

Sentencing Council

The Sentencing Council welcomes the report 'Equality and diversity in the work of the Sentencing Council', and is grateful for the work undertaken, at its request, by the University of Hertfordshire.

The research aimed to identify and analyse any potential for the Council's work to cause disparity in sentencing outcomes across demographic groups, and to make recommendations for how to mitigate these disparities, if possible, where it was within the remit of the Council. It took into consideration protected characteristics under the Equality Act 2010: age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership, and pregnancy and maternity. However, there was a specific focus on the protected characteristics that are more relevant to sentencing, and those where sufficient data exists, namely race, age and sex, as well as considering other potentially relevant issues such as 'primary carer' status.

The work was undertaken using a multi-method approach consisting of: text analysis of guidelines; statistical analysis of Crown Court Sentencing Survey data, a survey of all sentencing decisions that ran in the Crown Court between 2010 and 2015; and a co-production methodology, which involved engagement with a number of civil society organisations, defence lawyers and sentencers, to discuss relevant issues and offer solutions. The study examined a small number of offence specific guidelines (all robbery offences, theft from the person, theft from a shop or stall, theft in breach of trust, handling stolen goods, and harassment and stalking (fear of violence) offences), as well as the Sentencing children and young people guideline.

The report outlines a number of recommendations for the Council. We welcome these and have carefully considered them, alongside the limitations of the research that are outlined in the report. As a result, we have committed to take forward a number of actions to address the recommendations put forward by the University of Hertfordshire. Where we are unable to address a recommendation directly, this is because we have alternative work underway, need to complete other work in advance, or feel the issue can be sufficiently addressed, or at least is more properly addressed, through other aspects of the sentencing process. We are committed to placing issues of equality and diversity at the heart of everything we do and have dedicated one of our [Strategic objectives for 2021-2026](#) to this. The work we do in this area will therefore not be confined just to the recommendations put forward in this research but will underpin the whole range of work that we undertake.

The following summary outlines the actions that we plan to undertake in response to the recommendations generated through this research. For more information please refer to the full research report.

Number (from full report)	Recommendation	Council response
1	<p>Consider adding an extra step to the existing approach in adult guidelines. In this step, sentencers would review the sentence they have arrived at with mitigating factors and the offender's personal circumstances in mind.</p>	<p>We have considered the need for an extra step in guidelines, including whether text similar to that on personal mitigation in the robbery guideline for children and young people should be adopted. This was also considered in 2018 in relation to Professor Sir Anthony Bottoms' independent review of the Council and in 2020 in relation to the responses to the consultation on the Council's strategic objectives for the period 2021-2026.</p> <p>Our research with sentencers indicates that they do consider whether there are relevant mitigating factors and do take these into account. After careful consideration we have initially concluded that it would not be helpful to include an extra step for this in guidelines. We currently consider that the issue is more one of whether courts are aware of all the mitigation relevant to a case, and whether they have all the information they need, rather than whether they take all relevant matters of mitigation into account when they do have the information.</p> <p>We do, however, agree that the issue is an important one and have therefore included consideration of this finding as part of our review of the Imposition of community and custodial sentences guideline. This is considering issues around whether, and the point at which, sentencers request pre-sentence reports and consequently receive all the information necessary for sentencing (including personal mitigation). This review is underway and the revised guideline is likely to be issued for public consultation later in 2023. In addition, in recognition of the importance of mitigating factors, we have noted the need to consider whether any additional mitigating factors are needed on a guideline-by-guideline basis during their development.</p>
2	<p>Re-evaluate the potential impact of group affiliation as a sentencing factor in robbery cases by using more recent data, because there is a clear gap between co-production partners' perceptions and the findings of CCSS data analysis.</p>	<p>We have a data collection underway in magistrates' courts and the Crown Court (running from 9 January until 30 June 2023). This is collecting information on several different offences, including robbery. We will therefore have some data available for analysis later in 2023 that may shed light on this issue. However, taking account of the fact that the collection will last for only six months, as well as the likely response rates, we may find that volumes are too low for meaningful analysis on the specific issues raised by the University of Hertfordshire. If so, we will need to wait until we have more</p>

		data available in the future. One such possibility is drawing on information from the Common Platform; we are currently discussing options for this with colleagues in HM Courts and Tribunals Service (HMCTS).
5	Extend the expanded explanation for 'remorse', and include 'learning disability, communication difficulties and cultural differences' as influential factors in the evaluation of remorse.	We agree that it could be beneficial to include these factors in the expanded explanation for remorse. We will test additional text in research with sentencers.
7	Consider a qualitative study on the lived experience of offenders with mental health issues and chronic addictions. The findings might lead to a better understanding of how sentencing can be used to enable the desistance of offenders with multiple needs.	<p>As part of our strategic objectives for 2021-2026, we have an action to "Consider the possibility of future work with offenders to understand which elements of their sentence may have influenced their rehabilitation by undertaking a scoping exercise in this area". We plan to start scoping this work in 2023 after some of our current high priority work has completed. At this point we will consider including questions that are relevant to the issues of mental health and addiction, including the reasons why some offenders choose not to, or cannot, disclose these issues.</p> <p>The report noted concerns raised by civil society organisations that sentencers may not always take into account offenders' efforts to access help, especially when it has been delayed for reasons outside of their control. As part of the 2023/24 miscellaneous amendments consultation we will consult on amending the expanded explanation that accompanies the mitigating factor of 'Determination and/or demonstration of steps taken to address addiction or offending behaviour'. The amendment will be designed to make it clearer that the factor should be applied where support has been sought but not received.</p>
17	Consider including guidance to increase the use of the notion of 'difficult/deprived background' for robbery offences for children and young people, by adding it as a downward factor.	This issue is already covered in the Sentencing children and young people guideline as a factor that could be present in the background of children and young people who come before the court. The guideline states that "The court should always seek to ensure that it has access to information about how best to identify and respond to these factors and, where necessary, that a proper assessment has taken place in order to enable the most appropriate sentence to be imposed". In addition, the Robbery–sentencing children and young people and the Bladed articles and offensive weapons (possession and threats) - children and young people guidelines have a personal mitigating factor of 'Unstable upbringing' which may relate to a number of different

		<p>issues including, but not limited to, time spent as a looked after child, lack of familial presence or support, exposure to drug or alcohol abuse, experiences of trauma or loss etc. We therefore consider that this factor is sufficiently covered in the current guidelines for children and young people.</p>
8	<p>Consider including 'difficult/deprived backgrounds', 'in work or training' and 'loss of job or reputation' in the mitigation lists of theft and robbery guidelines. These factors are highly relevant in crimes for financial gain.</p> <p>Consider whether it is necessary to include 'offender experiencing exceptional financial hardship' for more theft offences.</p>	<p>We have considered introducing a new factor that relates to an offender's 'Difficult personal circumstances or background' in adult guidelines. We plan to trial a new factor and an associated 'expanded explanation' (guidance that accompanies the factor in the guideline and provides information on how to interpret and apply the factor) as part of future qualitative research. This will review the use and application of the current factors and expanded explanations and will involve constructing hypothetical offence scenarios to explore the impact on sentencing outcomes of variations in the circumstances presented in the scenarios. We committed to such a review as part of the actions contained within our 2021-2026 strategy and are currently scoping this work with a view to starting fieldwork early in 2023.</p> <p>With regard to adding factors relating to 'in work or training' and 'loss of job or reputation', we have discussed this in detail and feel that these are issues which are more appropriately considered as part of the review of the Imposition of community and custodial sentences guideline. We will, however, test potential new mitigating factors for offence specific guidelines as part of our review of the expanded explanations before making a final decision on this.</p> <p>On the factor of 'offender experiencing exceptional hardship', we note that there are two guidelines where this is already included: the Theft from a shop or stall guideline and the Benefit fraud guideline. This is because these offences in particular may be committed as a response to need and a factor such as this has direct relevance. We are content that these are the two offences where this factor is most directly relevant and so we do not plan to include it in other guidelines. However, given that the list of mitigating factors in guidelines is non-exhaustive, sentencers can apply this type of factor to other offences if they feel it necessary and appropriate.</p>

20	<p>Consider providing more inclusive examples of 'good character and/or exemplary conduct', alongside existing examples.</p>	<p>Consideration has been given to what suitable examples may be added, but it is problematic to ensure that examples are inclusive enough. We therefore plan to remove the example currently given (of charitable work) due to the possibility of this being applied only to a certain type of offender and to ensure the widest possible application. We will include this factor in the review of the expanded explanations in order to ascertain how sentencers are applying and interpreting it.</p> <p>In addition, having considered other factors where examples are given, and in light of the report's reference to the fact that the word 'hood' might be more easily associated with young people from certain subcultures, we have decided to remove the examples of wearing a balaclava or hood from the aggravating factor of 'attempt to conceal identity' in the robbery guidelines.</p>
19; 10; 6; 12	<p>Endeavour to collect a larger volume of data than is currently available in order to analyse for intersectionality effectively.</p> <p>Obtain more recent data to evaluate the impact of 'use of weapon' and 'wearing a disguise' in robbery cases. A larger sample of ethnic minority offenders is also needed to test the hypotheses that these two upward factors affect children and young people from ethnic minority groups more than others.</p> <p>Conduct further research into why some of the downward factors do not seem to have an impact on sentencing outcomes in robbery cases involving children and young people.</p> <p>For stronger conclusions about racial or ethnic disparities, data that oversample ethnic minority groups should be collected, to ensure conclusions about</p>	<p>As outlined in relation to recommendation 2, above, we have a data collection underway in magistrates' courts and the Crown Court from 9 January until 30 June 2023. This is collecting information on several different offences, including robbery. We will also be collecting a unique identifier as part of this data collection which will allow us to link to Ministry of Justice (MoJ) data on ethnicity and potentially undertake more analysis on this.</p> <p>We will therefore have some data available for analysis later in 2023 which may shed some light on some issues. However, taking account of the fact that the collection will only last for six months, as well as the likely response rates, we may find that volumes are too low for meaningful analysis, particularly in relation to issues of intersectionality. If so, we will need to wait until we have more data available in the future to look in more depth, potentially from the Common Platform.</p> <p>It is also important to note that our data collections only cover adult offenders; we do not have any currently planned data collection exercises that will specifically cover children and young people. This would be a longer-term piece of work, which would not yield quick results: given the small number of children and young people sentenced we would need to run a data collection for a significant period of time in order to obtain a sufficient sample size. The Council is also aware of a large-scale study published by the Youth Justice Board (YJB) in 2021 (Ethnic Disproportionality in Remand and Sentencing in the Youth Justice System) that examines some relevant issues. At this stage we feel our limited resources are best deployed in exploring whether other</p>

	ethnic minority groups are robust and that the disparity between co-production partners' perceptions and the results of regression analysis can be explored.	organisations or bodies will have relevant data that we can draw on in the future rather than putting in place our own bespoke piece of work.
3	Consider commissioning a qualitative study on the application of upward factors in theft cases to address potential inconsistencies highlighted in the CCSS analysis (e.g. there are questions to be asked as to why 'previous convictions' seems to be important in some theft offences but not others; why 'group membership' is important in receiving stolen goods but not in other types of theft etc).	As outlined above, we are currently scoping work to review some of the factors in guidelines and their expanded explanations and can include these factors in that review. We hope to start fieldwork for this early in 2023.
9	Disparity is not always caused by the demographic characteristics of offenders; it might be caused by the characteristics of victims as well. The Council may wish to explore the relationship between sentencing outcomes and the demographic data of victims, as well as exploring the findings in relation to the impact of 'victim-related' aggravating factors from an EDI (equality, diversity and inclusion) perspective.	We do not collect large-scale data on victims and so detailed quantitative analysis of sentencing outcomes in relation to the demographics of victims will not be possible. However, as part of our qualitative research to look at the application of the different factors and the expanded explanations in the guidelines, we can vary the characteristics of the victims in the offence scenarios that we use and explore whether this has an impact on sentencing outcomes. While this will not produce conclusive evidence on the impact of victim demographics, it will provide some small-scale indicative information that can be considered as part of guideline development.
11	Undertake further exploration of sentencers' attitudes about female offenders to understand the role their perception of equity has in sentencing. Specifically, further research could examine whether the leniency is applied	We have committed to an action in our five-year strategy to consider whether separate guidance or a guideline is needed for female offenders, after conducting our review of the expanded explanations. As outlined for recommendation 8, we will be able to vary the scenarios we use for this qualitative piece of research and by varying the sex of the offender, we can explore whether any differing views of appropriate sentence outcomes exist for the same offence. If this is found to be the case, we can explore the

	equally to all women, or selectively, and whether factors such as a perception of blameworthiness, gender roles, and of the paternalistic role of the court influence the sentencing of women.	reasons why. This information will feed into future discussions around the need for guidance or a specific guideline for sentencing female offenders. We are also considering issues related to the sentencing of specific cohorts, including female offenders, as part of our review of the Imposition of community and custodial sentences guideline.
18	Specify pregnancy and maternity as a discrete phrase where medical conditions are referred to in the guidelines.	We recognise the specific issues that pregnant offenders face during the sentencing process. One option is to remove the reference to pregnancy from the factor of 'sole or primary carer' and to create a new mitigating factor. We plan to consult on a new factor relating to this and the associated expanded explanation as part of our 2023/24 miscellaneous amendments consultation.
13; 14	Consider conducting more research to explore any potential bias against older offenders (for example over 60 years of age) and 'age and/or lack of maturity' as a downward factor could be used more extensively for older offenders.	We note that some factors in previous guidelines differ from those used in current guidelines. Because of this, the data that needed to be used for this research – which covered 2013-2015 – was based on the factor of 'age', rather than the present factor of 'age and/or lack of maturity', which relates these issues to the offender's responsibility for the offence and the effect of the sentence on them. Given that the factor is different now, we feel it is important to explore the impact of this factor and plan to do this as part of our review of the expanded explanations.
15	Consider ways in which more guidance can be issued for sentencing young adults to improve consistency and precision in sentence reduction for young adults.	<p>We considered the need for more guidance or a guideline for sentencing young adults when reviewing responses to our consultation on future priorities. As a result, our strategy includes an action to consider whether separate guidance is needed, after the review of expanded explanations has reported. If further guidance is developed, the wording in the Sentencing children and young people guideline could be adapted for this purpose.</p> <p>We will therefore return to this issue after this review has reported. We are also considering issues related to the sentencing of specific cohorts, including young adults, as part of our review of the Imposition of community and custodial sentences guideline.</p>
16	Consider a downward factor based on dynamic spatiality, giving allowance for	Consideration has been given to developing a mitigating factor relating to the difficulty that some offenders such as those from Gypsy Roma Traveller groups may face in

	<p>lateness and uncertainty in response and presence.</p>	<p>terms of attending court when required, because of frequent changes of address or moving at short notice. However, we believe that this would only be relevant to sentencing guidelines in situations where lateness or failure to attend causes disadvantage in the sentencing process, and there is no aggravating factor relating to failure to appear at court as this would be dealt with by the issuing of a warrant and/or the laying of a Bail Act offence.</p> <p>In this context, we do not feel that it would be appropriate to introduce a mitigating factor relating to dynamic spatiality. If it was relevant in specific circumstances – for example if an offender had not been able to enter a guilty plea at the first hearing because they had not received court documents – then the normal practice would be to allow credit if a plea is entered on the first occasion that they become aware of court proceedings in accordance with the exceptions in the Reduction in sentence for a guilty plea guideline.</p>
4; 21	<p>Consider how to make expanded explanations more visible and digestible to sentencers, defence lawyers and the public.</p> <p>Consider changing the format of the display of expanded explanations on the webpage, for example by making them automatically displayed and continuous, below the factor.</p>	<p>We have recently commissioned external contractors to conduct user testing of our digital guidelines. This project is exploring how sentencers access and use the sentencing guidelines and navigate the Sentencing Council website, including how they use the expanded explanations. This work, along with the review of the expanded explanations, will provide information on whether any changes to the display of these is needed.</p>
22; 26	<p>Consider a more integrated approach to developing sentencing guidelines by assessing if there are better ways to communicate, engage and collaborate with the Probation Service, Youth Offending Teams, prosecutors, and defence lawyers, all of whom participate and contribute to the decision making in sentencing.</p>	<p>Our Confidence and Communication strategy includes a number of actions which will address these recommendations. The strategy will also take account of the findings from public confidence research that we published on 12 December 2022.</p> <p>On using a more integrated approach to developing guidelines and assessing if there are better ways to communicate with other ‘consumers’, such as the Probation Service, Youth Offending Teams, prosecutors and defence lawyers, the review of the Imposition of community and custodial sentences guideline is engaging specifically with a variety of these consumers for early input pre-consultation. We always consult on proposed guidelines; all consultations are open to anyone to contribute, including members of the</p>

	Further expand stakeholder engagement, through more diverse means, including more targeted consulting, through one-to-one meetings or targeted focus groups.	<p>public. We have also refined our project initiation process to include detailed consideration of how other consumers, specifically offenders (especially those with protected characteristics) and their families, victims (especially those with protected characteristics), and members of the public can be engaged with at an earlier stage in the guideline development process, as and when it is relevant and beneficial.</p> <p>Prompted by responses to our consultation on our future priorities, we are reviewing our approach to identifying and targeting audiences for consultation, with a view to eliciting a broader and more representative body of responses, including from those with relevant lived experience.</p>
23	Increase the use of real-life case studies in public communication and education to illustrate how guidelines are interpreted and applied at court, and how they shape the outcome of sentencing through an adversarial procedure.	<p>This recommendation has been considered previously and is not without its challenges. There is, for example, no such thing as a 'typical' case. However, we will explore further the potential of using stories and examples, where appropriate, to help illustrate our communications. Since July 2022, some sentencing remarks from Crown Court hearings have been filmed for broadcast; we are already directing website visitors to these videos, which illustrate very clearly the role of guidelines in sentencing. We will also be promoting the new version of You Be the Judge to a wide range of audiences when it becomes available online.</p>
24	Consider combining lived experience training with guideline training (it should however be noted that judicial training falls outside the Council's realm of responsibility).	<p>The fact that judicial training is outside the remit of the Council means that we cannot directly action the recommendation related to lived experience training. We have, however, made enquiries as to what might already be available on this. We will also feed this suggestion in as part of future discussions with the Judicial College.</p> <p>On lived experience more generally, the Council wishes to engage more directly with those with relevant lived experience, where appropriate, when developing our guidelines. We also intend to reach out to those with relevant lived experience as part of our upcoming review of the Imposition of community and custodial sentences guideline and, if successful, will continue to do so for input into all relevant guidelines.</p>
25	Improve the transparency of the guideline development process, clarify the standards used for evaluating existing guidelines, and communicate these standards more effectively to stakeholders, Non-Governmental	<p>As outlined in our response to the consultation on our future priorities, we are continuing to consider how we define the 'success' of our guidelines and to collect evidence that will help us look in different ways at the impact of guidelines. Where data exists, our work already takes account of issues related to sex and race and we are actively seeking to improve the data we have in this area (e.g. in our forthcoming data</p>

	Organisations (NGOs) and professional groups.	collection, we have reinstated collection of the unique case identifier to enable us to link to MoJ data on ethnicity).
27	Consider more efficient ways of directing sentencers to the Equal Treatment Bench Book (ETBB) , which gives sentencers more specific guidance on how to ensure 'fair treatment' and avoid 'disparity' of outcomes for different groups.	<p>We are currently working with contractors on a user testing project which will explore how sentencers access and use the sentencing guidelines and some of the links within them. The findings of this work will inform future development of features in the guidelines.</p> <p>In addition, the review of the Imposition of community and custodial sentences guideline will consider whether more direct reference to equality, diversity, and inclusion issues and the ETBB would be beneficial in an updated version of this guideline. If there is a lack of familiarity amongst sentencers, then further actions point towards training, and we will feed this into discussions with the Judicial College.</p>

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