

Final 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 ([s127 Coroners and Justice Act 2009](#)).

Rationale and objectives for new guideline

There have previously been no guidelines for sentencing the offence of selling knives and certain articles with blade or point to persons under 18 contrary to 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's intention is that the guideline for organisations should ensure fine levels are proportionate to the size of the organisation.

The Council has produced two new 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. The guidelines apply only to the unlawful sale in a single transaction of a knife or a small quantity of knives etc and do not apply to offenders whose marketing of knives has deliberately or recklessly attracted children.

Scope

As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the guidelines on the prison service, probation service and youth justice services. Any resource impacts which may fall elsewhere are therefore not included in this assessment. The guideline for individuals applies to adults only and so an assessment of the impact on youth justice services has not been required.

This resource assessment covers the offence of selling knives and certain articles with blade or point to persons under 18 (s141A Criminal Justice Act 1988). Resource

impacts for individuals and organisations are presented separately, to reflect the fact that there are two separate guidelines.

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. For more information on this data source please see the Further information section at the end of this document.

Discussions were held with sentencers to gather feedback and gauge whether the new guidelines would work as anticipated. This has provided 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 guidelines have been published on the [Sentencing Council: Statistical bulletins webpage](#).

Individuals

In the five year period between 2017 and 2021, around 70 adult offenders were sentenced for this offence. The most common sentencing outcome for individuals between 2017 and 2021 was a fine (76 per cent) followed by an absolute or conditional discharge (14 per cent). A further 6 per cent received a community order, 3 per cent were 'otherwise dealt with', and the remaining 2 per cent received a suspended sentence. No offenders were sentenced to immediate custody for this offence during this period.

For individuals sentenced to a fine between 2017 and 2021, the average (median) fine value was £383, and fine values ranged between £34 and £6,000.

Organisations

Around 90 organisations were sentenced for this offence in the period from 2017 to 2021. Nearly all (99 per cent) organisations sentenced in the years 2017 to 2021 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 2017 and 2021, the average (median) fine value was £2,600, and fine values ranged between £269 and £200,000.

Key assumptions

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

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

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

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

It remains difficult to estimate with any precision the impact the guideline for individuals may have on prison and probation resources and fine levels. To support the development of the guideline and mitigate the risk of the guideline having an unintended impact, discussions with sentencers were 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 on the [Sentencing Council website](#).

Summary

Overall, it is expected the new guidelines for individuals and organisations will encourage consistency of approach to sentencing. For individuals it is expected there will be no change in average sentencing severity for most cases. For larger organisations the new guideline is likely to increase 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. 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

Previously there was no guideline for sentencing individuals for the sale of knives etc to persons under 18.

The new 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 fine (starting point 50 per cent of the offender's relevant weekly income) and the highest starting point is a medium level community order or a Band E fine (starting point 400 per cent of the offender's relevant weekly income). 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 and/or an unlimited fine, but very few custodial sentences were issued between the years 2017 and 2021 (2 per cent of individuals received a suspended sentence), and the majority of individuals between 2017 and 2021 received a fine (76 per cent). As current sentencing practice leads to very few custodial sentences, and the new guideline does not include custodial sentences in the sentencing table, it is expected the guideline for this offence will have a 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' 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

Previously there was no guideline for sentencing organisations for the sale of knives etc to persons under 18.

The new 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 2017 and 2021, nearly half (49 per cent) were less than or equal to £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 new guideline. Therefore, unless 49 per cent of offenders between 2017 and 2021 receiving fines were micro organisations falling into the low culpability box, fine levels may increase for organisations. However, from this data source we do not have information on the size of the organisations sentenced to date or the details of the offending, so we cannot confidently predict how much fine levels will increase by.

The Council is aware of some specific cases where 'very large' organisations in particular have received fines which fall on the lower end of the sentencing range for 'large organisations' (examples were provided to the Council by the London Borough of Barking and Dagenham). There is no sentencing table for 'very large' organisations, but the guideline indicates moving outside of the range may be necessary to achieve a proportionate sentence. Therefore, it is likely the fines in the examples provided would be much higher under the new guideline. However, these covered a small number of cases and it is not possible to assess how representative they are of all sentences imposed for 'very large' organisations.

Overall, this suggests that there is some evidence to suggest that fines will increase under the new guideline, and while the evidence itself is not strong, it tallies with the Council's intention in producing this guideline: to ensure that sentences imposed for organisations are proportionate to the size of the organisation and severity of the offence.

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 also included a question in the consultation document, asking for consultees' views on the potential impact of the proposals. This information has provided support for the expected resource impacts as outlined in this 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 has also enabled issues with implementation to be identified and addressed prior to the publication of the definitive guideline.

Consultees were also able to feed back their views of the likely effect of the guideline, and whether this differed 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.

Further information

Data sources and quality

The Court Proceedings Database (CPD), maintained by the Ministry of Justice (MoJ), is the data source for these statistics. Every effort is made by MoJ and the Sentencing Council to ensure that the figures presented in this publication are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

Further details of the processes by which MoJ validate the records in the CPD can be found inside the 'Technical Guide to Criminal Justice Statistics' within the [Criminal Justice System Statistics Quarterly \(CJSQ\) publication](#).

The data presented in this resource assessment only include cases where the specified offence was the principal offence committed. When an offender has been found guilty of two or more offences, the principal 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 these sentencing data can be found in the accompanying statistical bulletin and data tables published on the [Sentencing Council: Statistical bulletins webpage](#).

'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.

Figures presented include the time period from March 2020 in which restrictions were initially placed on the criminal justice system due to the coronavirus (COVID-19) pandemic, and the ongoing courts' recovery since. 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.

General conventions

Actual numbers of sentences have been rounded to the nearest 100, when more than 1,000 offenders were sentenced, and to the nearest 10 when fewer than 1,000 offenders were sentenced.

Proportions of sentencing outcomes have been rounded to the nearest integer. Percentages in this report may not appear to sum to 100 per cent, due to rounding.