

## Consultation Stage 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<sup>1</sup>.

### 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. 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 in February 2010. However, there is only piecemeal guidance for sentencing the health and safety offences excluded 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 authority setting out general principles of sentencing for such offences. There is 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.

2.2 The number of health and safety and food offences sentenced by the courts is relatively low in comparison to other offences. For instance, in 2013, a total of 698 sentences were passed for offences falling under these guidelines. However, the Council found in speaking to sentencers around the country that, as a result of the relative infrequency with which magistrates and judges sentence these cases, there was at times a lack of familiarity with them. In addition, in reviewing current sentencing practice the Council identified some inconsistency in how various factors were weighted and applied in reaching sentencing decisions across the country. 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

2.3 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, there is a guideline produced by the SGC in force for corporate manslaughter offences. However, as

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

explained in detail in the consultation paper<sup>2</sup> the Council is proposing a different approach to that used in the SGC guideline to the assessment of fines in the draft guidelines for health and safety offences. The Council considered that this approach should be used consistently across health and safety offences and corporate manslaughter. In addition, as the SGC guideline applies both to health and safety offences causing death and corporate manslaughter the Council was concerned that it would be confusing to leave only the part of the SGC guideline relating to corporate manslaughter in force. Consequently, the Council determined to update relevant aspects of the corporate manslaughter guideline.

## **Overarching aims**

2.4 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.

2.5 While there were some important data limitations in conducting this exercise<sup>3</sup>, 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; the Council also identified some inconsistency in how various factors were weighted and applied in reaching sentencing decisions. 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 draft proposals would result in an increase in fines in some cases. In particular, the Council anticipates that more serious offences committed by larger organisations would result in higher levels of fines. However, for less serious offences and offences committed by individuals and smaller organisations, the Council anticipates that there would be little change from current sentencing practice.

2.6 The Council considers that the starting points and ranges in the draft guidelines are fair, consistent and proportionate as possible within each offence and across all offences covered by the draft 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 proposed new guidelines on the prison service, probation service and youth justice services.

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 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. Second, sentencing volumes for these cases are relatively low. In 2013, there were 698 sentences for offences that would be covered

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<sup>2</sup> <http://sentencingcouncil.judiciary.gov.uk/get-involved/consultations-current.htm>

<sup>3</sup> See discussion in section 4, below

by the food hygiene and health and safety 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 - there averages fewer than two sentences a year in England and Wales

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 proposed 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 better understand the potential resource impacts of the guidelines, the Council has carried out analytical and research work in support of the guidelines.

4.2 A review has been conducted of recent cases in the magistrates' courts and the Crown Court, 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 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 The Sentencing Council, in partnership with the Environment Agency, has been conducting a survey to understand how the Sentencing Council's recent guideline on environmental offences has been used in practice. This survey is in its early stages, but initial returns have helped the Council to understand how the environmental offences guideline is being applied. Findings from this survey have been valuable to the development of the guidelines on health and safety, corporate manslaughter and food safety and hygiene because the proposed new guidelines follow a similar format.

4.4 Finally, the Council has undertaken statistical analysis of current sentencing practice to help inform the sentencing ranges in the draft guideline. Detailed statistics for the offences covered by the guideline can be found at the following URL: <http://sentencingcouncil.judiciary.gov.uk/consultations-current.htm>.

4.5 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.

4.6 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 draft guidelines cover a wide range of offence seriousness and apply to many different types of offender, it is also difficult to build up a significant volume of data for each offence category committed by each type of offender.

4.7 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 2013 across all the guidelines).

4.8 Finally, data on financial penalties is difficult to interpret because it cannot be directly linked to the sentencing ranges set out in the proposed 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 proposed new guideline the penalty would fall.

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

4.10 Further research is planned for the consultation period to help improve the Council's understanding of the effect of the new guideline. Specifically research will be conducted with sentencers to better understand how they will use the guideline in practice.

## **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 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. Our research work helps with this process, but due to the huge range of possible factual scenarios and offending behaviour, uncertainty inevitably remains.

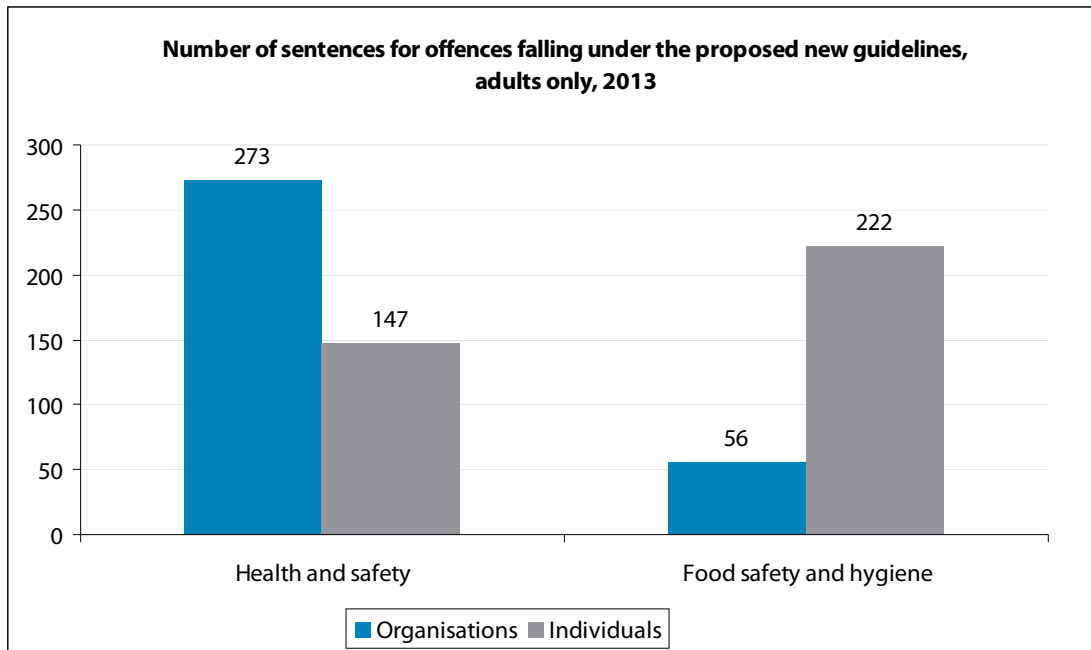
5.3 The resource impact of the new guidelines is measured in terms of the change in sentencing practice that is expected to occur as a result of the new guidelines. Any future changes in sentencing practice which are unrelated to the publication of the new guidelines are therefore not included in the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

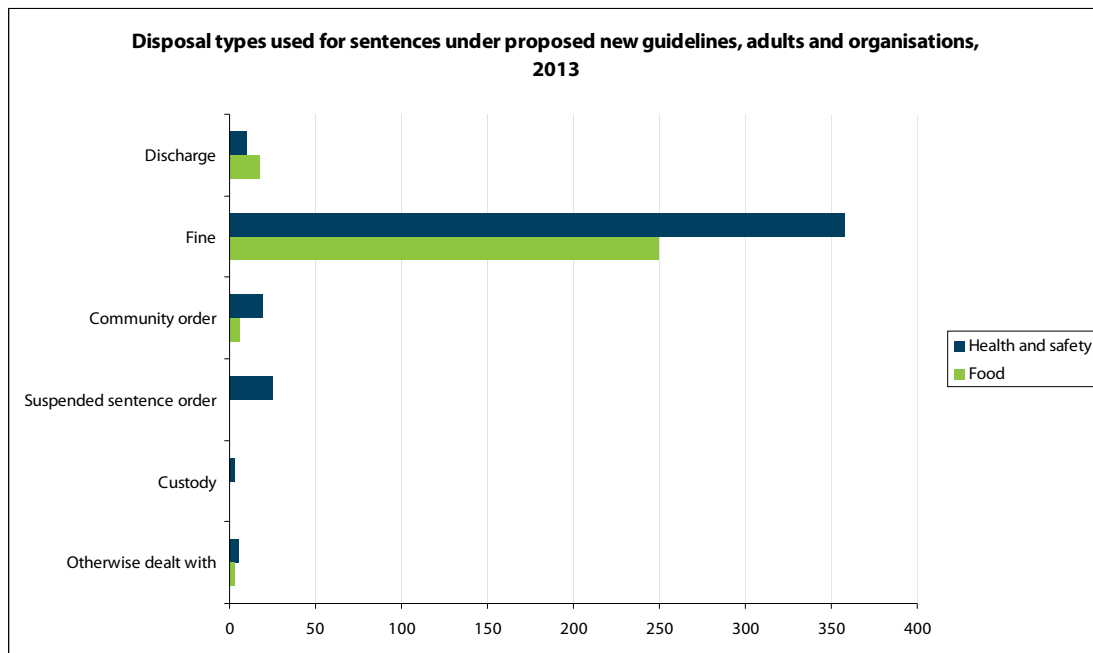
<http://sentencingcouncil.judiciary.gov.uk/consultations-current.htm>. This section presents simple statistics to give an indication of the volume of offences and the sentences which are received for these offences, and the disposal types used.

6.2 Figure 1 shows the number of adult offenders who were sentenced for offences falling under the two guidelines in 2013. 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**

6.3 Figure 2 shows that the disposal that the majority of penalties for these offences were fines (87.1%).



**Figure 2**

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 in for some cases of health and safety and food hygiene offending involving larger organisations committing relatively serious offences. Specifically, in its review of recent cases, the Council judged that fine levels in some cases involving corporations were too low. As a result, the fine levels in the proposed 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 proposed the new guideline is low – for instance, there were a total of only 329 in 2013, many of which are relatively low severity and would be unlikely to be affected by the proposed 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 Council in meeting the purposes of sentencing, and to be proportionate with the sentences that are recommended under the proposed 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 guidance to the existing Sentencing Guidelines Council guidance, 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. Council uses this assessment as a basis to consider whether current sentencing levels are appropriate or whether any changes should be made. Where 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 will be mitigated by the research with sentencers that is planned to take place during the consultation period, which will study how sentencers use the proposed 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 affect 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. Finally, consultees can

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.

8.7 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.

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