

Final 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. As evaluation of the guideline published in January 2016 found that sentencing severity had increased beyond that which 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 evaluation published in July 2017 found that the guideline may have contributed to increases in sentencing severity for all three burglary offences.³ The increase in domestic burglary was within the expected range, but numbers for aggravated burglary were still too low to be conclusive. For non-domestic burglary, the evaluation found that aggregate sentencing severity had increased. However, further work was carried out to understand current sentencing practice in more detail, and based on this, the Council took the view that in most cases reviewed, sentences appeared to be proportionate to the seriousness of the offence.

Given the findings of the evaluation for non-domestic burglary, for the more serious cases, the Council has decided to retain the current sentencing levels. However, at the lower end of offence seriousness, the Council decided it would be helpful to provide further guidance for disposals that may be appropriate when non-custodial options are being considered and have made changes to the guideline to reflect this.

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 guidelines, there

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>

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 acknowledged by the Council that sentencing levels had increased since the guideline came into force. On reflection the Council considered that current levels, broadly speaking, were not disproportionate to the offences committed and so the revised guidelines have been developed with recent sentencing levels in mind.

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); and
- 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 revised guidelines will encourage consistency of sentencing and in the vast majority of cases will not change overall sentencing practice from the current levels under the previous guideline. 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, sentencing data from the Court Proceedings Database,⁴ findings from the two burglary evaluations, 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.

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>

During the consultation stage, some small-scale research was conducted with a group of sentencers, to check that the draft guidelines would work as anticipated. This research also provided 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 guidelines have been published on the Sentencing Council website at the following link:

<https://www.sentencingcouncil.org.uk/research-and-resources/publications?s&cat=statistical-bulletin>.

Non-domestic burglary

Around 4,400 adults were sentenced for a non-domestic burglary offence in 2020.⁵ This number has been decreasing since 2011 when 8,900 adults were sentenced for this offence. Around 65 per cent of offenders were sentenced in magistrates' courts in 2020; the remaining 35 per cent were sentenced in the Crown Court.

Just over half (55 per cent) of those sentenced for non-domestic burglary in 2020 were sentenced to immediate custody. A further 20 per cent and 18 per cent of adults received a suspended sentence order and a community order, respectively. The rest received a fine (3 per cent), a discharge (2 per cent) or were 'otherwise dealt with'⁶ (2 per cent).

The statutory maximum sentence for this offence is 10 years' custody. In 2020, the average custodial sentence length (ACSL)⁷ was 10.6 months (after any reduction for a guilty plea).

Domestic burglary

Around 3,700 adults were sentenced for a domestic burglary offence in 2020. 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 in 2020.

Around 75 per cent of those adults sentenced for domestic burglary in 2020 received an immediate custodial sentence.⁸ This was followed by 14 per cent receiving a

⁵ Figures presented for 2020 include the time period since March 2020 in which restrictions were placed on the criminal justice system due to the COVID-19 pandemic. It is therefore possible that these figures may reflect the impact of the pandemic on court processes and prioritisation and the subsequent recovery, rather than a continuation of the longer-term series, so care should be taken when interpreting these figures.

⁶ 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 several 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.

⁷ The average custodial sentence lengths referred to in this resource assessment are the mean average, which is calculated by adding all the individual values and dividing the total by the number of values.

⁸ The Court Proceedings Database does not include any information on the offending histories of the offenders sentenced, so there are no figures from this source on the number or proportion of offenders sentenced for a qualifying third domestic burglary (known as 'third strike' domestic burglary) under section 111 of the Powers of Criminal Courts (Sentencing) Act 2000. However, figures are available on this from a different source – the Police National Computer. These figures show that there were 327 third-time burglary offenders in 2020. Of these, 57 per cent received a custodial sentence of 28.8 months or more (a three-year sentence with a 20 per cent discount for a guilty plea). More detail can be found in the 'Offending Histories' link on the following

suspended sentence order and 9 per cent receiving a community order. The rest received a fine (less than 0.5 per cent), a discharge (less than 0.5 per cent) or were 'otherwise dealt with'⁹ (2 per cent).

The statutory maximum sentence for this offence is 14 years' custody. The ACSL in 2020 was 2 years 4 months (after any reduction for a guilty plea).

Aggravated burglary

Around 200 adults were sentenced for an aggravated burglary in 2020. This is a reduction from 2011 when 320 adults were sentenced for the same offence. This offence is indictable only and therefore all offenders are sentenced in the Crown Court.

Nearly all (94 per cent) of the offenders sentenced in 2020 received an immediate custodial sentence, with the remaining offenders either receiving a suspended sentence order, a community order or were 'otherwise dealt with'.¹⁰

The statutory maximum sentence for this offence is life imprisonment. The ACSL in 2020 was 7 years 2 months (after any reduction for a guilty plea).

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.

webpage: <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-march-2021>.

Note that as these figures and those given in the rest of this document are from different sources, they are not directly comparable.

⁹ The category 'otherwise dealt with' for this offence 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 several 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.

¹⁰ The category 'otherwise dealt with' for this offence includes otherwise dealt with on conviction (or finding of guilt). Due to a data issue currently under investigation, there are several 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.

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 new guidelines have introduced a medium level of culpability and a medium level of harm, which did not exist in the previous guideline. This means that it is difficult to foresee how offences will 'map' from the previous to the revised guidelines. Consequently, 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 were undertaken with sentencers during the consultation period, which have provided more information on which to base this final resource assessment.

Resource impacts

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

Summary

There have been several changes to the placement of factors in the revised guidelines. These include the factor related to group offending within the non-domestic and domestic burglary guidelines. Additionally, some new wording related to alcohol dependency/ misuse has been added to the domestic and non-domestic burglary guidelines, with the intention that this might encourage more community orders to be given at the lower end of offence severity. Analysis carried out during the development of the guideline and during the consultation stage, involving sentencing remarks and interviews with sentencers, showed evidence that very little change is expected in sentencing for these offences and therefore minimal resource impact is expected.

The factor related to a weapon carried when entering the premises in the aggravated burglary guideline has been moved from step one to step two of the guideline, and the step one harm factor reworded to avoid any possible double counting of this factor. Analysis suggests that there may be a slight decrease in sentence severity due to this change. However, the sample size analysed was small and therefore while any resource impact is not expected to be substantial, the findings in relation to this should be interpreted as indicative of the expected impacts only.

Overall, for all three offences (non-domestic, domestic and aggravated burglary), analysis suggests that sentences should remain similar under the revised guidelines to sentencing levels under the previous guidelines, and there is no conclusive evidence to suggest that the guidelines will have a notable impact on prison or probation resources.

Non-domestic burglary

The resource assessment published in 2012 for the previous guideline estimated that no change in sentencing severity was expected as a result of the guideline. The

Council has since considered evidence both from the evaluations and additional work undertaken, including analysis of transcripts of Crown Court judges' sentencing remarks and analysis of data from the CPD and the Crown Court Sentencing Survey.¹¹ The evaluations found that aggregate sentencing severity increased following the introduction of the guideline. However, as a result of the additional work undertaken, whilst the aggregate impact of the original guideline was higher than predicted, the Council is content to retain the current levels for most cases as analysis indicates that for most individual cases, sentencing is proportionate to the seriousness of the offence.

The previous guideline had two levels of culpability and two levels of harm, leading to three levels of seriousness in the sentence starting point and range table. This went 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 revised 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. This would 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 previous 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. Furthermore, the Council hope that by not including custody in the B3 or C2 sentencing ranges, this might also encourage more community orders to be given at this lower end of offence severity.

Several other changes have also 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 to step two of the guideline. Also, 'premises or victim deliberately targeted'¹² has been removed from the guideline factors. Several of the harm factors and aggravating and mitigating factors have also been re-worded.

An analysis of a small sample¹³ of transcripts of Crown Court judges' sentencing remarks was undertaken to assess whether there might be any potential resource

¹¹ During the period 1 October 2010 to 31 March 2015, the Sentencing Council conducted a data collection exercise called the Crown Court Sentencing Survey (CCSS). The CCSS recorded details on the factors taken into account by the judge when determining the appropriate sentence for an offender (such as harm and culpability factors, and aggravating and mitigating factors), and the final sentence given. For further information see <http://www.sentencingcouncil.org.uk/analysis-and-research/crown-court-sentencing-survey/>.

¹² The factor 'vulnerable victim' appears instead at step two under aggravating factors.

¹³ 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.

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 small, and is unlikely to have accounted for the full range of offending at the Crown Court, and so the transcript analysis findings for this offence are tentative.

However, based on this analysis of a small sample of cases, most of the changes in the 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 particular change of interest in the revised guideline was the movement of the factor relating to group offending from step one to step two. In the transcript analysis, there were several cases where the judge had placed the offence within the higher culpability category under the previous guideline, where one of the relevant factors was that the offender committed the offence as part of a group. Nevertheless, under the revised guideline, the analysis found that other higher culpability factors (such as 'significant planning was involved') would also be applicable in most cases, which would serve to keep the offender within this higher culpability category. This suggests that the movement of the factor relating to group offending to step two of the guideline will not lead to a reduction in sentences in most cases.

This is supported by research with sentencers during the consultation stage. A scenario involving group offending was found to be sentenced consistently between the previous and revised guideline, which further suggests that the movement of this factor is unlikely to lead to a substantial impact on prison or probation resources.

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 previous 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 revised guideline has the same text but also now mentions alcohol dependency /misuse and alcohol treatment requirements. This 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.

Domestic burglary

The original evaluation of the impact of the previous guideline for this offence and the further evaluation conducted in order 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 previous guideline were proportionate to the seriousness of the offences. However, to bring the guideline into line with the Council's standard structure and to revise some of the factors, the Council decided that a revision was still necessary.

The previous 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 revised 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 previous 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).

Several 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.

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 2020), it is expected that these transcripts should be broadly 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. Therefore, further research was conducted during the consultation stage to better understand the possible impact of the guideline on sentencing.

Based on the transcript analysis of a small sample of cases, most of the changes in the revised 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 guideline. Sentencers may consider the relevant aggravating factor, but this may not fully offset any decrease to sentences caused by the lower culpability categorisation. This was tested through research with

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.

sentencers during the consultation, using scenarios of offending. In the relevant scenario, there was no evidence that the movement of this factor led to a lowering of the final sentence; the scenario was found to be sentenced consistently when using the previous guideline compared with the revised guideline, in the vast majority of cases. This was because sentencers considered other factors were present in the case which maintained the highest level of culpability.

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, there is the expectation that this may lead to a greater use of community orders for this offence. In the research with sentencers, many sentencers felt that they would follow this guidance but may need evidence that addiction was the root cause of the offending behaviour. As such, this change is unlikely to lead to substantial resource impacts.

Aggravated burglary

The initial evaluation of the impact of the previous guideline for this offence and the further evaluation which was 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 previous guideline were proportionate to the seriousness of the offences. However, to bring the guideline into line with the Council's standard structure and to revise some of the factors, the Council decided that a revision was still necessary.

The previous guideline had two levels of culpability and two levels of harm, leading to three levels of seriousness in the sentence starting point and range table. This went 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 revised 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 previous 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, several 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 broadly represent the full range of offending, although, as with the burglary offences covered earlier, it is possible that some types

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 offending have not been captured by these transcripts given that the sample is very small.

Based on this analysis of a sample of cases, the movement of the ‘weapon carried when entering premises’ factor from step one to step two amid concerns of double counting¹⁶ may mean some cases are put into a lower level of culpability at step one, when under the previous guideline they were put into higher culpability. In three of the transcripts analysed, the removal of this factor, ‘weapon carried when entering premises’, from step one led to a lower final sentence. However, in the majority of transcripts analysed, the culpability stayed at the same level due to the ‘significant degree of planning’ factor being present in the case. This was supported by research with sentencers during consultation: the sentencers’ assessment of the degree of planning seemed to drive their culpability categorisations.

Finally, the factor ‘Violence used or threatened against the victim, particularly involving a weapon’ has been amended to remove explicit reference to a weapon, to avoid double counting, whilst ensuring that the most serious cases remain within the higher end of the sentencing table.

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 come 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 a number of 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 has also

¹⁶ Following *R v Sage*; AG’s Ref Sage [2019] EWCA Crim 934 [2019] 2 Cr App R (S) 50, paras 38 and 45.

helped to identify issues with implementation and application of the guidelines, and some amendments have been made. The Council also uses data from the Ministry of Justice as well as a data collection for certain offences including burglary to monitor the effects of its guidelines.

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