

Annex A: Key findings from the research

The structure/ stepped approach to sentencing in adult guidelines

The key findings on this issue were as follows:

CCSS data analysis found, as expected, that the level of seriousness of the offence, as identified by the judge completing the CCSS survey form (from the most serious to the least serious), had the largest effect on sentencing outcomes for some offences included in the study: there was a strong and largely consistent relationship between the seriousness of the offence and both the use of immediate custody and the length of custodial sentences for adult robbery cases and three of the four theft offences (theft from the person, theft from a shop or stall, theft in breach of trust). For robbery committed by children and young people, however, offence seriousness was not a significant factor in predicting immediate custody (it was not possible to analyse the impact of offence seriousness for harassment and the fourth theft offence, receiving stolen goods).

Upward factors¹ generally had a stronger effect on outcomes than downward factors, except for the offence of theft from a shop or stall, where certain downward factors were stronger predictors (for example, 'addressing needs/ addiction', 'currently in work/ training'²). However, because the data were collected at a single timepoint, the analysis is unable to account for the order in which judges considered the factors, i.e. the analysis was not able to explore whether, and to what extent, judges completed the steps in the order listed in the sentencing guidelines. Therefore, even though downward factors in general exerted the smallest effect on sentencing outcomes, this does not mean mitigation was considered last³, and downward factors may be considered by sentencers at any stage during sentencing.

Text analysis⁴ also suggests that the text contained in offence-specific guidelines places more emphasis on upward factors than downward factors, with a greater percentage of each guideline devoted to describing upward, as opposed to downward factors.

¹ Upward factors increase a sentence and downward factors decrease a sentence.

² This terminology was used on the CCSS forms.

³ There are also likely to be factors outside of those measured that can further explain sentencing outcomes. Even when the highest number of different upward and downward factors were considered, they only explained about 50 per cent of the variance in the length of sentence, leaving the remaining 50 per cent unexplained.

⁴ Text analysis examined the total number of words in each of the sampled guidelines, what percentage of these words are devoted to describing upward and downward factors, and the most frequently used words or phrases.

CS partners were generally concerned about the stepped approach in offence-specific guidelines, arguing that mitigating factors might not have a sufficient impact on sentencing outcomes because they are considered only at Step 2. In their view, the insufficient consideration of mitigating factors might have a bigger impact on disabled offenders, offenders from ethnic minority groups, and offenders from deprived backgrounds, because compared to other offenders, it can be even harder for these groups to evidence and advocate mitigation at court. Defence lawyers also felt that mitigating factors have very limited impact on sentencing outcomes, and that this might impact offenders from deprived backgrounds more.

CS partners asked whether mitigating factors could come at an earlier stage. Some sentencers agreed with this, though almost all were against it (mainly citing that consistency is achieved by firstly basing the sentence on the seriousness of the crime). Sentencers noted that personal mitigation was always 'at the back of their mind'.

An alternative suggestion was discussed in co-production meetings: adding another step to the current approach to require sentencers to review the sentence they arrived at with mitigating factors and the offender's personal circumstances in mind.

Defence lawyers and CS partners generally agreed this is a better approach: it allows the sentencer to reflect on the sentence at the final stage and see the offender as a 'person' and an 'individual'. Most sentencers supported this suggestion, which would bring sentencing for adults more into line with that in the youth court.

Nevertheless, there were minor concerns about resources. Some sentencers argued that the adult court might not have the resources for this approach in the same way as the youth court does, due to not having pre-sentence reports (PSRs) for all adult offenders, for instance.

Factors within the guidelines

The research highlighted a number of issues related to factors included within the guidelines: either factors that already exist or factors that could be considered for inclusion.

The UH report categorises guideline factors as either 'generic' factors (those that appear across most guidelines, for example 'remorse' or 'previous convictions'), and offence-specific factors (those that are specific to one offence or certain types of offence covered by the guidelines included in this study). The following sections discuss generic factors first, followed by offence-specific factors.

Because the quantitative data analysis used the CCSS dataset, which was based on the way factors were worded seven years ago, whereas other aspects of the research reflect the wording of current factors, they are often combined and referred to as 'upward' factors or 'downward' factors.

Generic upward factors

These are: group or gang membership⁵, failure to comply with current court orders, offence committed on bail or offence committed on licence, and previous convictions.

Group or gang membership

Sentencers, defence lawyers and CS partners all agreed that the word 'gang' indicates too many presumptions and biases, and 'gang membership' is more likely to affect young offenders. CS partners and defence lawyers also argued that this expression might lead to racial disparity, although not all sentencers agreed.

While most co-production partners welcomed the Council's replacement of 'gang' by 'group' in most guidelines, some sentencers felt the scope of 'group' is too broad, and this might affect young offenders more than other groups because they 'just hang out together' (McCulloch et al., 2006). CS partners argued that 'group membership' alone should not be seen as a factor that might increase a sentence, because a person (especially young people and women) might be coerced, manipulated or even groomed to join a group. They felt that their vulnerability should be taken into account instead of being used against them.

However, text analysis showed that none of the sampled guidelines treat group membership *per se* as a factor which could increase sentences. The expression used relates to a role where 'offending is part of a group activity'⁶ or an 'offender was a member of, or was associated with, a group promoting hostility based on race or religion (where linked to the commission of the offence)⁷. Also, where relevant, the expanded explanation of 'offence committed as a group' makes it clear that the mere membership of the group should not be used to increase the sentence, but where the **offence was committed as part**⁸ of a group it will normally make it more serious.

⁵ The text analysis also found use of the expression 'a leading role...' or 'a significant role'... 'where offending is part of a group activity'.

⁶ Robbery and theft guidelines.

⁷ Harassment and stalking guideline.

⁸ Emphasis in original text.

In addition, CCSS analysis indicated that there was very little association between this factor and the likelihood of receiving a custodial sentence or a longer custodial sentence: there was an association in only two offences examined, with higher odds found for receiving immediate custody for offences of receiving stolen goods, and a greater likelihood of receiving a longer custodial sentence in adult robbery offences.

Failure to comply with current court orders/ offence committed on bail/ offence committed on licence

Legal professionals and CS partners had quite different perceptions on these factors. CS partners were concerned judges might be reluctant to take offenders' personal difficulties into account and they may be penalised for non-compliance that is out of their control. However, sentencers argued the judiciary generally adopts a cautious approach to non-compliance, noting it is more about checking whether the current court order is appropriate (this was endorsed by defence lawyers).

CCSS analysis found that the relevant factors on the CCSS forms were associated with both receiving immediate custody and a longer sentence for adult offenders sentenced to robbery offences. For those sentenced for theft, the relevant factors were associated with a greater likelihood of custody for all four theft offences, but there was no association with the length of custody. For harassment offences, there was an association with receiving custody (although this was not as strong as for theft or adult robbery) and with receiving *shorter* sentences.

The factor was not associated with either outcome for robbery offences committed by children and young people.

Previous convictions

CS partners stressed the impact of 'addiction' and the 'age-crime curve'⁹ on re-offending; they felt that sentencers should be reminded, potentially in expanded explanations, that there might be complicated reasons underlying persistent behaviour. In contrast, defence lawyers and sentencers were more concerned with systemic problems in the criminal justice system that might lead to some groups having more previous convictions (e.g. perceived police bias in the application of diversion). Therefore, even if application of 'previous convictions' has a discriminating effect in sentencing, this is not caused by sentencing

⁹ The 'age-crime curve' refers to the phenomenon that criminal behaviour increases in adolescence and decreases in adulthood.

guidelines *per se*. Text analysis showed that the Council had already addressed some of the concerns expressed by co-production partners in the relevant expanded explanation.

CCSS analysis indicated that the presence of previous convictions predicted both a sentence of immediate custody being handed down, and a longer custodial sentence, for adult robbery offences. For robbery offences committed by children and young people, there was a strong association between previous convictions and receipt of custody (especially for offenders with four or more convictions), but only longer custody for those with four to nine previous convictions.

For all theft offences there was a clear association between previous convictions and the likelihood of receiving custody, but a more inconsistent association with sentence length (in some instances there was no association, while in others it was associated with a shorter sentence).

Finally, there was no association between these factors and the harassment offences included in this study.

Generic downward factors

These are: remorse, determination and/ or demonstration of steps taken to address addiction or offending behaviour, physical/ mental illness, mental disorder and learning disability, difficult/ deprived background, and good character and/ or exemplary conduct.

Remorse

There was consensus among the co-production partners that 'remorse' might lead to disparity in sentencing, but they offered different explanations as to why. CS partners and sentencers stressed cultural differences, arguing that offenders from certain ethnic minority groups might find the expression of remorse challenging due to their cultural beliefs. Lack of maturity and the peer pressure of 'staying tough' were also seen to be highly relevant for young offenders. Defence lawyers stressed the impact of learning disabilities and communication difficulties. According to them, it is harder for less articulate offenders to appear remorseful in front of probation officers and sentencers.

CCSS analysis showed that remorse did have an effect on sentences: there were lower odds of receiving immediate custody in adult robbery cases, all theft offences and harassment offences, but not for robbery offences committed by children and young people.

For only one offence – adult robbery – was the factor of remorse found to be associated with sentence length (shorter sentences).

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

CCSS analysis showed this factor was associated with mitigating against immediate custody and receipt of a shorter custodial sentence for adult robbery offences (although the association with length of sentence was relatively small). It was also associated with a lower likelihood of immediate custody for all theft offences and harassment offences, but not with length of sentence. No association was found for robbery offences involving children and young people and either outcome.

Defence lawyers and sentencers felt this factor may in practice lead to disparity between different groups. Some sentencers argued that offenders from ethnic minority backgrounds are more likely to demonstrate determination to address offending behaviour because of a strong family culture/ domestic support. White offenders, especially those from deprived backgrounds, might not have such strong support, which might mean the disparity may affect them more. Defence lawyers generally endorsed this viewpoint.

Other sentencers argued it is not racial disparity that is relevant here, but class inequality: wealthy defendants may be able to more easily access addiction treatment services than those from less privileged backgrounds. Defence lawyers and CS partners agreed, with the latter being concerned that sentencers might not consider offenders' efforts to address addiction or offending behaviour when they tried to seek support, but appointments have been delayed by the system. Some CS partners also argued that offenders (in particular women) with mental health issues may rely on drugs and alcohol for self-medication meaning it might be difficult for them to demonstrate determination to address addiction.

Physical/ mental illness; mental disorder and learning disability

CCSS analysis indicated that the relevant factors¹⁰ mitigated against receiving custody for all adult offences in the study (robbery, theft and harassment)¹¹. They were only associated

¹⁰ Factors relating to physical and mental illness varied between the different guidelines/ CCSS forms and for harassment had to be combined due to low sample sizes.

¹¹ Due to lack of data, regression analysis was not possible on cases involving robbery offences committed by children and young people

with shorter prison sentences for adult robbery offences (the association was a relatively small one).

Co-production partners flagged the potential for these factors to lead to disparities in sentencing between different groups. Sentencers, lawyers and CS partners all agreed that offenders from ethnic minority groups are less likely to disclose mental disorder and learning disability, due to cultural differences and the fear of social stigma. Some sentencers reported that they observed this tendency more frequently among people from African Caribbean and Asian communities. However, others argued that lack of mental health support is becoming a general issue for all offenders, including those from White middle-class backgrounds: they noted that how to evidence mental disorder and learning disability is becoming a real challenge for all social groups.

Difficult/ deprived background

Co-production partners felt that offenders from deprived backgrounds were 'lower hanging fruits' for the criminal justice system and were at a disadvantage because they are more likely to have aggravating boxes ticked and mitigating boxes unticked (e.g. an offender with fewer financial resources might find it harder to devote time to charity work and so be less able to draw on mitigation relating to good character).

After accounting for upward and downward factors, 'difficult/ deprived background' was not associated with the length of sentence nor with a lower likelihood of receiving a custodial sentence, for adult robbery, any type of theft, or robbery committed by children and young people.

It was not possible to conduct extensive analysis to explore how different characteristics intersect in respect of this factor. Therefore, intersectionality was only analysed for adult robbery offences because this was the largest sample: 'difficult/ deprived background' was more frequently ticked on the CCSS form for female offenders compared to male offenders, as well as White offenders compared to Black and Asian ethnic groups.

However, there was no difference in sentencing outcomes between men and women relative to their socio-economic background or for different ethnic groups.

Good character and/ or exemplary conduct

Co-production partners commented that the factor 'good character and/ or exemplary conduct'. is more likely to be applied to wealthier defendants, because the example given in the guideline is 'charitable work'.

For harassment offences, CCSS analysis found that 'good character' was associated with lower odds of immediate custody. Likewise, 'offence out of character' (the factor that was on the CCSS form) was significant for adult robbery offences.

Offence-specific guideline factors

The study also explored factors that were specific to the guidelines selected for this work. The key findings are below. Because the recommendations are often relevant to more than one guideline, these are presented in one section from paragraph 4.63 onwards.

Adult Robbery

Almost all upward factors (including 'targeting vulnerable victims', 'use of weapon', 'significant degree of force or violence', 'wearing of a disguise' and 'high value of items taken') were significant predictors of receiving immediate custody in adult offences (the exception was the factor of 'group or gang membership'). Similarly, almost all upward factors were associated with longer custodial sentences, except 'offender under the influence of alcohol or drugs'. The strongest factors in predicting immediate custody and the length of sentence were 'offender was on bail or licence', 'use of weapon' and 'high value of items taken'.

Generic downward factors were closely associated with sentencing outcomes in adult robbery cases. Factors of 'age', 'genuine remorse', 'offender addressing needs or addiction' and 'co-operation with authorities' were associated with shorter custodial sentences. Among them, 'age' had the strongest predictive power. In terms of reducing the odds of immediate custody, 'physical/ mental illness; mental disorder and learning disability' was the most significant factor, followed by 'offender can/ is addressing needs/ addiction' together with 'offence out of character' and 'unplanned or opportunist crime'. However, it is worth noting that 'offence out of character' is no longer included as a downward factor in the new guidelines.

For 'difficult/ deprived background', while adult offenders seem to serve shorter sentences and were less likely to get immediate custody, after accounting for other factors, this was no longer associated with the length of sentence nor with a lower likelihood of receiving a

custodial sentence. It was not possible to analyse 'in work or training' or 'loss of job or reputation' due to few cases having these factors ticked.

Robbery committed by children and young people

The only upward factors that were significantly associated with longer custodial sentences for these offences were: 'use of weapon', 'degree of force of violence', and 'wearing of a disguise'. 'Targeting vulnerable victim' and 'more than one victim' were also associated with a greater likelihood of receiving immediate custody.

Text analysis explored whether the word 'hood' is more easily associated with young people from certain subgroup cultures such as 'rap gangs'¹². Some sentencers agreed this might be the case, but there were also opposing voices.¹³

Co-production partners also raised concerns about the 'use of weapon' factor. Both CS partners and defence lawyers argued this factor affects young people from ethnic minority backgrounds more than others, because they are often labelled as 'violent' and 'gang members'. However, although CCSS analysis for both adult robbery offences and robbery offences committed by children and young people indicated that 'use of weapon' is a strong factor in predicting the length of custody, this factor was found to have slightly *lower* importance here compared to adult robbery cases. This contradicts the perceptions of the co-production partners.

Fewer downward factors were significant. Only 'unplanned or opportunist crime' and 'currently in, or prospects of work/ training' were associated with a shorter custodial sentence, while 'responds well to current order' was significant in reducing the odds of receiving immediate custody¹⁴.

Theft offences

'Pre-planning or premeditation', 'high value of the property', 'high level of gain', 'targeting of vulnerable victim', and 'victim particularly vulnerable' were generally associated with a higher chance of receiving a custodial sentence for all theft offences (exceptions to this were: 'targeting of vulnerable victim' and receiving stolen goods offences; 'pre-planning and pre-meditation', 'victim particularly vulnerable', and 'high level of gain' for theft from a shop or

¹² Maxwell (1991).

¹³ One sentencer argued that, *'it is not the clothes that matter here, it is whether the defendant used the clothes as disguise'*.

¹⁴ However, this downward factor is excluded from the new guideline.

stall, and 'high level of gain' for theft from the person). 'Pre-planning or premeditation' and 'high value of the property' were associated with longer prison sentences on all theft offences, while 'high level of gain' was for all but 'theft from a shop or stall'.

No downward factors that appeared on the theft from the person or theft from a shop or stall CCSS dataset (which contains more factors than in the guideline), were important for predicting the length of custody. The only two cases where downward factors were significant for the length of the sentence were 'currently in, or prospects of work/ training', which predicted the length of sentence for receiving stolen goods, and 'loss of job or reputation', which predicted the length of immediate custody for theft in breach of trust. The factor 'currently in, or prospects of work/ training' was also a significant predictor of immediate custody for *all* theft offences.

Harassment offences

'Failure to comply with a court order' and 'offence committed under the influence of alcohol/ drugs' were associated with a longer custodial sentence, while 'victim particularly vulnerable', 'failure to comply with current court orders', and 'previous violence/ threats' were associated with a higher likelihood of immediate custody. All these factors had a similar strength of association. The factors related to offences being 'motivated by/ demonstrating hostility' on the basis on race/ religion, disability, sexual orientation or transgender identity were rarely ticked by sentencers in the CCSS dataset and therefore could not be included in quantitative analysis.

No downward factors were significant in predicting the length of custody for harassment. However, three generic downward factors were associated with lower odds of immediate custody, namely, 'genuine remorse', 'good character', and 'addressing needs or addiction'.

Sex/ gender¹⁵

Co-production partners expressed different opinions on gender and sentencing disparity. Some sentencers argued that women tend to be treated more favourably in sentencing. However, CS partners did not believe this because they think female offenders are often blamed for 'double deviance' (Gelsthorpe and Sharpe, 2015)¹⁶. For CS partners, *even if* female offenders receive more lenient sentences compared to males, it is not necessarily because of their gender, but because they are less dangerous offenders and often commit

¹⁵ In the Equality Act 2010, the term used is sex, but in the CCSS dataset, gender is used.

¹⁶ 'Double deviance' means that female offenders are perceived to be twice as deviant as male offenders, once for breaking the law, and once for deviating from traditional gender norms about how a woman should act.

less serious crimes. Moreover, their caring roles and special vulnerability¹⁷ deserve recognition in sentencing. This is a matter of 'equity', not 'inequality'.

The difference of opinions was most evident in discussions about 'being a sole or primary carer for dependant relatives': sentencers tended to believe this is a 'striking' downward factor that often helps offenders (often women, especially single mothers) 'avoid' a prison sentence. CS partners were instead concerned that this downward factor is not applied consistently in practice, and sentencers might give a single mother a harsher sentence, because 'she should have known better'. In contrast, judges and magistrates believed that the difficulty facing single mothers is well recognised, and they would never punish a mother for this reason.

Sentencers' concern was more that because the factor is perceived to be related to women and mothers, other carers might be overlooked in practice (e.g. some argued that in Asian communities, young men are often responsible for taking care of the extended family, something that is not well understood in the British context. The same may apply to other ethnic minority groups where the family structure is different from the European type).

Defence lawyers also argued that in practice, the relationship between carers and dependents can be complicated: a child could be the carer for other children because parents are absent, middle-aged men might take care of older parents, young adults might care for grandparents, and relatives might care for other relatives. In their view, it is the less typical carers who are often being overlooked in sentencing.

CCSS analysis showed that after controlling for other factors, men were more likely to receive a custodial sentence for robbery (adult) and all theft offences. For robbery (adult) offences men also received longer custodial sentences.

In terms of carer status, after controlling for upward and downward factors, the size of the odds of immediate custody for carers was around 60 per cent lower than the odds for those without the carer status present for robbery (adult) offences, receiving stolen goods, and theft from a person. It was one half the size for theft in breach of trust. The 'main carer/ has responsibility' factor was associated with a shorter custodial sentence for robbery (adult), but not for any type of theft. This finding applied regardless of gender. Carer status for harassment and robbery committed by children and young people was not analysed because the number of offenders with that factor ticked was too low.

¹⁷ For example, being exploited by male co-offenders, etc.

A small number of co-production partners flagged the fact that pregnancy and maternity pose very specific challenges for the criminal justice system.

Race/ ethnicity¹⁸

CS partners discussed how factors such as gang membership, carer status, addressing addiction or offending behaviour, expression of remorse, and mental disorder and learning disability can have a disparate effect on offenders from ethnic minorities. They did not mention guilty plea until prompted that existing evidence suggests that defendants from ethnic minority groups are less likely to plead guilty. Sentencers did not rebut this, but believed that when people from ethnic minority groups do enter a plea, the guilty plea reduction applies to them equally. Most sentencers (supported by defence lawyers) think that it is instead offenders who have no legal representation who are adversely affected. Regarding whether those from ethnic minority groups who have pleaded guilty late are less likely to receive a higher reduction, sentencers said they will evaluate the reason for this, and if excusable, they will take this into account and allow a larger reduction.

CCSS analysis indicated that, after controlling for all relevant factors, adult Black offenders convicted of robbery offences were less likely to receive a custodial sentence than White offenders. For the same offence, Asian ethnicity was associated with a shorter custodial sentence compared to White offenders. These findings were therefore not considered to be strong evidence of disparity as this was only present in one out of seven offences explored. The analysis also indicated that with regards to the disparate effect of upward and downward factors on different ethnic groups, unlike co-production partners' suggestions, the data did not provide evidence that any factor had a differential impact on sentencing outcomes of different ethnic groups.

Age

CS partners praised the guideline for Sentencing children and young people for considering the '*capability*' and the '*vulnerability*' of young offenders and the 'more individualistic approach' adopted by it. Some, however, felt it is too long/ not prescriptive enough, that its primary goal is not clear enough, and that it is not suitable for use in an open court where time is a concern. Children's welfare and the prevention of reoffending are emphasised, but no guidance is provided on how to prioritise when necessary.

¹⁸ Please note in the Equality Act 2010, the term used is race, but in the CCSS dataset, the term used is ethnicity.

The main concern related to the difference between 'emotional and developmental age' and 'chronological age'. Although sentencers argued that they are well aware of the differences, some CS partners were concerned that certain young offenders are treated as adults by criminal justice agencies because of their physical appearance ('adultification').

Defence lawyers argued that young offenders who are 18 might not be mentally mature and might still face similar challenges as they did at 17 (arguing this is particularly acute for males, looked-after children, and those leaving care). They thought that removing the protective umbrella from these vulnerable young offenders at 18 is not a sensible approach. Sentencers argued that because age is still a downward factor for young adults, they can use discretionary power to reduce the sentence even if the offender is no longer covered by the overarching guideline.

Vulnerability was also discussed in the context of elderly offenders, with a few co-production partners mentioning that the vulnerability and special needs of elderly offenders should be considered more.

CCSS analysis did not find a strong relationship between age and sentencing outcomes. After controlling for relevant factors, including previous convictions, it was found that older age was significant for receiving custody in only two offences: older offenders were more likely to receive a custodial sentence for adult robbery offences and less likely to receive custody for theft from a shop or stall¹⁹. Older offenders however received longer sentences for robbery offences and all four theft offences.²⁰ The strength of the association was similar for all five offences.

Additionally, the analysis found that age as a downward factor is not used extensively for offenders older than 60. For offenders 60 years or older, in almost 40 per cent of the theft cases, 45 per cent of robbery cases, and 87 per cent of harassment cases, it was not applied.²¹

Dynamic spatiality

¹⁹ With each additional year of age, the odds of immediate custody for robbery are 1.04 times greater. With each additional year of age, the odds of immediate custody for theft from a shop or stall are 0.98 times lower.

²⁰ The impact of age on sentencing children and young people for robbery was not analysed because the age data was not available due to disclosure issues.

²¹ Note that 'age' was a mitigating factor on the CCSS forms for robbery and theft, on the assault form (which covered harassment offences), it was 'age and/ or lack of maturity'.

The research report defines this as: *“a way to characterise the frequent change in residential space of traveller groups that adopt nomadism or semi-nomadism as a lifestyle, specifically referring to the caravan dwelling households of gypsies and Irish travellers. It is used in this context to denote negation of a territorial conception of residence”*.

There was consensus between CS partners and sentencers that travellers (as a group with unique spatial needs) are an ignored group, and they tend to be disadvantaged in sentencing, which was endorsed by some defence lawyers.

It was felt that their unique needs can be met by taking it into account when ‘no shows’ at a hearing are flagged up as an upward factor. For example, an offender might not have turned up in court due to a need to shift their caravan at short notice, or because they didn’t receive the summons in the post due to frequent changes of location.

The broader work of the Sentencing Council

UH discussed broader aspects of the work of the Council in co-production meetings, namely: accessibility and usability of the sentencing guidelines and their impact on the process of sentencing; the guideline development process; and the achievement of EDI (Equality, Diversity and Inclusion) ambitions embedded in the strategic objectives of the Sentencing Council.

Sentencers said the switch to electronic copy makes the guidelines harder to use: not all information is visible at the same time, and multiple clicks or drop downs are necessary for seeing the content; some expanded explanations are quite long and UH cite research, some of which suggests that use of drop-downs may be problematic in terms of comprehension²²; and virtual trials are problematic as they require numerous ‘windows’ to be open on the screen.

The expanded explanations need to be both accessible and meaningful (sentencers need to have some awareness about the ‘lived experience’ that they try to capture and elicit): CS partners raised this and some sentencers concurred. Therefore, a better way to increase use of expanded explanations would be through ‘lived experience’ training delivered through guideline training. Sentencers also need to be able to effectively communicate and justify use of the guidelines/ expanded explanations with offenders.

²² *“The existing research is highly divided over whether hidden text and linked text might cause comprehension loss in online reading (Wei et al., 2005; Tseng, 2010; Fitzsimmons et al., 2014)”*.

There is a lack of familiarity with expanded explanations by sentencers and defence lawyers and with some guidelines. The general consensus was that there does not seem to be a need to refer to the expanded explanations, hence their resort to these is minimal to non-existent. Sentencers usually rely on the Probation Service to get information about personal mitigating factors, but they felt that the Service is not necessarily familiar with the sentencing guidelines and/ or expanded explanations.²³

Given that sometimes the representatives of CS organisations were not aware that the issues they are worried about are already addressed in sentencing guidelines/ expanded explanations, the same can be inferred about members of the public.

Several prompted and unprompted references to the Equal Treatment Bench Book (ETBB) were made by sentencers and sometimes by CS representatives. Several sentencers used it regularly, while also familiarising themselves with the contents of the full volume; other sentencers only used some sections of it, as and when the situation warranted; and others did not recall using it much at all. Although not all sentencers use the ETBB, those who have consulted it speak highly of its practicality and comprehensiveness on the subject of fair treatment and the need to avoid disparity amongst different individuals.

In terms of guideline development, CS partners were keen to understand the levers for this and the different stages, and there was a general appetite to get more involved in the development process. They were particularly interested in the guideline development stages of 'developing the guideline', 'monitoring and assessing the guideline', and 'feedback'. CS partners also felt EDI concerns were not manifested clearly as levers for guideline development, and there was a need to develop standards of evaluation for EDI in the development process. Partners wanted to know what criteria were used in guideline evaluation, and the standards used for assessing guideline effectiveness (generally and for EDI specifically).

Increased involvement in developing guidelines was desired by those who work in EDI areas with a specific focus, such as pregnancy and maternity. It was found that public consultations do not reach all of the CS organisations involved in the study. Lack of resources and disruption caused by the pandemic has disrupted CS organisations working in

²³ The Probation Service was not independently involved in this research, and therefore, the above comment needs to be understood as reported by the sentencers.

criminal justice issues, and therefore engagement with them on EDI issues in sentencing could be more proactive.

A number of organisations would welcome one-to-one engagement with the Sentencing Council in their work, in order that it better understands lived experience. Co-production partners felt the Council's strategic objectives will be best served by more direct engagement with EDI lived experience.

Some representatives of CS organisations said that they don't know (or believe) that judges actually follow the stepped approach in sentencing, which also suggests a lower understanding among the general public.

Annex B: Summary of recommendations

Number (from full report)	Recommendations
1; 2	<p>Consider adding an extra step to the existing approach in adult guidelines. In this step, sentencers would review the sentence they have arrived at with mitigating factors and the offender's personal circumstances in mind.</p> <p>The Council could run a pilot project with selected courts where sentencers adopt this extra step.</p>
3	<p>Re-evaluate the potential impact of group affiliation as a sentencing factor in robbery cases by using more recent data, because there is a clear gap between co-production partners' perceptions and the findings of CCSS data analysis.</p>
4	<p>Extend the expanded explanation for 'remorse', and include 'learning disability, communication difficulties and cultural differences' as influential factors in the evaluation of remorse.</p>
5	<p>The Council might consider a qualitative study on the lived experience of offenders with mental health issues and chronic addictions. The findings might lead to a better understanding of how sentencing can be used to enable the desistance of offenders with multiple needs.</p>
6	<p>The Council considers guidance to increase the use of the notion of 'difficult/ deprived background' for robbery offences for children and young people, by adding it as a downward factor.</p>
7	<p>The Council might consider including 'difficult/ deprived backgrounds' in the mitigation lists of theft and robbery guidelines. These factors are highly relevant in crimes for financial gain.</p>
8	<p>The Council considers providing more inclusive examples of good character and/ or exemplary conduct, alongside existing examples.</p>
9; 13; 17	<p>The Council endeavours to collect a larger volume of data than is currently available in order to analyse for intersectionality effectively.</p> <p>The Council could obtain more recent data to evaluate the impact of 'use of weapon' and 'wearing a disguise' in robbery cases. A larger sample of ethnic minority defendants is also needed to test the hypotheses that these two upward factors affect children and young people from ethnic minority groups more than others.</p> <p>For stronger conclusions about racial or ethnic disparities, data that oversample ethnic minority groups should be collected, to ensure conclusions about ethnic minority groups are robust and that the disparity between co-production partners' perceptions and the results of regression analysis can be explored.</p>
10	<p>Consider commissioning a qualitative study on the application of upward factors in theft cases to address potential inconsistencies highlighted in the CCSS</p>

	analysis (e.g., there are questions to be asked as to why 'previous convictions' seems to be important in some theft offences but not others; why 'group membership' is important in receiving stolen goods but not in other types of theft etc).
11	Consider including 'in work or training', and 'loss of job or reputation' in the mitigation lists of theft and robbery guidelines. These factors are highly relevant in crimes for financial gain. The Council might also consider whether it is necessary to include 'offender experiencing exceptional financial hardship' for more theft offences and in the robbery guideline.
12	Disparity is not always caused by the demographic characteristics of defendants; it might be caused by the characteristics of victims as well. The Council may wish to explore the relationship between sentencing outcomes and the demographic data of victims, as well as exploring the findings in relation to the impact of 'victim-related' aggravating factors from an EDI perspective.
14	Conduct further research into why some of the downward factors do not seem to have an impact on sentencing outcomes in robbery cases involving children and young people.
15	Further exploration of sentencers' attitudes about female offenders to understand the role their perception of equity has in sentencing. Specifically, further research could examine whether the leniency is applied equally to all women, or selectively, and whether factors such as a perception of blameworthiness, gender roles, and of the paternalistic role of the court influence the sentencing of women.
16	Specify pregnancy and maternity as a discrete phrase where medical conditions are referred to in the guidelines.
18	There should be more research exploring any potential bias against older offenders (for example over 60 years of age) and 'age and/ or lack of maturity' as a downward factor could be used more extensively for older offenders.
19	The Council could consider ways in which more guidance can be issued for sentencing young adults to improve consistency and precision in sentence reduction for young adults.
20	The Council could consider a downward factor based on dynamic spatiality, giving allowance for lateness and uncertainty in response and presence.
21	Consider changing the format of the display of expanded explanations on the webpage, for example by making them automatically displayed and continuous, below the factor.
22; 23; 24; 26	<p>Consider a more integrated approach to developing sentencing guidelines by assessing if there are better ways to communicate, engage and collaborate with the Probation Service, Youth Offending Teams, prosecutors and defence lawyers, all of whom participate and contribute to the decision making in sentencing.</p> <p>Increase the use of case studies in public communication and education; use these real-life cases to illustrate how guidelines are interpreted and applied at</p>

	<p>court, and how they shape the outcome of sentencing through an adversarial procedure.</p> <p>Consider combining lived experience training with guideline training (it should however be noted that judicial training falls outside the Council's realm of responsibility).</p> <p>Further expands stakeholder engagement, through more diverse means, including more targeted consulting, through one-to-one meetings or targeted focus groups.</p>
25	<p>Clarify the standards for guideline evaluation. For example, what are the criteria for 'effective' guidelines? How does the Council determine whether a guideline is 'effective', particularly from the EDI perspective? These standards should be communicated more clearly to relevant CS organisations, minority groups, and members of the public. By doing so, greater transparency can be achieved, which is crucial for the good reputation of the Council and for improving confidence in the criminal justice system.</p>
27	<p>Consider more efficient ways of directing sentencers to the ETBB, which gives sentencers more specific guidance on how to ensure 'fair treatment' and avoid 'disparity' of outcomes for different groups.</p>

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Causing death by dangerous driving

Culpability	Starting point	Range
High	12 years	8 – 18 years
Medium	6 years	4 – 9 years
Lesser	3 years	2 – 5 years

Causing death by careless driving

Culpability	Starting point	Range
High	2 years	1 – 4 years
Medium	1 year	26 weeks – 3 years
Lesser	26 weeks	Medium level community order – 1 year

Causing death by careless driving whilst under the influence of drink or drugs

The legal limit of alcohol is 35µg breath (80mg in blood and 107mg in urine)	High culpability	Medium culpability	Lesser culpability
71µg or above of alcohol OR Deliberate refusal to provide specimen for analysis OR Evidence of substantial impairment and/or multiple drugs or combination of drugs and alcohol	Starting point: 12 years Sentencing range: 8 – 18 years	Starting point: 9 years Sentencing range: 6 – 12 years	Starting point: 6 years Sentencing range: 5 – 10 years
51- 70 µg of alcohol OR Any quantity of a single drug detected	Starting point: 9 years Sentencing range: 6 – 12 years	Starting point: 6 years Sentencing range: 4 – 9 years	Starting point: 4 years Sentencing range: 3 – 7 years
36-50 µg of alcohol	Starting point: 6 years Sentencing range: 4 – 9 years	Starting point: 3 years Sentencing range: 2 – 5 years	Starting point: 1 year 6 months Sentencing range: 26 weeks - 4 years

Causing serious injury by dangerous driving

	Culpability		
	A	B	C
Harm 1	Starting Point: 4 years Category range: 3 – 5 years	Starting Point: 3 years Category range: 2 – 4 years	Starting Point: 2 years Category range: 1 – 3 years
Harm 2	Starting Point: 3 years Category range: 2 – 4 years	Starting Point: 2 years Category range: 1 – 3 years	Starting Point: 1 year Category range: 26 weeks – 2 years

Causing serious injury by careless driving

	Culpability		
	A	B	C
Harm 1	Starting Point: 1 year 6 months Category range: 1 - 2 years	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year
Harm 2	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year	Starting Point: High level community order Category range: Low level community order – 26 weeks

Dangerous driving

	Culpability		
	A	B	C
Harm 1	Starting Point: 1 year 6 months Category range: 1 – 2 years	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year
Harm 2	Starting Point: 1 year Category range: 26 weeks – 1 year 6 months	Starting Point: 26 weeks Category range: High level community order – 1 year	Starting Point: High level community order Category range:

			Low level community order – 26 weeks
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Annex A: Select responses to our proposals for s.4-8 animal cruelty sentence levels

RSPCA:

Generally yes although we feel the category range for 1A offences should be changed to 52 weeks to 4 years. As Magistrates now have the powers to give longer sentences we feel there should be a higher category range for the most serious offences. The starting point for category 1A offences could then be increased proportionally.

We would consider the higher category range to be applicable to those most serious offences such as (but not limited to): serious violence including torture (such as burning with cigarettes), use of a weapon, e.g. bolt gun, crossbow, serious abuse for self gratification, causing repeated serious injuries and serious non-accidental injury (NAI), purposefully administering unlawful drugs which has serious effects on the animal, animal fighting resulting in serious injury to animals.

Battersea Dogs and Cats Home:

It is unclear why it was deemed appropriate to compare animal cruelty sentencing with other sentencing practices not related to the Parliamentary Act, which increased the maximum sentence tenfold in accordance with the will of Parliament. Given the transformative change, and the clear intention of the Act, these comparisons are of limited value and unnecessary.

Serious animal cruelty offenders are a high risk to the public as well as to animals. Academic studies show they are five times more likely to go on to commit other acts of violence, animal abuse is 11 times more likely around domestic violence and pet abuse is concurrent in 88% of families under supervision for physical abuse of their children. 3 years' custody for a Category 1 high culpability offence, the gravest act of animal cruelty, such as torturing an animal to death fails to recognise this wider risk to the public, and the initial onus for changing the law. A short sentence limits the amount of protection to communities, not only because the most high-risk offenders are in prison for a shorter period, with less opportunity for rehabilitation, but also because the deterrent effect is weaker.

Blue Cross:

...we are concerned and disappointed with the Category 1 High Culpability starting range of 1 year 6 months. With many sentences below two years being suspended and guilty pleas resulting in an automatic reduction by a third of any custodial sentence imposed, it will mean that too many perpetrators will not even receive a custodial sentence. We do not believe this adequately reflects the intent and purpose of the Animal Welfare (Sentencing) Act 2021 or will provide enough protection for animals...

As a pet welfare organisation, we see a number of appalling cruelty cases in both our centres and hospitals each year. Our staff have nursed pets who should have been loved but instead have been deliberately burned; tied up in rubbish bags and left to die; thrown out of moving cars; beaten; starved. These cases are not only obviously deeply traumatic and agonising for the animal but are also extremely distressing and emotionally exhausting for the staff involved. Animals who have endured so much suffering deserve justice that truly reflects the heinous nature of the offence.

Dogs' Trust:

It is extremely disappointing to see that the Sentencing Council has proposed a maximum sentence of three years for the most severe offences sitting under High Culpability and Category 1 harm... We urge the Sentencing Council to amend the proposed guidelines so that these better reflect the serious nature of animal abuse and ensure sentences fit the crime and act as a deterrent to offenders.

Annex A: Select responses to our proposals for s.4-8 animal cruelty sentence levels

... we ran through real-life cases of animal cruelty and determined the sentences they would likely be given, according to the Sentencing Council's proposed starting points and category ranges. The sentences that would likely be given in these cases remain woefully inadequate, many equivalent to the sentences issued when the maximum penalty was 6 months imprisonment, indicating that under the current proposed guidelines little would change.



Justice Committee

The Rt Hon Lord Justice William Davis

Chairman, Sentencing Council

22 September 2022

Dear Lord Justice William Davis,

Congratulations on your appointment as Chairman of the Sentencing Council. We look forward to working with you.

Thank you for giving the Justice Committee the opportunity to respond to the Sentencing Council's consultation on the proposed changes to the animal cruelty guidelines. We are grateful also to the Council for sharing the other responses to the consultation with us in advance of our submission.

The Committee supports the Council's decision to respond to Parliament's enactment of the Animal Welfare (Sentencing) Act 2021 by proposing changes to the animal cruelty guidelines. Parliament's intent in passing that legislation was clear: the maximum penalty for five animal cruelty offences should be increased from six months' custody to five years. As a result, it is vital that the relevant sentencing guidelines are updated accordingly. The Act also changed these offences from summary only to either way offences. The fact that these offences can now be tried in the Crown Court also reflects Parliament's intent that the law should recognise the seriousness of these offences.

In relation to the proposed changes to the culpability factors, we would note that there is a risk of confusion between the proposed new culpability B factor of 'Deliberate disregard for the welfare of the animal (including failure to seek treatment)' and the culpability C factor of 'Well-intentioned but incompetent care'. It would be helpful to amend the culpability B factor to include "including a deliberate failure to seek treatment", as suggested by the legal committee of HM Council of District Judges. The Sentencing Council should also consider whether to take a more consistent approach to the culpability factor of 'ill treatment in a commercial context', as it is a medium culpability factor for animal cruelty offences, but a high culpability factor for the offence of failure to ensure animal welfare.

In relation to the sentencing table, the proposed changes raise an important question as to how sentence levels in this guideline should be changed to reflect the significant increase in the statutory maximum by Parliament. We note that a number of responses to the consultation suggest that the maximum sentences and starting points are too low and do not adequately reflect Parliament's intent in enacting the Animal Welfare (Sentencing) Act 2021. We note that the Council decided to set the upper end of the highest category at three years' custody after examining the sentence ranges for serious child cruelty offences. The consultation explains that a higher category range would therefore be disproportionate in the Council's view.

We appreciate the Council's reasoning and recognise that in determining the sentence levels in a guideline, it is important to have regard to other offences and to ensure that the law is



Justice Committee

proportionate. We also recognise the need to give sentencers flexibility and headroom to go above the maximum sentence in exceptional cases. However, this also needs to be balanced against Parliament's clear intent as expressed in the 2021 Act. We would suggest that the Council considers raising the upper end of the highest category to three years and six months and that the starting point is increased to two years for the highest category. We also recommend that the Council includes a reminder above the table, as was included in the recently updated burglary guidelines, that sentences above the top of the range can be appropriate when it would be contrary to the interests of justice to sentence within the relevant category range. We also suggest that in future it would be of assistance if the consultation could list the specific offences that the Council has used as a means of comparison when determining the appropriate sentences levels.

With regard to the aggravating factors, we recommend that abuse conducted for sexual gratification should be included as an aggravating factor.

The Committee would also ask if the Council considered whether any public engagement events on this guideline would be appropriate. We note that these offences give rise to particular public concern and therefore this consultation could be used as an opportunity for a public event on sentencing. We would be happy to work with the Council to organise such a discussion if that would be helpful.

Your sincerely,

Sir Robert Neill MP
Chair
Justice Committee

Sale of knives etc to persons under 18: road testing summary

Introduction

In May 2020, the Council considered a submission on behalf of the London Borough of Barking and Dagenham for a sentencing guideline for selling knives to persons under the age of 18, and agreed to add this to the list of future guidelines. In March 2022, the Council agreed the content and signed off two guidelines for consultation, which ran from 1 June to 24 August 2022: one for the sale of knives by individuals; and one by organisations.

Methodology

Small-scale qualitative road testing of both guidelines¹ took place in June 2022 to ensure the wording is clear and to test how the new guidelines will work in practice. Ten magistrates were interviewed, with each sentencing three hypothetical scenarios: two to test the organisations guideline, one to test the individuals guideline. Particular attention was paid to issues Council had discussed, including: the introductory explanation² about the focus on small numbers of sales; the inclusion of only one level of harm; the proposed sentences and fines outlined in the sentencing tables³; and Step 3 – ‘Adjustment of fine’.

Summary of main points

1. Magistrates found the **introductory text** to be ‘*self-explanatory*’, agreeing **both guidelines** were generally ‘*clear*’ and ‘*easy to interpret*’.
2. There was a high level of consistency when determining **culpability** using both guidelines.
3. Magistrates generally agreed with the inclusion of only one level of **harm**.
4. There were some mixed views on the **sentencing tables**: some felt the starting points and ranges for larger organisations were about right but a little high for smaller organisations, and on the individuals guideline the ranges could be expanded.
5. There was some inconsistency when applying, or not, **Step 3 – Adjustment of fine** with a large/very large organisation, but greater consistency with a smaller organisation and an individual.

This paper discusses the results of the road testing on the organisations guideline, then the individual guideline, drawing comparisons across both where appropriate. Summary tables for each scenario are presented in Annex A.

¹ [Sale of knives etc to persons under 18: Consultation – Sentencing \(sentencingcouncil.org.uk\)](#)

² The introductory text states: “Note: This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by retailers *or those employed by retailers*. It does not apply to cases of a more serious nature such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children”. Text in italic was in the individuals guideline only.

³ For organisations, this covers fines from £500 for a micro-organisation through to £1,000,000+ for a very large organisation, maximum of an unlimited fine; for individuals, it covers discharge through to a MLCO/fines, maximum of six months’ custody.

Organisations guideline

Scenario 1: Online purchase

A 13-year-old test purchaser bought a three-piece knife set from a prominent on-line retailer XX Ltd (one of the largest exclusively online retailers in the UK).

Trading Standards had warned XX Ltd in advance that test purchases would be taking place.

XX Ltd acknowledged that it had specifically considered the risk of knives being purchased by children but decided that such an event was highly unlikely. Age restricted items were identified on its website and purchasers were asked to confirm their age, but no age verification measures were in place to check this information.

XX Ltd was convicted after trial of one offence contrary to s.141A of the Criminal Justice Act 1988. The company had no previous convictions.

XX Ltd had a turnover during the relevant period of approximately £1.5 billion.

This was expected to be high culpability (A); there is only one level of harm. The starting point for a large organisation⁴ is £400,000, range £200,000 - £1,000,000; it could be higher if treated as a very large organisation⁵. There are no aggravating factors, and a mitigating factor of no previous convictions. Step 3 - Adjustment of fine could result in an increase as this is a large/very large organisation. The estimated final fine is £1 million or more. Key findings are below; the summary table can be found in Annex A, Table 1.

Key findings

1. None of the 10 magistrates had previously sentenced any cases of sales of knives.
2. Nine magistrates chose **culpability A**; one B⁶. Factors discussed included the: lack of age verification checks; advance warning a test purchase would take place (some noted this could equate to 'failed to make appropriate changes following advice'); and the organisation thought the risk of knives being bought was very unlikely.
3. Nine magistrates chose a **starting point** of £400,000; the sentencer who chose B selected £200,000. The majority of respondents thought it was '*straightforward*' and '*easy*' to **determine the starting point**, with only one stating that '*you really have to be quite specific to the actual items in the guideline*'. When asked if they had considered whether this was a **very large organisation**, seven said they would and '*that it might be necessary to move outside the range*', with a couple noting they would '*need more information*'; two had missed the instruction, with one noting they '*went straight to the tables*'; and one that it was '*not particularly helpful as it gives you such a wide range*'.
4. Eight respondents said there were no **aggravating factors**; two mentioned the fact that three knives were sold, one of whom '*would want to know if time had lapsed as they*

⁴ 'Turnover or equivalent of £50 million and over'.

⁵ 'Turnover or equivalent very greatly exceeds the threshold for large organisations'.

⁶ They originally thought A but chose B as they felt there was some evidence of systems being in place.

would have had time to consider’, and the other that the ‘child was only 13’ although they did not increase the sentence.

5. Eight magistrates noted that there were no previous convictions under **mitigating factors** with one also stating they ‘would want to know if remedial actions had been taken or cooperation’; the remaining two felt there were no mitigating factors.
6. Four respondents did not apply any additional factors as outlined under **Step 3 – Adjustment of fine**, while six did, citing ‘implementing effective compliance programmes’, ‘appropriate punishment’, and ‘deterrence’ from Step 3, and that they would ‘make it less financially attractive for them to continue to breach’, with two noting that as it is a very large organisation, they could go ‘outside the range’ and ‘a larger fine is necessary’.
7. While a wide range of **final sentences**⁷ were given, from two extremes of £10,000 through to £10 million, the majority were more aligned: one was for £200,000 from the sentencer who chose culpability B, two chose £400,000, one between £500,000 to £750,000 with another selecting £750,000, and the remaining three £1 million. Of the two extremes, the magistrate who chose £10,000 noted they only had three years’ experience and that ‘district judges usually deal with these sorts of cases... they are much more used to sentencing organisations... a magistrate’s court imposing a fine of £1,000,000 plus feels like... fantasy land’; the magistrate who chose £10 million noted they ‘felt out of their comfort zone dealing with such large numbers and keeping a grasp of proportionality’.
8. As might be expected, there were a range of **views about their final sentence**:
 - a. The magistrate who selected £10,000 noted that ‘fining an organisation £1 million plus for selling some knives online feels... inappropriate... £10,000 still seems a lot but anything smaller... wouldn’t be significant’;
 - b. The one selecting £200,000 noted it ‘might go up depending on information such as have things improved since?’;
 - c. The two selecting £400,000 felt it was a ‘hefty amount of money’ or ‘it seems heavy’ but both referred to the turnover and that they are ‘in favour of robust financial penalties’ or ‘they’re... in the market of knowing what they’re doing’;
 - d. The two selecting £500,000 to £750,000 and £750,000 had slightly different views: the former noted it is ‘a proper and high level of fine towards the upper end’ while the other ‘would feel more comfortable [if we could] see some additional things... there needs to be something in place to ensure they comply with regulations... and if it doesn’t, we would impose further fines or take some other action’;
 - e. The three who imposed £1 million agreed that this was ‘appropriate’, ‘reasonable’, and ‘will act as a deterrent [but could] imagine a conversation where we would be looking to go higher than that’; and,
 - f. The sentencer imposing a £10 million fine noted this ‘seems an extreme amount’.

⁷ The scenario noted that this went to trial – there was therefore no reduction for a guilty plea.

Scenario 2: In store purchase⁸

A 14-year-old test purchaser bought a retractable craft knife from Terry's Crafts Ltd (a small independent craft and hobby shop).

The company (through its owner and sole director, Terry Smith) pleaded guilty at the first appearance to one offence contrary to s.141A of the Criminal Justice Act 1988. It accepted that it had failed to identify knives as age-restricted products in its store (though it did have restrictions in place for solvents).

Trading Standards had written to the company 3 months before the test purchase warning that test purchases may be carried out and enclosing a leaflet setting out the obligations of retailers relating to age restricted sales.

The company had no previous convictions.

The company had an annual turnover during the relevant period of approximately £75,000 but was not profitable having made a loss of £5,000 in the most recent trading year.

This is expected to be high culpability (A); only one level of harm. The starting point for a micro-organisation⁹ is £12,500, range of £6,000 - £25,000. There are no aggravating factors, and a mitigating factor of no previous convictions. Step 3 – Adjustment of fine could decrease the fine as the organisation is not profitable, and a reduction of a third for a guilty plea. The estimated final fine is £4,000. Key findings are below; the summary table can be found in Annex A, Table 2.

Key findings

1. Eight magistrates chose **culpability** A; one A or B; and one B¹⁰. Factors discussed included the: lack of age verification checks; failure to identify age-restricted items; advance warning a test purchase would take place (some noted this could equate to 'failed to make appropriate changes following advice'); and having systems in place but not being sufficiently adhered to.
2. The eight magistrates who chose culpability A all chose a **starting point** of £12,500; the one who said A or B chose between £6,000 to £12,500; the remaining one chose £6,000. The majority found it 'easy' or 'straightforward' to **determine the starting point**, with only one noting that they found it 'quite difficult actually' referring to the 'loss of £5,000 last year' but did also note Step 3 considers putting companies out of business.
3. Nine respondents noted there were no **aggravating factors**; one noted the child was 14 but did not increase the sentence.
4. Nine noted a **mitigating factor** of no previous convictions; one stated there were none. Individuals mentioned 'wanting to see if there was any evidence of any steps taken',

⁸ Please note: this scenario is very similar to the individual scenario below, to test whether there is any difference if the offender is an individual or an organisation when everything else is similar.

⁹ 'Turnover or equivalent not more than £2 million'.

¹⁰ The magistrate noted the offender had 'pleaded guilty... were sent a detailed list from trading standards they haven't understood or taken heed of... it's a retractable craft knife'.

‘exploring their record of compliance as they had restrictions for solvents’, and ‘the guilty plea indicates they accept responsibility’.

5. Nine magistrates applied additional factors as per **Step 3 – Adjustment of fine**, reducing the fine; one did not. The majority of those who did noted that the company was very small and not making a profit/ low turnover, and discussed their ability to pay, that it could put them out of business, and the impact of the fine on staff and service users, as well as on their ability to implement a compliance programme.
6. As might be expected due to the discretion allowed under Step 3, there were a range of **pre-guilty plea sentences** given, ranging from £1,000 to £8,000: one respondent gave £1,000; one gave £3,000; another gave £3,000 to £5,000; four gave £6,000; and one chose £8,000¹¹.
7. All respondents took into account a **reduction for a guilty plea**, with final sentences ranging from £300 to £5,280: one gave £300; one gave £660; one gave £2,000; another gave £2,000 to £2,500; one gave £3,000; four gave £4,000; and one gave £5,280.
8. As might be expected, respondents **views of their final sentence** varied. The two at the lower end acknowledged that *‘in reality it would be an impossible situation because it is so far below the starting point and the lower limit’* and *‘it’s way off the guidelines’* noting they felt *‘comfortable’* or it was *‘fair and proportionate’*. The next three (final sentences between £2,000 to £3,000) noted it was a *‘hefty fine which [should] have an impact’*, *‘hope it’s fair [and] ensures implementation... is undertaken...’* and it *‘will have the desired punishment effect and deterrence’*. Of the four choosing £4,000, three thought it was *‘fair’*, *‘appropriate’* or *‘correct’*, while one noted the fact that the company ignored information sent in advance *‘keeps the fine at the higher level... if they’d put things in place and staff had forgotten about it, that would have made a difference’*. Finally, the magistrate who gave a final sentence of £5,280 noted *‘it’s sufficiently punitive for them to get their act together’*.

¹¹ One respondent did not give a pre-guilty plea sentence; another did but then reduced the fine in accordance with Step 3.

Comments on the organisations guideline

The following summarises comments made during the application of the guideline to the scenarios and through follow-up questions. Where similar views are noted across both guidelines, these are summarised at the end:

1. The magistrates all thought the guideline helped them **assess culpability**, with several noting that they were *'very helpful'*, *'familiar format'*, and *'fully explained'*. Some did provide suggestions for amendments: *'you might want to distinguish between identification of restricted products and age verification... should I have moved it down because they had realised it should be age restricted?'* with another similarly noting *'it could be clearer... whether one or all of the matters listed were needed'*. Individuals noted: *'is age of the purchaser relevant? Could make it clearer that it applies to anyone under 18?'*; *'is there any difference based on the type of knife?'* (then decided not); on lower culpability *'if they had made so many efforts, why would Trading Standards bring it to court?'*; and on the middle category, one stated that they say *'something along the lines of anything else not in C, so having a definition of what B means is helpful and clear... I understand and appreciate the clear distinction between the three categories, which isn't always the case'*.
2. There were **mixed views on the starting points and ranges** in the sentencing table: two felt the *'ranges and starting points, particularly for a large organisation... are appropriate'* or *'about right'*; one that *'they are serious amounts, but it allows flexibility'*; one that the *'starting points are fine'* but these *'need to be regularly monitored – perhaps an update every 3 – 5 years'*; while a fifth felt they were *'too high'*. One felt that *'for smaller companies... they are rather steep...but for the larger companies they are about right'*; two others also felt that *'for the smaller companies... they seemed to start relatively high'* or *'the range is quite vast'*, quoting £3,000 to £12,000 on culpability B, and *'there seems to be an awful big drop between the big companies and the smaller ones'*. Magistrates also suggested some changes: two wondered if there *'could be a category below micro'*, with one noting it could be for *'proper micro organisations of up to £100,000 or £200,000'* while another thought it should be for a *'turnover of not more than a million with lower fine ranges'*; three indicated there could be a *'new starting point/ category for the very large organisation'* with two noting they had missed the guidance as it did not fit the table format used for the other organisational sizes so *'it would make it easier'*, and *'could it include some indication of percentage of turnover?'*. Another noted it would be good to have *'more guidance on £50 million or over'*.
3. While four magistrates thought there was nothing to add to the **factors increasing seriousness**, others provided suggestions, including: three about the *'number of items'* such as *'could be an aggravating factor if four or five knives'* while another thought *'a set or maybe eight or a dozen [knives]'*; two about the *'age of the child'*; two wondered about the type of knife, with one referring to the guideline on bladed weapons; and two suggested *'reference to failing to take immediate remedial action'* or *'wilful negligence'*.
4. Seven magistrates thought there was nothing to add to the **factors reducing seriousness**, with positive feedback with two noting that *'steps taken to prevent*

reoccurrence is good’ while another noted that the *‘good record of compliance is important as is high level of cooperation and evidence of steps’*. One asked *‘how do you know about the good record of compliance? Trading Standards? Prosecutor?’*, another wondered whether there could be more *‘opposites as aggravating and mitigating factors’*, and a third noted *‘if the person buying the knife has been sufficiently sophisticated in their approach to proving their age, that could lead a reasonable person to think the person is the age they say they are?’*.

5. There were mixed views on **Step 3 - Adjustment of fine**: five felt these were *‘pretty good’*, *‘fine’*, had *‘nothing to add’* or were *‘reasonably easy’*, with a further one noting *‘there is a lot of flexibility... many magistrates might feel out of their depth [although] the principles are clear’*; two felt it *‘took a little time to look through it’* or *‘I had to reread that a couple of times to understand it’*, but both then noted it *‘sets it out’* and *‘makes good sense’*; one said *‘it’s not that easy’* and another noted that *‘you have a clear set of fine ranges within culpability... I would take it out, it’s not adding anything’*.
6. There were two further comments on **using the guideline**: *‘sale of knives to persons under 18 is mentioned at the top and under harm in both guidelines but not elsewhere – should say it throughout i.e. sales to individuals under 18?’*; and *‘could removal of gain including through the avoidance of costs be made clearer?’*

Individual guideline

Scenario 3: In store purchase¹²

A 14-year-old test purchaser bought a retractable craft knife from Terry's Crafts (a small independent craft and hobby shop).

The owner and manager Terry Smith pleaded guilty at the first appearance to one offence contrary to s.141A of the Criminal Justice Act 1988. He accepted that he had failed to identify knives as age-restricted products in the store (though he did have restrictions in place for solvents).

Trading Standards had written to him 3 months before the test purchase warning that test purchases may be carried out and enclosing a leaflet setting out the obligations of retailers relating to age restricted sales.

Mr Smith, aged 47, had no previous convictions.

Mr Smith presents a means form showing he earns approximately £500 per week which is nearly all accounted for by food and household bills. He says he has a wife and 2 children who are dependent on him and he is struggling to make ends meet. He says he would need time to pay any fine.

This is expected to be high culpability (A); there is only one level of harm. The starting point is a medium level community order (MLCO) or Band E fine. Based on his income, the anticipated fine would be £8,000. There are no aggravating factors, and a mitigating factor of no previous convictions. Step 3 could decrease the fine due to affordability¹³, and reduction of a third for a guilty plea. The estimated final fine is £600. Key findings are below; the summary table can be found in Annex A, Table 3.

Key findings

1. Nine magistrates chose **culpability A**; one said A or B. Respondents listed factors such as: failure to identify age-restricted items; had a warning; lack of age verification checks; and failed as a person of responsibility.
2. Eight magistrates chose a **starting point** of a MLCO or Band E fine; two simply stated MLCO.
3. All 10 noted there were no **aggravating factors**.
4. Nine listed no previous convictions as a **mitigating factor**, with two also noting 'sole/ primary carer for dependent relatives', and one the 'guilty plea suggests a high level of cooperation' and 'they accept responsibility'. One stated there were no factors.
5. Two magistrates reduced their sentence based on **Step 3 – Adjustment of fine**, the remaining eight did not, although they did discuss options such as 'opting for a financial penalty rather than a CO', 'giving him time to pay', 'ensuring the fine is appropriate' and 'exploring compliance as had one in place for solvents'.

¹² As noted above, this scenario is very similar to that for scenario 2 (organisation in-store), to test what difference it makes if the offender is an individual or an organisation if everything else is similar.

¹³ 'Having regard to the financial position of the offender'

6. A mix of COs and fines were given for **pre-guilty plea sentences**. Four magistrates gave COs: one gave a LLCO with 80 hours unpaid work, another a LLCO or lower end MLCO, and the other two MLCO (one with a programme requirement); five gave fines, with two stating Band E fine, and three giving figures (£1,000, £1,500 and £2,000)¹⁴.
7. All respondents gave a **reduction for the guilty plea**. Those who gave COs reduced the number of days, amended from a MLCO to LLCO, or reduced the number of hours of unpaid work; those giving fines reduced the fines, such as from a Band E fine to a Band D fine, or taking a third off where explicit figures were stated (e.g. £1,500 down to £1,000).
8. The magistrates were generally satisfied with their **final sentences**: those who gave COs noted it was a *'perfectly good sentence'*, they were *'quite content'*, or *'satisfied'*, and it *'feels reasonable'*. Four of those giving fines held similar views, while one felt their fine of £300 was *'a bit too high'* and another, who gave £666, that it *'would be interesting to see what probation thought of a LLCO'*.

Comparison with similar scenario using the individuals and organisations guidelines

Across both guidelines:

1. The majority of magistrates chose **culpability A**.
2. The majority of magistrates stated there were no **aggravating factors**.
3. The majority of magistrates stated there was a **mitigating factor** of no previous convictions; more personal factors were noted with the individuals guideline.
4. All respondents took into account a **reduction for a guilty plea**.

Using the organisations guideline, at **Step 3 – Adjustment of fine**, the majority of respondents would reduce the fine: this was not the case with the individuals guideline where only two of the five who selected fines explicitly stated they would, although others did discuss certain elements, as outlined above.

¹⁴ One magistrate did not give a pre-guilty plea sentence.

Comments on the individuals guideline

The following summarises comments made during the application of the guideline and through follow-up questions. Where similar views are noted across both guidelines, these are summarised at the end.

1. The majority of the magistrates thought the guideline was *'helpful', 'straightforward', 'points you in the right direction'* for **assessing culpability**. However, as with the organisations guideline, one queried *'whether one or all of the matters listed were needed, that could be clearer'* and the *'it could make it clearer that it applies to anyone under 18'* and *'is there any difference based on type of knife'*. Another noted it *'could have a bit more differential between B and A culpability'* and another that *'it didn't have a great deal of manoeuvrability for someone struggling with his company – I would have gone culpability C rather than A but you couldn't because of the way it was written'*.
2. Four magistrates thought the **starting points and ranges** in the sentencing table were *'about right'* or *'quite good'*, while another felt the *'starting points are about right [but] the ranges may be expanded somewhat'* noting that *'as an individual, if you are caught with an offensive weapon, the starting points are considerably higher. If you are selling as an individual... and you know you shouldn't, the range could go a bit further into 12 weeks' custody'*. This was echoed by another magistrate who, while also referring to sentencing for carrying a knife, noted *'where a small retailer/ individual is on their third/ fourth offence, a custodial sentence or SSO is needed to get the message across'*. One felt the *'punishments are too high'*; another that *'the possibility of discharge is interesting'*; one had a *'reservation about the starting point for the lower level points of transgressions, [i.e.] at the medium level there should be a starting point of a CO'*; while another thought there was a *'big jump [in fine] from culpability C to B'*.
3. Similarly to comments on the organisations guideline, five magistrates felt there was nothing to add to the **factors increasing seriousness**, three reiterated the quantity involved could be an aggravating factor, and one mentioned the age of the child. One magistrate noted there was *'no recognition of the outcome of whether or not it is involved in any injury'* while another wondered *'does it need to be quite as heavy as the organisation one, i.e. the way its written with aggravating factors – does it have to be quite so determined/ precise?'*
4. Eight magistrates had nothing to add to the **factors reducing seriousness**, while two asked for clarification: *'could you clarify what is expected by voluntarily prevent re-occurrence?'* and *'what is serious medical condition in the context of this one?'*.
5. Eight magistrates were positive about the **Step 3 – Adjustment of fine**, with one suggesting we *'highlight the phrase 'the court should step back and consider the overall effect of its orders' [as] it makes you think about equal opportunities, different cultures, ways of life etc'*; one noted it should *'perhaps look at adjustment of CO as well as it is unfair to talk about adjusting one type of punishment but not the other'*, and one magistrate reiterated that the step *'doesn't add anything'*.
6. Two **further comments were provided on the guideline**: as with the organisations guideline, one magistrate felt that the guideline should say *'sales to individuals under*

18' throughout; and one noted *'I'm not necessarily fully understanding of step 4 – taking into account section 74, not something for the magistrates' court'*.

7. Magistrates were asked whether they thought there were 'any particular words or phrases in the draft [individual] guideline that you think may contribute to **disparities in sentencing**'. The majority thought that there were not, with only one magistrate providing a possible issue: in *'high culpability, I wondered about the inclusion of the word 'standard' in standard measures – it denotes a collective knowledge/ regulation and the small person in an organisation/ employee in corner shop in sections of the community may not have the same access to what may be perceived by a huge organisation as standard measures. Is standard codified anywhere? Could 'standard' be replaced by 'reasonable' or 'acceptable' or some other alternative that does not connote a knowledge of what those measures are?'*

Comments across both guidelines

The following summarises comments applicable to both guidelines:

1. All 10 thought it was **clear which guideline to use** (i.e. when to use the one for an individual or for an organisation): four noted the court would be told which one to use.
2. The majority of the magistrates thought the **introductory text**¹⁵ in both guidelines was *'clear', 'easy to read' or 'self-explanatory'*, with three commenting about the number of knives, i.e. *'what is considered a small quantity of knives?'* and *'could that be made more explicit?'*, with one suggesting that it *'perhaps a definition could be added... could be an aggravating factor if four or five?'*
3. All of the magistrates thought both guidelines were **clear and easy to interpret**, although it must be noted that one initially struggled a little to navigate the individual guideline, until the interviewer displayed the guideline on their screen.
4. Magistrates generally agreed with **only one level of harm**, commenting: *'it is very difficult to determine harm as there doesn't appear to be a 'victim' - harm is to society itself and possibly individuals – it covers it quite well'; 'the issue here is there is a risk... selling knives to under 18, that the risk doesn't change, the harm is there'; and 'I don't know how you can put it into different categories, I don't know how else you could do it?'*. However, one noted it would be good to *'spell it out more'*, and another that they were *'moderately surprised there's only one level of harm because of the risk to everyone. You only have to think about a group of 17-year-olds getting knives and going out and stabbing the boy from the school next door. Very different to someone who just buys a kitchen knife for cooking purposes. Puzzled that harm is not said to play any part because harm is always the same. Other guidelines, such as dangerous driving, assault, take into account the degree of injury. Seems to be inconsistent with other guidelines.'*

¹⁵ The introductory text states: "Note: This guideline applies to the unlawful sale in a single transaction of a small quantity of knives etc (whether in-store or online) by retailers or those employed by retailers. It does not apply to cases of a more serious nature such as those involving large quantities of knives or the deliberate or reckless marketing of knives to children". Text in italic was in the individual guideline only.

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Should be a consideration of any consequences of selling a knife to an underage person if that does result in injury or even threat – ought to attract a higher sentence.'

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Annex A: Summary tables**Table 1: Scenario 1 – organisation, online purchase**

	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine - additional factors considered	Impact on sentence	Final sentence
Expected	A	<ul style="list-style-type: none"> Failed to put in place standard measures to prevent underage sales 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> The value, worth or available means 	<ul style="list-style-type: none"> Increase 	£1 million (or more) ¹⁶
1	A	<ul style="list-style-type: none"> No age verification checks Informed the exercise was going to happen Acknowledge the risk of knives being purchased but thought it was highly unlikely Failure of duty of care 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Would consider how easily and quickly they could implement a compliance programme - given the size of the company, expect them to do something fairly quickly i.e. in a matter of weeks 	<ul style="list-style-type: none"> None stated 	£750,000
2	A	<ul style="list-style-type: none"> No age verification measures Decided, despite being warned, that it was highly unlikely they needed to take any action 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None applied 	<ul style="list-style-type: none"> Could increase as a larger organisation 	£400,000
3	A	<ul style="list-style-type: none"> Identified products as age related but made conscious decision not to implement age verification checks 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions Would want to know if remedial actions had been taken/ cooperation 	<ul style="list-style-type: none"> Want to ensure future compliance and properly punish the organisation Make it less financially attractive for them to continue to breach rather than implement measures to prevent underage sales 	<ul style="list-style-type: none"> None stated 	£500,000-£750,000

¹⁶ Please note: the expected final sentence is not precise – it would depend on the adjustment made at Step 3, at the magistrates' discretion

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	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine - additional factors considered	Impact on sentence	Final sentence
4	A	<ul style="list-style-type: none"> Lack of standard measures of a reliable online age verification tool or a collect in-store with checks Might be said that they failed to make appropriate changes following advice – you could say that the warning in advance of test purchases potentially amounts to advice 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Appropriate punishment – but fining an organisation £1million plus for selling some knives online feels disproportionate. 	<ul style="list-style-type: none"> Decrease 	£10,000
5	A	<ul style="list-style-type: none"> Failed to put in standard measures about age verification checks. Failed to make appropriate changes as had been a warning test purchases would be taking place and they didn't do anything 	£400,000	<ul style="list-style-type: none"> 3-piece knife set Would want to know if time had lapsed as would have had time to consider 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> None, fine has to be about punishment and deterrence. 	<ul style="list-style-type: none"> N/A 	£1 million
6	A	<ul style="list-style-type: none"> Company had been warned Failed to put in place the standard measures for online sales 	£400,000	<ul style="list-style-type: none"> 3 knives Child only 13 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None applied 	<ul style="list-style-type: none"> N/A 	£400,000
7	A	<ul style="list-style-type: none"> Failed to put in place age verification measures Active decision to act against guidance 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Outside the range with a turnover of 1.5 billion. 	<ul style="list-style-type: none"> Increase - calculated 1% of turnover = £12 million, then reduced 	£10 million

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	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine - additional factors considered	Impact on sentence	Final sentence
8	A	<ul style="list-style-type: none"> No online age verification tool 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> If £400,000 is applicable to a company with a £50 million turnover, larger fine is necessary for a company with a lot larger turnover They should have the resources available to put the necessary safeguards in place 	<ul style="list-style-type: none"> Increase 	£1 million
9	A	<ul style="list-style-type: none"> Age restricted items were identified on the website, but there was a failure to use reliable online verification tools. 	£400,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Very large organisation Fine needs to be substantial enough to bring it home to management etc that they need to operate within the law Got to be appropriate punishment and a deterrent in future 	<ul style="list-style-type: none"> Increase 	£1 million
10	B	<ul style="list-style-type: none"> Originally thought A but moved to B because there were systems in place but not sufficiently adhered to - had put on their website things about knives, but not enough work on the age verification process 	£200,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> None applied 	<ul style="list-style-type: none"> N/A 	£200,000

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Table 2: Scenario 2 – organisation, in store purchase

No	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine – additional factors considered	Impact on sentence	Final sentence without GP	Final sentence with GP
Expected	A	<ul style="list-style-type: none"> Failed to put in place standard measures to prevent underage sales 	£12,500	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Micro organisation Not profitable 	<ul style="list-style-type: none"> Decrease 	£6,000	£4,000 ¹⁷
1	A or B	<ul style="list-style-type: none"> System in place for solvents but not knives. Could they adapt and apply to offensive weapons? System in place but not sufficiently adhered to or implemented 	Between £6,000 and £12,500	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions Would want to see if there was evidence of any steps taken 	<ul style="list-style-type: none"> Impact of fine on offender's ability to implement effective compliance programme 	<ul style="list-style-type: none"> Reduction of fine 	£3,000-£5,000	£2,000-£2,500
2	A	<ul style="list-style-type: none"> Failed to identify age restricted items No age verification checks 	£12,500	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Ability to pay 	<ul style="list-style-type: none"> Would do a payment plan with instalments 	£1,000	£660
3	A	<ul style="list-style-type: none"> Failed to identify products as age-related Not taken any action Not checking age Not properly training staff 	£12,500	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Fairness - very small business, precarious financial state, limited income, financial dependants Not very profitable Need to see 3 years Turnover very low 	<ul style="list-style-type: none"> Reduce to £10,000, third off for GP (£6,666), impact on business and ability to pay = £3,000 	None stated	£3,000

¹⁷ Please note: the expected final sentences are not precise – it would depend on the adjustment made at Step 3, at the magistrates' discretion.

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No	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine – additional factors considered	Impact on sentence	Final sentence without GP	Final sentence with GP
4	A	<ul style="list-style-type: none"> Absence of measures to prevent underage sales Did have a warning - could see that as failed to make appropriate changes following advice and/or prior incidents 	£12,500	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Appropriate punishment Micro organization, operating on thin margins Impact of fine on the employment of staff, service users May impact future compliance Means of the offender On the edge of viability 	<ul style="list-style-type: none"> Reduce 	None stated	£300
5	A	<ul style="list-style-type: none"> Failed to make appropriate changes following advice – were notified a test purchase was going to happen and they didn't do anything 	£12,500	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions Would explore reasonable record of compliance as had restrictions for solvents 	<ul style="list-style-type: none"> Company was not profitable so would explore impact of a fine on employment of staff 	<ul style="list-style-type: none"> Reduce 	£6,000	£4,000
6	B	<ul style="list-style-type: none"> Sent documentation and notification about test cases which they didn't understand/ take heed of 	£6,000	<ul style="list-style-type: none"> 14-year old 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None applied 	<ul style="list-style-type: none"> N/A 	£6,000	£4,000
7	A	<ul style="list-style-type: none"> Had warning Failed to identify knives as age restricted 	£12,500	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Turnover at low end and not profitable - £12,500 not appropriate 	<ul style="list-style-type: none"> Reduce 	£3,000	£2,000

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No	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine – additional factors considered	Impact on sentence	Final sentence without GP	Final sentence with GP
8	A	<ul style="list-style-type: none"> • Hadn't identified knives as age-restricted products • Made no attempts to establish the age of person buying the knife 	£12,500	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No previous convictions 	<ul style="list-style-type: none"> • Company is losing money 	<ul style="list-style-type: none"> • Reduce 	£8,000	£5,280
9	A	<ul style="list-style-type: none"> • Failed to identify knives as age restricted products 	£12,500	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No previous convictions • GP indicates accepts responsibility 	<ul style="list-style-type: none"> • Business made a £5,000 loss in the last year • Fine within category range will potentially wipe the business out • Could be loss of employment • Need more information 	<ul style="list-style-type: none"> • Reduce 	£6,000	£4,000
10	A	<ul style="list-style-type: none"> • Had warning but hadn't done anything about it • Had some restrictions for solvents in place, but nothing for knives 	£12,500	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • No previous convictions 	<ul style="list-style-type: none"> • Micro company making a loss • Could put them out of business 	<ul style="list-style-type: none"> • Reduce 	£6,000	£4,000

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Table 3: Scenario 3 – individual, in store purchase

No	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine – additional factors considered	Impact on sentence	Final sentence before GP	Final sentence after GP
Expected	A	<ul style="list-style-type: none"> Failed to put in place standard measures to prevent underage sales 	MLCO or Band E fine of £8,000	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Financial position 	<ul style="list-style-type: none"> Decrease 	£900	£600 ¹⁸
1	A or B	<ul style="list-style-type: none"> If they had something they were going to implement and didn't, it's B. If totally disregarded it, it's A 	MLCO	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> Would discuss - may have mental/ physical health problem, lack a skill/ understanding, which could be fixed by a programme 	<ul style="list-style-type: none"> None stated 	MLCO with programme requirement	Depends on requirement of MLCO - reduction in no. of days
2	A	<ul style="list-style-type: none"> Hadn't identified age restricted products Warned 	MLCO	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions Level of cooperation 	<ul style="list-style-type: none"> None applied 	<ul style="list-style-type: none"> N/A 	MLCO	L or M CO, 75 hours UPW or 6 weeks curfew 6am-8pm
3	A	<ul style="list-style-type: none"> Failed as a person or responsibility Didn't identify product as age-related Didn't check age properly Didn't impose a policy/ train staff 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> None applied 	<ul style="list-style-type: none"> N/A 	Band E fine - 300-500%	£1,000

¹⁸ Please note: the expected final sentences are not precise – it would depend on the adjustment made at Step 3, at the magistrates' discretion

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No	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine – additional factors considered	Impact on sentence	Final sentence before GP	Final sentence after GP
4	A	<ul style="list-style-type: none"> Absence of measures to prevent underage sales Had a warning - could see that as failed to make appropriate changes following advice and or prior incidents 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> None applied, but gives discretion 	<ul style="list-style-type: none"> N/A 	None stated	£300
5	A	<ul style="list-style-type: none"> Owner/ manager - their responsibility to put in place standard measures Failed to act on concerns 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions Sole/ primary carer for dependent relatives 	<ul style="list-style-type: none"> Ensure fine is proportionate Explore compliance as had them in place for solvents 	<ul style="list-style-type: none"> None stated 	Band E fine	Band D fine
6	A	<ul style="list-style-type: none"> Lack of standard measures 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions GP suggests high level cooperation with investigation Accepts responsibility Sole/ primary carer for dependant relatives 	<ul style="list-style-type: none"> N/A 	<ul style="list-style-type: none"> N/A 	LLCO with 80 hours UPW	LLCO with 50 hours UPW

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No	Culp	Factors	SP	Aggravating	Mitigating	Step 3 – Adjustment of fine – additional factors considered	Impact on sentence	Final sentence before GP	Final sentence after GP
7	A	<ul style="list-style-type: none"> Warned Failed to identify knives as age restricted 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Fine is most appropriate as CO is more serious Range of 300-500% 	<ul style="list-style-type: none"> Reduce to 300% 	£1,500	£1,000
8	A	<ul style="list-style-type: none"> Hadn't identified knives as age-restricted products Made no attempts to establish age 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> None applied 	<ul style="list-style-type: none"> N/A 	LLCO or lower end MLCO	Third off
9	A	<ul style="list-style-type: none"> Failed to identify knives as age restricted products 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Opt for financial penalty rather than CO Give him time to pay it 	<ul style="list-style-type: none"> N/A 	Band E fine - £2,000	Band E fine - £1,333
10	A	<ul style="list-style-type: none"> Warned but done nothing about it 	MLCO or Band E fine	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> No previous convictions 	<ul style="list-style-type: none"> Income and levels of fines – he hasn't really got any money 	<ul style="list-style-type: none"> Reduce 	£1,000	£666

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Equivalent levels in other guidelines**Health & Safety**

Culp: High = fell far short of standard

Med = systems in place but not sufficiently followed

Low = did not fall far short of the appropriate standard

Harm: 3 = low likelihood of death OR medium likelihood of serious injury

Food Safety

Culp: High = fell far short of standard

Med = systems in place but not sufficiently implemented

Low = did not fall far short of the appropriate standard

Harm: 2 = med risk of some harm OR low risk or serious harm

Environmental

Culp: High = reckless failure to put in place and enforce systems

Med = negligent failure to put in place and enforce systems

Low = offence committed with little or no fault

Harm: 2 = risk of high harm

Large organisation - Turnover or equivalent: £50 million and over

Guideline	High	Med	Low
Health & Safety	£540,000 £250,000 – £1,450,000	£300,000 £130,000 – £750,000	£35,000 £10,000 – £140,000
Food Safety	£230,000 £90,000 – £600,000	£90,000 £35,000 – £220,000	£18,000 £9,000 – £50,000
Environmental	£250,000 £100,000 – £650,000	£140,000 £60,000 – £350,000	£25,000 £14,000 – £70,000

Medium organisation - Turnover or equivalent: between £10 million and £50 million

Guideline	High	Med	Low
Health & Safety	£210,000 £100,000 – £550,000	£100,000 £50,000 – £300,000	£14,000 £3,000 - £60,000
Food Safety	£90,000 £35,000 – £220,000	£35,000 £14,000 – £90,000	£7,000 £3,500 – £18,000
Environmental	£100,000 £40,000 – £250,000	£55,000 £25,000 – £140,000	£10,000 £5,500 – £25,000

Small organisation - Turnover or equivalent: between £2 million and £10 million

Guideline	High	Med	Low
Health & Safety	£54,000 £25,000 – £210,000	£24,000 £12,000 – £100,000	£3,000 £700 – £14,000
Food Safety	£24,000 £8,000 – £90,000	£8,000 £3,000 – £35,000	£1,400 £700 – £7,000
Environmental	£24,000 £10,000 – £100,000	£13,000 £6,000 – £55,000	£2,500 £1,000 – £10,000

Micro organisation - Turnover or equivalent: not more than £2 million

Guideline	High	Med	Low
Health & Safety	£30,000 £12,000 – £54,000	£14,000 £6,000 – £25,000	£1,200 £200 - £7,000
Food Safety	£12,000 £4,000 – £22,000	£4,000 £1,400 – £8,000	£500 £200 – £1,400
Environmental	£12,000 £1,500 – £24,000	£6,500 £1,000 – £13,000	£1,000 £350 – £2,400

Individuals

Guideline	High	Med	Low
Health & Safety	Band F fine Band E fine – 26 weeks' custody	Band E fine Band D fine or low level community order – Band E fine	Band C fine Band B fine – Band C fine
Food Safety	Band E fine Band D fine – 26 weeks' custody	Band D fine Band C fine – Band E fine	Band B fine Band A fine – Band B fine
Environmental	Band F fine Band E fine or medium level community order – 26 weeks' custody	Band E fine Band D fine or low level community order – Band E fine	Band C fine Band B fine – Band C fine

Consultation Stage Resource Assessment

Sale of knives etc to persons under 18

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

There are currently no guidelines for sentencing the offence of selling knives and certain articles with blade or point to persons under 18 (section 141A of the Criminal Justice Act 1988).

The development of guidelines for this offence is in accordance with the Council's aim to develop guidelines where they are absent to improve consistency in sentencing and provide guidance for sentencers. The Council is therefore consulting on two new draft sentencing guidelines for this offence for use in England and Wales: one for sentencing individuals and one for sentencing organisations. Both guidelines are for use in magistrates' courts.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guideline on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment. 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 selling knives and certain articles with blade or point to persons under 18 (Criminal Justice Act 1988, section 141A). Resource impacts for individuals and organisations are presented separately, to reflect the fact that there are two separate guidelines.

¹ Coroners and Justice Act 2009 section 127: 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 and research work in support of them.

The intention is that the new guidelines will encourage consistency of sentencing and ensure that fines for organisations are proportionate to the size of the organisation and severity of the offence. It is intended that in the vast majority of cases, sentence outcomes will not change, but the value of fines may increase. To ensure the objectives of the guideline are realised and to understand better the resource impacts of the guideline, knowledge of recent sentencing was required.

Sources of evidence have included information from Barking and Dagenham local authority, news articles and sentencing data from the Ministry of Justice Court Proceedings Database.^{2,3}

During the consultation stage, we intend to hold discussions with sentencers to invite feedback and gauge whether the new guidelines will work as anticipated. This should provide some further understanding of the likely impact of the guidelines on sentencing practice, and the subsequent effect on prison and probation resources.

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

Individuals

In the five year period 2016 and 2020, around 70 adult offenders were sentenced for this offence.⁴ The most common sentencing outcome for individuals between 2016 and 2020 was a fine (75 per cent) followed by an absolute or conditional discharge (15 per cent). A further 6 per cent received a community order, 3 per cent received a suspended sentence and the remaining 1 per cent were 'otherwise dealt with'.⁵

² The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When a defendant has been found guilty of two or more offences this is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe. Although the offender will receive a sentence for each of the offences that they are convicted of, it is only the sentence for the principal offence that is presented here. 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>

³ 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.

⁴ Due to the small number of offenders sentenced for this offence, 5 years of data have been presented.

⁵ 'Otherwise dealt with' covers miscellaneous disposals. Please note that due to a data issue currently under investigation, there are a number of cases which are incorrectly categorised in the Court Proceedings Database (CPD) as 'Otherwise dealt with'. Therefore, these volumes and proportions should be treated with caution.

For individuals sentenced to a fine between 2016 and 2020, the average (median) fine value was £308, and fine values ranged between £34 and £6,000.⁶

Organisations

Around 90 organisations were sentenced for this offence in the period from 2016 to 2020.⁴ Nearly all (99 per cent) organisations sentenced in the years 2016 to 2020 for the underage sale of knives etc received a fine. The remaining 1 per cent received an absolute or conditional discharge. Organisations cannot receive a community order or a custodial sentence.

For organisations sentenced to a fine between 2016 and 2020, the average (median) fine value was £2,500, and fine values ranged between £150 and £200,000.⁶

Key assumptions

To estimate the resource effect of a guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the draft guideline and draws upon analytical and research work undertaken during guideline development. However, some assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the draft guidelines are therefore subject to a large 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 thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed draft guideline.

The resource impact of the draft 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 guideline are therefore not included in the estimates.

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

While data exists on the number of offenders and the sentences imposed, assumptions have been made about how current cases would be categorised across the levels of culpability and harm proposed in the new guideline, 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 guideline.

⁶ The median is calculated by ordering all the fine values (from lowest to highest, or highest to lowest) and choosing the middle value. The median is less sensitive to extreme values. 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. The mean fine value from 2016 to 2020 was £582 for individuals and £10,264 for organisations.

It 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, discussions with sentencers will be undertaken during the consultation stage to provide more information on which to base the final resource assessment accompanying the definitive guideline.

Resource impacts

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

Summary

Overall, it is expected the draft guidelines for individuals and organisations will encourage consistency of approach to sentencing and will not change average sentencing severity for most cases. For larger organisations the new guideline may lead to increased fine levels. There has been little evidence on which to base any estimate of the magnitude of the impact of these guidelines, as fine band data for individuals and data on organisation size was not available. However, discussions with sentencers and key stakeholders during the consultation, alongside consideration of the consultation responses may help to provide further evidence to support the final stage resource assessment. Nevertheless, across both the individual and organisation guidelines it is expected there will be no notable impact on prison and probation resources; organisations cannot receive custodial or community sentences and the majority of individuals receive a fine.

Individuals

There is currently no existing guideline for sentencing individuals for the sale of knives etc to persons under 18.

The draft guideline has three levels of culpability and one level of harm, leading to a three-point sentencing table. The lowest starting point is a Band A fine⁷ and the highest starting point is a medium level community order or a Band E fine.⁸ The overall aim of the guideline is to encourage consistency of approach to sentencing and not to change the proportion of sentencing outcomes.

The statutory maximum sentence of this offence is 6 months' custody, but very few custodial sentences were issued between the years 2016 and 2020 (3 per cent of individuals received a suspended sentence), and the majority of individuals between 2016 and 2020 received a fine (75 per cent). As current sentencing practice leads to very few custodial sentences, and the draft guideline does not include custodial sentences in the sentencing table, it is expected the guideline for this offence will have negligible impact on prison and probation resources overall.

Analysis of transcripts of sentencing remarks has not been possible for this offence, which is a summary only offence. Proceedings are not recorded in magistrates'

⁷ The starting point for a Band A fine is 50% of the offender's relevant weekly income.

⁸ The starting point for a Band E fine is 400% of the offender's relevant weekly income.

courts where summary only offences are sentenced. As a result, details on which fine bands have been applied and what factors are being considered in sentencing in cases to date are not available, as these details are not available from the Court Proceedings Database. This means it is not possible to estimate how much impact the guideline will have on fine levels.

Organisations

There is no existing guideline for sentencing organisations for the sale of knives etc to persons under 18.

The draft guideline has three levels of culpability and one level of harm. The sentencing table is divided by the organisation's turnover (or equivalent). The lowest starting point is a £1,500 fine and the highest starting point is a £400,000 fine. The aim of this guideline is to ensure fines are proportionate to the organisation's size, and to also improve consistency in sentencing by providing a structured approach for sentencers to use.

Organisations cannot receive custodial or community sentences, and therefore there cannot be any impact on prison or probation resources.

Similar to individuals, the offence of underage sales of knives etc for organisations is summary only and analysis of transcripts has not been possible. As a result, it has been difficult to assess whether the fine amounts are currently linked to organisation size or what factors are being considered in sentencing.

Sentencing data show that, of fines imposed on organisations for this offence between 2016 and 2020⁴, nearly half (49 per cent) were less than £2,000. Fines of up to £2,000 would fall into the low culpability box of a micro organisation "turnover or equivalent: not more than £2 million" in the draft guideline. However, as we do not have information on the size of the organisations sentenced to date, we cannot confidently predict how much fine levels will increase by.

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 guideline comes into effect.

This risk is mitigated by information that is gathered by the Council as part of the consultation phase. This includes interviews and discussions with sentencers, to test whether the guidelines have the intended effect. However, there are limitations on the number of scenarios which can be explored, so the risk cannot be fully eliminated. The Council has also included a question in the consultation document, asking for consultees' views on the potential impact of the proposals. This information will provide further information on which to base the final resource assessment.

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

If sentencers do not interpret the guideline 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 a new guideline 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. Research carried out with sentencers should also enable issues with implementation to be identified and addressed prior to the publication of the definitive guideline.

Consultees can also feed back their views of the likely effect of the guideline, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.