

26 February 2021

Dear Members

Meeting of the Sentencing Council – 5 March 2021

The next Council meeting will be held via Microsoft Teams, the link to join the meeting is included below. **The meeting is Friday 5 March 2021 from 9:30 to 14:00.** Members of the office will be logged in shortly before if people wanted to join early to confirm the link is working.

The agenda items for the Council meeting are:

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| ▪ Agenda | SC(21)MAR00 |
| ▪ Minutes of meeting held on 12 February | SC(21)FEB01 |
| ▪ Action log | SC(21)MAR02 |
| ▪ Assault | SC(21)MAR03 |
| ▪ Sexual Offences | SC(21)MAR04 |
| ▪ Burglary | SC(21)MAR05 |
| ▪ What next for the Sentencing Council | SC(21)MAR06 |

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

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

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

Best wishes



Steve Wade

Head of the Office of the Sentencing Council

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COUNCIL MEETING AGENDA

5 March 2021

Virtual Meeting by Microsoft Teams

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| 09:30 – 09:45 | Minutes of the last meeting and matters arising (papers 1 and 2) |
| 09:45 – 11:00 | Assault - presented by Lisa Frost (paper 3) |
| 11:00 – 11:15 | Tea break |
| 11:15 – 12:00 | Sexual Offences - presented by Ollie Simpson (paper 4) |
| 12:00 – 12:45 | Burglary - presented by Mandy Banks (paper 5) |
| 12:45 – 13:00 | Tea break |
| 13:00 – 14:00 | What next for the Sentencing Council? - presented by Emma Marshall (paper 6) |

Sentencing Council

COUNCIL MEETING AGENDA

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MEETING OF THE SENTENCING COUNCIL

12 FEBRUARY 2021

MINUTES

Members present:

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

Apologies:

Rosa Dean

Representatives:

Hanna van den Berg for the Lord Chief Justice
(Legal and Policy Advisor to the Head of Criminal
Justice)
Phil Douglas for the Lord Chancellor (Head of
Custodial Sentencing Policy)

Members of Office in
attendance:

Steve Wade
Vicky Hunt
Ruth Pope

1. MINUTES OF LAST MEETING

- 1.1 The minutes from the meeting of 29 January 2021 were agreed subject to amendments.

2. MATTERS ARISING

- 2.1 The Chairman reported that the oral evidence session before the Justice Committee of the House of Commons on the work of the Sentencing Council on 2 February had gone well
- 2.2 The Chairman noted two changes in the office of the Sentencing Council. He welcomed Beth Brewer, an intern who is working the analysis and research team for three months, and noted that this would be the last Council meeting for Elaine Wedlock, head of the social research team, who is leaving to take up a post with the Royal Commission on Criminal Justice.

3. DISCUSSION ON FIREARMS IMPORTATION – PRESENTED BY RUTH POPE, OFFICE OF THE SENTENCING COUNCIL

- 3.1 The Council discussed the scope and format of a guideline for firearms importation offences. It was agreed that the guideline should cover offences contrary to sections 50 and 170 of the Customs and Excise Management Act 1979 and should relate to the importation of firearms and ammunition only. In order to reflect the wide range of offending and sentence outcomes for the offences, the guideline should first consider the type of weapon before considering other culpability and harm factors.
- 3.2 The Council agreed that two sentencing tables (one for offences subject to a seven year maximum and one for those with a maximum life sentence) could provide the required range of sentence outcomes.
- 3.3 The Council agreed to set up a working group to make recommendations to the full Council on the factors to be included and on the detail of the sentence levels.

4. DISCUSSION ON ROBBERY – PRESENTED BY VICKY HUNT, OFFICE OF THE SENTENCING COUNCIL

- 4.1 The Council discussed the findings of the cumulative impacts report, specifically in relation to the impact of the robbery guideline.
- 4.2 The Council concluded that it should continue to monitor the impact of the robbery guideline to see if sentencing severity changes over the next year or so. It was also agreed that, at this stage, no revision of the guideline is required. Whilst the guideline may have led to an increase in sentence severity, the guideline is working well and it is appropriate

that the most serious cases, involving firearms and knives, receive the highest sentences.

5. DISCUSSION ON GUIDELINE PRIORITY– PRESENTED BY STEVE WADE, OFFICE OF THE SENTENCING COUNCIL

5.1 The Council agreed that pending a fuller discussion of its priorities, the next guidelines to be developed should be:

- motoring offences causing death and serious injury and other motoring offences not yet covered by Sentencing Council guidelines; and
- witness intimidation and perverting the course of justice.

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SC(21)MAR02 March Action Log

ACTION AND ACTIVITY LOG – as at 26 February 2021

	Topic	What	Who	Actions to date	Outcome
SENTENCING COUNCIL MEETING 29 January 2021					
1	Trade Mark	Working group to be set up to discuss the issues raised at the January Council meeting around capturing additional harm in the guideline	Ruth Pope and Mike Fanning		ACTION CLOSED: Working group including two external experts met on 12 February. Issues to be referred back to the full Council.
SENTENCING COUNCIL MEETING 12 February 2021					
2	Firearms importation	Chairman and guideline lead to discuss membership of working group and meeting to be arranged to refine a draft of the guideline for consideration by the Council at the April meeting,	Tim Holroyde, Maura McGowan and Ruth Pope	ACTION ONGOING: Working group (consisting of TH, MM, AF, RC and a CPS rep) to meet on 5 March after the Council meeting	

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Sentencing Council

Sentencing Council meeting: 5 March 2021
Paper number: SC(21)MAR03 – Assault
Lead Council member: Rosa Dean
Lead officials: Lisa Frost
0207 071 5784

1 ISSUE

1.1 This meeting will consider issues raised in relation to the consultation on the Assault guideline revision; specifically, issues raised in respect of the proposed Common Assault revised guideline and related guidelines for Assaults on Emergency Workers and Assault with Intent to Resist Arrest.

2 RECOMMENDATION

2.1 That the Council:

- considers issues raised in relation to sentences, factors and approaches to assessing seriousness for common assault and related offences and;
- agrees any appropriate revisions.

3 CONSIDERATION

3.1 The draft common assault guideline which was subject to consultation is attached at Annex A. The consultation document set out the rationale for the revised guideline, and broadly respondents approved of the approach to address issues identified in the evaluation and to update the guideline. Some issues were raised in relation to step one and two factors, and sentences.

3.2 The Council agreed to consider whether to detach the guideline for Assaults on Emergency Workers guideline from the package of guidelines subject to the progress of proposals to double the statutory maximum sentence. As legislative change is expected to take longer than initially thought it is proposed the Emergency Workers

guideline be finalised and published, with a view to revising the guideline when sentences are increased.

3.3 The Assaults on Emergency Workers and Intent to Resist Arrest guidelines include the same factors as for the basic common assault offence guideline. The consultation sought views on factors and sentences within these draft guidelines. Responses were predominantly focused on the Emergency Workers guideline.

3.4 Some issues arose in respect of sentences for offences and the approach taken to these in the draft guideline. This paper addresses those issues first and will then consider responses to factors within the guidelines.

Sentences – Assaults on Emergency Workers

3.5 Views were split on the sentences for assaults on emergency workers with some respondents believing the sentences to be too low, while others considered them disproportionately high in comparison to the basic common assault offence;

The starting point must be custody regardless. This was the aim of the Assaults on Emergency Workers Act, and is what is continually pressed home by the government, yet here a person can be found guilty and escape prison. This should not be the case. This has to change if we are to address the continual and rising issue of assaults on emergency workers. As a minimum, this should start at 3 months imprisonment, moving up through the categories to 12 months for category 1. Again, any injury over minor should be treated as AOABH and aggravated further there if against an emergency worker. There really should be no exception whereby a person found guilty of assaulting an emergency worker does not receive a custodial sentence. I personally am very disappointed to see this being even considered here as it is completely at odds with the spirit of the Act which was put in to try and reduce these types of offences. This is the opportunity to send a clear message and really show that emergency workers are valued and should not, in any circumstances, be assaulted whilst at work. This is an opportunity to really demonstrate that these assaults are socially and morally repugnant and will always attract a custodial sentence. –

Representative of Yorkshire Ambulance Service

I agree with the proposed starting points. I think the range for Cat 3B starts too low, but I think that the Starting-Points and Ranges are otherwise 'spot-on'. They do, however, put a sharp focus on the proposed Starting-Points and Ranges for assaults on non-emergency workers. In my respectful view, the SPs and Ranges here show

that the SPs and Ranges for assaulting non-emergency workers are too low and should be adjusted upwards. I think everyone would agree that the SPs and Ranges for assaulting emergency workers should be higher (although the police nowadays often charge the offence even where some minor, reckless, contact took place during an arrest); but the effect on members of the public of violence being used against them unlawfully needs to attract higher penalties than will follow from the suggested guideline for those assaults. – Magistrate

The uplift in sentencing starting points and ranges seems to be severe and does not differentiate between different emergency workers. There is a notable practical difference between the culpability and risk of harm of an assault on an off-duty paramedic, neither armed nor protected by personal equipment, and that on a police officer in full uniform on patrol with a colleague. Comparing this proposed guideline with the revised common assault guideline is likely to cause members of the public and complainants of domestic abuse to feel aggrieved that their complaints are treated less seriously when it comes to sentence than offences against emergency workers. Consider the following worrying example. An offender places his hands around the throat of his partner and strangles her causing more than minor psychological distress, this falls into category A1. The starting point is a high-level community order. Now consider this offence being committed against a police officer on full uniformed duty, where it is worth bearing in mind that he or she has been trained in self-defence, carries a radio for backup and most likely a CS gas spray which is prohibited to the general public. The proposed guideline suggests a starting point of an eight-month sentence, a period of custody which exceeds the statutory maximum in cases where a private citizen is the victim. – Researcher to Chief Magistrate (Chief Magistrate submitted similar response)

We question whether – given the current sentencing guidelines applicable to Assault with Intent to Resist arrest - whether the proposed starting points in this case are too high. We recognise that with a maximum sentence of 12 months for this offence and that of 2 years for the other the issue of maintaining some degree of relativity is difficult and there will be a degree of compression in the sentencing ranges. We suggest lower starting points be applied to reflect the difference in the maximum sentences applicable in these 2 cases. - HM Circuit Judges

All the category starting points here are significantly higher when compared with the guideline for common assault. We are doubtful as to whether this is proportionate. There is such a large difference here in starting points. We agree that a custodial sentence should be the starting point for the more serious cases being charged under

this offence, but looking at the Culpability A/Category 1 Harm in particular, a Starting Point of 8 months appears to us excessive. In particular: a. We do not consider that the one significant difference (the job / profession of the victim) with all other factors being equal should justify such a large difference in Starting Points as shown in bullet 5 above. b. We do not consider that the Starting Point should be in excess of that available in the magistrates' court. - West London Bench

Both HM Circuit Judges and the West London Bench suggested category A1 should include a lower starting point of 6 months custody and categories A2/B1 a starting point of 12 or 13 weeks custody.

The Sentencing Academy also considered the sentences disproportionate and disapproved of the degree of uplift in Emergency Workers offence sentences;

If the victim is an emergency worker, the starting point jumps to eight months, well above the common assault guideline and above the midpoint of the guideline's sentence range. We do not believe the occupational status of the victim justifies such a jump in severity. As a general observation, category starting points are usually set just below the midpoint of the category range. In this case that would result in a starting point of 4-5 months. This convention should apply here. In addition, the guideline range itself is problematic: it spans the statutory range, an anomaly in Council's guidelines. – Sentencing Academy

3.6 In developing sentences the Council were alert to the need to reflect Parliament's clear intention to increase sentences for these offences, but were also balancing this objective with not increasing sentences for all other common assault offences. This caused a wide disparity in sentence levels between the offences.

3.7 A further complexity to the issue has arisen with a number of respondents highlighting the contrast in the approach for sentencing racially aggravated common assault offences compared to the aggravated offence of Assaults on Emergency workers, when the statutory maximum for the latter is lower;

We thought it interesting to compare the available sentencing data for this offence to the racially / religiously aggravated common assault (section 29, Crime and Disorder Act 1998) offence sentencing. This is because they are both essentially common assault offences, but both have single aggravating features (inherent in the offence itself), taking their seriousness beyond the sentences for common assault per se, although their maximum sentences are different. We have extracted the following data from the Assault Offences Statistical Bulletin issued with the Consultation document

(although not for the same period of time, but this is the best we can do with the data provided). We note:

Disposal	Racially / Religiously Aggravated Common Assault	Assault on Emergency Workers
Immediate Custody	25%	17%
Suspended Custody	18%	10%
Community Order	37%	38%
Fine	13%	23%
Discharge	Not stated	8%

Statistics	Racially / Religiously Aggravated Common Assault	Assault on Emergency Workers
Number of Offenders Sentenced	800 (2018)	6,400 (2019 Q1-Q3)
Maximum Sentence	2 years' custody	1 years' custody
Average Custodial Sentence Length	4 months	3 months

a. There are many more custodial sentences for the section 29 offence (43%) than for the assault on emergency workers offence (27%). This would perhaps be expected, given the higher statutory maximum sentence for the section 29 offence.

b. Community disposals are very similar between the two offences, which is also perhaps to be expected.

c. The average custodial sentence length for the section 29 offence is not that much higher than that for assault on emergency workers. Given that the maximum sentence is double, we might expect the average custodial sentence to be higher.

Does this indicate that these offences should be aligned further in some way, or should they continue to be considered separately, without any attempt to draw any comparisons or equivalences between the two? We leave any further consideration of this point to the Sentencing Council. – **West London Bench**

3.8 While a direct comparison of the data referred to does not account for a number of variables, there is merit in the point. The Council did consider applying an uplift approach for this offence in developing the guideline but felt this would not achieve consistent sentences. Separate sentencing tables were explored for racially and religiously aggravated offences in developing the Public Order and Criminal Damage guidelines, and consultation was undertaken on a separate sentencing table for aggravated public order offences. However, in road testing it was found that

sentencers found it very difficult to separate the basic offence from the aggravated activity and apportion weight to each element. The uplift approach was preferred as sentencers felt the sentences arrived at were disproportionate to the overall offence seriousness. However, some consultation respondents have made the same point in respect of sentences for the emergency workers offence.

3.9 The emergency worker common assault offence does not include the same complexities as a racially or religiously aggravated common assault offence. The research undertaken as part of the Public Order guideline development highlighted that racial or religious aggravation can range in type and severity, whereas the aggravation in the common assault of an emergency worker offence is one dimensional and relates only to the profession of the victim. The aggravation assessment in a racially or religiously aggravated offence relates to the level of aggravation present and the proportion of aggravation within the offence, which is not applicable to aggravation in the emergency workers offence. However, when considered starkly it may appear as if the Council are content to specify high sentences to reflect legislation in relation to specified professions, but not to reflect legislation in respect of other victim characteristics. The statutory maximum sentence for basic common assault offences is currently one year which is half of the statutory maximum sentence for racially and religiously aggravated common assault. If legislative changes result in parity between the statutory maximum for each type of aggravation this could further legitimise concerns that the approaches for assessing the uplift, and the degree of uplift, should be consistent.

3.10 The Council are asked to consider this issue now as it is likely to become more of an issue at the point the Emergency Workers guideline would need to be revised and disproportionality between basic offence sentences and offences with comparable aggravated statutory maximums will be more pronounced. It is also likely to prove difficult at that stage to ensure proportionality with more serious assault offences such as ABH where a statutory aggravating factor is included rather than a statutory maximum sentence.

3.11 There are a number of issues and risks to consider. Although other aggravated offences exist, these are perhaps not considered to be substantive offences in the same way that the emergency workers offence is. However, the way in which the legislation provides for an increased offence is the same for each, and it has been defined as an aggravated form of an existing offence in the leading legal practitioner reference publications of Blackstone's and Archbold;

The wording of s. 1 is such that it does not simply create a free-standing offence, as for example does the OAPA 1861, s. 47. Instead, it creates aggravated versions of the existing offences of common assault and common battery, and such offences should accordingly be charged as 'contrary to the CJA 1988, s. 39(2), and the Assaults on Emergency Workers (Offences) Act 2018, s. 1(2)'. Blackstone's - B2.39

Common assault and battery are triable summarily. The CDA 1998 created an aggravated form of this offence, committed when an attack is motivated by racial or religious hostility, which is triable either way. The Assaults on Emergency Workers (Offences) Act 2018 also created an aggravated form of the offence which is triable either way where it involves an assault on an emergency worker. Archbold - 25-2

That said, there is an expectation the Council will publish a specific guideline for the emergency workers offence. However, there is no difference in the basic elements of each offence which is reflected by the fact the guidelines include the same step one and step two factors (save for very minor differences).

3.12 Not proceeding with a specific guideline would be difficult. Sentencers have been requesting a guideline for this offence for some time, and there would likely be significant criticism of the Council if a full guideline for the offence were not published. However, there is precedent for approaches to change following consultation, and such a decision was taken following consultation on a prescribed sentencing table for Public Order aggravated offences. The reasons for not specifying aggravated sentence levels in the Public Order guideline also related to avoiding disproportionate sentences and maintaining a consistent approach for sentencing aggravated offences across guidelines. The Council could decide that the issues raised in respect of treating aggravating features and characteristics differently are compelling, and that proposed legislative changes will complicate and enhance disparity in approach further. The uplift approach would also avoid a greater disproportionality and greater lack of relativity with the basic offence at the point sentences would need to be increased.

3.13 Should the Council wish to consider an uplift approach, the model for aggravated offence uplifts used in other guidelines would not translate to this offence given the one-dimensional aspect of aggravation in common assault of an emergency worker already noted. It is thought the uplift would need to be related to the category of offence. As there are six offence categories, the Council would need to consider if the uplift should relate to specific categories such as A1, A2/B1 and A3/B2/B3 or relate to the level of harm involved in the offence, given that the provisions are predominantly

intended to punish the harm caused to emergency workers by these offences. Such an approach is illustrated below;

Harm Category 1 OR A1	Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.
Harm Category 2 OR A2/B1	Consider a significantly more onerous penalty of the same type or consider a more severe type of sentence than for the basic offence.
Harm Category 3 OR A3/B2/B3	Consider a more onerous penalty of the same type identified for the basic offence.

Alternatively, the level or range of uplift or increase to sentence could be specified. The level of increase is not usually specified with the uplift approach, although there is an exception with the s5 Disorderly Behaviour guideline due to the limited statutory maximum sentence of a fine not providing for any other type of sentence to be imposed.

3.14 Another option to address the lack of proportionality raised by respondents is that sentence starting points are reduced from the consultation version in line with respondent suggestions of a 6 month starting point in category A1 and 12 weeks in categories A2 and B1, which is more in line with the approach usually taken in reflecting statutory maximum sentences. As the statutory maximum sentence for this offence may now increase, the lack of proportionality will be even greater at that stage. However, there is a risk that if sentences are reduced it could be perceived as an attempt to undermine the proposed legislative changes to increase sentences.

3.15 This is a challenging issue and any revision to approach or sentences presents risks. The Council are often criticised for sentence inflation and given the high volume of assault offences even small increases for low level offences will cause inflation and sentence ‘creep’ with other assault offences. While all within the Criminal Justice system agree that emergency workers should be protected there are other aims of

sentencing which may be undermined by disproportionate sentences and excessive inflation, and the Council will be expected to make principled decisions in this regard.

3.16 In summary, the options the Council are asked to consider are therefore;

- i) Retaining the sentence table as consulted, or with amended sentences, and agreeing to revise sentences at such time legislative changes necessitate or;
- ii) Revising the guideline and adapting the uplift approach used for other aggravated offences.

Question 1: Does the Council wish to revise the approach to the Emergency workers guideline and include the uplift approach used for other aggravated offences? If it does not, does the Council wish to retain sentences as consulted or revise these down to address proportionality issues?

Sentences – Assault with Intent to Resist Arrest

3.17 Sentences for this offence were increased from the existing guideline levels to achieve relativity with Emergency Worker sentences, as this offence is effectively the same but with the added element of resisting arrest. The majority of respondents who commented on this aspect of the guideline noted it was rarely charged. A number of respondents considered increasing sentences for the offence was unnecessary, although recognised the objective;

We have already noted the issues in maintaining some degree of relativity and proportionality between the offences of assault on an emergency worker and assault with intent to resist arrest. We feel that a reduction in the sentencing proposals for the former and the application of those proposed for the latter achieve that result. - HM Circuit Judges

3.18 Proposals and any further consideration in respect of sentences for this offence will be informed by the approach to be taken for the Emergency Workers guideline.

Sentences – Common Assault (basic offence)

3.19 A number of respondents considered sentences too low, particularly in the categories B2/A3 and B3 where the starting points are fines;

'In my view, the starting-points and ranges are too low, certainly at the Category 2B and below levels. The current levels are leading magistrates to impose fines out of all proportion to the effect of violence on victims and society generally. For example, a

person on benefits, convicted of battery and placed in Category 2B, will be fined less than he would be for using a vehicle without insurance. Other comparisons would also serve. An offence deemed to fall into Cat 3B would receive a fine of a derisory amount - and that is happening now. I would respectfully suggest that the starting-points should be higher - certainly for Categories 2B and below, and probably above that too'.

Magistrate

*We agree that the amended wording concerning harm may put more cases into a higher category. We are concerned that there is not sufficient distinction between the starting points and ranges for grid 2B, 3A and 3B. We also observe that a starting point of a Band A & B for these assaults does not distinguish the severity of such offences from victimless strict liability offences such as failure to pay for TV licence. Nevertheless, a Band A starting point for any common assault seems unjustly low, when considering that this is the minimum fine a person can receive in the guidelines for any offence whatsoever. – **Justices' Legal Advisers and Court Officers'***

Service (JCS)

*If I were victim of an assault, I do not think I would be happy with the giving of a low level fine – **Magistrate***

*I do not think a fine is an appropriate sentence to any assault offence, this does not feel proportionate to any level of harm caused to a victim of assault and in particular a domestic abuse survivor. One of my team made the comment that in every circumstance where she has informed a survivor of domestic abuse that their abuser had received a fine as a sentence, the survivor was unhappy with the outcome, finding this insulting and offensive given their traumatic experience – **Leeds Womens Aid***

3.20 The existing guideline includes 3 categories and starting points of a high level community order, medium level community order and a Band A fine, within a range of 26 weeks custody to a discharge. The sentences included were intended to reflect the existing starting points and ranges, and it is believed that revision to the guideline model and factors will address the evaluation finding that sentences for common assault decreased on the introduction of the existing guideline.

3.21 Further consideration of sentences has been undertaken with reference to sentences for s4 Threatening Behaviour offences, as these are similar to common assault and share the same statutory maximum sentence, although are likely to be considered less serious as do not involve physical harm but putting a victim in fear of harm. While there are only four categories of s4 offence (2 culpability and 2 harm categories), all categories include a community order starting point;

S4 Public Order Act sentences

Harm	Culpability	
	A	B
Category 1	Starting point High level community order Range Low Level community order - 26 weeks' custody	Starting point Medium level community order Range Band C Fine – 12 weeks' custody
Category 2	Starting point Medium level community order Range Band C Fine – 12 weeks' custody	Starting point Low level community order Range Discharge - Medium level community order

3.22 While it is justifiable to include fines as a starting point for cases involving the lowest level of harm and this is included in the lowest category of the existing guideline, to ensure a common assault offence involving the highest degree of culpability or some degree of physical harm does not attract a sentence lower than an equivalent category s4 offence, the Council are asked to consider if the starting point of category B2 should be a low level community order. This would better reflect proportions of disposals imposed as illustrated by the updated statistics for common assault sentence distribution below. Only 17% of current disposals are fines and 12% are discharges, so maintaining starting points of fines across half of the categories may decrease sentences further rather than achieving the objective of addressing the evaluation findings in relation to decreases while ensuring just but proportionate sentences. Updated statistics are as follows;

Outcome	2015	2016	2017	2018	2019
Absolute and conditional discharge	15%	15%	14%	14%	12%
Fine	16%	16%	16%	17%	17%
Community sentence	39%	38%	39%	41%	43%
Suspended sentence	13%	14%	14%	12%	11%
Immediate custody	14%	14%	14%	14%	14%
Otherwise dealt with ¹	3%	3%	3%	3%	3%

3.23 Arguably the highest category should include a custodial starting point, given that 25% of offences receive immediate or suspended custody. This would address some of the proportionality concerns and better reflect the current sentence distribution. However, while the lower end of sentences were considered too low, few respondents raised concerns with the current highest starting point for common assault being maintained, and statistics illustrate custodial sentences are being imposed with the existing guideline which does not include a custodial starting point.

3.24 The Council is also asked to consider increasing the fine band of category B3 as this is exceptionally low, and as pointed out by some respondents similar to fines which would be received for offences such as no insurance and TV licence evasion.

Question 2: Does the Council agree that sentences in the lower categories should be increased as proposed?

Common Assault offences - Culpability factors

3.25 Some changes to factors have already been agreed in considering other draft guidelines and cross cutting factors. These include revising the 'prolonged assault' factor to 'prolonged/persistent assault' and expanding the strangulation factor to read 'strangulation/suffocation'.

3.26 The Council recently agreed to include an additional lesser culpability factor 'Impulsive/spontaneous and short lived assault' in the ABH and GBH guidelines as an alternative to lack of premeditation which is in the existing guidelines, in order to reflect the spectrum of planning and provide for appropriate balancing of factors. In revising the common assault guideline the Council removed 'significant degree of planning' and 'lack of premeditation' from the culpability assessment, as it was thought that planning was not often a feature of common assault offences. This was highlighted in consultation and some respondents disagreed;

We note that Sentencing Council research shows that premeditation is rare in common assault offences and the factor is more difficult to interpret, however magistrates do report seeing offences where the common assault is premeditated. – Magistrates Association

We are not convinced that premeditation should be removed from high culpability. We are not convinced that it "rarely" applies in common assault cases. Just because the injury is minor doesn't prevent there being pre-meditation. - Criminal Law Solicitors' Association

The Council is asked to consider whether planning, and a lack of, should be provided for in the common assault guidelines. As many common assault offences will be short lived, inclusion of the recently agreed lesser culpability factor for ABH and GBH of 'Impulsive/spontaneous and short-lived assault' could result in a high proportion of common assault offences being assessed at lesser culpability.

Question 3: Does the Council wish to include factors relating to planning and lack of premeditation in the common assault guideline?

Intention to cause fear of serious harm, including disease transmission

3.27 The disease transmission factor was particularly well received, although a number of respondents including HM Circuit Judges and a number of magistrate respondents thought that spitting, even without an inference of disease transmission, should be provided for at step one. The Council debated at length whether to include spitting at step one or two during the guideline development, but ultimately decided to include it as an aggravating factor and include the high culpability factor 'Intention to cause fear of serious harm, including disease transmission' to capture cases where an offence includes spitting or any activity where there is an inference of potential disease transmission. This point was explained in the consultation document and the rationale will be included again in the consultation response.

Targeting of vulnerable victim

3.28 A high culpability factor included is '*targeting of vulnerable victim due to victim's personal characteristics or circumstances*'. The Justices' Legal Advisers and Court Officers' Service (JCS) agreed that targeting of a vulnerable victim increases culpability, but thought an additional higher culpability factor should be '*victim obviously vulnerable due to age, personal characteristics or circumstances*', which is included in the ABH and GBH guidelines. A related point was raised by the West London Bench, who thought 'targeting' was not necessary as the vulnerability of the victim is sufficient to assess the offence as high culpability. This point was also made by the Council of HM Circuit Judge's, who noted that '*it is the targeting of the victim because of their vulnerability that raises the offenders culpability*'.

3.29 In ABH and GBH 'targeting' was not included to ensure cases where a victim could not necessarily be said to be targeted but was vulnerable, such as baby shaking cases, could be captured at high culpability. In the existing guideline the same

vulnerability factor wording is included across guidelines, and for consistency of approach it may be preferable for the factor to be consistently worded in the revised guidelines. This would also avoid the factor not being applicable where a victim is vulnerable but not necessarily said to be targeted.

Question 4: Does the Council wish to phase the vulnerable victim factor as in the other Assault guidelines and remove the ‘targeting’ element?

Use of substantial force

3.30 A small number of respondents questioned the factor ‘use of substantial force’;
‘Substantial force is unclear. What is substantial?’ – Birmingham Law Society

‘We are not sure what is meant by “substantial force”. Almost by definition there will not be “substantial force” in a Common Assault case as if there were then ABH injurie would be used. We feel that the intention behind this element is dealt with in the Harm part of the guideline.’ - CLSA

3.31 The CPS response suggested that the consultation document explanation for the factor should be included;

‘We understand from the consultation document that the ‘use of substantial force’ culpability factor has been added to reflect an intention by the offender to cause more serious harm than may result from the offence. This explanation will not be a part of the final guideline and will not be available at the time of sentence. We think that for this factor to be applied consistently it requires further explanation as the use of substantial force will normally result in more than minor injury.’ – CPS

However, this would undermine the purpose of the revision of the existing factor ‘intention to commit more serious harm than actually resulted’ which was found to be problematic in the evaluation of the existing guideline. Other respondents recognised that the factor would reflect the intention of the offender;

Sensible to have these as culpability rather than harm factors as they are more a measure of intent than effect. - East Kent Bench

3.32 This factor is also included in the definitive guidelines for S4 and S4A offences, which share some similarity with common assault offences, and it is not proposed that it be revised or qualified.

Question 5: Is the Council content to retain the use of substantial force factor as worded?

Assaults on individuals providing a service to the public

3.33 The draft guideline retains the current approach of providing for an offence committed against a person providing a service to the public to aggravate the offence at step two rather than being relevant to culpability. A significant proportion of responses were from representatives of workers not covered by the emergency workers provisions, arguing that higher sentences should be applicable to non-emergency workers in public facing roles. The Council may be aware that a Bill, the Assaults on Retail Workers (Offences) Bill has been introduced to Parliament and is currently due for a second reading. This seeks to put assaults on retail workers on a similar footing to assaults on emergency workers, and for a sentencing guideline to specifically provide for offences committed where a retail worker is enforcing a statutory requirement such as refusing to sell alcohol. This was highlighted in a letter from Chris Philp MP, Parliamentary Under-Secretary of State for Justice, which stated *'as you may be aware, there have been calls to increase protection for retail workers against assault, which have intensified since the onset of the Covid-19 pandemic. The Government has been clear that the Assault Guideline requires the court to treat the fact that an offence was committed against those providing a service to the public as an aggravating factor, making the offence more serious. We welcomed the Council's expanded explanation on this in 2019 and the recent interim guidance published in April for sentencers on sentencing common assault offences involving threats or activity relating to transmission of Covid-19. We would welcome, however, consideration by the Council of whether the guideline could include explicitly reference to retail workers as an example of those providing a service to the public. We believe this would make it clearer that retail workers are covered by the aggravating factor in the Assault Guideline.'*

3.34 The Justice Select Committee response raised only two points, one of which was to support this factor and to note its expansion;

'The revised guideline has expanded the factor to read as follows: "Offence committed against those working in the public sector or providing a service to the public or against a person who coming to the assistance of an emergency worker". Assaults against those working in public facing roles is a matter of increasing public concern, especially during the Covid-19 pandemic.

The Committee recognises that this is a pressing issue and support this aggravating factor. The Committee also wishes to note that the Sentencing Council may need to revise this guideline if and when the Assaults on Retail Workers (Offences) Bill has been enacted. An individual guideline dealing with offences under the relevant Act will be valuable to sentencers.' **Justice Select Committee.**

3.35 A number of respondents (including the All Party Parliamentary Group on Retail Crime (APPG on Retail Crime), British Retail Consortium (BRC), Union of Shop Distributive and Allied Workers, The Co-op Group, and the Association of Convenience Stores went further and called for increased sentences for offences against retail workers. Similar submissions were made by non-retail sector public service representatives including the Security Industry Authority, the Football Association and the Referee's Association.

*Shopworkers are in a vulnerable situation, sometimes being alone in a store or with only one other colleague, perhaps late at night, facing intimidation from someone potentially carrying a knife or other dangerous implement. They are also in a different situation from many other victims in that their job requires them to return to exactly the same situation day after day and thus to fear that the next customer might be yet another attacker. More than that, some members report growing instances of threats such as – we know where you are and when you leave work and will come for you; and in similar vein others note increases in 'mental abuse' of stalking shopworkers when they leave the premises at lunchtime in order to intimidate them. - **BRC***

The APGG response highlighted that shop worker attacks are often related to them enforcing their legal duty to refuse restricted product sales without identification;

*'A significant trigger for attacks on those working in newsagents and convenience stores is the refusal to sell age restricted products to customers who are known or believed to be under age or who are unwilling or unable to prove their age in a manner required by law. Thirty percent of instances of violence arise when shop workers request proof of I.D on age-restricted products, such as alcohol, tobacco and lottery products.... Having placed duties upon retailers to ensure that they do not sell to underage customers, it is the very least the justice system can do it to recognise the fact if a retailer is attacked as a result of doing what the law requires' – **APPG***

The APPG response also included the following quote from a shopworker;

" Receiving abuse after asking for ID is a weekly occurrence for me. I'm very often told they will be waiting for me outside when I finish my shift, which is very intimidating. I

feel sorrier for my staff having to put up with the abuse. We are only doing our job and the implications of failing to get it right can cost us our job”.

3.36 The Referees Association requested the aggravating factor relating to assaults on public workers be moved to step one across the guidelines, to ensure high or medium culpability assessments for these offences;

*‘Factors indicating higher culpability should include ‘The victim is a person acting on duty in the exercise of lawful authority or coming to the assistance of an emergency worker’. Examples should be included: sports match officials and referees, schoolteachers, public transport staff, NHS staff, shop workers, security staff, traffic wardens etc. This would automatically place such assaults into Category 1 or 2. It is not sufficient that such an assault might be treated as having a factor increasing seriousness within any of Categories 1-3 as an ‘Offence committed against those working in the public sector or providing a service to the public or against a person coming to the assistance of an emergency worker’. - **The Referees Association***

3.37 It is not thought that this would be appropriate across all assault guidelines as even the emergency worker provisions only provide a statutory aggravating factor for more serious offences. However, the Council are asked to consider if this factor should be included at step one of in respect of common assault offences.

3.38 It was anticipated that the introduction of higher sentences for emergency workers would result in requests for sentences to be increased for other groups vulnerable to attacks. However, this would likely have the effect of elevating a high proportion of offences into high culpability. The vulnerable victim factor is broad in providing for other characteristics and circumstances to be taken into account, and would already capture lone shop workers and others who are vulnerable by circumstances. The factor may also have greater impact at step two where it will provide for an increased sentence in any offence category.

Question 6: Does the Council think common assault on public facing workers should be provided for at step one or step two?

Lesser culpability factors

3.39 The draft guideline includes three lesser culpability factors: lesser role in group activity; mental disorder or learning disability where linked to the commission of the offence and an ‘all other cases’ factor.

3.40 The Justices' Legal Advisers and Court Officers' Service (JCS) disapproved of the 'catch all' factor;

We are concerned by the catch all – “All other cases not captured by category 1 factors.” It would include cases of targeting a victim who is not vulnerable in a premeditated assault. This could be avoided if targeting were part of high culpability (see above) and additionally lesser culpability included “lack of premeditation”.

Further, a “catch all” factor is generally dangerous in our view as it means the list of higher culpability cases needs to completely cover all those cases where higher culpability truly exists, which is extremely difficult to do. Offenders with other higher culpability factors not predicted by the writers will receive lesser sentences as a result. Appreciating that sentencers can use their common sense, nevertheless in the interests of consistent sentencing and justice we think it too dangerous. – JCS

The consultation document will confirm that the highest category includes factors the Council considers reflect the most serious offences, most of which are present in the existing guideline, although some are rephrased in response to evaluation findings. It is common practice for guidelines to include a catch all factor, and this avoids the counter argument to the JCS point which is that it may not be possible to define every activity which may arise in an offence and the approach prevents any offence falling outside of any category.

3.41 Excessive self-defence is included at lesser culpability in the existing guideline but the Council moved to step two in the revised guideline for common assault, although it remains at step one for ABH and GBH offences. The LCCSA, CLSA and the Sentencing Academy disapproved of this and thought it should be retained at lesser culpability;

‘We take issue with the removal of “excessive self-defence” as a mitigating factor because it is in our view a factor that can and should be properly be taken into account when assessing the overall seriousness of the offence.’ - LCCSA

‘Excessive self-defence should be retained as lessening culpability’ - CLSA

‘Excessive self-defence has been moved to Step 2. We disagree. Many assaults arise as a result of an excessive response to mild or moderate provocation or even assault, and this may be a compelling claim for diminished culpability. When the assault arises out of an excessive, criminal response to provocation, the assault carries an element of ‘but for’ of the provocation. This is an important reduced culpability factor which should be located at Step 1. We note that analyses of the Council's own Crown Court

Sentencing Survey data show this to be a very significant factor, much more predictive of seriousness than 'subordinate role' although that factor remains at Step 1.2 So theoretically and empirically there appears little reason to consign excessive self-defence to Step 2, where its influence will be greatly constrained.' – **Sentencing Academy**

The Crown Court Sentencing data referred to confirms that the factor was present in 4% of common assault cases in 2013 and 3% in 2014, while the subordinate role factor was present in 3% and 2% of cases respectively, so this observation is accurate. However, the data did not heavily influence the factors included in the guideline as it is Crown Court data and not considered to be illustrative of a high proportion of cases given that very few common assault offences would be sentenced in the Crown Court.

3.42 There is some merit however in the argument that the factor is highly relevant to the motivation of an offender and culpability, and where the factor is relevant offenders may be disadvantaged by removal of the factor from step one. The alternative argument is that the factor could have greater impact at step two, although the level of reduction would be at the discretion of the sentencer. The Council are asked to consider if the decision to move the factor to step two should be revised, particularly given that it has been retained at step one in other guidelines. If not then a clear rationale would be necessary to justify the decision in the consultation response document.

Question 7: Should excessive self-defence in common assault offences be provided for at step one or step two?

Balancing culpability factors

3.43 One response did highlight the difficulty presented by factors in both higher and less culpability categories being present, as no guidance is provided on how the seriousness assessment should then be undertaken;

'The culpability factors need to be addressed so as to state that, for example, if a higher factor is present but the Defendant had a lesser role in a gang, then lesser culpability would apply. At the moment, that is unclear.' - **Birmingham Law Society**

3.44 This will be even more of an issue if the Council does decide to add factors to the assessment. There are two options to address this; the first is that a balancing category be included as for other guidelines which would require a revised sentence table. This would require 9 sentence starting points as reducing harm categories would

not address the issues identified in the evaluation of the guideline of no medium category of harm being available. The second option is to include explanatory wording such as is included for attempted murder, which instructs sentencers to weigh factors to achieve the most appropriate culpability assessment. This wording reads as follows;

The characteristics below are indications of the level of culpability that may attach to the offender's conduct. Where there are characteristics present which fall into both higher and lower categories, the court must carefully weigh those characteristics to reach a fair assessment of the category which best reflects the offender's overall culpability in all the circumstances of the case. The court may then adjust the starting point for that category to reflect the presence of characteristics from another category.

3.45 The Council are asked to consider the best approach taking into account any earlier decisions made in respect of culpability factors.

Question 8: Should the common assault guidelines include guidance on how to assess factors where higher and lesser culpability factors are present within an offence?

Harm

3.46 While almost all respondents approved of the revised harm model providing for three categories of harm, a number of respondents questioned the factors within the model, and in particular how to distinguish between category 2 and 3 harm. Philip Davies MP wrote to the Chairman with the following question, which it was agreed would be considered as a consultation response;

I would be very grateful if you could let me know what the difference is meant to be between "minor" and "very low level" in this context and what the rationale is for making this particular distinction. I am concerned that those using the guidelines in future may be asking the same question and would urge you to look again at this wording. Is there a reason that the wording in category 3 could, for example, not simply read "No physical harm and/or distress" especially given the fact that generally lower level assaults are charged under this offence anyway and not ones where there are more serious injuries which should be charged as more serious kinds of assaults?

The Council did originally agree to phrase the lowest harm category as 'no physical harm/distress', but there were concerns that very few cases would be charged which would fall within this category, so rephrased this category as 'no/very low level'.

3.47 Other dissenting respondents raised similar concerns regarding the potential for inconsistent harm categorisations and the lack of distinction between categories, and with other aspects of the harm assessment;

We agree with the observations that common assault will usually involve injuries which are minor and have no lasting impact and that more serious injuries would properly be charged as ABH. The consultation paper further explains that inconsistencies in assessment of harm have been identified as arising from use of 'serious in the context of the offence'. As common assault usually involves minor harm, we suggest that the highest category of 'more than minor physical or psychological harm/distress' appears to be redundant in its application to common assault raising a risk that most common assault offences will fall within category 2. Alternatively, we foresee inconsistency in interpretation of what more than minor harm is. Despite inconsistent interpretation of 'Serious in the context of the offence' as currently exists in the guideline this phrase sought to address the issue we raise. A revised high harm factor, for offences where more than minor harm in the context of common assault occurs, may better assist in the assessment of harm. – CPS

Not entirely because the court may have to decide either to sentence according to the effect on the victim or on an objective view of the results of the defendant's actions. As an example, take a case of a single punch between strangers, one of whom believes the other has said something unpleasant to his girlfriend in a pub. The case is proved and afterwards the victim impact statement is read out. It is long, detailed and makes for upsetting listening as it clearly details more than minor psychological distress. However, the police report, heard in evidence, of the injuries a few days later when the statement was taken showed nothing more than a one-inch bruise on the victim. Where in that circumstance does justice lie, with the demonstrable extent of the assault or the subjective view of the victim? The victim's statement would tend to suggest harm in Category 1 but the evidence, tested at trial, points to Category 2. The Council's guidelines are produced to foster consistency of approach yet there are two divergent paths which could be taken in sentencing that scenario. - Chief Magistrate

We don't agree that psychological harm/distress should ever take this into Category 1. If there is serious psychological harm/distress evidenced by medical evidence then the case can be charged as ABH. Our concern is that the current draft will put too many cases with no physical injuries into Category 1 – based solely on victim statement. Our suspicion is that victims are prone to overstate distress in Victim Impact Statements

and this amended guideline will lead to an increased number of cases attracting custody. – **CLSA**

It is felt that the proposed changes are better than the existing guidelines which are hopelessly vague, and the addition of a middle category is an improvement. However, level of harm assessed from various injuries always causes debate amongst a bench and the example of the black eye is a relevant and valid example, usually relying on bench members understanding of injuries and their impact. The graduated levels of harm, when read in conjunction with the explanation in the consultation exercise, make sense, but without this explanation there will still be very wide variations on what different sentencers consider to be minor physical and psychological harm. It would be helpful to have guidance along the lines of the current explanation included in this consultation, along with a note that this is not a harm tariff list. Some more explanation of what constitutes psychological harm would also be helpful to ensure more consistency in sentencing. Is psychological harm: Nervousness? Scared to go out? Unease? Need to see a counsellor to help overcome the experience? Etc. – **East Kent Bench**

3.48 Addressing these concerns poses difficulty, as an integral aspect of harm in these cases will require assessment of any distress or psychological harm suffered. Other guidelines require assessments of psychological harm, and sentencers are experienced in assessing such injuries and are assisted by medical reports where these are available. This point will be made in the consultation response document.

3.49 The response from the West London Bench on the harm assessment was extensive and comprehensive and repeated the concerns of other respondents that the categories as worded could be inconsistently interpreted and applied. They agreed with other respondents that psychological harm is difficult to assess, and that in many cases the physical harm and psychological harm may be of different levels for the same assault. They suggested some description of injuries and psychological impact would have to be included to provide for consistent assessments of harm. They summarised their extensive consideration of the point as follows;

‘As the SC has mentioned, there could be a range of harm within specific physical injuries (like for example a scratch, a bruise or a small cut) depending on factors such as the location, severity and pain suffered. We agree that this is very difficult to do within a guideline, and we have no suggestions to make as to how this could be accomplished. We agree that it should be left to the sentencers as to how to take factors such as the location, severity and the pain suffered into account, as they will

be very offence-specific. But we recommend that these factors should be mentioned in the guidelines, to assist setting the harm category. This could be done by modifying the note to the harm category table, so that this now reads:

“The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim. When assessing the level of harm, consideration should be given to the number of injuries, injury location(s), injury severity and pain caused, and the time span of any harm or distress caused.”

West London Bench

3.50 A small scale road-testing exercise was undertaken to identify how the factors were applied to scenarios and if issues arose with consistency of assessment (the exercise was also undertaken to identify how harm was assessed in a strangulation case with a low level of physical injury but high level of psychological harm). An alternative model with a ‘cases between’ category was also tested to identify if this influenced assessments differently where differing levels of physical and emotional harm were involved. The findings are at **Annex B**. While the research sample was too small to draw firm conclusions, there is some indication from the results of the harm assessment in the biting scenario that the alternative model enabled sentencers to balance the harm involved, and that the current draft model led to greater inconsistency of assessment.

3.51 The Council is asked to consider the concerns raised and if the harm model should be revised based on concerns raised by consultation respondents which the limited road testing does indicate are not unfounded. The Council has already agreed previously that descriptions of injuries should not be included due to the difficulty in categorising injury types as these can vary in severity (eg; a black eye could involve minor or severe bruising and differing impacts).

3.52 A number of options have been identified for revised harm models;

Option 1) Adopt the alternative model used in road testing which was as follows;

Harm The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
Category 1	More than minor physical or psychological harm
Category 2	Harm falling between categories 1 and 3

Category 3	No physical injury No/very low level of distress
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Option 2) Retain the draft guideline model and include explanatory text similar to that proposed by the West London Bench response, as follows;

Harm The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim. In assessing the level of harm, consideration should be given to the number of injuries; severity of injury and pain suffered and; the duration or longevity of any psychological harm or distress caused.	
Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

Option 3) A hybrid of options 1 and 2, using the alternative model tested which includes the 'cases between' category and guidance to instruct sentencers how to identify the most appropriate category;

Harm The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim. In assessing the level of harm, consideration should be given to the number of injuries; severity of injury and pain suffered and; the duration or longevity of any psychological harm or distress caused.	
Category 1	More than minor physical or psychological harm
Category 2	Harm falling between categories 1 and 3
Category 3	No physical injury No/very low level of distress

3.53 There is a risk with the third option that given the limited range of harm the middle category will be overused.

Question 9: Does the Council agree the harm model should be revised and which option, if any, does it prefer?

Aggravating factors

3.54 As anticipated and noted earlier in this paper, a high number of respondents thought that spitting should be provided for at step one of the common assault guideline. The Council debated this at some length in developing the guideline, and ultimately decided that the seriousness of spitting is increased where this is undertaken with the intention of causing the victim to believe they will contract a disease. Many respondents approved of this approach and it is not suggested that this decision be revised.

The Sentencing Academy response thought that spitting and coughing should not be included as an aggravating factor;

'Spitting/ coughing' is a particularly unpleasant form of assault; it is not an aggravating way of committing the offence. All other aggravating factors are enhancements to an act of assault. Spitting may well cause more harm and distress than, say, a slap in the face. Or it may not. For example, if the offender spits on a clothed limb of the victim. The offender's level of culpability should be left to the court to determine. As a general rule, the form of the offence should not be construed as an aggravation. The effects of spitting can be placed within the guideline, such as exposure to the transmission of disease, which can encompass spitting and coughing without the need to specify the nature of the behaviour.'

3.55 The addition of coughing specifically as an aggravating factor raised some concerns. The Criminal Law Committee of the Birmingham Law Society response stated;

'Coughing should not be included. This would lead to higher sentences for the many poor, ill and homeless clients convicted of these offences. Many are in bad health and cough intermittently anyway. It would be regrettable if the new Guidelines were to impose a higher sentence on someone because they are ill, and involuntarily cough.'

Other respondents thought the 'spitting/coughing' factor should be clarified as deliberate, to avoid such concerns.

Question 10: Does the Council wish to qualify the 'spitting/coughing' factor as 'deliberate spitting/coughing'?

3.56 A few responses raised the issue of biting;

We strongly recommend that biting be included as an aggravating factor along with spitting and coughing. – Restore Justice

I would also be grateful if you could let me know what consideration the Sentencing Council has given to the issue of biting - in terms of harm, culpability and/or as an aggravating factor. I note that the intention to cause fear of serious harm, including disease transmission, is something currently indicating higher culpability in the new guideline but if there was a bite without the intention element what would the Council envisage would be the situation in relation to the guideline as it stands? - Philip

Davies MP

The Council did include biting in an early version of the guideline, but later decided to remove this to avoid overloading aggravating factors. It was thought that the culpability factor 'use of substantial force' would capture particularly forceful incidents of biting. However, this was tested in the recent road testing of the draft guideline and not found to be the case. Even though the bite in the scenario was hard and teeth marks were left on the victim's skin for some time, only two out of 11 sentencers identified the offence as involving high culpability due to biting and one identified bite marks as an aggravating factor; none of the assessments were due to applying the 'use of substantial force' factor. The Council are therefore asked to consider if 'biting' should be included as an aggravating factor. This is a common feature of assaults on emergency workers.

Question 11: Should biting be included as an aggravating factor?

3.57 Some respondents suggested an additional factor of the factor 'presence of children' should be expanded to 'offence committed in presence of others'. The existing guideline includes the factor 'presence of others including relatives, especially children or partner of victim'. The general guideline includes a factor 'Offence committed in the presence of other(s) (especially children)' and the factor as worded currently is included in the Manslaughter and overarching Domestic Offences guidelines. It may be that 'others' is too wide and would capture too many cases, but the Council are asked if the factor should be expanded to include other family members as it is thought that it would be particularly distressing for a victim for their family members or loved ones to witness an assault on them.

Question 12: Should the factor 'presence of children' be expanded to 'presence of children or relatives of victim'?

Mitigating factors

3.58 There were no new mitigating factors suggested and comments were mainly focused on matters which should not be taken into account as mitigation. These related to factors such as remorse and good character which are standard mitigating factors included in guidelines.

4 IMPACT /RISKS

4.1 The risks associated with the points in this paper are highlighted in the body of the paper.

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DRAFT GUIDELINES – ASSAULT OFFENCES

COMMON ASSAULT

STEP ONE

Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:	
A - High culpability:	
<ul style="list-style-type: none"> • Intention to cause fear of serious harm, including disease transmission • Targeting of vulnerable victim, where victim vulnerable by personal characteristics or circumstances • Prolonged assault • Use of substantial force • Strangulation • Threatened or actual use of weapon or weapon equivalent* • Leading role in group activity 	
B – Lesser culpability	
<ul style="list-style-type: none"> • Lesser role in group activity • Mental disorder or learning disability, where linked to the commission of the offence • All other cases not captured by category A factors 	
*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.	

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

HARM	CULPABILITY	
	A	B
Harm 1	<p>Starting point High level Community Order</p> <p>Category Range Low level Community Order - 26 weeks' custody</p>	<p>Starting point Medium level Community Order</p> <p>Category Range Low level Community Order - 16 weeks' custody</p>
Harm 2	<p>Starting point Medium level Community Order</p> <p>Category Range Low level Community Order - 16 weeks' custody</p>	<p>Starting point Band B fine</p> <p>Category Range Band A Fine - low level Community Order</p>
Harm 3	<p>Starting point Band B fine</p> <p>Category Range Band A Fine - Low level Community Order</p>	<p>Starting point Band A Fine</p> <p>Category Range Discharge – Band C Fine</p>

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Other aggravating factors:

Spitting or coughing

Offence committed against those working in the public sector or providing a service to the public or against person coming to the assistance of emergency worker

Offence committed in prison

Offence committed in domestic context

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

Maximum sentence for the aggravated offence on indictment is 2 years' custody (maximum when tried summarily is 6 months' custody)

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none">Racial or religious aggravation was the predominant motivation for the offence.Offender was a member of, or was associated with, a group promoting hostility based on race or religion.	Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.

<ul style="list-style-type: none"> ▪ Aggravated nature of the offence caused severe distress to the victim or the victim’s family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	
<p>MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</p>	<p>SENTENCE UPLIFT</p>
<ul style="list-style-type: none"> ▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the victim or the victim’s family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	<p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>
<p>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</p>	<p>SENTENCE UPLIFT</p>
<ul style="list-style-type: none"> ▪ Aggravated element formed a minimal part of the offence as a whole. ▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim’s family (over and above the distress already considered at step one). 	<p>Consider a more onerous penalty of the same type identified for the basic offence.</p>

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

Dangerousness

Racially/religiously aggravated common assault is a specified offence within the meaning of Chapter 5 of Part 12 of the Criminal Justice Act 2003. The court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to impose an extended sentence (section 226A).

STEP SIX

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Totality* guideline.

STEP SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

ASSAULT ON EMERGENCY WORKER

STEP ONE

Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:	
A - High culpability:	
<ul style="list-style-type: none"> • Intention to cause fear of serious harm, including disease transmission • Prolonged assault • Use of substantial force • Threatened or actual use of weapon or weapon equivalent* • Strangulation • Leading role in group activity 	
B – Lesser culpability	
<ul style="list-style-type: none"> • Lesser role in group activity • Mental disorder or learning disability, where linked to the commission of the offence • All other cases not captured by category 1 factors 	
*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.	

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

HARM	CULPABILITY	
	A	B
Harm 1	<p>Starting point 8 months</p> <p>Category Range 26 weeks' – 1 years' custody</p>	<p>Starting point 16 weeks</p> <p>Category Range High level Community Order - 26 weeks' custody</p>
Harm 2	<p>Starting point 16 weeks</p> <p>Category Range High level Community Order - 26 weeks' custody</p>	<p>Starting point HL CO</p> <p>Category Range Low Level Community Order – 16 weeks</p>
Harm 3	<p>Starting point HL CO</p> <p>Category Range Low Level Community Order – 16 weeks</p>	<p>Starting point ML CO</p> <p>Category Range Band B Fine – HL CO</p>

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: race, religion, disability, sexual orientation or transgender identity

Other aggravating factors:

Spitting or coughing

Victim isolated and/or had no opportunity to escape situation

Presence of children

Gratuitous degradation of victim

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Totality* guideline.

STEP SIX

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP SEVEN

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT

Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

ASSAULT WITH INTENT TO RESIST ARREST

STEP ONE

Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

Culpability demonstrated by one or more of the following:	
A - High culpability:	
<ul style="list-style-type: none"> • Intention to cause fear of serious harm, including disease transmission • Prolonged assault • Use of substantial force • Threatened or actual use of weapon or weapon equivalent* • Strangulation • Leading role in group activity 	
B – Lesser culpability	
<ul style="list-style-type: none"> • Lesser role in group activity • Mental disorder or learning disability, where linked to the commission of the offence • All other cases not captured by category 1 factors 	
*Examples of a weapon equivalent can include but are not limited to: a shod foot, use of acid, use of animal in commission of offence.	

Harm	
The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

HARM	CULPABILITY	
	A	B
Harm 1	<p>Starting point 36 weeks' custody</p> <p>Category Range 26 weeks' custody – 15 months</p>	<p>Starting point 26 weeks' custody</p> <p>Category Range High level Community Order - 9 months' custody</p>
Harm 2	<p>Starting point 26 weeks' custody</p> <p>Category Range High level Community Order - 36 weeks' custody</p>	<p>Starting point High Level Community Order</p> <p>Category Range Low Level Community Order – 26 weeks' custody</p>
Harm 3	<p>Starting point High Level Community Order</p> <p>Category Range Low Level Community Order – 26 weeks' custody</p>	<p>Starting point Medium Level Community Order</p> <p>Category Range Band B Fine – High Level Community Order</p>

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: race, religion, disability, sexual orientation or transgender identity

Other aggravating factors:

Spitting or coughing

Victim isolated and/or had no opportunity to escape situation

Presence of children

Gratuitous degradation of victim

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Totality* guideline.

STEP SIX**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP SEVEN**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP EIGHT**Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender’s culpability.**

Culpability demonstrated by one or more of the following:

A - High culpability

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent*
- Strangulation
- Leading role in group activity
- Prolonged assault

B – Medium culpability

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category A or C because:
 - Factors in both high and lesser categories are present which balance each other out; and/or
 - The offender’s culpability falls between the factors as described in high and lesser culpability

C – Lesser culpability

- No weapon used
- Excessive self defence
- Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon includes weapons such as knives and firearms. Weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; *‘any article made or adapted for use for causing injury, or is intended by the person having it with him for such use’*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.

Harm

To assess the level of harm caused by the offence, the court must consider;

- The range of injuries (including physical and psychological injury) that can occur in cases of assault occasioning actual bodily harm
- Where in **that range** of injuries the injury caused falls

Category 1	High level of physical or psychological harm
Category 2	Medium level of physical or psychological harm
Category 3	Low level of physical or psychological harm

STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point</p> <p>2 years 6 months' custody</p> <p>Category Range 1 year 6 months' – 4 years' custody</p>	<p>Starting point</p> <p>1 year 6 months' custody</p> <p>Category Range 36 weeks' – 2 years 6 months' custody</p>	<p>Starting point</p> <p>36 weeks' custody</p> <p>Category Range High Level Community Order - 1 year 6 months' custody</p>
Harm 2	<p>Starting point</p> <p>1 year 6 months' custody</p> <p>Category Range 36 weeks' – 2 years 6 months' custody</p>	<p>Starting point</p> <p>36 weeks' custody</p> <p>Category Range High Level Community Order - 1 year 6 months' custody</p>	<p>Starting point</p> <p>High Level Community Order</p> <p>Category Range Low Level Community Order – 36 weeks' custody</p>
Harm 3	<p>Starting point</p> <p>36 weeks' custody</p> <p>Category Range High Level Community Order - 1 year 6 months' custody</p>	<p>Starting point</p> <p>High Level Community Order</p> <p>Category Range Low Level Community Order – 36 weeks' custody</p>	<p>Starting point</p> <p>Medium Level Community Order</p> <p>Category Range Band B Fine – 26 weeks' custody</p>

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

Spitting or coughing

Offence committed against those working in the public sector or providing a service to the public or against person coming to the assistance of emergency worker

Offence committed in prison

Offence committed in domestic context

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

Maximum sentence for the aggravated offence on indictment is 7 years' custody (maximum when tried summarily is 6 months' custody)

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation was the predominant motivation for the offence. ▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion. ▪ Aggravated nature of the offence caused severe distress to the victim or the victim's family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	<p>Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.</p>
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the 	<p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>

<p>victim or the victim's family (over and above the distress already considered at step one).</p> <ul style="list-style-type: none"> ▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	
<p>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</p>	<p>SENTENCE UPLIFT</p>
<ul style="list-style-type: none"> ▪ Aggravated element formed a minimal part of the offence as a whole. ▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one). 	<p>Consider a more onerous penalty of the same type identified for the basic offence.</p>

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Totality* guideline.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

STEP ONE

Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The level of culpability is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender’s culpability.**

Culpability demonstrated by one or more of the following:

A - High culpability

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent*
- Strangulation
- Leading role in group activity
- Prolonged assault

B – Medium culpability

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category A or C because:
 - Factors in both high and lesser categories are present which balance each other out; and/or
 - The offender’s culpability falls between the factors as described in high and lesser culpability

C – Lesser culpability

- No weapon used
- Excessive self defence
- Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon includes weapons such as knives and firearms. Weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; *‘any article made or adapted for use for causing injury, or is intended by the person having it with him for such use’*. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case.

Harm	
All cases will involve 'really serious harm', which can be physical or psychological, or wounding. The court should assess the level of harm caused with reference to the impact on the victim	
Category 1	<p>Particularly grave and/or life-threatening injury caused</p> <p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 2	<p>Grave but non life-threatening injury caused</p> <p>Offence results in a permanent, irreversible injury or condition but no substantial and long term effect on victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 3	<p>All other cases of really serious harm</p> <p>All other cases of wounding</p>

STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point 4 years' custody</p> <p>Category Range 3 years– 4 years 6 months' custody</p>	<p>Starting point 3 years' custody</p> <p>Category Range 2 -4 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category Range 1-3 years' custody</p>
Harm 2	<p>Starting point 3 years' custody</p> <p>Category Range 2 -4 years' custody</p>	<p>Starting point 2 years' custody</p> <p>Category Range 1-3 years' custody</p>	<p>Starting point 1 years' custody</p> <p>Category Range High Level Community Order - 2 years' custody</p>
Harm 3	<p>Starting point 2 years' custody</p> <p>Category Range 1-3 years' custody</p>	<p>Starting point 1 years' custody</p> <p>Category Range High Level Community Order - 2 years' custody</p>	<p>Starting point 26 weeks' custody</p> <p>Category Range Medium Level Community Order – 1 years' custody</p>

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: disability, sexual orientation or transgender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

Spitting

Offence committed against those working in the public sector or providing a service to the public

Offence committed in prison

Offence committed in domestic context

History of violence or abuse towards victim by offender

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

RACIALLY OR RELIGIOUSLY AGGRAVATED OFFENCES ONLY

Having determined the category of the basic offence to identify the sentence of a non-aggravated offence, the court should now consider the level of racial or religious aggravation involved and apply an appropriate uplift to the sentence in accordance with the guidance below. The following is a list of factors which the court should consider to determine the level of aggravation. Where there are characteristics present which fall under different levels of aggravation, the court should balance these to reach a fair assessment of the level of aggravation present in the offence.

Maximum sentence for the aggravated offence on indictment is 7 years’ custody (maximum when tried summarily is 6 months’ custody)

Care should be taken to avoid double counting factors already taken into account in assessing the level of harm at step one

HIGH LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation was the predominant motivation for the offence. ▪ Offender was a member of, or was associated with, a group promoting hostility based on race or religion. ▪ Aggravated nature of the offence caused severe distress to the victim or the victim’s family (over and above the distress already considered at step one). ▪ Aggravated nature of the offence caused serious fear and distress throughout local community or more widely. 	<p>Increase the length of custodial sentence if already considered for the basic offence or consider a custodial sentence, if not already considered for the basic offence.</p>
MEDIUM LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION	SENTENCE UPLIFT
<ul style="list-style-type: none"> ▪ Racial or religious aggravation formed a significant proportion of the offence as a whole. ▪ Aggravated nature of the offence caused some distress to the 	<p>Consider a significantly more onerous penalty of the same type <u>or consider</u> a more severe type of sentence than for the basic offence.</p>

<p>victim or the victim's family (over and above the distress already considered at step one).</p> <ul style="list-style-type: none"> ▪ Aggravated nature of the offence caused some fear and distress throughout local community or more widely. 	
<p>LOW LEVEL OF RACIAL OR RELIGIOUS AGGRAVATION</p>	<p>SENTENCE UPLIFT</p>
<ul style="list-style-type: none"> ▪ Aggravated element formed a minimal part of the offence as a whole. ▪ Aggravated nature of the offence caused minimal or no distress to the victim or the victim's family (over and above the distress already considered at step one). 	<p>Consider a more onerous penalty of the same type identified for the basic offence.</p>

Magistrates may find that, although the appropriate sentence for the basic offence would be within their powers, the appropriate increase for the aggravated offence would result in a sentence in excess of their powers. If so, they must commit for sentence to the Crown Court.

The sentencer should state in open court that the offence was aggravated by reason of race or religion, and should also state what the sentence would have been without that element of aggravation.

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose an extended sentence (section 226A).

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Totality* guideline.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

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STEP ONE

Determining the offence category

The court should determine the offence category with reference **only** to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**. The level of culpability is determined by weighing up all the factors of the case. Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics giving appropriate weight to relevant factors to reach a fair assessment of the offender's culpability.

Culpability demonstrated by one or more of the following:

A - High culpability

- Significant degree of planning or premeditation
- Victim obviously vulnerable due to age, personal characteristics or circumstances
- Use of a highly dangerous weapon or weapon equivalent*
- Strangulation
- Leading role in group activity
- Prolonged assault
- Revenge

B – Medium culpability

- Use of a weapon or weapon equivalent which does not fall within category A
- Lesser role in group activity
- Cases falling between category high and low culpability because:
 - Factors in both high and lesser categories are present which balance each other out; **and/or**
 - The offender's culpability falls between the factors as described in high and lesser culpability

C – Lesser culpability

- No weapon used
- Excessive self defence
- Offender acted in response to prolonged or extreme violence or abuse by victim
- Mental disorder or learning disability, where linked to the commission of the offence

* A highly dangerous weapon includes weapons such as knives and firearms. Weapon equivalents can include corrosive substances (such as acid), whose dangerous nature must be substantially above and beyond the legislative definition of an offensive weapon which is; '*any article made or adapted for use for causing injury, or is intended by the person having it with him for such use*'. The court must determine whether the weapon or weapon equivalent is highly dangerous on the facts and circumstances of the case. Non-highly dangerous weapon equivalents may include but are not limited to a shod foot, headbutting, use of animal in commission of offence.

Harm	
All cases will involve 'really serious harm', which can be physical or psychological, or wounding. The court should assess the level of harm caused with reference to the impact on the victim	
Category 1	<p>Particularly grave or life-threatening injury caused</p> <p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or psychological condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 2	<p>Grave injury</p> <p>Offence results in a permanent, irreversible injury or condition not falling within category 1</p>
Category 3	<p>All other cases of really serious harm</p> <p>All other cases of wounding</p>

STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

For category A1 offences the extreme nature of one or more high culpability factors or the extreme impact caused by a combination of high culpability factors may attract a sentence higher than the offence category range

HARM	CULPABILITY		
	A	B	C
Harm 1	<p>Starting point 12 years' custody</p> <p>Category Range 10-16 years' custody</p>	<p>Starting point 7 years' custody</p> <p>Category Range 6-10 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category Range 4-7 years' custody</p>
Harm 2	<p>Starting point 7 years' custody</p> <p>Category Range 6-10 years' custody</p>	<p>Starting point 5 years' custody</p> <p>Category Range 4-7 years' custody</p>	<p>Starting point 4 years' custody</p> <p>Category Range 3 – 6 years' custody</p>
Harm 3	<p>Starting point 5 years' custody</p> <p>Category Range 4-7 years' custody</p>	<p>Starting point 4 years' custody</p> <p>Category Range 3-6 years' custody</p>	<p>Starting point 3 years' custody</p> <p>Category Range 2-4 years' custody</p>

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: race, religion, disability, sexual orientation or transgender identity

Offence was committed against an emergency worker acting in the exercise of functions as such a worker.

Other aggravating factors:

Offence committed against those working in the public sector or providing a service to the public

Offence committed in prison

Offence committed in domestic context

History of violence or abuse towards victim by offender (where not taken into account at step one)

Presence of children

Gratuitous degradation of victim

Abuse of power and/or position of trust

Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Remorse

Good character and/or exemplary conduct

Significant degree of provocation

History of significant violence or abuse towards the offender by the victim (where not taken into account at step one)

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence

Sole or primary carer for dependent relative(s)

Determination and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the *Totality* guideline.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT**Reasons**

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

ATTEMPTED MURDER

STEP ONE

Determining the offence category

The characteristics below are indications of the level of culpability that may attach to the offender's conduct. Where there are characteristics present which fall into both higher and lower categories, the court must carefully weigh those characteristics to reach a fair assessment of the category which best reflects the offender's overall culpability in all the circumstances of the case. The court may then adjust the starting point for that category to reflect the presence of characteristics from another category.

Culpability demonstrated by one or more of the following:

A – Very High culpability	<ul style="list-style-type: none"> • Abduction of the victim with intent to murder • Attempted murder of a child • Offence motivated by or involves sexual or sadistic conduct • Offence involves the use of a firearm or explosive or fire • Offence committed for financial gain • Attempted murder of a police officer or prison officer in the course of their duty • Offence committed for the purpose of advancing a political, religious, racial or ideological cause • Offence intended to obstruct or interfere with the course of justice • Offence racially or religiously aggravated or aggravated by sexual orientation, disability or transgender identity
B- High culpability	<ul style="list-style-type: none"> • Offender took a knife or other weapon to the scene intending to commit any offence or have it available to use as a weapon, and used that knife or other weapon in committing the offence. • Planning or premeditation of murder
C - Medium culpability	<ul style="list-style-type: none"> • Use of weapon not in category A or B • Lack of premeditation/spontaneous attempt to kill
D- Lesser culpability	<ul style="list-style-type: none"> • Excessive self defence • Offender acted in response to prolonged or extreme violence or abuse by victim • Offender's responsibility substantially reduced by mental disorder or learning disability

	<ul style="list-style-type: none"> • Genuine belief by the offender that the offence was an act of mercy
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Harm	
Category 1	<p>Injury results in physical or psychological harm resulting in lifelong dependency on third party care or medical treatment</p> <p>Offence results in a permanent, irreversible injury or psychological condition which has a substantial and long term effect on the victim's ability to carry out normal day to day activities or on their ability to work</p>
Category 2	Serious physical or psychological harm not in category 1
Category 3	All other cases

STEP TWO

Having determined the category, the court should use the corresponding starting points to reach a sentence within the category range below before further adjustment for aggravating or mitigating features, set out below.

For offences involving an extreme nature of one or more very high or high culpability factors a sentence higher than the offence category range or an extended or life sentence may be appropriate. Extended and life sentences are dealt with at Step 5 of the guideline.

HARM	CULPABILITY			
	A	B	C	D
Harm 1	Starting point 35 years Category Range 30 - 40	Starting point 30 Category Range 25-35	Starting point 25 Category Range 20-30	Starting point 14 Category Range 10-20
Harm 2	Starting point 30 years Category Range 25-35	Starting point 25 Category Range 20-30	Starting point 20 Category Range 15-25	Starting point 8 Category Range 5-12
Harm 3	Starting point 25 Category Range 20-30	Starting point 20 Category Range 15-25	Starting point 10 Category Range 7-15	Starting point 5 Category Range 3-6

Note: The table is for a single offence against a single victim. Where another offence or offences arise out of the same incident or facts, concurrent sentences **reflecting the overall criminality** of offending will ordinarily be appropriate: please refer to the *Offences Taken into Consideration and Totality guideline*.

The table below contains a non-exhaustive list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

Factors increasing seriousness

Statutory aggravating factors:

Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction

Offence committed whilst on bail

Offence motivated by, or demonstrating hostility based on any of the following characteristics of the victim: disability, sexual orientation or gender identity

Other aggravating factors:

Offence committed against those working in the public sector or providing a service to the public

Offence committed in prison

Offence committed in domestic context

History of violence or abuse towards victim by offender (where not taken into account at step one)

Abuse of position of trust

Gratuitous degradation of victim

Others put at risk of harm by the offence

Use of duress or threats against another person to facilitate the commission of the offence

Actions after the event (including but not limited to attempts to cover up/conceal evidence)

Steps taken to prevent the victim from seeking or receiving medical assistance

Commission of offence whilst under the influence of alcohol/drugs

Offence committed whilst on licence or subject to post sentence supervision

Failure to comply with current court orders

Factors reducing seriousness or reflecting personal mitigation

No previous convictions or no relevant/recent convictions

Significant degree of provocation (including due to prolonged and/or excessive stress linked to circumstances of offence)

History of significant violence or abuse towards the offender by the victim (where not taken into account at step one)

Attempt by offender to give assistance/summon help when the attempted murder failed

Remorse

Good character and/or exemplary conduct

Age and/or lack of maturity

Mental disorder or learning disability, where not linked to the commission of the offence (where not taken into account at step one)

Sole or primary carer for dependent relative(s)

Serious medical conditions requiring urgent, intensive or long-term treatment

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

Dangerousness

The court should consider whether having regard to the criteria contained in Chapter 5 of Part 12 of the Criminal Justice Act 2003 it would be appropriate to impose a life sentence (section 224A or section 225) or an extended sentence (section 226A). When sentencing offenders to a life sentence under these provisions, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

Special custodial sentence for certain offenders of particular concern (section 236A)

Where the offence has a terrorist connection and satisfies the criteria in Schedule 18A of the Criminal Justice Act 2003 and the court does not impose a sentence of imprisonment for life or an extended sentence, but does impose a period of imprisonment, the term of the sentence must be equal to the aggregate of the appropriate custodial term and a further period of 1 year for which the offender is to be subject to a licence.

STEP SEVEN

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Offences Taken into Consideration and Totality guideline.

STEP SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

Where the offence involves a firearm, an imitation firearm or an offensive weapon the court may consider the criteria in section 19 of the Serious Crime Act 2007 for the imposition of a Serious Crime Prevention Order.

STEP EIGHT

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for time spent on bail

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003.

Findings – common assault road testing

Aims

This research was conducted to understand how harm is assessed using the draft guidelines for common assault. Previous testing indicated that this step may allow for a wide range of outcomes, depending on the sentencer's interpretation. In testing the common assault guideline, we also sought to understand how magistrates treat biting and spitting, in two separate scenarios.

Methodology

Three common assault scenarios (see Annex A) were tested with 12 magistrates. An alternative harm model was also developed for each guideline (see Annex B), to understand how this might impact on assessment of harm and was tested at a slightly later date. The second model used different wording for each of the categories, including changing category 2 (medium level) of harm to: 'Harm falling between categories 1 and 3.'

A sample of magistrates was taken from the OSC's research pool. The scenarios used were similar to those used in a previous road testing exercise, so any previous participants were deselected, as were any sentencers who had taken part in OSC research in the last year. Sentencers were approached by email, and the draft guidelines were sent to those who said they would like to take part. Interviews were conducted on Microsoft Teams and scenarios were sent to participants shortly before the interviews.

In total, 12 magistrates were interviewed. There was a lower response rate in the second round, after the second harm model was developed, so this model was tested with fewer participants.

	Harm model 1	Harm model 2
Magistrates	9	3

Participants were asked to sentence up to three scenarios using the draft guideline. Responses were collated in an Excel grid and tables with individual sentencing outcomes are set out below. Where participants were given the second harm model, their responses are highlighted in green in the tables.

Key findings on harm

- For the scenario involving **biting**, most sentencers (9 out of 11) placed harm in category 2. The remaining two sentencers placed harm in category 3.
- There were more mixed results for the scenario involving **spitting**, though most sentencers (7 out of 11) still placed the harm in category 2, with the remainder split between category 1 and 3. The element of spitting was also considered by most sentencers as part of their assessments of culpability or aggravation. Assessments of harm focussed on distress to the victim, while some identified 'Intent to cause fear of serious harm' (by disease transmission) in the assessment of culpability.
- For the scenario involving **strangulation**, most sentencers (8 out of 9) placed harm in category 1, citing the fact that the victim was in fear for her life, and one sentencer placed harm in category 2.

- There were no significant differences identified where sentencers were using the second harm model. However, it is not possible to draw conclusions due to the very small number of sentencers interviewed.
- In a number of interviews, sentencers said they would want to see the VPS and/or photographs of injuries before assessing the harm.

Summary findings on harm

Scenario A – biting (11 magistrates)

Most sentencers (9 out of 11) placed harm in category 2, and the remaining two placed it in category 3. The three sentencers using the second harm model all placed it in category 2.

A number of sentencers who placed harm in category 2 highlighted the fact that there were markings and redness from biting, but the skin was not broken. Some sentencers added that there was little indication of psychological distress.

Teeth marks were visible for some time and skin was red until the following morning... so there weren't any long-lasting injuries but I thought it was minor rather than more than minor... I don't think there's much psychological distress in this incident

(placed in category 2)

One sentencer who placed harm in category 3 identified that there were marks on the hand but little distress, and the other did not give reasons for their assessment. However, this sentencer included biting as an aggravating factor which increased their sentence from the starting point.

Biting was also considered by one sentencer in the assessment of culpability, and they placed the offence in higher culpability because of the use of teeth. Most sentencers (8 out of 11) placed the offender in lesser culpability, and three placed the offender in higher culpability.

Scenario B – spitting (11 magistrates)

7 out of 11 sentencers placed harm in category 2. Two placed it in category 1 and two placed it in category 3. There was mixed opinion about this assessment and several sentencers thought it was a borderline case, either between categories 1 and 2 or between categories 2 and 3. One sentencer stated they would need a VPS to determine whether there had been lasting psychological damage.

Of the sentencers using the second harm model, two placed it in category 2 and one placed it in category 3. The first two both thought it was borderline between categories 1 and 2. One stated that the fact the victim decided to have a shower quickly indicated that the harm did not last long, while the other thought that her taking a shower showed that the harm was more than minor.

Most sentencers identified that the spitting had caused psychological harm or distress. One sentencer who placed harm in category 1 thought there was substantial distress caused by the spitting.

There was a substantial element of distress caused by the incident

(placed in category 1)

Of the two who placed harm in category 3, one stated there was no real physical harm and that the distress caused by spitting would be applied as an aggravating factor.

I think that will come in later as spitting is very nasty... it's a bit borderline... category 3 and aggravate it up a bit

(placed in category 3)

The other, using the second harm model, stated there was no injury and little indication of distress.

There's no injury and she was deeply embarrassed... that's it... it doesn't say she was still bothered about it the next day (placed in category 3)

Spitting was also a factor drawn upon when assessing culpability and aggravation. 5 out of 11 sentencers placed in the offender in higher culpability: four identified 'Intent to cause fear of serious harm' (of disease transmission) as a culpability factor (two of whom also listed spitting as a culpability factor), and one identified spitting as a weapon equivalent. Eight sentencers identified spitting as an aggravating factor of the offence. In their final comments, a few sentencers highlighted the fact that spitting could be seen as a culpability and an aggravating factor.

One sentencer also referred to the fear of disease transmission in their assessment of harm.

Category 2 because there doesn't seem to be any prolonged physical or psychological harm or distress... some sentencers would probably opt for category 1 because of the [Covid-19] context

(placed in category 2)

Scenario C – strangulation (9 magistrates)

8 out of 9 sentencers placed harm in category 1, and one placed it in category 2. Most sentencers highlighted that the victim was in fear for her life and said this amounted to more than minor psychological distress.

It's not much physical harm but she said she was in fear of her life and thought she would pass out (placed in category 1)

One sentencer questioned whether magistrates are qualified to assess psychological harm.

I don't know whether somebody's suffering from psychological harm or not... If someone has a letter from a doctor to say they've been prescribed anti-depressants as a result of that... then that is evidence of psychological harm, but if someone just says I've been very upset and I haven't been sleeping very well, I don't know if that's true or not, I haven't got evidence for that. You have to go with instinct and I don't like doing that, I don't think it's a very good way of doing it (placed in category 1)

Another sentencer who placed harm in category 1 said their decision was led by the physical harm, although acknowledged there had also been psychological harm.

One sentencer who placed harm in category 2 said there was evidence of serious distress, but they were unsure if it was more than minor.

No lasting physical injuries, evidence of immediate serious distress, fear of becoming unconscious so... certainly not category 3... unsure as to whether we're talking more than minor... high category 2 but bearing in mind as we carry on that it's nearer 1 than 3 (placed in category 2)

(placed in category 2)

ANNEX B

Common assault

Scenario A – biting

	Culp	Factors	Harm	SP	Aggravating factors	Mitigating factors	Final sentence (before GP)
1	B	<ul style="list-style-type: none"> No high culpability factors 	2	low level community order	<ul style="list-style-type: none"> Service to the public 	<ul style="list-style-type: none"> Remorse Previous good character 	Band B fine
2	B	<ul style="list-style-type: none"> No high culpability factors 	2	Band B fine	<ul style="list-style-type: none"> Service to the public 	<ul style="list-style-type: none"> Remorse 	Band B fine
3	B	<ul style="list-style-type: none"> No high culpability factors 	2	fine		<ul style="list-style-type: none"> Remorse 	Band B fine
4	B	<ul style="list-style-type: none"> No high culpability factors 	2	Band B fine	<ul style="list-style-type: none"> Angry and abusive 	<ul style="list-style-type: none"> Remorse Previous good character 	Band A fine
5	A	<ul style="list-style-type: none"> Leading role in group activity 	2	medium level community order	<ul style="list-style-type: none"> Service to the public 	<ul style="list-style-type: none"> Remorse Previous good character 	low level community order with UPW
6	B	<ul style="list-style-type: none"> No high culpability factors 	3	Band A fine	<ul style="list-style-type: none"> Service to the public Took place at night Verbal abuse 	<ul style="list-style-type: none"> Remorse 	Band B fine
7	B	<ul style="list-style-type: none"> No high culpability factors 	3	Band A fine	<ul style="list-style-type: none"> Bite marks 	<ul style="list-style-type: none"> Remorse Previous good character Lack of maturity 	Band B or C fine
8	A	<ul style="list-style-type: none"> Use of teeth 	2	medium level community order	<ul style="list-style-type: none"> Service to the public 	<ul style="list-style-type: none"> Remorse 	medium level community order
9	A	<ul style="list-style-type: none"> Intent to cause fear of serious harm 	2	medium level community order	<ul style="list-style-type: none"> Deliberate 	<ul style="list-style-type: none"> Remorse 	low level community order
10	B	<ul style="list-style-type: none"> No high culpability factors 	2	Band B fine	<ul style="list-style-type: none"> Service to the public Presence of others 		low level community order
11	B	<ul style="list-style-type: none"> No high culpability factors 	2	Band B fine	<ul style="list-style-type: none"> Service to the public 	<ul style="list-style-type: none"> Remorse Previous good character 	Band C fine

Responses highlighted in green signify where sentencers used Harm Model 2.

ANNEX B

Scenario B – spitting

	Culp	Factors	Harm	SP	Aggravating factors	Mitigating factors	Final sentence (before GP)
1	A	<ul style="list-style-type: none"> • Prolonged • Intent to cause fear of serious harm 	1	medium level community order	<ul style="list-style-type: none"> • Domestic context • Alcohol • Prolonged 		medium level community order
2	B	<ul style="list-style-type: none"> • No high culpability factors 	2	Band B fine	<ul style="list-style-type: none"> • Spitting • Domestic context 		Band C fine
3	B	<ul style="list-style-type: none"> • No high culpability factors 	1	community order	<ul style="list-style-type: none"> • Spitting 		high level community order
4	B	<ul style="list-style-type: none"> • No high culpability factors 	2	Band B fine	<ul style="list-style-type: none"> • Domestic context 		Band C fine
5	A	<ul style="list-style-type: none"> • Intent to cause fear of serious harm 	2	high level community order	<ul style="list-style-type: none"> • Spitting • Domestic context 	<ul style="list-style-type: none"> • Provocation 	12 weeks custody
6	B	<ul style="list-style-type: none"> • No high culpability factors 	3	band A fine	<ul style="list-style-type: none"> • Spitting • Domestic context • Alcohol 		Band B fine
7	A	<ul style="list-style-type: none"> • Spitting • Intent to cause fear of serious harm 	2	medium level community order	<ul style="list-style-type: none"> • Spitting 	<ul style="list-style-type: none"> • Provocation 	low level community order
8	A	<ul style="list-style-type: none"> • Spitting as weapon equivalent 	2	medium level community order	<ul style="list-style-type: none"> • Spitting (not double counted) • Domestic context • Alcohol 		medium/high level community order
9	A	<ul style="list-style-type: none"> • Spitting • Intent to cause fear of serious harm • Not prolonged but a build-up 	2	medium level community order	<ul style="list-style-type: none"> • Domestic context 		medium level community order
10	B	<ul style="list-style-type: none"> • No high culpability factors 	2	Band B fine	<ul style="list-style-type: none"> • Spitting • Domestic context • Presence of others 	<ul style="list-style-type: none"> • Previous good character 	low level community order
11	B	<ul style="list-style-type: none"> • No high culpability factors 	3	Band A fine	<ul style="list-style-type: none"> • Spitting • Domestic context 	<ul style="list-style-type: none"> • Previous good character 	Band B fine

Responses highlighted in green signify where sentencers used Harm Model 2.

ANNEX B

Scenario C – strangulation

	Culp	Factors	Harm	SP	Aggravating factors	Mitigating factors	Final sentence (before GP)
1	A	<ul style="list-style-type: none"> • Intent to cause fear of serious harm • Strangulation 	2	medium level community order	<ul style="list-style-type: none"> • Domestic context • Alcohol 		high level community order
2	A	<ul style="list-style-type: none"> • Prolonged • Substantial force • Strangulation 	1	18 weeks custody	<ul style="list-style-type: none"> • Domestic context • Alcohol • Strangulation 		18 weeks custody
3	A	<ul style="list-style-type: none"> • Intent to cause fear of serious harm • Strangulation 	1	high level community order	<ul style="list-style-type: none"> • Domestic context • Abuse of power • Alcohol 		high level community order
4	A	<ul style="list-style-type: none"> • Intent to cause fear of serious harm • Strangulation 	1	high level community order	<ul style="list-style-type: none"> • Domestic context 	<ul style="list-style-type: none"> • Previous good character 	high level community order
5	A	<ul style="list-style-type: none"> • Intent to cause fear of serious harm • Substantial force • Strangulation 	1	high level community order	<ul style="list-style-type: none"> • Domestic context • Alcohol 		12 weeks
6	A	<ul style="list-style-type: none"> • Substantial force • Strangulation 	1	high level community order	<ul style="list-style-type: none"> • Domestic context • Alcohol 		12 weeks
7	A	<ul style="list-style-type: none"> • Prolonged • Substantial force • Strangulation 	1	high level community order	<ul style="list-style-type: none"> • Domestic context • Alcohol 		12 weeks, suspended for 12 months
8	A	<ul style="list-style-type: none"> • Intent to cause fear of serious harm • Strangulation 	1	high level community order	<ul style="list-style-type: none"> • Domestic context • Gratuitous degradation • Abuse of power • Alcohol 		high level community order
9	A	<ul style="list-style-type: none"> • Strangulation 	1	high level community order	<ul style="list-style-type: none"> • Domestic context • Alcohol 	<ul style="list-style-type: none"> • Previous good character 	high level community order

Responses highlighted in green signify where sentencers used Harm Model 2.

ANNEX B

Annex A – scenarios

Scenario A – biting

T and M were on a night out and waiting in line to get into a nightclub for some time. On arriving at the end of the queue, the doorman, B, informed them the venue was full and no further entry could be admitted. M became very angry and abusive, shouting that she was cold and needed the toilet, and had queued for 45 minutes and was not leaving. This continued for 5 minutes. B then advised her that, due to her behaviour and bad language, she would definitely not be allowed to enter and told her to leave the premises. M refused and tried to push past B, who held her back. M bit B's hand hard, causing him to let her go. Teeth marks were visible in his skin for some time, and the skin remained red until the following morning. In B's statement, he said while the bite was painful it was par for the course in his job. M pleaded guilty at the first hearing and was full of remorse and regretted her behaviour.

Scenario B – spitting

H was at a family party and had an argument with his stepmother, S, whom he disliked and had a bad relationship with. S was slightly drunk and was telling H he needed to learn some manners and change his attitude as he had ignored her all evening. H told her to 'fuck off you bitch and don't speak to me.' S continued to berate H and shouted at him that he was 'a rude little bastard', waving her finger in his face. A nasty verbal argument ensued. H decided to leave and, as he pushed past S, spat in her face. S was very upset and tearful and left the party, feeling deeply embarrassed and needing to have a shower and wash her hair. H pleaded guilty but stated that she shouldn't have kept on at him and refused to apologise for the incident.

Scenario C – strangulation

V and her partner D had been to an engagement party. They had both been drinking and, on returning home, D accused V of flirting with someone at the party. She told him to stop being stupid and that she was going to bed and he could sleep on the sofa. As she went to pass him, he threw her against the wall and shouted in her face that he had seen her flirting and she had made him look like a twat. She tried to push him away and go upstairs, and he grabbed her by the throat and held her against the wall with his hand around her neck. V was crying and distressed, and D only let her go once she had gone red in the face and was gasping for air. In her statement, V said she had been unable to breathe, thought she was going to pass out and had been in fear for her life. There were no lasting physical injuries or any bruising, although reddening of her neck was visible in police photographs. D pleaded guilty on the day of trial.

Annex B – harm models

Model 1 (as in the draft guideline)

Harm The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
Category 1	More than minor physical or psychological harm/distress
Category 2	Minor physical or psychological harm/distress
Category 3	No/very low level of physical harm and/or distress

Model 2

Harm The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.	
Category 1	More than minor physical or psychological harm
Category 2	Harm falling between categories 1 and 3
Category 3	No physical injury No/very low level of distress

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

5 March 2021
SC(21)MAR04 – Sexual Offences
Adrian Fulford
Ollie Simpson
07900 395719

1 ISSUE

1.1 Seeking Council's sign off to the draft revisions to the sexual offences guidelines for consultation.

2 RECOMMENDATIONS

2.1 That Council:

- notes the resource assessment at **Annex A** and, subject to that assessment's findings;
- signs off the revisions to the sex offences guidelines for consultation.

3 CONSIDERATION

Resource assessment

3.1 The draft consultation stage resource assessment is at **Annex A**. It estimates that the new guidelines for section 15A (sexual communication with a child) may lead to a small increase in sentencing severity, with some offenders who would previously have received a community order now receiving a suspended sentence order.

3.2 The amendments we are making as a result of *Privett* are not strictly themselves the cause of any impacts on sentencing practice, prison and probation services. Assuming the courts follow the approach set out in *Privett* these impacts would be seen anyway; the revised guidelines simply reflect the approach (although it may be an open question whether that approach applies to cases where activity has been incited with a real child, but not caused). Nonetheless, the resource assessment covers what impacts we expect to see as a result of this approach, as set out in the revised guidelines, becoming the norm.

3.3 For section 14 the resource assessment suggests there may be a small increase overall in sentence levels for cases in which no actual child exists. It estimates, based on 2019 data, that there may be an increase in average custodial sentencing lengths for these cases by 5 months, from two years 10 months to three years 3 months. This means the potential requirement for approximately 40 additional prison places per year. The increase in severity may not appear too dramatic, and this appears to be because several judges are

already taking the approach in these cases (as in all cases conjoined in *Privett*), often placing activity in category 1 or 2 harm regardless of whether there is a real child victim. However, we are also making assumptions about the reductions made to take account of the lack of a real child (generally using 1 year as a rule of thumb) which we can test as part of road-testing.

3.4 The similar changes made to the section 10 guideline (causing or inciting a child to engage in sexual activity) are estimated to result in an increase in sentencing severity for cases where no child exists (which are charged as attempts), or where the child does exist and the offence was incited but did not occur. The average custodial sentence length may increase by about two years 4 months, from one year 2 months to three years 6 months, with the potential requirement for around 190 additional prison places per year.

3.5 This is greater than the increase for section 14, probably because in these cases the courts have till now more usually been following the previous *Baker* approach. The greater impact on the prison population reflects to a degree the greater volumes of cases (around 100 section 14 cases in 2019, compared to about 260 for section 10).

3.6 Beyond section 10, the revisions are not expected to have a measurable impact on other “causing or inciting” offences. For section 8 (causing or inciting sexual activity with a child under 13), the structure of the harm categories means that there is unlikely to be a difference in the harm categorisation. There are such low volumes of cases for the other offences (sections 17, 31, 39, 48 and 52 of the 2003 Act, which altogether saw around 190 offenders sentenced between 2015 and 2019) that any impacts of the revisions are hard to quantify, but likely to be small.

3.7 The further amendments in scope of the consultation (providing clarification on the factors “abuse of trust” and “severe psychological harm” and amendments to the wording in guidance on historic sex cases are not expected to have any impact on sentencing severity and are therefore not covered in the resource assessment. This will be set out in the consultation document.

Question 1: do you have any concerns with the findings of the resource assessment?

Revisions to the sex offences guidelines

Section 14 – arranging or facilitating

3.8 The draft short narrative section 14 guideline is at **Annex B**. As now this directs users to the guidelines for the offences which have been arranged or facilitated (sections 10 to 13), and we have provided links to those.

3.9 The guideline tells sentencers to determine harm on the basis of what the offender had intended, and then to provide a discount (ahead of any further aggravation or mitigation) to reflect the fact that lesser or no harm has been caused. We do not provide specifics about the extent of the discount, but note that where someone has only been prevented by others at the last minute the discount will usually be a small one within the category range. At the other end of the spectrum (voluntary desistance at an early stage), a larger discount will be appropriate, even outside of the category range.

Causing or inciting offences

3.10 The revised guidelines for section 10 are at **Annex C** with the additions highlighted. These changes would also be made to other “causing or inciting” offences under the Sexual Offences Act 2003.

3.11 Aside from the central issue of situations where sexual activity has been incited but has not taken place, we have added a paragraph to be clear that activity incited outside of England and Wales and/or remotely is to be treated no less seriously than activity incited in person/within this jurisdiction.

3.12 The guideline then replicates the approach to take from the section 14 guideline (above). This has been placed before the Step One tables to ensure it does not get missed. A modification to the wording is needed for the circumstance where a child does not exist, as this will be charged as an attempt. We are clear in these circumstances that the discount for the victim not being real is the discount for the offence being an attempt.

3.13 We propose deleting the mitigating factor “Sexual activity was incited but no activity took place because the offender voluntarily desisted or intervened to prevent it” as this scenario has now been covered with the earlier wording.

Additional guidance

3.14 Following the findings of the 2018 assessment of the existing guidelines, we have decided to consult on including expanded explanations in all relevant sexual offences guidelines of the harm factor “severe psychological harm” and the culpability factor “abuse of trust”. This would be the first use of expanded explanations at Step One.

3.15 We are also consulting on amendments to the guidance on historic sex offences to reflect more closely Court of Appeal authority in the cases of *Forbes* and *R v H*.

3.16 Both of these proposed clarifications are shown at **Annex D** and I will demonstrate the drop down expanded explanations at the meeting.

Section 15A

3.17 The new draft guideline for sexual communication with a child proposed for consultation is at **Annex E**.

3.18 The guideline starts with the standard text (covered above) for attempts where no child has been the recipient of sexual communication. We are proposing just two levels of harm: a raised level where sexual images have been sent/received or where significant psychological harm or distress has been caused, and a lower level covering all other cases. Culpability is separated into two levels and is a departure from the usual child sex guidelines, where raised culpability is represented by a series of grooming elements. Here, raised culpability is indicated by abuse of trust, use of threats, targeting of a particularly vulnerable child, commercial exploitation and/or motivation, and soliciting images. Culpability B captures all other cases.

3.19 All starting points are custodial with only Category 2B cases being within the powers of the magistrates' courts. We have deliberately not left "headroom" given the relatively low maximum penalty and the dangers that this offending can pose. The range goes down to a medium level community order as a fine alone was not thought appropriate for this offence.

3.20 We have so far proposed the fairly standard list of aggravating and mitigating factors for child sex offending. There had been debate about whether lying about age/identity should be a step one factor, but we concluded it should be step two. "Offence involved sustained or persistent communication" is bespoke to this guideline, and its corresponding mitigating factor is "Isolated offence".

3.21 In finalising the guideline I have also considered two further amendments to the standard mitigating factors. Firstly, for "*Age and/or lack of maturity where it affects the responsibility of the offender*" given that our understanding of neurological development amongst youths has advanced since 2013, it may be helpful to rename it simply "*Age and/or lack of maturity*" and have the expanded explanation as set out in **Annex E**.

3.22 I also propose adding in the standard mitigating factor "*Physical disability or serious medical condition requiring urgent, intensive or long-term treatment*" with its accompanying expanded explanation. This is also set out at **Annex E**. The latter in particular may come into play when sentencing historic sex offences. If we were to consult on including these in the section 15A guideline I would also propose including them as standard in all sex offence guidelines.

Question 2: do you want to add/amend these mitigating factors to the section 15A guideline and all sex offence guidelines?

3.23 It was suggested that step seven, covering ancillary orders should make specific mention of sexual harm prevention orders (SHPOs). At the moment, the definitive guidelines for sexual offences provide a link to the Crown Court compendium and a dropdown at this stage. The dropdown gives information on Slavery and Trafficking Prevention Orders (STPOs and the automatic orders relating to notification and vetting. We could therefore add wording on SHPOs at this step (like that proposed in **Annex E**) of all sex offence guidelines, and I propose adding it to the dropdown ahead of the wording on STPOs. The possible downside is that it could get overlooked there, but most prosecutors are likely to be pushing for one in appropriate cases.

3.24 There was text on the predecessor for SHPOs (Sexual Offences Prevention Orders, SOPOs) in the definitive sex offence guidelines when published in 2013, but this was outdated by the time the definitive guidelines went online. Adding them to step seven would not strictly require consultation so we could make that change to all existing sex offence guidelines now. Alternatively, Council may wish to consult on the point as we consult on these other changes.

Question 3: (subject to the answer to Question 1) are you content with the proposed amendments and the new section 15A guideline as set out in the annexes?

Question 4: do you want to consult on adding information on Sexual Harm Prevention Orders to the ancillary orders step of all sex offence guidelines?

4 EQUALITIES

4.1 In 2019, immediate custody was the most common sentence for most offences, except section 13 and section 15A for which the most common was a community sentence. Generally, younger offenders seem to get a 'less severe' sentence – a higher proportion of younger offenders receive community sentence. As offenders get older, the proportion receiving custody seems to increase.

4.2 Males are overrepresented in every offence: overall, females only accounted for 2% of offenders sentenced for the sexual offences we are looking at. Because the number of female offenders is so low we cannot highlight any obvious trends but from what we do have, generally female offenders are getting the same sentences as their male counterparts.

4.3 In general, there seems to be equal treatment between ethnicities, probably stemming from the fact that most offenders are receiving a custodial sentence and again we are considering very small numbers in each group.

Question 5: are there any equalities issues that you think the consultation should address or seek views on, or are you content simply for the above information to be set out in the document?

5 IMPACT AND RISKS

5.1 The impact of these proposals is covered above. As mentioned there, any increase from the additional guidance on cases where no child exists or activity is incited but not caused is strictly speaking a result of the Court of Appeal case law, rather than directly from the change to our guidelines.

5.2 Aside from the new guideline for s15A offences, these changes respond to Court of Appeal case law. There may be further issues related to sex offences and the operation of the guidelines that we are unaware of and the consultation may provide an opportunity for people to raise a wide range of specific issues beyond those we are consulting on. Given the need to clarify the situation for the issues raised by Privett and other cases, we would need to be clear in responding to the consultation that other issues would need to await a fuller revision of the guidelines.

5.3 There is a risk that the Council is seen to be ignoring the increased sentencing severity for sexual assault and sexual assault of a child under 13 observed in the 2018 assessment conducted with the University of Leicester. That could be mitigated to a degree by providing clarity on those factors which the report concluded were creating uncertainty.

5.4 We are aware that legislation is planned that would amend section 14. As we understand it, this could involve adding section 8 (sexual activity with a child under 13) to the possible offences which could be planned and facilitated under section 14 and provide for different possible maximum penalties that track those for the underlying offences (so from life imprisonment for a section 8 offence involving penetration, down to five years' imprisonment for a child sexual offence committed by a child). We are unaware of the precise timing of this legislation, but it should not affect our approach to the revisions; we may simply want the consultation document to refer to the possible changes.

Consultation Stage Resource Assessment

Sexual Offences

Introduction

This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.¹

Rationale and objectives for new guideline

In April 2014, the Sentencing Council's *Sexual Offences Definitive Guideline* came into force, covering most sexual offences regularly sentenced by courts in England and Wales. It included guidelines for sentencing over 50 offences including offences relating to causing or inciting sexual offences and arranging and facilitating sexual offences under the Sexual Offences Act 2003 (SOA)

Recent Court of Appeal case law has clarified the approach that the courts should take in cases where no sexual activity takes place, including instances where no child victim exists, usually because the offender is the subject of a so-called "sting" operation. This will typically involve either the police, or an informal group, pretending to be a fictitious child or the parent of a fictitious child in order to identify those trying to commit sexual offences with children. The Court of Appeal requested that the Council consider clarifying the guideline for section 14 of the SOA to cater for these cases. The Council has considered that such an update is necessary. Additionally, following this case law, the Council has considered how the guidelines for causing or inciting offences (for example, section 10 of the SOA) would apply to the situation where activity is incited but not caused, and have revisited these to provide further clarification.

Section 67 of the Serious Crime Act 2015 inserted a new section 15A into the SOA making sexual communication with a child a specific offence. This offence came into effect on 3 April 2017, and no current guideline exists.

The Council is consulting on a draft sentencing guideline covering the new offence under section 15A and the updated and revised guidelines, for use in all courts in England and Wales.

The Council's aim in developing the new and revised guidelines is to provide sentencers with a clear approach to sentencing sexual offences – including those

¹ Coroners and Justice Act 2009 section 127: www.legislation.gov.uk/ukpga/2009/25/section/127

where no sexual activity has occurred - that will ensure that sentences are proportionate to the offence committed and in relation to other offences, and additionally to promote a consistent approach to sentencing.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guideline on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the new and revised guidelines for the following offences under the Sexual Offences Act 2003:

- Sexual communication with a child (section 15A)
- Arranging or facilitating the commission of a child sex offence (section 14)
- Causing or inciting a child to engage in sexual activity (section 10)
- Causing or inciting a child under 13 to engage in sexual activity (section 8)
- Abuse of position of trust: causing or inciting a child to engage in sexual activity (section 17)
- Causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity (section 31)
- Care workers: causing or inciting sexual activity (section 39)
- Causing or inciting sexual exploitation of a child (section 48)
- Causing or inciting prostitution for gain (section 52)²

The *Sexual Offences* guideline applies to sentencing adults only; it will not directly apply to the sentencing of children and young people.

Current sentencing practice

To ensure that the objectives of the guideline are realised, and to understand better the potential resource impacts of the guideline, the Council has carried out analytical and research work in support of it.

The intention is that the new section 15A guideline will encourage consistency of sentencing in an area where no guideline currently exists and that the revisions to existing guidelines will encourage consistency of sentencing and better reflect current case law.

Knowledge of recent sentencing was required to understand how the new guideline may impact sentences. Sources of evidence have included the analysis of transcripts of Crown Court judges' sentencing remarks for offenders sentenced for sexual offences and sentencing data from the Court Proceedings Database³. A review of

² Due to very low volumes of causing and inciting sexual offences, sections 17, 31, 39, 48 and 52 have been grouped together in the resource assessment to allow more meaningful analysis of resource impacts of the guidelines.

³ The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences

case law has informed the draft guideline⁴ and knowledge of the sentences and factors used in previous cases, in conjunction with Council members' experience of sentencing, has helped to inform the development of the guidelines.

During the consultation stage, we intend to conduct research with sentencers, to explore whether the draft guidelines will work as anticipated. This research should also provide some further understanding of the potential impact of the guidelines on sentencing practice, and the subsequent effect on the prison population.

Detailed sentencing statistics for sexual offences covered by the draft guidelines have been published on the Sentencing Council website at the following link: <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year.>

Sexual communication with a child (section 15A)

The statutory maximum sentence for sexual communication with a child is 2 years' custody and around 280 offenders were sentenced for this offence in 2019. About 42 per cent were sentenced to a community order, a further 36 per cent received a suspended sentence and 15 per cent received an immediate custodial sentence, the remaining 6 per cent were recorded as otherwise dealt with.^{5,6} For those receiving immediate custody in 2019, the ACSL was 10 months.

Arranging or facilitating the commission of a child sex offence (section 14)

The statutory maximum sentence for arranging or facilitating the commission of a child sex offence is 14 years' custody. In 2019, around 100 offenders were sentenced for this offence, with the majority (71 per cent) sentenced to immediate custody. A further 17 per cent received a suspended sentence, 10 per cent received a community order and 2 per cent were recorded as otherwise dealt with.^{5,6} The average (mean) custodial sentence length (ACSL) for those sentenced to immediate custody was 3 years 10 months.

Causing or inciting a child to engage in sexual activity (section 10)

The statutory maximum sentence for causing or inciting a child to engage in sexual activity is 14 years. In 2019, around 260 offenders were sentenced for this offence and the most common outcome was immediate custody (51 per cent of offenders). A further 26 per cent received a suspended sentence, 16 per cent received a community order and 6 per cent were recorded as otherwise dealt with.^{5,6} For those receiving immediate custody, the ACSL was 3 years 2 months.

this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. The average custodial sentence lengths presented in this resource assessment are average custodial sentence length values for offenders sentenced to determinate, immediate custodial sentences, after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin.>

⁴ Notably *R v Privett [2020] EWCA Crim 557*

⁵ 'Otherwise dealt with' include restriction orders, disqualification orders, victim surcharge, guardianship orders, restraining orders, sexual harm prevention orders, forfeiture orders and other miscellaneous disposals.

⁶ Percentages may not sum to 100 per cent due to rounding.

Causing or inciting a child under 13 to engage in sexual activity (section 8)

The statutory maximum sentence for causing or inciting a child under 13 to engage in sexual activity is life imprisonment. In 2019, around 170 offenders were sentenced for this offence, most offenders received an immediate custodial sentence (85 per cent). A further 10 per cent received a suspended sentence, 4 per cent received a community order and 2 per cent were recorded as otherwise dealt with.^{5,6} In 2019, the ACSL for this offence was 4 years 3 months.

Other causing and inciting sexual offences (sections 17, 31, 39, 48 and 52)^{2,7}

The statutory maximum sentence varies across these causing and inciting offences under the sections of the SOA mentioned above, from 5 years' for section 17 (abuse of position of trust: causing or inciting a child to engage in sexual activity) to life imprisonment for section 31 (causing or inciting a person, with a mental disorder impeding choice, to engage in sexual activity where penetration was involved).⁸

Between 2015 and 2019, around 190 offenders were sentenced for causing and inciting sexual offences under the sections of the SOA mentioned above. The majority of these (around 130 offenders, 67 per cent) were sentenced under section 48: causing or inciting sexual exploitation of a child. Around 30 offenders were sentenced under section 17, around 20 offenders were sentenced under section 52, around 10 offenders were sentenced under section 31 and less than 5 were sentenced under section 52.⁹

For offenders sentenced under section 48 (the highest volume of these offences) between 2015 and 2019, 60 per cent of offenders were sentenced to immediate custody. Suspended sentence orders accounted for 19 per cent of sentences, community order accounted for 16 per cent, 3 per cent were recorded as otherwise dealt with and fines and discharges accounted for 1 per cent each.^{5,6} The ACSL for section 48 over the 5-year period was 3 years and 4 months.

Key assumptions

To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guideline and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guideline are therefore subject to a substantial degree of uncertainty.

⁷ Due to the small number of offenders sentenced for these offences, 5 years of data have been presented. For offences with very low volumes, further breakdowns of sentence outcomes and ACSLs have not been provided.

⁸ The statutory maximum for section 39 offences is 14 years' custody, for section 38 offences the statutory maximum is 14 years' custody and for section 52 offences the statutory maximum is 7 years.

⁹ Figures on sentence outcomes have been presented for the highest volume offence (section 48), figures of sentencing outcomes for the other sections are available in the accompanying data tables.

Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. In addition, for low volume offences, and those which have only recently been created, there are limited data available. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed new guideline, and an assessment of the effects of changes to the wording of the guideline where a previous guideline existed.

The resource impact of the draft guideline and changes to existing ones are measured in terms of the changes in sentencing practice that are expected to occur as a result of them. Any future changes in sentencing practice which are unrelated to the publication of the draft guidelines and revisions are therefore not included in the estimates.

In developing sentence levels for the new guideline, existing guidance and data on current sentence levels has been considered. While data exists on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the draft guidelines, due to a lack of data available regarding the seriousness of current cases. As a consequence, it is difficult to ascertain how sentence levels may change under the draft guideline.

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To support the development of the new guideline and revisions to existing ones and to mitigate the risk of the changes having an unintended impact, research will be undertaken with sentencers during the consultation period, utilising different sexual offence scenarios. Along with consultation responses, this should hopefully provide more information on which to base the final resource assessment accompanying the definitive guideline and revisions.

Resource impacts

This section should be read in conjunction with the draft guideline available at: <http://www.sentencingcouncil.org.uk/consultations/>.

Overall impacts

The expected impact of each guideline and revision is shown in detail below. Analysis of Crown Court judges' sentencing remarks for the relevant sexual offence cases has been conducted to assess how sentences may change under the draft revised guidelines.

For sexual communication with a child (section 15A), there is currently no guideline in place, so the aim of this new guideline is to improve consistency of sentences. However, it is estimated that there may be a small increase in sentencing severity, with some offenders who would previously have received a community order now receiving a short immediate custodial sentence that would likely be suspended.

For arranging or facilitating the commission of a child sexual offence (section 14), there may be a small increase overall in sentence levels for cases in which no actual child is present. It is estimated that there may be a small increase in the ACSL for these cases with the potential requirement for approximately 40 additional prison places per year.¹⁰

For causing or inciting a child to engage in sexual activity (section 10), there may be an increase in sentencing severity for cases where no child exists (which are charged as attempts), or where the child does exist and the offence was incited but did not occur. It is estimated that for these cases, the average custodial sentence length may increase, with the potential requirement for around 190 additional prison places per year.¹⁰

For causing or inciting a child under 13 to engage in sexual activity (section 8) it is anticipated that there will be little change in sentencing practice and as such there will be little impact on correctional facilities.

For other causing and inciting sexual offences under sections 17, 31, 39, 42 and 52 of the SOA 2003, there may be a small increase in sentencing severity for cases where no real victim exists, or where a victim does exist and the offence was incited but did not occur. As volumes are low, it is difficult to ascertain the impact for these offences but it is anticipated that any changes would have very little impact on prison and probation resources.

The revised guidelines for all arranging or facilitating and causing or inciting offences (sections 8, 10, 14, 17, 31, 39, 48 and 52 of the SOA) have been updated following guidance from the Court of Appeal and as such the estimated changes in sentencing practice presented above are attributable to the case law which is now incorporated within the guideline, rather than an intention of the Council to influence sentencing practice.

Sexual communication with a child (section 15A)

The offence of sexual communication with a child, inserted by section 67 of the Serious Crime Act 2015, came into force on 3 April 2017; there is currently no guideline for this offence.

The new proposed guideline has two levels of culpability and two levels of harm, leading to four offence categories. The sentencing range for this offence has been set with evidence of current sentencing practice in mind, spanning from a community order to 2 years' immediate custody. The statutory maximum for this offence is 2 years' custody.

Just over 80 per cent of offenders sentenced for sexual communication with a child are sentenced at the Crown Court and analysis of a sample of Crown Court judges' sentencing remarks has been undertaken to understand the possible effects of the guideline on sentencing practice.¹¹ This analysis suggests that offenders that would

¹⁰ These estimates are based on 2019 data and as such should be treated with caution as current sentencing practice after May 2020, may already be accounting for the Court of Appeal guidance. For more information on how the impacts were calculated, see page 8 for section 14 offences and page 9 for section 10 offences.

¹¹ Around 20 transcripts of Crown Court sentencing remarks were analysed to assess the impact this guideline may have on prison and probation services.

currently receive a community order may receive a short custodial sentence using the new draft guideline. However, based on current sentencing practice, it is likely that most of these sentences would be suspended and so there would be minimal impact on prison resources. If a higher proportion of custodial sentences are not suspended, this would require additional prison places; however, it is expected that this impact would be negligible.

Arranging or facilitating the commission of a child sex offence (section 14)

The existing guideline for section 14 asks sentencers to refer to the guideline for the applicable, substantive offence of arranging or facilitating under sections 9 to 12 of the SOA 2003 and provides brief guidance on how to apply those guidelines to section 14 cases. This approach remains suitable and appropriate; however, following a request from the Court of Appeal to consider whether further guidance was required, the Council proposes to amend the guideline to provide additional information for sentencers in cases in which no child exists.

The Court of Appeal case of *R. v Privett* highlighted that no sexual activity needs to take place for a section 14 offence to be committed and raised concerns about the previous approach taken regarding harm when no child existed. The Court of Appeal in *Privett* said that the court is required to consider the sexual activity intended (even if it does not occur) as part of its assessment of harm, and as such these offences should not automatically be treated as the lowest level of seriousness simply on the basis that no real child was involved. The revised guideline echoes this approach and advises sentencers to identify the category of harm at step 1 based on the sexual activity intended and then apply a downward adjustment at step 2 to reflect the lack of harm which has actually resulted.

In 2019, all adult offenders sentenced for arranging or facilitating a child sexual offence were sentenced at the Crown Court. Analysis of a sample of Crown Court judges' sentencing remarks was undertaken to assess whether there might be any potential resource impact related to these changes. It found that 75 per cent of transcripts involved cases in which no real child existed. These transcripts were then used to identify possible impacts of the additional wording provided in the guideline.¹²

The transcripts were analysed with reference to the directions provided in the revised guideline for these types of cases, to try to determine how sentences may change. For cases involving no actual child, original sentence practice varied, with most being placed in the lower levels of harm (around 70 per cent were placed in level 2 or 3, with around 30 per cent in level 1). The analysis suggests that overall, sentences would be likely to increase because most of these cases would now be placed into the highest harm category (about 90 per cent in level 1 and 10 per cent in level 2), and then adjusted accordingly. It was estimated that for cases where no real child was involved, most offences that previously attracted a community order or suspended sentence order would now be given an immediate custodial sentence instead¹³, and custodial sentence lengths would increase. Sentence lengths would on

¹² Of the 28 Crown Court transcripts analysed, 21 transcripts (75 per cent) were identified as relating to cases in which no real child was present; most of these were identified as police undercover operations, but a small proportion were identified as vigilante action.

¹³ Very few transcripts were analysed for those sentenced to community orders or suspended sentence orders, however, all those that were included in the analysis, saw the sentence increased to an immediate custodial

average increase by 5 months for these offences, from 2 years 10 months to 3 years 3 months¹⁴ and as a result may lead to the need for approximately 40 additional prison places per year.¹⁵ This anticipated increase is lower than that for section 10 cases (see below) as some cases already appear to be taking a similar approach to that set out in the case of *Privett*. However, this increase in sentence severity would be attributable to the change in case law which is now incorporated within the guideline, rather than an intention of the Council to influence sentencing practice.

The transcripts used for this analysis are cases from 2019, before the Court of Appeal ruling occurred in May 2020; therefore, the findings presented here, represent the estimated impact of the guideline on 2019 sentencing practice. To calculate the estimated impact, case specific details from the transcripts and knowledge of the case law was used to establish the appropriate reduction to make for cases in which no real child was present. Firstly, the harm and culpability levels were established, then a reduction of between 0 and 1 year was applied from the starting point, before any other aggravation or mitigation was applied. This was then compared to the original sentence to allow an estimate of the impact based on 2019 sentencing outcomes. It is likely that after May 2020, sentencers would follow the approach set out by the Court of Appeal and as such it is anticipated that the revised guideline itself would have little impact on current sentencing practice. Further research will be done during the consultation stage to test specific scenarios with sentencers to understand how sentencing practice may be influenced by the additional wording in the guideline after the Court of Appeal ruling.

Causing or inciting a child to engage in sexual activity (section 10)

The revised guideline for causing or inciting a child to engage in sexual activity repeats the guidance set out in the offence of arranging or facilitating the commission of a child sexual offence: that sentencers should identify the category of harm on the basis of the sexual activity the offender intended rather than the sexual activity that occurred, then apply an appropriate downward adjustment at step 2.

Transcripts of Crown Court judges' sentencing remarks have been analysed in relation to the draft guideline and cases where there was no real child or where the activity was incited with a real child but did not take place have been identified. These cases have been analysed to try to determine how sentences may change under the additional guidance.¹⁶

Similarly to the section 14 offence, the categorisation of harm for section 10 offences is expected to increase for cases where there is no real child or where the activity was incited with a real child but did not take place. These cases account for

sentence. Therefore, this estimate provides an indication of the movement of sentences in relation to these cases.

¹⁴ This ACSL was calculated using the sampled transcripts and represents the estimated average custodial sentence length of the section 14 offences within the transcript analysed where no real child was involved. It does not reflect the whole case mix of this offence and as such is not comparable to the ACSL set out in the 'Current sentencing practice' section of this document.

¹⁵ Using evidence from the transcript analysis, it has been estimated that around 75 per cent of offenders sentenced for the section 14 offence were sentenced for cases in which no real child existed, therefore this proportion has been applied to the overall number of offenders sentenced for this offence in 2019 to allow an estimation of the impact of this change

¹⁶ Of the 26 transcripts relating to causing or inciting a child to engage in sexual activity analysed, 14 were identified as involving no real child or where the activity was incited with a real child but did not take place.

approximately 54 per cent of those sentenced for section 10 offences and the analysis suggested that the harm would increase from level 3 under 2019 sentencing practice to level 1 under the revised guideline, with a reduction applied to allow for the lesser harm actually caused. Due to this, it is estimated that on average, immediate custodial sentences for cases where there was no real child or where the activity was incited with a real child but did not take place may increase by about 2 years 4 months, from 1 year 2 months to 3 years 6 months¹⁷, resulting in a need for approximately 190 additional prison places per year. This increase in sentence severity would be attributable to the change in case law which is now incorporated within the guideline, rather than an intention of the Council to influence sentencing practice. It is also expected that in cases where a real child was present or the sexual activity took place, sentences will remain unaffected by this change.^{18,19}

As with the section 14 offence, the transcripts used for this analysis are cases from 2019, before the Court of Appeal ruling occurred in May 2020; therefore, the findings presented here represent the estimated impact of the guideline on 2019 sentencing practice. To calculate the estimated impact, cases specific details from the transcripts and knowledge of the case law was used to establish the appropriate reduction to make for cases in which no real child was present. Firstly, the harm and culpability levels were established, then a reduction of between 0 and 1 year was applied from the starting point, before any other aggravation or mitigation was applied. This was then compared to the original sentence to allow an estimate of the impact based on 2019 sentencing outcomes. It is likely that after May 2020, sentencers would follow the approach set out by the Court of Appeal and as such it is anticipated that the revised guideline itself would have little impact on current sentencing practice. As with the section 14 offences, further research will be done during the consultation stage to test specific scenarios with sentencers to understand how sentencing practice may be influenced by the additional wording in the guideline after the Court of Appeal ruling.

The revised guideline also adds additional guidance for sentencers on cases where offences are committed remotely or online, clarifying that sentencers should draw no distinction between activity caused or incited in person and activity caused or incited remotely, nor between the harm caused to a victim in this jurisdiction and that caused to a victim anywhere else in the world. Due to the small number of offences of this nature captured by the transcripts, it is difficult to estimate the effect of this change on sentencing outcomes. However, it is expected that the changes to the guideline will help improve consistency when sentencing these cases, that it reflects current practice to a large extent, and any impact on sentences is likely to be small since the number of offenders sentenced for this type of offence is so low.

Causing or inciting a child under 13 to engage in sexual activity (section 8)

The revised guideline for causing or inciting a child under 13 to engage in sexual activity follows the same structure as the section 10 offence and advises sentencers

¹⁷ This ACSL was calculated using the sampled section 10 transcripts and represents the estimated average custodial sentence length of the specific offence within the transcript analysed where no real child was involved

¹⁸ Using evidence from the transcript analysis, it has been estimated that 54 per cent of offenders sentenced for section 10 offences were sentenced for offences in which no child was harmed, therefore this proportion has been applied to the overall number of offenders sentenced for this offence in 2019 to allow an estimation of the impact of this change.

to identify the category of harm on the basis of the sexual activity the offender intended rather than the sexual activity that occurred, then apply an appropriate downward adjustment at step 2.

Due to the nature of this offence and the harm factors presented in the guideline as it currently exists, it is not anticipated that this additional information would cause the harm category to increase for cases where no real child is involved, or the offence is incited but does not occur. The factors within the guideline that would lead to the higher levels of harm would usually require a real child to exist or for some aspect of the offending to have actually occurred, (for example, abduction and forcing entry into the victim's home). It is therefore anticipated that this change will have little impact on sentencing outcomes for this offence and as such any impact of correctional resources will be negligible.

Other causing and inciting sexual offences (sections 17, 31, 39, 48 and 52)

The additional explanatory wording provided within the guidelines for the section 8 and 10 offences, highlighting that sentencers should identify the category of harm on the basis of the sexual activity the offender intended rather than the sexual activity that occurred, then apply an appropriate downward adjustment at step 2, is also being applied to all other causing and inciting offence guidelines, to provide clarity on how sentencers should approach cases where no real victim is involved, or the offence is incited but does not occur.

Due to small volumes of these offences, it is difficult to estimate the effect of this change on sentencing outcomes, however, it is possible that this change may increase sentencing severity for these specific cases and consequently have an impact on correctional resources. Although it is not possible to quantify what this impact might be, it is anticipated to be minimal due to the small number of offenders sentenced for these offences, with a negligible impact on prison and probation resources.

Risks

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guidelines comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guidelines have the intended effect and inviting views on the guidelines. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated. Transcripts of judges' sentencing remarks have provided a more detailed picture of current sentencing practice for these offences which has formed a large part of the evidence base on which the resource impacts have been estimated, however it should be noted that these are rough estimates

which should be interpreted as indicative of the direction and approximate magnitude of any change only.

Risk 2: Sentencers do not interpret the new guidelines as intended

If sentencers do not interpret the guidelines as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers interpret them as intended. For the new section 15A guideline, sentencing ranges have been agreed on by considering sentence ranges in the existing Sexual Offences guidelines, in conjunction with sentencing data and Council members' experience of sentencing. Transcripts of sentencing remarks of relevant sexual offence cases have been studied to gain a greater understanding of current sentencing practice and to ensure that the guidelines are developed with current sentencing practice in mind. Research with sentencers carried out during the consultation period should also enable issues with implementation to be identified and addressed prior to the publication of the definitive guidelines.

Consultees can also feed back their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines.

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Arranging or facilitating the commission of a child sex offence

Sexual Offences Act 2003, s.14

Effective from: 1 April 2014

Triable either way

Maximum: 14 years' custody

For offences committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15 for the purposes of sections 273 and 283 (life sentence for second listed offence) of the Sentencing Code.

These are **specified offences** for the purposes of sections 266 and 279 (extended sentence of imprisonment for certain violent, sexual or terrorism offences) of the Sentencing Code.

When sentencing a section 14 offence, sentencers should refer to the guideline for the applicable, substantive offence of arranging or facilitating under sections 9 to 12:

- [Sexual activity with a child](#), Sexual Offences Act 2003, s.9
- [Causing or inciting a child to engage in sexual activity](#), Sexual Offences Act 2003, s.10
- [Engaging in sexual activity in the presence of a child](#), Sexual Offences Act 2003, s.11
- [Causing a child to watch a sexual act](#), Sexual Offences Act 2003, s.12

The level of harm should be determined by reference to the type of activity arranged or facilitated. Where the activity takes place, sentences commensurate with the applicable starting point and range will ordinarily be appropriate.

No sexual activity need take place for a section 14 offence to be committed, including in instances where no child victim exists. In such cases the court should identify the category of harm on the basis of the sexual activity the offender intended, and then apply a downward adjustment at step two to reflect the fact that no or lesser harm actually resulted.

The extent of this adjustment will be specific to the facts of the case. In cases where an offender is only prevented by the police or others from conducting the intended sexual activity at a late stage, or where a child victim does not exist and, but for this fact, the offender would have carried out the intended

sexual activity, a small reduction within the category range will usually be appropriate.

Where, for instance, an offender voluntarily desisted at an early stage a larger reduction is likely to be appropriate, potentially going outside the category range.

In either instance, it may be the case that a more severe sentence is imposed in a case where very serious sexual activity was intended but did not take place than in a case where relatively less serious sexual activity did take place.

The sentence will then be subject to further adjustment for aggravating and mitigating features, in the usual way.

For offences involving significant commercial exploitation and/or an international element, it may be appropriate to increase a sentence to a point above the category range. In exceptional cases, such as where a vulnerable offender performed a limited role, having been coerced or exploited by others, sentences below the range may be appropriate.

Sexual activity with a child/ Causing or inciting a child to engage in sexual activity

Sexual Offences Act 2003, s.10, Sexual Offences Act 2003, s.9

Effective from: 1 April 2014

Sexual activity with a child, Sexual Offences Act 2003, s.9

Causing or inciting a child to engage in sexual activity, Sexual Offences Act 2003, s.10

Triable only on indictment (if penetration involved), otherwise, triable either way

Maximum: 14 years' custody

Offence range: Community order – 10 years' custody

For offences committed on or after 3 December 2012, these are offences listed in Part 1 of Schedule 15 for the purposes of sections 273 and 283 (life sentence for second listed offence) of the Sentencing Code.

These are **specified offences** for the purposes of sections 266 and 279 (extended sentence of imprisonment for certain violent, sexual or terrorism offences) of the Sentencing Code.

Step 1 – Determining the offence category

The court should determine which categories of harm and culpability the offence falls into by reference only to the tables below.

This guideline also applies to offences committed remotely/online. Sentencers should draw no distinction between activity caused or incited in person and activity caused or incited remotely, nor between the harm caused to a victim in this jurisdiction and that caused to a victim anywhere else in the world.

In section 10 cases where activity is incited but does not take place the court should identify the category of harm on the basis of the sexual activity the offender intended, and then apply a downward adjustment at step two to reflect the fact that no or lesser harm actually resulted.

The extent of downward adjustment will be specific to the facts of the case. Where an offender is only prevented by the police or others from carrying out the offence at a late stage, or in attempts where a child victim does not exist and, but for this fact, the offender would have carried out the offence, a small reduction within the

category range will usually be appropriate. No additional reduction should be made for the fact that the offending is an attempt.

Where for instance, an offender voluntarily desisted at an early stage a larger reduction is likely to be appropriate, potentially going outside the category range.

In either instance, it may be the case that a more severe sentence is imposed in a case where very serious sexual activity was intended but did not take place than in a case where relatively less serious sexual activity did take place.

The sentence will then be subject to further adjustment for aggravating and mitigating features.

Harm
<p>Category 1</p> <ul style="list-style-type: none">• Penetration of vagina or anus (using body or object)• Penile penetration of mouth <p>In either case by, or of, the victim.</p>
<p>Category 2</p> <ul style="list-style-type: none">• Touching, or exposure, of naked genitalia or naked breasts by, or of, the victim
<p>Category 3</p> <ul style="list-style-type: none">• Other sexual activity

Culpability
<p>Culpability A</p> <ul style="list-style-type: none">• Significant degree of planning• Offender acts together with others to commit the offence• Use of alcohol/drugs on victim to facilitate the offence• Grooming behaviour used against victim• Abuse of trust• Use of threats (including blackmail)• Sexual images of victim recorded, retained, solicited or shared• Specific targeting of a particularly vulnerable child• Offender lied about age• Significant disparity in age• Commercial exploitation and/or motivation• Offence racially or religiously aggravated

<ul style="list-style-type: none"> • Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation) or transgender identity (or presumed transgender identity) • Offence motivated by, or demonstrating, hostility to the victim based on his or her disability (or presumed disability)
<p>Culpability B</p> <ul style="list-style-type: none"> • Factor(s) in category A not present

Step 2 – Starting point and category range

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under Part 3 of Schedule 9 to the Sentencing Code can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	<p>Starting point 5 years' custody</p> <p>Category range 4 – 10 years' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range High level community order – 2 years' custody</p>
Category 2	<p>Starting point 3 years' custody</p> <p>Category range 2 – 6 years' custody</p>	<p>Starting point 26 weeks' custody</p> <p>Category range High level community order – 1 year's custody</p>
Category 3	<p>Starting point 26 weeks' custody</p> <p>Category range High level community order – 3 years' custody</p>	<p>Starting point Medium level community order</p> <p>Category range Low level community order – High level community order</p>

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. **In particular, relevant recent convictions are likely to result in an upward adjustment.** In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

When sentencing appropriate **category 2 or 3 offences**, the court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors

Statutory aggravating factors

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

Other aggravating factors

- Severe psychological or physical harm
- Ejaculation
- Pregnancy or STI as a consequence of offence
- Location of offence
- Timing of offence
- Victim compelled to leave their home, school, etc
- Failure to comply with current court orders
- Offence committed whilst on licence
- Exploiting contact arrangements with a child to commit an offence
- Presence of others, especially other children
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Failure of offender to respond to previous warnings
- Commission of offence whilst under the influence of alcohol or drugs
- Victim encouraged to recruit others
- Period over which offence committed

Mitigating factors

Statutory aggravating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct*
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- ~~Sexual activity was incited but no activity took place because the offender voluntarily desisted or intervened to prevent it~~

* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

In the context of this offence, previous good character/exemplary conduct should not normally be given any significant weight and will not normally justify a reduction in what would otherwise be the appropriate sentence.

[Further steps]

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“Severe psychological harm” – expanded explanation

“The assessment of psychological harm experienced by the victim is for the sentencer. Whilst it may be assisted by expert evidence, such evidence is not necessary for a finding of psychological harm, including severe psychological harm. A sentencer may assess that such harm has been suffered on the basis of evidence from the victim, including evidence contained in a Victim Personal Statement (VPS), or on his or her observation of the victim whilst giving evidence.”

“Abuse of trust” – expanded explanation

- *A close examination of the facts is necessary and a clear justification should be given if abuse of trust is to be found.*
- *In order for an abuse of trust to make an offence more serious the relationship between the offender and victim(s) must be one that would give rise to the offender having a significant level of responsibility towards the victim(s) on which the victim(s) would be entitled to rely.*
- *Abuse of trust may occur in many factual situations. Examples may include relationships such as teacher and pupil, parent and child, employer and employee, professional adviser and client, or carer (whether paid or unpaid) and dependant. It may also include ad hoc situations such as a late-night taxi driver and a lone passenger. These examples are not exhaustive and do not necessarily indicate that abuse of trust is present.*
- *Additionally an offence may be made more serious where an offender has abused their position to facilitate and/or conceal offending.*
- *Where an offender has been given an inappropriate level of responsibility, abuse of trust is unlikely to apply.*

Proposed amendments to historic sex offences guidance

Approach to sentencing historic sexual offences

When sentencing sexual offences under the Sexual Offences Act 1956, or other legislation pre-dating the 2003 Act, the court should apply the following principles:¹

¹ R v H and others [2011] EWCA Crim 2753

1. The offender must be sentenced in accordance with the sentencing regime applicable at the **date of sentence**. Under sections 57 and 63 of the Sentencing Code the court must have regard to the statutory purposes of sentencing and must base the sentencing exercise on its assessment of the seriousness of the offence.
2. The sentence is limited to the maximum sentence available at the **date of the commission of the offence**. If the maximum sentence has been reduced, the lower maximum will be applicable.
3. The court should ~~have regard~~ **sentence by reference** to any applicable sentencing guidelines for equivalent offences under the Sexual Offences Act 2003. Where the offence, if committed on the day on which the offender was convicted, would have constituted an offence contrary to section 5 or section 6 of the Sexual Offences Act 2003, sections 265 and 278 of the Sentencing Code (special custodial sentence for certain offenders of particular concern) apply.
4. The seriousness of the offence, assessed by the culpability of the offender and the harm caused or intended, is the main consideration for the court. The court should not seek to establish the likely sentence had the offender been convicted shortly after the date of the offence.
5. When assessing the culpability of the offender, the court should have regard to relevant culpability factors set out in any applicable guideline.
6. The court must assess carefully the harm done to the victim based on the facts available to it, having regard to relevant harm factors set out in any applicable guideline. Consideration of the circumstances which brought the offence to light will be of importance.
7. The court must consider the relevance of the passage of time carefully as it has the potential to aggravate or mitigate the seriousness of the offence. It will be an aggravating factor where the offender has continued to commit sexual offences against the victim or others or has continued to prevent the victim reporting the offence.
8. Where there is an absence of further offending over a long period of time, especially combined with evidence of good character, this may be treated by the court as a mitigating factor. However, as with offences dealt with under the Sexual Offences Act 2003, previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.
9. If the offender was very young and immature at the time of the offence, depending on the circumstances of the offence, this may ~~be regarded as personal mitigation~~ **significantly reduce the offender's culpability**.
10. If the offender made admissions at the time of the offence that were not investigated this is likely to be regarded as personal mitigation. Even greater mitigation is available to the offender who reported himself to the police and/or made early admissions.
11. A reduction for an early guilty plea should be made in the usual manner.

Sexual communication with a child

Sexual Offences Act 2003, s.15A

Effective from: XXXXX

Triable either way

Maximum: 2 years' custody

Offence range: XXXXXXXXXX

This is a **specified offence** for the purposes of sections 266 and 279 (extended sentence of imprisonment for certain violent, sexual or terrorism offences) of the Sentencing Code.

Step 1 – Determining the offence category

The court should determine which categories of harm and culpability the offence falls into by reference only to the tables below.

In cases of attempts where an offender tries to communicate with a child victim who does not exist, the court should identify the category of harm on the basis of the sexual activity the offender intended, and then apply a downward adjustment at step two to reflect the fact that no or lesser harm has actually resulted. In such cases a small reduction within the category range will usually be appropriate.

Harm
Category 1 <ul style="list-style-type: none"> Sexual images sent or received Significant psychological harm or distress caused to victim
Category 2 <ul style="list-style-type: none"> Factor(s) in category 1 not present

Culpability
Culpability A <ul style="list-style-type: none"> Abuse of trust Use of threats (including blackmail) Targeting of a particularly vulnerable child Commercial exploitation and/or motivation

<ul style="list-style-type: none"> • Soliciting images
<p>Culpability B</p> <ul style="list-style-type: none"> • Factor(s) in category A not present

Step 2 – Starting point and category range

Having determined the category of harm and culpability, the court should use the corresponding starting points to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. Having determined the starting point, step two allows further adjustment for aggravating or mitigating features, set out below.

A case of particular gravity, reflected by multiple features of culpability or harm in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Where there is a sufficient prospect of rehabilitation, a community order with a sex offender treatment programme requirement under Part 3 of Schedule 9 to the Sentencing Code can be a proper alternative to a short or moderate length custodial sentence.

	A	B
Category 1	<p>Starting point 18 months' custody</p> <p>Category range 9 – 24 months' custody</p>	<p>Starting point 1 year's custody</p> <p>Category range High level community order – 18 months' custody</p>
Category 2	<p>Starting point 1 year's custody</p> <p>Category range High level community order – 18 months' custody</p>	<p>Starting point 6 months' custody</p> <p>Category range Medium level community order – 1 year's custody</p>

The court should also consider the custody threshold as follows:

- has the custody threshold been passed?
- if so, is it unavoidable that a custodial sentence be imposed?
- if so, can that sentence be suspended?

Aggravating factors
Statutory aggravating factors

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors

- Failure to comply with current court orders
- Offence committed whilst on licence
- Financial or other reward offered to victim
- Offender lied about age or used a false identity
- Any steps taken to prevent the victim reporting an incident, obtaining assistance and/or from assisting or supporting the prosecution
- Attempts to dispose of or conceal evidence
- Failure of offender to respond to previous warnings
- Commission of offence whilst under the influence of alcohol or drugs
- Victim encouraged to recruit others
- Victim particularly vulnerable (where not taken into account at step one)
- Offence involved sustained or persistent communication

Mitigating factors

- No previous convictions or no relevant/recent convictions
- Remorse
- Previous good character and/or exemplary conduct*
- Age and/or lack of maturity *[see expanded explanation below]* ~~where it affects the responsibility of the offender~~
- Mental disorder or learning disability, particularly where linked to the commission of the offence
- **Physical disability or serious medical condition requiring urgent, intensive or long-term treatment [see expanded explanation below]**
- Isolated offence

* Previous good character/exemplary conduct is different from having no previous convictions. The more serious the offence, the less the weight which should normally be attributed to this factor. Where previous good character/exemplary conduct has been used to facilitate the offence, this mitigation should not normally be allowed and such conduct may constitute an aggravating factor.

Expanded Explanation: age and/or lack of maturity

Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm

Age and/or lack of maturity can affect:

- the offender's responsibility for the offence and
- the effect of the sentence on the offender.

Either or both of these considerations may justify a reduction in the sentence.

The emotional and developmental age of an offender is of at least equal importance to their chronological age (if not greater).

In particular young adults (typically aged 18-25) are still developing neurologically and consequently may be less able to:

- evaluate the consequences of their actions
- limit impulsivity
- limit risk taking

Young adults are likely to be susceptible to peer pressure and are more likely to take risks or behave impulsively when in company with their peers.

Immaturity can also result from atypical brain development. Environment plays a role in neurological development and factors such as adverse childhood experiences including deprivation and/or abuse may affect development.

An immature offender may find it particularly difficult to cope with custody and therefore may be more susceptible to self-harm in custody.

An immature offender may find it particularly difficult to cope with the requirements of a community order without appropriate support.

There is a greater capacity for change in immature offenders and they may be receptive to opportunities to address their offending behaviour and change their conduct.

Many young people who offend either stop committing crime, or begin a process of stopping, in their late teens and early twenties. Therefore a young adult's previous convictions may not be indicative of a tendency for further offending.

Where the offender is a care leaver the court should enquire as to any effect a sentence may have on the offender's ability to make use of support from the local authority. (Young adult care leavers are entitled to time limited support. Leaving care services may change at the age of 21 and cease at the age of 25, unless the young adult is in education at that point). See also the Sentencing Children and Young People Guideline (paragraphs 1.16 and 1.17).

Where an offender has turned 18 between the commission of the offence and conviction the court should take as its starting point the sentence likely to have been imposed on the date at which the offence was committed, but applying the purposes of sentencing adult offenders. See also the Sentencing Children and Young People Guideline (paragraphs 6.1 to 6.3).

When considering a custodial or community sentence for a young adult the National Probation Service should address these issues in a PSR.

Expanded explanation: Physical disability or serious medical condition requiring urgent, intensive or long-term treatment

Care should be taken to avoid double counting factors including those already taken into account in assessing culpability or harm or those inherent in the offence

- The court can take account of physical disability or a serious medical condition by way of mitigation as a reason for reducing the length of the sentence, either on the ground of the greater impact which imprisonment will have on the offender, or as a matter of generally expressed mercy in the individual circumstances of the case.
- However, such a condition, even when it is difficult to treat in prison, will not automatically entitle the offender to a lesser sentence than would otherwise be appropriate.
- There will always be a need to balance issues personal to an offender against the gravity of the offending (including the harm done to victims), and the public interest in imposing appropriate punishment for serious offending.
- A terminal prognosis is not in itself a reason to reduce the sentence even further. The court must impose a sentence that properly meets the aims of sentencing even if it will carry the clear prospect that the offender will die in custody. The prospect of death in the near future will be a matter considered by the prison authorities and the Secretary of State under the early release on compassionate grounds procedure (ERCG).
- But, an offender's knowledge that he will likely face the prospect of death in prison, subject only to the ERCG provisions, is a factor that can be considered by the sentencing judge when determining the sentence that it would be just to impose.

[Further steps]

Step 7 – Ancillary Orders

The court must consider whether to make any ancillary orders. The court must also consider what other requirements or provisions may automatically apply.

- [Link: Ancillary orders – Crown Court Compendium, Part II Sentencing, s7](#)

Additional ancillary orders – sexual offences [drop down]

Sexual harm prevention orders (SHPOs)

Sexual Offences Act 2003, s103A

In order to make a SHPO, the court must be satisfied that the offender presents a risk of sexual harm to the public (or particular members of the public) and that an order is necessary to protect against this risk.

The only prohibitions which can be imposed by a SHPO are those which are necessary for the purpose of protecting the public from sexual harm from the

offender. The order may include only negative prohibitions; there is no power to impose positive obligations.

The order may have effect for a fixed period (not less than five years) or until further order.

Slavery and trafficking prevention orders

Modern Slavery Act 2015, s14

A court may make a slavery and trafficking prevention order against an offender convicted of a slavery or human trafficking offence, if satisfied that:

- there is a risk the offender may commit a slavery or human trafficking offence; and
- it is necessary to make the order for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the offender committed such an offence.

Automatic orders on conviction

The following requirements or provisions are not part of the sentence imposed by the court but apply automatically by operation of law. The role of the court is to inform the offender of the applicable requirements and/or prohibition.

Requirement or provision

Statutory reference

Notification requirements

A relevant offender automatically becomes subject to notification requirements, obliging him to notify the police of specified information for a specified period. The court should inform the offender accordingly.

Sections 80 to 88 and Schedule 3 of the Sexual Offences Act 2003

The operation of the notification requirement is not a relevant consideration in determining the sentence for the offence.

Section 2 and Schedule 3 of the Safeguarding Vulnerable Groups Act 2006

Protection for children and vulnerable adults

A statutory scheme pursuant to which offenders will or may be barred from regulated activity relating to children or vulnerable adults, with or without the right to make representations, depending on the offence. The court should inform the offender accordingly.

Safeguarding Vulnerable Groups Act 2006 (Prescribed Criteria and Miscellaneous Provisions) Regulations 2009 (SI 2009/37) (as amended)

Sentencing Council

Sentencing Council meeting: 5 March 2021
Paper number: SC(21)MAR05 – Burglary Revision
Lead Council member: Rebecca Crane
Lead officials: Mandy Banks
0207 071 5785

1 ISSUE

1.1 This is the final meeting to discuss the revision of the existing burglary guideline, ahead of consultation in early June. At this meeting the Council will be asked to consider the amendments to the guidelines recommended by the working group and to consider the draft resource assessment.

2 RECOMMENDATION

2.1 That the Council:

- Considers the changes to the guidelines recommended by the working group
- Considers the draft resource assessment

3 CONSIDERATION

Amendments proposed by the burglary working group

3.1 At the December meeting it was agreed that a burglary working group should be set up to consider some matters of detail, to be brought back to this meeting for consideration. A working group consisting of Tim, Rebecca, Maura, Rosina and Naomi from the CPS was set up and met in January.

3.2 The first matter the group considered was the issue of '*weapon present on entry*', a high culpability factor in the existing [aggravated burglary](#) guideline, and the concerns raised in *Sage*¹. In summary, the concern raised in *Sage* is one of double counting around '*weapon present on entry*', as set out below.

¹ [AG's Ref Sage \[2019\] EWCA Crim 934](#), [2019] 2 Cr App R (S) 50, paras 38 and 45

3.3 If an offender commits an aggravated² burglary with intent to steal/inflict GBH/intent criminal damage [a 9(1)(a) burglary], they commit the offence at the point of the trespass when they enter the building. So for these offences, all aggravated burglaries would have the weapon present on entry. For the aggravated version of s.9(1)(b) the offence is not committed until the point of the theft/attempted theft or GBH/attempt GBH and therefore the offender may have the weapon on entry or have picked it up in the address. The point from *Sage* is that '*weapon present on entry*' is an essential element of an aggravated s.9(1)(a) offence and so should not automatically be put into high culpability.

3.4 The group considered some of the options put forward in the December meeting to deal with this issue, either to remove the factor all together, or try to differentiate between types of weapon, or try to focus on the use of the weapon, rather than whether it was being carried when the premises were entered or picked up whilst in the premises. The group also noted that there was a category 1 harm factor of '*violence used or threatened against the victim, particularly involving a weapon*'.

3.5 This issue is quite a difficult one to resolve. However after careful deliberation the group decided to remove the factor from high culpability and move it to step 2, to become an aggravating factor of '*weapon carried when entering the premises*'. By doing so, and retaining the harm factor referencing a weapon, it would avoid the problem of double counting referred to in *Sage*, but at the same time would:

- Enable the court to distinguish between the burglar who goes armed and the burglar who does not [with a warning, to avoid double counting]
- Enable the court to deal more severely with a burglar who uses/threatens a weapon which he brought into the premises
- Catch the armed burglar who finds the premises empty and therefore has no opportunity to use/threaten violence.

These proposed changes have been made and can be seen on page 4 of **Annex A**.

Question 1: Does the Council agree with the working groups' recommendation that 'weapon carried when entering the premises' becomes a step 2 aggravating factor?

² A person is guilty of aggravated burglary if he commits any burglary and at the time has with him any firearm or imitation firearm, any weapon of offence, or any explosive.

3.6 The next matter the working group considered was the issue discussed at the last Council meeting of sentence ranges and whether there should be some wording added that referred sentencers to the assault guidelines in burglary cases involving violence.

3.7 The working group noted the information provided by the CPS at the December meeting around charging decisions, that there would not be many cases charged as burglary which involved actual physical injury that didn't have additional assault charges (at the relevant level for the assault inflicted). Or, if there was actual violence or threats of violence in order to effect a theft then cases would probably be charged as a robbery rather than burglary.

3.8 Therefore, the group decided that on balance, that it was not necessary to have any additional wording on this point. In making this decision the group also considered concerns around fairness to offenders, that they should only be sentenced for matters that they have been charged with, (e.g burglary) and not for those that they haven't (e.g assault). The group was also concerned that any possible wording would become quite complicated if it also tried to advise sentencers about totality where the violence is separately charged.

Question 2: Does the Council agree with the working groups' recommendation that the guidelines should not have any wording that refers to the assault guidelines?

3.9 The third issue the working group considered was the wording that the Council discussed at the last meeting should be added to the domestic burglary guideline, that cases of particular gravity could result in sentences above the top of the range. The group discussed this and agreed the wording should say:

'For cases of particular gravity, sentences above the top of the range may be appropriate.'

This can be seen above the sentence table in the domestic burglary guideline on page 3 of **Annex B**.

Question 3: Does the Council agree with the working groups' proposed wording for the domestic burglary guideline?

3.10 The rest of the changes agreed at the last Council meeting in December have been made to the guidelines and can be seen within **Annexes A-C**. The

consultation document and finalised guidelines will be circulated via email to Council members for comment in due course.

Draft resource assessment

3.11 The full draft resource assessment can be found at **Annex D**. Analysis was undertaken to assess whether changes to the existing guidelines would have an impact on sentencing for burglary offences. In summary, there is not enough evidence to suggest that the guidelines will have a notable impact on prison or probation resources at this stage.

3.12 There have been several changes to the placement of factors in the draft revised guidelines, which the analysis suggests may lead to changes in the categorisation of culpability in some cases, with potential subsequent impacts on sentences. This comprises the factor related to group offending within the non-domestic and domestic burglary guidelines, and the factor related to a weapon being present on entry to the premises within the aggravated burglary guideline. Additionally, some new wording related to alcohol dependency/misuse may lead to lower sentences.

3.13 Further research during the consultation stage will explore these issues in more detail, and there should therefore be further evidence available to estimate the impact of the guidelines for the final resource assessment.

3.14 Overall, aside from the specific issues mentioned above which will be explored during the consultation, for all three offences (non-domestic, domestic and aggravated burglary), analysis suggests that sentences should remain similar under the revised guidelines, and at this stage, there is no conclusive evidence to suggest that the guidelines will have a notable impact on prison or probation resources.

Potential changes as a result of the resource assessment analysis

3.15 At this stage of reviewing the guideline ahead of consultation, and considering the findings of the draft resource assessment, the Council could choose to look again at some of the decisions around the factors, in particular the one related to group offending. In discussing this factor previously the Council thought this factor could be problematic, citing concerns as to how many offenders constitute a group for example, and it was moved from high culpability to become an aggravating factor. However, there is the text within the [expanded explanations](#) on the 'offence committed as part of a group' factor, which states that membership of a group is two or more persons, so this and other additional detail on this factor may assist

sentencers. With burglary offences there does seem something inherently more serious from a victim's perspective in a group of offenders breaking in, as opposed to one person.

3.16 Given that the resource assessment indicates that for domestic and non-domestic burglary the removal of this factor from culpability may lead to a decrease in sentencing, the Council could decide to put the factor back into culpability from step two. In addition, the Council could decide to put the factor back into culpability for aggravated burglary also. The number of high culpability factors has reduced from five in the existing guideline to two or three in the revised guidelines, potentially making it more difficult for an offender to be placed in this category. Adding the '*offence was committed as part of a group*' factor will help redress this balance and make sure that the most serious cases can be sentenced accordingly. It is suggested that the mitigating factor of '*offender was in a lesser or subordinate role if acting with others/performed limited role under direction*' remains at step two, as in the existing guideline (rather than moving to become a lesser culpability factor).

3.17 It is not suggested however that the '*weapon present on entry*' factor is placed back into high culpability, for the reasons set out earlier in the paper. This was a difficult matter to resolve and the solution of placing the reworded factor at step two, with the existing reference to a weapon in harm is recommended as the most appropriate solution. And, the resource assessment indicates that the movement of this factor from step one to step two will not have an effect on the sentence in most cases.

Question 4: Does the Council have any observations on the draft resource assessment?

Question 5: Does the Council wish to place 'offence committed as part of a group' back into high culpability for all three offences?

4. EQUALITIES

- 4.1 At the December meeting the Council considered the additional demographic tables on ethnicity data broken down by sentence types, ACSLs and sentence length. **(Annex E)**. This suggested that for burglary offences overall, the evidence for disparities in sentencing is not as clear as it appeared to be for firearms or drug offences. Given this finding, the Council discussed whether the guideline should make any reference to it or not. It was then decided that the matter should be remitted to the Equalities and Diversity working group for further discussion, as any decision could have implications for other guidelines.

4.2 The Equalities and Diversity working group has met and decided that there should not be any reference to the research on the face of the guideline. The consultation document will explain what work has been carried out in this area and what it has shown and will ask if consultees have any comments.

Question 6: Is the Council content to sign off the guideline ahead of consultation?

Aggravated burglary

Theft Act 1968 (section 10)

Triable only on indictment

Maximum: Life imprisonment

Offence range: 1 – 13 years' custody

This is a [Schedule 19](#) offence for the purposes of sections [274](#) and section [285](#) (required life sentence for offence carrying life sentence) of the Sentencing Code.

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code.

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors in the table below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability the court should balance these characteristics to reach a fair assessment of the offender's culpability**

Culpability demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Targeting of vulnerable victim• A significant degree of planning or organisation
B- Medium culpability	<ul style="list-style-type: none">• Some degree of planning or organisation• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Involved through coercion, intimidation or exploitation• Mental disorder or learning disability, where linked to the commission of the offence

Harm

The level of harm is assessed by weighing up all the factors of the case

Category 1	<ul style="list-style-type: none">• Substantial physical or psychological injury or other substantial impact on the victim• Victim at home or on the premises (or returns) while offender present• Violence used or threatened against the victim, particularly involving a weapon• Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value)• Soiling of property and/or extensive damage or disturbance to property• Context of public disorder
Category 2	<ul style="list-style-type: none">• Some psychological injury or some other impact on the victim• Theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value)

	<ul style="list-style-type: none"> • Ransacking or vandalism to the property
Category 3	<ul style="list-style-type: none"> • No violence used or threatened and a weapon is not produced • Limited psychological injury or other limited impact on the victim

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous conditions

Harm	Culpability		
	A	B	C
Category 1	Starting Point 10 years' custody Category Range 9 -13 years' custody	Starting Point 8 years' custody Category Range 6 -11 years' custody	Starting Point 6 years' custody Category Range 4 – 9 years' custody
Category 2	Starting Point 8 years' custody Category Range 6 -11 years' custody	Starting Point 6 years' custody Category Range 4– 9 years' custody	Starting Point 4 years' custody Category Range 2-6 years' custody
Category 3	Starting Point 6 years' custody Category Range 4-9 years' custody	Starting Point 4 years' custody Category Range 2-6 years' custody	Starting Point 2 years' custody Category Range 1-4 years' custody

<https://www.sentencingcouncil.org.uk/overarching-guides/crown-court/item/imposition-of-community-and-custodial-sentences/>.

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Care should be taken to avoid double counting factors already taken into account at step one

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Weapon carried when entering premises
- Use of face covering or disguise
- Offence committed in a dwelling
- Child at home (or returns home) when offence committed
- Offence committed at night
- Abuse of power and/or position of trust
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim (where not captured at category one)
- Victim compelled to leave their home
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- Nothing stolen or only property of low value to the victim (whether economic, commercial or personal)
- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability, where not linked to the commission of the

offence

- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the *Reduction in Sentence for a Guilty Plea* guideline.

STEP FIVE**Dangerousness**

The court should consider whether having regard to the criteria contained in [section 308 of the Sentencing Code](#) it would be appropriate to impose a life sentence (sections [274](#) and [285](#)) or an extended sentence (sections [266](#) and [279](#)). When sentencing offenders to a life sentence under these provisions the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT**Reasons**

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

Domestic burglary

Theft Act 1968 (section 9)

Triable either way (except as noted below)

Maximum: 14 years' custody

Offence range: Low level community order- six years' custody

This is a **specified offence** for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code if it was committed with intent to:

- a. inflict grievous bodily harm on a person, or
- b. do unlawful damage to a building or anything in it.

This offence is **indictable only** where:

- a. it is a burglary comprising the commission of, or an intention to commit, an offence which is triable only on indictment; or
- b. any person in the dwelling was subjected to violence or the threat of violence; or
- c. if the defendant were convicted, it would be a third qualifying conviction for domestic burglary.

Where sentencing an offender for a qualifying **third domestic burglary**, the Court must apply [section 314 of the Sentencing Code](#) and impose a custodial term of at least three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors in the table below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability the court should balance these characteristics to reach a fair assessment of the offender's culpability**

Culpability demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• Targeting of vulnerable victim• A significant degree of planning or organisation• Knife or other weapon carried (where not charged separately)
B- Medium culpability	<ul style="list-style-type: none">• Some degree of planning or organisation• Equipped for burglary (where not in high culpability)• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Offence committed on impulse, with limited intrusion into property• Involved through coercion, intimidation or exploitation• Mental disorder or learning disability, where linked to the commission of the offence

Harm	
The level of harm is assessed by weighing up all the factors of the case	
Category 1	<ul style="list-style-type: none">• Much greater emotional impact on the victim than would normally be expected• Occupier at home (or returns home) while offender present• Violence used or threatened against the victim• Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value)• Soiling of property and/or extensive damage or disturbance to property• Context of public disorder
Category 2	<ul style="list-style-type: none">• Greater emotional impact on the victim than would normally be expected

	<ul style="list-style-type: none"> • Theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value) • Ransacking or vandalism to the property
Category 3	<ul style="list-style-type: none"> • Nothing stolen or only property of low value to the victim (whether economic, commercial or personal) • Limited damage or disturbance to property

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous conditions

Where sentencing an offender for a qualifying **third domestic burglary**, the Court must apply [section 314 of the Sentencing Code](#) and impose a custodial term of at least three years, unless it is satisfied that there are particular circumstances which relate to any of the offences or to the offender which would make it unjust to do so.

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under [part 10](#), or an alcohol treatment requirement under [part 11](#), of Schedule 9 of the Sentencing Code may be a proper alternative to a short or moderate custodial sentence.

For cases of particular gravity, sentences above the top of the range may be appropriate.

Harm	Culpability		
	A	B	C
Category 1	Starting Point 3 years' custody Category Range 2 -6 years' custody	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 year 6 months custody Category Range 6 months – 3 years' custody
Category 2	Starting Point 2 years' custody Category Range 1 -4 years' custody	Starting Point 1 year 6 months custody Category Range 6 months – 3 years' custody	Starting Point 1 years' custody Category Range High level community order-2 years' custody

Category 3	Starting Point 1 year 6 months custody Category Range 6 months - 3 years' custody	Starting Point 1 years' custody Category Range High level community order-2 years' custody	Starting Point High level community order Category Range Low level community order-6 months custody
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Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Child at home (or returns home) when offence committed
- Offence committed at night
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim
- Victim compelled to leave their home
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction

- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability, where not linked to the commission of the offence
- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

STEP THREE

Consider any factors which indicate a reduction for assistance to the prosecution

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the *Reduction in Sentence for a Guilty Plea* guideline. Where a minimum sentence is imposed under [section 314 of the Sentencing Code](#), the sentence must not be less than 80 percent of the appropriate custodial period after any reduction for a guilty plea.

STEP FIVE

Dangerousness

A burglary offence under section 9 Theft Act 1968 is a specified offence if it was committed with the intent to (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it. The court should consider whether having regard to the criteria contained in [section 308 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

STEP SIX

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

STEP SEVEN

Compensation and ancillary orders

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT

Reasons

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for time spent on bail (tagged curfew)

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

Non-domestic burglary

Theft Act 1968 (section 9)

Triable either way (except as noted below)

Maximum: 10 years' custody

Offence range: Discharge – five years' custody

This is a specified offence for the purposes of sections [266](#) and [279](#) (extended sentence for certain violent, sexual or terrorism offences) of the Sentencing Code if it was committed with intent to:

- a. inflict grievous bodily harm on a person, or
- b. do unlawful damage to a building or anything in it.

This offence is indictable only where it is a burglary comprising the commission of, or an intention to commit, an offence which is triable only on indictment.

STEP ONE

Determining the offence category

The court should determine the offence category with reference only to the factors in the table below. In order to determine the category the court should assess **culpability** and **harm**.

The level of **culpability** is determined by weighing up all the factors of the case. **Where there are characteristics present which fall under different levels of culpability the court should balance these characteristics to reach a fair assessment of the offender's culpability**

Culpability demonstrated by one or more of the following:	
A- High Culpability	<ul style="list-style-type: none">• A significant degree of planning or organisation• Knife or other weapon carried (where not charged separately)
B- Medium culpability	<ul style="list-style-type: none">• Some degree of planning or organisation• Equipped for burglary (where not in high culpability)• Other cases that fall between categories A and C because:<ul style="list-style-type: none">○ Factors are present in A and C which balance each other out and/or○ The offender's culpability falls between the factors described in A and C
C- Lower culpability	<ul style="list-style-type: none">• Offence committed on impulse, with limited intrusion into property• Involved through coercion, intimidation or exploitation• Mental disorder or learning disability, where linked to the commission of the offence

Harm

The level of harm is assessed by weighing up all the factors of the case

Category 1	<ul style="list-style-type: none">• Much greater emotional impact on the victim than would normally be expected• Victim on the premises (or returns) while offender present• Violence used or threatened against the victim• Theft of/damage to property causing a substantial degree of loss to the victim (whether economic, commercial or personal value)• Soiling of property and/or extensive damage or disturbance to property• Context of public disorder
Category 2	<ul style="list-style-type: none">• Greater emotional impact on the victim than would normally be expected

	<ul style="list-style-type: none"> • Theft of/damage to property causing some degree of loss to the victim (whether economic, commercial or personal value) • Ransacking or vandalism of the property
Category 3	<ul style="list-style-type: none"> • Nothing stolen or only property of low value to the victim (whether economic, commercial or personal) • Limited damage or disturbance to property

STEP TWO

Starting point and category range

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous conditions

Where the offender is dependent on or has a propensity to misuse drugs or alcohol and there is sufficient prospect of success, a community order with a drug rehabilitation requirement under [part 10](#), or an alcohol treatment requirement under [part 11](#), of Schedule 9 of the Sentencing Code may be a proper alternative to a short or moderate custodial sentence.

Harm	Culpability		
	A	B	C
Category 1	Starting Point 2 years' custody Category Range 1 -5 years' custody	Starting Point 1 years' custody Category Range High level community order - 2 years' custody	Starting Point 6 months custody Category Range Medium level community order – 1 years' custody
Category 2	Starting Point 1 years' custody Category Range High level community order - 2 years' custody	Starting Point 6 months custody Category Range Medium level community order – 1 years' custody	Starting Point Medium level community order Category Range Low -high level community order
Category 3	Starting Point 6 months custody Category Range Medium level community order - 1 years' custody	Starting Point Medium level community order Category Range Low – high level community	Starting Point Band B fine Category Range Discharge – Low level community order

Below is a **non-exhaustive** list of additional elements providing the context of the offence and factors relating to the offender. Identify whether a combination of these or other relevant factors should result in any upward or downward adjustment from the sentence arrived at so far.

Factors increasing seriousness

Statutory aggravating factors:

- Previous convictions, having regard to a) the **nature** of the offence to which the conviction relates and its **relevance** to the current offence; and b) the **time** that has elapsed since the conviction
- Offence committed whilst on bail
- Offence motivated by, or demonstrating hostility based on any of the following characteristics or presumed characteristics of the victim: religion, race, disability, sexual orientation or transgender identity

Other aggravating factors:

- Abuse of a position of trust
- Restraint, detention or additional gratuitous degradation of the victim
- Vulnerable victim
- Offence was committed as part of a group
- Offences taken into consideration
- Any steps taken to prevent the victim reporting the incident or obtaining assistance and/or from assisting or supporting the prosecution
- Offence committed on licence or post sentence supervision or while subject to court order(s)
- Commission of offence whilst under the influence of alcohol or drugs
- Established evidence of community impact

Factors reducing seriousness or reflecting personal mitigation

- Offender has made voluntary reparation to the victim
- The offender was in a lesser or subordinate role if acting with others/performed limited role under direction
- No previous convictions **or** no relevant/recent convictions
- Remorse
- Good character and/or exemplary conduct
- Determination, and/or demonstration of steps taken to address addiction or offending behaviour
- Physical disability or serious medical conditions requiring urgent, intensive or long-term treatment
- Mental disorder or learning disability, where not linked to the commission of the offence
- Age and/or lack of maturity
- Delay since apprehension
- Sole or primary carer for dependent relatives

STEP THREE**Consider any factors which indicate a reduction for assistance to the prosecution**

The court should take into account [section 74 of the Sentencing Code](#) (reduction in sentence for assistance to prosecution) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR**Reduction for guilty pleas**

The court should take account of any potential reduction for a guilty plea in accordance with [section 73 of the Sentencing Code](#) and the *Reduction in Sentence for a Guilty Plea* guideline.

STEP FIVE**Dangerousness**

A burglary offence under section 9 Theft Act 1968 is a specified offence if it was committed with the intent to (a) inflict grievous bodily harm on a person, or (b) do unlawful damage to a building or anything in it. The court should consider whether having regard to the criteria contained [section 308 of the Sentencing Code](#) it would be appropriate to impose an extended sentence (sections [266](#) and [279](#)).

STEP SIX**Totality principle**

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the overall offending behaviour in accordance with the Totality guideline.

STEP SEVEN**Compensation and ancillary orders**

In all cases the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT**Reasons**

[Section 52 of the Sentencing Code](#) imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE**Consideration for time spent on bail (tagged curfew)**

The court must consider whether to give credit for time spent on bail in accordance with section 240A of the Criminal Justice Act 2003 and [section 325 of the Sentencing Code](#).

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Consultation Stage Resource Assessment

Burglary Offences

Introduction

This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.¹

Rationale and objectives for new guideline

In January 2012, the Sentencing Council's definitive *Burglary Offences* guideline came into force. An assessment of the guideline published in January 2016 found that sentencing severity had increased beyond what was expected for non-domestic burglary offences.² 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. A further assessment published in July 2017, found that the guideline may have contributed to increases in sentencing severity for all three burglary offences, although the increase in domestic burglary was within the expected range.³

In light of the assessment findings, the Council decided to update the guidelines. The Council also decided to bring the guidelines into line with the structure now used for most guidelines. Previously, there were two levels of culpability and two levels of harm, leading to a sentencing table with three starting points. In the draft guideline, there are now medium levels of culpability and medium levels of harm leading to nine possible starting points in the sentencing table.

The Council's aim in developing the guidelines has been to ensure that sentencing for these offences is proportionate to the offence committed and to promote a consistent approach to sentencing. It was accepted by the Council that sentencing levels had increased since the guideline came into force, and the draft revised guidelines have been developed with recent sentencing levels in mind.

¹ Coroners and Justice Act 2009 section 127: www.legislation.gov.uk/ukpga/2009/25/section/127

² <https://www.sentencingcouncil.org.uk/wp-content/uploads/Burglary-assessment.pdf>

³ <https://www.sentencingcouncil.org.uk/wp-content/uploads/Burglary-further-assessment.pdf>

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guidelines on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment.

This resource assessment covers the following offences:

- Non-domestic burglary, Theft Act 1968 (section 9);
- Domestic burglary, Theft Act 1968 (section 9);
- Aggravated burglary, Theft Act 1968 (section 10).

The *Burglary Offences* guidelines apply to sentencing adults only; they will not directly apply to the sentencing of children and young people.

Current sentencing practice

To ensure that the objectives of the guidelines are realised, and to understand better the potential resource impacts of the guidelines, the Council has carried out analytical and research work in support of it.

The intention is that the new guidelines will encourage consistency of sentencing and in the vast majority of cases will not change overall sentencing practice as it is currently. In order to develop a guideline that maintains current practice, knowledge of recent sentencing was required.

Sources of evidence have included the analysis of transcripts of judges' sentencing remarks, sentencing data from the Court Proceedings Database,⁴ findings from the two burglary guideline assessments, Council members' experience of sentencing burglary cases and references to case law and news articles. Knowledge of the sentencing starting points, ranges and factors used in previous cases has helped the Council to create guidelines that should maintain current sentencing practice.

During the consultation stage, some small-scale research will be conducted with a group of sentencers, to check that the draft guidelines would work as anticipated. This research should also provide some further understanding of the likely impact of the guidelines on sentencing practice, and the subsequent effect on the prison population.

Detailed sentencing statistics for burglary offences covered by the draft guidelines have been published on the Sentencing Council website at the following link: <http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year>.

⁴ The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Data on average custodial sentence lengths presented in this resource assessment are those after any reduction for guilty plea. Further information about this sentencing data can be found in the accompanying statistical bulletin and tables published here: <http://www.sentencingcouncil.org.uk/publications/?s&cat=statistical-bulletin>

Non-domestic burglary

Around 5,200 adults were sentenced for a non-domestic burglary offence in 2019. This number has been decreasing since 2011 when 8,500 adults were sentenced for this offence. Around 64 per cent of offenders were sentenced in magistrates' courts, the remaining 36 were sentenced in the Crown Court.

Just over half (55 per cent) of those sentenced for non-domestic burglary in 2019 were sentenced to immediate custody. A further 22 per cent and 17 per cent of adults received a community sentence and a suspended sentence respectively. The rest received a fine (2 per cent), a discharge (2 per cent) or were otherwise dealt with⁵ (2 per cent).

The statutory maximum sentence for this offence is 10 years' custody. In 2019, the average custodial sentence length (ACSL)⁶ was 11.3 months (after any reduction for a guilty plea).

Domestic burglary

Around 4,700 adults were sentenced for a domestic burglary offence in 2019. This has been sharply decreasing since a high of 11,100 in 2011. Around 87 per cent of offenders were sentenced in the Crown Court, the remaining 13 per cent were sentenced in magistrates' courts.

Around 77 per cent of those adults sentenced for domestic burglary in 2019 received an immediate custodial sentence. This was followed by 12 per cent receiving a suspended sentence and 9 per cent receiving a community sentence. The rest received a fine (less than 0.5 per cent), a discharge (1 per cent) or were otherwise dealt with⁷ (2 per cent).

The statutory maximum sentence for this offence is 14 years' custody. The ACSL in 2019 was 28.6 months (after any reduction for a guilty plea).

Aggravated burglary

Around 190 adults were sentenced for an aggravated burglary in 2019. This is a reduction from 2011 when 320 adults were sentenced for the same offence. This offence is indictable only and therefore all offenders were sentenced in the Crown Court.

⁵ The category 'Otherwise dealt with' in this case includes: one day in police cells; hospital order; forfeiture of property; restraining order; a deferred sentence; compensation; and other miscellaneous disposals. Due to a data issue currently under investigation, there are a number of non-domestic burglary cases which are incorrectly categorised in the CPD as 'Otherwise dealt with'. The figures shown for 'Otherwise dealt with' should therefore be treated with caution.

⁶ The average referred to in the text is the mean, which is calculated by adding all of the individual values and dividing the total by the number of values.

⁷ The category 'Otherwise dealt with' in this case includes: one day in police cells; hospital order; compensation; restraining order; and other miscellaneous disposals. Due to a data issue currently under investigation, there are a number of domestic burglary cases which are incorrectly categorised in the CPD as 'Otherwise dealt with'. The figures shown for 'Otherwise dealt with' should therefore be treated with caution.

Nearly all (91 per cent) of the offenders received an immediate custodial sentence with the remaining 9 per cent 'otherwise dealt with'⁸.

The statutory maximum sentence for this offence is life imprisonment. The ACSL in 2019 was 7.8 years (after any reduction for a guilty plea). Under 0.5 per cent of those sentenced in 2019 received an indeterminate sentence⁹.

Key assumptions

To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guideline and draws upon analytical and research work undertaken during guideline development. Additionally, in this case, findings from the two guideline evaluations have helped to inform guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guideline are therefore subject to a substantial degree of uncertainty.

The resource impact of the new guideline is measured in terms of the change in sentencing practice that is expected to occur as a result of it. Any future changes in sentencing practice which are unrelated to the publication of the new guideline are therefore not included in the estimates.

In developing sentence levels for the different guidelines, existing guidance and data on current sentence levels has been considered.

While data exists on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guidelines, due to a lack of data available regarding the seriousness of current cases. Additionally, the draft guidelines have a medium level of culpability and a medium level of harm, which are not part of the current guideline, meaning that it is difficult to foresee how offences will map from the existing to draft guidelines. As a consequence, it is difficult to ascertain how sentence levels may change under the new guidelines.

It therefore remains difficult to estimate with any precision the impact the guidelines may have on prison and probation resources. To support the development of the guidelines and mitigate the risk of the guidelines having an unintended impact, interviews will be undertaken with sentencers during the consultation period, which will provide more information on which to base the final resource assessment accompanying the definitive guidelines.

⁸ The category 'Otherwise dealt with' in this case includes: otherwise dealt with on conviction (or finding of guilt). Due to a data issue currently under investigation, there are a number of aggravated burglary cases incorrectly categorised in the CPD as 'Otherwise dealt with'. The figures shown for 'Otherwise dealt with' should therefore be treated with caution.

⁹ Adults sentenced to indeterminate sentences are not included in ACSL and sentence length figures.

Resource impacts

This section should be read in conjunction with the draft guidelines available at: <http://www.sentencingcouncil.org.uk/consultations/>.

Summary

There have been several changes to the placement of factors in the draft revised guidelines, which the analysis suggests may lead to changes in the categorisation of culpability in some cases, with potential subsequent impacts on sentences. This comprises the factor related to group offending within the non-domestic and domestic burglary guidelines, and the factor related to a weapon being present on entry to the premises within the aggravated burglary guideline. Additionally, some new wording related to alcohol dependency/misuse may lead to lower sentences.

Further research during the consultation stage will explore these issues in more detail, and there should therefore be further evidence available to estimate the impact of the guidelines for the final resource assessment.

Overall, aside from the specific issues mentioned above which will be explored during the consultation, for all three offences (non-domestic, domestic and aggravated burglary), analysis suggests that sentences should remain similar under the revised guidelines, and at this stage, there is no conclusive evidence to suggest that the guidelines will have a notable impact on prison or probation resources.

Non-domestic burglary

The assessment of the impact of the existing guideline for this offence found that average sentencing severity increased beyond the expected levels when the guideline came into force, suggesting that the guideline had had an unintended impact of increasing sentences. The Council considered the findings of this assessment, as well as findings from the further assessment which explored the possible reasons for the increases.

The existing guideline has two levels of culpability and two levels of harm, leading to three levels of seriousness in the sentence starting point and range table. This goes from a starting point of a medium level community order for the least serious offence up to a starting point of two years' custody for the most serious.

The draft guideline has three levels of culpability and three levels of harm, leading to nine possible starting points and ranges. This goes from a starting point of a band B fine for the least serious offences up to two years' custody as a starting point for the most serious offences.

The Council decided to look carefully at the top categories of culpability and harm within the guideline, to ensure that only the most serious offences lead to the highest sentences. Accordingly, some changes to the factors in these categories were made. The intention was not necessarily to maintain or to decrease sentences, but instead to ensure that proportionate sentences were imposed relative to the seriousness of the offence. The Council also decided that sentences at the lower end of offending could better address the causes of the offending behaviour. Therefore, it was decided to include a new reference to alcohol treatment requirements alongside the

existing reference to drug treatment requirements in the guideline, as alternatives to short or moderate custodial sentences in appropriate cases. It was acknowledged that this may lead to decreases in sentence severity in some cases at the lower end of offending, but is intended to help reduce future offending.

A number of changes have been made to the wording and placement of the factors in the guideline. For example, the culpability factor of 'member of a group or gang' has been re-worded to 'offence was committed as part of a group' and has been moved from step one of the guideline to step two. Also 'premises or victim deliberately targeted'¹⁰ has been removed from the guideline factors. Several of the harm factors and aggravating and mitigating factors have also been re-worded, and the factor 'offence committed at night' has been removed from the aggravating factors.

An analysis of a small sample¹¹ of transcripts of Crown Court judges' sentencing remarks was undertaken to assess whether there might be any potential resource impact related to these changes. It should be noted that transcripts of judges' sentencing remarks are only available for offenders sentenced at the Crown Court. As around two thirds of offenders (64 per cent in 2019) are sentenced in magistrates' courts for this offence, this means that this transcript analysis covers only the most serious end of offending. Therefore, findings will not be representative of all offenders sentenced for this offence. Additionally, the sample analysed was fairly small, and is unlikely to have accounted for the full range of offending at the Crown Court, and so findings for this offence are tentative.

Based on this analysis of a small sample of cases, most of the changes in the draft guideline are not expected to result in an impact on prison or probation resources. Where a change in sentences was found, it was minimal in size, and where an increase in the sentence under the new guideline was observed for some cases, this was usually balanced out by a decrease of around the same magnitude in other cases.

One exception to this was for several cases where the judge had placed the offence within the higher culpability category under the existing guideline where one of the relevant factors was that the offender committed the offence as part of a group. Under the revised guideline, the analysis found that other higher culpability factors (such as 'significant planning was involved') would be taken into account in most cases to keep the offender within this higher culpability category. This suggests that this would not have an impact on sentences. However, different findings were found for domestic burglary (see later),¹² The impact of this change will therefore be explored in more detail as part of research planned for during the consultation.

As explained above, the small sample of transcripts analysed was mainly comprised of more serious offences, in particular those which judges had put into the highest harm categories. This means that it has not been possible at this stage to determine

¹⁰ The factor 'vulnerable victim' appears instead at step two under aggravating factors.

¹¹ A total of 15 transcripts were analysed for this offence, of which 9 transcripts covering 19 offenders contained enough detail to provide evidence of the possible impact of the revised guideline on sentences.

¹² Where similar changes were made to these factors in the domestic burglary guidelines, the analysis suggested that in some cases, the movement of this factor from step one to step two may lead to a lower culpability categorisation. However, while sentencers may take the 'offence committed as part of a group' aggravating factor into account at step two and increase the sentence, this may not fully offset the decrease in culpability.

the possible impact of the lower starting point for the lowest level of offending¹³. It is possible that sentences may decrease for the least serious offences, but without further evidence, it is not possible to determine this at this stage.

A few of the transcripts of sentencing remarks mentioned the offender having an issue with alcohol addiction. The text above the sentencing table in the existing guideline mentions that sentencers may choose a community order with a drug rehabilitation requirement (DRR) as an alternative to a custodial sentence where the offender is dependent on or has a propensity to misuse of drugs and there is sufficient prospect of success. The draft guideline has the same text but also mentions alcohol dependency/misuse and alcohol treatment requirements, which may lead to more community orders being given to those with alcohol dependency or misuse issues, leading to a possible decrease in sentencing severity in some cases. However, it has not been possible to estimate the impact of this change from the sample of sentencing remarks, as it was not possible to identify when this factor may be a sufficient reason to impose a community order instead of a custodial sentence, and it may be that community orders with alcohol treatment requirements are already being imposed whenever relevant. Additionally, as the transcripts covered the more serious end of offending for this offence, it may be that the relevant types of cases where this change could occur were just not present in the evidence used to inform this resource assessment.

Due to the small sample of transcripts and lack of cases falling into the lower harm categories, these issues will be explored further during the consultation stage. This will include research with sentencers, which will include offences at the lower end of seriousness as this is where most change to sentence starting points in the draft guideline, have been made.

Domestic burglary

The assessment of the impact of the existing guideline for this offence and the further assessment conducted to explore the evidence in more detail both concluded that sentencing severity had increased following the introduction of the guideline, although severity stayed within the bounds of the expected levels. The Council considered these findings and concluded that the higher sentences imposed under the existing guideline were proportionate to the seriousness of the offences. However, to bring the guideline into line with the Council's now standard structure and to revise some of the factors, the Council decided that a revision was still necessary.

The existing guideline has two levels of culpability and two levels of harm, leading to three levels of seriousness in the sentence starting point and range table. This goes from a starting point of a high level community order for the least serious offence up to a starting point of three years' custody for the most serious.

The draft guideline has three levels of culpability and three levels of harm, leading to nine possible starting points and ranges. This goes from the same starting point as

¹³ The lowest starting point in the current guideline is a medium level community order whereas the lowest starting point is a Band B fine in the draft guideline.

the current guideline (high level community order for the least serious offences) up to again, the same starting point for the most serious offences (three years' custody).

A number of changes have been made to the wording and placement of the factors in the guideline. For example, similarly to the non-domestic burglary guideline, the culpability factor of 'member of a group or gang' has been re-worded to 'offence was committed as part of a group' and moved from step one of the guideline to step two. Several of the harm factors and aggravating and mitigating factors have also been re-worded. Text has been added above the sentencing table telling sentencers that sentences above the top of the range may be appropriate for cases of particular gravity.

An analysis of a small sample¹⁴ of transcripts of Crown Court judges' sentencing remarks was undertaken to assess whether there might be any potential resource impact related to these changes. As the majority of offenders are sentenced at the Crown Court for this offence (87 per cent in 2019), it is expected that these transcripts are representative of most types of offending for this offence, except for those with the very lowest levels of seriousness. However, as this is a high-volume offence and the sample was small, it is unlikely that all types of offending have been captured within the analysis. Further research will be conducted during the consultation stage to better understand the possible impact of the guideline on sentencing.

Based on this analysis of a small sample of cases, most of the changes in the draft guideline are not expected to result in an impact on prison or probation resources. However, there were some exceptions.

The analysis found that in some cases, the movement of the factor related to group offending from step one to step two of the guideline could lead to a lowering of the culpability category under the draft guideline. Sentencers may take into account the relevant aggravating factor, but this may not fully offset any decrease to sentences caused by the lower culpability categorisation. There is not enough evidence at this stage to suggest that a decrease in sentences may occur as a result of this, but this will be explored in more detail as part of research planned for during the consultation.

A few of the transcripts of sentencing remarks mentioned the offender having an issue with alcohol addiction. The text above the sentencing table in the guideline has been revised in the same way as within the non-domestic burglary guideline, to capture dependency on or propensity to misuse alcohol. Similarly, this may lead to a greater use of community orders for this offence, but it has not been possible to estimate the impact of this from the sample of sentencing remarks.

Within the sample of transcripts, there were several cases which might fall under the definition of 'cases of particular gravity', and the text above the sentencing table advising sentencers that a sentence above the top of the range may be appropriate might apply in cases such as these. However, the sentence imposed in these cases was already above the top of the range, demonstrating that sentencers may already be sentencing in the way recommended by the additional wording. There is a possibility that in some cases, this is not currently happening, and so sentences may

¹⁴ A total of 21 transcripts were analysed for this offence, of which 11 transcripts covering 14 offenders contained enough detail to provide evidence of the possible impact of the revised guideline on sentences.

increase, but any impact of this is likely to be minimal, as the evidence suggests that for the small proportion of cases where this text would apply, at least some if not many sentencers are already imposing more severe sentences.

As explained above, due to the small sample of transcripts, it is recommended that further analysis and research is undertaken during the consultation stage to better understand the possible impact of the revised guideline on sentences, and subsequently on prison and probation resources.

Aggravated burglary

The assessment of the impact of the existing guideline for this offence and the further assessment conducted to explore the evidence in more detail both concluded that sentencing severity had increased following the introduction of the guideline. However, as the volume of offenders sentenced for this offence is relatively low, the findings needed to be treated with caution. The Council considered these findings and concluded that the higher sentences imposed under the existing guideline were proportionate to the seriousness of the offences. However, to bring the guideline into line with the Council's now standard structure and to revise some of the factors, the Council decided that a revision was still necessary.

The existing guideline has two levels of culpability and two levels of harm, leading to three levels of seriousness in the sentence starting point and range table. This goes from a starting point of two years' custody for the least serious offence up to a starting point of 10 years' custody for the most serious.

The draft guideline has three levels of culpability and three levels of harm, leading to nine possible starting points and ranges. This goes from the same starting point as the current guideline (two years' custody for least serious offences) up to again, the same starting point for most serious offences (10 years' custody).

In addition to the structural changes, a number of changes have been made to the culpability factors. The factors 'weapon present on entry' and 'member of a group or gang' have been moved from step one to step two (aggravating factors) and re-worded. 'Equipped for burglary' has been removed from all steps of the guideline and 'use of face covering or disguise' has been added to step two (aggravating factors).

An analysis of a small sample¹⁵ of transcripts of Crown Court judges' sentencing remarks was undertaken to assess whether there might be any potential resource impact related to these changes. As all offenders are sentenced at the Crown Court for this offence, the sample should represent the full range of offending, although, as with the burglary offences covered earlier, it is possible that some types of offending have not been captured by these transcripts as the sample is small.

Based on this analysis of a sample of cases, the movement of the 'weapon present on entry' factor may mean some cases are put into a lower level of culpability at step one, when under the existing guideline they were put into higher culpability. In three of the transcripts analysed, the removal of this factor from step one was not balanced out by taking into account 'weapon carried when entering premises' as an aggravating factor and instead led to a lower final sentence. However, in the majority

¹⁵ A total of 20 transcripts were analysed for this offence, of which 13 transcripts covering 20 offenders contained enough detail to provide evidence of the possible impact of the revised guideline on sentences.

of transcripts analysed, the culpability stayed at the same level due to the 'significant degree of planning' factor being present in the case. The factor 'Violence used or threatened against the victim, particularly involving a weapon' has remained within the high harm box and will also keep these cases within the higher end of the sentencing table. Therefore, the evidence suggests that the movement of this factor ('weapon present on entry') will not have an effect on the final sentence in most cases. There may be a decrease in sentences in a small proportion of cases where this factor is present. The analysis for domestic burglary found that the movement of the factor 'offence was committed as part of a group' from step one to step two may lead to lower categorisations of culpability. However, the analysis for aggravated burglary did not suggest a similar finding: there seemed consistently to be enough other culpability factors available in the revised guideline to maintain a high level of culpability for those offenders previously placed in higher culpability. Therefore, for this offence, categorisations of culpability are not expected to decrease. Given that this finding has not been consistent across the three burglary offences, this will be explored in more detail as part of research that will be conducted during the consultation, and may provide further evidence for the final resource assessment.

Further research will be conducted during the consultation stage to explore in more detail the possible impact of the guideline on sentences and subsequently on prison and probation resources.

Risks

Risk 1: The Council's assessment of current sentencing practice is inaccurate

An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guidelines comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as part of the consultation exercise which are intended to test whether the guidelines have the intended effect and inviting views on the guidelines. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

Risk 2: Sentencers do not interpret the new guideline as intended

If sentencers do not interpret the guidelines as intended, this could cause a change in the average severity of sentencing, with associated resource effects.

The Council takes a number of precautions in issuing new guidelines to try to ensure that sentencers interpret them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of sentencing remarks for 56 cases have also been studied to ensure that the guidelines are developed with current sentencing practice in mind. Research with sentencers carried out during the consultation period should also

enable issues with implementation to be identified and addressed prior to the publication of the definitive guidelines.

Consultees can also feed back their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines.

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Non-domestic burglary

- Tab 1.1 Sentencing volumes, types of disposal, Severity, ACSLs and Sentence lengths. (CPD data) - 2009-2019
- Tab 1.2 Post guideline Seriousness. (CCSS data)
- Tab 1.3 Post guideline factors. (CCSS data)
- Tab 1.4 Demographic breakdowns - Sentencing volumes (CPD data) -2019
- Tab 1.5 Demographic breakdowns - Types of disposal (CPD data) - 2019
- Tab 1.6 Demographic breakdowns - ACSLs (CPD data) -2019
- Tab 1.7 Demographic breakdowns - Sentence lengths (CPD data) - 2019

Domestic burglary

- Tab 2.1 Sentencing volumes, types of disposal, Severity, ACSLs and Sentence lengths. (CPD data) - 2009-2019
- Tab 2.2 Post guideline Seriousness. (CCSS data)
- Tab 2.3 Post guideline factors. (CCSS data)
- Tab 2.4 Demographic breakdowns - Sentencing volumes (CPD data) -2019
- Tab 2.5 Demographic breakdowns - Types of disposal (CPD data) - 2019
- Tab 2.6 Demographic breakdowns - ACSLs (CPD data) -2019
- Tab 2.7 Demographic breakdowns - Sentence lengths (CPD data) - 2019

Aggravated burglary

- Tab 3.1 Sentencing volumes, types of disposal, Severity, ACSLs and Sentence lengths. (CPD data) - 2009-2019
- Tab 3.2 Post guideline Seriousness. (CCSS data)
- Tab 3.3 Post guideline factors. (CCSS data)
- Tab 3.4 Demographic breakdowns - Sentencing volumes (CPD data) -2019
- Tab 3.5 Demographic breakdowns - Types of disposal (CPD data) - 2019
- Tab 3.6 Demographic breakdowns - ACSLs (CPD data) -2019
- Tab 3.7 Demographic breakdowns - Sentence lengths (CPD data) - 2019

Sentencing trends for non-domestic burglary, 2009-2019¹

Number and proportion of adult offenders sentenced for non-domestic burglary, by court type, 2009-2019

Court type	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Magistrates' court	5,699	5,848	6,394	5,468	4,995	4,414	3,942	3,856	4,031	3,703	3,364
Crown Court	1,757	1,789	2,103	2,195	2,043	2,139	2,094	1,849	1,771	1,759	1,879
Total	7,456	7,637	8,497	7,663	7,038	6,553	6,036	5,705	5,802	5,462	5,243

Court type	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Magistrates' court	76%	77%	75%	71%	71%	67%	65%	68%	69%	68%	64%
Crown Court	24%	23%	25%	29%	29%	33%	35%	32%	31%	32%	36%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

The number of offenders sentenced for non-domestic burglary has decreased from a high of 8,500 in 2011 to 5,200 in 2019. In 2019, 64 per cent of offenders were sentenced in magistrates' courts.

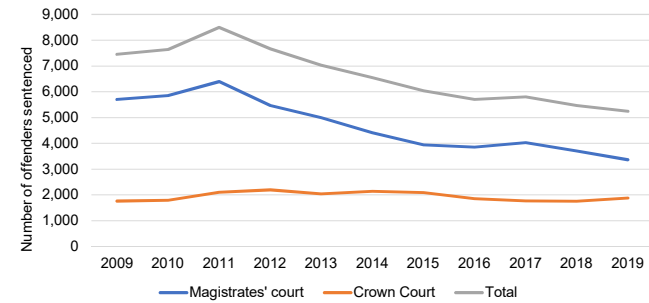
Number and proportion of adult offenders sentenced for non-domestic burglary, by sentence outcome, all courts, 2009-2019

Outcome	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Absolute discharge	4	5	5	3	4	4	10	6	5	2	1
Conditional discharge	350	324	350	230	205	226	187	133	97	107	90
Fine	255	318	340	234	218	259	205	168	188	157	113
Community sentence	3,023	3,107	3,187	2,526	1,911	1,462	1,375	1,132	1,122	1,163	1,147
Suspended sentence	956	1,014	1,158	1,072	1,169	1,209	1,227	1,211	1,205	1,034	912
Immediate custody	2,747	2,736	3,281	3,347	3,150	3,004	2,911	2,980	3,109	2,896	2,881
Otherwise dealt with	121	133	176	251	381	389	121	75	76	103	99
Total	7,456	7,637	8,497	7,663	7,038	6,553	6,036	5,705	5,802	5,462	5,243

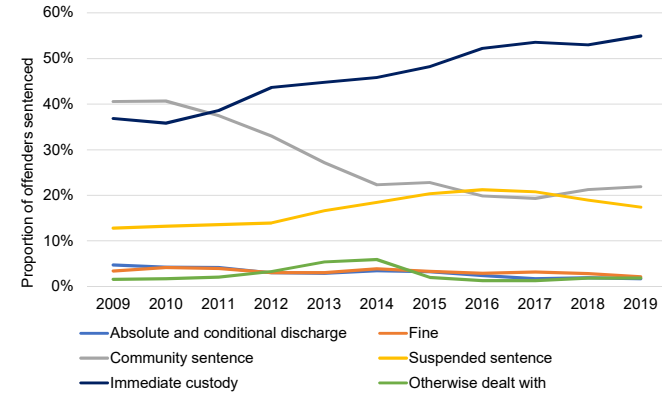
Outcome	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Absolute and conditional discharge	5%	4%	4%	3%	3%	4%	3%	2%	2%	2%	2%
Fine	3%	4%	4%	3%	3%	4%	3%	3%	3%	3%	2%
Community sentence	41%	41%	38%	33%	27%	22%	23%	20%	19%	21%	22%
Suspended sentence	13%	13%	14%	14%	17%	18%	20%	21%	21%	19%	17%
Immediate custody	37%	36%	39%	44%	45%	46%	48%	52%	54%	53%	55%
Otherwise dealt with	2%	2%	2%	3%	5%	6%	2%	1%	1%	2%	2%

Between 2010 and 2017, the proportion of offenders receiving a CO decreased from 41 per cent to 19 per cent. In 2018 and 2019 this increased slightly, to 21 and 22 per cent. The proportion of offenders receiving a custodial sentence (either immediate or suspended) increased during the period 2010 and 2017, and has since remained stable. In 2019, 17 per cent of offenders were given a suspended sentence, and 55 per cent were sentenced to immediate custody.

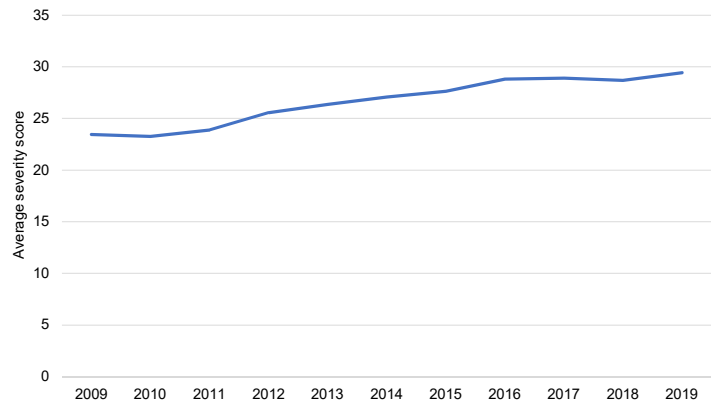
Number of adult offenders sentenced for non-domestic burglary, by court type, 2009-2019



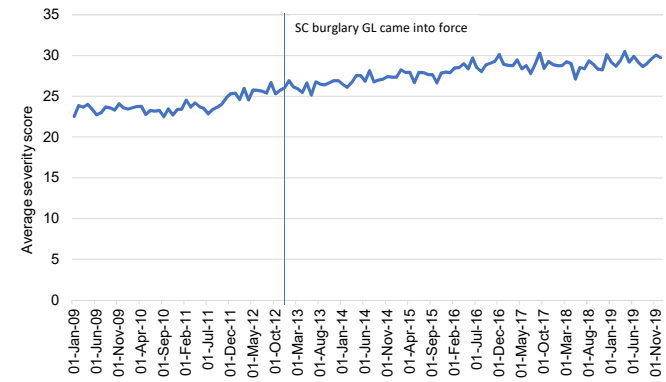
Sentence outcomes for adult offenders sentenced for non-domestic burglary, all courts, 2009-2019



Average sentencing severity per year for adult offenders sentenced for non-domestic burglary, all courts, 2009-2019

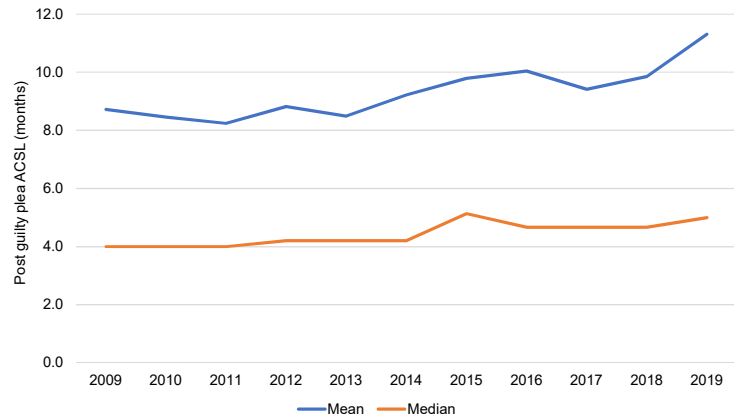


Average sentencing severity per month for adult offenders sentenced for non-domestic burglary, all courts, 2009-2019

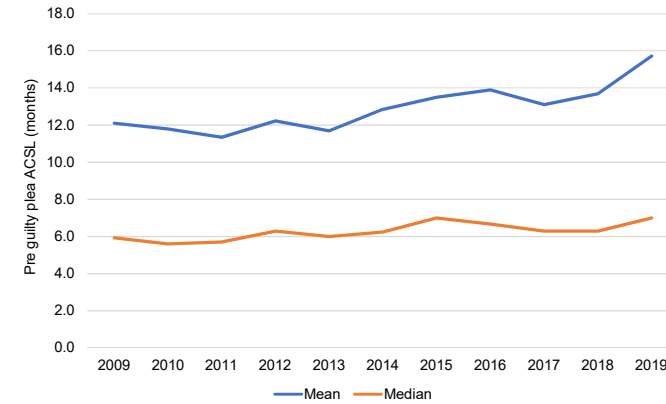


Between 2010 and 2016 there was an upward trend in sentence severity, which appears to have been driven by an increase in the proportion of offenders receiving a custodial sentence (either immediate or suspended), and a reduction in the proportion of offenders receiving a CO. Severity remained stable between 2016 and 2018 but in 2019 started to rise again.

Post guilty plea ACSLs received by adult offenders sentenced to immediate custody for non-domestic burglary, all courts, 2009-2019



Estimated ACSLs (pre guilty plea) received by adult offenders sentenced to immediate custody for non-domestic burglary, all courts, 2009-2019



Information is displayed for both the mean and median average custodial sentence lengths (ACSLs). Over time the ACSL (mean) has increased, from 8 months in 2011 to 11 months in 2019 (post guilty plea).

Sentence length bands (post guilty plea) received by adult offenders sentenced to immediate custody for non-domestic burglary, all courts, 2009-2019

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	2,222	2,282	2,714	2,702	2,587	2,352	2,238	2,263	2,413	2,203	2,090
Between 1 and 2 years	331	247	359	416	352	413	412	434	422	399	438
Between 2 and 3 years	109	125	120	133	128	138	160	175	188	200	211
Between 3 and 4 years	56	39	44	59	46	71	63	57	50	65	66
Between 4 and 5 years	12	26	25	17	22	15	25	25	22	17	37
More than 5 years	17	17	19	20	15	15	13	26	14	12	39
Total	2,747	2,736	3,281	3,347	3,150	3,004	2,911	2,980	3,109	2,896	2,881

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	81%	83%	83%	81%	82%	78%	77%	76%	78%	76%	73%
Between 1 and 2 years	12%	9%	11%	12%	11%	14%	14%	15%	14%	14%	15%
Between 2 and 3 years	4%	5%	4%	4%	4%	5%	5%	6%	6%	7%	7%
Between 3 and 4 years	2%	1%	1%	2%	1%	2%	2%	2%	2%	2%	2%
Between 4 and 5 years	0%	1%	1%	1%	1%	0%	1%	1%	1%	1%	1%
More than 5 years	1%	1%	1%	1%	0%	0%	0%	1%	0%	0%	1%

Over time, the proportion of offenders receiving a final sentence of 1 year or less has declined, and a higher proportion now receive sentences between 2 and 3 years.

Sentence length bands (pre guilty plea) received by adult offenders sentenced to immediate custody for non-domestic burglary, all courts, 2009-2019

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	1,985	2,043	2,442	2,402	2,353	2,130	1,991	2,044	2,213	2,009	1,903
Between 1 and 2 years	386	362	449	527	423	414	445	429	369	368	372
Between 2 and 3 years	195	135	200	208	183	249	249	263	282	267	289
Between 3 and 4 years	69	81	81	99	98	94	115	116	130	130	156
Between 4 and 5 years	46	47	48	44	36	48	53	61	67	70	61
Between 5 and 6 years	40	30	30	39	29	44	34	22	22	27	32
Between 6 and 7 years	9	16	14	7	11	7	8	15	9	6	22
More than 7 years	17	22	17	21	17	18	16	30	17	19	46
Total	2,747	2,736	3,281	3,347	3,150	3,004	2,911	2,980	3,109	2,896	2,881

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	72%	75%	74%	72%	75%	71%	68%	69%	71%	69%	66%
Between 1 and 2 years	14%	13%	14%	16%	13%	14%	15%	14%	12%	13%	13%
Between 2 and 3 years	7%	5%	6%	6%	6%	8%	9%	9%	9%	9%	10%
Between 3 and 4 years	3%	3%	2%	3%	3%	3%	4%	4%	4%	4%	5%
Between 4 and 5 years	2%	2%	1%	1%	1%	2%	2%	2%	2%	2%	2%
Between 5 and 6 years	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%
Between 6 and 7 years	0%	1%	0%	0%	0%	0%	0%	1%	0%	0%	1%
More than 7 years	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	2%

Source: Court Proceedings Database, Ministry of Justice

Note:

1) Excludes youths, and custodial sentences of over 10 years (the statutory maximum for this offence)

Sentence outcomes and ACSLs for non-domestic burglary offences (post-guideline), Crown Court, 2012 Q2 - 2015 Q1^{1,2}

Offenders placed in each offence category (level of seriousness)

Seriousness	2012 Q234 (n=749)	2013 (n=1,108)	2014 (n=1,238)	2015 Q1 (n=282)
Level 1 (most)	28%	29%	36%	35%
Level 2	46%	49%	47%	51%
Level 3 (least)	26%	22%	17%	14%
Total	100%	100%	100%	100%

Based on the most recent data available, 35 per cent of offenders currently fall in the highest category of seriousness, and 14% fall in the lowest category.

Offence category 1 (most serious)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234 (n=211)	2013 (n=325)	2014 (n=450)	2015 Q1 (n=98)
Immediate custody	85%	82%	83%	74%
SSO	11%	18%	17%	24%
CO	4%	1%	0%	1%
Total	100%	100%	100%	100%

In category 1 there has been a decrease in the use of immediate custody over time, and an increase in SSOs. The ACSL in category 1 has remained relatively stable since the guideline came into force, and was around 1 year 10 months in 2015 Q1 (post guilty plea) or 2 years 6 months pre guilty plea (note: the starting point for this category is 2 years).

Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	24.2	23.9	23.5	21.5
Median	21.0	20.0	22.0	21.0

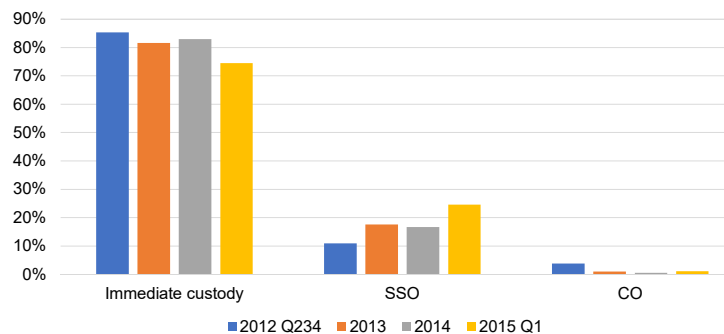
Pre guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	33.6	33.2	32.8	29.7
Median	29.9	28.0	29.9	26.9

Offence categories in Sentencing Council non-domestic burglary definitive guideline

Offence Category	Starting Point (Applicable to all offenders)	Category Range (Applicable to all offenders)
Category 1	2 years' custody	1–5 years' custody
Category 2	18 weeks' custody	Low level community order – 51 weeks' custody
Category 3	Medium level community order	Band B fine – 18 weeks' custody

Proportion of adult offenders, by sentence outcome, category 1 (most serious), 2012 to 2015



	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	2.0	2.0	2.0	1.8
Median	1.8	1.7	1.8	1.8

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	2.8	2.8	2.7	2.5
Median	2.5	2.3	2.5	2.2

Offence category 2 (middle category)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234	2013	2014	2015 Q1
	(n=347)	(n=541)	(n=577)	(n=144)
Immediate custody	58%	60%	59%	60%
SSO	29%	30%	30%	31%
CO	11%	10%	11%	8%
Conditional discharge	0%	0%	0%	0%
Other	1%	0%	0%	0%
Total	100%	100%	100%	100%

The proportion of offenders placed in category 2 has fluctuated between 46 and 51 per cent since the guideline came into force. Both the use of disposal types and the ACSL in category 2 have remained broadly stable over time.

Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	13.0	11.1	10.9	11.6
Median	12.0	9.0	9.0	9.0

Pre guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	18.5	15.7	15.4	16.0
Median	17.9	11.9	11.9	11.9

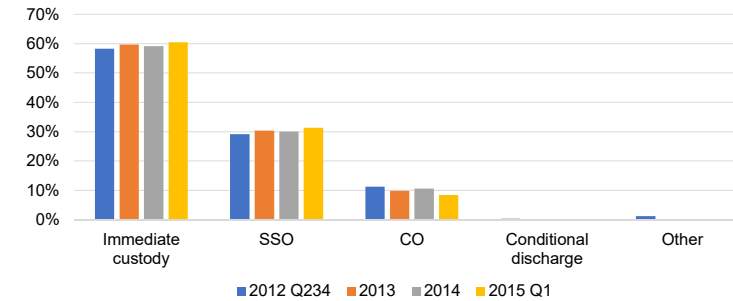
Offence category 3 (least serious)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234	2013	2014	2015 Q1
	(n=191)	(n=242)	(n=211)	(n=40)
Immediate custody	46%	43%	49%	55%
SSO	18%	25%	22%	15%
CO	35%	29%	27%	28%
Fine	0%	1%	0%	0%
Conditional discharge	1%	2%	0%	0%
Other	0%	0%	1%	3%
Total	100%	100%	100%	100%

In category 3, the various disposal types and the ACSL have fluctuated over time.

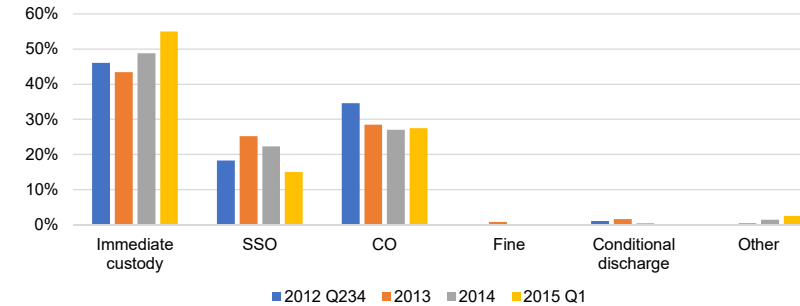
Proportion of adult offenders, by sentence outcome, category 2 (middle category), 2012 to 2015



	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	1.1	0.9	0.9	1.0
Median	1.0	0.8	0.8	0.8

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	1.5	1.3	1.3	1.3
Median	1.5	1.0	1.0	1.0

Proportion of adult offenders, by sentence outcome, category 3 (least serious), 2012 to 2015



Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	8.9	7.7	8.3	5.8
Median	8.0	6.0	6.0	4.0

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	0.7	0.6	0.7	0.5
Median	0.7	0.5	0.5	0.3

Pre guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	12.5	11.0	11.5	7.9
Median	10.6	9.0	8.6	5.3

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	1.0	0.9	1.0	0.7
Median	0.9	0.7	0.7	0.4

Source: Crown Court Sentencing Survey

Notes:

1) Excludes youths, and custodial sentences of over 10 years (the statutory maximum for this offence).

2) The CCSS response rate for the period 1 April - 31 December 2012 was 58%. In 2013 and 2014, the response rates were 60% and 64%, respectively. From 1 January - 31 March 2015 the response rate was 58%.

Frequency of factors for non-domestic burglary offences (post-guideline), Crown Court, 2012 Q2 - 2015 Q1^{1,2,3}

	2012 Q234	2013	2014	2015 Q1
Total forms included in analysis:	910	1,293	1,392	330
So 10% is approximately:	91	129	139	33
And 1% is approximately:	9	13	14	3

	2012 Q234	2013	2014	2015 Q1
Factors indicating greater harm				
Theft of/damage to property causing significant degree of loss	30%	31%	35%	32%
Soiling/ransacking/vandalism of property	11%	11%	10%	12%
Victim on/returns to premises while offender present	7%	9%	11%	8%
Significant physical/psychological injury or trauma	2%	2%	2%	1%
Violence used/threatened particularly involving a weapon	2%	1%	2%	2%
Context of general public disorder	12%	3%	1%	0%
None stated	52%	54%	53%	53%

This factor has consistently been the most frequently used greater harm factor.

	2012 Q234	2013	2014	2015 Q1
Factors indicating lesser harm				
No physical/psychological injury or trauma	17%	16%	16%	12%
No violence used/threatened and a weapon not produced	18%	16%	18%	15%
Nothing stolen or of very low value	17%	18%	16%	13%
Limited damage/disturbance to property	14%	15%	15%	16%
None stated	66%	67%	67%	73%

	2012 Q234	2013	2014	2015 Q1
Factors indicating higher culpability				
Deliberately targeted	33%	33%	38%	30%
Significant degree of planning	23%	27%	35%	29%
Weapon present on entry or carried	2%	2%	1%	2%
Equipped for burglary	25%	25%	32%	30%
Member of group or gang	31%	31%	36%	33%
None stated	44%	43%	35%	36%

This factor has been used frequently over time.
This factor has been used frequently over time.

This factor has been used frequently over time.
This factor has been used frequently over time.

	2012 Q234	2013	2014	2015 Q1
Factors indicating lower culpability				
Offender exploited by others	2%	2%	3%	3%
Offence committed on impulse/limited intrusion	9%	10%	8%	7%
Mental disorder/learning disability where linked to the	1%	1%	1%	0%
None stated	88%	88%	90%	90%

Most frequently used lower culpability factor.

	2012 Q234	2013	2014	2015 Q1
Factors increasing seriousness				
<i>Statutory aggravating factors:</i>				
Previous relevant convictions	70%	74%	80%	76%
Offence committed on bail	8%	7%	6%	5%
None stated	28%	25%	19%	23%

High proportion of cases with previous convictions.

	2012 Q234	2013	2014	2015 Q1
<i>Other aggravating factors include:</i>				
Child at home/returns	0%	1%	0%	0%
Committed at night	21%	24%	29%	23%
Abuse of power/trust	2%	2%	2%	2%
Gratuitous degradation	0%	0%	0%	0%
Steps taken to prevent reporting/assisting prosecution	0%	0%	0%	0%
Established evidence of community impact	3%	2%	3%	2%
Offender was under the influence of alcohol/drugs	12%	11%	13%	11%
Failure to comply with current court orders	16%	12%	13%	15%
On licence	9%	10%	11%	10%
TIC's	4%	7%	5%	2%
High level of gain/level of profit element/financially motivated offence	1%	0%	0%	1%
Multiple/previous attempts at same type of offence	2%	1%	0%	1%
Speed of reoffending	0%	1%	1%	0%
No factors stated	49%	51%	48%	49%

Frequently used aggravating factor.

	2012 Q234	2013	2014	2015 Q1
Factors reducing seriousness or reflecting personal mitigation				
Made voluntary reparation	0%	1%	1%	1%
Subordinate role in group or gang	7%	5%	7%	6%
No previous relevant convictions	7%	7%	6%	5%
Remorse	16%	18%	15%	16%
Good character/exemplary conduct	5%	4%	3%	2%
Determination/demonstration to address addiction/behaviour	10%	11%	9%	13%
Serious medical conditions	2%	2%	2%	3%
Age/lack of maturity affecting responsibility	6%	5%	3%	3%
Lapse of time not fault of offender	2%	1%	1%	1%
Mental disorder/learning disability where not linked to the commission of the offence	3%	2%	2%	2%
Sole/primary career for dependant relatives	2%	2%	1%	3%
Nothing stolen or of very little value	12%	9%	9%	8%
Long gap between offences/lived legally in-between reoffending	1%	1%	0%	0%
Suffering stress/under pressure at time of offence/family problems at time of offence	1%	1%	0%	0%
Property recovered	0%	1%	0%	1%
Is an addict	0%	0%	1%	1%
Co-operation with authorities	1%	1%	0%	1%
Offender responding well to existing order/sentence	1%	1%	1%	0%
Currently in, or prospects of work/training	0%	0%	1%	1%
No Factors stated	58%	62%	62%	62%

Most frequently used mitigating factor.

Source: Crown Court Sentencing Survey

Notes:

- 1) Excludes youths, and custodial sentences of over 10 years (the statutory maximum for this offence).
- 2) In some cases, sentencers wrote additional factors in a free-text box on the form. These have been included in the table above if the proportion was at least 1% in more than one period. These factors have been highlighted in orange.
- 3) Factors in blue are those which are not specifically listed in the non-domestic burglary guideline, but were on the CCSS form, because they were in either the domestic or aggravated burglary guidelines.
- 4) The factor 'Nothing stolen or of very little value' is not actually a mitigating factor in the non-domestic burglary guideline (it is a lesser harm factor). It is, however, a mitigating factor for aggravated burglary, and therefore appeared in two places on the CCSS form (which covered all types of burglary). It was therefore possible for sentencers to tick this factor twice.

Demographics of adult offenders sentenced for Non-domestic Burglary, by sex, age and perceived ethnicity, 2019

Sex	Number of adults sentenced	Percentage of all adults sentenced ¹
Male	4,994	96
Female	208	4
Not recorded/not known	41	
Total	5,243	100

96% of those sentenced were male

Age Group	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	378	7
22 to 29 years	1,004	19
30 to 39 years	2,118	40
40 to 49 years	1,430	27
50 to 59 years	284	5
60 years or older	28	1
Not recorded/not known	1	
Total	5,243	100

40% of the adults sentenced were in the 30 to 39 age group.

Perceived Ethnicity ²	Number of adults sentenced	Percentage of all adults sentenced ¹
White	4,009	88
Black	358	8
Asian	125	3
Other	64	1
Not recorded/not known	687	
Total	5,243	100

88% of adults sentenced had 'white' recorded as their perceived ethnicity.

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Percentage calculations do not include cases where the sex, age or perceived ethnicity was unknown.
- 2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Number and proportion of adult offenders sentenced for non-domestic burglary, by gender, age and perceived ethnicity and sentence outcome, 2019

Sex	Number of adults sentenced							Total	Sex	Proportion of adults sentenced							Total
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	Discharge			Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹			
Male	81	107	1060	857	2797	92	4994	Male	2%	2%	21%	17%	56%	2%	100%		
Female	9	4	78	44	68	5	208	Female	4%	2%	38%	21%	33%	2%	100%		
Not recorded/not known	1	2	9	11	16	2	41	Not recorded/not known	2%	5%	22%	27%	39%	5%	100%		

Age Group	Number of adults sentenced							Total	Age Group	Proportion of adults sentenced							Total
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	Discharge			Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹			
18 to 21 years	20	16	152	58	121	11	378	18 to 21 years	5%	4%	40%	15%	32%	3%	100%		
22 to 29 years ²	13	35	221	181	539	16	1005	22 to 29 years ²	1%	3%	22%	18%	54%	2%	100%		
30 to 39 years	29	30	395	346	1287	31	2118	30 to 39 years	1%	1%	19%	16%	61%	1%	100%		
40 to 49 years	18	23	300	272	785	32	1430	40 to 49 years	1%	2%	21%	19%	55%	2%	100%		
50 to 59 years	9	8	74	52	132	9	284	50 to 59 years	3%	3%	26%	18%	46%	3%	100%		
60 years or older	2	1	5	3	17	0	28	60 years or older	7%	4%	18%	11%	61%	0%	100%		
Not recorded /not known	0	0	0	0	0	0	0	Not recorded /not known	-	-	-	-	-	-	-		

Perceived Ethnicity ³	Number of adults sentenced							Total	Perceived Ethnicity ³	Proportion of adults sentenced							Total
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	Discharge			Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹			
White	66	86	922	684	2179	72	4009	White	2%	2%	23%	17%	54%	2%	100%		
Black	9	5	60	70	209	5	358	Black	3%	1%	17%	20%	58%	1%	100%		
Asian	1	2	28	19	72	3	125	Asian	1%	2%	22%	15%	58%	2%	100%		
Other	1	0	13	8	39	3	64	Other	2%	0%	20%	13%	61%	5%	100%		
Not recorded/not known	14	20	124	131	382	16	687	Not recorded/not known	2%	3%	18%	19%	56%	2%	100%		

Source: Court Proceedings Database, Ministry of Justice

Footnotes.

1) The category 'Otherwise dealt with' includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation; compensation; and other miscellaneous disposals.

2) The 22-29 age group includes an adult whose age was unknown.

3) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Average custodial sentence lengths (ACSL) received by adult offenders sentenced for non-domestic burglary, by sex, age and perceived ethnicity, 2019

Gender	ACSL (months)¹	
	Mean	Median
Male	11.5	5.4
Female	6.9	3.7
Not recorded/not known	3.23	3.03

Age	Mean	Median
18 to 21 years	13.1	6.0
22 to 29 years	12.5	6.0
30 to 39 years	11.4	4.7
40 to 49 years	10.0	5.1
50 to 59 years	11.0	4.7
60 years or older	20.2	9.0
Not recorded /not known	-	-

Perceived Ethnicity²	Mean	Median
White	11.3	4.7
Black	8.8	4.0
Asian	9.8	4.7
Other	13.0	8.0
Not recorded/not known	13.0	7.5

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Excludes life and indeterminate sentences.
- 2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Sentence lengths received by adult offenders sentenced to immediate custody for non-domestic burglary, by gender, age and perceived ethnicity, 2019

Sex	Number of adults sentenced to each sentence length (years) ¹							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
Male	2018	428	209	66	37	13	26	2797
Female	56	10	2	0	0	0	0	68
Not recorded /not known	16	0	0	0	0	0	0	16

Age Group	Number of adults sentenced to each sentence length (years) ¹							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
18 to 21 years	83	21	10	2	1	1	3	121
22 to 29 years	365	97	45	10	14	4	4	539
30 to 39 years	938	186	93	35	14	7	14	1287
40 to 49 years	597	113	49	15	8	1	2	785
50 to 59 years	98	19	9	4	0	0	2	132
60 years or older	9	2	5	0	0	0	1	17
Not recorded /not known	-	-	-	-	-	-	-	-

Perceived Ethnicity ²	Number of adults sentenced to each sentence length (years) ¹							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
White	1590	327	151	50	32	7	22	2179
Black	168	24	10	3	2	1	1	209
Asian	56	8	3	4	1	0	0	72
Other	24	8	5	2	0	0	0	39
Not recorded /not known	252	71	42	7	2	5	3	382

Sex	Proportion of adults sentenced to each sentence length (years)							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
Male	72%	15%	7%	2%	1%	0%	1%	100%
Female	82%	15%	3%	0%	0%	0%	0%	100%
Not recorded /not known	100%	0%	0%	0%	0%	0%	0%	100%

Age Group	Proportion of adults sentenced to each sentence length (years)							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
18 to 21 years	69%	17%	8%	2%	1%	1%	2%	100%
22 to 29 years	68%	18%	8%	2%	3%	1%	1%	100%
30 to 39 years	73%	14%	7%	3%	1%	1%	1%	100%
40 to 49 years	76%	14%	6%	2%	1%	0%	0%	100%
50 to 59 years	74%	14%	7%	3%	0%	0%	2%	100%
60 years or older	53%	12%	29%	0%	0%	0%	6%	100%
Not recorded /not known	-	-	-	-	-	-	-	-

Perceived Ethnicity ²	Proportion of adults sentenced to each sentence length (years)							Total
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	
White	73%	15%	7%	2%	1%	0%	1%	100%
Black	80%	11%	5%	1%	1%	0%	0%	100%
Asian	78%	11%	4%	6%	1%	0%	0%	100%
Other	62%	21%	13%	5%	0%	0%	0%	100%
Not recorded /not known	66%	19%	11%	2%	1%	1%	1%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than and equal to 1 year, and '1 to 2' includes sentence lengths over 1 year, and up to and including 2 years.

2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Sentencing trends for domestic burglary, 2009-2019

Number and proportion of adult offenders sentenced for domestic burglary, by court type, 2009-2019

Court type	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Magistrates' court	2,034	2,237	2,321	1,903	1,508	1,256	1,035	989	921	720	598
Crown Court	7,638	8,272	8,759	8,357	8,183	7,500	6,370	5,261	4,914	4,399	4,053
Total	9,672	10,509	11,080	10,260	9,691	8,756	7,405	6,250	5,835	5,119	4,651

Court type	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Magistrates' court	21%	21%	21%	19%	16%	14%	14%	16%	16%	14%	13%
Crown Court	79%	79%	79%	81%	84%	86%	86%	84%	84%	86%	87%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

Domestic burglary volumes have decreased from a high of 11,100 in 2011 down to 4,700 in 2019. In 2019 87 per cent of offenders were sentenced in the Crown Court.

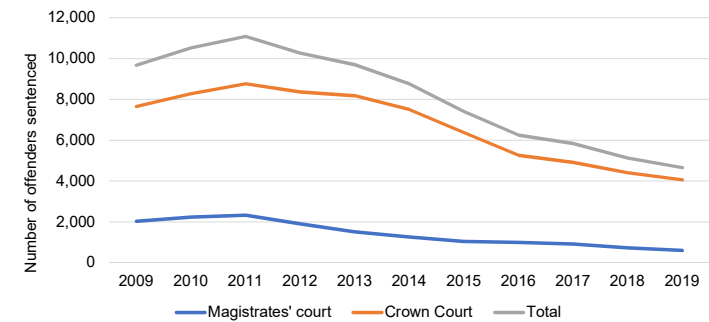
Number and proportion of adult offenders sentenced for domestic burglary, by sentence outcome, all courts, 2009-2019

Outcome	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Absolute discharge	3	4	1	0	2	2	1	5	0	3	5
Conditional discharge	84	99	81	57	44	57	47	32	35	29	25
Fine	29	44	32	34	38	41	38	21	18	18	16
Community sentence	1,913	2,116	2,010	1,648	1,181	895	740	529	451	459	423
Suspended sentence	1,408	1,571	1,561	1,494	1,547	1,524	1,352	962	805	653	546
Immediate custody	6,137	6,575	7,300	6,925	6,737	6,086	5,149	4,637	4,453	3,875	3,563
Otherwise dealt with	98	100	95	102	142	151	78	64	73	82	73
Total	9,672	10,509	11,080	10,260	9,691	8,756	7,405	6,250	5,835	5,119	4,651

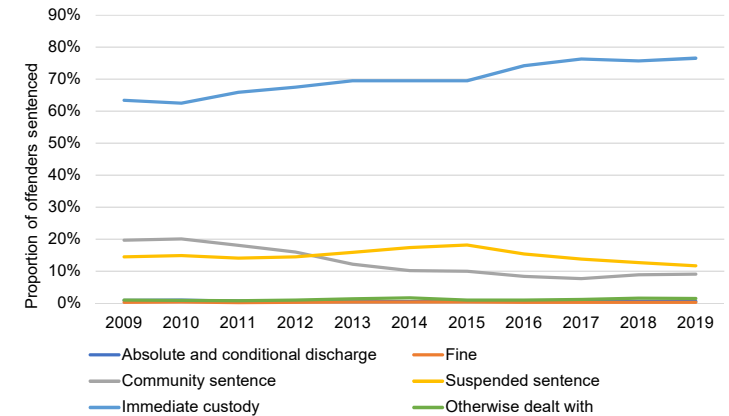
Outcome	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Absolute and conditional discharge	1%	1%	1%	1%	0%	1%	1%	1%	1%	1%	1%
Fine	0%	0%	0%	0%	0%	0%	1%	0%	0%	0%	0%
Community sentence	20%	20%	18%	16%	12%	10%	10%	8%	8%	9%	9%
Suspended sentence	15%	15%	14%	15%	16%	17%	18%	15%	14%	13%	12%
Immediate custody	63%	63%	66%	67%	70%	70%	70%	74%	76%	76%	77%
Otherwise dealt with	1%	1%	1%	1%	1%	2%	1%	1%	1%	2%	2%

Over the last decade there has been a gradual increase in the proportion of offenders sentenced to immediate custody, and in 2019 the proportion sentenced to immediate custody was 77 per cent. The proportion of offenders receiving suspended sentences increased during the period 2012 to 2015, but has since been decreasing, with 12 per cent of offenders receiving an SSO in 2019. The proportion receiving COs decreased in the period 2008 to 2017, but increased slightly in 2018, where it remains in 2019 at 9 per cent.

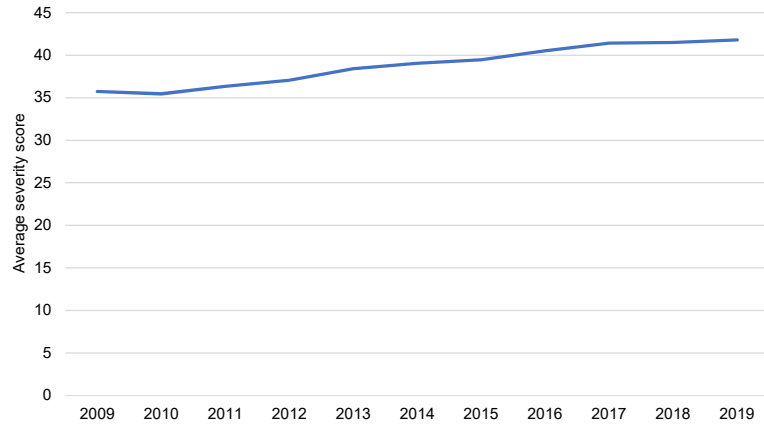
Number of adult offenders sentenced for domestic burglary, by court type, 2009-2019



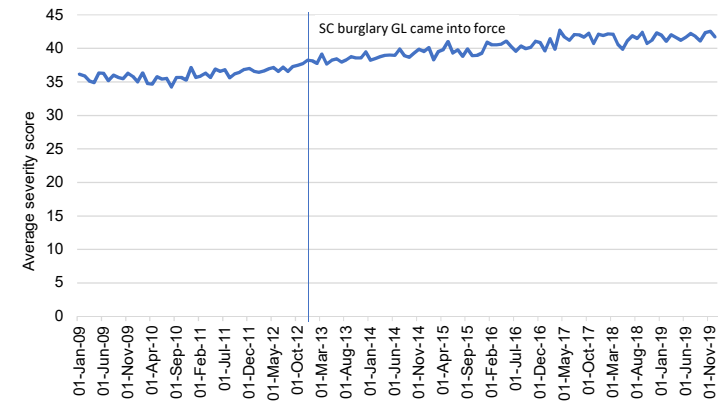
Sentence outcomes for adult offenders sentenced for domestic burglary, all courts, 2009-2019



Average sentencing severity per year for adult offenders sentenced for domestic burglary, all courts, 2009-2019

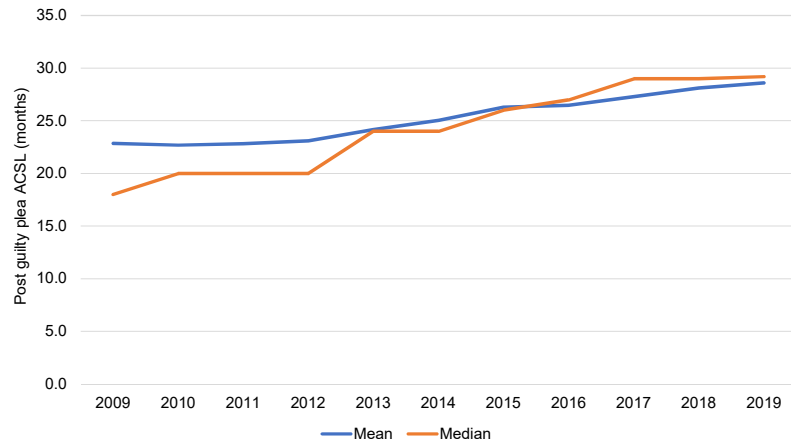


Average sentencing severity per month for adult offenders sentenced for domestic burglary, all courts, 2008-2018

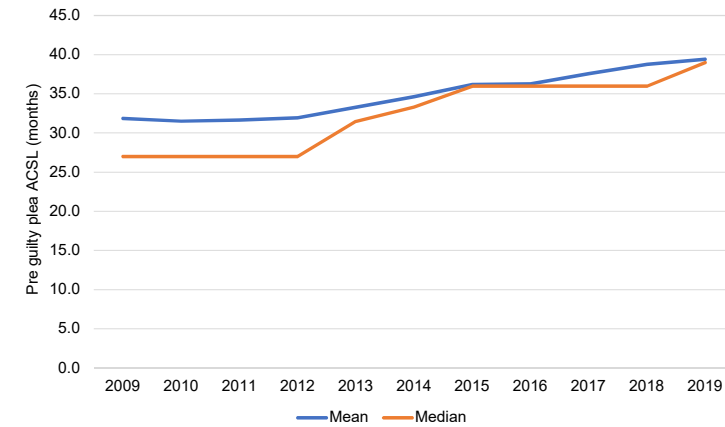


Over time there has been an upward trend in sentence severity, which appears to have been driven by an increase in the proportion of offenders sentenced to immediate custody, and an increase in ACSL.

Post guilty plea ACSLs received by adult offenders sentenced to immediate custody for domestic burglary, all courts, 2009-2019



Estimated ACSLs (pre guilty plea) received by adult offenders sentenced to immediate custody for domestic burglary, all courts, 2009-2019



Information is displayed for both the mean and median average custodial sentence lengths (ACSLs). Over time the ACSL (mean) has increased, from 22.8 months in 2011 to 28.6 months in 2019 (post guilty plea).

Sentence length bands (post guilty plea) received by adult offenders sentenced to immediate custody for domestic burglary, all courts, 2009-2019

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	2,014	2,120	2,400	2,205	1,968	1,687	1,347	1,187	1,041	848	760
Between 1 and 2 years	1,787	1,958	2,085	1,891	1,762	1,558	1,214	1,095	1,018	893	778
Between 2 and 3 years	1,529	1,699	1,850	1,894	2,037	1,858	1,635	1,482	1,476	1,265	1,218
Between 3 and 4 years	548	553	678	651	690	652	605	572	611	536	490
Between 4 and 5 years	166	143	170	179	175	183	192	164	185	180	169
Between 5 and 6 years	54	61	73	65	55	87	84	83	76	95	79
More than 6 years	39	41	44	40	50	61	72	54	46	58	69
Total	6,137	6,575	7,300	6,925	6,737	6,086	5,149	4,637	4,453	3,875	3,563

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	33%	32%	33%	32%	29%	28%	26%	26%	23%	22%	21%
Between 1 and 2 years	29%	30%	29%	27%	26%	26%	24%	24%	23%	23%	22%
Between 2 and 3 years	25%	26%	25%	27%	30%	31%	32%	32%	33%	33%	34%
Between 3 and 4 years	9%	8%	9%	9%	10%	11%	12%	12%	14%	14%	14%
Between 4 and 5 years	3%	2%	2%	3%	3%	3%	4%	4%	4%	5%	5%
Between 5 and 6 years	1%	1%	1%	1%	1%	1%	2%	2%	2%	2%	2%
More than 6 years	1%	1%	1%	1%	1%	1%	1%	1%	1%	1%	2%

Over time, the proportion of offenders receiving a final sentence of 1 year or less has declined, and a higher proportion now receive sentences between 2 and 4 years.

Sentence length bands (pre guilty plea) received by adult offenders sentenced to immediate custody for domestic burglary, all courts, 2009-2019

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	1,129	1,203	1,353	1,313	1,178	980	771	699	623	481	425
Between 1 and 2 years	1,684	1,829	2,027	1,827	1,626	1,439	1,169	991	915	741	706
Between 2 and 3 years	1,179	1,266	1,360	1,209	1,227	1,068	865	822	737	721	554
Between 3 and 4 years	964	1,096	1,220	1,318	1,420	1,351	1,164	1,065	1,025	870	897
Between 4 and 5 years	628	648	728	720	726	693	614	561	616	536	492
Between 5 and 6 years	359	337	384	329	352	301	301	273	308	277	245
Between 6 and 7 years	62	64	70	70	85	77	92	80	85	95	94
Between 7 and 8 years	65	61	81	84	59	87	78	62	77	71	76
More than 8 years	67	71	77	55	64	90	95	84	67	83	74
Total	6,137	6,575	7,300	6,925	6,737	6,086	5,149	4,637	4,453	3,875	3,563

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
1 year or less	18%	18%	19%	19%	17%	16%	15%	15%	14%	12%	12%
Between 1 and 2 years	27%	28%	28%	26%	24%	24%	23%	21%	21%	19%	20%
Between 2 and 3 years	19%	19%	19%	17%	18%	18%	17%	18%	17%	19%	16%
Between 3 and 4 years	16%	17%	17%	19%	21%	22%	23%	23%	23%	22%	25%
Between 4 and 5 years	10%	10%	10%	10%	11%	11%	12%	12%	14%	14%	14%
Between 5 and 6 years	6%	5%	5%	5%	5%	5%	6%	6%	7%	7%	7%
Between 6 and 7 years	1%	1%	1%	1%	1%	1%	2%	2%	2%	2%	3%
Between 7 and 8 years	1%	1%	1%	1%	1%	1%	2%	1%	2%	2%	2%
More than 8 years	1%	1%	1%	1%	1%	1%	2%	2%	2%	2%	2%

Source: Court Proceedings Database, Ministry of Justice

Note:

1) Excludes youths, and custodial sentences of over 14 years (the statutory maximum for this offence)

Sentence outcomes and ACSLs for domestic burglary offences (post-guideline), Crown Court, 2012 Q2 - 2015 Q1^{1,2}

Offenders placed in each offence category (level of seriousness)

Seriousness	2012 Q234 (n=2,902)	2013 (n=4,418)	2014 (n=4,362)	2015 Q1 (n=899)
Level 1 (most)	30%	33%	35%	32%
Level 2	54%	54%	54%	57%
Level 3 (least)	16%	13%	10%	11%
Total	100%	100%	100%	100%

Offence categories in Sentencing Council domestic burglary definitive guideline

Offence Category	Starting Point (Applicable to all offenders)	Category Range (Applicable to all offenders)
Category 1	3 years' custody	2–6 years' custody
Category 2	1 year's custody	High level community order – 2 years' custody
Category 3	High Level Community Order	Low level community order – 26 weeks' custody

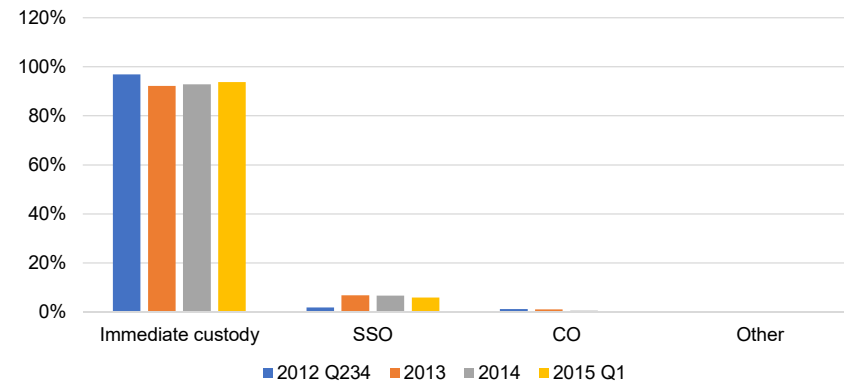
Based on the most recent data available, 32 per cent of offenders currently fall in the highest category of seriousness, and 11% fall in the lowest category.

Offence category 1 (most serious)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234 (n=861)	2013 (n=1,450)	2014 (n=1,539)	2015 Q1 (n=289)
Immediate custody	97%	92%	93%	94%
SSO	2%	7%	7%	6%
CO	1%	1%	1%	0%
Other	0%	0%	0%	0%
Total	100%	100%	100%	100%

In category 1 there has been a small decrease in the use of immediate custody, and a small increase in SSOs. The ACSL in category 1 has increased slightly since the guideline came into force, and was around 3 years in 2015 Q1 (post guilty plea) or 4 years pre guilty plea (note: the starting point for this category is 3 years).



Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	34.1	33.4	34.2	35.7
Median	32.0	32.0	32.0	32.0

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	2.8	2.8	2.8	3.0
Median	2.7	2.7	2.7	2.7

Pre guilty plea ACSLs for offenders sentenced to immediate custody

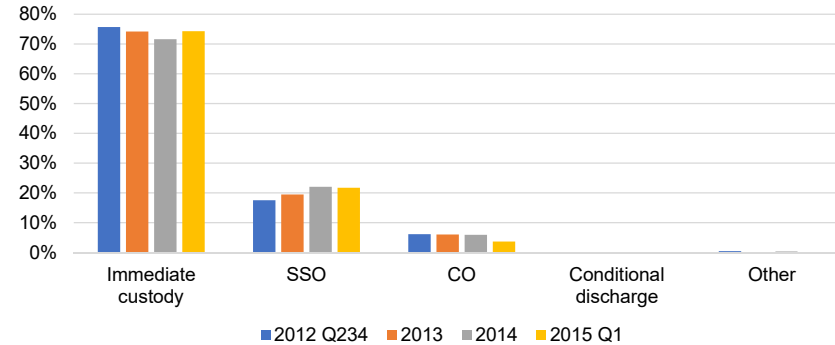
	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	46.6	45.6	46.3	47.6
Median	44.8	42.0	43.6	44.8

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	3.9	3.8	3.9	4.0
Median	3.7	3.5	3.6	3.7

Offence category 2 (middle category)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234 (n=1,578)	2013 (n=2,384)	2014 (n=2,370)	2015 Q1 (n=510)
Immediate custody	76%	74%	72%	74%
SSO	18%	20%	22%	22%
CO	6%	6%	6%	4%
Conditional discharge	0%	0%	0%	0%
Other	1%	0%	0%	0%
Total	100%	100%	100%	100%



The proportion of offenders placed in category 2 has been relatively stable since the guideline came into force. Similarly to category 1, the use of immediate custody has slightly decreased, and the use of SSOs has slightly increased. The ACSL in category 2 has remained fairly stable over time.

Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	20.6	21.2	20.8	21.6
Median	16.0	18.0	16.0	18.0

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	1.7	1.8	1.7	1.8
Median	1.3	1.5	1.3	1.5

Pre guilty plea ACSLs for offenders sentenced to immediate custody

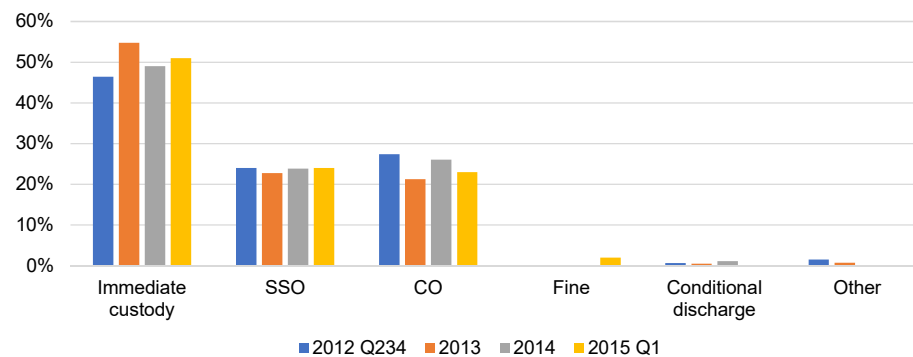
	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	28.2	29.0	28.2	29.2
Median	23.9	23.9	23.9	23.9

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	2.4	2.4	2.4	2.4
Median	2.0	2.0	2.0	2.0

Offence category 3 (least serious)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234 (n=463)	2013 (n=584)	2014 (n=453)	2015 Q1 (n=100)
Immediate custody	46%	55%	49%	51%
SSO	24%	23%	24%	24%
CO	27%	21%	26%	23%
Fine	0%	0%	0%	2%
Conditional discharge	1%	1%	1%	0%
Other	2%	1%	0%	0%
Total	100%	100%	100%	100%



In category 3, the various disposal types and the ACSL have fluctuated over time.

Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	17.6	17.2	19.3	17.2
Median	14.0	12.0	15.0	12.0

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	1.5	1.4	1.6	1.4
Median	1.2	1.0	1.3	1.0

Pre guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	24.1	23.6	25.8	22.7
Median	18.7	17.9	22.4	17.9

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	2.0	2.0	2.2	1.9
Median	1.6	1.5	1.9	1.5

Source: Crown Court Sentencing Survey

Notes:

- 1) Excludes youths, and custodial sentences of over 14 years (the statutory maximum for this offence).
- 2) The CCSS response rate for the period 1 April - 31 December 2012 was 58%. In 2013 and 2014, the response rates were 60% and 64%, respectively. From 1 January - 31 March 2015 the response rate was 58%.

Frequency of factors for domestic burglary offences (post-guideline), Crown Court, 2012 Q2 - 2015 Q1^{1,2,3}

	2012 Q234	2013	2014	2015 Q1	
Total forms included in analysis:	3,355	5,121	5,096	1,036	
So 10% is approximately:	336	512	510	104	
And 1% is approximately:	34	51	51	10	
Factors indicating greater harm					
Theft of/damage to property causing significant degree of loss	23%	22%	22%	21%	This factor has been used frequently over time.
Soiling/ransacking/vandalism of property	12%	14%	12%	14%	
Victim on/returns to premises while offender present	36%	39%	39%	37%	This has consistently been the most frequently used greater harm factor.
Significant physical/psychological injury or trauma	10%	9%	10%	9%	
Violence used/threatened particularly involving a weapon	4%	4%	4%	3%	
Context of general public disorder	0%	0%	0%	0%	
None stated	39%	37%	37%	38%	
Factors indicating lesser harm					
No physical/psychological injury or trauma	14%	12%	11%	11%	
No violence used/threatened and a weapon not produced	19%	17%	16%	15%	
Nothing stolen or of very low value	15%	15%	13%	14%	
Limited damage/disturbance to property	17%	16%	15%	15%	
None stated	68%	69%	71%	72%	
Factors indicating higher culpability					
Deliberately targeted	23%	21%	24%	22%	This factor has been used fairly frequently.
Significant degree of planning	16%	17%	18%	16%	
Weapon present on entry or carried	1%	2%	1%	2%	
Equipped for burglary	14%	15%	16%	14%	
Member of group or gang	24%	26%	24%	21%	This factor has been used fairly frequently.
None stated	53%	51%	50%	56%	
Factors indicating lower culpability					
Offender exploited by others	3%	2%	2%	2%	
Offence committed on impulse/limited intrusion	12%	11%	10%	11%	Most frequently used lower culpability factor.
Mental disorder/learning disability where linked to the	1%	1%	1%	1%	
None stated	85%	86%	88%	87%	
Factors increasing seriousness					
<i>Statutory aggravating factors:</i>					
Previous relevant convictions:	72%	73%	72%	76%	High proportion of cases with previous convictions.
Offence committed on bail	7%	6%	6%	4%	
None stated	27%	26%	27%	24%	
<i>Other aggravating factors include:</i>					
Child at home/returns	6%	6%	6%	4%	
Committed at night	27%	27%	27%	26%	Frequently used aggravating factor.
Abuse of power/trust	4%	3%	4%	4%	
Gratuitous degradation	1%	1%	1%	0%	
Steps taken to prevent reporting/assisting prosecution	0%	1%	0%	0%	
Victim compelled to leave home (domestic violence in particular)	1%	1%	1%	1%	
Established evidence of community impact	2%	2%	2%	1%	
Offender was under the influence of alcohol/drugs	18%	17%	17%	18%	
Failure to comply with current court orders	13%	11%	9%	10%	
On licence	11%	11%	12%	11%	
TIC's	9%	8%	6%	4%	
Multiple/previous attempts at same type of offence	2%	1%	0%	1%	
Vulnerable victim	2%	1%	1%	2%	
Speed of reoffending	1%	1%	0%	1%	
No factors stated	38%	45%	46%	46%	
Factors reducing seriousness or reflecting personal mitigation					
Subordinate role in group or gang	5%	5%	5%	4%	
No previous relevant convictions	10%	9%	8%	8%	
Remorse	22%	22%	21%	19%	Most frequently used mitigating factor.
Good character/exemplary conduct	4%	4%	3%	3%	
Determination/demonstration to address addiction/behaviour	10%	9%	9%	8%	
Serious medical conditions	1%	1%	1%	1%	
Age/lack of maturity affecting responsibility	8%	8%	6%	5%	
Lapse of time not fault of offender	1%	1%	1%	1%	
Mental disorder/learning disability where not linked to the commission of the offence	2%	2%	2%	3%	
Sole/primary career for dependant relatives	2%	2%	1%	2%	
Nothing stolen or of very little value	9%	9%	8%	11%	
Made voluntary reparation	1%	1%	1%	2%	
Long gap between offences/lived legally in-between reoffending	1%	0%	1%	0%	
Co-operation with authorities	1%	1%	1%	0%	
No Factors stated	56%	58%	61%	62%	

Source: Crown Court Sentencing Survey

Notes:

- 1) Excludes youths, and custodial sentences of over 14 years (the statutory maximum for this offence).
- 2) In some cases, sentencers wrote additional factors in a free-text box on the form. These have been included in the table above if the proportion was at least 1% in more than one period. These factors have been highlighted in orange.
- 3) Factors in blue are those which are not specifically listed in the domestic burglary guideline, but were on the CCSS form, because they were in either the non-domestic or aggravated burglary guidelines.
- 4) The factor 'Nothing stolen or of very little value' is not actually a mitigating factor in the domestic burglary guideline (it is a lesser harm factor). It is, however, a mitigating factor for aggravated burglary, and therefore appeared in two places on the CCSS form (which covered all types of burglary). It was therefore possible for sentencers to tick this factor twice.

Demographics of adult offenders sentenced for domestic Burglary, by sex, age and perceived ethnicity, 2019

Sex	Number of adults sentenced	Percentage of all adults sentenced ¹
Male	4,319	93
Female	319	7
Not recorded/not known	13	
Total	4,651	100

93% of those sentenced were male

Age Group	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	645	14
22 to 29 years	1,195	26
30 to 39 years	1,519	33
40 to 49 years	995	21
50 to 59 years	272	6
60 years or older	25	<1
Not recorded/not known	-	
Total	4,651	100

A third of the adults sentenced were in the 30 to 39 age group.

Perceived Ethnicity ²	Number of adults sentenced	Percentage of all adults sentenced ¹
White	3,336	86
Black	316	8
Asian	126	3
Other	79	2
Not recorded/not known	794	
Total	4,651	100

86% of adults sentenced had 'white' as their recorded perceived ethnicity.

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Percentage calculations do not include cases where the sex, age or perceived ethnicity was unknown.
- 2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Number and proportion of adult offenders sentenced for domestic burglary, by gender, age and perceived ethnicity and sentence outcome, 2019

Sex	Number of adults sentenced						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	Total
Male	19	14	366	468	3388	64	4319
Female	11	2	52	77	168	9	319
Not recorded/not known	0	0	5	1	7	0	13

Age Group	Number of adults sentenced						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	Total
18 to 21 years	6	0	100	101	424	14	645
22 to 29 years	8	6	112	150	900	19	1195
30 to 39 years	5	5	113	165	1213	18	1519
40 to 49 years	10	3	86	87	794	15	995
50 to 59 years	1	2	11	34	217	7	272
60 years or older	0	0	1	9	15	0	25
Not recorded /not known	0	0	0	0	0	0	0

Perceived Ethnicity ²	Number of adults sentenced						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	Total
White	27	13	319	361	2569	47	3336
Black	1	2	34	53	219	7	316
Asian	0	0	10	17	96	3	126
Other	0	0	4	11	64	0	79
Not recorded/not known	2	1	56	104	615	16	794

Notes:

- 1) The category 'Otherwise dealt with' includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation; compensation; and other miscellaneous disposals.
- 2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Sex	Proportion of adults sentenced						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	Total
Male	0%	0%	8%	11%	78%	1%	100%
Female	3%	1%	16%	24%	53%	3%	100%
Not recorded/not known	0%	0%	38%	8%	54%	0%	100%

Age Group	Proportion of adults sentenced						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	Total
18 to 21 years	1%	0%	16%	16%	66%	2%	100%
22 to 29 years	1%	1%	9%	13%	75%	2%	100%
30 to 39 years	0%	0%	7%	11%	80%	1%	100%
40 to 49 years	1%	0%	9%	9%	80%	2%	100%
50 to 59 years	0%	1%	4%	13%	80%	3%	100%
60 years or older	0%	0%	4%	36%	60%	0%	100%
Not recorded /not known	0%	0%	0%	0%	0%	0%	-

Perceived Ethnicity ²	Proportion of adults sentenced						
	Discharge	Fine	Community sentence	Suspended sentence	Immediate custody	Otherwise dealt with ¹	Total
White	1%	0%	10%	11%	77%	1%	100%
Black	0%	1%	11%	17%	69%	2%	100%
Asian	0%	0%	8%	13%	76%	2%	100%
Other	0%	0%	5%	14%	81%	0%	100%
Not recorded/not known	0%	0%	7%	13%	77%	2%	100%

Source: Court Proceedings Database, Ministry of Justice

Average custodial sentence lengths (ACSL) received by adult offenders sentenced for domestic burglary, by sex, age and perceived ethnicity, 2019

Gender	ACSL (months) ¹	
	Mean	Median
Male	28.9	29.2
Female	24.0	24.0
Not recorded/not known ²	4.5	5.6

Age Group	Mean	Median
18 to 21 years	24.3	24.0
22 to 29 years	27.9	28.0
30 to 39 years	28.3	29.0
40 to 49 years	30.8	30.0
50 to 59 years	33.7	32.0
60 years or older	24.1	29.0
Not recorded /not known	-	-

Perceived Ethnicity ³	Mean	Median
White	28.7	29.2
Black	28.0	29.2
Asian	27.6	24.0
Other	25.2	20.0
Not recorded/not known	28.9	28.0

Source: Court Proceedings Database, Ministry of Justice

- = No offenders were sentenced to immediate custody.

Notes:

- 1) ACSL was based on only 7 adults.
- 2) Excludes life and indeterminate sentences.
- 3) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Sentence lengths received by adult offenders sentenced to immediate custody for domestic burglary, by gender, age and perceived ethnicity, 2019

Sex	Number of adults sentenced to each sentence length (years) ¹							
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	Total
Male	705	738	1161	472	166	77	69	3388
Female	48	40	57	18	3	2	0	168
Not recorded /not known	7	0	0	0	0	0	0	7

Age Group	Number of adults sentenced to each sentence length (years) ¹							
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	Total
18 to 21 years	111	140	117	37	10	2	7	424
22 to 29 years	210	204	294	115	40	15	22	900
30 to 39 years	279	249	415	155	57	35	23	1213
40 to 49 years	127	152	302	131	51	20	11	794
50 to 59 years	28	31	84	50	11	7	6	217
60 years or older	5	2	6	2	0	0	0	15
Not recorded /not known	0	0	0	0	0	0	0	0

Perceived Ethnicity ²	Number of adults sentenced to each sentence length (years) ¹							
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	Total
White	541	539	893	362	130	59	45	2569
Black	46	38	90	31	8	3	3	219
Asian	24	28	24	10	6	1	3	96
Other	20	17	15	7	3	1	1	64
Not recorded /not known	129	156	196	80	22	15	17	615

Notes:

1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category 'Less than 1 year' includes sentence lengths less than and equal to 1 year, and '1 to 2' includes sentence lengths over 1 year, and up to and including 2 years.

2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Sex	Proportion of adults sentenced to each sentence length (years)							
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	Total
Male	21%	22%	34%	14%	5%	2%	2%	100%
Female	29%	24%	34%	11%	2%	1%	0%	100%
Not recorded /not known	100%	0%	0%	0%	0%	0%	0%	100%

Age Group	Proportion of adults sentenced to each sentence length (years)							
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	Total
18 to 21 years	26%	33%	28%	9%	2%	0%	2%	100%
22 to 29 years	23%	23%	33%	13%	4%	2%	2%	100%
30 to 39 years	23%	21%	34%	13%	5%	3%	2%	100%
40 to 49 years	16%	19%	38%	16%	6%	3%	1%	100%
50 to 59 years	13%	14%	39%	23%	5%	3%	3%	100%
60 years or older	33%	13%	40%	13%	0%	0%	0%	100%
Not recorded /not known	-	-	-	-	-	-	-	100%

Perceived Ethnicity ²	Proportion of adults sentenced to each sentence length (years)							
	1 year or less	Between 1 and 2 years	Between 2 and 3 years	Between 3 and 4 years	Between 4 and 5 years	Between 5 and 6 years	More than 6 years	Total
White	21%	21%	35%	14%	5%	2%	2%	100%
Black	21%	17%	41%	14%	4%	1%	1%	100%
Asian	25%	29%	25%	10%	6%	1%	3%	100%
Other	31%	27%	23%	11%	5%	2%	2%	100%
Not recorded /not known	21%	25%	32%	13%	4%	2%	3%	100%

Source: Court Proceedings Database, Ministry of Justice

Sentencing trends for aggravated burglary, 2009-2019

Number and proportion of adult offenders sentenced for aggravated burglary, by court type, 2009-2019

Court type	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Magistrates' court	0	0	0	0	0	0	0	0	0	0	0
Crown Court	263	309	318	303	257	227	217	193	200	170	190
Total	263	309	318	303	257	227	217	193	200	170	190

Court type	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Magistrates' court	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Crown Court	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%
Total	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%	100%

The number of offenders sentenced for aggravated burglary has decreased from a high of 320 in 2011 to 190 in 2019.

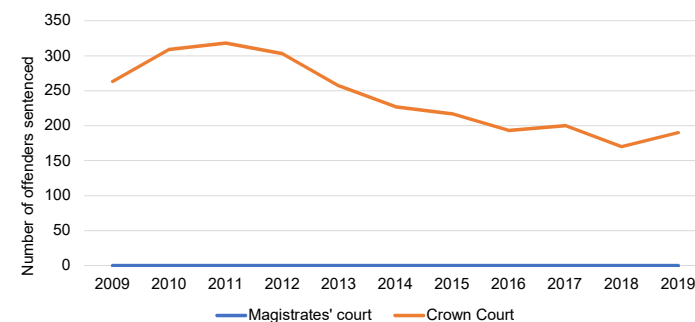
Number and proportion of adult offenders sentenced for aggravated burglary, by sentence outcome, all courts, 2009-2019

Outcome	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Fine	0	0	0	0	0	0	1	0	0	0	0
Community sentence	5	11	4	3	0	3	1	0	2	1	0
Suspended sentence	10	15	8	3	4	2	6	2	2	1	0
Immediate custody	246	278	302	293	251	217	199	179	183	159	173
Otherwise dealt with	2	5	4	4	2	5	10	12	13	9	17
Total	263	309	318	303	257	227	217	193	200	170	190

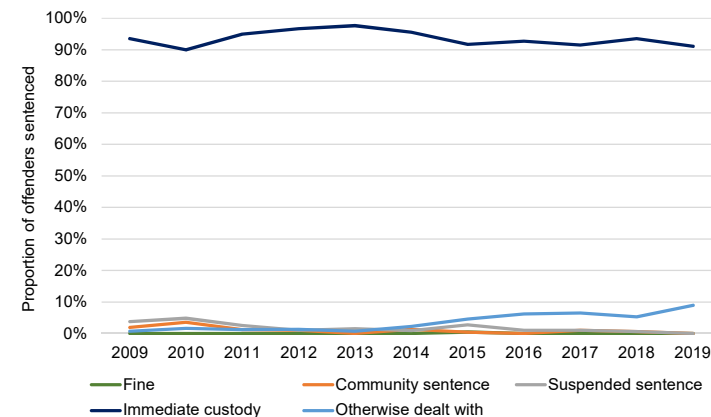
Outcome	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
Fine	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%	0%
Community sentence	2%	4%	1%	1%	0%	1%	0%	0%	1%	1%	0%
Suspended sentence	4%	5%	3%	1%	2%	1%	3%	1%	1%	1%	0%
Immediate custody	94%	90%	95%	97%	98%	96%	92%	93%	92%	94%	91%
Otherwise dealt with	1%	2%	1%	1%	1%	2%	5%	6%	7%	5%	9%

The majority of offenders sentenced for aggravated burglary are sentenced to immediate custody. In 2019, 91 per cent of offenders were sentenced to immediate custody and nine per cent were otherwise dealt with.

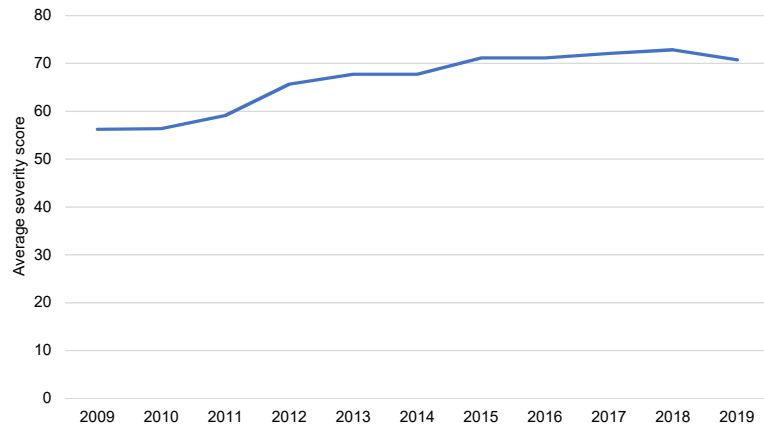
Number of adult offenders sentenced for aggravated burglary, by court type, 2009-2019



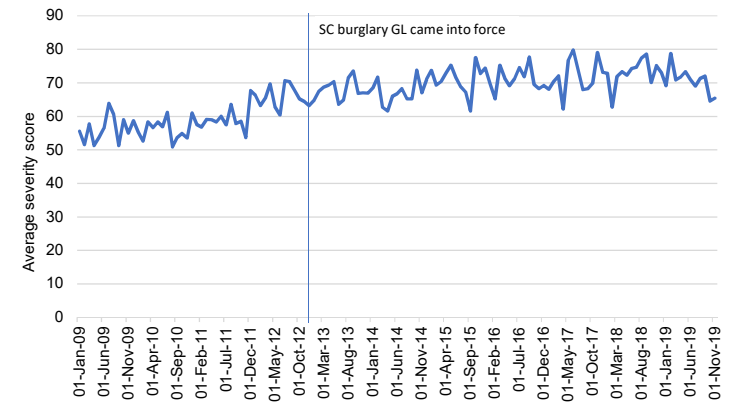
Sentence outcomes for adult offenders sentenced for aggravated burglary, all courts, 2009-2019



Average sentencing severity per year for adult offenders sentenced for aggravated burglary, all courts, 2009-2019

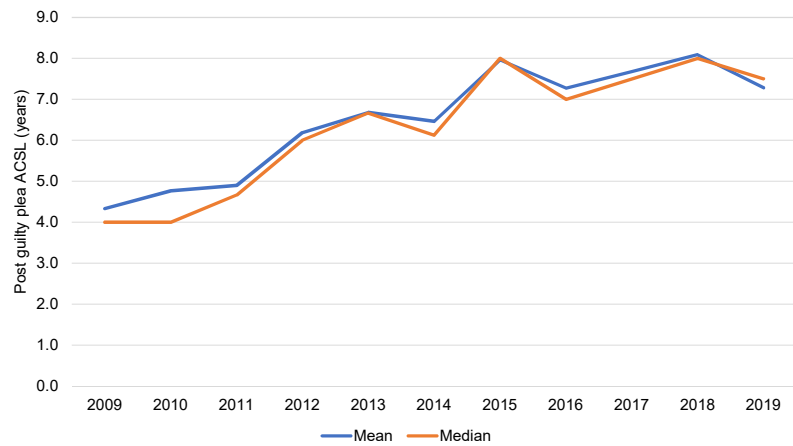


Average sentencing severity per month for adult offenders sentenced for aggravated burglary, all courts, 2009-2019

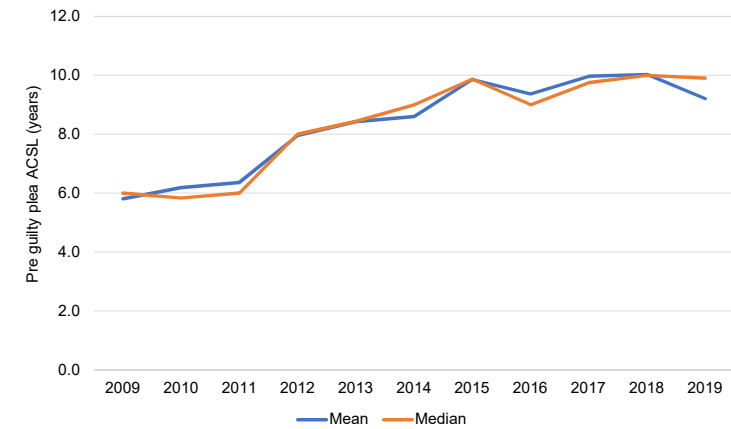


Since 2010 there has been an upward trend in sentence severity, but has started to drop in the last year.

Post guilty plea ACSLs received by adult offenders sentenced to immediate custody for aggravated burglary, all courts, 2009-2019



Estimated ACSLs (pre guilty plea) received by adult offenders sentenced to immediate custody for aggravated burglary, all courts, 2009-2019



Information is displayed for both the mean and median average custodial sentence lengths (ACSLs). Over time the ACSL (mean) has increased, from 4 years 4 months in 2009 to 7 years 3 months in 2019 (post guilty plea).

Sentence length bands (post guilty plea) received by adult offenders sentenced to immediate custody for aggravated burglary, all courts, 2009-2019

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
2 years or less	36	29	28	12	8	5	3	2	3	1	6
Between 2 and 4 years	77	104	91	50	37	41	20	19	20	17	24
Between 4 and 6 years	85	67	102	94	70	62	37	43	41	30	36
Between 6 and 8 years	16	31	39	69	69	66	49	59	55	45	45
Between 8 and 10 years	5	11	12	29	51	29	51	39	38	36	34
More than 10 years	4	11	7	17	14	13	38	17	26	30	27
Indeterminate	23	25	23	22	2	1	1	.	.	.	1
Total	246	278	302	293	251	217	199	179	183	159	173

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
2 years or less	15%	10%	9%	4%	3%	2%	2%	1%	2%	1%	3%
Between 2 and 4 years	31%	37%	30%	17%	15%	19%	10%	11%	11%	11%	14%
Between 4 and 6 years	35%	24%	34%	32%	28%	29%	19%	24%	22%	19%	21%
Between 6 and 8 years	7%	11%	13%	24%	27%	30%	25%	33%	30%	28%	26%
Between 8 and 10 years	2%	4%	4%	10%	20%	13%	26%	22%	21%	23%	20%
More than 10 years	2%	4%	2%	6%	6%	6%	19%	9%	14%	19%	16%
Indeterminate	9%	9%	8%	8%	1%	<1%	<1%	0%	0%	0%	<1%

In 2019, 46% of those sentenced receive a sentence of between six and ten years.

Sentence length bands (pre guilty plea) received by adult offenders sentenced to immediate custody for aggravated burglary, all courts, 2009-2019

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
2 years or less	16	7	14	6	4	5	3	1	.	1	3
Between 2 and 4 years	38	52	46	25	16	13	6	7	7	6	11
Between 4 and 6 years	82	94	94	49	35	39	19	17	23	14	27
Between 6 and 8 years	54	56	61	64	59	36	30	42	29	23	23
Between 8 and 10 years	20	17	42	66	78	57	56	54	49	47	33
Between 10 and 12 years	6	16	15	49	33	47	48	31	40	44	52
More than 12 years	7	11	7	12	24	19	36	27	35	24	23
Indeterminate	23	25	23	22	2	1	1	.	.	.	1
Total	246	278	302	293	251	217	199	179	183	159	173

Sentence length band	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	2019
2 years or less	7%	3%	5%	2%	2%	2%	2%	1%	0%	1%	2%
Between 2 and 4 years	15%	19%	15%	9%	6%	6%	3%	4%	4%	4%	6%
Between 4 and 6 years	33%	34%	31%	17%	14%	18%	10%	9%	13%	9%	16%
Between 6 and 8 years	22%	20%	20%	22%	24%	17%	15%	23%	16%	14%	13%
Between 8 and 10 years	8%	6%	14%	23%	31%	26%	28%	30%	27%	30%	19%
Between 10 and 12 years	2%	6%	5%	17%	13%	22%	24%	17%	22%	28%	30%
More than 12 years	3%	4%	2%	4%	10%	9%	18%	15%	19%	15%	13%
Indeterminate	9%	9%	8%	8%	1%	<1%	1%	0%	0%	0%	1%

Source: Court Proceedings Database, Ministry of Justice

Note:

1) Excludes youths, and cases which are recorded in the CPD as being sentenced in magistrates' courts (this offence is indictable only).

Sentence outcomes and ACSLs for aggravated burglary offences (post-guideline), Crown Court, 2012 Q2 - 2015 Q1^{1,2}

Offenders placed in each offence category (level of seriousness)

Seriousness	2012 Q234	2013	2014	2015 Q1
	(n=123)	(n=155)	(n=160)	(n=43)
Level 1 (most)	76%	68%	69%	81%
Level 2	23%	28%	29%	19%
Level 3 (least)	1%	4%	1%	0%
Total	100%	100%	100%	100%

Offence categories in Sentencing Council aggravated burglary definitive guideline

Offence Category	Starting Point <i>(Applicable to all offenders)</i>	Category Range <i>(Applicable to all offenders)</i>
Category 1	10 years' custody	9–13 years' custody
Category 2	6 years' custody	4–9 years' custody
Category 3	2 years' custody	1–4 years' custody

Based on the most recent data available, 81 per cent of offenders currently fall in the highest category of seriousness, and the remainder (19 per cent) fall in the middle category.

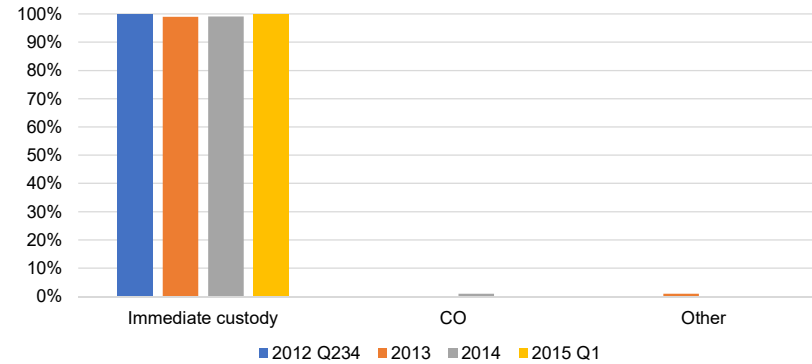
Offence category 1 (most serious)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234	2013	2014	2015 Q1
	(n=94)	(n=105)	(n=111)	(n=35)
Immediate custody	100%	99%	99%	100%
CO	0%	0%	1%	0%
Other	0%	1%	0%	0%
Total	100%	100%	100%	100%

Since the guideline came into force, the ACSL in category 1 has ranged from 7 years 3 months to 8 years (post guilty plea). The pre guilty plea ACSL has ranged from 9 years 6 months to 9 years 10 months. (To note, the starting point in this category is 10 years.)

Proportion of adult offenders, by sentence outcome, category 1 (most serious), 2012 to 2015



Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	89.7	87.4	87.8	95.5
Median	90.0	90.0	88.0	108.0

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	7.5	7.3	7.3	8.0
Median	7.5	7.5	7.3	9.0

Pre guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	117.7	113.5	113.6	115.0
Median	116.4	114.0	120.0	120.0

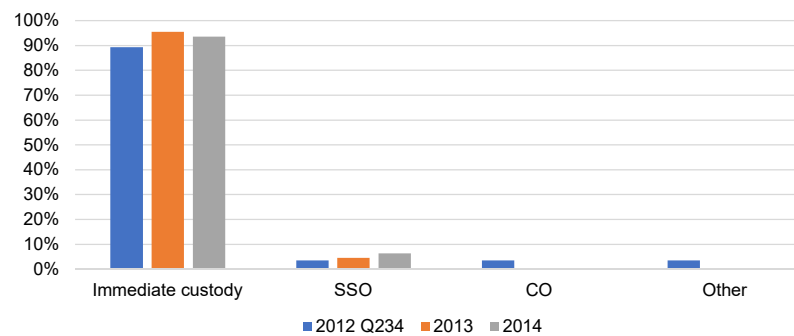
	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	9.8	9.5	9.5	9.6
Median	9.7	9.5	10.0	10.0

Offence category 2 (middle category)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234 (n=28)	2013 (n=44)	2014 (n=47)	2015 Q1 (n=8)
Immediate custody	89%	95%	94%	*
SSO	4%	5%	6%	*
CO	4%	0%	0%	*
Other	4%	0%	0%	*
Total	100%	100%	100%	*

Proportion of adult offenders, by sentence outcome, category 2 (middle category), 2012 to 2015



The proportion of offenders placed in category 2 has fluctuated since the guideline came into force, as has the ACSL, which has ranged from 4 years 4 months to 4 years 8 months.

* Proportions and ACSLs have not been shown for 2015 Q1, due to the low number of offenders placed within this category during this period.

Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	54.9	55.9	52.4	*
Median	54.0	53.0	48.0	*

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	4.6	4.7	4.4	*
Median	4.5	4.4	4.0	*

Pre guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	69.9	71.3	64.3	*
Median	71.6	69.2	60.0	*

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	5.8	5.9	5.4	*
Median	6.0	5.8	5.0	*

Offence category 3 (least serious)

Proportion of offenders receiving each sentence outcome

Sentence outcome	2012 Q234 (n=1)	2013 (n=6)	2014 (n=2)	2015 Q1 (n=0)
Immediate custody	*	*	*	*
SSO	*	*	*	*
Total	*	*	*	*

* Proportions and ACSLs have not been shown for category 3, due to the very low number of offenders placed within this category each year.

Post guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	*	*	*	*
Median	*	*	*	*

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	*	*	*	*
Median	*	*	*	*

Pre guilty plea ACSLs for offenders sentenced to immediate custody

	ACSL in months			
	2012 Q234	2013	2014	2015 Q1
Mean	*	*	*	*
Median	*	*	*	*

	ACSL in years			
	2012 Q234	2013	2014	2015 Q1
Mean	*	*	*	*
Median	*	*	*	*

Source: Crown Court Sentencing Survey

Notes:

1) Excludes youths, and cases which are recorded in the CPD as being sentenced in magistrates' courts (this offence is indictable only).

2) The CCSS response rate for the period 1 April - 31 December 2012 was 58%. In 2013 and 2014, the response rates were 60% and 64%, respectively. From 1 January - 31 March 2015 the response rate was 58%.

Frequency of factors for aggravated burglary offences (post-guideline), Crown Court, 2012 Q2 - 2015 Q1^{1,2,3}

	2012 Q234	2013	2014	2015 Q1
Total forms included in analysis:	136	168	172	46
So 10% is approximately:	14	17	17	5
And 1% is approximately:	1	2	2	0

Factors indicating greater harm

	2012 Q234	2013	2014	2015 Q1
Theft of/damage to property causing significant degree of loss	13%	9%	13%	17%
Soiling/ransacking/vandalism of property	12%	14%	12%	9%
Victim on/returns to premises while offender present	74%	68%	69%	74%
Significant physical/psychological injury or trauma	42%	39%	41%	57%
Violence used/threatened particularly involving a weapon	80%	75%	67%	72%
Context of general public disorder	4%	5%	3%	7%
None stated	8%	13%	12%	11%

Very frequently used greater harm factor
Frequently used greater harm factor
Very frequently used greater harm factor

Factors indicating lesser harm

No physical/psychological injury or trauma	5%	7%	6%	11%
No violence used/threatened and a weapon not produced	1%	5%	4%	7%
Nothing stolen or of very low value ⁴	10%	17%	8%	9%
Limited damage/disturbance to property	6%	11%	3%	9%
None stated	82%	79%	85%	83%

Factors indicating higher culpability

	2012 Q234	2013	2014	2015 Q1
Deliberately targeted	51%	48%	45%	52%
Significant degree of planning	43%	42%	44%	39%
Equipped for burglary	32%	43%	37%	24%
Weapon present on entry or carried	77%	72%	76%	85%
Member of group or gang	62%	60%	52%	61%
None stated	7%	13%	13%	11%

Frequently used greater harm factor
Frequently used greater harm factor
Frequently used greater harm factor
Very frequently used greater harm factor
Very frequently used greater harm factor

Factors indicating lower culpability

Offender exploited by others	5%	1%	2%	4%
Offence committed on impulse/limited intrusion	4%	4%	5%	0%
Mental disorder/learning disability where linked to the	1%	1%	1%	2%
None stated	90%	95%	92%	96%

Factors increasing seriousness

	2012 Q234	2013	2014	2015 Q1
<i>Statutory aggravating factors:</i>				
Previous relevant convictions:	62%	61%	62%	57%
Offence committed on bail	4%	3%	4%	2%
None stated	35%	38%	36%	41%

High proportion of cases with previous convictions.

Other aggravating factors include:

Child at home/returns	16%	20%	18%	26%
Committed at night	42%	38%	50%	48%
Abuse of power/trust	0%	2%	1%	0%
Gratuitous degradation	7%	9%	7%	4%
Steps taken to prevent reporting/assisting prosecution	2%	5%	3%	2%
Victim compelled to leave home (domestic violence in particular)	2%	10%	6%	9%
Established evidence of community impact	0%	2%	1%	0%
Offender was under the influence of alcohol/drugs	19%	21%	17%	37%
Failure to comply with current court orders	12%	4%	9%	13%
On licence	10%	9%	12%	13%
TIC's	4%	2%	1%	0%
Major role of offender including Facilitating/forcing involvement of others including child	1%	1%	0%	2%
Multiple/previous attempts at same type of offence	0%	1%	1%	0%
Newton hearing/trial of issue	1%	1%	0%	0%
Risk of harm to others/causing fear to others	0%	1%	0%	4%
Location of offence	1%	0%	1%	4%
Wearing of a disguise	1%	1%	0%	2%
Vulnerable victim	0%	1%	0%	2%
No factors stated	29%	38%	31%	26%

Frequently used aggravating factor.

Factors reducing seriousness or reflecting personal mitigation

	2012 Q234	2013	2014	2015 Q1
Subordinate role in group or gang	13%	11%	14%	9%
Injuries caused recklessly	2%	5%	2%	2%
Nothing stolen or of very little value ⁴	15%	15%	11%	11%
Made voluntary reparation	1%	0%	1%	0%
No previous relevant convictions	16%	17%	16%	2%
Remorse	29%	25%	25%	15%
Good character/exemplary conduct	10%	5%	8%	0%
Determination/demonstration to address addiction/behaviour	4%	5%	7%	4%
Serious medical conditions	2%	1%	4%	2%
Age/lack of maturity affecting responsibility	13%	15%	12%	13%
Lapse of time not fault of offender	1%	2%	1%	2%
Mental disorder/learning disability where not linked to the commission of the offence	2%	2%	3%	4%
Sole/primary carer for dependant relatives	1%	1%	1%	0%
Long gap between offences/lived legally in-between reoffending	0%	1%	1%	0%
Is an addict	0%	0%	1%	2%
Co-operation with authorities	2%	2%	0%	0%
Provocation	1%	1%	1%	0%
No Factors stated	45%	45%	52%	61%

Most frequently used mitigating factor.

Source: Crown Court Sentencing Survey

Notes:

- 1) Excludes youths.
- 2) In some cases, sentencers wrote additional factors in a free-text box on the form. These have been included in the table above if the proportion was at least 1% in more than one period. These factors have been highlighted in orange.
- 3) Factors in blue are those which are not specifically listed in the aggravated burglary guideline, but were on the CCSS form, because they were in either the domestic or non-domestic burglary guidelines.
- 4) The factor 'Nothing stolen or of very little value' is not actually a lesser harm factor in the aggravated burglary guideline (it is a mitigating factor). It is, however, a lesser harm factor for domestic/non-domestic burglary, and therefore appeared in two places on the CCSS form (which covered all types of burglary). It was therefore possible for sentencers to tick this factor twice.

Demographics of adult offenders sentenced for Aggravated Burglary, by sex, age and perceived ethnicity, 2019

Sex	Number of adults sentenced	Percentage of all adults sentenced¹
Male	181	95
Female	9	5
Not recorded/not known	-	-
Total	190	100

95% of those sentenced were male

Age Group	Number of adults sentenced	Percentage of all adults sentenced
18 to 21 years	46	24
22 to 29 years	65	34
30 to 39 years	43	23
40 to 49 years	26	14
50 to 59 years	10	5
60 years or older	-	-
Not recorded/not known	-	-
Total	190	100

81% of the adults sentenced were under 40 years of age.

Perceived Ethnicity²	Number of adults sentenced	Percentage of all adults sentenced¹
White	119	78
Black	23	15
Asian	6	4
Other	5	3
Not recorded/not known	37	-
Total	190	100

78% of adults sentenced had 'white' as their recorded perceived ethnicity.

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Percentage calculations do not include cases where the sex, age or perceived ethnicity was unknown.
- 2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Number and proportion of adult offenders sentenced for aggravated burglary, by gender, age and perceived ethnicity and sentence outcome, 2019

Sex	Immediate custody	Otherwise dealt with ¹	Total
Male	168	13	181
Female	5	4	9
Not recorded/not known	-	-	-

Age Group	Immediate custody	Otherwise dealt with ¹	Total
18 to 21 years	44	2	46
22 to 29 years	59	6	65
30 to 39 years	39	4	43
40 to 49 years	21	5	26
50 to 59 years	10	0	10
60 years or older	0	0	0
Not recorded/not known	0	0	0

Perceived Ethnicity ²	Immediate custody	Otherwise dealt with ¹	Total
White	109	10	119
Black	22	1	23
Asian	5	1	6
Other	5	0	5
Not recorded/not known	32	5	37

Sex	Immediate custody	Otherwise dealt with ¹	Total
Male	93%	7%	100%
Female	56%	44%	100%
Not recorded/not known	-	-	-

Age Group	Immediate custody	Otherwise dealt with ¹	Total
18 to 21 years	96%	4%	100%
22 to 29 years	91%	9%	100%
30 to 39 years	91%	9%	100%
40 to 49 years	81%	19%	100%
50 to 59 years	100%	0%	100%
60 years or older	-	-	-
Not recorded/not known	-	-	-

Perceived Ethnicity ²	Immediate custody	Otherwise dealt with ¹	Total
White	92%	8%	100%
Black	96%	4%	100%
Asian	83%	17%	100%
Other	100%	0%	100%
Not recorded/not known	86%	14%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) The category 'Otherwise dealt with' includes: one day in police cells; disqualification order; restraining order; confiscation order; travel restriction order; disqualification from driving; recommendation for deportation;
- 2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Average custodial sentence lengths (ACSL) received by adult offenders sentenced for aggravated burglary, by sex, age and perceived ethnicity, 2019

Gender	ACSL (years)¹	
	Mean	Median
Male	7.8	7.5
Female	6.9	8.0
Not recorded/not known	-	-

Age Group	Mean	Median
18 to 21 years	6.1	6.0
22 to 29 years	8.3	8.0
30 to 39 years	7.5	8.0
40 to 49 years	6.4	7.0
50 to 59 years	16.7	7.8
60 years or older	-	-
Not recorded /not known	-	-

Perceived Ethnicity²	Mean	Median
White	8.4	8.0
Black	7.6	7.1
Asian	6.0	6.0
Other	5.9	6.5
Not recorded/not known	6.6	6.4

Source: Court Proceedings Database, Ministry of Justice

Notes:

- 1) Excludes life and indeterminate sentences.
- 2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case.

Sentence lengths received by adult offenders sentenced to immediate custody for aggravated burglary, by gender, age and perceived ethnicity, 2019

Sex	Number of adults sentenced to each sentence length (years) ¹								
	2 years or less	Between 2 and 4 years	Between 4 and 6 years	Between 6 and 8 years	Between 8 and 10 years	Between 10 and 12 years	More than 12 years	Indeterminate	Total
Male	6	23	35	44	32	24	3	1	168
Female	0	1	1	1	2	0	0	0	5
Not recorded /not known	-	-	-	-	-	-	-	-	-

Age Group	Number of adults sentenced to each sentence length (years) ¹								
	2 years or less	Between 2 and 4 years	Between 4 and 6 years	Between 6 and 8 years	Between 8 and 10 years	Between 10 and 12 years	More than 12 years	Indeterminate	Total
18 to 21 years	0	8	19	9	7	1	0	0	44
22 to 29 years	2	5	8	15	14	14	1	0	59
30 to 39 years	2	5	6	11	9	5	1	0	39
40 to 49 years	2	5	3	4	3	3	1	0	21
50 to 59 years	0	1	0	6	1	1	0	1	10
60 years or older	0	0	0	0	0	0	0	0	0
Not recorded /not known	-	-	-	-	-	-	-	-	-

Perceived Ethnicity ²	Number of adults sentenced to each sentence length (years) ¹								
	2 years or less	Between 2 and 4 years	Between 4 and 6 years	Between 6 and 8 years	Between 8 and 10 years	Between 10 and 12 years	More than 12 years	Indeterminate	Total
White	4	11	21	28	25	17	2	1	109
Black	0	4	5	4	4	4	1	0	22
Asian	0	1	2	1	1	0	0	0	5
Other	0	1	1	3	0	0	0	0	5
Not recorded /not known	2	7	7	9	4	3	0	0	32

Sex	Proportion of adults sentenced to each sentence length (years)								
	2 years or less	Between 2 and 4 years	Between 4 and 6 years	Between 6 and 8 years	Between 8 and 10 years	Between 10 and 12 years	More than 12 years	Indeterminate	Total
Male	4%	14%	21%	26%	19%	14%	2%	1%	100%
Female	0%	20%	20%	20%	40%	0%	0%	0%	100%
Not recorded /not known	-	-	-	-	-	-	-	-	-

Age Group	Proportion of adults sentenced to each sentence length (years)								
	2 years or less	Between 2 and 4 years	Between 4 and 6 years	Between 6 and 8 years	Between 8 and 10 years	Between 10 and 12 years	More than 12 years	Indeterminate	Total
18 to 21 years	0%	18%	43%	20%	16%	2%	0%	0%	100%
22 to 29 years	3%	8%	14%	25%	24%	24%	2%	0%	100%
30 to 39 years	5%	13%	15%	28%	23%	13%	3%	0%	100%
40 to 49 years	10%	24%	14%	19%	14%	14%	5%	0%	100%
50 to 59 years	0%	10%	0%	60%	10%	10%	0%	10%	100%
60 years or older	-	-	-	-	-	-	-	-	-
Not recorded /not known	-	-	-	-	-	-	-	-	-

Perceived Ethnicity ²	Proportion of adults sentenced to each sentence length (years)								
	2 years or less	Between 2 and 4 years	Between 4 and 6 years	Between 6 and 8 years	Between 8 and 10 years	Between 10 and 12 years	More than 12 years	Indeterminate	Total
White	4%	10%	19%	26%	23%	16%	2%	1%	100%
Black	0%	18%	23%	18%	18%	18%	5%	0%	100%
Asian	0%	20%	40%	20%	20%	0%	0%	0%	100%
Other	0%	20%	20%	60%	0%	0%	0%	0%	100%
Not recorded /not known	6%	22%	22%	28%	13%	9%	0%	0%	100%

Source: Court Proceedings Database, Ministry of Justice

Notes:

1) Sentence length intervals do not include the lower bound, but do include the upper bound sentence length. For example, the category '2 years or less' includes sentence lengths less than and equal to 2 years, and '2 to 4' includes sentence lengths over 2 years, and up to and including 4 years.

2) The "perceived ethnicity" is the ethnicity of the offender as perceived by the police officer handling the case

Meeting date: 5 March 2021
Paper number: SC(21)MAR06 – What next for the
Sentencing Council?
Lead official: Emma Marshall

ISSUE

1.1 Responses put forward in the Vision consultation in relation to the Council's analytical work.

RECOMMENDATION

2.1 That the Council considers the issues raised and provides indicative responses to the questions posed; in particular, that the Council agrees to devote some time in the Analysis and Research (A&R) team to scoping out an enhanced approach to data collection which in the longer term may facilitate improvements to some of the issues outlined in this paper.

CONSIDERATION

3.1 As discussed in previous Council meetings, one of the overarching themes of the Vision consultation was analysis and research. Of the 23 questions asked, six covered this work and included issues such as whether there were any technical aspects of the Council's analytical work that could be improved, whether the focus and prioritisation of the work was appropriate and whether there were any other areas the Council should be considering as part of its programme of analytical work. There was also a question on whether there are any areas of work that would be more suitable for an academic institution or external organisation to undertake.

3.2 This area of the Council's work attracted a lot of comments. Some of these have already been discussed in previous meetings and views/ actions already noted:

- The agreement that, subject to resources and availability of data, more analytical work should be undertaken in relation to specific groups, most notably those with

protected characteristics. It was noted that in order to do this, we may need to seek money from elsewhere and/ or collaborate with external partners.

- That to facilitate further work in the area of ethnicity we would seek permission to include case identifiers in future data collections to permit data linking.
- That the Council would consider undertaking more qualitative work with offenders and victims, and other relevant groups, on a case by case basis.
- That we would provide information around how to obtain sentencing transcripts, given that the Council cannot share these with external people/ organisations.

3.3 The new Equality and Diversity working group, along with the Analysis and Research subgroup, will steer work in these areas to ensure that the relevant issues are considered in our analytical work. This paper will therefore cover issues not yet raised in feedback to the Council.

The prioritisation of the Council's analytical work

3.4 Although very few people specifically addressed the question around whether the Council had correctly prioritised its duties in relation to analytical work, the volume and diversity of comments more generally indicated how important this area is regarded in terms of the overall functioning of the Council.

3.5 Of the small number that did address this question, there were contrasting views. The MA felt that the *"correct balance has been achieved in this regard"*, whereas, the Prison Reform Trust felt that work to evaluate guidelines should be prioritised more highly than work on developing new guidelines. The Justice Select Committee also felt that whilst guidelines should continue to be a core part of the Council's work, it should rebalance *"so that it can dedicate more resources to evaluating the impact of guidelines, producing research and analysis on sentencing trends and promoting public confidence in sentencing"*.

3.6 One member of the judiciary was, however, less supportive of a high priority being given to this area: *"the sentencing guidelines are the priority. Analytical work comes a very poor second and so it should"* (although arguably, this may more reflect the need to be clearer about the role of research and analysis in guideline development).

3.7 In terms of more specific comments, respondents felt there should be further work undertaken in the following areas:

- Assessing the impact and implementation of guidelines, including resources and consistency of sentencing;
- Data issues;
- Local area data;
- Sentencing and non sentencing factors reports;
- Other areas for research and analysis; and,
- Collaborating with others and seeking external sources of funding.

Assessing the impact and implementation of guidelines

3.8 The need to more fully assess the impacts of guidelines was raised in several submissions. This covered assessment of resources, as well the impact on sentencing outcomes (generically and for specific groups, as discussed previously in relation to groups with protected characteristics). It was felt that we should not only be evaluating more of our guidelines, but undertaking fuller and more informed evaluations.

The Council has neglected its duties to monitor the operation and effect of its sentencing guidelines and consider what conclusions can be drawn from the information obtained... The Council has not reliably been able to fulfil its core function of estimating the impact of its guidelines on prison and probation resources. For most of the offences covered in the arson and criminal damage guideline, for example, it was not possible to predict whether the guidelines would have an impact because of a lack of available data on how cases would be categorised under the new guidelines; on breach of a suspended sentence order it was not possible to assess previous sentencing practice or to make any realistic or informative estimate of the impact of the guideline on prison or probation services. Transform Justice thinks that much more priority needs to be given to assessing the resource impact of guidelines and monitoring what happens after they come into force. Indeed, there is a strong case that guidelines should not be developed in relation to a particular offence unless and until sufficient data is available to assess current sentencing practice, Transform Justice

We would also suggest that more work could be done to assess the impact of sentencing guidelines once they have been implemented. This is crucial in ensuring that they are being implemented consistently and having the intended effects. This may be particularly important in magistrates' courts, where there is a large volume of cases and a relative lack of available information on sentencing decisions, Magistrates' Association

To-date, the Council's work has been too descriptive and not sufficiently explanatory. Without a good understanding of the mechanisms explaining the effect of the guidelines on sentencing practice, the Council's efforts to improve the guidelines (and practice) are lacking the relevant evidence and consequently unlikely to succeed. Examples of research questions that could be pursued in order to adopt a more evidence-based approach to the monitoring and evaluation of guidelines include: (1) Why do sentencers depart from the guidelines (not simply "the frequency/extent to which courts depart from sentencing guidelines")? (2) What is the effect of specific legal and extra-legal factors on sentencing, controlling for the effects of other factors, and examining their interactions (not simply "factors that influence the sentencing imposed by the courts, Professor Mandeep Dhani

We agree with Anthony Bottoms that the Council has fulfilled its statutory duty to assess the impact of every guideline "only to a limited extent"... We note with concern that two of the three impact assessments for assault and burglary revealed unexpected increases in sentencing for some offences. Rightly, the Council is now conducting a further review of the assault guideline in order to address these anomalies. However, a concern remains that, as with the guidelines on assault and burglary, other guidelines will have had similar and unexpected consequences for sentencing practice which will not have been identified because of a lack of resource available to monitor their impacts... Guidelines for high volume offences, which the Council has prioritised over the past 10 years, will have a disproportionate impact on sentencing practice overall. Therefore, it is vital that the Council has a good understanding of their impact in order to address any unintended outcomes. We therefore believe this work should be prioritised over fresh analytical work on proposed new guidelines, Prison Reform Trust

3.9 Both the Justice Select Committee and Transform Justice also recommended that all legislative and policy proposals which could have an impact on the prison population should be subject to a resource assessment by the Council at an early stage.

3.10 For several respondents, a view was expressed that there was also a need to assess the impact of guidelines on consistency in sentencing, and consequently to address more fully the duty in this area. The Sentencing Academy also noted the relative lack of analysis of the impact of overarching guidelines.

To date, the Council's research has concentrated on projecting the impact of an impending guideline on prison capacity or evaluating the impact of an existing guideline on trends in sentence severity, including prison admissions and sentence lengths. The Council's guideline assessments have overlooked the question of consistency, Sentencing Academy

The Council also needs to have a clear definition of consistency, and it should examine alternative types of consistency so it can conduct a more accurate and nuanced analysis of the "the effect of guidelines in promoting consistency". The main examples of alternative types of consistency include variation (1) across different areas, courts, and judges, as well as (2) within areas, courts, and judges. Statistical analyses of consistency could also distinguish between consistency achieved by chance v. intention. Analysis along these lines could pinpoint the areas where more or less intervention is required to promote consistency, Professor Mandeep Dhami

3.11 In conducting assessments of impacts, some respondents felt that the Council needs more fundamentally to reconsider what it regards as "success" and therefore how it interprets its evaluation evidence.

3.12 The Prison Reform Trust (PRT) in particular questioned the way in which we interpret our evaluation findings. Citing the burglary evaluation, they flag that this found an upward trend in sentence severity prior to introduction of the guideline and consequently concluded that the continuing increase after introduction of the guidance was in line with anticipated results. However, in support of a point made by Professor Sir Anthony Bottoms in his review of the Council¹, they feel that any pre-guideline increases in sentencing severity that continue after implementation of a guideline should be regarded as an unanticipated outcome. Other comments are below:

¹ The Prison Reform Trust: "As Anthony Bottoms highlights, however, "This judgement is open to question. It can be argued, to the contrary, that the purpose of a guideline is to set sentencing levels, and if there is a pre-existing upward trend for the particular offence, and the guideline recommends (broadly) the existing sentencing levels, then the intention of the guideline is to stabilise the upward trend. Accordingly, it is recommended that when conducting impact assessments, if there is a pre-existing upward trend and sentence severity continues to rise after the implementation of a guideline, the Council should in future treat this as an unanticipated, and not an anticipated, increase in the sentence level."

The effectiveness of sentencing appears to focus on reoffending rates whereas maybe a focus on positive outcomes and how sentences influenced that outcome and why... I think the general approach of the Council in providing guidance is ok at the moment but the measure of success is in my view very flawed, Magistrate

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

Prevention of offending should be the main consideration of the Council, Member of the public

3.13 The issue of effectiveness in sentencing will be discussed in more detail at the April Council meeting and any decisions on this can be fed into the impacts that we consider in our future evaluations (caveated with the fact that for some areas data may be limited).

3.14 For all of the areas flagged here under the general theme of assessing the impact and implementation of guidelines, the two key constraints for any future work is availability of data and the capacity of the analytical team to undertake more in-depth work, as outlined below.

Assessing resources

3.15 From a data perspective, our earlier resource assessments were less problematic. Early guidelines produced by the Council – e.g. assault, burglary and drugs – related to offences where more data, particularly on volumes and outcomes, were available. However, for later guidelines, there has not been as much data available on which to base these assessments.

3.16 Resource assessments are also particularly problematic for guidelines that cover lower level offences as the data on non-custodial sentences is poorer, or for overarching guidelines which tend to cover broader areas or areas which are not offences in their own right (e.g. the mental health guideline and the domestic abuse guideline). This means that our resource assessments tend to focus on prison places, as noted by the MoJ who felt that

this should be broadened out: *“I would be interested in further information on how fine levels are likely to be used and distributed across the courts for draft and definitive guidelines. This would be particularly helpful for low level offences in the magistrates’ court”*.

3.17 The lack of data we often have is explicitly acknowledged when we publish resource assessments, and is an area that has been flagged in the past by others (for example by the JSC in response to specific guideline consultations). We do, however, endeavour to collect as much information as possible. This includes conducting our own data collection exercises, liaising with other agencies and stakeholders to establish what other data might be available (e.g. NHS England for data on mental health disorders), conducting road testing exercises to explore the potential behavioural implications of guidelines, and buying in transcripts of sentencing hearings wherever possible and using these to “re-sentence” cases using draft guidelines. However, it remains the case that the information that we have to draw on for resource assessments is problematic.

Assessing impacts and implementation issues

3.18 In terms of our evaluations, we again endeavour to cover as much as possible based on the data and resources we have available. Although each evaluation is different, we generally explore both the impact and implementation issues, using a range of different approaches. These include time series analysis to look at trends in sentencing severity before and after a guideline came into force, regression analysis to explore the impact of different guideline factors on outcomes, and qualitative research to ascertain sentencers’ views on guidelines and whether they have experienced any issues with using the guideline in practice.

3.19 Over time, we have worked to make improvements to our evaluations, where possible. This has included starting to look at sentence outcomes for different ethnic groups (as we did in the Children and Young People guideline evaluation), making improvements to our data collections to anticipate what we might need for future evaluations and exploring what other data we might be able to draw on (e.g. we now have an agreement to access Court of Appeal data). We are also currently in discussions with an external academic to update our sentencing severity scale² after which we plan to consider changing our approach to the time series analysis.

² For our statistical analysis, we need to convert sentences to enable meaningful comparisons to be drawn. Sentences are converted into a continuous “severity scale” with scores ranging from 0 to 100, representing the full range of sentence outcomes from a discharge (represented by 0) to 20 years’ custody (represented by 100); this allows the creation of a consistent and continuous measure of sentencing severity that can be used to evaluate changes in sentencing.

3.20 There is undoubtedly more we could do to enhance our evaluations; as highlighted by some respondents, we could look in more detail at impacts on specific groups and could try to build in analysis that could potentially attempt to isolate the impact of the guidelines on outcomes, as opposed to, for example, case mix or legislative changes. However, this would require access to more data (assuming it exists in all areas) and would be extremely resource intensive if we were to do this for every evaluation. The gap between the implementation of a guideline and its evaluation is already longer than we would want, due to the pressure of other analytical work in the team, and without more resources, any more in-depth work would further widen this gap. We would also need to spend some time developing a suitable methodology for this type of analysis which is potentially complex.

3.21 This means that as resources currently stand, it will be difficult to conduct more in-depth evaluations, and even if we maintain our current approach, it will be difficult to conduct more evaluations on a more frequent basis. If we were to do this, other work would need to be slowed down, for example, the rate of new guideline production. If more evaluative work is to be a priority, then some reprioritisation of other work will be needed.

3.22 On the specific point raised by Transform Justice - that all legislative and policy proposals which could have an impact on the prison population should be subject to a resource assessment by the Council at an early stage – again, set against the Council's resources and other priorities, this would not seem to be a possibility. Civil servants in the relevant department would also be better placed to make this assessment than the Council's officials.

Assessing consistency

3.23 On consistency, the Council has adopted an approach that focusses on consistency of approach rather than outcome. This makes measurement problematic as it relies on having information on starting points (which is only available through our data collections) rather than outcome data (which is more readily available through administrative data sources).

3.24 The area of consistency is also an extremely complex one, as will be outlined in a report that we plan to publish later in 2021 (this will be circulated for comment in due course). In addition to a literature review of recent work in this area, the report outlines a methodology to measure consistency of approach to sentencing that was developed and applied to data covering three Sentencing Council guidelines – domestic

burglary, supply/possession with intent to supply a controlled drug, and theft from a shop or stall - to understand whether the guidelines have achieved the Council's aim of improving consistency in sentencing.

3.25 To date, we have not included an assessment of consistency as a routine part of our evaluations; the assessment in relation to the three offences mentioned above is the first time we have done this. This is because the whole area of measurement of consistency is complex, it can be measured in a variety of different ways, and it requires data that we sometimes do not have available to us. More work needs to be done in this area (including on a methodology as the one used previously has some limitations) and this will be flagged in the report referred to above.

Data issues

3.26 Respondents were asked to consider whether there are any improvements we could make in terms of the data sources we draw on and the time we give to accessing different types of data.

3.27 In general, respondents called for more of most things: a greater volume of data (mainly quantitative, but also qualitative), a greater diversity of data and more robust data. The overall sense that the Council needs to improve the data and evidence it draws upon was also something that was emphasised in the recent Justice Select Committee evidence session. In their response to the consultation they also said that "*improving the quality of information and analysis on sentencing, including the sentencing decision process and on sentencing outcomes, should be a key priority for the Sentencing Council over the next decade*".

3.28 Responses on data clearly have a large overlap with the issues presented above: if we are able to improve our data sources, then arguably some of the issues raised in relation to resource assessments and guideline evaluations could more easily be addressed.

3.29 Specific comments included the need to include specific subsamples in work (e.g. the YJB felt that there should be a standard youth subsample in all data collections) and others that more data on groups with protected characteristics was needed. Some people flagged the need for more qualitative work (although note that this was at odds with others' views, who clearly felt that the focus should be on larger scale quantitative work):

I am convinced that you should do a lot more small-scale qualitative research: it remains striking that one of the very rare times when you decided to ‘nudge’ sentences down was when your researchers had actually spoken to some drugs ‘mules’ in prison. The Sentencing Council and its staff (as well as judges and magistrates, as part of their training) should spend more time speaking with offenders and their families, and victims, to understand what works, and what people consider to be appropriate punishments, Professor Nicky Padfield

3.30 Some of the specific points mentioned are likely to be covered in the actions agreed in the Equality and Diversity working group; for example we agreed to consider more qualitative work with victims and offenders on a case-by-case basis.

3.31 More commonly, respondents called for a more ambitious programme of data collection, analysis and publication – one that would facilitate more evaluation of guidelines and more analysis of their impact. Some felt that a Crown Court Sentencing Survey (CCSS)³ should be resurrected (or something akin to this) or they stated that it had been a loss to have stopped this exercise in the first place.⁴

Improving the quality of information and analysis on sentencing, including the sentencing decision process and sentencing outcomes, should be a key priority for the Sentencing Council over the next decade, Justice Select Committee

Sentencing Council to facilitate ongoing data collection and monitoring of sentencing, ... Given that ongoing data collection about sentencing practice is key to monitoring the operation and effect of sentencing guidelines, it is regrettable that the CCSS was ended... The revised approach - bespoke data collection in the Crown Court and magistrates' courts to inform the development of (offence) specific guidelines – represents a loss of

³ Between 1 October 2010 and 31 March 2015, the Council conducted the CCSS, a census survey in all Crown Courts collecting data on the majority of offences sentenced. The CCSS was a paper-based survey and was completed by the sentencing judge. It collected information on the factors considered by the judge for the principal offence involved in the case, including harm and culpability, aggravating and mitigating factors, sentence starting points, end sentences and guilty plea reductions.

⁴ Due to resource constraints, it was decided to cease the CCSS from March 2015 and to move to targeted bespoke data collections to permit a continuation of data collection in Crown Courts, whilst also collecting data in magistrates' courts where most cases are sentenced (previously there had been no data collection in magistrates' courts). We now tend to run an exercise once every 18 months or so, in either the Crown Court or magistrates' courts. These exercises are targeted in the sense of covering specific offences, a sample of courts, and specific time periods (generally three to five months).

transparency in monitoring how sentencing impacts upon minority and disadvantaged groups and limits insight into changing practices over time, Dr Carly Lightowlers

We believe that an increased use of data collection exercises in the magistrates' courts could assist the Council's analytical work, Justices' Clerks Society

The Sentencing Council's Crown Court Sentencing Survey (CCSS) was very useful in stimulating external research. The publicly available database has been used by a significant number of scholars...However, the CCSS is now over five years old. The SC discontinued the survey in 2015 and replaced it by periodic, bespoke data collections. If these data were made publicly available, they would also be useful to external researchers. Otherwise researchers will have to work with data which too old. Sentencing Academy

3.32 People also wanted the data that we collect to be more routinely published.

Periodic, bespoke data collections...If these data were made publicly available, they would also be useful to external researchers. Otherwise researchers will have to work with data which too old, Sentencing Academy

Please publish the data. You do not have to interpret it, nor control it. We may be able to inform some of our own questions ourselves!, Member of the Judiciary

Sentencing Council to facilitate ongoing data collection and monitoring... and facilitate the transparent release of these. In order to deliver on a commitment to justice and to allow for ongoing evaluation of the work of the courts, "a robust strategy for data collection, analysis and sharing must be in place"...As well as quantitative data, the Council themselves have showcased how the analysis of sentencing transcripts can be illuminating. I encourage the Council to consider whether these can be made either open access or available to accredited researchers for their own content analysis, thus allowing the potential of these data to be more fully exploited and for furthering our understanding of sentencing practice, Dr Carly Lightowlers

3.33 As previously discussed, we are planning on publishing data from our bespoke data collections on a regular basis and the first of these – on theft from a shop or stall – was published in December. However, the work involved in cleaning, quality assuring and

publishing these datasets is substantial and if this was to be prioritised more highly, then we would need to slow down other aspects of the team's work (we already have a backlog of data to be cleaned because the 3.5 statisticians in the team are covering higher priority work in relation to producing resource assessments, analysing evaluation evidence and providing statistics for guideline development etc). We therefore currently work on the publication of data when resources permit and prioritise these other areas to a greater extent.

3.34 In relation to transcripts of sentencing remarks, as discussed previously, we are unable to facilitate access to these given the sensitive nature of some of these and the data sharing agreement we have with HMCTS. However, in a previous Council meeting, we agreed to publish information on our website to this effect and to advise people on how they may access these independently.

Enhanced data collection

3.35 The Council's Vision working group discussed data collection issues in their January meeting and the Analysis and Research subgroup have also fed into this. It was agreed that enhancing our data collections would yield benefits in a number of areas:

- It would permit more robust and meaningful analysis in some areas, based on potentially larger sample sizes.⁵
- It may permit us to undertake more analysis on key areas, for example, the exploration of whether any disproportionality in sentencing exists in relation to particular guideline offences.
- It would allow us to publish more in-depth data, thus promoting greater transparency in our work.
- It would create further opportunities for research in the MoJ and academia, which would not only further analysis more generally in the area of sentencing, but may lead to work being conducted that would directly benefit the Council.

⁵ Professor Dhimi argued that "the Council ought to recognise the fact that some data collection methods (e.g., focus groups, interviews, observations) as well as data analysis techniques (e.g., simple descriptive statistics) are less rigorous and reliable than others (e.g., statistical modelling, randomized controlled trials).

3.36 Crucially, in the context of many of the consultation responses, it could provide data to help strengthen our resource assessments, facilitate more robust and in-depth evaluations and explore issues around consistency of approach to sentencing more.

3.37 There are, however, some general constraints to any improvements we could consider making in this area:

- the type/ volume of data that could be collected (e.g. in some areas – particularly on protected characteristics – data/ sufficient data may not exist).
- if we wanted to increase the scale of frequency of our data collection in courts, we would need to obtain permission for data collections from the SPJ and HMCTS and agree any changes to the current approach.
- If we wanted to increase the scale and frequency of our data collections, we would need to ensure we had sufficient participation from sentencers to justify the increased effort (the MA pointed out the need to consider the timing and burden of any exercise on magistrates)⁶.
- The resources available in the analytical team. At this stage, without an agreed new model of data collection, it is difficult to estimate the resource impacts. However, any increased collections – beyond that which we already take forward – is likely to require the equivalent of an additional 0.5-1 FTE analyst.⁷

3.38 The vehicle through which we collect our data (i.e. as a survey hosted on our website/ app as is currently the case) or through digital court systems will also be dependant on our discussions with HMCTS on the Common Platform. We are currently discussing the type of information the system holds/ may hold in the future and the ways in which we might use this to feed into our guideline development and evaluation work.

3.39 Ideally, we would want to draw all the data needed from the Platform so that we do not have to ask for additional information from sentencers. However, it is likely that

⁶ *“It is important for the Council to consider the timing of any research targeted towards magistrates to take account of any other consultations or data collection exercises that might be ongoing. In addition, it should be remembered that there is less time during sittings in magistrates’ court to respond to surveys or fill in feedback forms”.*

⁷ It should be noted however, that the financial requirements for the data collection has decreased substantially (from around £89,000 per annum to less than £8,000 per exercise). This is due to the move from paper-based surveys to electronic surveys.

whatever data we could get from the Platform would need to be supplemented by additional information added by sentencers – for example data that relate specifically to harm, culpability, aggravation and mitigation, which are very specific to individual sentencing guidelines⁸. Anything that might be possible will also be subject to the timing of existing planned development work for the Common Platform, including its pilot. We have arranged a meeting with the HMCTS Transformation Director in order to push forward with these discussions.

3.40 Regardless of whether the Common Platform can fully meet our needs in the future, there are several different approaches that we could adopt for future data collection. These span retaining our current approach of bespoke targeted collections at one end of the spectrum, through bringing back a census survey in the Crown Court only with bespoke surveys in the magistrates' courts, to census surveys in both courts at the other end.

3.41 The final decision regarding which approach will be optimal will depend on a variety of issues, including the constraints outlined in paragraph 3.37 and available resources. The working group considered some of these of their recent meeting, but concluded that more detail would be needed, as well as a clearer sense of what the Common Platform might offer. It was therefore recommended that the A&R team devote some short-term resource to working up a clearer proposal for an enhanced approach to data collection which can then be considered alongside all of the priorities emerging from Vision discussions. Given the comments above regarding the need to potentially cover more elements in our evaluations (e.g. more subsample analysis, analysis of consistency etc), we suggest that part of this review is a consideration of how we might broaden out our evaluations in the future.

3.42 Although undertaking this review will require some resource from the A&R team, which may necessitate slowing down other work briefly⁹, it would be a useful exercise to inform our future direction in this area.

Question 1: does the Council agree that the A&R team should devote some time to scoping out possibilities for future data collection/ evaluation, even if this

⁸ One magistrate respondent emphasised this point: “One concern I have is that data drawn from court resulting does not capture issues that can affect sentencing and therefore does not identify issues requiring guidance. An example would be where magistrates consider public interest, illness of the offender or issues that lead to an absolute discharge. I am concerned that sentencing results do not capture the issues that affect final decisions”.

⁹ If this was agreed, we would discuss in our planning meetings how to do this without impacting on the overall work programme of the Council.

necessitates slightly slowing other down work? We will then discuss options more fully with the Analysis and Research subgroup and Vision working group.

Question 2: Does the Council agree that enhancing our data collections, and improving our evaluations and resource assessments, are priority areas?

Question 3: In the context of stretched staffing resources, is the Council content with the current situation regarding the publication of data (that we work on this when resources permit and prioritise other analytical work to a greater extent)?

Local area data

3.43 The Council has a statutory duty to publish, at intervals the Council considers appropriate, information regarding the sentencing practice of magistrates in relation to each local justice area and the practice of the Crown Court in relation to each location at which the Crown Court sits.

3.44 The Council carefully considered this duty when it was first set up and to date has not formally gathered or published information of this nature¹⁰. This is mainly due to the difficulties with interpreting data produced on a local level (it could be potentially misleading if the analysis were not able to control for other factors that may have an influence, for example, the type of case load, socio-economic status of the population in the area, and the type of area). In addition, in the early days of the Council, it was felt that publishing local area data might be seen as a way of monitoring different courts, which might lead to a lack of support for the CCSS.

3.45 Only a small number of respondents addressed this, but those that did tended to feel that the rationale for not producing this type of information – especially given that it is a statutory duty - was inadequate and could be overcome.

We agree that publishing misleading statistics is worse than not publishing data. However, the solution is rather to ensure that the comparisons are appropriate. Local statistics are published for a wide range of issues; sentencing statistics should not be excluded. The problem appears to be that the Council has the mandate to publish these statistics but not

¹⁰ We have, however, looked at the specific court where the offender was sentenced as part of a wider piece of work on consistency in sentencing (this work will be briefly covered in the review due to be published later in 2021). The findings do not identify or comment on specific courts.

the resources, while the Ministry of Justice has the resources but not the mandate. The impasse should be resolved, and these statistics published on a routine if not annual basis, Sentencing Academy

The reasons given are not convincing: of course “interpreting data produced on a local level would be potentially misleading” but so what? That is not a reason to hide the data, particularly given concerns about racial, sexual and class-based discrimination. Personally, I think much more local data would be useful. As long as there are the ‘critical friends’ with time to critique and deconstruct it, Professor Nicky Padfield

3.46 Again, resources and priorities are key here. Whilst it may be possible to analyse at a more local level in the future, we do not feel this is the highest priority issue at present. Given the greater emphasis we are now placing on exploring issues such as disproportionality in sentencing, and the likelihood that we will need to improve our resource assessments and evaluations, we would recommend that our limited resource is focused in those areas instead. We can, however, return to this issue at a later date when we are clearer what data we will have to draw on in the future. In the meantime, it may be worth considering whether we can provide information on what data is actually available elsewhere and to signpost people to this.

Question 4: Does the Council agree that the analysis and publication of data on a local area level basis should continue to currently be lower priority, but that this can be reviewed if resources in the future permit?

Question 5: If more resources were available would analysis and publication of data at a local level be a priority for the Council?

Sentencing and non-sentencing factors

3.47 The Coroners and Justice Act 2009 requires the Council to produce, as part of its annual report, a sentencing factor report (s130) and a non-sentencing factor report (s131).

3.48 The sentencing factors report is required to contain an assessment of the impact of the Council’s guidelines on prison, probation and youth justice services. The Council complies with this by including in the annual report a summary of the resource assessments for definitive guidelines that it has published during the reporting year.

3.49 The non-sentencing factors report requires the Council 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 the sentences imposed by the courts. These factors include the volume of offenders coming before the courts, recall, breaches (of community orders, suspended sentence orders and youth rehabilitation orders), patterns of re-offending, decisions by the Parole Board, early release from prison and remand.

3.50 The Council complies with this requirement in each annual report by providing short summaries of the data available on each of these topics, where available, and providing links where users can find further information.

3.51 Only a small number of respondents commented on the way in which the Council has chosen to fulfil these duties. However, when comments were put forward these suggested that the Council should do more work in these areas and that a less narrow view should be taken of the way in which it complies with its duties.

It would also be helpful to include some more detail on the youth jurisdiction within the sentencing factors and non-sentencing factors reports within the Annual Report, or elsewhere, should that be deemed inappropriate, YJB

The Council has taken a very narrow and technical approach to the sentencing and non-sentencing factors reports...The first considers changes in the sentencing practice of courts and their possible effects on the resources required in the prison, probation and youth justice services. However, the Council considers only changes in sentencing practice caused by changes in sentencing guidelines, ignoring changes in law or Court of Appeal guidelines. A more comprehensive analysis would be much more useful. The non-sentencing factors report aims to identify the impact on prison and probation resources of any changes in the volume of offenders coming before the courts or of alterations in release provisions resulting in prisoners spending longer or shorter periods in prison when serving a particular sentence. Because of technical complexities the Council has not attempted to untangle the interactions between different non-sentencing factors to explain the causes of observed changes and their impact on resources, Transform Justice

3.52 The way in which the Council has addressed these two duties thus far again reflects the general analytical constraints that it faces: a lack of data in some areas and a lack of capacity to undertake more detailed analysis.

3.53 For the sentencing factors report, the “narrow” approach taken is necessary, given that we currently have very little information in some areas (for example, on lengths of suspended sentence orders, levels of community orders and bands of fines) and there are no continuously collected data sources on the relative seriousness of offences (for example, the culpability of the offender and the harm caused by the offence). We also confine the work here to the impact of guidelines in order to retain analytical resource for other more pressing work.

3.54 In the future, if we are able to enhance our data collections, it may be possible to consider more data when we undertake resource assessments, and thus to feed this into the sentencing factors report. Improvements to the data collected by the Ministry of Justice (for example, more detailed data on suspended sentence orders and community orders) would also help to facilitate this. We now also have a data sharing agreement that allows us to access Court of Appeal data and are intending to build an analysis of that into future evaluations. However, the extent to which we can widen out this aspect of our work will be limited by how quickly we can obtain more data and the more general resources in the team.

3.55 Regarding the non-sentencing factors reports, whilst it is relatively straightforward to analyse the available data on non-sentencing factors, 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.

3.56 Improvements to the data collected by the Ministry of Justice would go some way to improving the Council's ability to comply with this requirement (for example, on breaches of community and suspended sentence orders). However, we would also need more staffing resources to undertake this work every year (in the first three years of the Council, a more comprehensive analysis of these factors was attempted for the Annual Report, but the work required was disproportionately large and had an impact on other work the team could conduct).

3.57 At this stage, without more data and more analytical staff, it is therefore unlikely that the Council will be able to provide more detailed or extensive sentencing and non-sentencing factors reports. Again, we may be able to review this when we are in a position to access more data.

Question 6: Does the Council agree that in the short to medium term the way in which it addresses its sentencing factors report is an appropriate and proportionate approach to this duty? This can be reevaluated at a later stage if and when more data becomes available.

Question 7: Does the Council agree in the short to medium term the way in which it addresses its non-sentencing factors report is an appropriate and proportionate approach to this duty? This can be reevaluated at a later stage if and when more data becomes available.

Question 8: if more resources were to become available, would further work on the sentencing and non-sentencing factors report become a higher priority?

Other areas for research and analysis

3.58 There were a number of other more specific areas that people raised for attention. Some of these will be covered as part of other workstreams/ discussions (e.g. the need to obtain more evidence on female offenders when we come to scoping out a guideline/ guidance in this area, the need for more information on patterns of reoffending when we come to discuss the broader comments on effectiveness in sentencing.) However, there were also the following suggestions for future work:

Information on aggravating and mitigating factors

3.59 The MoJ called for more information on aggravating and mitigating factors to be available:

As a Department, we are regularly approached by stakeholders seeking to add or strengthen aggravating factors in sentencing for certain offences such as for assaults on retail workers. Whilst I note some information on aggravating and mitigating factors is made available as part of the Annual Report, I would like the Council to consider making more of the information it collects on the impact of aggravating and mitigating factors on sentencing outcomes publicly available. This would help to improve public understanding around the impact these factors are having on sentencing, MoJ

3.60 Dr Carry Lightowlers also felt that there should be a specific review of the impact of the aggravating factor of intoxication and how it is implemented.

3.61 If we are able to collect more data generally, then it would be possible to analyse and publish more data on aggravating and mitigating factors. However, this would need to be obtained through the Council's data collections, rather than administrative data sources, as this is the only source of information on these factors. Our proposed work to scope out an enhanced data collection will therefore impact on this. In terms of evaluating the impact of any specific factor/ set of factors, this would be covered in an evaluation of the expanded explanations, which we hope to start scoping out later this year.

Analysis on multiple offences

3.62 Professor Mandeep Dhani encouraged the Council to move away from analysis based on the principal offence only and to consider sentencing across all offences. The Council's assessment of sentencing practice is currently based on data for the offender's principal offence; we do not collect any further information about secondary/non-principal offences or the sentences imposed for them. This approach has been considered the most effective and pragmatic way of assessing this, given the data that is available and the difficulties of disentangling the effect of secondary offences on the overall sentence.

In my recent analysis of CCSS data (Dhani, 2020), I found that multiple offence (MO) cases represent common court business – they represented approximately half of the sentenced cases in the CCSS datasets examined. Therefore, the Council currently does not know the sentences meted out at least half (and likely to be much more) of the offences that appear before the Crown Court. Given that offences in MO cases are subject to the offence-specific guidelines, this means that the extant findings of the Council's work on the monitoring and evaluation of its guidelines are unreliable and invalid; they provide only a partial and skewed picture. This oversight of the sentences given to the non-principal offences in MO cases also means that the Council cannot properly consider the implications of the implementation and application of guidelines. It also means that other criminal justice bodies (e.g., probation and prisons) cannot make fully-informed resourcing decisions, Professor Mandeep Dhani

3.63 We have not done our own analysis of this, so are unable to verify the proportion of cases to which this applies. However, it is the case that there is an argument for us exploring this in the future, especially given that there are examples of situations that could be concealed behind the principal offence. This might include where there is more than one count of the same offence against different victims on the same occasion e.g. where a single act of dangerous driving causes the death of multiple victims, or where there is more than one count of different offences against the same victim on the same occasion e.g. an assault and criminal damage in a domestic abuse situation. There may also be various counts of

the same offence on different occasions e.g. several shoplifting offences and a mixture of counts of various offences on several different occasions.

3.64 We have already started discussing within the Office the possibility of ascertaining if there is a more sophisticated methodology that we can use to assess current sentencing practice and that would consider all offences dealt with in a sentencing occasion and the impact of the totality on the final sentence outcome. The work is likely to involve an in-depth review of the way in which sentencing data is recorded in the relevant datasets (e.g. is it consistent and accurate, how many offences are typically dealt with in one hearing, are sentences consecutive or concurrent, does recording vary across different offences etc), with comparison against sentencing transcripts (where available).

3.65 It will not be possible to use data from the Crown Court Sentencing Survey (CCSS) for this, as although the CCSS recorded whether the offence was sentenced as a single offence or alongside other offences, no information about the other offences was collected, and so the CCSS cannot be used to answer the questions posed. We would therefore need to explore other data sources and/ or build extra questions into future data collections.

3.66 We would recommend undertaking such a review at some point in the near future in order to ensure we can fully account for all impacts on sentencing outcomes. Given that this will inform any future revision of the totality guideline, we propose that the scale and remit of this is considered after we have reviewed the findings from the small-scale piece of qualitative work that we are currently undertaking on totality (possibly some time towards the end of this year). This will again be subject to overall priorities and resources within the analytical team (a review of the data in this area would not be a quick or simple review) and our general progress on improving our data sources.

Question 9: Does the Council agree that, subject to overall resources, we should consider building in some resource for a review of the data/ potential methodologies for future analysis of multiple offences?

Research on behavioural insights

3.67 Whilst acknowledging the need for resources, The MA suggested that the Council consider “*research on behavioural insights in determining how best to achieve desired behaviours through effective communication (as recommended by Sir Anthony Bottoms in a previous review of the Sentencing Council)*”. The Sentencing Academy said it is “*unaware of*

any research which has explored users' perceptions and experiences with the guidelines. Are the guidelines applied in practice in the ways expected by Council?"

3.68 It is likely that this type of information could be derived through our proposed work on user testing which we have already developed a specification of requirements for. In this, the stated aim of the project is to test how sentencers use, access and experience digital sentencing guidelines. The project will investigate whether digitisation of guidelines has had any impact on the way in which the guidelines are used and propose any potential changes to improve the provision of digital sentencing guidelines and ensure they are used in line with the intentions of the Council.

3.69 An Invitation to Tender for this project was issued in late 2020, but unfortunately we received no bidders. We have not yet reissued this tender as the delay in the work will now necessitate funds from next year's budget which are currently not confirmed. However, if and when these funds are confirmed as available from the budget, we will pick this up again and reissue it for tender.

Research on attitudes to sentencing

3.70 Transform Justice stated that: *"Consideration should be given to undertaking more surveys and research studies to understand the complexity of attitudes to particular offences"*. We have in the past commissioned such work – e.g. on public attitudes to drug offences and to guilty plea reductions, and in 2019 we published Comres research on public knowledge and confidence in the criminal justice system and sentencing.

3.71 As highlighted above, we plan to consider qualitative research with victims and offenders on a case-by-case basis and could also include these types of surveys. We also plan to repeat some of the survey questions included in the Comres research to look at trends over time (again subject to resources).

Research on Victim Personal Statements

3.72 The Sentencing Academy felt there should be more research on Victim Personal Statements (VPS) to ascertain if more guidance is needed in this area: *"Research with sentencers would provide clarification on the issue by revealing whether they share a common understanding of the role of the VPS and whether they are satisfied with current levels of guidance. Additionally, CoA guidance is now rather dated, and produced at a time*

when VPSs were used less frequently than at present". They recommended we undertake a survey to look into this issue.

3.73 As discussed in December, in relation to the similar comment made by the Sentencing Academy on areas in which further guidance was required, the expanded explanations cover this to a limited extent, and we would be able to pick up on related issues through any evaluation of those.

Research on protective and preventative orders

3.74 A member of the public called for this, saying this is *"An area of sentencing that has been neglected... I don't think that any research has been done into how frequently some of these orders are made/how effective they are"*. This linked to their view that more guidance was needed in this area. This was flagged in the December Council paper, but was not considered a priority area.

A survey to identify areas for future guidance/ guidelines

3.75 More generally, the Sentencing Academy suggested that the Council should conduct a survey with judges and magistrates *"to help identify areas of sentencing law where there is a perceived need for greater guidance. This might take the form of a new guideline or the revision of an existing guideline"*.

3.76 Given that the Council already has a full workplan going forward and is considering proposals for further guidance/ guidelines put forward more generally as part of the Vision consultation, we do not recommend putting in place such a survey.

Question 10: Does the Council agree that we have sufficient information on this and that a further survey is not necessary?

Collaborating with others and seeking external sources of funding

3.77 As highlighted several times, many of the issues presented above are extremely dependant on the resources available to the Council, particularly the staffing resources in the analytical team, and in the context that covering even our current work programme is becomingly increasingly problematic. Many responses acknowledged this. Accordingly, there were several respondents who felt that the Council could benefit from collaborating with external partners and/ or seeking funding from elsewhere.

Analysis of the impact of sentences on reducing reoffending, as well as understanding of victims' views about the process, could be appropriately carried out by academic institutions, YJB

The Council should continue to work alongside academics to apply for funding from research councils to support its research and analysis as this will increase its capacity to look at a range of priority issues and base the development of guidance on rigours research findings. Such external critical input from academics, adds a level of rigour and in turn public trust and support in the work of the Council, Carly Lightowlers

The Sentencing Council has conducted several seminars in conjunction with academic researchers, the last being in 2018 in conjunction with City Law School. We encourage the Council to continue this collaborative activity and the Sentencing Council could identify a list of research questions for which it is particularly interested in seeking answers...Sentencing Council support for research projects conducted by academics and other organisations could be key to unlocking philanthropic/research council funding, Sentencing Academy

3.78 As discussed in the November Council meeting, specifically in relation to research and analysis on diversity and equality issues, we are increasingly working with external academics and will continue to do so. We already endorse applications for research funding where applicable to the work of the Council (most recently in late 2020 we endorsed a project to look at disproportionality in sentencing amongst different ethnic groups and, subject to the Council's agreement, we plan to endorse a second similar project later in 2021). We are also strengthening our links with MoJ analysts and in the first week of March are attending a meeting to discuss future work with academics.

3.79 We also plan to continue our engagement with external academics/ organisations in the form of seminars and workshops. Our anniversary event would have been a good opportunity to do this, but unfortunately needed to be cancelled. The current plan – to convene a number of workshops on relevant issues over the course of this year - will, however, be an opportunity to engage more fully.

3.80 Again, as noted in November, enhancing our links with external organisations and collaborating on more work is not resource free and it will require some staffing resources. This was also flagged by Professor Padfield:

You should encourage more academic researchers to use your data. But remember that Universities are probably even more short of money than you are. And one risk with working with “external organisations” is the additional costs (e.g. huge data protection issues). Working with other organisations is of course a good thing – we all need critical friends, ‘deconstructors’, who can peel back our onion skins and challenge our ways of thinking – but it is not a way of saving money.

3.81 On balance, however, although collaboration with others requires some staffing resources, it does have the potential to provide access to data and generate findings without any financial input. We would therefore recommend that we invest time into having these wider discussions with external organisations and academics and to explore opportunities to collaborate on work/ obtain additional funding.

Question 11: Does the Council agree that the Office should invest the necessary time into enhancing our links with external organisations and academics and considering the opportunities for future collaborative work?

RISKS AND IMPACT

4.1 Whilst enhancing future data collections will be welcomed by other departments, organisations and academics, this is likely to require additional resources and it will be important not to raise expectations before securing this. The early scoping work on potential future approaches to data collection and methodologies for taking account of multiple offences will also require a relatively large amount of resource from the analysis and research team in the short to medium term. This will need to be taken into account when planning other work.

4.2 The other areas of work flagged for development will also require resource and it will be important that once we have indicative views from Council we look across the piece to ensure that we can effectively plan our resources for the forthcoming period.

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