



Josh's Law – Why It's Needed

A review of the Unduly Lenient Sentencing (ULS) Scheme

**by policy clinics at
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This report was prepared by law students on behalf of The Josh Hanson Trust.
It does not constitute legal advice. The information provided is based on the law students' research
and understanding of the law at the time of writing.

FOREWORD

It has been a privilege to work with Open Justice Centre at The Open University, the University of Lancashire and Lancaster University to commission this independent academic research to commission this independent academic research. This report provides crucial insights into the history of the Unduly Lenient Sentencing (ULS) scheme, and the ongoing inequalities victims face within the Criminal Justice System (CJS).

Ten years ago, my 21-year-old son Josh was murdered in an unprovoked knife attack. Since that devastating moment, I have worked tirelessly within the Criminal Justice System to campaign for change - determined that no other family should have to endure the same failures and distress we experienced.

In Josh's case, it took four years for a conviction and sentencing to be reached. At no stage during the trial or at the point of sentencing was I informed of the ULS scheme. I only learned of its existence from another bereaved parent, by which time I had just hours left to act within the strict 28-day limit. With no clear guidance available, I submitted an appeal late in the evening on the 28th day, only to be told it was "out of time" because it arrived outside office hours. That decision was final. I had no right to appeal.

Since raising my concerns about this lack of information and guidance, the government has updated its website to include time restrictions and clearer details about the ULS scheme. I also received a written apology from the Crown Prosecution Service (CPS). But these steps do not go far enough.

Since 2019, I have been campaigning for **Josh's Law** - a simple, vital reform that would require the CPS to notify all victims of offences within the scheme, including bereaved families, of their right to appeal under the ULS scheme, either before or at the time of sentencing. This is not a call to extend the 28-day rule, but to ensure that if victims are not properly informed, this failure is recognised as an *exceptional circumstance*. In such cases, reviews should be permitted outside the 28-day limit.

Josh's Law would close a damaging gap in the system, ensuring victims' rights are finally brought into line with offenders' rights - a balance that has been absent since 1907.

On the 10th anniversary of Josh's murder, we are proud to launch both this report and The Josh Hanson Trust manifesto. Together, they call for Josh's Law to be enshrined in legislation, delivering long-overdue equality and justice for victims of crime.

Tracey Hanson
CEO
The Josh Hanson Trust

CONTENTS

Foreword.....	3
Executive Summary.....	6
The Research.....	7
Aims of the study.....	7
1. Introduction.....	8
1.1 Why was the scheme introduced?.....	8
1.2 Justification for the scheme.....	9
2. How does the ULS operate?.....	11
2.1 First five years of the ULS scheme.....	11
2.2 Summary of all offences covered by the scheme.....	12
2.3 Sentencing guidelines.....	12
3. The ULS scheme application process.....	16
3.1 Media depiction of the ULS scheme.....	18
3.2 Support for victims and families.....	19
3.3 Concerns surrounding the scheme's operation.....	20
4. Proposed amendments.....	21
5. Research methods.....	22
6. Results.....	23
6.1 Freedom of Information request to the AG.....	23
6.2 The referral process.....	23
6.3 Freedom of Information request to the CPS.....	24

6.4 Government data.....	24
6.5 Data analysis.....	27
6.6 Procedure and decision-making.....	28
6.7 Referrals.....	28
6.8 Court of Appeal judgments.....	29
7. Literature analysis.....	32
8. Recommendations for reform.....	34
9. Conclusion.....	37
10. Further research	38
11. Appendices.....	39
i) <i>Appeal Office Form NG Sentence</i>	
ii) <i>NG form notes D1 and D2</i>	

EXECUTIVE SUMMARY

The Unduly Lenient Sentencing (ULS) scheme provides for certain Crown Court sentences to be reviewed by the Attorney General's Office (AGO) if the sentence is considered too lenient, the AGO can request that the Court of Appeal review the sentence.

Anyone can make a request to review a sentence; referrals to the AGO are often made by victims, bereaved families, MPs, pressure groups, charities or members of the public. There are strict deadlines within which a referral can be made. A request must be made within 28 calendar days of the sentence.

This research finds there is a need to reform the ULS scheme. The scheme needs to take a victim-centred approach, ensuring that victims are notified of their right to appeal cases and informed of their options early or immediately after a sentence is given.

This report is provided to The Josh Hanson Trust, which has actively campaigned to increase the visibility of the scheme.

The report recommends that there needs to be more research on the scheme and better information provided to victims to make sure the victim's voice is included in the criminal justice process.

The Josh Hanson Trust agrees with the recommendations while calling for greater transparency and accountability across all agencies when gathering data relating to the ULS scheme.

THE RESEARCH

This research was undertaken by the policy clinics at the University of Central Lancashire, Lancaster University and the Open University Law School. The purpose of the policy clinics is to give students an opportunity to research areas on behalf of an organisation. All work in the policy clinic is overseen by academics. The report does not constitute legal advice. The information provided is based on the law students' research and understanding of the law at the time of writing.

This research is in response to a brief provided by [The Josh Hanson Trust](#) to explore the ULS scheme. The first part of the report outlines the online documentary research that was carried out into the government and parliamentary archives to explore why the scheme was introduced, and how the scheme operates in practice. It then considers the sentencing guidelines for murder, manslaughter and knife crime, and reviews a sample of Court of Appeal cases. Freedom of information requests were made to obtain data on the number of referrals made between the years 2015-2024. Statistics relating to the ULS scheme have been analysed, along with a sampling of Court of Appeal cases. The report considers the effectiveness of the ULS Scheme and makes suggestions for further research and reform to the ULS scheme.

AIMS OF THE STUDY

The purpose of the research is to support the campaigning work of The Josh Hanson Trust. The Trust is concerned about the effectiveness of the ULS scheme and whether there is sufficient information provided to victims about the scheme to allow them to make an application for a sentence to be reviewed.

1. Introduction to the Unduly Lenient Sentencing scheme

The ULS scheme enables anyone to request that certain Crown Court sentences are reviewed by the Attorney General's Office (AGO) if they consider the sentence too lenient. There are three ways to establish a sentence as unduly lenient, as seen in the [CPS guidelines](#).

- Firstly, a sentence is lenient "... where it falls outside the range of sentences which the judge, applying his mind to all the relevant factors, could reasonably consider appropriate" (*Attorney General's Reference No 4 of 1989* [1990] 1 WLR 41, Lord Lane CJ).
- The court in *Attorney General's Reference No 3 and 5 of 1989* [1990] 90 Cr App R 358 stated that "there must have been some error of principle in the judge's sentence; that, in the absence of the sentence being altered by the court, public confidence would be damaged; and that the court should only grant leave in exceptional circumstances, and not in borderline cases".
- In *Edwards* [2012] EWCA Crim 2746 the Court affirmed that the scheme is designed to deal with cases where judges have fallen into gross error.

1.1 Why was the scheme introduced?

The introduction of the ULS scheme can be largely attributed to political action following public outcry over several cases that were heavily publicised where the sentencing of the defendant was considered highly inappropriate. Public opinion, coupled with support from leading academics and senior members of the judiciary, led to the policy decision for the introduction of the scheme.¹ Shute argues that the reasons behind the implementation of the ULS scheme were that lenient sentences: "damaged public confidence in the criminal justice system, dulled the deterrent effect of criminal sentences, weakened the morale of the police, made coherent sentencing policy hard to achieve and tempted disgruntled victims to take the law into their own hands".² Such rationale, combined with universal interest from the public, led to the implementation of the ULS scheme.

The ULS scheme was implemented via Section 36 of the Criminal Justice Act 1988 and enabled any member of the public the right to ask for a review of a criminal sentence if they considered it "unduly lenient". There were several driving forces behind the ULS's implementation.

¹ Stephen Shute, 'Prosecution Appeals against Sentence: The First Five Years' (1994) 57(5) Mod. L. Rev. 745, 745-746

² Ibid 745-746

1.2 Justification for the scheme

The ULS scheme involves cases referred to the Attorney General because of concerns that the sentence was given in gross error. Today, this means the sentence was outside of the sentencing guidelines. The ULS scheme has been described as an “important mechanism” which ensures that for the most serious criminal offences, sentences are “commensurate with the seriousness of the offending and give the victims of crime confidence that justice will be served”.³ Essentially, the scheme is in place to instil public confidence in the criminal justice system by ensuring that gross errors in sentencing are corrected.

1.2.1 LEGAL REFORM 1907

The Criminal Appeal Act 1907 was introduced to ensure fairness within the criminal justice system by giving defendants the right to appeal a decision. This move was aimed at strengthening the impartiality of decisions and reducing the significant influence the Home Secretary had over criminal cases. MPs in the House of Commons debated the creation of a Court of Criminal Appeal to formalise the process and address concerns over miscarriages of justice. Mr. Gladstone, who worked for the Home Secretary, remarked, “I say very deliberately to this House that the general position of the Home Secretary in criminal cases is now almost unbearable.”⁴ On 19 August 1907, it was agreed that a formal Court of Criminal Appeal would be established, providing a structured way to challenge miscarriages of justice. However, while the Act granted defendants the right to appeal, it did not extend this right to the prosecution or victims, leaving them without a similar avenue for contesting decisions.

However, continual legal reforms between then (1907) and now have sought to address such inconsistencies. Key changes culminated in 1988 when (by virtue of S.36 of the Criminal Justice Act 1988) the prosecution was finally granted the ability to contest sentences deemed unduly lenient. However, enabling prosecutors to be involved in the appeal process has not been without criticism. For example, Mr Nicholas Fairbairn (then MP) argued that prosecutors could prioritise punitive measures or institutional objectives over balanced justice.⁵ Therefore, the ability of prosecutors to challenge sentences was seen by some to impact fair, balanced and impartial legal decision-making.

1.2.2 LEGAL REFORM AND THE RISE OF THE MEDIA 1970 AND 1980s

The Attorney General was given for the first time by Section 36 of the Criminal Justice Act 1972, permission to ask the Court of Appeal for their opinion on points of law. It did not, however, give any power to change the outcome of a decision.⁶ Indeed, no real substantial reforms were made before the work of Jack Ashley (former MP).⁷ The Stoke on Trent MP was the driving force behind the implementation of the ULS scheme. In 1978 he proposed a White

³ UIN 27579 (12 July 2022)

⁴ <https://hansard.parliament.uk/Commons/1907-05-31/debates/e0566c06-d0f6-4501-be4d-3d7ada5155d9/CriminalAppealBill>

⁵ [https://hansard.parliament.uk/Commons/1978-02-14/debates/f94e2e47-5fcd-4835-9e1b-08460b374e5b/CriminalOffences\(Appeals\)](https://hansard.parliament.uk/Commons/1978-02-14/debates/f94e2e47-5fcd-4835-9e1b-08460b374e5b/CriminalOffences(Appeals))

⁶ [https://www.legislation.gov.uk/ukpga/1972/71/section/36#:~:text=\(1\)Where%20a%20person%20tried,s hall%2C%20in%20accordance%20with%20this](https://www.legislation.gov.uk/ukpga/1972/71/section/36#:~:text=(1)Where%20a%20person%20tried,s hall%2C%20in%20accordance%20with%20this)

⁷ <https://archives.blog.parliament.uk/2020/04/08/jack-ashley-no-barriers/>

Paper in the House of Commons. As a passionate advocate for the disadvantaged and vulnerable in society, his aim was to reduce disparities in the law.⁸ Specifically, he claimed it was to, “ensure a greater understanding of, and consistency in, sentencing policy for criminals and thereby assure greater public confidence in the law”.⁹ The White Paper failed with 293 votes (against) to 30 (in favour).¹⁰ However, further controversial judgements were fuelling an unrest within society, exacerbated by the media. The main cases that influenced change were:

- The 1982 Ipswich rape case which resulted in a mere £2,000 fine for the rape of a 17-year-old hitchhiker (*R v Allen*, 1982).
- 12-month sentence for the rape and indecent exposure of a six-year-old in 1982.
- The Ealing vicarage rape case in 1986.¹¹

These three cases, as well as many more, sparked public interest, demanding fairer outcomes in the form of harsher sentences for crimes committed. At this time, the popularity of tabloid newspapers and the media was on the rise leading to a greater spread of concerns. Academics were also supporting demands for higher levels of scrutiny on sentencing.¹² Parliament recognised the growing influence that the media had and the public's growing demands for change. The significance of public opinion was an additional force compelling the introduction of the ULS scheme.¹³ This societal and media pressure ultimately led to Jack Ashley's White Paper making its way to the House of Lords in 1985.

1.2.3 OCTOBER 1985 – JACK ASHLEY'S WHITE PAPER

By 1985, Jack Ashley's White Paper had reached the House of Lords, and was debated once in April, and twice in October. By October 1985, more members of the House of Lords had become convinced that this proposed scheme would be effective. Some significant arguments (both for and against) from this October debate included the following:

- Lord Denning argued that following the Ealing Rape Case (*R v Horscroft* 1987), the public had become distrustful of the courts, and this needed to be corrected to re-establish public confidence in the law.
- Lord Hutchinson argued that the great characteristic of the justice system is that judges often decide on individuals' cases using their own judgement and knowledge. The introduction of the scheme would enable this judgment to be challenged.
- Lord Hailsham argued there must be a development in jurisprudence in which consistency of sentencing and general principles of it are decided by the proper body (Courts of Appeal).

⁸ [https://hansard.parliament.uk/Commons/1978-02-14/debates/f94e2e47-5fcd-4835-9e1b-08460b374e5b/CriminalOffences\(Appeals\)?highlight=unduly%20lenient#contribution-903110fe-88df-4824-bf45-21e293478031](https://hansard.parliament.uk/Commons/1978-02-14/debates/f94e2e47-5fcd-4835-9e1b-08460b374e5b/CriminalOffences(Appeals)?highlight=unduly%20lenient#contribution-903110fe-88df-4824-bf45-21e293478031)

⁹ [https://hansard.parliament.uk/Commons/1978-02-14/debates/f94e2e47-5fcd-4835-9e1b-08460b374e5b/CriminalOffences\(Appeals\)?highlight=unduly%20lenient#contribution-903110fe-88df-4824-bf45-21e293478031](https://hansard.parliament.uk/Commons/1978-02-14/debates/f94e2e47-5fcd-4835-9e1b-08460b374e5b/CriminalOffences(Appeals)?highlight=unduly%20lenient#contribution-903110fe-88df-4824-bf45-21e293478031)

¹⁰ <https://api.parliament.uk/historic-hansard/commons/1983/dec/05/rape-prosecutions>

¹¹ <https://www.bbc.co.uk/news/uk-38516389>

¹² <https://www.jstor.org/stable/1093889>

¹³ Questions as to Sentencing HL deb 489 26 October 1987.

- Lord Widgoder argued the number of cases that are potentially being dealt with is very few and, in introducing the scheme, the time and expense dedicated to this introduction made it ludicrous.¹⁴

Although there were still critics of the proposed scheme, there was enough support to warrant the legal reform which was ultimately implemented via Section 36 of the Criminal Justice Act 1988.

2. How does the ULS scheme operate?

When the ULS scheme was first enacted in 1988,¹⁵ it enabled anyone (not just defendants) to question the sentences handed down in the Crown Court. The ULS scheme's main aim was to correct the occasional unduly lenient sentence. It was intended by the House of Lords to deal with no more than a dozen cases a year to adjust sentences which were unduly lenient. To ensure it was only used where completely necessary, the legislation had stringent caveats. Those restrictions were and continue to be:

- Only certain triable-either-way or indictable offences, tried in the Crown Court could be submitted for review.
- A full list of eligible crimes was and is provided by the CPS.¹⁶
- The appeal needed to be filed within 28 calendar days of the decision.¹⁷

There is no ability to extend this time limit, although there is currently a petition that has been filed by a murder victims' family to remove the appeal deadline.¹⁸

2.1 First five years of the ULS scheme

In the first five years of the Scheme, 120 cases were reported. Of these 120 sentences, 40 were rejected, while the other 80 had their sentences increased.

- In 1989, 10 sentences were referred to the scheme
- In 1991, 41 sentences were referred to the scheme
- In 1993, 31 sentences were referred to the scheme.

This shows that although there was an increase in the usage of the scheme, it has not been consistent.

2.2 Summary of all offences covered by the scheme

This section considers the offences which are covered by the ULS scheme. Part IV of the Criminal Justice Act 1998 began by introducing important provisions concerned by the review of sentencing for offences triable by indictment. These offences include (but are not limited to) many serious crimes such as murder, manslaughter, knife crime and sexual offences. Over the years, the Criminal Justice Act 1998 has been amended many times (2006, 2012, 2017 and 2019) which has led to new offences to be added.

¹⁴ See <https://api.parliament.uk/historic-hansard/lords/1987/oct/26/questions-as-to-sentencing>

¹⁵ CJA 1988

¹⁶ <https://www.cps.gov.uk/legal-guidance/unduly-lenient-sentences>

¹⁷ <https://www.cps.gov.uk/legal-guidance/unduly-lenient-sentences>

¹⁸ <https://petition.parliament.uk/petitions/700168> The Government responded to the petition on 14th March and said they are considering this and will publish their decision in their final report. They stated in their initial response - "While we can understand calls for the limit to be extended, particularly for victims and their families, Parliament intended the ULS scheme to be an exceptional power. It is important that there is finality in sentencing, and that we avoid ongoing uncertainty, for both victims and offenders, about the sentence to be served. Any expansion of the scheme must therefore be carefully considered."

The CPS details all the offences which are included in Annex A of their legal guidance on Unduly Lenient Sentences.¹⁹ Of particular interest are the extensive number of amendments that have been made, expanding the included offences. A range of new offences have been added by virtue of the following Orders:

- The Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006
- The Criminal Justice Act 1988 (Reviews of sentencing) (Amendment) Order 2012/1833
- The Criminal Justice Act 1988 (Reviews of Sentencing) (Amendment) Order 2017/751
- The Criminal Justice Act 1988 (Reviews of Sentencing) (Amendment) Order 2017/1328
- The Criminal Justice Act 1988 (Reviews of Sentencing) (Amendment) Order 2019/1397

However, section 35 of the Criminal Justice Act 1998 specifies that it is only offences passed in the Crown Court that are triable only on indictment or specifically added to the scheme by subsequent order that can be reviewed under the ULS. However, if the defendant is sentenced for an offence which is applicable, then all of their sentences, including for offences not within the scheme, can be reviewed by the Court of Appeal.²⁰

2.3 Sentencing guidelines

Three types of offences which are included within the ULS scheme are murder, manslaughter and knife crimes. The framework for establishing and imposing sentences for these crimes is complicated.

2.3.1 Murder

For murder, the judge must impose a life sentence. Using Schedule 21 of the Sentencing Act 2020, the judge will set a minimum tariff that the offender must be in prison for before being considered for release.

- Where the seriousness of the offence is exceptionally high, and the offender is over 21 when the offence is committed, a whole life order is the appropriate starting point.
- This will be reduced to 30 years where the court considers the seriousness of the offence as particularly high (as opposed to exceptionally), and the offender was over 18 when the offence was committed.
- The minimum term will be 25 years if the offender took a knife/other weapon to the scene intending to commit an offence or have it available to use as a weapon and used it in committing the murder. The offender must be aged 18 or over when the offence is committed, and it was committed on/after 2nd March 2010.
- If the offender was aged 18 or over when the offence was committed, and does not fall within the above criteria, the appropriate minimum term will be 15 years.
- Finally, if the offender was under 18 at the time the offence was committed, the appropriate starting point is 12 years.

¹⁹ <https://www.cps.gov.uk/legal-guidance/unduly-lenient-sentences>

²⁰ Clews [2019] EWCA Crim 769.

After setting the minimum term, the judge will consider aggravating/mitigating factors and amend the term up or down. Aggravating factors include a significant degree of planning/premeditation, the vulnerability of the victim, the use of duress etc.

Mitigating factors include an intention to cause serious bodily harm rather than to kill and a lack of premeditation. The age of the offender can also act as a form of mitigation. The judge may also reduce the minimum term if the defendant submits a guilty plea. Where the defendant has pled guilty, the maximum level of reduction is one third if inputted at the first stage of proceedings. After the first stage of proceedings, the maximum level is one-quarter.

CASE STUDY - JOSH HANSON

Shane O'Brien was convicted of the murder of Josh Hanson in 2019. Shane murdered Josh in an unprovoked attack at a bar in Hillingdon, west London on 11 October 2015, when he slashed Josh's neck with a Stanley knife causing a 37cm knife wound. The whole incident was recorded on CCTV.

O'Brien evaded capture for three years. He fled the UK and moved around Europe before he was finally extradited from Romania for trial.

Sentencing O'Brien, Judge Nigel Lickley QC called it a "grotesque, violent and totally unnecessary attack on an innocent man." The judge convicted O'Brien to 26 years' imprisonment. At no stage during the trial or at the point of sentencing was Josh's mother, Tracey Hanson, informed of her right to appeal O'Brien's sentence under the ULS scheme.

"I only learned of its existence from another bereaved parent, by which time I had just hours left to act within the strict 28-day limit. With no clear guidance available, I submitted an appeal late in the evening on the 28th day, only to be told it was 'out of time' because it arrived outside office hours. That decision was final. I had no right to appeal.

"Offenders can appeal their sentences at any time. There is no time limit and they have defence lawyers to represent their cases," continued Hanson. "Victims have no such representation. We have to research and fight for everything ourselves. The system is currently unjust and imbalanced in favour of offenders."

2.3.2 Manslaughter

Voluntary manslaughter (Diminished responsibility)

Manslaughter, by reason of diminished responsibility, occurs when the offender's mental disorder impairs the understanding of their actions substantially. This sentence ranges from 3 to 40 years in custody, with a maximum of a life sentence. When sentencing, both aggravating and mitigating factors are taken into consideration. Aggravating factors include use of excessive force, violent criminal history and a lack of remorse. On the other hand, mitigating factors include untreated mental illness, an early guilty plea and no prior conviction, which can lead to a reduced sentence.

Voluntary manslaughter (Loss of control)

Manslaughter by loss of control occurs when the offender loses control due to a qualifying trigger, such as a fear of serious violence. This offence ranges from 3 to 20 years' custody,

with a maximum of a life sentence possible. When sentencing, both aggravating and mitigating factors are taken into consideration. Aggravating factors include the victim being particularly vulnerable or the offence being part of a violent altercation. Mitigating factors may involve a reasonable provocation or emotional distress at the time.

Involuntary manslaughter (Unlawful act)

Unlawful act manslaughter, which involves a dangerous or unlawful act that causes death, is subject to sentencing ranging from 1 to 24 years in custody, with a potential life sentence. Aggravating factors in these cases include brutality or cruelty in the commission of the crime, victim vulnerability, and a history of violent offending. On the other hand, mitigating factors could include minimal involvement in the offence, lack of prior criminal history, or acting under duress. A guilty plea or cooperation with authorities can also lead to a reduction in sentence.

Involuntary manslaughter (Gross negligence)

Gross negligence manslaughter arises when the offender's negligence leads to death. The sentence for this offence typically ranges 0 to 18 years' custody, with the possibility of life imprisonment. Aggravating factors include recklessness, the victim's vulnerability, and the failure to take reasonable steps to prevent harm. Mitigating factors might involve remorse or an isolated instance of negligence. The court also considers whether a custodial sentence is necessary and evaluates the possibility of a suspended sentence, depending on the offender's circumstances.

CASE STUDY – RASHKO KURTEV

One case where a sentence for manslaughter was found to be unduly lenient was the case of Rashko Kurtev.²¹ Kurtev caused serious head injuries to the victim (McLeod) by striking him with two metal chairs outside a fish and chip shop in Birchington, Kent. He was originally sentenced to three years and 9 months. There were aggravating factors, including the use of the chair as a weapon and the offence being in public. The mitigating factors were the guilty plea, lack of previous convictions and lack of premeditation. However, when Kurtev appealed the sentence, the court found that he had ample opportunity to indicate a guilty plea earlier than he chose to do so, and therefore, the reduction in his sentence was not justified. As a result, he was then sentenced to six years.

2.3.3 Knife crime

The Sentencing Council provides a full breakdown of different knife crimes.²²

Possession of a bladed article in a public place

Offence: Being found with a knife or similar object without lawful reason.

Maximum sentence: 4 years' imprisonment and/or an unlimited fine.

Sentencing range (based on harm and culpability): Community order to 3 years in custody.

Aggravating factors: Previous similar convictions, presence in a school or crowded area, gang context, weapon brandished.

Mitigating factors: No intention to use, young age, remorse, mental health issues.

²¹ <https://www.bbc.co.uk/news/articles/c30pr6qmelvo>

²² [Knives and offensive weapons – Sentencing](#)

Possession of an offensive weapon

Similar to knife possession – slightly broader as it includes non-bladed weapons.

Maximum sentence: 4 years.

Sentencing range: Community Order to 3 years in custody

Threatening with a bladed article

Offence: Threatening someone in public with a knife in a way that causes immediate risk of serious harm.

Maximum sentence: 4 years

Minimum sentence (for adults): 6 months in custody

Sentencing range: 6 months to 4 years in custody.

Using a knife to cause injury (e.g. grievous bodily harm, actual bodily harm, assault)

Prosecuted under the Offences Against the Person Act 1861 (GBH, ABH, attempted murder, etc.), but the use of a knife makes the offence more serious.

Maximum sentences:

- GBH with intent (Section 18): Life imprisonment
- GBH without intent (Section 20): 5 years
- ABH (Section 47): 5 years

It is important to consider how the ULS scheme is effective at distributing just sentences. Harris²³ highlighted some key reasons why sentences may not always be increased when referred to the Attorney General. Firstly, it is important to note that a sentence increase does not always indicate the “correct” result. The scheme focuses on correcting any errors, and in some cases, that may mean leaving the sentence as it is.²⁴ Alternatively, a different sentence type may be imposed to reflect a focus on a different aim of sentencing, such as rehabilitation.

²³ Lyndon Harris, ‘Evaluating 30 years of the unduly lenient sentence scheme: Attorney General’s References 1988-2017’ (2019) 5 CLR 370, 387.

²⁴ Ibid

3. The ULS scheme application process

There is an online application process to ask for a sentence to be reviewed under the ULS scheme.²⁵ The diagram below (created by University of Central Lancashire) outlines the application process; the questions replicate the website questions.

It should be noted that the application form can be difficult to locate and may require multiple searches until the correct government website is found.²⁶ F

The form consists of several identification questions and asks for personal contact details. It also requires an explanation of why the sentence is believed to be unduly lenient. There is no clear information about how this information will be shared.

If an extension to the 28-day rule was to be permitted in exceptional circumstances, as being requested by The Josh Hanson Trust as part of Josh's Law, it would be straightforward to add the following two questions to the form:

- Are you applying for an extension to the 28-day rule?
- What are your reasons to support this application for an extension?

These questions are included in the form NG, which offenders have to complete when they wish to appeal against their sentence (see Appendices I and ii, form NG Sentence, notes D1 and D2). Adding these questions and supporting notes to the ULS scheme application form would afford the same rights to victims wishing to appeal as are entitled to by offenders, who have a right to appeal outside of the 28-day rule ²⁷.

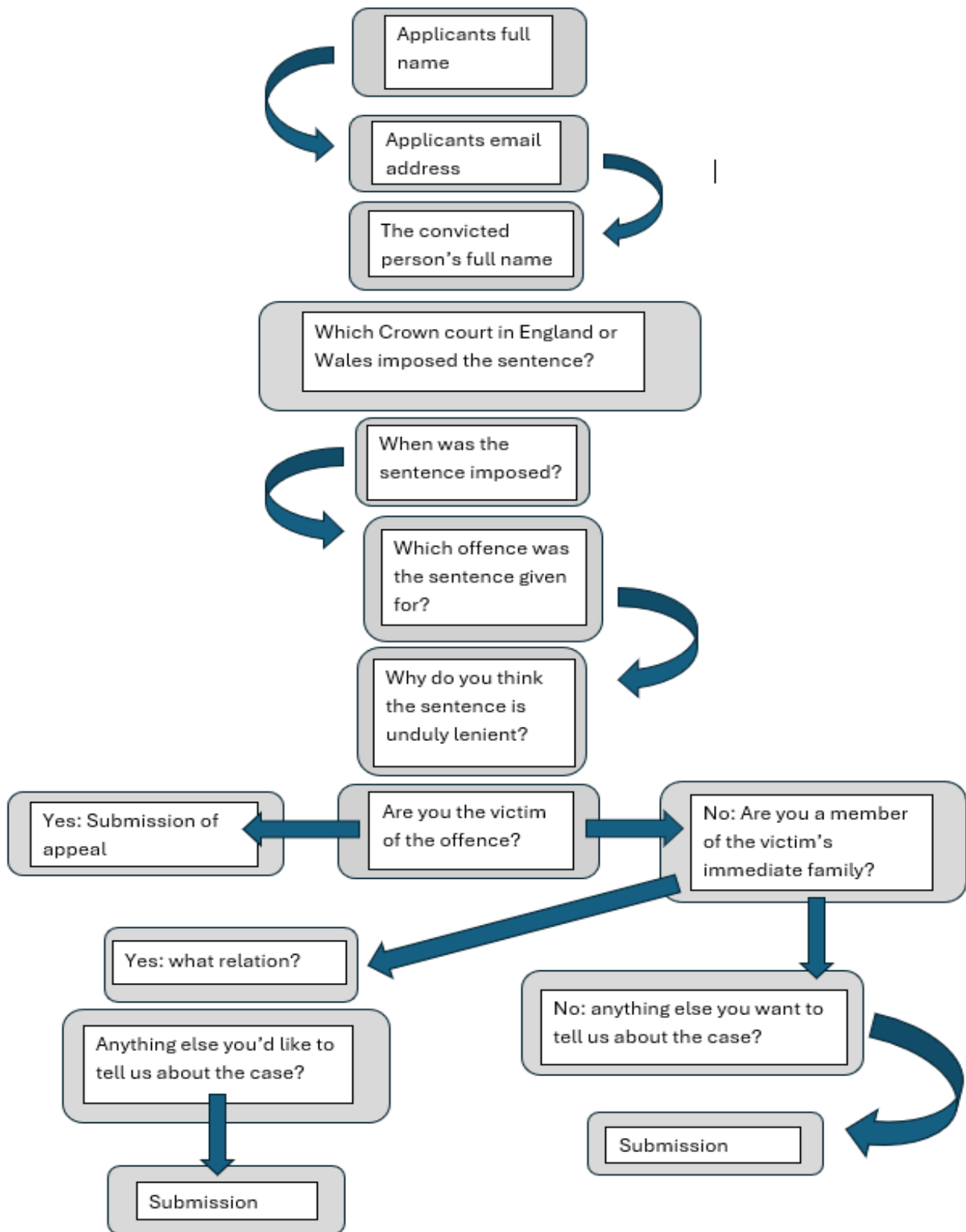
The ULS scheme form is basic and clinical in nature. The online form might cause difficulties for people who struggle with digital formats or have low levels of digital literacy.

Within the application form, there is the option to request support via the 'need help filling out this form' hyperlink. This then takes the user to an email address and a phone number which is available between 9am and 5pm, Monday to Friday.

²⁵ [Ask for a Crown Court sentence to be reviewed - GOV.UK](#)

²⁶ [Ask for a Crown Court sentence to be reviewed - GOV.UK](#)

²⁷ <https://assets.publishing.service.gov.uk/media/5fdb228d8fa8f54d60878b3b/ng-guidance.pdf>



3.1 Media depiction of the ULS scheme

The media plays a crucial role in shaping public perception of the ULS scheme - often portraying it as a necessary safeguard against perceived judicial leniency. The scheme allows members of the public and the Attorney General to challenge sentences deemed too lenient for serious crimes such as murder, sexual offences and terrorism. Media coverage frequently highlights high-profile cases where offenders receive, what is perceived as, inadequate punishment. This fuels debates on judicial discretion and sentencing consistency.

It could be argued that media coverage should instead focus on informing the bereaved and the public about the facts of each case, rather than attempting to determine its outcome.²⁸ Therefore, there must be a distinction made between public confidence surrounding sentencing by the scheme's guidelines, and public concern about a particular sentence which may be based upon media misrepresentation.²⁹

Sensationalist reporting can sometimes exaggerate concerns, suggesting widespread judicial leniency rather than isolated cases. Such headlines can lead to public outcry and political pressure, potentially influencing future sentencing policies. However, critics argue that media coverage often lacks nuance and fails to acknowledge factors like sentencing guidelines, mitigating circumstances, and judicial independence. By focusing on extreme cases, the media can create a perception that lenient sentencing is widespread, rather than exceptional.

While such coverage can lead to greater public scrutiny and accountability, it may also oversimplify complex legal decisions. This lack of nuance can contribute to undue pressure on the judiciary and policymakers to impose harsher penalties.

Conversely, the media also serves a vital role in holding the justice system accountable, ensuring transparency, and providing a platform for victims' voices. By highlighting particularly controversial cases, journalists can prompt legal reforms and increased public engagement with sentencing laws. For example, law officers use social media to promote the ULS scheme by working with the Ministry of Justice to raise awareness and inform victims of the scheme and the criteria for eligibility³⁰. Moreover, media sites such as the BBC³¹ have used their platforms to educate the public about the scheme by publishing findings and statistics. However, in 2023, even though the scheme had existed for 30 years, many victims were still unfamiliar with how the scheme operates.³²

²⁸ Hannah Quirk, "Unduly Lenient Sentences" (2024) 4 Crim. L. R 205, 206.

²⁹ *ibid.*

³⁰ European Union News, "Ellie Reeves ask the Attorney General, with reference to the Victims Commissioner's annual report 2019 | 20, what steps the Attorney General is taking with the Lord Chancellor to promote the changes to the review into the unduly lenient scheme to ensure victims are aware of their right to request a challenge." (2020) <<https://go.gale.com/ps/i.do?p=ITOF&u=unilanc&id=GALE%7CA631045577&v=2.1&it=r&sid=bookmark-ITOF&asid=baf88cd0>> accessed 30 January 2025.

³¹ Rob England, "Unduly lenient sentences review scheme "inadequate" (BBC News, 9 July 2019), <<https://www.bbc.co.uk/news/uk-47879288>> accessed 1 February 2025.

³² GOV. UK, "Unduly lenient sentence annual case outcomes data (GOV.U, 1 January 2011)" <<https://www.gov.uk/government/publications/unduly-lenient-sentence-annual-case-outcomes-data#:~:text=If%20a%20sentence%20given%20in,t%20o%20look%20at%20the%20sentence.>> accessed 2 February 2025.

3.2 Support for victims and families

Support for victims and families regarding the scheme is provided through statutory interventions. For instance, the Code of Practice for Victims of Crime in England and Wales (Victims' Code) sets out the rights that the victim can expect to receive from criminal justice agencies.³³ One of these is the right to be given information about the outcome of the case and any appeals.³⁴

This right includes information about the ULS scheme and places an obligation on the Witness Care Unit to inform victims about the scheme once they are told the sentence.³⁵ Further to this, if a victim or family member believes that they have not received any of their rights under this code, they can make a complaint.³⁶

Nonetheless, according to Lord Sandhurst, the support offered by the Code is insufficient because Witness Care Units only engage with victims who are witnesses in the court case. This excludes a proportion of victims, such as bereaved family members.³⁷

The Victims' and Prisoners' Act 2024 is a statutory intervention which strengthens compliance with the Victims' Code of Practice (VCOP), thus increasing the support offered to victims and families. Alongside a duty for criminal justice agencies to take reasonable steps to promote awareness of the VCOP, section 5(1) outlines that where the Code makes provision about a service to be provided, the person must provide the service in accordance with the Code unless the person has good reasons not to.³⁸ Compliance is further reinforced, as a court may consider a failure to adhere to the Code in determining a question in the proceedings.³⁹

However, while the statutory intervention strengthens the application of the Victims' Code of Practice, it does not fully address the issue of awareness of the scheme. This is because it does not create a duty to inform victims who are not in contact with the Witness Care Unit about the ULS scheme, resulting in a continued gap in support for victims and families.

³³ 'Victims' Code' (*Victim Support*, 28 February 2024) < www.victimsupport.org.uk/help-and-support/your-rights/victims-code/ > accessed 10 February 2025.

³⁴ *Code of Practice for Victims of Crime in England and Wales* (Ministry of Justice 2020) para 9.

³⁵ *ibid* para 9.6

³⁶ *ibid* para 12.1.

³⁷ Lord Sandhurst, 'Amendment 113' (*They work for you*, 7 February 2024) < www.theyworkforyou.com/lords/?id=2024-02-07c.1722.0 > accessed 10 February 2025.

³⁸ Victims and Prisoners Act 2024.

³⁹ *ibid* s5(4).

3.3 Concerns surrounding the scheme's operation

There are several concerns regarding the scheme's operation, which continue to remain an issue and recommendations are made for reform later in the report.

28-day limit

Anyone wishing to use the scheme must do so within 28 calendar days, which is restrictive and has been criticised.⁴⁰ This is particularly true at certain times of year. For example, if the sentence was passed around a holiday period, such as Christmas, a large part of those 28 days would fall on bank holidays (not accounted for).

In addition, the information that must be provided when applying through the ULS scheme could be difficult to find, particularly within the short time frame. Often the people asking for a review have links to the victim or the case. When the case involves violent crime, victims will have experienced trauma, grief or emotional difficulties. In this situation, a 28-day period is insufficient time to give victims to come to terms with the trial and sentencing, to process the outcome and to act.

Lack of awareness

A further concern relates to a lack of awareness. Though it is well known the defendant can appeal, very few people know that victims or their families can too, as a result, many people unfairly lose their right to apply for the scheme because they found out too late, as happened with Tracey Hanson after her son Josh's murder. There should be an obligation for all parties connected to a case to be informed of the ULS.

As Tracey Hanson says, this could be as simple as it being the court's responsibility, namely the Crown Prosecution Service to hand out a leaflet to victims and their families at the time of the trial and sentencing explaining the ULS scheme, what it is and how to apply.

Media coverage

Without widespread media coverage, victims are often unaware of the 28-day period to refer a case to the Attorney General and unaware their request must be made as soon as possible stating relevant grounds.⁴¹

This could mean they miss the opportunity for the sentencing to be reviewed altogether. This is particularly concerning for less publicised cases with less media attention. It should not be the case that the ability to challenge a sentence depends on chance and the circumstances of the case, rather than equal access to information for all.

This lack of coverage leads to insufficient public awareness, and therefore procedural constraints. One significant implication is the erosion of public trust in the judicial system. In cases where sentences are perceived as being disproportionately lenient, victims and their families may feel a sense of injustice that could remain unchallenged.

⁴⁰ [Blackpool murder victim's sisters demands longer appeal period - BBC News](#)

⁴¹ UK Parliament, "Unduly Lenient Sentence Scheme", <<https://commonslibrary.parliament.uk/unduly-lenient-sentence-scheme/>> accessed 7 February 2025.

Addressing public safety

The failure to utilise the scheme might compromise the safety of the public as it could allow dangerous offenders to serve inadequate sentences. The ULS scheme is an opportunity to extend sentences when public safety is at risk.

4. Proposed amendments

The first part of the report has set out the background to the scheme and highlighted some of the issues.

There are proposed amendments to the ULS scheme which include, addressing some of the concerns around time limits, the scope of offences, victims' rights and improved operationalisation of the scheme.

In May 2025, the Ministry of Justice published a Victims' and Courts' Bill Overarching Impact Assessment which sets out the legislative measures and details of both the monetary and non-monetary impact on victims⁴². Measure 7 relates specifically to the ULS scheme - it refers to amending the time limit - acknowledging that it would improve confidence of victims, their families and the criminal justice system. There is recognition that reform to the scheme is required.

The next part of the report considers some of the data and statistics around the scheme.

⁴² https://assets.publishing.service.gov.uk/media/681b1b1f34321d7b2d873af2/vac-oia-ia.pdf?utm_source=perplexity

5. Research methods

The plan was to collect statistical data from the Attorney General and the CPS Service. Referrals of ULS scheme cases are reviewed by the Attorney General, where they are either referred to the Court of Appeal or rejected. A freedom of information (FOI) request was sent to the Attorney General's office to obtain data on the referrals made between the years 2015-2024. The questions asked related to the numbers of referrals, their sources, eligibility and decision-making process, rejection of the referrals, communication and accessibility of the scheme. In addition to the FOI request to the Attorney General, a FOI was sent to the Crown Prosecution Service to obtain some general statistical data of the sources of referrals. Both the FOI requests were declined with only some limited data being provided, which is discussed later in the report.

As we were not able to obtain data through the FOI, online research was conducted to obtain statistics relating to the ULS scheme, through the unduly lenient sentence annual case outcomes data (www.gov.uk). Data from 2011-2023, was used to analyse and compare the total annual numbers of referrals, refusals and sentence increases in the Court of Appeal across the range.

Using Westlaw and Lexis Nexis databases, sampling of Court of Appeal cases relating to referrals under the scheme in 2020-2023 was conducted to determine whether there were any similar factors, common themes or patterns that affected the outcomes that could be established. Details of the scope and size of the sample is discussed later in the report. A list of themes used in the analysis of the judgments included the following factors:

- Offender's personal characteristics such as gender, age, ethnicity, character.
- Offender's mental health and disability, personal history, previous convictions, gang affiliation.
- Reasons for sentence being unduly lenient, as presented by the Attorney General (aggravating and mitigating factors, seriousness and categorisations, totality, dangerousness to public).
- Guideline issues (newly implemented, conflicting), sentencing errors, failure to consider relevant facts, failure to obtain pre-sentence reports.

The sampling process was limited due to the availability of recorded judgments in the databases for years 2020-2023. Particular attention was paid to any correlation between the outcomes of the cases, in terms of whether the sentence was increased or unchanged, the type of offence and the original court location.

Two years were selected for a full detailed review – 2021 and 2023. Year 2021 was chosen as semi-pandemic year as the conditions in prisons were still highly difficult due to isolation rules. In contrast, 2023 represents more normality within prisons, as well as being the latest year where data was fully available.

6. Results

6.1 Freedom of Information request to the Attorney General (Ag)

The AG was asked for a breakdown of who originally made the referrals – victims and their families, CPS, members of the public, MPs or other sources. The response was that the information cannot be released as it falls under the exemption of s30, Freedom of Information Act (FOIA) 2000.

An enquiry was then made as to whether there is a standard notification procedure; any information regarding how the victims and their families are informed about the scheme, or a record of any notification given to the victims and families as to their right to make a referral. The response from the AG was that the AG office does not hold this information.

6.2 The referral process

The procedure for a referral to the Court of Appeal involves both the CPS and AGO, ensuring any information is verified. Initially the CPS will identify the case, offence and sentence, while AGO's lawyers and paralegals will review the information to establish whether the case qualifies under the scheme.

Cases that do not qualify are reported on AGO's website, and persons who have made the referral are notified by the AGO. No requests to the AGO are rejected when determining whether a sentence falls within the scheme. For qualifying cases, the next stage of consideration includes AGO officials carefully examining sentencing documents that are requested from CPS. Using relevant guidelines, the judgment is thoroughly assessed, and the final decision on whether to refer the case to the Court of Appeal is made by a law officer.

The FOI contained several questions relating to the total number of requests annually made to the AG, for the period 2015-2024. This includes all cases originally received at AG office, whether eligible under the ULS scheme or not. The AGO informed us that data for 2015 was not available, the data for 2024 was still being processed and therefore also unavailable.

Table 1 summarises the limited data that was obtained from the AGO's responses to the three questions that were asked.

Table 1. Attorney General's FOI response data			
	Total number of referrals made to the Attorney General	Number of referrals eligible for review under the scheme	Number of referrals that did not meet criteria or out of time
2016	835	555	280
2017	944	615	329
2018	1067	666	401
2019	983	620	363
2020	787	578	209
2021	1003	717	286
2022	1179	848	331
2023	910	614	296

6.3 Freedom of Information request to the Crown Prosecution Service (CPS)

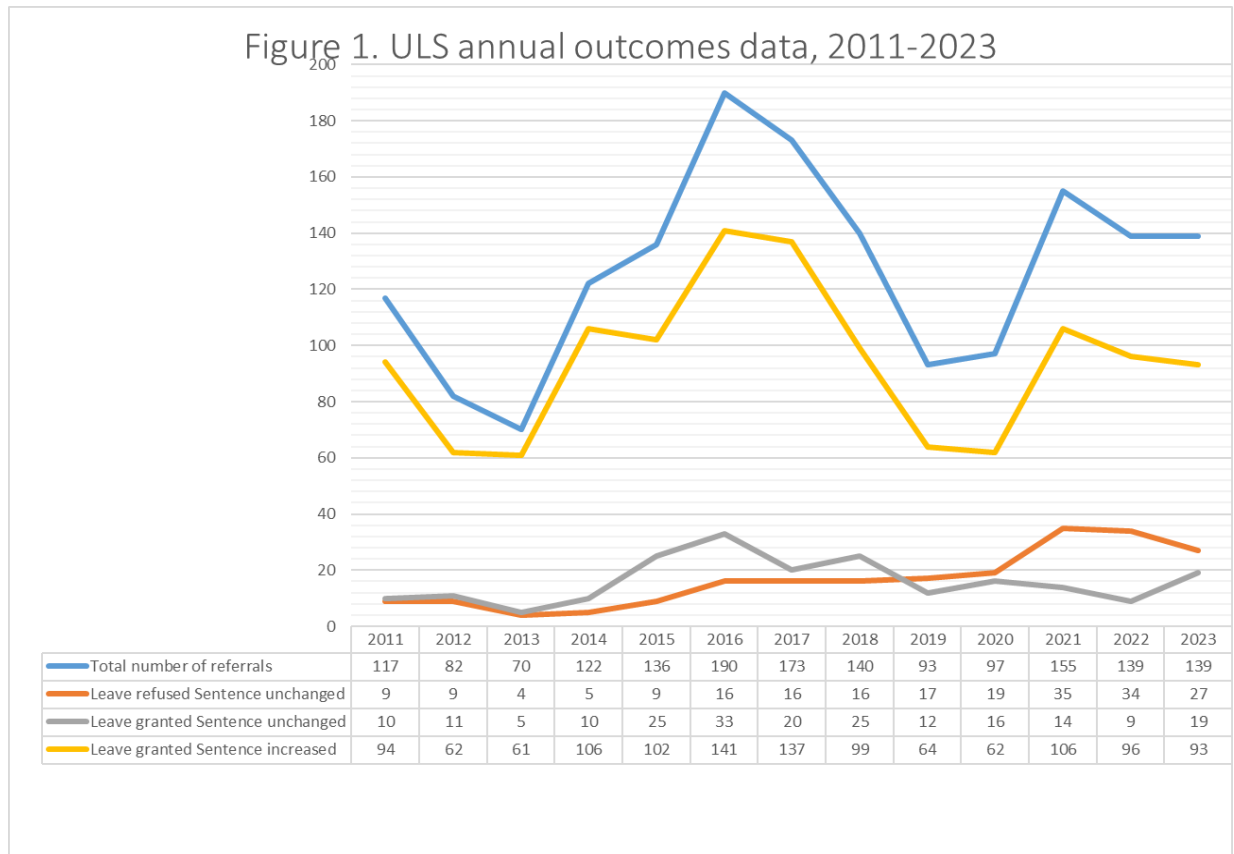
A similar request was also sent to the CPS, asking for: general annual statistics / breakdown data of sources of the original referrals (e.g. Crown Prosecution Service, victims, victims' families, members of the public, MPs, or other sources). The information does not need to contain any names or personal details.

The following response was received from the CPS:

*The Attorney General's Office (AGO) is responsible for referring cases falling in the Unduly Lenient Sentence Scheme. It appears, as you refer in your scope to referrals **from** the Crown Prosecution Service (CPS) and others, you may have intended to send this request to them.*

6.4 Government data

A useful source of information is the ULS Scheme annual outcomes data from www.gov.uk. Obtained data is summarised in Figure 1 and shows the numbers of the cases that were referred to the Court of Appeal by the AGO.



Sampling of the Court of Appeal cases

Sampling of the Court of Appeal cases against various themes and criteria using legal databases produced the following results:

Availability of recorded judgments between 2020-2023 is summarised in Table 2:

Table 2	Total number of entries referred to the Court of Appeal*	Number of entries reported	Number of entries not reported
2020	97	68	29
2021	155	103	52
2022	139	88	51
2023	139	93	46

* An entry consists of a single offender. There can be multiple offenders tried for the same crime and their sentences and outcomes can vary. Therefore, each offender is recorded in a separate entry on the ULS scheme spreadsheet.

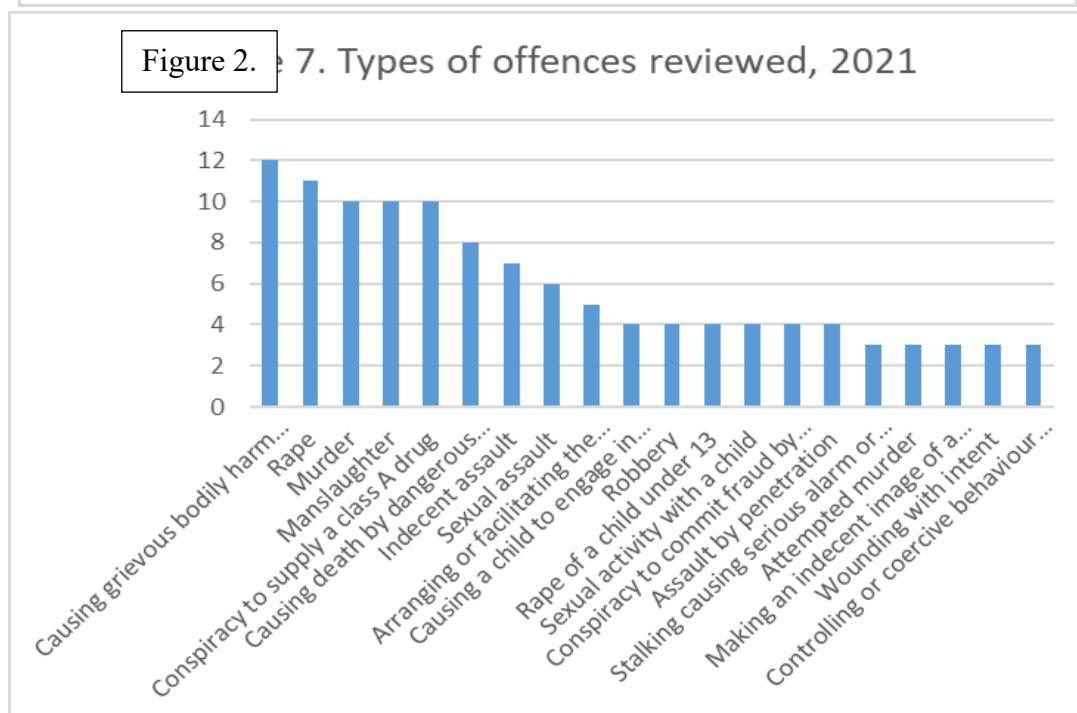
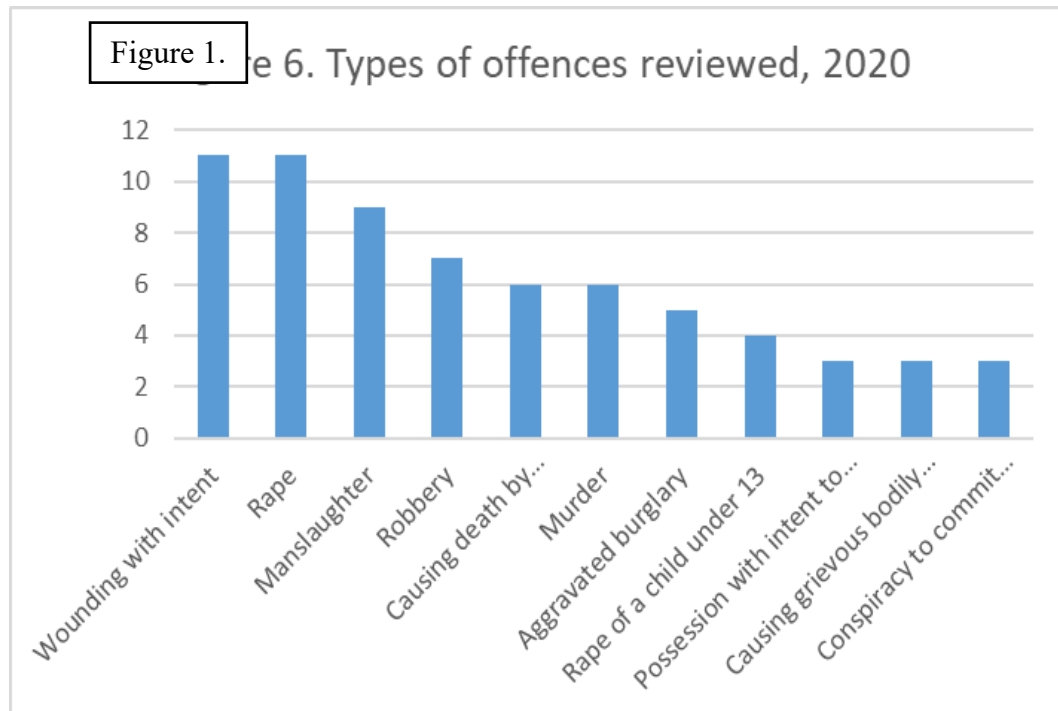
It is important to recognise that the Court of Appeal (CoA) is generally limited to considering only the material that was available to the sentencing judge in the original case.⁴³ However, in cases deemed 'unduly lenient', the CoA has full discretion to determine whether new evidence that emerges should be considered in the judge's assessment. This discretion allows the court

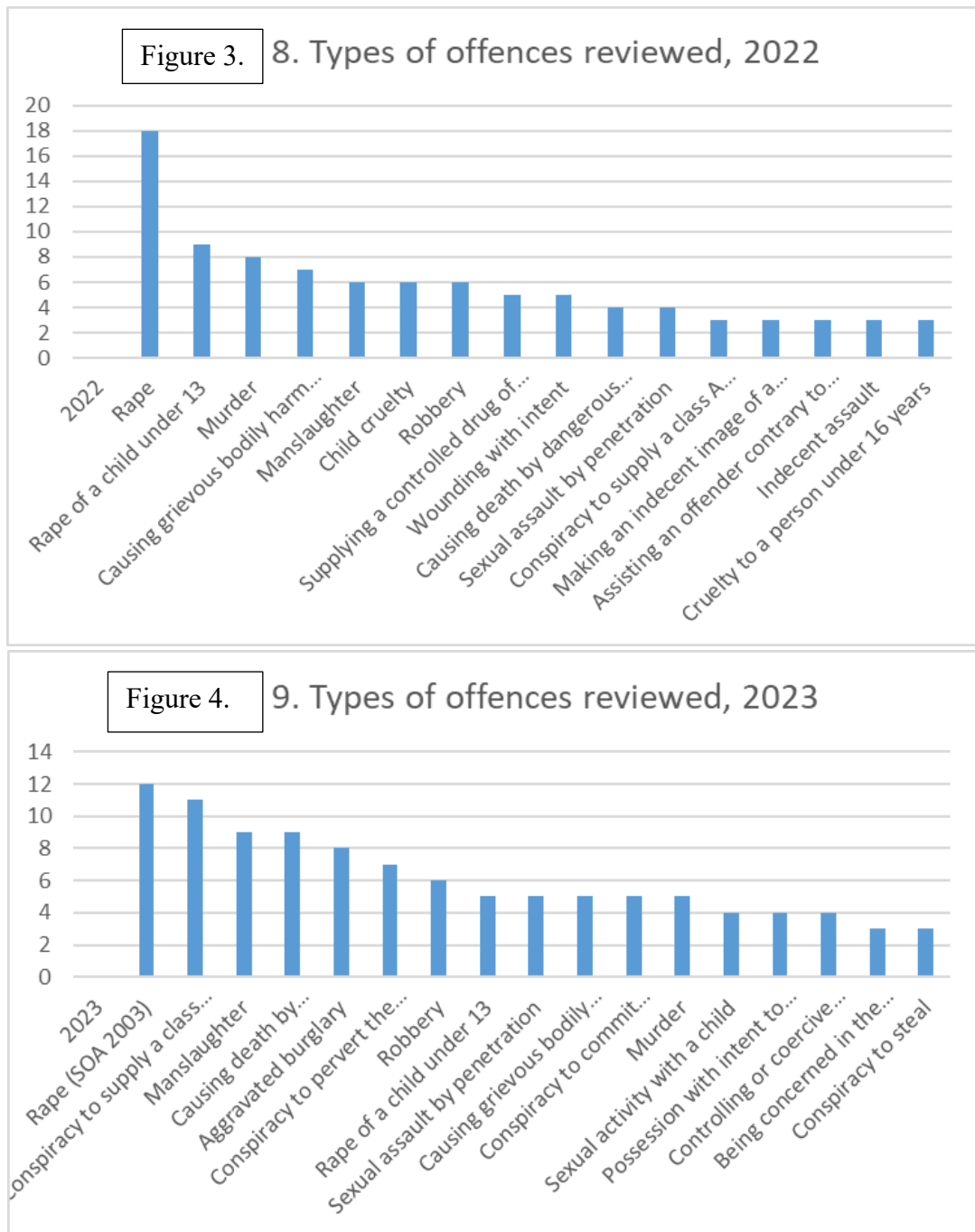
⁴³ CPS, "Unduly Lenient Sentences", <<https://www.cps.gov.uk/legal-guidance/unduly-lenient-sentences>> accessed 27 January 2025.

to decide whether a sentence should be increased or, in some instances, reduced based on additional considerations.

The data presented in Figures 1 to 4 is limited to the number of offences of at least three to display most frequent types of offences reviewed in any given year. Full raw data is available in addition to this report.

Data related to types of offences in reviewed cases, across years 2020-2023:





6.5 Data analysis

Detailed sampling of the cases considered by the Court of Appeal in 2021 and 2023 contained in the raw data spreadsheet is analysed in the following section. It was unfortunate that the information was not available from the AGO or the CPS. Unfortunately, there was insufficient time to submit a follow-up FOI request. It is recommended that future research could make additional requests for data. The information regarding victims and family notification procedures received was not sufficient to draw any conclusions.

6.5.1 PROCEDURE AND DECISION-MAKING

The information regarding the procedure and decision-making received from the AG office is consistent with the information provided by www.gov.uk. The involvement of two offices in the process can be seen as positive as it allows for extra verification of the facts, reducing a chance of human or administrative error. However, this can also mean delays in exchange of information between offices which can be detrimental to a process that operates with a 28-day rule in place.

The data in Table 1 shows that, on average, 32% of cases each year between 2016-2023 do not meet the criteria or are submitted late. There was no data provided to clarify the proportion of late submissions. However, the 32% average could be brought further down if late submissions were reduced by an extension to the 28-day rule. The substantial drop in referrals in 2020 and subsequent rise in the following years is likely to be the result of the onset of COVID-19 pandemic.

6.5.2 REFERRALS

The intended breakdown information on who made original referrals was not received from the CPS. This is likely to have been an issue of clarity within the request itself as the CPS suggests request for that type of information should be sent to the Attorney General's Office. Comparing the numbers of referrals eligible for review under the scheme to number of cases reaching the Court of Appeal upon review by AGO shows 22% average in years 2016-2023. Under the ULS scheme, a sentence can only be increased if the original sentence was too low due to judicial error, incorrect application of guidelines or other matters of law. The data signifies that the occurrence of judicial error is considerably high, but unfortunately, does not offer enough specifics as to why.

Between years 2011-2023, the proportion of cases in which the sentence was increased by the Court of Appeal out of all cases referred averages 74%. However, there appears to be a downward trend of the average from 82% between 2011-2014, to 68% post pandemic (Figure 1).

As cases referred to the Court of Appeal are thoroughly examined by the AGO, it therefore signifies that the work undertaken by the AGO at the initial stage of referrals appears to be highly efficient. The decrease in uplifted sentences could be explained by fewer errors made by the original sentencing judge, or the work from the AGO becoming less thorough. This may be due to the demand of cases, targets that need to be met and potentially undertrained solicitors handling the cases.

There was an obvious decline in the number of referrals during the Covid-19 pandemic, that can be explained by court closures. While the subsequent rise is expected due to the pandemic restrictions being lifted.

6.5.3 COURT OF APPEAL JUDGMENTS

The reasons for some Court of Appeal judgments not being reported could not be ascertained. It appears to be a similar proportion each year, averaging 33% between years

2020-2023. The unreported cases vary in type of offence, location and final decision and do not appear to be correlated in any way.

The data on the type of offences shows prevalence of the most serious offences and represents the base purpose of the scheme in ensuring that serious crime receives appropriate sentence. In line with changes to types of crimes committed during the pandemic, there are fewer referrals of cases such as burglaries, robberies and offences against persons, and more cases of drug related offences, child cruelty and child offences (Fig. 1-4)

A detailed review of the Court of Appeal judgments in years 2021 and 2023 related to specific themes revealed the following:

- Age of the offender – a certain proportion of youth offenders seen in both years. However, most of the offenders are aged between 25 and 40, with fewer older offenders (over 55). Older offenders also appear to be treated a little more leniently when presented with health issues, intellectual difficulties or due to time elapsed since the offence in historic cases, such as reported or prosecuted years after the fact⁴⁴. Convictions of older offenders (over 55) predominantly include sexual offences against children with the exception of fraud and attempted murder⁴⁵, child cruelty⁴⁶, harassment⁴⁷, misconduct in public office⁴⁸, wounding with intent⁴⁹, conspiracy to supply a class A drug⁵⁰, conspiracy to pervert the course of justice⁵¹, false imprisonment⁵².
- Sex of the offender – most of the offenders are male, with a slight increase in female offenders in 2023 compared to that in 2021.
- Ethnicity – very rarely mentioned in judgments, in such cases where it is relevant to offender's family history. As such, it cannot be taken into consideration in exploring themes.
- Previous good character – typically plays an important role in sentencing, however it does not appear to affect the referrals or outcomes. Previous convictions – typically considered an aggravating feature, however it depends on the date of the previous offending - the longer time has passed since offending, the less weight it will have in the current sentencing exercise. Any recent previous convictions must also be of similar type to be considered relevant but, on occasion, are not.

⁴⁴ [2021] EWA Crim 1756; [2021] EWCA Crim 1511; [2021] EWCA Crim 1735; [2022] EWCA Crim 77; [2022] EWCA Crim 365

⁴⁵ [2021] EWCA Crim 727

⁴⁶ [2021] EWCA Crim 1083

⁴⁷ [2021] EWCA Crim 1511

⁴⁸ [2021] EWCA Crim 1868

⁴⁹ [2022] EWCA Crim 77

⁵⁰ [2023] EWCA Crim 836; [2023] EWCA Crim 938

⁵¹ [2023] EWCA Crim 707; [2023] EWCA Crim 1015

⁵² [2023] EWCA Crim 851

- Gang affiliation – generally, no mentioning of gang affiliation was noted, with exception of two cases⁵³.
- Mental health issues – a proportion of offenders make unconfirmed claims to have mental health conditions, and some are diagnosed with those, in both years⁵⁴. Those with confirmed conditions are typically treated milder with sentences being suspended in cases where the custody threshold is passed, but the offending is not too serious.
- Personal history – not disclosed in majority of cases, but similarly to mental health issues, particularly difficult personal history can provide some mitigation during sentencing⁵⁵.
- COVID-19 – prisons were affected by the pandemic, as strict isolation rules meant that prisoners were spending 23 hours a day in their cells⁵⁶ and it is reflected in COVID-19 references appearing in 2021 judgments. Sometimes playing a vital role in choices between suspended and custodial sentence, the reduction is mostly minimal⁵⁷. Some trials have seen adjournments and delays⁵⁸ and issues with access to legal advice⁵⁹. In some cases, prison lockdowns resulted in minor leniency or at least were considered in less serious crimes⁶⁰, and some show that 'burdensome' time already spent in prison during lockdowns has played a mitigating role when reviewing an earlier sentence⁶¹. However, some judgments show that a reduction of sentence due to COVID-19 was excessive or incorrect⁶². Certain offences committed during the national lockdown, where it assisted the perpetrator, are also seen in the referrals⁶³.
- Reasons for referrals – in almost all cases, categorisation of an offence was argued by the AGO, whether culpability or harm. As the name suggests, sentencing guidelines are not definitive, and it is the duty of the judge to determine the correct category, thus rendering errors in this area probable due to variable factors, such as judge's experience, information available to them and sometimes even bias.

⁵³ [2021] EWCA Crim 294; [2021] EWCA Crim 855

⁵⁴ [2022] EWCA Crim 63; [2022] EWCA Crim 63; [2021] EWCA Crim 2023; [2022] EWCA Crim 77; [2022] EWCA Crim 365; [2022] EWCA Crim 250; [2021] EWCA Crim 294; [2021] EWCA Crim 1511; [2022] EWCA Crim 178; [2023] EWCA Crim 649; [2024] EWCA Crim 116; [2023] EWCA Crim 1642; [2024] EWCA Crim 104; [2021] EWCA Crim 1535

⁵⁵ [2022] EWCA Crim 77; [2021] EWCA Crim 1535

⁵⁶ R v Manning [2020] EWCA Crim 592 [41]

⁵⁷ R v Whittington [2020] EWCA Crim 1560

⁵⁸ [2021] EWCA Crim 1959; [2020] EWCA Crim 1729; [2021] EWCA Crim 1250; [2021] EWCA Crim 1868; [2022] EWCA Crim 365; [2022] EWCA Crim 178; [2021] EWCA Crim 797; [2021] EWCA Crim 2023; [2021] EWCA Crim 1094; [2021] EWCA Crim 1846; [2021] EWCA Crim 1397;

⁵⁹ [2021] EWCA Crim 568; [2021] EWCA Crim 839;

⁶⁰ [2021] EWCA Crim 572; [2021] EWCA Crim 1064; [2021] EWCA Crim 1578; [2021] EWCA Crim 294; [2021] EWCA Crim 813; [2021] EWCA Crim 814; [2021] EWCA Crim 1530; [2021] EWCA 1078

⁶¹ [2021] EWCA Crim 840; [2021] EWCA Crim 572;

⁶² [2021] EWCA Crim 991; [2022] EWCA Crim 63

⁶³ [2022] EWCA Crim 1063;

- Sentencing guidelines – the introduction of new guidelines appears to trigger higher levels of referrals. In 2023, new guidelines increased the maximum penalty for the offence of death by dangerous driving. These came into effect from June 2022. A previous sentence of 14 years' imprisonment was replaced with life imprisonment for the most serious cases. As a result, there was an increase in referrals of those cases in 2023. The sentence was slightly increased in 6 out of 7 cases referred, however none of the referrals resulted in a life sentence⁶⁴.
- Absent guidelines – it appears that some of the offences do not have relevant sentencing guidelines. In both 2021 and 2023, it was found that guidelines do not exist for the offences of perverting the course of justice⁶⁵, misconduct in public office⁶⁶ and conspiracy to import a prohibited firearm⁶⁷.
- Pre-sentence reports – lack of pre-sentence reports appear to be a cause of lower sentences in some cases⁶⁸. Pre-sentence reports are typically requested by the judge where they are deemed important in assisting the judge in making sentencing decision. They contain various types of information, such as health and mental health reports, previous convictions, arrests and cautions, family circumstances, and recommendations from a probation officer that is prepared following meetings with an offender.
- Precedents – in 2021, AGO referred six similar cases in one referral⁶⁹ to establish a single and most appropriate precedent to be used in all such cases. It was discovered that judges had previously followed two conflicting precedents resulting in different categorisation of similar offences and thus varied sentences. These cases were related to sexual offences against children where a child was a decoy or an offence was not actually committed due to apprehension or disruption of the offenders' plans. Following this referral, the Sentencing Council has updated sentencing guidelines in May 2022⁷⁰.

Judicial error – two cases in 2021 include a judicial error of suspending a sentence where a custodial sentence was required⁷¹. Additionally, there are four examples over two years of an error of not applying a statutory minimum custody term in cases of 3rd strike appear in 2023⁷².

⁶⁴ [2023] EWCA Crim 978; [2023] EWCA Crim 1399; [2023] EWCA Crim 1296; [2023] EWCA Crim 661; [2023] EWCA Crim 1537; [2024] EWCA Crim 195; [2023] EWCA Crim 467

⁶⁵ [2023] EWCA Crim 673; [2023] EWCA Crim 707

⁶⁶ [2021] EWCA Crim 1868

⁶⁷ [2021] EWCA Crim 1160

⁶⁸ [2021] EWCA Crim 1064; [2021] EWCA Crim 1233 (two offenders)

⁶⁹ [2021] EWCA Crim 572

⁷⁰ <https://www.sentencingcouncil.org.uk/news/item/child-sexual-offences-sentencing-guidelines-published/>

⁷¹ [2022] EWCA Crim 54; [2021] EWCA Crim 2023

⁷² [2023] EWCA Crim 1365; [2024] EWCA Crim 404;

7. Literature Analysis

7.1 Negatives and subsequent reforms

Despite the justifiable origin of the scheme, there are several aspects that have since fallen under scrutiny. In 2022, the House of Commons released a research briefing on the topic of unduly lenient sentences. This review provided an overview of the procedure, whilst considering criticisms and calls for reform. Notably, the report considered the current position of the Law Commission and the government in their plans for reform. In July 2023, the Law Commission released an Issues Paper on criminal appeals with detailed areas in need of addressing.⁷³

7.2 The 28-day rule

While the academic literature regarding reform for the ULS scheme is minimal, talks of reform have circled for years, emphasising the shortfalls of the scheme. On 25 May 2021, Members of Parliament debated the need for reform, with talks focusing on the 28-day rule which outlines that any claims of an unduly lenient sentence must be brought before the 28th day after sentencing.⁷⁴

Firstly, the debate noted an issue with the absolute time limit of 28 days when making a referral. The issue is that there is another power to alter a sentence within 56 days, known as the 'slip rule'. The slip rule is used where a sentence is legally deficient, for example where the mandatory minimum sentence has not been imposed. However, if the CPS seeks to correct a sentence using this power, it also risks losing the ability to refer the sentence to the Court of Appeal if the sentence is not corrected.

This is not the only criticism of the time limit. It has been argued that the time limit in itself, which is absolute and cannot be extended in any circumstance, should be amended to allow the Court of Appeal discretion to extend the limit when necessary for justice. This lack of flexibility has been seen to lead to injustices in many circumstances, such as where sentencing announcements are withheld, the time limit lapses, and the victim is left without an adequate remedy. A scheme that aims to provide justice is limited, simply due to a too rigid mechanism.

Furthermore, the debate emphasised the importance of raising awareness of the scheme, and the lack of requirement to inform is directly leading to injustice. Where a victim passes away due to violent crime, family members are not informed of the scheme during judgment or thereafter and families may be '...denied the right to challenge simply because they are not aware the scheme exists'.⁷⁵ The debate argued for a responsibility to be placed on the CPS to inform family members of the ULS scheme.

Despite calls for reform, the government have stated that they do not currently plan to remove the time limit, due to the importance of finality in sentencing.⁷⁶ Yet, the scheme itself is in place

⁷³ Law Commission, *Criminal Appeals: Issues Paper* (2023).

⁷⁴ WH Deb Vol 696 Col 85 (25 May 2021).

⁷⁵ Stephanie Peacock, Unduly Lenient Sentence Scheme (Volume 696: debated on Tuesday 25 May 2021).

⁷⁶ HL Deb 15 December 2021, vol 817, col 342.

to assist where judges have made an error. Why should victims who have suffered great loss be prevented from accessing justice, simply because sentencing should be final? Parliament and subsequently the CPS passively increase injustice by creating increasing lack of accessibility to the scheme, and it could be argued that this is a failure of the criminal justice system.

7.3 The youth court

Another rather stark issue with the ULS scheme is that it is not applicable in the youth court. Even though the youth court can hear indictable offences, such as rape, the ULS scheme cannot be used to appeal an unfair sentence.⁷⁷

It is obvious that this will prevent victims from accessing justice when a perpetrator gains an unfairly lenient sentence and is a clear area in which the scheme requires reform. Those whose trial is heard at the youth court should gain access to the scheme.

7.4 An influx of cases?

Moreover, another criticism of the scheme is that it has become “too politicised”, with “too many” cases being referred.⁷⁸ This criticism suggests that the scheme needs to be more restrictive to decrease the number of referrals.

7.5 Indictable cases

A notable issue with the ULS scheme is its primary focus on indictable offences. Whilst this is justified in that ‘public concern is naturally at its greatest in the case of indictable only offences’, it overlooks the fact that either-way, and even, summary offences can provoke significant public unease. For example, Jeremy Smith, dubbed ‘Britain’s worst motorist’, received no imprisonment, sparking local outrage and prompting one MP to label the judgment as ‘blinding stupidity’. This raises wider concerns about the scheme’s capacity to uphold public confidence in the justice system. If this is to be the purpose of the scheme, then excluding such cases appears incongruent.

Recent developments do suggest that Parliament is responsive to some criticisms of the scheme. In June 2024, the list of offences eligible for a claim under the ULS scheme was expanded, demonstrating some willingness to address concerns around scope. However, this responsiveness appears selective. The same debate highlighted the rigidity of the 28-day rule, yet no changes were made to introduce greater flexibility. The continued application of this strict deadline has led to clear injustices, raising questions about the consistency and willingness of Parliament’s approach to reform.

However, it should be noted that expanding the scope of the scheme should be approached with caution. Evidence suggests that policy changes based purely on public opinion should be met with careful scrutiny, as this risks undermining the principled and consistent application of justice.⁷⁹

⁷⁷ Law Commission 7.52.

⁷⁸ David Ormerod and Hannah Quirk, ‘Reforming Criminal Appeals’ [2022] 10(10) Crim L.R 791, 793.

⁷⁹ Lord Lane of St Ippollitts, *Report of the Committee on the Penalty for Homicide* (Prison Reform Trust 1993) 29-30.

7.6 Informants

The ULS scheme faces an issue regarding the sentencing of those found guilty who become informants. The current climate of openness with regard to sentencing means that the victim hears and understands the rationale behind the sentence. Therefore, the mitigating factors that reduce a defendant's sentence can be thoroughly understood, even if not agreed with. However, in the case of defendants who have agreed to help the police by providing information to reduce their own sentence, such a mitigating factor in the sentencing is not made known to the victim. O'Doherty offers the view that if a victim is unaware of why the sentence is so low, they may seek the ULS scheme, and in their rejection, be left wholly dissatisfied.⁸⁰ This may lead to an increased rate of unsuccessful applications under the ULS scheme. However, it must be noted that reform in this area in order to better the ULS scheme would be difficult; there is very reasonable rationale behind the secrecy of these mitigating factors, and the balance of open justice with that of the protection offered to informants must be retained.⁸¹

7.7 Gaps in literature

There are severe gaps in the academic research and literature regarding how a victim interacts with the ULS scheme. Given the databases available during research (Westlaw, LexisNexis, Practical Law etc.), we were unable to identify any academic literature regarding how a victim, both the individual and the close family, interact with the ULS scheme. This is a clear gap in the academic research. It should be noted that a Law Commission report regarding criminal appeals is in the process of pre-consultation and may address some of these gaps in the research.⁸² Furthermore, there is some uncertainty whether the Sentencing Guidelines made it easier to identify unduly lenient sentences. There still appears to be gaps in the research into sentencing in the Crown Court, highlighting the need for more research.

8. Recommendations for reform

8.1 Extension of the 28-day rule

- The 28-day period should be extended. Currently the 28 days, includes bank holidays and weekends. It does not account for the lack of awareness of the scheme or recognise the distress the victims and families are going through.
- Additional time would give the AGO greater opportunity to properly review cases to consider whether a sentence should be referred to the Court of Appeal.
- If the 28-day rule is retained, an extension to applications should be permitted in special circumstances. These circumstances could include the applicant not knowing about the scheme or trauma as a result of the trial.
- A more flexible approach would allow more people to access the scheme and provide greater equality between victims and defendants. Defendants are more likely to be

⁸⁰ Stephen O'Doherty, 'Informants and Texts', (2001) 32 Criminal Law and Justice Weekly 615.

⁸¹ *ibid* 616-617.

⁸² Law Commission, *Criminal Appeals: Issues Paper* (2023).

aware of and informed of the process of reviewing a sentence by their legal teams, whereas victims (and their families may not) and this would mitigate that.

- There is support for extending the 28-day rule. There is a petition currently in progress created by a family of a victim, whose perpetrator's sentence was unduly lenient.⁸³ The Government have responded to this, and they say they are reviewing criminal appeals generally, including the time limits.

8.2 Application form and communications

- The online form should be reviewed and amended. There should be more guidance provided about the process for having a sentence reviewed. There should be links to organisations that can assist with the application in addition to contact details of the Attorney General's Office.
- There should be clearer information about the finality of the 28-day rule to ensure there is awareness that if the application is not received in time the sentence cannot be reviewed.
- The form should explain and provide details of the 'follow up process'. This would provide better information and communication to the person asking for the sentence to be reviewed.
- It is not clear what exactly happens to the form after submission – it would be advisable for this information to be made available to the person/persons applying.
- It is difficult to establish the 'timeline' of the communications post-submission of the online form.

8.3 Defendant and prosecution on equal footing

- There should be a legal duty to inform the victim and or their family that they can ask for the sentence to be reviewed.
- A legal duty would give victims parity with defendants.
- It should be considered whether it is appropriate that the judge explains at the end of the court proceedings that the victim and or their family have the right to ask for the sentence to be reviewed.

8.4 Public legal education campaign

- There should be regular public legal education campaigns to ensure that there is greater knowledge of ULS scheme, and clearer guidance of how the scheme works.
- There should be greater use of social media to address to increase awareness of the scheme. In 2020, Law Officers wanted to promote the scheme both in Parliament and on social media. Despite this, there has been no apparent increase in social media coverage surrounding the scheme since.⁸⁴

⁸³ <https://petition.parliament.uk/petitions/700168>

⁸⁴ European Union News, "Ellie Reeves ask the Attorney General, with reference to the Victims Commissioner's annual report 2019|20, what steps the Attorney General is taking with the Lord Chancellor to promote the changes to the review into the unduly lenient scheme to ensure victims are aware of their right to request a

- There should be resources created that clearly explain in plain English how the scheme works to support victims understanding of the terminology of ULS scheme and to give them a better understanding of whether they should ask for a review of the sentence.

8.5 Amendments to the scheme

- The scheme should be reviewed, and extensions should be considered. For example, the ULS scheme is limited to specific offences “that are triable on indictment in the Crown Court.”⁸⁵ This limited scope does not include all cases in which a victim may believe that the sentencing was too lenient.
- The ULS scheme should include all victims. The scheme does not provide provisions for child victims, who could struggle to appeal a case without due processes of advocacy, or additional provisions, leaving child victims unsupported through the lack of consideration of children’s rights.
- Financial support should be provided where appropriate to support a victim and their family with an application to the scheme. Currently, there is no provision for reimbursement or to mitigate the legal, travel and other related costs when seeking a ULS scheme review. This criticism is highlighted in the Transform Justice report, in which it found families paid thousands to challenge unduly lenient sentences.⁸⁶

8.6 Increasing support for victims

- There is a provision when someone completes the form to request additional help with the form, but there needs to be better levels of support aligned with the ULS process.
- There are systemic problems with the scheme that need to be addressed to better support victims. The Victims Commissioner’s report highlights the lack of support and the need for clearer and more effective communication with victims by the criminal justice system.⁸⁷
- Not every offence can be challenged resulting in a lack of support for some victims, there needs to be more effective and targeted support for all victims.
- There should be dedicated support for victims when they are seeking a review through the ULS scheme as they are already dealing with a challenging and traumatic situation. The review process adds even more distress regardless of whether the sentence is reviewed and uplifted. The Ministry of Justice asserts the

challenge." (2020), Gale General OneFile,
 <link.gale.com/apps/doc/A631045577/ITOF?u=unilanc&sid=bookmark-ITOF&xid=baf88cd0> Accessed 4 February 2025.

⁸⁵ Crown Prosecution Service

⁸⁶ ‘Transform Justice, Response to the Sentencing Review’ (January 2025)

<<https://www.transformjustice.org.uk/wp-content/uploads/2025/01/Transform-Justice-response-to-the-sentencing-review-Jan-2025.pdf>> accessed 13 February 2025.

⁸⁷ ‘Victims’ Commissioner for England and Wales, Annual Report 2023/24’ (October 2024) <<https://cloud-platform-e218f50a4812967ba1215eaecede923f.s3.amazonaws.com/uploads/sites/6/2024/10/2023-24-Annual-Report-Victims-Commissioner-accessible.pdf>> accessed 13 February 2025.

importance of emotional support for victims of crime, however the need for this support, specifically in relation to the ULS scheme, is absent, highlighting a gap in the provision of support.

- There should be a revision of the victim's code and the recommendations from Claire Waxman, London's Victims' Commissioner, should be addressed.

9. Conclusion

The ULS scheme serves as a vital mechanism for correcting sentencing errors to reinforce public confidence in the criminal justice system. However, the scheme also faces significant challenges, particularly regarding the rigidity of the 28-day rule and its scope, exclusion from the youth court and its focus on indictable offences. Further, substantial gaps remain in the academic literature, particularly concerning victims' experiences and how victims access the scheme.

The ULS scheme is an essential safeguard in the justice system, ensuring that sentences truly reflect the severity of crimes. There are gaps in public awareness and consistency. Many victims do not know that they have the right to request a review, and media coverage often sensationalises cases, rather than providing clear guidance on how the scheme works.

Therefore, to make the ULS scheme even more effective, efforts should be made to improve public knowledge, to simplify access to the ULS scheme, and to encourage responsible media reporting. By doing this, we can ensure a fairer, more transparent justice system that prioritises both victims' rights and judicial integrity.

This research has identified there is a severe lack of academic literature that discusses this crucial area of victim safeguarding and more research is required on the operationalisation of the scheme.

10. Further work

10.1 Greater understanding of the data

Understanding when a referral under the ULS scheme has led to an increased sentence is key to appreciating its impact, as this potential outcome serves as a primary motivation for victims and the CPS to seek a review. Of the 139 cases reviewed, 93 resulted in an increased sentence, while 46 remained unchanged.⁸⁸ These figures highlight the effectiveness of the ULS scheme in securing stricter sentencing in cases deemed unduly lenient. Victims and their families are therefore given a second chance at justice, reinforcing the scheme's role in securing justice and maintaining victims' confidence in the legal system.

Statistics reflecting a high proportion of sentencing increases highlights a wider importance of the ULS scheme. The greater the number of cases revived, and outcomes altered, the more guidance given to the AGO in shaping the sentencing framework and ensuring more

⁸⁸ *ibid.*

consistent sentencing for complex cases.⁸⁹ By providing a dataset, patterns in sentencing approaches can be identified more easily and aid the development of case law. If certain offence types can be identified as frequently resulting in unduly lenient sentences, it may aid the courts in setting precedents. It may also be of use to the AGO when considering where reform is needed in the approach taken to applying the law in these cases. Each case that sees a sentence change under the scheme may help contribute toward achieving a more uniform approach to sentencing across courts, particularly in complex cases.

Therefore, the statistics highlight a significant issue regarding the consistency and fairness of the criminal justice system. There are notable disparities in sentencing outcomes when different judges review the same case under identical circumstances. For example, some cases have seen sentences shift drastically, changing from a community order to a three-year prison sentence.

10.2 Further research

Further research is required to identify how the 28-day rule and late applications work. There was insufficient data to clarify what happens if the referral is made late and additionally, what is considered 'late' specifically – What is the cut-off to declare the referral 'late'?

Based on the findings so far, there seems to be little correlation between cases (based on the identified themes). It would be helpful to include the additional statistic breakdown within the material provided by the Attorney General.

It should be considered whether pre-sentence reports should be made compulsory as they often hold vital information, including previous convictions that can otherwise be missed in assessing dangerousness, public safety and propensity. This would not only relate to the ULS scheme but would have to apply to all courts.


Sentencing guidelines provides judges with assistance for sentencing and the foremost step in identifying a category is determination of the culpability of the offender and harm caused to the victim. These guidelines typically offer three levels of harm and 3-5 categories for culpability that determine a starting point of the sentence and range. It is then adjusted after consideration of any aggravating or mitigating factors. It could be beneficial to provide a wider range of categories to allow for a more specific approach.

There is a need for additional research into the demographic criteria, building on the work of charities such as Amnesty International and The Josh Hanson Trust, which hold relevant demographic statistics.

⁸⁹ Gov.UK, "106 increased sentences under the Unduly Lenient Scheme in <https://www.gov.uk/government/news/106-increased-sentences-under-the-unduly-lenient-scheme-in-2021>> accessed 10 February 2025.2021">

11. APPENDICES

- i) *Appeal Office Form NG Sentence*
- ii) *NG form notes D1 and D2*
- iii) *The raw data can be supplied along with the FOI and responses from the*
- iv) *The list of offences within the scheme can be found at:*
<https://www.legislation.gov.uk/ukxi/2006/1116/schedule/1>

		FOR OFFICIAL USE: CAO Ref No:		Form NG Sentence			
NOTICE and GROUNDS of appeal or application for permission to appeal against SENTENCE to the Court of Appeal Criminal Division (Criminal Procedure Rules 39.3(1), 39.3(2))							
Please read the Guidance Notes before completing this form. Write in black ink and use block capitals							
Section A Appellant's details See Note A	Surname			Forenames			
	Address (Personal or Prison if in custody)			Prison Index No			
	E-mail			Date of birth			
Section B Court details	The court where convicted			The court where sentenced			
	Date convicted			Date sentenced			
	Name of Judge			Name of Judge			
Section C Details of relevant proceedings See Note C1	Crown Court Case number(s)	Count No.	Offence(s) & Legislation	Pleaded guilty or convicted	Sentence	Consecutive or Concurrent	Maximum sentence for offence
Total Sentence:							
Minimum term if applicable:							
Total period of remand in custody prior to sentence							
Time ordered to count towards sentence under s.240A Criminal Justice Act 2003 – see Note C2							
Other relevant orders: (mention any ancillary orders that were made e.g. Sexual Harm Prevention Order, Disqualification from Driving)							

Section D	<p>D1 Timing – The time for applying for permission to appeal runs from the date of verdict, finding or order. For permission to appeal against conviction, time runs from the date of conviction even where sentence is passed on a later date. For permission to appeal against sentence, time runs from the date sentence was passed. For permission to appeal against a confiscation order, time runs from the date the order was imposed. For permission to appeal against the minimum term set or reviewed by the High Court, time runs from the date of the High Court decision. For permission to appeal against a sentence review decision, time runs from the date of the review decision. For permission to appeal against a serious crime prevention order, time runs from the date of the making of the order.</p> <p>The relevant Form NG should be lodged with the Criminal Appeal Office not more than 28 days after the conviction, sentence, verdict, finding or decision that is being appealed.</p> <p>Instructions for lodging Form NG and Grounds of Appeal are given below in the section entitled other information.</p>
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	<p>D2 Extension of time – The period of 28 days cannot be extended except with permission of the Court of Appeal Criminal Division and detailed reasons for the delay must be attached to Form NG. An application for an extension of time will not be considered before an application to appeal conviction, sentence, confiscation order, minimum term, review decision or serious crime prevention order has been lodged on form NG, whether or not the 28 day period has already expired. In <i>R v Wilson</i> [2016] EWCA Crim 65, the Court reiterated that applications for extensions of time must be supported by an explanation for the delay in making the application and it is not enough to rely simply on the merits of the Grounds of Appeal.</p>
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