

# Sentencing Council



**Sentencing Council**  
**Annual Report 2020/21**



# **Sentencing Council Annual Report 2020/21**

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice

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# Contents

<b>Foreword</b>	<b>1</b>
<b>Introduction</b>	<b>7</b>
<b>Key events of 2020/21</b>	<b>8</b>
<b>Sentencing guidelines</b>	<b>10</b>
Sentencing Code	10
Assault and attempted murder	11
Burglary	12
Child sexual offences	12
Children and young people	13
Dangerous dogs	13
Drug offences	16
Firearms offences	18
Firearms importation	19
Guilty pleas	19
Magistrates' courts sentencing guidelines and associated explanatory materials	20
Mental disorders, developmental disorders and neurological impairments	20
Modern slavery offences	21
Unauthorised use of a trademark	22
<b>Communication</b>	<b>23</b>
Working with the media	23
Sentencing Council website	26
Social media: Twitter	26
Working to engage the public and victims of crime	27
Reaching young people	27
Developing relationships with partners and interested parties	28
<b>Analysis and research</b>	<b>30</b>
Undertaking research and analysis to support the development of guidelines and other statutory duties	30
Conducting an assessment of the resource implications of guidelines	30
Monitoring the operation and effect of sentencing guidelines and drawing conclusions	31
Publishing Sentencing Council research	31
Reporting on sentencing factors and non-sentencing factors	31



<b>Sentencing factors report</b>	<b>34</b>
Sentencing guidelines	34
Sentencing offenders with mental disorders, developmental disorders or neurological impairments	34
Changes to the magistrates' courts sentencing guidelines and associated explanatory materials	35
Firearms offences	36
 <b>Non-sentencing factors report</b>	<b>40</b>
Definition of non-sentencing factors and their significance	40
Statistics on the effect of non-sentencing factors on resource requirements	40
Volume of sentences and composition of offences coming before the courts	42
The rate of recall from licence	42
Post-sentence supervision	42
The rate at which court orders are breached	42
Patterns of reoffending	43
Release decisions by the Parole Board	43
Remand	43
<b>Budget</b>	<b>44</b>
Financial report	44
<b>Appendices</b>	<b>45</b>
<b>Appendix A: About the Sentencing Council</b>	<b>45</b>
Governance	45
How the Council operates	46
Equality and diversity working group	47
Public sector equality duty	48
Relationship with Parliament	48
The Office of the Sentencing Council	49
Senior management team	49
Guideline development	50
<b>Appendix B: Membership of the Sentencing Council</b>	<b>51</b>
Membership of the Council at 31 March 2021	51
Judicial members	51
Non-judicial members	51
Register of members' interests	51
<b>Appendix C: Sentencing guidelines production stages</b>	<b>52</b>

# Foreword

## by the Chairman



I am pleased to introduce the Sentencing Council's annual report for 2020/21. It is the Council's 11th annual report and my third as Chairman, and it marks the year in

which the Council celebrated its first decade and began to set the scene for the next.

2020/21 was a momentous year the world over. The global pandemic tested us all and presented many challenges to the criminal justice system in England and Wales and, not least, to the Sentencing Council. Our ways of working were profoundly disrupted, with the Council unable to meet in person throughout the year, and many of our plans were subject to change.

I am proud to say that, in spite of these challenges, the Council successfully delivered the core of our work plan for the year. In July 2020, we published a definitive overarching guideline for sentencing offenders with mental disorders, developmental disorders, or neurological impairments, which came into effect on 1 October. On the same day, revised versions of a number of the magistrates' courts sentencing guidelines came into effect, alongside updates of related explanatory materials. On 9 December we published definitive guidelines covering firearms offences, which came into effect on 1 January 2021. January also saw the publication of definitive guidelines for drug offences:

five of these guidelines were revisions of existing drug-offences guidelines; four were new guidelines covering offences under the Psychoactive Substances Act 2016. Together, these guidelines provide sentencers with a comprehensive sentencing framework that recognises the changing nature of drugs and drug offending. The guidelines were published on 27 January 2021 and came into effect on 1 April 2021.

During the year we also ran three consultations on draft offence specific guidelines for assault offences and attempted murder; unauthorised use of trademarks; and modern slavery offences. Consultation is a vital aspect of the Council's work, and one which we take very seriously. As ever, the Council has given close consideration to all the responses we received to this year's consultations, and definitive guidelines for all three will come into effect during the course of 2021.

We also ran a consultation between March and September 2020 in which we posed the question "What next for the Sentencing Council?". The consultation, which was launched to mark the Council's tenth anniversary in April 2020, originated in our decision to use the opportunity of the anniversary to review the Council's achievements to date and consider our future priorities and strategy and the way in which we discharge the Council's statutory duties. We opened the consultation to a wide audience, including: criminal justice professionals; reformers, academics and others working in criminal justice; and other organisations and individuals, including the

public, who have an interest in criminal justice and the work of the Sentencing Council. We received 37 responses, and the Council is in the process of considering the wide variety of suggestions put forward. Deciding on our future priorities is inevitably a work of fine balance and requires great care, particularly in light of the limited resources the Council has available. There is more information on the consultation on pages 14-15; we expect to publish a response in late summer 2021.

“What next for the Sentencing Council?” was just one of a number of activities we had planned for the Council’s tenth anniversary year, and the timing of its launch had been chosen to herald what we had hoped would be a significant, one-day event in April. Sadly, the launch came only days before the nation was put into lockdown on 23 March 2020, and we swiftly had to change our anniversary plans. The change of plans included postponing – and finally cancelling – our event, which was due to be held at the Law Society Hall in London on Friday 3 April. The event would have brought together a wide range of people with interest in the criminal justice system to consider the impact of the Council, the evolution of the sentencing guidelines and what effect these have had on the approach to sentencing and the work of the courts. It would have provided us with an opportunity to hear at first hand from our friends, partners and critics and, along with the anniversary consultation, the Council is considering in what other ways we might continue this dialogue.

Unfortunately, lockdown also forced us to cancel the live finals of our anniversary sentencing competition, which were due to be held at the Royal Courts of Justice on 25 March. The competition, which was open to all students of the Legal Practice Course and Bar Professional Training Course, was designed to give the next generation of solicitors and barristers an opportunity to work with the sentencing guidelines, increase their awareness and understanding of sentencing and how the sentencing guidelines operate, and give them an insight into the Council’s work. The members of the Council are grateful to all the students who entered the competition, and we would like to congratulate again our two winners, both students of the Bar Professional Training Course: Steven Ramesh of the University of the West of England, Bristol, who received first prize, and second-prize winner Lameesa Iqbal of City, University of London. We are only sorry that they have not yet been able to take up their awards: a one-week mini pupillage, kindly offered by Red Lion Chambers, London; and a one-week marshalling experience with a judge.

The impact of the Covid-19 pandemic was felt across the criminal justice system. In the early months, in response to public concerns about Covid-related assaults, the Council published interim guidance to assist the courts in sentencing common assault offences in the context of the pandemic. The interim guidance clarified that, when sentencing common assault offences involving threats or activity relating to transmission of Covid-19, courts should treat this as an aggravating feature of the offence. Responding again



to public concerns about the imposition of custodial sentences during the pandemic, the Council issued a public statement in June that aimed to clarify, for those who are less familiar with the criminal justice system, the well-established sentencing principles which, with sentencing guidelines, are sufficiently flexible to deal with all circumstances, including the consequences of the pandemic.

Despite the pressures of the pandemic, thanks to the efforts of Council members and officials in the Office of the Sentencing Council, we were able to continue to deliver work across the range of the Council's responsibilities. In addition to publishing guidelines, the Council is also required to monitor and evaluate their operation and effect. In October 2020, we published our evaluation of the dangerous dogs sentencing guidelines, which came into effect in July 2016. This was followed in November by the evaluations of two overarching guidelines: *Reduction in sentence for a guilty plea* and *Sentencing children and young people*, both of which have been in effect since June 2017.

Between 4 January and 7 May 2021, the Council ran a data collection exercise across all magistrates' courts in England and Wales. We would like to thank all the magistrates who contributed to this exercise and allowed us to gather information about vital aspects of the sentencing process, including culpability and harm factors, aggravating and mitigating factors, guilty plea reductions and sentence outcomes.

We were particularly pleased to release, in December 2020, data on the factors taken into account by magistrates' courts when sentencing offences of theft from a shop or stall. This publication marked the Council's first data release of its kind for a magistrates' court offence and represents a significant step forward in filling the gap in detailed, publicly available, sentencing data from the magistrates' courts. There is more on this data release on pages 38-9. We expect in the next year to publish releases of similar data on drug offences sentenced at magistrates' courts and robbery offences sentenced in the Crown Court.

We continue to publish resource assessments alongside each of our new and revised guidelines. This year, these included resource assessments for the revised drug offences guidelines, the firearms guidelines, the changes to magistrates' courts sentencing guidelines and the overarching guideline on sentencing offenders with mental disorders, developmental disorders, or neurological impairments.

In last year's annual report, we reported on the research we conducted to support the consultation on draft drug offences guidelines. The research analysed sentencing data to consider the association between different factors and sentencing outcomes in the Crown Court for selected drug offences. In particular, the Council wanted to investigate the possible association between an offender's sex and ethnicity and the sentence imposed for these offences. This year, the Council has undertaken further work to understand more about potential

disparities in sentencing outcomes for particular groups. We also conducted an analysis in support of the firearms offences consultation that opened in December 2020, in which we identified disparities in sentence outcomes based on ethnicity. The Council has taken measures in the drug offences and firearms offences guidelines to address these disparities. These measures include drawing sentencers' attention to evidence of sentencing disparities in specific offences as an integral part the sentencing process. The Council is committed to continuing to investigate apparent disparity in sentencing outcomes across all offences. We have set up a working group to look at this specific issue and the Council will take further action as and when there is evidence of effective measures that can be applied to guidelines.

This year, we also began the process of commissioning a research project to examine the potential for our guidelines to cause disparities in sentencing. The project is intended to review the language used in the guidelines and the structure of guidelines, and it will ask whether any aspects of the way in which we develop guidelines could have implications for equalities and disparity in sentencing. The review will also consider how the Council can best increase awareness and understanding of sentencing guidelines among people with protected characteristics under the Equality Act 2010. This is work of vital importance in helping to maintain confidence in the sentencing guidelines and the wider criminal justice system, and we look forward to seeing the results. There is more information on pages 32-3 on the work we are doing to examine the procedures and

processes for developing guidelines and the sentencing guidelines themselves within the context of equality and diversity.

On 1 December 2020 the Sentencing Act 2020 came into force. The Act contains within it the Sentencing Code, which consolidates all sentencing procedure law of England and Wales. This welcome consolidation brought together sentencing-related provisions spread across a number of different statutes, including the Powers of Criminal Courts (Sentencing) Act 2000, the Criminal Justice Act 2003, the Coroners and Justice Act 2009 and the Legal Aid, Sentencing and Punishment of Offenders Act 2012. To make sure the sentencing guidelines remained accurate and enable sentencers and practitioners to follow the Code, we needed to identify and amend references to any provisions from those pieces of legislation wherever they appeared in the guidelines. This was a painstaking and complex piece of work, which we completed in time to coincide with the commencement of the Act and which we were able to undertake only because of the Council's earlier decision to make the guidelines fully digital.

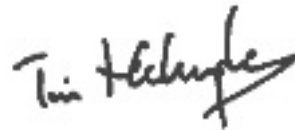
The ready availability of the sentencing guidelines on our website does much to improve the transparency of sentencing and make it more accessible to the public. On 1 December 2020 we launched a new website for the Council. For many people, our website is their first encounter with the Council, and the new site has been designed specifically to promote a greater understanding of sentencing among our public and other non-specialist audiences. For more information

on the new website and how it contributes to the Council's duty to have regard to public confidence in sentencing and the criminal justice system, see pages 24-5.

Since 1 April 2020, the Council has seen a number of changes of personnel, with the appointment of Assistant Commissioner Nick Ephgrave as the policing member; the Honourable Mrs Justice Juliet May from the High Court; and Ms Jo King JP to the magistrates' role. I offer them all a warm welcome. I also offer my sincere thanks to Mr Justice Goose, whose term of appointment came to an end on 25 May 2020. Since joining the Council in April 2014, he has made a most valuable contribution to the Council and as Chairman of the Confidence and Communication sub-group.

I pay tribute to all my fellow members of the Sentencing Council who have approached this difficult year with energy, commitment and good will to make sure that the Council could continue to meet the very high standards for which it is deservedly known and play a significant role in the delivery of justice that is consistent and fair – and can be seen to be consistent and fair. In the year ahead we will work together to face the challenges of, we hope, the return to more traditional ways of working both on the Council and in the Office of the Sentencing Council.

I continue to be enormously impressed by the officials of the Office of the Sentencing Council. They are the Council's most valuable resource, and I am very proud of the high quality of the work they produce, even in exceptional times such as these. We operate within a limited budget and it is testament to their ability and dedication that the Council continues to have the success that it does.



Tim Holroyde  
**Lord Justice Holroyde**  
July 2021





Royal Courts of Justice, London



# Introduction

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice. It was set up by Part 4 of the Coroners and Justice Act 2009 to promote greater transparency and consistency in sentencing, while maintaining the independence of the judiciary.

The aims of the Sentencing Council are to:

- promote a clear, fair and consistent approach to sentencing;
- produce analysis and research on sentencing; and
- work to improve public confidence in sentencing.

This annual report covers the period from 1 April 2020 to 31 March 2021. For information on past Sentencing Council activity, please refer to our earlier annual reports, which are available on our website at:

[www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk).

In 2020/21 the Council's work was aligned to the following four objectives:

- Prepare sentencing guidelines that meet their stated aims, with particular regard to the likely impact on prison, probation and youth justice services, the need to consider the impact on victims, and the need to promote consistency and public confidence.

- Monitor and evaluate the operation and effect of guidelines and draw conclusions.
- Promote awareness of sentencing and sentencing practice.
- Deliver efficiencies, while ensuring that the Council continues to be supported by high-performing and engaged staff.

The activities for 2020/21 that contributed to the delivery of these objectives are outlined in this report.

Also in this report, produced in accordance with the Coroners and Justice Act 2009, are two reports considering the impact of sentencing (pages 34-7) and non-sentencing factors (pages 40-3) on the resources required in the prison, probation and youth justice services to give effect to sentences imposed by the courts in England and Wales.

# Key events of 2020/21

2020		
<b>April</b>	15	Magistrates' courts sentencing guidelines and associated explanatory materials consultation closed
	15	Assault offences statistical bulletin published
	16	Assault offences and attempted murder consultation opened
<b>May</b>	7	Drug offences consultation closed
	26	Assistant Commissioner Nick Ephgrave appointed as policing member of the Council
<b>June</b>	23	Statement released on the application of sentencing principles during the Covid-19 pandemic
<b>July</b>	7	Unauthorised use of a trademark statistical bulletin published
	8	Unauthorised use of a trademark consultation opened
	14	Sentencing Council Annual Report 2019/20 laid before Parliament and published
	21	Sentencing offenders with mental disorders, developmental disorders and neurological impairments overarching guideline published
<b>September</b>	9	"What next for the Sentencing Council?" consultation closed
	15	Assault offences and attempted murder consultation closed
	30	Unauthorised use of a trademark consultation closed
<b>October</b>	1	Updates to the magistrates' courts sentencing guidelines published and came into effect
	1	Sentencing offenders with mental disorders, developmental disorders and neurological impairments overarching guideline published
	8	The Hon Mrs Justice May and Jo King JP appointed to the Sentencing Council
	14	Modern slavery offences statistical bulletin published
	15	Modern slavery offences consultation opened
	21	Dangerous dogs offences guidelines assessment published



2020		
<b>November</b>	17	Sentencing children and young people overarching guideline assessment published
	17	Reduction in sentence for a guilty plea guideline assessment published
<b>December</b>	1	New website launched and all guidelines updated to reflect coming into force of the Sentencing Code
	8	Firearms offences data tables published
	9	Firearms offences definitive guidelines published
	17	Theft from a shop or stall data published
2021		
<b>January</b>	1	Firearms offences definitive guidelines came into effect
	15	Modern slavery offences consultation closed
	26	Drug offences data tables published
	27	Drug offences definitive guidelines published



*Newport Magistrates' Court, South Wales*

# Sentencing guidelines

The sentencing guidelines are intended to help ensure a consistent approach to sentencing, while preserving judicial discretion. Under the Sentencing Act 2020 (formerly the Coroners and Justice Act 2009), a court must follow relevant sentencing guidelines unless satisfied in a particular case that it would be contrary to the interests of justice to do so.

When developing guidelines, the Council has a statutory duty to publish a draft for consultation. At the launch of a consultation, we will seek publicity via mainstream and specialist media, as well as promoting it via social media and on the Sentencing Council website. We make a particular effort to reach relevant professional organisations and representative bodies, especially those representing the judiciary and criminal justice professionals, but also others with an interest in a particular offence or group of offenders. Many of the responses come from organisations representing large groups so the number of replies does not fully reflect the comprehensive nature of the contributions, all of which are given full consideration by the Council.

The work conducted on all the guidelines during the period from 1 April 2020 to 31 March 2021 is set out in this chapter, separated into four key stages:

- development
- consultation
- post-consultation
- evaluation and monitoring

Because guidelines were at different stages of production during the year, reporting varies between guidelines. See Appendix C for more information on the production stages of the guidelines.

## Sentencing Code

The Sentencing Act 2020 came into force on 1 December 2020. The Act created the Sentencing Code, which consolidates existing sentencing procedure law. To enable sentencers and practitioners to follow the Code, the Council updated all sentencing guidelines and related explanatory materials to reflect the new provisions.

## Assault and attempted murder

### **Consultation**

The assault offences guidelines were the first guidelines produced by the Sentencing Council and were published in 2011. Following an evaluation of the guidelines in 2015, the Council drafted revised guidelines for assault offences and also for attempted murder (an offence covered by a guideline published by the Sentencing Guidelines Council), and opened a consultation on those draft guidelines on 16 April 2020. The consultation sought views on seven sentencing guidelines. These included nearly all offences covered by the existing assault and attempted murder guidelines, as well as an additional guideline for assaults on emergency workers. The consultation closed on 15 September 2020.

Alongside the consultation, the Council also published a resource assessment and statistical bulletin for the offences included.

During the consultation period, to support the development of the guideline, we carried out extensive analysis of court transcripts and qualitative research with Crown Court judges and magistrates to explore how the draft revised guidelines might work in practice. Before and during the consultation we also engaged with external stakeholders and government departments to discuss and explore views on our approach to revising the guidelines.

### **Post-consultation**

There were 67 responses to the consultation and the Council considered changes to the guidelines in the light of these. Potential further changes based on responses and research findings were tested with sentencers. A data collection exercise was also undertaken in magistrates' courts between January and May 2021 that included the collection of data on sentencing factors and outcomes for several assault offences. An early sample of data from this exercise will be used to support the resource assessment of the guideline and, in due course, a similar post-guideline data collection exercise will be undertaken to provide information to evaluate the impact of changes made to the guidelines. The definitive guidelines were finalised in April 2021 and published in May 2021.

### **Media coverage**

The consultation on sentencing guidelines for assault and attempted murder offences was reported in the *Guardian*, *Daily Telegraph* and *Police Oracle*. It was also featured on Sky Radio, LBC, Talk Radio and on over 30 other commercial radio stations.

## Burglary

### *Development*

In January 2012, the Sentencing Council's definitive guidelines for sentencing burglary offences came into effect. An evaluation of the guidelines published in January 2016 found that sentencing severity had increased beyond what was expected for non-domestic burglary offences. Sentences were also found to have increased beyond what was expected for aggravated burglary, although due to low volumes for this offence, the findings were less conclusive. Further analysis published in July 2017 found that the guidelines may have contributed to increases in sentencing severity for all three burglary offences, although the increase in domestic burglary was within the expected range. In light of these findings, the Council decided to revise the guidelines.

A consultation on the revised guidelines is expected to take place during summer 2021.

## Child sexual offences

### *Development*

The Sentencing Council produced definitive guidelines covering sexual offences, mainly under the Sexual Offences Act 2003, in 2013. These guidelines came into effect on 1 April 2014.

In April 2020, the case of *Privett and Others* [2020] EWCA Crim 557 set out the approach for the courts to take for offences under section 14 of the Sexual Offences Act 2003 (Arranging or facilitating the commission of a child sex offence) when no real child victim exists. This may be because an offender has been deceived into believing they are arranging to meet a child, who is in fact an adult decoy.

At the conclusion of the judgment, the Court of Appeal invited the Sentencing Council to consider whether any and, if so, what clarification of the relevant sentencing guideline might be necessary, and whether further guidance could be given to sentencers.

The Council has agreed to develop revised guidelines for the courts to follow in such cases, and has also developed the first draft guideline for offences committed under section 15A of the Sexual Offences Act 2003 (Sexual communication with a child). We are also considering various other minor amendments to the sexual offence guidelines.

We launched a consultation on these amendments and the draft of the new section 15A guideline in May 2021.

## Children and young people

### *Monitoring and evaluation*

The Council undertook an exercise to assess the impact and implementation of the definitive guideline *Sentencing children and young people*, which came into effect on 1 June 2017 and includes overarching principles for sentencing children and young people as well as offence specific guidelines for robbery and sexual offences. The guideline applies to those aged under 18 years only.

We analysed data from the Ministry of Justice's Court Proceedings Database to produce descriptive statistics to observe the changes in the type of disposals being imposed for children and young people and the average custodial sentencing length. We also conducted a time series analysis to forecast likely sentencing trends in the absence of the guideline and compared this to actual trends in sentencing severity. The analysis also included a breakdown of sentencing outcomes over time by ethnicity.

We carried out a survey with sentencers working in the youth court to establish whether the guideline met its stated aim, to understand how sentencers use the guideline and their attitudes to it, and to explore sentencers' perception of whether the guideline has changed sentencing behaviour.

The evaluation was published on 17 November 2020.

## Dangerous dogs

### *Evaluation and monitoring*

In October 2020, the Council published a quantitative assessment of the impact of the dangerous dog offences guidelines, which came into effect in July 2016 and replaced the Council's previous guidelines for dangerous dog offences. We produced the updated guidelines in response to legislative changes introduced by Parliament, which came into force in May 2014. The guidelines themselves were not anticipated to change sentencing practice; it was assumed that any changes observed would be attributable to the legislation.

For most offences, sentencing outcomes either remained relatively stable when the guideline came into effect, or the number of offenders sentenced for the period analysed was too low to conduct any meaningful analysis.

For offences involving a dog dangerously out of control where a person is injured, we found that average sentencing severity increased slightly when the guideline came into effect, although mostly within the bounds of what would be expected based on historical trends. The increase we observed was very small so any impact on prison or probation resources would also have been small.

The Council has concluded that, based on the evidence available, there is no immediate need to revisit the guidelines, but we will continue to monitor impact.

## What next for the Sentencing Council?

April 2020 marked ten years since the Sentencing Council was set up by the Coroners and Justice Act 2009. This significant anniversary provided us with a natural point at which to take stock of what we have achieved and look forward to what the Council's priorities should be for the next five to 10 years. In March 2020 we launched a consultation seeking views from our partners, supporters and critics as to what the Council's future objectives and priorities should be.

### Balance of statutory functions

Our founding legislation sets out a number of duties that the Council *must* fulfil and some that *may* be carried out. The Council's view is that we should continue to focus on the areas where we believe we can add most value, namely developing and revising guidelines; monitoring and evaluating guidelines; and promoting public confidence. We asked our consultees whether they agreed that we should continue to prioritise these statutory duties or whether and, if so to what extent, we should devote some of the Council's limited resources to other functions.

### Developing and revising sentencing guidelines

Guidelines have always been at the core of the Council's work. As well as producing new guidelines, during the last 10 years we have also revised some of the Council's early guidelines to take account of changes to legislation and/ or in response to evaluation.

As well as seeking views on the criteria by which the Council decides to develop guidelines, we also asked our consultees whether they thought we could offer more value by: developing new guidelines and revising existing ones; producing guidelines for higher volume or lower volume offences; or developing overarching principles or more offence specific guidelines.

### Analysis and research

Analysis and research are an integral part of guideline development. They help the Council identify potential problems with sentencing, for example disproportionate outcomes for particular offenders; set sentencing ranges; and determine the likely implications of a guideline. To inform our work, we draw on external data sources as well as undertaking our own research. There are several analytical areas to which the Council could consider devoting more resources if these were to be regarded as priority areas, more resources were to become available or we could work in collaboration with academics and external partners.

To help us balance our priorities, we asked our consultees whether, and if so how, our analysis and research work could be improved and which areas of this work should we prioritise.



### **Promoting public confidence**

The Council has a statutory duty to have regard to the need to promote public confidence in the criminal justice system when developing sentencing guidelines.

We have interpreted this duty more widely as an obligation to actively promote public confidence in the system and in sentencing.

Our communications aim to promote public confidence by improving people's knowledge about, and understanding of, sentencing and how it works.

We asked our consultees to what extent the Council should be responsible for promoting public confidence in both sentencing and the wider criminal justice system and what we could do to achieve most with our limited resources.

### **Costs and effectiveness of sentencing**

The Council has a statutory duty to have regard to the cost of different sentences and their relative effectiveness in preventing reoffending.

We produce an annual, internal report on the latest research on effectiveness of sentencing to help inform the Council's deliberations. While we have chosen to focus on effectiveness in relation to reducing reoffending, it can of course be considered more broadly.

The Council has chosen not to address costs or cost-effectiveness in our resource assessments beyond those of correctional resources. Interpretation of related data is difficult, and the Council would need to take a view on how to define "effective", which is the subject of much debate.

We asked consultees to help us consider whether the Council has sufficiently addressed this duty and are there broader issues we should consider.

### **How we work**

We are required by legislation to consult on a draft version of our guidelines. We consult widely, particularly among sentencers and other professionals in the criminal justice system, as well as those with an interest in criminal justice or the subject matter of individual guidelines.

Our guidelines stand alone but we have at times published supporting materials. Judicial training on guidelines is a matter for the Judicial College and their interpretation, for the Court of Appeal, but we are open to considering whether we could do more to assist guideline users.

We asked consultees whether the Council's working practices could be improved and should the Council have a role in providing more assistance on the use and interpretation of guidelines.

### **Reporting on the outcome**

We received 37 responses to the consultation, which ran from 10 March to 9 September 2020. We expect to report on our decisions in late summer 2021.

## Drug offences

### *Post-consultation*

The drug offences definitive guidelines were published on 27 January 2021 and came into effect on 1 April 2021.

The definitive guidelines include:

- a revision of the Misuse of Drugs Act 1971 guidelines originally published in 2012
  - including offences of importation/exportation; supply/ possession with intent to supply; production/ cultivation; permitting premises to be used for drug related activity and possession of a controlled drug; and
- new guidelines for offences under the Psychoactive Substance Act 2016
  - including offences of importation/exportation; supply/ possession with intent to supply; production/ cultivation.

We held a consultation on the draft guidelines from 15 January 2020 to 7 May 2020.<sup>1</sup> During this consultation 43 responses were received. The responses were broadly supportive of the approach taken by the Council. The Council did, however, make some changes in light of consultation responses, such as removing some proposed ‘leading role’ culpability factors and putting them as aggravating factors instead. A number of respondents indicated that, while the factors might indicate that the offence was more serious, they did not necessarily indicate that the offender had

a ‘leading role’ and could result in an offender receiving a disproportionate sentence.

We had also sought views on whether any aspects of the guidelines could lead to or contribute to any disparities in sentencing outcomes associated with an offender’s ethnicity or gender. As a result of the responses, the Council chose to make some changes to the guidelines including providing new expanded explanations for the mitigating factors ‘remorse’ and ‘mental disorder and learning disability’. The expanded explanation for remorse reflects the fact that offenders will express remorse in many different ways, perhaps reflecting their cultural norms. It warns against making assumptions about an offender’s remorse or lack of remorse based simply upon their demeanour in court. The expanded explanation for ‘mental disorder and learning disability’ links to our overarching principles guideline on this subject and specifically the section that refers to the fact that some offenders from Black, Asian and Minority Ethnic communities may be unlikely to raise this in mitigation due to a perceived stigma.

In addition, a tailored reference to the evidence of disparities in sentencing and to the Equal Treatment Bench Book has been added to those guidelines where there is sufficient evidence of disparity in sentence outcomes.

The guidelines were published alongside a response to consultation document; a final resource assessment; and data tables, showing current sentencing practice for these offences.

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<sup>1</sup> The consultation period was extended from 7 April in recognition of the potential impact on consultees of the Covid-19 lockdown.



*Newport Magistrates' Court, South Wales*



Llys Ynadon  
Casnewydd  
Newport  
Magistrates' Court

Llys Ynadon Casnewydd  
Newport Magistrates' Court

Health  
Llys Ynadon



**Media coverage**

The launch of the sentencing guideline for drug offences in January 2021 was reported in the *Daily Mail*, *Daily Telegraph*, *The Times*, *Independent*, *Police Oracle* and the *Law Society Gazette*.

**Firearms offences****Post-consultation**

The firearms offences guidelines were published in December 2020, following a consultation we held between 9 October 2019 and 12 January 2020. There were 21 responses to the consultation, most of which were from groups or organisations. In general, respondents supported the proposals and there were some helpful suggestions for changes that the Council adopted. The research with sentencers conducted during the consultation period also gave rise to some changes to aid clarity. Several respondents, including the Crown Prosecution Service and the National Crime Agency, suggested that in addition to the guidelines consulted on, the Council should develop a guideline for firearms importation offences. The Council agreed and decided to consult on that guideline separately (see below).

The consultation had noted that, while firearms offences are most often committed by White offenders, when compared with the demographics of the population as a whole, there is an over-representation of Black, Asian and Other ethnicity offenders. The consultation sought suggestions as to how issues of equality and diversity could

be addressed by the guidelines. The Council reconsidered the factors in the guidelines in the context of the apparent disparities and removed one factor that could be applied disproportionately to certain ethnic groups. A tailored reference to the evidence of disparities in sentencing and to the *Equal Treatment Bench Book* has been added to those guidelines where there is sufficient evidence of disparity in sentence outcomes.

Eight firearms guidelines were published on 8 December 2020 and came into effect on 1 January 2021. They cover the following offences under the Firearms Act 1968:

- Possession, purchase or acquisition of a prohibited weapon or ammunition – sections 5(1), 5(1A);
- Possession, purchase or acquisition of a firearm/ammunition/shotgun without a certificate – sections 1(1), 2(1);
- Possession of a firearm or ammunition by person with previous convictions prohibited from possessing a firearm or ammunition – sections 21(4), 21(5);
- Carrying a firearm in a public place – section 19;
- Possession of firearm with intent to endanger life – section 16;
- Possession of firearm or imitation firearm with intent to cause fear of violence – section 16A;
- Use of firearm or imitation firearm to resist arrest/possession of firearm or imitation firearm while committing a Schedule 1 offence/carrying firearm or

imitation firearm with criminal intent – sections 17(1), 17(2), 18; and

- Manufacture/sell or transfer/possess for sale or transfer/purchase or acquire for sale or transfer prohibited weapon or ammunition – section 5(2A).

The Council also published a resource assessment and data tables.

### **Media coverage**

The December 2020 launch of the sentencing guidelines for firearms offences received coverage in the *Daily Mail*, the *Guardian* and the *Lancashire Evening Post*. It was also reported in *New Law Journal*, *Police Oracle* and *The Voice*.

## **Firearms importation**

### **Development**

Responses to the consultation on guidelines for offences under the Firearms Act 1968 included a suggestion that a guideline should be developed for firearms importation offences. The Council had made the original decision not to proceed with guidelines for importation offences based on sentencing data from 2017. However, more recent data showed that volumes for importation offences under the Customs and Excise Management Act 1979 had increased. We also considered feedback from judges indicating that a guideline for importation offences would be useful and the Council has subsequently agreed to develop one.

We plan to consult on the guideline in the summer of 2021.

## **Guilty pleas**

### **Evaluation and monitoring**

The *Reduction in sentence for a guilty plea* definitive guideline came into effect on 1 June 2017, following which the Council established a dedicated monitoring group. Members of the group include representatives of the Sentencing Council, the police, the Crown Prosecution Service, Her Majesty's Courts and Tribunal Service, Victim Support, Judicial Office, Her Majesty's Prison and Probation Service, the Justices' Legal Advisers and Court Officers Service and the Ministry of Justice.

Throughout 2020/21, the group continued its work to steer efforts to collect a range of data and information in support of an assessment of the implementation and impact of the guideline.

The assessment concluded that guilty plea reductions were being applied to sentences in magistrates' courts and the Crown Court in line with the guideline in most cases and that there was no indication that the guideline had had an adverse effect on prison or probation resources. However, given the wider context in which the guideline sits, having been introduced during a period of change within the wider criminal justice system, it proved difficult to conclude definitively what the overall impact of it had been, and the Council has agreed to keep the guideline under review and work with the steering group to obtain further feedback.

We published a report outlining the key findings from this analysis on 17 November 2020.

## Magistrates' courts sentencing guidelines and associated explanatory materials

### ***Post-consultation***

The magistrates' courts sentencing guidelines consists of sentencing guidelines for a wide range of offences that are sentenced in magistrates' courts. A consultation on minor improvements that could usefully be made to these guidelines and the explanatory materials that accompany them closed on 15 April 2020.

Minor changes were proposed to the following guidelines:

- *Drive whilst disqualified*
- *Breach of a community order*
- *Totality*

Changes were also proposed to the following sections of the explanatory materials:

- Fines and financial orders:
  - Approach to the assessment of fines
  - Assessment of financial circumstances
  - Prosecution costs
  - Victim surcharge
- Road traffic offences: disqualification
  - "Totting up" disqualification

There were 219 responses, most of which were broadly in support of the proposals, and several very helpful suggestions were made. The Council carefully considered the responses and made a number of changes to proposals as a result. The amended versions of the guidelines and explanatory materials were published on 1 October 2020 and came into effect on that date.

The Council also published a resource assessment.

## Mental disorders, developmental disorders and neurological impairments

### ***Post-consultation***

The definitive overarching guideline, *Sentencing offenders with mental disorders, developmental disorders and neurological impairments*, was published on 21 July 2020 and came into effect on 1 October 2020. Following consultation on the draft guideline in 2019 the proposed general approach was maintained but some amendments were made. In particular, section three, Determining the sentence, and Annex C, which covers sentencing disposals, were revised in order to give greater assistance to courts, and a new section on "Effect of hospital orders, restriction orders and 'hybrid' orders and their release provisions" was created at the end of Annex C. The definitive guideline was published alongside a final resource assessment and a response to consultation.



### **Media coverage**

The launch on 21 July of *Sentencing offenders with mental disorders, developmental disorders and neurological impairments* was covered in the *Daily Telegraph*, *Independent*, *Yorkshire Post*, *Shropshire Star* and *New Law Journal*. It was also covered by BBC Radio 4 *Today* and 43 regional radio stations.

## **Modern slavery offences**

### **Development**

The Modern Slavery Act 2015 came into force in July 2015. While there was a guideline for one of the predecessor offences to those in the Act (Trafficking for sexual exploitation, section 59A of the Sexual Offences Act 2003) there were no dedicated sentencing guidelines for the offences under the 2015 Act.

The Act has been the subject of two reviews since its commencement. The first of these reviews,<sup>2</sup> looking at the effectiveness of the Act's criminal justice provisions, made a specific recommendation about the development of sentencing guidelines for these offences. The Independent Review of the Modern Slavery Act 2015<sup>3</sup> also made a recommendation in its March 2019 report relating to Modern Slavery Reparation Orders and sentencing guidelines.

The Council agreed that guidelines should be developed for modern slavery offences and so prepared drafts for consultation. These drafts were informed by the current guideline for trafficking offences as well as by Court of Appeal case law.

### **Consultation**

We consulted on the draft guidelines between 15 October 2020 and 15 January 2021. The principal guideline consulted on offences under both section 1 and section 2 of the 2015 Act:

- Section 1: Slavery, servitude and forced or compulsory labour
- Section 2: Human trafficking

The consultation also sought views on brief guidance for section 4 offences (Committing an offence with intent to commit an offence under section 2), and on an approach to sentencing section 30 offences (Breach of a slavery and trafficking prevention order or a slavery and trafficking risk order).

Alongside the consultation, the Council also published a resource assessment and statistical bulletin, showing current sentencing practice for modern slavery offences.

During the consultation period, to support the development of the guideline, we carried out qualitative research with 16 Crown Court judges to explore how the draft guidelines might work in practice. Before and during the

<sup>2</sup> Caroline Haughey (2016) Modern Slavery Act Review [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/542047/2016\\_07\\_31\\_Haughey\\_Review\\_of\\_Modern\\_Slavery\\_Act\\_-\\_final\\_1.0.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/542047/2016_07_31_Haughey_Review_of_Modern_Slavery_Act_-_final_1.0.pdf)

<sup>3</sup> Baroness Elizabeth Butler-Sloss, Maria Miller MP, Frank Field MP (2019) <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>

consultation we met several stakeholders on a one-to-one basis to discuss and explore our approach to the guidelines.

### **Media coverage**

The consultation for this guideline was featured on BBC Radio 4, Radio 2, Radio 5 Live and several BBC regional stations. It was also reported by the Press Association and received coverage in *The Times*, *Lancashire Evening Post*, *New Law Journal*, *Law Society Gazette* and *Police Oracle*.

## **Unauthorised use of a trademark**

### **Development**

The Council decided to replace and update the guideline, produced by the Sentencing Guidelines Council (SGC) in 2008, for the offence of unauthorised use of a trademark. The SGC guideline is for use in magistrates' courts and applies only to sentencing individuals convicted of the offence. As part of a commitment to replace all SGC guidelines, the Council developed separate guidelines for individuals and organisations that can be used in both magistrates' courts and the Crown Court. It is an offence that sentencers are unlikely to have much experience of sentencing, and the Council considered that comprehensive guidelines would therefore be of great assistance.

### **Consultation**

The consultation opened on 8 July and ran until 30 September 2020. During the consultation period a roundtable discussion was held with trading standards officers. A series of interviews was also held with magistrates and Crown Court judges in September 2020.

Alongside the consultation, we also published a resource assessment and statistical bulletin, showing current sentencing practice for this offence for both individuals and organisations.

### **Post-consultation**

There were 41 responses to the consultation and the Council is considering changes to the guidelines in the light of these and the results of the research with sentencers. The definitive guidelines will be published in the summer of 2021.

### **Media coverage**

The consultation was reported in the *Daily Telegraph*, *New Law Journal* and *Retail Times*.

# Communication

The Sentencing Council has a statutory obligation, in producing guidelines, to have regard to “the need to promote public confidence in the criminal justice system”.<sup>4</sup> To help the Council meet this duty, we have set ourselves a strategic objective: to improve awareness and understanding of sentencing among victims, witnesses, offenders and the public.

The Communication team has a central role to play in supporting this objective, which we do by delivering high-quality communications that aim to:

- inform and equip our professional audiences, and strengthen their confidence in the Council, the sentencing guidelines and the Council’s sentencing model; and
- inform and educate our public audiences, and improve their understanding of, and confidence in, sentencing and the criminal justice system.

## ***Working with the media***

The Council publicises its work via general and specialist media. Our aim is to make sure that sentencers and criminal justice practitioners are aware of what work the Council is undertaking and are kept informed about the publication of new guidelines.

We also make sure that practitioners and stakeholders with an interest in specialist topic areas are aware of our consultations so that they are able to respond and share their knowledge and expertise with the Council.

Achieving media coverage for the publication of new guidelines or consultations also provides us with opportunities to inform the wider public about how sentencing works and the role played by the Council and the guidelines in enabling the courts to take a consistent, fair and transparent approach to sentencing.

The definitive guidelines and consultations published over the period of this annual report were supported by a programme of communication activities targeting the media, including criminal justice publications, national and regional print and broadcast channels and other specialist titles where relevant. Council members were fully briefed and prepared to talk to the media for each announcement and undertook a number of interviews, including on high-profile, national programmes such as Sky News, BBC News, the *Today* programme on BBC Radio 4, BBC *Breakfast*, BBC 2 and BBC Radio 5 Live, as well as on BBC Asian Network and regional radio. There was also coverage on Sky Radio, LBC and a number of commercial radio stations.

<sup>4</sup> s.120(11)(d) Coroners and Justice Act 2009.

## A website for public confidence

The Council's new website, which we launched on 1 December 2020, has been designed specifically to help us meet our statutory duty to have regard to the need to promote public confidence in the criminal justice system.<sup>5</sup>

For many of our public and other non-legal audiences, our website is their first encounter with the Council. Our aim was to deliver for them a modern, user-friendly website that would provide the information they were looking for while also engaging their interest and allowing us to inform them about sentencing and sentencing guidelines in ways that are relevant and easily understood.

In developing the new website, we set ourselves four objectives.

- Engage the public, including victims, witnesses and offenders, to improve their understanding of and confidence in sentencing
- Provide clearer destinations for researchers and academics
- Support the Council's business needs and objectives
- Make sure sentencing guidelines continue to be easy to find and easy to use.



## Illustrating offences

We know that many of our public audience arrive at our website having searched for information on particular offences. Where previously these visitors would have landed on the relevant sentencing guideline, which might be confusing for anyone not familiar with the guidelines, they will now find pages explaining in plain language what the offence is, the circumstances in which it might take place, what the penalties could be and how the sentences are worked out. Armed with this information, they are likely to have a far greater understanding of sentencing guidelines and how they work.

## Articles and blogs

We have introduced a dedicated news and blogging area to the site designed to allow us to respond more readily to emerging sentencing-related issues and make more of opportunities to inform and educate the public. We use these pages to publish articles or short blog posts to help us explain to the public about the work of the Sentencing Council, how the guidelines are developed and how sentencing works. We promote these pages on our Twitter account, inviting people to visit the website to find out more.

<sup>5</sup> s.120(11)(d) Coroners and Justice Act 2009.

## **Going to court**

Members of the public who visit our website are likely to have little, if any, legal knowledge, and will not be familiar with the sentencing guidelines or the process of sentencing or know much about what happens in a criminal court. Research tells us that knowing the guidelines exist improves confidence in the fairness of sentencing among victims and the public at least a little. Our new website has an area dedicated to guiding victims, witnesses and defendants through the court system. It aims to provide context for the sentencing guidelines, demystify the sentencing process, debunk common myths and manage expectations.

## **Research and resources**

One of our aims for the new website was to give the Council's analysis and research work a higher profile. Analysis and research are integral to the development of the guidelines, and the website allows us to demonstrate the extent to which the guidelines are evidence based.

On these pages visitors can now easily find our statistical bulletins, resource assessments, guideline evaluations and information on our data collections. Analysis of data from these collections helps us explore what might be influencing outcomes and understand how a guideline has been implemented in practice. We are also now publishing on the website the underlying data from these collections so that users may conduct their own analyses.

These pages also provide access to a wide range of criminal justice statistics from other sources, all the Council's publications and our resources for teachers.

## **Protecting the sentencing guidelines**

One of our prime objectives in redeveloping our website was to protect the area of the site that hosts the guidelines and make sure that nothing would detract from the experience of judges, magistrates and other professional users.

We completed our project to make the sentencing guidelines fully digital in 2018. All offence specific and overarching sentencing guidelines that are used in magistrates' courts and the Crown Court are now available in a digital format in dedicated areas on the website. The move to digital has enabled the Council to introduce features such as expanded explanations and gives users confidence that the guidelines they are looking at are the most up to date. It also makes the guidelines more visible to the public, helping to make sentencing more transparent and accessible.

The work of the Council remained of significant interest to the media and, over the course of the year, there were 124 mentions of the Council in print media, 355 broadcast mentions and 250 mentions in online publications (not including social media).

Our press office also routinely answers media enquiries about sentencing issues, provides background for sentencing related articles and puts forward spokespeople, where appropriate.

The office also handles many calls and emails from members of the public enquiring about sentencing and the guidelines. While we are not able to provide advice or comment on individual cases, we provide information and alternative sources where we can.

### ***Sentencing Council website***

For many people, our website, [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk), is their first encounter with the Sentencing Council. On 1 December 2020 we launched a new, more user-friendly website designed specifically to promote a greater understanding of sentencing among our public and other non-specialist audiences, while continuing to provide access to sentencing guidelines for criminal justice professionals.

The site explains how sentencing works in plain, easy-to-understand language. It gives broad information on some often-sentenced offences and debunks common sentencing myths. The public-facing pages provide clear, helpful context to the sentencing guidelines, which aims to improve the transparency of sentencing and make it more accessible to the public.

The website has continued to be a source of information for sentencers and others in the criminal justice system, as well as for victims, witnesses and journalists. The new site has seen an increase in users, with the number of unique visitors in the first quarter of 2020/21 rising to 437,831 compared with 412,986 in the first quarter of 2019/20.

There is more information about the new website and the objectives behind its development on pages 24-5.

### ***Social media: Twitter***

Twitter is widely used by legal practitioners and criminal justice commentators, academics and reformers. The Council uses a corporate Twitter account to tell our followers about consultations and guideline launches as well as to monitor and respond to what is being said about sentencing and the Council.

In March 2021, we took advantage of the opportunity offered by Justice Week to increase awareness of our Twitter account and broaden the profile of our followers. Justice Week is an initiative of the Law Society, supported by the Bar Council and the Chartered Institute of Legal Executives (CILEx). It aims to make the criminal justice system more accessible to the public and, in particular, to build public support and understanding for the rule of law and justice. Between 1 and 5 March, we published a series of tweets about the Council and how sentencing and the guidelines work, all of which were designed to encourage people to find out more on our website. Our messages were retweeted or liked by 183 accounts,



including the Law Society, Magistrates' Association and Bar Council who between them have more than 176,000 followers; 40 people clicked through to our profile to find out more about the Council; almost 100 people followed links through to our website; and half the new followers we gained during the week were from outside the criminal justice system, with a number being educators.

### ***Working to engage the public and victims of crime***

To assist us in improving understanding of sentencing, particularly among victims and witnesses, the Council continues to nurture our relationships with partner organisations who have direct contact with the public.

We focus on our communication with the police service, aiming to reach the officers who most often engage with the public. Our activities have included ensuring police publications receive Council announcements, working with Police Professional magazine to provide articles and features on aspects of sentencing and establishing relationships with relevant groups of officers, such as Family Liaison Officers, who, among their other duties, provide the link between bereaved families and the police during major investigations.

Throughout the year the Witness Service continued to use our materials about sentencing to support and reassure witnesses and victims.

### ***Reaching young people***

To meet our statutory duty to have regard to the need to promote public confidence, the Council must have a clear and detailed picture of current levels of understanding of sentencing among the public. In 2019, we published a report of research into public knowledge of, and confidence in, sentencing and the criminal justice system.<sup>6</sup> The research told us that young people between school-leaving age and early 30s have greater confidence in the effectiveness and fairness of the criminal justice system than older people, and most say that hearing about the sentencing guidelines increases their levels of confidence. However, young people are less likely than any other age group to know about the guidelines.

To mitigate this lack of knowledge among the next generation of young adults, the Council has identified young people of secondary-school age as a priority audience.

Our aim is to equip them with a knowledge and understanding of sentencing that will improve their confidence in the criminal justice system, whether they encounter it as victims, witnesses or defendants, and enable them to become critical readers of the media's reporting of sentencing.

<sup>6</sup> ComRes (2019) Public Knowledge of and Confidence in the Criminal Justice System and Sentencing, Sentencing Council: <https://www.sentencingcouncil.org.uk/publications/item/public-confidence-in-sentencing-and-the-criminal-justice-system/>

To help us educate young people, the Council aims to contribute to teaching activities that are run by our partners in the criminal justice system and other organisations who have far greater reach into schools than the Council could achieve alone.

In autumn 2020 we continued our work with Young Citizens, an education charity that works in primary and secondary schools to help educate, inspire and motivate young people. We developed sentencing-related content for the charity's Court Reporter Competition, which is set in the Crown Court and runs alongside their Bar Mock Trials. The competition provides an opportunity for students at key stages 3 and 4 to play the part of court reporter. It teaches them about the relevant law and the importance of producing accurate and factual reports. The Council's contribution includes guidance on the accurate use of language to describe sentencing and the guidelines, and sentencing myths to avoid. Our contribution complements the materials we developed last year for Young Citizens' Bar Mock Trials competition, which the charity runs every year.

During the year we also began work to develop a lesson plan for Go-Givers, another Young Citizens programme that has the potential to reach more than 48,000 children at key stages 1 and 2.

Our new website features a page of resources for teachers. The page currently hosts the teaching pack we have developed for schools to deliver as part of the citizenship curriculum for key stage 3 and 4 pupils. These resources help pupils in England and Wales develop an

understanding of how criminal sentencing works and give them the opportunity to try sentencing for themselves through interactive scenarios. As well as being published on our website, the pack is also available through Young Citizens, the Association for Citizenship Teaching, and the Times and Guardian educational pages. The page also includes links to the teaching materials provided by Young Citizens to which we have contributed.

In the first three months of 2021, 572 visits were made to the Council's teaching resources webpage, 302 of which were by new users.

### ***Developing relationships with partners and interested parties***

To further our work to engage stakeholders and build relationships across the criminal justice system, Council members and staff from the Office of the Sentencing Council (OSC) frequently give speeches and presentations covering all aspects of sentencing and developing guidelines. Our ability to do so between April 2020 and March 2021 was inevitably significantly curtailed by the Covid-19 pandemic. However, the few events we did contribute to were conducted online, which meant that we were able to reach far larger audiences than usual. In March, Her Honour Judge Rosa Dean spoke on the subject of sentencing offenders with mental disorders at a meeting of the Royal College of Psychiatrists, reaching an audience of almost 600 forensic psychiatrists. Also in March 2021, an official from the OSC presented to a Probation Service audience, talking about the imposition of community

and custodial sentences to 600 probation officers, including those responsible for writing pre-sentence reports. The Chairman presented at both the Murder induction and Murder continuation courses led by the Judicial College and spoke about the Council and the sentencing guidelines to an audience of bar pupils and young barristers of the Northern and North-Eastern Circuits.

In more normal times, the Council could expect to host visitors from overseas seeking to learn more about the Sentencing Council and to understand how the guidelines are developed and used. We hope soon to be able to resume these visits, which allow us in turn to learn about the criminal justice systems of other nations and discover whether and how sentencing guidelines are used in other jurisdictions.



# Analysis and research

The statutory duties of the Council include requirements to carry out analysis and research into sentencing. Our work in this area includes the following.

## ***Undertaking research and analysis to support the development of guidelines and other statutory duties***

The Council regularly carries out social research and analysis that aims to augment the evidence base underpinning guidelines, ensuring, in particular, that guidelines are informed by the views and experiences of those who sentence. We conduct primary research with users of the guidelines: primarily Crown Court judges, district judges and magistrates, using a range of methods. These methods include surveys, interviews (conducted face-to-face, over the telephone and using MS Teams) and group discussions. Our researchers also review sentencing literature and analyse the content of Crown Court sentencing-remark transcripts. This work helps to inform the content of the guidelines at an early stage of development and explore any behavioural implications. Where relevant, we also conduct research with victims, offenders and members of the public.

During the development of draft guidelines, we also draw on a range of data sources to produce statistical information about current sentencing practice, including offence

volumes, average custodial sentence lengths and breakdowns by age, gender and ethnicity. We use this information to understand the parameters of current sentencing practice and to fulfil the Council's public sector equality duty<sup>7</sup> (see also page 48).

Where necessary, the Council also undertakes research and analysis to support some of our wider statutory duties or to provide further information in specific areas. This includes work to support our public confidence duties and issues related to effectiveness and consistency in sentencing and judicial attitudes to guidelines. It also includes research on equality and diversity in the work of the Sentencing Council.

## ***Conducting an assessment of the resource implications of guidelines***

The Council has a statutory duty to produce a resource assessment to accompany each sentencing guideline that estimates the effects of the guideline on the resource requirements of the prison, probation and youth justice services. This assessment enables the Council and our stakeholders to better understand the consequences of the guidelines in terms of impact on correctional resources. The work that goes into resource assessments also results in wider benefits for the Council.

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<sup>7</sup> The public sector Equality Duty, s.149 of the Equality Act 2010, applies to the public bodies listed in Schedule 19 <https://www.gov.uk/government/publications/equality-act-2010-schedule-19-consolidated-april-2011>



The process involves close scrutiny of current sentencing practice, including analysis of how sentences may be affected by guilty plea reductions and consideration of the factors that influence sentences. This analysis provides a “point of departure” for the Council when we are considering the appropriate sentencing ranges for a guideline.

Where the Council intends a guideline to improve consistency, while causing no change to the overall severity of sentencing, the guideline sentencing ranges will aim to reflect current sentencing practice, as identified from the analysis. Where we intend a guideline to effect changes in the severity of sentencing for an offence, the Council may set sentencing ranges higher or lower than those indicated by current sentencing practice.

We publish resource assessments alongside our consultations and our definitive guidelines. Alongside our draft guidelines for consultation we also publish a statistical bulletin summarising the statistical information that has helped inform their development.

### ***Monitoring the operation and effect of sentencing guidelines and drawing conclusions***

The actual impact of the guideline on sentencing and, consequently, on resources, is assessed through monitoring and evaluation after the guidelines have been implemented. To achieve this, we use a range of different approaches and types of analysis, including putting in place bespoke, targeted data

collections in courts, qualitative interviews with sentencers, transcript analysis and analysis of administrative data. These data are supplemented by data collected through the Crown Court Sentencing Survey (which ran between October 2010 and March 2015).

We have published data from the Crown Court Sentencing Survey on our website as well as more recent data collected from magistrates’ courts on theft from a shop or stall. We will be publishing data from other data collection exercises in due course.<sup>8</sup>

### ***Publishing Sentencing Council research***

We publish our research and statistical outputs on the analysis and research pages of our website.<sup>9</sup> More information about the analysis and research we have undertaken to support the development of new guidelines or to evaluate existing guidelines is included in the Sentencing guidelines chapter of this report (see pages 10-22).

### ***Reporting on sentencing factors and non-sentencing factors***

The Council has a statutory duty to produce sentencing factors and non-sentencing factors reports. These reports can be found on the following pages.

<sup>8</sup> Data collections on the Council website: <https://www.sentencingcouncil.org.uk/research-and-resources/data-collections/>

<sup>9</sup> <https://www.sentencingcouncil.org.uk/research-and-resources/sentencing-council-research-and-analysis/>

## **Having regard to equality and diversity**

The Sentencing Council is committed to exploring fully and taking action on the equality and diversity implications of our work – both in its outcomes and in how we carry it out. During the reporting year, we have taken further steps to consider how equality and diversity is reflected in our guidelines and in the ways in which we work.

### **Preventing discrimination**

Sentencing guidelines are intended to apply equally to all offenders and the Council takes great care to guard against any unintended impact. We also have an obligation under the Public Sector Equality Duty to consider the effects of our guidelines on different groups (see page 48 for more).

We recognise that draft guidelines could be interpreted in different ways and ask consultees specifically for views on whether any of the factors in draft guidelines, or the ways in which they are expressed, could risk being interpreted in ways that could lead to discrimination against particular groups.

### **Guarding against disparity of outcomes**

When drafting new guidelines for consultation, we look at sentencing data for those offences grouped by offenders' age, sex and ethnicity, and we also consider statistics on the age, sex and ethnicity of offenders when evaluating whether our existing guidelines have affected the sentences of different groups in different ways.

Clearly, guidelines cannot alone preclude disparity of outcomes for different groups. However, where the Council has identified disparities of sentencing outcomes for specific offences, we have consulted on and taken pre-emptive measures in guidelines. These measures have included drawing sentencers' attention, as an integral part the sentencing process, both to relevant sections of the Equal Treatment Bench Book and to evidence of sentencing disparities.

During 2020/21, these special measures have been reflected in definitive guidelines for drug and firearms offences where there was sufficient evidence of disparity in sentence outcomes, and in new expanded explanations for the mitigating factors "remorse" and "mental disorder and learning disability". We know that offenders will express remorse in many different ways, perhaps reflecting their cultural norms, and the new guidance warns sentencers against making assumptions about an offender's remorse based on their demeanour in court. The expanded explanation for "mental disorder and learning disability" links to our guideline on sentencing offenders with mental disorders, developmental disorders or neurological impairments, which advises that, due to perceived stigma, some offenders from Black, Asian and Minority Ethnic communities may be unlikely to raise this in mitigation.

This year, we began the process of commissioning a research project to examine the potential for the factors, language or structure of our guidelines to cause disparities in sentencing.

## **Equality and diversity working group**

On 10 February 2021 the Council’s equality and diversity working group held its first meeting. The group has been set up to advise the Council on matters relating to equality and diversity and make sure we have regard to the full range of protected characteristics in our work.<sup>10</sup> The group will consider ways in which the Council could more effectively engage with, and take account of the views and perspectives of, people with protected characteristics, and with offenders and victims.

## **Extending our reach**

To make sure that the sentencing guidelines take into account the perspectives of all those who could potentially be affected by their implementation, we aim to elicit a broad and representative body of responses.

The Council asked the Equality and Diversity working group to consider our approach to identifying and reaching audiences for consultation. In May, the group began to review how we could improve the value of our consultations, specifically with regard to hearing the voices of offenders, victims and people under probation supervision; Black, Asian and Minority Ethnic audiences; and individuals and organisations representing people with protected characteristics.

## **Building our capability**

Officials from the Office of the Sentencing Council (OSC) held several internal events during the year to consider race relations, diversity and inclusion. They considered how language may be perceived differently by people of different ethnicities and explored what steps could be taken to improve diversity and inclusion not just within the Office but also in their work for the Council.

The conversations are now an integral part of the landscape of the OSC, with more planned for the future.

## **Steps already taken**

All sentencing guidelines now include a link to the Equal Treatment Bench Book and a reminder to sentencers that the Book covers important aspects of fair treatment and disparity of outcomes for different groups in the criminal justice system.

Guidelines also now include expanded explanations to many aggravating and mitigating factors designed to help ensure that relevant considerations are taken into account in sentencing. These include, for example, an expanded explanation for the mitigating factor “age and/ or lack of maturity” that sets out the latest information on how immaturity can impact on offending.

<sup>10</sup> s149(7) of the Equality Act 2010 defines protected characteristics as: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex; and sexual orientation.

# Sentencing factors report

In accordance with section 130 of the Coroners and Justice Act 2009, the Sentencing Council's annual report must contain a sentencing factors report. This report considers changes in the sentencing practice of courts and their possible effects on the resources required in the prison, probation and youth justice services.

Sentencing guidelines are a key driver of change in sentencing practice. Some guidelines aim to increase the consistency of approach to sentencing while maintaining the average severity of sentencing. Other guidelines explicitly aim to cause changes to the severity of sentencing.

Changes in sentencing practice can also occur in the absence of new sentencing guidelines and could be the result of many factors such as Court of Appeal guideline judgments, legislation and changing attitudes towards different offences.

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

## Sentencing guidelines

Between 1 April 2020 and 31 March 2021, the Council published:

- The definitive overarching principles guideline: *Sentencing offenders with mental disorders, developmental disorders or neurological impairments*
- Changes to the magistrates' courts sentencing guidelines and associated explanatory materials
- Definitive guidelines for sentencing firearms offences
- Definitive guidelines for sentencing drug offences

### ***Sentencing offenders with mental disorders, developmental disorders or neurological impairments***

The Council's aim in developing the overarching principles for sentencing offenders with mental disorders, developmental disorders, or neurological impairments was to consolidate and provide information that would assist courts to pass appropriate sentences when dealing with offenders who have mental disorders, developmental disorders or neurological impairments, and to promote consistency of approach in sentencing.

Our intention was that the new guideline would encourage consistency of sentencing through bringing together information on these disorders and impairments in one place. We did not intend directly to cause changes to sentencing practice. However, it is possible that by bringing this information together in a guideline for the first time, there may be an impact on sentencing practice, and we have explored this possibility through consultation-stage research interviews and a review of written responses to the consultation.

Both the interview findings and a review of consultation responses showed that there was a perception from some that the guideline would not have an impact on sentencing, while others thought that there could be a change (for example, an increased use of lower culpability factors and mitigating factors relating to mental health, a decrease in sentencing severity, and an increased use of medical reports in the Crown Court and of some community sentence requirements). However, while there was a perception from some that there could be some changes in these areas, the interview findings also showed that when sentencers were given scenarios to sentence under current practice and then under the draft guideline, there was no clear evidence of any changes in sentencing practice. Therefore, the guideline is not expected to have an impact on these areas.

For hospital orders, it was generally thought that the guideline would not have an impact, as the guideline reflects current legislation and recent case law in this area. Therefore, again, the guideline is not expected to have an impact on the use of hospital orders.

Interview participants felt that the guideline was part of wider trends of moving towards a more understanding approach to these disorders and impairments throughout the criminal justice system. Many of the consultation respondents felt that the guideline would improve consistency of sentencing, with some others commenting that it would increase transparency. Therefore, it may be that the guideline is part of a wider focus on offenders' mental health, which may gradually change the way in which mental health is treated in the criminal justice system.

### ***Changes to the magistrates' courts sentencing guidelines and associated explanatory materials***

Several changes were made to the explanatory materials to the magistrates' courts sentencing guidelines (MCSG), including removing and replacing the guidance on fines for high-income offenders. This may cause an increase in the value of fines for some high-income individuals but any increase is expected to be small when compared to the total value of fines imposed across all offenders each year.

The other changes to the explanatory materials to the MCSG relate to the surcharge, prosecution costs and disqualification. As these do not relate to prison or probation services, they will not have an impact on these correctional resources.

The change made to the *Driving whilst disqualified* guideline involves including additional wording about disqualification



only. This change will therefore not have an impact on prison or probation services or on the value of fines.

There are two amendments to the wording of the *Breach of a community order* guideline. The first amendment clarifies that the court may extend the length of requirement(s) or the length of the order to allow time for the completion of requirement(s), but this is not a standalone option for dealing with a breach. This amendment reflects the correct legal position as set out in guidance issued to magistrates' courts by the Justices' Legal Advisers and Court Officers Service in March 2019. Analysis of data collected from magistrates' courts in 2019 led the Council to conclude that some individuals may receive fines or more onerous community order requirements when the changes are made. However, it should be noted that imposing a stand-alone extension to the order is not a lawful way of dealing with a breach and, therefore, any change in practice that results from the amendments will be correcting an erroneous interpretation of the law and the guideline.

The second amendment to the wording of the *Breach of a community order* guideline relates to where an offender is convicted by a magistrates' court for a new offence while a community order issued in the Crown Court is in force. The Court of Appeal has clarified that the breach legislation does not give magistrates' courts the power to commit the new offence to the Crown Court, but feedback suggested that the wording in the guideline around this issue was potentially misleading. The wording has therefore been

amended to clarify the correct legal position. It is expected that the principles set out in the amendment are already being followed but, if the amendment did affect sentencer behaviour, then any impact would relate to the venue for sentence and not to average sentencing severity. The amendment will therefore not have an impact on prison or probation resources or on the value of fines.

### ***Firearms offences***

The definitive guidelines for sentencing firearms offences aim to improve consistency of sentencing but, for the majority of cases, the Council does not anticipate a change to sentencing practice.

For carrying a firearm in a public place, analysis of transcripts of Crown Court judges' sentencing remarks indicated that some offenders would receive a less severe sentence under the new guideline; specifically, some offenders who previously received a suspended sentence order would instead receive a community order. In addition, some offenders who were previously sentenced to immediate custody would also receive a community order, resulting in a small impact on correctional resources (an estimated reduction of fewer than five prison places per year and a small requirement for additional probation resources). Research with magistrates' court sentencers also suggested that some offenders may receive less severe sentences at magistrates' courts, specifically that more offenders may receive a fine instead of a community order.

For manufacturing, selling or transferring, possession for sale or transfer, purchase or acquire for sale or transfer prohibited weapon or ammunition, there were previously no guidelines in place. Analysis of judges' sentencing remarks found that some sentences would be likely to increase under the new guideline, some would be likely to decrease, and some would remain the same. The lack of a clear pattern indicates there is currently some variation in sentencing for these offences. Due to a lack of data available we are not able to say whether the guideline for these offences will have an impact on prison or probation resources overall. It is anticipated, however, that sentencing will become more consistent following the introduction of the guideline.

For all other offences covered by the guidelines, we do not expect there to be any impact on prison or probation resources.

### ***Drug offences***

Overall, the definitive guidelines for sentencing drug offences aim to improve consistency of sentencing but not to change average sentencing practice. However, there are a few exceptions to this, where changes may be seen.

For importation of a class A drug, there may be a decrease in sentences for offenders categorised as lesser role culpability and harm level 3, due to a reduction in the starting point sentence when compared with the existing guideline. It is estimated that this may lead to a need for around 10 fewer prison places per year.

For importation offences, supplying or offering to supply a controlled drug/ possession of a controlled drug with intent to supply it to another and production/ cultivation offences, there have been some changes to the ecstasy tablets, cannabis plants and MDMA quantities provided in the revised guidelines. These changes mean that it is possible the guidelines may have an impact on correctional resources (although it is not possible to quantify what this impact might be). As the new guideline takes account of the fact that the average purity/ yield is now higher (so no adjustments need to be made by sentencers), the net impact of revising these quantities may be small.

## **A new window on magistrates' courts**

On 17 December 2020 the Council released, for the first time, some data collected from magistrates' courts sentencing the offence of theft from a shop or stall. The release represents a significant first step in filling the gap in detailed, publicly available, sentencing data from the magistrates' courts.

Between October 2010 and March 2015, the Council ran the Crown Court Sentencing Survey (CCSS). The survey collected information on sentencing reasons, including harm and culpability factors, aggravating and mitigating factors, guilty pleas and sentence outcomes, but only, as the name suggests, for the Crown Court.

Since 2015, we have conducted targeted and bespoke collections to gather similar data from both the Crown Court and magistrates' courts. Our December 2020 release is the first of its kind for a magistrates' court offence.

### **What can the data tell us?**

Where possible, we collect data both before and after a new guideline has come into force. Analysis of data from these rich and detailed collections helps us explore what might be influencing outcomes and understand how the guideline has been implemented in practice.

The data can tell us about the variety of factors sentencers are taking into account when arriving at their sentencing decision. They include factors related to the culpability of the offender and the harm caused by the offence. For theft from a shop or stall, this includes information such as the value of the stolen goods and whether emotional distress was caused to the victim. The datasets contain details of any aggravating or mitigating factors as well as information about whether the defendant pleaded guilty and, if so, how the sentencers subsequently adjusted the sentence.

The data also tell us about the final sentence the sentencers imposed, including what type of sentence and how long it was. They give us a level of detail not seen before, even in the CCSS, with regards to the sentencing outcome, for example: the level of a community order, the fine band and the length of a suspended sentence. The collection also includes a new 'single most important factor' variable, from which we can identify the most important factor sentencers took into account when making their sentencing decision.

### **What will the data be used for?**

This collection will help inform the Council's understanding of sentencing for lower-level theft offences. It will also be a valuable resource for criminal justice researchers and others interested in the sentencing decision-making process and the key factors that contribute to final sentencing outcomes.

### Single factor data

A comparison of the five, most-frequent, identifiable, single most important factors recorded in both the pre- and post-guideline data.<sup>11</sup>



<sup>11</sup> The proportions provided are out of the total number of single factors indicated, which is higher than the number of cases in the published data, since some sentencers indicated multiple reasons (pre guideline total 3,377, post guideline total 2,733)

# Non-sentencing factors report

The Sentencing Council is required under the Coroners and Justice Act 2009 to prepare a report of non-sentencing factors to identify the quantitative effect that non-sentencing factors are having, or are likely to have, on the resources needed or available to give effect to sentences imposed by courts in England and Wales.

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

## Definition of non-sentencing factors and their significance

The approach taken by the courts to sentencing offenders is a primary driver of requirements for correctional resources in the criminal justice system. We discuss this in our report on sentencing factors (see pages 34-7). However, non-sentencing factors also exert an important influence on requirements for correctional resources.

Non-sentencing factors are factors that do not relate to the sentencing practice of the

courts but which may affect the resources required to give effect to sentences. For example, the volume of offenders coming before the courts is a non-sentencing factor: greater sentencing volumes lead to greater pressure on correctional resources, even if the courts' treatment of individual cases does not change. Release provisions are another example: changes in the length of time spent in prison for a given custodial sentence have obvious resource consequences.

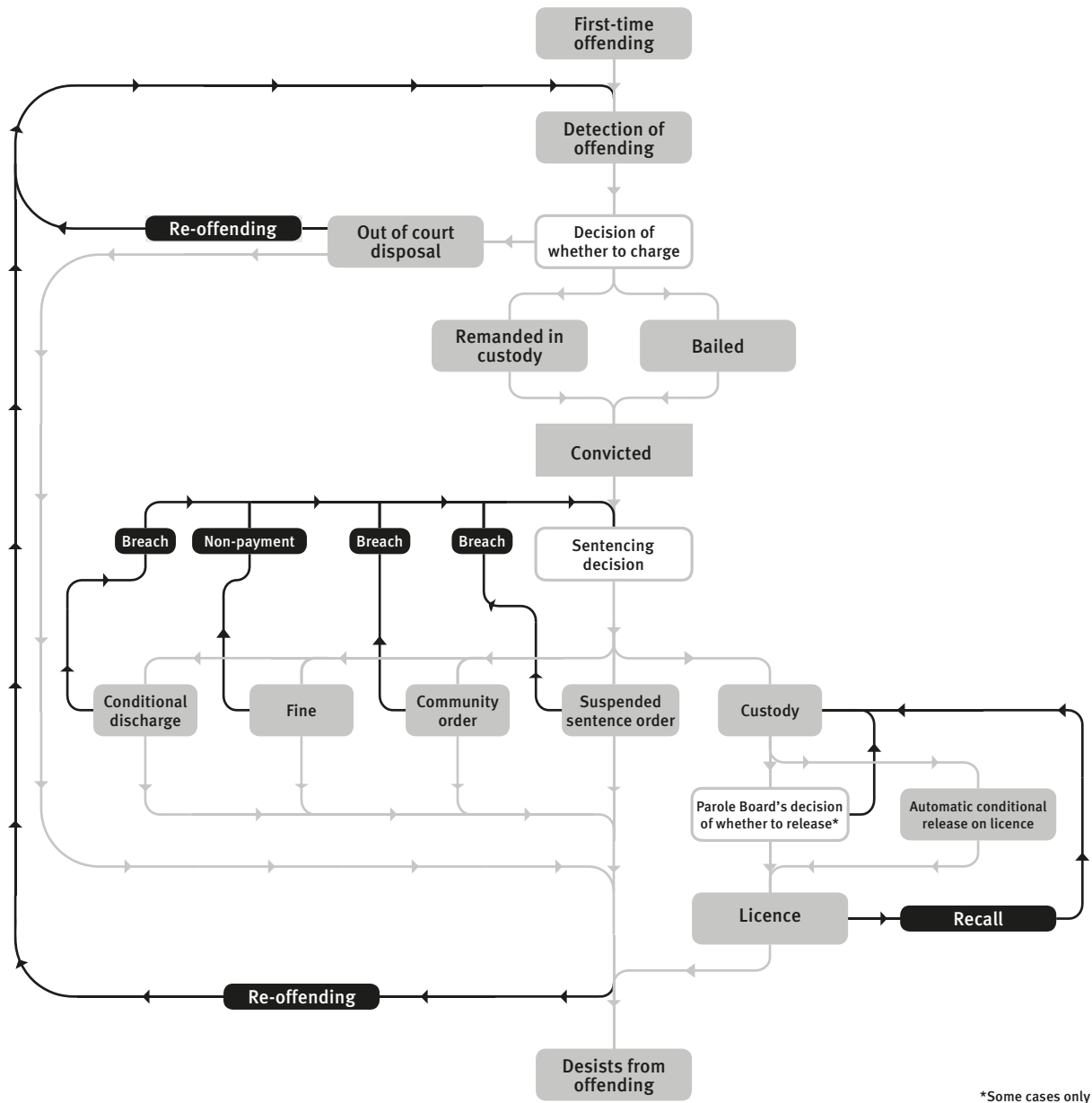
## Statistics on the effect of non-sentencing factors on resource requirements

It is relatively straightforward to analyse the available data on non-sentencing factors. However, it is extremely difficult to identify why changes have occurred and to isolate the resource effect of any individual change to the system. This is because the criminal justice system is dynamic and its processes are interconnected.

Figure 1 shows a stylised representation of the flow of offenders through the criminal justice system. This figure demonstrates the interdependence of the system and how changes to any one aspect will have knock-on effects in many other parts.



Figure 1



On the following pages we examine the available data on non-sentencing factors. Because of the complexities explained above, we have not attempted to untangle the interactions between different non-sentencing factors to explain the causes of observed changes and their impact on resources.

## Volume of sentences and composition of offences coming before the courts

The Ministry of Justice (MoJ) publishes on [www.gov.uk](http://www.gov.uk) *Criminal Justice System Statistics Quarterly*, which gives quarterly statistics on the volume of sentences and the offence types for which offenders are sentenced.<sup>12</sup>

For the most detailed information on sentencing outcomes, follow the link on [www.gov.uk](http://www.gov.uk) for *Criminal Justice System Statistics Quarterly: December 2020* to use the sentencing tool. The tool provides statistics on the total number of sentences passed and how this has changed through time. The statistics can be broken down by sex, age group, ethnicity, court type and offence group.

## The rate of recall from licence

An offender is recalled to custody by the Secretary of State if they have been released from custody but then breach the conditions of their licence or appear to be at risk of doing so. Because time served in custody is considerably more costly than time spent on licence, recall decisions have a substantial resource cost. Statistics on recall from licence can be found in the MoJ publication, *Offender Management Statistics Quarterly*.<sup>13</sup> The tables concerning licence recalls, Table 5.1 to Table 5.12, can be found on [www.gov.uk](http://www.gov.uk) via

the link *Offender Management Statistics Quarterly: October to December 2020*. For example, Table 5.1 contains a summary of the number of licence recalls since 1984.

## Post-sentence supervision

The Offender Rehabilitation Act 2014 expanded licence supervision, which means that since 1 February 2015, all offenders who receive a custodial sentence of less than two years are subject to compulsory post-sentence supervision (PSS) on their release for 12 months. MoJ publishes statistics on the number of offenders under PSS in *Offender Management Statistics Quarterly*.<sup>14</sup> Follow the link *Probation: October to December 2020* and see Table 4.6.

## The rate at which court orders are breached

If an offender breaches a court order, they must return to court. Their revised sentence will typically add or augment requirements to the order or involve custody. Breaches can therefore have significant resource implications.

Statistics on breaches can also be found in *Offender Management Statistics Quarterly*. Follow the link *Probation: October to December 2020* and see Table 4.9, for a breakdown of terminations of court orders by reason.<sup>15</sup>

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<sup>12</sup> <https://www.gov.uk/government/collections/criminal-justice-statistics-quarterly>

<sup>13</sup> <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

<sup>14</sup> Ibid

<sup>15</sup> Ibid

## Patterns of reoffending

Moj publishes reoffending statistics in *Proven Reoffending Statistics*.<sup>16</sup>

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

## Release decisions by the Parole Board

Many offenders are released from prison automatically under release provisions that are set by Parliament and Moj. However, in a minority of cases, which are usually those of very high severity, the Parole Board makes release decisions.

Statistics on release rates for these cases can be found in the annual reports of the Parole Board for England and Wales.<sup>17</sup>

## Remand

Decisions to hold suspected offenders on remand are a significant contributor to the prison population. The remand population can be broken down into the untried population and the convicted but yet to be sentenced population.

Statistics on the number of offenders in prison on remand can be found in Moj's *Offender Management Statistics Quarterly*.<sup>18</sup> The prison population tables can be found via the link *Offender Management Statistics Quarterly: October to December 2020*. For example, Table 1.1 contains data on how the remand population has changed through time.

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<sup>16</sup> <https://www.gov.uk/government/collections/proven-reoffending-statistics>

<sup>17</sup> <https://www.gov.uk/government/publications/the-parole-board-for-england-wales-annual-report-and-accounts-201920>

<sup>18</sup> <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

# Budget

## Financial report

### *The cost of the Sentencing Council*

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

	2020/21 (actual) <sup>19</sup> £000s
<b>Total funding allocation</b>	1,495
Staff costs	1,166
Non-staff costs	119
<b>Total expenditure</b>	<b>1,285</b>

<sup>19</sup> The total expenditure has been rounded to the nearest £1,000 independently from the constituent parts, therefore summing the parts may not equal the rounded total.

# Appendices

## Appendix A: About the Sentencing Council

The primary function of the Sentencing Council is to prepare sentencing guidelines,<sup>20</sup> which the courts must follow unless it is contrary to the interests of justice to do so.<sup>21</sup>

The Council also fulfils other statutory functions:

- Publishing the resource implications in respect of draft guidelines<sup>22</sup>
- Preparing a resource assessment to accompany new guidelines<sup>23</sup>
- Monitoring the operation and effect of our sentencing guidelines, and drawing conclusions<sup>24</sup>
- Consulting when preparing guidelines<sup>25</sup>
- Promoting awareness of sentencing and sentencing practice<sup>26</sup>
- Publishing a sentencing factors report<sup>27</sup>

- Publishing a non-sentencing factors report<sup>28</sup>
- Publishing an annual report<sup>29</sup>

### **Governance**

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

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

The Council is accountable to Parliament for the delivery of our statutory remit set out in the Coroners and Justice Act 2009. Under section 119 of the Act, the Council must make an annual report to the Lord Chancellor on how we have exercised our functions.

20 s.120 Coroners and Justice Act 2009.

21 s.59(1) Sentencing Code.

22 s.127 Coroners and Justice Act 2009.

23 s.127 *ibid.*

24 s.128 *ibid.*

25 s.120(6) *ibid.*

26 s.129 *ibid.*

27 s.130 *ibid.*

28 s.131 *ibid.*

29 s.119 *ibid.*



The Lord Chancellor will lay a copy of the report before Parliament, and the Council will publish the report.

Ministers are ultimately accountable to Parliament for the Council's effectiveness and efficiency, for our use of public funds and for protecting our independence.

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

The Council is accountable to the Permanent Secretary at MoJ as Accounting Officer and to ministers for the efficient and proper use of public funds delegated to the Council, in accordance with MoJ systems and with the principles of governance and finance set out in Managing Public Money, and other relevant Treasury instructions and guidance.

The budget is delegated to the Head of the Office of the Sentencing Council (OSC) from the Chief Finance Officer, Ministry of Justice. The Head of the OSC is responsible for the management and proper use of the budget.

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

### ***How the Council operates***

The Council is outward-facing, responsive and consultative. We draw on expertise from relevant fields where necessary while ensuring the legal sustainability of our work. The Council aims to bring clarity in sentencing matters, in a legally and politically complex environment.

The Council aims to foster close working relationships with judicial, governmental and non-governmental organisations and individuals while retaining our independence. These include: the Attorney General's Office; the College of Policing; the Council of Her Majesty's Circuit Judges; the Council of Her Majesty's District Judges (magistrates' courts); the Criminal Procedure Rules Committee; the Crown Prosecution Service; the Home Office; the Judicial Office; Justices' Legal Advisers and Court Officers Service; the Magistrates Association; the Ministry of Justice; the Magistrates' Leadership Executive, the National Police Chiefs' Council and many academics in related fields.

The Council engages with the public on sentencing, providing information and improving understanding.

The Council meets 10 times a year to discuss current work and agree how it should be progressed. The minutes of these meetings are published on our website.<sup>30</sup>

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<sup>30</sup> [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

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

**Analysis and research** – to advise and steer the analysis and research strategy, including identifying research priorities so that it aligns with the Council’s statutory commitments and work plan. Chaired by: Dr Alpa Parmar.

**Confidence and communication** – to advise on and steer the work programme for the Communication team so that it aligns with the Council’s statutory commitments and work plan. Chaired by: Her Honour Judge Rosa Dean.

**Governance** – to support the Council in responsibilities for issues of risk, control and governance, by reviewing the comprehensiveness and reliability of assurances on governance, risk management, the control environment and the integrity of financial statements. Independent member: Elaine Lorimer, Chief Executive, Revenue Scotland. Chaired by: Beverley Thompson OBE.

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

### ***Equality and diversity working group***

At the Sentencing Council meeting on 20 November 2020 it was decided to establish a working group to advise the Council on matters relating to equality and diversity and make sure that the full range of protected characteristics are considered in our work: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation. The group will also consider ways in which the Council could engage more effectively with, and take account of the views and perspectives of, representatives of people with protected characteristics, and with offenders and victims more. The group held its first meeting in February 2021.

### ***Ad hoc working groups and contributions***

Where necessary, the Council sets up working groups to consider particular aspects of the development of a guideline or specific areas of business. In 2020 we established a working group to oversee the tenth anniversary and the Council's consideration of our future priorities in response to the anniversary consultation. We also sometimes invite contributions from people who are not members of the Council but who have particular experience and expertise in fields of relevance to the guidelines.

### ***Public sector equality duty***

The Council is committed to meeting its obligations under the public sector equality duty (PSED).<sup>31</sup> The PSED is a legal duty that requires public authorities, when considering a new policy or operational proposal, to have due regard to three needs:

- to eliminate discrimination, harassment, victimisation and any other conduct prohibited under the 2010 Act;
- to advance equality of opportunity between those who share a protected characteristic and those who do not; and
- to foster good relations between those who share a protected characteristic and those who do not.<sup>32</sup>

In developing guidelines, the Council considers the PSED in the context of the individual offence(s). Where there are offences that are aggravated by reasons of being related to a protected characteristic, this will be of particular relevance. Most guidelines include statutory aggravating factors at step two, relating to offences motivated by, or demonstrating hostility based on, protected characteristics. In addition, to assist sentencers in employing the principles of fair treatment and equality, we have placed links in all the guidelines to the Equal Treatment Bench Book.<sup>33</sup>

The Council also considers data in relation to offenders sentenced for individual offence(s), including data on volumes of offenders sentenced grouped by gender, ethnicity and age and this is published alongside the draft and definitive guidelines. Consultations include a consideration of the issues raised by the data and seek views as to whether there are any other equality or diversity implications the guideline has not considered. In all our communications, we actively seek to engage diverse audiences and ensure multiple voices and interests are represented, particularly in our consultations.

### ***Relationship with Parliament***

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

The Council informs all organisations and individuals who respond to our consultations that their responses may be shared with the Committee in order to facilitate its work.

On 2 February 2021, Lord Justice Holroyde, Chairman of the Sentencing Council, and Steve Wade, Head of the Office of the Sentencing Council, gave evidence to the Justice Select Committee at a session dedicated to the work of the Sentencing Council.

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<sup>31</sup> s.149 Equality Act 2010.

<sup>32</sup> Protected characteristics under the PSED are: age; disability; gender reassignment; pregnancy and maternity; race; religion or belief; sex and sexual orientation.

<sup>33</sup> Judicial College, Equal Treatment Bench Book: <https://www.judiciary.uk/publications/new-edition-of-the-equal-treatment-bench-book-launched/>.

### ***The Office of the Sentencing Council***

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

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

At 31 March 2021 there were 18 members of staff, including the Head of the Office of the Sentencing Council.

In the 2020 Civil Service Staff Engagement Survey, the OSC recorded a staff engagement index of 83 per cent. This places the Office 16 percentage points ahead of other MoJ arm's-length bodies and 13 percentage points ahead of other high-performing units across the Civil Service.

### ***Senior management team***

The work of the OSC is overseen by a senior management team comprising the Head of Office and senior staff. The role of the team is to:

- monitor and evaluate progress of the Council's workplan, as published in the Business Plan;
- monitor and evaluate budget expenditure, and make decisions regarding budget allocation;
- undertake regular review of the risk register on behalf of the Governance sub-group, with a view to ensuring that all information regarding delivery of the Sentencing Council's objectives and mitigation of risks is current and updated; and
- consider and make decisions on any other issues relating to the work of the OSC as may be relevant.

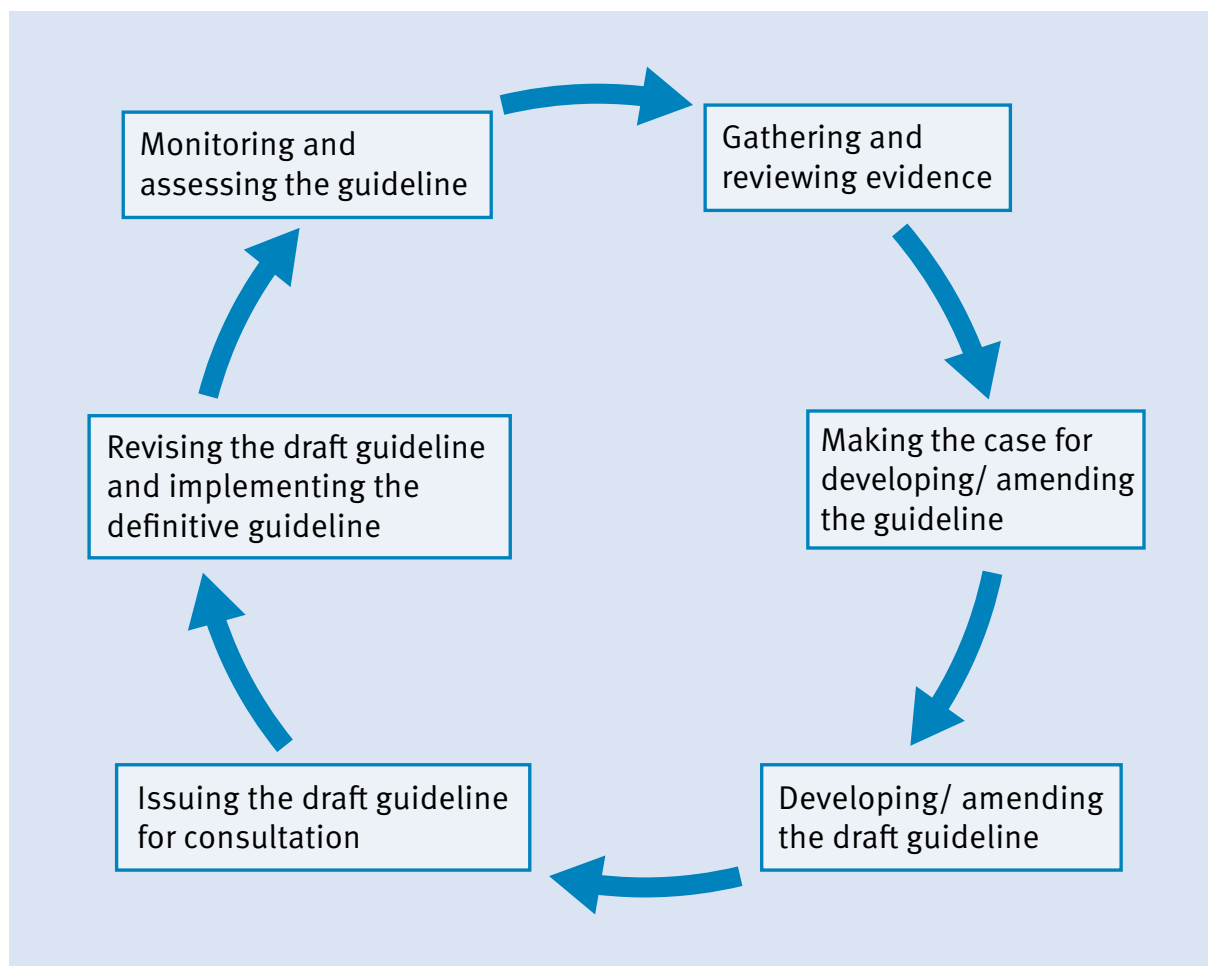
### Guideline development

In developing guidelines, the Council follows a process that is based on the policy cycle set out by HM Treasury in the *Green Book: Central Government Guidance on Appraisal and Evaluation* (2018) and allows a culture of continuous improvement to be embedded.

The process, from first consideration by the Council to publication of a definitive guideline, can extend to 18 months or more. However, if the Council believes there to be a pressing need, it can be expedited.

Figure 2 illustrates the guideline development cycle.

Figure 2





## Appendix B: Membership of the Sentencing Council

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

The Right Honourable Lord Justice Holroyde, a Court of Appeal judge, was appointed Chairman of the Sentencing Council from 1 August 2018.

The Lord Chancellor and Secretary of State for Justice appoints non-judicial members, with the agreement of the Lord Chief Justice.

### Membership of the Council at 31 March 2021

#### *Judicial members*

Chairman: the Right Honourable Lord Justice Holroyde, appointed 6 April 2015, appointed as Chairman 1 August 2018

In order of appointment:

The Honourable Mrs Justice McGowan,  
2 January 2017

Her Honour Judge Rebecca Crane,  
1 April 2017

Her Honour Judge Rosa Dean, 6 April 2018

The Right Honourable Lord Justice Adrian Fulford, 1 September 2019

District Judge (Magistrates' Courts)  
Mike Fanning, 1 September 2019

The Honourable Mrs Justice May, 8  
October 2020

Jo King JP, 8 October 2020

#### *Non-judicial members*

In order of appointment:

Rosina Cottage QC, barrister, 18 July 2016

Dr Alpa Parmar, academic, University of Oxford, 6 April 2018

Beverley Thompson OBE, CJS Consultant and former CEO of Probation, 15 June 2018

Max Hill QC, Director of Public Prosecutions and Head of the Crown Prosecution Service, 1 November 2018

Diana Fawcett, Chief Executive, Victim Support, 5 April 2019

Nick Ephgrave, Assistant Commissioner (Frontline Policing), Metropolitan Police, 26 May 2020

#### *Register of members' interests*

At 31 March 2021, only one member of the Council had a personal or business interests to declare: a close family member of Jo King JP is a serving member of the Metropolitan Police.

## Appendix C: Sentencing guidelines production stages

Guideline	Production stage	Timing
<b>Arson and criminal damage</b>	Development	Throughout 2016/17
	Consultation	March to June 2018
	Post-consultation	Published 3 July 2019 Came into effect 1 October 2019
	Evaluation and monitoring	In progress 2020
<b>Assault and attempted murder</b>	Development	Throughout 2018/19 and 2019/20
	Consultation	April to September 2020
	Post-consultation	September 2020 to May 2021
	Evaluation and monitoring	Some data collected 2021
<b>Bladed articles and offensive weapons</b>	Development	Throughout 2015/16
	Consultation	October 2016 to January 2017
	Post-consultation	Published 1 March 2018 Came into effect 1 June 2018
	Evaluation and monitoring	April to September 2019
<b>Breach offences</b>	Development	Throughout 2016/17
	Consultation	October 2016 to January 2017
	Post-consultation	Published 7 June 2018 Came into effect 1 October 2018
	Evaluation and monitoring	April to September 2019
<b>Burglary (revised)</b>	Development	2020/2021
	Consultation	June to September 2021
	Post-consultation	
	Evaluation and monitoring	
<b>Children and young people</b>	Development	Throughout 2015/16
	Consultation	May to August 2016
	Post-consultation	Published 7 March 2017 Came into effect 1 June 2017
	Evaluation and monitoring	Published 17 November 2020

Guideline	Production stage	Timing
<b>Dangerous dogs</b>	Development	Throughout 2014/15
	Consultation	March to June 2015
	Post-consultation	Published 17 March 2016 Came into effect 1 July 2016
	Evaluation and monitoring	Published October 2020
<b>Drug offences (revised)</b>	Development	Assessment of original guidelines and interim guidance published June 2018
	Consultation	January to May 2020
	Post-consultation	Published 27 January 2021 Came into effect 1 April 2021
	Evaluation and monitoring	
<b>Firearms</b>	Development	Throughout 2018/19 and 2019/20
	Consultation	October 2019 to January 2020
	Post-consultation	Published 8 December 2020 Came into effect 1 January 2021
	Evaluation and monitoring	
<b>Firearms importation</b>	Development	2020/21
	Consultation	Summer 2021
	Post-consultation	
	Evaluation and monitoring	
<b>General guideline and expanded explanations</b>	Development	Throughout 2017/18 and 2018/19
	Consultation	June to September 2018
	Post-consultation	Published 24 July 2019 Came into effect 1 October 2019
	Evaluation and monitoring	

Guideline	Production stage	Timing
<b>Guilty plea</b>	Development	Throughout 2015/16
	Consultation	February to May 2016
	Post-consultation	Published 7 March 2017 Came into effect 1 June 2017
	Evaluation and monitoring	Published 17 November 2020
<b>Health and safety offences, corporate manslaughter and food safety and hygiene offences</b>	Development	Throughout 2013/14
	Consultation	November 2014 to February 2015
	Post-consultation	Published 3 November 2015 Came into effect 1 February 2016
	Evaluation and monitoring	Guideline assessment published 4 April 2019
<b>Intimidatory offences</b>	Development	Throughout 2016/17
	Consultation	March to June 2017
	Post-consultation	Published 5 July 2018 Came into effect 1 October 2018
	Evaluation and monitoring	Impact assessment conducted autumn 2019, for later publication
<b>Mental disorders, developmental disorders or neurological impairments</b>	Development	Throughout 2018
	Consultation	April to July 2019
	Post-consultation	Published 21 July 2020 Came into effect 1 October 2020
	Evaluation and monitoring	
<b>Modern slavery</b>	Development	Throughout 2020/21
	Consultation	15 October 2020 to 15 January 2021
	Post-consultation	
	Evaluation and monitoring	

Guideline	Production stage	Timing
<b>Public order offences</b>	Development	Throughout 2017/18
	Consultation	May to August 2018
	Post-consultation	Published 16 October 2019 Came into effect 1 January 2020
	Evaluation and monitoring	
<b>Terrorism (revised)</b>	Development	From April 2019 (Counter Terrorism and Border Security Act 2018 came into force)
	Consultation	October 2019 to December 2019
	Post-consultation	
	Evaluation and monitoring	
<b>Unauthorised use of a trademark</b>	Development	2020
	Consultation	8 July 2020 to 30 September 2020
	Post-consultation	
	Evaluation and monitoring	









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