

4 February 2021

Dear Members

Meeting of the Sentencing Council – 12 February 2021

The next Council meeting will be held via Microsoft Teams, the link to join the meeting is included below. **The meeting is Friday 12 February 2021 from 9:30 to 11:45.** Members of the office will be logged in shortly before if people wanted to join early to confirm the link is working.

The agenda items for the Council meeting are:

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| ▪ Agenda | SC(21)FEB00 |
| ▪ Minutes of meeting held on 29 January | SC(21)JAN01 |
| ▪ Action log | SC(21)FEB02 |
| ▪ Firearms Importation | SC(21)FEB03 |
| ▪ Robbery | SC(21)FEB04 |
| ▪ Guideline priority | No paper |

Members can access papers via the members' area of the website.

If you are unable to attend the meeting, we would welcome your comments in advance.

The link to join the meeting is: [Click here to join the meeting](#)

Best wishes



Steve Wade

Head of the Office of the Sentencing Council

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COUNCIL MEETING AGENDA

12 February 2021

Virtual Meeting by Microsoft Teams

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|---------------|--|
| 09:30 – 09:45 | Minutes of the last meeting and matters arising (papers 1 and 2) |
| 09:45 – 10:45 | Firearms Importation – presented by Roth Pope (paper 3) |
| 10:45 – 11:30 | Robbery – presented by Vicky Hunt (paper 4) |
| 11:30 – 11:45 | Guideline priority – presented by Steve Wade |

Sentencing Council

COUNCIL MEETING AGENDA

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MEETING OF THE SENTENCING COUNCIL

29 JANUARY 2021

MINUTES

Members present:

Tim Holroyde (Chairman)
Rosina Cottage
Rebecca Crane
Rosa Dean
Michael Fanning
Diana Fawcett
Adrian Fulford
Max Hill
Jo King
Juliet May
Maura McGowan
Alpa Parmar
Beverley Thompson

Apologies:

Nick Ephgrave

Representatives:

Hanna van den Berg for the Lord Chief Justice
(Legal and Policy Advisor to the Head of Criminal
Justice)
Amy Randall for the Lord Chancellor (Director
General of the Policy, Communications and
Analysis Group, MoJ)

Observer:

Jack Hickey (Policy Advisor, Policy,
Communications and Analysis Group, MoJ)

Members of Office in
attendance:

Steve Wade
Lisa Frost
Phil Hodgson
Ruth Pope
Ollie Simpson

1. MINUTES OF LAST MEETING

- 1.1 The minutes from the meeting of 18 December 2020 were agreed.

2. MATTERS ARISING

- 2.1 On 27 January the revised sentencing guidelines for drugs offences that reflect a change in the nature of offending and additional offences in relation to psychoactive substances were published. There had been good press coverage focussing on the inclusion of information on disparity in sentence outcomes associated with ethnicity and the changes relating to the exploitation of vulnerable people. The revised guidelines will come into force on 1 April 2021.
- 2.2 The Chairman informed the meeting that on 2 February he and the Head of Office would be giving oral evidence to the Justice Committee of the House of Commons on the work of the Sentencing Council.

3. DISCUSSION ON ASSAULT – PRESENTED BY LISA FROST, OFFICE OF THE SENTENCING COUNCIL

- 3.1 The Council considered consultation responses to factors relating to GBH and ABH offences and the findings of research in relation to a number of points raised. Minor amendments were agreed to explanatory text relating to highly dangerous weapons, and to the highest GBH harm factor for the purpose of clarity.
- 3.2 The Council discussed whether the guidelines should provide for a lack of premeditation to be included as a lesser culpability factor, and based on a suggestion by a consultation respondent a relevant factor was agreed for inclusion in the guidelines.
- 3.3 The Council considered responses and research findings in respect of application of the draft ABH harm model. An alternative more descriptive model was discussed and the Council agreed this should be tested with sentencers to identify if the revised model addresses the issues raised.

4. DISCUSSION ON TRADE MARK – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

- 4.1 The Council considered the responses to the consultation and the evidence from research with sentencers and discussed suggestions for changes to culpability and harm factors and to and aggravating and mitigating factors.
- 4.2 The Council noted that this was an offence that most sentencers come across only rarely and that the culpability factors in the draft guideline were too generic to provide much assistance to sentencers in some situations. It was agreed that the culpability factors should be revised to

ensure that it was clear that in appropriate cases an offender working alone could be placed in high culpability.

4.3 The Council considered that some very valuable contributions had been made by respondents and that many of the issues raised warranted further consideration. In particular, the Council was keen to ensure that the right balance was struck between the financial value of the offending and other harms that could result.

4.4 The Council agreed that a working group should be set up to consider some of the issues in more detail. It was recognised that this might mean that the timetable for publishing the guidelines would have to be pushed back.

5. DISCUSSION ON SEXUAL OFFENCES– PRESENTED BY OLLIE SIMPSON, OFFICE OF THE SENTENCING COUNCIL

5.1 As part of the sex offences guideline revision, the Council discussed the findings of the 2018 assessment of the guideline. It was agreed that, in the context of generally increasing sentencing severity for sex offences, there was not a disproportionate increase in severity for sexual assault and sexual assault of a child since 2015. Nonetheless, picking up on the findings of the assessment, the Council agreed to provide clarity for all relevant sexual offence guidelines by way of expanded explanations for the Step One elements of “abuse of trust” and “psychological harm” in line with Court of Appeal case law.

5.2 The Council also discussed consulting on small revisions to the guidance on historic sex offences, to align the wording more closely to Court of Appeal authority in the case of *Forbes*.

6. DISCUSSION ON WHAT NEXT FOR THE SENTENCING COUNCIL? – PRESENTED BY PHIL HODGSON AND OLLIE SIMPSON, OFFICE OF THE SENTENCING COUNCIL

6.1 The Council considered a summary of the consultation responses relevant to promoting public confidence. Members made several concrete suggestions for the communication team to follow up and gave provisional feedback in relation to priorities for the Council’s public confidence work.

6.2 Some respondents to the consultation had suggested that the Council should draw more on specialist expertise. The Council agreed that external expertise could be fed into the Council’s deliberations by way of sub-groups and that at the scoping stage of a new guideline, consideration should be given to what external expertise might be needed.

6.3 The Council noted suggestions that it should becoming more actively involved in public debate on sentencing matters, but expressed concern about the risk of being drawn on individual cases.

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SC(21)FEB02 February Action Log

ACTION AND ACTIVITY LOG – as at 5 February 2021

	Topic	What	Who	Actions to date	Outcome
SENTENCING COUNCIL MEETING 29 January 2021					
1	Trade Mark	Working group to be set up to discuss the issues raised at the January Council meeting around capturing additional harm in the guideline	Ruth Pope and Mike Fanning	ACTION ONGOING: Working group to meet on 12 February after the Council meeting	.

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Sentencing Council meeting:
Paper number:
Lead Council member:
Lead official:

12 February 2021
SC(21)FEB(03) – Firearms importation
Maura McGowan
Ruth Pope

1 ISSUE

1.1 The Council published eight firearms offences guidelines in December 2020 which came into force on 1 January 2021.

1.2 In the response to consultation for the firearms guidelines the Council stated its intention to consult on an additional guideline for firearms importation in 2021.

1.3 This paper discusses the approach to be taken to an importation guideline.

2 RECOMMENDATION

2.1 That the Council agrees that the scope of the guideline should be limited to the importation of firearms contrary to sections 50 and 170 of the Customs and Excise Management Act 1979.

2.2 That the Council considers the range of offending covered by the offences and agrees an approach to the guideline.

3 CONSIDERATION

The offences

3.1 The eight existing firearms guidelines all relate to offending contrary to the Firearms Act 1968. The offences relating to importation are contained in the Customs and Excise Management Act (CEMA) 1979. There are two CEMA offences which are used for the prosecution of importation of firearms: section 50(1)(b) and s170(2)(b). These offences are technically different, but the CPS position is that there is no material difference in the way that the two offences are prosecuted, though in practice section 50 is more likely to be charged in respect of less dangerous weapons.

50.— Penalty for improper importation of goods.

(3) If any person imports or is concerned in importing any goods contrary to any prohibition or restriction for the time being in force under or by virtue of any enactment with respect to those goods, whether or not the goods are unloaded, and does so with intent to evade the prohibition or restriction, he shall be guilty of an offence under this subsection and may be arrested.

(4) Subject to subsection (5), (5A), (5AA), (5B) or (5C) below, a person guilty of an offence under subsection (2) or (3) above shall be liable—

(a) on summary conviction, to a penalty of £20,000 or of three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding 6 months, or to both; or

(b) on conviction on indictment, to a penalty of any amount, or to imprisonment for a term not exceeding 7 years, or to both.

(5A) In the case of—

(a) an offence under subsection (2) or (3) above committed in Great Britain in connection with a prohibition or restriction on the importation of any weapon or ammunition that is of a kind mentioned in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or (1A)(a) of the Firearms Act 1968,

subsection (4)(b) above shall have effect as if for the words “imprisonment for a term not exceeding 7 years” there were substituted the words “imprisonment for life”.

170.— *Penalty for fraudulent evasion of duty, etc.*

(1) Without prejudice to any other provision of the Customs and Excise Acts 1979, if any person—

(b) is in any way knowingly concerned in carrying, removing, depositing, harbouring, keeping or concealing or in any manner dealing with any such goods,

and does so with intent to defraud Her Majesty of any duty payable on the goods or to evade any such prohibition or restriction with respect to the goods he shall be guilty of an offence under this section and may be arrested.

(2) Without prejudice to any other provision of the Customs and Excise Acts 1979, if any person is, in relation to any goods, in any way knowingly concerned in any fraudulent evasion or attempt at evasion—

(a) of any duty chargeable on the goods;

(b) of any prohibition or restriction for the time being in force with respect to the goods under or by virtue of any enactment; or

(c) of any provision of the Customs and Excise Acts 1979 applicable to the goods, he shall be guilty of an offence under this section and may be arrested.

(3) Subject to subsection (4), (4A), (4AA), (4B) or (4C) below, a person guilty of an offence under this section shall be liable—

(a) on summary conviction, to a penalty of £20,000 or of three times the value of the goods, whichever is the greater, or to imprisonment for a term not exceeding 6 months, or to both; or

(b) on conviction on indictment, to a penalty of any amount, or to imprisonment for a term not exceeding 7 years, or to both.

(4A) In the case of—

(a) an offence under subsection (1) or (2) above committed in Great Britain in connection with a prohibition or restriction on the importation or exportation of any weapon or ammunition that is of a kind mentioned in section 5(1)(a), (ab), (aba), (ac), (ad), (ae), (af) or (c) or (1A)(a) of the Firearms Act 1968, or subsection (3)(b) above

shall have effect as if for the words “imprisonment for a term not exceeding 7 years” there were substituted the words “imprisonment for life”.

(6) Where any person is guilty of an offence under this section, the goods in respect of which the offence was committed shall be liable to forfeiture.

3.2 It should be noted that offences prosecuted under CEMA are not subject to the minimum term provisions but weapons and ammunition that would be subject to the minimum term if prosecuted as possession, have a statutory maximum sentence of life as opposed to 7 years for all other weapons.

Firearms covered by the offences

3.3 Neither of the offences set out above are specifically firearms offences and it is not apparent of the face of the legislation exactly which weapons would be caught by the relevant provisions. The following explanation has been arrived at with the considerable help of the NCA and the CPS.

3.4 CEMA provides powers and offences for enforcing prohibitions and restrictions established by other legislation or provisions. In terms of firearms, the enabling legislation establishing import prohibitions and restrictions is the Import, Export and Customs Powers (Defence) Act 1939. Section 1 of The Import of Goods (Control) Order 1954 made under the enabling 1939 Act, prohibited the import of all goods into the United Kingdom. Section 2 exempts from prohibition any goods under the authority of any licence granted by the Board of Trade and in accordance with any condition attached thereto.

3.5 This led to the creation of the Open General Import Licence (OGIL) issued by the Department for International Trade (DIT) and renewed periodically by the Secretary of State as required. Under the OGIL most commodities are permitted to be imported to the UK without restriction except for an Annex of exceptions contained within the licence.

3.6 The current OGIL came into force 31 December 2020 and is attached as **Annex C**. The table (at Annex 1 of the OGIL) describes those goods not covered by the OGIL. These are listed as either ‘prohibited’ or ‘controlled’. Goods described as ‘prohibited’ represent an absolute prohibition and may not be imported. Goods described as ‘controlled’ may be imported into the UK but only under the authority of a specific licence issued by DIT.

3.7 The relevant provisions relating to firearms are at numbers 5 and 6 in the table. In summary it appears from this that it is an offence to import firearms (including component parts), shot guns, rifles, stun guns, pepper sprays, silencers, bump stocks and some categories of ammunition but not most air weapons.

3.8 Additionally, there are prohibitions on importing firearms in breach of international sanctions (for example Russian manufactured firearms are prohibited under a Regulation made under the Sanctions and Anti-Money Laundering Act 2018).

Evidence from transcripts

3.9 We have 33 transcripts of sentencing remarks for CEMA offences relating to 34 offenders. All of these cases appear to relate to firearms prohibited under section 5 of the Firearms Act 1968. Nine of them involved weapons that attract a maximum sentence of seven years and the remainder have a maximum of life.

3.10 Many of the importation cases involve more than one weapon or pieces of ammunition, and a few also involve the importation of other restricted items such as knives or drugs.

3.11 The scale of offending in the transcripts ranges from an individual bringing back a souvenir from holiday or ordering a stun gun on the internet with no criminal intent, to highly organised importation of multiple firearms. **Annex D** contains a brief summary of these cases. It should be noted that as these are all Crown Court cases they will not reflect the full range of offending and sentences.

Volumes and sentence outcomes

3.12 These are low volume offences. In 2019 eight offenders were sentenced where the principal offence was s170 and 17 were sentenced under s50 (in 2018 there were 11 sentenced for s170 and 19 for s50).

3.13 For the most part, s170 offences are dealt with in the Crown Court (88% of all offenders sentenced since 2009). Whereas s50 offences have been predominately dealt with in magistrates' courts (78% since 2014).

3.14 The types of sentences passed in 2019 were as follows:

Offence	Discharge	Fine	Community order	Suspended sentence	Immediate custody	Range
s50 CEMA	2	7	1	5	2	Discharge – 3 years' custody
s170 CEMA		1	1	2	4	Fine - 14 years' custody

The scope and structure of the guideline

3.15 As the offences do not relate specifically to firearms, it would be theoretically possible for the guideline to cover a wider range of weapons (such as batons, zombie

knives, explosives etc). However, this would over-complicate the guideline and goes beyond what has been asked for and agreed.

3.16 As for which firearms are included – it may not be necessary or helpful to attempt specify on the face of the guideline what these are. This is because the firearms included in the OGIL and in other regulations may change over time and, as set out above, it is by no means straightforward to identify them.

3.17 For this reason a structure similar to the [possession of a prohibited weapon guideline](#) where the type of weapon is identified by reference to the Firearms Act as the first stage of assessing culpability could be problematic. Although, if the guideline made it clear that these were examples of the type of weapon and not a definitive list it could still be a useful approach.

3.18 Alternatively or additionally it would be possible for a guideline to distinguish between those firearms which carry a maximum sentence of life (which is a defined list) and those which have a maximum sentence of seven years (which is anything else) and perhaps have two sentencing tables.

3.19 The suggestion from the NCA was that the guideline could be similar to the [transfer and manufacture guideline](#). This could work reasonably well for the sort of case that the NCA investigates but would not readily apply to offences at the bottom end of the scale.

Suggested approaches

3.20 Two versions of an importation guideline have been drafted to illustrate the different approaches that could be taken. Both would require considerable further work. At this stage the Council is asked to provide an indication of which, if either, of these approaches should be used as the basis for an importation guideline.

3.21 Version A at **Annex A** is based on the transfer and manufacture guideline. Changes from that guideline are shown by deletions being struck through and additions underlined. Highlighted sections are those which particularly require further thought.

3.22 The main difficulty with this model is ensuring that the less serious cases are covered. An additional lower harm level has been added to attempt to address this, though the additional sentence levels in this version are still higher than the lowest sentences passed.

3.23 Version B at **Annex B** is based on the possession of a prohibited weapon guideline. The sentence levels in table 1 are taken from the possession with intent to endanger life guideline and table 2 has been left as it is in the possession of a prohibited weapon guideline.

3.24 In both guidelines the assessment of harm is a challenge. By the nature of the offence the firearms will have been seized before they go into circulation and so it is the risk of harm that is relevant.

Question 1: Does the Council agree that the importation guideline should be confined to offences contrary to sections 50 and 170 of CEMA involving the importation of firearms and ammunition?

Question 2: Which, if either, of the suggested approaches to the guideline should be developed further?

Next steps

3.25 The tentative plan had been to sign the guideline off for consultation at one further meeting in April, consult in the early summer, bring it back to Council in the autumn and publish the definitive guideline in time for it to come into force on 1 January 2022 – which would be one year after the other firearms guidelines. Sign off in April looks over-ambitious, but any delay could perhaps be offset by a slightly shorter than usual consultation period as this is a fairly niche guideline and we can target those who responded to the earlier consultation.

3.26 In any event, it seems likely that a working group meeting will be needed before the next Council meeting to consider some of the detailed points.

Question 3: Does the Council agree that the Firearms Working Group should consider the next draft of the guideline?

4 EQUALITIES

4.1 Due to the very low volumes of these offences it will not be possible to draw any conclusions from demographic data on whether there are any issues of disparity of sentence outcomes between different groups. However, care can be taken to ensure that the guideline operates fairly.

5 IMPACT AND RISKS

5.1 A resource assessment will be provided for the consultation. At this stage it would be helpful to have an indication whether the Council intends broadly to maintain current sentence levels.

Question 4: Should the guideline seek to maintain current sentence levels for these offences?

Sentencing Council meeting:
Paper number:
Lead official:

12 February 2021
SC(21)FEB04 – Robbery
Vicky Hunt
0207 0715786

1 ISSUE

1.1 As part of the Council's tenth anniversary year the Analysis and Research team undertook to estimate the cumulative impact of the Sentencing Council's guidelines. The analysis looked at all guidelines that have been evaluated to date; this covers 76 offences. Whilst all of the guidelines that had been evaluated were reviewed the team's main focus was on the impact of the Council's offence-specific guidelines on sentencing severity and subsequently on the need for prison places. The research also sought to compare the actual outcome with the expected impact for each offence.

1.2 The research found that of all of the guidelines, robbery was associated with the greatest need for additional prison places, amounting to an average of 500 places per year, by 2018. The resource assessment had indicated that we did not expect there to be an impact.

1.3 This paper asks the Council to consider whether this guideline should be revised as a result of these findings.

2 RECOMMENDATION

2.1 That the Council consider the discussion set out below.

3 CONSIDERATION

3.1 The research identified 21 offences (out of 76) where changes in sentencing severity were observed. 10 of those 21 offences related in some way to immediate custody. The potential associated change in the requirement for prison places was estimated for nine of these 10 offences.¹ Overall, it is estimated that these nine offences were associated with a need for a total of around 900 additional prison places per year, by 2018. Around three quarters of these are estimated to have arisen as a result of two offences/ guidelines:

¹ One offence (theft from a shop or stall) was excluded from the 10 offences, as it was not clear that the guideline was associated with the changes observed.

causing grievous bodily harm with intent, and robbery. All nine of the guidelines are listed below:

Robbery
Causing grievous bodily harm with intent
Non-domestic burglary
Sexual assault on a child under 13
Sexual assault
Going equipped for theft or burglary
Assault on a police constable
Importation / exportation of a class B drug
Importation / exportation of a class A drug

3.2 All other guidelines listed above are in the process of being revised or have already been revised. However, none of the revisions are solely as a result of the impact on prison places. Both the burglary and assault guidelines are currently in the older Sentencing Council format which combines the assessment of harm and culpability and leads to the identification of one of 3 categories. With this model there is no medium level of harm or culpability, only higher and lower culpability and greater/lesser harm. These old-style guidelines are a lot less nuanced and we have gradually replaced them with more complex models over the years. Whilst the revision of burglary will revise the structure and make a number of other factor changes its main aim is not to reduce seriousness for non-dwelling burglaries.

3.3 With regard to assault, the evaluation of assault revealed some concerns with specific factors within the guidelines, and there have been some changes to legislation since the existing guideline came into effect. Both of these issues are being addressed in the rewrite. For the offences where there were unintended increases in sentences under the existing guideline (for example, for GBH with intent where sentences increased considerably when only a small increase was expected), analysis suggests that the revised guidelines should address the issues causing the increases and sentences should decrease as a result.

3.4 Last month the Council were asked to consider whether changes are needed to the sexual offence guidelines listed above to address the associated increase in sentence severity. The Council decided not to take action specifically related to sentence levels as it

was felt that they were relatively minor, and justified. The Council did, however, choose to address some other issues with regard to factors that are not well understood or need clarification. These changes will be made as part of a wider project of changes to the sexual offence guidelines including a revision of the s14 Sexual Offences Act 2003 arranging or facilitating the sexual exploitation of a child guideline, and the production of a new guideline for the offence of sexual communication with a child.

3.5 The drugs guidelines have now also been revised but for reasons outside of the evaluation, mainly related to changes in offending behaviour and the creation of new offences in legislation. Indeed, drugs is only included in the list above because the original importation guideline had the desired effect of reducing seriousness for sentencing drug mules. We have not sought to undo those changes within the new importation guidelines.

3.6 For robbery there are no other reasons to revise the guidelines; there have been no changes in legislation; no significant case law that has a bearing on the guidelines, and they are in the current format. The only reason the Council would revise the guidelines would be to address the increase in sentence severity.

The Robbery Guidelines and Evaluation

3.7 The Sentencing Council's *Robbery Definitive Guideline* came into force on 1 April 2016, replacing an earlier guideline issued by the Sentencing Council's predecessor body, the Sentencing Guidelines Council. It was designed to improve consistency in sentencing and was not anticipated to change sentencing practice significantly. The guideline for adults covers all types of robbery and splits the single offence under section 8 of the Theft Act 1968 into three guidelines, with different sentencing ranges for each: [click on the link below for access to the relevant guideline]

- [Street and less sophisticated commercial;](#)
- [Dwelling;](#) and,
- [Professionally planned commercial robbery.](#)

3.8 The earlier guideline (attached as Annex A), produced by the Sentencing Guidelines Council consisted of just one guideline covering street robbery, robbery of small businesses and less sophisticated commercial robbery. Dwelling and professionally planned commercial robberies were not covered and instead sentencers were referred to relevant guidance from the Court of Appeal- a short precis of which was included.

3.9 The new guideline also had the aim of consolidating existing sentencing practice, ensuring that robberies with knives and guns should attract the toughest sentences. This was not expected to change sentencing severity in practice, because the limited data

available when the guideline was published suggested that these cases already received the toughest sentences.

3.10 However, trend data showed that sentencing severity did increase beyond the upper boundary of what would have been expected from normal fluctuations in sentencing after the guideline was introduced.² The guideline therefore appeared to have an unanticipated, inflationary effect. This indicates that we may have been mistaken in our belief that cases involving knives and guns were already getting the toughest sentence, or perhaps the case mix has changed.

3.11 The quantitative data suggested that this increase may be related to a high proportion of cases being categorised at the highest level of culpability (culpability A). Furthermore, regression analysis indicated that the new high culpability factor relating to producing a bladed article or firearm to threaten violence was associated with the greatest effect in increasing average custodial sentence length (ACSL). While this indicates that the guideline succeeded in ensuring that the robberies involving highly dangerous weapons continued to attract the toughest sentences, the inclusion of this factor in the guideline also appears to have led to an unanticipated uplift.

3.12 The introduction of 'psychological harm' as part of harm may also have played a role in the increase in sentencing severity, particularly in relation to dwelling and professionally planned commercial robberies, where psychological harm was often deemed serious.

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

3.14 One area that was not explored as part of guideline development or the evaluation is whether sentences vary according to the age, sex or ethnicity of the offender. Data tables showing sentencing outcomes and immediate custodial sentence lengths by age, sex and ethnicity will be provided to the Council on the day of the Council meeting.

² See the evaluation of the Robbery guideline:
<https://www.sentencingcouncil.org.uk/publications/item/robbery-assessment-of-guideline/>

Conclusions

3.15 The evaluation highlights that the inclusion of the high culpability factor; 'production of a bladed article, firearm or imitation firearm to threaten violence' was associated with the greatest effect in increasing average custodial sentence length (ACSL).

3.16 In preparation for this meeting the A&R team have gathered up to date data on the sentences received and the Average Custodial Sentence Lengths (ACSLs). The data can be seen at Annex B. It shows that the ACSLs continue to rise up to 2019.

3.17 As there are no other known concerns with the guideline any revision would be solely to address the increase in sentence severity and would likely involve either removing, rewording or reallocating the relevant culpability factor ('production of a bladed article, firearm or imitation firearm to threaten violence') to a lower culpability level, or the Council could chose to change the sentences within the sentence table. Changing the guidelines in any of these ways is likely to present some handling difficulties as most people would probably agree that the production of a knife and/ or firearm during a robbery makes it very serious. In addition, the guideline in its current format appears to be well liked by sentencers.

3.18 However not revising the guideline will also attract criticism from some. This guideline has had the most significant impact on sentence severity of all our guidelines to date and the impact of that guideline was not predicted. The Council have already decided to take no action in relation to the inflationary impact of other guidelines on the basis that the increase is justified.

Question

Does the Council want to revise the robbery guideline to seek to address the increases in sentence severity?

4 NEXT STEPS

4.1 Should the Council choose to take action the revision itself would not be imminent as there is already a lot of work on our schedule. It would instead be added to the list of guidelines to be produced/ rewritten. The first step in the project though would likely be further analysis, perhaps involving some transcript work to get a sense of any obvious issues or disproportionate sentencing with individual cases.

4.2 Whilst any revision of this guideline could not be started soon it is still useful to have a decision on this area now so that any questions we are asked as a result of the cumulative impacts work can be answered.

5 EQUALITIES

5.1 Data tables showing sentencing outcomes and immediate custodial sentence lengths by age, sex and ethnicity are currently being prepared and will be provided to the Council on the day of the Council meeting.

6 IMPACT AND RISKS

6.1 The Council may be criticised for failing to respond to the evidence that shows the robbery guideline to have an inflationary effect, especially as it was not one that we anticipated within our resource assessment. Robbery has had the largest impact of any of our guidelines to date. Whilst not revising the guideline may be justifiable, there have been other guidelines where similar arguments have been made, including sexual offences, and burglary. The argument could be made that the work of the Council is pushing up sentences and the Council does not respond to their own evaluations.

6.2 However, in the case of robbery the Council was clear in the development of the guidelines that offending involving the production of a knife or firearm should result in the highest level of culpability and thus result in one of the higher sentences within the sentencing table. A revision of the guideline that results in a change from this position – i.e. one that reduces the seriousness of robberies involving knives or firearms may also attract criticism.