



## BRIEFING PAPER

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# Review of unduly lenient sentences

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### Inside:

1. The power to refer
2. Procedure
3. Time limit
4. Use of the power



# Contents

<b>Summary</b>	<b>3</b>
<b>1. The power to refer</b>	<b>4</b>
1.1 Offences to which the power applies	4
Expansion of the scheme	4
1.2 What is meant by “unduly lenient”?	5
<b>2. Procedure</b>	<b>6</b>
<b>3. Time limit</b>	<b>6</b>
<b>4. Use of the power</b>	<b>7</b>
An increase in the number of sentences considered	7
Type of offences for which sentences are most often referred	7
Proportion of offenders whose sentences are increased	7

## Summary

The Attorney General has the power to refer sentences for certain offences which he or she believes to be unduly lenient to the Court of Appeal. This is sometimes called the unduly lenient sentence scheme. The Attorney General's power to refer only applies to serious offences, being those that can only be dealt with by the Crown Court and some other offences specified in an order. In recent years the scheme has been extended to more offences.

Anyone can ask the Attorney General to consider whether a sentence should be referred to the Court of Appeal as being unduly lenient, including a victim, a relative of a victim or a member of the public.

The Attorney General will consider whether the sentence is "unduly lenient". If the Attorney General considers that it might be, then he refers the sentence to the Court of Appeal for review. If the Court agrees that the sentence is unduly lenient then it may increase it.

There is a strict 28 day time limit within which the Attorney General is able to refer a sentence to the Court of Appeal.

This briefing applies to England and Wales.

# 1. The power to refer

In certain circumstances, where the Attorney General thinks a sentence imposed by a Crown Court appears to be unduly lenient, the Attorney General may refer the case to the Court of Appeal.<sup>1</sup> This is sometimes called the unduly lenient sentence scheme.

## 1.1 Offences to which the power applies

The Attorney General's power to refer cases to the Court of Appeal as appearing unduly lenient only applies in respect of sentences imposed by the Crown Court for certain serious offences. The power is only available for:

- offences that are triable on indictment (i.e. in the Crown Court) such as murder, rape and robbery; and
- some offences that are triable either way (i.e. in either the Crown Court or magistrates' court) that are specified in orders made by the Secretary of State under section 35 of the *Criminal Justice Act 1988*.<sup>2</sup>

### Expansion of the scheme

The Secretary of State has a power to specify that an either way offence is one that the power to refer applies to, that is to add an offence to the scheme. This power has been exercised a number of times since 1994.<sup>3</sup>

The Conservative party manifesto for the 2015 general election contained a commitment to widen the scope of the power to refer so that sentences for other offences could be referred to the Court of Appeal.<sup>4</sup>

The scheme was extended in August 2017 to 19 terror related offences including supporting extremist organisations, encouraging acts of terror and failing to disclose information about a terrorist attack.<sup>5</sup> Further terror related offences were added in January 2018.<sup>6</sup>

14 offences were added in November 2019:<sup>7</sup>

- From the *Sexual Offences Act 2003*:
  - the abuse of position of trust offences set out in sections 16 to 19
  - the offence of inciting a child family member to engage in sexual activity under section 26

<sup>1</sup> [Sections 35 and 36 of the Criminal Justice Act 1988](#)

<sup>2</sup> *Criminal Justice Act 1988 (Reviews of Sentencing) Order 2006/1116*, Schedule 1

<sup>3</sup> Lyndon Harris, *Evaluating 30 Years of the Unduly Lenient Sentence Scheme: Attorney General's References 1988-2017*, [2019] Crim L R 5 370

<sup>4</sup> [Conservative Manifesto 2015](#)

<sup>5</sup> Gov.uk, [Terror offences extension to Unduly Lenient Sentence scheme comes into effect](#), 8 August 2017

<sup>6</sup> Gov.uk, [Further 9 terror-related offences added to Unduly Lenient Sentence scheme](#), 29 December 2017

<sup>7</sup> Gov.uk [Public given power to question 'lenient' prison sentences](#), 29 October 2019

## 5 Review of unduly lenient sentences

- the offences against persons with a mental disorder impeding choice set out in sections 30 to 33
- Offences concerning indecent photographs of a child under section 160 of the *Criminal Justice Act 1988* and section 1 of the *Protection of Children Act 1978*
- Offences of putting people in fear of violence and stalking involving fear of violence or serious alarm or distress under sections 4 and 4A of the *Protection from Harassment Act 1997*
- The offence of controlling or coercive behaviour in an intimate or family relationship under section 76 of the *Serious Crime Act 2015*.

### 1.2 What is meant by “unduly lenient”?

The Court of Appeal will act in relation to a sentence only where it is unduly lenient (not simply lenient). A sentence will be unduly lenient where it falls outside the range of sentences which the judge, applying his or her mind to all the relevant factors, could reasonably consider appropriate.<sup>8</sup>

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<sup>8</sup> *Attorney General's Reference No 4 of 1989* 11 Cr. App. R. (S) 517 - Lord Lane CJ

## 2. Procedure

Anyone can ask the Attorney General to consider referring a sentence to the Court of Appeal. This would include the victim, a relative of a victim or a member of the public.

The relevant contact information for making a referral to the Attorney General can be found on the Gov.uk page: [Ask for a Crown Court sentence to be reviewed](#).

The Attorney General will consider whether the sentence is “unduly lenient”. If he or she considers that it might be, then he or she refers the sentence to the Court of Appeal for review.

Once the Attorney General has referred a sentence to the Court of Appeal, the court will review it and, if it agrees that the sentence is unduly lenient, it may then increase it. The Court of Appeal may alternatively decide that the sentence should stay the same.

The practitioner’s text *Blackstone’s Criminal Practice 2019* states that where the Court of Appeal increases a sentence under this procedure, its practice has often been to allow some discount on the sentence it would consider appropriate because of what is called the “double jeopardy” of an offender having to wait before knowing if his or her sentence is to be increased. The text notes that the effect of this principle will vary significantly according to the circumstances and that, in a case in 2014, the Court explicitly stated that the question of discount did not arise when an offender was in custody and aware that the Attorney General intended to refer the case to the Court of Appeal.<sup>9</sup>

## 3. Time limit

There is a strict 28 day time limit within which the Attorney General is able to refer a sentence to the Court of Appeal.<sup>10</sup> The time limit is absolute. There is no power to extend the time limit or to apply for leave to refer out-of-time. The period is calculated from the day following the sentence, so it will end on the same day of the week, four weeks later.<sup>11</sup>

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<sup>9</sup> *Blackstone’s Criminal Practice 2019*, D28.9

<sup>10</sup> *Criminal Justice Act 1988*, Schedule 3

<sup>11</sup> Crown Prosecution Service, [Legal Guidance: Unduly Lenient Sentences](#)

## 4. Use of the power

From May 2016 details of cases submitted to the Attorney General's Office are being updated on a weekly basis on the Attorney General's Office section of the Gov.uk website. This includes the sentences examined, the outcome and details of the cases. See: [Outcome of unduly lenient sentence referrals](#).

Previously the Attorney General's Office released annual statistics for unduly lenient sentence referrals. These can also be found on Gov.uk website. See:

- [Unduly lenient sentence statistics 2015](#).
- [Unduly lenient sentence statistics 2014](#)
- [Unduly lenient sentence statistics 2013](#)
- [Unduly lenient sentences 2012](#)

### An increase in the number of sentences considered

A parliamentary question (PQ) response from then Solicitor General, Robert Buckland, in November 2017 noted that the number of sentences considered by the Attorney General's Office more than doubled between 2010 and 2016, from 342 to 837 requests.<sup>12</sup>

Then Attorney General, Jeremy Wright, said that the 837 referrals received by his office in 2016 was a 17% increase from the previous year.<sup>13</sup>

In June 2018 Jeremy Wright said that approximately 2,347 people had applied for sentences to be reviewed in the last 12 months and a total of 1040 sentences had been referred to his office for consideration as unduly lenient.<sup>14</sup>

### Type of offences for which sentences are most often referred

The then Attorney General, Dominic Grieve, stated in answer to a PQ in July 2014 that in the period from 1 July 2013 to 4 July 2014 the type of offences most often referred to his office were sexual offences, including rape, indecent assault and assault by penetration.<sup>15</sup>

### Proportion of offenders whose sentences are increased

In 2018, the Attorney General referred a fifth of all eligible cases to the Court of Appeal and, of those, 73% were found to be unduly lenient.<sup>16</sup>

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<sup>12</sup> [HC Deb 16 November 2017 c571](#)

<sup>13</sup> [PQ 6582](#), 5 September 2017

<sup>14</sup> [PQ 50016](#), 14 June 2018

<sup>15</sup> [HC Deb 8 July 2014 c157](#)

<sup>16</sup> [HC Deb 4 Jul 2019 c1339](#)

In 2016 190 cases were referred to the Court of Appeal, and in 141 of these the Court of Appeal increased the sentence.<sup>17</sup>

In 2015 the Attorney General's Office considered 713 requests, of which 136 were referred to the Court of Appeal as potentially unduly lenient, with the Court agreeing to increase the original sentence for 102 offenders.<sup>18</sup>

In 2014 the Law Officers considered 469 cases and referred 128 offenders to the Court of Appeal. Of these offenders, 86% had their sentences increased.<sup>19</sup>

An answer to a PQ in March 2014 provided information on the number of sentences referred and the number of sentences increased in the years 2010 to 2013:

	<b>Number of offenders whose sentences were referred to the Court of Appeal as potentially unduly lenient</b>	<b>Number of offenders whose sentences were increased (and proportion of total in brackets)</b>
2010	90	77 (85%)
2011	121	94 (77%)
2012	88	62 (70%)
2013	83	60 (72%)

There is one outstanding case from 2013.<sup>20</sup>

<sup>17</sup> [PQ 111834](#), 15 November 2017

<sup>18</sup> [PQ 906822](#), 27 October 2016

<sup>19</sup> [PQ 901591](#), 15 October 2015

<sup>20</sup> [HC Deb 10 March 2014 c126W](#)



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