

# Sentencing Council

## CONSULTATION STAGE RESOURCE ASSESSMENT: BREACH OF A COMMUNITY ORDER, SUSPENDED SENTENCE ORDER AND POST SENTENCE SUPERVISION

### 1 INTRODUCTION

1.1 This document fulfils the Council's statutory duty to produce a resource assessment which considers the likely effect of its guidelines on the resources required for the provision of prison places, probation and youth justice services.<sup>1</sup>

### 2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINE

2.1 The existing Sentencing Guideline Council's guideline *New Sentences: Criminal Justice Act 2003* contains limited guidance on breach of Suspended Sentence Orders (SSOs) and Community Orders (COs). It will soon be replaced in part by the *Imposition of Community and Custodial sentences* guideline, which is due to come into force in January 2017. Due to evidence indicating that SSOs are sometimes being imposed as a more severe form of CO, the Imposition guideline seeks to ensure that the principles for the imposition of these sentences are clarified to reverse this trend. The new guideline is more functional than the existing narrative guidance, while retaining key information and highlighting principles that are paramount in imposing these sentences. There is currently no guidance for breach of post sentence supervision due to the provisions being so recent.

2.2 The guidance on the principles by which SSOs and COs should be imposed has been produced alongside new guidelines for Breach of a CO, Breach of a SSO and Breach of Post Sentence Supervision (PSS). These guidelines seek to be more of a functional tool for sentencers and to promote consistency in dealing with these breaches, and for SSOs, the guideline aims to provide greater clarification as to when activation of a custodial term would be appropriate.

### 3 SCOPE

3.1 This resource assessment covers the following offences:

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<sup>1</sup> Coroners and Justice Act 2009 section 127.

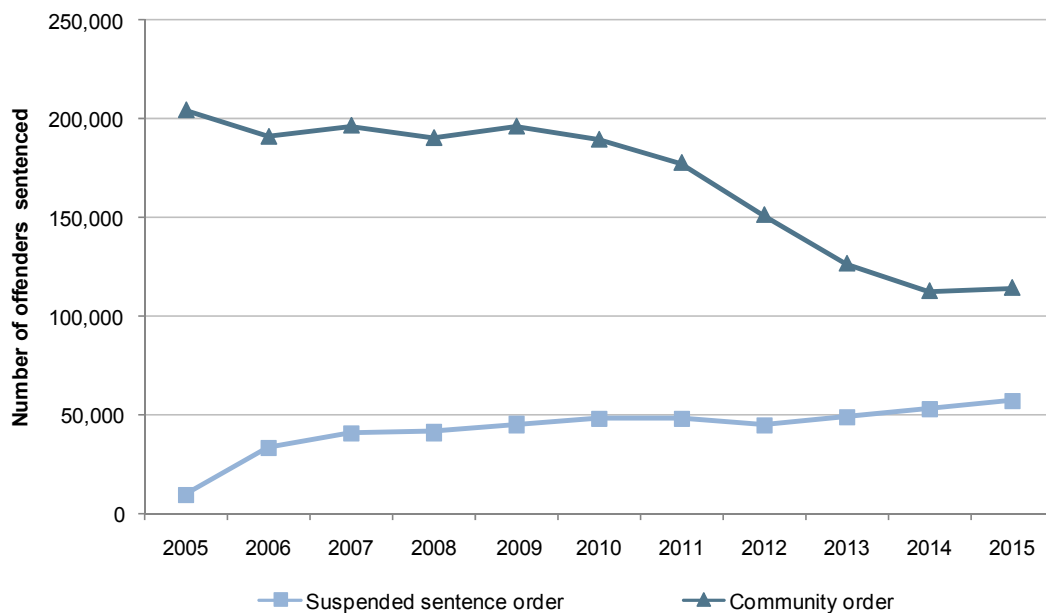
- Breach of a CO;
- Breach of a SSO; and,
- Breach of PSS.

3.2 Other breach offences, for which the Council is proposing new guidelines, will be covered under separate resource assessments.

#### 4 CURRENT SENTENCING PRACTICE

4.1 Figure 1 shows the number of COs and SSOs imposed over the last ten years. As can be seen, the number of COs has decreased (from around 204,200 in 2005 to around 114,300 in 2015) and the number of SSOs has increased (from 9,700 in 2005, to 57,100 in 2015).<sup>2</sup>

**Figure 1: Number of adult offenders sentenced to a community order or suspended sentence order, all courts, 2005-2015<sup>2</sup>**

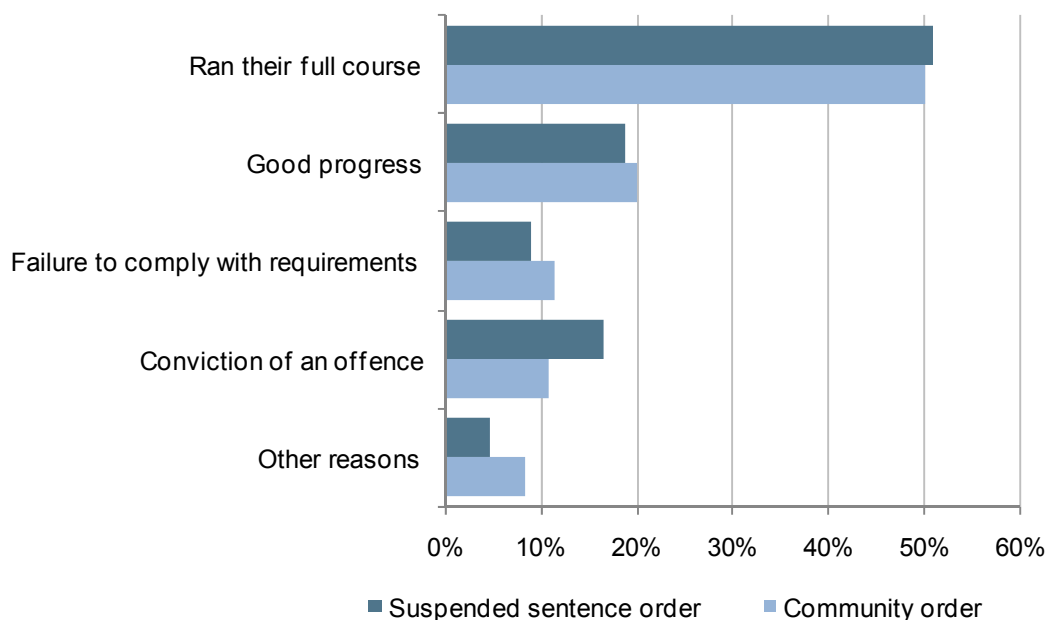


4.2 If an offender fails to comply with the conditions of their CO or SSO, or commits a further offence during the operational period of the order, then they face being returned to court. This process is called a ‘breach’. The court may add additional requirements to a CO, and if the breach is serious enough they may revoke the original sentence and re-sentence the offender which may involve a custodial sentence. A breached SSO must be activated unless it would be unjust to do so in all of the circumstances.

<sup>2</sup> <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2015> (Table Q5.1)

4.3 Data exists on the number of COs and SSOs imposed, and those terminated for various reasons. Figure 2 shows the proportion of COs and SSOs which were terminated in 2015 for: good progress; failure to comply with requirements; conviction of an offence; and 'other' reasons. Failure to comply with requirements and conviction of an offence both represent breaches of an order. What is difficult to establish is what happens to these offenders when their order is terminated for a breach. For example, failure to comply with requirements may lead to a SSO being activated, but it is not possible to establish from the data available exactly how many this applies to, or, for example, how many receive an extension to the operational period of the SSO or a fine.

**Figure 2: Percentage of terminations of community orders and suspended sentence orders by reason, 2015<sup>3</sup>**



4.4 The Offender Rehabilitation Act 2014 expanded licence supervision, which means that since 1<sup>st</sup> February 2015 all offenders who receive a custodial sentence of more than one day and less than two years are subject to compulsory PSS on their release for 12 months. In the quarter ending December 2015, approximately 57,700 offenders were subject to PSS.<sup>3</sup>

4.5 If this period of supervision is breached, either by failing to comply with the requirements or committing a further offence, the offender can be taken back to court and given a supervision default order to be served in the community or be committed

<sup>3</sup> <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-october-to-december-2015> (Probation, Tables 4.11 and 4.7).

to prison for up to 14 days. In the quarter ending December 2015, 90 offenders were given a supervision default order and around 60 were committed to prison for such a breach.<sup>4</sup>

## **5 KEY ASSUMPTIONS**

5.1 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. However, strong assumptions must be made, in part because it is not possible precisely to foresee how sentencers' behaviour may be affected across the full range of sentencing scenarios. Any estimates of the impact of the new guideline are therefore subject to a large degree of uncertainty.

5.2 Historical data on changes in sentencing practice following the publication of guidelines can help inform these assumptions, but since each guideline is different, there is no strong evidence base on which to ground assumptions about behavioural change. The assumptions thus have to be based on careful analysis of how current sentencing practice corresponds to the guideline ranges presented in the proposed new guideline, and an assessment of the effects of changes to the structure and wording of the guideline. This is particularly the case for these guidelines.

## **6 RESOURCE IMPACTS**

This section should be read in conjunction with the draft guidelines available at:

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

6.1 There is existing Sentencing Guidelines Council (SGC) guidance for both breach of a CO and breach of a SSO. This guidance is in a narrative format. PSS came into force in February 2015 and there is therefore no existing guideline for breach of PSS.

6.2 The new guidelines are not in the Council's usual format due to the unique features of these orders. The new guidelines seek to be much more of a functional tool for sentencers and promote consistency in dealing with breaches. For SSOs, it also seeks to guide sentencers as to the relevant considerations for activating a custodial term.

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<sup>4</sup> [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/519437/offender-management-statistics-quarterly-bulletin-oct-dec-2015.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/519437/offender-management-statistics-quarterly-bulletin-oct-dec-2015.pdf)

Where an offender is sentenced to 14 days' custody, they will be required to serve the full 14 days.

6.3 Estimating the resource impacts of the breach guidelines for SSOs and COs is problematic. Firstly, it is difficult to establish current sentencing practice for these orders. Although data exists on the number of COs and SSOs imposed and the number terminated for various reasons (including breach; see figure 2), there is no reliable data available on the action taken when a breach occurs. In particular, it is not known exactly how many breaches of these orders lead to a custodial sentence being activated, and if so, the length of the custodial sentence imposed. Also, as most of these breaches are dealt with in the magistrates' court, there are no case transcripts available for review.<sup>5</sup>

6.4 Secondly, some evidence suggests that some SSOs are being imposed as a more severe form of CO,<sup>6</sup> and therefore when a breach occurs the custodial sentence may not be activated as it was not intended that custody actually be served for the original offence. The Imposition definitive guideline which was published in October 2016 is designed to address this issue of the inappropriate imposition of SSOs.

6.5 If the Imposition guideline is implemented as intended, we would expect to see a reduction in the number of SSOs imposed. If the Breach guideline is implemented as intended we would expect to see an increase in the proportion of those SSOs which are imposed that are activated. Around 57,100 offenders a year receive a SSO and so the guideline has the potential to affect a large number of people. However, due to the lack of data and the changes that the Imposition guideline will bring about, it is not possible at this point to provide a precise estimate of the potential impact of the CO and SSO guideline on prison, probation and youth justice resources. Data to assess the impact of the new guideline is unlikely to be available before mid to late 2017. The Council will review the data at that time.

6.6 PSS was only introduced in February 2015 and to date there is limited data available on the number of breaches and recalls to custody (see section 4.4). The Ministry of Justice impact assessment relating to PSS anticipates a large volume of offenders being sentenced to a short custodial sentence as a result of a breach [[https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/208171/updated-rehabilitation-bill-impact-assessment.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/208171/updated-rehabilitation-bill-impact-assessment.pdf)]; however as this is not related to the sentencing guideline and it is not expected that the guideline would increase the rate of breaches, the impact of the guideline at this stage is resource neutral.

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<sup>5</sup> Transcripts are only available for the Crown Court.

<sup>6</sup> More details on this research are available in the breach consultation document.

## 7 RISKS

7.1 Two main risks have been identified:

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

7.2 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. This is a particular issue for these guidelines, due to the limited data available.

7.3 The 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.

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

7.4 If sentencers do not interpret the guideline as intended, 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).

7.5 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.

7.6 Following the release of the 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.

7.7 The Council will monitor both the Imposition and Breach guidelines to try and mitigate both of these risks and provide more information on the impact of both guidelines after they are in force.