

17 September 2015

Dear Member,

Meeting of the Sentencing Council – 25 September 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 25 September 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 following papers are attached for the Council meeting:

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| ▪ Agenda | SC(15)SEP00 |
| ▪ Minutes of meeting held on 17 July | SC(14)JUL01 |
| ▪ Action Log | SC(15)SEP02 |
| ▪ Guilty Pleas | SC(15)SEP03 |
| ▪ Robbery | SC(15)SEP04 |
| ▪ Allocation | SC(15)SEP05 |
| ▪ Youths | SC(15)SEP06 |
| ▪ Dangerous Dogs | SC(15)SEP07 |
| ▪ Annual Report | SC(15)SEP08 |

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

Just to make you aware that we will require photographs of the meeting for the annual report. Therefore, Nick Mann will be taking these at various points during the meeting.

I look forward to seeing you on the 25th.

Yours sincerely



Claire Fielder

Head of the Office of the Sentencing Council

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Sentencing Council

COUNCIL MEETING AGENDA

25 September 2015
Royal Courts of Justice
Queen's Building Conference Room

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| 09:45 – 10:00 | Minutes of the last meeting and matters arising (papers 1 & 2) |
| 10:00 – 11:15 | Guilty Pleas presented by Ruth Pope (paper 3) |
| 11.15 – 12.00 | Robbery presented by Vicky Hunt (paper 4) |
| 12.00 – 13.15 | Allocation presented by Ruth Pope (paper 5) |
| 13.15 - 13.45 | Lunch |
| 13:45 – 14:45 | Youths presented by Vicky Hunt and Joanne Keatley (paper 6) |
| 14:45 – 15:45 | Dangerous Dogs presented by Mandy Banks (paper 7) |
| 15.45 – 15:55 | MCSG update presented by Claire-Louise Manning |
| 15:55 – 16:15 | Annual report presented by Anthony Walker (paper 8) |
| 16:15 – 16:30 | Update from the analysis and research subgroup – presented by Julian Roberts |

Sentencing Council

COUNCIL MEETING AGENDA

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MEETING OF THE SENTENCING COUNCIL

17 JULY 2015

MINUTES

<u>Members present:</u>	Colman Treacy (Chairman) Michael Caplan Julian Goose Martin Graham Heather Hallett Tim Holroyde Sarah Munro Julian Roberts John Saunders Richard Williams
<u>Apologies:</u>	Jill Gramann Javed Khan Lynne Owens Alison Saunders
<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 Chief Constable Chris Eyre, attending on behalf of Lynne Owens
<u>Members of Office in Attendance</u>	Claire Fielder (Head of Office) Mandy Banks Lisa Frost Vicky Hunt Ruth Pope Caroline Nauth-Misir Helen Stear

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 19 June 2015 were agreed.

3. MATTERS ARISING

3.1 The Chairman thanked Richard Williams for chairing a successful consultation event on the Dangerous Dogs guideline in Caernarfon on 25 June.

3.2 The Chairman also thanked Sarah Munro for attending a meeting with officials from the Victim Commissioner's Office on 25 June as part of the Commissioner's review of compliance with the requirements of the Victims' Code relating to the victim personal statements. This enabled the Council to highlight how victims are taken into account throughout all guidelines. The report is expected in the autumn.

3.3 The Chairman also thanked Tim Holroyde for his speech at the Homicide Working Group on 2 July, discussing the work of the Sentencing Council and how the guidelines are used.

3.4 The Council noted that today would have been the last meeting for Javed Khan. The Chairman recorded the Council's thanks for Javed's contribution to the Council over the last two years. The Chairman updated the Council on the recent appointment of Mark Castle, Chief Executive of Victim Support. His appointment will begin on 1 August.

3.5 The Chairman welcomed Liz Whiting who has recently joined the Office from the Department for Energy and Climate Change. Liz will be leading on the resource assessments for the Council and heading the statistics part of the analysis and research team.

4. PRESENTATION FROM THE LAW COMMISSION ON THE SENTENCING PROJECT – PRESENTED BY PROFESSOR DAVID ORMEROD AND PAUL HUMPHERSON, LAW COMMISSION

4.1 Professor David Ormerod, Law Commissioner, and Paul Humpherson, lead official on the sentencing project at the Law Commission, updated the Council on its first consultation for its project to create a sentencing code for England and Wales. They also updated the Council on plans for the rest of the project over the next two years. It was agreed to have further presentations and discussions throughout the duration of the project.

5. DISCUSSION ON GOVERNANCE AND STRATEGY – PRESENTED BY CLAIRE FIELDER, OFFICE OF THE SENTENCING COUNCIL

- 5.1 The Council discussed progress over the past year in matters relating to strategy and planning, financial accountability and other compliance matters, and performance. It noted that improvements had been made to processes for the recruitment and induction of new members and in the oversight of risk and budget matters.
- 5.2 The Council agreed that it should approve any major changes to the work plan or budget made in year, which would affect the delivery of Business Plan commitments. The Council decided that its Business Plan, which included a three year work programme, remained an accurate statement of its strategy.

6. DISCUSSION ON COSTS OF SENTENCING – PRESENTED BY CAROLINE NAUTH-MISIR, OFFICE OF THE SENTENCING COUNCIL

- 6.1 The Council reviewed a draft note setting out information relating to the costs of sentencing. The Council decided that the note should be revised in order to reflect that this data was owned by the Ministry of Justice and its agencies, not the Council and that the Council was simply providing signposting in the interests of transparency.

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

- 7.1 The Council reviewed the theft guidelines for the final time. In particular, amendments to the general theft, handling and shop theft guidelines which had been made since the last meeting were discussed and agreed by the Council. The guideline was signed off for publication of the definitive guideline in the autumn.

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

- 8.1 Stephen Muers updated the Council on work being undertaken by the Ministry of Justice Analytical Services team on building a model to assess the system wide impact of the proposed guilty plea scheme. The results of this work in conjunction with analysis being carried out within the Office of the Sentencing Council would be available to the Council at its September meeting.
- 8.2 Chris Eyre and Peter Lewis explained how the police and CPS were implementing initiatives and investing in resources to ensure that high quality decisions would be made early in cases to provide defendants

and their representatives with the information needed to decide on plea.

9. DISCUSSION ON HEALTH AND SAFETY AND FOOD SAFETY AND HYGIENE - PRESENTED BY LISA FROST, OFFICE OF THE SENTENCING COUNCIL

- 9.1 This was the Council's final consideration of issues raised in response to the draft health and safety guideline. The Council gave further consideration and discussed responses relating to fines and related issues for all offences within the guideline.
- 9.2 The Council agreed the final version of the health and safety harm model, and also considered one further category of offences which had been suggested for inclusion within the scope of the health and safety guidelines. Finally, the Council reviewed and agreed the summary of all amendments made to the guideline over the last three meetings. The guideline was signed off for publication of the definitive guideline in the autumn.

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

- 10.1 The Council considered how best to develop offence specific guidelines for young offenders, and what offences should be covered. It was agreed that sentencers should be encouraged to take an individualistic approach to sentencing and so a step by step approach with sentencing tables may not be appropriate, but that guidance could be provided to assist sentencers in determining whether a case has crossed the custody threshold.
- 10.2 The Council decided that such guidance should be provided on sexual offences and robbery cases.

11. UPDATE ON DIGITAL MCSG – PRESENTED BY HELEN STEAR, OFFICE OF THE SENTENCING COUNCIL

- 11.1 The Council was updated on the digital landscape and how work on digital sentencing guidelines for magistrates fits into that. Also opportunities were outlined for the Council to tie in with other digital projects such as the Bench Solution and e-Judiciary to ensure the best possible publicity for the digital guidelines when they are launched later in the year.

ACTION AND ACTIVITY LOG – as at 17 September 2015

	Topic	What	Who	Actions to date	Outcome
SENTENCING COUNCIL MEETING 30 JANUARY 2015					
1	Probation	John Crawforth proposed a presentation on changes to Probation for a future Council meeting	Claire Fielder	ACTION ONGOING – Claire is approaching Colin Allars, Director of Probation in NOMS, to speak to the Council at a future meeting.	ACTION CLOSED - Colin has confirmed attendance at the October meeting.
2	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 ONGOING Longer term "out of scope" recommendations relating to structure of the criminal courts will be considered at a later date.	PARTIALLY CLOSED The Council agreed to revise the allocation guideline and the recommendations relating to the guilty plea guideline will be picked up in the consultation.
SENTENCING COUNCIL MEETING 6 MARCH 2015					
3	Assault	Council decided that the work to be taken forward should be a potential combination of a complete review, option 3, and a review plus guidance on child cruelty and/or domestic violence, option 4, depending on the resource involved and whether Government legislates on DV early in next Parliament.	Mandy Banks	ACTION ONGOING: MOJ have since confirmed that the recent legislation on child cruelty was not a new offence, but a clarification of existing offences.	ACTION ONGOING - Review in November.
SENTENCING COUNCIL MEETING 15 May 2015					
4	Guilty Pleas	Consultation to be delayed. Officials are speaking to the CPS, MoJ and police regarding impact on other parts of the system. The costs model is to be run again using 2014 CCSS data and with the reduction at the second stage of proceedings at 20% and 25%. Discussions have been undertaken with MoJ on how best to resource this work and the support they will offer to the Council. Progress on work to date will be brought back to Council in July.	Ruth Pope/ Victoria Obudulu		ACTION CLOSED: The results to be presented at September Council meeting

5	Guilty Pleas	MoJ analytical services to provide assistance with cost modelling. MoJ to liaise with Home Office and Attorney General's Office regarding an analysis of the wider implications of the proposed reforms to the CJS of which the guilty plea guideline is a part.	Stephen Muers		ACTION CLOSED: Results to be presented to the Council at September meeting.
6	Allocation	Key stakeholders to be consulted on the proposed allocation guideline by email. Council members will receive a draft of the consultation document by email for comments.	Ruth Pope/ Council members		ACTION CLOSED: Consultation commenced 19 June will conclude 31 July. The results will be presented to the Council at the September meeting.
7	Robbery	Minor amendments to be made to Model B. Office to work on sentencing levels, and test those via a transcript exercise to ensure sentencing practice is unaffected by guideline.	Vicky Hunt		ACTION CLOSED: Make small adjustments to the sentencing levels, in particular the ranges. To be presented to the Council at the September meeting.
SENTENCING COUNCIL MEETING 19 June 2015					
8	Youth	To redraft the approach to determining the sentence (section four) considering a different approach to assessing seriousness. John Saunders to consider section on allocation in light of Tyneside decision and send comments to office/Bill Davis.	Jo Keatley John Saunders		ACTION CLOSED: Comments received from John Saunders and changes implemented. Approach to seriousness has been redrafted to be presented to the Council at the September meeting.
SENTENCING COUNCIL MEETING 17 July 2015					
9	Costs of sentencing	To amend the draft of the cost paper to include only the opening sentence and the links to the relevant statistics and present back to Council for consideration.	Caroline Nauth-Misir		ACTION CLOSED: Links to the relevant statistics have been included in the Annual Report, which will be presented to the Council to review at the September meeting.
10	Youth	To reconsider the approach to offence specific guidelines. Instead draft additional chapters to the overarching principles to cover sexual offences and robbery guidance	Vicky Hunt		ACTION ONGOING: Drafts to be presented to the Council at the September meeting.

11	Theft	To circulate the revised version of the general theft guideline to Council members, and to circulate new wording for the short custodial sentences issue in shop theft. Council members to email Mandy with any drafting/style comments by 24/7/15. Mandy to circulate a draft of the response paper w/c 3/8/15 with one week deadline. Copy of the updated resource assessment to be circulated to Council members before publication.	Mandy Banks/Emma Marshall All Council members		ACTION CLOSED. Revised version of General theft, and the new wording for short custodial sentences was circulated. Draft of the response paper was circulated to Council on 4/8.
12	Consistency	To revise form of words about the Council's objective to improve consistency and circulate to Council members for agreement.	Claire Fielder All Council members	Draft circulated to Council members; comments received	ACTION CLOSED: Wording agreed.
13	Health & Safety	LF to circulate consultation response document and final versions of guidelines week commencing 3/8. Council members to provide comments by 19/8.	Lisa Frost All Council members		ACTION CLOSED

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Sentencing Council

Sentencing Council meeting: 25 September 2015
Paper number: SC(15)SEP03 – 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 At the meeting in July 2015, the Council agreed that further work should be done to understand the likely impact of the proposed guideline both in terms of the impact on correctional resources and the wider system costs and savings associated with the guideline to report back to the Council in September.

1.2 This work has been completed and the resource assessment estimates that the proposed guideline would lead to an increase in the prison population (over time) of between one and five per cent.

2 RECOMMENDATION

2.1 The Council is asked to consider the report at **Annex A** on the work undertaken jointly by the analysts from the office of the Sentencing Council and Analytical Services at the Ministry of Justice.

2.2 The Council is asked to decide on one of three options:

- continue to prepare the proposed guideline for public consultation;
- cease work on a guilty plea guideline; or
- commence work on a new guilty plea guideline afresh.

3 CONSIDERATION

The results of the analysis

3.1 **Annex A** sets out the estimated impact of the proposed guideline. It is important to note that despite the rigorous analytical work undertaken, the findings

are estimates based on a number of assumptions about the behaviour of defendants, their representatives, prosecutors and sentencers. The assumptions underpinning the impact assessment were provided by members of the guilty plea subgroup. The results – that the central estimate is that by 2024/2025 2,500 additional prison places will be required – are very similar to those presented to the Council in May 2015.

3.2 It seems likely, therefore, that the guideline will result in a small but significant increase in prison population which is unlikely to be offset in financial terms by savings elsewhere in the criminal justice system.

3.3 The proposed guideline has the stated aim of benefiting witness and victims by bringing forward the point at which a defendant admits his guilt.

3.4 Based on the assumptions underpinning the resource assessment, for the 86,000 cases that are sentenced in the Crown Court each year:

- between 29% and 48% of guilty pleas would be entered earlier than at present;
- in around 50% of cases the plea would be entered at the same stage as at present;
- in between 3% and 15% of cases the plea would be entered at a later stage than at present; and
- of those, between 1% and 8% of cases where a guilty plea is currently entered would go to trial.

3.5 This indicates that overall the guideline would be likely to achieve the aim of benefiting victims and witnesses by bringing forward the point at which guilt is accepted.

3.6 The Council has drafted the guilty plea guideline based on the principle that offenders should be incentivised to admit guilt as early as possible in the process and that the application of guilty plea reductions should be consistent. Although the guideline could be subject to drafting changes both before consultation and as a result of the consultation process, there are no changes that could be made to the draft guideline which would alter the resource assessment significantly. Therefore, if the Council wishes to proceed to consultation it will be in the knowledge that there is likely to be a significant impact on correctional resources.

3.7 If a decision is taken to proceed to consultation, it is recommended that at least one further Council meeting is taken to finalise the guideline and that thereafter careful consideration will need to be given to the timing and handling of the

consultation process in the light of the wider work plan and the amount of stakeholder engagement needed.

3.8 If the Council does not wish to proceed to consult on the draft guideline, the options are to cease work on a guilty plea guideline or to take a fresh look at the issue going back to first principles. The Council has a statutory duty to prepare a guideline on guilty pleas and the current draft represents the second time the Council has devoted time and resource to developing a guilty plea guideline. The Council will be aware that it has a challenging work plan and that starting again on guilty plea guideline could only be justified if the work would result in a guideline that would improve on the current definitive guideline. Consideration would need to be given to how this work would be accommodated in the work plan.

3.9 If the Council ceases to work on a guilty plea guideline altogether, it will have to justify that decision with regard to its statutory obligations and the expectations of stakeholders. It will also miss the opportunity to update the guilty plea guideline to take into account legislative changes (such as the new minimum sentences for knife offences).

Question 1: Does the Council wish to proceed to consult on the draft guilty plea guideline?

Question 2: If so, does the Council agree to defer a decision on the timing of the consultation until the October meeting?

Question 3: If not, does the Council wish to go back to first principles and commence work on a new guilty plea guideline?

Question 4: Or does the Council wish to cease work on a guilty plea guideline altogether?

4 IMPACT

4.1 The resource impact of the guideline is discussed fully at Annex A.

5 RISKS

5.1 The Council will be aware that it has a statutory duty to prepare a guideline for reductions for guilty pleas and that the guideline is in its published work plan. There is an expectation from the PQBD's Review, from the SPJ and others, including many judges and magistrates, that a guideline will be consulted on in the near future. Any decision to discontinue work or to start work afresh would have to be very

carefully explained to key stakeholders including police, prosecutors, judiciary, and the courts service.

5.2 There are risks to political and public confidence in the Council if it either fails to consult on the guideline, or if it consults on a guideline which it is unable to deliver because of the likely impact. Equally, the Council will want to maintain its independence and avoid any perception that the guideline has been cancelled due to outside pressures.

Estimated impact of the guilty plea guideline: results of further analysis

Following discussion at the July Council meeting, the Analysis and Research team have undertaken further analysis of the guilty plea guideline in order to produce:

- a range of estimates of the correctional resource costs/savings attributable to the proposed guideline based on different assumptions of offender behaviour;
- a breakdown of the estimates by summary, either way and indictable only offences;
- a subset of estimates for different offence types (e.g. sexual offences);
- models with the capability for sensitivity analysis (e.g. increasing or decreasing the level of reduction available at certain stages); and
- an estimate of the impact on a year by year basis.

In addition to the work undertaken by the OSC, the Ministry of Justice (MoJ) have also completed work looking at the impact in the magistrates' court, and the wider system impacts.

Background:

1. The draft resource assessment discussed at the May Council meeting indicated that, as a central estimate, the new guideline would have a steady state cost of £80m per year on prison services. The range of estimates in which the resource assessment fell was very wide, ranging from a cost of £35m to a cost of £130m per year.
2. Given the concern over these costs, and the fact that they did not take account of the wider system impacts, it was agreed that further work needed to be undertaken. This would also allow more exploration of where in the process the costs might be arising and an opportunity to revisit the original assumptions associated with the guideline. As a result, two new models have been built to accommodate this work: a magistrates' and a Crown Court model.

3. At the end of July a meeting was held with members of the Sentencing Council to agree the assumptions for use in the modelling work. Members were asked to agree both an optimistic and pessimistic scenario of how offenders might respond to the new guideline. These are presented in Annex B.

The new model:

4. In 2014, 1,215,695 offenders were sentenced in all courts in England and Wales. Of these 86,297 were in the Crown Court and 1,129,398 in the magistrates' courts. Of those offenders sentenced in the Crown Court, 90 per cent entered a guilty plea.
5. The majority of offenders (81 per cent), who entered a guilty plea and were sentenced in the Crown Court, did so before or at the Plea and Case Management Hearing (PCMH). As a result, 76 per cent of these received the maximum reduction in sentence of one-third. However, at present some offenders are still receiving maximum discount at the latest stage: around 11 per cent of those that entered a plea on or after the day of trial received a reduction of a third from their sentence¹.
6. There are legitimate reasons why this might be the case, for example where the charge is changed at a late stage and therefore the first opportunity the offender has to plead is at a very late stage of proceedings. However, it is thought that these exceptional circumstances do not account for the total number of cases where an incompatible level of reduction has been given.
7. Under the new guideline offenders would only receive the maximum discount at the first stage of proceedings. The aim is that offenders will have a greater incentive to plead at the earliest hearing and therefore receive the maximum reduction. However, at the other end of the spectrum, having missed the full discount, some offenders might be incentivised to go to trial and therefore receive no discount and a more severe sentence. An optimistic and pessimistic

¹ No data on the size of discounts at magistrates' courts is collected.

scenario has therefore been presented to represent these two opposing scenarios as offenders' behaviour is uncertain.

8. In building the new models, we assume that sentencers will follow the proposed guideline as it is set out; if sentencers do not apply the guideline correctly or if they subvert the guideline, for example by choosing a lower starting point to achieve a desired outcome, the model will not reflect this.
9. The impact has only been measured in terms of changes to levels of reductions for guilty pleas which are expected to occur as a result of the guideline. Any future changes in sentencing practice which may have occurred whether or not the new guideline was implemented are not included in the estimates.
10. The costs quoted exclude capital build costs and overheads. On this basis, a year in custody is assumed to cost an average of around £25,000 in resource terms, including local maintenance, but excluding any capital build expenditure and overheads that may be necessary. It should be noted that this is a lower figure than previously used in our resource assessments (£30,000) but this aligns with the new estimates used across the Ministry of Justice (MoJ).
11. The Crown Court model has been built using the 2014 Court Proceeding Database (CPD) matched with the Crown Court Sentencing Survey (CCSS) 2014. The matched data gives us information both about the guilty plea and the stage at which the plea was entered. The magistrates' courts model used sentencing data, including initial plea rates and cracked trial rates².
12. The new models have been designed to capture the impact across the whole system including the magistrates' court, Crown Court, changes to hearing times, police time, legal aid and the National Probation Service (NPS). It is also designed to show at what point the costs are occurring and the impact over time, as some costs won't come on stream until several years after the guideline has been in force.

² Cracked trials where the defendant entered an acceptable, late guilty plea.

13. However, since the largest impact on offender management depends on plea behaviour at the Crown Court, this has been the main area of our focus. In addition, the magistrates' court model has been lighter touch due to limited data regarding guilty pleas.

14. Only offenders aged 18 or above have been included in this assessment, as it has not been possible to estimate the change in Detention and Training Orders (DTOs) as a result of the guideline.

Results:

15. Headline results:

- In the Crown Court, using the new assumptions, it is estimated that the guideline would increase the prison population by approximately three per cent. This is based on a central estimate of an increase in the number of prison places required of around 2,500, equating to a cost of £63 million per year. However, not all these places (and therefore costs) come on stream in year one. The build up over time is shown in section 18.
- The estimated impact on prison resources is wide-ranging, from £28 million (1,100 places) to £99 million (4,000 places) per year, having reached steady state. This represents an increase in the prison population of between one and five per cent. It is worth noting, that the reduction in costs from the original resource assessment is largely a result of the lower costs used for prison places rather than fewer prison places being required (see point 10).
- Further exploration of the data provides some indication as to where the extra prison places and costs are generated. Table 1 shows that a large number of these extra places result from triable either way (TEW) cases. The reason for the increase in these cases specifically is twofold: there are a lot of these cases which are currently getting a discount of one third after the initial hearing and under the new guideline this level of reduction will no longer be available. In addition, the 25 per cent discount has been

reduced to 20 per cent, so those pleading at the second stage are receiving a smaller reduction than previously. The TEW cases make up the largest group, and so these changes have a significant impact.

Table 1: Estimated increase in prison places for indictable and either way offences in the Crown Court under the new guideline³

	IND	TEW	TOTAL
Central Estimate	400	2,200	2,500
Optimistic scenario	100	1,100	1,100
Pessimistic scenario	700	3,300	4,000

16. Changes to discount:

- Under the new guideline the discount available at the second stage is 20 per cent, compared to 25 per cent under the existing guideline. As already indicated above, changing the discount at the second stage has a substantial impact on the estimates.
- A 20 per cent discount gives a central estimate of an additional 2,500 prison places, where as a 25 per cent discount gives a central estimate of 1,700 prison places. Therefore the reduction in discount costs an additional 900 places.

17. Sexual offences:

- The analysis also looked at the impact that offenders sentenced for sexual offences might be having on resources. Sexual offenders are more likely

³ These estimates show the increase in prison places in steady state in the Crown Court broken down by offence type. Table 2 shows the build-up in places resulting from changes in the magistrates' and Crown Court after the introduction of the guideline, using the MoJ prison projection model.

to plead late or not enter a plea at all. In the Crown Court, 46 per cent of those sentenced for sexual offences in 2014 didn't enter a plea, compared to 10 per cent of those sentenced for other offence types. This is only of those who ultimately received a custodial sentence. In order to explore the impact these offenders were having, they were removed from the model.

- A lot of sexual offenders don't enter a plea and it is assumed that this would remain unchanged under the new guideline. In addition, sexual offenders tend to enter a plea late and receive long sentences, and largely it is assumed this would remain unchanged under the new guideline. However, there are currently some offenders receiving the maximum discount after the first hearing but before the PCMH and this would no longer happen. These offenders already have a large impact on prison resources, and therefore this is not expected to increase substantially under the new guideline. It is estimated that the number of prison places required would increase by approximately 60 to 290 prison or £2 to £7 million, per year in steady state.

18. Magistrates' court and annual impact:

- The new guideline has minimal impact in the magistrates' court, compared to the Crown Court. It is estimated that the magistrates' court contributes 80 to 280 extra prison places or around £2 to £7 million. These extra places build up quickly over a period of 12 to 18 months.
- The figures quoted in section 15 are the additional prison places generated in the Crown Court, once the model has reached steady state. However, it takes time for the places to build up. The MoJ prison projection model has been used to give the increase in the number of places required over time. Table 2 shows the extra places required as a result of changes in both the magistrates' and Crown Court.
- Table 2 shows that steady state is not reached until around 2024/25. These figures are not cumulative.

Table 2: Build-up in the prison population for all courts

	15/16	16/17	17/18	18/19	19/20	20/21	21/22	22/23	23/24	24/25
Central estimate	0	400	1300	1800	2000	2400	2500	2600	2600	2700
Optimistic	0	200	600	800	900	1100	1200	1200	1200	1200
Pessimistic	0	500	1900	2700	3100	3700	3900	4000	4100	4100

19. Wider system impact

- The increase in the prison population in both the Crown and magistrates' court results from longer sentences. This causes a temporary reduction in the expected licence population as offenders are released later. However, this does not have a significant impact on payments made by MoJ to Community Rehabilitation Companies as they are paid per licence start rather than on a caseload basis. The caseload for the National Probation Service initially decreases, producing a saving of between £1 and £3 million in 2017/18, but this then changes to a net cost of £2 to £6 million per year in the longer term as a result of offenders spending a longer amount of time on licence (due to longer overall sentences).
- The impact on sitting days at the Crown Court is difficult to estimate as average total hearing times are not broken down by the seven stages of the current guideline or the five stages of the new guideline. The analysis is based on assumptions, and the results are sensitive to those assumptions. In the optimistic scenario, where offenders plead earlier as a result of the guideline, we estimate a saving of about five per cent of Crown Court hearing time. In the pessimistic scenario, where offenders who miss the largest discount, then decide to go to trial, there is an increase of 11 per cent. This is equivalent to a saving of £8 million or a cost of £18 million per year. If the reduction in court workload from the guilty plea guideline is used to address the backlog in cases at the Crown Court, there would be no saving in cost.
- The total costs across the system are shown in Table 3. The costs continue to increase over time beyond 2019/20, to reach a steady state of between £23 million and £123 million per year by around 2024/25.

Table 3: 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	18/19	19/20	20/21	21/22	22/23	23/24	24/25
Central	£0	£12	£35	£46	£54	£64	£68	£71	£72	£73
Optimistic	£0	-£3	£6	£11	£14	£19	£21	£22	£23	£23
Pessimistic	£0	£27	£63	£81	£93	£109	£115	£119	£122	£123

- It has not been possible to estimate the potential savings to the Crown Prosecution Service or the Police due to the lack of any unit cost data. In discussion with police analysts, it was decided that, whilst changes to workload could be discussed qualitatively, sufficiently robust unit costs were not available to make a cost estimate. It may be possible to estimate the cost impact on the CPS, but the relevant unit costs have not been made available. It has also not been possible to estimate the savings to Legal Aid due to limited data. In the case of Legal Aid, it is not thought that these savings would be significant anyway.
- Costs and savings are presented in current values. In reality, it may not be possible to realise any of the savings, as this would entail closing offices and courts, and reducing the number of employees. The costs involved have not been modelled. Neither have the capital costs of increasing capacity to deal with the increases in demand.

Conclusions:

20. The guideline is estimated to increase the prison population by between 1 and 5 per cent. While this may not seem substantial, because the prison population is already operating at maximum capacity, this does present an issue.
21. This equates to between 1,100 to 4,000 extra prison places and costs of £23 to £123 million. The prison places and costs build up over several years, reaching a steady state by around 2024/25.

22. A lot of validation of the models has been conducted, and we are confident in the estimates generated. However, the model is dependent on the assumptions going into it, and the reality could be very different depending on offenders and sentencers' behaviour. Therefore these estimates should be treated as a guide only.

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ANNEX B: GUILTY PLEA ASSUMPTIONS

Indictable only offences

Future Assumptions		Existing Assumptions															
		1. Early Guilty Plea Hearing			2. PrePCMH			3. PCMH			4. PostPCMH			5. day of Trial			6. No plea
Scenario		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

Existing Assumptions

Future Assumptions	Scenario	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%

Sentencing Council

Sentencing Council meeting: 25 September 2015
Paper number: SC(15)SEP04 - Robbery
Lead officials: Vicky Hunt & Jo Keatley
020 7071 5786
Lead Council member: Julian Goose

1 ISSUE

- 1.1 This is the fourth consideration of the guidelines post consultation. The aim is for the guidelines to be signed off at the next Council meeting in October, published in January 2016 and come into force in April 2016. The main purpose of this paper is to confirm that the Council is content with the sentencing levels within each of the guidelines, and to note some minor changes.
- 1.2 The Council will also have the opportunity to see a mock up of the Robbery guidelines as they will appear when published (subject to any further changes made). This is attached at **Annex A**.

2 RECOMMENDATION

The Council is asked to consider

- The sentencing levels set out in each of the guidelines; and
- Whether 'value' should be considered at step 1 or step 2 in the combined street/ less sophisticated commercial robbery guideline.

3 CONSIDERATION

Sentencing Levels

- 3.1 At the June meeting the Council reached broad agreement about the sentencing levels in each of the guidelines, but the Council asked for further work to be undertaken in two areas:
- In the combined street/ less sophisticated commercial robbery guideline - to reconsider the ranges as they appeared to be too broad

- In the professionally planned commercial robbery guideline – to check that the sentence starting point for a category A1 offence is correct and inline with relevant authorities

Street/ less sophisticated commercial robbery guideline

3.2 The ranges have been considered and some proposed changes are set out below in bold red. There are only a small number of changes that can be made in order to narrow the ranges but keep the same starting points. The main factor that affects narrowing the ranges is the upper limit of 12 years in category A1. This is the same upper limit that is in the existing SGC Robbery guideline and the Council may feel that to reduce the maximum sends a message about the Council’s intentions which could affect sentencing practice, and may also be contrary to the message the Council put out in the consultation paper that sentence levels should reflect the serious social problem of offenders carrying knives.

3.3 If the Council agrees that the upper limit of 12 years has to be kept then the range within that category would have to cover a period of at least 6 years. Narrower ranges can be achieved in the other categories though as set out below.

Harm	Culpability		
	A	B	C
Category 1	Starting point 8 years’ custody Category range 7 – 12 years’ custody	Starting point 5 years’ custody Category range 3 – 8 years’ 4-8 years’ custody	Starting point 4 years’ custody Category range 2 - 7 years’ custody 3-6 years’ custody
Category 2	Starting point 5 years’ custody Category range 3 – 8 years’ custody 4-8 years’ custody	Starting point 4 years’ custody Category range 2 - 7 years’ custody 3-6 years’ custody	Starting point 2 years’ custody Category range 1 year – 4 years’ custody
Category 3	Starting point 4 years’ custody Category range 2 - 7 years’ custody 3-6 years’ custody	Starting point 2 years’ custody Category range 1 year – 4 years’ custody	Starting point 1 year custody Category range High Level Community Order – 3 years’ custody

Question 1: Does the Council agree to the amended sentencing ranges for the combined street/ less sophisticated commercial robbery?

Professionally Planned Commercial Robbery

3.4 In June the Council agreed, in principle, to the sentencing starting points and ranges in the professionally planned commercial robbery guideline as set out below.

Harm	Culpability		
	A	B	C
Category 1	Starting point 16 years' custody Category range 12 – 20 years' custody	Starting point 9 years' custody Category range 7 – 14 years' custody	Starting point 5 years' custody Category range 4 – 8 years' custody
Category 2	Starting point 9 years' custody Category range 7 – 14 years' custody	Starting point 5 years' custody Category range 4 – 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody
Category 3	Starting point 5 years' custody Category range 4 – 8 years' custody	Starting point 3 years' custody Category range 2 – 5 years' custody	Starting point 2 year's custody Category range 18 months custody - 4 years' custody

3.5 There was, however, discussion about the upper sentencing starting point- in category A1, of 16 years. Some Council members were concerned that it may not be high enough as some sentences of around 20 years have been imposed for robberies of banks/ building societies or post offices involving firearms.

3.6 I have, therefore, carried out a further analysis of sentencing decisions to ensure that 16 years is appropriate and to find out whether those sentences of around 20 years are only in cases involving a series of robberies. Some key cases are set out below for the Council's consideration.

3.7 The 1975 case of *R v Turner* held that the normal sentence for anyone taking part in a bank robbery, or in the hold up of a security or Post Office van, should be 15 years if firearms were carried and no serious injury done. It has

now been acknowledged, in a number of cases, that this decision is out of date and no longer provides the same level of guidance to sentencing judges as it used to, as terms of imprisonment on conviction of murder and other serious violence offences are higher than they were in 1975 when *Turner* was decided. The following cases, therefore post date *Turner*.

- *R v Thomas and Others* 2011 EWCA Crim1497

K and C, with others, robbed the Graff jewellery store in New Bond Street using converted firearms. To assist their escape a female employee was seized for 40 seconds. £40 million worth of jewellery was stolen and none of it was recovered. No one was injured but death threats were made, and shots were fired at a pursuing car. K and C had no relevant previous convictions. The sentences after trial were **16 year's imprisonment each for conspiracy to rob**, and consecutive sentences for possession of a firearm resulting in K receiving 23 years imprisonment, and C 21 year's imprisonment. It was held that the sentence of 23 years may have been slightly less than it might have been, and the sentence of 21 years was not manifestly excessive.

- *R v Twomey and Others* 2011 EWCA Crim 8

T, H, C and others were involved in a carefully planned and professionally executed armed robbery at a secure warehouse premises. Each of the six robbers was armed with a firearm, one of which was a sub machine gun. More than a dozen employees were rounded up, threatened and restrained. T was sentenced to **20 ½ years' imprisonment** for robbery and 7 years' imprisonment to run concurrently for possession of a firearm with intent to commit robbery: H was sentenced to **17 ½ years imprisonment** for his involvement in the robbery, with 7 years to run concurrent for the firearm, and C was sentenced to **15 ½ years imprisonment** for the robbery, also with 7 years concurrent for possession of a firearm. H & C appealed against their sentence on the basis that the starting point for sentence was too high (based on a reliance of the decision in *R v Turner*), and that the sentences did not adequately reflect personal mitigation. It was held that the 35 year old decision in *R v Turner* is no longer a reliable guide. The sentences in the case of H and C fell within the appropriate bracket of sentence.

- *R v McCartney & Others* 2003 EWCA Crim 1372

During a period of two years 20 armed robberies or attempted armed robberies were committed in the Manchester area. H & M were involved to differing degrees; H was involved in 11 robberies, and sentenced to **22 years imprisonment**, and M was involved in 2 robberies and sentenced to **11 years imprisonment**, to be served consecutively to his existing 8 years sentence for an unrelated offence involving a firearm. The Court of Appeal held these sentences were not manifestly excessive.

- *R v Jenkins & Others* 2008 EWCA Crim 1372

Five robberies had occurred over a six-month period, all involving the use of sawn-off shotguns and were planned and targeted on security guards delivering cash to building societies at night. The guards had been threatened with the guns, one having been hit with the butt of a gun. The issue was whether the starting point of 25 years was too high. The guidance for robberies of this gravity had to be found in cases such as *R. v McCartney* and *R. v Atkinson*, which supported the view that **the maximum sentence for a number of armed robberies where violence was actually used was in the region of 25 years.**

- *R v Atkinson* 2004 EWCA Crim 3223

X and S had been the leaders in arranging a series of armed robberies of sub post offices. There were nine robberies and two attempted robberies, resulting in a total of £424,000 being stolen, but X and S had not participated in all of them. Violence was used on the victims, who were also threatened with guns and knives. X contended that, in view of the authorities, his sentence was manifestly excessive. Held, allowing the appeals, that in **cases of multiple armed robberies, a sentence of 25 years' imprisonment was at the top of the range and should be reserved for the gravest offences.** In the instant case there had been no actual physical injury caused to the victims, and on the facts X's sentence was reduced to 22 years' imprisonment.

- 3.8 The authorities seem to indicate that sentences in the region of 20+ years are reserved for serious multiple robberies. The draft guideline currently provides for a starting point of 16 years imprisonment for an A1 category offence, with a sentencing range of 12 – 20 years, which appears to be appropriate in light of the relevant authorities.

Question 2: Is the Council content with the sentencing starting point and range for a category A1 professionally planned commercial robbery?

Value

- 3.9 At the June Council meeting, when robbery was last on the agenda, the Council was asked to consider the combined street and less sophisticated commercial robbery guideline to decide whether 'value' should be a step 1 harm consideration or a step 2 aggravating feature. The Council could not reach agreement and it was decided that the matter should be brought back at a later date, when there was expected to be a greater number of Council members at the meeting.
- 3.10 The issue around value arose when it was agreed that the street and less sophisticated commercial robbery guidelines should be combined. The benefits of combining the guidelines were that it would avoid confusion about which guideline a sentencer should use in the case of a robbery in a taxi or a robbery on the street, targeting commercial takings; and it meant that the guidelines would operate similarly to the existing SGC guideline which sentencers are familiar with. However by combining the guidelines the Council have been left with the decision of where value should be considered.
- 3.11 When the guidelines were separate the Council was keen that, for street robbery, value should be considered only at step 2, as value is not a key consideration of harm. The main issue when assessing harm in a street robbery case is the effect the robbery has had on the victim, rather than the value of goods taken which is often down to chance.
- 3.12 The guidelines that were subject to public consultation included a separate street robbery guideline; a commercial robbery guideline which covered all forms of commercial robbery; and a dwelling robbery guideline. When the guidelines were arranged in this way value was a step 1 consideration within the commercial robbery guideline, as clearly value is a key factor in professionally planned commercial robberies.
- 3.13 When the Council agreed that the two guidelines should be combined it was suggested that value appear at step 1 with the caveat that it should only be considered in commercial cases. As set out below:-

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1	<ul style="list-style-type: none">• Serious physical and/or psychological harm caused to the victim• Serious detrimental effect on the business• Very high value goods or sums (whether economic, personal or sentimental) (commercial robberies only)
Category 2	<ul style="list-style-type: none">• Some physical harm caused to the victim• Some psychological harm caused to the victim above the level of harm inherent in the offence of robbery• Some detrimental effect on business• High or medium value goods or sums (whether economic, personal or sentimental) (commercial robberies only)
Category 3	<ul style="list-style-type: none">• Factors in categories 1 and 2 not present

3.14 In June I brought the issue back to the Council to raise some potential concerns with the guideline being drafted in that way. There were three main concerns:

- Treating value differently for street and less sophisticated commercial robberies as above will mean that the Council will need to clearly define the circumstances in which a case would be classed as a street robbery, and when a commercial robbery. The Council spent a long time deliberating over these issues and considering the various scenarios that could potentially fall within either classification (e.g. robbery of a taxi, robbery of a man on the street who is carrying commercial takings, robbery of a pizza delivery man). Ultimately the Council decided that combining the guidelines was the best way to overcome the problem and to ensure that sentencers were consistent with the guideline they used. The benefits of combining the guideline would, therefore, be lost if we adopt the above approach.

- Including value at step 1 with the caveat that it only applies to commercial robberies adds a complexity to the guideline, and a potential for sentencers to misread it and apply the factors incorrectly. In May and June the office undertook a transcript exercise to test out the sentencing levels within each of the guidelines. In that transcript exercise the testers were given this combined street/less sophisticated commercial robbery guideline with value at step 1 and the caveat. However a number of testers overlooked the caveat when working through a street robbery case and considered value at step 1. This was a very small sample size, but does highlight the risks of overly complicating a guideline. The danger is that if sentencers misapply the guideline street robbery sentences could be inflated.
- The existing SGC guideline, which combines street and less sophisticated commercial robbery, includes value as an aggravating factor (at step 2). To change the structure so that value is considered at step 1 for less sophisticated commercial robberies may risk inflating sentences for those types of robberies and may affect sentencing practice.

3.15 Placing value at step 2 for both street and less sophisticated robbery would resolve the above concerns. However, the issue for many members of the Council was that value is a key consideration when sentencing less sophisticated commercial robberies, as most robbers will have chosen their target on the assumption that they would obtain high value goods, and therefore value should be considered at step 1.

3.16 'Value' as a harm factor is intended to capture the harm caused to the business/ organisation as a result of the loss. Another factor within step 1 is 'serious detrimental effect on the business'. Arguably any high value loss to a business would result in serious detriment to that business. The use of this factor perhaps better captures the real harm of a less sophisticated commercial robbery than value would. In addition the wording of this factor would ensure that it would only ever be applicable to a commercial type robbery rather than a street robbery.

3.17 At consultation the Association of Convenience Stores commented that in a commercial robbery of a small business, "the loss of goods or money may be of less significance compared to the time the store needs to close or the cost of supporting the staff thereafter". This supports the idea that harm is better

captured through the 'detriment to business' factor as opposed to an assessment of the value lost.

Question 3: Does the Council agree to move value to a step 2 consideration in the combined street/ less sophisticated commercial robbery guideline?

4 IMPACT

The guidelines were developed based on a careful assessment of current sentencing practice and were then tested via roadtesting with sentencers. The guidelines put to Council today have been tested by a transcript exercise in which the new guideline was tested against real cases that were sentenced in the Crown Court to ensure that the impact of the proposals on the criminal justice system is neutral, and to ensure that the guideline is easy to follow.

5 RISK

The main risk remains the potential for an increase in the prison population if the impact is not accurately assessed, or the problems already identified with the guideline are not addressed.

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Robbery – street and less sophisticated commercial

Theft Act 1968 (section 8(1))

This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003.

Triable only on indictment
Maximum: Life imprisonment

Offence range: Community order – 12 years' custody

This guideline applies only to offenders aged 18 and older.

Street/less sophisticated commercial robbery refers to robberies committed in public places, including those committed in taxis or on public transport. It also refers to unsophisticated robberies within commercial premises or targeting commercial goods.

The Sentencing Guidelines Council Robbery Definitive Guideline includes a guideline for sentencing young offenders which continues to be in force.

General principles to be considered in the sentencing of youths are available in the Sentencing Guidelines Council's definitive guideline, *Overarching principles – Sentencing Youths*, which will continue to be in force pending new and updated youth guidance.

Check www.sentencingcouncil.org.uk for amendments to guidance for youth offenders.

STEP ONE**Determining the offence category**

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following

A – High culpability	<ul style="list-style-type: none"> • Use of a weapon to inflict violence • Production of a bladed article or firearm or imitation firearm to threaten violence • Use of very significant force in the commission of the offence • Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))
B – Medium culpability	<ul style="list-style-type: none"> • Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence • Threat of violence by any weapon (but which is not produced) • Other cases where characteristics for categories A or C are not present
C – Lesser culpability	<ul style="list-style-type: none"> • Involved through coercion, intimidation or exploitation • Threat or use of minimal force • Mental disability where linked to the commission of the offence

Harm

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused to the victim • Serious detrimental effect on the business
Category 2	<ul style="list-style-type: none"> • Other cases where characteristics for categories 1 or 3 are not present
Category 3	<ul style="list-style-type: none"> • No/minimal physical or psychological harm • No/minimal detrimental effect on the business

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Consecutive sentences for multiple offences may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	Starting point 8 years' custody	Starting point 5 years' custody	Starting point 4 years' custody
	Category range 7 – 12 years' custody	Category range 4 – 8 years' custody	Category range 3 – 6 years' custody
Category 2	Starting point 5 years' custody	Starting point 4 years' custody	Starting point 2 years' custody
	Category range 4 – 8 years' custody	Category range 3 – 6 years' custody	Category range 1 – 4 years' custody
Category 3	Starting point 4 years' custody	Starting point 2 years' custody	Starting point 1 year's custody
	Category range 3 – 6 years' custody	Category range 1 – 4 years' custody	Category range High level community order – 3 years' custody

The table on the next page contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness**Statutory aggravating factors:**

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability

Involvement of others through coercion, intimidation or exploitation

Prolonged nature of event

Restraint, detention or additional degradation of the victim

Sophisticated organised nature of offence

A leading role where offending is part of a group activity

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Failure to respond to warnings about behaviour

Timing of the offence

Location of the offence

Attempt to conceal identity (for example, wearing a balaclava or hood)

Commission of offence whilst under the influence of alcohol or drugs

Targeting of large sums of money or valuable goods

High value goods or sums (whether economic, personal or sentimental)

Location of offence also victim's residence

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Remorse, particularly where evidenced by voluntary reparation to the victim

Good character and/or exemplary conduct

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability

Little or no planning

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**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.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Robbery – professionally planned commercial (including banks, shops, businesses)

Theft Act 1968 (section 8(1))

This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003.

Triable only on indictment
Maximum: Life imprisonment

Offence range: 18 months' – 20 years' custody

This guideline applies only to offenders aged 18 and older.

Professionally planned commercial robbery refers to robberies involving a significant degree of planning, sophistication or organisation.

STEP ONE**Determining the offence category**

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following

A – High culpability	<ul style="list-style-type: none"> • Use of a weapon to inflict violence • Production of a bladed article or firearm or imitation firearm to threaten violence • Use of very significant force in the commission of the offence • A leading role where offending is part of a group activity • Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation)) • Abuse of position
B – Medium culpability	<ul style="list-style-type: none"> • Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence • Threat of violence by any weapon (but which is not produced) • A significant role where offending is part of a group activity • Other cases where characteristics for categories A or C are not present
C – Lesser culpability	<ul style="list-style-type: none"> • Performed limited function under direction • Involved through coercion, intimidation or exploitation • Threat or use of minimal force • Mental disability where linked to the commission of the offence

Harm

The level of **harm** is determined by weighing up all the factors of the case to determine the harm that has been caused or was intended to be caused to the victim. The victim relates both to the commercial organisation that has been robbed and any individual(s) who has suffered the use or threat of force during the commission of the offence.

Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused to the victim • Serious detrimental effect on business • Very high value goods or sums (whether economic, personal or sentimental)
Category 2	<ul style="list-style-type: none"> • Other cases where characteristics for categories 1 or 3 are not present
Category 3	<ul style="list-style-type: none"> • No/minimal physical or psychological harm • No/minimal detrimental effect on the business • Low value goods or sums (whether economic, personal or sentimental)

STEP TWO**Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of high culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Consecutive sentences for multiple offences may be appropriate particularly where exceptionally high levels of harm have been caused.

Where multiple offences or a single conspiracy to commit multiple offences of particular severity have taken place sentences in excess of 20 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	Starting point 16 years' custody	Starting point 9 years' custody	Starting point 5 years' custody
	Category range 12 – 20 years' custody	Category range 7 – 14 years' custody	Category range 4 – 8 years' custody
Category 2	Starting point 9 years' custody	Starting point 5 years' custody	Starting point 3 years' custody
	Category range 7 – 14 years' custody	Category range 4 – 8 years' custody	Category range 2 – 5 years' custody
Category 3	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 2 years' custody
	Category range 4 – 8 years' custody	Category range 2 – 5 years' custody	Category range 18 months' – 4 years' custody

The table on the next page contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness**Statutory aggravating factors:**

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability

Involvement of others through coercion, intimidation or exploitation

Restraint, detention or additional degradation of the victim

Prolonged nature of attack

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Failure to respond to warnings about behaviour

Timing of the offence

Attempt to conceal identity (for example, wearing a balaclava or hood)

Commission of offence whilst under the influence of alcohol or drugs

Targeting of large sums of money or valuable goods (except where considered at step one)

Location of offence also victim's residence

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Remorse, particularly where evidenced by voluntary reparation to the victim

Good character and/or exemplary conduct

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**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.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Robbery – dwelling

Theft Act 1968 (section 8(1))

This is a serious specified offence for the purposes of section 224 of the Criminal Justice Act 2003.

Triable only on indictment
Maximum: Life imprisonment

Offence range: 1 year's custody – 16 years' custody

This guideline applies only to offenders aged 18 and older.

STEP ONE**Determining the offence category**

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following

A – High culpability	<ul style="list-style-type: none"> • Use of a weapon to inflict violence • Production of a bladed article or firearm or imitation firearm to threaten violence • Use of very significant force in the commission of the offence • Sophisticated organised nature of offence • A leading role where offending is part of a group activity • Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation)) • Abuse of position
B – Medium culpability	<ul style="list-style-type: none"> • Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence • Threat of violence by any weapon (but which is not produced) • A significant role where offending is part of a group activity • Other cases where characteristics for categories A or C are not present
C – Lesser culpability	<ul style="list-style-type: none"> • Performed limited function under direction • Involved through coercion, intimidation or exploitation • Threat or use of minimal force • Very little or no planning • Mental disability where linked to the commission of the offence

Harm

The court should weigh up all the factors set out below to determine the harm that has been caused or was intended to be caused to the victim.

Category 1	<ul style="list-style-type: none"> • Serious physical and/or psychological harm caused to the victim • Very high value of goods (whether economic, sentimental or personal) • Soiling, ransacking or vandalism of property
Category 2	<ul style="list-style-type: none"> • Other cases where characteristics for categories 1 or 3 are not present
Category 3	<ul style="list-style-type: none"> • No/minimal physical or psychological harm • Low value goods or sums (whether economic, personal or sentimental) • Limited damage or disturbance to property

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Consecutive sentences for multiple offences may be appropriate particularly where exceptionally high levels of harm may be caused.

In a case of particular gravity, reflected by extremely serious violence, a sentence in excess of 13 years may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	Starting point 13 years' custody	Starting point 8 years' custody	Starting point 5 years' custody
	Category range 10 – 16 years' custody	Category range 6 – 10 years' custody	Category range 4 – 8 years' custody
Category 2	Starting point 8 years' custody	Starting point 5 years' custody	Starting point 3 years' custody
	Category range 6 – 10 years' custody	Category range 4 – 8 years' custody	Category range 2 – 5 years' custody
Category 3	Starting point 5 years' custody	Starting point 3 years' custody	Starting point 18 months' custody
	Category range 4 – 8 years' custody	Category range 2 – 5 years' custody	Category range 1 – 3 years' custody

The table on the next page contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness***Statutory aggravating factors:***

Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction

Offence committed whilst on bail

Other aggravating factors:

Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution

Victim is targeted due to a vulnerability (or a perceived vulnerability), including but not limited to age, mental or physical disability

Involvement of others through coercion, intimidation or exploitation

Prolonged nature of event

Restraint, detention or additional degradation of the victim

A leading role where offending is part of a group activity

Child or vulnerable person at home (or returns home) when offence committed

Victim compelled to leave their home

Attempts to conceal/dispose of evidence

Established evidence of community/wider impact

Failure to comply with current court orders

Offence committed on licence

Offences taken into consideration

Failure to respond to warnings about behaviour

Timing of the offence

Attempt to conceal identity (for example, wearing a balaclava or hood)

Commission of offence whilst under the influence of alcohol or drugs

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Remorse, particularly where evidenced by voluntary reparation to the victim

Good character and/or exemplary conduct

Serious medical conditions requiring urgent, intensive or long-term treatment

Age and/or lack of maturity where it affects the responsibility of the offender

Mental disorder or learning disability

Sole or primary carer for dependent relatives

Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

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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.

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The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention order.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for time spent on bail**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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Sentencing Council

Sentencing Council meeting: 25 September 2015
Paper number: SC(15)SEP05– Allocation
Lead officials: Ruth Pope
Lead Council member: Heather Hallett

1 ISSUE

1.1 The Council agreed to amend the Allocation Guideline and, in light of the level of consultation and consensus already achieved on this matter, undertook a short, targeted, consultation with stakeholders in June and July 2015.

1.2 48 responses were received from individuals and stakeholder groups.

1.3 The consultation responses were largely supportive of the aims of the revised guideline, which were to provide clear guidance to enable and encourage magistrates' courts to retain more cases for summary trial.

1.4 However, a significant minority raised important questions regarding:

- the principle of there being no expectation that by accepting summary jurisdiction a defendant would be sentenced within magistrates' courts powers; and
- the practical effects of the guideline namely, whether it would, in fact, achieve the desired outcome of fewer cases being sent to the Crown Court for trial.

1.5 Michael Caplan and Tim Holroyde are holding a meeting with representatives from the defence community on 24 September and will report on the matters raised.

2 RECOMMENDATION

2.1 The Council is asked to consider;

- issues of principle at paragraphs 3.2 to 3.10 below and decide on the aims of the guideline;
- whether the guideline as drafted is likely to achieve the aim of retaining more cases in magistrates' courts (see paragraphs 3.11 to 3.16 below); and
- if not, whether any of the proposed amendments at paragraphs 3.27 – 3.30 would assist, or whether it can identify other solutions.

3 CONSIDERATION

3.1 The draft guideline is attached at **Annex A**. This paper is focussing on the aspects of the draft guideline which caused the most controversy.

The 'expectation principle'

Guidance

It is important to ensure that all cases are tried at the appropriate level.

1. In general, either way offences should be tried summarily unless:

- the outcome would result in a sentence in excess of the court's powers for a single offence after taking into account personal mitigation and any reduction for a guilty plea; or
- the case involves complex questions of fact or difficult questions of law, including difficult issues of disclosure of sensitive material, in which case the court should consider sending for trial notwithstanding that its powers may be sufficient.

2. However, in **straightforward cases** the court should bear in mind its **power to commit for sentence after a trial** and may **retain jurisdiction** notwithstanding that the likely sentence would exceed its powers.

Consultation question: 3

Do you agree with the proposed change of practice as set out at paragraph 2? Is the wording clear? Please give your reasons if you do not agree.

3.2 23 respondents agreed to question 3 without further comment. The National Council of District Judges, the National Bench Chairs Forum (NBCF) and the Magistrates' Association (MA) welcomed the change and felt that it would lead to more cases being tried in magistrates' courts. Professor Hungerford-Welch agreed with the proposal which he felt was consistent with the recommendation made by the PQBD in his Review.

3.3 Others disagreed. Anthony Edwards states "this straight forward application of the expectation principle in sentencing is overlooked by the Chief Magistrate in his interim guidance and belittled by the President in his report. If it is thought no longer to apply then clients will inevitably elect trial." The Criminal Law Solicitors Association felt that it was better for a defendant to be sentenced by the trial court and were concerned that unrepresented defendants would not understand the risk of committal after trial. The Law Society also felt it was preferable for a defendant to be sentenced by the trial court and if it was considered that the defendant was at risk of a sentence in excess of magistrates' courts powers the case should be sent to the Crown Court.

3.4 The Justices' Clerks Society (JCS) agreed that potentially more cases should be kept in the magistrates' court and committed for sentence where appropriate but suggest that the guideline goes further than envisaged by the Review and that legislative change may be required (this point is also made by the Justice Select Committee see 3.9 below). The JCS think further clarification is required and suggested it might be better to focus on borderline cases where for lack of information (either about the offence or the offender) the court is unsure whether its powers would be sufficient.

3. In addition, straightforward cases should be tried summarily even when it is apparent from the list of previous convictions that the defendant is subject to a Crown Court Suspended Sentence Order or Community Order.¹

4. All parties should be asked by the court to make representations as to whether the case is suitable for summary trial. The court should refer to definitive guidelines to assess the likely sentence for the offence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence to include personal mitigation.

Where the court decides that the case is suitable to be dealt with in the magistrates' court, it must warn the defendant that all sentencing options remain open and, that if the defendant consents to summary trial and is convicted by the court, the defendant may be committed to the Crown Court for sentence.

<p>Consultation Question 6: Do you agree with the proposed final paragraph of the Guidance section? Please give your reasons if you do not agree.</p>
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3.5 26 respondents agreed to question 6 without further comment. Of the rest the majority supported the proposed wording which was considered vital.

3.6 There was a consensus that a clear warning should be given if the guideline provides for no restriction on committal for sentence; what was controversial was whether or not there should be an expectation that in at least some cases once jurisdiction has been accepted, the case would be sentenced within magistrates' court powers.

Committal for sentence

There is ordinarily no statutory restriction on committing an either way case for sentence following conviction. The general power of the magistrates' court to commit to the Crown Court for sentence after a finding that a case is suitable for summary trial and/or conviction continues to be available where the court is of the opinion 'that the offence or the combination of offence and one or more offences associated with it was so serious that the Crown Court, should in the court's opinion, have the power to deal with the offender in any way it could deal with him if he had been convicted on indictment'.²

However, where the court proceeds to the summary trial of certain offences relating to criminal damage, upon conviction there is no power to commit to Crown Court for sentence.³

Consultation Question 8:

Do you agree with the proposed guidance in the Committal for sentence section? Please give your reasons if you do not agree.

3.7 34 respondents agreed to question 8 without further comment. Anthony Edwards suggests that the Council must decide whether the expectation principle is to be abandoned; if so defendants must be advised of the likelihood for committal for sentence with the risk of more committals for trial. Professor Hungerford-Welch suggests the inclusion of an explicit statement to the effect that the fact that the magistrates' court has accepted jurisdiction does not fetter the court's jurisdiction to commit for sentence and that there does not have to be any additional information to justify this.

3.8 In response to consultation question 9 which asked for any additional comments or suggestions, many sentencers welcomed the proposals and felt that they would encourage the retention of jurisdiction by magistrates. The NCBF suggested incorporating the following wording from the PQBD's review into the guideline:

The Sentencing Guideline on Allocation should be construed such that, in cases where Magistrates are uncertain about the adequacy of their powers (short of it being likely that they are not [adequate]), they can retain the case and commit for sentence if they later take the view that the case falls outside their sentencing powers. This possibility needs to be made clear to the accused.

3.9 The Justice Committee "note that the overall effect of the draft guideline appears to be that straightforward cases should be tried summarily, regardless of likely sentence (paragraphs 2 and 3 of the section "Guidance"). The only factor prescribed by statute (apart from taking into account representations and allocation guidelines) is the sentencing power of a magistrates' court. We consider that it is not

clear that the approach in the draft guideline is consistent with the statutory emphasis on sentencing power.”

3.10 The Council of HM Circuit Judges state:

We can see obvious advantages in the magistrates accepting jurisdiction subject to their power to commit for sentence. We are concerned however that cases that cross the custody threshold and merit a sentence (be it immediate or suspended) in the 6 to 12 month range will be under-sentenced. If the real aim is to keep more cases in the magistrates’ court then consideration should be given to bringing into force the provisions of the 2003 Act that increase their sentencing powers. In saying this we are not necessarily endorsing an increase in the magistrates’ powers but stating what appears to be the logical position. We appreciate however that this may lie outside the Sentencing Council’s terms of reference and involve wider issues of policy.

We do not think that the proposed guidelines make it sufficiently clear whether they are intended to embody a fundamental change from the previous practice. If so this should be spelt out clearly; otherwise it will be taken to be simply a change of presentation rather than substance. Those who have to apply these guidelines are entitled to know what they represent.

The practical effects of the proposals

3.11 As stated above, the majority of respondents welcomed the proposals and (subject to some drafting changes and relatively minor issues which will be discussed at the October Council meeting) consider that the draft guideline would result in more cases being retained in magistrates’ courts.

3.12 The CLSA, however, stated that as the effect of the proposals would be to “increase the workload of the magistrates’ courts and place an even greater strain on CPS resources [] it is only worth considering if the resources available to the Crown are increased to allow the work to be carried out in a efficient, timely and professional manner.” Further they state that “the provision of criminal defence services is currently finely balanced. Justice in the Crown Court costs more ...the resource devoted to serious cases in the Crown Court is greater, both by the defence and the Crown. If the current model is adjusted to bring more cases into the magistrates’ court funding regime then (1) practitioners’ top line will be dramatically affected and (2) the model on which firms have tendered for two tier contracting will no longer be accurate” running “the risk of placing firms, already teetering on the edge, into insolvency.” At the same time, they suggest that the guideline is likely to lead to more defendants electing Crown Court trial. This will affect the fee paid to the solicitor/advocate if the defendant subsequently pleads guilty and will put the solicitor in a dilemma of an ‘own interest’ conflict.

3.13 Anthony Edwards states that the proposal that magistrates courts should accept jurisdiction for straightforward cases even if their powers of sentence are insufficient creates considerable practical difficulties against the background of the Criminal Courts Charge, which is only £200 more for an either way trial in the Crown Court than magistrates' courts. Many defendants consider that they would rather face trial by jury as the chances of acquittal are greater. If accepting summary trial does not mean that sentence will be limited to magistrates' court powers then many more may elect Crown Court trial.

3.14 Andrew Turnbull, a barrister, suggests that the blanket warning that where a magistrates' court accepts jurisdiction all sentencing options, including committal for sentence remain open contradicts the desire to "sell" the idea of summary trial by not giving anything as a reward. He asserts that most defendants would consent to summary trial if they were offered a guarantee that the sentence would not exceed six months. He notes the consequences for fees if a defendant elects Crown Court trial.

3.15 He comments: "if the idea behind this is that by making a few subtle changes in the wording, more cases will be dealt with summarily, then you are mistaken. Defence lawyers will still advise their clients to elect in appropriate cases, if there is going to be a trial, and savvy defendants will still want the Crown Court. Defendants who want the Crown Court don't tend to mind how they arrive there." To retain more cases he suggests:

- that where magistrates accept jurisdiction and summary trial is consented to, a guarantee be given that the sentence passed will **not** exceed 6 months' custody (or 12 months for two or more either way offences);
- that there should be a loss of credit immediately at the point Crown Court trial is elected;
- for magistrates to make more use of the option to adjourn for a PSR keeping all options open – if the PSR is positive a community order may result; and
- the CPS be prepared to agree bases of plea at magistrates' courts.

3.16 A legal adviser in the magistrates' courts suggests that it would assist the retention of cases in magistrates' courts if they were able to assure defendants that if they consent to summary trial they will receive a sentence within magistrates' courts powers. He notes that a warning that committal for sentence remains an option is often given in cases where there is absolutely no likelihood of it applying, but this

may not be apparent to the defendant. He suggests a compromise: if magistrates allocate a case for summary trial, the accused consents, is convicted and committed for sentence, the Crown Court's sentencing powers instead of being the same as on conviction on indictment could be limited to (for example) double those of the magistrates' powers. That may still give the magistrates the confidence to retain jurisdiction in borderline cases while enabling the accused in such cases to be assured of a limitation of the severity of their sentence if convicted, if they consent to summary trial.

Summary of issues

3.17 There are a number of issues of law, principle, and practical effect raised by the above responses which are interlinked. These can be summarised as follows:

3.18 **Law:** section 19 of the Magistrates' Courts Act 1980 (MCA) provides that:

(1) "The court shall decide whether the offence appears to it more suitable for summary trial or for trial on indictment.

(2) Before making a decision under this section, the court –

- (a) shall give the prosecution an opportunity to inform the court of the accused's previous convictions (if any); and
- (b) shall give the prosecution and the accused an opportunity to make representations as to whether summary trial or trial on indictment would be more suitable.

(3) In making a decision under this section, the court shall consider –

- (a) whether the sentence which a magistrates' court would have power to impose for the offence would be adequate; and
- (b) any representations made by the prosecution or the accused under subsection (2)(b) above,

and shall have regard to any allocation guidelines (or revised allocation guidelines) issued as definitive guidelines under section 122 of the Coroners and Justice Act 2009.

3.19 Council members have previously raised concerns as to whether paragraph 2 of the draft guideline (which states that in straightforward cases a magistrates' court may retain jurisdiction notwithstanding that the likely sentence would exceed its powers) goes beyond what is permitted, or at least envisaged, by the legislation. Members will recall that the Council was previously satisfied that the reference at 19(3) to having regard to allocation guidelines sanctioned the inclusion of any additional considerations which the Council saw fit to include.

3.20 Concerns have been raised by some respondents (see paragraph 3.4 and 3.9 above) that this approach is not consistent with the statutory emphasis on sentencing power.

Question 1: Is the Council satisfied that the retention of straight forward cases in magistrates' courts notwithstanding the likely sentence is compatible with section 19(3) MCA 1980?

3.21 **Principle:** the draft guideline adopted the guidance given by the Chief Magistrate and the JCS (at page 15 of Annex A) that there is an unfettered discretion after conviction to commit for sentence not limited to cases where information is received showing the offence to be more serious than it was originally thought to be. The majority of respondents supported the idea that the guideline should make it clear that there was no expectation of being sentenced in a magistrates' court if the trial takes place there, but a few suggested that this could lead to unfairness especially for unrepresented defendants.

3.22 Several respondents expressed concern for unrepresented defendants who may not understand the significance of the warning about committal for sentence especially if the warning is given in all cases regardless of whether committal is a possibility.

3.23 There is also a concern that it is undesirable for the sentencing court and the trial court to be different.

Question 2: Is the Council satisfied that provided the appropriate warnings are given, there is no inherent unfairness in an unfettered discretion to commit for sentence?

3.24 **Practical effect:** the stated aim of the revised guideline is to enable and encourage magistrates to retain more cases for summary trial but the suggestion from some respondents is that the effect of the proposals will be an increase in defendants electing Crown Court trial. Removing any legitimate expectation that by agreeing to a trial in the magistrates' court a defendant will be sentenced within magistrates' courts powers also removes the incentive for the defendant to consent to summary trial.

3.25 Respondents from the defence community state that there is a belief that there is a higher chance of acquittal by a jury than by magistrates and that there is a perception that a Crown Court judge is likely to sentence a borderline case more leniently than a magistrates' court. Both of these factors will tend to incentivise

defendants to elect Crown Court trial. In addition the small differential in the Criminal Courts charge between an either way trial in the Crown Court (£1200) or magistrates' courts (£1000) does little to discourage election.

3.26 In contrast it is in the publicly funded defence representative's financial interest for the defendant not to elect in cases where a change of plea is likely, leading to a concern that either defence firms will struggle financially or that defendants will be given advice which is not in their best interests.

Question 3: Does the Council agree that the draft guideline may have the unintended effect of increasing elections to the Crown Court for trial?

Suggested amendments

3.27 Several modifications have been suggested by respondents, in order to address these concerns. Some (including the JCS) feel that committal for sentence after a trial should apply only in borderline cases and that the option to keep straightforward cases notwithstanding the likely sentence should be removed.

3.28 Others have suggested that where cases are committed for sentence after a trial there should be a limit to the length of sentence they could receive. This would require legislative change.

3.29 A further suggestion is that magistrates should clearly indicate whether a case is either:

- one where there is no likelihood of committal for sentence (unless there is new information about the offence showing that it is more serious than thought); or
- one where there is a possibility of committal for sentence on the basis of the facts known to the court.

3.30 In the first case there would be a legitimate expectation of being sentenced within magistrates' courts powers (and hence less likelihood of election for trial) and in the second the defendant would be clearly warned of the possibility of committal.

Question 4: Does the Council wish to incorporate any of the above suggestions into the draft guideline?

4 IMPACT

4.1 The impact assessment issued with the consultation did not envisage any impact on correctional resources. The impact of any change to the definitive guideline will be very difficult to quantify, given the range of other factors that influence allocation decisions and the retention of the option of election for Crown Court trial.

4.2 Due to the complexities of the issues involved it has not been possible to monitor the effects of the current guideline and for the same reasons, there are no plans to monitor in any detailed way the effects of any revisions. However, it will be possible to obtain descriptive statistics on sendings for trial and committal for sentence over time.

4.3 However, an increase in the number of defendants electing trial on the Crown Court would have an impact on caseload and resources. While this is not something the Council has a duty to monitor and nor, for the reasons above, would it be possible to do so, it is something that the Council must bear in mind.

5 RISKS

5.1 There is an expectation that the Council will provide an updated allocation guideline which will result in fewer cases being sent for trial. Allocation decisions are influenced by a number of factors and the guideline is only one part of that wider picture. Publicity and training would ensure that a new guideline had the maximum impact, but at the same time the Council would want to ensure that unrealistic expectations are not raised as to what a revised guideline can achieve in isolation.

5.2 As outlined above, respondents have suggested a risk of unintended consequences, with a greater number of defendants electing Crown Court trial, which need to be considered.

Allocation guideline

Determining whether cases should be dealt with by a magistrates' court or the Crown Court

Applicability of guideline

In accordance with section 122(2) of the Coroners and Justice Act 2009, the Sentencing Council issues this definitive guideline. It applies to all defendants in the magistrates' court (including youths jointly charged with adults) whose cases are dealt with on or after [tbc]. It will not be applicable in the youth court where a separate statutory procedure applies.

Guidance

It is important to ensure that all cases are tried at the appropriate level.

1. In general, either way offences should be tried summarily unless:

- the outcome would result in a sentence in excess of the court's powers for a single offence after taking into account personal mitigation and any reduction for a guilty plea; or
- the case involves complex questions of fact or difficult questions of law, including difficult issues of disclosure of sensitive material, in which case the court should consider sending for trial notwithstanding that its powers may be sufficient.

2. However, in **straightforward cases** the court should bear in mind its **power to commit for sentence after a trial** and may **retain jurisdiction** notwithstanding that the likely sentence would exceed its powers.

3. In addition, straightforward cases should be tried summarily even when it is apparent from the list of previous convictions that the defendant is subject to a Crown Court Suspended Sentence Order or Community Order.¹

4. All parties should be asked by the court to make representations as to whether the case is suitable for summary trial. The court should refer to definitive guidelines to assess the likely sentence for the offence in the light of the facts alleged by the prosecution case, taking into account all aspects of the case including those advanced by the defence to include personal mitigation.

Where the court decides that the case is suitable to be dealt with in the magistrates' court, it must warn the defendant that all sentencing options remain open and, that if the defendant consents to summary trial and is convicted by the court, the defendant may be committed to the Crown Court for sentence.

1. The power to commit the case to the Crown Court to be dealt with under para 11(1) of Schedule 12 or para 22 of Schedule 8 to the Criminal Justice Act 2003 can be exercised if the defendant is convicted.

Linked Cases

Where a youth and an adult are jointly charged, the youth must be tried summarily unless the court considers it to be in the interests of justice for both the youth and the adult to be sent to the Crown Court for trial. Examples of factors that should be considered when deciding whether to separate the youth and adult defendants include:

- whether separate trials can take place without causing undue inconvenience to witnesses or injustice to the case as a whole;
- the age of the youth, particularly where the age gap between the youth and adult defendant is substantial;
- the immaturity of the youth;
- the relative culpability of the youth compared with the adult and whether or not the role played by the youth was minor; and the lack of previous convictions on the part of the youth.

Committal for sentence

There is ordinarily no statutory restriction on committing an either way case for sentence following conviction. The general power of the magistrates' court to commit to the Crown Court for sentence after a finding that a case is suitable for summary trial and/or conviction continues to be available where the court is of the opinion 'that the offence or the combination of offence and one or more offences associated with it was so serious that the Crown Court, should in the court's opinion, have the power to deal with the offender in any way it could deal with him if he had been convicted on indictment'.²

However, where the court proceeds to the summary trial of certain offences relating to criminal damage, upon conviction there is no power to commit to Crown Court for sentence.³

2. Powers of Criminal Courts (Sentencing) Act 2000, s.3.

3. Magistrates' Courts Act 1980, s.3(4) and s.22.

Statutory Framework

Section 19 of the Magistrates' Courts Act 1980 provides that:

- (1) "The court shall decide whether the offence appears to it more suitable for summary trial or for trial on indictment.
- (2) Before making a decision under this section, the court –
 - (a) shall give the prosecution an opportunity to inform the court of the accused's previous convictions (if any); and
 - (b) shall give the prosecution and the accused an opportunity to make representations as to whether summary trial or trial on indictment would be more suitable.
- (3) In making a decision under this section, the court shall consider –
 - (a) whether the sentence which a magistrates' court would have power to impose for the offence would be adequate; and
 - (b) any representations made by the prosecution or the accused under subsection (2)(b) above, and shall have regard to any allocation guidelines (or revised allocation guidelines) issued as definitive guidelines under section 122 of the Coroners and Justice Act 2009.
- (4) Where –
 - (a) the accused is charged with two or more offences; and
 - (b) it appears to the court that the charges for the offences could be joined in the same indictment or that the offences arise out of the same or connected circumstances, subsection (3)(a) above shall have effect as if references to the sentence which a magistrates' court would have power to impose for the offence were a reference to the maximum aggregate sentence which a magistrates' court would have power to impose for all of the offences taken together."

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 guideline which is 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."
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Sentencing Council

Sentencing Council meeting: 25 September 2015
Paper number: SC(15)SEP06(a) – Youths
Lead officials: Vicky Hunt / Joanne Keatley
020 7071 5786
Lead Council member: John Saunders

1 ISSUE

1.1 To consider the final revision of the Overarching Principles ensuring the amendments are complementary to existing guidelines and consistent with the overall aims of the Council in revising this document.

2 RECOMMENDATION

2.1 This is the third time that the Council has reviewed the draft Overarching Principles. There have been a number of minor amendments following discussions from the previous Council meeting, external comments from Council members and suggestions from roadtesting, but only the key amendments have been tracked (Annex A). The Council is asked to review these amendments ahead of the meeting to ensure that they are content with them.

2.2 The Council is asked to approve the draft of the Overarching Principles, paying particular attention to the approach taken in assessing the seriousness of an offence.

2.3 This will be the final time that the Overarching Principles are discussed at a Council meeting prior to the consultation sign off in November. There will however be the option to circulate the guideline outside of meetings if further drafting is required.

3 CONSIDERATION

3.1 In past Council meetings the draft Overarching Principles had incorporated a 'stepped approach' to assessing seriousness, reflecting the format taken in our other guidelines. However, in June the Council questioned whether this was the correct approach to take as this guideline is substantially different to a standard offence guideline.

3.2 Following on from this discussion the approach to assessing seriousness has been amended considerably (para 4.6 -4.9, p.12-13). There is no longer a 'stepped approach' and instead the guideline offers a broad approach to assessing culpability (para 4.6) and harm (para 4.7). It has however retained a list of aggravating and mitigating factors that could be relevant to several offences of a different nature. This reflects the approach taken in the current '*Overarching Principles: Seriousness*' and also serves to remind sentencers to consider some of the more youth specific factors, such as '*involved through bullying*'.

3.3 The aggravating factor of '*filming of the offence*' has been expanded upon and now reads '*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.*' This was extended to include a broader range of deliberate humiliation factors because sentencing remark transcripts and news stories suggest these are common factors present in youth crime.

Question one: Does the Council approve of the approach taken to the assessment of seriousness?

3.4 During road testing one participant suggested that the section '*Charged alongside an adult*' (para 2.12-2.14, p.6) should be extended, to include guidance on whether a youth should be committed to the Crown Court for trial, if the adult that they are charged alongside has been.

3.5 This new guidance has been incorporated at paragraphs 2.12 – 2.11 and in the new allocation flowcharts at pages 9 and 10. The original allocation flowchart (Annex B) has also been simplified (p. 8) to ensure that sentencers do not get overly distracted by the dangerousness test (which is rarely met in reality).

Question two: Does the Council agree to the simplified version of the allocation flowchart?

Question three: Does the Council agree to the inclusion of the additional information regarding a youth charged alongside an adult?

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Section one: General approach

Sentencing principles

- 1.1 When sentencing an offender aged under 18, a court must¹ have regard to:
 - the principal aim of the youth justice system (to prevent offending by children and young people);² and,
 - the welfare of the offender.³
- 1.2 While the seriousness of the offence will be the starting point, the approach to sentencing should be individualistic and offender focused, as opposed to offence focused. For an offender under 18 the sentence should focus on the rehabilitation of the offender where possible. A court should also consider the effect the sentence is likely to have on the young person as well as any underlying factors contributing to the offending behaviour.
- 1.3 It is important to avoid “criminalising” young people unnecessarily; the primary purpose of the youth justice system is to foster a sense of responsibility for others and promote re-integration into society rather than to punish.
- 1.4 Young people have not reached full maturity and as such may not fully appreciate the effect their actions can have on other people. They may not be capable of understanding the distress and pain they cause to the victims of their crimes. Young people are also likely to be susceptible to peer pressure and other external influences. It is important to consider the extent to which the offender has been acting impulsively and the offender’s conduct has been affected by inexperience, emotional volatility or negative influences.
- 1.5 For these reasons young people are likely to benefit from being given an opportunity to address their behaviour and may be receptive to changing their conduct. They should, if possible, be given the opportunity to learn from their mistakes without undue penalisation or stigma, especially as a court sanction might have a significant effect on the prospects and opportunities of the young person and hinder their re-integration into society.
- 1.6 Offending by a young person is often a phase which passes fairly rapidly and so the sentence should not result in the alienation of the young person from society if that can be avoided.

¹ This section does not apply when imposing a mandatory life sentence, when imposing a statutory minimum custodial sentence, when imposing detention for life under the dangerous offender provisions or when making certain orders under the Mental Health Act 1983

² Crime and Disorder Act 1998, s.37(1)

³ Children and Young Persons Act 1933, s.44(1)

- 1.7 The impact of punishment is likely to be felt more heavily by a young person in comparison to an adult as any sentence will seem longer due to their young age.
- 1.8 Any restriction on liberty must be commensurate with the seriousness of the offence and care must be taken to ensure that a more severe sentence than the offence merits is not imposed because of a risk of re-offending. In considering the seriousness of any offence, the court must consider the offender's culpability in committing the offence and any harm which the offence caused, was intended to cause or might foreseeably have caused.⁴

Welfare

- 1.9 The statutory obligation to have regard to the welfare of a young offender includes the obligation to secure proper provision for education and training, where appropriate to remove from undesirable surroundings and the need to choose the best option for the young person taking account of the circumstances of the offence.⁵
- 1.10 In having regard to the welfare of the young person, a court should ensure that it is alert to:
- the high incidence of mental health problems amongst young people in the criminal justice system;
 - the high incidence of those with learning difficulties or learning disabilities amongst young people in the criminal justice system;
 - the effect that speech and language difficulties might have on the ability of the young person (or any adult with them) to communicate with the court, to understand the sanction imposed or to fulfil the obligations resulting from that sanction;
 - the reasons why a young person may conduct themselves inappropriately in court, e.g. due to nerves, a lack of understanding of the system, a belief that they will be discriminated against, peer pressure to behave in a certain way because of others present, a lack of maturity etc;
 - the vulnerability of young people to self harm, particularly within a custodial environment;
 - the extent to which changes taking place during adolescence can lead to experimentation; and
 - the effect on young people of experiences of loss and neglect and/or abuse.
- 1.11 Additional factors regularly present in the background of young offenders include deprived homes, poor employment records, low

⁴ Criminal Justice Act 2003, s.143(1)

⁵ *ibid.*

educational attainment, early experience of offending by other family members, experience of abuse and/or neglect, negative influences from peer associates and the misuse of drugs and/or alcohol.

1.12 Evidence shows that “looked after” children are over-represented in the criminal justice system.⁶ When dealing with a young person who is “looked after” the court should also bear in mind the additional complex vulnerabilities that are likely to be present in their background. For example, looked after children may have no or little contact with their family and/or friends, they are relatively likely to have special educational needs and/or emotional and behavioural problems, they may be heavily exposed to peers who have committed crime and they are likely to have accessed the care system as a result of abuse, neglect or parental absence due to bereavement, imprisonment or desertion. The court should also bear in mind that the level of parental-type support that a looked after child receives throughout the criminal justice process may vary, and may be limited.

1.13 The court should always seek to ensure that it has access to information about how best to identify and respond to these factors and, where necessary, that a proper assessment has taken place in order to enable the most appropriate sentence to be imposed.

1.14 The requirement to have regard to the welfare of a young person is subject to the obligation to impose only those restrictions on liberty that are commensurate with the seriousness of the offence; accordingly, a court should not impose greater restrictions because of other factors in the young person’s life.

1.15 When considering a young offender who may be particularly vulnerable sentencers should consider which available disposal is best able to support the young offender and which disposals could potentially exacerbate any underlying issues. This is particularly important when considering custodial sentences as there are concerns about the effect on vulnerable young offenders of being in closed conditions, with risks found of self harm and suicide.

1.16 The vulnerability factors that are often present in the background of young offenders should also be considered in light of the offending behaviour itself. Although they do not alone cause offending behaviour – there are many young people who have experienced these circumstances but do not commit crime – there is a correlation and any response to criminal activity amongst young people will need to recognise the presence of such factors in order to be effective.

This does not undermine the fact that the sentence must be commensurate to the seriousness of the offence. Further guidance

⁶ Department for Education (2014) Outcomes for Children Looked After by Local Authorities in England, as at 31 March 2014. Statistical First Release 49/2014. [accessed via: <https://www.gov.uk/government/statistics/outcomes-for-children-looked-after-by-local-authorities>]

on assessing the seriousness of an offence can be found at section four.

Section two: Allocation

2.1 Cases involving young offenders and in particular those under 15 years of age should, wherever possible, be tried in the youth court. It is the court which is best designed to meet their specific needs. A trial in the Crown Court with the inevitably greater formality and greatly increased number of people involved (including a jury and the public) should be reserved for the most serious cases.⁷

This section covers the exceptions to this requirement.⁸

2.2 A youth must always appear in the Crown Court for trial if:

- charged with homicide;
- charged with a firearms offence subject to a mandatory minimum sentence of three years (and is over 16 years of age at the time of the offence); or
- notice has been given to the court (under section 51B or 51C of the Crime and Disorder Act 1998) in a serious or complex fraud or child case.

Dangerousness

2.3 A case should be sent to the Crown Court for trial if the offence charged is a specified offence⁹ **and** it seems to the court that if convicted the young person would meet the criteria for a sentence under the dangerous offender provisions.

2.4 A sentence under the dangerous offender provisions can only be imposed if

- the young person is convicted of a specified violent or sexual offence **and**
- the court is of the opinion that there is a significant risk to the public of serious harm caused by the young person committing further specified offences **and**
- a custodial term of at least four years would be imposed for the offence.

2.5 A 'significant risk' is more than a mere possibility of occurrence. The assessment of dangerousness should take into account all the

⁷ *R on the application of H,A and O v Southampton Youth Court [2004] EWHC 2912 Admin*

⁸ Magistrates' Courts Act 1980, s.24

⁹ As listed in the Criminal Justice Act, 2003 Sch.15

available information relating to the circumstances of the offence and **may** also take into account any information regarding previous patterns of behaviour related to this offence and any other relevant information relating to the offender. In making this assessment it will normally be necessary to obtain a pre-sentence report.

2.6 Young offenders may change and develop within a shorter time than adults and this factor, along with their level of maturity, may be highly pertinent when assessing probable future conduct and whether it may cause a significant risk of serious harm.¹⁰

2.7 In anything but the most serious cases it may be impossible for the court to form a view as to whether the defendant would meet the criteria of the dangerous offender provisions without greater knowledge of the circumstances of the offence and the offender. In those circumstances jurisdiction for the case should be retained in the youth court. If, following conviction, the dangerousness criteria are met then the defendant should be committed **for sentence**.

Grave crimes

2.8 Where a child or young person is before the court for an offence mentioned in section 91(1) of the Powers of Criminal Courts (Sentencing) Act 2000 and the court considers that it ought to be possible to sentence him to more than two years detention if found guilty of the offence, then he should be sent to the Crown Court. The test to be applied by the court is whether there is a **real prospect** that a sentence in excess of two years detention will be imposed.

2.9 Before deciding whether to commit to the Crown Court or retain jurisdiction in the Youth Court, the Court should hear submissions from the prosecution and defence. As there is now a power to commit for sentence the Court should no longer take the prosecution case at its highest when deciding whether to retain jurisdiction.¹¹ In most cases it is likely to be impossible to decide whether there is a real prospect that a sentence in excess of two years detention will be imposed without knowing more about the facts of the case and the offender. In those circumstances the youth court should retain jurisdiction and commit for sentence if it is of the view, having heard more about the facts and the offender, that its powers of sentence are insufficient.

2.10 An offence comes within section 91 where:

¹⁰ *R v Lang* [2005] EWCA Crim 2864, [2006] 1 WLR 2509

¹¹ Powers of Criminal Courts (Sentencing) Act 2000, s.3(b) (as amended)

- it is punishable with 14 years imprisonment or more for an adult (but is not a sentence fixed by law);
- it is an offence of sexual assault, child sex offences committed by a child or young person, sexual activity with a child family member or inciting a child family member to engage in sexual activity; or
- it is one of a number of specified offences in relation to firearms, ammunition and weapons which are subject to a minimum term but in respect of which a court has found exceptional circumstances justifying a lesser sentence.

Where the court decides that the case is suitable to be dealt with in the youth court it must warn the young person that all available sentencing options remain open and, if convicted, the young offender may be committed to the Crown Court for sentence.

A young person aged 10 or 11 should only be sent for trial or committed for sentence to the Crown Court when charged with or convicted of an offence of such gravity that, despite the normal prohibition on a custodial sentence for a person of that age, a sentence exceeding two years is a realistic possibility.

A young person aged 12-17 (for which a detention and training order could be imposed) should be sent for trial or committed for sentence to the Crown Court only when charged with or convicted of an offence of such gravity that a sentence substantially beyond the two year maximum for a detention and training order is a realistic possibility.

Charged alongside an adult

- 2.11 The proper venue for the trial of any youth is normally the Youth Court. That remains the case where a youth is charged jointly with an adult. Where the decision as to the proper venue first must be taken in relation to the adult, the court then will consider where the youth should be tried. The youth must be tried separately in the Youth Court unless the adult is being sent for trial to the Crown Court and it is in the interests of justice for the youth and the adult to be tried jointly.
- 2.12 Examples of factors that should be considered when deciding whether to send the youth to the Crown Court (rather than having a trial in the Youth Court) include:
- whether separate trials will cause injustice to witnesses or to the case as a whole [(consideration should be given to the provisions of sections 27 and 28 of the Youth Justice and Criminal Evidence Act 1999)];
 - the age of the youth; the younger the youth, the greater the desirability that the youth be tried in the Youth Court;
 - the age gap between the youth and the adult; a substantial gap in age militates in favour of the youth being tried in the Youth Court;

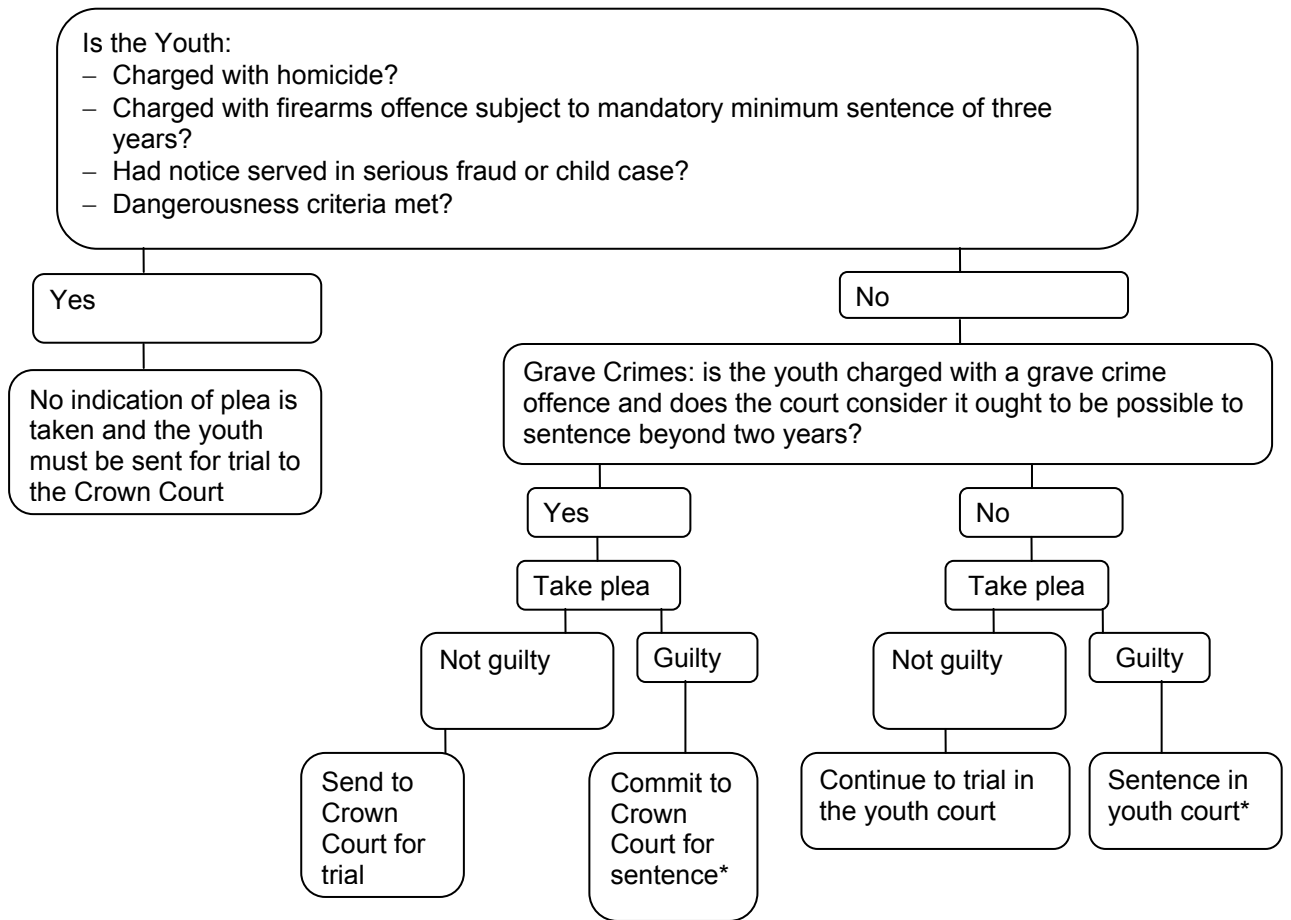
- the lack of maturity of the youth;
 - the relative culpability of the youth compared with the adult and whether the [alleged] role played by the youth was minor; and/or,
 - the lack of previous convictions on the part of the youth.
- 2.13 The court should bear in mind that the Youth Court now has a general power to commit for sentence (as discussed at paragraph 2.9); in appropriate cases this will permit sentence to be imposed by the same court on adults and youths who have been tried separately.
- 2.14 The court should follow the plea before venue procedure (paragraphs 2.6-2.11) prior to considering whether it is in the interest of justice for the youth and the adult to be tried jointly.

Remittal from the Crown Court

- 2.15 If a young person is convicted before the Crown Court of an offence other than homicide the court must remit the case to the youth court, unless it would be undesirable to do so.¹² In considering whether remittal is undesirable a court should balance the need for expertise in the sentencing of young offenders with the benefits of the sentence being imposed by the court which had determined guilt.
- 2.16 Particular attention should be given to young offenders who are appearing before the Crown Court only because they have been charged with an adult offender; referral orders are generally not available in the Crown Court but may be the most appropriate sentence.

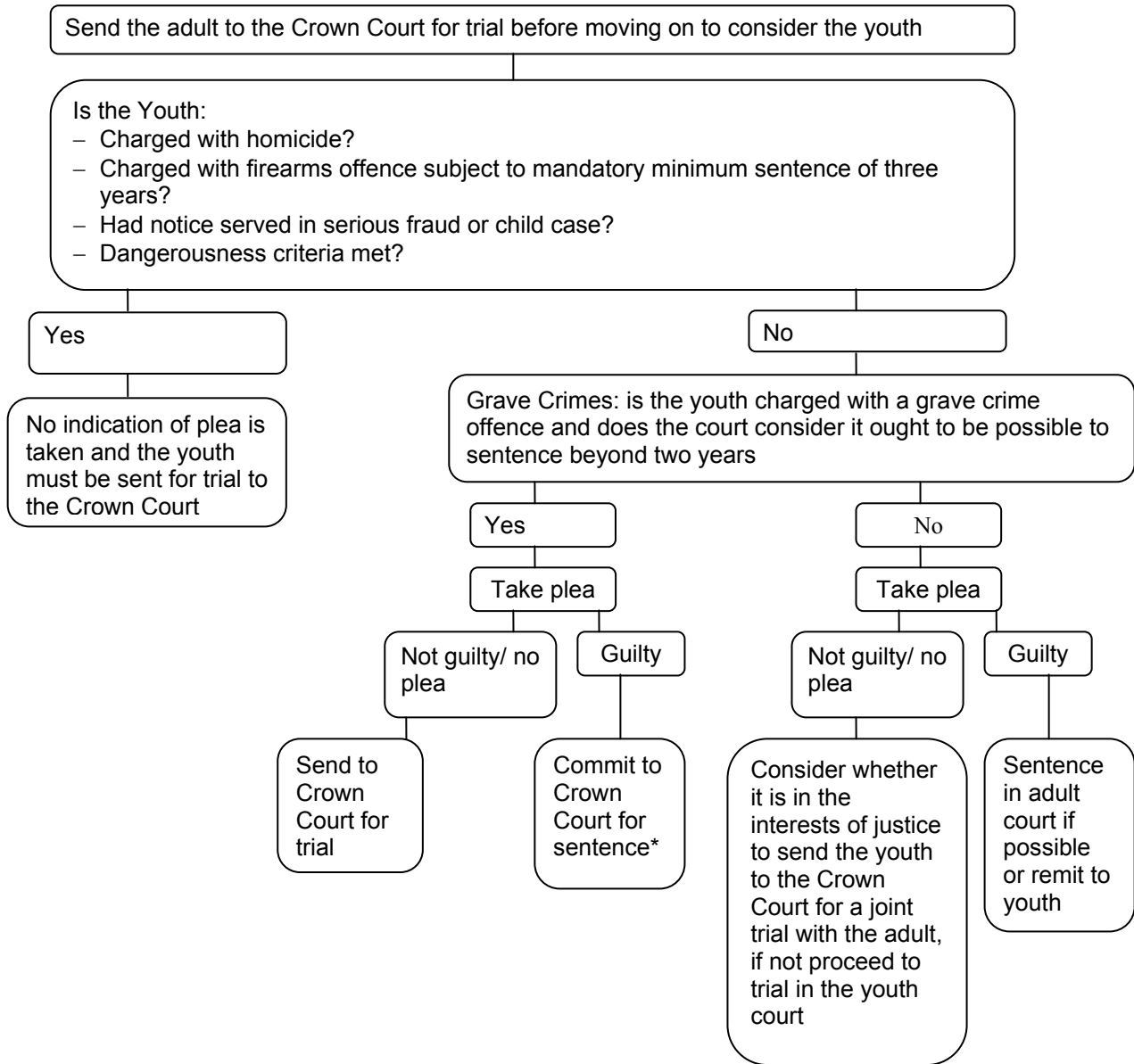
¹² Powers of Criminal Courts (Sentencing) Act 2008, s.8

Allocation Chart



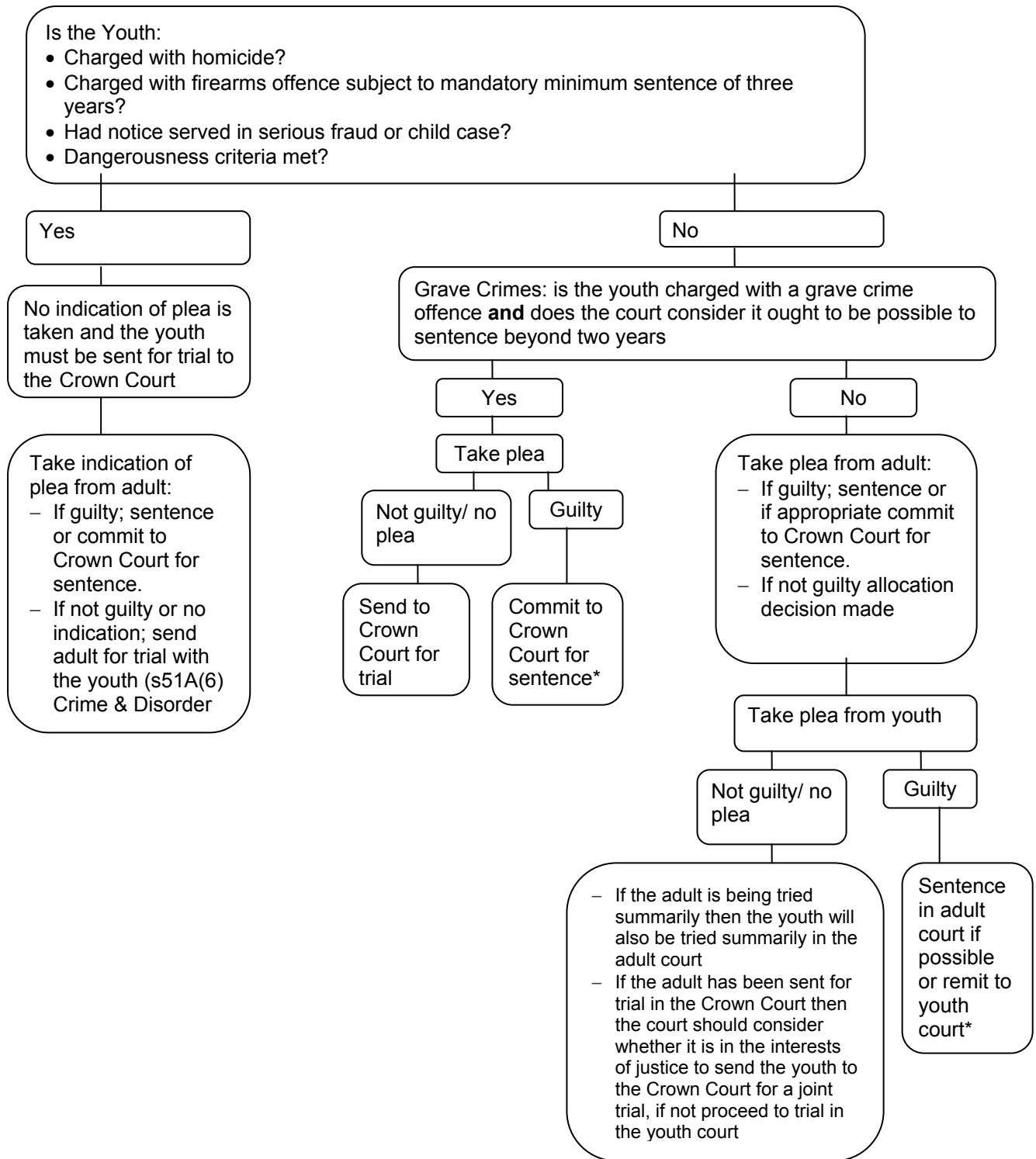
* If the dangerousness provisions are satisfied the court must commit for sentence

Youth and Adult charged as co-defendants where the adult is charged with an indictable only offence (or an offence where notice is given to the court under s51B or s51C Crime & Disorder Act 1998)



* If the dangerousness provisions are satisfied the court must commit for sentence

Youth and Adult charged as co-defendants where the adult is charged with either way offence



*If the provisions are satisfied the court must commit for sentence

Section three: Parental responsibilities

- 3.1 For any young person aged under 16 appearing before court there is a statutory requirement that parents/guardians attend during all stages of proceedings, unless the court is satisfied that this would be unreasonable having regard to the circumstances of the case.¹³ The court may also enforce this requirement for a young person aged 16 and above if they deem it desirable to do so.
- 3.2 Although this requirement can cause a delay in the case before the court it is important it is adhered to. If a court does find exception to proceed in the absence of a responsible adult then extra care must be taken to ensure the outcomes are clearly communicated to and understood by the young person.
- 3.3 In addition to this responsibility there are also orders that can be imposed on parents. If the young offender is aged under 16 then the court has a duty to make a **parental bind over** or impose a **parenting order**, if it would be desirable in the interest of preventing the commission of further offences.¹⁴ There is a discretionary power to make these orders where the offender is aged 16 or 17. If the court chooses not to impose a parental bind over or parenting order they must state their reasons for not doing so in open court. In most circumstances a parenting order is likely to be more appropriate than a parental bind over.

A court cannot make a bind over alongside a referral order.

¹³ Children and Young Persons Act 1933 s.34A

¹⁴ Powers of Criminal Courts (Sentencing Act) 2000 s.150 & Crime and Disorder Act 1998, s.8(6)

Section four: Determining the sentence

4.1 In determining the sentence, the key elements to consider are:

- the seriousness of the offence;
- the age of the offender (chronological and emotional);
- the likelihood of further offences being committed; and
- the extent of harm likely to result from those further offences.

The seriousness of the offence

4.2 The seriousness of the offence is the starting point for determining the appropriate sentence; the sentence imposed and any restriction on liberty must be commensurate with the seriousness of the offence.

4.3 The approach to sentencing young offenders should always be individualistic and the court should always have in mind the principal aims of the youth justice system.

4.4 There is an expectation that in general a young person will be dealt with less severely than an adult offender although this distinction diminishes as the offender approaches age 18, subject to an assessment of maturity and criminal sophistication. In part, this is because young people are unlikely to have the same experience and capacity as an adult to realise the effect of their actions on other people or to appreciate the pain and distress caused and because a young person may be less able to resist temptation, especially where peer pressure is exerted.

4.5 In order to determine the seriousness the court should assess the culpability of the offender and the harm that was caused, intended to be caused or could foreseeably have been caused.

4.6 In assessing culpability the court will wish to consider the extent to which the offence was planned, the role of the offender (if committed as part of a group), the level of force that was used in the commission of the offence and the awareness that the offender had of their actions and its possible consequences.

4.7 In assessing **harm** the court should consider the level of physical and psychological harm caused to the victim, the degree of any loss caused to the victim and the extent of any damage caused to property.

4.8 The Court should also consider any aggravating or mitigating factors that may increase or reduce the overall seriousness of the offence. **If any of these factors are included in the definition of the committed offence they should not be taken into account when considering the relative seriousness of the offence before the court.**

Statutory aggravating factors:

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors:

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Victim is particularly vulnerable due to factors including but not limited to age, mental or physical disability
- Restraint, detention or additional degradation of the victim
- Prolonged nature of attack
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Involvement of others through peer pressure or bullying
- Commission of offence whilst under the influence of alcohol or drugs
- History of antagonising or bullying 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

Factors reducing seriousness or reflecting personal mitigation

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Unstable upbringing including but not limited to time spent in care, 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
- Involved through bullying or peer pressure
- Limited understanding of effect on victim
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour

Age of the offender

- 4.9 There is a statutory presumption that no young person under the age of 10 can be guilty of an offence.¹⁵
- 4.10 With a young offender, the consideration of age requires a different approach to that which would be adopted in relation to the age of an adult. Even within the category of “youth,” the response to an offence is likely to be very different depending on whether the offender is at the lower end of the age bracket, in the middle or towards the top end.
- 4.11 It is important to consider whether the young offender lacks the necessary maturity to appreciate fully the consequences of their conduct, the extent to which the offender has been acting on an impulsive basis and whether their conduct has been affected by inexperience, emotional volatility or negative influences.

Section five: Available sentences

Crossing a significant age threshold between commission of offence and sentence

- 5.1 There will be occasions when an increase in the age of an offender will result in the maximum sentence on the date of *conviction* being greater than that available on the date on which the offence was *committed* (primarily turning 12, 15 or 18 years old).
- 5.2 In such situations the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed. This includes offenders who attain the age of 18 between the *commission* and the *conviction* of the offence¹⁶ but when this occurs the purpose of sentencing adult offenders¹⁷ has to be taken into account, which is:
- the punishment of offenders;
 - the reduction of crime (including its reduction by deterrence);
 - the reform and rehabilitation of offenders;
 - the protection of the public; and
 - the making of reparation by offenders to persons affected by their offences.

¹⁵ Children and Young Persons Act 1933, s.50

¹⁶ *R v Ghafoor* [2002] EWCA Crim 1857, [2003] 1 Cr App R (S) 428

¹⁷ Criminal Justice Act 2003, s.142

- 5.3 When any significant age threshold is passed it will rarely be appropriate that a more severe sentence than the maximum that the court could have imposed at the time the offence was committed should be imposed. However, a sentence at or close to that maximum may be appropriate.

Persistent offenders

- 5.4 Some sentences can only be imposed on young offenders if they are deemed a “persistent offender.” A youth **must** be classed as such for one of the following to be imposed:

- a YRO with intensive supervision and surveillance when aged under 15;
- a youth rehabilitation with fostering when aged under 15; and
- a detention and training order when aged 12- 14.

- 5.5 The term “persistent offender” is not defined in statute but has been considered by the Court of Appeal. In general it is expected that the young offender would have had previous contact with authority as a result of criminal behaviour. This could include previous convictions and disposals which involve an admission or finding of guilt such as reprimands, final warnings and conditional cautions.

- 5.6 A young offender who has committed one previous offence cannot reasonably be classed as a “persistent offender”, and a young offender who has committed two or more previous offences should not be assumed to be one. To determine if the behaviour is persistent the nature of the previous offences and the lapse of time between the offences would need to be considered.¹⁸

- 5.7 If convicted three times in the past 12 months for imprisonable offences of a comparable nature (or been made the subject of orders as detailed above in relation to an imprisonable offence) then the court could certainly justify classing them as a “persistent offender.”

5.8 When a young offender is being sentenced in a single appearance for a series of separate, comparable offences committed over a short space of time then the court could justifiably consider the offender to be a “persistent offender,” despite the fact that there may be no previous convictions.¹⁹

- 5.9 Even where a young person is found to be a persistent offender, a court is not obliged to impose one of the optional sentences. The approach should still be individualistic and all other considerations still apply.

¹⁸ *R v M* [2008] EWCA Crim 3329

¹⁹ *R v S* [2000] 1 Cr App R (S.)18

Custodial sentences must be a last resort for all young offenders and there is an expectation that they will be particularly rare for offenders aged 14 or less.

Sentences available by age:

Sentence	Age of youth		
	10-12	12-14	15-17
Absolute or conditional discharge or reparation order	✓	✓	✓
Financial order	✓	✓	✓
Referral order	✓	✓	✓
YRO	✓	✓	✓
Detention and training order	x	✓ For 'persistent offenders' only	✓
s91 PCC(S) Act detention (grave crime)	✓	✓	✓
Extended sentence of detention*	✓	✓	✓

*If convicted of a specified violent or sexual offence and the court is of the opinion that there is a significant risk to the public of serious harm caused by the child or young person committing further specified offences.

5.10 Some sentences have longer rehabilitation periods than others and so could have a longer term impact on the future of young offenders; this should be taken into account when considering if the sentence is commensurate to the seriousness of the offence. For example absolute or conditional discharges are not deemed to be treated as convictions other than for the purposes of criminal proceedings²⁰ and referral orders are spent on the last day on which the order is to have effect.²¹

Breaches and the commission of further offences during the period of an order

5.11 If a young offender is found guilty of breaching an order, or commits a further offence during the period of an order, the court will have various options available to them, depending on the nature of the order (Appendix 1). The primary aim of the court should be to encourage compliance and seek to support the rehabilitation of the offender.

²⁰ Powers of Criminal Courts (Sentencing) Act 2000, s.14 (1)

²¹ Legal Aid, Sentencing and Punishment of Offenders Act 2012, s.139

Absolute or conditional discharge and reparation orders

- 5.12 An absolute discharge is appropriate when, despite a finding of guilt, the offence is not serious enough to warrant punishment.
- 5.13 A conditional discharge is appropriate when, despite a finding of guilt, the offence is not serious enough to warrant an immediate punishment. The fixed period of conditional discharge must not exceed three years. Unless exceptional circumstances are found a conditional discharge cannot be imposed if the young offender has received one of the following in the previous 24 months: a final warning; two or more cautions; or a conditional caution followed by a caution.
- 5.14 A reparation order can require a young offender to make reparation to the victim of the offence, where a victim wishes it, or to the community as a whole. Before making an order the court must consider a written report from a relevant authority, e.g. a youth offending team, and the order must be commensurate with the seriousness of the offence.
- 5.15 If the court has the power to make a reparation order but chooses not to do so, they must give their reasons.

Financial order

- 5.16 A court may impose a fine for any offence (unless the criteria for a mandatory referral order are met). In accordance with statutory requirements, where financial orders are being considered, priority must be given to compensation orders and, when an order for costs is to be made alongside a fine, the amount of the cost must not exceed the amount of the fine. If the offender is under 16 then the court has a duty to order parents or guardians to pay the fine; if the offender is 16 or over this duty is discretionary.
- 5.17 It is important that travel costs to school, college or apprenticeships and lunch expenses are taken into account when assessing the income of a young offender.

Referral orders

- 5.18 A referral order is the mandatory sentence in a youth court or magistrates' court for most first time offenders who have pleaded guilty to an imprisonable offence. Exceptions are for offences where a sentence is fixed by law or if the court deems a custodial sentence, an absolute or conditional discharge or a hospital order to be more appropriate.

- 5.19 A discretionary referral order can also be given if the above conditions are not met but the offender has pleaded guilty to at least one connected offence. If the offender does not plead guilty to any offence then a referral order is not available to the court.
- 5.20 There is no restriction to the number of times a young offender can be sentenced to a referral order or the number of referral orders that can be imposed or the number of previous convictions a young offender receiving a referral order can have. However before a court imposes a further referral order they must be satisfied that the sentence is commensurate with the seriousness of the offence and that the imposition of such a sentence has a reasonable prospect of preventing re-offending.
- 5.21 The court determines the length of the order but a Youth Offender Panel determines the requirements of the order.

Offence seriousness	Suggested length of referral order
Low	<ul style="list-style-type: none"> • 3-5 months
Medium	<ul style="list-style-type: none"> • 5-7 months
High	<ul style="list-style-type: none"> • 7-9 months • 10-12 months

A court should be prepared to use the whole range of periods; orders of 10-12 months should be made only for the most serious offences.

Youth Rehabilitation Orders (YRO)

- 5.22 A YRO is a community sentence within which a court may include one or more requirements designed to provide for punishment, protection of the public, reducing re-offending and reparation.
- 5.23 When imposing a YRO, the court must fix a period within which the requirements of the order are to be completed; this must not be more than three years from the date on which the order comes into effect.
- 5.24 The offence must be “serious enough” in order to impose a YRO, but it does not need to be an imprisonable offence. Even if an offence is deemed “serious enough” the court is not obliged to make a YRO.
- 5.25 The requirements included within the order (and the subsequent restriction on liberty) and the length of the order must be proportionate to the seriousness of the offence and suitable for the offender.
- 5.26 The available requirements within a YRO are:
- activity requirement;
 - supervision requirement;

- unpaid work requirement;*
- programme requirement;
- attendance centre requirement;
- prohibited activity requirement;
- curfew requirement;
- exclusion requirement;
- electronic monitoring requirement
- residence requirement;*
- local authority accommodation requirement;
- fostering requirement;**
- mental health requirement;
- drug treatment requirement (with or without drug testing);
- intoxicating substance requirement;
- education requirement; and
- intensive supervision and surveillance requirement**

*These requirements are only available for offenders aged 16 or 17 years old on the date of conviction

**These requirements can only be imposed if the offence is an imprisonable one and for offenders aged under 15 they must be deemed a “persistent offender”

5.27 When determining the nature and extent of the requirements the court should primarily consider the likelihood of the young person re-offending and the risk of the young person causing serious harm.

5.28 The Youth Offending Team will assess this as part of their report and recommend an intervention level to the court for consideration.

	Offender profile	Requirements of order²²
Standard	Low likelihood of re-offending and a low risk of serious harm	<u>Primarily seek to repair harm caused through, for example:</u> <ul style="list-style-type: none"> • <u>reparation;</u> • <u>unpaid work;</u> • <u>supervision; and/or</u> • <u>attendance centre.</u>
Enhanced	Medium likelihood of re-offending or a medium risk of serious harm	<u>Seek to repair harm caused and to enable help or change through, for example:</u> <ul style="list-style-type: none"> • <u>supervision;</u> • <u>reparation;</u> • <u>requirement to address behaviour e.g. drug treatment, offending behaviour programme, education programme; and/or</u> • <u>a combination of the above.</u>

²² The examples provided here are not exclusive; the Youth Offending Team will make recommendations based upon their assessment of the young offender which may vary from some of the examples given.

Intensive	High likelihood of re-offending or a very high risk of serious harm	<p><u>Seek to ensure the control of the young person through, for example:</u></p> <ul style="list-style-type: none"> • <u>supervision;</u> • <u>reparation;</u> • <u>requirement to address behaviour;</u> • <u>requirement to monitor or restrict movement, e.g. prohibited activity, curfew, exclusion or electronic monitoring; and/or</u> • <u>a combination of the above.</u>
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5.29 If a young person is assessed as presenting a high risk of re-offending or of causing serious harm but the offence that was committed is of relatively low seriousness then the appropriate requirements are likely to be primarily rehabilitative or for the protection of the public.

5.30 Likewise if a young person is assessed as presenting a low risk of re-offending or of causing serious harm but the offence was of relatively high seriousness then the appropriate requirements are likely to be primarily punitive.

Orders with intensive supervision and surveillance or with fostering

5.31 An intensive supervision and surveillance requirement and a fostering requirement are both intended to be a community alternative to custody.

5.32 The offence must be punishable by imprisonment, cross the custody threshold and a custodial sentence must be merited before one of these requirements can be imposed.

5.33 An order of this nature may only be imposed on an offender aged below 15 (at the time of conviction) if they are a “persistent offender.”

With intensive supervision and surveillance

5.34 An order of this nature must include an extended activity requirement of between 90 to 180 days, a supervision requirement and a curfew requirement. Where appropriate, a YRO with intensive supervision and surveillance may also include additional requirements (other than a fostering requirement), although the order as a whole must comply with the obligation that the requirements must be those most suitable for the offender and that any restrictions on liberty must be commensurate with the seriousness of the offence.

5.35 When imposing such an order, a court must ensure that the requirements are not so onerous as to make the likelihood of breach almost inevitable.

With fostering

- 5.36 Where a fostering requirement is included within a YRO, it will require the offender to reside with a local authority foster parent for a specified period that must not exceed 12 months.
- 5.37 In order to impose this requirement the court must be satisfied that a significant factor in the offence was the circumstances in which the young person was living and that the imposition of a fostering requirement would assist in the rehabilitation of the young person. It is likely that other rights will be engaged (such as those under Article 8 of the European Convention on Human Rights²³) and any interference with such rights must be proportionate.
- 5.38 The court must consult the young person's parent or guardian (unless impracticable) and the local authority before including this requirement. It can only be included if the young person was legally represented in court when consideration was being given to imposing such a requirement unless the offender, having had the opportunity to do so, did not apply for representation or that right was withdrawn because of the offender's conduct. **This requirement may be included only where the court has been notified that arrangements are available in the area of the relevant authority.**
- 5.39 A YRO with a fostering requirement must include a supervision requirement and can include other requirements when appropriate (except an intensive supervision and surveillance requirement). The order as a whole must comply with the obligation that the requirements must be those most suitable for the offender and that any restrictions on liberty must be commensurate with the seriousness of that offence.
- 5.40 It is unlikely that the statutory criteria²⁴ will be met in many cases; where they are met and the court is considering making an order, care should be taken to ensure that there is a well developed plan for the care and support of the young person throughout the period of the order and following conclusion of the order. A court will need to be provided with sufficient information, including proposals for education and training during the order and plans for the offender on completion of the order.

Custodial Sentences

A custodial sentence should always be used as a last resort.

The available custodial sentences for a youth are:

²³ Right to respect for family and private life

²⁴ See paragraphs 5.28-30

Youth Court	Crown Court
<ul style="list-style-type: none"> • Detention and training order for the following periods: <ul style="list-style-type: none"> ○ 4 months; ○ 6 months; ○ 8 months; ○ 10 months; ○ 12 months; ○ 18 months; or ○ 24 months 	<ul style="list-style-type: none"> • Detention and training order (the same periods are available as in the youth court) • Long term detention (under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000) • Extended sentence of detention or detention for life (if dangerousness criteria is met) • Detention at Her Majesty’s pleasure (for offences of murder)

5.41 Under both domestic law and international convention, a custodial sentence must only be imposed as a “**measure of last resort**”; statute provides that such a sentence may be imposed only where an offence is “so serious that neither a fine alone nor a community sentence can be justified.”²⁵ If a custodial sentence is imposed, a court must state its reasons for being satisfied that the offence is so serious that no other sanction would be appropriate and, in particular, why a YRO with intensive supervision and surveillance could not be justified.

5.42 The term of a custodial sentence must be the shortest commensurate with the seriousness of the offence; any case that warrants a detention and training order of less than four months must result in a non-custodial sentence. The court should take account of the circumstances, age and maturity of the offender.

5.43 In determining whether an offence has crossed the custody threshold a court will need to assess the seriousness of the offence, in particular the level of harm that was caused, or was likely to have been caused, by the offence. If youth offence specific guidelines are available then the court should consult them in the first instance. The risk of serious harm in the future must also be assessed. The pre-sentence report will assess this criterion and must be considered before a custodial sentence is imposed. A custodial sentence is most likely to be unavoidable where it is necessary to protect the public from serious harm.

The court must always bear in mind that the principal aim of any sentence is **to prevent re-offending**.²⁶

4.44 If the court is satisfied that the offence crosses the custodial threshold, and that no other sentence is appropriate, the court may as a preliminary consideration consult the equivalent adult guideline in order to decide upon the appropriate length of the sentence.

²⁵ Criminal Justice Act 2003, s.152(2)

²⁶ Crime and Disorder Act 1998, s.37

- 4.45 When 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 adult sentence. 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.
- 4.46 The closer the young offender is to 18 the closer the sentence will be to that which would have been imposed for an adult. In most cases when making this assessment the emotional age and maturity of the offender is of at least equal importance as their chronological age.
- 4.47 There is an expectation that custodial sentences will be particularly rare for an offender aged 14 or less. If custody is imposed, it should be for a shorter length of time than that which a young offender aged 15-17 would receive if convicted of the same offence. For an offender aged 14 or under the sentence should normally be imposed in a youth court (except in cases of homicide or when the dangerous offender criteria is met).
- 5.48 The welfare of the offender must be considered when imposing any sentence but is especially important when a custodial sentence is being considered. A custodial sentence could have a significant effect on the prospects and opportunities of the young person and a young person is likely to be more susceptible than an adult to the contaminating influences that can be expected within a custodial setting. There is a high reconviction rate for young people that have had custodial sentences and there have been many studies profiling the effect on vulnerable young people, particularly the risk of self harm and suicide.

Detention and training order

- 5.49 A court can only impose a detention and training order if the offender is legally represented unless they have refused to apply for legal aid or it has been withdrawn as a result of their conduct.
- 5.50 If it is determined that the offence is of such seriousness that a custodial sentence is unavoidable then the length of this sentence must be considered on an individual basis. The court must take into account the chronological age of the offender, as well as their maturity and other relevant factors, such as their mental health or learning disabilities.
- 5.51 A detention and training order cannot be imposed on any offender under the age of 12 at the time of conviction and is only applicable to offenders aged 12-14 if they are deemed to be a “persistent offender.”

5.52 A detention and training order can be made only for the periods prescribed – 4, 6, 8, 10, 12, 18 or 24 months. Any time spent on remand in custody or on bail subject to a qualifying curfew condition should be taken into account when calculating the length of the order. The accepted approach is to double the time spent on remand before deciding the appropriate period of detention, in order to ensure that the regime is in line with that applied to adult offenders.²⁷ After doubling the time spent on remand the court should then adopt the nearest prescribed period available for a detention and training order.

Long term detention

5.53 A young person may be sentenced by the Crown Court to long term detention under section 91 of the Powers of Criminal Courts (Sentencing) Act 2000 if convicted of a “grave crime” and neither a community order nor a detention and training order is suitable.

5.54 These cases may be sent for trial to the Crown Court or committed for sentence only²⁸ (see section two for further information).

5.55 It is possible that, following a guilty plea a two year detention order may be appropriate, as opposed to a sentence of section 91 detention, to account for the discount.²⁹

Dangerous offenders

5.56 If a young person is found to be a dangerous offender they can be sentenced to **extended detention** or **detention for life**.

5.57 A sentence of extended detention may be imposed only where the appropriate custodial term would be four years or more. The extension period must not exceed 5 years in the case of a specified violent offence and 8 years in the case of a specified sexual offence. The term of the extended sentence of detention must not exceed the maximum term of imprisonment for an adult offender convicted of that offence.

5.58 A sentence of detention for life should be used as a last resort when an extended sentence is not able to provide the level of public protection that is necessary.³⁰ In order to determine this the court should consider the following factors in the order given:

- the seriousness of the offence;
- the offender’s previous convictions;

²⁷ *R V Eagles* [2006] EWCA Crim 2368

²⁸ Powers of Criminal Courts (Sentencing) Act 2000, s.3(b) (as amended)

²⁹ *Fieldhouse and Watts* [2001] 1 Cr App R (S) 104)

³⁰ *R. v. Saunders; R v. G.; R v. Edwards* [2014] 1 Cr.App.R.(S.) 45, CA

- the level of danger posed to the public and whether there is a reliable estimate of the length of time the defendant will remain a danger, and;
- the alternative sentences available.³¹

The court is required to set a minimum term which must be served in custody before parole can be considered.

Detention at Her Majesty's pleasure

5.59 This is the mandatory sentence for anyone convicted of committing a murder whilst aged below 18 years old. The starting point for the minimum term is 12 years.

³¹ *Att.-Gen.'s Reference (No. 27 of 2013)*

Appendix 1

Breach of a conditional discharge

- 6.1 If the young offender commits an offence during the period of conditional discharge then the court has the power to re-sentence the original offence. The offender should be dealt with on the basis of their current age and not the age at the time of conviction and the court can deal with the original offence(s) in any way which it could have if the offender had just been convicted.
- 6.2 There is no requirement to re-sentence; if a court deems it appropriate to do so they can sentence the offender for the new offence and leave the conditional discharge in place.

If the order was made by the Crown Court then the youth can be committed to that court for re-sentence.

If the young offender is convicted of committing a new offence after attaining the age of 18 but during the period of a conditional discharge made by a youth court then they may be re-sentenced for the original offence by the convicting adult magistrates' court. If the adult magistrates' court decides to take no action then the youth court that imposed the conditional discharge may summons the offender for the breach to be dealt with.

Breach of a reparation order

- 6.3 If it is proved to the appropriate court that the offender has failed to comply with any requirement of a reparation order that is currently in force then the court can:
- Order the young offender to pay a fine not exceeding £1,000; or
 - Revoke the order and re-sentence the offender in any way which they could have been dealt with him for that offence

If re-sentencing the offender the court must take into account the extent to which the offender has complied with the requirements of this order.

- 6.4 If the order was made by the Crown Court then the youth court can commit the offender in custody or release them on bail until they can be brought or appear before the Crown Court.
- 6.5 The young offender or a YOT officer can also apply for the order to be revoked or amended but any new provisions must be ones that the court would have been able to include when the original reparation order was given. There is no power to re-sentence in this situation as the offender has not been found to be in breach of requirements.

Even when an offender has attained the age of 18 breach of a reparation order must be dealt with in the youth court.

Breach of a referral order (Referral back to court)

6.6 If a young offender is found to have breached the conditions of their referral the Court can revoke the referral order and re-sentence the young offender using the range of sentencing options (other than a referral order) that would have been available to the court that originally sentenced them. If the court chooses not to revoke the referral order then it is possible to:

- allow the referral order to continue with the existing contract;
- extend the referral order up to a maximum of 12 months; or
- impose a fine up to a maximum of £2500.

If an offender has attained the age of 18 by the first court hearing then breach proceedings must be dealt with by the adult magistrates' court. If the court chooses to revoke the order then its powers are limited to those available to the court at the time of the original sentence.

Commission of further offences whilst on a referral order

6.7 The court has the power to extend a referral order in respect of additional or further offences. This applies to not only a first referral order but also to any subsequent referral orders. Any period of extension must not exceed the total 12 month limit for a referral order.

6.8 If the court chooses not to extend the existing referral order they have the power to impose a new referral order. The court may direct that the contract under the new order is not to take effect until the earlier order is revoked or discharged.

6.9 If the court sentences in any other way they have a discretionary power to revoke the referral order. Where an order is revoked, if it appears to be in the interests of justice, the court may deal with the original offence(s) in any way that the original court could have done, but may not make a new referral order. Where the referral contract has taken effect, the court shall have regard to the extent of the offender's compliance with the terms of the contract.

Breach of a YRO

6.10 Where a young person fails to comply with a YRO, the responsible officer must consider whether there was a reasonable excuse. If the officer considers that there was no reasonable excuse then a warning must be issued.

- 6.11 A warning must describe the circumstances of the failure to comply and include a statement that the failure is not acceptable and that further failure to comply may lead to the order being referred back to the court. In most circumstances, two warnings will be permitted within a 12 month period before the matter is referred back to court but there is a discretionary power to do so on the second failure.
- 6.12 The following options are available to the court:
- allow the order to continue in its original form;
 - impose a fine (and allow the order to continue in its original form);
 - amend the terms of the order; or
 - revoke the order and re-sentence the offender.
- 6.13 If the terms of the order are amended the new requirements must be capable of being complied with before the expiry of the overall period. The court may impose any requirement that it could have imposed when making the order and this may be in addition to, or in substitution for, any requirements contained in the order. If the YRO did not contain an unpaid work requirement and the court includes such a requirement using this power, the minimum period of unpaid work is 20 hours; this will give greater flexibility when responding to less serious breaches or where there are significant other requirements to be complied with.
- 6.14 A court may not amend the terms of a YRO that did not include an extended activity requirement or a fostering requirement by inserting them at this stage; should these requirements be considered appropriate following breach, the offender must be re-sentenced and the original YRO revoked.
- 6.15 A court must ensure that it has sufficient information to enable it to understand why the order has been breached and should be satisfied that the Youth Offending Team and other local authority services have taken all steps necessary to ensure that the young person has been given appropriate opportunity and the support necessary for compliance. This is particularly important if the court is considering imposing a custodial sentence as a result of the breach.
- 6.16 Where the failure arises primarily from non-compliance with reporting or other similar obligations and a sanction is necessary, the most appropriate response is likely to be the inclusion of (or increase in) a primarily punitive requirement such as the curfew requirement, unpaid work, the exclusion requirement and the prohibited activity requirement or the imposition of a fine. However, continuing failure to comply with the order is likely to lead to revocation of the order and re-sentencing for the original offence.
- 6.17 Where the offender has “wilfully and persistently” failed to comply with the order, and the court proposes to sentence again for the offence(s) in respect of which the order was made, additional powers are available.

A young person will almost certainly be considered to have “wilfully and persistently” breached a YRO where there have been three breaches that have demonstrated a lack of willingness to comply with the order that have resulted in an appearance before court.

6.18 The additional powers available to the court when re-sentencing an offender who has “wilfully and persistently” breached their order are:

- the making of a YRO with intensive supervision and surveillance even though the offence is non imprisonable;
- a custodial sentence if the YRO that is breached is one with an intensive supervision and surveillance requirement, which was imposed for an offence that was imprisonable; and
- the imposition of a detention and training order for 4 months for breach of a YRO with intensive supervision and surveillance which was imposed following wilful and persistent breach of an order made for a non-imprisonable offence.

The primary objective when sentencing for breach of a YRO is to ensure that the young person completes the requirements imposed by the court.

If an offender has attained the age of 18 by the first court hearing then breach proceedings must be dealt with by the adult magistrates’ court. If the court chooses to revoke the order then its powers are limited to those available to the court at the time of the original sentence.

Commission of further offences during a YRO

6.19 If a young offender commits an offence whilst subject to a YRO the court can impose any sentence for the new matter, but can only impose a new YRO if they revoke the existing order. Where the court revokes the original order they may re-sentence that matter at the same time as sentencing the new offence.

Breach of a detention and training order

6.20 If a young offender is found to have breached a supervision requirement after release from custody then the court may:

- impose a further period of custody of up to three months or the length of time from the date the breach was committed until the end of the order **whichever is shortest**;
- impose a further period of supervision of up to three months or the length of time from the date the breach was committed until the end of the order **whichever is shortest**;
- impose a fine of up to £1,000; or

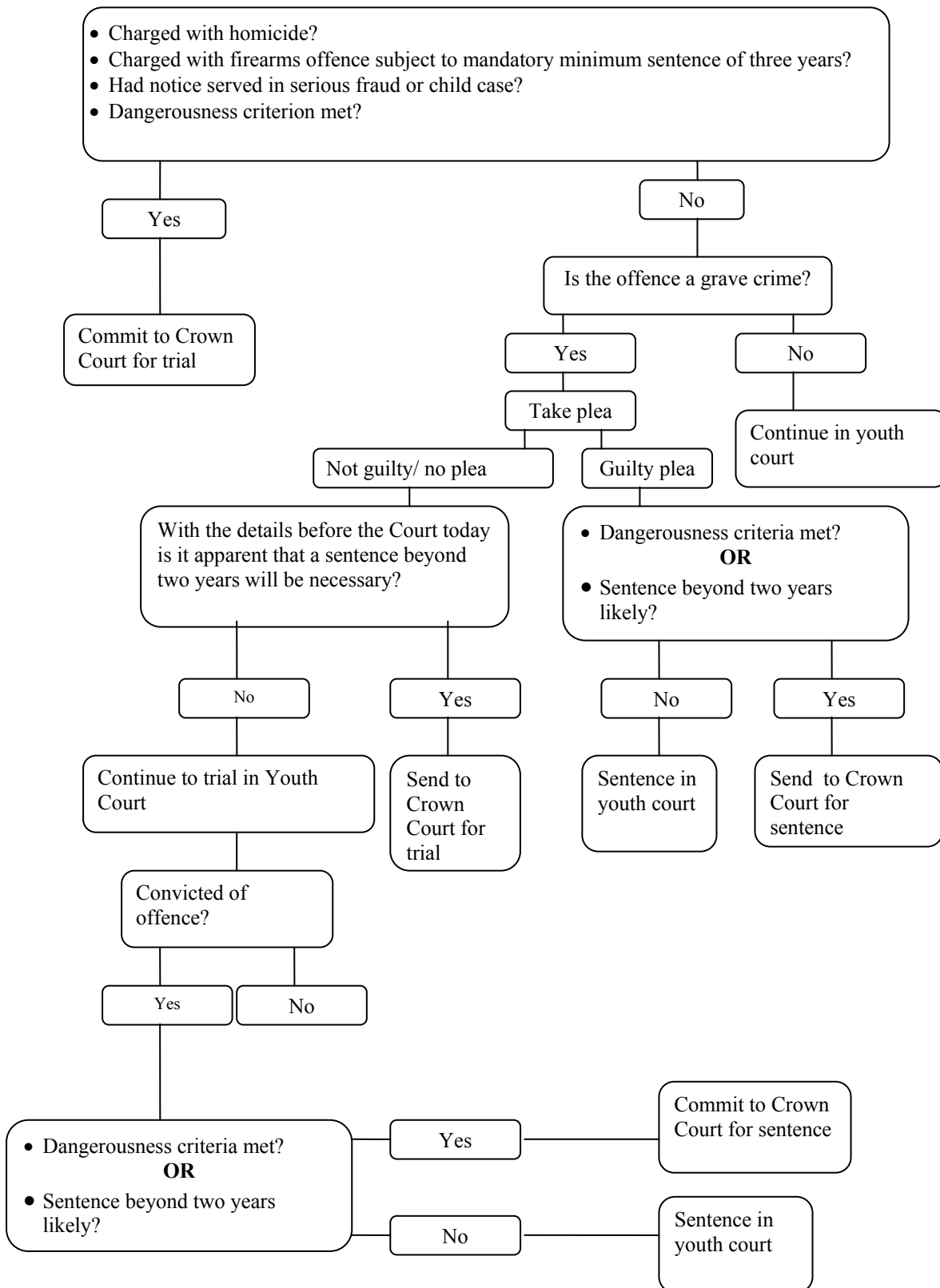
- take no action.

Even if the offender has attained the age of 18 proceedings for breach of the supervision requirements must be dealt with in the youth court.

Commission of further offences during a detention and training order

- 6.21 If a young offender is found guilty of a further imprisonable offence during the currency of the order then the court has the power to impose a further period of detention, whether or not it chooses to pass any other sentence. This period cannot exceed the period between the date of the new offence and the date of when the original order would have expired.
- 6.22 This period can be served consecutively or concurrently with any sentence imposed for the new offence and this period should not be taken into account when determining the appropriate length of the sentence for the new offence.

Allocation Chart



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Sentencing Council

Sentencing Council meeting: 25 September 2015
Paper number: SC(15)SEP06(b) - Youths
Lead officials: Vicky Hunt & Jo Keatley
020 7071 5786
Lead Council member: John Saunders

1 ISSUE

- 1.1 This is the first consideration of a new draft format sexual offences guideline for youths.
- 1.2 It is proposed that the Council will have an opportunity to consider a new draft format youth robbery guideline in October. The aim is for both guidelines to be signed off at the Council meeting in November, and out for consultation by February 2016.

2 RECOMMENDATION

The Council is asked to consider

- The general format of the guideline;
- The scope of the guideline;
- The factors included within the non custodial group;
- The factors included within the custodial group;
- The aggravating and mitigating factors; and
- The reference to the use of adult guidelines.

3 CONSIDERATION

- 3.1 At the July meeting the Council decided that offence specific guidelines drafted in the usual SC style, are not appropriate for youths as they are too specific and would likely lead to higher sentences than are currently imposed. It was felt that when sentencing young offenders there are too many

variables, specific to the offender. Instead it was proposed that guidance could be provided to assist sentencers in determining whether the case before them is so serious that it has crossed the custodial threshold. The Council also decided that if the case had clearly crossed the custodial threshold then only at this stage might the sentencer want to consult the equivalent adult guideline to provide broad assistance with the sentence level, taking into account reductions for the youth of the offender.

3.2 With these aims in mind I have drafted the attached guideline at **Annex A**.

Structure

3.3 The Council will note that under the first box, which sets out the factors indicating lesser serious offending, sentencers are instructed that presence of one or more of those factors may lead the court to consider a non custodial sentence. However the next box, which deals with those cases that cross the custodial threshold, requires sentencers to find one of those factors plus one or more aggravating factors before concluding that the case may have crossed the custodial threshold. The reason for the different approach was that there did not appear to be any factors that, on their own, would certainly lead to a case crossing the custodial threshold. The aggravating factors listed are all ones which are quite serious in themselves, to ensure that a case should not tip over the custodial threshold by virtue of one relatively minor aggravating factor. However the aggravating factors are less serious than those factors listed in the second box, and on their own and perhaps even combined with each other, are insufficiently serious to warrant a custodial sentence.

3.4 It would be possible for a case to include factors indicating both a less serious offence and an offence that is so serious it could cross the custodial threshold. For example, where the offender has a mental disorder or learning disability, but the offence involves coercive penetrative activity with a significant degree of planning. In such a scenario the sentencer would have to weigh up for themselves which factors are more relevant on the facts of the case. This is not a new concept, even within the step by step guidelines usually produced by the Council sentencers will come across scenarios with factors indicating both higher and lesser levels of harm or culpability, and they would be expected to balance those factors to reach a fair assessment.

Question 1: Is the Council content with the structure of the guideline?

Scope

3.5 The factors included in the guideline all point toward sexual offences involving contact. The guideline would not, therefore, be suitable for the following types of sexual offence:

- Engaging in sexual activity in the presence of a child
- Causing a child to watch a sexual act
- Possession of indecent images
- Exploitation offences
- Others including exposure and voyeurism etc

3.6 However, given the very low numbers of offences of these types which, for young people, are unlikely to result in a custodial sentence, the need for a guideline in these areas is perhaps diminished. The general information provided within the newly drafted overarching principles, and the sexual offence specific detail at page 1 of this guideline should give the sentencer sufficient assistance.

Question 2: Is the Council content to provide a guideline that applies only to contact type sexual offences?

Non Custodial Factors

3.7 The factors listed within the first box indicate those cases where it would seem unlikely that a custodial sentence would result. It is intended to capture the lower level type sexual offences.

Question 3: Is the Council content that the factors listed do describe offences that, in most cases, should not result in a custodial sentence?

3.8 The use of the term 'non coerced sexual activity' is intended to capture those cases where two young people have willingly engaged in sexual activity without regard to the fact that the victim, by virtue of their age, is unable to legally consent. The SGC guideline used the phrase 'relationship of genuine affection' which may have been trying to capture the same thing, however is

perhaps a little less clear, and may result in mitigation being given where it is not warranted. For example an offender and victim may have been in a 'relationship of genuine affection' but if on this occasion the victim was forced to engage in sexual activity the fact of their existing relationship is likely to be irrelevant.

Question 4: Is the Council content to use the phrase 'non coerced sexual activity'?

Custodial Factors

- 3.9 The factors listed within the second box are intended to be the most serious factors which, when combined with an aggravating factor would lead the case to cross the custodial threshold. Coercion appears twice within this list. On the first occasion; penetrative activity involving coercive behaviour. As discussed above, is intended to differentiate between those young people willingly engaging in sexual activity. The coercion within this factor need not be violent but could involve undue pressure, encouragement or blackmail.
- 3.10 Coercion through violence or threats of violence is intended to capture a higher level of coercion, but will apply to offences including non penetrative sexual behaviour.

Question 5: Is the Council content that the factors listed do describe offences that, in most cases, should result in a custodial sentence?

Aggravating & Mitigating Factors

- 3.11 The aggravating and mitigating factors have been collated from a number of sources including the existing SGC youth guidelines and through a small-scale analysis of transcripts of youth sexual offence cases which have reached the Crown Court. The factors were also 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 met with general support. Further road testing is planned for the consultation stage of the guidelines.

Question 6: Is the Council content with the list of aggravating and mitigating factors?

The Use of Adult Guidelines

3.12 The SGC's Overarching Principles – Sentencing Youths guideline provides that when dealing with offenders aged 15, 16 or 17 whose offending has crossed the custodial threshold:

...where there is no offence specific guideline, it may be appropriate, depending on maturity, to consider a starting point from half to three quarters of that which would have been identified for an adult offender.

3.13 At the last Council meeting, when guidelines had been drafted providing sentencing levels of three quarters of the adult equivalent guideline, it was clear that the Council felt that the sentences proposed were too high.

3.14 Since the last Council meeting the analysis and research team have carried out an assessment of existing sentencing practice to consider whether in fact youth sentencers, when imposing a custodial sentence, do broadly sentence between half to three quarters of the adult equivalent. The results show that a far smaller percentage of youths received a custodial sentence than adults, but when a custodial sentence was imposed for the more serious offences which are being considered by the Council, such as robbery and rape, it was somewhere between half to two thirds of the equivalent adult sentence. This is only a slight downward adjustment to the previous provision.

3.15 It is therefore proposed that both within this sexual offences guideline, and within the new draft Overarching Principles document it states that

If satisfied that the offence crosses the custodial threshold, and that no other sentence is appropriate, the court may as a preliminary consideration consult the equivalent adult guideline in order to decide upon the appropriate length of the sentence.

When 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 adult sentence. 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.

Question 7: Is the Council content that both the Overarching Principles and the Sexual Offences guideline make this reference to the equivalent adult 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.

Sexual Offences

Sentencing youths for sexual offences requires a number of different considerations from adults to be considered. The primary difference is the age and immaturity of the offender. Young people are less emotionally developed than adults; offending can arise through lack of control; inappropriate sexual experimentation; confusion about sexual identity or orientation; gang or peer group pressure to engage in sexual activity; lack of understanding around consent, and coercion. All these circumstances have the potential to mitigate the young person's level of culpability for the offence.

Background factors may also be relevant to the sentencing decision. These include, but are not limited to the following:-

- 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

The approach to sentencing a youth should always be individualistic. However, the starting point of sentencing will require the court to assess the seriousness of the offence. The tables below include offence-related factors that may indicate that the case is either below, or alternatively, has crossed, the custodial threshold. This threshold is likely to be higher for young persons than adults, due to the more harmful effects that custody has upon a juvenile.

If the custodial threshold has been passed the court should consider whether an alternative penalty is available and if so whether that penalty would be appropriate. In particular, in those cases where it is available, the court should consider whether a Youth Rehabilitation Order with Intensive Surveillance and Supervision would be an appropriate alternative to custody.

Presence of one or more of the following factors may lead the court to consider a **community penalty or an appropriate non custodial sentence is the most suitable disposal**

- Any form of non penetrative sexual activity
- Particularly young or immature offender
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- Non coerced sexual activity

Presence of one of the following factors combined with one or more aggravating features may lead the court to conclude that the **custodial threshold* has been passed**

- Penetrative activity involving coercive behaviour
- Severe psychological or physical harm caused to the victim
- Coercion through violence or threats of violence
- Sustained or repeated offence

*the court should consider whether a YRO with ISS could be justified before passing a custodial sentence

The Court must also consider the aggravating and mitigating features before deciding upon a final sentence.

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)
- Recording of the offence or other actions designed to humiliate or degrade the victim
- 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
- Coercion through violence or threats of violence (where not considered above)

Mitigating factors (non exhaustive)

- No previous convictions **or** no relevant/ recent convictions
- Good character and/or exemplary conduct
- Remorse
- 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

- | |
|--|
| <p>behaviour, exposure to pornography or sexually explicit materials</p> <ul style="list-style-type: none">– Determination and/or demonstration of steps taken to address offending behaviour– Participated in offence due to peer pressure/ bullying– Genuine belief that activity was lawful– Particularly young or immature offender (where not considered above)– Mental disorder or learning disability, particularly where linked to the commission of the offence (where not considered above)– Non coerced sexual activity (where not considered above) |
|--|

If satisfied that the offence crosses the custodial threshold, and that no other sentence is appropriate, the court may as a preliminary consideration consult the equivalent adult guideline in order to decide upon the appropriate length of the sentence.

When 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 adult sentence. 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.

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Sentencing Council

Sentencing Council meeting: 25 September 2015
Paper number: SC(15)SEP07 – Dangerous Dogs
Lead Council member: Richard Williams
Lead officials: Mandy Banks
0207 071 5785

1 ISSUE

1.1 This is the first consideration of the guidelines post consultation, and will consider the responses to all the guidelines on the approach to culpability and harm.

1.2 Over two further meetings the Council will also be asked to consider the approach to the aggravating and mitigating factors, sentence levels and finally the coherence of the guidelines as a whole and the response to the consultation paper.

1.3 The timetable is for the guidelines to be signed off by December, and published by the end of the 2015/16 financial year.

2 RECOMMENDATION

The Council is asked to agree the following:

- Changes to the culpability factors as discussed **at para 3.6, page 3 onwards**
- Changes to the harm factors, as discussed at **para 3.27 page 9 onwards**

3 CONSIDERATION

Consultation

3.1 The Council received 70 responses to the consultation, mainly by hard copy or email, with 28 using the online questionnaire. Some small scale research with sentencers took place to assist in developing the guidelines prior to consultation, no road testing of the guidelines was conducted during the consultation. Three consultation events on the guidelines were held, as below:

- Portsmouth magistrates and legal practitioners, chaired by Sarah Munro
- Worcestershire, Shropshire and Herefordshire magistrates, chaired by Jill Gramann

- Welsh magistrates, chaired by Richard Williams.

3.2 The reaction to the draft guidelines has been positive, the Association of Lawyers for Animal Welfare (ALAW) commented '*ALAW would firstly like to commend the Sentencing Council for the care that has clearly been taken in drafting the new proposed Dangerous Dog Offences Guidelines.*' The Council of HM Circuit Judges stated '*We (therefore) welcome the introduction of guidelines for these new offences that may be unlikely to come frequently before the Crown Court but will raise considerable public concern when they do. We find ourselves in broad agreement with the proposals.*'

3.3 Balanced against this general support for the proposals were comments made by a few attendees at consultation events and a few other organisations who expressed surprise that the Council had decided to completely revise the existing guideline, given the current pressure of work. However, this view was expressed by a very small number of people, compared to the strong support expressed for the revised guideline.

Structure

3.4 The guideline contains five separate guidelines, the first four are offences causing death, offences causing injury, attacks on assistance dogs and the non-aggravated offence of a dog dangerously out of control, and are all very similar. The fifth guideline is for the offence of the possession, breeding, selling or advertising of a prohibited dog, and is specifically tailored to that offence. The guidelines¹ can be viewed at: <https://www.sentencingcouncil.org.uk/publications/item/dangerous-dog-offences-consultation-2/>.

3.5 There were two general questions asked in the consultation, the first regarded the separate guideline for offences causing death:

Q1. Do you agree that guidance for this offence should be contained within a separate guideline, and not in a combined guideline which includes other offences?

96 per cent of respondents agreed that this offence should be contained within a separate guideline. The second question regarded the separate guideline for offences resulting in injury:

Q16. Do you agree that guidance for this offence should be contained within a

¹ Hard copies of the guidelines will be available at the Council meeting.

separate guideline, and not in a combined guideline which includes other offences?

93 per cent of respondents agreed that that this offence should be contained within a separate guideline. No other concerns were raised regarding the proposed structure of the guidelines therefore it is recommended that the structure of five separate guidelines is maintained.

Culpability - cross cutting issues

3.6 For three of the guidelines (offences causing death, offences causing injury and the attack on assistance dogs), the approach consulted on was to assess culpability as high, medium or lesser, and the culpability factors are identical within the three. The culpability levels were developed to reflect offenders in higher culpability, who have acted deliberately and the offence occurs because of an action on their part, to offenders in medium culpability who have been negligent or failed to act in a way which could have prevented an incident, to offenders in lesser culpability who have generally acted responsibly, but nevertheless an unforeseen incident has occurred.

3.7 For two of the guidelines (the non-aggravated offence of no injury caused, and the offence of possessing a prohibited dog) there were two levels proposed, higher and lesser. This was because there was not thought to be the range of offending behaviour within those offences to necessitate three levels of culpability. For the non-aggravated offence, the same higher and lesser culpability levels are used as the first three guidelines, just the medium level is omitted. For the offences of possessing a prohibited dog, specific factors that were present in the existing guideline were used.

3.8 Respondents to the consultation largely supported the approach taken to culpability within the guidelines; a small number of issues were raised regarding the culpability issues across the guidelines, which are discussed below.

3.9 A number of respondents, including the police, some magistrates, HM Circuit Judges, Battersea Dogs Home and legal practitioners, requested that '*dog known to be prohibited*' (included as an aggravating factor in all of the guidelines except the possession of a prohibited dog guideline where it is a high culpability factor) should be moved to high culpability. Most respondents did not specifically articulate why the factor should be moved but it seems that people feel an attack committed by a known prohibited dog makes an offender more culpable, as they should have taken greater care and safety measures than other dog owners.

3.10 Battersea Dogs Home stated that section one of the Dangerous Dogs Act requires all owners of banned breed dogs to apply for their dogs to be exempted legally and certain control measures to be affected, such as muzzling in a public place. If an attack took place and the owner was aware that their dog was a banned breed and had not applied for exemption, or adhered to the required control measures, then they have also contravened this law and should be considered more culpable.

Question one - Does the Council wish to place 'dog known to be prohibited' in culpability A within the offences of causing death, injury, attack on assistance dogs and the non- aggravated offence?

3.11 A number of respondents including the police, the Kennel Club, the RSPCA, a barrister and the ALAW questioned the wording of the factor in high culpability of *'dog bred or trained to be aggressive.'* Respondents suggested that it is misleading to suggest a dog can be bred to be aggressive as although some dogs are born with inherited tendencies that might, if not controlled, make aggressive behaviour more likely, it is a dog's upbringing, treatment or training, rather than its heritage at birth, which dictates whether or not a dog will be aggressive and any dog in the wrong hands has the potential to cause harm. The police were also concerned that the guideline should be able to differentiate between dogs who had legitimately been trained to bite such as police dogs, security dogs, or dogs trained for certain sports, and those trained for the purpose of aiding criminality, otherwise they believed there was a risk that the guideline would result in higher sentencing than was intended.

3.12 This factor was developed following early research with Judges, to capture the criminal context in which some dangerous dogs are kept (to enforce certain criminal activities). Respondents suggested a number of ways to reword this factor, such as *'using or attempting to use the dog to attack upon command,' 'dog used in a confrontation or aggressive circumstances,' 'dog bred or trained such that they are more likely to be aggressive,'* and *'dog trained to be aggressive for unlawful purposes.'* If the Council wish this culpability factor to differentiate between dogs trained for lawful purposes, as opposed to unlawful purposes, then the last factor listed would be the most appropriate.

3.13 Alternatively, to avoid unnecessary complications, the existing factor within high culpability of *'dog used as a weapon or to intimidate people'* may be sufficient to capture this criminal context, and may avoid the need to reword the *'dog bred or trained to be aggressive'* factor by removing it.

Question two- Does the Council wish to reword the factor of ‘Dog bred or trained to be aggressive’ to ‘dog trained to be aggressive for unlawful purposes?’ Or, should this factor be removed as ‘dog used as a weapon or to intimidate people’ may be sufficient within high culpability?

3.14 The other high culpability factor of ‘*failure to respond to official warnings or to comply with orders concerning the dog*’ was designed to reflect offenders who have ignored court orders regarding the dog, such as requiring it be muzzled etc. This factor as currently worded does not reflect an offender who has ignored court orders regarding themselves, such as an order which banned them for life from owning a dog. This was recently highlighted in the case of Craig Greve² who had been banned for life from owning a dog, a ban which he subsequently ignored, and his dog then went on to kill his grandmother. Accordingly, the factor could be reworded to ‘*Failure to respond to official warnings/orders, or to comply with orders concerning the dog.*’

3.15 **Question three- Does the Council agree to reword the factor to ‘Failure to respond to official warnings/orders, or to comply with orders concerning the dog?’**

3.16 A small number of respondents questioned the wording of the factor ‘*failure to respond to warnings or concerns expressed by others about the dog’s behaviour*’ in medium culpability. The RSPCA were concerned with the factor in medium culpability, stating that some warnings or concerns expressed could be incorrect due to a lack of knowledge about dog behaviour. Another respondent suggested that the factor in medium culpability should have the words ‘made in good faith’ added, to avoid an increase in culpability due to neighbourly disputes and disgruntled persons expressing unwarranted concerns. The Justices’ Clerks’ Society suggested adding the word ‘unofficial’ to the factor in medium culpability to distinguish it more clearly from the factor in high culpability.

Question four- Does the Council agree to add the word ‘unofficial’ to the medium culpability factor regarding warnings within the offences of causing death, injury, attack on assistance dogs and the non-aggravated offence?

3.17 The Magistrates’ Association and a magistrates’ bench suggested that ‘*failure to take adequate precautions to prevent the dog from escaping,*’ which is an aggravating factor within the first four guidelines, should be moved to be a culpability factor instead. From the analysis of dangerous dog cases, this is a reasonably

² He was recently sentenced at Cardiff Crown Court to five and a half years imprisonment (with maximum credit for an early guilty plea), case to be discussed further at the next meeting on sentencing levels.

common scenario in these offences, so there is justification for moving the factor to step one instead. There is currently a factor in medium culpability of *'lack of safety or control measures taken in situation where an incident could reasonably have been foreseen.'* This could potentially cause double counting with two similar factors, so the medium factor could be reworded to *'lack of safety or control measures taken in a situation where an incident could reasonably have been foreseen, including a failure to stop the dog from escaping'* and the aggravating factor removed.

Question five- Does the Council agree to reword the factor in medium culpability and remove the aggravating factor regarding a dog escaping?

Specific culpability issues - offence where an assistance dog is injured or killed

3.18 A small number of respondents suggested that the culpability factors for this guideline should be more tailored to the specific offence of attacks on assistance dogs resulting in injury or death. It was noted that there is no reference to dogs or the deliberate targeting of assistance dogs or their owners, due to their disability, within this guideline. To this end, Judges at Kingston Crown Court suggested that the words 'or dogs' should be added to the first high culpability factor, so it reads *' Dog used as a weapon or to intimidate people or other dogs'*.

3.19 ALAW, and some participants at consultation events felt that for this offence, the proposed aggravating factor³ of *'offence motivated by, or demonstrating hostility based on, but not limited to, the victim's age, sex or disability'* (present within the first four offences), was insufficient. They argued that as the high culpability factors focus on deliberate intent, for this offence, if an offender targets someone due to perceptions of their disability and then uses their dog to bully or harass the assistance dog and their owner, leading to an attack on the assistance dog, then this should place them within high culpability.

3.20 There is a factor in high culpability in the existing guideline of *'offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)*. This factor could be placed in high culpability for this offence only.

Question six - does the Council agree to amend the first culpability factor as suggested?

³ The wording and placement of this factor needs to be revised and will be considered at the next meeting in the discussion of aggravating /statutory aggravating factors

Question seven – does the Council agree to place the factor regarding offence motivated by hostility based on disability from the existing guideline in high culpability for this offence only?

Dog dangerously out of control, no injury caused (non aggravated offence)

3.21 A number of respondents (including the RSPCA, some magistrates, Battersea Dogs Home, H.M Circuit Judges) questioned why there were only two levels of culpability for this offence, stating that they thought there should be three levels, like the offences of causing death, causing injury and attacks on assistance dogs. The existing guideline only has two levels, which was replicated in the revised guidelines, as the Council thought that creating three levels would over complicate this offence. However, given the amount of support for three levels the Council may wish to reconsider this decision. The guideline could be amended to add in a medium level of culpability, using the same factors from the other guidelines. This would necessitate changes to the sentencing table, and result in fairly small ranges, given the statutory maximum of 6 months' custody for this offence.

3.22 How the revised sentencing table⁴ might look with three culpability levels can be seen below. There was much less support for three levels of harm (as discussed at paragraph 3.34 below) so this version contains two levels of harm.

Harm	Culpability		
	A	B	C
Greater harm	<p>Starting point Medium level community Order</p> <p>Category range Band C fine – 6 months' custody</p>	<p>Starting point Band C fine</p> <p>Category range Band B fine to Low level community order</p>	<p>Starting point Band B fine</p> <p>Category range Band A – Band C fine</p>
Lesser harm	<p>Starting point Band C fine</p> <p>Category range Band B fine – Low level community order</p>	<p>Starting point Band B fine</p> <p>Category range Band A – Band C fine</p>	<p>Starting point Band A fine</p> <p>Category range Discharge – Band B fine</p>

Question eight – Does the Council wish to include a medium level of culpability for this offence?

⁴ These are proposed sentence ranges only, sentence levels will be reviewed and the consultation responses regarding sentence levels will be discussed at the October meeting.

Possession of a prohibited dog

3.23 This guideline has two levels of culpability relating specifically to the possession, selling, breeding, exchanging or advertising of a prohibited dog, and as such uses completely different culpability factors from the other offences within the guideline. All the factors were largely taken from the existing guideline, as this offence was mostly unaffected by the changes to legislation. Only one or two respondents suggested that this guideline should have three levels of culpability, instead there was some support for clarification of what would constitute a lower culpability offence, which is currently worded '*all other offences.*' It is therefore recommended that two levels of culpability are maintained.

3.24 A small number of respondents including the police stated that the word '*known*' should be removed from '*Possessing a dog known to be prohibited,*' so it would read '*Possessing a prohibited dog*'. '*Known*' is also referenced in two of the high culpability factors, '*Breeding from a dog known to be prohibited*' and '*Selling, exchanging or advertising a dog known to be prohibited.*' They state that the burden of proof should be on the owner who would have to make their case to the court that they were not aware that the dog was prohibited.

Question nine – does the Council wish to remove the word 'known' from the high culpability factors in this guideline?

3.25 The RSPCA stated that as currently drafted, someone who accidentally acquired a prohibited breed would be as culpable as someone who had deliberately done so to use for criminal purposes. There is a mitigating factor of '*unaware that dog was prohibited despite reasonable efforts to identify type,*' and although it is implicit that an offender who did not know the dog was prohibited would fall into lower culpability under '*all other offences,*' there may be justification to further clarify this point, as the responses to the consultation indicated confusion on this issue. The factor could be moved from mitigation at step two to lower culpability at step one.

3.26 A small number of respondents also queried the factor '*offence committed for gain,*' given that the offence is of selling a prohibited dog. For clarity, this factor could be reworded to '*high level of commercial activity for substantial profit*' in high culpability, and a new factor of '*low level of commercial activity for small profit*' could be added to lower culpability.

Question ten – does the Council agree to the addition of two new factors in lower culpability?

Harm

Offences resulting in death

3.27 The approach to harm differs between the guidelines. For the guideline dangerous dog offences causing death, only one level of harm was proposed, which reads *'there is no variation in the level of harm caused, as by definition the harm involved in an offence where a death is caused is always of the utmost seriousness.'* This approach was supported by 94 per cent of respondents to the consultation. The National Bench Chairmen's Forum (NBCF) and another magistrate suggested that differentiation could be made between instantaneous deaths, and subsequent deaths, due to infections such as septicaemia or a heart attack following a relatively minor incident. As the vast majority of respondents agreed with the Council's proposed approach to the assessment of harm it is recommended that this approach is maintained.

Question eleven- Does the Council agree to maintain the consultation approach to the assessment of harm in offences resulting in death?

Offences resulting in injury

3.28 For this offence, three levels of harm were proposed. The majority of respondents, 77 per cent, agreed with this approach. However, a small number of respondents, including the NBCF felt that more examples of what constitutes the levels of harm would be helpful. The PDSA, Justices' Clerks' Society, and a magistrates' bench suggested including *'life changing injury'* and *'permanent disfigurement or disability'* as examples within category one. The RSPCA and a magistrate suggested that categories two and three should incorporate varying levels of psychological harm, as currently only serious psychological harm is listed in category one, which they state is insufficient to assess the harm caused by this offence. One magistrates' bench suggested using the definitions of harm used by the NHS for clarity (the definitions are low, moderate, or severe).

3.29 The Council will recall that the assessment of harm was carefully considered during the guideline development. The rationale used was that category one was for serious harm, category three for minor injuries, and category two for all other cases, allowing courts the discretion to decide on the basis of the facts before them what this constitutes. However, as the responses indicate that some additional detail would be of assistance in order to assess harm, the Council could include some of the additional factors described above, as shown in track changes below. The consultation version already included an example, that of disease transmission in

category one, so this proposal would just be including some further examples. Similar factors to assess harm (*serious, considerable, some*) have been used in other guidelines, for example fraud.

Harm

The level of harm is assessed by weighing up all the factors of the case.

<p>Category 1</p> <ul style="list-style-type: none"> • Serious injury (which includes disease transmission) • <u>Life changing injury or permanent disfigurement or disability</u> • Serious psychological harm 	
<p>Category 2</p> <ul style="list-style-type: none"> • <u>Considerable injury</u> • <u>Considerable psychological harm</u> 	<div style="border: 1px solid orange; border-radius: 10px; padding: 5px; display: inline-block;"> Deleted: Factors in categories 1 or 3 not present </div>
<p>Category 3</p> <ul style="list-style-type: none"> • <u>Some injury</u> • <u>Some psychological harm</u> 	<div style="border: 1px solid orange; border-radius: 10px; padding: 5px; display: inline-block;"> Deleted: Minor </div>

Question twelve- Does the Council agree to the recommendation to include additional factors within the assessment of harm for this offence?

Offences resulting in an attack on assistance dog

3.30 For this offence, three levels of harm were proposed, to assess both the level of injury to the dog, and the level of impact on the assisted person. This approach was strongly supported by respondents to the consultation, with 92 per cent agreeing. However, a small number of respondents, including Guide Dogs for the Blind, stated that additional clarification or wording, particularly around the *‘impact on the assisted person is severe’* factor would be helpful to aid assessment of harm for this offence. Guide Dogs for the Blind argue that the relationship between an assistance dog and their owner is not one which is well understood by those without close experience, so it might be difficult for people to understand how a severe impact on an assisted person would manifest itself. One magistrates’ bench stated that the text used in the consultation which explained the factors proposed, should be included within the guideline. Similar comments were made at the consultation events.

3.31 Other respondents queried the factors in category three, stating that although the injury to the assistance dog might be minor it could have such an effect that the dog has to be retired and so the impact on the assisted person would be severe. The guideline intends that in such circumstances, harm would be assessed as category one, as although there is a minor injury to the dog, the impact of the offence on the assisted person is severe. There is additional wording in the guideline that states the level of harm should be assessed by weighing up all the factors of the case, but this wording did not necessarily seem that clear to some respondents. To resolve this, the word 'or' could be removed from the first factor in category three, as shown below, to clarify that if the impact on the assisted person is severe, this will fall into category one, regardless if only a minor injury to the dog was caused.

3.32 As the Council is aware, providing examples is often not helpful within guidelines, as guideline users tend to see the examples listed as exhaustive. However, as this offence is fairly specific and unique, an option would be to keep the 'impact of the offence on the assisted person is severe' factor as worded, but provide additional text in the form of a footnote or asterisk. This would provide additional explanation regarding the category one factor.

Harm

The level of harm is assessed by weighing up all the factors of the case.

<p>Category 1</p> <ul style="list-style-type: none"> • Fatality or serious injury to an assistance dog and/or • Impact of the offence on the assisted person is severe* <p><i>*this can be if the person is very reliant on the dog and the dog is not able to work for any period of time, or emotional distress, fear or severe trauma caused to the person by the attack</i></p>
<p>Category 2</p> <ul style="list-style-type: none"> • Factors in categories 1 or 3 not present
<p>Category 3</p> <ul style="list-style-type: none"> • Minor injury to assistance dog and • Impact of the offence on the assisted person is limited.

Deleted: /or

Question thirteen- Does the Council wish to include additional text regarding the impact on the assisted person is severe factor, and agree to remove the word 'or' in category three?

Dog dangerously of control (no injury caused)

3.33 For this offence, two levels of harm were proposed, greater and lesser harm. The factors used are the ones used in the current guideline, as shown below:

Greater harm

- *Presence of children or others who are vulnerable because of personal circumstances*
- *Injury to other animals*

Lesser harm

- *Low risk to the public*

3.34 Respondents to the consultation largely supported this approach to harm, 76 per cent agreed with the proposals. Two respondents commented that there should be three levels of harm for this offence. A small number of correspondents suggested that the factor of *'presence of children or others who are vulnerable because of personal circumstances'* should be removed and become an aggravating factor. A few respondents suggested that greater harm should just state, *'high risk to the public.'* A small number suggested that psychological harm should be a factor, although this can be captured under the aggravating factor of *'significant ongoing effect on the victim and/or others.'* As the majority of respondents agreed with the proposals and there was no consensus amongst those who disagreed, it is recommended that the approach proposed in the consultation is maintained.

Question fourteen – Does the Council agree to maintain the approach to harm proposed in the consultation?

Possession of a prohibited dog

3.35 For this offence, two levels of harm were proposed, greater and lesser harm, as shown below:

Greater harm

- *High risk to the public and/or other animals*

Lesser harm

- *Low risk to the public*

3.36 The wording was designed to allow courts to decide, in the context of the particular offence before them, whether there was greater or lesser harm based on an assessment of risk. The majority of respondents, 75 per cent, supported this approach. There was no consensus amongst those who disagreed with this approach. One respondent commented that there should be no assessment of harm

at all, as the assessment of risk was hypothetical. The police commented that the risk and welfare to the animal in question should be a harm factor however, this is already an aggravating factor. Another respondent noted the increase in illegal dog fighting and suggested that any association between an offender to illegal dog fighting should represent a higher risk.

3.37 As the majority of respondents agreed with the proposed approach for this offence, it is recommended that it is maintained. The definitions proposed were deliberately designed to be broad to allow courts to assess the harm for this offence based on the facts of each case and providing further examples would not necessarily assist this process.

Question fifteen – Does the Council agree to maintain the approach to harm proposed in the consultation?

4 IMPACT/RISKS

4.1 We are currently analysing figures relating to the number of dangerous dog offences that have been sentenced since the legislation came into force in May 2014. This will allow a more accurate picture of the likely impact of the guideline to be assessed, particularly for the new offences involving assistance dogs where we have no historical data. However, it is important to note that any changes to sentences as a result of the guideline will need to be distinguished from those attributable to the introduction of the legislation.

Question sixteen – Is the Council content that the impact and risks are being adequately considered? If not, are there any other actions or considerations that should be undertaken at this stage?

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Sentencing Council

Sentencing Council meeting: 25 September 2015
Paper number: SC(15)SEP08 - Annual Report
Lead official: Anthony Walker
020 7071 5790

1 ISSUE

- 1.1 The Council has a legislative duty to publish an annual report as set out in the Coroners and Justice Act 2009 [s.119].
- 1.2 This paper sets out the changes made to the document following last year's report and feedback received from Council.
- 1.3 The paper also requests that Council members who have yet to register with the Office their interests according to the Code of Conduct for Board Members of Public Bodies¹ please do so by email to Anthony Walker by noon on Tuesday 29 September.

2 RECOMMENDATION

- 2.1 That the Council signs off of the Annual Report subject to minor amendments and corrections.
- 2.2 The Council considers and approves the content, structure and style of the Annual Report. There is no need to proof read the whole document; this will be done by office staff.

3 CONSIDERATION

Format and presentation

- 3.1 The structure follows that of last year, which met with the Council's approval.
 - The report begins with a foreword by the Chairman, followed by a brief introduction.
 - It then continues with *Activity and achievements 2014/15* which covers work undertaken during the period.

¹ http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/code-of-conduct_tcm6-38901.pdf

- The sections entitled *Guidelines* and *Work in progress* cover the work of the policy team over the period, *Analysis and research* and *Communications* covers the work of those teams respectively.
- *Analysis and research* this year contains Ministry of Justice information on the costs of sentencing. In July the Council decided that the costs of sentencing note should be revised to include only one sentence and links to the relevant statistics. We therefore propose to incorporate this information into the Annual Report, rather than publishing a separate note.
- The *Summary of achievements* is well populated for the most part, reflecting a busy year, but if members undertook activity in August and September, details would be appreciated.
- *Progress against 2014/15 Business Plan* is as positive as possible given that it is essentially there to set out what the Sentencing Council was not able to do.
- In *Budget and support activity* the presentation of our financial information and governance follows the same format as previously.
- *Governance* has been moved to *Annex A: About the Council* and cut down to avoid repetition.
- The attached version is for publication online, all links to web pages will be written in full for the hard copy.

Approval and timing of publication

- 3.2 In order to publish the report immediately after the summer recess and conferences, it is vital that any comments or details of members' interests are given by noon on Tuesday 29 September. Substantial changes at this stage could have an impact on the publication date.
- 3.3 The report will be laid before Parliament on 20 October.
- 3.4 The Secretary of State's office, Justice Committee, MoJ parliamentary branch and press office are all aware of the time table.

Distribution

- 3.5 We are producing the minimum number of hard copies (35 or fewer) and will print with a colour cover only. These copies are required to be laid before Parliament and to fulfil various other obligations.
- 3.6 All remaining distribution will occur digitally. The launch will be announced via the Sentencing Council's website, Twitter feed and in an email to key stakeholders.

Question: Is the Council content to approve the plan as an accurate report of its activities? In particular, is it content with the proposal at paragraph 3.1, bullet point 4, regarding costs of sentencing?

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Sentencing Council

Sentencing Council Annual Report 2014/15

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice

This report is presented to Parliament pursuant to Section 119(2) of the Coroners and Justice Act 2009



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Foreword

by the Chairman

It is my pleasure to begin this report on another highly productive year, and I am very proud of what we have achieved during the past 12 months. I am keen that this continues, so my focus remains firmly on the future to ensure that the Council builds on its successes and cements its place at the heart of clear and consistent sentencing.

This year the Council brought into force three new definitive guidelines and completed three consultations, reinforcing its position at the core of the sentencing process. These covered some very complex and sensitive issues, proving the ability of the Sentencing Council and its guideline development process to cope with all types of offence. The Council is determined to keep up this challenging pace without sacrificing quality.

Responses to the consultations have been strong, with excellent engagement from legal experts, professional bodies and individuals. It is heartening to get such a high number and quality of responses. These help to shape new guidelines and demonstrate the importance of all the work we have done to engage with a wide audience. They have led to some interesting and important discussions at Council meetings and important changes to guidelines.

So, the Council continues to be an efficient and productive body but, as I said, I want to take this opportunity to look forward. There is a great deal of work in the pipeline and the Council will be dealing with a variety of subjects, some topical or controversial, and some very technical. We have also completely revised our website and are in the process of carrying out the complicated but essential task of the digitisation of the Council, its meetings and its guidelines.

The Council is currently working on new guidelines for theft, robbery, and health and safety, corporate manslaughter and food safety and hygiene offences; revising its guidelines for allocation and dangerous dog offences; and reviewing the Magistrates' Court Sentencing Guidelines and guilty plea guidelines issued by the Sentencing Guidelines Council. We will also continue to work on new guidelines dealing with breach offences and the important issue of the principles to be used when sentencing

youths. In order to be sure that the best guideline format is identified for this particularly tricky area, a wide range of options is being considered. We hope to consult on this in the spring of 2016.

Besides the creation of sentencing guidelines, the Council has two other important roles to fulfil: confidence and communications and analysis and research.

This year the Council has worked to improve public understanding of the sentencing process in two ways. It has remained proactive in its engagement with the media, working hard to secure positive, accurate, far reaching coverage and striving to minimise any confusion or misrepresentation. This has been achieved not only by responding to enquiries but, more importantly, by actively engaging with the media at the launch of new definitive guidelines, consultations and at other times when we have something interesting to say or there is the potential to raise the profile of the Sentencing Council and its work.

Secondly, we have worked closely with partners across the criminal justice system to raise awareness of the Council and its guidelines whenever possible. Council members are keen to undertake speaking opportunities to talk about Sentencing Council and its work. This year examples include the Criminal Law Review Conference, the Judicial College's Long and Complex Trial Seminar for circuit judges, a joint seminar with the Probation Institute and talks to various student groups.

The Council held its first event to engage directly with parliamentarians in November. This event for MPs, peers and their aides at Portcullis House, which I hosted, gave parliamentarians the opportunity to find out more about the work of the Sentencing Council, as well as talk to members of the Council and raise any concerns they or their constituents may have. This year also saw members of the Council attend the Justice Committee more times than ever before. We have made sure this contact has continued since the general election.

Analysis and research continue to form the foundations of the Council's work. This year the decision was made to change the focus of sentencing data collection. Since its creation in 2010, the Sentencing Council has conducted the Crown Court Sentencing Survey (CCSS), collecting data from all Crown Court cases. This was a massive task but it has given us a comprehensive understanding of current sentencing practice and how guidelines may affect this. The Council took the decision to bring the CCSS to a close and instead conduct more focused research into the specific areas of our current work. This will, for the first time, allow the Council to extend its research into the

magistrates' courts where the vast majority of criminal cases are heard and sentenced. The CCSS was immensely useful; it has helped shape our guidelines and will continue to provide invaluable insight over the next few years. I wish to thank all those involved in responding to, compiling, processing and analysing the CCSS for all their hard work.

The Council remains on course to produce guidelines for all the most frequently prosecuted criminal offences within the next three years. Alongside this work the Council continues to fulfil its duty to assess the impact of its guidelines and review them if necessary.

This year saw some significant firsts; not only the Council's first open parliamentary event and the beginning of the digitisation of the Council, but also the first time the Council has revisited one of its own guidelines. This became necessary when the government made such substantial changes to dangerous dog offences and the maximum penalties available that the Council considered it necessary to revise the guideline covering these offences comprehensively. We are also at present reviewing our initial guideline on assault with a view to improving and updating it in the light of experience.

The Council has confirmed its position as a good place to work, scoring very highly in the Civil Service staff survey. This is a testament to the professionalism of all the office staff and the close working relationship they have with Council members, on whose behalf I would like to thank them for their contributions.

The Council is growing in stature and it is increasingly being seen as an expert body by an international audience. This year we received delegations from South Korea, Bangladesh and New York, all enthusiastic to find out how we work.

Lastly, I would like to take this opportunity to thank my fellow Council members for all their hard work; without their knowledge and insight none of this excellent work would be possible. I would especially like to thank Henry Globe, John Crawford, Javed Khan and Katharine Rainsford for their time and effort, as their terms on the Council have all come to an end this year. In their places I would like to welcome Tim Holroyde, Martin Graham, Mark Castle and Jill Gramann to the Council.

I present this detailed account of the Council's activities.



Colman Treacy

The Right Honourable Lord Justice Treacy

October 2014



Introduction

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice. It was set up by Part 4 of the Coroners and Justice Act 2009 (the 2009 Act) to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary.

The aims of the Sentencing Council are to:

- promote a clear, fair and consistent approach to sentencing;
- produce analysis and research on sentencing; and
- work to improve public confidence in sentencing.

This annual report covers the period from 1 April 2014 to 31 March 2015. For information on previous Sentencing Council activity, please refer to the 2012/13 and 2013/14 annual reports which are available on the website: **www.sentencingcouncil.org.uk**

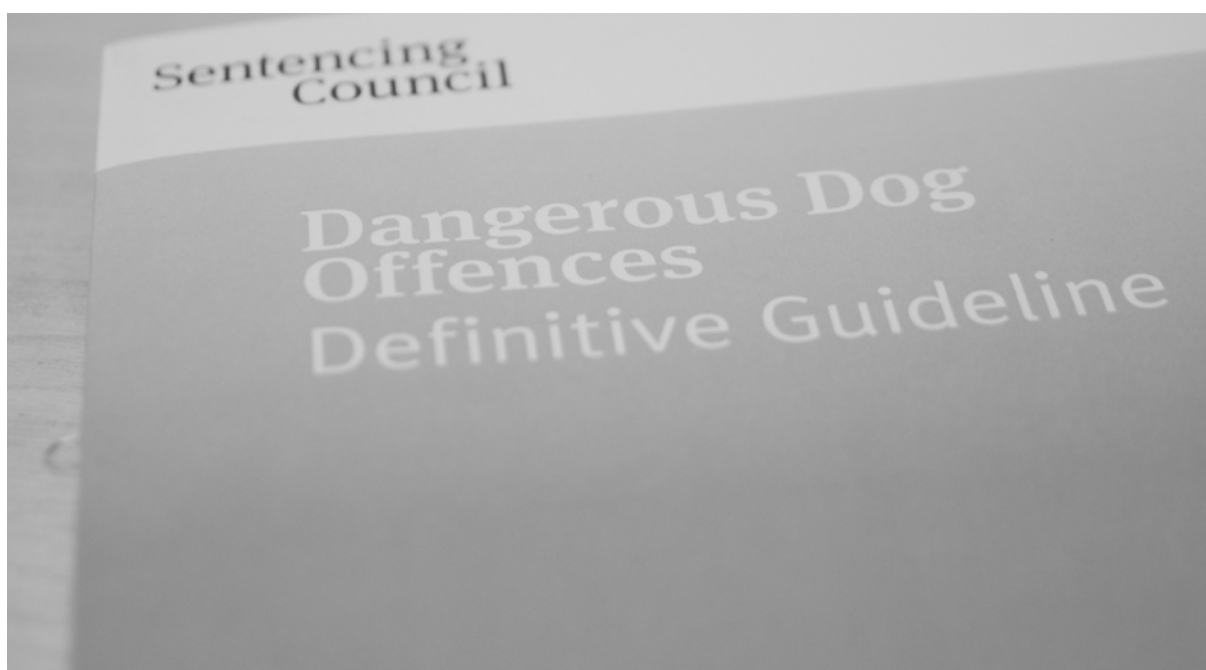
Activity and achievements 2014/2015

The Sentencing Council is responsible for developing sentencing guidelines and monitoring their use.¹

The work of the Sentencing Council over the last five years has resulted in a very visible change in courts with all parties now referring to our guidelines.

In 2014/15, the Council has:

- published definitive guidelines on non corporate fraud offences;
- carried out a consultation on theft offences;
- carried out a consultation on robbery offences;
- carried out a consultation on health and safety, corporate manslaughter and food hygiene offences;
- launched a consultation on dangerous dog offences;
- published a report on the findings of the Crown Court Sentencing Survey;
- produced resource assessments in association with draft guidelines;
- carried out research to support guideline development; and
- undertaken 28 speaking engagements.



¹ See Annex E for full details of all the roles and functions

Guidelines and consultations

Guidelines are intended to create a consistent approach to sentencing, while preserving judicial discretion. If in any particular case the judge feels it is in the interests of justice to sentence outside the guideline, this is specifically allowed for in the 2009 Act.²

Fraud, bribery and money laundering offences

The Council consulted on a fraud, bribery and money laundering guideline and issued a definitive guideline covering corporate offenders on 31 January 2014. Information about the consultation and the corporate offences guideline was included in the last annual report. The remainder of the definitive guideline, covering individual offenders, was published on 23 May 2014. The definitive guideline for both corporate and individual offenders came into effect on 1 October 2014.

Individual offenders

The guideline covers fraud, bribery and money laundering offences for individual offenders. The consultation responses were broadly in support of the Council's proposals. Changes were made at the suggestion of respondents to clarify language and to refine the guideline but the overall approach remains the same. Details of the changes

that were made as a result of the responses received can be found in the Council's response paper.

There was particular support for the Council's recognition that the impact of fraud on victims may go beyond the purely financial:

"The draft guideline puts greater emphasis on the impact the crime has had on the victim than previous guidelines... We welcome this approach ... as we are particularly conscious that victims, particularly vulnerable individuals, may suffer significant financial and psychological harm over the loss of relatively small sums."

Justice Select Committee

Theft offences

Rationale

Theft is a high volume offence, which covers a wide range of offences from theft from shops to handling stolen goods. Existing guidance for theft offences is currently provided in the Sentencing Guidelines Council (SGC) guideline, Theft and burglary in a building other than a dwelling, published in 2008, and in the Magistrates' Courts Sentencing Guidelines (MCSG). There is no guidance for some common theft offences, such as theft of a motor vehicle. The SGC guideline also contains out of date burglary guidance, as

² s.125(1) Coroners and Justice Act 2009

the new burglary offences definitive guideline came into force in 2012. A new theft definitive guideline will provide guidance for sentencers for the most common theft offences within a single guideline.

Approach

In preparing the draft guideline for consultation, the Council had regard to current sentencing practice and reported theft cases. The Council's social research team carried out qualitative research to explore sentencers' views on the draft guidelines during which views on the content of guidelines were explored, along with any potential behavioural implications of the proposals on sentencing practice. Observational research in magistrates' courts was conducted and content analysis of transcripts of sentencing hearings relating to defendants in the Crown Court also took place.

Consultation

The consultation contained six guidelines and ran for 12 weeks from 3 April to 26 June, during which time a number of events were held. The events were co-hosted with a cross section of interested parties in order to enable representatives of key interested parties to consider the proposals that were of particular relevance to them in detail and to provide officials and Council members with their views. The Justice Committee also held an event to seek views on the guideline.

In total 92 responses were received, mainly by e-mail or letter, with 20 responses submitted online.

Post consultation

Responses were broadly in support of the Council's key proposals; however some points made by consultation respondents and research participants required careful and thorough consideration by the Council over a longer time period. The Council therefore decided to extend the work programme in order to analyse the responses and the results from the research in more detail.

The Council intends to publish the definitive guideline in October 2015.

Robbery offences

Rationale

The Sentencing Guidelines Council published a definitive guideline for robbery in July 2006. This grouped street robbery, robberies of small businesses and less sophisticated commercial robberies together. No guidance was provided for violent personal robberies in the home or for professionally planned commercial robberies. The Council has agreed to include guidance for sentencing these types of robbery in a comprehensive new guideline.

Approach

In preparing the draft guideline for consultation, the Council had regard to statistical data from the Ministry of Justice Court Proceedings Database³ and the CCSS. To assist the Council in understanding the most significant factors when sentencing robbery offences and the effect these have on the final sentence, a qualitative analysis of

³ A database maintained by the Ministry of Justice, of all principal offences sentenced at the Crown Court and used to produce the MoJ quarterly criminal justice statistics publication. www.gov.uk/government/collections/criminal-justice-statistics-quarterly

transcripts of judges' sentencing remarks was undertaken. In addition to these sources of data, regard was paid to relevant case law.

The Council's social research team also interviewed a number of Crown Court judges and recorders exploring the consultation version of the guideline to discuss their general views on the proposals.

Consultation

The consultation ran for 12 weeks from 21 October 2014 to 23 January 2015. The Council received a total of 37 responses to the consultation including from magistrates, judges and legal practitioners. The Justice Committee also held an event to seek views. The Council is considering those responses with the aim of producing a definitive guideline by early 2016.

Health and safety, corporate manslaughter and food safety and hygiene offences

Rationale

Following the Council's production of the environmental offences guideline, it reviewed other offences where similar sentencing issues existed and where guidelines would be of assistance to the courts.

The Council identified health and safety and food hygiene and safety as areas where the amount of guidance for sentencers varied. Given that these offences are seen relatively infrequently by the courts, the Council considered that sentencers may

therefore lack familiarity with these areas and guidelines may be of assistance. In addition, these offences involve a wide range of offenders, from individuals to large corporations, and the Council considered that additional guidance and support would assist sentencers in taking a consistent and fair approach to sentencing these offences, and provide parity with the approach taken to sentencing environmental offences.

The Council reviewed current sentencing practice in this area and identified, in some cases, a lack of consistency in the approach to sentencing similar offences committed by similar offenders across the country. After considering the current fine levels in view of recent developments in the approach to sentencing corporate offenders (for example, recent Court of Appeal cases), the Council concluded that guidance to assist magistrates and judges in setting appropriate fines would be valuable.

The Council also decided to update the Sentencing Guidelines Council's guideline on corporate manslaughter to ensure that it was consistent with the approach for the related offences of health and safety offences causing death.

Approach

The Council undertook a statistical analysis of current sentencing practice to help inform the development of the guideline. To supplement statistical data the Council also undertook a review of sentencing in recent cases. The Council used a range of sources for this review, including transcripts of Crown

Court and Court of Appeal cases, information provided by prosecution agencies, media reports and information from Companies House regarding offenders' means.

To develop the overall structure and approach of the guideline, the Council drew on the lessons learned from research when developing the environmental guideline.

During the consultation period, in order to help explore how the draft guideline might work in practice, a small programme of qualitative research with magistrates and Crown Court judges was undertaken by the social research team. The guideline was refined in response to the findings from this work.

In addition, the Council approached a small number of experts and sentencers with experience in each of the fields covered by the guidelines to seek feedback and challenge on early proposals.

Consultation

The Council consulted on the draft guideline for health and safety, corporate manslaughter and food safety and hygiene offences for 12 weeks from 13 November 2014 to 18 February 2015. During this period the Council held consultation events with various stakeholders with an interest in the guideline. The Justice Committee also held an event to discuss the guideline.

The Council intends to publish the definitive guideline in November 2015.

Dangerous dog offences

Rationale

The Sentencing Council issued a definitive dangerous dog offences guideline in August 2012. In May 2014 the Anti-Social Behaviour, Crime and Policing Act 2014 made amendments to the Dangerous Dogs Act 1991. These were so substantial that the Council considered that it would be appropriate to revise comprehensively the existing guideline. The Council did consider simply updating the existing guideline to reflect the amended legislation, particularly as overall numbers sentenced for these cases are low, but concluded that this option would not give sentencers sufficiently clear guidance, particularly as they may not sentence this type of case very frequently.

Approach

In preparing the draft guideline for consultation, the Council had regard to current sentencing practice and reported cases, although this data was limited as very few cases involving a death have been sentenced. It also considered the offences referenced by the Government when it introduced the new maxima for dangerous dog offences, namely death by dangerous driving and assault occasioning actual bodily harm. Accordingly, in developing the guideline the Council also considered sentencing data for driving, assault and, as some dangerous dog offences were previously charged as manslaughter, manslaughter cases.

A review of international policies and data on dangerous dog offences and a qualitative content analysis of the transcripts of the sentencing remarks for 20 recent Crown Court cases involving death or injury by a dangerous dog attack were also conducted. These helped the Council understand the key factors influencing sentencing decisions in these cases. The factors identified were compared to the factors within guidelines for other offences involving death across a broad spectrum of culpability, for example motoring offences causing death.

A small number of interviews with Crown Court and district judges who had recently tried a dangerous dog case were also conducted. The Council also discussed its proposals with organisations that have specific interests in the field, to help inform the development of the guideline, particularly the guideline for the new offence of attacks on assistance dogs.

Consultation

The consultation was launched on 17 March, running until 9 June. The Council will consider the responses to the consultation during the autumn of 2015, with the aim of publishing the definitive guideline in spring 2016.

Work in progress

A number of new guideline projects are under way and are outlined below.

Guilty pleas

In 2013 the Council resumed work it had paused in 2011 on a guideline covering reductions for guilty pleas to replace the guideline issued in 2007 by the Sentencing Guidelines Council (SGC): 'Reduction in sentence for a guilty plea'. A draft guideline was developed with the aim of encouraging offenders to admit their guilt as early as possible. Work was again paused on this guideline in March 2014 while the impact of various initiatives in the criminal justice system was assessed, and resumed again in December 2014.

Rationale

The Council has a legislative duty to produce a guideline on reductions for guilty pleas. The Council is clear that the main reason for encouraging guilty pleas is that an admission of guilt reduces the impact of the crime on victims and witnesses and saves them from having to attend court and give evidence.

Approach

The Council had drawn on research undertaken in 2011 on attitudes to guilty plea reductions and further research in 2013 amongst sentencers on how the

SGC guideline was working in practice. By producing a more concise guideline with a clear decision making process, the Council aims to improve clarity and consistency in the application of guilty plea reductions. In March 2014, the Council carried out further research with sentencers to test the clarity of the proposed guideline. The results of this research will be used to refine the guideline before consultation.

Consultation

As part of the consultation process the Council will produce a resource assessment to estimate the impact of the proposed guideline on correctional resources (probation and prison places). A guilty plea guideline is relevant to almost all criminal cases in England and Wales and so it is essential that the Council is able accurately to assess the impact. Work on this is ongoing.

Magistrates' Court Sentencing Guidelines

The Magistrates' Courts Sentencing Guidelines (MCSG) were originally produced by the Sentencing Guidelines Council in 2008. The Sentencing Council has issued updates to the MCSG each time a new definitive guideline is published.

⁴ Coroners and Justice Act 2009, s. 120 (3) (a)

Rationale

The MCSG is relied upon by magistrates around the country who use them in court every day. The Council considers it extremely important that the MCSG should offer users an up-to-date and comprehensive resource for sentencing in magistrates' courts. Therefore it decided to review both the content and the format of the MCSG.

Approach

The Council considered different options for providing the MCSG in a digital format that could be easily updated. A working group of users of the MCSG and other key stakeholders also considered updates to the content of the 'explanatory materials' section of the MCSG.

Consultation

A draft updated version of the explanatory materials was circulated to magistrates and district judges for their feedback during December 2014 and January 2015. As part of the same exercise they were asked questions relating to how they access the MCSG and what technology was available to them in their courts. The results of this research are being used to design a digital version of the MCSG with up-to-date explanatory guidance. Work will continue in the coming financial year.

Breach

The Council commenced its consideration of a guideline for sentencing breaches of orders in October 2014.

Rationale

Breach offences are relatively high in volume and much of the sentencing is carried out in the magistrates' court. Guidance for sentencing for breach offences is piecemeal and some existing guidance issued by the Sentencing Guidelines Council is out of date having been superseded by recent legislative changes. Examples include Anti Social Behaviour Orders being replaced with Criminal Behaviour Orders and Sexual Offences Prevention Orders being replaced with Sexual Harm Prevention Orders. There are also new legislative provisions which require guidance, such as breach of supervision requirements for prisoners serving sentences of less than 12 months, which were introduced in the Offender Rehabilitation Act 2014.

Approach

The Council is exploring the development of one comprehensive breach guideline encompassing all breach offences. This is a challenging project, as statutory sentences for breach offences vary, and there are a wide range of orders that can be breached. To date, the Council has considered volumes of breach offences and explored current sentencing practice, which has informed the scope and structure of a breach guideline, as well as identifying further information which will be required to determine suitable sentence levels.

Consultation

The Council intends to consult on a draft guideline in mid 2016.

Youth offences

The Council began consideration of guidance for sentencing youths in October 2014.

Rationale

The Sentencing Guidelines Council (SGC) published a definitive guideline on Overarching Principles – Sentencing Youths, in November 2009. It also produced offence specific guidelines for youths within its definitive robbery guideline, published in July 2006, and within Part 7 of its definitive guideline on the Sexual Offences Act 2003 which was published in April 2007. The Council has decided to review sentencing guidance for youths to provide up to date, consolidated guidance.

Approach

The Council has drawn on research undertaken with Youth Court sentencers in 2012 to understand the general approach taken to sentencing youths. Further research was undertaken in 2014 using an online survey to explore the themes identified in the earlier interviews. The principal research tool was an online (self-completion) survey which sought the views of Youth Court magistrates and district judges on current

guidance and preferences for future guidance. To supplement that research, meetings have been held with a small number of sentencers, practitioners and legal advisers.

Consultation

The Council intends to consult on draft guidance in Spring 2016.

Allocation

The allocation guideline forms part of the MCSG and was produced by the Sentencing Council in 2012. It gives guidance to magistrates when deciding whether to try cases in the magistrates' court or to send them to the Crown Court for trial.

Rationale

On 28 February 2014 the Lord Chancellor requested that the Council consider revising the guideline following a recommendation made in the President of the Queen's Bench Division's Review of Efficiency in Criminal Proceedings.

The Sentencing Council discussed this request, alongside a similar request from the Lord Chief Justice, at the Council meeting held on 6 March 2014 and agreed to include a review of the allocation guideline in its work plan for 2015-2016.

⁵ www.judiciary.gov.uk/the-president-of-the-queens-bench-divisions-review-of-efficiency-in-criminal-proceedings



Analysis and research

The Council has a responsibility to assess the impact of guidelines on sentencing practice. It may also be required to consider the impact of policy and legislative proposals relating to sentencing, when requested by the government.

One of the functions of the Council is to carry out analysis and research into sentencing. Ongoing work includes, and has been informed by, analysis of the results of the Crown Court Sentencing Survey (CCSS), various social research exercises, resource assessments and analysis and research bulletins that support the development of guidelines.

Statistical monitoring and analysis

The Council has a legislative duty to monitor the operation and effect of its guidelines and to draw conclusions about:

- the frequency with which, and the extent to which, courts depart from sentencing guidelines;
- the factors which influence the sentences imposed by the courts;
- the effect of guidelines on the promotion of consistency in sentencing; and
- the effect of guidelines on the promotion of public confidence in the criminal justice system.

Crown Court Sentencing Survey

To date, the Crown Court Sentencing Survey has collected the information required to fulfil the Council's obligations in the Crown Court. This year, the Council decided to end the CCSS and agreed a new analytical strategy, focusing for the first time on gathering data on the operation and effect of its guidelines in the magistrates' court. In the future, the Council will also undertake more targeted and bespoke data collection in both the Crown Court and magistrates' courts, to help inform the development of future guidelines as well as to monitor and evaluate existing guidelines. As part of this, initial work is under way to identify the most effective methodology for collecting the data the Council requires from magistrates' courts.

The CCSS ran between 1 October 2010 and 31 March 2015. The survey was the first of its kind, capturing data on the way that Crown Court judges sentence across England and Wales.

As sentencers provided the information for the survey, the findings provide a unique insight into sentencing decisions. This includes the factors affecting sentencing, the ways that guidelines are being applied and areas where guidelines can or need to be developed. Data collected includes factors affecting seriousness, guilty plea reductions and sentence outcomes for specific offences.

Over the last year survey response rates remained relatively high, averaging over 60 per cent, and comparative analyses conducted by the Council's analysis and research team ensured that conclusions drawn from the survey were robust. The CCSS report contains further methodological details.⁶

The results from the survey were published annually as a government official statistics bulletin which is available on the Council's website. First published in May 2012, the bulletin provides a national overview of how key factors which are taken into account when sentencing influence the final sentence outcome. The bulletin contributes to the fulfilment of the Council's obligation to promote public confidence in sentencing. Results from the survey covering the year from January to December 2014 have been published on our website.

Using the CCSS data

The survey has contributed to work on a number of guidelines, including reviewing the reduction in sentence currently available for offenders who plead guilty by identifying the timing and location of any guilty plea. It is also used to produce estimates of the sentence before taking any guilty plea into account. This information is used to determine current sentencing practice before the guilty plea discount is applied and therefore appropriate guideline ranges.

During 2014/15, the survey data has also contributed to the development of the robbery offences draft guideline by providing a unique source of data on the location of

offences, which was used to analyse current sentencing practice for offences such as street robbery and robbery in a dwelling. The results were included in the analysis and research bulletin for robbery offences which was published alongside the consultation for the draft robbery guideline.⁷

Further work

The Council is in the process of analysing the impact and implementation of the assault guideline on sentencing practice in the Crown Court and magistrates' courts with the intention of publishing the results later in 2015. It is also undertaking statistical work to look at the impact of its burglary guideline and, as part of its new analytical strategy, commissioning work to support evaluations of both its theft and drugs guidelines.

Monitoring use of the guidelines

The Council decided that it is only appropriate for it to monitor departures from guidelines issued by the Sentencing Council, rather than those issued by the Sentencing Guidelines Council or flowing from decisions of the Court of Appeal (Criminal Division).

The Sentencing Council definitive guidelines that have been in force long enough for monitoring of departures to be effective are assault, burglary, drugs and dangerous dog offences.⁸

The 2009 Act defines a departure sentence as one falling outside the total offence range, rather than the category range. The offence

⁶ <http://www.sentencingcouncil.org.uk/analysis-and-research/crown-court-sentencing-survey/ccss-annual-2014-results/>

⁷ <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=analysis-and-research-bulletin&topic=&year=>

ranges within the guidelines are intended to deal with the majority of cases for a particular offence. The Council recognises that there will be exceptional cases, the facts of which will justify imposition of a sentence outside the offence range (either above or below) and this is reflected in the language of the statute.⁹

The analysis below presents data on sentences imposed between January and December 2014 for assault, burglary, drug and dangerous dog offences from an analysis of the CCSS and the Ministry of Justice's Court Proceedings Database.¹⁰

Assault offences (Definitive guideline in force 13 June 2011)

- Assault occasioning actual bodily harm: 97 per cent of sentences imposed fell within the guideline offence range; two per cent were above and one per cent below the range.
- Causing grievous bodily harm with intent to do grievous bodily harm/wounding with intent to do grievous bodily harm: 92 per cent were within the range; two per cent were above and seven per cent below the range.
- Common assault: 98 per cent were within the range and two per cent above the range.
- Inflicting grievous bodily harm/unlawful wounding: 98 per cent were within the range, two per cent were above and less than one per cent below the range.
- Assault on a police officer in the execution of his duty: 86 per cent were within the range, one per cent were above and 13 per cent below the range.

Burglary offences (Definitive guideline in force 16 January 2012)

- Domestic burglary: 96 per cent of sentences imposed fell within the guideline offence range, three per cent were above and one per cent were below the range.
- Non domestic burglary: 96 per cent of sentences imposed fell within the guideline offence range, less than one per cent were above and four per cent were below the range.

Drug offences (Definitive guideline in force 27 February 2012)

- Possession of a controlled drug – Class A: 84 per cent of sentences imposed fell within the guideline offence range; less than one per cent were above and 16 per cent were below the range.

⁸ These guidelines have been in force for the complete 12 month period from January to December 2014.

⁹ Section 125 of the Coroners and Justice Act 2009 states that:

"(1) 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."

¹⁰ The analysis excludes sentences where the offender was a youth (under 18 years of age on the date of sentence) or where the sentence imposed was a life sentence. The analysis also excludes cases falling into the category of 'other' disposal types, because these sentences do not fit cleanly into the categories of 'below', 'within' and 'above' guideline sentencing ranges. Furthermore, due to the volatility of small volumes of data, results for offences where there were fewer than 500 sentenced cases in 2014 are not provided.

It should be noted that sentencing data records the sentence length after any guilty plea reduction. For this analysis, for custodial sentences, the sentence length has been adjusted back to the pre-guilty plea sentence using information on the level of reduction recorded by the CCSS. This is because the offence ranges specified within the guidelines relate to sentence lengths prior to any guilty plea reduction.

It should also be noted that due to rounding figures some percentages do not total 100.

- Possession of a controlled drug – Class B: over 99 per cent of sentences imposed fell within the guideline offence range and less than one per cent were above the range.
- Possession of a controlled drug – Class C: 89 per cent of sentences imposed fell within the guideline offence range and 11 per cent were above the range.
- Production of a controlled drug – Class B/ cultivation of a cannabis plant: over 99 per cent of sentences imposed fell within the guideline offence range and less than one per cent were above the range.
- Supply or offering to supply a controlled drug/possession of a controlled drug with intent to supply it to another – Class A: 99 per cent of sentences imposed fell within the guideline offence range, one per cent were above and less than one per cent were below the range.
- Supply or offering to supply a controlled drug/possession of a controlled drug with intent to supply it to another – Class B: 99 per cent of sentences imposed fell within the guideline offence range; less than one per cent were above and one per cent were below the range.

Dangerous Dog offences (Definitive guideline in force 20 August 2012)

- Owner or person in charge of a dog dangerously out of control in a public place, injuring any person/Owner or person in charge allowing a dog to be

in a private place where the dog is not permitted to be, injuring any person: over 99 per cent of sentences imposed fell within the guideline offence range, less than one per cent were above the range.

Analysis and research bulletins (statistics)

The Council produces an analysis and research statistical bulletin relating to each new guideline. This provides information about current sentencing practice in relation to the offence covered. During the development of draft guidelines these bulletins are used to understand the parameters of current sentencing practice, and during the consultation process they ensure that those responding are better able to understand the implications of the guideline proposals.

This year, the Council has published statistical bulletins on the draft guidelines covering theft offences; robbery offences; health and safety, corporate manslaughter, and food safety and hygiene offences; and dangerous dog offences. The Council's analysis and research sub-group provided advice; colleagues in the Ministry of Justice were consulted and provided quality assurance. The bulletins are published as part of the package of consultation documents on our website.

Social Research

The Sentencing Council regularly carries out social research which aims to augment the evidence base underpinning guidelines, ensuring, in particular, that guidelines are

informed by the views and experiences of those who sentence. The Council's social researchers conduct primary research with users of the guidelines: primarily Crown Court judges, district judges and magistrates, using a range of methods. These methods include surveys, face-to-face and telephone interviews and group discussions. Researchers also review sentencing literature and analyse the content of sentencing remark transcripts, which help to inform the content of the guidelines at an early stage of development.

The findings from these research exercises are critical for guideline development. For example, analysis of sentencing remark transcripts helped determine the factors and sentencing ranges for the dangerous dog offence guideline at an early stage of development. Social research also helps the Council to understand how the guidelines will be used in practice and helps to predict what type of effect, intended or unintended, a guideline might have on sentencing. For example, for the health and safety, corporate manslaughter and food safety and hygiene offences guideline, researchers

carried out group discussions and a series of hypothetical sentencing exercises using the draft guideline with groups of magistrates in three different locations around the country. A small group of magistrates also carried out the sentencing exercises individually, online. Researchers also interviewed four Crown Court judges who had recently sentenced a corporate manslaughter case, which are very rare. The findings from these exercises helped to refine the guideline.

Research on sentencing robbery offences

This year's work on the robbery guideline built on earlier quantitative research commissioned by the social research team which informed how the Council should categorise robbery offences in the guideline. Qualitative research into the content of the draft guidelines was undertaken with 45 Crown Court judges and recorders, across several phases. Additionally, members of the Sentencing Council and staff members of the Office of the Sentencing Council carried out

a hypothetical sentencing exercise in which they ‘sentenced’ a range of Crown Court cases, using transcripts of judges’ sentencing remarks. This exercise generated 186 responses, all of which were all analysed.

Research on sentencing theft offences

In 2014/15 the social research team carried out qualitative interviews with magistrates, district judges and Crown Court judges on the draft theft guideline. The aim of this research was to explore issues associated with the revised draft guideline and establish any unintended consequences that may arise when using it. Sixty-three interviews were carried out in total. Additionally, a transcript-based sentencing exercise was carried out by members of the Council and Office staff. 102 responses to this exercise were received and analysed.

Research on sentencing youths

The Sentencing Council’s early work on the guidelines for sentencing youths continued in 2014 with an online survey of magistrates and district judges, to which 138 people responded. The survey explored what types of guidance are used in the youth court and what type of guidance magistrates and district judges feel they need.

Research on sentencing dangerous dog offences

Research on the revised guidelines included a content analysis of the sentencing remarks for 20 recent Crown Court cases involving death or injury by a dangerous dog attack. In-depth telephone interviews were then carried out

with 12 Crown Court and district judges who had recently sentenced a dangerous dog case involving a death or an injury. In order to establish what impact the revised guideline might have on sentencing levels, the judges were asked to re-sentence their case using an early draft of the guideline, explaining their thinking and offering critique and suggestions as they went along.

Research on sentencing health and safety, corporate manslaughter and food safety and hygiene offences

Crown Court sentencing remarks for these offence types were reviewed. During the consultation period, a small programme of qualitative research with magistrates and Crown Court judges was undertaken which included group discussions, online exercises and interviews with Crown Court judges.

Research on guilty plea sentence reductions

Social researchers carried out primary research with 19 Crown Court judges, recorders and magistrates who examined the draft guideline in detail, and were interviewed about their understanding of the wording in the guideline. This information has yielded important information to refine the structure and format of the guideline.

Research on assault

As part of a wider process of guideline evaluation, an externally-commissioned project examined users' views of the definitive Sentencing Council assault guideline. The research looked particularly at the guideline structure, the wording of sentencing factors, additional factors that might be included in a revised guideline, any perceived problems with using it and its perceived effect on sentencing. In-depth telephone interviews and small group discussions were conducted with 30 Crown Court judges, 28 magistrates, 14 district judges, six prosecution and six defence lawyers.

Additional work in progress

As highlighted above, some of our research on these guidelines is ongoing, including research with judges and magistrates on youth sentencing, breach offences, and sentence reduction for a guilty plea. The Council is also developing research to support planned work on new guidelines for possession of a bladed article/offensive weapon offences, public order offences and manslaughter.

Resource assessments

The Council has a statutory duty to produce a resource assessment to accompany each sentencing guideline which considers the effects of the guideline on the resource requirements of the prison, probation and youth justice services.

The Council also has a statutory duty to have regard to the cost of different sentences¹¹ and their relative effectiveness in preventing re-offending.

These statutory requirements enable the Council to understand better the consequences of its guidelines in terms of impact on correctional resources, and the possible impact of its recommended sentencing options on re-offending.

The work which goes into resource assessments also results in wider benefits for the Council. The process involves close scrutiny of current sentencing practice, including analysis of how sentences may be affected by guilty plea reductions, and consideration of the factors that influence sentences. This analysis provides a 'point of departure' for the Council when it is considering the appropriate sentencing ranges for a guideline.

Where the guideline aims to increase consistency, while causing no change to the overall severity of sentencing, the guideline sentencing ranges will aim to reflect current sentencing practice. Where the guideline aims to effect changes in the severity of sentencing for an offence, the Council can move away from the ranges suggested by current sentencing practice.

The resource assessment process is especially useful in helping the Council compare the impact of different options for guideline sentencing ranges. For instance, if the Council is debating the relative merits of two different proposals for sentencing ranges for a given offence, the analysis and research team is able to advise on difference in terms of resource impact between the two proposals.

¹¹ Information on the average cost of a prison place/prisoner in 2013/14. Information on the average cost of i) a community order or suspended sentence order, ii) offender supervision on licence post-release and iii) a Pre-Sentence report in 2012/13.

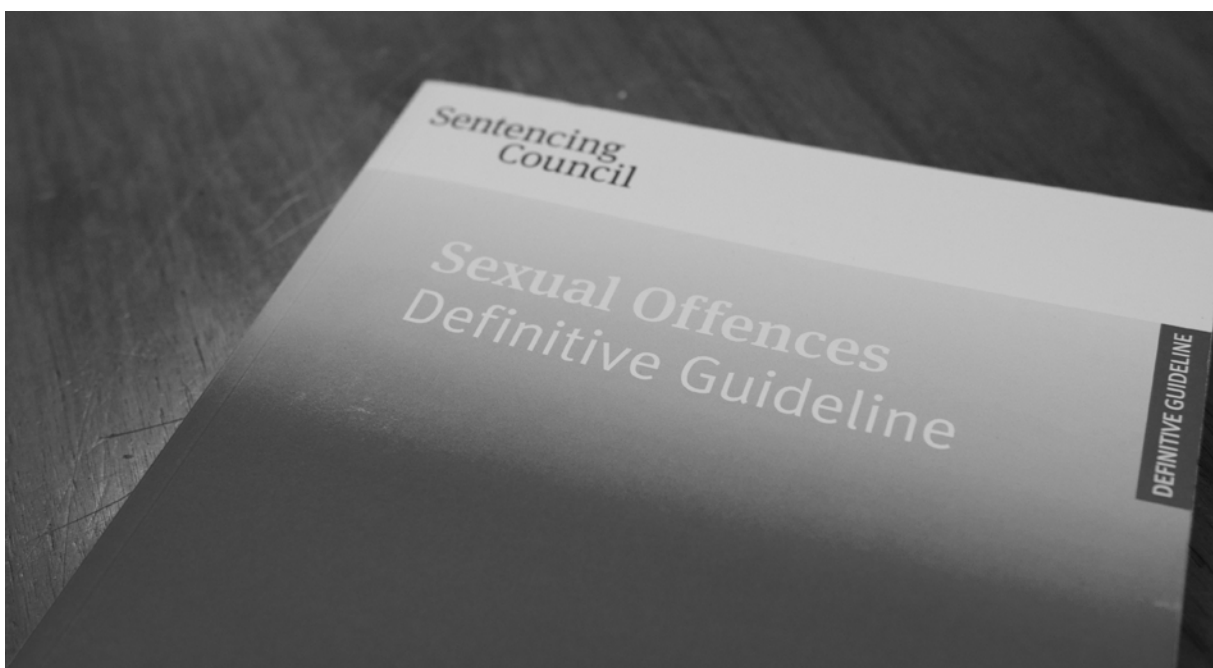
Later in the process, the actual impact of the guideline on sentencing, and consequently on resources, will be assessed through the Council's monitoring and evaluation work.

Implementation

The Council prepared resource assessments for its guidelines on fraud, bribery and money laundering; robbery; health and safety, corporate manslaughter and food safety and hygiene; dangerous dogs; and theft offences.

These resource assessments were supported by the research and analysis work conducted by the Council when developing these guidelines. The Council's understanding of the guidelines' likely effect on sentencing practice was improved by the interviews detailed in the previous section, as well as detailed analysis

and modelling work using sentencing statistics from the CCSS and the Ministry of Justice's Court Proceedings Database.



Communications

Introduction

The primary aim of the Council's communications activity is to improve knowledge about sentencing so that the approach to sentencing offenders is viewed as proportionate, fair and consistent by the general public, especially victims of crime, the police and key participants in the criminal justice process. This will ensure the Sentencing Council is seen as the expert body on sentencing in England and Wales.

In more detail, the aims are that:

- members of the public and victims have a clear knowledge of how the sentencing process works so that they are able to draw their own conclusions about whether sentencing is proportionate and fair, both in cases in which they are involved and in high profile cases covered by the media;
- judges and criminal justice practitioners have confidence in the guidelines and in the sentencing process which the guidelines promote;
- key players in the criminal justice system such as police and probation are advocates of the sentencing process, and use the guidelines to explain the sentencing process to victims and others involved.

Achievements

Over this period the Council made eight announcements related to guidelines. These comprised the publication of one definitive guideline, four consultations on draft guidelines and the coming into force of three guidelines.

Particular highlights included:

- achieving widespread and positive media coverage for the launch of the definitive guideline for fraud offences;
- achieving widespread and positive or neutral media coverage for four consultation launches;
- the timely publication and distribution of consultations, definitive guidelines and all supporting materials in hard copy and online;
- increased visibility of the Council through 28 speaking engagements undertaken by Council members and Office staff; and
- continued, positive relationships at all levels with key partners, for example, government, the judiciary and third sector organisations.

Guidelines

Consultations

As in previous years, when developing each new guideline the Council has actively sought the views of criminal justice professionals, those with an interest in the subject matter and members of the public.

The Council held consultations on theft; dangerous dogs; robbery; and health and safety, corporate manslaughter and food safety and hygiene offences. These were all actively promoted to raise awareness among potential respondents.

The consultation on the draft theft guideline generated significant media interest with 13 interviews undertaken by Council spokespeople on national and regional BBC radio stations. National print coverage had a combined circulation of more than 2.6 million, appearing in The Daily Mail, The Telegraph and Times, all of which were positive. There was significant further coverage online, such as The Guardian's website, and in publications such as Police Professional and the Law Society Gazette.

The consultation on the draft robbery offences guideline gained 35 news items in total with 33 being positive or neutral. Coverage spanned TV, national and local radio, five of the national papers, along with local and trade media.

The health and safety, corporate manslaughter and food hygiene guideline consultation was covered in 25 news items.

As expected given the subject area, this was predominantly in professional, trade and sector publications along with significant numbers of online media news items and six blog posts.

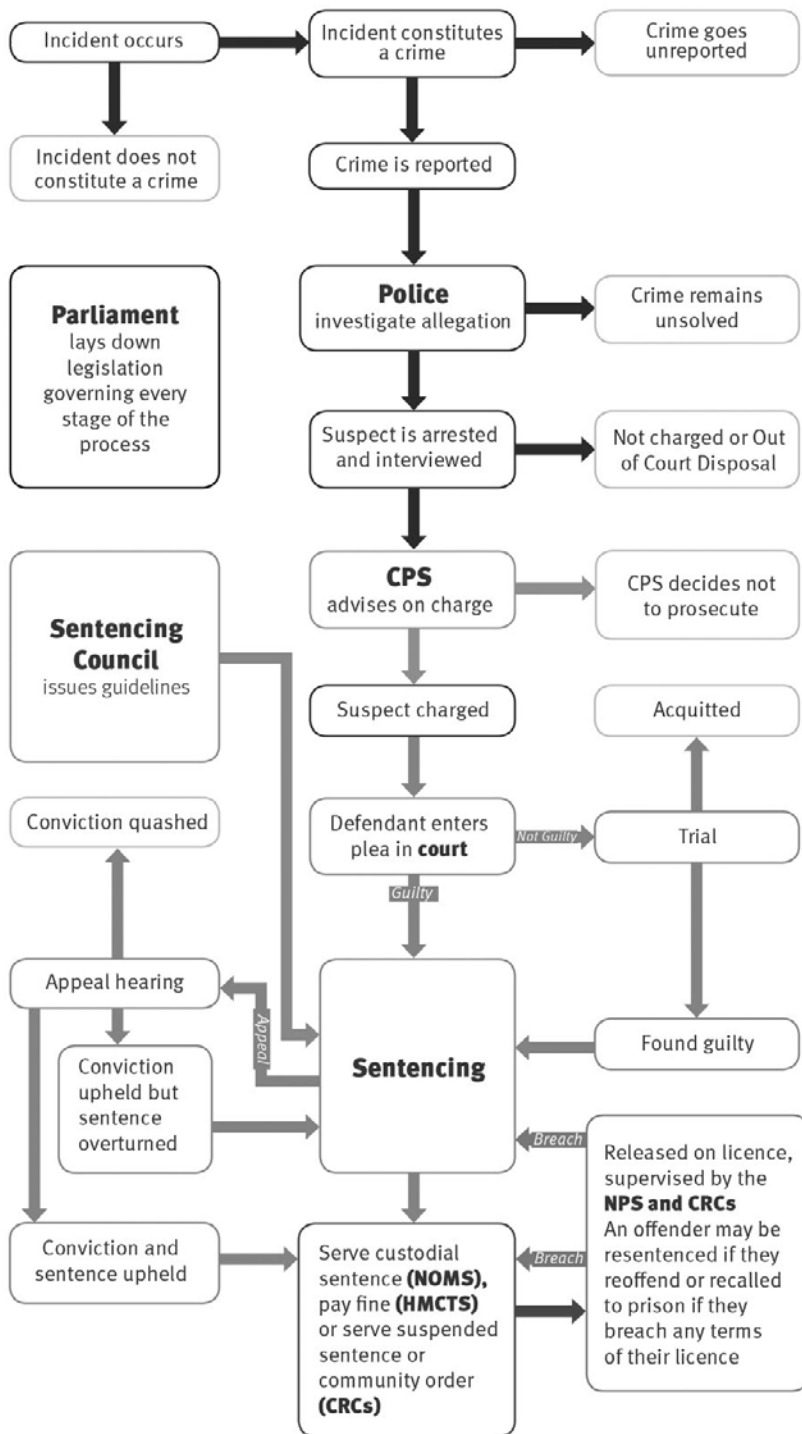
The dangerous dog offences consultation led to a very significant amount of coverage with 133 news items, of which 131 were positive or neutral. There were 27 broadcast news items, and a great deal of social media activity with 56 tweets and retweets reaching almost 500,000 followers and numerous Facebook posts.

Definitive guideline launches

There was one definitive guideline published during this period, which was for fraud offences. Following extensive communications activity upon publication on 23 May 2014, 19 news items appeared including a front page story in The Telegraph and other items in The Guardian, Financial Times and The Times. There was further coverage online on the BBC, The Independent, ITV and the Press Association's copy was picked up by some regional papers' websites. An opinion piece also appeared in The Telegraph's health section, focusing on vulnerable victims suffering from dementia. Further coverage appeared in a number of trade and legal publications and there were over 150 tweets, not including retweets.

Sentencing Council

Criminal Justice System simplified



Other communications work

Working with the media

In addition to extensive promotion of guideline announcements to media, the Council has continued to assist with sentencing-related enquiries. Information has also been supplied proactively to media in order to clarify particular issues, such as how sentencing works in relation to those convicted of historic offences.

Council spokespeople have also undertaken interviews to explain aspects of sentencing including on LBC's Drivetime and BBC Radio 5 Live. These have been useful opportunities to address misconceptions about sentencing, clearly setting out the facts to a very large audience.

The Council has provided programme makers with information and advice or offered spokespeople to inform their future broadcast content. This has varied from helping soap operas with plot lines to advising Radio 4 about how disability is taken into account in sentencing.

Working for victims and witnesses

With Citizens' Advice taking over management of the Witness Service from Victim Support in April 2015, the Council has successfully worked during the run up to this date to ensure that the suite of materials it maintains for victims and witnesses would continue to be used by the Witness Service.

Over this period, two short videos were produced about the work of judges and

magistrates giving an overview to the public and victims of crime to help demystify the sentencing process.

Events

This year Council members and staff spoke or gave presentations at 28 external events, webinars and speaking engagements. Many were hosted by partner organisations, and included the Health and Safety Lawyers' Association conference, the Criminal Law Review conference, two courses run by the Judicial College for Crown Court Judges and a joint seminar with the Probation Institute.

The Council continued to develop its good relationship with Parliament. Lord Faulks, Minister of State for Justice, attended a Council meeting and, in November 2014, held an event with the support of the Justice Committee at Portcullis House for MPs, peers and their aides. Those who attended were able to find out more about the important work the Council does creating and monitoring guidelines, as well as promoting public confidence in sentencing. It also gave them the opportunity to raise any issues they or their constituents may have had.

Website and social media

The Council's website provides an important reference point for sentencers and a source of information on sentencing for the public and professionals alike.

During this period the planned migration of the Sentencing Council's website took place, which introduced significantly improved functionality. The Council is proud to be at

¹⁵ <http://www.bbc.co.uk/news/magazine-25315320>

the forefront of the move towards working digitally and particularly looks forward to delivering a digital version of the MCSG during the coming financial year.

A blog area was launched on the Council's website which, as well as allowing comment and analysis of current work, has also been used to address areas of sentencing where explanation or clarification is needed to help inform the public.

During this period the site has been visited over 630,000. The most frequently accessed document was the Magistrates' Court Sentencing Guidelines (85,212 views) followed by the assault guideline (31,782 views).

The use of Twitter was expanded over this period. The range of content being posted became more varied and the number of followers increased by almost 20 per cent over the year.

Partnership work

The Sentencing Council works hard to form strong partnership as part of an efficient and effective communications strategy.

During the year the Council has further engaged with the academic community, not only encouraging their involvement in the consultation process but also talking about the work of the Sentencing Council to law students across England and Wales.

Last year's progress in building closer relationships with police has continued. A third leaflet for Family Liaison Officers to use

when explaining sentencing was created, covering cases of death caused by driving, which complements those already produced for murder and manslaughter.

The Council has continued to work with bodies and organisations who support or represent judges and magistrates, including the Magistrates' Association, which it has worked with to provide sentencing scenario content for its magazine.

One example of working with partners to reach the widest audience possible was the health and safety, corporate manslaughter and food safety and hygiene offences consultation, when it held consultation events with groups of magistrates and presented at two industry conferences. The Council worked closely with industry titles, trade press and organisations to make sure that news of the consultation made it to the right audience. In addition social media was used to raise the profile of the consultation. The announcement of the consultation was re-tweeted 200 times enabling it to reach a potential audience in excess of six million followers.

Summary of achievements – timeline

April 2014	1	Definitive guideline on sexual offences in force
	1	Definitive guideline on environmental offences in force
	3	Theft consultation opens
May 2014	6	Speech to Court of Appeal Judges on sexual offence guideline
	23	Definitive guideline on non corporate fraud published
June 2014	25	Crown Court Sentencing Survey published
	26	Theft consultation closes
	26	Lexis Nexis webinar on environmental offences
July 2014	2	Sarah Munro appears in front of the Justice Committee to discuss theft guidelines
August 2014		
September 2014		
October 2014	1	Definitive guidelines on fraud in force
	21	Robbery consultation opens
	21	Annual report published
	28	Speech to Scottish Judiciary
November 2014	13	Health and safety, corporate manslaughter and food
	26	Parliamentary reception at Portcullis House
December 2014	2	Speech at Criminal Law Review conference
January 2015	23	Robbery consultation closes
February 2015	10	Julian Goose appears in front of the Justice Committee to discuss robbery guidelines
	18	Health and safety, corporate manslaughter and food hygiene consultation closes
	24	Michael Caplan appears in front of the Justice Committee to discuss health and safety guidelines
	26	New Council members announced: Mr Justice Tim Holroyde and Jill Gramann JP
March 2015	17	Dangerous dog offences consultation opens
	27	New Council member announced: Martin Graham

Progress against 2014/15 Business Plan

The Council published its second annual business plan in 2014/15. This set out an ambitious programme of work. The business plan is intended to ensure that those with an interest in the Council's work can monitor developments and plan accordingly.

As in previous years, while the majority of business plan commitments were delivered, a number of changes were necessary. This section details the modifications to the plan and the reasons why they were made; other sections of this report detail the achievements over the course of the year.

Objective 1: Prepare sentencing guidelines to help ensure a consistent approach to sentencing

The Council met almost all of its published commitments relating to the preparation of guidelines, which related to all stages of guideline development from initial research, through consultation, to publication and entry into force of the definitive guideline. The only significant modification to the plan related to the timetable for theft: in light of issues raised during the consultation and research phases, publication of the definitive guideline was postponed until October 2015.

The Council received three requests under section 124 of the Coroners and Justice Act 2009. In May 2014, the Lord Chancellor asked

the Council to consider producing a guideline on "one punch" manslaughter. The Council agreed to consider this as part of work on a more wide ranging guideline covering all types of manslaughter, which is reflected in the Council's current work programme. In February 2015, both the Lord Chancellor and the Lord Chief Justice asked the Council to consider producing a revised guideline on allocation. The Council agreed to expedite this guideline and have amended the work programme to accommodate the project.

In addition, the Council agreed that resource should be devoted to updating the Magistrates' Courts Sentencing Guidelines in preparation for launch of a digital version, which was not reflected in the published work plan.

Objective 2: Publish the resource implications in respect of the guidelines it drafts and issues

The Council continued to publish resource assessments alongside all consultations and definitive guidelines. The timetable for the theft resource assessment was adjusted in light of the decision to amend the timetable for publication of the definitive guideline.

Objective 3: Monitor the operation and effect of its sentencing guidelines and draw conclusions

While the Council continued to monitor the operation and effect of its guidelines via the Crown Court Sentencing Survey, it did not publish the three reports on the operation of its existing guidelines as set out in the business plan. This was due to pressure of other work and in order to develop a suitable methodology to collect data from the magistrates' court to inform these reports. The Council intends to publish all three reports during the financial year 2015/16.

Objective 4: Assess the impact of government and legislative proposals

The Council did not receive any requests of this nature.

Objective 5: Promote awareness of sentencing and sentencing practice and work to improve public confidence in sentencing

The Council made significant progress against this objective, which is detailed elsewhere in the report.

Work plan

The published work plan annexed to the business plan lists the guidelines that the Council has decided to produce and provides an indicative order and timetable for the work. However, timings are always approximate, in particular because the amount of time required depends on the

scope of the guideline and complexity of the issues, which are not possible to predict accurately before work has commenced; but also because of resource pressures. The work plan was amended towards the end of the year to accommodate revision of the allocation guideline and revision of the Magistrates' Courts Sentencing Guidelines, as noted above. Otherwise the content of the work plan and the order in which the Council will produce the guidelines remains unchanged. The theft guideline was not published during the current financial year. The Council consulted on four guidelines over the year, as planned, with a view to publication of definitive guidelines in the coming financial year.



Budget

Financial report

The cost of the Sentencing Council

The Council's resources are made available through the Ministry of Justice and, as such, the Council is not required to produce its own audited accounts. However, the Council's expenditure is an integral part of the Ministry of Justice's resource account, which is subject to audit. The summary below reflects expenses directly incurred by the Sentencing Council and is shown on an accrual basis.

	2014/15 (actual) £000s
Total funding allocation	1,580
Office staff costs ¹²	1,058
Council members and adviser fees ¹³	71
Analysis and research	146
Design and printing services	64
Confidence and communications	20
IT services	15
Training	6
Other office expenditure ¹⁴	27
Total expenditure	1,409¹⁵

¹² Includes office staff travel and subsistence

¹³ Includes travel and subsistence costs incurred by Council members and advisers.

¹⁴ Includes off-site storage cost and postage for consultations/definitive guidelines

¹⁵ The total expenditure has been rounded to the nearest £1,000 independently from the constituent parts, therefore summing the parts may not equal the rounded total.

Annexes

Annex A: About the Sentencing Council



Functions

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice. It was set up by part four of the Coroners and Justice Act 2009 to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary.

The Sentencing Council fulfils the following statutory functions¹⁶:

- prepare sentencing guidelines¹⁷;
- publish the resource implications in respect of the guidelines it drafts and issues¹⁸;
- monitor the operation and effect of its sentencing guidelines and draws conclusions¹⁹;
- prepare a resource assessment to accompany new guidelines²⁰;
- promote awareness of sentencing and sentencing practice²¹; and
- publish an annual report that includes the effect of sentencing and non-sentencing practices²².

The primary role of the Sentencing Council is to issue guidelines on sentencing which the courts must follow unless it is in the interest of justice not to do so²³.

¹⁶ See Annex E for full details of all roles and functions

¹⁷ s.120 Coroners and Justice Act 2009

¹⁸ s.127 *ibid*

¹⁹ s.128 *ibid*

²⁰ s.127 *ibid*

²² s.129 *ibid*

²³ s.119 *ibid*

Governance

The Council is an advisory Non-Departmental Public Body (NDPB) of the Ministry of Justice. Unlike most advisory NDPBs however, the Council's primary role is not to advise Ministers, but to provide guidance to sentencers.

The Council is independent of the government and the judiciary with regard to the guidelines it issues to courts, its impact assessments, its publications, promotion of awareness of sentencing and in its approach to delivering these duties.

The Council is accountable to Parliament for the delivery of its statutory remit set out in the 2009 Act. Under section 119, the Council must make an annual report to the Lord Chancellor on how it has exercised its functions. The Lord Chancellor will lay a copy of the report before Parliament and the Council will publish the report.

Ministers are ultimately accountable to Parliament for the Council's effectiveness and efficiency, for its use of public funds and for protecting its independence.

Section 133 of the 2009 Act states that the Lord Chancellor may provide the Council with such assistance as it requests in connection with the performance of its functions.

The Council is accountable to the Permanent Secretary at the Ministry of Justice as Accounting Officer and to Ministers for the efficient and proper use of public funds delegated to the Council, in accordance with Ministry of Justice systems and with the

principles of Governance and Finance set out in Managing Public Money, and other relevant Treasury Instructions and Guidance.

The budget is delegated to the Head of the Office of the Sentencing Council from the Director General, Criminal Justice Group at the Ministry of Justice. The Head of the Office of the Sentencing Council is responsible for the management and proper use of the budget.

The Director General, Criminal Justice Group is accountable for ensuring that there are effective arrangements for oversight of the Council in its statutory functions and as one of the Ministry of Justice's Arm's Length Bodies.

How the Council operates

The Council is outward-facing, responsive and consultative; it draws on expertise from relevant fields where necessary while ensuring the legal sustainability of its work. The Council aims to bring clarity in sentencing matters, in a legally and politically complex environment.

The Council aims to foster close working relationships with judicial, governmental and non-governmental bodies while retaining its independence. These include: the Attorney General's Office; the College of Policing; the Council of Circuit Judges; the Council of Her Majesty's District Judges (Magistrates' Courts); the Criminal Procedure Rules Committee; the Crown Prosecution Service; the Home Office; Judicial Office; the Justices' Clerks' Society; the Magistrates' Association; the Ministry of Justice; the National Bench Chair's Forum and the National Police Chiefs' Council.

The Council engages with the public on sentencing, offers information and encourages debate.

The Council meets 10 times a year to discuss current work and agree how it should be progressed; minutes are published on the Council's website. In addition to members, two advisors advise the Council on matters related to their specialist areas. They are:

- Paul Cavadino, former Chief Executive, Nacro; and
- Paul Wiles, former government Chief Social Scientist and Chief Scientific Adviser to the Home Office.

The Council has sub-groups to enable detailed work on three key areas of activity: analysis and research; confidence and communications; and risk and audit.

The sub-groups' roles are mandated by the Council and all key decisions are escalated to the full membership. The sub-groups are internal rather than public-facing.





Relationship with Parliament

The Council has a statutory requirement to consult Parliament, specifically the House of Commons Justice Committee²⁴. On 2 July 2014, Council member Sarah Munro answered questions on the draft theft offence guideline; on 10 February 2015, Council member Julian Goose answered questions on the draft robbery offence guideline; and on 24 February 2015, Council member Michael Caplan answered questions on the development of the draft health and safety, corporate manslaughter and food hygiene offences guideline. The Justice Committee responded to all three consultations and the council always carefully considers and gratefully values this input..

The Office of the Sentencing Council

The Council is supported in its work by the Office of the Sentencing Council, in particular in:

- preparing draft guidelines for consultation and publication, subject to approval from the Council;
- ensuring that the analytical obligations under the Act are met;
- providing legal advice to ensure that the Council exercises its functions in a legally sound manner;
- delivering communications activity to support the Council's business; and
- providing efficient and accurate budget management with an emphasis on value for money.

²⁴ s.120(6)(c) Coroners and Justice Act 2009

Guideline development

The box below sets out the process involved in developing a guideline, from planning, through drafting and consultation stages, to a definitive version used by the judiciary and subsequent monitoring. The process from first consideration by the Council to publication of definitive guideline can extend to 18 months or more.

Step 1 – Priorities

The Council identifies work plan priorities, on a three year rolling basis. These may be based on concerns about an existing guideline, offence types which lack a guideline or because the Council is required by statute to produce a guideline.

Step 2 – Research

Research is undertaken alongside policy and legal analysis. The Council agrees the overall approach to the guideline, enabling the Office to prepare an initial draft guideline.

Step 3 – Approach

Over a number of meetings, the Council discusses the draft guideline, refines the approach and agrees on the version which will form the basis for consultation. The Council also produces a draft resource assessment and an equality impact assessment, to accompany the consultation.

Step 4 – Consultation

The Council conducts a public consultation, including its statutory consultees, criminal justice professionals and wider public, usually over a 12 week period.

Step 5 – Responses

The Council considers the responses to the consultation and develops and approves the definitive guideline, which is accompanied by a response paper a, resource assessment and equality impact assessment.

Step 6 – Publication

The Council issues the definitive guideline and supports training for sentencers where necessary, providing materials via the Judicial College.

Step 7 – Monitoring

The impact of the guideline is monitored. The Council considers any findings and may decide to undertake further monitoring or evaluation, or to revise the guideline.

Annex B: Membership

The Lord Chief Justice, the Right Honourable Lord Thomas of Cwmgiedd, is President of the Council. In this role he oversees Council business and appoints judicial members.

Lord Justice Treacy, a Court of Appeal judge, has been Chairman of the Sentencing Council since November 2013.

The Lord Chancellor and Secretary of State for Justice appoints non-judicial members. All appointments are for a period of three years, with the possibility of extending up to a maximum of 10 years.

Membership of the Council on 31 March 2015 was as follows:

Judicial members:

- The Honourable Mr Justice Globe
- His Honour Judge Julian Goose QC
- The Right Honourable Lady Justice Hallett
- Her Honour Judge Sarah Munro QC
- Katharine Rainsford JP, Magistrate on the West and Central Hertfordshire Bench
- The Honourable Mr Justice Saunders
- The Right Honourable Lord Justice Treacy
- District Judge Richard Williams

Non-judicial:

- John Crawford OBE, former Chief Executive, Greater Manchester Probation Trust
- Michael Caplan QC, defence solicitor
- Javed Khan, Chief Executive, Barnardo's
- Lynne Owens, Chief Constable, Surrey Police
- Professor Julian Roberts, Professor of Criminology, University of Oxford
- Alison Saunders, Director of Public Prosecutions and Head of the Crown Prosecution Service

Register of members' interests

Michael Caplan

- partner at Kingsley Napley LLP
- member of Cobalt Data Centre 2 LLP
- member of Green Power Plant LP

John Crawforth

- no personal or business interests to declare

Sir Henry Globe

- no personal or business interests to declare

Julian Goose

- no personal or business interests to declare

Dame Heather Hallett

- no personal or business interests to declare

Javed Khan

- no personal or business interests to declare

Sarah Munro

- no personal or business interests to declare

Lynne Owens

- no personal or business interests to declare

Katharine Rainsford

- author, published by Orion

Julian Roberts

- no personal or business interests to declare

Alison Saunders

- no personal or business interests to declare

Sir John Saunders

- no personal or business interests to declare

Sir Colman Treacy

- no personal or business interests to declare

Richard Williams

- no personal or business interests to declare

Advisors to the Council

Paul Cavadino

- no personal or business interests to declare

Paul Wiles

- Local Government Boundary Commissioner for England; Board member of the Food Standards Agency; Board member and trustee for NatCen Social Research; Governor, Sheffield Hallam University and Honorary Professor, Sheffield University

Annex C: Sentencing factors report

Introduction

In accordance with section 130 of the Coroners and Justice Act 2009 this report considers changes in the sentencing practice of courts (hereafter ‘sentencing practice’), and their possible effects on the resources required in the prison, probation and youth justice services.

Sentencing guidelines are a key driver of change in sentencing practice. Some guidelines aim to increase the consistency of approach to sentencing whilst maintaining the average severity of sentencing, whilst other guidelines explicitly aim to cause changes to the severity of sentencing.

Changes in sentencing practice can also occur in the absence of new sentencing guidelines and could be the result of many factors such as Court of Appeal guideline judgments, legislation, and changing attitudes towards different offences.

This report considers only changes in sentencing practice caused by changes in sentencing guidelines.

Sentencing Guidelines

During its fifth year (to 31 March 2015), the Council published definitive guidelines on the following offences:

- Fraud, bribery and money laundering (effective from 1 October 2014).

As required by statute, a resource assessment accompanied the publication of this guideline which considered the likely effect of the guideline on the prison, probation and youth justice services.

Fraud, bribery and money laundering offences

The Sentencing Council guidelines for fraud include bribery and money laundering and, within the revenue guideline, the common law offence of cheating the revenue. The guidelines are also applicable when sentencing offenders convicted of conspiracy to commit the substantive offence. The guideline covers sentencing for individuals and for organisations.

For individuals, the guideline aims to improve consistency of sentencing but not to cause changes in the use of disposal types. Guideline sentencing ranges have been set with this in mind using all available evidence, and the Council does not anticipate that the guideline will have an effect on custodial sentence lengths, or numbers of community orders or custodial sentences. As a result, no significant impact on prison, probation or youth justice resources is anticipated.

For organisations, the new fraud guideline includes a single guideline on corporate offences which applies to many different offences: banking and insurance fraud, obtaining credit through fraud, revenue fraud, bribery and money laundering. The guideline aims to improve the consistency of sentencing but not to cause changes in fine levels. The guideline is therefore not expected to result in any effects on fine levels or requirements for criminal justice resources.

However, the resource assessment showed that the limited data available on sentencing for fraud offences makes an assessment of current sentencing practice challenging; data on sentencing for organisations is particularly sparse. As a result, there are two risks: firstly, that sentencing ranges do not accurately reflect current sentencing practice, which could result in unintentional changes in fine levels, or the mix of disposal types used for fraud offences. This risk has been mitigated by gathering information from sentencers and other legal professionals on sentencing levels and potential areas of departure from the guideline, as part of the consultation process and the Council's programme of research interviews.

Secondly, sentencers may not interpret the new guideline as intended, which could cause a change in the average severity of sentencing, with associated resource effects. To mitigate this risk, the Council has considered sentencing data, consulted with expert advisors and conducted research with judges to assess the likely affect of the guidelines on sentencing practice. Following the guidelines' release, supporting materials

have been made available on the Sentencing Council website to aid the interpretation of the guidelines. The Council also uses data from the Ministry of Justice and the Crown Court Sentencing Survey to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.

For further details of the expected resource effects of the guideline published during the Council's fifth year, please see: http://www.sentencingcouncil.org.uk/wp-content/uploads/Final_Resource_Assessment_Fraud_offences.pdf

Annex D: Non-sentencing factors report

Introduction

The Sentencing Council is required under the Coroners and Justice Act 2009 to prepare a non-sentencing factors report to identify the quantitative effect which non-sentencing factors are having, or are likely to have, on the resources needed or available to give effect to sentences imposed by courts in England and Wales.

This report begins by defining non-sentencing factors, and explaining their importance to resource requirements in the criminal justice system. It then catalogues the most recent published evidence on how these factors may be changing.

Definition of non-sentencing factors and their significance

The approach taken by the courts to sentencing offenders is a primary driver of requirements for correctional resources in the criminal justice system. This is discussed in the sentencing factors report at Annex C. However, non-sentencing factors also exert an important influence on requirements for correctional resources.

Non-sentencing factors are factors which do not relate to the sentencing practice of the courts, but which may affect the resources required to give effect to sentences. For

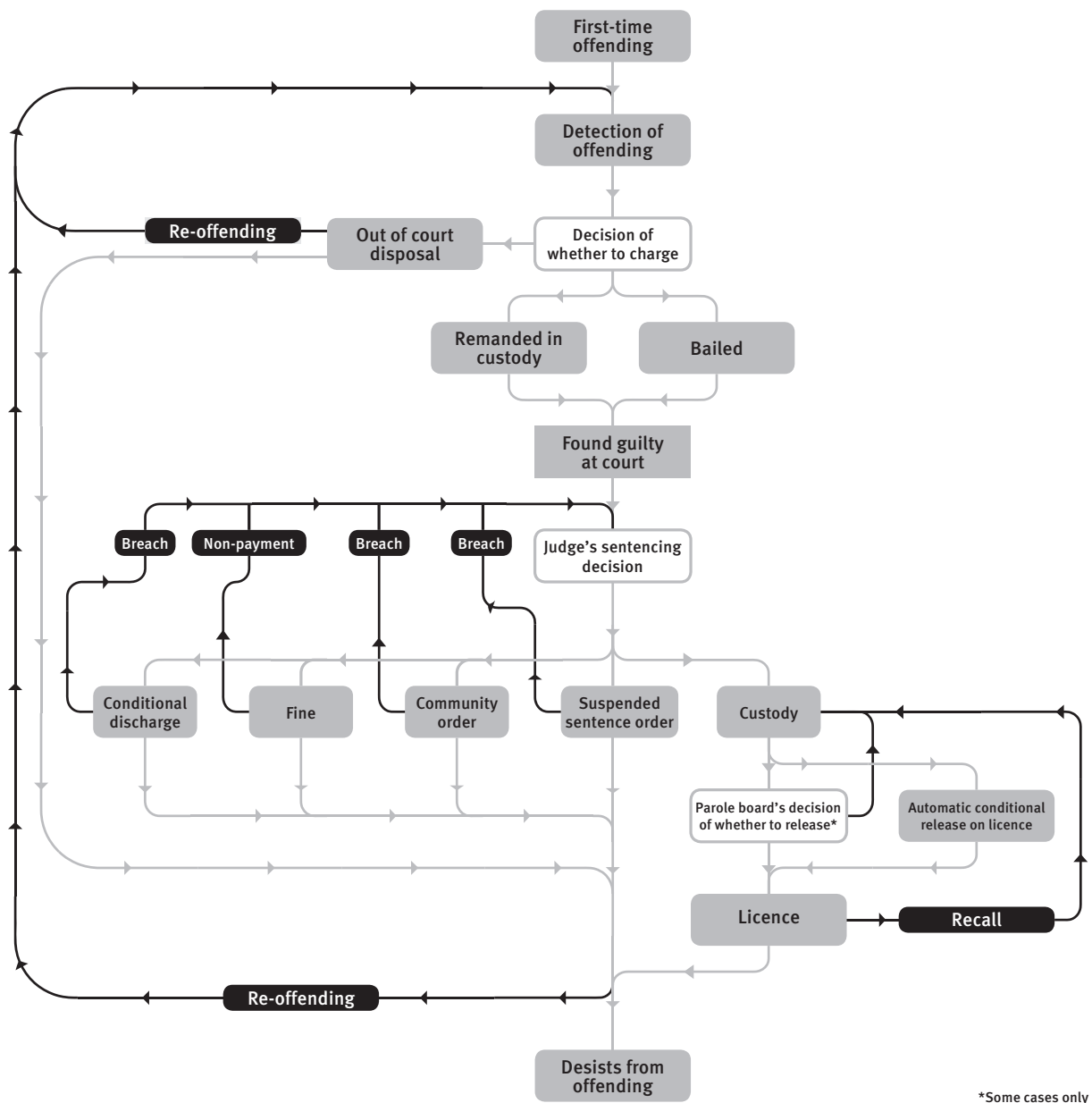
example, the volume of offenders coming before the courts is a non-sentencing factor because greater sentencing volumes lead to greater pressure on correctional resources, even if the courts' treatment of individual cases does not change. Release provisions are another example of a non-sentencing factor: changes in the length of time spent in prison for a given custodial sentence have obvious resource consequences.

Statistics on the effect of non-sentencing factors on resource requirements

It is straightforward to analyse the available data on non-sentencing factors. However, it is extremely difficult to identify why changes have occurred, and to isolate the resource effect of any individual change to the system. This is because the criminal justice system is dynamic, and its processes are heavily interconnected.

Figure 1 shows a stylised representation of the flow of offenders through the criminal justice system. This figure demonstrates the interdependence of the system and how changes to any one aspect of the system will have knock-on effects in many other parts.

Figure 1



The remainder of this report examines the available data on non-sentencing factors. Due to the complexities explained in Figure 1, it makes no attempt to untangle the interactions between different non-sentencing factors to explain the causes of observed changes and their resource effects.

Volume of sentences and composition of offences coming before the courts

The Ministry of Justice publishes quarterly statistics on the volume of sentences and the offence types for which offenders are sentenced.

The most recent publication can be found at the following URL: <https://www.gov.uk/government/collections/criminal-justice-statistics-quarterly>

Under the link for March 2015, readers should refer to the sentencing data tool for the most detailed information on sentencing outcomes for the relevant figures. The data tool provides statistics on the total number of sentences passed, and how this has changed through time. The statistics can be broken down by sex, age group, ethnicity, court type and offence group.

The rate of recall from licence

An offender is recalled to custody by the Secretary of State if they have been released from custody, but then breaches the conditions of their licence or appears to be at risk of doing so. Since time served in custody is considerably more resource intensive than time spent on licence, recall decisions have a substantial resource cost.

Statistics on recall from licence can be found in the Ministry of Justice's Offender Management Statistics Quarterly, which is found here: <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

Under the link 'offender-management-statistics-quarterly' management January to March 2015, readers should refer to the tables which concern licence recalls, which are numbered Table 5.1 to Table 5.9. For instance, Table 5.1 contains a summary of the number of licence recalls since 1984.

The rate at which court orders are breached

If an offender breaches a court order, they must return to court. Their revised sentence will typically add or augment requirements to the order, or involve custody. Breaches can therefore have significant resource implications.

Statistics on breaches can be found in the Ministry of Justice's Offender Management Statistics Quarterly, which is at the URL <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

Readers should refer to the probation tables, specifically Table 4.11 which gives a breakdown of terminations of court orders by reason.

Patterns of re-offending

The Ministry of Justice publishes re-offending statistics in Proven Reoffending Statistics, the latest edition of which can be found at the following URL: <https://www.gov.uk/government/collections/proven-reoffending-statistics>

The frequency and severity of re-offending is an important driver of changes in requirements for criminal justice resources.

Detailed statistics of how re-offending rates are changing through time can be found in the report, and additional statistics can be found in supplementary tables.

Release decisions by the Parole Board

Many offenders are released from prison automatically under release provisions which are set by Parliament and the Ministry of Justice. However, in a minority of cases, which are usually those of very high severity, the Parole Board makes release decisions.

Statistics on release rates for these cases can be found in the Parole Board for England and Wales's Annual Report and Accounts starting at page 24, which can be found at the following URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/446277/Parole_Board_for_England_and_Wales_Annual_Report_2014.15.pdf

Remand

Decisions to hold suspected offenders on remand are a significant contributor to the prison population. The remand population can be broken down into the untried population and the convicted but yet to be sentenced population.

Statistics on the number of offenders in prison on remand can be found in the Ministry of Justice's Offender Management Statistics Quarterly publication, the latest version of which can be found at the following URL: <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

Under the link Offender management statistics quarterly: January to March 2015, readers should refer to the prison population tables. For example, Table 1.1 contains data on how the remand population has changed through time.

Annex E: Summary of activities by legislative function

Mandatory requirements for annual report

- Report on the exercise of the Council's functions during the year **[s.119]**.
- Summary of monitoring information of operation and effect of guidelines **[s.128(3)]**.
- Sentencing factors report – an assessment of the effect which any changes in sentencing practice is having or likely to have on resources required for:
 - the provision of prison places;
 - probation provision; and
 - the provision of youth justice services **[s.130]**.
- A non-sentencing factors report – an assessment of any significant quantitative effect, or significant change in quantitative effect – which non-sentencing factors are having, or are likely to have, on the resources needed or available for giving effect to sentences imposed by courts. Non-sentencing

factors are factors which do not relate to the sentencing practice of the courts and include:

- recalling of persons to prison;
- breaches of orders (community orders, Suspended Sentence Orders, youth rehabilitation orders);
- patterns of re-offending;
- decisions or recommendations for release made by the Parole Board;
- early release under discretionary powers of persons detained in prison; and
- remanding of persons in custody **[s.131]**.

The Council's functions

With regard to guidelines, the Council:

- must prepare guidelines about guilty pleas **[s.120(3)(a)]**; this is planned for development and consultation during 2015/16;
- must prepare guidelines about the rule of law as to the totality of sentences **[s.120(3)(b)]**; this came into effect in the Sentencing Council's definitive guideline on allocation, offences taken into consideration and totality on 11 June 2012;

- may prepare guidelines about any other matters with regard to statutory matters in **s.120(11) [s.120(4) and s.122]**; and
- must consult when preparing guidelines **[s.120(6)]** and prepare resource assessments **[s.127]**. All Sentencing Council guidelines have been subject to consultation and associated resource implications published.

With regard to monitoring, the Council must monitor the operation and effect of its sentencing guidelines and consider what conclusions can be drawn from the information obtained, in particular about:

- the frequency with which, and extent to which, courts depart from sentencing guidelines;
- factors which influence the sentences imposed by courts;
- the effect of the guidelines in promoting consistency; and
- the effect of guidelines on the promotion of public confidence in the criminal justice system **[s.128]**.

With regard to promoting awareness, the Council must publish at such intervals as it considers appropriate:

- information regarding the sentencing practice of the magistrates in relation to each local justice area; and

- information regarding the sentencing practice of the Crown Court in relation to each location at which the Crown Court sits **[s.129(1)]**.

The Council may also promote awareness of matters relating to the sentencing of offenders, in particular:

- sentences imposed;
- costs of different sentences and their relative effectiveness in preventing re-offending; and
- the operation and effect of guidelines. **[129(2)]**.

With regard to resources, the Council:

- may provide the Lord Chancellor with a non-sentencing factors report, and may publish that report **[s.131(2)]**; and
- has a duty to prepare a report where the Lord Chancellor refers any government policy or proposal likely to have significant effect on resources for prison, probation or youth justice services **[s.123]**.

Copies of this report may be obtained from our website:
www.sentencingcouncil.org.uk

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