Sentencing Council

Miscellaneous amendments to sentencing guidelines

Response to consultation

May 2025

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

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

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Foreword

To ensure that guidelines are kept up to date the Council holds an annual consultation on miscellaneous amendments and this was the fourth of these consultations.

As ever, the consultation covered a wide range of issues across various topics. The majority of the proposed changes arose from suggestions from guideline users including some that came from responses to the third annual miscellaneous amendments consultation. We welcome and value all such suggestions for improvements to guidelines and supporting materials.

This particular consultation included a proposal which aims to standardise wording across guidelines. This change is not expected to have a significant impact on sentencing practice but will help to ensure that guidelines are applied consistently and fairly.

On behalf of the Sentencing Council I would like to thank all those who responded to this consultation. The responses have led us to make changes to most of the proposals, the full details of which are set out in this document.

Lord Justice William Davis

Chairman, Sentencing Council

Introduction

The Sentencing Council has built up a large body of sentencing guidelines and accompanying materials that are in use in criminal courts throughout England and Wales. Over time guidelines require updating because, for example, 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(often using the feedback function on all guidelines) or case law or new legislation may render aspects of guidelines out of date.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 materials that accompany them. This was the fourth of these annual consultations in which the Council sought the views of guideline users to proposals to make amendments to existing guidelines.

The consultation is available on the Council's website: www.sentencingcouncil.org.uk.

The changes consulted on relate to guidelines used in magistrates' courts and the Crown Court and can be summarised as follows:

Matters relevant primarily to magistrates' courts:

- Supplementary information: new guidance on setting a fine for those on a variable income
- New guideline for the offence of using or keeping heavy goods vehicle if levy not paid
- Careless Driving: revising the guideline to change the factors to align with newer guidelines and replace reference to 'pedestrians' with 'vulnerable road users'
- Drive otherwise than in accordance with a licence: adding clarification to the guideline regarding offenders who are entitled to a licence but do not hold one
- Allocation guideline: various changes including changing the name of the guideline; updating the legislative references; changing 'youths' to 'children'; clarifying wording relating to community orders; adding a reference to the Criminal Practice Directions in the Committal for sentence section; and providing additional information by way of an Annex

Matters relevant to magistrates' courts and the Crown Court:

- Sentencing children and young people guideline: changing references to 'children and young people' to 'children' in both the title (of this and other guidelines relating to sentencing under 18s) and in the text of all sentencing guidelines; and adding a reference to sentencing young adults at the beginning of the guideline
- Assistance to the prosecution: adding a dropdown to guidelines summarising the approach to be taken.
- Sentencing very large organisations: adding some guidance on sentencing very large organisations to relevant guidelines

- Revenue fraud: adding a sentence table for offences where the maximum sentence has increased from 7 years to 14 years
- Standard language in guidelines: establishing a standard form of wording in guidelines
- Totality: adding further guidance to the Totality guideline
- Shop theft and Benefit fraud guidelines: adding an expanded explanation to the mitigating factor ‘offender experiencing exceptional hardship’
- Wording relating to community orders in guidelines: clarifying the wording relating to programme requirements and adding a note relating to committal to the Crown Court
- Wording on mandatory minimum sentences: adding a reference stating where the burden of showing that exceptional circumstances exist lies
- Domestic abuse: adding the aggravating factor to more guidelines

Summary of responses

There were 65 responses to the consultation. Some of the responses were from groups or organisations, and some from individuals.

Breakdown of respondents

Type of respondent	Number of responses
Academic	2
Charity or non-governmental organisation	2
Judges	7
Legal professional	9
Industry	1
Magistrates	29
Medical professional	1
Member of the public/ unknown	8
Parliamentary or government	2
Prosecutor or investigator	4

Overview

The majority of responses were broadly supportive of the proposals to which they responded but there were a number of critical responses and many suggestions for changes.

Details of the responses to each issue are detailed below.

Setting a fine for those on a variable income

The issue

The Council received a suggestion that it would be helpful to include information (in the fines guidance for magistrates' courts) on how to assess relevant weekly income for those whose income varies from week to week.

The Council consulted on adding the following to the current fines guidance:

> Where an offender's income varies, the court should take an average of four to six weeks' income to assess the relevant weekly income.
>
> Where an offender expresses their income in terms of an hourly rate, the court should make enquiries as to how many hours work they typically work each week and, if appropriate, take an average of the last four to six weeks to assess the relevant weekly income.

Responses

Several respondents thought that a period of four to six weeks would be too short in some cases or might mask seasonal fluctuations and some made alternative suggestions:

> With regards to the proposal that variable incomes be calculated by reference to an average across 4 – 6 weeks' income, this may fail to capture other common scenarios. Some individuals may receive seasonally variable income, other individuals will receive a low salary but a substantial dividend or profit share / bonus, It does not necessarily follow that if the date of sentence falls in a " low income period" they do not have means to pay but they might seek to exploit the lacuna by declaring (say in winter for an ice cream salesman) a low income but they make enough in summer to sustain themselves across the whole year.
>
> Perhaps it would assist to include a broader approach:
>
> "In cases where the offender has a variable income, the court should ordinarily take an average of four to six weeks' income to assess the relevant weekly income. However, if such an approach would fail to provide a fair reflection of the offender's means, the court should consider the offender's broader financial circumstances and exercise its judgment to ensure the fine reflects the seriousness of the offence and the financial circumstances of the offender."
>
> Senior District Judge

We agree that additional guidance will help ensure consistency of approach. However care should be taken to ensure that the guidance is not treated as prescriptive, as that would risk causing injustice in individual cases.

Many people have significant fluctuations in income across the year. For example, many work in sectors where there are significant seasonal differences in trade, such as hospitality, tourism and agriculture. Some students rely on working in the summer vacation to build up savings to cover living costs in the rest of the year. A fine may be too high or too low if it is based on a snapshot of earnings which is unrepresentative of normal income.

“Where an offender’s income varies, the court should normally take an average of four to six weeks’ income to assess the relevant weekly income. Exceptionally, the court may look at a longer period if it is shown that the offender’s income in the four to six weeks’ period is not representative of their normal income.”

Criminal Bar Association (CBA)

The Justices’ Legal Advisers and Court Officers’ Service (formerly the Justices’ Clerks’ Society) (JCS) considered that a period of 4 – 6 weeks was ‘arbitrary’ and made similar points about seasonal workers. However, they preferred leaving the existing guidance unchanged.

The majority of respondents to this question were in favour of including the proposed guidance but with some additional wording to allow for a longer period where appropriate. Some respondents noted the time constraints in a busy court and other practical issues that make it difficult to obtain accurate information of an offender’s means.

Outcome

The Council has already expressed an intention to develop a guideline on the imposition of fines and the wider issues raised can be explored as part of that exercise.

Taking into account the responses to the consultation, the Council decided to adopt the following wording:

> In cases where the offender has a variable income, the court should ordinarily take an average of four to six weeks’ income to assess the relevant weekly income. However, if such an approach would fail to provide a fair reflection of the offender’s means, the court should consider the offender’s broader financial circumstances and exercise its judgement to ensure the fine reflects the seriousness of the offence and the financial circumstances of the offender.

Where an offender expresses their income in terms of an hourly rate, the court should make enquiries as to how many hours work they typically work each week and apply the approach above.

Using or keeping heavy goods vehicle if levy not paid

The issue

The Council consulted on adding this simple guideline to the following page:

https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/offences-appropriate-for-imposition-of-fine-or-discharge/5-offences-appropriate-for-imposition-of-fine-or-discharge/:

Offence	**Maximum**	**Points**	**Starting point**	**Special considerations**
Using or keeping heavy goods vehicle if levy not paid (HGV Road User Levy Act 2013, s.11)	L5	–	B (driver) B* (owner-driver) C (owner-company)	

Responses

All of the respondents to this question agreed with the proposal. The only substantive issue was raised by the Legal Committee of HM Council of District Judges (Magistrates' Courts)

> We agree that the guidance is appropriate, however references to fine bands for companies is problematic. We note the guidelines provide band fines for corporate offenders elsewhere but as such fines are calculated with reference to an individual offender's weekly take home income, and companies have no such income, they are of little assistance to sentencers. The extent of the current guidance [When sentencing organisations the fine must be sufficiently substantial to have a real economic impact which will bring home to both management and shareholders the need to comply with the law. The court should ensure that the effect of the fine (particularly if it will result in closure of the business) is proportionate to the gravity of the offence] merely provides the courts should ensure the fine is such that it will bring home the impact of offending to managers and shareholders. Unlike individual offenders, of whom the courts demand a statement of means, companies are not routinely required to provide information as to their finances when summoned for less serious offences and we suspect this results in a great inconsistency in outcomes. We believe that the Council should issue guidance as to the information courts should require corporate offenders to produce and how band fines might be applied to companies generally.

Outcome

The Council agreed that this was a valid point and noted that it applies not only to the proposed new guideline but also to similar existing guidelines. The issue will be addressed in a future guideline on the imposition of fines.

The Council agreed to add the proposed guideline for the offence of using or keeping heavy goods vehicle if levy not paid.

Careless driving

The issue

The Council consulted on proposals to align the culpability factors in the simple careless driving guideline with those in the causing death and causing serious injury by careless driving guidelines and to align the harm factors and the step 2 factors with those for simple dangerous driving. This results in a six box sentencing table (compared to three boxes in the previous guideline) and in the proposed guideline the range of penalty points or disqualification is linked to culpability.

Responses

Most respondents were generally in favour of the proposals, with some making suggestions for changes:

> We agree the proposed changes. We note the guidelines only appear to provide starting points: we assume that these starting points are intended to be the ranges also (as is the case in the current guidelines) and wonder whether this should be stated explicitly.
>
> HM Council of District Judges

> I am mostly in agreement, and as a whole I am in agreement with the aim of standardising the factors that should be identical across related offences.
>
> However, I disagree with the removal of 'High level of traffic or pedestrians in vicinity' from the greater harm factors; as the harm (risk) of the offence is increased if this is present, even if no-one is hurt (in the same fashion that intended loss can be taken into account in theft guidelines where the loss is recovered). However I accept that this is actually the view that the factor should be added to the simple dangerous driving harm factors.
>
> Magistrate

> We agree with the proposed changes and welcome consistency across the guidelines.

> We do consider that “high level of traffic or pedestrians in vicinity” is worthy of being retained in the amended guideline, perhaps as an aggravating factor, but we accept that this can nevertheless be considered by sentencers, where relevant.
>
> Crown Prosecution Service (CPS)

An individual respondent made a similar point:

> The current guidelines provide the following factor as high harm: "High level of traffic or pedestrians in vicinity". This seems to have entirely disappeared.
>
> Under the current proposals, harm will only be high if injury or damage was actually caused. This has the effect of reducing the sentence on the basis of evasive action taken by other road users, or pure luck. For example, if someone performs a careless overtake, but the oncoming vehicle only just manages to brake in time and swerve into the verge, this would still be classed as 'low' harm 2.
>
> Therefore, the harm 1 list should be expanded to include a factor: "significant risk of injury or damage being caused".
>
> The previous "High level of traffic or pedestrians in vicinity" should also be restored as a Harm 1 factor in slightly different wording: "High level of traffic or vulnerable road users in vicinity".

The Chief Magistrate had concerns about the impact of the guideline on disqualifications:

> Aligning the culpability factors for careless driving with those present in guidelines for causing death or serious injury by way of careless driving is logical and consistent. Aligning the harm factors with those in the dangerous driving guideline removes the greater harm factor of there being a ‘high level of traffic or pedestrians in vicinity’. While the changes to harm and culpability factors improve consistency across the guidelines, it is possible that fewer offenders will fall to be disqualified for careless driving under the draft guideline compared to the existing guideline. This is because cases committed in the vicinity of a high level of traffic or pedestrians alongside either distraction, tiredness, under medication or excessive speed currently fall under Category 1 (the most serious) whereas under the draft guideline they could classify as medium culpability and lesser harm.

As to the approach of using culpability only (to the exclusion of harm factors) to determine the approach to penalty points and / or disqualification, this gives rise to the following thought. Authorities agree that risk to the public is reflected by the offender's level of culpability and that the main purpose of disqualification is forward looking and preventative, rather than backward looking (R v Morrison [2022] 1 Crim App R at [30]). However, it is also acknowledged that disqualification is still an important part of the overall sentencing purpose, including punishment and deterrence. The creation by Parliament of a mandatory minimum 12 months disqualification for offences of causing serious injury by careless driving further indicates that culpability is not the sole consideration behind the imposition of disqualification.

If the sentencing table were to revert back to the previous approach of classifying the combination of culpability and harm factors into categories 1, 2 and 3, this would result in the outcome under the draft sentencing table that offenders only face disqualification where the incident has resulted in injury or damage. Given the acknowledgment above that protection of the public is the main purpose of disqualification, it may be that the sentencing table can be adjusted such that category 2 cases could result in a short period of disqualification or 5 – 6 points. While on its face, this introduces the option of disqualification where it wasn't present previously, the introduction of 3 tiers of culpability has created a higher tier of severity than currently exists which has shifted the range in seriousness to be encountered in category 2. This proposal would also be consistent with the speeding guideline where 'mid-tier' offences face either 4 – 6 points or a disqualification up to a month.

A magistrate and an individual respondent were also concerned about the approach to points and disqualification:

No. Attaching guidance on points/ disqualification to culpability alone will not provide the court with the correct approach. Harm is also a matter to be considered when looking at the overall situation and need to protect other road users so is a factor which should be considered when determining the level of points or disqualification.

In my view, each of the current 6 starting points should have their own points/ disqualification range, as the Harm should be taken into account for this (as is currently the case).

Furthermore, "Consider disqualification OR 7 – 9 points" should be amended to include the standard minimum disqualification period. In my view, this should start at least 3 months for category A (as otherwise the 'harsher' discretionary disqualification may in fact be more lenient than imposing points).

A few other respondents queried the wording of the culpability factors and variously suggested minor changes or requested examples. These were very much in the minority and any changes would defeat the object of aligning factors across guidelines.

The Department for Transport made a suggestion for re-wording an aggravating factor:

- Victim was a vulnerable road user, noting Highway Code 'hierarchy of road users' - pedestrians, cyclists, horse riders and motorcyclists, with children, older adults and disabled people being more at risk.

A magistrate felt that the proposed guideline was overly complicated. She queried the mitigating factor of 'Difficult and/or deprived background or personal circumstances'. No other respondents commented on this but there is a case for not including all of the mitigating factors from the dangerous driving guideline as some of them are mostly relevant to the imposition of community or custodial penalties. Most other fine only guidelines do **not** include the following 'standard' mitigating factors:

- Serious medical condition requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity (which may be applicable to offenders aged 18-25)
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Pregnancy, childbirth and post-natal care
- Difficult and/or deprived background or personal circumstances
- Prospects of or in work, training or education

If these were removed it would not prevent a court taking them into account if, exceptionally, they were relevant.

The consultation asked for views on the likely impact of the proposals on fines or disqualification. Several respondents indicated that any effects would be difficult to predict but were likely to be minimal. Others thought that there would be an increase in fine levels:

> The guidelines are likely to result in some higher fines being imposed as they introduce band D fines for the most serious cases. It is also likely that fewer lower fines will be imposed as they limit the circumstances where a band A fine will be the starting point. We believe the changes will result in a modest increase to fine levels overall.
>
> We suspect that there will be little impact on the number of defendants who are disqualified, although by limiting the guidance to disqualify only to level A culpability there is a potential for disqualification to be used less frequently.
>
> Legal Committee of HM Council of District Judges (Magistrates' Courts)

This proposal may result in an increase in fines for the most serious cases of this type (Culpability A / Harm 1). However, the increase is modest and we consider it to be appropriate. It is necessary to maintain an adequate distinction between the different categories of case.

These changes would mean that the court will only consider discretionary disqualification in cases involving Culpability A. On the face of it, that is a narrower range of cases than under the current guideline. Again, we consider this to be an appropriate change. The exclusion of lower culpability cases from consideration for disqualification is the just result of having more precise and detailed guidance. This will also promote greater consistency between cases.

Criminal Bar Association

Although the reasoning for similar approaches in guidelines is understood, there are concerns that with the new approach, a significant number of cases will fall into 'Category B' which otherwise on the existing guidelines would have been 'lower culpability' resulting in a higher fines bracket.

We suggest that the change is not required; the current guidelines are adequate.

Criminal Law Solicitors' Association

This view was supported by some individual magistrates but others expressed a contrary view. They considered that the removal of the current high harm factor of 'High level of traffic or pedestrians in vicinity' would lead to a decrease in fines and disqualification.

Outcome

The Council carefully considered all of the points raised, and agreed changes to the consultation version to maintain consistency with other guidelines at step 1 but take account of the differences between careless driving and dangerous driving in the factors at step 2. The changes to the sentence table and disqualification levels reflect the comments by the Chief Magistrate and the Council of District Judges.

Step 1 – Determining the offence category

The court should determine the offence category with reference **only** to the factors identified in the following tables. In order to determine the category the court should assess **culpability** and **harm**.

Culpability Where there are factors present from more than one category of culpability, the court should weigh those factors in order to decide which category most resembles the offender's case.
A • Standard of driving was just below threshold for dangerous driving and/or includes extreme example of a culpability B factor
B • Unsafe manoeuvre or positioning • Engaging in a brief but avoidable distraction • Driving at a speed that is inappropriate for the prevailing road or weather conditions • Driving impaired by consumption of alcohol and/or drugs • Driving vehicle which is unsafe or where driver's visibility or controls are obstructed • Driving impaired as a result of a known medical condition and/or in disregard of advice relating to the effects of medical condition or medication • Driving when deprived of adequate sleep or rest • The offender's culpability falls between the factors as described in culpability A and C
C • Standard of driving was just over threshold for careless driving • Momentary lapse of concentration

Harm
Category 1 • Offence results in injury to others • Damage caused to vehicles or property
Category 2 • All other cases

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

An adjustment from the starting point, upwards or downwards, may then be necessary to reflect particular features of culpability and/or harm (for example, the presence of multiple factors within one category, the presence of factors from more than one category (where not already taken into account at step 1), or where a case falls close to a borderline between categories).

For this offence the fine band given as the **starting point** also represents the **range**

	Culpability		
Harm	**A**	**B**	**C**
Harm 1	**Starting point** Band D fine	**Starting point** Band C fine	**Starting point** Band B fine
Harm 2	**Starting point** Band C fine	**Starting point** Band B fine	**Starting point** Band A fine

Fines [dropdown]

- **Must endorse and may disqualify. If no disqualification impose 3 – 9 points**

Culpability level	**Disqualification/points**
A	Consider disqualification **OR** 7 – 9 points
B	5 – 6 points **OR** Consider disqualification of up to 56 days
C	3 – 4 points

See Step 6 for more information on driving disqualification

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in a further upward or downward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Offence committed in the vicinity of vulnerable road users, including pedestrians, cyclists, horse riders, motorcyclists
- Driving for commercial purposes
- Driving a goods vehicle, PSV etc
- Other driving offences committed at the same time as the careless driving
- Blame wrongly placed on others
- Failed to stop and/or obstructed or hindered attempts to assist at the scene
- Passengers in the offender's vehicle, including children
- Vehicle poorly maintained
- Offence committed on licence or while subject to court order(s)

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions or no relevant/recent convictions
- Good driving record
- Actions of the victim or a third party contributed significantly to collision
- Offence due to inexperience rather than irresponsibility (where offender qualified to drive)
- Genuine emergency
- Efforts made to assist or seek assistance for victim(s)
- Remorse

Step 3 – Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Step 4 – Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 73 of the Sentencing Code and the Reduction in Sentence for a Guilty Plea guideline.

Step 5 – Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

Step 6 – Disqualification, compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

- Ancillary orders – Magistrates' Court

Disqualification guidance [Drop down]

Step 7 – Reasons

Section 52 of the Sentencing Code imposes a duty to give reasons for, and explain the effect of, the sentence.

Drive otherwise than in accordance with a licence

The issue

A guideline user asked for an explanation of '(where could be covered)' to be included in the Drive otherwise than in accordance with a licence (where could be covered) guideline. This is a single line guideline in the 'Motoring offences appropriate for imposition of fine or discharge' section of the magistrates' guidelines and sits alongside the more commonly prosecuted version of the offence. The Council consulted on incorporating the statutory language into the guideline so that it would read:

Offence	Maximum	Points	Starting point	Special considerations
Drive otherwise than in accordance with licence (where could be covered*) (Road Traffic Act 1988, s.87(1))	L3	–	A	* This applies where the offender's driving would have been in accordance with any licence that could have been granted to them
Drive otherwise than in accordance with licence (Road Traffic Act 1988, s.87(1))	L3	3 – 6	A	Aggravating factor if no licence ever held

The consultation document provided the following explanation:

> What this means in practice is that someone who is entitled to a driving licence for the vehicle driven but does not hold a current one (for example because they have failed to renew it when entitled to do so) need not have points put on their licence, but those who have no entitlement to a licence must have their licence endorsed with 3-6 points.

Responses

All respondents who commented thought that the addition was helpful but several (including the CPS and the CBA) suggested that the example provided in the consultation document could usefully be provided in the guideline. Suggested wording from the CBA:

> This applies where the offender's driving would have been in accordance with any licence that could have been granted to them (for example, because they have failed to renew it when entitled to do so).

The Legal Committee of HM Council of District Judges (Magistrates' Courts) appeared to think that the explanation in the consultation document was (or should be) intended as part of the guideline and proposed a fuller explanation:

> What this means in practice is that someone who is entitled to a driving licence for the vehicle driven but does not hold one (for example because they have failed to renew it when entitled) need not have points put on their driving record. The court should not endorse for an offence committed by someone who could have been granted a provisional licence so long as they were complying with the requirements of such licence (e.g. displaying "L" plates or a supervising driver). In all other cases offenders must have their driving record endorsed with 3-6 points

The Council felt that this suggestion was possibly too long (especially as it excluded the wording that was actually consulted on) for the format of the simple guideline. These suggestions raised the familiar issue of whether giving examples helps or hinders. The use of the phrase 'in all other cases' in the suggestion above could make it sound as though the examples given are the only two possibilities. As it is probably not possible to list all the examples that could apply, the Council considered it would be preferable to provide either just one example or none at all.

Outcome

Judging from the number of respondents who said they would find an example helpful in understanding the statutory language, the Council decided to adopt the suggested wording from the CBA above.

Offence	Maximum	Points	Starting point	Special considerations
Drive otherwise than in accordance with licence (where could be covered*) (Road Traffic Act 1988, s.87(1))	L3	–	A	* This applies where the offender's driving would have been in accordance with any licence that could have been granted to them (for example, because they have failed to renew it when entitled to do so).

Allocation guideline

The issue

The Council consulted on proposals to amend the Allocation guideline to:

- update the legislative references
- change ‘youth’ to ‘child’
- clarify wording relating to community orders in the Committal for sentence section
- add a reference to the Criminal Practice Directions in the Committal for sentence section
- embed legislative references in the text (rather than use footnotes)
- provide additional information by way of an Annex.

Responses

Respondents generally agreed with the proposals but there were some areas of disagreement and suggestions for improvement. All but one respondent who commented on the proposal agreed to change ‘youth’ to ‘child’. The one dissenting voice being a magistrate who objected to the term ‘child’ for a person of 16 or 17 years.

There were no objections to embedding the legislative references in the text. There were two responses questioning the proposed wording relating to community orders in the Committal for sentence section:

> Where the offending is so serious that the court is of the opinion that the Crown Court should have the power to deal with the offender, the case should be committed to the Crown Court for sentence even if a community order may be the appropriate sentence (this will allow the Crown Court to deal with any breach of a community order or offence committed during such an order, if that is the sentence passed).

These responses suggested that the Council had misinterpreted the legal position. The Council noted that the proposed wording (which is only a slight variation on the current wording) reflects the law as set out in Archbold Magistrates’ Courts Criminal Practice 2024 16-57:

> Where the court revokes a community order in respect of an offender who has breached the order, the power of the court to resentence the offender does not include the power to commit to the Crown Court for sentence under s.14 of the Sentencing Code for the offence in respect of which the order was made: see R. v Jordan [1998] 2 Cr. App. R.(S.) 83, DC and CA; and R. v Andrews [2006] EWCA Crim 2228; [2007] 1 Cr. App. R. (S.) 81.

Respondents who commented on the proposal to add a reference to the Criminal Practice Directions in the Committal for sentence section agreed that this would be helpful. The Environment Agency (EA) suggested further references to the CPD:

> We note and understand the observation the Council makes that matters pertaining to the Criminal Practice Direction 2023 (CPD) are out of the Council's remit for proposed amendment or consultation purposes. However, we submit that adherence to relevant sections of the CPD is integral to the proper consideration of very high fines cases involving VLO's and in *R v Thames Water Utilities Ltd (2015) EWCA* the court said:
>
> "Sentencing very large organisations involves complex issues as is clear from this judgment. It is for that reason that special provision is made for such cases in Crim PD XIII,[now the Criminal Practice Directions 2023] listing and classification. Such cases are categorised as class 2 C cases and must therefore be tried either by a High Court Judge or another judge only where either the Presiding Judge has released the case or the Resident judge has allocated the case to that judge. It is essential that the terms of this Practice Direction are strictly observed."
>
> We therefore invite the Council to consider whether reference to the CPD 5.16 should not only be included in the 'Committal for Sentence' section of the Guideline but elsewhere in the document. Given the broad ambit of CPD 5.16.6 ('An authorised DJ(MC) should consider allocating the case to the Crown Court or committing the accused for sentence**.'**) we submit that reference to the CPD might also be included in the earlier section of the guideline under the heading, 'Venue for trial'.

The Environment Agency made further submissions:

> We draw the Council's further attention to other parts of the CPD which are also of relevance and might also be referenced in the guideline as the Council considers appropriate:
>
> CPD 5.9.5: (emphasis added)
>
> *Cases in the magistrates' courts involving the imposition of very large fines:*
>
> a. Where a defendant appears before a magistrates' court for an either way offence, to which s.85 LASPO Act 2012 applies the case must be dealt with by a DJ(MC) who has been authorised to deal with such cases by the Chief Magistrate. See 5.16 below.

b. ***The authorised DJ(MC) must first consider whether such cases should be allocated to the Crown Court*** *or, where the defendant pleads guilty, committed for sentence under s.14 Sentencing Act 2020, and must do so when the DJ(MC) considers the offence or combination of offences so serious that the Crown Court should deal with the defendant as if they had been convicted on indictment.*

c. *If an authorised DJ(MC) decides not to commit such a case the reasons must be recorded in writing to be entered onto the court register.*

CPD 5.8.8 (emphasis added to relevant parts only):

All cases in Class 1A, 1B and 1C must be referred by the Resident Judge to a Presiding Judge, **as must a case in any class** which is:

a. an unusually grave or complex case or one in which a novel and important point of law is to be raised;

e. a case which for any reason is likely to attract exceptional media attention;

f. a case where a large organisation or corporation may, if convicted, be ordered to pay a very ***large fine****;*

The Health and Safety Executive (HSE) also suggested that a reference to CPD 5.9.5 should be included.

The idea of the Annex was welcomed by respondents and there were a few suggestions for changes.

The annex to the guideline setting out committal powers is also welcomed. However, it is important to ensure that use of Schedule 10 para 24(2) and Schedule 16 para 11(2) are the provisions that allow a Magistrates' Court to commit an offender back to the Crown Court where further offences committed during currency of a Crown Court Community Sentence or Suspended Sentence Order. They are not the correct provisions for committing for sentence in relation to the new offences. It is important that if either way or summary offences are committed, they are committed alongside pursuant to s.14 or s.20 Sentencing Code alongside the committal under Schedule 10 or 16. This is to ensure the correct committal pathway is followed as highlighted by the Court of Appeal in R v. Morgan [2012] EWCA Crim 1939 – referencing the old provisions under the Powers of the Criminal Courts (Sentencing Act) Act 2000 but transposed into the Schedules and ss.14 and 20 of the Sentencing Code.

Legal Committee of HM Council of District Judges (Magistrates' Courts)

> With respect to the proposed annex, it may assist to clarify that where an offender commits a further offence while on a Crown Court conditional discharge, community order or suspended sentence order, that the new summary only or either way offence is not what is committed under Sch.10 para 24, Sch. 2 para 5(4) or Sch.16 para 11(2) and that rather the magistrates' court must either deal with the new offence itself or commit under a separate power (*R v De Brito* [2013] EWCA Crim 1134). This could be resolved by adding a line underneath such as: "New offence to be dealt with or committed under its own power".
>
> Senior District Judge

A magistrate stated, 'It should be clearer that committing Summary Only Offences to the Crown Court occurs when these offences have been committed alongside other conjoined Either Way matters.'

The CPS stated:

> In relation to the Annex, we welcome this as a tool to assist sentencers. We query whether further clarity would be helpful in relation to the power to commit an offender for sentence for an offence committed while a suspended sentence made by the Crown Court is in force. This will help to ensure sentencers are aware that a determination as to the primary committal power (e.g. s.14, s.18 or s.20 of the Sentencing Act 2020) will also be required

There were very few comments on the proposal to change the name of the guideline to 'Allocation and committal for sentence'. Those who did address the proposal directly were in favour

Outcome

The Council decided to make the changes consulted on (apart from changing 'youth' to 'child' – see the discussion in the next section) and additionally to include a reference (and hyperlink) to CPD 5.9.5 as well as to CPD 5.16 in both the venue for trial and committal for sentence sections.

The Council agreed a revised version of the Annex to address the issues raised by respondents. The Council noted that the Annex would not form part of the Allocation guideline but would be provided for information only. It would therefore be permissible for changes to be made without consultation in the event of legislative changes or if inaccuracies were pointed out or suggestions were received to make it clearer.

Sentencing children and young people guideline

The issue

Three judges with a particular interest and expertise in sentencing children, invited the Council to consider changing the name of the Sentencing children and young people guideline, to the Sentencing children guideline. The reason for this would be to make it clear to all sentencers (but particularly to judges sentencing children in the Crown Court) that children should not be dealt with as mini adults. The change would also align with the approach being taken in other publications such as the Crown Court Compendium.

There are other guidelines specifically for sentencing under 18s which have ‘children and young people’ in the titles:

Bladed articles and offensive weapons (having in public/education premises and threats) – children and young people

Child sex offences committed by children or young persons (sections 9-12) (offender under 18)/ Sexual activity with a child family member (offender under 18)/ Inciting a child family member to engage in sexual activity (offender under 18)

Robbery – Sentencing children and young people

Sexual offences – Sentencing children and young people

The Council proposed that all references across sentencing guidelines to ‘children and young people’ or ‘child or young person’ should be changed to ‘children’ or ‘child’ as appropriate.

In addition, the Council proposed adding a paragraph to the General approach section at the beginning of the Sentencing children and young people guideline explaining the transition of under 18-year-olds to adulthood and including the relevant information available in the expanded explanation of the mitigating factor 'Age and/or lack of maturity' from the sentencing guidelines for adults.

Responses

The many responses to the proposal to change all references in the titles and content of guidelines to ‘child’ or children’ generally took one of two opposing viewpoints. Responses from professional bodies and most judges welcomed the change – responses from magistrates sitting in youth courts tended to be strongly opposed.

Responses in favour included:

RCPCH wholly supports both of the proposed amends to better clarify that children who enter the criminal justice processes do not lose their status as children, and the specific rights afforded to them by the united Nations Convention on the Rights Of the Child (IJNCRC). Our justice system was established with adults in mind, however over 16,000 children were proceeded against in court in 2023, and over 11,900 of these children were sentenced. For the first time in 10 years, this figure is on the rise.

It is therefore imperative that the justice system as a whole considers how it protects children's rights and ensures that everybody working in the system is clear when they are working with, or making decisions about, a child.

RCPCH is in full support of changing the name of all guidelines for sentencing under to use the term 'children' rather than 'children and young people' rather than 'youth'; and changing all references to offenders aged under 18 throughout sentencing guidelines and supporting materials to 'child' or ‘children'.

This takes a children's rights approach, making it clear that those who are under 18 years old are indeed children, and are therefore afforded specific rights.

Additionally, this language change aligns with The Children Act 1989, which uses 'child/children' to refer to those under the age of 18 years. The RCPCH'S healthcare standards for children and people in secure settings sets out on page 8 that, while the title of the document uses the term 'young people' due to commissioning arrangements, the document itself and communication regarding this cohort will use the term 'children/child' only.

Royal College of Paediatrics and Child Health

Our reasons for supporting the proposals to refer to all defendants under 18 as ‘children’ can be summarised as follows:

Legal accuracy

There is no statutory basis for using the term ‘young people’;

There is no current legal basis for distinguishing between ‘children’ and ‘young persons’ in criminal proceedings or other areas;

Coherence and consistency

Referring to every defendant under 18 as a ‘child’ is consistent with other areas of law, with general understanding and with common parlance;

Using the term ‘young person’ may elide with the concept of ‘young offender’ which definition applies only to those aged 18 to 20;

The label ‘young person’ is better applied to those aged 18 to 25 who may be developmentally immature;

Proper approach

Focusing on ‘Sentencing Children’ reinforces that a court should not sentence anyone under 18 as if they were a mini-adult;

Renaming the guideline Sentencing Children would be a powerful and positive step in ensuring that courts adopt the distinct approach to sentencing children that is required by the law.

HHJ Heather Norton & HHJ Gareth Branston

I support and endorse the proposal to replace references to ‘youths’ and ‘young persons’ with references to children throughout the guidelines and supporting materials. This includes changing the title of the overarching guideline to ‘Sentencing children’.

Chief Magistrate

The YJB fully supports the use of the term ‘children’ in place of ‘children and young people’ as well as changing all references to ‘offenders’ aged under 18 to ‘child’ or ‘children’. Adopting the use of ‘child’ and ‘children’ provides undiluted emphasis of the unique legal standing of this age group and the protections needed. In turn it is aligned with the evidence-based Child First framework which advocates recognising children according to their age and developmental needs. This amendment can help to ensure that guidelines emphasise children’s distinct developmental status and provide context helping to influence sentencing decisions.

The proposed changes will help to encourage a move away from referring to children as offenders which is stigmatising and only reflects one element of the child. The fourth tenet of the Child First framework outlines the importance of minimising criminogenic stigma from contact with the system as stigma can have a detrimental impact on children. The second tenet of the Child First framework is based around supporting children to build a pro-social identity which is helped by not labelling children as offenders. Supporting children to develop a pro-social identity can lead to sustainable desistance and safer communities.

Youth Justice Board

Some respondents noted that the terms ‘children and young persons’ and ‘child and young person’ appear in statue. For some respondents this was a reason in not to make the proposed change, but others supported the proposal while making suggestions for dealing with any potential confusion:

Subject to further explanation being provided within the introductory text to the guideline, the CBA supports these proposed changes.

These changes reflect contemporary understanding of child development and maturity. They are consistent with the clear approach of UN Convention on the Rights of the Child, namely that anyone under the age of 18 years must be treated as a child. However, the difficulty which arises is that this is a departure from the language used by the relevant statutory provisions, including those which the guideline itself is designed to reflect.

The opening paragraph (Para 1.1) of the existing guideline contains a reminder to the court of its statutory duties when sentencing offenders aged under 18. In its current form, the guideline is consistent with the statutory provisions in that they refer to ‘children and young persons’.

Para 1.1 of the guideline states:

“1.1 When sentencing children or young people (those aged under 18 at the date of the finding of guilt) a court must have regard to:

- the principal aim of the youth justice system (to prevent offending by **children and young people**); and

- the welfare of the **child or young person**.”

In the consultation document, at page 20, point 2, it is suggested that all references in the guideline will be amended to read ‘child’ or ‘children’. No doubt it is intended that Para 1.1 will be amended accordingly.

This gives rise to a risk of confusion, in that both of these duties arise from statutes which use the term ‘children and young person’. The first duty arises under Section 37(1) of the Crime and Disorder Act 1998, which states:

“It shall be the principal aim of the youth justice system to prevent offending by children and young persons.”

The second duty arises under Section 44(1) of the Children and Young Persons Act 1933, which states:

*"Every court in dealing with **a child or young person** who is brought before it, either as . . . an offender or otherwise, shall have regard to the welfare of the **child or young person** and shall in a proper case take steps for removing him from undesirable surroundings, and for securing that proper provision is made for his education and training.."*

Both of those statutes contain relevant definitions of 'child' and 'young person'. In both, a 'child' is defined as a person under the age of 14 years and a 'young person' is defined as a person who has attained the age of fourteen but is under the age of eighteen years. See: Section 107(1) of the Children and Young Persons Act 1933 and Section 117(1) of the Crime and Disorder Act 1998 respectively.

To add to the statutory confusion of terms:

The Crime and Disorder Act 1998 also compendiously refers to children and young persons as 'youths' (for the purposes of the Youth Offending Teams, Youth Court, the Youth Justice Board and the Youth Justice System).

The Sentencing Act 2020 refers to persons aged under 18 who appear for sentence as 'young offenders'.

We invite the Sentencing Council to consider whether adopting terminology which is different from the relevant legislation may, without explanation, give rise to some confusion. We would therefore suggest the inclusion of an additional paragraph at the very start of the guideline to the following effect:

"For the purposes of this guideline, persons under the age of 18 years are referred to throughout as 'children'. Differing terms are used in legislation, including 'children and young persons', 'youths' and 'young offenders'. This guideline uses the single term 'children' for the sake of consistency and as a reminder that the court's treatment of persons under the age of 18 years is different from its approach to the sentencing of adult offenders."

Criminal Bar Association

The Society supports the proposal to use the word 'children' instead of 'children and young people' as a pragmatic approach that will encourage practitioners and the courts to apply the correct approach to sentencing offenders under the age of 18.

While it is noted that the Children and Young Persons Act 1933 still draws a distinction between "children" (under 14) and "young people" (aged 14 but under 18), these categories are of limited (if any) legal relevance today.

It is also accepted that some individuals under the age of 18 may not think of themselves as children and that the courts may struggle to see a 17-year-old as child.

However, arguably this is all the more reason for the change to be made as it will assist all parties and the Court to apply the correct legal framework to all individuals under 18, as restated by the Court of Appeal in R v ZA [2023] EWCA Crim 596 §52: “It is categorically wrong to set about the sentencing of children and young people as if they are “mini-adults. An entirely different approach is required.” It is suggested that this explanation for use of the word ‘child’ or ‘children’ for all offenders under the age of 18 should be included in the Guideline.

It also has the obvious advantage of simplicity: one word rather than several.

Law Society

Responses opposed to the proposals included:

I am a JP at Highbury Corner Mags in Central London and sit in Adult and Youth Courts, and I have a comment in respect of the 'Children and Young Persons Guideline' proposal.

I would retain the existing wording, especially the references to 'Young People'. I believe using the term 'Children' for all could be counter-productive. While it may make 'practitioners' in assorted roles feel better, my experience is that it would have an adverse effect on the young people and lead to further disengagement from the Court process. I believe it is better to look at this issue from the perspective of the young person, who is supposed to be central to the proceedings.

The question of 'respect', particularly between young people and their peers and those with whom they interact - including victims - is frequently at the core of youth offending. When matters come to Court, I am acutely aware for example that when YJS colleagues look up from their laptops to say that X is a 'Looked After Child', this usually elicits a negative response from the young person, who interprets 'Child' as disrespectful, condescending, patronising, belittling and derogatory. For lawyers to start making reference to 'The Children Guidelines' in open Court when talking 'about' (usually not 'to') the young person would compound the sense of humiliation.

My JP colleagues and our Legal Advisers are well aware of the importance of differentiating our approach to Adult and Youth Courts, and we do not dismiss 'young people' as 'mini adults' . Young people involved in the criminal justice system can feel they have little agency or autonomy and little stake in the proceedings. A modicum of respect can go a long way in addressing this.

Magistrate

I, too, am a Crown Court Judge and previously was a District Judge in the Magistrates' Court. In that role, I sat many times each month in the Youth Court. I too therefore have experience of both jurisdictions.

I disagree with this proposal for a number of reasons:

1. I agree that some Recorders and Judges without much experience of dealing with those under the age of 18 risk dealing with them as "mini adults". In my view, that is precisely the strength of the guideline being worded as it is. I think that there is a risk that those without that experience and dealing perhaps with a Defendant who is 17+ might think that the individual before them is not a "child" and may not therefore turn to the guideline. The fact that those in this category are not "mini adults" is and can be made plain throughout the guideline. I do not think that a change of name will achieve this desired result and may risk having the opposite result.

2. Many cases arise when a person commits an offence when under the age of 18, but by the time of sentence they are 18+. Some sentencers may not, in that instance, turn to this guideline, because they are not sentencing a "child". Those who are not experienced in such cases therefore risk missing the references to Ghafoor and that line of authority about how to deal with such cases.

3. I think that this change risks being seen as making entrenched the difference between "children" and "adults", thereby undermining the prevailing authorities in relation to Clarke and others etc. I note what is said about changes to the guidelines to refer to "young adults" but I think it is more helpful for sentencers to have in their minds turning to a guideline that encompasses "young people" as well as children in such cases.

I make it plain, my concern is limited to the title of this document. I agree that in other respects (e.g. allocation changing "youths" to "children") may be appropriate.

Circuit judge

Most respondents who commented on the proposal to add wording to the beginning of the guideline were in agreement though some suggested changes:

The related proposal relating to young adults of including a paragraph highlighting the approach where an offender turns 18 between commission of the offence and conviction is helpful.

Given the rationale in the paper that the extremely helpful expanded explanation of the mitigating factor 'Age and/or lack of maturity' should be flagged, the proposed wording could do this more clearly. The steady stream of sentence appeals concerning young adults since R v Clarke, Andrews & Thompson [2018] EWCA Crim 185 suggests that it is important to ensure that this expanded explanation is routinely considered in all cases concerning young adults. The expanded explanation should therefore be expressly included in the new wording. Further, as the court held in R v Balogun [2018] EWCA Crim 2933, the guideline for offenders under 18 may still be relevant.

It is therefore recommended that the penultimate line of the new paragraph should be amended along the following lines or similar:

“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. While the purposes of sentencing adult offenders will apply, this guideline is relevant and the expanded explanation of the mitigating factor 'Age and/or lack of maturity' should always be considered.”

Law Society

- We think this additional note at the outset of the guideline draws attention to factors that are easily overlooked by sentencers more familiar with adult sentencing framework, and it will improve the consistent application of the guideline.
- We welcome clarity about the relevance of the guideline to sentencing young adults although we form the view that this could be strengthened.
- We would suggest amended wording as the guideline to ensure applies to sentencing those aged under 18 at the date of the offence.

Suggested alternative wording –

Note: This guideline applies to sentencing those aged under 18 at the date of ~~finding of guilt~~ ***<u>the offence</u>****, but the guideline will be* ***relevant to sentencing young adults (18-25 year olds) as their youth and maturity will be factors to inform any sentencing decision.*** *~~many of the principles will also be relevant to sentencing young adults~~.*

- We welcome clarity about the relevance of the age of the person being sentenced at the date of offence to determining sentence, although we form the view that this requires more detail for accuracy.

Suggested alternative wording –

~~Where an offender has turned 18 between the commission of the offence and conviction~~ **When sentencing any person who has committed an offence as a child,** the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed. **This principle applies to a person who has turned 18 between the commission of the offence and conviction, but the court should** apply the purposes of sentencing adult offenders. See paragraphs 6.1 to 6.3 below.

Garden Court Chambers Children's Rights Team

Outcome

The Council agreed with the suggestion from the Law Society to cross refer to the age and or lack of maturity factor and decided that the opening paragraph should read:

> Note: This guideline applies to sentencing those aged under 18 at the date of finding of guilt, but many of the principles will also be relevant to sentencing young adults (aged 18-25). 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. The expanded explanation of the mitigating factor 'Age and/or lack of maturity' should also be considered. See paragraphs 6.1 to 6.3 below.

The Council noted the general agreement to the proposed change of language but also the concerns raised by magistrates about how older children may not want to be addressed as a 'child'. The Council considered that the proposed changes to wording in the guideline would not prevent sentencers from treating older children with the appropriate respect. Nor would the change in language alter the fact that younger children may be dealt with differently from older children; the guideline contains details of the different disposals available to courts when sentencing children of different ages.

The Council was therefore minded to adopt the proposed change in terminology to reflect modern usage and in particular modern statutory language. However, the Council noted that draft legislation before Parliament uses various different terms to describe offenders under the age of 18 and so has decided to defer making the proposed changes until it is clear what language will be used in forthcoming legislation.

Assistance to the prosecution

The issue

The Council consulted on adding a note (as a dropdown) to the relevant step in guidelines summarising the case law regarding providing assistance to law enforcement authorities on sentencing.

Responses

Respondents who commented on the proposal were generally in favour and there were two suggestions for additions.

The CBA supports the proposed amendment, but we suggest that three additional factors should be added. The draft guidance states in the introduction that:

"The following sequence of matters for a sentencing court to consider reflects the judgment R v Royle and others [2023] EWCA Crim 1311."

However, the summary which follows does not include all of the factors identified in the list at para [33] of the judgment in Royle. In particular, two important factors not included are:

The seriousness of the offending to which the information relates (Royle, para 33(i)).

The period of time over which information has been provided (Royle, para 33(ii)).

Further, the guideline should also reflect the additional guidance from the Court of Appeal in the subsequent case of R v BFE [2024] EWCA Crim 1198, at para [17]. The Court there identified a gap in the guidance provided at para [33(iii)] in Royle, in that it did not address those cases where at the time of sentence it is too early to say what the results the information may bring. The Court held that in such cases the sentencer should take into account the potential value of the information. Although the judgment in BFE makes no reference to the facts of that case, it is clear is that cases of that type may involve information being provided relating to high level activities in relation to the most serious types of offending.

We therefore suggest that point 2 in the draft additional guidance should be expanded to read as follows [additions shown in bold]:

"The court should then consider the quality and quantity of the material provided by the offender in the investigation and subsequent prosecution of crime. **The court should take into account the period of time over which the information was provided and the seriousness of the offending to which it relates.** Particular value should be attached to those cases where the offender provides evidence in the form of a witness statement or is prepared to give evidence at any subsequent trial, especially where the information either produces convictions for the most serious offences, or prevents them, or which leads to disruption of major criminal networks. **In cases where it is too early to say what impact the information will have, the Court should take into account the potential value of the information provided**."

Criminal Bar Association

The guidance provided in the drop-down is very helpful and reflects the detail provided in the R v Royle judgment. In accordance with the new Criminal Procedure Rule 28.12(4), it may assist to also note that courts when dealing with the common law "text" procedure must not refer to the text in sentence or give any indication of the extent, if any, of the effect on sentence that the text had.

Senior District Judge

Outcome

The Council considered these suggestions to be helpful and decided to add a reference to CPR 28.12(4) in paragraph 14 and add references to the CPR in the opening paragraph. The Council also agreed to make the suggested additions to paragraph 2 and to remove the specific reference to R v Royle and replace it with the phrase 'reflects case law'.

The agreed changes can be seen below:

Step 3 – Consider any factors which indicate a reduction, such as assistance to the prosecution

The court should take into account section 74 of the Sentencing Code (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

Guidance on the effect of providing assistance to law enforcement authorities on sentencing

Case law has established that there are no inflexible rules as to the method by which any reduction should be assessed nor the amount of the reduction. It will be a fact specific decision in each case. The rationale for making a reduction is the same whether the statutory procedure or the common law “text” procedure has been engaged. In principle, there is no reason to distinguish between the two procedures in terms of the extent of the reduction which is made. See also the relevant Criminal Procedure Rules: CPR 28.11 (statutory procedure) CPR 28.12 (text procedure).

The following sequence of matters for a sentencing court to consider reflects case law:

1. The court should assess the seriousness of the offences being sentenced following any relevant sentencing guidelines.
2. The court should then consider the quality and quantity of the material provided by the offender in the investigation and subsequent prosecution of crime. The court should take into account the period of time over which the information was provided and the seriousness of the offending to which it relates. Particular value should be attached to those cases where the offender provides evidence in the form of a witness statement or is prepared to give evidence at any subsequent trial, especially where the information either produces convictions for the most serious offences, or prevents them, or which leads to disruption of major criminal networks. In cases where it is too early to say what impact the information will have, the Court should take into account the potential value of the information provided.
3. This consideration should be made in the context of the nature and extent of the personal risks to, and potential consequences faced by, the offender and members of the offender’s family.
4. A guilty plea is not an essential prerequisite of the making of a reduction for information and assistance provided, but contesting guilt may be one of the factors relevant to the extent of the reduction made for that assistance. The extent to which an offender has been prepared to admit the full extent of their criminality is relevant to the level of the reduction.
5. Any reduction for a guilty plea is separate from and additional to the appropriate reduction for assistance provided by the offender. The reduction for the assistance provided by the offender should be assessed first to arrive at a notional sentence and any guilty plea reduction applied to that notional sentence.
6. A mathematical approach to determining the level of reduction for assistance to the authorities is liable to produce an inappropriate answer – the totality principle is fundamental.
7. Where the statutory procedure applies, the court should take into account that this requires offenders to reveal the whole of their previous criminal activities which will often entail pleading guilty to offences which the offender would never otherwise have faced.
8. An informer can generally only expect to receive credit once for past information or assistance, and for that reason the court should be notified whether particular information and assistance has been taken into account in imposing a previous sentence or when making an application to the Parole Board.

9. The court should enquire whether an offender has received payment for assistance provided and if so, how much. Financial reward and a reduction in sentence are complementary means of incentivising the disclosure of the criminal activities of others and therefore a financial reward, unless exceptionally generous, should play only a small, if any, part in the sentencer's decision.
10. The totality principle is critical in the context of an offender who is already serving a sentence, and who enters into an agreement to provide information which discloses previous criminal activities and comes before the court to be sentenced for the new crimes, as well as for a review of the original sentence (under section 388 of the Sentencing Code).
11. Where an offender has committed serious crimes, neither the statutory nor common law process provide immunity from punishment, and, subject to appropriate reductions, an appropriate sentence should be passed. By providing assistance to the authorities the offender is entitled to a reduction from the sentence which would otherwise be appropriate to reflect the assistance provided to the administration of justice, and to encourage others to do the same.
12. It is only in the most exceptional case that the appropriate level of reduction would exceed three quarters of the total sentence which would otherwise be passed. The normal level for the provision of valuable information will be a reduction of somewhere between one half and two thirds of that sentence.
13. In cases where the information provided was of limited value, the reduction may be less than one half and where the information given is unreliable, vague, lacking in practical utility or already known to the authorities, any reduction made will be minimal.
14. The risk to an offender who provides information, and the importance of the public interest in encouraging criminals to inform on other criminals, will often mean that the court will not be able to make any explicit reference to the provision of information or the reduction of the sentence on that ground. The duty to give reasons for the sentence will be discharged in such cases by the judge stating that the court has considered all the matters of mitigation which have been brought to its attention. See also CPR 28.12(4).

Sentencing very large organisations

The issue

The Environment Agency (EA) raised an issue of fines where the offender is a very large organisation (VLO). The EA submitted that the current wording in guidelines for sentencing a VLO is too limited and that courts would benefit from more and clearer guidance. This submission was endorsed by the Secretary of State for Environment, Food & Rural Affairs.

The Council considered that it is undesirable for courts routinely to need to have recourse to case law in order to apply a sentencing guideline and that it would be useful to encapsulate the guidance given by the Court of Appeal on sentencing a VLO in the relevant guidelines so that the information is clear, accurate and readily available to all guideline users.

The proposal was to expand the current wording to say:

> ### Very large organisations
>
> Where an offending company's turnover or equivalent very greatly exceeds the threshold for large companies, it may be necessary to move outside the suggested range to achieve a proportionate sentence.
>
> There is no precise level of turnover at which an organisation becomes "very large". In the case of most organisations it will be obvious if it either is or is not very large.
>
> In the case of very large organisations the appropriate sentence cannot be reached by merely applying a mathematical formula to the starting points and ranges for large organisations.
>
> In setting the level of fine for a very large organisation the court must consider the seriousness of the offence, the purposes of sentencing (including punishment and deterrence) and the financial circumstances of the offending organisation. Regard should be had to the principles set out under "General principles in setting a fine" above and at steps 5 to 7 below.
>
> Particular regard should be had to making the fine proportionate to the means of the organisation, sufficiently large to constitute appropriate punishment, and sufficient to bring home to the management and shareholders the need for regulatory compliance.

It was proposed to adopt similar wording in the following guidelines:

- Organisations: Breach of duty of employer towards employees and non-employees/ Breach of duty of self-employed to others/ Breach of Health and Safety regulations

- Organisations: Breach of food safety and food hygiene regulations
- Organisations: Sale of knives etc by retailers to persons under 18

Responses

The Senior District Judge supported the proposals saying that they 'reach an appropriate balance between highlighting the key case law principles without seeking to confine or restrict the courts too narrowly'. The CPS agreed with the proposals but thought that 'monopoly status may be a factor relevant to sentencing, and therefore that it ought to be referred to within the guidelines'. The Legal Committee of HM Council of District Judges (Magistrates' Courts) thought the proposed wording was helpful but considered that the final paragraph was an unnecessary duplication of matters covered at later steps of the guidelines.

Other respondents proposed changes:

The proposed amendments are consistent with the guidance of the Court of Appeal in R v Thames Water Utilities Ltd [2019] EWCA Crim 1344 and R v Places for People Homes [2021] EWCA Crim 410. We agree that it is not appropriate to identify very large organisations by reference to a fixed threshold of turnover, which is not always the best measure in any event. There are always going to be cases which exceed the upper limit. For example, if a threshold of (say) £300 million was set, the Council would then have to decide what guidance to give about organisations with a turnover substantially in excess of the new upper threshold.

Although Para 3 of the draft echoes some of what was said by Popplewell LJ at paras [34] and [35] of Places for People, we suggest that for clarity it would be helpful also to include the qualification which he added. We suggest para 3 should read as follows:

"In the case of very large organisations the appropriate sentence cannot be reached by merely applying a mathematical formula to the starting points and ranges for large organisations. The extent to which any increase is required will depend upon the particular circumstances of each individual case."

The proposed additional wording makes no reference to the specified aggravating and mitigating features within the existing guidelines. For the avoidance of doubt, it might be preferable to make it clear that it is a relevant consideration. The fourth paragraph would therefore read as follows:

"In setting the level of fine for a very large organisation the court must consider the seriousness of the offence, any aggravating or mitigating factors (as identified below), the purposes of sentencing (including punishment and deterrence) and the financial circumstances of the offending organisation. Regard should be had to the principles set out under "General principles in setting a fine" above and at steps 5 to 7 below."

The consultation document suggests that the additional guidance on very large companies should be included in the guidelines on Environmental Offences, Health and Safety, Food Safety and Sale of Knives. We suggest that it should also be included in the guideline on Corporate Manslaughter.

Criminal Bar Association

We agree broadly with the additional wording proposed but respectfully submit that the first paragraph (which has not changed from the wording in the current guidance) does not now wholly reflect the current caselaw as consolidated in R. v Places for People Homes, Court of Appeal (Criminal Division) 24 February 2021 [2021] EWCA Crim 410; [2021] 2 Cr. App. R. (S.) 37, which at paragraph 31/3 states;

"in the case of very large organisations the starting points and ranges for large organisations do not apply."

We submit that the words, '…..it may be necessary to move outside the suggested range to achieve a proportionate sentence', imply, incorrectly, that a sentencing court should start with a consideration of the sentencing ranges for large organisations. Given the size of organisation under consideration here it is somewhat inconceivable that these ranges could ever be applicable. Moreover, given the new proposed final paragraph ("Particular regard should be had….."), this wording does not provide the right starting point for a sentencing court. We submit that for VLO's which very greatly exceed the threshold the first paragraph should be amended to the following wording:

"Where an offending company's turnover or equivalent very greatly exceeds the threshold for large companies, fines exceeding those suggested for large companies should be considered."

We propose that the final paragraph of the new wording proposed be amended slightly as follows (emphasis added to highlight our amendment):

Particular regard should be had to making the fine proportionate to the means of the organisation, sufficiently large to constitute appropriate and proportionate punishment, and sufficient to bring home to the management, Board, and shareholders the need for regulatory compliance.

We submit that this amendment is desirable given that, for example, a fine of £5 million will affect a company with a turnover of £200 million considerably more than a company with a turnover of £4 billion, merely because of the difference in size. To achieve the same impact and thereby be proportionate with the impact of a similar fine on smaller sized organisations the court should consider increasing the fine on the grounds of proportionality to size of the organisation alone.

Environment Agency

The Health and Safety Executive made a very similar suggestion regarding the opening paragraph: ‘Where an offending company’s turnover or equivalent very greatly exceeds the threshold for large companies, sentences exceeding those suggested for large companies should be considered.’

The Health and Safety Lawyers’ Association (HSLA) recognised why turnover had been adopted as a measure and that the guideline provide flexibility in the later steps but considered that turnover is a ‘blunt instrument’ and said that courts often do not adopt the flexibility in the guideline in practice. They considered that public bodies may be classed as VLOs but may be facing severe financial difficulties and that this should be a consideration at the point of considering the starting point, rather than only at a later stage – see their recommendation [1] below. They noted that the proposed wording did not reflect the judgment in R v Whirlpool UK Appliances Ltd [2017] EWCA Crim 2186 where the court took the starting point for a large company and adjusted from that – see [2]. They were concerned that the reference to a fine being ‘sufficient to bring home’ the need for regulatory compliance over-emphasises the size of the organisation at the expense of the relevance of the findings of seriousness [3a] and [3b]. Finally they considered that there is a perception that courts tend to give insufficient weight to a VLO’s commitment to health and safety and more detailed reasons would help to address that [4]

The following recommendations are made [additions in bold]:

Where an offending company’s turnover or equivalent very greatly exceeds the threshold for large companies, it may be necessary to move outside the suggested range to achieve a proportionate sentence. **However, this is not automatic as there will be many organisations, particularly in the public sector, where the turnover figure needs to be interpreted in the context of the purposes of an organisation which is not primarily focused on profit [1].**

There is no precise level of turnover at which an organisation becomes "very large". In the case of most organisations it will be obvious if it either is or is not very large.

In the case of very large organisations the appropriate sentence cannot be reached by merely applying a mathematical formula to the starting points and ranges for large organisations. **However, it is appropriate to begin by looking to the appropriate figures for a 'large' company and adjusting as may be appropriate by reference to them [2].**

In setting the level of fine for a very large organisation the court must consider the seriousness of the offence, the purposes of sentencing (including punishment and deterrence) and the financial circumstances of the offending organisation. Regard should be had to the principles set out under "General principles in setting a fine" above and at steps 5 to 7 below. **Further, the court may wish to consider whether any appropriate uplift should be applied by reference to the stated aggravating factors rather than the size of the organisation alone [3a].**

Particular regard should be had to making the fine proportionate to the means of the organisation, sufficiently large to constitute appropriate punishment, and sufficient to bring home to the management and shareholders the need for regulatory compliance **consistent with the court's finding with regards to, in particular culpability, as well as the other relevant factors set out in the Guidance [3b]. Encouragement of good health and safety practices can be expressed in the sentencing remarks by specifically identifying the nature and extent of appropriate reductions where the identified mitigating factors are present [4].**

Health and Safety Lawyers' Association

Eversheds Sutherland (Intl) LLP identified issues with defining a VLO (see further below), when it may be necessary to go outside the range, how profitability and other financial markers should be taken in to account and the extent to which existing investment in health and safety is taken in to account. They proposed the following points from the case of R v Places for People Homes Limited [2021] EWCA Crim 410 (shown in bold) should be incorporated in to the guideline:

"In the case of **very large organisations the starting points and ranges for large organisations do not apply…** That is not to say, however, that for very large organisations the court should not follow the steps required by the Guideline…

In the case of **organisations which are merely large, not very large, the court is not bound by, or even bound to start with, the ranges of fines suggested by** the Sentencing Council…

There should be no mechanistic extrapolation from the figures in the table for large companies either in the case of larger “large” companies or “very large” organisations…

It is apparent, therefore, that **there is not, and should not be, a bright dividing line between “large” and “very large” organisations. The size of the organisation lies on a spectrum** and the sentencing objectives clearly identified in the steps set out in the Guideline and the above authorities [Thames Water, Sellafield], apply to both.

The larger the company the greater the fine may need to be in order for it to be proportionate to the organisation' means, to constitute adequate punishment, and to bring home to management and shareholders the need for regulatory compliance. **The extent to which any increase is required will depend upon the particular circumstances of each individual case and it is not something for mechanistic extrapolation.**”

Several respondents referred to the issue of defining a VLO:

The revised guideline says that it is not possible to define precisely what constitute a very large organisation but it will, in most cases, be obvious whether the organisation is very large or not (put colloquially, sentencers will know one when they see it). This is rather vague, but a pragmatic approach seems to be best. The guidance that the amount of the fine should be “sufficient to bring home to the management and shareholders the need for regulatory compliance” is important.

Law Society

HMRC define a very large organisation as having taxable profits in excess of £20 million. Is there any reason why this should not be adopted in these guidelines?

Individual

Yes agree. In opening sentence would be helpful to have threshold figure for large companies stated (ie in excess of £xx) or have a profit ratio listed and a guide number stated

Individual

> Is it not possible to give some guidance on the definition of a VLO? eg Number of employees, annual turnover, annual profit?
>
> Individual

Eversheds sought the views of solicitors and counsel working in the field of health and safety. They found that "the approach to determining if an organisation is a VLO differs considerably in different court centres and between different judges (whether sitting in Magistrates' or Crown Courts)." They go on to say:

> Without any further, tangible, guidance on the approach to be taken to VLOs, the capacity for wildly differing approaches to sentencing - and therefore fines - will continue. In our submission, it is clear from the above that any further guidance needs to go beyond the existing proposed wording, and should focus on […] Confirming that, for good reason, there is no specific threshold for VLO status (perhaps with reference to case law …), or better guidance as to the circumstances in which VLO status may be appropriate.

Outcome

The Council agreed with the suggestion that the new wording (suitably adapted) should also be included in the Corporate manslaughter guideline.

Reviewing all of the (sometimes contradictory) suggestions for changes to the wording, the Council noted that most of the valid points mentioned by respondents are already covered if courts follow all of the steps of the guideline, and the usefulness of placing extra emphasis on one aspect or another depends on the circumstances of the individual case.

The following changes to the wording consulted on were agreed (deletions struck through, additions in bold):

Very large organisations

Where an offending company's turnover or equivalent very greatly exceeds the threshold for large companies, **courts should consider fines outside the range for large companies** ~~it may be necessary to move outside the suggested range~~ to achieve a proportionate sentence.

There is no precise level of turnover at which an organisation becomes "very large". In the case of most organisations it will be obvious if it either is or is not very large.

In the case of very large organisations the appropriate sentence cannot be reached by merely applying a mathematical formula to the starting points and ranges for large organisations.

In setting the level of fine for a very large organisation the court must consider the seriousness of the offence **with reference to the culpability and harm factors above and the aggravating and mitigating factors below**, the purposes of sentencing (including punishment and deterrence) and the financial circumstances of the offending organisation. Regard should be had to the principles set out under "General principles in setting a fine" above and at steps 5 to 7 below.

Particular regard should be had to making the fine proportionate to the means of the organisation, sufficiently large to constitute appropriate punishment **depending on the seriousness of the offence**, and sufficient to bring home to the management and shareholders the need for regulatory compliance.

Revenue fraud

The issue

Section 32 of the Finance Act 2024 has doubled the maximum penalty for various revenue fraud offences to 14 years. For offences committed on or after February 22, 2024 the maximum for these offences covered by the Revenue fraud guideline is now **14 years** for:

- Customs and Excise Management Act 1979 (sections 50, 170 and 170B)
- Taxes Management Act 1970 (section 106A)
- Value Added Tax Act 1994 (section 72)

The Revenue fraud guideline already had three sentence tables:

- Table 1 for offences with a maximum of 10 years
- Table 2 for offences with a maximum of 7 years, and
- Table 3 for offences with a maximum of life imprisonment.

The Council noted that the policy paper relating to the legislative change states that the increase relates to “the most egregious examples of tax fraud”. With regard to operational impacts the paper states: “There may be increased prison costs associated with longer sentencing if imposed by Sentencing Council”.

The Council proposed to add a fourth table to the Revenue fraud guideline for offences with a 14 year statutory maximum that maintains sentences at the lower end of seriousness at current levels but allows for higher sentences were the amount defrauded is over £2 million (harm categories 1, 2 and 3).

Responses

Respondents approved of this approach. A judge commented, ‘I think that this change will have a significant effect on "lorry driver" cases. I sit at Maidstone and it is not uncommon for us to have cases involving the importation of cigarettes. A lorry load of cigarettes will often have a value in excess of £2 million. The suggestion from counsel in cases is that as the value of duty on cigarettes has increased, we have seen an increase in sentence length as the amount defrauded has gone up, even if the number of cigarettes has not. There is a policy issue as to whether this is the intention behind the draft guideline, although plainly with the increase in the sentence maxima it may well be that this is the intention.’

Outcome

The Council decided to implement the change consulted on.

Standard language in guidelines

The issue

The Council received some feedback from a judge regarding the inconsistency of language in guidelines and a lack of clarity as to whether a sentencer can take a starting point higher or lower than that in the sentencing table before adjusting for aggravating and mitigating factors.

The Council was clear that adjustment from the starting point before further adjustment for aggravating and mitigating factors was permissible and agreed that the wording in guidelines should make this clearer. The Council looked the various forms of wording used across guidelines and concluded that it would be preferable for these to be standardised wherever possible.

The Council noted that variations in wording may be required for particular offences but absent any special requirements it proposed to adopt the following standard wording for steps 1 and 2 for new and existing guidelines.

Step 1 – Determining the offence category

The court should determine the offence category with reference only to the tables below. In order to determine the category the court should assess **culpability** and **harm**.

Culpability Where there are factors present from more than one category of culpability, the court should weigh those factors in order to decide which category most resembles the offender's case.
A – High culpability • Factors • Factors
B – Medium culpability • Factors • Factors
C – Lesser culpability • Factors • Factors

Harm Where there are factors present from more than one category of harm, the court should weigh those factors in order to decide which category most resembles the offender's case
Category 1 • Factors • Factors
Category 2 • Factors • Factors
Category 3 • Factors • Factors

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point 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.

An adjustment of the starting point, upwards or downwards, may then be necessary to reflect particular features of culpability and/or harm (for example, the presence of multiple factors within one category, the presence of factors from more than one category, or where a case falls close to a borderline between categories.)

	Culpability		
Harm	**A**	**B**	**C**
Category 1	**Starting point** Sentence	**Starting point** Sentence	**Starting point** Sentence
	Category range Sentence – Sentence	**Category range** Sentence – Sentence	**Category range** Sentence – Sentence
Category 2	**Starting point** Sentence	**Starting point** Sentence	**Starting point** Sentence
	Category range Sentence – Sentence	**Category range** Sentence – Sentence	**Category range** Sentence – Sentence
Category 3	**Starting point** Sentence	**Starting point** Sentence	**Starting point** Sentence
	Category range Sentence – Sentence	**Category range** Sentence – Sentence	**Category range** Sentence – Sentence

The tables below contain a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in a further upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness
Statutory aggravating factors: • Factors • Factors
Other aggravating factors: • Factors • Factors • Factors

Factors reducing seriousness or reflecting personal mitigation
• Factors • Factors • Factors

Responses

Most respondents agreed with the proposals to standardise language in guidelines. The Legal Committee of HM Council of District Judges (Magistrates' Courts) suggested a change:

> We note the proposed change at step 2 states "An adjustment of the starting point, upwards or downwards, may then be necessary to reflect particular features of culpability and/or harm (for example, the presence of multiple factors within one category, the presence of factors from more than one category, or where a case falls close to a borderline between categories.)".
>
> Where the proposed amendment states "…the presence of factors from more than one category…", we believe there could be a risk of double-counting here. For example, many of the guidelines set out at step 1, where finding 'culpability B', "other cases that fall between categories A or C because: factors are present in A and C which balance each other out…".

If a sentencer has already taken into account the presence of factors from A and C in assessing culpability (for example in finding culpability is therefore B), factors present in A and C, should not then be taken into account at this juncture too. We would therefore suggest this part of the intended amendment reads:

"An adjustment of the starting point, upwards or downwards, may then be necessary to reflect particular features of culpability and/or harm (for example, the presence of multiple factors within one category, the presence of factors from more than one category **(where not already taken into account at step 1)**, or where a case falls close to a borderline between categories).

The CBA also had a suggestion for a change:

Subject to a slight difference in wording, the CBA supports this proposal.

We agree that the existing offence guidelines are inconsistent in their wording at Step 2. It would be helpful to adopt standard wording to ensure consistency.

At the risk of disagreeing over a mere preposition, we suggest that the guideline should not refer to "An adjustment **of** the starting point…". A starting point is fixed and immutable. Section 121(5) and 121(10) of the Coroners' and Justice Act 2009 defines the meaning of starting point: it is the sentence specified in a guideline by the Sentencing Council as the starting point within each category of that offence. The sentencer can depart from the starting point, but they cannot change it. Existing guidelines therefore refer to adjustments *"from"* the starting point.

The second paragraph under Step 2 should therefore read:

"An adjustment **from** the starting point, upwards or downwards, may then be necessary to reflect particular features of culpability and/or harm …"

A magistrate thought that the proposed wording at step two relating to aggravating and mitigating factors could be improved:

I agree with the new proposed standard wording for except for where the additional factual elements are discussed; in particular:

> Identify whether any combination of these, or other relevant factors, should result in a further upward or downward adjustment from the starting point.

While this does note it is a 'further upward or download adjustment', the reuse of the term 'starting point' is still unclear, compared to mentioning the previously calculated position (e.g. it suggests to 'return' to the starting point). I would suggest wording instead as:

> Identify whether any combination of these, or other relevant factors, should result in a further upward or downward adjustment

The Health and Safety Executive made an interesting point regarding sentencing organisations:

> In respect of the Health and Safety Guideline for organisations (and other similar guidelines), reference is made to movement outside of the suggested range for offending organisations whose turnover very greatly exceeds the threshold for large organisations. We note the Sentencing Council's view that adjustment from the starting point before further adjustment for aggravating and mitigating factors is permissible, though the proposed wording gives a specific example of multiple culpability factors.
>
> We would seek clarity as to whether the Council is content that adjustment can also be made from the starting point in light of where the organisation's turnover falls within the range (i.e. whether the court should consider reducing the starting point for a small company where the turnover is £2.5m, or increasing the starting point for a medium organisation whose turnover is £48m) prior to adjustment for aggravating and/or mitigating factors, as long as there is no double counting for the same reason at steps 3 or 4.

Outcome

The Council considered the suggested changes to the wording in guidelines for sentencing individuals and decided to adopt the wording consulted on subject to the following changes to at step two (additions shown in bold, deletions struck through):

Step 2 – Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point 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.

An adjustment ~~of~~ **from** the starting point, upwards or downwards, may ~~then~~ be necessary to reflect particular features of culpability and/or harm (for example, the presence of multiple factors within one category, the presence of factors from more than one category **(where not already taken into account at step 1)**, or where a case falls close to a borderline between categories.)

[Sentence table]

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any

combination of these, or other relevant factors, should result in a further upward or downward adjustment ~~from the starting point~~. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

[aggravating and mitigating factors]

Regarding the suggestion made by the Health and Safety Executive regarding sentencing organisations, the Council considered that the adjustments courts are required to make at steps three and four are sufficient and that introducing another formal level of adjustment at step two would overcomplicate the guidelines.

The Council also decided to make a change to the wording at step one which was not raised by respondents. To make it clear that the factors at step are exhaustive the words ‘factors in the’ have been added to the text below:

Step 1 – Determining the offence category

The court should determine the offence category with reference only to the factors in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The changes will apply to most guidelines, but each guideline will need to be considered separately to ensure that each aspect of the standard wording is applicable and does not have any unintended consequences. The Council has therefore decided that the changes will be made over a period of a few months. A record of what changes have been made and when will be available on the Sentencing Council website.

Totality

The issue

The Council consulted on changes to the Totality guideline to:

- add a legislative reference to the General principles section
- give further guidance on imposing a determinate sentence where there is an existing sentence
- give guidance on imposing a new community order alongside an existing order

Responses

The first of the proposals was welcomed by all who commented on it.

There were some comments on the length and relevance of the proposed additions relating to determinate sentences.

> With regards to the proposed new table, the Sentencing Council acknowledges that this involves repetition within the totality guideline. I query whether the benefits of the proposed change (completeness) outweigh the disadvantages of the added length and density. For example, in the proposed draft guideline on totality, the table on how to approach an 'existence sentence, where determinate sentence to be passed' also includes factors for consolidating existing community orders where the court does not consider custody to be necessary. This information, which is repeated elsewhere in the 'community orders' section, may be considered to stray too far from the primary objective and omits some of the detail later addressed in the community orders section of the totality guideline. It may be preferrable instead to have a row for 'offender subject to existing community order' and direct readers to 'see below under non-custodial sentences for further guidance' as the same principles apply. This would avoid repetition while also preserving the detail given further below on the same topic.
>
> Senior District Judge

The Probation Service provided some comments suggesting that the current (and proposed) wording relating to resentencing to a single community order is misleading:

> A court may not impose a single community order for the two offences (the original resentenced offence and the new offence). It must sentence each offence or mark one as no separate penalty. The current reference to imposing a single community order risks the court failing to resentence the original offence or mark it as no separate penalty. We also believe that the existing wording is inconsistent. Whilst suggesting that a court may impose a single order, it acknowledges that the court must "sentence afresh for both the original and the additional offence".

They suggested the following changes:

> **When sentencing both the original offence and the new offence** the sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of associated offences is sufficiently serious to justify a custodial sentence. If the court does not consider that custody is necessary, it should impose a ~~single~~ community order for each offence with the same types of requirements and end date that reflects the totality of the overall criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.

The Probation Service also commented on the proposed new wording relating unpaid work:

> We would highlight that it is the unpaid work requirement (paragraph 2(1)(b), schedule 9 Sentencing Code), rather than the order, which prohibits the unpaid work exceeding 300 hours.

They therefore suggested a minor change:

> Where the offender was subject to an unpaid work requirement on the earlier order, the number of hours remaining to be completed on that requirement ~~earlier order~~ should be added to the number of hours of unpaid work the court would impose for the new offence.

The Council of District Judges had reservations about the content:

the proposed guidance states that where there is an order with outstanding unpaid work hours, the outstanding hours should be added to the number of hours which would be imposed for the new offence. This appears to be too simplistic an equation. There may be examples where a large number of hours would have a bigger impact on some offenders than others, particularly those who have some form of disability. Perhaps the guidance should state the number of hours remaining to be completed should ***ordinarily*** be added to the number of hours which the court would impose for the new offence. The court however should review the total number of hours to ensure that the order is not unduly onerous taking into account the individual characteristics of the offender.

For similar reasons, it is felt that the next paragraph is too strong by directing courts that they should include further punishment (curfew or fine) once the limit of 300 unpaid work hours have been reached if the court feels further unpaid work is justified.

In relation to imposing a new community order to run alongside an existing one, the Probation Service suggested a change to the proposed wording:

While it is generally preferable to revoke any earlier order, there may be situations where for reasons of continuity it would be helpful to allow an existing order to continue alongside a new order. It is not unlawful for the court to leave the existing community order running and impose a new community order even if the aggregate number of hours of unpaid work exceeded 300. However, it will be generally undesirable to make an order which imposes ~~a significantly longer total period~~ an unpaid work requirement which means that the aggregate number of unpaid work hours is significantly greater.

Outcome

In view of the positive responses to the proposal to add a legislative reference to the General principles section, the Council decided to make the change consulted on.

In respect of imposing a determinate sentence where there is an existing sentence, the Council took account of the responses to the consultation and decided to amend the following paragraphs (the same wording is also used in relation to the Crown Court) to read:

Existing sentence, where determinate sentence to be passed	
Circumstance	**Approach**
Offender subject to an existing community	If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a

order imposed by a magistrates' court	magistrates' court of an additional offence, the magistrates' court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence (see below under non-custodial sentences for further guidance). **When sentencing both the original offence and the new offence** the sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of offences is sufficiently serious to justify a custodial sentence. The court must take into account the extent to which the offender complied with the requirements of the community order.

In respect of imposing a community order where there is an existing community order, the Council noted the helpful comments and suggestions from respondents and decided to amend the wording to:

Community orders	
Circumstance	**Approach**
Offender convicted of an offence while serving a community order	The power to deal with the offender depends on the offender being convicted while the order is still in force; it does not arise where the order has expired, even if the additional offence was committed while it was still current. (Paragraphs 22 and 25 of Schedule 10 to the Sentencing Code) **Community order imposed by magistrates' court** If an offender, in respect of whom a community order made by a magistrates' court is in force, is convicted by a magistrates' court of an additional offence, the magistrates' court should ordinarily revoke the previous community order and sentence afresh for both the original and the additional offence (see below for further guidance). **Community order imposed by the Crown Court** Where an offender, in respect of whom a community order made by the Crown Court is in force, is convicted by a magistrates' court, the magistrates' court may, and ordinarily should, commit the offender to the Crown Court, in order to allow the Crown Court to re-sentence for the

original offence. The magistrates' court may also commit the new offence to the Crown Court for sentence where there is a power to do so.

Where the magistrates' court has no power to commit the new offence it should sentence the new offence and commit the offender to the Crown Court to be re-sentenced for the original offence.

When sentencing both the original offence and the new offence the sentencing court should consider the overall seriousness of the offending behaviour taking into account the additional offence and the original offence. The court should consider whether the combination of offences is sufficiently serious to justify a custodial sentence. If the court does not consider that custody is necessary, it should impose identical community orders for each offence to run concurrently that reflect the totality of the overall criminality. The court must take into account the extent to which the offender complied with the requirements of the previous order.

Where the offender was subject to an unpaid work requirement on the earlier order, the number of hours remaining to be completed on that requirement should ordinarily be added to the number of hours of unpaid work the court would impose for the new offence.

If the aggregate number of hours would exceed 300 (which cannot be exceeded in the new order), the court should consider imposing a further punitive requirement (or a fine) in addition to unpaid work.

In all cases the court must ensure that requirements imposed are the most suitable for the offender – see the Imposition of community and custodial sentences guideline.

While it is generally preferable to revoke any earlier order, there may be situations where for reasons of continuity it would be helpful to allow an existing order to continue alongside a new order. It is not unlawful for the court to leave the existing community order running and impose a new community order even if the aggregate number of hours of unpaid work exceeded 300. However, it will be generally undesirable to make an order which imposes an unpaid work requirement which means that the aggregate number of unpaid work hours is significantly greater.

Shop theft and Benefit fraud guidelines

The issue

Following the addition in April 2024 of the mitigating factor 'Difficult and/or deprived background or personal circumstances' to most offence specific sentencing guidelines, some magistrates queried how this factor relates to the existing mitigating factor of **'**Offender experiencing **exceptional** financial hardship' in the Theft from a shop or stall guideline (this is a factor that is most likely to apply in cases were the items taken are food or essential daily living supplies). There is a similar factor in the Benefit fraud guideline.

The factor of 'Difficult and/or deprived background or personal circumstances' had been introduced alongside the factor of 'Prospects of or in work, training or education' in the interests of transparency and consistency as these are factors which courts routinely take into account but were previously absent from guidelines.

The Council consulted on narrowing the factor relating to financial hardship in the shop theft guideline and clarifying this factor in both guidelines:

- Rewording the factor in the Theft from a shop or stall guideline to: 'Offender experiencing **exceptional** financial hardship at the time the theft was committed'
- Adding an expanded explanation (as a dropdown) to the factors in both guidelines which reads:

> **Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm**
>
> Where the offence was motivated by circumstances arising out of exceptional and immediate financial hardship, this may be relevant to the offender's responsibility for the offence.
>
> This factor may apply independently of or in conjunction with the wider factor of 'Difficult and/or deprived background or personal circumstances'

Responses

Most respondents agreed with the proposals. Some individual magistrates felt that the factor was still not entirely clear but none suggested changes to improve the wording.

Outcome

The Council agreed to make the changes consulted on to the shop theft and benefit fraud guidelines which would make it clear that the potential mitigation relates to exceptional financial hardship at the time of the offence.

Wording relating to community orders in guidelines

The issue

The Council noted that there was some potential conflict between guidance in the Allocation guideline relating to committing cases to the Crown Court even if a community order may be the appropriate sentence, and the existing wording used in various guidelines that refer to community orders as an alternative to a short custodial sentence. The Council therefore consulted on amending the wording in guidelines (the wording below appears in various guidelines for example the Theft from shop or stall guideline):

> Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under part 10, or an alcohol treatment requirement under part 11, of Schedule 9 of the Sentencing Code may be a proper alternative to a short or moderate custodial sentence.
>
> Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under part 9 of Schedule 9 of the Sentencing Code may be a proper alternative to a short or moderate custodial sentence.
>
> However, if a magistrates' court is of the opinion that that the offending is so serious that the Crown Court should have the power to deal with the offender, the case should be committed to the Crown Court for sentence even if a community order may be the appropriate sentence (see the Allocation guideline).

Responses

The JCS agreed with the changes in so far as they reflect the law but noted:

> In practice, JCS members have received feedback from resident judges at the crown court that, in their view, too many offences of possession of indecent images are committed to the crown court for sentence. The implication is that the somewhat unfettered discretion to decide that offending is so serious that the Crown Court should have the power to deal with the offender, notwithstanding a community order may be the appropriate sentence, is contributing to crown court caseloads to a greater degree than may be desirable. JCS took the view that this was relevant to the impact of the change.

The Marie Collins Foundation (a charity focused on addressing and responding to the significant problem of Technology-Assisted Child Sexual Abuse) made a suggestion:

We agree with the proposed changes but specifically as this relates to magistrates' referring serious matters for committal to the Crown Court and we suggest that the wording on this aspect needs to be much stronger, as suggested here:

However, if a magistrates' court is of the opinion that that the offending is so serious that the Crown Court should have the power to deal with the offender, the case ~~should~~ **MUST** be committed to the Crown Court for sentence even if a community order may be the appropriate sentence (see the Allocation guideline)

It is our view that where an offence is deemed so serious that a magistrate would consider elevating the case to the Crown Court, this must be automatically done, regardless of whether a community order is an appropriate sentence or not.

The Legal Committee of HM Council of District Judges (Magistrates' Courts) and the Senior District Judge proposed some minor changes:

We agree with the proposed changes although we think the proposed wording should be changed. As drafted it does not follow the statutory language sufficiently closely. Eg the MHTR paragraph should state "Where *the offender suffers from a mental condition that requires and is susceptible to treatment but does not warrant the making of a hospital order, and where the arrangements and consent conditions apply, a community order with a mental health treatment requirement.....etc*".

Also where the guidance states *"(see the Allocation guideline)*", it would be easier to spare the reader the journey to and through that guideline by instead inserting the relevant words from it ie *"(this will allow the Crown Court to deal with any breach of a community order if that is the sentence passed)*". It's a few more words, but if it's worth inserting this scenario, we think it's worth providing the full explanation in one place.

Legal Committee of HM Council of District Judges (Magistrates' Courts)

It is appropriate to ensure consistent information across all guidelines. It may assist some courts, in understanding the rationale, to add the following italics or equivalent:

"However, if a magistrates' court is of the opinion that that the offending is so serious that the Crown Court should have the power to deal with the offender *in the event of a breach*, the case should be committed to the Crown Court for sentence even if a community order may be the appropriate sentence (see the Allocation guideline)."

Senior District Judge

Outcome

The Council agreed with the suggestion from the Legal Committee of HM Council of District Judges (Magistrates' Courts) to repeat the wording in the Allocation guideline which would also deal with the point raised by the Senior District Judge.

> Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under part 10, or an alcohol treatment requirement under part 11, of Schedule 9 of the Sentencing Code may be a proper alternative to a short or moderate custodial sentence.
>
> Where the offender suffers from a medical condition that is susceptible to treatment but does not warrant detention under a hospital order, a community order with a mental health treatment requirement under part 9 of Schedule 9 of the Sentencing Code may be a proper alternative to a short or moderate custodial sentence.
>
> However, if a magistrates' court is of the opinion that that the offending is so serious that the Crown Court should have the power to deal with the offender, the case should be committed to the Crown Court for sentence even if a community order may be the appropriate sentence (this will allow the Crown Court to deal with any breach of a community order if that is the sentence passed).

Wording on mandatory minimum sentences

The issue

The Council consulted on adding the following line to the minimum terms step (immediately after the reference to Newton hearings) in all relevant guidelines:

> The burden of establishing that exceptional circumstances exist is on the offender.

Responses

Most respondents who commented were in favour of this addition. Some (including the Council of District Judges) suggested that the standard of proof should also be stated. The Criminal Law Solicitors' Association (CLSA) had a different view:

> We do not agree that the word 'burden' should be used, as this creates the impression that there is high standard of proof in order for the defendant to raise 'exceptional circumstances'. If clarity is needed, which we do not think is the case, it may be more suitable to say 'it is for the offender to raise exceptional circumstances'. If such a reference is included, there should also be guidance that unrepresented defendant's are pointed to this 'burden' by the court before proceeding to sentence.

Outcome

The Council decided to adopt the following wording:

> It is for the offender to establish that the exceptional circumstances exist.

Domestic abuse

The issue

The Council proposed adding the domestic abuse aggravating factor to 23 guidelines. Most respondents agreed with this proposal but there were some dissenting voices:

Responses

Although we believe that no immediate issues would be caused by the addition of the domestic abuse guideline reference to the offence guidelines identified by the Council, we are concerned that the addition would undermine the non-exhaustive nature of the list of offences to which the guideline is applied.

We agree with the Sentencing Council that the change is unlikely to have a significant impact on sentencing practices, we are therefore of the position that the addition should not be made.

Alternatively, we would propose the more extensive change, …, which would see the addition of a newly formatted step into all guidelines requiring courts to take into account any relevant overarching principle. We argue that this would improve the consistency and clarity across all sentencing guidelines and reflect the non-exhaustive nature of the domestic abuse overarching principle.

Student Legal and Social Policy Clinic, London South Bank University

We do not believe that this aggravating factor should be added to the following guidelines: breach of a criminal behaviour order; Firearms – Carrying in a public place; Firearms – Possession by person prohibited; Firearms – Possession of prohibited weapon; Firearms – Possession with intent – other offences; Theft – general.

Criminal Law Solicitors' Association

Outcome

The Council carefully considered the CLSA's suggestion and taking into account the general agreement to the proposed list, concluded it was appropriate to add the factor to the following guidelines as proposed in the consultation:

- Administering a substance with intent
- Bladed articles and offensive weapons – possession
- Bladed articles and offensive weapons – threats
- Breach of a criminal behaviour order
- Breach of a protective order (restraining and non-molestation orders)
- Causing or inciting prostitution for gain/ Controlling prostitution for gain
- Committing an offence with intent to commit a sexual offence
- Engaging in sexual activity in the presence of a person with mental disorder impeding choice/ Causing a person, with mental disorder impeding choice, to watch a sexual act
- Engaging in sexual activity in the presence procured by inducement, threat or deception, of a person with mental disorder/ Causing a person with a mental disorder to watch a sexual act by inducement, threat or deception
- Firearms – Carrying in a public place
- Firearms – Possession by person prohibited
- Firearms – Possession of prohibited weapon
- Firearms – Possession with intent – other offences
- Firearms – Possession with intent to cause fear of violence
- Firearms – Possession with intent to intent to endanger life
- Firearms – Possession without certificate
- Aggravated burglary
- Domestic burglary
- Non-domestic burglary
- Robbery – dwelling
- Theft – general
- Trespass with intent to commit a sexual offence
- Voyeurism

Equalities and Impact

Equality and diversity

The Public Sector Equality Duty is a duty set out in section 149 of the Equality Act 2010 (the 2010 Act) which came into force on 5 April 2011. It is a legal duty which requires public authorities (and those carrying out public functions on their behalf) to have "due regard" to three "needs" or "limbs" when considering a new policy or operational proposal. Complying with the duty involves having due regard to each of the three limbs:

The first is the need to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act.

The second is the need to advance equality of opportunity between those who share a "protected characteristic" and those who do not.

The third is to foster good relations between those who share a "protected characteristic" and those who do not.

Under the PSED the protected characteristics are: race; sex; disability; age; sexual orientation; religion or belief; pregnancy and maternity; and gender reassignment. The protected characteristic of marriage and civil partnership is also relevant to the consideration of the first limb of the duty.

Section 149 of the Equality Act 2010 contains further detail about what is meant by advancing equality of opportunity and fostering good relations.

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

Most of the proposals consulted on were for relatively minor or technical changes which the Council felt were unlikely to have any bearing on equality issues. However, respondents were asked if there were any equality issues relating to the proposals that should be addressed.

Several respondents who objected to the proposal to refer to offenders under the age of 18 as 'children' raised this as an equalities issue:

> The proposal concerning the re-classifying all under 18s as children most certainly goes against a sound approach to equality. There should be a recognition that youths have a reasonable expectation to be treated in such a way that recognises their particular status, just as, for example, do persons with disability. Diversity also seems to have been forgotten in that proposal.
>
> Individual

> Infantilising under 18s by referring to them as "children", if it influenced sentencers to treat them substantially differently to over 18s, could have the affect of encourage age discrimination favouring under 18s compared to over 18s. Principles of respect and consideration to the convict must be applied to all.
>
> Individual

Other respondents made more general points:

> I believe that existing guidelines on equality and diversity already apply to all sentencing and should be adhered to.
>
> Magistrate

> We would encourage the council to consider whether any of the guidelines affected by the proposals herein can be analysed to consider parity or disparity between white, black and Asian offenders as we have seen for other guidelines – not least because this may illustrate whether the issue is specific to certain offending or wider.
>
> CPS

The Council noted these responses. The Council rejected suggestion that referring to under 18s as ‘children’ unfairly discriminates against them or unfairly favours them (however as noted above this change is not being made at present). On the point raised by the CPS – when producing new or revised guidelines the Council does consider, and publish, offence specific sentencing data broken down by age, sex, and ethnicity where that information is available. Where the data show potential inequities in sentencing outcomes between different demographic groups, the Council will include a note in relevant guidelines to alert sentencers to this. For the minor changes proposed in this consultation it was not felt necessary or helpful to produce such detailed statistics.

Impact

The Council anticipated that any impact on prison and probation resources from the majority of the changes proposed in this consultation would be minor. Respondents were invited to comment on the likely impact of the proposals on sentencing practice.

> Most are beneficial in providing added guidance to sentencers; in practice, I doubt that most will impact substantially on sentencing practice.
>
> Individual

They are all helpful in attaining the most appropriate sentence

Magistrate

Considering how full UK prisons are I think exploring other options for punishment could be a good idea. As an example I think it would be reasonable to (if necessary or otherwise preferable as a punishment) seize vehicles owned and or regularly driven by the offender (even if they weren't involved in the case) in cases where the driving offences committed could send the offender to prison.

Individual

I am slightly concerned that some the proposals have the potential to increase the already huge burden on the Crown Court, which is toiling under a backlog that will take years to clear.

Magistrate

See also the section on the Careless driving guideline above for responses relating to the likely impact of the changes to that guideline.

Conclusion and next steps

As a result of the consultation the Council will make the changes set out in the sections above. In most cases the amended versions of the guidelines will be published on the Council's website (https://www.sentencingcouncil.org.uk) on 1 June 2025 and come into effect on publication. Exceptions are:

- The revised careless driving guideline which will come into effect on 1 July 2025 to allow time for sentencers to familiarise themselves with the changes
- the changes to standard wording which will be introduced over the months following publication.

Some respondents also made suggestions for future changes to guidelines. The Council welcomes these and will consider them along with other matters that have come to its attention as part of the next annual miscellaneous amendments consultation which is expected to take place in the autumn of 2025.

Consultation respondents

15 Individuals
Brian Watt
Criminal Bar Association
Criminal Law Solicitors' Association
Criminal Sub-Committee of the Council of HM's Circuit Judges
Crown Prosecution Service
David Saunders
Environment Agency
Eversheds Sutherland (Intl) LLP
Fiona Levack
Garden Court Chambers Children's Rights Team
Gary Knight
Glyn Austen
Health and Safety Executive
Health and Safety Lawyers' Association
HHJ Heather Norton & HHJ Gareth Branston
Ian Andrews
Jacqueline Gazzard
Jacqueline Haliday
Joel Gardners
Julie Lewis
Karen Cardiff
Katharine Long
Kathryn Hollingsworth & Kate Aubrey Johnson
Law Society
Lea Taylor
Legal Committee of HM Council of District Judges (Magistrates' Courts)
London Criminal Courts Solicitors' Association
Magistrate
Marie Collins Foundation
Maxine Gibbs
Natalie Tubeileh-Hall
Neil Corre
Nigel D Cook
North Essex Bench
Paul Heywood
Peter Reed
R Bowen
Robert Humphries
Robert Sandiford

Royal College of Paediatrics and Child Health
Senior District Judge of England and Wales (Chief Magistrate)
Serious Fraud Office
Simon Barter
Sir Nic Dakin MP – Ministry of Justice
Standing Together Against Domestic Abuse
Student Legal and Social Policy Clinic, London South Bank University
Suffolk Magistrates Bench
The Justices' Legal Advisers and Court Officers' Service (formerly the Justices' Clerks' Society)
The Road Surface Treatments Association (RSTA) Ltd
Youth Justice Board for England and Wales

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

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