

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 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.