

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

**21 May 2021**  
**SC(21)MAY03 – Trade mark**  
**Mike Fanning**  
**Ruth Pope**

## **1 ISSUE**

1.1 At the April meeting the Council agreed the unauthorised use of a trade mark guideline for individuals subject to confirming the details of the wording of some factors.

1.2 At this meeting the Council will be asked to consider the responses to the consultation, and the results of research carried out with sentencers on the guideline for organisations.

1.3 The aim is to sign off the definitive versions of the two guidelines and the resource assessment at this meeting, for publication in August, to come into force on 1 October 2021.

## **2 RECOMMENDATION**

2.1 That the Council agrees modifications to the guideline for individuals set out at 3.1 to 3.6 below

2.2 That the Council considers the responses to the consultation and the evidence from the road testing and agrees changes to the guideline for organisations set out at 3.9 to 3.21 below.

2.3 That the Council agrees to sign off the resource assessment and definitive versions of both guidelines for publication.

## **3 CONSIDERATION**

### *Individuals*

3.1 The guideline for individuals with changes to reflect the decisions made at the April meeting is at **Annex A**. The outstanding issues have been discussed with Mike Fanning and the proposed solutions are highlighted in yellow in Annex A.

3.2 In high culpability, 'the use of a website that mimics that of the trade mark owner or a legitimate trader' has been added to the examples of sophisticated nature of the offence.

3.3 An issue raised in some consultation responses was the difficulty of testing counterfeit goods to show that they represent a risk of physical harm. To avoid this becoming an issue some explanatory wording has been added, '(this may be evidenced by a failure to take steps to be satisfied that the goods are safe)'.

3.4 The harm wording relating to high risk/low value offending has been modified to read:

Where purchasers/ end users are put at **risk of death or serious physical harm** from counterfeit goods, harm should be at least category 3 even if the equivalent retail value of the goods falls below £50,000.

**Question 1: Is the Council content with the culpability and harm factors in Annex A?**

3.5 If a case fell into category 1 harm on the basis of the equivalent retail value of the goods the guideline was silent on how any significant additional harm should be taken into account. Some suggested wording has been added above the sentence table: 'For category 1 cases an upward adjustment within the category range should be made for any significant additional harm'. This reflects the approach taken in other guidelines (for example [theft](#)).

3.6 This raises the question of whether the category range for A1 is too narrow. The version consulted on had a starting point of 5 years with a range of 3 to 6 years. At the April meeting the Council rejected a proposal to increase the top of the range to 7 years. However, if there is only one year between the starting point and the top of the range, there is very little scope for the guideline to reflect any additional harm and, for example, previous convictions in an appropriate case. This could give the impression that the changes made to the guideline post consultation have concentrated disproportionately on lower level offending.

**Question 2: Does the Council agree to the addition of the wording above the sentence table? If so, should the top of the range be increased to 7 years?**

3.7 Wording for aggravating and mitigating factors relating to expectation of financial gain is proposed in line with that used in other guidelines.

3.8 At step 6 the wording relating to confiscation orders has been modified for clarity.

**Question 3: Does the Council agree to the wording of the aggravation and mitigating factors and step 6?**

*Organisations*

3.9 The consultation version of the guideline for organisations can be found [here](#). A revised version is attached at **Annex B**. This version reflects changes made to the guideline for individuals as many of the points made by respondents to the consultation about the guideline for organisations mirror those made about the guideline for individuals.

*Steps 1 and 2*

3.10 There were several comments from respondents and from sentencers in road testing to the effect that steps 1 and 2 were confusing. Magistrates often misunderstood what was meant by confiscation, thinking that it was the same as forfeiture. One judge commented that these steps seemed to be in the wrong place.

3.11 In order to explain the reason for placing these steps first, the following wording is proposed before step one:

Note The penalties in this guideline for sentencing organisations are financial. Courts are required to consider financial penalties in the following order:

- compensation (which takes priority over any other payment);
- confiscation (Crown Court only);
- fine

Therefore, in this guideline the court is required to consider compensation and confiscation before going on to determine the fine

3.12 The revised wording at step 2 for confiscation is consistent with the guideline for individuals and should help to clarify the relevance of confiscation (or lack of it) for magistrates.

## Step 2 – Confiscation

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the **Crown Court**. Confiscation must be considered by the Crown Court if either the prosecutor asks for it or the Crown Court thinks that it may be appropriate.

An offender convicted of an offence in a **magistrates' court** must be committed to the Crown Court where this is requested by the prosecution with a view to a confiscation order being considered (section 70 of the Proceeds of Crime Act 2002).

(Note: the valuation of counterfeit goods for the purposes of confiscation proceedings will not be the same as the valuation used for the purposes of assessing harm in this sentencing guideline.)

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation).

(See Proceeds of Crime Act 2002 sections 6 and 13)

### **Question 4: Does the Council agree to the proposed changes to steps 1 and 2?**

#### *Culpability organisations*

3.13 In road testing and in the responses to consultation there was some uncertainty about how to assess the level of organisation or planning in order to distinguish between high and medium culpability. Several respondents reiterated the comments made about the culpability factors in the guideline for individuals. The addition of examples to the first high culpability factor should address those concerns and assist with the assessment.

3.14 Two respondents queried the concept of an organisation being coerced in the low culpability factor 'Involvement through coercion, intimidation or exploitation'. While this would rarely apply (it may be unlikely that a prosecution would be pursued in such circumstances), the factor balances out the equivalent high culpability factor and does apply in other guidelines (such as [corporate fraud](#)).

## Culpability

The level of culpability is determined by weighing up all the factors of the case to determine the offending organisation's **role** and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

### A – High culpability

- Organisation plays a leading role in organised, planned unlawful activity, whether acting alone or with others (indicators of organised/ planned activity **may include but are not limited to:** the use of multiple outlets or trading identities for the sale of counterfeit goods, the use of multiple accounts for receiving payment, the use of professional equipment to produce goods, the use of a website that mimics that of the trade mark owner or a legitimate trader, offending over a sustained period of time)
- Involving others through pressure or coercion (for example employees or suppliers)

### B – Medium culpability

- Organisation plays a significant role in unlawful activity organised by others
- Some degree of organisation/planning involved
- Other cases that fall between categories A or C because:
  - Factors are present in A and C which balance each other out and/or
  - The offending organisation's culpability falls between the factors as described in A and C

### C – Lesser culpability

- Organisation plays a minor, peripheral role in unlawful activity organised by others
- Involvement through coercion, intimidation or exploitation
- Little or no organisation/planning
- Limited awareness or understanding of the offence

**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.**

### **Question 5: Does the Council agree with the proposed changes to culpability factors?**

3.15 The harm assessment in the two guidelines was identical and therefore the comments about harm factors were the same as those made for the guideline for individuals. Any changes made to the guideline for individuals will apply equally to this guideline.

#### *Aggravating and mitigating factors*

3.16 Most respondents to the consultation agreed with the proposed aggravating factors and in road testing they were generally applied consistently and as expected. In the guideline for individuals the mitigating factor 'Business otherwise legitimate' was removed and it is proposed to do the same for this guideline because it could represent either mitigation or aggravation depending upon circumstances.

3.17 An aggravating factor of 'Expectation of substantial financial gain' has been added in line with the guideline for individuals. The guideline for organisations already has a mitigating

factor 'Little or no actual gain to organisation from offending'. This is different from the wording proposed in the guideline for individuals ('Expectation of limited financial gain') to cover the situation where the offending may have resulted from a lack of training/supervision but did not benefit the organisation financially.

#### **Question 6: Should the proposed changes be made to aggravating and mitigating factors?**

##### *Sentence levels and Step 5 – Adjustment of fine*

3.18 Consultation responses were generally supportive of the proposed sentence levels, although some made comments that the sentences seemed low compared with the sentences for individuals. One respondent pointed out some apparent inconsistencies in the sentence table. In summary they suggested changing the starting point for 2C to £25,000 and changing the category range for 5A to £5,000 - £25,000. These proposed changes seem sensible.

3.19 Step 5 was supported by most respondents who commented on it and in road testing one judge commented:

'I commend Step 5 – I think it is a clear and useful section in the guideline, which is actually very clear in its effect.'

3.20 One suggestion from the Council of District Judges (Magistrates' Courts) was that step 5 should include a reminder that the sentence levels at step 4 are based on an offending organisation with an annual turnover of not more than £2 million. Some suggested wording has been added to Annex B:

**Note the fine levels above assume that the offending organisation has an annual turnover of not more than £2 million. In cases where turnover is higher, adjustment may need to be made including outside the offence range.**

3.21 Overall, in road testing the guideline for organisations was appreciated, especially in the absence of a guideline at present. One magistrate summarised their views as follows:

'What the guideline probably did was make me focus in a more structured way on the harm and culpability elements, so it's a higher amount than I initially started with, but I think rightly so. I don't feel that I've been corralled into imposing a penalty that I think is too high.'

#### **Question 7: Does the Council agree to amend the sentence levels as suggested?**

#### **Question 8: Does the Council agree to add the proposed wording to step 5?**

## **4 IMPACT AND RISKS**

4.1 A revised resource assessment for the definitive guidelines is attached at Annex C. Overall, the resource impact of the guidelines in terms of prison and probation places is

expected to be small although the changes agreed to the harm model will result in higher sentences in some cases.

## **5 EQUALITIES**

5.1 As noted in the consultation document there are very little data recorded on the ethnicity of offenders but the impression gained from reading transcripts of sentencing remarks is that a significant proportion may be from a minority ethnic background. There is no evidence one way or the other about sentencing disparity between different demographic groups and so no information on that point can be included in the guidelines. The introduction of guidelines for this offence for use in all courts should improve consistency and ensure proportionate sentencing. The guidelines will include the standard reference to the ETBB to remind sentencers of the guidance on fair treatment for different groups.

**Question 9: Is the Council content to sign off the definitive versions of the guidelines and the resource assessment for publication?**

## Individuals: Trade mark, unauthorised use of etc.

Trade Marks Act 1994, s.92

Triable either way

Maximum: 10 years' custody

Offence range: Discharge – 7 years' custody

Use this guideline when the offender is an individual. If the offender is an organisation, please refer to the **Organisations: Trade mark, unauthorised use of etc.** guideline.

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### Step 1- Determining the offence category

The court should determine the offence category with reference to culpability and harm.

#### Culpability

The level of culpability is determined by weighing up all the factors of the case to determine the offender's **role** and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

##### A – High culpability

- Sophisticated nature of offence/significant planning (examples **may** include but are not limited to: the use of multiple outlets or trading identities for the sale of counterfeit goods, the use of multiple accounts for receiving payment, the use of professional equipment to produce goods, **the use of a website that mimics that of the trade mark owner or a legitimate trader**, offending over a sustained period of time)
- A leading role where offending is part of a group activity
- Involvement of others through coercion, intimidation or exploitation

##### B – Medium culpability

- Some degree of organisation/planning involved
- A significant role where offending is part of a group activity
- Other cases that fall between categories A or C because:
  - Factors are present in A and C which balance each other out **and/or**
  - The offender's culpability falls between the factors as described in A and C

##### C – Lesser culpability

- Little or no organisation/planning
- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Limited awareness or understanding of the offence

**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.**

#### Harm

The assessment of harm for this offence involves putting a monetary figure on the offending with reference to the **retail value of equivalent genuine goods** and assessing **any significant additional harm** suffered by the trade mark owner or purchasers/ end users of the counterfeit goods:

1. Where there is evidence of the volume of counterfeit goods sold or possessed:
  - a. the monetary value should be assessed by taking the **equivalent retail value of legitimate versions** of the counterfeit goods involved in the offending.
  - b. Where it would be impractical to assign an equivalent retail value of legitimate versions, an estimate should be used.
2. Where there is no evidence of the volume of counterfeit goods sold or possessed:
  - a. In the case of labels or packaging, harm should be assessed by taking the **equivalent retail value of legitimate goods** to which the labels or packaging could reasonably be applied, taking an average price of the relevant products.
  - b. In the case of equipment or articles for the making of copies of trade marks, the court will have to make an assessment of the scale of the operation and assign an equivalent value from the table below.

**Note:** the equivalent retail value is likely to be considerably higher than the actual value of the counterfeit items and this is accounted for in the sentence levels. However, in **exceptional** cases where the equivalent retail value is grossly disproportionate to the actual value, an adjustment **may** be made.

The general harm caused to purchasers/ end users (by being provided with counterfeit goods), to legitimate businesses (through loss of business) and to the owners of the trade mark (through loss of revenue and reputational damage) is reflected in the sentence levels at step 2.

Examples of **significant additional harm** may include but are not limited to:

- Substantial damage to the legitimate business of the trade mark owner (taking into account the size of the business)
- Purchasers/ end users put at risk of physical harm from counterfeit goods (this may be evidenced by a failure to take steps to be satisfied that the goods are safe)

Where purchasers/ end users are put at **risk of death or serious physical harm** from counterfeit goods, harm should be at least category 3 even if the equivalent retail value of the goods falls below £50,000.

	<b>Equivalent retail value of legitimate goods</b>	Starting point based on
<b>Category 1</b>	£1million or more <b>or</b> category 2 value with significant additional harm	£2 million
<b>Category 2</b>	£300,000 – £1million <b>or</b> category 3 value with significant additional harm	£600,000
<b>Category 3</b>	£50,000 – £300,000 <b>or</b> category 4 value with significant additional harm	£125,000
<b>Category 4</b>	£5,000 – £50,000 <b>or</b> category 5 value with significant additional harm	£30,000
<b>Category 5</b>	Less than £5,000 <b>and</b> little or no significant additional harm	£2,500

## Step 2 – Starting point and category range



Having determined the category at step 1, the court should use the appropriate starting point to reach a sentence within the category range in the table below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate.

**For category 1 cases an upward adjustment within the category range should be made for any significant additional harm.**

Harm	Culpability		
	A	B	C
<b>Category 1</b> £1 million or more  Starting point based on £2 million	<b>Starting point</b> 5 years' custody  <b>Category range</b> 3 – 7 years' custody	<b>Starting point</b> 3 years' custody  <b>Category range</b> 2 – 5 years' custody	<b>Starting point</b> 2 years' custody  <b>Category range</b> 1 – 3 years' custody
<b>Category 2</b> £300,000 – £1million  Starting point based on £600,000	<b>Starting point</b> 4 years' custody <b>Category range</b> 2 – 5 years' custody	<b>Starting point</b> 2 years' custody <b>Category range</b> 1 – 3 years' custody	<b>Starting point</b> 1 year's custody <b>Category range</b> 26 weeks' – 2 years' custody
<b>Category 3</b> £50,000 - £300,000  Starting point based on £125,000	<b>Starting point</b> 2 years' custody  <b>Category range</b> 1 – 3 years' custody	<b>Starting point</b> 1 year's custody  <b>Category range</b> 26 weeks' – 2 years' custody	<b>Starting point</b> High level community order  <b>Category range</b> Low level community order – 26 weeks' custody
<b>Category 4</b> £5,000- £50,000  Starting point based on £30,000	<b>Starting point</b> 1 year's custody  <b>Category range</b> 26 weeks' – 2 years custody	<b>Starting point</b> High level community order <b>Category range</b> Low level community order – 26 weeks' custody	<b>Starting point</b> Band C fine  <b>Category range</b> Band B fine – Medium level community order
<b>Category 5</b> Less than £5,000  Starting point based on £2,500	<b>Starting point</b> High level community order <b>Category range</b> Low level community order – 26 weeks' custody	<b>Starting point</b> Band C fine  <b>Category range</b> Band B fine – Medium level community order	<b>Starting point</b> Band B fine  <b>Category range</b> Discharge – Band C fine

This is an offence where it may be appropriate to combine a community order with a fine

The court should then consider further adjustment for any aggravating or mitigating factors. The following list is 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.

## 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

### Other aggravating factors

1. Purchasers or others put at risk of some harm from counterfeit items (where not taken into account at step 1)
2. Expectation of substantial financial gain
3. Attempts to conceal/dispose of evidence
4. Attempts to conceal identity
5. Failure to respond to warnings about behaviour
6. Offences taken into consideration
7. Blame wrongly placed on others
8. Failure to comply with current court orders
9. Offence committed on licence or post sentence supervision

## Factors reducing seriousness or reflecting personal mitigation

1. No previous convictions or no relevant/recent convictions
2. Remorse
3. Good character and/or exemplary conduct
4. Offender co-operated with investigation, made early admissions and/or voluntarily reported offending
5. Expectation of limited financial gain
6. Lapse of time since apprehension where this does not arise from the conduct of the offender
7. Serious medical condition requiring urgent, intensive or long-term treatment
8. Age and/or lack of maturity
9. Mental disorder or learning disability
10. Sole or primary carer for dependent relatives

## Step 3 – Consider any factors which indicate a reduction, such as 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 4 – 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 5 – 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 6 – Confiscation, compensation and ancillary orders

**Confiscation orders** under the Proceeds of Crime Act 2002 may only be made by the Crown Court. The Crown Court must proceed with a view to making a confiscation order if it is asked to do so by the prosecutor or if the Crown Court believes it is appropriate for it to do so.

An offender convicted of an offence in a magistrates' court must be committed to the Crown Court where this is requested by the prosecution with a view to a confiscation order being considered (section 70 of the Proceeds of Crime Act 2002).

(Note: the valuation of counterfeit goods for the purposes of confiscation proceedings is not the same as the valuation used for the purposes of assessing harm in this sentencing guideline.)

Where the offence has resulted in loss or damage the court must consider whether to make a **compensation order** and must give reasons if it does not do so ([section 55 of the Sentencing Code](#)).

If the court makes both a confiscation order and an order for compensation and the court believes the offender will not have sufficient means to satisfy both orders in full, the court must direct that the compensation be paid out of sums recovered under the confiscation order (section 13 of the Proceeds of Crime Act 2002).

### **Forfeiture – section 97 of the Trade Marks Act 1994**

The prosecution may apply for forfeiture of goods or materials bearing a sign likely to be mistaken for a registered trademark or articles designed for making copies of such a sign. The court shall make an order for forfeiture only if it is satisfied that a relevant offence has been committed in relation to the goods, material or articles. A court may infer that such an offence has been committed in relation to any goods, material or articles if it is satisfied that such an offence has been committed in relation to goods, material or articles which are representative of them (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

The court may also consider whether to make other ancillary orders. These may include a [deprivation order](#) and [disqualification from acting as a company director](#).

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium, Part II Sentencing](#)

## Step 7 – Reasons

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

## Step 8 – 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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## Organisations: Trade mark, unauthorised use of etc.

Trade Marks Act 1994, s.92

Triable either way

Maximum: Unlimited fine

Use this guideline when the offender is an organisation. If the offender is an individual, please refer to the **Individuals: Trade mark, unauthorised use of etc.** guideline.

Note The penalties in this guideline for sentencing organisations are financial. Courts are required to consider financial penalties in the following order:

- compensation (which takes priority over any other payment);
- confiscation (Crown Court only);
- fine

Therefore, in this guideline the court is required to consider compensation and confiscation before going on to determine the fine

### Step 1 – Compensation

The court must consider making a [compensation order](#) requiring the offender to pay compensation for any personal injury, loss or damage resulting from the offence in such an amount as the court considers appropriate, having regard to the evidence and to the means of the offender.

Where the means of the offender are limited, priority should be given to the payment of compensation over payment of any other financial penalty.

Reasons should be given if a compensation order is not made ([section 55 of the Sentencing Code](#)).

### Step 2 – Confiscation

Confiscation orders under the Proceeds of Crime Act 2002 may only be made by the **Crown Court**. Confiscation must be considered by the Crown Court if either the prosecutor asks for it or the Crown Court thinks that it may be appropriate.

An offender convicted of an offence in a **magistrates' court** must be committed to the Crown Court where this is requested by the prosecution with a view to a confiscation order being considered (section 70 of the Proceeds of Crime Act 2002).

(Note: the valuation of counterfeit goods for the purposes of confiscation proceedings will not be the same as the valuation used for the purposes of assessing harm in this sentencing guideline.)

Confiscation must be dealt with before, and taken into account when assessing, any other fine or financial order (except compensation).

(See Proceeds of Crime Act 2002 sections 6 and 13)

### Step 3 – Determining the offence category

The court should determine the offence category with reference to culpability and harm.

## Culpability

The level of culpability is determined by weighing up all the factors of the case to determine the offending organisation's **role** and the extent to which the offending was **planned** and the **sophistication** with which it was carried out.

### A – High culpability

- Organisation plays a leading role in organised, planned unlawful activity, whether acting alone or with others (indicators of organised/ planned activity **may include but are not limited to:** the use of multiple outlets or trading identities for the sale of counterfeit goods, the use of multiple accounts for receiving payment, the use of professional equipment to produce goods, the use of a website that mimics that of the trade mark owner or a legitimate trader, offending over a sustained period of time)
- Involving others through pressure or coercion (for example employees or suppliers)

### B – Medium culpability

- Organisation plays a significant role in unlawful activity organised by others
- Some degree of organisation/planning involved
- Other cases that fall between categories A or C because:
  - Factors are present in A and C which balance each other out and/or
  - The offending organisation's culpability falls between the factors as described in A and C

### C – Lesser culpability

- Organisation plays a minor, peripheral role in unlawful activity organised by others
- Involvement through coercion, intimidation or exploitation
- Little or no organisation/planning
- Limited awareness or understanding of the offence

**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.**

## Harm

The assessment of harm for this offence involves putting a monetary figure on the offending with reference to the **retail value of equivalent genuine goods** and assessing **any significant additional harm** suffered by the trade mark owner or purchasers/ end users of the counterfeit goods:

1. Where there is evidence of the volume of counterfeit goods sold or possessed:
  - a. the monetary value should be assessed by taking the **equivalent retail value of legitimate versions** of the counterfeit goods involved in the offending.
  - b. Where it would be impractical to assign an equivalent retail value of legitimate versions, an estimate should be used.
2. Where there is no evidence of the volume of counterfeit goods sold or possessed:
  - a. In the case of labels or packaging, harm should be assessed by taking the **equivalent retail value of legitimate goods** to which the labels or packaging could reasonably be applied, taking an average price of the relevant products.

- b. In the case of equipment or articles for the making of copies of trade marks, the court will have to make an assessment of the scale of the operation and assign an equivalent value from the table below.

**Note:** the equivalent retail value is likely to be considerably higher than the actual value of the counterfeit items and this is accounted for in the sentence levels. However, in **exceptional** cases where the equivalent retail value is grossly disproportionate to the actual value, an adjustment **may** be made.

The general harm caused to purchasers/ end users (by being provided with counterfeit goods), to legitimate businesses (through loss of business) and to the owners of the trade mark (through loss of revenue and reputational damage) is reflected in the sentence levels at step 2.

Examples of **significant additional harm** may include but are not limited to:

- Substantial damage to the legitimate business of the trade mark owner (taking into account the size of the business)
- Purchasers/ end users put at risk of physical harm from counterfeit goods (this may be evidenced by a failure to take steps to be satisfied that the goods are safe)

Where purchasers/ end users are put at **risk of death or serious physical harm** from counterfeit goods, harm should be at least category 3 even if the equivalent retail value of the goods falls below £50,000.

	<b>Equivalent retail value of legitimate goods</b>	Starting point based on
<b>Category 1</b>	£1million or more or category 2 value with significant additional harm	£2 million
<b>Category 2</b>	£300,000 – £1million or category 3 value with significant additional harm	£600,000
<b>Category 3</b>	£50,000 – £300,000 or category 4 value with significant additional harm	£125,000
<b>Category 4</b>	£5,000 – £50,000 or category 5 value with significant additional harm	£30,000
<b>Category 5</b>	Less than £5,000 and little or no significant additional harm	£2,500

## Step 4 – Starting point and category range

Having determined the category at step 3, the court should use the table below to determine the starting point within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions.

Where the value is larger or smaller than the amount on which the starting point is based, this should lead to upward or downward adjustment as appropriate.

For category 1 cases an upward adjustment within the category range should be made for any significant additional harm.

The fine levels below assume that the offending organisation has an annual turnover of not more than £2 million. In cases where turnover is higher, adjustment may need to be made at Step 5 below including outside the offence range.

Harm	Culpability		
	A	B	C
<b>Category 1</b> £1 million or more  Starting point based on £2 million	<b>Starting point</b> £250,000  <b>Category range</b> £150,000 - £450,000	<b>Starting point</b> £100,000  <b>Category range</b> £50,000- £200,000	<b>Starting point</b> £50,000  <b>Category range</b> 25,000 - £100,000
<b>Category 2</b> £300,000 – £1million  Starting point based on £600,000	<b>Starting point</b> £150,000  <b>Category range</b> £75,000 - £250,000	<b>Starting point</b> £50,000  <b>Category range</b> 25,000 - £100,000	<b>Starting point</b> <b>£30,000</b>  <b>Category range</b> £15,000 - £50,000
<b>Category 3</b> £50,000 - £300,000  Starting point based on £125,000	<b>Starting point</b> £50,000  <b>Category range</b> £25,000 - £100,000	<b>Starting point</b> £25,000  <b>Category range</b> £15,000 - £50,000	<b>Starting point</b> £10,000  <b>Category range</b> £5,000 - £25,000
<b>Category 4</b> £5,000- £50,000  Starting point based on £30,000	<b>Starting point</b> £25,000  <b>Category range</b> £15,000 - £50,000	<b>Starting point</b> £10,000  <b>Category range</b> £5,000 - £25,000	<b>Starting point</b> £5,000  <b>Category range</b> £2,000 - £10,000
<b>Category 5</b> Less than £5,000  Starting point based on £2,500	<b>Starting point</b> £10,000  <b>Category range</b> <b>£5,000 - £30,000</b>	<b>Starting point</b> £5,000  <b>Category range</b> £2,000 - £10,000	<b>Starting point</b> £1,000  <b>Category range</b> £250 - £5,000

Having determined the appropriate starting point, the court should then consider adjustment within the category range for aggravating or mitigating features. The following list is 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.

### Factors increasing seriousness

1. Previous relevant convictions or subject to previous relevant civil or regulatory enforcement action
2. Organisation or subsidiary set up to commit counterfeiting activity
3. Counterfeiting activity endemic within organisation
4. **Expectation of substantial financial gain**
5. Purchasers put at risk of harm from counterfeit items (where not taken into account at step one)
6. Attempts to conceal/dispose of evidence
7. Attempts to conceal identity
8. Failure to respond to warnings
9. Blame wrongly placed on others

### Factors reducing seriousness or reflecting mitigation



1. No previous relevant convictions or previous relevant civil or regulatory enforcement action
2. Organisation co-operated with investigation, made early admissions and/or voluntarily reported offending
3. ~~Business otherwise legitimate~~
4. Little or no actual gain to organisation from offending
5. Lapse of time since apprehension where this does not arise from the conduct of the offender

**General principles to follow in setting a fine.** The court should determine the appropriate level of fine in accordance with [section 125 of the Sentencing Code](#), which requires that the fine must reflect the seriousness of the offence and requires the court to take into account the financial circumstances of the offender.

### **Obtaining financial information [Dropdown]**

Where the offender is a company or a body which delivers a public or charitable service, it is expected to provide comprehensive accounts for the last three years, to enable the court to make an accurate assessment of its financial status. In the absence of such disclosure, or where the court is not satisfied that it has been given sufficient reliable information, the court will be entitled to draw reasonable inferences as to the offender's means from evidence it has heard and from all the circumstances of the case.

1. *For companies:* annual accounts. Particular attention should be paid to turnover; profit before tax; directors' remuneration, loan accounts and pension provision; and assets as disclosed by the balance sheet. Most companies are required to file audited accounts at Companies House. Failure to produce relevant recent accounts on request may properly lead to the conclusion that the company can pay any appropriate fine.
2. *For partnerships:* annual accounts. Particular attention should be paid to turnover; profit before tax; partners' drawings, loan accounts and pension provision; assets as above. Limited liability partnerships (LLPs) may be required to file audited accounts with Companies House. If adequate accounts are not produced on request, see paragraph 1.
3. *For local authorities, fire authorities and similar public bodies:* the Annual Revenue Budget ("ARB") is the equivalent of turnover and the best indication of the size of the defendant organisation. It is unlikely to be necessary to analyse specific expenditure or reserves unless inappropriate expenditure is suggested.
4. *For health trusts:* the independent regulator of NHS Foundation Trusts is Monitor. It publishes quarterly reports and annual figures for the financial strength and stability of trusts from which the annual income can be seen, available via [www.monitor-nhsft.gov.uk](http://www.monitor-nhsft.gov.uk). Detailed analysis of expenditure or reserves is unlikely to be called for.
5. *For charities:* it will be appropriate to inspect annual audited accounts. Detailed analysis of expenditure or reserves is unlikely to be called for unless there is a suggestion of unusual or unnecessary expenditure.

## Step 5 – Adjustment of fine

**Note the fine levels above assume that the offending organisation has an annual turnover of not more than £2 million. In cases where turnover is higher, adjustment may need to be made including outside the offence range.**

Having arrived at a fine level, the court should consider whether there are any further factors which indicate an adjustment in the level of the fine including outside the category range. The court should 'step back' and consider the overall effect of its orders. The combination of orders made, compensation, confiscation and fine ought to achieve:

- the removal of all gain
- appropriate additional punishment, and
- deterrence

The fine may be adjusted to ensure that these objectives are met in a fair way. The court should consider any further factors relevant to the setting of the level of the fine to ensure that the fine is proportionate, having regard to the size and financial position of the offending organisation and the seriousness of the offence.

The fine must be substantial enough to have a real economic impact which will bring home to both management and shareholders the need to operate within the law. Whether the fine will have the effect of putting the offender out of business will be relevant; in some bad cases this may be an acceptable consequence.

In considering the ability of the offending organisation to pay any financial penalty the court can take into account the power to allow time for payment or to order that the amount be paid in instalments.

The court should consider whether the level of fine would otherwise cause unacceptable harm to third parties. In doing so the court should bear in mind that the payment of any compensation determined at step one should take priority over the payment of any fine.

Below is a **non-exhaustive** list of additional factual elements for the court to consider. The court should identify whether any combination of these, or other relevant factors, should result in a proportionate increase or reduction in the level of fine.

### Factors to consider in adjusting the level of fine

- Fine fulfils the objectives of punishment, deterrence and removal of gain
- The value, worth or available means of the offender
- Fine impairs offender's ability to make restitution to victims
- Impact of fine on offender's ability to implement effective compliance programmes
- Impact of fine on employment of staff, service users, customers and local economy (but not shareholders)
- Impact of fine on performance of public or charitable function

## Step 6 – Consider any factors which indicate a reduction, such as 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 7 – 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 8 – Totality principle

If sentencing an offender for more than one offence, consider whether the total sentence is just and proportionate to the offending behaviour in accordance with the [Totality](#) guideline.

## Step 9 – Ancillary orders

### **Forfeiture – section 97 of the Trade Marks Act 1994**

The prosecution may apply for forfeiture of goods or materials bearing a sign likely to be mistaken for a registered trademark or articles designed for making copies of such a sign. The court shall make an order for forfeiture only if it is satisfied that a relevant offence has been committed in relation to the goods, material or articles. A court may infer that such an offence has been committed in relation to any goods, material or articles if it is satisfied that such an offence has been committed in relation to goods, material or articles which are representative of them (whether by reason of being of the same design or part of the same consignment or batch or otherwise).

The court may consider whether to make other ancillary orders. These may include a [deprivation order](#).

- [Ancillary orders – Magistrates' Court](#)
- [Ancillary orders – Crown Court Compendium, Part II Sentencing](#)

## Step 10 – Reasons

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

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## Final Resource Assessment

### Unauthorised use of a trade mark

#### 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.<sup>1</sup>

#### Rationale and objectives for new guideline

In August 2008, the Council's predecessor body, Sentencing Guidelines Council's (SGC) *Trade mark, unauthorised use of etc* guideline came into force. This guideline applies to individuals only, and is only for use in magistrates' courts, as part of the Magistrates' Court Sentencing Guidelines.

In accordance with its stated aim to update and replace all SGC guidelines, the Sentencing Council has produced new guidelines for this offence: one for sentencing individuals and one for sentencing organisations, to apply in both magistrates' courts and the Crown Court.

#### 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. The guideline for individuals applies to adults only and so an assessment of the impact on youth justice services has not been required.

This resource assessment covers the offence of unauthorised use of a trade mark, (Trade Marks Act 1994, section 92). Resource impacts for individuals and organisations are presented separately, to reflect the fact that there are two separate guidelines.

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<sup>1</sup> Coroners and Justice Act 2009 section 127: [www.legislation.gov.uk/ukpga/2009/25/section/127](http://www.legislation.gov.uk/ukpga/2009/25/section/127)

## 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 work in support of them.

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. 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 Crown Court judges' sentencing remarks of around 45 cases, sentencing data from the Court Proceedings Database<sup>2</sup> and references to case law.

During the consultation stage, some small-scale research was conducted with a group of sentencers, to examine how the draft guidelines may be applied in practice.<sup>3</sup> This research provided evidence to help further understand the likely impact of the guidelines on sentencing practice, and the subsequent effect on prison and probation resources.

Detailed sentencing statistics for the offences covered by the 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>.

### Individuals

Around 370 adult offenders were sentenced for this offence in 2019.<sup>4</sup> The most common sentencing outcome was a community sentence (36 per cent of offenders) followed by a fine (31 per cent).<sup>5</sup>

### Organisations

In 2019, around 40 organisations were sentenced for this offence. The most common sentencing outcome imposed on organisations was a fine (89 per cent of

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<sup>2</sup> The Court Proceedings Database (CPD) is an administrative database managed by the Ministry of Justice (MoJ), containing data on defendants proceeded against, convicted and sentenced at court. Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used. Further details of the processes by which the Ministry of Justice validate the records in the Court Proceedings Database can be found within the guide to their Criminal Justice Statistics publication which can be downloaded via the link: <https://www.gov.uk/government/collections/criminal-justice-statistics>

<sup>3</sup> A series of semi-structured interviews were conducted with 7 Crown Court judges and 11 magistrates. Sentencers were provided with hypothetical scenarios concerning a trade mark offence committed by both an individual and an organisation.

<sup>4</sup> The CPD 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>

<sup>5</sup> A further 17 per cent were given a suspended sentence, 4 per cent were sentenced to immediate custody, 5 per cent were given a discharge and the remaining 6 per cent were recorded as otherwise dealt with.

organisations),<sup>6</sup> although it should be noted that organisations cannot receive custodial sentences (immediate or suspended) or community sentences. The mean fine value in 2019 was £771.<sup>7</sup>

## 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 guidelines 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 guidelines are therefore subject to a substantial degree of uncertainty.

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. The assumptions therefore must be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the new guidelines, and an assessment of the effects of changes to the structure and wording of the guidelines where previous guidelines existed.

The resource impact of the new guidelines is measured in terms of the change in sentencing practice that is expected to occur as a result of them. Any future changes in sentencing practice which are unrelated to the publication of the new guidelines 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 exist 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. 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 guideline for individuals may have on prison and probation resources. To support the development of the guideline and mitigate the risk of the guideline having an unintended impact, interviews were undertaken with sentencers during the consultation period, which provided information that helped to shape the definitive guideline.

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<sup>6</sup> A further 3 per cent received a discharge, and the remaining 8 per cent were recorded as otherwise dealt with.

<sup>7</sup> The mean fine value is calculated by adding up all of the fines values and dividing the total by the number of offenders sentenced to a fine. Another measure that can be helpful is the median, which is less sensitive to extreme values. The median is calculated by ordering all fine values (from lowest to highest, or highest to lowest), and choosing the middle value. The median fine value in 2019 was £285.

## Resource impacts

This section should be read in conjunction with the guidelines available at: <https://www.sentencingcouncil.org.uk/offences/>.

### Summary

Overall, it is expected that the guidelines for individuals and organisations will encourage consistency of approach to sentencing and will not change average sentencing severity for most cases. However, there may be some increases in custodial sentence lengths for individuals sentenced for the most serious types of cases and some increase in the use of custody for cases of low value but high risk of serious harm. It has been hard to estimate the precise resource impact of the increase in severity of sentence outcomes but, given the small volumes of custodial outcomes currently, of which over 80 per cent in 2019 were suspended, it is estimated to result in the need for between 0 and 20 additional prison places per year.

For organisations, there cannot be any impact on prison or probation resources because organisations cannot receive custodial or community sentences, but there may be some increases in fine levels. However, Step 5 of the guideline asks sentencers to ‘step back’ and to consider the overall impact of all financial penalties and the means of the offending organisation. They may then adjust the sentence to account for this, and therefore reduce the fine level. Fines may therefore not increase considerably in the majority of cases, if at all.

Overall, there has been very little evidence on which to base any estimate of the impact of these guidelines due to the infrequent nature of these offences and the limited relevant details contained in the transcripts. Nevertheless, research interviews during the consultation stage and discussion with experts yielded some useful findings which have helped to shape the definitive guideline, particularly concerning the additional harm from unsafe goods.

### Individuals

The existing SGC guideline for unauthorised use of a trade mark has four levels of seriousness, based on the nature of the activity. At the lowest level of seriousness, for an offence involving a small number of counterfeit items, the starting point is a Band C fine.<sup>8</sup> At the highest level, where the offender was deemed to have had a central role in a large-scale operation, the starting point is to send the offender to the Crown Court for sentencing.

The new definitive guideline has three levels of culpability and five levels of harm, leading to a 15-category sentencing table, in which the lowest starting point is a Band B fine<sup>9</sup> and the highest is 5 years’ custody. The overall aim of the guideline is to encourage consistency of approach to sentencing and not to cause changes to the average severity of sentences.

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<sup>8</sup> The starting point for a Band C fine is 150% of the offender’s relevant weekly income.

<sup>9</sup> The starting point for a Band B fine is 100% of the offender’s relevant weekly income.



Sentencing data suggest that the majority of adult offenders sentenced for this offence currently receive non-custodial sentence outcomes; over two thirds of offenders in 2019 received either a community order (36 per cent in 2019) or a fine (31 per cent)<sup>10</sup> and, therefore, it could be assumed that these offenders fall under the lowest two levels of seriousness under the existing guideline. These levels relate to a small number of counterfeit items or a larger number of counterfeit items but where the offender had no involvement in the wider operation.

The new guideline categorises harm largely based on the equivalent retail value of legitimate goods, and not on the number of items. A sample of transcripts of judges' sentencing remarks has been used to understand the details of the types of cases coming before the courts in recent years. However, the transcripts provided very few details of the equivalent retail value of legitimate goods, as this is not something that sentencers are asked to take into account at present.

The guideline has been constructed so that only the most serious cases would fall into the top levels of harm. When looking at a small number of transcripts of cases at the more serious end of offending, and comparing the sentences imposed with the sentence that may be expected under the guideline, there is some evidence that the guideline may lead to higher sentences for some of these more serious cases where offenders are already being sentenced to immediate custody. Since transcripts are only available for offenders sentenced in the Crown Court and the majority of offenders sentenced for this offence are dealt with at magistrates' courts (76 per cent in 2019), it is likely that the transcripts represent the more serious end of offending and do not provide a representative overview of the cases coming before the courts. As such, it has not been possible to quantify the resource impact of this.

Furthermore, in reflecting on the findings of the consultation and research with sentencers, the Council made changes to the harm assessment to ensure that proportionate sentences would result where the goods were unsafe. Where there is risk of death or serious physical harm, sentencers are advised that the offender should be placed in at least harm category 3, even if the equivalent retail value of the goods is below £50,000, which would ordinarily place the offender in a lower harm category. There is a chance this may lead to an additional small increase in the proportion of offenders being given custodial sentences (immediate custody or suspended sentence orders). Given that over 80 per cent of the custodial outcomes in 2019 were suspended, it has not been possible to estimate precisely what the resource impact is likely to be. Nevertheless, due to the low volumes for this offence and in particular the low volume of immediate custody outcomes, it is estimated this will lead to fewer than 20 additional prison places per year. However, this is estimated to be an upper bound, as it is based on evidence of the severity of offending sentenced in the Crown Court. As explained earlier, most offenders are sentenced at magistrates' courts for this offence, and so the impact is likely to be lower than the analysis suggests. It is not possible to estimate how much lower the impact is likely to be, therefore, the actual impact is expected to be somewhere in the range of between 0 and 20 prison places per year.

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<sup>10</sup> Additionally, 17 per cent of offenders received a suspended sentence, 4 per cent received an immediate custodial sentence, 5 per cent received a discharge and the remaining 6 per cent were otherwise dealt with.

## Organisations

There is no existing guideline for sentencing organisations for unauthorised use of a trade mark.

The definitive guideline has three levels of culpability and five levels of harm, leading to a 15-category sentencing table, in which the lowest starting point is a £1,000 fine and the highest is a £250,000 fine. However, all starting points are based on an assumption that the offending organisation has an annual turnover of not more than £2 million, so sentencers are advised to adjust these starting points at Step 5 if the turnover is higher. Sentencers are also advised to adjust their sentence upwards within the category range for the most serious offences (category 1 harm) in instances of significant additional harm. The aim of the guideline is to encourage consistency of approach to sentencing, and to ensure that appropriate and proportionate sentences are imposed on organisations.

Sentencing data show that of the fines imposed on organisations for this offence in 2019, 72 per cent received a fine of £500 or less, and only 9 per cent received a fine of over £2,000 (3 organisations).

In the same way as for the guideline for sentencing individuals, harm is largely based on the equivalent retail value of legitimate goods. Transcripts of Crown Court judges' sentencing remarks were used to analyse the details of the cases coming before the courts. However, again, as most offenders are sentenced in magistrates' courts (67 per cent in 2019), the transcripts are expected to represent the most serious end of offending and so are unlikely to be representative of all cases coming before the courts.

Despite the very little evidence available on which to base an estimate, it is anticipated that the assessment of culpability and harm may lead to higher starting point sentences than most offending organisations currently receive. Nevertheless, since organisations cannot be given custodial or community sentences, there will be no impact on prison or probation resources. Any impact is therefore likely only to be as a result of changing fine levels.

As with the guideline for individuals, after reflecting on the findings of the consultation and research with sentencers, the Council was keen to ensure that the guideline would provide for proportionate sentence outcomes where the goods in question were unsafe. In the definitive guideline for organisations, sentencers are guided that the offender should be placed in at least harm category 3 in cases where there is risk of death or serious physical harm, even if the equivalent retail value of the goods is below £50,000, which would ordinarily place the offender in a lower harm category. However, at Step 5 of the guideline, sentencers are asked to step back and consider the overall effect of any financial orders on the organisation. Orders for costs, confiscation, compensation, etc, should be considered alongside the level of fine, and sentencers are told to consider adjusting the fine to ensure the total impact is proportionate having regard to the size and financial position of the offending organisation and the seriousness of the offence. It is expected that in many cases, sentencers will take account of these factors and reduce fine levels from the initial starting point. There may then be less of an impact, if any, on the overall levels of fines imposed on organisations.

## 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 the research that has been conducted with sentencers during the consultation period, and discussions with prosecuting authorities.

### **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 it as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing. Transcripts of sentencing remarks for around 45 cases have also been studied to ensure that the guidelines are developed with current sentencing practice in mind. Research with sentencers and discussions with prosecuting authorities carried out during the consultation period have helped to identify possible issues with the guidelines, and amendments have subsequently been made to the definitive guidelines.

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