

## EXECUTIVE SUMMARY

The Sentencing Council for England and Wales launched a new survey on 1st October 2010 to capture information on the factors that influence sentence outcomes. Although the primary purpose for collecting this data is not to produce a publication of findings, the Council have recognised the usefulness of this data in providing new information about the relationship between the offence committed by an offender and the sentence that they finally receive. Therefore, it is their intention to publish the findings on a regular basis. This report presents the findings of the first six months of the survey and the work being done by analysts at the Council to further develop the statistics.

A survey form is expected to be completed for every sentence passed on a principal offence at every Crown Court location across England and Wales on or after 1st October 2010. Between 1st October 2010 and 31 March 2011, a survey form was returned for 36,093 sentences. Of these, at least 89% have been confirmed to relate to the principal offence committed. This represents an overall national response rate of between 54% (when looking at only cases where a match was made to principal offence) and 64% (when all cases are considered).

The survey is essentially a Census but at this stage has not been weighted for potential non-response. However, we believe that there is value in putting the first results into the public domain provisionally while the weighting methodology is developed and feedback is received on the presentation of these statistics.

## Offence Level

The first factor that a judge will determine when sentencing an offender is the offence level. This is a reflection of the severity of the offence compared to other offences of the same type (for example, one ABH case vs. other cases of ABH) and is determined by assessing the harm caused, or risked being caused, by committing the offence and how blameworthy (culpable) the offender was for the offence. The survey indicates that:

- 17% of sentences were for a level 1 offence – an offence involving a high level of harm and high level of culpability compared to other offences of the same type, and 20% for an offence that was level 4 or lower – an offence involving the lowest levels of harm and culpability.
- 70% of level 1 offenders were sentenced to immediate custody, 14% were given a suspended sentence order, and 12% received a community order.
- For level 4 or lower offenders, 25% were sentenced to immediate custody, 27% were given a suspended sentence order, and 39% received a community order.
- After applying any reductions for a guilty plea, the average custodial sentence length was 3 years 3 months for a level 1 offender, and 1 year 4 months for a level 4 or lower offender.

## Previous Convictions

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 survey shows that:

- 49% of offenders sentenced had no previous convictions taken into account when determining their sentence.
- Where the offender did have previous convictions that were taken into account when determining the sentence, most frequently, between 1 and 3 offences were taken into account.
- 59% of offenders with 1-3 previous convictions taken into account were sent to immediate custody. This increased to 78% for offenders with 10 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. Results from the survey show that:

- For offenders with four or more aggravating factors but no mitigating factors, 96% were sent to immediate custody, whilst for offenders with four or more mitigating factors but no aggravating factors, only 12% 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 3 months. This compares to an average custodial sentence length of 1 year 7 months for offenders with no aggravating factors and four or more mitigating factors.

## Guilty Pleas

Offenders can enter a guilty plea at any stage in the court process. The level of guilty plea reduction applied will depend on the stage of the process at which the plea is made and the circumstances in which the plea was given. In some cases, the offender may indicate guilt at the police station before entering court, (although any formal guilty pleas must be entered at court). 35% of forms reported that the offender had indicated guilt at the police station. Whilst at court, 87% of forms indicated that the offender entered a plea of guilty. The survey shows that:

- The most frequent stage of the proceedings at which offenders pleaded guilty was at the plea and case management hearing (PCMH), an early hearing at the Crown Court, with 43% indicated to have pleaded at this stage.
- Of those pleading guilty, 69% received a discount of 33%, 12% received a discount of 21-32%, 8% received a discount of 11-20% and 8% received a discount of 1-10%. 2% received no discount.

## Sentences for the offence of Actual Bodily Harm (ABH)

Some offence specific findings are presented in this report for actual bodily harm (ABH) – the offence for which the highest volume of forms was received. These findings are provided as an example of how other offence specific findings may be presented in future publications.

- Between October 2010 and March 2011, of all offenders sentenced for ABH, 13% committed offences that were considered to have involved the highest level of harm and culpability,

reflecting a level 1 offence, whilst 27% were level 2 offences, 33% were level 3 offences and 27% involved the lowest levels of harm and culpability (level 4 offences).

- On average, before the guilty plea reduction was applied, level 1 ABH offenders who were sentenced to immediate custody received a sentence length of 2 years 2 months. For level 2 offenders, this was 1 year 6 months, for level 3 offenders it was 1 year 2 months whilst for level 4 offenders, it was 1 year 1 month.
- The guideline in use over the period of this report for assault offences was the Sentencing Guidelines Council (SGC) guideline: Assault and other offences against the person. This guideline suggests an appropriate range of outcomes for the offence of ABH – a community order to a 4 year custodial sentence. This range is applicable before taking into account any further factors relating to the offence or the offender, or any reductions for a guilty plea. 98% of sentences for ABH fell within the overall SGC guideline offence range.
- The most commonly seen aggravating factor in sentenced cases of ABH was the use of a weapon. The most commonly seen mitigating factor was genuine remorse shown by the offender,
- 90% of offenders sentenced for ABH had entered a guilty plea. For those who pleaded guilty to an ABH offence, the offender most frequently entered their plea at the Plea and Case Management Hearing (PCMH) (in 43% of cases), and the most common level of discount applied was 33% (in 64% of cases).

### Further work

Analysts at the Council are working towards the following for future publications of Crown Court Sentencing Survey data:

- To report the survey data in an annual release on a calendar year basis.
- To weight for non-response.
- Where possible, to provide data that is aligned to other Criminal Justice Statistics.
- To include some qualitative analysis of the free text sections of the form to further supplement the data received and to help explain any anomalies in the data.

### Acknowledgements

This survey would not be possible if it were not for the time spent by judges and court staff in ensuring the completion and administration of the survey. The Council would like to express their gratitude to all those involved for their continued participation which has allowed this new and useful information to be made available.

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<sup>1</sup> The Head of Profession for Statistics works in an independent capacity to assure the quality of all statistics produced by the Ministry of Justice or any of its arms length bodies.

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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.

This first statistical release reports on the data received from the first six months of the survey. These data relate to sentences passed at the Crown Court between 1 October 2010 and 31 March 2011. This is the first time that statistics have been collected on the key factors taken into account by judges when determining the appropriate sentence for an offender being sentenced at the Crown Court. As these statistics are new and still subject to testing in terms of their robustness and ability to meet wider customer needs, for the purposes of the UK Statistics Authority, they are classed as **experimental**.

At this stage, the results presented are based only on those sentences for which a form was returned. Therefore, they may not provide a representative picture of all sentences imposed at the Crown Court across England and Wales. The Council has chosen to release the data before making a full assessment of how well the returned forms represent all sentences across the Crown Court as they are aware of the importance of this data in adding to the public debate on sentencing. Further details of the methodology that is being developed to assess how representative the data is are provided on page 9.

As the format for publication of these statistics in the future is still being considered, analysts at the Council welcomes the feedback of users on this experimental release. A short questionnaire is attached within the consultation section on page 48 inviting readers to provide their thoughts.

For those readers who are unfamiliar with the process of sentencing, a supplementary document: *A Guide to CCSS Statistics* is provided alongside this release<sup>2</sup>. This supplementary document provides background information on the factors that a judge will consider when deciding on the appropriate sentence to help understand the context of the data presented here. It is recommended that the reader refers to this before or in conjunction with this release.

Whilst reading this document, the reader is asked to keep in mind one important point – that **every criminal case is unique**. There may be considerations other than the ones expressed here, or collected on the Crown Court Sentencing Survey that have an impact on the sentence<sup>3</sup>. Furthermore, although the same factors may be present in two cases prosecuted for 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 detail considered for 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 eventual sentence imposed.

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 orders might differ depending on the opinion of the court as to which are the most suitable for the offender.

Some limitations have been recognised from the first six months of data which have restricted the level of analysis that can be done at this stage. Work has been and continues to be done to improve the survey and address the limitations identified. For further details on the limitations and the current and future work of analysts at the Council in relation to the survey, please refer to the limitations and further work sections on pages 33 and 34.

Although not nationally representative, the results presented here offer a new and interesting snap-shot of sentencing practice in the Crown Court. Even though we may have a good idea of how we expect certain factors to influence a sentence, these statistics begin to show, in practice, not only the effect of these factors but also how frequently these factors are present in a case.

The results have been split into two sections:

### Section 1

The first section provides a general overview of responses from all forms. This section aims to show which factors are commonly taken into account across all sentences, and the general effect of these factors on the outcome.

### Section 2

The second section provides an analysis of the factors taken into account for a single specific offence – Actual Bodily Harm. This section aims to provide a flavour of how offence specific results might be presented in future publications.

The data quality and validation section on page 31 provides details on the how the survey results were analysed to produce the results presented.

## METHODOLOGY FOR THE SURVEY

The survey is a census, not a sample survey. For every *new* criminal case sentenced on or after 1 October 2010 at the Crown Court, the sentencing judge is expected to complete a survey form. When completing the form, the judge is required only to consider 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<sup>4</sup> of a previous sentence, this sentence would not be *new* and therefore a form would not be completed.

The survey data is collected using nine different **offence type** forms. These are:

- arson and criminal damage
- assault and public order;
- driving offences;
- drug offences;
- homicide and ancillary offences<sup>5</sup>;
- other offences;
- robbery and assault with intent to rob;
- sexual offences; and
- theft, dishonesty, burglary and fraud.

Only one form is completed, depending on the nature of the **principal offence** being sentenced. The nine variations of the form 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.

These forms record information on:

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

For definitions and further details on each of these factors, please refer to the document: *Guide to Sentencing and Sentencing Practice* which can be found on the Council's website<sup>6</sup>. For links to copies of the forms, please refer to page 35.

4 There are 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 The title of this form has since changed to "offences causing death" but still covers the same offences.

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

This section looks at the findings from the survey responses across all nine offence forms. Some factors vary substantially across offences, therefore only those parts of the form where it is appropriate to aggregate across offence types have been considered in this section.

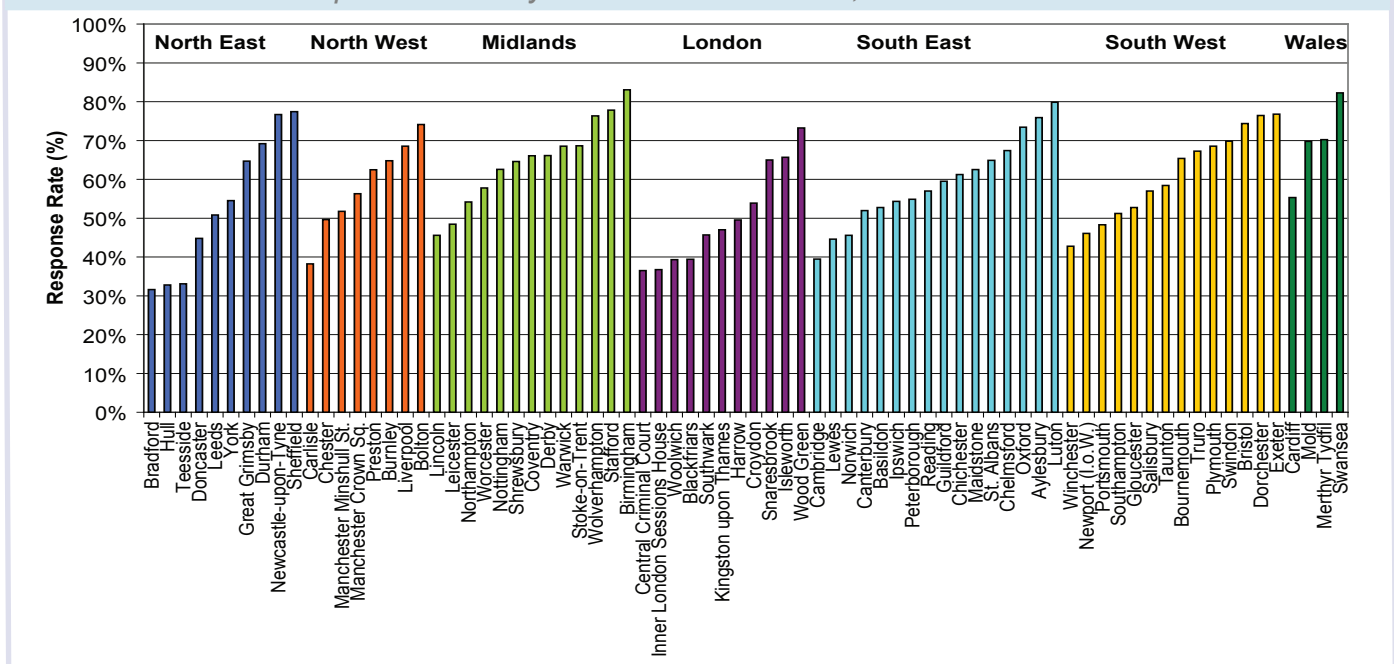
### 1.1 Survey response rates

Across all Crown Court locations in England and Wales, between 1 October 2010 and 31 March 2011, a survey form was completed for 36,093 sentences. Of these, it has been possible to confirm that at least 89 per cent of the forms returned relate to the principal offence through comparison with the administrative database, CREST<sup>7</sup>. The other 11 per cent have been excluded from the results presented as it is not possible to say whether these forms relate to the principal offence.

For those forms that have been included in the results, this represents an overall national response rate of between 54 per cent and 64 per cent<sup>8</sup>. However, response rates by location vary from 28 per cent to 88 per cent.

Chart 1.11 shows the distribution of response rates across the court locations, separated by regions. The volume of cases seen will differ between courts, therefore the actual volumes of forms included in the analysis from each court are shown in chart 1.12.

Chart 1.11: Response rates by Crown Court location, October 2010 to March 2011.

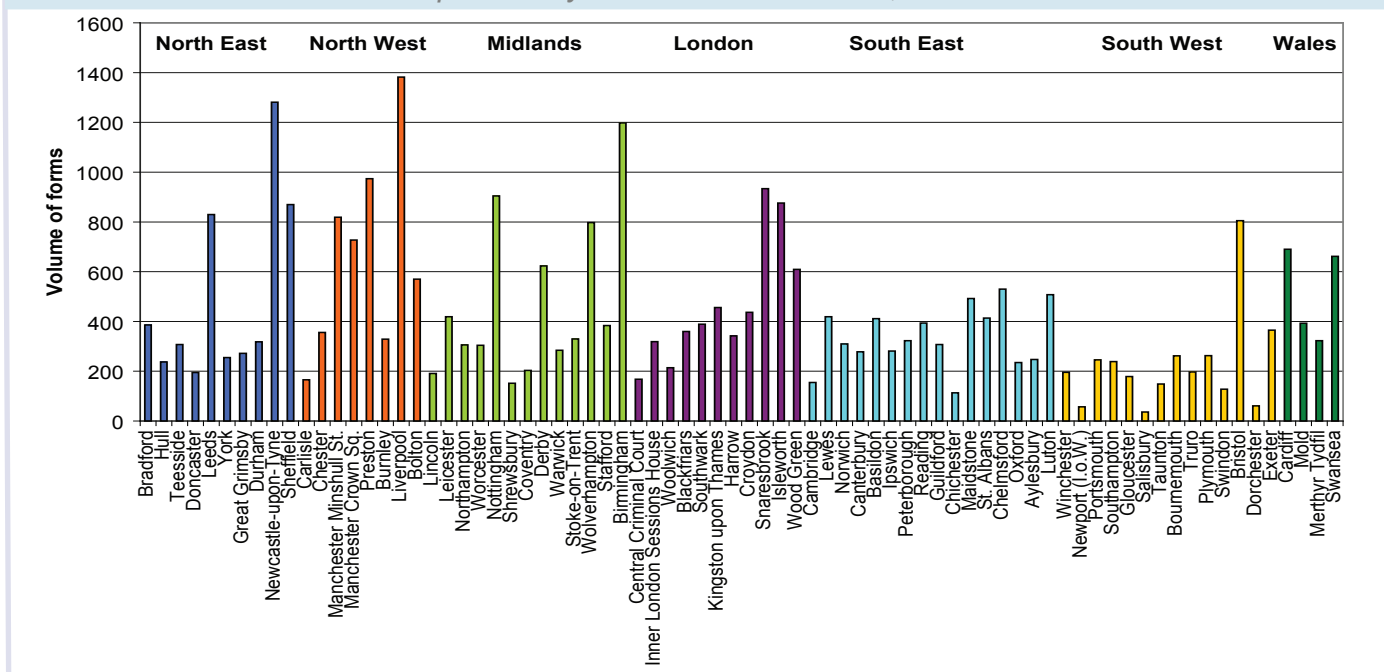


<sup>7</sup> CREST (Crown Court Electronic Support System) is the case management system used by Crown Courts for tracking case progression.

<sup>8</sup> The response rates are based on provisional data on the overall number of principal offences, therefore a range of response rates has been indicated.



Chart 1.12: Volume of responses by Crown Court location, October 2010 to March 2011.



To allow this data to be made available as soon as possible, at this stage, no assessment has been made of the non-response bias. Therefore, it is not possible to say whether the results presented are representative of all sentences passed at the Crown Court. Analysts at the Council are currently considering a methodology to allow nationally representative data to be presented in future publications. This will be based on a comparison of the distribution of sentence outcomes received by offenders for whom a form was completed to that for offenders for whom no form was completed.

### 1.2 Offence level (level of harm and culpability)

See page 5 of the Guide to CCSS Statistics

The offence level is a measure of the severity of the offence and is determined by an assessment of the amount of **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 level measures the scale of severity in comparison to other offences of the same type. This means that the offence level does not give any information about the severity of an offence relative to an offence of another type, even if the levels of the two offences are the same. For example, a level 1 assault cannot be compared to a level 1 theft.

The sentencing guidelines for any particular offence define a set of offence levels which are based on the **culpability** of the offender and the **harm** caused. Not all offences have a sentencing guideline. For those offences with a guideline, the Crown Court Sentencing Survey form captures the offence level. If a guideline does not exist for the offence being sentenced, the judge is requested to tick “no guideline” on the form.

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

This section seeks to show how the offence level influences the final sentence received by an offender. Only those forms where the question on offence seriousness was completed and **where the offence is one for which a guideline currently exists** are included in the results. For a full list of the offences included, please refer to page 46 of the annex.

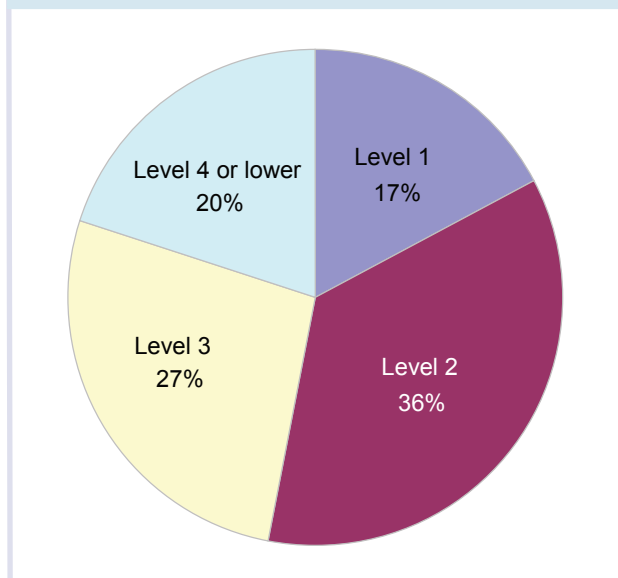
## Findings

Over the period October 2010 to March 2011, of those offenders sentenced at the Crown Court for an offence for which a current sentencing guideline exists and a survey form was returned, and the relevant question completed:

- 17 per cent were sentenced for a level 1 offence – an offence involving a high level of harm caused and high level of culpability in comparison to offences of the same type.
- 20 per cent were sentenced for an offence that was level 4 or lower – an offence involving the lowest levels of harm and culpability.
- 70 per cent of level 1 offenders were sentenced to immediate custody. This compares to 25 per cent being sentenced to immediate custody for level 4 or lower offenders.
- Of those receiving immediate custody, before applying any reductions for a guilty plea, the average custodial sentence length was 4 years for a level 1 offender, and 1 year 9 months for a level 4 or lower offence.
- After applying any reductions for a guilty plea, the average custodial sentence length was 3 years 3 months for a level 1 offender, and 1 year 4 months for a level 4 or lower offender.
- The average guilty plea reduction was therefore 19 per cent for level 1 offenders and 22 per cent for level 4 or lower offenders.
- Of those receiving immediate custody, 6 per cent of level 1 offenders received a life sentence or Imprisonment for Public Protection (IPP). 1 per cent of level 4 or lower offenders received this outcome.

Chart 1.21 shows the proportion of offenders falling into each offence level. For each of these levels, chart 1.22 describes the sentence outcomes received by the offenders under each level<sup>9</sup>.

*Chart 1.21: The level of offence committed by offenders convicted of offences for which sentencing guidelines exist, Crown Court, October 2010 to March 2011.*



*Level 1 and level 2 offenders are more likely to be sent to immediate custody than level 3 or lower offenders.*

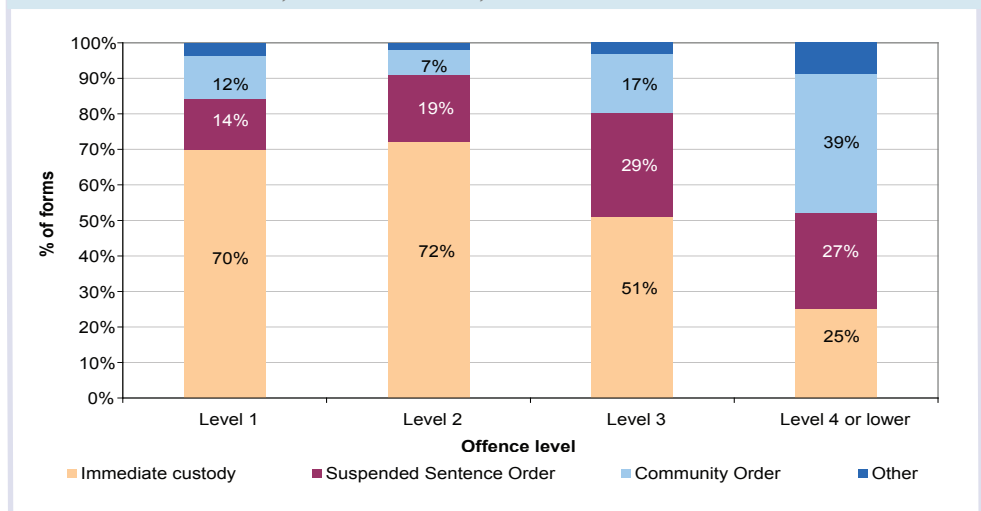
The likelihood of being sent to immediate custody is very similar for level 1 and 2 offenders, but then decreases for lower offence levels which indicate lesser harm and lower culpability. 70 per cent of level 1 offenders were sentenced to immediate custody. This compares to 51 per cent for level 3 offenders and 25 per cent for level 4 or lower offenders.

*On average, level 1 offenders receive longer custodial sentence lengths than offenders who commit lower level offences.*

Although the percentage of level 1 and level 2 offenders receiving immediate custody is fairly similar, the custodial sentence length received does vary across these two levels, with level 1 offenders,

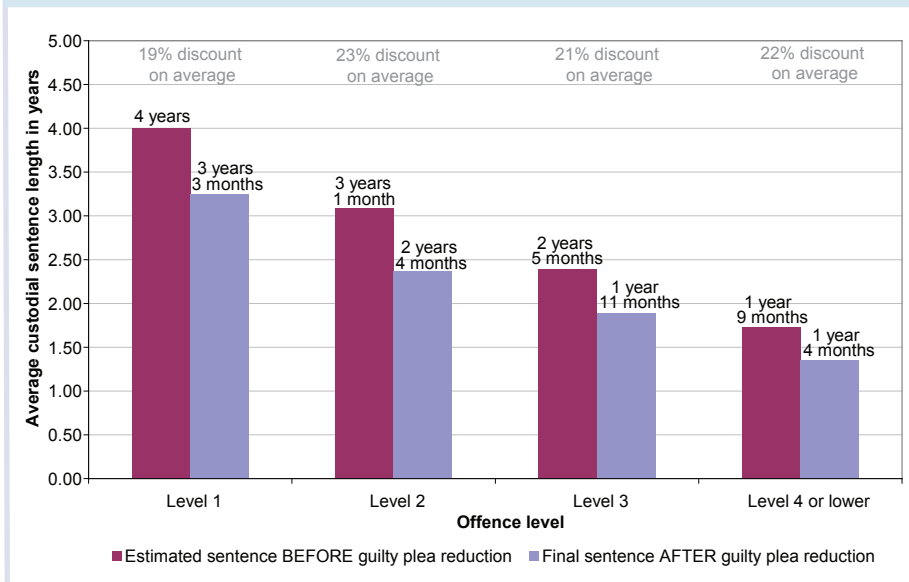
on average, receiving a significantly higher custodial sentence length. The average custodial sentence length for offenders at level 1, after applying any reduction for a guilty plea, was 3 years 3 months compared to 2 years 4 months for offenders at level 2. This is shown in chart 1.23 which shows the average custodial sentence length received by those offenders who were sentenced to immediate custody (excluding life sentences and IPPs). 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 discount are shown in this chart.

*Chart 1.22: Sentence outcome received by offenders convicted of offences for which sentencing guidelines exist, broken down by level of offence, Crown Court, October 2010 to March 2011.<sup>8</sup>*



<sup>9</sup> Immediate custody includes those sentenced to life imprisonment or an IPP.

*Chart 1.23: Average custodial sentence length received by offenders sentenced to immediate custody for offences for which sentencing guidelines exist, broken down by level of offence, Crown Court, October 2010 to March 2011.*



The results presented in Charts 1.22 and 1.23 show that the sentence imposed reflects the harm caused, or potentially caused, by the offender and the offender's culpability. Where an offender caused significant harm, and was shown to be highly culpable (a level 1 offence), the offender was almost 3 times more likely to be sent to immediate custody than an offender who caused much less harm and had much lower culpability (a level 4 or lower offence). This is also true of the length of sentence received by those sentenced to immediate custody: on average, a level 1 offender

received 3 years 3 months whilst, on average, a level 4 or lower offender received 1 year 4 months after applying any reductions for a guilty plea.

## Limitations

Of those forms for an offence which has a guideline, the judge ticked "no guideline" in 10 per cent of cases. There are many reasons why this could have occurred, for example, after assessment against the levels described in the guideline, the judge could decide that the case is exceptional and therefore does not fit into the guideline. Equally, there could be a recording error. Analysts at the Council are working to better understand why these instances are occurring. They have not been included in the analysis above.

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

Within some guidelines, the recommended ranges of sentence outcomes overlap between adjacent offence levels. Where this is the case, or where the judge feels that the offence could fall within either of two adjacent levels, the judge is requested to tick both levels on the form. More than one level had been ticked on 6 per cent of forms included in the analysis. Due to the small number of such cases, where more than one level is ticked, the form has been recorded under the level which indicates the highest harm and culpability out of those ticked.

### 1.3 Number of previous convictions taken into account

See page 6 of the Guide to CCSS Statistics

Not all previous convictions will be taken into account by the judge 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<sup>10</sup>. Where an offender has previous convictions which are different in nature to the current offence or where they occurred a long time ago the judge is unlikely to take them into consideration. Those previous convictions that the judge decided to treat as an aggravating factor that serve to increase the sentence imposed, are referred to as previous convictions **taken into account**.

The Crown Court Sentencing Survey forms capture whether the offender had any previous convictions that were considered to be recent or relevant. Where it is indicated that the offender does have recent or relevant convictions, the survey then records how many of these offences the judge decided to **take into account** when determining the sentence.

For all forms where the question relating to previous convictions was completed, this section describes the frequency with which offenders were indicated to have previous convictions taken into account to determine their sentence, the number that were taken into account and the final sentence imposed in each case.

The options available to select for the number of previous convictions taken into account differ on the homicide form. In the results presented, homicide forms have been excluded, except for table 1.32 where the responses provided on the homicide forms are shown separately. Homicide forms account for [1 per cent] of all forms analysed, therefore this does not have much effect on the overall findings.

### Findings

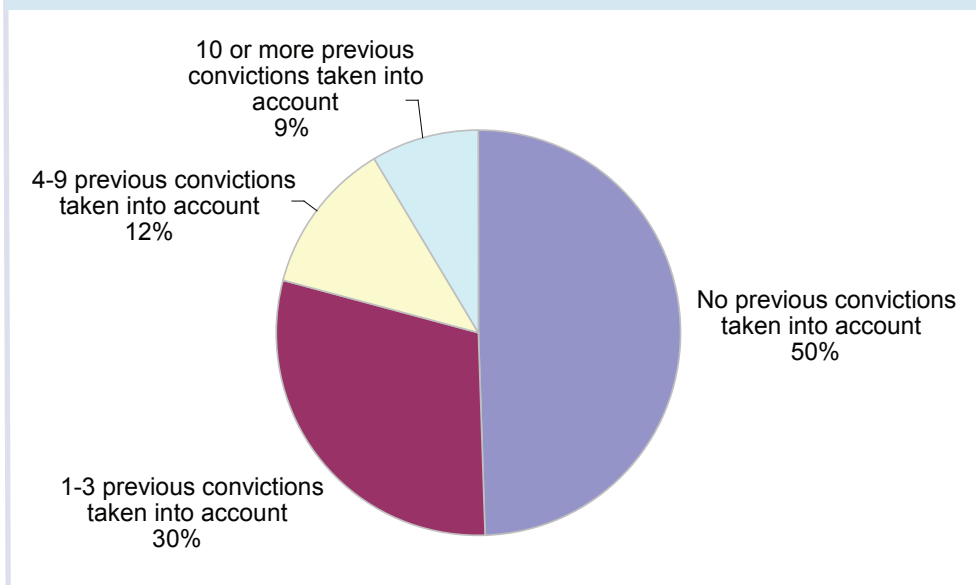
Over the period October 2010 to March 2011, of those offenders sentenced at the Crown Court for whom a survey form was returned, and the relevant question completed:

- 50 per cent of offenders had no previous convictions taken into account when determining their sentence.
- Where the offender did have previous convictions that were taken into account when determining the sentence, most frequently between 1 and 3 offences were taken into account.
- 59 per cent of offenders with 1-3 previous convictions taken into account were sent to immediate custody. This increased to 78 per cent for offenders with 10 or more previous convictions taken into account.

<sup>10</sup> S143(2) Criminal Justice Act 2003

- Offenders convicted of sexual offences were least likely to have any previous convictions that were considered recent and relevant to the offence being sentenced. 31 per cent of forms returned for sexual offences indicated that the offender had at least 1 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. 17 per cent of forms for theft offences indicated that this number of previous convictions had been taken into account to determine their sentence.

*Chart 1.31: The number of previous convictions taken into account to determine the sentence imposed, Crown Court, October 2010 to March 2011.*



Over the period October 2010 to March 2011, of those offenders sentenced at the Crown Court for whom a survey form was returned, 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.

*Offenders being sentenced for sexual offences and offences of arson and criminal damage were least likely to have any previous convictions taken into account to determine their sentence. Offenders being sentenced for robbery and theft offences were most likely to have previous convictions that were taken into account.*

The offences for which offenders were least likely to have had any previous convictions that were considered recent and relevant enough to take into account to determine their sentence, were sexual offences, arson and criminal damage offences and homicide offences. No previous convictions were taken into account for 69 per cent of those sentenced for sexual offences, 64 per cent of those sentenced for arson and criminal damage offences and 64 per cent of those sentenced for homicide offences. On the other hand, the offences for which offenders were most likely to have had previous convictions taken into account to determine their sentence were robbery, theft and driving. Of those sentenced for these offences, 36 per cent, 41 per cent and 43 per cent respectively had no previous convictions taken into account. Those convicted of theft offences were the most likely to have 4 or more recent and relevant previous convictions with 33 per cent of theft offenders having this number taken into account when determining their sentence.

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, October 2010 to March 2011.

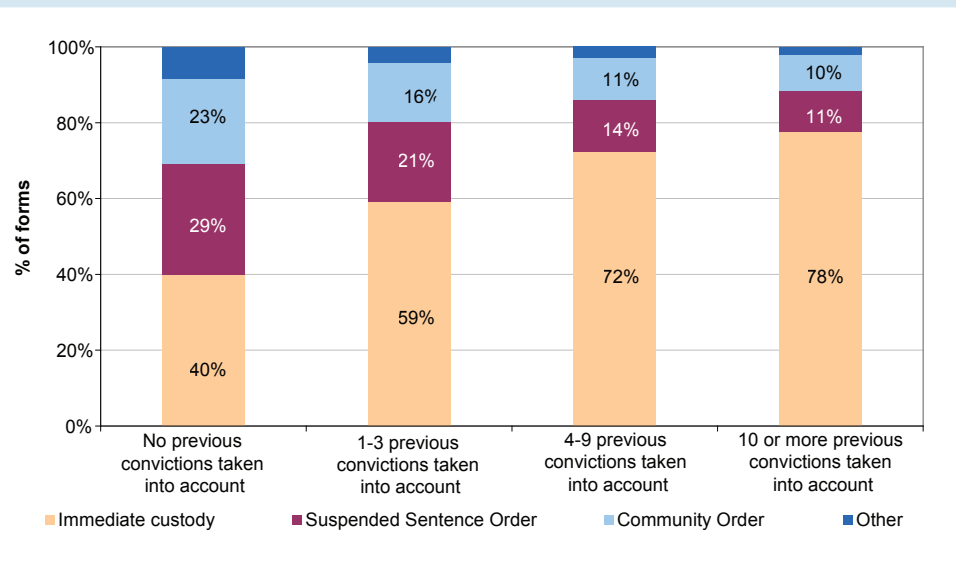
Offence Form	No previous convictions taken into account	Where previous convictions were taken into account, how many were considered?		
		1-3	4-9	10 or more
% of forms				
Arson and criminal damage	64%	22%	7%	7%
Assault	49%	35%	12%	4%
Driving	43%	34%	13%	10%
Drugs	61%	29%	7%	3%
Other	55%	27%	11%	6%
Robbery	36%	37%	17%	10%
Sexual	69%	23%	5%	3%
Theft <sup>10</sup>	41%	26%	16%	17%
<b>All forms excluding homicide</b>	50%	29%	12%	9%
		<b>1</b>	<b>2</b>	<b>3 or more</b>
Homicide <sup>11</sup>	64%	9%	9%	18%

The more previous convictions that are taken into account by the judge, the more likely the offender is to be sent to immediate custody.

Chart 1.33 shows how the sentence outcomes imposed differ according to the number of previous convictions.

As the number of previous convictions taken into account by the judge determining the sentence increases, chart 1.33 shows that the likelihood of being sent to immediate custody increases. Of those offenders with no previous convictions taken into account, 40 per cent received immediate custodial sentences compared to 78 per cent of offenders with 10 or more previous convictions taken into account.

Chart 1.33: Sentence outcome received by offenders, broken down by the number of previous convictions taken into account to determine their sentence, Crown Court, October 2010 to March 2011.



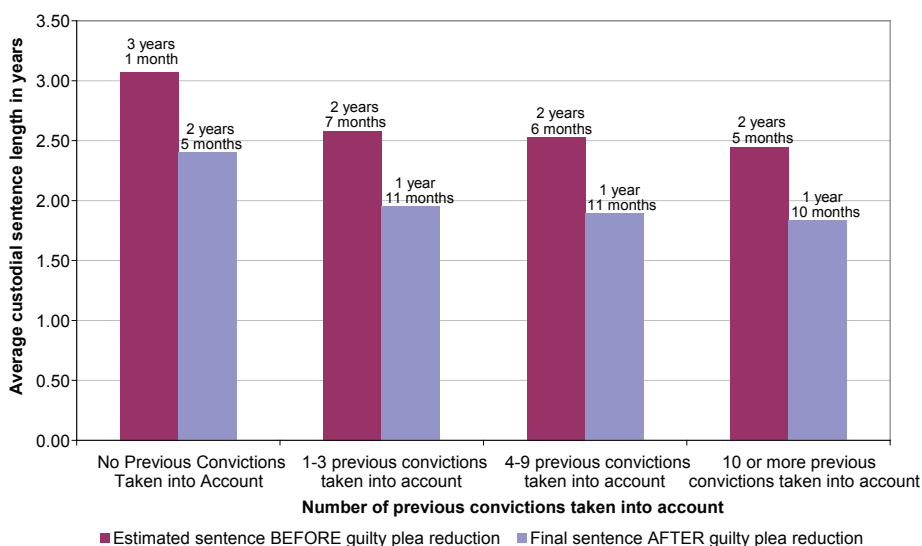
11 The form for theft covers offences of theft, dishonesty, burglary and fraud.

12 The options for the number of previous convictions taken into account differ on the homicide form. Please see page 13 for further details.

## Limitations

For those receiving immediate custody, the average custodial sentence lengths imposed are shown in chart 1.34. However, this chart should be treated with caution as it does not provide a true indication of the effect of the number of previous convictions taken into account on the sentence length imposed. 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 long string of similar offences. Therefore, the more serious offences which attract longer sentences are more likely to be captured under the data relating to an offender with fewer previous convictions taken into account. As seen in chart 1.34, when aggregating all offences together, it appears that offenders with a higher number of previous convictions taken into account are given lower custodial sentence lengths, but this is actually because the type of offences being sentenced are usually less serious. Average custodial sentence lengths in relation to relevant previous convictions can only be sensibly looked at for an individual offence type, as shown for the offence of actual bodily harm in section 2.

*Chart 1.34: Average custodial sentence length received by offenders sentenced to immediate custody for offences for which sentencing guidelines exist, broken down by level of offence, Crown Court, October 2010 to March 2011.*



## 1.4 Aggravating and mitigating factors

See page 7 of the Guide to CCSS Statistics

Once the judge has made an assessment of the **harm and culpability** involved in an offence (the offence level), 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 higher sentence is appropriate or mitigating factors which suggest that a lower sentence is appropriate.



On the Crown Court Sentencing Survey forms, judges are requested to indicate the individual aggravating and mitigating factors that had an influence on the sentence imposed. This section reports on the results from this part of the form. As the aggravating and mitigating factors involved can vary substantially between different offences, some of the results have been separated by offence type<sup>13</sup>.

## Findings

Over the period October 2010 to March 2011, of those offenders sentenced at the Crown Court for whom a survey form was returned and the relevant question completed:

- For offenders with four or more aggravating factors but no mitigating factors, 96 per cent were sent to immediate custody, whilst for offenders with four or more mitigating factors but no aggravating factors, 12 per cent were sentenced to immediate custody.
- Of those offenders sentenced to immediate custody, the average custodial sentence length received by offenders with four or more aggravating factors but no mitigating factors was 4 years 3 months. This compares to an average custodial sentence length of 1 year 7 months for offenders with no aggravating factors and four or more mitigating factors.
- In cases of arson and criminal damage, the most frequently recorded aggravating factor present was that the offender was under the influence of drugs or alcohol, whilst the most frequently recorded mitigating factor was that the offender showed genuine remorse.

Table 1.41 shows the number of aggravating and mitigating factors taken into account during sentencing (over and above the presence of previous convictions) and the sentence outcome imposed.

*Table 1.41: Sentence outcomes received, broken down by the number of aggravating and mitigating factors (excluding the presence of previous convictions), Crown Court, October 2010 to March 2011.*

Number of aggravating factors	Number of mitigating factors	Sentence Outcome				Average custodial sentence length in years
		Community Order	Suspended Sentence Order	Immediate Custody	Other	
		% of forms				
None	None	23%	15%	51%	11%	1 year 9 months
	1-3	31%	27%	29%	13%	1 year 8 months
	4 or more	38%	35%	12%	14%	1 year 7 months
1-3	None	5%	12%	81%	2%	2 years 5 months
	1-3	14%	24%	59%	4%	1 year 11 months
	4 or more	27%	43%	25%	5%	1 year 10 months
4 or more	None	1%	3%	96%	1%	4 years 3 months
	1-3	3%	8%	87%	1%	3 years 1 months
	4 or more	13%	31%	54%	2%	2 years

<sup>13</sup> The offence type groupings are determined by the form on which the offence appears.

*An offender with many aggravating factors and few mitigating factors is more likely to be sentenced to immediate custody and for a longer amount of time.*

Although this table does not show the relative importance of individual factors, it does provide a good indication of the combined effect of all factors present in a case. As we would expect, a case with many aggravating factors and few mitigating factors is dealt with more harshly than one with few aggravating factors and many mitigating factors. Offenders with four or more aggravating factors but no mitigating factors were most likely to be sent to immediate custody with 96 per cent receiving this sentence and an average custodial sentence length of 4 years 3 months after applying any reductions for a guilty plea. Of offenders with between one and three aggravating factors and between one and three mitigating factors, 59% were sent to immediate custody and the average custodial sentence length was 1 year 11 months. This compares to offenders with four or more mitigating factors but no aggravating factors, of whom 12 per cent were sentenced to immediate custody with the average custodial sentence length being 1 year 7 months. This shows that the presence of mitigating or aggravating factors can serve to either influence the type of sentence imposed or the length of the sentence imposed, or both.

*In arson and criminal damage offences, the most commonly present aggravating feature was that the offender was under the influence of drugs or alcohol. The most commonly present mitigating factor was that the offender showed genuine remorse.*

Charts 1.42a) and b) show which factors occurred most frequently in cases of arson and criminal damage being sentenced. They provide the percentage of forms on which individual factors were indicated to have had an influence on the sentence imposed. As the factors involved vary across different offence types, separate charts are required for each offence form. Equivalent charts for offence types other than arson and criminal damage are provided on pages 38-45 of the annex.

*Chart 1.42a): Frequency of specific aggravating factors that influenced the sentence imposed for offences recorded on the arson and criminal damage form, Crown Court, October 2010 to March 2011.*

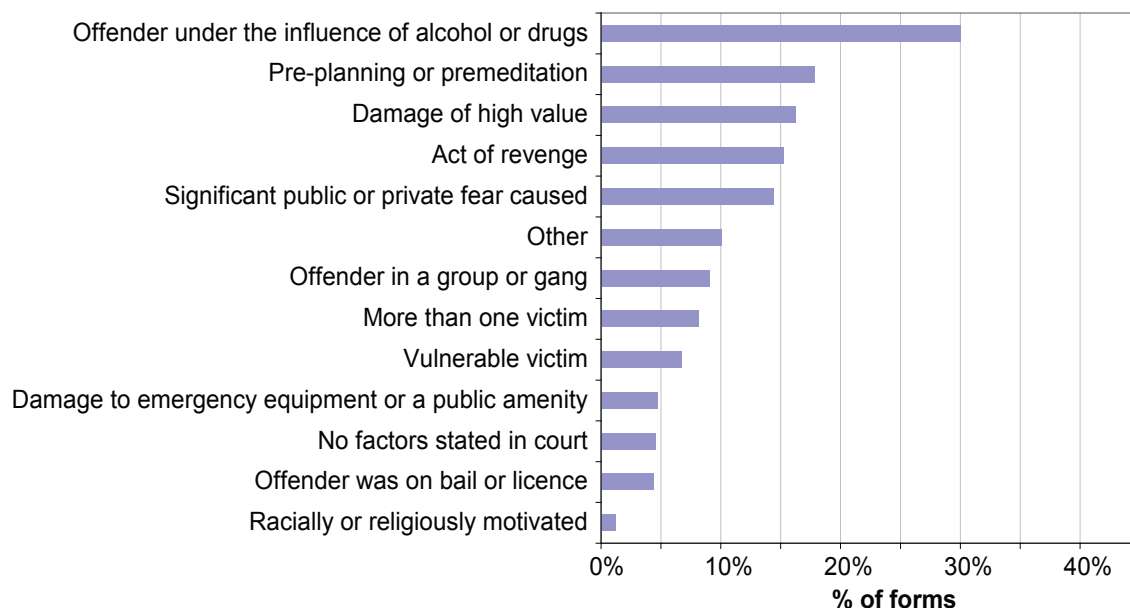
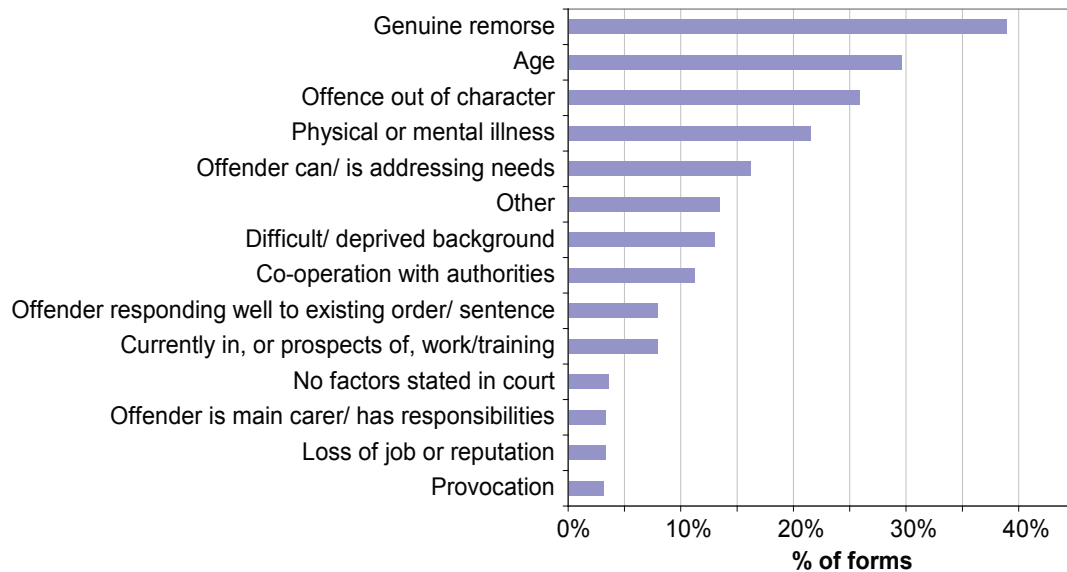


Chart 1.42b): Frequency of specific mitigating factors that influenced the sentence imposed for offences recorded on the arson and criminal damage form, Crown Court, October 2010 to March 2011.



For offences recorded on the arson and criminal damage form<sup>14</sup>, the most frequent aggravating factor present was that the offender was under the influence of drugs or alcohol, with 30 per cent of arson and criminal damage forms indicating that this factor influenced the sentence imposed. The most frequent mitigating factor was genuine remorse, with 39 per cent of arson and criminal damage forms indicating that this factor influenced the sentence imposed.

## Limitations

Although the number of factors provides an indication of how many different factors influenced the judge's decision, it **does not reflect the relative importance of the individual aggravating and mitigating factors on the sentence**. Some factors will be considered by the sentencing judge to be more or less important to the case or the offender than others which will in turn influence how much the sentence is increased or decreased to take account of these factors.

This publication makes no attempt to estimate the individual effect of each factor present on the sentence outcome. Such a task would require complex modelling procedures. This will be considered for future publications once a larger dataset is available and a more robust analysis of the data is possible.

<sup>14</sup> For details on how to access copies of the forms, please refer to page 35.

## 1.5 Pleading guilty to the offence

See page 8 of the Guide to CCSS Statistics

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<sup>15</sup>. 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 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. The level of reduction diminishes when the plea is entered later than the first opportunity. As with all factors, if it is in the interests of justice to do so, the judge may decide to move outside of the approach recommended by 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). 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. Although a formal plea must be entered at court, when an offender pleads guilty at an early stage, the court may decide to take into account whether the offender had indicated guilt at the police station.

The way in which a case reaches the Crown Court will determine exactly which stage of the proceedings will constitute the first reasonable opportunity to plead guilty. Further guidance on this is provided in the SGC definitive guideline: *Reductions for a guilty plea*.

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 discount applied to the sentence. It also captures whether an indication of guilt was provided at the police station prior to the court process. This section presents the findings from this part of the form.

For the purpose of this release, those forms for which the judge either indicated a discount of "greater than 33 per cent" have been included in the group "33 per cent"<sup>16</sup>. Analysts at the Council have identified a potential source of confusion between these categories and have therefore decided to report the data in this way whilst they investigate and resolve the issue.

15 S144 Criminal Justice Act 2003.

16 10 per cent of forms in this group ticked "greater than 33 per cent"; 90 per cent ticked "33 per cent".

## Findings

Over the period October 2010 to March 2011, of those offenders sentenced at the Crown Court for whom a survey form was returned, and the relevant question was completed:

- In 35 per cent of cases, the offender indicated guilt at the police station.
- Of all forms, 87 per cent indicated that the offender had pleaded guilty to the offence. Of these, 82 per cent had both the question on amount of discount given and the question on the stage at which the plea was entered completed.
- The most frequent stage of the proceedings at which offenders pleaded guilty was at the plea and case management hearing (PCMH), with 43 per cent indicated to have pleaded at this stage.
- Of those pleading guilty, 69 per cent received a discount of 33 per cent, 12 per cent received a discount of 21-32 per cent, 8 per cent received a discount of 11-20 per cent and 8 per cent received a discount of 1-10 per cent. No discount was received by 2 per cent.
- Where the question on whether the offender entered their plea at the first opportunity was also completed, 64 per cent stated that the plea was entered at the first opportunity.

Of those forms where it was indicated that the offender entered a guilty plea and both the discount given and the stage at which the plea was entered were provided, table 1.51 shows the average discount given to the offender, broken down by the stage of plea.

*Table 1.51: For those indicated to have pleaded guilty, the stage at which the plea was entered, and the discount applied to their sentence, Crown Court, October 2010 to March 2011.*

Stage of plea	Discount given				
	0%	1-10%	11-20%	21-32%	33%
	% of forms				
At the magistrates' court	1%	<0.5%	1%	4%	93%
Prior to the PCMH	<0.5%	<0.5%	2%	7%	90%
At the PCMH	1%	1%	3%	12%	84%
After the PCMH but before the day of trial	1%	5%	19%	30%	45%
On or after the day of trial	8%	46%	25%	9%	12%

*The sooner offenders enter their guilty plea, the higher the discount they are likely to receive.*

These results are in line with the approach recommended by the sentencing guideline: *Reductions for a guilty plea*. This recommends a discount of up to one third (counted under the “33 per cent” category) for a plea entered at the first opportunity and reducing to a discount of 10 per cent (counted under the “1-10 per cent” category) for a plea entered on the day of trial. The majority, 88 per cent, of offenders who received a “33 per cent” discount for their guilty plea entered their plea at either the magistrates’ court, prior to the PCMH or at the PCMH. Any of these three initial stages could have been the first opportunity, depending on the way in which the case reached the Crown Court. The majority, 77 per cent, of offenders who received a discount of between 21 and 32 per cent entered their plea either at or after the PCMH (but before the trial), and the majority, 82 per cent, of offenders who received a discount of between 11 and 20 per cent entered their plea either after the PCMH or on the day of trial. Of those offenders who received a discount of between 1 and 10 per cent, 87 per cent entered their plea on the day of trial.

### Limitations

No attempt has been made here to separate cases that are committed for trial or committed for sentence from those that are sent for trial to the Crown Court. Although the form captures data on whether the plea was entered at the first opportunity, this does not provide enough information on separate cases according to how they reached the Crown Court. Further work is being done by analysts at the Council to allow these results to be presented according to the type of case in future releases.

The Council's primary reason for conducting this survey is to collect information that allows it to fulfil its legislative duty to "monitor the operation and effect of its sentencing guidelines"<sup>17</sup>. To better understand how the application of sentencing guidelines affects sentencing decisions, the data from this survey needs to be considered on an individual offence level basis. In future releases, the Council intends to provide offence specific findings for a selection of high volume offences for which existing sentencing guidelines are available. This section provides an indication of how these findings might look for a single offence.

This section looks specifically at the offence of **Actual Bodily Harm (ABH)**. This is the offence for which the highest volume of forms was received and for which a guideline exists.

Both of the following are included in this section:

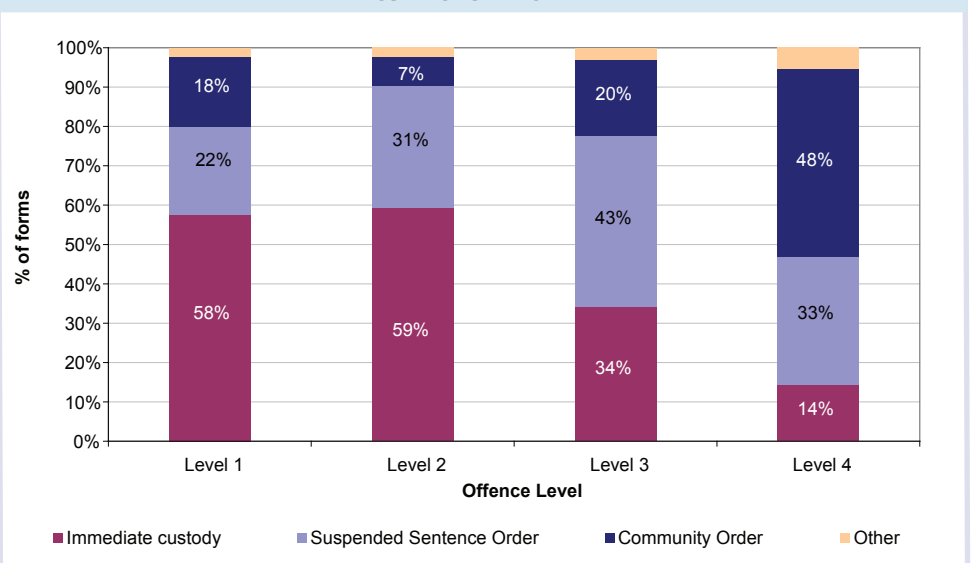
- ABH (Offences against the Person Act 1861, S47); and
- racially or religiously aggravated ABH (Crime and Disorder Act 1998, S29).

Over the period of October 2010 to March 2011, the six months to which this publication relates, the guidelines that were in use in the courts were the Sentencing Guidelines Council (SGC) sentencing guidelines: *Assault and other offences against the person*. For the interested reader, a link to these guidelines can be found on page 35. Since 13 June 2011, the Sentencing Guidelines Council guidelines have been replaced by the Sentencing Council's *Definitive Guideline for Assault*.

### 2.1 Offence level and SGC guideline ranges

Of all offenders sentenced for ABH, 13 per cent committed offences that were considered to have involved the highest level of harm and culpability, reflecting a level 1 offence, whilst 27 per cent were level 2 offences, 33 per cent were level 3 offences and 27 per cent involved the lowest level of harm and culpability (level 4 offences).

Chart 2.11: Sentence outcome received by offenders convicted of ABH, broken down by level of offence, Crown Court, October 2010 to March 2011.



For each level of offence, chart 2.11 shows the sentence outcomes received by those convicted of ABH. This shows a similar picture to chart 1.22 which considered all offences, with the likelihood of being sent to immediate custody being similar for level 1 and 2 offenders, then decreasing for level 3 and 4 offenders. For those sentenced to immediate custody, chart 2.12 shows the average custodial sentence length imposed.

*Chart 2.12: Average custodial sentence length received by offenders sentenced to immediate custody for ABH, broken down by the number of previous convictions taken into account, Crown Court, October 2010 to March 2011.*



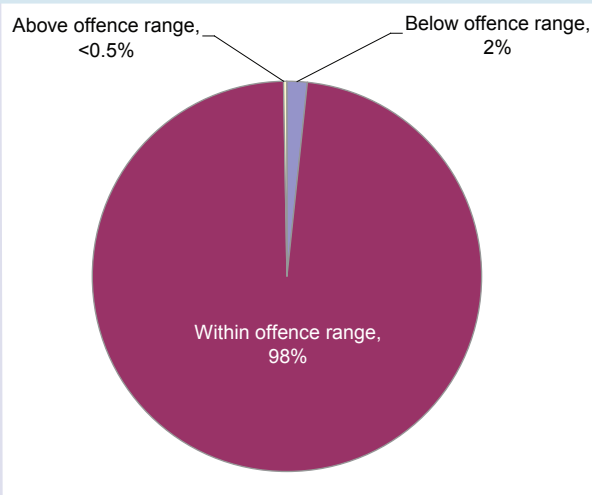
The offence level is the first factor that is determined by the judge when sentencing. For each offence level, the SGC sentencing guideline suggests an appropriate range of outcomes and an appropriate starting point sentence. It is only after the level and starting point have been determined that further factors relating to the offence and the offender will be taken into account. These further factors can serve to push the sentence up or down from the starting point.

Once all factors have been considered, any additional reductions applicable, for example for a guilty plea, are then applied. Therefore, in order to better understand how sentence outcomes compare to the ranges provided within the guideline, the sentence outcomes before any reductions for a guilty plea need to be known. The following charts are based on estimates of the sentence outcomes received before applying any reductions.

For those sentenced to immediate custody, the form was checked to see whether a discount had been applied for a guilty plea. If so, the discount level indicated was added back on to the sentence to estimate the length received before any reductions for a guilty plea. For sentence outcomes other than immediate custody, it has been assumed that the guilty plea reduction did not change the type of sentence received.



Chart 2.13: Proportion of sentences for the offence of ABH falling below, into or above the SGC guideline offence range, October 2010 to March 2011.

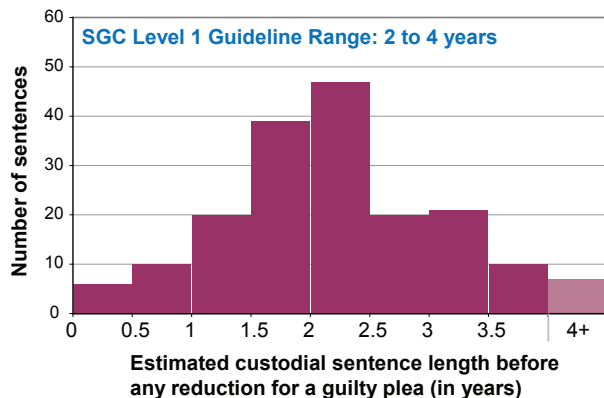


The legislative duty on courts is to impose a sentence within the **offence range**. The offence range is the full spectrum of sentences over all offence levels. Therefore, for the offence of ABH, this range is from a medium community order (the minimum for a level 4 offence) to 4 years in custody (the maximum for a level 1 offence). Chart 2.13 shows the proportion of sentences falling below, within, or above this range.

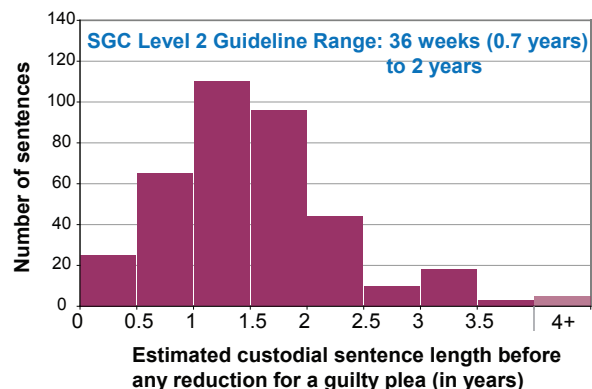
For each offence level, the SGC guidelines provide a more specific range of appropriate outcomes – this is called the **category range**. Charts 2.14a), b), c) and d) show the distribution of sentence lengths before the application of any guilty plea reductions.

Charts 2.14a), b), c), d): Distribution of sentence lengths received by offenders sentenced to immediate custody for the offence of ABH, broken down by the level of offence, Crown Court, October 2010 to March 2011.<sup>17</sup>

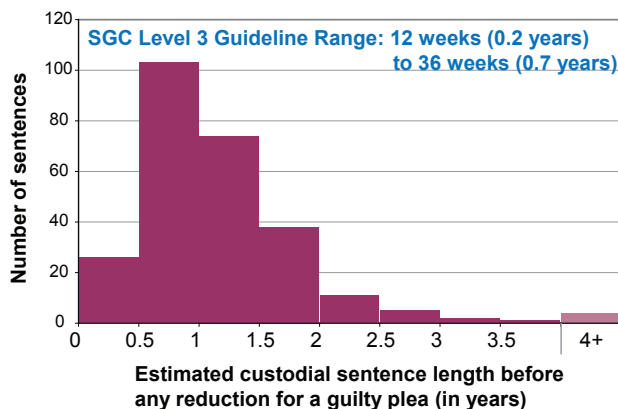
2.14a) LEVEL 1



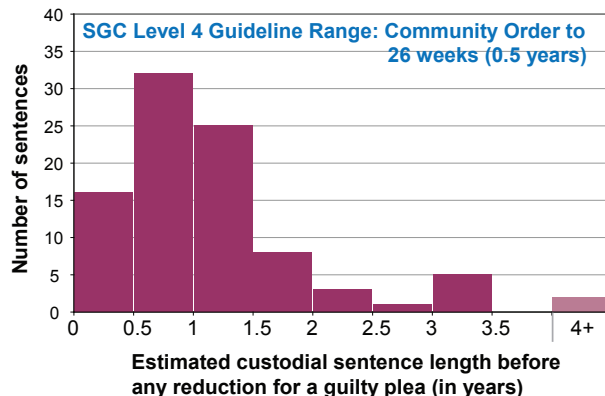
2.14b) LEVEL 2



2.14c) LEVEL 3



2.14d) LEVEL 4



18 A bar relating to sentence lengths from 0.5 years to 1 year includes sentences of exactly 0.5 years, but excludes sentences of exactly 1 year.

The category ranges supplied in the SGC guidelines specifically for each offence level are also shown in these charts. Life custodial sentences and sentences of Imprisonment for Public Protection (IPPs) are included within the final bar of each chart.

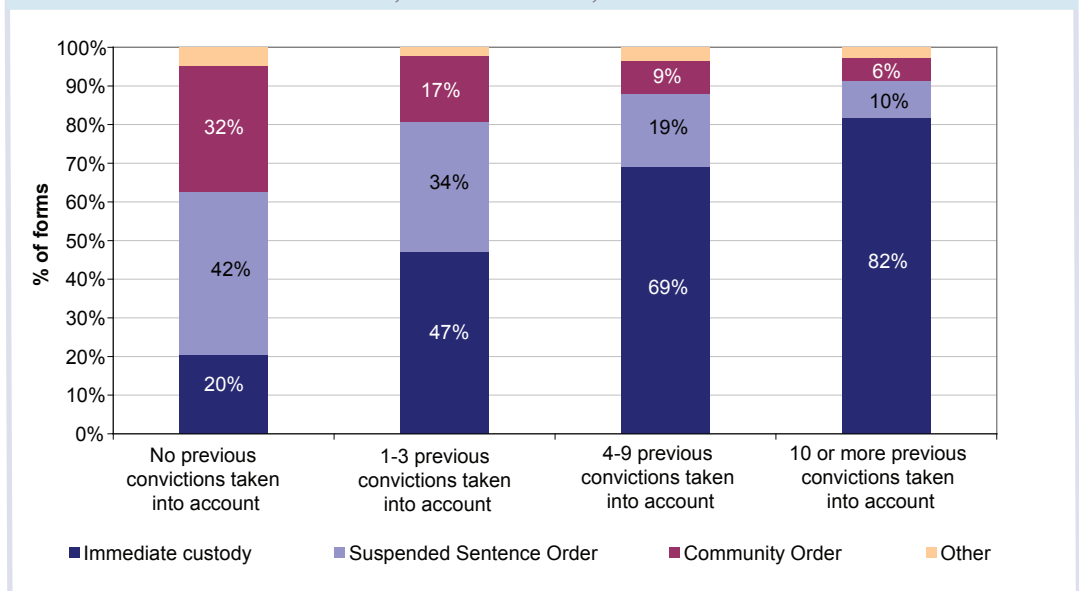
Although the courts have a duty to impose a sentence within the offence range, the legislation does not require them to impose a sentence within the category (or offence level) range. The offence level selected on the Crown Court Sentencing Survey forms is based on the judge's initial assessment of harm and culpability before taking account of any other factors. It may be entirely correct, once further factors have been considered but before the guilty plea reduction is applied, for the sentence to fall outside of the category range. No attempt has been made to assess whether those sentences falling outside of the guideline ranges are justified.

## 2.2 Number of previous convictions taken into account

Over the period October 2010 to March 2011, of those offenders sentenced at the Crown Court for ABH for whom a survey form was returned and the relevant question was completed, 47 per cent did not have any previous convictions that were taken into account when determining their sentence, 37 per cent had between 1 and 3 taken into account, 11 per cent had between 4 and 9 taken into account and 5 per cent had 10 or more previous convictions taken into account.

Chart 2.21 shows the sentence outcomes imposed broken down by the number of previous convictions taken into account. Again, this shows a similar picture to chart 1.23 which considered all offences, with the likelihood of being sent to immediate custody increasing as the number of previous convictions taken into account when determining the sentence increases.

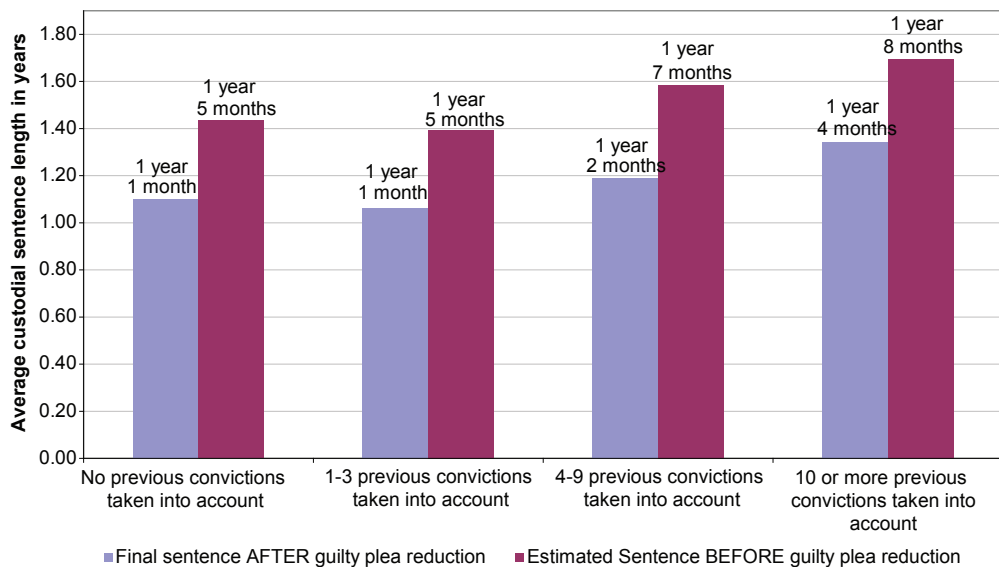
*Chart 2.21: Outcome received by offenders sentenced for ABH, broken down by the number of previous convictions taken into account to determine the sentence, Crown Court, October 2010 to March 2011.*



For those sentenced to immediate custody, chart 2.22 shows the average custodial sentence length received broken down by number of previous convictions taken into account. Both the final sentence outcome (**after** applying any reductions for a guilty plea) and the estimated average custodial sentence lengths **before** applying any discounts for a guilty plea are shown. For ABH

offenders with no previous convictions taken into account, after applying any reductions for a guilty plea, the average custodial sentence length was 1 year 1 month. This increases to 1 year 4 months for an ABH offender who had 10 or more previous convictions taken into account.

*Chart 2.22: Average custodial sentence length received by offenders sentenced to immediate custody for ABH, broken down by the number of previous convictions taken into account, Crown Court, October 2010 to March 2011.*



### 2.3 Aggravating and mitigating factors

The aggravating and mitigating factors seen to be present in cases of ABH are shown in charts 2.31a) and b).

The aggravating features that were seen most commonly in cases of ABH are:

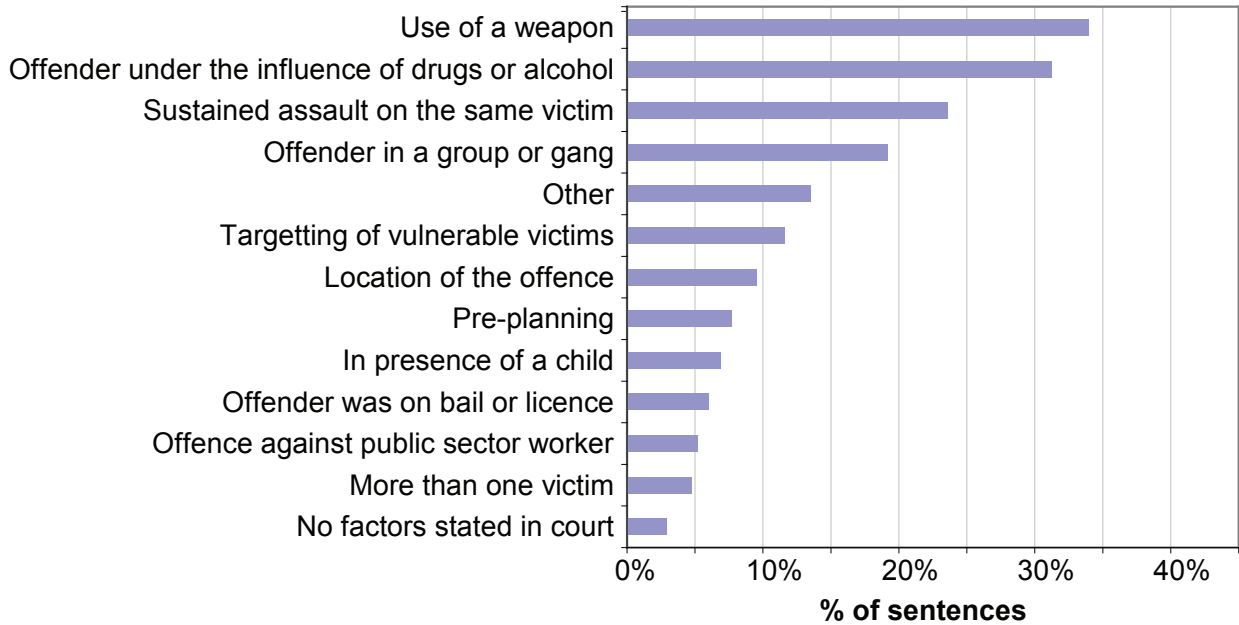
- the use of a weapon, present in 34 per cent of ABH cases sentenced;
- the offender was under the influence of drugs or alcohol, an aggravating factor in 31 per cent of ABH cases sentenced; and
- the attack was sustained for a prolonged period, a factor in 24 per cent of ABH cases sentenced.

The mitigating features that were seen most commonly in cases of ABH are:

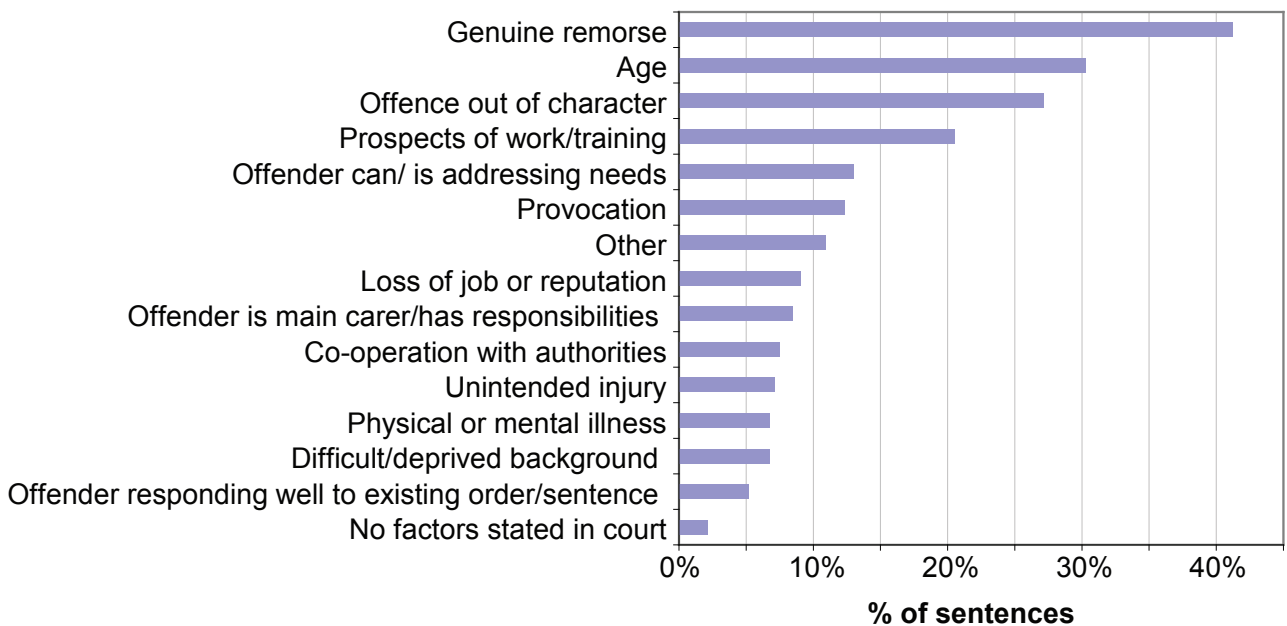
- genuine remorse shown by the offender, present in 41 per cent of ABH cases sentenced;
- the age of the offender, a mitigating factor in 30 per cent of ABH cases sentenced; and
- the offender acted out of character, a factor present in 27 per cent of ABH cases sentenced.

Charts 2.31a) and b): Frequency of specific aggravating and mitigating factors that influenced the sentence imposed for the offence of ABH, Crown Court, October 2010 to March 2011.

2.31a) ABH AGGRAVATING FACTORS



2.31b) ABH MITIGATING FACTORS



## 2.4 Pleading guilty to the offence

Over the period October 2010 to March 2011, of those offenders sentenced at the Crown Court for ABH for whom a survey form was returned, 90 per cent were indicated to have entered a guilty plea. This is slightly higher than the proportion of offenders indicated to have pleaded guilty over all offences.

For those who pleaded guilty to an ABH offence, the offender most frequently entered their plea at the Plea and Case Management Hearing (PCMH) (in 43 per cent of cases), and the most common level of discount applied was 33 per cent (in 64 per cent of cases). A full picture of the distribution of discounts applied to the sentence for those who pleaded guilty, broken down by the stage at which the plea was entered, is provided in chart 2.41. Similar to table 1.41, the trends shown in this chart are in line with the approach recommended by the SGC sentencing guideline: *Reductions for a guilty plea*.

Table 2.41: For those indicated to have pleaded guilty, the stage at which the plea was entered, and the discount applied to their sentence, Crown Court, October 2010 to March 2011.

Stage of plea	Discount given				
	0%	1-10%	11-20%	21-32%	33%
	% of forms				
At the magistrates' court	1%	1%	1%	5%	92%
Prior to the PCMH	1%	0%	0%	8%	91%
At the PCMH	<0.5%	<0.5%	2%	16%	81%
After the PCMH but before the day of trial	1%	4%	18%	29%	47%
On or after the day of trial	5%	50%	23%	11%	10%

## 2.5 Summary of all factors

For the range of sentence outcomes imposed for ABH, tables 2.51a), b), c) and d) look at the average number of previous convictions present, the average numbers of mitigating and aggravating factors present and the average guilty plea discount applied. This is separated out according to offence levels. When looking at these tables, the reader should bear in mind that some rows relate to only a small number of cases, which may lead to higher variability in the results presented for these rows.

Although this publication does not assess how the different factors present in a case interact or their relative importance in determining the sentence, the results presented in these tables show their overall effect on the sentence outcome. For example, for a level 1 offender receiving an immediate custodial sentence of between 3 and 4 years, the average number of aggravating factors present was 3, the average number of mitigating factors was 1 and the average number of previous convictions was 7. This compares to level 1 offenders receiving a community order who, on average, had 2 aggravating factors, 3 mitigating factors and 1 previous conviction.

Tables 2.51a), b), c) and d): Summary of factors present in sentences for ABH, broken down by sentence outcome and offence level, Crown Court, October 2010 to March 2011.

## 2.51a) LEVEL 1

Sentence outcome after reduction for guilty plea	Number of sentences	Average number of aggravating factors	Average number of mitigating factors	Average number of previous convictions taken into account	Average reduction for a guilty plea (%)
3 to 4 years <sup>19</sup>	13	3.0	1.6	6.6	13
2 to 3 years	47	3.3	1.0	5.2	26
1 to 2 years	95	2.9	1.8	3.2	29
Less than 1 year	24	2.6	2.1	2.8	27
Suspended Sentence Order	70	1.9	3.2	1.2	26
Community Order	56	1.6	2.9	0.5	29

## 2.51b) LEVEL 2

Sentence outcome after reduction for guilty plea	Number of sentences	Average number of aggravating factors	Average number of mitigating factors	Average number of previous convictions taken into account	Average reduction for a guilty plea (%)
3 to 4 years <sup>19</sup>	7	3.3	0.3	8.1	33
2 to 3 years	34	2.9	1.8	5.9	27
1 to 2 years	187	2.8	1.7	3.3	26
Less than 1 year	147	2.6	2.0	3.5	28
Suspended Sentence Order	196	2.1	3.2	1.3	27
Community Order	46	2.0	3.0	1.5	28

## 2.51c) LEVEL 3

Sentence outcome after reduction for guilty plea	Number of sentences	Average number of aggravating factors	Average number of mitigating factors	Average number of previous convictions taken into account	Average reduction for a guilty plea (%)
3 to 4 years <sup>18</sup>	-	-	-	-	-
2 to 3 years <sup>19</sup>	8	3.0	1.6	3.4	22
1 to 2 years	81	2.6	1.9	4.2	25
Less than 1 year	172	2.4	1.9	3.1	27
Suspended Sentence Order	334	1.9	2.9	1.4	27
Community Order	151	1.7	3.2	1.1	26

## 2.51d) LEVEL 4

Sentence outcome after reduction for guilty plea	Number of sentences	Average number of aggravating factors	Average number of mitigating factors	Average number of previous convictions taken into account	Average reduction for a guilty plea (%)
3 to 4 years <sup>18</sup>	-	-	-	-	-
2 to 3 years <sup>19</sup>	7	3.2	2.7	2.1	27
1 to 2 years <sup>19</sup>	15	2.4	1.6	6.6	20
Less than 1 year	66	2.1	1.8	4.1	26
Suspended Sentence Order	208	1.9	3.0	1.3	27
Community Order	305	1.5	3.2	0.9	26

<sup>19</sup> Categories where the total number of sentences is less than 5 have been excluded.

<sup>20</sup> Due to the small number of cases in this category, there may be some volatility in the results. Results in this row should be read with caution.

### Data quality and validation

Prior to producing this report, the dataset received from the first six months of survey forms 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 data was initially matched to data on principal offences provided by the Ministry of Justice from the CREST<sup>21</sup> database. 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 89 per cent of forms, a match has been made.

The matched data has been used to cross check variables common to both data sources, as well as picking up some supplementary variables. For the first six months of data, due to problems identified on the completion of part B, section 2 (sentence outcome), the sentence outcome has instead been derived from the CREST database. This issue has now been addressed so that the sentence outcome can be reported as completed on the forms in future returns.

Due to the nature of the survey, it is not possible to recover missing responses. Where data is missing for a particular question, that form has not been included in any results presented that are based on that particular question.

After matching, further routines have been applied to ensure that responses are consistent across the whole form. Even after applying these routines, some parts of the dataset are not considered robust enough for analysis. These parts of the dataset have not been included in this report, but may be included in future work after further quality assurance work has been carried out. Analysts at the Council are addressing these limitations, further details of which are provided on page 33.

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

## Presentation of the results

The results provided should not be seen as nationally representative as they only reflect those sentences for which a form was completed. At this stage, no attempt has been made to infer national level totals from the smaller set of matched records. However, analysts at the Council will be developing a methodology for estimating national totals which takes account of missing data and differing response rates across courts so that future reports can present the data at national level.

Even with specific offence findings, it is important to bear in mind the interaction of the different factors present in a case. For example, even across all offences at a single offence level, there will be a variation in the final sentence due to the presence of other factors such as aggravating and mitigating factors. This release makes no attempt to analyse the interaction of the different factors captured by the form.

The sentence outcomes reported 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, 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 discount recorded at Part B, Section 7 (Indication of guilt/guilty plea) of the form to work back from the final sentence outcome. Where the guilty plea data is missing, it has been assumed that no discount was applied. Where specified, these estimates have been provided alongside the final outcome in the results presented.

Where immediate custodial sentences are described, the sentence length refers to the full sentence imposed. Some of this may ultimately be served in the community on licence and home detention curfew where applicable due to statutory release provisions. Average custodial sentence lengths are the average lengths over all determinate custodial sentences, therefore do not include life sentences or sentences of Imprisonment for Public Protection (IPPs).

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. 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 percent is zero per cent, the convention “< 0.5” per cent has been used.



## Limitations to the data

As with any new data collection exercise there have been some initial unforeseen problems with both the collection and the analysis. Although the survey forms were piloted and changes were made before the survey was introduced nationally, over the first six months some issues with the forms have been identified which have limited the level of detail at which results can be reported. Although work is being done to correct these issues, this release does not provide a detailed analysis of all questions on the form, only for those that have been deemed fit for analysis from the quality assurance and validation routines described above.

Information on the issues arising from the first six months of data is provided below.

Data input was completed using character recognition scanning equipment with additional manual correction. Although a quick method of data input, the speed with which the forms are designed to be completed has meant that the hand-written elements on the forms have, in some instances, been incorrectly recognised by the scanner. This has required extra work to double check and try to correct entries where possible.

For the first six months of data, no attempt has been made to analyse the free text sections of the form. Nearly all questions on the form have a free text element that allows those circumstances that are not covered by the tick boxes to be captured. As the free text responses have been so wide ranging, work has been and continues to be carried out to consider the most appropriate method of analysing the free text. It is anticipated that in the future these sections will provide an aid for explaining unusual deviations in sentencing practice, rather than as a tool for quantitative analysis.

The Council has requested access to more sophisticated software to handle large datasets. In the absence of such software, quality assurance has proved a time consuming process. With limited resource available and the presence of the unforeseen issues described, analysts at the Council have been limited in what they are able to produce for this first round of analysis. To maintain timeliness, the Council has chosen to publish top level results and continue its quality assurance work subsequent to this release to ensure that further detail can be reported in future releases.

Since implementing the survey, analysts at the Council have put in place changes to address the limitations identified. Revisions have been made to particular sections of the form and the methods used at the data input stage have also been amended. These changes have led to a significant improvement in the data quality. The Council will continue to work with judges, courts and those involved with the administration of the survey to better understand how the survey process may be improved at the data processing level, and also within individual court centres.

## Further work

The survey has been designed to fulfil the Council's statutory duty to monitor the operation and effect of its sentencing guidelines. Although the survey is considered fit for purpose, analysts at the Council continually review the survey to assess whether changes are required to improve the process and data quality. The Council also regularly review the survey to assess whether the survey remains the most viable method for collecting the data required to fulfil its statutory requirements.

Due to the limitations identified from the first few months of operation and the short time frame covered by the initial dataset, no attempt will be made at this stage to use the data to fully assess the use of guidelines. Furthermore, whilst the free text elements of the form continue to be processed, it is not possible to gain enough insight into possible reasons for deviations from the guidelines. Once further data has been received, the initial limitations are overcome and the free text elements are available for analysis, analysts at the Council will begin to make this assessment.

Although some revisions have already been made, the Council recognises the implication of such changes on the consistency of the data received. The Council will be creating a revisions policy for the forms which will define 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 it is felt that other alternatives will not resolve any recognised problems with the data.

After this first release, the Council intends for the survey data to be reported in an annual release on a calendar year basis. The Council foresees that the improvements made to the forms and data inputting process will allow a more in-depth analysis to be provided from the survey in future releases. In particular, the analysts at the Council will seek to:

- provide nationally representative information;
- where possible, provide data that is grouped according to Ministry of Justice offence groups, so that the information is aligned to other criminal justice statistics; and
- include some qualitative analysis of the free text sections of the form to explain anomalies in the data and further supplement data received.

A short consultation on this release is included on page 48 of the annex. This will be used to assess the usefulness of the information in this release to the public and general users. The results of this consultation will determine the content and layout for future releases.

## 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. Therefore, due to the possibility of disclosing individuals, the data set of the survey result from the first six months will not be made available. 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 is practically possible.

## Relevant background

### ***A Guide to Crown Court Sentencing Survey 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 over the first six months of this survey (but has now been replaced by the Sentencing Council's: *Definitive guideline for Assault*) 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](http://webarchive.nationalarchives.gov.uk/+http://www.sentencingcouncil.org.uk/docs/Assault_and_other_offences_against_the_person_accessible.pdf)

### ***Copies of forms***

For copies of the forms that were in use over the first six months of the survey, please contact the Council directly using the contact details provided at the end of this release.

The forms have since been updated and the assault form has been replaced by a newer version which follows the approach in the new Sentencing Council *Definitive Guideline for Assault*. 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](http://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>

#### **Uses made of the data**

The Council primarily intends to use this information to fulfil its statutory duty under the Coroners and Justice Act 2009 S128 to “monitor the operation and effect of its sentencing guidelines”. The information provided will further contribute to other legislative functions of the Council including:

- S129(1) to publish local area information regarding the sentencing practice of the magistrates' courts and the Crown Court; and
- S127 to publish a resource assessment in respect of guidelines issued.

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

The Council further envisages that this information will be useful to the judiciary and to organisations associated with the Criminal Justice System.

This first publication of the data has been produced with the aims of:

- providing judges and those involved directly in the survey with some of the initial results, and providing them with details of the Council's work plan and how the Council intends to continue developing and using the survey in the future;
- presenting some of the data being collected to the public, so that they can be made aware of how the new information that is being made available through the implementation of this survey will provide further insight into the sentences imposed at the Crown Court; and
- providing the public with a provisional format for how the results of the survey may be presented in future statistical publications.

## Your views

As these statistics are still very much in the developmental stages, analysts at the Council welcome the feedback of users and other interested parties on this experimental release.

A short questionnaire is attached on page 48 seeking your views on this release. Alternatively, you can contact us using the details provided below.

## Contact Us

### General Enquiries

Tel: 020 3334 0634

Email: [research@sentencingcouncil.gsi.gov.uk](mailto:research@sentencingcouncil.gsi.gov.uk)

### Responsible Statistician

Trevor Steeples

020 3334 0642

### Press Office Enquiries

Nick Mann

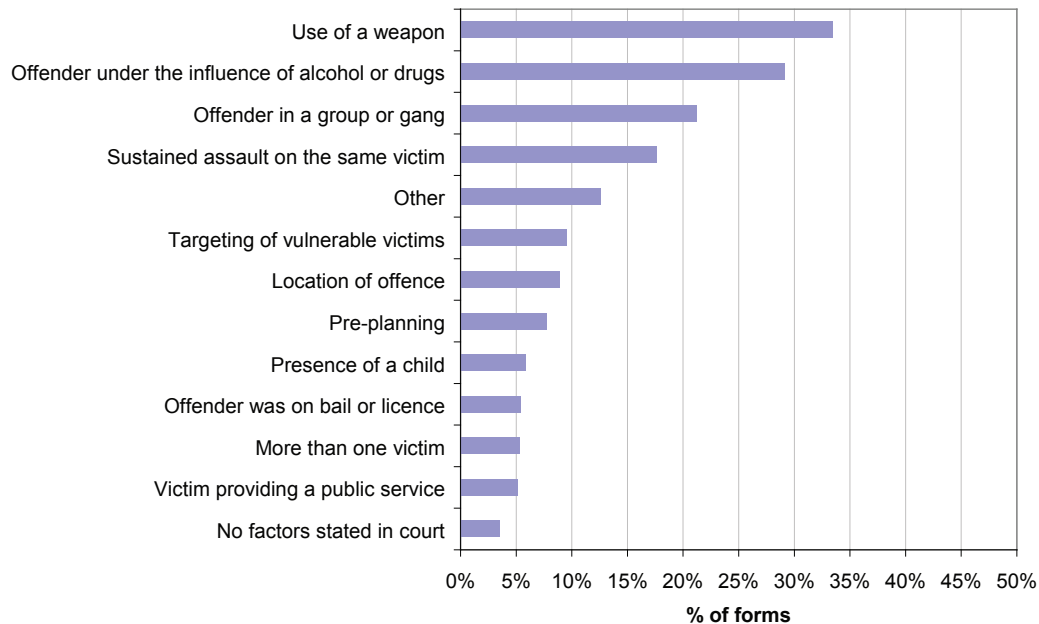
020 3334 0631

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

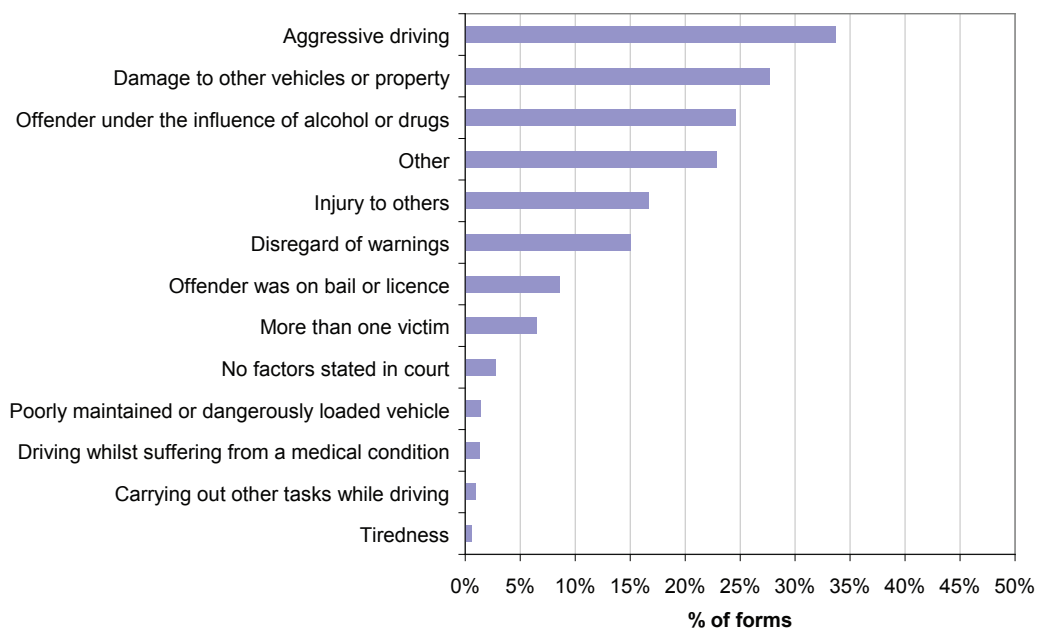
<http://www.sentencingcouncil.org.uk>

### A.1 Frequency of aggravating factors by offence form

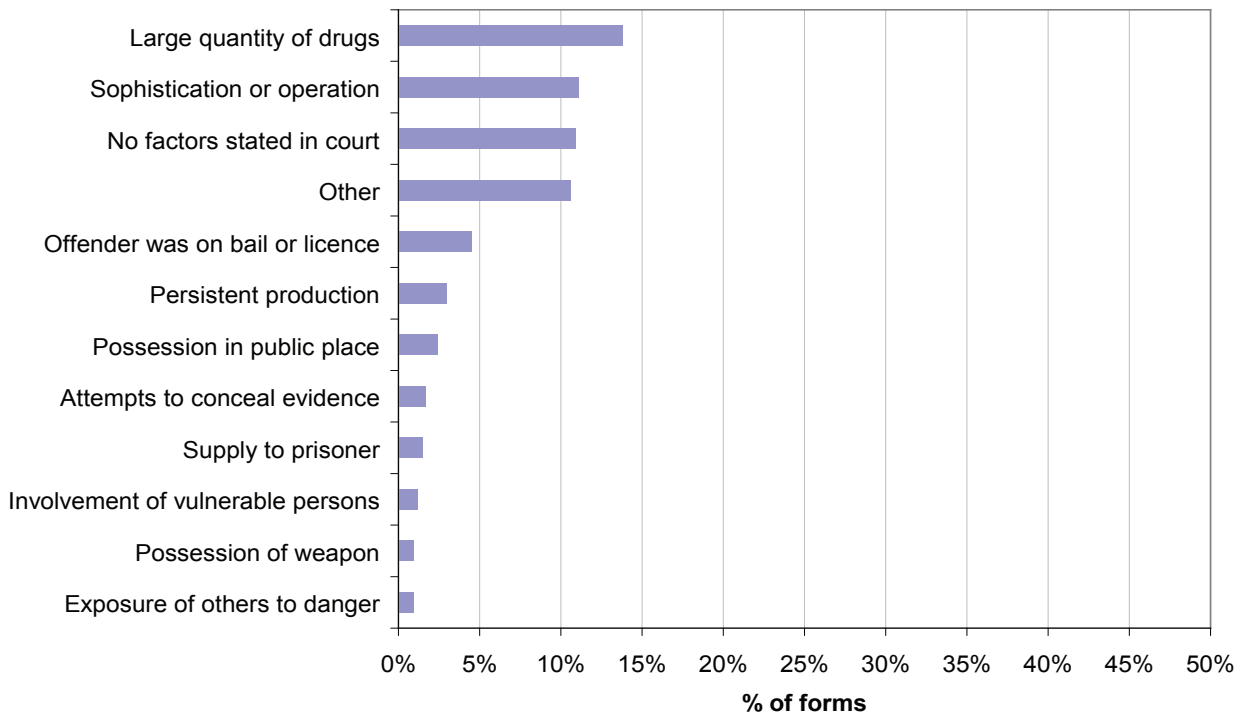
#### Assault and Public Order Form Aggravating Factors



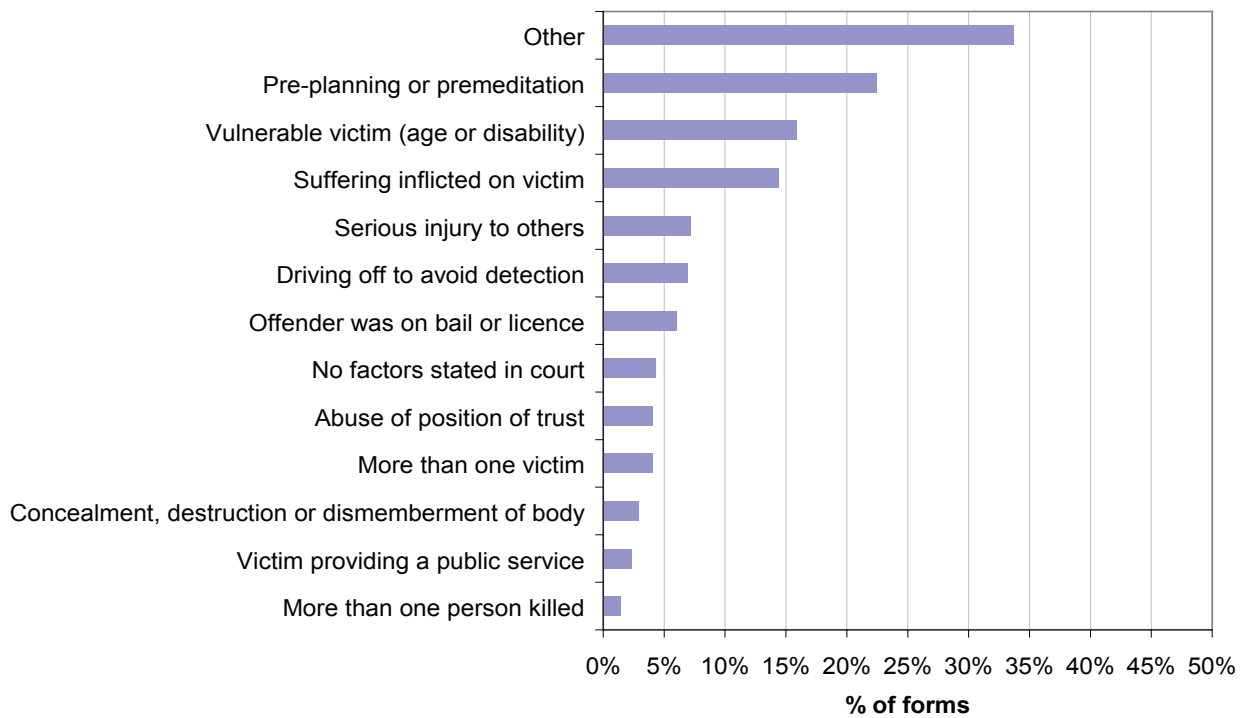
#### Driving Offences Form Aggravating Factors



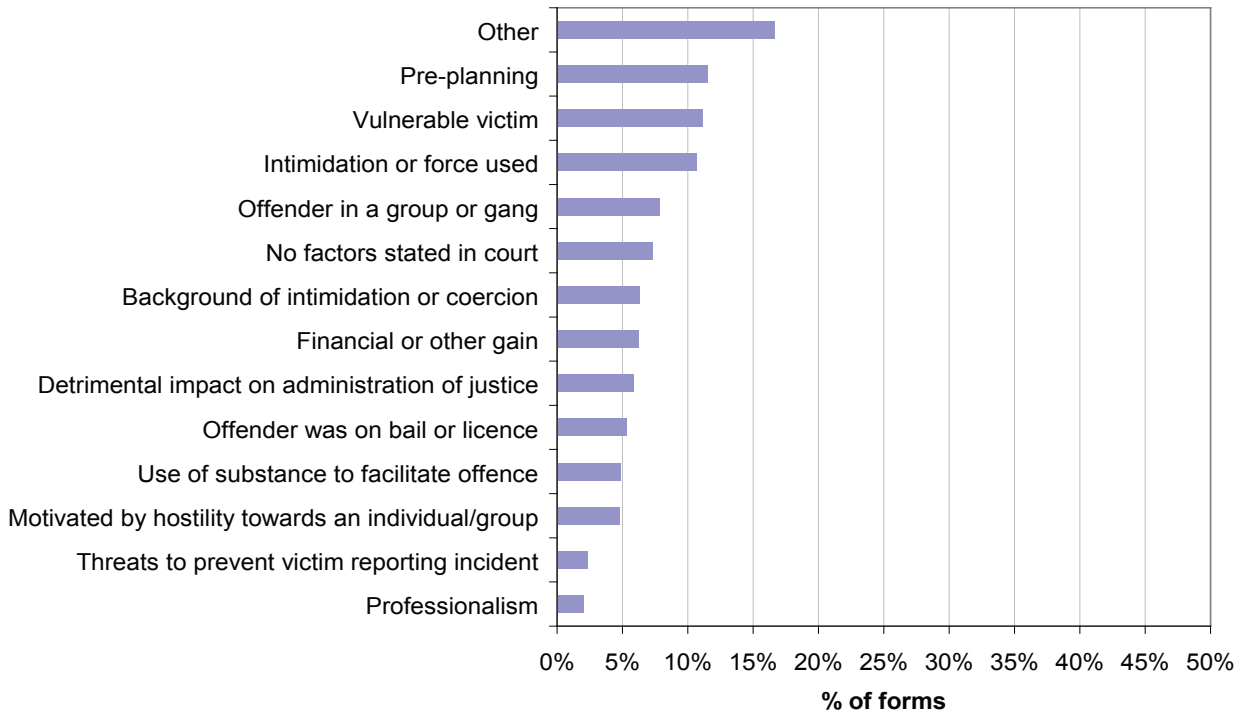
*Drug Offences Form Aggravating Factors*



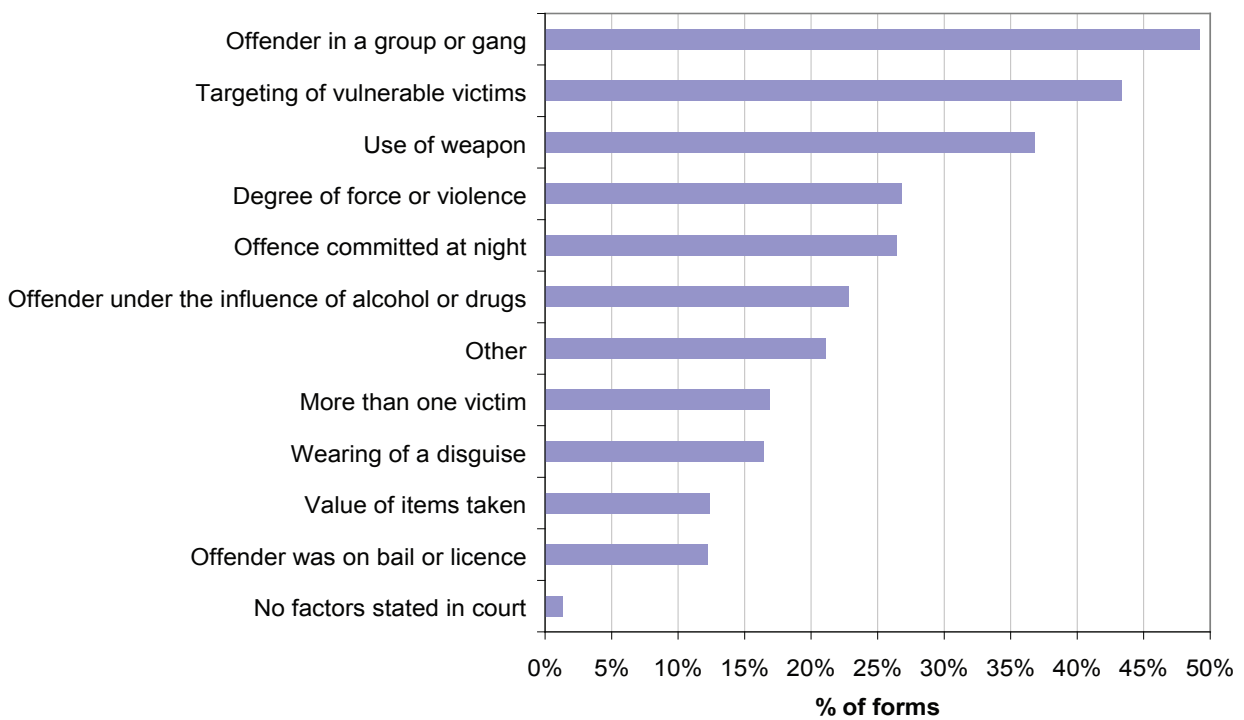
*Homicide and Ancillary Offences Form Aggravating Factors*



*Other Offences Form Aggravating Factors*

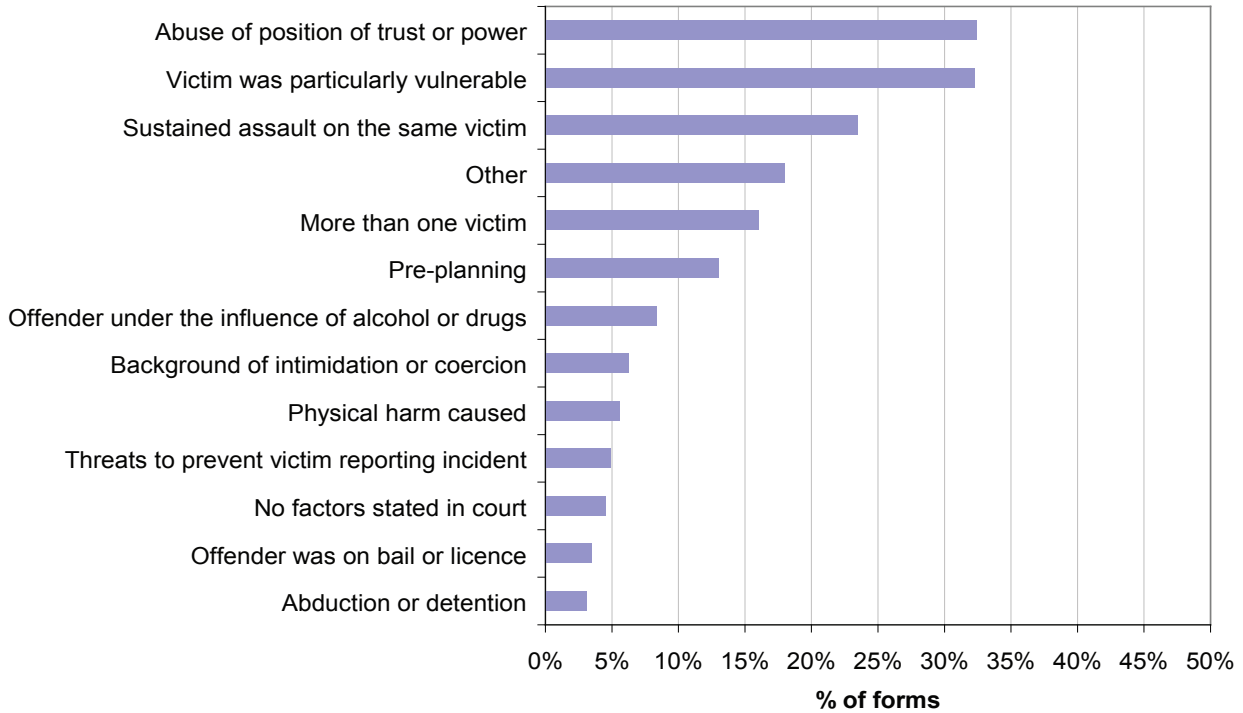


*Robbery and Assault with Intent to Rob Form Aggravating Factors*

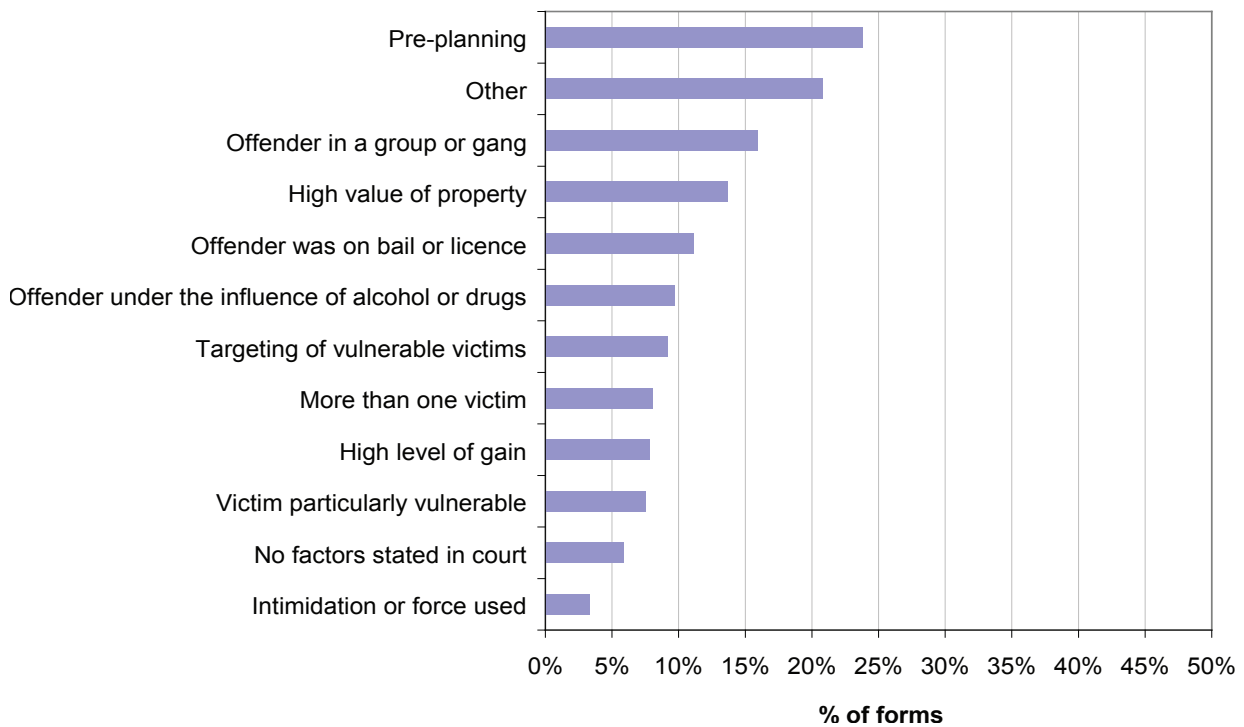




*Sexual Offences Form Aggravating Factors*

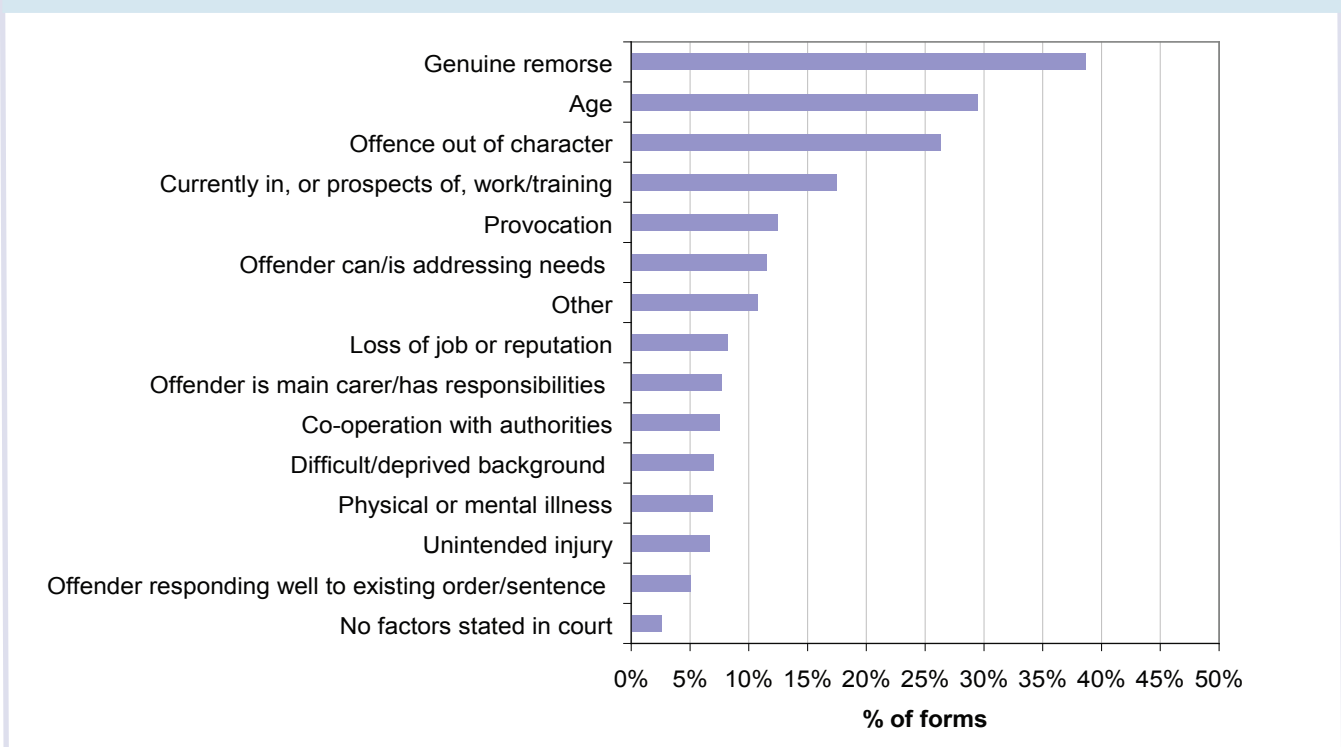


*Theft, Dishonesty, Burglary and Fraud Form Aggravating Factors*

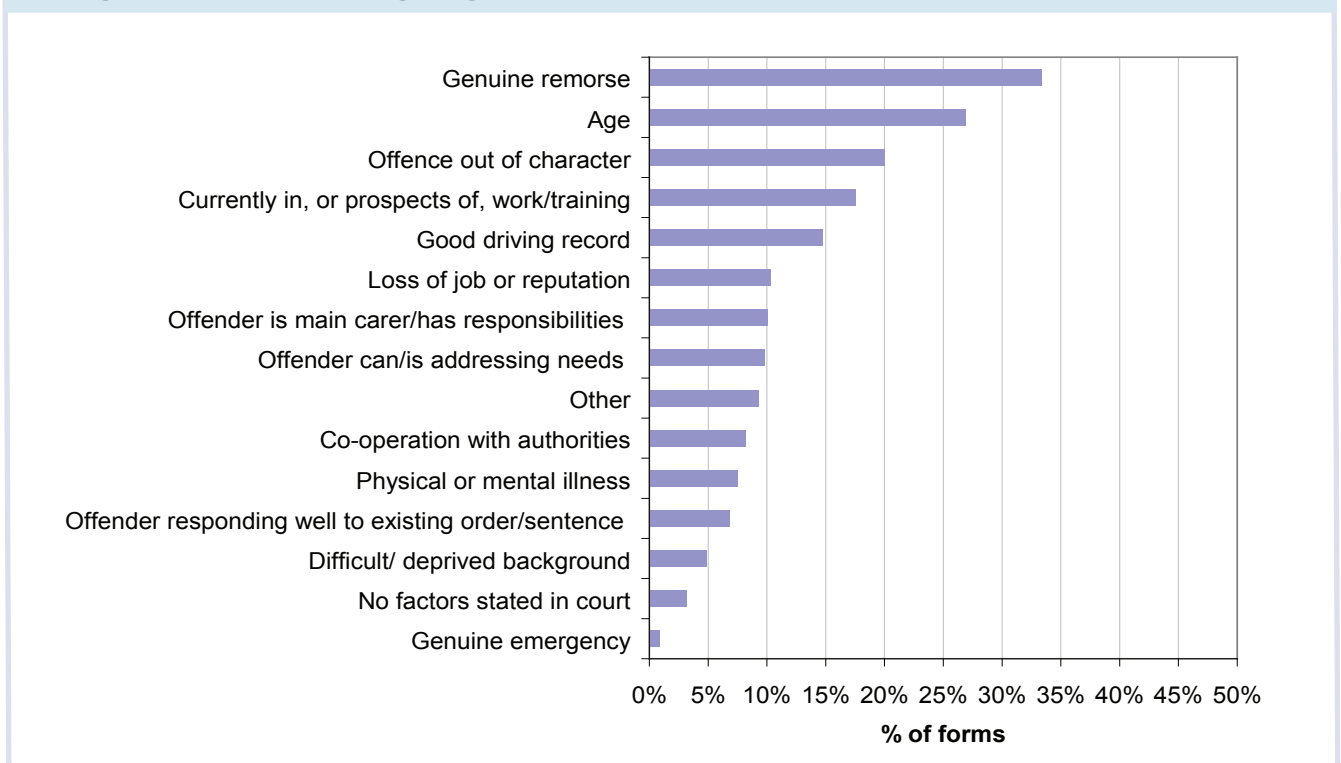


**A.2 Frequency of mitigating factors by offence form**

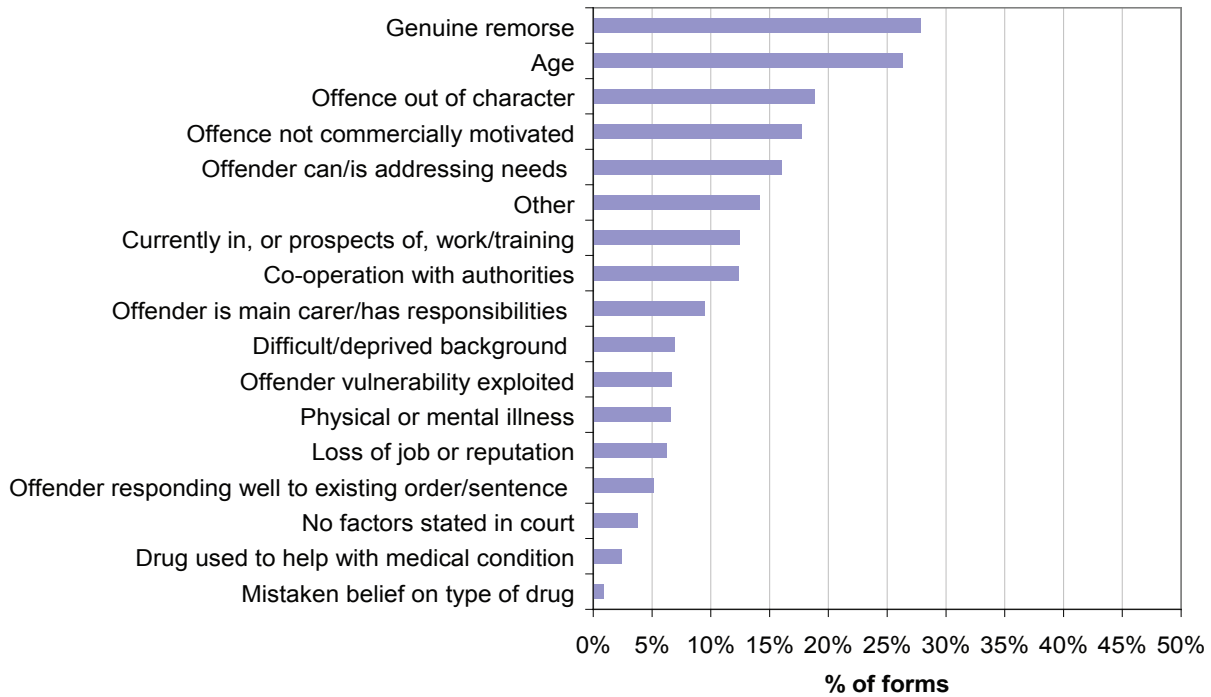
*Assault and Public Order Form Mitigating Factors*



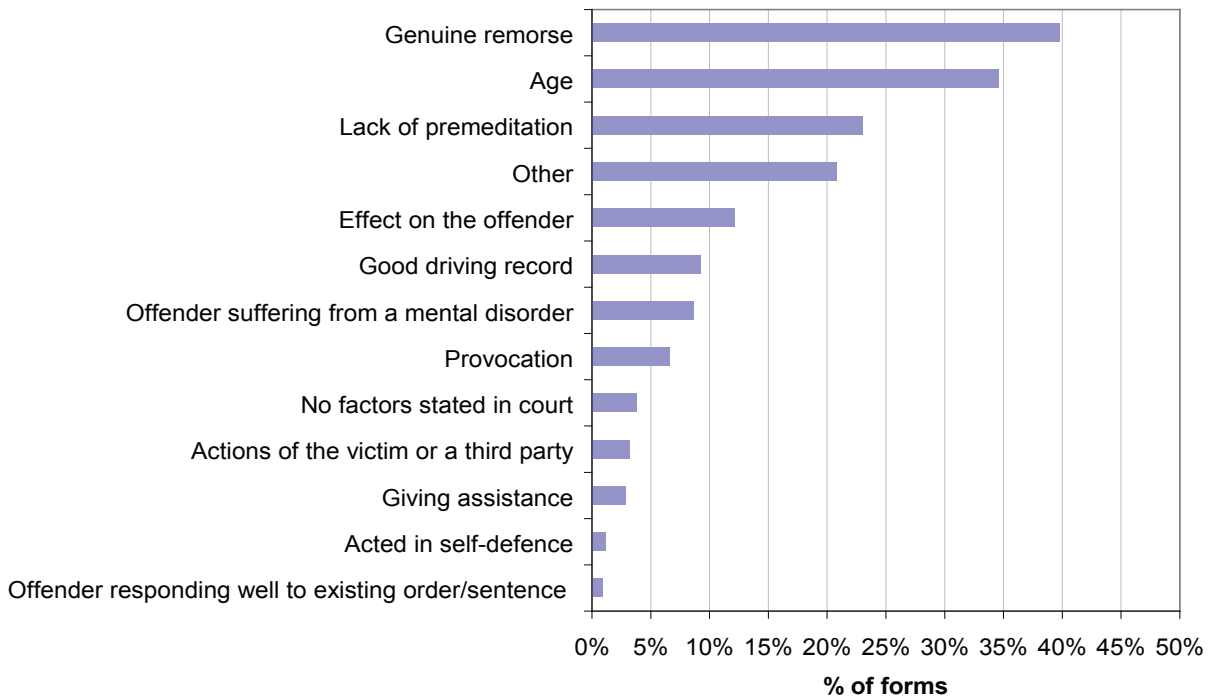
*Driving Offences Form Mitigating Factors*



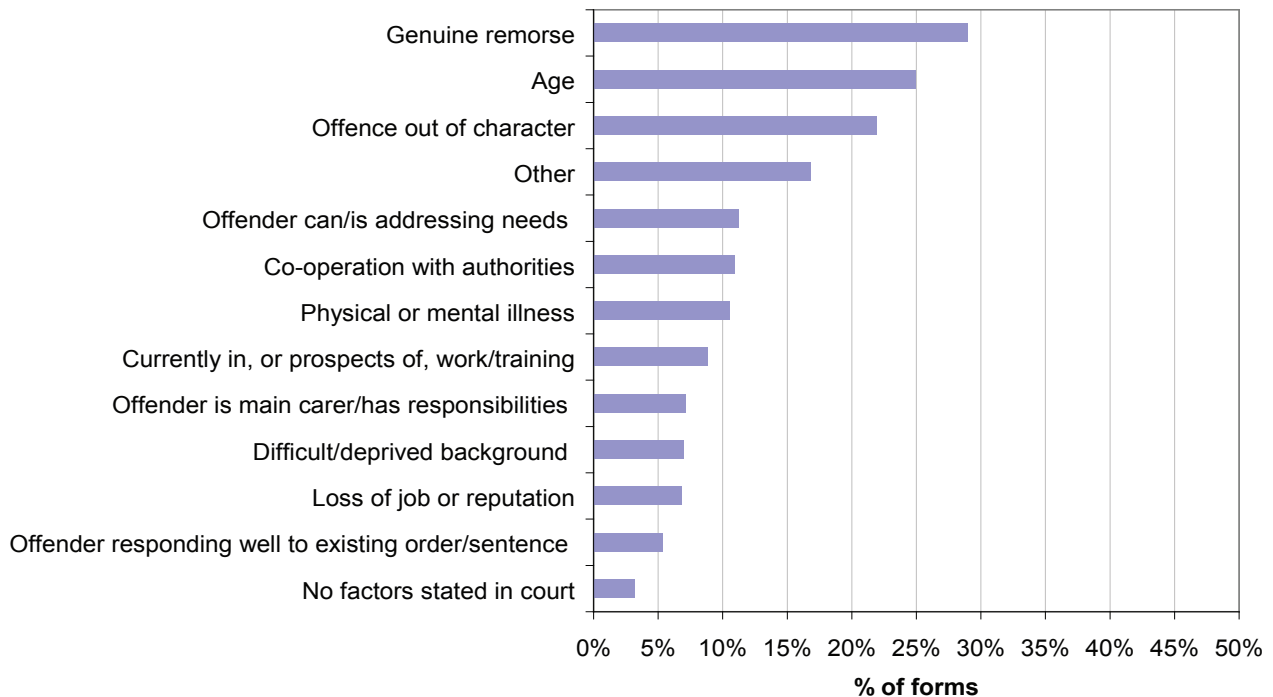
*Drug Offences Form Mitigating Factors*



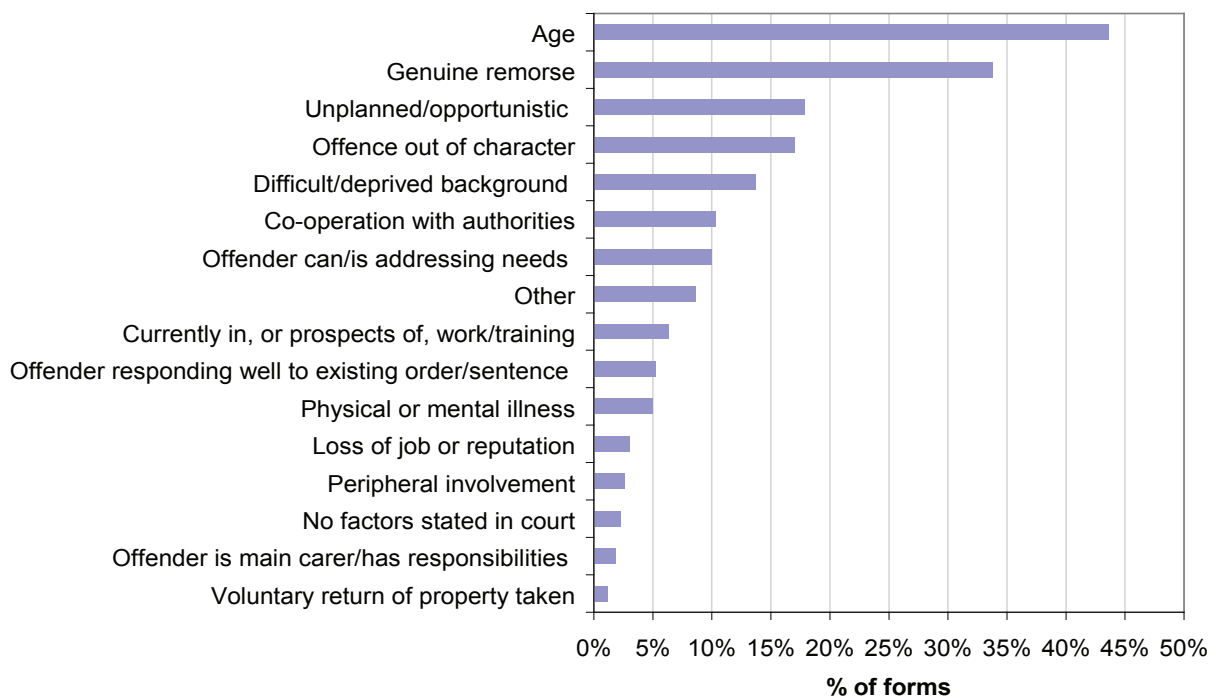
*Homicide and Ancillary Offences Form Mitigating Factors*



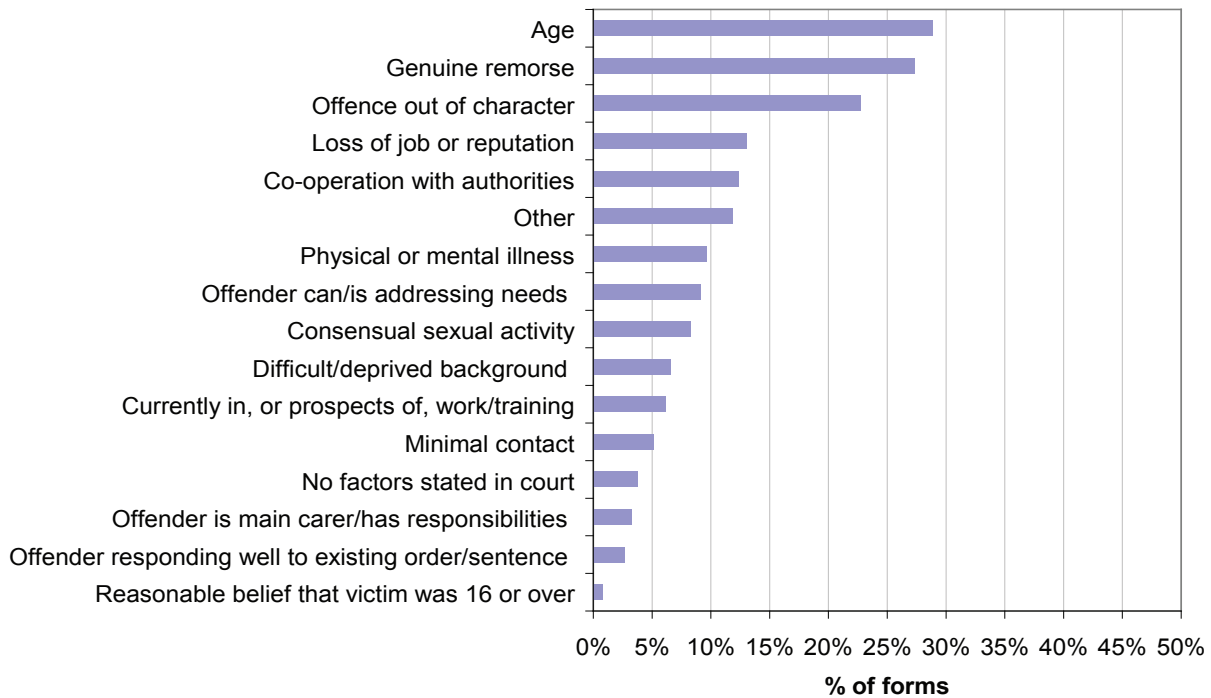
*Other Offences Form Mitigating Factors*



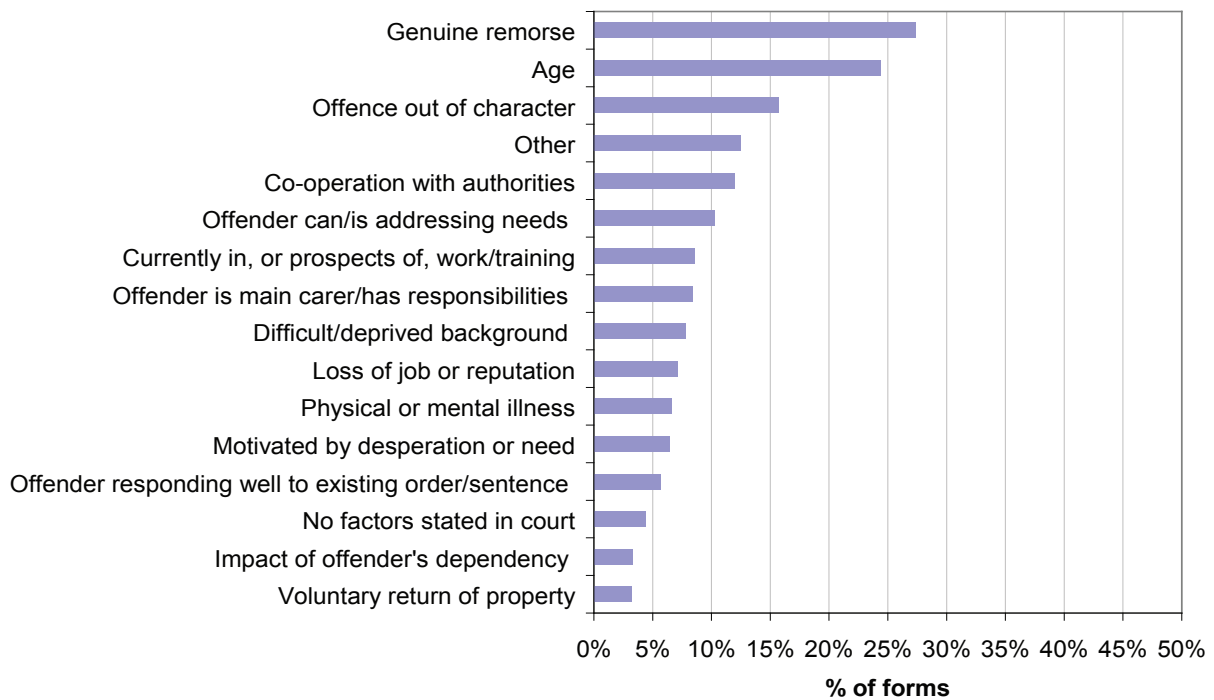
*Robbery and Assault with Intent to Rob Form Mitigating Factors*



*Sexual Offences Form Mitigating Factors*



*Theft, Dishonesty, Burglary and Fraud Form Mitigating Factors*



### A.3 Table of offences with guidelines

The following table lists those offences dealt with by the Crown Court that have sentencing guidelines 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>

For assault offences, this table references the old SGC guideline: *Assault and other offences against the person*, which was applicable over the period 01 October 2010 to 31 March 2011. Since 13 June 2011, this has been replaced by the Sentencing Council's: *Definitive guideline for assault*. This can be accessed via the link above.

Guideline	Offence as recorded on form
Assault and other offences against the person: Definitive Guideline	<ul style="list-style-type: none"> <li>• Common assault (S47)</li> <li>• Grievous bodily harm (S20)</li> <li>• Grievous bodily harm with intent (S18)</li> <li>• Assault on a police constable</li> <li>• Assault with intent to resist apprehension</li> <li>• Racially/religiously aggravated assault (S29)</li> </ul>
Attempted Murder: Definitive Guideline	<ul style="list-style-type: none"> <li>• Attempted murder</li> </ul>
Breach of a Protective Order: Definitive Guideline	<ul style="list-style-type: none"> <li>• Breach of restraining order</li> <li>• Breach of non-molestation order</li> </ul>
Breach of an Anti-Social Behaviour Order: Definitive Guideline	<ul style="list-style-type: none"> <li>• Breach of ASBO</li> </ul>
Causing death by driving: Definitive Guideline	<ul style="list-style-type: none"> <li>• Causing death by careless or inconsiderate driving (disqualification obligatory)</li> <li>• Causing death by dangerous driving</li> <li>• Causing death by careless driving when under the influence of drink or drugs</li> <li>• Driving without insurance/licence</li> </ul>
Fail to Surrender to Bail: Definitive Guideline	<ul style="list-style-type: none"> <li>• Bail act offence</li> </ul>
Manslaughter by Reason of Provocation: Definitive Guideline	<ul style="list-style-type: none"> <li>• Manslaughter by provocation</li> </ul>
Robbery: Definitive Guideline	<ul style="list-style-type: none"> <li>• Robbery (various locations)</li> </ul>
Sentencing for Fraud - Statutory Offences: Definitive Guideline	<ul style="list-style-type: none"> <li>• Other fraud</li> </ul>

Guideline	Offence as recorded on form
Sexual Offence Act 2003: Definitive Guideline	<ul style="list-style-type: none"> <li>• Assault by penetration</li> <li>• Attempted rape</li> <li>• Attempted rape of child</li> <li>• Child sex offence committed by child</li> <li>• Extreme pornography</li> <li>• Incite child to engage in sexual activity</li> <li>• Indecent photos of children</li> <li>• Other child sex offence</li> <li>• Rape of child</li> <li>• Rape of female aged 16 or over</li> <li>• Rape of female under the age of 16</li> <li>• Rape of male</li> <li>• Rape of male aged 16 or over</li> <li>• Rape of male under the age of 16</li> <li>• Sexual activity with a female</li> <li>• Sexual activity with a male</li> <li>• Sexual activity in the presence of a child</li> <li>• Sexual activity with a child</li> <li>• Sexual activity with a person with a mental disorder</li> <li>• Sexual activity with a person with a mental disorder by a care worker</li> <li>• Sexual activity with family member</li> <li>• Sexual assault on a child</li> <li>• Sexual assault on a male</li> <li>• Sexual assault on a female</li> <li>• Trafficking offence</li> <li>• Voyeurism</li> </ul>
Theft and Burglary in a building other than a dwelling: Definitive Guideline	<ul style="list-style-type: none"> <li>• Theft from shops and stalls</li> <li>• Burglary in a building other than a dwelling</li> <li>• Theft in breach of trust</li> <li>• Theft from a person</li> </ul>



**A.4 Consultation**

This is our first publication on the Crown Court Sentencing Survey and we are therefore seeking your views on this and forthcoming releases. We have set out a number of key questions that it would be useful to know your views on. We are grateful to receive views from readers within the criminal justice environment as well as those outside of it. If you would like to provide answers to any of the questions below or any general feedback, comments, or questions, contact details are provided at the end of this questionnaire.

**Has this first publication been of use to you? Please tell us why it has or has not been useful.**

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**How easy or hard was this first publication to understand? Please explain your answer.**

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Future publications will differ in that they will seek to present data that are nationally representative (in other words can be considered to reflect sentencing practice across the entire Crown Court in England and Wales), that reflect offence groupings as used by the Ministry of Justice if possible, that include individual offence guideline statistics and that include an analysis of free text responses provided in the survey.

Do you think that the above additions/changes would be useful? Please explain your answer.

Horizontal lines for text input.

Are there any other changes that should be considered for future publications to make them more useful? Please explain your answer.

Horizontal lines for text input.

Thank you for taking the time to provide us with your views.

Please return your responses to:

Analysis and Research Team
Office of the Sentencing Council
3.08 Steel House
11 Tothill Street
London
SW1H 9LJ

Alternatively, you can email your responses to: research@sentencingcouncil.gsi.gov.uk