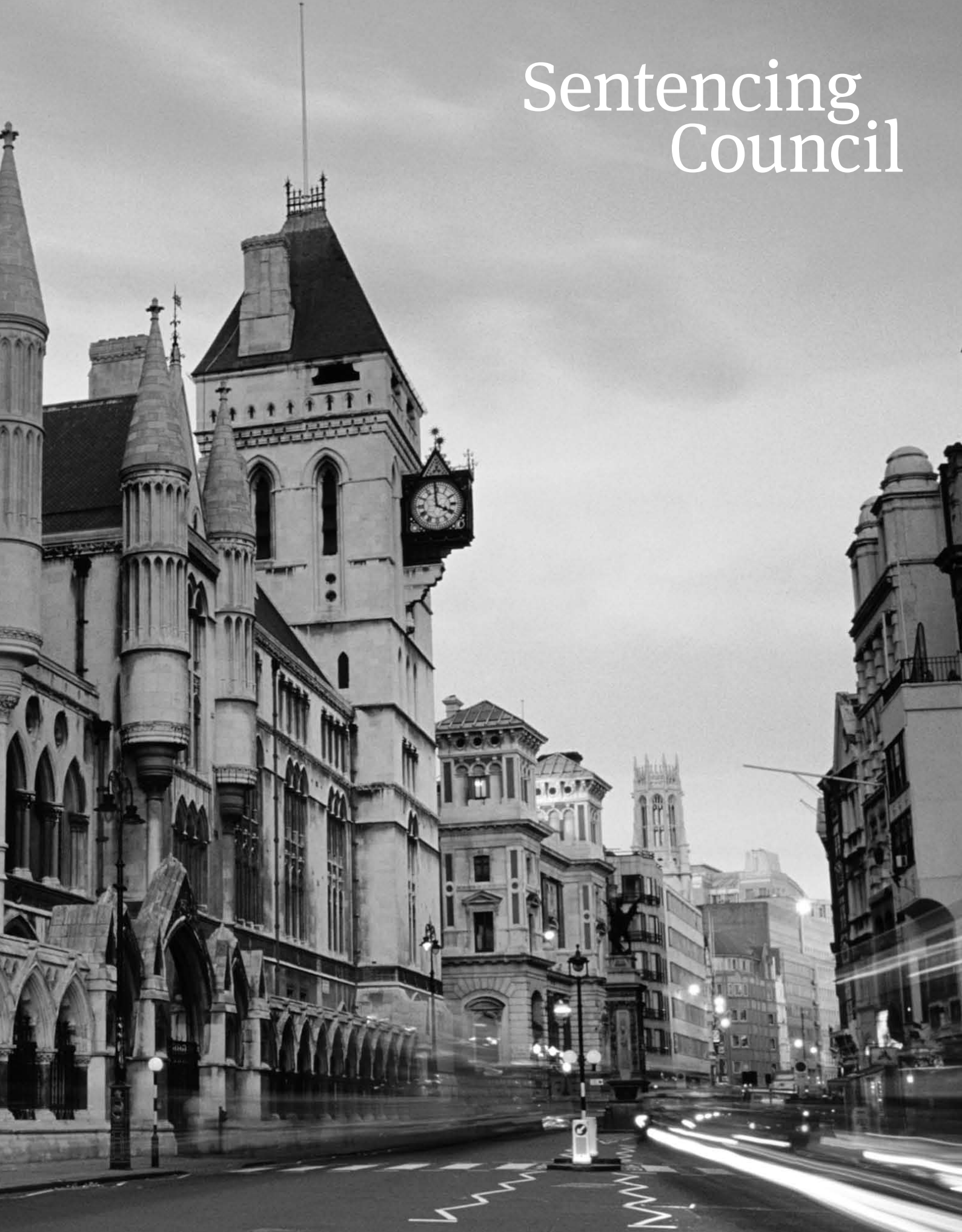


Sentencing Council



Annual Report and Financial Report 2010/11

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Foreword



The creation of the Sentencing Council in April 2010 has been an important and positive development in the field of criminal justice.

When the Lord Chief Justice asked if I would accept appointment as the new Chairman of the Council, I said that I would be very pleased to do so. I was enthusiastic because I believe that the Sentencing Council, which has a wider remit than the structures that came before it, has a significant opportunity to contribute both to the law and practice of sentencing and also to the wider public understanding of issues of sentencing.

The Council's aims in drafting sentencing guidelines include not only promoting a consistent approach to sentencing but also endeavouring to improve the understanding of the public both in the process involved in sentencing offenders and the likely outcomes. In other words, we want to demystify sentencing and get the public to understand what we are doing in their name and why.

We have already seen considerable achievements for the Sentencing Council. Successes include consulting on and developing guidelines around assault and drug offences, launching the Crown Court Sentencing Survey, and making real progress on improving public understanding in sentencing through our consultations, events, website and media work.

I would like to take the opportunity that the publication of this report presents, to thank all those judges and members of staff in courts across England and Wales who are participating in the Crown Court Sentencing Survey. From the survey we have access to data which helps us understand the factors that influence sentencing, which in turn helps us to improve consistency in sentencing and thereby increase public confidence in courts and the criminal justice system. This important work could not be carried out without their help and I am sincerely grateful.

We are proud of our progress so far and look forward to our next steps in the coming year.

A handwritten signature in black ink, which appears to read "Leveson". Below the signature is a horizontal line.

Lord Justice Leveson
October 2011

Part 1

The Sentencing Council and its work

The role of the Sentencing Council

The Sentencing Council for England and Wales was set up by part four of the Coroners and Justice Act 2009¹ to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary.

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice and replaces the Sentencing Guidelines Council and the Sentencing Advisory Panel.

The Sentencing Council issues guidelines on sentencing which the courts must follow unless it is in the interest of justice not to do so.

The aims of the Sentencing Council for England and Wales are to:

- promote a clear, fair and consistent approach to sentencing;
- produce analysis and research on sentencing; and
- work to improve public confidence in sentencing.

The Council fulfills the following functions contained in the Coroners and Justice Act 2009:

- prepare sentencing guidelines ;
- publish the resource implications in respect of the guidelines it drafts and issues;
- monitor the operation and effect of its sentencing guidelines and draw conclusions;
- prepare a resource assessment to accompany new guidelines;

- promote awareness of sentencing and sentencing practice; and
- publish an annual report that includes the effect of sentencing and non-sentencing practices.

Functions

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- prepare a resource assessment to accompany new guidelines;
- promote awareness of sentencing and sentencing practice; and
- publish an annual report that includes the effect of sentencing and non-sentencing practices.

The Sentencing Council has responsibility for:

- developing sentencing guidelines and monitoring their use;
- assessing the impact of guidelines on sentencing practice. It may also be required to consider the impact of policy and legislative proposals relating to sentencing, when requested by the Government; and
- promoting awareness amongst the public regarding the sentencing process and publishing information regarding sentencing practice in magistrates' courts and the Crown Court.

¹ See Annex D for full details

In addition to the functions above, the Council must:

- consider the impact of sentencing decisions on victims;
- monitor the application of the guidelines, better to predict the effect of them; and
- promote understanding of, and increase public confidence in, sentencing and the criminal justice system.

Membership of the Council

As president, the Lord Chief Justice, the Right Honourable Lord Judge provides an overseeing role to the Council and appoints judicial members.

Lord Justice Leveson, a Court of Appeal judge, was appointed Chairman of the Sentencing Council in November 2009.

There were 13 other appointments, seven judicial and six non-judicial. All judicial appointments were made by the Lord Chancellor and Lord Chief Justice. Non-judicial positions were widely advertised and appointments were made following application and interview. The members are as follows:

Judicial:

- District Judge (magistrates' court) Anne Arnold
- The Honourable Mr Justice Globe
- The Right Honourable Lord Justice Hughes
- His Honour Judge McCreath
- The Right Honourable Lady Justice Rafferty DBE
- Katharine Rainsford JP, magistrate on the West Hertfordshire Bench
- The Honourable Mr Justice Treacy

Non-judicial:

- John Crawforth OBE, former head, Greater Manchester Probation
- Siobhain Egan, defence solicitor
- Tim Godwin OBE QPM, Deputy Commissioner, Metropolitan Police
- Gillian Guy, Chief Executive, Citizens Advice
- Professor Julian Roberts, Professor of Criminology, University of Oxford
- Keir Starmer QC, Director of Public Prosecutions and Head of the Crown Prosecution Service

The Office of the Sentencing Council is a small team of civil servants which supports the Council, in particular in:

- developing policy for the Council and its sub-groups to consider;
- ensuring that the legislative analytical obligations are met;
- providing legal advice to ensure that the Council exercises its functions in a legally sustainable manner;
- delivering communications activity to support the Council's business; and
- providing efficient and accurate budget management with an emphasis on providing value for money.

How the Council operates

The Council is outward-facing, responsive and consultative and draws on expertise from relevant fields wherever necessary while ensuring the legal sustainability of all its work. The Council operates in a legally and politically complex environment and aims to bring clarity wherever possible. The Council aims to foster close working relationships with judicial, governmental and non-governmental bodies while retaining its

independence. The Council engages with the public on sentencing, offers information and encourages debate.

The Council meets on a near monthly basis to discuss current work and agree how it should be progressed. Minutes are published subsequently on the Council's website.

The Council has established sub-groups to enable detailed work on two key areas of activity - analysis and research and confidence and communications - with key decisions being escalated to the full Council. The role of the groups is mandated by the Council.

Relationship with Parliament

The Council has a statutory requirement to consult with Parliament² and during the period of this report, Lord Justice Leveson gave evidence to the House of Commons Justice Select Committee on the assault guideline. This new guideline came under particular scrutiny as questioning covered not only the specifics of the guideline itself but, as it was the committee's first opportunity to raise questions with the chair of the new Council, also broader questions about the Council, its structure and approach to guidelines. The Council looks forward to a continuing relationship with the select committee.



² s.120 (6)(c) Coroners and Justice Act 2009

Part 2

Council activity and achievements

Guidelines

The Sentencing Council has responsibility for developing sentencing guidelines and monitoring their use.

Producing sentencing guidelines is one of the primary roles of the Council and the box on the right sets out the process involved in developing a guideline from draft, through consultation stages, to a definitive version used by the judiciary.

It is important to note that guidelines still allow for the discretion of judges. Guidelines are intended to create an approach and within that approach, judicial discretion is preserved. There is always room within the guideline for a judge to sentence the particular offender for the particular offence that is in front of him or her. If in any particular case, the judge feels it is within the interests of justice to sentence outside the guideline, the Coroners and Justice Act specifically allows for this³.

In its first year the Council has:

- produced a definitive guideline on sentencing assault offences;
- issued a consultation on sentencing for drug offences; and
- researched guidelines for burglary offences, early guilty pleas and initial research on totality, allocation and offences taken into consideration (TICs).

Step 1 - Priorities

Council identifies priorities – this could be based on an offence which lacks a clear guideline or because we have been asked in statute to look at a particular area.

Step 2 - Research

Research is undertaken and policy and legal investigations are carried out to create an initial draft guideline.

Step 3 - Approach

Council members discuss the draft guideline and agree on the approach to be adopted.

Step 4 - Consultation

Council consults the statutory consultees, criminal justice professionals and wider public over a 12 week period.

Step 5 - Responses

Council considers the responses to the consultation and develops a response paper and definitive version of the guideline.

Step 6 - Publication

Council issues the definitive guideline and supports training for sentencers where necessary.

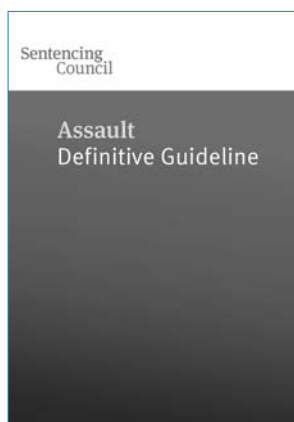
³ s.125(1) Coroners and Justice Act 2009

Assault

The Council's first definitive guideline, on assault, was issued on 16 March 2011 and came into force on 13 June 2011.

The format and development of this guideline are set out in some detail below to demonstrate the Council's overall approach to developing new guidelines. It is not anticipated that this level of detail will be required in future reports.

The Council has chosen to make a break from the past and adopt a step-by-step approach for offence-specific guidelines, moving away from a narrative style. The approach ensures that guidelines, in the form of self-contained documents containing all the necessary information, are as clear as possible for those using them to pass sentence, those advising offenders, prosecutors and police, and also for a wider public audience. The Council hopes that this will encourage a more consistent approach and increase public confidence in sentencing. This approach will be adopted for all future offence-specific guidelines.



The Council used the six most commonly sentenced assault offences to model the new structure and format for the guidelines. Those offences, starting with the most serious, are:

- grievous bodily harm with intent to do grievous bodily harm/wounding with intent to do grievous bodily harm⁴;
- inflicting grievous bodily harm/unlawful wounding⁵;
- assault occasioning actual bodily harm⁶;
- assault with intent to resist arrest⁷;
- assault on a police constable in the execution of his duty⁸; and
- common assault⁹.

Rationale

The Council decided to develop a guideline on assault as its first guideline to replace the existing Sentencing Guidelines Council (SGC) assault guideline. The Council made this choice on the basis that it was problematic to use particularly with its focus on narrowly defined scenarios rather than a more general focus on harm and culpability. For example, the scenarios focussed on premeditated assault whereas in reality, many assaults are would not fall under this category.

In choosing assault, the Council was able to offer judges the opportunity to compare and contrast the new guideline with an existing one.

Approach

The Council returned to first principles of sentencing, focusing on the culpability of the offender and the harm caused or intended to be caused, by the offence rather than by the use of specific scenarios. It is intended that this will continue to be the approach used for the development of future guidelines.

⁴ s.18 Offences against the Person Act (OPA)1861

⁵ s.20 ibid

⁶ s.47 ibid

⁷ s.38 ibid

⁸ s.89 Police Act 1996

⁹ s.39 Criminal Justice Act 1988



The Council considered how the structure and format of the existing SGC assault guideline could be adapted to aid sentencers in reaching their sentencing decisions and decided that the creation of a clear, structured process was the best way to achieve this.

The Council therefore developed a nine step process for sentencers to follow with a focus on the principal elements of culpability and harm at step one.

The following three pages set out these nine steps exactly as they appear for section 18 offences (causing grievous bodily harm with intent) in the definitive guideline.

Section 18 - causing grievous bodily harm with intent

STEP ONE

Determining the offence category

The court should determine the offence category using the table below.

Category 1	Greater harm (serious injury must normally be present) and higher culpability
Category 2	Greater harm (serious injury must normally be present) and lower culpability; or lesser harm and higher culpability
Category 3	Lesser harm and lower culpability

The court should determine the offender's culpability and the harm caused, or intended, by reference **only** to the factors below (as demonstrated by the presence of one or more). These factors comprise the principal factual elements of the offence and should determine the category.

Factors indicating greater harm

Injury (which includes disease transmission and/or psychological harm) which is serious in the context of the offence (must normally be present)

Victim is particularly vulnerable because of personal circumstances

Sustained or repeated assault on the same victim

Factors indicating lesser harm

Injury which is less serious in the context of the offence

Factors indicating higher culpability

Statutory aggravating factors:

Offence racially or religiously aggravated

Offence motivated by, or demonstrating, hostility to the victim based on his or her sexual orientation (or presumed sexual orientation)

Offence motivated by, or demonstrating, hostility to the victim based on the victim's disability (or presumed disability)

Other aggravating factors:

A significant degree of premeditation

Use of weapon or weapon equivalent (for example, shod foot, headbutting, use of acid, use of animal)

Intention to commit more serious harm than actually resulted from the offence

Deliberately causes more harm than is necessary for commission of offence

Deliberate targeting of vulnerable victim

Leading role in group or gang

Offence motivated by, or demonstrating, hostility based on the victim's age, sex, gender identity (or presumed gender identity)

Factors indicating lower culpability

Subordinate role in group or gang

A greater degree of provocation than normally expected

Lack of premeditation

Mental disorder or learning disability, where linked to commission of the offence

Excessive self defence

Every offence has three categories, each with its own starting point and range of sentences. Once the court identifies the relevant category and starting point at step two, it moves on to consider any additional factual elements of the offence which provide context to the offence and any relevant factors relating to the offender. These factors will enable the court to decide whether it should move up or down from the starting point. The Council decided to include a non-exhaustive list of such factors for each offence.

STEP TWO**Starting point and category range**

Having determined the category, the court should use the corresponding starting points 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 in step one, could merit upward adjustment from the starting point before further adjustment for aggravating or mitigating features, set out below.

Offence Category	Starting Point (<i>Applicable to all offenders</i>)	Category Range (<i>Applicable to all offenders</i>)
Category 1	12 years' custody	9–16 years' custody
Category 2	6 years' custody	5–9 years' custody
Category 3	4 years' custody	3–5 years' custody

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 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 include:

Location of the offence

Timing of the offence

Ongoing effect upon the victim

Offence committed against those working in the public sector or providing a service to the public

Presence of others including relatives, especially children or partner of the victim

Gratuitous degradation of victim

In domestic violence cases, victim forced to leave their home

Failure to comply with current court orders

Offence committed whilst on licence

An attempt to conceal or dispose of evidence

Failure to respond to warnings or concerns expressed by others about the offender's behaviour

Commission of offence whilst under the influence of alcohol or drugs

Abuse of power and/or position of trust

Exploiting contact arrangements with a child to commit an offence

Previous violence or threats to the same victim

Established evidence of community impact

Any steps taken to prevent the victim reporting an incident, or obtaining assistance and/or from assisting or supporting the prosecution

Offences taken into consideration (TICs)

Factors reducing seriousness or reflecting personal mitigation

No previous convictions **or** no relevant/recent convictions

Single blow

Remorse

Good character and/or exemplary conduct

Determination, and/or demonstration of steps taken to address addiction or offending behaviour

Serious medical conditions requiring urgent, intensive or long-term treatment

Isolated incident

Age and/or lack of maturity where it affects the responsibility of the offender

Lapse of time since the offence where this is not the fault of the offender

Mental disorder or learning disability, where **not** linked to the commission of the offence

Sole or primary carer for dependent relatives

The court then moves on to consider the following:

STEP THREE

Consider any other factors which indicate a reduction, such as assistance to the prosecution

The court should take into account sections 73 and 74 of the Serious Organised Crime and Police Act 2005 (assistance by defendants: reduction or review of sentence) and any other rule of law by virtue of which an offender may receive a discounted sentence in consequence of assistance given (or offered) to the prosecutor or investigator.

STEP FOUR

Reduction for guilty pleas

The court should take account of any potential reduction for a guilty plea in accordance with section 144 of the Criminal Justice Act 2003 and the *Guilty Plea* guideline.

STEP FIVE

Dangerousness

Causing grievous bodily harm with intent to do grievous bodily harm/wounding with intent to do grievous bodily harm is a serious offence within the meaning of Chapter 5 of the Criminal Justice Act 2003 and at this stage the court should consider whether having regard to the criteria contained in that Chapter it would be appropriate to award a life sentence, imprisonment for public protection or an extended sentence. Where offenders meet the dangerousness criteria, the notional determinate sentence should be used as the basis for the setting of a minimum term.

STEP SIX

Totality principle

If sentencing an offender for more than one offence, or where the offender is already serving a sentence, consider whether the total sentence is just and proportionate to the offending behaviour.

STEP SEVEN

Compensation and ancillary orders

In all cases, the court should consider whether to make compensation and/or other ancillary orders.

STEP EIGHT

Reasons

Section 174 of the Criminal Justice Act 2003 imposes a duty to give reasons for, and explain the effect of, the sentence.

STEP NINE

Consideration for remand time

Sentencers should take into consideration any remand time served in relation to the final sentence. The court should consider whether to give credit for time spent on remand in custody or on bail in accordance with sections 240 and 240A of the Criminal Justice Act 2003.

Once the Council agreed a draft format for the guideline, it issued a consultation for both professionals and the public explaining the new process and the proposed changes.

Consultation

The Council developed both a professional and a public-facing consultation document as well as an online questionnaire and an easy-read version.

The Council received a large volume of responses from a range of respondents – nearly 400 in total with over half of respondents using our online questionnaire.

The Council held three consultation events for around 30 participants with a specific focus on mental health and young adults, magistrates and victims and witnesses to ensure the widest possible range of views was heard.

The Council received broad support for the overall structure and step by step decision-making process. Comments submitted during the consultation provided assistance with finalising the detail of the guideline.

Lord Justice Leveson gave evidence to the House of Commons Justice Select Committee on 14 December 2010. A transcript of this evidence session is available on the Justice Select Committee's publications page on the Parliament website¹⁰. The committee heard from a wide range of experts on the assault guideline including academics and practitioners. A written response to the assault consultation was submitted to the Council by the committee and the Council noted this in its response to the assault consultation. This document is available on the Council's website¹¹.

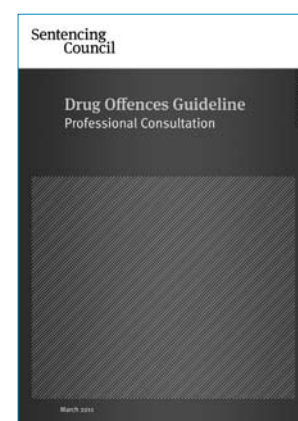
Implementation

The Council decided on a three month implementation period allowing for training

and awareness-raising of sentencers and legal professionals. The Office of the Sentencing Council worked with the Judicial College to develop comprehensive training on the new process. It also provided training to lawyers through their professional associations and worked with magistrates to produce a podcast on the website which was published along with broader training materials.

Drugs

The Council developed its sentencing guideline for drugs offences, going out to consultation with the draft guideline on 28 March 2011.



Rationale

Offences involving controlled drugs form a large proportion of cases dealt with in the court system – in 2009, 50,325 adult offenders were sentenced for drug offences.

There is currently no Crown Court guideline for these types of offences although there is some guidance for magistrates when sentencing limited types of drug offences in the Magistrates Court Sentencing Guidelines (MCSG).

The Sentencing Advisory Panel (SAP) produced advice for the Sentencing Guidelines Council (SGC) entitled *Sentencing for Drug Offences* in March 2010. The Sentencing Council replaced both these organisations in April 2010 but decided to continue the SAP's

¹⁰ <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmjust/637/10121401.htm>

¹¹ <http://sentencingcouncil.judiciary.gov.uk/sentencing/consultations-closed.htm>

work in this area. The Council supported several of the recommendations made in the SAP's valuable advice but proposed alternatives in relation to others.

Approach

In preparing the draft guideline, the Council's aim was to ensure that all sentences are proportionate to the culpability of the offender and the harm caused by the offence. The draft guideline seeks to maintain current sentencing practice for the majority of drug offenders whilst increasing consistency in the decision making process. There is one group of offenders however, where the Council believes that current sentencing levels are sometimes disproportionate to the levels of culpability and harm caused. These are so-called 'drug mules' where the Council's aim is to cause a downward shift in sentences to ensure they are proportionate to those received by other drug offenders. The Council remains committed to ensuring that long sentences continue to be handed to offenders who play a significant role in the most organised and large-scale operations.

Consultation

The Council launched its consultation on 28 March 2011 for a period of three months. It sought views from professionals and the public on the structure of the guideline and the proposed sentencing ranges producing both professional and public versions of the consultation document. The Council received 685 responses submitted via email to a dedicated consultation inbox, in hard copy or via an online questionnaire.

There is also testing underway of the draft guideline with a number of judges to test the approach adopted. See work in progress on page 22. For more information on other research for the drugs guideline see page 21.

Work in progress

Considerable work has been done on developing the following guidelines and planning their scope. Both have since gone out to consultation:

i. Burglary

The Council worked on a draft guideline for burglary offences. Burglary is a high volume offence with 17,387 adults sentenced for burglary in 2009 across both the magistrates' courts and the Crown Court. There is currently a Crown Court guideline on non-domestic burglary but not on domestic or aggravated burglary. The MCSG includes guidelines for offences of domestic and non-domestic burglary dealt with in the magistrates' courts. The Sentencing Council is grateful to the SAP for its advice, *Sentencing for Domestic Burglary*, which has informed the thinking of the Council for this offence. The Council's aim is to produce a single consistent approach in one guideline for all three offences. The consultation process was launched outside the scope of this report.

ii. Allocation/ Totality/ Offences Taken Into Consideration (TICs)

The Council has commenced work on these three non-offence specific guidelines and issued them as part of one consultation process on 15 September 2011 in order to increase

efficiency and reduce the burden on those being asked to respond. The consultation is due to close on 8 December 2011.

The Council has a statutory duty to prepare guidelines about “the application of any rule of law as to the totality of sentences”¹². The principle of totality applies when a court is sentencing for multiple offences. This is a complex area of sentencing practice and by producing a guideline the Council aims to achieve a greater consistency of approach.

The Council also has discretion to prepare guidelines about the allocation decision¹³ (this decision relates to offences which can be tried either in the magistrates’ court or the Crown Court as to which court is the most appropriate to deal with

the case) and offences taken into consideration (TICs). When sentencing for TICs, a court can take into account offences for which an offender has not been convicted but which he has admitted in court and are, at his request, taken into account when sentence is passed for the conviction offence. Whilst it is a long standing practice of the courts, and is now included in statute¹⁴, there is no single source of guidance about the approach the courts should take.



¹² s.120 (3) (b) Coroners & Justice Act 2009

¹³ s.122 (2) *ibid*

¹⁴ s.148,152 and 153 of the Criminal Justice Act 2003 dealing with associated offences

Analysis and Research

The Sentencing Council has responsibility for assessing the impact of guidelines on sentencing practice. It may also be required to consider the impact of policy and legislative proposals relating to sentencing, when requested by the Government.

One of the functions of the Sentencing Council is to carry out analysis and research into sentencing. Work carried out in the past year includes the launch of the Crown Court Sentencing Survey, various social research studies and the development of publications such as resource assessments and data bulletins that inform and support the development of guidelines.

Crown Court Sentencing Survey

One of the key successes for the Council over the past year has been the launch and implementation of the Crown Court Sentencing Survey (CCSS). This is the first time anyone has attempted to record the way Crown Court judges are sentencing across England and Wales, and the resulting information provides a useful insight into what factors influence sentencing and how our guidelines can be better developed as a result of this knowledge.

Rationale

The Council is under a legislative duty to monitor¹⁵ the operation and effect of its sentencing guidelines and in particular, discharge its duty with a view to drawing conclusions about a) the frequency with which, and the extent to which, courts depart from sentencing guidelines; b) the factors which influence the sentences imposed by the courts; c) the effect of guidelines on the promotion of consistency in sentencing; and d) the effect of guidelines on the promotion of public confidence in the criminal justice system.

Although this obligation relates to both the Crown Court and the magistrates' court, the best approach was seen to concentrate on the Crown Court before extending or changing the approach when gathering this information in magistrates' courts. The Lord Chief Justice, Lord Justice Thomas (as Deputy President of the Queen's Bench Criminal Division) and Lord Justice Leveson considered several options for how best the information could be collected. It was concluded that the best way to collect this information was by asking judges to complete a one page questionnaire relating to the principal offence sentenced in each case.

¹⁵ s.128 Coroners and Justice Act 2009

Implementation

Before starting the nationwide exercise the CCSS was piloted to test the questionnaire design and the process of completing them within courts. The pilot phase took place during May 2010 at the Crown Court in Liverpool, Snaresbrook, Winchester and Worcester. On conclusion of the pilot phase the questionnaires were amended slightly to remove some of the ambiguity found by judges in answering the various sections.

Courts were alerted to the October launch of the survey throughout the summer. In addition, visits were organised to inform resident judges of the survey and to answer any questions or concerns that they might have. On 1 October 2010 the CCSS was formally started in the Crown Court nationwide. As with any new systems, particularly one trying to capture over 90,000 returns in a full year, some adjustments have been necessary. However, a response rate of between 54 and 64 per cent was achieved in the first six months of operation. A formal revisions policy will be put in place so that any further changes to the forms are done in a structured orderly way so as not to jeopardise the establishment of comparable data over time.

Outcomes

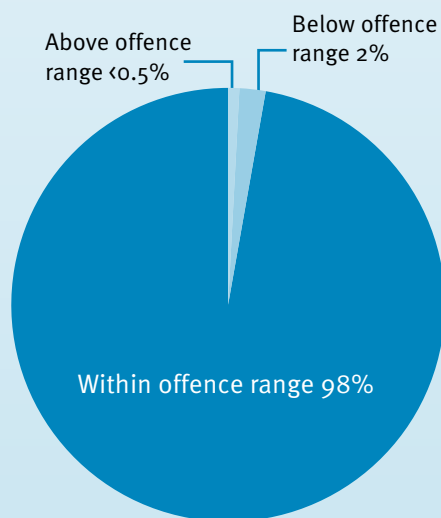
To coincide with the publication of this first annual report the Council has simultaneously published a statistical release giving the first high level results from the CCSS for the six months from 1 October 2010 to 31 March 2011. Work is continuing on the data collected and further analysis from the survey will be published on the Council's website.

One of the main statutory duties of the Council is to monitor 'the frequency with which, and extent to which, courts depart from sentencing guidelines'. The Council has decided that at least a minimum of one full year's worth of data from the survey is needed before it can realistically start to discharge this duty for individual offences. This is because low volume offences are liable to be particularly volatile. The statistical release mentioned above does however, show the proportion of departures from the Sentencing Guidelines Council ABH guideline, between 1 October 2010 and 31 March 2011. This information is reproduced below and provides an illustration of what will be available in future annual reports.

Crown Court Sentencing Survey results for the offence of actual bodily harm (ABH)

The courts have a legislative duty to impose a sentence within the overall offence definitive guideline range¹⁶. The offence range is the range of sentences over all offence levels. Therefore for the offence of ABH, this range is from a medium¹⁷ community order (the minimum for a level 4 offence) to four years in custody (the maximum for a level 1 offence) before any reduction for a guilty plea. The chart below shows the proportion of sentences falling below, within, or above this range¹⁸. Custodial sentence lengths prior to a guilty plea reduction have been estimated based on information provided on the Crown Court Sentencing Survey forms. No adjustment has been applied to non-custodial sentences to estimate the outcome prior to any guilty plea reductions.

Proportion of sentences for the offence of ABH falling below, into or above the SGC guideline offence range, October 2010 to March 2011



In future reports the Council will make an assessment as to whether those sentences falling outside of the offence range are understandable. However, if the sentences outside of the guidelines ranges cannot be readily understood, the Council will undertake further analysis to understand the reasons for the departures and whether there were any problems with the guideline.

Although the guidelines suggest an appropriate range for each offence level, it may be entirely correct for a sentence to fall outside of the offence level range when the sentencing judge takes into account the aggravating and mitigating factors present in each individual case.

Social research

The Sentencing Council has also undertaken a number of social research projects in its first year, designed to provide evidence to inform the development of sentencing guidelines. This work has involved collecting views from a number of different audiences – the general public, victims, witnesses and offenders. Current work in progress extends this to collecting the views and opinions of judges and magistrates who will be using the sentencing guidelines.

The Sentencing Council's social research team adopts a variety of methodologies, including surveys, questionnaires, face-to-face interviews and focus groups. In the first year, two research reports were published and additional pieces of work designed and commissioned. Social research undertaken within the past year includes:

- Public attitudes to the sentencing of drug offences (for drug offences guideline)

¹⁶ 125(3)(a) Criminal Justice Act 2009.

¹⁷ Within SGC guidelines, community orders are categorised into three levels – low, medium or high. The offence range for ABH begins at a MEDIUM level community order.

¹⁸ It is not possible to derive from the data whether a community order is a low, medium or high level order, therefore all community orders have been counted within the offence range.

Research on public attitudes to sentencing drug offences was commissioned in November 2010. The research took place between December 2010 and January 2011 and involved conducting 15 qualitative focus groups with members of the public. The main aims of the research were to examine attitudes in relation to the gravity of drug offences, to the various roles of drug offenders (with particular attention to drug couriers), the harm caused and the culpability of the offender and attitudes in relation to sanctions given for drug offences.

The research was undertaken by the Institute for Criminal Policy Research and published in March 2011, alongside the drugs draft guideline. The findings contributed to the development of the draft guideline by highlighting some of the views of the public in this area and the reasons for these views.

- Drug mules: 12 case studies (for drug offences guideline)

In early 2011, researchers from the Office of the Sentencing Council undertook case study interviews with 12 women imprisoned for unlawful importation of drugs, many acting as drug ‘mules’. The aim of the interviews was to discuss the background and circumstances leading up to their offence, their reactions to the sentence they received and the impact this had on their lives and that of their families. The information generated provided a greater insight and understanding into some of the potential reasons for involvement in these offences and to highlight the type of roles they may play.

The information generated through this work has helped inform the Sentencing Council’s development of a draft guideline on sentencing drug offences. By indicating

“ Nice to be able to give an opinion on something that is of deep concern to everyone I know. ”

YouGov survey respondent

the circumstances underlying the women’s involvement in these offences, it informed an understanding of the ‘role’ they should be attributed during sentencing and consequently changes to the sentencing ranges for this group. It also complemented the research examining public attitudes to the sentencing of drug offences more generally. It was published alongside the drugs consultation in March 2011.

- Attitudes to guilty plea sentence reductions (for guilty plea guideline since put on hold)

Although publication occurred after the period covered in this document, research was undertaken by Ipsos MORI into attitudes to guilty plea sentence reductions. The fieldwork, undertaken between October and December 2010, consisted of a face-to-face qualitative survey with the general public, discussion groups with the general public, interviews with those who had been victims of crime or who had witnessed a crime, and interviews with offenders.

The research was commissioned to provide evidence to feed into the development of a revised guideline on guilty plea sentence reductions by the Sentencing Council. This work was commenced in advance of the Ministry of Justice Green Paper: *“Breaking the Cycle: Effective Punishment, Rehabilitation and Sentencing of Offenders”* (December 2010). In light of the proposals contained within this document work on the revised guideline was suspended.

Work in progress

The period covered in this report also saw the commissioning of further research projects, though most of this work has been undertaken since the end of March 2011. This work includes research with judges on the proposed drug offences guidelines, a pro bono *YouGov* public survey on attitudes to sentencing, and some initial survey work with judges and magistrates into current sentencing practice for dangerous dogs offences – for which the Council is developing a future guideline.

Research was also undertaken into sentencing sexual offences with the public and victims.

“ I love getting the chance to give my opinion about crime. It’s an issue the public should have more of an input on. ”

YouGov survey respondent

Outcomes

Our ongoing research will also help the Council understand how draft guidelines may be used in practice by judges. This allows the Council to ensure the draft guidelines are interpreted in the way intended. If issues are identified during the research phase, the Council can make changes or clarifications to the draft before the definitive guideline is published.

Research evidence has supported other views put forward and has been reviewed as part of consultation exercises, providing a more evidence-based rationale for taking some issues forward over others. For example, the public focus groups commissioned on sentencing drug offences supported the advice previously put forward by the SAP in relation to drug ‘mules’ and indicated that some members of the public feel these particular offenders should be sentenced less punitively, taking into account their vulnerability and personal circumstances. This supported the recommended approach of the Council in the draft drugs guideline which proposes shorter sentences for drug ‘mules’ than current sentencing practice.

Respondents involved in Sentencing Council research have welcomed this input, found it interesting and informative and have shown a greater interest in sentencing generally.

Judges involved in drugs guideline research have also indicated that they found the exercise an interesting one, and that they appreciated the opportunity to reflect on the draft proposals before they are finalised for use.

Resource Assessments

The Council's analysis and research team produce resource assessments when developing any sentencing guideline. When formulating guidelines, the Council has a statutory duty to have regard to the cost of different sentences and their relative effectiveness in preventing reoffending¹⁹. The Council also has a duty to produce a resource assessment to accompany each sentencing guideline which considers the effects of the guideline on the resources required for the prison, probation and youth justice services²⁰.

These statutory requirements enable the Council to better understand the consequences of their guidelines in terms of impact on correctional resources, and the possible impact of their recommended sentencing options on reoffending.

The work which goes into resource assessments also results in wider benefits for the Council. The process involves close scrutiny of current sentencing practice, including analysis of how sentences may be affected by guilty plea reductions, and consideration of current patterns in the use of indeterminate sentences. This analysis provides a 'point of departure' for the Council when they are considering the appropriate sentencing ranges for a guideline. Where the guideline aims to increase consistency, while causing no change to the overall severity of sentencing, the guideline sentencing ranges will aim to reflect current sentencing practice. Where the guideline aims to affect changes in the severity of sentencing for an offence, the Council can move away from the ranges suggested by current sentencing practice. The resource assessment process is especially useful in helping the Council compare the impact of different options for guideline sentencing

ranges. For instance, if the Council is debating the relative merits of two different proposals for sentencing ranges for a given offence, the analysis and research team is able to advise on differences between the two proposals in terms of resource impact.

Implementation

During its first year, the Council has developed a resource model, which facilitates a consistent approach to the production of Council resource assessments²¹. The model allows the Council to test the possible resource implications of its guidelines, and provides the flexibility to analyse different scenarios about how magistrates and judges' sentencing behaviour may change in response to a guideline. The model was used for the resource assessment for the assault guideline, and has since been very useful for developing other offence-specific guidelines.

One challenge for the Council has been a lack of good quality data on the severity of offences within each offence type. Sentencing data provides a good benchmark for the consideration of overall guideline sentencing ranges, but it is less helpful in informing the split of the overall guideline range into individual category ranges, associated with different levels of harm and culpability. For instance, the sentencing data currently collated by the Ministry of Justice does not contain details of the aggravating and mitigating factors taken into account by judges. This information is part of the Crown Court Sentencing Survey so it is expected that in future years, this analysis will become more precise as data becomes available from the Crown Court Sentencing Survey.

¹⁹ S.120 (1) (e) Coroners and Justice Act 2009

²⁰ S.127 (3) *ibid*

²¹ For more information about the model, see: http://sentencingcouncil.judiciary.gov.uk/docs/The_Sentencing_Council_Resource_Model.pdf

Work in progress

Since the end of March, work has also progressed on resource assessments for the Council's forthcoming guidelines on burglary, drugs, offences taken into consideration (TICs), allocation and totality.

The first statistical bulletin was released when the draft drugs guideline went to public consultation on 28 March 2011. This bulletin was drafted and developed with advice from the Council's analysis and research sub-group. Colleagues within the Ministry of Justice were consulted, both to provide quality assurance and to verify the content.

Bulletins

The Council publishes analysis and research statistical bulletins for both professional and public audiences, presenting data relevant to the development of new guidelines. The bulletins are published at the start of the consultation period for draft guidelines, as part of the package of consultation documents.

The Council intends to continue producing these bulletins to be included within the package of consultation documents for any offence specific guidelines. In the future, the data in these bulletins will be enhanced with data provided by the Crown Court Sentencing Survey so that an even more accurate portrayal of current sentencing practice is available.

The bulletins aim to inform respondents to the consultation about current sentencing practice in relation to the offences in the draft guidelines. Those responding to the consultation may not have an accurate perception of how frequently such offences are sentenced in the courts or the types of sentences currently being received and therefore may not be able to fully grasp the potential impact of the proposed guidelines. The availability of this data through the statistical bulletins therefore ensures that the public, when responding to the consultation, are better able to understand the implications of the proposals being made.

Confidence and Communications

The Sentencing Council has responsibility for promoting awareness amongst the public regarding the realities of sentencing and publishing information regarding sentencing practice in magistrates' courts and the Crown Court.

As well as core work on publicising consultations to ensure both professionals and public can share their views, the Council's work to build public confidence in sentencing continues through our website, our proactive media work and developing a presence at a range of conferences and events for those with an interest in justice.

There are a number of ways in which the Council has engaged with the public to improve communication around sentencing, guidelines and our work in general.

Broadening the reach of consultations on sentencing guidelines

The consultation on the assault draft guideline sought views from as wide an audience as possible, including members of the judiciary, legal practitioners and individuals and organisations involved in the criminal justice system. Alongside the professional consultation, a further consultation document was developed specifically for members of the public with an interest in the criminal justice system and sentencing, including victims and their families. There was also an easy read version produced for those with learning difficulties. Additionally, the Council developed a quick and easy online questionnaire

for those wishing to access the Council's proposals on the web only. As previously mentioned, three consultation events on assault were held in November and December 2010 with a range of representative groups and interested parties.

Response rates for the assault consultation were higher than expected, partly as a result of our proactive media approach. The Sentencing Council worked with the Judicial College in developing training on the definitive assault guideline, in particular for magistrates. The Council also worked with other partners to develop training on the assault guideline for practitioners, including disseminating material via CrimeLine's e-bulletin and working with colleagues from the Crown Prosecution Service. Training was provided to members of the Criminal Bar Association and the London Criminal Courts Solicitors Association and a new training and support section was developed on our website.

The Council's communications strategy has continued to be successful for more recent drugs and burglary consultations, which although consulted on after March 2011 have seen ever-increasing response rates – with more than 500 people accessing the online questionnaire for each consultation.

Proactive media approach

The Sentencing Council has chosen to adopt a more proactive approach to communications than its predecessor bodies, aiming to promote its work in order to engage the public in its proposals, raise knowledge of sentencing and increase confidence in sentencing guidelines. The Council has made real progress in putting sentencing on the map as far as the media and the public are concerned. In the year 2010/11, there were 358 articles covering the work of the Sentencing Council and 50 interviews, articles and press notices were completed. Consultations on draft guidelines have been publicised widely, not only to the legal sector press but to national print and broadcast media and regional press. Radio and TV interviews, for example on the BBC's Today programme on Radio 4 and BBC Breakfast TV, have been undertaken by the Council chairman. Other members of the Council have been interviewed on a range of national and regional broadcast channels, which have been particularly effective in putting across guideline proposals and encouraging consultation responses.

It is worth noting that Lord Justice Leveson has successfully found a way to engage with the media and discuss the principles of sentencing whilst making it clear that, as with all judges, he will not discuss the details of any individual cases. This has been well received by those in the media and the Office of the Sentencing Council is now regularly approached to comment on sentencing issues.

There has also been a significant amount of proactive communication to build relationships with key figures in the media, ensuring they are aware of the Council's role and how guidelines work. Regional newspapers have been contacted to ensure

they know about the remit and work of the Council and that they can contact us for information about sentencing. The Sentencing Council chairman also accepted an invitation to undertake a wide-ranging interview about sentencing with Radio 5 Live in March 2011. Audio material from You Be The Judge (YBTJ) scenarios was used to help illustrate how sentencing works and how judges and magistrates reach sentencing decisions. This interview led to a significant spike in visits to the YBTJ website and the interview brought very positive feedback from listeners. One listener said "I was fascinated by the insight into the judicial service" and another said: "A most informative interview. At last I know what a life sentence actually means."

Events

As well as Council members and office staff attending external events and speaking engagements including those organised by the Bar Council, ACPO and the Judicial Studies Board, the Council ran a number of events, including consultation meeting on assault as mentioned above, an academic conference on 7 July 2010 and a sentencing competition for students in March 2011.

“The whole process has been a wonderful and informative experience that I will never forget.

Sophie Wood, Sentencing competition winner

The Sentencing Council ran this competition to promote awareness of sentencing guidelines among those in further education. All Legal Practice Course (LPC) and Bar Professional



The winner of the sentencing competition, Sophie Wood with the judging panel (l-r) HH Judge Kramer, Lord Justice Leveson and Mark Ellison QC

Training Course (BPTC) students in England and Wales were invited to apply. More than 270 students expressed an interest in the competition. Following a written round, the final took place at the Old Bailey on 24 March 2011. Finalists were asked to prepare a case involving an assault offence, addressing a ‘court’ in the role of the defence advocate, and provide mitigation for their client based on relevant sentencing guidelines and principles. The judging panel included Lord Justice Leveson, HH Judge Kramer, and Mark Ellison QC of QEB Hollis Whiteman chambers, who also sits as a High Court judge.

First prize was a choice of either a mini-pupillage at QEB Hollis Whiteman or a work experience placement at Lewis Nedas & Co. solicitors. Winner Sophie Wood commented on the experience: “Standing before Lord Justice Leveson, His Honour Judge Kramer and Mark Ellison QC in the renowned Court One of the Old Bailey made for my most memorable experience to date. Aside from the drama, the lessons I learned were significant. I cannot

thank the Sentencing Council and QEB Hollis Whiteman enough. The whole process has been a wonderful and informative experience that I will never forget.”

Website

Over the period of this report, the Sentencing Council’s website has received a new structure with clearly defined sections, a revised homepage, information podcasts for sentencers and clear promotion of consultations and research publications. The Council has also gone to great efforts to promote the web address throughout our work and visitor rates have increased accordingly.

At the time of the site’s relaunch in October 2010 the website had 29,254 monthly visitors. By March 2011 the amount of monthly visitors was 42,385 and we have since seen the 100,000 visitor mark surpassed in June 2011. The most popular area of the site continues to be our sentencing guidelines section.

Partnership working

Improving the Council’s relationship with other organisations has been a key part of its communication strategy. Regular meetings with organisations such as the Criminal Justice Alliance, Hibiscus, the Howard League, Justices’ Clerks’ Society Magistrates’ Association, National Bench Chairmen’s Forum, the Prison Reform Trust, Revolving Doors, Victim Support and Voice UK have brought about useful information sharing and added expertise in our work. We have also worked directly with NACRO in organising a consultation event for the assault draft guideline and with the Metropolitan Police to develop a leaflet explaining community sentences and licences.

Summary of Achievements - Timeline

2010

April	May	June	July	August	September
<p>6th Sentencing Council comes into being</p> <p>22nd First meeting of the Council</p>	<p>4th CCSS pilot begins in four courts</p> <p>8th Leveson LJ speech at Bar Council conference</p> <p>24th Second meeting of the Council</p> <p>28th Leveson LJ speech at ACPO conference</p>	<p>21st Leveson LJ speech at Coroners and Justice conference</p> <p>25th Third meeting of the Council</p>	<p>23rd Fourth meeting of the Council</p> <p>26th Leveson LJ meets with Justice Secretary</p>		<p>20th Leveson LJ speech at JSB seminar</p> <p>24th Fifth meeting of the Council</p>

2011

October	November	December	January	February	March
<p>1st CCSS begins in all courts</p> <p>13th Assault consultation opens</p> <p>20th Leveson LJ speech at Criminal Justice Alliance</p> <p>22nd Sixth meeting of the Council</p> <p>27th Justice Select Committee announces inquiry into assault</p>	<p>19th Assault consultation event with Nacro</p> <p>23rd Leveson LJ gives evidence on assault to Justice Select Committee</p> <p>26th Seventh meeting of the Council</p> <p>29th Leveson LJ delivers Roscoe lecture</p>	<p>1st Leveson LJ addresses Westminster forum</p> <p>3rd Leveson LJ opening the Criminal Law Review conference</p> <p>17th Eighth meeting of the Council</p>	<p>5th Assault consultation closes</p> <p>28th Ninth meeting of the Council</p>	<p>16th Roundtable meeting on the implementation of assault guideline in magistrates' courts</p> <p>28th Leveson LJ meets with Attorney General</p>	<p>4th Tenth meeting of the Council</p> <p>8th Leveson LJ interview on BBC 5 Live</p> <p>16th Publication of definitive guideline on assault</p> <p>24th Final of student sentencing competition</p> <p>28th Drugs consultation opens</p>

Part 3

Budget and support activity

Financial Report

The Council's resources are made available through the Ministry of Justice and as such the Council is not required to produce its own audited accounts. However, the Council's expenditure is an integral part of the Ministry of Justice's resource account, which is subject to audit. The summary below reflects expenses directly incurred by the Sentencing Council and is shown on an accrual basis.

Office staff cost ²²	983
Council members and advisor fees ²²	60
Analysis and research	217
Design and printing services	65
IT Services ²³	36
Training	18
Other office expenditure ²⁴	60

²² Includes travel and subsistence in addition to £5,000 of travel and subsistence incurred by the Sentencing Advisory Panel.

²³ Includes IT expenditure incurred when the office was relocated to Steel House.

²⁴ Other office expenditure includes off-site storage cost and postage.

Governance

The Sentencing Council for England and Wales was established by Part 4 of the Coroners and Justice Act 2009.

The Council is an Advisory Non Departmental Public Body (NDPB) of the Ministry of Justice (MoJ). Unlike most advisory NDPBs however the Council's primary role is not to advise ministers, but to provide guidance to sentencers.

The Council is independent of the government and of the judiciary as regards the guidelines it issues to courts, its impact assessments, its publications, and its promotion of awareness of sentencing and in its approach to delivering these.

The Council is accountable to Parliament for the delivery of its statutory remit set out in the Coroners and Justice Act 2009. Under Section 119 of the 2009 Act, the Council must make an annual report to the Lord Chancellor on how it has exercised its functions. The Lord Chancellor will lay a copy of the report before Parliament and the Council will publish the report.

Ministers are ultimately accountable to Parliament for the Council's effectiveness and efficiency, for its use of public funds and for protecting its independence.

Section 133 of the 2009 Act provides that the Lord Chancellor may provide the Council with such assistance as it requests in connection with the performance of its functions.

The Council is accountable to the Permanent Secretary at the Ministry of Justice as accounting officer and to ministers for the efficient and proper use of public funds delegated to the Council, in accordance with MoJ systems and with the principles of Governance and Finance set out in *Managing Public Money*²⁵ and other relevant Treasury instructions and guidance.

The budget is delegated to the head of the Office of the Sentencing Council (OSC) from the MoJ director of criminal policy. The head of the OSC is responsible for the management and proper use of the budget.

The director general of the Justice Policy Group at the MoJ is accountable for ensuring that there are effective arrangements for oversight of the Council in its statutory functions and as one of MoJ's Arms Length Bodies (ALBs)²⁶.



²⁵ http://www.hm-treasury.gov.uk/psr_mpm_index.htm

²⁶ 'Arms Length Bodies' is an umbrella term for Executive Agencies and Non-Departmental Public Bodies.



Annexes

Annex A: Register of members' interests

Anne Arnold - no personal or business interests to declare

John Crawforth - no personal or business interests to declare

Siobhain Egan - no personal or business interests to declare

Sir Henry Globe - no personal or business interests to declare

Tim Godwin - no personal or business interests to declare

Gillian Guy - no personal or business interests to declare

Sir Anthony Hughes - no personal or business interests to declare

Sir Brian Leveson - no personal or business interests to declare

Anthony McCreath - no personal or business interests to declare

Dame Anne Rafferty - no personal or business interests to declare

Katharine Rainsford - no personal or business interests to declare

Julian Roberts - no personal or business interests to declare

Keir Starmer - no personal or business interests to declare

Sir Colman Treacy - no personal or business interests to declare

Annex B:

Sentencing factors report

1. Introduction

1.1

In accordance with section 130 of the Coroners and Justice Act 2009 this report considers changes in the sentencing practice of courts (hereafter 'sentencing practice'), and their possible effects on the resources required in the prison, probation and youth justice services. It is organised as follows:

1.2

First, the report defines what is meant by a 'change in the sentencing practice of the courts', which establishes the scope of the report.

1.3

Second, the report outlines the changes in sentencing practice that are expected as a result of sentencing guidelines which have been published by the Council in the past year. This section is a summary of the resource assessments the Council has published to accompany its guidelines.

1.4

Finally, the report presents an analysis of sentencing data for a selection of offences for which there have been the most significant changes in sentencing practice between 2009 and 2010 (the latest available data).

2. Scope

2.1

A change in the sentencing practice of courts arises when, through time, there are changes to the way in which courts sentence similar cases.

2.2

Changes in sentencing practice are best envisaged by imagining how a representative group of sentencing scenarios would be sentenced from one year to the next if the facts of the cases and the characteristics of the offenders remained fixed each year. If sentences change through time then, since all other factors are fixed, the change could be attributed to changes in sentencing practice.

2.3

There are many other factors which can cause changes in the sentences passed by courts, but are not related to changes in sentencing practice. For example, changes in the characteristics of offenders coming before the courts will result in different sentencing decisions, even though the approach to sentencing may remain the same.

2.4

Sentencing Guidelines are a key driver of change in sentencing practice. Some guidelines aim to increase consistency of sentencing whilst maintaining the average severity of sentencing, whilst other guidelines explicitly aim to cause changes to the severity of sentencing. An example of the latter is the forthcoming drugs guideline, which aims to cause reductions in sentencing for so-called drug 'mules'. Section 3 of the report describes the changes in sentencing practice that are expected to occur as a result of the

sentencing guidelines that the Council has worked on in the last year.

2.5

Changes in sentencing practice can also occur in the absence of new sentencing guidelines and could be the result of many factors such as Court of Appeal guideline judgments, legislation, and changing attitudes towards different offences.

2.6

Measuring changes in sentencing practice is not straightforward because the sentencing scenarios which pass through the courts each year are not fixed in terms of offender characteristics and case facts, as envisaged above. There is therefore no directly observable measure of changes in sentencing practice. Instead, changes in sentencing practice will cause changes to variables such as average custodial sentence lengths, custody rates, and data on the use of other disposal types, which are also affected by factors other than sentencing practice.

2.7

For example, average custodial sentence length for a given offence is determined not only by sentencing practice, but also by the average severity of offences coming before the courts, amongst other variables. This creates difficulties in interpretation: supposing from one year to the next it is observed that average custodial sentence lengths have increased. In the absence of other evidence, it is not clear whether this is due to more severe offences coming before the courts, or due to harsher sentencing practice.

2.8

The Council believes that, given currently available data, it is not possible to disentangle these factors, and to separate out an estimate

of the effects of sentencing practice on its own. Due to these difficulties, section 4 of this report presents data on changes in variables such as average custodial sentence length, but is agnostic as to their causes. The Council hopes in future years that data from the Crown Court Sentencing Survey will help contribute towards a better understanding of changes in the sentencing practice of courts.

3. Sentencing guidelines

3.1

During its first year (to March 2011), the Council produced a definitive guideline on assault offences, and also conducted a substantial amount of preparatory work for guidelines on burglary and drugs offences, which went out for consultation over summer 2011.

3.2

This section presents the changes in sentencing practice which are expected as a result of the assault guideline, which became effective on 13 June 2011. Estimates of the resource effects of the guideline are discussed for each offence.

3.3

In addition to offence specific changes in sentencing practice, a primary objective of sentencing guidelines is the promotion of consistency in sentencing. The Council therefore expects to see overarching increases in consistency of sentencing across all the offences covered by its guidelines. The resource effects of increases in consistency of sentencing are considered in a separate research paper by the Council, which can be accessed on the Sentencing Council website.²⁷

²⁷ http://sentencingcouncil.judiciary.gov.uk/docs/Consistency_in_sentencing.pdf

Assault offences – definitive guideline, effective from 13 June 2011

GBH with intent s.18

3.4

Around 1,500 adults are sentenced for GBH with intent a year.

3.5

The guideline is not expected to affect the use of the various types of disposals for cases of GBH with intent.

3.6

It is expected that, as a result of the new guideline, there will be an increase in the average sentence length of offenders sentenced for GBH with intent of around one to two per cent. This is estimated to result in a requirement for between 20 and 60 additional prison places per annum.

3.7

The changes outlined above are expected to result in an increase in costs to the prison service of between £0.7m and £1.9m a year and a small annual increase in costs to the probation service of less than £0.1m (due to increases in the length of time offenders spend on licence).

GBH s.20 (incorporating racially or religiously aggravated GBH s.29)

3.8

Around 4,100 adults are sentenced for GBH a year.

3.9

Each year, it is estimated that there would be between 50 and 90 fewer custodial sentences for GBH. Instead, these sentences

would be community orders. However, at the most severe end of the sentencing scale, it is expected that some sentences will rise by a small amount. Overall, the average custodial sentence length is expected to rise by around two to four per cent²⁸. The aggregate effect is expected to be a requirement for between 10 and 20 additional prison places per annum.

3.10

The changes outlined above are expected to result in an increase in cost to the prison service of between £0.2m and £0.5m and an increase in costs to the probation service of between £0.1m and £0.3m a year.

ABH s.47 (incorporating racially or religiously aggravated ABH s.29)

3.11

Around 12,900 adults are sentenced for ABH each year.

3.12

Each year, it is expected that there would be between 400 and 900 fewer custodial sentences for ABH. Instead, these sentences would be community orders.

3.13

Some sentences which would have been community orders under the current guideline are expected to become fines. Each year, it is estimated that between 400 and 1,000 sentences will change in this way.

3.14

The aggregate effect of these changes in the use of community orders would be anywhere between a decrease of 100 and an increase of 100²⁹ orders per annum.

²⁸ Part of this change is due to longer sentences at the top of the range, but part is also due to lower-end custodial sentences dropping out the calculation of the average as they are replaced with community orders

²⁹ This figure does not appear to agree with the narrative. This is due to rounding errors. The same caveat applies to other figures in this report.

3.15

It is also expected that the length of some custodial sentences will fall as a result of the guideline. However, due to the shifts away from the use of custody amongst shorter sentences, it is expected that the average length of the remaining custodial sentences will be around six to 16 per cent higher. Overall, it is expected that between 80 and 200 fewer prison places would be needed per annum.

3.16

The changes outlined above are expected to result in an annual cost saving to the prison service of between £3m and £6m and an annual cost increase to the probation service of between £0 and £2m.

Assault with intent to resist arrest s.38**3.17**

Around 200 adult offenders are sentenced for assault with intent to resist arrest each year.

3.18

Each year, it is expected that there would be between 10 and 30 fewer custodial sentences for assault with intent to resist arrest. Instead, these sentences would be community orders.

3.19

Some sentences which would have been community orders under the current guideline are expected to become fines. Each year, it is estimated that between nought and 10 sentences will change in this way.

3.20

The aggregate effect of these changes would be an increase in the use of community orders of between 10 and 20 orders per annum.

3.21

It is also expected that the length of some custodial sentences will fall as a result of the guideline. However, due to the shifts away from the use of custody amongst shorter sentences, it is expected that the average length of the remaining custodial sentences will be around seven to 15 per cent higher. Overall, it is expected that between nought and 10 fewer prison places would be needed per annum.

3.22

The changes outlined above are expected to result in a cost saving to the prison service of between £0.1m and £0.2m a year and an increase in cost to the probation service of between £0.0m and £0.1m a year.

Assault on a police officer s.89**3.23**

Around 8,300 adults are sentenced for assault on a police officer each year.

3.24

Each year, it is expected that there would be between 200 and 600 fewer custodial sentences for assault on a police officer. Instead, these sentences would be community orders.

3.25

Some sentences which would have been community orders under the current guideline are expected to become fines. Each year, it is estimated that between 500 and 1,200 sentences will change in this way.

3.26

The aggregate effect of these changes would be a reduction in the use of community orders of between 300 and 600 orders per annum.

3.27

It is also expected that the length of some custodial sentences will fall as a result of the guideline. However, due to the shifts away from the use of custody amongst shorter sentences, it is expected that the average length of the remaining custodial sentences will be around two to seven per cent higher. Overall, it is expected that between 20 and 60 fewer prison places would be needed per annum.

3.28

The changes outlined above are expected to result in a cost saving to the prison service of between £0.7m and £1.7m a year and a change in costs in the probation service of between an increase of £0.1m and a decrease of £0.7m a year.

Common assault s.39 (incorporating cases of religiously or racially aggravated common assault s.29)

3.29

Around 44,000 adults are sentenced for common assault each year.

3.30

Each year, it is estimated that there would be between 1,300 and 3,000 fewer custodial sentences for common assault. Instead, these sentences would be community orders.

3.31

Some sentences which would have been community orders under the current guideline are expected to become fines. Each year, it is estimated that between 1,600 and 3,800 sentences will change in this way.

3.32

Finally, it is estimated that there will be a small shift towards the use of conditional discharges for sentences which are fines under the current guideline. This is expected to affect between 400 and 900 sentences a year.

3.33

The aggregate effect of these changes each year would be between 1,300 and 3,000 fewer custodial sentences, between 400 and 900 fewer community orders, between 1,200 and 2,900 additional fines, and between 400 and 900 additional conditional discharges.

3.34

It is also expected that the length of some custodial sentences will fall as a result of the guideline. However, due to the shifts away from the use of custody amongst shorter sentences, it is expected that the average length of the remaining custodial sentences will be around one to three per cent higher. Overall, it is expected that between 150 and 350 fewer prison places would be needed per annum.

3.35

The changes outlined above are expected to result in a cost saving to the prison service of between £4m and £10m a year and a cost impact to the probation service of between a saving of £1m and an increase in cost of £4m a year.

4. Evidence of changes in sentencing practice in sentencing data

4.1

Changes in sentencing practice may be detected using data on a number of variables: changes in average custodial sentence lengths (ACSLs), the custody rate, and the use of the various disposal types all may point to changes in sentencing practice.

4.2

Unfortunately, amongst the variables which respond to changes in sentencing practice, no variable exists that responds only to changes in sentencing practice, and is not influenced by other factors such as the severity of cases or the characteristics of offenders coming before the courts. This means that changes in sentencing practice are not directly observable in isolation.

4.3

As a result, there are therefore always multiple hypotheses for an observed phenomenon – for instance, an increase in average custodial sentence lengths could be due to more severe sentencing practice, to more serious cases coming before the courts, or some other factor. The data alone cannot help distinguish between these hypotheses, and no attempt to do so is made in this report.

4.4

The following presents a brief discussion of some of the variables which will be used in this report, and the caveats that surround them:

Average custodial sentence length (ACSL).

4.5

This is a measure of the average sentence length for those given a determinate sentence only. Harsher sentencing practice would usually be expected to result in increased ACSLs. However, care should be taken with this measure for a number of reasons:

- It does not take account of the custody rate. For example, if judges began to use suspended sentences rather than shorter custodial sentences, ACSL could rise because those custodial sentences remaining would tend to be longer sentences.
- The average does not include indeterminate sentences for public protection (IPPs) or other indeterminate sentences. When IPPs were introduced, ACSL reduced for a number of offences. This appears to be because IPPs tend to be given to offenders who would otherwise have got lengthy determinate custodial sentences. Following their introduction, the average lengths of the remaining custodial sentences were therefore shorter.
- Average custodial sentence lengths are calculated on sentence lengths post guilty plea reductions. They would therefore change in response to changes to plea rates.

The custody rate

4.6

The custody rate is the proportion of all sentences which are of immediate custody. Harsher sentencing practice would usually be expected to result in an increased custody rate. Care should be taken with this measure because:

- It does not take into account the length of custodial sentences.
- It does not take into account the mix of other disposal types. For instance, a movement towards the use of fines and away from the use of community orders may be an indicator of changes to the severity of sentencing, but could not be identified from data on the custody rate.

Sentencing volumes

4.7

There is no direct link between changes in sentencing volumes and sentencing practice. However, changes in sentencing volumes may suggest that changes are occurring in the types of cases coming before the courts. For example, there have been decreasing numbers of thefts of automobiles in recent years. This is due in part to the increased effectiveness of security devices and may mean that, where thefts still occur, they tend to be of higher sophistication and severity³⁰.

4.8

Therefore, when analysing data to detect changes in sentencing practice, it is always useful to keep sentencing volumes in mind: if changes in custody rates and average custodial sentence lengths coincide with dramatic changes in offence volumes, then it is more likely that factors other than sentencing practice are driving these changes.

4.9

Data on sentencing volumes is also useful for a second purpose: to understand the size of the potential impact that changes in sentencing practice could have on correctional resources. For example, a small change in a high volume offence type may have a greater overall resource effect than a large change in sentencing practice in a low volume offence type.

Selected offences for which there have been significant changes in sentencing practice 2009-10

4.10

A comprehensive study of changes in sentencing patterns is beyond the scope of this report. Instead, a limited selection of offences has been chosen for more detailed analysis.

4.11

These were selected by considering the sentencing volumes for the offence, and the scale of changes in average custodial sentence length between 2009 and 2010. The offences chosen were ones where the combination of sentencing volumes and changes in ACSLs implied they may be having a large effect on correctional resources.

³⁰ Whilst it is true that improved security devices have meant thefts of motor vehicles have declined in recent years, the remainder of this example is speculative.

4.12

The offences selected include ones where the average severity of sentencing appears to be increasing and decreasing. There are a greater number of offences for which the average severity of sentences appears to be increasing, so more of these offences were chosen for further analysis.

- ◇ Blackmail
- ◇ Importation of class A drugs

Increases in average custodial sentence lengths: Wounding with intent to do grievous bodily harm³¹

Sentencing trends

4.13

In all, four offences were chosen where ACSLs are increasing:

- ◇ GBH with intent/wounding (s.18)
- ◇ Robbery
- ◇ Supply of Class A drugs
- ◇ Dishonestly making a false representation

4.15

The latest comprehensive set of sentencing data from the Ministry of Justice predate the release of the Sentencing Council’s definitive guideline on assault, so any changes in sentencing seen in the following charts cannot be attributed to this guideline.

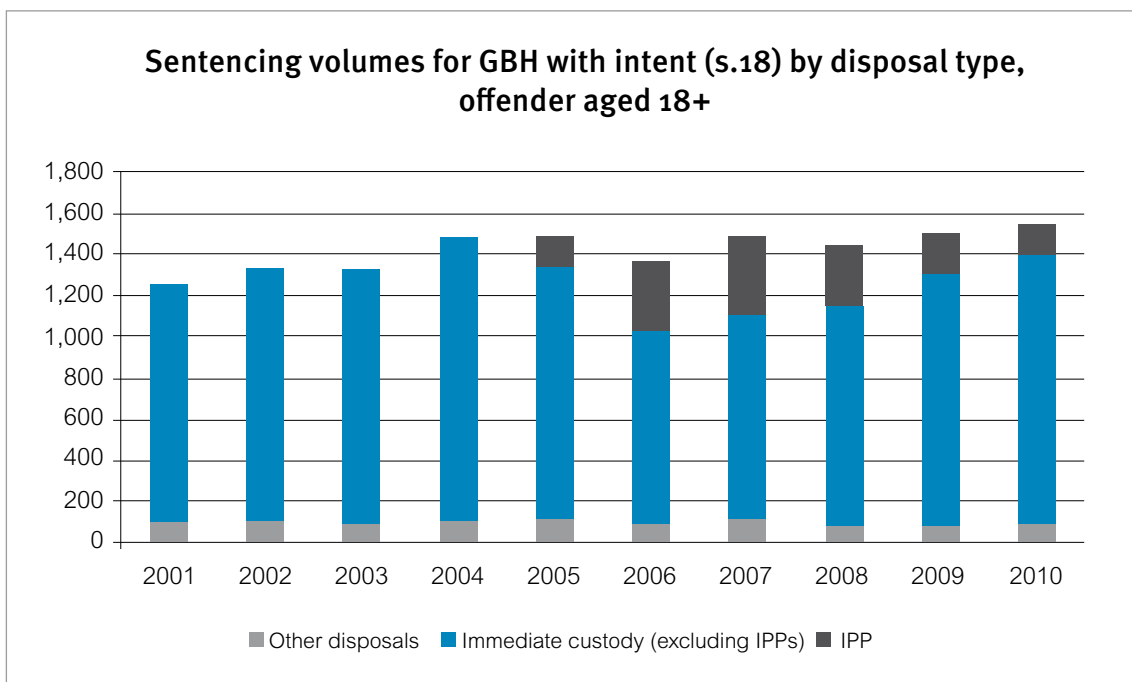
4.14

Two offences were chosen where ACSLs are decreasing:

4.16

Chart 1 shows the volume of sentencing for the offence of wounding with intent to do grievous bodily harm from 2001 to 2010. Sentencing volumes peaked in 2010.

Chart 1



³¹ s.18 of the Offences against the Person Act 1861

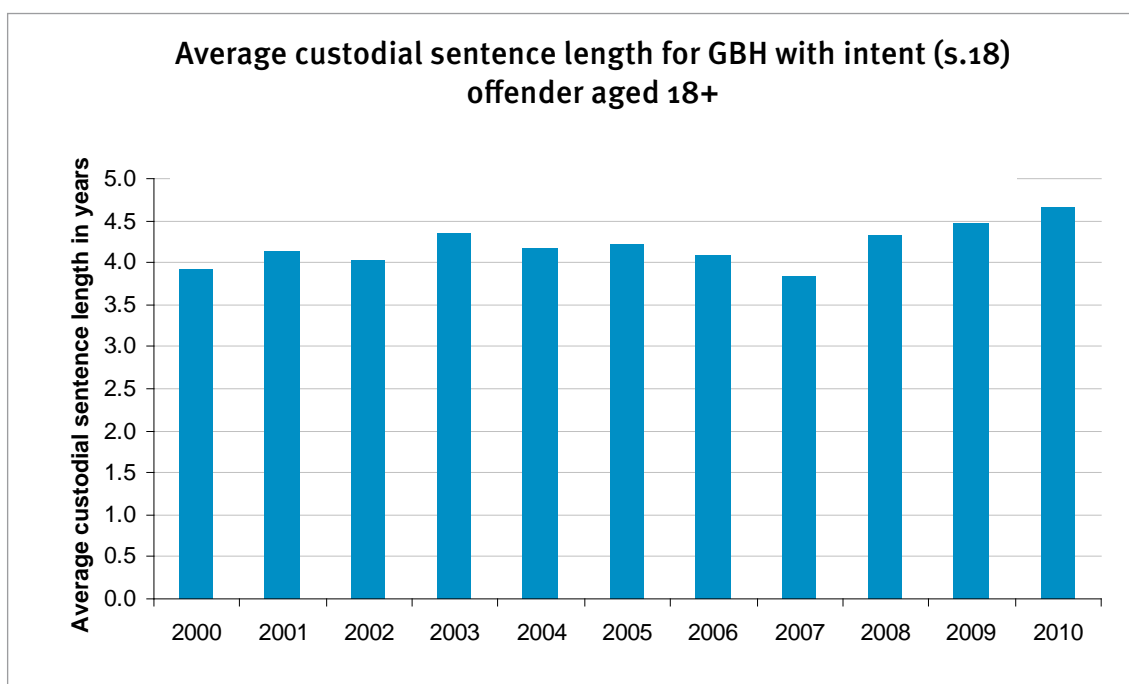
4.17

Average custodial sentence lengths for determinate sentences are shown in Chart 2, below. There were declines in ACSLs in 2006 and 2007, after which they have increased every year. In 2010, they were higher than at any time during the previous decade.

4.19

The link between volumes of IPP sentences and ACSLs makes it much more difficult to interpret overall trends in custodial sentence lengths. Changes in ACSLs may be due to changes in the types of cases coming before the court, changes in sentencing practice, or changes in the volumes of IPP sentences passed.

Chart 2

**4.18**

In chart 2 a link emerges between the use of IPPs and average determinate custodial sentence lengths. Between 2005 and 2007, during which time the volume of IPP sentences increased dramatically, average custodial sentence lengths fell. As the use of IPPs fell back during the period 2008 to 2010, average custodial sentence lengths began to rise again.

4.20

However, between 2009 and 2010, the number of IPP sentences passed for this offence was relatively steady. This means it is less likely that the increase in ACSLs between 2009 and 2010 was due to changes in the use of IPPs – they are more likely to be an indication of changing sentencing practice or changes in the severity of cases coming before the courts.

4.21

Chart 3 shows the custody rate for this offence, which has been steady at around 95 per cent since 2008.

4.22

Chart 2 shows that the average custodial sentence length amongst determinate sentences for this offence rose by around two months between 2009 and 2010.

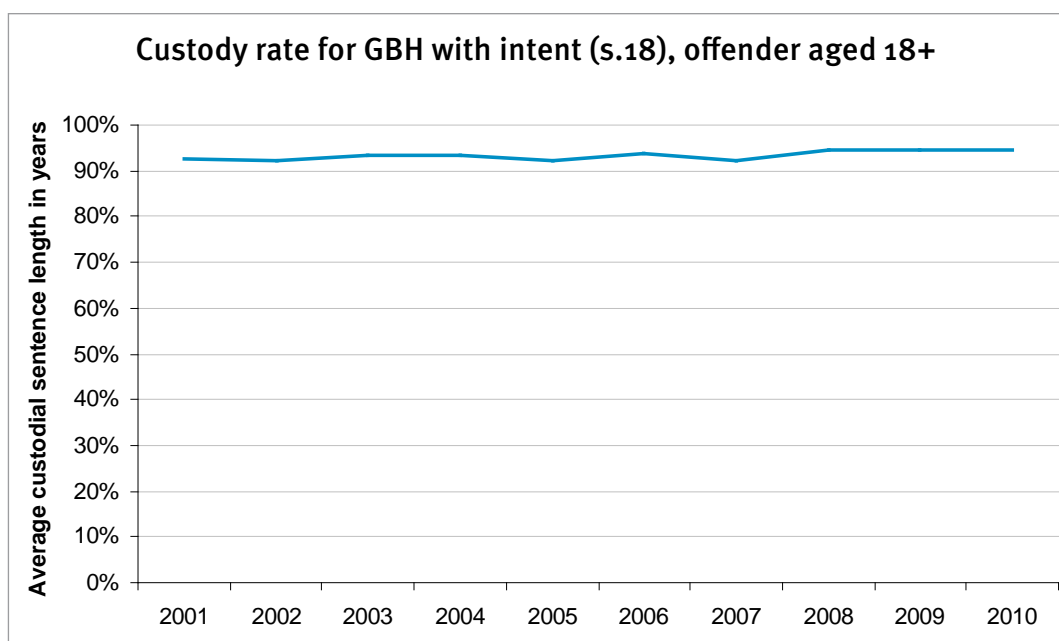
4.23

In 2010, 1,466 offenders were sentenced to immediate custody for this offence. Due to the relatively high volume of sentences, the increase in custodial sentence lengths would have a sizable resource impact. However, it is not clear whether this change is due to changes in sentencing practice, changes in the severity of cases coming before the court, changes in the characteristics of the offenders who are sentenced, or other factors.

4.24

Sentencing volumes increased between 2009 and 2010 by four per cent, which would serve to amplify the resource effects of longer sentence lengths. However, the volume of sentences is a non-sentencing factor so is discussed more fully in the non-sentencing factors report that accompanies this document.

Chart 3



Increases in average custodial sentence lengths: Robbery³²

Sentencing trends

4.25

Chart 4 shows that the volume of offenders sentenced for robbery rose from around 4,000 in 2005 to around 5,000 in 2010. The number of IPP sentences for robbery peaked in 2007, before moderating in subsequent years.

4.26

Chart 5 shows average custodial sentence lengths for this offence. The clearest trend is the substantial decrease in the ACSL from around 3.7 years in 2002 to around three years in 2007.

4.27

For many other offences, a clear link is apparent between average custodial sentence lengths and the number of IPP sentences.

Increasing use of IPPs tends to result in lower ACSLs, and vice versa. This link is not so obvious in the data on robbery, perhaps because it is obscured by other trends. For example, although sentence lengths decreased between 2005 and 2007 as the use of IPPs increased, a trend towards shorter ACSLs had begun before the use of IPPs started to exert an influence, so it is difficult to disentangle these effects. However, it is likely that increases in the use of IPPs exacerbated the decreases in ACSL between 2005 and 2007, and the subsequent decrease in the use of IPPs from 2008 to 2010 contributed to the rise in ACSLs from 2007 to 2009.

4.28

The most recent data shows that there was a one per cent increase in ACSLs for robbery offences between 2009 and 2010. This increase may be partly a result of decreases in the use of IPPs, from 205 in 2009 to 154 in 2010.

Chart 4

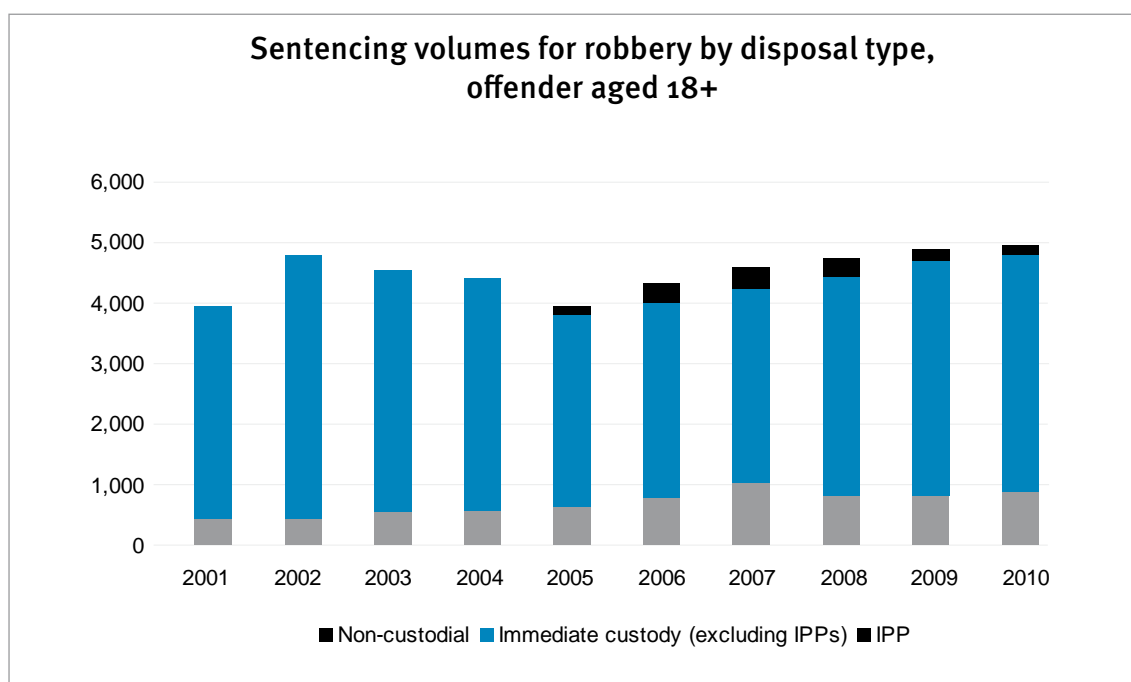
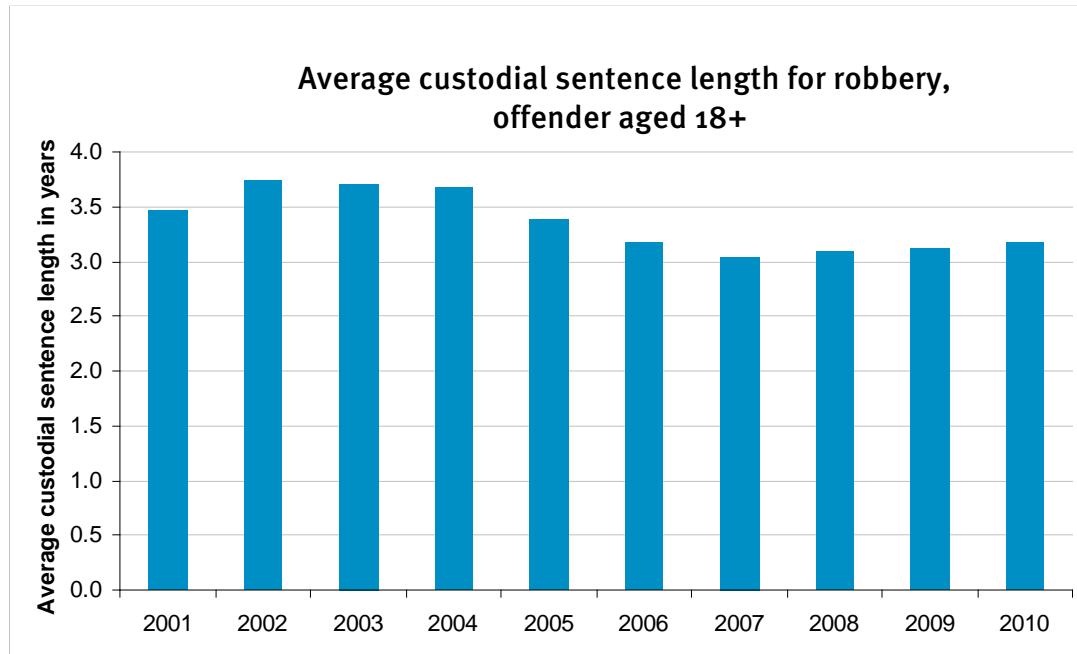


Chart 5



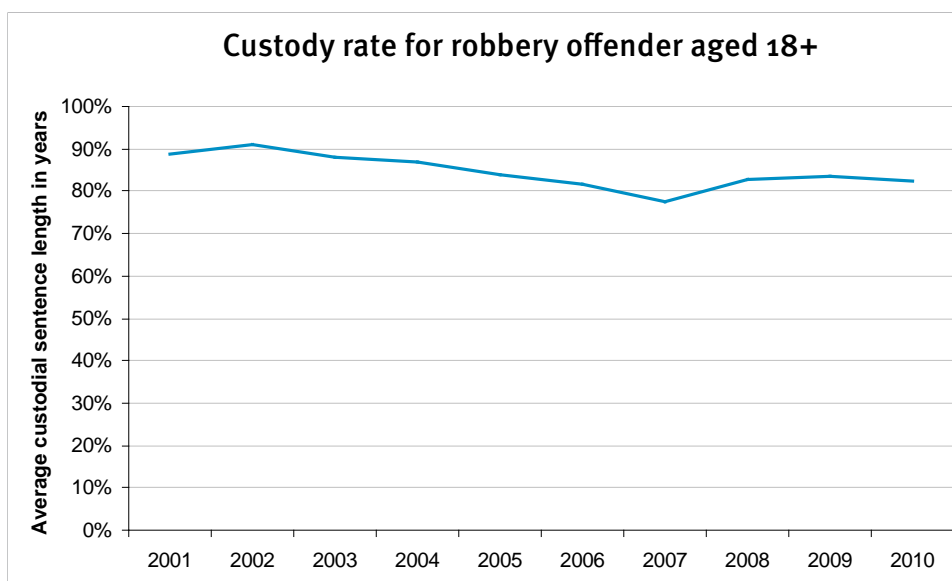
4.29

Chart 6 shows the custody rate for robbery over the last 10 years. Mirroring falls in ACSLs, the custody rate fell between 2002 and 2007, and rose in 2008 and 2009. However, between 2009 and 2010 the custody rate fell slightly, whilst ACSLs rose.

4.30

In terms of changes in the severity of sentencing between 2009 and 2010, the overall picture is ambiguous: ACSLs have increased, but the custody rate has decreased, and there have been falls in the numbers of IPP sentences.

Chart 6



Resource effects of changes in the severity of sentencing, 2009-2010

4.31

An increase of one per cent was observed in average custodial sentence lengths for robbery offences between 2009 and 2010. However, this was counteracted by a one per cent decrease in the custody rate. Although these changes are small, robbery is a relatively high volume offence, so any changes could have substantial resource implications.

4.32

It is not clear whether the changes identified are due to changes in sentencing practice, changes in the severity of cases coming before the court, changes in the characteristics of the offenders who are sentenced, or other factors such as changes in the use of IPPs.

Increase in average custodial sentence lengths: Dishonestly making a false representation

4.33

This is a relatively new offence which was introduced under the Fraud Act 2006, so sentencing data is only available from 2007 onwards. The offence covers a wide range of offending behaviour, but would include offences such as:

- ◇ Dishonestly using a credit card to pay for items;
- ◇ Phishing (online banking fraud);
- ◇ Selling goods as genuine “designer” items but knowing this might be untrue.

4.34

Offenders sentenced for offences under the new Act would previously have been prosecuted for a number of different offences under the Theft Act 1968, such as the offence of obtaining property by deception.

Chart 7

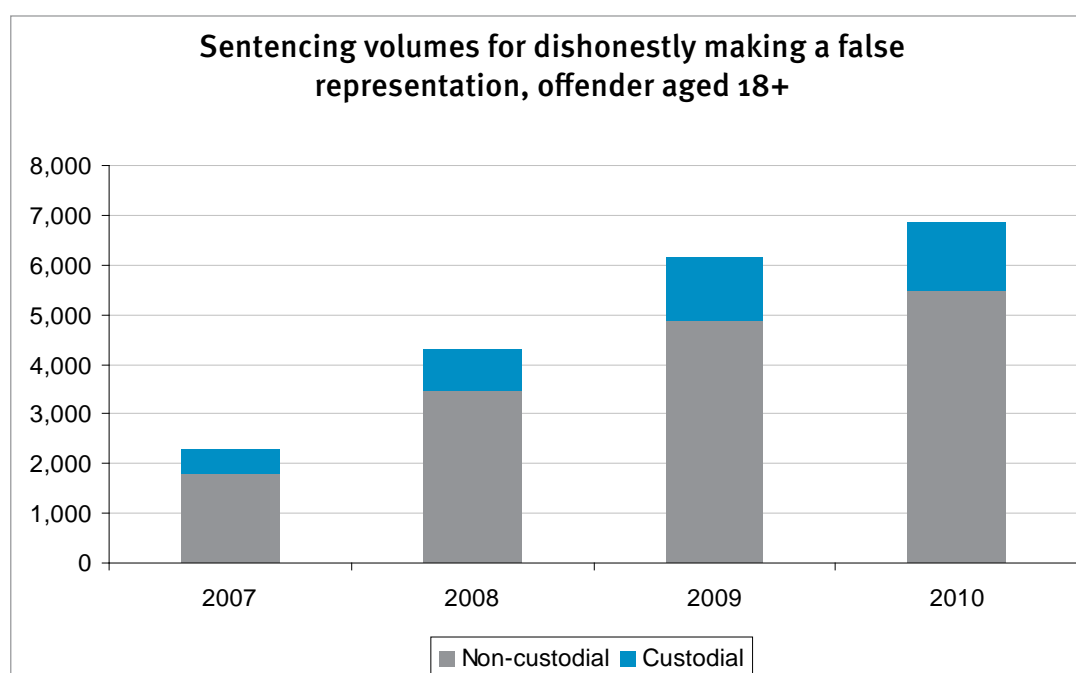


Chart 8

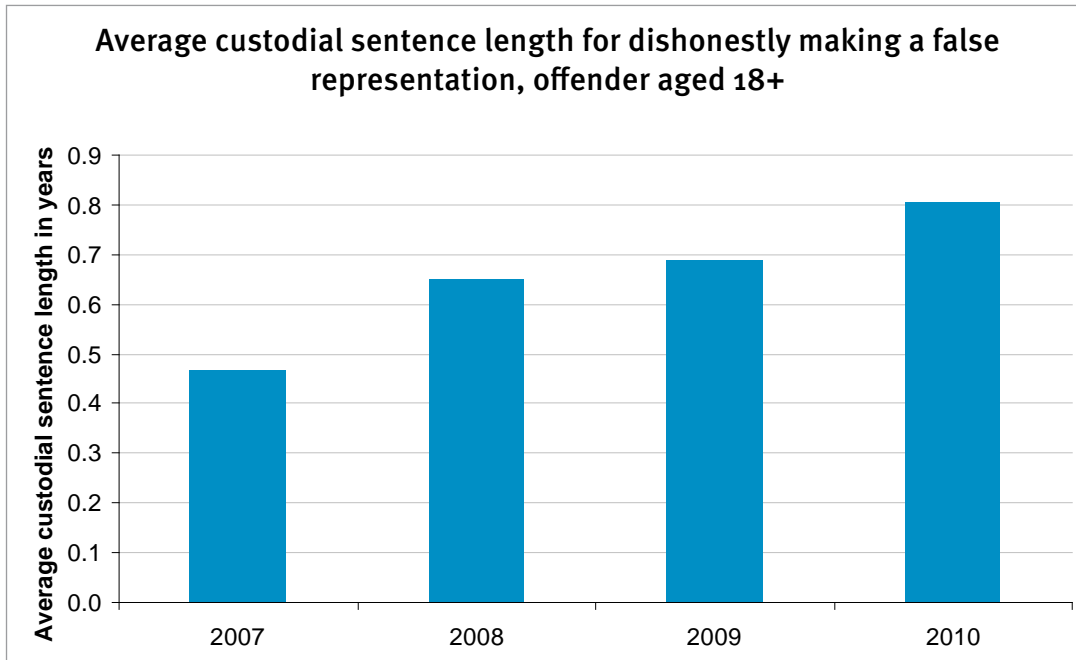
**4.35**

Chart 7 shows sentencing volumes for this offence. There have been large increases in sentencing volumes each year. Part of these increases can be explained by how recently the offence was introduced - there may be a considerable lag between an offence being committed and the offender being sentenced, which means that increasing sentencing volumes would be expected in the first few years after an offence was introduced. However, a question remains of whether there is an underlying trend towards greater sentencing volumes for this offence, over and above the effects of lags working their way through the system.

4.36

This question can be answered by considering sentencing volumes for offences committed prior to 2006, many of which would have been charged under the Theft Act 1968. Analysis of this data has confirmed that there is an underlying trend towards greater sentencing volumes for this offence, over and above the normal ramping-up of sentencing volumes after an offence is introduced.

4.37

Chart 8 shows that ACSLs for this offence have increased each year since the offence was introduced. Between 2009 and 2010, the ACSL increased by 17 per cent, from 8.3 to 9.7 months. Since sentencing volumes for this offence also changed considerably between 2009 and 2010, special care should be taken in interpreting changes in ACSLs. The changes in sentencing volumes make it especially likely that the mix of offences being sentenced is changing through time, which could have contributed to changes in ACSLs.

4.38

The custody rate for this offence is much lower for other offences studied in this report, at around 20 per cent. Chart 9 shows that the custody rate has been steady since the offence was introduced.

4.39

Chart 10 shows that between 2009 and 2010, there were no dramatic changes in the use of the various disposal types for this offence.

Resource effects**4.40**

In 2010, 1,386 offenders received custodial sentences for this offence, and ACSLs rose by 1.4 months. The changes to ACSLs will have caused upward pressure on correctional resources, especially in the Prison Service. Increases in sentencing volumes between 2009 and 2010 are also likely to cause additional resource pressures, but this is a non-sentencing factor.

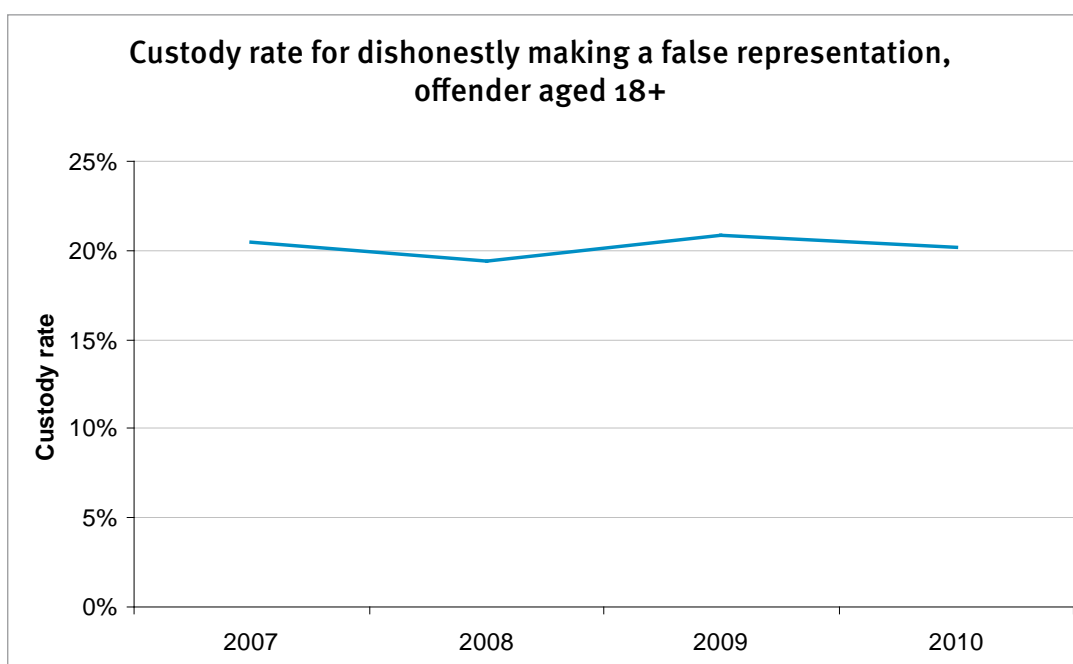
4.41

However, it is not clear whether the changes in ACSLs identified are due to changes in sentencing practice, changes in the severity of cases coming before the court, changes in the characteristics of the offenders who are sentenced, or other factors.

Increases in average custodial sentence lengths: Supply of class A drugs³³**4.42**

Chart 11 shows sentencing volumes for this offence. Volumes reached a peak of 2,839 in 2008, before moderating to 2,453 in 2010. IPPs are very rarely used for this offence; since their introduction, an IPP sentenced has been passed on just three occasions.

Chart 9



³³ s.4 of the Misuse of Drugs Act 1971

Chart 10

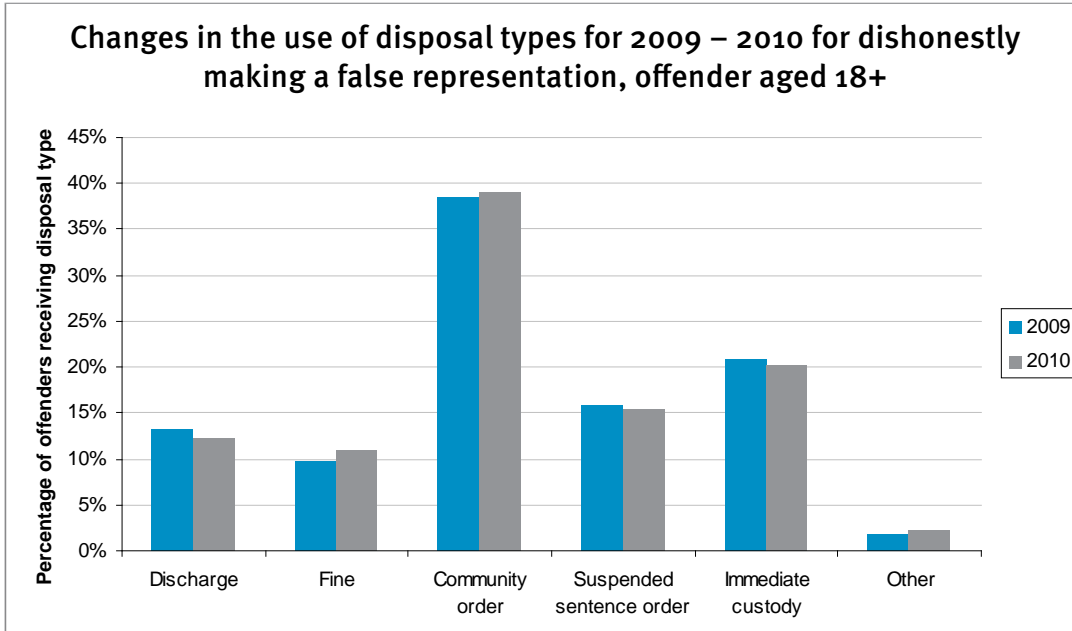
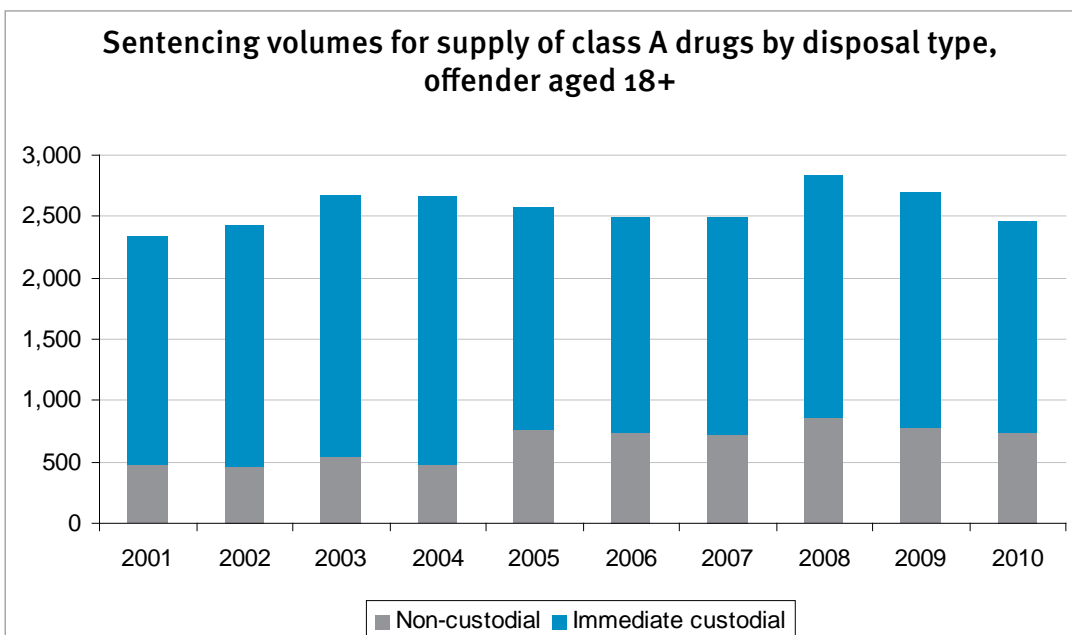


Chart 11



4.43

Chart 12 shows average custodial sentence lengths for this offence. There has been no clear trend over the past decade. Between 2009 and 2010, ACSLs increased by 2.8 months to three years 7.5 months.

4.44

The majority of cases of class A supply are for supply of heroin, cocaine or crack. Sentencing volumes for these drugs in 2010 were 1,150, 647, and 189 respectively. Chart 13 shows how average custodial sentence lengths changed for these drugs between 2009 and 2010. The greatest increases in ACSLs have been amongst cases of supply of cocaine, in which they increased from three years seven months in 2009 to four years two months in 2010.

4.45

Finally, Chart 14 shows the custody rate for this offence. The custody rate declined between 2004 and 2005 onwards, coinciding with the introduction of the Suspended Sentence

Order. Subsequently, the custody rate has been steady at around 70 per cent.

Resource effects**4.46**

Chart 14 shows that the average custodial sentence length for the supply of a class A drug rose by around 2.8 months between 2009 and 2010.

4.47

In 2010, 1,718 offenders were sentenced to immediate custody for this offence. Due to the relatively high volumes of sentences for the supply of a class A drug, the increase in custodial sentence lengths would have a sizable resource impact. However, it is not clear whether this change is due to changes in sentencing practice, changes in the severity of cases coming before the court, changes in the characteristics of the offenders who are sentenced, or other factors.

Chart 12

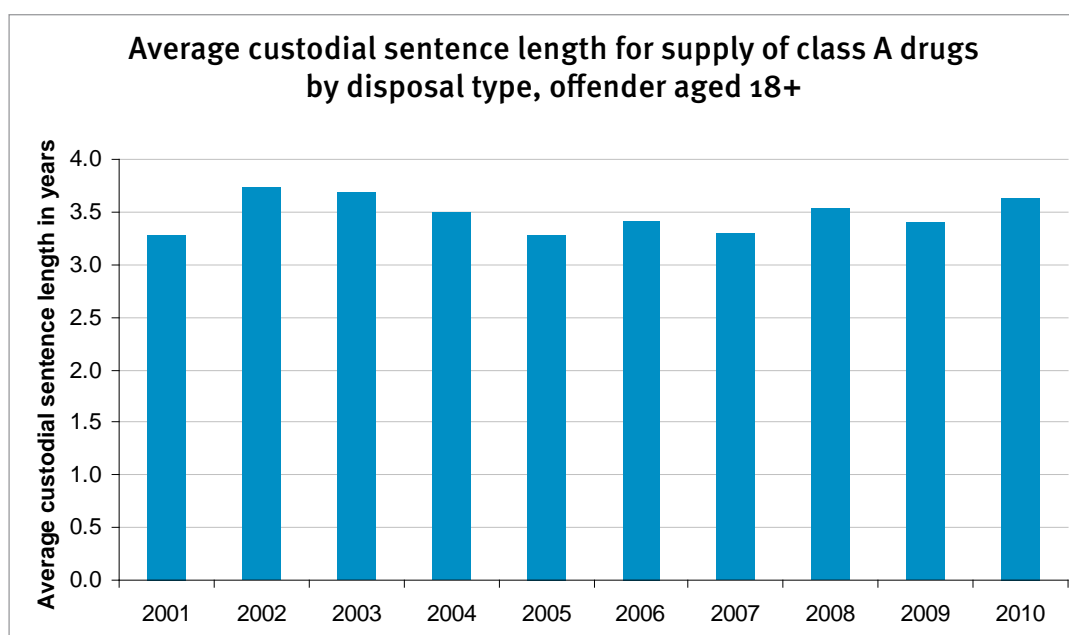
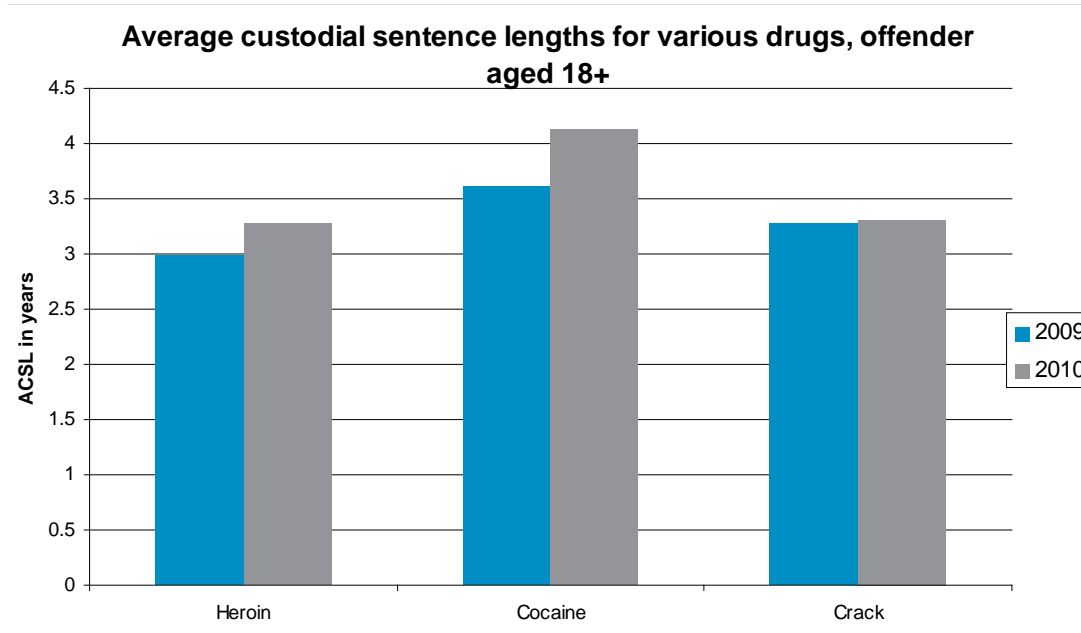


Chart 13



4.48

This effect would be mitigated by the fall in sentencing volumes between 2009 and 2010 of nine per cent. Sentencing volumes are discussed in more detail in the non sentencing factors report.

Chart 14

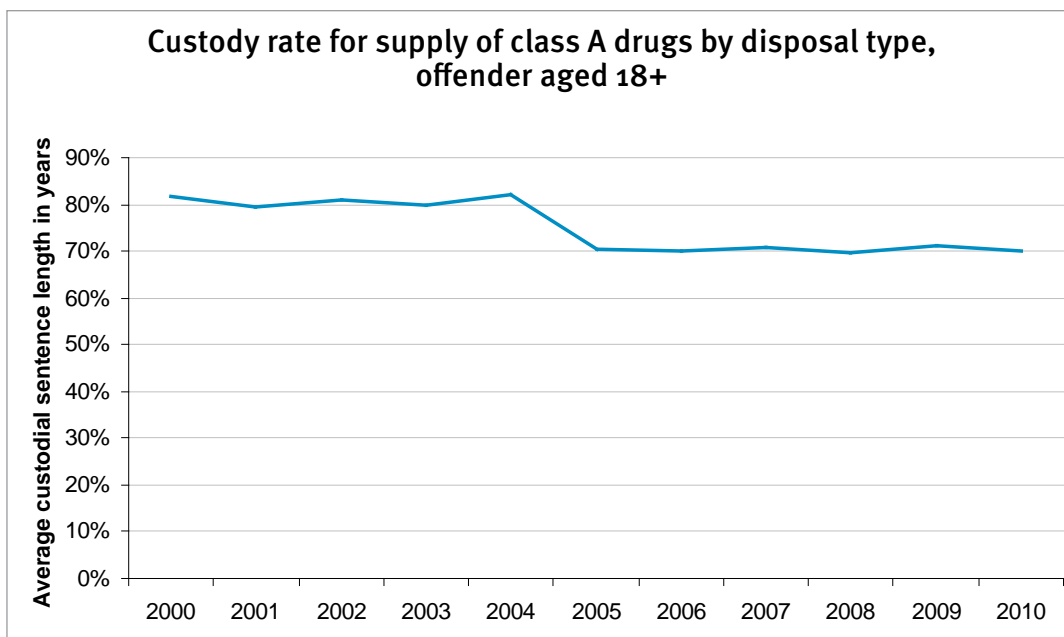
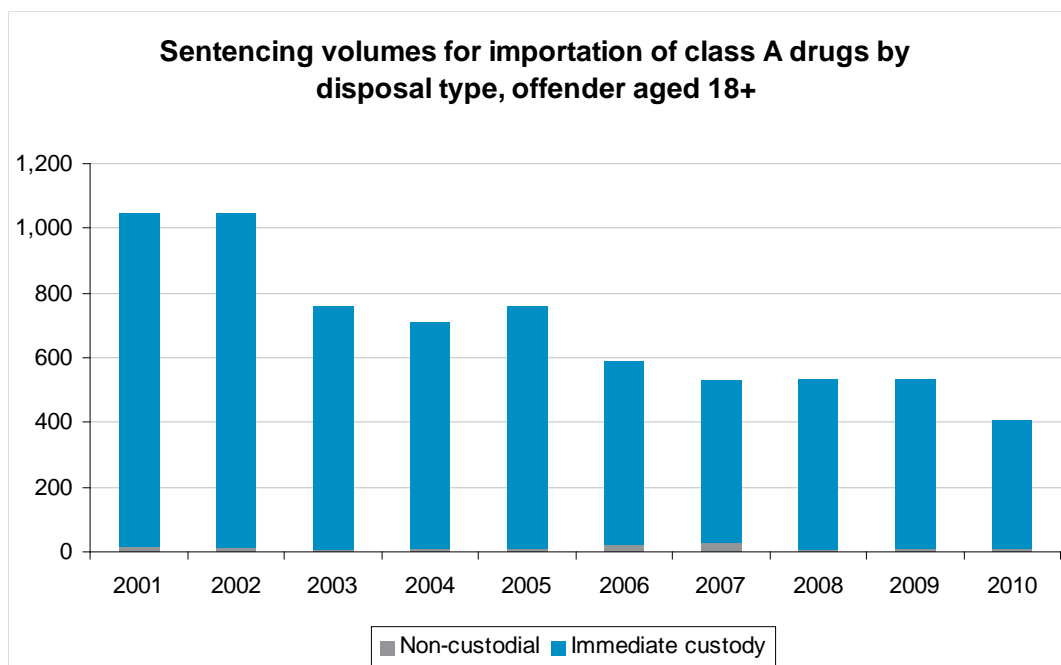


Chart 15



Decreases in average custodial sentence lengths: Importation of Class A drugs³⁴

4.49

Chart 15 shows that there have been substantial declines in the volume of sentences for importation of class A drugs over the past decade. The years 2001-2, 2005-6 and 2009-10 saw particularly sharp declines. The chart also shows that almost all sentences for this offence are of immediate custody. No offenders have been given IPPs for this offence since they became available to be used in 2005.

4.50

Chart 16 shows average custodial sentences for this offence. There was a trend towards higher ACSLs between 2002 and 2009. However, between 2009 and 2010 there was a significant decline in ACSLs.

4.51

Since the vast majority of offenders for this offence receive custodial sentences, and none receive IPPs, the ACSL is a good measure of the average severity of sentencing. The decrease in ACSLs between 2009 and 2010 therefore points to a decrease in the average severity of sentences. However, caution should be taken in interpreting this due to the large changes in sentencing volumes.

4.52

The change in sentencing volumes suggests that the mix of cases being sentenced each year may be changing considerably from year to year. If this is the case, then the average severity of sentences may be expected to change even if there have been no changes in sentencing practice. For instance, sentencing volumes fell by 24 per cent from 536 in 2009 to 405 in 2010, and at the same time ACSLs decreased by five months, but it is difficult to know whether this data points to any change in sentencing practice.

³⁴ Misuse of Drugs Act (section 3) and Customs & Excise Management Act 1979

Chart 16

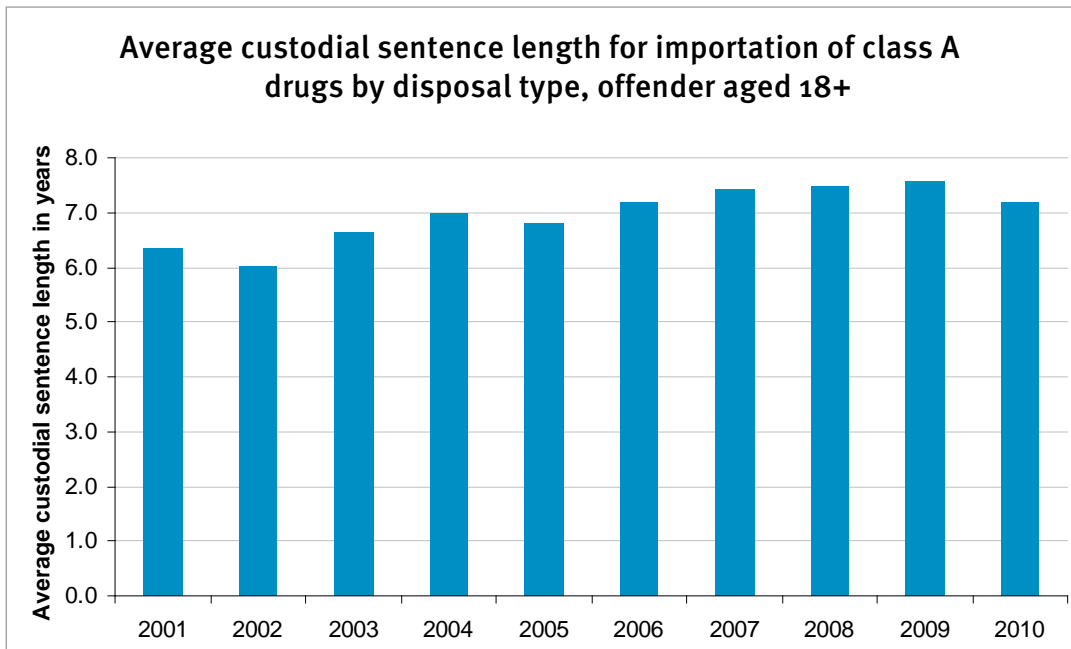
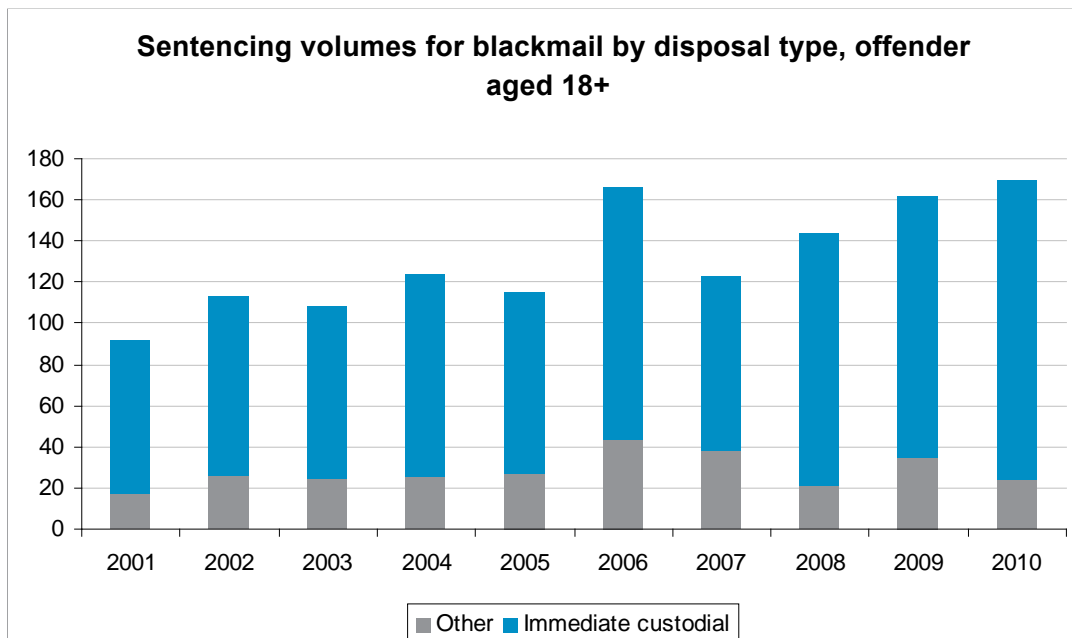


Chart 17



Resource effects

4.53

The decrease in average custodial sentence lengths between 2009 and 2010 of around five months will significantly reduce the correctional resources required to give effect to sentences for importation of class A drugs. The 24 per cent decrease in sentencing volumes between 2009 and 2010 suggests there may have been changes in the types of cases coming before the courts, which could affect the average severity of sentences. Firm conclusions therefore cannot be drawn about whether any of the reduction in average custodial sentence lengths between 2009 and 2010 was due to changes in sentencing practice.

Decreases in the average severity of sentencing: Blackmail³⁵

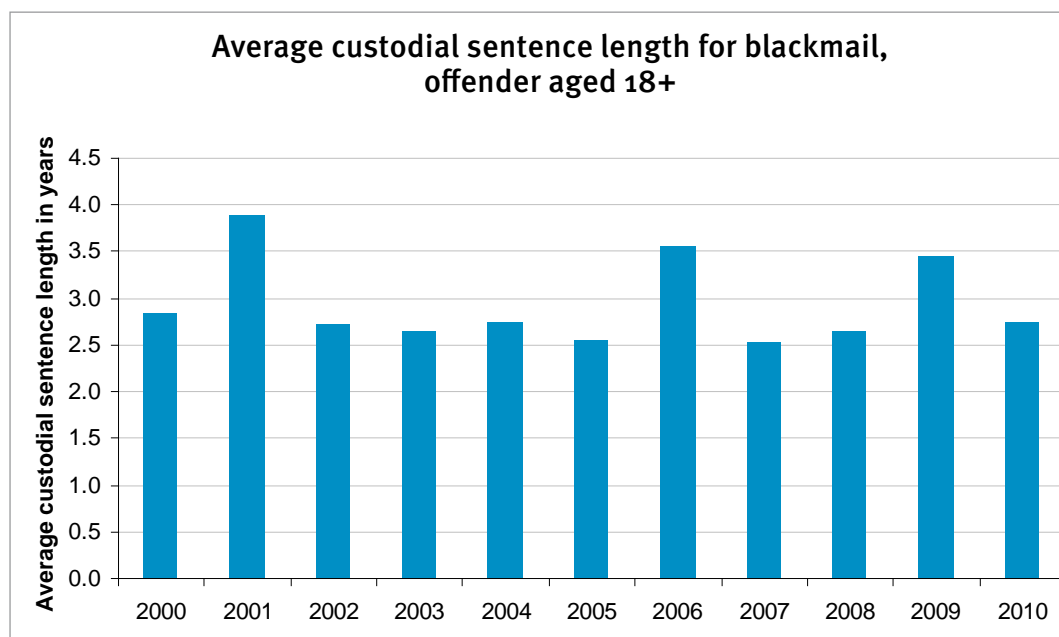
4.54

Chart 17 shows that sentencing volumes for blackmail are relatively low at fewer than 200 cases per year. Although the series is volatile, sentencing volumes have tended to increase over the past decade, from 93 cases in 2001 to 170 cases in 2010. IPPs are not shown in this chart because they are very rare: only two IPPs have ever been imposed for blackmail, both in 2006.

4.55

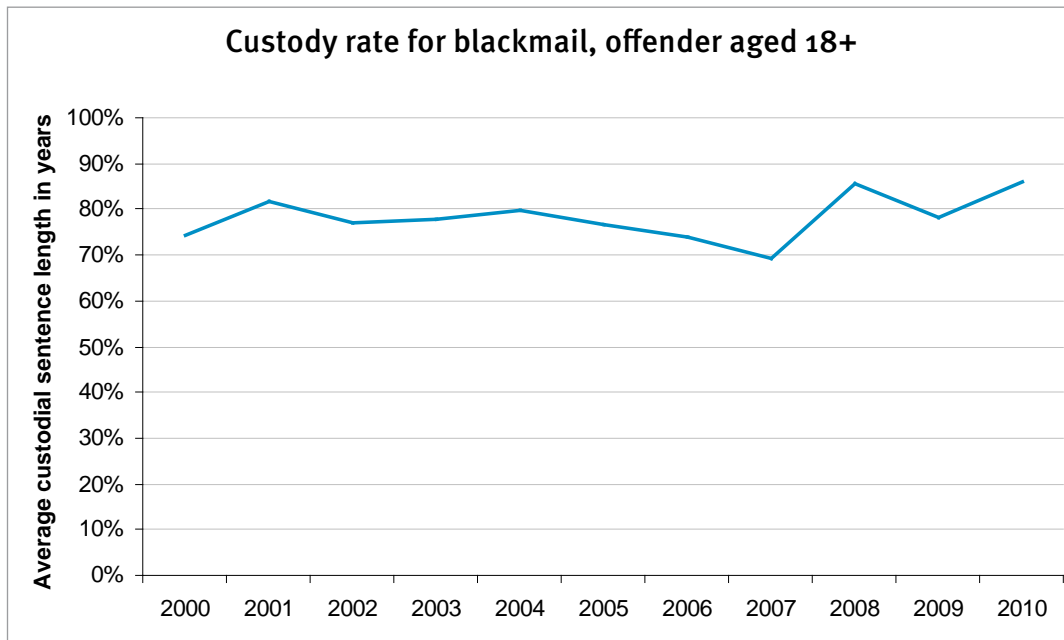
Average custodial sentence lengths have also been volatile following no clear pattern (see Chart 18). This volatility may be a result of low sentencing volumes, which mean that in any given year, a few unusually long sentences could significantly increase the average.

Chart 18



³⁵ s.21 of the Theft Act 1968

Chart 19

**4.56**

There was a large fall in ACSLs between 2009 and 2010. However, this seems to be because ACSLs were unusually high in 2009, rather than because 2010 was an exceptional year - in fact, ACSLs in 2010 were close to the average for the last decade.

4.57

Chart 19 shows the custody rate for blackmail. Between 2009 and 2010 there was an increase in the custody rate, which occurred at the same time as the fall in ACSLs described above. This is surprising because a fall in ACSLs would usually point to decreasing severity of sentencing, whereas an increase in the custody rate usually points to an increase in the severity of sentencing. This apparent incongruity could be explained by a changing composition of cases: for instance, it would be consistent with a fall in the number of very serious cases, but an increase in the severity of cases amongst other cases.

4.58

Due to the spikes in ACSLs in 2001, 2006 and 2009, it would be difficult to explain the fluctuations in sentencing shown in Chart 18 in terms of changes to sentencing practice. It seems more likely that they are a result of a changing composition of cases coming before the courts each year, and that in these years a number of cases of unusually high severity were sentenced.

Resource effects**4.59**

The decrease in average custodial sentence lengths between 2009 and 2010 of around 8.5 months will have significantly reduced the correctional resources required to give effect to sentences passed for blackmail in 2010 relative to sentences passed in 2009. This will have been partially offset by the increase in the custody rate. However, these changes are likely to be primarily due to changes in the composition of cases coming before the courts rather than a change in sentencing practice.

Annex C:

Non sentencing factors report

1. Introduction

1.1

The Sentencing Council is required under the Coroners and Justice Act 2009 to prepare a non sentencing factors report to identify the quantitative effect which non sentencing factors are having or are likely to have on the resources needed or available for giving effect to sentences imposed by courts in England and Wales.

1.2

This report is structured as follows. First, non sentencing factors are defined, and their importance is explained. Second, an overview is presented of some of the major overarching influences on the criminal justice system which may affect non sentencing factors. Finally, the report summarises published statistics on non sentencing factors, to consider the most recent published evidence on how these factors may be changing.

2. Definition of non sentencing factors and their significance

2.1

The approach taken by the courts to sentencing offenders is a primary driver of requirements for correctional resources in the criminal justice system. This is discussed in the sentencing factors report, which is also part of the Sentencing Council's Annual Report. However, non sentencing factors – the focus of this report - also exert an important influence on requirements for correctional resources.

2.2

Non sentencing factors are factors which do not relate to the sentencing practice of the courts, but which may affect the resources required to give effect to sentences. For example, the volume of offenders coming before the courts is a non sentencing factor because greater sentencing volumes lead to greater pressure on correctional resources, even if the courts' treatment of individual cases does not change. Release provisions are another example of a non sentencing factor: changes in the length of time spent in prison for a given custodial sentence have obvious resource consequences.

3. Overview of changes in non sentencing factors

3.1

The criminal justice system is in a state of continual change as political, social and economic factors exert an influence on criminality, the apprehension and charging of offenders, sentencing practice, and how sentences are administered. This section considers some of the overarching influences currently affecting the system, focussing on their effect on non sentencing factors.

3.2

The new government, elected in May 2010, is in the process of implementing a number of changes to sentencing and how sentences are administered. These changes emphasise rehabilitation and effective punishment, to be achieved through payment by results models, additional discretion for criminal justice system professionals, more effective community sentencing and making prisons places of hard work.

3.3

These changes are likely to have direct resource effects as a result of changes to the way in which sentences are administered. However, their most important resource effects are expected to be as a result of a reduction in reoffending, which will reduce the inflow of offenders into the system, and therefore the resources required for giving effect to sentences. More effective sentencing would also be expected to influence other non sentencing factors - for instance, breach rates and recalls to custody may be expected to fall, which would also reduce resource requirements.

3.4

The youth justice system continues to undergo considerable changes. The Ministry of Justice has reasserted three priorities for the youth justice system: reducing the number of first time entrants to the youth justice system; reducing reoffending; and reducing custody numbers.

3.5

These are areas in which significant progress has already been made over the past few years. The number of first time entrants into the youth justice system has decreased from 84,643 in 2008 to 48,606 in 2010, representing a 43 per cent decrease over this two year period. There have also been declines in the number of young people in custody with data showing that in March 2011, the population of those under the age of 18 in custody stood at 2,083, four per cent lower than in March 2010. The declines in the number of youths in custody are likely to be a combination of sentencing and non sentencing factors: fewer young people are entering the system, and at the same time, there has been a focus on ensuring that young people do not receive a custodial sentence where a community sentence would be more appropriate.

3.6

Fewer entrants into the youth justice system will undoubtedly cause reductions in the requirement for resources to give effect to sentences. However, the most serious youth offenders will continue to enter the system, and these offenders are likely to receive some of the most resource intensive sentences. As a result, resource requirements do not change in direct proportion to the number of offenders entering the system. In addition, offenders who in the past may have entered the system, but now are diverted away, are likely to require other interventions the costs of which may be borne by agencies outside the criminal justice system.

3.7

Wider societal factors also influence the criminal justice system. The continuing economic downturn is likely to influence patterns of offending in ways which are not well understood. For example, some academic studies suggest that troubled macroeconomic conditions may cause increases in acquisitive crime. Until 2010/11, this effect has been conspicuous by its absence in published statistics. However, the latest figures from the British Crime Survey (BCS) showed an increase in domestic burglary, which could be a manifestation of this relationship. On the other hand, the rise follows a record low measurement for domestic burglary in 2009/10, and it remains to be seen whether this is the beginning of a trend.

3.8

The urban riots which occurred in early August 2011 provided a stark reminder of how the social, political and economic environment can affect the resources required in the criminal justice system. For instance, some commentators have suggested that economic disadvantage may have been a significant contributor to the causes of the riots.

3.9

The economic downturn has also been associated with a drive for efficiency and austerity across government. This has affected all agencies of the criminal justice system and is likely to result in reductions in the resources available to give effect to sentences, relative to what would have been the case in the absence of the downturn. These reductions could have implications for the effectiveness of sentencing and the rate of reoffending, although they may be counteracted by better and more efficient use of resources.

3.10

It is also possible that cuts in resources may affect the detection of crime. In particular, the Council notes that the significant cuts in police budgets which have been announced may affect the police's ability to detect offences and apprehend criminals relative to a situation in which budget cuts were not required, although again this may be countered by increases in efficiency.

4. Statistics on the effect of non sentencing factors on resource requirements

4.1

It is straightforward to survey the available data on non sentencing factors. However, it is extremely difficult to identify why changes have occurred, and to isolate the resource effect of any individual change or impulse to the system. This is because the criminal justice system is dynamic, and its processes are heavily interconnected.

4.2

Figure 1 shows a stylised representation of the flows of offenders through the criminal justice system. This figure demonstrates the interdependence of the system, and how changes to any one aspect of the system will have knock on effects in many other parts.

4.3

An example will clarify the complexity of the problem. Supposing from one year to the next, it was observed that there was a rise in severity of offences coming before the court. This would have a direct effect on correctional resources as offenders received longer and more onerous sentences. In turn, this change could interact with other non sentencing factors such as future breach rates in complicated and unforeseen ways, causing further knock-on effects on resources. Identifying the total resource effect - including both the direct and indirect effects - is therefore very difficult. To make matters worse, at the same time, many other changes may be affecting the criminal justice system, which could also affect non sentencing factors such as breach rates. Unpicking all of these factors is therefore extremely complicated.

4.4

The remainder of this report surveys the available data on non sentencing factors. Due to the difficulties explained above, it makes no attempt to untangle the interactions between different non sentencing factors to explain the causes of observed changes and their resource effects. However, for each factor surveyed, the resource implications are discussed in qualitative terms.

4.5

The factors surveyed are:

- the volume of sentences and composition of offences coming before the courts;
- the rate of recall from licence;
- the rate at which court orders are breached;
- patterns of reoffending;
- release decisions by the Parole Board; and
- the number of offenders remanded in custody.

4.6

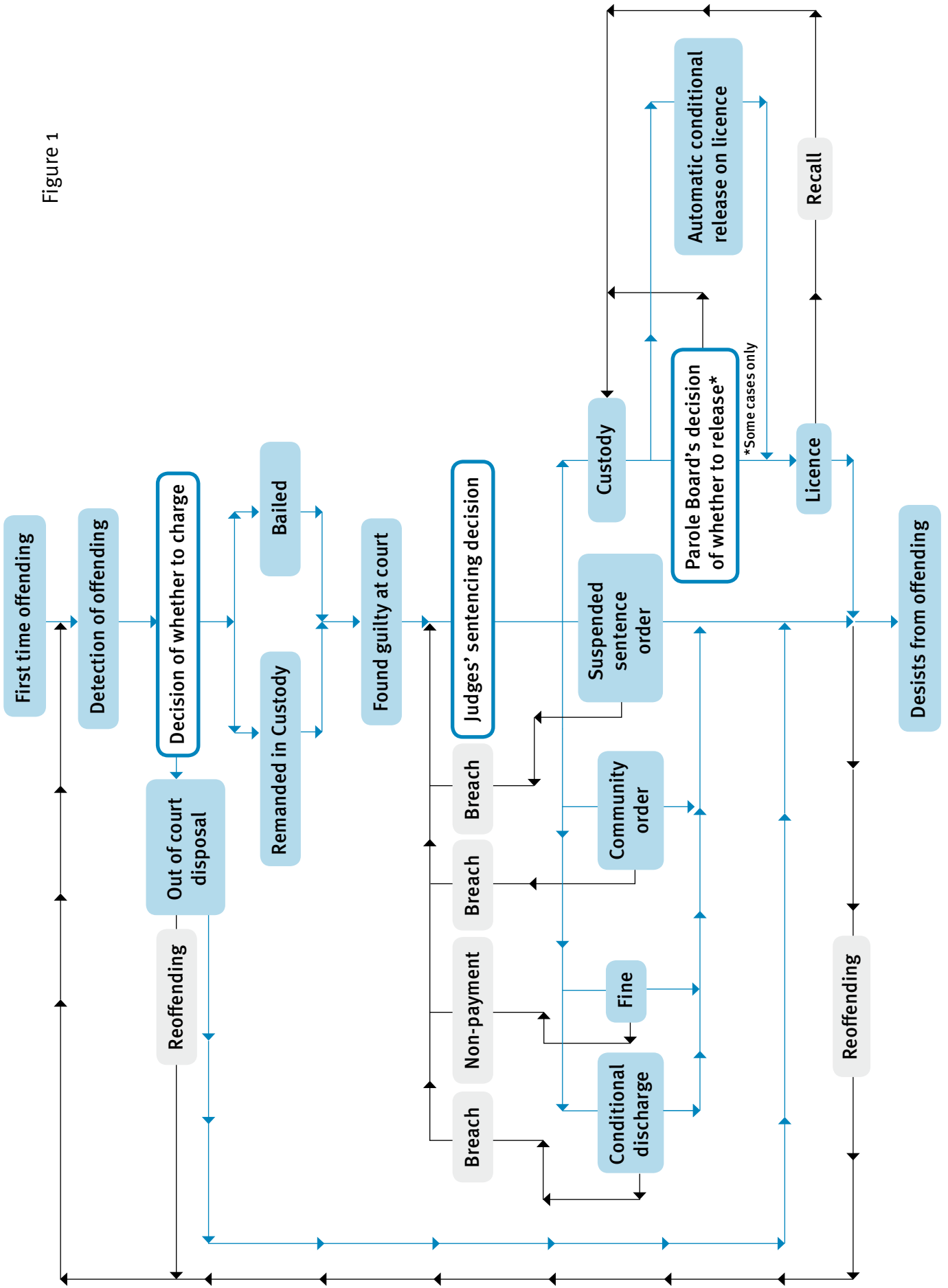
To maintain consistency with other Council documents, the consideration of resource effects will be limited to the prison, probation and youth justice services.

Sources of data

4.7

All data presented in this report are the latest published statistics from the Ministry of Justice and its agencies. The Ministry of Justice publishes statistics throughout the year, which means that different publications may cover different time periods. Since the statistics in this report are taken from a variety of publications, they do not always cover the same time period: some figures are from 2010, and others are from 2010/2011.

Figure 1



4.8

The level of detail in which each non sentencing factor can be surveyed differs depending on the amount of available data. The length of the discussion should therefore not be interpreted as an indication of the importance of each non sentencing factor.

4.9

The majority of the statistics come from the following three publications, all published by the Ministry of Justice:

- criminal justice system statistics;
- offender management caseload statistics; and
- re-offending of adult offenders.

Volume of defendants sentenced and composition of offences coming before the courts

4.10

The volume of offenders who are sentenced by the courts and the composition of offences are two of the primary drivers of requirements for criminal justice resources: pressure can arise from greater volumes of sentences, or a more serious mix of offences.

4.11

A total of 1,365,347 defendants were sentenced in 2010, down three per cent from 1,405,938 offenders in 2009³⁶.

4.12

Despite the overall decrease in sentences, there were increases in sentencing volumes for more serious offences. Between 2009 and 2010, the number of sentences for the most serious cases (known as indictable cases³⁷) rose six per cent from 327,361 to 348,220. Over the same time period, the number of sentences in the Crown Court rose eight per cent from 94,590 in 2009 to 101,951 in 2010³⁸. This data is summarized in Table 1 and Table 2³⁹.

Table 1 – Number of offenders sentenced by court type, 2009 & 2010

	2009	2010	Change
Crown Court	94,590	101,951	7.8%
Magistrates' courts	1,312,315	1,263,396	-3.7%
Total	1,406,905	1,365,347	-3.0%

Table 2 – Number of offenders sentenced by offence type, 2009 & 2010

	2009	2010	Change
Indictable	327,361	348,220	6.4%
Summary only	1,079,554	1,017,127	-5.8%
Total	1,406,905	1,365,347	-3.0%

³⁶ These figures refer to the number of defendants who were sentenced as opposed to the number of offences for which they were sentenced. These figures are different because a defendant may be sentenced for multiple offences on a single sentencing occasion.

³⁷ 'Indictable cases' include all cases which are triable either way or triable on indictment only

³⁸ Increasing sentencing volumes in the Crown Court are likely to be a result of changes in the severity of offences (e.g. more indictable and fewer summary), but are also influenced by allocation decisions. That is, there may have been changes in the propensity of magistrates to decline jurisdiction, or the propensity of defendants to elect for a Crown Court trial.

³⁹ Some figures in these tables are sourced directly from the Ministry of Justice's Court Proceedings database and may not be found in existing Ministry of Justice publications.

4.13

The overall changes in sentencing patterns surveyed in these tables disguise significant differences between offence types. Chart 1 shows the change in sentencing volumes for indictable offences, broken down by offence group.

4.14

This chart suggests that the offence categories of theft, drugs offences and ‘other indictable’ offences have been significant sources of increased pressure on resources.

4.15

Chart 2 shows that, amongst summary offences, the greatest declines in sentencing volumes between 2009 and 2010 occurred amongst motoring offences.

Chart 1

Change in sentencing volumes, indictable offences, 2009 to 2010

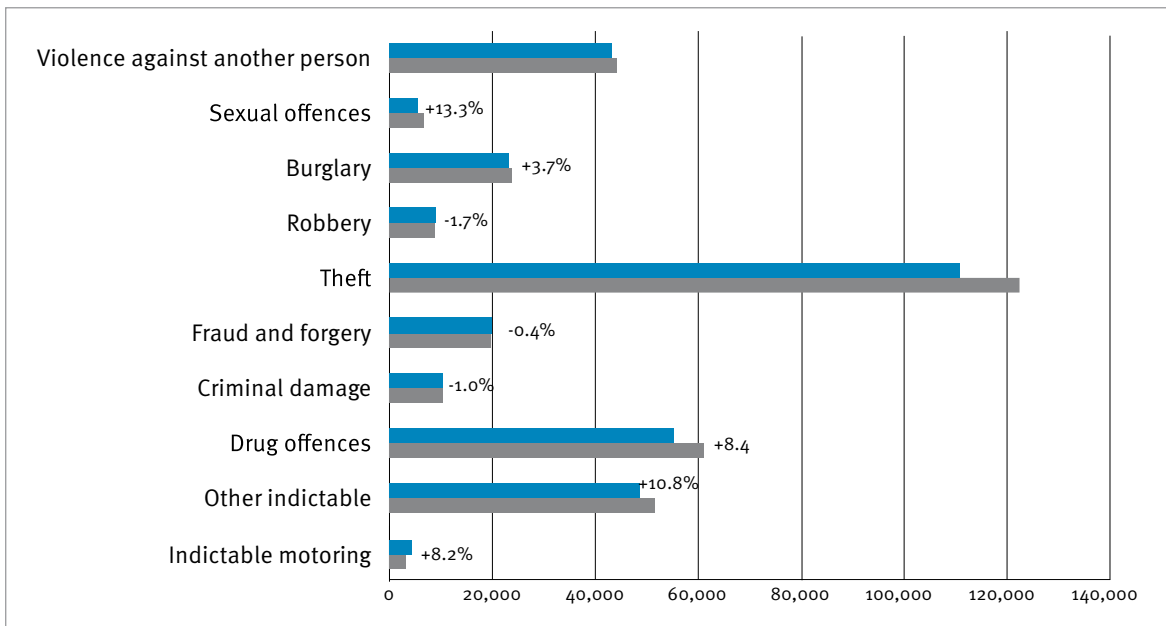
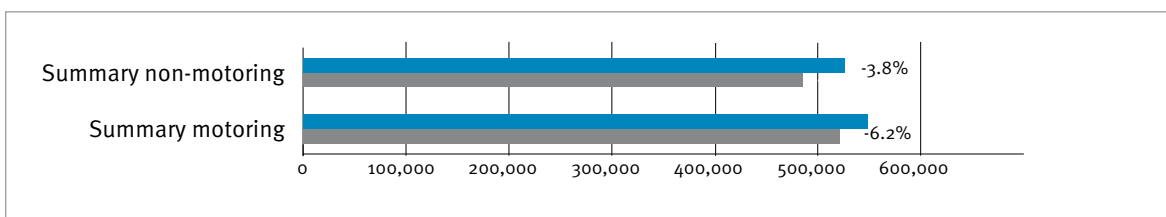


Chart 2

Change in sentencing volumes, summary only offences, 2009 to 2010



4.16

Table 3 shows the change in the use of the various disposal types between 2009 and 2010. The table shows a movement towards the use of more severe and resource intensive sentences, which is consistent with the figures in Tables 1 and 2 that show an increase in the proportion of indictable cases and Crown Court cases.

Table 3 - Volumes of disposals of various types, 2009-2010, all offenders

	Number of sentences, 2009	Number of sentences, 2010	Absolute change	Percentage change
Fine	946,146	893,931	-52,215	-5.5%
Community Order	195,903	189,321	-6,582	-3.4%
Suspended Sentence Order	45,157	48,118	2,961	6.6%
Immediate custody	100,231	101,513	1,282	1.3%
Other disposals	119,468	132,464	12,996	10.9%

4.17

If sentencing practice was unchanging from year to year, then the changes in disposal types shown in Table 3 could be attributed to non sentencing factors. However, since sentencing practice is not fixed, it is difficult to distinguish whether changes in the sentencing patterns are due to changes in non sentencing factors – for example, the volume and severity of cases coming before the courts - or changes in the sentencing practice of courts.

4.18

The resource effects of changes in sentencing volumes and the composition of cases coming before the courts are therefore ambiguous. Lower overall sentencing volumes would tend to decrease resource requirements, whereas increased volumes amongst the most serious offences suggests a movement towards some of more expensive disposal types, particularly custody. It is unclear to what extent changing patterns of the use of disposal types are being driven by changes in the severity of cases, or by changes in the sentencing practice of courts.

Recall

4.19

An offender is recalled to custody by the Secretary of State if they have been released from custody, but breach the conditions of their licence or appear to be at risk of doing so. Since time served in custody is considerably more expensive than time spent on licence, recall decisions have a substantial resource cost.

4.20

The number of offenders in custody as a result of recall increased by two per cent to 5,625 between end March 2010 and end March 2011. This suggests that over the past year there has been a slight increase in pressure on prison resources arising from the recall of offenders.

4.21

The number of offenders on post release supervision rose by seven per cent to 37,229 at the end of 2010, from 34,881 at the end of 2009. The increase in offenders in prison following recall therefore appears to be due more to a rise in the number of offenders on post release supervision and thus eligible for recall, rather than an increase in the rate at which offenders are recalled.

Breach

4.22

If an offender breaches a court order, they must return to court where they are re-sentenced. The revised sentence will typically add or augment requirements to the order, or involve custody. Breaches can therefore have significant resource implications.

4.23

Detailed data is not published on the number of offenders who breach Community Orders or Suspended Sentence Orders or the outcomes of these breaches. However data is published on the reasons for the termination

Breaches of Community Orders

Table 4 - Percentage of Terminations of Community Orders by reason, 2009 and 2010

	2009	2010
Ran their full course	52%	53%
Terminated early for:		
Good progress	12%	12%
Failure to comply with requirements	16%	15%
Conviction of an offence	10%	10%
Other reasons	10%	10%
All Community Orders (=100%)	130,533	130,474

4.24

Between 2009 and 10, there was a slight increase in the proportion of orders which ran their full course, and a slight decrease in orders which were terminated early as a result of a conviction for an offence.

Breaches of Suspended Sentence Orders

Table 5 - Percentage of Terminations of Community Orders by reason, 2009 and 2010

	2009	2010
Ran their full course	55%	56%
Terminated early for:		
Good progress	10%	11%
Failure to comply with requirements	12%	12%
Conviction of an offence	16%	15%
Other reasons	7%	7%
All Community Orders (=100%)	43,783	45,458

4.25

Between 2009 and 10, there was a slight increase in the proportion of Suspended Sentence Orders (SSOs) which ran their full course, and in orders terminated for good progress, and a decrease in the proportion of orders which terminated due to conviction for another offence.

4.26

Overall this data suggests that patterns of breaches of Community Orders or Suspended Sentence Orders are not a source of changing pressure on criminal justice system resources.

Number of offenders in prison for breaching court orders

4.27

The Ministry of Justice also publish figures on the number of offenders who are in prison as a result of breaching the terms of their

Community Order or Suspended Sentence Order. These figures do not include offenders who were convicted and sentenced to imprisonment for a further offence whilst on the order.

4.28

On 30 June 2010, there were 909 offenders in prison as a result of a breach. This compares to 1,134 on 30 June, 2009, and represents a drop of 19.8 per cent over the year.

4.29

This decrease is surprising given the stability in the number of terminations of court orders, and the reasons for their terminations. It is not clear why this disparity exists, but it could reflect changes in the circumstances in which breaches occurred (in other words the 'severity' of breaches), or changes in the length of time offenders are sent to custody for breaches.

Patterns of re-offending

4.30

The effect of patterns of re-offending on resources in the criminal justice system is a vast topic, which cannot be comprehensively covered in this report. The scope of this section is limited to identifying aggregate changes in reconvictions, which are the primary conduit through which re-offending impacts on correctional resources.

4.31

The following figures, which produced by the Ministry of Justice, are based on tracking the re-convictions of a representative cohort of offenders, selected from the group of offenders who are released from custody or begin a court order in the first three months of each year.

4.32

The re-conviction 'frequency rate' decreased from 155.5 in 2008 to 140.5 in 2009 (a decrease of 9.6 per cent). The frequency rate measures the number of re-convictions per hundred offenders in the 'one year follow up period' (the one year period following the release of the offender from prison, or the offender's commencement of a court order).

4.33

There was also a 0.8 percentage point drop in the re-conviction rate, from 40.1 per cent in 2008 to 39.3 per cent in 2009. The re-conviction rate is a measure of the percentage of offenders who are convicted of at least one offence in the one year follow up period.

4.34

Finally the number of severe reconvictions per 100 offenders in the one year follow-up period increased 1.1 per cent from 0.87 in 2008 to 0.88 offences. This is a measure of reconvictions for a group of offences which are considered to be of the most serious nature.

4.35

The Ministry of Justice also use a statistical methodology to produce a measure of progress in reducing re-convictions, which makes adjustments for the changing profile of offenders in each year's cohort. This provides a better measure of progress in reducing reconvictions, because without such adjustment, changes in re-convictions from year to year could simply be a result of a different offence mix or demographic mix in the cohort of offenders being tracked. The measure showed progress in reducing re-convictions between the 2008 and the 2009 cohorts.

4.36

Overall, these figures suggest that resource pressures from re-convictions reduced between 2008 and 2009.

Release decisions by the Parole Board

4.37

In recent years, changes to release provisions have meant that the Parole Board makes release decisions in fewer cases than previously. The Parole Board is now responsible for making release decisions for offenders who have been recalled to custody and are ineligible for 28 day fixed term recall, and offenders who have received indeterminate sentences. They also make release decisions in a declining number of legacy cases for offenders who were given determinate sentences under historical provisions. The primary resource impact of release decisions is on the Prison Service.

4.38

The release rate for determinate sentence prisoners rose by one percentage point between 2009 and 10 and 2010 and 11, from 18 per cent to 19 per cent. Such a change is not large enough to suggest of a significant shift in the Parole Board's behaviour with respect to these cases: it could simply reflect a small change in the composition of the caseload between these years.

4.39

The release rate for indeterminate sentence prisoners rose by four percentage points between 2009/10 and 2010/11, from 11 per cent to 15 per cent. Of indeterminate cases, the largest caseload was amongst offenders sentenced to indeterminate sentences for public protection (IPPs). Amongst these offenders, the release rate rose by one percentage point, from five per cent to six per cent. It is not clear whether these figures reflect an increase in the Board's propensity to release prisoners, or a fluctuation in the composition of their caseload.

4.40

Overall, these figures suggest that changes in release rates by the Parole Board may be exerting slight downward pressure on Prison Service resources.

4.41

The Parole Board's workload also has an important impact on requirements for correctional resources, because if capacity is not available to evaluate an offender's case, then no decision can be made to release an offender. In 2009/10, the Parole Board faced a significant backlog of such cases. In the past year, the Board has been successful in clearing 40 per cent of this backlog, which is likely to help alleviate pressure on prison resources.

Remand

4.42

The number of offenders in custody on remand decreased two per cent to 13,004 on 30 June 2010, from 13,276 on 30 June 2009, which suggest decreasing pressure on resources from offenders on remand.

4.43

The bulk of the decrease was amongst untried offenders, rather than offenders who had been convicted but not been sentenced.

Annex D: Summary of activities by legislative function

Mandatory requirements for annual report

- Report on the exercise of the Council's functions during the year [s.119]⁴⁰.
- Summary of monitoring information of operation and effect of guidelines [s.128(3)].
- Sentencing factors report - an assessment of the effect which any changes in the sentencing practice is having or likely to have on resources required for:
 - ◇ the provision of prison places;
 - ◇ probation provision; and
 - ◇ the provision of youth justice services [s.130].
- A non-sentencing factors report – an assessment of any significant quantitative effect, or significant change in quantitative effect - which non-sentencing factors are having, or are likely to have, on the resources needed or available for giving effect to sentences imposed by courts. Non-sentencing factors are factors which do not relate to the sentencing practice of the courts and include:
 - ◇ recalling of persons to prison;
 - ◇ breaches of orders (community orders, suspended sentence order, youth rehabilitation orders);
 - ◇ patterns of re-offending;
 - ◇ decisions or recommendations for release made by the parole board;
 - ◇ early release under discretionary powers of persons detained in prison; and
 - ◇ remanding of persons in custody [s.131].

The Council's functions

With regard to guidelines, the Council:

- must prepare guidelines about guilty pleas [s.120 (3a)];
- must prepare guidelines about the rule of law as to the totality of sentences [s.120 (3)(b)];
- may prepare guidelines about any other matters - including allocation - with regard to statutory matters in s.120(11) [s.120(4) and s.122]; and
- must consult when preparing guidelines [s.120(6)] and prepare resource implications [s.127].

With regard to monitoring, the Council must monitor the operation and effect of its sentencing guidelines and consider what conclusions can be drawn from the information obtained, in particular about:

- the frequency with which, and extent to which, courts depart from sentencing guidelines;
- factors which influence the sentences imposed by courts;
- the effect of the guidelines in promoting consistency; and
- the effect of guidelines on the promotion of public confidence in the criminal justice system [s.128].

⁴⁰ This and all subsequent references on this page are to the Coroners and Justice Act 2009

With regard to promoting awareness, the Council must publish at such intervals as it considers appropriate:

- information regarding the sentencing practice of the magistrates in relation to each local justice area; and
- information regarding the sentencing practice of the Crown Court in relation to each location at which the Crown Court sits [s.129(1)].

The Council may also promote awareness of matters relating to the sentencing of offenders, in particular:

- sentences imposed;
- costs of different sentences and their relative effectiveness in preventing re-offending; and
- the operation and effect of guidelines [s.129(2)].

With regard to resources, the Council:

- may provide the Lord Chancellor with a non-sentencing factors report, and may publish that report [s.131(2)]; and
- has a duty to prepare a report where the Lord Chancellor refers any government policy or proposal likely to have significant effect on resources for prison, probation or youth justice services [s.123].



Copies of this report may be obtained from our website:
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