

## Research to support the development of a robbery sentencing guideline

### Introduction

To support the development of a guideline for robbery offences, the Sentencing Council conducted a number of strands of research:

- An exercise to source information on sentenced robbery cases. The majority of this was obtained from publicly available sentencing remarks of Crown Court cases; the remainder were anonymised Pre Sentence Reports, supplied by Youth Offending Teams (*phase 1*);
- Qualitative research to explore views on consultation versions of the guideline, to assess any behavioural implications of the proposals and ascertain whether the guideline might affect sentencing practice. Following some amendments to one of the guidelines, a further small exercise was undertaken with sentencers to discuss these changes (*phase 2*); and
- An exercise to re-sentence a number of Crown Court sentencing transcripts using the draft guideline, in order to compare the sentence given through this with that in the actual case (*phase 2*).

Each phase of research focused on different stages in the development of the guideline:

- Phase 1 was conducted prior to drafting a new Sentencing Council guideline and was designed to inform the initial stages of thinking;
- Phase 2 centred on “testing” consultation versions of the guideline<sup>1</sup>, along with a slightly revised version of the street robbery guideline that was explored for comparison.<sup>2</sup>

### Background

In developing a new sentencing guideline, the Council’s aim was to ensure that all sentences are proportionate to the offence committed and in relation to other offences, and to provide comprehensive guidance covering the whole range of robbery offences. The new guideline, in contrast to that published by its predecessor the Sentencing Guidelines Council, therefore also includes guidelines for professionally planned commercial robberies and robberies in the home<sup>3</sup>. It also reflects concern in society about the problem of knife and gun robberies, designating these as amongst the most serious of these offences, and increases the focus on the effect on the victim to emphasise not only physical injuries, but also psychological harm.

The development of the guideline involved a number of stages: consideration of case law and current sentencing practice, discussions with stakeholders and experts in the area, findings from responses to the public consultation, and research and analysis.

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<sup>1</sup> See [www.sentencingcouncil.org.uk/wp-content/uploads/Robbery\\_offences\\_guideline\\_consultation\\_web1.pdf](http://www.sentencingcouncil.org.uk/wp-content/uploads/Robbery_offences_guideline_consultation_web1.pdf)

<sup>2</sup> See annex A.

<sup>3</sup> At the consultation stage the three guidelines covered: street robbery; commercial robbery and dwelling robbery.

The work on research and analysis aimed to explore various specific issues:

- current sentencing practice;
- an assessment of the likely resource effects of the new guideline;
- judicial reasoning and decision-making regarding robbery offences;
- an assessment of the practical implications of the guideline proposals (e.g. whether they might change sentencers' behaviour and therefore affect sentencing practice); and
- views on drafts of the guideline, and any other issues judges felt were relevant to revising a sentencing guideline in this area.

The work on current sentencing practice and on assessing the potential resource impacts of the guideline can be found at: [www.sentencingcouncil.org.uk/analysis-and-research](http://www.sentencingcouncil.org.uk/analysis-and-research). This document covers the remainder of the analytical work undertaken.

## Methodology

### ***Phase 1: Sourcing information on sentenced robbery cases (2012/2013)***

An exercise to source and summarise information on sentenced robbery cases was undertaken to support the early development of the guideline<sup>4</sup>. This was conducted to supplement the information currently available in administrative statistics and to provide more detailed breakdowns (for example, available statistics group robbery offences together as a whole, rather than breaking them down into the categories of relevance to the sentencing guidelines: street, commercial and dwelling). It also allowed for an exploration of some of the key factors that influence sentencing outcomes in different cases which helped inform the harm, culpability, aggravating and mitigating factors in the draft guideline.

The Crown Court cases were selected by drawing a stratified sample (based on age, gender, sentence length and type of disposal) from the Ministry of Justice (MoJ) Court Proceedings Database. For most of the cases, the information on them was obtained by purchasing the Crown Court sentencing remarks<sup>5</sup>; the remainder were anonymised Pre Sentence Reports<sup>6</sup>, supplied by Youth Offending Teams, to ensure that information on youths was also captured<sup>7</sup>. 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<sup>8</sup>.

The details of each case were reviewed, coded and recorded into a spreadsheet<sup>9</sup>. This information was used to inform early categorisations of the guidelines, help draft some of the step 1 and 2 factors and to set early sentence starting points and ranges.

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<sup>4</sup> This work was externally commissioned to the Institute for Criminal Policy Research and ran from November 2012 to May 2013.

<sup>5</sup> Where it was found that the sentencing remarks were not detailed enough, a transcript of the full sentencing hearing was obtained and reviewed.

<sup>6</sup> Youth Offending Teams (YOTs) anonymised Pre-Sentence Reports before sending them to the Office of the Sentencing Council. A further review to ensure all relevant details had been anonymised was then undertaken before sending these on to our contractors. The YOTs were asked to provide two or three cases where the offender has been convicted of robbery and where the sentence had been passed in the Youth Court prior to 30<sup>th</sup> June 2012. Given the sampling approach, the final sample was not representative and was smaller than had been anticipated.

<sup>7</sup> As approximately 40% of robbery cases are committed by youths, it was important that as many of these types of cases were also reviewed. A new youth robbery guideline is currently being developed and will be in force in due course.

<sup>8</sup> Thirty of these were serious robberies which were added as a sample boost.

<sup>9</sup> It should be noted that the details contained within each transcript varied, and as a result there was a fair amount of "missing" data. This may have been attributable to certain characteristics of an offence not being known, details not being mentioned by a judge, or because a certain variable was not applicable in the case.

## ***Phase 2: Exploring drafts of the robbery guideline (2014)***

As part of assessing the likely impact and workability of the draft consultation robbery guideline, two exercises were conducted: a series of semi structured face-to-face interviews with sentencers and an exercise to re-sentence real life robbery cases using the draft guideline.

For the interviews, a total of 36 sentencers (33 Crown Court judges and three Recorders) were interviewed across all seven HMCTS regions: London, South East, South West, Midlands, Wales, North West and North East.

Sentencers were chosen to take part using three different methods: individuals who had put themselves forward for Sentencing Council research and to be part of a research “pool”<sup>10</sup>; Resident Judges who had also agreed to take part in a review of the Crown Court Sentencing Survey<sup>11</sup>; and a small number of Recorders from a list provided by the Judicial College. Interviews took place between July and September 2014.

Sentencers were asked to consider either one or two offence scenarios<sup>12</sup> and to sentence these using either the draft street robbery or commercial robbery guideline. Depending on the scenarios in question, they may have also been asked to re-sentence the offences using the alternative guideline<sup>13</sup>. Scenarios were rotated to account for any order issues or respondent fatigue.

As a follow up, a small number of additional interviews were conducted to test a slightly modified version of the street robbery guideline (particularly at step 1 – see Annex A). Nine additional interviews were therefore conducted.

The exercise to re-sentence real life robbery cases (August to November 2014) involved both Council members and members of the Office of the Sentencing Council<sup>14</sup> sentencing a selection of actual cases from 2011 and 2012 using the new guideline. Eighty sentencing transcripts were selected from the sample collected in phase 1; some were sentenced by one participant only, whereas others were sentenced by multiple participants in order to explore issues relating to consistency of sentencing. This meant that in total 186 responses were received from participants.

For each case sentenced, participants filled out a form that led them through the step-by-step sentencing process set out in the proposed new guideline at that time (see Annex C). This form asked the participant to record how the facts of the case led them to choose the starting point sentence, and what aggravating and mitigating factors they took into account. Finally, the form asked them whether they had any difficulties in applying the guideline to the case, and if they felt that the resultant sentence was just and proportionate.

## ***Limitations of the research***

The research provided valuable information to support development of the guideline. However, it is acknowledged that there are limitations to the work, which comprised several

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<sup>10</sup> The Office of the Sentencing Council holds a research “pool” of Crown Court judges, District Judges and magistrates who have volunteered to be available to take part in research exercises.

<sup>11</sup> During the summer of 2014, a review of the Crown Court Sentencing Survey was undertaken and 15 Resident Judges were interviewed to provide views on the survey and whether there may be alternative ways of collecting the same information. In order to conduct this robbery research in the most cost-effective way, the same judges were also interviewed about robbery at the same time.

<sup>12</sup> These were shortened and adapted versions of actual cases; the number considered was based on whether the participant had already undertaken a short interview on the Crown Court Sentencing Survey and time limitations.

<sup>13</sup> Although two scenarios – scenario 3 and 5 – had been designated as a certain type of robbery by the Sentencing Council, it was known that sentencers in practice did not always agree with this. Therefore, sentencers were asked to sentence the scenario using both guidelines to compare the outcomes under each.

<sup>14</sup> In total, there were 27 participants in this exercise.

small-scale exercises that were designed within the context of the resources available. As a result, the research findings presented in this bulletin should be regarded as **indicative** only and not conclusive. The following features of the research should be noted:

- Small sample sizes: only a relatively small number of judges took part, thus representing only a small proportion of all Crown Court judges;
- Those who took part were largely self selecting.<sup>15</sup> Likewise, only a small number of sentencing transcripts were examined and these may not be representative;
- To reduce the burden on individual judges, not all scenarios were considered by all participants in the interviews. This means that individual scenarios were only considered by a sub-sample of the total; the interviews also did not cover issues associated with dwelling robberies in any detail;
- The detail included in the sentencing transcripts varied and therefore there was a fair amount of “missing” data recorded;
- There may be differences between the way sentencers approach a research exercise and real sentencing decisions; and
- The level of detail with which participants completed the transcript exercise varied.

### **Key findings**

The following covers the main issues identified. Most of these findings emerged in phase 2 through the interviews and scenario testing with judges that explored the consultation versions of the guidelines, as well as a modified version of the street robbery guideline. This is therefore the main focus here; however, where other issues emerged through the transcript work, this is noted.

### ***Factors influencing seriousness***

Where time permitted, sentencers were asked what factors would affect their assessment of offence seriousness when sentencing robbery cases<sup>16</sup>.

Reflecting the structure of the guideline, by far the most frequently cited factors sentencers said they focused on were the use or threat of a weapon and the impact on the victim. The type of weapon used was, however, less frequently cited. The use/level of violence or force involved in the offence was also a common factor cited.

Other factors that were raised, although in smaller numbers overall, included planning, whether a group was involved, the timing of the offence (being worse if committed at night), the vulnerability of the victim and the targeting of victims. Value was not mentioned often and for some, this was more important in relation to commercial robberies.

### ***Using the guidelines: sentence consistency***

The interviews all recorded which consultation guideline (street or commercial) the participants chose to sentence each scenario with and how they categorised the offence in the scenario at step 1<sup>17</sup>, along with the aggravating and mitigating factors deemed to be relevant and the final sentence imposed.

For most scenarios, there was relative consistency in the choice of guideline, and in the harm and culpability categorisations chosen to be applicable. This was particularly the case in

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<sup>15</sup> Although judges from a number of different courts and regions were invited to take part, not all were able to do so.

<sup>16</sup> Similar factors were found in the transcript analysis in phase 1.

<sup>17</sup> The guideline contained three culpability categories: A – high culpability; B – medium culpability; and C – lesser culpability. There were three harm categories – 1, 2 and 3, with harm 1 representing the highest level of physical and psychological harm involved in the offence.

scenarios involving more clear-cut, unambiguous issues (e.g. a bladed article had been used and so it was clear that the offence was high culpability, or a high level of injury was involved).

Where there was more inconsistency, this tended to relate to differing interpretations of several factors at step 1 in the consultation guidelines (the same issues also emerged in the transcript/re-sentencing exercise in phase 2). The main factors contributing to this were:

- “Some physical and/or psychological harm” as opposed to “serious physical and/or psychological harm” – what constituted some harm, as opposed to serious harm, was often a matter of opinion; for example, two different participants assessed the harm involved in scenario 2 in different ways:

*I would have thought that the impact on this young man would have been extremely poor... you know, he'd had a very bad time. I would have thought it falls into harm 1. I would be very surprised if it wasn't. Serious psychological harm caused to the victim. (Crown Court judge)*

*...some physical or psychological harm, on the basis that you must be able to infer some psychological harm from what has happened. I can't imagine on the evidence there that you can fit it into serious psychological or physical harm. (Crown Court judge)*

- “Use of very significant force in the commission of the offence” - again, there were differences over whether some scenarios involved significant force or not (for example, in scenario 5, where the victim was thrown to the floor, some participants felt that this placed them in high culpability (A) and others in medium culpability (B)). Disagreements over what constituted significant or minimal force also existed in the transcript re-sentencing exercise.

- “Deliberately targeting victim on basis of particular vulnerability”<sup>18</sup> - participants were found to have assessed vulnerability in different ways (for example, in scenario 2, the youth of the victim was felt to have made him vulnerable for some, but not for others). *Targeting* was also an issue – in some cases it seemed that the factor was misinterpreted by some as focusing only on the vulnerability aspect, whereas the factor in full was actually about the *targeting* of the vulnerable victim. This was also found to be an issue in the phase 2 transcript exercise where there was disagreement over whether the victims were deliberately targeted due to their vulnerability in one of the scenarios: *“Although I treated the vulnerability of the victims as a step 2 factor, some might have interpreted the sentencing judge's remarks as indicating a step 1 factor”* (Transcript exercise participant).

- “Sophisticated organised nature of offence/significant planning” – when sentencing scenarios using the commercial guideline<sup>19</sup>, the general issue of “significant planning” was often cited – participants used this to place the offence in both high (A) and medium (B) culpability A<sup>20</sup>, suggesting differing interpretations of how planning affected culpability existed<sup>21</sup> and that some were not applying the guideline as intended (significant planning is only mentioned as a high culpability factor).

There was also inconsistency over which guideline to use to sentence scenario 3 and 5<sup>22</sup>. For scenario 3, an offence involving robbery of a taxi driver, the Council had categorised this

<sup>18</sup> Note that in the follow-up interviews, a revised version of the street robbery guideline was discussed, in which this factor had been removed from step 1. A new factor of *“targeting of victim”* was included in the aggravating factors at step 2.

<sup>19</sup> Note that in the follow-up interviews, only the street robbery guideline was discussed.

<sup>20</sup> This was, however, more likely to be cited in relation to culpability A.

<sup>21</sup> Some sentencers also commented that they did not understand why planning was not included in the street robbery guideline.

<sup>22</sup> This inconsistency existed in the transcript resentencing exercise between Council members and participants but also amongst participants.

as a street robbery offence; however, only four of 10 sentencers agreed, with six stating this was instead a commercial robbery. The reasons given for this was because the taxi driver was robbed at his place of work and whilst carrying out a public function – they likened the taxi to a “mobile office”; “like a shop, only it moves”.

In contrast, the Council had categorised scenario 5, the robbery of the takings from a bookmaker’s shop whilst the manager was in the street, as a commercial robbery. As with scenario 3, not all participants agreed with this, with seven preferring to sentence using the street robbery guideline. Their reasons for this tended to be related to the offence having been carried out in the street<sup>23</sup>.

Other reasons for variations in choice of guideline included who was being robbed (street robbery being about members of the public and commercial involving someone at work), and whether the offence was targeted or planned (a commercial robbery being more planned).

Where planning was involved in a commercial robbery, this led some to question whether this could lead to double counting similar issues within the sentencing process: they felt that the higher starting points and ranges in the commercial guideline would already have taken into account the more targeted and planned nature of these types of offences, and that by then placing the offence into the high culpability category because of the factor “*sophisticated organised nature of offence/significant planning*” could over inflate the final sentence.

### **Using the guidelines: sentence levels**

It was also found that participants’ choice of the guideline factors for the scenarios presented could have the potential to affect sentence levels – where they chose or applied factors in an unanticipated way, this led to differences between their final sentences and those in the actual case. For example, in scenario 2, where participants felt that the victim had suffered “serious” psychological harm (as opposed to “some” harm), sentences tended to be higher than the sentence given by the actual judge in the case (from between six months and two and a half years). Where participants deemed the offence to involve “some” harm, sentences were more in line with that given in the actual case (or in some instances, lower).

Likewise, sentences for scenario 5 were often higher than those given by the actual judge. This was related to some participants feeling that the offence was in the highest harm or culpability categories, based on their assessment that the victim had been targeted, that significant planning and significant force had been involved and that it led to “serious” harm<sup>24</sup>. Not all participants applied these factors, however, and in these cases, sentence levels were not as affected.

The separate transcript resentencing exercise, undertaken at a similar time in phase 2, also indicated that some factors in the guideline could lead to some offences being classified in higher culpability and harm categories than intended, therefore leading to higher sentences – in particular “*psychological harm*” and “*deliberately targeting victim on basis of particular vulnerability*” at step 1. Some participants in the exercise questioned the logic of this:

*What constitutes “targeting”?...There is a risk that, whenever a vulnerable victim is robbed, the case will fall into culpability A....Should the guideline not make a little clearer how “targeting” is to be interpreted? (Transcript exercise participant)*

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<sup>23</sup> One participant, however, chose the street robbery guideline because of the lower starting points and ranges within it when compared to the commercial robbery guideline.

<sup>24</sup> Not all participants used all of these factors when reviewing this scenario.

In the latter, it was found that some people classified robberies against teenagers and schoolchildren as involving the targeting of a vulnerable victim. Given that a high proportion of robberies involve young people, this interpretation of the factor could lead to inflation in a number of cases.

It was also found that some participants felt that the multifaceted definition of culpability A may lead to some cases being categorised too highly:

*There is an issue about guidelines where there are a number of criteria for getting into culpability A and the offender only has to satisfy one of them.  
(Transcript exercise participant)*

Finally, it seemed that the mere choice of guideline with which to sentence the scenarios also had an impact, as this was not always in line with that anticipated by the Council (a similar disparity was found for one of the scenarios in the phase 2 transcript exercise). For example, choosing to sentence an offence perceived to be a street robbery by the Council with the commercial robbery guideline would inflate sentences as the starting points and ranges were higher in this latter guideline (for example an A1 offence at consultation stage – high culpability and high harm - using the commercial guideline, this had a starting point of 16 years, as opposed to 8 years in the street robbery guideline; a B2 offence – medium culpability and harm - had starting points of 5 years and 3 years 6 months, respectively).

### **Culpability issues**

In addition to the observations on culpability factors generated through the sentencing exercise, participants were asked for their general views on this part of the consultation guidelines.

### Weapons

The most common comment on culpability concerned the inclusion of factors relating to weapons in high and medium culpability. Although judges felt that taking account of weapons was vital, and was often one of the factors they said they took into account in determining seriousness, there were many comments on the way in which the guideline currently reflected these (a few judges, however, felt that the delineation was right).

Comments tended to focus on two main issues:

- *“Production” of a weapon*: most of the comments raised by participants centred on the fact that the guideline suggested that threats with weapons that are produced and shown to victims are more serious than those which are not produced. Many participants disagreed with this, feeling that the fear elicited would be the same in both situations:

*Threat of knife should be in the same category – if someone threatens to knife you, you believe them whether you see a knife or not. (Crown Court judge)*

*If someone has a ruler in his pocket and it looks like a knife and someone actually has a knife in his pocket...why is there a difference? In both cases there is the intention to make the victim fear there is a weapon...culpability is the same, harm is different – you can do less harm with a ruler. (Crown Court judge)*

One judge, however, did explicitly say that the culpability in these two situations would be different and that it was right to differentiate between them.

In relation to the factors involving production of a weapon, other participants also felt that the word “*production*” did not add anything to the “*use*” of a weapon to inflict violence<sup>25</sup> (how can a weapon be used if it’s not produced?) and would only serve to confuse. It was therefore suggested that the part of the factor focusing on production was removed.

- *The types of weapons specified in the guideline:* A few participants felt that the guideline was very/too focused on firearms and bladed articles when there are also other weapons that can cause as much fear:

*[I’m] always worried about defining weapons as part of culpability. Baseball, screwdriver – which is worse? Do we have to differentiate between classes of weapons? Where does a syringe which brings the danger of infections fall? Is quite random that some fall into A and some B. (Crown Court judge)*

*Why is the threat of a gun or knife different from the threat of an acid attack? Or baseball bat? (Crown Court judge)*

*There are things that can be just as bad [as knives, guns etc]. Better to say ‘production of bladed article, firearm, imitation firearm, or any other weapon capable of causing serious harm’. (Crown Court judge)*

A small number of participants therefore felt that weapons other than firearms or bladed articles should be encompassed within the high culpability category. One also felt that the text in this guideline should be consistent with that in the assault guideline and specifically mention that a weapon would include a shod foot.

Other comments on culpability included:

#### High culpability (category A)

There were very few comments on the high culpability category factors. However, of those who commented, most disliked use of the word “*very*” in “*use of very significant force in the commission of the offence*”. It was felt that adding “*very*” into the factor made it open to interpretation and liable to lead to argument in court, and that the distinction between “*force*” or “*significant force*” in the commission of an offence was sufficient<sup>26</sup>. Other comments on factors (mentioned by just one participant each) were:

- Who would be encompassed within the factor of “*deliberately targeting victim on basis of particular vulnerability*” – differing interpretations of who this would be was observed in both the scenario and transcript exercises and therefore some participants commented that the guidelines should be clear on this.
- Why there was no reference to offender role in the street robbery guideline when gang type offences can occur (e.g. “*steaming*”<sup>27</sup>) and when it was included in the commercial and dwelling guidelines.
- A suggestion to add “*perceived personal characteristics*” to “*offence motivated by, or demonstrating hostility based on the victim’s personal characteristics*”.

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<sup>25</sup> In the high culpability category at the consultation stage there was the factor “*production and use of weapon to inflict violence*” and in the medium culpability category there was “*production and use of a weapon to threaten violence*”.

<sup>26</sup> This comment has also been raised in relation to its use in other guidelines.

<sup>27</sup> “*Steaming is where a group of people rob an individual or other group of people, often using the threat of, or actual violence*”; [http://safe.met.police.uk/personal\\_theft/get\\_the\\_facts.html](http://safe.met.police.uk/personal_theft/get_the_facts.html)



### Medium culpability (category B)

Again, there were very few comments on the medium culpability category. The most frequent ones centred on the factor of “*other cases where characteristics for categories A and C are not present*”<sup>28</sup>. Participants responded positively to this factor, and thought it worked in practice and provided them with flexibility. A few, however, said they did not understand what was meant by the factor and that overall it was not clear.

The few other comments on this category involved the suggestion that group activity should be mentioned here and that there should have been some wording that addressed the issue of force, given that the two alternative categories in culpability C both included something – one participant suggested adopting wording such as “*use of force which is more than minimal*”.

### Lesser Culpability (category C)

Most participants also did not comment on culpability C specifically. The small number of comments suggested that the factors of “*performed limited function under direction*” and “*involved through coercion, intimidation or exploitation*” should be at step 2 as aggravating or mitigating factors, and that the first factor here would be clearer by using the term “*performed limited role*”. One participant also felt that as the lesser culpability category was relatively underpopulated in terms of factors, this could have the effect of pushing offences upwards into either medium or high culpability.

### **Harm issues**

There were two issues that received most comments on harm:

- the inclusion (or otherwise) of value as a factor in the street robbery guideline; and,
- the concept of harm being above the level “*inherent in the offence of robbery*” that was in the consultation version of the guideline<sup>29</sup>.

Value - having seen the consultation version of the street robbery guideline in which value did not feature<sup>30</sup>, sentencers were given an alternative model that did include value<sup>31</sup>, and were asked for their views on this. Overall, more than half felt the issue of value should not be taken into account as part of harm, around a third felt it should be and a very small number either had no comment or were not sure.

Participants’ opinions tended to be based on their views on:

- whether street robbery tends to be targeted or not;
- consistency of approach – between guidelines and in terms of sentencing in general.

- **Targeting:** Those who felt value should be included as a factor in the assessment of harm tended to report that street robberies were often targeted for particular items or money and that the harm incurred would involve financial loss:

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<sup>28</sup> The greater number of comments on this factor may be due to the fact that some people were specifically asked for their views on this.

<sup>29</sup> In some cases, these issues elicited comment because the interviewers prompted sentencers on them. However, in many cases, they were also spontaneously raised.

<sup>30</sup> It was included, however, as an aggravating factor at step 2.

<sup>31</sup> In the highest harm category, an extra factor of “*very high value of goods (whether economic, sentimental or personal)*” was included and in the medium harm category, the factor “*high or medium value of goods (whether economic, sentimental or personal)*”.

*The point of robbery is acquisitive gain. If you don't put acquisitive gain in the equation you are concentrating solely on the violence that accompanies it, but the violence is instrumental in robbery. (Crown Court judge)*

*Think value should be in because often people are targeted, especially students, for their phones. High value should make a difference to the sentence so I would like to see it included. (Recorder)*

*...it seems to me that if you form the view that somebody was targeting high value items...that that ought to be a factor to take into account. (Crown Court judge)*

On the other hand, there were participants who felt that these types of robberies were more opportunistic and random, and that the important issue was the physical and emotional impact on the victim rather than the financial loss:

*Robbery is an offence of violence with coincidental acquisition. (Crown Court judge)*

*I think the gravimum of street robbery is the violence. (Recorder)*

*The nature of the offence is not stealing the money, it's the circumstances you put the individual in. (Crown Court judge)*

*I don't think a poor person who doesn't have anything of great value should be less protected by the courts than somebody who does have. I don't find it necessary to put very high value of goods...much more important to concentrate on harm to the victim. (Crown Court judge)*

These participants consequently felt that value should not be included as part of the harm assessment, but should more sensibly be taken into account later as part of aggravation.

- *Consistency issues:* Some participants felt that value should be included as part of the harm assessment in the street robbery guideline in order to make it consistent with the commercial and dwelling guidelines in which it did appear.

One participant also felt that whether or not the robbery was targeted in street should make no difference to how the offence was categorised, and therefore that taking account of the value robbed when sentencing was a risk the offender took – he therefore thought that the street robbery guideline should be consistent with the general principles of sentencing:

*Some offences are targeted. Whether or not the value is by chance, you have done more harm by robbing something of higher value. Seems illogical to exclude a harm factor on the basis that the harm was never intended. It's always been part of sentencing policy that the circumstances are as they are and if you commit an offence you run that risk. Having value in would bring it into line with general policy. (Crown Court judge)*

- *Other issues:* Finally, a small number felt that it sent the wrong message to omit value from street robbery: *"It doesn't look good to say it matters to shops and businesses but not to individuals"* (Crown Court judge) and others felt where in the guideline value was taken into account (as part of harm or aggravation or mitigation) wouldn't make much difference as judges already take it into account where it is appropriate. Other comments included:

- How would the levels of value be classified? (e.g. what would constitute high or low value?). This was felt to be open to interpretation;
- That the wording could be changed to reflect loss to the victim rather than value to the defendant.

- “Above the level of harm inherent in the offence of robbery” - Although a number of participants put forward no comments on the harm factors in the consultation guidelines and two said they were fine, around half of those interviewed did have comments and of these, nearly every one included concern around the factor of *“some physical and/or psychological harm caused to the victim above the level of harm inherent in the offence”*.

Participants generally did not know what this would mean in practice (and this was observed when they sentenced the scenarios) – mainly because it was not clear what they should regard as “inherent” in the offence, especially in light of the legal definition of robbery<sup>32</sup> which includes both use and threat of force<sup>33</sup>:

*Inherent in....it's not very helpful as it presupposes there's going to be some harm without actually identifying what the inherent/ normal harm would be.*  
(Crown Court judge)

*Above the level of harm inherent in the offence - is hard to know the level inherent. What does that mean? Above the level where you might get punching, or above the level inherent in robbery, which might just be threat.*  
(Crown Court judge)

*What force is inherent in robbery? Suggests that some physical harm is inherent in robbery which it isn't. Robbery can be committed with the threat of harm/use of force which doesn't result in any injury. Could argue that any physical injury is beyond what is inherent....Not sure what is inherent is useful concept.* (Crown Court judge)

As a consequence, participants wanted clarification around what was “inherent”; some indicated that without more thought, the drafting of the factor as it was at this stage could lead to changes in sentence levels. For example, a small number felt that the current drafting could result in placing the majority of robberies in just one box: for example, offences involving any physical force might place most into the medium harm (2) category if threat was seen as the level of harm inherent in robbery:

*The level of harm inherent in robbery is the threat of the use of force - it doesn't imply any injury being used. Don't find drafting - inherent in the offence - very useful. Any physical force could be argued into 2. Query the use of that. You could argue that everything falls into [category] 2 except where there is no harm at all. Do the guidelines want to achieve that?* (Crown Court judge)

*Physical and psychological harm above a robbery - I don't know what that means. The absence of factors would put you in harm 3 - would be 95% of robberies (and 95% shouldn't go in).* (Crown Court judge)

<sup>32</sup> Under the Theft Act 1968, “A person is guilty of robbery if he steals, and immediately before or at the time of doing so, and in order to do so, he uses force on any person or puts or seeks to put any person in fear of being then and there subjected to force”.

<sup>33</sup> The transcript exercise also identified problems with the definition of harm, particularly use of psychological harm.

### Other harm factors

Other harm factors attracted less comment, but included the need to<sup>34</sup>:

- Ensure clarity about definitions;
- Consider including goods recovered in the categorisation in harm;
- Recognise to a greater extent a victim's loss of independence in the guideline;
- Make clear that medical evidence is not required to assess vulnerability – that the judge's assessment will be sufficient; and
- Consider widening the harm factors to include not only the victim but also the effect on partners or witnesses etc.

### **Starting points and ranges**

Not all participants specifically commented on the starting points and ranges in the consultation guidelines, but where they did, some felt that:

- The starting points were too high in the commercial robbery guideline; and
- There should not be a community order included at the bottom end of the sentencing range.

In addition, although participants were not asked to discuss in any detail the dwelling robbery guideline, there was a consensus that the starting points and range were too low at the top end, especially in comparison to those in the commercial robbery guideline<sup>35</sup>:

*I always think robbery dwelling is very serious...[sentences downgraded slightly] by treating people who get robbed in a bank as more important than people who get robbed in their own home. Actually the trauma is greater and the category of 9 to 13, I thought, personally, was too low. (Crown Court judge)*

*I'm a bit concerned when you look at the range for domestic robberies, that they're a little bit down on the commercial robberies. It may be that the commercial robberies are high... (Crown Court judge)*

### **Conclusion**

As this report indicates, the research identified various issues in the consultation drafts of the guideline that were potentially problematic. As a result, in conjunction with the whole range of work undertaken during the development of the guideline, the following changes have been made to minimise the risk of unintended consequences:

- The categorisation of robbery offences into different guidelines has now been altered. The definitive guideline is now split into: street and less sophisticated commercial robbery; professionally planned commercial robbery; and dwelling robbery. This will avoid any inconsistency and/or changes in sentence levels brought about by sentencers choosing different guidelines, with different starting points and ranges within them, with which to sentence (the two scenarios causing confusion in this research would both now be covered by the first guideline only). It also addresses the concern that the starting points and ranges were too high in the commercial robbery guideline

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<sup>34</sup> Each of these were raised by just one judge only.

<sup>35</sup> At this point in the guideline development, the A1 starting point for a commercial robbery was 16 years and for a dwelling house robbery 11 years.

for some offences – these have now been lowered for less sophisticated commercial robberies by combining these with street robberies; however, high sentences are retained for the more serious, professionally planned, commercial robberies.

- The factor “*deliberately targeting victim on basis of particular vulnerability*” has been slightly reworded and removed from the assessment of culpability, now appearing as an aggravating factor (“*victim is targeted due to a vulnerability (or perceived vulnerability)*”) – this should help ensure that some cases are not inflated into higher sentence ranges than they should be (e.g. all cases involving young victims) and should highlight the focus on the targeting element in addition to the vulnerability issue.
- The harm factors in the guideline have been revised to ensure more clarity over where different offences should sit and to remove the wording “*above the level inherent*” which caused confusion for some of the participants in the research and contributed to inconsistent sentencing<sup>36</sup>.
- The factor “*sophisticated organised nature of offence/significant planning*” has been removed from the culpability assessment in the commercial guideline. It now appears as an aggravating factor of “*significant planning*” in the street and less sophisticated commercial guideline (but not in the professionally planned commercial guideline to reflect the higher starting points and ranges already built into that guideline).<sup>37</sup>
- The wording relating to the culpability factors involving weapons has been slightly amended to make them clearer and less unambiguous;
- The starting points and range for the top end of dwelling robbery have been increased – the starting point from 11 years to 13 years and the range from 9 years to 13 years, to 10 years to 16 years.

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 it has been completed.

## **Acknowledgments**

I would like to thank all those who contributed to the various exercises outlined in this report and who offered useful insights into the guideline at various stages of development: the Institute for Criminal Policy Research who undertook the early transcript work; the Youth Justice Board for helping to facilitate the sourcing of Pre-Sentence Reports and the individual Youth Offending Teams for supplying these documents and taking time to anonymise them; the judges who took part in the interviews; and members of the Sentencing Council and Office of the Sentencing who took part in the transcript re-sentencing exercise and analysis of this work.

**Emma Marshall**

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<sup>36</sup> The definitive guideline now cites “*serious physical and/or psychological harm caused to the victim*” in the highest harm category and “*no/minimal physical or psychological harm caused to the victim*” in the lowest harm category.

<sup>37</sup> In the dwelling guideline, a factor of “*sophisticated organised nature of offence*” is included in high culpability (A).

**Annex A: revised street robbery guideline used in follow up interviews  
(January 2015)**

**STEP ONE  
Determining the offence category**

The court should determine the offence category with reference only to the factors listed in the tables below. In order to determine the category the court should assess **culpability** and **harm**.

The court should weigh all the factors set out below in determining the offender's culpability.

**Where there are characteristics present which fall under different levels of culpability, the court should balance these characteristics to reach a fair assessment of the offender's culpability.**

**Culpability** demonstrated by one or more of the following:

**A - High culpability:**

- Production and use of a weapon to inflict violence
- Production of a bladed article or firearm or imitation firearm to threaten violence
- Offence motivated by, or demonstrating, hostility based on the victim's personal characteristics (for example, sex, race, sexual orientation (or presumed sexual orientation))

**B - Medium culpability:**

- Production and use of a weapon to threaten violence
- Threat of violence by a bladed article or firearm or imitation firearm (but which is not produced)
- Other cases where characteristics for categories A or C are not present

**C - Lesser culpability:**

- Performed limited function under direction
- Involved through coercion, intimidation or exploitation
- Threat or use of minimal force
- Very little or no planning
- Mental disorder or learning disability where linked to the commission of the offence

**Harm**

The court should consider the factors set out below to determine the level of harm that has been caused or was intended to be caused to the victim.

<b>Category 1</b>	Serious physical and/or psychological harm caused to the victim
<b>Category 2</b>	Some physical and/or psychological harm caused to the victim above the level of harm inherent in the offence of robbery
<b>Category 3</b>	Factors in categories 1 and 2 not present

**Where the goods stolen are of more than low value, whether economic, sentimental or personal, this is considered as an aggravating factor at step two.**

**STEP TWO****Starting point and category range**

Having determined the category at step one, the court should use the corresponding starting point to reach a sentence within the category range below. The starting point applies to all offenders irrespective of plea or previous convictions. A case of particular gravity, reflected by multiple features of culpability or harm in step 1, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out on the next page.

Consecutive sentences for multiple offences may be appropriate.

Harm	Culpability		
	A	B	C
<b>Category 1</b>	<p><b>Starting point</b> 8 years' custody</p> <p><b>Category range</b> 7 – 12 years' custody</p>	<p><b>Starting point</b> 5 years' custody</p> <p><b>Category range</b> 3 – 8 years' custody</p>	<p><b>Starting point</b> 3 years 6 months' custody</p> <p><b>Category range</b> 18 months' – 5 years' custody</p>
<b>Category 2</b>	<p><b>Starting point</b> 5 years' custody</p> <p><b>Category range</b> 3 – 8 years' custody</p>	<p><b>Starting point</b> 3 years' 6 months' custody</p> <p><b>Category range</b> 2 – 5 years' custody</p>	<p><b>Starting point</b> 2 years' custody</p> <p><b>Category range</b> 18 months' – 3 years 6 months' custody</p>
<b>Category 3</b>	<p><b>Starting point</b> 4 years' custody</p> <p><b>Category range</b> 2 – 5 years' custody</p>	<p><b>Starting point</b> 2 years' custody</p> <p><b>Category range</b> 18 months' – 3 years 6 months' custody</p>	<p><b>Starting point</b> 1 year's custody</p> <p><b>Category range</b> High level community order – 2 years' custody</p>

The table below contains a **non-exhaustive** list of additional factual elements providing the context of the offence and factors relating to the offender. Identify whether any combination of these, or other relevant factors, should result in an upward or downward adjustment from the starting point. In particular, relevant recent convictions are likely to result in an upward adjustment. In some cases, having considered these factors, it may be appropriate to move outside the identified category range.

**Factors increasing seriousness****Statutory aggravating factors:**

- Previous convictions, having regard to a) the nature of the offence to which the conviction relates and its relevance to the current offence; and b) the time that has elapsed since the conviction
- Offence committed whilst on bail

**Other aggravating factors:**

- Steps taken to prevent the victim reporting or obtaining assistance and/or from assisting or supporting the prosecution
- Targeting of victim

- High value of goods (whether economic, sentimental or personal)
- Involvement of others through coercion, intimidation or exploitation
- Restraint, detention or additional degradation of the victim
- Sophisticated organised nature of offence/significant planning
- A leading role where offending is part of a group activity
- Attempts to conceal/dispose of evidence
- Established evidence of community/wider impact
- Failure to comply with current court orders
- Offence committed on licence
- Offences taken into consideration
- Failure to respond to warnings about behaviour
- Timing of the offence
- Location of the offence
- Attempt to conceal identity (for example, wearing a balaclava or hood)
- Commission of offence whilst under the influence of alcohol or drugs

#### **Factors reducing seriousness or reflecting personal mitigation**

- No previous convictions **or** no relevant/recent convictions
- Remorse, particularly where evidenced by voluntary reparation to the victim
- Good character and/or exemplary conduct
- Serious medical conditions requiring urgent, intensive or long-term treatment
- Age and/or lack of maturity where it affects the responsibility of the offender
- Mental disorder or learning disability
- Sole or primary carer for dependent relatives
- Determination and/or demonstration of steps having been taken to address addiction or offending behaviour



## **Annex B: Scenarios used in interviews with sentencers**

### **Scenario 1**

Offender A pleaded guilty to the offence of robbery which took place at 10am on a Sunday in October. The victim, a male aged 19, was walking along a residential street using his smart phone. The offender, who was drunk, approached him and tried to take the phone from him. The victim resisted and the offender shoved him and made off with the phone. The victim gave chase and the offender was caught and detained. The phone was recovered. The victim suffered minor injuries.

The offender has a long record of mainly shop theft offences, but also two convictions for dwelling house burglary. He was subject to a community order with a drug rehabilitation requirement imposed for the most recent dwelling house burglary at the time of the robbery. He had been making good progress on that order until a few weeks before the robbery, when he committed two shop thefts for which he was on bail at the time of the robbery.

### **Scenario 2**

T, aged 19, was convicted after a trial of one count of robbery and one count of attempted robbery. The victim, J aged 16, was sitting on the back seat on the top deck of a bus; he was on his way to sit his maths GCSE exam. The offender, T, boarded the bus wearing a hood and sat opposite J. T was drunk. J suffers from cerebral palsy; he has a speech impediment and impaired mobility. J immediately felt threatened by the way T looked at him. After other passengers had got off the bus, T pulled a penknife and put it to J's stomach and told him to hand over his mobile phone. J gave T his i-pod and T put it in his pocket and continued to ask for J's phone. T tried to put his hand in J's pocket and found his phone, but J grabbed T's hands and T gave up. T told J not to shout for help and then got off the bus a minute later.

In a victim personal statement J reported that he was terrified throughout the incident and felt completely helpless. He was unable to sit his exam that day and this had delayed his going to college. He no longer felt confident on buses or on the streets of the area where the incident happened. He had attended court to give evidence which he found very stressful. The incident had completely changed his life and he was in fear that something similar would happen to him. This also had an effect on his family, who were constantly worried about him.

T has six prior convictions, for ten prior offences including a robbery when he was aged 15 involving the taking of a ball and a mobile phone from a 13 year old; and a theft from the person where he snatched a mobile phone from a 14-year-old victim. In mitigation it was accepted that T came from a difficult (but not entirely unsupportive) family background and that he had problems with drink and drugs.

### **Scenario 3**

The offender, H aged 17, was on bail for an offence of ABH. At 6am he picked up a taxi and asked the driver to take him to a shop where he could buy cigarettes. He bought the cigarettes and then continued the journey in the taxi. At the end of the journey he was charged £10, but instead of paying the fare he pulled a knife, grabbed the taxi driver around the neck, pushed the knife under his chin, and demanded money. The driver instinctively put his hand up and suffered a cut to his thumb and his finger. The injury was not serious but was painful. H then head butted the driver three times, causing a swelling to the nose, pain, but no permanent bony injury. H took £70 in cash and the PDA (a device used for guiding the driver to his next job) and searched the taxi before leaving.

He was subsequently identified through the phone he used to book the taxi and CCTV from the shop, which was confirmed by the victim picking him out at an identity parade. He pleaded guilty.

H has no previous convictions and the pre sentence report gave details of a 'very sad background'. He also pleaded guilty to the ABH.

#### **Scenario 4**

P, aged 22, went into a corner shop with another at 11am and asked to buy cigarettes. The shopkeeper asked P to remove the hood he was wearing so that he could see if he was old enough to buy cigarettes. P went to the end of the counter and attempted get through the access door which was locked. The shopkeeper came towards him and threatened to beat him if he tried to get behind the counter. P leant over, undid the bolt and went behind the counter. The shopkeeper pushed P to prevent him coming further and P punched him once in the face, grabbed him round the neck and punched him twice more in the face.

P stole cigarettes and an i-phone from behind the counter and then left with his companion, shouting threats to the shopkeeper. The incident lasted less than five minutes. The shopkeeper sought medical attention and suffered from blurry vision but there was no lasting injury. P pleaded guilty.

P has previous convictions but none for offences of violence. A pre-sentence report noted that P was aware that he had problems controlling his temper. In mitigation it was said of P that the offence was committed after he had argued with his girlfriend and that he was suffering from grief after the death of his cousin.

#### **Scenario 5**

The area manager of a bookmakers travelled by car to one of the branches he managed, parked his car and made his way towards the bookmakers. As he did so, he was confronted by two people who had just got out of a stolen car. One of them said, "Give me the money." He was thrown to the floor and felt a searing pain in his right leg. He was turned on to his back and the offenders went through his trousers and shirt pockets, took his car keys and his mobile phone, ran to his car and searched it. The offenders were then chased off by other people. B was subsequently identified as being one of the offenders by someone nearby who knew him and by his fingerprint on the stolen car.

B denied the offence but was convicted after a trial. The judge found that the offence was undoubtedly pre-planned, as indicated by the use of the stolen car, and by the way in which the victim was searched and what was said to him. It was anticipated that a large pay-out was going to be made at the bookmakers that day.

The victim suffered a serious injury to his leg and was still limping six months later. It was clear from a victim personal statement that the offence had an extremely significant effect on the victim's life.

B, aged 21, was on licence for an offence of burglary at the time of the offence. The judge found that was not necessary to utilise the dangerousness provisions in the sentencing.

## Annex C: Data collection form used in transcript re-sentencing exercise

<b>Robbery Transcript Sentencing Exercise.</b> Please fill in <b>orange</b> boxes The information recorded on this form should relate to the <b>principal offence</b> only	
<b>Name of offender to sentence:</b>	
<b>Case ID:</b>	<b>Name of reviewer:</b>
<b>Which sub-guideline did you use:</b>	<input type="checkbox"/> Street robbery <input type="checkbox"/> Commercial robbery <input type="checkbox"/> Dwelling robbery
<b>Was it clear which sub guideline to use. If not why not?</b>	
Guideline step 1: Culpability factors for principal offence:	
<b>Assessment of culpability:</b>	e.g. "Culpability A"
<b>Reason for culpability assessment/factors taken into account:</b>	e.g. "offence conducted over a sustained period of time"
Guideline step 1: Harm factors for principal offence:	
<b>Assessment of harm:</b>	e.g. Category 2
<b>Reason for harm assessment/ factors taken into account:</b>	e.g. "emotional distress, fear/loss of confidence caused by the crime"
<b>What was your starting point sentence based on your assessment of harm and culpability:</b>	e.g. 2 years' custody
Guideline step 2: Aggravating and mitigating factors for principal offence	
<b>What sentence did you arrive at after taking into account aggravating and mitigating factors (including previous convictions) but before making an adjustment for a guilty plea?</b>	
e.g. 3 years' custody	
<b>Explain how you arrived at this sentence - what adjustments were made from the starting point sentence you reached at step 1?</b>	

e.g. aggravating factor of planning and sophistication was offset by remorse, so no adjustment was made from the starting point

**Guilty plea and final sentence:**

**What was the final sentence for the principal offence in this case, following guilty plea discount?**

e.g. 2 years' custody

**What discount did you apply (%):**

e.g. 33%

**IMPORTANT – the following questions are critical to the utility of this exercise:**

**Other information and observations**

**Did you have any difficulties using the guideline in this case? If so, what were they?**

**Do you have any views on the final sentence? Do you think it is just and proportionate?**

Please use the following box to note any observations from this case which may be useful for policy development, or to further explain any previous answers. If applicable, please use this box to note any improvements that you would suggest.