## THE KING -v- [NAME OF OFFENDER]

## ADVICE UPON THE MERITS OF A REFERENCE UNDER SECTION 36 OF THE CRIMINAL JUSTICE ACT 1988

## The offender(s)

The offender is [name]. She/He/They is/are [X] years old, having been born on [DD/MM/YYY]. The offender is of previous good character / The offender’s previous convictions, so far as they are material, may be summarised as follows.

## The sentence imposed

1. [*Please complete the following table for each offender.*]

|  |  |
| --- | --- |
| Name of offender |  |
| Date of birth |  |
| Date of sentence / Court |  |
| Judge  |  |
| Date of plea / conviction  |  |
| Stage of proceedings at which pleaded / convicted (PTPH / trial) |  |
| **Count on indictment** | **Offence** | **Sentence (Consecutive/concurrent)** |
| Count 1 |  |  |
| Count 2 |  |  |
| Count 3 etc. |  |  |
| Total sentence |  |
| Reporting restrictions |  |
| Other relevant orders  |  |

## The facts

1. [*Please summarise the salient facts of the case. Only the facts material to sentence need be included, ensuring it is clear on what factual basis the offender fell to be sentenced.*]

## The material relevant to sentence

1. [*Please identify any such material e.g. pre-sentence report, psychiatric report, basis of plea, chambers/open court discussion of appropriate sentence.*]

## The sentence exercise

1. [*A transcript is not routinely required other than in cases in which the CPS is referring the case. It is critical therefore that sufficient detail from the sentencing hearing is provided. Please set out what approach the Judge took to sentence:*
2. *What guideline(s) applied?*
3. *How did the Judge categorise the offending?*
4. *What aggravating and mitigating factors were present and how did they impact, if at all, on the starting point?*
5. *What credit, if any, did the Judge give for guilty plea?*
6. *How did the Judge address totality (if relevant)?*
7. *Did the judge consider dangerousness (if relevant)?*

*Please ensure this includes reference to any possible information or reason which was material to the sentence imposed.*]

## Analysis

1. [*Please address factors 1-6 above.*]

## Matters relevant to resentencing

1. [*Include anything relevant to whether the Court would exercise its discretion to increase the sentence. For example, delay, other relevant sentences where there might be a disparity, where the offender is at liberty, is due to be released imminently or is a youth.*]

## Advice on a reference

1. I am asked to advise on the merits of a reference under section 36 of the Criminal Justice Act 1988[[1]](#footnote-1). [*Please provide an analysis of the sentence, including the relevant steps taken by the Judge above.*]

## Conclusion

1. I recommend that this case [is/is not] referred to the Court of Appeal.

Name:

Contact details:

Date:

[*Please ensure all square brackets and italicised text are deleted.*]

1. The issues to consider in advising on the merits of an application to the Court of Appeal are:
(1) whether the sentence is outside the range of sentences which the judge, applying their mind to the relevant factors, could reasonably have considered appropriate; and (2) if so whether the Court of Appeal would be likely to increase the sentence if a reference was made by the Attorney-General.
The Court of Appeal has demonstrated a reluctance to increase sentences save in cases where the sentence was clearly wrong, namely those cases where alteration is necessary to correct a “gross error” (*Attorney-General’s Reference No 132 of 2001 (Johnson* [2003] 1 Cr App R (S) 41). [↑](#footnote-ref-1)