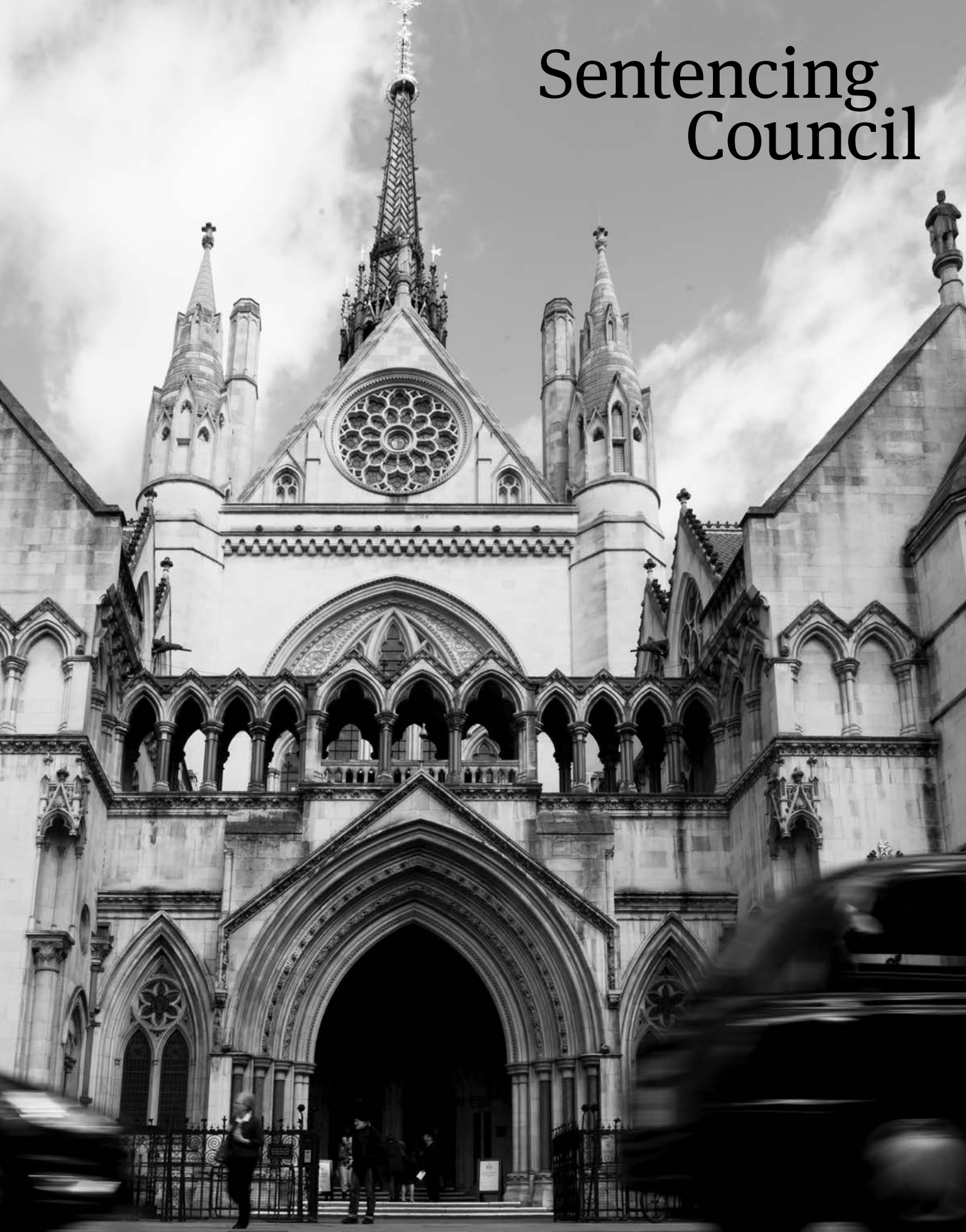


# Sentencing Council



**Sentencing Council  
Annual Report 2012/13**



# Sentencing Council

## **Sentencing Council Annual Report 2012/13**

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice.

This report is presented to Parliament pursuant to Section 119(2) of the Coroners and Justice Act 2009.

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# Foreword

## by the Chairman

It is three years since the implementation of the Coroners and Justice Act 2009 which brought the Sentencing Council of England and Wales into being. Since its inception the Council has been extremely productive and this year has seen work on guidelines continuing at a pace, despite reduced resources. The Council has developed two specific guidelines for consultation in highly complex areas of sentencing law, analysis of the Crown Court Sentencing Survey results has started in earnest and there have been continued strides in public engagement.

I am both proud and delighted to report that the quality of the work produced by the Council was recognised by a prestigious Guardian Public Services Award, which the Council received for its use of evidence in the development of the definitive guideline for drug offences which was completed last year. In the meantime, two definitive guidelines came into force this year: these are the guideline on allocation, offences taken into consideration and totality (on 11 June 2012) and the guideline on dangerous dogs (on 20 August 2012). These guidelines were followed by two draft guidelines on sexual offences and environmental offences which were issued for consultation on 6 December 2012 and 14 March 2013 respectively.

Both of the subject areas of these recent consultations are particularly difficult. It goes without saying that the sentencing of sexual offences carries particular sensitivities. Central to the Council's considerations have been the perspective of victims as well as public protection and the need to respond to the impact of technological developments on offending behaviour.

The environmental offences guideline created other challenges for the Council but was also designed to cover a broad range of offending behaviour and offender types. It is the first guideline that sets out an approach to sentencing corporate as well as individual offenders, and aims to fill the relative void of

sentencing guidance in this area. As with all other guidelines, it seeks to promote a consistent approach to sentencing.

The approach taken with environmental offences may have application in future guidelines covering health and safety and food offences; it is also relevant to the preparation of draft guidelines for fraud, bribery and money laundering. The Council has been developing the latter following a request from the Lord Chancellor under section 124 of the Coroners and Justice Act 2009. This was expedited in order to support the Government's introduction of deferred prosecution agreements for corporate offenders although, in accordance with our statutory remit, the guideline to be produced will only deal with sentences following conviction.

This year has also seen the continuation of the Crown Court Sentencing Survey which began in October 2010. Most recently, we have carried out in-depth statistical analysis of the results relating to the assault guideline and we hope to publish a paper later in 2013 setting out those findings. The results of our analysis suggest that the guideline is being used in the ways anticipated by the Council and indicate that there is a substantial degree of consistency across Crown Court centres in the way in which the guidelines are being applied.

This work, of course, would not be possible without the continued support of our judicial colleagues and we thank them for helping us achieve a response rate to the survey averaging over 60 per cent, with some areas achieving as high as 95 per cent. I would also like to extend the Council's gratitude to all the judges and magistrates who have taken part in the practical sentencing exercises we carry out on draft guidelines. This is extremely useful in helping build a picture of current sentencing practice, as well as testing draft guidelines to see if they fulfil their aims.

We have been pleased by the success of our public engagement activities, including the Council's second sentencing competition and the DVD on sentencing developed for victims. We have welcomed the high level of generally positive or neutral media coverage and high number of visits to our website. This



year we created a new web-based questionnaire to provide individuals and organisations with a simple way to respond to our consultations. We look forward to making greater use of online channels to improve the way in which we interact with the public and interested parties.

The coming year will be one in which the Council builds on its achievements so far. Our work programme continues to be challenging in terms of volume and complexity. This applies particularly to ongoing activity on fraud, bribery and money laundering and the forthcoming work on guilty pleas, theft and robbery. Further details of the Council's work programme for 2013/14 is set out in its Business Plan, which is available on the Sentencing Council website. In the meantime, I believe firmly that we have made exceptional progress in delivering against our objectives. We have also consolidated our reputation as a centre of excellence for the collection and use of evidence in all that we do.

Finally, I would like to thank all the members of the Council for their hard work and commitment in delivering what has been a very challenging work programme. In particular, I express my thanks to members whose terms of office on the Council have come to an end, namely, Siobhain Egan, Tim Godwin, Gillian Guy, The Right Honourable Lord Justice Hughes (now Justice of the Supreme Court) and His Honour Judge Alastair McCreath (now Recorder of Westminster). In their place, I welcome Michael Caplan QC, Javed Khan, Lynne Owens, Her Honour Judge Sarah Munro and The Honourable Mr Justice Saunders who have recently taken their places on the Council. Last, but by no means least – indeed, as important as any other duty – I must thank Michelle Crotty and the entire team at the Council whose dedication and effort has been second to none.

I commend this detailed account of the Council's activities.



**The Right Honourable Lord Justice Leveson**

July 2013



# Introduction

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice. It was set up by part four of the Coroners and Justice Act 2009 to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary.

The aims of the Sentencing Council are to:

- promote a clear, fair and consistent approach to sentencing;
- produce analysis and research on sentencing; and
- work to improve public confidence in sentencing.

This annual report covers the period from 1 April 2012 to 31 March 2013. For information on previous Sentencing Council activity, please refer to our 2011/12 annual report which is available on our website: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

# Activity and achievements 2012/2013

The Sentencing Council is responsible for developing sentencing guidelines and monitoring their use<sup>1</sup>.

In 2012/13, the Council has:

- brought into force its definitive guideline on allocation, offences taken into consideration and totality;
- brought into force its definitive guideline on dangerous dog offences;
- commenced work on drafting guidelines on fraud offences;
- issued a consultation on sentencing for sexual offences;
- issued a consultation on sentencing for environmental offences;
- published a report on the findings of the ongoing Crown Court Sentencing Survey;
- produced resource assessments in association with draft guidelines; and
- carried out research to support guideline development.



<sup>1</sup> See Annex E for full details of all the roles and functions

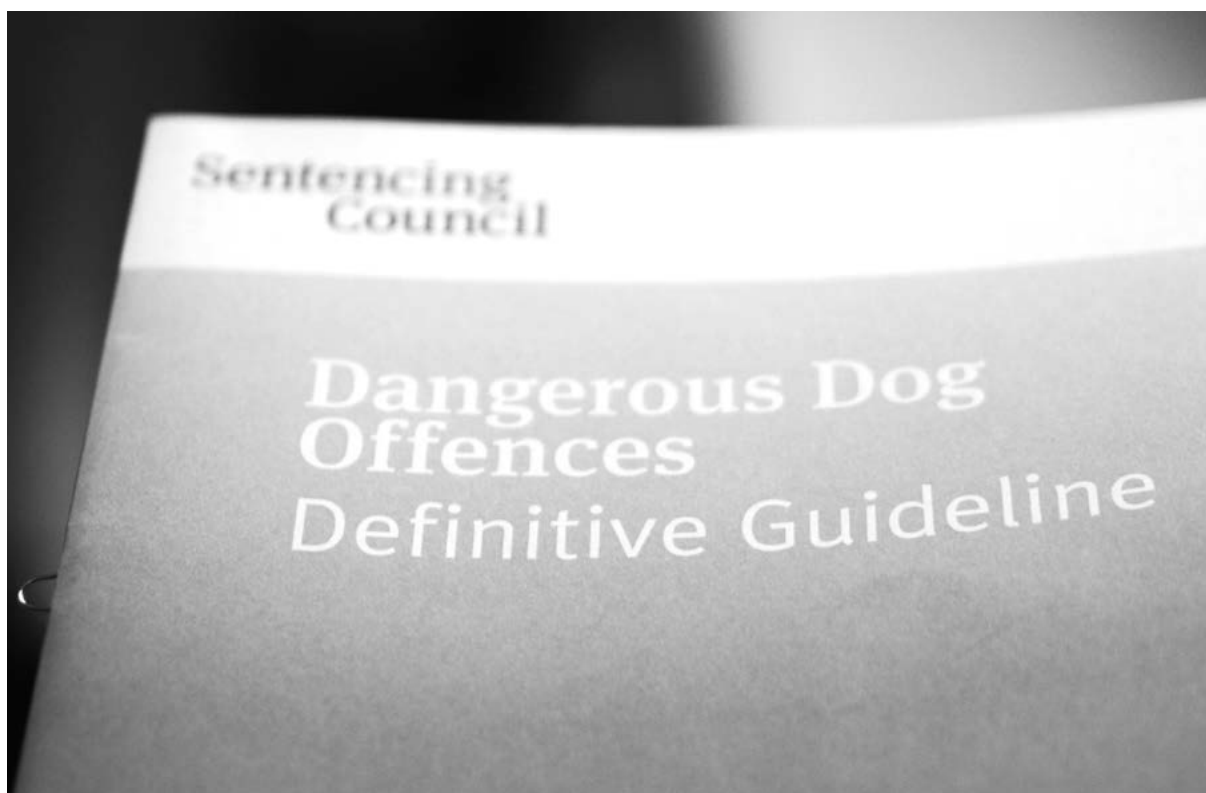
## Guidelines

Guidelines are intended to create a consistent approach to sentencing, while preserving judicial discretion. If in any particular case the judge feels it is within the interests of justice to sentence outside the guideline, this is allowed for specifically within the Coroners and Justice Act<sup>2</sup>.

## Dangerous dog offences

Following consultation and subsequent publication of the definitive guideline on 15 May 2012, the dangerous dog offences guideline<sup>3</sup> came into force for all courts in England and Wales on 20 August 2012.

The development of the guideline was generally welcomed. Prior to the consultation, many magistrates and district judges had commented that such a guideline would be very helpful as the number of such offences coming before the courts was continuing to rise. The Council received a total of 502 responses to the consultation, in light of which some of the starting points and sentencing ranges were revised in the definitive guideline. A detailed description of the development of the guideline is included in our 2011/12 annual report.



<sup>2</sup> s.125(1) Coroners and Justice Act 2009

<sup>3</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/Dangerous\\_Dog\\_Offences\\_Definitive\\_Guideline\\_\(web\)\\_final.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Dangerous_Dog_Offences_Definitive_Guideline_(web)_final.pdf)

## Allocation, offences taken into consideration and totality

Following consultation and subsequent publication of the guideline on 6 March 2012 the guideline on offences relating to allocation, offences taken into consideration (TICs) and totality<sup>4</sup> came into force on 11 June 2012. The consultation formed an important part of the Council's consideration of these three overarching areas. Eighty three responses, received from a variety of criminal justice professionals, informed changes to the TICs and totality guidelines. A detailed description of the development of the guideline is included in our 2010/11 annual report.

## Sexual offences

This period saw the Council develop its most comprehensive guideline so far, covering offences in the Sexual Offences Act 2003 (SOA 2003). The draft guideline, comprising 55 offences covered in 33 separate guidelines, was issued for consultation on 6 December 2012.

The consultation closed on 14 March 2013 and, given its size and complexity, the Council continues to analyse the significant responses received and aims to finalise the guideline by the end of 2013.

## Rationale

It is eight years since the Sexual Offences Act 2003 came into force and a clearer picture is available of the way in which new offences are being used by the courts. Also, there are areas where the nature of offending has changed, for example, the increased use of technology to facilitate the sexual exploitation and grooming of children, and increased understanding of offenders' behaviour when targeting children. The current guidelines need to be amended to reflect these developments.

A total of 6,932 people were sentenced for sexual offences in 2011<sup>5</sup>. The volume of offences means it is important for judges and magistrates to have relevant and up-to-date guidance in this complex area of sentencing. It is equally important that the process for arriving at sentences is transparent to victims and the public.

## Approach

In developing the draft guideline the Council has taken into account a number of sources of information, including data on current sentencing practice and discussions with organisations working in this field. This includes investigators, non-governmental organisations, prosecutors, sentencers and academics. To supplement statistical data the Council also assessed the results of the Crown Court Sentencing Survey for sexual offences. This showed the type and length of sentence given, together with the aggravating and mitigating factors which had a significant impact on the sentence. The survey provided

<sup>4</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/Definitive\\_guideline\\_TICs\\_\\_totality\\_Final\\_web.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Definitive_guideline_TICs__totality_Final_web.pdf)

<sup>5</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/Sexual\\_Offences\\_Data\\_Bulletin\\_\(web\).pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Sexual_Offences_Data_Bulletin_(web).pdf)

important information that allowed the Council to gain better understanding of the use of aggravating factors in sexual offences.

The Council recognised that statistical evidence only provides part of the picture when assessing sexual offences. The gravity of sexual offending and the very particular emotional and physical harm experienced by victims means that engagement with victims and those working in this field has been vital. Accordingly, the Council commissioned NatCen Social Research to undertake research into victim and public attitudes to the sentencing of sexual offences<sup>6</sup>.

The research was conducted with the assistance of organisations such as Rape Crisis. Forty six people who had been victims of sexual offences (or parents/guardians of victims of sexual offences) and 82 members of the public participated in discussions where attitudes to sentencing were explored in depth. Views were also shared about appropriate sentences and factors that should be taken into account. In developing the consultation we had reference to these findings.

Overall, the report found that although victims have very diverse experiences, backgrounds and points of view, there are some areas where views are relatively consistent. A key issue to emerge was a strong desire for the criminal justice system to demonstrate an accurate understanding of the overarching and long term harmful effects of sexual violence and abuse on the victim and their family, and to consider this to a greater extent within the sentencing process.

## Consultation

The Council launched its consultation on 6 December 2012 for a period of 14 weeks, closing on the 14 March 2013. The consultation sought responses to specific questions on areas such as:

- the main factors that reflect the harm caused to the victim by an offence and the culpability of the offender which enable the court to decide the sentence starting point for the offence;
- the additional factors that should influence the sentence; and
- the approach and structure of the guideline and how this should be tailored to different offences.

The consultation dealt with 55 offences covered in 33 separate guidelines. Due to the scale of the guideline, offences were grouped in such a way as to allow offence sections to be read independently. This structure was followed in the paper-based and online consultation survey, enabling organisations and individuals with specific interests to address discrete topic areas. This reduced the burden on those responding by enabling them to reply either to the full consultation or to the areas that particularly concerned them.

Consultation events were held with legal practitioners, criminal justice organisations (including the police and prosecutors) and organisations with experience of working with victims of sexual offences. Five London-based events were held and two regional events in Lancaster and Birmingham. These events

<sup>6</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/Attitudes\\_to\\_Sentencing\\_Sexual\\_Offences\\_\(web\).pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Attitudes_to_Sentencing_Sexual_Offences_(web).pdf)

provided the Council with much to consider and enabled individual guidelines to be explored in some depth.

The in-house research team also carried out sentencing exercises with 44 Crown Court judges over several months, interviewing them about how they sentence currently, the effect of the proposed guidelines and any issues that may arise. The Council has been impressed with the levels of engagement demonstrated by organisations working with victims, those involved in the criminal justice system and the judiciary. The willingness to engage in constructive discussion and to challenge but also to offer solutions, has helped shape and refine the guidelines.

## Environmental offences

The Council developed its guideline on environmental offences, issuing the draft guideline for consultation on 14 March 2013.

### Rationale

Currently, there is limited guidance for sentencers on environmental offences in the Magistrates' Court Sentencing Guidelines. There is some general guidance in a publication issued by the Magistrates' Association called *Costing the Earth*. Court of Appeal authority is limited for environmental offences, although there is more developed authority for health and safety offences which carry some similarities with environmental offences in terms of sentencing.

The Council received a number of requests to produce a guideline focusing on waste and pollution offences from a range of parties with an interest in this area, including the Environment Agency and the Magistrates' Association. The requests arose from concerns that the levels of fines currently imposed for environmental offences are not high enough: they neither reflect the seriousness of the offences committed nor deter offenders. Concerns were also raised about the inconsistency in fine levels for similar offences committed by similar offenders across the country.

The Council considered these requests and sentencing data provided by local authorities, the Environment Agency, the Ministry of Justice and its own research with sentencers. Findings from its work with magistrates pointed to a lack of familiarity with sentencing these types of offences due to the infrequency with which they come to court. It also showed a lack of confidence in assessing the seriousness of offences and pitching fines at appropriate levels, particularly for corporate offenders.

The Council concluded that there was a need for improved guidance in this area to address inconsistencies in sentencing, including the levels of fines being given.

### Approach

As with all other guidelines, the Council sought to promote a consistent approach to sentencing for environmental offences. However, it is particularly difficult to achieve consistency in sentencing in an area of



offending which involves such a wide range of offender types. Some offences are committed by individuals, very small commercial operations or publicly-funded bodies, while others involve large organisations or multinational companies with multi-million pound assets. The guideline must also deal with a wide variability of culpability and harm. The aim has been to devise a guideline which supports sentencers to apply this combination of factors in a consistent way.

In drafting this guideline the Council has had to consider a number of key issues which it has not previously had to consider. For example, this is the first guideline the Council has produced which deals with corporate offenders. The feedback received on the proposals in the draft guideline on environmental offences will also be considered in the development of draft guidelines on other regulatory offences such as food and health and safety offences, as well as financial crimes, namely, fraud, bribery and money laundering.

It is also the first time that Council has had to consider the sentencing of offences which do not cause actual harm but rather create a risk of harm, as well as offences which are strict liability in nature but, committed, have caused serious harm.

The Council conducted a review of current sentencing practice for environmental offences. The aim was to assess both the consistency in the levels of fines imposed for similar offences and offenders, and whether these fines reflected the seriousness of the offences committed. Levels of fines

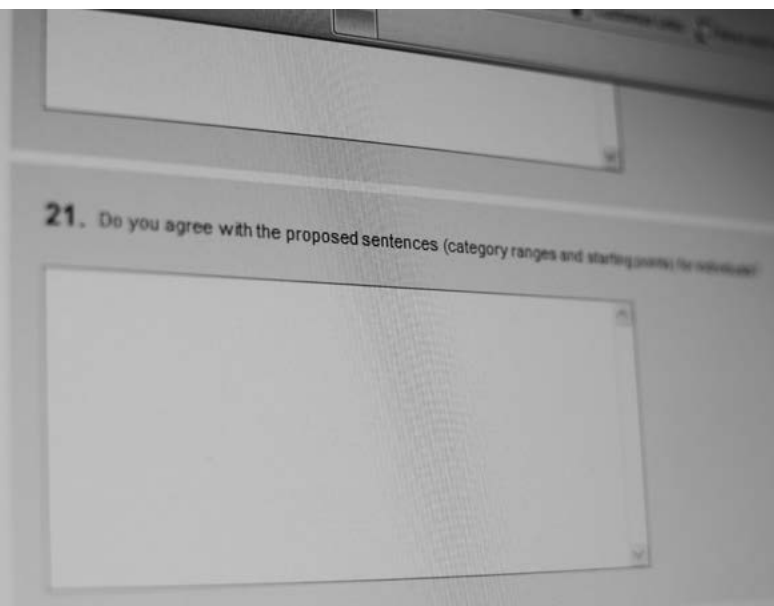
may differ for quite valid reasons given the variability of culpability, harm and the means of offenders involved. Nevertheless, the Council determined that the levels of some fines given were too low and did not reflect the seriousness of the offences committed. The Council adopted a principled approach to formulating the starting points and ranges in the draft guideline informed by the somewhat limited sentencing data available.

By improving consistency, the Council expects the guideline to increase the current levels of fines received for some offences by some offenders. Given the limited sentencing data available, it is not possible to quantify exactly the likely increase. It is anticipated that companies that commit more serious offences would receive higher fines as a result of the guideline. However, for individuals committing less serious offences it is expected that current fine levels will be maintained.

## Consultation

The Council's consultation on the draft guideline was launched on 14 March 2013 to conclude on 6 June 2013. It sought views from a wide range of interested parties including sentencers, legal and other professionals and members of the public with an interest in this area.

As at 31 March the Council intends to hold consultation events with legal practitioners, magistrates and legal advisers, local authorities, the National Fly-tipping Prevention Group (which is sponsored by Defra and whose membership includes the



Environment Agency, industry bodies and environmental charities) and the 'Keep Britain Tidy' campaign.

For more information on the research conducted as part of the Council's development of the guideline, see page 19.

## Work in progress

Development of guidelines on fraud, bribery and money laundering offences is underway with a planned consultation launch in June 2013.

### Rationale

The inclusion of this set of guidelines in the Council's work programme followed a request from the Lord Chancellor under section 124 of the Coroners and Justice Act 2009 which states that:

“(1) The Lord Chancellor may propose to the Council -

- (a) that sentencing guidelines be prepared or revised by the Council under section 120
  - (i) in relation to a particular offence, particular category of offence or particular category of offenders, or
  - (ii) in relation to a particular matter affecting sentencing.”

The request was made in the context of Government plans to legislate for deferred prosecution agreements. The Council agreed

to amend its work programme and expedite its planned work on fraud to cover not only individual offences, which comprise the majority of cases coming before the courts, but also corporate offenders.

The Sentencing Guidelines Council (SGC) produced a definitive guideline for fraud<sup>7</sup> in October 2009. The existing guideline does not cover conspiracy to defraud, money laundering and bribery offences or the common law offence of cheating the revenue, nor does it give any guidance for sentencing corporate rather than individual offenders. The Council agreed that it would be opportune to provide guidance on these offences within a revised fraud guideline.

## Approach

In developing the draft guideline, the Council has taken into account a number of sources of information including data on current sentencing practice, international models of fine calculation for corporate offenders and reported cases.

The available data on current sentencing practice was not a reliable basis for developing the majority of the guidelines due to the way offences are grouped. For example, a wide range of offending may be charged under section 1 Fraud Act 2006, but it is not possible to extract any information about the type of fraud committed or the financial amount involved. For other offences, the Ministry of Justice data and the Crown Court Sentencing Survey provided a much clearer picture of current sentencing practice.

The Council commissioned NatCen Social Research to undertake research on online fraud. In particular, it explored the ways that online fraud is being committed, its impact on victims, and attitudes to concepts relating to sentencing fraud offences. The findings from this research informed the development of the guidelines and particularly the proposal that emphasis is placed on the impact these offences have on victims when assessing harm. The research will be published with the consultation.

For more information on the research conducted as part of the Council's development of the guideline see page 19.

<sup>7</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/web\\_sentencing\\_for\\_fraud\\_statutory\\_offences.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/web_sentencing_for_fraud_statutory_offences.pdf)

## Analysis and research

The Council has responsibility for assessing the impact of guidelines on sentencing practice. It may also be required to consider the impact of policy and legislative proposals relating to sentencing, when requested by the Government.

One of the functions of the Council is to carry out analysis and research into sentencing. Ongoing work includes, and has been informed by, the results from the Crown Court Sentencing Survey, various social research studies, the development of publications such as resource assessments and analysis, and research bulletins that support the development of guidelines.

## Statistical monitoring and analysis

The Council has a legislative duty to monitor the operation and effect of its guidelines, and to draw conclusions about:

- the frequency with which, and the extent to which, courts depart from sentencing guidelines;
- the factors which influence the sentences imposed by the courts;
- the effect of guidelines on the promotion of consistency in sentencing; and

- the effect of guidelines on the promotion of public confidence in the criminal justice system.

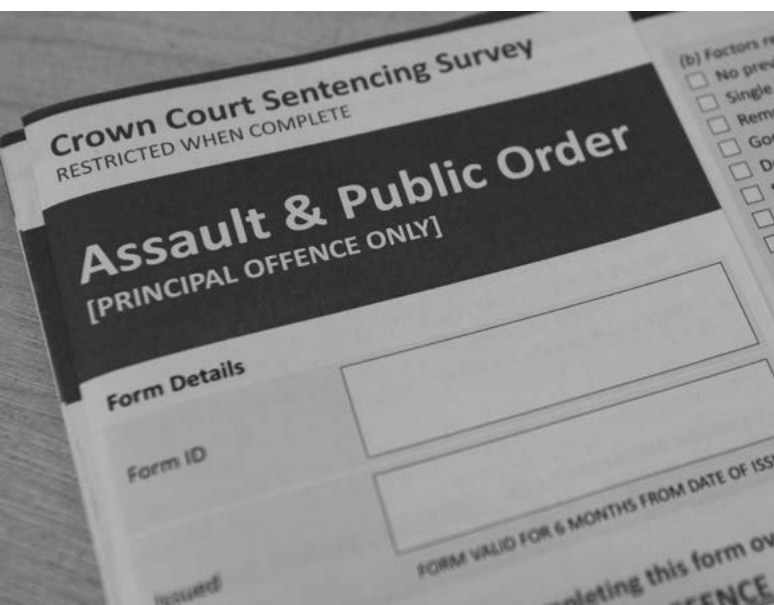
The Crown Court Sentencing Survey collects the information required to fulfil these obligations in the Crown Court. Initial work has been underway to plan a similar exercise for sampling sentencing outcomes in the magistrates' courts.

## Crown Court Sentencing Survey

The Crown Court Sentencing Survey (introduced in October 2010) is the first survey to capture data on the way that Crown Court judges sentence across England and Wales.

As sentencers provide the information for the survey, the findings provide a unique insight into sentencing decisions. This includes the factors affecting sentencing, the ways that guidelines are being applied and areas where guidelines can or need to be developed. Data collected includes factors affecting seriousness, guilty plea reductions and sentence outcomes for specific offences. For example, analysis of the aggravating factors recorded was used to determine at which step they should be included in the draft sexual offences guideline.

Survey response rates continue to remain relatively high averaging over 60 per cent, and comparative analyses conducted by the Council's analysis and research team ensured that conclusions drawn from the survey were



robust. The Crown Court Sentencing Survey report contains further methodological details.

As a result of the Crown Court Sentencing Survey all parties with an interest in the sentencing process – including crime victims, legal practitioners, policy makers and many others – have a more comprehensive portrait of sentencing than ever before.

## Publications

The results from the survey are published as a government statistics bulletin which is available on the Council's website and the UK Statistics Authority website<sup>8</sup>. First published in May 2012, the bulletin provides a national overview of how key factors which are taken into account when sentencing influence the final sentence outcome. The bulletin is produced with a public audience in mind and contributes to the fulfilment of the Council's obligation to promote public confidence in

sentencing. Results from the survey covering the year from January to December 2012 were published on our website on 30 May 2013.<sup>9</sup>

## Using the data

During 2012/13, the survey data has contributed to the development of the sexual offences draft guideline by showing which factors sentencers take into account when sentencing sexual offences. The survey is being used in a similar way to inform the development of the draft fraud offences guideline.

Opinion Research Services, appointed by the Council in April 2012 to process the survey data, has redesigned the forms to make them easier for sentencers to complete. The database has also been improved so that analyses are quicker and more straightforward to undertake.

## Further work

The Council is in the process of analysing the impact of the assault data on sentencing practice in the Crown Court with the intention of publishing the results later this year. This will be followed by a similar analysis of the burglary data following the new definitive burglary guideline which came into force on 16 January 2012.

The Council also produces an analysis and research bulletin showing trends in sentencing relating to an offence when a consultation guideline for that offence is published. This will continue and, in future, will be supplemented with information from the Crown Court Sentencing Survey.

<sup>8</sup> <http://www.statisticsauthority.gov.uk/>

<sup>9</sup> <http://sentencingcouncil.judiciary.gov.uk/facts/crown-survey-results-2012.htm>

## Monitoring in magistrates' courts

The legislative requirements of the Council also extend to magistrates' courts. Initial work has been underway to develop a survey similar to the one running in the Crown Court to capture the factors that influence sentencing at magistrates' courts. Following consultation with interested parties, the Council will be conducting a pilot of the magistrates' courts survey if funding is available.

## Monitoring use of the guidelines

The Council decided that it is only appropriate for it to monitor departures from guidelines issued by the Sentencing Council, rather than those issued by the Sentencing Guidelines Council or flowing from decisions of the Court of Appeal (Criminal Division).

The Sentencing Council definitive guidelines that have been in force long enough for monitoring to be effective are assault, burglary and drug offences.

The analysis below presents Crown Court Sentencing Survey data on sentences for assault (from 1 January 2012), burglary (from 16 January 2012) and drugs (from 27 February 2012). For the present, analysis focuses on the percentage of cases falling within the guideline offence ranges. The offence ranges within the guidelines are intended to deal with the large majority of cases for a particular offence. The Council recognises that there will be exceptional cases, the facts of which will justify imposition of a sentence outside the offence range, and this is reflected in the language of the statute.

Section 125 of the Coroners and Justice Act 2009 states that:

“(1) Every court —

- (a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and
- (b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function,

unless the court is satisfied that it would be contrary to the interests of justice to do so.”

This means imposing a sentence within the offence range prescribed by any relevant guideline unless the court is satisfied that it would be contrary to the interests of justice to do so. Accordingly, the Council analysed the volume of sentences falling within the total offence ranges by the assault, burglary and drug offences guidelines. The analysis includes all sentences imposed on or after the appropriate date quoted above and captured by the survey.

The analysis excludes sentences where the offender was a youth (under 18 years of age), the sentence imposed was an Imprisonment for Public Protection (IPP) or life sentence, or where a hospital order was handed down. These represent approximately one per cent of sentence outcomes in the periods in question for the relevant offences. Furthermore, due to the volatility of small

volumes of data where there were fewer than 100 cases, the results for these offences are not provided. Finally, the data reflect sentences before any reductions for a guilty plea.

## Assault offences

- Assault occasioning actual bodily harm: 96 per cent of sentences imposed fell within the guideline offence range; three per cent were above and one per cent below the range.
- Assault on a police constable in execution of his duty: 95 per cent of sentences imposed fell within the guideline offence range and five per cent<sup>10</sup> were above the range.
- Causing grievous bodily harm with intent to do grievous bodily harm/wounding with intent to do grievous bodily harm: 89 per cent were within the range and 11 per cent below the range.
- Common assault: 99 per cent were within the range and one per cent<sup>11</sup> above the range.
- Inflicting grievous bodily harm/unlawful wounding: 98 per cent were within the range and two per cent above.

## Burglary offences

- Aggravated burglary: 94 per cent of sentences imposed fell within the

guideline offence range; four per cent were above and two per cent below the range.

- Domestic burglary: 97 per cent of sentences imposed fell within the guideline offence range and three per cent were above the range.
- Non domestic burglary: 98 per cent of sentences imposed fell within the guideline offence range and two per cent were above the range.

## Drug offences

- Fraudulent evasion of a prohibition by bringing into or taking out of the UK a controlled drug – Class A: 91 per cent of sentences imposed fell within the guideline offence range; two per cent were above and seven per cent below the range.
- Possession of a controlled drug – Class A: 87 per cent of sentences imposed fell within the guideline offence range; five per cent were above and eight per cent below the range.
- Possession of a controlled drug – Class B: 98 per cent of sentences imposed fell within the guideline offence range and two per cent were above the range.
- Production of a controlled drug – Class B/ cultivation of a cannabis plant: 100 per cent of sentences imposed fell within the guideline offence range.

<sup>10</sup> Cases where the maximum penalty was given after a guilty plea or case of racially aggravated common assault where the maximum penalty is 2 years' imprisonment

<sup>11</sup> Cases where the maximum penalty was given after a guilty plea

- Supply or offering to supply a controlled drug/possession of a controlled drug with intent to supply it to another – Class A: 100 per cent of sentences imposed fell within the guideline offence range.
- Supply or offering to supply a controlled drug/possession of a controlled drug with intent to supply it to another – Class B: 100 per cent of sentences imposed fell within the guideline offence range.

## Analysis and research bulletins (statistics)

The Council produces an analysis and research statistical bulletin relating to each new guideline<sup>12</sup>. This provides information about current sentencing practice in relation to the offence covered. During the development of draft guidelines they are used to understand the parameters of current sentencing practice, and during the consultation process they ensure that those responding are better able to understand the implications of the guideline proposals.

This year, the Council has published statistical bulletins on the draft guidelines covering sexual offences and environmental offences. These were developed with advice from the Council's analysis and research sub-group; colleagues within the Ministry of Justice were consulted and provided quality assurance.

The bulletins are published as part of the package of consultation documents on our website. In the future, they will be enhanced with data provided by the Crown Court

Sentencing Survey so that an even more accurate and detailed portrayal of current sentencing practice is available.

## Social research

The Council has undertaken a number of social research projects in the past year, designed to inform the development of sentencing guidelines. These cover both internal research and externally commissioned projects and have involved collecting views from a number of different audiences; victims, the general public and practitioners including Crown Court judges, district judges and magistrates.

The Council's social researchers adopt a variety of methodologies, including surveys, questionnaires, face-to-face interviews and focus groups.

Social research undertaken or completed during the period covered by this report is outlined below.

### Research on sentencing sexual offences

Research, conducted internally, was undertaken with Crown Court judges to inform the development of the draft sexual offences guideline. This was conducted in two phases. The initial phase in early 2012 gained feedback from judges on early drafts of the sentencing guidelines. The second phase was then carried out during the consultation period with 44 sentencers and took views on revisions made and established if there

<sup>12</sup> <http://sentencingcouncil.judiciary.gov.uk/facts/research-and-analysis-publications.htm>





would be any unintended consequences of the proposals. The research was conducted face-to-face, using a semi-structured interview schedule and offence scenarios to establish issues that may arise with use of the guideline in practice. The findings from the research will be available later in 2013.

### **Research on sentencing environmental offences**

Research, conducted internally, was undertaken with a small number of Crown Court judges, district judges and magistrates (14 in total) to inform the development of the guideline for environmental offences. The research was conducted face-to-face, using a semi-structured interview schedule and offence scenarios to establish issues that may arise with use of the guideline in practice. A second exercise commenced during the consultation phase of the guideline.

### **Research on sentencing youths**

Some exploratory research was undertaken to review the current guidance on youth sentencing to establish whether changes to this guidance or new guidance is required. Face-to-face interviews (with 21 participants in total) were conducted with magistrates, district judges and one Crown Court judge by the Council's analytical team to feed into early discussions in this area.

### **Research on fraud**

The Sentencing Council has conducted both internal and external research on fraud in the past year to inform the development of new guidelines on fraud offences. Most of the work was conducted prior to the publication of the consultation.

The internal work comprised interviews with magistrates, district judges and Crown Court judges, and was conducted in four phases. The first phase, with 13 participants, explored views on the key issues regarding sentencing various fraud offences, as well as gathering views on the existing Sentencing Guidelines Council fraud guidelines. The remaining phases were to establish views and associated issues with drafts of the new benefit fraud guidelines (17 participants) and money laundering guidelines (nine participants). The final phase, concerned with the draft bribery guidelines, will be completed during the consultation period and will involve six participants. All phases of the research were conducted face-to-face, using a semi-structured interview schedule. Offence scenarios were used to establish issues that

may arise with use of proposed guidelines in practice. The findings will be available later in 2013.

The external work, undertaken by NatCen Social Research, explored the issue of online fraud. In particular, it addressed the ways that online fraud is being committed, its impact on victims, and attitudes to concepts relating to sentencing fraud offences. The research involved a rapid evidence assessment followed by interviews and focus groups with victims and stakeholders.

### **Research on robbery**

External research on robbery has been undertaken by the Institute for Criminal Policy Research at Birkbeck, University of London. This was commissioned to inform the development of a sentencing guideline on robbery and involved reviewing and describing the characteristics of a sample of Crown Court sentencing hearing transcripts and youth court pre-sentence reports where no transcripts were available. The analysis of these cases will inform decisions as to the most suitable approach for categorising robbery offences when the Council considers the guideline. It will also identify key aggravating and mitigating factors that should be considered by sentencers.

### **Additional work in progress**

Research with judges and magistrates on the sexual offences, fraud and environmental guidelines is ongoing. This also applies to external research on robbery. We are also

developing research to explore the issue of guilty pleas to feed into work on this guideline later in 2013.

## **Outcomes**

The findings from the Council's social research are critical in helping to identify the potential behavioural consequences of guidelines. For example, the early work on environmental offences helped to identify the issues sentencers take into account when dealing with cases of this type. This was particularly helpful as a guideline had not existed previously. For fraud offences, the external research helped inform our knowledge of the types of impact online fraud may have on victims which, in turn, has informed how harm is defined in the guidelines. For sexual offences, interviews with judges helped establish how sentencers may use a revised guideline and whether this is likely to have any impact on sentencing levels.

## **Resource assessments**

The Council has a statutory duty to produce a resource assessment when formulating each sentencing guideline. The assessment considers the effects of the guideline on the resources required for the prison, probation and youth justice services. The Council also has a statutory duty to have regard to the cost of different sentences and their relative effectiveness in preventing re-offending.

These statutory requirements enable the Council to understand better the consequences of their guidelines in terms of impact on correctional resources, and the possible impact of their recommended sentencing options on re-offending.

The work that goes into resource assessments also results in wider benefits for the Council. The process involves close scrutiny of current sentencing practice, including analysis of how sentences may be affected by guilty plea reductions, and consideration of current patterns in the use of indeterminate sentences. This analysis provides a ‘point of departure’ for the Council when they are considering the appropriate sentencing ranges for a guideline.

Where the guideline aims to increase consistency, while causing no change to the overall severity of sentencing, the guideline sentencing ranges will aim to reflect current sentencing practice. Where the guideline aims to affect changes in the severity of sentencing for an offence, the Council can move away from the ranges suggested by current sentencing practice.

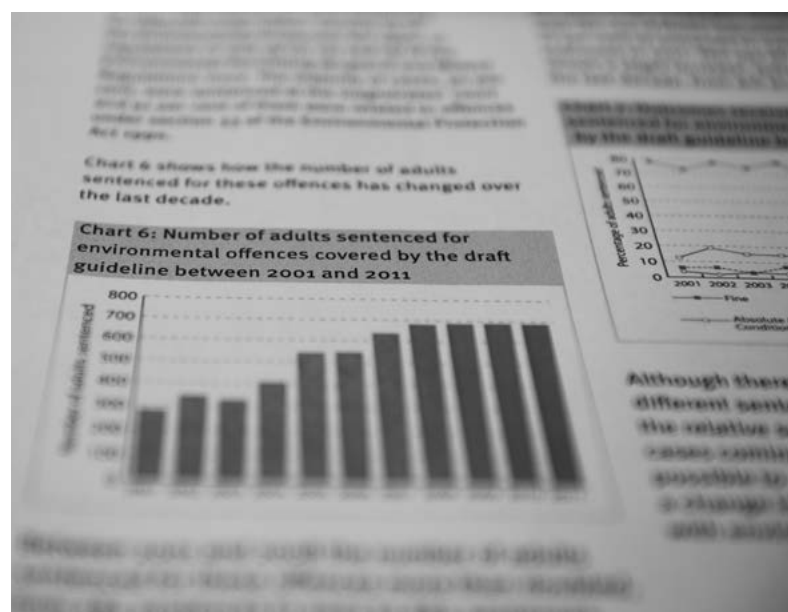
The resource assessment process is especially useful in helping the Council compare the impact of different options for guideline sentencing ranges. For example, if the Council is debating the relative merits of two different proposals for sentencing ranges for a given offence, the analysis and research team is able to advise on differences between the two proposals in terms of resource impact.

Resource assessments are published with consultation documents and available on the Sentencing Council website<sup>13</sup>.

## Implementation

During its third year, the Council has prepared resource assessments for its guidelines on sexual offences and environmental offences, underpinned by the Council’s research and analysis work.

Understanding of the likely effect of guidelines on sentencing practice was improved by the research interviews conducted with sentencers, as well as detailed analysis and modelling work using statistics from the Crown Court Sentencing Survey and the Ministry of Justice Court Proceedings database. This is a key area in which evidence collected by the Crown Court Sentencing Survey is contributing to the Council’s decision making.



<sup>13</sup> <http://sentencingcouncil.judiciary.gov.uk/facts/data-and-analysis.htm>

## Communications

Our communications strategy for the period aimed to ensure that the public, victims, the legal community, the law enforcement community, NGOs and the media have:

- a clearer understanding of how the approach to sentencing works;
- access to relevant information and opportunities to feedback their views;
- access to analysis and research produced by the Council; and
- greater confidence that sentencing is fair, proportionate and consistent.

As a result, the Sentencing Council will be seen as the expert body on sentencing in England and Wales.

## Achievements

A range of communications activity has been carried out to deliver the above aims. Particular highlights are:

- gaining visibility for our research and analysis work by winning a prestigious Guardian Public Service Award<sup>14</sup> for *Evidence-based policy making*;
- providing easy-to-understand information on sentencing for victims by developing a film<sup>15</sup> and supporting leaflet which have subsequently been viewed over 4,500 times;

- achieving positive or neutral media coverage of the sexual offences consultation launch against a backdrop of high profile media coverage of child sexual offences;
- providing a simple, web-based facility to allow the public and interested parties to respond to consultations online, enabling the complex sexual offences consultation to be segmented into specific subject areas for ease of response;
- improved engagement in consultations through targeted events run in collaboration with interested parties, for example, Child Exploitation and Online Protection regarding sexual offences, the National Fly-tipping prevention group regarding environmental offences;
- successful running of the Council's second sentencing competition<sup>16</sup>, raising awareness of the work of the Council among aspiring law professionals;
- the timely publication and distribution of consultations, definitive guidelines and all supporting materials in hard copy and online;
- greater visibility of research and analysis reports online for academics and the media;
- continued, positive relationships at all levels with key partners, for example government, judicial bodies and third sector parties; and

<sup>14</sup> <http://www.guardian.co.uk/publicservicesawards/series/public-services-awards-2013>

<sup>15</sup> <http://www.youtube.com/watch?v=M4ClveEDtmk>

<sup>16</sup> <http://sentencingcouncil.judiciary.gov.uk/get-involved/events.htm>

- increased visibility of the Council through numerous speaking engagements undertaken by members and staff speaking at magistrates' and other events.



## The Guardian's Public Services Award

In November 2012 the Sentencing Council was presented with a prestigious Guardian Public Services Award for *Evidence-based policy making* in respect of the sentencing guideline for drug offences.

The Guardian's Public Services Awards<sup>17</sup> set out to showcase innovation and best practice across Whitehall, local government, the NHS and beyond. The awards are for all organisations involved in commissioning or delivering public services, whether in the public, private or voluntary sectors. They are

recognised widely as the gold standard of achievement by public services teams.

To receive such an award was a major achievement; it gained national media coverage and raised the Council's profile with the public and professional audiences alike.

In presenting the award Andrew Rawnsley spoke on behalf of the judges and said,

*"Again, the standard of entries in this category was very high but the judges felt the Sentencing Council is working with evidence in a new way that can really help in the future. It shows a real potential to change the way we approach penal policy and has overcome some significant political barriers. The combination of methods employed, from analytical tools to staff efforts, and the overall complexity of their approach, is deeply impressive. It is thorough, unique and highly innovative."*

## Consultations

In developing new guidelines, the Council has continued to seek views from as wide an audience as possible, including members of the judiciary, legal practitioners, the public and organisations involved in the criminal justice system.

### Sexual offences

This year the Council delivered its largest, most comprehensive and potentially most controversial draft guideline and consultation. The sexual offences guideline consultation

<sup>17</sup> <http://www.guardian.co.uk/publicservicesawards>

encompassed 55 offences, split across 33 guidelines.

Due to the sensitive nature of this consultation the communications planning was particularly detailed, especially in respect of engaging with interested parties and managing the media.

The hard copy, amounting to 368 pages, was delivered successfully to specific interested parties. In line with the government's 'digital by default' initiative, the consultation was also delivered online and structured to enable organisations and individuals with specific interests to address discrete topic areas.

With regard to media coverage, the launch of the consultation on 6 December 2012 attracted 45 news items including 20 interviews across channels as varied as ITV Daybreak, BBC Today Programme and BBC Radio 5 Live. A guest blog on Mumsnet<sup>18</sup> was also produced on behalf of Council member Anne Arnold, which was positively received by Mumsnet users.

## **Environmental offences**

The launch of the consultation on the draft environmental guideline involved extending our links to communicators with government departments and agencies not directly involved in the criminal justice system. At 31 March events were being arranged with: the National Fly-tipping Prevention Group (sponsored by Defra); legal practitioners and academics; magistrates and legal advisers; and local authorities.

With regard to media coverage, the launch on 14 March was widely covered, with more than 100 news items in national, regional, trade and niche publications. Council members undertook 12 broadcast interviews to explain the proposals.

## **Definitive guidelines**

The definitive guideline on dangerous dog offences was published on 15 May 2012, and there were 85 news items, including 25 interviews on national radio and TV and local radio. There was further coverage when the guideline came into force in courts on 20 August, with 20 national newspaper stories and more than 100 local news items.

## **Working with the media**

The work of the Sentencing Council has continued to be of strong interest to the media and guideline announcements during this period were all extensively covered by print and broadcast media. This is partly due to the subject matter and partly due to the proactive ways in which the communications team has engaged with media. This has involved promoting the Council's work actively and ensuring that spokespeople are available subject to their other professional commitments.

Announcements by the Council reach a huge audience in print, online, radio and TV. Over the period covered by this report, there were

<sup>18</sup> <http://www.mumsnet.com/bloggers/guest-blogs/sentencing-council>

almost 500 news items and Council members undertook more than 70 interviews with media.

After his appointment to chair the inquiry into the culture, practices and ethics of the press, the Chairman felt it necessary to decline media interviews on Sentencing Council business and, in these circumstances, other members of the Council have undertaken these responsibilities.

Most media interest and coverage comes from the publication of guideline consultations and definitive guidelines and Council spokespeople have been interviewed on programmes and channels as varied as the Today programme, Radio 5 Live, ITV Daybreak, BBC3, Sky News and Farming Today about draft or definitive guidelines. Print media coverage can be expected from the national dailies as well as from regional press, criminal justice publications and other trade and professional magazines.

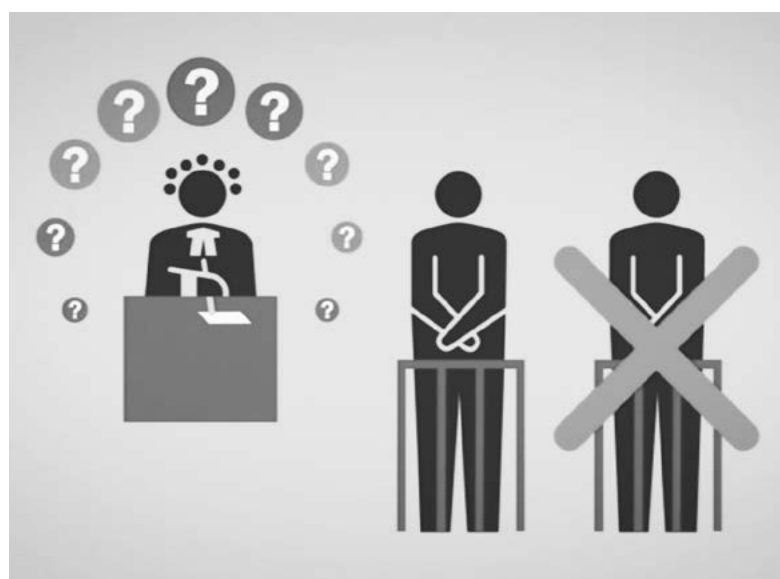
The press office has continued to advise journalists, programme makers and others on sentencing issues and handles day-to-day enquiries from the media, while making sure relevant journalists are aware of the Council's role and how guidelines work. The press office has also taken responsibility for increasing use of Twitter to promote the Council's work and engage in conversations with interested groups and members of the public via an additional commonly used channel.

## Working for victims and witnesses

The Council has continued to be proactive in its communications beyond announcements on new guidelines.

In October 2012, it launched a short animated film for victims and witnesses of crime<sup>19</sup> explaining how sentencing works and the types of sentence offenders can get. As well as being embedded from Youtube on the Council's site, it has been promoted on various other sites such as Victim Support and Open Justice. So far it has been viewed more than 4,500 times. Two shorter excerpts from the film have also received nearly 2,000 views.

As well as being available to view online, it is being used by Victim Support's Witness Service volunteers at courts throughout England and Wales when they are helping victims and witnesses.



<sup>19</sup> <http://www.youtube.com/watch?v=M4ClveEDtmk>

## Events

Council members and office staff attended numerous external events and speaking engagements during the period. This included the Winfield (Law) Society, the Irish Law Reform Group and the United Kingdom Environmental Law Association, as well as seven Magistrates' Association events and a number of training/induction courses.

Events performed an important role in enabling feedback to the sexual offences consultation due to the sensitivity of the subject matter and breadth of the guideline. Audiences were carefully chosen according to their role and area of interest, with seven events covering subjects such as rape, indecent images, child offences and mental disorder. Legal and law enforcement professionals, magistrates, academics and specific interest groups attended locations ranging from London to Lancaster.

## Website

The Council's website continues to provide an important reference point for sentencers and a source of information on sentencing for the public and interested parties.

During this period the site has seen nearly half a million visits, of which the guidelines download page attracted nearly 300,000. The most frequently accessed document is the Magistrates' Court Sentencing Guidelines (73,198 views) followed by the assault guideline (37,836 views).

In order to further develop the website, in November 2012 we appointed a part-time digital communications officer whose role is to implement the Council's digital communications strategy. Following the Council's exemption from GOV.UK, the strategy will include moving the website to a new hosting and support provider.

Alongside development of the website, the Office has started working towards digital delivery of the guidelines. This is in line with the wider government 'digital by default' initiative and programmes to increase digital working across the criminal justice system.

## Partnership working

The Council's relationship with other organisations forms a key part of its communication strategy. In addition to engagement with specific interested parties during the development of guidelines, regular meetings are held with a variety of organisations to inform our work and share information. This includes the Ministry of Justice and the Magistrates' Association.

An illustration of our collaborative approach was the formation of a group to review the Magistrates' Court Sentencing Guidelines. The group, chaired by a Council member, comprised: the Magistrates' Association, the Law Society, Justices' Clerks' Society, National Bench Chairmen's Forum, HM Courts and Tribunals Service, Crown Prosecution Service, Judicial College and judicial representatives. Working with such a group enabled the Council to ensure that the needs of those





using the guidelines would be met and proposed changes would be communicated effectively through established channels.

We continue to engage actively with the academic community. In July 2012 Council members and staff participated in a day long international seminar held at the University of Oxford, involving 40 academics and researchers. Several papers and a number of essays have been edited subsequently and will appear in a book published by the Oxford University Press in August 2013. Entitled “*Sentencing Guidelines: Exploring the English Model*”<sup>20</sup>, the volume contains contributions from leading scholars in the United Kingdom, United States and New Zealand.

<sup>20</sup> Ashworth A., Roberts J.V. Due for publication August 2013. *Sentencing Guidelines: Exploring the English Model*. UK: Oxford University Press

## Summary of achievements – timeline

<b>April 2012</b>	<b>27</b> Speech to Winfield (Law) Society, St John's College, Cambridge
<b>May 2012</b>	<b>15</b> Dangerous dogs offences definitive guideline published <b>24</b> Crown Court Sentencing Survey Report published
<b>June 2012</b>	<b>11</b> Allocation, TICs and totality definitive guideline comes into force
<b>July 2012</b>	<b>5</b> Participation in international sentencing seminar, All Souls College, Oxford
<b>August 2012</b>	<b>20</b> Dangerous dog offences definitive guideline comes into force
<b>September 2012</b>	<b>10</b> Film launched for victim and witnesses <b>20</b> Speech to Irish Law Reform Group, Ireland
<b>October 2012</b>	<b>23</b> Participation in LexisNexis webinar 'Sentencing reform – where are we now?' <b>26</b> Delivery of the Monkman Lecture, Leeds <b>30</b> Speech to United Kingdom Environmental Law Association
<b>November 2012</b>	<b>21</b> Sentencing Council wins Guardian Public Services Award
<b>December 2012</b>	<b>6</b> Sexual offences guideline consultation launched – the first to be delivered online <b>14</b> Sentencing competition for law students launched Sentencing and victims of crime bulletin published
<b>January 2013</b>	<b>23</b> Sexual offences guideline consultation event for legal practitioners Viewings of victim and witness film reach 3,500
<b>February 2013</b>	<b>13</b> Sexual offences guideline consultation events for police, CEOP, magistrates and special interest groups <b>25</b> Speech to Irish judges at the invitation of the Irish Chief Justice
<b>March 2013</b>	<b>13</b> Sentencing competition finals held at the Royal Courts of Justice <b>14</b> Environmental offences guideline consultation launched <b>14</b> Sexual offences consultation closes

# Budget and support activity

## Financial report

The Council's resources are made available through the Ministry of Justice and, as such, the Council is not required to produce its own audited accounts. However, the Council's expenditure is an integral part of the Ministry of Justice's resource account, which is subject to audit. The summary below reflects expenses directly incurred by the Sentencing Council and is shown on an accrual basis.

	2012/13 (actual) £000s
<b>Total funding allocation</b>	<b>1,544</b>
Office staff costs <sup>21</sup>	1,002
Council members and adviser fees <sup>22</sup>	73
Analysis and research	150
Design and printing services	106
Confidence and communications	1
IT services	16
Training	10
Other office expenditure <sup>23</sup>	87
<b>Total expenditure</b>	<b>1,445</b>

<sup>21</sup> Includes office staff travel and subsistence

<sup>22</sup> Includes travel and subsistence costs incurred by Council members and advisers

<sup>23</sup> Includes off-site storage cost and postage for consultations/definitive guidelines

During the period covered by the report the Council's work programme was amended to accommodate the complexity and size of the sexual offences guideline. This was by far the largest guideline produced to date comprising 55 offences covered in 33 separate guidelines. It had the effect of delaying the start of work on other projects; reallocation of resources and a subsequent budget underspend.

During the period the Council was also asked by the Lord Chancellor, under section 124 of the Coroners and Justice Act 2009, to deliver a definitive guideline on fraud, bribery and money laundering in 2014. This was in order to support the government's introduction of deferred prosecution agreements for corporate offenders. To meet this timeframe without causing further delay to the Council's work programme required the secondment of three additional members of staff for the duration of the work.

## Staff headcount (as at March 2013)

Area of activity	FTE <sup>24</sup>
Head of Office and support	2
Policy	3.8 <sup>25</sup>
Analysis and research	8.5 <sup>26</sup>
Legal	2 <sup>27</sup>
Communications	4.4 <sup>28</sup>
<b>Total</b>	<b>20.7</b>

<sup>24</sup> FTE: full-time equivalents

<sup>25</sup> Includes 1 member of temporary staff (1 FTE) recruited to deliver Fraud guideline. Does not include 1 permanent vacancy

<sup>26</sup> Includes 1 ESRC intern, 1 temporary member of staff (0.6 FTE) recruited to deliver Fraud guideline and 1 member of staff covering an unpaid career break (0.9 FTE)

<sup>27</sup> Includes 1 temporary member of staff (1 FTE) recruited to deliver Fraud guideline

<sup>28</sup> Includes member of staff on maternity leave (0.8 FTE); 1 maternity cover (1 FTE) and 1 member of staff on a fixed term contract (0.6 FTE) recruited to deliver digital project

## Governance

The Sentencing Council for England and Wales was established by part four of the Coroners and Justice Act 2009.

The Council is an advisory Non-Departmental Public Body (NDPB) of the Ministry of Justice (MoJ). Unlike most advisory NDPBs however, the Council's primary role is not to advise Ministers, but to provide guidance to sentencers.

The Council is independent of the government and the judiciary with regard to the guidelines it issues to courts, its impact assessments, its publications, promotion of awareness of sentencing and in its approach to delivering these.

The Council is accountable to Parliament for the delivery of its statutory remit set out in the Coroners and Justice Act 2009. Under Section 119 of the 2009 Act, the Council must make an annual report to the Lord Chancellor on how it has exercised its functions. The Lord Chancellor will lay a copy of the report before Parliament and the Council will publish the report.

Ministers are ultimately accountable to Parliament for the Council's effectiveness and efficiency, for its use of public funds and for protecting its independence.

Section 133 of the 2009 Act states that the Lord Chancellor may provide the Council with such assistance as it requests in connection with the performance of its functions.

The Council is accountable to the Permanent Secretary at the MoJ as Accounting Officer and to Ministers for the efficient and proper use of public funds delegated to the Council, in accordance with MoJ systems and with the principles of Governance and Finance set out in Managing Public Money and other relevant Treasury instructions and guidance.

The budget is delegated to the Head of the Office of the Sentencing Council (OSC) from the MoJ Director of Criminal Policy. The Head of the OSC is responsible for the management and proper use of the budget.

The Director General, Justice Policy Group at the MoJ is accountable for ensuring that there are effective arrangements for oversight of the Council in its statutory functions and as one of MoJ's Arms Length Bodies (ALBs).



# Annexes

## Annex A: About the Sentencing Council

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice. It was set up by part four of the Coroners and Justice Act 2009 to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary.

The Sentencing Council fulfils the following functions contained in the Coroners and Justice Act 2009<sup>29</sup>:

- prepares sentencing guidelines<sup>30</sup>;
- publishes the resource implications in respect of the guidelines it drafts and issues<sup>31</sup>;
- monitors the operation and effect of its sentencing guidelines and draws conclusions<sup>32</sup>;
- prepares a resource assessment to accompany new guidelines<sup>33</sup>;
- promotes awareness of sentencing and sentencing practice<sup>34</sup>; and

- publishes an annual report that includes the effect of sentencing and non-sentencing practices<sup>35</sup>.

The primary role of the Sentencing Council is to issue guidelines on sentencing which the courts must follow unless it is in the interest of justice not to do so<sup>36</sup>.

## Functions

The Sentencing Council has responsibility for:

- developing sentencing guidelines and monitoring their use;
- assessing the impact of guidelines on sentencing practice. It may also be required to consider the impact of policy and legislative proposals relating to sentencing, when requested by the Government; and
- promoting awareness amongst the public regarding the sentencing process and publishing information regarding sentencing practice in magistrates' courts and the Crown Court.

<sup>29</sup> See Annex E for full details of all roles and functions

<sup>30</sup> s.120 Coroners and Justice Act 2009

<sup>31</sup> s.127 ibid

<sup>32</sup> s.128 ibid

<sup>33</sup> s.127 ibid

<sup>34</sup> s.129 ibid

<sup>35</sup> s.119 ibid

<sup>36</sup> s.125(1) ibid

In addition to the functions above, the Council must:

- consider the impact of sentencing decisions on victims;
- monitor the application of the guidelines, better to predict the effect of them; and
- promote understanding of, and increase public confidence in, sentencing and the criminal justice system.

## How the Council operates

The Council is outward-facing, responsive and consultative and draws on expertise from relevant fields where necessary while ensuring the legal sustainability of its work. The Council aims to bring clarity in sentencing matters, in a legally and politically complex environment.

The Council aims to foster close working relationships with judicial, governmental and non-governmental bodies while retaining its independence. These include: the Council of Circuit Judges; the Criminal Procedure Rules Committee; the Judicial Office; the Council of Her Majesty's District Judges (Magistrates' Courts); the Magistrates' Association; Ministry of Justice, Home Office and the Attorney General's Office. The Council engages with the public on sentencing, offers information and encourages debate.

The Council meets 10 times a year to discuss current work and agree how it should be progressed; minutes are published on the Council's website. In addition to members, two advisors are invited to advise the Council on matters related to their specialist areas. They are:

- Paul Cavadino, former Chief Executive, Nacro; and
- Paul Wiles, former government Chief Social Scientist and Chief Scientific Adviser to the Home Office.

The Council has sub-groups to enable detailed work on two key areas of activity: analysis and research; and confidence and communications. The sub-groups' role is mandated by the Council and all key decisions are escalated to the full membership. The sub-groups are internal rather than public-facing.



## Relationship with Parliament

The Council has a statutory requirement to consult with Parliament<sup>37</sup>, specifically the House of Commons Justice Select Committee. On 22 January Lord Justice Hughes attended an informal meeting of the Committee to answer questions on the development of the draft sexual offences guideline.

The Council continues to develop its relationship with the Committee and with Parliament more widely.

## The Office of the Sentencing Council

The Council is supported in its work by the Office of the Sentencing Council, in particular in:

- ensuring that the analytical obligations under the Act are met;
- providing legal advice to ensure that the Council exercises its functions in a legally sustainable manner;
- delivering communications activity to support the Council's business; and
- providing efficient and accurate budget management with an emphasis on value for money.

<sup>37</sup> s.120(6)(c) Coroners and Justice Act 2009



## Guideline development

The box below sets out the process involved in developing a guideline - from draft, through consultation stages, to a definitive version used by the judiciary. The process from beginning to end can extend to 18 months or more meaning that effective prioritisation, planning and project management are essential.

### **Step 1 – Priorities**

The Council identifies work plan priorities – this could be based on concerns about an existing guideline, offence types which lack a guideline or because we have been required by statute to look at a particular area.

### **Step 2 – Research**

Research is undertaken; policy and legal investigations are carried out; the approach to the particular guideline is discussed by the Council and agreed and an initial draft guideline is then created.

### **Step 3 – Approach**

The Council members discuss the draft guideline, refine the approach and agree on the broad structure and detail which will form the basis for consultation.

### **Step 4 – Consultation**

The Council consults the statutory consultees, criminal justice professionals and wider public over a 12 week period. The Council also produces a draft resource assessment and an equality impact assessment at this step.

### **Step 5 – Responses**

The Council considers the responses to the consultation and develops a response paper and definitive version of the guideline, resource assessment and equality impact assessment.

### **Step 6 – Publication**

The Council issues the definitive guideline and supports training for sentencers where necessary.

### **Step 7 – Monitoring**

The use of the guideline is monitored via the Crown Court Sentencing Survey.

## Annex B: Membership

The Lord Chief Justice, the Right Honourable Lord Judge, is President of the Council. In this role he oversees Council business and appoints judicial members. The Right Honourable Lord Justice Leveson, a Court of Appeal judge, has been Chairman of the Sentencing Council since November 2009.

The Lord Chancellor and Secretary of State for Justice appoints non-judicial members. All posts were for an initial period of three years (to April 2013) with the possibility of extending them beyond that period.

During the period covered by this report, the tenure of a number of judicial and non-judicial members came to an end and a process was put in place to appoint new members from 6 April 2013.

The Council comprises eight judicial and six non-judicial members, as follows:

### Judicial:

- District Judge (Magistrates' Courts) Anne Arnold
- His Honour Judge Davis QC
- The Honourable Mr Justice Globe
- The Right Honourable Lord Justice Hughes
- His Honour Judge McCreath
- Katharine Rainsford JP, Magistrate on the West and Central Hertfordshire Bench

- The Right Honourable Lord Justice Treacy (appointed as a Lord Justice of Appeal in July 2012)

### Non-judicial:

- John Crawford OBE, former Chief Executive, Greater Manchester Probation Trust
- Siobhain Egan, defence solicitor
- Gillian Guy, Chief Executive, Citizens Advice
- Professor Julian Roberts, Professor of Criminology, University of Oxford
- Keir Starmer QC, Director of Public Prosecutions and Head of the Crown Prosecution Service

The Council's representative from the police, Tim Godwin OBE QPM, former Deputy Commissioner, Metropolitan Police, stood down from the Council on 30 September. Lynne Owens, Chief Constable of Surrey Police, was appointed in an interim capacity.

## Register of members' interests

### **Anne Arnold**

- no personal or business interests to declare

### **John Crawford**

- no personal or business interests to declare

### **William Davis**

- no personal or business interests to declare

### **Siobhain Egan**

- no personal or business interests to declare

### **Sir Henry Globe**

- no personal or business interests to declare

### **Tim Godwin**

- senior executive, global defence and safety team, Accenture

### **Gillian Guy**

- no personal or business interests to declare

### **Sir Anthony Hughes**

- no personal or business interests to declare

### **Sir Brian Leveson**

- no personal or business interests to declare

### **Alistair McCreath**

- no personal or business interests to declare

### **Lynne Owens**

- no personal or business interests to declare

### **Katharine Rainsford**

- author, published by Orion

### **Julian Roberts**

- no personal or business interests to declare

### **Keir Starmer**

- no personal or business interests to declare

### **Sir Colman Treacy**

- no personal or business interests to declare

## Advisors to the Council

### **Paul Cavadino**

- member of the Parole Board of England and Wales

### **Paul Wiles**

- Local Government Boundary Commissioner for England; Board member of the Food Standards Agency; Board member and trustee for NatCen Social Research; Deputy Chair, main panel C for the Research Excellence Framework, currently being run by the Higher Education Funding Council; Chair of review of the Global Uncertainties Programme for the UK Research Councils

# Annex C: Sentencing factors report

## Introduction

In accordance with section 130 of the Coroners and Justice Act 2009 this report considers changes in the sentencing practice of courts (hereafter ‘sentencing practice’), and their possible effects on the resources required in the prison, probation and youth justice services. It is organised as follows:

First, the report defines what is meant by a ‘change in the sentencing practice of the courts’, which establishes the scope of the report.

Second, the report outlines the changes in sentencing practice that are expected as a result of sentencing guidelines which have been published by the Council in the past year. This summarises the resource assessments the Council has published to accompany its guidelines.

Finally, the report presents an analysis of sentencing data for a selection of offences for which there have been the most significant changes in sentencing practice between 2011 and 2012 (the latest available data).

This report does not consider in detail the effects of the Sentencing Council’s definitive guidelines on sentencing for assault, burglary or drug offences which came into effect on 13 June 2011, 16 January 2012 and 27 February

2012 respectively. In the autumn the Council is planning to conduct an evaluation of the effect of the assault guideline which aims to evaluate how the guideline may have changed sentencing practice. This will be undertaken when at least one full year’s sentencing data is available and robust analysis can be conducted. Basing analysis on a short time period may mean that any changes observed may be due to volatility in the time series rather than a persistent, long term trend.

After evaluation of the assault guideline has been published the Council is planning to conduct similar evaluation for the guidelines on burglary and drug offences.

## Scope

A change in the sentencing practice of courts arises when, through time, there are changes to the way in which courts sentence similar cases - that is, when there is a change in the courts’ approach to sentencing.

Changes in sentencing practice are best envisaged by imagining how a representative group of sentencing scenarios would be sentenced from one year to the next if the facts of the cases and the characteristics of the offenders remained fixed each year. If sentences changed through time then, since all other factors are fixed, the change could be attributed to changes in sentencing practice.

There are many factors which can cause changes in the sentences passed by courts. As such, a change in the average severity of sentences passed does not necessarily imply there has been a change in sentencing practice. For example, changes in the characteristics of offenders coming before the courts will result in different sentencing decisions, even though the approach to sentencing may remain the same.

Sentencing guidelines are a key driver of change in sentencing practice. Some guidelines aim to increase the consistency of approach to sentencing whilst maintaining the average severity of sentencing, whilst other guidelines explicitly aim to cause changes to the severity of sentencing. An example of the latter is the Council's definitive drugs guideline, which aimed to cause reductions in sentencing for so-called drug mules. Changes in sentencing practice that are expected to occur as a result of sentencing guidelines the Council has published in the last year are shown on page 40.

Changes in sentencing practice can also occur in the absence of new sentencing guidelines and could be the result of many factors such as Court of Appeal guideline judgments, legislation, and changing attitudes towards different offences.

Measuring changes in sentencing practice is not straightforward because the sentencing scenarios which pass through the courts each year are not fixed in terms of offender characteristics and case facts, as envisaged above. There is therefore no directly

observable measure of changes in sentencing practice.

Instead, changes in sentencing practice must be observed through changes to variables such as average custodial sentence lengths, custody rates, and data on the use of other disposal types. However, these variables are also affected by factors other than sentencing practice, so it is difficult to isolate how sentencing practice has changed.

For example, the average custodial sentence length for a given offence is determined not only by sentencing practice, but also by the average severity of offences coming before the courts, amongst other variables. This creates difficulties in interpretation: supposing from one year to the next it is observed that average custodial sentence lengths have increased, in the absence of other evidence. It is not clear whether this is due to more severe offences coming before the courts or due to harsher sentencing practice.

The Council believes that, given currently available data, it is not possible to disentangle these factors, and separate out an estimate of the effects of sentencing practice on its own. Due to these difficulties, pages 59 to 69 of this report presents data on changes in variables such as average custodial sentence length, but is agnostic as to their causes. The Council hopes in future years that data from the Crown Court Sentencing Survey will help contribute towards a better understanding of changes in the sentencing practice of courts by providing information on the factors which are influencing sentencing decisions.

## Sentencing guidelines

During its third year (to March 2013), the Council published definitive guidelines on the following offences:

- Totality, TICs and Allocation (effective from 11 June 2012); and
- Dangerous dog offences (effective from 20 August 2012).

This section presents the changes in sentencing practice which are expected as a result of these guidelines.

The guideline on totality, TICs and allocation is expected to further the Council's aim of increasing the consistency of sentencing, but is not expected to cause shifts in the aggregate severity of sentencing.

The resultant changes in the consistency of sentencing are very difficult to observe since they are likely to play only a minor role in the aggregate severity of offending. Rather, there is likely to be upward adjustment to some sentences and downward adjustment to others, with these effects tending to cancel one another out. This issue is considered in more detail in a separate research paper by the Council, which can be accessed on our website.<sup>38</sup>

## Dangerous dog offences – definitive guideline

The dangerous dogs definitive guideline is also expected to cause increases in the consistency of sentencing. In addition, the guideline is expected to change the aggregate severity of offending for two offences: dangerously out of control causing injury, and possession of prohibited dogs offences. The changes which are anticipated are outlined below.

### **Dangerously out of control, causing injury**

As a result of the new guideline, each year it is expected that:

- between 30 and 60 sentences that would have been fines will instead be community orders;
- between 20 and 40 sentences a year which would have been community orders would become suspended sentence orders; and
- between 10 and 20 sentences which would have been community orders would become immediate custodial sentences.

Finally, it is expected that a small number of immediate custodial sentences may become longer by between one and three months.

Overall these changes are expected to cause an increase in cost to the Prison Service of between £80,000 and £160,000 a year. They are expected to cause an increase in cost to

<sup>38</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/Consistency\\_in\\_sentencing.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Consistency_in_sentencing.pdf)

the probation service of between £50,000 and £100,000 a year.

### Prohibited dogs offences

The new guideline is expected to cause an increase in the severity of sentencing for some offenders. As a result, it is expected that each year between 25 and 55 sentences which would otherwise have been fines will become community orders.

This is expected to cost the probation service between £50,000 and £150,000 a year.

For further details of the expected resource effects of the two guidelines published during the Council's third year, please see the individual resource assessments.<sup>39</sup>

## Evidence of changes in sentencing practice in sentencing data

The previous section considered changes in sentencing practice that may result from Sentencing Council guidelines that came into effect in 2012/13. This section considers wider changes in sentencing practice which may be occurring.

Changes in sentencing practice may be detected using data on a number of variables: changes in average custodial sentence lengths, the custody rate, and the use of the various disposal types may all point to changes in sentencing practice.

Unfortunately, amongst the variables which respond to changes in sentencing practice, none exist that respond **only** to changes in sentencing practice. Rather, they are influenced by other factors such as the severity of cases and the characteristics of offenders coming before the courts. This means that changes in sentencing practice are not directly observable in isolation.

As a result, there are always many hypotheses for an observed phenomenon. For example, an increase in average custodial sentence lengths could be due to more severe sentencing practice, to more serious cases coming before the courts, or some other factor. The data alone cannot help distinguish between these hypotheses, and no attempt to do so is made in this report.

The following presents a brief discussion of some of the variables used in this report and the caveats that surround them.

### Average custodial sentence length (ACSL)

This is a measure of the average sentence length for those given a **determinate sentence only**. Harsher sentencing practice would usually be expected to result in increased ACSLs. However, care should be taken with this measure for a number of reasons:

- It does not take account of the custody rate. For example, if judges began to use suspended sentences rather than shorter custodial sentences, ACSL could rise because those custodial sentences

<sup>39</sup> [http://sentencingcouncil.judiciary.gov.uk/docs/Dangerous\\_dog\\_offences\\_resource\\_assessment\\_\(web\)\\_final.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Dangerous_dog_offences_resource_assessment_(web)_final.pdf)  
[http://sentencingcouncil.judiciary.gov.uk/docs/Final\\_resource\\_assessment.pdf](http://sentencingcouncil.judiciary.gov.uk/docs/Final_resource_assessment.pdf)

remaining would tend to be longer sentences.

- The average does not include indeterminate sentences for public protection (IPPs) or other indeterminate sentences. When IPPs were introduced, ACSL reduced for a number of offences. This appears to be because IPPs tend to be given to offenders who would otherwise have received lengthy determinate custodial sentences. Following their introduction, the average lengths of the remaining custodial sentences were therefore shorter.
- Average custodial sentence lengths are calculated on sentence lengths post guilty plea reductions. They would therefore change in response to changes to plea rates.

### The custody rate

The custody rate is the proportion of all sentences which are of immediate custody. Harsher sentencing practice would usually be expected to result in an increased custody rate. Care should be taken with this measure because:

- it does not take into account the *length* of custodial sentences;
- it does not take into account the mix of other disposal types. For instance, a movement towards the use of fines and away from the use of community orders may be an indicator of changes to the severity of sentencing, but could not be identified from data on the custody rate.

### Sentencing volumes

There is no direct link between changes in sentencing volumes and sentencing practice. However, changes in sentencing volumes may suggest that changes are occurring in the types of cases coming before the courts. For example, there have been decreasing numbers of thefts of automobiles in recent years. This is due in part to the increased effectiveness of security devices and may mean that, where thefts still occur, they tend to be of higher sophistication and severity<sup>40</sup>.

Therefore, when analysing data to detect changes in sentencing practice, it is always useful to keep sentencing volumes in mind: if changes in custody rates and average custodial sentence lengths coincide with dramatic changes in offence volumes, then it is more likely that factors other than sentencing practice are driving these changes.

Data on sentencing volumes is also useful for a second purpose: to understand the size of the potential impact that changes in sentencing practice could have on correctional resources. For example, a small change in a high volume offence type may have a greater overall resource effect than a large change in sentencing practice in a low volume offence type.

<sup>40</sup> Whilst it is true that improved security devices have meant thefts of motor vehicles have declined in recent years, the remainder of this example is speculative.



## Selected offences for which there have been significant changes in sentencing practice 2011 to 2012

A comprehensive study of changes in sentencing patterns is beyond the scope of this report. Instead, a limited selection of offences has been chosen for more detailed analysis.

These were selected by considering the sentencing volumes for the offence, and the scale of changes in the severity of sentencing between 2011 and 2012. The offences chosen were ones where the combination of sentencing volumes and changes in the severity of sentencing implied they may be having a large effect on correctional resources.

The offences selected include ones where the average severity of sentencing appears to be increasing or decreasing. There is a greater number of offences for which the average severity of sentences appears to be increasing, so more of these offences were chosen for further analysis.

In all, three offences were chosen where ACSLs are increasing:

- assault occasioning actual bodily harm (section 47, Offences against the Person Act 1861);
- wounding or causing grievous bodily harm with intent to do grievous bodily harm (section 18, Offences against the Person Act 1861); and

- domestic burglary (section 9, Theft Act 1968).

Two offences were chosen where ACSLs are decreasing:

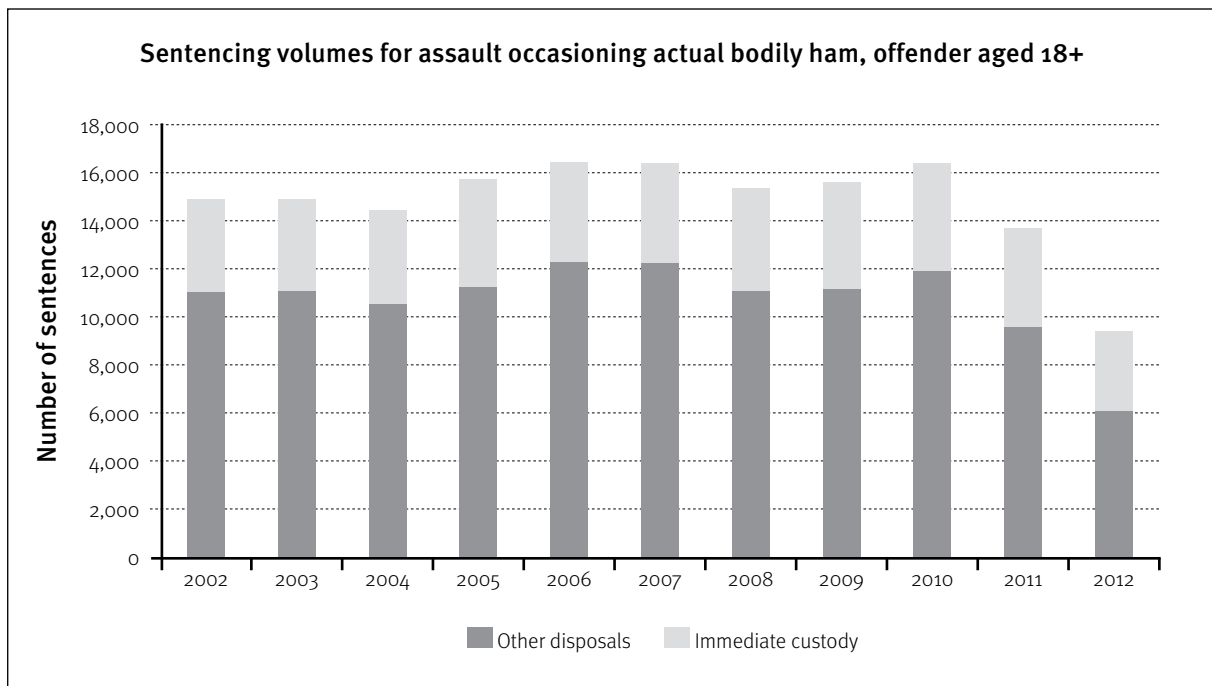
- unlawful importation of a Class A controlled drug (section 170, Customs and Excise Management Act 1979); and
- production of cannabis being a Class B controlled drug (section 4(2) Misuse of Drugs Act 1971).

## Increases in the average severity of sentencing: Assault occasioning actual bodily harm

### Sentencing trends

Chart 1 shows the volume of sentencing for this offence from 2002 to 2012. From 2002 until 2010 the series was relatively stable, since then volumes have declined. This decline is more noticeable in the “other disposals” category although there has also been a decline in the volume of immediate custody.

**Chart 1**



Average custodial sentence lengths for determinate sentences are shown in Chart 2, below. ACSLs increased from 2003 to 2009 when they remained steady for one year (2010) before increasing again in 2011 and 2012. In 2012, they were at their highest level for the whole period at one year three months.

Chart 2

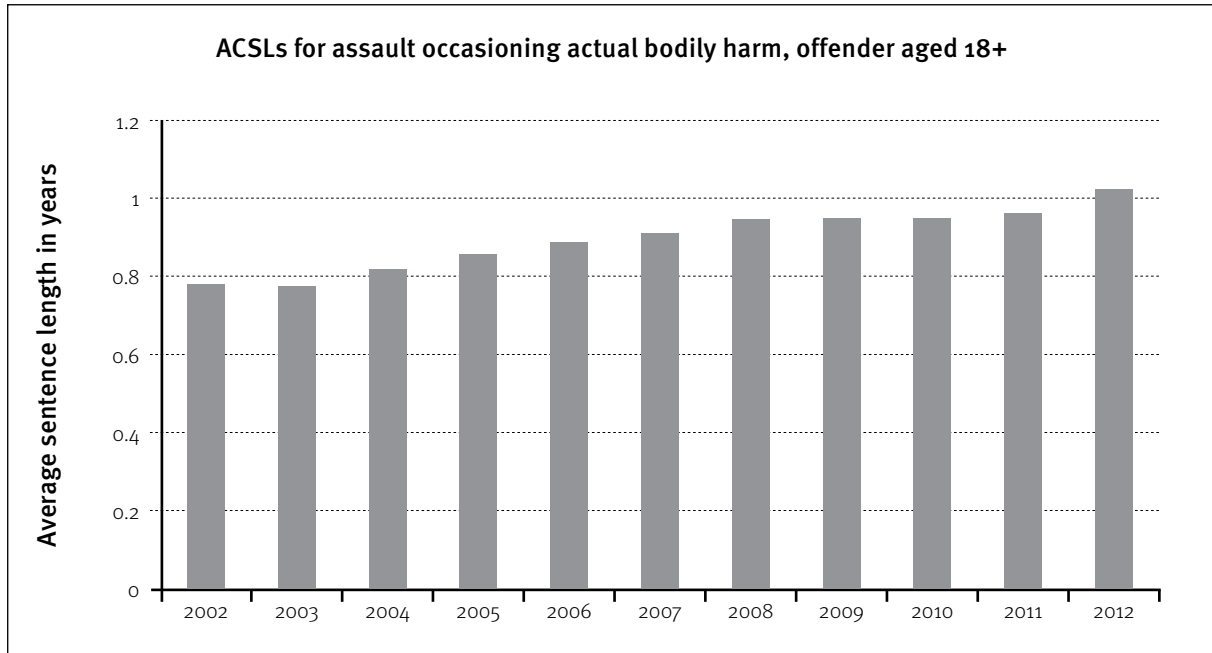
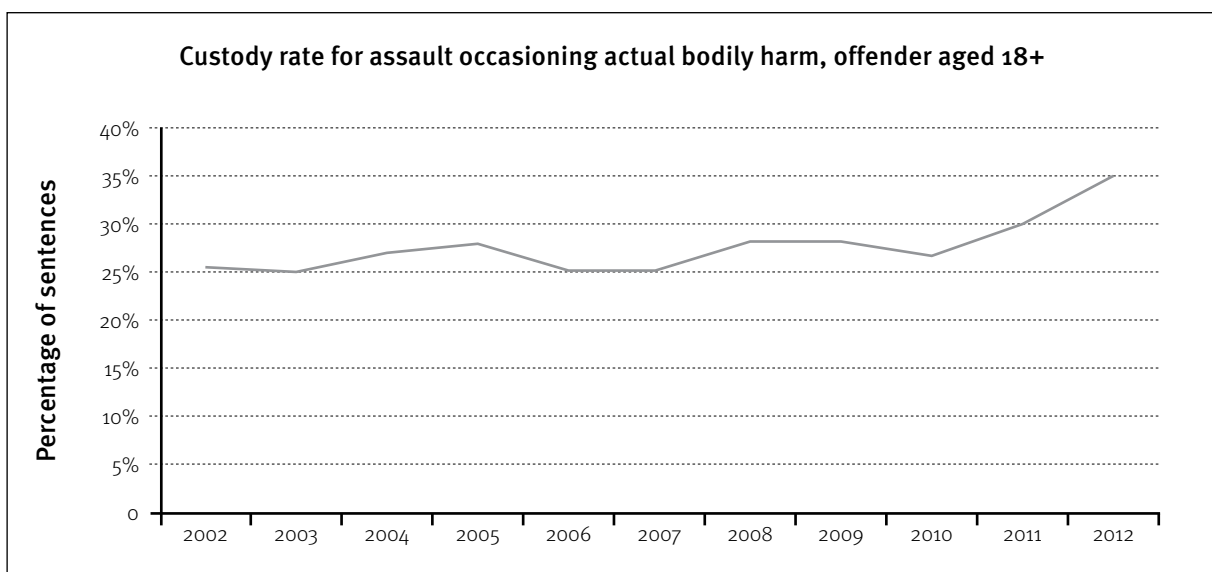


Chart 3 shows the custody rate for this offence has fluctuated between around 25 per cent and 30 per cent between 2002 and 2011. There was then a marked increase in the custody rate in 2012, when it rose to 35 per cent. This increase, accompanied by the increase in ACSLs indicates an increase in the average severity of sentencing in 2012.

Chart 3



## **Resource implications of recent changes in sentencing**

Chart 2 and Chart 3 show that between 2011 and 2012, there was an increase in both the custody rate and ACSLs. The custody rate increased from 30 per cent to 35 per cent and ACSLs increased by three months from one year to one year three months.

Greater use of custody and longer custodial sentence length would both serve to increase pressure on prison service resources. However, it is not clear whether this change is due to: changes in the severity of cases coming before the court; changes in the characteristics of the offenders who are sentenced; changes in sentencing practice in general; brought about by the introduction of the assault definitive guideline; or other factors.

The decrease in sentencing volume of immediate custody between 2011 and 2012 by 20 per cent, would serve to decrease the resource effects of longer sentence lengths. However, the volume of sentences is a non-sentencing factor so is discussed more fully in the non-sentencing factors report at Annex D.

As already mentioned, the Council will be conducting an evaluation of the assault definitive guideline with the aim of determining whether any increased pressure on prison resources in 2012 due to (a) the greater use of custody and (b) the increase in the ACSL for assault occasioning actual bodily harm was due to the introduction of the definitive guideline.

## Increases in the average severity of sentencing: Wounding or causing grievous bodily harm, with intent to do grievous bodily harm (section 18, Offences against the Person Act 1861)

Chart 4 shows sentencing volumes for this offence. The sentencing volume for this offence has been fairly volatile during the decade 2002 to 2012 with the level fluctuating between approximately 1,400 and 1,800 sentences a year.

Between 2011 and 2012 there was a decrease of seven per cent in sentencing volumes.

**Chart 4**

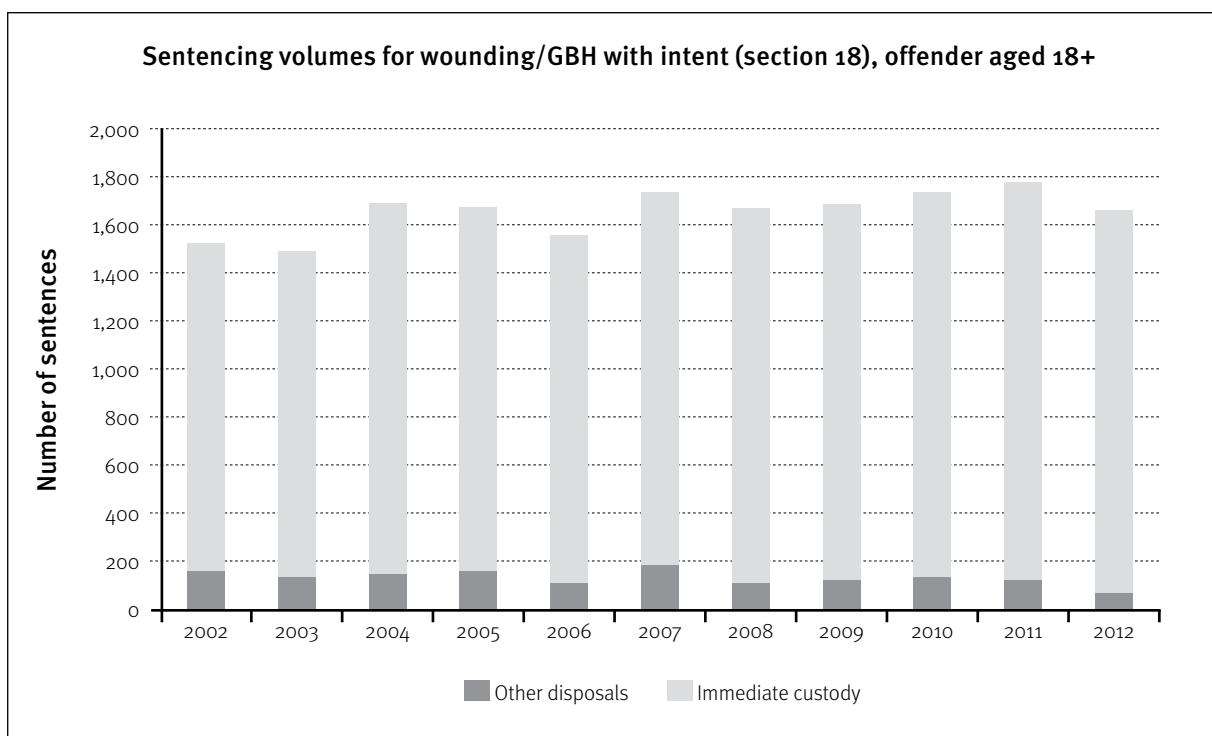


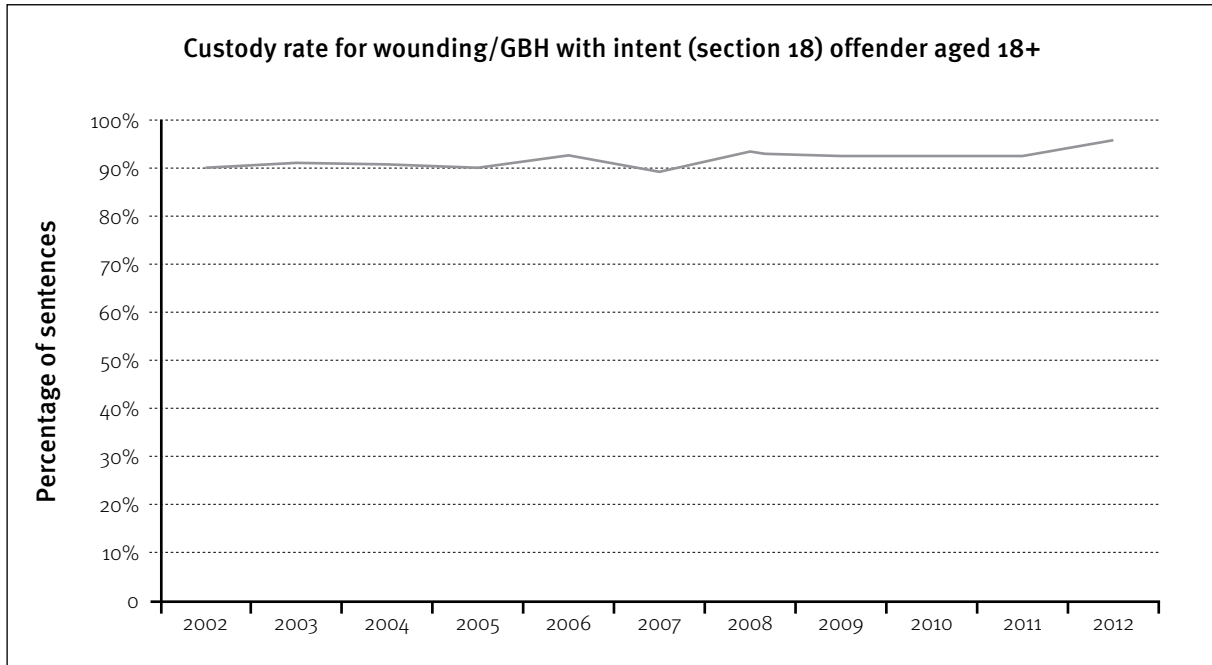
Chart 5 shows that ACSLs for this offence remained relatively stable between 2002 and 2006, at approximately four years. There was a slight drop to three years ten months in 2007 before increasing each year since then. Between 2007 and 2012, the ACSL increased by 49 per cent, from three years ten months to five years nine months. As the major disposal type for this offence is immediate custody this increase in ACSL points to an increase in the average severity of sentencing.

### Chart 5



Chart 6 shows the custody rate for this offence. The custody rate for this very serious offence has remained at or above 90 per cent for most of the decade 2002 to 2012. Having remained reasonably stable between 2002 and 2005 there was an increase in the custody rate to 93 per cent. There was a sudden drop in 2006 to 89 per cent, the reason for which is unknown. The custody rate immediately returned to 93 per cent in 2007 where it remained until 2012 when it increased yet again to 96 per cent. This increase, accompanied by the increase in ACSLs indicates an increase in the average severity of sentencing in 2012.

Chart 6



### Resource effects of recent changes in sentencing

The combination of the increase in the ACSL and the increase in the custody rate between 2011 and 2012 would cause upward pressure on the resources required by the prison service to administer sentences for this offence.

However, it is not clear whether this change is due to: changes in sentencing practice in general; or changes in the severity of cases coming before the court; changes in the characteristics of the offenders who are sentenced; brought about by the introduction of the assault definitive guideline; or other factors.

The slight decrease in sentencing volume of immediate custody between 2011 and 2012 by three per cent, would only serve to mitigate the resource effects of longer sentence lengths. However, as discussed already, the volume of sentences is a non-sentencing factor so is discussed more fully in the non-sentencing factors report at Annex D.

It has already been stated that the Council will be conducting an evaluation of the assault definitive guideline with the aim of determining whether any increased pressure on prison resources in 2012 (due to the greater use of custody and in the increase in the ACSL for these offences) was due to the introduction of the definitive guideline.

## Increases in the average severity of sentencing: Domestic burglary (section 9, Theft Act 1968)

### Sentencing trends

Chart 7 shows sentencing volumes for this offence from 2002 to 2012. There was a noticeable decline in sentencing volumes between 2002 and 2006 after which point sentencing volumes increased again up to 2011 to a level very close to that seen in 2002 of approximately 14,000 per annum. However, there was a sharp decline between 2011 and 2012 when sentencing volumes fell to approximately 12,200. It is too early to say whether this decline is the start of a downward trend or just a more extreme manifestation of the volatility exhibited in sentencing volumes throughout the decade 2002 to 2012.

**Chart 7**

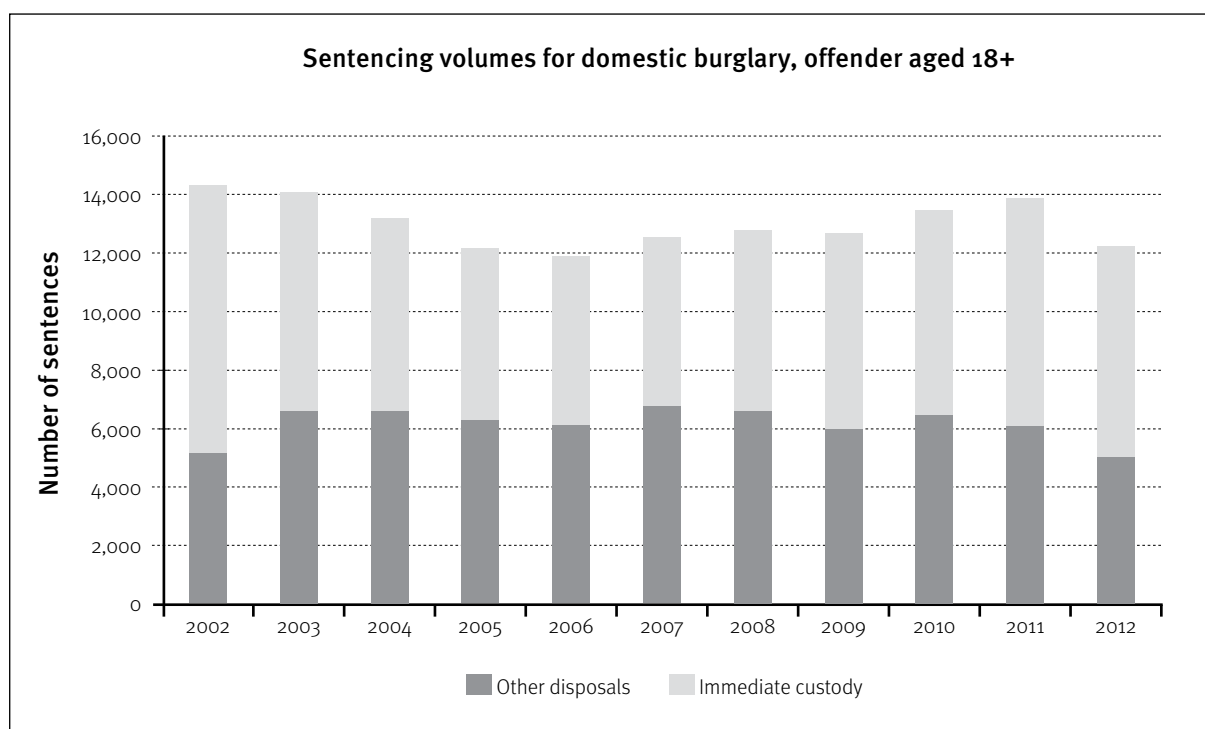




Chart 8 shows the proportions of the various disposal types used for this offence. In the early part of the decade, up to 2005, the proportion of defendants being sentenced to immediate custody declined as the use of community orders increased. In the following two years, the proportion of immediate custody continued to fall which coincided with the introduction of the new suspended sentence order. At the same time the proportion of defendants being given a community order started to decline and this decline continued to the end of the decade. Since 2007, the proportion of defendants sentenced to immediate custody has increased every year so that by 2012 the proportion was almost back to that seen in 2002 of approximately 60 per cent.

**Chart 8**

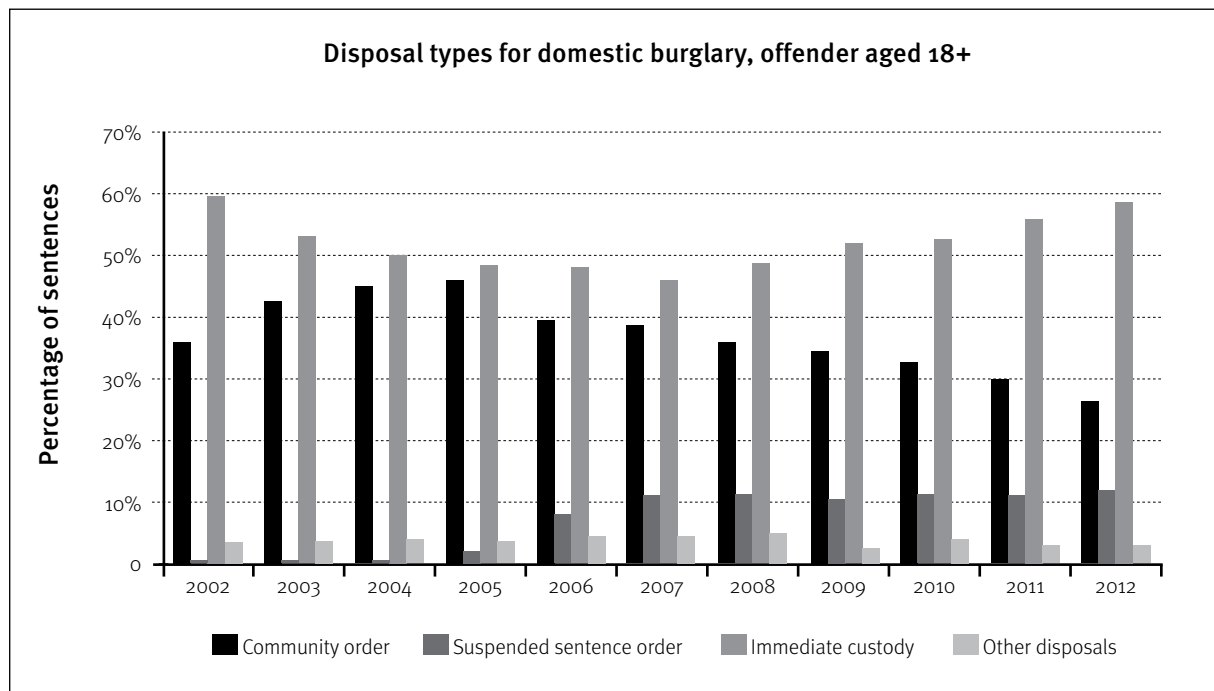
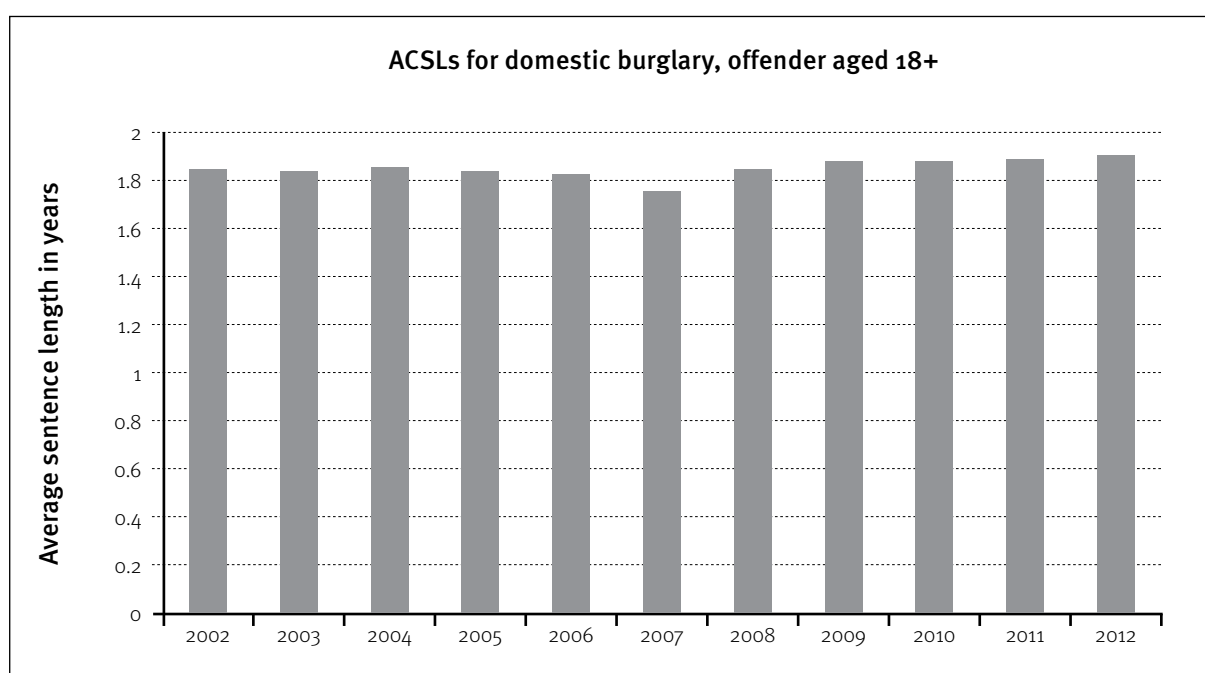


Chart 9 shows average custodial sentence lengths for domestic burglary in years. Between 2002 and 2006 the ACSLs remained at slightly over one year ten months. In 2007, there was a small fall in the ACSL when it was one year nine months. Since then the ACSL has increased marginally every year and reached its highest during the decade in 2012 at one year and eleven months.

**Chart 9**



### **Resource implications of recent changes in sentencing**

Overall, between 2011 and 2012, the custody rate for this offence rose from 56 per cent to 59 per cent and ACSLs rose marginally from one year ten months 19 days to one year ten months 24 days. These changes are likely to put increased pressure on correctional resources for the prison service.

However, it is unclear whether the change in the custody rate identified is due to sentencing practice, changes in the severity of cases coming before the court, changes in the characteristics of the offenders who are sentenced, or other factors.

As already noted the Council will be conducting an evaluation of the assault definitive guideline. Once this has been completed a similar evaluation will take place for the burglary offences definitive guideline. This evaluation will aim to determine whether any increased pressure on prison resources in 2012 due to the greater use of custody for domestic burglary was due to the introduction of the definitive guideline.

## Decreases in the average severity of sentencing: Unlawful importation of a Class A controlled drug (section 170, Customs and Excise Management Act 1979)

Chart 10 shows that sentencing volumes for this offence have declined considerably throughout the decade 2002 to 2012. In 2002, 1,055 defendants were sentenced for this offence but by 2012 this number had decreased by 67 per cent to 345.

**Chart 10**

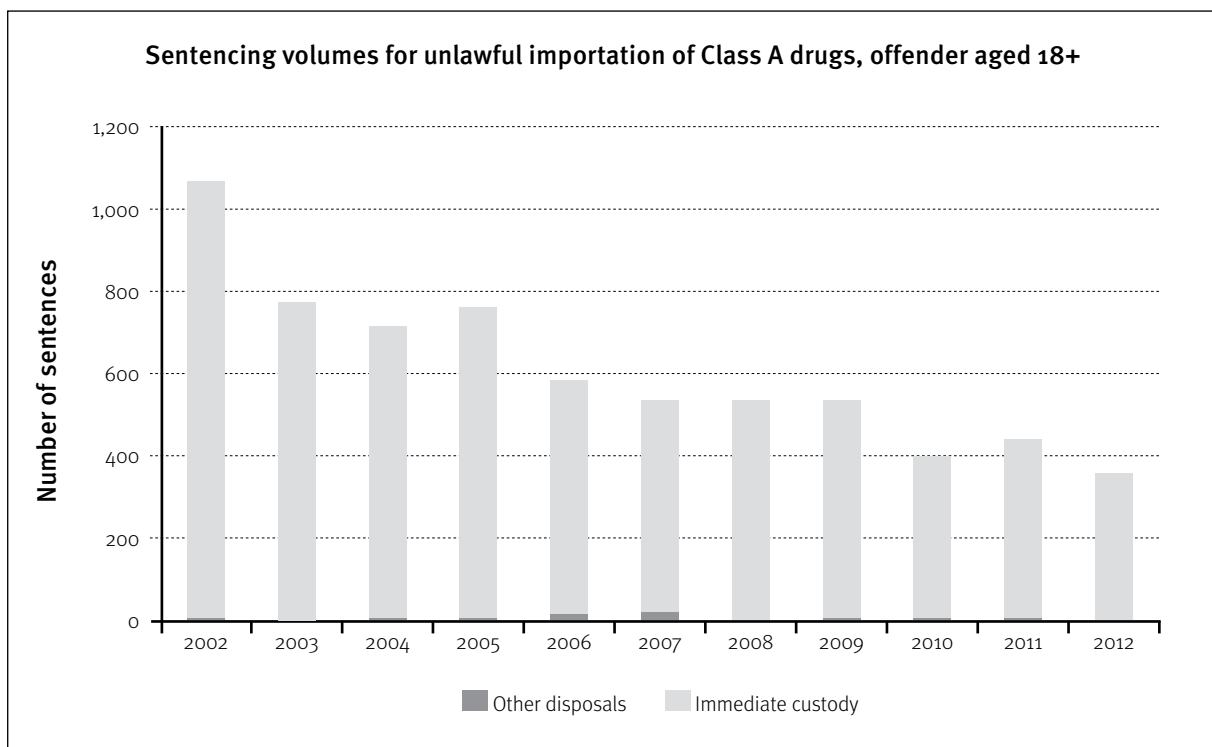


Chart 11 shows that the custody rate for this offence has been very stable with a rate of over 95 per cent throughout the past decade. This is unsurprising given the Sentencing Council's offence range is three years six months' to 16 years' custody depending on the role of the offender and the quantity of drugs imported.

**Chart 11**

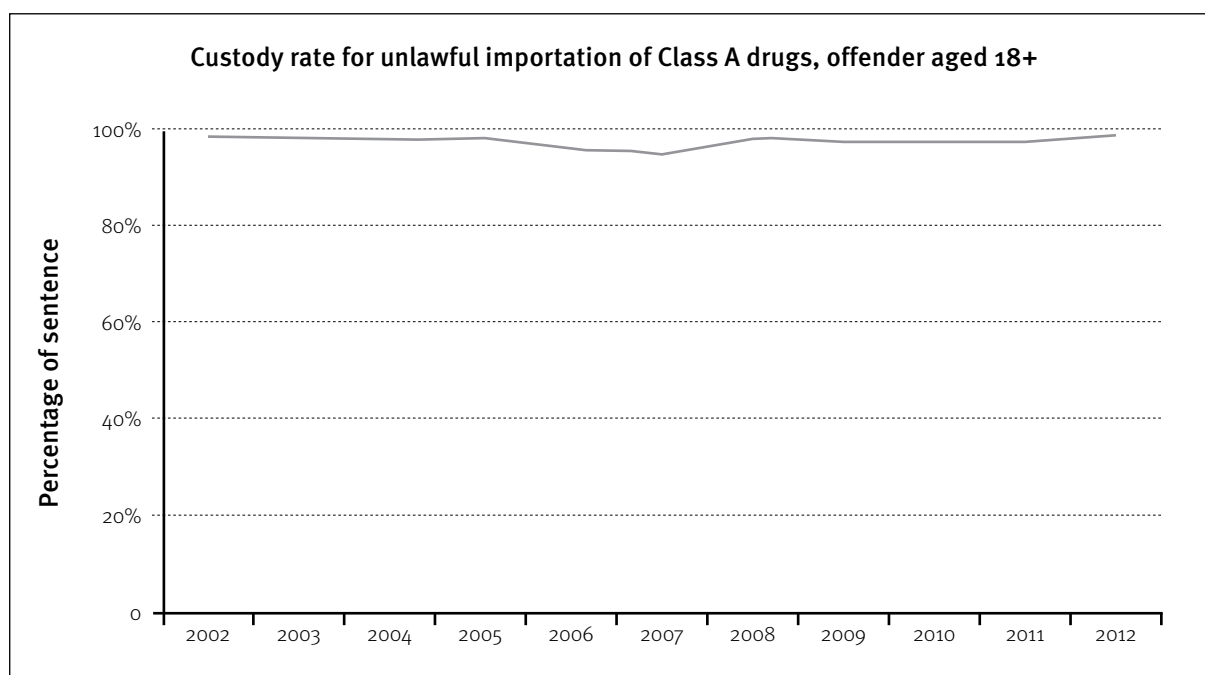
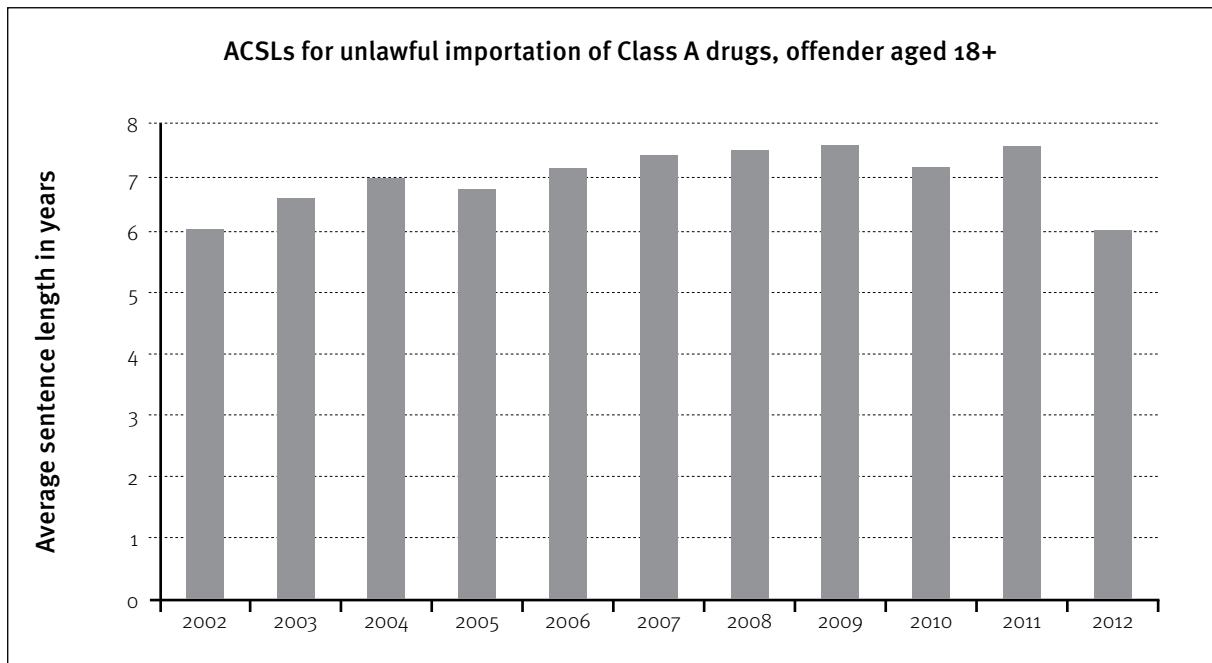


Chart 12 shows the ACSLs over the period 2002 to 2012. In 2002 the ACSL was six years; this increased throughout the decade, apart from an occasional dip, until 2011 when the ACSL was seven years seven months, an increase of approximately 25 per cent since the beginning of the decade. However, in 2012 the ACSL dropped considerably back to the 2002 level of six years. The Council had a specific intention when producing its definitive guideline on drug offences, which came into force on 27 February 2012, to reduce the sentence penalty for a specific group of defendants, namely drug mules. It is too early to say whether the fall in the ACSL in 2012 is solely attributable to the guideline.

Chart 12



### Resource effects of recent changes in sentencing

The decrease in average custodial sentence lengths between 2011 and 2012 of around one year seven months will reduce the correctional resources required to give effect to sentences for unlawful importation of class A drugs.

As ACSLs had been relatively stable over the last couple of years before the decrease in 2012, it is almost certain that most of the decrease is due to a change in sentencing practice for this offence. However, other factors could still have influenced the decline, such as a change in the severity of the caseload from year to year.

As mentioned above, it is likely that the Council's definitive guideline on drug offences was a major contributing factor to this change in sentencing practice. In order to confirm this, the Council will be undertaking an evaluation of the drug offences definitive guideline once evaluation of the assault and burglary definitive guidelines has been completed.

## Decreases in the average severity of sentencing: Production of cannabis, being a Class B controlled drug (section 4(2) Misuse of Drugs Act 1971)

Chart 13 shows the sentencing volumes for this offence by disposal type when it was reclassified back to a class B drug on 29 January 2009. Volumes of all disposal types have increased considerably, year on year since 2009. In 2009, 1,611 defendants were sentenced for this offence but by 2012 this had risen to 5,880, a 365 per cent increase. A community order is still the most common disposal type, followed by immediate custody and then a suspended sentence order. The volume of immediate custody sentences went from 469 in 2009 to 1,472 in 2011 before dropping very slightly to 1,463 in 2012. At the peak in 2011 the volume of immediate custody sentences was 314 per cent greater than in 2009.

**Chart 13**

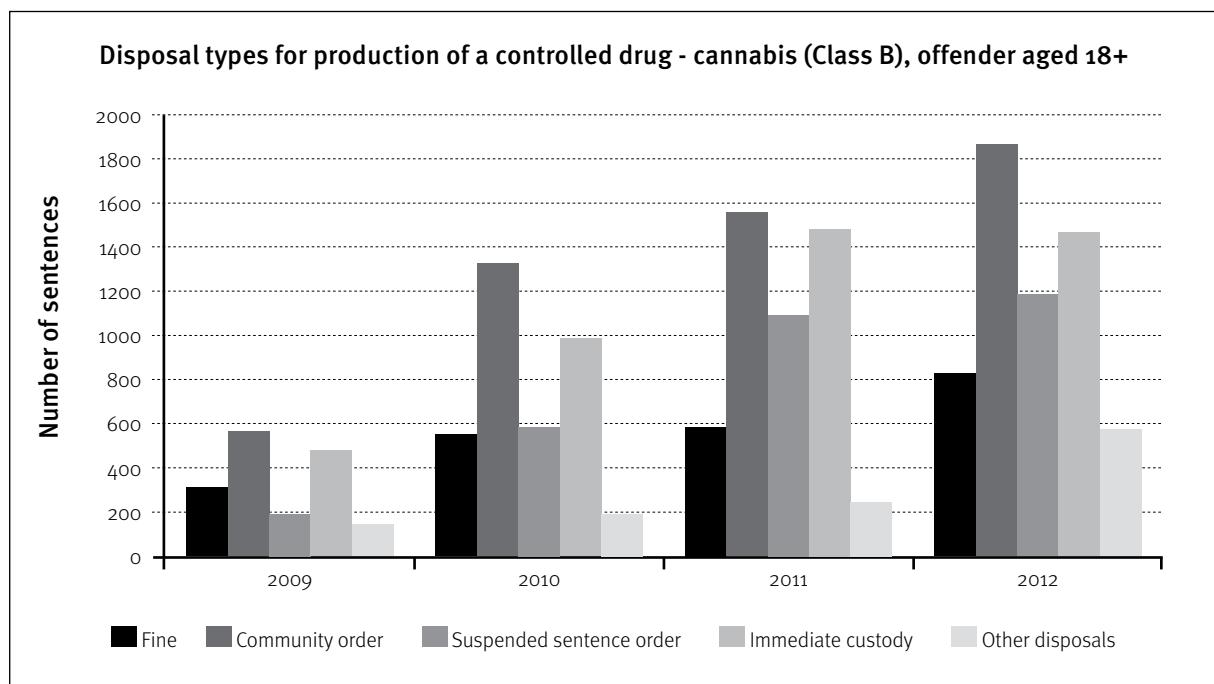


Chart 14 shows that the custody rate for this offence has fluctuated around the 28 per cent level since 2009, with a fall between 2011 and 2012. In 2011 the custody rate was 30 per cent but in 2012 this had fallen to 25 per cent. Because of the year-on-year fluctuations in custody rate since 2009 it is difficult to say whether the fall in 2012 is the start of a downward trend, a stabilisation of the rate at a lower level, or a one-off occurrence.

**Chart 14**

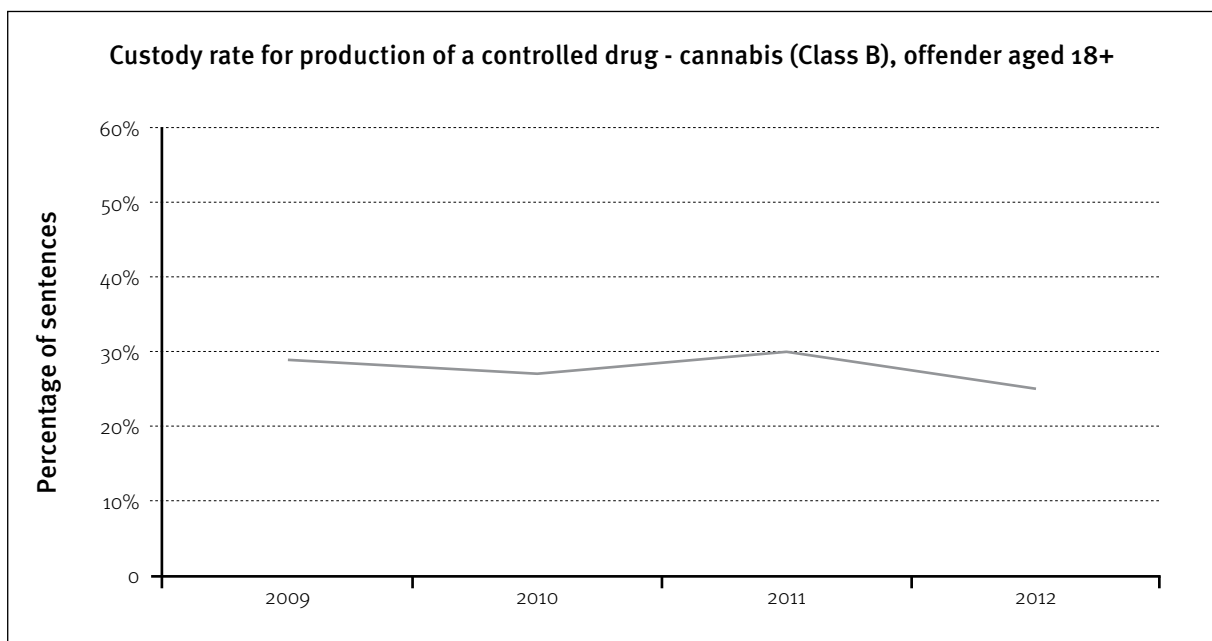
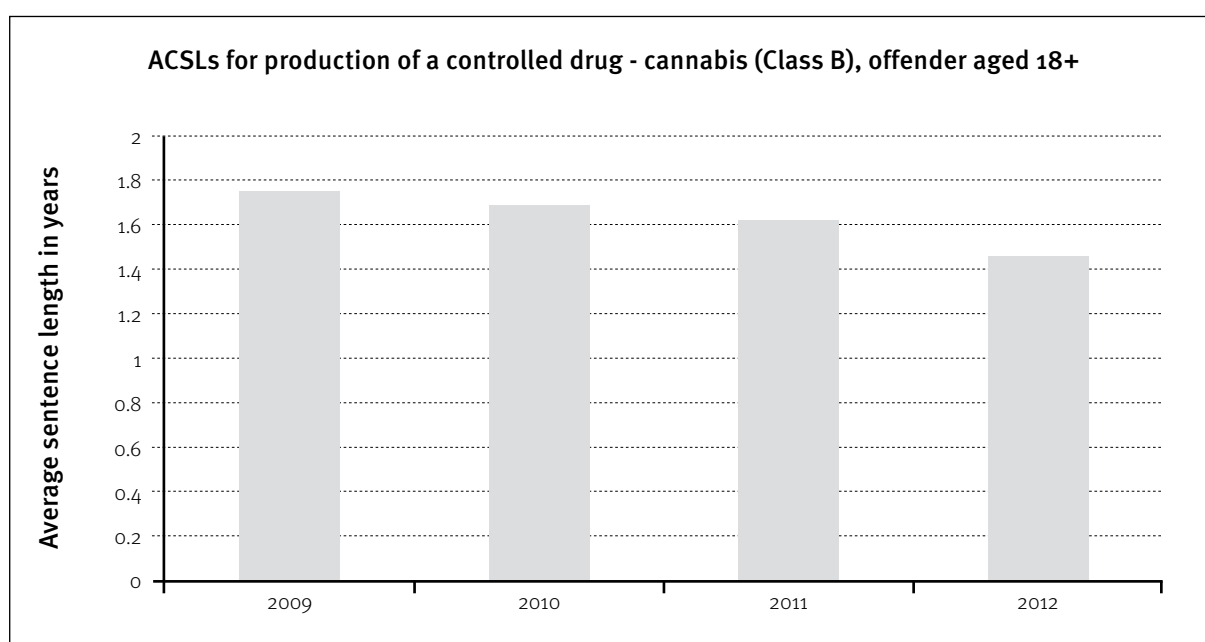


Chart 15 shows that the trend in average custodial sentence lengths since 2009 has been declining. In 2009 the ACSL was one year nine months, but by 2012 this had fallen to one year six months. As this downward trend was already happening before the Council's definitive guideline on drug offences, which came into force on 27 February 2012, it is difficult to say whether the fall in ACSL in 2012 is due to the Council's guideline or other factors.

**Chart 15**



### **Resource effects of recent changes in sentencing**

The decrease in average custodial sentence lengths between 2011 and 2012 of around one year seven months will reduce the correctional resources required to give effect to sentences for production of a controlled drug - cannabis (Class B), even as the volume of immediate custodial sentences has been increasing.

As the time series of ACSLs has been declining since 2009, it is not clear whether the decrease is due to a change in sentencing practice for this offence, other factors such as a change in the severity of the caseload from year to year or due to the introduction of the Council's definitive guideline on drug offences. Firm conclusions therefore cannot be drawn about how much any of the reduction in average custodial sentence lengths between 2011 and 2012 was due to changes in sentencing practice.

In order to confirm the contribution of the decline in ACSL to the Council's definitive guideline, the Council will be undertaking an evaluation of the drug offences definitive guideline once evaluation of the assault and burglary guidelines has been completed.



# Annex D: Non-sentencing factors report

## Introduction

The Sentencing Council is required under the Coroners and Justice Act 2009 to prepare a non-sentencing factors report to identify the quantitative effect which non-sentencing factors are having, or are likely to have, on the resources needed or available for giving effect to sentences imposed by courts in England and Wales.

This report begins by defining non-sentencing factors, and explaining their importance to resource requirements in the criminal justice system. It then considers the most recent published evidence on how these factors may be changing.

## Definition of non-sentencing factors and their significance

The approach taken by the courts to sentencing offenders is a primary driver of requirements for correctional resources in the criminal justice system. This is discussed in the sentencing factors report at Annex C. However, non-sentencing factors – the focus of this report - also exert an important influence on requirements for correctional resources.

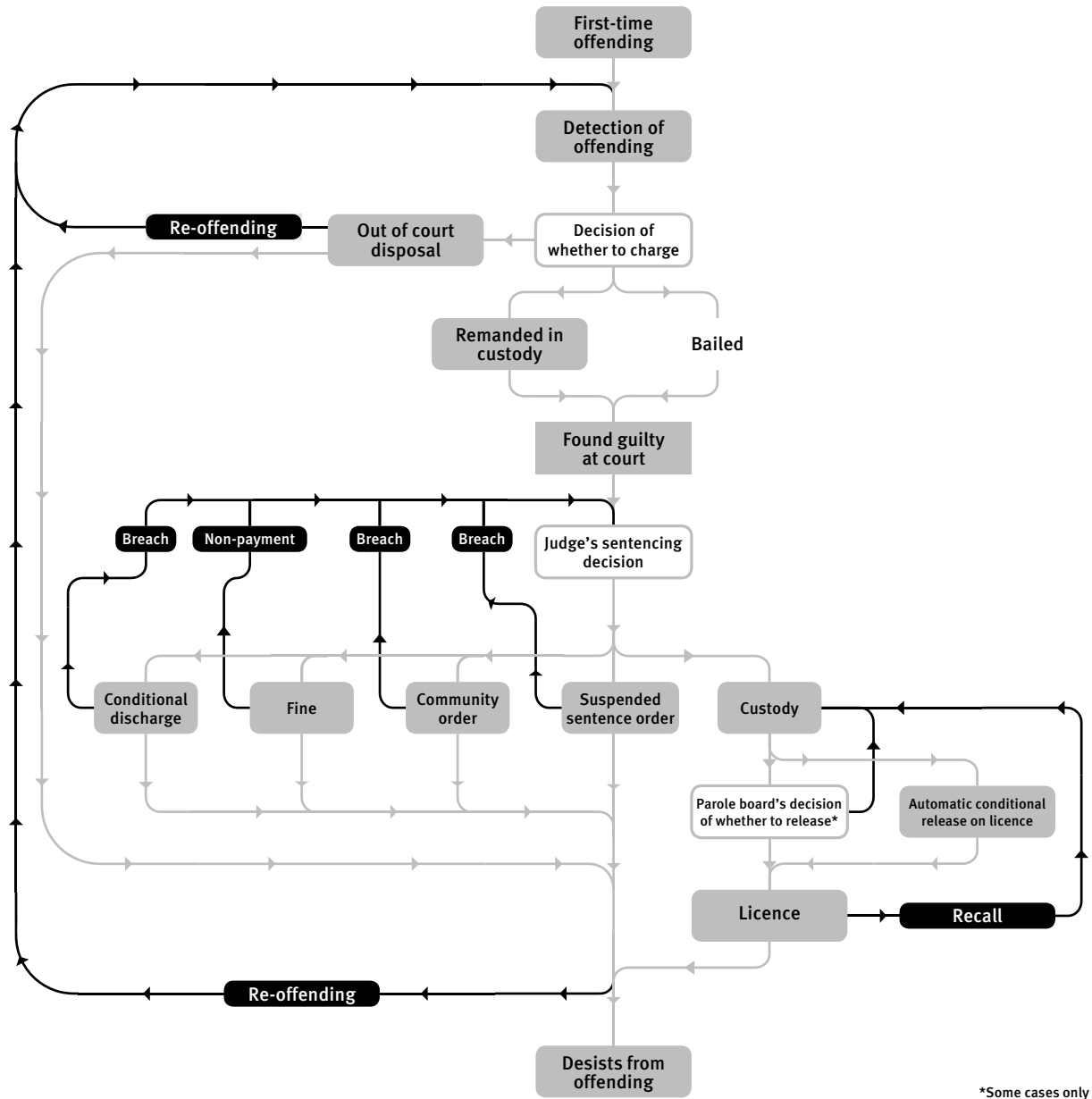
Non-sentencing factors are factors which do not relate to the sentencing practice of the courts, but which may affect the resources required to give effect to sentences. For example, the volume of offenders coming before the courts is a non-sentencing factor because greater sentencing volumes lead to greater pressure on correctional resources, even if the courts' treatment of individual cases does not change. Release provisions are another example of a non-sentencing factor: changes in the length of time spent in prison for a given custodial sentence have obvious resource consequences.

## Statistics on the effect of non-sentencing factors on resource requirements

It is straightforward to survey the available data on non-sentencing factors. However, it is extremely difficult to identify why changes have occurred, and to isolate the resource effect of any individual change or impulse to the system. This is because the criminal justice system is dynamic, and its processes are heavily interconnected.

Figure 1 shows a stylised representation of the flow of offenders through the criminal justice system. This figure demonstrates the interdependence of the system and how changes to any one aspect of the system will have knock-on effects in many other parts.

Figure 1



An example will clarify the complexity of the problem. Supposing from one year to the next, it was observed that there was a rise in severity of offences coming before the court. This would have a direct effect on correctional resources as offenders received longer and more onerous sentences. In turn, this change could interact with other non-sentencing factors, such as future breach rates, in complicated and unforeseen ways causing further knock-on effects on resources. Identifying the total resource effect – including both the direct and indirect effects – is therefore very difficult. At the same time, many other changes may be affecting

the criminal justice system, which could also affect non-sentencing factors such as breach rates. Unpicking all of these factors is therefore extremely complex.

The remainder of this report surveys the available data on non-sentencing factors. Due to the difficulties explained above, it makes no attempt to untangle the interactions between different non-sentencing factors to explain the causes of observed changes and their resource effects. However, for each factor surveyed the resource implications are discussed in qualitative terms.

The factors surveyed are:

- the volume of sentences and composition of offences coming before the courts;
- the rate of recall from licence;
- the rate at which court orders are breached;
- patterns of re-offending;
- release decisions by the Parole Board; and
- the number of offenders remanded in custody.

To maintain consistency with other Council documents, the consideration of resource effects will be limited to the prison, probation and youth justice services.

## Sources of data

All data presented in this report are the latest published statistics from the Ministry of Justice (MoJ) and its agencies. The MoJ publishes statistics throughout the year, which means that different publications may cover different time periods. Since the statistics in this report are taken from a variety of publications, they do not always cover the same time period.

The level of detail in which each non-sentencing factor can be surveyed differs depending on the amount of available data. The length of the discussion should therefore not be interpreted as an indication of the importance of each non-sentencing factor.

The majority of the statistics come from the following three publications, all published by the MoJ:

- Criminal Justice Statistics<sup>41</sup>;
- Offender Management Statistics Quarterly<sup>42</sup>; and
- Proven Re-offending Statistics Quarterly Bulletin<sup>43</sup>.

<sup>41</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/172773/criminal-justice-stats-sept-2012.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/172773/criminal-justice-stats-sept-2012.pdf)

<sup>42</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/192314/omsq-q4-oct-dec-2012\\_\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/192314/omsq-q4-oct-dec-2012__2_.pdf)

<sup>43</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/192631/proven-reoffending-jul-10-jun-11.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/192631/proven-reoffending-jul-10-jun-11.pdf)

## Volume of defendants sentenced and composition of offences coming before the courts

The volume of offenders who are sentenced by the courts and the composition of offences are two of the primary drivers of requirements for criminal justice resources: pressure can arise from greater volumes of sentences, or a more serious mix of offences.

A total of 1,229,827 defendants were sentenced in 2012, down six per cent from 1,312,739 offenders in 2011.<sup>44</sup>

Decreases in the volume of sentences came disproportionately from decreases in the number of indictable only and triable either way offences, which are the most serious categories of offences<sup>45</sup>. This is shown in Table 1.

**Table 1 – Number of offenders sentenced by offence category, 2011 and 2012**

Category of offence	2011	2012	Percentage change
Indictable only	19,681	17,972	-8.7%
Triable either way	322,952	288,896	-10.5%
Summary	969,962	922,830	-4.9%
<b>Total*</b>	<b>1,312,739</b>	<b>1,229,827</b>	<b>-6.3%</b>

\*The total shown is slightly higher than the sum of the categories due to a small number of cases for which the category of offence was unknown.

Since decreases in volumes came predominantly amongst more serious offence types, it is not surprising that the Crown Court saw a greater decline in sentencing volumes than magistrates' courts<sup>46</sup>. This is shown in Table 2.

<sup>44</sup> These figures refer to the number of defendants who were sentenced as opposed to the number of offences for which they were sentenced. These figures are different because a defendant may be sentenced for multiple offences on a single sentencing occasion.

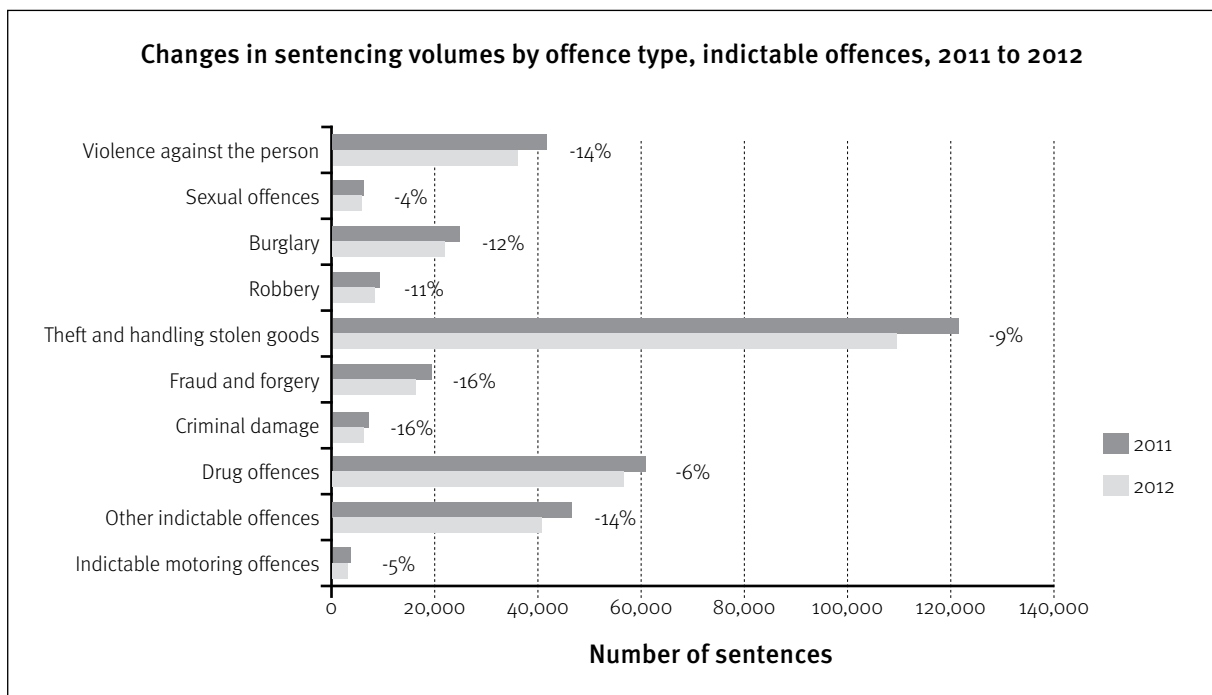
<sup>45</sup> Summary offences are almost always tried in magistrates' courts. Triable either way cases may be heard in either the Crown Court or magistrates' courts. Indictable only cases can only be heard in the Crown Court.

<sup>46</sup> Increasing sentencing volumes in the Crown Court are likely to be a result of changes in the severity of offences (e.g. more indictable and fewer summary), but are also influenced by allocation decisions. That is, there may have been changes in the propensity of magistrates to decline jurisdiction, or the propensity of defendants to elect for a Crown Court trial.

**Table 2 – Number of offenders sentenced by court type, 2011 and 2012**

Court type	2011	2012	Percentage change
Crown Court	102,164	90,564	-11.4%
Magistrates' courts	1,210,575	1,139,263	-5.9%
<b>Total</b>	<b>1,312,739</b>	<b>1,229,827</b>	<b>-6.3%</b>

The overall changes in sentencing patterns surveyed in these tables disguise significant differences between offence types. Chart 1 shows the change in sentencing volumes for indictable offences<sup>47</sup>, broken down by offence group.

**Chart 1**

There were decreases across all offence categories but the largest percentage decreases have come amongst the offences of fraud and forgery, and criminal damage, which both saw declines in volume of 16 per cent between 2011 and 2012. The smallest declines were for sexual offences and indictable motoring offences, which fell by four per cent and five per cent respectively.

<sup>47</sup> "Indictable offences" includes triable either way offences and indictable only offences.

Chart 2 shows the declines in sentence volumes amongst summary offences. Both summary motoring and summary non motoring offences saw drops in sentencing volumes of five per cent between 2011 and 2012.

**Chart 2**

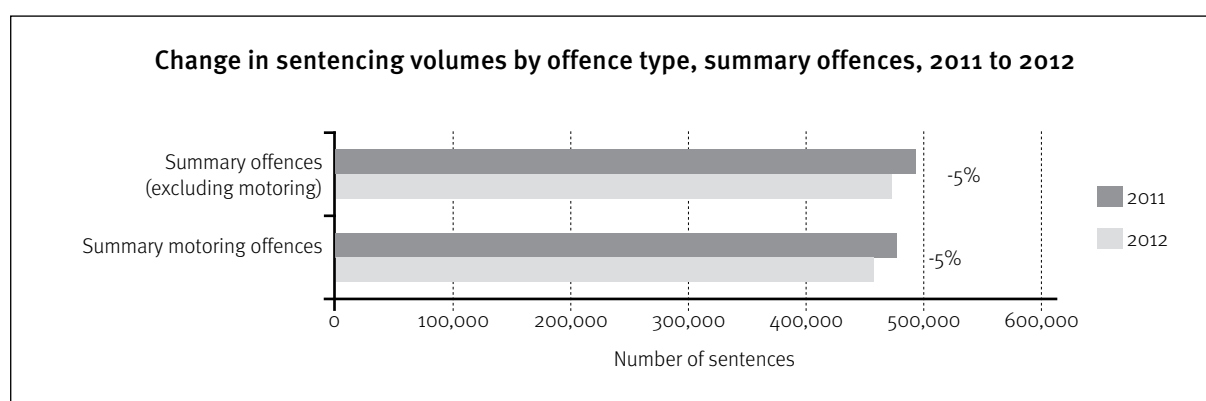


Table 3 shows the change in the use of the various disposal types between 2011 and 2012. The proportion of offenders receiving the various disposal types were little changed between 2011 and 2012. The most notable change was an increase in the proportion of fines of 1.6 percentage points, and a decline in the proportion of community orders of 1.3 percentage points.

**Table 3 - Volumes of disposals of various types, 2011 to 2012, all offenders**

	Proportion of sentences		Absolute number of sentences	
	2011	2012	2011	2012
Absolute discharge	0.6%	0.6%	8,189	7,529
Conditional discharge	6.6%	6.5%	86,341	79,911
Fine	65.3%	66.9%	856,808	823,298
Community order	13.4%	12.1%	175,525	149,328
Suspended sentence order	3.7%	3.6%	48,153	44,644
Immediate custody	8.1%	8.0%	106,170	98,047
Other	2.4%	2.2%	31,553	27,070

Further analysis of the data shows that amongst the custodial sentences, there was almost no change in the average custodial sentence length (ACSL), which stayed constant at approximately 1.2 years' custody in both 2011 and 2012.

Overall, these figures on the volumes of sentences and the disposal types used suggest that pressure on criminal justice system resources will decline. The average severity of sentencing was relatively stable between 2011 and 2012, but fewer sentences were passed. The changes in sentencing volumes were quite substantial – overall there was a six per cent decline in sentencing volumes – so a corresponding decrease in resource pressure may be expected.

## Recall

An offender is recalled to custody by the Secretary of State if they have been released from custody but breach the conditions of their licence or appear to be at risk of doing so. Since time served in custody is considerably more resource intensive than time spent on licence, recall decisions have a substantial resource cost.

The number of offenders in custody as a result of recall decreased by seven per cent to 5,140 between end March 2012 and end March 2013. This suggests that over the past year there has been a decrease in pressure on prison resources arising from the recall of offenders.

On the other hand, the number of offenders on post release supervision rose by five per cent to 42,162 at the end of 2012, from 40,049 at the end of 2011. This suggests that resource requirements for post-release supervision may be increasing.

## Breach

If an offender breaches a court order, they must return to court. Their revised sentence will typically add or augment requirements to the order, or involve custody. Breaches can therefore have significant resource implications.

Detailed data is not published on the number of offenders who breach community orders or suspended sentence orders or the outcomes of these breaches. However, data is published on the reasons for the termination of these orders. This is presented in the following two sections.

## Breaches of community orders

**Table 4 - Percentage of terminations of community orders by reason, 2011 and 2012**

	2011	2012
Ran their full course	55%	55%
Terminated early for:		
Good progress	11%	11%
Failure to comply with requirements	14%	14%
Conviction of an offence	10%	11%
Other reasons	10%	9%
<b>All community orders (=100%)</b>	<b>125,398</b>	<b>116,667</b>

Between 2011 and 2012, there was almost no change in the outcome of community orders. There was a slight increase in the number of community orders which were terminated due to the conviction for an offence, and a slight decline in terminations for other reasons.



## Breaches of suspended sentence orders

**Table 5 - Percentage of terminations of suspended sentence orders by reason, 2011 and 2012**

	2011	2012
Ran their full course	57%	57%
<b>Terminated early for:</b>		
Good progress	10%	12%
Failure to comply with requirements	11%	11%
Conviction of an offence	15%	15%
Other reasons	7%	6%
<b>All suspended sentence orders (=100%)</b>	<b>46,960</b>	<b>46,314</b>

Note percentages may not sum to 100 per cent due to rounding

Suspended sentence orders (SSOs) involve a number of requirements that are managed by the probation service. These may include, for instance, supervision requirements and unpaid work requirements, amongst others. If these requirements do not run their full course, the order is said to be terminated early. However, it should be noted that the termination reflects an end of probation service involvement with the order, and does not necessarily represent an end of the order itself. For instance, if the order is terminated for good process, this means that probation service involvement has terminated early, but the custodial term will remain eligible for activation throughout the whole suspension period.

Between 2011 and 2012, there was no change in the proportion of SSOs which ran their full course. However, there was an increase in the proportion terminated early for good progress, from 10 per cent of all terminations in 2011 to 12 per cent of all terminations in 2012. This was offset to some extent by a decline in the proportion of SSOs terminated for 'other reasons'.

Overall this data suggests that patterns of breaches of community orders or suspended sentence orders are not a significant source of changing pressure on criminal justice system resources.

## Patterns of re-offending

The effect of patterns of re-offending on resources in the criminal justice system is a vast topic which cannot be comprehensively covered in this report. The scope of this section is limited to identifying aggregate changes in proven re-offending, which is the primary conduit through which re-offending impacts on correctional resources.

The figures in this section are the latest statistics published by the MoJ. They are based on tracking the proven re-offences of the cohort of adult offenders who were discharged from custody, otherwise sanctioned at court, received a caution, reprimand or warning or tested positive for opiates or cocaine in the period July 2010 to June 2011. In what follows, this group will be referred to as 'the latest cohort'. The group of such offenders from the period July 2009 to June 2010 will be referred to as 'the previous year's cohort'<sup>48</sup>.

The proven re-offending rate for the latest cohort increased by 0.6 percentage points to 25.5 per cent when compared to the previous year's cohort. The re-offending rate is a measure of the percentage of offenders in the cohort who commit proven re-offences in a 12 month follow-up period, with a further six months for offences to be proved.

The average number of re-offences per re-offender in the latest cohort was 2.88, which represents an increase of 2.4 per cent compared to the previous year's cohort. This is a measure of the average number of proven re-offences committed by offenders

in the cohort amongst those offenders who re-offend.

Finally, the re-offending rate for severe offences in the latest cohort increased by 0.22 percentage points to 2.74 per cent. This is a measure of the proportion of offenders in the cohort who are proven to commit a 'serious' re-offence. Serious re-offences are any proven re-offence within a list of the most serious offences.

The MoJ also use a statistical methodology to produce a measure of progress in reducing re-offending, which makes adjustments for the changing profile of offenders in each year's cohort. This provides a better measure of progress in reducing re-offending, because without such adjustment, changes in re-offending from year to year could simply be a result of a different offence mix or demographic mix in the cohort of offenders being tracked. The measure suggests that part of the increase which was observed in proven re-offending may have been due to a change in the mix of offenders in the cohort. However, even after adjusting for this change, proven re-offending still rose.

Overall, these figures suggest that resource pressures from re-offending increased amongst the most recent cohort, relative to the previous year's cohort.

## Release decisions by the Parole Board

In recent years, changes to release provisions have meant that the Parole Board

<sup>48</sup> Further details of the definitions and measurement of re-offending statistics can be found here: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/192407/proven-reoffending-definitions-measurement.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/192407/proven-reoffending-definitions-measurement.pdf)

makes release decisions in fewer cases than previously. The Parole Board is now responsible for making release decisions for offenders who have been recalled to custody and are ineligible for 28 day fixed-term recall, and offenders who have received indeterminate sentences. They also make release decisions in a declining number of legacy cases for offenders who were given determinate sentences under historical provisions. The primary resource impact of release decisions is on the prison service.

The release rate for determinate sentence prisoners rose by three percentage points between 2010/11 and 2011/12, from 19 per cent to 22 per cent. These cases are legacy cases, and over the same time horizon, their volume reduced by 44 per cent. As a result, it is difficult to determine whether this is representative of a shift in the Parole Board's behaviour towards release, or reflective of a change in the composition of caseload.

The release rate for life sentence prisoners who have completed their tariff and prisoners detained at Her Majesty's pleasure was little changed between 2010/11 and 2011/12, at 15 per cent and 16 per cent respectively.

For offenders on indeterminate sentences for public protection (IPPs) who had completed their tariff, the release rate rose from six per cent in 2010/11 to 14 per cent in 2011/12. As a result, release rates amongst IPP prisoners and life sentence prisoners are now much more similar than they have been in the past. It is unclear why such an increase in release rates amongst IPP prisoners has been observed, and the Parole Board has not yet conducted any formal research into this topic.

The Parole Board has not made any changes to the approach it takes when considering IPP cases, nor have there been any changes to the statutory test for release, so these possibilities can be ruled out. One obvious factor contributing to the increase is the fact that in each year since the IPP sentence was introduced in 2005 more prisoners have reached their tariff dates, completed offending behaviour programmes to reduce their risk and successfully spent periods in open prison, thereby becoming eligible for release.

Due to the increase in the release rate amongst IPP prisoners, these figures suggest that changes in release rates by the Parole Board may be exerting downward pressure on prison service resources.

## Remand

The number of offenders in custody on remand decreased by 10 per cent to 10,768 by 31 March 2013, from 11,907 on 31 March 2012 which suggests decreasing pressure on resources from offenders on remand.

The remand population can be broken down into the untried population and the convicted but unsentenced population. Of the two, the greatest percentage decline was amongst the untried population, which decreased by 16 per cent, relative to a decrease of six per cent amongst the convicted but unsentenced population.

## Annex E: Summary of activities by legislative function

### Mandatory requirements for annual report

- Report on the exercise of the Council's functions during the year **[s.119]**.
- Summary of monitoring information of operation and effect of guidelines **[s.128(3)]**.
- Sentencing factors report – an assessment of the effect which any changes in the sentencing practice is having or likely to have on resources required for:
  - the provision of prison places;
  - probation provision; and
  - the provision of youth justice services **[s.130]**.
- A non-sentencing factors report – an assessment of any significant quantitative effect, or significant change in quantitative effect – which non-sentencing factors are having, or are likely to have, on the resources needed or available for giving effect to sentences imposed by courts. Non-sentencing factors are factors which do not relate to the sentencing practice of the courts and include:
  - recalling of persons to prison;
  - breaches of orders (community orders, Suspended Sentence Orders, youth rehabilitation orders);
  - patterns of re-offending;
  - decisions or recommendations for release made by the Parole Board;
  - early release under discretionary powers of persons detained in prison; and
  - remanding of persons in custody **[s.131]**.

### The Council's functions

With regard to guidelines, the Council:

- must prepare guidelines about guilty pleas **[s.120(3)(a)]**; this is planned for development and consultation during 2013/14;
- must prepare guidelines about the rule of law as to the totality of sentences **[s.120(3)(b)]**; this came into effect in the Sentencing Council's definitive guideline on allocation, offences taken into consideration and totality on 11 June 2012;
- may prepare guidelines about any other matters with regard to statutory matters in s.120(11) **[s.120(4) and s.122]**; and

- must consult when preparing guidelines **[s.120(6)]** and prepare resource implications **[s.127]**. All Sentencing Council guidelines have been subject to consultation and associated resource implications published.

With regard to monitoring, the Council must monitor the operation and effect of its sentencing guidelines and consider what conclusions can be drawn from the information obtained, in particular about:

- the frequency with which, and extent to which, courts depart from sentencing guidelines;
- factors which influence the sentences imposed by courts;
- the effect of the guidelines in promoting consistency; and
- the effect of guidelines on the promotion of public confidence in the criminal justice system **[s.128]**.

With regard to promoting awareness, the Council must publish at such intervals as it considers appropriate:

- information regarding the sentencing practice of the magistrates in relation to each local justice area; and
- information regarding the sentence practice of the Crown Court in relation to each location at which the Crown Court sits **[s.129(1)]**.

The Council may also promote awareness of matters relating to the sentencing of offenders, in particular:

- sentences imposed;
- costs of different sentences and their relative effectiveness in preventing re-offending; and
- the operation and effect of guidelines. **[129(2)]**.

With regard to resources, the Council:

- may provide the Lord Chancellor with a non-sentencing factors report, and may publish that report **[s.131(2)]**; and
- has a duty to prepare a report where the Lord Chancellor refers any government policy or proposal likely to have significant effect on resources for prison, probation or youth justice services **[s.123]**.



Copies of this report may be downloaded from our website: [www.sentencingcouncil.org.uk](http://www.sentencingcouncil.org.uk)

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