

# 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 Bodies<sup>1</sup> 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.

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<sup>1</sup> [http://resources.civilservice.gov.uk/wp-content/uploads/2011/09/code-of-conduct\\_tcm6-38901.pdf](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](http://www.sentencingcouncil.org.uk)**

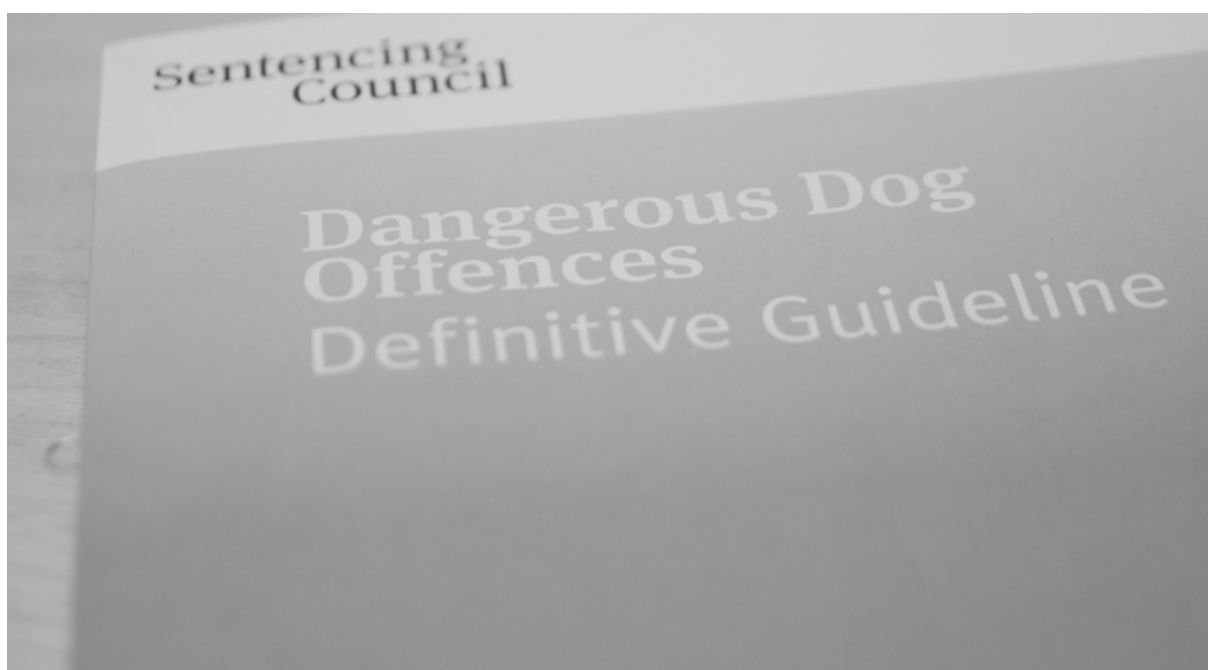
# Activity and achievements 2014/2015

The Sentencing Council is responsible for developing sentencing guidelines and monitoring their use.<sup>1</sup>

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.



<sup>1</sup> 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.<sup>2</sup>

## 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

<sup>2</sup> 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 Database<sup>3</sup> 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

<sup>3</sup> 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](http://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.

<sup>4</sup> 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.

<sup>5</sup> [www.judiciary.gov.uk/the-president-of-the-queens-bench-divisions-review-of-efficiency-in-criminal-proceedings](http://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.<sup>6</sup>

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.<sup>7</sup>

### 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.<sup>8</sup>

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

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

<sup>7</sup> <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.<sup>9</sup>

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.<sup>10</sup>

### **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.

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

<sup>9</sup> 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."

<sup>10</sup> 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 sentences<sup>11</sup> 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.

<sup>11</sup> 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.



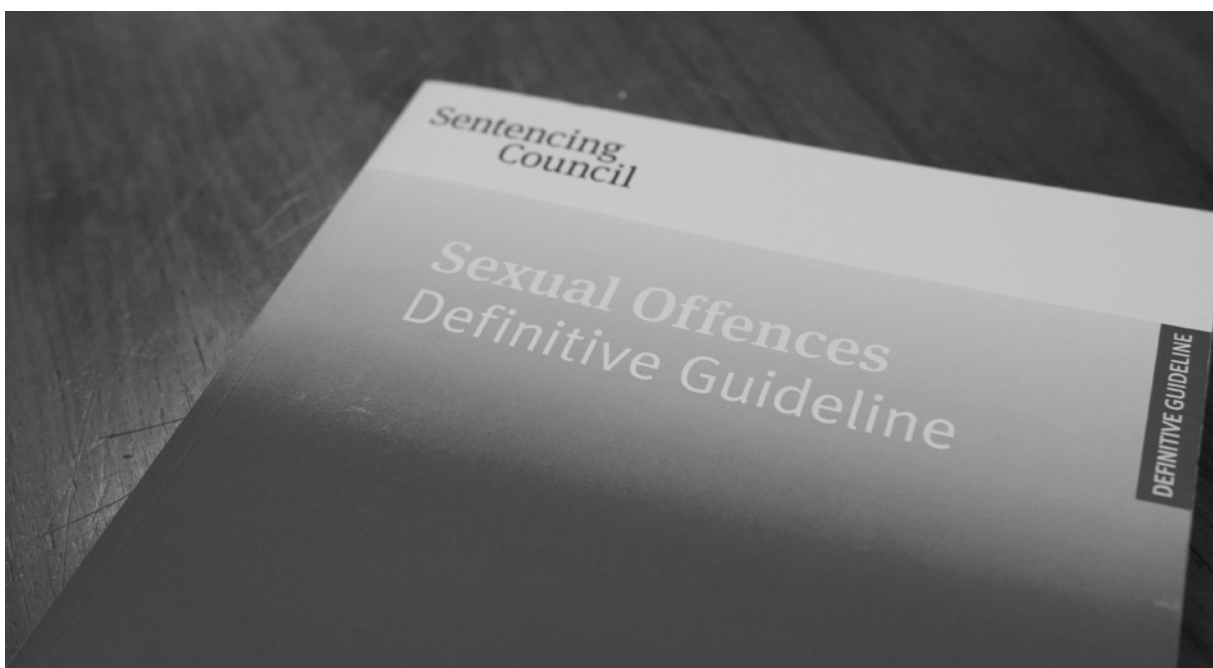
Later in the process, the actual impact of the guideline on sentencing, and consequently on resources, will be assessed through the Council's monitoring and evaluation work.

## 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.

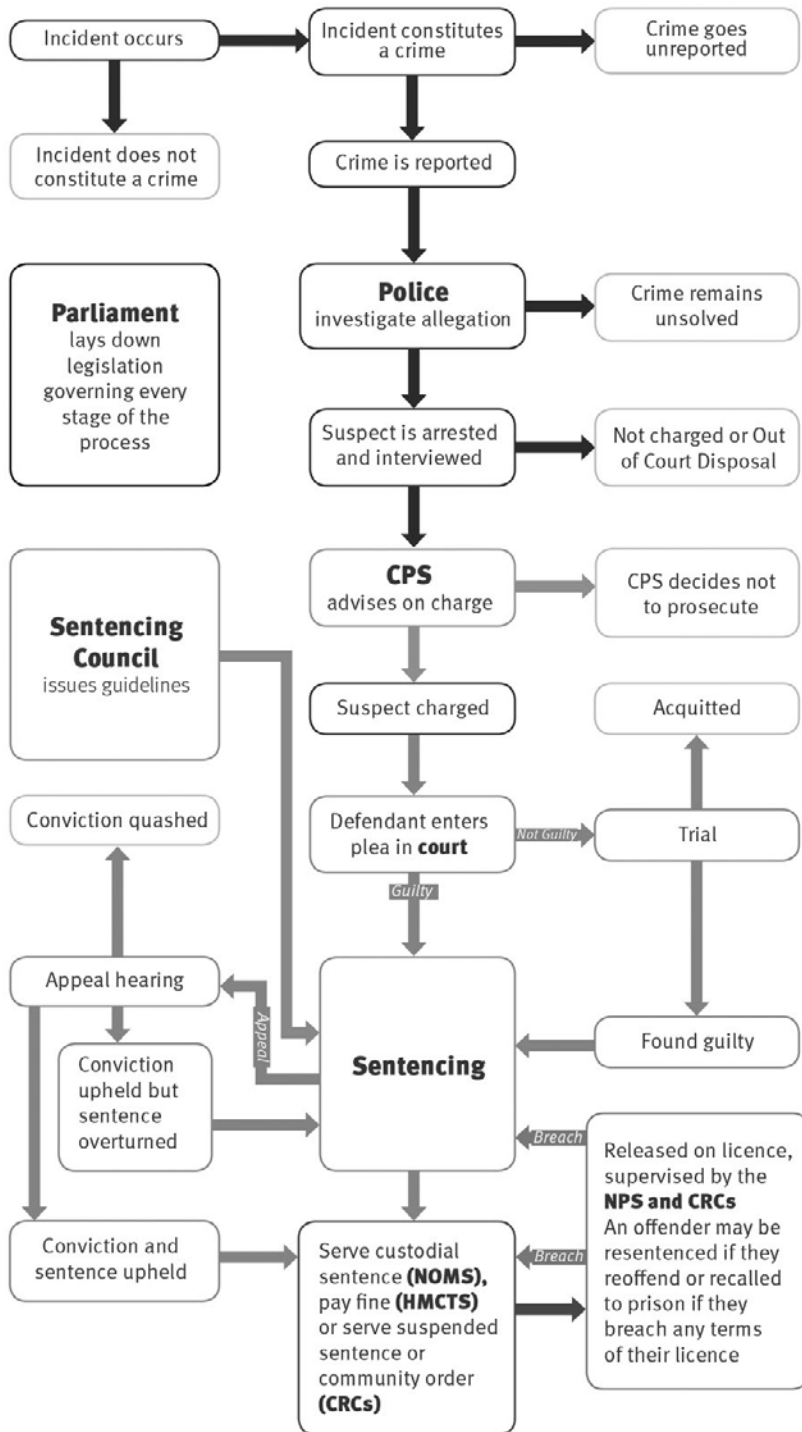
The dangerous dog offences consultation led to a very significant amount of coverage with 133 news items, of which 131 were positive or neutral. There were 27 broadcast news items, and a great deal of social media activity with 56 tweets and retweets reaching almost 500,000 followers and numerous Facebook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

<sup>15</sup> <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

<b>April 2014</b>	<b>1</b>	Definitive guideline on sexual offences in force
	<b>1</b>	Definitive guideline on environmental offences in force
	<b>3</b>	Theft consultation opens
<b>May 2014</b>	<b>6</b>	Speech to Court of Appeal Judges on sexual offence guideline
	<b>23</b>	Definitive guideline on non corporate fraud published
<b>June 2014</b>	<b>25</b>	Crown Court Sentencing Survey published
	<b>26</b>	Theft consultation closes
	<b>26</b>	Lexis Nexis webinar on environmental offences
<b>July 2014</b>	<b>2</b>	Sarah Munro appears in front of the Justice Committee to discuss theft guidelines
<b>August 2014</b>		
<b>September 2014</b>		
<b>October 2014</b>	<b>1</b>	Definitive guidelines on fraud in force
	<b>21</b>	Robbery consultation opens
	<b>21</b>	Annual report published
	<b>28</b>	Speech to Scottish Judiciary
<b>November 2014</b>	<b>13</b>	Health and safety, corporate manslaughter and food
	<b>26</b>	Parliamentary reception at Portcullis House
<b>December 2014</b>	<b>2</b>	Speech at Criminal Law Review conference
<b>January 2015</b>	<b>23</b>	Robbery consultation closes
<b>February 2015</b>	<b>10</b>	Julian Goose appears in front of the Justice Committee to discuss robbery guidelines
	<b>18</b>	Health and safety, corporate manslaughter and food hygiene consultation closes
	<b>24</b>	Michael Caplan appears in front of the Justice Committee to discuss health and safety guidelines
	<b>26</b>	New Council members announced: Mr Justice Tim Holroyde and Jill Gramann JP
<b>March 2015</b>	<b>17</b>	Dangerous dog offences consultation opens
	<b>27</b>	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
<b>Total funding allocation</b>	<b>1,580</b>
Office staff costs <sup>12</sup>	1,058
Council members and adviser fees <sup>13</sup>	71
Analysis and research	146
Design and printing services	64
Confidence and communications	20
IT services	15
Training	6
Other office expenditure <sup>14</sup>	27
<b>Total expenditure</b>	<b>1,409<sup>15</sup></b>

<sup>12</sup> Includes office staff travel and subsistence

<sup>13</sup> Includes travel and subsistence costs incurred by Council members and advisers.

<sup>14</sup> Includes off-site storage cost and postage for consultations/definitive guidelines

<sup>15</sup> 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 functions<sup>16</sup>:

- prepare sentencing guidelines<sup>17</sup>;
- publish the resource implications in respect of the guidelines it drafts and issues<sup>18</sup>;
- monitor the operation and effect of its sentencing guidelines and draws conclusions<sup>19</sup>;
- prepare a resource assessment to accompany new guidelines<sup>20</sup>;
- promote awareness of sentencing and sentencing practice<sup>21</sup>; and
- publish an annual report that includes the effect of sentencing and non-sentencing practices<sup>22</sup>.

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 so<sup>23</sup>.

<sup>16</sup> See Annex E for full details of all roles and functions

<sup>17</sup> s.120 Coroners and Justice Act 2009

<sup>18</sup> s.127 *ibid*

<sup>19</sup> s.128 *ibid*

<sup>20</sup> s.127 *ibid*

<sup>22</sup> s.129 *ibid*

<sup>23</sup> 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 Committee<sup>24</sup>. 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.

<sup>24</sup> 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](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

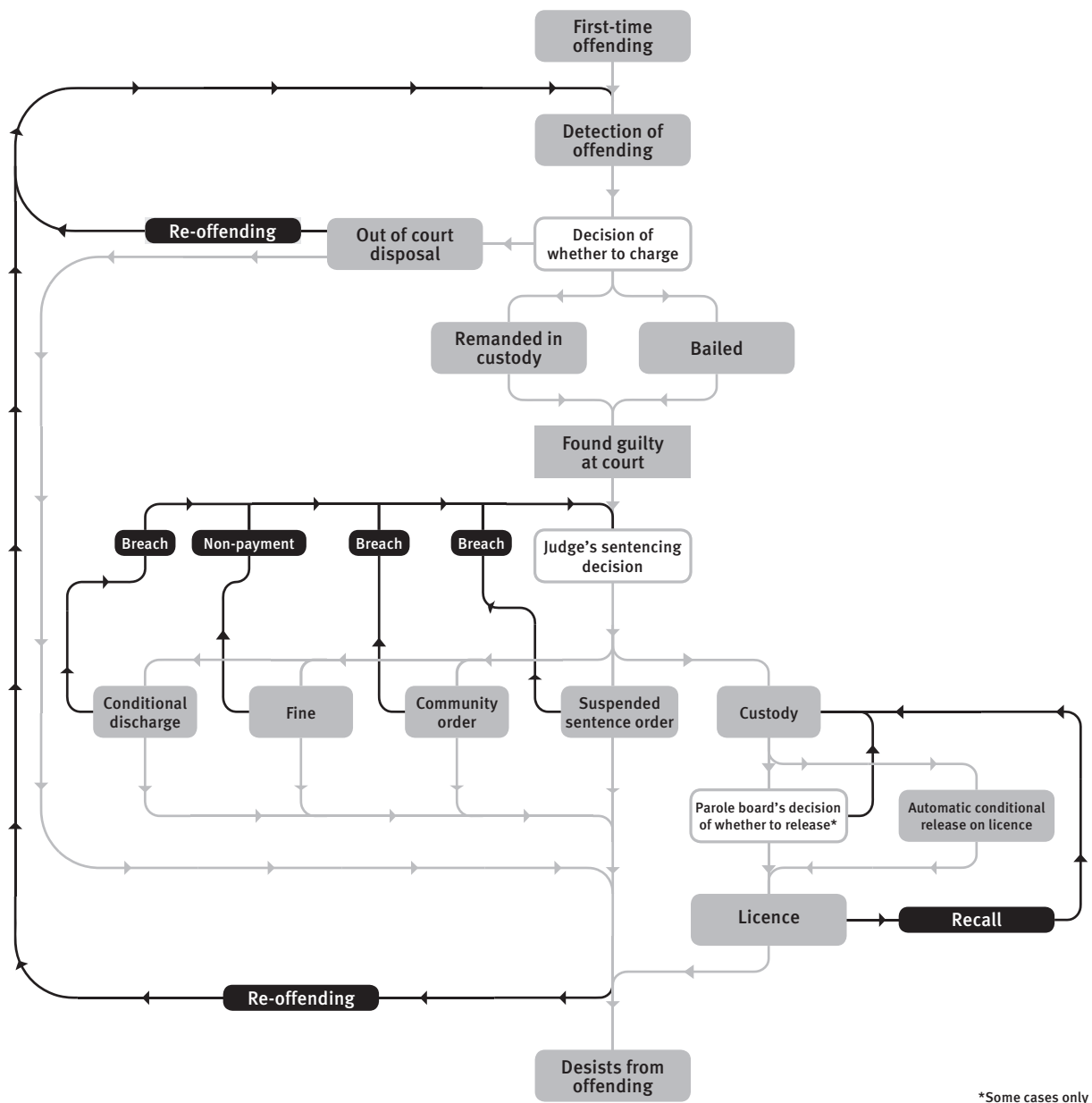
example, the volume of offenders coming before the courts is a non-sentencing factor because greater sentencing volumes lead to greater pressure on correctional resources, even if the courts' treatment of individual cases does not change. Release provisions are another example of a non-sentencing factor: 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](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](http://www.sentencingcouncil.org.uk)**

For other enquiries, please contact:  
The Office of the Sentencing Council  
EB 14 - 20, Royal Courts of Justice  
Strand  
London WC2A 2LL

Telephone: 020 7071 5793  
Email: [info@sentencingcouncil.gsi.gov.uk](mailto:info@sentencingcouncil.gsi.gov.uk)

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