

Final Resource Assessment: Health and Safety, Corporate Manslaughter and Food Safety and Hygiene offences

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.¹

2 RATIONALE AND OBJECTIVES FOR NEW GUIDELINES

Health and safety and food safety offences

2.1 The extent of existing guidance for health and safety offences varies. In February 2010, the predecessor body to the Sentencing Council, the Sentencing Guidelines Council ("SGC"), published a definitive guideline for corporate manslaughter and health and safety offences causing death, committed by organisations. However, there is only piecemeal guidance for sentencing the health and safety offences not covered by the SGC guideline: offences not resulting in death and offences committed by individuals. There is some general guidance in the Magistrates' Court Sentencing Guidelines and Court of Appeal case law setting out general principles of sentencing for such offences.

2.2 There is also very little specific guidance for sentencing food safety offences and the courts will usually have to extract applicable principles from sentencing in cases involving health and safety and environmental offences.

2.3 The number of health and safety and food safety offences sentenced by the courts is relatively low in comparison to other offences. For instance, in 2014, a total of 682 sentences were passed for offences that would be covered under these guidelines.² As a result, through speaking to sentencers around the country the Council found that because of the relative infrequency with which magistrates and

¹ Coroners and Justice Act 2009 section 127

² Source: Ministry of Justice. For details of data collection and methodology please see <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014>

These figures relate to persons or organisations 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.

judges sentence these cases, there was at times a lack of familiarity with these cases. The Council concluded that further guidance would assist in addressing this inconsistency and would be useful to sentencers dealing with these relatively unfamiliar cases.

Corporate manslaughter

2.4 Corporate manslaughter offences are sentenced infrequently. There have been fewer than 10 cases sentenced since the Corporate Manslaughter and Homicide Act 2007 came into force in 2008. As noted above, the SGC produced a guideline for sentencing corporate manslaughter offences. However, as explained in detail in the consultation paper,³ in the Council's definitive guideline, it has used a different approach to that used in the SGC guideline for assessing fines. The Council considers that a consistent approach should be used across health and safety offences, food safety offences, and corporate manslaughter. In addition, as the SGC guideline only applied to health and safety offences causing death and corporate manslaughter, the Council was concerned that it would be confusing to leave in force only the part of the SGC guideline relating to corporate manslaughter. Consequently, the Council has also updated relevant aspects of the corporate manslaughter guideline.

Overarching aims

2.5 The Council conducted a review of current sentencing practice in order to assess both the consistency in levels of fines given for similar offences committed by similar offenders, and to determine whether the levels of fines imposed were proportionate to the seriousness of the offence, taking into account the means of the offender.

2.6 While there were some important data limitations in conducting this exercise,⁴ the Council concluded that in some cases the levels of fines imposed appeared to be too low to meet the aims of sentencing in this area. However, by no means did the Council conclude that sentencing was too lenient in all cases. As a result, in proposing starting points that it considers to be reflective of the seriousness of various offences and proportionate to the varying financial circumstances of offenders, the Council anticipates that the guidelines will result in an increase in fines in some cases. In particular, the Council anticipates that more serious offences committed by larger organisations will result in higher levels of fines. However, for less serious offences and offences committed by individuals and smaller organisations, the Council anticipates that there will be little change from current sentencing practice.

2.7 The Council considers that the starting points and ranges in the definitive guidelines are fair, consistent and as proportionate as possible within each offence and across all offences covered by the definitive guidelines.

3 SCOPE

3.1 As stipulated by section 127 of the Coroners and Justice Act 2009, this assessment considers the resource impact of the new guidelines on the prison service, probation service and youth justice services.

³ <http://www.sentencingcouncil.org.uk/publications/item/health-and-safety-offences-corporate-manslaughter-food-safety-and-hygiene-offences-consultation/>

⁴ See discussion in section 4, below

3.2 This resource assessment considers three guidelines which are being published simultaneously - on health and safety, corporate manslaughter and food safety and hygiene offences. These are considered to be suitable to be grouped together within a single resource assessment for a number of reasons:

3.3 First, there is a great deal of commonality between the offences in terms of the disposal types used. Sentences are overwhelmingly fines – partly because many of the entities being sentenced are organisations rather than individuals. This is also relevant because the effects of the guideline on fines fall outside the statutory remit of resource assessments as outlined in 3.1. Second, sentencing volumes for these cases are relatively low; in 2014, there were 682 sentences for offences that would be covered by the health and safety and food safety and hygiene guidelines. Finally, considering specifically the corporate manslaughter guideline, it would not make sense to produce a separate resource assessment because the volume of cases is so low.

3.4 Since the majority of disposals for these offences are fines, this resource assessment will go beyond the statutory remit and consider the effects of the new guideline on the level of financial penalties.

4 SUPPORTING EVIDENCE

4.1 To ensure that the objectives of the guideline are realised, and to understand the potential resource impacts of the guidelines better, the Council has carried out analytical and research work in support of the guidelines.

4.2 A review has been conducted of cases sentenced in the magistrates' courts and the Crown Court in the last few years, which has enabled the Council to identify the harm and culpability factors present in offences, and where the offender is a company, its wealth. The sources of this data have been Crown Court transcripts, Court of Appeal transcripts, and media reports. In addition, for some cases, it was possible to obtain offenders' publicly available accounts from Companies House. In total across all of these sources, more than 200 cases were analysed to support the development of the guideline. However, information on the details of cases is not available for all cases that are sentenced each year, and so it is not possible to obtain an unbiased, representative sample of sentences. We are aware that availability of data tends to be biased in favour of cases with certain features. For instance, media reports are more likely to be available for high severity cases, and Crown Court transcripts will only be available for cases serious enough to reach this court.

4.3 In addition, during the consultation period, in order to help explore how the guideline might work in practice, a small programme of qualitative research with magistrates and Crown Court judges was undertaken by the social research team. The guideline was refined in response to some of the findings from this work.

4.4 The Sentencing Council, in partnership with the Environment Agency, has also been undertaking data collection related to these cases to better understand how the Sentencing Council's recent guideline on environmental offences, (which follows a similar format to the health and safety, corporate manslaughter and food safety and hygiene guideline), has been used in practice. This exercise is coming to an end, but early analysis of the returns has helped the Council understand how the environmental offences guideline is being applied.

4.5 Finally, the Council has undertaken statistical analysis of current sentencing practice to help inform the sentencing ranges in the definitive guideline. Detailed

statistics for the offences covered by the guideline can be found at the following URL: <http://www.sentencingcouncil.org.uk/publications/item/health-and-safety-offences-corporate-manslaughter-food-safety-and-hygiene-offences-analysis-and-research-bulletin/>.⁵

4.6 Despite the evidence which has been collected, understanding current sentencing practice for these offences has been more challenging than for many of the other sentencing guidelines produced by the Council. There are several reasons for this.

4.7 First, health and safety, corporate manslaughter and food safety and hygiene offences are relatively low volume. This means that few sentencers have experience of sentencing significant numbers of cases and as a result, it is difficult to build up a representative picture of how cases are currently dealt with. In addition, given that the definitive guidelines cover a wide range of offence seriousness and apply to many different types of offender, it is also difficult to built up a significant volume of data for each offence category committed by each type of offender.

4.8 Second, many of these offences are sentenced in the magistrates' court. It is difficult to get access to information on the circumstances of these cases because sentencing transcripts cannot be obtained for cases in the magistrates' court. One option would be to visit courts to observe such cases, but this would be highly resource intensive due to their infrequency (on average, there were fewer than two cases per magistrates' court in 2014 across all the guidelines). As mentioned in 4.3, the social research team did carry out some group discussions with magistrates, but sample sizes were low. Also, since these cases are low volume, few magistrates could recall dealing with cases (in spite of responding specifically because they were interested in helping with research into these offences) so the focus of the research was on using and interpreting the new guideline, rather than current sentencing practice.

4.9 Finally, data on financial penalties is difficult to interpret because it cannot be directly linked to the sentencing ranges set out in the new sentencing guidelines. The sentencing guidelines specify penalties which are dependent on the means of the defendant (e.g. weekly income or company size). Although efforts have been made to obtain information relating to offenders' financial circumstances from Companies House, for many organisational offenders and all individual offenders, the means of the defendant is unknown. This makes it difficult to infer the severity of the penalty; in particular, it is not possible to infer into which category of the new guideline the penalty would fall.

4.10 The relative paucity of data means that there is a risk that the new sentencing guideline will have unanticipated effects on fine levels. This is detailed further in section 8 of this document.

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 founded on the objectives of the new guideline, and backed up by the research and analytical work which has been undertaken in support of the guideline. 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

⁵ The statistical bulletin relates to 2013, in line with the draft resource assessment. The figures in this paper have been updated to 2014.

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 new guideline, and an assessment of the effects of changes to the structure and wording of the guideline. Our research work helps with this process, but due to the huge range of possible factual scenarios and offending behaviour, uncertainty inevitably remains.

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

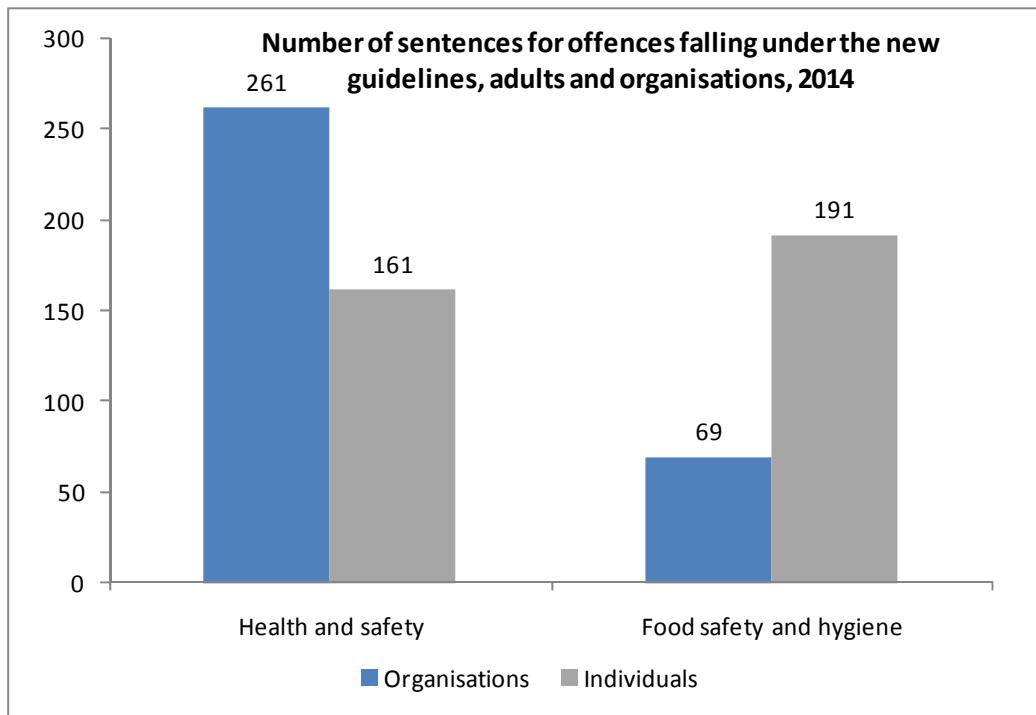
6 SENTENCING FOR HEALTH AND SAFETY, CORPORATE MANSLAUGHTER AND FOOD SAFETY AND HYGIENE OFFENCES

6.1 Detailed sentencing statistics for these offences have been published on the Sentencing Council website at the following link:

<http://www.sentencingcouncil.org.uk/publications/item/health-and-safety-offences-corporate-manslaughter-food-safety-and-hygiene-offences-analysis-and-research-bulletin/>.⁵ This section presents simple statistics to give an indication of the volume of offences and the sentences which are received for these offences.

6.2 Figure 1 shows the number of adult offenders who were sentenced for offences falling under the health and safety and food safety and hygiene guidelines in 2014. Corporate manslaughter statistics are not shown in these charts because volumes are too low – there have been fewer than 10 cases in total since 2008.

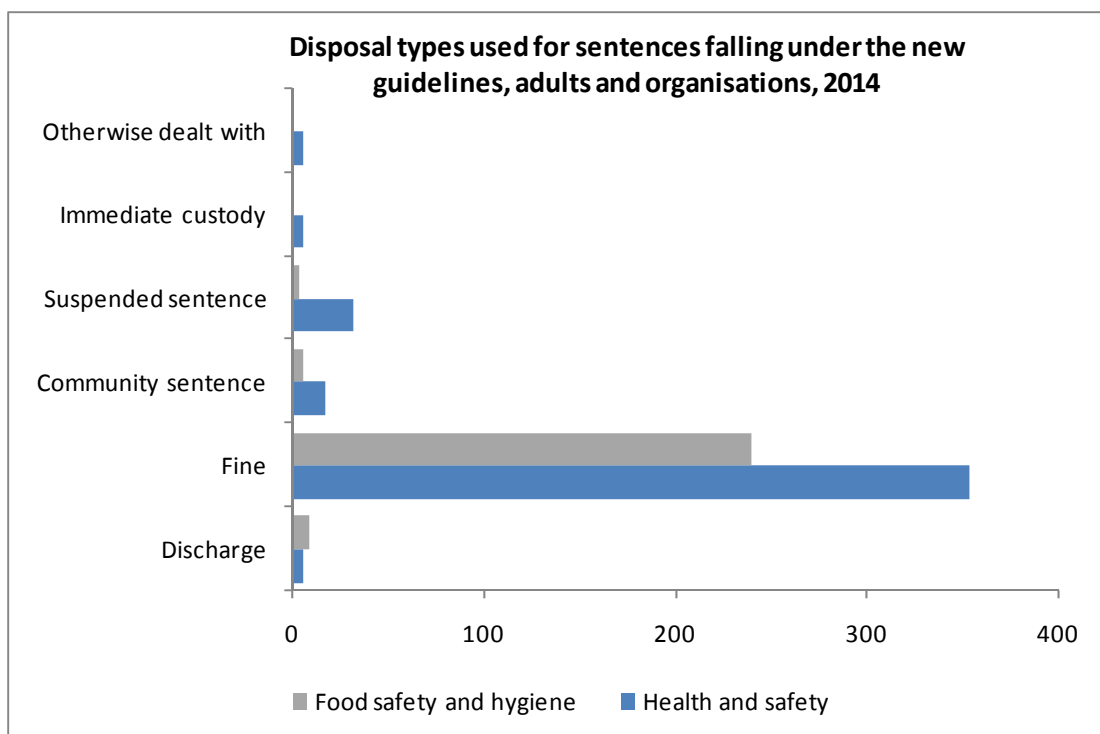
Figure 1



Source: Ministry of Justice²

6.3 Figure 2 shows that the sentence outcome for the majority of these offences in 2014 was a fine (87.1%).

Figure 2



Source: Ministry of Justice²

6.4 These figures indicate that, given the infrequency with which community orders and custodial sentences are imposed, the resource effects of any changes to sentencing practice for these offences on the prison, probation and youth justice services are likely to be relatively small.

7 RESOURCE IMPACTS OF GUIDELINE

Health and safety and food safety and hygiene

7.1 In developing the sentencing guidelines for individuals, the Council aims to increase the consistency of sentencing but not to change the average severity of penalties. Sentence levels have therefore been set to correspond to the Council's understanding of current sentencing practice for these offences. The Council therefore does not anticipate any changes in the use of the various disposal types, or average custodial sentence lengths, for these offenders.

7.2 The Council anticipates there may be an impact on fine levels for some cases of health and safety and food safety and hygiene offending involving larger organisations committing relatively serious offences. Specifically, in its review of cases sentenced in the last few years, the Council judged that fine levels in some cases involving corporations were too low. As a result, the fine levels in the new guidelines were set at levels above those seen in some examples of current sentencing practice. The Council is therefore expecting increases in fine levels each year for some cases where the offender is an organisation.

7.3 The Council has not attempted to quantify the possible increase in fine levels for a number of reasons. First, the number of fines given to organisations for the offences covered by the new guideline is low – for instance, there were a total of only 324 in 2014, many of which are relatively low severity and would be unlikely to be affected by the new guideline.

7.4 Second, due to the lack of comprehensive data on the circumstances of corporate offending and current sentencing practice described in section 4, it is difficult to assess the number of cases which would be affected and how much fine levels would change. Therefore, it is felt that quantitative estimates would be subject to such a high degree of uncertainty that they would not add value.

Corporate manslaughter

7.5 Sentence levels for these offences have been set at the level considered to be appropriate by the Council in meeting the purposes of sentencing, and to be proportionate with the sentences that are recommended under the new health and safety guideline. Since fewer than 10 organisations have been sentenced for this offence over the past 6 years, it is not possible accurately to assess current sentencing practice. Consequently, a quantitative estimate of likely changes to sentence levels is not provided.

7.6 However, by comparing the new guideline to the Sentencing Guidelines Council guideline, it seems likely that fine levels may increase for some corporate offenders in some sentencing scenarios, particularly for cases where the organisation is large.

8 RISKS

8.1 Two risks have been identified:

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

8.2 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. Where the Council is content with current sentencing levels, guideline sentencing ranges reflect the best data which is available on sentencing practice.

8.3 As discussed in section 4 of this document, the data which is available on sentencing for these offences makes an assessment of current sentencing practice challenging. As a result, there is a risk that sentencing ranges do not accurately reflect current sentencing practice. This could result in unintentional changes in fine levels, or the mix of disposal types used for these offences.

8.4 This risk is mitigated by the research with sentencers that took place during the consultation period, which looked at how sentencers used the new guideline, and how it may affect the sentences they pass.

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

8.5 This could cause a change in the average severity of sentencing, with associated resource effects.

8.6 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. The Council has several expert advisors from various disciplines who scrutinise the guidelines. Prior to the guidelines' release, research is conducted with sentencers to assess the likely effect of the guidelines on sentencing practice, and following their release supporting materials are made available on the Sentencing Council website to aid the interpretation of the guidelines.

8.7 The Council will also be monitoring the guideline for a year after it comes into force to help assess its impact and whether any unintended consequences may exist. The Council will also use data from the Ministry of Justice to monitor the effects of the guideline to ensure any divergence from its aims is identified as quickly as possible.

8.8 Nevertheless, the possibility of unintended consequences of the new guidelines cannot be ruled out.