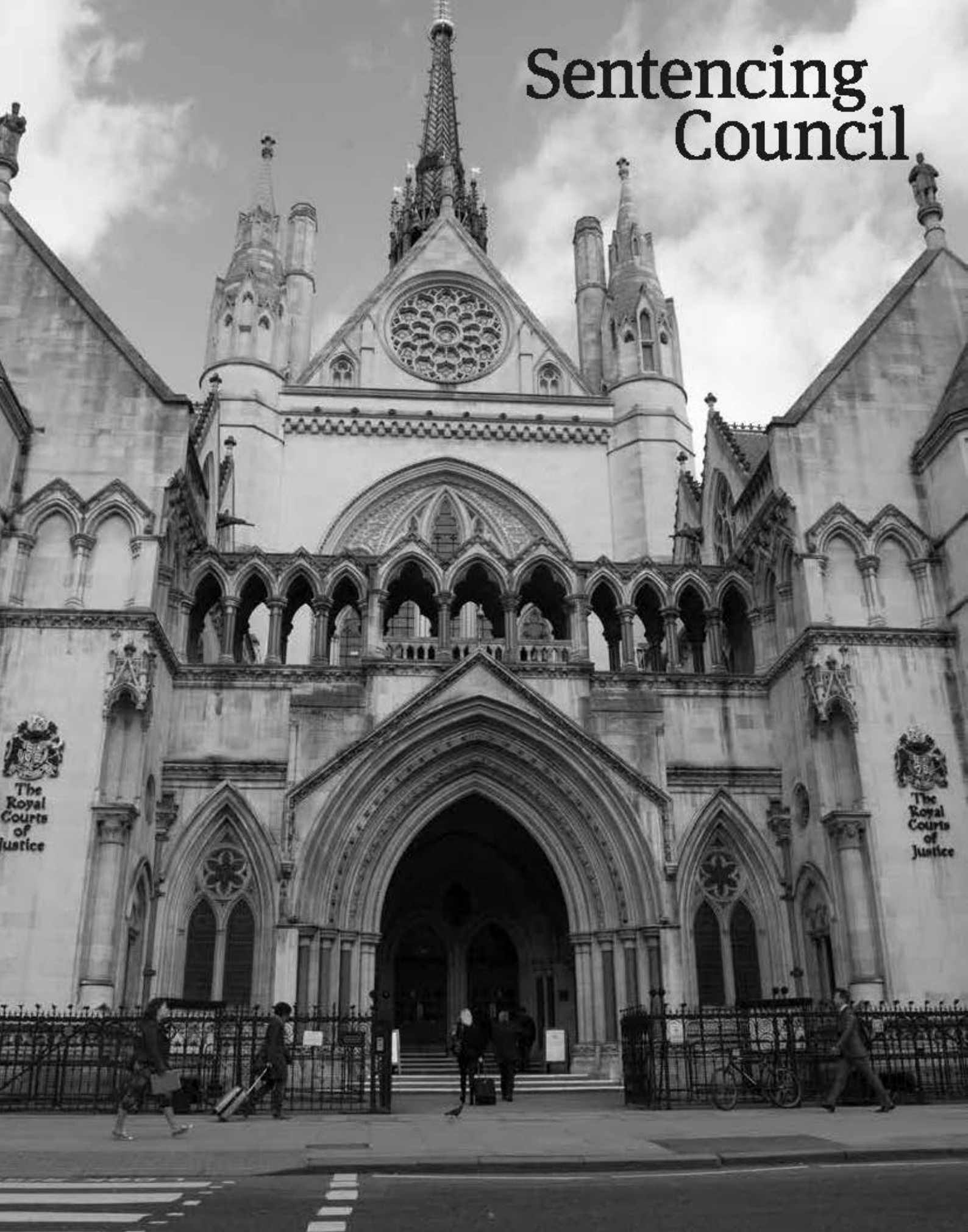


Sentencing Council



Sentencing Council
Annual Report 2013/14

Sentencing Council

Sentencing Council Annual Report 2013/14

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice

This report is presented to Parliament pursuant to Section 119(2) of the Coroners and Justice Act 2009



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Print ISBN 9781474111379

Web ISBN 9781474111386

Printed in the UK by the Williams Lea Group on behalf of the Controller of Her Majesty's Stationery Office

ID 17101401 10/14

Printed on paper containing 75% recycled fibre content minimum

Contents

Foreword	1
Introduction	5
Activity and achievements	6
Guidelines	7
environmental offences	7
fraud offences	7
sexual offences	9
Work in progress	11
guilty pleas	11
health and safety offences	12
robbery offences	13
theft offences	13
Analysis and research	15
statistical monitoring and analysis	15
social research	19
resource assessments	21
Communications	23
Summary of achievements - timeline	29
Progress against 2013/14 Business Plan	30
Budget and support activity	32
Annex A: About the Sentencing Council	34
Annex B: Membership	38
Annex C: Sentencing factors report	40
Annex D: Non-sentencing factors report	43
Annex E: Summary of activities by legislative function	47



Foreword

by the Chairman

It was a great honour to assume responsibility as Chairman of the Sentencing Council in November 2013 from Lord Justice Leveson. I thank him on behalf of the Council for the very solid foundation he laid and pay tribute to the considerable achievements of the Council under his leadership.

The Council has now been in existence for four years and I believe it is the right time to review our progress. It is fair to say that at the time of its inception there was some scepticism as to what the Council could achieve. I have been a member of the Council since the start and am very proud of what the Council has achieved in a relatively short period with limited resources. Firstly, the Council has established itself as an expert and credible body amongst the judiciary and legal practitioners meaning that the guidelines have become the bedrock of sentencing. Secondly, through its consultation processes and engagement with expert bodies, it has earned itself a reputation as a genuinely consultative body, listening to the feedback of those who are tasked with the application of the guidelines. Thirdly, its proactive and positive engagement with the media has resulted in widespread and broadly positive coverage of the Council's work, all of which helps to improve public understanding of the sentencing process. Finally, the Council has become recognised as an excellent place to work as reflected in one of the highest staff survey scores of the Ministry of Justice and its associated bodies. This is an achievement of which the Council is rightly proud as it can only achieve what it does, due to the efforts of its staff.

But the Council is not in self-congratulatory mode; whilst it is right to recognise our achievements over the first four years, it is also an opportunity to consider areas where more could be done and to look to the future. It is important to recognise that the Council was set up with a very ambitious remit in terms of breadth of statutory functions but a very small budget within which to deliver these. The Council is tasked with many functions in addition to the production of guidelines and its resources are already spread thinly. In line with

all public sector bodies, the Council can only anticipate decreases not increases to its budget which will undoubtedly have an impact on the work that the Council can undertake both in relation to its core function of producing guidelines and additional functions.

Since its inception, the Council has been extremely productive in developing guidelines for sentencers with a total of eight consultations and eight definitive guidelines in four years. This report of our progress for 2013/14 and our planned work for 2014 – confirms that the Council continues to work at pace, although we remain responsive to external events. For example, the Council has delayed its work on guidelines for knife offences pending the outcome of the Government's decision on whether to introduce minimum sentences for those offences.

The Council recognises that in three to four years time it will have produced guidelines for all the most frequently prosecuted criminal offences. There will be a continuing duty to evaluate the impact of the guidelines that it has introduced and to review guidelines in light of evaluation findings; this will begin with a review of the assault guideline in early 2015. However, the Council appreciates that it will need to set time aside to consider whether it should broaden the scope of its work. For example, in 2014/15 the Council will start work on a more general piece of work surrounding the sentencing of youth offences which will involve major considerations of principle for a very different jurisdiction to that considered by the Council to date.

There are two other main areas of work which the Council has responsibility for in addition to its work on guidelines, namely confidence and communications and analysis and research.

From the outset, the Council has endeavoured to improve public understanding of the sentencing process. Whilst we have made good progress with this as evidenced by the media coverage of our work and the breadth of our communications activities, I believe there is more to be done by working with more of our external partners to develop materials of interest to their users; I regard the explanatory leaflets we produced this year in conjunction with the Metropolitan Police Family Liaison and Disaster Management Team and the Parole Board for those working with the families of victims of murder and manslaughter, as a prime example of this.

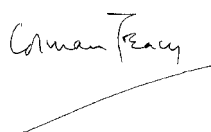
Analysis and research underpins much of the Council's work and consequently accounts for a significant proportion of the Council's

budget. The Crown Court Sentencing Survey continues to run and I wish to express my gratitude to all those judges who take the time and effort to complete the survey. We are in the process of critically examining our processes in this respect, together with the feasibility of expanding the survey into the magistrates' courts. I also wish to thank all sentencers who have given us their time and the benefit of their experience in testing draft models for guidelines. This testing provides invaluable insight into how the guidelines will be applied in practice and allows the Council to consider common themes which directly influence the structure and content of the guidelines. I look forward to continuing our work with sentencers in this way over the coming year.

With increasing pressure on its budget, the Council will need to consider the resources which can be devoted to the two areas of work outlined above.

Whilst we have been reviewing our progress, the pace of work on the development of current projects has not slowed this year. Not only did the Council produce its largest and most sensitive guideline (the sexual offences guideline), it also developed its first guideline for the sentencing of corporate offenders in the environmental guideline which in turn influenced the development of the model for sentencing corporate fraud offenders. None of this would have been possible without the dedication and commitment of the Council members whose skills, breadth of experience and judgment ensure that the Council continues to produce work of the highest quality. My particular thanks go to District Judge Anne Arnold, whose term expired in April 2014 for her work with officials and the media; in her place I welcome District Judge Richard Williams. I also congratulate Mr Justice William Davis on his promotion to the High Court in May 2014 and welcome HHJ Julian Goose, Recorder of Sheffield as a Crown Court member of the Council with effect from 26 June 2014. Mr Justice Davis has been co-opted to the Council until April 2015 to continue leading our work on a consultation for robbery offences.

I commend this detailed account of the Council's activities.



Colman Treacy

The Right Honourable Lord Justice Treacy
October 2014



Introduction

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice. It was set up by part four of the Coroners and Justice Act 2009 to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary.

The aims of the Sentencing Council 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.

This annual report covers the period from 1 April 2013 to 31 March 2014. For information on previous Sentencing Council activity, please refer to our 2012/13 annual report which is available on our website: **www.sentencingcouncil.org.uk**

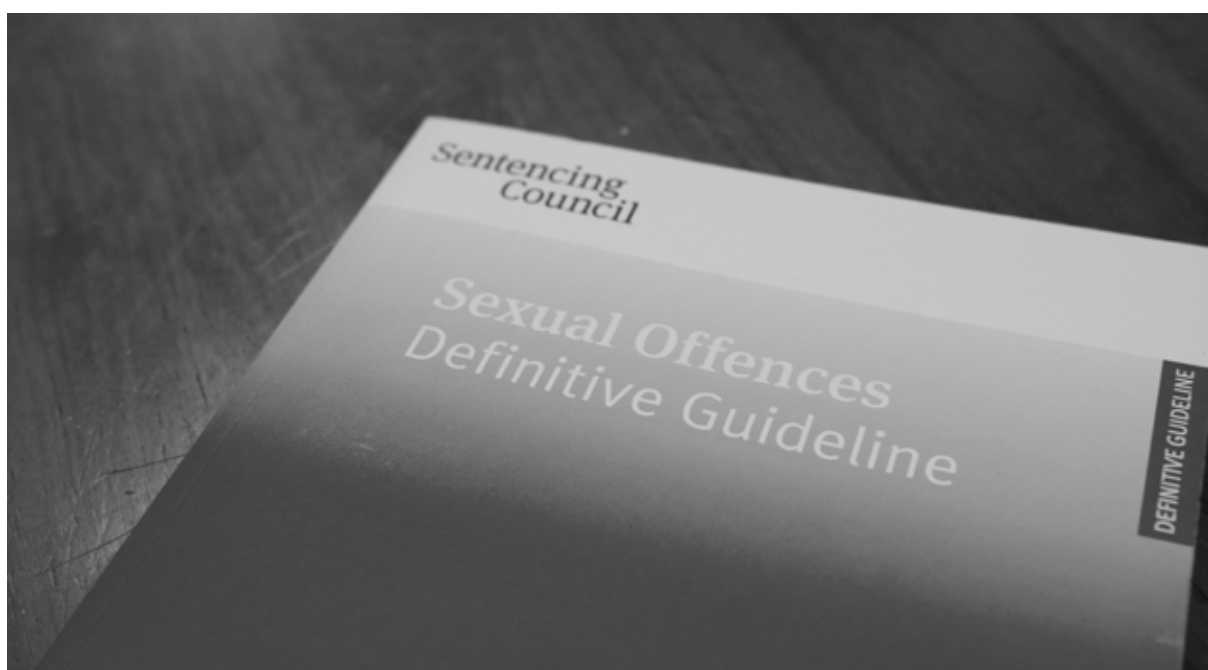
Activity and achievements 2013/2014

The Sentencing Council is responsible for developing sentencing guidelines and monitoring their use.¹

The work of the Sentencing Council over the last four years has resulted in a very visible change in courts with all parties now referring to our guidelines.

In 2013/14, the Council has:

- concluded its consultation on environmental offences and published the definitive guideline;
- carried out a consultation on all fraud offences and published the definitive guideline on corporate fraud;
- published the definitive guideline on sexual offences achieving positive and widespread media coverage;
- published a report on the findings of the ongoing Crown Court Sentencing Survey;
- produced resource assessments in association with draft guidelines;
- carried out research to support guideline development; and
- increased visibility of the Council through 20 speaking engagements.



¹ See Annex E for full details of all the roles and functions

Guidelines

Guidelines are intended to create a consistent approach to sentencing, while preserving judicial discretion. If in any particular case the judge feels it is within the interests of justice to sentence outside the guideline, this is allowed for specifically within the Coroners and Justice Act.²

Environmental offences

The Council completed its consultation and issued the definitive guideline on 26 February 2014

Rationale

There was limited guidance for sentencers on environmental offences and the Council therefore concluded that there was a need for improved guidance in this area to address inconsistencies in sentencing, including the levels of fines being given. The Council also received a number of requests from interested parties in the area for a guideline.

Approach

A detailed description of the development of the guideline is included in our 2012/13 annual report.

In publishing this guideline, the Council has provided further guidance on sentencing corporate offenders and the work is being

considered in the development of other regulatory offences such as food and health and safety offences.

Consultation

The Council received a total of 124 responses to the consultation including from magistrates, judges, industry and environmental groups. The response was generally positive. However, the Council made a number of changes to the guideline in response to the issues raised by respondents. These included adjustments to starting points and ranges and the factors to be taken into account in finalising a fine. The Council will work with the Environment Agency over the coming year to monitor closely the initial impact of the guideline from the date it comes into force in July 2014.

Fraud, bribery and money laundering offences

The Council developed its fraud, bribery and money laundering guideline issuing a draft guideline for consultation on 27 June 2013 and a definitive guideline on corporate offending on 31 January 2014. The remainder of the definitive guideline covering individual offenders comes into effect 1st October 2014.

² s.125(1) Coroners and Justice Act 2009

Rationale

The Council agreed to expedite its planned work on this guideline following a request made by the Lord Chancellor to do so in 2012. The request was to ensure that there would be a corporate fraud guideline in existence to support the introduction of Deferred Prosecution Agreements. The previous Sentencing Guidelines Council guideline did not include guidance for sentencing conspiracy to defraud, money laundering or bribery offences, nor did it give guidance for sentencing corporate offenders for this type of offending. The Council agreed it would be opportune to provide guidance on these offences within a revised guideline.

Approach

In preparing the draft guideline for consultation, the Council had regard to current sentencing practice, reported cases and international models of fine calculation for corporate offenders. The Council commissioned NatCen Social Research to undertake research on online fraud. In particular, it explored the ways that online fraud is being committed, its impact on victims, and attitudes to concepts relating to sentencing fraud offences. The Council's social research team carried out sentencing exercises with Crown Court judges and magistrates over several months, interviewing them about how they sentence currently and any issues they identified with early drafts of the guidelines. This helped the Council finalise the guidelines for consultation.

Consultation

The consultation contained seven guidelines; six for sentencing individuals and one for sentencing corporate offenders. It ran for 14 weeks during which time a number of events were held. The events were co-hosted with a cross section of interested parties in order to enable representatives of key interested parties to consider the proposals that were of particular relevance to them in detail and to provide officials and Council members with their views.

In total 84 responses were received; 76 of these were sent by e-mail or letter and eight were submitted online.

Corporate Offenders

Post consultation the Council expedited consideration of the responses to the draft guideline for corporate offenders in order that it would be available, if not in force, as a point of reference for judges applying the Deferred Prosecution Agreements scheme.

The Council's underlying principles when drafting this guideline were that:

- any profit must be removed; and
- the penalty must have a real economic impact on the offender including on the shareholders.

The majority of respondents welcomed the introduction of this guideline and were supportive of the approach in the proposal. It was published on 31 January 2014 and will come into force on 1 October 2014.

Individual Offenders

The Council began consideration of the responses to the guidelines for individuals convicted of these offences in December 2013. There was considerable overlap of approach across the guidelines which led to the Council considering responses thematically rather than by each guideline. Consultees were broadly supportive of the suggested approach to culpability. The two stage approach to harm in the fraud guideline which takes into account both the financial loss and the impact on the victim, was welcomed as a progressive move that recognised the impact this type of offending can have.

The Council is continuing to analyse the responses with the aim of publishing the definitive guideline in summer 2014.

Sexual offences

As set out in the 2012/13 annual report, the Council consulted on a new sexual offences guideline, its most comprehensive guideline to date. At the time of our previous annual report, the consultation had just closed and the Council was conducting detailed analysis of the significant number of responses it had received. In the period of this report, the Council issued the definitive guideline (12 December 2013) and brought it into force on 1 April 2014.

Rationale

It was nearly 10 years since the Sexual Offences Act 2003 came into force and a

clearer picture was emerging of the way in which sexual offences were being dealt with by the courts. There were also areas where the nature of offending had changed; for example, the increased use of technology to facilitate the sexual exploitation and grooming of children, and increased understanding of offenders' behaviour when targeting children. There was a clear need for the old guidelines to be amended to reflect these developments.

A total of 6,858 adults were sentenced for sexual offences covered by the Sexual Offences definitive guideline in 2013.⁶ The increasing volume of offences means it is important for judges and magistrates to have relevant and up to date guidance in this complex area of sentencing. It is equally important that the process for arriving at sentences is transparent to victims and the public.

Approach

This was the single largest piece of work undertaken by the Council and one of the most complex, covering 55 separate offences across 33 guidelines and taking nearly three years to develop. From the outset, the sensitivity and complexity of this area of sentencing was at the forefront of the Council's thinking. It was also clear that the nature of offenders' behaviour and the reporting of offences by victims of sexual offending was evolving and the extent of the impact of such offences has been increasingly highlighted. Society's understanding of the impact of these offences continued to evolve during the development of the guidelines, as shown by a series of high-profile cases which have further evidenced

⁶ This includes offences involving indecent photographs of children which for technical reasons are not included in the Ministry of Justice's category of 'sexual offences'. The figure is therefore not comparable to the number of sexual offences cases reported by the Ministry of Justice.

the very varied nature of sexual offending. The Council needed to ensure that the guidelines it produced were flexible enough to accommodate such developments and to assist judges in reflecting the core aspects of harm and culpability in sentence levels. The Council's approach to sentencing for the majority of these offences was to move away from the SGC model of focusing on the nature of the physical activity involved as the primary determinant of harm. Instead, the Council's model recognises that all sexual offences have baselines of inherent harm and culpability. It goes on to identify a series of additional factors for both harm and culpability, any one of which will increase the sentence starting point. This approach was welcomed by a broad range of respondents, particularly for its inclusion of the psychological impact of the offence on the victim.

Consultation

Setting out the Council's thinking across such a wide range of offences led to a significant consultation document, and its sheer size made it a challenge for those responding. Nonetheless, the Council was hugely impressed by the time, effort and consideration that went into the 165 responses it received. What was particularly important was that where respondents disagreed with the proposals, they provided reasoned argument as to why and suggested alternative ways to deal with the issue. The Council maintained its overall approach, but the responses were of great assistance in honing the guidelines to make them as clear and transparent as possible. Changes

that were made as a result of the responses received were set out in the Council's detailed response paper.⁷

Comments from the consultation include:

"We believe that the public would share our view that children should never be viewed as having truly consented when sentencing child sexual abuse and exploitation. The Council's review of sentencing guidelines has begun the process through its removal of explicit references to consent and ostensible consent."

Barnardo's

"In the case of those trafficked for sexual exploitation, the victims often do not see themselves as victims and may think they have consented to the exploitation in order to earn money or say that they have as they fear the repercussions of telling the truth. This is also the case for those who have been groomed and believe that the accused is their 'boyfriend' or loves them... This [guideline] should protect those who believe they are able to consent to sex and seek to punish those who abuse their innocence and vulnerability."

ECPAT UK - Campaigning against child trafficking and transnational child exploitation

⁷ http://sentencingcouncil.judiciary.gov.uk/docs/Final_Sexual_Offences_Response_to_Consultation_%28web%29.pdf

Work in progress

A number of new guideline projects are under way and are outlined below.

Guilty pleas

The Council resumed work it had paused in 2011 on a guideline for reductions in guilty pleas.

Rationale

The Council has a legislative duty to produce a guideline on reductions for guilty pleas.⁸ There is a current definitive guideline issued by the Sentencing Guidelines Council (SGC) in 2007: 'Reduction in Sentence for a Guilty Plea'. The Council originally commenced work on a new guideline in 2010, but the work was put on hold when the government indicated that it might legislate in this area. By 2013, it was clear that there were no plans to legislate and so the Council resumed consideration of the guideline.

Approach

The Council drew on research that had been undertaken in 2011 and carried out further research amongst sentencers on how the SGC guideline was working in practice. The Council aims to improve clarity and consistency in the application of guilty plea reductions by producing a new more concise guideline. The intention is for the decision

making process in the proposed guideline to provide a clear structure, not only for sentencers, but to provide more certainty for offenders and their advisers to encourage early pleas, and to enable victims, witnesses and the public to have a better understanding of how a final sentence has been reached. The Council is clear that the main reason for encouraging guilty pleas is that an admission of guilt reduces the impact of the crime on victims and witnesses and saves them from having to attend court and give evidence. A draft guideline was therefore developed with the aim of encouraging offenders to admit their guilt as early as possible.

A guilty plea guideline is relevant to almost all criminal cases in England and Wales and so it is essential that the Council is able to accurately assess the impact of any proposed guideline. This was not possible to do in the context of various ongoing and proposed changes in the wider criminal justice system.

Consultation

The Council decided to delay consultation on a draft guideline until the changes outlined above had been made and their effects known - we anticipate this will be in mid-2015. Details of progress with the guideline will be found in our business plan available on the website.

www.sentencingcouncil.org.uk

⁸ Coroners and Justice Act 2009, s. 120 (3) (a)

Health and safety, corporate manslaughter and food safety and hygiene offences

Over the past year the Council has commenced work on developing wide ranging guidelines for health and safety, corporate manslaughter and food safety and hygiene offences. The Council anticipates publishing the draft guidelines for consultation towards the end of 2014.

Rationale

The Council produced the environmental offences guideline following requests for further guidance in this area and research demonstrating a lack of familiarity with sentencing environmental offences. The Council found that magistrates in particular lacked confidence in assessing the seriousness of offences and pitching fines at appropriate levels, particularly for corporate offenders. In the past year the Council has reviewed other offences where similar issues arise and where guidelines would be of assistance to the courts.

The Council identified health and safety and food hygiene and safety as areas where the amount of guidance for sentencers varied. Given that these offences are seen less frequently by the courts, the Council considered that sentencers may lack familiarity with these areas and guidelines may be of assistance. In addition, these offences involve a wide range of offenders – from individuals to large corporations – and the Council considered that additional

guidance and support would assist sentencers in taking a consistent and fair approach to sentencing these offences.

The Council reviewed current sentencing practice in this area and identified, in some cases, a lack of consistency in the approach to sentencing similar offences committed by similar offenders across the country. After considering the current fine levels in view of recent developments in the approach to sentencing corporate offenders (for example, recent Court of Appeal cases), the Council concluded that guidance to assist magistrates and judges in pitching appropriate fines would be valuable.

The Council also determined to update the Sentencing Guidelines Council's guideline on corporate manslaughter to ensure that it is consistent with the approach being proposed for the related offences of health and safety offences causing death.

Approach

The Council has undertaken a statistical analysis of current sentencing practice to help inform the development of the guideline.

To supplement statistical data the Council has undertaken a review of sentencing in recent cases. The Council has used a range of sources for this review, including transcripts of Crown Court and Court of Appeal cases, information provided by prosecution agencies, media reports and information from Companies House regarding offenders' means.

To develop the overall structure and approach of the guideline, the Council has drawn on

the lessons learnt from research with a small pool of Crown Court judges, District Judges and magistrates from across the country undertaken in 2012/13 when developing the environmental guideline. The Council has considered this information to help inform the appropriate structure and approach of a guideline for health and safety, corporate manslaughter and food safety and hygiene offences.

In addition, the Council has approached a small number of experts and sentencers with expertise in each of the fields covered by the guidelines to seek feedback and challenge on early proposals.

Consultation

It is intended to consult on a draft guideline towards the end of 2014.

Robbery offences

The Council began consideration of a guideline on robbery in January 2014.

Rationale

The Sentencing Guidelines Council published a definitive guideline for robbery in July 2006. This guideline groups into one guideline street robbery, robberies of small businesses and less sophisticated commercial robberies. No guidance is provided for violent personal robberies in the home or for professionally planned commercial robberies. The Council has agreed to include guidance for sentencing these types of robbery within the new guideline; it will also apply to conspiracies.

Approach

In developing the draft guideline the Council considered statistical data from the court proceedings database and the Crown Court Sentencing Survey for the offences covered in the guideline. This data gives a reasonably accurate picture of current sentencing levels by location of the offence but there are limitations with the level of detail that can be obtained. An example of this is the lack of data relating to the value of the goods stolen. To assist the Council to understand which are the most significant factors taken into account when sentencing robbery offences and the effect these have on the final sentence, a qualitative analysis exercise of a random sample of first instance transcripts of sentencing remarks of robbery offences will be undertaken. In addition to these sources of data, regard was paid to relevant case law.

Consultation

It is intended to consult on a draft guideline towards the end of 2014.

Theft offences

The Council issued a draft guideline for consultation on 3 April 2014.

Rationale

Courts see a very high number of theft cases coming before them, and theft cases can cover a wide range of offences including stealing goods from shops and the illegal abstraction of electricity. Existing sentencing guidance for theft offences is currently contained within the



Sentencing Guidelines Council (SGC) guideline, Theft and Burglary in a building other than a dwelling, published in 2008, and within the Magistrates' Court Sentencing Guidelines (MCSG). There no guideline for some common theft offences, such as the theft of cars or bicycles. The SGC guideline also contains out of date burglary guidance, as a new definitive guideline covering burglary offences came into force in 2012.

Approach

The Council aims to provide courts with effective guidance that will assist them to give consistent and proportionate sentences to the very varied spectrum of offenders that come before them for theft offences. The draft guideline sets out a clear, step by step decision making process for the courts to use when sentencing theft and handling offences.

This approach is also intended to provide more transparency in the sentencing process for the public and victims of these offences.

The draft guideline seeks to give greater recognition to the harm caused to victims of theft, which can go beyond the financial impact, as thefts can cause real inconvenience to victims, emotional distress, fear and loss of confidence. The guideline also seeks to reflect the impact that metal thefts can have, both in terms of the disruption to infrastructure, railways, telephones and so on, but also the loss or damage to heritage structures such as war memorials.

Consultation

The Council's consultation on the draft guideline was launched on 3 April 2014 and will conclude on 26 June 2014. It sought views from a wide range of interested parties including sentencers, retailers, legal professionals and members of the public.

Analysis and research

The Council has a 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 Council is to carry out analysis and research into sentencing.

Ongoing work includes, and has been informed by, the results of the Crown Court Sentencing Survey, various social research studies, the development of publications such as resource assessments and analysis and research bulletins that support the development of guidelines.

Statistical monitoring and analysis

The Council has a legislative duty to monitor the operation and effect of its guidelines and to draw conclusions about:

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

The Crown Court Sentencing Survey collects the information required to fulfil these obligations in the Crown Court. Initial work has begun to consider the options for collecting the information the Council requires from magistrates' courts.

Crown Court Sentencing Survey

The Crown Court Sentencing Survey (introduced in October 2010) is the first survey to capture data on the way that Crown Court judges sentence across England and Wales.

As sentencers provide the information for the survey, the findings provide a unique insight into sentencing decisions. This includes the factors affecting sentencing, the ways that guidelines are being applied and areas where guidelines can or need to be developed. Data collected includes factors affecting seriousness, guilty plea reductions and sentence outcomes for specific offences. For example, analysis of the aggravating factors recorded was used to determine at which step they should be included in the draft sexual offences guideline.

Survey response rates continue to remain relatively high averaging over 60 per cent,

and comparative analyses conducted by the Council's analysis and research team ensured that conclusions drawn from the survey were robust. The Crown Court Sentencing Survey report contains further methodological details.⁹

CCSS Publications

The results from the survey are published as a government official statistics bulletin which is available on the Council's website. First published in May 2012, the bulletin provides a national overview of how key factors which are taken into account when sentencing, influence the final sentence outcome. The bulletin contributes to the fulfilment of the Council's obligation to promote public confidence in sentencing. Results from the survey covering the year from January to December 2013 have been published on our website.¹⁰

Using the data

The survey has contributed to work on reviewing the reduction in sentence currently available for offenders that plead guilty by identifying the timing and location of any guilty plea.

The survey is also used to produce estimates of the sentence before taking any guilty plea into account. This information is used to determine current sentencing practice before the guilty plea discount is applied and therefore appropriate guideline ranges.

During 2013/14, the survey has contributed to the development of the theft offences draft guideline by providing a unique source of data on the levels of recent and relevant previous

convictions, which the sentencer must take into account. The results were included in the analysis and research bulletin for theft offences which was published alongside the consultation for the draft theft guideline.¹¹

Work is also under way to inform the development of the draft robbery offences guideline by providing a more detailed breakdown of current sentencing practice for these offences than is available from other existing sources, for example current sentencing practice for street robbery and robbery in a dwelling.

Further work

The Council is in the process of analysing the impact of the assault guideline on sentencing practice in the Crown Court with the intention of publishing the results later in 2014. This will be followed by a similar analysis of the burglary data following the definitive burglary guideline which came into force on 16 January 2012. We intend to publish these results in 2015.

Monitoring use of the guidelines

The Council decided that it is only appropriate for it to monitor departures from guidelines issued by the Sentencing Council, rather than those issued by the Sentencing Guidelines Council or flowing from decisions of the Court of Appeal (Criminal Division).

The Sentencing Council definitive guidelines that have been in force long enough for monitoring to be effective are assault, burglary, drugs and dangerous dog offences.

⁹ <http://sentencingcouncil.judiciary.gov.uk/facts/crown-survey-results-2013.htm>

¹⁰ This differs from the information published by MoJ which is for all previous convictions irrespective of how recent or relevant they may be to the most recent offence

¹¹ <http://sentencingcouncil.judiciary.gov.uk/facts/research-and-analysis-publications.htm>

The Coroners and Justice Act defines a departure sentence as one falling outside the total offence range, rather than the category range. The offence ranges within the guidelines are intended to deal with the majority of cases for a particular offence. The Council recognises that there will be exceptional cases, the facts of which will justify imposition of a sentence outside the offence range (either above or below) and this is reflected in the language of the statute.¹²

The analysis below presents data on sentences imposed between January and December 2013 for assault, burglary, drug and dangerous dog offences from an analysis of the Crown Court Sentencing Survey and the MoJ's Court Proceedings Database in respect of sentences in magistrates' courts.¹³

Assault offences (Definitive guideline in force 13 June 2011)

- Assault occasioning actual bodily harm: 97 per cent of sentences imposed fell within the guideline offence range; two per cent were above and one per cent below the range.
- Causing grievous bodily harm with intent to do grievous bodily harm/wounding with intent to do grievous bodily harm: 92 per cent were within the range; one per cent were above and seven per cent below the range.

- Common assault: over 99 per cent were within the range and less than one per cent¹⁴ above the range.
- Inflicting grievous bodily harm/unlawful wounding: 97 per cent were within the range, two per cent were above and less than one per cent below the range.
- Assault on a police officer in the execution of his duty: 86 per cent were within the range, less than one per cent were above and 13 per cent below the range.

As part of the Council's work programme in 2014/15 it will review the *Assault Definitive Guideline* which will include a fuller investigation of these results, particularly reasons for departures above and below the ranges.

Burglary offences (Definitive guideline in force 16 January 2012)

- Domestic burglary: 97 per cent of sentences imposed fell within the guideline offence range, two per cent were above and less than one per cent were below the range.
- Non domestic burglary: 96 per cent of sentences imposed fell within the guideline offence range, less than one per cent were above and three per cent were below.

¹² Section 125 of the Coroners and Justice Act 2009 states that:

"(1) Every court —

(a) must, in sentencing an offender, follow any sentencing guidelines which are relevant to the offender's case, and

(b) must, in exercising any other function relating to the sentencing of offenders, follow any sentencing guidelines which are relevant to the exercise of the function, unless the court is satisfied that it would be contrary to the interests of justice to do so."

¹³ The analysis excludes sentences where the offender was a youth (under 18 years of age). In the Crown Court, the analysis excludes cases where the sentence imposed was a hospital order. In the magistrates' courts, the analysis excludes cases falling into the category of 'other', disposal types, because these sentences do not fit cleanly into the categories of 'below', 'within' and 'above' guideline sentencing ranges. Furthermore, due to the volatility of small volumes of data where there were fewer than 500 sentenced cases in 2013, the results for these offences are not provided. Finally, the data reflect sentences before any reductions for a guilty plea.

¹⁴ Cases where the maximum penalty was given after a guilty plea or case of racially aggravated common assault where the maximum penalty is two years' imprisonment

Drug offences (Definitive guideline in force 27 February 2012)

- Possession of a controlled drug – Class A: 83 per cent of sentences imposed fell within the guideline offence range; less than one per cent were above and 16 per cent were below the range.
- Possession of a controlled drug – Class B: over 99 per cent of sentences imposed fell within the guideline offence range and less than one per cent were above the range.
- Possession of a controlled drug – Class C: 91 per cent of sentences imposed fell within the guideline offence range and nine per cent were above the range.
- Production of a controlled drug – Class B/ cultivation of a cannabis plant: over 99 per cent of sentences imposed fell within the guideline offence range and less than one per cent were above the range.
- Supply or offering to supply a controlled drug/possession of a controlled drug with intent to supply it to another – Class A: 99 per cent of sentences imposed fell within the guideline offence range, one per cent were above and less than one per cent were below the range.
- Supply or offering to supply a controlled drug/possession of a controlled drug with intent to supply it to another – Class B: 99 per cent of sentences imposed fell within the guideline offence range and less than one per cent were above and less than one per cent were below the range.

Dangerous Dog offences (Definitive guideline in force 20 August 2012)

- Owner or person in charge of a dog dangerously out of control in a public place, injuring any person/ Owner or person in charge allowing a dog to be in a private place where the dog is not permitted to be, injuring any person: over 99 per cent of sentences imposed fell within the guideline offence range, less than one per cent were above the range.

Analysis and research bulletins (statistics)

The Council produces an analysis and research statistical bulletin relating to each new guideline. This provides information about current sentencing practice in relation to the offence covered. During the development of draft guidelines they are used to understand the parameters of current sentencing practice, and during the consultation process they ensure that those responding are better able to understand the implications of the guideline proposals.

This year, the Council has published statistical bulletins on the draft guidelines covering sexual offences and environmental offences. These were developed with advice from the Council's analysis and research sub-group; colleagues within the Ministry of Justice were consulted and provided quality assurance. The bulletins are published as part of the package of consultation documents on our website.

Social research

The Sentencing Council has continued to develop its social research work and undertaken a number of social research projects in the period covered by this report, designed to inform the development of sentencing guidelines. This work has involved collecting views from a number of different audiences: the general public, victims, and practitioners including Crown Court judges, district judges, and magistrates. The Sentencing Council's social researchers adopt a variety of methodologies, including surveys, questionnaires, content analysis of transcripts, face-to-face interviews and focus groups.

The findings from this research are critical in helping to develop sentencing guidelines and identifying any potential behavioural consequences. For example, the early work on theft offences helped to identify what type of issues sentencers take into account when dealing with these types of cases and observational research in magistrates' courts facilitated the collection of information relating to the value of theft cases, information which was not available elsewhere. The transcript work looking at sentence reductions for guilty pleas also helped inform the Council's understanding of situations in which reductions outside of the current guideline suggestions may occur.

These issues are fed into the final stages of guideline development to ensure that any necessary changes or clarifications are made to definitive guidelines.

Research on sentencing fraud offences

The Sentencing Council conducted both internal and external research on fraud to inform the development of new guidelines on fraud offences.

The external work, undertaken by NatCen Social Research explored the issue of online fraud and in particular the ways that online fraud is being committed, its impact on victims, and attitudes to concepts relating to sentencing fraud offences. The research involved a rapid evidence assessment, and interviews and focus groups with stakeholders and victims of such offences and was conducted to inform the Sentencing Council's current review of guidelines on sentencing fraud offences. The research was published in June 2013:

http://sentencingcouncil.judiciary.gov.uk/docs/Research_on_sentencing_online_fraud_offences.pdf

The internal work comprised 78 interviews with magistrates, District Judges and Crown Court Judges and was conducted in seven phases. These different phases explored views on: the key issues with regard to sentencing various fraud offences; the existing Sentencing Guidelines Council fraud guidelines; and drafts of new fraud, money laundering and bribery guidelines. All phases of the research were conducted face-to-face, using a semi-structured interview schedule. The findings from the research will be published in May 2014.

Research on guilty plea sentence reductions

Internal research was conducted in June and July 2013 to support early thinking on a revised guideline on guilty plea sentence reductions. Along with content analysis of sentencing transcripts, face-to-face interviews and focus groups were conducted with sentencers to explore issues around these reductions and how they may be applied to certain offences. The information gained from this exercise will be supplemented by further research currently being planned.

Research on sentencing robbery offences

External research on robbery, undertaken by the Institute for Criminal Policy Research at Birkbeck, University of London, was finalised in summer 2013. This was commissioned to inform the development of a sentencing guideline on robbery and involved reviewing and describing the characteristics of a sample of Crown Court sentencing hearing transcripts and Youth Court Pre-Sentence Reports. The analysis of these cases has informed decisions as to the most suitable approach for categorising robbery offences in the draft guideline, which is now being researched with Crown Court judges.

Research on sentencing sexual offences

Research conducted internally using face-to-face interviews, was undertaken with 64 Crown Court judges to inform the development of a revised sexual offences guideline. This

covered collecting information on views and issues associated with various drafts of the guideline and establishing if there were any unintended consequences of the proposals. A small-scale email survey of judges was also conducted as well as some content analysis of sentencing transcripts. The findings from the research were published in December 2013: http://sentencingcouncil.judiciary.gov.uk/docs/Final_Sexual_offences_social_research_bulletin.pdf

Research on sentencing environmental offences

Research conducted internally was undertaken with 36 Crown Court judges, District Judges and magistrates to inform the development of a guideline for sentencing environmental offences. The research was conducted face-to-face, using a semi-structured interview schedule and offence scenarios to establish issues that may arise with use of the guideline in practice. The findings from this research were published in February 2014: http://sentencingcouncil.judiciary.gov.uk/docs/Final_research_bulletin_environmental_offences.pdf



Research on sentencing theft offences

Internal research on theft commenced in autumn 2013 with some content analysis of Crown Court sentencing transcripts to help support early development of a new guideline. Observational research in magistrates' courts was also undertaken to provide further information at this stage. An exercise, involving face-to-face interviews with 44 sentencers was then conducted to explore issues associated with the draft revised guidelines and establish any likely unintended consequences. The findings from these exercises will be available in due course.

Content analysis of Crown Court sentencing transcripts

In addition to content analysis of Crown Court transcripts as part of wider exercises (see above), two further standalone exercises were conducted in 2013/14 to provide information on sentences and to map out the features involved in the cases. These exercises were in relation to driving offences causing death and health and safety offences and have formed or will form part of the information considered in early stages of planning guidelines in these areas.

Work in progress

Other research is ongoing, including research with judges and magistrates on theft and robbery. We are also developing research to support a revision of the dangerous dogs guideline and exploratory research using an online survey to elicit views on the current guidance available for youth sentencing.

Resource assessments

When formulating guidelines, the Council has a statutory 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 services.

The Council also has a statutory duty to have regard to the cost of different sentences and their relative effectiveness in preventing re-offending.

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 re-offending.

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 the factors that influence 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.

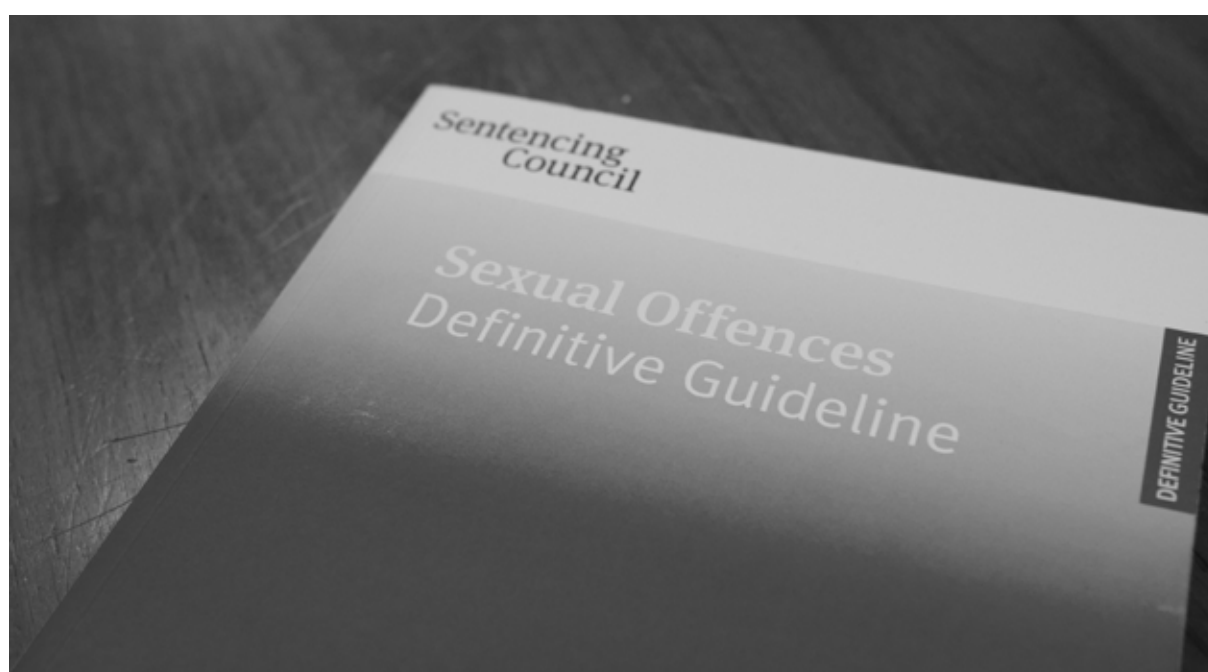
The resource assessment process is especially useful in helping the Council compare the impact of different options for guideline sentencing ranges. For instance, if the Council is debating the relative merits of two different proposals for sentencing ranges for a given offence, the analysis and research team is able to advise on differences between the two proposals in terms of resource impact.

Implementation

During its fourth year, the Council has prepared resource assessments for its guidelines on sexual offences, fraud offences, theft offences and environmental offences.

These resource assessments were underpinned by Council's research and analysis work that it conducted in support of these guidelines. Specifically, the Council's

understanding of the guidelines' likely effect on sentencing practice was improved by the research interviews which were conducted with sentencers, and detailed analysis and modelling work using sentencing statistics from the Crown Court Sentencing Survey and the Ministry of Justice's court proceedings database. This is a key area in which evidence collected by the Crown Court Sentencing Survey is contributing to the Council's decision making.



Communications

The primary aim of the Council's communications activity is to improve knowledge about sentencing so that the approach to sentencing offenders is viewed as proportionate, fair and consistent by victims of crime, the general public, the police and key participants in the criminal justice process.

In more detail, the aims are that:

- members of the public and victims have a clear knowledge of how the sentencing process works so that they are able to draw their own conclusions about whether sentencing is proportionate and fair both in cases in which they are involved and in high profile cases covered by the media;
- judges and criminal justice practitioners have confidence in the guidelines and in the sentencing process which the guidelines promote;
- key players in the criminal justice system such as police and probation are advocates of the sentencing process, and use the guidelines as a touchstone to explain the sentencing process to victims and others involved.

As a result, the Sentencing Council is seen as the expert body on sentencing in England and Wales.

Achievements

A range of communications activity has been carried out to deliver the above aims.

Particular highlights are:

- achieving positive and widespread media coverage of the sexual offences definitive guideline launch against a backdrop of high profile media coverage of child sexual offences;
- achieving widespread and positive or neutral media coverage of other guideline and consultation launches;
- the timely publication and distribution of consultations, definitive guidelines and all supporting materials in hard copy and online;
- increased visibility of the Council through 20 speaking engagements undertaken by members and staff speaking at magistrates' and other events; and
- continued, positive relationships at all levels with key partners, for example, government, judicial bodies and third sector parties.

Consultations

As in previous years, when developing each new guideline, the Council has actively sought the views of criminal justice professionals, others with an interest in the subject matter and members of the public more widely. There was one consultation launch during this period.

- Fraud, bribery and money laundering offences – 27 June to 4 October 2013

The consultation on this guideline ran for 14 weeks during which time seven events were held, co-hosted with a cross section of interested parties. A total of 84 responses to the consultation were received.

The guideline consultation launch was of significant interest to media with Council spokespeople giving nine interviews including the Today programme and Radio 5 Live, while other high profile programmes like You and Yours and ITV Daybreak also covered the announcement. Immediately after the announcement, 36 news items appeared including the front page of the FT and an article in The Times from Council member Michael Caplan. Reporting represented accurately the scope and purpose of the guideline which was very beneficial in communicating the Council's work to the public.

Definitive guideline launches

Three definitive guidelines were published in this period – sexual offences, corporate fraud and environmental offences.

- Sexual offences – 12 December 2013 (came into effect 1 April 2014)

Encompassing more than 50 offences, the publication of the definitive sexual offences guideline was the most extensive guideline produced by the Council to date. It was also the most sensitive subject area the Council has worked on, including offences such as rape and child sex offences. As well as being a topic of great interest to the media, the ongoing Operation Yewtree and prosecutions of high profile individuals, meant it was an even more prominent topic.

Publication of the 160-page guideline generated a very large amount of media coverage with 71 news items including 23 interviews and nine national newspaper print articles. The response was overwhelmingly positive, the team having ensured a proper understanding of the guideline among media in the run up to publication. On the day, 1,210 tweets were also recorded reaching 6,704,020 followers.

To ensure understanding of the guideline among interested parties, the Council undertook significant work ahead of the announcement. As a result of this, there was widespread support for and endorsement of the guideline from organisations such

as Barnardo's, the Office of the Children's Commissioner and Victim Support.

- Corporate fraud – 31 January 2014

The Sentencing Council's guideline for the sentencing of organisations convicted of fraud, money laundering and bribery offences was part of the wider development of overall guidelines for all fraud offences committed by individuals. These will be published in summer 2014.

The corporate fraud guideline was published earlier in order to coincide with the introduction of Deferred Prosecution Agreements (DPAs) to assist judges operating the DPA scheme. It will not, however, be used for sentencing offenders until the overall guideline comes into force in October 2014.

Communication about its publication was undertaken primarily with interested parties as it was a specialist issue and wider communication was undertaken when the full guideline was published.

- Environmental offences – 26 February 2014

The announcement about the publication of this guideline generated more than 30 news items which were overwhelmingly positive or neutral in tone. It was primarily of interest to regional print media and sector media such as those catering for the farming and waste industries although there was some coverage by national media. The announcement also led to the highest number of daily visitors to the Sentencing Council's website, with just over 4,000 visits on the day of publication.

Other communications work

Working with the media

Announcements made over the course of this period have been of significant interest to the media. Overall, there were some 475 print or online news items relating to the Sentencing Council over this period and Council members undertook around 50 interviews. Spokespeople have been available to media for each guideline announcement and whenever appropriate and feasible, on other sentencing issues. One such example was assisting the BBC online magazine with an article entitled A Tale of Three Murders by Jon Kelly published on 11 December 2013.¹⁵ The article looked at how three murder cases were sentenced and why the sentences given were different. The Council was able to assist with this article and provide a spokesperson, who was quoted in the article.

As well as handling day-to-day media enquiries and ensuring all relevant media are kept informed about the work of the Council, press office has remained active in ensuring that journalists and programme makers understand other wider sentencing issues. This has included proactive contact with key journalists to provide information about complex topical issues such as sentencing for historic sex offences. This has helped ensure accurate information has reached key journalists and saved them time in researching issues.

With the appointment of the new Council chairman, Lord Justice Treacy, in November 2013, the potential for media engagement

¹⁵ <http://www.bbc.co.uk/news/magazine-25315320>

increased. His predecessor, Lord Justice Leveson, had separate responsibility for the inquiry into the culture, practices and ethics of the press, which very much limited the media work he was able to undertake on behalf of the Council. Lord Justice Treacy immediately did interviews with national press legal correspondents to set out his priorities as new chairman, was interviewed on Law in Action, and acted as the primary spokesman for the Council for the launch of the sexual offences guideline in December 2013.

Working for victims and witnesses

In 2012, the Council launched a short film about sentencing for victims and witnesses of crime, intended primarily for use by Victim Support's Witness Service in helping them explain how sentencing works to victims and witnesses of crime. During this reporting period, usage of the film was reviewed in terms of its reach and impact through research with Victim Support's Witness Service managers and volunteers. This research indicated that the film is seen as a useful, easy to understand resource which is positively received, helping witnesses, victims and volunteers to understand sentencing. Further work has now been undertaken to ensure that it is reaching all locations where Witness Service managers and volunteers operate. The film also remains on YouTube, where more than 12,000 people had viewed the film by the end of this reporting period.

Events

Council members and office staff attended 20 external events and speaking engagements during the period. This included magistrates' AGMs, webinars for legal practitioners, presentations for Metropolitan Police Family Liaison Officers, a presentation to the National Crime Agency and speeches for the Criminal Bar Association and the Serious Sexual Offences Seminar for Crown Court judges and recorders.

This number does not include those events held as part of a public consultation exercise on specific guidelines.

Events performed an important role in raising awareness of the new sexual offences guideline due to the sensitivity of the subject matter, the breadth of the guideline and the very real changes included within it.

Website

The Council's website continues to provide an important reference point for sentencers and a source of information on sentencing for the public and interested parties. During this period the site has seen over half a million visits, of which the guidelines download page attracted nearly 300,000. The most frequently accessed document was the Magistrates' Court Sentencing Guidelines (65,286 views) followed by the assault guideline (31,893 views).

During this period the planned migration of the Sentencing Council's website did not take place due to a lack of resources. However, internal workshops were held regarding

the structure and content of the site and detailed plans were drawn up regarding the future of the site. Both the migration of the site with significantly improved functionality and digital guidelines for magistrates will be delivered in 2014/15. This is in line with the wider government 'digital by default' initiative and programmes to increase digital working across the criminal justice system.

Partnership working

The Council's relationship with other organisations forms a key part of its communication strategy. In addition to engagement with specific interested parties during the development of guidelines, regular meetings are held with a variety of organisations to inform our work and share information. This includes the Ministry of Justice and the Magistrates' Association.

We continue to engage actively with the academic community. In July 2013 Council members and staff participated in a day long sentencing seminar held in Oxford involving around 40 academics and researchers. In addition, the Sentencing Council regularly employs PhD students as interns. This year, this has resulted in the publication of two journal papers on consistency in sentencing, published in the *British Journal of Criminology* and the *Journal of Quantitative Criminology*, in July 2013 and March 2014 respectively.

We have concentrated additional effort in ensuring new guidelines are received and understood across the whole criminal justice system. As an example, the following communications to criminal justice staff took

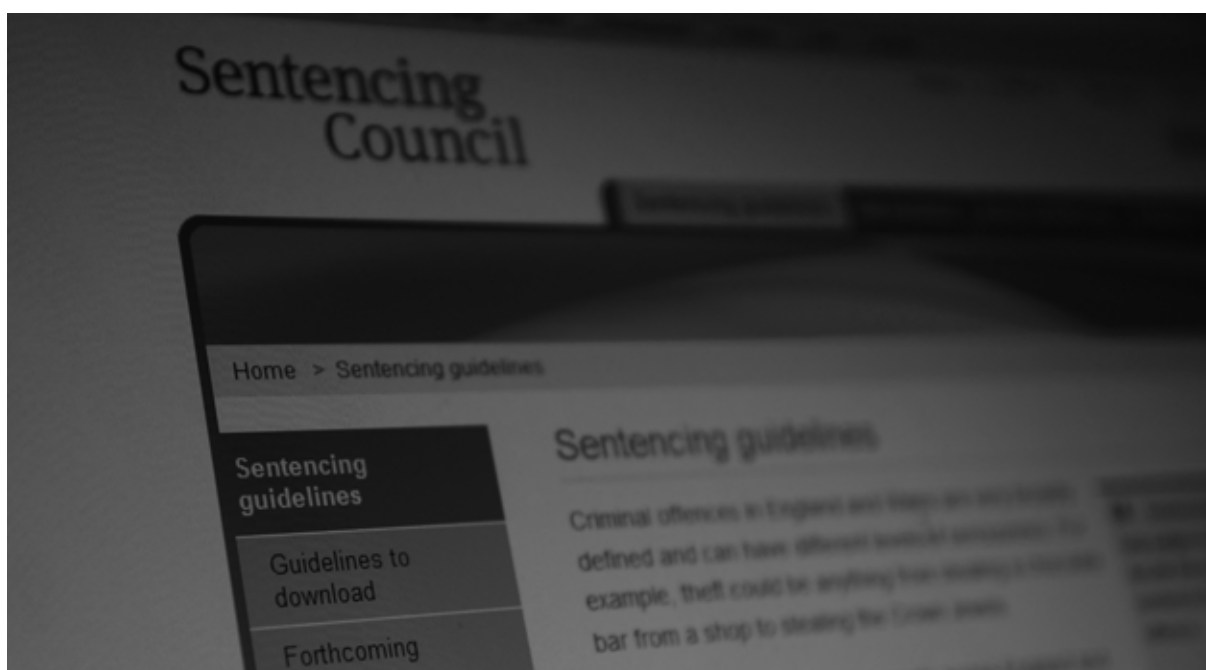
place around the time of the launch of the definitive guideline on sexual offences:

- courts – an article was sent to the communications team for their intranet and bulletins and the same article was sent to regional heads of crime;
- judiciary – a full page article was published in Benchmark which is available to 10,000 judicial readers and there was a link from the judicial intranet to the Council's website;
- legal community – the press notice for professional audiences was sent to the Bar Council, Law Society and LCCSA; an article was published in the Law Society daily update bulletin; and two speeches were delivered by the Chairman to the Criminal Bar Association (3 December) and Criminal Law Review conference (6 December);
- magistrates – a double page article was published in the Magistrates' Association (MA) magazine and shorter articles were sent to the MA e-news (14,000 recipients), National Bench Chairman's Forum (received by 152 bench chairs) and Justice's Clerks Society (1,000 recipients) for use in bulletins and on intranets;
- Ministry of Justice – a short article was published on the intranet and a notice was sent out to 777 sentencing stakeholders from the MOJ database;
- police - a letter was sent from Chief Constable Jon Murphy to all chief officers;

- probation – a reminder notice went to senior leaders in mid-Nov; an article was sent for use on launch day in the senior leaders bulletin and on the intranet; and an article was sent to NAPO and the Probation Chiefs Association which reaches 300 senior managers; and
- prosecution - an article was published on the CPS intranet which is available to 7,000 staff.

Great progress has been made in building closer relationships with the police. We have published two leaflets for use by Family Liaison Officers to help them explain how sentencing works for cases of murder and manslaughter. There is potential here for further leaflets to be produced. We have also established firm links with the College of Policing having supplied them with materials for a new training module for detectives working on sexual offending cases.

A pack of materials for use in schools has been developed and will be distributed in 2014/15. This work has been carried out with assistance from the Association of Citizenship Teachers. The pack aims to provide citizenship teachers with the information they need to explain sentencing to secondary school students. The pack includes sentencing scenarios to give students the experience of sentencing, simplified guidelines, a glossary of terms and other useful information.



Summary of achievements – timeline

April 2013	New Council members announced: Michael Caplan, Javed Khan, Her Honour Judge Sarah Munro and Mr Justice Saunders
May 2013	15 Speech at Police Federation conference
June 2013	6 Environmental offences consultation closes
	27 Fraud consultation opens
July 2013	5 Participation in international sentencing seminar, All Souls College, Oxford
	11 Annual report published
August 2013	
September 2013	26 LexisNexis webinar updating on all guidelines
October 2013	04 Fraud consultation closes
November 2013	11 New chairman, Lord Justice Treacy announced – article Times & Guardian
December 2013	03 Criminal Bar Association speech re sex offences
	06 Criminal Law Review speech re sex offences
	12 Definitive guideline on sex offences published
January 2014	14/15 Police Family Liaison Officers presentation re sentencing for murder and manslaughter
	31 Definitive guideline on corporate fraud offences published
February 2014	12 Speech at Serious Sexual Offending Seminar (Warwick)
	26 Definitive guideline on environmental offences published
March 2014	15/19 Beds and Cambs Magistrates' AGM presentations

Progress against 2013/14 Business Plan

2013/14 was the first year that the Council published a formal business plan, setting out the Council's aims and objectives and outlining an ambitious programme of work. The aim of the plan was to ensure that those with an interest in our work could keep abreast of developments and plan their own commitments accordingly.

Based on our previous years' experiences, Lord Justice Leveson sounded a note of caution in his introduction to the plan, indicating that priorities 'can, and do, change'. That note of caution was wise as a number of changes were necessary during the course of the year in order to respond to external events. Overall the business plan has been adhered to but the following modifications have been made necessary by events.

The main modifications and reasons are set out below.

Objective 1

prepare sentencing guidelines to help ensure a consistent approach to sentencing.

Whilst the Council met the majority of its aims under this objective, our development of a draft guideline for guilty pleas was paused due to a series of ongoing changes within the criminal justice system which would have made it extremely difficult to a) determine current sentencing practice and b)

consequently assess the impact of any draft guideline on sentencing practice. Those changes included the introduction of a national early guilty plea scheme by the Senior Presiding Judge, changes to criminal legal aid, changes to the way in which the CPS prepares cases for trial and the introduction of pre-trial cross-examination in specified cases. The Council anticipates that these changes to the system will have settled by mid-2015 and intends to consult on a draft guideline at that stage.

Objective 2

publish the resource implications in respect of the guidelines it drafts and issues.

The majority of aims were met but due to the delays to the guilty plea consultation the required guilty plea resource assessment was not produced in quarter four as anticipated.

Objective 3

monitor the operation and effect of its sentencing guidelines and draw conclusions.

The analysis of the assault sentencing data took considerably longer than anticipated due to technical difficulties and also the limited availability of resources which meant that analysis for draft guidelines on sexual, environmental and fraud offences were prioritised. At the time of this annual report,

work is continuing and we anticipate being in a position to publish our analysis in 2014/15.

The Council has begun work on analysis of the burglary guideline but this also took longer than anticipated due to issues related to sentencing for the summer 2011 riots which affected the data during the consultation period for the new guideline. We anticipate publishing this analysis during 2014/15.

Objective 4

assess the impact of government policy and legislative proposals

The Lord Chancellor made no requests to the Sentencing Council to assess policy or legislative proposals in 2013/14, so no work was necessary in this area.

Objective 5

promote awareness of sentencing and sentencing practice and work to improve public confidence in sentencing

There was good progress in all aspects of this objective but two key areas did not progress as anticipated – namely our digital capability and aspects of the work with victims. Our digital capability has been adversely affected by a lack of technical resource available in Ministry of Justice (MOJ) Digital Services Division. This has now been resolved and the Council is on track to deliver on its digital objectives in 2014/15. Work continued to ensure our film for victims and witnesses continues to be promoted but no new activity was initiated during this period due to a lack of resources. At the time of writing, the Council has recruited a specialist

communications officer to focus on confidence work, including with victims, over the 14/15 reporting year.

Work plan

The Council delayed beginning its consideration of driving offences causing death or injury which it was due to begin in quarter four of 2013/14. This was following discussions with the government concerning their intention to undertake a review of driving offences. The Council took the view that it would not be an efficient use of its resources to conduct research and/or public consultation on a series of offences where there was a possibility that the offences might change, including changes to statutory maxima which could affect the Council's recommendations as to the type and levels of sentence. It has therefore delayed its work on this guideline pending the outcome of the review.



Budget and support activity

Financial report

The cost of the Sentencing Council

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.

	2013/14 (actual) £000s
Total funding allocation	1,452
Office staff costs ¹⁶	1,223
Council members and adviser fees ¹⁷	76
Analysis and research	119
Design and printing services	45
Confidence and communications	16
IT services	29
Training	8
Other office expenditure ¹⁸	29
Total expenditure	1,545

¹⁶ Includes office staff travel and subsistence

¹⁷ Includes travel and subsistence costs incurred by Council members and advisers

¹⁸ Includes off-site storage cost and postage for consultations/definitive guidelines

Governance

The Sentencing Council for England and Wales was established by part four 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 the judiciary with regard to the guidelines it issues to courts, its impact assessments, its publications, 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 states 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 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, Sentencing and Rehabilitation. The Head of the OSC is responsible for the management and proper use of the budget.

The Director General, Transforming Justice 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).



Annexes

Annex A: About the Sentencing Council

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice. It was set up by part four of the Coroners and Justice Act 2009 to promote greater transparency and consistency in sentencing, whilst maintaining the independence of the judiciary.

The Sentencing Council fulfils the following functions contained in the Coroners and Justice Act 2009¹⁹:

- prepares sentencing guidelines²⁰;
- publishes the resource implications in respect of the guidelines it drafts and issues²¹;
- monitors the operation and effect of its sentencing guidelines and draws conclusions²²;
- prepares a resource assessment to accompany new guidelines²³;
- promotes awareness of sentencing and sentencing practice²⁴; and

- publishes an annual report that includes the effect of sentencing and non-sentencing practices²⁵.

The primary role of the Sentencing Council is to issue guidelines on sentencing which the courts must follow unless it is in the interest of justice not to do so [s.125(1)].

Functions

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.

¹⁹ See Annex E for full details of all roles and functions

²⁰ s.120 Coroners and Justice Act 2009

²¹ s.127 ibid

²² s.128 ibid

²³ s.127 ibid

²⁴ s.129 ibid

²⁵ s.119 ibid

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.

How the Council operates

The Council is outward-facing, responsive and consultative and draws on expertise from relevant fields where necessary while ensuring the legal sustainability of its work. The Council aims to bring clarity in sentencing matters, in a legally and politically complex environment.

The Council aims to foster close working relationships with judicial, governmental and non-governmental bodies while retaining its independence. These include: the Association of Chief Police Officers; the Attorney General's Office; the College of Policing; the Council of Circuit Judges; the Council of Her Majesty's District Judges (Magistrates' Courts); the Criminal Procedure Rules Committee; the Crown Prosecution Service; the Home Office; Judicial Office; the Justices' Clerks' Society; the Magistrates' Association; the Ministry of Justice; the National Bench Chair's Forum.

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

The Council meets 10 times a year to discuss current work and agree how it should be progressed; minutes are published on the Council's website. In addition to members, two advisors are invited to advise the Council on matters related to their specialist areas. They are:

- Paul Cavadino, former Chief Executive, Nacro; and
- Paul Wiles, former government Chief Social Scientist and Chief Scientific Adviser to the Home Office.

The Council has sub-groups to enable detailed work on three key areas of activity: analysis and research; confidence and communications; and risk and audit. The role of this new group, established in November 2013, is to review the fullness and reliability of assurances on governance, risk management, the control environment and the integrity of financial statements.

The sub-groups' role is mandated by the Council and all key decisions are escalated to the full membership. The sub-groups are internal rather than public-facing.



Relationship with Parliament

The Council has a statutory requirement to consult with Parliament²⁶, specifically the House of Commons Justice Select Committee. On 25 June 2013, Council member District Judge Anne Arnold attended an informal meeting of the committee to answer questions on the development of the draft environmental offences guideline and on 23 October 2013, Council member John Crawforth answered questions on the development of the draft fraud offences guideline.

The Council continues to develop its relationship with the committee and with Parliament more widely.

The Office of the Sentencing Council

The Council is supported in its work by the Office of the Sentencing Council, in particular in:

- ensuring that the analytical obligations under the Act 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 value for money.

²⁶ s.120(6)(c) Coroners and Justice Act 2009

Guideline development

The box below sets out the process involved in developing a guideline - from draft, through consultation stages, to a definitive version used by the judiciary. The process from beginning to end can extend to 18 months or more meaning that effective prioritisation, planning and project management are essential.

Step 1 – Priorities

The Council identifies work plan priorities – this could be based on concerns about an existing guideline, offence types which lack a guideline or because we have been required by statute to look at a particular area.

Step 2 – Research

Research is undertaken; policy and legal investigations are carried out; the approach to the particular guideline is discussed by the Council and agreed and an initial draft guideline is then created.

Step 3 – Approach

The Council members discuss the draft guideline, refine the approach and agree on the broad structure and detail which will form the basis for consultation.

Step 4 – Consultation

The Council consults the statutory consultees, criminal justice professionals and wider public over a 12 week period. The Council also produces a draft resource assessment and an equality impact assessment at this step.

Step 5 – Responses

The Council considers the responses to the consultation and develops a response paper and definitive version of the guideline, resource assessment and equality impact assessment.

Step 6 – Publication

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

Step 7 – Monitoring

The use of the guideline is monitored via the Crown Court Sentencing Survey.

Annex B: Membership

The Lord Chief Justice, the Right Honourable Lord Thomas, is President of the Council. In this role he oversees Council business and appoints judicial members. Lord Justice Treacy, a Court of Appeal judge, has been Chairman of the Sentencing Council since taking over from its first chairman, Lord Justice Leveson, in November 2013.

The Lord Chancellor and Secretary of State for Justice appoints non-judicial members. All non-judicial members were appointed for an initial period of three years (to April 2013) with the possibility of extending them beyond that period.

Membership of the Council on 31 March 2014 was as follows:

Judicial members:

- District Judge Anne Arnold
- His Honour Judge Davis QC
- The Honourable Mr Justice Globe
- The Right Honourable Lady Justice Hallett appointed 27 November 2013 to replace The Right Honourable Lord Justice Hughes
- Her Honour Judge Sarah Munro QC
- Katharine Rainsford JP, Magistrate on the North London Bench
- The Honourable Mr Justice Saunders

- The Right Honourable Lord Justice Treacy - appointed chairman on 11 November 2013, replacing The Right Honourable Lord Justice Leveson

Non-judicial:

- Michael Caplan QC, defence solicitor
- John Crawford OBE, former Chief Executive, Greater Manchester Probation Trust
- Javed Khan, Chief Executive, Victim Support
- Lynne Owens, Chief Constable Surrey Police
- Professor Julian Roberts, Professor of Criminology, University of Oxford
- Alison Saunders, Director of Public Prosecutions and Head of the Crown Prosecution Service - appointed 1 November 2013 to replace Keir Starmer QC

Register of members' interests

Anne Arnold

- no personal or business interests to declare

Michael Caplan

- partner at Kingsley Napley LLP
- member of Cobalt Data Centre 2 LLP
- member of Green Power Plant LP

John Crawforth

- no personal or business interests to declare

William Davis

- no personal or business interests to declare

Sir Henry Globe

- no personal or business interests to declare

Dame Heather Hallett

- no personal or business interests to declare

Javed Khan

- no personal or business interests to declare

Sarah Munro

- no personal or business interests to declare

Lynne Owens

- no personal or business interests to declare

Katharine Rainsford

- author, published by Orion

Julian Roberts

- no personal or business interests to declare

Alison Saunders

- no personal or business interests to declare

Sir John Saunders

- no personal or business interests to declare

Sir Colman Treacy

- no personal or business interests to declare

Advisors to the Council

Paul Cavadino

- member of the Parole Board of England and Wales

Paul Wiles

- Local Government Boundary Commissioner for England; Board member of the Food Standards Agency; Board member and trustee for NatCen Social Research; Deputy Chair, main panel C for the Research Excellence Framework, currently being run by the Higher Education Funding Council; Chair of review of the Global Uncertainties Programme for the UK Research Councils

Annex C: Sentencing factors report

Introduction

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.

Sentencing guidelines are a key driver of change in sentencing practice. Some guidelines aim to increase the consistency of approach to sentencing whilst maintaining the average severity of sentencing, whilst other guidelines explicitly aim to cause changes to the severity of sentencing.

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.

This report considers only changes in sentencing practice caused by changes in sentencing guidelines.

Sentencing Guidelines

During its fourth year (to 31 March 2014), the Council published definitive guidelines on the following offences:

- Sexual offences (effective from 1 April 2014)
- Environmental offences (effective from 1 July 2014)

As required by statute, a resource assessment accompanied the publication of each of these guidelines which considered the likely effect of the guideline on the prison, probation and youth justice services.

Sexual offences

For most offences within the new sexual offences guideline, the new guideline aims to promote consistency of sentencing for sexual offences, whilst leaving the average severity of sentencing unchanged. The intention for these offences is that average custodial sentence lengths, and the proportion of offenders receiving the various disposal types, will not change. For these offences it was assessed that as a central estimate, the new sentencing guideline would have no resource impact on the prison, probation or youth justice services.

Research work conducted with Crown Court judges as part of the consultation process for the new guideline suggested that for some offences of rape, the new guideline may result

in moderate uplifts to current sentencing levels in some instances, although the size of this effect is uncertain.

The resource assessment assessed the impact of this effect with reference to 2012 sentencing data, which showed that 773 offenders were sentenced to offences that would be covered by the new rape guideline. It was assumed that similar numbers of offenders would be sentenced in future years.

The Sentencing Council's research indicated that the magnitude of increases in sentence lengths is subject to a substantial degree of uncertainty. Analysis of sentencing transcripts from the Crown Court and Court of Appeal broadly supported the view that the rape guideline may not cause shifts in sentence lengths. To reflect this work, as a lower bound estimate, the resource assessment assumed that the rape guideline would have no effect on sentence levels. On the other hand, research interviews with Crown Court judges suggested that some sentences may increase, but this finding was not universal. To reflect these findings, as a higher end estimate the resource assessment estimated a moderate increase in sentence lengths (of around six months on average, before guilty plea discounts are applied).

Using these assumptions, the resource assessment estimated that the new rape guideline would result in a requirement for between 0-180 additional prison places, due to longer sentences for some offenders. This corresponds to an increase in the resources required for the prison service of around £0 - £5.0 million per annum.

Environmental offences

The new environmental offences guideline aims to improve consistency of sentencing but not to cause changes in the use of disposal types. The resource assessment therefore anticipated that it was unlikely there would be significant impacts on prison or probation resources. However, it was anticipated that there may be some changes in the levels of fines. The resource assessment separately considered fines for individuals and for organisations.

Fine levels for organisations

The resource assessment anticipated that there may be an impact on fine levels for some cases of environmental offending involving organisations. Specifically, in its review of recent cases, the Council judged that fine levels in some relatively severe cases involving corporations were too low. As a result, the fine levels in the new guidelines were set at levels higher than some examples of current sentencing practice. The Council is therefore expecting increases in fine levels each year for some cases where the offender is an organisation.

The resource assessment did not attempt to quantify the possible increase in fine levels for a number of reasons. First, the number of fines given to organisations for the offences covered by the proposed new guideline is low – for instance, there were only 37 in 2012. Second, amongst the cases reviewed by the Council, there was a mix of sentences that the Council felt were appropriate and ones which the Council judged were too low, so not all sentences for organisations

would be affected by the new guideline. Due to the lack of comprehensive data on the circumstances of corporate offending, it was difficult to assess the proportion of cases which would be affected and how much fine levels would change. Therefore, it was felt that quantitative estimates would be subject to such a high degree of uncertainty that they would not add value.

Fine levels for individuals

In the new guideline, the Council set fine levels for individuals at levels consistent with its understanding of current sentencing practice for most offenders. However, it is likely that fine levels for the more serious types of offences will be raised.

The resource assessment did not attempt to quantify the scale of the rise in the level of fines due to uncertainties surrounding current sentencing practice.

For further details of the expected resource effects of the two guidelines published during the Council's fourth year, please see the individual resource assessments, which can be accessed at the following URLs:

http://sentencingcouncil.judiciary.gov.uk/docs/Final_resource_assessment_environmental_%28web%29.pdf

http://sentencingcouncil.judiciary.gov.uk/docs/Final_Resource_Assessment_Sexual_offences.pdf



Annex D: Non-sentencing factors report

Introduction

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.

This report begins by defining non-sentencing factors, and explaining their importance to resource requirements in the criminal justice system. It then catalogues the most recent published evidence on how these factors may be changing.

Definition of non-sentencing factors and their significance

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 at Annex C. However, non-sentencing factors also exert an important influence on requirements for correctional resources.

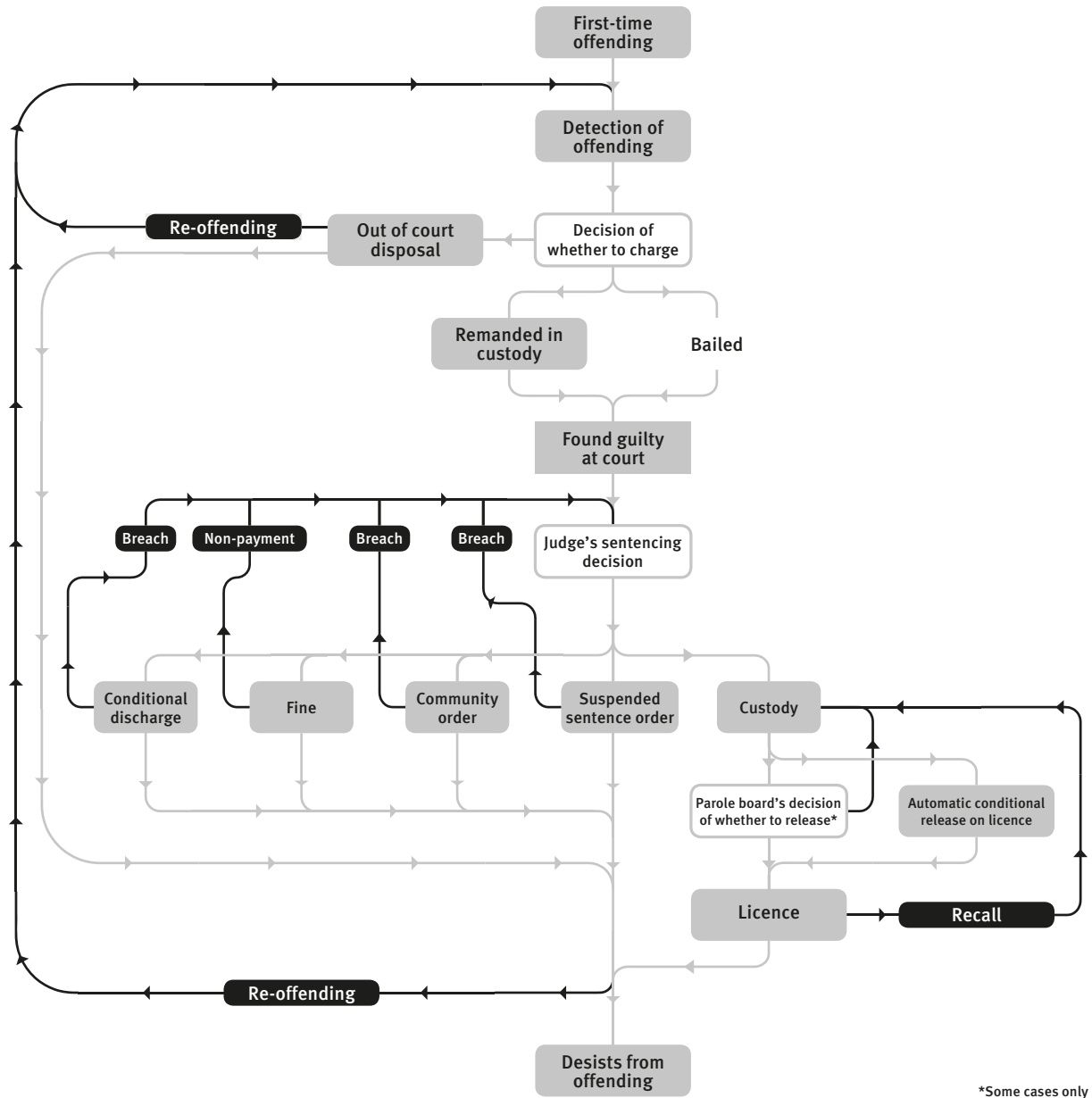
Non-sentencing factors are factors which do not relate to the sentencing practice of the courts, but which may affect the resources required to give effect to sentences. For example, the volume of offenders coming before the courts is a non-sentencing factor because greater sentencing volumes lead to 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.

Statistics on the effect of non-sentencing factors on resource requirements

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.

Figure 1 shows a stylised representation of the flow 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.

Figure 1



The remainder of this report surveys the available data on non-sentencing factors. Due to the complexities 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.

Volume of sentences and composition of offences coming before the courts

The Ministry of Justice publishes quarterly statistics on the volume of sentences and the offence types for which offenders are sentenced.

The most recent publication can be found at the following URL: <https://www.gov.uk/government/collections/criminal-justice-statistics-quarterly>

Under the link Criminal Justice statistics quarterly: March 2014, readers should refer to the sentencing tables for the most detailed information on sentencing outcomes. For example, table Q5.1 gives statistics on the total number of sentences passed, and how this has changed through time, and table A5.1 which is included in the annual statistics, gives sentencing statistics broken down by the offence group.

The rate of recall from licence

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 resource intensive than time spent on licence, recall decisions have a substantial resource cost.

Statistics on recall from licence can be found in the Ministry of Justice's Offender Management Statistics Quarterly, which is

at the following URL: <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

Under the link Offender management statistics quarterly: January to March 2014, readers should refer to the tables which concern licence recalls, (Q1 2014) which are numbered Table 5.1 to Table 5.10. For instance, Table 5.1 contains a summary of the number of licence recalls since 1984.

The rate at which court orders are breached

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

Statistics on breaches can be found in the Ministry of Justice's Offender Management Statistics Quarterly, which is at the URL above.

Readers should refer to the probation tables (Q1 2014), specifically Table 4.11 which gives a breakdown of terminations of court orders by reason.

Patterns of re-offending

The Ministry of Justice publish re-offending statistics in Proven Reoffending Statistics, the latest edition of which can be found at the following URL: <https://www.gov.uk/government/collections/proven-reoffending-statistics>

The frequency and severity of re-offending is an important driver of changes in requirements for criminal justice resources. Detailed statistics of how re-offending rates are changing through time can be found in the report, and additional statistics can be found in supplementary tables.

Release decisions by the Parole Board

Many offenders are released from prison automatically under release provisions which are set by Parliament and the Ministry of Justice. However, in a minority of cases which are usually those of very high severity, the Parole Board makes release decisions.

Statistics on release rates for these cases can be found in the Parole Board for England and Wales' Annual Report and Accounts starting at page 26, which can be found at the following URL: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/329169/parole-board-annual-report-2013-14.pdf

Remand

Decisions to hold suspected offenders on remand are a significant contributor to the prison population. The remand population can be broken down into the untried population, and the convicted but yet to be sentenced population.

Statistics on the number of offenders in prison on remand can be found in the Ministry of Justice's Offender Management Statistics Quarterly publication, the latest version of which can be found at the following

URL: <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

Under the link Offender manager statistics quarterly; January to March 2014, readers should refer to the prison population tables. For example, Table 1.1 contains data on how the remand population has changed through time.

Annex E: 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]**.
- 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 Orders, 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(3)(a)]**; this is planned for development and consultation during 2014/15;
- must prepare guidelines about the rule of law as to the totality of sentences **[s.120(3)(b)]**; this came into effect in the Sentencing Council's definitive guideline on allocation, offences taken into consideration and totality on 11 June 2012;
- may prepare guidelines about any other matters 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]**. All Sentencing Council guidelines have been subject to consultation and associated resource implications published.

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]**.

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. **[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:
www.sentencingcouncil.org.uk

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ISBN 978-1-4741-1137-9



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