

CRIMINAL LAW UPDATE



MAY 2025

The Sentencing Council's New Guidelines on Blackmail

New sentencing guidelines came into force on the 1st of April 2025 for the offence of Blackmail. This followed research into judges' sentencing remarks, and small-scale qualitative research to gauge how the guidelines would work in practice.¹

The Need for Sentencing Guidelines – A Case Study

Without structured guidelines it has been difficult to find an appropriate starting point when sentencing. This can be seen in the case of *R v Taberer and Rana* [2011] EWCA Crim 1186 which resulted in a prison sentence of 8 years being halved on appeal.²

This case concerned demands made to a wealthy businessman for £1 million. The Defendants impersonated two men, one of them a well-known criminal, and told the victim that if he did not pay they would come to his house with 50 men and hurt him and his family. The victim knew that the drug debt was not genuine and told him that

¹ Sentencing Council, 'Blackmail, kidnap and false imprisonment guidelines. Response to consultation' (February 2025) p2, <https://www.sentencingcouncil.org.uk/wp-content/uploads/BKFI-final-response-document-web.pdf>.

² *R v Taberer and Rana* [2011] EWCA Crim 1186, [20].

he did not know the people they were impersonating. He recorded subsequent phone calls and called the police.

When sentencing, the Judge centred his remarks around the large amount of money involved and the fact that the Defendants did not believe it was a genuine debt. The Judge stated that he would have passed a sentence of 12 years after a contested trial, however this was reduced to 8 years after credit for their guilty plea was taken into account.³

The sentence was appealed as being manifestly excessive. In his judgment, Sir Christopher Holland noted that, without sentencing guidelines, guidance 'is solely afforded by two matters: first, there is the maximum for this offence, which is 14 years; and, second, there are a series of decisions that have been recorded indicating a substantial range in the sentences passed in like circumstances'.⁴

The impact which the new sentencing guidelines may have had on the sentencing exercise will be returned to later in this article.

The Sentencing Council Guidelines

Culpability

The guidelines provide for three levels of culpability:

A. High culpability

- Conduct repeated or prolonged over a substantial period of time
- Sophisticated planning
- Deliberate targeting of particularly vulnerable victim and/or their family
- Use of violence.

B. Medium culpability

- Violence threatened
- Other cases that fall between categories A and C because:

³ Ibid, [16].

⁴ Ibid (n 2) [17].

- Factors are present in A and C which balance each other out
and/or
- The offender's culpability falls between the factors described in A and C.

C. Lower culpability

- Limited in scope and duration
- Involved through coercion, intimidation or exploitation
- Offender's responsibility substantially reduced by mental disorder or learning disability.

During the research phase the Sentencing Council noted that whether culpability A or B was selected was largely determined by whether or not the judge felt that the culpability A factor of 'deliberate targeting of particularly vulnerable victim and/or their family' applied.⁵ H.M. Council of Circuit Judges suggested that, in circumstances where a victim was particularly vulnerable, but where there had been no 'deliberate targeting' of a particularly vulnerable victim, this should be an aggravating factor applied at step two. This approach was approved of by the Sentencing Council and implemented into the guidelines.⁶

Harm

The guidelines provide for three levels of harm.

1. Category 1 harm

- Very serious distress and/or psychological harm caused to the victim and/or others
- Property demanded or obtained represents or would represent very substantial loss to the victim and/or others (whether financial, commercial or of personal value).
- Widespread public impact of the offence.

⁵ Ibid 5.

⁶ Ibid (n 1) 5.

2. Category 2 harm

- Substantial distress and/or psychological harm caused to the victim and/or others
- Property demanded or obtained represents or would represent substantial loss to the victim and/or others (whether financial, commercial or of personal value).

3. Category 3 harm

- Limited effects of the offence
- Property demanded or obtained represents or would represent a limited loss to the victim and/or others (whether financial, commercial or of personal value).

There was a suggestion from the Criminal Law Solicitors' Association (CLSA) that the harm factors should also contain a reference to physical harm. This suggestion was deemed unnecessary by the Sentencing Council because any physical harm would likely form the basis of separate charges.⁷

Sentence range

The proposed sentencing categories are as follows on the next page:

⁷ Ibid (n 1) 6.

Harm	Culpability		
	A	B	C
Category 1	Starting point 6 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 4 – 10 years' custody	Category range 2 – 8 years' custody	Category range 1 – 5 years' custody
Category 2	Starting point 4 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 2 – 8 years' custody	Category range 1 – 5 years' custody	Category range 26 weeks' – 2 years' custody
Category 3	Starting point 2 years' custody	Starting point 1 year's custody	Starting point 6 months' custody
	Category range 1 – 5 years' custody	Category range 26 weeks' – 2 years' custody	Category range High level community order – 1 year's custody

During the consultation phase, the starting point for category A1 was 8 years with a range of 4 – 12 years. The CLSA felt that the starting point for A1 was too high, and longer sentences should be reduced as a way to reduce the prison crisis. The CLSA stated this is because the deterrent and punitive impact of a notional 6-year and 8-year prison sentence are broadly the same.⁸

The Sentencing Council took into account the latest sentencing data from the Court Proceedings Database. This showed that in 2023, after any reduction for guilty plea, around 92% of offenders sentenced to immediate custody received a sentence of up to and including 6 years. However, only 2% received sentences in excess of 8 years, and no offenders received sentences of over 10 years.⁹

Following the statistical analysis and the consultation responses concerning the starting point for A1 being too high, the Sentencing Council reduced the starting point and range slightly to the one shown in the current guidelines.

⁸ Ibid (n 1) 7.

⁹ Ibid (n 1) 7.

After the court has identified the starting point, the process of applying aggravating and mitigating factors is carried out in the usual manner. The guidelines identify the following aggravating and mitigating factors:

Aggravating factors

Statutory aggravating factors

- Previous convictions
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity.

Other aggravating factors

- Victim was particularly vulnerable (where not taken into account at step one)
- Intent to obtain sexual gratification or to procure sexual activity (see step 5 on totality when sentencing for more than one offence)
- Property demanded or obtained is intimate/sexual images
- Conduct intended to maximise distress and/or humiliation
- Offence committed in context of or in connection with other criminal activity
- Abuse of trust or dominant position or abuse of confidential information
- As a result of the offence victim forced to abuse their position
- Offence involved use or threat of a weapon (where not taken into account at step one)
- Other(s) put at risk of harm by the offending
- Blame wrongly placed on others

- Offence committed in a domestic abuse context (where not taking into account at step one)
- Leading role in group
- Offence committed on licence or while subject to court order(s).

Mitigating factors

- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions or no relevant/recent convictions
- Remorse
- Pregnancy, childbirth and post-natal care
- Difficult and/or deprived background or personal circumstances
- Prospect of or in work, training or education
- Positive character and/or exemplary conduct (regardless of previous convictions)
- Physical disability or serious medical conditions requiring urgent, intensive or long-terms treatment
- Mental disorder or learning disability (where not taken into account at step one)
- Age and/or lack of maturity (which may be applicable to offenders aged 18-25)
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour.

Impact of the Guidelines on Sentencing

Returning to the case of *R v Taberer and Rana*, it is likely that the sentencing exercise would have been approached differently using the guidelines.

Regarding culpability, it is likely that this case would have been placed in culpability B. The culpability A factor of 'sophisticated planning' may have been made out, however, on balance this case would likely have fallen at the top end of culpability B/bottom end of culpability A because the offending falls between the factors described in culpability A and culpability C.

Regarding harm, the guidelines would have placed the impact on the victim at the centre of the sentencing exercise and encouraged the Judge to step away from sentencing based mainly on the amount of money demanded. In this case the victim was extremely wealthy. On appeal, a submission that a demand for £1 million would not have been as significant a loss for this victim as it would have been for a victim of more modest means was given approval.¹⁰ It is likely therefore that the amount demanded would have been assessed as 'substantial loss' as opposed to 'very substantial loss', placing the level of harm in category 2.

As shown in the sentencing matrix, a B2 offence has a starting point of 2 years custody with a range of 1-5 years custody. Even when allowances are made for movement up the category range to take into account aggravating features, the starting point using the guidelines is staggeringly different to the one of 12 years reached by the sentencing Judge.

Conclusion

The imposition of sentencing guidelines for the offence of blackmail will add clarity and consistency to the sentencing process, and ensure every sentence accurately reflects the criminality before the court.

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¹⁰ Ibid (n 2) [18].

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