

Executive Summary

The Sentencing Council for England and Wales launched the Crown Court Sentencing Survey on 1 October 2010. It collects information directly from judges on the factors taken into account when they impose a sentence at the Crown Court.

This publication presents the findings of the survey for sentences passed by the Crown Court in 2011. The presentation of the results focuses on exploring the relationship between the factors taken into account in sentencing and the final sentence imposed, to help improve understanding of the sentencing process. The findings shown are across all offences, except where otherwise specified.

Offence category

The first factor that a judge will determine when sentencing an offender is the offence category, which is a measure of the harm caused and the culpability of the offender. The results for 2011 show that an offender being sentenced for an offence involving a high level of harm and a high level of culpability is more likely to be sentenced to immediate custody and for a longer period than an offender who committed a similar offence but caused less harm and is shown to be less culpable.

- In 2011, 78 per cent of category 1 offenders were sentenced to immediate custody. This compares to 64 per cent being sentenced to immediate custody for category 2 offenders, 43 per cent for category 3 offenders and 26 per cent for category 4 or lower offenders.
- Of those receiving immediate custody, after applying any reductions for a guilty plea, the average custodial sentence length was 3 years and 9 months for a category 1 offender, and 1 year 6 months for a category 4 or lower offender.

Previous convictions taken into account

Where the offender has previous convictions that are either recent, or considered relevant, to the offence being sentenced, the judge may decide to take these into account. The results for 2011 show that the likelihood of an offender having previous convictions that are considered recent and relevant enough to influence the sentence they receive will generally depend on the type of offence being sentenced. Where an offender does have recent and relevant previous convictions, that offender is more likely to be sentenced to immediate custody, with this likelihood increasing as the number of previous convictions increases.

- Offenders convicted of sexual offences were least likely to have previous convictions that were considered recent and relevant to the offence being sentenced. In 25 per cent of sentences for sexual offences, the offender had at least one previous conviction taken into account when determining their sentence.

- Offenders convicted of theft offences were most likely to have 10 or more previous convictions that were considered recent and relevant to the offence being sentenced. In 17 per cent of cases of theft, this number of previous convictions had been taken into account to determine the sentence.
- Where no previous convictions were taken into account, 46 per cent of offenders were sentenced to immediate custody. This increased to 64 per cent for offenders with between one and three previous convictions taken into account and over 77 per cent for offenders with four or more previous convictions taken into account.

Aggravating and mitigating factors

Aggravating and mitigating factors are other factors relating to the case or the offender that provide the context to how and why the offence was committed. In each case, these factors will have differing levels of importance in determining the sentence, depending on the specific circumstances of that case. The survey only captures the number of aggravating and mitigating factors and what they were, not their relative importance. Aggravating factors tend to be related to the context of the offence, therefore the nature of aggravating factors will vary according to the type of offence being sentenced. Unlike aggravating factors, mitigating factors include factors related to the circumstances of the offender. These also vary depending on the nature of the offence being sentenced, but to a lesser extent. The results for 2011 show that a case with a number of aggravating factors is more likely to be sentenced to immediate custody and for a longer period of time. The opposite is true of mitigating factors, where the likelihood of immediate custody, and the sentence length imposed, both decrease with the number of mitigating factors present.

- Of those offenders with four or more aggravating factors present but no mitigating factors, 99 per cent were sent to immediate custody, whilst for offenders with four or more mitigating factors present but no aggravating factors, 13 per cent were sentenced to immediate custody.
- Of those offenders sentenced to immediate custody, after applying any reductions for a guilty plea, the average custodial sentence length received by offenders with four or more aggravating factors present but no mitigating factors, was 4 years 11 months. This compares to an average custodial sentence length of 1 year 6 months for offenders with no aggravating factors present and four or more mitigating factors present.
- The offence group of theft, dishonesty, burglary and fraud captures the highest volume of offences. In cases of theft, dishonesty, burglary and fraud, the most frequently recorded aggravating factor present was that the offender had shown an element of pre-planning, whilst the most frequently recorded mitigating factor was that the offender showed genuine remorse for the offence.

Guilty pleas

Offenders can enter a guilty plea at various stages in the court process. The court must take account of this and will usually apply a reduction to the sentence length. The reduction applied will depend on the stage of the process at which the plea was made and the circumstances in which the plea was made, as guided by the Sentencing Guidelines Council guideline, *Reductions for a Guilty Plea*. The results for 2011 show that the majority of offenders who plead guilty do so early on in the court process and for those who plead at one of these early stages, a higher reduction is usually granted. For the smaller volume entering a plea later in the process, the level of reduction granted is less.

- In 2011, 86 per cent of offenders sentenced at the Crown Court pleaded guilty to the offence.
- Most frequently, where a guilty plea was made, the plea was entered at an early stage of the proceedings, with 74 per cent of offenders pleading guilty either before or at the Plea and Case Management Hearing (PCMH).
- Where a plea was entered either before or at the PCMH, 88 per cent were granted the highest level of reduction. A further 9 per cent were granted a reduction of between 21 and 32 percent; and 3 per cent were granted a reduction of 20 per cent or less.
- In 64 per cent of cases, the plea was entered at the first reasonable opportunity.

Departures from the Sentencing Council guideline, *Assault Definitive Guideline*

Courts are not required to stay within the relevant category range defined by sentencing guidelines, however they are under a legislative duty to impose a sentence which is within the offence range specified by the guideline, unless it is in interests of justice to depart from the range. The offence range is the full spectrum of sentences over all offence categories. The first Sentencing Council guideline came into force on 13 June 2011, covering offences of assault. The results for 2011 show that:

- From the introduction of the new Sentencing Council guideline, *Assault Definitive Guideline*, on 13 June 2011, until the end of 2011, 96 per cent of sentences for offences covered by the guideline fell within the relevant offence range, 1 per cent fell below and 3 per cent fell above.

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Acknowledgements

The Council would like to express its gratitude to the judges and court staff working at all Crown Court centres across England and Wales who have been involved in the Crown Court Sentencing Survey.

Their continued efforts and participation have enabled the Council to collect a wealth of new and useful data that will enable the Council to:

- recognise where changes are needed in the development, implementation and operation of sentencing guidelines;
- improve public confidence in sentencing by highlighting the key considerations made when sentencing; and
- gain a better understanding of sentencing practice at the Crown Court.

The Council would also like to thank everyone involved in the survey for their cooperation and assistance at times when changes have had to be made to the survey and its administration.

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Introduction

The Crown Court Sentencing Survey (CCSS) began on 1 October 2010. It collects information directly from judges on the factors taken into account when they impose a sentence at the Crown Court. The survey was primarily designed to collect the information required by the Council to fulfil its legislative duty under section 128(1) of the Coroners and Justice Act 2009, to “monitor the operation and effect of its sentencing guidelines”. However, it has also been recognised as an important source of new data to supplement the range of criminal justice data already available and for improving understanding of how sentences are determined.

This is the second publication of data from the survey, reporting on the survey data for 2011, covering the period 1 January 2011 to 31 December 2011. This follows on from the first publication which was an experimental publication looking at the first six months of data.¹ Since the first publication, improvements have been made to all areas of the survey. These have led to an improvement in data quality and allowed more of the data to be utilised. Details of the improvements made and ongoing work are provided on page 32.

The results presented in this publication have been adjusted to reflect national sentencing levels. Details of the methodology used are provided on page 30.

For those readers who are less familiar with the sentencing process, a supplementary document, *A Guide to CCSS Statistics*, is provided alongside this release.² This document provides background information on the factors that a judge will consider when deciding on the appropriate sentence. It is recommended that the reader refers to this document before or in conjunction with this release.

It is important to note that **every criminal case is unique**. There may be considerations other than those expressed here, or collected in the Crown Court Sentencing Survey that have an impact on the sentence.³ Furthermore, although the same factors may be present in two cases of the same offence, the specific circumstances of each case may mean that the factors are not given the same importance in both cases. It has not been possible to capture every factor considered by a judge when sentencing and the survey does not aim to do this. What it does aim to do is to shed light on the key considerations at sentencing and their influence on the sentence imposed.

1 The first Crown Court Sentencing Survey publication can be accessed on the Council's website at:
<http://sentencingcouncil.judiciary.gov.uk/facts/sentencing-survey.htm>

2 *A Guide to CCSS Statistics* can be accessed on the Council's website at:
<http://sentencingcouncil.judiciary.gov.uk/facts/sentencing-survey.htm>

3 For example, the requirements attached to a community order might differ depending on the opinion of the court as to which are the most suitable for the offender.

The Crown Court Sentencing Survey Background

The survey is a census, not a sample survey. For every *new* criminal case sentenced at the Crown Court, the sentencing judge is expected to complete a survey form. When completing the form, the judge is required to consider only the **principal offence** (most severe offence) being sentenced on that occasion. Where the sentence is not a *new* sentence, the judge is not required to complete a form. For example, if the sentence resulted from the breach of a previous sentence, this sentence would not be *new* and therefore a form would not be completed.⁴

Over the period covered by this release, the survey data were collected using nine different **offence type** forms:

- arson and criminal damage;
- assault and public order;
- driving offences;
- drug offences;
- offences causing death;
- other offences;
- robbery and assault with intent to rob;
- sexual offences; and
- theft, dishonesty, burglary and fraud⁵.

Only one form is completed, depending on the nature of the **principal offence** being sentenced. The different offence type variations reflect the fact that some of the factors taken into account will be specific to the type of offence committed; therefore, each offence type has its own form.

To limit the burden placed on judges, each form consists of a single side of paper. Therefore, not all considerations will be captured by the survey. The key areas covered are:

- the **offence category** (a measure of the **harm** caused and the blameworthiness, or **culpability**, of the offender);
- the number of recent and relevant previous convictions of the offender;
- **aggravating** and **mitigating** factors present in the case;⁶ and
- any reduction given for a **guilty plea**, where a guilty plea was entered.

For definitions and further details on each of the factors covered by the survey, please refer to the document *A Guide to CCSS Statistics* which can be found on the Council's website.⁷ For links to copies of the forms, please refer to page 35.

4 There is a limited number of court orders, which if breached, do receive a new sentence. In these cases, a form would be completed. Further details are provided in the guidance notes on the back of the survey forms, to which a link is provided in the further information section on page 35.

5 In January 2012, the Sentencing Council introduced a new definitive sentencing guideline for burglary offences. At this point, burglary offences were removed from the theft, dishonesty, burglary and fraud form, and transferred to a new survey form.

6 In new Sentencing Council guidelines introduced after May 2011, aggravating factors are referred to as *factors increasing seriousness* and mitigating factors are referred to as *factors reducing seriousness or reflecting personal mitigation*.

7 <http://sentencingcouncil.judiciary.gov.uk/facts/sentencing-survey.htm>

The results presented have been split into the following sections:

Section 1: Results for England and Wales, 2011

The first section provides a national overview of the results of the survey in 2011. This section aims to show which factors are commonly taken into account in sentencing, and the general effect of these factors on the sentence imposed.

Section 2: Departures from Sentencing Council Guidelines

This section provides an overview of the operation of the first Sentencing Council guideline *Assault Definitive Guideline*. It considers the proportion of sentences falling within the new guideline offence ranges for sentences passed since the guideline came into force on 13 June 2011.

Section 3: Further Information

This section provides background information on the quality assurance process and how the survey data were analysed to produce the results presented; the improvements that have been made since the first publication; and the work that analysts at the Council are continuing to do to improve the survey further.

Section 1: Results for England and Wales, 2011

This section presents the findings from the survey responses in 2011. Some factors vary substantially across offence; only where it has been considered appropriate to aggregate across offence types has this been done.

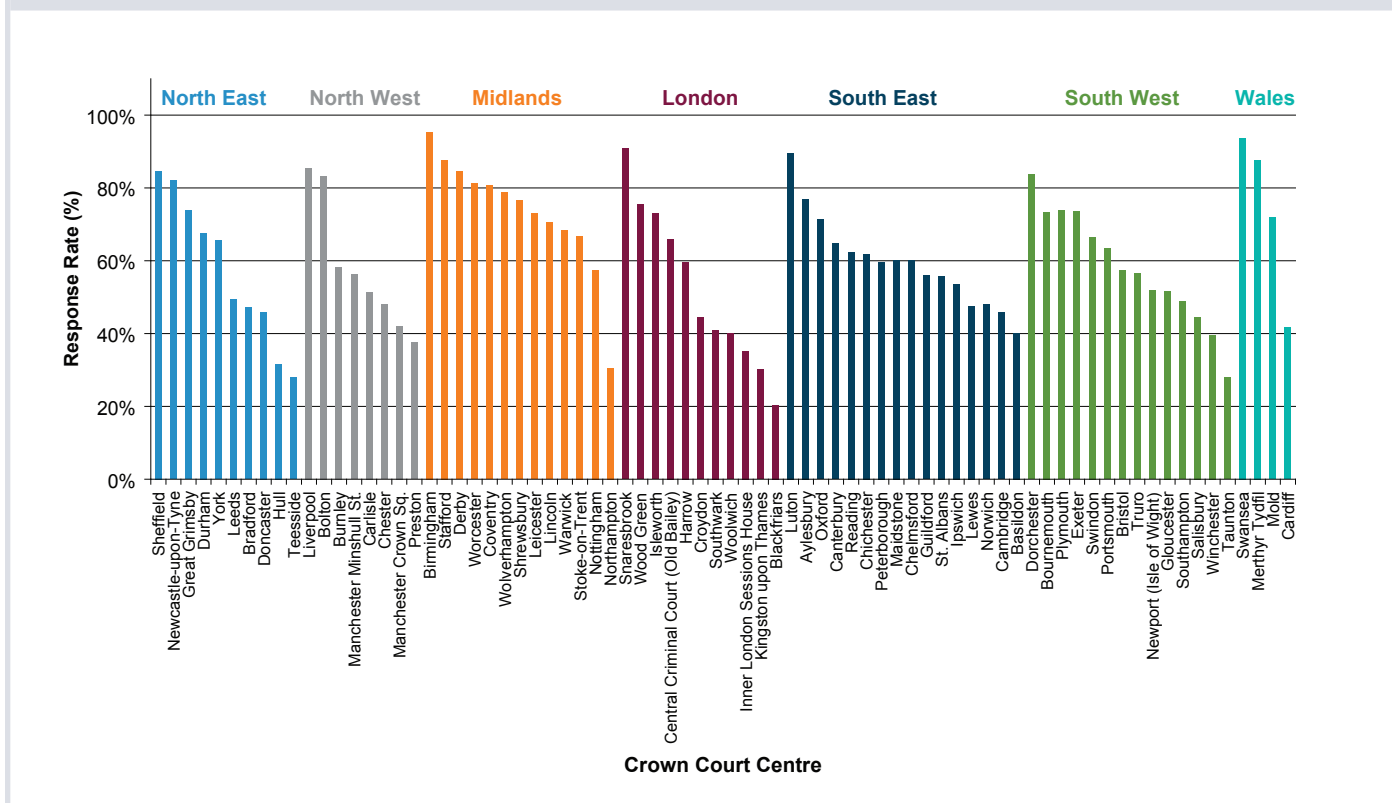
1.1 Survey response rates

Across all Crown Court locations in England and Wales, between 1 January 2011 and 31 December 2011, a survey form was completed for 62,449 sentences. Of these, it has been possible to confirm that 93 per cent of the forms returned relate to the principal offence through comparison with the administrative database, CREST.⁸ The other 7 per cent have been excluded from the results presented as it is not possible to say whether these forms relate to the principal offence.

In 2011, there were 95,032 sentences passed for principal offences at the Crown Court.⁹ For those forms that have been included in the results, this represents an overall national response rate of 61 per cent. However, response rates by location vary from 20 per cent to 95 per cent.

Chart 1.11 shows the distribution of response rates across the court locations, separated by regions.

Chart 1.11: Response rates by Crown Court location, 2011

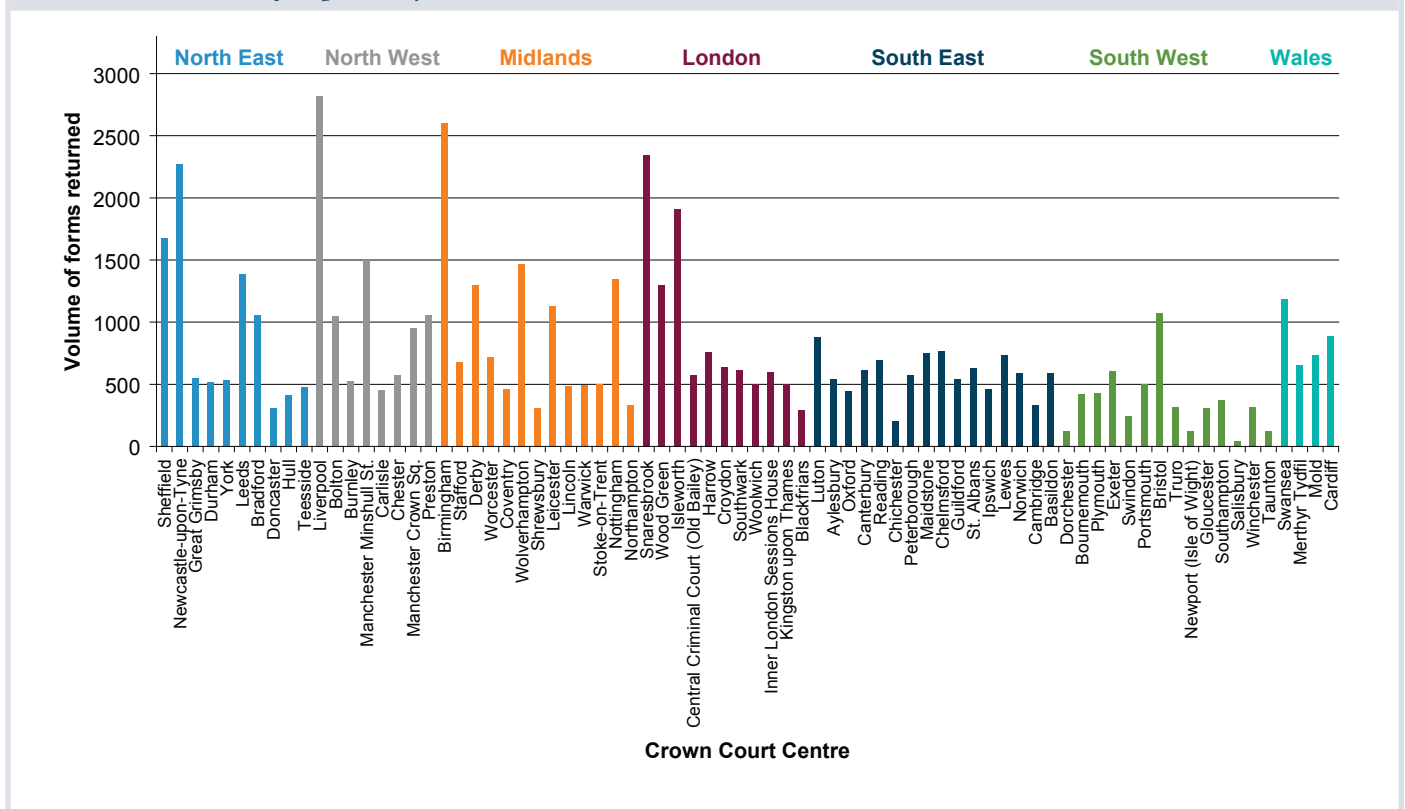


⁸ CREST (Crown Court Electronic Support System) is the case management system used by the Crown Court for tracking case progression.

⁹ This differs from the total number of sentences reported in the Ministry of Justice publication *Criminal Justice Statistics Annual, 2011*. Further details are provided on page 33.

The volume of sentences passed at each Crown Court location will vary. Even if the response rate of a Crown Court location is not particularly high, it may still represent a significant proportion of the overall set of forms analysed. The actual volumes of forms returned by each court in 2011 are shown in chart 1.12.

Chart 1.12: Volume of responses by Crown Court Location, 2011



Using information from the Ministry of Justice on all sentences passed at the Crown Court in England and Wales in 2011, the sentences for which a survey form was returned were compared to the full population of sentences. This showed that the survey responses provide a good representation of the national picture of sentencing at the Crown Court in 2011. Further details are provided on page 30.

1.2 Offence category (level of harm and culpability)

Background¹⁰

The offence category is a measure of the seriousness of the offence and is determined by an assessment of the harm caused, or potentially caused, by the offender when committing the offence, and how much the offender was to blame for the offence committed (the offender's culpability). The offence category measures the scale of seriousness of the offence being sentenced *in comparison to other offences of the same type*. This means that the offence category does not give any information about the seriousness of an offence relative to an offence of another type, even if the categories of the two offences are the same. For example, a category 1 assault cannot be compared to a category 1 theft.

The sentencing guideline for any particular offence defines a set of offence categories which are based on the **culpability** of the offender and the **harm** caused.¹¹ For each category, the guideline provides a range of appropriate sentences.

For any specific offence, the most serious cases are categorised as **category 1** offences. These relate to offences where a **significant level of harm** was caused, or potentially caused, and the offender had a **high level of culpability**.¹² Less serious offences, where lesser harm was caused or the offender had lower culpability, are categorised by a higher category number. Therefore a category 2 offence is considered less serious than a category 1 offence and so on. The total number of offence categories for any particular offence will depend on how many categories are defined in the relevant sentencing guideline. Most guidelines have three or four categories; however, some have more, for example some offences in the guideline on fraud have five categories.

Not all offences have a sentencing guideline. For those offences with a guideline, the Crown Court Sentencing Survey form captures the offence category. Where it is felt that the offence falls between two adjacent categories, the judge is requested to tick both categories.¹³ If a guideline does not exist for the offence being sentenced, the judge is requested to tick "no guideline" on the form.

This section shows how the offence category influences the final sentence received by an offender. Only offences for which an offence specific guideline currently exists have been included in the results – these account for approximately 40 per cent of sentences at the Crown Court. For a full list of the offences included, please refer to Annex A.1 on page 38.

Summary: Relationship between the offence category and sentence outcome

There is a clear relationship between the severity of the sentence imposed and the level of harm and culpability, as reflected by the offence category. An offender being sentenced for an offence involving a high level of harm and high level of culpability is more likely to be sentenced to immediate custody and for

¹⁰ See page 5 of *A Guide to CCSS Statistics*

¹¹ On most of the survey forms, the term "level" is used rather than "category".

¹² For some offences, only one of the parameters, harm or culpability, is used to determine the category. For example, in cases of theft, the categories are based purely on an assessment of the harm caused.

¹³ More than one category was ticked on 3 per cent of forms. Where this occurred, the category which indicates the highest harm and culpability out of those ticked has been assumed to be the most appropriate.

a longer period than an offender who committed a similar offence but caused less harm and is shown to be less culpable for the offence. For example, 78 per cent of cases classified at the highest category were sent to immediate custody with an average custodial sentence length of 3 years 9 months, compared to 26 per cent receiving immediate custody for a category 4 or lower offence, with an average custodial sentence length of 1 year 6 months.

Findings

- In 2011, 18 per cent of offenders sentenced for an offence with a sentencing guideline were sentenced for a category 1 offence – an offence involving a high level of harm and a high level of culpability in comparison to offences of the same type; 16 per cent were sentenced for an offence that was category 4 or lower – an offence involving the lowest levels of harm and culpability.
- In 2011, 78 per cent of category 1 offenders were sentenced to immediate custody. This compares to 64 per cent being sentenced to immediate custody for category 2 offences, 43 per cent for category 3 offences and 26 per cent for category 4 or lower offences.
- Of the category 1 offenders sentenced to immediate custody, in 5 per cent of cases, sentences of Imprisonment for Public Protection (IPP) were imposed with an average minimum term tariff of 7 years and 8 months. This compares to 1 per cent of category 4 or lower offenders sentenced to immediate custody who received an IPP, with an average minimum term tariff of 4 years 11 months.
- Of those receiving immediate custody, before applying any reductions for a guilty plea, the average custodial sentence length was 4 years and 7 months for a category 1 offender, and 1 year 10 months for a category 4 or lower offender.
- After applying any reductions for a guilty plea, the average custodial sentence length was 3 years 9 months for a category 1 offender, and 1 year 6 months for a category 4 or lower offender.

Chart 1.21 shows the proportion of offenders falling into each offence category. For each offence category, chart 1.22 describes the sentence outcomes imposed.

The likelihood of being sentenced to immediate custody decreases with the category of offence. Of category 1 offenders, 78 per cent were sentenced to immediate custody. This compares to 64 per cent of category 2 offenders, 43 per cent of category 3 offenders and 26 per cent for category 4 or lower offenders.

Chart 1.21: The category of offence committed by offenders convicted of offences for which sentencing guidelines exist, Crown Court, 2011

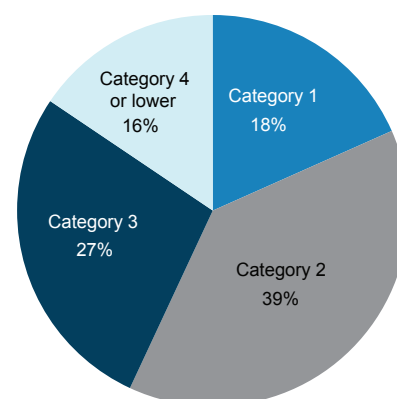
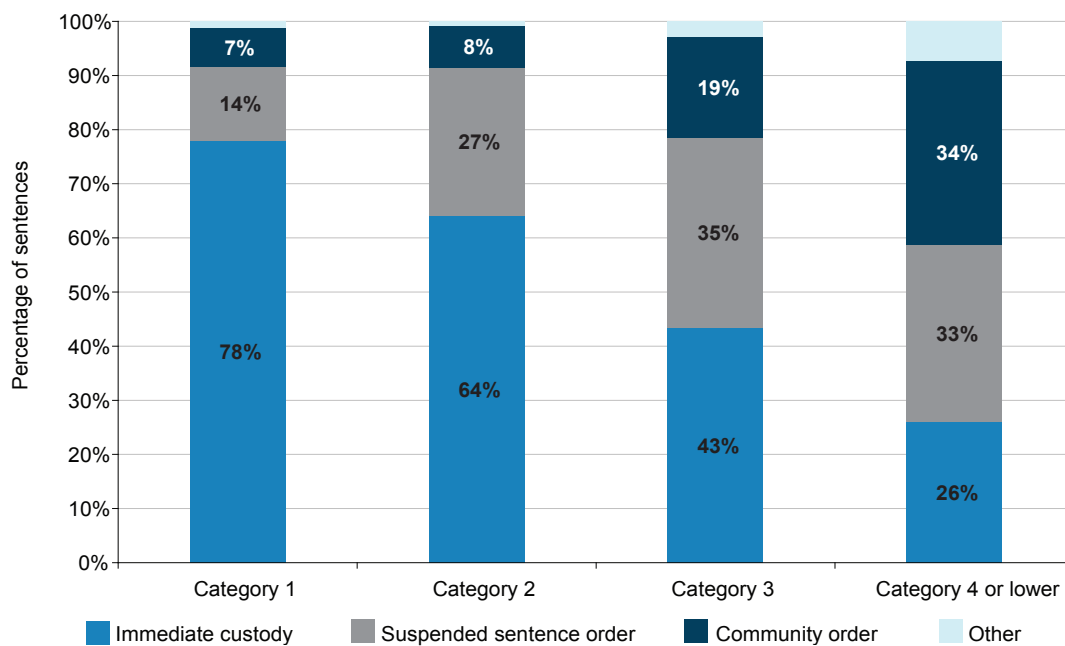


Chart 1.22: Sentence outcomes received by offenders convicted of offences for which sentencing guidelines exist, broken down by category of offence, Crown Court, 2011

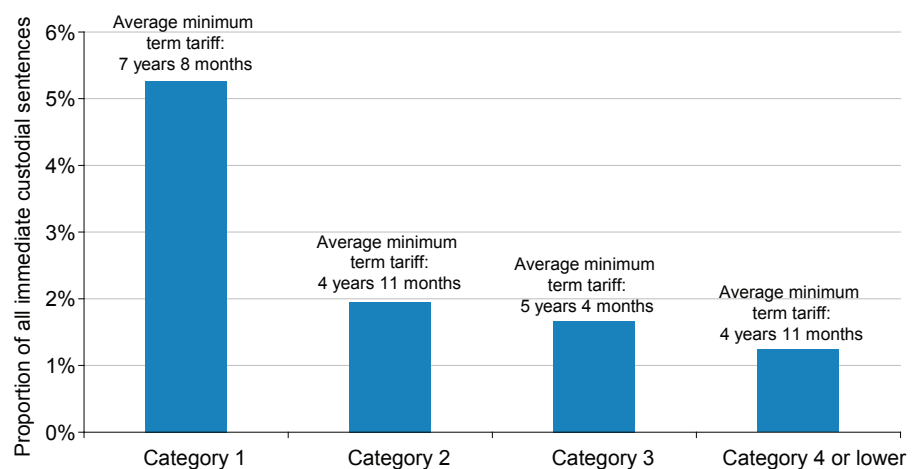


Where the outcome was immediate custody, this includes some sentences of Imprisonment for Public Protection (IPP).

When sentencing an offender to an IPP, the judge will set the minimum length of time which the offender must serve in prison – this is known as the minimum term tariff of the IPP. After the minimum term, only if the offender is assessed as no longer being a risk to the public, will they be released from prison.

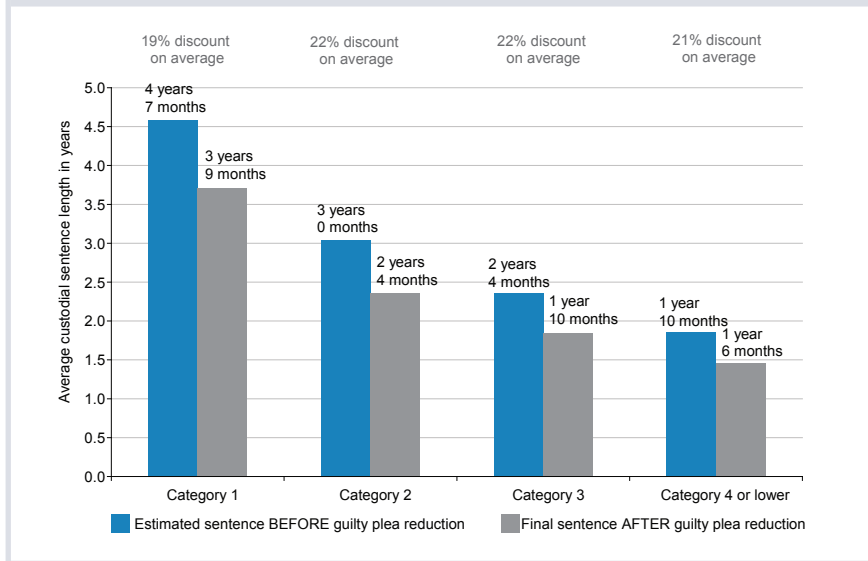
Of those sentenced to immediate custody, chart 1.23 shows the proportion that were sentences of Imprisonment for Public Protection (IPPs) and the average minimum term tariff in each case. This shows that the proportion of IPPs is much higher for category 1 offences, making up 5 per cent of all immediate custodial sentences imposed. For all other offence categories, the proportion and average minimum term tariffs are similar.

Chart 1.23: The percentage of all immediate custodial sentences which are sentences of Imprisonment for Public Protection (IPP), Crown Court, 2011



To date, only a small proportion of offenders sentenced to an IPP have been released at the end of the minimum term tariff. Since the introduction of IPPs, each year, less than 10 per cent of on/post tariff parole board hearings have resulted in the offender being released.¹⁴ Therefore, the actual amount of time spent in prison is likely to be higher than the averages in chart 1.23 suggest.

Chart 1.24: Average custodial sentence length received by offenders sentenced to immediate custody for offences for which sentencing guidelines exist, broken down by category of offence, Crown Court, 2011



Where the offender was sentenced to immediate custody but the resulting sentence was not an IPP or a life sentence, chart 1.24 shows the average custodial sentence length received. The final sentence outcome **after** applying any reductions for a guilty plea, an estimate of the sentence outcome **before** applying any guilty plea reductions, and the average guilty plea reduction are shown in this chart.

For sentences where the outcome was an immediate custodial sentence, excluding IPPs and life sentences, the average custodial sentence length also decreases with the category of the offence. The

average custodial sentence length for category 1 offenders, after applying any reductions for a guilty plea, was 3 years 9 months, compared to 2 years 4 months for a category 2 offender and under 2 years for both category 3 and category 4 or lower offenders.

Other considerations

The number of categories used to describe the level of harm and culpability varies across offences. Most offences have a total of either three or four offence categories; however, there are some, particularly some fraud and some sexual offences, which have more than four categories. The results presented above do not try to normalise all offences on to a single scale of harm and culpability, they just report the categories as completed on the survey forms.

¹⁴ The Parole Board for England and Wales, Annual Report and Accounts 2010/11

1.3 Number of previous convictions taken into account

Background¹⁵

Not all previous convictions will be taken into account when determining the sentence. The court must have regard to the relevance of the previous conviction to the current offence and the time that has elapsed since the previous conviction.¹⁶ Where an offender has previous convictions which are very different in nature to the current offence, or where they occurred a long time ago, they are unlikely to have a significant effect on the sentence. The previous convictions that the judge decides to treat as an aggravating factor, increasing the sentence imposed, are referred to as previous convictions **taken into account**. This may be different to the actual number of previous convictions the offender has.¹⁷

The Crown Court Sentencing Survey forms capture whether the offender had any previous convictions that were considered to be recent or relevant and how many of these offences the judge decided to **take into account** when determining the sentence.

The options available to select for the number of previous convictions taken into account differ on the form for offences causing death. In the results presented, offences causing death have been excluded, except for table 1.32 where the responses provided on the form for offences causing death are shown separately. Offences causing death account for 1 per cent of all records analysed, so this has little effect on the overall findings.

Summary: Relationship between previous convictions taken into account at sentencing and the sentence outcome

The likelihood of an offender having previous convictions that are considered recent and relevant enough to influence the sentence they receive will generally depend on the type of offence being sentenced. For offences such as theft, robbery and driving offences, offenders are more likely to have recent and relevant previous convictions, whereas offenders being sentenced for sexual offences are much less likely to have previous convictions that are recent and relevant. Where an offender does have recent and relevant previous convictions, that offender is more likely to be sentenced to immediate custody, with this likelihood increasing as the number of previous convictions increases. For example, 79 per cent of offenders with ten or more previous convictions taken into account were sentenced to immediate custody, compared to 46 per cent of offenders with no previous convictions taken into account.

15 See page 6 of A Guide to CCSS Statistics

16 s.143(2) Criminal Justice Act 2003

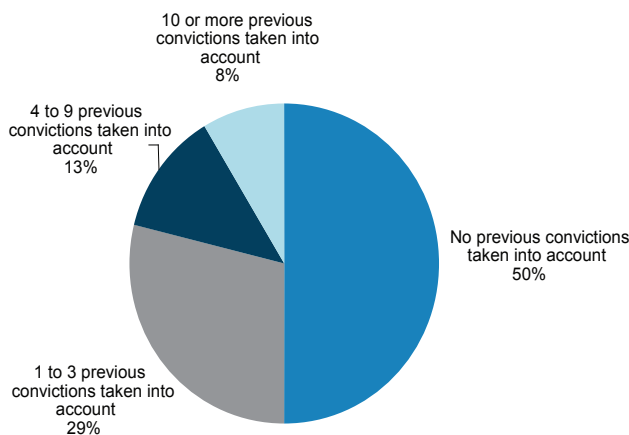
17 This is important to bear in mind when looking at other sources of information on previous convictions, as these will generally include all previous convictions regardless of whether they are taken into account at sentencing.

Findings

- For 50 per cent of sentences, the offender had no previous convictions taken into account in determining the sentence. Where the offender did have previous convictions taken into account in sentencing, most frequently between one and three offences were taken into account.
- Offenders convicted of sexual offences were least likely to have previous convictions that were considered recent and relevant to the offence being sentenced. In 25 per cent of sentences for sexual offences, the offender had at least one previous conviction taken into account when determining their sentence.
- Offenders convicted of theft offences were most likely to have ten or more previous convictions that were considered recent and relevant to the offence being sentenced. In 17 per cent of cases of theft, this number of previous convictions was taken into account in determining the sentence.
- Where no previous convictions were taken into account, 46 per cent of offenders were sentenced to immediate custody. This increased to 64 per cent for offenders with between one and three previous convictions taken into account, and over 77 per cent for offenders with four or more previous convictions taken into account.

For offenders sentenced at the Crown Court in 2011, chart 1.31 shows how many previous convictions were taken into account when determining their sentence. Table 1.32 shows this information by offence form.

Chart 1.31: The number of previous convictions taken into account to determine the sentence imposed, Crown Court, 2011



The offences for which offenders were least likely to have any previous convictions that were considered recent and relevant enough to take into account in determining the sentence were sexual offences and offences causing death. No previous convictions were taken into account for 75 per cent of sentences for sexual offences and 65 per cent of sentences for offences causing death. On the other hand, the offences for which offenders were most likely to have recent and relevant previous convictions were robbery, theft and driving offences.

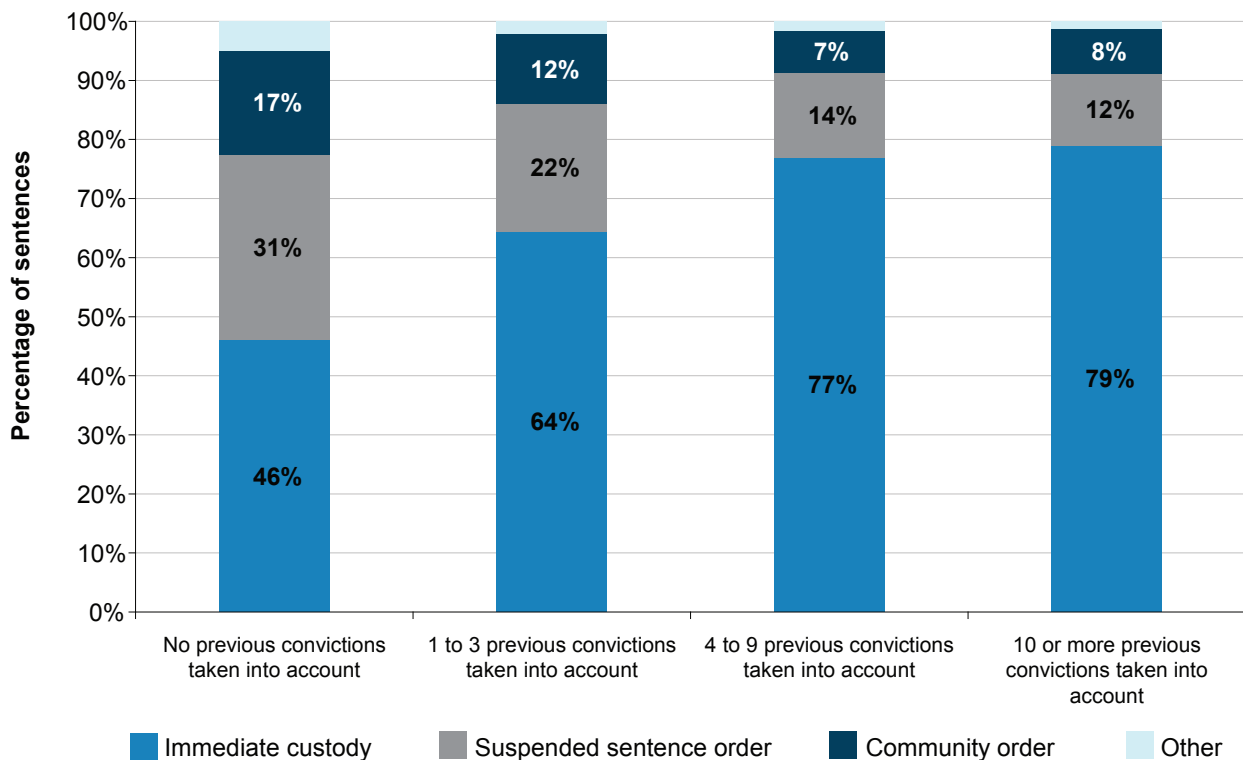
Chart 1.33 shows how the sentence outcomes received by these offenders differed according to the number of previous convictions taken into account. This shows that the likelihood of being

sentenced to immediate custody increases with the number of previous convictions taken into account. Of those offenders with no previous convictions taken into account, 46 per cent were sentenced to immediate custody, compared to 64 per cent of offenders with between one and three previous convictions taken into account, 77 per cent of offenders with between four and nine previous convictions and 79 per cent of offenders with ten or more recent and relevant previous convictions.

Table 1.32: Of those offenders with previous convictions that were taken into account to determine the final sentence, the number that were taken into account, broken down by offence form, Crown Court, March 2011

Offence type	No previous convictions taken into account	Where previous convictions were taken into account, how many were considered?		
		1 to 3	4 to 9	10 or more
Percentage of sentences				
Arson and criminal damage	57%	26%	10%	7%
Assault	51%	33%	13%	3%
Driving	40%	36%	14%	10%
Drugs	60%	29%	7%	3%
Other	53%	28%	11%	7%
Robbery	37%	35%	18%	10%
Sexual	75%	19%	4%	2%
Theft	41%	26%	17%	17%
All offence types excluding offences causing death	50%	29%	13%	8%
		1	2	3 or more
Offences causing death	65%	12%	7%	16%

Chart 1.33: Sentence outcomes received by offenders, broken down by the number of previous convictions taken into account to determine their sentence, Crown Court, 2011



Other considerations

For offenders receiving immediate custody, the average custodial sentence lengths and information on IPPs have not been shown. The first CCSS publication highlighted the problem with looking at the association between these variables and the number of previous convictions taken into account across all offences.¹⁸

Offenders convicted of relatively minor crimes such as petty theft, are more likely to have committed a string of similar offences, whilst those offenders convicted of more serious crimes, such as serious assault, are much less likely to have committed a string of similar offences. Therefore, the more serious offences which attract longer sentences, or are more likely to warrant an IPP, are more likely to be captured under the data relating to an offender with fewer previous convictions taken into account.

Aggregating all offences together makes it appear that offenders with a higher number of previous convictions taken into account are given lower custodial sentence lengths and are less likely to receive an IPP, but this is actually because the types of offences being sentenced are usually less serious. Therefore, to avoid misinterpretation, these results have therefore not been shown.

18 The first publication, *CCSS Experimental Statistics, October 2011*, can be accessed on the Council's website at: <http://sentencingcouncil.judiciary.gov.uk/facts/sentencing-survey.htm>

1.4 Aggravating and mitigating factors

Background¹⁹

Once the judge has made an assessment of the harm and culpability involved in an offence (the offence category), they will then take into account other factors relating to the case or the offender that provide the context to how and why the offence was committed. These other factors can be aggravating factors which suggest that a more severe sentence is appropriate or mitigating factors which suggest that a less severe sentence is appropriate. The extent to which the sentence is increased or decreased due to the presence of a particular aggravating or mitigating factor will depend on the relative importance of that factor on the overall case.

On the Crown Court Sentencing Survey forms, judges are requested to indicate which aggravating and mitigating factors had an influence on the sentence imposed. However, they are not requested to record the relative importance of these factors.

This section reports on the results from this part of the form. Although the presence of recent and relevant previous convictions is considered to be an aggravating factor, this particular factor has been excluded from this section as it is covered separately. Furthermore, as aggravating and mitigating factors can vary substantially between different offences, some of the results have been separated according to the different offence variations of the survey form.

Summary: Relationship between aggravating and mitigating factors and the sentence outcome

As we would expect, a case with many aggravating factors and few mitigating factors is dealt with more severely than a case with few aggravating factors and many mitigating factors. Where many aggravating factors are present, the offender is more likely to be sentenced to immediate custody and for a longer period of time. The opposite is true of mitigating factors, where the likelihood of immediate custody, and the sentence length imposed, both decrease with the number of mitigating factors present.

Aggravating factors tend to be related to the context of the offence, therefore the nature of aggravating factors will vary according to the type of offence being sentenced. For example, for assault offences, the most common aggravating factor present was the fact that offender was under the influence of drugs or alcohol at the time of the offence. Whereas, for other crimes such as driving offences, the most common aggravating factors were the degree to which the driving was deemed to be aggressive and the extent of damage to other vehicles or property.

Unlike aggravating factors, mitigating factors include factors related to the circumstances of the offender. These also vary depending on the nature of the offence being sentenced, but to a lesser extent. For all offence types except robbery and sexual offences, genuine remorse on the part of the offender was the most common mitigating factor.

¹⁹ See page 7 of A Guide to CCSS Statistics

Findings

- For offenders with four or more aggravating factors but no mitigating factors, 99 per cent were sent to immediate custody, whilst for offenders with four or more mitigating factors but no aggravating factors, 13 per cent were sentenced to immediate custody.
- Of those offenders sentenced to immediate custody, after applying any reductions for a guilty plea, the average custodial sentence length received by offenders with four or more aggravating factors but no mitigating factors, was 4 years 11 months. This compares to an average custodial sentence length of 1 year 6 months for offenders with no aggravating factors and four or more mitigating factors.
- Of the nine offence types with a separate survey form, the group of theft, dishonesty, burglary and fraud captures the highest volume of offences. In cases of theft, dishonesty, burglary and fraud, the most frequently recorded aggravating factor present was that the offender had shown an element of pre-planning, whilst the most frequently recorded mitigating factor was that the offender showed genuine remorse for the offence.

Table 1.41 shows how the sentence outcome received by offenders differed according to the number of mitigating factors taken into account during sentencing. These results have been shown separately for the following groups:

- a. offenders with no aggravating factors;
- b. offenders with between one and three aggravating factors and;
- c. offenders with four or more aggravating factors.

For IPPs, the average minimum term tariff is not provided due to the small volume of these types of sentences at the level of detail provided in this table.

This shows that a case with few mitigating factors and many aggravating factors is more likely to be sentenced to immediate custody and for a longer period of time than a case with many mitigating factors and few aggravating factors. For offenders with four or more aggravating factors present and no mitigating factors, 99 per cent were sent to immediate custody with an average custodial sentence length of 4 years 11 months. For offenders with between one and three aggravating factors and between one and three mitigating factors, 62 per cent were sent to immediate custody with an average custodial sentence length of 2 years 3 months. This compares to offenders with no aggravating factors and four or more mitigating factors, of whom 13 per cent were sent to immediate custody with an average custodial sentence length of 1 year 6 months.

Table 1.42 shows which aggravating factors were most common amongst cases being sentenced. It provides the percentage of sentences for offences of the same type for which individual factors were indicated to have had an influence on the sentence imposed. Table 1.43 then shows this for mitigating factors.

It can be seen that the types of mitigating factors taken into account are similar across all offence types with genuine remorse being the most common factor across all but two offence types. Aggravating factors vary more widely depending on the type of offence committed. Of the nine offence types with a separate survey form, the group of theft, burglary and fraud captures the highest volume of offences. In cases of theft, burglary and fraud, the most frequently recorded aggravating factor present, seen in 32 per cent of cases sentenced, was that the offender had shown an element of pre-planning.

Tables 1.41 a, b and c: Sentence outcomes received, broken down by the number of aggravating and mitigating factors (excluding the presence of previous convictions), Crown Court, 2011

Table 1.41a: Offenders with no aggravating factors

Number of mitigating factors	Sentence Type					Average custodial sentence length (after any reductions for a guilty plea)
	Immediate custody	Of which are IPPs	Suspended sentence order	Community order	Other	
	Percentage of sentences					
None	56%	<0.5%	19%	17%	9%	1 year 10 months
1 to 3	32%	<0.5%	33%	26%	9%	1 year 9 months
4 or more	13%	0%	45%	31%	11%	1 year 6 months

Table 1.41b: Offenders with between one and three aggravating factors

Number of mitigating factors	Sentence Type					Average custodial sentence length (after any reductions for a guilty plea)
	Immediate custody	Of which are IPPs	Suspended sentence order	Community order	Other	
	Percentage of sentences					
None	87%	1%	8%	3%	1%	2 years 9 months
1 to 3	62%	1%	25%	11%	2%	2 years 3 months
4 or more	29%	<0.5%	48%	21%	2%	1 years 10 months

Table 1.41c: Offenders with four or more aggravating factors

Number of mitigating factors	Sentence Type					Average custodial sentence length (after any reductions for a guilty plea)
	Immediate custody	Of which are IPPs	Suspended sentence order	Community order	Other	
	Percentage of sentences					
None	99%	6%	1%	<0.5%	<0.5%	4 years 11 months
1 to 3	90%	3%	7%	2%	<0.5%	3 years 5 months
4 or more	65%	0%	26%	8%	0%	2 years 4 months

Table 1.42: Five most common aggravating factors ticked, broken down by offence type, Crown Court, 2011

Offence type	Five most common aggravating factors	Proportion of sentences	Offence type	Five most common aggravating factors	Proportion of sentences
Arson and criminal damage	Offender under the influence of alcohol or drugs	28%	Offences causing death	Pre-planning or premeditation	26%
	Pre-planning or premeditation	19%		Vulnerable victim (because of age or disability)	24%
	Damage of high value	18%		Mental or physical suffering inflicted on the victim	16%
	Act of revenge	17%		Serious injury to others in addition to the victim	13%
	Significant public or private fear caused	13%		Driving off to avoid detection or apprehension	10%
Assault (using old style survey form)*	Use of a weapon (including body and shod feet)	35%	Robbery	Offender in a group or gang	12%
	Offender under the influence of alcohol or drugs	29%		Targeting of vulnerable victims	12%
	Offender in a group or gang	21%		Use of a weapon (including body and shod feet)	10%
	A sustained assault or repeated assaults on the same victim	19%		Offence committed at night/hours of darkness	8%
	Targeting of vulnerable victims	11%		Degree of force or violence used	6%
Assault (using new style survey form)*	Offender under the influence of alcohol or drugs	33%	Sexual offences	Victim was particularly vulnerable	49%
	Location of the offence	27%		Abuse of position of trust or power	43%
	Presence of others, especially children	24%		A sustained assault or repeated assaults on the same victim	38%
	Ongoing effect on the victim	16%		More than one victim	28%
	Timing of the offence	13%		Pre-planning	24%
Driving	Aggressive driving	15%	Theft, Dishonesty, Burglary and Fraud	Pre-planning	32%
	Damage to other vehicles or property	14%		Offender in a group or gang	31%
	Offender under the influence of alcohol or drugs	4%		High value of the property (including sentimental value) or substantial consequential loss	25%
	Disregard of warnings	3%		Offender was on bail or licence	15%
	Injury to others caused	3%		Offender under the influence of alcohol or drugs	14%
Drugs	Large quantity of drugs	22%	Other	Pre-planning	26%
	Sophistication of operation	17%		Vulnerable victim	18%
	Offender on bail or licence	14%		Intimidation or force used	15%
	Persistent production	8%		Offender in a group or gang	11%
	Possession in a public place, school or prison	5%		Financial or other gain	10%

* On 13 June 2011, the Sentencing Council issued a new guideline for assault offences. After this, a new form was also issued to align with the style of the new guideline.

Table 1.43: Five most common mitigating factors ticked, broken down by offence type, Crown Court, 2011

Offence type	Five most common mitigating factors	Proportion of sentences	Offence type	Five most common mitigating factors	Proportion of sentences
Arson and criminal damage	Genuine remorse	36%	Offences causing death	Genuine remorse	39%
	Age / lack of maturity where it affects the responsibility of the offender	27%		Age / lack of maturity where it affects the responsibility of the offender	31%
	Offence out of character	24%		Lack of premeditation	27%
	Physical or mental illness	23%		Good driving record	12%
	Offender can or is addressing their needs	17%		Effect on the offender	11%
Assault (using old style survey form)*	Genuine remorse	37%	Robbery	Age / lack of maturity where it affects the responsibility of the offender	43%
	Age / lack of maturity where it affects the responsibility of the offender	28%		Genuine remorse	32%
	Offence out of character	24%		Offence out of character	17%
	Currently in, or prospects of, work or training	16%		Unplanned or opportunistic	16%
	Provocation	12%		Difficult or deprived background	13%
Assault (using new style survey form)*	Genuine remorse	31%	Sexual offences	Age / lack of maturity where it affects the responsibility of the offender	30%
	No previous convictions	26%		Genuine remorse	28%
	Single blow	16%		Offence out of character	23%
	Good character / exemplary conduct	16%		Loss of job or reputation	13%
	Isolated incident	14%		Cooperation with authorities	12%
Driving	Genuine remorse	34%	Theft, Dishonesty, Burglary and Fraud	Genuine remorse	27%
	Age / lack of maturity where it affects the responsibility of the offender	25%		Age / lack of maturity where it affects the responsibility of the offender	24%
	Offence out of character	19%		Offence out of character	16%
	Currently in, or prospects of, work or training	17%		Cooperation with authorities	11%
	Good driving record	13%		Offender can or is addressing their needs	9%
Drugs	Genuine remorse	28%	Other	Genuine remorse	28%
	Age / lack of maturity where it affects the responsibility of the offender	26%		Age / lack of maturity where it affects the responsibility of the offender	24%
	Offence out of character	19%		Offence out of character	20%
	Offence not commercially motivated	17%		Offender can or is addressing their needs	10%
	Offender can or is addressing their needs	15%		Cooperation with authorities	10%

* On 13 June 2011, the Sentencing Council issued a new guideline for assault offences. After this, a new form was also issued to align with the style of the new guideline.

1.5 Pleading guilty to the offence

Background²⁰

Where an offender pleads guilty to an offence, the court is under a duty to take into account the stage in the proceedings at which the plea is indicated and the circumstances in which the indication is given.²¹ This will normally result in a reduction to their sentence and the reduction is applied to the sentence after all aggravating and mitigating factors have been taken into account.

The reduction principle derives from the need for effective administration of justice. It takes account of the fact that a guilty plea avoids the need for a trial, shortens the gap between charge and sentence, saves considerable cost, and, where the plea is entered early, saves victims and witnesses from the concern about giving evidence.

The Sentencing Guidelines Council (SGC) definitive guideline, *Reductions for a guilty plea*, recommends a reduction of up to one third when the offender pleads guilty at the first reasonable opportunity.²² The level of reduction diminishes when the plea is entered later than the first reasonable opportunity. Guidance on where the first reasonable opportunity occurs is also provided in the guideline.

The stages at which the defendant has an opportunity to plead guilty will vary depending on the case. All cases begin in the magistrates' court, and some defendants will have an opportunity to plead guilty at this stage. For defendants who do not have an opportunity to plead guilty at the magistrates' court, the first opportunity to plead guilty will often be at the Plea and Case Management Hearing (PCMH) in the Crown Court. However, some Crown Court locations hold a separate hearing prior to the PCMH specifically to give the offender the opportunity to plead guilty before the court process begins. After the PCMH, there may be several other opportunities to plead guilty, including on the day of trial.

For those cases where a guilty plea was entered, the Crown Court Sentencing Survey captures the stage at which the plea was entered and the reduction applied to the sentence. This section presents the findings from this part of the form.

Summary: Relationship between sentencing practice and reductions for a guilty plea

The majority of offenders who plead guilty do so early on in the court process, with 74 per cent of guilty pleas being entered either before, or at, the PCMH and 26 per cent entering a plea at some point after the PCMH. The way in which guilty plea reductions are granted for these offenders is, on the whole, consistent with the approach recommended by the guideline, *Reductions for a guilty plea*. For those offenders who plead at one of these early stages, a higher reduction is usually granted, whilst for the smaller volume entering a plea later in the process, the level of reduction granted is less.

²⁰ See page 8 of *A Guide to CCSS Statistics*

²¹ s.144 Criminal Justice Act 2003.

²² A copy of the SGC Guideline, *Reductions for a Guilty Plea*, can be accessed on the Council's website at: <http://sentencingcouncil.judiciary.gov.uk/guidelines/guidelines-to-download.htm>

Findings

- In 2011, 86 per cent of offenders sentenced at the Crown Court pleaded guilty to the offence.
- Most frequently, where a guilty plea was made, the plea was entered at an early stage of the proceedings, with 74 per cent of offenders pleading guilty either before or at the Plea and Case Management Hearing (PCMH).
- Where a plea was entered either before or at the PCMH, 88 per cent were granted the highest level of reduction. A further 9 per cent were granted a reduction of between 21 and 32 per cent and 3 per cent were granted a reduction of 20 per cent or less.
- In 64 per cent of cases, the plea was entered at the first reasonable opportunity.

Where the offender entered a guilty plea, table 1.51 shows the reduction given to the offender, broken down by the stage of plea.

Table 1.51: Of offenders pleading guilty, the stage at which the plea was entered, and the reduction applied to their sentence, Crown Court, 2011

Stage of Plea	Volume of sentences*	Reduction given				
		0%	1-10%	11-20%	21-32%	33% or more**
		Percentage of sentences				
Up to, or at, the PCMH	60,500 (100%)	1%	<0.5%	2%	9%	88%
After the PCMH but before the day of trial	9,100 (100%)	1%	6%	22%	34%	37%
On or after the day of trial	12,200 (100%)	6%	48%	24%	9%	12%

* Volumes have been rounded to the nearest 100
 ** 10 per cent of this group indicated a discount of "greater than 33 per cent".

This shows that the majority of offenders who entered a guilty plea did so either before or at the PCMH, with 74 per cent of guilty pleas being entered at this stage. Across those offenders who entered a plea before or at the PCMH, in 88 per cent of cases, the highest level of reduction was granted. Where the offender entered a plea at the latest stage, either at or after trial, in 48 per cent of cases, a reduction of between 1 and 10 per cent was granted.

Other considerations

The stage at which the defendant has the first reasonable opportunity to enter a plea will vary depending on the circumstances of the case, and the way in which the case reached the Crown Court. The guideline, *Reductions for a guilty plea*, provides guidance on where the first reasonable opportunity for an offender to plead guilty occurs.

In some circumstances, where it is in the interests of justice to do so, it may be entirely appropriate for the court to depart from the approach recommended by the guideline *Reductions for a guilty plea*. These circumstances have not been explored in the analysis above; however, analysts at the Council will be looking into this further.

Section 2: Departures from Sentencing Council Guidelines

Before 2011, all sentencing guidelines in use were issued by the Sentencing Council's predecessor body, the Sentencing Guidelines Council (SGC). In 2011, the Sentencing Council issued its first definitive guideline, which became applicable to sentences passed after 13 June 2011. This was for assault offences and replaced the previous SGC guideline, *Assault and Other Offences against the Person*.

This section discusses the new sentencing guideline, *Assault Definitive Guideline*. It considers how often sentences fell outside the guideline ranges in 2011 since the introduction of the new guideline. As more Sentencing Council guidelines are introduced, this section will be expanded to include them.

2.1 Departures from the offence range: *Assault Definitive Guideline*

Under the assault guideline, the first stage that the judge should consider when sentencing is the category of the offence being sentenced. The guideline recommends a range of sentences for each category. These are known as the category ranges.

Courts are not required to stay within the relevant category range; however, they are under a legislative duty to impose a sentence which is within the offence range.²³ The offence range is the full spectrum of sentences over all offence categories. It begins at the bottom of the range for the lowest offence category and ends at the top of the range for the highest offence category. For example, for the offence of Actual Bodily Harm (ABH), the offence range goes from a fine to 3 years' immediate custody.

The following results show how often, in 2011, sentences for assault offences departed from the offence ranges set by the new guideline. As the results shown cover only the first six months after the guideline was introduced, they will not fully reflect how often sentences depart from the new guideline as there is likely to be a period of transition whilst judges familiarise themselves with the changes and implement them.

Sentences where the offender was a youth (under 18 years of age), or the sentence imposed was a hospital order, an IPP or life sentence, these sentences have been excluded from the results shown. IPPs and life sentences account for 1 per cent of all sentences passed in 2011 that were covered by the new assault guideline. Furthermore, due to the volatility of small volumes of data, for offences where the nationally adjusted volume of sentences falls below 100, the results have not been shown.

²³ s.125(3) Coroners and Justice Act 2009.

Findings

- From new Sentencing Council guideline, *Assault Definitive Guideline*, coming into force on 13 June 2011, until the end of 2011, 96 per cent of sentences for offences covered by the guideline fell within the relevant offence range, 1 per cent fell below and 3 per cent fell above.
- The offence with the highest proportion of sentences falling outside of the offence range was GBH with intent, with 8 per cent of sentences departing from the range.
- The offence with the highest proportion of sentences falling within the offence range was common assault, with 99 per cent of sentences falling within the range.

Table 2.11: Percentage of sentences below, within and above the guideline offence range for the definitive guideline on assaults (effective from 13 June 2011), Crown Court, 2011

Offence	Volume of sentences*	Below range	Within range	Above range	Bottom of offence range	Top of offence range
Assault occasioning actual bodily harm	4000	1%	97%	2%	Fine	3 years
Assault on a police constable in execution of his duty	<100	-	-	-	Fine	26 weeks
Assault with intent to resist arrest	<100	-	-	-	Fine	51 weeks
Causing grievous bodily harm with intent to do grievous bodily harm/Wounding with intent to do grievous bodily harm	800	7%	92%	1%	3 years	16 years
Common Assault **	1200	0%	99%	1%	Discharge	26 weeks
Inflicting grievous bodily harm/Unlawful wounding	2000	<0.5%	97%	3%	Community order	4 years
Total	8000	1%	96%	3%	-	-

Sentences for youths and those resulting in a hospital order, an IPP or Life sentence have been excluded.

* Volumes have been rounded to the nearest 100.

** The results for common assault have been estimated using sentence outcome data from the Ministry of Justice database of Crown Court sentences rather than the survey. Further details are provided in the other considerations section below.

For each offence covered by the new guideline *Assault Definitive Guideline*, table 2.11 shows the proportion that fell below, within, or above the offence ranges specified. Racially and religiously aggravated assaults are also covered by the guideline and have therefore been included in the results shown. This may be the reason for some sentences falling above the range specified.

The offence of “causing grievous bodily harm/wounding with intent” (GBH with intent) had the highest proportion of sentences falling outside the offence range in the first six months after the new guideline was introduced. For this offence, 92 per cent of sentences fell within the offence range, and 8 per cent fell outside. Sentences for common assault had the smallest proportion of departures from the offence range in the new guideline, with 99 per cent of sentences falling in the range defined. Taking all sentences covered by the new guideline, 96 per cent fell within the offence range in the first six months after the introduction of the guideline.

Other considerations

It is important to note that some assault offences are summary only offences and therefore would ordinarily be tried at the magistrates’ court. Possible reasons why these offences have been sentenced at the Crown Court are:

- the offence might have been racially/religiously aggravated (this may also be the reason for some sentences falling above the range specified); or
- such offences may enter the Crown Court as, or alongside, a more serious offence, but during the course of proceedings, circumstances may arise which result in a conviction for the lesser offence only. In these circumstances the primary charge then becomes a summary only offence. However, as the case has already entered the Crown Court it will be completed there, including the final sentence and is therefore captured by the survey.

When the new guideline for assault offences was introduced, a revised version of the survey form for assault offences was issued. A copy of this form can be found in Annex A.2 on page 40. To limit the burden placed on judges, the survey forms should not exceed one side of paper, which required some of the questions to be densely packed on the form. Initial analysis of the survey forms indicated that the structure of these new forms caused some judges to inadvertently indicate the wrong offence. In particular, a large proportion of offences of more serious assaults were wrongly recorded as common assaults. Therefore, for the offence of common assault, the results have instead been estimated using Ministry of Justice data on sentence outcomes. The results for all other offences shown are based directly on the survey data.

Section 3: Further Information

3.1 Presentation of the results

The results present each of the key influencing factors: offence category; previous convictions; aggravating and mitigating factors; and guilty pleas, individually. It is important to bear in mind that in reality, there will be some interaction of the different factors present in a case. For example, even across all offences at a single offence category, there will be a variation in the final sentence due to the presence of other factors such as aggravating and mitigating factors. This release does not attempt to analyse the interaction of the different factors captured by the form.

Findings for specific offences have not been included in this publication. Due to limited resource, analysts at the Council will instead be analysing the data at offence specific category at various points through the year, and an offence specific bulletin will be released. The offences chosen will be aligned to the Council's future work plan.

The sentence outcomes reported on the survey forms are the final outcomes after all factors have been taken into account and all relevant reductions, for example for a guilty plea, have been applied. These outcomes are not directly comparable to the sentencing ranges provided within the guidelines (which are before taking into account any further factors relating to the offence and the offender or any reductions for a guilty plea). In order to make this comparison in section 2, where the outcome is an immediate custodial sentence, an estimate of the sentence length before the application of the guilty plea reduction has been made. This estimate makes use of the guilty plea reduction recorded at Part B, Section 7 (Indication of guilt/guilty plea) of the form to work back from the final sentence outcome. In section 1, where specified, as well as the final outcome, these estimates have also been provided.

Immediate custodial sentences include sentences of Imprisonment for Public Protection (IPP) and life sentences, which are types of indeterminate sentence. The large majority of indeterminate sentences are IPPs. When sentencing an offender to an IPP, the judge must set a minimum term tariff for the sentence. This is the minimum amount of time that the offender must spend in prison before they can be considered for release. This is not equivalent to the sentence length of other immediate custodial sentences which are not IPPs or life sentences (called determinate sentences).

The sentence length of a determinate custodial sentence refers to the full sentence imposed, not just the period spent in prison. Some of this time may ultimately be served in the community on licence and home detention curfew, where applicable, due to statutory release provisions.

Where average custodial sentence lengths are provided, these are the average lengths over all determinate custodial sentences, therefore do not include life sentences and IPPs. Average minimum term tariffs for IPPs are provided separately. Information on life sentences has not been included due to the very small volume of such cases.

The following conventions have been applied to the data:

- percentages shown are provided to the nearest whole percentage, except when the nearest whole per cent is zero per cent, or a finer level of detail is required to show a trend. In some instances, this may mean that the percentages shown, for example in pie charts, do not add up 100 per cent;
- where totals have been provided, these have been calculated using unrounded data and then rounded; therefore, percentages provided in the narrative may differ slightly from the sum of percentages shown on charts; and
- where the nearest whole per cent is zero per cent, the convention “< 0.5” per cent has been used.

3.2 Methodology for analysis

Preparation of the data

Prior to producing this report, the dataset received from the data processors has been subject to a number of quality assurance and validation routines. Details of these are provided here.

Using the personal information collected on the form, the survey records were initially matched to a database of records on principal offences provided by the Ministry of Justice from the CREST database.²⁴ Where a match has been found, this guarantees that the form corresponds to a principal offence. To avoid capturing secondary offences, all results provided in this report are based only on the set of survey records for which a match has been found on the CREST database. For 93 per cent of forms, a match has been made.

Due to the nature of the survey, for most questions on the form, it is not possible to recover missing responses. Only where variables are common to the Ministry of Justice database and the survey has it been possible to complete areas of missing information. After matching, further routines have been applied to ensure that responses are consistent across the whole form.

However, any data collection of this kind will be subject to some recording errors. Although every attempt has been made to prevent and correct for such errors through the processes described, there will inevitably be some error that remains in the data presented.

National representativeness

The Ministry of Justice database used in the matching exercise records a variety of variables for the full population of sentences at the Crown Court, including the sentence received and the offence being sentenced. For key variables common to the Crown Court Sentencing Survey and the Ministry of Justice database, a comparison was made between the survey records and the full population of sentencing occasions at the Crown Court in 2011. These comparisons are displayed on the following page.²⁵

24 CREST (Crown Court Electronic Support System) is the case management system used by Crown Courts for tracking case progression.

25 The distributions and results shown for the full population of sentences at the Crown Court may differ from those reported in the Ministry of Justice publication, *Criminal Justice Statistics Annual 2011*. The reason for this is provided on page 33..

Chart 3.21: Comparison of use of disposal types between Ministry of Justice database and Crown Court Sentencing Survey responses, 2011

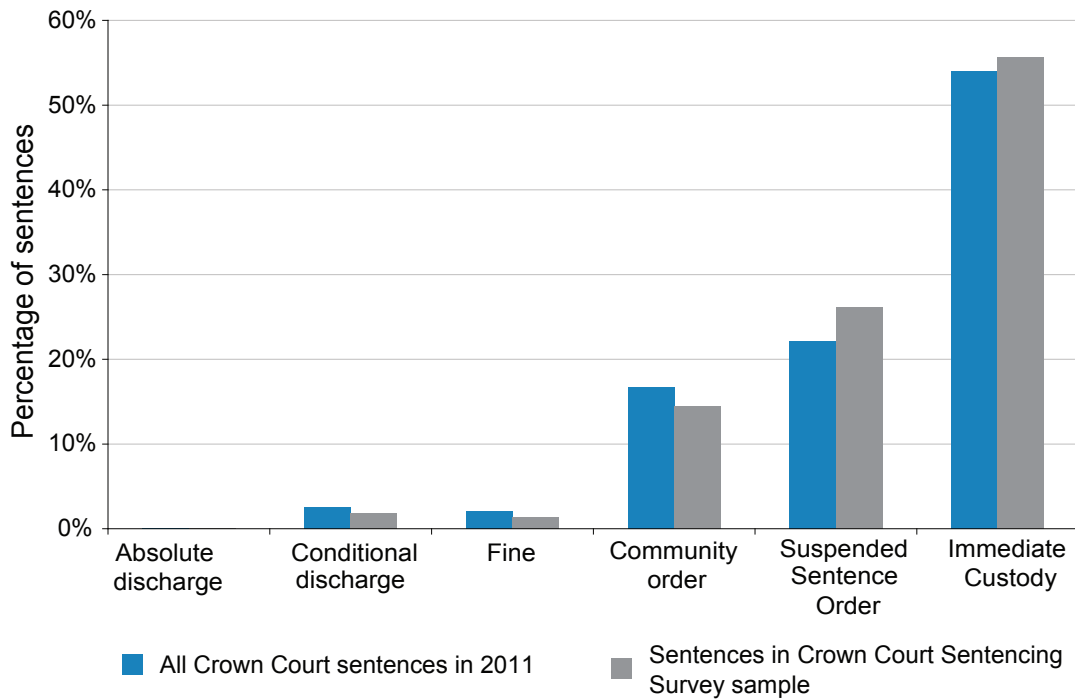


Chart 3.22: Comparison of proportion of sentences of different offence categories between Ministry of Justice database and Crown Court Sentencing Survey responses, 2011

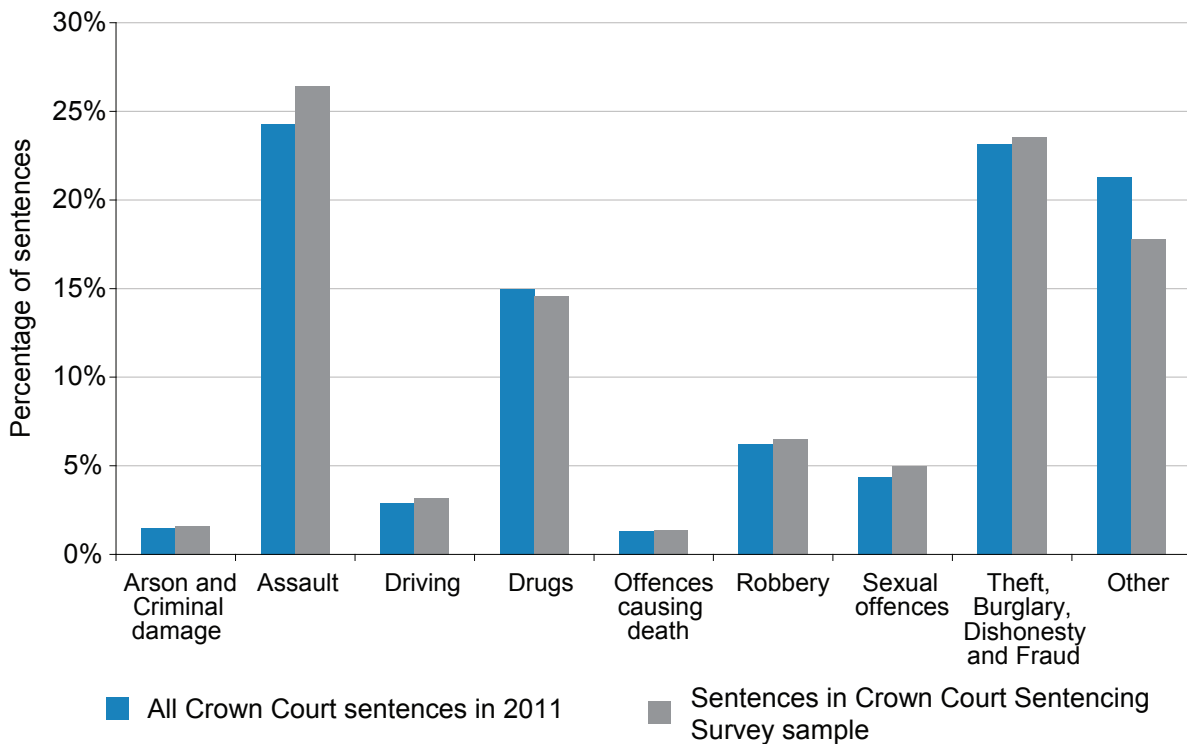


Table 3.23: Comparison of custodial sentences between the Ministry of Justice database and Crown Court Sentencing Survey responses, 2011

Immediate custodial sentences		
	All Crown Court sentences in 2011	Crown Court Sentencing Survey sample
Average custodial sentence length	2 years 2 months	2 years 4 months
Proportion of custodial sentences that are life sentences or IPPs	2.3%	2.1%

As these comparisons show similar distributions, this has been taken as an indication that the sentences for which a survey form was returned are representative of the full population of sentences at the Crown Court. Therefore, for now, a simple estimation methodology has been used to derive national level figures. This methodology applies a multiplication factor to the results to adjust for response rates.

It is acknowledged that this methodology does not account for possible sources of bias in variables that cannot be compared to the full population or for biases created by missing information in specific questions. For example, given the estimation methodology used, national level averages which are derived from the restricted set of records where a response was provided for a specific question may differ from the same average when taken over all records for which a form was completed. However, it was decided that the gain in using a more complex methodology is not justified at this stage. Analysts at the Council will continue to consider alternative methodologies for estimating national level figures for possible use in future publications.

3.3 Progress of the survey

Improvements made

The experimental publication covering the first six months of data described a number of concerns that had affected data quality or were being investigated. The progress on these is discussed below.

Sentence outcome data

Due to problems identified on the completion of part B, section 2 (sentence outcome) of the form, the six month experimental publication derived sentence outcome data from the CREST database. Improvements made to the survey forms have meant that these problems have since been resolved. Therefore, this publication reports the sentence outcomes as completed on the survey forms.

Matching and validation routines

The Council has since obtained more sophisticated software for handling and manipulating large scale datasets. This has facilitated a more accurate methodology for matching records to the Ministry of Justice database or principal offences sentenced, therefore reducing the potential for wrongly excluding any survey forms from the analysis. It has also allowed better quality assurance routines to be used.

Change of data processors

The contract for processing the survey forms and transferring them to a database came to an end in March 2012. A new organisation took over this responsibility as of April 2012. This change was taken as an opportunity to implement further changes to reduce the scope for error at the data entry stage of the process. This has included a complete redesign of the physical layout of the form (with no change to the questions asked) which has made it much clearer and easier to complete. The improvement from this change is not reflected in the 2011 results presented here, but will have a significant positive impact on future results.

Free text

Although no analysis of the free text has been provided in this publication, a framework has been developed for coding free text to make it useful and amenable for analysis.

There is little scope for analysing free text when considering high level overviews of the data. It is expected that the free text sections of the form will be used to help explain anomalies in the data and further supplement the data received when analysts at the Council look at specific offences in detail.

Revisions policy

The Council recognises the implication of changes to the questions on the forms on the consistency of the data received. Therefore, the Council has created a revisions policy for the forms which defines the process by which further revisions can be made and a time frame for their implementation. This will ensure that changes can only be made at defined points in time and only where it is felt that the benefit from altering the form is far greater than the cost of a break in the time series, and where other alternatives will not resolve the problems recognised. This policy is awaiting final agreement from relevant parties and will be made available soon.

Limitations that continue to be addressed

Total number of principal offences sentenced at the Crown Court in England and Wales in 2011

The figures in this release have been adjusted to reflect a national total of 95,032 sentences for principal offences across England and Wales in 2011 at the Crown Court. This differs from the Ministry of Justice publication, *Criminal Justice Statistics Annual 2011*, which reports this total as 102,164.

The reasons for the difference are as follows:

- a provisional version of the Ministry of Justice database of all Crown Court sentences was used to conduct the matching and subsequent analysis of the Crown Court Sentencing Survey data. This was necessary to allow a timely release of the CCSS data; and
- whilst completing the matching exercise, a number of records were found in the Ministry of Justice database which warrant further inspection. For consistency with previous years, these records have been left in the Ministry of Justice database. Whereas, for the purposes of this publication, these records have been excluded from the total number of sentences.

Once investigations into the discrepancy have been completed, any necessary revisions will be made.

Data quality

Many of the data quality concerns that have arisen from the survey have now been addressed, although some changes were not implemented until mid 2011 or early 2012. Therefore, not all improvements will be recognised in the data presented in this particular publication. Where data quality concerns may have biased the results presented, the reader is made aware of these under the heading of **other considerations**.

These concerns were originally recognised through feedback from judges completing the survey and scrutiny of the raw survey data. Analysts at the Council will continue to scrutinise the raw data as they receive it to ensure that potential sources of error are recognised and addressed immediately.

Furthermore, the Council will continue to work with judges, courts and those involved with the administration of the survey to gain a better understanding of how the survey process may be improved at the data processing stage, and also within individual court centres.

3.5 Additional tables

The data behind the charts provided in this report are available for download as spreadsheets from the Sentencing Council's website:

<http://sentencingcouncil.judiciary.gov.uk/facts/sentencing-survey.htm>

At present, the database behind this release will not be made available to the public. As the information is collected on an individual offender basis, even when personal identifiers are removed, it may be possible to identify individuals from the factors involved a case.

Analysts at the Council are considering a method for completely anonymising the data so that the underlying data can be made available as soon as practically possible.

3.6 Relevant background

A Guide to Crown Court Sentencing Survey (CCSS) Statistics

A supplementary document, *A Guide to CCSS Statistics*, has been published alongside this release. This document aims to provide the necessary background information on sentencing practice in order to set the context for the data presented in this release. It can be accessed via the Council's website:

<http://sentencingcouncil.judiciary.gov.uk/facts/sentencing-survey.htm>

Copies of guidelines

All sentencing guidelines that are relevant to the Crown Court can be downloaded from the Council's website:

<http://sentencingcouncil.judiciary.gov.uk/guidelines/guidelines-to-download.htm>

The SGC guideline, *Assault and other offences against the Person*, which was applicable until 12 June 2011 (but has now been replaced by the Sentencing Council guideline, *Assault Definitive Guideline*) can be accessed at the following link:

http://webarchive.nationalarchives.gov.uk/+http://www.sentencingcouncil.org.uk/docs/Assault_and_other_offences_against_the_person_accessible.pdf

Copies of forms

A copy of the assault offences survey form which came into use after the introduction of the new Sentencing Council guideline for assault, on 13 June 2011, can be found at Annex A.2 on page 40.

For copies of the other forms that were in use over the period of this publication, please contact the Council directly using the contact details provided at the end of this release.

The survey forms have since been redesigned to make them clearer and easier to complete. The latest versions of the forms are available for download at:

<http://sentencingcouncil.judiciary.gov.uk/facts/sentencing-survey.htm>

Other sources of statistics and general information on sentencing

Ministry of Justice: Criminal Justice Statistics

The Ministry of Justice publishes both a quarterly and annual statistical release on criminal justice statistics. This includes a chapter on sentencing which focuses on national level trends in sentencing for all offences. These statistics can be accessed via the Ministry of Justice statistics homepage:

<http://www.justice.gov.uk/releases/statistics-and-data/index.htm>

Sentencing Council website

Further information on general sentencing practice in England in Wales can be found on the Council's website:

www.sentencingcouncil.org.uk

Direct.gov website

Alternatively, the sentencing area on the Direct.gov website provides information on how sentences are worked out and the different types of sentence available:

<http://www.direct.gov.uk/en/CrimeJusticeAndTheLaw/Sentencingprisonandprobation/Sentencingandcriminalrecords/index.htm>

3.7 Uses made of the data

The Council primarily intends to use the information from the survey to fulfil its statutory duty under s.128 of the Coroners and Justice Act 2009 to “monitor the operation and effect of its sentencing guidelines”. The information provided will contribute further to other legislative functions of the Council including:

- s.129(1) to publish local area information regarding the sentencing practice of the magistrates’ courts and the Crown Court; and
- s.127 to publish a resource assessment in respect of guidelines issued.

Although further data will be required before the Council can begin to consider its monitoring duty in depth, the survey data have begun to feed into the work of the Council more generally. Information from the survey has contributed to the development of recent guidelines by indicating which aggravating and mitigating factors are commonly seen for particular offences. Furthermore, where more general sentencing data appear to show contradictory information, the survey has allowed the Council to seek reasons for these occurrences. It has also been used to update the information feeding into the models used to assess the resource implications of guidelines.

The Council intends to continue publishing the data collected in a regular statistical release. By doing so, the Council aims to increase awareness and understanding of sentencing practice in the Crown Court and the different factors that are taken into account when determining a sentence.

Furthermore, the Council envisages that this information will be useful to the judiciary and to organisations associated with the criminal justice system.

Consultation responses

The first experimental publication contained a short consultation inviting feedback on the presentation of the results and their use.

In response to the feedback provided, the Council recognises the limited ability of a high level overview of the kind presented in this bulletin to meet the specific requirements of the judiciary. However, the Council is keen to provide this overview to show the type of new information being collected by the survey and how it seeks to explain variations in sentencing.

The Council is aware that more specific analyses will need to be conducted to produce something that is more meaningful to the questions posed by judges. Data quality concerns and resource limitations have, thus far, constrained the ability of analysts at the Council to conduct these sorts of analyses. Improvements have now been made, as reflected in the improvements section on page 32. However, there will be a time lag whilst previous errors filter out and analysts at the Council are waiting for a reasonable amount of more recent data to become available before beginning some of their more specific analysis.

In the meantime, the Council is reviewing the most appropriate method for presenting the survey data in the future in order to meet the needs of all users.

3.8 Your views

We continue to welcome the feedback of users and other interested parties on this publication and the statistics presented in it.

Whether you found this publication interesting, useful or difficult to understand, or if you have suggestions for alternative methods of providing the data collected by the Crown Court Sentencing Survey, we would like to hear from you.

Alternatively, if you would just like to find out more about the survey and the data it collects, contact us using the contact details provided below.

3.9 Contact us

General Enquiries

Tel: 020 3334 0634

Email: research@sentencingcouncil.gsi.gov.uk

Responsible Statistician

Trevor Steeples
020 3334 0642

Press Office Enquiries

Nick Mann
020 3334 0631

Further information on the Sentencing Council and its work can be found at:

<http://www.sentencingcouncil.org.uk>

ANNEX

A.1 Table of offences with guidelines

The following table lists those offences dealt with by the Crown Court that had sentencing guidelines in 2011 and the relevant guideline in each case. For copies of the guidelines, please visit the guidelines section of the Sentencing Council's website at:

<http://sentencingcouncil.judiciary.gov.uk/guidelines/guidelines-to-download.htm>

Guidelines that were introduced after 31 December 2011 have not been included here.

Guideline	Offences covered
<p><u>Before 13 June 2011</u>: Assault and other offences against the person, Definitive Guideline</p> <p><u>On or after 13 June 2011</u>: Assault Definitive Guideline</p>	<ul style="list-style-type: none"> • Grievous bodily harm / wounding (racially or religiously aggravated grievous bodily harm) • Grievous bodily harm with intent • Actual bodily harm (racially or religiously aggravated actual bodily harm) • Common assault (racially or religiously aggravated common assault) • Assault with intent to resist arrest • Assault on a police constable
Attempted Murder, Definitive Guideline	<ul style="list-style-type: none"> • Attempted murder
Breach of a Protective Order, Definitive Guideline	<ul style="list-style-type: none"> • Breach of restraining order • Breach of non-molestation order
Breach of Anti-Social Behaviour Order, Definitive Guideline	<ul style="list-style-type: none"> • Breach of Anti-Social Behaviour Order (ASBO)
Causing death by driving, Definitive Guideline	<ul style="list-style-type: none"> • Causing death by careless or inconsiderate driving (disqualification obligatory) • Causing death by dangerous driving • Causing death by careless driving when under the influence of drink or drugs • Driving without insurance/licence

Guideline	Offences
Failure to Surrender to Bail, Definitive Guideline	<ul style="list-style-type: none"> • Bail Act offences
Manslaughter by Reason of Provocation, Definitive Guideline	<ul style="list-style-type: none"> • Manslaughter by provocation
Robbery, Definitive Guideline	<ul style="list-style-type: none"> • Street robbery or 'mugging' • Robberies of small businesses • Less sophisticated commercial robberies
Sentencing for Fraud, Definitive Guideline	<ul style="list-style-type: none"> • Banking and insurance fraud, and obtaining credit through fraud • Benefit fraud • Confidence fraud • Making or supplying articles for use in fraud • Possessing articles for use in fraud • Revenue fraud
Sexual Offences Act 2003, Definitive Guideline	<ul style="list-style-type: none"> • Non-consensual offences • Offences involving ostensible consent • Preparatory offences • Exploitation offences • Other offences
Theft and Burglary in a building other than a dwelling, Definitive Guideline	<ul style="list-style-type: none"> • Theft from shops and stall • Burglary in a building other than a dwelling • Theft in breach of trust • Theft from a person

A.2 Copy of the assault survey form in use between 13 June 2011 and 1 April 2012

Form ID May 2011

Crown Court Sentencing Survey Assault & Public Order

RESTRICTED WHEN COMPLETE

Part A: To be completed by the sentencing Judge/ Recorder or Court Clerk (PLEASE COMPLETE IN CAPITALS)

Sentence Date: <input type="text"/>	Crown Court Centre: <input type="text"/>	CREST case ID: <input type="text"/>
Offender Name (Surname): <input type="text"/>		(Forename): <input type="text"/>
Offender DOB: <input type="text"/>	Offender Gender: <input type="checkbox"/> Male	<input type="checkbox"/> Female
Case process: <input type="checkbox"/> Sent for trial <input type="checkbox"/> Committed for trial <input type="checkbox"/> Committed for sentence		

Part B: To be completed by the sentencing Judge/ Recorder for the principal offence (see notes overleaf)

1a. Type of offence (For breaches, see guidance overleaf) (Please also tick S.29 box if relevant)

- S.18 S.20 S.47 Common assault S.4A POA S.4POA S.5 POA Harassment Was this a S.29 Offence? Yes
 No Other offences - Assault on a police constable Assault - intent to resist arrest Affray Violent Disorder
 Cruelty/ neglect of a child Other (please specify) _____

2. Sentence outcome (for the principal offence) (see notes overleaf, tick all applicable)

a) Custodial Sentence: <input type="checkbox"/> Determinate (length): _____ <input type="checkbox"/> EPP (custodial term): _____ and (extension period): _____ <input type="checkbox"/> Life <input type="checkbox"/> IPP (minimum term): _____	
b) <input type="checkbox"/> Suspended Sentence Order (length): _____ (suspension period): _____ or <input type="checkbox"/> Community Order (length): _____	
Requirements of Suspended Sentence Order or Community Order: (Tick all Adult requirements given or nearest YRO equivalent, if appropriate)	
<input type="checkbox"/> Supervision (length): _____ <input type="checkbox"/> Unpaid work (length): _____ <input type="checkbox"/> Curfew (period): _____ <input type="checkbox"/> Activity (time to complete) _____ <input type="checkbox"/> Prohibited activity <input type="checkbox"/> Exclusion <input type="checkbox"/> Residence <input type="checkbox"/> Mental health treatment <input type="checkbox"/> Drug rehabilitation <input type="checkbox"/> Alcohol treatment <input type="checkbox"/> Attendance centre <input type="checkbox"/> Programme (specify programme(s)) _____	
c) Other outcome: <input type="checkbox"/> Fine £ _____ <input type="checkbox"/> Conditional Discharge <input type="checkbox"/> Absolute Discharge - (record compensation, confiscation & costs in Section 8)	

3. Definitive guideline - Step 1

- a. Factors indicating greater harm:** Injury/ fear of injury which is serious in context of offence Victim particularly vulnerable
 Sustained or repeated assault on same person
- b. Factors indicating lesser harm:** Injury which is less serious in the context of the offence
- c. Factors indicating higher culpability:**
 (Statutory aggravating factors): Offence motivated by/ demonstrating hostility to: race/ religion sexual orientation disability
 (Other aggravating factors): Significant degree of premeditation Threatened/ actual use of weapon/ equivalent
 Intention to commit more serious harm Deliberately causes more harm than necessary Targeting of vulnerable victim
 Leading role in group/ gang Offence motivated by/ demonstrating hostility to age, sex, gender identity
- d. Factors indicating lower culpability:**
 Subordinate role in group/ gang Greater degree of provocation Lack of premeditation Excessive self defence
 Mental disorder/ learning disability linked to commission

4. Offence seriousness (see notes overleaf) Category 1 (Most serious) Category 2 Category 3 (Least serious) No guideline

5. Definitive guideline - Step 2:

a. Factors increasing seriousness

- (Statutory aggravating factors): Previous relevant convictions - How many? 1-3 4-9 10 or more Offence committed on bail
 (Other aggravating factors include): Location Timing Ongoing effect on victim
 Offence against those in the public sector/ service to public Presence of others Gratuitous degradation Victims forced to leave home (domestic violence) Failure to comply with current court orders On licence Attempt to conceal/ dispose of evidence Failure to respond to warnings/ concerns Under the influence of alcohol/ drugs Abuse of power/ trust
 Exploiting contact arrangements Previous violence/ threats Evidence of community impact Steps taken to prevent reporting/ assisting prosecution TICs Other factors (please specify) _____

b. Factors reducing seriousness or reflecting personal mitigation:

- No previous relevant convictions Single blow Remorse Good character/ exemplary conduct
 Determination/ demonstration to address addiction/ behaviour Serious medical conditions Isolated incident
 Age/ lack of maturity affecting responsibility Lapse of time not fault of offender
 Mental disorder/ learning disability not linked to commission Sole/ primary carer for dependent relatives
 Other factors (please specify): _____

6. Indication of Guilt/ Guilty plea

a. Was guilt indicated at the police station? Yes No

b. Where Guilty plea entered: At Mag Prior to PCMH At PCMH After PCMH/ prior to day of trial At/ after day of trial

c. What reduction was given? Greater than 33% 33% 21% to 32% 11% to 20% 1% to 10% 0%

d. Was the guilty plea entered at the first reasonable opportunity? Yes No

7. Additional factors: Were any of the following other factors present or stated to have influenced the sentence imposed?

(do not include anything that is covered elsewhere on the form)

- Totality principle Consecutive sentence Concurrent sentence Multiple defendants Ancillary Order Compensation Order Confiscation Order Costs Serving another sentence Other factors that you stated and are relevant to the sentencing decision for e.g. S.116 Return to Custody (please specify) _____