

Miscellaneous amendments to sentencing guidelines Consultation

Miscellaneous amendments to sentencing guidelines

Consultation

Published on 7 September 2023

The consultation will end on 30 November 2023

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 7 September 2023 to 30 November 2023

Enquiries (including requests for the paper in an alternative format) to: Office of the Sentencing Council
Room EB20
Royal Courts of Justice
Strand
London WC2A 2LL
Tel: 020 7071 5793
Email: info@sentencingcouncil.gov.uk

How to respond: Please send your response by 30 November 2023:
by email to Ruth Pope: consultation@sentencingcouncil.gov.uk
or by using the online consultation at:
<https://consult.justice.gov.uk/>

Response paper: Following the conclusion of this consultation exercise, a response will be published at: www.sentencingcouncil.org.uk

Freedom of information: We will treat all responses as public documents in accordance with the Freedom of Information Act 2000 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.

Contents

Introduction	3
Allocation guideline	5
Supply of drugs to children	6
Fraud	7
Breach of a protective order guideline	13
Environmental guideline for individuals	17
Mitigating factors and expanded explanations	23
Remorse	23
Good character and/or exemplary conduct	24
Determination and/or demonstration of steps having been taken to address addiction or offending behaviour	26
Age and/or lack of maturity	26
New factors: Difficult and/or deprived background or personal circumstances and Prospects of or in work, training or education	28
New factor: Pregnancy and maternity	32
Manslaughter	35

Strangulation, suffocation or asphyxiation	36
Coercive or controlling behaviour	37
Equalities and impact	39
Annex – changes that are not subject to consultation	40

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 its proposed guidelines before they come into force and on any proposed changes to existing guidelines.

What is this consultation about?

The Sentencing Council has built up a large body of sentencing guidelines and accompanying materials that are in use in courts throughout England and Wales. Over time guidelines require updating because users have pointed out issues (often using the feedback function on all guidelines) or case law or new legislation may render aspects of guidelines out of date. The Council therefore holds an annual consultation on miscellaneous amendments to guidelines and the explanatory materials that accompany them. This is the third of these annual consultations in which the Council seeks the views of guideline users to proposals to make amendments to existing guidelines.

The proposed changes relate to magistrates' courts and the Crown Court.

Summary of the proposed changes

Matters relevant primarily to magistrates' courts:

- in the [Allocation](#) and [Sentencing children and young people](#) guidelines, adding a factor relating to waiting time to the non-exhaustive list of factors to be considered when deciding whether it is in the interests of justice to send a child jointly charged with an adult to the Crown Court for trial

Matters relevant to magistrates' courts and the Crown Court:

- adding an aggravating factor relating to the supply of drugs to children to the [Supplying or offering to supply a controlled drug/ Possession of a controlled drug with intent to supply it to another](#) guideline
- amending the [Fraud](#) guideline to address perceptions that non-financial impact is not given sufficient weight and to cater for situations where there is no or minimal pecuniary loss
- adding breach of a stalking prevention order (SPO) and breach of a domestic abuse prevention order (DAPO) to the [Breach of a protective order \(restraining and non-molestation orders\)](#) guideline
- amending the [Individuals: Unauthorised or harmful deposit, treatment or disposal etc of waste/ Illegal discharges to air, land and water](#) guideline to give greater emphasis to community orders over fines
- amending or adding mitigating factors and the associated expanded explanations to address issues relating to equality and diversity in sentencing:
 - Remorse

4 Miscellaneous amendments, Consultation

- Good character and/or exemplary conduct
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour
- Age and/or lack of maturity
- New factors: Difficult and/or deprived background or personal circumstances and Prospects of or in work, training or education
- New factor: Pregnancy and maternity

Matters relevant to only to the Crown Court:

- changes to the [loss of control](#), [diminished responsibility](#), [unlawful act](#) and [gross negligence](#) manslaughter guidelines relating to:
 - strangulation, suffocation or asphyxiation
 - coercive or controlling behaviour

Other changes

In addition to the changes consulted on in this document, the Council has made other minor changes to guidelines or the explanatory materials which, while not requiring consultation, it was felt should be drawn to the attention of those responding to this consultation.

A list of these changes is annexed to the end of this document.

Responding to the consultation

Through this consultation process, the Council is seeking views on the usefulness, accuracy and clarity of the proposed changes and anything else that you think should be considered.

In the following sections the proposed changes are outlined in detail and you will be asked to give your views. You can give your views by answering some or all of the questions below either by email to consultation@sentencingcouncil.gov.uk or by using the online consultation at <https://consult.justice.gov.uk/>.

What else is happening as part of the consultation process?

This is a 12 week public consultation. The Council has not planned any consultation meetings but would be happy to arrange a meeting to discuss any of the issues raised if this would be helpful. Once the results of the consultation have been considered, the updated guidelines will be published and used by all courts.

Question 1: What is your name?

Question 2: What is your email address?

Question 3: Are you answering as an individual? If so, are you happy for your name to be included in the consultation response document?

Question 4: If you are answering on behalf of an organisation, group or bench, please provide the name of the organisation, group or bench.

Allocation guideline

The issue

In the [Allocation guideline](#) under the heading ‘Children or young people jointly charged with adults – interests of justice test’ there is a non-exhaustive list of examples of factors to be considered when deciding whether it is in the interests of justice to send the child to the Crown Court for trial:

- whether separate trials will cause injustice to witnesses or to the case as a whole (consideration should be given to the provisions of sections 27 and 28 of the Youth Justice and Criminal Evidence Act 1999);
- the age of the child or young person: the younger they are, the greater the desirability that they be tried in the youth court;
- the age gap between the child or young person and the adult: a substantial gap in age militates in favour of the child or young person being tried in the youth court;
- the lack of maturity of the child or young person;
- the relative culpability of the child or young person compared with the adult and whether the alleged role played by the child or young person was minor;
- the lack of previous convictions on the part of the child or young person.

In 2020 the youth justice judicial lead gave some [guidance](#) about the relevance of delay to the interests of justice test during the pandemic.

The proposed change

The Council considered that this guidance remains relevant and should be encapsulated into the appropriate part of the Allocation guideline (which is also reproduced in the [Sentencing children and young people guideline](#)) in the form of an additional factor about the expected waiting time for a trial in the Crown Court:

- the likely waiting time in trying the youth in the Crown Court as compared to the youth court

The impact

This change which relates to the venue for trial rather than the sentence is not expected to have an impact on prison or probation resources.

Question 5: Do you agree with the proposed change to the Allocation and Sentencing children and young people guidelines? If not, please provide any alternative suggestions.

Supply of drugs to children

The issue

In March 2023 the Ministry of Justice asked the Council to amend existing relevant guidelines to make clear that supply of a controlled drug to a child is an aggravating factor.

In the [Supplying or offering to supply a controlled drug/ Possession of a controlled drug with intent to supply it to another guideline](#) there are already statutory aggravating factors that relate to under 18s:

- Offender used or permitted a person under 18 to deliver a controlled drug to a third person
- Offender 18 or over supplies or offers to supply a drug on, or in the vicinity of, school premises either when school in use as such or at a time between one hour before and one hour after they are to be used.

There are also several other existing aggravating factors in the guideline that reference children but do not specifically refer to sale to children:

- Exploitation of children and/or vulnerable persons to assist in drug-related activity
- Targeting of any premises where children or other vulnerable persons are likely to be present
- Presence of others, especially children and/or non-users

The Council agreed that there could be merit in adding a factor that explicitly addresses the sale to children in the interests of aiding public understanding of how courts apply these aggravating factors in relevant cases.

The proposed change

The suggested wording for an additional factor is:

- Offender supplies or offers to supply a drug to a person under the age of 18

The impact

We have no information on how many offenders are sentenced on the basis that they supplied to children – prosecutions for supply are often as a result of test purchases by undercover police officers. There is also no evidence to suggest that courts are failing to aggravate sentences where drugs have been sold directly to children, and the change is therefore unlikely to have a significant impact on prison or probation resources.

Question 6: Do you agree with the proposed additional aggravating factor in the [Supplying or offering to supply a controlled drug/ Possession of a controlled drug with intent to supply it to another guideline](#)? If not, please provide any alternative suggestions.

Fraud

The issue

The Justice Committee published a report, '[Fraud and the Justice System](#)' in October 2022. This contained the following recommendation (at paragraph 122):

The loss of a comparatively small amount of money can have a greater impact on one individual than the loss of a greater amount on another. The current sentencing guidelines do not recognise this and therefore overlook the emotional and psychological impact that fraud crimes can have on their victims. Sentencing guidelines should be amended to give greater consideration to the emotional and psychological harms caused by fraud crimes alongside the financial losses incurred.

The Council was also made aware of a potential difficulty in sentencing cases where there is little or no financial harm but a high level of non-financial impact on the victim.

The fraud guideline relevant to this issue is simply titled [Fraud](#). When developing the guideline the Council took care to ensure that the effect on the victim was taken into account in sentencing and used a two-stage harm model:

Harm

Harm is initially assessed by the actual, intended or risked loss as may arise from the offence.

The values in the table below are to be used for **actual** or **intended** loss only. Intended loss relates to offences where circumstances prevent the actual loss that is intended to be caused by the fraudulent activity.

Risk of loss (for instance in mortgage frauds) involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of loss is less serious than actual or intended loss. Where the offence has caused risk of loss but no (or much less) actual loss the normal approach is to move down to the corresponding point in the next category. This may not be appropriate if either the likelihood or extent of risked loss is particularly high.

Harm A – Loss caused or intended		
Category 1	£500,000 or more	Starting point based on £1 million
Category 2	£100,000 – £500,000 or Risk of category 1 harm	Starting point based on £300,000
Category 3	£20,000 – £100,000 or Risk of category 2 harm	Starting point based on £50,000
Category 4	£5,000 – £20,000 or Risk of category 3 harm	Starting point based on £12,500
Category 5	Less than £5,000 or Risk of category 4 harm	Starting point based on £2,500
Risk of category 5 harm, move down the range within the category		

Harm B – Victim impact demonstrated by one or more of the following

The court should then take into account the level of harm caused to the victim(s) or others to determine whether it warrants the sentence being moved up to the corresponding point in the next category or further up the range of the initial category.

Level of harm: victim impact

High impact – move up a category; if in category 1 move up the range

- Serious detrimental effect on the victim whether financial or otherwise, for example substantial damage to credit rating
- Victim particularly vulnerable (due to factors including but not limited to their age, financial circumstances, mental capacity)

Medium impact – move upwards within the category range

- Considerable detrimental effect on the victim whether financial or otherwise

Lesser impact – no adjustment

- Some detrimental impact on victim, whether financial or otherwise

The proposed change

The Council proposes to address the concerns raised by making the changes to the Fraud guideline set out below. In summary these are:

- some changes to the wording to give greater prominence to victim impact
- removal of the example of serious detrimental effect on the victim (which may have given the impression that emotional and psychological harms are not in scope)
- the addition of wording relating to situations where there is little or no pecuniary loss to indicate that the court can go above category 4
- the removal of financial amounts from the sentence table to avoid the impression that it is only financial amounts that are considered

The proposed changes are shown in detail below (deletions struck through and additions in red):

Harm

Harm is ~~initially~~ assessed by the actual, intended or risked **financial loss and the impact on the victim** ~~as may arise from the offence.~~

The values in the table below are to be used for **actual** or **intended financial** loss only. Intended loss relates to offences where circumstances prevent the actual loss that is intended to be caused by the fraudulent activity.

Risk of loss (for instance in mortgage frauds) involves consideration of both the likelihood of harm occurring and the extent of it if it does. Risk of loss is less serious than actual or intended loss. Where the offence has caused risk of loss but no (or much less) actual loss the normal approach is to move down to the corresponding point in the next category. This may not be appropriate if either the likelihood or extent of risked loss is particularly high.

Harm A Financial harm - Loss caused or intended		
Category 1	£500,000 or more	Starting point based on £1 million
Category 2	£100,000 – £500,000 or Risk of category 1 harm	Starting point based on £300,000
Category 3	£20,000 – £100,000 or Risk of category 2 harm	Starting point based on £50,000
Category 4	£5,000 – £20,000 or Risk of category 3 harm	Starting point based on £12,500
Category 5	Less than £5,000 or Risk of category 4 harm	Starting point based on £2,500
Risk of category 5 harm, move down the range within the category		

Harm B – Victim impact demonstrated by one or more of the following

The court should then take into account the level of harm caused to the victim(s) or others to determine whether it warrants the sentence being moved up to the corresponding point in the next category or further up the range of the initial category.

Level of harm: victim impact Victim impact demonstrated by one or more of the following
<p>High impact – move up a category; if in category 1 move up the range</p> <ul style="list-style-type: none"> • Serious detrimental effect on the victim whether financial or otherwise, for example substantial damage to credit rating • Victim particularly vulnerable (due to factors including but not limited to their age, financial circumstances, mental capacity) <p>If the loss caused or intended is of no or minimal financial value but high impact – circumstances may make it appropriate to move up more than one category</p>
<p>Medium impact – move upwards within the category range</p> <p>Considerable detrimental effect on the victim whether financial or otherwise</p>
<p>Lesser impact – no adjustment</p> <ul style="list-style-type: none"> • Some detrimental impact on victim, whether financial or otherwise

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the appropriate starting point (as adjusted in accordance with **victim impact** ~~step one above~~) to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate.

Where the value greatly exceeds the amount of the starting point in category 1, it may be appropriate to move outside the identified range.

Culpability			
Harm	A	B	C
Category 1 £500,000 or more Starting point based on £1 million	Starting point 7 years' custody	Starting point 5 years' custody	Starting point 3 years' custody
	Category range 5 – 8 years' custody	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody
Category 2 £100,000 – £500,000 Starting point based on £300,000	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 18 months' custody
	Category range 3 – 6 years' custody	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 3 years' custody
Category 3 £20,000 – £100,000 Starting point based on £50,000	Starting point 3 years' custody	Starting point 18 months' custody	Starting point 26 weeks' custody
	Category range 18 months' – 4 years' custody	Category range 26 weeks' – 3 years' custody	Category range Medium level community order – 1 year's custody
Category 4 £5,000 – £20,000 Starting point based on £12,500	Starting point 18 months' custody	Starting point 26 weeks' custody	Starting point Medium level community order
	Category range 26 weeks' – 3 years' custody	Category range Medium level community order – 1 year's custody	Category range Band B fine – High level community order
Category 5 Less than £5,000 Starting point based on £2,500	Starting point 36 weeks' custody	Starting point Medium level community order	Starting point Band B fine
	Category range High level community order – 1 year's custody	Category range Band B fine – 26 weeks' custody	Category range Discharge – Medium level community order

The impact

Only a very small proportion of frauds result in a prosecution. The [Justice Committee report](#) states at paragraph 88: “In the year ending September 2021, the Crown Prosecution Service (CPS) prosecuted 7,609 defendants where fraud and forgery were the principal offence, with a conviction rate of 84.9%. Whilst this is a relatively high success rate, the level of prosecutions represents only about 0.75% of fraud crimes reported in the year.”

The various fraud guidelines overlap in terms of the offences covered (which include false accounting and conspiracy to defraud as well as the section 1 Fraud Act offence), and it is not possible to single out the volumes for the Fraud guideline as distinct from the Revenue fraud and Benefit fraud guidelines. However, it is reasonable to assume that the volume of offenders sentenced using the Fraud guideline is fairly high and that therefore any substantive changes to the guideline would have the potential to have an impact on prison and probation resources.

The number of offenders sentenced during the period 2018 to 2022 for offences under Section 1 of the Fraud Act 2006 are shown in Table 1, along with sentencing outcomes in Tables 2a and 2b, and average custodial sentence lengths in Table 3. Figures from 2020 onwards may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, so should be treated with caution.

The number of offenders sentenced in 2022 for offences contrary to section 1 of the Fraud Act 2006 is lower than in the previous four years but the average custodial sentence length is higher for 2021 and 2022 when compared with previous years. This may indicate that more serious cases are being prioritised by the courts, or may reflect the nature of the offences being investigated and prosecuted.

Table 1: Number of adult offenders sentenced for offences under Section 1 of the Fraud Act 2006, all courts, 2018-2022

Court type	2018	2019	2020	2021	2022
Magistrates' courts	2,840	2,510	1,495	1,390	1,209
Crown Court	1,937	2,053	1,610	1,736	1,565
Total	4,777	4,563	3,105	3,126	2,774

Table 2a: Number of adult offenders sentenced for offences under Section 1 of the Fraud Act 2006, by sentence outcome, 2018-2022

Outcome	2018	2019	2020	2021	2022
Absolute and conditional discharge	423	353	214	207	166
Fine	465	461	266	295	226
Community sentence	1,219	1,148	630	605	479
Suspended sentence	1,222	1,173	934	988	818
Immediate custody	1,298	1,283	937	932	969
Otherwise dealt with	150	145	124	99	116
Total	4,777	4,563	3,105	3,126	2,774

Table 2b: Proportion of adult offenders sentenced for offences under Section 1 of the Fraud Act 2006, by sentence outcome, 2018-2022

Outcome	2018	2019	2020	2021	2022
Absolute and conditional discharge	9%	8%	7%	7%	6%
Fine	10%	10%	9%	9%	8%
Community sentence	26%	25%	20%	19%	17%
Suspended sentence	26%	26%	30%	32%	29%
Immediate custody	27%	28%	30%	30%	35%
Otherwise dealt with	3%	3%	4%	3%	4%
Total	100%	100%	100%	100%	100%

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

Table 3: Average custodial sentence lengths (ACSL) received by adult offenders sentenced for offences under Section 1 of the Fraud Act 2006, 2018-2022

ACSL (months)	2018	2019	2020	2021	2022
Mean	17.1	21.0	19.9	23.8	23.8

Note: The statutory maximum sentence for this offence is 10 years' custody. The figures presented are mean average custodial sentence lengths for offenders sentenced to determinate custodial sentences, after any reduction for guilty plea.

Source: [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022) (see 'Magistrates' court data tool', 'Crown Court data tool' and 'Outcomes by Offence data tool')

The proposed changes to wording give greater emphasis to victim impact, the removal of the example of victim impact and the removal of financial amounts from the sentence table are designed to ensure the guideline works as originally intended. Evidence from an analysis of 15 cases appealed to the Court of Appeal indicates that courts are taking into account victim impact in assessing harm. The changes are likely therefore to have more of an impact on the perception of the guideline rather than sentencing practice.

The proposed addition of wording relating to situations where there is no pecuniary loss indicating that the court can go above category 4, would be new and is in response to an issue raised in a particular case. Similar situations may be unusual but in the view of the Crown Prosecution Service there will be other cases where similar considerations apply. It is likely that this change, if implemented, could lead to higher sentences in this small number of cases.

Question 7: Do you agree with the proposed changes to the Fraud guideline? If not, please provide any alternative suggestions.

Breach of a protective order guideline

The issue

The Suzi Lamplugh Trust asked the Council to consider adding breach of a stalking prevention order (SPO) under section 8 of the Stalking Protection Act 2019 and breach of a domestic abuse prevention order (DAPO) under section 39 of the Domestic Abuse Act 2021 to the [Breach of a protective order \(restraining and non-molestation orders\) guideline](#). This guideline currently applies to breaches of restraining orders and non-molestation orders. The culpability and harm factors in the guideline are:

Culpability
In assessing culpability, the court should consider the intention and motivation of the offender in committing any breach.
A
<ul style="list-style-type: none"> • Very serious and/or persistent breach
B
<ul style="list-style-type: none"> • Deliberate breach falling between A and C
C
<ul style="list-style-type: none"> • Minor breach • Breach just short of reasonable excuse

Harm
The level of harm is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused.
Category 1
<ul style="list-style-type: none"> • Breach causes very serious harm or distress
Category 2
<ul style="list-style-type: none"> • Cases falling between categories 1 and 3
Category 3
<ul style="list-style-type: none"> • Breach causes little or no harm or distress*

* where a breach is committed in the context of a background of domestic abuse, the sentencer should take care not to underestimate the harm which may be present in a breach

The proposed change

The Council agreed that the factors in the breach of a protective order guideline would apply equally to breach of an SPO or DAPO and, that as all the offences have the same statutory maximum penalty (five years), the sentence levels in the guideline would also apply. The legislation creating the breach of a DAPO offence is not yet in force, but the Council is consulting on adding a reference to it now so that any change can be made once it is in force.

The proposed changes are to two guideline pages (additions in red):

Breach of a protective order (restraining and non-molestation orders)

Family Law Act 1996, s.42A (breach of non-molestation order), Protection from Harassment Act 1997, s.5A, Sentencing Code, s.363 (restraining orders),

Also applicable to: Breach of a stalking prevention order [and breach of a domestic abuse prevention order]

Breach offences (other)

Sentencing guidelines are available for 10 specific breach offences:

- [Breach of a community order](#)
- [Breach of a suspended sentence order](#)
- [Breach of post-sentence supervision](#)
- [Failure to surrender to bail](#)
- [Breach of a protective order \(Restraining and non-molestation orders\)](#) (Also applicable to: breach of a stalking prevention order [and breach of a domestic abuse prevention order])
- [Breach of a criminal behaviour order](#) (also applicable to breach of an anti-social behaviour order)
- [Breach of a sexual harm prevention order](#) (also applicable to breach of a sexual offences prevention order and to breach of a foreign travel order)
- [Fail to comply with notification requirements](#)
- [Breach of disqualification from acting as a director](#)
- [Breach of disqualification from keeping an animal](#)

The relevant search terms will also be added to assist sentencers in locating the correct guideline.

The impact

The number of offenders sentenced during the period 2020 to 2022 for breach of a protective order and breach of a stalking prevention order are shown in Table 4, along with sentencing outcomes for 2022 in Table 5. Figures from 2020 onwards may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, so should be treated with caution.

The mean average custodial sentence length (ACSL) in 2022 for breach of a protective order was 6 months, compared to 5 months for breach of a stalking prevention order. The statutory maximum sentence for these offences is 5 years' custody. Breach of a DAPO is not yet in force, therefore there are no sentencing data currently available for this offence.

We do not anticipate that this change to the guideline will have an impact on sentence levels as courts would already be referring to the breach of a protective order guideline as an analogous sentencing guideline when sentencing breach of an SPO.

Table 4: Number of adult offenders sentenced for breach of a protective order, and breach of a stalking prevention order, all courts, 2020-2022

Breach of a protective order

Court type	2020	2021	2022
Magistrates' courts	7,798	7,266	5,508
Crown Court	1,509	1,306	1,543
Total	9,307	8,572	7,051

Breach of a stalking prevention order

Court type	2020	2021	2022
Magistrates' courts	22	35	50
Crown Court	0	0	18
Total	22	35	68

Table 5: Number and proportion of adult offenders sentenced for breach of a protective order, and breach of a stalking prevention order, by sentence outcome, 2022

Breach of a protective order

Outcome	Number	Proportion
Absolute and conditional discharge	235	3%
Fine	870	12%
Community sentence	1,318	19%
Suspended sentence	1,327	19%
Immediate custody	3,164	45%
Otherwise dealt with	137	2%
Total	7,051	100%

Breach of a stalking prevention order

Outcome	Number	Proportion
Absolute and conditional discharge	3	4%
Fine	13	19%
Community sentence	14	21%
Suspended sentence	11	16%
Immediate custody	24	35%
Otherwise dealt with	3	4%
Total	68	100%

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

Source: [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022) (see 'Magistrates' court data tool', 'Crown Court data tool' and 'Outcomes by Offence data tool')

Question 8: Do you agree with the proposed addition of breach of a stalking prevention order and (once it is in force) breach of a domestic abuse prevention order to the breach of a protective order guideline? If not, please provide any alternative suggestions.

Environmental guideline for individuals

The issue

The Council has received representations from those concerned with prosecuting fly-tipping offences asserting that financial penalties imposed by courts using the [Environmental offences guideline for sentencing individuals](#) are insufficient to deter offending and in some cases lower than the fixed penalty offered to the offender.

The Council gave careful consideration to these matters and looked at whether there were any aspects of the guideline that required amendment. The Council concluded that no changes to the guideline could be made to address the chief complaint about the quantum of financial penalties. This is because the guideline already requires courts to consider any claim for compensation (for example to cover clean-up costs) and confiscation and to ensure that any financial penalty should remove any economic benefit the offender has derived through the commission of the offence including avoided costs, operating savings and any gain made as a direct result of the offence. The guideline also requires sentencers to consider relevant ancillary orders. It is for the prosecuting authorities to ensure that courts have all the relevant information about a case to enable courts to apply the guideline effectively.

The law, [section 124 of the Sentencing Code](#), requires courts to take into account the financial circumstances of the offender in setting the amount of a fine and this may in some cases result in a fine that is less than the fixed penalty.

Another aspect of the guideline that the Council was asked to consider was whether greater use could be made of community orders. The Council agreed that the extent to which the guideline steers sentencers away from community sentences in favour of fines should be reconsidered. The emphasis on fines was a deliberate policy at the time that the guideline was introduced, on the grounds that this type of offending is often financially motivated (including the desire to avoid the costs of operating within the law).

The Environmental offences guideline states:

Where the range includes a potential sentence of a community order, the court should consider the community order threshold as follows:

- has the community order threshold been passed?

However, even where the community order threshold has been passed, a fine will normally be the most appropriate disposal. Where confiscation is not applied for, consider, if wishing to remove any economic benefit derived through the commission of the offence, combining a fine with a community order.

This goes further than the [Imposition of custodial and community sentences guideline](#) which states:

A community order must not be imposed unless the offence is ‘serious enough to warrant the making of such an order’.

Sentencers must consider all available disposals at the time of sentence; even where the threshold for a community sentence has been passed, a fine or discharge may be an appropriate penalty. In particular, a Band D fine may be an appropriate alternative to a community order.

The proposal

The Council proposes to replace the wording in the guideline relating to community orders with:

Where the range includes a potential sentence of a community order, the court should consider the community order threshold as follows:

- a community order must not be imposed unless the offence is serious enough to warrant the making of such an order ([section 204 of the Sentencing Code](#))
- Where the community order threshold has been passed, a fine may still be the most appropriate disposal. Where confiscation is not applied for, consider, if wishing to remove any economic benefit derived through the commission of the offence, combining a fine with a community order.

Also in the sentence tables where a fine and community order are listed as alternatives, the Council proposes to reverse the order and where a Band D, E or F fine is given as a starting point changing this to a community order.

Replacing, for example:

Offence category	Starting Point	Range
Category 1	18 months’ custody	1 – 3 years’ custody
Category 2	1 year’s custody	26 weeks’ – 18 months’ custody
Category 3	Band F fine	Band E fine or medium level community order – 26 weeks’ custody
Category 4	Band E fine	Band D fine or low level community order – Band E fine

with:

Offence category	Starting Point	Range
Category 1	18 months’ custody	1 – 3 years’ custody
Category 2	1 year’s custody	26 weeks’ – 18 months’ custody
Category 3	High level community order	Medium level community order or band E fine – 26 weeks’ custody
Category 4	Medium level community order	Low level community order or band D fine – Medium level community order or Band E fine

The impact

The guideline applies to offences covered by section 33 of the Environmental Protection Act 1990 (EPA 1990); the Environmental Permitting (England and Wales) Regulations 2010, regulations 12 and 38(1), (2) and (3); and the Environmental Permitting (England and Wales) Regulations 2016, regulations 12 and 38(1), (2) and (3). The statutory maximum sentence for an individual is five years' custody and the guideline offence range is a discharge to three years' custody.

Sentencing data for offences under s33 EPA 1990 (which would include fly-tipping) are shown in Tables 6 to 8. Figures from 2020 onwards may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, so should be treated with caution. Not all of these offences will be fly-tipping, but what the figures show is (with the exception of 2020) volumes of prosecutions have been relatively stable for many years.

Table 6: Number of adult offenders sentenced for offences under Section 33 of the EPA 1990, all courts, 2012-2022

Year	Magistrates' courts	Crown Court	Total
2012	560	22	582
2013	545	27	572
2014	538	30	568
2015	637	25	662
2016	598	26	624
2017	671	32	703
2018	752	26	778
2019	641	53	694
2020	311	10	321
2021	527	23	550
2022	593	31	624

Table 7a: Number of adult offenders sentenced for offences under Section 33 of the EPA 1990, by sentence outcome, 2012-2022

Year	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
2012	141	377	43	10	4	7	582
2013	111	380	43	15	12	11	572
2014	95	411	40	8	5	9	568
2015	86	484	48	22	11	11	662
2016	76	463	46	15	7	17	624
2017	49	503	55	37	26	33	703
2018	65	572	62	20	10	49	778
2019	47	497	57	53	18	22	694
2020	26	233	28	6	4	24	321
2021	37	418	38	21	5	31	550
2022	40	475	32	24	14	39	624

Table 7b: Proportion of adult offenders sentenced for offences under Section 33 of the EPA 1990, by sentence outcome, 2012-2022

Year	Absolute and conditional discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with	Total
2012	24%	65%	7%	2%	1%	1%	100%
2013	19%	66%	8%	3%	2%	2%	100%
2014	17%	72%	7%	1%	1%	2%	100%
2015	13%	73%	7%	3%	2%	2%	100%
2016	12%	74%	7%	2%	1%	3%	100%
2017	7%	72%	8%	5%	4%	5%	100%
2018	8%	74%	8%	3%	1%	6%	100%
2019	7%	72%	8%	8%	3%	3%	100%
2020	8%	73%	9%	2%	1%	7%	100%
2021	7%	76%	7%	4%	1%	6%	100%
2022	6%	76%	5%	4%	2%	6%	100%

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

Fines appear to have been imposed in around three-quarters of cases since the guideline came into force in 2014. Prior to that the proportion of fines was slightly lower and the proportion of discharges higher (although due to a data processing issue, offenders sentenced to a fine of over £10,000 in magistrates' courts during the period 2012 to 2015 may have been excluded from the data and therefore volumes shown for this period may be lower than the actual number sentenced; however, it is likely that the number of missing records is low).

Table 8: Median fine amounts received by adult offenders sentenced for offences under Section 33 of the EPA 1990, 2015-2022

Year	Median fine amount
2015	£250
2016	£300
2017	£320
2018	£300
2019	£320
2020	£320
2021	£320
2022	£340

Note: The figures presented are median fine amounts, after any reduction for guilty plea.

Source: Court Proceedings Database, Ministry of Justice. Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used. Figures are subject to change in future publications.

As the guideline applies not only to offences under s33 EPA 1990 but also to offences under the Environmental Permitting (England and Wales) Regulations there is a possibility that any changes to the guideline could have an effect on sentencing for those offences as well. Fines represent a lower proportion of sentences for these offences (around 57 per cent on average for the years 2012 to 2022) and community orders a slightly higher proportion compared to s33 EPA 1990. The volumes of offenders sentenced under the regulations are much lower (around 50 offenders in 2022).

It is not clear what the impact of this change will be. Although it is unlikely to result in an impact on prison resources, it is anticipated that the change will lead to an increase in the proportion of community orders imposed, and a subsequent reduction in the proportion of fines. We are interested to hear views on the likely impact of the proposed changes.

Question 9: Do you agree with the proposed amendments to the environmental offences guideline? If not, please provide any alternative suggestions.

Question 10: Do you have any views on the likely impact of the proposed changes on sentence outcomes?

Mitigating factors and expanded explanations

In 2021, the Council commissioned the University of Hertfordshire to conduct research into and report on [Equality and diversity in the work of the Sentencing Council](#). The research aimed to identify and analyse any potential for the Council's work to cause disparity in sentencing outcomes across demographic groups, and to make recommendations for how to mitigate these disparities, if possible. In light of the findings and the recommendations in the [research report](#) (the 'UH report'), the Council published a [response](#) in January 2023 setting out the steps being taken which include reviewing the use and application of aggravating and mitigating factors and expanded explanations in sentencing guidelines. In the response the Council undertook to consult on some changes and additions and to conduct research into how these changes might work in practice.

Remorse

The issue

The UH report recommended that the Council should "Extend the expanded explanation for 'remorse', and include 'learning disability, communication difficulties and cultural differences' as influential factors in the evaluation of remorse". The Council agreed to test these potential changes with judges and magistrates.

For this qualitative research, we created a revised version of the expanded explanation for this mitigating factor:

Remorse

The court will need to be satisfied that the offender is genuinely remorseful for the offending behaviour in order to reduce the sentence (separate from any guilty plea reduction).

Lack of remorse should never be treated as an aggravating factor.

Remorse can present itself in many ways. A simple assertion of the fact may be insufficient, and the offender's demeanour in court could be misleading, due to for example:

- nervousness
- a lack of understanding of the system
- **learning disabilities**
- **communication difficulties**
- **cultural differences**
- a belief that they have been or will be discriminated against
- peer pressure to behave in a certain way because of others present
- a lack of maturity etc.

If a PSR has been prepared it will provide valuable assistance in this regard.

The explanation differs from that currently in use, in that the examples of what may affect an offender's demeanour (which are currently in a paragraph) were put into a bulleted list and the items in red were added. When discussing the factor in research interviews, sentencers generally approved of these changes when asked about them, though a question was raised about what was meant by 'cultural differences' and why this was relevant to remorse. In general, sentencers liked bulleted lists rather than a block of text.

We used sentencing scenarios in the research interviews, in which we varied the ethnicity, age, sex and other characteristics of the offender to see if this affected if, and how, factors were applied. However, the limitations of the research design (which includes a small sample size) meant that it was not really possible to assess how sentencers would pick up on potential 'cultural differences'. The Council considered that it would not be helpful to try to define this further and that including cultural differences in the expanded explanation would alert sentencers to this issue when relevant.

The proposed change

In view of the positive response to the revised factor, the Council agreed to consult on making the changes set out above.

The impact

Remorse is a factor in almost all offence specific guidelines and therefore a change to the way it is applied has the potential to affect a large number of cases. It is not possible to predict the number of cases that this change would influence or whether the final sentence may be affected by any additional consideration of remorse. Any impact would be to reduce the sentence imposed.

Question 11: Do you agree with the proposed changes to the expanded explanation for the mitigating factor of remorse? If not, please provide any alternative suggestions.

Good character and/or exemplary conduct

The issue

The UH report recommended that the Council should "Consider providing more inclusive examples of 'good character and/or exemplary conduct', alongside existing examples". In response, the Council said that it would remove the example currently given (of charitable work) and include the factor in the review of the expanded explanations in order to ascertain how sentencers are applying and interpreting it.

We included the revised version of the factor in the qualitative research:

Good character and/or exemplary conduct

This factor may apply whether or not the offender has previous convictions. Evidence that an offender has demonstrated positive good character through, for example, charitable works may reduce the sentence.

However, this factor is less likely to be relevant where the offending is very serious. Where an offender has used their good character or status to facilitate or conceal the offending it could be treated as an aggravating factor.

In research, sentencers were broadly in favour of removing the current example of charitable works, suggesting it was too restrictive (particularly if the offender was from a lower socio-economic background and therefore less likely to have the time or finances to volunteer). There were mixed views about the explanation's usefulness, with some sentencers feeling that its open definition was helpful and sensible, but others suggesting that creating a list of examples would be an aid to sentencing.

Although there was a suggestion that more examples of conduct that may demonstrate good character would be useful, sentencers that were asked about this found it difficult to suggest what these might be.

Another finding from the research interviews was that in some cases 'good character' was equated with having no previous convictions, although these are separate factors in guidelines. If a sentencer reads the expanded explanation they will see that the "factor may apply whether or not the offender has previous convictions", but if they think it does not apply, they are unlikely to click on the explanation.

The proposed change

The proposal is to consult on changing the mitigating factor and explanation to:

Positive character and/or exemplary conduct (regardless of previous convictions)

- This factor may apply whether or not the offender has previous convictions.
- Evidence that an offender has demonstrated positive good character may reduce the sentence.
- **However**, this factor is less likely to be relevant where the offending is very serious. Where an offender has used their positive character or status to facilitate or conceal the offending it could be treated as an aggravating factor.

The impact

Good character is a factor in almost all offence specific guidelines and therefore a change to the way it is applied has the potential to affect a large number of cases. It is not possible to predict the number of cases that this change would influence or whether the final sentence may be affected by any additional consideration of positive or good character. Any impact would be to reduce the sentence imposed.

Question 12: Do you agree with the proposed changes to the wording of the factor and expanded explanation for the mitigating factor of good character? If not, please provide any alternative suggestions.

Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

The issue

The UH report noted concerns raised by civil society organisations that sentencers may not always take into account offenders' efforts to access help, especially when it has been delayed for reasons outside of their control. The Council therefore agreed to consult on amending the expanded explanation that accompanies the mitigating factor of 'Determination and/or demonstration of steps taken to address addiction or offending behaviour' to make it clearer that the factor should be applied where support has been sought but not received.

The proposed change

Additions shown in red:

Where offending is driven by or closely associated with drug or alcohol abuse (for example stealing to feed a habit, or committing acts of disorder or violence whilst drunk) a commitment to address the underlying issue (including where support has been sought but not yet received) may justify a reduction in sentence. This will be particularly relevant where the court is considering whether to impose a sentence that focuses on rehabilitation.

Similarly, a commitment to address other underlying issues that may influence the offender's behaviour (including where support has been sought but not yet received) may justify the imposition of a sentence that focusses on rehabilitation.

The court will be assisted by a PSR in making this assessment.

The impact

This mitigating factor and expanded explanation appears in over 60 offence specific guidelines but the change is only expected to be relevant to a limited number of cases. Any impact would be to reduce the sentence imposed.

Question 13: Do you agree with the proposed additions to the Determination and/or demonstration of steps taken to address addiction or offending behaviour expanded explanation? If not, please provide any alternative suggestions.

Age and/or lack of maturity

In response to the recommendation in the UH report: "Consider ways in which more guidance can be issued for sentencing young adults to improve consistency and precision in sentence reduction for young adults", the Council agreed to consider the need for this as part of the expanded explanations research. In some of the scenarios we tested with judges and magistrates in research interviews, the offender was a young adult. The mitigating factor was frequently applied where the offender was 19 years old. However, in scenario versions where the offender was 22 years old, there was more variation in whether or not it was applied as a mitigating factor. The expanded explanation for this factor states:

Age and/or lack of maturity

Age and/or lack of maturity can affect:

- the offender's responsibility for the offence and
- the effect of the sentence on the offender.

Either or both of these considerations may justify a reduction in the sentence.

The emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater).

In particular young adults (typically aged 18-25) are still developing neurologically and consequently may be less able to:

- evaluate the consequences of their actions
- limit impulsivity
- limit risk taking

Young adults are likely to be susceptible to peer pressure and are more likely to take risks or behave impulsively when in company with their peers.

Immaturity can also result from atypical brain development. Environment plays a role in neurological development and factors such as adverse childhood experiences including deprivation and/or abuse may affect development.

An immature offender may find it particularly difficult to cope with custody and therefore may be more susceptible to self-harm in custody.

An immature offender may find it particularly difficult to cope with the requirements of a community order without appropriate support.

There is a greater capacity for change in immature offenders and they may be receptive to opportunities to address their offending behaviour and change their conduct.

Many young people who offend either stop committing crime, or begin a process of stopping, in their late teens and early twenties. Therefore a young adult's previous convictions may not be indicative of a tendency for further offending.

Where the offender is a care leaver the court should enquire as to any effect a sentence may have on the offender's ability to make use of support from the local authority. (Young adult care leavers are entitled to time limited support. Leaving care services may change at the age of 21 and cease at the age of 25, unless the young adult is in education at that point). See also the Sentencing Children and Young People Guideline (paragraphs 1.16 and 1.17).

Where an offender has turned 18 between the commission of the offence and conviction the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed, but applying the purposes of sentencing adult offenders. See also the Sentencing Children and Young People Guideline (paragraphs 6.1 to 6.3).

When considering a custodial or community sentence for a young adult the Probation Service should address these issues in a PSR.

The proposed change

The content of the expanded explanation raised no issues in research but the Council considered that recognition of this factor by sentencers might be improved if a reference to

the age range to which it typically applies were included in the factor itself. The proposal is therefore to change the factor to:

- **Age and/or lack of maturity (typically applicable to offenders aged 18-25)**

The impact

This factor appears in almost all offence specific guidelines and around 200,000 offenders in the age range of 18 to 25 (inclusive) were sentenced in 2022 (source: Court Proceedings Database, Ministry of Justice). Therefore any change to the factor has the potential to affect a significant number of cases sentenced. However, our experience indicates that in many relevant cases sentencers are already considering this mitigating factor and applying it appropriately. Any impact this change does have is likely to decrease sentences.

Question 14: Do you agree with the proposed change to the age and/or lack of maturity factor? If not, please provide any alternative suggestions

New factors: Difficult and/or deprived background or personal circumstances and Prospects of or in work, training or education

The issue

In response to the recommendation in the UH report: “Consider including ‘difficult/deprived backgrounds’, ‘in work or training’ and ‘loss of job or reputation’ in the mitigation lists of theft and robbery guidelines” the Council undertook to test potential new mitigating factors and associated expanded explanations across all offence specific guidelines.

Groups of magistrates or circuit judges were asked for their views on two proposed new factors and expanded explanations:

Difficult and/or deprived background or personal circumstances

The court will be assisted by a pre-sentence report in assessing whether there are factors in the offender’s background or current personal circumstances which may be relevant to sentencing. Such factors **may** be relevant to:

- the offender’s responsibility for the offence and/or
- the effect of the sentence on the offender.

Courts should consider that different groups within the criminal justice system have faced multiple disadvantages which may have a bearing on their offending. Such disadvantages include but are not limited to:

- experience of discrimination
- negative experiences of authority
- early experience of loss, neglect or abuse
- early experience of offending by family members
- experience of having been a looked after child (in care)
- negative influences from peers
- misuse of drugs and/or alcohol
- low educational attainment

- insecure housing
- mental health difficulties
- poverty
- direct or indirect victim of domestic abuse

There are a wide range of personal experiences or circumstances that may be relevant to offending behaviour. The [Equal Treatment Bench Book](#) contains useful information on social exclusion and poverty (see in particular Chapter 11, paragraphs 101 to 114). The [Sentencing offenders with mental disorders, developmental disorders, or neurological impairments](#) guideline may also be of relevance.

Prospects of or in work, training or education

This factor is particularly relevant where an offender is on the cusp of custody or where the suitability of a community order is being considered. See also the [Imposition of community and custodial sentences guideline](#).

Where an offender is in, or has the confirmed prospect of starting, work, education or training this may indicate a willingness to rehabilitate and desist from future offending. Similarly, the loss of employment, education or training opportunities may have a negative impact on the likelihood of an offender being rehabilitated or desisting from future offending. The court may be assisted by a pre-sentence report in assessing the relevance of this factor to the individual offender.

The absence of work, training or education should never be treated as an aggravating factor.

For more serious offences where a substantial period of custody is appropriate, this factor will carry less (if any) weight.

In focus group discussions, views on introducing these factors were predominantly negative or neutral from judges and magistrates, though there were also some positive comments for both factors. The minority who shared positive views on the 'Deprived and/or difficult background or personal circumstances' factor suggested that it was useful and liked the way it clearly listed what to consider.

Concerns relating to the 'Deprived and/or difficult background or personal circumstances' factor included that it covered the large majority of offenders being sentenced, the link to mitigation for some of the factors was not clear, inappropriate or too broad and a general feeling that a new mitigating factor was not necessary as sentencers took these matters into account already. Some magistrates felt that the reference to misuse of drugs or alcohol conflicted with the aggravating factor 'Commission of offence under the influence of alcohol or drugs'.

The minority who shared positive views about the 'Prospects of or in work, training or education' factor suggested it was especially good mitigation when the offender was on the cusp of custody and that it was helpful when thinking about the impact of the sentence and opportunities for rehabilitation.

Concerns relating to the proposed 'Prospects of or in work, training or education' factor and expanded explanation included whether it would discriminate against some groups such as those not able to work and those who would find it difficult to demonstrate

prospects of work; that it was vague and again that it was unnecessary as sentencers would take it into account anyway. Some of the concerns with this factor related to what evidence a court would require and whether the wording “The court may be assisted by a pre-sentence report in assessing the relevance of this factor to the individual offender” would lead to reports being ordered which would delay cases unnecessarily.

The proposed change

The Council considered that these two factors should be considered as a pair to address the concerns that some offenders would be discriminated against by one or other of them. The assertion that sentencers are taking them into account anyway is not necessarily an argument for not including them. Firstly, because if most sentencers are already considering these matters, the presence of the factors and the expanded explanations will help to ensure that the factors are applied in a consistent and appropriate way. Secondly, in the interests of transparency and fairness (particularly for unrepresented offenders), it is important that guidelines include factors that are routinely taken into account.

An objection from some sentencers in the research groups was that these issues were not mitigation in the sense that they make the offence less serious – rather that they are relevant to the offender’s circumstances. This overlooks the fact that the heading in (most) guidelines is ‘Factors reducing seriousness or reflecting personal mitigation’ and that many other mitigating factors relate primarily to the offender rather than the offence.

The Council agreed that the reference to misuse of drugs and/or alcohol could be clarified.

The Council considered the issue of how courts will satisfy themselves of the veracity of assertions of offers of work or training and the point that unrepresented offenders or those in casual work may find it more difficult to provide satisfactory evidence.

Taking into account the points raised including those that were supportive of the proposals and the comments about the presentation of the explanation, the Council proposes adding the following two factors and expanded explanations to all offence specific guidelines (except those where the offender is an organisation):

Difficult and/or deprived background or personal circumstances

The court will be assisted by a pre-sentence report in assessing whether there are factors in the offender’s background or current personal circumstances which may be relevant to sentencing. Such factors **may** be relevant to:

- the offender’s responsibility for the offence and/or
- the effect of the sentence on the offender.

Courts should consider that different groups within the criminal justice system have faced multiple disadvantages which may have a bearing on their offending. Such disadvantages include but are not limited to:

- experience of discrimination
- negative experiences of authority
- early experience of loss, neglect or abuse
- early experience of offending by family members
- experience of having been a looked after child (in care)
- negative influences from peers

- difficulties relating to the misuse of drugs and/or alcohol (but note: being voluntarily intoxicated at the time of the offence is an aggravating factor)
- low educational attainment
- insecure housing
- mental health difficulties
- poverty
- direct or indirect victim of domestic abuse

There are a wide range of personal experiences or circumstances that may be relevant to offending behaviour. The [Equal Treatment Bench Book](#) contains useful information on social exclusion and poverty (see in particular Chapter 11, paragraphs 101 to 114). The [Sentencing offenders with mental disorders, developmental disorders, or neurological impairments](#) guideline may also be of relevance.

Prospects of or in work, training or education

This factor is particularly relevant where an offender is on the cusp of custody or where the suitability of a community order is being considered. See also the [Imposition of community and custodial sentences guideline](#).

Where an offender is in, or has a realistic prospect of starting, work, education or training this may indicate a willingness to rehabilitate and desist from future offending.

Similarly, the loss of employment, education or training opportunities may have a negative impact on the likelihood of an offender being rehabilitated or desisting from future offending.

The court may be assisted by a pre-sentence report in assessing the relevance of this factor to the individual offender.

The absence of work, training or education should never be treated as an aggravating factor.

The court may ask for evidence of employment, training etc or the prospects of such, but should bear in mind any reasonable practical difficulties an offender may have in providing this.

For more serious offences where a substantial period of custody is appropriate, this factor will carry less (if any) weight.

The impact

If these factors and expanded explanations were added to all relevant offence specific guidelines there would be the potential for them to affect a significant proportion of cases sentenced. However, the evidence we have is that sentencers do often take these matters into account already. Any impact would be to reduce the sentence imposed.

Question 15: Do you agree with the proposed new mitigating factor and associated expanded explanation: Difficult and/or deprived background or personal circumstances? If not, please provide any alternative suggestions.

Question 16: Do you agree with the proposed new mitigating factor and associated expanded explanation: Prospects of or in work, training or education? If not, please provide any alternative suggestions.

New factor: Pregnancy and maternity

The issue

The UH report recommended that the Council should: “Specify pregnancy and maternity as a discrete phase where medical conditions are referred to in the guidelines”. In response, the Council proposed to remove the reference to pregnancy from the factor of ‘Sole or primary carer for dependant relative(s)’ and to create a new mitigating factor and consult on that new factor and the associated expanded explanation.

Currently there is a reference to sentencing pregnant offenders in the expanded explanation for the mitigating factor ‘Sole or primary carer for dependent relative(s)’:

In addition when sentencing an offender who is pregnant relevant considerations may include:

- any effect of the sentence on the health of the offender and
- any effect of the sentence on the unborn child

We drafted the following factor and expanded explanation and invited views on this change in research with judges and magistrates.

Pregnancy and maternity

When sentencing an offender who is pregnant relevant considerations may include:

- any effect of the sentence on the physical and mental health of the offender and
- any effect of the sentence on the unborn child

The impact of custody on pregnant women can be harmful for both the mother and the unborn child. Pregnant women in custody are more likely to have high risk pregnancies with reduced access to specialised maternity services. There may also be difficulties accessing medical assistance and with being transported to hospital when in labour and giving birth.

This factor is particularly relevant where an offender is on the cusp of custody or where the suitability of a community order is being considered. See also the [Imposition of community and custodial sentences guideline](#).

For offenders on the cusp of custody, imprisonment should not be imposed where there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing.

When considering a custodial or community sentence for a pregnant offender the Probation Service should be asked to address these issues in a pre-sentence report.

Views from participants in focus group discussions were predominantly neutral or negative. A prominent view was that the factor was unnecessary as courts would always take this into account and others expressing concern about the content of the expanded explanation. However, there were some positive comments about how clearly it set out the increased risks associated with giving birth in prison and the impact of custody on pregnant women.

One suggestion from focus groups was that the information would be better placed as part of the 'sole or primary carer for dependent relative(s)' expanded explanation – which (as noted above) is where a shorter version of the information is at the moment. Some sentencers questioned the evidence behind the assertion in the expanded explanation that “Pregnant women in custody are more likely to have high risk pregnancies with reduced access to specialised maternity services. There may also be difficulties accessing medical assistance and with being transported to hospital when in labour and giving birth”.

The proposed change

The Council is aware of several reports published in recent years that indicate that there have been issues with the care of pregnant women and their children in prison and the Council has received representations from campaign groups on this issue. Taking into account the comments raised in the research, the Council proposes adding the following factor and expanded explanation to all offence specific guidelines (except those where the offender is an organisation):

Pregnancy, childbirth and post-natal care

When considering a custodial or community sentence for a pregnant offender the Probation Service should be asked to address the issues below in a pre-sentence report.

When sentencing an offender who is pregnant relevant considerations may include:

- any effect of the sentence on the physical and mental health of the offender and
- any effect of the sentence on the child

The impact of custody on an offender who is pregnant can be harmful for both the offender and the child.

Women in custody are likely to have complex health needs which may increase the risks associated with pregnancy for both the offender and the child.

There may be difficulties accessing medical assistance or specialist maternity services in custody.

This factor is particularly relevant where an offender is on the cusp of custody or where the suitability of a community order is being considered. See also the [Imposition of community and custodial sentences guideline](#).

For offenders on the cusp of custody, imprisonment should not be imposed where there would be an impact on dependants which would make a custodial sentence disproportionate to achieving the aims of sentencing.

The impact

We do not have information on the number of pregnant offenders sentenced. The [HMPPS annual digest](#) shows that between April 2022 and March 2023 there were 44 births to women in custody, 43 of which occurred in a hospital. The total number of pregnant women in prison during the year ending March 2023 was 196.

If this factor and expanded explanation were added to all relevant offence specific guidelines there would be the potential for an effect on a small number of cases sentenced. Any impact would be to reduce the sentence imposed.

Question 17: Do you agree with the proposed new mitigating factor and expanded explanation relating to pregnancy? If not, please provide any alternative suggestions.

Manslaughter

The [Domestic Homicide Sentencing Review](#) (the Review) was published in March and made several recommendations directed to the Sentencing Council:

<p>Recommendation 11 Paragraph 8.1.23</p>	<p>We recommend that in cases of manslaughter by way of diminished responsibility consideration should be given to sentencing guidelines being amended to make strangulation an aggravating factor.</p>
<p>Recommendation 12 Paragraph 8.1.24</p>	<p>We recommend that in manslaughter by way of loss of control, consideration should be given to sentencing guidelines being amended to make strangulation an aggravating factor.</p>
<p>Recommendation 13 Paragraph 8.1.25</p>	<p>We recommend that in cases of manslaughter, consideration should be given to sentencing guidelines being amended to make coercive control on the part of the perpetrator of the killing towards the victim a factor which indicates higher culpability. Further, that consideration should be given to making coercive control towards the perpetrator of the killing by the victim of the killing a factor denoting lower culpability.</p>
<p>Recommendation 14 Paragraph 8.1.26</p>	<p>We recommend that consideration be given to whether the Overarching Principles on Domestic Abuse should be amended to contain explicit reference to assaults consisting of non-fatal strangulation being an aggravating factor.</p>
<p>Recommendation 15 Paragraph 8.2.10</p>	<p>We recommend that in cases of domestic manslaughter, consideration should be given to sentencing guidelines being amended to indicate that use of a weapon is not necessarily an aggravating factor.</p>
<p>Recommendation 16 Paragraph 8.3.29</p>	<p>We recommend that that where death occurs in the course of violence which is alleged to be consensual during a sexual encounter between the perpetrator and the victim then whether the offender is charged with unlawful act manslaughter or gross negligence manslaughter, the killing should be categorised as category B high culpability.</p>

The Council has published a separate [response document](#) giving a detailed response to each of these recommendations. For the purposes of this consultation we are focussing on recommendations 11, 12 and 13.

Strangulation, suffocation or asphyxiation

The issue

The Council considered whether an aggravating factor relating to strangulation, suffocation or asphyxiation should be added to the [loss of control](#) and [diminished responsibility](#) guidelines as set out in Recommendations 11 and 12.

It was noted that there was limited evidence to support these recommendations. At 8.1.11 the Review states:

Strangulation played a significant role within the context of manslaughter. Of all 7 strangulation cases which resulted in manslaughter convictions for men, 3 cases were by way of diminished responsibility. It is difficult to conceive of it playing a significant role in loss of control cases given the time it can take to strangle a victim. However, in order to maintain consistency, we have included loss of control cases in our recommendation on strangulation set out below.

The Review cites some diminished responsibility cases where strangulation was a feature. In our own review of sentencing remarks of manslaughter cases sentenced in 2019, of 148 offenders sentenced, there were two cases of diminished responsibility that involved strangulation or asphyxiation. In each of these cases the Council was satisfied that the court had taken the relevant factors into account in sentencing.

The Review does not recommend adding a similar factor to the [unlawful act](#) or [gross negligence](#) manslaughter guidelines. We identified two cases of unlawful act manslaughter in our 2019 transcripts where death was caused by strangulation. In both cases the use of strangulation was recognised by the sentencing judge as engaging the high culpability factor of 'Death was caused in the course of an unlawful act which carried a high risk of death or GBH which was or ought to have been obvious to the offender'.

The addition of an aggravating factor may not make any material difference to sentences because if (as in the examples given above) the method of killing has been taken into account at step one, it will not be double counted to aggravate the sentence at step two.

In the analogous situation of the 'Offence involved use of a weapon' aggravating factor, it is notable that judges are careful not to double-count when the factor had already been taken into account to assess culpability.

The main argument for adding an aggravating factor relating to strangulation is that it will indicate to lay readers of the guidelines that this is taken seriously, rather than to influence sentence levels, though it would ensure that the seriousness of strangulation was not overlooked in the sentencing exercise. It would also be consistent with the assault guidelines which have 'Strangulation/suffocation/asphyxiation' as a high culpability factor alongside 'Use of a highly dangerous weapon or weapon equivalent'.

The proposed change

The Council is conscious of the danger of unintended consequences if changes are made to guidelines without a clear need for such changes. However, it is acknowledged that as the guidelines all currently have the 'Offence involved use of a weapon' aggravating factor it would be logical and consistent to add a factor relating to strangulation which is an issue of increasing concern.

The Council therefore proposes to add an aggravating factor to all four manslaughter guidelines of:

- Use of strangulation, suffocation or asphyxiation

The impact

Between 2017 and 2020, the number of adult offenders sentenced for manslaughter decreased from around 200 in 2017 to around 140 in 2020. Since then, volumes have been increasing, and in 2022 around 190 offenders were sentenced (source: [Criminal Justice System statistics quarterly: December 2022 - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2022)). Figures from 2020 onwards may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, so should be treated with caution.

Manslaughter cases vary considerably on their facts and cases involving strangulation, suffocation and asphyxiation are currently rare. It is therefore not possible to say with certainty what the impact of adding this factor would be. However, as manslaughter is a relatively low volume offence, along with the fact that it is likely these factors are already being taken into account, it is not likely to have a significant impact on sentence levels or on the need for prison places.

The Council is currently conducting an evaluation of the manslaughter guidelines and will return to this issue if further evidence emerges.

Question 18: Do you agree with adding the proposed aggravating factor relating to strangulation, suffocation or asphyxiation to the manslaughter guidelines? If not, please provide any alternative suggestions.

Coercive or controlling behaviour

The issue

Recommendation 13 of the Review relates to all four manslaughter guidelines:

- coercive control by the offender towards the victim should be a factor which indicates higher culpability
- coercive control by the victim towards the offender should be a factor which indicates lower culpability

The Council was not clear from the evidence in the Review that there are any examples of courts having failed to take into account coercive or controlling behaviour in relevant cases when using the guidelines.

The manslaughter guidelines currently have the following factors:

- History of violence or abuse towards victim by offender (aggravating factor in all four guidelines)
- History of significant violence or abuse towards the offender by the victim (mitigating factor in all guidelines except for gross negligence)

The proposal

Again, the Council was conscious of the danger of making changes to guidelines without good reason. However, the Council felt that the proposed change would reflect up-to-date terminology and may have a positive impact on public confidence in the criminal justice system. This view is reflected in the Review which says (at 5.4) “Concerns were expressed in the majority of our focus groups about the fact that coercive control is still poorly understood and that it is often overlooked in the context of intimate partner killing”.

The Council proposes amending these aggravating and mitigating factors to read:

- History of violence or abuse (which may include coercive or controlling behaviour) towards the victim by the offender
- History of significant violence or abuse (which may include coercive or controlling behaviour) towards the offender by the victim

This would not place consideration of coercive or controlling behaviour at step one as the Review proposes, but as there is no evidence that courts are failing to take it into account in relevant cases, the Council was not in favour of changing the step one factors. An analysis of 2019 manslaughter transcripts also indicates that courts are taking controlling and coercive behaviour into account where there was evidence (in the limited number of cases where it featured).

The impact

As noted above, the evidence we have is that courts are taking coercive or controlling behaviour into account in sentencing manslaughter and therefore, we do not anticipate that this change will have a significant impact on sentence levels or on the need for prison places.

Question 19: Do you agree with the proposed change to the aggravating and mitigating factors relating to coercive or controlling behaviour in the manslaughter guidelines? If not, please provide any alternative suggestions.

Equalities and impact

Equalities

Many of the proposals within this consultation are for relatively minor or technical changes which are unlikely to have any bearing on equality issues. The proposed changes to mitigating factors and expanded explanations are in response to recommendations relating to mitigating any potential for the Council's work to cause disparity in sentencing outcomes across demographic groups. We would welcome comments on any equality issues relating to the proposals that we have missed.

Question 20: Are there any equalities issues relating to the proposals that should be addressed?

Impact

The Council anticipates that any impact on prison and probation resources from the majority of the changes proposed in this consultation will be minor. In view of the nature of the consultation, a separate resource assessment has not been produced but a brief discussion on impact has been included in relation to each proposal.

Question 21: Do you have any comments on the likely impact of the proposals on sentencing practice?

General observations

We would also like to hear any other views you have on the proposals that you have not had the opportunity to raise in response to earlier questions.

Question 22: Are there any other comments you wish to make on the proposals?

Annex – changes that are not subject to consultation

In addition to the changes consulted on in this document, the Council has made minor changes to guidelines or the explanatory materials which, while not requiring consultation, it was felt should be drawn to the attention of those responding to this consultation.

All minor changes made to guidelines (and associated materials) are logged and that log is published on the Council’s website at:

<https://www.sentencingcouncil.org.uk/updates/magistrates-court/item/revisions-and-corrections-to-sentencing-council-digital-guidelines/>

While the Council is not consulting on these changes (which have already been made) we do welcome feedback on these or any other aspects of the Council’s output. This can be done at any time via the feedback section at the bottom of every guideline or by emailing info@sentencingcouncil.gov.uk

Bladed articles etc guidelines:

Previous title	Amended title
Bladed articles and offensive weapons – possession	Bladed articles and offensive weapons – having in a public place
Bladed articles and offensive weapons (possession and threats) – children and young people	Bladed articles and offensive weapons (having in public/education premises and threats) – children and young people
Possession of an article with blade/point in a public place	Having an article with blade/point in a public place
Possession of an article with blade/point on school premises	Having an article with blade/point on education premises
Possession of an offensive weapon in a public place	Having an offensive weapon in a public place
Possession of an offensive weapon on school premises	Having an offensive weapon on education premises
Threatening with an article with blade/point or offensive weapon on school premises	Threatening with an article with blade/point or offensive weapon on education premises

Seat belt offences

Update [Offences concerning use of vehicle](#) to read:

Offence	Maximum	Points	Starting point
Seat belt offences (Road Traffic Act 1988 ss.14 and 15)	L2	–	A

Failure to surrender to bail guideline

Replace the wording under the sentence table and add at top of guideline:

Maximum sentence in magistrates' court – 3 months' imprisonment

Maximum sentence in Crown Court – 6 months' imprisonment

Note: the change in the maximum from 12 months to 6 months' custody in the Crown Court is as a result of an amendment with effect from 7 February 2023 to section 6(7) of the Bail Act 1976 by regulation 2 and the Schedule to the [Judicial Review and Courts Act 2022 \(Magistrates' Court Sentencing Powers\) Regulations 2023](#). The Council understands that this change was inadvertent and will be reversed. The guideline will be updated again when that happens.

Previous convictions dropdown

Deletions struck through and additions in red:

1. Previous convictions are considered at step two in the Council's offence specific guidelines.
2. The primary significance of previous convictions (including convictions in other jurisdictions) is the extent to which they indicate trends in offending behaviour and possibly the offender's response to earlier sentences.
3. Previous convictions are normally ~~relevant~~ **of relevance** to the current offence when they are of a similar type.
4. Previous convictions of a type different from the current offence **may** be ~~relevant~~ **of relevance** where they are an indication of persistent offending or escalation and/or a failure to comply with previous court orders.
5. Numerous and frequent previous convictions might indicate an underlying problem (for example, an addiction) that could be addressed more effectively in the community and will not necessarily indicate that a custodial sentence is necessary.
6. If the offender received a non-custodial disposal for the previous offence, a court should not necessarily move to a custodial sentence for the fresh offence.
7. In cases involving significant persistent offending, the community and custody thresholds may be crossed even though the current offence normally warrants a lesser sentence. If a custodial sentence is imposed it should be proportionate and kept to the necessary minimum.
8. The aggravating effect of relevant previous convictions reduces with the passage of time; **older convictions are less relevant** ~~of less relevance~~ to the offender's culpability for the current offence and less likely to be predictive of future offending.
9. Where the previous offence is particularly old it will normally have little relevance for the current sentencing exercise.
10. The court should consider the time gap since the previous conviction and the reason for it. Where there has been a significant gap between previous and current convictions or a reduction in the frequency of offending this may indicate that the offender has made attempts to desist from offending in which case the aggravating effect of the previous offending will diminish.
11. Where the current offence is significantly less serious than the previous conviction (suggesting a decline in the gravity of offending), the previous conviction may carry less weight.

12. When considering the totality of previous offending a court should take a rounded view of the previous crimes and not simply aggregate the individual offences.
13. Where information is available on the context of previous offending this may assist the court in assessing the relevance of that prior offending to the current offence

Update victim personal statements guidance

Following the introduction of the new [Criminal Practice Directions](#) (CPD) which came into force in on 29 May the guidance on victim personal statements in the explanatory materials to the magistrates' courts sentencing guidelines has been updated. Some of the text has been moved and additional text shown in red:

A victim personal statement (VPS) gives victims a formal opportunity to say how a crime has affected them. Where the victim has chosen to make such a statement, a court should consider and take it into account prior to passing sentence. The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and the offender, taking into account, so far as the court considers it appropriate, the consequences to the victim.

The [Criminal Practice Directions](#) (external website) emphasises that:

- evidence of the effects of an offence on the victim must be in the form of a witness statement under section 9 of the Criminal Justice Act 1967 or an expert's report;
- the statement must be served on the defence prior to sentence;
- except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, the court must not make assumptions unsupported by evidence about the effects of an offence on the victim;
- At the discretion of the court the VPS may also be read aloud in whole or in part or it may be summarised. If it is to be read aloud the court should also determine who should do so. In making these decisions the court should take into account the victim's preferences, and follow them unless there is a good reason not to do so (for example, inadmissible or potentially harmful content). Court hearings should not be adjourned solely to allow the victim to attend court to read the VPS;
- **The decision about whether or not to make a VPS is entirely a matter for the victim; no pressure should be brought to bear, and no conclusion should be drawn if no statement is made;**
- the opinions of the victim or the victim's close relatives as to what the sentence should be are not relevant.

See also the guidance on [compensation](#) particularly with reference to the victim's views as to any compensation order that may be imposed.

Domestic abuse

In the following guidelines references to 'domestic violence' have been changed to 'domestic abuse':

- Assault by penetration
- Care workers: sexual activity with a person with a mental disorder/ Care workers: causing or inciting sexual activity
- Causing a person to engage in sexual activity without consent
- Inducement, threat or deception to procure sexual activity with a person with a mental disorder/ Causing a person with a mental disorder to engage in or agree to engage in sexual activity by inducement, threat or deception
- Rape
- Sexual activity with a person with a mental disorder impeding choice/ Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity
- Sexual assault

In the following guidelines, where domestic abuse was referenced in the header but not in the body of the guideline an aggravating factor of 'Offence committed in a domestic context' has been added:

- Disclosing private sexual images
- Harassment/ Stalking/ Racially or religiously aggravated harassment/stalking
- Threats to kill

Common assault guideline

In response to feedback from magistrates the title and header of the [Common assault guideline](#) has been changed so that it references 'Assault by beating' and 'battery'. Additions shown in red:

Common assault/ **Battery/ Racially or religiously aggravated offence/ Offence committed against emergency worker**

Criminal Justice Act 1988, s.39, Crime and Disorder Act 1998, s.29, Assaults on Emergency Workers (Offences) Act 2018, s.1

Effective from: 1 July 2021

Common assault and battery (sometimes described as assault by beating), Criminal Justice Act 1988 (section 39)

Racially or religiously aggravated common assault, Crime and Disorder Act 1998 (section 29)

Assaults on emergency workers, Assaults on Emergency Workers (Offences) Act 2018 (section 1)

