

Sentencing Council

CONSULTATION STAGE RESOURCE ASSESSMENT: BLADED ARTICLES AND OFFENSIVE WEAPONS (YOUTHS)

1 INTRODUCTION

1.1 This document fulfils the Council's statutory duty, under section 127 of the Coroners and Justice Act 2009 to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.

2 RATIONALE AND OBJECTIVES FOR THE NEW GUIDELINE

2.1 In 2009 the Sentencing Guidelines Council (SGC), the predecessor body to the Sentencing Council, published a definitive guideline *Overarching Principles – Sentencing Youths*. Earlier this year the Council consulted on offence specific guidelines for sexual offences and robbery offences, along with an updated version of the *Overarching Principles*, with the aim of providing a comprehensive and accessible document on the general principles to be applied when sentencing youths.

2.2 The Sentencing Council is currently in the process of producing new adult guidelines for bladed article and offensive weapon offences. The Council previously decided that a different approach was required for sentencing youths. As bladed article and offensive weapon offences are relatively high volume for youth offenders, it was decided to produce a separate youth guideline for these offences, alongside the adult guidelines.

2.3 In addition, recent legislation created a minimum sentence, of a 4 months Detention and Training Order, for 16 and 17 year olds convicted of a second or subsequent offence of possession of a bladed article or offensive weapon. This legislation has been incorporated into the new guideline.

3 CURRENT SENTENCING PRACTICE

3.1 Sentencing statistics for bladed article and offensive weapon offences have been published on the Sentencing Council website at the following link:

<http://www.sentencingcouncil.org.uk/publications/?type=publications&s=&cat=statistical-bulletin&topic=&year.>

This section presents simple statistics to give an indication of the volume of these offences and the types of sentences received by youth offenders. Youth offenders are defined as those aged under 18 years of age.

3.2 The principles surrounding the sentencing of youths differ significantly from the sentencing of adults. The principal aim of the youth justice system is to prevent offending

and reoffending by children and young people and to have regard for the welfare of the young offender.

3.3 Courts have a range of different sentencing options designed to address the needs of the young offender. Community sentences for youths include Referral Orders (ROs) and Youth Rehabilitation Orders (YROs). A RO requires the offender to attend a youth offender panel and agree a contract, containing certain commitments (for example, to repair any damage caused or to make financial recompense), which will last between three months and a year. The aim is for the offender to make up for the harm caused and address their offending behaviour. A RO is the mandatory sentence in a youth court or magistrates' court for most first time offenders who have pleaded guilty to an imprisonable offence.¹ A YRO can include one or more of 18 different requirements that the offender must comply with for up to three years. Some examples of the requirements that can be imposed are a curfew, supervision, unpaid work, electronic monitoring, drug treatment, mental health treatment and education requirements.

3.4 Young offenders can also be sentenced to custody (normally a Detention and Training Order; DTO) but it is only imposed in the most serious cases. When a custodial sentence is given, the aim is to provide training and education and rehabilitate the offender so that they do not reoffend. Sentences can be spent in secure children's homes, secure training centres and young offender institutions.

3.5 Bladed article and offensive weapon offences are relatively high volume offences for youths; in 2015 around 1,400 offenders were sentenced for these offences.²³ The majority of offences (1,300) related to possession of a bladed article or offensive weapon, and the remainder related to threatening with a bladed article or offensive weapon. Offences

¹ Exceptions are for an offence where a sentence is fixed by law or if the court deems a custodial sentence, an absolute or conditional discharge or a hospital order to be more appropriate.

² Source: Court Proceedings Database, Ministry of Justice. For details of data collection and methodology please see <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015>

The figures shown relate to persons for whom these offences were the principal offences for which they were dealt with. When a defendant has been found guilty of two or more offences it is the offence for which the heaviest penalty is imposed. Where the same disposal is imposed for two or more offences, the offence selected is the offence for which the statutory maximum penalty is the most severe.

Every effort is made to ensure that the figures presented are accurate and complete. However, it is important to note that these data have been extracted from large administrative data systems generated by the courts and police forces. As a consequence, care should be taken to ensure data collection processes and their inevitable limitations are taken into account when those data are used.

³ The Ministry of Justice publishes Official Statistics on these offences in the 'Knife Possession Sentencing Quarterly' publication, available here: <https://www.gov.uk/government/collections/knife-possession-sentencing-quarterly>

This data is sourced from the Police National Computer and includes cautions and convictions for all knife and offensive weapon offences (i.e. not just those which are the principal offence), along with estimated sentence outcomes. The CPD has been used for this resource assessment as it details final sentence outcomes recorded.

involving a bladed article are more common than those involving an offensive weapon (see Figures 1 and 2).

Figure 1: Number of youth offenders sentenced for possession offences, by type of offence, 2015

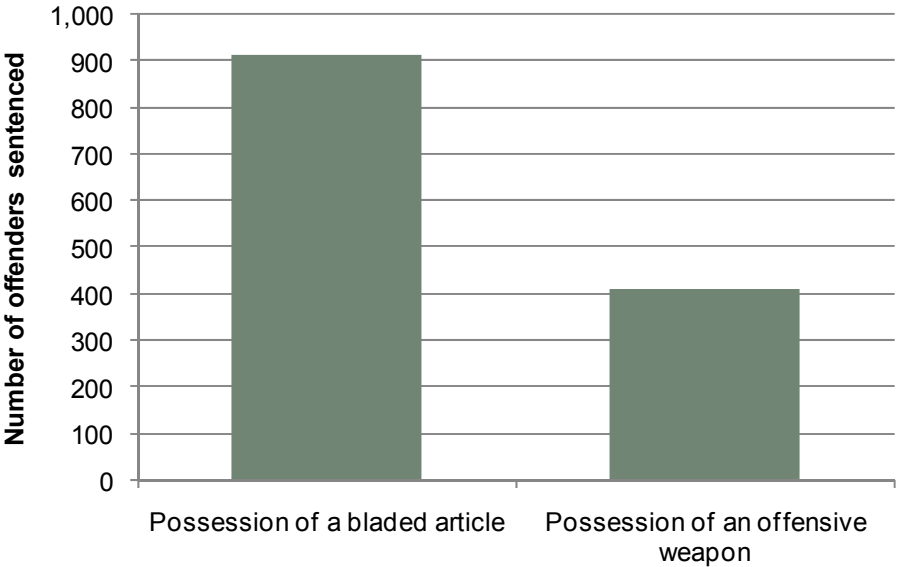
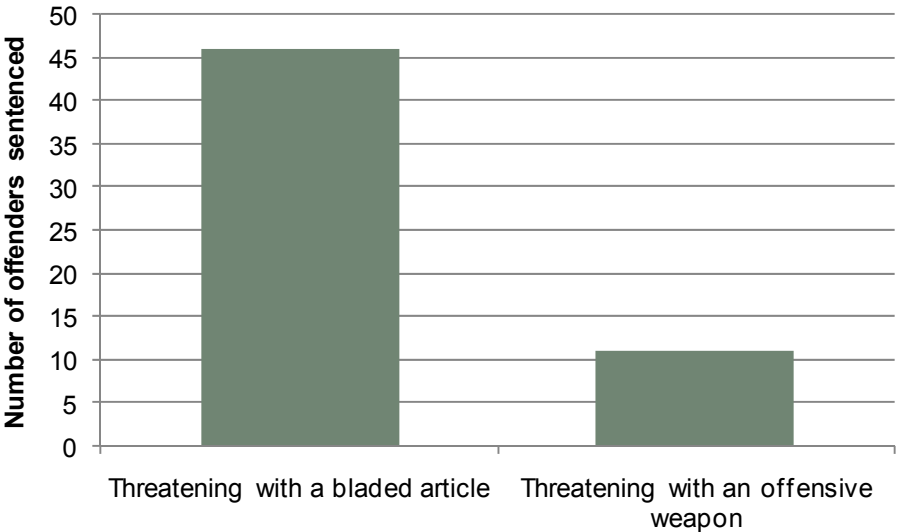


Figure 2: Number of youth offenders sentenced for threatening offences, by type of offence, 2015

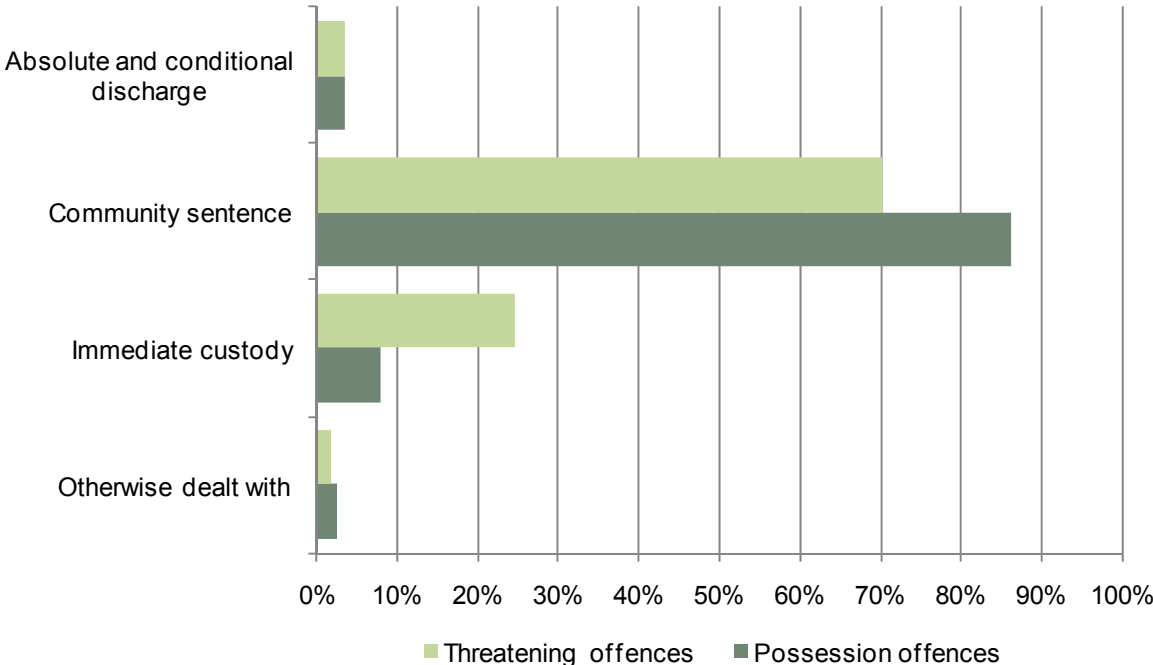


3.6 Figure 3 shows the disposal types used for these offences in 2015. Community sentences (including YROs and ROs) were the most frequent sentence outcome for youths; around 86 per cent of offenders sentenced for possession offences received a community sentence, and a further eight per cent were sentenced to immediate custody (mainly DTOs).⁴

⁴ It is not possible to provide a further breakdown of the disposal types (for example, how many community sentences were YROs/ROs), but further information is published in Youth Justice Annual Statistics:

For threatening offences, 70 per cent of youths received a community sentence, and a quarter (approximately 10 offenders) were sentenced to immediate custody.

Figure 3: Sentence outcomes received by youth offenders sentenced for bladed article and offensive weapon offences, 2015⁵



4 KEY ASSUMPTIONS

4.1 To estimate the resource effect of a new guideline, an assessment is required of how it will affect aggregate sentencing behaviour. This assessment is based on the objectives of the new guideline, and draws upon analytical and research work undertaken during guideline development.

4.2 Strong assumptions must also be made, in part because it is not possible precisely to foresee how sentencers’ behaviour may be affected across the full range of sentencing scenarios. Historical data on changes in sentencing practice can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. Therefore any estimates of the impact of the new guideline are subject to a large degree of uncertainty.

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

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/495708/youth-justice-statistics-2014-to-2015.pdf (p36)

⁵ The category ‘Otherwise dealt with’ includes a number of orders, for example hospital orders, confiscation orders and compensation orders.

5 RESOURCE IMPACT

5.1 The Council's aim in developing this guideline is not to change sentencing practice but rather to make a guideline which is accessible and useful to sentencers and to promote a more consistent approach to sentencing.

5.2 For first time offenders who have pleaded guilty to an imprisonable offence, a Referral Order (RO) remains the mandatory sentence in the new guideline.

5.3 There is currently no guidance for youth offenders relating to bladed article and offensive weapon offences. The proposed new guideline is designed to cover all offences relating to possession of or threatening with a bladed article or offensive weapon, and can be used for sentencing any offender under the age of 18. The new guideline aims to set out when the custody threshold has been crossed, and there is a significant focus on offender mitigation (in addition to offence mitigation). As a result it is not anticipated that more offenders will receive a custodial sentence than currently.

5.4 As with the other new youth offence specific guidelines currently being produced by the Council (for sexual offences and robbery offences), the Council wanted to ensure that sentencers have a framework to use that allows a consistent approach to be adopted but does not prevent the sentencer from taking a very individual approach to sentencing, accounting for the offender's age and/or maturity, their previous offending behaviour, and their personal background. As a consequence, the new bladed article and offensive weapon offences guideline does not set out starting points and sentence ranges when sentencing young offenders to custody.

5.5 The new guideline also incorporates recent legislation which states that 16 and 17 year olds convicted of a second or subsequent offence of possession of a bladed article or offensive weapon should receive a minimum sentence of a 4 months Detention and Training Order. As a result, any increase in the number of offenders receiving DTOs for a second or subsequent offence is the impact of the legislation and not the sentencing guideline.

5.6 The Council does not anticipate that the guideline will have an effect on the number of community orders or custodial sentences imposed, or the length of community or custodial sentences. As a result, no significant impact on correctional resources is anticipated.

6 RISKS

6.1 Two main risks have been identified:

Risk 1: The Council's assessment of current sentencing practice is inaccurate.

6.2 An important input into developing sentencing guidelines is an assessment of current sentencing practice. The Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Inaccuracies in the Council's assessment could cause unintended changes in sentencing practice when the new guideline comes into effect.

6.3 This risk is mitigated by information that is gathered by the Council as part of the guideline development and consultation phase. This includes providing case scenarios as

part of the consultation exercise which are intended to test whether the guideline has the intended effect and inviting views on the guideline. However, there are limitations on the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

6.4 The risk is also mitigated by the collection and analysis of sentencing information from courts. By comparing sentence outcomes to those that may result from the new guideline, it is possible to detect and amend problematic areas of the proposed new guideline.

Risk 2: Sentencers do not interpret the new guideline as intended.

6.5 This could cause a change in the average severity of sentencing, with associated resource effects (including the potential for anticipated changes to some categories of the guideline to affect other categories where no change was intended).

6.6 The Council takes a number of precautions in issuing new guidelines to try to ensure that judges interpret them as intended. Sentencing ranges are agreed on by considering sentencing data in conjunction with Council members' experience of sentencing.

6.7 Following the release of guidelines, explanatory material will be provided to read alongside the guidelines; consultees can also feedback their views of the likely effect of the guidelines, and whether this differs from the effects set out in the consultation stage resource assessment. The Council also uses data from the Ministry of Justice to monitor the effects of its guidelines to ensure any divergence from its aims is identified as quickly as possible.