Background

This is the third biennial report\(^1\) of the Lord Chief Justice’s Sentencing Group\(^2\). The Sentencing Group was established in 2010 by the Lord Chief Justice with the function to:

(a) advise the Lord Chief Justice as to topics for his ‘Programme of Action on Sentencing’;
(b) consider and advise sentencing guidelines for the Magistrates’ Courts in Northern Ireland;
(c) consider judgments of the Court of Appeal and advise the Judicial Studies Board for Northern Ireland (“JSB”) as to their suitability for inclusion on the JSB Sentencing Guidelines and Guidance website;
(c) consider first instance judgments of the Crown Court and advise the JSB as to their suitability for inclusion on the Sentencing Guidelines and Guidance section of the JSB website;
(d) liaise with the JSB as to the training of the judiciary on sentencing practice and the dissemination of sentencing guidelines;
(e) make such other proposals and carry forward such other programmes of action relating to sentencing guidelines and practice as may seem fit to them after consultation of the Lord Chief Justice.

The Sentencing Group meets on a termly basis.

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\(^2\) A full list of the members of the Lord Chief Justice’s Sentencing Group can be found at Annex A
Membership of the Sentencing Group

Following its initial establishment, the Lord Chief Justice considered the appointment of lay members to the Sentencing Group would enhance the Group’s ability to perform its functions. To that end, in 2013, the Lord Chief Justice, in consultation with the Department of Justice, ran two open public competitions to appoint two lay members to the group: one lay member was required to have academic experience in criminal law, criminal procedure or sentencing within the Northern Ireland criminal justice system; the second lay member was required to have a knowledge and understanding of issues facing victims of crime.

In June 2013 the Lord Chief Justice was very pleased to appoint Professor Sally Wheeler of Queen’s University, Belfast as the first lay member on the Group. In June 2016 Ms Geraldine Hanna, Chief Executive, Victim Support NI, given her knowledge and understanding of the issues facing victims and witnesses of crime, accepted an invitation from the Lord Chief Justice to join the Group as the second Lay Member.

Court of Appeal Sentencing Guidelines

The Sentencing Group periodically reviews new judgments being issued by the Court of Appeal. Where the Group considers that the judgment forms the basis of a sentencing guideline, it directs the judgment to be published as such on the JSB website.

Since the date of the last report in December 2014 the Group has identified and published 18 new Court of Appeal sentencing guidelines judgments.

Crown Court Sentencing Guidance

One of the issues raised by the initial Report to the Lord Chief Justice in 2010 was the limited ability of the Court of Appeal to target specific offences for issuing sentencing guidelines (e.g. where the offence has been recently created, or where the offence comes before the Court of Appeal infrequently).

To help combat this problem the Sentencing Group has put in place a procedure whereby local Crown Court offices identify cases which fall within the ‘Programme of Action’ and where a plea of guilty has been entered. These cases are then transferred to Belfast and placed in the Presiding County Court Judge’s list for him to issue a guidance judgment in the Crown Court. This is a comprehensive sentencing judgment giving general guidance to the Crown Court judiciary in relation to sentencing for the given offence. The guidance can then be used as an interim measure pending a suitable case coming before the Court of Appeal allowing formal sentencing guidelines to be issued.

Since December 2014 no Crown Court cases were identified as being suitable for the purpose of issuing a Crown Court guidance judgment. The ongoing review of Crown Court judgments by the Sentencing Group did, however, identify a judgment by Mr Justice Treacy

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3 A full list of these judgments, together with keywords, can be found at Annex B
sitting in the Crown Court which it determined provided useful guidance in relation to sentencing in farming regulatory offences.

Magistrates’ Courts Sentencing Guidelines:

The Sentencing Group’s Magistrates’ Courts Sentencing Guidelines Sub-committee, chaired by the Presiding District Judge (Magistrates’ Courts), has created and published sentencing guidelines for some 115 offences in total which cover the vast majority of offences which commonly come before the courts. The sentencing guidelines which have been issued are kept under review by the Sentencing Group to ensure they reflect changes in the law and current best practice.

As part of its forward work plan, the Magistrates’ Courts Sub-committee shall be reviewing the present guidelines as against the revised Programme of Action and shall also be issuing new sentencing guidelines for any further offences it considers to be appropriate (e.g. offences under the Psychoactive Substances Act 2016).

Judicial Studies Board:

The Sentencing Group continues to work in partnership with the JSB and during the period December 2014 to December 2016 the following events relating to sentencing matters were organised by the JSB:

(i) Cybercrime Seminar – 24 February 2015 (Tiers: Court of Judicature, County Court, DJ(MC) and Deputy DJ(MC));

(ii) Visits to PJNI Community Service Projects – various dates (Tiers: County Court, DJ(MC) and Deputy DJ(MC));

(iii) Cybercrime Workshop – 27 May 2015 (Tiers: Crown Court, DJ(MC) and Deputy DJ(MC));

(iv) Criminal Law Update – 19 April 2016 (Tiers: Court of Judicature, County Court, DJ(MC)).

Other Materials:

The Sentencing Group is conscious of the fact that not all topics on the Lord Chief Justice’s Programme of Action can be captured by the combination of Court of Appeal guideline judgments, Crown Court guidance judgments and JSB presentations and papers. The Sentencing Group has, therefore, issued a number of ‘Sentencing Case Compendia’ which provides a ‘one stop shop’ for sentencers in relation to the given topic. These compendia are published on the judicial intranet only.

4 A full list of the members of the sub-committee can be found at Annex C.
Lord Chief Justice’s Programme of Action on Sentencing:

The Lord Chief Justice’s Programme of Action on Sentencing is a ‘rolling’ programme with topics being removed when appropriate guidelines have been issued; and topics being added where the Lord Chief Justice considers it appropriate to do so. In September 2015 a review of the Programme of Action was undertaken and a targeted consultation paper issued to 54 consultees.

As a result, the Lord Chief Justice has added the following topics to the Programme of Action:

(i) Credit for Guilty Pleas
(ii) Indecent Images
(iii) Psychoactive Substances
(iv) Cyber-bullying (as distinct from cyber-crime generally)
(v) Non-paramilitary Blackmail
(vi) Attacks on Older People (as distinct from ‘Attacks on Vulnerable People’ generally)

Annex E gives a summary of how the Sentencing Group has so far addressed each of the topics on the Lord Chief Justice’s Programme of Action.

Summary and Conclusions

Over the last two years the Sentencing Group has continued to work with the judiciary and the JSB to target those topics in the Programme of Action which need addressed and to also oversee the publication of sentencing guidelines and guidance to ensure the Northern Ireland judiciary is kept up to date on sentencing practice in Northern Ireland. To that end, since its inception in 2010, the Sentencing Group has, amongst other things:

- reviewed and streamlined the collection of Court of Appeal sentencing guidelines;
- created a mechanism for identification and publication of first instance sentencing guidance judgments in the Crown Court for crimes on which the Court of Appeal will have infrequent opportunity to issue guidelines;
- created a mechanism for the creation and publication of Magistrates’ Court sentencing guidelines;
- identified and published 59 new Court of Appeal sentencing guidelines;
- identified and published 8 Crown Court guidance cases;
- created and published 116 Magistrates’ Court guidelines;
- created and published 4 sentencing case compendia;
- created and published a Sentencing Guidance Note on ‘Honour-base Crime’;
- conducted a review of the Programme of Action; and
- established links and information exchange with the newly created Scottish Sentencing Council.
The Rt. Hon. Lord Justice Weir
12 December 2016
Annex A

Membership of the Sentencing Group:

The Right Honourable Lord Justice Weir, Chairperson\(^5\)
The Honourable Mr Justice Treacy (Senior Criminal Judge)
His Honour Judge McFarland, Recorder of Belfast (Presiding County Court Judge)
Her Honour Judge Philpott QC, Deputy Recorder of Belfast\(^6\)
His Honour Judge Miller QC, (Judicial Studies Board Tutor Judge)
District Judge (Magistrates’ Court) Bagnall (Presiding District Judge (Magistrates’ Court))
District Judge (Magistrates’ Court) McNally\(^7\)
Professor Sally Wheeler, QUB (Lay Member)\(^8\)
Ms Geraldine Hanna, Victim Support NI (Lay Member)\(^9\)
Ms Anne Dillon (Legal Secretary to the Lord Chief Justice)\(^{10}\)
Mr Terence Dunlop (Secretary to the Judicial Studies Board)
Mr Paul Conway (Secretary)
Mrs Wendy Murray (Assistant Secretary)

\(^5\) Replaced the Rt. Hon. Lord Justice Gillen as Chairperson as of June 2016.
\(^6\) Until June 2016.
\(^7\) Until July 2016.
\(^8\) Appointed Lay Member on 12 June 2013.
\(^9\) Appointed Lay Member on 16 June 2016.
\(^{10}\) Upon her appointment as Legal Secretary to the Lord Chief Justice in May 2016, replacing Ms Claire McGivern.
<table>
<thead>
<tr>
<th>Case</th>
<th>Citation</th>
<th>Keywords</th>
<th>Section</th>
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<tr>
<td>R v Edward Cambridge</td>
<td>[2015]</td>
<td>Robbery contrary to s. 8(1) Theft Act (NI) 1969 and AOABH contrary to s 47 of the Offences Against Person Act 1861 – whether finding of dangerousness justified – whether indeterminate custodial sentence justified – appeal allowed solely in respect of indeterminate sentence which is ‘a sentence of last resort’ – extended custodial sentence substituted</td>
<td>Attacks on the Elderly</td>
</tr>
<tr>
<td>R v Gabriel Mackle</td>
<td>[2015]</td>
<td>Convictions under s. 3(1)(b) of the Explosive Substances Act 1883, and article 58(1) of the Firearms (Northern Ireland) Order 2004 – whether forfeiture order in respect of motorbike lawful – title to the item subject to hire purchase in brother’s name - nemo dat quod non habet – order quashed</td>
<td>Orders Ancillary to Sentence</td>
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<tr>
<td><strong>Case</strong></td>
<td><strong>Year</strong></td>
<td><strong>Reference</strong></td>
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<tr>
<td>R v Balmer and Wilson</td>
<td>2015</td>
<td>NICA 40</td>
<td>AOABH contrary to s. 47 OAPA 1861 and common assault (co-def. aiding and abetting) – shaving victim’s hair and eyebrows while she was in alcohol induced stupor – done over two nights – striking her on the face – filming/photographing the offending – 5 year ECS manifestly excessive and replaced with determinate 4 year sentence</td>
</tr>
<tr>
<td>R v TH</td>
<td>2015</td>
<td>NICA 48</td>
<td>Sexual Assault by penetration together with Common Assault, Criminal Damage and Possession of Class B Drug – digital penetration and further degradation of victim in her home accompanied by acts of violence and destruction. Total sentence of 18 months’ imprisonment plus 18 months on licence – appeal refused and sentence upheld – recent definitive Guideline from E&amp;W considered – need for victim’s medical reports to be supported by notes and records underlined.</td>
</tr>
<tr>
<td>R v Hughes, Hughes and Hughes (DPP References 1, 2, 3 and 4 of 2015)</td>
<td>2015</td>
<td>NICA 53</td>
<td>DPP reference – Possession of class A/B drugs with intent to supply – significant quantities of class A with high value – 3 defendants – determinate sentences of 5 yrs., 4 yrs., and 3 yrs. (6 custody plus 2½ on licence) – unduly lenient – substituted with 6½ yrs., 5 yrs., and 2yrs. (12 month plus 12 months) – earlier NI guidelines</td>
</tr>
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| **R v Sean Hackett** | [2015] NICA 57 | Manslaughter on ground of diminished responsibility and 2 X possession of a firearm with intent – planned killing of offender’s father – impaired judgement – assessed as presenting further risk of serious harm – whether life sentence necessary – whether ICS adequately considered – whether 10 yr. tariff appropriate – whether conclusion that responsibility was relatively high correct – fresh medical evidence received on appeal establishing lower culpability – ICS with specified period of 7 years substituted for manslaughter and two with specified period of 4 for firearms convictions | 1. Manslaughter  
2. Discretionary Life Sentences  
3. Dangerous Offenders under CJ (NI) Order 2008 |
| **R v Raymond Brownlee** | [2015] NICA 58 | Wounding with intent X2; common assault X2; and false imprisonment – domestic violence – culpability high but degree of harm low – ECS of 6 plus 4 for each wounding – court underlined need to identify domestic setting as aggravating feature – dangerousness considered – delay between conviction and sentence held to be breach of Article 6 but aggravation outweighed this – appeal refused | 1. Violent Offences  
2. Dangerous Offenders under CJ (NI) Order 2008 |
| **R v Brian Mongan** | [2015] NICA 65 | Wounding with intent to commit GBH (ECS 9 plus 3) threats to kill (9 plus 1 concurrent) – both lower harm and lower culpability required for lower starting point in s.18 OAPA 1861 offence – McAuley and Seaward guideline clarified – however sentencing court’s starting point here of 11yrs. was too high in a case of low harm – 9 yr. custodial element reduced to 7 – dangerousness finding approved and 3 yr. extension left undisturbed | 1. Violent Offences  
2. Dangerous Offenders under CJ (NI) Order 2008 |
| **R v Lukaz Kubik** | [2016] NICA 3 | Rape contrary to Article 5(1) of the Sexual Offences (NI) Order 2008 – continued application of Sentencing | Sexual Offences |
Advisory Panel’s 2002 Guidelines – medical evidence of impact on victim must be such as to establish to a rigorous standard – extended custodial sentence of 9 years replaced with a determinate custodial sentence of 7 years - 3½ in custody and 3½ on licence

| R v Paul Braniff | [2016] NICA 9 | offences of depositing, keep and treating controlled waste under Article 4 Waste and Contaminated Land (NI) Order 1997 – aggravating factors correctly identified – starting point should first be identified by sentencers – 12 month determinate custodial sentence (6 & 6) substituted for the earlier 18 month sentence | Environmental Offences |

| R v Sean Ruddy | [2016] NICA 17 | possession of explosives with intent to endanger life or cause serious injury to property contrary to s. 3(1)(b) of the Explosive Substances Act 1883 - reiteration of principles governing guilty pleas – need for counsel to correct any misapprehension on court’s part as to timing of guilty plea – recourse to be had to the ‘slip rule’ under s. 49(2) of the Judicature (Northern Ireland) Act 1978 when appropriate – sentence left undisturbed. | 1. Firearms/Explosives Offences 2. Guilty Pleas |

| R v Alan McDonald | [2016] NICA 21 | Historic sexual abuse - discretionary life sentence - whether necessary to make finding of unstable character - whether offences sufficiently grave - whether likely future offending must be sex offences - whether alternative protective sentence could be imposed - appeal dismissed | |

| R v Patricia McKeown | [2016] NICA 24 | Causing grievous bodily injury by driving without due care and attention or without reasonable consideration - whether judge correct to impose three year disqualification - whether judge correct to impose extended driving test requirement - appeal allowed | |

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<tr>
<th>Case</th>
<th>Citation</th>
<th>Description</th>
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<tr>
<td>R v Paul Mahoney</td>
<td>[2016] NICA 27</td>
<td>appeal dismissed - principles derived and applied from first instance sentencing remarks, the Court of Appeal (E&amp;W) and Sentencing Guidelines Council</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Appeal against 4 year Determinate Custodial Sentence, comprising 2 years custody and 2 years on licence - conspiracy to defraud - setting up and operation of websites which permitted the viewing of films in breach of copyright and the advertising revenue - sections 327(1)(a) and 329 Proceeds of Crime Act 2002</td>
</tr>
<tr>
<td></td>
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<td>disqualification period of 12 months substituted - requirement for extended driving test removed</td>
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Annex C

Membership of the Magistrates’ Courts Sentencing Guidelines Sub-Committee

District Judge (Magistrates’ Courts) Bagnall, Chairperson
Her Honour Judge Philpott QC, Deputy Recorder of Belfast¹¹
District Judge (Magistrates’ Courts) Hamill
District Judge (Magistrates’ Courts) Watters
District Judge (Magistrates’ Courts) Meehan
District Judge (Magistrates’ Courts) McNally¹²
Mr Paul Conway, Secretary

¹¹ Until June 2016
¹² Until July 2016
Annex D

List of Magistrates’ Court Sentencing Guidelines

ANIMAL OFFENCES
Breeding/Selling/Gifting/Advertising/Not Muzzling / Abandoning A ‘Dangerous Dog’
Causing/Attending Animal Fighting
Cruelty to Animals
Docking Dog’s Tail
Dog Attack on Other Animal/Worrying Livestock
Dog Attack on Person
Possessing a Dangerous Dog

ASSAULT OFFENCES
Assault occasioning actual bodily harm
Assault on police
Common Assault (Simpliciter)
Aggravated Common Assault on a Male Child or a Female (Simpliciter)
Threats to kill
Wounding / inflicting grievous bodily harm (section 20)

BREACH OF COURT ORDER OFFENCES
Breach of Anti-Social Behaviour Order
Breach of Bail (Failure to Surrender)
Breach of a ‘Regulated Match’ Banning Order

COUNTERFEIT OFFENCES
Making or Distributing Material Infringing Copyright
Passing Counterfeit Currency
Possessing Counterfeit Currency
Unauthorised Use of Trade Mark

CHILD CRUELTY OFFENCES
Cruelty to Person Under 16
Exposing Child Under 2 whereby Life or Permanent Health is Endangered
Exposing Child Under 12 to Risk of Burning

DISHONESTY OFFENCES
Abstracting Electricity
Burglary (dwelling)
Burglary (non-dwelling)
Handling/Receiving Stolen Goods
Making off Without Payment
Possession of False Identity Document
Social Security Fraud
Theft (breach of trust)
Theft (shoplifting)
Theft (simpliciter)
**DRUG OFFENCES**
- Possession Of ‘Class A’ Drugs
- Possession Of ‘Class B’ Drugs
- Possession Of ‘Class C’ Drugs
- Possession Of ‘Class A’ Drugs With Intent To Supply
- Possession Of ‘Class B’ Drugs With Intent To Supply
- Possession Of ‘Class C’ Drugs With Intent To Supply
- Cultivating Cannabis

**ENVIRONMENT OFFENCES**
- Breach of Prohibition Notice
- Depositing Waste Without a Licence
- Discharge/Deposit of Polluting Matter
- Treating/Keeping/Disposing of Waste in manner likely to cause Pollution
- Treating/Keeping/Disposing of Waste Without a Licence

**FARMING OFFENCES**
- Deliberate Infection of Animals
- Failure to Cleanse and Disinfect
- Failure to Comply with Restrictions
- Failure to Isolate Animal
- Failure to Maintain Fences
- Failure to Notify Birth / Death / Movement of Cattle
- Failure to notify Presence of Disease
- Failure to Pre-Movement Test
- Failure to Present Animals for Testing

**HARASSMENT AND DOMESTIC OFFENCES**
- Breach of Harassment Injunction
- Breach of Non-Molestation Order
- Breach of Restraining Order
- Harassment Causing Fear of Violence
- Harassment (Simpliciter)
- Offensive / Malicious / Nuisance Communications

**PLANNING OFFENCES**
- Breach of a Tree Preservation Notice
- Breach of Enforcement or Stop Notice
- Damaging Tree In Conservation Area
- Damaging a Listed Building
- Non-Compliance with Planning Contravention Notice
- Working on Listed Building without Consent

**PUBLIC ORDER OFFENCES**
- Breach of the Peace
- Criminal Damage
- Disorderly Behaviour
- Obstructing Police
Possession of an Offensive Weapon
Resisting Police
Riotous Behaviour
Threats to Damage Property

**ROAD TRAFFIC OFFENCES**
Aggravated Vehicle Taking
Breach of Traffic Signal
Careless/inconsiderate driving
Causing Death by Careless/Inconsiderate Driving
Dangerous driving
Driving whilst disqualified
Driving whilst Unfit
Driving with excess alcohol
Failing to Give Info Re Identity of Driver
Failing To Produce Licence / Insurance / Test Certificate
Failing To Provide Specimen Of Breath/Blood
Failing to Stop for a Constable
Failing to Stop/Remain/Report Injury Accident or Damage Accident
In charge of vehicle with excess alcohol
In Charge Whilst Unfit
Permitting/Driving in Excess of Permitted Driving Hours
Making/Using False Certificate of Insurance
No Taxi Licence
No Vehicle Test Certificate
Tachograph Offences
Taking Vehicle Without Consent
Using/CAusing/Permitting No Insurance
Using/Permitting Overweight Goods Vehicle
Using Mobile Phone While Driving

**SEXUAL OFFENCES**
Breath of Foreign Travel Order
Breath of Risk of Sexual Harm Order
Breath of Sexual Offences Notification Requirements
Breath of Sexual Offences Prevention Order
Causing a Person to Engage in Sexual Activity Without Consent
Causing or Inciting a Child to Engage in Sexual Activity
Causing or Inciting a Child under 13 to Engage in Sexual Activity
Exposure
Gross Indecency with or towards a Child
Indecent Assault on a Female
Indecent Assault on a Male
Indecent Behaviour In A Public Place
Sexual Activity with a Child
Sexual Assault
Sexual Assault on a Child Under 13

**FIREARMS OFFENCES**
Possession of a firearm
Breach of Condition in a Firearms Certificate
### Annex E

**Update of Lord Chief Justice’s Programme of Action on Sentencing**

| Domestic Violence | 1. Magistrates’ Courts Sentencing Guidelines  
| | 2. JSB Publication of Paper by HHJ Burgess  
| | 3. JSB Presentation by HHJ McFarland  
| | 4. JSB Presentation by PBNI  
| | 5. R v PH [2011] NICA 42  
| | 6. R v Brownlee (Sentencing) [2015] 58  
| Serious Sexual Offences (including offences against children) | 1. Magistrates’ Courts Sentencing Guidelines  
| | 2. R v SG [2010] NICA 32  
| | 4. DPP’s Ref (1 of 2012)(R v DM) [2012] NICA 36  
| | 5. R v ML [2013] NICA 27  
| Indecent Images |  
| Human Trafficking [including Slavery] | 1. JSB Presentation by PSNI  
| | 2. R v Matayis Pis [2012] NICC 14  
| Attacks on Public Workers (including police officers) | 1. Magistrates’ Courts Sentencing Guidelines  
| Attacks on Vulnerable people | 1. Magistrates’ Courts Sentencing Guidelines  
| Attacks on Older People | 1. Magistrates’ Courts Sentencing Guidelines  
| Duty Evasion and Smuggling | 1. R v Grew; R v Mackle and others [2011] NICA 31  
| | 2. Sentencing Case Compendium  
| | 3. R v Kumar [2013] NICC 12  
| Environmental Crime | 1. JSB Presentation by Professor Sharon Turner  
| | 2. R v Allingham; R v McKenna [2012] NICA 29  
| Honour-based Crime | 1. Sentencing Group Guidance Note  
| Tiger Kidnapping | 1. Sentencing Case Compendium  
| | 2. Sentencing Case Compendium  
| | 3. R v Paul Mahoney [2016] NICA 27  
| Road Traffic Offences | 1. Magistrates’ Courts Sentencing Guidelines  
| | 2. JSB Sentencing Workshop  
| | 4. DPP’s Reference (No.5 of 2012)(Berry) [2013] NICA 9  
| | 5. DPP’s Reference (No.7 of 2013)(Kevin Brannigan)  

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<tr>
<th>Category</th>
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<tr>
<td>Hate Crime</td>
<td>1. Magistrates’ Courts Sentencing Guidelines</td>
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<tr>
<td>Health and Safety Offences Causing Death</td>
<td>1. R v JMW Farm Ltd [2012] NICA 17</td>
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<tr>
<td>Manslaughter</td>
<td>1. JSB Presentation by Hart J</td>
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<td>2. R v Eamon Coyle [2010] NICA 48</td>
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<tr>
<td>Child Cruelty and Neglect and Serious Assaults on Children</td>
<td>1. Magistrates’ Courts Sentencing Guidelines</td>
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<td>2. Sentencing Case Compendium</td>
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<td>3. R v W [2014] NICA 71</td>
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<td>Animal Cruelty</td>
<td>1. Magistrates’ Courts Sentencing Guidelines</td>
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<td>Cyber Crime</td>
<td>1. JSB Presentation by Professor Alisdair Gillespie</td>
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<td>2. JSB Cybercrime Workshop</td>
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<td>Cyber Bullying</td>
<td>1. R v Balmer and Wilson [2015] NICA 40</td>
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<td>Psychoactive Substances</td>
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<td>Non-paramilitary blackmail</td>
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<td>Credit for guilty plea</td>
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