

Sentencing Council

Sentencing guidelines and the Sentencing Council

Overview of Presentation

- Evolution of guidelines
- The Sentencing Council
- Developing guidelines
- Comparison with Minnesota
- Example of guidelines

Evolution of sentencing guidelines

Judicial sentencing discretion structured over time by:

- Statutory context
- Court of Appeal judgments
- Guidelines

Statutory Context

Parliament has provided a statutory framework for sentencers: Examples include:-

- Statutory maximum and minimum for certain offences (e.g s9 Theft Act 1968 provides for 14 year maximum for burglary of a dwelling; minimum sentence of 7 years for third Class A drug trafficking offence under s110 Powers of the Criminal Courts (Sentencing) Act 2000)
- Sentencing thresholds (e.g for seriousness thresholds for community and custodial sentences; dangerousness provisions for IPPs)
- General principles of sentencing (s142 Criminal Justice Act 2003)
- Courts sentencing powers
- Aggravating and mitigating factors (e.g power to increase sentences for previous convictions, racial aggravation)

Role of Court of Appeal

- Judiciary creating principles of sentencing

e.g *Aramah* on drugs (1982); *Milberry* on rape (2003) set a 5 year starting point for rape cases and an 8 year starting point for rape where aggravating features were present.

- Reporting of appellate decisions – e.g Criminal Law Sentencing Series, Current Sentencing Practice

Sentencing Advisory Panel and Sentencing Guidelines Council

SAP established by Crime and Disorder Act 1998 to provide advice to the Court of Appeal. Their guidance was non-binding.

SGC created by Criminal Justice Act 2003. Worked together with SAP to produce sentencing guidelines to encourage consistency in sentencing throughout England and Wales and to support sentencers in their decision making

SAP would produce advice for the SGC to consider

The SGC would publish draft guidelines for consultation and then issue definitive guidelines for sentencers

Courts had a duty to have regard to guidelines under s172 Criminal Justice Act 2003

In 2009 Sentencing Commission Working Group report made a number of recommendations about sentencing.

SGC and SAP disbanded on 6th April 2010

Sentencing Council

Sentencing Council for England and Wales created by Coroners and Justice Act 2009.

Replaced SAP and SGC

Is an independent NDPB sponsored by the Ministry of Justice

14 members

President - Lord Chief Justice

Chairman - Lord Justice Leveson

8 judicial members (2 Court of Appeal Judges, 2 High Court Judge, 2 Circuit Judges, 1 District Judge, 1 Magistrate)

6 non-judicial members (policing; prosecution; defence; probation, promotion of welfare of victims, academic)

1 observer (Ministry of Justice - sentencing policy and administration of sentences)

Supported by an office – with policy, legal, analytical and communications teams

Difference between Sentencing Council and previous guideline authorities

The Sentencing Council more streamlined body

Greater remit on analysis and research, e.g. duty to produce impact assessments for each new guideline

Engaging more with the public to improve understanding about sentences

The Sentencing Council to consider the impact of sentences on victims

Role of the Sentencing Council

The Sentencing Council has responsibility for:-

- developing sentencing guidelines (s120-124 Coroners and Justice Act)
- monitoring the operation and effect of its sentencing guidelines (s128 Coroners and Justice Act)
- promoting awareness amongst the public regarding the sentencing practice in Magistrates' and Crown courts (s129 Coroners and Justice Act).
- Provide an annual report containing a sentencing factors and a non-sentencing factors report (s130-131 Coroners and Justice Act)
- it may also be required to consider the impact of policy and legislative proposals relating to sentencing, when requested by the Government (s132 Coroners and Justice Act)

Purpose of guidelines

- Provide a structured approach to sentencing process
- Promote consistency of approach
- Promote proportionality across offences
- Increase transparency

Comparison with Minnesota

- Guideline framework designed to improve consistency, to make predictions of prison population more accurate and to increase transparency.
- Sentencing Commission in each state responsible for promulgating guidelines, monitoring effect of guideline and provide predictions of their effect on correctional resources.
- Use sentencing grid – with 2 axes. Offence will fall into vertical category of seriousness. Horizontal axes defined by number and type of previous convictions. Interception point provides the range.
- Judge may depart from range only if there is substantial and compelling reason.
- Guidelines are placed before legislature for approval. In Minnesota have statutory force unless vetoed.

How the Sentencing Council develops guidelines

- Identifies priorities (work programme)
- Researches extensively (legal, analytical, engagement with stakeholders)
- Required to take into account following factors (s120(11) CJA 2009)
 - the sentences imposed by courts in England and Wales for offences;
 - the need to promote consistency in sentencing;
 - the impact of sentencing decisions on victims of offences;
 - the need to promote public confidence in the criminal justice system;
 - the cost of different sentences and their relative effectiveness in preventing re-offending;
 - the results of the monitoring carried out under section 128
- Produces draft guideline and consultation paper together with resource assessment setting out the likely effect of guidelines on resources required for provision of prison places, probation and youth justice services
- Consults widely with the public and with Parliament/Ministers
- Publishes Definitive Guidelines

How binding are guidelines?

Section 125 Coroners and Justice Act 2009

(1) Every court-

- a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and*
- b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,*

unless the court is satisfied that it would be contrary to the interests of justice to do so.

Decision-making process

Step 1 – Offence category

Step 2 – Starting point and category range

Step 3 - Statutory factors indicating reduction (e.g assistance to prosecution)

Step 4 – Reduction for guilty pleas

Step 5 – Dangerousness

Step 6 – Totality

Step 7 - Compensation and ancillary orders

Step 8 – Reasons

Step 9 – Remand time

Example: Definitive Guideline GBH (s18)

STEP ONE

Determining the offence category

The court should determine the offence category using the table below.

Category 1	Greater harm (serious injury must normally be present) and higher culpability
Category 2	Greater harm (serious injury must normally be present) and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm

Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)

Victim is particularly vulnerable because of personal circumstances

Sustained or repeated assault on the same victim

Factors indicating lesser harm

Injury which is less serious in the context of the offence

Factors indicating higher culpability

Statutory aggravating factors:

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

Other aggravating factors:

A significant degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Deliberate targeting of vulnerable victim

Leading role in group or gang

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Factors indicating lower culpability

Subordinate role in group or gang

A greater degree of provocation than normally expected

Lack of premeditation

Mental disorder or learning disability, where linked to commission of the offence

Excessive self defence

STEP TWO

Starting point and category range

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point (Applicable to all offenders)	Category Range (Applicable to all offenders)
Category 1	12 years' custody	9–16 years' custody
Category 2	6 years' custody	5–9 years' custody
Category 3	4 years' custody	3–5 years' custody

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 an 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:

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 include:

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Offence committed against those working in the public sector or providing a service to the public

Presence of others including relatives, especially children or partner of the victim

Gratuitous degradation of victim

In domestic violence cases, victim forced to leave their home

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Abuse of power and/or position of trust

Exploiting contact arrangements with a child to commit an offence

Previous violence or threats to the same victim

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, or obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Single blow

Remorse

Good character and/or exemplary conduct

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

Serious medical conditions requiring urgent, intensive or long-term treatment

Isolated incident

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where **not** linked to the commission of the offence

Sole or primary carer for dependent relatives

For further information...

www.sentencingcouncil.org.uk