

Assessing the impact and implementation of the Sentencing Council's Robbery Definitive Guideline

Summary

- The Sentencing Council's *Robbery Definitive Guideline* came into force on 1 April 2016, replacing an earlier guideline issued by the Sentencing Council's predecessor body, the Sentencing Guidelines Council. It was designed to improve consistency in sentencing and was not anticipated to change sentencing practice significantly. The guideline covers all types of robbery and splits the single offence under section 8 of the Theft Act 1968 into three types, with different sentencing ranges for each:
 - Street and less sophisticated commercial;
 - Dwelling; and,
 - Professionally planned commercial robbery.
- The new guideline also had the aim of consolidating existing sentencing practice, ensuring that robberies with knives and guns should attract the toughest sentences. This was not expected to change sentence severity in practice, because the limited data available when the guideline was published suggested that these cases already received the toughest sentences.
- A quantitative and qualitative research approach was taken to assess the impact of the guideline on sentencing outcomes and assess whether there were any problems or issues with its implementation. This included analysing data from before and after the guideline came into force.
- A resource assessment that was previously undertaken to establish the likely effect of the guideline on correctional resources anticipated that there would be no impact on sentence severity. However, trend data showed that sentencing severity increased beyond the upper boundary of what would have been expected from normal fluctuations in sentencing after the guideline was introduced. The guideline therefore appeared to have an unanticipated, inflationary effect.
- The quantitative data suggested that this increase may be related to a high proportion of cases being categorised at the highest level of culpability (culpability A). Furthermore, regression analysis indicated that the new high culpability factor relating to producing a bladed article or firearm to threaten violence was associated with the greatest effect in increasing average custodial sentence length (ACSL). While this indicates that the guideline succeeded in ensuring that the robberies involving highly dangerous weapons

continued to attract the toughest sentences, the inclusion of this factor in the guideline also appears to have led to an unanticipated uplift.

- The introduction of ‘psychological harm’ as part of harm may also have played a role in the increase in sentencing severity, particularly in relation to dwelling and professionally planned commercial robberies, where psychological harm was often deemed serious.
- In interview, judges expressed broad support for the guideline. The general sense was that the guideline is working well and is being applied consistently. This was evidenced in the sentencing of two scenarios (as part of these interviews with judges), which resulted in consistent use of factors and consistent final sentences across judges.

Introduction

The Sentencing Council’s Robbery Definitive Guideline

Robbery is a relatively low volume, serious offence involving both violence and acquisitive elements. All robbery cases are dealt with in the Crown Court. In 2017, 2,800 adult offenders were sentenced for the robbery offences covered by the robbery guideline, a decrease from 3,900 sentenced in 2014 and a marked decrease from the most recent peak of 5,500 in 2011.¹ Offenders sentenced for robbery currently account for less than one per cent of all offenders sentenced, but because the sentences for robbery are long, those sentenced for these offences (including assault with intent to rob, which is not covered by the definitive guideline) made up 10 per cent of the sentenced prison population as at the end of June 2018.²

The Sentencing Guidelines Council (SGC)³ produced a robbery guideline which came into force in 2006, however after almost a decade in operation this guidance required updating, in particular to reflect concerns about robberies involving knives and firearms.⁴ The Sentencing Council consulted and produced the new robbery guideline, which came into force in April 2016.⁵

The SGC guideline provided one set of guidance covering street robbery, robbery of small businesses and less sophisticated commercial robbery.⁶ The Sentencing Council guideline covers these but, unlike the SGC guideline, now also includes specific guidance on sentencing professionally planned robbery and robbery in a dwelling. The new guideline was designed to ensure consistency in sentencing. It

¹ Source: Court Proceedings Database, Ministry of Justice.

² Source: Offender Management Statistics, Ministry of Justice.

³ The SGC was the predecessor body to the Sentencing Council.

⁴ Sentencing Council Press Release, 28th January 2016:

<https://www.sentencingcouncil.org.uk/news/item/new-robbery-sentencing-guidelines-put-emphasis-on-seriousness-of-robberies-involving-knives-and-guns/>

⁵ Sentencing Council (2016) Robbery: Definitive Guideline, available at

<https://www.sentencingcouncil.org.uk/publications/.../robbery-definitive-guideline-2>

⁶ Sentencing Guidelines Council (2006) Robbery: Definitive Guideline, available at

https://www.sentencingcouncil.org.uk/wp-content/uploads/web_robbery-guidelines.pdf

was also designed to ensure that those offences which cause serious harm to the victim and those which involve knives and firearms, including imitation firearms, continue to result in the toughest sentences, something that it was believed that sentencing practice already reflected; therefore, the new guideline was not anticipated to have an impact on sentencing severity.

The Sentencing Council guideline groups robberies into three types, with a separate guideline for each: street and less sophisticated commercial, professionally planned commercial, and dwelling. Within each guideline, the sentencing exercise takes the form of a two-step process. At step one, the guideline indicates the factors to be considered when deciding the offender's level of culpability and the harm caused. Culpability ranges from A (highest) to C (lowest) and harm ranges from 1 (highest) to 3 (lowest). Step two specifies an appropriate sentencing range and starting point based on the level culpability and harm decided at step one. The judge then takes into account aggravating and mitigating factors, which are specified in a non-exhaustive list, to determine the final sentence within the specified range. It is the application of step one that is likely to have the greatest influence on sentencing.

Street and less sophisticated commercial robbery is the most common type of robbery offence, comprising 85 per cent of offenders sentenced for robbery in 2014.⁷ For this type of robbery, the sentences indicated in the new guideline range from a community sentence to 12 years' custody.

When assessing the level of culpability, one of the factors to be taken into account is 'Use of a weapon to inflict violence'. This factor places the offence in the most serious category of culpability (A), as does, 'Production of a bladed article or firearm or imitation firearm to threaten violence', 'Use of very significant force in the commission of the offence' or 'Offence motivated by, or displaying hostility based on any of the following characteristics or presumed characteristics of the victims: religion, race, disability, sexual orientation or transgender identity'.

In terms of harm, the most serious offences (in level 1) are those which cause serious physical or psychological harm. Inversely, the least serious (level 3) are those where there is no or minimal harm, or in the case of businesses no or minimal detrimental effect. In between, level 2 harm, covers cases where there is neither serious nor minimal harm. Serious psychological harm is a feature which is new to this guideline. Listed amongst the aggravating factors for street and less sophisticated commercial robbery are, 'High value goods or sums targeted or obtained (whether economic, personal and sentimental)' and the targeting of a victim on the basis of their vulnerability.

⁷ The Ministry of Justice does not include the type of robbery in its administrative data collection. Data are therefore taken from the Crown Court Sentencing Survey (CCSS). The CCSS began on 1 October 2010 and data collection ceased on 31 March 2015, hence 2014 is the last full year and gives the most up-to-date breakdown. A survey form was expected to be completed for every new criminal case sentenced at the Crown Court in 2014. Where an offender was being sentenced for more than one offence on the same indictment, the sentencing judge was required to consider only the most severe or "principal" offence. In 2014, the survey data were collected using twelve different offence form types, one of which was robbery. The data was used to produce an annual publication which provides a high-level summary of the data collected, available at <http://www.sentencingcouncil.org.uk/analysis-and-research/ccss-annual-2014- results/>

Robberies in dwellings comprised 12 per cent of all offenders sentenced for robbery in 2014. For this type of robbery, the sentences indicated in the new guideline range from 1 to 16 years' custody. The main culpability factors are the same as those specified for street and less sophisticated commercial robbery, for example those relating to use or production of a weapon. However, as with professionally planned commercial robbery (see below), the offender's role within a group is also relevant (for example, whether they lead, play a significant or minimal role), as well as abuse of position. In addition, the level of planning is also relevant to culpability, with the highest level ascribed to dwelling robberies of a sophisticated, organised nature and the lowest level to those involving little or no planning. Harm is categorised in the same way as street and less sophisticated commercial robberies but in addition the value of the goods obtained or targeted is relevant and the highest level of harm takes into account soiling, ransacking and vandalism of the property, whereas the lowest refers to limited damage or disturbance to the property. These factors are all taken into account at step one of the sentencing process, ensuring they have maximum impact on the final sentence. At step two, the targeting of a victim on the basis of their vulnerability is listed as one of the aggravating features of a dwelling robbery, as is 'Restraint, detention or additional degradation of the victim'.

Professionally planned commercial robbery is the least common type of this offence, comprising just two per cent of offenders sentenced for robbery in 2014. For this type of robbery, the sentences indicated in the new guideline range from 1 year and 6 months to 20 years' custody. When assessing the level of culpability, the main factors to be taken into account are the same as for robbery of a dwelling. In relation to harm, as well as the level of psychological and/or physical harm caused, the high or low value of the goods is a factor, as is 'Serious detrimental effect on the business'.

Prior to the introduction of the guideline, a resource assessment was carried out to predict its likely impacts on prison and probation resources.⁸ The assessment showed that the average custodial sentence length for robbery has been increasing since 2007. The aim of the new robbery guideline was to replicate current sentencing practice rather than to increase the length of custodial sentences or change disposal types. The resource assessment noted that any change in practice could have a significant impact on prison places because a high proportion of offenders sentenced for robbery receive a custodial sentence. The limited data available at the time suggested that robberies committed with weapons were already amongst those which received the toughest sentences.⁹ It was therefore anticipated that the new guideline would not increase sentences but consolidate existing practice.

The research

The Sentencing Council has a statutory duty to monitor the operation of its guidelines. The Council commissioned the University of Leicester to assess the impact and implementation of the sentencing guideline for robbery.¹⁰ The

⁸ Sentencing Council (2016) Robbery: Final Resource Assessment, available at <https://www.sentencingcouncil.org.uk/wp.../Robbery-Final-Resource-Assessment.pdf>

⁹ Sentencing Council (2016) Robbery: Final Resource Assessment, para 5.2 available at <https://www.sentencingcouncil.org.uk/wp.../Robbery-Final-Resource-Assessment.pdf>

¹⁰ Sexual offences guidelines also formed part of the assessment and are the subject of a separate report. – please insert link when we have it post publication

assessment considers whether each guideline had an impact on sentencing outcomes (and whether these impacts differed from those expected) and the existence of any issues or problems with their implementation.

Methodology

Stage one

The Ministry of Justice's Court Proceedings Database (CPD) was used to explore trends in the types of disposals being imposed and the average custodial sentence lengths (ACSL) for robbery offences in the 12 months before the guideline came into effect (January – December 2015)¹¹ and the 12 months after (April 2016 – March 2017). It was not possible to break down the CPD data by type of robbery, so analyses were conducted on all types of robbery together. As the data included a mix of sentences of varying lengths and types, to ensure comparability between different types of sentences, they were converted into a continuous 'severity' scale, with scores ranging from 0 to 100, representing the full range of sentence outcomes, from discharge (score of 0) to 20 years' custody (score of 100). However, it is acknowledged that this measure is not perfect and so should not be seen as an absolute objective measure of sentence severity.

To take account of 'normal' fluctuations in the severity of sentencing (e.g. due to changes in severity of cases), time series analyses were undertaken using data from the CPD from 2005 to 2017. This allowed us to distinguish between these 'normal' fluctuations in sentencing and changes that could reasonably be attributed to the guideline.¹²

The time series model was created to forecast the likely range of sentence severity values for 21 months after the guideline came into force (April 2016 – December 2017)¹³, assuming that no guideline had been issued.

Stage two

Prior to the introduction of the Sentencing Council guideline, data were collected from courts through the Crown Court Sentencing Survey (CCSS), and then in a similar exercise post-guideline. The post-guideline data collection involved the distribution of a survey in the form of a paper or electronic PDF form to all Crown Courts in England and Wales with a request that judges complete a form for every offender sentenced for robbery between 1st November 2016 and 28th April 2017.

The response rate for the most recent survey was around 48 per cent, with 650 surveys received over the reporting period. These data were used to examine which guideline factors might have been influencing sentencing outcomes before and after the guideline was introduced. The analysis compared the factors impacting on sentences for 2013 and 2014 (before the implementation of the guideline) and for

¹¹ The analysis did not use data from the full 12 months before the guideline came into force in case judges' sentencing was impacted upon by the knowledge that new guideline was coming into effect (the guideline was published in January 2016 but did not come into force until April). This time frame also allowed for parity in terms of length of time and any potential impact of seasonality.

¹² See further detail at annex A.

¹³ These were the latest data available at the time of analysis.

November 2016 to 28 April 2017 (after implementation). Regression analyses were conducted to see which aggravating, mitigating, harm or culpability factors impacted on sentence severity score and ACSL. For this analysis, frequencies were generated for the aggravating, mitigating, harm and culpability factors. Separate analyses were conducted for the individual offences of dwelling robbery, street/less sophisticated commercial robbery and professionally planned commercial robbery.

Stage three

Stage three comprised a qualitative study involving semi-structured interviews with 26 Crown Court judges, mainly over the telephone. The majority of the participants were recruited via the Sentencing Council's existing research 'pool',¹⁴ but some were recruited via invitations circulated by court contacts. The interview schedule, devised in consultation with the Office of the Sentencing Council, aimed to explore with sentencers the extent to which the definitive guideline was being used in practice, whether or not they faced any difficulties when applying the guideline and the perceived existence of any unanticipated consequences.

In addition, in advance of the interview judges were asked to consider a scenario, either robbery in a dwelling or robbery in a taxi, and complete the sentencing survey which was being completed in courts at that time (see stage two). This was to facilitate discussion about their sentencing practices in these types of cases and explore how the guideline was being applied by different judges, in particular: whether they used it in a consistent way, and whether the judges' sentencing was in line with what we would expect for this scenario. Fuller details of the facts provided to the judges within these scenarios can be found in annex C.

The two scenarios were randomly allocated and sent to participants prior to the interview. Interviews were recorded (with judges' permission) and they lasted between 30 and 55 minutes. Interviews were then transcribed and all data were coded for themes.¹⁵

The reporting of the qualitative work below is an interpretative summary of some of the issues raised by participants in free-ranging discussions. Verbatim quotations have been selected from this analysis and are used for their vividness in capturing particular points of view, but they should not be taken as representative of the views of all judges. Rather, they are used to give a sense of the original data from which the interpretation was made, and to add detail to the points made.

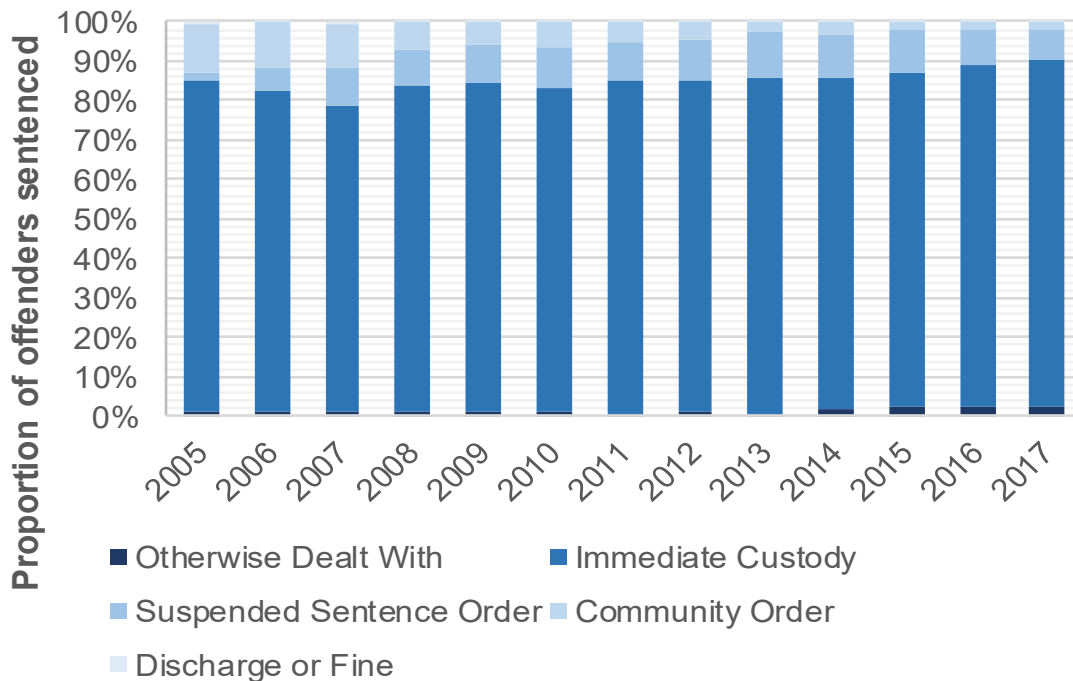
¹⁴ This is a database of judges who have agreed to be approached by the Sentencing Council to take part in research from time to time. It is acknowledged that selecting participants from a pool of willing judges might skew the sample in favour of judges who are well-disposed towards the Sentencing Council and/or are very used to our research. However, it should be noted that the pool is very large, including around one sixth of all Crown Court judges, so pool members are generally interviewed infrequently and so are not likely to be particularly familiar with our research. Moreover, a second sampling method was used (asking for volunteers via court contacts) and this should also help offset any bias in the sample.

¹⁵ The software package NVivo was used for this purpose.

Overall findings

The CPD analysis for all robbery offences¹⁶ showed that the vast majority of sentences imposed result in immediate custody. While this has been the case for the last 12 years, the percentage of immediate custodial sentences has been increasing since 2012, standing at 88 per cent in 2017. Over time, the proportion of offenders who received a community sentence has decreased and while the proportion of offenders receiving suspended sentences increased from 2005 to 2012, it stayed roughly the same between 2012 to 2015, and declined in 2016 and 2017. This finding corresponds with general trends in sentencing, whereby there was a decrease in community orders and an increase in suspended sentence orders between 2005 and 2015.¹⁷ Discharges and fines are rarely used for robbery.

Figure 1: Proportion of offenders sentenced for robbery, by year and disposal type 2005-17



The time series method allows us to disentangle the effect of pre-existing trends in sentencing from the effect of the introduction of the new guideline. As can be seen in figure 2, sentencing severity for robbery had been increasingly steadily from 2007 until the point of guideline implementation. It is difficult to say with confidence why this was, but CCSS data suggests that the offending coming before the courts may have become more serious during this period: for street or less sophisticated commercial robberies (the most common type), the proportion of offenders categorised at the lowest level of seriousness decreased in the years before the

¹⁶ In the CPD, robbery offences are not further sub-divided by type. Data are only available for all robbery offences.

¹⁷ Table Q5.1, *Criminal Justice Statistics Quarterly Update to December 2015*, Ministry of Justice, <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>

guideline came into force (from 31 per cent in 2012 to 27 per cent in 2014), while the proportion in the middle category of seriousness increased over this period (from 59 per cent to 64 per cent).¹⁸ In addition, the average number of aggravating factors taken into account in sentencing increased over this period (from an average of 2.8 aggravating factors taken into account in sentencing in 2012 to 2.9 in 2014), while the average number of mitigating factors taken into account decreased (from 1.7 to 1.5).¹⁹

The adjusted ACSL²⁰ increased significantly between the 12 months before and 12 months after the guideline came into force: from 5 years to 5 years and 4 months. There was a similarly statistically significant increase in the severity of sentences between these two time-periods. The time series graph (figure 2) illustrates this: at the point of guideline implementation in April 2016 there was a step change upwards, with a sharp rise following guideline implementation, which is beyond the upper estimate of where we would expect sentencing to fall had the guideline not been introduced (see the dotted line labelled 'forecast upper confidence limit', or 'forecast UCL').²¹ This suggests that sentence severity has increased beyond the level expected had the pre-guideline trend upwards merely continued, and so this rise is likely to have been attributable to the new guideline. As noted above, the resource assessment anticipated that there would be no impact on sentences, but the evidence suggests that the guideline has increased sentencing severity (for further detail on the time series method, see annex A).

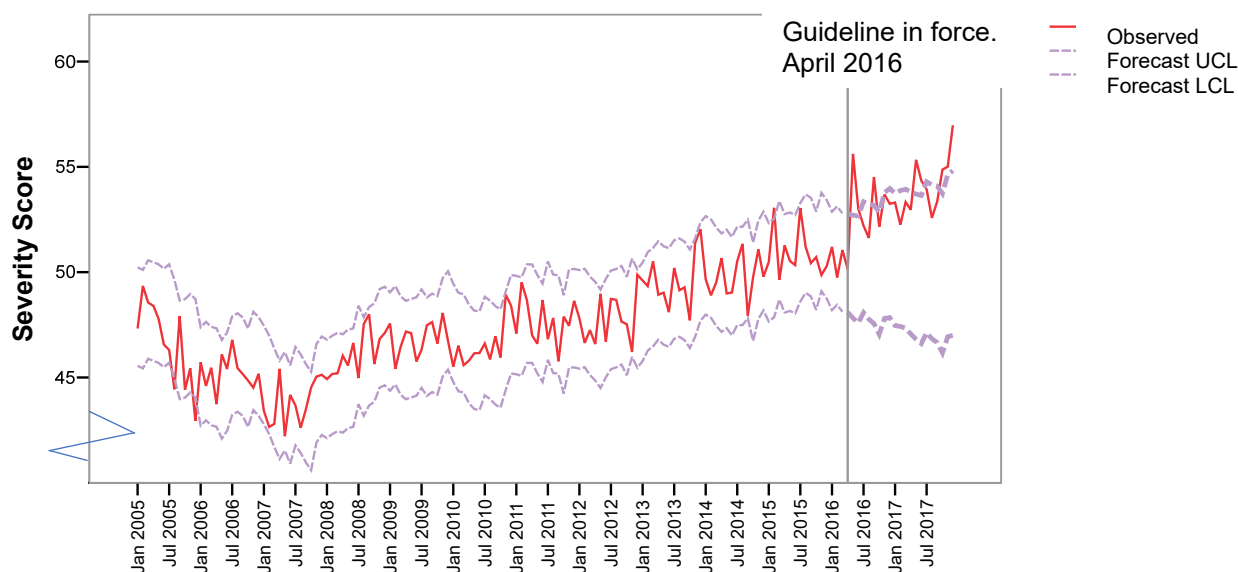
¹⁸ The analysis is based on the CCSS forms for adult offenders, and excludes records where the level of seriousness was missing. Where two boxes were ticked, for example the higher and middle levels of seriousness, the highest level of seriousness has been assumed to be the level of seriousness for the offender. Although the CCSS ran from late 2010, the 2012 dataset is the earliest one we can confidently use for this particular analysis.

¹⁹ The averages calculated represent the average number of factors ticked, where these factors were in the list presented on the CCSS form (there were 10 aggravating factors and 14 mitigating factors listed on the form). The CCSS form also had free text options for the sentencer to provide information about any other aggravating or mitigating factors taken into account when sentencing. These other factors, which were not listed on the form, have not been included in this analysis.

²⁰ This is ACSL as estimated pre-guilty plea, derived from post guilty plea data.

²¹ On the graphs the dotted lines show the confidence interval (also called the margin of error) of the estimate. At the 95 per cent confidence level, over many repeats of a survey under the same conditions, it is expected that the confidence interval would contain the true population value 95 times out of 100.

Figure 2: Sentencing severity time series analysis for all robbery offences²²



Since street/less sophisticated commercial robberies constitute around 85 per cent of robberies, any changes in the way this type of robbery was sentenced after the guideline took effect is likely to be driving the overall trend. As discussed in detail below, the survey data suggests that this was most likely due to the high proportion of cases falling into culpability A and the new guideline’s treatment of weapons.

The CCSS and survey data also suggest other possible reasons which may have contributed to the uplift in sentencing. For dwelling and professionally planned commercial robbery, there was a tendency not only for culpability to fall into A, but also for harm to fall into category 1, with 30 per cent and 56 per cent²³ of dwelling and professionally planned commercial robbery cases respectively being placed in this category (compared to only 10 per cent for street/less sophisticated commercial). As discussed below, this appeared to be linked to the high incidence of what was deemed to be ‘serious’ psychological harm. This was a new factor in the Sentencing Council guideline, present in around of third of dwelling and professionally planned commercial robberies.

While step one of the guideline is likely to have the highest influence on sentencing patterns, changes in the use of aggravating and mitigating factors may also have an effect. For example, for street/less sophisticated commercial robbery, the proportion of cases in which aggravating factors *only*, or both aggravating *and* mitigating factors were taken into account were similar at both times (31 per cent and 26 per cent; and 64 per cent and 65 per cent, respectively). However, the proportion of cases in which

²² The number on the vertical axes is the sentencing severity score. UCL refers to the upper 95% confidence interval limit. LCL refers to the lower 95% confidence interval limit.

²³ These percentages should be treated with caution because the sample size for dwelling robbery was low (n=80) and for professionally planned commercial, it was very low (n = 40). See annex B for tables.

any mitigating factors were taken into account fell post-guideline (from 73 per cent to 65 per cent), which may also help to account for the increase in sentencing severity. One reason for this decrease in the use of mitigating factors may have been the fact that some offence specific mitigating factors which were listed in the SGC guideline are not present in the Sentencing Council guideline at step one or step two. These included 'Peripheral involvement', 'Voluntary return of property taken', 'Unplanned/opportunistic' and 'Peer group pressure'.

During interviews, many judges commented positively on the guideline, considering it to be helpful, straightforward and a considerable improvement on the previous guidance. Judges were supportive of the recognition and categorisation of the different robbery types in the new guideline:

It's far better than the original robbery guideline, which was too limited in its outlook. It didn't deal really with professionally planned commercial robberies, and it didn't really deal with ... robberies in dwelling houses.

In particular, the new guideline's explicit recognition of dwelling and professionally planned robbery was held to be a significant improvement. Whilst some judges felt that the guideline had increased sentence levels, those that commented to this effect were supportive of this increase. Judges were also supportive of the guideline ranges, although some felt that the guideline could still lead to sentences which were too low. Judges' comments and performance on a scenario-based sentencing exercise revealed that they used the guideline in a consistent manner and had no major difficulties with its interpretation and implementation.

Offence specific findings

Analyses of CCSS data from before the guideline and new data collected post guideline implementation were conducted separately for the three offences of street/less sophisticated commercial robbery, dwelling robbery, and professionally planned commercial robbery. The results of this quantitative analysis and some of the offence specific qualitative findings from interviews with Crown Court judges are discussed below.

Street/less sophisticated commercial robbery

The quantitative data indicated that the sentencing severity for street and less sophisticated commercial robbery increased significantly after the introduction of the new guideline, with the adjusted ACSL for this offence increasing from 4 years and 3 months in 2013/14 to 4 years and 11 months in 2016/17.²⁴ This concurred with judges' subjective perceptions: in interviews, judges commented that the new guideline involved an uplift in sentencing in relation to street robbery. This increase was generally considered to be appropriate, and judges were broadly content with

²⁴ While the finding that the ACSL has increased is supported by the courts data, these estimated ACSL figures should be treated with caution, because overall, sentence lengths from the CCSS and data collection were found to be higher than sentence lengths in the courts data (on average (mean) by two months for the CCSS data and by seven months for the 2016/17 data collection), and therefore the analysis may be biased towards higher values.

the sentencing ranges in the guideline. The one exception to this was that a few judges raised doubts regarding the range for a robbery which falls into the lowest category of both culpability and harm (offences falling into culpability C, harm 3), with some surprise being expressed with regards to the potential of a non-custodial sentence for street and less sophisticated commercial robbery.

The SGC guideline for street/less sophisticated commercial robbery had three categories of seriousness with associated sentencing starting points and ranges, whereas the Sentencing Council guideline has nine categories (and nine starting points and ranges). The only categories which are completely comparable are the highest level of seriousness (SGC guideline) and culpability A, harm 1 (SC guideline), both of which have starting points of eight years' custody with a range of 7 to 12 years. As shown in figures 3 and 4, the pre-guideline data showed eight per cent of cases were placed in the top category of seriousness by judges, a very similar proportion to the seven per cent of cases which were placed in culpability A and harm 1 under the new guideline. However, further analysis shows that while the adjusted ACSL for offenders categorised at the highest level of seriousness in the SGC guideline was 6 years 2 months, the adjusted ACSL for offenders categorised at culpability A, harm 1 in the new guideline was 8 years 9 months. This suggests that some of the uplift in sentencing may be due to increases in sentencing the top of the sentencing spectrum.

Figures 3 and 4 show the proportion of offenders falling into the harm and culpability levels pre- and post-guideline. If we examine how offenders were categorised post-guideline, we can see that whilst judges placed only 10 per cent of offenders sentenced to street/less sophisticated commercial robbery in the highest category of harm (1), they placed 44 per cent in the highest category of culpability, A (see figure 4). A categorisation of culpability A takes the judge to a starting point of at least four years, and so one reason for the uplift in sentencing may have been the high proportion of cases falling into this relatively high sentencing bracket.

Figure 3: Proportion of cases categorised across the three levels of seriousness in the pre-guideline (under the SGC *Street/Less Sophisticated Commercial* guideline)²⁵

Seriousness	Frequency
1 (most)	294 (8%)
2	2250 (63%)
3 (least)	1031 (29%)
TOTAL	3,575 ²⁶

²⁵ Source: CCSS for 2013 and 2014 combined, n = 3,575. Note there were 408 cases in the dataset where this information was missing.

²⁶ Source: 2016/17 data collection exercise, n = 412.

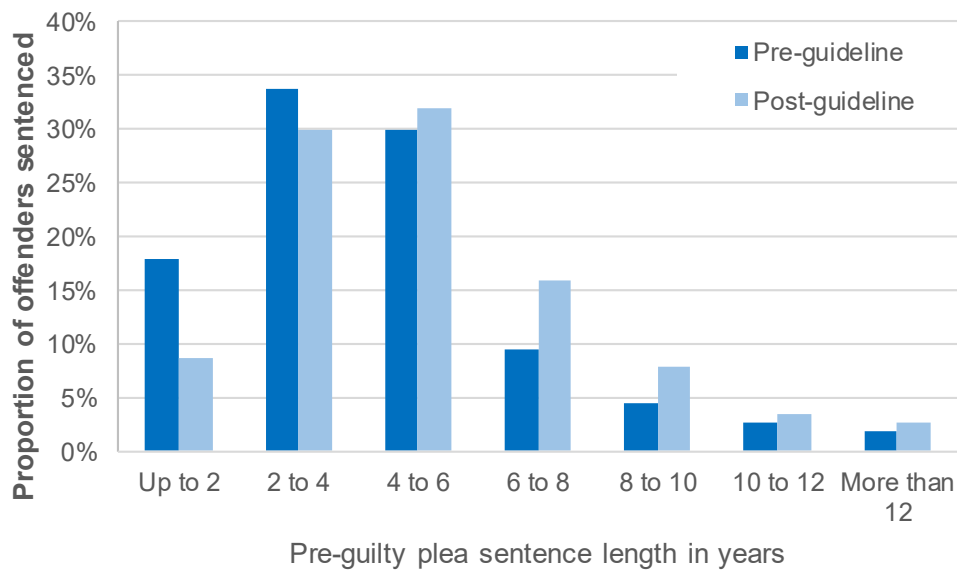
Figure 4: Proportion of cases categorised across the three levels of seriousness post-guideline (with levels as specified in the Sentencing Council *Street/Less Sophisticated Commercial* guideline)²⁷

Category	Culpability A	Culpability B	Culpability C	TOTAL
Harm 1	30 (7%)	8 (2%)	1 (0%)	39 (10%)
Harm 2	116 (28%)	118 (28%)	22 (5%)	256 (62%)
Harm 3	37 (9%)	42 (10%)	38 (9%)	117 (28%)
TOTAL	183 (44%)	168 (40%)	61 (15%)	412 (100%)

In support of this interpretation, figure 5 shows that after the new guideline was introduced there was a notable increase in the proportion of offenders who received immediate custodial sentences of *over* four years and a notable decrease in the proportion receiving sentences of *under* four years (prior to any reduction for guilty plea)²⁸. In particular, there was an increase of six percentage points in sentences of six to eight years, and three percentage points in sentences of eight to ten years, suggesting that some of the increase to sentence levels was at the highest levels of offending. Conversely, there was a decrease of nine percentage points in immediate custodial sentences of up to two years, suggesting that some of the increase in sentence levels was at the lowest levels of offending. Interestingly in this context, at interview a significant number of judges expressed the opinion that the new guideline ranges produced starting points that were perceived to be low, especially for a robbery at the lowest level of culpability and harm, which, in the case of street robbery, encompasses a community order. This difference in judges' perceptions compared with sentencing behaviour may suggest that judges are not seeing cases that warrant the lowest starting points in the guideline.

²⁷ Source: CCSS for 2013 and 2014 combined, n = 3,385 and 2016/17 data collection exercise, n = 418.

Figure 5: Pre-guilty plea sentence lengths for offenders sentenced to immediate custody for a street/less sophisticated commercial robbery, comparing pre and post-guideline²⁹



With respect to the pre-guideline data, the regression analysis showed that the use of a weapon had the greatest impact on sentencing, adding 15 months to the ACSL. Two aggravating factors, ‘Wearing a disguise’ and ‘Value of items taken’ were also found to have a statistically significant impact on sentencing, adding 13 and 12 months to the ACSL respectively. After the new guideline had come into force, the regression analysis showed that the new factors in culpability A relating to weapons³⁰ had the greatest impact on sentencing: in particular, production of a firearm and production of a bladed article to threaten violence were associated with an increase of 25 months and 18 months to the ACSL, respectively.³¹ ‘Production of a bladed article’ was ticked on a quarter of all survey forms, which indicates that it was not only an influential factor but also one which was frequently used. This suggests that it is likely to have been a major contributory factor to the uplift in sentencing, both by virtue of the fact that it would take offenders into culpability A, and because the presence of this factor was associated with a significant uplift in sentence in its own right.

The other factors that had a statistically significant impact on sentencing included ‘Use of a weapon to inflict violence’ (in culpability A) and ‘Production of a weapon other than a bladed article or firearm or imitation firearm to threaten violence’ (in

²⁹ Sentence length intervals include the lower bound, but do not include the upper bound sentence length. For example, the category ‘up to 2’ includes sentence lengths less than (but not equal to) 2 years, and ‘2 to 4’ includes sentence lengths of two years, and up to four years (but not including 4 years).

³⁰ In the SGC guideline, use of a weapon placed an offender in the highest category of seriousness, whereas production of a weapon and use to threaten placed it in the middle category. The inclusion of production of a bladed article, firearm or imitation firearm in culpability A was therefore an important change in the Sentencing Council guideline.

³¹ The factor in the guideline is, ‘Production of a bladed article or firearm or imitation firearm to threaten violence’, but the 2016/17 survey split out production of a bladed article from production of a firearm, hence the two weapons are discussed separately.

culpability B) which added 11 months to the ACSL in each case. Furthermore, the use of a weapon was commonly cited by the judges as being central to the sentence: out of approximately 500 cases of street/less sophisticated robbery, factors relating to weapons were spontaneously cited by judges as being the ‘single most important factor’ in their sentencing decision in around 17 per cent of cases.³² Answers to the question made reference to weapons either generically or by specifying the weapon (gun; firearm; knife; hammer, meat cleaver, etc.). These findings are consistent with the expectation that weapons, particularly knives and guns, would result in the toughest sentences being imposed, which was what the new guideline was designed to ensure. However, they also suggest that the inclusion of this specific set of factors relating to weapons may have been a key driver of the unexpected increase in sentencing since the guideline’s implementation.

At interview, judges suggested that the production and use of a weapon had been given appropriate weight in the guideline, and they generally found the guidance relating to weapons clear and useful. As part of the qualitative interviews, judges were asked to sentence a street/less sophisticated commercial robbery, and judges consistently and appropriately categorised the offence as culpability A on the basis of production of bladed article in this scenario. Indeed, all of the judges placed the case within the expected category (A2), which suggests that the guideline was being used consistently.

However, at interview some discrepancy of opinion emerged with regard to the distinction between the production of a bladed weapon and firearm (including imitation) to threaten violence (which would lead to culpability A) and the production of another type of weapon (which would lead to culpability B). Some judges approved of this distinction due to the level of fear and terror that such weapons instil: “because, more often than not, it’s the threat of what might happen that is the really frightening thing for the victim”. On the other hand, a couple of judges queried whether the elevation of knives and guns was justified, implying that use of any weapon should uniformly lead to a higher classification of culpability compared to mere production:

It feels wrong ... that you should have high culpability whether he’s actually fired the gun, or stabbed someone and caused serious injury; or on the other hand, has brandished a gun, but it’s unloaded, or brandished knife, but not actually struck out with it.

Overall, the quantitative and qualitative data indicate that that the introduction of the culpability factor, ‘Production of a bladed article or firearm or imitation firearm to threaten violence’ is contributing to the increase in sentencing levels, but there may be some disagreement in opinion (if not in practice) as to whether this should be the case.

In the regression, the new step one factor of ‘Serious physical and/or psychological harm’ was associated with an addition of 18 months to the ACSL. This suggests that this new factor, too, may have played some part in the uplift, although the incidence

³² At the end of the survey form, judges were asked to write what they saw as the ‘single most important factor’ affecting their sentence in an open text box. Most judges completed this box for every sentence they passed (464). However, not all identified a single factor, despite the wording of the question, but provided a line recording what they identified the most important factors to be.

of serious psychological harm was far lower in this type of robbery compared to dwelling and professionally planned commercial.

Turning to step two factors, the targeting of a vulnerable victim was identified as an aggravating factor in 30 per cent of street/less sophisticated commercial robbery cases and as such, was the fourth most commonly cited aggravating factor after previous convictions, location and timing of the offence. Furthermore, vulnerability was the second most commonly cited 'single most important factor' overall, after the use of a weapon, being mentioned spontaneously in around 10 per cent of cases. Significantly, however, this was not limited to the aggravating factor of 'Victim is targeted due to a vulnerability (or perceived vulnerability)', but also included the victim's vulnerability more generally, even though the guideline does not contain a factor on general vulnerability. Targeting a vulnerable victim was included at step two of the new guideline because early testing of the draft guideline suggested that the inclusion of this factor at step one held the potential to increase sentence levels. However, in interviews, a few judges considered that targeting a vulnerable victim, or the vulnerability of the victim in more general terms, should be taken into account earlier in the process when determining the level of culpability. Whilst this research suggested that most judges do consider vulnerability at stage two, as the new guideline requires, it also suggested that they place emphasis upon it. This was evident in the sentencing of the scenario, in which most judges identified the taxi-driver victim as vulnerable due to his job:

They're there at all times at night, ... they could be picking up all sorts of customers, they've got money. ... they're on their own. They haven't got anywhere else to go; they have to make a living. ... Even if they're 45 years old, male and fit – I think they're vulnerable.

The application of this aggravating factor ('Victim is targeted due to a vulnerability (or a perceived vulnerability)') to the taxi driving scenario also appeared to result in some inconsistency in approach, with some judges citing it, others not, although there was consistency in the final indicated sentence.

The targeting of goods of high value is an aggravating factor in the *Street and Less Sophisticated Commercial* guideline, and this was present in only 11 per cent of cases. At interview, judges generally felt that robbery is first and foremost a crime of violence, with the value of goods stolen being of secondary importance to other factors, such as production and use of a weapon, which typify violent crime. Judges were therefore generally supportive of the placing of value at step two in this particular guideline:

A street robbery is serious because you are having your stuff taken under threat or actual use of violence, and that is corrosive to our sense of security in society – and that makes it serious, whether it they take £5 or £50.

Lastly, turning to factors lessening the seriousness of street/less sophisticated commercial robbery, the factor associated with the highest decrease in sentence, where present, was age. Age was cited in 31 per cent of 2013/14 cases and was associated with a decrease in sentence of eight months. In the 2016/17 data relating to the new guideline, the mitigating factor of 'Age or lack of maturity where it affects the responsibility of the offender' was cited less often (in 19 per cent of cases) but, where present, was associated with a decrease in sentence of one year.

Robbery of a dwelling

Quantitative analysis showed that the adjusted ACSL for dwelling robberies increased substantially following implementation of the new guideline, from 7 years in 2013/14 to 8 years and 9 months in 2016/17.³³

Pre-guideline, the regression analysis showed that 'Use of a weapon' had the greatest impact on sentencing of dwelling cases, adding 19 months to the ACSL. Other statistically significant factors which had the greatest impact on sentencing were 'Degree of force or violence' and 'Wearing a disguise', which added 15 months and 14 months respectively, and are similar to the findings for street/less sophisticated commercial robbery, as detailed above. The number of cases of dwelling robbery in the post-guideline data was too small to conduct a reliable regression analysis. However, the results from the 'street' analysis may suggest that use of and production of a weapon, including a bladed article, may have pushed up sentencing for this offence too. Indeed, the production of a bladed article to threaten violence was ticked as present in 40 per cent of the 90 cases in the data, and 'Use of a weapon to inflict violence' was present in 23 per cent of cases.

It is also interesting to note that the new factor relating to psychological harm was identified in the quantitative data as being 'serious' in over a third of cases (34 per cent), with only 22 per cent of cases indicated as minimal psychological harm and 42 per cent falling between serious and minimal.³⁴ In contrast, physical harm was only cited as serious in 11 per cent of cases. This perhaps reflects the view expressed by a small number of judges during interviews that harm is inherent in a dwelling robbery because of the expectation of safety inside the home which is seriously undermined by an offence committed there:

I think being robbed in your home is more serious than being robbed in the street, where at least there is an acceptance that you might be subject to a degree of vulnerability – but in your home, you expect to be safe.

Given the frequency with which psychological harm was observed, the explicit recognition of psychological harm as a discrete factor in the new guideline may therefore have contributed to the increase in sentencing for this offence.

The outcome of the sentencing exercise in interview demonstrated that judges applied the guideline for dwelling robbery fairly consistently, with over half categorising the scenario as falling within category 2A of the guideline, as expected, and all judges reaching end sentences of between 4 and 6 years. Most judges, although not all, considered that the level of force used by the offender amounted to 'very significant force', and identified this factor (amongst others) as requiring the offence to be categorised as high culpability. It might be expected that 'Very

³³ While the finding that the ACSL has increased is supported by the courts data, these estimated ACSL figures should be treated with caution, because sentence lengths from the CCSS and data collection were found to be higher than sentence lengths in the courts data (on average by two months for the CCSS data and by 6 months for the 2016/17 data collection), and therefore the analysis may be biased towards higher values.

³⁴ Although in the robbery guideline both psychological and physical harm are integrated into one factor, on the data collection form the two types of harm were split out, enabling us to separate the two for the purpose of analysis.

significant' force would usually result in significant physical harm, but this was not viewed as the case in either this scenario or the street/less sophisticated commercial one. This, however, suggests that the guideline is working as intended as high culpability was not highly interlinked to the existence of significant harm, so that the one was not seen as necessitating the other, but rather the dimensions of harm and culpability were fully separate. In contrast to the 'street' scenario, where there was variability over whether the taxi driver was seen as targeted because of his vulnerability, all judges who reviewed the 'dwelling' scenario identified 'Victim is targeted due to a vulnerability (or perceived vulnerability)' (a man in his 50s with mobility problems as a result of a stroke) as being an aggravating factor. Many identified the victim's vulnerability as being the 'single most important factor'. Indeed, a few judges explicitly commented that the vulnerability of the victim was a factor (among others)³⁵ in their decision to categorise the case as culpability level A, even though victim vulnerability is not a factor at step one. One judge said: "it's not an aggravating factor, it's the thing that should set the standard for the sentence".

Overall, in interview, judges noted that it was important to have specific guidance on dwelling robbery. Some judges noted that previously, in lieu of guidance, they would often consult the guideline on aggravated burglary.³⁶ It was perceived that the new dwelling robbery guideline produced outcomes that were broadly in line with sentences for aggravated burglary: "there's much more consistency between aggravated burglary and robbery in the home [under the new guideline]. I think that was helpful as there was a bit of a dichotomy there. I think they've brought greater consistency ...". However, a few judges thought that the starting point for some robberies of a dwelling involving 'gangs' remained a little low.

Professionally planned commercial robbery

It is not possible to compare estimates of ACSL for professionally planned commercial robbery pre and post the introduction of the Sentencing Council guideline, or to conduct regression analysis, because there were too few cases of this type in the 2016/17 data to produce an accurate post-guideline estimate. However, from the survey data it is possible to compare how frequently factors were taken into account by judges in sentencing. For professionally planned commercial robbery, the most frequently cited factors by judges before the guideline were: 'Use of a weapon' (51 per cent), 'Targeting of a vulnerable victim' (42 per cent), 'Member of a group or gang' (40 per cent) and 'Wearing a disguise' (36 per cent). The factors which were associated with the greatest impact on sentencing, pre-guideline were 'Use of a weapon', which added 31 months to ACSL, as well as 'Wearing a disguise', adding 24 months.

³⁵ Other factors included: 'Production of a bladed article or firearm or imitation firearm to threaten violence', 'Use of a weapon to inflict violence' and 'Use of very significant force in the commission of the offence'.

³⁶ Aggravated burglary is committed when an offender enters a building as a trespasser (i.e. without permission) and steals or attempts to steal (or commits grievous bodily harm) and has with them a weapon or explosive(s). Dwelling robbery is committed when an offender steals and uses force or threats of force to do so in a dwelling.

Similar factors were cited as important after the guideline: Production of bladed article to threaten violence³⁷ (48 per cent), 'Use of very significant force in the commission of the offence' (27 per cent), 'Attempt to conceal identity (for example, wearing a balaclava or hood' (79 per cent) and 'Attempts to conceal/dispose of evidence' (41 per cent). Psychological harm was ticked as 'serious' in a third of cases (33 per cent), with only 17 per cent of cases indicated as minimal psychological harm. However, physical harm was cited as serious in 27 per cent of cases and minimal in 42 per cent. As with dwelling robberies, it may be that there is an inherent assumption that psychological harm is caused because of the nature of the offence, hence a lower threshold may be required to push this type of case into 'serious' psychological harm.

The sentencing scenarios discussed by the judges did not include an example of a professionally planned commercial robbery but some judges who had experience of sentencing such offences, which was uncommon since these offences are low in volume, drew on cases and emphasised the weapons and the terror caused. Concern was expressed that the previous guidance led to sentences which were too low, particularly in cases which did *not* involve the use of a firearm. They felt this omission had now been rectified in the new guideline. It was also recognised that in professionally planned robberies, high value of the goods targeted or obtained could and should increase the sentence. At the same time, it was noted that "high value robberies are quite rare". However, as discussed earlier, many judges noted that robbery was first and foremost a crime of violence. As such, violence would tend to be the key determinative factor, as opposed to the value of the goods.³⁸

Conclusion

This assessment of the impact and implementation of the Sentencing Council's *Robbery Definitive Guideline* indicated that the guideline led to an unanticipated increase in sentence severity, with sentence levels increasing above the upper boundary of our estimate of what the sentencing trend would have looked like, had the guideline not been introduced. Analysis of survey data suggests that a key reason for this increase may have been the fact that a high proportion of cases fell into culpability A in the new guideline, most commonly as a result of a bladed article being produced to threaten violence. This factor had a statistically significant impact on sentencing, its presence adding 18 months to the ACSL for street/less sophisticated commercial cases. Other new culpability factors relating to weapons, though less prevalent, were also shown to increase sentence severity. The presence of the new factor relating to psychological harm may also have had a role in increasing sentencing, particularly for the less common types of robbery, dwelling

³⁷ The factor in the guideline is, '*Production of a bladed article or firearm or imitation firearm to threaten violence*', but the 2016/17 survey split out production of a bladed article from production of a firearm, hence the two weapons are discussed separately.

and professionally planned commercial, in which psychological harm was often deemed serious.

Qualitative research suggested that the guideline has met with approval from judges, who generally agreed with key features of the guideline, including the treatment of weapons and value of the goods targeted or obtained. Judges were asked to carry out a scenario based sentencing exercise at interview and the results of this showed consistency in how the guideline was interpreted and used. There therefore appear to be no significant implementation issues with the guideline. Some judges felt that the guideline had increased sentences, but they were supportive of this increase, which implies a slight divergence from the perspective of the Council, since the guideline had the stated aim of not changing sentencing severity, albeit that this prediction was based on limited data. In the light of this analysis, the Council will revisit the guideline and consider making changes to it in due course.

Acknowledgements

The Sentencing Council would like to thank all the judges who completed the data collection forms and, in particular, the 26 judges who were interviewed for this piece of work.

Annexes

A. Quantitative method: technical annex

Analysis of trends in outcomes and ACSLs do not take account of 'normal' fluctuations in the average severity of sentencing over time due to changes in sentencing practice which are unrelated to guidelines – e.g. the changing number and seriousness of cases coming before the courts, changes in charging practice, etc. The data was therefore also used to conduct a time series analysis using data from the CPD from 2005 to 2017. Time series analysis allowed us to distinguish between these 'normal' fluctuations in sentencing and changes that could reasonably be attributed to the guideline, by taking historic trends into account and using these to predict what future values might have been in the absence of the guideline. These time series models allowed us to forecast likely sentencing outcomes in the absence of the guideline and then compare this to what did happen, by seeing if the actual trend in sentence severity was within the 'forecasted severity region' in the model. If average severity stayed within the 'forecasted severity region' when the guideline came into force, then this suggests that the guideline did not have an impact on average sentences, whereas if average severity went outside of this region, then the guideline may have caused changes to average sentences. Statistical software was used to determine the best fitting time series model for the dependent variable of sentencing severity. These models were then used to produce forecasts for sentencing severity. The time series model produced for robbery shows a forecast which becomes more uncertain over time, due to the previous volatility in the data (average sentencing severity for robbery both increased and decreased during certain points in the decade before the new guideline came into force). The model shows that, in the absence of the guideline, average severity might have increased or decreased within the confidence limits.

The regressions were conducted with simultaneous entry of predictors. Due to the large number of aggravating, mitigating, harm and culpability factors, it was decided to enter only those factors that reached a 5 per cent frequency threshold for each offence. Where there were smaller samples, this cut-off was raised to a frequency of 10 cases in which the factor was cited as being relevant to sentencing, regardless of percentage. Doing this also ensured that the analyses would detect at least a medium effect in terms of the ratio of number of predictors/number of cases.

B. Comparison of categorisation pre and post Sentencing Council guideline for dwelling and professionally planned commercial robbery

Dwelling

Seriousness (2013/14)	Frequency
1 (most)	90 (30.3%)
2	164 (55.2%)
3 (least)	43 (14.5%)
TOTAL	297

Category (2016/17)	Culpability A	Culpability B	Culpability C	TOTAL
Harm 1	22	2	0	24 (30.0%)
Harm 2	17	21	3	41 (51.2%)
Harm 3	4	7	4	15 (18.8%)
TOTAL	43 (53.8%)	30 (37.5%)	7 (8.8%)	80 (100%)

Professionally planned commercial

Seriousness (2013/14)	Frequency
1 (most)	14 (20.9%)
2	37 (55.2%)
3 (least)	16 (23.9%)
TOTAL	67 (100%)

Category (2016/17)	Culpability A	Culpability B	Culpability C	TOTAL
Harm 1	18	4	1	23 (56.1%)
Harm 2	12	5	0	17 (41.5%)
Harm 3	0	1	0	1 (2.4%)
TOTAL	30 (73.2%)	10 (24.4%)	1 (2.4%)	41 (100%)

Annex C: Sentencing exercises

Street/less sophisticated commercial scenario

The offender, H aged 25, was on bail for an offence of ABH. At 6am he picked up a taxi and asked the driver to take him to a shop where he could buy cigarettes. He bought the cigarettes and then continued the journey in the taxi. At the end of the journey he was charged £10, but instead of paying the fare he pulled a knife, grabbed the taxi driver around the neck, pushed the knife under his chin, and demanded money. The driver instinctively put his hand up and suffered a cut to his thumb and his finger. The injury was not serious but was painful. H then head butted the driver three times, causing a swelling to the nose, pain, but no permanent bony injury. H took £70 in cash and the PDA (a device used for guiding the driver to his next job) and searched the taxi before leaving.

He was subsequently identified through the phone he used to book the taxi and CCTV from the shop, which was confirmed by the victim picking him out at an identity parade. He pleaded guilty.

Dwelling scenario

The victim was a man in his fifties who had suffered a stroke and had mobility difficulties. He had previously met S, the offender. The victim was at home and heard a knock on his window. S was outside and asked to come in to use the toilet. He let her in through the front door. She went into the bathroom and when she came out, the victim asked her to leave. She did not leave and when the victim remonstrated with her, she picked up a knife from the kitchen. She said that she wanted his money and when he put up some resistance the knife was put to his throat so as to reinforce the threat. She dragged him to the bedroom and made threats to kill him unless he complied with the request for money. The victim had taken £50 out of his bank account earlier that day and he gave that to S. She then left.

The injuries he sustained were minor but he speaks in a victim personal statement of feeling depressed since the incident, having trouble sleeping and suffering nightmares about the incident.

S has no previous convictions. A pre-sentence report stated that the offences were committed whilst S was under the influence of class A drugs. The report indicated that adverse personal events, including a close bereavement and miscarriage, led to her reverting to the use of drugs at the time of the offence. Whilst in custody she had become drug-free through detoxing. She has a young child, now aged six.