



Sentencing Guidelines Council

Guideline Judgments
Case Compendium

FOREWORD

Sentencing is a complex and difficult exercise. It can never be a rigid, mechanistic or scientific process. Consistency of approach by sentencers is essential to maintain public confidence. But perfect consistency in outcome is impossible to achieve because of the infinite variety of circumstances with which, even in relation to one kind of offence, the courts are presented.

In choosing a fair and just sentence in a particular case, judges and magistrates, within the parameters established by Parliament, must have regard to the gravity of the offence, its impact on the victim, the circumstances of the offender and the wider public interest. In relation to all these matters they must exercise judgement and discretion.

It is the purpose of this collection of cases to inform that exercise of judgement and discretion by providing sentencers with a succinct chart of the sentencing guidance provided by the Court of Appeal during the last 30 years. It will primarily be of use in Crown Courts, but it should also assist magistrates, both with regard to sentencing principles and in relation to some specific offences, such as shoplifting, carrying offensive weapons and downloading pornographic images.

I am grateful to the Council's Secretariat for gathering the cases from a variety of sources and preparing summaries of the authorities. Those consulting the compendium should bear in mind that, even now, it is unlikely to be exhaustive. For the future, new offences, new penalties and changing public and parliamentary perceptions of gravity will require a steady flow of further guidance from the Court of Appeal, until such time as the Sentencing Guidelines Council is able to produce and maintain replacement guidelines.



The Rt. Hon. Lord Justice Rose
Vice President, Court of Appeal (Criminal Division)
Deputy Chairman, Sentencing Guidelines Council

March 2005

PREFACE

For many decades, courts have followed sentencing guidelines. The importance of sentencers being familiar with, and applying, guideline cases has long been recognised and, as Lord Justice Kay stated:¹

“It is ... the clear responsibility of sentencers to be fully aware of the guidance given ... and faithfully apply it to cases even though the sentencing exercise may be both difficult and painful ...”

This responsibility does not lie solely with the sentencer, and it is the duty of others, such as prosecution advocates, to ensure that the attention of the court is drawn to relevant sentencing guidelines.²

Guidelines have not always been easily accessible. Acknowledging this gap, the Sentencing Guidelines Council commissioned work to identify and collate existing sentencing guideline cases. Now, for the first time, courts across England and Wales have a single reference resource comprising summaries of guideline cases, whether they relate to sentencing principles or specific offences, up to **28 February 2005**.

It is not intended that the compendium will replace the full text of the judgments, and users are urged to refer to the full text of the summarised cases rather than to rely on the compendium alone.

A ‘guideline case’ can be interpreted to mean many things, from the Court indicating factors and issues for consideration, to setting out comprehensive sentencing ranges. For the purposes of this compendium, cases have been included where the Court expressed that the guidance given in the judgment was intended to apply more widely than the case before it. **Except where the contrary is stated, sentences indicated assume conviction after trial.**

Where older cases have been superseded, only the most recent authorities have been included in order to provide the user with the most current position. Users should bear in mind that cases not included in the compendium may still provide helpful guidance.

The Sentencing Guidelines Council is now responsible for framing and revising sentencing guidelines for all offences as well as for general issues, to which every court must have regard.³ As such, this compendium has been produced as an interim measure to assist sentencers pending guidelines from the Council.

Case summaries included in the compendium can also be found at: www.sentencing-guidelines.gov.uk. No updates will be provided for guideline judgments handed down on or after 1 March 2005. However, summaries for cases after this date will be provided on the website.

1 AG’s Reference Nos. 35, 37, 38, 40, 42, 43, 44, 51, 53 and 54 of 2003 [2004] 1 Cr.App.R.(S) 84

2 AG’s Reference No. 52 of 2003 (Webb) [2003] EWCA Crim 3731

3 Criminal Justice Act 2003, section 172

CONTENTS

(A)	Generic sentencing principles	1
(B)	Homicide and related offences	19
(C)	Non-fatal offences against the person	23
(D)	Driving offences resulting in death	29
(E)	Sexual offences	35
(F)	Drug offences	53
(G)	Public order offences	65
(H)	Theft Acts offences/Fraud	71
(I)	Offences against public justice	91
(J)	Counterfeiting and money laundering	95
(K)	Miscellaneous offences	99

GENERIC SENTENCING PRINCIPLES

Overview of cases

Subject	Cases	Page
Attorney-General's References	<u>AG's Ref. No. 4 of 1989 (Brunt)</u> (1989) 11 Cr.App.R.(S) 517	2
Contempt of court	<u>R v Montgomery</u> (1995) 16 Cr.App.R.(S) 274	2
Health of the offender	<u>R v Bernard</u> [1997] 1 Cr.App.R.(S)135	3
Life sentences		
• Automatic life sentences	<u>R v Buckland</u> [2000] 2 Cr.App.R.(S) 217 <u>R v Offen</u> [2001] 2 Cr.App.R.(S) 10	4 4
• Discretionary life sentences	<u>R v Hodgson</u> (1968) 52 Cr.App.R.(S) 113 <u>R v Chapman</u> [2000] 1 Cr.App.R.(S) 377	5 5
• Specified period	<u>R v Marklew and Lambert</u> [1999] 1 Cr.App.R.(S) 6 <u>R v Szczerba</u> [2002] 2 Cr.App.R.(S) 86	5 5
Offences taken into consideration (TICs)	<u>R v McLean</u> (1910–1911) 6 Cr.App.R. 26 <u>R v Simons</u> (1953) 37 Cr.App.R. 120 <u>R v Walsh</u> unreported, 8 March 1973	6 6 6
Prosecution duty: guidelines	<u>AG's Ref. No. 52 of 2003 (Webb)</u> [2003] EWCA Crim 3731	6
Racially aggravated offences	<u>R v Kelly and Donnelly</u> [2001] 2 Cr.App.R.(S) 73	7
Sentence discounts		
• Assistance to the police/ Informers	<u>R v A and B</u> [1999] 1 Cr.App.R.(S) 52 <u>R v Guy</u> [1999] 2 Cr.App.R.(S) 24 <u>R v X</u> [1999] 2 Cr.App.R.(S) 294 <u>R v R (Informer: Reduction in sentence)</u> [2002] EWCA Crim 267	9 9 9 10
• Lapse of time between offence and sentence	<u>R v Bird</u> (1987) 9 Cr.App.R.(S) 77 <u>R v Tiso</u> (1990) 12 Cr.App.R.(S) 122	10 10
Sentence length		
• Custodial sentences	<u>R v Bibi</u> (1980) 2 Cr.App.R.(S) 177 <u>R v Ollerenshaw</u> [1999] 1 Cr.App.R.(S) 65 <u>R v Kefford</u> [2002] 2 Cr.App.R.(S) 106	11 11 11
• Extended sentences	<u>R v Nelson</u> [2002] 1 Cr.App.R.(S) 134 <u>R v Cornelius</u> [2002] 2 Cr.App.R.(S) 69	11 12
• Joint conviction with a juvenile offender	<u>R v Tyre</u> (1984) 6 Cr.App.R.(S) 247	12

Subject	Cases	Page
Sentences/Ancillary orders		
• Anti-Social Behaviour Orders (imposed with custody)	<u>R v Parkin</u> [2004] EWCA Crim 287	12
• Compensation Orders (imposed with custody)	<u>R v Sullivan</u> [2003] EWCA Crim 1736	13
• Drug Treatment and Testing Orders (DTTOs)	<u>R v Robinson</u> [2002] 2 Cr.App.R.(S) 95 AG's Ref. No. 64 of 2003 (<u>Boujettif and Harrison</u>) [2004] 2 Cr.App.R.(S) 22	13 14
Specimen offences	<u>R v Kidd and Canavan</u> [1998] 1 Cr.App.R.(S) 243	15
Victim's wishes	<u>R v Perks</u> [2001] 1 Cr.App.R.(S) 19	15
Young offenders		
• Age for purpose of sentencing	<u>R v Danga</u> (1992) 13 Cr.App.R.(S) 408 <u>R v Ghafoor</u> [2003] 1 Cr.App.R.(S) 84	17 17
• Venue for trial	<u>R v Southampton Youth Court, Wirral Boro YC</u> [2003] 1 Cr.App.R.(S) 455	17

OFFENCES

Overview of cases

Subject	Cases	Page
Affray	<u>R v Keys and others</u> (1986) 8 Cr.App.R.(S) 444	68
Assault		
<ul style="list-style-type: none"> Assault occasioning ABH (attacks on hospital staff) 	<u>R v McNally</u> [2000] 1 Cr.App.R.(S) 535	24
<ul style="list-style-type: none"> Racially aggravated assault occasioning ABH 	<u>R v Saunders</u> [2000] 2 Cr.App.R.(S) 71	24
Assault by penetration	AG's Ref. No. 104 of 2004 (<u>Garvey and others</u>) [2004] EWCA Crim 2672 <u>R v Corran and others</u> [2005] EWCA Crim 192	51 47
Battery with intent to commit a sexual offence	<u>R v Wisniewski</u> [2004] EWCA Crim 3361	51
Burglary (domestic)	<u>R v McInerney and Keating</u> [2003] 2 Cr.App.R.(S) 39	72
Causing death by careless driving whilst under the influence of drink or drugs	<u>R v Cooksley and others</u> [2004] 1 Cr.App.R.(S)	30
Causing death by dangerous driving	<u>R v Cooksley and others</u> [2004] 1 Cr.App.R.(S) 1	30
Counterfeiting and forgery		
<ul style="list-style-type: none"> Dealing in counterfeit currency 	<u>R v Howard</u> (1985) 7 Cr.App.R.(S) 320	96
<ul style="list-style-type: none"> Counterfeiting coins 	<u>R v Crick</u> (1981) 3 Cr.App.R.(S) 275	96
<ul style="list-style-type: none"> False passports 	<u>R v Kolawole</u> [2004] EWCA Crim 3047	96
Drug offences		
<ul style="list-style-type: none"> General 	<u>R v Aramah</u> (1982) 4 Cr.App.R.(S) 407	54
<ul style="list-style-type: none"> Importation of Class A drugs 	<u>R v Aranguren and others</u> [1995] 16 Cr.App.R.(S) 211	57
<i>Cocaine</i>	<u>R v Martinez</u> (1984) 6 Cr.App.R.(S) 364	58
<i>Heroin</i>	<u>R v Bilinski</u> (1987) 9 Cr.App.R.(S) 360	58
<i>Opium</i>	<u>R v Mashaollahi</u> [2001] 1 Cr.App.R.(S) 330	59
<i>Ecstasy</i>	<u>R v Warren and Beeley</u> [1996] 1 Cr.App.R.(S) 223	59

Subject	Cases	Page
• Importation of Class B drugs		
<i>Amphetamine</i>	<u>R v Wijs and others</u> [1999] 1 Cr.App.R.(S) 181	60
<i>Cannabis (prior to reclassification)</i>	<u>R v Ronchetti</u> [1998] 2 Cr.App.R.(S) 100	61
• In transit on high seas	<u>R v Maguire</u> [1997] 1 Cr.App.R.(S) 130 <u>R v Wagenaar and Pronk</u> [1997] 1 Cr.App.R.(S) 178	62 62
• Possession with intent to supply		
<i>Class A drugs</i>	<u>R v Singh (Satvir)</u> (1988) 10 Cr.App.R.(S) 402	61
<i>LSD</i>	<u>R v Hurley</u> [1998] 1 Cr.App.R.(S) 29	62
• Purity analysis of Class A drugs	<u>R v Morris</u> [2001] 1 Cr.App.R.(S) 297	63
• Supply and dealing in Class A drug	<u>R v Djahit</u> [1999] 2 Cr.App.R.(S) 142 <u>R v Twisse</u> [2001] 2 Cr.App.R.(S) 37 <u>R v Afonso and others</u> [2004] EWCA Crim 2342	55 56 56
• Supply to prisoners	<u>R v Prince</u> [1996] 1 Cr.App.R.(S) 335	57
Explosives offences	<u>R v Martin</u> [1999] 1 Cr.App.R.(S) 477	66
Firearms offences	<u>R v Avis and others</u> [1998] 1 Cr.App.R.(S) 178	66
Fraud		
• Benefit fraud	<u>R v Stewart and others</u> (1987) 9 Cr.App.R.(S) 135	76
• Company management	<u>R v Feld</u> [1999] 1 Cr.App.R.(S) 1	77
• Excise/Revenue fraud		
<i>Tax evasion</i>	<u>AG's Ref. Nos. 87 and 86 of 1999 (Webb and Simpson)</u> [2001] 1 Cr.App.R.(S) 505	77
<i>Evading excise duty</i>	<u>R v Czyzewski and others</u> [2004] 1 Cr.App.R.(S) 49	78
• Fraudulent trading	<u>R v Palk and Smith</u> [1997] 2 Cr.App.R.(S) 167	80
• Mortgage fraud	<u>R v Stevens and others</u> (1993) 14 Cr.App.R.(S) 372	81
• Obtaining money transfer by deception	<u>R v Roach</u> [2002] 1 Cr.App.R.(S) 12	81
Handling stolen goods	<u>R v Webbe and others</u> [2002] 1 Cr.App.R.(S) 22	82
Harassment	<u>R v Liddle and Hayes</u> [2000] 1 Cr.App.R.(S) 131 <u>R v Pace</u> [2004] EWCA Crim 2018	25 26

Subject	Cases	Page
Health and safety offences	<u>R v F. Howe and Son (Engineers) Ltd</u> [1999] 2 Cr.App.R.(S) 37	100
	<u>R v Rollco Screw and Rivet Co Ltd</u> [1999] 2 Cr.App.R.(S) 436	101
Immigration offences	<u>R v Le and Stark</u> [1999] 1 Cr.App.R.(S) 422	101
Incest	<u>AG's Ref. No. 1 of 1989</u> (1989) 11 Cr.App.R.(S) 409	36
Indecent assault		
• General	<u>AG's Ref. Nos. 91, 119 and 120 of 2002 (E, K and G)</u> [2003] 2 Cr.App.R.(S) 55	37
• Indecent assault on male	<u>R v Lennon</u> [1999] 1 Cr.App.R.(S) 19	37
Intimidation of witnesses	<u>R v Williams</u> [1997] 2 Cr.App.R.(S) 221	92
	<u>R v Chinery</u> [2002] 2 Cr.App.R.(S) 55	92
Kidnapping	<u>R v Spence and Thomas</u> (1983) 5 Cr.App.R.(S) 413	26
Manslaughter		
• By reason of diminished responsibility	<u>R v Chambers</u> (1983) 5 Cr.App.R.(S) 190	20
• By reason of provocation	<u>R v Shaw</u> (1984) 6 Cr.App.R.(S) 108	20
	<u>AG's Ref. No. 33 of 1996 (Latham)</u> [1997] 2 Cr.App.R.(S) 10	20
	<u>AG's Ref. Nos. 72, 95 and 118 of 2003 (Suratan and others)</u> [2003] 2 Cr.App.R.(S) 42	21
Money laundering		
• General	<u>R v Basra</u> [2002] 2 Cr.App.R.(S) 100	97
	<u>R v Gonzalez and Sarmiento</u> [2003] 2 Cr.App.R.(S) 9	97
• Proceeds of drug trafficking	<u>R v El-Delbi</u> [2003] EWCA Crim 1767	98
Offensive weapons	<u>R v Poulton and Celaide</u> [2003] 1 Cr.App.R.(S) 116	67
Perjury	<u>R v Archer</u> [2003] 1 Cr.App.R.(S) 86	92
Perverting the course of justice	<u>R v Walsh and Nightingale</u> (1993) 14 Cr.App.R.(S) 671	93
Pornography		
• Having obscene articles for publication for gain	<u>R v Holloway</u> (1982) 4 Cr.App.R.(S) 128	38
• Importation of indecent or obscene publications	<u>R v Nooy and Schyff</u> (1982) 4 Cr.App.R.(S) 308	38

Subject	Cases	Page
<ul style="list-style-type: none"> • Making and distributing indecent photographs of a child 	<u>R v Toomer and others</u> [2001] 2 Cr.App.R.(S) 8 <u>R v Wild</u> [2002] 1 Cr.App.R.(S) 37 <u>R v Oliver and others</u> [2003] 2 Cr.App.R.(S) 15	39 39 40
Prison breaking (escape)	<u>R v Coughtrey</u> [1997] 2 Cr.App.R.(S) 269	93
Rape	<u>R v Billam</u> (1986) 8 Cr.App.R.(S) 48 <u>R v Millberry and others</u> [2003] 2 Cr.App.R.(S) 31 <u>AG's Ref. No. 104 of 2004 (Garvey and others)</u> [2004] EWCA Crim 2672 <u>R v Corran and others</u> [2005] EWCA Crim 192	43 44 51 47
Riot	<u>R v Najeeb and others</u> [2003] 2 Cr.App.R.(S) 69	69
Robbery		
<ul style="list-style-type: none"> • Armed robbery 	<u>R v Turner</u> (1975) 61 Cr.App.R.67 <u>R v Daly</u> (1981) 3 Cr.App.R.(S) 340 <u>R v Gould and others</u> (1983) 5 Cr.App.R.(S) 72	83 83 83
<ul style="list-style-type: none"> • During course of burglary 	<u>AG's Ref. Nos. 32 and 33 of 1995 (Pegg and Martin)</u> [1996] 2 Cr.App.R.(S) 346	84
<ul style="list-style-type: none"> • Hijacking of cars 	<u>R v Snowden</u> [2002] EWCA Crim 2347	84
<ul style="list-style-type: none"> • Small shops 	<u>AG's Ref. No. 2 of 1989 (Major)</u> (1989) 11 Cr.App.R.(S) 481 <u>AG's Ref. No. 7 of 1992 (Khan)</u> (1993) 14 Cr.App.R.(S) 122	85 85
<ul style="list-style-type: none"> • Street robbery (mugging) 	<u>R v O'Brien</u> (1984) 6 Cr.App.R.(S) 274 <u>R v Edwards and Larter</u> <i>The Times</i> , 3 February 1987 <u>AG's Ref. Nos. 4 and 7 of 2002 (Lobban and Sawyers)</u> [2002] 2 Cr.App.R.(S) 77	85 85 86
Sex Offenders' Register	<u>AG's Ref. No. 50 of 1997 (David Victor V)</u> [1998] 2 Cr.App.R.(S) 155	46
Sexual Offences Act 2003 (various offences)	<u>R v Corran and others</u> [2005] EWCA Crim 192	47
Theft		
<ul style="list-style-type: none"> • Airport luggage 	<u>R v Dhunay and others</u> (1986) 8 Cr.App.R.(S) 107	87
<ul style="list-style-type: none"> • Breach of trust – 'white-collar' dishonesty 	<u>R v Clark</u> [1998] 2 Cr.App.R.(S) 95	87
<ul style="list-style-type: none"> • 'Ringing' of stolen cars 	<u>R v Evans</u> [1996] 1 Cr.App.R.(S) 105	88
<ul style="list-style-type: none"> • Shoplifting 	<u>R v Page and others</u> [2004] EWCA Crim 3358	89

Subject	Cases	Page
Trafficking women for prostitution	<u>AG's Ref. No. 6 of 2004 (Plakici)</u> [2004] EWCA Crim 1275	46
Violent disorder	<u>R v Chapman</u> [2002] EWCA Crim 2346	70
Wounding/causing GBH with intent		
• 'Glassing' of victim	<u>R v Harwood</u> (1979) 1 Cr.App.R.(S) 354	27
• Setting fire to victim	<u>R v Thomas</u> (1985) 7 Cr.App.R.(S) 87	27
• Stabbing	<u>AG's Ref. No. 18 of 2002 (Hughes)</u> [2003] 1 Cr.App.R.(S) 9	28
• Stamping on head of victim	<u>AG's Ref. No. 59 of 1996 (Grainger)</u> [1997] 2 Cr.App.R.(S) 250	28
• Using excessive force in self-defence	<u>AG's Ref. Nos. 59, 60 and 63 of 1998 (Goodwin and others)</u> [1999] 2 Cr.App.R.(S) 128	28

Table of cases

	Page
A and B [1999] 1 Cr.App.R.(S) 52	9
Afonso and others [2004] EWCA Crim 2342	56
AG’s Ref. No. 1 of 1989 (1989) 11 Cr.App.R.(S) 409	36
AG’s Ref. No. 2 of 1989 (Major) (1989) 11 Cr.App.R.(S) 481	85
AG’s Ref. No. 4 of 1989 (Brunt) (1989) 11 Cr.App.R.(S) 517	2
AG’s Ref. No. 7 of 1992 (Khan) (1993) 14 Cr.App.R.(S) 122	85
AG’s Ref. Nos. 32 and 33 of 1995 (Pegg and Martin) [1996] 2 Cr.App.R.(S) 346	84
AG’s Ref. No. 33 of 1996 (Latham) [1997] 2 Cr.App.R.(S) 10	20
AG’s Ref. No. 59 of 1996 (Grainger) [1997] 2 Cr.App.R.(S) 250	28
AG’s Ref. No. 50 of 1997 (David Victor V) [1998] 2 Cr.App.R.(S) 155	46
AG’s Ref. Nos. 59, 60 and 63 of 1998 (Goodwin and others) [1999] 2 Cr.App.R.(S) 128	28
AG’s Ref. Nos. 87 and 86 of 1999 (Webb and Simpson) [2001] 1 Cr.App.R.(S) 505	77
AG’s Ref. Nos. 4 and 7 of 2002 (Lobban and Sawyers) [2002] 2 Cr.App.R.(S) 77	86
AG’s Ref. No. 18 of 2002 (Hughes) [2003] 1 Cr.App.R.(S) 9	28
AG’s Ref. Nos. 91, 119 and 120 of 2002 (E, K and G) [2003] 2 Cr.App.R.(S) 55	37
AG’s Ref. No. 52 of 2003 (Webb) [2003] EWCA Crim 3731	6
AG’s Ref. No. 64 of 2003 (Boujettif and Harrison) [2004] 2 Cr.App.R.(S) 22	14
AG’s Ref. Nos. 72, 95 and 118 of 2003 (Suratan and others) [2003] 2 Cr.App.R.(S) 42	21
AG’s Ref. No. 6 of 2004 (Plakici) [2004] EWCA Crim 1275	46
AG’s Ref. No. 104 of 2004 (Garvey and others) [2004] EWCA Crim 2672	51
Aramah (1982) 4 Cr.App.R.(S) 407	54
Aranguren and others [1995] 16 Cr.App.R.(S) 211	57
Archer [2003] 1 Cr.App.R.(S) 86	92
Avis and others [1998] 1 Cr.App.R.(S) 178	66
Basra [2002] 2 Cr.App.R.(S) 100	97
Bernard [1997] 1 Cr.App.R.(S) 135	3
Bibi (1980) 2 Cr.App.R.(S) 177	11
Bilinski (1987) 9 Cr.App.R.(S) 360	58
Billam (1986) 8 Cr.App.R.(S) 48	43
Bird (1987) 9 Cr.App.R.(S) 77	10
Buckland [2000] 2 Cr.App.R.(S) 217	4
Chambers (1983) 5 Cr.App.R.(S) 190	20
Chapman [2000] 1 Cr.App.R.(S) 377	5
Chapman [2002] EWCA Crim 2346	70
Chinery [2002] 2 Cr.App.R.(S) 55	92
Clark [1998] 2 Cr.App.R.(S) 95	87
Cooksley and others [2004] 1 Cr.App.R.(S) 1	30

Cornelius [2002] 2 Cr.App.R.(S) 69	12
Corran and others [2005] EWCA Crim 192	47
Coughtrey [1997] 2 Cr.App.R.(S) 269	93
Crick (1981) 3 Cr.App.R.(S) 275	96
Czyzewski and others [2004] 1 Cr.App.R.(S) 49	78
Daly (1981) 3 Cr.App.R.(S) 340	83
Da17nga (1992) 13 Cr.App.R.(S) 408	17
Dhunay and others (1986) 8 Cr.App.R.(S) 107	87
Djahit [1999] 2 Cr.App.R.(S) 142	55
Edwards and Larter <i>The Times</i> , 3 February 1987	85
El-Delbi [2003] EWCA Crim 1767	98
Evans [1996] 1 Cr.App.R.(S) 105	88
F Howe and Son (Engineers) Ltd [1999] 2 Cr.App.R.(S) 37	100
Feld [1999] 1 Cr.App.R.(S) 1	77
Ghafoor [2003] 1 Cr.App.R.(S) 84	17
Gonzalez and Sarmiento [2003] 2 Cr.App.R.(S) 9	97
Gould and others (1983) 5 Cr.App.R.(S) 72	83
Guy [1999] 2 Cr.App.R.(S) 24	9
Harwood (1979) 1 Cr.App.R.(S) 354	27
Hodgson (1968) 52 Cr.App.R. 113	5
Holloway (1982) 4 Cr.App.R.(S) 128	38
Howard (1985) 7 Cr.App.R.(S) 320	96
Hurley [1998] 1 Cr.App.R.(S) 299	62
Kefford [2002] 2 Cr.App.R.(S) 106	11
Kelly and Donnelly [2001] 2 Cr.App.R.(S) 73	7
Keys and others (1986) 8 Cr.App.R.(S) 444	68
Kidd and Canavan [1998] 1 Cr.App.R.(S) 243	15
Kolawole [2004] EWCA Crim 3047	96
Le and Stark [1999] 1 Cr.App.R.(S) 422	101
Lennon [1999] 1 Cr.App.R.(S) 19	37
Liddle and Hayes [2000] 1 Cr.App.R.(S) 131	25
Maguire [1997] 1 Cr.App.R.(S) 130	62
Marklew and Lambert [1999] 1 Cr.App.R.(S) 6	5
Martin [1999] 1 Cr.App.R.(S) 477	66
Martinez (1984) 6 Cr.App.R.(S) 364	58
Mashaollahi [2001] 1 Cr.App.R.(S) 330	59
McInerney and Keating [2003] 2 Cr.App.R.(S) 39	72
McLean (1910–1911) 6 Cr.App.R. 26	6
McNally [2000] 1 Cr.App.R.(S) 535	24
Millberry and others [2003] 2 Cr.App.R.(S) 31	44

Montgomery (1995) 16 Cr.App.R.(S) 274	2
Morris [2001] 1 Cr.App.R.(S) 297	63
Najeeb and others [2003] 2 Cr.App.R.(S) 69	69
Nelson [2002] 1 Cr.App.R.(S) 134	11
Nooy and Schyff (1982) 4 Cr.App.R.(S) 308	38
O'Brien (1984) 6 Cr.App.R.(S) 274	85
Offen [2001] 2 Cr.App.R.(S) 10	4
Oliver and others [2003] 2 Cr.App.R.(S) 15	40
Ollerenshaw [1999] 1 Cr.App.R.(S) 65	11
Pace [2004] EWCA Crim 2018	26
Page and others [2004] EWCA Crim 3358	89
Palk and Smith [1997] 2 Cr.App.R.(S) 167	80
Parkin [2004] EWCA Crim 287	12
Perks [2001] 1 Cr.App.R.(S) 19	15
Poulton and Celaire [2003] 1 Cr.App.R.(S) 116	67
Prince [1996] 1 Cr.App.R.(S) 335	57
R (Informer: Reduction in sentence) [2002] EWCA Crim 267	10
Roach [2002] 1 Cr.App.R.(S) 12	81
Robinson [2002] 2 Cr.App.R.(S) 95	13
Rollco Screw and Rivet Co. Ltd [1999] 2 Cr.App.R.(S) 436	101
Ronchetti [1998] 2 Cr.App.R.(S) 100	61
Saunders [2000] 2 Cr.App.R.(S) 71	24
Shaw (1984) 6 Cr.App.R.(S) 108	20
Simons (1953) 37 Cr.App.R. 120	6
Singh (Satvir) (1988) 10 Cr.App.R.(S) 402	61
Snowden [2002] EWCA Crim 2347	84
Southampton Youth Court, Wirral Boro YC [2003] 1 Cr.App.R.(S) 455	17
Spence and Thomas (1983) 5 Cr.App.R.(S) 413	26
Stevens and others (1993) 14 Cr.App.R.(S) 372	81
Stewart and others (1987) 9 Cr.App.R.(S) 135	76
Sullivan [2003] EWCA Crim 1736	13
Szczerba [2002] 2 Cr.App.R.(S) 86	5
Thomas (1985) 7 Cr.App.R.(S) 87	27
Tiso (1990) 12 Cr.App.R.(S) 122	10
Toomer and others [2001] 2 Cr.App.R.(S) 8	39
Turner (1975) 61 Cr.App.R. 67	83
Twisse [2001] 2 Cr.App.R.(S) 37	56
Tyre (1984) 6 Cr.App.R.(S) 247	12
Wagenaar and Pronk [1997] 1 Cr.App.R.(S) 178	62
Walsh and Nightingale (1993) 14 Cr.App.R.(S) 671	93

Walsh (unreported), 8 March 1973	6
Warren and Beeley [1996] 1 Cr.App.R.(S) 223	59
Webbe and others [2002] 1 Cr.App.R.(S) 22	82
Wijs and others [1999] 1 Cr.App.R.(S) 181	60
Wild [2002] 1 Cr.App.R.(S) 37	39
Williams [1997] 2 Cr.App.R.(S) 221	92
Wisniewski [2004] EWCA Crim 3361	51
X [1999] 2 Cr.App.R.(S) 294	9

(A) GENERIC SENTENCING PRINCIPLES

Attorney-General's References	2
Contempt of court	2
Deportation	3
Health of the offender	3
Life sentences	3
• Automatic life sentences	3
• Discretionary life sentences	5
• Specified period	5
Offences taken into consideration (TICs)	6
Prosecution duty: guidelines	6
Racially aggravated offences	7
Sentence discounts	9
• Assistance to the police/Informers	9
• Lapse of time between offence and sentence	10
• Reduction for a guilty plea	10
Sentence length	10
• Custodial sentences	10
• Extended sentences	11
• Joint conviction with a juvenile offender	12
Sentences/Ancillary orders	12
• Anti-Social Behaviour Orders (ASBOs) (imposed with custody)	12
• Compensation Orders (imposed with custody)	13
• Drug Treatment and Testing Orders (DTTOs)	13
Seriousness of an offence	15
Specimen offences	15
Victim's wishes	15
Young offenders	17
• Age for purpose of sentencing	17
• Venue for trial	17

Attorney-General's References

AG's Ref. No. 4 of 1989 (Brunt) (1989) 11 Cr.App.R.(S) 517

- Where a case has been referred by the Attorney-General, the Court can increase a sentence under the Criminal Justice Act 1988, s.36 only if it considers it unduly lenient. It cannot increase the sentence merely because the sentence is less than the Court would impose.
- A sentence is unduly lenient where it falls outside the range of sentences which the judge could reasonably consider appropriate. In that respect, the Court must refer to reported cases and guidance given by the Court of Appeal in guideline cases.
- The Court has discretion whether to exercise its powers under the section, even where it considers the sentence unduly lenient. This may be the case where in the light of events since the trial it appears either that the sentence could be justified or that to increase it would be unfair to the offender or detrimental to others for whose well-being the Court ought to be concerned.

Contempt of court

R v Montgomery (1995) 16 Cr.App.R.(S) 274

- An immediate custodial sentence is the only appropriate sentence for contempt unless there are wholly exceptional circumstances.
- There is no rule or established practice that states higher sentences should be imposed in cases of interference with for example jurors, than in the case of a witness refusing to give evidence.
- Although the maximum sentence for failing to comply with a witness order is 3 months, this does not mean a longer sentence cannot be imposed for blatant contempt by refusing to testify.
- The following factors were determined to be relevant to the sentencing of contemnors:
 - (a) the gravity of the offence being tried;
 - (b) the effect upon the trial;
 - (c) the contemnor's reasons for failing to give evidence;
 - (d) whether the contempt is aggravated by impertinent defiance to the judge;
 - (e) the scale of sentences in similar cases, albeit each case must turn on its own facts;
 - (f) the antecedents, personal circumstances and characteristics of the contemnor; for example, whether for the contemnor this would be his first time to prison or is institutionalised.

- Unless there are good reasons for dealing with the matter quickly, sentence of contemnor should be left to end of trial (or at least until end of prosecution case).

(These principles were upheld in R v Richardson [2004] EWCA Crim 758)

Current Sentencing Practice Reference: B8-3

Deportation

Please note that the Sentencing Advisory Panel has published a consultation paper on making recommendations for deportation. This can be found at the following website: www.sentencing-guidelines.gov.uk

Current Sentencing Practice Reference: K

Health of the offender

R v Bernard [1997] 1 Cr.App.R.(S) 135

- A medical condition, which may at some time in the future affect either the offender's life expectancy or the prison's ability to treat them, is not generally a reason to interfere with an otherwise appropriate sentence.
- If the offender is HIV positive or otherwise has a reduced life expectancy, this should not generally affect the sentence.
- Where the offender has a serious medical condition and it is not easily treatable in prison, they are not automatically entitled to a lesser sentence.
- In exceptional circumstances, the offender's serious medical condition might enable the court to reduce the sentence as an act of mercy.

Current Sentencing Practice Reference: C5-2B

Life sentences

Automatic life sentences

Please note that s.109 of the Powers of Criminal Courts (Sentencing) Act 2000 will be superseded by provisions in Chapter 5 of Part 12 of the Criminal Justice Act 2003 with effect from 4 April 2005.

R v Buckland [2000] 2 Cr.App.R.(S) 217

The Court considered what might amount to 'exceptional circumstances' when considering a life sentence under [s.109 of the Powers of Criminal Courts (Sentencing) Act 2000], which obliges the court to impose a life sentence on an offender convicted of a second 'serious offence' unless there are exceptional circumstances.

The judgement of whether exceptional circumstances existed might be qualitative as well as quantitative. In judging whether, if exceptional circumstances were found to exist, they justified the court in not imposing a life sentence, the court must bear in mind the rationale of section 2.

Guidelines

- The section was founded on an assumption that those who had been convicted of two qualifying serious offences presented such a serious and continuing danger to public safety that they should be liable to indefinite incarceration and, if released, should be liable indefinitely to recall to prison. Where such a danger did exist, the court would be justified in imposing the statutory sentence, even if exceptional circumstances were found to exist.
- However, if exceptional circumstances were found, and the evidence suggested that the offender did not present a serious and continuing danger to public safety, the court might be justified in imposing a lesser penalty.
- An *attempt* to commit a 'serious offence' is not in itself a serious offence, except in the case of attempted murder and attempted rape.

R v Offen [2001] 2 Cr.App.R.(S) 10

- The intention of Parliament behind s.109 of the Powers of Criminal Courts (Sentencing) Act 2000 was to protect the public against a person who had committed two serious offences.
- It therefore can be assumed that the section was not intended to apply to someone who was not deemed a future risk to the public.
- Factors such as the time that has elapsed between the two offences, the nature of two different offences and the offender's age may indicate that the circumstances were exceptional for the purposes of s.109.
- Section 109 would not contravene Convention rights if courts applied the section so that it did not result in an offender who did not constitute a significant risk to the public being given a sentence of life imprisonment.

Current Sentencing Practice Reference: A14

Discretionary life sentences

R v Hodgson (1968) 52 Cr.App.R.(S) 113

The Court stated that a sentence of life imprisonment is justified when:

- (i) the offence(s) are grave enough to require a very long sentence; and
- (ii) from the nature of the offence or the offender's history, it appears that the offender is unstable and likely to commit such offences in the future. Further, that if such offences are committed, the harm to others may be especially injurious, as in the case of sexual or violent crimes.

R v Chapman [2000] 1 Cr.App.R.(S) 377

Confirming that R v. Hodgson (1968) 52 Cr.App.R.(S) 113 represents the current position, the conditions for imposing a discretionary sentence of life imprisonment are:

- (i) the offence is sufficiently grave to warrant a substantial sentence; and
- (ii) there should be good grounds for believing that the offender might remain a serious danger to the public for a period which could not be reliably estimated at the time of sentence.

Current Sentencing Practice Reference: F3 (life imprisonment) and A4-2I (longer than commensurate sentence)

Specified period

R v Marklew and Lambert [1999] 1 Cr.App.R.(S) 6

- When passing a sentence of life imprisonment, the sentencer should make clear what the determinate sentence would have been, and then fix the specified period.
- The time that the offender has spent in remand should be deducted from the specified period.

R v Szczerba [2002] 2 Cr.App.R.(S) 86

- The specified period of a life sentence should range from between one-half to two-thirds of the determinate term.
- One-half should be the normal proportion, less time spent in custody. But in some cases, more than one-half will be appropriate.
- If a judge specifies a higher proportion than one-half, he or she should state the reasons for doing so.

Current Sentencing Practice Reference: A14 and F3-4B

Offences taken into consideration (TICS)

R v McLean (1910–1911) 6 Cr.App.R. 26

- A sentencer should not take into consideration an offence which the offender is willing to admit if the public interest requires that the offence be dealt with by indictment.

R v Simons (1953) 37 Cr.App.R. 120

- A sentencer should not take into consideration an offence which he or she would not be empowered to try.
- An offence that involves mandatory disqualification from driving, or the endorsement of a driving licence, should not be taken into consideration.

R v Walsh (unreported), 8 March 1973

- The practice of taking other offences into consideration when imposing a sentence is a conventional practice, not founded on statute or any rule of law.
- It is essential that those administering justice should ensure that the accused understands what is being done, admits the offences and wishes to have each and every one of them taken into consideration.
- It is the court's responsibility to ensure that the accused understands the document he has received (list of offences) and has a proper opportunity, which means time, to consider the document; if necessary, time can be given by adjournment.

Current Sentencing Practice Reference: L3

Prosecution duty: guidelines

AG's Ref. No. 52 of 2003 (Webb) [2003] EWCA Crim 3731

The prosecution counsel has a duty, prior to sentence being passed, to draw a sentencing judge's attention to any relevant guideline cases and to have copies of those cases available so that the judge can refer to them if he or she wishes.

The following extract has been taken from the 'Code for Crown Prosecutors' which can be found at: www.cps.gov.uk.

11 PROSECUTORS' ROLE IN SENTENCING

11.1 Crown Prosecutors should draw the court's attention to:

- any aggravating or mitigating factors disclosed by the prosecution case;
- any victim personal statement;
- where appropriate, evidence of the impact of the offending on a community;
- any statutory provisions or sentencing guidelines which may assist;
- any relevant statutory provisions relating to ancillary orders (such as anti-social behaviour orders).

11.2 The Crown Prosecutor should challenge any assertion made by the defence in mitigation that is inaccurate, misleading or derogatory. If the defence persist in the assertion, and it appears relevant to the sentence, the court should be invited to hear evidence to determine the facts and sentence accordingly.

Racially aggravated offences

See also the topic 'Racially aggravated ABH' in the section on 'Non-fatal offences against the person', page 24.

R v Kelly and Donnelly [2001] 2 Cr.App.R.(S) 73

(incorporating and adjusting the decision in R v Saunders [2000] 2 Cr.App.R.(S) 71)

- Court referred to Sentencing Advisory Panel advice.
- Court should indicate the extent to which a sentence was enhanced to reflect the element of racial aggravation.
- A number of factors seriously aggravating the racial element were given in relation to the offender's intention and the impact on the victim.

Factors which seriously aggravate the racial element in relation to the offender's culpability are:

- nature of the hostile demonstration whether by language, gestures or weapons;
- number of those demonstrating;

- planning by the offender;
- the length of the hostile demonstration and whether the offence is part of a pattern of racist offending by the offender;
- membership of a group promoting racist activities;
- the deliberate setting up of a victim for the purposes of humiliating him or being offensive towards him.

Aggravating factors due to the impact on the victim:

- if the offence took place in the victim's home;
- the victim was particularly vulnerable or providing a service to the public;
- the timing or location of the offence was such as to maximise the harm or distress it caused;
- expressions of racial hostility were repeated or prolonged;
- fear and distress throughout a particular community resulted from the offence;
- particular distress was caused to the victim or the victim's family;
- the number of those being demonstrated against.

Guidelines

- The court should first arrive at the appropriate sentence, without the element of racial aggravation but including other aggravating or mitigating factors. The sentence should then be enhanced to take account of the racial aggravation.
- Even if the basic offence would not cross the custody threshold so as to merit imprisonment, the element of racial aggravation might well result in the custody threshold being passed.
- The court should state "expressly and publicly" what the sentence would have been without the element of racial aggravation.

Current Sentencing Practice Reference: A16 and B2-4.3H

Sentence discounts

Assistance to the police/Informers

R v A and B [1999] 1 Cr.App.R.(S) 52

- Cooperation by incriminating co-defendants would result in an enhanced discount.
- Further discount on top of enhanced discount where help given towards prosecution of serious crime.
- Discount based on quality and quantity of help given and also danger to the offender and family.

R v Guy [1999] 2 Cr.App.R.(S) 24

- Extent of discount when the appellant has given assistance to the authorities depends on:
 - (i) the quality and quantity of material disclosed;
 - (ii) the willingness of the informer to give evidence in court;
 - (iii) the degree to which the appellant put himself and family at risk by providing information.
- Amount of discount will range from one-half to two-thirds.

R v X [1999] 2 Cr.App.R.(S) 294

- Normally, credit for assistance of this sort should only be given if proffered early enough for it to have been potentially useful and in any event before sentence.
- The purpose of the credit is two-fold: first, to reflect the offender's own attitude and acceptance of guilt and remorse; and second, to assist in the arrest of others and the prevention of crime.
- Importance of court having reliable information and what to do if there is a conflict between the offender's account and the police account of assistance given.
- Court cannot rely on the offender's account to mitigate sentence unless supported by the police.

R v R (Informer: Reduction in sentence) [2002] EWCA Crim 267

- Credit could be given on appeal if the appellant had provided information about his offence to the authorities within a reasonable time of being sentenced, pleaded guilty and had provided some information (albeit in relation to a different case) before sentence.
- The discount would not be as much as had the same information been provided prior to sentence.

Current Sentencing Practice Reference: C6-2D

Lapse of time between offence and sentence

R v Bird (1987) 9 Cr.App.R.(S) 77

There may be exceptional cases where the sentencing court ought not to shut its eyes to subsequent events. It is the duty of the court to sentence for the offence. The offence had not changed by the passage of time, but the man had.

R v Tiso (1990) 12 Cr.App.R.(S) 122

Offences involving sexual abuse within the family are by their very nature likely to remain undetected for substantial periods, partly because of fear, partly because of family solidarity and partly because of embarrassment.

- The mere passage of time cannot attract a great deal of discount by way of sentence in relation to offences of this kind.

Current Sentencing Practice Reference: C6-2E

Reduction for a guilty plea

Please refer to the 'Reduction in Sentence for a Guilty Plea' guideline published by the Sentencing Guidelines Council on 16 December 2004 which took effect on 10 January 2005.

Sentence length

Custodial sentences

Please note that the Sentencing Guidelines Council published guidelines on 'Overarching Principles: Seriousness' and 'New Sentences: Criminal Justice Act 2003' on 16 December 2004 and these are relevant to the length of custodial sentence imposed.

R v Bibi (1980) 2 Cr.App.R.(S) 177

- In view of the dangerous overcrowding of prisons, where a sentence of imprisonment is necessary, it should be as short as possible, consistent with public protection and the punishment and deterrence of the offender.
- Medium or longer term sentences would be suitable in most cases of robbery, serious violence, use of a weapon to wound, burglary of private dwelling, planned crime for profit and large-scale drug trafficking.

R v Ollerenshaw [1999] 1 Cr.App.R.(S) 65

- When a court is considering a custodial sentence of 12 months or less, it should question, especially where the offender has not previously had a custodial sentence, whether an even shorter period might be equally effective in protecting public interests, and punishing and deterring the offender.

R v Kefford [2002] 2 Cr.App.R.(S) 106

- Custodial sentences should only be imposed when absolutely necessary and for no longer than necessary.
- Imprisonment may be appropriate for those who commit offences of violence or intimidation or other grave crimes; the court has a role to play in protecting the public from these types of offenders.
- For other types of offenders, such as those involved in economic crimes or first-time offenders, community punishment or a fine may be suitable.

Current Sentencing Practice Reference: A2-2A

Extended sentences

The concept of extended sentences will be superseded by the dangerous offender provisions in Chapter 5 of Part 12 of the Criminal Justice Act 2003; these provisions will come into force on 4 April 2005.

R v Nelson [2002] 1 Cr.App.R.(S) 134

Extended sentences have two components:

- (1) custodial term (the sentence that the court would otherwise have imposed); and
- (2) the extension period of licence – beginning when the normal period of licence expires or when the offender is released from custody.

The Court considered advice from the Sentencing Advisory Panel and stated circumstances in which it is appropriate to impose an extended sentence and the length of sentence appropriate in those cases.

Guidelines

- The length of the extended sentence depends on what the court thinks is an adequate period to secure the offender's rehabilitation and prevent re-offending.
- A short custodial term followed by a significantly longer extension period may be appropriate where the offence was relatively minor but the risk of re-offending justifies an extended period of supervision.
- Extended sentences should not generally be imposed consecutively.

R v Cornelius [2002] 2 Cr.App.R.(S) 69

- The length of the extension period is not designed to reflect the seriousness of the offence but is designed to protect the public and secure the rehabilitation of the offender to prevent his re-offending.
- While the offender may, in the events which can happen, have to serve the whole or part of the extension period, as a matter of logic, the strict proportionality between the length of the extension period and the seriousness of the offence is not a primary consideration; but, that said, the principle of proportionality has to be observed.

Current Sentencing Practice Reference: A17

Joint conviction with a juvenile offender

R v Tyre (1984) 6 Cr.App.R.(S) 247

Where an offender aged over 18 and under 21 is convicted jointly with a juvenile, of an offence for which a sentence of detention in a young offender institution is appropriate, the court in passing sentence on the older offender is not restricted by the fact that the maximum term of detention which may be imposed on the younger offender is 24 months.

Current Sentencing Practice Reference: E2-3D

Sentences/Ancillary orders

Anti-Social Behaviour Orders (ASBOs)

(imposed with custody)

R v Parkin [2004] EWCA Crim 287

- If a substantial custodial sentence was imposed on an offender there would be only limited circumstances in which it would also be necessary to make a suspended ASBO which would come into effect on the offender's release. However, there would be cases in which geographical restraints could properly supplement licence conditions.

- The following principles emerged:
 - (i) the test for making an order was one of necessity to protect the public from further anti-social acts by the offender;
 - (ii) the terms of the order must be precise and capable of being understood by the offender;
 - (iii) findings of fact giving rise to the making of the order must be recorded;
 - (iv) the order must be explained to the offender; and
 - (v) the exact terms of the order must be pronounced in open court and the written order must accurately reflect the order pronounced.
- The conduct primarily envisaged as triggering such orders was graffiti, abusive and intimidating language, excessive noise, fouling the street with litter, drunken behaviour and drug dealing.

Current Sentencing Practice Reference: H10 and S1-006

Compensation Orders (imposed with custody)

R v Sullivan [2003] EWCA Crim 1736

- A compensation order should not be made if it would subject the offender on release from prison to a financial burden he might not be able to meet without committing further crime.
- Accordingly, someone sentenced to custody should not also be ordered to pay compensation without evidence that he would have the means to pay.

Current Sentencing Practice Reference: J2-4B and S1-019

Drug Treatment and Testing Orders (DTTOs)

Note the provisions of Part 12 of the Criminal Justice Act 2003 which abolishes the Drug Treatment and Testing Order as it currently stands but incorporates similar provisions into the list of requirements that can be included in the new community order. These provisions will come into force on 4 April 2005.

R v Robinson [2002] 2 Cr.App.R.(S) 95

- The court discussed the sentencing options available when a DTTO is breached.

- In some cases, it may be necessary for a sentence of imprisonment to be passed, even if a DTTO has recently been made and breached (especially where a serious offence is committed after a DTTO was imposed).
- Where no custodial sentence was imposed and the sentencer wishes to permit the DTTO to continue, the sentencer can
 - (i) make no order
 - (ii) defer sentence
 - (iii) grant a conditional discharge
 - (iv) impose a community rehabilitation order
 - (v) impose a further DTTO
- In most cases, if a custodial sentence is not imposed, it will be desirable to make a further DTTO, community rehabilitation order, or both.

AG's Ref. No. 64 of 2003 (Boujettif and Harrison) [2004] 2 Cr.App.R.(S) 22

The court set out a non-exhaustive list of factors relevant to whether a DTTO should be made.

Factors relevant to considering whether DTTO should be made:

- (i) where there is a realistic prospect of reducing drug addiction;
- (ii) many offences committed by an offender under the influence of drugs;
- (iii) must be clear evidence that the offender is determined to free himself or herself from drugs;
- (iv) DTTO is likely to have better prospect of success early rather than late in a criminal career;
- (v) very rare for DTTO to be appropriate for offence of serious violence or threat of violence with a lethal weapon;
- (vi) generally appropriate in cases of acquisitive offending;
- (vii) DTTO appropriate even where a substantial number of offences have been committed;
- (viii) unlikely to be appropriate for a substantial number of serious offences which either involve minor violence, or have a particularly damaging effect on the victim or victims. There must be a degree of proportionality between offence and sentence, so that excessive weight is not given to the prospect of rehabilitation at the expense of proper regard for the criminality of the offender;

- (ix) material about the offender, which becomes available between sentencing and appeal may be of significance as to the propriety of a DTTO.
- Usually, orders will be made in relation to Class A drugs.
 - Breach action may be taken after one unacceptable failure and must be taken after a second unacceptable failure to comply with requirements.

Current Sentencing Practice Reference: D5A and S1-046

Seriousness of an offence

Please refer to the 'Overarching Principles – Seriousness' guideline published by the Sentencing Guidelines Council on 16 December 2004.

Specimen offences

R v Kidd and Canavan [1998] 1 Cr.App.R.(S) 243

- An offender cannot be sentenced for offences for which they have not been indicted and which they have denied or declined to admit.

Current Sentencing Practice Reference: L2-1D

Victim's wishes

R v Perks [2001] 1 Cr.App.R.(S) 19

Having reviewed existing authorities on 'Victim Impact Statements', the Court restated the following principles:

1. A sentencer must not make assumptions, unsupported by evidence, about the effects of an offence on the victim.
2. If an offence has had a particularly damaging or distressing effect upon a victim, this should be known to and taken into account by the court when passing sentence.
3. Evidence of the effects of an offence on the victim must be in proper form, a Section 9 witness statement, an expert's report or otherwise, duly served upon the offender or his representatives prior to sentence.
4. Evidence of the victim alone should be approached with care, especially if it relates to matters which the Defence cannot realistically be expected to investigate.
5. The opinions of the victim and the victim's close relatives on the appropriate level of sentence should not be taken into account. The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender subject to two exceptions:

- (i) Where the sentence passed on the offender is aggravating the victim's distress, the sentence may be moderated to some degree.
- (ii) Where the victim's forgiveness or unwillingness to press charges provide evidence that his or her psychological or mental suffering must be very much less than would normally be the case.

Current Sentencing Practice Reference: L2-2S

The following extract has been taken from the 'Consolidated Criminal Practice Direction' which was published on 29 July 2004 and can be found at: www.hmcourts-service.gov.uk.

III.28 PERSONAL STATEMENTS OF VICTIMS

III.28.1 This section draws attention to a scheme, which started on 1 October 2001, to give victims a more formal opportunity to say how a crime has affected them. It may help to identify whether they have a particular need for information, support and protection. It will also enable the court to take the statement into account when determining sentence.

III.28.2 When a police officer takes a statement from a victim the victim will be told about the scheme and given the chance to make a victim personal statement. A victim personal statement may be made or updated at any time prior to the disposal of the case. The decision about whether or not to make a victim personal statement is entirely for the victim. If the court is presented with a victim personal statement the following approach should be adopted:

- (a) The victim personal statement and any evidence in support should be considered and taken into account by the court prior to passing sentence.
- (b) Evidence of the effects of an offence on the victim contained in the victim personal statement or other statement, must be in proper form, that is a witness statement made under section 9 of the Criminal Justice Act 1967 or an expert's report, and served upon the defendant's solicitor or the defendant, if he is not represented, prior to sentence. Except where inferences can properly be drawn from the nature of or circumstances surrounding the offence, a sentencer must not make assumptions unsupported by evidence about the effects of an offence on the victim.
- (c) The court must pass what it judges to be the appropriate sentence having regard to the circumstances of the offence and of the offender, taking into account, so far as the court considers it appropriate, the consequences to the victim. The opinions of the victim or the victim's close relatives as to what the sentence should be are therefore not relevant, unlike the consequence of the offence on them. Victims should be advised of this. If, despite the advice, opinions as to sentence are included in the statement, the court should pay no attention to them.
- (d) The court should consider whether it is desirable in its sentencing remarks to refer to the evidence provided on behalf of the victim.

Young offenders

Age for purpose of sentencing

R v Danga (1992) 13 Cr.App.R.(S) 408

- For the purposes of sentencing a young offender, the age is that at the date of conviction, that is the day when a jury pronounces a verdict of guilty or when the plea of guilty is entered.

R v Ghafoor [2003] 1 Cr.App.R.(S) 84

The court stated the approach to be adopted where an offender crosses a relevant age threshold between the date of the commission of the offence and the date of conviction.

- The starting point is the sentence that the offender would have been likely to receive if he had been sentenced at the date of the commission of the offence.

Current Sentencing Practice Reference: E2-3A

Venue for trial

R v Southampton Youth Court, Wirral Boro YC [2003] 1 Cr.App.R.(S) 455

Venue for trial of offences which could attract a custodial sentence for those aged under 18.

- Justices should start off with a strong presumption against sending young offenders to the Crown Court unless they are satisfied that that is clearly required, notwithstanding the fact that the forum for trial will not be so appropriate as the Youth Court.
- Justices should have in mind that, if they are going to send a case to the Crown Court, it is such a serious case that detention above two years is required, or it is one of those cases where they consider that the appropriate sentence is not only a custodial sentence, but a custodial sentence which is approaching the two-year limit which is normally applicable to older offenders with whom they have to deal.
- The fact that justices come to the conclusion that a case should be sent to the Crown Court does not mean that the Crown Court Judge has to take the view that detention for as long as two years is required.
- A Crown Court Judge should not impose one more day's detention than he or she would otherwise consider appropriate merely because the matter has been sent to the Crown Court.

(B) HOMICIDE AND RELATED OFFENCES

Manslaughter	20
• By reason of diminished responsibility	20
• By reason of provocation	20

Manslaughter

By reason of diminished responsibility

Legislation: *s.2, Homicide Act 1957*

R v Chambers (1983) 5 Cr.App.R.(S) 190

Sets out four sentencing options (see below). The choice of the right course depends on the state of the evidence and material before the court.

<i>Sentencing options</i>	<i>Circumstances</i>
1. Hospital order	where recommended by psychiatric report
2. Life imprisonment	where hospital order not recommended and the offender constitutes a danger to the public for an unpredictable period
3. Determinate sentence	where no basis for hospital order but responsibility not minimal. Length determined by assessment of degree of responsibility and of time the accused will remain a danger to the public
4. Release and suspension	no danger of repetition of violence. Responsibility grossly impaired and degree of responsibility minimal

Current Sentencing Practice Reference: B1-1

By reason of provocation

The Sentencing Guidelines Council is currently considering advice of the Sentencing Advisory Panel on this subject and is likely to issue a draft guideline in Spring 2005.

Legislation: *s.3, Homicide Act 1957*

R v Shaw (1984) 6 Cr.App.R.(S) 108

There is no authority to show that seven years is to be regarded as the maximum sentence for a killing by manslaughter on the ground of provocation.

AG's Ref. No. 33 of 1996 (Latham) [1997] 2 Cr.App.R.(S) 10

Guidelines

- Where an offender deliberately goes out with a knife, carrying it as a weapon, and uses it to cause death, even if there is provocation he should expect to receive on conviction in a contested case a sentence in the region of 10 to 12 years.

- The alternative would be to say that although the tariff should remain the same, the indictment should contain a separate count in relation to the carrying of the offensive weapon for which a separate and normally consecutive sentence should be imposed, but that would be a “somewhat cumbersome approach”.

AG’s Ref. Nos. 72, 95 and 118 of 2003 (Suratan and others) [2003] 2 Cr.App.R.(S) 42

When sentencing an offender who is not guilty of murder but guilty of manslaughter by reason of provocation, the judge must make certain assumptions in the offender’s favour:

- at the time of the killing, the offender lost his self-control;
- that the offender was caused to lose his self-control by things said or done by the person whom he has killed;
- the offender’s loss of control was reasonable in all the circumstances;
- the circumstances were such as to make the loss of self-control sufficiently excusable to reduce the gravity of the offence from murder to manslaughter.

Current Sentencing Practice Reference: B1-2

(C) NON-FATAL OFFENCES AGAINST THE PERSON

Assault	24
• Assault occasioning ABH (attacks on hospital staff)	24
• Racially aggravated assault occasioning ABH	24
Harassment	25
Kidnapping	26
Wounding/causing grievous bodily harm with intent	27
• 'Glassing' of victim	27
• Setting fire to victim	27
• Stabbing	28
• Stamping on head of victim	28
• Using excessive force in self-defence	28

Assault

Assault occasioning ABH (attacks on hospital staff)

R v McNally [2000] 1 Cr.App.R.(S) 535

- Doctors, nurses and other staff were entitled to whatever protection the courts could give, and those who used physical violence against them should expect a sentence of immediate imprisonment.
- The length of sentence must depend on the circumstances of the particular case.

Aggravating factors:

- striking of repeated blows;
- use of weapon, feet or head-butting;
- infliction of serious or lasting injury;
- use of violence to more than one person.

Mitigating factors:

- immediate and genuine remorse;
- plea of guilty;
- previous good character;
- personal circumstances of offender, particularly those relevant to his state of mind at the time.

Current Sentencing Practice Reference: B2-4

Racially aggravated assault occasioning ABH

See also the topic 'Racially aggravated offences' in the section on 'Generic sentencing principles', page 7.

R v Saunders [2000] 2 Cr.App.R.(S) 71

The maximum sentence of 5 years for assault occasioning actual bodily harm had been increased to 7 years where the offence was racially aggravated. This must be reflected in the sentence imposed by courts.

Guideline

- Generally speaking, following a trial, a period of up to 2 years should be added to the term of imprisonment otherwise appropriate for the offence, had it not been racially aggravated.

Current Sentencing Practice Reference: B2-4.3H

Harassment

See also a consultation paper published by the Sentencing Advisory Panel on domestic violence (July 2004), which includes proposed guidelines on a breach of a restraining order and a non-molestation order (the latter a new criminal offence under the Domestic Violence, Crime and Victims Act 2004). This can be found at: www.sentencing-guidelines.gov.uk

Legislation: Protection from Harassment Act 1997
(also relevant in context of breach of a restraining order)

R v Little and Hayes [2000] 1 Cr.App.R.(S) 131

The court should consider the following when sentencing for breach of a restraining order:

- whether the breach related to an order made under section 2 (summary offence) or section 4 (offence triable either way);
- history of disobedience of court orders (civil or under the Protection from Harassment Act 1997);
- seriousness of offender’s conduct; actual violence or direct contact is likely to be more serious than letters or other forms of indirect contact;
- whether the conduct was persistent, or a single incident;
- degree of physical or psychological effect upon the victim and whether the victim required protection;
- the level of risk posed by the offender;
- the mental health of the offender and willingness to undergo treatment or have help from the Probation Service;
- the offender’s reaction to the court proceedings;
- a plea of guilty;
- showing of remorse and recognition of need for help.

Guidelines

<i>Circumstances</i>	<i>Guideline sentence</i>
1. First offence	A “short sharp sentence”
2. Second offence	15 months on guilty plea

R v Pace [2004] EWCA Crim 2018

Note: The Court proceeded on the basis that there were no existing guidelines and set out the following relevant factors to consider when sentencing for breach of a restraining order:

- (i) nature of the act giving rise to the breach. The use of actual violence and the threat of serious violence would clearly be aggravating features;
- (ii) effect on the victim;
- (iii) whether or not the offence was the first breach, or the last in a series of breaches;
- (iv) the offender's record and, in particular, how he had responded to community penalties in the past and whether or not he was subject to community penalties at the time of the breach;
- (v) the need to protect the person named in the restraining order.

Guideline

- The Court noted that sentences of between 12 months and 2 years had been upheld for breach of a restraining order.

Current Sentencing Practice Reference: B3-6

Kidnapping

Kidnapping may also be relevant in the context of s.62 of the Sexual Offences Act 2003 which makes it an offence to commit an offence with the intention of committing a sexual offence.

R v Spence and Thomas (1983) 5 Cr.App.R.(S) 413

Guidelines

<i>Circumstances</i>	<i>Guideline sentence</i>
1. Violence or firearm used, exacerbating features such as detention of victim over long period	More than 8 years' imprisonment
2. Carefully planned abductions, victim used as hostage, or ransom money demanded	Seldom less than 8 years' imprisonment
3. Scarcely kidnapping, perhaps the sequel to a family tiff or lovers' dispute	Up to 18 months' imprisonment

Current Sentencing Practice Reference: B3-4

Wounding/causing grievous bodily harm with intent

Legislation: s.18, Offences against the Person Act 1861

Please note that the Sentencing Advisory Panel is due to publish a consultation paper on 'Assault and other offences against the person' in Summer 2005. This will be published in due course at the following website: www.sentencing-guidelines.gov.uk

'Glassing' of victim

R v Harwood (1979) 1 Cr.App.R.(S) 354

- A sentence of 3 years' imprisonment should be regarded as a normal sentence for a deliberate wounding in which a broken glass or bottle is used as a weapon, in the absence of exceptional circumstances, even where there is a plea of guilty.

Current Sentencing Practice Reference: B2-2.3B

Setting fire to victim

R v Thomas (1985) 7 Cr.App.R.(S) 87

In cases where the victim has been doused with petrol and set afire, there is a high degree of probability that the victim will die. If the victim does die, then clearly murder has been committed. However, if the victim does not die because of superb medical intervention, then the offence is within touching distance of murder.

Guidelines

- In such cases, the probable sentence is one of life imprisonment as the factor which distinguishes such cases from murder is a matter of chance whether the victim dies or survives.
- In cases where there are strong mitigating factors (such as the act was done on the spur of the moment when the offender was in a temper with the victim, the offender tried to put out the flames immediately and showed remorse), it is unlikely that on conviction the sentence will be less than 5 years' imprisonment.

Current Sentencing Practice Reference: B2-2.3E

Stabbing

AG's Ref. No. 18 of 2002 (Hughes) [2003] 1 Cr.App.R.(S) 9

- Having referred to a number of existing authorities, the Court concluded that, depending on the circumstances of the particular offence and whether or not there is a plea of guilty, a sentence within the range of 3 to 8 years was appropriate for offences contrary to s.18 of the Offences Against the Person Act 1861, when a knife is used.

Current Sentencing Practice Reference: B2-2.3A

Stamping on head of victim

AG's Ref. No. 59 of 1996 (Grainger) [1997] 2 Cr.App.R.(S) 250

- A non-custodial sentence is wholly inappropriate for an offence of causing grievous bodily harm with intent where the offence involves stamping on the head of the victim and kicks to the face, head and body whilst the victim is on the ground.

Current Sentencing Practice Reference: B2-2.3C

Using excessive force in self-defence

AG's Ref. Nos. 59, 60 and 63 of 1998 (Goodwin and others) [1999] 2 Cr.App.R.(S) 128

An offence under s.18 of the Offences against the Person Act 1861 (including those involving the use of excessive force in self-defence) is always to be regarded as of great seriousness. This is reflected in the maximum penalty of life imprisonment.

The use of a weapon would aggravate the offence.

Guidelines

- Such an offence would almost always warrant a custodial sentence.
- Whilst excessive use of force in self-defence was perhaps the least inexcusable example of the offence, even then, a custodial sentence would usually be appropriate.

(D) DRIVING OFFENCES RESULTING IN DEATH

Causing death by dangerous driving and careless driving whilst under the influence of drink or drugs

30

Causing death by dangerous driving and careless driving when under the influence of drink or drugs

Please note that the maximum penalties for both offences of causing death by dangerous driving and causing death by careless driving whilst under the influence of drink or drugs were increased from 10 years to 14 years imprisonment by s.285 of the Criminal Justice Act 2003.

R v Cooksley and others [2004] 1 Cr.App.R.(S) 1

General issues:

- It will usually be obvious to the offender that the driving was dangerous and therefore deserves to be punished accordingly.
- Parliament regarded the consequences of dangerous driving as being a relevant consideration so that if death does result, this in itself can justify a heavier sentence than could be imposed for a case where death does not result.
- The impact on the family (where death results) is a matter that the courts can and should take into account.
- In determining sentence, it is important for courts to stress the message as to the dangers that can result from dangerous driving on the road. Motor vehicles can be lethal if they are not driven properly and, this being so, drivers must know that if as a result of their driving dangerously, a person is killed, no matter what the mitigating circumstances, normally only a custodial sentence will be imposed. This is because of the need to deter other drivers from driving in a dangerous manner and because of the gravity of the offence.

Aggravating and mitigating factors:

- The Court adopted the Sentencing Advisory Panel's series of aggravating and mitigating factors but stressed that they were not exhaustive. The Court added that it is important to appreciate that the significance of the factors can differ. There can be cases with three or more aggravating factors that are not as serious as a case providing a bad example of one factor. They are as follows:

Aggravating factors

"Highly culpable standard of driving at the time of the offence"

- (a) the consumption of drugs (including legal medication known to cause drowsiness) or of alcohol, ranging from a couple of drinks to a 'motorised pub crawl'
- (b) greatly excessive speed; racing; competitive driving against another vehicle; 'showing off'
- (c) disregard of warnings from fellow passengers

- (d) a prolonged, persistent and deliberate course of very bad driving
- (e) aggressive driving (such as driving much too close to the vehicle in front, persistent inappropriate attempts to overtake, or cutting in after overtaking)
- (f) driving while the driver's attention is avoidably distracted, for example by reading or by use of a mobile phone (especially if hand-held)
- (g) driving when knowingly suffering from a medical condition that significantly impairs the offender's driving skills
- (h) driving when knowingly deprived of adequate sleep or rest
- (i) driving a poorly maintained or dangerously loaded vehicle, especially where this has been motivated by commercial concerns.

Driving habitually below an acceptable standard

- (j) other offences committed at the same time, such as driving without ever having held a licence; driving while disqualified; driving without insurance; driving while a learner without supervision; taking a vehicle without consent; driving a stolen vehicle
- (k) previous convictions for motoring offences, particularly offences that involve bad driving or the consumption of excessive alcohol before driving.

Outcome of the offence

- (l) more than one person killed as a result of the offence (especially if the offender knowingly put more than one person at risk or the occurrence of multiple deaths was foreseeable)
- (m) serious injury to one or more victims, in addition to the death(s).

Irresponsible behaviour at the time of the offence

- (n) behaviour at the time of the offence, such as failing to stop, falsely claiming that one of the victims was responsible for the crash, or trying to throw the victim off the bonnet of the car by swerving in order to escape;
- (o) causing death in the course of dangerous driving in an attempt to avoid detection or apprehension;
- (p) offence committed while the offender was on bail.

Mitigating factors

- (a) a good driving record;
- (b) the absence of previous convictions;
- (c) a timely plea of guilty;
- (d) genuine shock or remorse (which may be greater if the victim is either a close relation or a friend);
- (e) the offender's age (but only in cases where lack of driving experience has contributed to the commission of the offence); and
- (f) the fact that the offender has also been seriously injured as a result of the accident caused by the dangerous driving.

Guidelines

The following guidelines apply in the case of a contested trial.

Imprisonment

<i>Circumstances</i>	<i>Guideline sentence</i>
1. No aggravating circumstances	Immediate custodial sentence will generally be necessary unless there are exceptional circumstances. Starting point: 12–18 months for adult offenders
2. Intermediate culpability – momentary dangerous driving/error of judgement/short period of bad driving	Starting point: 2–3 years (but up to 5 years if multiple factors are present)
3. Higher culpability – standard of offender's driving is more highly dangerous (one or two aggravating factors)	Starting point: 4–5 years

Disqualification

<i>Circumstances</i>	<i>Guideline sentence</i>
1. Where the offender had a good driving record before the offence and the offence was a momentary error of judgement	In the order of 2 years
2. Where the offence and offender's record show the offender tends to disregard the rules of the road or drive carelessly or inappropriately	3–5 years
3. Where the offence and offender's record show the offender represents a real and continuing danger to other road users	5–10 years

Current Sentencing Practice Reference: B1-7

(E) SEXUAL OFFENCES

All these offences are now included in the Sexual Offences Act 2003 and many are defined differently and/or have different maximum penalties. These cases are included because there will be a number of cases to which the previous legislation applies.

The Sentencing Advisory Panel has consulted widely on the offences in the 2003 Act. A draft guideline is likely to be published in Summer 2005.

Incest	36
Indecent assault	37
• Indecent assault – general	37
• Indecent assault on male	37
Pornography	38
• Having obscene articles for publication for gain	38
• Importation of indecent or obscene articles	38
• Making and distributing indecent photographs of a child	39
Rape	43
Sex Offenders' Register	46
Trafficking women for prostitution	46
<u>Guidelines on the following topics relate to offences as set out in the Sexual Offences Act 2003:</u>	
Offences under the Sexual Offences Act 2003	47
• Rape (section 1)	47
• Assault by penetration (section 2)	47
• Rape of a child under 13 (section 5)	47
• Sexual activity with a child (section 9)	49
• Causing or inciting a child to engage in sexual activity (section 10)	49
• Sexual assault on a child under 13 (section 7)	49
• Inciting a child to engage in penetrative sexual activity (section 8)	49
• Engaging in sexual activity in the presence of a child (section 11)	50
• Causing a child to watch a sexual act (section 12)	50
Assault by penetration (and rape)	51
Committing an offence with intent to commit a sexual offence	51
• Battery with intent to commit a sexual offence	51

Incest

This offence is now included in the Sexual Offences Act 2003 and may be defined differently and/or have different maximum penalties. These cases are included because there will be a number of cases to which the previous legislation applies.

The Sentencing Advisory Panel has consulted widely on the offences in the 2003 Act. A draft guideline is likely to be published in Summer 2005.

AG's Ref. No. 1 of 1989 (1989) 11 Cr.App.R.(S) 409

The case involved a man who committed incest against his daughter.

Aggravating factors

Whatever the age of the girl, aggravating factors are:

- Girl has suffered physically or psychologically from the incest;
- Incest has continued at frequent intervals over a long period of time;
- Girl has been threatened or treated violently or was terrified of the father;
- Incest has been accompanied by perversions abhorrent to the girl, e.g. buggery or fellatio;
- Girl has become pregnant by reason of the father failing to take contraceptive measures;
- Offender has committed similar offences against more than one girl.

Possible mitigating factors are:

- A guilty plea;
- Genuine affection on the part of the offender rather than the intention to use the girl simply as an outlet for his sexual inclinations;
- Girl has had previous sexual experience;
- Girl has made deliberate attempts at seduction;
- That a shorter term of imprisonment for the father may be of benefit to the victim and the family.

Guidelines

The Court offered broad guidance as to the level of sentence for various categories of incest where there has been no plea of guilty:

1. Where the girl is over 16

A range from 3 years' imprisonment to a nominal penalty, depending on whether force was used and the degree of harm, if any, to the girl, and on the other hand to the desirability, where it exists, of keeping family disruption to a minimum. The lower the degree of corruption, the lower the penalty.

2. Where the girl is aged from 13 to 16

A sentence between 5 and 3 years seems appropriate. The likelihood of corruption increases in inverse proportion to the age of the girl.

3. Where the girl is under 13

If the girl is near 13 and there are no particularly adverse or favourable features, a term of about 6 years would seem appropriate. The younger the girl when the sexual approach started, the more likely the girl's will was overborne and, accordingly, the more serious the crime would be.

Current Sentencing Practice Reference: B4-2

Indecent assault

Legislation: Sexual Offences Act 1956

This offence is now included in the Sexual Offences Act 2003 and may be defined differently and/or have different maximum penalties. These cases are included because there will be a number of cases to which the previous legislation applies.

The Sentencing Advisory Panel has consulted widely on the offences in the 2003 Act. A draft guideline is likely to be published in Summer 2005.

Indecent assault – general

AG's Ref. Nos. 91, 119 and 120 of 2002 (E, K and G) [2003] 2 Cr.App.R.(S) 55

In determining the gravity of an offence of indecent assault or other sexual offence, the sentencing court should take account of the same general considerations as in a case of rape. Those are:

- the degree of harm to the victim;
- the level of culpability of the offender; and
- the level of risk posed by the offender to society – the offender's age and the fact that the offender might only be a danger to members of the family with whom he had the relationship would be relevant in determining whether there was a reduced risk of offending.

Indecent assault on male

R v Lennon [1999] 1 Cr.App.R.(S) 19

When considering earlier decisions of the Court of Appeal in cases of indecent assault, it is important to view them against the statutory background that was in force at the time the sentences were passed.

The case of R v Demel [1997] 2 Cr.App.R.(S) 5, which was said to have laid down that there was an established sentencing tariff (after a trial) of 13–18 months' imprisonment, may need to be regarded as confined to its own facts.

Current Sentencing Practice Reference: B4-6 and B4-8

Pornography

This offence is now included in the Sexual Offences Act 2003 and may be defined differently and/or have different maximum penalties. These cases are included because there will be a number of cases to which the previous legislation applies.

The Sentencing Advisory Panel has consulted widely on the offences in the 2003 Act. A draft guideline is likely to be published in Summer 2005.

Having obscene articles for publication for gain

Legislation: s.2(1), Obscene Publications Act 1959

R v Holloway (1982) 4 Cr.App.R.(S) 128

These guidelines are for those who commercially exploit pornography.

- Custodial sentences should be imposed on first offenders and all connected with the commercial exploitation of pornography (e.g. salesman, projectionists, owners and suppliers behind the owners).
- The length of custodial sentences for first offenders need only be comparatively short, but persistent offenders should get the full rigour of the law. In addition, very substantial fines should be imposed to take the profit out of the trade.

Importation of indecent or obscene publications

R v Nooy and Schyff (1982) 4 Cr.App.R.(S) 308

- Where there is importation for commercial gain, the normal sentence should be one of loss of liberty. Past sentences of 3 months and 1 month are not appropriate now or in the foreseeable future.
- Organisers and mere carriers and helpers should get severe sentences. The sentences imposed in this case should not be regarded as the normal kind of sentence imposed. In the future, even severer sentences may properly be passed.
- Those who sentence should bear in mind that the law allows substantial fines as well as loss of liberty; here the purpose of the fine would be to discourage the trade by taking the profit out of it.

Making and distributing indecent photographs of a child

Legislation: Sections 1(1)(a) and 1(1)(b) of the Protection of Children Act 1978 as amended by sections 45 and 46 of the Sexual Offences Act 2003

R v Toomer and others [2001] 2 Cr.App.R.(S) 8

Having considered existing authorities, the Court stated the following principles:

- Sentences up to the statutory maximum should be imposed when there is a contested case and there is evidence of commercial or large-scale exploitation and there is a significant amount of material, especially if the offender has previous convictions.
- Non-custodial sentences should be reserved for isolated offences where there is no commercial element, the amount of material is very small and is for personal use or within a small circle, and the offender pleaded guilty and is a first offender.
- Where a case fell between those extremes would depend on the circumstances, in particular on:
 - i. the quality, quantity and nature of the material;
 - ii. any element of exploitation or commercial gain;
 - iii. whether the offence was simply one of making (downloading and saving) or also involved distribution and, if so, to what extent (to a single recipient or significantly more widespread);
 - iv. the character of the offender and the effect of the conviction on the individual;
 - v. whether there had been a plea of guilty coupled with co-operation from the outset in the investigation.

R v Wild [2002] 1 Cr.App.R.(S) 37

This case was concerned with making indecent photographs or pseudo-photographs of children.

Aggravating factors

Having upheld the principles as set out in R v Toomer and others [2001] 2 Cr.App.R.(S) 8, the Court went on to state the following:

- The distribution or further dissemination of obscene material was inevitably likely to be an aggravating factor. Whether such cases would warrant custody depended on the extent of the distribution and other factors as mentioned in R v Toomer.

- The quality of the image and degree of obscenity involved might well bear on the gravity of the offence as they reflect the degree of corruption to which the child had been exposed.
- Aggravating features pertaining to the image included:
 - the age and number of children involved;
 - whether the children were of one or both sexes;
 - the nature of the conduct to which they were subjected or in which they were depicted as taking part.

R v Oliver and others [2003] 2 Cr.App.R.(S) 15

As part of the draft guideline being considered in relation to offences under the Sexual Offences Act 2003, it is possible that the definitions within each of the sentencing levels (below) will change.

The Court considered advice from the Sentencing Advisory Panel.

The guideline provides for the seriousness of materials to be analysed using five levels of activity:

1. Images depicting erotic posing with no sexual activity.
2. Sexual activity between children or solo masturbation by a child.
3. Non-penetrative sexual activity between adults and children.
4. Penetrative sexual activity between children and adults.
5. Sadism or bestiality.

Seriousness increases with the offender's proximity to and responsibility for the original abuse.

Aggravating factors

- (i) Images shown or distributed to a child.
- (ii) Large number of images. (Have regard to the principles in R v Kidd and Canavan [1998] 1 Cr.App.R.(S) 243.
- (iii) Collection of images organised on a computer in a way that indicates a more or less sophisticated approach to trading or a higher level of personal interest.

- (iv) Images posted on a public area of the internet or distributed in a way making it more likely they will be found accidentally by computer users not looking for pornographic material.
- (v) Offender responsible for the original production of the images, particularly if the child or children involved were members of the offender's own family, or were drawn from particularly vulnerable groups, or offender has abused a position of trust.
- (vi) Age of children involved.

Mitigating factors

- (i) Some but not much weight should be attached to good character.
- (ii) Guilty plea.

Guidelines

For adult offenders, after a trial, the following guidelines apply.

<i>Guideline sentence</i>	<i>Circumstances</i>
Fine or conditional discharge	A <u>fine may be appropriate</u> if: the offender was merely in possession of material solely for own use, including where material was downloaded from the internet but not further distributed, and consisted entirely of pseudo-photographs, the making of which had involved no abuse or exploitation of children, or there was no more than a small quantity of material at level 1. A <u>conditional discharge may be appropriate</u> in such a case if the offender pleaded guilty and had no previous convictions.
Community sentence	A community sentence may be appropriate if the offender was in possession of a large amount of material at level 1 and/or a small number of images at level 2, provided the material was not distributed or shown to others.

<i>Guideline sentence</i>	<i>Circumstances</i>
<p>Custodial sentence</p> <p>The <u>custody threshold</u> would usually be passed where any of the material had been shown or distributed to others or, in a case of possession, where there was a large amount of material at level 2 or a small amount at level 3 or above.</p>	
Up to 6 months' custody	<p>Appropriate if:</p> <ul style="list-style-type: none"> (a) Offender was in possession of a large amount of material at level 2 or a small amount at level 3 or above, or (b) Offender had shown, distributed, or exchanged indecent material at level 1 or 2 on a limited scale, without financial gain.
6–12 months' custody	<p>Appropriate if:</p> <ul style="list-style-type: none"> (a) Showing or distributing a large number of images at level 2 or 3, or (b) Possessing a small number of images at levels 4 or 5.
12 months–3 years' custody	<p>Appropriate if:</p> <ul style="list-style-type: none"> (a) Possessing a large quantity of material at levels 4 or 5, even if there was no showing or distribution of it (b) Showing or distributing a large number of images at level 3 (c) Producing or trading in material at levels 1, 2 or 3
Longer than 3 years' custody	<p>Appropriate if:</p> <ul style="list-style-type: none"> (a) Images at level 4 or 5 had been shown or distributed, or (b) Offender was actively involved in production of images at levels 4 or 5, especially where that involvement included a breach of trust, and whether or not there was an element of commercial gain, or (c) Offender commissioned or encouraged the production of such images <p>(An offender whose conduct merited more than 3 years would merit a higher sentence if his conduct was within more than one of the categories)</p>
Sentences approaching the 10 year maximum	<p>Appropriate in very serious cases where the offender had a previous conviction either for dealing in child pornography or for abusing children sexually or with violence.</p>

Current Sentencing Practice Reference: B10-1.3B and B10-1.3C

Rape

This offence is now included in the Sexual Offences Act 2003 and may be defined differently and/or have different maximum penalties. These cases are included because there will be a number of cases to which the previous legislation applies.

The Sentencing Advisory Panel has consulted widely on the offences in the 2003 Act. A draft guideline is likely to be published in Summer 2005.

R v Billam (1986) 8 Cr.App.R.(S) 48

Aggravating factors

Where any one or more of the following aggravating factors is present, the sentence should be substantially higher than the suggested starting point:

- Violence is used over and above the force necessary to commit the rape.
- A weapon is used to frighten or wound the victim.
- The rape is repeated.
- The rape has been carefully planned.
- The offender has previous convictions for rape or other serious offences of a violent or sexual kind.
- Victim subjected to further sexual indignities or perversions.
- The victim is either very old or very young.
- The effect upon the victim, whether physical or mental, is of special seriousness.

Mitigating factors

- The fact that the victim may be considered to have exposed herself to danger is not a mitigating factor.
- The victim's previous sexual experience is irrelevant.
- If the victim behaved in a manner calculated to lead the offender to believe she would consent to intercourse, there should be some mitigation of the sentence.
- Previous good character of the offender is of only minor relevance.

Guidelines

- The starting point for attempted rape should normally be less than for the completed offence.
- For offenders under the age of 21 there should be some reduction to reflect their youth.

The following guidelines apply in a contested case.

<i>Circumstances</i>	<i>Guideline sentence</i>
1. Offence committed by an adult without aggravating or mitigating factors.	Starting point: 5 years
2. Offence committed by two or more offenders or the offender gained access to the place where the victim was living, or the victim was abducted and held captive.	Starting point: 8 years
3. Offender carried out campaign of rape of a number of different women/girls.	15 years or more may be appropriate
4. Where the offender's behaviour has manifested perverted or psychopathic tendencies or gross personality disorder and where he is likely if at large to remain a danger to women for an indefinite time.	A life sentence will not be inappropriate

R v Millberry and others [2003] 2 Cr.App.R.(S) 31

The guidelines are based on advice from the Sentencing Advisory Panel, retaining the structure established in R v Billam (1986) 8 Cr.App.R.(S) 48 but taking into account changes in legislation since those guidelines were issued.

The guidelines apply to 'relationship', 'acquaintance' and 'stranger' rape, and similarly to male and female rape, and the starting points are the same for all categories of rape and for 'historic' cases of rape.

Aggravating factors

Aggravating factors include those from R v Billam and additionally:

- Offender broke into or otherwise gained access to the place where the victim is living (referred to in R v Billam as a factor attracting the 8 year starting point).
- The presence of children when the offence is committed.
- The covert use of a drug to overcome the victim's resistance and/or obliterate memory of the offence.
- A history of sexual assaults or violence by the offender against the victim.

In all cases the sentencer should consider whether it is appropriate to impose a sentence [under the dangerous offender provisions in Chapter 5 of Part 12 of the Criminal Justice Act 2003 which will come into force on 4 April 2005].

Mitigating factors

- Guilty plea
- The offender’s good character does not justify a substantial reduction of what would otherwise be the appropriate sentence.

Guidelines

The following starting points apply to an adult offender following trial. A sentence should be significantly shorter for young offenders.

<i>Circumstances</i>	<i>Guideline sentence</i>
1. Single offence on an adult victim, with no aggravating features.	5 years’ imprisonment
2. If any of the following aggravating features are present: (i) offence committed by two or more offenders acting together (ii) offender is in a position of responsibility towards the victim or is a person in whom the victim has placed their trust by virtue of their office or employment (iii) the offender abducts the victim and holds him/her captive (iv) rape of a child or a victim who is especially vulnerable because of physical frailty, mental impairment or disorder, or learning disability (v) racially aggravated rape and other cases where the victim has been targeted because of his or her membership of a vulnerable minority (vi) repeated rape in the course of one attack (vii) rape by a man who is knowingly suffering from a life-threatening sexually transmissible disease, whether or not he has told the victim of his condition and whether or not disease was actually transmitted.	8 years’ imprisonment

<i>Circumstances</i>	<i>Guideline sentence</i>
3. Campaign of rape involving multiple victims or repeated rape of the same victim over a course of time.	15 years' imprisonment
4. Where the offender's behaviour has manifested perverted or psychopathic tendencies or gross personality disorder and where he is likely if at large to remain a danger to women for an indefinite time.	A life sentence will not be inappropriate
If an offender has a <u>previous conviction for rape or another serious offence</u> , he may be classified as a dangerous offender for the purposes of Chapter 5 of Part 12 of the Criminal Justice Act 2003 (which will come into force on 4 April 2005).	

Current Sentencing Practice Reference: B4-1

Sex Offenders' Register

AG's Ref. No. 50 of 1997 (David Victor V) [1998] 2 Cr.App.R.(S) 155

The Court considered whether the obligation to register was a relevant factor when determining a sentence in a sexual offence case.

The Court held that it is not appropriate for a sentence to be reduced to limit the offender's obligation to register under the Sex Offenders Act 1997.

The provisions of the Act should not be regarded as a 'penalty' within the provisions of section 28 Criminal Justice Act 1991 [now section 158, Powers of Criminal Courts (Sentencing) Act 2000].

Current Sentencing Practice Reference: B4-6.2

Trafficking women for prostitution

This offence is now included in the Sexual Offences Act 2003 and may be defined differently and/or have different maximum penalties. These cases are included because there will be a number of cases to which the previous legislation applies.

The Sentencing Advisory Panel has consulted widely on the offences in the 2003 Act. A draft guideline is likely to be published in Summer 2005.

AG's Ref. No. 6 of 2004 (Plakici) [2004] EWCA Crim 1275

The offences committed by the offender pre-dated the trafficking offences introduced in the Immigration and Asylum Act 2002. The offender was charged with a range of offences including facilitating illegal entry, kidnapping, procuring a girl to have unlawful sex, living on prostitution, incitement to rape and false imprisonment.

In the absence of any guidelines relating to sentencing for what amounted to an offence of trafficking for prostitution, the Court stated that human trafficking was a degrading activity that produced untold misery to girls around the world and such offences warranted lengthy custodial sentences.

The original sentence of 10 years' imprisonment (concurrent sentences) was increased to consecutive sentences totalling 23 years.

Offences under the Sexual Offences Act 2003

The Sentencing Advisory Panel has consulted widely on the offences in the Sexual Offences Act 2003. A draft guideline is likely to be published in Summer 2005.

R v Corran and others [2005] EWCA Crim 192

The Court made observations and offered guidance on a number of offences created by the Sexual Offences Act 2003.

Rape (section 1) and Assault by penetration (section 2)

In all cases [of rape and assault by penetration] the maximum punishment available is life imprisonment. But the level of punishment appropriate will depend on the circumstances of the particular case.

The Court restated principles as set out in AG's Ref. No. 104 of 2004 (Garvey) [2004] EWCA Crim 2672 which dealt with rape (section 1) and assault by penetration (section 2) that:

- The aggravating and mitigating factors identified in R v Millberry and others [2003] 2 Cr.App.R.(S) 31 continue to be of assistance;
- The starting point for non-penile penetration should generally be lower than for penile penetration;
- For young offenders, the sentence should be significantly shorter than for an adult.

Rape of a child under 13 (section 5)

The Court stated that no precise guidance could be given on this offence. The appropriate sentence is likely to lie within a very wide bracket, depending on all the circumstances of the particular offence.

Factors relevant to sentence will include:

- age of the offender, of itself and when compared with the age of the victim;
- nature of the relationship between the two and their respective characters and maturity;

- the number of occasions when penetration occurred;
- the circumstances of the penetration, including whether contraception was used, the consequences for the victim, emotionally and physically;
- the degree of remorse shown by the offender and the likelihood of repetition.

Mitigating factors include:

- presence of consent, especially in the case of a young offender
- a reasonable belief that the victim was 16, especially in the case of a young offender.
- a plea of guilty (in accordance with the guideline issued by the Sentencing Guidelines Council).

Guidelines

- There will be very few cases in which immediate custody is not called for, even in relation to a young offender. The offence is of such seriousness that custody is likely to be warranted even after the new sentencing provisions of the Criminal Justice Act 2003 come into force.
- There will be some offences, for example where there is no question of consent, and where significant aggravating features, as identified in R v Millberry, are present, where a long determinate sentence, or a life sentence, will be appropriate, in accordance with existing authority on seriousness and dangerousness, as amplified by the Sentencing Guideline Council's guideline on seriousness, by reference to sections 142(1) and 143(1) of the Criminal Justice Act 2003, when those provisions come into force.
- Although the absence of consent is not an ingredient of the offence, the presence of consent will be material in relation to sentence, particularly in relation to young offenders. A very short period of custody is likely to suffice for a teenager where the other party consents.
- In exceptional cases, a non-custodial sentence may be appropriate for a young offender.
- If the offender is much older than the victim a substantial term of imprisonment will usually be called for.
- Existing authorities, which indicate a sentence of around 15 months for an offender in his 20s, will continue to be of assistance, particularly bearing in mind that life imprisonment was the maximum sentence for the pre-Act offence of having sexual intercourse with a girl under 13.

***Sexual activity with a child (section 9) and
Causing or inciting a child to engage in sexual activity (section 10)***

Sexual activity with an under-16-year-old of either sex is now a criminal offence and the penalty has been increased substantially.

Sections 9(1) and 9(2) make it an offence punishable with up to 14 years' imprisonment to engage in any form of sexual activity with a person under the age of 16 (if the offender does not reasonably believe the other person is 16 or over) or under the age of 13.

If the offender is under 18, the maximum sentence, by section 13, is 5 years on indictment.

Sections 10(1) and 10(2) contain similar provisions in relation to causing or inciting a child to engage in sexual activity.

These increases in the maximum penalty must be appropriately reflected in sentences imposed by the courts in relation to offenders of whatever age.

Factors relevant to sentence

The factors identified as among those relevant to sentence, in relation to the rape of a child under 13, will also be relevant in relation to penetrative sexual activity, under section 9 and section 10 subject to the one obvious difference that, in section 9 and section 10 offences, where the other party is 13 or over, reasonable belief that he or she was 16 or over will afford to a defendant of any age a defence rather than, as in section 5 rape, merely mitigation.

Guidelines

- As indicated by the penalties provided by Parliament, an offence contrary to section 5 will generally attract a heavier sentence than an offence, even where the victim is under 13, contrary to section 9 or section 10.
- The sentence for section 9 and section 10 offences is likely to be less where the victim is under 16 rather than under 13.

***Sexual assault on a child under 13 (section 7)
Causing or inciting a child to engage in penetrative sexual activity (section 8)***

Section 7 provides a maximum of 14 years' imprisonment on indictment, for sexual assault on a child under 13. The Court recorded that section 8 provides the same penalty for inciting a child to engage in penetrative sexual activity; in fact the same penalty only applies in relation to non-penetrative activity. The maximum penalty where the sexual activity caused or incited involves penetrative activity, as defined, is life imprisonment.

The age of the offender and consent by the victim are both immaterial to the definition of the offences in sections 7 and 8.

Factors relevant to sentence will include:

- the nature of the assault or penetrative activity, and the period of time it lasted, and
- all the other factors identified in relation to a section 5 offence, appropriately adjusted, in relation to section 7 offences, to apply to assault rather than penetration.

Guidelines

- Pre-Act authorities will continue to be of assistance, subject to them being viewed through the prism of the increased sentence for sexual assault from 10 to 14 years.
- In relation to section 7 offences, the custody threshold will not always be passed.
- Generally speaking, despite the similar maximum penalties, section 7 offences will be less serious than offences contrary to sections 8, 9 or 10. (It should be noted that, as the maximum penalty for the offence at section 8 is life imprisonment if the offence involves penetrative activity, this statement can only be true in relation to non-penetrative activity.)

Engaging in sexual activity in the presence of a child (section 11)
Causing a child to watch a sexual act (section 12)

Sections 11 and 12, respectively, create offences for persons over 18, engaging in sexual activity in the presence of children either under 16 not reasonably believed to be 16 or over, or under 13, and for the purposes of sexual gratification derived from causing such a child to watch such activity. The maximum penalty for these offences is 10 years on indictment.

Factors relevant to sentence will include:

- the age and character of the offender;
- the age of the child;
- the nature and duration of the sexual activity engaged or, in the case of section 12, depicted in the image;
- the number of occasions when the activity is observed;
- the impact on the child;
- the degree of remorse shown by the offender and the likelihood of repetition.
- A plea of guilty will call for the appropriate discount.

Guideline

These offences will usually attract a lesser sentence than that appropriate for sexual activity with a child, in contravention of sections 5, 7, 8, 9 or 10.

Assault by penetration (and rape)

The Sentencing Advisory Panel has consulted widely on the offences in the Sexual Offences Act 2003. A draft guideline is likely to be published in Summer 2005.

Legislation: s.2, Sexual Offences Act 2003

AG's Ref. No. 104 of 2004 (Garvey and others) [2004] EWCA Crim 2672

Guidelines

- The appropriate starting point for a rape of an adult contrary to s.1(1) of the 2003 Act was 5 years' imprisonment for conduct including penetration of the vagina, anus or mouth of a male or female. The level should be adjusted upwards or downwards depending on the aggravating features identified in R v Millberry and others [2003] 2 Cr.App.R.(S) 31, and should take into account a plea of guilty.
- An adult victim of an offence of non-penile vaginal or anal penetration, contrary to s.2 of the Act, had an absence of risk of pregnancy or infection which was inherent in an offence of rape. Thus the starting point for such an offence would be generally lower than for rape, namely in the region of 4 years' imprisonment (following a contested case).
- However, a starting point of 5 years' imprisonment (following a contested case) would be appropriate in some cases where non-penile penetration was with an object of a size and character that would cause significant risk of injury.
- If the assault by penetration was of a lesser degree or lasted for a minimal time, a lower starting point may be applicable.
- A significantly shorter period would be appropriate for an offence of rape or assault by penetration committed by a young person.

Committing an offence with intent to commit a sexual offence

The Sentencing Advisory Panel has consulted widely on the offences in the Sexual Offences Act 2003. A draft guideline is likely to be published in Summer 2005.

Legislation: s.62, Sexual Offences Act 2003

Maximum penalty: 10 years' imprisonment

Battery with intent to commit a sexual offence

R v Wisniewski [2004] EWCA Crim 3361

Battery with intent to commit sexual offences was one of the several new offences created by the Sexual Offences Act 2003. However, the conduct giving rise to the new offences was not new and authorities decided before the Act should continue to guide sentencers.

In relation to battery with intent to commit a sexual offence, factors of particular relevance include:

- (i) the method and degree of force used by an offender;
- (ii) the nature and extent of the indecency intended;
- (iii) the degree of vulnerability of, and harm to, the victim;
- (iv) the circumstances of the attack, including the time of day, the place of the offence, and the level of risk posed by the offender;
- (v) good character, which would afford limited mitigation.

Guidelines

- The maximum sentence provided by Parliament was 10 years' imprisonment compared with life imprisonment for rape or attempted rape committed in similar circumstances.
- Except where a great deal of violence was inflicted, the level of sentence for the instant offence was generally to be lower than was appropriate for offences of rape or attempted rape in similar circumstances.

(F) DRUG OFFENCES

Drug offences – general	54
Drug trafficking/Supply	55
• Supply and dealing in Class A drugs	55
• Supply to prisoners	57
Importation of controlled drugs	57
• Class A drugs	57
• Class B drugs	60
Possession with intent to supply	61
• Class A drugs	61
In transit, on high seas	62
Purity analysis of Class A drugs	63

Drug offences – general

R v Aramah (1982) 4 Cr.App.R.(S) 407

Class A drugs

Anything that courts can do by way of deterrent sentences on those found guilty of crimes involving Class A drugs should be done.

The following guidelines apply where there is a contested trial.

<i>Details of offence</i>	<i>Guidelines</i>
(i) Large-scale importation	<ol style="list-style-type: none">1. Street value £1 million or more: 12–14 years' imprisonment2. Street value of £100,000 or more: 7 years' imprisonment upwards3. Importation of appreciable amount: seldom less than 4 years' imprisonment <p>(see <u>R v Bilinski</u> (1987) 9 Cr.App.R.(S) 360 for revised guideline on importation of Class A drugs to reflect the increase in maximum penalty)</p>
(ii) Supply	<p>Seldom less than 3 years' imprisonment will be justified. *</p> <p>The nearer the source of supply the offender is, the heavier the sentence will be.</p>
(iii) Possession	<p>Impossible to lay down practical guidelines, but there will be many cases where deprivation of liberty is proper and expedient</p>

* [starting point increased to 5 years imprisonment in R v Singh (Satvir)]

Class B drugs

The following guidelines apply where there is a contested trial.

<i>Details of offence</i>	<i>Guidelines</i>
(i) Importation 1. Large or wholesale importation (unless offender in subordinate role) 2. Medium quantities over weight of 20kg 3. Up to weight of 20kg of herbal cannabis or equivalent in resin/oil	10 years' imprisonment 3–6 years' imprisonment 18 months' – 3 years' imprisonment Lowest for guilty plea cases and where profit to offender was small. Good character less important. Few cases will merit anything other than immediate custodial sentence.
(ii) Supply 1. Massive quantities (unless offender in subordinate role) 2. Otherwise depends on the scale of the operation 3. Where no commercial motive (e.g. supply at a party)	10 years' imprisonment 1–4 years' imprisonment Offence may well be serious enough to justify a custodial sentence.
(iii) Possession 1. Small amounts for personal use 2. Persistent flouting of the law	Fine Imprisonment

Current Sentencing Practice Reference: B11

Drug trafficking/supply

Supply and dealing in Class A drugs

R v Djahit [1999] 2 Cr.App.R.(S) 142

Sentencer assumed that the drugs were not of a high purity and that the appellant was a relatively small-time dealer who fed his addiction by selling to others.

- It was well established that the starting point for sentencing offences of possession with intent to supply or of supply of Class A drugs was in general now at least 5 years following a conviction.
- In deciding the appropriate level of sentence, the degree of involvement, the amount of trafficking and the value of the drug being handled were important. The quantity of drugs found on the offender was not necessarily decisive.
- The material factors in sentencing were the scale and nature of the dealing.

Guidelines

- A plea at the earliest opportunity would reduce the sentence by the appropriate margin.
- Personal circumstances might reduce it further.
- If the offender was able to show that he was no longer addicted to Class A drugs, a reduction might also be appropriate.

R v Twisse [2001] 2 Cr.App.R.(S) 37

Offender was a street-level dealer who only sold amounts sufficient to cover his own habit.

- The Court looked at a wide range of reported cases dealing with all Class A drugs and the sentences imposed over a period extending from 1988 to date. All indicate a sentencing bracket of between 5 and 7 years.
- The Court considered whether at this stage it was necessary to review the existing tariff but it was not persuaded that it was necessary to take that step.
- The Court stated that it is important to only sentence for the criminality proved or admitted (TICs). An offender charged with one offence of supply could not receive a more substantial sentence because it was clear to the court that he had been trading for nine months, but the court was not required to blind itself to the obvious.

R v Afonso and others [2004] EWCA Crim 2342

The level of sentencing indicated by R v Djahit [1999] 2 Cr.App.R.(S) 142 and R v Twisse [2001] 2 Cr.App.R.(S) 37, namely in the region of 6 years after a contested trial applies to offenders who are largely commercially motivated and repeatedly supply small quantities of Class A drugs to drug users. There is a subset of offenders who supply Class A drugs, for whom this level of sentence is not appropriate.

The culpability of an unemployed drug addict is likely to be less than that of many other suppliers as they have limited options to fund their addiction; the harm is also comparatively slight where they are shown only to have supplied undercover police officers and hold no stock for supplying others.

Guidelines

- In such a case, where a DTTO is not appropriate, the offender is an adult, it is a first drugs supply offence, and the case is contested, a short-term prison sentence is appropriate. Following a guilty plea at the first reasonable opportunity, the offender should be sentenced to a term of the order of 2 to 2½ years' imprisonment.
- For young offenders, in circumstances as indicated above, the custodial term is likely to be less.

Current Sentencing Practice Reference: B11-2.3B

Supply to prisoners

R v Prince [1996] 1 Cr.App.R.(S) 335

Supplying heroin to prisoner serving sentence. Father intended to supply heroin to his son who was a serving prisoner.

- Although the circumstances of this offence did not indicate a normal commercial supply but was a supply or supplies by a father attempting, however misguided, to assist his son; supply of Class A or indeed any drugs to a serving prisoner is a most serious offence and a lengthy custodial sentence was required – 5 years' imprisonment upheld, after a plea of guilty.

Current Sentencing Practice Reference: B11-2.3B

Importation of controlled drugs

*Legislation: Section 3, Misuse of Drugs Act 1971
Section 170, Customs & Excise Management Act 1979*

*Maximum penalty: Class A = Life imprisonment
Class B = 14 years' imprisonment*

Class A drugs

R v Aranguren and others [1995] 16 Cr.App.R.(S) 211

- For importation of heroin or cocaine, the sentence should be related to the weight of the pure drug imported rather than the estimated street value.
- R v Aramah (1982) 4 Cr.App.R.(S) 407 and R v Bilinski (1987) 9 Cr.App.R.(S) 360 dealt with only one factor in the sentencing exercise; that is the measure of the drugs in question. Other important factors are:
 - the role played by the offender;
 - previous convictions for drugs offences;
 - whether the offender pleaded guilty or rendered assistance to the prosecution.
- Use of street value estimates as a rough guide was a reasonable and fair approach and there was no reason why courts should not measure the length of sentence to some degree by them. A better way to measure the relative significance of any seizure of Class A drugs is by weight.

- *Amphetamine sulphate* (production/importation/supply) can be dealt with per Aramah guidelines for cannabis offences. Sentencers should take into account the purity level as well as the weight/quantity in such cases.
- *LSD* – Benefits from guidance in Attorney-General’s Ref. Nos. 3, 4 and 5 of 1992 (1993) 14 Cr.App.R.(S) 191 applying Aramah and Bilinski.

Guidelines

<i>Heroin</i> – (replaces guidelines in <u>Bilinski</u>)	<i>Guideline sentence</i>
1. Weight of drugs 100% pure 5kg or more	14 years’ imprisonment upwards
2. Weight of drugs 100% pure 500g or more	10 years’ imprisonment upwards

Current Sentencing Practice Reference: B11-2.3

Cocaine

R v Martinez (1984) 6 Cr.App.R.(S) 364

The same considerations as applied to heroin and other Class A drugs.

R v Aramah (1982) 4 Cr.App.R.(S) 407 applied. The Court stated that any idea that those who import or deal in cocaine or LSD should be treated more leniently was entirely wrong.

Current Sentencing Practice Reference: B11-2.2

Heroin

R v Bilinski (1987) 9 Cr.App.R.(S) 360

Belief is relevant to punishment and the offender who believed he was importing cannabis was less culpable than one who knew it to be heroin. The level of mitigation attaching to the belief would depend on factors such as the degree of care exercised by the offender. In some circumstances a Newton hearing would be necessary.

Guidelines

- The sentences suggested in R v Aramah (1982) 4 Cr.App.R.(S) 407 should be increased in light of the increase in the maximum penalty from 14 years to life imprisonment for importation of Class A drugs

<i>Circumstances</i>	<i>Guideline sentence</i>
1. Consignment street value £1 million or more	14 years’ imprisonment upwards
2. Consignment street value £100,000 or more	10 years’ imprisonment upwards

Current Sentencing Practice Reference: B11-2.3A

Opium**R v Mashaollahi** [2001] 1 Cr.App.R.(S) 330

- Court referred to the advice of the Sentencing Advisory Panel.
- 40kg of opium at 100% would be equivalent in value to 5kg of heroin at 100% purity, the importation of which attracts sentences of 14 years' imprisonment and upwards in contested cases per current guidelines.
- Guideline for importation or possession of opium should be based on weight, cross checked with street value to ensure that at least an approximate equivalence to heroin and cocaine was maintained. This is not mandatory nor appropriate in every case and should be disregarded if an unacceptably high sentence would be produced using it.
- The court should proceed on the assumption that the opium was 100% pure.

Guidelines

<i>Circumstances</i>	<i>Guideline sentence</i>
1. Consignment of 40kg or more	14 years' imprisonment upwards (following a contested trial)
2. Consignment of 4kg or more	10 years' imprisonment upwards (following a contested trial)
3. Where established that importation was carried out for the purpose of conversion into morphine or heroin	These would be exceptional cases where the appropriate sentence should be based on the equivalent value of those drugs.

Ecstasy**R v Warren and Beeley** [1996] 1 Cr.App.R.(S) 223

- R v Aranguren and others [1995] 16 Cr.App.R.(S) 211 established that regard should be had to the weight of the heroin/cocaine rather than its street value. The same applies to ecstasy and sentencing levels maintained as for other Class A drugs.

Guidelines

<i>Circumstances</i>	<i>Guideline sentence</i>
1. 50,000 tablets of ecstasy or more	14 years' imprisonment upwards (following a contested trial)
2. 5,000 tablets of ecstasy or more	10 years' imprisonment upwards (following a contested trial)

- If analysis showed the tablets to be more than the average content, then the weight of the constituent would be the determinative factor.
- The role of the offender, his plea and any assistance given to the prosecution and other factors must also be balanced.

Current Sentencing Practice Reference: B11-2.3M

Class B drugs

Amphetamine

R v Wijs and others [1999] 1 Cr.App.R.(S) 181

- Levels of sentence should depend not on the market value but, subject to all other considerations, on the quantity of amphetamine calculated on the basis of 100% pure amphetamine base (theoretical max 73% base and 27% sulphate).
- Guidelines must differ from those pertaining to cannabis due to the distinguishing features of amphetamine defined.

Guidelines

- After a contested trial, a custodial sentence would almost invariably be called for save in exceptional circumstances or where the amount was small and for personal use.
- The following relates to an ordinary level of sentence on conviction after trial.

<i>Circumstances</i>	<i>Guideline sentence</i>
1. More than 15 kilos (100% pure base)	10 years' imprisonment upwards
2. More than 10 but less than 15 kilos (100% pure base)	7–10 years' imprisonment
3. More than 2.5 but less than 10 kilos (100% pure base)	4–7 years' imprisonment
4. More than 500g but less than 2.5 kilos (100% pure base)	2–4 years' imprisonment
5. Up to 500g (100% pure base)	Up to 2 years' imprisonment

Current Sentencing Practice Reference: B11-3.2

Cannabis

(prior to reclassification as Class C drug)

R v Ronchetti [1998] 2 Cr.App.R.(S) 100

- Guidelines issued in conformity with, but by way of addendum to R v Aramah (1982) 4 Cr.App.R.(S) 407.
- The starting point should rise according to the roles played, the weight involved, and the circumstances of the case up to the maximum.
- A discount would be called for according to the role played and whether there was a guilty plea.

Guidelines

<i>Circumstances</i>	<i>Guideline sentence</i>
1. Importations of 500kg or more	Starting point 10 years' imprisonment
2. Importations of 100kg or more	Starting point 7–8 years' imprisonment

Current Sentencing Practice Reference: B11-1.2

Possession with intent to supply

Legislation: Section 5(3), Misuse of Drugs Act 1971

Maximum penalty: Class A – Life imprisonment

Class A drugs

Heroin

R v Singh (Satvir) (1988) 10 Cr.App.R.(S) 402

R v Aramah (1982) 4 Cr.App.R.(S) 407 updated in view of increased maximum penalty. The scale and nature of the dealing were the important factors.

Guidelines

- Starting point for both supplying and possession with intent to supply increased from 3 years' imprisonment to at least 5 years.

Current Sentencing Practice Reference: B11-2.2

LSD

R v Hurley [1998] 1 Cr.App.R.(S) 29

- Agreed with R v Aranguren and others [1995] 16 Cr.App.R.(S) 211 that estimated retail value should not be the primary guide.
- The number of impregnated squares (with average 50mg) provided the best guide and starting point, then allowance made if evidence of significantly more/less impregnation (10mg or more).
- If LSD in the form of tablets or crystals, calculate the number of 50mg dosage units which could be produced.

Guidelines

<i>Circumstances</i>	<i>Guideline sentence</i>
1. 250,000 or more squares or dosage units	14 years' imprisonment or more
2. 25,000 or more squares or dosage units	10 years' imprisonment or more

Current Sentencing Practice Reference: B11-2.3G

In transit, on high seas

Legislation: Criminal Justice (International Co-operation) Act 1990

R v Maguire [1997] 1 Cr.App.R.(S) 130

- The sentence which might be imposed in another country is irrelevant to the sentence to be imposed in England and Wales. The destination may not be known and English courts should sentence according to guidelines laid down in English cases.

R v Wagenaar and Pronk [1997] 1 Cr.App.R.(S) 178

- Matter of principle that the fact that a consignment of drugs was targeted for a country where the maximum sentence was lower than in England and Wales was an irrelevant factor to the sentencer.
- The fact that the drugs never entered the United Kingdom did not affect the sentence that should be passed.

Current Sentencing Practice Reference: B11-1.2

Purity analysis of Class A drugs

R v Morris [2001] 1 Cr.App.R.(S) 297

Principles per existing authorities restated.

- The amount of Class A or B drug with which the offender was involved was a very important but not solely determinative factor. Evidence as to the scale of dealing could come from many sources.
- Amount should generally be based on weight at 100% purity, not street value. Reference to street value of different drugs might be a pertinent cross-check in some circumstances.
- Weight depended on purity; for heroin, cocaine and amphetamine determined by analysis; for ecstasy tablets (assumed 100mg) and LSD in dosage form (assumed 50mg) by reference to the number of them.
- In view of cost and delay for analysis essential only for 500mg of cocaine, amphetamine or heroin. In absence of analysis, court could not assume level of purity except for ecstasy/LSD.

(G) PUBLIC ORDER OFFENCES

Explosives offences	66
Firearms offences	66
Offensive weapons	67
• Possession of offensive weapon	67
Public order	68
• Affray	68
• Riot	69
• Violent disorder	70

Explosives offences

R v Martin [1999] 1 Cr.App.R.(S) 477

Distinguish cases where primary purpose is to endanger life or destroy property.

The appropriate sentence would depend on a large number of factors including:

- the likely result of any explosion or the target of any conspiracy;
- the role of the individual offender;
- the size and likely effect of any explosive device;
- the motivation of the offender; and
- where death, injury or damage had been caused, the nature and extent of it.

Guidelines

- The sentencing bracket of 20 to 35 years embraces most previous English cases.
- For some conspiracies directed to the destruction of property, a starting point of 20 years or even below 15 years may be appropriate.

Current Sentencing Practice Reference: B7-3

Firearms offences

Legislation: Firearms Act 1968, Sections 1(1), 2(1), 2(4), 3, 4, 5(1) and 5(1A), 16, 16A, 17(1), 17(2), 18(1) and 19

Please be aware that s.287 of the Criminal Justice Act 2003 introduced a 5-year minimum sentence for certain firearms offences for adult offenders (a 3-year minimum sentence for young offenders).

R v Avis and others [1998] 1 Cr.App.R.(S) 178

Set out a series of questions for courts to consider when determining the seriousness of the offence.

(i) *What sort of weapon was involved?*

Genuine or loaded firearms are more dangerous than imitation or unloaded firearms. If ammunition was available for unloaded firearms they are more dangerous than those for which it is not. Court should view more seriously, possession of a firearm for which there was no lawful use.

(ii) *What use had been made of the firearm?*

Take account of all circumstances surrounding the use. The more prolonged and premeditated and violent the use, the more serious the offence.

(iii) *With what intention (if any) did the offender possess or use the firearm?*

The more serious the act intended, the more serious the offence.

(iv) *What was the offender's record?*

The seriousness of any firearms offence was inevitably increased if the offender had an established record of committing firearms offences or crimes of violence.

Guidelines

- Offences against the provisions of the Firearms Act 1968 would almost always merit terms of custody, even on a plea of guilty and where the offender had no record.
- Where there were breaches of sections 4, 5, 16, 16A, 17(1) & 17(2), 18(1), 19 or 21, a custodial term was likely to be of considerable length.
- Where the four questions (as above) yielded answers which were adverse to the offender, in a contested case, terms at or near the maximum might be appropriate.
- Indeterminate sentence only appropriate where the established criteria are met.

Current Sentencing Practice Reference: B3-3

Offensive weapons

Legislation: s.1, Prevention of Crime Act 1953

Maximum penalty: 4 years' imprisonment

Possession of offensive weapon

R v Poulton and Celaire [2003] 1 Cr.App.R.(S) 116

This guideline is based on advice from the Sentencing Advisory Panel.

In assessing seriousness, consider the offender's intention, the circumstances of the offence and the nature of the weapons involved.

Aggravating factors which relate to offender's intention:

- planned use of the weapon to commit/threaten violence or intimidate
- if motivated by hostility towards an individual/group
- if the offender was acting under the influence of alcohol or drugs.

Aggravating factors which relate to circumstances of offence:

- premises were vulnerable (e.g. school or hospital)
- if the offence was committed at a large public gathering
- if committed on public transport, licensed premises or where public services are carried out (e.g. a doctor's surgery).

The nature of the weapon

- This is not the primary determinant as to seriousness, but the carrying of a weapon that was offensive per se might shed light on the offender's intentions.
- Sentences should be concurrent if weapons offence is ancillary to more serious offence.
- Sentences should be consecutive if weapons offence is distinct and independent of another offence.

Guidelines

- For an offender with previous convictions for violence or carrying weapons convicted of carrying a particularly dangerous weapon, where aggravating circumstances are present and there was a clear intention to cause injury or fear, a sentence at or near the statutory maximum can be expected.
- Custody threshold almost invariably passed for an adult offender of good character if dangerous circumstances are combined with actual use of the weapon to threaten/cause fear. Nature of weapon, and aggravating and mitigating factors bear on length of term.
- Custody threshold may not be passed where no threat has been made, the weapon was not particularly dangerous and other aggravating features are absent. Community sentence towards top of available range may be appropriate.

Current Sentencing Practice Reference: B3-5

Public order

Affray

R v Keys and others (1986) 8 Cr.App.R.(S) 444 *

In cases of very serious affray where it is plain that there was some measure of preparation, some measure of central organisation and direction, those who are proved to be organisers and ringleaders can expect heavy custodial sentences.

If an offender is convicted of other offences such as wounding or if he has shown to have manufactured, thrown or been in possession of petrol bombs, different considerations will apply to those set out below.

* Please note case heard prior to implementation of the Public Order Act 1986 which set the maximum penalty for affray at 3 years imprisonment.

Guidelines

- For organisers/ringleaders, sentences may be in the range of 7 years' imprisonment and upwards, apart from any sentences imposed upon them for other specific offences arising from the incident.
- In a prolonged and vicious attack upon the police, any participant, however slight his involvement, can expect a sentence of at least 18 months to 2 years.
- The carrying of weapons and/or throwing of missiles ought properly to be reflected in an increase in that minimum.

Current Sentencing Practice Reference: B3-1

Riot

Legislation: s.1, Public Order Act 1986

R v Najeeb and others [2003] 2 Cr.App.R.(S) 69

These observations were made in the case of a particular riot, of utmost gravity as it:

- involved many hundreds of people
- was aimed at the police
- lasted about 12 hours
- involved injury to police officers and put many in fear
- resulted in many millions of pounds' worth of damage being done
- was initially unpremeditated but as time passed there were clear signs of organisation and marks of premeditation (people returning to the scene or wearing masks).

Guidelines

<i>Circumstances</i>	<i>Guideline sentence</i>
1. Ringleader	Sentence near maximum of 10 years after trial
2. Active and persistent participant (threw petrol bomb, used weapon, drove at police)	8–9 years after trial
3. Participation over lengthy period, threw missiles (such as knives/poles/gas cylinders) or set fire to cars	6–7 years after trial
4. Present for a significant period and repeated throwing of missiles (bricks/stones)	5 years after trial

Current Sentencing Practice Reference: B3-1

Violent disorder

R v Chapman [2002] EWCA Crim 2346

- Where offences of violent disorder are committed in the context of wider public disorder, it is appropriate to pass a deterrent sentence.
- Such a context adds gravity to the offence and therefore the individual acts by the offender cannot be considered in isolation when passing sentence.

Current Sentencing Practice Reference: B3-1

(H) THEFT ACTS OFFENCES/FRAUD

Burglary	72
• Domestic burglary	72
Fraud	76
• Benefit fraud	76
• Company management	77
• Excise/Revenue fraud	77
• Fraudulent trading	80
• Mortgage fraud	81
• Obtaining money transfer by deception	81
Handling stolen goods	82
Robbery	83
• Armed robbery	83
• During course of burglary (elderly victim)	84
• Hijacking of cars	84
• Small shops	85
• Street robbery (mugging)	85
Theft	87
• Airport luggage (theft of)	87
• Breach of trust – ‘white-collar’ dishonesty	87
• ‘Ringing’ of stolen cars	88
• Shoplifting	89

Burglary

Legislation: Section 9, Theft Act 1968

Maximum penalty: 14 years' imprisonment

Domestic burglary

Note: Section 111 of the Powers of Criminal Courts (Sentencing) Act 2000 creates a presumptive sentence of 3 years' imprisonment for a third conviction of domestic burglary.

R v McInerney and Keating [2003] 2 Cr.App.R.(S) 39

(incorporating and adding to R v Brewster [1998] 1 Cr.App.R.(S) 181)

The court considered advice from the Sentencing Advisory Panel.

General

The Court stated that domestic burglary is a very serious offence because of the loss of material possessions, but more so because of the invasion of privacy and the level of fear experienced by the victim (during or after the event).

The seriousness of the offence can vary almost infinitely from an impulsive act involving an object of little value, to a professional, planned organisation, directed at objects of high value.

The record of the offender is of more significance in the case of domestic burglary than in the case of some other offences.

Sentencing should reflect the degree of harm, including the impact on the victim, whether or not the offender foresaw that result or impact.

The Court referred to the obligation under section 111 of the Powers of Criminal Courts (Sentencing) Act 2000 to impose a minimum sentence of 3 years' imprisonment for a third domestic burglary.

Aggravating factors

Following the advice of the Panel, the Court set out two categories of aggravating factors: high level and medium level. However, it must be borne in mind that there is no clear line between the categories and they can overlap.

The high-level aggravating factors are:

- force used or threatened against the victim;
- a victim injured (as a result of force used or threatened);

- an especially traumatic effect on the victim, in excess of the trauma generally associated with a standard burglary;
- professional planning, organisation or execution;
- vandalism of the premises, in excess of the damage generally associated with a standard burglary;
- a racially aggravated offence;
- a vulnerable victim deliberately targeted (including cases of ‘deception’ or ‘distraction’ of the elderly).

The medium-level aggravating factors are:

- a vulnerable victim, although not targeted as such;
- the victim was at home (whether daytime or night-time burglary);
- goods of high value were taken (economic or sentimental);
- the burglars worked in a group.

The Court offered an example of a case that could overlap the two categories; this could be where the victim is especially old, say in his 90s, but is not shown to have been targeted because of this.

The number of offences to which the offender is to be sentenced may indicate that the offender is a professional burglar, which would be a high-level aggravating feature, but even if they do not fall within this category the number of offences could still be at least a mid-level aggravating feature.

The Court identified the following additional aggravating factors:

- the offender being on bail or licence;
- the offence committed out of spite;
- the offence committed at night, especially if it involves a confrontation with the householder.

Mitigating factors include:

- a first offence;
- nothing, or only property of very low value, is stolen;
- the offender played only a minor part in the burglary;

- there is no damage or disturbance to property;
- the offence was committed on impulse;
- plea of guilty, particularly if at an early stage;
- offender's age or state of health (both mental and physical);
- evidence of genuine regret and remorse;
- response to previous sentences and ready co-operation with the police.

Defining a 'standard' domestic burglary

For the purposes of the judgment, a 'standard' domestic burglary was taken to mean a burglary that had some or all of the following features:

- (i) committed by a repeat offender;
- (ii) involves the theft of electrical goods such as a television or video;
- (iii) involves the theft of personal items such as jewellery;
- (iv) damage is caused by the break-in itself;
- (v) some turmoil in the house, such as drawers upturned or damage to some items occurs;
- (vi) no injury or violence, but some trauma is caused to the victim.

Guidelines

Not taking into account any aggravating/personal mitigating factors, or the discount for a guilty plea, in relation to a completed burglary of domestic premises, recommendations are divided into four categories, as below.

The following are appropriate starting points following a contested trial.

<i>Circumstances</i>	<i>Guideline sentence</i>
(a) Low level burglary committed by a first time domestic burglar (and some second time), where there is no damage and no/low value property is stolen	Starting point: Community sentence
(b) For a domestic burglary displaying most of the features of a standard burglary (as defined), committed by: (i) First time burglar (ii) Second time burglar (iii) Burglar with two or more qualifying convictions	Starting point: Community sentence (see qualifications below) Starting point: 18 months' imprisonment Starting point: 3 years' imprisonment
(c) Standard domestic burglary with 'medium relevance' factors (as defined), committed by: (i) First time burglar (ii) Second time burglar (iii) Burglar with two or more qualifying convictions	Starting point: Community sentence (see qualifications below) Starting point: 2 years' imprisonment Starting point: 3½ years' imprisonment
(d) Standard domestic burglary with a 'high relevance' factor (as defined), committed by: (i) First time burglar (ii) Second time burglar (iii) Burglar with two or more qualifying convictions	Starting point: 18 months' imprisonment Starting point: 3 years' imprisonment Starting point: 4½ years' imprisonment

- The incremental increase should slow significantly after the third qualifying conviction to retain a degree of proportionality.
- In categories (b) and (c), the initial approach of the courts should be to impose a community sentence subject to conditions that ensure that the sentence is
 - (a) an effective punishment and
 - (b) one that offers action on the part of the Probation Service to tackle the offender's criminal behaviour and
 - (c) when appropriate, one that will tackle the offender's underlying problems such as drug addiction

Current Sentencing Practice Reference: B6-4.2

Fraud

Benefit fraud

R v Stewart and others (1987) 9 Cr.App.R.(S) 135

These offences involved the dishonest abstraction of taxpayers' money, and were not to be treated lightly. However, it should be borne in mind that the crimes are non-violent, non-sexual and non-frightening.

The Court suggested that for average offenders it is advisable to enquire how the Department proposes to recover the loss.

Considerations that might affect sentence

- (i) A guilty plea
- (ii) The amount involved and the length of time over which the defalcations were persisted in (bearing in mind that a large total might in fact represent a very small weekly amount)
- (iii) The circumstances in which the offences began (there was a plain difference between a legitimate claim which became false owing to a change of situation and, on the other hand, a claim that is false from the very beginning)
- (iv) The use to which the money was put (the provision of household necessities was more venial than spending money on unnecessary luxuries)
- (v) Previous character
- (vi) Matters special to the offender, such as illness, disability, family difficulties etc.
- (vii) Any voluntary repayment of the amounts overpaid.

Guidelines

<i>Circumstances</i>	<i>Guideline sentence</i>
Overpayment of less than £10,000	9–12 months' imprisonment (after a contested trial)
Organised fraud on a large scale that results in loss of considerable sums	30 months' imprisonment or more (after a contested trial)

- Deterrence should not play a large part in sentence of this sort in the Crown Court.
- A partly suspended sentence might be appropriate where a short immediate sentence is insufficient.

Current Sentencing Practice Reference: B6-3.3F

Company management

Legislation: Financial Services Act 1986

R v Feld [1999] 1 Cr.App.R.(S) 1

In relation to offences of raising money by means of false statements relating to the financial position of a company, factors relevant to sentence include:

- amount of the fraud;
- the manner in which it was carried out;
- the period over which the fraud was carried out;
- the persistence with which it was carried out;
- the position of offender in the company and his measure of control over it;
- any abuse of trust;
- the consequences of the fraud;
- the effect on public confidence in the City and integrity of commercial life;
- the loss to small investors;
- the personal benefit to offender;
- the plea, age and character of offender.

Current Sentencing Practice Reference: B13-5.2

Excise/Revenue fraud

Tax evasion

AG's Ref. Nos. 87 and 86 of 1999 (Webb and Simpson) [2001] 1 Cr.App.R.(S) 505

- Where over a period of time an offender has evaded tax, they must not only pay the tax and pay a financial penalty but a custodial sentence should also be imposed.
- The length of the sentence will depend on a number of factors including:
 - the amount of tax evaded;
 - the period of time during which the evasion took place;

- the effort made to conceal the fraud;
- whether others were drawn in and corrupted;
- the character of the offender;
- the extent (if known) of his personal gain;
- whether the offender pleaded guilty;
- the amount recovered.

Current Sentencing Practice Reference: B9-2.2

Evading Excise Duty

R v Czyzewski and others [2004] 1 Cr.App.R.(S) 49

(modifying and adding to R v Dosanjh [1999] 1 Cr.App.R.(S) 107)

The Court considered advice from the Sentencing Advisory Panel.

The Court restated the view set out in Dosanjh that deterrence is a relevant consideration when sentencing in cases of major fraud.

At the other end of the scale of gravity, the Panel's suggestion that non-custodial sentences, or somewhat shorter sentences than those suggested in Dosanjh, may be appropriate.

Aggravating factors:

- offender played an organisational role
- offender made repeated importations, particularly in the face of a warning from the authorities
- offender was a professional smuggler (as dealt with below)
- offender used a legitimate business as a front
- offender abused position of privilege as a customs or police officer, or as an employee, for example, of a security firm, ferry company or port authority
- offender used children or vulnerable adults
- offender threatened violence to those seeking to enforce the law
- offender dealt in goods with an additional health risk because of possible contamination
- offender disposed of goods to under-aged purchasers

In addition to the above, there are statutory aggravating factors of offending whilst on bail or having previous convictions.

Evidence of professional smuggling will include:

- 1) a complex operation with many people involved;
- 2) financial accounting or budgets;
- 3) obtaining goods from several different sources;
- 4) integration of freight movements with commercial organisations;
- 5) sophisticated concealment methods such as forged documents or specially adapted vehicles;
- 6) varying of methods and routes;
- 7) links with illicit overseas organisations; and
- 8) when the duty evaded is in the region of £75,000: that is not a precise indication; but the value of goods involved is a potential indicator of professional smuggling.

Mitigating factors include:

- prompt plea of guilty
- co-operation with the authorities, particularly in providing information about the organisation
- to a limited extent, previous good character
- pressure from others to commit the offence may, depending on the circumstances, afford mitigation.

Guidelines

The Court adopted the Panel’s suggestions that following trial, for an offender with no relevant previous convictions and disregarding any personal mitigation, the following starting points are appropriate:

<i>Circumstances</i>	<i>Guideline sentence</i>
1. Duty evaded less than £1,000 and level of profit small	a moderate fine
2. As above with strong mitigation and provided there had been no earlier warning	conditional discharge
3. Duty evaded not more than £10,000 (approximately equates to 65,000 cigarettes) and first time offender; or low level offending either within an organisation or persistently as an individual	community sentence or curfew enforced by tagging, or a higher level of fine; the custody threshold is likely to be passed if any of the aggravating features (identified above) are present
4. Duty evaded between £10,000 and £100,000, whether offender operating individually or at low level within organisation	up to 9 months’ custody; some of these cases can be dealt with by magistrates, but others, particularly if marked by any of the aggravating features, should be dealt with by Crown Court
Where the duty evaded is in excess of £100,000, the length of custodial sentence will be determined principally by the degree of professionalism and the presence/absence of aggravating features; subject to this starting points as follows:	
5. £100,000 to £500,000	9 months to 3 years
6. £500,000 to £1 million	3 to 5 years
7. In excess of £1 million	subject to comment made earlier where many millions of pounds are evaded, 5 to 7 years

Sentencers should bear in mind their powers to order: confiscation orders, compensation orders, deprivation orders, disqualification orders.

Current Sentencing Practice Reference: B9-2.3E

Fraudulent trading

R v Palk and Smith [1997] 2 Cr.App.R.(S) 167

There is no doubt that, because of the wide spectrum covered by fraudulent trading offences, in relation to both the amount and the level of criminality on the part of the offender, a wide spectrum of sentences may also be appropriate.

In broad terms, it is right to say that a charge of fraudulent trading resulting in a substantial total deficiency to creditors is less seriously regarded than a specific charge of theft or fraud to an equivalent amount.

Current Sentencing Practice Reference: B6-3.3E

Mortgage fraud

R v Stevens and others (1993) 14 Cr.App.R.(S) 372

One hundred and twenty-eight mortgage applications made in relation to 90 different properties. A total of £1.8 million obtained over a period of 8 years (and attempts made in relation to a further £2.5 million).

The Court made the following observations:

- An important consideration is the part played by any given offender – anything between prime mover and nominee.
- It is an aggravating feature to recruit others to participate in the commission of the fraud.
- Of relevance also, is the length of involvement in the fraud by a particular offender, as well as the extent of the personal benefit.
- It is important to bear in mind whether any particular offender is a professional person or a quasi-professional person (breach of trust).
- Finally, the nature and the timing of a guilty plea is of consequence where there has been a delay; and, in cases of this kind, as in other types of fraud, the court must pay particular regard to the character of the perpetrator as well as to age when a party to it.

Current Sentencing Practice Reference: B6-3.3EE

Obtaining money transfer by deception

R v Roach [2002] 1 Cr.App.R.(S) 12

Guidelines in R v Clark [1998] 2 Cr.App.R.(S) 95 and R v Barrick (1985) 7 Cr.App.R.(S) 142 were not relevant to offending of the kind under consideration. The distinctive feature of this case was that it involved the exploitation of pitifully vulnerable people, whether due to age or infirmity or a combination of both.

- 18 months' imprisonment considered an entirely correct and appropriate sentence for this offending in the circumstances of this case.

Current Sentencing Practice Reference: B6-3.3D

Handling stolen goods

Legislation: Section 22, Theft Act 1968

Maximum penalty: 14 years' imprisonment

R v Webbe and others [2002] 1 Cr.App.R.(S) 22

The Court considered advice from the Sentencing Advisory Panel.

Aggravating factors:

- closeness of handler to primary offence;
- seriousness in primary offence;
- high value (including sentimental) of goods;
- goods were proceeds of domestic burglary;
- sophistication;
- high level of profit made or expected;
- provision of regular outlet;
- threats of violence/abuse of power by handler over others;
- statutory factor of commission of offence whilst on bail.

Guidelines

<i>Circumstances</i>	<i>Guideline sentence</i>
(i) Property handled of low monetary value (less than four figures) and acquired for receiver's own use	Starting point: moderate fine/discharge
If any one of the aggravating factors was present	Community sentence
If the offender has a record of either dishonesty or sophisticated law-breaking	Custodial sentence
(ii) Value of goods up to £100,000, offence committed in the context of a business and the offender organises/distributes proceeds of crime or makes himself available to other criminals	12 months' – 4 years' imprisonment
(iii) Value of goods exceeds £100,000, professional commercial operation or professional handler, who over time has promoted and encouraged (indirectly) criminal activity by others	More than 4 years' imprisonment

Current Sentencing Practice Reference: B6-5.2

Robbery

The Sentencing Guidelines Council is currently considering advice of the Sentencing Advisory Panel on this subject and is likely to issue a draft guideline during 2005.

Legislation: s.8, Theft Act 1968

Maximum penalty: Life imprisonment

Armed robbery

R v Turner (1975) 61 Cr.App.R. 67

- In the case of a single offence of armed robbery where the target was a bank, or a security or Post Office van and there was no serious injury, the appropriate starting point is 15 years.
- In the cases of offenders who have committed more than one robbery, the maximum total sentence is 18 years.

R v Daly (1981) 3 Cr.App.R.(S) 340

In a bank robbery, the most serious features were:

- detailed planning;
- the use of loaded firearms or ammonia;
- the involvement of a number of people;
- a planned attack in the hope of stealing a substantial amount of money.

A starting point of 15 years' imprisonment is appropriate.

R v Gould and others (1983) 5 Cr.App.R.(S) 72

Features likely to aggravate the offence were:

- the fact that a real rather than an imitation weapon was used;
 - that the weapon was discharged;
 - that violence was used upon the victim;
 - that a number of people took part;
 - that careful reconnaissance and planning were involved;
 - that there was more than one offence committed by the offender.
-

Features likely to mitigate an offence were:

- a plea of guilty;
- the youth of the offender;
- a previously clean record;
- the fact that the offender had no companion when committing the offence;
- the fact that no-one was injured.

A deterrent element is necessary in sentencing for this type of offence (robbery of shop or business premises).

Current Sentencing Practice Reference: B6-2.2 and B6-2.2A

During course of burglary (elderly victim)

AG's Ref. Nos. 32 and 33 of 1995 (Pegg and Martin) [1996] 2 Cr.App.R.(S) 346

Attacks on elderly people in their homes were particularly despicable and deserved severe punishment.

Guideline

- Where an elderly victim, living alone, was violently attacked by intruders and was injured, the likely sentence would be a custodial sentence of 10 years or more.

Current Sentencing Practice Reference: B6-2.3C

Hijacking of cars

R v Snowden [2002] EWCA Crim 2347

The pre-planned hijacking of a car, usually involving ramming the car from behind, was a particularly serious type of robbery.

The offence is aggravated where impact by ramming a vehicle from behind is followed by personal violence to the victim or the threat or use of a knife or other weapon.

The penalty imposed should reflect the fact that, where the car taken was particularly valuable, the proceeds received might make the offence as serious as robbing a bank or building society.

Guidelines

- An offender, even of good character, who on several separate occasions committed an offence of this type, aggravated by the use or threat of additional violence, could expect a sentence of at least 10 years' imprisonment following a trial.

Small shops

AG's Ref. No. 2 of 1989 (Major) (1989) 11 Cr.App.R.(S) 481

In cases where the robbery occurs in smaller shops (such as a betting shop) which don't have the sophisticated protection that banks and building societies may have, the court must offer its protection and impose a deterrent custodial sentence.

The deterrent element in punishment for this sort of offence (armed robbery of betting shop) is not primarily to deter the offender, but to deter others.

The appropriate starting point is 7 years' imprisonment.

AG's Ref. No. 7 of 1992 (Khan) (1993) 14 Cr.App.R.(S) 122

Small shops are often staffed by only one person who may be unable to defend him/herself. It is also unlikely there will be any sophisticated security, and it is a prime target for someone who wants to enrich himself quickly and successfully.

It is therefore appropriate to pass deterrent sentences in cases of robbery of small shops, small corner/grocer shops and to sub-Post Offices.

- Original sentence of 3 years quashed and replaced with 7 years' imprisonment, on a plea of guilty.

Current Sentencing Practice Reference: B6-2.3B

Street robbery (mugging)

R v O'Brien (1984) 6 Cr.App.R.(S) 274

The case concerned the 'mugging' of elderly persons in streets.

- Young men who committed this sort of offence against elderly women going about their business in the streets of any city should expect to receive a custodial sentence of around 5 years.

R v Edwards and Larter *The Times*, 3 February 1987

- Courts should impose long custodial sentences on young muggers of women at night in urban areas, even where no serious injury was caused.

AG's Ref. Nos. 4 and 7 of 2002 (Lobban and Sawyers) [2002] 2 Cr.App.R.(S) 77

In its guideline "Overarching Principles: Seriousness" the Sentencing Guidelines Council has drawn attention (at section F on page 9) to the approach where sentencing is based on prevalence of offending.

The Court consolidated the principles established by reported decisions for robbery involving theft of mobile phones and small amounts of money, which frequently involved elderly or young victims.

Custodial sentences would be the only option available to courts unless there are exceptional circumstances, irrespective of the age of the offender and of whether the offender had previous convictions, though both factors are relevant to the length of sentence.

An aggravating factor would be if a team of offenders was involved as this would make the offence more intimidating.

There has been an increase in the incidence of the type of robbery considered in this judgment. The need to deter potential offenders has increased because of prevalence. It was recognised that considerable efforts were being made by manufacturers to reduce the benefits of this type of offending.

Guidelines

The following ranges of sentences were established from existing authorities.

- Where a weapon was involved, a sentence of 18 months' to 5 years' imprisonment is appropriate.
- Where no weapon was involved, a sentence of 18 months' to 3 years' imprisonment is appropriate.

The upper sentencing limits may not be appropriate if:

- the offender had a number of previous convictions
- there was a substantial degree of violence
- a particularly large number of offences were committed

Current Sentencing Practice Reference: B6-2.3D

Theft

Legislation: Sections 1–7, Theft Act 1968

Maximum penalty: 7 years' imprisonment

Airport luggage (theft of)

R v Dhunay and others (1986) 8 Cr.App.R.(S) 107

- In cases where airport baggage handlers were guilty of persistently stealing from luggage, those involved should be made examples of and punished so as, if possible, to deter others from behaving in such a way. The appropriate starting point was 3 years' imprisonment.

Current Sentencing Practice Reference: B6-1.2

Breach of trust – 'White-collar' dishonesty

R v Clark [1998] 2 Cr.App.R.(S) 95

(superseding **R v Barrick** (1985) 7 Cr.App.R.(S) 142)

- Due to the increasing scale of 'white-collar' dishonesty (in the form of theft and fraud), both in terms of complexity of execution and in the rewards that could be obtained, such cases warranted longer sentences than were originally contemplated in Barrick.
- The Court focused particularly on cases where accountants, solicitors, bank employees (and postmen) had used their position of trust to defraud.
- Revised monetary figures stated in Barrick to be in line with inflation (as at 1997).
- As was pointed out in Barrick, the amount stolen is not the only factor to be considered. There are many others including those specifically identified in that judgment, which were:
 - quality and degree of trust in and rank of the offender
 - the period over which the frauds were perpetrated
 - the use made of the money/property stolen
 - the effect on the victim
 - the impact of the offences on the public and public confidence

- the effect on fellow employees and partners
 - the effect on the offender
 - the offender's own history
 - matters of personal mitigation
 - long delay between the discovery of the offences and the start of trial (2 years or more)
- Discount should be given for a guilty plea.
 - Consecutive sentences may be appropriate where the sums involved were exceptionally large, and not stolen on a single occasion, or the dishonesty was directed at more than one victim.

Guidelines

The following guidelines apply where there is a contested trial.

<i>Amount stolen</i>	<i>Guideline sentence</i>
Amount stolen is not small, but is less than £17,500	Custodial terms from the very short to 21 months
£17,500 to £100,000	2–3 years' custodial sentence
£100,000 to £250,000	3–4 years' custodial sentence
£250,000 to £1 million	5–9 years' custodial sentence
£1 million or more	Custodial sentence of 10 years or more

Current Sentencing Practice Reference: B6-1.2

'Ringing' of stolen cars

R v Evans [1996] 1 Cr.App.R.(S) 105

Case concerned 'ringing' of stolen cars; that is where an offender steals a car, changes its identity and then sells it with false documents.

Guidelines

- Where the offender is a ringleader in offences of this nature, a sentence of 4 or 5 years' imprisonment would not be excessive in a contested case.
- For an offender who could be described as a 'lieutenant', a sentence of 3 years would be appropriate in a contested case.

Current Sentencing Practice Reference: B6-1.31

Shoplifting

R v Page and others [2004] EWCA Crim 3358

When dealing with adult shoplifters, sentencers should bear in mind the following principles:

1. Custody should be the last resort and would almost never be appropriate for a first offence. Where the offence had been aggravated by the use of a child, immediate custody had been and remains, merited. A community penalty might be appropriate in some cases where other adults were involved and the offence was organised.
2. Where offences were attributable to drug addiction, a drug treatment and testing order would often be appropriate.
3. A short custodial term of not more than 1 month might be appropriate for an offender who persistently offended on a minor scale. Where that persistence also involved preparation of equipment by the offender to facilitate the offence 2 months might be called for.
4. Even where an offender had to be sentenced for a large number of such offences, or where he had a history of persistent similar offending on a significant scale, the comparative lack of seriousness of an offence would, on a plea of guilty, rarely require a total sentence of more than 2 years and would often merit no more than 12 to 18 months.
5. Young offenders would usually be dealt with appropriately by a non-custodial penalty, where there was no evidence that they were being used by adults.
6. Nothing in the guidelines was intended to affect the level of sentence appropriate for shoplifting by organised gangs. When that occurred repeatedly or on a large scale, sentences of the order of 4 years are likely to be appropriate even with a guilty plea.
7. If violence was used against a shopkeeper and a charge of robbery was inapt, a sentence in excess of 4 years was likely to be appropriate.
8. In cases of shoplifting by isolated individuals, not accompanied by threats or violence, albeit a nuisance, these were generally not dangerous or frightening and did not damage public confidence.

(I) OFFENCES AGAINST PUBLIC JUSTICE

Intimidation of witnesses	92
Perjury	92
Perverting the course of justice	93
Prison breaking (escape)	93

Intimidation of witnesses

R v Williams [1997] 2 Cr.App.R.(S) 221

- The offence of threatening witnesses was to be viewed extremely seriously.
- The maximum statutory sentence for this offence was 5 years' imprisonment. It is an offence for which, in ordinary circumstances, a deterrent sentence would be appropriate.

R v Chinery [2002] 2 Cr.App.R.(S) 55

- The sentencing judge was entitled to pass consecutive sentences as the offences were not committed on precisely the same occasion and involved different victims.
- Offences of intimidating witnesses involved sentences containing an element of deterrence.

Current Sentencing Practice Reference: B8-2.3AA

Perjury

R v Archer [2003] 1 Cr.App.R.(S) 86

- The court offered guidance as to factors to be considered in determining the appropriate level of sentence. These include:
 - the number of offences committed;
 - whether they were planned or spontaneous;
 - whether they were persisted in;
 - whether the lies told or fabrications embarked upon had any actual impact on the proceedings in question;
 - whether the activities of the offender drew in others;
 - the relationship between those drawn in and the offender.
- No distinction as to the level of sentence to be drawn according to whether the proceedings contaminated were of a civil or criminal nature.

Current Sentencing Practice Reference: B8-1

Perverting the course of justice

R v Walsh and Nightingale (1993) 14 Cr.App.R.(S) 671

- When sentencing, care must be taken to avoid giving the impression that the sentence has been calculated on the basis of conviction of the substantive offences rather than of the conspiracy to pervert the course of justice.

Current Sentencing Practice Reference: B8-2.3C

Prison breaking (escape)

R v Coughtrey [1997] 2 Cr App R (S) 269

In cases of an offender escaping from prison, the factors to be taken into account in determining the length of sentence will include:

- the nature and circumstances of the crime for which the offender was in prison;
- his conduct while in prison;
- the methods employed in effecting escape and in particular whether any violence was used;
- whether there was extensive planning and outside assistance;
- whether and how soon he surrendered himself after the escape;
- a plea of guilty.

Guidelines

- Prison breaking is a very serious offence for which a substantial sentence of imprisonment is always to be expected.
- If the offender is already serving a determinate sentence, a consecutive sentence should almost always be imposed.
- If the offender is serving a life sentence, the sentence for prison breach will necessarily be concurrent, but should be for the same length as would have been appropriate if the offender had been serving a determinate sentence.

Current Sentencing Practice Reference: B8-5

(J) COUNTERFEITING AND MONEY LAUNDERING

Counterfeiting and forgery	96
• Dealing in counterfeit currency	96
• Counterfeiting coins	96
• False passports	96
Money laundering	97
• General	97
• Proceeds of drug trafficking	98

Counterfeiting and forgery

Dealing in counterfeit currency

R v Howard (1985) 7 Cr.App.R.(S) 320

The issue of counterfeit notes undermined the whole economy of the country, and was likely to result in great loss to individuals who found themselves in possession of worthless notes.

Guidelines

- This type of offence was one that required in nearly every case a custodial sentence, to punish and deter the wrongdoer and others.
- The most important consideration in cases of this type was the quantity of counterfeit notes found in the offender's possession. This demonstrates, with some degree of accuracy, his proximity to the source of the notes.

Current Sentencing Practice Reference: B9-3.3D

Counterfeiting coins

R v Crick (1981) 3 Cr.App.R.(S) 275

Coining is a serious offence but not all offences are of the same gravity.

Guidelines

- At one extreme is the professional forger who manufactures large quantities of banknotes and puts them into circulation. In such a case, a long sentence of imprisonment is appropriate.
- At the other end of scale are cases where the tools used were primitive, the methods amateurish, and the coins could not be put into general circulation; in such cases shorter sentences are appropriate.

Current Sentencing Practice Reference: B9-3.2

False passports

Legislation: s.3, Forgery and Counterfeiting Act 1981

R v Kolawole [2004] EWCA Crim 3047

(superseding **R v Daljit Singh** [1999] 1 Cr.App.R.(S) 490)

Due to international events in recent years and the resulting increase in public concern, deterrent sentences at a higher level than when **R v Daljit Singh** was decided are justified.

Guideline

- The appropriate sentence for using or holding with the intention of use one false passport, even on a guilty plea by a person of good character, should usually be within the range of 12 to 18 months' imprisonment.

Money laundering

General

R v Basra [2002] 2 Cr.App.R.(S) 100

Money laundering was an offence that stood alone.

There might be circumstances where the launderer had no knowledge of the source of the money and might choose not to know. He might know that the money represented the proceeds of criminal activity but would be careful not to ask further questions.

Guidelines

- There is not necessarily a direct relationship between the sentence for the laundering offence and the original antecedent offence.
- Nonetheless the sentence for laundering cannot be wholly disproportionate to the sentence for the original antecedent offence, where the offence is that of being involved in an arrangement whereby there is retention or control of the proceeds of criminal conduct.

R v Gonzalez and Sarmiento [2003] 2 Cr.App.R.(S) 9

- As to what was the correct starting point, relevant factors include:
 - the amount of money laundered
 - whether it was a single trip
 - whether drugs were involved.
- As the volume of money increases, the gravity of the offence necessarily increases, although not in direct proportion to the sum involved, and subject to all mitigation.

Current Sentencing Practice Reference: B13-8.3E

Proceeds of drug trafficking

R v El-Delbi [2003] EWCA Crim 1767

- Those who launder large sums that are the proceeds of drug trafficking play an essential role in enabling the drugs conspiracy to succeed and, as such, can expect severe sentences comparable to those given to others playing a significant role in the supply of drugs.
- However, it has to be borne in mind that Parliament has provided different upper limits to a judge's sentencing process for dealing in Class A drugs (life imprisonment) and money laundering (14 years).
- There will be no direct arithmetical relationship between the sums recovered by Customs or shown to be involved; nonetheless sentences very close to the maximum have to be reserved for cases where the evidence establishes laundering on a very large scale.

(K) MISCELLANEOUS OFFENCES

Health and safety offences	100
Immigration offences	101

Health and safety offences

Legislation: Health and Safety at Work Act 1974

R v F. Howe and Son (Engineers) Ltd [1999] 2 Cr.App.R.(S) 37

Court outlined relevant factors that should be taken into account, but it was impossible to lay down a tariff or say that fines bear specific relationship to the turnover or net profit of the offender.

In assessing the gravity of the breach, it is often helpful to look at how far short of the appropriate standard the offender fell in failing to meet the 'reasonably practicable' test.

The standard of care imposed by the legislation is the same regardless of the size of the company.

Aggravating factors:

- generally where death is the consequence of a criminal act, it is regarded as an aggravating feature of the offence. The penalty should reflect public disquiet at the unnecessary loss of life
- a deliberate breach of the health and safety legislation with a view to profit seriously aggravates the offence
- a failure to heed warnings.

Mitigating factors:

- prompt admission of responsibility and a timely plea of guilty
- steps to remedy deficiencies after they are drawn to the defendant's attention
- a good safety record.

Guidelines

- Fines should reflect the gravity of the offence and means of offender; this applies just as much to corporate offenders as to any other.
- Fines need to be large enough to bring home the message that the object of prosecution is to achieve a safe environment for workers and members of the public.
- The court must look at the whole sum (fine plus costs) that it was minded to order and consider the impact upon the offender.
- Any fine must be balanced against the length of any suspended sentence passed at the same time.

Current Sentencing Practice Reference: B13-2.2

R v Rollco Screw and Rivet Co Ltd [1999] 2 Cr.App.R.(S) 436

Supported the principles from R v F. Howe and Son (Engineers) Ltd [1999] 2 Cr.App.R.(S) 37.

- In relation to the period over which a fine might properly be ordered to be paid, it appeared to be acceptable on proper facts and circumstances for a fine to be payable by a company over a substantially longer period than in the case of an individual.
- For smaller companies, the court must be alert to make sure that it is not in effect imposing a double punishment.
- The proper approach would be as follows:
 - 1) to decide what financial penalty the offence would merit and
 - 2) to decide what financial penalty the offender (corporate or personal) could reasonably be ordered to meet.

Current Sentencing Practice Reference: J1-2H

Immigration offences

R v Le and Stark [1999] 1 Cr.App.R.(S) 422

- The appropriate penalty for all but minor offences against s25(1)(a) of the Immigration Act 1971, was one of immediate custody.
- The offence is one which generally calls for deterrent sentences.

Aggravating factors include:

- where the offence has been repeated and the offender has a record of violations of this provision;
- where the offence has been committed for financial gain;
- where illegal entry has been facilitated for strangers as opposed to a spouse or close family member;
- for conspiracies, where the offence was committed over a period;
- where there was a high degree of planning, organisation and sophistication;
- the more prominent the role of the offender, the greater the aggravation;
- where there were a large number of illegal immigrants as opposed to one or a very small number.

Current Sentencing Practice Reference: B9-5

