(2024) 36 SAcLJ 380
(Published on e-First 5 August 2024)

SENTENCING FRAMEWORKS FOR CONSISTENCY

A Proposed Framework

In criminal law, consistency in sentencing is crucial as it reflects the notion of equal justice. To achieve this, the Supreme Court of Singapore began issuing guideline sentencing frameworks with an increased frequency since 2013. This article will highlight some limitations of these frameworks, before comparing them with similar frameworks in the UK. Based on this comparison, this article will then propose some tweaks to the current guideline sentencing frameworks in Singapore, before explaining the advantages of, and addressing the potential concerns associated with, said proposal. The authors believe that the proposal will increase consistency in the sentencing decisions of the Singapore courts.

Ivan **TANG** Wu Hwan[1]
LLB (Summa Cum Laude) (Singapore Management University).

HONG Shiuan Shiuan
LLB and BAcc (Summa Cum Laude) (Singapore Management University).

Ezra **LIM** Pin
LLB (Summa Cum Laude) (Singapore Management University).

I. Introduction

1 In criminal law, consistency in punishment is crucial as it reflects the notion of equal justice. Inconsistency in sentencing, on the other hand, diminishes the idea of justice being equal to all in a legal system and leads to the loss of public confidence.[2]

2 To achieve such consistency in punishment, the Supreme Court of Singapore ("Supreme Court") has, in the past decade, begun to issue

1 The authors express their sincere gratitude towards the anonymous referees for reviewing this article and towards Jonathan Cheah for his invaluable inputs throughout the editorial process. All errors remain the authors' alone.

2 *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [19], citing *Lowe v The Queen* (1984) 154 CLR 606 at 610–611.

guideline sentencing judgments with an increased frequency.[3] The sentencing frameworks and guidelines established in these judgments have played an undeniably important role in helping to achieve a certain level of consistency in the sentences imposed by the Singapore courts, and in protecting the public's confidence in the Singapore legal system.

3 It is probably also for this reason that on 2 June 2022, the Ministry of Law had gone a step further and announced the establishment of the Sentencing Advisory Panel, whose key function is to "formulate and publish guidelines on matters relating to sentencing, to promote greater consistency, transparency and public awareness".[4] Whilst anticipating the impact of the Sentencing Advisory Panel on sentencing,[5] this article will reflect on the guideline sentencing judgments that have been issued by the Supreme Court.

4 Part II of this article provides some context to the Supreme Court's approach towards sentencing in the past decade, before explaining some of the limitations in the current guideline sentencing frameworks. In Part III, this article compares these frameworks to those in the UK, before proposing some tweaks to the Singapore guideline sentencing frameworks (the "Proposed Framework" or "Framework"). This article will then illustrate how the Proposed Framework operates and will explain its strengths and implications. Finally, Part IV anticipates and addresses two potential concerns regarding the Proposed Framework, before Part V concludes.

II. Background and limitations of current sentencing frameworks

5 In March 2013, driven by the main objective of "assist[ing] the State Courts in the exercise of their sentencing powers to achieve greater consistency and predictability in the sentences which they impose for

3 Benny Tan, "Assessing the Effectiveness of Sentencing Guideline Judgments in Singapore Issued Post-March 2013 and a Guide to Constructing Frameworks" (2018) 30 SAcLJ 1004 at para 1.

4 Ministry of Law, "Establishment of the Sentencing Advisory Panel" (2 June 2022) at paras 1–2.

5 For a summary of the *influence* which the Sentencing Advisory Panel's *Guidelines on Reduction in Sentences for Guilty Pleas* have on sentencing and how it might operate alongside existing case law, see generally *Public Prosecutor v Iskandar bin Jinan* [2024] SGHC 134 at [19]–[35].

similar offences by providing clearer guidance on sentencing and on sentencing methodologies",[6] a sentencing council was established.[7]

6 Since then, the Supreme Court began issuing guideline sentencing judgments with an increased frequency.[8] The inception of these sentencing guidelines has certainly led to a greater degree of coherence and rationality in sentencing.[9] Specifically, there has been an increased consistency in the *formulation* of guideline sentencing frameworks; cases of similar types have increasingly been sentenced using similar approaches.[10]

7 However, there remain some limitations to the *application* of these guideline sentencing frameworks. This Part highlights two related observations, *ie*, the inconsistent standards occasionally applied by the sentencing courts when employing the guideline sentencing frameworks and the inadequacy of guidance provided by these frameworks.

A. Inconsistent standards occasionally applied by sentencing courts

8 Despite the establishment of guideline sentencing frameworks, inconsistency in sentencing occasionally arises. This is likely due to different standards applied by sentencing judges when employing sentencing frameworks. This article will illustrate such inconsistent standards by highlighting the application of the guideline sentencing frameworks for road traffic offences involving s 338(*b*) of the Penal Code 1871 ("PC") and offences under s 51(1)(*a*) of the Corruption,

6 Chao Hick Tin, Judge of Appeal, Supreme Court of Singapore, "The Art of Sentencing – An Appellate Court's Perspective", speech at Sentencing Conference 2014: Trends, Tools & Technology (9 October 2014) at para 3.

7 Benny Tan, "Assessing the Effectiveness of Sentencing Guideline Judgments in Singapore Issued Post-March 2013 and a Guide to Constructing Frameworks" (2018) 30 SAcLJ 1004 at para 1, citing Chao Hick Tin, Judge of Appeal, Supreme Court of Singapore, "The Art of Sentencing – An Appellate Court's Perspective", speech at Sentencing Conference 2014: Trends, Tools & Technology (9 October 2014) at paras 2 and 4.

8 Benny Tan, "Assessing the Effectiveness of Sentencing Guideline Judgments in Singapore Issued Post-March 2013 and a Guide to Constructing Frameworks" (2018) 30 SAcLJ 1004 at para 1.

9 Benny Tan, "Assessing the Effectiveness of Sentencing Guideline Judgments in Singapore Issued Post-March 2013 and a Guide to Constructing Frameworks" (2018) 30 SAcLJ 1004 at para 22.

10 Benny Tan, "Assessing the Effectiveness of Sentencing Guideline Judgments in Singapore Issued Post-March 2013 and a Guide to Constructing Frameworks" (2018) 30 SAcLJ 1004 at para 22.

Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 ("CDSA").

*(1) Section 338(*b*) PC*

9 In *Tang Ling Lee v Public Prosecutor*[11] ("*Tang Ling Lee*"), the High Court held that in sentencing an offender for a road traffic offence involving s 338(*b*) of the PC[12], the court should undertake a two-step inquiry ("*Tang Ling Lee* framework").

10 First, the court should identify the sentencing band within which the offence in question falls, and also where the particular case falls within the applicable presumptive sentencing range.[13] This should be done by having regard to the considerations of harm and culpability and with reference to the following sentencing ranges:[14]

Category	Circumstances	Presumptive Sentencing Range
1	Lesser harm and lower culpability	Fines
2	Greater harm and lower culpability *or* Lesser harm and higher culpability	One to two weeks' imprisonment
3	Greater harm and higher culpability	>Two weeks' imprisonment

11 Next, further adjustments should be made to account for the relevant mitigating and aggravating factors.

12 With regard to the first step, the High Court also held that the fact that grievous bodily injury has been caused is itself indicative that

11 [2018] 4 SLR 813. As the court clarified at [24], s 338(*b*) of the Penal Code 1871 may be used to deal with a broad range of offences where grievous hurt is caused by negligent acts. It should also be noted that the sentencing guideline laid out here only deals with road traffic cases where the accused claims trial.

12 In *Tang Ling Lee v Public Prosecutor*, the applicable edition of the Penal Code was Cap 224, 2008 Rev Ed. That edition of the Penal Code has since been replaced with the Penal Code 1871 (2020 Rev Ed). However, the provision in question has remained the same. To avoid confusion, this article will only refer to this provision under the Penal Code 1871 (2020 Rev Ed).

13 *Tang Ling Lee v Public Prosecutor* [2018] 4 SLR 813 at [32].

14 *Tang Ling Lee v Public Prosecutor* [2018] 4 SLR 813 at [31].

the harm occasioned to the victim is not slight and minor. Further, the victim's period of hospitalisation leave or medical leave would be a relevant consideration in so far as it represents a medical professional's opinion on the length of time required for treatment and for the victim to resume his or her daily activities.[15]

13 Despite the establishment of the *Tang Ling Lee* framework, sentencing courts have continued to arrive at arguably inconsistent outcomes when sentencing road traffic offences involving s 338(*b*) of the PC. This is because they have adopted inconsistent standards at the first step of the framework. To illustrate, this article will compare three decisions of the Magistrates' Courts which have applied this framework.

14 First, in *Public Prosecutor v Wah Zhee Ron, Johann*[16] ("*Johann Wah*"), the accused failed to keep a proper lookout while driving and collided into the victim when making a right turn.[17] The victim, a 69 year-old woman, suffered multiple fractures following the accident. No operation was necessary, but the victim was hospitalised for 14 days and given a further 19 days' hospitalisation leave. The victim also suffered mobility problems as a result of the accident and required the assistance of a wheelchair for about seven months.[18] The court held that "[t]he prosecution had rightly classified the harm as relatively low",[19] and that this case fell under Category 1.[20]

15 Next, in *Public Prosecutor v Yeo Suan Tiak*[21] ("*Yeo Suan Tiak*"), the accused did not keep a proper lookout while driving, resulting in a head-to-rear collision with another motorcar.[22] This caused a chain collision involving two other motorcars. There were four victims, two of whom sustained injuries. One of the victims ("V1"), a 73-year-old male, suffered contusions and multiple fractures, while the other victim ("V2"), a 66-year-old woman, suffered a fracture to her sternum. V1 was treated as an outpatient and given five days' medical leave. V2 was warded for seven days and given approximately two months' hospitalisation leave.[23]

---

15 *Tang Ling Lee v Public Prosecutor* [2018] 4 SLR 813 at [26].
16 [2019] SGMC 36.
17 *Public Prosecutor v Wah Zhee Ron, Johann* [2019] SGMC 36 at [1].
18 *Public Prosecutor v Wah Zhee Ron, Johann* [2019] SGMC 36 at [4] (see paras 11–12 of the Statement of Facts).
19 *Public Prosecutor v Wah Zhee Ron, Johann* [2019] SGMC 36 at [8]. It is also notable that the court did not elaborate on *why* it had agreed with the Prosecution's submission on the level of harm caused.
20 *Public Prosecutor v Wah Zhee Ron, Johann* [2019] SGMC 36 at [13].
21 [2020] SGMC 2.
22 *Public Prosecutor v Yeo Suan Tiak* [2020] SGMC 2 at [1].
23 *Public Prosecutor v Yeo Suan Tiak* [2020] SGMC 2 at [4] (see paras 4–12 of the Statement of Facts).

The court noted that in this case there were multiple victims, though the injuries suffered by the victims were not as severe as those in the other cases cited by the Prosecution.[24] The judge thus held that this case fell under Category 1.[25]

16 Last, in *Public Prosecutor v Ng Sue Rong Charis*[26] ("*Charis Ng*"), the accused collided into the victim while riding an e-scooter at a void deck.[27] The victim, a 70-year-old female, suffered a fracture on her left elbow and a contusion on her left shoulder.[28] She also suffered a tear on the supraspinatus tendon of her left shoulder.[29] The victim was not hospitalised and was treated conservatively.[30] She also did not seek medical leave as she was a retiree.[31] The court considered that the fracture was caused to "a significant bone" of the victim's body and that the victim was elderly.[32] Coupled with the victim's inability to lift heavy items and her development of a phobia of e-scooters after the incident,[33] the court held that the harm caused was "at least moderate"[34] and placed this case within Category 2.[35]

17 Comparing these three cases, it is submitted that there is some level of inconsistency in the assessment of harm caused. While the courts in *Johann Wah* and *Yeo Suan Tiak* found that lesser harm was caused, the court in *Charis Ng* held that "at least moderate" harm was caused. Yet, a comparison of these three cases suggest that the harm caused in *Charis Ng* was less severe than that caused in *Johann Wah* and/or *Yeo Suan Tiak*, for at least two reasons.

18 First, no hospitalisation was required for the victim in *Charis Ng*.[36] This can be contrasted with the victim in *Johann Wah*, who was

24 *Public Prosecutor v Yeo Suan Tiak* [2020] SGMC 2 at [15].
25 *Public Prosecutor v Yeo Suan Tiak* [2020] SGMC 2 at [16].
26 [2021] SGMC 29.
27 *Public Prosecutor v Ng Sue Rong Charis* [2021] SGMC 29 at [5] (see para 3 of the Statement of Facts).
28 *Public Prosecutor v Ng Sue Rong Charis* [2021] SGMC 29 at [5] (see para 8 of the Statement of Facts).
29 *Public Prosecutor v Ng Sue Rong Charis* [2021] SGMC 29 at [47].
30 *Public Prosecutor v Ng Sue Rong Charis* [2021] SGMC 29 at [8].
31 *Public Prosecutor v Ng Sue Rong Charis* [2021] SGMC 29 at [46].
32 *Public Prosecutor v Ng Sue Rong Charis* [2021] SGMC 29 at [45].
33 *Public Prosecutor v Ng Sue Rong Charis* [2021] SGMC 29 at [48].
34 *Public Prosecutor v Ng Sue Rong Charis* [2021] SGMC 29 at [49].
35 *Public Prosecutor v Ng Sue Rong Charis* [2021] SGMC 29 at [51].
36 *Public Prosecutor v Ng Sue Rong Charis* [2021] SGMC 29 at [46].

hospitalised for 14 days,[37] and with the two victims in *Yeo Suan Tiak*, of whom one was hospitalised.[38]

19 Second, while the victim in *Charis Ng* had suffered a single undisplaced fracture,[39] this was still less serious than the other two cases, where at least one victim had suffered multiple fractures,[40] with one of the victims in *Yeo Suan Tiak* even suffering a fracture to her sternum (an undoubtedly more significant bone[41]).[42]

20 While the assessment of harm is ultimately a fact-sensitive exercise, it is submitted that on a face-value comparison of the aforementioned cases, it is arguable that the victims in *Johann Wah* and *Yeo Suan Tiak* had suffered an equal, if not higher, level of harm as compared to the victim in *Charis Ng*. It would thus be inconsistent for the sentencing courts to have held that the level of harm in *Charis Ng* was "at least moderate", when they had also held that the level of harm in the other two cases was merely slight. These three cases thus collectively demonstrate the inconsistent standards that the sentencing courts have sometimes applied when employing the guideline sentencing frameworks.

21 This inconsistency is also evident from the *considerations* which the courts had emphasised. The following two examples illustrate this point.

22 First, in reaching its finding of "at least moderate harm", the court in *Charis Ng* had emphasised that the injury was caused to an elderly victim above 70 years old.[43] This same consideration could equally have applied to the victims in *Johann Wah* and *Yeo Suan Tiak*, who were of a

37 *Public Prosecutor v Wah Zhee Ron, Johann* [2019] SGMC 36 at [4] (see para 13 of the Statement of Facts).
38 *Public Prosecutor v Yeo Suan Tiak* [2020] SGMC 2 at [4] (see para 12 of the Statement of Facts).
39 *Public Prosecutor v Ng Sue Rong Charis* [2021] SGMC 29 at [5] (see para 8 of the Statement of Facts).
40 *Public Prosecutor v Wah Zhee Ron, Johann* [2019] SGMC 36 at [4] (see para 1 of the Statement of Facts); *Public Prosecutor v Yeo Suan Tiak* [2020] SGMC 2 at [4] (see para 10 of the Statement of Facts).
41 Compare, *Public Prosecutor v Ng Sue Rong Charis* [2021] SGMC 29 at [48], where the court held that the fracture to the victim's left elbow was to "a significant bone" of her body.
42 *Public Prosecutor v Yeo Suan Tiak* [2020] SGMC 2 at [4] (see para 12 of the Statement of Facts).
43 *Public Prosecutor v Ng Sue Rong Charis* [2021] SGMC 29 at [45].

similar age.[44] Yet, in these two cases, the courts did not appear to have taken this into consideration in reaching their decisions.

23 Second, in *Public Prosecutor v Eric Gan Chye Hoe*[45] ("*Eric Gan*"), the court had also applied the *Tang Ling Lee* framework and found that greater harm was caused, thus placing the offence under Category 2.[46] This was because:[47]

> … In the present case, the victim suffered multiple fractures to her face and body. *Applying the Penal Code definition of hurt and grievous hurt*, fractures fell into the category of grievous hurt. That being the case, the injuries suffered by the victim could not be described as anything else other than serious … [emphasis added]

24 In coming to its conclusion, the court had relied on the definition of "grievous hurt" in the PC and concluded that the presence of fractures would *inevitably* mean that "grievous hurt" was caused. However, no other case which applied the *Tang Ling Lee* framework had measured the level of harm using this standard. In fact, in *Johann Wah*, *Yeo Suan Tiak* and *Charis Ng*, the victims had all suffered fractures. Yet, none of the judges in those cases had placed their respective cases in Category 2 based on this consideration. This is but another illustration of the inconsistent standards applied by the sentencing courts in applying guideline sentencing frameworks.

(2) Section 51(1)(a) *CDSA*

25 In *Huang Ying-Chun v Public Prosecutor*[48] ("*Huang Ying-Chun*"), the High Court laid out a five-step framework for sentencing money laundering offences under s 51(1)(*a*) of the CDSA[49] ("*Huang Ying-Chun* framework").

26 The full framework will be elaborated upon at paras 40–45 below, but it suffices for now to note that under this framework, the court should

44 The victim in *Public Prosecutor v Wah Zhee Ron, Johann* was 69 years old while the victims in *Public Prosecutor v Yeo Suan Tiak* were 73 and 66 years old.

45 [2019] SGMC 45.

46 *Public Prosecutor v Eric Gan Chye Hoe* [2019] SGMC 45 at [25].

47 *Public Prosecutor v Eric Gan Chye Hoe* [2019] SGMC 45 at [24].

48 [2019] 3 SLR 606.

49 In *Huang Ying-Chun v Public Prosecutor*, the applicable provision was s 44(1)(*a*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act (Cap 65A, 2000 Rev Ed). That edition of the Act has now been repealed and the equivalent provision is now found in s 51(1)(*a*) of the present Act. To avoid confusion, this article will only refer to s 51(1)(*a*) of the Corruption, Drug Trafficking and Other Serious Crimes (Confiscation of Benefits) Act 1992 (2020 Rev Ed).

first consider the offence-specific factors in the case to identify the level of harm (*ie*, whether the level of harm was low, moderate or severe) and the level of culpability.[50] The problem, however, is that the sentencing courts have sometimes adopted inconsistent standards when applying this framework, thus arriving at inconsistent outcomes. To illustrate, the cases of *Public Prosecutor v Lim Yi Jie*[51] ("*Lim Yi Jie*"), *Public Prosecutor v Ng Koon Lay*[52] ("*Ng Koon Lay*") and *Public Prosecutor v Ng Siew Wai Carole*[53] ("*Carole Ng*") will be compared.

27 In *Lim Yi Jie*, in respect of the second charge, the accused had allowed someone else to have control over his bank account, which was then used to receive $5,950 worth of criminal benefits. The court acknowledged that the sum involved was "significantly less" than the sum involved in the first charge (which totalled $86,400) but placed great emphasis on the fact that the offence involved a transnational syndicate. Coupled with the fact that the accused's actions had harmed Singapore's reputation and status as a financial centre, the court held that the harm caused was in the *moderate* range, albeit at the lower end of the range.[54]

28 This can be contrasted with *Ng Koon Lay*, where the sums of criminal benefits involved were much larger, *ie*, $47,050 and $174,750 respectively, for two of the accused's proceeded charges.[55] Similar to *Lim Yi Jie*, there was also a syndicate involved and a transnational element to the offences as the funds were withdrawn overseas.[56] Yet, the judge had proceeded on the basis that the harm caused was "slight".[57] Similarly, in *Carole Ng*, the court did not appear to give much weight to the consideration that the offence possessed a transnational element[58] and held that under the first charge involving $27,600, only slight harm was caused.[59]

---

50 *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 at [101].
51 [2019] SGDC 128.
52 [2020] SGDC 196.
53 [2021] SGDC 148.
54 *Public Prosecutor v Lim Yi Jie* [2019] SGDC 128 at [40].
55 *Public Prosecutor v Ng Koon Lay* [2020] SGDC 196 at [6] (see paras 18–19 of the Statement of Facts).
56 *Public Prosecutor v Ng Koon Lay* [2020] SGDC 196 at [88].
57 *Public Prosecutor v Ng Koon Lay* [2020] SGDC 196 at [89]. While the court had initially described the harm caused as "slight to moderate", it is clear, based on the indicative starting range later identified in the sentencing matrix, that the sentencing judge had eventually proceeded on the basis that the harm caused was "slight". This is because the indicative starting range identified by the judge (*ie*, ten to 30 months' imprisonment) corresponds with a finding of "slight" harm and "medium" culpability (which the court had clearly found at [88]).
58 *Public Prosecutor v Ng Siew Wai Carole* [2021] SGDC 148 at [142].
59 *Public Prosecutor v Ng Siew Wai Carole* [2021] SGDC 148 at [154].

29 The inconsistent standards which the sentencing courts have applied in respect of two of the offence-specific factors, namely, (a) the involvement of a syndicate and (b) the involvement of a transnational element, can thus be seen. The court in *Lim Yi Jie* had placed much greater weight on these factors as compared to the courts in *Ng Koon Lay* and *Carole Ng*.

30 These cases, together with the earlier examples cited for s 338(*b*) of the PC, illustrate the inconsistent standards occasionally adopted by the sentencing courts when applying guideline sentencing frameworks, which have in turn led to inconsistent sentencing outcomes.

B. Inadequate guidance affecting sentencing courts' ability to deal with novel cases

31 Another observation that can be made regarding the Supreme Court's guideline sentencing frameworks is that limited examples are provided when a judgment is issued. This makes it hard for sentencing courts to decipher the differences between the gradations of the sentencing framework.

32 One example of this can be found in the guideline sentencing framework laid out in *Leong Sow Hon v Public Prosecutor*.[60] There, the appellant was appointed as an accredited checker for building works related to the construction and completion of a viaduct.[61] He was to determine the adequacy of the key structural elements of the building to be erected or affected by the building works carried out in accordance with certain building plans.[62] In July 2017, the crossheads at two piers of the viaduct gave way, causing the death of one worker.[63]

33 The appellant was charged with an offence under s 18(1) of the Building Control Act[64] ("BCA").[65] The High Court held that in sentencing an offender under the BCA, a two-stage approach with sentencing bands was to be adopted[66] ("*Leong Sow Hon* framework"). At the first stage, the court would establish the level of harm and level of culpability to derive the indicative starting point according to the following matrix:[67]

60 [2021] 3 SLR 1199.
61 *Leong Sow Hon v Public Prosecutor* [2021] 3 SLR 1199 at [2].
62 *Leong Sow Hon v Public Prosecutor* [2021] 3 SLR 1199 at [5].
63 *Leong Sow Hon v Public Prosecutor* [2021] 3 SLR 1199 at [6].
64 Cap 29, 1999 Rev Ed.
65 *Leong Sow Hon v Public Prosecutor* [2021] 3 SLR 1199 at [10].
66 *Leong Sow Hon v Public Prosecutor* [2021] 3 SLR 1199 at [51].
67 *Leong Sow Hon v Public Prosecutor* [2021] 3 SLR 1199 at [52].

		Culpability		
		Low	***Medium***	***High***
Harm	***High***	Six to ten months' imprisonment	Ten to 15 months' imprisonment	>15 months' imprisonment
	Medium	Up to three months' imprisonment	Three to six months' imprisonment	Six to ten months' imprisonment
	Low	Up to $32,500 fine	$32,500 to $65,000 fine	$65,000 to $100,000 fine

34 Next, adjustments to the starting point should be made according to the offender-specific aggravating and mitigating factors that remain unaccounted for.[68] Focusing on the first step of the framework, the High Court assessed that the appellant's culpability was medium and that the harm caused was high.[69]

35 With respect to the harm caused, the court found that it was high because eight of the ten permanent corbels were under-designed, with five being unable to bear their own intended weight during the construction stage. There was thus a serious risk that the permanent corbels would fail, which would have placed life and limb in clear danger, demonstrating high potential harm. This case thus represented a scenario where the level of harm was high.[70]

36 This would mean that future cases applying the *Leong Sow Hon* framework would only have this particular fact scenario as guidance, making it difficult for sentencing courts to determine what would be considered a "low" or "medium" level of harm.

37 The same issue would arise if the guideline judgment involved a novel case where a low level of harm was caused, as there would be difficulties in ascertaining the difference between a "medium" and "high" level of harm. This issue is further exacerbated by the fact that most lower court cases remain unreported. It would therefore be especially challenging to ensure that the sentencing courts are equipped with the means to apply the guideline sentencing frameworks consistently, particularly in novel cases.

68 *Leong Sow Hon v Public Prosecutor* [2021] 3 SLR 1199 at [51(b)].
69 *Leong Sow Hon v Public Prosecutor* [2021] 3 SLR 1199 at [54].
70 *Leong Sow Hon v Public Prosecutor* [2021] 3 SLR 1199 at [56].

III. Proposed Framework

38 This Part sets out and elaborates on the Proposed Framework. It will first set out the Singapore sentencing framework for s 51(1)(*a*) of the CDSA, before explaining why this offence was chosen to illustrate the Proposed Framework. Next, this Part sets out the English sentencing framework for s 328(1) of the Proceeds of Crime Act 2002[71] ("UK PCA"), which criminalises a similar offence. A comparison between the two frameworks will then be made before the article explains, illustrates and outlines the strengths of the Proposed Framework. Finally, this Part will explain why and how the Proposed Framework could be applied to other commonly used sentencing approaches.

A. Section 51(1)(a) CDSA

39 To begin, this article will examine the current sentencing framework for s 51(1)(*a*) of the CDSA before explaining why this offence has been chosen to illustrate the application of the Proposed Framework.

(1) The offence and current sentencing framework

40 Section 51(1)(*a*) of the CDSA criminalises the assistance of another to retain benefits from criminal conduct. As mentioned at para 25 above, the applicable sentencing framework for such an offence is the five-step *Huang Ying-Chun* framework.

41 At the first step, the court should identify: (a) whether the level of harm caused by the offence is slight, moderate or severe; and (b) whether the level of the offender's culpability is low, medium or high.[72] In doing so, the following offence-specific factors should be considered:[73]

71 (c 29) (UK).
72 *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 at [101].
73 *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 at [98] and [101].

Offence-specific factors	
Factors going towards harm	Factors going towards culpability
(a) the amount cheated (b) involvement of a syndicate (c) involvement of a transnational element (d) the seriousness of the predicate offence (e) harm done to confidence in public administration	(a) the degree of planning and premeditation (b) the level of sophistication (c) the duration of offending (d) the offender's role (e) abuse of position and breach of trust (f) the mental state of the offender (g) whether commission of the offence was the offender's sole purpose for being in Singapore (h) the offender's knowledge of the underlying predicate offence (i) the prospect of a large reward

42 At the second step, the court should, based on its findings made at the first step, identify the applicable indicative sentencing range with reference to the following sentencing matrix:[74]

Harm / Culpability	Slight	Moderate	Severe
Low	Fine and/or short custodial term	10 to 30 months' imprisonment	30 to 60 months' imprisonment
Medium	10 to 30 months' imprisonment	30 to 60 months' imprisonment	60 to 90 months' imprisonment
High	30 to 60 months' imprisonment	60 to 90 months' imprisonment	90 to 120 months' imprisonment

43 At the third step, the court should identify the appropriate starting point within the indicative sentencing range. The same offence-specific factors should be examined again, but this time with the object of granulating the case before the court to identify the specific sentence that is appropriate as a starting point in that particular case.[75]

74 *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 at [102].
75 *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 at [103].

44 At the fourth step, the court should make the appropriate adjustments to the starting point identified at the third step by considering the following relevant offender-specific aggravating and mitigating factors:[76]

Offender-specific factors	
Aggravating factors	Mitigating factors
(a) offences taken into consideration for sentencing purposes (b) relevant antecedents (c) evident lack of remorse	(a) a guilty plea (b) voluntary restitution (c) cooperation with the authorities

45 At the last step, the court should make further adjustments to the sentence to account for the totality principle.[77]

(2) Advantages of example

46 This article focuses on s 51(1)(*a*) of the CDSA to illustrate the Proposed Framework for two reasons. First, the five-step sentencing framework used in sentencing an offence under s 51(1)(*a*) of the CDSA is highly versatile and has been adopted in an "eclectic ensemble of cases".[78] It has also been "gaining ground as the preferred sentencing framework for offences which admit of a wide variety of typical presentations".[79]

47 Second and relatedly, the five-step sentencing framework used in sentencing an offence under s 51(1)(*a*) of the CDSA arguably "encompasses the best parts of the other sentencing approaches".[80] Hence,

76 *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 at [98] and [104].

77 *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 at [105].

78 *Public Prosecutor v Natarajan Baskaran* [2019] SGDC 210 at [21]. See also Ho Hsi Ming, Shawn, "Analytical Framework for Sentencing: Harm, Culpability and Aggravating/Mitigating Factors" *Law Gazette* (January 2019) <https://lawgazette.com.sg/feature/analytical-framework-for-sentencing/> (accessed 9 April 2024).

79 *Nicholas Tan Siew Chye v Public Prosecutor* [2023] 4 SLR 1223 at [56]. While the High Court's observations were made in the context of the framework in *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev* framework"), these apply equally to the *Huang Ying-Chun* framework, which was "modelled on" the *Logachev* framework (see *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 at [100]). This point will be elaborated upon in greater detail below: see n 107 *ff*.

80 There are, at present, at least four other commonly used sentencing frameworks, namely: (a) the sentencing matrix approach; (b) the multiple starting points approach; (c) the benchmark approach; and (d) the single starting point approach – see Sundaresh Menon, Chief Justice of Singapore, "Sentencing Discretion: The Past, Present and Future", keynote address at Sentencing Conference 2022 (31 October 2022) at para 22. See also, Kok Yee Keong, "Perhaps It Is Time to Consider a *Spandeck* Approach to Developing Sentencing Frameworks" *Law Gazette* (May 2021) <https://

(cont'd on the next page)

demonstrating the application of the Proposed Framework by using s 51(1)(*a*) of the CDSA as an example would best support this article's argument that the Framework should also be applied to other types of sentencing approaches. This point will be discussed in greater detail at paras 95–97 below.

B. Section 328(1) UK PCA

48 This article now turns to examine the current sentencing framework for s 328(1) of the UK PCA ("s 328(1) PCA framework"), which similarly criminalises entering into arrangements concerning criminal property. The framework used for sentencing s 328(1) UK PCA offences is the eight-step sentencing framework established by the UK Sentencing Council.[81]

49 At the first step, the court should determine the offence category by assessing: (a) the offender's culpability; and (b) the level of harm caused by the offence. The level of culpability is determined by weighing up all the factors of the case to determine the offender's role, the extent to which the offending was planned and the sophistication with which it was carried out.[82]

50 There are three levels of culpability identified with reference to the following table:[83]

Culpability demonstrated by one or more of the following:
A – High culpability • A leading role where offending is part of a group activity • Involvement of others through pressure, influence • Abuse of position of power or trust or responsibility • Sophisticated nature of offence or significant planning • Criminal activity conducted over sustained period of time

lawgazette.com.sg/feature/perhaps-it-is-time-to-consider-a-spandeck-approach/> (accessed 9 April 2024).

81 "Money laundering" *Sentencing Guidelines Council* <https://www.sentencingcouncil.org.uk/offences/crown-court/item/money-laundering/> (accessed 9 April 2024).

82 "Money laundering" *Sentencing Guidelines Council* <https://www.sentencingcouncil.org.uk/offences/crown-court/item/money-laundering/> (accessed 9 April 2024).

83 "Money laundering" *Sentencing Guidelines Council* <https://www.sentencingcouncil.org.uk/offences/crown-court/item/money-laundering/> (accessed 9 April 2024).

B – Medium culpability
• A significant role where offending is part of a group activity
• Other cases that fall between categories A or C because:
  • factors are present in A and C which balance each other out; and/or
  • the offender's culpability falls between the factors as described in A and C

C – Lesser culpability • Performed limited function under direction • Involved through coercion, intimidation or exploitation • Not motivated by personal gain • Opportunistic 'one-off' offence; very little or no planning • Limited awareness or understanding of extent of criminal activity

51 Importantly, "where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability".[84]

52 As for the level of harm, it is initially assessed by considering the value of the money laundered, in accordance with the following six categories:[85]

Category 1	£10m or more	Starting point based on £30m
Category 2	£2m–£10m	Starting point based on £5m
Category 3	£500,000–£2m	Starting point based on £1m
Category 4	£100,000–£500,000	Starting point based on £300,000
Category 5	£10,000–£100,000	Starting point based on £50,000
Category 6	Less than £10,000	Starting point based on £5,000

53 Next, to complete the assessment of harm, the court should take into account the level of harm associated with the underlying offence to determine whether it warrants an upward adjustment of the starting point within the range, or in appropriate cases, outside the range. Where it is possible to identify the underlying offence, regard should be given to the relevant sentencing levels for that offence.[86]

84 "Money laundering" *Sentencing Guidelines Council* <https://www.sentencingcouncil.org.uk/offences/crown-court/item/money-laundering/> (accessed 9 April 2024).

85 "Money laundering" *Sentencing Guidelines Council* <https://www.sentencingcouncil.org.uk/offences/crown-court/item/money-laundering/> (accessed 9 April 2024).

86 "Money laundering" *Sentencing Guidelines Council* <https://www.sentencingcouncil.org.uk/offences/crown-court/item/money-laundering/> (accessed 9 April 2024).

54 At the second step, the court should first use the appropriate starting point (as adjusted in accordance with the first step) to reach a sentence within the category range based on the table below:[87]

	Culpability		
Harm	A	B	C
Category 1 £10 million or more Starting point based on £30 million	**Starting point** 10 years' custody	**Starting point** 7 years' custody	**Starting point** 4 years' custody
	Category range 8 – 13 years' custody	**Category range** 6 – 10 years' custody	**Category range** 3 – 6 years' custody
Category 2 £2 million–£10 million Starting point based on £5 million	**Starting point** 8 years' custody	**Starting point** 6 years' custody	**Starting point** 3 years 6 months' custody
	Category range 6 – 9 years' custody	**Category range** 3 years 6 months' – 7 years' custody	**Category range** 2 – 5 years' custody
Category 3 £500,000–£2 million Starting point based on £1 million	**Starting point** 7 years' custody	**Starting point** 5 years' custody	**Starting point** 3 years' custody
	Category range 5 – 8 years' custody	**Category range** 3 – 6 years' custody	**Category range** 18 months' – 4 years' custody
Category 4 £100,000–£500,000 Starting point based on £300,000	**Starting point** 5 years' custody	**Starting point** 3 years' custody	**Starting point** 18 months' custody
	Category range 3 – 6 years' custody	**Category range** 18 months' – 4 years' custody	**Category range** 26 weeks' – 3 years' custody
Category 5 £10,000–£100,000 Starting point based on £50,000	**Starting point** 3 years' custody	**Starting point** 18 months' custody	**Starting point** 26 weeks' custody
	Category range 18 months' – 4 years' custody	**Category range** 26 weeks' – 3 years' custody	**Category range** Medium level community order – 1 year's custody
Category 6 Less than £10,000 Starting point based on £5,000	**Starting point** 1 year's custody	**Starting point** High level community order	**Starting point** Low level community order
	Category range 26 weeks' – 2 years' custody	**Category range** Low level community order – 1 year's custody	**Category range** Band B fine – Medium level community order

55 The starting point applies to all offenders irrespective of their plea (*ie*, whether they claimed trial or pleaded guilty) or previous convictions. Moreover, where the quantum of the criminal benefits is larger or smaller than the amount upon which the starting point is based, this should lead to an upward or downward adjustment as appropriate.[88]

56 The next part of the second step involves examining a non-exhaustive list of additional factual elements providing context to the offence and factors relating to the offender, and identifying whether any combination of these or other relevant factors should result in an upward or downward adjustment of the sentence arrived at thus far. These factors are:[89]

87 "Money laundering" *Sentencing Guidelines Council* <https://www.sentencingcouncil.org.uk/offences/crown-court/item/money-laundering/> (accessed 9 April 2024).

88 "Money laundering" *Sentencing Guidelines Council* <https://www.sentencingcouncil.org.uk/offences/crown-court/item/money-laundering/> (accessed 9 April 2024).

89 "Money laundering" *Sentencing Guidelines Council* <https://www.sentencingcouncil.org.uk/offences/crown-court/item/money-laundering/> (accessed 9 April 2024).

Factors increasing seriousness
Statutory aggravating factors: • Previous convictions, having regard to: (a) the nature of the offence to which the conviction relates and its relevance to the current offence; and (b) the time that has elapsed since the conviction • Offence committed whilst on bail
Other aggravating factors: • Attempts to conceal or dispose of evidence • Established evidence of community or wider impact • Failure to comply with current court orders • Offence committed on licence or post sentence supervision • Offences taken into consideration • Failure to respond to warnings about behaviour • Offences committed across borders • Blame wrongly placed on others • Damage to third party for example loss of employment to legitimate employees

Factors reducing seriousness or reflecting personal mitigation
• No previous convictions or no relevant or recent convictions • Remorse • Little or no prospect of success • Good character and/or exemplary conduct • Serious medical conditions requiring urgent, intensive or long-term treatment • Age and/or lack of maturity • Lapse of time since apprehension where this does not arise from the conduct of the offender • Mental disorder or learning disability • Sole or primary carer for dependent relatives • Offender co-operated with investigation, made early admissions and/or voluntarily reported offending
• Determination and/or demonstration of steps having been taken to address addiction or offending behaviour • Activity originally legitimate • Pregnancy, childbirth and post-natal care • Difficult and/or deprived background or personal circumstances • Prospects of or in work, training or education

57 At the third step, the court should consider if there is any other rule of law in the UK (*eg*, assistance to the Prosecution) by which an offender may receive a discounted sentence. At the fourth step, the court

should consider any potential reduction of sentence for a guilty plea. At the fifth step, the totality principle should be considered. At the sixth step, the court should consider if any confiscation, compensation and/or ancillary orders should be made. The seventh step is a reminder that the court has, under UK law, a duty to give reasons for and explain the effect of the sentence imposed, and the last step is a reminder that the court must consider whether to give credit for time spent on bail.[90]

C. Comparison of frameworks

58 Having set out the sentencing frameworks for s 51(1)(*a*) of the CDSA and s 328(1) of the UK PCA, this article will now evaluatively compare them. Preliminarily, the two frameworks are broadly similar in terms of the steps required to be taken by a court. Specifically, both frameworks require the court to:

(a) identify the level of harm caused and the offender's culpability with reference to a list of factors;

(b) identify an appropriate sentencing range within a matrix;

(c) identify an appropriate starting point; and

(d) further adjust the starting point, taking into consideration a list of factors and the totality principle.

59 Viewed in detail however, the frameworks differ substantively in at least three aspects, namely, in: (a) how the offence- and the offender-specific factors are considered; (b) the weight ascribed to the quantum of criminal benefits in the sentencing process; and (c) the specificity of the guidance rendered. These three differences will now be examined in turn.

(1) Consideration of offence- and offender-specific factors

60 The first substantive difference between the two frameworks lies in how the offence- and the offender-specific factors are considered. Under the *Huang Ying-Chun* framework, there is a clear delineation between when the offence-specific factors (*ie*, factors going towards harm and culpability) and the offender-specific factors should be considered. The former is only relevant at the first three steps of the *Huang Ying-Chun* framework, *ie*, when deriving an appropriate starting point, while the latter is only considered at the fourth step, *ie*, when further adjusting the sentence.

90 "Money laundering" *Sentencing Guidelines Council* <https://www.sentencingcouncil.org.uk/offences/crown-court/item/money-laundering/> (accessed 9 April 2024).

61 In contrast, under the s 328(1) PCA framework, there is no clear delineation between when the offence- and offender-specific factors should be considered. At the second step, the list of factors to be considered when ascertaining if further adjustments to the sentence should be made contains *both* offence- and offender-specific factors.

62 For instance, while some factors such as "[p]revious convictions", "[o]ffence committed whilst on bail" and "[o]ffences taken into consideration" are *offender*-specific factors, other factors such as "[o]ffences committed across border" and "damage to third party" are *offence*-specific factors. There is thus no clear delineation between when offence-specific factors, as opposed to offender-specific factors, should be considered.

63 With respect to this difference, it is submitted that the Singapore approach should be preferred because it is clearer, more transparent, more coherent and more consistent than the UK approach. To this end, the case of *Ng Kean Meng Terence v Public Prosecutor*[91] is instructive.

64 In this case, the Singapore Court of Appeal examined the approach to sentencing in New Zealand as gleaned from *R v Taueki*.[92] Under this approach, the court should first identify a "starting point sentence" which reflects the intrinsic seriousness of the *offending act*, before adjusting this starting point sentence to reflect circumstances which are *personal to the offender*, and then apply a sentencing discount to account for the value of any guilty plea.[93]

65 While the Court of Appeal opined that the value of the guilty plea should be considered together with the rest of the offender-specific factors instead of being considered separately,[94] it commended the New Zealand approach and held that it should be adopted in Singapore, explaining as follows:[95]

> … it ***draws a distinction between factors which relate to the offending act and those which are personal to the offender***. In our opinion, the *Taueki* methodology has clarity, transparency, coherence and consistency to commend it and should be adopted. The principal advantages of this approach are as follows:
>
> > (a) First, it allows the court to clearly articulate the seriousness of the offence while allowing the sentence to be tailored

91 [2017] 2 SLR 449.
92 [2005] 3 NZLR 372.
93 *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [36].
94 *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [38].
95 *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [37].

> according to the circumstances of each case. This promotes the communicative function of the criminal law, as it allows the court to express disapprobation for the *act* even if there are exceptional personal mitigating circumstances which might warrant a significant sentencing discount for the *offender*.
>
> (b) Secondly, it promotes transparency and consistency in reasoning. Courts will have to openly and clearly articulate the precise weight that is being ascribed to a particular factor. This is especially important when an adjustment is made to account for the personal circumstances of the offender, where the dangers of inconsistency and arbitrariness are greater. If applied consistently over a period of time, the accumulation of transparently reasoned precedents will undoubtedly help future courts to accurately benchmark the seriousness of an offence against others of like nature.
>
> (c) Thirdly, it will promote greater coherence. The dichotomy between *offence*-related factors and *offender*-specific factors is conceptually sound (see, generally, Jessica Jacobson and Mike Hough, *Mitigation: The Role of Personal Factors in Sentencing* (Prison Reform Trust, 2007) at p *vii*) and it addresses one of the principal criticisms of the *Public Prosecutor v NF* … approach[96], which is the lack of a principled reason for distinguishing between category-defining factors and non-category defining factors …
>
> [emphasis in original in italics; emphasis added in bold italics]

66 Like the New Zealand approach, the Singapore approach requires the court to first identify a starting point sentence with reference to the relevant offence-specific factors, before calibrating the sentence to account for offender-specific factors; there is a clear dichotomy between *offence*- and *offender*-specific factors. The Court of Appeal's observations pertaining to the advantages of the New Zealand approach would thus apply equally to the Singapore approach, which should therefore be preferred over the UK approach.

(2) Weight ascribed to quantum of criminal benefits

67 The second substantive difference between the two frameworks concerns the weight ascribed to the quantum of criminal benefits. Under the *Huang Ying-Chun* framework, the quantum of criminal benefits is merely one of many factors which a court should consider in determining the broad level of harm (*ie*, slight, moderate or severe) caused by the offence, for the purposes of placing the case within the sentencing matrix.

96 For a detailed account of the criticisms of the approach established in *Public Prosecutor v NF* [2006] 4 SLR(R) 849, see *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [12]–[22].

68 In contrast, under the s 328(1) PCA framework, the quantum of criminal benefits appears to be the primary factor used to ascertain the broad level of harm caused, for the purposes of placing the case within the sentencing matrix. This is evident from how the level of harm caused is initially assessed with reference to six categories with each corresponding to a range of quantum of criminal benefits, as well as how the sentencing matrix is formulated with close reference to these six categories. In fact, even the starting points have been prescribed with reference to specific quanta of criminal benefits.

69 With respect to this difference, it is again submitted that the Singapore approach should be preferred. This is because the UK approach limits a sentencing judge's discretion to some extent. At the very least, a sentencing judge is forced to firstly and primarily consider only the quantum of criminal benefits to derive the appropriate level of harm.

70 Moreover, while the UK approach requires the sentencing judge to complete the assessment on the level of harm by taking into account the underlying offence, the fact that the quantum of criminal benefits is the primary harm factor would inevitably eclipse this latter requirement. To this end, the case of *Pua Om Tee v Public Prosecutor*[97] is instructive.

71 There, Kannan Ramesh J rejected the argument that the amount of tax evaded should be used as the primary factor to determine the level of harm for the offence of wilfully evading goods and services tax ("GST") under s 62 of the Goods and Services Tax Act,[98] because "to do so would run the risk of ignoring other sentencing factors completely, *ie*, to make the quantum of GST evaded the primary factor would inevitably lead to it becoming the sole determinant".[99] Similarly, because the UK approach effectively treats the quantum of criminal benefits as the primary factor, there is the risk that this factor would eclipse all the other offence-specific factors and become the sole determinant in cases involving s 328(1) of the UK PCA.

72 In contrast, the Singapore approach gives a sentencing judge the full discretion to consider and assign weight to the full spectrum of offence-specific factors.

73 Comparing these approaches, it becomes clear that the UK approach is problematic because it relegates (at least part of) the sentencing process to a formulaic exercise, which is something which

97 [2022] 5 SLR 689.
98 Cap 117A, 2005 Rev Ed.
99 *Pua Om Tee v Public Prosecutor* [2022] 5 SLR 689 at [56].

the Singapore courts have repeatedly cautioned against.[100] In so far as the Singapore framework gives the sentencing judge full discretion to consider and assign weight to the full spectrum of offence-specific factors, it is submitted that this aspect of the framework should be preferred.

(3) Specificity of guidance

74 The third substantive difference between the frameworks pertains to the specificity of guidance rendered. Under the *Huang Ying-Chun* framework, the relevant offence-specific factors considered at the first step are merely listed in broad, general terms. There is also minimal guidance on what standard each factor should be measured against.

75 For example, one of the offence-specific factors going towards an offender's culpability has merely been stated generally as "the offender's role". There is no guidance, however, on what *specific* kind of role would tend towards a finding of high, medium or low culpability. This lack of specificity has, as observed at paras 8–30 above, occasionally given rise to inconsistencies in sentencing.

76 In contrast, under the s 328(1) PCA framework, the offence-specific factors in the first step have been stated using descriptors which are specific to each tier of harm and culpability. In terms of harm, each of the six categories corresponds to a range of quanta of criminal benefits.

77 More importantly, in terms of culpability, the factors have been delineated into those tending towards "high", "medium" and "low" culpability.

78 For example, instead of merely stating "an offender's role" as one of the offence-specific factors going towards an offender's culpability, the s 328(1) PCA framework specifically describes how such a role would look like with respect to each level of culpability:

> (a) offenders who played a "leading role" would tend to suggest a high culpability;
>
> (b) offenders who played a "significant role" would tend to suggest a medium culpability; and
>
> (c) offenders who "[p]erformed [a] limited function under direction" would tend to suggest a low culpability.

100 See, *eg*, *Goh Ngak Eng v Public Prosecutor* [2023] 4 SLR 1385 at [43] and *Public Prosecutor v Takaaki Masui* [2022] 1 SLR 1033 at [15]. See also Sundaresh Menon, Chief Justice of Singapore, "Sentencing Discretion: The Past, Present and Future", keynote address at Sentencing Conference 2022 (31 October 2022) at para 31.

79 Notably, unlike the inquiry pertaining to the level of harm, which is primarily focused on the quantum of criminal benefits, the inquiry pertaining to the level of the offender's culpability does not place undue weight on any sole factor. Instead, it has been emphasised in the sentencing framework that "[w]here there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability".

80 This approach, it is humbly submitted, should be preferred when setting out offence-specific factors in sentencing frameworks. This is because it provides greater guidance to sentencing judges, but still allows them to fully retain their discretion to consider and assign weight to the full spectrum of offence-specific factors. It is with this approach in mind that this article now turns to the Proposed Framework.

D. Application of Proposed Framework

81 This article will now explain and illustrate the application of the Proposed Framework, which draws from and weds the best practices of the UK and Singapore sentencing frameworks, before explaining its strengths.

(1) Explanation and illustration of Proposed Framework

82 As explained at paras 59–80 above, the five-step sentencing framework for s 51(1)(*a*) of the CDSA (among many other offences) is preferable to the s 328(1) PCA framework in terms of its neatness and clarity in considering offence- and offender-specific factors separately, and in terms of giving the sentencing judge full discretion to consider and assign weight to the full spectrum of offence-specific factors. However, the Singapore framework could draw from the UK framework in terms of the specificity of guidance the latter offers to the sentencing judge when considering offence-specific factors at the first step.

83 In light of these considerations, the authors propose tweaking the five-step sentencing framework such that at step one, instead of merely listing out the offence-specific factors which are relevant in ascertaining the level of harm and the offender's culpability in broad and general terms, the framework should set out these factors using: (a) descriptors; (b) numerical indications; (c) general principles; and/or (d) examples based on precedents (or illustrations where no relevant precedents exist) which are *specific* to each level of harm and culpability. In other words, the offence-specific factors listed under the first step should be tiered

according to how each of them would tend to be manifested under each level of harm and culpability.[101]

84 Then, to make it clear that no single factor should necessarily eclipse the other factors, a statement expressly requiring the sentencing judge to conduct a balancing exercise between the various factors present at his or her discretion should also be included in the Framework.

85 Further, to make it clear that the list of offence-specific factors is not to be considered closed, and that new sentencing considerations may arise as the case law develops, a statement clarifying this should be included in the Framework.

86 At this juncture, it should be clarified that the suggestion to "tier" the factors is confined to *offence*-specific factors and does not extend to *offender*-specific factors. This is because unlike the offences for which a sentencing framework is laid down, which would typically involve a set of (usually quantifiable) principal offence-specific factors which in turn could be compared to form the basis of a sentencing framework,[102] every offender is vastly different. It would thus be inappropriate to quantify the offender-specific factors.

87 To illustrate, in *Kuah Teck Hin v Public Prosecutor*,[103] Vincent Hoong J rejected the cases cited by the accused in his appeal against a

101 To avoid doubt, the Proposed Framework is different to that set out in *Public Prosecutor v NF* [2006] 4 SLR(R) 849 ("*NF*") in at least three aspects. First, instead of purporting to describe the *precise circumstance(s)* corresponding to each category of cases (*NF* at [20]–[23]), the Proposed Framework purports to describe the *list of offence-specific factors* tending towards each category of harm and culpability. The limitation of the framework in *NF*, namely, that "the categories are not sufficiently comprehensive and do not cover the full spectrum of the circumstances in which the offence of rape may be committed" (see *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 ("*Terence Ng*") at [12(a)]), would thus be absent in the Proposed Framework.

Second, while there is "no conceptual coherence to the Category 2 aggravating factors" in *NF* (see *Terence Ng* at [12(b)]), the Proposed Framework is conceptually coherent because it merely describes how each of the offence-specific factors (which are already in operation under the present framework in *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606) might manifest itself in cases involving each level of harm and culpability.

Third, the concern with regard to the framework in *NF* that "it is not clear as to how the statutory aggravating factors (and the statutory minimum sentence prescribed in relation to those factors) should be taken into account" (see *Terence Ng* at [12(c)]) will not exist in the Proposed Framework, because any such statutory aggravating factors can simply be weaved into the Proposed Framework.

102 *Koh Yong Chiah v Public Prosecutor* [2017] 3 SLR 447 at [46].

103 [2022] 5 SLR 720.

sentence of preventive detention, finding them to be of "little assistance" because "[n]o two offenders would present with the same offending history, background, mental conditions, risk factors and protective factors".[104] This highlights the difficulty and inappropriateness in quantifying offender-specific factors in any sentencing framework.

88 Having explained the Proposed Framework in theory, this article now demonstrates how it may be applied, by applying it to offences under s 51(1)(*a*) of the CDSA:

> 1 At the first step, the court should identify: (a) whether the level of harm caused by the offence is 'Slight', 'Moderate' or 'Severe'; and (b) whether the level of the offender's culpability is 'Low', 'Medium' or 'High'. In doing so, the following offence-specific factors are relevant:

Factors going towards harm *Where factors fall under different levels of harm, they should be balanced to reach a fair level of harm*
A – Factors tending to indicate Severe harm: • Amount involved exceeds $100,000. • Alleged predicate offence involves large foreign syndicate with complex and structured transnational criminal enterprises: see Huang Ying-Chun at [67] and [144]. See, *eg*, *Public Prosecutor v Chen You-Jeng* [2018] SGDC 252 ("*Chen You-Jeng*") and *Ang Jeanette v Public Prosecutor* [2011] 4 SLR 1 ("*Ang Jeanette*").
In *Chen You-Jeng*, the accused persons were involved in a transnational syndicate which operated a police impersonation scam targeting elderly and vulnerable victims in Singapore. In total, $185,000 of scam proceeds obtained from five elderly victims aged between 51 and 83 years old were dissipated. Considering: (a) the amount cheated; (b) that a foreign syndicate with evidently complex operations was involved; (c) the number and vulnerability of victims in the predicate offence; and (d) the potential which such police impersonation scams have to erode the trust which the public has in the authorities, this case would rightfully be one where the level of harm caused was Severe. In *Ang Jeanette*, the accused, on instruction, remitted more than $2m worth of criminal benefits overseas. Although no syndicate was involved, a significant sum of criminal benefits, which were part of an even larger sum of criminal benefits that had been fraudulently obtained from several hundred victims, was involved. This would, thus, still be a case where the level of harm caused was Severe.

104 *Kuah Teck Hin v Public Prosecutor* [2022] 5 SLR 720 at [19].

B – Factors tending to indicate at least Moderate harm

- Cases involving a transnational element and/or syndicate are, ordinarily, minimally of Moderate harm: see *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 at [58].
- Amount involved exceeds $50,000.
- Confidence in public administration and/or financial sector harmed.

See, *eg*, *Public Prosecutor v Ong Tian Soon* [2008] SGDC 35 ("*Ong Tian Soon*") and *Public Prosecutor v Goh Teck Meng* [2009] SGDC 495 ("*Goh Teck Meng*").

In *Ong Tian Soon*, the accused allowed his account with POSB Bank to be used to receive scam proceeds worth $8,340, which were later withdrawn. Although the quantum of criminal benefits involved was relatively low, a scam syndicate was involved. Confidence in Singapore's financial sector was also harmed since the accused's bank account was used as an integral part of the predicate offence. This would, thus, still be a case where the level of harm caused was Moderate.

In *Goh Teck Meng*, the accused opened an account with DBS Bank and allowed it to be used to receive scam proceeds worth $29,907, which were later withdrawn. For the same reasons given in *Ong Tian Soon*, the level of harm caused was also deemed to be Moderate.

C – Factors tending to indicate Slight harm

- Amount cheated is below $20,000.
- No other harm factors in A and B present.

To date, there has been no reported decision where the harm caused may be considered Slight. Indeed, it would be rare for cases involving s 51(1)(*a*) of the CDSA to have only caused Slight harm. Perhaps an example of such a case would be one where the accused helps to remit a minimal sum of criminal benefits for a family member or friend and no syndicate was involved.

Factors going towards culpability

Where factors fall under different levels of culpability, they should be balanced to reach a fair level of culpability

A – Factors tending to indicate High culpability

- Offender played a leading role.
- Offender abused position of, and/or breached, trust.
- Significant planning and/or sophisticated nature of offence.
- Criminal activity sustained over long period of time.
- Offender in Singapore solely to commit offence.
- Offender appreciated nature of predicate offence.
- Offender charged under "actual knowledge" limb.

See, *eg*, *Chen You-Jeng* and *Public Prosecutor v Teng Weng Liang* [2018] SGDC 8 ("*Teng Weng Liang*").

In *Chen You-Jeng*, while the accused persons did not mastermind the highly co-ordinated scheme, they, motivated by the promise of a reward, played active and significant roles as runners of the syndicate, traveling to Singapore for the sole purpose of receiving and transferring the criminal benefits back to the foreign syndicate. The first accused had even recruited the second accused for the job, even though he knew that the moneys involved were derived from a police impersonation scam. This would thus be a case where the culpability of the accused persons was High (with the first accused having a higher culpability than the second accused).

In *Teng Weng Liang*, the accused, a Malaysian national, played a significant role in the operation of a foreign syndicate which he had direct links with. He actively recruited Malaysian runners who had bank accounts in Singapore and actively kept an eye on and directed them to withdraw scam proceeds which have been deposited into their bank accounts, masterminding the CDSA offences committed by at least three of his runners. He also travelled to Singapore for the sole purpose of committing the offences. Significant planning was involved to avoid detection. For example, the accused and his coconspirators took systematic steps to avoid detection by ensuring that they withdrew the funds from different branches of UOB Bank. Even after his runners' bank accounts were blocked from access, the accused recruited other runners or asked the existing runners to source for other bank accounts. This is a case where the accused's culpability would be High.

B – Factors tending to indicate at least Medium culpability

- Offender played a significant role.
- Some planning involved.
- Criminal activity sustained over some period of time.
- Offender was motivated by prospect of reward.

See, *eg*, *Ong Tian Soon* and *Goh Teck Meng*.

In *Ong Tian Soon*, the accused knew that he was facilitating a syndicated illegal activity. Motivated by a monetary reward however, he surrendered his bank passbook and ATM card, and was even caught trying to withdraw criminal benefits from another bank account belonging to another offender involved in a similar offence. He was also found to be in possession of three bank books and seven ATM cards belonging to a number of people. The offender's culpability in this case would be considered Medium.

In *Goh Teck Meng*, the accused knew that he was facilitating an illegal activity. Motivated by a reward however, he opened a bank account to facilitate the retention of criminal benefits, and this involved some degree of planning and premeditation as he made a deliberate decision to assist his accomplice and also received some moneys from his accomplice to open his bank account. He even played an active role by introducing three of his friends to his accomplice for the purposes of opening bank accounts for his accomplice's use. The offender's culpability in this case would be considered Medium.

> C – Factors tending to indicate Low culpability
> - Offender performed limited function under direction.
> - Offender was coerced, intimidated and/or exploited.
> - Opportunistic one-off offence; minimal planning involved.
> - No other harm factors in A and B present.
>
> To date, there has been no reported decision where the offender's culpability may be considered Low. That said, Low culpability may arise where a youthful offender helps an elder family member to receive and withdraw some moneys from his or her bank account, on the former's direction.

> 2 Before moving on to the second step, two important points should be emphasised. First, the tiered factors detailed above should not be applied in a mechanical or mathematical fashion. Where the factors present in the case at hand fall under different levels of harm and/or culpability, the sentencing judge should perform a *holistic balancing exercise based on all the factors* to arrive at a fair level of harm and/or culpability; no single factor should trump the other factors by default.
>
> 3 Second, the factors identified above are non-exhaustive and new sentencing considerations may be identified as the case law develops (see *Huang Ying-Chun* at [99]).
>
> …

89 The second to fifth steps of the sentencing framework would then be similar to the *Huang Ying-Chun* framework, except that at the third step, the sentencing judge would refer to the tiered list of factors when granulating the case.

(2) Strengths of Proposed Framework

90 The principal strength of the Proposed Framework is that it contains a degree of specificity which provides clearer guidance to the sentencing judge when determining the appropriate level of harm and culpability at the first stage (and, to a lesser extent, at the third stage), whilst allowing the sentencing judge to fully exercise his or her discretion by considering and assigning weight to the full spectrum of offence-specific factors. In fact, the Proposed Framework expressly requires the sentencing judge to conduct a holistic balancing exercise with reference to all of the factors present.

91 This way, the Proposed Framework retains the two strengths which the Singapore five-step sentencing framework has over the UK eight-step sentencing framework, namely: (a) clarity and neatness in terms of the consideration of offence- and offender-specific factors separately, which is in fact necessary for the Proposed Framework to operate because it only tiers the offence-specific factors but not the

offender-specific factors; and (b) discretion given to the sentencing judge to consider the full range of offence-specific factors.

92 Simultaneously, the Proposed Framework would also contain the strength of the UK framework, *ie*, the specificity of guidance it provides the sentencing judge at the first step.

93 The authors believe this would help to alleviate the two limitations of Singapore's current sentencing frameworks identified above[105] (*ie*, the occasional inconsistent application of guideline sentencing frameworks and, relatedly, the limited guidance offered for certain factual scenarios).

94 The ultimate role of sentencing frameworks is to "secure broad consistency in sentencing outcomes, by establishing patterns of reasoning that can guide the court to a sentence that is both appropriate on the facts of the case and broadly in line with the sentences imposed on similarly placed offenders".[106] It is humbly submitted that the Proposed Framework, which tiers and sets out the offence-specific factors with greater specificity, would allow patterns of reasoning to be established with greater clarity, thereby providing greater guidance to the sentencing court, in turn allowing it to derive sentences which are more aligned with those previously imposed on similarly-placed offenders. It would hence better serve the role of sentencing frameworks.

E. Application of Proposed Framework to other sentencing approaches

95 Thus far, this article has explained the operation of the Proposed Framework with reference to s 51(1)(*a*) of the CDSA, which employs a sentencing approach "modelled on" the "sentencing bands" approach as set out in *Logachev Vladislav v Public Prosecutor*[107] ("*Logachev*").

---

105 See para 7 *ff*.

106 Sundaresh Menon, Chief Justice, Supreme Court of Singapore, "Sentencing Discretion: The Past, Present and Future", keynote address at Sentencing Conference 2022 (31 October 2022) at para 20, citing *Public Prosecutor v Wong Chee Meng* [2020] 5 SLR 807 at [57] and *M Raveendran v Public Prosecutor* [2022] 3 SLR 1183 at [46].

107 [2017] 2 SLR 449. See n 79 *ff* and Kok Yee Keong, "Perhaps It Is Time to Consider a *Spandeck* Approach to Developing Sentencing Frameworks" *Law Gazette* (May 2021) <https://lawgazette.com.sg/feature/perhaps-it-is-time-to-consider-a-spandeck-approach/> (accessed 9 April 2024).

For clarity, under the "sentencing bands" approach, the court would first consider the *offence*-specific factors to determine the indicative sentencing bands, before adjusting the sentence to account for the offender-specific factors and the totality principle: see *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [39] and [72]; *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 ("*Logachev*") at [75]–[84]. Technically speaking, one could further split the "sentencing bands"

(cont'd on the next page)

96 Nonetheless, the Proposed Framework is equally applicable to the other four commonly used sentencing approaches, which are as follows:

(a) Under the "single starting point" approach, the court would first identify a notional starting point, which would then be adjusted after taking into account the *offence*- and offender-specific aggravating and mitigating factors.[108]

(b) Under the "benchmark" approach, the court would first identify an archetypal case (or a series of archetypal cases) and the sentence which should be imposed, before adjusting the sentence after taking into account the *offence*- and offender-specific aggravating and mitigating factors.[109]

(c) Under the "multiple starting points" approach, the court would first establish different indicative starting points, each corresponding to a different class of the offence, before adjusting the sentence to take into account the other *offence*- and offender-specific aggravating and mitigating factors.[110]

---

approach into the "two-step sentencing bands" approach and the "five-step sentencing bands" approach. However, as observed by some academics, there is no practical difference between these two sub-approaches: see Kok Yee Keong, "Perhaps It Is Time to Consider a *Spandeck* Approach to Developing Sentencing Frameworks" *Law Gazette* (May 2021) <https://lawgazette.com.sg/feature/perhaps-it-is-time-to-consider-a-spandeck-approach/> (accessed 9 April 2024). Menon CJ also drew no distinction between the two sub-approaches: see Sundaresh Menon, Chief Justice of Singapore, "Sentencing Discretion: The Past, Present and Future", keynote address at Sentencing Conference 2022 (31 October 2022) at para 22. Similarly, this article will not distinguish between the two sub-approaches.

For completeness, the authors note that the High Court in *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 ("*Huang Ying-Chun*") at [47]–[49] had held that it was employing the "sentencing matrix" approach. However, the structure of the *Huang Ying-Chun* framework appears to be more analogous to the *Logachev* framework than the "sentencing matrix" framework as it was originally construed (see *Poh Boon Kiat v Public Prosecutor* [2014] 4 SLR 892 at [74]–[86] and [94]–[100], cited in *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [33]). This article has hence proceeded on the basis that that the *Huang Ying-Chun* framework was "modelled on" the *Logachev* framework's "sentencing bands" approach. In any event, regardless of whether the *Huang Ying-Chun* framework adopted the "sentencing bands" or "sentencing matrix" approach, the argument that the Proposed Framework can be applied across all of the commonly used sentencing approaches remains valid. This is because all approaches involve the consideration of the relevant offence-specific factors, which the Proposed Framework targets: see para 97 *ff*.

108 See, *eg*, *Vijay Kumar v Public Prosecutor* [2023] SGHC 109 at [74]–[77]. See also *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [27].

109 See, *eg*, *Huang Xiaoyue v Public Prosecutor* [2023] SGHC 187 at [54]–[60]. See also *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [31]–[32].

110 See, *eg*, *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 at [47]–[76]. See also *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [29].

(d) Under the "sentencing matrix" approach, the court would first consider the seriousness of an offence by referring to the "principal factual elements" of the case to arrive at a preliminary classification (in practice, this is done by locating the position of the case in a sentencing matrix, with each cell in the matrix featuring a different indicative starting point and sentencing range). Based on this assessment, the starting point and the range of sentences will be identified. At the second stage of the analysis, the precise sentence to be imposed will be determined by having regard to any other *offence*- and offender-specific aggravating and mitigating factors, which do not relate to the principal factual elements of the offence.[111]

97 As can be gleaned from their respective explanations (and examples cited), each of the other four sentencing approaches, like the "sentencing bands" approach upon which the *Huang Ying-Chun* framework is modelled, involves the consideration of the relevant *offence-specific* factors. Since the Proposed Framework is targeted at such lists of offence-specific factors (see paras 83–86 above), it can and would be equally applicable to all other sentencing approaches commonly used by the Singapore courts.

IV. Concerns

98 This article will now address some potential concerns with the Proposed Framework, namely, that it will fetter a sentencing judge's discretion and that its application might be practically difficult or lead to arbitrariness.

A. Fettering of sentencing judges' discretion

99 As the offence-specific factors are tiered under the Proposed Framework, there may be concerns that such specific guidance on how to apply offence-specific factors would tie a sentencing court's hands when it comes to imposing an appropriate sentence.

100 However, the authors humbly submit that the Proposed Framework will not fetter the court's discretion. This is because: (a) the guidelines proffered only pertain to offence-specific factors; (b) the guidelines are not prescriptive and, in fact, emphasise discretion; and

111 See, *eg*, *Poh Boon Kiat v Public Prosecutor* [2014] 4 SLR 892 at [74]–[86] and [94]–[100]. See also *Ng Kean Meng Terence v Public Prosecutor* [2017] 2 SLR 449 at [33].

(c) a mathematical approach is not being recommended. Each of these reasons will now be discussed in turn.

(1) Guidelines relate only to offence-specific factors

101 First, the suggestions to tier the relevant factors pertains only to the offence-specific considerations, the application of which already ought to be largely consistent as a matter of principle (see para 94 above). The offender-specific factors, which, as explained at paras 86–87 above, would become inappropriate if tiered, are left untouched under the Proposed Framework.

(2) Guidelines are not prescriptive

102 Second, as explained at paras 84–85 above, under the Proposed Framework, judges are still free to apply the factors based on their discretion. In fact, the Framework explicitly requires sentencing judges to exercise their discretion by performing a *holistic balancing exercise based on all the factors* to arrive at a fair level of harm and/or culpability where, as would often be the case, the various factors in a case fall within different tiers of harm and/or culpability.

103 Moreover, judges are free to distinguish the case before them from the tiered offence-specific factors set out in the Proposed Framework. As noted by V K Rajah J in *Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor*,[112] "no two cases can or ever will be completely identical and symmetrical".[113] If a sentencing judge disagrees with the impact of the presence of an offence-specific factor on the harm or culpability level in a case, he or she could distinguish that factor as presented in the case at hand from the seemingly similar factor as tiered in the Framework. Hence, even with the enhanced guidance under the Framework, judges are still free to exercise their discretion by distinguishing the case before them from the illustrations and examples set out in the Framework, to justify any deviations.[114]

(3) Approach is not mathematical

104 To illustrate the third point, it would be helpful to compare the Proposed Framework with the sentencing framework set out in *Takaaki*

112 [2005] 3 SLR(R) 1.

113 *Dinesh Singh Bhatia s/o Amarjeet Singh v Public Prosecutor* [2005] 3 SLR(R) 1 at [24], cited in *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [18].

114 *Viswanathan Ramachandran v Public Prosecutor* [2003] 3 SLR(R) 435 at [43], cited in *Public Prosecutor v UI* [2008] 4 SLR(R) 500 at [20].

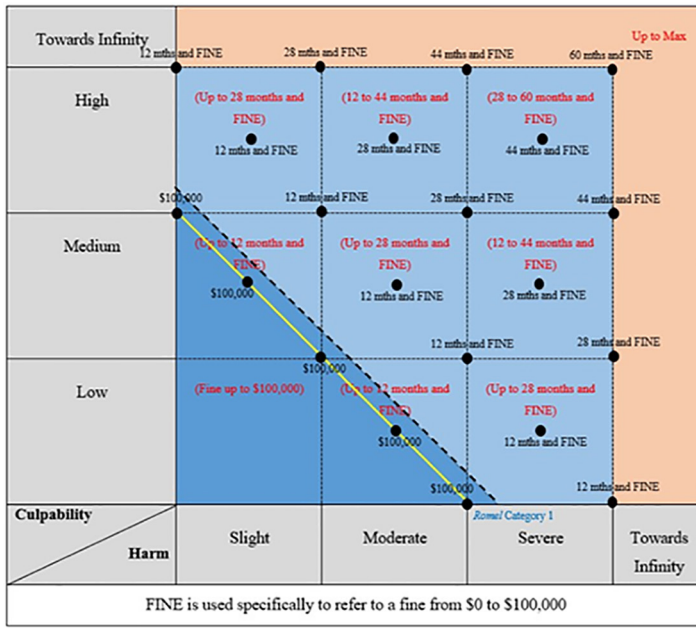
Masui v Public Prosecutor[115] ("*Masui (HC)*"), which is a modification of the commonly used five-step sentencing approach.

105 In *Masui (HC)*, the High Court distinguished guideline sentencing frameworks into three categories: (a) the "Single Variable Framework", wherein indicative starting sentences are derived based on a single "dominant sentencing parameter" (*eg*, weight of drugs trafficked); (b) the "Double Variable Framework", wherein indicative starting sentences are derived based on two "dominant independent sentencing variables" (*eg*, harm and culpability); and (c) the "Multiple Variable Framework", wherein "more than two key variables have a major impact on the indicative sentence".[116]

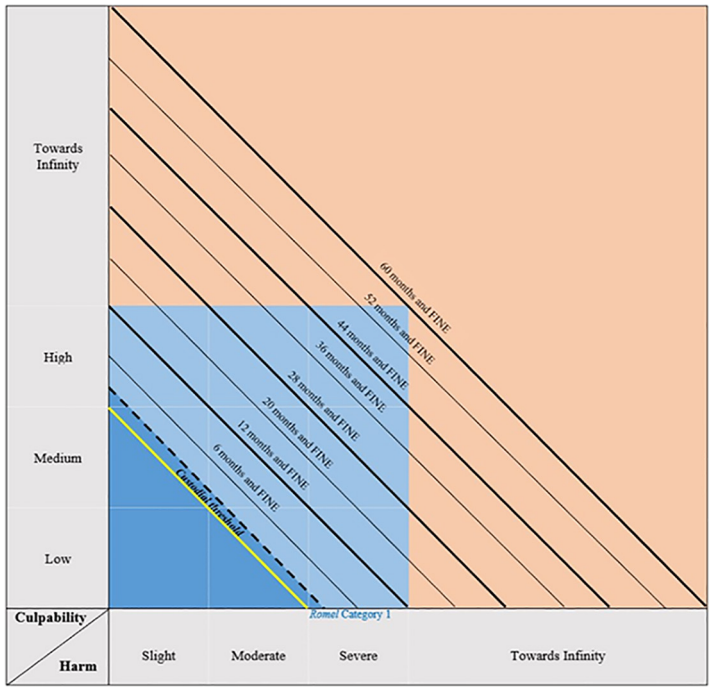
106 The High Court then introduced a new sentencing framework which would allow courts to appreciate that each combination of the levels of harm and culpability, as the two independent variables in the "Double Variable Framework", would culminate in a precise point within a matrix, which would in turn correspond to a specific starting sentence.[117]

107 Specifically, *Masui (HC)* would have the sentencing court use a "modified harm-culpability matrix" (or a "contour matrix", which is a simplified and more user-friendly form of the "modified harm-culpability matrix") to *precisely pinpoint* where its case falls within a harm-culpability matrix, to determine an exact indicative starting sentence at steps 2 and 3 of the Framework:

115 [2021] 4 SLR 160.
116 *Takaaki Masui v Public Prosecutor* [2021] 4 SLR 160 at [128]–[131].
117 *Takaaki Masui v Public Prosecutor* [2021] 4 SLR 160 at [254]–[283].



Modified harm-culpability matrix



Contour matrix

108 Commenting on the sentencing framework in *Masui (HC)*, Sundaresh Menon CJ in *Goh Ngak Eng v Public Prosecutor*[118] reiterated that sentencing frameworks are "meant to only *guide* the court to the appropriate sentence … using a methodology that is broadly consistent", and hence cautioned against enforcing a sentencing framework which sets out "specific guidance … in the aim of achieving mathematical precision".[119] Therefore, the sentencing framework in *Masui (HC)* was observed by Menon CJ to have the "untoward effect of fettering the court's discretion".[120]

109 In contrast, the Proposed Framework does not deviate nearly as far from the current sentencing approaches adopted by the courts, as compared to the mathematical approach expounded on in *Masui (HC)*. The Framework simply advocates for the Supreme Court to be *more specific* in setting out the harm and culpability factors to be considered after examining the relevant precedents. This would give sentencing court judges clearer and more helpful guidance.

110 To further elaborate, the specific examples, illustrations, and/or numerical indications that the Proposed Framework would ask the Supreme Court to provide would most often be based on existing case law which would have, in any event, been referred to by sentencing judges when deciding future cases. The main difference which the Framework provides is thus an authoritative pronouncement of the precedents which correctly reflect the level of seriousness of the offence-specific factors from the outset, rather than leaving it to individual sentencing judges or an appellate court.

111 Therefore, the Proposed Framework can be characterised as an enhancement of the current approach, which, unlike the approach in *Masui (HC)*, assists, rather than dictates, a sentencing court's exercise of its discretion.

B. Practical difficulty and arbitrariness of application

112 The second potential concern which may arise is the practical difficulty involved in requiring Supreme Court judges to extrapolate

118 [2022] SGHC 254.

119 *Goh Ngak Eng v Public Prosecutor* [2022] SGHC 254 at [43].

120 *Goh Ngak Eng v Public Prosecutor* [2022] SGHC 254 at [42]–[44]. For a more recent example where the High Court had declined to adopt a sentencing framework because it "seeks to achieve a mathematically precise sentence which is antithetical to the sentencing exercise which is essentially one of judgment and commonsense", see *Syed Fathuddin Putra bin Syed A Rahman v Public Prosecutor* [2023] SGHC 338 at [33]–[45].

from the case at hand to provide guidance on what would result in a lower or higher level of harm and culpability, and, in any case, the arbitrariness of such extrapolation. In response, it is humbly submitted that: (a) the Singapore courts have, in existing guideline sentencing framework judgments, already demonstrated the practical feasibility of implementing the Proposed Framework; (b) there should generally be no issues of arbitrariness as judges would have a solid basis to rely on when implementing the Framework; and (c) in any case, any arbitrariness which may arise would be less than if sentencing courts were left to apply guideline sentencing frameworks with minimal guidance.

(1) Singapore courts have demonstrated practical feasibility of Proposed Framework

113 First, the Singapore courts have, in existing guideline sentencing framework judgments, already demonstrated several recommended practices contained in the Proposed Framework, albeit not consistently so.

114 Reference is made to the following cases:

(a) In *GBR v Public Prosecutor*,[121] the High Court had, in setting out the guideline framework for the offence of aggravated outrage of modesty under s 354(2) of the PC,[122] provided guideline descriptors and examples of what would fall within each sentencing band, by making reference to past case law. For example, the court held that Band 1 (low severity) would include cases which involve a touch over the clothes of the victim and do not involve an intrusion into the victim's private parts, referencing *Public Prosecutor v Palanisami Mohankumar*,[123] which involved the accused resting his hand on the thigh of a female victim.[124]

(b) In *Tan Song Cheng v Public Prosecutor*,[125] the High Court had, in setting out the guideline sentencing framework for tax evasion offences under s 96(1)(*b*) of the Income Tax Act,[126] provided guideline numerical indications of what sums of tax evaded would fall within each band of harm, wherein Levels 1,

121 [2018] 3 SLR 1048.

122 In *GBR v Public Prosecutor*, the applicable edition of the Penal Code was Cap 24, 2008 Rev Ed. That edition of the Penal Code has since been replaced with the 2020 Revised Edition. However, the provision in question remains the same. To avoid confusion, this article will only refer to this provision under the Penal Code (2020 Rev Ed).

123 District Arrest Case No 501215 of 2013.

124 *GBR v Public Prosecutor* [2018] 3 SLR 1048 at [32].

125 [2021] 5 SLR 789.

126 Cap 134, 2008 Rev Ed.

2 and 3 would involve cases with sums below $75,000, between $75,000 and $150,000 and above $150,000, respectively.[127]

(c) In *Logachev*,[128] in setting out a sentencing framework for cheating at play offences under s 172A(2) of the Casino Control Act,[129] the High Court provided general guiding principles on how the presence or absence of certain factors should affect determinations of levels of harm, by holding that cases which involve either a transnational element and/or a syndicate would result in at least a moderate level of harm in the usual course.[130]

(d) In *Vasentha d/o Joseph v Public Prosecutor*,[131] in setting out the guideline sentencing framework for the offence of trafficking in diamorphine under s 5(1)(*a*) read with s 5(2) of the Misuse of Drugs Act,[132] the High Court tiered the relevant culpability factors by sorting the factors into those which would indicate higher and lower levels of culpability.[133]

(2) No issue of arbitrariness

115 With regard to the potential concern that any specifics provided would be arbitrary, this article makes three points in response. First, in cases where guideline sentencing frameworks are established, judges would typically have read a good variety of cases cited by the Prosecution, the Defence and/or the Young Independent Counsel,[134] to assist them in formulating the appropriate guideline sentencing frameworks. Supreme Court judges could draw on such examples, illustrations, numerical indicators and/or general guiding principles from these past decisions.

116 Second, where the precedents do not readily lend themselves to a sentencing framework because the scenarios that arise are too varied, or where there is a paucity of reasoned precedents, the Supreme Court would often not issue a guideline sentencing framework as doing so would

127 *Tan Song Cheng v Public Prosecutor* [2021] 5 SLR 789 at [71].
128 *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609.
129 Cap 33A, 2007 Rev Ed.
130 *Logachev Vladislav v Public Prosecutor* [2018] 4 SLR 609 at [87].
131 [2015] 5 SLR 122.
132 Cap 185, 2008 Rev Ed.
133 *Vasentha d/o Joseph v Public Prosecutor* [2015] 5 SLR 122 at [51].
134 Young Independent Counsel were formerly known as young *amicus curiae*. The young *amicus curiae* scheme was introduced in 2010 with the aim of, *inter alia*, providing judges with assistance in finding precedent cases to establish new sentencing frameworks: see Benny Tan, "Assessing the Effectiveness of Sentencing Guideline Judgments in Singapore Issued Post-March 2013 and a Guide to Constructing Frameworks" (2018) 30 SAcLJ 1004 at para 19. See also, *eg*, *Sue Chang v Public Prosecutor* [2023] 3 SLR 440 at [28]–[29].

be inappropriate. An example of the former is the offence of cheating under s 417 of the PC, for which no general sentencing framework exists; this is because "offences of cheating do not readily lend themselves to a sentencing framework because of the array of different scenarios that might arise".[135] An example of the latter can be found in *Kwan Weiguang v Public Prosecutor*,[136] where Aedit Abdullah J observed that: "[i]t would not be wise to formulate a framework when there is an insufficient body of case law before the court".[137]

117 Third, this article acknowledges that there may be occasions where precisely because there is a paucity of reasoned decisions relating to an offence, the court finds that it is necessary to formulate a guideline sentencing framework.[138] In such cases, there would inevitably be a lack of precedents to refer to.

118 Even so, reference can be made to the relevant statutory provisions and to case law from other related areas of law in formulating the framework, such that the Proposed Framework would still not result in arbitrariness. To this end, the case of *Sue Chang v Public Prosecutor*[139] is instructive.

119 There, the High Court found that it was necessary to set out a sentencing framework for the offence of causing grievous hurt by driving without due care or reasonable consideration under s 65(3)(*a*) of the Road Traffic Act[140] ("RTA") to address a pressing need for consistency arising from a "pipeline" of pending prosecutions and appeals, and two different sentencing frameworks having arisen in the lower courts.[141] However, as s 65(3)(*a*) of the RTA was a relatively new provision, there was a lack of precedent cases on which the High Court could base its sentencing framework.

120 Nonetheless, in formulating the appropriate guideline sentencing framework, the High Court took reference from judgments involving

135 *Wong Tian Jun De Beers v Public Prosecutor* [2022] 4 SLR 805 at [38].
136 [2022] 5 SLR 766.
137 *Kwan Weiguang v Public Prosecutor* [2022] 5 SLR 766 at [44].
138 *Huang Ying-Chun v Public Prosecutor* [2019] 3 SLR 606 at [32].
139 [2023] 3 SLR 440.
140 Cap 276, 2004 Rev Ed. While the High Court in *Chen Song v Public Prosecutor* [2024] SGHC 129 has recently departed from *Sue Chang v Public Prosecutor* [2023] 3 SLR 440 ("*Sue Chang*") in its approach towards sentencing offences under s 65(3)(*a*) of the Road Traffic Act 1961 (2020 Rev Ed) (at [121]–[138]), *Sue Chang* remains relevant in illustrating how the courts might sometimes find it necessary to establish sentencing frameworks when there is a paucity of reasoned decisions relating to an offence.
141 *Sue Chang v Public Prosecutor* [2023] 3 SLR 440 at [49]–[52].

similar offences, such as *Tang Ling Lee*, where the court set out a sentencing framework for road traffic cases involving the offence of causing grievous hurt under s 338(*b*) of the PC (see paras 9–12 above), and *Edwin s/o Suse Nathen v Public Prosecutor*,[142] which involved the offence of driving under the influence of alcohol under s 67(1)(*b*) of the RTA.[143]

121 Therefore, in most cases where a guideline sentencing framework is set out, specifics provided could be based on precedent cases or statute, and there should not be much concern about arbitrariness.

(3) Alternative would result in even more arbitrariness

122 In any case, even if some degree of arbitrariness were encountered in the implementation of the Proposed Framework, this article argues that the degree of arbitrariness would be less than that which would arise from the alternative, *ie*, leaving the sentencing courts to apply their own standards to derive the levels of harm and culpability without specific guidance.

123 This alternative situation would likely result in the inconsistent application of sentencing frameworks and, in turn, inconsistent sentencing outcomes. In comparison, the Proposed Framework would not only result in less potential arbitrariness (as any arbitrariness would only arise when the framework is initially established, as opposed to every time a sentencing framework is applied by a sentencing court), but would also create more consistency in the application of sentencing frameworks and in the resultant sentencing outcomes.

V. Conclusion

124 In the past decade, the Supreme Court has issued guideline sentencing judgments with increased frequency. While these guideline judgments have increased consistency in terms of the sentencing *approaches* adopted by sentencing courts, there is still room for improvement because the guideline sentencing frameworks have not always been *applied* with consistent standards and, relatedly, because the present guideline frameworks sometimes provide insufficient guidance for sentencing courts.

125 In light of this, this article has recommended the tiering of the offence-specific factors in future guideline sentencing frameworks, to

142 [2013] 4 SLR 1139.
143 *Sue Chang v Public Prosecutor* [2023] 3 SLR 440 at [93], [95]–[96] and [103].

provide greater guidance to sentencing courts. This would, the authors believe, further improve the consistency in the sentencing decisions of the Singapore courts, whilst not fettering the discretion of the courts or resulting in any practical difficulties or arbitrariness.

126 The importance of consistency in sentencing by the first instance court is critical, for at least three reasons. First, the significant majority of criminal cases in Singapore are heard by the State Courts[144] and will remain unreported. Many also do not go on appeal. This would mean that any inconsistent sentences imposed by State Court judges may remain uncorrected.[145]

127 Second, even when a case goes on appeal, the appeal will be dismissed unless the sentence is *manifestly* excessive or inadequate. Such a position is logical considering the highly discretionary nature of the sentencing process and the relatively circumscribed grounds on which appellate intervention is warranted.[146] Nevertheless, it further serves to emphasise the importance of consistency in sentencing by the sentencing courts.

128 Lastly, many cases involve self-represented persons who may not have a firm grasp of the precedents, may not know how or when to appeal, or simply do not have the means to appeal their case. This again underscores the importance of the sentencing court meting out the appropriate sentence.

129 Indeed, it is telling that in its first-ever published guidelines on the reduction of sentences for guilty pleas, the Sentencing Advisory Panel has sorted the factor of the presence of a guilty plea into four tiers based on when *exactly* an accused indicates his or her intention to plead guilty to a charge, with each tier generally corresponding to an appropriate sentencing discount.[147]

130 Similarly, in the recent case of *Chen Song v Public Prosecutor*,[148] the High Court held that a new "modified *Tang Ling Lee* sentencing bands

144 See "Role and Structure of the State Courts" *SG Courts* <https://www.judiciary.gov.sg/who-we-are/role-structure-state-courts/role> (accessed 15 April 2024).

145 Sundaresh Menon, Chief Justice, Supreme Court of Singapore, Opening Address at Sentencing Conference 2014: Trends, Tools & Technology (9 October 2014) at para 23.

146 *Public Prosecutor v Mohammed Liton Mohammed Syeed Mallik* [2008] 1 SLR(R) 601 at [84]. See also *Kamis bin Basir v Public Prosecutor* [2023] SGHC 348 at [23].

147 Sentencing Advisory Panel Singapore, *Guidelines on Reduction in Sentences for Guilty Pleas* (1 October 2023) at paras 9–11.

148 [2024] SGHC 129.

approach" should be applied in the (limited)[149] context of offences under ss 65(3)(*a*) and 65(4)(*a*) of the Road Traffic Act 1961.[150] As will become evident from the following reproduced parts of this decision, the High Court had effectively tiered the harm and culpability factors to provide more specific guidance to the sentencing courts:[151]

> In our judgment, therefore, a modified *Tang Ling Lee* 'sentencing bands' approach is most suited for careless driving offences causing grievous hurt and hurt punishable under ss 65(3)(*a*) and 65(4)(*a*) of the RTA.
>
> As we shall elaborate below, this modified *Tang Ling Lee* 'sentencing bands approach' retains the key substance of the *Tang Ling Lee* 'sentencing bands approach', while *seeking to provide more specific guidelines to assist the sentencing courts in arriving at the appropriate sentence on the facts of each case. In particular, these specific guidelines aim to: (a) better aid the courts in their assessment of the extent of the harm suffered; and (b)* ***provide more structured guidance on when a certain case would fall within a particular sentencing band****.*
>
> *The modified Tang Ling Lee sentencing bands approach*
>
> As in *Tang Ling Lee*, the sentencing framework comprises the same three broad sentencing bands reflecting the varying degrees of seriousness of the offence, which is determined on the basis of: (a) the harm suffered by the victim; and (b) the culpability of the offender. *The difference lies in determining which indicative sentencing band a particular offence may fall within. In this regard, we find that* ***a quantitative factors-based approach, where the indicative sentencing band is determined at the first step, based on the number of offence-specific harm and culpability factors is especially useful****. To illustrate, 'lesser harm' is caused, and the offender's culpability is deemed as 'lower culpability' where* ***at most one harm or culpability factor applies in respect of each category****. 'Greater harm' would be caused and the offender's culpability deemed as 'higher culpability' where* ***there are 2 or more harm and culpability factors respectively.*** That being said, we stress that this is a general guideline which is not to be applied mechanistically in every case. The foremost inquiry is to assess holistically whether the totality of the harm suffered by the victim should be classified as either 'greater harm' or 'lesser harm' and whether the offender's culpability considered as a whole should be classified as either 'lower culpability' or 'higher culpability'.
>
> …
>
> For culpability, we have taken reference from the reported decisions across the offences under s 337(*b*) of the Penal Code (negligent driving causing hurt), s 338(*b*) of the Penal Code (negligent driving causing grievous hurt), s 65(4)(*a*) of the RTA (careless driving causing hurt) and s 65(3)(*a*) of the RTA (careless driving causing grievous hurt) in arriving at the relevant factors for culpability.

149 See generally, *Chen Song v Public Prosecutor* [2024] SGHC 129 at [47]–[140].
150 2020 Rev Ed.
151 See *Chen Song v Public Prosecutor* [2024] SGHC 129 at [121]–[140].

We set out a non-exhaustive list of factors which each constitute 1 offence-specific factor going towards culpability:

(a) *Any form of dangerous driving behaviour*. For instance:

(i) speeding;

(ii) driving against traffic;

(iii) driving when not fit to drive;

(iv) driving under the influence of alcohol or drugs;

(v) sleepy driving;

(vi) driving while using a mobile phone;

(vii) swerving in and out of lanes;

(viii) using a vehicle in a dangerous fashion; and

(ix) street racing.

(b) *Flouting of traffic rules and regulations*. For instance:

(i) failing to stop at a stop line;

(ii) failing to conform to traffic signal;

(iii) not forming up correctly to execute a turn;

(iv) changing lanes across a set of double white lines/chevron markings; and

(v) making an illegal U-turn/right turn.

(c) *High degree of carelessness*: This is demonstrated where there was a prolonged or sustained period of inattention (as opposed to a momentary lapse of attention), and where the offender was deliberately cavalier about certain mitigatable risks. As stated in *Sue Chang* at [95], it would also be relevant to consider the extent to which the offender's distraction was avoidable and the extent to which the offender's misjudgment was reasonable.

[emphasis in original in underline; emphasis added in italics and bold italics]

131 In light of the foregoing, the authors hope that the Supreme Court will consider implementing the Proposed Framework.