

**Sentencing Council meeting:**  
**Paper number:**  
**Lead Council member:**  
**Lead official:**

**16 June 2023**  
**SC(23)JUN08 – Guideline priorities**  
**N/A**  
**Steve Wade**  
**steve.wade@sentencingcouncil.gov.uk**

## **1 ISSUE**

1.1 To update Council on the existing current and planned programme of guideline work and seek decisions on the next pieces of work to be picked up. Also, to make Council aware of the range of further guidelines currently on the long list of areas for possible consideration and seek views on whether there are any additional guidelines and/or other areas of work that Council wishes to be considered.

## **2 RECOMMENDATIONS**

2.1 That the Council:

- agrees the next set of guideline priorities
- indicates which areas it next wishes to focus on in the short-to-medium term
- notes that agendas may be slightly shorter for a brief period in coming months

## **3 CONSIDERATION**

### Current Position

3.1 We are going through a period where we have published a reasonable number of definitive guidelines very recently with a couple more due to be published imminently. We published the revisions to the Totality guideline on 2 June and before that published the animal cruelty revisions on 10 May and this year's miscellaneous amendments on 9 March. We are next due (at the time of writing) to publish the definitive guidelines for the main batch of motoring offences on 15 June and the Perverting the course of justice and witness intimidation definitive guidelines on 12 July.

3.2 That will leave a small number of guidelines still at some stage of active development. Assuming sign-off today, we plan to publish the Blackmail, threats to disclose, kidnap, and false imprisonment draft guidelines for consultation shortly after the summer

break. On our current timetable, we are then planning for sign-off of the draft Imposition guideline in September for consultation from November onwards. This year's miscellaneous amendments are due for publication in draft for consultation in September. That then leaves the various immigration offences that are at an early stage of Council's consideration and which are likely to be published in draft in early 2024 under current plans.

3.3 There are two pieces of work that we already have scheduled in to be started once policy team members become free. These are: the second (much smaller) batch of motoring related offences, which Ollie is due to start once the first batch have been published, and non-fatal strangulation, which Mandy is due to pick up once blackmail etc. is published. Finally, there are a small number of potential additional areas of work which, subject to decisions today or at the July meeting, Council may wish to pick up. These include: possible work arising from the discussion on fraud at today's meeting; work arising from the domestic homicide review, which was discussed last month and which we agreed to hold back further discussion upon until we had seen the direction of travel of potential MoJ legislative changes; and possible work arising from a discussion scheduled for July on guidance relating to 'assistance given to the prosecution'. Whether these areas are taken forward, and what the size of any work might be, is dependent on the decisions Council takes but it is assumed that any areas identified would be picked up as a priority as soon as time and resources allow.

#### Next immediate priorities

3.4 Annex A includes a list of possible guidelines that have been previously flagged to the Council as areas for consideration. Policy team members have conducted a very brief scoping exercise for each and the rough ranking indicates their views as to the relative merit of each guideline in terms of if and when it should be picked up. Broadly speaking there are two categories: high and low priority.

3.5 You will see that there is also one area – that of protest offences – which is identified as very high priority. Council will be aware that new offences recently came on to the statute book (so called 'locking on' and 'tunnelling') just prior to the Coronation and we had previously indicated that, once on the statute book, this was an area we wanted to pick up once it was clearer what cases were being prosecuted and what the various salient factors were. This therefore remains a priority but currently we would propose picking this up in 2024 once we have a chance to see what cases are coming before the courts. That 'pause' period aside, this area is probably then the highest priority currently on the list.

**Question 1 – Does Council agree that protest offences ought to be prioritised and, if so, do you agree that we should still wait until 2024 in order to see what types of case are coming to court?**

3.6 There are then a number of other areas that have been identified as next highest in priority, some of which are bracketed together. First, there is cyber-crime. This has been an area that we have often circled and agreed it should be an area that the Council should pick up but there have always been more pressing areas that have taken precedence. When we have looked at this area previously it has often been difficult to identify precisely what offences might be covered by such a guideline – in particular given that many activities that one might consider to be a cyber-crime are in practice covered by existing guidelines (e.g. fraud committed in a digital setting). The most obvious area that has been identified are those offences involving ‘hacking’ under the Computer Misuse Act 1990 (CMA) although there are others. In 2017, we received a paper from the then HHJ Michael Topolski QC (since, I believe, retired), which he produced at our request, outlining a range of offences that could be captured. In addition to the range of CMA offences, he also suggested some offences under the Communications Act 2003, Section 1 of the Malicious Communications Act 1998 and various offences under the Copyright, Designs and Patents Act 1988 and the Video Recordings Act 2010 which may be worthy of consideration in any cyber-crime guideline. We could also add data protection offences to this long potential list.

3.7 One potential caveat is that there have been noises from the Home Office at points about possible changes to the CMA or other digitally-committed offences but at present things seem to have gone quiet. But generally speaking, this is a broad area of offending that continues to increase year-on-year and will only continue to do so. It is also an area that we have long said we intend to look at although, it would be fair to say, we have not received any representations urging us to look at this for some time now. But, on balance, and subject to a fuller scoping paper to nail down the precise range of offences with a clearer idea of current and projected volumes, we would consider the time to be right to pick this guideline up.

3.8 The second area that has been identified is that of wildlife offences. There are a range of offences that could be covered by a guideline in this area and it is one on which we are often lobbied, receiving correspondence over many years. Potentially this is high volume – possibly in the 100s of cases per year although this is not clear – and this would be an opportunity to provide a unified approach to sentencing different types of offending across a range of offences. The UN Office on Drugs and Crime also issued a report in August 2021, ‘Wildlife and Forest Crime Analytic Toolkit Report’, relating specifically to the position

in the UK. The report reflected that many stakeholders interviewed discussed the benefit and importance of guidelines being produced in this area, and the report inter alia does suggest that the authors see some merit in this. That said, the final report does suggest that in England and Wales the lack of much caselaw in this area could make the production of guidelines difficult and it made no firm recommendations in this area. One further point worth mentioning is that, in the course of the discussions with Council members in advance of us kicking off the consultation on our 5-year strategy, wildlife offences (along with animal cruelty offences) were cited as the type of guideline that would probably be a good opportunity to demonstrate the Council's responsiveness to addressing areas that many members of the public feel strongly about.

3.9 The third area identified as reasonably high priority is that of a variety of offences connected with housing matters. Again, these are reasonably high volume and are areas on which we have received correspondence in the past. Offences could cover those relating to so-called rogue landlords or relating to houses of multiple occupation and could potentially include offences related to evictions or breaches of planning law. It is an area which, anecdotally, some sentencers have suggested would be helpful to have guidelines on and the relatively high volumes would mean there would be value in picking it up.

3.10 All these areas appear to have merit in being taken forward and are areas on which we have had a number of representations over the years and so our recommendation is that we pick up these three areas as the next priorities. The precise orderings are likely to be broadly as ordered above but will also be dependent on the relative size of the projects as they are scoped and the capacity of team members as they become free to pick up new pieces of work.

**Question 2 – Does Council agree that the three offence areas above ought to be those that are next picked up?**

Future work

3.11 As members will see from the annex there are a number of areas that have been identified as low priority and which are listed with no further prioritisation among them. Some of these may be areas that we have had raised with us but only once or twice (and that some time ago). Some will be because they were considered briefly as part of the scope of, or otherwise arose during the course of, another guideline and that we agreed not to include at the time but might possibly consider them in the future. And others will simply be offences that we are otherwise aware of, which have a reasonable volume but for which we have not really spotted a significant demand.

3.12 We have not provided a full analysis of these guidelines but some are worthy of at least brief mention. Female genital mutilation offences were briefly explored for inclusion in the child cruelty guidelines when we covered the failure to protect offence but it was decided that it was not sufficiently similar to the rest of the range of offences covered to count as part of the core scope and it was not included. Neglect of vulnerable adults was also briefly discussed as part of the conversations around child cruelty given some of the issues around vulnerability were not dissimilar but, again, was not included as it was felt better to keep the scope around child cruelty offences tight. Fire safety offences are low volume and were not included in the health and safety guidelines but in the response to that consultation it was suggested we may consider doing a guideline for these offences at some point in time. Finally, when the terrorism guidelines were developed there was some discussion about whether it might be useful at some point in the future to pick up a guideline for terrorism offences committed by those under 18.

3.13 Of all of those in the paragraph above, FGM offences are very low volume indeed (only one case could be found in the brief trawl to prepare for this paper) and there are likely to be sensitivities in producing a guideline for terrorism offences relating to offenders under the age of 18. Certainly in the past, although our Children and young persons' guideline was very well received, there was some concern from campaign organisations at the prospect that we would produce too many more offence specific guidelines for sentencing children (such as the under 18s bladed articles guideline). Rightly or wrongly they believe such guidelines would remove some of the flexibility that currently sentencers have when sentencing these age groups with a risk that, if anything, sentences might become more severe. Given that these offences have very low volumes and absent any strong apparent need for guidelines, we would suggest both of these are placed low on the list of priorities for now.

3.14 Most of the other suggestions are relatively low volume and with no pressing need for a guideline. Those offences relating to the neglect of vulnerable adults have a reasonable volume of cases, and there are a variety of different offences. This area therefore might most merit a guideline being considered. There was also a reasonable appetite during the discussion of the Child cruelty guidelines for revisiting these offences at some point but the make-up of the Council will have changed considerably since then as will the legislative and regulatory environment.

3.15 Finally, we do have a number of ongoing evaluations of existing guidelines currently planned or underway and these may of course identify existing guidelines that may merit revision either to a greater or lesser extent but none stand out at present as being particularly likely to show an issue.

3.16 As part of this preparation for this paper we also asked Council members if there were any existing or potential guidelines from your perspective that could usefully be considered for inclusion on our work programme. To date no areas have been identified but some further options may occur to members when considering this paper.

**Question 3 – Which, if any of the low priority offences do members consider ought to be next picked up after the high priority cases above? Are there any areas that should definitely *not* be picked up in the short to medium term? Are there any other areas not listed that members feel warrant inclusion?**

Longer term

3.17 It will not have escaped members attention that many of the low priority guidelines are relatively low volume, low profile, and do not have an immediately pressing need for a guideline. This is a natural consequence of us having now produced guidelines for most – if not all – of the high-volume offences and those lower volume offences that particularly required a guideline. That is not to say that there is no merit in producing guidelines for those offences and which would be of use to those sentencing them even if they lack the gravity of some of the guidelines that we have worked on more recently. In addition, many of our existing guidelines are now relatively old and may, whether as a result of our evaluations or otherwise, need to be looked at again over the next few years to see if they need amendment or updating. Finally, changes to legislation – whether to existing offences or creating new offences – will require work. So there is plenty of guideline development work still to be done.

3.18 Nonetheless it is also worth pointing out that, given the number of guidelines produced to date, the evaluations are starting to stack up a little. Now would seem to be a good time for some of the policy team to provide a little more support to the analytical team in carrying out those evaluations and helping them draw conclusions as to what may be required in terms of guideline revision as a result. It is possible therefore, that over the coming months some Council meetings may run shorter or there may be a slight shift in emphasis to bringing evaluations to meetings for discussion of whether, and in what way, existing guidelines may require revision.

**Question 4 – Do Council members have any final comments or thoughts on priorities going forward?**

SUGGESTED GUIDELINE	NOTES
<b>VERY HIGH PRIORITY</b>	
Protest Offences (new offences)	Wait until 2024
<b>HIGH PRIORITY</b>	
Cybercrime (Hacking)	
Data Protection	INCLUDE WITH CYBERCRIME
Malicious communications	INCLUDE WITH CYBERCRIME
Wildlife crime	
Housing	
Planning laws	INCLUDE WITH HOUSING
Unlawful Eviction	INCLUDE WITH HOUSING
<b>LOW PRIORITY</b>	
Outraging public decency	
Fire Safety	No recent demand
Prisoner offences / offences committed whilst in prison	No recent requests for offences not covered by existing guidelines
Littering	Under Environmental Protection Act 1990  No clear demand
Tobacco offences	Including sale of e-cigarettes?  No clear demand
Ancillary orders	Suggestion: a guideline on the imposition of preventative orders, identifying common issues, and providing pro-forma draft terms and technical guidance on complex restrictions such as those on internet use
Insolvency	No clear demand
Misconduct in a public office	Low volume

Blue badge fraud	No clear demand
Neglect of vulnerable adults	44(1)(b) of the Mental Capacity Act 2005, s5 Domestic Violence, Crime and Victims Act 2004  No immediate need but reasonable volumes
Level crossings	Very low volume
Female Genital Mutilation (FGM) offences	Very low volume
Terrorism - under 18s	Very low volume