

## FINAL STAGE RESOURCE ASSESSMENT: ROBBERY

### 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 Robbery is a high volume, serious offence and it is therefore important that judges have clear, comprehensive and up to date sentencing guidelines. The Sentencing Council has completed a definitive fraud, bribery and money laundering guideline and a definitive theft guideline. Robbery was therefore the next logical guideline in order to complete the category of acquisitive offences.

2.2 The existing robbery guideline produced by the Sentencing Guidelines Council (SGC) does not include guidance for sentencing professionally planned commercial robbery or robbery in a dwelling. The new guideline includes guidance for these types of robbery and is also applicable to conspiracy to commit the substantive offence. The SGC guidelines are based on three levels of seriousness; the approach taken in the new guidelines is more nuanced and is intended to ensure that offences which cause serious harm to the victim and involve knives, firearms or imitation firearms result in the toughest sentences.

2.3 The Council's aim in developing this guideline has been to ensure that the sentences are proportionate to the offence committed and in relation to other offences. The approach taken aims to regularise practice and ensure the consistency of sentencing rather than alter it substantially. It also aims to reflect society's concerns about the problem of knife and gun robberies, designating these as amongst the most serious of these offences.

### 3 SENTENCING FOR ROBBERY OFFENCES

3.1 Detailed sentencing statistics for robbery 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 robbery offences and the sentences which are received for these offences.

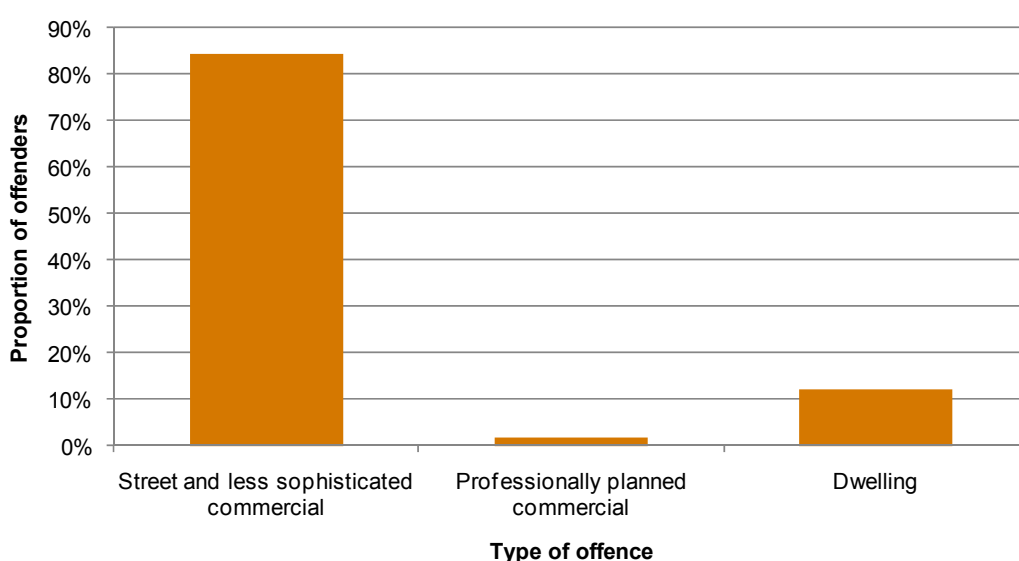
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<sup>1</sup> Coroners and Justice Act 2009 section 127

3.2 Robbery is a relatively high volume offence that typically attracts severe sentences. It therefore accounts for a substantial proportion of the prison population. For example, the latest statistics<sup>2</sup> show that on 30th September 2015, 7,253 adult offenders were in prison under an immediate custodial sentence for the offence type of robbery. These offenders accounted for 11 per cent of the sentenced adult prison population.<sup>3</sup>

3.3 In total, around 3,900 adult offenders<sup>4</sup> were sentenced for the offence of robbery in 2014. Figure 1 shows that street and less sophisticated commercial robberies made up the biggest proportion of offenders sentenced (85 per cent), followed by robbery in a dwelling (12 per cent) and professionally planned commercial robbery (two per cent).

**Figure 1: Proportion of adult offenders sentenced by type of offence, 2014**



Source: Crown Court Sentencing Survey<sup>5</sup>

3.4 Figure 2 shows the disposal types used for this offence, and Figure 3 shows average custodial sentence lengths over time. As can be seen, there has been an increase in sentence lengths for robbery offences since 2007.

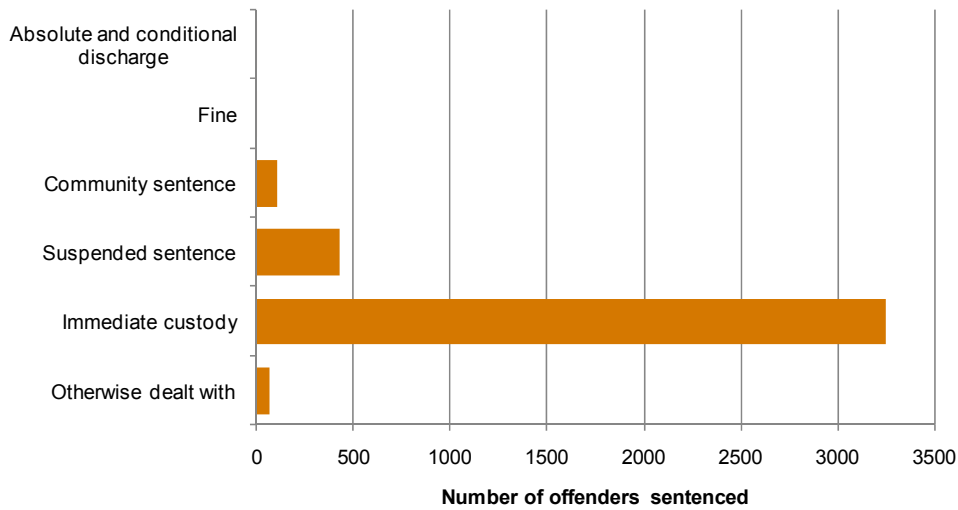
<sup>2</sup> <https://www.gov.uk/government/statistics/offender-management-statistics-quarterly-april-to-june-2015>

<sup>3</sup> See table 1.2b of the above link.

<sup>4</sup> Note this figure differs from MoJ published statistics because it excludes offences of assault with intent to rob, which are included in MoJ figures.

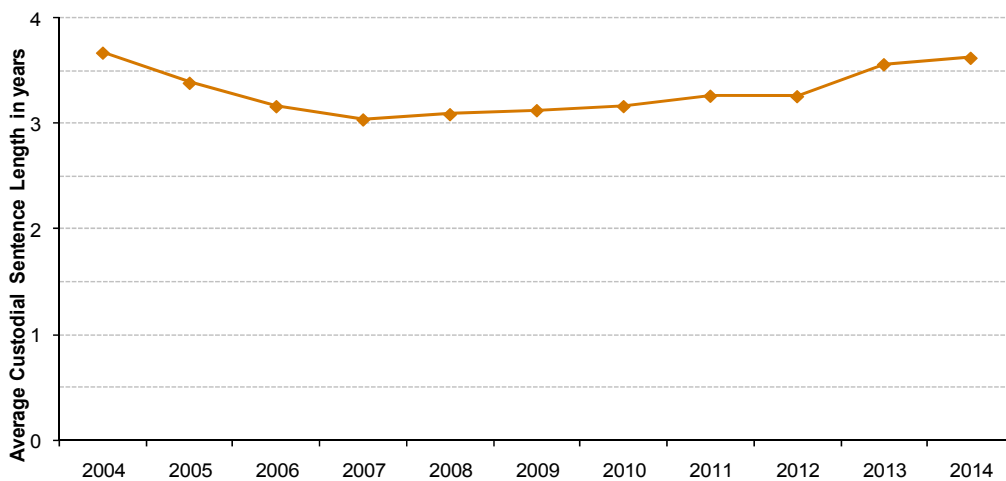
<sup>5</sup> Proportions have been calculated from the CCSS where the location of the robbery was completed. Cases where the location was not stated or was unknown have been excluded; in 2014 these cases formed 16 per cent of the total number of robbery cases.

**Figure 2: Sentence outcomes received by adult offenders sentenced for robbery, 2014**



Source: Court Proceedings Database, Ministry of Justice<sup>6</sup>

**Figure 3 – Average (mean) custodial sentence length for adult offenders sentenced to immediate custody for robbery, 2014<sup>7</sup>**



Source: Court Proceedings Database, Ministry of Justice<sup>6</sup>

<sup>6</sup> For details of data collection and methodology please see <https://www.gov.uk/government/statistics/criminal-justice-system-statistics-quarterly-december-2014>

The figures given in the chart 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.

<sup>7</sup> Excludes life and indeterminate sentences.

3.5 A high proportion of offenders sentenced for robbery receive a custodial sentence. As a consequence any changes in sentencing practice have the potential to have significant impacts on requirements for prison places.

## **4 SUPPORTING EVIDENCE**

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.

4.4 To support the development of the guideline in line with its stated aims and to better understand the potential resource impacts of the guideline, the Council conducted several different analytical exercises:

### **Qualitative interviews with sentencers**

4.5 A research exercise was undertaken in which a total of 36 sentencers (Crown Court judges and Recorders) were interviewed and asked to sentence commercial and street robbery scenarios under the draft guideline. By comparing these sentences to the sentences received under the current guideline, the Council was able to identify any potential issues with the guideline and any possible unanticipated consequences. A further 10 interviews were also conducted following changes to the street robbery guideline.

### **Transcript work**

4.6 An exercise to source information on sentenced robbery cases was undertaken to support the early development of the guideline.<sup>8</sup> This was undertaken to provide more information than is currently available in administrative statistics (for example, statistics published by the Ministry of Justice group robbery offences together as a whole, rather than breaking them down into the categories of relevance to the sentencing guidelines: street/low commercial, professionally planned commercial and dwelling). It also allowed an exploration of some of the key factors

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<sup>8</sup> This work was externally commissioned to the Institute for Criminal Policy Research and ran from November 2012 to May 2013.

influencing sentencing outcomes in different cases which helped inform the harm, culpability, aggravating and mitigating factors in the draft guidelines. The information was obtained from Crown Court sentencing remarks, along with anonymised Pre Sentence Reports for youth offenders. In total, the available details relating to 238 sentenced robbery cases were analysed; 176 of these related to adult cases and 62 to youth cases.

4.7 This information was used to inform early categorisations of the guidelines, help draft some of the step 1 and 2 factors and inform sentence starting points and ranges. Eighty of these transcripts were re-sentenced using the draft guideline.

4.8 By comparing the sentences actually received by the offenders in the transcript cases with the sentences they would be likely to receive under the draft guideline, it was possible to gain a greater understanding of the likely impact of the draft guideline on sentence levels, and make changes where necessary.

4.9 The combination of evidence from the qualitative interviews and the transcript work improved the Council's understanding of the potential issues relating to the impact, implementation, and consequently resource effects of the guideline. Changes were then made to the guideline between the consultation and definitive stage in order to ensure that the risk of unintended consequences was minimised.

## **5 RESOURCE IMPACTS OF GUIDELINE**

5.1 The guideline aims to improve consistency of sentencing but not to cause changes in the use of disposal types or sentence lengths. Guideline sentencing ranges have therefore been set with these aims in mind, and the Council does not anticipate that the guideline will have an effect on custodial sentence lengths, or numbers of community orders or custodial sentences.

5.2 The Council's intention is to ensure that offences which involve weapons receive the toughest sentences. However, the limited data available suggests that these cases already receive the most severe sentences, and as a result no further change is expected. No significant impact on prison, probation or youth justice resources is therefore 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.

6.3 However, developing an accurate picture of sentencing practice across the country can be challenging. Sentencing starting points in the proposed robbery guideline rely on very specific aspects of the case, such as the type of weapon

involved in the case (if any), whether it was produced, used to threaten, or used to commit violence. Comprehensive data does not exist on the presence of these factors in robbery cases and therefore there is uncertainty surrounding the precise sentence levels which are currently used in these cases.

6.4 This risk has been mitigated by information gathered through the research interviews undertaken. In these, sentencers reviewed the guideline and commented on whether it represented a departure from current sentencing practice. Where they felt it might be, the reasons for this were noted and changes have been made to the guideline where appropriate. However, there are limitations on the number of research interviews that can be conducted, and the number of factual scenarios which can be explored, so the risk cannot be fully eliminated.

6.5 The risk has also been mitigated by the collection and analysis of Crown Court sentencing transcripts. By comparing sentence outcomes in the transcripts to those that may result from the new guideline, it has been possible to detect and amend areas of the new guideline that may be having unintended effects as part of any post-consultation changes to the guideline. However, as above, it is not possible to fully eliminate this risk.

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

6.6 The resource assessment assumes that sentencers interpret the guideline as intended and in a consistent manner. A failure to do so could cause a change in the average severity of sentencing, with associated resource effects. It could also lead to inconsistency in sentencing outcomes.

6.7 Several potential causes of this risk were identified during the guideline development. As a result changes were made to the guideline to mitigate these, including:

- Changing the categorisation of the guidelines to ensure that sentence inflation and inconsistency was minimised. It was found that sentencers varied in how they classified some cases across the three robbery groupings proposed in the consultation guideline. Sentence starting points in the commercial guideline were substantially higher than those in the street robbery guideline at the consultation stage - there was therefore a risk that average sentence lengths could increase if cases that would currently be categorised as a street robbery were to be sentenced using the commercial robbery guideline. As a consequence the Council decided to change the groupings of the guidelines to ensure there is no ambiguity over which guideline sentencers should use.
- Removing the factor of 'deliberately targeting a vulnerable victim' in the assessment of culpability at step one of the guideline. The road testing and transcript analysis indicated that the inclusion of this factor could be a potential source of sentence inflation and as a consequence it was moved to step two and slightly reworded for clarity.
- Removing the phrase 'above the level of harm inherent in the offence of robbery'. There was a considerable amount of confusion around this concept.

As a result the harm model was rearranged, so that only the most serious and least serious harm is described.

- Increasing the starting points for robbery in a dwelling at the top end. The research indicated that some sentencers felt the starting points for this type of robbery were too low. As a result some of the ranges were adjusted upwards. However, this is only likely to impact the most violent robberies which occur in a dwelling, which are low in volume, and therefore it is not anticipated it will have an impact on resources.

6.8 In addition, 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 and expertise.

6.9 The Council will 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. Further work will be undertaken to explore the impact and implementation of the guideline after it has been in force for at least six months. The findings from this work will be published when this work has been completed.