would be where an individual exceeds the hire period of a rental vehicle and voluntarily returns the vehicle or where a teenager exceeds the permitted usage of his/her parents’ car. It seems to us that such offences should not attract a period of disqualification. Whilst it is accepted that the guideline only asks the court to consider disqualification, it is felt that a suggested starting point of 4 months is likely to lead to a large increase in offenders who are disqualified.” – Criminal Bar Association

The Council reflected on the proposal and made some changes, removing the reference to 4 months disqualification at the lowest seriousness level.

Conclusion and next steps

The consultation has been an important part of the Council's consideration of this guideline. Responses received from a variety of sources have informed changes made to the definitive guidelines.

The definitive guidelines will apply to all offenders aged 18 and over who are sentenced on or after 24 April 2017, regardless of the date of the offence.

Throughout the development of the guidelines the equality impacts have been fully considered. No evidence was received during the consultation period which suggested that the guideline would have any adverse impact on equalities issues which would warrant a full Equality Impact Assessment.

Following implementation, the Council will continue to collect any relevant data to support the guidelines.

Annex A

Consultation questions

Limitations of approach to structure

- 1) Do you agree that offense generally should be presented in one consistent format?
- 2) Do you agree with this use of suggested points within a fine band?

Offence specific proposals

Alcohol sale offences

- 3) Do you agree that conditional discharge is an appropriate option at the lower end of the range for category 3 cases?
- 4) Do you agree that 'few entries in refusals/ incident book' should remain a higher culpability factor as drafted?
- 5) Do you have any other comments about any of the factors and/or ranges for this offence?

Animal cruelty

- 6) Do you agree with the draft guideline, in particular with the culpability and harm factors and with the use of three levels of seriousness?
 - i) Do you consider the sentence passed in scenario A is proportionate?
 - ii) Do you consider that the sentence passed in scenario B is proportionate?
 - iii) Do you consider that the sentence passed in scenario C is proportionate?

Careless driving

- 7) Do you agree with the draft guideline in respect of disqualification?

Communication network offences: draft guideline

- 8) Do you agree with the proposed changes to the category one starting point?

Drugs Class A: fail to attend/remain for initial assessment

- 9) Do you agree with this treatment of culpability?
- 10) Do you agree with the proposed wording of the harm factor 'aggressive or disruptive during attendance'?

Drunk and disorderly

- 11) Do you have any comments about this draft guideline?

Fail to stop/ fail to report

- 12) Do you agree with the proposed wording of this mitigating factor?

Football related offences

- 13) Do you agree with the proposed culpability and harm factors and the inclusion of both generic and specific factors?

Railway fare evasion

- 14) Do you agree that the factor 'aggressive towards staff' captures both verbal and non-verbal behaviour, including offensive language?

School non-attendance

- 15) Do you agree with the proposed aggravating and mitigating factors?
16) Do you agree with the proposed approach regarding fine bands?

Speeding

- 17) Do you agree with the proposed structure for this guideline?

Sexual activity in a public lavatory

- 18) Do you agree with the proposed sentencing ranges?

Taxi touting/soliciting for hire

- 19) Do you agree with the proposed step one and step two factors?

TV licence payment evasion

- 20) Do you agree with the proposed step one and step two factors?

Vehicle interference

- 21) Do you agree with the proposed culpability and harm factors?

Vehicle taking without consent

- 22) Do you agree with the proposed lengths of disqualification?

Annex B

Consultation respondents

Responses were received from the following:

- Mary Alderson
- Ian Allot JP
- Anonymous (x8)
- Association of convenience stores
- Association of Lawyers for Animal Welfare (ALAW)
- Battersea dogs & cats home
- Blue Cross
- Eric Bodger JP
- Kevin Brown
- Rosemary Carawan JP
- Janet Carter
- Cat Chat, the Cat Rescue Resource
- Peter Collins
- CPS
- Duncan Craig
- Criminal Bar Association
- Criminal Law Solicitors' Association
- Cycling UK
- Jim Dickinson JP
- Dogs Trust
- Derek Evans JP
- Jackie Hamilton JP
- Nick Harrington JP
- Sandra Hilder
- HM Circuit Judges
- HM Prison Service
- Dr Lilian Hobbs JP

- Justice Committee
- Iacovos Koumi JP
- Law Society
- Legal Committee of Her Majesty's Council of District Judges (Magistrates' Courts) of England and Wales
- London Criminal Courts Solicitors' Association (LCCSA)
- Jim Ludlam JP
- Magistrates' Association
- Manchester and Cheshire Dogs' Homes
- Simon Masseralla JP
- Ministry of Justice
- NHS Protect
- Office of the Police and Crime Commissioner for Kent
- Emma Park
- Harry Chipchase Patterson JP
- Brian Phelan JP
- Lilas Rawling JP
- Luke Rigley
- RMT
- RoadPeace
- RSPCA
- Somerset Bench
- South East London Bench
- Teeside Magistrates' Bench
- David Thew JP
- Transition 2 Adulthood
- Transport for London
- Victim's Commissioner
- David Ward
- Peter Watson JP
- West Yorkshire Police
- David Williams JP