

**Sentencing Council meeting:**  
**Paper number:**

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**SC(21)APR06 – What next for the**  
**Sentencing Council – Effectiveness**  
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**Lead official:**

## **1 ISSUE**

1.1 This paper considers the responses to questions in the consultation regarding how the Council currently discharges its duties to consider the cost and effectiveness of different sentences.

## **2 RECOMMENDATION**

2.1 That the Council notes the range of responses to the consultation and:

- Considers views on the Council's current approach to assessing effectiveness and;
- considers suggestions as to further work and agrees action which could be undertaken to discharge this duty more fully.

## **3 CONSIDERATION**

3.1 S120(11)(e) of The Coroners and Justice Act 2009 provides that in developing guidelines the Council must have regard to the cost of different sentences and their relative effectiveness in preventing re-offending.

3.2 The relevant section of the consultation which discussed effectiveness is included at Annex A. Views were sought on how the Council has approached this duty to date, and what more could be done in this area. The consultation explained the narrow approach taken to considering costs to date in that 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. While views regarding this were sought and are included in this paper, the focus of the consultation and subsequently this paper predominantly relates to the effectiveness element of the duty.

## The Council's current approach to discharging the statutory duty relating to effectiveness

3.3 The approach currently taken to discharging this duty was determined in 2017 when the Council agreed that the Analysis and Research team should undertake a piece of work to assess what evidence was available on the effectiveness of sentencing in reducing reoffending and take a view as to the quality, consistency and comprehensiveness of this work. The A&R sub group, at the time led by Julian Roberts, subsequently considered what the Council could do in respect of fulfilling the statutory duty. It was recommended that a proportionate approach for the Council to fulfil its statutory responsibility to 'have regard to' the cost and effectiveness of sentencing would be to maintain an awareness and knowledge of current research in this area. It was agreed that an annual digest of current research and evidence in this area would be provided to all council members, together with any significant additional research or evidence that may become available during the year. It was agreed that the aim would not be that this information necessarily directly influenced deliberations on any individual guideline; rather, it would supplement council members' significant existing expertise and experience in sentencing matters and brought to bear in Council discussions when considering the development of guidelines. This approach was felt to be a proportionate response to the fulfilment of the Council's statutory responsibility in this area, given the current state of the evidence.

3.4 The consultation document explained the following in respect of how the Council currently considers effectiveness;

*"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.*

*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."*

The consultation explained the limitations of undertaking further work in this area. It highlighted that *"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.”*

As well as the resource burden, the consultation document explained that the cost of sentences should not be a consideration in determining an appropriate sentence, and that “*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. Finally, it was explained that; 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.”*

3.5 In January 2021 the Sentencing Academy published a review of key research findings, titled *The Effectiveness of Sentencing Options*, which has been included at Annex B. This also highlighted the complexities of measuring and defining effectiveness;

*“A common research strategy involves comparing the re-offending rates of different disposals. Drawing causal inferences from this research is challenging. Studies that compare re-offending rates by type of sentence can only show a correlation between the type of sentence and the outcome (desistance or re-offending). Many factors other than sentence type may explain offending. For example, people may have particular characteristics that make them more likely to re-offend regardless of the type of sentence imposed and certain crime categories have long been associated with high re-offending rates – again independent of the sentence imposed.*

*Effectiveness can also have alternate meanings. Policy-makers may wish sentences to be effective in the more complete sense of desistance. Desistance refers to a long-term cessation in criminality for those who had a pattern of offending (Sapouna et al. 2015). Yet studies on re-offending tend to follow ex-offenders for relatively short periods of time (one to three years is common). The absence of offending during those follow-up periods does not necessarily mean that these individuals have achieved desistance. Indeed, the studies tend only to count offences that are known to police and their perpetrators identified as ex-offenders. This means that ex-offenders who commit offences yet who evaded prosecution and punishment may be mistakenly counted as successes. As well, the limited follow-up periods do not necessarily detect desistance where the ex-offenders may have committed new offences outside the short time frame studied. Effectiveness could also be measured by*

*the extent to which the sentence addressed the individual's criminogenic needs. The term 'needs' here refers to those characteristics and problems that are amenable to treatment and, if addressed, will reduce the individual's likelihood of re-offending. For men, common criminogenic needs include drug/alcohol problems, underemployment and a lack of stable housing. For female offenders, needs may include a history of trauma, fractured family ties and sexual victimisation. Thus, a broader approach to effectiveness would consider how sentences foster improvements for offenders in such life areas as health, employment and family and social networks (Villettaz et al. 2015). Another definition of effectiveness would consider how well different sentences compensate victims or society in general (Mann and Bermingham 2020). Unfortunately, studies provide little information on this version of effectiveness. The emphasis in the effectiveness literature has long been upon re-offending rates over relatively short periods of time, rather than these other, broader conceptions."*

3.6 In relation to how the Council currently addresses the statutory duty on effectiveness the consultation asked; 'Do you have any views on the way the Council has addressed the duty to have regard to the costs of sentencing and and their relative effectiveness in preventing re-offending?'. Respondents did not necessarily agree that the Council could not go further to fulfil the duty or that the current approach works as set out in the consultation paper, and responses received were as follows;

You say that "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. This is because in any individual case, the cost of a sentence should not be considered when deciding upon the most appropriate disposal". Who says? I disagree strongly. If your ambition is to reduce re-offending in an economically sensible, or cost efficient way, you must consider costs. It is irresponsible not to do so. Not considering costs is not neutral in a number of ways. It also backs away from educating the public about the direct financial costs of imprisonment, as compared to other sentences.

You should not give up because "further work would require the Council to take a view on how it defines 'effective' within this context or what constitutes 'reoffending'". That is really basic – and crucial to any public confidence. If the SC can't say what it means by 'effective', who can the public rely on? You know well that relying on proven reoffending within a year of release from custody, or from the point of sentence for a community order is a pretty crazy measure, but what 'risks' would you like to encourage sentencers to take? The SC may have lost its way in failing to advocate adequately for individualised sentences.

You can't just put this in the "too difficult" box! You say in a footnote that "In the field of criminology, desistance is generally defined as the cessation of offending or other antisocial

behaviour". As part of your public engagement brief, you should expand this: we know that desistance is slow and difficult, and beset with traps and hurdles. There is a vast literature which you could bring to public attention in an engaging format (and I include the judiciary in the 'public' in this context).

- **Nicky Padfield**

3.7 While some respondents would like the Council to take the lead in defining what effectiveness is, others agreed that the issue is complex, multi-faceted and involves issues which are broader than the Council's remit of sentencing;

An issue we come across repeatedly is the personal circumstances of the offender including background and social status. Sadly, these factors if negative can have a debilitating effect throughout a person's life and often leading to criminality. Focussing purely on repeat offending fails to take into account social issues for an individual i.e. one size punishment fits all, and that is what we judge success or failure on. The reality is that courts see offenders with 40, 50, 60 convictions for petty theft, public order, drugs, assaults etc with a sprinkling of prison, rehab' and probation work yet are still offending. To task yourselves with assessing the success of sentencing without consideration of community intervention resources such as housing, health support and even education etc. is in my view naive. There are factors beyond mere sentencing that influence reoffending rates and this requirement should be monitored but not measured. It is the social factors considered during sentencing that are not captured in court results etc and it is those factors that need more work. - **Magistrate**

I think this is an almost impossible task. I have little confidence in the statistics on the effectiveness of community sentences in reducing reoffending and in times of austerity we don't spend nearly enough on rehabilitating offenders in prison or in the community. –

**Individual respondent**

Lowered sentences for admitting guilty does not prevent reoffending. Prison encourages more crime activity due to all the criminals, gangs and violence in prison as well as drugs and corrupt officers there. Improvement in the prison system is needed, they should work for their keep inside the prison and learn discipline rather than obedience. However the public needs to be kept safe, so longer sentences means safer society to an extent. The causes of crime should be dealt with to prevent the reoffending such as mental problems or unemployment etc. - **Anonymous respondent**

3.8 The following responses directly addressed the current approach;

We have a number of concerns about this (the current) approach:

1. Lack of transparency. There is no clear justification for withholding from the public domain the information on reoffending that is being circulated to Council members to inform their deliberations on the development of guidelines

2. Because of this lack of transparency, it is not clear where the evidence is being sought to bear in the formulation of a particular guideline and where it is not. It is perfectly reasonable for the Council to prioritise issues other than reoffending in relation to the development of particular guidelines. The CJA 2003 states that the process of sentencing involves a balance of five purposes, only two of which (the reduction of crime (including its reduction by deterrence) and the reform and rehabilitation of offenders) are relevant to reoffending. However, the Council should be transparent about what purposes it chooses to prioritise and the evidence, including on reoffending, that goes into informing its deliberations.

3. There are a number of guidelines, in particular on the imposition of community and custodial sentences, where much of the evidence on reoffending is in favour of community over custodial disposals. For these guidelines, it is particularly important that the evidence is made clear and the Council is transparent about how it is taken into account in the development of the guideline.

4. Publishing the evidence would contribute to the Council fulfilling its statutory duty to promote public awareness of the realities of sentencing and its related duty to promote public confidence in the criminal justice system. Therefore, we would favour a change to the current approach, prioritising transparency and the explicit consideration of evidence on reoffending relevant to each guideline. This could include:

1. The publication of the document outlining the latest research on reoffending
2. The publication of any relevant evidence on reoffending as part of the impact assessment of each guideline. - **Prison Reform Trust**

In the year to March 2020 the average length of a prison sentence stood at its highest level for a decade - 19.6 months (MoJ 2020). In 2020 forty-eight per cent of determinate prison sentences were over four years – in 2010 only thirty-three per cent of sentences were of that length (House of Commons 2020). In relation to ‘effectiveness’, it is difficult to accept, in light of the developments outlined above and Ministry of Justice statistical data, the Council’s assertion in the consultation paper that their current approach in this area ‘seems to work’. It is equally hard to agree with the suggestion that practical difficulties and resource

constraints overwhelm the Council's capacity to give due regard to this statutory duty -

**Howard League**

The SC's response to its statutory duty in this regard is to publish an 'annual internal report' summarising the latest research evidence regarding re-offending. This seems a rather modest step towards discharging the statutory duty. In its consultation document the Council concludes that this approach 'seems to work', but how do we know this, and who has determined what works? Is there any evidence or are there any examples of this information having influenced the guidelines' sentence recommendations? We recommend the Council produce and publish a document on this subject -- possibly every other year -- and in conjunction with the Ministry of Justice. This would inform the wider community about the research findings, and also help external users understand the information which feeds into the Council's guideline construction. **Sentencing Academy**

Why do you produce "an annual internal document outlining the latest research evidence in this area regarding reoffending". Not making it public might imply a nervousness about effective independent scrutiny. And why on earth is it not intended directly to influence the Council's deliberations? That is weird!..... "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". Surely not? If your guidelines were 'effective' in reducing re-offending, we wouldn't have the extraordinarily high levels of reconviction, about which you and the public should be very troubled. - **Nicky Padfield**

In paragraph 125, reference is made to the production of an annual internal document focused on latest research evidence regarding reoffending. The YJB understands the arguments defining 'success in reoffending', and appreciates that this can be a challenging area to navigate. However, we believe there would be merit in publishing the internal document that is referenced here to provide transparency around the way in which sentencing guidelines are in fact effecting reoffending rates. Of particular interest for the YJB, would also include information in relation to children, and the way in which the application of sentencing guidelines effect this (and to what extent). – **Youth Justice Board**

I note from the consultation paper that the Council acknowledges that it has not fully explored the relative cost and effectiveness of various sentencing approaches to date. Were the Council able to provide greater insight in this area, it would support policy development and improve our understanding of the impacts of our policies. However, I do also understand

that a greater focus on this must be considered in the context of the delivery of other priorities such as production of the guidelines and so may not be feasible. - **MOJ (Lord Chancellor)**

We would agree with the way the Council has addressed effectiveness in sentencing and in particular the issue of costs. We agree that the cost of a sentence should not be considered when deciding upon the most appropriate disposal. We also believe that further work in this area would not add significant value. It would not only prove difficult but divert resources away from other areas of the Councils activities - **Justices' Clerks Society**

3.9 While views differ on how and the extent to which the Council should consider evidence on effectiveness, responses illustrate a strong appetite for the Council to share evidence it does consider. While the consultation response stated that the Council considers an internal publication on effectiveness research, for various reasons this has not been consistent and the last report considered was in 2018. As suggested by a number of respondents, if the research were considered and published annually or bi-annually this could promote transparency and understanding of how the Council has had regard to effectiveness, and would allow for the limitations of any evidence to be highlighted. As responses illustrate, a number of respondents – even whilst accepting the resource constraints the Council are under – commented on the apparent lack of transparency of not publishing what it has and how it may appear as if evidence is ‘hidden’.

3.10 Publication would require a commitment to the task and have resource implications. If the work was conducted internally, it would require time to source the relevant studies, assess them for relevance and robustness and then synthesise them into a publishable document. The report would need to be peer reviewed and go through the standard approval processes; overall this would constitute a full project for a social researcher and would need to be built into our work plans. If we were to externally commission the work, the internal resource implications would be less (although some input would still be required), but we would need to set aside funds for the work (likely to be in the region of at least £10,000). It would also likely be necessary to publish an accompanying narrative explaining how the evidence has been considered in the context of the Council’s work. Undertaking this on a bi-annual basis would help manage the resources required for this in context of other work the A&R team need to undertake. It would also seem sensible, given that analytical work in this area takes time to conduct and so new evidence is not available on a frequent basis. The Council is therefore asked to consider if more should be done to ensure that current research on effectiveness is regularly and consistently considered, and if the



evidence should be published. It is also asked to consider how frequently it should publish new updates: on an annual or bi-annual basis.

**Question 1: Does the Council agree a digest of evidence on effectiveness should be produced and considered regularly and published on the Council's website? If so, how frequently should this be published?**

Could the Council do more to have regard to effectiveness?

3.11 Resources and a lack of clarity as to how to measure and define effectiveness are significant barriers in themselves to ensuring effectiveness of sentences are a key consideration of the Council, but perhaps the most compelling argument for the current scope of the Council's work in this area is the point made in the consultation document as to what purpose it would serve in respect of its core functions. As offence seriousness is the predominant driver of the sentence and the Council must also have regard to consistency, impact on victims, and the need to promote public confidence, consideration must be given to how much weight could, or should, reasonably and realistically be given to effectiveness in balancing these other objectives.

3.12 The second question sought views on this and asked respondents; 'Do you have any views 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?'. The following suggestions and points were made;

The SA believes that the Council could do more to promote more cost-effective sentencing. We agree with the Council that 'in any individual case, the cost of a sentence should not be considered'. Encouraging individual sentencers or panels of magistrates to undertake their own cost-effective analysis prior to choosing the appropriate disposal is likely to provoke greater inconsistency, as sentencers' views on this issue will diverge. In addition, proportionality will be undermined if disposal costs, a factor unrelated to harm or culpability, plays a pivotal role in determining sentencing outcomes. That said, the costs of different disposals vary greatly, and are a matter of public record. In addition, research by the Ministry of Justice has clearly demonstrated that short prison terms are associated with higher rates of re-offending than other, cheaper sanctions such as community orders or suspended sentence orders. The SC could consider simply making these trends (costs; effectiveness) more widely known to sentencers by publishing them on their website. The Council notes that 'resources are scarce' but Council should surely work with the Ministry of Justice to do more work in this area. There is a consensus among scholars at least that sentencing in

England and Wales could deploy its more expensive sanctions more effectively than at present. All sentencers should be aware of the relative effectiveness of different sanctions at their disposal. – **Sentencing Academy**

3.13 While publishing or linking to MOJ data on sentencing costs may be a fairly simple objective to achieve, it is necessary to consider what the purpose of this would be. Publishing the information without context would likely raise questions as to what the Council intends the information is used for, and the Council have already agreed that the cost of a disposal should not be a relevant factor in determination of the appropriate sentence. As there is no clear evidence available which illustrates a link between cost of sentences and their relative effectiveness and this is unlikely to be available while there are diverging views on how effectiveness can be measured, it is difficult to see how the Sentencing Academy's final point can be achieved. However, a commitment to keep evidence of relative effectiveness of sentences under review and be transparent as to how the Council takes this into account is probably a reasonable expectation.

3.14 The Council are asked to consider, bearing in mind the points above, if evidence of sentencing costs should be published or linked on its website for information and transparency purposes?

**Question 2: Does the Council think information on sentencing costs should be published on its website?**

3.15 Other respondents shared views on how the Council could broaden its consideration of effectiveness, and what steps and measures it could take;

I think this is basic to your role? The SC is made up of extraordinarily influential and knowledgeable people. I remain surprised that you haven't prioritised much more work on the 'effects' as well as the 'effectiveness' of sentencing. Discrimination is an obvious area: the impact of imprisonment on the lives of already disadvantaged people. I am surprised that you make no reference to the Lammy Review (2017), and was disappointed that you refer to the Public Sector Equality Duty merely in an Annex. This does not seem to have led you to take equality issues to the very heart of your agenda and your self-evaluation (when you might have chosen to go rather further than required by the minimalist Equality Act 2010 – intersectional disadvantage in the penal system is of huge concern). A small example: has the SC done all that it can to highlight the additional disadvantages faced by many women in the community stages of sentences (including the lack of Approved Premises)? Another example: should the SC encourage sentencers to explore the reality of support (including mental health treatments) available under different penal 'pathways' – **Nicky Padfield**

A framework document providing more detailed analysis of how each (sentencing) principle is achieved, and how they interrelate, could be beneficial. This could be cross-referenced in respect of certain sentences – for example, looking at what options imprisonment offers to rehabilitation. In order to assess effectiveness of sentencing, the Council should consider coordinating with other stakeholders (including those bodies with a statutory responsibility to inspect probation and prison services) to look at the impact of recommendations on probation on sentencing, and linking that to reoffending rates.- **Magistrates Association**

The goals of sentencing are multi-fold and often competing i.e., to give offenders their just deserts, incapacitate or deter them from committing crimes in the future, rehabilitate them, or enable them to make reparations. Therefore, the Council could examine the extent to which these goals are met, perhaps with reference to different subgroups of offences and/or offenders. - **Mandeep Dhani**

We need statistical analysis of outcomes following different types of sentencing over periods of time. This is to review the effectiveness of each types of sentences. – **Individual respondent**

Since 04 the Catholic Church has proposed that the SC “should be given the brief not simply of rationalising and systematising sentencing so that it becomes proportionate, consistent and effective. It should also be given the brief of gearing the system so that fewer people are sent to prison.” England and Wales now have the highest imprisonment rate in Western Europe. Despite a noticeable fall in recorded crime, the prison population has risen by almost 70% over the last 30 years. Giving appropriate levels of care to such a high prison population is a demand that is not being met effectively, with serious consequences not only for the human dignity of those in prison, but also their opportunities for effective rehabilitation. One of the main reasons for this trend is a significant and persistent increase in the average custodial sentence length over the past decade. Therefore, we strongly believe that the Sentencing Council should adopt a stated aim to curb sentence inflation and undertake a periodic review of sentencing trends in relation to specific offences. This would greatly assist with determining the causes of sentence inflation and improve the effectiveness of sentencing guidelines in addressing it. The process may also help to identify areas where existing guidelines or legislation require amendment. - **Catholic Bishops’ Conference**

3.16 A number of responses considered that rehabilitation directly links to effectiveness and suggested the Council should give more prominence to rehabilitation as a purpose of sentencing, and highlighted practical steps which could be taken in this regard;

The principle of proportionality in sentencing and the statutory requirement to assess the cost and effectiveness of sentencing must be at the heart of the Council's future work. The development of any new guidelines should pay sufficient regard to the 'cost of different sentences and their relative effectiveness in preventing re-offending' (Coroners and Justice Act 2009 (s120(11)(e))). Without proper focus on the cost and effectiveness of different sentences there is little prospect of sentencing guidance enabling sentencers to take a proportionate and effective response to offending. Without this focus the worrying trajectory of the last ten years is likely to be replicated, with increasingly severe sentences and prisons remaining overcrowded, unsafe and ineffective. There are several avenues that the Sentencing Council might fruitfully explore in giving greater regard to the cost and relative effectiveness of different sentences. In the first instance these factors should inform the levels at which category ranges are set. The Howard League suggests that a review of the category ranges, and the thresholds for the imposition of custody, particularly those for less serious and non-violent offending, is necessary to give effect to this statutory duty. Secondly, having appropriate regard to effectiveness and the wider 'cost' or impact of sentencing options ought reasonably to result in building these factors into the process by which sentencers themselves arrive at an appropriate sanction. To achieve this the Council should consider a review of the structured approach to sentencing set out in the offence-specific guidance. The Howard League suggests that the Council review whether to include a step in the process requiring the sentencer to consider the effectiveness of the proposed sentence and its likely impact, not only on the victim(s) and individual defendant, but also on the defendant's family/dependents and the community at large. These considerations are at present neglected in the structured approach a sentencer is required to follow. The assessment of effectiveness could be structured by reference to the five purposes of sentencing to which sentencers must have regard: punishment, the reduction of crime (including by deterrence), the reform and rehabilitation of offenders, the protection of the public and the making of reparation to victims (s142 Criminal Justice Act 2003). – **Howard League**

In respect of the purpose of sentencing, the Council appears to prioritise punishment and public protection, emphasising the former as the primary means of deterring and preventing crime. From its website: "While punishing the offender for the crime committed is one of the purposes, there are other important aims, like preventing crime happening in the future so

more people don't become victims of the same offender." Sentencing aims to protecting the public "...from the offender and from the risk of more crimes being committed by them. This could be by putting them in prison, restricting their activities or supervision by probation." Rehabilitation is portrayed by this narrowly unimaginative example: "by requiring an offender to have treatment for drug addiction or alcohol abuse". It is thus marginalised to the public mind, reflecting presumably its marginalisation within the Council's mind. It would not be sufficient for the Council to respond by saying that its potential work is limited by the s.142 CJA 2003. However confused, the Act's five purposes give plentiful scope for development. In the face of strong evidence of the ineffectiveness of prison for reducing recidivism (and hence longer term for protecting the public), it is urgently necessary for the Sentencing Council to put its weight behind determined exploration of rehabilitative policies. Given the costs of imprisonment and recidivism, this relates directly to cost-effectiveness. Given a media appetite for effectively equating justice with revenge, this is not an easy argument. Public "confidence" may more easily be achieved by conforming to Pavlovian simplicities. However, one essential "overarching issue" is surely the Council's leadership role in encouraging more nuanced understandings of what counts as "effective" as well as "fair". –

**Individual respondent**

We hope in particular that the Council will take forward the Bottoms' proposals on effectiveness, to more closely match guidelines to support the process of desistance and to reflect consequentialist approaches to sentencing. We share Anthony Bottoms' view that the Council's consideration of 'effectiveness' in relation to sentencing has been too limited. In particular, we endorse his recommendations that:

- Offence-specific guidelines might usefully include some reference to the 2003 legislative provision relating to the purposes of sentencing (paragraph 38).
- It is appropriate for those responsible for sentencing (including the Sentencing Council) to structure sentencing practices so that, where possible, they contribute to the desistance process – without, of course, compromising the other purposes of sentencing (paragraph 48).
- Since s. 142(1) of the Criminal Justice Act 2003 includes consequentialist aims among the purposes of sentencing, when constructing guidelines the Council should consider research evidence on consequences (paragraph 91). The first recommendation would require the Council to update existing and new guidelines, or to produce separate guidance which could then be cross referenced from each offence specific guideline. This is something which the migration of guidelines online should make relatively straightforward. A comprehensive response to the second and third recommendations would require a review of the 'step'

framework the Council has adopted for offence specific guidelines. We do not doubt the significant amount of work this might involve. Nonetheless, the consultation should be an opportunity for the Council to reflect on whether the way in has chosen to structure its guidelines to date adequately reflects: 1) “the rapid recent development of desistance research, which has produced clear evidence that most offenders wish to desist” (Bottoms, para 48); and 2) whether it has done enough to take account of the consequentialist purposes of sentencing. We could, for instance, imagine a framework which was significantly different to the one currently adopted, structured to fully take account of the desistance process. This might involve:

Step 1: identify the background to this offence (what led to this offence)

Step 2: identify the factors which might lead to this offender not re-offending

Step 3: having put the offence in context (step 1) identify aggravating and mitigating factors in order to evaluate culpability

Step 4: identify offence serious in the light of 1-3.

Even if the Council chose not to embark on such a comprehensive revision of the framework, there are still practical steps it could take to ensure that its guidance better supports the process of desistance and consideration of consequences. Perhaps the most significant would be to consult on an overarching guideline on the sentencing of young adults (aged 18-25), since it is the age-range 20- 25 when there is the fastest deceleration of offending among persistent offenders.

The Council may also choose to take forward some of the recommendations put forward by Anthony Bottoms to amend the step framework, which would work to support the process of desistance: From the point of view of an offender reading the Council’s guidelines, there would be merit in separating out personal mitigation factors as a separate Step in the guideline, so that offenders are more aware that their personal circumstances, and their steps towards desistance, are explicitly recognised by the Council as relevant to sentencing. This change is accordingly recommended (paragraph 47).

- The Council should consider whether it would be helpful to add the question ‘Is Custody Unavoidable?’ as a standard additional Step in guidelines for all imprisonable offences (paragraph 84).

- The possible new ‘Is Custody Unavoidable?’ Step in offence-specific guidelines might usefully contain a reminder that the court can request an adjournment to ensure that a more considered and reliable pre-sentence report (PSR) is obtained in the interests of better decision-making (paragraph 85). – **Prison Reform Trust**

3.17 The latter suggestions made by the Prison Reform Trust have already been effected since the digitisation of guidelines, with all guidelines including a drop down section on custodial sentences which include the key questions from the Imposition guideline. The same approach is taken for Community Orders with each offence specific guideline including the relevant principles and criteria relevant to imposing such an order. Some guidelines, such as burglary, also include specific references to rehabilitation and highlight community orders with a rehabilitation requirement may be a proper alternative to short or moderate custodial sentences.

3.18 While it is not thought that the model of guidelines should be revised as radically as suggested, there is perhaps merit in the suggestion by the PRT and a number of respondents that the aims of sentencing could be highlighted more clearly in guidelines as a step rather than being limited to the general guideline and referenced and reflected in the Imposition guideline. As suggested by the PRT a practical way to do this could be to include a separate step in guidelines so that an overall assessment of these is made in finalising the sentence. This could take the form of a 'step back' assessment, similar to the approach taken in the Health and Safety guideline where the sentencer is required to consider the overall impact of a financial penalty on an individual or an organisation. At a later stage this may also provide for links to be included to relevant and current evidence of effectiveness, as the Council have recently started to do in respect of evidence of racial disparity.

3.19 A recommendation made by Professor Anthony Bottoms on the review of the Council was that '*The Council might wish to consider whether a guideline, or less formal guidance, on s.142(1) of the Criminal Justice Act 2003 should be developed, in the course of which comments would be made on relevant empirical research findings*'. At that time the Council did not wish to reference empirical data in guidelines, but if it is decided that effectiveness evidence considered should be published then a natural progression could be to link this to any steps included which may relate to the aims of sentencing, and rehabilitation and deterrent effects of sentencing which are the most relevant to reducing reoffending. Such a suggestion was made by Andrew Ashworth, who submitted the following response which cut across a number of the consultation questions;

In relation to effectiveness, the Council argues at [132-136] that it lacks the resources to undertake research on this, that there are difficult questions of definition of 'effective' and of 're-offending', and that it is best to continue with its current approach of producing an annual internal document summarising the latest research. I have not seen a copy of any annual review, but it sounds as if this charts recent research findings without placing them in the context of effectiveness research generally (for example, Bottoms and von Hirsch, 'The Crime-Preventive Impact of Penal Sanctions', in P. Cane and H. Kritzer, Oxford Handbook of

Empirical Legal Research,2010). In what is one of the weakest paragraphs in the consultation document, the Council states that its current approach of bringing recent research to the attention of Council members ‘seems to work’. The Council gives no evidence of whether or how it ‘works.’ For example, Council documents frequently refer to the need for deterrence, without any reference to the research findings on deterrence. If the Council has an internal document summarising those research findings, should it not be brought to the attention of consultees at the stage of consulting on a draft guideline. What is the sentencer to do when s. 142 of the 2003 Act sets out 5 purposes of sentencing to which regard must be had, when the country’s leading criminologist states that ‘the bulk of the evidence suggests that increases in sentence severity have zero or very weak effects’ (Bottoms Review, [88]), and when the distinguished former chief magistrate highlights the findings of one study of sentences after the 2011 London riots which claims that the tougher sentences had a ‘general deterrence effect’ (H. Riddle [2020] Crim.L.R. 194, at pp. 209-210)? Surely the sentencer should be given some guidance about the robustness of research findings when reliance is placed on any of the five ‘purposes of sentencing.’ -

**Andrew Ashworth**

3.20 The practical challenges of this would be that sentencers are unlikely to have time to review such evidence during a sentencing exercise, which may limit its impact. However, if the evidence were published and widely communicated, adding a ‘step back’ step may serve as a ‘nudge’ or reminder to sentencers that it is available and encourage an evidence based approach if any is available for consideration. This approach may also be a step towards helping focus sentencers on potential factors that may have disadvantaged certain offenders, and could indirectly link to addressing racial disparities on outcomes.

3.21 Should the Council consider this idea worth exploring, the additional step could be at step three immediately after the consideration of adjustment to the sentence for aggravating and mitigating factors and look something like as follows;

### **Step Three**

The sentence arrived at should be considered with reference to the aims of sentencing as provided for by s142 of the Criminal Justice Act 2003, which are as follows;

the punishment of offenders,

the reduction of crime (including its reduction by deterrence),

the reform and rehabilitation of offenders,

the protection of the public, and

the making of reparation by offenders to persons affected by their offences.



The court should consider which of the five purposes of sentencing it is seeking to achieve through the sentence that is imposed. More than one purpose might be relevant and the importance of each must be weighed against the particular offence and offender characteristics when determining sentence.

*(nb. The final paragraph is already included in the general guideline)*

This is a very basic example for illustrative purposes only. Further work could be undertaken on this subject to the Council's views on the merit of the suggestion.

**Question 3: Does the Council think further consideration to include an additional step in guidelines should be undertaken, to remind sentencers to consider their sentence in the round in terms of potential relative effectiveness?**

#### Additional research

3.22 The final question in relation to effectiveness asked 'Should the Council carry out additional research in the area of effectiveness of reducing reoffending? What should the additional research priorities be?'.

3.23 There was broad agreement that more research into effectiveness was needed, although views varied on whether this should be undertaken by the Council.

The SC is the primary statutory authority with respect to guidance for sentencers. This confers on the Council a unique authority to provide, for courts and the community, authoritative advice about the most effective ways of reducing re-offending through the sentencing process. The Council does not appear to have the resources at present to carry out original research in this area. But the Council could work with the Ministry of Justice to publish brief research summaries with respect to various questions relating to sentencing options and re-offending. We note that there is a 'What Works' Centre involving the College of Policing. There is a clear need for some form of 'What Works' Centre focusing on the effectiveness of different disposals and the Council should play a key role in establishing and guiding such a centre. A good example of collaborative research with the Ministry of Justice (and possibly academics) involves the most effective requirements of community orders in terms of preventing re-offending. When imposing a community order, courts in England and Wales may choose to impose one or more of 15 requirements such as a curfew, a residence requirement or an unpaid work requirement. When crafting the sentence, courts should individualise the restrictions imposed, with a view to determining the most effective and most appropriate combination. This determination is assisted by counsel and by advice from probation services. Ultimately, however, the conditions imposed are likely to reflect the

court's experience and intuitions about which specific requirements are most useful or effective. The SC is encouraged to work with the Ministry of Justice to develop a research programme which would compare the effectiveness of different conditions. Furthermore, consideration must be given to the availability of specific requirements in each area and the SC must advocate for the universality of provision to both help reduce re-offending and ensure consistency. – **Sentencing Academy**

I do not think this is the remit of the Sentencing Council but is a piece of work desperately needed as long as it takes a holistic view. - **Individual respondent**

I think you can put too many resources into this. Really affectively rehabilitated people probably don't appear in your statistics. - **Individual respondent**

Indeed, this should be a key focus. - **Sentencer**

Someone should carry out more research. It would be good if it was an independent body without any financial, political or management pressures - such as the Council. - **Individual respondent**

The Howard League do not consider that it is necessary or practicable for the Council itself to conduct its own research in this area (CQ24). There are broad areas of agreement in sentencing research to which the Council can, and must properly, have regard. - **Howard League**

There is already a substantive body of research on the effectiveness of sentencing options such as community orders and restorative justice. Yet despite the proven benefits when it comes to rehabilitating offenders and supporting victims, they remain underutilised. We would welcome further analysis by the Sentencing Council in this area, specifically focussed on developing recommendations regarding the wider use of non-custodial alternatives in the criminal justice system. This clearly needs to be accompanied by the political will in government and parliament to implement such changes. - **Catholic Bishops' Conference**

It is important for sentencers to have a detailed understanding of the effectiveness of sentencing options on reducing reoffending, but in order to ensure there is no doubling up of

work, the Council must liaise with other stakeholders, including Inspectorate bodies and independent researchers. – **Magistrates Association**

Yes. I think much more will be learnt by qualitative research than quantitative. We all know how unreliable reconviction data is as a measure of re-offending! And the life stories of those attempting to live law-abiding lives have to be so much better understood (by judges, policy makers and the public).

The SC should consider whether it would be more effective either to publish summaries of other people’s research in this area or to carry out its own. Probably the most cost-effective step forward would be to do both?

It is worth revisiting Professor Ralph Henham’s suggestion in his Sentencing Policy and Social Justice (2018) that regional Sentencing Councils should be established, not least for training purposes and to keep sentencers abreast of “social cost factors” (p. 208). - **Nicky Padfield**

Yes, if you have the time and funding. Perhaps student/ university staff can help with this. - **Individual respondent**

3.24 Other respondents suggested areas of research which would be useful;

We would be supportive of any research which looked at the concept of desistance, especially in relation to children. It will be noted that one of the tenets of the YJB’s Guiding Principle focuses on how the YJB can work with other partners to ensure that children can develop a pro-social identity and in turn, sustainable desistance. We understand that there are constraints on the Council’s resource but do consider that conducting further analysis on desistance would help the Council in the execution of its statutory functions, by enhancing the understanding of how reoffending can be reduced and sustained. – **Youth Justice Board**

Taking short custodial sentences as an example, there is clear, uncontroversial evidence that they are ineffective, indeed that they are generally counter-productive (see for discussion Corston 2007, British Academy 2016). There is broad, cross-party consensus that the movement away from such sentences is an urgent necessity. The Ministry of Justice’s own research (MoJ 2018b, see also Mews et al 2015) has identified that for individuals with significant previous offending a short-term sentence raises the odds of that person reoffending by around a third in comparison to the same individual being given a

community order. Far from protecting the public, short sentences are more likely to make more victims. The Council's guidance should warn against imposing counter-productive short sentences. Indeed giving proper regard to the relative effectiveness (or ineffectiveness) of short sentences the Council ought properly to be calling for their abolition. Instead, following sentencing guidance, 34,900 adult defendants were given immediate prison sentences of less than 6 months in the year to March 2019 (MoJ 2020a). – **Howard League**

Looking at ways to assess what was the intervention that gave the positive benefit, was it simply the shock of a sentence, was it providing a home, was it drugs intervention, was it financial advice on managing personal finances etc. We need to know more about what works in different situations if we are to avoid having no option but to send people to prison. I agree that short sentences do not work for most people, sadly though some people already are beyond what the system can offer and if we are to stop sending people to prison then we need to know what will work and that requires not just looking at reoffending rates but looking at the positive outcomes and what that was. - **Individual respondent**

Please Investigate the Police and Volunteers Scheme in Scotland to stop Re-Offending by means of convincing offenders that unemployment, drugs, alcohol, gangs and continued unemployment leads to recidivism and a life of prison in, out, in, out etc. It also screws-up the life of the next generation, who all too often then follow in the very same footsteps of the parent or parents. And so on and so on, for years and years. - **Individual respondent**

Understanding the effectiveness of various community order options would be valuable, also any regional differences. I do not understand why 'reducing offending' is considered to be different from the first step to 'desistance' - **Magistrate**

Transform Justice also thinks that when producing guidelines, the Council should interview those who have been convicted, as they did in relation to drug mules. This would help ensure that the human consequences of sentencing decisions are fully considered.

Areas for further research could include: Sentencing and desistance, the role of pre-sentence reports and restorative justice. - **Penelope Gibb, Transform Justice**

3.25 Clearly there is a demand for more research, although the majority of respondents recognise that there are resource constraints which limit the extent to which further research could be undertaken by the Council. Some suggestions, such as the Council being involved

in establishing a 'What Works' centre as suggested by the Sentencing Academy, are ambitious although potentially something that could be explored with MOJ if resources were available.

3.26 Other suggestions may be possible to integrate into the Council's existing work. The biggest area for which there seems to be a demand is qualitative research with offenders to understand which elements of a sentence may have influenced their rehabilitation, and to which degree. While there are many non-sentencing factors which influence offending such as addiction, lifestyle and other socio-economic factors, it could be valuable to understand how sentences could intervene and the extent to which they may be able to influence desistance. As noted by the Transform Justice response, the Council did carry out research with drug mules to provide for proportionate sentences for this category of offender, and understanding broader offender motivations and needs may assist in considering how guidelines could provide for addressing these more specifically. However, to some degree the Council have done this already as noted earlier in this paper, by highlighting where consideration should be given to imposing sentences focused on rehabilitating offenders convicted of particular offences rather than imposing short or moderate custodial sentences. This has not been as a result of research as such, but more by an understanding that some offences are more likely to be related to addiction. However, research may provide valuable evidence to support and influence wider government and agency initiatives into sentences and programmes which reduce re-offending, and is an area there is strong support for the Council to explore further in having regard to effectiveness.

3.27 As with many other issues considered, such research would be subject to resources. Potential options could be for offender engagement to be undertaken as part of the research of guideline development or evaluation, which could be facilitated through links with Probation or partner agencies, or as suggested by a respondent, for work to be outsourced to Universities. The key point to consider is whether this should become an integral part of guideline development and evaluation.

**Question 4: Does the Council think consideration should be given to undertaking research in guideline related work related to how effectiveness of sentences may be influenced or enhanced?**

3.28 The responses included many suggestions which it would not be possible to discuss in the course of one meeting. The Council are asked if there are any issues raised by respondents and not covered by the questions posed which the Council consider are worthy

of further consideration, either by the A&R sub group or by the full Council at a future meeting?

**Question 5: Are there any other points made by respondents, or that arise from this paper, that the Council thinks should be explored for fuller consideration?**

### 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](#),<sup>[1]</sup> 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).

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<sup>[1]</sup> 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.<sup>[2]</sup> Some also feel that the concept of ‘desistance’<sup>[3]</sup> 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?**

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<sup>[2]</sup> 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.

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

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# THE EFFECTIVENESS OF SENTENCING OPTIONS

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A review of key research findings

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January 2021

# EXECUTIVE SUMMARY

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- Reducing re-offending is one of five key sentencing objectives in England and Wales. Courts employ a range of sentences, from discharges to imprisonment. This paper summarises findings from the latest research exploring the relative effectiveness of the principal sanctions for more serious offending: immediate imprisonment, suspended sentence orders and community orders.
- In recent years, researchers have evaluated the relative effectiveness of these different sanctions by comparing the re-offending rates of those who have served a sentence of immediate imprisonment to those who served instead a community order or suspended sentence order.
- Comparing re-offending rates associated with different sanctions is challenging because high risk offenders are more likely to be sentenced to custody. This may explain why short sentences of imprisonment are associated with higher re-offending rates than community orders and suspended sentence orders.
- Recent research by the Ministry of Justice and other agencies compared re-offending rates for immediate imprisonment, suspended sentence orders and community orders, having first controlled for other explanatory factors. Re-offending rates for offenders sentenced to short terms of immediate imprisonment were higher than rates for offenders sentenced to either a community order or a suspended sentence order. Re-offending rates for offenders sentenced to community orders are typically higher than those given suspended sentence orders.
- It is too early to know whether the introduction of supervision upon release for short-term custodial sentences has been effective in reducing re-offending because of additional changes implemented around the same time.
- More research is needed to determine whether the type of sentence is related to re-offending rates by gender and ethnicity and to determine how different sentences meet the criminogenic needs of offenders and how they improve their lives more generally.
- Research should use longer follow-up periods to better evaluate the impact of sentences on long-term desistance.

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# 1. SCOPE OF REVIEW

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The purposes of sentencing were first specified in statute in the Criminal Justice Act 2003 and include punishment and the prevention of crime. This paper focuses on the possible preventive effectiveness of key criminal sanctions. Re-offending rates are the most common measure of effectiveness – although others have been proposed (and are discussed below). At sentencing, courts attempt to prevent further offending through the imposition of sanctions which deter, incapacitate, or rehabilitate offenders. To this end, sentencers employ a range of different disposals including: immediate custody; suspended sentence orders; community orders; and fines.<sup>1</sup> This paper reviews the latest evidence relating to the effectiveness of the first three of these sentences and summarises the latest cost estimates of different disposals.

The first part of this paper provides background information about effectiveness and re-offending. The paper then summarises research which compares the re-offending rates associated with different sanctions uncorrected for variables which may explain these differences. Then it describes findings from Ministry of Justice research (and other agencies) which compares re-offending rates after controlling for other relevant variables such as offenders' prior records and their risk of re-offending. As will be seen, the two bodies of research reach the same general conclusions. The paper concludes by noting some important research priorities.

## 2. BACKGROUND

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In England and Wales, sentencing is based on five key objectives: punishment, the reduction of crime; reparation; rehabilitation; and public protection.<sup>2</sup> Three of these purposes – crime reduction, rehabilitation and protecting the public – share a broader aim of reducing re-offending. The recent White Paper, *A Smarter Approach to Sentencing*, expressed concerns about repetitive crime by low-level and repeat offenders (Buckland 2020). The revolving door of justice carries great financial costs: The total estimated economic and social cost in England and Wales of re-offending by adults is £16.7 billion (Newton et al. 2019). This estimate includes expenses in relation to future crime, the consequences of crime and responses to crime.

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1 For very low level offending a court may instead impose either a conditional or absolute discharge.

2 Section 57 of the Sentencing Code.

### ***The Principal Sentences Available in England and Wales***

When determining which sanction to impose, courts in England and Wales apply a “custody threshold” at sentencing. This means that a court must not impose a custodial sentence unless it is of the opinion that the offence was sufficiently serious that neither a fine nor a community sentence would be justified.<sup>3</sup> This provision attempts to ensure that imprisonment is reserved for the most serious offences (Sentencing Council 2017). Courts have a range of different sentences to deploy at sentencing. The principal disposals for more serious offending include the following:<sup>4</sup>

Determinate prison sentences require immediate custody.<sup>5</sup> Offenders serve a fixed period of time in prison before automatic release. Offenders sentenced to determinate prison terms generally serve half of the period in prison and the remainder on licence in the community (although the picture is now a little more complicated as recent reforms to release arrangements mean that offenders serving longer sentences for certain sexual or violent offences have to serve two-thirds of their determinate term in custody before being released). If the person breaches any of the licence conditions, or commits any further offences during the licence period, he or she may be returned to prison.

Suspended sentence orders (SSOs) involve the imposition of a custodial sentence which is then suspended for a period to allow the offender to remain in the community. A custodial sentence of between 14 days to two years may be suspended and the suspension period may last up to two years. A sentencing judge may, but need not, impose one or more requirements upon the offender during the operational period of the SSO (the available requirements are the same as may be attached to a community order, specified below). If the person breaches any requirement imposed or commits a new offence, the court may order the person to serve their original custodial sentence. An SSO is considered a custodial sentence; before imposing an SSO the court must decide that the custody threshold has been crossed.

A community order can last up to 36 months and must include at least one specified requirement. When imposing a community order, courts select from a menu of requirements to address the offender’s needs and to promote his or her rehabilitation. In addition, the court must impose at least one condition that is punitive in nature. A court can impose any one or more of the following:<sup>6</sup>

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- 3 Section 230 of the Sentencing Code, replicating the earlier provision from the Criminal Justice Act 2003, states: ‘The court must not pass a custodial sentence unless it is of the opinion that the offence, or the combination of the offence and one or more offences associated with it, was so serious that neither a fine alone nor a community sentence can be justified for the offence’.
  - 4 Other sentences not discussed further in this paper include financial penalties and conditional and absolute discharges (whereby the person does not face an immediate punishment but is recorded as having a criminal record). This paper also does not consider out-of-court disposals.
  - 5 Some offenders receive indeterminate prison sentences – custodial sentences without a fixed release date. These offenders serve a minimum amount of time in prison (the minimum term) before being considered for release by the Parole Board. Release will only be directed by the Parole Board if it is satisfied that it is no longer necessary for the protection of the public for the person to remain in custody.
  - 6 Section 201 of the Sentencing Code.

- \* Unpaid work requirement
- \* Rehabilitation activity requirement
- \* Programme requirement
- \* Prohibited activity requirement
- \* Curfew requirement
- \* Exclusion requirement
- \* Residence requirement
- \* Foreign travel prohibition requirement
- \* Mental health requirement
- \* Drug Rehabilitation requirement
- \* Alcohol treatment requirement
- \* Alcohol abstinence and monitoring requirement
- \* Attendance centre requirement
- \* Electronic compliance monitoring requirement
- \* Electronic whereabouts monitoring requirement

In the year ending March 2020, the following distribution of sentences was recorded across England and Wales: Fines (78%), immediate custody (7%), community orders (7%), suspended sentence orders (3%) and conditional discharges (3%) (Ministry of Justice 2020a). Although fines are the most common sentence, this report examines immediate sentences of imprisonment, suspended sentences orders and community orders. There are several reasons for this focus. First, these three sanctions are the most expensive to administer and therefore need to be scrutinised most closely. Second, they attract the most media attention and public interest. Third, these three disposals often overlap in terms of the offenders on whom they are imposed. Under the sentencing regime in England and Wales, even if the case has passed the custody threshold, there may be reason to suspend the prison sentence or even impose a high-end community order. In cases which only just cross the custody threshold a court may consider immediate imprisonment, an SSO or a community order.

### ***Costs of Principal Sentences***

The costs of different sentences vary greatly. The Ministry of Justice does not routinely publish the costs of community orders and SSOs. However, the 2014/15 National Offender Management Service Business Plan noted that in 2012/13 the average cost per community order/SSO was £4,305 compared to an average cost of £36,808 for a prison place (National Offender Management Service 2014, p. 35). The costs of community-based supervision will of course vary, depending on the number and type of requirements imposed on the individual. The difference in costs between imprisonment and community-based sanctions has recently become more significant: 'The search for effective alternatives to custody has become even more urgent following the recent recession and the demand for governments to make cuts in public services, including the criminal justice system' (Abramovaite, et al. 2018, pp. 800-801). The renewed focus on alternative sanctions reflects



the fact that prisons in England and Wales are operating near capacity and the coronavirus pandemic has exacerbated the risks of imprisonment (Pope et al. 2020).

### ***Rate of Imprisonment and Relationship Between Prison Populations and Crime Rates***

The imprisonment rate in England and Wales is currently higher than most other European countries (Walmsley 2018). As the Lord Chief Justice noted in a recent speech, the length of custodial sentences has been increasing in recent years.<sup>7</sup> The imprisonment rate and the average sentence length imposed have both been increasing steadily. The custody rate for indictable offences<sup>8</sup> rose from 24.1% in 2010 to 35.1% in 2020,<sup>9</sup> an increase of 46%. Much of this increase is more recent: the first half of the decade saw an 11% increase in the custody rate for indictable offences, while the increase from 2015-2020 was 28%. Over the decade 2010-2020, the average custodial sentence length for all offences rose from 13.8 months to 19.5 months, an increase of 34%.<sup>10</sup>

The use of imprisonment may prevent crime through incapacitating effects, specific deterrence (i.e. encouraging the individual not to re-offend) and general deterrence (i.e. encouraging others not to offend). However, imprisonment itself can create criminogenic effects in facilitating criminal behaviour.

### ***The Use of Imprisonment as a Potential Contributor to Re-offending***

Offenders are sent to prison, in part, to prevent further offending, but imprisonment may also contribute to future offending.<sup>11</sup> There are a number of explanations for this apparent paradox. Ex-prisoners may lose many of the protective benefits that living in the community offers, including employment opportunities, pro-social relationships and safe housing (Sapouna et al. 2015). While in custody, prisoners have opportunities to interact with other individuals who may reinforce and encourage offending behaviours. Further, imprisonment labels ex-prisoners as 'deviant' and this may impede their efforts to lead crime-free lives after release (Abramovaite et al., 2018). Recent research has found that longer terms of imprisonment have adverse, criminogenic effects by reducing the opportunities for employment, housing, benefits and marriage (e.g. Ramakers et al. 2017). Short terms of imprisonment may be particularly counter-productive in different ways. The early weeks of imprisonment are often chaotic and transitioning back to the community is often challenging. Finally, the limited time in detention may be insufficient for rehabilitation programming to be successful (Cracknell 2018).

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7 Lord Chief Justice of England and Wales, UCL Judicial Institute Annual Lecture, 9 December 2020.

8 An indictable offence is either an either way offence (an offence that can be tried in either the magistrates' courts or the Crown Court) or an indictable only offence (which can be tried only in the Crown Court). These are the most serious offences.

9 Ministry of Justice (2020) *Criminal justice system statistics quarterly: June 2020*, Table Q5.2b. The custody rate increased more sharply for some high-volume offence categories. The custody rate for theft rose by 58% while for fraud it rose by 56%.

10 Ministry of Justice (2020) *Criminal justice system statistics quarterly: June 2020*, Table Q5.2c. Certain offence categories showed much higher increases: the average custodial sentence length for robbery over this period rose from 33.8 months to 53.7 months, an increase of 59%, while average sentence lengths for fraud rose by 85%.

11 The authors of a comprehensive research review concluded: 'A good deal of evidence indicates that incarceration, on average, increases the offending of those incarcerated' (Kleck and Sever, 2018, p. 305). More recently a review conducted by the Queensland Sentencing Advisory Council concluded that: 'At best, imprisonment has a marginal effect on recidivism. At worst, imprisonment increases the likelihood of reoffending' (Gelb et al. 2019, xii).

### 3. DEFINING EFFECTIVENESS

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In weighing the benefits and consequences of different types of penalties, officials often question which is most 'effective' (Ministry of Justice 2020b). A common research strategy involves comparing the re-offending rates of different disposals. Drawing causal inferences from this research is challenging. Studies that compare re-offending rates by type of sentence can only show a correlation between the type of sentence and the outcome (desistance or re-offending). Many factors other than sentence type may explain offending. For example, people may have particular characteristics that make them more likely to re-offend regardless of the type of sentence imposed and certain crime categories have long been associated with high re-offending rates – again independent of the sentence imposed.

Effectiveness can also have alternate meanings. Policy-makers may wish sentences to be effective in the more complete sense of desistance. Desistance refers to a long-term cessation in criminality for those who had a pattern of offending (Sapouna et al. 2015). Yet studies on re-offending tend to follow ex-offenders for relatively short periods of time (one to three years is common). The absence of offending during those follow-up periods does not necessarily mean that these individuals have achieved desistance. Indeed, the studies tend only to count offences that are known to police and their perpetrators identified as ex-offenders. This means that ex-offenders who commit offences yet who evaded prosecution and punishment may be mistakenly counted as successes. As well, the limited follow-up periods do not necessarily detect desistance where the ex-offenders may have committed new offences outside the short time frame studied.

Effectiveness could also be measured by the extent to which the sentence addressed the individual's criminogenic needs. The term 'needs' here refers to those characteristics and problems that are amenable to treatment and, if addressed, will reduce the individual's likelihood of re-offending. For men, common criminogenic needs include drug/alcohol problems, underemployment and a lack of stable housing. For female offenders, needs may include a history of trauma, fractured family ties and sexual victimisation. Thus, a broader approach to effectiveness would consider how sentences foster improvements for offenders in such life areas as health, employment and family and social networks (Villettaz et al. 2015). Another definition of effectiveness would consider how well different sentences compensate victims or society in general (Mann and Bermingham 2020). Unfortunately, studies provide little information on this version of effectiveness. The emphasis in the effectiveness literature has long been upon re-offending rates over relatively short periods of time, rather than these other, broader conceptions.

#### ***Thinking about Risk***

The discussion about the effectiveness of sentencing alternatives (at least in terms of its meaning for reductions in re-offending) confuses different concepts. References to repeat offenders as endangering public safety, for instance, suggest the concern is more specifically about repeat

offenders who commit serious or violent crimes. Yet many such offenders commit only less serious crimes. Theft convictions, for example, are a common predictor of re-offending. Even when sophisticated risk assessment tools, such as the Offender Group Reconviction Scale (OSGR)<sup>12</sup> used in England and Wales, predict an individual to be at high risk, this result does not necessarily mean a likelihood of committing a serious or violent crime. Instead, a strong likelihood is predicting any re-offending, including quite minor offences.

Consequently, reform proposals should reflect these issues. Repeat offenders may be taxing on criminal justice resources as they cycle in and out of the justice system. But they may distract attention from the small group of individuals who do pose a serious and violent threat to society. The recent White Paper recognises the difference:

*There are some offenders that we consider to be ‘prolific’. These offenders commit a large number of generally low-level crimes, and often fail to respond to existing interventions by the court. For these prolific offenders we will continue to consider whether there are innovative ways in which we could tackle their persistent offending.* (Ministry of Justice 2020b, p. 34)

The White Paper provides little detail on these innovations but the implication remains that the current sentencing system which cycles these ‘prolific’, yet non-serious, offenders in and out of prison is not ideal. Increasing the number or duration of custodial sentences will contribute to the already burgeoning prisons. ‘Smarter’ sentencing will entail amending current alternatives or creating new penalties that help transform the lives of repeat offenders.

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<sup>12</sup> The Offender Group Reconviction Scale (OSGR) is a risk assessment tool used by probation and prison services across England and Wales. Initially deployed in 1996, the OGRS was designed to predict the probability of re-offending by adults discharged from custody or given non-custodial sentences (Howard 2018). OGRS scores are based on age, gender, offence type and criminal history. Higher scores indicate a greater likelihood of re-offending. The OGRS is designed to predict the risk of committing any crime, regardless of severity. Hence, a high score is not equivalent to predicting the offender will commit a serious or violent crime.

## 4. RE-OFFENDING RATES AND THE PRINCIPAL SENTENCES

The Ministry of Justice regularly publishes re-offending rates and recent statistics for England and Wales regarding annual average proven re-offending statistics for adults by sentence type are summarised in Table 1 (Ministry of Justice 2020c). This table notes the percentage of recidivists in each category, the average number of offences committed per re-offender and the average risk score for the offenders who previously received the disposal.

**Table 1: Adult Known Re-offending Rates by Sentence Type (April 2017 – March 2018)**

Sentence Type	Percentage of Offenders	Average number of new offences per recidivist	Average risk score
All custodial sentences	48%	5.3	51.1
Less than or equal to 6 months	66%	6.1	59.0
More than 6 months to less than 12 months	52%	5.4	52.6
12 months to less than 2 years	37%	3.9	46.5
2 years to less than 4 years	29%	3.2	45.6
4 to 10 years	19%	2.8	37.0
More than 10 years	8%	2.0	21.6
Suspended sentence order with requirements	30%	3.7	35.4
Suspended sentence order without requirements	48%	5.3	46.7
Community order	33%	4.0	35.3

Source: Ministry of Justice (2020c, Tables C1a and C2a); percentages rounded.

Table 1 shows the percentage of offenders within each sentence group who re-offended (i.e. were convicted or received a caution for a new offence) during a one-year period.<sup>13</sup> The overall re-offending rate for offenders sentenced to immediate custody was 48%. Re-offending rates varied significantly across different sentence lengths with the highest re-offending rate (66%) emerging for

<sup>13</sup> The year began for those receiving a custodial sentence when they were released from prison and for the others on the date of their court conviction.

those who had served the shortest sentences. The proportion of offenders re-offending then declined steadily for longer sentences, down to 8% for custodial sentences of over 10 years.

### ***Re-offending Rates Higher for Custody than Community-based Sentences***

Offenders who had served a period in custody offended at a higher rate (approximately 48%) than those sentenced to community orders (about 33%) or SSOs with requirements (30%). These latter community-based orders are more likely to be considered appropriate alternatives to short prison sentences. Re-offending occurred less often for ex-offenders who had received community orders or SSOs than for custodial sentences of less than six months (about 66%) and of six to 12 months (about 52%).

Table 1 also shows the average number of offences per re-offender in each group. For custodial sentences, the average number of new offences was highest for the shortest terms of imprisonment and then declined as the sentence length increased. Comparing averages across sentence type, a similar pattern to the re-offending rates emerged: custodial sentences were associated with a higher number of new offences than community orders and SSOs.

Table 1 summarises the average risk score for each sentence group as a whole from the OGRS. The average risk scores are consistent with the patterns in the first two columns. Those released from longer custodial sentences were evaluated at lower risk by the OGRS. This may be explained by the fact the risk assessment tool places great weight on offender age as a risk factor. Offenders who served custodial sentences were scored, on average, higher risk than offenders sentenced to community-based penalties; offenders with SSOs or community orders were assessed on average as lower risk than the custody group.

However, there is a clear contrast between SSOs with and without requirements. Re-offending rates of offenders who receive an SSO with requirements were higher than those whose SSO had no requirements attached. The latter perform much more similarly to the custodial sentence group than they do to the other community-based sentence cohorts. This group has a higher risk score and, in terms of the proportion who re-offend and the average number of offences per re-offender, it performs almost identically to the overall custody cohort. The higher risk score of offenders who receive an SSO without requirements suggests that there is something fundamentally different about this group of offenders to those who receive the other community-based sentences.<sup>14</sup>

Some insight into the relationship between re-offending and sentence type emerges from studies with prisoners. Research conducted by Lievesley et al. (2018) involving repeat offenders in an English prison provides some context on those cycling in and out of short custodial sentences. These individuals tended to describe their prison terms as exemplifying their way of life in which re-offending was assumed to be inevitable. These prisoners did not see their time in custody as rehabilitative. Instead, they considered each short sentence as worsening their problems on the

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<sup>14</sup> In 2019, 18% of offenders who received an SSO did not have any requirements attached to the order (Ministry of Justice (2020d, Probation 2019, Table A4.1)).

outside. Criminal behaviour became their default way of meeting their needs for housing, food and drugs.

### ***Variations in Re-offending Rates***

The statistics in Table 1 do not establish whether the nature of sentence (e.g. custodial versus community-based) or the length of custody are *causes* of re-offending. Rather, the form and length of sentence may just be *correlated* (i.e. associated) with re-offending. The offenders in the multiple sentencing groups vary in risk-relevant ways, such as the types of offences committed and in their personal characteristics. Individuals sentenced to imprisonment may differ in many ways from those given community orders or SSOs – and these differences may explain the variable re-offending rates.<sup>15</sup> The lower average risk scores listed in Table 1 for community orders or SSOs compared to custodial sentences are evidence of such risk-relevant differences.

Limited evidence is available on how re-offending varies according to the type of offence, or gender and ethnicity of the offender (Ministry of Justice 2020c). For the year ending March 2018, female offenders had significantly lower re-offending rates than males. Females re-offended at a rate of 23% compared to males at 30%. Comparisons based on ethnicity categorisations revealed the following re-offending rates: White offenders (30%), Black offenders (31%), Asian offenders (24%) and other ethnicities (20%). Re-offending rates by offence type are presented in Table 2.

**Table 2: Adult Re-offending by Offence Type (April 2017 – March 2018)**

Offence Category	Re-offending rate
Sexual	14%
Fraud	17%
Drugs	25%
Violence against the person	26%
Criminal damage and arson	26%
Robbery	32%
Possession of a weapon	33%
Public order	39%
Theft	52%

Source: Ministry of Justice (2020c, Table A4a); percentages rounded

As noted earlier, offenders who received short custodial sentences were often convicted of low-level offences such as public order offences and theft. Table 2 thus provides some explanation for this finding: less serious offences (such as theft) are associated with higher re-offending rates. In

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<sup>15</sup> See findings and discussion in Villettaz et al. (2015).

contrast, the more serious types of offence that would justify lengthier custodial terms (such as sexual offences and violence against the person) are among the lower re-offending rates.

## 5. COMPARING RE-OFFENDING RATES WITH MATCHED SAMPLES

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While comparing re-offending rates for different sentence types (see Table 1) yields general information on the patterns of repeat offending, such comparisons are unable to estimate the relative *effectiveness* of different forms of the penalty (e.g. custody or community order). As noted, the groups in each sentence type may vary in many respects. Thus, different re-offending rates across types of sentencing outcome may simply reflect differences in offences and offenders. For example, offenders sentenced to immediate custody are likely to have more serious criminal histories.<sup>16</sup> This would make them a higher risk to re-offend even before they begin their sentence. For this reason, it is necessary to control for factors such as the previous convictions.

To address this problem, researchers created comparable samples in order to control for any pre-existing differences between offenders. Samples of individuals are matched on multiple offender and offence characteristics. This method increases the confidence that different types of sentences are related to re-offending. The trade-off with using matched samples is that not all offenders can be appropriately matched and some individuals are lost in the comparisons. Hence, the matched sample design is unable to give full re-offending rates because the comparisons between sentence types only include those offenders who could be matched. Nonetheless, the results provide further insight into how sentence types may differ with respect to re-offending outcomes for similar offenders.

### ***Comparing Short and Intermediate Custodial Sentences with Community Sanctions***

The Ministry of Justice has published several comprehensive analyses using this superior methodology. In a study of matched samples in England and Wales for 2010 (Ministry of Justice 2013),<sup>17</sup> researchers matched individuals on age, gender, offence type, offence seriousness and the number of prior offences. This study compared various sentencing types in pairs (i.e. each pair was matched on those characteristics). The differences between re-offending rates in each pair are shown in Table 3 (the group in the left-hand column of the table has a higher re-offending rate than the comparator on the right).

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<sup>16</sup> A provision in the Sentencing Code (replicating an earlier provision in the Criminal Justice Act 2003) requires courts to take prior convictions into account at sentencing unless it would be unreasonable to do so.

<sup>17</sup> This study defined re-offending as any court conviction, caution, reprimand, or warning.

Table 3: Re-offending Comparisons by Type of Sentence (2010)

Matched group pairs		Difference	
Custody < 12 months	vs	Custody from 1-4 years	+ 12%
Custody < 12 months	vs	Community orders	+ 6%
Custody < 12 months	vs	Suspended sentence orders	+ 9%
Custody 1 – 6 months	vs	Custody from 6-12 months	+ 5%
Community orders	vs	Suspended sentence orders	+ 3%

Source: Ministry of Justice (2013); percentages rounded.

Table 3 reveals that short custodial sentences (< 12 months) were associated with higher re-offending rates, whether compared to intermediate custodial sentences of one to four years or to either a community order or SSO. Shorter custodial sentences (one to six months) had a higher re-offending rate than a custodial sentence of six to 12 months. These results suggest that a short term of imprisonment is the least effective sentence in reducing re-offending.

One possible explanation for these trends is that short prison sentences disrupt offenders' lives without allowing sufficient time for the prisoner to gain any rehabilitative benefits that custody might offer (such as rehabilitative programmes). Table 3 shows that both community orders and SSOs are associated with lower re-offending rates than short custodial sentences and that SSOs were more effective in terms of a lower likelihood of re-offending than community orders.

These findings confirm earlier research outcomes.<sup>18</sup> Mews et al. (2015) compared re-offending rates for the principal sanctions and found that short custodial sentences (< 12 months) were consistently associated with higher rates of re-offending than SSOs or community orders. These researchers had controlled for differences between offenders sentenced to the various sanctions.<sup>19</sup>

### ***Offender Characteristics and Variations by Offence Type***

Researchers have also used matched samples analysis to determine whether the differences in re-offending rates based on sentence type varied by age, ethnicity, gender, criminal history and mental health status (Hillier and Mews 2018). Their focus was upon short custodial sentences (12 months or less) compared to community orders and SSOs. In this study, short prison sentences were associated with higher rates of re-offending than community orders or SSOs (Hillier and Mews 2018). However, the relationship varied depending on the offender's criminal history. The difference in re-offending for first offenders was not statistically significant. But for those with many prior

<sup>18</sup> The advantage of a period of community supervision with requirements over imprisonment is a robust finding which has been noted since the 1960s (see Hammond 1964; Brody 1976, pp. 27-29.)

<sup>19</sup> This was accomplished by applying 'propensity score matching', described by the researchers as 'a well-tested approach to looking at impact' of different sanctions (Mews et al. 2015, p. 1).



offences, there was a significant decrease in re-offending rates for those given community orders or SSOs compared to short custodial sentences.

Compared to short custodial sentences, community orders or SSOs were more significantly related to lower re-offending rates for those who were younger (age 18-20) or older (over age 50). Community orders and SSOs were also related to reduced re-offending for those with severe mental health issues, after controlling for offending history. No differences were observed based on gender or ethnicity, after controlling for offending history, in re-offending rates between short custodial sentences versus the other orders. This means that reductions in re-offending for community orders and SSOs compared to short prison sentences were seen for those with similar criminal histories, regardless of gender or ethnicity.

### ***Comparing Short Custodial Sentences Plus Supervision with Community Sanctions***

The matched sample comparisons relate to a time when short custodial sentences did not include any supervision in the community upon release. The Offender Rehabilitation Act 2014 introduced a requirement for community supervision upon release with custodial sentences of less than twelve months. Thus, it is possible that the supervisory requirement may affect re-offending rates for short custodial sentences. More recently, researchers have investigated re-offending patterns with a new cohort of adult offenders whose short custodial sentences included post-release supervision (Eaton and Mews 2019). These researchers created comparable groups by matching on 150 factors. Results are shown in Table 4 with the disposal in the left-hand column representing the alternative with a higher re-offending rate.

**Table 4: Re-offending Comparisons by Sample Type (2016)**

Matched group pairs		Difference	
Custody < 12 months	vs	Community orders	+3.7%
Custody < 12 months	vs	Suspended sentence orders	+4.1%
Community orders	vs	Suspended sentence orders	+ 4.2%

Source: Eaton and Mews (2019, p. 16)

The results are consistent with the earlier studies. Short custodial sentences, even with supervision upon release, were associated with higher re-offending rates (about 4% higher) than community orders or SSOs. Although not shown in the table, these results occurred whether the custodial sentences were less than three, six, or 12 months (Eaton and Mews 2019). In this new study, community orders were associated with a higher re-offending rate than SSOs.

It is not possible to determine whether the introduction of the supervision requirement for short custodial sentences had any impact on re-offending rates by comparing results between Table 3 (pre-supervision requirement) and Table 4 (post-supervision requirement). Between the study dates, the Ministry of Justice changed the data used to compile re-offending statistics and various

other reforms in managing offenders were implemented. This may have affected the results. Amidst these various adjustments, it was not possible to isolate the effect of the introduction of a supervision component.

### ***Similar Findings from Other Countries***

For comparison purposes, it is of interest to look at the relative re-offending rates in a related jurisdiction. In Scotland, the re-offending rate for those released after a custodial sentence was about 41% (Justice Directorate 2020). In contrast, the re-offending rate for what are referred to in Scotland as community payback orders (a form of community order with requirements attached) was lower -- at about 29%. As with England and Wales, the longer the prison sentence, the less likely the individuals were to re-offend. Scottish officials offer an explanation: 'Short custodial sentences have higher reconvictions than longer sentences. This is largely because offenders who are given shorter sentences commit relatively less serious crimes such as shoplifting and tend to commit more of these crimes than those committing more serious crimes and so they are reconvicted more often' (Justice Directorate 2020, p. 6).

Overall, these various studies in England and Wales and in Scotland that reveal higher re-offending rates for short term custody over community sanctions are consistent with research in other parts of the world (Villettaz et al. 2015; Zara and Farrington 2016). For instance, Dutch researchers also recorded higher re-offending rates for custodial sentences than suspended sentences (Aarten et al. 2015; see also Mears and Cochran 2018; Lulham et al. 2009).

## 6. RESEARCH PRIORITIES

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Reducing re-offending is only one of five primary sentencing objectives in England and Wales. Nevertheless, it is vital that sentencing options contribute to reducing offending in the most cost-effective way. The research consensus suggests that short term prison sentences are not a cost-effective means of reducing re-offending. Beyond this conclusion, several areas of interest remain to be addressed.

First, when imposing community orders or SSOs, sentencers may select from a range of requirements. Yet little is known about the relative effectiveness of different requirements or the ways that different requirements interact. If researchers could establish which specific requirements, or combinations of requirements, contributed most to reducing re-offending, this information would be of great use to sentencers. It would also be helpful if researchers could establish why offenders sentenced to an SSO without requirements re-offend at a rate that is very similar to those who receive an immediate custodial sentence (and much more frequently than those receiving other community-based sentences). This may be caused by the types of offender

who receive this particular disposal or by an inherent flaw in this type of sentence, or some other reason.

Second, more research is needed upon the effectiveness of the SSO. The volume of these orders has increased dramatically over the past 15 years.<sup>20</sup> Again, research to date has demonstrated the cost-effective nature of this form of custodial sentence, relative to immediate terms of custody. What is needed now is a better understanding of the factors explaining the relative success of SSOs and the optimal periods during which a sentence is suspended. Finally, moving beyond the question of relative effectiveness in reducing offending, it would be worth exploring public reaction to the use of SSOs.<sup>21</sup>

Third, many other jurisdictions employ intensive community-based orders which are designed to be as punitive as a short term of imprisonment. The recent White Paper proposes to introduce such a high-end supplement to improve the scope of community orders.<sup>22</sup> The proposal is similar to sanctions in other jurisdictions, such as the Intensive Correction Order and the Community Corrections Order in Australia or the Conditional Sentence of Imprisonment in Canada (see Maxwell (2017) and Roberts and Cole (2020)). These sanctions permit the offender to reside in the community, but only subject to very restrictive conditions, including a curfew and possibly electronic monitoring. Breach of these conditions should result in committal to custody. Both sentences were created to offer courts a plausible alternative to imposing a relatively short term of institutional imprisonment.

The research on these sanctions is limited, but generally finds that such intensive orders perform better than prison in reducing re-offending. For example, Wang and Poynton (2017) report a significantly greater reduction in re-offending for offenders sentenced to an Intensive Correction Order compared with offenders who received a prison sentence of up to 24 months.

Finally, Sentencing Commissions and Councils in other countries have published comprehensive reviews of the effectiveness of the sanctions in their jurisdiction (e.g. Gelb et al. 2019). A similar exercise is long overdue in England and Wales. While the Ministry of Justice has published a number of reports examining select disposals, a more comprehensive, comparative exercise, in conjunction with the Sentencing Council would provide courts with useful information on the crime preventive effectiveness of the sanctions they deploy.

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20 The increase in the use of SSOs since 2005 represents the most dramatic shift in sentencing practices in England and Wales in decades (for discussion, see Irwin-Rogers and Roberts, 2019).

21 Research could explore the extent to which the public is aware of the nature of SSOs and whether there is public support for, or opposition to, the expanded use of this form of custodial sentence.

22 The Centre for Social Justice recently proposed a new custodial sentence called the Intensive Control and Rehabilitation Order (ICRO). This sanction would be served wholly in the community with the offender being subject to electronic monitoring, curfew monitoring and regular periodic reviews by a court; See <https://www.centreforsocialjustice.org.uk/library/sentencing-in-the-dock-the-case-for-a-new-sentence-in-the-criminal-courts-of-england-and-wales>.

## 7. SUMMARY AND CONCLUSION

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Different types of sentences (e.g. custodial or community-based) are associated with different rates of re-offending. Longer custodial terms are associated with progressively lower re-offending rates. This is likely to be explained in part by the ageing of the longer serving prisoners. Short term custody (with or without supervision on release) is linked to higher re-offending rates than either community orders or SSOs. The studies were not able to show whether the introduction of supervision to offenders released after custodial sentences of less than twelve months was effective or not because differences in how data were collected preclude such comparisons. In turn, community orders with requirements were associated with higher re-offending rates than those receiving SSOs. Overall, these findings with respect to re-offending with different sentence types were consistent across gender and ethnicity. Ultimately, this research suggests that the selection of a sentence does make a difference with respect to the likelihood of re-offending.

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