

10 December 2015

Dear Members

Meeting of the Sentencing Council – 18 December 2015

The next Council meeting will be held in the **Queens Building Conference Suite, 2nd Floor Mezzanine at the Royal Courts of Justice**, on Friday 18 December 2015 at 9:45.

The meeting is being held in the Queen's Building. A security pass is not needed to gain access to this building and members can head straight to the meeting room. Once at the Queen's building go to the lifts and the floor is 2M. Alternatively call the office on 020 7071 5793 and a member of staff will come and escort you to the meeting room.

The agenda items for the Council meeting are:

- | | |
|--|-------------|
| ▪ Agenda | SC(15)DEC00 |
| ▪ Minutes of meeting held on 20 November | SC(14)NOV01 |
| ▪ Action Log | SC(15)DEC02 |
| ▪ Guilty Plea | SC(15)DEC03 |
| ▪ Youths | SC(15)DEC04 |
| ▪ Sentencing Mothers | SC(15)DEC05 |
| ▪ Imposition | SC(15)DEC06 |
| ▪ Workplan | SC(15)DEC07 |

Members can access papers via the members' area of the website.

This is a shorter meeting, finishing at 13:45. A table has been booked for 14:00 at Cigalon, Chancery Lane for Christmas lunch.

I look forward to seeing you on the 18th.

Yours sincerely



Claire Fielder

Head of the Office of the Sentencing Council

Blank page

Sentencing Council

COUNCIL MEETING AGENDA

18 December 2015
Royal Courts of Justice
Queen's Building Conference Room

- | | |
|---------------|--|
| 09:45 – 10:00 | Minutes of the last meeting and matters arising (papers 1 & 2) |
| 10:00 – 11:00 | Guilty plea presented by Ruth Pope (paper 3) |
| 11:00 – 11:45 | Youth presented by Vicky Hunt (paper 4) |
| 11:45 – 12:15 | Sentencing Mothers: Prison Reform Trust recommendations to the Council presented by Claire Fielder (paper 5) |
| 12:15 – 13:15 | Imposition of community orders and custodial sentences presented by Lisa Frost (paper 6) |
| 13:15 – 13:30 | Members' area demonstration presented by Helen Stear |
| 13:30 – 13:45 | Update on the workplan presented by Claire Fielder (paper 7) |

Sentencing Council

COUNCIL MEETING AGENDA

Blank page

Sentencing Council

MEETING OF THE SENTENCING COUNCIL

20 NOVEMBER 2015

MINUTES

<u>Members present:</u>	Colman Treacy (Chairman) Michael Caplan Mark Castle Julian Goose Martin Graham Jill Gramann Tim Holroyde Sarah Munro Lynne Owens Julian Roberts John Saunders
<u>Apologies:</u>	Heather Hallett Alison Saunders Richard Williams
<u>Advisers present:</u>	Paul Wiles
<u>Representatives:</u>	Stephen Muers for the Ministry of Justice (Director, Criminal Justice Policy) Ceri Hopewell for the Lord Chief Justice (Legal Advisor to the Lord Chief Justice, Criminal Justice Team) Peter Lewis, Chief Executive of CPS, attending on behalf of Alison Saunders
<u>Members of Office in Attendance</u>	Claire Fielder (Head of Office) Mandy Banks Lisa Frost Vicky Hunt Ruth Pope Nick Mann

1. WELCOME AND APOLOGIES FOR ABSENCE

- 1.1 Apologies were received as set out above.

2. MINUTES OF LAST MEETING

- 2.1. The minutes from the meeting of 23 October 2015 were agreed.

3. MATTERS ARISING

- 3.1 The Chairman welcomed Judge Chanyoung Yoon and Judge Eui Young Lee, from South Korea, who were observing half of the Council meeting. They are both currently academic visitors at Cambridge University.
- 3.2 The Chairman expressed his thanks to Paul Wiles for his enormous contribution as advisor to the Council since its creation. His appointment had come to an end but he would continue to advise on an ad hoc basis and to attend meetings at the invitation of the Chairman.

4. UPDATE ON HEALTH & SAFETY LAUNCH - PRESENTED BY NICK MANN, OFFICE OF THE SENTENCING COUNCIL

- 4.1 The Council was updated on the launch of the guideline on sentencing health and safety offences. The launch received completely positive or neutral media coverage, with over 30 news items and four interviews with Council spokespeople. The key messages were widely carried including bigger fines for serious offenders and improved consistency in sentencing. There were over 300 tweets on the day of launch with discussions continuing on subsequent days and an increase in the Council's online followers. Practitioners were informed via internal channels.
- 4.2 The Chairman thanked the media spokespeople, Michael Caplan and Tim Holroyde.

5. DISCUSSION ON ALLOCATION – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

- 5.1 The Council agreed a minor alteration to the revised Allocation guideline following representations from stakeholders. The guideline will be published on 10 December 2015 and come into effect on 1 March 2016.

6. DISCUSSION ON GUILTY PLEA – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

- 6.1 The Council considered the consultation document and resource assessment for the draft reduction in sentence for a guilty plea guideline. The Council agreed the consultation document in outline and suggested amendments to the resource assessment to aid clarity. The Council agreed that the consultation should be held from February to May 2016.

7. DISCUSSION ON ASSAULT – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

- 7.1 The Council discussed proposals to revise the assault definitive guideline, following the recent publication by the Council of its assessment of the guideline. The Council considered the implications of the recent recommendations by the Law Commission on reforming the Offences against the Person Act. Given the significance of the Law Commission's recommendations, the Council decided to pause work on revising the guideline.
- 7.2 In making this decision, the Council noted that its own assessment had not identified an urgent need to revise the guideline. It agreed that a higher priority was to commence work on revising the Overarching Principles - Domestic Violence and Overarching Principles - Assaults on a Child and Child Cruelty.
- 7.3 The Council agreed to review the timing of any future work on the assault guideline once the Government publishes its interim response to the Law Commission's recommendations.

8. UPDATE FROM THE ANALYSIS AND RESEARCH SUB-GROUP – PRESENTED BY JULIAN ROBERTS, SENTENCING COUNCIL

- 8.1 The Council was informed that evaluation of the theft and drugs guidelines started in 81 magistrates' courts on 16 November, the first stage of which will run until Christmas and then throughout January.
- 8.2 Analysis of data on burglary is being updated; a decision will be taken at a later stage on what if any additional work is required to evaluate the guideline.

9. DISCUSSION ON IMPOSITION OF COMMUNITY AND CUSTODIAL SENTENCES – PRESENTED BY LISA FROST, OFFICE OF THE SENTENCING COUNCIL

- 9.1 The Council reviewed a draft guideline for the imposition of community and custodial sentences. A number of revisions to the guideline were

discussed and agreed. It was agreed that the guideline would be signed off at the December meeting, and a short targeted consultation launched in mid January.

10. DISCUSSION ON DANGEROUS DOGS – PRESENTED BY MANDY BANKS, OFFICE OF THE SENTENCING COUNCIL

- 10.1 The Council agreed some minor changes to some sentence levels, harm factors, and aggravating factors. The Council agreed its approach to the consultation response paper and signed off the definitive guidelines for publication in March 2016.

11. DISCUSSION ON YOUTHS – PRESENTED BY VICKY HUNT, OFFICE OF THE SENTENCING COUNCIL

- 11.1 The Council considered the latest draft of the sexual offences youth guideline and discussed options for a change to the structure. The proposed changes will also be reflected in the new robbery youth guideline and presented back to the Council in December.

SC(15)DEC02 December Action Log

ACTION AND ACTIVITY LOG – as at 10 December 2015

	Topic	What	Who	Actions to date	Outcome
SENTENCING COUNCIL MEETING 30 JANUARY 2015					
1	PQBD's review of efficiency in criminal proceedings	Paper/s to March Council exploring options for implementing the review's recommendations where relevant to the Council.	Claire Fielder / Ruth Pope		ACTION CLOSED The allocation guideline has been revised in accordance with the recommendations in the Review. The recommendations relating to the guilty plea guideline have been considered in the draft guideline consultation.
SENTENCING COUNCIL MEETING 23 October 2015					
2	Robbery	Council members to check that they are content with the rationale for the main changes to the guidelines set out in October's Council paper, and send any proposed changes to Vicky within a fortnight.	All Council members/ Vicky Hunt	Consultation Response Document circulated in full. Comments received by 7 members of the Council	ACTION ONGOING: Comments to be received in full by 18 December
3	Work Plan	Review of scope and timing of work on child abuse / online offences, with further input from the police as to the offences of concern, and revert to the Council for confirmation of approach.	Lynne Owens' office Claire Fielder/ Office		ACTION CLOSED: Council will be invited to approve amendments to the work plan in December.
SENTENCING COUNCIL MEETING 20 November 2015					
4	Guilty Plea	Julian Roberts and Paul Wiles to meet with officials to rework the resource assessment for consideration by the Council at the December meeting	Julian Roberts, Paul Wiles, Ruth Pope and Liz Whiting		ACTION CLOSED: Input received from Paul and Julian. Two alternative resource assessments to be considered at December meeting.
5	Imposition	Lisa Frost to provide a final draft imposition guideline incorporating changes suggested in November for review by the Council in December.	Lisa Frost		ACTION CLOSED: Final draft prepared for December meeting.

6	Dangerous Dogs	All Council members to send final comments on the guidelines to Mandy within a fortnight. The draft consultation response paper will be circulated to all members for comments by the end of December.	All Council members/Mandy Banks	ACTION ONGOING: any comments on the guidelines to be sent by 4 December. Draft of the consultation response paper to be sent by the end of December.	
7	Assault	Council to review decision to postpone assault work in June/ July 2016.	Mandy Banks	NOT STARTED: Review in summer 2016.	
8	Youth	Vicky Hunt to work with John Saunders to revise the sexual offences and robbery guidelines.	Vicky Hunt, John Saunders		ACTION CLOSED: New drafts have now been prepared ready for the Council to consider in December.
9	Analysis and Research subgroup	Analysis and Research subgroup to consider the updated burglary analysis when it is circulated and advise on what further work might be needed. Office to respond to Meng Le Zhang to add standard Sentencing Council research disclaimer to his academic paper.	Analysis and Research subgroup/Liz Whiting/Emma Marshall		ACTION CLOSED: Burglary analysis has been circulated; Emma Marshall has responded to Meng Le Zhang.
10	Work Plan	Work plan to be revised to take account of decision to delay work on assault.	Claire Fielder		ACTION CLOSED: Council will be invited to approve amendments to the work plan in December.
11	Work Plan	Consideration to be given to the impact on timetable of PCC and local elections in May 2016	Claire Fielder	ACTION ONGOING: No impact on Justice Committee planning. Usual 6 week pre election period from 24 March. Guidance to civil servants will be issued nearer the time. We will schedule announcements to avoid this period.	

Sentencing Council

Sentencing Council meeting: 18 December 2015
Paper number: SC(15)NOV03 – Guilty Pleas
Lead Council members: Alison Saunders, Michael Caplan, Julian Roberts and Tim Holroyde
Lead official(s): Ruth Pope
0207 071 5781

1 ISSUE

1.1 The Council has a statutory duty to publish a resource assessment when it consults on draft guidelines and when it issues definitive guidelines. The statute requires an assessment by the Council of the likely effect of the guidelines on the resources required for the provision of prison places, probation services and youth justice services.

1.2 At the meeting in November 2015, the Council considered a draft consultation resource assessment for the guilty plea guideline. The collective view of the Council was that the resource assessment did not give a balanced explanation of the potential resource implications of the guideline in the context of a changing criminal justice system.

1.3 As agreed, Julian Roberts and Paul Wiles have liaised with officials regarding a revised resource assessment. As a result of this work two options are provided.

1.4 This is the final opportunity for the Council to discuss and decide the approach to and content of the resource assessment before the consultation launch on 9 February 2016.

1.5 A short presentation will be made to the Council at the meeting to ensure that all members are fully aware of the issues surrounding the resource impact of this guideline.

2 RECOMMENDATION

2.1 The Council is asked to choose between the two alternative resource assessments at Annexes A and B.

2.2 The recommended version is Annex B (the no change or 'null hypothesis' scenario).

2.3 Any drafting suggestions on the preferred option should be made by email to Ruth Pope by 8 January 2016.

3 CONSIDERATION

The two alternative approaches

3.1 At previous meetings the Council has considered different approaches to quantifying and presenting the potential resource implications of this guideline.

3.2 The first approach, considered in September, was based on an attempt to predict behavioural change by offenders. Alison Saunders, Tim Holroyde and Michael Caplan worked with officials to develop an 'optimistic' and a 'pessimistic' scenario of how the draft guideline might affect offender behaviour. The starting point for these scenarios was the latest data that we have for timings of pleas and levels of reduction, from 2014. The scenarios estimated how behaviour might change under the new guideline, from the 2014 baseline.

3.3 The second approach, considered in November, was not to attempt to predict how offender behaviour might change, but to illustrate the potential resource impact of the guideline with reference only to the 2014 baseline figures: the 'null hypothesis'.

Achieving the right balance

3.4 At previous Council meetings members expressed misgivings about both approaches and were concerned that the resource assessment was underselling the positive effects of the guideline. In so far as there was any consensus at the November meeting it was also felt that the tables of

numbers in the version under consideration were difficult to interpret and gave too much prominence to figures that could be taken out of context.

3.5 There was some suggestion from Council members that as it is not possible to produce a fully evidence based resource assessment we should avoid giving any figures as to do so gives a spurious indication of accuracy. However, the clear steer from the November meeting was that the resource assessment must make plain the likelihood of there being significant costs associated with the guideline, given that we know that is likely to be the case in practice.

3.6 As a result of the discussions at previous Council meetings and the helpful input from Julian Roberts and Paul Wiles, two alternative resource assessments have been produced.

3.7 In both versions a largely narrative approach has been taken, to aid clarity and to ensure that undue prominence is not given to particular figures taken out of context. However no attempt has been made to conceal the conclusion that the guideline is likely to result in some increase in the prison population and consequently significant costs, which will not be entirely mitigated by savings elsewhere in the wider system.

3.8 Council members will recall that in spite of intensive work over the summer, it was ultimately decided that it was not possible to quantify the benefits accrued in terms of potential savings to the police and CPS, so reference to any system-wide savings also takes a largely narrative approach in both versions.

The optimistic and pessimistic scenarios

3.9 The resource assessment at Annex A is based on the approach outlined at paragraph 3.2 above. The optimistic and pessimistic scenarios used represent our best attempt to forecast the likely reaction from offenders to the guideline but are nevertheless only estimates. The attraction of this version is that it shows how the guideline could operate to incentivise earlier pleas and bring about the positive benefits (both financial and non-financial) that the guideline aims to achieve. The disadvantage of this version is that it is based on assumptions about offender behaviour. This behaviour is very

difficult to predict given the limited research in this area, and therefore the resource assessment may give 'spurious accuracy' to figures which are based on conjecture.

The 'null hypothesis' or no change scenario

3.10 The resource assessment at Annex B is based on the approach at paragraph 3.3 above. This recognises that it is impossible accurately to predict offender behaviour and therefore bases the analysis on 2014 figures. The attraction of this version is that the figures are based on reliable data whilst the narrative makes it clear that they are provided only as a reference point. The disadvantage of this version is that it gives no predicted improvement in plea timings to illustrate potential wider system savings. It has not been possible to estimate the full costs across the wider system, and therefore the savings and costs have not been presented in monetary terms, to avoid giving a biased picture.

Recommendation

3.11 On balance the recommended version is Annex B as it uses robust data without introducing any inherently unreliable predictions of behavioural change. This will make it less susceptible to criticism that any predictions are unrealistic or biased, whilst clearly conveying the conclusion that the resource implications of the guideline are likely to be significant.

Question 1: Which version of the resource assessment does the Council wish to publish?

Evaluation of the guideline

3.12 In both versions of the resource assessment there is a recognition that evaluation of the guideline will be important in order to assess its impact. The final paragraph of each version sets out the approach to evaluating the impact of the guideline. This work will not be straightforward and will require the assistance of other agencies in planning the approach and helping to access available data. Council members will be asked to assist in facilitating this.

Question 2: Does the Council agree with the proposed approach to evaluating the guideline?

4 IMPACT

4.1 The resource impact of the guideline is considered at paragraphs 3.1 to 3.11 above.

4.2 The Council is also required to consider the potential equality impact of the guideline. There is evidence from CCSS data and other academic sources that rates of pleas vary across ethnic groups. However, as this guideline is specifically designed to affect the **timing** of pleas but not the **rate** of pleas we do not anticipate that there are any equality issues associated with this guideline. This is, however, one area that could be explored as part of evaluation work.

Question 3: Is the Council content that there are no equality issues that require further investigation and that the evaluation process discussed at 3.12 above can be used to assess this aspect of the impact of the guideline?

5 RISKS

5.1 The Council will be aware that the guilty plea guideline is likely to be controversial and may attract criticism, not only in relation to potential costs but also in relation to the principles and the effect of the proposed rules on sentence lengths. To mitigate the risk of criticism of the principles, stakeholder engagement work has already commenced. This should also go some way to mitigate the risk of criticism of the potential costs, although as is explained above, it is not possible to mitigate completely the risks associated with the impact of the guideline.

Blank page

Consultation Stage resource assessment

Reduction in sentence for a guilty plea

1 Introduction

1.1 This document accompanies the consultation on the draft *reduction in sentence for a guilty plea* guideline and should be read alongside that document. It fulfils the Council's statutory duty, under section 127 of the Coroners and Justice Act 2009, to publish a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services. The main focus of this assessment is on estimating the impact of the proposed guideline on prison places.

2 Rationale and objectives for the new guideline

2.1 The Sentencing Council has a statutory duty under section 120(3) of the Coroners and Justice Act 2009 to prepare "*sentencing guidelines about the discharge of a court's duty under section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentence for guilty pleas)*". In producing this guideline the Council wishes to promote a clear, fair and consistent approach to the way guilty plea reductions are applied in all courts in England and Wales.

2.2 The guideline aims to incentivise offenders who are guilty to plead guilty as early in the court process as possible by restricting the maximum reduction in sentence to those who do so. The goal is to influence the timing of guilty pleas, but not to influence the rate of guilty pleas entered. If the guideline is successful, the proportion of pleas entered at the earliest stage of the court process will increase; the percentage of guilty pleas entered late in the process will decline. However, the overall proportion of cases resolved through a guilty plea should remain largely unchanged.

2.3 The draft guideline is more prescriptive than the existing guideline. In particular, under the draft guideline to receive the maximum one-third reduction for an either-way offence, a guilty plea must be entered in the magistrates' court, whereas currently a plea at the Crown Court will often receive the maximum reduction. This means that if offenders do not bring forward the timing of their pleas in response to the draft guideline, many will receive a lower reduction, resulting in longer prison terms being served and consequently greater costs in terms of providing prison places. However, if the draft guideline achieves its aim of encouraging earlier pleas, then some offenders will receive the same reduction and others will receive a higher reduction thus reducing any additional costs.

2.4 Encouraging more offenders to plead guilty at an earlier stage of the process will have many benefits, to victims and witnesses, and across the 85

whole criminal justice system. Some of these benefits will be monetary and others will be non-financial. For a detailed discussion of the benefits, see the Consultation document.

3. Sentencing practice and guilty pleas

3.1 In 2014, 1,215,695 offenders were sentenced in all criminal courts in England and Wales. Of these, 86,297 were in the Crown Court and 1,129,398 in magistrates' courts. Of those offenders sentenced in the Crown Court, 90 per cent entered a guilty plea at some point in the proceedings.

3.2 The Council has been able to use detailed data from the Crown Court Sentencing Survey¹ to establish when pleas were entered in the Crown Court and the level of reduction made in 2014. It should be noted that the timings of pleas and levels of reductions are already likely to have changed since 2014, as a result of initiatives such as Better Case Management, to bring current plea behaviour more in line with that prescribed by the new guideline. However, 2014 is the latest data available on which to make an assessment.

3.3 To estimate the resource effect of a guilty plea guideline, an assessment is required of how it will affect the levels of reductions applied and therefore the length of custodial sentences imposed. This guideline presents a particular challenge for the Council: in contrast to offence specific guidelines, which are intended solely to influence sentencers' behaviour, it is also intended to affect the behaviour of offenders and their legal representatives. This behaviour is very difficult to predict given the limited research in this area.

3.4 It should be noted that the assessment takes no account of any exceptions to the normal application of the guideline – it is assumed that the appropriate reduction for the stage of plea would be applied in all cases and that none of the exceptions would apply.² In addition, as with any Council resource assessment, the assessment is based on sentencers following the draft guideline at all times.

3.5 The assessment also does not take into account any potential changes to sentence levels prior to the application of the guilty plea reduction (such as treating co-operation with police as mitigation) again, because it is impossible to make any meaningful assessment.

3.6 Any changes in sentencing practice which may have occurred whether or not a new guideline was introduced (such as those arising through the implementation of the Better Case Management initiative) are also not included.

¹ From 1st October 2010 to 31st March 2015 the Council conducted the Crown Court Sentencing Survey (CCSS) which collected data on sentencing practice in the Crown Court.

² The draft guideline does provide for a number of exceptions to the levels awarded, the impact of which have not been estimated as part of this assessment.

4 Resource impact

4.1 Due to the uncertainty about how offenders might respond to the new guideline, the Council decided to explore two different scenarios based on assumptions about offenders' behaviour, in order to give a range within which the actual estimate may fall.

- **Scenario one:** the optimistic scenario - assumes that more offenders will plead at the first stage of the proceedings than in 2014. The rationale is that this will now be the only stage they will receive the maximum reduction and so they will be incentivised to enter an earlier plea.
- **Scenario two:** the pessimistic scenario - assumes that some offenders, having missed the full discount will now be more likely to go to trial and therefore receive no discount and a longer sentence. These scenarios are provided for reference at Annex A.

4.2 In every case in which a plea is entered and an offender is sentenced to immediate custody, the guilty plea reduction has an impact on the sentence length, and so any small change to average sentence lengths may have a very significant cumulative effect on the overall system.³

4.3 Using the scenarios, it is estimated that the draft guideline would increase the number of prison places required by approximately 500 under the optimistic scenario and by 2,000 under the pessimistic scenario, by 2017/18. This equates to a cost of between £15 million to £45 million in 2017/18, across both magistrates' and Crown Court sentences. The increase in prison places under the optimistic scenario results primarily from the reduction in discount from 25 to 20 per cent for pleas entered after the opportunity at the first stage of proceedings.

4.4 In time, the guideline could result in the requirement for between 1,000 (optimistic) and 4,000 (pessimistic) extra prison places each year, at a cost of between £30 to £105 million.

4.5 However, these costs reflect the increase in prison places only. Table 1 presents the resource impact under the two scenarios, and includes the savings and costs to prison, probation and the courts. Under the optimistic scenario savings would be generated in the short term, as offenders would plead earlier (reducing court hearing times) and fewer offenders would be released on licence.

³ In 2014 there were just under 90,000 prison sentences of immediate custody with an average custodial length of 15.6 months:
https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/428932/criminal-justice-statistics-december-2014.pdf

4.6 However, in the long term and by steady state, under both scenarios a cost is incurred. This is because, overall, offenders will spend longer on licence than they did in 2014, combined with the costs associated with the increase in prison places.

Table 1: Estimated nominal total resource costs excluding capital (savings are shown as negative) by financial year for the optimistic and pessimistic scenarios, £millions

	15/16	16/17	17/18	steady state
Optimistic	£0	-£20	-£10	£10
Pessimistic	£0	£20	£50	£120

4.7 The costs quoted exclude capital build costs and overheads. On this basis, a year in custody is assumed to cost an average of around £25,000⁴ in resource terms, including local maintenance, but excluding any capital build expenditure and overheads that may be necessary⁵.

4.8 As well as savings to the prison, probation and court service, where an offender pleads earlier then there would be some savings to the Crown Prosecution Service, Police and Legal Aid.

4.9 It is not possible to summarise accurately these wider system savings, as not all of the costs and savings are available to give a total picture. However, it is possible to provide an indication of where savings would be accrued. For example, the amount of work required to be undertaken by both the police and the Crown Prosecution Service to prepare the case file would reduce. The levels of remuneration paid by the Legal Aid Agency would reduce. However, under the pessimistic scenario where a defendant entered a plea much later in the process than at present, this would increase costs when compared to current levels.

4.10 A positive change in offender behaviour would also have a significant non-monetary benefit, in terms of the relief and reassurance felt by victims and witnesses.

4.11 If there were no positive change in offender behaviour, not only would the wider system savings not be realised, but also the significant investment by the police and the Crown Prosecution Service (CPS) in developing programmes to ensure provision of relevant material in a timely manner to enable a guilty plea to be entered at the first occasion⁶ would be undermined.

⁴ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367551/cost-per-place-and-prisoner-2013-14-summary.pdf

⁵ It should be noted that this is a lower figure than previously used in Sentencing Council resource assessments (£30,000) but this aligns with the new estimates used across the Ministry of Justice (MoJ).

⁶ For example, the development of the Transforming Summary Justice programme, Early Guilty Plea and Better Case Management Initiatives and recommendations in the President of the Queen’s Bench Division’s Review of Efficiency in Criminal Proceedings - which are now being built into the Criminal

As the purpose of the guideline is to change offender behaviour, failure to introduce the guideline may risk undermining these initiatives. Although it is too early to have firm evidence, early indications are that these initiatives, alongside related judicial initiatives, are having some positive impact on the stage at which pleas are being entered.⁷

5 Conclusion

5.1 The aim of calculating the impact of the guideline under both an optimistic and pessimistic scenario is to show both the potential savings and costs which may be incurred as a result of the guideline.

5.2 While there is considerable uncertainty around the exact resource implications, even where some offenders are incentivised to plead earlier, it is still likely that the guideline will result in a requirement for additional prison places.

5.3 In practice, the implications may be mitigated by the fact that the timings of guilty pleas will already have changed since 2014 by the time the guideline takes effect (which would not be before 2017), with practice more in line with the draft guideline than was the case in 2014. The cost of the prison places will also be partly offset by savings in the wider system, but they will not negate this cost completely.

6 Risks

6.1 Since the application of a sentence reduction for a guilty plea has the potential to apply to all sentences passed in the courts, small changes to offenders' behaviour and to practice by sentencers in applying the *reduction for a guilty plea* guideline have the potential to have substantial resource implications, depending on how these behavioural changes manifest themselves.

6.2 It is not possible accurately to predict how offenders' behaviour or sentencing behaviour will change as a result of the guideline, and hence there is considerable uncertainty surrounding the resource implications of the proposed guideline.

6.3 In light of this, it will be important for the Council to conduct early work to assess any consequences of the guideline once it is in force. Prior to the guideline coming into force, the Council will put in place a group comprising representatives of the Sentencing Council, the police, CPS, Her Majesty's Courts and Tribunal Service and the Ministry of Justice, to help steer work to collect a range of information that will feed into an assessment of the

Procedure Rules - place a requirement on all parties to engage early, make the right decisions, identify the issues for the court to resolve and provide sufficient material to facilitate that process. In many cases, the expectation is that the provision of relevant material in a timely manner will enable a just guilty plea to be entered at the first occasion.

⁷ From Crown Prosecution Service data, based on Crown Court data.

implementation and impact of the guideline in 2017. This may include, for example, interviews with sentencers and other criminal justice professionals, analysis of transcripts of sentencing remarks, case file analysis, and analysis of data from other criminal justice agencies. The group will review the findings from this data collection and advise the Council if it suggests the need for a review of the guideline.

Guilty plea Annex A – Resource assessment with optimistic and pessimistic scenarios

ANNEX A: GUILTY PLEA ASSUMPTIONS

Indictable only offences

Future Assumptions	Scenario	Existing Assumptions															
		1. Early Guilty Plea Hearing			2. PrePCMH			3. PCMH			4. PostPCMH			5. day of Trial			6. No plea
		10%	25%	33%	10%	25%	33%	10%	25%	33%	10%	25%	33%	10%	25%	33%	
1. 1st hearing at Crown Court - one third reduction	OPT	100%	100%	100%	80%	80%	75%	60%	60%	50%	40%	40%	40%	20%	20%	20%	
	PES	100%	100%	100%	65%	65%	65%		30%	30%		20%	20%		10%	10%	
2. Until time expires for service of defence statement - one fifth	OPT				20%	20%	25%	40%	40%	40%	30%	30%	30%	30%	30%	30%	
	PES				30%	30%	30%	100%	40%	40%		20%	20%		10%	10%	
3. Thereafter up to day of trial - 10-20% reduction	OPT									10%	30%	10%	10%				
	PES								20%	20%	100%	20%	20%		30%	30%	
4. day of trial 10%	OPT											10%	10%	50%	50%	50%	
	PES											20%	20%	100%	30%	30%	
5. No plea	OPT											10%	10%				100%
	PES				5%	5%	5%		10%	10%		20%	20%		20%	20%	100%

Yellow = greater than or equal to 10% of offenders

Guilty plea Annex A – Resource assessment with optimistic and pessimistic scenarios

Future Assumptions	Scenario	Existing Assumptions																		
		1. Magistrates Court			2. Early Guilty Plea Hearing			3. PrePCMH			4. PCMH			5. PostPCMH			6. Day of Trial			7. No plea
		10%	25%	33%	10%	25%	33%	10%	25%	33%	10%	25%	33%	10%	25%	33%	10%	25%	33%	
1. Magistrates Court One third reduction	OPT	99%	99%	100%	60%	50%	50%	55%	50%	50%	50%	50%	50%	50%	50%	50%				
	PES	95%	95%		50%	20%	20%	35%	20%	20%	20%	20%	20%	20%	20%	20%				
2. 1st hearing at Crown Court - one fifth reduction	OPT	1%	1%		40%	50%	50%	40%	45%	45%	40%	40%	40%	40%	40%	40%	40%	40%	40%	
	PES	5%	5%		50%	80%	50%	50%	65%	50%	50%	50%	50%	50%	50%	50%	0%	0%	0%	
3. After first hearing and up to day of trial - 20-10% reduction	OPT																40%	40%	40%	
	PES																10%	10%	10%	
4. Day of trial - 10% reduction	OPT							5%	5%	5%	5%	5%	5%	5%	5%	5%	20%	20%	20%	
	PES						10%	15%	15%	15%	15%	15%	15%	15%	15%	15%	90%	90%	90%	
5. No plea	OPT										5%	5%	5%	5%	5%	5%				100%
	PES						20%			15%	15%	15%	15%	15%	15%	15%				100%

Consultation Stage resource assessment

Reduction in sentence for a guilty plea

1 Introduction

1.1 This document accompanies the consultation on the draft *reduction in sentence for a guilty plea* guideline and should be read alongside that document. It fulfils the Council's statutory duty, under section 127 of the Coroners and Justice Act 2009 to publish a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services. The main focus of this assessment is on estimating the impact of the proposed guideline on prison places

2 Rationale and objectives for the draft guideline

2.1 The Sentencing Council has a statutory duty under section 120(3) of the Coroners and Justice Act 2009 to prepare "sentencing guidelines about the discharge of a court's duty under section 144 of the Criminal Justice Act 2003 (c. 44) (reduction in sentence for guilty pleas)". In producing this guideline the Council wishes to promote a clear, fair and consistent approach to the way guilty plea reductions are applied in all courts in England and Wales.

2.2 The guideline aims to incentivise offenders who are guilty to plead guilty as early in the court process as possible by restricting the maximum reduction in sentence to those who do so. The goal is to influence the timing of guilty pleas, but not to influence the rate of guilty pleas entered. If the guideline is successful, the proportion of pleas entered at the earliest stage of the court process will increase; the percentage of guilty pleas entered late in the process will decline. However, the overall proportion of cases resolved through a guilty plea should remain largely unchanged.

2.3 The draft guideline is more prescriptive than the existing guideline. In particular, under the draft guideline to receive the maximum one-third reduction for an either-way offence, a guilty plea must be entered in the magistrates' court, whereas currently a plea at the Crown Court will often receive the maximum reduction. This means that if offenders do not bring forward the timing of their pleas in response to the draft guideline, many will receive a lower reduction, resulting in longer prison terms being served and consequently greater costs in terms of providing prison places. However, if the draft guideline achieves its aim of encouraging earlier pleas, then some offenders will receive the same reduction and others will receive a higher reduction thus reducing any additional costs.

2.4 Encouraging more offenders to plead guilty at an earlier stage of the process will also have benefits, to victims and witnesses, and across the whole criminal justice system. Some of these benefits will be monetary and others will be non-financial. For a detailed discussion of the benefits, see the consultation document pXX.

3 Sentencing practice and guilty pleas

3.1 In 2014, 1,215,695 offenders were sentenced in all criminal courts in England and Wales. Of these, 86,297 were in the Crown Court and 1,129,398 in magistrates' courts. Of those offenders sentenced in the Crown Court, 90 per cent entered a guilty plea at some point in the proceedings.

3.2 The Council has the benefit of detailed data from the Crown Court Sentencing Survey¹ as to when pleas were being entered in the Crown Court and the level of reduction being made in 2014. This data shows that a substantial proportion (22 per cent) of offenders sentenced to custody for either-way offences in 2014, benefited from a reduction of one-third for guilty pleas entered in the Crown Court. In addition 17 per cent of offenders pleading to either-way offences at the Crown Court in 2014 had their sentences reduced by one-quarter. Under the draft guideline, the maximum that offenders in either of these categories would receive is a reduction of one-fifth.

3.3 There are other examples of offenders in the Crown Court who would receive a lower reduction under the draft guideline than they do under current practice. **Without a change in behaviour** there are only a very small number who may benefit from a greater reduction, namely those who currently receive a lower reduction because they are deemed to have pleaded in the face of overwhelming evidence. In all other cases offenders would receive either the same or a lower reduction than in 2014, unless they bring forward the point at which they plead.

4 Assessing the resource implications of the draft guideline

4.1 To estimate the resource effect of a guilty plea guideline, an assessment is required of how it will affect the levels of reductions awarded and therefore the length of custodial sentences imposed. This guideline presents a particular challenge for the Council - in contrast to offence-specific guidelines, which are intended solely to influence sentencer behaviour, it is also intended to affect the behaviour of offenders and their legal representatives. This behaviour change is something that it is not possible to predict with any confidence, given the limited research in this area.

4.2 The Council considered the possibility of estimating the costs of the draft guideline based on assumptions about offender behaviour, but rejected

¹ From 1 October 2010 to 31 March 2015 the Council conducted the Crown Court Sentencing Survey (CCSS) which collected data on sentencing practice in the Crown Court.

this because of the highly speculative and subjective nature of any such estimate. Therefore this assessment of the resource implications of the guideline starts from the concept of the “null hypothesis”, which in this context means that offenders will continue to plead at the same stage in the court process as was the case in 2014 (the latest figures that are available).

4.3 The following assessment is in no way a prediction of what is expected to happen following implementation of the guideline, but it provides a baseline against which to consider the costs. The fact that timings of pleas and levels of reductions are already likely to have changed since 2014, and that it is likely that there will be *some* change in defendant behaviour means that that the “null hypothesis” is very much a starting premise.

4.4 It should also be noted that the assessment takes no account of any exceptions to the normal application of the draft guideline – it is assumed that the appropriate reduction for the stage of plea would be applied in all cases and that none of the exceptions would apply.²

4.5 In addition, as with all Council resource assessments, the assessment is based on sentencers following the draft guideline at all times.

4.6 The assessment also does not take into account any potential changes to sentence levels prior to the application of the guilty plea reduction (such as treating co-operation with police as mitigation) again, because it is impossible to make any meaningful assessment.

4.7 Any changes in sentencing practice which may have occurred whether or not a new guideline was introduced (such as those arising through the implementation of the Better Case Management initiative) are also not included.

5 Resource impact

5.1 In every case in which a plea is entered and an offender is sentenced to immediate custody, the guilty plea reduction has an impact on the sentence length, and so any small change to average sentence lengths may have a very significant cumulative effect on the overall system.³

5.2 Applying the “null hypothesis”, it is estimated that the effect of the draft guideline would be an increase of approximately 600 prison places in 2016/17 and 2,000 prison places in 2017/18. The increase in prison places results from longer custodial sentences because smaller reductions would be given. This increase equates to a cost of £15 million and £50 million

² The draft guideline does provide for a number of exceptions to the levels of reduction awarded, the impact of which have not been estimated as part of this assessment.

³ In 2014 there were just under 90,000 prison sentences of immediate custody with an average custodial length of 15.6 months:

respectively,⁴ across both magistrates' court and Crown Court sentences; it also includes costs incurred in the probation service. If brought into force and without a change in behaviour compared to 2014, the guideline could, over time, result in the need for 4,500 additional prison places each year at a cost of £115 million per year.

5.3 The increase in the prison population would cause a temporary reduction in the expected licence population as offenders would be released later. However, this would not generate a significant saving to the public purse as Community Rehabilitation Companies are paid per licence start (i.e. by how many offenders start a licence period) rather than by caseload (the total number of offenders handled in any given period). The caseload for the National Probation Service would initially decrease, producing a saving, but this would then change to a net cost as a result of offenders spending longer on licence (due to longer overall sentences).

5.4 It should, however, be noted that whilst it is likely that the resource implications of the draft guideline will be substantial, it is unlikely that the costs will reach these levels. As already indicated, the timings of pleas and levels of reductions are already likely to have changed since 2014, and it is likely that overall offenders *will* plead at an earlier stage in the court process (for example, some offenders, when faced with only a one-fifth reduction at the Crown Court will enter their plea in the magistrates' court to obtain a one-third reduction).

6 The Wider System

6.1 If the guideline did not bring about any change in offender behaviour, then no wider system savings would be realised. However, as explained above, and in more detail in the consultation document, the purpose of the guideline is to bring about such behavioural change and incentivise early pleas. Where offenders plead earlier there would be some savings to the administration of justice.

6.2 It is not possible to summarise accurately these wider system savings, as not all of the costs and savings are available to give a total picture. However, it is possible to provide an indication of where savings would be accrued.

6.3 There would be a reduction in the average sitting days per case in the Crown Court, leading to those cases that do go to trial being listed more quickly. The amount of work required to be undertaken by both the police and the Crown Prosecution Service to prepare the case file would reduce.

⁴ The costs quoted exclude capital build costs and overheads. On this basis, a year in custody is assumed to cost an average of £25,000, including local maintenance, but excluding any capital build expenditure and overheads that may be necessary. This is a lower figure than previously used in Sentencing Council resource assessments (£30,000) but this aligns with the new estimates used across the Ministry of Justice (MoJ). For more details see: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/367551/cost-per-place-and-prisoner-2013-14-summary.pdf.

Conversely, if contrary to the aim of the guideline a defendant entered a plea much later in the process than at present, this would increase costs when compared to current levels.

6.4 A positive change in offender behaviour would also have a significant non-monetary benefit, in terms of the relief and reassurance felt by victims and witnesses.

6.5 If there were no positive change in offender behaviour, not only would the wider system savings not be realised, but also the significant investment by the police and the Crown Prosecution Service (CPS) in developing programmes to ensure provision of relevant material in a timely manner to enable a guilty plea to be entered at the first occasion⁵ would be undermined. As the purpose of the guideline is to change offender behaviour, a failure to introduce the guideline may risk undermining these initiatives. Although it is too early to have firm evidence, early indications are that these initiatives, alongside related judicial initiatives, are having some impact on the stage at which pleas are being entered.⁶

7 Conclusion

7.1 The aim of calculating the impact of the guideline under the “null hypothesis” (of no change in offender behaviour) is to provide a starting premise for any assessment of potential resource implications of the proposed guideline. Under the no change scenario there is a substantial increase in prison places. Even where there is behaviour change and some offenders are incentivised to plead earlier, it is still highly likely that the guideline will result in a requirement for additional prison places.

7.2 In practice, the actual implications may be mitigated both by a change in offender behaviour and by the fact that the timings of guilty pleas will already have changed by the time the guideline takes effect (which will not be before 2017) as practice moves more in line with the draft guideline than was the case in 2014. The cost of the prison places will also be partly offset by savings in the wider system, but they will not negate this cost completely.

8 Risks

8.1 Since the application of a sentence reduction for a guilty plea has the potential to apply to all sentences passed in the courts, small changes to offenders’ behaviour and to practice by sentencers in applying the *reduction for a guilty plea* guideline have the potential to have substantial resource

⁵ For example, the development of the Transforming Summary Justice programme, Early Guilty Plea and Better Case Management Initiatives and recommendations in the President of the Queen’s Bench Division’s Review of Efficiency in Criminal Proceedings - which are now being built into the Criminal Procedure Rules - place a requirement on all parties to engage early, make the right decisions, identify the issues for the court to resolve and provide sufficient material to facilitate that process. In many cases, the expectation is that the provision of relevant material in a timely manner will enable a just guilty plea to be entered at the first occasion.

⁶ From Crown Prosecution Service data, based on Crown Court data.

implications, depending on how these behavioural changes manifest themselves.

8.2 It is not possible accurately to predict how offenders' behaviour or sentencing behaviour will change as a result of the guideline, and hence there is considerable uncertainty surrounding the resource implications of the proposed guideline.

8.3 In light of this, it will be important for the Council to conduct early work to assess any consequences of the guideline once it is in force. Prior to the guideline coming into force, the Council will put in place a group comprising representatives of the Sentencing Council, the police, CPS, Her Majesty's Courts and Tribunal Service and the Ministry of Justice, to help steer work to collect a range of information that will feed into an assessment of the implementation and impact of the guideline in 2017. This may include, for example, interviews with sentencers and other criminal justice professionals, analysis of transcripts of sentencing remarks, case file analysis, and analysis of data from other criminal justice agencies. The group will review the findings from this data collection and advise the Council if it suggests the need for a review of the guideline.

Sentencing Council

Sentencing Council meeting: 18 December 2015
Paper number: SC(15)DEC04 - Youth
Lead officials: Vicky Hunt & Jo Keatley
020 7071 5786
Lead Council member: John Saunders

1 ISSUE

1.1 The Council is asked to consider a new structure for the youth guidelines following the discussion at the Council meeting in November.

2 RECOMMENDATION

2.1 The Council is asked to:

- agree the structure of the youth guidelines;
- make a decision about the approach to sentencing young offenders who are in 'relationships' with under 16 year olds and willingly engage in sexual activity;
- agree to the other minor changes in the sexual offences guideline; and
- agree to the factors in the youth robbery guideline.

3 CONSIDERATION

Structure

3.1 The new draft youth sexual offences and robbery guidelines follow a stepped approach. Steps 1 and 2 relate to offence seriousness. Step 1 sets out examples of harm and culpability factors that would indicate a certain threshold of sentence is likely to have been crossed, and Step 2 requires the sentencer to consider the aggravating and mitigating factors in order to conclude the assessment of seriousness.

3.2 Step 3 is specifically about offender mitigation and, for the first time, this is separated out from the offence mitigation to emphasise the importance of tailoring the sentence to the individual young offender.

- 3.3 Step 4 requires the sentencer to reduce the sentence where the young offender has pleaded guilty. This section reminds sentencers that this may mean changing from one type of sentence down to another.
- 3.4 Finally the sentencer must review the sentence at Step 5 to ensure it is appropriate. The sentencer is required to consider whether the sentence addresses the likelihood of an offender reoffending and the risk of that offender causing serious harm. This section illustrates that even where there is a high likelihood of offending or a high risk of serious harm, an intensive YRO should be able to address those concerns. In addition it shows that the court could consider a community alternative to custody under a YRO with Intensive Surveillance and Supervision (ISS) or a YRO with fostering. Finally custodial sentences are discussed, illustrating that these are sentences of last resort to be imposed where custody is unavoidable.
- 3.5 It is hoped that this new structure addresses the concerns raised at the last meeting and makes clear that many serious offences will cross the custody threshold, but before imposing such a sentence the court must give full consideration to the individual offender, in particular their age, level of maturity and their background, to consider whether a custodial sentence is appropriate. The structure presents a number of opportunities for the court, who may have originally assessed an offence as meriting custody, to move away from that initial assessment and impose a different type of sentence, should that prove suitable.

Question 1: Is the Council content with the general structure of the youth guidelines?

Changes to the Factors

- 3.6 Since the Council last saw the youth sexual offences guidelines there have been a number of changes to the factors at Step 1 which are highlighted and underlined in the draft at **Annex A**.
- 3.7 The first change is the addition of the word *isolated* in the second factor of the community order box so that it now reads; *Sexual activity (including **isolated penetrative activity**) without coercion, exploitation or pressure*. In the custodial box, the first factor has changed to **repeated penetrative activity or any penetrative activity involving coercion, exploitation or pressure**.

3.8 With these amendments only an isolated incident of penetrative activity would fall into the community order sentencing bracket, and any sort of repeated penetrative activity would be sufficient to cross the custodial threshold. This change would reflect the fact that repeated activity indicates a higher level of seriousness.

3.9 However this would mean that those young offenders who are involved in a sexual 'relationship' with a person under 16, where both parties willingly engage in sexual activity (although the younger party is not in a position to legally consent) would now fall into the custodial threshold category. This is something that the Council will need to consider and take a view on.

3.10 The CPS charging standards says the following:

It should be noted that where both parties to sexual activity are under 16, then they may both have committed a criminal offence. However, the overriding purpose of the legislation is to protect children and it was not Parliament's intention to punish children unnecessarily or for the criminal law to intervene where it was wholly inappropriate.

Consensual sexual activity between, for example, a 14 or 15 year-old and a teenage partner would not normally require criminal proceedings in the absence of aggravating features. The relevant considerations include:

- *the respective ages of the parties;*
- *the existence and nature of any relationship;*
- *their level of maturity;*
- *whether any duty of care existed; and*
- *whether there was a serious element of exploitation.*

3.11 It seems that most young people, who have willingly engaged in penetrative activity with a person under 16, are unlikely to be brought to Court. However if they are prosecuted it is most likely to be because the CPS took the view that the age gap, or gap in the level of maturity was such that there was an element of exploitation; or because there was an abuse of trust (breach of duty of care), which similarly could be described as exploitation.

3.12 Whilst the considerations for sentencing are likely to be different to those relevant to prosecution the Council may want to consider whether coercion, exploitation or pressure are potentially the most relevant features when considering the relative seriousness of an offence. The existence of any of these factors would place the offence into the custodial category under the existing draft.

Question 2: Does the Council consider that repeated penetrative activity should lead to the custodial threshold being crossed, or should the presence of exploitation, coercion or pressure be sufficient on its own to indicate that the custodial threshold is crossed?

3.13 One further change has been made to the last factor in the custodial box, to change the factor from **severe** psychological or physical harm to **significant** psychological or physical harm, as it was felt that severe made the threshold too high.

Question 3: Does the Council agree to the change from severe to significant psychological or physical harm?

3.14 As discussed above, one of the main changes to the structure of the guideline was to make the first step about the offence seriousness, and then to separate out the mitigation into offence and offender mitigation. In doing so two of the factors have been removed from the community order box at Step 1 (*Particularly young or immature offender, and Mental disorder or learning disability, particularly where linked to the commission of the offence*) and put into the offender mitigation box at Step 3.

Question 4: Does the Council agree to the removal of these factors from Step 1, and putting them into Step 3?

3.15 In the offence mitigating factors at Step 2, one additional factor has been added; 'Limited awareness or understanding of the offence'. This is a factor that is present in some of our other guidelines and may be a useful addition here. It is similar to the factor, 'genuine belief that activity was lawful' but may cover a wider set of circumstances.

Question 5: Does the Council agree to the addition of this factor in the offence mitigating factors?

3.16 At Step 3, the offender mitigating factors remain the same as in the earlier draft but are now separated from the offence mitigating factors.

Question 6: is the Council content with Step 3 or are there any additional factors, or explanatory wording to be added?

Additional Steps

3.17 Step 4 reminds the sentencer to reduce the sentence to take account of a guilty plea, where appropriate.

3.18 Step 5 is a new section, presenting a final opportunity for a sentencer to review the sentence to ensure it is adequate to prevent reoffending (rehabilitation) and minimise the risk of harm to the public (protection of the public). It shows the community and custodial options in more detail, demonstrating that custody should only be imposed where it is unavoidable.

Question 7: is the Council content with Steps 4 and 5?

Robbery Guideline

3.19 The Robbery guideline at **Annex B** has been drafted to replicate the sexual offences guideline in structure. It aims to cover all types of robbery.

3.20 The factors included in the guideline are the same as in earlier drafts but have been reorganised to ensure that those factors relating to the offender have been moved to the offender specific mitigation section at step 3.

3.21 The factors have been previously discussed (albeit in a different style of guideline) with magistrates and district judges during the first stage of our road testing on the youth guidelines, where they were met with general support. Further road testing is planned for the consultation stage of the guidelines.

3.22 The factors listed within the first box of Step 1 indicate those cases where it would seem unlikely that a custodial sentence would result. It is intended to capture the lower level type robbery offences, and the factors included relate only to the offence, not the offender.

Question 8: Is the Council content with the factors in the community order box?

3.23 The factors listed within the second box at Step 1 are intended to be the most serious factors which should cross the custodial threshold.

Question 9: Is the Council content with the factors in the custodial sentence box?

3.24 The aggravating and mitigating factors are the most commonly considered factors, but as always the lists are non exhaustive.

Question 10: Is the Council content with the list of aggravating and mitigating factors?

3.25 The guideline from Step 3 onwards is a replication of the sexual offences guideline.

Question 11: Is the Council content with the final sections of the guideline?

4 IMPACT

The potential impact of the proposed guidelines will be further explored during the consultation period. The intention is that the new guidelines do not impact sentencing practice but ensure a consistent approach by sentencers.

5 RISK

The youth of the offender requires a different approach to sentencing than that for adults. Sentencing is more individualistic and focuses heavily on the offender. There are differing ideas as to the best way to approach sentencing guidelines for youths. The Council will need to be able to give clear and cogent reasons for the choices it makes.

Sentencing youths for sexual offences involves a number of different considerations from adults. The primary difference is the age and immaturity of the offender. Young people are less emotionally developed than adults; offending can arise through inappropriate sexual experimentation; confusion about sexual identity or orientation; gang or peer group pressure to engage in sexual activity; or a lack of understanding regarding consent, exploitation and coercion.

Background factors may also play a part:-

- A history of abuse within the family (sexual, physical or emotional)
- Exposure to pornography or materials which are unsuitable for a person of the age of the offender
- Involvement in gangs associated with child sexual exploitation
- Unstable living or educational arrangements
- A trigger event such as the death of a close relative or a family breakdown

This guideline should be read alongside the Overarching Principles – Sentencing Youths definitive guideline which provides comprehensive guidance on the full range of sentences that are available by age. The guideline also includes details on issues such as grave crime determination and dangerousness.

The first step in determining the sentence is to assess the seriousness of the offence. This assessment is made by considering the nature of the offence and any aggravating and mitigating factors relating to the offence itself. **The fact that a sentence threshold is crossed does not necessarily mean that that sentence should be imposed.**

STEP 1: OFFENCE SERIOUSNESS – Nature of the offence

The boxes below give **examples** of the type of culpability and harm factors that may indicate that a particular threshold of sentence has been crossed.

A community sentence or an appropriate non custodial sentence may be the most suitable disposal where one or more of the following factors apply:

- Any form of non penetrative sexual activity
- Sexual activity (including **isolated** penetrative activity) without coercion, exploitation or pressure
- No psychological or physical harm caused to the victim

A custodial sentence or Youth Rehabilitation Order with Intensive Supervision and Surveillance or Fostering may be justified where one or more of the following factors apply:

- **Repeated penetrative activity or** any penetrative activity involving coercion, exploitation or pressure
- Coercion through violence or threats of violence
- Sustained or repeated offence
- Significant psychological or physical harm caused to the victim

STEP 2: OFFENCE SERIOUSNESS – Aggravating and mitigating factors

To complete the assessment of seriousness the court should consider the aggravating and mitigating factors relevant to the offence.

Aggravating factors (non exhaustive)

- 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
- Significant degree of planning
- Offender acts together with others to commit the offence
- Use of alcohol/ drugs on victim to facilitate the offence
- Abuse of trust (e.g. where the offender is babysitting the victim or is an older relative of the victim)
- Deliberate humiliation of victim, including but not limited to filming of the offence, deliberately committing the offence before a group of peers with the intent of causing additional distress or circulating details/photos/videos etc of the offence on social media or within peer groups
- Grooming

- Significant disparity of age between offender and victim
- Specific targeting of particularly vulnerable victim
- Any steps taken to prevent reporting the incident/ seeking assistance
- Pregnancy or STI as a consequence of offence
- Blackmail

Mitigating factors (non exhaustive)

- No previous convictions **or** no relevant/ recent convictions
- Good character and/or exemplary conduct
- Participated in offence due to peer pressure/ bullying
- Genuine belief that activity was lawful
- **Limited awareness or understanding of offence**

STEP 3: OFFENDER MITIGATION

Having assessed the offence seriousness the court should then consider the mitigation personal to the offender to determine whether a custodial sentence or a community sentence is necessary. The effect of personal mitigation may reduce what would otherwise be a custodial sentence to a non-custodial one or a community sentence to a different means of disposal.

Offender mitigating factors (non exhaustive)

- Particularly young or immature offender
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Unstable upbringing including but not limited to numerous care placements, exposure to drug and alcohol abuse, lack of attendance at school, lack of familial presence or support, victim of neglect and/or abuse, exposure to familial criminal behaviour, exposure by others to pornography or sexually explicit materials
- Determination and/or demonstration of steps taken to address offending behaviour

STEP 4: REDUCTION FOR GUILTY PLEAS

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

The reduction in sentence for a guilty plea can be taken into account by imposing one type of sentence rather than another; for example:

- by reducing a custodial sentence to a community sentence, or
- by reducing a community sentence to a different means of disposal.

See the Overarching Principles – Sentencing Youths definitive guideline for details of other available sentences including Referral Orders and Reparation Orders.

STEP 5: REVIEW THE SENTENCE

The court must now review the sentence to ensure it is the most appropriate one for the young offender. This will include an assessment of the likelihood of reoffending and the risk of causing serious harm. A report from the Youth Offending Team may assist.

Youth Rehabilitation Order

The following non custodial sentences are available under a Youth Rehabilitation Order:

	Offender profile	Requirements of order
Standard	Low likelihood of re-offending and a low risk of serious harm	Primarily seek to repair harm caused through, for example: <ul style="list-style-type: none"> • reparation; • unpaid work; • supervision; and/or • attendance centre.
Enhanced	Medium likelihood of re-offending or a medium risk of serious harm	Seek to repair harm caused and to enable help or change through, for example: <ul style="list-style-type: none"> • supervision; • reparation; • requirement to address behaviour e.g. drug treatment, offending behaviour programme, education programme; and/or • a combination of the above.
Intensive	High likelihood of re-offending or a very high risk of serious harm	Seek to ensure the control of the young person through, for example: <ul style="list-style-type: none"> • supervision; • reparation; • requirement to address behaviour; • requirement to monitor or restrict movement, e.g. prohibited activity, curfew, exclusion or electronic monitoring; and/or • a combination of the above.

YRO with Intensive Supervision and Surveillance (ISS) or YRO with fostering

A YRO with an ISS or fostering requirement is a community alternative to custody. The YRO with ISS includes an extended activity requirement, a supervision requirement and curfew. The YRO with fostering requires the offender to reside with a local authority foster parent for a specified period of up to 12 months.

Custodial Sentences

Where a custodial sentence is **unavoidable** the length of custody imposed must be commensurate with the seriousness of the offence. The court may want to consider the equivalent adult guideline in order to determine the appropriate length of the sentence.

If considering the adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the appropriate adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. The individual factors relating to the offence and the offender are of the greatest importance and may present good reason to impose a sentence outside of this range.

Blank page

This guideline should be read alongside the Overarching Principles – Sentencing Youths definitive guideline which provides comprehensive guidance on the full range of sentences that are available by age. The guideline also includes details on issues such as grave crime determination and dangerousness.

The first step in determining the sentence is to assess the seriousness of the offence. This assessment is made by considering the nature of the offence and any aggravating and mitigating factors relating to the offence itself. **The fact that a sentence threshold is crossed does not necessarily mean that that sentence should be imposed.**

STEP 1: OFFENCE SERIOUSNESS – Nature of the offence

The boxes below give **examples** of the type of culpability and harm factors that may indicate that a particular threshold of sentence has been crossed.

A community sentence or an appropriate non custodial sentence may be the most suitable disposal where one or more of the following factors apply:

- Threat or use of minimal force
- No/ minimal physical or psychological harm caused to the victim

A custodial sentence or Youth Rehabilitation Order with Intensive Supervision and Surveillance or Fostering may be justified where one or more of the following factors apply:

- Use of very significant force
- Threat or use of a bladed article, firearm or imitation firearm
- Serious physical or psychological harm caused to the victim

STEP 2: OFFENCE SERIOUSNESS – Aggravating and mitigating factors

To complete the assessment of seriousness the court should consider the aggravating and mitigating factors relevant to the offence.

Aggravating factors (non exhaustive)

- 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
- Significant degree of planning
- Threat or use of a weapon other than a bladed article, firearm or imitation firearm (whether produced or not)
- Victim is targeted due to vulnerability (or a perceived vulnerability)
- A leading role where offending is part of a group
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Any steps taken to prevent the reporting the incident/ seeking assistance

- High value goods or sums targeted or obtained (includes economic, personal or sentimental)
- Restraint, detention or additional degradation of the victim

Mitigating factors (non exhaustive)

- No previous convictions **or** no relevant/ recent convictions
- Good character and/or exemplary conduct
- Participated in offence due to peer pressure/ bullying
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Little or no planning

STEP 3: OFFENDER MITIGATION

Having assessed the offence seriousness the court should then consider the mitigation personal to the offender to determine whether a custodial sentence or a community sentence is necessary. The effect of personal mitigation may reduce what would otherwise be a custodial sentence to a non-custodial one or a community sentence to a different means of disposal.

Offender mitigating factors (non exhaustive)

- Particularly young or immature offender
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Unstable upbringing including but not limited to numerous care placements, exposure to drug and alcohol abuse, lack of attendance at school, lack of familial presence or support, victim of neglect and/or abuse, exposure to familial criminal behaviour
- Determination and/or demonstration of steps taken to address offending behaviour

STEP 4: REDUCTION FOR GUILTY PLEAS

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

The reduction in sentence for a guilty plea can be taken into account by imposing one type of sentence rather than another; for example:

- by reducing a custodial sentence to a community sentence, or
- by reducing a community sentence to a different means of disposal.

See the Overarching Principles – Sentencing Youths definitive guideline for details of other available sentences including Referral Orders and Reparation Orders.

STEP 5: REVIEW THE SENTENCE

The court must now review the sentence to ensure it is the most appropriate one for the young offender. This will include an assessment of the likelihood of reoffending and the risk of causing serious harm. A report from the Youth Offending Team may assist.

Youth Rehabilitation Order

The following non custodial sentences are available under a Youth Rehabilitation Order:

	Offender profile	Requirements of order
Standard	Low likelihood of re-offending and a low risk of serious harm	Primarily seek to repair harm caused through, for example: <ul style="list-style-type: none"> • reparation; • unpaid work; • supervision; and/or • attendance centre.
Enhanced	Medium likelihood of re-offending or a medium risk of serious harm	Seek to repair harm caused and to enable help or change through, for example: <ul style="list-style-type: none"> • supervision; • reparation; • requirement to address behaviour e.g. drug treatment, offending behaviour programme, education programme; and/or • a combination of the above.
Intensive	High likelihood of re-offending or a very high risk of serious harm	Seek to ensure the control of the young person through, for example: <ul style="list-style-type: none"> • supervision; • reparation; • requirement to address behaviour; • requirement to monitor or restrict movement, e.g. prohibited activity, curfew, exclusion or electronic monitoring; and/or • a combination of the above.

YRO with Intensive Supervision and Surveillance (ISS) or YRO with fostering

A YRO with an ISS or fostering requirement is a community alternative to custody. The YRO with ISS includes an extended activity requirement, a supervision requirement and curfew. The YRO with fostering requires the offender to reside with a local authority foster parent for a specified period of up to 12 months.

Custodial Sentences

Where a custodial sentence is **unavoidable** the length of custody imposed must be commensurate with the seriousness of the offence. The court may want to consider the equivalent adult guideline in order to determine the appropriate length of the sentence.

If considering the adult guideline, the court may feel it appropriate to apply a sentence broadly within the region of half to two thirds of the appropriate adult sentence for those aged 15 – 17 and allow a greater reduction for those aged under 15. This is only a rough guide and must not be applied mechanistically. The individual factors relating to the offence and the offender are of the greatest importance and may present good reason to impose a sentence outside of this range.

Sentencing Council

Sentencing Council meeting: 18 December 2015
Paper number: SC(15)DEC05 – Prison Reform Trust
recommendations
Lead officials: Claire Fielder
020 7071 5779

1 ISSUE

1.1 To consider the Prison Reform Trust's discussion paper on the sentencing of mothers, in particular the recommendations directed to the Council; and agree a response.

2 RECOMMENDATION

2.1 That the Council:

- notes the content of the report, in particular the recommendations addressed to the Council;
- discusses the issues raised and agrees a position in response; and
- considers the form and timing of any response.

3 CONSIDERATION

3.1 The Prison Reform Trust informed the Council about its research into the sentencing of mothers and invited the Chairman to a meeting to discuss the draft recommendations. The discussion paper was published at the end of November. It contains a number of linked recommendations, broadly unchanged from the draft. Two are directed to the Council, although the others are also of interest and are summarised at paragraphs 3.9 to 3.14. The full report is available at:

http://www.prisonreformtrust.org.uk/Portals/0/Documents/sentencing_mothers.pdf

3.2 The Chairman agreed that he would bring the report and recommendations to the Council's attention. While there is no requirement to respond, there is merit in the Council considering its position. The PRT is likely to follow up in due course. The Magistrates' Association has already expressed interest in the Council's reaction and

it is likely that the Government, the Judicial College and the senior judiciary will be interested in the Council's views. It is also possible that the Justice Committee will take an interest and the Ministry of Justice has received Parliamentary Questions linked to the report.

Recommendation 3: Sentencing guidelines should be strengthened by the addition of an “Overarching Principle” setting out the court's duty to investigate sole or primary caring responsibilities of defendants and to take these responsibilities into account in sentencing decisions

3.3 The Council considered the treatment of those with caring responsibilities in October, when it reviewed the draft guideline on imposition of community orders and custodial sentences. It rejected a proposal to include specific guidance to the court requiring it to consider whether the offender is a primary carer (or has mental health or substance misuse issues). The Council felt that to steer judges away from sentencing particular groups to imprisonment would be a policy decision, which should not be a factor in judicial decision making. The guidance emphasises that custody is reserved for the most serious offences, when other options have been considered and rejected; and similarly guides the court to consider whether a fine or discharge would be an appropriate penalty rather than a community order. In the case of both custodial and community penalties the new guidance emphasises the importance of requesting a pre-sentence report.

3.4 We have conducted a light touch review of the *Overarching Principles – Seriousness*, to assess whether the introduction of the new guidance on imposition of sentences could replace them. We have concluded that they contain other material which is useful to sentencers, and that they should therefore remain in effect until such time as the Council revises them (a project on the long term work plan). It may therefore be possible to incorporate more in depth guidance on primary carers in updated *Overarching Principles on seriousness* in due course.

Question 1: Are you content that this accurately reflects the consensus of the Council? Is there any appetite for producing an Overarching Principle as described in the report, or other forms of guidance?

Recommendation 9: The Sentencing Council should undertake or support targeted research and consultation with magistrates and judges on how sole and primary caring responsibilities are and should be taken into account in court, as well as monitoring sentencing practice and outcomes in this area more closely

3.5 The Council has already conducted some analysis, drawing on CCSS data of the use of the mitigating factor “sole or primary carer” and Sarah Munro presented this to the Government’s Advisory Board on Female Offenders in December 2014. In summary, this found that the mitigating factor ‘*Sole or primary carer for dependent relatives*’ was more likely to be taken into account when sentencing women than men. This was true across all sentence outcomes including when considering sentences of immediate custody only. For example, for GBH section 20 assault offences, women were about six times more likely than men to have this factor taken into account across all sentence outcomes, and almost 7 times more likely when just considering sentences of immediate custody. However, this factor was not the most prevalent mitigating factor taken into account when sentencing women offenders. Mitigating factors of ‘*remorse*’ and ‘*lack of previous convictions*’ were the most common factors taken into account when sentencing women. For example, in GBH section 20 offences, remorse as a mitigating factor was present in 58% of cases, lack of previous convictions in 45% of cases, compared to 20% of cases for sole/primary carer. For the drug offences where the mitigating factor ‘*offender’s vulnerability was exploited*’ is specified in the guideline, women offenders were three times more likely than men to have the factor taken into account when sentencing.

3.6 However, it is difficult to assess the impact of the use of individual mitigating factors as information is only available for Crown Court cases, where women only account for 1 in 10 offenders. This means that for many offences there are insufficient cases to enable robust analysis. We have not published this analysis, but it was considered by the Council in late 2014. It would require further quality assurance were we to publish it.

3.7 For the first time, we are monitoring sentencing practice in the magistrates’ courts. The current data collection exercise will capture the frequency with which this mitigating factor is being taken into account for shop theft and selected drugs offences. We will publish the findings in due course, once the assessments of these guidelines have been completed.

3.8 However, the recommendation goes further than simply conducting research into the use of the existing mitigating factor. It calls on the Council to review how these responsibilities *are and should be* taken into account. This goes beyond the

scope of the Council's analytical strategy, which was agreed following a review of the Council's analytical functions and priorities and is less than a year old. The Council agreed that its analytical strategy would focus on meeting those elements of its statutory duties linked to the cycle of guideline development, which includes monitoring and evaluation. Cross-cutting, general research about how particular factors or circumstances should be taken into account in sentencing is currently outside the scope of the strategy. In light of the constraints on our budget, such research therefore does not appear to be a priority. More immediately the restrictions imposed by the Ministry of Justice on how we spend our budget would prevent expenditure of this nature: we lack the staff resources and are prevented from employing new staff or an external contractor to undertake it.

Question 2: Do you agree that we should not devote resources to the type of research envisaged in the report?

Question 3: Are there other options we might explore, to deliver the research proposed without requiring Council resources (whether staff or financial)?

The other recommendations

3.9 While the other recommendations are not addressed to the Council, they are nevertheless of interest as they all relate to the court's overall approach to sentencing women with caring responsibilities. As noted, the Council has been involved in previous discussions on sentencing women, both internally and through the Government's Advisory Board.

3.10 The Government is encouraged to review the sentencing framework "to ensure appropriate recognition of and provision for an offender's sole or primary care responsibilities" (recommendation 1). It is also encouraged to review arrangements for women in criminal justice more generally, co-ordinating through the Advisory Board (recommendation 2). The Ministry of Justice is considering its response.

3.11 Courts are encouraged to "establish mechanisms to ensure the provision of sufficient information to sentencers where the offender has primary caring responsibilities, including a requirement for a full written pre-sentence report and local directory of women's services" (recommendation 4). While this recommendation is not directed at the Council, the guidelines already include encouragement, but not an absolute requirement, to require a pre-sentence report if considering imposing a community order or custodial sentence, although this will not necessarily be a written report. The new draft guideline on imposition of such orders

emphasises the importance of pre-sentence reports. The Council discussed the challenges currently facing courts in having access to information about the full range of non-custodial options available at its last two meetings; further clarity would no doubt be welcome, but is outside the court's direct control and is likely to require action by the NPS and CRCs.

3.12 The report recommends that sentencers, when imposing non custodial sentences, be required to inquire about family responsibilities and ensure that rehabilitation activity requirements are achievable (recommendation 5). As discussed at the Council in November, the requirements under a RAR cannot be set by the court: this was not Parliament's intention. As above, further information about the options in the local area would no doubt be welcomed by the courts but is not within their (or the Council's) control.

3.13 Recommendation 6 is that sentencers should be required to consider non-custodial sentences for offenders with primary care responsibilities, and in cases when imprisonment is an option, to consider a community order, deferred or suspended sentence. The Council's qualitative research has found that sentencers do take into account a range of personal circumstances when deciding on the appropriate sentence. The existing *Overarching Principles – Seriousness* and the draft guideline on imposition of community and custodial penalties both emphasise that custody is reserved for the most serious cases and remind sentencers that even when the custody threshold has been passed that does not mean that a custodial sentence should be deemed inevitable. The guidance goes on to say that custody can be avoided in the light of personal mitigation or where there is a suitable intervention in the community which provides sufficient restriction (by way of punishment) while addressing the rehabilitation of the offender. At page 18, the recommendation is explained in more detail, to include a presumption that very few cases tried by magistrates will merit a custodial penalty. This is at odds with the direction of travel in the Allocation Guideline. Recommendation 6 also includes a requirement for written reasons in all cases where an immediate custodial sentence is imposed. This is outside the Council's remit but raises questions about practicality and cost.

3.14 The remaining recommendations relate to training and encourage training about taking caring responsibilities into account when sentencing (recommendation 7) and the different impact of imprisonment on men and women (recommendation 8).

Responding to the recommendations

3.15 As noted, there is no formal requirement to respond to the recommendations. However, having agreed to bring the recommendations to the attention of the Council, it is reasonable to assume that the Prison Reform Trust will follow up with us in due course. The Advisory Board has expressed an interest in the Council's views. The Judicial College, also a recipient of recommendations, will wish to be aware of the Council's response and it is reasonably likely that the Justice Committee will touch on these issues when it takes evidence from the Chairman next year.

Question 4: Do you wish to respond formally in any way, or are you content that the Council position be communicated less formally, as the opportunity arises (whether via one of the routes identified, or others)?

Question 5: Do you wish to discuss any of the issues raised by the report in more depth at a future meeting?

4 IMPACT

4.1 There is no resource or other impact arising from this paper, although decisions to pursue new guidelines would have an impact on the work plan and resources. Similarly, if the Council wished to conduct additional research or publish existing unpublished findings, this would also have a resource impact.

5 RISKS

5.1 The report directs attention towards the Sentencing Council and is likely to prompt questions about its approach towards women and/ or primary carers. Some risk arises if the Council does not have a response to such questions, in particular if they are asked by the Justice Committee during a formal evidence session. This can be mitigated by reaching consensus on the issues raised.

Sentencing Council

Sentencing Council meeting: 18 December 2015
Paper number: SC(15)DEC06 – Imposition of Community and Custodial sentences
Lead Council member: Jill Gramann & Martin Graham
Lead officials: Lisa Frost
020 7071 5784

1 ISSUE

1.1 The consultation on the draft imposition of community and custodial sentences guideline will run from 14 January 2016 until 25 February 2016. This is to ensure a timetable that complements the breach guideline which it has been agreed should come into force after the imposition guideline has had the opportunity to take effect. This timetable is also compatible with other planned consultation activity in the Council's workplan.

1.2 To achieve this challenging timetable, the draft guideline must be agreed and signed off today.

2 RECOMMENDATION

2.1 That the Council;

- considers a number of other revisions proposed to the draft guideline which is attached at Annex A;
- signs off the draft guideline, subject to any further revisions agreed today; and
- agrees, subject to any revisions agreed at the meeting and any minor drafting points, the content and structure of the consultation document which is attached at Annex B.

3 CONSIDERATION

3.1 At the last meeting the Council agreed the content and scope of the draft guideline. The amendments requested at the meeting have been effected, and a

number of further amendments are proposed and set out below. These all relate to the imposition of custodial and suspended sentences sections of the draft guideline, which are highlighted at Annex A.

Presentation of custody considerations

3.2 The Council will recall that wording included in the guideline outlining considerations to be taken by sentencers when suspending a sentence was removed at the last meeting. These related to highlighting the potential for an offender to serve the custodial sentence in the event of a breach. It was suggested that the concerns the guideline was attempting to address would be captured by question two of both the imposition of custodial sentences and suspending a custodial sentence sections of the guideline, where it is asked; 'is it unavoidable that a custodial sentence be imposed?'

3.3 Officials have given further consideration to the structure of the guidance on custodial and suspended sentences and it is proposed that improvements could be made to the presentation of the information. This would be achieved by moving the content of 'the custody threshold' section to its relevant 'general principle' question. It is suggested that this would give a fuller, more structured assessment of these questions at the appropriate stage, which will ensure consistency of approach by sentencers. The restructured information would be presented as follows;

The approach to the imposition of a custodial sentence should be as follows:

1) Has the custody threshold been passed?

A custodial sentence must not be imposed unless the offence 'was so serious that neither a fine alone nor a community sentence can be justified for the offence'. The clear intention of the threshold test is to reserve prison as a punishment for the most serious offences.

2) If so, is it unavoidable that a custodial sentence be imposed?

Passing the custody threshold does not mean that a custodial sentence should be deemed inevitable. Custody can still be avoided in light of offender mitigation or where there is a suitable intervention in the community which provides sufficient restriction on the offender's liberty (by way of punishment) while addressing the rehabilitation of the offender to prevent future crime.

This can be cross referenced with the current layout on page 8 of the draft guideline at Annex A.

Question 1: Does the Council agree to the restructure of this section of the guideline to enhance the guidance on these questions?

Post Sentence Supervision

3.4 A further issue for the Council's consideration relates to new provisions introduced by the Offender Rehabilitation Act 2014 for short term prison sentences. At the Criminal Law Review Conference attended by the Chairman and the Office lawyer, Nicky Padfield expressed disappointment that the Sentencing Council had not issued guidance to sentencers on imposing short term custodial sentences which include post sentence supervision (PSS) requirements. The implication was that the PSS requirements can effectively make the sentence more onerous and that sentences imposed should be shorter to reflect this. Officials disagree with this suggestion, as it would not be possible for a sentencer to know when sentencing an offender which post sentence requirements may be imposed upon their release in order to identify how onerous the PSS may be. Further, officials have reviewed the MOJ impact assessment of the PSS policy, and while it recognised the risk that sentencing behaviour may change in this respect, it was not an intention of the policy that custodial sentences be reduced to take into account potential PSS requirements.

3.5 It is suggested that the guideline could include guidance that aligns with the intention of the PSS policy. This could be included at point 4 of the general principle for imposition of custodial sentences, which asks 'what is the shortest term commensurate with the seriousness of the offence'. It is suggested that wording could be included to the effect of 'in considering this the court must NOT consider any licence or PSS requirements which may subsequently be imposed upon the offender's release'.

Question 2: Does the Council agree to add wording to this section of the guideline to prevent a consideration of post sentence requirements by sentencers imposing custody?

Committal for Sentence

3.6 The final amendment the Council is asked to consider relates to the inclusion of the Committal for Sentence section of the guideline. This was included as it was contained within the MCSG guidance, but we are now recommending it is removed from the imposition guideline. This is because it is thought unnecessary to include this guidance as it addresses a particularly niche issue which is adequately dealt with in the revised Allocation guideline.

Question 3: Does the Council agree to remove the Committal for Sentence section from the imposition of custodial sentences section of the guideline?

Question 4: Does the Council agree with the overall content of the draft guideline?

3.7 The Council is asked to review and approve the draft consultation document at Annex B, subject to the consequential changes arising from the points covered at paragraphs 3.2 to 3.6. Any minor drafting comments should be sent to Lisa.Frost@sentencingcouncil.gsi.gov.uk by 4th January 2016 to enable amendments to be made to the publications prior to their release.

Question 5: Does the Council have any substantive comments on the consultation document, or is it content to sign it off, subject to any minor drafting points?

4 IMPACT

4.1 The draft resource assessment for this guideline is currently being reviewed by the Analysis and Research sub group and MoJ and will be available for review by the Council shortly before the meeting. The resource assessment is likely to say that the Imposition of Community Orders and Custodial Sentences guideline is not intended or expected to affect the average severity of sentences – rather it seeks to clarify the key principles associated with the imposition of these sentences (in particular suspended sentences of imprisonment and COs).

4.2 Whilst one impact may be an increase in the number of COs and a corresponding decrease in the numbers of SSOs (in cases where the latter were being used as a more severe form of the former), as all these sentences will be

served in the community, it is not anticipated that there will be any overall change in the resources needed for these.¹ It is therefore estimated that the guideline will have no overall resource impact on the prison, probation or youth justice services.

4.3 The guideline is intended to have the effect of reversing inappropriate impositions of SSOs. If it is effective, SSO volumes should decrease and COs would increase. No equality impact issues are identified as the guideline will have comprehensive application to all subjects of community and custodial sentences.

4.4 The issuing of up to date guidance for these orders is likely to have a positive reputational impact for the Council. The guideline will also provide clarification for sentencers on new provisions available for these sentences, as well as mitigating any negative impact of the breach guideline which is under development.

5 RISKS

5.1 There is a risk that the guideline will not be as effective as hoped, and will not adequately address sentencing behaviour to achieve the desired impact of reversing inappropriate imposition of SSOs. The consultation document clearly sets out what the guideline is seeking to achieve in order to mitigate this risk.

6 COMMUNICATIONS HANDLING

6.1 Communications activity for the announcement of the consultation on the draft guideline will be aimed primarily at legal media and CJS practitioners. A press release will be sent to legal media and news items drafted for use on CJS intranets and bulletins. It will also be announced on our website and via twitter.

¹ Sentences being served in the community would include at this stage an SSO as the offender would not be serving an immediate custodial sentence for which a prison place would be required. In addition, for the purposes of the resource assessment, it is assumed that there would be no difference in the requirements attached to either order and so substituting one for the other would also not impact on resources. Although the legislation states that CO requirements should be more onerous than for an SSO due to the potential for the custodial sentence to be invoked in an SSO, there is no evidence available to confirm this happens in practice.

Blank page

Imposition of
Community and
Custodial Sentences
Draft Guideline

Contents

Applicability of guideline	2
Imposition of Community Orders	3
Imposition of Custodial Sentences	8
Suspending a Custodial Sentence	9

© Crown copyright 2015

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk. Where we have identified any third party copyright information you will need to obtain permission from the copyright holders concerned.

Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all offenders aged 18 and older, who are sentenced on or after (TBC), regardless of the date of the offence.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the Sentencing Guidelines Council’s definitive guideline, *Overarching Principles – Sentencing Youths*.

Imposition of Community Orders

GENERAL PRINCIPLES

Community orders fulfil all of the purposes of sentencing. In particular, they have the effect of restricting the offender's liberty while providing punishment in the community, rehabilitation for the offender, and/or ensuring that the offender engages in reparative activities.

A community order must not be imposed unless the offence is 'serious enough to warrant such a sentence'. Where an offender is being sentenced for a non-imprisonable offence, the court may not make a community order.

Sentencers must consider all available disposals at the time of sentence; even where the threshold for a community sentence has been passed, a fine or discharge may be an appropriate penalty.

The court must ensure that the restriction on the offender's liberty is commensurate with the seriousness of the offence and that the requirements imposed are the most suitable for the offender.

Sentencers must also ensure the sentence strikes the right balance between proportionality and suitability. The resulting restriction on liberty must be a proportionate response to the offence committed.

COMMUNITY ORDER LEVELS

The seriousness of the offence should be the initial factor in determining which requirements to include in a community order. Offence guidelines refer to three sentencing levels within the community order band based on offence seriousness (low, medium and high). The culpability and harm present in the offence(s) should be considered to identify which of the three sentencing levels within the community order band (low, medium and high) is appropriate. See below for **non-exhaustive** examples of requirements that might be appropriate in each (the full list of requirements is at page 5).

The examples focus on punishment in the community; **other requirements of a rehabilitative nature** may be more appropriate in some cases. To ensure the order is punitive, at least one requirement **MUST** be imposed for the purpose of punishment and/or a fine imposed in addition to the community order **unless there are exceptional circumstances which relate to the offender that would make it unjust in all the circumstances to do so.**

Low	Medium	High
Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate	Offences that obviously fall within the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
Suitable requirements might include: <ul style="list-style-type: none"> • 40 – 80 hours unpaid work • Curfew requirement within the lowest range (e.g. up to 16 hours per day for a few weeks) • Exclusion requirement, for a few months • Prohibited activity requirement • Attendance centre requirement (where available) 	Suitable requirements might include: <ul style="list-style-type: none"> • Greater number of hours of unpaid work (e.g. 80 – 150 hours) • Curfew requirement within the middle range (e.g. up to 16 hours for 2 – 3 months) • Exclusion requirement lasting in the region of 6 months • Prohibited activity requirement 	Suitable requirements might include: <ul style="list-style-type: none"> • 150 – 300 hours unpaid work • Curfew requirement up to 16 hours per day for 4 – 12 months • Exclusion order lasting in the region of 12 months
* If order does not contain a punitive requirement, suggested fine levels are indicated below:		
BAND A FINE	BAND B FINE	BAND C FINE

Requirements

Community orders consist of one or more of the following requirements:

- unpaid work requirement;
- drug rehabilitation requirement;
- alcohol treatment requirement;
- programme requirement;
- prohibited activity requirement;
- curfew requirement;
- exclusion requirement;
- residence requirement;
- foreign travel prohibition requirement;
- mental health treatment requirement;
- alcohol abstinence and monitoring requirement (where available);
- in a case where the offender is aged under 25, attendance centre requirement (where available);
- rehabilitation activity requirement (RAR).

(RARs provide flexibility for responsible officers in managing an offender's rehabilitation post sentence. When allocating a RAR the court does not prescribe the activities to be included but will specify the maximum number of activity days the offender must complete. The offender's Responsible Officer will decide the activities to be undertaken. Where appropriate this requirement should be made in addition to, and not in place of, other requirements listed above.)

Specific considerations in determining requirements

- i) At least one requirement must be imposed for the purpose of punishment and/or a fine imposed in addition to the community order. Which requirements amount to punishment is a matter for the court to decide in each case.
- ii) Where two or more requirements are included, they must be compatible with one another.
- iii) The particular requirements imposed must be suitable for the individual offender and will be influenced by a range of factors, including:
 - the stated purpose(s) of the sentence;
 - the risk of re-offending;
 - the ability of the offender to comply;
 - the availability of the requirements in the local area.

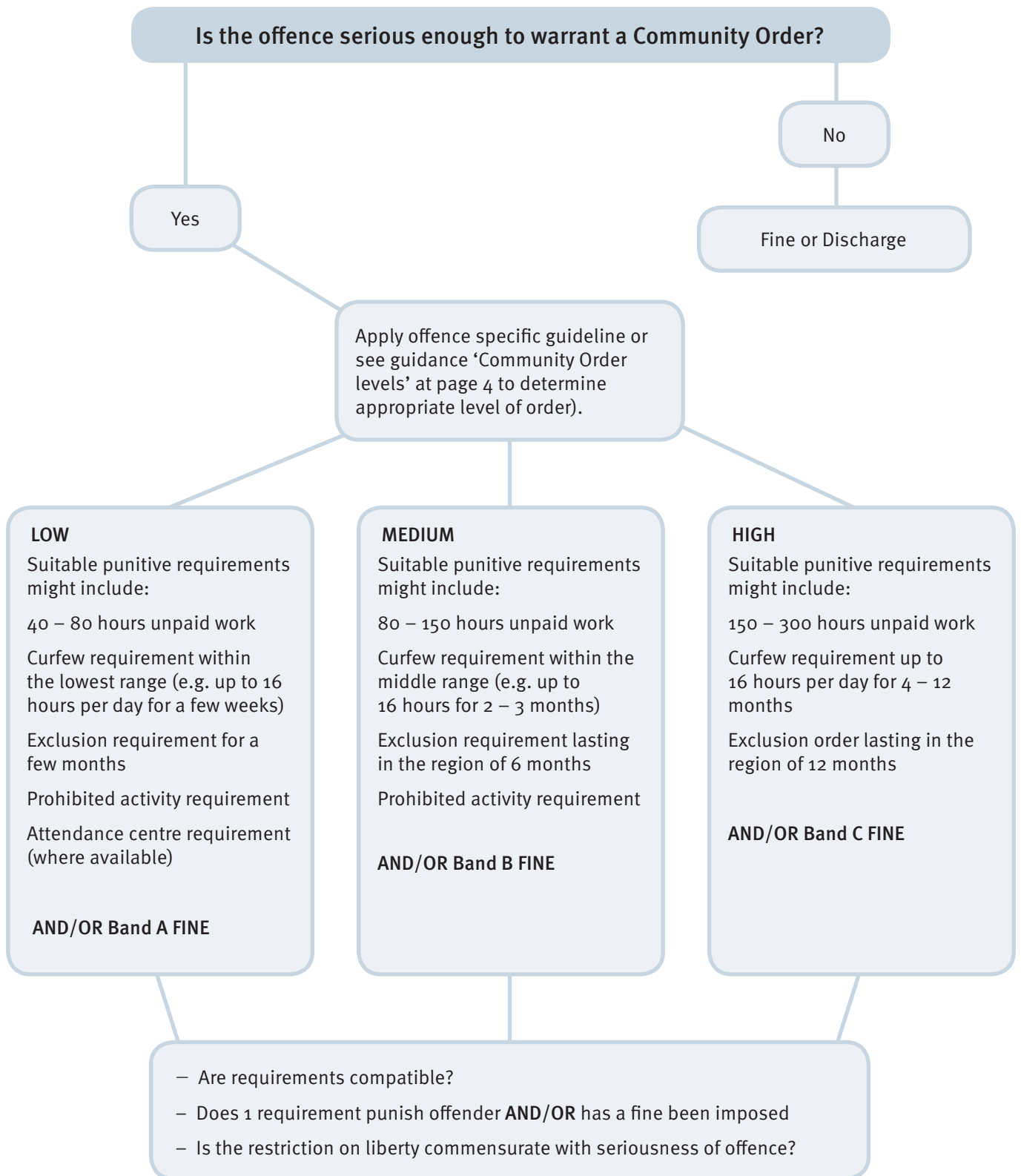
Pre-sentence reports

In many cases, a pre-sentence report will be pivotal in helping the court decide whether to impose a community order and, if so, whether particular requirements or combinations of requirements are suitable for an individual offender. Whenever the court reaches the provisional view that a community order may be appropriate, it should usually request a pre-sentence report. It may be helpful to indicate to the National Probation Service the court's preliminary opinion as to which of the three sentencing levels is relevant and the purpose(s) of sentencing that the package of requirements is expected to fulfil. Ideally a pre-sentence report should be completed on the same day to avoid adjourning the case. If an adjournment cannot be avoided, the information should be provided to the National Probation Service in written form and a copy retained on the court file for the benefit of the sentencing bench. However, the court must make clear to the offender that all sentencing options remain open including, in appropriate cases, committal for sentence to the Crown Court.

Electronic Monitoring

Subject to limited exceptions, when available the court must impose an electronic monitoring requirement where it makes a community order with a curfew or exclusion requirement, and may do so in all other cases. Electronic monitoring should be used with the primary purpose of promoting and monitoring compliance with other requirements, in circumstances where the punishment of the offender and/or the need to safeguard the public and prevent re-offending are the most important concerns.

Imposing a Community Order



Imposition of Custodial Sentences

General Principles

The approach to the imposition of a custodial sentence should be as follows:

- 1) Has the custody threshold been passed?
- 2) If so, is it unavoidable that a custodial sentence be imposed?
- 3) Can the sentence be suspended? See page 9.
- 4) What is the shortest term commensurate with the seriousness of the offence?

Specific considerations:

The custody threshold

A custodial sentence must not be imposed unless the offence 'was so serious that neither a fine alone nor a community sentence can be justified for the offence'. The clear intention of the threshold test is to reserve prison as a punishment for the most serious offences.

Passing the custody threshold does **not** mean that a custodial sentence should be deemed inevitable; custody can still be avoided in light of offender mitigation or where there is a suitable intervention in the community which provides sufficient restriction on the offender's liberty (by way of punishment) while addressing the rehabilitation of the offender to prevent future crime.

Pre-sentence report

Before deciding whether:

- the custody threshold has been passed; and, if so
- the length of imprisonment which represents the shortest term commensurate with the seriousness of the offence;

the court should obtain a pre-sentence report, unless the court considers a report to be unnecessary. Ideally a pre-sentence report should be completed on the same day to avoid adjourning the case.


Magistrates: consult your legal adviser before deciding to sentence to custody without a pre-sentence report.

Committal for Sentence

For either way offences, where the offending is so serious that a magistrates' court is of the opinion that the Crown Court should have the power to deal with the offender, the case should be committed to the Crown Court for sentence even if a community order may be the appropriate sentence (this will allow the Crown Court to deal with any breach of a community order, if that is the sentence passed).

Suspending a Custodial Sentence

A suspended sentence is a sentence of imprisonment. The following questions are paramount in deciding whether to suspend a custodial sentence. A court considering whether to suspend a custodial sentence must answer the following questions in the following order:

- 1) Has the custody threshold been passed? If not, a suspended sentence **cannot** be passed. 
- 2) If so, is it **unavoidable** that a custodial sentence be imposed? If not, a suspended sentence **cannot** be passed.
- 3) If so, can that sentence be suspended? Sentencers should be clear that they would have imposed an immediate custodial sentence if the power to suspend had not been available.

A suspended sentence **MUST NOT** be imposed as a more severe form of Community Order.

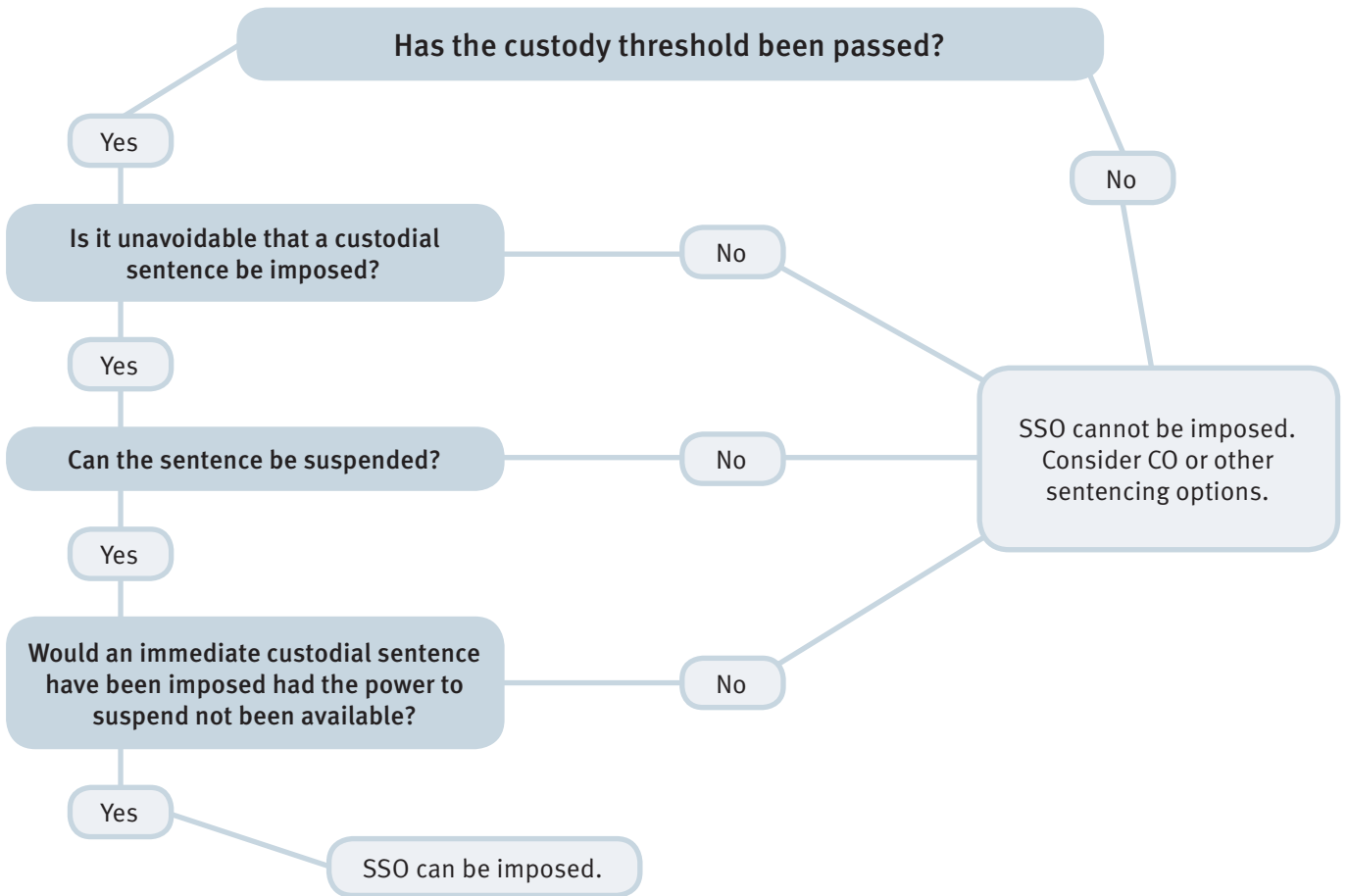
Specific considerations

The imposition of a custodial sentence is both punishment and a deterrent. To ensure that the overall terms of the sentence are commensurate with offence seriousness, requirements imposed as part of the sentence should generally be less onerous than if a community order had been imposed. A court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate.

Suspended Sentences: General guidance

- i) The requirement to obtain a pre-sentence report for custodial sentences applies if suspending custody.
- ii) If the court imposes a term of imprisonment between 14 days and 2 years (6 months in magistrates' courts), it may suspend the sentence for between 6 months and 2 years (the 'operational period').
- iii) Where the court imposes two or more sentences to be served consecutively, the court may suspend the sentence where the aggregate of the terms is between 14 days and 12 months. (Magistrates may only impose aggregate sentences of more than 6 months where there are two or more either way offences).
- iv) When the court suspends a sentence, it may impose one or more requirements for the offender to undertake in the community. The requirements are identical to those available for community orders on page 5.
- v) A custodial sentence that is suspended should be for the same term that would have applied if the sentence was to be served immediately.
- vi) The time for which a sentence is suspended should reflect the length of the sentence; up to 12 months might normally be appropriate for a suspended sentence of up to 6 months.
- vii) When the court imposes a suspended sentence with community requirements, it may also order that the sentence be reviewed periodically at a review hearing.

Imposing a Suspended Sentence Order



Consultation on draft guideline for Imposition of Community & Custodial sentences

Contents

Introduction	p.2
Current position & General proposals	p.3
The proposals –	
Applicability of guideline and statutory framework	p.4
Imposition of Community Order	p.5-10
Imposition of Custodial Sentences	p.11
Imposition of Suspended Sentence	p.12-13
General	
Annex A – The current definitive guideline	
Annex B – The draft guideline	
Annex C – List of consultation questions	

Introduction

What is the Council consulting about?

The Sentencing Council is proposing to issue a new definitive guideline for imposition of community and custodial sentences.

The Sentencing Council is therefore seeking feedback from sentencers, justices' clerks, legal advisers, prosecutors, defence representatives and other interested parties on proposals to replace the *New Sentences - Criminal Justice Act 2003* definitive guideline¹ with a guideline for the Imposition of Community and Custodial Sentences. The draft guideline can be found here: [link to website] or at Annex B.

The consultation runs for six weeks from 14 January 2016 to 25 February 2016. This is a shorter period than is customary for Sentencing Council consultations. The reasons for this are:

- the consultation relates to a concise, technical guideline and;
- we want to deliver improvements as soon as possible.

We will treat all responses as public documents in accordance with the Freedom of Information Act and we may attribute comments and include a list of all respondents' names in any final report we publish. We may also share responses with the Justice Committee of the House of Commons. If you wish to submit a confidential response, you should contact us before sending the response. PLEASE NOTE – we will disregard automatic confidentiality statements generated by an IT system.

Please complete the online version at xxxxxxxxxx or respond by email to:

Impositionconsultation@sentencingcouncil.gsi.gov.uk. Please use the same email address for any queries you may have about the consultation.

The Sentencing Council will review the responses to the questions and will use these to produce a definitive guideline.

You may find it helpful to have a copy of the draft guideline open as you work through this document. This can be found on our website [Link] or at Annex X. A list of the questions is at Annex X and can also be found on the website: [Link]

¹ Reference to SGC guideline

The Council has a statutory duty, under section 127 of the Coroners and Justice Act 2009, to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services. The resource assessment for the draft guideline can be found at annex X.

Current position

The Sentencing Guidelines Council issued the definitive guideline, *New Sentences - Criminal Justice Act 2003* in December 2004, which contains guidance on community and custodial sentences.²

The guideline is now out of date as a result of legislative changes since 2004. Given the frequency of imposition of community and custodial sentences, the Council considers that it would be highly beneficial for sentencers to have up to date guidelines for imposing these sentences. There is no current Council-issued guidance for these sentences for Crown Court sentencers, although Council-issued guidance for imposing these sentences is available for magistrates' courts in the Magistrates' Courts Sentencing Guidelines (MCSG). The MCSG is regularly reviewed and updated, and much of this has therefore been used as the basis for the new guideline the Council is proposing. The new guideline has also been prompted by work the Council is undertaking to produce a guideline on breach of orders. This has revealed some evidence of inconsistency in the imposition of suspended sentences, which the Council is keen to address prior to issuing a guideline for breach of these orders.

General proposals for the guideline

The Council has consolidated and updated existing guidance to produce a more concise, up to date and functional guideline, which is applicable in all courts.

The new guideline is suitable for use by all sentencers, which will promote consistency in imposing these sentences across the justice system. The Council has reviewed the existing Sentencing Guidelines Council (SGC) and MCSG guidance in developing the guideline, and many of the principles underpinning these sentences remain unchanged.

The content of the MCSG guidance has largely been adopted for the new guideline,

² <http://www.sentencingcouncil.org.uk/publications/item/new-sentences-criminal-justice-act-2003-definitive-guideline/>

although amendments have been made to ensure it is also suitable for use in the Crown Court, and to clarify some important considerations to be made in imposing these sentences. For this reason much of the guidance will look familiar to magistrates and district judges.

The Council has avoided including extensive legislative references, and has focused on providing concise guidance covering the most important issues that must be considered by sentencers. The Council has retained but updated specific guidance regarding particular aspects of these sentences, such as pre-sentence reports and electronic monitoring requirements.

A notable difference from the SGC guideline is that this draft guideline does not include guidance for dealing with breaches of community and suspended sentences. The Council is in the process of developing a guideline on breach of orders which it intends to issue for consultation later this year.

The specific proposals relating to the imposition of community and custodial sentences are explained in detail in the following pages. Where changes or amendments to the existing MCSG or SGC guidance have been made, these are highlighted.

Applicability of guideline

In accordance with section 120 of the Coroners and Justice Act 2009, the Sentencing Council issues this draft guideline. Following consultation, when a definitive guideline is produced, it will apply to all offenders aged 18 and older, who are sentenced on or after the date it comes into force, regardless of the date of the offence.

Section 125(1) of the Coroners and Justice Act 2009 provides that when sentencing offences committed after 6 April 2010:

“Every court –

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender’s case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This guideline applies only to offenders aged 18 and older. General principles to be considered in the sentencing of youths are in the SGC’s definitive guideline, *Overarching Principles – Sentencing Youths*.

The proposals – Guidance on Imposition of Community Orders

Much of the existing SGC guidance for community sentences sets out their specific legislative provisions and the approach to be taken in imposing these sentences. The Council considers that much of this information is superfluous as the legislation is now familiar to sentencers, and legislative changes in respect of these sentences render much of the information provided in the SGC guideline out of date.

The guidance on imposing community orders first sets out the general principles for community orders. These are well established and have been replicated from the SGC and MCSG guidance for these sentences. The Council considers that it will be useful for these principles to be contained within consolidated guidance for use by all sentencers.

Community orders fulfil all of the purposes of sentencing. In particular, they have the effect of restricting the offender's liberty while providing punishment in the community, rehabilitation for the offender, and/or ensuring that the offender engages in reparative activities.

A community order must not be imposed unless the offence is 'serious enough to warrant such a sentence'. Where an offender is being sentenced for a non-imprisonable offence, the court may not make a community order.

Sentencers must consider all available disposals at the time of sentence; even where the threshold for a community sentence has been passed, a fine or discharge may be an appropriate penalty.

The court must ensure that the restriction on the offender's liberty is commensurate with the seriousness of the offence and that the requirements imposed are the most suitable for the offender.

Sentencers must also ensure the sentence strikes the right balance between proportionality and suitability. The resulting restriction on liberty must be a proportionate response to the offence committed.

Question 1: Do you agree with the general principles for community orders? Please highlight any additional principles you believe should be included.

Guidance on community order sentence levels is also included. This is largely unchanged from the existing guidance and reflects existing principles, although it has been updated to include guidance on new provisions for these orders. This includes the principle that at least one requirement must be punitive or a fine be imposed while stating the exception available to this rule. The requirement to ensure a community order includes a punitive element was introduced by an amendment made to section 177 Criminal Justice Act 2003 by the Crime

and Courts Act 2013, and therefore postdates the SGC guidance. The proposed new guidance cannot define which requirements are punitive as the legislation governing these sentences does not provide a definition. The table within the community order guidance therefore provides some non-exhaustive examples of requirements a court may consider to be punitive.

The guidance maintains the current position that the level of the order imposed should be identified in accordance with the seriousness of the offence, which reflects existing principles. The guidance will assist where no offence specific guideline is available to identify the appropriate level of order, but will also provide further guidance where offence specific guidance specifies the level of community order to be imposed.

The seriousness of the offence should be the initial factor in determining which requirements to include in a community order. Offence guidelines refer to three sentencing levels within the community order band based on offence seriousness (low, medium and high). The culpability and harm present in the offence(s) should be considered to identify which of the three sentencing levels within the community order band (low, medium and high) is appropriate. See below for **non-exhaustive** examples of requirements that might be appropriate in each (the full list of requirements is at page 5).

The examples focus on punishment in the community; other requirements of a rehabilitative nature may be more appropriate in some cases. To ensure the order is punitive, at least one requirement **MUST** be imposed for the purpose of punishment and/or a fine imposed in addition to the community order **unless there are exceptional circumstances which relate to the offender that would make it unjust in all the circumstances to do so.**

A table is included to provide guidance on each level of community order. This is currently provided in the MCSG guidance, and only minor amendments have been effected to update it. As in the MCSG guidance, the first row within the table indicates which type of offence would attract each level of community order. The second row then specifies how many requirements would usually be appropriate based on the order level, with the third row suggesting suitable requirements and ranges where appropriate. As in the existing MCSG guidance, examples of requirements which may be considered punitive are included. A new feature of the table is that where no punitive requirement is to be imposed, the guideline indicates appropriate fine bands to be imposed in place of a punitive requirement, dependent on the level of order.

Low	Medium	High
Offences only just cross community order threshold, where the seriousness of the offence or the nature of the offender's record means that a discharge or fine is inappropriate	Offences that obviously fall within the community order band	Offences only just fall below the custody threshold or the custody threshold is crossed but a community order is more appropriate in the circumstances
In general, only one requirement will be appropriate and the length may be curtailed if additional requirements are necessary		More intensive sentences which combine two or more requirements may be appropriate
<p>Suitable requirements might include:</p> <ul style="list-style-type: none"> • 40 – 80 hours unpaid work • Curfew requirement within the lowest range (e.g. up to 16 hours per day for a few weeks) • Exclusion requirement, for a few months • Prohibited activity requirement • Attendance centre requirement (where available) 	<p>Suitable requirements might include:</p> <ul style="list-style-type: none"> • Greater number of hours of unpaid work (e.g. 80 – 150 hours) • Curfew requirement within the middle range (e.g. up to 16 hours for 2 – 3 months) • Exclusion requirement lasting in the region of 6 months • Prohibited activity requirement 	<p>Suitable requirements might include:</p> <ul style="list-style-type: none"> • 150 – 300 hours unpaid work • Curfew requirement up to 16 hours per day for 4 – 12 months • Exclusion order lasting in the region of 12 months
* If order does not contain a punitive requirement, suggested fine levels are indicated below:		
BAND A FINE	BAND B FINE	BAND C FINE

Question 2: Is the guidance on how to identify the level of community order clear? Please highlight any additional information you believe should be included.

Page 5 of the guideline sets out the requirements available for a community order. Additional, new guidance is provided on Rehabilitation Activity Requirements, to highlight the purpose of these requirements and to ensure that sentencers understand that these should not be imposed in place of other requirements which are available to support rehabilitation of offenders.

Requirements

Community orders consist of one or more of the following requirements:

- unpaid work requirement;
- drug rehabilitation requirement;
- alcohol treatment requirement;
- programme requirement;
- prohibited activity requirement;
- curfew requirement;
- exclusion requirement;
- residence requirement;
- foreign travel prohibition requirement;
- mental health treatment requirement;
- alcohol abstinence and monitoring requirement (where available);
- in a case where the offender is aged under 25, attendance centre requirement (where available);
- rehabilitation activity requirement (RAR).

(RARs provide flexibility for responsible officers in managing an offender's rehabilitation post sentence. When allocating a RAR the court does not prescribe the activities to be included but will specify the maximum number of activity days the offender must complete. The offender's Responsible Officer will decide the activities to be undertaken. Where appropriate this requirement should be made in addition to, and not in place of, other requirements listed above.)

Question 3: Is the list of requirements clear and comprehensive? Please highlight any additional information you believe should be included.

The guideline also provides a list of specific considerations to be made when determining which requirements to impose as part of the order. These are currently included in the MCSG guidance in a narrative format, but are listed in the new guideline for ease of reference.

Specific considerations in determining requirements

i) At least one requirement must be imposed for the purpose of punishment and/or a fine imposed in addition to the community order. Which requirements amount to punishment is a matter for the court to decide in each case.

ii) Where two or more requirements are included, they must be compatible with one another.

iii) The particular requirements imposed must be suitable for the individual offender and will be influenced by a range of factors, including:

- the stated purpose(s) of the sentence;
- the risk of re-offending;
- the ability of the offender to comply;
- the availability of the requirements in the local area.

Question 4: Are the specific considerations to be made when determining requirements of a community order clear and comprehensive? Please highlight any additional information you believe should be included.

Page 6 of the guideline provides guidance for sentencers on pre-sentence reports and electronic monitoring of community orders. This has been updated from existing guidance to make it clear that the pre-sentence report should be completed on the same day where possible to ensure adjournments are avoided.

Pre-sentence reports

In many cases, a pre-sentence report will be pivotal in helping the court decide whether to impose a community order and, if so, whether particular requirements or combinations of requirements are suitable for an individual offender. Whenever the court reaches the provisional view that a community order may be appropriate, it should usually request a pre-sentence report. It may be helpful to indicate to the National Probation Service the court's preliminary opinion as to which of the three sentencing levels is relevant and the purpose(s) of sentencing that the package of requirements is expected to fulfil. Ideally a pre-sentence report should be completed on the same day to avoid adjourning the case. If an adjournment cannot be avoided, the information should be provided to the National Probation Service in written form and a copy retained on the court file for the benefit of the sentencing bench. However, the court must make clear to the offender that all sentencing options remain open including, in appropriate cases, committal for sentence to the Crown Court.

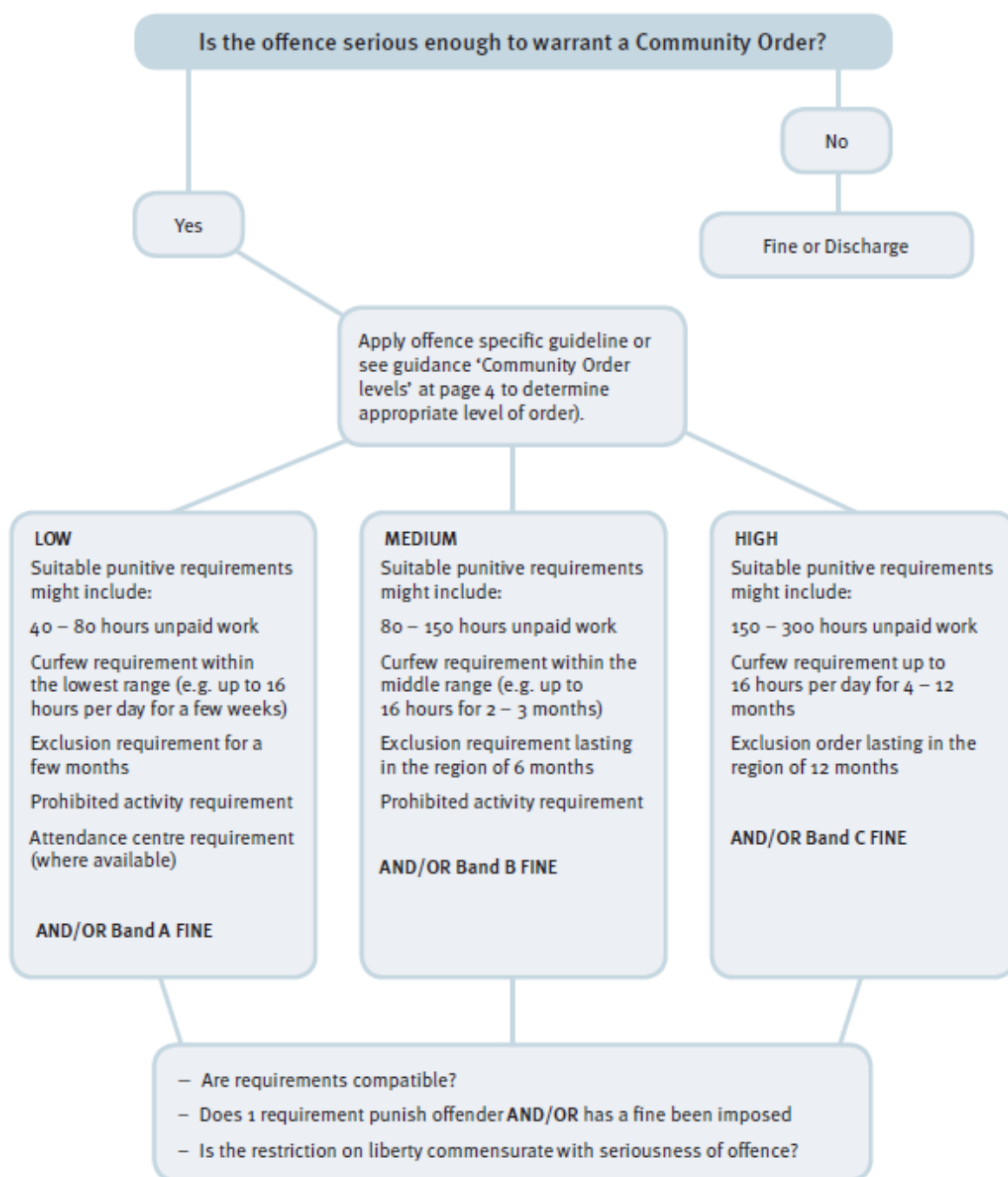
Electronic Monitoring

Subject to limited exceptions, when available the court must impose an electronic monitoring requirement where it makes a community order with a curfew or exclusion requirement, and may do so in all other cases. Electronic monitoring should be used with the primary purpose of promoting and monitoring compliance with other requirements, in circumstances where the punishment of the offender and/or the need to safeguard the public and prevent re-offending are the most important concerns.

Question 5: Is the guidance on pre sentence reports and electronic monitoring clear and comprehensive? Please highlight any additional information you believe should be included.

A flowchart is also included at the end of the guideline on imposition of community orders:

Imposing a Community Order



Question 6: Do you agree with the structure and content of the flowchart for imposition of community orders? Please give your reasons if you do not agree and/or highlight any additional information you believe should be included.

Question 7: Do you agree with the overall proposed guidance on imposition of community orders? Please give your reasons if you do not agree and/or highlight any additional information you believe should be included.

The proposals – Guidance on Imposition of Custodial Sentences

The guidance first sets out the general principles to be observed when imposing custodial sentences. These are presented as questions the court must ask before imposing a custodial sentence, which is the approach taken in the current MCSG guidance.

General Principles

The approach to the imposition of a custodial sentence should be as follows:

- 1) Has the custody threshold been passed?
- 2) If so, is it unavoidable that a custodial sentence be imposed?
- 3) Can the sentence be suspended? See page 9.
- 4) What is the shortest term commensurate with the seriousness of the offence?

Specific considerations:

The custody threshold

A custodial sentence must not be imposed unless the offence 'was so serious that neither a fine alone nor a community sentence can be justified for the offence'. The clear intention of the threshold test is to reserve prison as a punishment for the most serious offences.

Passing the custody threshold does **not** mean that a custodial sentence should be deemed inevitable; custody can still be avoided in light of offender mitigation or where there is a suitable intervention in the community which provides sufficient restriction on the offender's liberty (by way of punishment) while addressing the rehabilitation of the offender to prevent future crime.

Pre-sentence report

Before deciding whether:

- the custody threshold has been passed; and, if so
- the length of imprisonment which represents the shortest term commensurate with the seriousness of the offence;

the court should obtain a pre-sentence report, unless the court considers a report to be unnecessary. Ideally a pre-sentence report should be completed on the same day to avoid adjourning the case.

Magistrates: consult your legal adviser before deciding to sentence to custody without a pre-sentence report.

Committal for Sentence

For either way offences, where the offending is so serious that a magistrates' court is of the opinion that the Crown Court should have the power to deal with the offender, the case should be committed to the Crown Court for sentence even if a community order may be the appropriate sentence (this will allow the Crown Court to deal with any breach of a community order, if that is the sentence passed).

Question 8: Do you agree with the approach to imposing custodial sentences? Please give your reasons if you do not agree and/or highlight any additional information you believe should be included in this section of the guidance.

The proposals – Guidance on Suspending Custodial Sentences

The Council has considered data for suspended sentences, and noted a trend for decreasing volumes of community orders and increasing volumes of suspended sentence orders, rather than a decrease in volumes of immediate custodial sentences, which was the expected consequence of introducing the suspended sentence provisions in 2005. Evidence has indicated that a potential reason for this is that, in some cases, suspended sentences are being imposed as a more severe form of community order where the offending has not crossed the custody threshold. In light of this the Council considers it important to clarify the circumstances in which suspension of a custodial sentence may be appropriate for the following reasons:

- Without a change in practice, any subsequent guideline on breach of suspended sentence orders would result in an increase in the number of activations of suspended custodial sentences for cases where it was never intended that a custodial sentence be served; and
- If suspended sentences are imposed, but not subsequently activated upon breach, they will not act as a deterrent.

The guideline first sets out the questions a court must ask when considering whether to suspend a custodial sentence. The Council considers that it is paramount that sentencers answer the questions set in the order they are presented to be absolutely clear that custody is the intended and appropriate sentence for the offender. A reminder is included that a suspended sentence must not be imposed as a more severe form of community order.

Suspending a Custodial Sentence

A suspended sentence is a sentence of imprisonment. The following questions are paramount in deciding whether to suspend a custodial sentence. A court considering whether to suspend a custodial sentence must answer the following questions in the following order:

- 1) Has the custody threshold been passed? If not, a suspended sentence **cannot** be passed.
- 2) If so, is it **unavoidable** that a custodial sentence be imposed? If not, a suspended sentence **cannot** be passed.
- 3) If so, can that sentence be suspended? Sentencers should be clear that they would have imposed an immediate custodial sentence if the power to suspend had not been available.

A suspended sentence **MUST NOT** be imposed as a more severe form of Community Order.

Specific considerations

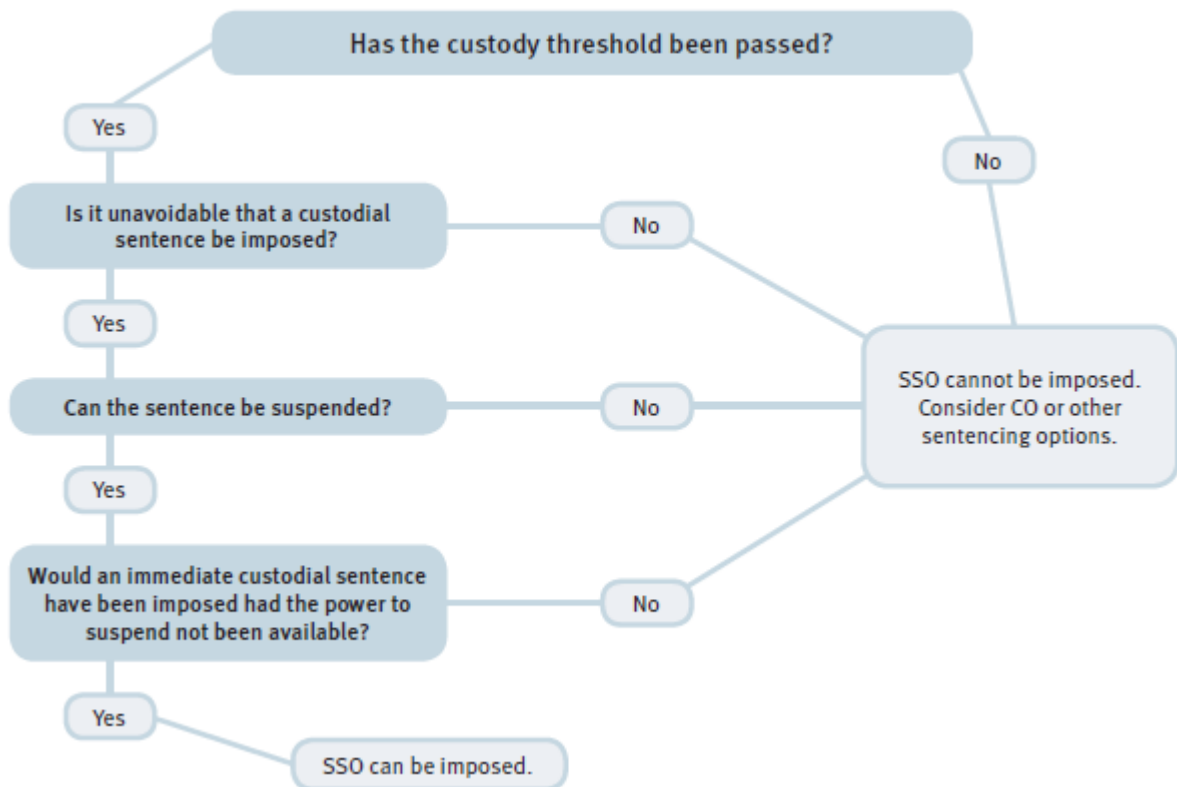
The imposition of a custodial sentence is both punishment and a deterrent. To ensure that the overall terms of the sentence are commensurate with offence seriousness, requirements imposed as part of the sentence should generally be less onerous than if a community order had been imposed. A court wishing to impose onerous or intensive requirements should reconsider whether a community sentence might be more appropriate.

Question 9: Do you agree with the approach to suspending custodial sentences?

Please give your reasons if you do not agree and/or highlight any additional information you believe should be included in this section of the guidance.

A flowchart is also included on suspending a custodial sentence:

Imposing a Suspended Sentence Order



Question 10: Do you agree with the structure and content of the flowchart for imposing a suspended sentence order? Please give your reasons if you do not agree and/or highlight any additional information you believe should be included.

Question 11: Do you agree with the overall proposed guidance on imposition of suspended sentences? Please give your reasons if you do not agree and/or highlight any additional information you believe should be included.

General comments

The Council would like to hear any further comments you may have about the guideline or suggestions as to how it could be improved.

Question 12: Please provide any additional comments or suggestions that you have about the proposals.

About you

In order for us to evaluate the responses to this consultation it would be helpful to know the role of respondents.

Question 13: What is your name?

Question 14: What is your role and organisation?

Thank you very much for your time. Your answers will be very valuable in revising the draft guideline.

Sentencing Council

Sentencing Council meeting:
Paper number:
Lead official:

18 December 2015
SC(15)DEC07 – Work Plan update
Claire Fielder 020 7071 5779

1 ISSUE

- 1.1 To update the Council following its recent decisions about the work plan, in order to inform work in preparing the business plan.

2 RECOMMENDATION

- 2.1 That the Council:
- Confirms that this paper reflects the recent decisions taken by the Council about its priorities; and
 - Notes the revised timetable for discussions by the Council.

3 CONSIDERATION

- 3.1 In November, the Council decided to postpone work on the **assault** guideline, in light of the Law Commission report on Offences against the Person, a lack of evidence of serious problems with the 2011 guideline, and the need to prioritise limited resources to the most important projects in a time of increasing financial constraint.
- 3.2 It agreed that the timetable for the **manslaughter** guideline would remain as planned, coming to the Council for the first time next April.
- 3.3 The Council was further invited to confirm that work to revise both the **Overarching Principles on Assaults on Children and Cruelty to a Child** and also the **Overarching Principles on Domestic Violence** should be undertaken as freestanding projects. The Council had agreed in April 2015 that replacement of SGC guidelines remained a strategic priority for its three year work plan. It therefore decided to proceed with both projects, updating the DV principles to refer to domestic abuse.
- 3.4 The Council had previously indicated that it would like to explore the possibility of prioritising work on offences such as **disclosing private sexual photographs and films with intent to cause distress (“revenge porn”)**,

harassment and stalking, including online, over the planned work on **public order**. For ease of reference, we are referring to this group of offences as “interpersonal offences” at this early stage of the work. “Revenge porn” was also identified as a priority by the MCSG working group. At its October meeting, the Council decided that this offence should not be dealt with as part of the MCSG project because it is not a summary only offence.

3.5 We have reviewed the plan and brought forward work to scope all of these projects. Decisions on scope will in turn affect the scope of the **MCSG project**, where the MCSG contains guidelines for the relevant offences.

Question 1: Is the Council content that this is an accurate reflection of the decisions it took at the October and November meetings?

3.6 As explained at the November meeting, the decision to postpone assault does not mean we can simply insert a new guideline to the plan and produce it to the same timetable. Extensive analysis had already been conducted for assault and the necessary preparatory work for the other guidelines is not so far advanced. However, it does mean that we can start work on updating the domestic violence overarching principles and on the “interpersonal offences” guideline earlier than originally planned. The work on the **imposition of custodial sentences and community orders** guideline, a late addition to the work plan, has meant a consequential delay to the work on **public order**, but some research has been conducted and work done to scope the project, so we propose continuing with this in parallel to the other newer projects. If the public order work were stopped entirely, the scope of the MCSG revision would need to be expanded to cover those public order offenses already within the MCSG.

3.7 Subject to further scoping work over the coming month, the provisional timetable for bringing the new guidelines to the Council is as follows:

Guideline	First discussion by the Council
Knife / bladed article offences	January
Manslaughter	April
Child cruelty OPs	April
Public Order	May
Domestic abuse OPs	May
“Interpersonal offences”	May

Question 2: Is the Council content with this plan?

Question 3: Do members have any questions or comments about the work plan over the coming months?

3.8 In light of the busy guideline publication schedule over the next three months, members may also wish to note the following dates for their diaries:

Month	Consultation	Guideline launch	Guideline in force
January	15 th : Imposition	28 th : Robbery	
February	11 th : Guilty plea		1 st : Theft 1 st : Health and Safety
March		22 nd : Dangerous Dogs	1 st : Allocation

4 IMPACT

4.1 As noted above, the changes to the work plan do have some impact on the pace of work. However, the impact is minimal and it remains the case that the Council has had an extremely productive year, with another busy year forecast for 2016/17.

5 RISK

5.1 There is no real risk of reputational damage as a result of the decision to postpone revision of the assault guideline.

5.2 In light of current restrictions on spending and recruitment, it may be necessary to slow down or stop work on certain guidelines in the event of staff leaving or ongoing restrictions on externally commissioned research. At the moment, however, the policy team is at full strength and we therefore have sufficient resource to start work on a number of new guidelines, even if consultations may have to be postponed or prioritised next year to take account of resource constraints on the analytical side.

Blank page

ANALYSIS AND RESEARCH

NOTE OF SUB-GROUP MEETING

18 November 2015

Members present: Julian Roberts (Chair)
Richard Williams

Apologies: Tim Holroyde
John Saunders

In attendance: Emma Marshall (Head of Analysis and Research)
Sarah Poppleton (Researcher)
Caroline Nauth-Misir (Statistician)
Lauren Bowes (Researcher)

1. UPDATE ON SOCIAL RESEARCH WORK

1.1 Sarah Poppleton (SP) informed the group that the data collection exercise for the theft and drugs guidelines evaluation has began in 81 magistrates' courts and that data collection appears to be going well so far, with a number of courts having already requested additional forms from our contractor, RAND Europe. SP showed the group the two data collection forms that are being used for the evaluation. Data will be collected for five weeks pre-Christmas and for four weeks after the Christmas break (i.e. throughout January, before the definitive theft guideline comes into force on 1 February 2016).

1.2 SP updated the group on progress on our project to scope out the best way to collect data from the magistrates' courts in the future, which is currently being carried out by NatCen Social Research. By the end of this week, NatCen will have carried out six out of the seven planned visits to courts across the seven HMCTS regions and a survey of all courts will be disseminated via the justices' clerks during the week commencing 30 November. The project will report at the end of January.

1.3 SP informed group that in September/October the research team carried out a telephone survey with 60 participants (52 magistrates and eight district judges) on how they currently sentence possession of a bladed article/offensive weapon offences. The results of this survey (presented later at this meeting) will be combined with early feedback responses and analysis of Crown Court sentencing transcripts for presentation to the Council in January 2016.

1.4 Other ongoing work within the social research team is a content analysis of 154 manslaughter transcripts, which Lauren (LB) has begun in preparation for the manslaughter guideline. In terms of completed work, the health and safety research bulletin was also published earlier this month, alongside the definitive guideline.

2. UPDATE ON RESOURCE ASSESSMENTS AND STATISTICAL WORK

2.1 Emma Marshall (EM) informed the group that the A&R team are working on a number of resource assessments for upcoming guidelines:

- the allocation resource assessment will be published alongside the definitive allocation guideline on the 10 December.
- Liz Whiting (LW) is currently working on the robbery resource assessment and it will be sent to the sub-group for review in December. Early indications show that we do not expect the guideline to push sentencing up overall, although for offences involving a knife there may be increases due to offences moving into the highest category of culpability.
- the guilty plea resource assessment is complete and will be discussed at Council on Friday 20 November. EM informed the group that there has been significant debate regarding how to present this information but a decision has been made to cover only the scenario of which we can be most certain, which is based on an assumption of no change to offender behaviour. It has been agreed that this is the only quantifiable approach.
- there will be a resource assessment for the draft imposition guideline, as a precursor to the breach guideline. EM stated this is likely to be a straightforward narrative resource assessment and expects there will not be any resource implications.
- the resource assessment for the definitive dangerous dogs guideline will be complete in March 2016.

2.2. Caroline Nauth-Misir (CNM) informed the group that LW has worked on analysing court volumes for theft and drug offences, to create a sample of magistrates' courts for the evaluation of these guidelines.

2.8 CNM updated the group that the statistics team has provided data to policy team members for their Council papers on dangerous dogs, youths and assault offences.

2.9 CNM notified the group that the A&R team are re-drafting the existing data sharing agreement with MoJ, in order to obtain record level data for both Crown Court and magistrates' court from their Court Proceedings Database (CPD). We also want to ensure that contractors are able to see and use extracts of the data from the database.

2.10 CNM advised the group that the team has carried out quality assurance work on a section of MoJ's bi-annual Race and the Criminal Justice System report, where they have used CCSS data on mitigating and aggravating factors relating to drug offences.

3. UPDATE ON BUDGET AND RISK REGISTER

3.1 On budget, CNM advised that the A&R budget is likely to have a £67,000 underspend at the end of this financial year. This is because of the following reasons:

- a) the drugs and theft evaluation work has been delayed due to changes by the policy team, resulting in final payments shifting to the next financial year;
- b) both the magistrates' court data scoping project and the CCSS final payment have come in under budget;

- c) there has been a delay on breach research due to changes in the work plan;
- d) and proposed qualitative work on drugs has been removed from the work plan.

- 3.2 EM updated the group on the current spending and recruitment restrictions. These restrictions mean that there is a freeze on certain aspects of spending and that there can be no recruitment in any form, including awarding of work to contractors (although there may be some limited scope to extend contracts already in place and we are exploring this). EM noted that a business case needs to be made for all spending.
- 3.3 Richard Williams (RW) suggested that, in light of the restrictions and impact they will have on the work of the A&R team, the issue needs to be identified formally at Council at the earliest opportunity. Julian Roberts (JR) suggested there should be greater clarification on what is classified as business critical in relation to analysis and research. EM agreed to discuss the under-spend and MoJ's imposition of constraints on spending this with Claire, as well as reviewing the financial constraints guidance documents supplied by MoJ.

Action: EM to explore the financial constraints issue further in relation to A&R work.

4. UPDATE ON RISK REGISTER

- 4.1 On risks, it was decided that the risk relating to staff and financial resource should remain at the same level but that information should be added to the narrative to detail the restrictions on spending and recruitment and the implications these might have.

Action: EM to update narrative on risk register and circulate to subgroup.

5. PLANS FOR WORK ON DEVELOPING AN ELECTRONIC DATA COLLECTION FORM

- 5.1 SP informed the group that she recently had a meeting with Lee Hyde from MoJ technology to discuss the development of an electronic data collection form, for future guideline development and evaluation work in the courts. Lee said that progress on some elements of digitisation (e.g. the bench solution) may be slowed down because of the imposition of spending cuts.
- 5.2 SP explained that because not all magistrates and judges will be issued with i-Pads/laptops in the short to medium term, a totally digital solution to data collection will not be possible at the moment and paper-based forms will continue to be needed.
- 5.4 SP informed the group of the A&R team's intention to design a generic electronic data collection form that would be used alongside paper forms, going forward. It would have generic and tailored components and would have functionality for compulsory answers, routing and pop-up instructions. This would be a more efficient method for collecting data from those magistrates and judges who do use i-Pads and laptops in their work. In order to facilitate this work, the A&R team will explore the possibility for extending the contract for one of existing contractors (NatCen and Rand) – although this will depend on the outcome of reviewing the documents on the spending constraints – as well, as

possible use of MoJ Digital (who may offer a cheaper solution than a contractor).

- 5.5 RW enquired whether an online survey provider such as Survey Monkey could be used and SP informed the group that contracts are possible with online services, but are sometimes limited by scale. LB suggested the name of a company that offered online survey services on a large scale.

Action: A&R team to explore possible options for contracting out the development of a generic, electronic form.

6. Burglary guideline analysis and plans for publication

- 6.1 Referring to the paper on burglary circulated in advance of the meeting, EM discussed options for analysis and publication of a report on whether the burglary guideline had impacted on sentencing.
- 6.2 The group agreed that these data should be updated for the latest ten years and that further work should be undertaken, particularly to explore the issues observed in the time trend with commercial burglary. A paper outlining the initial analysis will be circulated (in early December) prior to a decision being made on when it should be published (either early next year or when the further analysis has been undertaken).

Action: LW to circulate updated analysis to subgroup in December.

7. OUTCOMES FROM BLADED ARTICLE/OFFENSIVE WEAPONS ANALYSIS

- 7.1 SP shared the results from 60 telephone interviews with magistrates and district judges on the bladed article/offensive weapon guideline. The results will help to inform the development of the new sentencing guideline, in particular starting points and sentence ranges, as well as mitigating and aggravating factors.
- 7.2 SP informed the group that the results from the telephone interviews as well as early feedback responses and Crown Court transcript analysis are likely to be presented to the Council in January, as part of the early consideration of the content of the new guideline.

8. COMMENTS ON RACE AND GENDER PAPER

- 8.1 EM introduced the paper that was circulated prior to the meeting on race and gender, authored by Meng-Le Zhang. This uses detailed CCSS data, accessed by Meng-Le when he completed an internship at the Office of the Sentencing Council.
- 8.2 JR proposed that the Council should distance itself from the paper and noted that the paper represents the views of an independent academic. It was decided that no comments should be formally provided to Meng-Le by the A&R subgroup and that the author should make it explicit (in a revised footnote) that the paper represents his own view, and not that of the Council.
- 8.3 Independent of Council, Julian will send comments on the paper to Meng-Le in his capacity as a senior academic.

- 8.4 JR will update the Council at the next meeting (Friday 20 November) about the forthcoming submission of Meng-Le's paper to a peer-reviewed journal, noting the author's independence. It will be stressed that the Council will have no input into the final draft of the paper.

Actions: JR to update Council on the paper; EM to feed back to the author that a footnote should be included to make it clear the paper represents the author's view, rather than that of the Council.

9. 2016 MEETINGS

- 9.1 EM informed the group that the meetings will remain on a Wednesday in 2016, since LW will now be able to attend on a Wednesday for some time going forward, and will circulate possible dates for 2016. It was suggested that the next meeting should occur in mid-January.
- 9.2 JR stated that it would be useful if members of the sub-group could join the meeting through virtual telephone or video links to avoid unnecessary time spent in travelling from courts to the RCJ.

Action: EM to circulate provisional dates for 2016 meetings; EM to look into possibilities of video conferencing and teleconferencing for meetings.

Blank page

Sentencing Council

CONFIDENCE AND COMMUNICATIONS SUB GROUP 7 December 2015 - Meeting Notes

Attendees

Council:	Michael Caplan (Chair), Jill Gramann, Martin Graham, Lynne Owens
OSC:	Nick Mann, Helen Stear, Gareth Sweny
Apologies:	Julian Goose

Aims of meeting

1. To note current spending restrictions as well as risks and budget
2. To monitor progress against actions
3. To comment on our progress with engaging victims
4. To receive an update on progress on our digital work
5. To feedback on media handling plans for allocation, imposition, robbery and guilty pleas

Introduction

Michael welcomed the members of the sub group and congratulated Lynne on her appointment as Director General of the National Crime Agency, a post she is due to take up on 4 January 2016.

1. Impact of spending restrictions, risks and budget

- 1.1 Helen updated the group to let them know that the emergency spending restrictions for this financial year had little impact on the communications team as there has been a freeze on all communications spending for several years. Any budget which has already been committed is protected so the digital work can continue as planned.
- 1.2 Helen went through the risk register and noted that there were too many risks listed under communications and suggested that any risks with a score of one for either impact or likelihood should be removed.

Action:

- Helen to remove risks with a score of one from comms sub-risks

2. Action log

Helen went through the action log and highlighted three items which were not covered elsewhere in the meeting's papers.

- In relation to item 8 the Chairman has been meeting with members of the Justice Committee and other interested MPs. Helen will bring options around any future parliamentary events to the next meeting.
- In relation to item 9, Helen proposed that this be de-prioritised as we have had no interest from the women's media and Anthony is no longer here meaning we have a reduced capacity. The group agreed with this although Jill Gramann noted that we should keep a clear record of what attempts have been made to reach this audience.
- In relation to item 10, Nick let the group know that he is now actively promoting the educational materials and was considering whether we could, given the spending restrictions outlined at point 1, justify paying the Association of Citizenship Teachers a further small fee to publicise the materials via their channels.

3. Victims

- 3.1 Nick updated the group on latest activity relating to victims. Helen and Nick met Victim Support's head of comms in November to discuss some potential ways in which the two organisations could work together. It also led to some suggestions for useful contacts for other organisations it would be useful to establish links with such as the Victim Support homicide service, who may be able to use our existing leaflets, the police pan-London domestic violence service and the umbrella body for the PCCs.
- 3.2 As a result of the meeting, lines of communication were established which meant that VS contacted the OSC before issuing a press release about victim personal statements, allowing some changes to be made which avoided the suggestion that a lack of a VPS affected a judge's ability to sentence.
- 3.3 Nick reported that the head of comms had now moved to another role in VS and therefore another meeting with the new head of comms would be necessary. Nick also said that given the spending restrictions in place, the development of video material was looking unlikely to be possible and so he would approach relevant stakeholders, the Witness Service in the first instance, to see if there was any

potential for a collaborative approach, with the OSC bringing the concept, script, and expert contacts within the CJS, and the partner having the resources to be able to get it into production.

3.4 Jill suggested that Victim Support may be a good avenue to follow with regard to finding some speaking opportunities for Council members.

Action:

- Nick will arrange a meeting with the new VS head of comms and another with the Witness Service.

4. Digital update

4.1 Helen updated the group on all areas of digital work. The group were content with the update and were happy to receive and demonstration of the new online document store at the Council meeting later in December.

4.2 Jill noted that one clear difference between the requirements for digital guidelines in the magistrates' and the Crown court was that magistrates had a much greater need for quick access to guidelines as they may sentence many cases in a short time whereas Crown Court judges would not have to do this.

5. Media handling

5.1 Nick expanded on the media handling paper, outlining the approach to the announcements relating to allocation, imposition, robbery and guilty pleas.

5.2 The group noted that in relation to the guilty plea guideline it was important to emphasise the differences between the existing approach and the new one and that this is not 'new policy'.

5.3 Lynne noted that the police would respond well to messages around the guilty plea guideline making things tighter and clearer. The message should be clear that victims and witnesses, rather than the criminal, will benefit from the new guideline, giving them more certainty as to whether a trial is going ahead.

5.4 It was also emphasised that it was important to ensure defence lawyers were reached regarding the allocation guideline as well as the other procedural guidelines namely, guilty pleas and imposition as there was some evidence that the messages were not always getting through. Michael offered to act as a spokesperson with relevant titles such as the Law Society Gazette.

5.5 Jill noted that we should clarify which offences are covered in the robbery guideline and provide definitions of robbery, burglary and theft to avoid any confusion.

Action:

- Nick will be developing the approaches to the guideline publication comms and will update at the next meeting, along with providing summaries of the guideline publication response to the announcements that occur in the meantime.

6. AOB

Helen informed the group that she and the Head of Office were having ongoing discussions with various contacts regarding the provision of guidelines in Welsh. There is some demand for these and we are working with the HMCTS Welsh Language Unit to establish what resources would be required to deliver sentencing guidelines in Welsh.

NEXT MEETING: 8 February