

Costs and effectiveness of sentencing

1. The Council's duty in relation to this appears in two sections of the C&JA 2009: section 120, where the he cost of different sentences and their relative effectiveness in preventing reoffending, and section 129, which covers promoting awareness of this.
2. Clearly the 'effectiveness' of sentencing can be considered more broadly than simply the way in which it is effective in terms of reducing reoffending. However, given that the statute gives particular weight to this aspect, the Council has primarily chosen to focus on this.
3. The legislation itself does not specify how the Council must have regard to this factor, nor provide for how to weigh up this factor alongside the other matters to which the Council is required to have regard, some of which may be in conflict.
4. The Council's approach to this in recent years has been to produce an annual internal document outlining the latest research evidence in this area regarding reoffending. The evidence review is not intended directly to influence the Council's deliberations on any individual guideline but to supplement Council members' significant existing expertise and experience in sentencing matters, which is brought to bear in discussions when considering the development of guidelines.
5. Given the Council's limited budget and, therefore, our research capability, we have considered this to be a practical and proportionate way to ensure that all Council members have a shared understanding of the current literature relating to sentencing and reoffending.
6. In addition, the Council, where applicable, already considers issues related to effectiveness in the guidelines. For example, in *Domestic burglary*, it states:

Where the defendant is dependent on or has a propensity to misuse drugs and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under section 209 of the Criminal Justice Act 2003 may be a proper alternative to a short or moderate custodial sentence
7. Similarly, the Council's *Imposition* guideline includes 'realistic prospect of rehabilitation' as one of the factors that indicate that it may be appropriate to suspend a custodial sentence.
8. On costs, the Council has generally chosen not to address costs or cost-effectiveness in resource assessments explicitly beyond the inclusion of the costs of correctional resources. At one point, we included some limited additional information in the Annual Report, but have not done this recently.

9. There are two reasons why we have not pursued this area more fully: firstly, in any individual case, the cost of a sentence should not be considered when deciding upon the most appropriate disposal for that case. Secondly, meaningful analysis of the data in relation to cost-effectiveness is difficult and the resources required to do even a small amount of work in this area would be significant. It would be extremely difficult to isolate the effect of guidelines specifically on any reduction in reoffending or to identify, in a meaningful way, what the total cost of any guideline-related reoffending might be. For these reasons, whenever the Council has revisited this topic, for example following the recommendations of [Professor Bottoms' report](#),^[1] we have not been convinced of the value of carrying out additional research in this area or of integrating any such information within guidelines themselves.
10. However, the Council has been criticised in the past for not having done more in relation to this. As a result, we have considered what more we might do in this particular area but have identified a number of practical difficulties.
11. Resources are clearly a significant constraint. Carrying out or commissioning additional research of our own would divert resources away from other areas of the Council's activities, notably the production and monitoring of guidelines.
12. Further work would require the Council to take a view on how it defines 'effective' within this context. Ministry of Justice (MoJ) studies have a reasonably tight definition: proven reoffending within a year of release from custody, or the point of sentence for a community order. However, the Council is aware that there are arguments for alternative definitions within the academic community and, while there may be practical benefits for adopting a similar approach to the MoJ studies, the Council does not consider that there is a clear objective rationale for choosing that measure over another.
13. Finally, it is not obvious to what practical purpose carrying out further work in this area could be put. Our existing approach of bringing current research in this area to Council members' attention, and for them to have this in mind during their deliberations on individual guidelines, seems to work. This is, after all, just one of the matters to which the Council must have regard: current sentences, consistency, impact on victims, and the need to promote public confidence are all other matters that the Council must consider and weigh up when producing guidelines (see Annex B, which outlines all the Council's duties).

^[1] A Report on Research to Advise on how the Sentencing Council can best Exercise its Statutory Functions: <https://www.sentencingcouncil.org.uk/news/item/council-publishes-independent-review/>

14. We are also aware that there is a view from some quarters that that the Council should move beyond a strict focus on the statute – effectiveness of sentencing defined specifically in terms of reducing reoffending – and explore whether any work could be done in relation to the five purposes of sentencing more generally.^[2] Some also feel that the concept of ‘desistance’^[3] should feature more heavily, something about which much more is now known.
15. Bearing in mind the limitations to work in the area of effectiveness in sentencing outlined above, the Council is therefore seeking views as to what more we could do, either in terms of further research, or in the way that we currently have regard to this duty and the information we currently produce.

CONSULTATION QUESTIONS ON COSTS AND EFFECTIVENESS IN SENTENCING

Question 21: Do you have any views on the way the Council has addressed the duty to have regard to the costs of sentencing and their relative effectiveness in preventing re-offending?

Question 22: Do you have any view on other aspects more broadly in terms of the ‘effectiveness’ of sentencing that the Council might want to consider and if so, how we would go about doing this? To what extent should any further work be prioritised above other areas of the Council’s activities?

Question 23: Should the Council carry out additional research in the area of effectiveness of reducing reoffending? What should the additional research priorities be?

^[2] The purposes of sentencing: Criminal Justice Act 2003 S142(1):

(1) Any court dealing with an offender in respect of his offence must have regard to the following purposes of sentencing—

- (a) the punishment of offenders,
- (b) the reduction of crime (including its reduction by deterrence),
- (c) the reform and rehabilitation of offenders,
- (d) the protection of the public, and
- (e) the making of reparation by offenders to persons affected by their offences.

^[3] In the field of criminology, desistance is generally defined as the cessation of offending or other antisocial behaviour.

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