

Annex A - Results of the second sentencing exercise for a combined kidnap and false imprisonment guideline

Kidnap cases	A,B,C							
	Culpability	Harm	SP	After aggravating/mitigating factors	GP	Final sentence	Key observations by participants	Actual sentence in case
Scenario A								10 yrs 10 mths
Participant 1	A, detention over protracted time, leading role in large group	1, severe psych injury- also psych harm caused to mother	11yrs	12 yrs 6 mths, age of victim-17-detention in isolated place, threats to family members. Mit- no relevant previous, poss exemplary conduct (charity work)	10%	11 yrs 3 mths	Should threats to family members be an agg factor? Should age of victim be an explicit agg factor?	
Participant 2	High, detention over protracted period, leading role in group, use of weapon, motivated by financial gain	1, very serious distress caused to victim and others	12 yrs	No mitigation, 1 precon but not significant	10%	10 yrs 9 mths	Is detention over 3hrs protracted period of time? Should there be an agg factor of vulnerable victim? Not all vul victims will fall into the high culp factor	
Participant 3	A, leading role, use of sig force, motivated by financial gain, Some B factors –	1, serious psych harm/v severe distress caused to the	14 yrs	Multiple culp A factors resulted in upward adjustment from A1 starting point. Element of detention in isolated	10%	12.5 yrs	Possibly no deliberate targeting of the victim- a culp A factor- so	

	use of weapon to make threats -but on balance Culp A	victim/others, serious injury/pain caused to the victim		location but it was limited in duration			should there be an agg factor of vulnerable victim (not taken into account at step 1?). There was a threat to kill - should the cat 2 harm factor be threat of torture or to kill?	
Participant 6	A, leading role, motivated by expectation of financial gain.	1, serious psychological harm, very severe distress	11 yrs	12 yrs, number of others who joined in the violence, use of weapon to threaten by one of them, victim felt obliged to move house, movement between vehicles and location over 3 hrs, little or no apparent mitigation	10%	10yrs 9 mths	Further thought to agg factor of 'offender involves others in conduct- could apply to others joining in with the offenders, others being adversely affected by the offending, or both	
Scenario B								20 mths susp for 2yrs
Participant 4	C, limited force, limited duration	3, limited effects	1 yr	16mths, on bail- domestic context, mit-	25%	12 mths		

				lack of previous convictions				
Participant 5								
Participant 6	C, limited use of force, limited in duration	2, some distress	2yrs- harm was low in the scale for cat 2	2yrs, young, immature, lack of support, but domestic context and in breach of a bail condition in relation to the victim	20%	18 mths	Harm 2 has to cover a wide range of harm	
Participant 3	C, limited use of force, limited in scope/duration	3, limited effects of the offence	1 yr	9mths, offence committed on bail, domestic context but no previous convictions, age/lack of maturity, age significant and outweighed the agg factors	20%	7 mths custody- possibly suspended or CO- due to time remanded in custody		
Scenario C								5 yrs
Participant 1	A, use of weapon to inflict violence	2- some injury/pain, some psych harm	7yrs	8yrs- on licence- leading role being the oldest, driving the car, hitting with brick. Previous cons? No mit	N/A	8yrs		
Participant 4	A, leading role, use of a weapon to inflict violence. Of limited duration in cat C but the cat A factors outweighed this	2 some distress caused	7yrs	8yrs -on licence- previous convictions. No mit	N/A	8yrs		
Participant 7	Borderline between A/B.	Between 2/3. Victim said	8 yrs	9yrs. No mit factors apparent. Agg-	N/A	9yrs		

	A:Use of weapon to inflict injury. Offence committed in furtherance of criminal activity. B: other violence threatened/offence committed by group. C: offence of limited duration	kidnap was the most horrific event he'd ever experienced- but no evidence of anything other than limited effects		previous cons but limited to avoid double counting with step 1- offence on licence- offended wielded the brick				
Participant 8	A-use of brick and violence	2- injuries	7yrs	On licence and pre-cons-fear of being doused in petrol- but short lived and not part planned -up to 8yrs	N/A	8yrs		
False Imprisonment cases	D,E,F							
Scenario D								11yrs custody plus extended licence 4 yrs
Participant 1	A, planned, 'devious', more than some element of planning	Between 1-2, no VPS, but 'absolutely terrified'	10	14 yrs, sexual motive, attempt to inflict GBH. Stat agg of previous similar offending against women. No mit.			Should sexual motive be a high culp factor? Or agg factor? Or rely on being	

							charged separately?	
Participant 2	High, planned, use of weapon	2, v. limited information about effect on victim	5 yrs	7yrs- amount and nature of pre-cons-significant risk to women, and sexual motive. No mit factors	N/A	7yrs	No info from the PSR or psych assessment so difficult to make a full assessment of the case.	
Participant 3	A, elements of A and B, A-vulnerable victim-sophisticated planning-he was intending to commit a sexual offence, B- use of weapon to make threats. On balance a cat A case	2, v. limited info so difficult to assess- assume some psych harm/distress	7 yrs	12 yrs- uplift of 2 yrs to reflect intent to commit a sexual offence (as per guidance note for s.62 SOA 2003). Further 3 yrs to reflect aggravation of the previous conviction, similarity of earlier offence but 20 yrs ago	N/A	12 yrs - possibly an extended sentence if further info available	Nothing currently in g'line which refers to an intent to commit a sexual offence-useful to add something on this- at either step 1 or 2? And/or cross refer to s.62 SOA 2003 note? Sentence using this draft lower than I would have expected	
Participant 8	High, planning and degree of violence	2-due to lack of VPS- with which it may have been 1	7yrs	10yrs due to aggravating factors- possibly an extended sentence	N/A	10yrs		

Scenario E								4yrs custody plus extended licence 3yrs
Participant 4	A, leading role, detention over a protracted period	1, V.serious distress caused? Hard to assess on limited evidence. Or 2?	11yrs	12 yrs, previous cons, possible mit on the psychiatric disorder? But no evidence so cannot assess it	33%	8yrs	V difficult to assess just using limited sentencing remarks	
Participant 6	B, v.sig violence threatened, use of weapon to make threats, offence committed as part of a group	2, some psych harm/distress caused, some injury caused, threats of torture, all present, harm 1 factors not established	5 yrs- adjusted to 6yrs due to multiple culp/harm factors	7yrs, previous cons, victim's vulnerability, filming, no mit of nay significance	33%	4yrs 8mths	Cat 2 harm has to cover a wide range of harm-should we add a year to the upper end of the cat range for each of the harm 2 boxes. 7yrs on the low side- but not app to go outside of the cat range. Add filming as an agg factor?	
Participant 7	Between A/B. Closer to A because of multiple B factors. A factors: detention over prolonged	Between 1/2 could be argued v severe distress but no evidence	9yrs	Previous convictions- not directly relevant/limited effect. Mit was effect on def's children-factors	33%	EDS- 6 yrs cust plus 3 yrs extended licence	Mental disorder not relevant as operative only as failed to	

	period/deliberate targeting of vul victim. B: v.sig violence threatened/use of weapon to make threats/group offence	of long term effect so arguable that harm better described as some distress		balance each other out.			take medication	
Scenario F								10mths custody
Participant 2	Medium-balance of high factor- detention and low factor- offender's resp reduced by MD	3-limited effects, no VPS, no evidence of distress caused to children	1 yr-	Agg/mit factors balance one another out-domestic/children and lack of precons	33%	8mths		
Participant 7	Between B/C. Detention between protracted and limited. No high cul. Factors. Resp reduced by his MD so C	2. Some distress caused to victim and children	2 yrs 9 mths	2yrs 3 mths. Domestic context agg factor. No previous convictions/remorse-mit factors. Mit factors outweigh agg	33%	18mths cust		
Participant 8	B-balance of factors esp MH in low but being locked in overnight with children is A	2, some harm	7yrs	Remorse and character (DA taken into account at step 1) down to 5yrs	33%	3yrs	Difficult to assess harm effectively without VPS and with poor sentencing remarks	

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