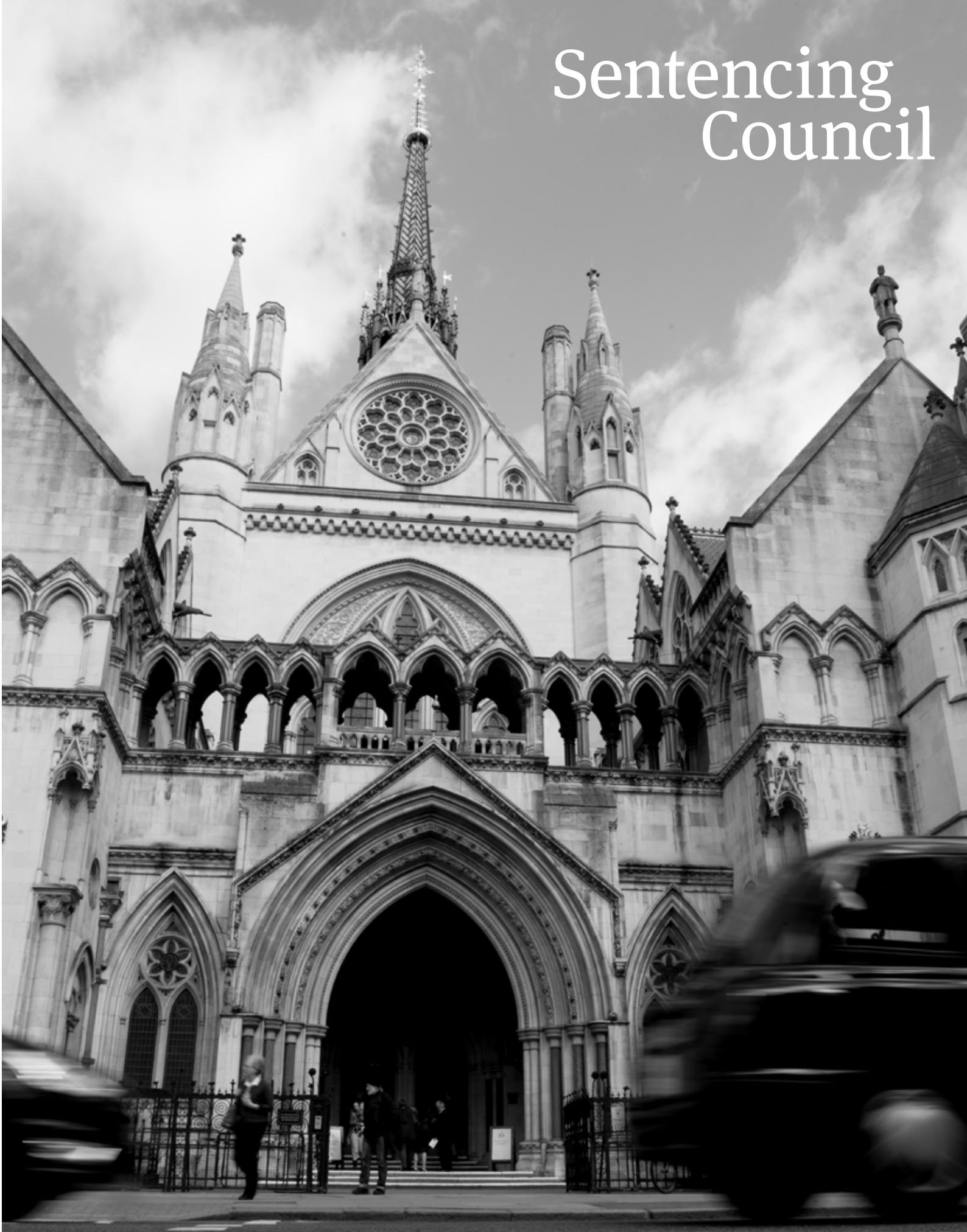


Sentencing Council



**Sentencing Council
Annual Report 2016/17**

Sentencing Council Annual Report 2016/17

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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Foreword

by the Chairman

I am pleased to introduce the Sentencing Council's annual report for 2016/17. I am proud of what we have achieved this year and the progress we have made towards our goals.

During this busy year we have published three definitive guidelines and consulted on four draft guidelines. We have also published a revised version of the Magistrates' Court Sentencing Guidelines, covering 27 summary-only offences. This work represents a significant step forward in our goal to replace by 2020 all magistrates' court guidelines issued by our predecessor body, the Sentencing Guidelines Council.

Another important goal we achieved this year was to meet one of the Council's statutory obligations under the 2009 Coroners and Justice Act, which we did by publishing a definitive guideline for reducing sentence for a guilty plea. We are optimistic that this guideline will iron out inconsistencies in the interpretation and application of guilty plea legislation and the existing guidance. It will reduce the burden on victims and witnesses of appearing at court to testify, which was our primary objective for this guideline, and do much to contribute to the efficiency of the courts by reducing the number of cases that must be prepared for trial.

We also make a further contribution to the efficiency of the courts with the publication of our guideline on the Imposition of Community and Custodial Sentences. The guideline, which came into force in February 2017, was developed to respond to a culture we identified among some sentencers of imposing suspended sentences as a more severe form of community order. It sets out clearly the factors that enable the court to suspend a sentence, while making it clear that a suspended sentence should be passed only where the offending passes the custody threshold.

The production of both these guidelines illustrates the ways in which the Sentencing Council contributes to reform and efficiency in the criminal justice system and how, in doing so, we meet our

own objective to deliver better outcomes for victims and witnesses, while safeguarding the rights of defendants.

The third definitive guideline we published this year deals with the sentencing of children and young people. The guideline embeds in sentencing practice the long-established principles that the aim of legislation and sentencing in relation to children and young people should be to prevent offending, which is the primary purpose of the youth justice system, and to make sure that the welfare of young offenders lies at the heart of sentencing decision-making.

In considering both the rehabilitation and welfare of the child or young person, the guideline requires the court to look with far greater detail at their age, background and circumstances, and asks sentencers to recognise that black and minority ethnic children are over-represented in the care system, and children in care are more likely to end up in the criminal justice system.

The Council also made significant progress this year with the work to digitise the sentencing guidelines, launching an offline version of the digital Magistrates' Court Sentencing Guidelines. This tool allows magistrates to use the guidelines even where there is no access to the internet. Its development advances the Council's ambition to digitise all sentencing guidelines, and aligns well with the drive by HM Courts and Tribunals Service to build a modern, more efficient, digital court service.

We have continued to consult widely as we prepare our guidelines. It is not unusual for us to amend our draft proposals quite significantly in light of responses we receive to consultations. The definitive guideline on imposition for example was influenced enormously, and for the better, as a result of feedback from consultees. We continue to be most grateful to the sentencers, other legal experts, professional bodies and individuals who contribute their time and expertise to our consultations. Their responses this year, as in others, have helped to refine our thinking and shape the guidelines that we have produced.

The strength of response to our consultations is testimony to the importance of the work we do to engage and build relationships with a broad range of existing and potential stakeholders. The Council has worked throughout the year to raise awareness of the work

we do and improve understanding of the Council and the role it plays. We actively engage with criminal justice professionals and subject experts during the course of our consultations and research, and use the media to alert them to new guidelines and opportunities to contribute to our work. We collaborate with partners across the criminal justice system to help us reach other important groups such as victims, witnesses and young people.

Council members have continued to take up speaking opportunities, which this year included the Criminal Law Solicitors' Association annual conference, a victim-focused event staged by the South Yorkshire Police and Crime Commissioner, the Judicial College Continuation Crime Course and events hosted by magistrates' groups across the country. We also had opportunities during the year to promote the work of the Council further afield, including speaking to senior judiciary from the Netherlands, China and Bahrain, and talking about the ways in which children are safeguarded in the guidelines to a conference of Lord Chief Justices and Chief Magistrates from Commonwealth jurisdictions. From time to time we are happy to welcome judges from foreign jurisdictions as observers at Sentencing Council meetings.

The Council has continued to engage with the media, working to secure positive and accurate coverage and striving to dispel confusion and challenge misrepresentation. We have achieved this not only by responding to enquiries from journalists but by building good relationships with the leading law correspondents and actively seeking the attention of relevant media at the launch of new definitive guidelines and consultations. We monitor media coverage of the Council and our work, challenging inaccuracies where possible, and take advantage of any other opportunities to raise our profile.

During the year we have continued to expand our evaluation work, publishing assessments of the environmental offences and burglary guidelines, and concluding the research to support the development of our guideline for reduction in sentence for a guilty plea. We also commissioned and published research designed to give the Council a more comprehensive view of how sentencing data is collected, recorded and used in magistrates' courts. The findings will be useful in the future to support the development, monitoring and evaluation of sentencing guidelines.

Taken as a whole, this year has seen us move significantly closer to our overarching goals: to have replaced our predecessor body's guidelines and to have issued guidelines covering all the most frequently sentenced either-way offences by the time of our tenth anniversary in 2020. We have started to take stock of our achievements to date and to consider what our next set of priorities should be once this ambition is achieved. To support the Council in this work, we commissioned Professor Anthony Bottoms, Emeritus Professor of Criminology at Cambridge University, to work with us on an internal review. We will be continuing to develop our longer-term strategic priorities throughout 2017/18 and will provide an update in next year's annual report.

In the meantime, although we have made good strides towards our current 2020 goals this year, there remains much important work to do.

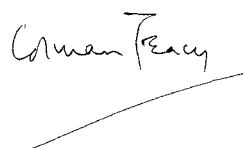
In the coming year the Council will prepare, and consult on, seven proposed guidelines and launch three definitive guidelines: Breach Offences, Bladed Articles and Offensive Weapons, and Terrorism.

Most significant among these is the terrorism offences guideline. Work to develop this guideline had already begun in 2016/17 with a view to issuing a guideline in 2019, in line with our standard timetable. Mindful of the increased threat of terrorism and Court of Appeal calls for a guideline in this area, the Council has considered ways in which this important work could be expedited as quickly as possible. As a result, we now hope to develop, consult on, and have essentially finalised this guideline by the end of 2017/18, and to publish it soon after.

I would like to take this opportunity to thank my colleagues on the Sentencing Council for their expertise, commitment and energy. Without their knowledge and insight, none of this excellent work would be possible. I welcome Simon Byrne, Rosina Cottage and Maura McGowan, all of whom joined the Council during the year. I would like to thank Kate Thirlwall, whose term on the Council both started and came to end during the year, and I wish to congratulate her on her appointment to the Court of Appeal. Particular thanks should also go to those Council members serving on our three sub-groups: analysis and research; confidence and communication; and governance. Our work has benefited much from their expertise, challenge and scrutiny.

I and my fellow members of the Council would not be able to do our work without the excellent support of the staff of the Office of the Sentencing Council (OSC). I am continually impressed by their expertise, professionalism and dedication, and am most grateful to them. I am particularly grateful to Steve Wade, Head of the OSC, for his leadership since he was appointed in October 2016 and to his predecessor Claire Fielder who left the OSC in September. I would like to take this opportunity to express my gratitude to Claire for her sterling work supporting the Council over the previous two years.

This is my fourth annual report for the Sentencing Council. It continues to be an enormous privilege to be the Chairman of this influential and successful body. The work we do plays a significant role in the delivery of justice that is consistent and fair – and can be seen to be consistent and fair. The Council continues to grow in stature and reputation, and I have every confidence that it will do so long into the future.

A handwritten signature in black ink, reading 'Colman Treacy', with a long horizontal line extending from the end of the signature.

Colman Treacy
Lord Justice Treacy
October 2017

Introduction

The Sentencing Council is an independent, non-departmental public body of the Ministry of Justice. It was set up by Part 4 of the Coroners and Justice Act 2009 (the 2009 Act) to promote greater transparency and consistency in sentencing, while 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 2016 to 31 March 2017. For information on past Sentencing Council activity, please refer to our earlier annual reports, which are available on our website at:

www.sentencingcouncil.org.uk

In 2016/17 the Council's work was aligned to the following four objectives:

1. Prepare sentencing guidelines that meet their stated aims, with particular regard to the likely impact on prison, probation and youth justice services, the need to consider the impact on victims and to promote consistency and public confidence.

2. Monitor and evaluate the operation and effect of guidelines and draw conclusions.
3. Promote awareness of sentencing and sentencing practice.
4. Deliver efficiencies, while ensuring that the Council continues to be supported by high-performing and engaged staff.

The activities for 2016/17 that have contributed to the delivery of these objectives are outlined in this report.

Also in this report, produced in accordance with the Coroners and Justice Act 2009, are two reports considering the impact of sentencing and non-sentencing factors on the resources required in the prison, probation and youth justice services to give effect to sentences imposed by the courts in England and Wales.

Key events of 2016/17

| 2016 | | |
|-----------|----|---|
| April | 1 | <i>Robbery</i> : definitive guideline comes into force |
| | 6 | Appointment of Mrs Justice Thirlwall as member of the Council Reappointment of Professor Julian Roberts to the Council |
| | 28 | Reappointment of HHJ Sarah Munro to the Council |
| May | 12 | <i>Sentencing Children and Young People Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery</i> : consultation opens on proposed guideline |
| | 19 | <i>Magistrates' Court Sentencing Guidelines</i> : consultation opens on revised guidelines for 27 summary-only offences |
| June | 9 | Offline version of the digital <i>Magistrates' Court Sentencing Guidelines</i> launched |
| July | 1 | <i>Dangerous Dogs Offences</i> : definitive guideline comes into force |
| | 18 | Appointment of Rosina Cottage QC as member of the Council |
| | 28 | Reappointment of Lord Justice Treacy as Chairman of the Council |
| September | 1 | Appointment of Chief Constable Simon Byrne MA QPM as member of the Council |
| October | 6 | <i>Bladed Articles and Offensive Weapons</i> : consultation opens on proposed guideline |
| | 25 | <i>Imposition of Community and Custodial Sentences</i> : definitive guideline published <i>Breach Offences</i> : consultation opens on proposed guideline |
| November | 3 | Annual Report 2015/16 published |
| | 17 | Drug driving guidance published |

| 2017 | | |
|----------|----|--|
| January | 2 | Appointment of Mrs Justice McGowan as member of the Council ¹ |
| | 24 | <i>Magistrates' Court Sentencing Guidelines</i> : revised guidelines for 27 summary-only offences published |
| February | 1 | <i>Imposition of Community and Custodial Sentences</i> : definitive guideline comes into force |
| March | 7 | <i>Reduction in Sentence for a Guilty Plea</i> : definitive guideline published <i>Sentencing Children and Young People Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery</i> : definitive guideline published |
| | 30 | <i>Intimidatory Offences and Domestic Abuse</i> : consultation opens on proposed guideline |

¹ Mrs Justice McGowan succeeded The Rt Hon Lady Justice Thirlwall, who resigned from the Council as of 31 December 2016 following her appointment to the Court of Appeal.

Guidelines

Guidelines are intended to help ensure a consistent approach to sentencing, while preserving judicial discretion. If in any particular case the judge feels it is in the interests of justice to sentence outside the guideline, this is specifically allowed by the 2009 Act.

Consultations are not only a statutory duty but also a very valuable resource for the Council. They are publicised via mainstream and specialist media and on Twitter and on the Sentencing Council website. We make a particular effort to publicise them with relevant professional organisations and representative bodies, especially those representing the judiciary and criminal justice professionals, but also others with an interest in a particular offence or group of offenders. Many of the responses come from organisations representing large groups so the number of replies does not fully reflect the comprehensive nature of the input.

The work conducted on all the guidelines during the period from 1 April 2016 to 31 March 2017 is set out here, separated into four key stages: development, consultation, post-consultation, and evaluation and monitoring. As guidelines were at different stages of development during the year, reporting varies between guidelines.

Arson and Criminal Damage

Development

The Council started work to develop a new arson and criminal damage guideline during this period. The existing, limited arson and criminal damage guidance within the Magistrates' Court Sentencing Guidelines (MCSG) was not updated as part of the recent MCSG work, which focused solely on summary-only offences. However, some of these are serious, either-way offences so the Council decided to develop a new guideline. The new guideline will also include guidance for the first time for a number of other related arson and criminal damage offences such as the aggravated form of arson and criminal damage (intent to endanger life / reckless as to whether life was endangered).

To support the early thinking around these offences, we conducted a small survey with magistrates (all of whom had consented to be part of the Council's research pool), to hear their views on the current guidance and gather suggestions for what the Council might want to take into consideration for the new guideline. Twenty-five sentencers responded to this request for feedback.

The Council will consider a draft guideline in 2017.

Assault

Evaluation and monitoring

An assessment of the impact and implementation of the assault guideline, published in October 2015, indicated some unintended impacts, as well as areas of the guideline that might potentially need to be revised in order to address those impacts.

As a result of the assessment, the Council agreed in principle to revise the guideline but to await the Government's response to the Law Commission's November 2015 recommendations for reform of offences against the person legislation.

It became clear during the year that there was unlikely to be any immediate new legislation following the Law Commission's recommendations, and the Council therefore agreed to include work to revise the guideline in our 3-year work plan. We expect to start this work early in 2018.

Bladed Articles and Offensive Weapons

Development

The Council has been working to develop guidelines for sentencing both adults and children or young people, to cover a number of offences of possession of or threatening with a bladed article or offensive weapon. There is currently some guidance for sentencing adult offenders in the magistrates' courts but none for adult offenders in the Crown Court, or for sentencing children or young people.

In magistrates' courts the existing guidance, *Possession of bladed article / offensive weapon*, was produced by the Council's predecessor body, the Sentencing Guidelines Council, and is contained within the MCSG. This guideline was produced in August 2008 alongside an additional note, *Sentencing for possession of a weapon – knife crime*, which was produced to be read with the guideline.

Since then, a number of new offences have been introduced, many of which are subject to mandatory minimum sentences and are not covered by any guidance. The new guidelines will provide sentencers across the Crown Court, magistrates' courts and youth courts with guidance on all offences in one self-contained document, which will assist in achieving our objective of consistent sentencing.

Consultation

During the year the Council consulted on revised draft guidelines for the offences of possession of a bladed article or offensive weapon and threatening with a bladed article or offensive weapon. The package of draft guidelines included a specific guideline for sentencing children and young people.

We opened a 13-week consultation on the revised guidelines on 6 October 2016. A resource assessment of the anticipated impact of the new guidelines on correctional resources was published alongside the consultation, in addition to a statistical bulletin. The final guidelines and the response to the consultation document will be published in spring 2018.

We also plan to collect data relating to sentencing practice in magistrates' courts later in 2017.

Breach Offences

Development

During this reporting period the Council returned to the development of a guideline on breach of orders with a focus on identifying current sentencing practice and the factors relevant to breach offences.

During earlier development of this guideline, we had identified some inconsistency of sentencing practice when imposing community and custodial sentences. As a result, development of the breach guideline was paused and we began work on a guideline on the imposition of community and custodial sentences (see p14).

Following the work on imposition, the Council returned to the breach guideline and agreed that a definitive guideline should be developed. The scope and content of the guideline was agreed to include guidelines for ten different breach offences:

- Breach of a Community Order
- Breach of a Suspended Sentence Order
- Breach of Post Sentence Supervision
- Failing to Surrender to Bail
- Breach of a Protective Order (restraining and non-molestation orders)
- Breach of a Criminal Behaviour Order and Anti-Social Behaviour Order
- Breach of a Sexual Harm Prevention Order and Sexual Offence Prevention Order
- Failing to Comply with Notification Requirement

- Breach of Disqualification from acting as a director
- Breach of Disqualification from keeping an animal

Consultation

Our consultation on breach offences ran between 25 October 2016 and 25 January 2017. During the consultation period, to support the development of the guidelines, we carried out qualitative research with magistrates and judges to explore how the draft guideline might work in practice. We conducted 28 in-depth interviews in total: 16 with Crown Court judges, 10 with magistrates, and two with district judges. We also carried out further informal testing of the draft guideline at a series of consultation events with magistrates and probation staff.

Alongside the consultation we published resource assessments of the anticipated impact of the individual guidelines on correctional resources and a statistical bulletin.

Post-consultation

We received 36 online and 23 written responses to the consultation. The vast majority of respondents were positive regarding the proposals. A significant proportion of responses came from magistrates and approximately two thirds from sentencers or groups representing sentencers, who were particularly positive. Consultees noted that the guideline covers complex subject matter and that improved consistency in sentencing breaches would be very welcome.

We expect to publish the definitive guideline in spring 2018. Because of the potential for the breach guideline to result in increased activations of suspended sentences, publication will be subject to consideration of any evidence available relating to the effectiveness of the imposition guideline. The Council will want to understand in some detail the impact the imposition guideline is having before finalising a publication date for the definitive guideline.

Burglary

Evaluation and monitoring

In January 2016 we published an assessment of the impact of our burglary guideline, which indicated some unintended impacts for some offences. The Council has since undertaken further analysis to explore potential reasons for the changes observed, and we will be publishing a summary report of the findings in summer 2017.

Child Cruelty

Development

During this reporting period the Council continued work on the development of a guideline for child cruelty offences. The Council decided that, as well as replacing the existing Sentencing Guidelines Council guideline for the offence of cruelty to a child, we should extend the scope to include the offences of causing or allowing a child to die or suffer serious physical harm, and failing to protect a girl from the risk of female genital mutilation (FGM).

To help inform the guideline, we held a number of conversations with relevant organisations such as the NSPCC and the FGM Centre. During this period the Council agreed the key factors and appropriate sentence levels for each offence and the draft guidelines were finalised. A consultation document was also drafted, ready for publication in June 2017.

To support development of the guideline, we conducted qualitative research to explore sentencers' responses to the draft guideline and examine how it might affect sentencing behaviour in practice. We conducted in-depth interviews with 20 sentencers (four High Court and six Crown Court judges, three district judges and seven magistrates). A resource assessment and statistical bulletin will be published alongside the consultation.

Children and Young People

Development

The Council continued to develop new guidelines for sentencing children and young people for robbery and sexual offences. We also continued the work to review and update the Sentencing Guidelines Council's *Overarching Principles – Sentencing Youths* guideline, to provide comprehensive and accessible guidance on the general principles to be applied when sentencing children and young people.

Consultation

The consultation took place between 12 May 2016 and 3 August 2016. There were 56 responses from organisations and individuals.

A resource assessment of the anticipated impact of the guideline on correctional resources was published alongside the consultation, in addition to a statistical bulletin.

Post-consultation

The definitive guideline was published on 7 March 2017, alongside a final resource assessment, to come into effect on 1 June 2017.

Domestic Abuse

Consultation

During this period the Council developed a revised draft guideline for domestic abuse offences. The guideline provides overarching principles for use in any criminal offence that takes place within a domestic abuse context.

We opened a 13-week consultation on the revised guidance on 30 March 2017, at the same time publishing a resource assessment of the anticipated impact of the guideline on correctional resources.

Most of the consultation period lies outside the timeframe of this report, and we will include full details in next year's Annual Report.

Drugs

Evaluation and monitoring

The Council's definitive guideline on drug offences came into force on 27 February 2012.

To assess the impact of the drug offences guideline, during 2016/17 we carried out a programme of data analysis, using data from the following sources:

- sentencing data from the Ministry of Justice's Court Proceedings Database;
- survey data from the Crown Court Sentencing Survey (which ran in Crown Courts between 2010 and 2015); and
- survey data collected across a sample of magistrates' courts in 2015/16.

We expect to publish this analysis in 2017/18.

Fraud, Bribery and Money Laundering

Evaluation and monitoring

The definitive guideline *Fraud, Bribery and Money Laundering Offences* was published in May 2014 and came into force in October 2014.

To assess the impact of the guideline, the Council this year commissioned an analysis of data from the Crown Court Sentencing Survey (which ran between 2010 and 2015) and data from the Ministry of Justice's Court Proceedings Database.

A summary of this analysis will be published in 2017/18.

Guilty Pleas

Development

The Council has a statutory duty to produce a guideline on reductions in sentence for a guilty plea. Work concluded on the development of the guideline this year.

Consultation

We received 181 responses to the 12-week consultation on this guideline, which was launched on 11 February 2016.

The consultation document was published alongside a resource assessment.

Post-consultation

As a result of the consultation responses, we made a number of changes to the guideline. We also carried out further research with defence representatives to test the revised version. This research consisted of 21 in-depth interviews with defence barristers and solicitors.

The definitive guideline was published on 7 March 2017 to come into force on 1 June 2017. A final resource assessment and a report detailing all the research carried out in support of the guideline's development were published alongside the guideline.

Evaluation and monitoring

The Council has put in place a group comprising representatives of the Sentencing Council, the Police, the Crown Prosecution Service, Her Majesty's Courts and Tribunal Service, Victim Support, and the Ministry of Justice, to steer work to collect a range of information that will feed into an assessment of the implementation and impact of the guideline. This work may include, for example, interviews with sentencers and other criminal justice professionals, analysis of transcripts of sentencing remarks, case file analysis,

and analysis of data from other criminal justice agencies.

The group will review the findings from this data collection and advise the Council if it suggests the need for a review of the guidelines.

Health and Safety

Post-consultation

The definitive guideline was published on 3 November 2015 and came into force on 1 February 2016.

Evaluation and monitoring

The evaluation of the guideline will begin in 2017. This will include analysis of sentencing data from the Ministry of Justice Court Proceedings Database and analysis of remarks from sentencing transcripts at the Crown Court.

Imposition of Community and Custodial Sentences

Development

The decision to produce this guideline came about during the development of our Breach Offences guideline (see p11), when evidence of inconsistency in the imposition of suspended sentences became apparent. The Council decided there was a need to address this issue prior to continuing the development of a guideline for breach of these orders. Guidance for imposition of these sentences was contained within the Sentencing Guidelines Council's guideline, *New Sentences – Criminal Justice Act 2003*.

This guideline had become outdated and contained guidance on a number of provisions that had never been commenced. More up-to-date Sentencing Council guidance already existed for magistrates in the Magistrates' Court Sentencing Guidelines (MCSG). Much of this guidance was used as the basis for the new guideline, which applies to all courts.

Consultation

Due to the technical nature of the guideline, we held a short consultation early in 2016 targeted at criminal justice professionals and agencies. The consultation document was accompanied by a resource assessment.

We received 246 responses. The Justice Committee published a written response in its Fifth Report of Session 2015-16.

Post-consultation

The Council carefully considered all consultation responses and the findings from its research with sentencers that related to the content and practical application of the guideline. On the basis of this feedback, we made a number of changes to the draft guideline, including:

- incorporating legislative references in the guideline;
- removing an indication of requirements that may be imposed for the purpose of punishment;
- giving a more balanced focus on rehabilitative requirements and greater detail of requirements;

- including a combined section on immediate custodial and suspended custodial sentences;
- making slight revisions to the content of the approach to imposing custodial sentences; and
- including factors relevant to the decision to suspend a custodial sentence.

The definitive guideline was published on 25 October 2016 and came into effect on 1 February 2017. A final resource assessment was published alongside the definitive guideline.

Intimidatory Offences

Consultation

During the period of this report the Council developed a guideline for intimidatory offences. The offences included are: harassment, stalking, threats to kill, disclosing private sexual images and controlling and coercive behaviour.

We launched a consultation on the draft guideline on 30 March 2017, accompanied by a draft resource assessment and statistics bulletin. To support the development of the guideline, we conducted qualitative research to explore sentencers' views of the draft guideline and gauge how it might work in practice. We carried out 32 in-depth interviews: 16 with Crown Court judges; 14 with magistrates; and two with district judges.

Further work on this guideline will take place post-consultation throughout the next year.

Magistrates' Court Sentencing Guidelines (MCSG)

Development

The Council decided to revise the existing guidelines for summary offences issued by the Sentencing Guidelines Council, which were last fully updated in 2008. It was not the intention of the Council to change sentencing practice or increase sentence levels but to convert them into the current step-by-step Sentencing Council format, thereby achieving a consistent approach to sentencing in magistrates' courts.

The Council drew on the expertise of a working group made up of sentencers, legal advisers, trainers and criminal justice agencies involved in magistrates' courts to develop revised guidelines for 27 offences. We also undertook a review of current sentencing statistics for these offences.

Consultation

Our consultation on this proposed guideline ran from 19 May 2016 to 11 August 2016. A resource assessment and statistics bulletin were published alongside the consultation paper.

We received 67 responses from organisations and individuals.

Post-consultation

In general, there was a positive response to the proposals. However, the Council was also grateful for constructive criticism and, in light

of suggestions, made some changes to the draft guidelines.

The definitive guidelines were published on 24 January 2017, to come into effect on 24 April 2017. A resource assessment and response to consultation were published alongside the definitive guidelines.

Manslaughter

Development

In 2014 the Council received a request from the Lord Chancellor to consider producing a guideline for so-called 'one punch' manslaughter offences. In considering this request, the Council decided that it was necessary to undertake a comprehensive review of manslaughter sentencing with a view to producing guidelines for a range of types of manslaughter:²

- Unlawful act manslaughter
- Gross negligence manslaughter
- Manslaughter by reason of loss of control
- Manslaughter by reason of diminished responsibility

In September 2016, as part of the development of the guideline, we conducted a large-scale research exercise involving focus groups with sentencers, at which we discussed an early draft of the involuntary manslaughter guideline. As a result of this exercise we made changes to the draft guideline and carried out further developmental work.

² A guideline for sentencing corporate manslaughter is incorporated in Health and safety offences, corporate manslaughter, food safety and hygiene offences.

We will continue our work to develop the guidelines with a view to consulting in the coming year, including carrying out interviews with sentencers to discuss in more detail the consultation version of the guidelines and ascertain whether they are likely to have any unanticipated consequences. A resource assessment and statistical bulletin will be published alongside the consultation.

Public Order

Development

The Council decided to produce guidelines for a number of public order offences. These are relatively high-volume offences and, although some guidance exists for magistrates, there is currently no guidance for judges in the Crown Court.

We began discussions on the scope and content of the guideline in January 2017. These discussions will continue throughout the coming year and we expect to consult on the draft guidelines early in 2018.

Robbery

Post-consultation

The definitive robbery guideline was published on 28 January 2016 and came into force on 1 April 2016.

The Council collected detailed data on sentencing across all Crown Courts between November 2016 and April 2017. We have analysed this data alongside data from the Crown Court Sentencing Survey (which ran between 2010 and 2015) and the Ministry

of Justice's Court Proceedings Database to assess the impact of the guideline.

We expect to publish a summary of this analysis in 2018/19.

Terrorism

Development

The Council began work on terrorism offences in November 2016. We decided to work on guidelines for the following offences which, by volume, appeared to be the most common:

- Encouragement of terrorism, section 1 Terrorism Act 2006
- Dissemination of terrorist publications, section 2 Terrorism Act 2006
- Preparation of terrorist acts, section 5 Terrorism Act 2006
- Possession for terrorist purposes, section 57 Terrorism Act 2000
- Collection of information, section 58 Terrorism Act 2000
- Membership, section 11 Terrorism Act 2000
- Support, section 12 Terrorism Act 2000
- Explosive substances, sections 2–4 Explosive Substances Act 1883
- Fundraising, section 15 Terrorism Act 2000
- Use and possession, section 16 Terrorism Act 2000

- Funding arrangements, section 17 Terrorism Act 2000
- Money laundering, section 18 Terrorism Act 2000
- Information about acts of terrorism, section 38B Terrorism Act 2000

We will continue our work on these guidelines throughout the coming year.

The Council considers that there is an urgent need for a guideline in this area. In light of judgments from the Court of Appeal highlighting the need for guidance and the raised threat of terrorism in England and Wales, we will seek opportunities to expedite the timetable as we prepare this guideline.

Theft

Post-consultation

The definitive guideline for theft offences was published on 6 October 2015 and came into force on 1 February 2016.

Evaluation and monitoring

To assess the impact of the theft guideline, survey data on the sentencing of shop theft was collected across a sample of magistrates' courts in two periods: one before the new guideline was implemented and another after implementation, between September and December 2016. We have analysed this data and will carry out further analysis of trend data across all theft offences later in the year, once sufficient time has elapsed for any changes in sentencing trends to be discernible.

We expect to publish an assessment of the impact of the guideline in 2018/19.

Analysis and research

The statutory duties of the Council include requirements to carry out analysis and research into sentencing. Our work in this area is set out in an analytical strategy, which includes the following.

Undertaking analysis to support the development of guidelines

The Council regularly carries out social research that aims to augment the evidence base underpinning guidelines, ensuring, in particular, that guidelines are informed by the views and experiences of those who sentence. We conduct primary research with users of the guidelines: primarily Crown Court judges, district judges and magistrates, using a range of methods. These methods include surveys, face-to-face and telephone interviews and group discussions. Our researchers also review sentencing literature and analyse the content of Crown Court sentencing remark transcripts. This work helps to inform the content of the guidelines at an early stage of development.

During the development of draft guidelines, the Council also draws on a range of data sources to produce statistical information about current sentencing practice, including offence volumes and average custodial sentence lengths. We use this information to understand the parameters of current sentencing practice.

Publishing an assessment of the resource implications of guidelines

The Council has a statutory duty to produce a resource assessment to accompany each sentencing guideline that estimates the effects of the guideline on the resource requirements of the prison, probation and youth justice services. This assessment enables the Council and our stakeholders to better understand both the consequences of the guidelines in terms of impact on correctional resources and the possible impact of our recommended sentencing options on re-offending.

The work that 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 it is considering the appropriate sentencing ranges for a guideline.

Where the Council intends for a guideline to improve consistency, while causing no change to the overall severity of sentencing, the guideline sentencing ranges will aim to reflect current sentencing practice, as identified from the analysis. Where we intend for a guideline

to effect changes in the severity of sentencing for an offence, the Council may set sentencing ranges higher or lower than those indicated by current sentencing practice.

Monitoring the operation and effect of sentencing guidelines and drawing conclusions

The actual impact of the guideline on sentencing and, consequently, on resources, is assessed through monitoring and evaluation after the guideline has been implemented. To achieve this, we may use a range of different approaches and types of analysis, including putting in place bespoke, targeted data collection in courts, qualitative interviews with sentencers, transcript analysis and analysis of administrative data. This data is supplemented by that collected through the Crown Court Sentencing Survey (which ran until March 2015).

In the forthcoming year, the Council will move from collecting bespoke data via paper data collection forms to using an online method. This will help to reduce the burden on courts and increase the efficiency of data collection.

Publishing sentencing factors and non-sentencing factors reports

See pages 24 to 31 for these reports.

We publish our research and statistical outputs on the analysis and research pages of our website:

<https://www.sentencingcouncil.org.uk/analysis-and-research/>.

More information about the analysis and research we have undertaken to support the development of new guidelines or to evaluate existing guidelines is included in the *Guidelines* chapter of this report (pp9-18).

Communication

The Council is required to have regard to the need to promote public confidence in the criminal justice system and the effect that the guidelines have on public confidence. The following pages outline our principal strands of work in this area.

Working with, and through, the media

The Council ensured that the four consultations and three definitive guidelines we published during the year, and our other corporate announcements, were communicated to the media, including criminal justice publications, national print and broadcast channels and relevant specialist titles.

The Council's aim, in working with the media, is to make sure that sentencers, criminal justice practitioners and the wider public are aware of the Council's work, are kept informed about new guidelines and know how to respond to consultations. We also use our engagement with the media as an opportunity to promote public confidence in sentencing.

The work of the Council remained of significant interest to the media and, over the course of the year, there were 507 mentions of the Council in print media, 1,826 broadcast items and 2,909 mentions online, not including social media.

Council members were available to talk to the media for each announcement and undertook a variety of interviews, including on high-profile, national programmes such as the BBC's Today programme, Sky News and Good Morning Britain, as well as on regional radio.

Our press office also routinely answers media enquiries about sentencing issues and provides spokespeople, where appropriate.

Working to engage the public and victims of crime

Building relationships with the Police Service

The Council's 2015/16 Communication Strategy identified the Police Service as a priority stakeholder and set an objective to work towards ensuring that members of the service:

- understand how sentencing works, and have confidence that guidelines are effective in making the sentence fit the crime;
- are better able to manage their own expectations about sentencing outcomes as well as those of victims and other members of the public; and
- potentially, become advocates for the Council's work, helping us to meet our objective of promoting confidence in sentencing.

As a preliminary to this work, we conducted a short research exercise to help us understand how sentencing is currently perceived among police officers. We conducted interviews with 22 serving officers, who were chosen based on the likelihood of them having regular contact with prosecution cases and exposure to sentencing outcomes.

The results of this research will inform the approach we take to this important strand of work in the year ahead.

We are particularly grateful to Inspector Alex McMillan of the Cheshire Constabulary for the considerable help he has given us with this project.

Working with partners

The Council continued to work with partner organisations to improve understanding of sentencing among victims, witnesses and the public. The Witness Service continued to use our materials about sentencing in training both staff and volunteers on key elements of sentencing, and for improving witnesses' understanding directly. At their request we produced more content during the year for their staff and volunteers to meet an identified need for information about specific aspects of the sentencing process.

We generated more than 102,000 views on our YouTube channel of the Council's videos about sentencing.³ Our video describing how sentencing works continues to attract consistent levels of interest, gaining more than 23,000 views this year. This level of interest

is likely to be due, in part, to our effective ongoing relationship with the Witness Service and our work with other partner organisations such as the Citizenship Foundation.

The Council continued to promote understanding of sentencing among young people. Our educational materials, which have been downloaded more than 800 times from the Times Educational Supplement website, were this year awarded a quality mark by the Citizenship Foundation. We also worked with the Citizenship Foundation on producing new resources for schools, including materials designed to dispel common sentencing myths. These resources were published on the Foundation's SmartLaw website, which provides resources for teachers.⁴

Developing relationships with partners and interested parties

To further our work to engage stakeholders and build relationships across the criminal justice system, Council members and staff from the Office of the Sentencing Council gave more than 30 speeches or presentations covering all aspects of sentencing and developing guidelines. Our audiences included magistrates, judges, the police, academics, NGOs, solicitors and barristers.

We also accepted two invitations to raise the profile of the Council in other jurisdictions, sharing our expertise on sentencing with senior judiciary in The Netherlands and Bahrain.

³ <https://www.youtube.com/user/SentencingCouncil>

⁴ <http://www.citizenshipfoundation.org.uk/main/page.php?466>

Developing digital capability

Online and offline Magistrates' Court Sentencing Guidelines

In June 2016 the Council launched an offline version of the Magistrates' Court Sentencing Guidelines (MCSG), representing a significant step forward in our move to providing fully digital guidelines.

The offline version of the MCSG is available on the iPads supplied to every magistrates' court by HM Courts and Tribunals Service (HMCTS) and is available free of charge from iTunes. The app runs in parallel with the online version of the MCSG, which can be found on the Council's website.⁵ Together they provide magistrates with easy access to offence-specific sentencing guidelines, overarching guidelines and explanatory materials, as well as a tool to help sentencers calculate fines.

Throughout the year, we have continued to develop these online and offline digital tools and to support the people who use them. We made a number of visits to magistrates' courts, observing how the digital guidelines are being used in the context of a busy court room, talking to bench chairs, magistrates, legal advisers, and other professional users about their experience of the guidelines, and testing our ideas for improvements in a series of focus groups. Informed by this research, we will be launching an upgraded version of the offline MCSG in autumn 2017.

Digital guidelines for the Crown Court

We began work this year on our project to develop digital sentencing guidelines for the Crown Court. Our priorities have been to establish a thorough understanding of HMCTS ICT Reform programme and the Common Platform, and to build relationships with other teams delivering digital reforms across the criminal justice system.

Welsh-language digital guidelines

In September 2016, the Sentencing Council agreed to produce a Welsh-language version of the digital MCSG, and translation of the first tranche of guidelines is underway. The Council is most grateful for the generous assistance of HMCTS Welsh Language Services with this work.

Website

The Council's website, **www.sentencingcouncil.org.uk**, has continued to be a source of information for sentencers and others in the criminal justice system, as well as for victims, witnesses, the public and journalists. Traffic to the website has increased significantly, with 814,713 unique visitors from 1 April 2016 to 31 March 2017, compared with 362,332 in the previous year.

⁵ <https://www.sentencingcouncil.org.uk/the-magistrates-court-sentencing-guidelines/>

Sentencing factors report

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 while maintaining the average severity of sentencing. 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 seventh year (to 31 March 2017), the Council published the following definitive guidelines:

- Imposition of Community and Custodial Sentences
- Magistrates' Court Sentencing Guidelines (MCSG)

- Reduction in Sentence for a Guilty Plea
- Sentencing Children and Young People
Overarching Principles and Offence
Specific Guidelines for Sexual Offences
and Robbery

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

Imposition of Community and Custodial Sentences

The Imposition of Community and Custodial Sentences guideline is not intended or expected to affect the average severity of sentences, rather it seeks to clarify the key principles associated with the imposition of these sentences, in particular suspended sentence orders (SSOs) and community orders (COs).

While one impact may be an increase in the number of COs and a corresponding decrease in the numbers of SSOs (in cases where SSOs were being used as a more severe form of CO), as none of these sentences will be served in custody, we do not anticipate that there will be any overall change in the relative proportions of sentences involving either immediate custody or being served in the community. We therefore estimate that the guideline will have no overall resource impact on the prison, probation or youth justice services.

Magistrates' Court Sentencing Guidelines

For all Sentencing Council guidelines, there is a small risk that the new format could cause sentencers to apply the guidelines differently, but as their layout has been designed to be clear and easy to follow, any changes in sentencing practice are likely to be due to an increased understanding of how to interpret the guidelines. This would increase consistency and therefore there is not expected to be any impact on resources over and above any highlighted below.

The resource assessment we have produced for the Magistrates' Court Sentencing Guidelines (MCSG) considers the seven summary offences in the MCSG where custody is included in the sentencing range. For five of these offences, there will be no changes to guideline starting points and ranges; the new guidelines merely reflect a conversion from previous guidelines to the Sentencing Council model. The five offences are: vehicle interference; vehicle taking without consent; excess alcohol (drive/attempt to drive and in charge); drive whilst disqualified; and animal cruelty. As the guidelines are not intended to change sentencing practice, we do not anticipate any impact on correctional resources.

For two communication network offences, there will be a change in the focus of the guidelines. However, any impact as a result of the changes is likely to be minimal, involving fewer than five prison places.

For TV licence payment evasion, conditional discharges are now included within the sentencing range for the lowest level of seriousness. This change may result in a decrease in the number of offenders sentenced to fines in the lowest category because some of these offenders may now instead receive a conditional discharge.

For speeding, where the statutory maximum penalty is a fine, we have made a change to the sentencing starting point and range for the most serious category, which is expected to result in an increase in the value of fines for the most serious level of offending.

Reduction in sentence for a guilty plea

Adults – impact on prisons

Due to the uncertainty about how defendants might respond to the new guidelines, the Council decided to explore two different scenarios (one optimistic, one pessimistic) based on assumptions about defendants' behaviour. These assumptions look at both the possibility of the guideline bringing about benefits, including cost savings, and the possibility of the guideline incurring costs. The resource assessment on the Council's website⁶ provides more information on the scenarios and the assumptions underpinning them.

Under the optimistic scenario, we estimate that the guideline would require only a minimal number of additional prison places in 2018/19 and, therefore, minimal costs would be incurred.

⁶ <https://www.sentencingcouncil.org.uk/wp-content/uploads/Guilty-plea-resource-assessment.pdf>

⁷ Figures quoted are averages for the financial year, and are rounded to the nearest 500.

⁸ All costs quoted are rounded to the nearest £10 million. Costs are in 2015/16 real prices.

Under the pessimistic scenario, there may be an increase of up to 500 prison places by 2018/19⁷, equating to a cost of up to £10 million⁸ in 2018/19, across both magistrates' and Crown Court sentences. This represents just under two per cent of the overall costs of prison places, as measured in 2015/16.

Under the pessimistic scenario, the guideline could ultimately result in the requirement for up to 1,500 extra prison places each year, at a cost of £30 million.

See Table 1 for an estimate of the total costs of prison places, probation and court hearings.

Adults – impact on prisons, probation and court services

The costs set out above reflect the increase in prison places only. The new guideline is also likely to bring about savings and costs to probation and court services.

This is because there may be changes in

the number of hearings required at court if defendants plead guilty at a different stage or, if sentence lengths change, there may be changes in the length of time spent on licence in the community or under post-sentence supervision. Table 1 presents the resource impact under the two scenarios and includes the savings and costs to prison, probation and the courts.

See the published resource assessment for details on the assumptions underpinning these figures.⁹

Children and young people

Because the vast majority of children and young people sentenced at court are given non-custodial sentences, and most of those who are sentenced to immediate custody are given custodial sentences of two years or less, any change in defendant behaviour will have minimal effect on overall resources.

For more information, see the published resource assessment.¹²

Table 1: Estimated total costs of prison places, probation and court hearings

This table shows estimated total costs, excluding capital (savings are shown as negative¹⁰), by financial year for the optimistic and pessimistic scenarios, £millions, 2015/16 real prices.

| | 17/18 | 18/19 | 19/20 | 20/21 | 21/22 | Annual cost over time ¹¹ |
|--------------------|-------|-------|-------|-------|-------|-------------------------------------|
| Optimistic | £0 | -£10 | -£10 | -£10 | -£10 | £0 |
| Pessimistic | £0 | £0 | £10 | £10 | £20 | £30 |

⁹ <https://www.sentencingcouncil.org.uk/wp-content/uploads/Guilty-plea-resource-assessment.pdf>

¹⁰ It should be noted that any potential savings are not necessarily cashable: for example, although there may be a theoretical saving in terms of court hearings, it may not mean that the number of court sitting days will reduce, rather that the increased efficiency will instead mean that more cases can be dealt with in the same period of time.

¹¹ These are the costs once steady state is reached in approximately 2031/32.

¹² <https://www.sentencingcouncil.org.uk/wp-content/uploads/Guilty-plea-resource-assessment.pdf>

Sentencing Children and Young People Overarching Principles and Offence Specific Guidelines for Sexual Offences and Robbery

The Council's aim in developing these guidelines is not to change sentencing practice but to make the guidelines more accessible and useful to sentencers and promote a more consistent approach to sentencing.

For children and young people sentenced for the first time for a criminal offence and who have pleaded guilty to an imprisonable offence, a Referral Order (RO) remains the mandatory sentence in both the new guidelines.¹³ There is greater flexibility to receive subsequent ROs under the new guideline, compared with the existing guidance (because of a change in legislation). Therefore, the Council does not anticipate any inflationary impact for this group.

For the offence-specific guidelines (for robbery and sexual offences), our research with sentencers suggest that there may be a shift from custodial to community sentences for a small number of cases where a custodial sentence is currently imposed. Therefore, the Council anticipates a small decrease in the use of custodial sentences and a corresponding uplift in the use of community sentences.

In 2015, only around six per cent of children and young people were sentenced to immediate custody (including 70 children and young people sentenced to custody for sexual offences and 330 for robbery offences). As a result, we expect the impact of this change on correctional resources to be small.

¹³ The only times a mandatory referral order does not apply is if the committed offence carries a sentence fixed by law, if a custodial sentence is more appropriate (i.e. in very serious cases), when a hospital order is more appropriate or when an absolute or conditional discharge is more appropriate (i.e. in less serious cases).

Non-sentencing factors report

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

We begin this report by defining non-sentencing factors and explaining their importance to resource requirements in the criminal justice system. We then catalogue the most recently 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. We discuss this in our report on sentencing factors. However, non-sentencing factors also exert an important influence on requirements for correctional resources.

Non-sentencing factors are factors that 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: greater

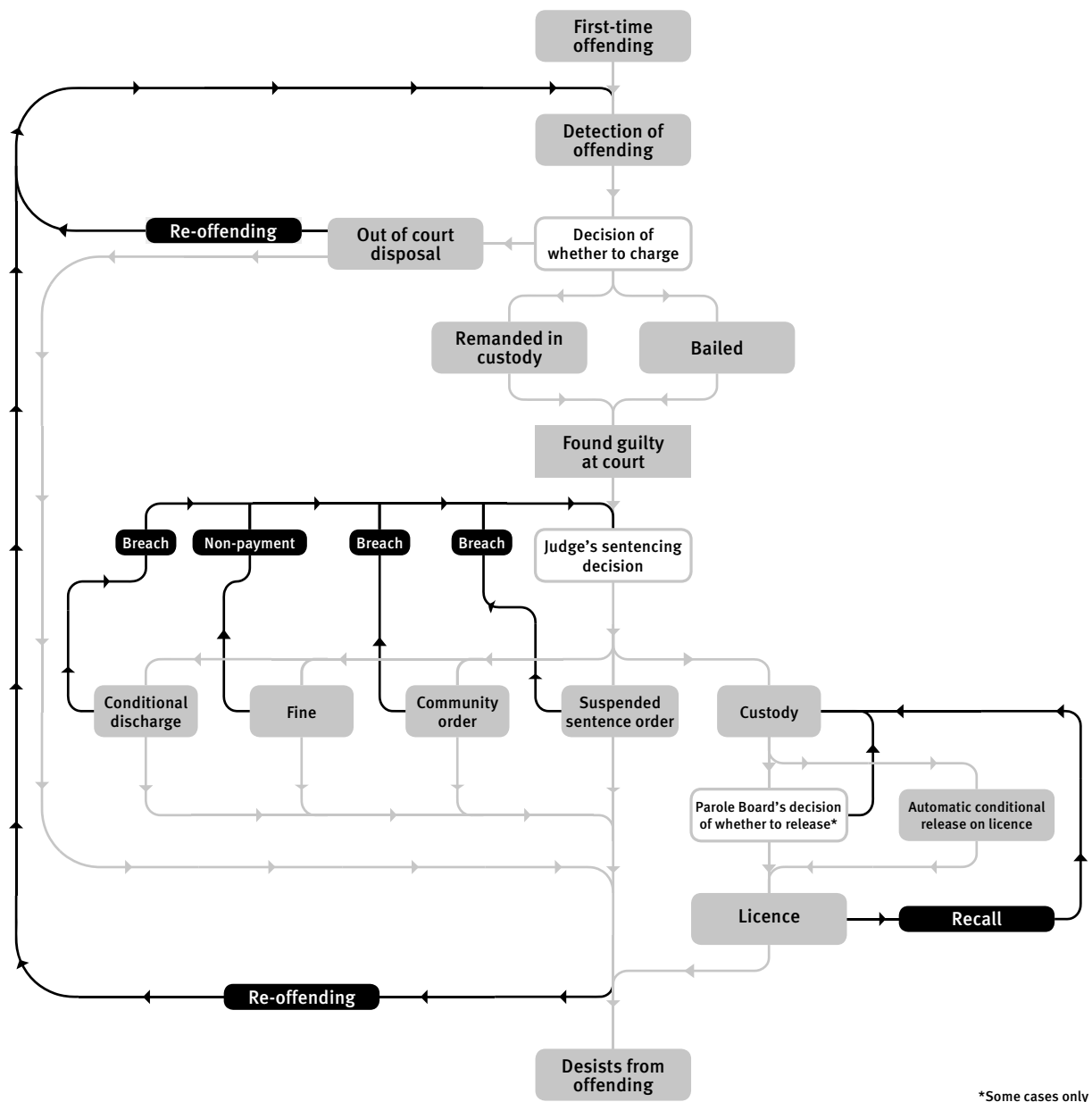
sentencing volumes lead to greater pressure on correctional resources, even if the courts' treatment of individual cases does not change. Release provisions are another example: changes in the length of time spent in prison for a given custodial sentence have obvious resource consequences.

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

It is straightforward to analyse 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 to the system. This is because the criminal justice system is dynamic and its processes are strongly 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 will have knock-on effects in many other parts.

Figure 1



The remainder of this report examines the available data on non-sentencing factors. Because of the complexities explained above, we have not attempted 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 (MoJ) publishes *Criminal Justice System Statistics Quarterly*, which gives quarterly statistics on the volume of sentences and the offence types for which offenders are sentenced.¹⁴

For the most detailed information on sentencing outcomes, follow the link *Criminal Justice System Statistics Quarterly: December 2016* to use the sentencing tool. The tool provides statistics on the total number of sentences passed and how this has changed through time. The statistics can be broken down by sex, age group, ethnicity, court type and 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 then 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 MoJ publication, *Offender Management Statistics Quarterly*.¹⁵

The tables concerning licence recalls, Table 5.1 to Table 5.11, can be found via the link *Offender Management Statistics Quarterly: October to December 2016*. For example, Table 5.1 contains a summary of the number of licence recalls since 1984.

¹⁴ <https://www.gov.uk/government/collections/criminal-justice-statistics-quarterly>.

¹⁵ <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

¹⁶ *ibid*

¹⁷ *ibid*

¹⁸ <https://www.gov.uk/government/collections/proven-reoffending-statistics>

Post-sentence supervision

The Offender Rehabilitation Act 2014 expanded license supervision, which means that since 1 February 2015 all offenders who receive a custodial sentence of less than two years are subject to compulsory post-sentence supervision (PSS) on their release for 12 months. MoJ publishes statistics on the number of offenders under PSS in *Offender Management Statistics Quarterly*.¹⁶ See Table 4.7 in the probation tables.

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 also be found in *Offender Management Statistics Quarterly*.¹⁷ Refer to the probation tables, specifically Table 4.11, which gives a breakdown of terminations of court orders by reason.

Patterns of re-offending

MoJ publishes re-offending statistics in *Proven Reoffending Statistics*.¹⁸

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. Additional statistics can be found in supplementary tables.

Release decisions by the Parole Board

Many offenders are released from prison automatically under release provisions that are set by Parliament and MoJ. 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*.¹⁹

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 MoJ's *Offender Management Statistics Quarterly*.²⁰

The prison population tables can be found via the link *Offender Management Statistics Quarterly: October to December 2016*.

For example, Table 1.1 contains data on how the remand population has changed through time.

¹⁹ https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/628032/Parole_Board_Annual_Review_Web_Accessible_Version.pdf, from p33.

²⁰ <https://www.gov.uk/government/collections/offender-management-statistics-quarterly>

Budget

Financial report

The cost of the Sentencing Council

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

| | 2016/17 (actual) £000s |
|---------------------------------|------------------------|
| Total funding allocation | 1,440 |
| Staff costs | 1,084 |
| Non-staff costs | 258 |
| Total expenditure | 1,342 |

Annexes

Annex A: About the Sentencing Council

The primary function of the Sentencing Council is to prepare sentencing guidelines,²¹ which the courts must follow unless it is in the interest of justice not to do so.²²

The Council also fulfils other statutory functions:

- Publishing the resource implications in respect of the guidelines we draft and issue.²³
- Monitoring the operation and effect of our sentencing guidelines, and drawing conclusions.²⁴
- Preparing a resource assessment to accompany new guidelines.²⁵
- Consulting when preparing guidelines.²⁶
- Promoting awareness of sentencing and sentencing practice.²⁷
- Publishing a sentencing factors report.²⁸
- Publishing a non-sentencing factors report.²⁹
- Publishing an annual report.³⁰

²¹ s.120 Coroners and Justice Act 2009

²² s.125(1) *ibid*

²³ s.127 *ibid*

²⁴ s.128 *ibid*

Governance

The Sentencing 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 we issue to courts, our impact assessments, our publications, how we promote awareness of sentencing and our approach to delivering these duties.

The Council is accountable to Parliament for the delivery of our statutory remit set out in the Coroners and Justice Act 2009. Under section 119 of the Act, the Council must make an annual report to the Lord Chancellor on how we have exercised our 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 our use of public funds and for protecting our independence.

Section 133 of the 2009 Act states that the Lord Chancellor may provide the Council with such assistance as we request in connection with the performance of our functions.

²⁵ s.127 *ibid*

²⁶ s.120(6) *ibid*

²⁷ s.129 *ibid*

²⁸ s.130 *ibid*

²⁹ s.131 *ibid*

³⁰ s.119 *ibid*

The Council is accountable to the Permanent Secretary at MoJ 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 from the Director General, Justice and Courts Policy Group at MoJ. The Head of the Office of the Sentencing Council is responsible for the management and proper use of the budget.

The Director General, Justice and Courts Policy Group is accountable for ensuring that there are effective arrangements for oversight of the Council in its statutory functions and as one of MoJ's arm's-length bodies.

For the financial year 2017/18 policy and budgetary oversight will move to the Offender and Reform Commissioning Group.

How the Council operates

The Council is outward-facing, responsive and consultative. We draw on expertise from relevant fields where necessary while ensuring the legal sustainability of our 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 our independence. These bodies include: 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; the Judicial Office; the Justices' Clerks' Society; the Magistrates' Association; the Ministry of Justice; the National Bench Chairs' Forum and the National Police Chiefs' Council.

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. The minutes of these meetings are published on our website.³¹

The Council has sub-groups to enable detailed work on three key areas of activity:

- Analysis and research – to advise and steer the Analysis and Research strategy, including identifying research priorities so that it aligns with the Council's statutory commitments and work plan.
- Confidence and Communication – to advise on and steer the work programme for the Communication team so that it aligns with the Council's statutory commitments and work plan.
- Governance – to support the Council in responsibilities for issues of risk, control and governance, by reviewing the comprehensiveness and reliability of assurances on governance, risk management, the control environment and the integrity of financial statements.

³¹ <https://www.sentencingcouncil.org.uk/>

The sub-groups' roles are mandated by the Council and all key decisions are escalated to the full membership.

Relationship with Parliament

The Council has a statutory requirement to consult Parliament, specifically the House of Commons Justice Committee.³²

Since 2015, in order to facilitate the work of the Committee, the Council has informed all organisations and individuals who respond to our consultations that their responses may be shared with the Justice Committee.

The Office of the Sentencing Council

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

- preparing draft guidelines for consultation and publication, subject to approval from the Council;

- ensuring that the analytical obligations under the Act are met;
- providing legal advice to ensure that the Council exercises its functions in a legally sound manner;
- delivering communication activity to support the Council's business; and
- providing efficient and accurate budget management, with an emphasis on value for money.

At 31 March 2017 there were 17 staff, including the Head of the Office of the Sentencing Council.

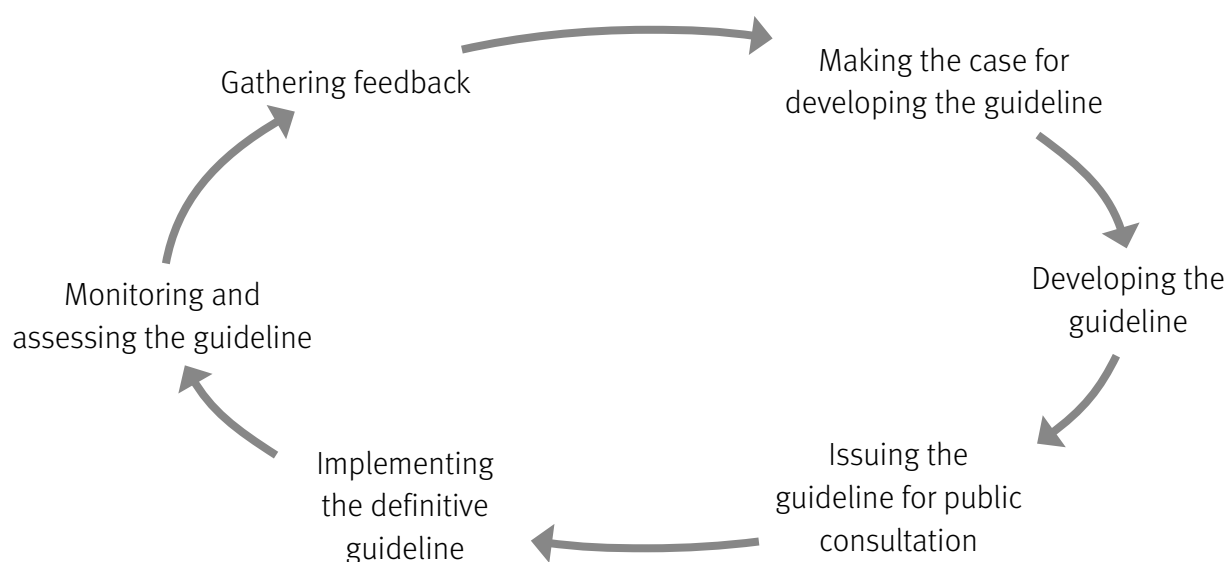
In the 2016 Civil Service Staff Engagement Survey, the Office recorded a staff engagement index of 87 per cent, representing an improvement of 6 per cent from the previous year. This places the Office well ahead of other arm's-length bodies and among the high-performing units of the Civil Service.

³² s.120 (6)(c) Coroners and Justice Act 2009

Guideline development

The diagram below sets out the process involved in developing a guideline, which is done through a guideline development cycle. This is based on the policy cycle set out by HM Treasury in the *Green Book on Appraisal*

and *Evaluation in Central Government* (2003) and allows a culture of continuous improvement to be embedded in the development process. The process, from first consideration by the Council to publication of a definitive guideline, can extend to 18 months or more.



Annex B: Membership

The Lord Chief Justice, the Right Honourable Lord Thomas of Cwmgiedd, is President of the Council. In this role he oversees Council business and appoints judicial members, with the agreement of the Lord Chancellor.

Lord Justice Treacy, a Court of Appeal judge, has been Chairman of the Sentencing Council since November 2013.

The Lord Chancellor and Secretary of State for Justice appoints non-judicial members, with the agreement of the Lord Chief Justice.

Membership of the Council on 31 March 2017

Judicial members:

- His Honour Judge Julian Goose QC
- Jill Gramann JP
- The Right Honourable Lady Justice Hallett
- The Honourable Mr Justice Holroyde
- The Honourable Mrs Justice McGowan
- Her Honour Judge Sarah Munro QC
- The Right Honourable Lord Justice Treacy
- District Judge Richard Williams

Non-judicial:

- Chief Constable Simon Byrne QPM, Chief Constable, Cheshire Constabulary
- Mark Castle OBE, Chief Executive of Victim Support
- Rosina Cottage QC, barrister
- Martin Graham, former Chief Executive of the Norfolk and Suffolk Community Rehabilitation Company
- Professor Julian Roberts, Professor of Criminology, University of Oxford
- Alison Saunders, Director of Public Prosecutions and Head of the Crown Prosecution Service

Register of members’ interests

At 31 March 2017, no member of the Council had any personal or business interests to declare.

Copies of this report may be obtained from our website:

www.sentencingcouncil.org.uk

For other enquiries, please contact:

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