

Sentencing Council meeting: 22 June 2018
Paper number: SC(18)JUN08 – Annual Report
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1 ISSUE

1.1 This paper presents the Sentencing Council Annual Report 2017/18 for consideration by members of the Council.

2 RECOMMENDATION

2.1 That the Council approves the Annual Report for submission to the Lord Chancellor and subsequent laying before Parliament.

3 CONSIDERATION

3.1 The Annual Report is a summary of the activities and achievements of the Sentencing Council between 1 April 2017 to 31 March 2018.

3.2 The document follows the same structure as was used last year, including the change we made last year to move the reports on sentencing factors and non-sentencing factors into the main body from the appendices.

3.3 The Council is required by statute to provide the Lord Chancellor with a report on the exercise of the Council's functions during the year. The Lord Chancellor must lay a copy of the report before Parliament, after which the Council will publish it.

3.4 The schedule for the Report is:

- Friday 29 June – submission to the Lord Chancellor
- Thursday 19 July – laid in Parliament (am) and published (pm)

3.5 The report will also be seen, prior to publication, by the Bail, Sentencing and Release Policy Team in MoJ, who are our sponsorship team.

3.6 Changes and amendments suggested by the Council's Governance Sub-group have already been taken in.

3.7 Members are asked to discuss any substantive corrections or suggestions for changes to the Report at the Council meeting on Friday 22 June, and to forward any further minor changes to Phil (phil.hodgson@sentencingcouncil.gov.uk) by end of Monday 25 June.

Question: Subject to any minor changes, does the Council approve the Annual Report 2017/18 for submission to the Lord Chancellor?

Sentencing Council



**Sentencing Council
Annual Report 2017/18**

Sentencing Council

Sentencing Council Annual Report 2017/18

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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ISBN xxx-x-xxxx-xxxx-x

CCSxxxxxxxxxx xx/18

Printed on paper containing 75% recycled fibre content minimum

Printed in the UK by the APS Group on behalf of the Controller of Her Majesty's Stationery Office

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Foreword

by the Chairman



I am delighted to introduce the Sentencing Council's annual report for 2017/18. It is my fifth annual report as Chairman, and my final one.

I am immensely proud of all that the Sentencing Council has achieved throughout my four and a half years as Chairman; this last year has been no exception. At its inception, the Council set itself the goals of issuing guidelines covering all the most frequently sentenced either-way offences and to have replaced the guidelines produced by our predecessor body, the Sentencing Guidelines Council (SGC), by the time of our tenth anniversary in 2020. We have continued to make great strides towards these goals in the past year.

Since April 2017 we have consulted on four draft guidelines and published three definitive guidelines. Unusually for the Council, we both consulted on and published one of our guidelines, relating to terrorism offences, within the year. As I noted in last year's annual report, development on this guideline began in November 2016 but the Council considered that there was an urgent need for such a guideline and, in light of the raised threat of terrorism in England and Wales, we made a commitment to seek opportunities to expedite production of the guideline, which we have done.

The new guideline, which came into force on 27 April 2018, reflects the changing nature of terrorism; today's terrorists use much less sophisticated methods than their forbears. One of our aims was to target those lower-level offences that, until now, might have been seen as less serious. Our purpose is to make sure that appropriate sentences are passed not only to punish offenders but, importantly, to disrupt their activities.

The Council also showed itself to be responsive to evolving requirements in February 2018 with the publication of a definitive guideline providing overarching principles for sentencing offences involving domestic abuse.

This new guideline replaced the existing SGC guideline on domestic violence. By broadening the focus from 'domestic violence' to 'domestic abuse' our guideline reflects changes in thinking and social attitude that have taken place over the last decade. It is now generally recognised that controlling or coercive behaviour in a domestic setting constitutes abuse just as physical violence does. The guideline, of course, goes much further, emphasising that offences committed in a domestic context can be more serious than those committed in a non-domestic context.

The third definitive guideline we published this year covers sentencing of adult and young offenders convicted of possessing bladed articles or offensive weapons, such as acid, in public or using them to threaten people. The guideline is designed to make sure that those convicted of offences

involving knives or particularly dangerous weapons, as well as those who repeatedly offend, will receive the highest sentences. It reflects concerns expressed in both Parliament and the Court of Appeal about the serious social problems caused by knife offences, and its publication on 1 March 2018 would appear sadly to be timely, given the apparent increase in recent months of knife-related violence and the rise in the use of acid as a weapon.

The *Domestic Abuse and Bladed Articles and Offensive Weapons* guidelines, which came into force on 24 May and 1 June 2018 respectively, represent significant progress in meeting our 2020 goals and updating the sentencing guidelines for today's criminal justice challenges.

We continue to consult widely as we prepare our guidelines and, as well as the terrorism guideline, we have run consultations this year on guidelines for child cruelty, manslaughter, arson and criminal damage offences.

Consultation is of the utmost importance to the Council. The development of our guidelines is influenced enormously, and invariably for the better, as a result of feedback from consultees. We continue to be most grateful to the sentencers, other legal experts, professional bodies and individuals who contribute their time and expertise to our consultations. This year, as in every other year, their responses have helped to refine our thinking and shape the definitive sentencing guidelines.

Consultation is just one step of the continuing cycle of research, development, consultation, delivery, evaluation and review that characterises the work of the Sentencing Council. And as the Council's earlier guidelines come to maturity, evaluation and review will become increasingly important.

On 13 July 2017 we concluded our analysis of the *Burglary* guideline. Coming into force in January 2012, this guideline was one of the Council's first, and replaced an SGC guideline covering non-domestic burglary. We also published an assessment on 6 March 2018 of the Council's *Allocation* guideline, which came into force on 1 March 2016. There will, of course, be other forces at play but our analysis suggests that the guideline has had the intended effect of encouraging the retention of cases for trial in magistrates' courts, while not changing overall sentencing severity for triable, either-way cases.

With an eye on the future, we ran a data collection exercise between November 2017 and March 2018 across a sample of 80 magistrates' courts, asking magistrates and district judges to collect data about how they sentence six offences for which we are developing guidelines. This exercise will allow us to assess the impact of the guidelines on sentencing behaviour and outcomes.

During the last year we have seen a number of new definitive guidelines come into force: *Reduction in Sentence for a Guilty Plea*; *Sentencing Children and Young People: Overarching Principles and offence specific guidelines for Sexual Offences and Robbery*; and, as a step forward in our programme to

modernise the *Magistrates' Court Sentencing Guidelines* (MCSG), 27 revised guidelines for summary-only offences.

We have also given the MCSG a fresh digital platform in the form of a new version of the Sentencing Council application. Magistrates have been generous with their time, helping us to test our ideas, and with their feedback, and this has enabled us to develop a more powerful and flexible digital tool that is responsive to the needs of sentencers at work in the busy magistrates' courts.

The digitisation of the Crown Court guidelines continues apace. Again, we have benefited enormously from the willingness of judges to help us gain insight into the needs of the sentencers who will be using the digital guidelines. It remains only for us to test the guidelines with judges during summer 2018, with a view to launching in the autumn.

The support we have received from judges, magistrates and other legal practitioners has enabled us to further advance the Council's ambition to digitise all sentencing guidelines and ensure we remain in step with the drive by HM Courts and Tribunals Service to build a modern, more efficient, digital court service.

In December 2017 we commissioned an external agency to conduct a review of the Council's website. With more than a million unique visitors this year, our website is a vital channel for reaching our audiences, both across and beyond the criminal justice system. The aim of the review was to consider how we might continue to

provide immediately accessible and clear digital guidelines for our professional audiences, while also furthering the Council's objective of improving public confidence in sentencing by providing a source of useful, easy-to-understand information tailored for non-specialists. We will incorporate the recommendations from this review into our rolling programme of digital transformation.

Also, to further our public confidence objective, we commissioned research designed to give the Council an insight into the public's attitudes towards, and understanding of, sentencing and criminal justice issues. The findings of this research will be used to inform the Council's confidence and communication strategy.

The website review and public attitude research were just two strands of work to emerge from the Council's consideration during the year of its longer-term strategic priorities. I outlined in last year's annual report our intention to consider our priorities, particularly in light of the internal review we commissioned from independent academic, Professor Sir Anthony Bottoms.¹ Among his recommendations, Professor Bottoms suggested the Council would benefit from fostering stronger links with the academic community. To this end we co-hosted a seminar on sentencing research with Cambridge University's Centre for Penal Theory and Penal Ethics in December 2017. The seminar marked the beginning of what we hope will become an ongoing and productive dialogue between academics and the Council.

¹ <https://www.sentencingcouncil.org.uk/news/item/council-publishes-independent-review/>

Other initiatives to emerge from Professor Bottoms' review include: developing a methodology for assessing the consistency of sentencing; reviewing evidence relating to effectiveness of sentencing; and, developing a generic guideline on how to sentence offences for which there is currently no guideline. A number of these projects are already well under way.

The Sentencing Council is approaching its tenth anniversary. We have already achieved an extraordinary amount, producing guidelines covering over 250 offences. I am fortunate to have been able to play a part in this achievement, and proud to have done so. My time here would not have been so productive or rewarding were it not for my colleagues on the Council, without whose knowledge, expertise and insight none of this excellent work would have been possible.

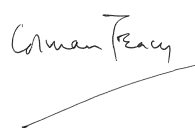
In October this year we welcomed the Rt Hon Lord Justice Burnett as the new President of the Sentencing Council. He took up the post on his appointment as Lord Chief Justice, following the retirement of the Rt Hon the Lord Thomas of Cwmgiedd. I am indebted to Lord Thomas for his guidance and support.

In terms of new members, I welcome District Judge Rebecca Crane, who joined the Council on 1 April 2017. I would like to congratulate Jill Gramann JP, the magistrate member of the Council, on her appointment during the year to the Criminal Cases Review Commission. Congratulations must also go to three of the Council's other judicial members: the Rt Hon Lord Justice Holroyde, who was appointed Lord Justice of Appeal in October 2017; the

Hon Mr Justice Goose, appointed to the High Court, Queen's Bench Division, also in October; and, Her Honour Judge Munro QC, promoted in July 2017 to Senior Circuit Judge sitting at the Central Criminal Court. I would like to thank Chief Constable Olivia Pinkney for the valuable contribution she has made to the Council in the latter half of the year, and those Council members who have served on our three sub-groups: analysis and research; confidence and communication; and governance. Our work benefits greatly from their experience, challenge and scrutiny.

I and my fellow members of the Council would not be able to do our work without the excellent support of the staff of the Office of the Sentencing Council (OSC) under the leadership of Head of the OSC, Steve Wade. I am continually impressed by their expertise, professionalism and dedication.

This is my final annual report for the Sentencing Council. It has been a challenge and an enormous privilege to lead this influential and successful body. The work of the Council plays a significant role in the delivery of justice that is consistent and fair – and can be seen to be consistent and fair. The Council continues to grow in stature and reputation, and I have every confidence that it will do so long into the future.



Colman Treacy
Lord Justice Treacy
July 2018

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 to promote greater transparency and consistency in sentencing, while 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 2017 to 31 March 2018. For information on past Sentencing Council activity, please refer to our earlier annual reports, which are available on our website at:

www.sentencingcouncil.org.uk

In 2017/18 the Council's work was aligned to the following four objectives:

1. Prepare sentencing guidelines that meet their stated aims, with particular regard to the likely impact on prison, probation and youth justice services, the need to consider the impact on victims, and to promote consistency and public confidence.
2. Monitor and evaluate the operation and effect of guidelines and draw conclusions.
3. Promote awareness of sentencing and sentencing practice.
4. Deliver efficiencies, while ensuring that the Council continues to be supported by high-performing and engaged staff.

The activities for 2017/18 that have contributed to the delivery of these objectives are outlined in this report.

Also in this report, produced in accordance with the Coroners and Justice Act 2009, are two reports considering the impact of sentencing (pp20–3) and non-sentencing factors (pp24–7) on the resources required in the prison, probation and youth justice services to give effect to sentences imposed by the courts in England and Wales.

Key events of 2017/18

2017		
April	1	District Judge Rebecca Crane appointed as member of the Council
	24	<i>Magistrates' Court Sentencing Guidelines</i> : revised guidelines for 27 summary-only offences come into force
June	1	<i>Reduction in Sentence for Guilty Plea Definitive Guideline</i> comes into force
	1	<i>Sentencing Children and Young People Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery Definitive Guideline</i> comes into force
	13	Consultation opens on proposed <i>Child Cruelty guideline</i>
July	4	Consultation opens on proposed <i>Manslaughter guideline</i>
	13	Assessment of the impact of the <i>Burglary Definitive Guideline</i> published
October	2	Appointment of the Rt Hon Sir Ian Burnett as Lord Chief Justice of England and Wales and President of the Sentencing Council
	12	Consultation opens on proposed <i>Terrorism Offences guideline</i>
November	7	<i>Sentencing Council Annual Report 2016/17</i> published
December	1	Seminar on Sentencing Research, co-hosted with Centre for Penal Theory and Penal Ethics, Institute of Criminology, University of Cambridge
	5	New <i>Magistrates' Court Sentencing Guidelines</i> digital app released
	19	<i>Sexual Offences Definitive Guideline</i> updated to include explanatory guidance for sentencing offences of sexual exploitation under section 2 of the Modern Slavery Act 2015

2018		
February	22	<i>Overarching Principles: Domestic Abuse Definitive Guideline</i> published
March	1	<i>Bladed Articles and Offensive Weapons Definitive Guideline</i> published
	6	Assessment of the impact of the <i>Allocation Definitive Guideline</i> published
	27	Consultation opens on proposed <i>Arson and Criminal Damage</i> guideline
	28	<i>Terrorism Offences Definitive Guideline</i> published

Guidelines

Guidelines are intended to help ensure 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 by the Council's founding legislation, the Coroners and Justice Act 2009.

Consultations are not only a statutory duty but also a valuable resource for the Council. They are publicised via mainstream and specialist media, on Twitter and on the Sentencing Council website. We make a particular effort to publicise them with relevant professional organisations and representative bodies, especially those representing the judiciary and criminal justice professionals, but also others with an interest in a particular offence or group of offenders. Many of the responses come from organisations representing large groups so the number of replies does not fully reflect the comprehensive nature of the input.

The work conducted on all the guidelines during the period from 1 April 2017 to 31 March 2018 is set out here, separated into four key stages: development, consultation, post-consultation, and evaluation and monitoring. Because guidelines were at different stages of development during the year, reporting varies between guidelines.

Allocation

Evaluation and monitoring

The *Allocation* definitive guideline was published in December 2015 and came into force in March 2016.

To assess the impact of the guideline, the Council conducted analysis of data from the Ministry of Justice's Court Proceedings Database.

A summary of this analysis was published in March 2018.

Arson and Criminal Damage Offences

Development

During this reporting period the Council developed draft guidelines for arson, criminal damage (including the racially or religiously aggravated form of the offence), criminal damage/arson with intent to endanger life or reckless as to whether life endangered, and threats to destroy or damage property.

Consultation

The Council launched a consultation on the draft proposals on 27 March 2018, at the same time publishing a draft resource assessment and statistical bulletin.

Qualitative research was commenced with sentencers to explore how these guidelines might work in practice and ascertain whether there might be any implementation issues.

The majority of the consultation period fell outside the timeframe for this annual report so we will include details of the consultation and research findings in next year's report.

We publicised the consultation to a range of general and specialist media, and received positive coverage in ten print and online articles. Two interviews by Council spokespeople were broadcast, along with bulletin content on 36 other radio stations.

Evaluation and monitoring

From November 2017 to March 2018, the Council collected data on how criminal damage cases are currently sentenced across a sample of magistrates' courts. These data will be used to help assess the impact and implementation of the new guideline, once in force.

Bladed Articles and Offensive Weapons

Development

The Council has developed separate guidelines for sentencing adults and children/young people for a number of offences of possession or threatening with a bladed article or offensive weapon. There had previously been some guidance available for sentencing adult offenders in the magistrates' courts but none for sentencing adult offenders in the Crown Court, or for sentencing children or young people.

We concluded our work on the development of the guideline this year.

Consultation

The consultation opened on 6 October 2016 and closed on 6 January 2017. We published a resource assessment of the anticipated impact of the new guidelines on correctional resources alongside the consultation, in addition to a statistical bulletin.

Post-consultation

As a result of the consultation responses, we made a number of changes to the guidelines by:

- including additional guidance on the definition of 'highly dangerous' weapon;
- providing additional guidance on when it may be 'unfair in all of the circumstances' to impose a statutory minimum sentence;
- making changes to the 'possession' guideline, changing the culpability factors to incorporate four levels to show a clearer gradation of seriousness. The structure of the guideline has also been changed to include two levels of harm rather than three since, upon analysis, too few cases would fall into the middle category. This has led to a change to the sentencing table; and
- making similar changes to the structure of the 'threats' guideline to include two levels of harm rather than three, which has also impacted on the sentence levels.

The definitive guideline was published on 1 March 2018 to come into force on 1 June 2018.

A final resource assessment and response to consultation were published alongside the guideline.

The publication of the guideline was positively received and generated 17 print and online news items, four broadcast interviews and bulletin content on 47 other radio stations.

Evaluation and monitoring

From November 2017 to March 2018, the Council collected data on how cases of possession of a bladed article or offensive weapon were being sentenced across a sample of magistrates' courts. These data will be used to help assess the impact and implementation of the new guideline.

Breach Offences

Post-consultation

Our consultation on breach offences ran between 25 October 2016 and 25 January 2017.

Due to a lack of available information on current sentencing practice for breaches of community orders and suspended sentence orders, the Council decided to collect new data to inform an estimate of the impact of the guideline.

From November 2017 to March 2018, the Council collected data on how breaches of protective orders, community orders and suspended sentence orders were being sentenced across a sample of magistrates' courts. These data will be used to help assess the potential impact of the new guideline and form the basis of the resource assessments for these guidelines.

The definitive guideline, consultation response, final resource assessments and updated statistics tables will be published in June 2018.

Burglary Offences

Evaluation and monitoring

In January 2016 we published an assessment of the impact of the *Burglary* guideline, which indicated some unintended impacts for some offences. The Council subsequently undertook further analysis to explore potential reasons for the changes observed, and published a summary report of the findings in July 2017.

As a result of the assessment, the Council agreed to review the guideline, and we have included the project in our three-year work plan.

Child Cruelty

Development

During this reporting period the Council continued to develop a guideline for child cruelty offences, having finalised the draft guideline for consultation at the end of the 2017/18 period. This guideline replaces the existing Sentencing Guidelines Council guideline for the offence of cruelty to a child. It also covers the offences of causing or allowing a child to die or suffer serious physical harm and failing to protect a girl from the risk of female genital mutilation (FGM).

Consultation

The consultation period began on 13 June 2017 and concluded on 13 September 2017. A resource assessment of the anticipated impact of the new guideline on correctional resources was published alongside the consultation, in addition to a statistical bulletin.

The publication of the consultation led to 15 news items in print and online, three interviews and bulletin content on 47 other radio stations.

The announcement was positively received overall.

Post-consultation

During the second half of this reporting period, we considered consultation responses and transcripts of more-recent cases (the draft guideline was based on cases from

2014). As a result, we made some changes to the guidelines for each of the three offences. The Council has continued to discuss changes and expects to approve the definitive guideline for publication in autumn 2018.

The response to consultation, resource assessment and statistical bulletin will be published alongside the definitive guideline.

Domestic Abuse

Consultation

Between 30 March 2017 and 30 June 2017, the Council ran a consultation on a revised guideline for domestic abuse offences. The draft guideline proposed overarching principles for use in any criminal offence that takes place within a domestic context.

At the same time, we also consulted on a draft guideline for intimidatory offences such as harassment, stalking and controlling or coercive behaviour (see p14). The joint consultation received 54 responses. We held two consultation events and studied transcripts of sentencing remarks of cases involving domestic abuse.

A draft resource assessment of the anticipated impact of the guideline on correctional resources was also published.

Post-consultation

The responses we received were broadly supportive of the revised guideline. As a result, the Council retained the general approach outlined in the guideline but with amendments. In particular, we have included

new guidance on Victim Personal Statements and the use of technology to perpetrate offences.

The definitive guideline was published on 22 February 2018, alongside a final resource assessment. Its release generated 29 print and online items, including a front-page article in *The Telegraph*, four TV interviews and six radio interviews. Thirty-four other radio stations carried bulletin content.

The Council will monitor the effect of the guideline.

We will publish the *Intimidatory Offences* definitive guideline separately during 2018.

Drug Offences

Evaluation and monitoring

The Council's *Drug Offences* definitive guideline came into force on 27 February 2012.

To assess the impact of the guideline, during 2017/18 we continued a programme of data analysis, using the following sources:

- sentencing data from the Ministry of Justice's Court Proceedings Database;
- survey data from the Crown Court Sentencing Survey (which ran in Crown Courts between 2010 and 2015); and
- survey data collected across a sample of magistrates' courts in 2015/16.

We published our analysis in June 2018, outside the period covered by this report. In light of the analysis, the Council has agreed to commence a review of the guideline.

Fraud, Bribery and Money Laundering Offences

Evaluation and monitoring

The definitive guideline *Fraud, Bribery and Money Laundering Offences* was published in May 2014 and came into force in October 2014.

To assess the impact of the guideline, the Council commissioned an analysis of data from the Crown Court Sentencing Survey (which ran between 2010 and 2015) and data from the Ministry of Justice's Court Proceedings Database.

A summary of this analysis will be published later in 2018.

Guilty Plea

Evaluation and monitoring

The definitive guideline for *Reduction in Sentence for a Guilty Plea* was published on 7 March 2017 and came into force on 1 June 2017.

The Council has put in place a group, including representatives of the Sentencing Council, the police, the Crown Prosecution Service, Her Majesty's Courts and Tribunal Service, Victim Support, Judicial Office, Her Majesty's Prison and Probation Service, the Justices' Clerks Society and the Ministry of

Justice, to steer work to collect a range of information that will feed into an assessment of the implementation and impact of the guideline. This work may include, for example, interviews with sentencers and other criminal justice professionals, analysis of transcripts of judges' sentencing remarks, case-file analysis, and analysis of data from other criminal justice agencies.

The group, which met for the first time in October 2017, will review the findings from these data and advise the Council if they suggest the need for a review of the guideline.

Health and Safety

Evaluation and monitoring

The *Health and Safety Offences, Corporate Manslaughter and Food Safety and Hygiene Offences* definitive guideline was published in November 2015 and came into force in February 2016.

In 2017/18, the Council commenced analysis of data from the Ministry of Justice's Court Proceedings Database to assess the impact of the guideline. Further analysis is planned, including analysis of transcripts of judges' sentencing remarks, and we will publish a summary of the findings in 2018/19.

Intimidatory Offences

Consultation

During the period of this report the Council ran a consultation on a guideline for harassment, stalking, threats to kill, disclosing private sexual images and controlling or coercive behaviour offences. The consultation ran between 30 March 2017 and 30 June 2017, in conjunction with a consultation on a revised *Domestic Abuse* guideline (see p12). Our proposals were discussed at four consultation meetings, and the Justice Committee published a report on these and the domestic abuse draft proposals.

During the consultation period we published a draft resource assessment and a statistics bulletin. We received 54 joint consultation responses.

Publicity for the consultation led to 30 print and online news items, three interviews and bulletin coverage on 30 other radio stations.

Post-consultation

The joint responses received were broadly supportive of the proposed guideline. As a result, the Council expects to retain the general approach outlined in the draft guidelines and we aim to publish the definitive guideline in summer 2018.

The *Domestic Abuse* definitive guideline was published separately on 22 February 2018.

Evaluation and monitoring

From November 2017 to March 2018, the Council collected data on how harassment/stalking cases were being sentenced across a sample of magistrates' courts. These data will be used to help assess the impact and implementation of the new guideline, once it is in force.

Manslaughter

Development

In 2014 the Council received a request from the Lord Chancellor to consider producing a guideline for so-called 'one punch' manslaughter offences. In considering this request, the Council decided it was necessary to undertake a comprehensive review of manslaughter sentencing with a view to producing guidelines for a range of types of manslaughter:

- Unlawful act manslaughter
- Gross negligence manslaughter
- Manslaughter by reason of loss of control
- Manslaughter by reason of diminished responsibility

Consultation

Between July and October 2017, the Council consulted on draft guidelines for these offences and, at the same time, carried out research interviews with sentencers to discuss the consultation version of the guidelines and ascertain whether they are likely to have any unanticipated

consequences. Twenty-eight interviews were carried out with Crown Court and High Court judges who had recently sentenced a manslaughter case. A draft resource assessment and statistical bulletin were published alongside the draft guideline.

The announcement generated 12 print and online news items, two interviews with Council spokespeople and coverage in bulletins on 39 other radio stations.

Post-consultation

The Council is reviewing the guidelines in light of the consultation responses and the results of the research, and aims to publish the definitive guideline by September 2018.

The response to consultation, resource assessment and statistical bulletin will be published alongside the definitive guideline.

Mental Health

Development

During the period of this annual report the Council decided to start work on an overarching principles guideline for the sentencing of offenders with mental health disorders or learning disabilities. During this early stage of development, we conducted research into the issues such a guideline would encompass.

The Council plans to consider a draft guideline later in 2018.

Public Order Offences

Development

The Council commenced the development of a package of guidelines for public order offences in January 2017. These are relatively high-volume offences and, although some guidance exists for magistrates, there is currently no guidance for judges in the Crown Court.

Consultation

We finalised the draft guidelines in early 2018 and opened a consultation in May 2018. At the same time, we commenced a programme of qualitative research with sentencers to examine systematically how the guideline may work in practice and to ascertain whether there may be any implementation issues. A resource assessment and statistical bulletin will be published alongside the consultation.

Robbery

Evaluation and monitoring

The Council's definitive guideline on robbery offences came into force on 1 April 2016.

To assess the impact of the guideline, during 2017/18 we carried out a programme of data analysis, using the following sources:

- Sentencing data from the Ministry of Justice's Court Proceedings Database
- Survey data from the Crown Court Sentencing Survey (which ran in Crown Courts between 2010 and 2015)

- Survey data collected across all Crown Courts for a six-month period in 2016/17

We expect to publish this analysis in 2018/19.

Seriousness

Development

The Council commenced the development of a project to replace the Sentencing Guidelines Council (SGC) *Overarching Principles: Seriousness* guideline in July 2017. The SGC guideline, published in 2004, provides general guidance on the approach to be taken to assessing culpability and harm and lists aggravating and mitigating factors that may apply to a range of offences.

The replacement guideline will take advantage of the digitisation of sentencing guidelines to provide additional, linked guidance to contextualise the factors in a new general guideline for use where there is no offence specific guideline.

The Council plans to develop a second phase of the project to provide additional information on factors in offence specific guidelines.

Consultation

The Council consulted on the first phase of this project in June 2018.

Sexual Offences

Evaluation and monitoring

The Council's definitive guideline on Sexual Offences came into force on 1 April 2014.

To assess the impact of the guideline, during 2017/18 we carried out a programme of data analysis, using the following sources:

- sentencing data from the Ministry of Justice's Court Proceedings Database; and
- survey data from the Crown Court Sentencing Survey (which ran in Crown Courts between 2010 and 2015).

We expect to publish this analysis in summer 2018.

Sexual Offences: Modern Slavery

Development

Representation was made to the Council advising that guidance on sentencing for modern slavery would be useful to the courts.

We responded by providing explanatory guidance for sentencing offences of sexual exploitation under section 2 of the Modern Slavery Act 2015, and we have included this guidance in the *Sexual Offences* guideline (see above).

The *Sexual Offences* guideline, which came into force in April 2014, includes a guideline for sentencing the offence of trafficking people for sexual exploitation. This offence was created by section 59A of the Sexual Offences Act 2003.

The Modern Slavery Act 2015 has since repealed section 59A but the Council considers that the sentencing guideline may still be of use for sentencing cases of sexual exploitation prosecuted under section 2 of the Modern Slavery Act 2015. We have added the explanatory guidance to the existing sentencing guideline to help those wanting to use the guideline for this purpose. In addition, the *Sexual Offences* guideline provides a list of ancillary orders that can be made when sentencing a relevant sexual offence. The list has been amended to include relevant orders that can be made under the Modern Slavery Act 2015.

Terrorism Offences

Development

The Council began work on terrorism offences in November 2016. We decided to work on guidelines for the following offences which, by volume, appeared to be the most common:

- Encouragement of terrorism, section 1 Terrorism Act 2006
- Dissemination of terrorist publications, section 2 Terrorism Act 2006
- Preparation of terrorist acts, section 5 Terrorism Act 2006

- Possession for terrorist purposes, section 57 Terrorism Act 2000
- Collection of information, section 58 Terrorism Act 2000
- Membership, section 11 Terrorism Act 2000
- Support, section 12 Terrorism Act 2000
- Explosive substances, sections 2–4 Explosive Substances Act 1883
- Fundraising, section 15 Terrorism Act 2000
- Use and possession, section 16 Terrorism Act 2000
- Funding arrangements, section 17 Terrorism Act 2000
- Money laundering, section 18 Terrorism Act 2000
- Information about acts of terrorism, section 38B Terrorism Act 2000

The Council accelerated the work on this project in light of the evolving nature of terrorist offending as evidenced by the terrorist offences that took place in 2017. The Council felt it was vital for the courts to have a consolidated, up-to-date package of guidelines available for use as soon as possible.

We concluded our work on the development of these guidelines during this reporting year.

Consultation

The consultation period began on 12 October 2017 and concluded on 22 November 2017. A draft resource assessment of the anticipated impact of the new guideline on correctional resources was published alongside the consultation, in addition to a statistical bulletin. During the consultation period, to support the development of the guideline, we carried out qualitative research with judges to explore how the draft guideline might work in practice. We conducted 16 in-depth interviews with judges who hear terrorism cases.

There was very significant media interest in the launch of the consultation for this guideline, with 19 print and online news items, 12 interviews with Council spokespeople and bulletin coverage on a great many other TV and radio stations.

Post-consultation

As a result of the consultation responses and our research, we made a number of changes to the guidelines by:

- including high-level community orders as a sentencing option within the *Encouragement of Terrorism; Membership; Support; Funding; Failure to Disclose Information; and Collection* guidelines. This sentence option is available only for the least-serious cases (it is included at the lowest part of the range for the least-serious offence);

- reducing the top of the sentence range in the *Funding and Failure to Disclose Information* guidelines to ensure there is ‘headroom’ for a sentencer to sentence outside the guideline in an exceptional case;
- including the following mitigating factors in all nine guidelines: ‘Age or level of maturity of the offender’; ‘Sole or primary carer for dependent relatives’; and ‘Offender involved through coercion, intimidation or exploitation’;
- adding the aggravating factor of ‘Deliberate use of encrypted communications or similar technologies to facilitate the commission of the offence and/or avoid or impede detection’ to several of the guidelines; and
- changing the harm model of the *Preparation of Terrorist Acts, Explosive Substances, Possession for Terrorist Purposes and Collection of Terrorist Information* guidelines to include consideration of the likelihood of harm. This change was made in response to a number of comments that the initial draft harm models were too simplistic.

The definitive guideline was published on 28 March 2018, to come into force on 27 April 2018. Publicity for the guideline generated 11 news items along with six interviews with Council spokespeople and bulletin coverage on 48 other radio stations.

A final resource assessment and response to consultation were published alongside the guideline.

Theft Offences

Evaluation and monitoring

The Council’s definitive guideline on theft offences came into force on 1 February 2016.

To assess the impact of the guideline, during 2017/18 we continued a programme of data analysis, using the following sources:

- sentencing data from the Ministry of Justice’s Court Proceedings Database;
- survey data from the Crown Court Sentencing Survey (which ran in Crown Courts between 2010 and 2015); and
- survey data collected across a sample of magistrates’ courts in 2015/16.

We expect to publish this analysis in 2018/19.

Sentencing factors report

In accordance with section 130 of the Coroners and Justice Act 2009 this report considers changes in the sentencing practice of courts and the 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 while maintaining the average severity of sentencing. Other guidelines explicitly aim to cause changes to the severity of sentencing, albeit rarely.

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, legislative amendments and changing attitudes towards different offences.

This report considers changes in sentencing practice caused by the sentencing guidelines only.

Sentencing guidelines

During its eighth year (to 31 March 2018), the Council published the following definitive guidelines:

- *Overarching Principles: Domestic Abuse*
- *Bladed Articles and Offensive Weapons*
- *Terrorism Offences*

Overarching Principles: Domestic Abuse

A large number of offenders are convicted each year for offences related to domestic abuse so any impact that the guideline may have on increasing sentencing severity could result in a substantial cumulative effect on prison places and probation resources. However, the evidence collected to inform the resource assessment indicated that many sentencers already increase their sentences where the offence has been committed within a domestic context. For those who do not, some may increase their sentence as a result of the new guideline but others may opt for a community order, following the guideline's emphasis on rehabilitation and the need to consider the most appropriate sentence to address the offending behaviour.

Overall, it is likely that there will be an increase in severity as courts apply the new guideline, which ensures that sentencers treat cases committed in a domestic context as more serious than those committed in a non-domestic context. However, the exact magnitude of any increase, or any change in the distribution of cases across different disposals, is impossible to predict with any greater precision.

It should be noted that most of the evidence collected to inform this assessment has been for adults (those aged 18 and over) only, whereas the guideline applies to anyone aged 16 or over. However, when sentencing offenders aged 16 to 18 for offences related to domestic abuse, sentencers are instructed to refer to the Council's *Sentencing Children and Young People – Overarching Principles* guideline, alongside the *Domestic Abuse* guideline. The children and young people guideline, which came into effect on 1 June 2017, states that: “Custodial sentences must be a last resort for children and young people”, and emphasises the aim of the youth justice system as being to prevent reoffending, with a focus on rehabilitation. It is expected that the new *Overarching Principles: Domestic Abuse* guideline will not change average sentencing practice for 16- and 17-year olds but, even if some small changes were observed, the volumes are low enough that there would be little impact on correctional resources.

Bladed Articles and Offensive Weapons

Bladed Articles and Offensive Weapons – Possession (adults)

Under the new guideline, any offences involving possession of a bladed article will fall within high culpability (category A). At the lower level of harm (category A2), this will attract a minimum starting point of six months' custody, with a sentence range from 3 to 12 months' custody. Because a high proportion of offenders currently receive a non-custodial sentence, it is anticipated that, under the new guideline, more offenders convicted for possession of a bladed article will receive a custodial sentence compared with current sentencing practice. This will have an impact on prison and probation resources.

An estimate of the potential uplift in custodial sentences that may occur can be calculated by assuming that all offenders who currently receive a non-custodial sentence for possession of a bladed article will now receive a short custodial sentence. Using 2016 Court Proceedings Database (CPD) data as a guide and, assuming that custodial sentences are suspended at the same rate as in 2016, this would result in the need for around 80 additional prison places per year, at a net cost of around £2.5 million. This breaks down as a cost of around £1.9 million in prison costs and £620,000 in probation costs (comprised of a saving from fewer community orders and a cost due to more suspended sentence orders and more offenders requiring post-sentence supervision when released from custody).

However, as sentences over the last decade have gradually become more severe for possession of a bladed article, with substantial increases in both the custody rate and the average custodial sentence length (ACSL), it could be expected that sentencing severity would continue to rise in absence of the guideline. Any increase observed following the introduction of the guideline may be largely due to a long-term increase and not solely due to the guideline itself. It is therefore likely that the costs directly related to the guideline will be lower than estimated.

The new guideline also reflects recent legislation, which states that offenders convicted of a second or subsequent offence of possession of a bladed article or offensive weapon should receive a minimum custodial sentence of six months' imprisonment. As a result, there may be an increase in the number of offenders receiving custodial sentences for a second or subsequent offence. However, this impact would be as a result of the legislation and not due to the sentencing guideline.

Bladed Articles and Offensive Weapons – Threats (adults)

Under the new guideline, threatening offences attract a starting point of custody, with an offence range of six months' custody up to three years. Current sentencing practice shows that in 2016 only around 20 offenders received either a conditional discharge, a fine or a community sentence for these offences.

While there is currently no specific guideline for these offences, there is a statutory minimum sentence for threatening offences of six months' custody. The new guideline, therefore, reflects the legislation and, as a result, any increase in the number of offenders receiving custodial sentences is the impact of the legislation and not the sentencing guideline. It is, therefore, not anticipated that the guideline will have any impact on prison and probation resources for these offences.

Bladed Articles and Offensive Weapons – Possession/Threats (children and young people)

The Council's aim in developing this guideline was not to change sentencing practice but rather to produce a guideline that is accessible and useful to sentencers and to promote a more consistent approach to sentencing.

The new guideline incorporates recent legislation, which states that 16- and 17-year olds convicted of a threats offence, or a second or subsequent offence of possession of a bladed article or offensive weapon, should receive a minimum sentence of a four-month detention and training order (DTO). As a result, any increase in the number of offenders receiving DTOs for threats or for a second or subsequent offence of possession will reflect the impact of the legislation and not the sentencing guideline.

The Council does not anticipate that the guideline will have an effect on the number of community orders or custodial sentences imposed, or the length of community or custodial sentences. As a result, no significant impact on correctional resources is anticipated.

Terrorism Offences

This guideline is anticipated to increase sentences in some cases. However, the expected increases are mainly anticipated to affect offenders categorised at the lowest levels of harm and culpability. Because very few offenders overall are sentenced for these offences (because few are prosecuted), it is expected that the anticipated longer sentences imposed as a result of the guideline will have only a minimal impact on the prisons, with fewer than five additional prison places expected to be required as a result of the guideline.

There is expected to be a negligible impact on probation services as a result of the guideline. The vast majority of offenders sentenced for these offences are given immediate custodial sentences. For some of the offences with lower statutory maximum sentences, a high-level community order is available at the bottom of the sentencing range. A small number of offenders who are placed at the lowest levels of culpability and harm under the new guideline may now receive community orders when previously they may have received custodial sentences. Conversely, for some other parts of the guideline, a small number of offenders that receive suspended sentences under current

sentencing practice may receive immediate custodial sentences under the new guideline but, as only ten offenders were given suspended sentence orders between 2006 and 2016 for the offences covered by the guideline, any change would have only a very small impact.

The recent increases in UK-based terrorist activity may lead to greater numbers of defendants coming before the courts for these offences and, therefore, more offenders being sentenced. This would mean that the guideline would affect a larger number of offenders. However, as the overall number of offenders sentenced is very small, it is expected that an increase in volumes would have only a minor effect on the prison population and probation services.

We are aware that there may be changes to legislation in this area but, as no Bill had yet been announced at the time of publishing this report, the Council decided to publish the existing guidelines and will look to review or amend them at a future stage, if necessary.

Non-sentencing factors report

The Sentencing Council is required under the Coroners and Justice Act 2009 to prepare a report of non-sentencing factors to identify the quantitative effect that 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.

We begin this report by defining non-sentencing factors and explaining their importance to resource requirements in the criminal justice system. We then signpost the most recently published evidence on these factors.

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. We discuss this in our report on sentencing factors (see p20–2). However, non-sentencing factors also exert an important influence on requirements for correctional resources.

Non-sentencing factors are factors that do not relate to the sentencing practice of the courts but which may affect the resources required to give effect to sentences. For

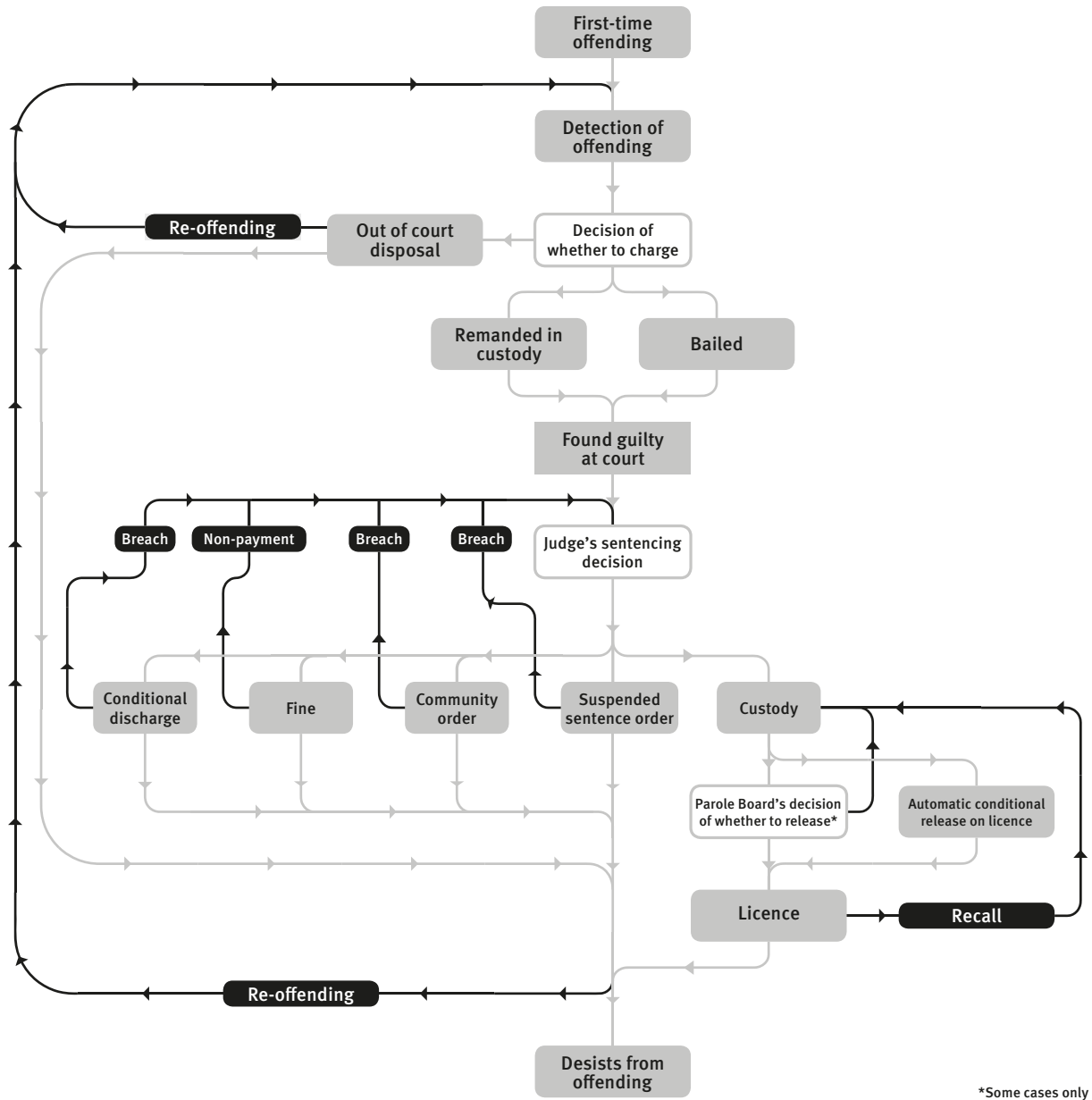
example, the volume of offenders coming before the courts is a non-sentencing factor: greater sentencing volumes lead to greater pressure on correctional resources, even if the courts' treatment of individual cases does not change. Release provisions are another example: changes in the length of time 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 relatively 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 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 will have knock-on effects in many other parts.

Figure 1



The remainder of this report examines the available data on non-sentencing factors. Because of the complexities explained above, we have not attempted to untangle the interactions between different non-sentencing factors to explain the causes of observed changes and their impact on resources.

Volume of sentences and composition of offences coming before the courts

The Ministry of Justice (MoJ) publishes *Criminal Justice System Statistics Quarterly*, which gives quarterly statistics on the volume of sentences and the offence types for which offenders are sentenced.²

For the most detailed information on sentencing outcomes, follow the link to *Criminal Justice System Statistics Quarterly: December 2017* to use the sentencing tool. The 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 breach the conditions of their licence or appear to be at risk of doing so. Because time served in custody is considerably more costly than time spent on licence, recall decisions have a substantial resource cost.

Statistics on recall from licence can be found in the MoJ publication, *Offender Management Statistics Quarterly*.³

The tables concerning licence recalls, Table 5.1 to Table 5.11, can be found via the link *Offender Management Statistics Quarterly: October to December 2017*. For example, Table 5.1 contains a summary of the number of licence recalls since 1984.

Post-sentence supervision

The Offender Rehabilitation Act 2014 expanded licence supervision, which means that since 1 February 2015 all offenders who receive a custodial sentence of less than two years are subject to compulsory post-sentence supervision (PSS) on their release for 12 months. MoJ publishes statistics on the number of offenders under PSS in *Offender Management Statistics Quarterly*.⁴ See Table 4.7 in the probation tables.

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 also be found in *Offender Management Statistics Quarterly*.⁵ Refer to the probation tables, specifically Table 4.11, which gives a breakdown of terminations of court orders by reason.

² <https://www.gov.uk/government/collections/criminal-justice-statistics-quarterly>

³ <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

⁴ *ibid*

⁵ *ibid*

Patterns of reoffending

MoJ publishes reoffending statistics in *Proven Reoffending Statistics*.⁶

The frequency and severity of reoffending is an important driver of changes in requirements for criminal justice resources. Detailed statistics of how reoffending rates are changing through time can be found in the report. Additional statistics can be found in supplementary tables.

Release decisions by the Parole Board

Many offenders are released from prison automatically under release provisions that are set by Parliament and MoJ. 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 annual reports of the Parole Board for England and Wales.⁷

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 MoJ's *Offender Management Statistics Quarterly*.⁸

The prison population tables can be found via the link *Offender Management Statistics Quarterly: October to December 2017*. For example, Table 1.1 contains data on how the remand population has changed through time.

⁶ <https://www.gov.uk/government/collections/proven-reoffending-statistics>

⁷ <https://www.gov.uk/government/publications?departments%5B%5D=parole-board>

⁸ <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

Communication

One of the aims of the Council is to work to improve public confidence in sentencing; one of its objectives is to promote awareness of sentencing and sentencing practice. The following pages outline our principal strands of work in these areas.

Working with the media

The Council has continued to publicise its work to general and specialist media, aiming to ensure that sentencers, criminal justice practitioners and the wider public are aware of what work the Council is undertaking, are kept informed about the publication of new guidelines and hear about consultations so that they can respond if interested. The press office has also continued to advise media on sentencing issues more generally and provide spokespeople for interview.

The five consultations and three definitive guidelines published over the period were communicated to the media, including criminal justice publications, national and regional print and broadcast channels and other specialist titles whenever relevant. Council members were available to talk to the media for each announcement and undertook a variety of interviews, including on high-profile, national programmes such as the BBC Breakfast TV, Sky News and Good Morning Britain, as well as on regional radio.

The work of the Council remained of significant interest to the media and, over the course of the year, there were 372 mentions of the Council in print media, 1,080 broadcast mentions and 2,275 mentions online, not including social media.

Our press office also routinely answers media enquiries about sentencing issues and provides spokespeople, where appropriate.

Working to engage the public and victims of crime

As in previous years, the Council has worked with partner organisations to improve understanding of sentencing among victims, witnesses and the public. The Witness Service continued to use our materials about sentencing, and these have also been supplied to the Magistrates in the Community initiative. The Council has advised other organisations, such as the National Justice Museum, on sentencing materials drafted by those organisations for use with the public.

The Council has also engaged with other criminal justice professionals, especially where they may act as a conduit to the public, to improve their understanding of sentencing. This has included for example, the police service. Activity has included ensuring police publications are reached with Council announcements, working with *Police Professional* magazine to provide articles

and features on aspects of sentencing and establishing relationships with relevant groups of officers, such as Family Liaison Officers, to establish how we can work together to ensure they have the information they need about sentencing.

Videos on our YouTube channel reached more than 137,000 views by the end of this period, with the videos describing how sentencing works generating consistent levels of interest and exceeding 100,000 views by year end, with 38,564 during the period of this report.

In December 2017, we commissioned an agency to undertake research into public attitudes to sentencing. The aim of the research was to gather insight for the Council into the public's attitudes towards, and their knowledge and understanding of, issues related to sentencing and the wider criminal justice system. It also investigated what sources of information most influence how people think about sentencing.

The findings of this research will be used to inform the Council's confidence and communication strategy, specifically our objective to provide members of the public with access to information that will demystify sentencing and dispel common misconceptions.

Developing relationships with partners and interested parties

To further our work to engage stakeholders and build relationships across the criminal justice system, Council members and staff from the Office of the Sentencing Council gave more than 20 speeches or presentations

covering all aspects of sentencing and developing guidelines. Our audiences included magistrates, judges, the police, academics, NGOs, solicitors and barristers.

We also accepted invitations to raise the profile of the Council in other jurisdictions, sharing our expertise on sentencing with senior judiciary in Australia and Uganda, and contributing to the work of the Sentencing Advisory Committee of the Supreme Court of the Eastern Caribbean.

Developing digital capability

Improving the digital Magistrates' Court Sentencing Guidelines

In June 2016 the Council launched an offline version of the Magistrates' Court Sentencing Guidelines (MCSG), representing a significant step forward in our move to providing fully digital guidelines.

The offline version of the MCSG is available on the iPads supplied free of charge to every magistrates' court by HM Courts and Tribunals Service (HMCTS). The app runs in parallel with the online version of the MCSG, which can be found on the Council's website. Together they provide magistrates with easy access to offence specific sentencing guidelines, overarching guidelines and explanatory materials, as well as a tool to help sentencers calculate fines.

Following extensive consultation with magistrates, legal advisers and other professional users of the digital guidelines, in December 2017 we launched a new version of the app. This new version included functionality to support magistrates and other professionals

in their work and give them easier, quicker access to guidelines and tools.

Digital guidelines for the Crown Court

We continued to make progress this year on our project to develop digital sentencing guidelines for the Crown Court.

The aim of this work is to deliver digital sentencing guidelines that meet the needs of judges and other professional practitioners, work effectively in the context of the Crown Court and are in line with HMCTS digital reforms.

During 2017, we undertook initial user research with Crown Court judges and other potential users to gain a clear understanding of the way in which the guidelines are used and what sentencers consider their priorities to be.

Informed by this research and what we have learned from developing digital guidelines for the magistrates' courts, we have prepared digital versions of all the sentencing guidelines used in the Crown Court. We will be testing the guidelines with users throughout summer 2018 with a view to launching on the Sentencing Council website in the autumn.

Welsh-language digital guidelines

In September 2016, the Sentencing Council agreed to produce a Welsh-language version of the digital MCSG. Translation of the first tranche of guidelines, including all the Council's overarching guidelines, is complete and work has started on the offence specific guidelines.

The Council is most grateful for the generous assistance of HMCTS Welsh Language Services with this work.

Website

The Council's website, www.sentencingcouncil.org.uk, has continued to be a source of information for sentencers and others in the criminal justice system, as well as for victims, witnesses, the public and journalists. Traffic to the website has increased significantly, with the number of unique visitors rising above a million for the first time: from 1 April 2017 to 31 March 2018, there were 1,214,518 unique visitors, compared with 814,713 in the previous year.

In December 2017 we commissioned an external agency to review our website and advise us on how we might improve the functionality and content to make it more accessible and useful to different audiences. The purpose of this work is to enable the Council to continue to serve our professional users while creating more compelling public-facing content that would contribute to meeting our objective of improving public confidence in sentencing.

Budget

Financial report

The cost of the Sentencing Council

The Sentencing Council's resources are made available through the Ministry of Justice (MoJ); the Council is not required to produce its own audited accounts. However, the Council's expenditure is an integral part of MoJ's resource account, which is subject to audit. The summary below reflects expenses directly incurred by the Council and is shown on an accrual basis.

	2017/18 (actual) £000s
Total funding allocation	1,455
Staff costs	1,116
Non-staff costs	323
Total expenditure	1,439

Appendices

Appendix A: About the Sentencing Council

The primary function of the Sentencing Council is to prepare sentencing guidelines,⁹ which the courts must follow unless it is in the interest of justice not to do so.¹⁰

The Council also fulfils other statutory functions:

- Publishing the resource implications in respect of the guidelines we draft and issue¹¹
- Monitoring the operation and effect of our sentencing guidelines, and drawing conclusions¹²
- Preparing a resource assessment to accompany new guidelines¹³
- Consulting when preparing guidelines¹⁴
- Promoting awareness of sentencing and sentencing practice¹⁵

- Publishing a sentencing factors report¹⁶
- Publishing a non-sentencing factors report¹⁷
- Publishing an annual report¹⁸

Governance

The Sentencing Council is an advisory non-departmental public body (NDPB) of the Ministry of Justice (MoJ). Unlike most advisory NDPBs, however, the Council's primary role is not to advise Government ministers but to provide guidance to sentencers.

The Council is independent of the government and the judiciary with regard to the guidelines we issue to courts, our impact assessments, our publications, how we promote awareness of sentencing and our approach to delivering these duties.

The Council is accountable to Parliament for the delivery of our statutory remit set out in the Coroners and Justice Act 2009. Under section 119 of the Act, the Council must make

9 s.120 Coroners and Justice Act 2009

10 s.125(1) *ibid*

11 s.127 *ibid*

12 s.128 *ibid*

13 s.127 *ibid*

14 s.120(6) *ibid*

15 s.129 *ibid*

16 s.130 *ibid*

17 s.131 *ibid*

18 s.119 *ibid*

an annual report to the Lord Chancellor on how we have exercised our 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 our use of public funds and for protecting our independence.

Section 133 of the 2009 Act states that the Lord Chancellor may provide the Council with such assistance as we request in connection with the performance of our functions.

The Council is accountable to the Permanent Secretary at MoJ as Accounting Officer and to ministers for the efficient and proper use of public funds delegated to the Council, in accordance with MoJ 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, Justice and Courts Policy Group at MoJ. The Head of the Office of the Sentencing Council is responsible for the management and proper use of the budget.

The Director General, Offender Reform and Commissioning Group is accountable for ensuring that there are effective arrangements for oversight of the Council in its statutory functions and as one of MoJ's arm's-length bodies.

How the Council operates

The Council is outward-facing, responsive and consultative. We draw on expertise from relevant fields where necessary while ensuring the legal sustainability of our 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 our independence. These bodies 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; the Judicial Office; the Justices' Clerks' Society; the Magistrates Association; the Ministry of Justice; the National Bench Chairs' 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. The minutes of these meetings are published on our website.¹⁹

¹⁹ <https://www.sentencingcouncil.org.uk/>

The Council has sub-groups to enable detailed work on three key areas of activity:

- Analysis and research – to advise and steer the Analysis and Research strategy, including identifying research priorities so that it aligns with the Council’s statutory commitments and work plan.
- Confidence and Communication – to advise on and steer the work programme for the Communication team so that it aligns with the Council’s statutory commitments and work plan.
- Governance – to support the Council in responsibilities for issues of risk, control and governance, by reviewing the comprehensiveness and reliability of assurances on governance, risk management, the control environment and the integrity of financial statements.

The sub-groups’ roles are mandated by the Council, and all key decisions are escalated to the full membership.

Relationship with Parliament

The Council has a statutory requirement to consult Parliament, specifically the House of Commons Justice Select Committee.¹¹

In order to facilitate the work of the Committee, the Council informs all organisations and individuals who respond to our consultations that their responses may be shared with the Justice Select Committee.

The Office of the Sentencing Council

The Council is supported in its work by the Office of the Sentencing Council (OSC), in particular in:

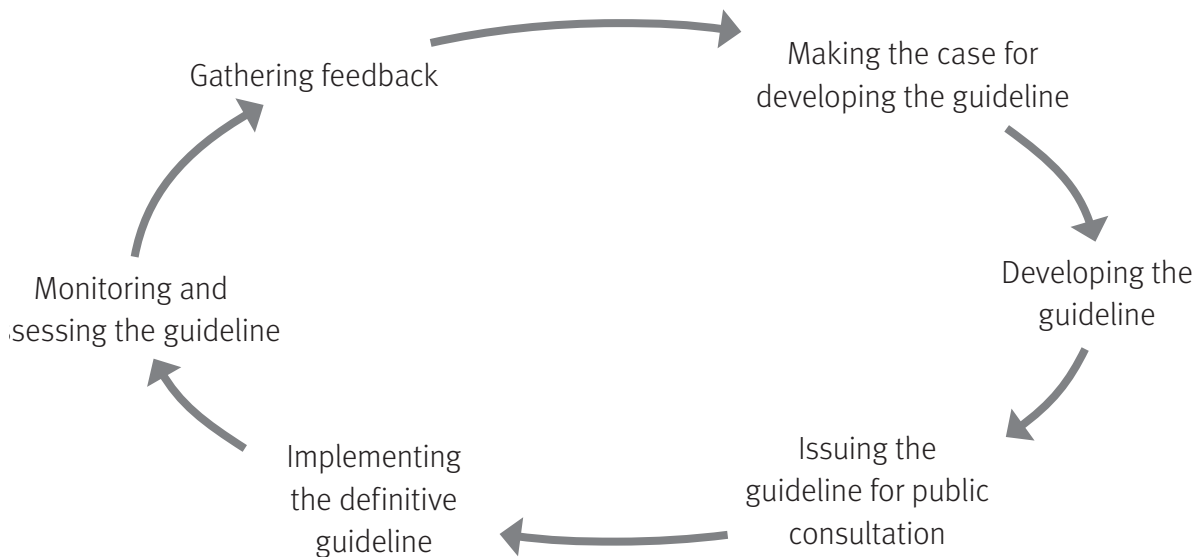
- preparing draft guidelines for consultation and publication, subject to approval from the Council;
- ensuring that the analytical obligations under the Act are met;
- providing legal advice to ensure that the Council exercises its functions in a legally sound manner;
- delivering communication activity to support the Council’s business; and
- providing efficient and accurate budget management, with an emphasis on value for money.

At 31 March 2018 there were 18 staff, including the Head of the Office of the Sentencing Council.

In the 2017 Civil Service Staff Engagement Survey, the OSC recorded a staff engagement index of 82 per cent. This places the Office well ahead of other arm’s-length bodies and high-performing units across the Civil Service.

Guideline development

The diagram below sets out the process involved in developing a guideline, which is done through a guideline development cycle. This is based on the policy cycle set out by HM Treasury in the *Green Book on Appraisal and Evaluation in Central Government* (2003) and allows a culture of continuous improvement to be embedded in the development process. The process, from first consideration by the Council to publication of a definitive guideline, can extend to 18 months or more. However, if the Council believes there to be a pressing need, as in the case of the *Terrorism Offences* guideline (see p17), the process can be expedited.



Appendix B: Membership of the Sentencing Council

The Lord Chief Justice of England and Wales, the Rt Hon Lord Justice Burnett, is President of the Council. In this role he oversees Council business and appoints judicial members, with the agreement of the Lord Chancellor.²⁰

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, with the agreement of the Lord Chief Justice.

Membership of the Council on 31 March 2018

Judicial members:

- The Right Honourable Lord Justice Treacy, appointed 6 April 2010, appointed as Chairman 4 November 2013
- Her Honour Judge Sarah Munro QC, appointed 6 April 2013
- The Right Honourable Lady Justice Hallett, appointed 27 November 2013
- The Honourable Mr Justice Goose QC, appointed 26 June 2014
- The Right Honourable Lord Justice Holroyde, appointed 6 April 2015
- Jill Gramann JP, appointed 6 April 2015

- The Honourable Mrs Justice McGowan, appointed 2 January 2017
- District Judge Rebecca Crane, appointed 1 April 2017

Non-judicial:

- Professor Julian Roberts, Professor of Criminology, University of Oxford, appointed 6 April 2010
- Alison Saunders, Director of Public Prosecutions and Head of the Crown Prosecution Service, appointed 1 November 2013
- Martin Graham, former Chief Executive of the Norfolk and Suffolk Community Rehabilitation Company, appointed 1 June 2015
- Mark Castle OBE, Chief Executive of Victim Support, appointed 1 August 2015
- Rosina Cottage QC, barrister, appointed 18 July 2016
- Chief Constable Simon Byrne QPM, Chief Constable, Cheshire Constabulary, appointed 1 September 2016

Register of members' interests

At 31 March 2018, no member of the Council had any personal or business interests to declare.

²⁰ The Rt Hon Lord Justice Burnett was appointed the Lord Chief Justice from 2 October 2017, following the retirement of the Rt Hon The Lord Thomas of Cwmgiedd as Lord Chief Justice and President of the Sentencing Council.

Copies of this report are available at **www.sentencingcouncil.org.uk**

For other enquiries, please contact:
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CROWN COURT



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